

## *Opinion*

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### **Trade, IP and Canada's Economic Future**

Having returned from a vacation abroad it is startling to come home to Canada and realize just how challenged its economy really is. Prices are high due to inefficient supply chains and infrastructure; science-based jobs are leaving; manufacturing as a percentage of GDP rivals that of emerging markets. Not good.

At a time when Prime Minister Trudeau and his Ottawa team are re-negotiating the North American Free Trade Agreement (NAFTA) with the US and Mexico there are so many opportunities to move Canada's economy forward. One such opportunity is in the area of the protection of intellectual property (IP).

Intellectual property consists of legal devices such as patents, trade-marks, data protection, copyrights and so on that protect the innovator's rights to profit from their ideas, products and processes. For example, in the innovative pharmaceutical industry, patents and data protection allow companies to invest their earnings in the research and development of very expensive new entities in an ongoing business model. Without IP protection, there would be no profits, no research and development, and thus no new medicines.

And therein lies the lesson for Canada's politicians, regulators and trade negotiators. One of the major reasons Canada has so few high-value add manufacturing jobs and high-value add science-based research and development jobs is that Canada's IP protection regime is out-of-step with that of its by-far largest, and most important trading partner and investor, the US.

NAFTA was the first trade agreement to enshrine IP protection. But why do this? The rationale was to provide a level playing field for persons, firms and other entities in the enforcement of IP rights in law, a basic proviso for free trade, market access and non-discrimination. Specifically, NAFTA sets out minimum standards of IP protection, requires strong border enforcement to protect nationals from infringing imports, and a dispute settlement process.

Over time Canada has played loose with NAFTA IP rules while at the same time not providing Canadian firms adequate protection. For example, Canada's internet pharmacies that sell patented Canadian drugs into the US market at lower prices than those in the US, without the permission of the manufacturers in the US - all to which Canadian governments have turned a blind eye - have violated the provisions of NAFTA. Little wonder research-based pharmaceutical companies have down-sized and are hesitant to invest further in Canada.

Canada also lags behind other countries in the border enforcement against counterfeit products, including drugs, from entering the US.

Canada has also sided with its domestic generic industry over the transnational branded drug industry in not protecting research-based companies' data as well as other nations, including the US. The Canadian courts' interpretation of "utility" has retroactively invalidated several drug patents, even though those drugs were helping patients, and allowed generics to come to market prematurely – all out-of-step with the rest of the industrialized world.

It took the completion of the Comprehensive Economic and Trade Agreement (CETA) between Canada and the EU to drag Canada into recognizing that patent-owning entities deserve the right to appeal decisions against them just as challengers have, and to extend patent life to offset time involved in government regulatory approval processes – even though it will be much less than offered by EU countries and the US. Yet Canada's trade with the EU is miniscule compared to that with the US.

At the cutting edge of life sciences research and development Canada is even more out-of-step. For large-molecule biologics that are being developed to target cancers

and other life-threatening chronic diseases the EU provides 10 years of data exclusivity, the US 12, but Canada only 8. For so-called orphan drugs that treat rare diseases that affect small populations, making them highly unlikely to ever be genericized, the US offers 7 years of market exclusivity, the EU 12 and Canada none. If Canada does not want to play fair then it should not expect any high-value add jobs to come this way any time soon.

While NAFTA is being renegotiated Canada is also simultaneously proposing to enact new regulations that will force brand name drug manufacturers to sell their products in Canada at the lowest of prices, and, calling for the industry to invest more in Canada. Under such a scenario – refusing to harmonize IP protection, slashing prices, and then demanding more investment – why would any industry want to do business in Canada?

Prime Minister, if you are serious about creating high-value add jobs in Canada and bringing new investment in life sciences – as you say you are - then realize that companies need to make profits to invest in the future, and use NAFTA as a means to get Canada's IP house in order.