

Intelligence MEMOS



As NAFTA renegotiations proceed through the summer and fall, the C.D. Howe Institute Intelligence Memos will be looking at what to expect and provide analysis on the latest developments at the table. This post is part of that series.

From: Daniel Schwanen and Aaron Jacobs

To: François-Philippe Champagne, Minister of International Trade

Date: August 9, 2017

Re: **NO REASON TO FEAR THE INTELLECTUAL PROPERTY BOGEYMAN**

As we prepare for the launch of NAFTA re-negotiations next week intellectual property (IP) is about to make its return to the stage.

The US side has already flagged IP issues as a priority in its [summary](#) of negotiating objectives.

Happily, this is a movie we have seen before, and Canada comes to the negotiating table well-prepared. The newly-implemented Comprehensive Economic and Trade Agreement (CETA) with Europe and the Trans-Pacific Partnership (TPP), which have occupied Canadian negotiators for almost a decade, both contain provisions that strengthened some IP-holder's rights. These provisions are likely to reappear in the new NAFTA. Indeed, the US list seems to embrace much of the TPP worldview, notwithstanding Donald Trump's public denouncement of that agreement.

Even more happily, our [study](#) earlier this year showed that these provisions, in contrast to the warnings of some doom-sayers, are likely to be fairly benign for Canada.

Critics focused notably on strengthened protection for pharmaceutical patents in the CETA, and on the extended term of copyright in the TPP. In both cases, we found that the cost of these changes is likely to be well under what their critics have claimed. There is no question that there could be some lessening of availability of lower-cost imitations of patented and copyrighted material. But these costs are dwarfed by the overall economic benefits of the two trade agreements.

Meanwhile, efforts to harmonize IP rules with those of our major trading partners will likely support increased access by our own exporters to these large markets.

Perhaps the most important lesson from the CETA and TPP negotiations is that new IP provisions are overwhelmingly likely to leave intact many tools for Canadian governments to address the cost of extended patent and copyright protection. If low drug prices and a strong public domain are at issue, Canada will yet have many ways to address them.

Canada is a net importer of intellectual property and as such will incur some short-term costs as a result of higher net payments to patents and rights holders abroad. But pessimists about the structure of Canada's economy assume that it will always be a net importer of R&D-intensive, cultural and other copyrighted products. Yet Canadians are net sellers of their brainpower. Canada is a strong net exporter of R&D services to the rest of the world. Indeed, at \$4.2 billion, Canada's little-heralded trade surplus in such services almost offsets the cost of its use of intellectual property. Exports of Canadian cultural products are also growing fast.

This emphasis on producing, rather than exploiting, IP indicates to some observers that something is wrong with Canadian entrepreneurship and innovation culture. We note that it can instead suggest the potential for Canada's one day becoming a stronger IP exporter, and therefore having more to gain from carefully addressing some IP rights in trade agreements than first appears.

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