For Canadian innovators, will TPP mean protection – or colonialism?

By Jim Balsillie
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In his 2011 State of the Union address, U.S. President Barack Obama said: "In America, innovation doesn't just change our lives; it is how we make our living." If a Canadian prime minister emphasized innovation in a Throne Speech, he would have to say: "In Canada, we invented the touch screen, Ebola vaccine, Internet search engine and YouTube, but we're not making a living from them. Instead, those Canadian inventions are generating hundreds of billions of dollars in prosperity for foreign countries."

The Trans-Pacific Partnership agreement is a legal and economic framework that will determine how its signatory nations make their living for the rest of the 21st century. As the world's biggest exporter of intellectual property, the United States can make an even better living off its high-margin intellectual property (IP). Canada, which owns little valuable IP, will continue to make its living by selling low-margin resources and agricultural goods such as beef, canola and softwood lumber, and competing with low-cost manufacturing labour from Mexico, Peru and Vietnam. Global economic opportunities will continue to shift from traditional goods to IP-based goods, and as a large IP importer, Canada's prospects are bleak.

The Office of the U.S. Trade Representative bills TPP as "Made in America" and "the first agreement that addresses the global digital economy." That's why TPP provides great benefits to national economies oriented to capturing wealth from high value-added goods and services. Canada is not one of those of countries. Because of decades of failed innovation policies, our economy is still structured for 19th-century commodities and 20th-century manufacturing rather than for a 21st-century innovation economy. When the TSX index traded down 11 per cent in 2015 (the worst performance among developed markets), the Nasdaq increased by more than 5 per cent and the S&P500 outperformed the TSX for the fifth straight year.

Canada currently does not have the capacity to compete in the global digital economy, which relies on intangible assets for growth. Despite Canada's 14 new free-trade deals, the 30-per-cent decline in our dollar and a growing U.S. economy, Canada posted record trade deficits and shrinking exports throughout 2015 as prices for tangible commodities fell.

Why TPP makes matters worse

TPP raises the minimum global IP standards agreed by the World Trade Organization by extending and enforcing the U.S. IP regime and interests to all TPP countries. Make no mistake about it: This is not your father's trade agreement. TPP clearly demarks the shift in global value creation from tangible to intangible goods by providing unprecedented advantages to current large holders and producers of IP.

Canada does not have the arsenal of valuable IP to benefit financially from such provisions. The Intellectual Property Owners Association's most recent ranking of "Top 300 Organizations Granted U.S. Patents" lists BlackBerry as the only Canadian entry. In their "Top 100 Worldwide Universities Granted U.S. Utility Patents," the University of British Columbia was the only Canadian university, listed at 78th place with 29 patents granted (compared with the University of California's 453).

Canadians create world-class innovations, but we fail to commercialize them. A recent Conference Board of Canada innovation report ranks Canada second to last on the ability to patent our ideas, a core aspect of ideas commercialization. With so few Canadian companies and universities positioned to benefit from TPP's IP provisions, we are ill-prepared to compete with countries possessing hundreds of such wealth-generating entities.

Canada's prosperity strategies for the past 30 years were dominated by the production principle of comparative advantage and trade liberalization. Unfortunately, this approach failed to position Canada for the global knowledge economy, including 21st-century trade agreements, such as TPP, which are not about the movement of tangible goods for developed economies, but rather about protection of their intangibles.

In 1975, intangible assets made up one-sixth of the value of S&P 500 companies; by 2015, they made up five-sixths of the value. On an inflation-adjusted basis, intangible asset values grew by 8.5 per cent a year, compounded, over 40 years, while tangible asset values – of which Canada has plenty – *shrank.*

Starting in the 1980s, Canadian policy makers and politicians blindly bought the narrative lobbied by foreign corporations, first in the pharmaceutical industry and then across all sectors, that stronger IP protection would lead to more domestic innovation and prosperity.

Three decades later, our pharma R&D has declined dramatically and drug prices for Canadian consumers are among the highest in the world. Our largest technology companies are much smaller now than 10 years ago and we have *zero* growth in innovation outputs over the past 30 years.

We should have learned our lesson by now, and yet the same outdated thinking from the 1980s is back on display from today's TPP proponents: Focus on aligning our domestic IP laws with the U.S. system and hope for the best. TPP needs to be assessed not for its legal purity or alignment to U.S. laws, but for the economic impacts colonial IP policies have on Canada. After all, Canada has aligned its laws with the United States both directly and indirectly in several international treaties over the past three decades, and our innovation performance always faltered thereafter.

When Canada diligently follows U.S. and European demands for stronger IP protection, we create greater leverage and prosperity for large foreign companies with pre-existing intellectual property rights positions, which further entrenches and extends their profits at our expense.

Despite our self-imposed disadvantages, TPP enthusiasts in Canada argue that the agreement will open a market of 800 million people for our innovators and therefore spur innovation. Yet 97 per cent of world trade in information technology products already move tariff-free under the World Trade Organization's Information Technology Agreement. So how does TPP provide new market access for Canadian technology companies?

Successful technology entrepreneurs don't access existing markets – they *create* new markets. There was no pre-existing global market for search engines, wireless e-mail, ride-sharing apps, social-media networks or e-commerce platforms. Those markets were created by entrepreneurs who designed new business models, protected them using sophisticated IP rights strategies and attacked existing profit pools.

Canada had no strategy of spurring domestic growth through innovation because those responsible for the agreement never consulted with Canadian technology entrepreneurs. Compare that with the current U.S. Trade Representative, who spent six years with Silicon Valley's best, crafting policies for TPP that resulted in what The New Yorker magazine has called “Silicon Valley’s Big TPP Win.” That’s why, more recently, Canadian TPP cheerleaders have started admitting that the agreement will not address our innovation shortcomings. If TPP does not enable Canadians to successfully commercialize our ideas, then it’s not a net benefit to our economy.

Every business is a technology business

Our traditional commodity industries will benefit in the short term from tariff reductions afforded by the TPP. Innovative high-growth Canadian technology companies trading high-margin products, often cloud-based, will not see competitive benefits from this agreement. TPP will further solidify U.S. hegemony over global technology standard-setting because harmonization entails adopting what the large sophisticated market decides. These standards entrench the profit-making abilities of companies who own the IP embedded in them.

Without national strategies for standards and regulations, and little valuable IP, Canada has not positioned itself to be a standard-setter. That’s why no one can show how new technology standards harmonization in TPP will increase the bottom line of a specific Canadian technology company.

But technology is no longer the sole purview of high-tech entrepreneurs. It permeates all industries and is the only wealth driver in the 21st-century economy. IP rights are the global currency for innovators in all markets to capture and extract value.

This is why companies in traditional sectors are also building IP arsenals. When Canadian farmers buy a tractor from John Deere or consumers buy a car from General Motors, they acquire a restricted licence to use proprietary technology. These new business models strengthen corporate control over their customers. Broader and stronger IP ownership laws create a neo-feudal economic structure where large IP owners have ever more unassailable profit-making positions.

A recent report published by the World Economic Forum states that in fewer than 30 years, possession of intellectual property will be the only competitive advantage for nations and businesses. TPP is an agreement that perfectly reflects this shift in capturing value and allows IP to be used as an asset in its dispute settlement mechanism. A Canadian company has never won an investor-state dispute settlement case under NAFTA. Under TPP, our government has the additional disadvantage of broader IP lawsuits from foreign corporations where tribunal decisions will now be made outside of Canada.

While Canada failed to build capacity in IP, other countries, such as China, Israel and South Korea, came from behind us to steadily build theirs. According to the World Intellectual Property Organization, China is now the world’s biggest patent filer, with the Chinese filing more than 700,000 patents in 2014 alone, outpacing Canada 150-fold. With this aggressive strategy, China will eventually have enough IP to drive its own prosperity by exporting higher valued-added goods and transforming into a higher-wage economy.

Should China join TPP in the future, it will be well equipped to compete with the United States and Japan and – unlike Canada – thrive under the deal. All successful innovation economies have strategies similar to China’s. While innovation success is not a simple game of patent volume, Canada’s domestic patent filings must dramatically increase to be on par with filings from similar-sized innovation economies.

What’s more, countries with large IP ownership have far better investment opportunities because high IP regimes create lower investment costs. This creates a virtuous cycle of innovation success, while countries with low IP ownership manifest a constrained and expensive business investment environment. This explains Canada's low and declining rate of business investment.

Until we create a sophisticated innovation strategy to address our dismal IP ownership and commercialization record, Canada competes globally by lowering both our wages and our dollar. This race to the bottom should alarm us.

While education and immigration strategies in Canada drive improvements in our skills productivity and the potential to trade more professional services, this has no effect on multi-factor productivity – the standard measure of innovation – which reflects the value of our intangible assets. Google and Facebook, opening sales and development offices in our cities, are not drivers of multi-factor productivity for Canada. This is how the world's leading economies capitalize on exceptionally skilled Canadian workers cheapened by a 70-cent dollar. In the 21st-century global economy, cheap branch-plant engineering talent is what factory workers in manufacturing branch plants were in colonial times.

Free trade unicorns, rainbows and sunny ways

In a more recent State of the Union address, Mr. Obama said: "We know that the nation that goes all-in on innovation today will own the global economy tomorrow."

Because of our failed policies, Canadians are betting our future prosperity on Japan gorging on our beef and America on our linseed and canola. That's more than an outdated prosperity strategy – that's hoping for a miracle. The only way to advance Canadian prosperity is to close our systemically widening productivity gap by increasing our high-margin exports.

Few people believe as much as I do in the ability of Canadian entrepreneurs to punch above their weight globally. But it's highly unlikely that they will use the time before TPP is ratified to furiously acquire valuable IP and create huge innovation businesses so that our economy can benefit from the strong incumbent IP protections in the deal.

Our innovation output deficit is the result of decades of outdated and incomplete public policies that put Canada at a disadvantage for 21st-century economic prosperity. Canada failed to build the needed competitive capacity to succeed under TPP. We are signing up future generations to an economic framework that indefinitely locks in our self-imposed competitive disadvantages.

If Canada wants to be a prosperous innovation nation, we urgently need new and effective strategies. Our current government did not create this crisis or TPP. But it's now this government's responsibility to acknowledge our structural disadvantages and craft radically different approaches that put Canada on a path to prosperity.

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