

BARRIERS TO IMPROVING GLOBAL HEALTH IN THE PROPOSED TRANSPACIFIC PARTNERSHIP AGREEMENT

- Noncommunicable diseases are the dominant health problem of the 21st Century and most of these diseases are the result of promotion and consumption of unhealthy products (tobacco, obesity-inducing foods, alcohol to excess)
- These products are profitable to sell, especially for transnational corporations
- Reducing the health impacts (and attendant impacts on health costs and the economy) requires regulating these products
 - Such regulation will almost certainly reduce profits of these companies
 - There is little dispute that public health officials, and state and national officials, have the power to enact and implement such regulations generally, though particular measures can be contested.
 - Trade agreements toss an exogenous barrier into the mix, requiring that regulations avoid even inadvertent “discrimination” against businesses, based on their country of origin.
- The "Investor-State" provisions of the TPP expand the opportunities for the tobacco industry, as well as purveyors of other products that damage health, to litigate against sensible public health regulations.
 - Regulations that reduced profits could be a legal cause of action
 - Even increased taxation designed to reduce sales
- These corporations have greater legal resources than most countries, especially poor and middle income countries, which makes the mere *threat* of litigation a deterrent to health regulations*
 - The only reason that Uruguay is able to defend its strong graphic warning labels on cigarettes is because US philanthropy is paying the legal costs
- The dispute resolution process (secret arbitration) prevents transparency and public involvement, further compromising the ability of public health
- The expanded intellectual property provisions will provide new causes of action for tobacco and other companies to oppose warning labels and advertising controls
 - To date tobacco companies have not been successful in arguing that international trademark treaties prohibit large warning labels or plain packaging; provisions in the TPP would give the tobacco companies such protections
- The expanded intellectual property provisions will make it more difficult and expensive to make pharmaceuticals available at low cost, including in poor countries
- Public health authorities have been frozen out of the negotiations
 - "Public consultations" are a joke (I have participated in two of them)
- Malaysia has tabled a clear "carve out" for tobacco to ensure that the tobacco companies will not be able to make clever legal arguments to fight public health policies
 - The Obama Administration is refusing to support Malaysia
 - A proposal to protect "science based regulation" the Administration floated last summer addresses none of these problems, and still leaves the door open to litigation
 - Unwillingness to protect the public from tobacco signals even less willingness to deal with other issues
- What needs to be done?
 - Support Malaysia tobacco carve out
 - Assure that commercial interests are not given priority over health
 - Include public health representatives in the negotiating advisory process, and promote transparency and democratic accountability at all levels of trade negotiations
 - Exclude vital human services such as health care and water, and intellectual property rules that affect warning labels on dangerous products and affordable medications from challenge under trade agreements

* See, for example http://www.nytimes.com/2013/12/16/opinion/big-tobacco-bullies.html?ref=opinion&_r=0