

New trade agreement threatens health in Australia and around the Pacific Rim

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A new trade agreement being negotiated between Australia, the United States and seven other countries could profoundly affect health in Australia and around the Pacific Rim for the foreseeable future.

The Trans Pacific Partnership Agreement (TPPA), a regional agreement involving Australia, the United States, New Zealand, Chile, Singapore, Brunei, Peru, Vietnam and Malaysia, is being hailed as a '21st Century' agreement that will cement Australia's place in the global economy and strengthen its position in the region.

But big US corporations are trying to use this agreement to force binding obligations on the other parties, including Australia, that are likely to reduce access to essential medicines and constrain the ability of governments to protect the health of their citizens.

These issues will be discussed in a roundtable involving trade negotiators from the Department of Foreign Affairs and Trade and public health experts in Canberra this morning.

The issues of greatest concern to public health experts are US proposals to include stringent intellectual property provisions and investment provisions in the agreement. These provisions go far beyond what Australia was prepared to agree to in the Australia-US Free Trade Agreement.

Australia's Pharmaceutical Benefits Scheme (PBS) could be decimated if the intellectual property provisions tabled by the US Government are adopted. The PBS is firmly in the sights of the powerful US pharmaceutical industry because it is such a widely accepted model for containing public spending that has inspired the introduction of similar programs in other countries.

Our PBS is very successful in keeping the cost of medicines low for consumers. This is achieved through a process called 'reference pricing', where the price paid to a manufacturer for a particular drug is determined by comparison with cheaper generic drugs. Medicines are only listed on the PBS if they are determined to be safer and more effective than existing drugs for the same condition.

Leaked US Government proposals indicate that the US is seeking intellectual property clauses in the TPPA that will grant pharmaceutical companies greater power in setting the prices of drugs, and will make it harder for generic manufacturers to produce cheaper versions. These clauses will make patents easier to obtain, even for minor variations to existing drugs, and prevent unwarranted patent applications from being challenged before they are granted. Pharmaceutical companies will be able to market prescription drugs directly to

consumers over the internet, a practice which is banned in all countries except for the US and New Zealand because it encourages over-prescribing.

Even more worrying than the effect of these clauses on Australia's PBS is their likely effect on the prices and availability of HIV/AIDS drugs and other essential medicines in developing countries. Take Vietnam for example. These clauses would mandate extensive changes Vietnam's patent laws to lower patenting standards and eliminate safeguards against unwarranted patents. According to an Oxfam report, similar provisions in the Jordan-US FTA increased the cost of medicines by 20% and threatened the government's ability to continue providing health services.

In addition to intellectual property provisions, the US is seeking provisions designed to protect the value of the investments of US businesses in other countries. These investment provisions enable companies to sue governments in international courts if their laws and policies are perceived to reduce the value of the company's investments.

Philip Morris has taken advantage of investment provisions in other trade agreements and investment treaties, suing the Uruguay Government in 2010 over its tobacco control measures and more recently indicating its intention to sue the Australian Government over the introduction of tobacco plain packaging, using an obscure Australian investment treaty with Hong Kong. The dangers of these types of provisions are clear: they restrict the ability of governments to legislate to protect health, and give power to foreign businesses to determine domestic policy.

The Australian Government has repeatedly affirmed that it will not be bullied by the tobacco industry into giving up on plain packaging. Legal advice suggests that Philip Morris is unlikely to win its claim under the Australia-Hong Kong investment treaty, but could cause delays to the legislation and cost the government millions of dollars in defending the case. If investment provisions are included in the TPPA, the tobacco industry will have further opportunities to tie up the government in expensive legal action and stall the introduction of effective tobacco control policies.

The impact of these provisions is likely to be far more serious in developing countries, where the health burden caused by tobacco is much higher and tobacco companies have more at stake. Developing country governments have fewer resources to spend on the battle and may be more cautious about introducing further controls over the tobacco industry.

In its Trade Policy Statement released in April, the Gillard Government indicated its intention to ensure that trade agreements would not undermine the pharmaceutical benefits scheme or allow foreign investors greater rights to sue governments than domestic businesses. Now that the US Government has made its position clear, it is time for Australia to take a strong counter-position, rejecting the health-damaging clauses the US is asking for and proactively shaping the agreement for the best possible health outcomes in Australia and around the Pacific Rim.

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