



*Trading Public Policy to Corporate Control:*  
The Trans-Pacific Partnership Threatens Public Health  
October, 2016

**The proposed Trans Pacific Partnership (TPP) is at a critical turning point.** The U.S. Congress could vote to ratify the TPP during an unaccountable “lame duck” session after the Nov. 8 election.

The TPP would include both high-income and low-income Pacific Rim nations: the U.S., Japan, Singapore, Australia, New Zealand, Canada, Mexico, Chile, Peru, Brunei, Malaysia, and Vietnam.

**The TPP’s corporate priorities would deepen income inequality.**

The U.S.’ high level of income inequality, a key indicator of the public’s health and longevity, reflects corporate influence on public policy. The TPP is a case in point. It was negotiated for seven years by corporate representatives and trade ministers, in strictly enforced secrecy from the public and most elected officials, until its public release in Nov. 2015.

Trade agreements were supposed to encourage trade across borders, and discourage nations from limiting international competition by protecting their own nation’s goods and services. But increasingly they handcuff nations’ ability to hold corporations accountable. Recent trade agreements between the U.S. and lower-income countries have accelerated a “race-to-the-bottom” by transnational corporations competing to pay the lowest wages in order to maximize profits. In part by reducing tariffs on imports, the North American Free Trade Agreement (NAFTA) contributed to job losses among industrial workers in the U.S., decimating entire communities. At the same time, Mexican corn farmers were largely displaced due to competition from lower-priced subsidized U.S. corn.

Congress’ insistence on austerity in U.S. government spending also precludes addressing the challenges of revitalizing hard-hit workforces, compounded by eroding financial insecurity, aging physical infrastructure, and increasingly precarious work among highly skilled professionals and lower skilled workers in services jobs, and among educated and younger workers.

Roberto Azevedo, Director-General of the World Trade Organization (WTO), [concedes](#) that trade deals are “imperfect,” and can have “negative effects in some parts of the economy; and those effects can have a big impact on some people’s lives...**To properly address the real challenges before us we need comprehensive and crosscutting domestic policies that address education, reskilling and support to the unemployed.**”<sup>1</sup>

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But WTO rules penalize policies and programs that could protect communities from economic shocks, while advancing population-wide wealth and health, if they tread on trade rules that define and prioritize the rights of foreign corporations. For example, in September, 2016, the U.S. [won a “trade” charge](#) against a program in India that offers government subsidies and long-term contracts to solar power companies to expand solar energy. It fostered the development of more than 8,000 megawatts of solar power, creating local, green jobs and bringing new solar entrepreneurs to the economy. The U.S. claimed that the “buy-local” program disadvantages potential competing foreign companies. India has now filed a trade charge against eight U.S. states’ clean energy programs that, like India’s, include “buy local” provisions.<sup>2</sup>

**The TPP’s Investor-State Dispute Settlement (ISDS) rules would strengthen the rights of private transnational corporations to override public health laws and regulations.**

The **Investor-State Dispute Settlement (ISDS) process** empowers foreign corporations (“investors”) to sue governments directly in order to invalidate and override domestic regulations they assert compromise their right to make profits from their investments. ISDS challenges are adjudicated in private by an appointed three-member tribunal guided only by trade rules, to the exclusion of public health data and policies. Countries faced with an ISDS challenge have to expend millions of dollars just to defend themselves. A country that loses a trade dispute is liable to compensate the corporation, often for additional enormous sums, using taxpayer funds. The threat of an ISDS challenge has chilled consideration of valuable proposed public protections.

Corporations have used the ISDS process in earlier agreements to invalidate local, state and national measures related to environmental protections, importation of adulterated drug products, tobacco control, alcohol control, hazardous waste management, essential public utilities, and “buy local” programs. A recent example: TransCanada is contesting President Obama’s rejection of the Keystone XL pipeline under the ISDS provisions of NAFTA. The company is asking for \$15 billion from U.S. taxpayers in compensation for future lost profits.<sup>3</sup>

**The TPP would strengthen corporate rights to undermine these public health protections:**

**Access to affordable medicines.** The U.S. is the highest-priced profit center for prescription drugs in the world. Life-saving medicines are often unaffordable in the U.S. as well as in lower-income countries. Brand name drug companies already benefit from patent rights that provide years of monopoly pricing for new products, protecting them from generic competition that would lower prices. The TPP’s Intellectual Property chapter adds additional “market exclusivity” rules that extend monopoly pricing rights, such as through protection of clinical trials data, claims for new uses of existing drugs, and compensation for administrative delays in processing patents. These rules have been shown to drive up prices<sup>4</sup> and would thus reduce access to medicines.<sup>5,6</sup> The TPP would be the

first agreement to apply these rules to breakthrough biologic drugs for cancer, hepatitis, and autoimmune diseases, produced through biological processes, which are already exorbitantly priced.<sup>7</sup>

**Right to regulate.** The TPP defines standards to test whether domestic regulations are “not more trade-restrictive than necessary to fulfill a legitimate objective.” When definitive scientific evidence of harm is scarce or inconclusive, as it takes time to accumulate evidence and reliable analytical methods, countries may lower their standards for protecting health in order to avoid a trade challenge, exposing populations to health-damaging preventable risks. New regulatory coherence provisions would permit “interested parties” from TPP countries to participate in regulation-setting in any other TPP country. This opens the door for transnational tobacco, alcohol, and food corporations to “capture” the formulation of regulations that affect their business practices in a TPP country.

**Environmental protection.** Environmental protections are stipulated in the TPP, but they are generally non-binding and unenforceable. It falls short of promoting active protection of the environment.<sup>7</sup>

**Climate change.** The single statement in TPP related to climate change encourages a transition to low emissions and a resilient economy. Otherwise, the TPP is silent.<sup>7,8,9</sup>

**Employment and income inequality.** Proponents and critics agree that TPP countries are likely to experience both employment gains and losses.<sup>10</sup> How changes in employment will impact health will depend largely on countries’ social policies.<sup>11</sup> Employment growth may not automatically improve health.<sup>12</sup> Further, because many TPP countries do not have an unemployment benefit program, greater risks to health of workers losing employment is a likely consequence of the TPP. In addition, the TPP will likely lead to increased income inequality,<sup>13</sup> which has been associated with worse population health, and may exacerbate health inequalities.<sup>14</sup>

**Labor/Occupational health and safety.** The TPP requires parties to uphold labor rights defined in the International Labor Organization’s (ILO) Declaration on Fundamental Principles and Rights at Work. However, countries are not required to ratify the corresponding specific ILO Conventions which would entail legal obligations. Other provisions call on countries merely to recognize the “goal” of eliminating forced and child labor and to “discourage” the importation of goods made under these circumstances. Countries can determine what constitutes “acceptable” work conditions. Similar provisions in other trade agreements have not translated into concrete changes in labor standards.<sup>15</sup>

**Nutrition.** The TPP could drive undernutrition, obesity and some non-communicable diseases through changes in food availability, price, and quality. Trade agreements open domestic markets to food trade and foreign direct investment, increasing entry of transnational food companies and expanding global food advertising, and driving out healthier local food sources.<sup>16</sup>

**Tobacco control.** Transnational tobacco firms have issued ISDS trade challenges against countries' sovereign right to regulate tobacco use. For example, in 2012, Australia was the first country to mandate that cigarettes must be sold in plain packages, in a bid to reduce marketing-driven smoking rates. The Philip Morris Co. lodged an ISDS challenge arguing that the new rules impinged on their intellectual property rights to display their trademark, based on a 1993 trade deal between Australia and Hong Kong. Philip Morris lost its case, and a similar one against Uruguay. But both countries were forced to spend millions of dollars to defend the rule. The cases still serve as a warning to other countries about the price of such public health regulations.<sup>17</sup>

The public health community has advocated to exclude health protections from trade challenges. The TPP takes a step in this direction. It would allow each country to choose to exclude its tobacco control regulations from ISDS provisions. This “opt-out” provision leaves countries vulnerable to opposition campaigns by the industry. Tobacco control measures can still be challenged in state to state trade disputes under other trade agreements. Additionally, under the TPP, tobacco products would experience substantial reduction in export tariffs, potentially decreasing prices, and increasing global consumption of tobacco with its attendant health concerns.<sup>15</sup> This victory does not outweigh the substantial threats of the TPP as a whole. But it does provide momentum for future strategizing.

**Alcohol control.** In addition to the potential impact on alcohol control policies from the ISDS and other provisions, the TPP's reductions in import tariffs are likely to increase alcohol consumption in signatory nations.<sup>18,19</sup>

**Take Action to Oppose the TPP! Please:**

- Inform and mobilize colleagues and organizations about the TPP and its threats to public health
- Brief members of Congress, the media, and the public
- Call your members of Congress at **202-223-3121** - Urge them to oppose the TPP publicly, Now! - to help stop it from coming to a vote.

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