Trans-Pacific Partnership Trade Agreement Protects Tobacco Control Laws from Tobacco Industry Assault

Cancer Action Network℠
American Cancer Society®
acscan.org

The American Cancer Society Cancer Action Network (ACS CAN) has advocated for inclusion of a strong anti-tobacco provision in the Trans-Pacific Partnership (TPP) trade and investment agreement that recognizes the unique harms of tobacco products. The new provision in the TPP would, for the first time, stop the too common tobacco industry practice of using trade and investment agreements to sue, or threaten to sue, countries to invalidate or block their tobacco control measures.

The tobacco industry uses international trade and investment agreements to undermine countries' efforts to reduce tobacco consumption.

International trade and investment agreements are intended to promote the flow of goods and services among countries to stimulate economic growth and development. Tobacco products, however, slow or prevent economic growth by undercutting worker productivity, increasing health care costs and diverting resources from other goods, services and investments that can promote healthier economic expansion.

One of the tobacco industry's frequently used tactics to undermine countries' ability to implement policies to reduce or prevent the use of tobacco products is to pursue legal challenges. Lawsuits, or just the threat of a lawsuit, can be a destructive weapon for the tobacco industry because these tactics are sometimes too costly for many countries to fight and can be lengthy, thereby stalling implementation of effective tobacco control measures. International trade and investment agreements have increasingly been utilized by the tobacco industry to target governments that have adopted significant tobacco control policies and to intimidate other governments from enacting such policies.

In 2010, Phillip Morris International used an international trade and investment agreement to initiate a dispute against Uruguay, suing for millions of dollars in lost profits and damages, claiming that the increase in size of the warning labels on cigarette packs and limiting the number on cigarette brand variations violated the company's intellectual property rights. In 2011, Phillip Morris Asia used an international trade and investment agreement to file a suit against Australia challenging its policies requiring large graphic warning labels and plain packaging to eliminate most branding on tobacco packages. Both of these disputes are ongoing, costing Uruguay and Australia millions of dollars and threatening the implementation of potentially lifesaving tobacco control measures.

Health and Economic Consequences of Tobacco

Tobacco use has already killed **100 million** people worldwide, including **20 million** people in the U.S.

One billion people are expected to die this century, **480,000** every year in the U.S., if trends don't change.

Tobacco use costs **one TRILLION dollars** globally, and in the U.S. more than **$300 billion, ANNUALLY.**

Recognizing that tobacco products are unique disease- and death-causing products, governments across the globe developed the world's only health treaty, the Framework Convention on Tobacco Control (FCTC). To date, 179 countries are parties to the treaty, committing to implement regulations, policies and programs to reduce tobacco use and the death and disease caused by tobacco. The FCTC calls on countries to adopt policies on tobacco product regulation, public education and awareness initiatives on the harms of tobacco, required warning labels on products, prohibitions on tobacco industry advertising and promotions, smoke-free policies, increases in the price of tobacco products and access to cessation services.

While not a party to the FCTC, the U.S. is implementing many of the FCTC provisions. In 2009, Congress granted the U.S. Food and Drug Administration regulatory authority over the manufacture, marketing, and sale of tobacco products – a historic step forward for tobacco control in the U.S. Under this authority, tobacco product sales to people under 18, fruit and candy flavors in cigarettes and false, misleading and unsubstantiated health claims are all prohibited. Additionally, multiple initiatives such as increased taxes on tobacco products, comprehensive smoke-free laws, and public education campaigns are underway nationally and in states to prevent initiation of tobacco use and to encourage and assist tobacco users to quit.

The U.S and all other countries are at risk of having their tobacco-related public health laws, regulations, policies and programs threatened or even eliminated because of the tobacco industry's ability to pursue legal disputes under international trade and investment agreements.

The TPP, with a meaningful tobacco provision, could protect U.S. public health efforts to prevent and reduce tobacco consumption and benefit countries around the world.

The TPP is a trade and investment agreement that twelve countries in the Pacific region, including the U.S., have negotiated. Approval of the TPP by Congress would protect the ability of governments to implement effective public health laws, regulations, policies and programs to reduce the disease and death caused by tobacco by ending the tobacco industry's ability to initiate disputes under the agreement. This tobacco provision in the TPP is consistent with the FCTC and U.S. public health priorities and would severely restrict the tobacco industry's ability to undermine tobacco laws in countries in the TPP. The TPP presents Congress the opportunity to make clear that we do not have to sacrifice public health in the pursuit of free trade, and that giving trade agreement lawsuit rights to the tobacco industry no longer makes sense.

Sources:

1. Eriksen M, Mackay J, Schluger N, Gomeshtapeh FI, Drope J. The Tobacco Atlas 5th Ed. Atlanta, GA: American Cancer Society; 2015. Available from: www.tobaccoatlas.org
2. Lencucha R.Philip Morris versus Uruguay: health governance challenged. Lancet. Volume 376, No. 9744, p852–853.
3. Mitchell AD, Studdert, DM. Plain Packaging of Tobacco Products in Australia: A Novel Regulation Faces Legal Challenge. JAMA. 2012;307(3):261-262.
4. U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.
5. WHO Framework Convention on Tobacco Control (FCTC). Geneva: WHO; 2003. Available from: http://www.who.int/fctc/text_download/en/index.html.
6. Xu X, Bishop EE, Kennedy SM, Simpson SA, Pechacek TF. Annual Healthcare Spending Attributable to Cigarette Smoking: An Update. American Journal of Preventive Medicine 2014;48(3):326–33.