

The Hon Tony Abbott
Prime Minister
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Cc: Andrew Robb, Minister for Trade and Finance

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Re: Trans Pacific Partnership Agreement (TPPA) and public health

Dear Prime Minister,

We write to express our concerns about the potential implications of the Trans Pacific Partnership Agreement (TPPA) for public health, and to urge you to ensure that the TPPA does not compromise health in Australia or in the other Parties to the TPPA.

The **investor-state dispute settlement (ISDS) mechanism** being negotiated for the TPPA would allow foreign corporations to mount legal challenges against governments over policies or laws which they perceive to affect the value of their investments. Philip Morris Asia is currently suing the Australian Government using the ISDS mechanism in a bilateral investment treaty between Hong Kong and Australia. While Australia is confident that it will win any trade-related disputes over tobacco plain packaging, the costs of arbitration under ISDS can amount to millions of dollars and the process is highly flawed. Australia should continue to insist on an exemption to ISDS in the TPPA.

Intellectual property (IP) provisions proposed by the United States would delay access to affordable generic medicines, raising pharmaceutical expenditure in Australia and risking access to affordable medicines for vulnerable groups. Developing countries would not be able to ensure access to medicines for millions of people. The humanitarian organisation Medecins Sans Frontieres has said: "Unless certain damaging provisions are removed, the TPP has the potential to become the most harmful trade pact ever for access to medicines."

We call on your government to reject the extreme IP proposals advanced by the US (with the support of Japan) and to instead support countries which are proposing an alternative approach based on the World Trade Organization's TRIPS Agreement, which allows more flexibility for each country to determine an IP regime suited to its own circumstances. We also urge you to reject any efforts by the US or Japan to apply differential IP standards for developed and developing countries.

An **annex to the transparency chapter** proposed by the US would constrain the operation of pharmaceutical pricing and reimbursement programs such as Australia's Pharmaceutical Benefit Scheme, preventing the use of effective pricing mechanisms and increasing the influence of the pharmaceutical industry over decision making. Australia should continue to reject the US proposal.

Provisions in the **wine and spirits annex** to the Technical Barriers to Trade Chapter may limit the options available to create a fully effective alcohol warnings scheme for wine and spirits. While the annex may not include any explicit restrictions on the design and placement of alcohol warnings, if it allows manufacturers to meet the requirements of the importing country through a supplementary label, this may in effect prevent governments from mandating that warnings be placed in a prominent position. While the current voluntary scheme for alcohol warning labels is being evaluated, it is important that the Australian Government retains the right to regulate alcohol warnings under the TPPA.

Another annex to the Technical Barriers to Trade Chapter with special provisions for **proprietary formulas** may also limit the options available to governments regarding food labeling in future. This is another area in which the Australian Government should be careful to retain the right to regulate, given rising rates of obesity and non-communicable diseases.

It is vitally important for the TPPA to include a strongly worded **public health exception** and for this exception to apply to all chapters of the TPPA, including the investment chapter.

Furthermore, the Australian Government should consider supporting the proposal by Malaysia to **carve out tobacco** from the TPPA. The United States has proposed a weak exception which, according to many legal experts, is not likely to have any legal effect. A full carve-out of tobacco would prevent tobacco companies from using any aspect of the TPPA to undermine tobacco control measures, and would have the added advantage of exempting tobacco from commitments to lower tariffs.

We are concerned that a chapter on **State Owned Enterprises** (SOEs) may apply to SOEs owned by state governments as well as those owned by national governments. In addition the definition of SOEs may not be precise enough to ensure the exclusion of state public hospitals, which engage in some operations which could be defined as commercial. We ask you to ensure that both the definition and scope of the negotiations clearly exclude public hospitals and that state governments are full consulted before any commitments are made in the negotiations.

We urge your government to commit to the utmost **transparency** in the TPPA negotiations, and to consult as fully as possible with civil society organisations, including health organisations. We call for release of the negotiating texts and for release of the final text for public and parliamentary scrutiny before it is signed by Cabinet.

Yours sincerely,



Adjunct Professor Michael Moore, CEO, Public Health Association of Australia

With the support of the following:

- Dr Patricia Ranald, Australian Fair Trade and Investment Network
- Benjamin Veness, President, Australian Medical Students' Association
- Alison Verhoeven, CEO, Australian Healthcare and Hospitals Association
- Martin Laverty, CEO, Catholic Health Australia
- Gemma Crawford, President, Australian Health Promotion Association