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Some devils in the detail of the Trans-Pacific Partnership trade deal (TPP) text

Foreign investor rights to sue governments over domestic laws (Chapter 9)

The TPP permits corporations to sue governments in international tribunals if they can argue that a change in law or policy at national, state or local level "harms" their investment. The tribunals consist of investment lawyers who are not independent judges but can continue to be practising lawyers, with obvious conflicts of interest. There are increasing numbers of cases against health, environment and even minimum wage laws. Key issues in the text are:

- Public health campaigning has resulted a specific TPP clause to exclude future tobacco regulation from ISDS cases (Chapter 29, Article 29.5). This is a victory and should prevent future cases like the still ongoing Philip Morris tobacco company case against our plain packaging law.

- But the need for the specific exclusion of tobacco regulation shows that the general "safeguards" for other public interest laws are weak, similar to clauses in other recent agreements, and will not prevent corporations from bringing cases (Annex 9-B 3b and 9.9 .3d).
- "Safeguards" in the definition of "fair and equitable treatment" for investors (Article 9.9.6) are still open to wide interpretation by tribunals, as shown by the recent Bilcon v Canada case.
- Procedural improvements (Article 9.21.6 and 9.23) do not address the fundamental flaws that ISDS tribunals have no independent judiciary and no precedents or appeals.

Stronger monopoly rights for pharmaceutical corporations and medicine price rises (Chapter 18)

- Pharmaceutical companies already have 20 years of patent monopoly and higher prices on new medicines before cheaper versions become available.
- Public health campaigning removed some of the most extreme proposals, but for many countries, the TPP will strengthen patent rights and provide additional monopoly rights for the costly biologic medicines used to treat cancer and other serious diseases.
- Doctors without Borders (MSF) says the TPP will restrict and delay access to lower-priced medicines for millions of people, especially in developing countries.
- Australian law on biologic monopolies will not change immediately, but the text is ambiguous, referring to "other measures" which would "deliver a comparable market outcome," and to a future review which could result in up to three extra years of monopoly (Article 18.52).
- Each year of delay in the availability of cheaper biologic medicines would cost the Australian government hundreds of millions of dollars, creating pressure for higher consumer prices.

Despite promises, environmental protections are weak and are not enforceable (Chapter 20)

- Despite promises that the TPP would include enforceable commitments by governments to at least seven international environment agreements, the text mentions only four, and only one, on trade in endangered species, has clearly enforceable commitments (Article20.17 .2).
- The text does not refer to climate change, but only to voluntary measures for lower emissions economies with no benchmarks or timeframes (Article 20.15).
- The voluntary and non-binding nature of the commitments in the environment chapter contrasts sharply with the legal rights of corporations to sue governments over domestic laws, including environmental laws, under the provisions for ISDS described above.

Labour rights are weaker than promised and difficult to enforce (Chapter 19)

- The chapter does not refer to International Labour Organisation Conventions, but only to the shorter and more general principles in the ILO Declaration (Article 19.3.1).
- Each national government commits to implement its own laws on minimum wages, hours of work and occupational health and safety (Article 19 .3 .2).
- Complaints about labour rights require evidence that there is a "sustained or recurring course of action" against labour rights (Article 19.5.1).
- Complaints require evidence of violation of labour rights "in a manner affecting trade or investment" between TPP governments, which means that public sector workers are not covered (Article .19 .5 .1).
- Instead of banning the products of forced labour, including compulsory child labour, governments only "recognise the goal" of eliminating forced labour (Article 19.6).
- There are special exceptions and phase-in periods for implementation of labour rights in several TPP countries where there are documented labour rights violations, including human trafficking, forced labour and child labour (Side letters on labour rights).
- The complaint and enforcement procedure requires lengthy consultations between governments before a formal complaint can be lodged (Article 19.15).

  This process has not proved effective in agreements with similar clauses like the North American Free Trade Agreement, the US-Peru Free Trade Agreement, and other agreements, none of which have resulted in any successful enforcement.

Copyright monopolies (Chapter 18)

- Copyright law is meant to maintain a balance between the right of creators to a reasonable income through payments for the use of their work, and the rights of consumers to fair use of information. Most copyright is now held by corporations, which lobby for trade agreements to extend their payments and rights.
- Community campaigning has removed some of the worst proposals, but the text still locks in strong specific legal rights for copyright holders and criminalisation of copyright breaches, with much vaguer references to fair use provisions for journalists, students, educators and consumers. Governments should only "endeavour to achieve an appropriate balance" between these interests (Article 18.66).
- These detailed specific rights for copyright holders could prevent governments from introducing future reforms to improve consumer rights or respond to technological change.