



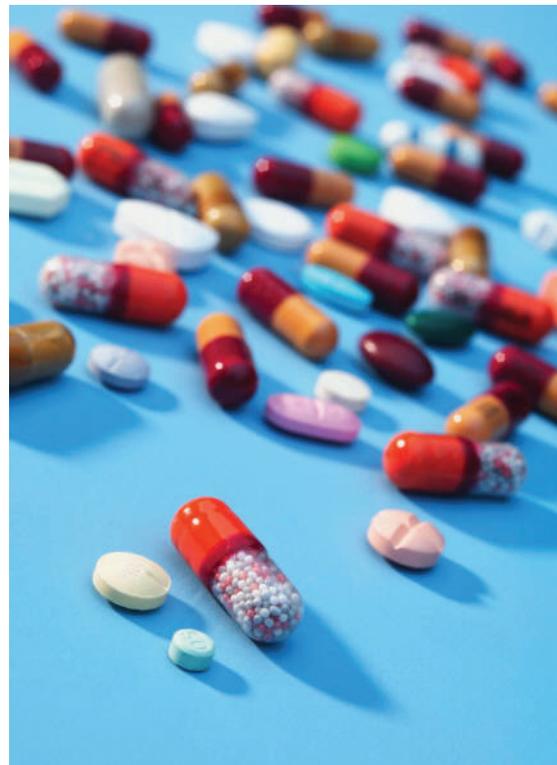
The Australian government is negotiating a Trans-Pacific Partnership (TPPA) free trade agreement with the US, New Zealand, Chile, Peru, Brunei, Singapore, Malaysia and Vietnam, with proposals for Japan, Canada and Mexico to join later this year. But the agenda on health issues is being set by giant US pharmaceutical and tobacco corporations. They have made submissions stating that they want to use the negotiations to:

- Increase intellectual property rights, which would enable pharmaceutical corporations to charge higher prices for longer periods for medicines;
- restrict the ability of governments to provide medicines at affordable prices through schemes like the Australian Pharmaceutical Benefits Scheme (PBS);
- give corporations like Philip Morris the right to sue governments for millions of dollars when they try to protect public health through regulation like the tobacco plain packaging legislation.

We need to ensure the Australian government stands by its policies and does not agree to these proposals.

US pharmaceutical companies want more intellectual property rights to charge high prices for longer

Intellectual property law already gives the inventor of new medicines the right to a patent, which means they can charge high monopoly prices for 20 years before anyone else has the right to produce a cheaper generic form of the same medicine. US pharmaceutical companies are using the TPPA to get other countries to agree to changes which give more rights to patent holders. US trade negotiators are making proposals which would extend patent rights and would delay cheaper generic drugs from becoming available¹. This is not about free trade, but about greater rights for these corporations to charge high prices for a longer time. This would also be a disaster for the developing countries in the TPPA, as it would make many medicines completely unaffordable for them.



In April 2011 the Australian government announced in its new trade policy that it would adopt the recommendations of the Productivity Commission, which were against increased intellectual property rights for medicines². But US corporations and the US Trade Representative are still pushing for these rights in the TPPA negotiations. The Australian government should not agree to increase intellectual property rights.

US companies want to reduce access to affordable medicines through the PBS

In the US where the national government does not have the same control over the price of medicines as the Australian Government, the wholesale prices of medicines are three to ten times the prices paid in Australia, and many people cannot afford to buy medicines.

In contrast to the US, the Australian PBS is based on the principle that everyone should have access to affordable medicines. Under the PBS, the wholesale price of medicines is lower than in the US because health experts compare the price and effectiveness of new medicines with the price of cheaper generic medicines with the same health effects. This results in a lower wholesale price for the pharmaceutical companies, which is why they oppose it. The government then subsidises the retail price we pay at the chemist, currently \$5.80 for pensioners and \$35.40 for others.

As well as keeping the prices of medicines low for consumers, the lower wholesale price reduces the cost to the taxpayer. This makes the PBS more sustainable in the long term.

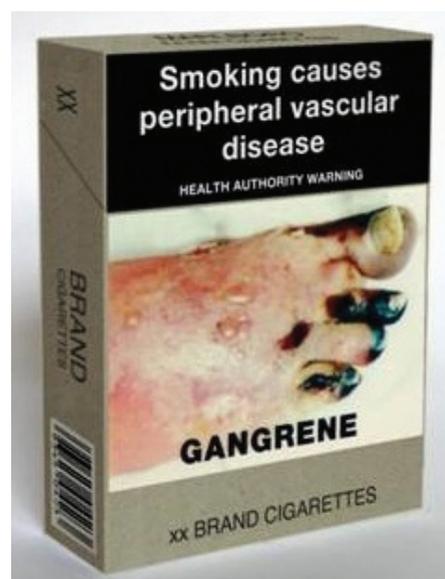
US pharmaceutical companies argue that the PBS is a barrier to trade. They want to be able to charge higher wholesale prices for new medicines, which would increase the cost of the PBS and lead to higher retail prices at the chemist. US trade negotiators have proposed changes which would restrict price comparisons and result in higher prices. They also want to enable companies to advertise their products direct to consumers³. But health experts generally agree that this leads to overprescribing, and it is not an accepted practice except in the US. Australian government policy says that it will not agree to changes which would weaken the PBS, but the companies and the US Trade Representative are pushing for them in the TPPA negotiations. The Australian government should not agree to these changes.

US Tobacco Corporations want special rights to sue governments for damages

US corporations like Philip Morris tobacco company want special rights in the TPPA for individual companies to sue governments for damages if their investments have been harmed by a particular law or policy⁴. These disputes, known as investor-state disputes, are heard by international investment tribunals, which give priority to the interests of the corporations, not to the public interest. There are no health experts involved in these tribunals.

Using these special rights in the North American Free Trade Agreement, US corporations have sued governments for millions of dollars over health and environmental legislation. International corporations can use their subsidiaries to find a forum which allows them to sue. For example, Philip Morris is an international company based in the United States. However, it recently claimed to be a Swiss company in order to use a Swiss investment agreement with Uruguay to sue the Uruguayan government over restrictions on tobacco advertising. It has also claimed to be a Hong Kong company in order to sue the Australian government for its 2011 tobacco plain packaging legislation, using an obscure 1993 Hong Kong – Australia bilateral investment treaty. This case is ongoing⁵.

Australian trade policy states that Australia will not support these special rights for investors to sue governments and will not seek them from other trading partners. But US companies and the US trade representative are still pushing strongly for them in the TPPA. The Australian government should not agree to investor-state dispute processes being included in the TPPA.



What you can do

The TPPA negotiations are continuing in 2012. The negotiations are held in secret and the danger is that the Australian government could agree to some of these policies in return for access to other US markets. We must hold our government accountable and ensure that this does not happen.

The Australian Fair Trade and Investment Network has a website (www.aftinet.org.au) with resources that you can use to:

- Send a message to the Trade Minister and the Health Minister, and get your organisation to do so.
- Raise the issues with your local Member of Parliament.
- Join our mailing list to get regular updates on the campaign.
- Donate to support the campaign.

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Email campaign@aftinet.org.au, website www.aftinet.org.au
phone 02 9212 7242.

¹Pharmaceutical Research and Manufacturers of America, March 10, 2009, Submission to the Office of the Trade Representative, found at www.regulations.gov/search/regs/home.html#docketDetail?R=0900006480fa6a1

²Leaked US intellectual property and medicines proposals in the TPPA negotiations found at <http://www.citizenstrade.org/ctc/blog/2011/10/22/leaked-trans-pacific-fta-texts-reveal-u-s-undermining-access-to-medicine/>

³The government accepted the recommendation of the Productivity Commission Report Ch. 14 which recommended against stronger intellectual property rights, in its Australian Government Trade Policy, April 12, 2011, p.18 found at <http://www.dfat.gov.au/publications/trade/trading-our-way-to-more-jobs-and-prosperity.html>

⁴See note 1 for link to leaked US TPPA proposals

⁵Submission of Philip Morris International in response to the request for comments concerning the proposed Trans-Pacific Partnership trade agreement, 25th January 2010, www.regulations.gov/#!documentDetail;D=USTR-2009-0041-0016

⁶For documents in the Philip Morris case see www.ag.gov.au/InternationalLaw/Pages/Investor-State-Arbitration---Tobacco-Plain-Packaging.aspx