



Consumers
Health Forum
of Australia

25 November 2013

Ms Elizabeth Ward
Assistant Secretary
Goods and Investment Branch
Department of Foreign Affairs and Trade
Barton ACT 0221

Dear Ms Ward

Trans-Pacific Partnership Agreement negotiations

The Consumers Health Forum of Australia (CHF) welcomes the opportunity to provide a submission to the Public Consultation on Australia's participation in Trans-Pacific Partnership Agreement negotiations (TPP).

CHF is the national peak body representing the interests of Australian healthcare consumers. CHF works to achieve safe, quality, timely healthcare for all Australians, supported by accessible health information and systems. As such, CHF's primary concern around the ongoing TPP negotiations is the impact that these arrangements will have on Australian health consumers.

Investor State Dispute Settlement

Current media reports suggest that the United States Trade led negotiations on the TPP contain some extreme trade provisions that have the potential to undermine the ability of member governments to effectively regulate health policy.

CHF is concerned that leaked draft copies of the agreement text include objectionable trade provision. An example is the investor-state dispute settlement (ISDS) mechanism being negotiated for the TPP, which would allow foreign investors to mount legal challenges against governments over policies or laws which they feel adversely impact their financial investments.

Australia is already facing one such legal battle by tobacco multinational Philip Morris Hong Kong based subsidiary, which commenced an investment treaty claim against Australia. The company claims that Australia's plain cigarette packaging legislation is a breach of Australia's 1993 bilateral investment treaty (BIT) with Hong Kong. The costs of arbitration under ISDS can amount to millions of dollars and the process itself is reported to be highly flawed.

Any such provision would be a significant barrier to the implementation of regulatory health policy. **CHF strongly opposes the inclusion of any investor-state dispute settlement clauses in the TPP.**

Intellectual Property

Leaked versions of the negotiation text also suggest that 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 (PBS). This would prevent the use of effective pricing mechanisms and increase the influence of the pharmaceutical industry over decision making.

The PBS is the main funding mechanism for prescription medicines in Australia, and its ongoing sustainability is a critical concern for all consumers. It is unacceptable that any confidential trade negotiation should seek to influence outcomes of government health policy in any way, shape or form.

CHF is strongly opposed to any trade negotiations that seek to exert undue industry influence on government health policy.

Pharmaceutical Patents

Media reports also suggest that The United States has proposed a set of extreme pharmaceutical intellectual property (IP) provisions.

From a consumer perspective, the challenge in considering any IP provisions is to ensure a balance between the level of incentive that is needed to encourage originator pharmaceutical companies to develop new treatments and the need for access to treatments that are affordable. This challenge has been recognised by the Productivity Commission and IP Australia in their recent reviews of pharmaceutical patents. For example, IP Australia¹ recently noted that:

[...] the challenge is to optimise policy so as to encourage innovation that would not otherwise have taken place but to do so only to the point at which such benefits continue to outweigh the costs of such measures to consumers, in higher prices, and to innovation more generally, by obstructing 'follow on' innovation.

Striking this balance is particularly important in relation to the ongoing TPP negotiations. Extending patentability to cover new forms and any further strengthening of patent rights, as is reportedly being sought by the US, would further delay the availability of cheaper medicines to consumers.

CHF is strongly opposed to any patent protection provisions that would hamper consumer access to affordable and effective medicines.

Other impacts on Regulatory Policy

Similarly damaging provisions in the 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 and may also limit the options available to governments regarding food labelling in future.

Current provisions being sought by member countries reportedly restrict the amount of information food companies can be required to provide about ingredients and formulae of

¹ IP Australia (2013) *Pharmaceutical Patents Review Draft Report*. IP Australia: Canberra. p18.

processed food products. Similarly, reports suggest that the agreement's proposed text includes an annex on the labelling of wine and distilled spirits.

These provisions would again seriously restrict the ability of governments to regulate food and alcohol labelling on public health grounds and will undermine health policy goals and extend the control of the industry over domestic policy.

CHF is strongly opposed to any trade negotiations that seek to influence Australian health and regulatory policy.

Public participation and transparency:

CHF is also concerned that apart from some leaked drafts during early negotiation rounds and a more recent leak by Wikileaks in November 2013, much of the text has remained confidential.

While CHF acknowledges that secrecy may be a requirement of the negotiations, the leaked documents reveal that the nature of the agreement is very controversial and requires appropriate communication strategies to address wider public concerns.

CHF is concerned that the nature of the leaked material suggests a strong industry influence on the development of the agreement. With provisions of the treaty reportedly seeking to influence government regulatory policy, **CHF recommends a more transparent, accountable and public participatory approach to the negotiation of the TPP.**

CHF looks forward to providing ongoing input to the consultation around the TPP and awaits the outcomes of this significant trade agreement.

Yours sincerely,



Rebecca Vassarotti
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