

# The TPPA and public health: Tobacco and Alcohol

Our government is negotiating an international agreement that could have a huge effect on the lives of ordinary kiwis. It's called the Trans-Pacific Partnership Agreement (TPPA), and it involves eleven Asian and Pacific-rim countries, including the United States. If it goes ahead, we risk damage to our innovative economy, our pristine environment, our health, and the ability to shape our own future.

**B**ecause the negotiations are being conducted in secret, what we know about the TPPA comes from leaked documents and detective work. This is not acceptable. We live in a democracy, which means we have the right to know what is done in our name and to have a say.

One of the many causes for concern around the TPPA is its potential effect on the regulation of **tobacco and alcohol**.

## Tobacco

Smoking kills around 5000 New Zealanders every year. However, the number of kiwis smoking is on the decline – in large part because of tobacco control measures undertaken by the government, such as banning smoking in workplaces, increasing the cost of tobacco, and banning the retail display of cigarettes. The government has committed itself to making New Zealand essentially smokefree by 2025.

If New Zealand signs up to the TPPA, we'll be putting our smokefree goal at risk.

This is because a **leaked TPPA text**<sup>1</sup> shows that New Zealand's negotiators seem willing to give more rights to big overseas companies, including the right to sue the government for making decisions which significantly hurt their investment. This process is called Investor-State Dispute Settlement and it takes place in secretive offshore arbitration tribunals, bypassing New Zealand's courts. Anti-smoking measures taken by our government could be challenged by the tobacco companies if we sign the TPPA.

If you think this sounds far-fetched, it's not – the Australian government is currently being sued by Philip Morris for its new plain packaging policy under an old international agreement between Australia and Hong Kong. Even though Australia's highest court has **ruled in favour of plain packaging**,<sup>2</sup> the government still faces international arbitration away from the eyes of the public, and could end up paying hundreds of millions of dollars to big tobacco for trying to protect the health of its citizens. Like Australia, our smokefree law could be challenged under an existing agreement, but it would be difficult and involve back door manouvering.

The TPP would let big tobacco stride through the front door.



*"Health starts, long before illness, in our homes, schools and jobs. Laws – such as food quality, smokefree laws, alcohol control – are our decisions on how to keep our neighbourhoods and homes safer. We should not be told what to do by other countries in a TPPA, just as we should not be letting smaller Pacific states be bullied into bad laws that make bad health, either."*

– Gay Keating, Public Health Practitioner

### Links:

1. <http://www.citizenstrade.org/ctc/wp-content/uploads/2012/06/tppinvestment.pdf>
2. <http://www.abc.net.au/news/2012-08-15/high-court-rules-in-favour-of-plain-packaging-laws/4199768>



## The TPPA and public health: Tobacco and Alcohol – continued

It isn't just plain packaging laws that will face problems if the TPPA negotiations are completed. Other policies that could fall foul of the rules include:

- banning the use of terms like 'mild', 'smooth', 'fine';
- controlling the use of flavours that disguise the foul taste of tobacco;
- reducing the nicotine content of tobacco products; and
- capping the number of tobacco retail outlets.

Many different chapters of the TPPA would impact on the smokefree policies, for example:

- intellectual property laws could be strengthened in favour of big tobacco companies, making it easier for them to claim that tobacco control policies infringe their trademarks;
- big tobacco's factories, distribution chains and intellectual property rights would be 'protected investments' who could also sue;
- advertisers, duty free stores, retailers, and other parts of the tobacco supply chain would also have special rights, even if they were operating by Internet from offshore; and
- new "transparency" and "regulatory coherence" rules would give tobacco companies much more influence over government decisions on tobacco control. This would go against another agreement signed by New Zealand – the Framework Convention on Tobacco Control (FCTC) – requiring the government to take steps to prevent tobacco company interfering in policy-making!

All of this goes in the opposite direction to New Zealand's obligations under the FCTC.

### Alcohol

Alcohol abuse is a big problem in New Zealand. Part of the solution is setting rules around the sale of alcohol – for example, a minimum price per unit of alcohol, lower limits on the alcohol content of RTDs, and banning advertising and sponsorship by alcohol companies.

As with tobacco, a TPPA will put the New Zealand government at risk of law suits from overseas companies for trying to reduce the damage caused by alcohol abuse. This could see the government paying millions of taxpayer dollars to overseas companies in compensation, or backing down from policies that protect New Zealanders.

The government will also face pressure to allow imports of products that meet the alcohol product standards in other TPP countries, even when they are inconsistent with our own.

That already happens: under another agreement (the CER) New Zealand is bound to recognise Australia's regulatory standards. The government had to **back down**<sup>3</sup> this year on its intention to cap the alcohol content of RTDs popular with underage drinkers – it could not have stopped Australian RTDs, with a higher legal alcohol limit, from being sold in NZ unless it changed the CER rules. Under the TPPA we risk the same thing, but with all 10 negotiating countries. This would have the same effect as watering down our regulations to the country with the lowest standards.

As with tobacco, the government risks being bound to increased "transparency" obligations around its decision-making process for alcohol policy. In practice, this means giving alcohol companies more say in what the government does to protect New Zealanders from alcohol abuse.

“Does the TPPA sound like something New Zealand should be a part of?”



#### Links:

3. <http://www.stuff.co.nz/dominion-post/comment/7536244/Booze-industry-win-means-youths-suffer>
4. [www.itsourfuture.org.nz/take-action/](http://www.itsourfuture.org.nz/take-action/)
5. [www.avaaz.org/en/stop\\_the\\_corporate\\_death\\_star/](http://www.avaaz.org/en/stop_the_corporate_death_star/)
6. [www.itsourfuture.org.nz/news/](http://www.itsourfuture.org.nz/news/)