

Southeast Asia Tobacco Control Alliance

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Call to Malaysian Government - Stand Firm in Position for Total Carve-out of Tobacco Control Measures in TPP

Bangkok, 2 October 2015: Malaysia must stand firm in their position on a total carve-out of tobacco control measures in the Trans-Pacific Partnership (TPP) agreement.

The latest proposal from the US Trade Representative does not go far enough to cover all the threats the tobacco industry poses to governments when they enact tobacco control measures.

The so-called investor-state dispute settlement (ISDS) only carve-out will exclude tobacco control measures from being challenged by a foreign investor directly in foreign tribunals but will not prevent future TPP members from initiating disputes under State-to-State mechanisms. The tobacco industry used the state-to-state dispute settlement mechanisms when it provided assistance to governments to challenge Australia's plain packaging law under the World Trade Organization (WTO). The same kind of mechanism was used when Indonesia challenged the US measure to ban flavored cigarettes and when the Philippines challenged Thailand's tax measures. Where a free trade pact allowed non-state actors to challenge measures such as the European Free Trade Association, tobacco companies used it to challenge Norway's ban on points of sale display of cigarettes.

The TPP's services chapter will liberalize all sectors including distribution, sales, and marketing of tobacco products. The ISDS-only carve out will not stop tobacco companies from financing states to challenge Malaysia, should Malaysia ban cigarette pack display at points-of-sale (even when done in accordance with the comprehensive advertising ban outlined in the tobacco control treaty). The government will also be challenged if they decide to ban tobacco industry-related CSR activities, an evidence-based measure to ban tobacco advertising, because the TPP encourages the tobacco industry to conduct CSR activities.

Even prior to initiating the disputes, the tobacco companies already managed to stop tobacco control measures in its tracks at the committee level. WTO members have used tobacco industry arguments to challenge ban on flavorings of Canada and Brazil even before it is enacted. Australia's plain packaging underwent much debate in the Technical Barriers to Trade Committee and the TRIPS council prior to the trade suit. The TPP is expected to have similar bodies.

The US government is overlooking the elephant in the room - 11 countries are Parties to the WHO FCTC and required to go beyond the minimal standards in the tobacco control treaty. The TPP on the other hand requires the governments to do the exact opposite for tobacco. Only a total carve-out of tobacco control measures in the TPP will give governments the 21st Century standard they need to protect public health.

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