A Health Impact Assessment of the Trans-Pacific Partnership Agreement: Few Gains, Many Risks

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From War to WTO to Today

Bretton Woods -
International
Trade
Organisation
(1944)

General
Agreement on
Tariffs and Trade
(1947)

World Trade
Organisation
(1995)

Regional and
Bilateral
Expansion
(WTO+)
Trans Pacific Partnership Agreement (TPP)

12 countries, 40% of global GDP

Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States, Vietnam

South Korea has formally expressed interest in joining

More countries may join: Thailand, The Philippines, Taiwan, etc
External Factors

2 main scenarios for the TPP to come into force:

1. All signatories complete their domestic processes within two years of signing

2. If not all after two years, at least 6, and they account for at least 85% of the combined GDP of the original signatories (as of 2013)

No US or No Japan = NO DEAL
Health Services
Spread of Health-Harmful Commodities

Year after Vietnam opened its markets to foreign ownership:
• significant increase in sales of sugar sweetened carbonated beverages
• no significant increase in control country, Philippines

The main beneficiaries of this growth were foreign beverage companies:
• primarily Coca-Cola and PepsiCo
• domestic beverage companies lost market share

Source: The role of trade and investment liberalization in the sugar-sweetened carbonated beverages market: a natural experiment contrasting Vietnam and the Philippines,” Globalization and Health (October 2015)
Regulating Health-Harmful Commodities

Taxation
Marketing Restrictions
Product bans
Ingredient Disclosure
Labelling Requirements
Content Control

SPS Chapter
TBT Chapter
Regulatory Coherence Chapter
SPS: Food Safety Standards

Sanitary and Phytosanitary Standards

• Aims to reconcile tensions between trade and different regimes of food safety
• Beyond non-discrimination: scientific risk assessment
• Trumps other treaties (e.g. Convention on Biological Diversity) unless all parties to dispute also parties to other treaties
• Based on Codex Alimentarius (WHO/FAO)
WTO: The Floor Becomes the Ceiling

CODEX as it was intended:

- Set minimum protection benchmarks
  - e.g. a certain vegetable cannot contain more than X milligrams of pesticide residues
  - national regulators can adopt more stringent residue standards, but not less

CODEX as utilized by the WTO SPS:

- Discourage measures that impose additional burdens on producers and exporters
  - national regulators should not be more stringent than the standard unless scientifically proven necessary
SPS: Burden of Evidence

• The WTO SPS Agreement:
  • “Members may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, *if there is a scientific justification*” (Art.3.3)

• TPP’s SPS+ Chapter:
  • “Each Party shall ensure that its sanitary and phytosanitary measures either conform to the relevant international standards, guidelines or recommendations or, if its sanitary and phytosanitary measures do not conform to international standards, guidelines or recommendations, *that they are based on documented and objective scientific evidence*” (Art.7.9)
Technical Barriers to Trade

• TBT (WTO)
  • Domestic regulations and standards should not be “unnecessary obstacles” to trade and alternative measures pursued that are “less trade restrictive” (the “necessity test”)

• TPP’s TBT+ Chapter
  • Countries need to ensure their standards “do not create unnecessary obstacles to international trade” before they are implemented
  • All TPP countries are entitled “to participate in the development” of all such regulations being considered in any TPP country
GATT XX(b): General Health Exception

“Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement [the GATT] shall be construed to prevent the adoption or enforcement by any contracting party of measures: ...

(b) necessary to protect human, animal or plant life or health;...”
Technical Barriers to Trade

• “nothing in this Chapter shall prevent a Party from adopting or maintaining technical regulations or standards, *in accordance with its rights and obligations under this Agreement*” (Art.8.3, ¶5)
Increasing foreign investor claims

Total foreign investor claims against countries

Year 2000
Increasing compensation for foreign investors

<table>
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<tr>
<th>Year 2000</th>
<th>Year 2005</th>
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Total compensation ordered (billions of USD)
Financial winners and losers

- **X-large cos.**
  - Extra large cos.: $6.3 billion net gain

- **ISDS legal industry**
  - ISDS legal industry: $1.7 billion net gain

- **Large cos.**
  - Large cos.: $630 million net gain

- **Very rich individuals**
  - Very rich individuals: $980 million net gain

- **Respondent countries**
  - Respondent countries: $10 billion net loss
ISDS: Not an international ‘court’

National courts

International Arbitration
ISDS and Public Health

• Many of the ISDS claims have been on health and environmental regulations
• Most of the environmental disputes, over water, land-use, pollution control and hazardous waste, have important indirect health implications
• “nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health or other regulatory objectives”
ISDS in the TPP

• “nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health or other regulatory objectives”

• Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute indirect expropriations, except in rare circumstances.

• Tobacco exception important, but not a carve out (state-to-state still possible), will not prevent tobacco TNCs treaty shopping outside of TPP.

• Why not apply this to all non-discriminatory public health measures?
A final word on ISDS

• Is it really necessary?

• Is there a European compromise?
  
  • “a new system...subject to democratic principles and scrutiny, where potential cases are treated in a transparent manner by publicly appointed, independent professional judges in public hearings and which includes an appellate mechanism, where...the jurisdiction of courts of the EU and of the member states is respected, and where private interests cannot undermine public policy objectives”

• Not all are convinced (in fact, not many at all...)
TPP: General Welfare Gains

• Of 6 econometric studies of which we are aware (Peterson Institute, USDA, NZ, CD Howe, US ITC, Tufts) the most optimistic ones (Peterson and US ITC) show only modest gains for almost all TPP countries – little more than ‘rounding errors’

• Optimistic (and even some marginally pessimistic) ones use CGE models that assume full employment, equal or improving income gains and no costs

• ‘Gold-plated treaty with huge economic opportunities’ – for whom?
Alternative econometric models

• Estimated TPP wage effects (USA):
  • -0.14 to -0.72% (decline in bottom 90% wages)
  • +0.4 to +1.5% (increase in top 1% of wages)

  Source: Rosnick: Gains from Trade? 2013

• UN Global Policy Model:
  • Economic losses all TPP HICs (-0.04% GDP annually)
  • Negligible economic gains TPP LMICs (+0.22% GDP annually)
  • Net employment loss across 12 TPP countries: 650,000

  Source: Capaldo et al: Trading Down, Tufts University 2016
Health-Proofing Trade and Investment Agreements

1. Remove ISDS provisions, no evidence they attract investment or are necessary, or at least...

2. Restrict ISDS provisions to cases of direct expropriation only, and only if a country’s court system is known to be politically corrupted.

3. Exempt from disputes under ISDS, or initiated under rules in SPS, TBT or other Regulatory Coherence chapters, all non-discriminatory environmental, health and social (including taxation) policies and regulations.

4. Extend flexibilities in tariff reductions for LMICs that lack tax capabilities to compensate for tariff revenue losses.

5. Subject all trade and investment agreements to \textit{a priori} prospective health and human rights impact assessments.
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