



## World Health Day 2016

### **NEW ISDS PROPOSAL CHANGES TO THE TTIP ARE NOT SUFFICIENT TO PROTECT PUBLIC HEALTH**

**There is a profound conflict between trade agreements, public health and treaties concerning human rights and climate change. The new ISDS proposals of the European Commission will continue to enable companies to sue governments over policies that they introduce in compliance with the WHO Framework Convention on Tobacco Control. ISDS continues to be a threat to health because:**

- The Commission proposal applies to **all sectors and services**, including health services which should be exempt from the investment chapter if it remains in the TTIP
- The **right to regulate provision** remains conditional to a **necessity clause**, which usually implies least trade and investment restrictiveness, when we know it could have been as explicit as for state-aid.
- It **still allows corporations to sue governments** for compensation from non-discriminatory legislation
- It can still lead to **regulatory chill** and **retraction of more effective policies** to reduce health inequalities and obesity
- It can still **undermine health and safety requirements and wise use of public resources** as result of stronger position for corporations to claim for compensation
- We **have not seen claimed benefits from investment protection** between high income countries, such as Canada or United States.

**Health-related decision-making is particularly vulnerable to ISDS** due to high public spending and the importance of contracts with private insurers or providers, the impact of public decisions on the profits of pharmaceutical and health technology companies, and health protection and promotion measures extending to other sectors such as the alcohol and tobacco industries with broad implications for these investors' markets.

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### **ISDS UNDERMINES GLOBAL TOBACCO CONTROL EFFORTS**

Tobacco is the only legal product that when used as intended is addictive and kills half of its users. Worldwide, 6 million people die each year from tobacco related diseases, including 600,000 from second-hand smoke.

The global public health treaty, the WHO Framework Convention on Tobacco Control (FCTC), aims to curb the epidemic; 179 countries and the European Community are Parties to the FCTC.

Effective tobacco control policies include:

- tax increases
- bans on tobacco advertising, promotion and sponsorship
- picture health warnings on cigarette packs and plain packaging
- smokefree workplaces and public places

**The inclusion of ISDS in any trade agreement threatens the success of the FCTC and effective tobacco control policies because:**

- The tobacco industry tries to prevent and circumvent tobacco control policies worldwide. Their companies threaten to, and sue governments before national courts and investor-state dispute settlement (ISDS) panels. Well-known cases include:
  - 2010: Philip Morris vs. Uruguay because the country introduced large picture health warnings, using a bilateral investment treaty (BIT) between Switzerland and Uruguay; the case is not decided yet
  - 2011: Philip Morris vs. Australia because the country introduced plain packaging, using a BIT between Hong Kong and Australia; Philip Morris lost the case in December 2015 because of technicalities
  - 2012: Ukraine, Indonesia, Honduras and other countries vs. Australia (WTO dispute) where the legal costs of several countries are covered by Philip Morris and British American Tobacco. The Ukraine has suspended the case in June 2015; the case is not decided yet
- Internal documents of cigarette companies show they even sue when they know that they will likely lose the case; the aim is to create a regulatory chill to dissuade other countries

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from introducing similar measures

- The average costs of an ISDS case are approximately US\$8m and often have to be paid no matter what the outcome of the dispute is (i.e. even if the country wins the case); these costs are a huge burden for low and middle income countries
- Public health exceptions in trade agreements do not provide sufficient protection: the Uruguay-Switzerland BIT includes a health exception in Article 2.1, Philip Morris is nevertheless using it to sue the Uruguayan government

**On the occasion of World Health Day 2016, the Health and Trade Network calls for ISDS to be eliminated from all trade agreements, and the strictest public health provisions put in place to protect population health throughout all legally binding trade deal chapters.**

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