

# Backgrounder on the Trans-Pacific Partnership and health care

By Margaret Flowers, M.D.

## **1. The Trans-Pacific Partnership (TPP) is part of a global effort to circumvent the failed World Trade Organization talks and dramatically shift power to multinational corporations.**

- While the TPP is being called a trade agreement, the U.S. already has trade agreements covering 80 percent of the goods traded with countries involved in the talks. (Williams, [“Trans-Pacific Partnership \(TPP\) Countries: Comparative Trade and Economic Analysis,”](#) Congressional Research Service, June 10, 2013.)
- The text of the TPP includes 29 chapters, only five of which are about trade. The remaining chapters are focused on changes that multinational corporations have not been able to pass in Congress such as restrictions on internet privacy, increased patent protections, greater access to litigation and further financial deregulation.
- Unlike previous trade agreements, the text of the TPP is classified so that only the U.S. trade representatives and their 600 corporate advisers have access. Members of Congress must go through a complicated process to see portions of the text. All that is known about the contents of the TPP is from documents that have been leaked and reports from NGOs and industry meetings. From the information available, one thing is clear about the impacts of the TPP on health care: the intention of the TPP is to enhance and protect the profits of medical and pharmaceutical corporations without considering the harmful effects their policies will have on human health. It is more appropriate to call these trade agreements “rigged” trade rather than “free” trade because they rig the rules in favor of business interests.

## **2. The TPP will raise the cost of health care, particularly of medications, by extending the length of patents, placing barriers to generics and giving the pharmaceutical and medical device industries greater legal standing to challenge reimbursements.**

- The TPP requires “evergreening” of the 20-year patents for pharmaceuticals and medical devices. Whenever there is any change such as a new indication or a new delivery method, the patent must be renewed even if there is no added therapeutic benefit. (Nicholls, [“Put health ahead of profits in Asia-Pacific trade pact,”](#) The Australian, March 6, 2013.)
- In addition to delaying the production of generic medications through prolonged patent periods, the TPP also places barriers to new generics by prohibiting the use of data from clinical trials conducted on behalf of the patented medications for an extra three years and by limiting challenges to patents. ([“Briefing Memo: Leaks at Trans-Pacific Trade Talks](#)

Confirm Obama Administration Backtracking from Bush Era Access to Medicines Commitments," Public Citizen, Oct. 22, 2011.)

- The TPP grants greater legal standing to pharmaceutical and medical device companies to challenge reimbursements negotiated with health systems even after the reimbursement has been set and to base the reimbursement on 'competitive market-based value.' This means that beyond research, development and production costs, companies can factor the costs of marketing into the price. The language in the leaked texts of the TPP demonstrates that the ability of health systems in the U.S. such as Medicaid, Medicare, TRICARE and the Veterans Health Administration to negotiate lower prices for pharmaceuticals would be impaired. ("Statement: Leaked US Proposal for a TPP Pharmaceutical Chapter," InfoJustice.org, Oct. 22, 2011; "Trans-Pacific Partnership Transparency Chapter, Annex on Transparency and Procedural Fairness for Healthcare Technologies," June 22, 2011; "Memo: Proposed Trans-Pacific Partnership rules could undermine drug cost containment provisions of Medicare, Medicaid and Veterans' Health, hurting seniors, military families and the poor," Public Citizen, June 14, 2012.)

### **3. The TPP will lower access to health care.**

- In addition to raising the costs of medications and medical devices, the TPP requires opening the floodgates to patenting surgical procedures, treatments, diagnostic tests and even plants and animals. In short, anything that can be monetized so that profits will be maximized at the expense of affordability of healthcare. People in many of the countries included in the TPP already have limited access to care because of the cost, and the TPP will worsen that situation. ("Secret Trans-Pacific Partnership Agreement (TPP) - IP Chapter," Wikileaks, Nov. 13, 2013; "The Australian: Put health ahead of profits in Asia-Pacific trade pact," Medecins Sans Frontieres Access Campaign, March 8, 2013)
- The TPP contains strict intellectual property right provisions which would limit the ability to share information and technology; therefore, keeping knowledge out of the hands of those who may need it to save lives. And with the emphasis on promoting corporate profits over public health needs, innovation will be driven by that which generates the most profit rather than that which addresses significant health conditions in low income populations or important public health threats.

### **4. The TPP threatens public health.**

- Most of the text of the TPP is written to eliminate non-trade barriers to profits such as the control of intellectual property rights, advantages given to locally-produced goods and public entities and regulations. A corporation can challenge perceived barriers to trade through an international trade tribunal, an extrajudicial legal system equivalent to arbitration that is composed of three lawyers, many of whom will be on temporary leave from their positions within corporations. The decisions of trade tribunals are not appealable to traditional courts and the laws of the nation where the trade issue occurred are not applied. This is known as the Investor State Dispute System, and it is highly controversial especially in the European equivalent to the TPP, the Trans-Atlantic Trade and Investment Partnership (TTIP). The TPP permits corporations to sue for loss of expected profits. This means that corporations can sue governments, even at the local level, for large sums of money if their laws that protect public health interfere with profits. Among the actions that could be considered interference are public health campaigns that educate about the dangers of smoking, labelling foods that contain genetically-modified organisms and laws to protect workers or that prevent polluting the environment. (Khor, "The Trans-Pacific Partnership Agreement (TPPA): When Foreign Investors Sue the State,"GlobalResearch.ca, Nov. 10,

2013.)

- The TPP will undermine food safety by lowering the standards on imported foods below those currently in effect in the U.S. It will also eliminate Buy America provisions meaning that institutions will not be able to give preference to local producers. (Paul and Cummins, "Consumer Alert: Secret Trade Agreements Threaten Food Safety, Subvert Democracy," Organic Consumers Association, June 13, 2013.)
- Trade agreements have been notoriously bad for workers and the TPP is no exception. Previous agreements have caused lost jobs, lower wages, barriers to union organizing and unsafe work environments. Even when they contain language to protect workers, the rules are not enforced. The ISDS system will hurt worker rights even more because higher wages and regulations to protect worker health will be challenged as threats to expected profits. ("The Trans-Pacific Partnership: Lost Jobs, Wages and Workers Rights," Communication Workers of America, Dec. 6, 2013.)
- For similar reasons, the TPP will be bad for the environment. The chapter on the environment was leaked in late 2013. It showed no enforcement mechanism for the weak regulations that are included. This means that corporations can challenge local laws that ban toxic practices such as hydro-fracking for methane gas. Large potential settlement costs can force governments to repeal those bans. (Kelsey, "TPPA Environment Chapter & Chair's Commentary Posted by WikiLeaks, Issues for NZ," Wikileaks, Jan. 16, 2014.)

## **5. The TPP is a significant barrier to single-payer health systems.**

- The TPP prohibits state-owned enterprises (SOEs, any enterprise that has any form of preferential treatment from the state such as tax breaks, access to resources and capital and favorable regulation) from having advantages over private enterprises. Further, the TPP attempts to eliminate the value of public service from SOEs, pushing for greater privatization of public services. This could have a harmful impact on current public health systems in the U.S. and abroad by opening the door to privatization. ("The risk of disciplines on state-owned enterprises in the proposed Trans-Pacific Partnership Agreement," [ItsOurFuture.org.nz](http://ItsOurFuture.org.nz), Sept. 17, 2013.)
- The TPP requires SOEs to disclose any special advantages they receive and the government to give the same advantages to corporations. It also provides methods for corporations to sue governments if they believe that they are not being treated fairly. The text outlines punishments such as increased tariffs on exports from the country found in violation and suspension of any "tariff concessions" made to the country in violation on imports.
- The TPP may require that a new monopoly (such as a single-payer health system) cannot exist until the companies that are put out of business by the monopoly are fully compensated. It is not known if such language exists in the TPP because only a small portion of the text that has been leaked is available to the public. However, such language did exist in WTO texts. (Skala, "The potential impact of the World Trade Organization's General Agreement on Trade in Services on health system reform and regulations in the United States," *International Journal of Health Services*, Vol. 39, No. 2.)
- By eliminating the public good aspect of health systems and opening the door to privatization, the TPP will force the failed market-based U.S. model of health care onto TPP countries and could damage some of the top health systems in the world (Australia, Japan). Already, Aflac has gained more access to the market in Japan as part of the TPP negotiation process. (Ito, "Aflac Wins Wider Access to Japan Post's Insurance Sales Network," Bloomberg News, July 26, 2013.)

## **6. The TPP undermines democracy.**

- The TPP will undermine democracy in the United States. Though the agreement is being negotiated in secret with little input from Congress, our domestic laws will have to be brought into compliance with provisions in the TPP. The process of negotiating in secret, with the participation of more than 600 large corporations, without Congress or the public participating is anti-democratic.
- The TPP gives greater legal standing to corporations to challenge domestic laws in an extrajudicial legal system without recourse. Corporations take complaints about barriers to their profits to a trade tribunal that operates as an arbitration court and does not allow decisions to be appealed. When faced with large potential settlements, local and state governments may choose to repeal laws, even those that have overwhelming public support and that protect public interests, rather than pay. As a result local governments lose control over the passage of laws, protecting their environment and controlling their budget to a secretly negotiated trade agreement.
- The president is pushing Congress to grant him trade promotion authority (also known as fast track) which means the president would negotiate and sign the agreement and then it would be presented to Congress for a brief period of review, limited debate and no amendments before an up-or-down vote. This prohibits any meaningful review of the impacts of the agreement. It excludes a transparent and democratic process.

### **Physicians for a National Health Program**

29 E Madison Suite 602, Chicago, IL 60602 ✉ [Find us on a map](#)  
Phone (312) 782-6006 | Fax: (312) 782-6007 | email: [info@pnhp.org](mailto:info@pnhp.org)  
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**Source URL (retrieved on *Thursday, February 19, 2015*):** <http://www.pnhp.org/news/2014/august/backgrounder-on-the-trans-pacific-partnership-and-health-care>