



Trans-Pacific Partnership Agreement

New Zealand College of Public Health Medicine Policy Statement

Policy Statement

The New Zealand College of Public Health Medicine (NZCPHM) recognises that free trade agreements can have significant population health implications.

The NZCPHM calls for openness and transparency in debating the potential health impacts of any free trade agreements such as the proposed Trans-Pacific Partnership Agreement (TPPA). Critical areas that may be affected include pharmaceutical pricing mechanisms, climate change mitigation and other environmental policy, food labelling, marketing of harmful substances, and public policy.

The NZCPHM supports the supply of effective medicines at an affordable cost, and acknowledges the PHARMAC model as a successful model of cost containment for the provision of pharmaceuticals. In particular, the NZCPHM recommends that the key features and integrity of PHARMAC's operation be preserved in any negotiated TPPA or other free trade agreement.

The NZCPHM recognises the importance of New Zealand's legal and regulatory frameworks, particularly those that protect public health, for example tobacco and alcohol provisions. The NZCPHM opposes any free trade agreement provisions, such as Investor-State Disputes (ISDS), that may erode these frameworks.

Background

Free trade agreement benefits

The TPPA is a proposed free trade agreement that New Zealand has been involved in negotiating with several other countries since 2010. Free trade considerations are important for a small, exporting country like New Zealand and can have many positive impacts on access to foreign markets and on our economy. The TPPA proposes to remove barriers to trade between signatory countries, and create a high quality free trade agreement that other Asia-Pacific countries will want to join. The agreement covers trade in intellectual property, pharmaceuticals, and other commodities.

Free trade agreement risks

Regardless of the size of the estimated economic gains to be made by agreements like the TPPA, there is no guarantee that these gains will be equitably distributed among the NZ population. In fact, challenges have been made by policy analysts and economists that similar investment agreements have exacerbated income inequality and health disparities.¹⁻³

Some of the potential clauses for inclusion or negotiation in the TPPA have important implications for health. A leading issue in the TPPA is the potential effect on pharmaceutical policy in New Zealand. The Pharmaceutical Management Agency (PHARMAC) decides on behalf of District Health Boards which medicines are subsidised in New Zealand. A range of methods are used, including cost-effectiveness evaluation, and this system is regarded as exceptionally successful in cost containment

internationally.⁴ A number of provisions proposed for inclusion in the TPPA relate to pharmaceutical pricing:

- Removal of reference pricing (ability to achieve the lowest price for medicines).
- Changes to the length of patents (currently patents for new drugs last 20 years; when patents expire generics can be generated).
- Extending the period of data exclusivity (exclusive control of their clinical trial data by makers of the first (branded) drug, preventing the effective registration of generic versions of their products).
- Limiting the transport and availability of generic medicines.
- Removal of compulsory licensing (public health emergency provisions).
- Investor-state dispute resolution.

Each of the above clauses may impact on PHARMAC's effectiveness, which may have significant health opportunity cost implications in New Zealand and internationally.⁵

Investor-State dispute

The potential inclusion of investor-state dispute resolution clauses in any free trade agreement, such as the current New Zealand-China Free Trade Agreement, is an important consideration for pharmaceuticals, environmental policy and public policy. Investor-state dispute resolution is a provision that allows companies to sue governments directly in private international courts where their investment (including their intellectual property rights) may have been negatively affected. International experience suggests multinational corporations will utilise these provisions to sue, with targets for this form of action including drinking water provision, tobacco (plain paper packaging) and alcohol regulations, environmental protections and indigenous resources.^{6,7} The clauses could also apply to climate change mitigation measures, food standards, food labelling (e.g. rating systems or antibiotic use during production) and public services (such as ACC and private ownership of healthcare or aged care facilities).

The NZCPHM therefore recommends careful consideration of the impact of investor-state dispute resolution clauses on broader health issues. In particular, the implications of any clause for Treaty of Waitangi obligations need to be carefully examined, to ensure that Māori rights are not eroded.

Future health risks

While there are many known issues like alcohol regulation that may be impacted by the TPPA - particularly if investor-state dispute resolution clauses are included - it is impossible to know what substances, products or other health risks may arise in future that require Government regulation. For example, the recent Psychoactive Substances Act 2013 was introduced to regulate synthetic cannabinoids which had previously been sold over the counter.

Therefore, the NZCPHM recommends that any trade agreements should be based on the 'precautionary principle' and allow the Government flexibility over NZ public policies and legislation.⁸ It is insufficient to just include exceptions in trade agreements for particular health and environmental issues.

Regional responsibility

Developing countries involved in the negotiations may also be impacted, such as with potential pharmaceutical changes. New Zealand has a responsibility as good international citizens (and as a high

income country) to help protect vulnerable nations in our region. Internationally, health agencies⁹ including the NZCPHM, support transparency in the process of free trade agreements negotiation in order to examine and inform debates about potential health impacts.

Key Recommendations

There is currently insufficient information available to external parties concerned with the TPPA. The NZCPHM acknowledges that the negotiation process involves a careful balance of tensions; however the NZCPHM believes that the lack of transparency makes it difficult to be clear about the wider implications of the TPPA on the lives and health of New Zealand citizens.

The NZCPHM calls for openness and transparency, as well as suggesting public health involvement in the process to assist in safeguarding the health of New Zealanders (in its broadest sense). In particular, we recommend that this involvement is in the form of a complete, independent Health Impact Assessment of the TPPA prior to the conclusion of negotiations and that the results of this assessment are made publicly available. Greater public involvement in negotiations prior to signing increases the likelihood that the agreement will be acceptable and enduring.

The NZCPHM recommends careful consideration of the impact of investor-state dispute resolution clauses on both the known and unknown broader health risks. The ability of the New Zealand Government to protect the health and environment of its citizens should not be compromised.

Links with other NZCPHM policies

Tobacco

Alcohol

Climate Change

Māori Health (forthcoming)

Health Equity

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9. For example see the letter from the American Medical Association to the United States Trade Representative, at www.citizen.org/documents/ama-comment-on-tpp-8-sept-2011.pdf.

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