

Tobacco and public health in TTIP

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Concerns about tobacco in TTIP

Tobacco products are unique in the scale and severity of the public health impacts they cause worldwide. Tobacco products are toxic, mutagenic, carcinogenic and pharmacologically active, as well as being addictive by design. No other legally available product kills over half of its consumers who use it as intended. In the EU alone, tobacco consumption is responsible for almost 700,000 deaths every year.¹ Tobacco use causes chronic diseases for active and passive consumers including cancers, cardio-vascular diseases and respiratory diseases - as such it has negative impacts on productivity and employment, and incurs significant costs for health systems across Europe. Annual EU healthcare expenditure on treating smoking attributable diseases is estimated around 25.3 billion € and society loses 8.3 billion € per annum due to productivity losses (including early retirements/deaths and absenteeism) linked to smoking.²

Tobacco control measures (such as rules on labelling and packaging of tobacco products, restrictions on advertising and promotion, and smoke-free policies) have been adopted both by the EU and national governments across Europe to protect health, healthcare systems and national budgets from the vast and costly damage caused by tobacco consumption. The spread of the tobacco epidemic is facilitated through a variety of complex factors, including trade liberalization and direct foreign investment.

To put the transatlantic tobacco trade in context, the global tobacco market is valued at around £450 [570€] billion and the industry produces around 5.5 trillion cigarettes a year. The four biggest international tobacco companies – British American Tobacco (headquartered in London), Imperial Tobacco (headquartered in Bristol, United Kingdom), Japan Tobacco (headquartered in Toranomon, Minato, Tokyo) and Philip Morris International (operational headquarters in Lausanne, Switzerland, although the corporate headquarters remain in New York) – account for some 45 per cent of the global market, or around three-quarters of the market outside China.³ The United States is now home to two of the world's three largest multinational cigarette companies (Philip Morris International, RJ Reynolds) and is the world's largest exporter of cigarettes.⁴ The combined revenues of the world's 6 largest tobacco companies in 2013 was 342\$ [296€] billion, equal to 2% of the Gross National Income of the United States.⁵

¹ Impact Assessment of the Tobacco Products Directive
http://ec.europa.eu/health/tobacco/docs/com_2012_788_ia_en.pdf

² Impact Assessment of the Tobacco Products Directive
http://ec.europa.eu/health/tobacco/docs/com_2012_788_ia_en.pdf

³ <http://www.bat.com/ar/2011/business-review/global-market-overview/>

⁴ Economic Research Service, U.S. Department of Agriculture, Tobacco, 16 September 1997.

⁵ <http://www.tobaccoatlas.org/country-data/united-states/>



The globally agreed WHO Framework Convention on Tobacco Control (FCTC) came about in recognition of sustained efforts by the tobacco industry to undermine and subvert tobacco-control measures around the world. The FCTC particularly recognises the role of international trade:

“The spread of the tobacco epidemic is facilitated through a variety of complex factors with cross-border effects, including trade liberalisation and direct foreign investment.”⁶

The EU and all its Member States have ratified the FCTC, while the United States has not ratified the FCTC.

These efforts include intense lobbying of negotiators of international trade and investment agreements, including TTIP, as evidenced by the release of extremely heavily redacted correspondence between DG Trade and tobacco companies.⁷ This access to policy-makers granted to tobacco lobbyists, along with the failure to disclose such contacts proactively, go against the public interest and has been heavily criticised by the European Ombudsman as a failure to comply with the FCTC.⁸

There is evidence^{9¹⁰} that the international tobacco industry views international trade and investment agreements, including TTIP, as an opportunity to undermine, subvert, or water down existing policies and to block future policy developments aimed at public health protection and improvement. Therefore, extreme caution must be taken with respect to the aspects of international trade and investment agreements which may affect the availability, affordability or attractiveness of tobacco products. International trade and investment agreements must not lead to an increase in consumption of tobacco products nor to a weakening of tobacco control measures as it would undermine the stated goals of such agreements.

The way tobacco products are handled in TTIP is perceived by the public and media as indicative of whether the EU is negotiating international trade and investment agreements in the public interest.

⁶ WHO FCTC (2003), entered into force 27 February 2005, 168 signatories including the USA, EU and all the 28 EU member states: http://www.who.int/fctc/text_download/en/

⁷ <http://corporateeurope.org/international-trade/2015/08/black-out-tobaccos-access-eu-trade-talks-eerie-indication-ttip-threat>

⁸ <http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/63624/html.bookmark>

⁹ Philip Morris vs. Australia ISDS-case <http://www.mccabecentre.org/focus-areas/tobacco/philip-morris-asia-challenge>

¹⁰ Philip Morris vs. Uruguay ISDS-case http://www.tobaccotactics.org/index.php/Philip_Morris_vs_the_Government_of_Uruguay



Recommendations on tobacco and TTIP

- 1. TTIP must not lead to an increase in consumption of tobacco products by increasing their availability, affordability or attractiveness. EU tariffs on tobacco products must not be removed unless they are compensated by other EU and national-level measures, such as EU proposals aiming at harmonising increased taxes or excise duties.**
- 2. As the spread of the tobacco epidemic is facilitated through trade liberalization and direct foreign investment, TTIP must be in line with the EU's and Member States' commitment to the WHO Framework Convention on Tobacco Control (WHO FCTC).**
 - a. An assessment of the economic, social and public health impact of TTIP with regard to the FCTC obligations on consumption should be prepared and published by the European Commission.
 - b. TTIP must not undermine existing measures at any level to protect people from exposure to tobacco smoke nor to continually and substantially decrease consumption of all tobacco products;
 - c. TTIP must enable the further development of stricter tobacco control, including pricing measures to reduce demand and consumption;
 - d. TTIP negotiating parties (the European Commission which is bound by FCTC obligations, but also the US Trade Representative), relevant bodies and any new bodies established for Regulatory Cooperation must comply with Article 5.3 and its Guidelines, particularly by restricting contacts with the tobacco industry to those which are strictly necessary, and by proactively disclosing all formal and informal contacts with the tobacco industry and its representatives.
 - e. TTIP must include a commitment from the United States to ratify the WHO FCTC.
- 3. The TTIP text must ensure that policy space for tobacco control measures is safeguarded.**

TTIP must include guarantees in the text that it will not have any 'chilling' impact on the freedom of any level of government to introduce new or stricter policies to protect and improve public health, including the implementation of the Tobacco Products Directive.

TTIP must not include an Investor State Dispute Settlement (ISDS) or Investment Court System (ICS).

If any form of ISDS/ICS is included in TTIP, instead of a specific and limited exclusion of tobacco products, ISDS/ICS must contain specific guarantees ensuring the full respect of the margin of appreciation of governments in the field of public health protection, including tobacco control measures.



Recommendation 1: TTIP must not lead to any increase in consumption of tobacco products by increasing their availability, affordability or attractiveness

The EU is legally bound to ensure a high level of human health protection in the definition and implementation of all Union policies (Article 168 TFEU). Given that health is a core value of the EU, as expressed in the EU Trade for All Strategy, TTIP cannot provide equal treatment for tobacco as other products. No other consumer product comes near to tobacco in terms of deaths and diseases it causes in its users.

In 2012, 28% of all EU citizens and 29% of people aged 15-24% smoked.¹¹ In the United States, 16,8% of adults and 15,7% of high school students are current smokers.¹²

Societal costs of smoking

Tobacco is a legal product on the market, but is no ordinary commodity in the sense that it is the largest avoidable health threat in the EU, responsible for almost 700,000 premature deaths per year. Tobacco is a major risk factor for all four major non-communicable diseases (cardiovascular diseases, cancers, respiratory diseases and diabetes), which account for almost 86% of premature mortality (death before the age of 70) and 77% of the disease burden in Europe.¹³

Close to 13 million people in the EU (EU-27) suffer from one or more of the six main disease categories that are associated with smoking. These are:

- Bronchitis and other lower respiratory infections;
- Chronic obstructive pulmonary diseases (COPD);
- Stroke, heart attacks, arterial obstructions (especially in the legs) and other cardiovascular diseases;
- Asthma;
- Lung cancers;
- Other cancers, such as pancreas, oesophagus, and stomach.¹⁴

¹¹ Impact Assessment of the Tobacco Products Directive
http://ec.europa.eu/health/tobacco/docs/com_2012_788_ia_en.pdf

¹² Tobacco Free Kids – Toll of Tobacco in the United States of America
http://www.tobaccofreekids.org/research/factsheets/pdf/0072.pdf?utm_source=factsheets_finder&utm_medium=link&utm_campaign=analytics

¹³ WHO Europe (2014). Prevention and control of noncommunicable diseases in the European Region: a progress report

¹⁴ Source: the 'ASPECT' study:
http://ec.europa.eu/health/ph_determinants/life_style/Tobacco/Documents/tobacco_fr_en.pdf



In the United States, more than 480.000 people die each year from cigarette smoking and exposure to second-hand smoke. There are 5,6 million children under 18 alive today who will ultimately die from smoking (unless smoking rates decline). There are more than 16 million people in the USA who currently suffer from smoking-caused illness.¹⁵

Economic burden of tobacco

The huge bill imposed on health systems, economic development and society by tobacco is well recognised.¹⁶ Cardio-vascular disease is the leading cause of death accounting for 40% of all deaths in the EU,¹⁷ with estimated costs to the EU economy of €196 billion per year.¹⁸ Annual EU public healthcare expenditure on treating smoking attributable diseases is estimated around 25.3 billion € and society loses 8.3 billion € per annum due to productivity losses (including early retirements/deaths and absenteeism) linked to smoking.¹⁹

Concerning the tobacco- related monetary costs in the USA, the total annual public and private health care expenditures caused by smoking are approximately \$170 [147€] billion. The annual health care expenditures solely from second-hand smoke exposure are 6.03\$ [522€] billion productivity losses caused by smoking each year account for 151\$ [131€] billion.²⁰

Tariffs are currently a major factor in the retail price of tobacco and thus a key determinant of consumption. At present, there are a range of EU tariff rates applied to tobacco, which range from 10.0% to 57.60%.²¹

¹⁵ Tobacco Free Kids – Toll of Tobacco in the United States of America

http://www.tobaccofreekids.org/research/factsheets/pdf/0072.pdf?utm_source=factsheets_finder&utm_medium=link&utm_campaign=analytics

¹⁶WHO Europe (2014). Prevention and control of noncommunicable diseases in the European Region: a progress report

¹⁷ WHO Europe (2016) Health topics. Noncommunicable diseases. Cardiovascular diseases. [online]

¹⁸ Nichols M, Townsend, N, Scarborough P, Luengo-Fernandez R, Real J, Gray A, Rayner M (2012); European Cardiovascular Disease Statistics 2012. European Heart Network, Brussels, European Society of Cardiology, Sophia Antipolis [online]

¹⁹ Impact Assessment of the Tobacco Products Directive

http://ec.europa.eu/health/tobacco/docs/com_2012_788_ia_en.pdf

²⁰ Tobacco Free Kids – Toll of Tobacco in the United States of America

http://www.tobaccofreekids.org/research/factsheets/pdf/0072.pdf?utm_source=factsheets_finder&utm_medium=link&utm_campaign=analytics

²¹ European Commission TARIC database. [online]

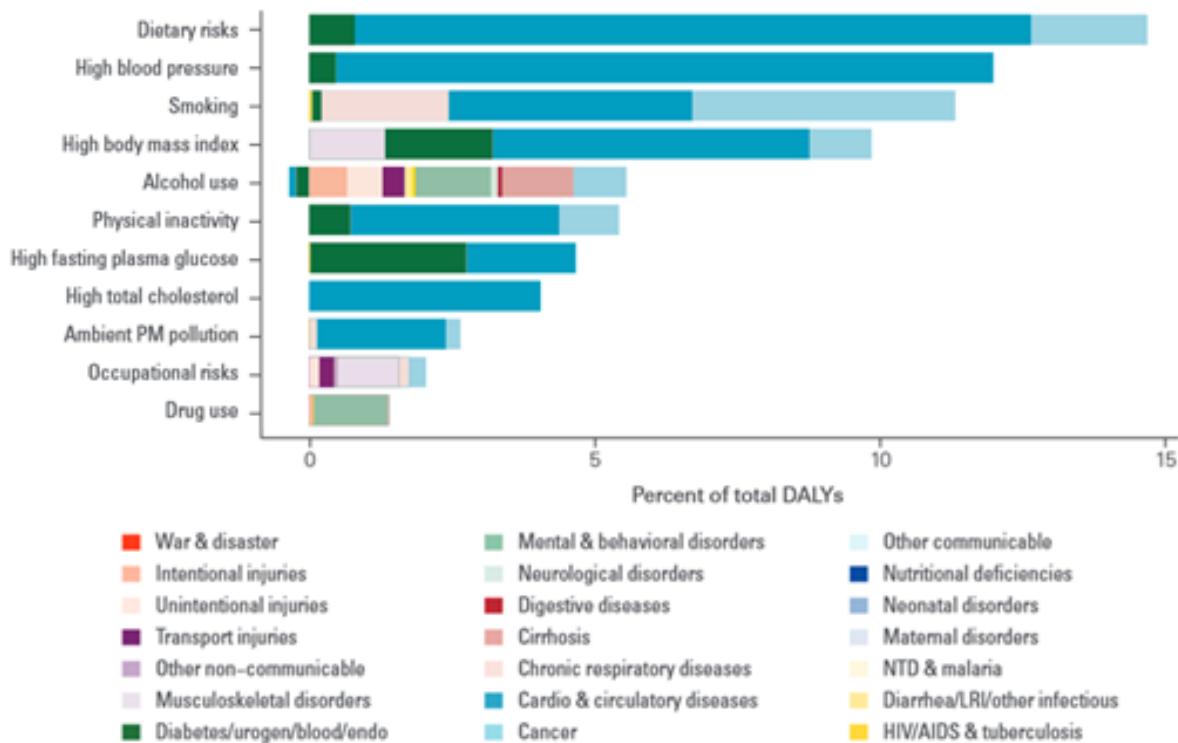


Figure 1: Disability adjusted life years lost" by risk factors, EU and EFTA, 2010 (The Global Burden of Disease)²²

CHAPTER 24 TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES

2402 Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes : (TN701)

2402 10 ▼ - Cigars, cheroots and cigarillos, containing tobacco

2402 20 ▼ - Cigarettes containing tobacco :

2402 20 10 ▼ - - Containing cloves

ERGA OMNES (ERGA OMNES)

→ Third country duty (01-07-2000 -) : 10.00 %

[R2204/99](#)

2402 20 90 ▼ - - Other

2402 90 ▼ - Other

ERGA OMNES (ERGA OMNES)

→ Third country duty (01-07-2000 -) : 57.60 %

[R2204/99](#)

Figure 2: Average tariff rates applicable to different sectors (CEPR)

Removing tariffs in TTIP would have an impact on public health: it would be making US tobacco products cheaper which would increase competition in the internal market and increased competition may lead to higher availability of those products and further reductions of prices of tobacco products in the EU.

22 The graph is an outcome of the "Global Burden of Disease" study (2013), a collaboration between seven leading international scientific institutes to systematically quantify the main causes of health loss.



While the primary aim of a tariff is to protect domestic industries in the market of a country by restricting the amount of goods traded and to generate revenue for the government, it is a key determinant of product price. Current tobacco tariffs are therefore serving public health purposes and their removal would have significant negative impact unless they are offset by EU and other national measures which ensure the retail/consumer price is unaffected.

The potential removal of tariffs on tobacco products would lead to increased consumption and thus have a negative impact on health and social costs as price is the primary determinant of tobacco consumption.²³ Evidence shows that low socioeconomic groups and young people are particularly sensitive to price and they spend a higher proportion of disposable income on tobacco.²⁴ Younger people are particularly responsive to price changes because young people tend to place greater emphasis on the short term costs, such as the price of tobacco compared to the future costs of smoking in terms of the associated health consequences.²⁵ Young people also can quit smoking in response to price increases as they have had less time to become addicted.

Research suggests that liberalisation of trade in tobacco has opened countries to competition from lower priced foreign tobacco products, resulting in lower prices and higher consumption in the importing country.^{26 27} Any decrease in price would reverse the positive recent trend in reduced tobacco use among young people and adults driven by taxation and pricing measures.²⁸

Pursuant to TFEU Article 168, the EU must consider public health aspects during tariff negotiations and can and should exclude them from free trade and investment agreements. Reducing tariffs on Tobacco in TTIP and relying only on taxation and excise duty policies concerning the price of tobacco would – de facto – mean reducing their prices and increasing their accessibility, which in light of the presented evidence, is contrary to the EU's obligation to protect and improve population health.

23 Andreyeva, Tatiana (2010). The Impact of Food Prices on Consumption: A systematic Review of Research on the Price Elasticity of Demand for Food

24 <http://www.ncbi.nlm.nih.gov/pubmed/12946461>

25 Chaloupka FJ, Grossman M. Price, tobacco control policies and youth smoking. Cambridge, Massachusetts, National Bureau of Economic Research, 1996. – referred in PPACTE project February 2009 – March 2012. P.27

26 E R Shaffer, J E Brenner, T P Houston, International trade agreements: a threat to tobacco control policy. *Tobacco Control*

27 WHO (2014) Raising tax on tobacco what you need to know

28 Powell et. A. (2013). Assessing the Potential Effectiveness of Food and Beverage Taxes and Subsidies for Improving Public Health: A systematic Review of Prices, Demand and Body Weight Outcomes



Recommendation 2: EU tariffs on tobacco products must not be removed unless they are compensated by other EU and national-level measures, such as EU proposals aiming at harmonising increased taxes or excise duties.

As the spread of the tobacco epidemic is facilitated through trade liberalization and direct foreign investment, TTIP must be in line with the EU's and Member States' commitment to the WHO FCTC.

The WHO FCTC is an evidence-based global treaty that reaffirms the right of all people to the highest standard of health. The WHO FCTC represents a paradigm shift in developing a regulatory strategy to address addictive substances: in contrast to previous drug control treaties, the WHO FCTC asserts the importance of demand reduction strategies as well as supply issues. The EU has committed to reducing use and exposure to the harmful health impacts of tobacco via the FCTC. TTIP must not contradict those principles.

Whilst the tobacco lobby is precluded from meeting with EU policy-makers in the health domain by proper application of the FCTC, a recent European Ombudsman investigation²⁹ found that this is not applied by other Directorates-General, including DG Trade. For the manifold reasons outlined in this paper, TTIP can have a profound impact on public health. The FCTC must therefore be equally applied – as strongly recommended by the European Ombudsman³⁰ – by all DGs, including trade negotiators and officials at all levels.

Several investigations³¹ have illustrated that the tobacco lobby is seeking to strongly influence the TTIP negotiators, in order to weaken existing tobacco control measures and to introduce a ‘chilling’ effect on potential future policies.³² Independent studies³³ ³⁴ have also illustrated the link between the tobacco lobby and the initial proposals behind the European Commission’s so-called “Better Regulation” agenda, which includes increasing focus on the cost of regulation to businesses (rather than societal benefits). The Regulatory Cooperation chapter foreseen for TTIP reflects many of the “Better Regulation principles” perceived by many public interest organisations designed to induce “paralysis by analysis” or “regulatory chill” in public authorities and regulators.

Further Recommendations

- a. **An assessment of the economic, social and public health impact of TTIP with regard to the FCTC obligations on consumption should be prepared and published by the European Commission.**

²⁹ <http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/63624/html.bookmark>

³⁰ <http://www.ombudsman.europa.eu/en/cases/recommendation.faces/en/61021/html.bookmark>

³¹ <http://corporateeurope.org/international-trade/2015/08/black-out-tobaccos-access-eu-trade-talks-eerie-indication-ttip-threat>

³² THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP: INTERNATIONAL TRADE LAW, HEALTH SYSTEMS AND PUBLIC HEALTH Usman Khan, Robert Pallot, David Taylor and Panos Kanavos January 2015

³³ The Origin of EU Better Regulation - The Disturbing Truth - http://www.smokefreepartnership.eu/images/event-file/Report_version_27012010_-2.pdf

³⁴ Evidence-based policy making and ‘Better Regulation’: The battleground for standardised packaging of tobacco - <http://www.bath.ac.uk/ipl/pdf/policy-briefs/tobacco-plain-packaging.pdf>



- b. TTIP must not undermine existing measures at any level to protect people from exposure to tobacco smoke nor continually and substantially decrease consumption of all tobacco products;
- c. TTIP must enable further development of stricter tobacco control, including pricing measures to reduce demand and consumption;
- d. TTIP negotiating parties (the European Commission which is bound by FCTC obligations, but also the US Trade Representative), relevant bodies and any new bodies established for Regulatory Cooperation must comply with Article 5.3 and its Guidelines particularly by restricting contacts with the tobacco industry to those which are strictly necessary, and by proactively disclosing all formal and informal contacts with the tobacco industry and its representatives.
- e. TTIP must include a commitment from the United States to ratify the WHO FCTC.

Recommendation 3: The TTIP text must ensure that policy space for tobacco control measures is safeguarded

The European Commission must provide in the legal text assurances that tobacco control measures will not be considered as non-tariff barriers to trade (NTB). Governments should be free to introduce policies to reduce consumption of and exposure to tobacco, by intervening e.g. on price (excise duties or minimum pricing), availability and attractiveness (promotional measures, advertising restrictions, marketing regulations, plain packaging) or accessibility (retail restrictions, smoking bans, etc.), and the EU should be free to increase harmonisation on these areas with the view of improving public health, as appropriate

Tobacco companies already have a strong track record in their resort to Investor Dispute Settlement mechanisms, established under other trade agreements, in order to sue sovereign governments for their application of tobacco control policies.

There are well documented investment protection cases which were launched with the intention to compromise (stop, delay, weaken) regulatory measures to achieve public policy objectives. ('regulatory chill').

Phillip Morris vs Australia for plain packaging of tobacco products (closed case) - PMA is seeking an order that the Australian Government suspend enforcement of the legislation and compensate PMA for loss suffered through compliance with the legislation;³⁵

Phillip Morris vs Uruguay for large health warnings on tobacco products (ongoing case). Philip Morris International (PMI) claims that Uruguay's regulatory measures violated the investment protection agreement signed in 1991 between Uruguay and Switzerland, where Philip Morris is headquartered.³⁶

35 <http://www.mccabecentre.org/focus-areas/tobacco/philip-morris-asia-challenge>

36 http://www.tobaccotactics.org/index.php/Philip_Morris_vs_the_Government_of_Uruguay



Tobacco and public health in TTIP

These cases have shown that ISDS has a worrying effect on the ability of governments to regulate on tobacco control. In 2013, New Zealand explicitly announced that it will postpone plain packaging legislation until the Australian case is resolved³⁷.

In addition, such proceedings entail significant costs and resources from governments and stall the implementation of a public health policy.

The tobacco industry, as well as other makers of health-harmful products, is calling for inclusion of an ISDS clause in TTIP with the intention to prevent or strongly dissuade governments from introducing proposals for tobacco control measures.

This is particularly relevant in the policy field of tobacco control where there are either relevant legislations in force or plans to introduce them both at European (the Tobacco Products Directive – 2014/40/EU³⁸) and Member States level (plain tobacco packaging in Ireland,³⁹ the United Kingdom⁴⁰, France⁴¹, Hungary,⁴² Sweden,⁴³ Finland,⁴⁴ Slovenia⁴⁵ and Belgium⁴⁶) and as presented above, the tobacco industry has a proven record of challenging those acts via trade and investment agreements. There are various tobacco control policies in place in the United States, both at Federal and State level, including US State and local taxes⁴⁷, smoke-free laws⁴⁸ and the FDA Regulation of Tobacco Products and Marketing.⁴⁹

Research indicates that the revised EU proposal for an Investment Protection Court (ICS) proposal would not prevent similar cases being launched against EU governments and causing regulatory chill.⁵⁰

The recent Trans Pacific Partnership (TPP)⁵¹ contains a specific exclusion of tobacco control measures from the Investor-to-State Dispute Settlement Mechanism (ISDS). The rationale is well justified, precisely because TPP negotiators recognised the well-understood threat that tobacco companies seek to use the clause to undermine policies and induce regulatory chill, but this is not the appropriate way to protect public health as it disregards other risk factors of NCDs, such as alcohol and unhealthy food.

³⁷ Turia T. Government moves forward with plain packaging of tobacco products. <http://www.beehive.govt.nz/release/government-moves-forward-plain-packaging-tobacco-products> Date last accessed: March 30, 2015. Date last updated: February 19, 2013.

³⁸ http://ec.europa.eu/health/tobacco/docs/dir_201440_en.pdf

³⁹ <http://www.theguardian.com/world/2015/mar/03/ireland-passes-plain-packaging-bill-cigarettes-smoking-tobacco>

⁴⁰ http://www.tobaccotactics.org/index.php/Plain_Packaging_in_the_UK

⁴¹ <http://www.theguardian.com/society/2015/dec/18/france-votes-for-plain-cigarette-packaging-from-2016>

⁴² <http://hungarytoday.hu/news/hungary-considering-introduction-australian-style-uniform-packaging-tobacco-products-12763>

⁴³ <http://www.euractiv.com/section/health-consumers/news/health-ministers-step-up-campaign-for-plain-tobacco-packaging/>

⁴⁴ http://www.ash.org.uk/files/documents/ASH_960.pdf

⁴⁵ World Health Organisation - Regional Office for Europe, Slovenia seeks stricter tobacco control legislation, 2016. Available from: <http://www.euro.who.int/en/countries/slovenia/news/news/2016/04/slovenia-seeks-stricter-tobacco-control-legislation>

⁴⁶ Maggie De Block's website, Plan anti-tabac avec interdiction de fumer en voiture en présence d'enfants et augmentation des accises, 2016. Available from: <http://www.deblock.belgium.be/fr/plan-anti-tabac-avec-interdiction-de-fumer-en-voiture-en-pr%C3%A9sence-d%20%99enfants-et-augmentation-des>

⁴⁷ http://www.tobaccofreekids.org/facts_issues/fact_sheets/policies/tax/

⁴⁸ http://www.tobaccofreekids.org/facts_issues/fact_sheets/policies/secondhand_smoke/

⁴⁹

http://www.tobaccofreekids.org/research/factsheets/pdf/0352.pdf?utm_source=factsheets_finder&utm_medium=link&utm_campaign=analytics

⁵⁰ https://www.foeeurope.org/sites/default/files/eu-us_trade_deal/2016/icstest_web.pdf

⁵¹ <https://ustr.gov/sites/default/files/TPP-Final-Text-Investment.pdf> TPP Article 29.5.



There is no need for such an ISDS or ICS clause at all between two developed, democratic economies respecting the rule of law. The intention behind a carve-out for tobacco serves to illustrate the threat of legal action from other makers of health-harmful products, and this is why the best option for the public interest is not including any ISDS / ICS chapter in TTIP.

However, instead of a tobacco carve-out, there is need for wider public health protection in the investment chapter of TTIP. The TTIP agreement must ensure that it is the legally immutable right of the EU and Member States ('margin of appreciation') to propose and implement policies and measures to achieve public health protection and improvement as democratically legitimate, irrefutable public policy objectives. In contrast, panel members of investment arbitration courts are in no position to evaluate the relative necessity of a public health measure.

In principle, it is desirable that international investors consider political and regulatory stability as a factor in their judgement of investment risk and due diligence assessments. Since the USA and all EU member states have well developed legal systems and are stable democracies respecting the rule of law, there is no need for an ISDS / ICS clause.

Further Recommendations

- a. TTIP must include guarantees in the text that it will not have any 'chilling' impact on the freedom of any level of government to introduce new or stricter policies to protect and improve public health, including implementation of the Tobacco Products Directive.**
- b. TTIP must not include an Investor State Dispute Settlement (ISDS) or Investment Court System (ICS).**
- c. If any form of ISDS/ICS is included in TTIP, instead of a specific and limited exclusion of tobacco products, ISDS/ICS must contain specific guarantees ensuring the full respect of the margin of appreciation of governments in the field of public health protection, including tobacco control measures.**

About EPHA

EPHA is a change agent – Europe's leading NGO advocating for better health. We are a dynamic member-led organisation, made up of public health NGOs, patient groups, health professionals, and disease groups working together to improve health and strengthen the voice of public health in Europe. EPHA is a member of, among others, the Social Platform, the Health and Environment Alliance (HEAL), the Transatlantic Consumer Dialogue (TACD) and the Better Regulation Watchdog.

EPHA's Transparency register number is 18941013532-08.

The objective of the European public health community with regard to EU Trade policy is to protect and promote public health and to ensure policy and regulatory space for governments and the EU.

Further reading

EPHA Position Paper - August 2015 – How to Include Public Health into the EU Trade Strategy >>[read more](#)

EPHA Position Paper - November 2015 - Investment Protection in TTIP and Trade Agreements. >>[read more](#)



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