The future prospects of regulating in the interest of public health under the Trans Pacific Partnership Agreement: the example of agricultural antibiotic use

The Trans Pacific Partnership (TPP) is an investment treaty that has been under negotiation since 2010 and involves 12 countries: New Zealand, Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, Vietnam and the USA.¹

Participating governments seek to conclude the agreement in 2014, which has been described as “a new style of regional trade agreement that presents profound new threats to global health”.²

Although access to draft texts has been granted to corporate representatives, similar access has not been provided to the wider public.³ Nonetheless, a series of leaked documents has enabled public health specialists to identify a number of serious concerns about the implications of the TPP for public health. In particular, concern has been expressed about the effect of the TPP on access to affordable generic medicines; the bargaining power of national pharmaceutical purchasing agencies (such as PHARMAC in NZ); and the ability of participating governments to introduce new legislation in the interest of public health.¹²⁴³

As doctors concerned about rising rates of antibiotic resistance, we wish to draw attention to the potential impact of the TPP on future regulation of antibiotic use in the agricultural sector, and highlight this issue as an example of how the TPP would reduce the ability of participating countries to introduce a variety of necessary interventions in the interest of public health.

Over the last decade, rising rates of antibiotic resistance have become widely recognised as an important global public health issue.⁶⁷ Increasing resistance is driven by complex, interconnected factors, although growing evidence suggests that large volumes of antibiotics used in agriculture are an important contributing factor.⁸⁻¹⁰

Because most countries have minimal requirements for monitoring and reporting agricultural antibiotic use, accurate data on total volumes are difficult to obtain, but are known to be very large. In the USA and in Australia for example, approximately 70% of all antibiotic use is consumed by livestock.⁸

Reducing antibiotic consumption in agriculture is therefore essential to slow the rise in antibiotic resistance over the long term. The World Health Organization recommends that the routine use of certain antimicrobial agents as “growth promoters” in agriculture should be “rapidly phased out or terminated”.¹¹ Evidence to support this includes data from Denmark where resistance was substantially reduced following a reduction in antibiotic use for growth promotion.¹² This outcome was achieved through a government ban on the use of certain antibiotics as growth promoters.

More recently, other regulatory approaches have been suggested, including mandatory food labeling indicating whether antibiotics were used during production and zero
tolerance rulings on certain types of resistant organisms in retail food, accompanied by regular monitoring programmes. Such approaches, although largely untested to date, hold promise as potentially powerful devices to help curb rapidly escalating antibiotic resistance worldwide.

It is therefore concerning that investment treaties such as the TPP threaten to undermine the prospects of such regulations being introduced or extended in participating countries.

The inclusion in the TPP of “investor-state dispute settlement” (ISDS) provisions allows transnational corporations to seek compensation from foreign governments if new domestic legislation is deemed to result in a loss of anticipated profits.

Under the North American Free Trade Agreement (NAFTA), there are already numerous examples of ISDS provisions being applied. For example the pharmaceutical company, Eli-Lilly is currently seeking compensation of $500 million dollars from the Canadian Government in response to a patent ruling made in a Canadian federal court.

Similarly, a $250 million law suit is being brought against the Canadian Government by a US oil and gas firm in response to a partial moratorium on shale gas exploration under the St Lawrence River.

Another example is the challenge made under an existing treaty between Australia and Hong Kong, by the tobacco company Phillip Morris Asia, on laws mandating the plain packaging of cigarettes. Furthermore, it is important to recognise that it is not just the actual exercise of ISDS provisions that is concerning, but also the deterrent effect that the mere threat of such action would have on the introduction of new domestic legislation in the interest of public health.

It is likely therefore that along with other public health concerns, the TPP would reduce the ease with which participating governments could introduce or extend regulations to reduce harmful antibiotic use in the agricultural sector. However, in order to preserve our remaining antibiotics for patients in whom they are absolutely vital—such as the immune-compromised and critically ill - the capacity to introduce such regulations must be carefully guarded.

We therefore highlight yet another public health issue likely to become more difficult to address effectively under the TPP. Accordingly, we urge the New Zealand medical workforce to consider the far-reaching implications of the TPP for the future health of New Zealanders and to engage in public debate on this issue.

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