

Jessica Laycock

December 15, 2015

International Actors and Issues

The Domestic and International Tobacco Industries' Effect on the Trans-Pacific Partnership

Tobacco will be one of the leading issues that will determine the ultimate success or failure of the Trans-Pacific Partnership. The tobacco industry has a powerful worldwide influence on trade, economics and in many cases sociopolitical factors as well. Two of the world's biggest tobacco producing regions are North America and the South Pacific Rim. Both have very different types of governments and very different positions on numerous international issues. However, both also have big interests in their own domestic tobacco cultivation and production as well as in the international market. With the negotiations of the Trans-Pacific Partnership completed, comes the need for all of the participating nations to review the agreements they have made with their domestic constituents. They can then officially take an international stance on the issue of tobacco and the regulation of this industry globally as a precedent for the regulation of other, future, controversial international industries.

As it stands, in an alleged attempt to promote international investment, there are certain protections put in place protecting foreign industries from "unfair treatment". This is because traditionally, "foreign investors are treated worse than domestic investors by domestic regulators and courts, these extra protections have proliferated through thousands of treaties worldwide" (Lester, 2015). These protections include a stipulation that states that international corporations are entitled to a minimum standard of obligated treatment and that "[c]ompanies can bring lawsuits against regulations that discriminate against foreigners (the traditional focus of trade law), but they can also challenge government behavior that falls below a so-called 'minimum

standard” (Lester, 2015). It is this stipulation that tobacco industries worldwide, but in particular in the United States, are using to keep sovereign states all over from deciding their own tobacco regulating policy.

One factor that would stop the negotiating parties from changing regulations and from keeping the tobacco industry from having the power to dictate this time of regulation, aside from national interests in the product which is undeniably the biggest element to why these nations are hesitant, is the fact that doing so would set a precedent for restricting international industries’ capacity to practice equal and open business worldwide. The capitalist system by which trade among nations occurs on an international scale works on the foundation of a free-market and laissez-faire principle. Within this framework for global trade, there are international “investor-state dispute systems (ISDS) that provide a special path for individuals and companies who believe that their economic rights protected by the treaty have been harmed” (Parmet, 2015). As of now, Big Tobacco uses these ISDS to protect their industry and brand in every nation. By changing the ISDS, nations are essentially targeting the tobacco industry, and prohibiting it from practicing business as freely as other industries. This type of action would be setting a precedent for the future limitations of other controversial industries conducting business worldwide.

In every international agreement process, there is a two-level game which the participating states have to adhere to in order to fully incorporate and implement the new standards stipulated by the agreement. When the negotiations for the Trans-Pacific Partnership came to a close in early October 2015, the first-level of the two-level game was completed. The collection of negotiating states successfully bargained their way into a compromise.

Now, every country that participated in the negotiation is looking for what is referred to as a “win-set” (Putnam, 1988). A “win-set” is first, gaining domestic acceptance for the international agreement by taking into consideration the domestic pressures from within a state, second, finding a large array of bargaining options within the bargaining range and third, choosing an option that can accommodate the needs of domestic groups as well as the needs of the whole state (Putnam, 1988). In this stage of the TPP, the “win-set” would complete the second-level of the game.

The process of the “win-set” is based on the foundation of bargaining theory, a subset of Myerson’s (1991) game theory which is concerned with how rational actors interact with each other with either cooperation or conflict in general. According to Fearon (1995), in bargaining theory, peaceful resolutions are preferable to conflict. What facilitates that peace, is the credibility and verifiability of the information on the capabilities and liabilities each negotiating party actually possesses.

In the United States, domestic tobacco interests certainly have affected its participation in negotiations of the Trans-Pacific Partnership. The American political system enables our legislature to play a decisive role in how the United States approaches negotiations of the Trans-Pacific Partnership, currently under domestic review. Tobacco is one of America’s largest cash crops and keeping tobacco industries from suing nations that try to decide their own tobacco policy may damage American revenue in that private sector. However, as the foremost leaders in progressive global politics, the pressing issue of the dangers of smoking to the health of people worldwide calls for the United States to set a precedent of regulating certain industries internationally. By making a two-level analysis of the processes of bargaining occurring both on

the American domestic level as well as on the Trans-Pacific International Level, we can witness the process by which the United States comes to a compromise with itself, on the issue of Big Tobacco.

In the United States Senate, we begin to see how domestic interests shape our country's position on the international issue. The “Senate majority leader Mitch McConnell, who represents the tobacco-producing state of Kentucky” addressed the topic and urged his fellow Senators to “not set a new precedent for future U.S. trade negotiations by negatively carving out a specific U.S. agriculture commodity—in this case tobacco” (Lester, 2015). Therefore, when the U.S. Senate reviews the results of the negotiations of the Trans-Pacific Partnership, it is likely that many Members will heed this type of domestic prioritizing advice and vote to protect what is nationally one of the largest yielding products.

Australia, which was also a participating member of the negotiations of the Trans-Pacific Partnership, has had its own issues with the power that tobacco industries have been afforded. “One case involves Phillip Morris challenging Australia’s plain packaging regulations for cigarettes, designed to undermine the use of branding on cigarette products” (Lester, 2015). As a result, Australia would like nothing less than to be completely protected from the legal measures and ISDS taken against them by tobacco companies when attempting to make policy actions to warn their citizens of the dangers of smoking. As of now, while “the High Court of Australia has upheld that nation’s tobacco plain packaging law, Phillip Morris Asia continues to pursue a claim before an ISDS that the packaging law violated a trade agreement between Australia and Hong Kong. That case has yet to be decided” (Parmet, 2015).

The nation of Malaysia also spoke out against the tobacco industry and in fact, took a leading role on tobacco during the TPP negotiations. They were the nation that first proposed the exclusion of tobacco in the trade agreement, that would effectively secure participating nations the “ability to enact measures contained in the WHO Framework Convention on Tobacco Control (FCTC) and protect the public health of their people” (*SEATCA*, 2015). Domestic Malaysian tobacco interests also affected their strategy, when negotiating during the Trans-Pacific Partnership. However, the Malaysian proposal is a much more aggressive stance against the power of tobacco lobbies than firstly, the United States would be willing to propose and secondly, than anyone was originally anticipating to come from this agreement. Nevertheless, “[o]n October 5, Malaysia together with US, Australia, Brunei, Canada, Chile, Japan, Mexico, New Zealand, Peru, Singapore and Vietnam concluded negotiations on the TPP. These 12 nations have yet to sign and ratify the TPP” (Lim, 2015). In the meantime, these countries will continue to look at the Trans-Pacific Partnership and look to their own domestic public opinion in order to ultimately decide what their “win-set” is, and whether that includes signing onto this new trade agreement.

Though the tobacco industry is a money making machine, smoking is a serious health problem that all governments have to deal with. Smoking is one of the leading causes of death worldwide. Governments spend billions on healthcare every year and their limited ability to take preemptive preventative action ultimately makes for more expenses down the line. In this day and age, it is becoming more and more obvious that the costs of allowing the tobacco industry to keep nations from protecting their citizens from tobacco and smoking is too high in terms of the damage it does to people’s lives and the financial implications of combating this health issue.

Every international topic has a myriad of different nations and subgroups of those societies with differing positions taken on the issue. In cases when an international agreement is constructed among countries, the practical application of the stipulations of that agreement can not be upheld if the countries domestic population does not support the stance. In preparation for this phenomenon, international actors and scholars must have strategies for anticipating potential obstacles along the path of the two-level game undertaking. By applying the fundamentals of bargaining and game theory to this two-level game, these integral players can begin to predict the motivations, actions and outcomes of all of the stakeholders involved.

References:

- Excluding Tobacco from Trade and Investment Agreements: Trans-Pacific Partnership Agreement (TPPA). (2015). *Southeast Asia Tobacco Control Alliance (SEATCA)*. Retrieved from http://seatca.org/dmdocuments/SEATCA%20Tobacco%20Carve%20out%20paper_FAQ.pdf
- Fearon, J.D. (1995). Rationalist Explanations for War. *International Organization*, 49 (03): 379–414.
- Lester, S. (2015). Will Tobacco Kill the Trans-Pacific Partnership?. *The National Interest*. Retrieved from <http://nationalinterest.org/feature/will-tobacco-kill-the-trans-pacific-partnership-14066>
- Lim, I. (2015). Minister: TPP Won't Encourage Vaping, Tobacco Use. *Malay Mail Online*. Retrieved from <http://www.themalaymailonline.com/malaysia/article/minister-tpp-wont-encourage-vaping-tobacco-use>
- Myerson, Roger B. (1991). Game Theory: Analysis of Conflict. *Harvard University Press*, 7-11.
- Parment, W. (2015). Trade, Health, And Tobacco Exceptionalism: The TPP Tobacco Carve-Out. *Health Affairs Blog*. Retrieved from <http://healthaffairs.org/blog/2015/11/10/trade-health-and-tobacco-exceptionalism-the-tpp-tobacco-carve-out/>
- Putnam, R.D. (1988). Diplomacy and Domestic Politics: The Logic of Two-Level Games. *International Organization*, 42 (03): 427–460.