

## Articles

# SAFEGUARDING TOBACCO CONTROL MEASURES FROM THE TOBACCO INDUSTRY'S TRADE-RELATED CHALLENGES THROUGH TRADE TREATY DESIGN

*Deborah K. Sy\**

### ABSTRACT

*In view of the tobacco provision in the Trans-Pacific Partnership and the Decision of the Sixth Conference of the Parties of the WHO Framework Convention on Tobacco Control enjoining parties to explore possible legal options to minimize the risk of the tobacco industry making undue use of trade and investments rules to challenge tobacco control measures, this paper explores and analyzes the practice of safeguarding specific sectors in trade and investment negotiations. Safeguarding a sector, be it tobacco control or the environment, in a trade and investment agreement involves legalizing the integration of the sector in the trade treaty primarily by explicitly acknowledging said sector in the instrument and encouraging compliance with a treaty or the standards it has set. This is primarily accomplished through (1) specific exception (or modified general exception); (2) partial exclusion; and, (3) full exclusion. The tobacco provision in the TPP, a treaty among twelve*

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\*Adjunct Professor, Georgetown Law—Harrison Institute for Public Law. This work was carried out partially with the aid of a grant from the International Development Research Centre, Ottawa, Canada, and assistance from the Southeast Asia Tobacco Control Alliance, a Bangkok-based multi-sectoral alliance established to support ASEAN countries in developing and putting in place effective tobacco control policies. The author is grateful to Atty. Alessandra O. Reyes and Mr. Allan V. Villanueva for helping edit this article. The author can be reached at: debbyksy@gmail.com.

*(12) countries, is an example of a partial exclusion as this involves the option to exclude tobacco control measures from the investor-state dispute settlement mechanisms chapter. The trend in integrating the environment and labor sectors in TIAs also involves enabling better enforcement of treaty standards previously agreed on. In United States free trade agreements, this requires: (1) Adoption of policies (including process and mechanisms for implementation); (2) public participation in decision-making; (3) inter-ministerial collaboration; and, (4) dispute settlement mechanisms. Knowledge of the extent by which a sector can be safeguarded in trade and investment agreements can inform discussion around strengthening FCTC implementation.*

**KEYWORDS:** *tobacco control, trade and investment treaties, tobacco industry, threats, litigations, safeguards, investment agreements*