**International Trade Agreements and Public Health**

Submitted by the Public Health Association of Australia (PHAA) and the Spanish Society for Public Health and Health Administration (SESPAS)

**Introduction:**
International trade agreements are arrangements agreed by two or more countries that govern the flow of goods, services and investment between them.\(^1,\)\(^2\) These include bilateral trade agreements (between two countries), multilateral agreements such as those administered through the World Trade Organization (WTO) and plurilateral agreements which are being increasingly negotiated outside the WTO. The traditional aim of such agreements is to reduce barriers to the free flow of trade, harmonize regulatory frameworks and integrate supply chains, in order to stimulate economic growth and integrate the global economy.

Trade agreements can hold benefits for health, for example, if they raise living standards and if the benefits are distributed equitably within and between countries. However, they can also have negative effects on health which are often not taken fully into consideration in the negotiations or given sufficient weight in forums where economic and corporate interests take priority.\(^1,\)\(^3\) Trade negotiations are also often characterized by a lack of transparency and public accountability. In this context, it is essential that public health associations in every nation, supported by the World Federation of Public Health Associations (WFPHA), engage with trade negotiations and advocate for public health to be protected. There is no system in the UN to monitor the effects on health of such agreements.

**Scope and Purpose:**
Recent trade negotiations have gone beyond the traditional issues of trade in goods and services to include areas that affect government regulation including investment, economic and technical cooperation and intellectual property rights. Thus, trade agreements have the potential to affect many aspects of health care and public health\(^1-^5\). These include, but are not limited to:

- Access to affordable medicines;
- The equitable provision and quality of health care services;
- The ability of governments to regulate health-damaging products and activities such as tobacco, alcohol, gambling, ultra/highly processed foods, and unsafe medicines;
- Access to sufficient and safe nutritious food;
- Capacity to legislate or regulate to protect the natural environment; and
- The protection of other determinants of health such as education, employment and working conditions.

Several large regional trade agreements currently being negotiated, or recently concluded, present new threats to public health. These include, but are not limited to:
The Trans Pacific Partnership Agreement (TPP), agreed in principle and signed in February 2016 between Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam; The Trans-Atlantic Trade and Investment Agreement (TTIP) under negotiation between the European Union and the United States; and The Regional Comprehensive Economic Partnership (RCEP) under negotiation between sixteen countries including ASEAN countries and the countries with which ASEAN has existing trade agreements.

Significant concerns relate to three grave threats:

(i) Intellectual property provisions that aim to expand and extend monopolies on medicines and delay the availability of affordable generic drugs;

(ii) Investor-state dispute settlement (ISDS) processes that provide investors from one country with the right to sue governments from another participating country over changes to policies and laws that they perceive harm their investments; and

(iii) Regulatory cooperation principles and bodies (RCBs), which may limit further the ability of states to develop laws pursuing social benefits.

For each of these agreements, countries with large pharmaceutical industries have sought strong intellectual property protections which go well beyond the World Trade Organization’s Trade Related Aspects of Intellectual Property (TRIPS) Agreement. These ‘TRIPS-Plus’ measures include patent term extensions, monopolies on clinical trial data (known as ‘data exclusivity’), and expanded scope of patentability (e.g. mandatory secondary patents for minor variations or new uses of existing products). These provisions prolong monopolies and delay access to affordable medicines, creating strain on government health expenditure and putting medicines out of reach for many people in developing countries. The final TPP text, for example, includes several TRIPS-Plus provisions, including novel provisions for lengthening monopolies on expensive biologic drugs, which can be expected to hinder access to medicines, particularly in the developing countries which are signatories. While transition periods have been negotiated by these developing countries, these are short and inflexible.

Investor-state dispute settlement (ISDS) processes have increasingly been included in bilateral and regional trade agreements. ISDS exposes states seeking to introduce innovative public health policies to expensive legal challenges brought by multinational corporations headquartered in other countries – potentially including pharmaceutical, tobacco, alcohol, sugar added drinks and processed food corporations. Even the threat of lodging an ISDS claim may provide a major disincentive for governments to regulate in favour of public health. Recent agreements have included some legal safeguards intended to assist governments to defend health and environmental measures in the event of an ISDS case, but aside from a ‘carve-out’ for tobacco in the TPP (which allows parties to prevent the use of ISDS claims over tobacco control measures), to date there are no examples of effective safeguards that rule out the possibility of ISDS claims over health/environmental measures.

Regulatory cooperation is a new tool, developed in the XII round of TTIP negotiations (Brussels, February 2016), and has been already applied to the treaty with Vietnam of August 2015, and CETA.
between Canada and Europe. This new tool could spread to other treaties in the future, affecting not just how laws are applied (ISDS) but also how laws are created, by allowing stakeholders to participate in regulatory cooperation bodies (RCB) replacing the traditional role of national governments and parliaments.¹

**Fields of Application:**
- National public health associations and their members
- The World Federation of Public Health Associations

**Main Content:**
The World Federation of Public Health Associations affirms the following principles:²

1. A fair regime of regulating trade, investment and intellectual property (‘trade and investment agreements’) should prioritize health and social and ecological sustainability as well as economic development.

2. Trade and investment agreements, and their dispute settlement mechanisms, along with RCBs, should be consistent with international law in relation to health, human rights and the environment, and uphold labor rights as well as worker protection standards.

3. Trade and investment agreements must:
   a. Prioritize equity within and between countries for population health improvement.
   b. Not limit or override a country’s ability to foster and maintain systems and infrastructure that contribute to the health and well-being of its citizens, nor penalize a government for doing so.
   c. Preserve policy space for governments to regulate to protect public health.
   d. Be negotiated in a transparent fashion, with opportunities for public and parliamentary scrutiny before commitments are made.
   e. Be subject to health and environmental impact assessments, carried out by parties independent of corporate interests.

**The WFPHA recommends:**

1. Public health associations in every country should:
   a. Develop policies on trade agreements and public health;
   b. Educate their members and the public about the connections between trade and health;
   c. Advocate for the full consideration of public health in trade negotiations, and promote for inclusion in the agreements the importance of environmental sustainability, progress on social and health outcomes and equity, and advancement of human rights including social, economic and cultural rights;
   d. Advocate for agreements to include specific provisions to confirm that governments have the duty to take measures for the public good;

² These principles were developed by the Public Health Association of Australia and the Public Health Association of New Zealand, and underpin the policies of each organisation on international trade and health.
e. Advocate for clarification of the links between trade law and other law relating to health, social and environmental objectives;

f. Advocate for transparency in negotiation, with the negotiation processes to be open to all interested parties, with no privileged access to the negotiating texts by corporate interests;

g. Advocate for a stronger role for the World Health Organization in promoting and protecting health during the negotiation of trade agreements and monitoring the effects on health of existing and proposed agreements; and

h. Work with universities and research institutes to develop capacity amongst public health practitioners and researchers to undertake research and advocacy on trade and health

i. Collaborate with academics and other health organisations, where practicable, on health impact assessments of trade agreements.

2. The WFPHA will:
   a. Support national PHAs in their policy development, advocacy, capacity-building and health impact assessment activities;
   b. Advocate for a strong role for the World Health Organization in promoting and protecting health during the negotiation of trade agreements; and
   c. Advocate for health and human rights impact assessments of all trade agreements.
References:


