Advancing Public Health on the Changing Global Trade and Investment Agenda

Comment on “The Trans-Pacific Partnership: Is It Everything We Feared for Health?”

Anne Marie Thow, Deborah Gleeson

Abstract

Concerns regarding the Trans-Pacific Partnership (TPP) have raised awareness about the negative public health impacts of trade and investment agreements. In the past decade, we have learned much about the implications of trade agreements for public health: reduced equity in access to health services; increased flows of unhealthy commodities; limits on access to medicines; and constrained policy space for health. Getting health on the trade agenda continues to prove challenging, despite some progress in moving towards policy coherence. Recent changes in trade and investment agendas highlight an opportunity for public health researchers and practitioners to engage in highly politicized debates about how future economic policy can protect and support equitable public health outcomes. To fulfill this opportunity, public health attention now needs to turn to strengthening policy coherence between trade and health, and identifying how solutions can be implemented. Key strategies include research agendas that address politics and power, and capacity building for both trade and health officials.

Keywords: International Trade Agreements, Health, Policy Coherence, Policy Space

Introduction

Agreement on the Trans-Pacific Partnership (TPP) in 2015 sent ripples of concern through the public health community. During negotiations stretching over five and a half years, public health advocates and researchers mounted a sustained campaign to identify potential concerns for health through analyses of leaked text and interaction with negotiators. Despite this concerted effort, the final text contains various provisions with negative implications for public health. The paper by Ronald Labonté and colleagues in the July issue of the International Journal of Health Policy and Management presents a summary analysis of the potential impact on health of the world’s largest trade and investment agreement, the TPP Agreement. A strength of this study is its use of the recently published text of the TPP to identify the implications of specific provisions for health and health policy-making. This analysis identified notable public health ‘wins’ evident in the TPP text. However, it also supports the conclusions of previous research: international economic policy agreements can have a significant negative impact on health.

What We Know About the Problem: Trade-Health Policy Incoherence

In the past decade, we have learned much about the implications of trade agreements for public health. There is potential for trade policy to contribute to equitable economic growth, in certain circumstances. In practice, however, trade and investment liberalization over the past six decades has coincided with ‘highly unequal patterns of income and wealth distribution. There has also been increasing recognition of incoherence between outcomes of trade and investment liberalization, and goals of health policy. Policy coherence refers to the systematic application of mutually reinforcing policies and integration of development concerns across government departments to achieve development goals along with national policy objectives. The Sustainable Development Goals have prioritised policy coherence at the national and international level in Goal 17, following on from the Addis Ababa Accord. Quantitative studies and targeted health impact assessments have identified specifically how trade and investment agreements can reduce equity in access to health services, increase flows of commodities of public health concern (such as tobacco and unhealthy foods) and reduce access to medicines. Policy analyses of trade and investment agreement texts have highlighted the potential for specific provisions to limit access to medicines and constrain policy space for health, which refers to the scope that governments have to pursue policy priorities. Economic studies have also demonstrated the increased costs associated with provisions that expand and prolong monopolies on medicines and delay the availability of affordable generics. Case studies have illustrated the threat of investor-state dispute settlement (ISDS) mechanisms that enable corporations to claim compensation from governments in certain situations where their investments have been negatively affected by government action.

The recognition that trade agreements need to allow policy
space for governments to achieve other policy objectives, including public health, has also proved challenging to translate into practice. Most trade agreements incorporate the general exception in Article XX of the General Agreement on Tariffs and Trade for measures ‘necessary to protect human, animal or plant life or health’, which is intended to protect the right to regulate in the public interest, including for health purposes. However, the interpretation of this exception is a contested issue and its application is determined by arbitrators in the event of a dispute.

Trade policy-making takes place in an environment where industry voices are prominent and where public health concerns tend to be marginalised. In many cases, trade policy is influenced by industry to achieve objectives related to profit, with little consideration of implications for public health. Powerful lobby groups representing the economic interests of pharmaceutical, health services, agriculture, food, tobacco, and alcohol industries are seeking to strategically influence negotiations of trade and investment agreements. Indeed, provisions in recently signed agreements also explicitly provide for industry involvement in domestic policy-making.

**Progress Towards Coherence**

Despite these ongoing challenges, there has been some progress in moving towards policy coherence. One example is the exemption or ‘carve-out’ of tobacco control measures from ISDS in the TPP Agreement (Article 29.5). This means that for countries that elect to employ the exemption, the tobacco industry will not be able to use ISDS to seek compensation for tobacco control measures, in the manner in which tobacco company Phillip Morris has challenged tobacco plain packaging in Australia and large health warnings in Uruguay. However, even this safeguard is limited: it does not apply to the whole TPP text but is restricted to ISDS, meaning that tobacco companies may still be able to persuade states to pursue disputes on their behalf. Of even greater concern is that there are no exemptions for policy measures to address other public health issues such as the sale, marketing and labelling of alcohol and processed foods.

Another example is the resistance shown by the non-US TPP countries to the US agenda to extend and expand monopolies on new medicines. Leaks of successive drafts of the TPP intellectual property chapter raised alarm amongst health and development organisations, resulting in considerable public pressure on governments to ensure that medicines remained affordable. As a result, some of the original US proposals were excluded from the TPP, and others were mitigated to a significant degree. However, provisions included in the final text of the TPP will still have a significant impact on access to medicines in developing countries, which were successful in securing only short and inflexible transition periods for implementation.

**New Opportunities to Engage With a Changing Trade and Investment Agenda**

A challenge for public health researchers is the need to engage with highly politicized and evolving economic agendas. The trade and investment agenda itself is changing. Multilateral negotiations at the World Trade Organization (WTO) have continued to stall, and there is substantial disagreement among major players about whether the WTO’s agenda should continue to focus on development, or on ‘new approaches’ for ‘meaningful outcomes’ in trade negotiations. New large-scale regional agreements, such as the TPP and Trans-Atlantic Trade and Investment Partnership (TTIP), have been celebrated as emerging from the multilateral vacuum to drive trade and investment liberalization forward. However, both of these agreements appear to have diminishing chances of ever entering into force. At the same time, the United Nations Conference on Trade and Development (UNCTAD) reports increasing dissatisfaction with ISDS processes, including a perception of bias towards investors among arbitrators of disputes. The Government of South Africa and Government of India have recently made the policy decision to terminate the majority of their bilateral investment treaties, in the interests of protecting policy space for domestic priorities. A range of model bilateral investment treaties at the national and regional level now contain very specifically circumscribed definitions of investment and the protections that will be offered to foreign investors, in an effort to expand domestic policy space. Countries are introducing a range of new approaches to preserve the right to regulate and ensure responsible development.

Overall, these trends speak to a broader dissatisfaction with – and perhaps even destabilization of – the neoliberal regime that has dominated economic policy discourse, highlighted recently by a critique of neoliberalism from within the International Monetary Fund. With core beliefs of this regime being repeatedly challenged in the wake of the global financial crisis, some have identified disorganization in the global economic policy regime as representing an opportunity for new theories and discourses to shape policy directions. There is an opportunity now for public health researchers and practitioners to contribute to this discourse a vision for trade and investment policy that protects and supports equitable public health outcomes. This vision would encompass a strategic understanding of opportunities for coherence between health and economic policy, and concrete policy options to achieve both health and economic policy goals. For public health to speak effectively into these changing discourses will, however, require new directions in research and practice.

**What Are the Future Needs for Public Health Research and Practice?**

**Politics and Power**

Further nuanced analyses of the consequences of trade and investment policy for public health will continue to help in identifying specific provisions of concern. However, there is also a need to turn public health attention to how solutions can be implemented. One aspect of this is to continue to provide technical input to trade and investment policy-makers regarding specific policy options to protect and promote public health.

However, to effect change in the trade and investment agenda we must also address politics and power. One key issue is to understand the roles and avenues of influence of different stakeholders, including industry actors, and how embedded power relationships function to prevent (or support) change...
for public health (see, for example, Gleson et al(43)). This will require research that examines how industry exerts power in economic policy arenas, and how diverse stakeholder interests can be managed. A second but equally important issue is the imbalance of economic and political power that often exists in trade negotiations between developed and developing countries; this requires insights from political science about the dynamics of negotiations and how structural power is exercised through networks and coalitions, as demonstrated in Peter Drahos’ analysis of negotiations over access to medicines at the WTO.(44)

Engaging with questions of power and influence will also be vital to identifying opportunities for real progress towards policy coherence. This will include research that examines economic policy-maker perceptions of the policy space available to them, constraints due to global commitments, and underlying priorities.(44) Understanding these dynamics can help identify specific opportunities to change discourse and policy-making to advance public health interests. Analysing power and political dynamics at multiple levels – global, regional, and national – will enhance public health understanding of potential points of intervention that could bridge silos within policy-making and help to identify alternative paradigms, to promote policy coherence between economic priorities and health objectives.

Capacity Building

Public health researchers and practitioners can play a valuable role in increasing capacity of governments to put public health issues on the trade agenda. However, this will require training of public health policy-makers and practitioners to ‘analyse political context and understand complexities, and to frame arguments and act effectively in the political arena’ – capacities that are often overlooked.(45) Policy-oriented capacity building would improve the ability of public health policy-makers and practitioners to engage in two key ways. First, being better equipped to speak into trade policy negotiation and implementation to ensure that flexibilities, exceptions and new processes for dispute settlement are negotiated and implemented in ways that support positive public health outcomes. This will require not only technical knowledge, but also appropriate language and knowledge of avenues through which to communicate potential implications for public health. Second, supporting public health capacity to develop strong arguments to counter industry advocacy, that give more prominence to health concerns.(5,14,26) This necessitates engagement with political and economic agendas, and can support the development of new discourses around achieving policy coherence between trade and health.

Efforts to increase public health capacity also need to address national implementation of trade agreements. There is scope at the ratification and implementation stage to mitigate potential impact on health inequalities.(47) Strong regional support and capacity building for health can also establish norms or policy frameworks to provide a counterbalance to regional trade commitments.(46,48)

Conclusion

The negative impacts of trade and investment agreements on public health outcomes and policy-making are becoming increasingly clear. Technical support provided by public health academics, advocates and practitioners has so far proved helpful in preventing and mitigating these effects, but alone is insufficient in ensuring protection for public health. To effect change, public health must turn attention to political and economic agendas that are heavily influenced by industry actors. These actors stand to gain a lot from provisions that may potentially have negative public health effects. Research into politics and power in trade agreements, and investment in capacity building should be key pillars of the next phase of public health research and practice regarding trade and investment policy.

Ethical issues

Not applicable.

Competing interests

DG and AMT have received funding from various non-government (not-for profit) organisations and governments to attend speaking engagements related to trade agreements and public health.

Authors’ contributions

Both authors contributed equally to the writing of this paper.

Authors’ affiliations

1Menzies Centre for Health Policy, University of Sydney, Sydney, NSW, Australia. 2School of Psychology and Public Health, La Trobe University, Bundoora, VIC, Australia.

References

1. Labonté R, Schram A, Ruckert A. The Trans-Pacific Partnership: Is It Everything We Feared for Health? Int J Health Policy Manag. 2016;5(8):487-496. doi:10.15171/ijhpm.2016.41
2. United Nations Conference on Trade and Development. Trade and Development Report. Geneva: UNCTAD;2014.
3. Ruckert A, Schram A, Labonté R, Friel S, Gleeson D, Thow AM. Policy coherence, health and the sustainable development goals: a health impact assessment of the Trans-Pacific Partnership. Crit Public Health. 2016;1:11. doi:10.1080/09581596.2016.1178379
4. Organization for Economic Cooperation and Development. Policy framework for policy coherence for development. Paris: OECD; 2012.
5. United Nations (UN). Transforming our world: the 2030 Agenda for Sustainable Development. New York: UN; 2015.
6. Hiroko K, Haigh F, Gleeson D, Harris P, Friel S. Is health impact assessment useful in the context of trade negotiations? A case study of the Trans Pacific Partnership Agreement. BMJ Open. 2016;6(4). doi:10.1136/bmjopen-2015-010339
7. Baker P, Friel S, Schram A, Labonte R. Trade and investment liberalization, food systems change and highly processed food consumption: a natural experiment contrasting the soft-drink markets of Peru and Bolivia. Global Health. 2016;12:24. doi:10.1186/s12992-016-0161-0
8. Weiss M. Trading Health? UK Faculty of Public Health Policy Report on the Transatlantic Trade and Investment Partnership. London: UK Faculty of Public Health; 2015.
9. Smith RD. The health system and international trade. Health systems in low- and middle-income countries: An economic and policy perspective. 2012. doi:10.1093/acprof:oso/9780199566761.001.0001
10. Schram A, Labonte R, Baker P, Friel S, Reeves A, Stuckler D. The role of trade and investment liberalization in the sugar-sweetened carbonated beverages market: a natural experiment contrasting Vietnam and the Philippines. Global Health. 2015;11:41. doi:10.1186/s12992-015-0127-7
11. Schram A, Labonté R, Sanders D. Urbanization and International Trade and Investment Policies as Determinants...
of Noncommunicable Diseases in Sub-Saharan Africa. Prog Cardiovasc Dis. 2013;56(3):281-301.

12. Baker BK. Trans-Pacific Partnership Provisions in intellectual property, transparency, and investment chapters threaten access to medicines in the US and elsewhere. PLoS Med. 2016;13(3):e1001970. doi:10.1371/journal.pmed.1001970

13. Gleeson D, Lopert R, Reid P. How the Trans Pacific Partnership Agreement could undermine PHARMAC and threaten access to affordable medicines and health equity in New Zealand. Health Policy. 2013;112. doi:10.1016/j.healthpol.2013.07.021

14. Thow AM, Snowdon W, Labonté R, et al. Will the next generation of preferential trade and investment agreements undermine implementation of the Global Action Plan for Prevention and Control of Noncommunicable Diseases? A prospective policy analysis of the Trans Pacific Partnership Agreement. Health Policy. 2015;119:88-96. doi:10.1016/j.healthpol.2014.08.002

15. Thow AM, McGrady B. Protecting policy space for public health nutrition in an era of international investment agreements. Bull World Health Organ. 2014;92:139-145.

16. Koivusalo M. Policy space for health and trade and investment agreements. Health Promot Int. 2014;29(suppl 1):29-47. doi:10.1093/heapro/dau033

17. Lexchin J, Gagnon M-A. CETA and pharmaceuticals: impact of the trade agreement between Europe and Canada on the costs of prescription drugs. Global Health. 2014;10:30. doi:10.1186/1744-8603-10-30

18. Abbott RB, Bader R, Bajaili L, et al. The price of medicines in Jordan: the cost of trade-based intellectual property. J Genic Med. 2012;9(2):75-85. doi:10.1177/1741134312447499

19. McGrady B. Implications of Ongoing Trade and Investment Disputes Concerning Tobacco: Philip Morris v. Uruguay. In: Voon T, Mitchell A, Liberman J, Ayres G, eds. Public Health and Plain Packaging of Cigarettes: Legal Issues. Edward Elgar; 2012.

20. Voon T, Mitchell A. Implications of international investment law for plain tobacco packaging: lessons from the Hong Kong–Australia BIT. In: Voon T, Mitchell A, Liberman J, Ayres G, eds. Public Health and Plain Packaging of Cigarettes: Legal Issues. Edward Elgar; 2012.

21. World Trade Organization (WTO). General Agreement on Tariffs and Trade 1994. Geneva: WTO; 1994.

22. Bennet N. Health concerns raised over EU-US trade deal. The Lancet. 2014;384(9946):843-844. doi:10.1016/S0140-6736(14)61492-6

23. Gleeson DH, Neuwelt P, Monasterio E, Lopert R. How the transnational pharmaceutical industry pursues its interests through International Trade and Investment agreements: a case study of the Trans Pacific Partnership. In: Jonge AD, Tomasic R, eds. Handbook of Research on Transnational Corporations. Edward Elgar Publishing Ltd; Forthcoming.

24. McCambridge J, Hawkins B, Holden C. Vested Interests in Addiction Research and Policy. The challenge corporate lobbying poses to reducing society’s alcohol problems: insights from UK evidence on minimum unit pricing. Addiction. 2014;109(2):199-205.

25. Lee S, Ling PM, Glantz SA. The vector of the tobacco epidemic: tobacco industry practices in low and middle-income countries. Cancer Causes Control. 2012;23(1):117-129. doi:10.1007/s10552-012-9914-0

26. Friel S, Ponnamperuma S, Schram A, et al. Shaping the discourse: What has the food industry been lobbying for in the Trans Pacific Partnership trade agreement and what are the implications for dietary health? Crit Public Health. 2016;26(5):518-529. doi:10.1080/09581596.2016.1139689

27. Hirono K, Gleeson D, Freeman B. To what extent does a tobacco carve-out protect public health in the Trans-Pacific Partnership Agreement? Public Health Res Pract. 2016;26(2):e2621622.

28. Legge DG, Gleeson DH, Löfgren H, Townsend B. Australia’s position on medicines policy in international forums: Intellectual property protection and public health. The Journal of Australian Political Economy. 2014(73):103.

29. Lexchin J, Gleeson D. The Trans Pacific Partnership Agreement and Pharmaceutical Regulation in Canada and Australia. Int J Health Serv. 2016; forthcoming.

30. Gleeson DH, Moir H, Lopert R. Costs to Australian taxpayers of pharmaceutical monopolies and proposals to extend them in the Trans-Pacific Partnership Agreement. Med J Aust. 2015;202(6):306-308.

31. World Trade Organization (WTO). Nairobi Ministerial Declaration, adopted on December 19, 2015. Geneva: WTO; 2015.

32. Banga R. New Issues in Multilateral Trade Negotiations. Econ Polit Wkly. 2016;(II(21)):28-32.

33. Baldwin R. The World Trade Organization and the Future of Multilateralism. J Econ Perspect. 2016;30(1):95-116.

34. Hammond A. Why Barack Obama wants to push TTIP through before he leaves the White House. International Business Times. September 15, 2016. http://www.ibtimes.co.uk/why-barack-obama-wants-push-ttp-through-before-he-leaves-white-house-1581527

35. United Nations Conference on Trade and Development. Taking stock of IIA Reform. Geneva: UNCTAD; 2016.

36. Ostry JD, Loungani P, Furceri D. Neoliberalism: Oversold? Finance Dev. 2016;53(2):38-41.

37. Stiglitz JE. Reconstructing macroeconomic theory to manage economic policy. In: Laurent E, Le Cacheux J, eds. Fruitful Economics: Papers in Honor of and by Jean-Paul Fitousi. London: Palgrave Macmillan UK; 2015:20-56.

38. Grabel I. Global Financial Governance and Development Finance in the Wake of the 2008 Financial Crisis. Fem Econ. 2013;19(3):32-54. doi:10.1038/s40545013.2013.798021

39. Grabel I. Not your grandfather’s IMF: global crisis, ‘productive incoherence’ and developmental policy space. Cambridge J Econ. 2011;35(5):805-830. doi:10.1093/cje/ber012

40. Labonté R. Health Promotion in an Age of Normative Equity and Rampant Inequality. International Journal of Health Policy and Management. 2016; forthcoming. doi:10.15171/ijhpm.2016.95

41. Walls H, Baker P, Smith R. Commentary: Moving towards policy coherence in trade and health. J Public Health Policy. 2015;36(4):491-501.

42. Blouin C. Trade policy and health: from conflicting interests to policy coherence. Bull World Health Organ. 2007;85(3):169-173. doi:10.2471/BLT.06.037143

43. Drahos P. Four lessons for developing countries from the trade negotiations over access to medicines. Liverpool Law Rev. 2007;28:11-39.

44. Schrecker T. Bringing (domestic) politics back in: global and local influences on health equity. Public Health. 2015;129(7):843-848. doi:10.1016/j.puhe.2015.05.007

45. Kickbusch I. The political determinants of health—10 years on. BMJ. 2015;350:h181. doi:10.1136/bmj.h181

46. Walls HL, Smith RD, Drahos P. Improving regulatory capacity to manage risks associated with trade agreements. Global Health. 2015;11(1):1-5. doi:10.1186/s12992-015-0099-7

47. Gleeson D, Friel S. Emerging threats to public health from regional trade agreements. Lancet. 2013;381(9876):1507-1509. doi:10.1016/S0140-6736(13)60312-8

48. Thow AM, Sanders D, Drury E, et al. Regional trade and the nutrition transition: opportunities to strengthen NCD prevention policy in the Southern African Development Community. Glob Health Action. 2015;8:28338. doi:10.3402/gha.v8.28338