

Public Health Policy and Global Trade

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Health Leaders Prescribe Caution on Trade Agreements

Drs. David Satcher, Joyce Lashof, Victor W. Sidel, Anthony Robbins, APHA, AMA, ANA, CPATH, Nov. 2003:

- New trade rules threaten ability of nations to protect public health
- Issue Call for Public Health Accountability



Caution Needed: Australia Trade Agreement

- Australia to change effective methods for controlling drug prices
- US: Need to raise drug prices abroad so drug companies can lower prices in US
- CPATH Analysis: Agreement can block reimporting lower priced drugs into US
- Could affect popular US drug price programs for VA, Medicaid, Medicare

TRADE AGREEMENTS, CORPORATIONS & PUBLIC HEALTH

- Context: Economic Globalization
- Trade Agreements: Threats to Public Health
 - Public Health's Right to Regulate
 - OSH, Environment, Tobacco Control, Food Safety
 - Services
 - Affordable Medicines
- Current Proposals: Bilateral, GATS
- Corporate and Public Health Representation in Trade Negotiations

CONTEXT: ECONOMIC GLOBALIZATION

- Greater quantity and accelerated pace of cross-border financial transactions by linked Multi-National Corporations
 - Potential to increase wealth
 - Depends on rules
- Growth of services sector in developed nations

Policy Agenda: Privatization, Deregulation

- Shift funds from public to private sector
 - Privatization and cuts in services
 - Tax cuts for corporations and the wealthy
- **“Free” trade agreements**
 - Reduce financial barriers to international trade
 - Reduce domestic sovereignty over regulations
- Weaker labor rights

INTERNATIONAL TRADE AGREEMENTS: THREATS TO PUBLIC HEALTH

- Challenge Democratic Rights to Protect Health
 - New rules: Public health measures must be no more burdensome than necessary to trade
 - New enforcement tools: Corporations can sue governments if laws restrict trade
 - Examples: Environment, OSH, Tobacco, Food Safety
- Health Care Services: New Area for Trade
- Medicines Unaffordable
 - Protect patents and high prices for US drug co.s
 - Prevent low-cost generics

CHALLENGING DEMOCRATIC RIGHTS: NAFTA

- Canada, Mexico, US - 1994
- Chapter 11 provides a unique “investor’s rights” mechanism.
 - Foreign corporations can directly sue any of the three national governments.
 - Companies can sue for the loss of current or future profits, even if the loss is caused by a government agency prohibiting the use of a toxic substance.

Who Decides: Trade Dispute Resolution

- 3 WTO-appointed trade “experts” decide in closed session if a trade policy has been violated
- Can impose economic sanctions
- Challenges domestic sovereignty to regulate and protect health care and other vital human services

Public Health

Laws and Regulations At Risk

- Quality standards for health care services and products & allocation based on need
- Protections for nurses and “travelers”
- Clinician licensing
- Staff to patient ratios
- Health insurance & patient protection
- Distribution of alcohol, tobacco, firearms
- Occupational safety & health
- Public subsidies for safety net
- Public administration of water & sanitation

Environment: NAFTA Metalclad Case

- Local community opposed Metalclad Corporation proposal to re-open a waste disposal facility, after geological audit showed **the facility would contaminate local water** supply.
- State of San Luis Potosi refused permission to re-open.
- Metalclad claimed this local decision constituted an **expropriation** of its future potential **profits** and successfully sued Mexico.
- NAFTA tribunal awarded U.S.-based Metalclad Company **\$16.7 million** in its suit against Mexico.

Environment: NAFTA MTBE Case

- Methanex Corporation of Canada sued the United States for approximately \$1 billion, because the state of California banned the use of methyl tertiary butyl ether (MTBE), a gasoline additive, due to suspected carcinogenicity.
- Due to the possible sanctions from this case, other states have withdrawn their plans to prohibit this product from use in gasoline.

Occupational Safety and Health

- NAALC: North American Agreement on Labor Cooperation (side letter on labor)
- 28 cases filed with National Administrative Offices, 7 related to workplace safety/health
- No change in enforcement, regulations
- Grounds: Country's own regulations
- Critical partners excluded: Workers not involved in dispute resolution
- Process: No time lines for decisions
 - Maquiladora Safety and Health Support Network

Tobacco and Trade

- Pan American Health Organization:
“Transnational tobacco companies...have been among the strongest proponents of tariff reduction and open markets. Trade openness is linked to tobacco consumption.”

D. Woodward, N. Drager, R. Beaglehole, D. Lipson. Globalization, global public goods, and health. In: Trade in Health Services: Global, Regional and Country Perspectives. N. Drager and C. Vieira, Eds. Washington, DC: PAHO, 2002. pp 6-7.

Tobacco Control vs. Trade Rules

- “Although the public health community does not currently endorse smoking low yield cigarettes as a less risky alternative to smoking full-flavored brands, public health concerns can be addressed through regulations that fall short of a ban.
- “Banning descriptive terms on tobacco packaging would violate...NAFTA...[and] expropriate and destroy the affected trademarks and brands in Canada...”
 - Submission by Philip Morris International in response to National Center for Standards and Certification Information Foreign Trade Notification (Canada), undated

Chilling Effect on Tobacco Control Regulations

- Canada withdrew its intent to legislate "plain" packaging for cigarettes when American tobacco companies threatened to sue the Canadian government for "expropriation" of their intellectual property, i.e. their trademarks.

Protecting Food Safety vs. Violating Trade Rules

- Europe vs. artificial hormones in US beef
 - Hormones cause harm, but no proof of harmful action if hormones delivered via beef
 - US has imposed financial sanctions
 - EU is paying sanctions rather than admitting suspect beef

HEALTH CARE SERVICES AND TRADE

“Historically, health care services in many foreign countries have largely been the responsibility of the public sector. This public ownership of health care has made it difficult for U.S. private-sector health care providers to market in foreign countries. In most emerging markets...barriers can be erected in the future as laws and regulations are enacted, absent commitments in writing .

U.S. Coalition of Services Industries, Nov. 27, 2000

Expanding Corporate Power in Services

“(E)xisting regulations...present serious barriers in OECD countries, including restricting licensing of health care professionals, and excessive privacy and confidentiality regulations.”

GATS: Health Protections Take Second Place

- **Laws and regulations which are “more burdensome than necessary” can be challenged as trade barriers.**
- General Agreement on Trade in Services (GATS)
- Covers 148 countries in World Trade Organization (WTO)
- Countries, not companies, can file disputes
- Countries exchange requests on which services to cover under most far-reaching rules

European GATS Requests to US: Cover Water, Postal

- **Drinking water and sanitation**
- **Distribution of alcohol products**
- **U.S. Postal system**
- **Loans from Small Business Administration**

GATS Requests to US

- India
 - Recognize qualifications of Indian Medical & Dental Professionals and Nurses
- Mexico
 - Eliminate all restrictions on hospitals and health facilities for:
 - Foreign Direct Investment
 - Number and type of services
- Paraguay & Mexico
 - Eliminate restriction of federal & state reimbursement to licensed, certified facilities in U.S. or in a U.S. state

Services Rules Threaten Health Care Professionals

■ Erosion of standards, working conditions, and worker safety

- Altered professional licensing of doctors, nurses, paraprofessionals, affecting quality control and oversight
- Exploitation of immigrant workers (“travelers”), downward pressure on wages and benefits
- Staffing ratios

■ Encourage privatization

- Loss of public subsidies for services, medical education

■ Outsourcing medical transcription, XRay readings

New GATS Deadline

- Countries encouraged to exchange new proposals by May, 2005
- Clinician migration an important topic

INTELLECTUAL PROPERTY: Barriers to Affordable Medicines

- Millions dying from HIV/AIDS, other treatable conditions
- Trade Agreements Protect Prices for US Pharmaceutical Industry
 - US Pharma: High drug prices needed for R&D
 - Marketing higher expense than R&D
- Brazil, Central America manufacture affordable generic drugs

TRIPS

■ TRIPS:

- World Trade Organization (WTO) agreement
- 20 –year patents on drugs
- Companies can own the rights to seeds

(Agreement on Trade-Related Aspects of
Intellectual Property= TRIPS)

Doha Declaration on the TRIPS agreement and public health

- Paragraph 4. “We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health.”
 - **World Trade Organization Ministerial Meeting, Doha**
 - Adopted November 14, 2001
- May, 2004: 40 million with AIDS untreated
- New FTAs undermine Doha Agreement

CURRENT PROPOSALS: Regional, Bilateral Agreements

- Since failure of large international trade negotiations in 2003, US is focusing on individual countries and smaller regions.
- Australia
- CAFTA: Central America + Dominican Republic
- FTAA: Free Trade Area of the Americas

Propping up Drug Prices: Australia FTA

- Australia to change effective methods for controlling drug prices
- US: Need to raise drug prices abroad so drug companies can lower prices in US
- CPATH: Could forbid reimporting lower priced drugs into US
- Could affect popular US drug price programs for VA, Medicaid, Medicare

Regulatory Practices Objective: Trade Promotion Authority

“to achieve the elimination of government measures such as price controls and reference pricing which deny full market access for United States products.”

Public Health Objective: TPA

“to respect the Declaration on the TRIPS Agreement and Public Health, adopted by the World Trade Organization at the Fourth Ministerial Conference at Doha, Qatar on November 14, 2001.”

Intellectual Property in Trade: Forces at Play in Policy and Politics

- Use copyrights and patents to protect prices for original producers of:
 - Films/recordings
 - Software and hi-tech
 - Pharmaceuticals

Congress Objects

- Australia FTA achieves corporate policy agenda without public debate
- Kennedy, Schumer, McCain, Gutknecht: Need public health representation
- Graham, Strickland, Evans: Protect VA
- Allen, Rangel, Levin: Not a precedent

Sen. Charles Schumer

- It has become clear in recent weeks that the pharmaceutical industry has not only done everything in its power to thwart drug reimportation legislation before this Congress, but now they have hijacked the trade agreement negotiation process as well. That practice has to end.
- The provision is nothing more than a backdoor opportunity to protect the big pharmaceutical companies' profits and keep drug prices high for U.S. consumers

Sen. Schumer

- The nature of trade agreements is changing. They are not just about tariffs anymore. They are getting into other substantive policy issues which dictate the parameters for health care delivery around the world. These are fundamental policy decisions with serious implications for access to affordable health care which can and will affect millions of people both overseas and here at home. Yet PhRMA is the only health care expert at the table for these negotiations. That has to end.

Sen. John McCain

- So a simple question comes to mind: What is our U.S. Trade Representative, who is charged with representing the interests of the American people, doing? Why deliberately include language in bilateral trade agreements that could thwart importation efforts? Why flagrantly disregard the intent of Americans and their elected representatives? It seems to me that the special interests have found friendly territory.

Sen. McCain

- When Americans wonder how this continues to happen, maybe they should take a glance at the list of intellectual property "advisors" who worked with the negotiators. These advisors include representatives from--guess who--drug companies--guess who--the pharmaceutical industry as a whole, and other lobbyists with a direct interest in blocking drug importation. How many public health and consumer advocacy groups were included on this committee? Zero.

Senator Kennedy

- Year in and year out, drug industry profits are the highest of any industry in the United States. Yet year in and year out, patients are denied life-saving drugs because those astronomical profits are possible only with astronomical prices-- prices that drug companies can't charge anywhere else in the world, because no other country in the world would let them. It's time for basic fairness in drug prices. It's time for the U.S. Trade Representative to start standing up for the interests of the American people, not just the interests of the pharmaceutical industry.

Rep. Ted Strickland

- I would like to call attention to information which was recently published by The Center for Policy Analysis on Trade and Health.
- CPATH's report explains that because chapter 15 of the U.S.-Australia Free Trade Agreement applies to Federal agencies like the Department of Veterans Affairs that procure pharmaceuticals, drug companies would have the right to challenge VA procurement decisions. ..based on technical specifications, timing, process, or any number of other disagreements.

Senator Bob Graham

Question to US Trade Representative
Zoellick:

Will raising drug prices in Australia lower
drug prices in the US?

USTR: Senator, you know we always work
hard to address your interests.

CAFTA, FTAA: Combines WTO Rules

- US-Central American Free Trade Agreement (CAFTA)
- Free Trade Area of the Americas
 - Longer patents than TRIPS
 - Barriers to generic licensing
 - would cover all services
 - States can sign on to Government Procurement section, requiring state to open all contracts to foreign companies:
 - Challenge to medical and financial privacy

DECISION-MAKING ON TRADE: CORPORATIONS & PUBLIC HEALTH

- US Trade Representative (USTR) Robert Zoellick, appointed by the President
- Congress has limited authority to approve trade agreements

Process is Secretive

- USTR Consults with:
 - Trade Committees in Congress
 - Advisory Committees
- Members sworn to secrecy
- Documents confidential

Role of Advisory Committees

- Mechanism for domestic input into trade negotiations from interested parties outside the federal government
- Provide advice and consult with the executive branch through formal and informal channels
- 110 meetings in 2001

Trade Advisory Committees: Pharma: 16 Public Health: 0

- Pharmaceutical Industry - Representatives associated with this industry serve on at least 5 advisory committees:
 - ACTPN;
 - Chemical, Pharmaceuticals, Health Science Products and Services (ITAC 3);
 - Customs Matters and Trade Facilitation (ITAC 14);
 - Intellectual Property Rights (ITAC 15);
 - Standards and Technical Trade Barriers (ITAC 16).
- Total Representatives on All Advisory Committees Associated with Pharmaceutical Industry: 16.

Tobacco: 7 Public Health: 0

- Tobacco Industry - Representatives associated with this industry serve on at least 2 advisory committees:
 - Tobacco, Cotton and Peanuts (ATAC)
 - Consumer Goods (ITAC 4).
- Total Representatives Associated with Tobacco Industry: 7.

Alcohol: 6 Public Health: 0

- Alcohol Industry - Representatives associated with this industry serve on at least 4 advisory committees:
 - Agricultural Policy Advisory Committee (APAC);
 - Consumer Goods (ITAC 4);
 - Distribution Services (ITAC 5);
 - Intellectual Property Rights (ITAC 15).
- Total Representatives Associated With Alcohol Industry: 6.

Food Industry: 4 Public Health: 0

- **Food Industry** - Representatives associated with this industry serve on at least 13 advisory committees:
 - ACTPN; APAC
 - 6 ATACs
 - Chemical, Pharmaceuticals, Health Science Products and Services (ITAC 3)
 - Consumer Goods (ITAC 4)
 - Distribution Services (ITAC 5)
- **Total Representatives Associated With Food Industry (not including the industry-dominated APAC and 6 ATACs): 4.**

Health Services: 5 Public Health: 0

- **Health Services and Health Insurance Industries:** Representatives associated with these industries serve at least on the following advisory committees:
 - Information and Communications Technologies, Services, and Electronic Commerce (ITAC 8)
 - Services and Finance Industries (ITAC 10)
- **Total Representatives Associated With the Health Services and Health Insurance Industries: 5.**

Access to Policy Making

- Informal consultations with the USTR, the Department of Commerce, the Department of Agriculture, and others
 - No records of informal meetings
- GAO: Committee members feel they have benefited from increased access to the USTR and other government officials, and increased ability to influence trade negotiations and policy

Reactions to Trade Agreements: Council of State Governments

“...all future laws and regulatory decisions adopted by states must be consistent with the commitments contained in the agreements.”

Council of State Governments report to US Trade Representative on US-Singapore and US-Chile FTAs, February 2003.

Reactions to Trade Agreements: States, Cities, Towns

- **“State and local officials are gravely concerned ... no provision remotely similar to [NAFTA’s investors’ rights chapter] should be included in future agreements...”**
 - Executive Directors of National Conference of State Legislators, National League of Cities, National Association of Towns & Townships
 - Comments to USTR, Fed. Register, August, 2002

Public Health Positions

■ APHA:

- * Adopt trade regulations that promote democracy, equity, and well-being, as well as wealth; and
- * Exempt essential public services like health, education, social services, water and corrections be formally exempted from liberalization, and immune from challenge, under the GATS, the FTAA, and bilateral trade agreements

■ AMA: Collaborate with interested members and other professional organizations to advise the U.S.T.R. on trade issues that involve the distribution and advertising of alcohol and tobacco, and other pertinent public health issues.

■ CCLHO: Environmental Health Committee

“Public” Public Health Committees

1. Create a **new public health advisory** committee.
2. **Add public health to existing committees.**
3. **Transparency and democratic accountability** at all levels of the trade negotiation process, including public access to trade advisory committee meetings, proceedings and submissions related trade negotiations.
4. Create **Public Health Advisory Committee on Trade to advise Congress**

- CPATH, APHA, ACPM, ANA

Vital Human Services for Sale

“Some kinds of public policy choices should be decided by democratically elected governments, not by unelected trade bureaucrats.”

U.S. Senator Jon Corzine (D-NJ)

CPATH Goals: Public Health Voice in Trade

1. Increase visibility of health leaders and activists in the global trade debate.
2. Education and mobilization on the threats of trade agreements for public health.
3. Develop alternative approaches.
4. Assure that trade policy promotes and protects health.

Call for Accountability: Health Must Take Priority Over Commercial Interests

- Assure that health care and public health takes priority
- Assess impact of trade agreements on health
- Include public health community in negotiations
- Exclude provisions that could harm health, access to medications, health care, and other vital human services
- Assure universal access to health care, water and sanitation, affordable meds, education, and environmental safety

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Protect Global Health

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