

Public Health Priorities In International Trade

CPATH

Center for Policy Analysis on Trade and Health

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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



NAFTA Challenge to Democracy and Health:

The Metalclad Case

Community Public Health Victory Trumped by NAFTA

- Local community opposed proposal by Metalclad Corporation 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.

Vectors of Pre-Emption in International Trade Agreements

- Policy Context: Economic Globalization
- 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, Food Safety, Tobacco
- Health Care Services: New Area for Trade
- Medicines Unaffordable
 - Protect patents and high prices for US drug co.s
 - Prevent low-cost generics

Latest News

- New Trade Agreements
- Health Advocates Speak Up
- What We Can Do

Policy Context: Economic Globalization

- Greater quantity and accelerated pace of cross-border financial transactions by linked Multi-National Corporations
- Growth of jobs in services in developed nations
- Shift funds from public to private sector
 - Privatization and cuts in services
 - Tax cuts for corporations and the wealthy
- Weaker labor rights
- “Free” trade agreements
 - Reduce financial barriers to international trade
 - Reduce domestic sovereignty over regulations

New Enforcement Tools and Rules Challenge Democratic Rights to Protect Health: 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 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

Levels of Trade Agreements

- International: World Trade Organization (WTO): 148 member countries
 - GATS: Services
 - TRIPS: Intellectual Property, Medicines
- Regional
 - NAFTA
 - CAFTA, FTAA
- Bilateral: U.S. - Australia

Examples of Pre-Emption: MTBE NAFTA Suit

- **Methanex** Corporation of Canada is suing 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.

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

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.

CHILLING EFFECT ON PUBLIC HEALTH 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 PUBLIC HEALTH vs. VIOLATING 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

PREEMPTING PUBLIC HEALTH REGULATORY AUTHORITY

- The Thai Ministry of Public Health proposed requiring cigarette manufacturers and importers to display graphic health warnings on cigarette packs
- Philip Morris reply: “It is simply unreasonable to force a tobacco company...to advertise against the use of its own product...”

Health Care Services: New Area for 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 Rules: Health Protections Take Second Place

- **Laws and regulations which are “more burdensome than necessary” can be challenged as trade barriers.**
(“Domestic Regulation” rule)
- General Agreement on Trade in Services (GATS)
- Covers 148 countries in World Trade Organization (WTO)
- Countries, not companies, can file disputes
- Countries request and offer services to be covered by some far-reaching rules

European GATS Requests to US: 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

Public Health

Laws and Regulations At Risk

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

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
- **Encourage privatization**
 - Loss of public subsidies
- **Outsourcing medical transcription, XRay readings**

Medicines Unaffordable: Intellectual Property Rules

- 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 Agreements contradict Doha

LATEST NEWS: US Shifts Gears: Regional, Bilateral Agreements

- Since failure of large international trade negotiations in 2003, US is focusing on individual countries and regions.
- Australia
- CAFTA: Central America + Dominican Republic
- FTAA: Free Trade Area of the Americas: 34 countries 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 !!
- FTA could block reimporting lower priced drugs into US
- Could affect popular US drug price programs for VA, Medicaid, Medicare

Congress Objects!

- FTA achieves corporate policy agenda without public debate
- Kennedy, Schumer, McCain, Gutknecht: Get public health representation!
- Bob Graham, Strickland, Evans: Protect VA!
- Allen, Rangel, Levin: Never again!

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.

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: Include Worst of All Agreements

- 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

Reactions to Trade Agreements: Tobacco Industry

- “The Free Trade Agreement with Singapore appropriately covers all agricultural products, including tobacco.”
 - Members of Agricultural Technical Advisory Committee representing tobacco interests, to US Trade Representative, February 2003

Reactions to Trade Agreements: Alcohol Industry

“The spirits industry toasts the efforts of the US negotiators and their Central American counterparts and urges other nations in the region to take part in the agreement...the elimination of trade barriers between the US and our Central American allies is a win-win situation for consumers in all countries...”

- Distilled Spirits Council of the United States, on US-Central American Free Trade Agreement, 2004

WHAT CAN WE DO?

Process is Secretive

- US Trade Representative (USTR) Robert Zoellick, appointed by the President
- USTR Consults with:
 - Trade Committees in Congress
 - Advisory Committees
- Members sworn to secrecy
- Documents confidential

PUBLIC HEALTH CAN SPEAK UP

- Congress has limited authority to approve trade agreements
- Influential public health leaders can speak up
- Communicate with National, State and Local Elected Officials
- Public Health Must Be Represented

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

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 Trade & Health Network

1. Increase visibility of public health leaders 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 Takes 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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Critical Time for Public Health

- Assure affordable medicines for AIDS in Africa and the elderly in Florida
- Assure that our food and water are safe
- Protect our democratic rights to protect the public's health:
 - Access to quality health services
 - Tobacco control
 - Priority of health over commercial interests

Protect Global Health

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