

Trade Agreements: Preempting Health

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:

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



Health Must Take Priority Over Commercial Interests

- November, 2003 - Historic gathering at APHA Annual Meeting organized by CPATH
- FTAA and other Trade Agreements:
 - Place commercial interests above health.
 - Threaten to pre-empt a wide range of laws, regulations, policies, and programs in U.S., and state and local authority to prevent disease and promote health.

CPATH Goal

Research, policy analysis and advocacy to advance public policy that protects and expands access to health care, water, and other vital human services.

By:

- Identifying and responding to policies and actions, including international trade agreements and financial policies that may harm access;
- Developing alternative policy proposals that increase access

Vectors of Pre-Emption in International Trade Agreements

■ Investor Rights Provisions

- Gives foreign corporations the legal right to directly sue national governments if laws or regulations restrict trade.

■ Public health measures must be no more burdensome than necessary to trade.

- Burden of proof on governments.
- Trade arbitrators decide what is “necessary.”

Health Care in the Cross-Hairs

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

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

North American Free Trade Agreement (NAFTA)

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

NAFTA and Health: Chapter 11 Cases

Metalclad

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

NAFTA Suit: MTBE

- 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.

NAFTA Suit MTBE: Status

■ Hearing to be held June 7, 2004:

International Center for Settlement of Investment Disputes, 1818 H Street, Washington, D.C.

■ Televised on closed circuit at ICSID

■ Further information:

– www.worldbank.org/icsid

– www.state.gov/s/l/c5818.htm

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.

PUBLIC HEALTH vs. TRADE WHO LOSES?

- Thailand's restriction on importing U.S. cigarettes found in violation of international trade rules **even though chemicals and other additives in US cigarettes may have been more harmful than those in Thai cigarettes.**

– GATT Trade Tribunal, 1990
(GATT=General Agreement on Tariffs and Trade)

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...”

PREEMPTING PUBLIC HEALTH REGULATORY AUTHORITY

- “The Regulation would impair the use of the Company’s valuable trademarks...

If it issues such a Regulation, the MOPH will abuse its regulation-making power to achieve a needlessly burdensome harassment and to interfere with legitimate commerce.”

- Philip Morris (Thailand) LTD. Memo to Thai Minister of Public Health (February 27, 2002)

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

Who Decides: World Trade Organization (WTO) Dispute Resolution

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

European GATS Requests to US: Water, Postal

- GATS = General Agreement on Trade in Services
- **Drinking water and sanitation**
- **Distribution of alcohol products**
- U.S. Postal system
- Loans from Small Business Administration

GATS Requests to US (cont'd.)

- 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

US Shifts Gears: Central America & Government Procurement

- Since failure of large international trade negotiations in 2003, US is focusing on individual countries and smaller regions.
- Central American Free Trade Agreement (CAFTA) 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

Propping up Drug Prices: Australia FTA

- Australia to change effective Scheme for controlling drug prices
- US: Need to raise drug prices abroad so drug companies can lower prices in US
- FTA Forbids reimporting lower priced drugs from Australia to US
 - Real target: Canada
- Achieves corporate policy agenda without public debate

Risks of Pre-Emption in California?

- **Subject to challenge as unduly restrictive to trade:**
 - **Ban on soda pop in schools?**
 - **Reducing exposure to second-hand smoke – clean indoor air rules?**
 - **Controlling sale and distribution of alcohol products?**
 - **Others?**

Who Decides for U.S.?

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

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

Reactions to Trade Agreements: Council of State Governments

“...the agreements presume that 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 about the prospect that the Singapore FTA may include an investor-to-state dispute resolution mechanism... no provision remotely similar to [NAFTA’s investment 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

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)

WHAT CAN YOU DO?

Work with CPATH to:

- **Stay informed about impact of trade on health policy and public health.**
- **Coordinate with CA Senate Select Committee on International Trade Policy and State Legislation**
- **Alert colleagues:**
 - **MD and health groups**
 - **State departments, boards, commissions**
 - **Officials of federal, state and local agencies, other organizations**

WHAT CAN YOU DO

Work with CPATH to:

- **Endorse Call for Accountability**
 - Resolutions pending: CCLHO, AMA
- **Communicate with policy makers**
 - US Trade Representative (USTR)
 - Congress
- **Create alternative policy recommendations to prevent disease and promote health of the public**

Protect Global Health

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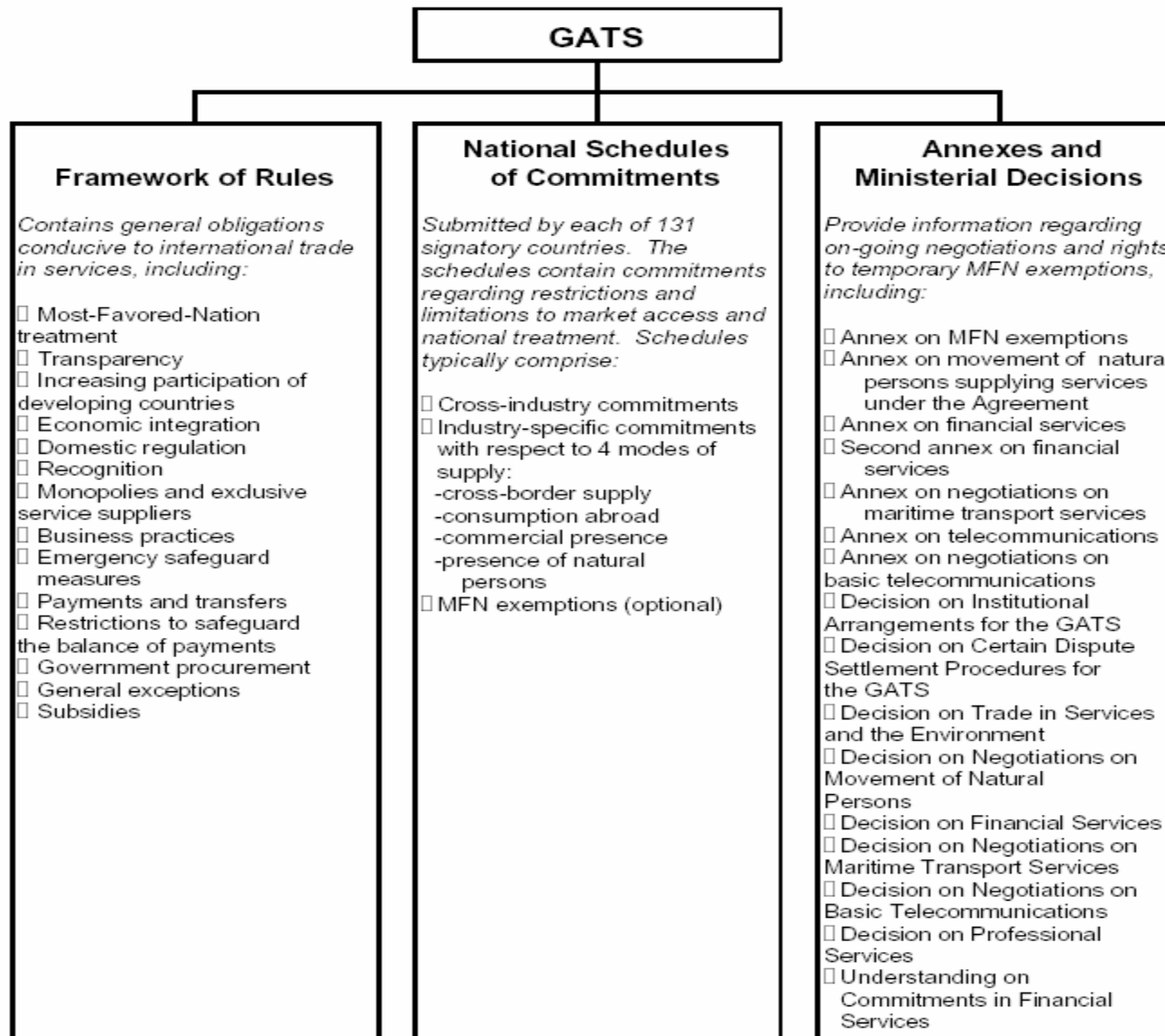
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Can We Prevent Disease and Protect Health in San Joaquin County?

- Corporations can sue to challenge public health protections:
 - Tobacco, food, alcohol, professional licensing, privacy, environment
- Public health measures can be no more burdensome than necessary to trade
- Public health care services and government contracts can't discriminate against foreign private corporations
- Can't buy cheaper drugs from Canada

Structure of the General Agreement on Trade in Services



Source: Compiled by USITC staff from World Trade Organization, legal texts, found at Internet address <http://www.wto.org/wto/legal/>.