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EDITORIALS

Rethinking governance for trade and health

The mechanism for dispute settlement in preferential trade agreements risks riding roughshod over health

Helen Walls *research fellow*, Richard Smith *professor*

London School of Hygiene and Tropical Medicine and Leverhulme Centre for Integrative Research on Agriculture and Health, London, UK

Strengthening governance for more "healthy" trade is a recognised public health priority,[1] and increasingly so given recent shifts in the international trade regime.[2] After the second world war increasing trade liberalisation became a focus of international attention, and the General Agreement on Tariffs and Trade (GATT) was set up to coordinate international trade agreements. This was highly successful, and average world tariff rates fell from about 40% in 1948 to 4% in the early 1990s.[3]

At this time, GATT was replaced by the World Trade Organization (WTO), which had an increased scope. However, over the past two decades bilateral and regional trade agreements have proliferated. These have generally been negotiated in extreme secrecy, with increasingly "deep" commitments that go beyond those required by the WTO.[2 4] These commitments, the specifics of which have been well documented,[2 5-7] have important implications for public health. One focus of concern is the investor-state dispute settlement (ISDS) mechanism, which allows foreign companies to sue host governments for compensation when policy changes threaten their ability to generate earnings from investments.[8] Claims in investor-state disputes are adjudicated in private tribunals (unlike regular lawsuits in open court and the more transparent review processes for within state disputes under the WTO system) with no appeals process and without the consistency and learning from a system of precedents.[5 9-11]

This dispute settlement mechanism is proposed in two key preferential trade agreements currently under negotiation, the Trans Pacific Partnership (TPP), which involves 12 Asia-Pacific Rim countries,[2 12] and the Transatlantic Trade and Investment Partnership (TTIP), between the European Union and United States.[5 13] A salutary example of the public health implications of investor-state dispute settlements is the litigation in response to Australia's introduction of legislation for plain packaged cigarettes.[10 14] But the deep commitments have far ranging implications, including those relating to intellectual property, with potential for "evergreening" drug patents—that is, extending patents for slight changes to formulation without demonstration of superior benefit.[2 15]

Such provisions in modern preferential trade agreements shift the balance of policy making in favour of corporate interests, limiting policy options available to governments to protect public health, and making governments reluctant to legislate for public services because they fear lawsuits from foreign investors.[2 5 16] This clearly challenges global, regional, and national governance structures concerned with health and healthcare.

To secure healthy trade, decision making processes need to include health as well as economic objectives, tackling trade in goods and services with direct negative effects on health. However, to date, much of the discussion and research regarding how to achieve such governance and what it would look like has been limited to the global level. For example, it has focused on institutions such as the WTO and World Health Organization.

Governance of trade and health at global level is important, but the stalling of the WTO Doha Development Round and the proliferation of bilateral and regional preferential trade agreements with arguably greater public health risks emphasise the critical nature of governance at regional and national levels.[2 17] Securing governance for healthy trade at these levels poses particular challenges. Some of them result from the different worldviews and large power imbalances between trade and health sectors, including the secrecy surrounding the negotiations and the vested corporate interests and well funded lobbies influencing countries' positions in the negotiations.[11 18] Furthermore, developing the requisite regulatory capacities for the negotiation, implementation, and ongoing management of preferential trade agreements is expensive and skill intensive and requires considerable infrastructure. Poorer countries will especially struggle with this.[17]

Success requires the establishment of governance structures and mechanisms that bridge current sectoral divides. These structures and mechanisms must promote collaboration and build trust between trade and health communities. There are some, albeit limited, examples of this approach improving regional and national regulatory capacity.[17 19-22] In Brazil, for example, responsibility for the examination and granting of pharmaceutical patents has been split between the National Sanitary Surveillance Agency and the Brazilian patent office, giving more influence to a public health perspective.[17 23] Given scarce resources, it may be prudent for countries to focus on

Correspondence to: H Walls helen.walls@lshtm.ac.uk

developing regulatory capacity in specific areas and then share best practice within regions, perhaps working towards developing regional regulatory mechanisms and structures.[17] Specific goals may include stronger and more legally defensible health exceptions or exemptions in preferential trade agreements.[11 17] For example, Faunce has suggested that Australia should have negotiated health exemptions in mechanisms for investor-state dispute settlement with regard to plain packaging.[10] Transparency in trade and investment policy making should also be prioritised.[24]

The rise of bilateral and regional trade initiatives, and concomitant reduction in influence of global institutions, makes more focus and research on governance at regional and national levels important, especially at the interface between these levels and global institutions and structure. Much of the existing research is not empirical and does not fully cover the characteristics of the issue and political environment. Public health researchers, practitioners, and policy makers must work together to understand and develop the necessary structures and mechanisms for governance at these levels. Without this, work on strengthening governance for healthy trade may be made less effective, or at worst irrelevant, by developments in bilateral and regional agreements.

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