

Trading up for health:

How to prevent trade deals from undermining health



Summary

Trade agreements have a profound impact on health. Important public policy areas such as health services, patents for medicines and even medical qualifications are increasingly being marketised and brought into the trade agenda. Provisions in trade deals such as those on intellectual property, public service provision, investment, border taxation and regulations and standards have both direct and indirect implications for health outcomes. These provisions can make it harder for people to access medicines and good-quality health services, and for governments to regulate to improve health outcomes or raise revenues to fund health programmes.

Creating a healthy society and realising 'Health for All' including the UN target on Universal Health Coverage requires trade agreements that work to promote and protect public health. Ensuring that trade policy supports access to affordable healthcare and medicines is an essential part of this. However we also need trade deals that underpin good quality, universal, public healthcare, and facilitate a healthy society by providing a healthy and safe environment, control of money and resources and access to nutritious food, jobs, and clean water for all.¹

As the UK seeks to develop its own trade policy for the first time in a generation, it is important that realising the right to health is a central consideration and that the appropriate steps are taken to ensure that trade protects, rather than undermines, our health and the health of people around the world with whom we trade.

This briefing outlines the main risks that trade policy poses to health, and then sets out the alternatives that could help avoid these risks and ensure that trade doesn't undermine health justice.

It makes the following recommendations for future UK agreements:

1. Support increased access to medicines by:

- Pushing for permanent exemptions for poor countries from the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
- Actively encouraging the use of TRIPS flexibilities
- Ensuring trade agreements promote the minimum intellectual property obligations possible
- Excluding a TRIPS-plus agenda

2. Promote public services by:

- Ending the use of 'negative lists' which force countries to 'opt out' rather than 'opt in' services they want to liberalise
- Ensuring that there are strong 'carve-outs' in trade agreements to exclude public services
- Including anti-tax avoidance measures or commitments

3. Promote the highest standards to protect public health and safety by:

- Making agreements subordinate to the UK's human rights and environmental commitments
- Establishing strong 'right to regulate' standards that mean government regulation to promote public health is explicitly excluded from trade disciplines
- Explicitly allowing the use of the precautionary principle to protect public health
- Ensuring trade agreements commit investors to abide by international environmental, labour and human rights standards as a condition for accessing benefits of the trade agreement
- Committing to joint action to meet the highest standards in the production of internationally traded goods with public health implications e.g. poultry, livestock products, and chemicals

4. Promotes healthy eating and better food standards by:

- Ensuring that trade agreements do not restrict governments' ability to promote healthy eating
- Ensuring that countries have the policy space to support local and small-scale food producers and restrict imports of ultra-processed food which is harmful to public health, including by excluding public procurement from future trade deals

5. Exclude investor-to-state dispute settlement (ISDS) or similar mechanisms

- ISDS mechanisms have been used on several occasions to challenge government policy on health, including challenges to laws related to cigarette packaging, sugary drinks and air quality. ISDS offers companies excessive privileges with no obligations; it must be excluded from future UK deals and existing Bilateral Investment Treaties must be cancelled.

6. Make trade subordinate to the UK's commitments on sustainable development by:

- Including binding language in agreements so that the Sustainable Development Goals (SDGs) and the UK's commitments under the Paris Climate Agreement are given precedence over the provisions of trade deals
- Ensuring countries have the policy space to support and build domestic industries
- Hold richer countries to their promise to eliminate trade-distorting subsidies
- Excluding provisions on migration from trade deals

7. Introduce proper provisions for UK trade policy and agreements to be transparent and democratic

It is only by ensuring that our elected representatives are involved in setting the mandate for trade agreements, can see negotiating texts, monitor the negotiation of trade agreements, and have the chance to vote on the outcome that we can ensure that trade agreements can help achieve Health for All. All trade deals must be subject to both ex-ante and ex-post health impact assessment by an independent body with relevant expertise, taking into consideration the seven points mentioned above.

RISK: Trade restricts access to medicine

Around the world, in both the global North and global South, people's access to essential medicines is restricted by high prices. This is caused in large part by intellectual property rights (IPR) enforced through trade deals. IPR became a central part of trade deals in 1995 when the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) was introduced. This established a common set of global standards to protect intellectual property, largely reflecting the IPR regime that had developed in the US and other industrialised countries.² The result of TRIPS is that an originator company is given an exclusive licence for a product which grants them a market monopoly for 20 years, allowing companies to push up prices by stifling competition.³

IPR can form an important part of a government's industrial policy. However, in trade agreements IPR regimes are being used to protect the market interests of pharmaceutical companies at the expense of those who need medicines, making medicines more expensive and delaying the market entry of cheaper, generic medicines. These regimes and their enforcement mechanisms have been continually extended and reinforced since the TRIPS agreement, including through new trade agreements.⁴

Traditionally, these issues have been seen primarily as an issue affecting countries in the global South, which have consistently opposed TRIPS and lobbied for a permanent exemption from implementing the deal. However, opposition from the USA, amongst others, has resulted in a rolling extension of the deadline for implementing TRIPS, rather than a full exemption, which means countries have to dedicate already stretched resources to regular renegotiations.⁵ The deadline for the poorest countries now extends to 2033.⁶

Whilst TRIPS itself has been rightly criticised for restricting access to medicines, the US and European countries have pushed for even *stricter* intellectual property rights than those under TRIPS in so called TRIPS-plus clauses, incorporated into many modern bilateral and 'mega-regional' trade deals like the Trans-Pacific Partnership (TPP), now the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP).¹²

TRIPS flexibilities

The TRIPS agreement does include 'flexibilities' which aim to give countries greater policy space in order to achieve public policy objectives. WTO members issued a statement in 2001 explicitly clarifying that this includes allowing countries to make exceptions to the general rules in order to address public health problems.⁷ This means that countries can, for instance, issue compulsory licenses, whereby they grant a licence to a second company to produce a patented medicine despite opposition by the patent holder. Countries, including developed nations, have taken this action in the past.⁸ They can also change their patent law so it better protects public health.

Yet despite TRIPS flexibilities being a legal, legitimate and effective⁹ means to protect the right to health and promote access to medicines, some pharmaceutical companies and governments (generally those of richer countries where pharmaceutical companies are often based) have sought to prevent their use.¹⁰ Many free trade agreements, particularly those between richer and poorer countries also contain clauses which try to undermine the use of TRIPS flexibilities.¹¹ Ultimately, TRIPS flexibilities are under-utilised because of the power imbalances between rich countries and transnational corporations, and poorer countries.

In effect, TRIPS-plus is the new 'gold standard' for intellectual property chapters of trade deals. TRIPS-plus measures include:

- Extending the length of a companies' market monopoly beyond 20 years
- Limiting the use of compulsory licenses and lowering the criteria for patentability so minor modifications to products (such as changing from a pill to a powder) can result in a new patent, further delaying the market entry for cheaper generic medicines¹³
- Making it harder for generic medicines to enter the market by forcing generic reproductions of medicines to go through new – expensive – clinical trials¹⁴

The impact of strict IPR regimes on human health is stark. For instance, although tuberculosis (TB) is treatable, in 2016 1.7 million people died from it¹⁵ making it the world's leading cause of death from infectious diseases.¹⁶ Some treatments for TB can cost over \$250,000 (£190,000).¹⁷ And whilst some drug companies offer concessionary rates for low-income countries, generic medicines could be produced at a fraction of the cost. For instance, a six-month course of bedaquiline, produced by the drug company Janssen to treat drug resistant TB, could be produced for \$50 (£38), but it is currently priced at \$900 (£686) for low-income countries, and up to \$30,000 (£22,880) for high-income countries.¹⁸

The inaccessibility of medicines caused by high prices is increasingly a global issue, affecting those in rich and poor countries alike. Just as patients in the global South cannot access medicines to treat TB or cancer,¹⁹ in richer countries patients and/or public services like the NHS are struggling to pay higher prices for medicines. For example, 19% of new treatments becoming available are deemed to be too expensive for the NHS because companies set prices too high.²⁰ This often means that these medicines remain out of reach or, in some cases, have to be rationed.²¹ NHS England statistics show the NHS spent a record £20.2 billion on prescription drugs in 2017 – a 10.9% rise on the previous year, meaning the cost of medicines continues to rise far faster than the NHS budget. This is in spite of the fact that seven out of the top 20 medicines purchased were developed with substantial public funding.²²

The inclusion of investor state dispute settlement (ISDS) mechanisms in trade and investment agreements only exacerbates these risks by potentially exposing governments to costly legal cases and awards if they take action to reduce drug prices, even if they do so by using (legitimate) TRIPS flexibilities.²³

Whilst pharmaceutical companies insist IPR regimes are necessary to spur innovation, as Stiglitz and others have found, the extension of IPR regimes in these ways has actually reduced innovation and 'not necessarily led to the discovery of new medicines'.²⁴ Rather than promoting innovation, IPR regimes promote rent-seeking: it can be more profitable for private companies to find ways to extend patents than to develop new medicines to address global health issues. Studies suggest that most innovation comes via government-funded research: it is

estimated that roughly one third of health innovation investment comes from the public purse.²⁵ However there is no guarantee that the public see an equitable return on this investment since the patent for an innovation almost always becomes the property of the private company.

In this way, pushing stricter IPR through trade agreements is supporting an inefficient pharmaceutical system that is failing to provide value for public money, promote research into new medicines or increase access to affordable medicines.

Healthier solutions: Trade that increases access to medicines

In order to ensure everyone can access medicines, we need action on multiple fronts. This includes investment in alternative research and development models, ensuring that public funders of research receive the benefits of the medicines which their tax money pays for.²⁶

We also need trade agreements that protect access to medicines. Given the failure of TRIPS to improve access to medicines, the lack of evidence that TRIPS itself is necessary to promote innovation, and the continued expansion of the TRIPS regime, governments should take intellectual property out of the remit of trade negotiations altogether to prevent IPR being used in a way that prevents governments from delivering legitimate public health initiatives.

However, until this is achieved, we urge governments to exploit and expand the space within the existing IPR regime in order to promote access to medicines. This could be achieved by:

- Giving poor countries a permanent exemption from TRIPS so that they can prioritise public health
- Actively restating the legitimacy of TRIPS flexibilities and facilitating the import and export of generic medicines
- Ensuring trade agreements promote the minimum intellectual property obligations possible, rather than promoting TRIPS-plus measures
- End the use of investor state dispute settlement (ISDS) or similar mechanisms in trade and investment agreements (see below)
- Excluding the TRIPS-plus agenda from the UK's future trade and investment agreements

ISDS and investor protection mechanism

All of the risks that trade poses to health and health systems are reinforced by the use of the investor-state dispute settlement (ISDS) mechanism. The problem with ISDS is that it gives corporations the ability to sue governments in private tribunals if a government introduces policies that they perceive to undermine their investment – even if those policies seek to protect public health, raise or collect taxes, tackle climate change or bring services under public control.²⁷ Only international investors can make use of these courts – there is no equivalent mechanism for domestic companies, governments or citizens – and the proceedings are held in secret. Simply the threat (either real or perceived) of a case being brought can be enough to lead governments to rethink their policies – known as 'policy chill' – in part because the costs involved in defending a claim alone average \$8 million.²⁸ If a government loses a case, the costs can be so high as to put them into economic hardship.²⁹ For a company, even if they lose a case, the financial gains of simply delaying or deterring regulatory development can outweigh the cost of bringing a case.³⁰ Companies can also offset the cost of cases via 'third party funding' in which a bank, hedge fund or other finance company pays part of the costs of a case in return for a percentage of any future award.

Many ISDS cases have impinged on governments' ability to pursue policies which encourage access to healthcare for all, or which challenge a governments ability to enact public policies which promote healthy lifestyles. Examples include:

- Slovakia sued by a Dutch investor (Achmea) when it tried to partially reverse a decision to privatise the health insurance market³¹
- Canada sued by pharmaceutical corporation Eli Lilly over its insistence that medicines must demonstrate their 'utility' (i.e. usefulness) to warrant a patent³²
- Australia sued by tobacco giant Philip Morris for plain cigarette packaging laws³³

Despite there being little evidence that investment agreements increase investment flows, ISDS has been increasingly used in trade and investment agreements. It is now included in over 3,000 active bilateral investment treaties, numerous other trade agreements with investment chapters, and a number of existing and proposed multilateral trade and investment agreements.³⁴

Healthier solutions: Alternatives to ISDS

Reforming ISDS, such as has been proposed in the European Commission 'Investment Court System' does nothing to address the underlying problems with such stringent investment protection.³⁵ Even reformed or re-labelled, ISDS mechanisms require taxpayers to insure the business risk of international investors and gives investors the unique ability to challenge policies that could protect and promote public health.³⁶

The UK must exclude ISDS from future trade agreements. Instead, companies should be encouraged to first undertake due diligence assessments before they invest in a country and to seek to rectify issues as they arise in the host country, including through mediation and recourse to domestic courts. Commercial political risk insurance is also available from private providers or via the World Bank's Multilateral Investment Guarantee Agency (MIGA), amongst others.

RISK: Trade that threatens high quality, public services

People have the right to high quality and accessible healthcare. A universal system of healthcare –funded through public finance – is widely regarded as one of the most effective ways to deliver healthcare in a way that is fair, effective and efficient. To realise health for all, it is also important that other public services like water or education are provided in a way that makes them as accessible as possible.

Yet trade agreements can undermine the provision of public services by locking-in privatisation and undermining the tax base (particularly in impoverished countries) that makes public service provision possible.

Trading away public health services

Privatisation of health services has very clear impacts on the right to health. Around the world, almost 100 million people are dragged into poverty to pay for healthcare each year.³⁷ This can lock people into a cycle of poverty and poor health from which they may never recover.

Research looking at 15 high-income countries has shown that competition, privatisation or marketisation in health systems has a negative effect on health equity.³⁸ In the UK, increasing use of private providers to deliver NHS services³⁹ has been criticised by doctors who see it as destabilising and fragmenting the NHS.⁴⁰ Outsourcing (privatisation) of support services such as cleaning has also had a negative effect on patient care⁴¹ and health.⁴²

Trade deals have a huge bearing on how public services are run, including the ability of governments to reverse privatisation where it has been shown to have failed. Trade in services, such as health services, began in earnest with the General Agreement on Trade in Services (GATS), brought into force in 1995. Yet whilst under GATS countries had some control over which services were opened up to competition, today, so-called next generation trade deals such as the (for now aborted) TTIP,⁴³ the EU-Canada Comprehensive Economic and Trade Agreement (CETA),⁴⁴ the TPP⁴⁵ and the Trade in Services Agreement (TiSA – also currently on ice) go much further than GATS in the ways that they force through and lock-in liberalisation and privatisation.⁴⁶ They do this in three key ways.

Firstly, these trade deals use an approach called 'negative listing', which means that all services are potentially opened up to international competition *unless* a country has explicitly listed it as excluded from the purview of the trade agreement. The problem with this approach is that it leads to the creeping liberalisation of public services as negotiators are unable to predict every detail of what should be excluded or the kinds of exclusions that might be required in future.^{47,48}

Secondly, next generation deals contain 'standstill' and 'ratchet' clauses which lock-in existing levels of privatisation and make it harder for future governments to roll back privatisation or deregulation.⁴⁹

Thirdly, all of these measures are further reinforced by the Investor State Dispute Settlement (ISDS) mechanism, contained in the trade deal themselves or in pre-existing bilateral investment treaties (BITs). The danger with this is that if a government wanted to move away from a privatised health service (or a partially privatised one as in the case of the NHS), towards a public health service, they could be sued by corporations.

The UK government has attempted to argue that the NHS is not covered by trade deals such as TTIP. However the exceptions included in such deals mean that public services are only excluded if they are not provided on a commercial basis or in competition with other suppliers. The vast majority of care covered by the NHS is now also available from private sector suppliers for a fee, which means that it would be subject to the trade deal. Legal advice commissioned by Unite the Union led to the conclusion from leading QC Michael Bowsher, a former chair of the Bar Council's EU law committee, that the NHS would not have been adequately protected from liberalisation under the proposed TTIP deal.⁵⁰

The risks that all of the above poses to public health systems are clear. In the UK, trade agreements could make it harder to roll-back the increasing privatisation of the NHS. Across the global South too trade deals could increase privatisation of public services.⁵¹ Indeed, Uruguay pulled out of the TiSA negotiations in part because of concerns about privatisation.⁵²

This also impacts services beyond healthcare which are essential for good health, including water⁵³ and education services.⁵⁴ For instance, trade agreements could be an obstacle for the remunicipalisation of water services, despite the privatisation of water services being an unmitigated disaster in the global South.⁵⁵

Undermining tax for public services

Whilst tax provisions are generally exempt from trade deals, trade liberalisation can result in reductions in import tariffs which reduces government revenue. This is particularly the case in countries of the global South. Countries in sub-Saharan Africa often rely on tariffs for up to 25 per cent of their revenue, compared to just 1 per cent in richer countries.⁵⁶ Trade deals can also reduce government revenue as a result of job losses or lower consumption. For instance, the North American Free Trade Agreement (NAFTA) resulted in huge losses in US manufacturing jobs, decimating local governments in areas hardest hit and reducing the money available for social services, which were conversely in greater demand.⁵⁷ When TTIP was being negotiated, one study suggested many countries in Europe would see a loss of government revenue.⁵⁸ France would have been most affected, seeing a loss of government revenue to the tune of 1% of the government budget.⁵⁹ Reductions in government revenue can result in reductions in government spending on public services.

As with other potential threats posed by modern trade and investment agreements there is also the possibility that governments could be challenged through the ISDS system if they seek to make changes to tax rules – such as tax incentives provided to specific companies.⁶⁰ At least 40 cases related to tax measures have been brought against 24 countries.⁶¹ For instance, energy companies have repeatedly sued Ecuador after the country introduced new taxes on sales of and profits from oil and the withdrawal of VAT tax breaks for foreign-owned oil companies.⁶² This type of claim can prevent countries from collecting tax or reforming their tax systems (by removing subsidies or tax exemptions) or increasing taxes to help fund public services like healthcare. Furthermore, other ISDS claims not related to tax can result in huge sums being paid out to corporations, which also potentially undermines a states' ability to provide public services.

Healthier solutions: Trade that promotes public services

Public services are essential if we want to achieve Health for All. Countries should have the policy space to determine the best way to provide these, including the option of providing universal public services. To achieve this, we should exclude public services from trade deals. Where more general services are included, trade deals should:

- End the use of 'negative listing.' This will give countries more power and policy space to determine which, if any, services are opened up to foreign competition
- Ensure that there are watertight 'carve-outs' in trade agreements to exclude public services effectively⁶³
- Include anti-tax avoidance measures or commitments within trade agreements to help countries build a tax base, and promote the upward harmonisation of corporate tax levels to prevent a race to the bottom⁶⁴
- End the use of ISDS or similar mechanisms

RISK: Trade deters and undermines public-interest policy making

Governments need to be able to regulate in the public interest. Regulations on smoking, air quality, food standards, pollution or the use of hazardous substances such as asbestos or pesticides can all help improve public health. We will need new regulations to cover as yet unknown threats from unknown products or processes. Yet trade agreements can undermine governments ability to regulate to protect public health.

Investor protection undermines public health

Regulation of tobacco products is one of the clearest examples of trade and investment agreements undermining or deterring public health policies. The cigarette manufacturer Philip Morris challenged Australia when it introduced plain packaging, and Uruguay for introducing graphic warnings, on cigarette packs. Whilst Philip Morris technically lost both cases,⁶⁵ they still arguably won: the Uruguay case in particular was thought to have deterred similar measures in Paraguay, Costa Rica and New Zealand.⁶⁶ This demonstrates the 'chilling effect' that ISDS or investment protection can have, whether a case is brought or not.⁶⁷

The health impact of this goes far beyond smoking regulations, or even the policies of health departments. Faced with the threat of a case brought under the North American Free Trade Agreement (NAFTA) Canada rolled back on restrictions on a gasoline additive called MMT which had been shown to risk nerve and brain damage in children.⁶⁸ Environmental protection is also often in the firing line. Pacific Rim, a mining company, brought an (ultimately unsuccessful)

ISDS claim against El Salvador when it placed a moratorium on mining projects to prevent further contamination and pollution of water on which half the population relied.⁶⁹

Regulations written by corporations

Many new trade deals give companies privileged access to decision-making about regulations.⁷⁰ This happens through so called 'regulatory exchange' or 'regulatory co-operation' mechanisms established by trade agreements such as CETA and the Japan-EU Free Trade Agreement (JEFTA).⁷¹ Of particular concern are the ways in which regulatory cooperation gives corporations early warnings about new regulations and the opportunity to comment on the new regulations before they are assessed by democratically elected representatives.⁷² Giving a greater role to corporations in this way could undermine public health.⁷³

The regulatory race to the bottom

Modern trade agreements can also serve to universalise the lowest standards by aiming for 'mutual recognition' or 'harmonisation' of regulations and standards across a trading bloc, so that goods or services accepted in one jurisdiction can be sold in the other country or countries.⁷⁴ Indeed, as tariffs are at historical lows (particularly between richer countries) it is regulations which are seen as the primary barriers to increasing trade.⁷⁵ Whilst harmonisation of regulations need not necessarily lead to lower standards, because of the influence of big business in trade negotiations and through regulatory co-operation mechanisms outlined above, it is likely that harmonisation will lead to the 'lowest common denominator' becoming accepted.⁷⁶ This is particularly the case where trade deals carry requirements that regulations "shall not be more trade-restrictive than necessary to fulfil the legitimate objective."⁷⁷ In Canada, the signing of NAFTA led to the lowering of food standards for this reason.⁷⁸ The UK may face similar pressure to lower standards in negotiations with the US on a potential post-Brexit trade deal.

Civil society organisations in the UK have already raised concerns that many of the labour rights, health and safety and environmental regulations currently enshrined in European Union directives could be abandoned in a bid to secure future trade deals. Trade agreements could also make it easier for UK companies to move production abroad to countries with lower regulatory standards and weaker human and labour rights, in a bid to further lower costs.

Trade agreements can also undermine the use of the precautionary principle, which requires that producers demonstrate that a product is safe before it can be sold.⁷⁹ Countries such as the US use a different approach, based on cost-benefit analysis, which puts the onus on the regulator to show evidence that the risks are too great.⁸⁰ Trade negotiations can be used to attempt to influence the approach taken by governments, for example US influence can be seen in the text of the original TPP, which required countries to provide a justification, 'based on documented and objective scientific evidence', for regulations they wished to introduce that exceeded the international standards.⁸¹

Healthier solutions: Trade that promotes the highest standards to protect public health and safety

Governments need to be able to regulate in order to promote and protect public health and we need standards to be set at the highest possible level, rather than the lowest. To do this we need to:

- Subject trade agreements to the provisions of the UK's commitments under human rights and environmental agreements such that where there is a conflict, the other commitments take precedence. This would mean that no provision could be included in trade agreements that was at odds with the UK's commitments on the right to health.
- Prevent downward pressure on regulation by limiting regulatory harmonisation in trade deals and ensuring mechanisms are in place to protect standards and wages
- Ensure trade agreements explicitly allow the use of the precautionary principle to protect public health and ensure governments maintain the right to regulate
- Ensure trade agreements commit investors to abide by international environmental, labour and human rights standards as a condition for accessing benefits of the trade agreement.
- Commit to joint action, outside of trade negotiations and trade deals, to meet the highest standards in the production of internationally traded goods with public health implications e.g., poultry, livestock products, and chemicals.
- End the use of ISDS

RISK: Worse food, increasing obesity and poorer health

Trade agreements can lead to an increase in the availability, promotion and production of cheap, ultra-processed food, associated with increasing health risks including obesity.⁸² In the UK, health problems associated with obesity already cost the NHS an estimated £6.1 billion: nearly two-thirds of adults and 1 in 3 children leaving primary school are overweight or obese.⁸³ An increase in consumption of ultra-processed food, considered a risk post-Brexit,⁸⁴ would only add to these problems.

Of course, this doesn't only affect the UK. The risks associated with increased consumption of processed food have been demonstrated to be linked to liberalisation through trade deals the world over. After the North American Free Trade Agreement (NAFTA) was signed, obesity rates rose significantly in both Mexico and Canada as a result of the increased consumption of sugary drinks and high fructose corn syrup respectively.⁸⁵ These links have also been observed in Central America,⁸⁶ Brazil,⁸⁷ and the Pacific Islands.⁸⁸ Lower-quality, calorie-rich, nutrient-poor food is hard-wired into the current approach to global trade. This has a huge impact on public health.

In addition, trade agreements impact on the food system by lowering standards that affect health and safety. For instance, if the UK enters into a trade agreement with the US post-Brexit, this could mean that the UK has to accept chlorine-washed chicken or hormone-treated beef as equivalent to UK processing methods, which could pose threats to food safety and public health.⁸⁹

Healthier solutions: Trade promotes healthy eating and better food standards

Trade should protect government promotion of healthy eating, access to nutritious food and sustainable agriculture. This means supporting local food producers and ensuring governments have the policy space to promote healthier diet and safe food. In order to achieve this, we should:

- Ensure that trade agreements do not restrict governments' ability to promote healthy eating
- Ensure that countries have the policy space to support local and small-scale food producers and restrict imports of ultra-processed food which is harmful to public health, including by excluding public procurement from future trade deals

RISK: Indirect impacts that drive poorer health

Inequality, poverty and climate change have a profound impact on health outcomes. Trade agreements can exacerbate and perpetuate poverty and inequality, both between countries and within countries, with the greatest impact on poor and marginalised communities. Further, whilst climate change is arguably the biggest threat to human health,⁹⁰ it often remains the elephant in the room in both trade negotiations and debates about achieving health justice.

Poverty

Trade liberalisation does not necessarily help those people living in poverty. Despite having opened up their markets, many countries still have large numbers of citizens living in poverty. A study by the UN Development Programme showed little relation between trade liberalisation and growth, and suggested that it does not necessarily improve or support human development.⁹¹ In richer countries too, trade deals can lead to job losses, which would force people into poverty.⁹² Even if trade liberalisation does boost economic growth, as its supporters insist it does, this does not necessarily mean it will reduce poverty. Even the World Bank themselves concede that "both theoretically and empirically, the impact of trade openness on poverty is ambiguous."⁹³

Ultimately, trade liberalisation, like globalisation itself, creates winners and losers. Those that suffer the most are people living in poverty in the global South, particularly in sub-Saharan Africa, and poorer communities in richer countries,⁹⁴ as trade liberalisation can lead to "deindustrialisation, job losses and stagnating or falling wages...condemning whole generations to unemployment and poverty and stifling hopes for sustainable development."⁹⁵ For example, in Brazil trade liberalisation reduced net employment by 2.7 million jobs between 1990 and 1997.⁹⁶ And in Mexico, the trade liberalisations both before and after NAFTA resulted in huge job losses in the agricultural sector.⁹⁷ Any attempt to tackle poverty and promote health for all needs to address the impact of trade on jobs and access to resources.

This can be particularly problematic where changes to public services and jobs combine and impact on the health workforce. Trade rules tend to treat health workers (and qualifications) as commodities, rather than as an essential

part of achieving health goals. They increasingly include 'mutual recognition of professional qualifications', which means that partner countries accept each others' qualifications as being of equal quality and makes it easier for health workers to leave one country to work in another.⁹⁸ Trade rules also include so-called 'Mode 4' provisions in which countries agree the number and kinds of visas that they will offer.⁹⁹

The inclusion of such provisions in trade deals can be extremely problematic. Countries often provide free or subsidised training for health workers who are then employed in other countries: in effect poorer countries often provide a hefty subsidy to richer countries.¹⁰⁰ The absence of health workers threatens the health of individuals and populations, destabilises health systems, and deepens existing global health inequalities. For example, Africa has 24% of the global disease burden yet only 3% of the world's health workers.¹⁰¹ In 57 countries the World Health Organization (WHO) has labelled the health worker shortage as critical.¹⁰² The scarcity of health workers constitutes a major barrier to the provision of essential health services, such as safe delivery of babies, childhood immunisation and the prevention and treatment of HIV/AIDS.¹⁰³

Workers should have the right to study, work, live and form relationships in other countries. But trade deals should not be seen as a way of cherry-picking workers from poorer countries. In particular, where their training is being subsidised by poorer governments, this should be redressed through helping those countries develop good quality, universally accessible and publicly funded health services. The UK should also develop a sustainable workforce strategy for the NHS that is based on long-term investment in training and recruitment.

Inequality

Inequality is being allowed to soar. In 2018, just 42 people own as much wealth as half of the world's citizens. In 2017, 82% of the global wealth generated went to the top 1%.¹⁰⁴ In the UK, while wealth inequality fell for much of the 20th century, it rose dramatically in the 1980s and continues to rise,¹⁰⁵ particularly when inheritance and capital gains of the wealthiest are taken into account.¹⁰⁶

Dismantling barriers to trade can increase inequality in a number of ways. Trade liberalisation and tariff reduction are often accompanied by increased income inequality between people with different skill levels and between different industries,¹⁰⁷ making unskilled workers worse off.¹⁰⁸ This has been observed around the world, for instance across Latin America.¹⁰⁹ Trade liberalisation can also stifle governments' attempts to tackle inequality, by making it more difficult to use targeted procurement to support marginalised groups, invest in local industries and jobs or direct banks to provide credit to poor people.¹¹⁰ Lastly, trade liberalisation is often implemented alongside cuts to or privatisation of public services (see above) which erodes the basic opportunities and services that people need to prosper, and further widens the gap between the rich and poor.

The way trade policy has developed – sweeping away government ability to protect people while giving transnational corporations and investors new 'rights' – has been good for those at the top of society, but severely detrimental to those who aren't. This fuels inequality.

Inequality has a number of impacts on health, both physical and psychosocial. A 2009 study in the British Medical Journal found that people living in regions with high income inequality had an excess risk of premature mortality independent of their socioeconomic status, age, and sex.¹¹¹ Inequality also increases stress. Stress is linked to a range of health issues including hypertension, heart disease, mental health disorders, accidents, ulcers, and cirrhosis.¹¹² The Equality Trust's Index of Health and Social Problems combines 10 indicators into a single variable to describe the overall "health" of a society. They show a positive correlation between inequality and health and social problems, mental illness and infant mortality.¹¹³

Climate Change

Climate change is arguably the largest threat to public health.¹¹⁴ The worst effects will fall on people living in poverty and those most marginalised, particularly in the global South.¹¹⁵ It is already causing drought and extreme weather events, displacing millions of people from their homes. This is only going to get worse. In order to combat climate change and meet the Paris commitments we need to reduce our use of fossil fuels and keep many fossil fuel reserves in the ground.¹¹⁶

Trade agreements impact on climate change in numerous ways. They increase the production and consumption of goods. These goods are transported by shipping or airline around the world, increasing emissions of greenhouse gases.¹¹⁷ They facilitate investment in extractive industries around the world, displacing greenhouse gas emissions to global South.¹¹⁸ Due to the codification and extension of intellectual property regimes, they undermine the dissemination of green technology that could be used to combat climate change.¹¹⁹ They lock-in dependency on fossil fuels, by making it difficult for countries to take action to limit the import or export of fossil fuels,¹²⁰ or take action to invest in renewable energy.¹²¹ And through investment protection mechanisms such as ISDS they give companies the tools to block government's action on climate change and shift towards greener, democratic energy system we need.¹²² In these ways trade agreements undermine climate action, and expose us all to unhealthy environments.

Perhaps most significantly, whilst climate deals like the Paris 2015 Agreement are *non-binding*, trade and investment agreements are both binding and enforceable. This means that trade and investment agreements have *de facto* supremacy over environmental agreements and as such have direct impact on the future of our society.¹²³ Yet whilst most trade agreements tend to increase carbon emissions,¹²⁴ no trade agreement currently in force contains any (binding) commitments to ensure that international trade supports climate targets.¹²⁵

Healthier solutions: Trade that promotes sustainable development

We need trade deals that promote sustainable development, rather than increasing inequality and poverty and exacerbating climate change. To achieve this, we should:

- Include binding language in trade deals such that that the Sustainable Development Goals (SDGs) and commitments under the Paris Climate Agreement are given precedence over the provisions of trade deals

- Ensure that developing countries have the policy space to support and build domestic industries and implement 'buy local' schemes to support sustainable local economies, including by excluding public procurement from trade deals (see above)
- Hold richer countries to their promise to eliminate trade-distorting subsidies
- Exclude provisions on migration from trade deals

Why we need trade democracy

For trade deals to be truly effective and to achieve Health for All, they firstly need to be transparent and democratic.¹²⁶ It is only by ensuring that our elected representatives are involved in setting the mandate for trade agreements, can see negotiating texts, monitor the negotiations, and have the chance to vote on the outcome that we can ensure that trade agreements can help to provide Health for All.

As part of increasing transparency and democratic input, all trade deals should be subject to a health impact assessment by an independent body with relevant expertise. Governments should be obligated to act on the findings of such health impact assessments to mitigate any risks to public health arising out of the trade deal.

Conclusion

We need trade deals to promote and protect human rights, access to medicines and healthy food, environmental protections, labour standards and public services. And we need trade deals that leave governments room to regulate and act in the public interest.

To achieve this the global trade system requires fundamental reform. The solutions outlined above would require a fundamental shift in the way we approach trade – away from increasing growth towards promoting human health, human flourishing and sustainable development. Only then can trade really work to benefit everyone and achieve Health for All.

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