Trading away our Health?

How trade and investment rules put corporate rights ahead of public health

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AFTINET
Australian Fair Trade & Investment Network

Trade agreements can have a strong impact on our access to medicines, the way our health services are managed and even our health warning labels.

Trade and investment rules restrict access to medicines

Pharmaceutical companies are among the most profitable in the world and exercise powerful influence on trade policy. They have lobbied successfully for trade rules that restrict access to medicines by extending medicine monopolies. This is the opposite of free trade and competition and can lead to substantial delays in the availability of cheaper generic medicines. Intellectual Property rules were initially brought into trade rules in 1995 through the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which set a minimum patent monopoly period of 20 years for WTO Members. This reduced access to affordable medicines in many developing countries. After campaigning by developing country governments and public health groups, the TRIPS agreement included some flexibilities for developing countries, which enabled them to get quicker access to affordable generic medicines.

It is a scandal that trade agreements are used to extend medicine monopolies, and intellectual property rules have been widely criticised by public health experts. Yet, recent trade agreements often go beyond the TRIPS agreement to include TRIPS Plus provisions that can extend monopoly rights beyond 20 years and strengthen patent enforcement measures, restricting the free flow of generic medicines. Some provisions also reduce the WTO flexibilities for developing countries. These can have devastating impacts on access to affordable medicines.

The TRIPS Plus agenda in the TPP

The Trans-Pacific Partnership (TPP-11) initially included rules that would extend patent monopolies on medicines beyond 20 years and protect clinical trial data for biologic medicines for 8 years, effectively establishing a longer market monopoly for some of the most expensive new medicines including some new treatments for cancer.

These rules were suspended when the USA left the agreement. However, they could be re-introduced with approval from member countries if, for example, USA was to express interest in re-joining the agreement.

Trade and investment rules undermine the provision of quality public services

Trade rules can impact on the availability and accessibility of health services and other public services by opening up services to foreign investment and restricting government regulation. Research shows that the privatisation of health services has led to less equitable access to health services.

Services were incorporated into trade agreements in 1995, with the establishment of the General Agreements on Trade in Services (GATS). The GATS includes an exemption for public services, which is ambiguous but provides limited exemptions for health services. Governments also have the flexibility to decide which services are covered under the agreement.

The TPP-11 and the Regional Comprehensive Economic Partnership (RCEP), which is currently under negotiation, do not provide this flexibility. All services are covered by these agreements unless a government explicitly excludes them. The inclusion of standstill and ratchet clauses that lock-in current and future liberalisation also restricts government regulation, including in response to privatisation failure.

Where's the funding for public services?

Developing countries face an additional challenge to their health systems. Trade tariffs account for, on average, 9.8 percent of revenue for least developed countries and 5.6 percent of revenue for low and middle income countries.

As a result, the reduction in trade tariffs can have a negative impact on the ability of developing country governments to fund good quality health services.

investment rules can restrict public health regulation

The inclusion of investor-state dispute settlement provisions (ISDS) provisions in trade and investment agreements can restrict governments' ability to regulate medicines and health services. ISDS gives international investors the right to sue governments for changes in policy that reduce the value of their investments. ISDS has been used by the pharmaceutical and tobacco industries to restrict health regulation. It could also be used against new regulation responding to emerging public health concerns.

Philip Morris vs Australia

The American tobacco company Philip Morris shifted assets to Hong Kong and used ISDS in an Australia-Hong Kong bilateral investment agreement to claim billions in compensation for Australia's plain packaging law. It took over 4 years and $24 million in legal costs for the tribunal to decide that Philip Morris was not a Hong Kong company. The Australian government was only awarded half the costs, leaving taxpayers $12 million out of pocket.

Trade liberalisation can exacerbate poverty and inequality

International trade can facilitate economic growth, support poverty reduction and contribute to global prosperity, but this is not guaranteed. There has been a rapid expansion of International trade since the 1980s but global economic growth has stagnated, nearly half of the world's population continues to live in poverty and inequality is on the rise, contributing to poor health outcomes for those on low incomes.

If trade rules are not designed to support inclusive social and economic development, the benefits can flow to the top of the economy, expanding the gap between the rich and poor. By opening up local markets to global competition trade liberalisation can stifle the development of local industries and reduce the availability of decent employment, leading to downward pressure on wages and conditions. The inclusion of ISDS provisions can also limit policy space for targeted action to address poverty and inequality.

Supplementary labelling rules and alcohol warnings

The TPP-11 and the Australia-Singapore Free trade Agreement include supplementary labelling rules that enable manufacturers to use additional labels for country specific information. These rules are designed to streamline labelling requirements, making it easier for companies that export alcohol products. However, research suggests that these rules could mean governments are less willing to introduce large and effective warnings about the health risks of alcohol.

Six principles for a healthy trading system

Trade agreements can have serious impacts on public health in Australia and across the world. A healthy approach to trade policy that ensures that trade agreements contribute to improvements in health and wellbeing must:

Be transparent and democratic: Negotiating texts must be published for public and parliamentary scrutiny during trade negotiations. The final text of the agreement must be released for independent assessment, including assessment of health impacts, before signing and the full agreement should be put to a vote in Parliament.

Comply with international human rights law: Agreements must contain enforceable human rights standards and a commitment to the supremacy of international law in relation to health, human rights, workers' rights and the environment. Provisions that have negative health impacts must be removed from agreements.

Exclude TRIPS Plus provisions: Agreements must not include TRIPS Plus provisions that extend medicine monopolies and strengthen patent enforcement measures. Developing countries must not be prevented from using TRIPS flexibilities to protect public health.

Exclude public services: Agreements must include a comprehensive exception for public services and a broad definition of public services must be adopted to ensure all public services are excluded irrespective of whether these services are managed by public or private providers.

Exclude investor-state dispute settlement provisions: ISDS provisions must be excluded from trade and investment agreements and corporations must not be empowered to use trade and investment agreements to restrict public health regulation.

Preserve the right to regulate: Governments must not be restricted from regulating to protect public health, including in relation to health services, tobacco control and alcohol labelling. Policy space must be preserved for governments to use procurement policy and other social and economic policy to address poverty and inequality and developing countries must have the flexibility to use tariff and non-tariff policy tools to achieve their development goals.

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