

How to Include Public Health into the EU Trade Strategy

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european public health alliance





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Health should be mainstreamed in EU trade policy

While the European Trade Policy is inextricably linked to the global context, the Preamble to the WTO agreement makes it clear that trade and investment are not goals in themselves but are rather means to raise standards of living and improve well-being.¹

The aim of the EU as set out in Article 3 of the Treaty on the European Union (TEU) is to promote peace, its values and the well-being of its peoples. The goals of the EU's Trade Policy – respecting EU's fundamental values and aims - is creating growth and jobs in Europe, promoting development around the world, and strengthening ties with important trading partners. Fully in line with EU law, specific emphasis should be given to health in the EU Trade Strategy given the fact that Article 168 of the Treaty on the Functioning of the European Union (TFEU) requires in a legally binding manner that health should be included in all EU policies.

To date, when 'health' is referred to in a trade policy context the focus is generally on 'health & safety', particularly in the workplace. Public health however is much broader; it is the protection and promotion of health as well as health care services. With respect to the latter, general principles are universal access to healthcare and to affordable and effective medicines. Protection and promotion of health often entail regulatory intervention, including on products which can harm our health.

Today's main public health challenges in the EU are chronic diseases and overweight and obesity. The increasing prevalence of chronic diseases and overweight and obesity is largely the result of changes in the economic and social environment. Tackling the causes require innovative policies and approaches "correcting" these causes. Incorporating flexibility for the EU and its member states' policy interventions into trade agreements is essential; this means space for experimental interventions which are called for in a complex new health reality. Such experimental interventions should not be seen as trade nuisances but be allowed to prove their effectiveness.

The Commission reflection paper '**How trade policy and regional trade agreements support and strengthen EU economic performance**'² reviews the contribution that deepening relationships between the EU and its key trading partners can make to a comprehensive strategy to boost jobs and growth in Europe. However, it omits consideration of the impact that trade can have on public health: we have taken note that public health has not yet been streamlined **into DG Trade's definition of public**

¹ "Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development" http://www.wto.org/english/docs_e/legal_e/04-wto.pdf

² http://trade.ec.europa.eu/doclib/docs/2015/march/tradoc_153270.pdf



goods protection. Generally, only environment and consumer protection are referred to. For example, and despite the fact that the Commission organised a stakeholder dialogue event on health on 27th May³, public health was not represented in the panels in the EU's Trade Policy day (June 23rd)⁴, nor in the opening speech of Commissioner Malmström on the European Trade Policy day itself⁵.

Trade should not only focus on economic benefits but also on the social and economic costs of Non-communicable diseases (NCDs)

At the heart of international trade is the belief that it will have a positive economic benefit. Historically, economic growth has led to improved population health. Yet this link is now weakening, and attention is being focussed on assessing the effect of Free Trade Agreements (FTAs) on health and the ability of governments to mitigate against negative impact⁶.

Trade negotiations are taking place in a context of the high and growing burden of chronic non-communicable diseases (NCDs) such as cardiovascular disease (CVD), diabetes, certain cancers, Chronic Obstructive Pulmonary Disease (COPD) as well as obesity. CVDs cause 50% of all deaths in Europe⁷ at estimated costs to the EU economy of **€196 billion/year**⁸. Alcohol-abuse is the leading risk factor for ill-health and premature death for the working age population (25-59 years) in Europe⁹. The societal costs of alcohol use in Europe are in excess of €155 billion per year across the EU¹⁰. Alcohol-related diseases across Europe claim 120,000 lives every year in the EU¹¹. These are in large part preventable conditions, leading to premature deaths.

There is evidence linking increased globalisation and free trade agreements to a nutritional transition towards diets characterised by a high intake of cheap, energy-dense nutrition-poor ultra-processed foods, high in (saturated) fats, salt and added sugars (HFSS), and a low intake of products high in fibre such as fruit and vegetables, and whole grains¹².

³ <http://trade.ec.europa.eu/doclib/events/index.cfm?id=1302>

⁴ <http://trade.ec.europa.eu/doclib/events/index.cfm?id=1302>

⁵ http://trade.ec.europa.eu/doclib/docs/2015/june/tradoc_153543.pdf

⁶ Khan, U., Pallot, R., Taylor, D. and Kavanos, P. (2015) 'The Transatlantic Trade and Investment Partnership: international trade law, health systems and public health' London School of Economics and Political Science and Modus Europe report. www.epha.org/6278

⁷ <http://www.euro.who.int/en/health-topics/noncommunicable-diseases/cardiovascular-diseases>

⁸ Nichols M, Townsend, N, Scarborough P, Luengo-Fernandez R, Real J, Gray A, Rayner M (2012) ; European Cardiovascular Disease Statistics 2012. European Heart Network, Brussels, European Society of Cardiology, Sophia Antipolis - <http://www.ehnheart.org/cvd-statistics.html>

⁹ Scientific Opinion of the Science Group of the European Alcohol and Health Forum (2011) Alcohol, Work and Productivity

¹⁰ Rehm, J. et al (2012) Interventions for alcohol dependence in Europe: A missed opportunity to improve public health.

¹¹ <http://www.euro.who.int/en/publications/abstracts/status-report-on-alcohol-and-health-in-35-european-countries-2013>

¹² World Health Organisation (WHO) Globalization, Diets and Noncommunicable Diseases
<http://whqlibdoc.who.int/publications/9241590416.pdf>



The EU remains a large exporter of processed foods. Following the overall logic of FTAs, one would expect a reduction in tariffs to result in an increase in trade and a reduction in prices. The EU weighted average tariffs are 14.6 % for processed foods and 3.7% for agriculture and these are one of the key tariff peaks that are often addressed through Free Trade Agreement negotiations. Increased trade and trade facilitating agreements could exacerbate the situation by reducing the market price for such goods and thereby increasing consumption. The same issue could apply to alcohol, where there is also an expectation of reduced tariffs and increased imports.

European standards should be preserved and improved by EU Trade Policy for economic as well as health reasons

Trade could have an impact on our European standards of protection of health, consumers and the environment to a weaker international or even global lowest common denominator level. Lowest common denominator standards would be against the strategic economic interests of a knowledge-based economy like Europe. We have the innovation capacity to be at the forefront of healthy, cleaner, less polluting products and production practices, for example. This is a competitive advantage that means our standards should be preserved and improved for economic as well as health reasons. For example, the enormous and terrifying scale of antimicrobial resistance (AMR) cannot be tackled without moving to much more restrictive global rules on the use of antibiotics. Drug resistant infections are responsible already for 25,000 deaths every year in the EU and are costing over €1.5 billion annually in the EU.

Trade policy should protect the “Right to Regulate” of the EU and Member States in the public interest

It is essential that the EU Trade Policy does not constrain the right to regulate in the public interests. A record-breaking number of objections to “trade barriers”, mostly dealing with issues such as the protection of health and the environment, have recently been raised before the WTO’s Technical Barriers to Trade (TBT) Committee. These trade concerns include e.g. nutrition labelling – in particular proposals relating to health and nutrition such as the so-called ‘traffic-light’ nutrition labelling. They also include objections in relations to tobacco and trade with four measures on plain packaging being discussed¹³.

There are limits to the benefits of free trade. Trade in products that harm our health – tobacco, alcohol, unhealthy foods, toxic or hormone-disrupting chemicals and pesticides, polluting fuels – resulting in cheaper and more accessible products may be

¹³ TTIP, international trade and cardiovascular health – a European Heart Network paper
http://www.ehnheart.org/index.php?option=com_downloads&id=1949
http://www.wto.org/english/news_e/news14_e/tbt_04nov14_e.htm



detrimental to public health. These are unusual goods in that making them cheaper for consumers may become dramatically more expensive for society & governments in the longer term costs of illness and treatment.

The European Trade Policy should be fully in line with the developments of international health instruments such as the World Health Organization Framework Convention on Tobacco Control (WHO FCTC)¹⁴ which is legally binding, as ratified by all the 28 EU Member States and by the EU itself. The WHO FCTC is an evidence-based treaty that reaffirms the right of all people to the highest standard of health. The WHO FCTC represents a paradigm shift in developing a regulatory strategy to address addictive substances; in contrast to previous drug control treaties, the WHO FCTC asserts the importance of demand reduction strategies as well as supply issues. Trade Policy should not contradict to those principles by treating public health measures as technical barriers to trade.

The WHO has set out a range of actions to be implemented within its Global Action Plan for the Prevention and Control of Non-Communicable Diseases¹⁵. Actions include initiatives reducing salt levels, eliminating industrially produced trans-fatty acids, decreasing saturated fats and limiting free sugars. Clear and understandable nutrition labelling is recommended in the WHO European Food and Nutrition Action Plan (2015-2020).¹⁶

Services of General Interest should not be covered by Trade and Investment agreements, regardless of their funding

Article 14 TFEU and protocol 26 TFEU recognise the special role of Services of General Economic Interest and the freedom of organisation of public authorities when providing Services of General Interest. The healthcare sector deserves specific attention in the context of the right to regulate and particular attention should be given to excluding healthcare systems from the different trade agreements.

Trade agreements should not undermine either the quality standards of public services or the affordability of those services, regardless of their financing. The EU should maintain its approach in WTO and in the General Agreement on Trade in Services (GATS) to maintaining general reservations on publicly funded services but it should be **clarified in existing and new trade agreements that 'public services' can be equally** publicly and privately funded. In addition to that, Member States should maintain their full autonomy on regulating distribution of pharmaceutical services.

¹⁴ http://www.who.int/fctc/text_download/en/

¹⁵ <http://www.who.int/nmh/publications/ncd-action-plan/en/>

¹⁶ http://www.euro.who.int/_data/assets/pdf_file/0008/253727/64wd14e_FoodNutAP_140426.pdf?ua=1



For most EU governments, health is typically the largest area of government expenditure (around 20% of the public budget¹⁷ after social protection and it is one of the main areas of public expenditure projected to come under additional pressure as a result of demographic ageing, increases in chronic diseases, and the widening gap in health inequalities. The economic crisis has brought significant changes to both health system financing and the regulatory framework in the pharmaceutical sector, which in turn, influences affordability and availability of medicines. Existing problems regarding the affordability of medicines in Europe and sustainability of public expenditure on medicines were heightened because of the crisis. Trade Agreements should not unduly restrict the licensing of generics. The crisis can be an opportunity to make reforms that promote efficiency and reduce spending, for example the rational use of medicines, greater uptake of Health Technology Assessment (HTA), pooled procurement, and the purchase of generic medicines¹⁸. However, these should not compromise quality or equity of access.

European trade agreements have raised fears of increased privatisation, pressure on Health services. There is no evidence that privatisation guarantees better health outcomes. There are strong divergences between Member States in liberalising national health services, which could lead to more cross-border '**health tourism**' of patients willing and able to pay for certain health services, thereby also increasing health inequalities and putting pressure on health systems to adapt to more commercial operations as a result.

Investment agreements should not contain any form of Investor-to-State Dispute Settlement (ISDS)

In order to ensure that Trade delivers public benefits to and maintain public trust and the rule of law, the new EU Trade strategy should aim to establish an international court to deal with disputes emerging from investment agreements. The Investor-to-State Dispute Settlement system (ISDS) is not fit for purpose. It has the potential to undermine democratic policy development (regulatory chill) and it could discriminate against local investors. Despite good intentions, there are concerns that partial reform of the existing ISDS will lead to the institutionalisation of arbitration rather than its elimination.

Investments should support a positive development of the host country. Therefore, public health interests should take precedents over on investments in activities that are broadly considered to have potential negatively impact public health; such investments include sectors producing tobacco, alcohol and unhealthy foods.¹⁹

¹⁷ General government expenditure statistics. Data from April 2012, most recent data: Further Eurostat information.

¹⁸ [EPHA Briefing] Access to Medicines in Europe in Times of Austerity www.epha.org/5698

¹⁹ <http://www.ehnheart.org/publications/responses-to-consultations.html>



A Proper Impact Assessment and Public Consultation is needed with regard to the EU Trade Strategy in order to embed broader public interest stakeholder input

Finally, we regret that the European Commission decided not to conduct a proper public consultation on the new EU strategy on trade, which would have given a chance for the broader civil society – including NGOs representing public health – to contribute to the process in a structured way. We share the concerns raised by other civil society NGOs that a 5 year EU trade strategy needs due process of stakeholder consultation and impact assessment, following the Commission's own guidelines. This means identifying a number of alternative options for EU trade policies, setting out the objectives in a measurable way, assessing the impacts of these options, organising formal consultations where it is clear and transparent who has been consulted, what their input has been, and how those inputs were taken into consideration. As Commissioner Malmström made clear on the European Trade Policy Day, the upcoming Communication is the start of the debate not the end, we sincerely hope that there will be a proper public consultation at a later stage.

About EPHA

EPHA is a change agent – Europe's leading NGO advocating for better health. We are a dynamic member-led organisation, made up of public health NGOs, patient groups, health professionals, and disease groups working together to improve health and strengthen the voice of public health in Europe. EPHA is a member of, among others, the Social Platform, the Health and Environment Alliance (HEAL), the EU Civil Society Contact Group and the Better Regulation Watchdog.

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