A MODEL HEALTH CHAPTER IN EU TRADE AND INVESTMENT AGREEMENTS

PROPOSAL FROM THE
EUROPEAN PUBLIC HEALTH ALLIANCE (EPHA)
AND THE EUROPEAN HEART NETWORK (EHN)

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HEALTH PROMOTION AND PREVENTION

Historically, when 'health' is referred to in a trade policy context the focus is on 'health & safety', e.g. SPS matter and health and safety in the workplace. However, public health protection is much broader; it includes health promotion and disease prevention 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 may entail regulatory intervention, including on products which can harm health.

Health promotion and disease prevention programmes focus on keeping people healthy. Health promotion programmes aim to engage and empower individuals and communities to choose healthy behaviours, and make changes that reduce the risk of developing chronic diseases and other morbidities. Defined by the World Health Organization[1], health promotion is:

"The process of enabling people to increase control over, and to improve, their health. It moves beyond a focus on individual behavior towards a wide range of social and environmental interventions."

Disease prevention differs from health promotion because it focuses on specific efforts aimed at reducing the development and severity of chronic diseases and other morbidities.

Health promotion and disease prevention programmes often address social determinants of health, which influence modifiable risk behaviours. According to the World Health Organization[2], social determinants of health are the economic, social, cultural, and political conditions in which people are born, grow, and live that affect health status. Modifiable risk behaviours include tobacco use, poor eating habits, and excess alcohol consumption, which contribute to the development of chronic diseases.

Today's main public health challenges are chronic diseases as well as overweight and obesity. A correlation between the rise in overweight and obesity and a country's integration into globalised food supply chains has been observed.[3],[4] For example, foreign direct investment (FDI) by transnational food companies has been identified as a particularly potent indicator of increased availability and accessibility of highly processed foods high in fat, sugar and salt (HFSS).[5] Altering the local availability, nutritional quality and desirability of foods, affects population diets and increasingly raise concerns about the development of obesity and chronic diseases.[6], [7] The high prevalence of chronic diseases and overweight and obesity is largely the result of changes in

1 https://www.who.int/healthpromotion/en/
2 https://www.who.int/social_determinants/thecommission/finalreport/key_concepts/en/
3 Boyd Swinburn et al. (2009) Increased food energy supply is more than sufficient to explain the US epidemic of obesity. Am J Clin Nutr. https://academic.oup.com/ajcn/article/90/6/1453/4598059
4 Yevgeniy Goryakin et al. (2015) The impact of economic, political and social globalization on overweight and obesity in the 56 low and middle income countries. The Lancet. https://www.sciencedirect.com/science/article/pii/S0277953615001744
5 Corinna Hawkes (2005) The role of foreign direct investment in the nutrition transition. Public Health Nutr. https://www.ncbi.nlm.nih gov/pubmed/15975180
6 Corinna Hawkes (2006) Uneven dietary development: linking the policies and processes of globalization with the nutrition transition, obesity and diet-related chronic diseases. BioMed Central. https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9580.pdf
7 Sharon Friel et. Al. (2013). A new generation of trade policy: potential risks to diet-related health from the trans-pacific partnership agreement https://www.ncbi.nlm.nih.gov/pubmed/24131595

the economic and social environment. It is widely recognised that these conditions undermine sustainable economic development.

Tackling them require innovative policies and approaches 'correcting' their causes. Incorporating flexibility for the EU and its member states' policy interventions ('policy space') into trade agreements by highlighting public health – through the inclusion of a dedicated Chapter – could be desirable. It would highlight the need for 'experimental' interventions, which may be called for in a complex new health reality. Such experimental interventions should not be seen as 'trade nuisances' but be given time to prove their effectiveness.

FACTS AND FIGURES:

- Chronic non-communicable diseases account for 86% of deaths and 77% of the disease burden in the WHO European Region[8] (63% of all deaths in the world)[9];

- 550 000 people of working age die from four major chronic diseases (CVD, cancers, respiratory diseases and diabetes) in the EU every year[10];

- the cost of chronic diseases to the EU healthcare budgets has been estimated at euros 700 billion (around 80% of total healthcare costs)[11]. The OECD has estimated that losing 550 000 productive lives costs the EU economy euros 115 billion a year; this corresponds to 0.8% of the GDP in the EU[12];

- globally, with respect to five major chronic diseases (cardiovascular disease, chronic respiratory disease, cancer, diabetes and mental health), macroeconomic simulations suggest a cumulative output loss of US$ 47 trillion over the next two decades (by 2030)[13].

For inclusion in Agreement's preamble

This Agreement is entered into to encourage and facilitate trade [and investment] between the Parties. The Parties acknowledge that enabling trade [and protection of investments] is not [a] goal[s] in themselves/itself, but constitute[s] a means to improve citizens' standards of living and their well-being.

The Parties acknowledge that this Agreement is entered into in a context where there is an imperative to ensure sustainable development, to protect the environment, to address complex public health challenges, and to protect consumers.

Nothing in this Agreement can encumber the Parties' basic right to regulate.

Nothing in this Agreement can oppose fundamental values and rights expressed in domestic and/or international law.

8 http://www.euro.who.int/en/publications/abstracts/gaining-health.-the-european-strategy-for-the-prevention-and-control-of-noncommunicable-diseases
9 http://www3.weforum.org/docs/WEF_Harvard_HE_GlobalEconomicBurdenNonCommunicableDiseases_2011.pdf
10 http://www.oecd.org/health/health-at-a-glance-europe-23056088.htm
11 https://ec.europa.eu/health//sites/health/files/major_chronic_diseases/docs/ev_20140403_mi_en.pdf
12 http://www.oecd.org/health/health-at-a-glance-europe-23056088.htm
13 http://www3.weforum.org/docs/WEF_Harvard_HE_GlobalEconomicBurdenNonCommunicableDiseases_2011.pdf

CHAPTER – TRADE AND PUBLIC HEALTH

Article 1

General

1. The Parties reaffirm their commitment to pursue public health promotion and protection, and are committed to promote the development of international trade [and investment] in such a way so as to contribute to achieving their respective national as well as global health and health-related objectives and targets.

2. The Parties recognise the value of global standards and agreements on public health as fundamental instruments to promote and achieve good health for all and stress the need to enhance the mutual supportiveness between trade and labour policies and rules.

3. Accordingly, the Parties recall the Declaration of Alma Ata on primary healthcare of 1978[14], the World Declaration and Plan of Action for Nutrition of 1992[15], the Doha Declaration on the TRIPS Agreement and Public Health of 2001[16], the WHO Framework Convention on Tobacco Control of 2003[17], the Global Strategy on Diet, Physical Activity and Health of 2004[18], the International Health Regulations of 2005[19], the Global strategy to reduce harmful use of alcohol of 2010[20], the Political Declaration of the High-level Meeting of the General Assembly [of the United Nations] on the Prevention and Control of Non-communicable Diseases of 2011 [21], the Global action plan for the prevention and control of NCDs 2013-2020 of 2013[22], the Rome Declaration on Nutrition of 2014[23] and the Rome Framework for Action on Nutrition of 2014[24], and the outcome of the UN Summit on Sustainable Development of 2015 entitled "Transforming Our World: the 2030 Agenda for Sustainable Development".[25]

Article 2

Objectives

Through this chapter, the Parties aim to:

a. ensure the positive contribution of this Agreement to public health;

b. ensure policy coherence and uphold the Parties' public health promotion and protection objectives;

c. formulate and implement policies that contribute to the achievement of universal healthcare coverage and public health goals;

d. promote public consultation and participation in the discussion of public health issues arising under this Agreement.

14 http://www.euro.who.int/__data/assets/pdf_file/0009/113877/E93944.pdf
15 http://www.who.int/nutrition/publications/policies/icn_worlddeclaration_planofaction1992/en/
16 https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm
17 http://www.who.int/fctc/text_download/en/
18 http://www.who.int/dietphysicalactivity/strategy/eb11344/strategy_english_web.pdf?ua=1
19 http://www.who.int/ihr/publications/9789241580496/en/
20 http://www.who.int/substance_abuse/activities/gsrhua/en/
21 UN document A/66/L.1 http://www.un.org/ga/search/view_doc.asp?symbol=A/66/L.1
22 http://www.who.int/nmh/publications/ncd-action-plan/en/
23 Second International Conference on Nutrition, Rome, 19-21 November 2014 http://www.fao.org/3/a-ml542e.pdf
24 Second International Conference on Nutrition, Rome, 19-21 November 2014 http://www.fao.org/3/a-mm215e.pdf
25 http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

Article 3

Right to regulate and levels of protection

1. The Parties recognise the right of each Party to determine its public health policies and priorities, to set and regulate its level of public health protection in line with the WHO Constitution and WHO definition of health promotion and prevention and to adopt or modify relevant polices and laws accordingly.

2. This Agreement does not and should not prevent the Parties from taking measures to protect public health and ensure access to affordable care [similarly to but not exclusively as the Alma Ata Declaration and Doha Declaration on the TRIPS Agreement and Public Health].

3. In the eventuality of a dispute, public health protection measures cannot be brought before the investment court [if an ICS chapter is included] by foreign investors unless they represent a violation of Article [X.X] on national treatment.

Article 4

Context and cooperation

Non-Communicable Diseases

1. The Parties underline their commitment to the prevention and control of non-communicable diseases worldwide, and recognise the importance of international treaties, agreements, strategies and action plans in this area.

2. Accordingly, the Parties acknowledge that non-communicable diseases constitute a major obstacle to sustainable development, economic productivity, social development and equality as well as the sustainability of health care systems.

[3. To this end, the Parties aim to:

a. formulate and implement population-level WHO best buy policies to prevent and reduce the level of exposure of individuals and populations to modifiable risk factors for non-communicable diseases namely, tobacco use, unhealthy diets, physical inactivity, and the harmful use of alcohol, and their determinants, to create and shape norms, environments and conditions for populations to lead long, productive lives in good health;

b. exchange information and cooperate, as appropriate, as effective non-communicable disease prevention and control require policy coherence, leadership and multi-sectoral approaches for health at the government level, including, as appropriate, health in all policies and whole-of-government approaches across such sectors as health, education, energy, agriculture, sports, transport, communication, urban planning, environment, labour, employment, industry and trade, finance and social and economic development;

c. promote worldwide implementation of multi-sectoral, cost-effective, population-level interventions in order to reduce the impact of the major non-communicable disease risk factors, namely tobacco use, unhealthy diet, physical inactivity and harmful use of alcohol, through the implementation of relevant international agreements and strategies, and education, legislative, regulatory and fiscal measures, without prejudice to the right of sovereign Nations to determine and establish their taxation policies;

d. strengthen cooperation with relevant stakeholders free from conflicts of interest by acknowledging the contribution and important role played by civil society, academia,

and where and as appropriate, the private sector, by acknowledging the contribution and important role played by all relevant stakeholders, in support of national efforts for non-communicable disease prevention and control, and recognise the need to further support the strengthening of coordination among these stakeholders in order to improve effectiveness of these efforts;

e. cooperate internationally as the rising prevalence, morbidity and mortality of non communicable diseases worldwide can be largely prevented and controlled through collective and multispectral action at local, national, regional, and global levels, and by raising the priority accorded to non-communicable diseases in development cooperation by enhancing such cooperation in this regard.]

Tobacco control

1. The Parties underline their commitment to implement the WHO Framework Convention on Tobacco Control (FCTC) of 2003.

2. Accordingly, the Parties reaffirm that the spread of the tobacco epidemic is a global problem with serious consequences for public health that calls for the widest possible international cooperation and the participation of all countries in an effective, appropriate and comprehensive international response.

[3. To this end, the Parties aim to:

a. implement effective domestic policies and measures to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke;

b. exchange information and cooperate, as appropriate, as tobacco control at all levels requires sufficient financial and technical resources commensurate with the current and projected need for tobacco control activities;

c. promote world-wide implementation of the Protocols and Guidelines developed in the framework of the FCTC;

d. strengthen cooperation with interested stakeholders, especially with non-governmental organisations and other members of civil society not affiliated with the tobacco industry, including health professional bodies, women's, youth, environmental and consumer groups, and academic and health care institutions in order to strengthen tobacco control efforts nationally and internationally;

e. cooperate internationally to eliminate all forms of illicit trade in cigarettes and other tobacco products, including smuggling, illicit manufacturing and counterfeiting.]

Food and nutrition

1. The Parties underline their commitment to eliminate hunger and to reduce all forms of malnutrition and the objectives for human development, food security, agriculture, rural development, health, nutrition and environment and sustainable development enunciated in a number of international conferences and documents.[26]

26 The World Food Conference, 1974; the Alma Ata Conference on Primary Health Care, 1978; the World Conference on Agrarian Reform and Rural Development. 1979; the Convention on the Elimination of All Forms of Discrimination Against Women, 1979,

2. Accordingly, the Parties reaffirm their commitments to the nutritional well-being of all people as a pre-condition for the development of societies and that it should be a key objective of progress in human development.

[3. To this end, the Parties aim to:

a. implement effective domestic policies and measures to ensure continued access by all people to sufficient supplies of safe foods for a nutritionally adequate diet;

b. exchange information and cooperate, as appropriate to achieve and maintain nutritional well-being of all people;

c. promote environmentally sound and socially sustainable development to contribute to improved nutrition and health;

d. strengthen co-operation with interested stakeholders to encourage commitments to

promote nutritional well-being;

e. cooperate internationally to develop strategies to ensure better nutrition for all that are oriented towards economic growth with equity, ensuring social justice and protecting and promoting the well-being of all, particularly of vulnerable groups.]

Alcohol

1. The Parties underline their commitment to reduce harmful use of alcohol and recognise the importance of international rules and agreements in this area.

2. Accordingly, the Parties reaffirm that alcohol harm is a global problem with serious consequences for human rights and human capital, public health, sustainable development, social cohesion and economic productivity that calls for the widest possible international cooperation and the participation of all countries in an effective, appropriate and comprehensive international response.

[3. To this end, the Parties aim to:

a. formulate and implement population-level best buy interventions addressing the affordability, availability and marketing of alcohol;

b. exchange information and cooperate, as appropriate, on preventing and reducing harmful use of alcohol;

c. strengthen cooperation with stakeholders, as appropriate, to reduce the harmful use of alcohol, especially with civil society free from conflicts of interest, and sectors such as development, transport, justice, social welfare, fiscal policy, trade, agriculture policy, consumer policy, education and employment to enhance policy coherence;

d. cooperate internationally to reduce the harmful use of alcohol by effective policy measures and by relevant infrastructure to successfully implement those measures. Cooperation should be oriented towards sustainable economic growth, reducing health inequalities and protecting the well-being of all, particularly of vulnerable groups.

especially articles 12 and 13; the Innocenti Declaration on the Protection, Promotion and Support of Breast feeding , 1990: the Montreal Policy Conference on Micronutrient Malnutrition, 199 1; the Rio Declaration on Environment and Development. 1992. the Global Strategy on Diet, Physical Activity and Health of 2004, the Rome Declaration on Nutrition of 2014 and the Rome Framework for Action on Nutrition of 2014; outcome of the UN Summit on Sustainable Development of 2015 entitled "Transforming Our World: the 2030 Agenda for Sustainable Development.

Article 5

Other health threats

Antibiotic resistance

1. The Parties recognise that antibiotic resistance is a serious and transnational threat to human and animal health, sustainable food production, and development.

2. Accordingly, the Parties underline their commitment to take a broad, coordinated approach to address the root causes of antibiotic resistance across multiple sectors, especially human health, animal health and agriculture.[27]

Communicable diseases and pandemics

1. The Parties [re]affirm their commitment to collaborate on communicable diseases and emerging pandemics in accordance with existing agreements including but not limited to the International Health Regulations (IHR).

Article 6

Access to affordable care

1. The Parties reaffirm their commitment to equitable access to quality health services and medicines.

2. The Parties reaffirm their committee to the Doha Declaration on the WTO Agreement on Trade-Related Aspects of IPRs (TRIPS) and public health adopted on 14 November 2001.

3. Accordingly, the Parties recognise the relationship between protection of IPR and the impact on medicine prices and aim to promote research and innovation that delivers competitiveness and trade as well as increase patient access to affordable medicine.

Article 8

Horizontal issues

Upholding levels of protection

1. The Parties recognise that it is inappropriate to weaken or reduce the levels of protection afforded in domestic public health promotion and protection laws in order to encourage trade or investment.

2. A Party shall not waive or derogate from, or offer to waive or derogate from, its public health promotion and protection laws as an encouragement for, or in a manner affecting, trade or

investment.

3. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its public health promotion and protection laws as an encouragement for, or in a manner

27 Political declaration on antimicrobial resistance adopted at the high -level meeting of the UN General Assembly on antimicrobial resistance of 22 September 2016, A/RES/71/3, available at: http://digitallibrary.un.org/record/842813?ln=en

affecting, trade or investment.

Transparency and public participation

1. Each Party, in accordance with Chapter … [Transparency], shall ensure that any measures pursuing public health objectives that may affect trade or investment – or trade or investment measures that may affect the promotion and protection of public health are developed, introduced, implemented and reviewed in a transparent manner.

2. The Parties shall encourage timely communication to, and consultation of, all stakeholders. No class of stakeholders should be accorded privileged treatment. Particular effort should be made to seek input from public interest groups.

3. The Parties shall take into consideration public health organisations', patients' and public health experts' recommendations in order to ensure implementation of this Chapter of the Agreement.

[4. The dialogue on the public health promotion and protection should be conducted in the framework of relevant fora, platforms and advisory groups.]

5. The Parties shall consider the impacts on public health notably in the framework of ex-ante and ex-post impact assessments. The Parties shall take into account the available data and recommendations given by the stakeholders listed in paragraph 3.

The European Public Health Alliance (EPHA) is a change agent, Europe's leading NGO alliance advocating for better health in EU policies. 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.

www.epha.org

The European Heart Network (EHN) is a Brussels-based alliance of foundations and associations dedicated to fighting heart disease and stroke and supporting patients throughout Europe. EHN plays a leading role in the prevention and reduction of cardiovascular diseases, in particular heart disease and stroke, through advocacy, networking, capacity-building, patient support, and research so that they are no longer a major cause of premature death and disability throughout Europe.

www.ehnheart.org

european public health alliance

fighting heart disease and stroke
european heart network

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