C4 | TRADE AGREEMENTS AND HEALTH OF WORKERS

Trade agreements have substantial effects on well-being and livelihoods, including on health. The harmonization of intellectual property protection laws and its consequences for access to medicines are perhaps the most familiar. But the consequences on various social determinants of health – the conditions in which people live, work and die – are probably more important, yet indirect and much harder to assess (McNeill et al., 2017).

In this chapter we look at the possible risks free trade agreements pose to the health of workers. First we give an insight into the changing power relations that have shaped the global trade framework in the last few decades. Before going deeper into the issue of the health of workers, we take a short look at the impact of trade agreements on various aspects of health, such as government revenue, nutrition, and access to medicines and healthcare services. Finally, we look at how trade agreements impact employment and working conditions, and the health of workers.

From WTO to free trade agreements

For almost half of the last century, the General Agreement on Tariffs and Trade (GATT) was the most important international framework shaping the global trade regime. GATT was formed in 1947 with the objective of reducing the barriers to international trade. Therefore, multilateral agreements were negotiated in different 'rounds' to reduce tariff barriers, quantitative restrictions and export subsidies.

Since the end of the Cold War, the ascent of neoliberal globalization has accelerated the expansion of international trade. Trade liberalization was promoted by international institutions as an important economic strategy towards development and poverty reduction. Consequently, the Uruguay Round of the GATT negotiations (1986–1993) gave birth to the World Trade Organization (WTO), which came into being on 1 January 1995. Unlike GATT, which only had a small secretariat, the WTO covers a scope that is much more encompassing. When it was established, GATT had 23 contracting parties and was limited to trade in goods. Today, the WTO has 164 members (who account for over 97 per cent of world trade), and includes trade in goods and services and the protection of intellectual property rights. By contrast, global health governance exhibits little structural coherence, a greater diversity of actors and approaches, and weaker legal obligations on states (Fidler, Drager & Lee 2009, pp. 325–31).

The member countries of the WTO have been negotiating the Doha Development Round since 2001. The name 'development' was added by the rich countries to bring on board the developing countries who were more interested in assessing the existing WTO agreements than engaging in new negotiations. There was also the promise to take into account their concerns. However, the Doha Round is characterized by a ratcheting up of the demand for 'market access' by rich countries – with tariff cuts of up to 55 per cent. Negotiations at the Doha Round have been stuck since the WTO Ministerial meeting at Cancun in 2003 when developing countries refused to commence discussions on the so called 'Singapore Issues' – investment, government procurement and competition.

Since then, the USA and EU have moved to negotiate bilateral treaties with different countries and currently both are pursuing free trade agreements (FTAs) with individual countries and groups of countries. These bilateral agreements do not replace but complement commitments under the WTO and cover a wide range of issues, including investments, trade in services, intellectual property rights, competition policy and government procurement. Often the provisions that were blocked by low- and middle-income countries (LMICs) at the WTO negotiations are now being repackaged in the bilateral FTAs.

A recent study comparing 74 previous agreements, which the Trans–Pacific Partnership (TPP) signatories have signed since 1995, concluded that negotiations can best be thought of as a competition among states to insert their vision for trade cooperation into an important new agreement (Allee and Lugg, 2016). This enhances an often-made point that FTA negotiations between a developing country and a developed country pose additional reasons for concern (Third World Network, 2009):

- FTAs are usually negotiated with little transparency or participation from the public. Civil society involvement during the negotiations is generally very limited or even non-existent. This stands in contrast to the involvement of private lobby groups. For example, 85 per cent of the committee members during the TPP negotiations in the USA consisted of trade advisers of private industry and trade groups (McNamara & Labonté 2016, pp. 1–21).
- Developing countries are usually in a weaker bargaining position due to the lack of capacity of their economies, their weaker political situation and their weaker negotiating resources. These power asymmetries are especially evident in the investor-state dispute settlement (ISDS) provisions. (See Chapter D5.)
- In the WTO, the principle of special and differential treatment (for developing countries) is recognized. Developing countries are, on paper at least, not obliged to open up their markets (or undertake other obligations) to

the same degree as developed countries. Most FTAs, on the other hand, are based on the principle of reciprocity.

- On issues that are the subject of rules in the WTO (for example, intellectual property and services), flexibilities are available to developing countries in interpreting and implementing obligations. However, developed countries attempt to remove these flexibilities for developing countries in the FTAs.

As we can see, existing power imbalances between the global North and the South are reflected in the rules established by trade agreements; they tend to deepen inequalities in multiple ways. (McNeill et al., 2017).

Trade impacts health in several ways1

The FTAs are blueprints for future bilateral and regional trade agreements and include a rewriting of the rules that govern the global economy, promoting corporate interests at the expense of public health priorities. These agreements go further than the traditional trade agreements that concerned themselves only with import and export tariffs, and also influence production rules and standards. Inevitably, their broader scope has more widespread consequences for economies and societies. They are influential in shaping employment, access to technologies, environmental pollution and sustainability, and many other social determinants of health."(McNeill et al., 2016)

FTAs cause a loss of government revenue by the abolition or lowering of tariffs on cross-border trade. As tariffs on cross-border trade represent a significant proportion of government revenues in the poorest countries, this loss limits the capacity of these countries to implement social policies and to make investments in vital sectors such as health and education. For many LMICs, raising public revenues through alternative forms of taxation is not feasible due to their weak formal sectors and the socially regressive nature of consumption taxes. It is projected that middle-income countries are likely, through taxation, to recover only 45–60 per cent of lost revenue (foregone as a result of reduction in tariffs), and low-income countries at best 30 per cent or less (Baunsgaard & Keen, 2005).

Second, and contrary to what is often believed, healthcare in developing countries can be very profitable, so commercial interests are involved. The health sector is one of the fastest growing sectors in the world economy. Consequently, the liberalization of services remains a crucial point in FTAs. Clauses relating to the liberalization of trade in services, including healthcare, encourage commercialization and privatization of health services. The increasing international trade in healthcare services takes different forms: healthcare workers move abroad to work (thus accentuating the health worker crisis in LMICs) , foreign investors invest in hospitals, and insurance companies search for new markets. Moreover, more and more countries try to attract consumers from different countries to promote so-called health tourism (Pollock and

Price, 2003). Opening the health sector to foreign competition through trade agreements lock countries into a situation where privatization of health services becomes irreversible (Legge, Sanders and McCoy, 2009).

Third, high standards of intellectual property rights (IPRs) are now an integral part of FTAs. Provisions in FTAs on IPRs demand stronger protection than those provide in the TRIPS agreement under the WTO. While the TRIPS agreement has been criticized for having a detrimental impact on access to medicines, the so-called 'TRIPS Plus' rules in FTAs are further loaded in favour of transnational pharmaceutical corporations and promote monopolies (Oxfam International, 2009). Access to affordable medicines is compromised, both by limiting the ability of governments to expand coverage and by limiting the ability of poor people to pay for medicines out-of-pocket (WHO, 2006).

Finally, policies that promote trade can lead to alterations in diet and the nutrition status of the population. For example, average tariffs in Central America declined from 45 per cent in 1985 to around 6 per cent in 2000 and food imports, especially of processed foods, more than doubled. This directly influenced the availability and price of processed foods, many of which are energy-dense and high in fats, sugars and salt (Thow and Hawkes, 2009). These trends have been accompanied by rising rates of obesity and chronic diseases, such as cardiovascular disease and cancer. Poor households are most sensitive to changes in food prices are more likely to shift to cheaper processed foods. Trade liberalization also promotes penetration of supermarkets and multinational fast-food outlets, and drives up consumption of alcohol and tobacco (Blouin, Chopra and Van der Hoeven 2009, pp. 502–07).

The rise of precarious employment and its impact on health

Trade also indirectly impacts health through its impact on employment and working conditions. (McNamara and Labonté 2016, pp. 1–21). Labour conditions can affect health of workers, families and communities in a negative way, especially if they are in what is called 'precarious employment'. There is no consensus on the definition of precarious employment, but Benach et al. (Benach et al., 2016, pp. 232–38) surmise that "[P]recarious employment might be considered a multidimensional construct encompassing dimensions such as employment insecurity, individualized bargaining relations between workers and employers, low wages and economic deprivation, limited workplace rights and social protection, and powerlessness to exercise workplace rights." Over the past decade, evidence has accumulated that demonstrates a consistent association between precarious employment and several dimensions of health (Benach et al., 2016, pp. 232–38).

In general, precarious work – such as informal work, temporary work, contract work, child labour and slavery/bonded labour – is associated with poorer health status. Evidence indicates that mortality is significantly higher among temporary workers as compared to permanent workers. Poor mental

health outcomes are associated with precarious employment. Workers who perceive work insecurity experience significant adverse effects on their physical and mental health (WHO, 2008).

There are important differences amongst countries, according to the labour standards and social protection policies in place. For example, the relationship between job insecurity and poor health is less in countries with more extensive social security systems, which improve the ability of individuals to cope with stressful events (Bambra, 2011, pp. 746–50). More severe adverse effects on health can be expected in countries with limited social protection (McNamara and Labonté, 2016, pp. 1–21).

On the other hand, redistributive social policies result in better population health outcomes (Wilkinson and Pickett, 2009). While precarious and informal employment is becoming more prevalent, acceptable labour standards and social protection extend only to a proportion of the growing number of workers. The enforcement of labour standards is typically restricted to formal markets, and the availability of social protection is usually restricted to standard, formal employment relationships, and not to different forms of precarious employment relationships (McNamara and Labonté, 2016, pp. 1–21).

Historically, precarious employment was common. Thanks to increased government regulation, better labour standards and social protection policies, precarious employment declined in the developed countries. Currently, precarious employment is again becoming more common in developed countries, and is still widespread in developing countries (Benach and Muntaner, 2007, pp. 276–77). The main causal factors in the rise of precarious employment are the processes of globalization, including trade (McNamara and Labonté, 2016, pp. 1–21).

Since the increase in global market integration in the 1970s, the dominance of neoliberalism has translated into a new model of economic development oriented towards productivity and supply of products to global markets. Institutions and employers wishing to compete in this market argue the need for a flexible and ever-available global workforce (Benach, Muntaner and Santana, 2007; WHO, 2008). Thus a race to the bottom for maintaining competitive prices has been initiated at the expense of workers' rights, leading to a shift away from job or employment security towards 'flexible' employment practices (Scott-Marshall and Tompa 2011, pp. 369–82).

The emergence of a 'new international division of labour' is exemplified by the relocation of labour-intensive production to sites in the developing world, selected on the basis of low wages and minimal social protection for workers (WHO, 2008). An example of this practice is the *maquilas* (manufacturing companies located in *zonas francas* or free trade zones, producing garments for export) in Mexico and Central America. Here working conditions are under constant pressure because of the lethal competition between companies. The North American Free Trade Agreement (NAFTA), enforced in 1994,

Box C4.1: Working women suffer most

Protection and benefits provided are generally poorer for women than men. Women are typically employed in lower paid, less secure and informal occupations. For equivalent work, women worldwide are paid 20–30 per cent less than men (WHO, 2008). When employment and working conditions worsen under the pressure of free FTAs, women are the first to be affected.

In addition, precarious working conditions have a serious impact on workers' social protection. In most countries social security systems are linked to formal employment (International Labour Organization, 2013). Informal workers (the majority of whom are women) do not receive a pension and get no unemployment allowance, no maternity leave or allowance, no replacement income when sick, and no reimbursement of medical expenses. While trade liberalization leads to more informalization and casualization, this has an effect on workers' social protection, hitting women particularly hard.

Image C4.1 Working women suffer most (Sulakshana Nandi)

drastically lowered import tariffs among the USA, Canada and Mexico, thus making it more beneficial for American businesses to relocate their production to Mexican *maquiladoras*. It is estimated that the USA and Canada lost up to 750,000 jobs due to NAFTA. Further, 65 per cent of American companies threatened to relocate production away from the USA if they were not allowed to lower wages (Amadeo, 2017).

Precarious employment is particularly prominent in the informal economy, especially in LMICs where employment conditions are unregulated (Benach and Muntaner, 2007, pp. 276–77). Trade liberalization has contributed to an increase in informalization and casualization across the globe (ILO, 2016). At the same time trade liberalization has negative effects on unionization of workers and their bargaining power of employees (ILO, 2013). The disempowerment of workers and their unions has gone hand in hand with the increasing power of large transnational corporations and multilateral institutions and their influence on policies on labour (WHO, 2008).

Labour provisions in free trade agreements: a solution?

Over the past two decades, labour provisions have been increasingly included in free trade agreements, to counterbalance the negative impact of trade liberalization on employment and working conditions and to ensure that labour standards are upheld or improved, rather than put at risk. The ILO defines labour provisions as "any standard that addresses labour relations or minimum working terms or conditions, mechanisms for monitoring or promoting compliance, and/or a framework for cooperation". They are becoming a common tool for promoting labour standards, with over 80 per cent of agreements entering into force since 2013 (International Labour Organization, 2016). But do these provisions really benefit workers, or are they just window dressing? Some observers argue that they will make trade more socially sustainable, others believe such provisions are intended more to limit domestic opposition to new trade and investment agreements than to ensure protection of labour rights (McNamara and Labonté, 2016, pp. 1–21).

In its latest report on this topic, the ILO (2016) concludes that it's hard to make general statements about the effectiveness of labour provisions because labour market outcomes vary according to the context, and depend strongly on governments' and institutions' capacity to implement and monitor labour rights and working conditions. Although the findings are not fully generalizable, several case studies have showed that capacity-building activities, monitoring and involvement of those affected in the framework of labour provisions, were associated with positive institutional and legal changes, and, in some cases, improvements in working conditions.

An example of an FTA with a labour chapter, which has brought about some positive changes in labour legislation and inspection, is the Dominican Republic–Central America FTA (CAFTA–DR) with Honduras.[2] In 2005

Box: C4.2: Work that kills slowly: banana workers in Ecuador

(This section draws on the work of De Ceukelaire and Vervoort (2010).

About 90,000 people work in the banana plantations in Ecuador. Ecuador is the world's leading banana exporting country (30 per cent), mainly producing for the EU market. Through the global supply chain, big companies compete to undercut others, and their buying power allows them to manipulate the market. The prices paid to banana producers by the supermarkets are forced down. And as producer prices are squeezed, production costs, such as labour costs, are forced down. Although Ecuador has signed the ILO conventions on fundamental labour rights — even incorporated them into the national legislation — the level of compliance is inadequate. The systematic violation of environmental, safety and labour standards by many fruit producers is well documented.

Image C4.2
Banana worker in Ecuador (Julie Steendam)

Workers testify that the work at the plantations is harsh, precarious and underpaid. Most workers are paid under the piece-rate system (payment linked to productivity), and many of them don't get the minimum wage of US$ 366. In most cases, women are paid less for the same work as compared to men. For many workers, the salary isn't sufficient to meet the basic needs of their families, such as healthy nutrition, adequate housing and clothing. Working days of 14 hours aren't an exception, and due to exhaustion there's an increased risk of suffering occupational accidents. In addition, workers generally don't receive the necessary protective clothing, which adds to the risk of their cutting themselves, being bitten by insects or snakes, or being poisoned by agrochemicals. The use of pesticides poses great risks to workers. A recent study (AGU, 2016) comparing workers exposed to pesticides with workers at organic plantations where no chemicals are used, shows that workers in conventional banana production (where extensive use of pesticides is common) suffer significantly more health problems. They suffer from eye and skin irritations (banana workers are often called *losmanchados*or 'the speckled', because of the stains on their skin), fatigue and insomnia. They are also at a six-to eight-times higher risk of developing gastrointestinal symptoms such as nausea, vomiting and diarrhoea. The study also says that workers exposed to pesticides are more likely to develop cancer.

The precarious working conditions have become worse over the years and informal work is increasing. Because of this, workers usually have little or no access to social protection. If they try to organize to change their situation, they may be blacklisted or threatened. Consequently, they are afraid to stand up for their rights, because losing their job means not having any income at all.

Honduras ratified this trade agreement between the USA, Central America and the Dominican Republic. The agreements include an extensive chapter on labour. In 2012, Honduran trade unions, together with the American Federation of Labour, and Congress of Industrial Organizations filed a complaint (Honduras Submission, 2012) stating that several articles of the labour chapter were being violated by the Government of Honduras. Labour inspectors from the US Ministry of Labour went to Honduras for an investigation and found that labour rights were violated in sectors such as the *maquilas* and the agro-industry. In order to comply with its obligations under CAFTA, the Ministry of Labour of Honduras had to agree to an Action Plan. An important step was the approval of a new Labour Inspection Law, more stringent than the previous one. Representatives from trade unions believe this to be an important step forward. However, trade unions warn

about the continuing and widespread violation of labour rights in Honduras and significant progress is still to be made.

However, the positive impact of labour provisions is not always a given. As the ILO report (ILO, 2016) states, the impact of these provisions depends crucially on the extent to which they involve different actors, especially those who are adversely affected. A number of these provisions make explicit reference to the involvement of such actors. Nonetheless, the implementation and use of these mechanisms is still very limited in practice. Also, overall transparency is limited, particularly in negotiation processes.

In a prospective analysis of the labour chapter of the TPP, McNamara and Labonté (2016, pp. 1–21) have tried to identify how the TPP can potentially affect health through labour market pathways. Although the TPP has a comprehensive labour chapter, there is little evidence to support the claim that it effectively addresses the negative impact of trade liberalization on labour. Instead, there are several ways in which the TPP might weaken employment relations to the detriment of health**.** The provisions related to labour standards and rights are unlikely to increase the power of workers and thereby improve employment relations important for health (ibid.). The TPP labour chapter refers to the ILO Declaration on Fundamental Principles and Rights at Work, but in fact that serves merely as a reaffirmation of the membership of countries in the ILO, without providing any incentive or obligation to ratify and implement the eight corresponding Core Conventions of the ILO. A related concern is that reference to the ILO Declaration can result in weak and elastic interpretations of labour rights. The ILO Declaration, unlike the Core Conventions, references broad and undefined fundamental rights. This means that signatory countries may find a potentially divergent and inadequate range of domestic measures to be satisfactory in meeting minimum labour standards. The provisions dealing with the implementation side of the chapter are largely ornamental and seem to offer little in terms of concrete improvements for employment or working conditions. The chapter's stipulations are also found to unevenly distribute power to the detriment of workers, and they establish the priority of trade and market regulation over workers' rights.

A common concern raised is that labour provisions or the so-called Sustainable Development Chapters in trade agreements often lack binding, stringent rules, as regards monitoring and enforcement of the provisions. In a recent study designed to document the specific threats to workers' rights embodied in the Transatlantic Trade and Investment Partnership (TTIP), AnetaTyc (2017, pp. 113–28) finds that the TTIP "implies disregard for workers' rights". Gaps include the lack of mandatory ratification of core labour conventions, the lack of a sanction mechanism in the case of failure of ratification of core conventions by a member of the ILO and the lack of a body that can monitor and assess compliance with commitments connected with the protection of workers' rights.

The future for trade agreements

Supporters of FTAs claim that trade contributes to global economic growth and job creation. But what does this mean, if this growth isn't contributing to improvement of employment and working conditions, better living standards and health for all? Claims that increased trade leads to economic growth and well-being are contradicted by facts. The unacceptably high levels of global inequality, consequence of a failed wealth distribution system, are now recognized as a serious threat by even the International Monetary Fund (IMF), long-time champion of neoliberal policies and structural adjustment (Nunn and White, 2016, pp. 186–231). If employment growth following the implementation of new FTAs is mainly in precarious or informal employment, as the evidence from other trade reforms would suggest, any potential economic and health benefits for workers will be, at best, limited (McNamara and Labonté, 2016, pp. 1–21).

We can conclude that trade agreements result in negative effects on health through various pathways, such as through its negative effect on employment and working conditions. "A flexible workforce may boost economic competitiveness, but brings with it negative effects on the health of workers", concluded the WHO Commission on the Social Determinants of Health (WHO, 2008).

That is why there is an urgent need to think beyond a framework that is bound by the neoliberal recipes of further deregulation, less government control and market liberalization. Adding labour chapters is clearly insufficient since their legal status is often less binding than other provisions directly linked to trade, such as ISDS mechanisms.

Treaties on trade, investment and intellectual property rights often undermine public health. Provisions that are obviously bad for public health, including TRIPS Plus provisions and the liberalization of health services, should never be part of free or any trade agreements. Moreover, developing countries should be compensated for revenue losses arising from lower tariffs by developed countries who demand lowered removal of tariff barriers.

Notes

1 This case draws upon the following sources: AGU (2016), and Oxfam Deutschland (2016)

2 Interview with representatives from Federación de Trabajadores de la AgroIndustria (FESTAGRO), CGT (Central General de Trabajadores) and RSM (Red de Sindicatos de la Maquila).

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