

Trade and Health – A Roadmap for PHA Engagement

Key problems to be addressed

Over the last three decades the dominant high income countries, working closely with leading transnational corporations, have put in place a network of ‘trade and investment’ agreements which have either been accepted by or forced on developing countries.

These are in effect *economic integration* agreements, going well beyond the liberalisation of trade in goods, to include the liberalisation of ‘trade’ in services, extreme protection for intellectual ‘property’ (IP), regulatory harmonisation, and new provisions to protect transnational corporations from regulation by host governments. Notable exceptions with respect to this ‘liberalisation’ are the movement of labour (which is brutally policed) and the continued protection of rich world agriculture and IP monopolies. Trade agreements generally include powerful enforcement provisions based on non-transparent adjudication and the legitimisation of bilateral trade sanctions (which inherently give more power to more powerful nations).

The regime thus put in place has had far reaching consequences for access to decent health care and for the social conditions which shape people’s health. Among the general consequences are widening inequality, within and between countries, and a weakening of government capacity in regulation, infrastructure development and the delivery of services. More specific consequences concern access to medicines, food sovereignty, employment opportunities, working conditions, and environmental degradation, including global warming.

Almost all countries represented at this Assembly have concluded or are negotiating regional or bilateral trade and investment agreements, generally driven by the US or the EU, and directed to advancing the interests of the transnational corporations.

The Regional Comprehensive Economic Partnership (RCEP), which involves many of the countries represented at this Assembly and is close to finalisation, **includes a range of provisions which would be harmful to people’s health. Immediate action is needed to prevent it from being concluded or, if it is concluded, to prevent it from entering into force** (see below).

More broadly there is an urgent need to roll back the harmful-to-health provisions of established trade agreements including **investor state dispute settlement (ISDS)** and extreme provisions for **intellectual property protection**.

The IP provisions of trade agreements and the system of profit driven development and supply of medicines, diagnostics and devices have had a devastating impact on access to medicines and on health care more generally. Medicines policy, which encompasses research and development, regulation, national production, pricing and supply, rational utilisation and ethical marketing, has been profoundly shaped by trade agreements.

High prices associated with extreme IP protection point towards the importance of national production. There is a significant role for South South technology transfer in building capacity for local production of generics as well as research and innovation.

Over the last several decades the transnational pharmaceutical companies have sought to conflate the regulation of substandard and falsified medicines (which involves statutory law) with claims of intellectual property (hitherto governed by private law) with a view to harnessing the power of the state (through the medicines regulator) to police breaches of putative IP rights. This push has been particularly powerful in Africa. In May 2018 African health ministers announced the creation of an African Medicines Agency (AMA) which will oversee marketing approval and other aspects of medicines regulation across the continent. The transnational pharmaceutical companies have been closely involved in this initiative, with a view to further harnessing the work of medicines regulatory officials to protect their claims of intellectual property rights. The establishment of an African Medicines Agency carries huge risks with respect to access to medicines as well as the potential benefits which could arise from more

comprehensive and accountable regulation of the supply, marketing and use of pharmaceuticals. There is a further risk that 'harmonisation' initiatives in new trade agreements (including increasingly rigorous manufacturing standards) do not contribute to further barriers to local production and access. **Urgent action is needed to ensure that the proposed AMA is not captured by the transnational pharmaceutical industry.**

Hunger and the impoverishment of small farmers are major threats to health arising from neoliberalism generally and various provisions in trade and investment agreements contribute to these threats including in particular the Agreement on Agriculture. Less well known are the provisions for patenting seeds (through reference to the International Union for the Protection of New Varieties of Plants (UPOV) in such agreements) which privileges agribusiness and can destroy small farmers' livelihoods. **The need for action on trade agreements will continue as an important element of PHM's campaigning around hunger, food, and food sovereignty.**

Looming over all of the threats to health arising from trade and investment agreements is the spectre of global warming. ISDS provisions can prevent countries from taking action on climate change if such action impinges on the profit expectations of foreign corporations, such as fossil fuel companies. The scope for technology transfer to developing countries to assist them to mitigate and adapt is greatly restricted by the extreme IP provisions in such agreements. To our knowledge no agreements so far concluded have listed climate change as an 'exception' which would allow the suspension of other obligations arising from trade and investment agreements. **PHM will include action on trade agreements as one element in our campaigning around climate change.**

Briefly about the causation of these problems

In some respects the network of trade agreements now governing the global economy reflects the specific demands of particular industries, largely based in the rich countries, including pharmaceuticals, agriculture, entertainment, mining and finance.

However, more broadly, the disciplinary regime which has been put in place is part of a policy package ('neoliberalism') designed to manage the contemporary crisis of globalised capitalism in the interests of the transnational capitalist class (including the executives and major shareholders of the transnational corporations).

This is a crisis of over-production: increasing capacity to produce more stuff using fewer workers contributes to stagnant demand which compromises corporate profitability. It is also a crisis of over-accumulation as a consequence of profit flowing increasingly to the financial sector, rather than into real investment. This has led to the obscene growth of the banks, the wealth funds and of speculation. As wages and tax revenues decline both household consumption and government expenditure are increasingly dependent on borrowing. Likewise the big corporations borrow heavily to support take-overs which reduce employment but increase market power.

The crisis of globalised capitalism, and the regime of neoliberalism which has been installed to manage it, are impacting with devastating effect on families and communities around the world, including: health care impoverishment, lack of access to health care, lack of investment in basic utilities such as clean water and sanitation, unemployment and hyper-exploitation of workers, hunger and profit driven pathologies. Conflict, displacement and refuge seeking are inevitable consequences. These pressures bear with particular force on indigenous peoples, on women, and on other vulnerable groups.

Broad objectives of PHM's intervention in this area

In the face of this onslaught PHM's objectives must include:

- stop the negotiation of trade and investment agreements designed to further extend and strengthen the neoliberal regime and terminate (withdraw from) existing agreements which shore up this regime;
- work towards a New International Economic Order which incorporates positive discrimination in favour of developing countries and which is oriented around an ecologically sustainable civilisation, based on living well rather than corporate profit;
- reform medicines regulation ensuring it is based on national sovereignty and directed to ensuring quality, safety, affordability and efficacious rational use.

Action commitments

We, the participants at this Fourth People's Health Assembly commit ourselves to the following strategies and actions to achieve these objectives.

Real Cooperation Empowering People (RCEP)

We commit to an immediate campaign directed to stopping the completion of the RCEP agreement (Ruthless Companies Entrenching Power) including a sign-on letter directed to governments currently engaged in the RCEP negotiations (see Attachment) with an explanatory policy brief and campaign framework for PHM networks and broader networks of progressive civil society. (People and organisations wishing to sign on to this letter are invited to visit <https://goo.gl/forms/MnNQzSx7LijV26FU2> to sign on.)

We, the delegates from the RCEP countries, commit to actively campaigning around this demand in the forthcoming weeks and months.

Keeping Big Pharma out of medicines regulation

PHM, and in particular the African delegates to this Assembly, note the proposed establishment of an African Medicines Agency and we highlight the very real risks of this agency adopting the regulatory policies which are being promoted by Big Pharma and which are directed to deploying statutory medicines regulation to police of IP claims.

We commit to further consultation around the preparation of a policy brief on the risks and possibilities of continent-wide medicines regulation. This will include materials for politicians, bureaucrats and civil society. It will outline the principles which must be included in the proposed treaty and corresponding national laws, and principles which must not be included.

We commit to further consultation around national and continent-wide campaigning to ensure these principles are observed in the finalisation of the treaty and the consequent national legislation.

Refuse and roll back neoliberal trade and investment agreements

Contemporary neoliberal trade and investment agreements include a broad range of provisions across many chapters which are harmful to health in many different ways. The provision for enforcement of investor protection through ISDS is one of the most egregious affronts to national sovereignty included in such agreements. Likewise the inclusion of IP provisions in the WTO package and in subsequent agreements has been a disaster for access to medicines and for an appropriate innovation framework.

Nevertheless it is not sufficient to solely oppose the provisions for ISDS and extreme IP protection because this would leave untouched a range of other provisions which constitute comparable threats (including for example, the impact of the Agreement on Agriculture on small farmers and the tariff reductions, arising from the liberalisation of trade in goods, which impact on government revenues).

We commit to campaigning against new neoliberal trade and investment agreements, and for the termination of existing agreements. We commit to convening an ad hoc group to plan for this campaign including developing appropriate information materials and a campaign framework.

UN treaty to regulate transnational corporations

We note the ongoing discussion about a treaty to regulate transnational corporations, known as the Legally Binding Instrument on Transnational Corporations and Other Business Enterprises with Respect to Human Rights. We see this as an critical step towards a New International Economic Order.

We commit to campaigning in support of a strong version of this treaty that overrides trade and investment treaties, including through awareness raising and critical policy dialogue with our governments regarding their support for such a treaty.

We commit to convening an ad hoc group to plan for this campaign including developing appropriate information materials and support for national level advocacy.

WHO treaty on the financing and coordination of research and development of medicines, diagnostics and devices

We note the failure of the IP monopoly-based and profit driven model of research and development (R&D) for medicines, diagnostics and devices. We note the ongoing discussion within the United Nations and the World Health Assembly regarding the delinking of R&D funding from monopoly profits and the adoption of a binding treaty to assure the necessary funding and coordination of publicly supported research and development in this field.

We commit to campaigning in support of this treaty, including awareness raising and policy dialogue with our governments regarding their support for such an treaty.

We commit to convening an ad hoc group to plan for this campaign including developing appropriate information materials.

Health impact assessment and human rights assessment of trade agreements

Health impact assessment (HIA) and human rights assessment (HRA) of trade agreements have emerged as potentially powerful tools in mobilising and advocacy around the health implications of trade agreements and ensuring that harmful agreements are not adopted.

We commit to convening an ad hoc group with a mandate to develop an approach to HIA and HRA which incorporates the necessary technical considerations and supports popular mobilising around the dangers to health of trade and investment agreements.

Capacity building around trade and health

We recognise the need to develop our own understanding of the health implications of trade and investment agreements and the practical strategies and skills of engaging in trade and health activism.

We commit to:

- organising a program of webinars and information sheets around key topics such as medicines policy, TRIPS and access, food trade, trade agreements and healthy systems, ISDS and health;
- organising further IPHUs around trade and health, including access to medicines;
- developing a web portal providing access to various reports and papers dealing with different aspects and at different levels of detail;
- collecting, developing and disseminating stories and trade and health activism (Uruguay, Croatia, ACTA, FTAA, MIA, etc).

We commit to convening an ad hoc group with a mandate to drive these initiatives to implementation.

Networking (listening across difference, collaborating, building solidarity)

We recognise that there are many progressive networks in many countries organising around trade and investment agreements including networks with special expertise in these areas. These include labour, food, environmental and women's organisations and many more.

We commit to building links with these networks, building solidarity and exploring collaboration.

Organising ourselves

We will use PHM's Trade and Health email list as a platform for progressing these initiatives and invite other PHM activists with a commitment to work on trade and health to join the program. Write to tradeandhealth@phmovement.org to join the email list.