

IFMSA Policy Statement Trade and Health

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Summary

Free trade agreements (FTAs) must hold health and education in the highest regard. The marketization of the public services and the cooperation towards uniformization of safety and health standards has been the pathway in the recent history of FTAs. This policy has been shown to reduce equity in provision and access to public services and to risk a “race to the bottom” in rules, regulations and standards, which bears hazard to consumers and the environment.

Transatlantic Trade and Investment Partnership (TTIP) could endanger our common good embracing several vital aspects of our societies. Namely, **the ability of states to legislate** public health measures can be compromised by dispute settlement mechanisms as states can be sued for limiting the potential profits of an investor. The fear to pass laws that can be targeted by investors lawsuits can also lead to a so-called “regulatory chill” that cannot be overlooked. Regarding **education**, it could become a good where an individual's financial situation determines their access to higher education; on the **environmental chapter**, opening the markets of energy, food aviation and chemical production without effectively regulate them could be disastrous, as protective measures and regulations are seen as ‘barriers to trade’ rather than good public health or environmental policies. Concerning the expansion of **intellectual property rights**, FTAs have important repercussions on the access and development of cutting-edge healthcare and to fair-priced quotidian medicines. About **countries not included in the FTAs**, they would be forced to adapt their own regulations and standards to the ones mentioned in the agreements in a much more costly fashion.

As such, the IFMSA calls on the civil society to be aware and actively take part in this fulcral discussion, and on governments to safeguard their citizens' best interest when negotiating trade agreements, by carefully considering how trade agreements may affect people's health, the societies and the environment.



Introduction

FTAs hold conceivable potential to give a new form to public health and health care worldwide and could have severe implications for efforts to tackle health inequities and the social determinants of health. The next generation of trade agreements currently under negotiation or final approval include the Trans Pacific Partnership (TPP), Transatlantic Trade and Investment Partnership (TTIP), Comprehensive Economic and Trade Agreement (CETA) and the Trade in Service Agreement (TiSA). Although the aforementioned trade agreements only include a subset of nations, these nations comprise around 60% of the global GDP and 40% of the trade in goods worldwide [1, 2]. They could set a global precedent and therefore become the model for all future trade agreements around the world [3].

Overview of link between trade and health

Trade agreements have wide-ranging impacts on health, both directly and indirectly. Their scope covers the organization of public services, food and environmental standards, and labor rights, all of which have demonstrable impacts on health. IFMSA's Policy Statement, "Health Equity and the Social Determinants of Health", adopted at AM14, regarded "the Social Determinants of Health as fundamental principles of the Federation" [4]. The Social Determinants of Health framework considers a holistic, systemic view of how social, political and economic processes affect health.

Mechanisms in free trade agreements

1. Market access

Market access comes under the remit of FTAs as a part of "non-tariff barriers to trade". Globally, and particularly between Western countries, the Free Trade agenda over several decades has now led to traditional trade barriers, such as tariffs, to be at a very low level [5]. This has led to a new focus of new trade agreements, such as TPP, CETA and TTIP; "covering substantially all sectors and all modes of supply, while achieving new market access by tackling long-standing market access barriers" [6]. FTAs also promote decreasing preferential treatment of national investors, thus allowing for equal treatment of local and foreign investment in services. The effect overall is increasing the marketization of services, by opening services up to investment by private companies.

2. Regulatory cooperation

Regulatory cooperation aims to decrease the burden of regulations on traded goods and services. This is achieved through increasing information exchange and transparency, regulatory harmonization and mutual recognition [7]. Harmonization is "the process of making different domestic laws, regulations [etc.] substantially or effectively the same or similar" [8]. In FTAs, harmonization can lead to the adoption of a common standard for assessing goods and services. Mutual recognition between trading countries means they may retain different standards whilst acknowledging their equivalence [9].

Regarding health, harmonization in FTAs could lead to the adoption of a mutual standard, which is less safe than either of those already in place [10]. The danger of mutual recognition is that it allows producers to bypass stricter health standards by choosing to follow less demanding standards [8].

Regulatory cooperation can also be conducted on a "horizontal" level, for instance, by demanding impact assessments for proposed regulations [11]. Such cooperation affects how

governments legislate in general. Horizontal regulatory cooperation chapters could be and have been used to avert governments from regulatory change [9, 12, 13]. Furthermore, trade talks themselves have been used as bargaining tools to affect regulations similarly [12, 14].

3. Dispute Settlement Mechanism

Dispute settlement mechanisms are set up in most trade agreements to ensure the agreements can be enforced and that disputes can be settled. These mechanisms are used to protect investors against indirect expropriation and to promote a fair and equitable treatment and create a specific procedure for an investor to bring a case before an international tribunal [15].

a. Investor State Dispute Settlements (ISDS)

Investor State Dispute Settlement (ISDS) has emerged as a strategy to attract foreign investment [16] as they empower corporations to challenge governments' when their policies breach their obligations under an investment treaty [9].

"Investor state dispute settlements (ISDS) allow [...] an investor from one country to bring a case directly against the country in which they have invested before an arbitration tribunal" [17]. That way, "ISDS clauses allow [investors] to bypass national court systems and sue governments directly [...] over measures that can jeopardize future profits – typically laws designed to protect the public" [18]. As such, ISDS mechanisms could pose an indirect, but also a dangerous threat to public health and human rights by undermining the autonomy of states and their right to establish healthy and sustainable public policies.

There have been several examples of cases of international corporations using ISDS mechanisms to sue governments after the introduction of political actions that compromised their future profits. Citing only one of the companies involved in these disputes, Philip Morris accomplished to sue both Uruguay and Australia governments after they introduced new anti-tobacco laws. Because of that, New Zealand did not enact an anti-tobacco law for more than two years waiting for the result of the lawsuit against the Australian government, showing that ISDS can also lead to regulatory chill.

b. Investment Court System (ICS)

The proposals made by the European Commission for the dispute settlement mechanism, named ICS, does not address the fundamental problems of ISDS. Core changes are non-existent, being the modifications made only to serve the purpose of making more acceptable the exact same privileges for foreign investors [19].

The new ICS proposal fails to address and solve the following:

Right to regulate

The language on the ICS proposal fails to protect or promote public interests. Even though the states keep their power to regulate, they are exposed to additional legal and financial risks, which could still lead to a regulatory chill [21].

Potential systemic conflict of interests of the arbitrators

From ISDS to ICS, steps were taken towards a more transparent and ethical selection of the professional arbitrators of the court system. However, it does not prevent unacceptably close links of the judges with one of the parties. In fact, the judges of the ICS are still allowed to work in the corporations involved before or after such cases.

Unclear costs and the impact of establishing an ICS

At this point it is unaccountable that the Commission didn't yet analyse the financial and administrative impacts of the ICS. Moreover, the Commission has not justified the need for a parallel court system when the parts involved have two of the world's most developed legal systems. [21] Also, the European Parliament's Committee on Legal Affairs has concluded that in the EU and the US adequate measures already assure legal security for investors. [54]

Furthermore, the European Court of Justice (ECJ) has not evaluated whether the dispute settlement mechanism fits within the EU law. Unfortunately, this evaluation can only be requested by the Members of the European Parliament (MEP). [22]

4. Transparency

International trade agreements have gained widespread criticism for their secrecy [23-25]. Proponents claim such measures of protection are mandatory for the purposes of strategy and building trust [26, 27]. However, insufficient transparency creates a climate of uncertainty, which could heighten public distrust [28] and derange the requisite checks and balances that help to protect against potentially damaging clauses. It is almost impossible to give appropriate feedback without the details found in a consolidated draft text [29].

The Impact of Free Trade Agreements on Health

Public services

Public services make up a complex system, which guarantees the provision of vital services regardless of personal income. Universal public services are important contributors to the social determinants of health [30], hence it is vital for the sake of health equity that these services are not subject to market access. Negotiators often set out to make exemptions for public services in FTAs [31], however ensuring such exemptions can prove exceptionally difficult. Even the supposed exclusion of 'public services' from a trade agreement can be circumvented by redefining the term "public" [31].

Human resources and health services

Migratory flow of health workers in and out of regional blocs is a multifaceted problem and one that is accentuated by the enforcement of free trade agreements. A study examining international service trade and its implication for human resources for health, taking Thailand as an example, states that the "growing international trade in health services has created several negative implications for health care systems". International trade in health services promotes "commercialisation of health care", enhances "existing tiered health care systems", stimulates "external and internal migration of health workforces" which results in an increasing "inequity of health care access" and enhances "erosion of ethics amongst health professionals, resulting in an increase in malpractice litigation" [32]. To sum up, FTAs can have a strong negative impact

on the global distribution of human resources for health and exacerbate the migration of health workers.

Universal healthcare

Experts and studies agree that where access to medical care is required, “a universal healthcare system, open to all, free to all, and funded by all through general taxation, remains not only the most equitable, but most managerially efficient and cost-effective system – delivering some of the best outcomes of any national health systems model” [16, 33]. Moreover, the UN Sustainable Development Goals call for the achievement of universal health coverage [34].

FTAs threaten universal health care due to their focus on market access, which could lead to the increased liberalisation of healthcare services and thus contribute to a widening of healthcare inequalities [16]. Concerns to that effect have been voiced in the context of TPP [35], TTIP [16] and CETA [36] among other FTAs. Moreover, precedents show [16] that the *achievement* of universal healthcare can be challenged by dispute settlement mechanisms[37].

Education

Generally, free trade agreements impact education services through liberalisation of market access, thus facilitating the private education market in place of public education [38, 39]. Most education systems in the world are both publicly and privately funded thus making it difficult to open the market to only one and to protect the other [40]. A potentially larger and more profit-oriented private education market due to an opening for private education providers would compete with public education over teachers and students. Education could then become a good where an individual’s financial situation determines their access to higher education.

Climate change and the environment

Some potentially very profitable markets have by nature a bigger impact on the environment, such as the markets of tar sands [41], fracking, offshore oil drilling, natural gas exploration [42], food and agriculture, aviation and chemicals [43]. Problems evolve firstly by opening those markets that have a bigger and potentially negative impact on the environment, and secondly by a country’s limited ability to regulate them afterwards due to investor settlement mechanisms and regulatory chill. These opened markets can pose a threat to the environment and therefore to people’s health. Environmental regulations are also at risk of being negatively impacted by regulatory cooperation due to downward harmonisation [44].

Food and agriculture

An increase in trade is a common part of a country’s development strategy and if included, the agriculture and food sector can be heavily impacted by free trade agreements [45, 46], Agri-food industries are of particular strategic interest to national governments, with wide-ranging impacts on health, the environment, rural development and employment [47].

FTAs aim to tackle non-tariff barriers in agriculture and food industries, particularly through regulatory cooperation. For example, one of the goals of TPP is to “eliminate unnecessary barriers [and] reduce regional divergence” in standards [48]. The concern is that “countries’ protective measures like tariffs and quotas, technical regulations like consumer labeling laws for food, and food safety standards [...] become problems to be solved” in favour of free trade [49]. Affected areas include labeling of food, restrictive laws concerning Genetically Modified Organisms (GMOs), protection of food producers relevant for a population’s food supply and legislation meant to protect food from certain microorganisms [49].

In summary, commercial interests could supersede the public interest. Protective measures and regulations are seen as 'barriers to trade' rather than good public health or environmental policies.

Intellectual Property rights: pharmaceuticals, medical devices and surgical/therapeutic procedures

FTAs currently being negotiated are placing a huge importance on protecting intellectual property (IP) over and beyond what is currently done through the Agreement on Trade-Related Intellectual Property Rights (TRIPS), creating "TRIPS-plus" scenarios [50]. This increased protection of IP would impact pharmaceuticals, medical devices, and surgical and therapeutic procedures.

Pharmaceutical companies could negatively impact equitable access to medicines through extending patents on drugs and thus price monopolies; restricting access to clinical trial data; and employing ISDS mechanisms against governments using TRIPS flexibilities to promote access to medicines, which could eventually pose a threat to research, development and innovation [50].

Medical devices and the ability to share innovation are severely hindered by the TRIPS-plus provisions FTAs are proposing. The ability to sequester clinical trial data and extend patent lifetimes will stop medical devices from being able to be introduced widely to patient care because of the high manufacturing costs [51].

For surgical and therapeutic procedures, the threat from FTAs comes from the harmonisation of standards between regional blocs. For example, surgical procedures in the USA have the ability to be patented whereas in many countries in the EU and beyond such procedures are exempted from patenting due to TRIPS provisions [52]. In effect, this could prevent patients from being able to avail of groundbreaking procedures because of the patents being enforced.

Consequences for countries not included in the trade agreements

With FTAs taking place between High-Income countries, other countries may lose their tariff advantages and therefore some of their competitiveness. This will force them to adapt their own regulations and standards to the ones mentioned in the FTA in a much more costly fashion [53]. A systematic crippling of public services, public health regulation, climate protection, staggering pharmaceutical price and high pricing monopolies could be the outcome, if the system is left unchallenged and unchecked.

Sovereignty of states to legislate for public health measures

The ability of states to legislate for public health measures that protect citizens' health can be compromised by ISDS mechanisms. This effect could be felt in any of the areas mentioned above, as states can be sued by investors for limiting the potential profits of an investor.

Main text

IFMSA reaffirms that:

1. Trade agreements can have a significant impact on health both directly and indirectly as sequelae of the social determinants of health. As students and health advocates, we believe international trade agreements should prioritize, promote and protect health above commercial interests.
2. Global trade governance and institutions should become more transparent, accountable and democratic.
3. Dispute Settlement provisions threaten public health and are anti-democratic by allowing corporations to challenge government policies and authority. Investment protection mechanisms should not be incorporated in trade agreements.
4. Equitable access to essential and affordable medicines is essential to tackle, control and prevent the global burden of both communicable and non-communicable diseases.
5. Trade agreements should support strong, evidence-based public health regulation including tobacco and alcohol control measures.
6. International trade agreements should support climate change mitigation and adaptation strategies and environmental protection.
7. Medical students and health professionals play a unique and essential role in tackling the social determinants of health, reducing health inequities and promoting access to affordable medicines. As a result, medical students and health professionals should engage in advocacy to advance health in trade policies and agreements.

IFMSA therefore calls on governments to:

1. Ensure trade agreements uphold the principles of human autonomy and justice.
2. Ensure trade agreements incorporate respect and protection of human rights including maintaining adequate labour standards and protections
3. Prioritize sustainability and long term consequences such as health of populations and the environment above short term political gain and profit interests in all trade agreements.
4. Ensure any and all trade agreement negotiations are open and transparent including but not limited to:
 - a) Public release of full negotiating texts including consolidated draft texts regularly during the negotiations;
 - b) Guaranteed direct, equitable and meaningful opportunities for stakeholder participation in negotiations; and
 - c) Meaningful opportunities for civil society to submit public comments on draft texts and engagement with negotiations and negotiators.
5. Oppose the inclusion of any dispute settlement mechanisms in trade agreements.
6. Ensure consumer standards and protections are not lowered through regulatory cooperation
7. Support the inclusion of evidence-based agriculture, nutrition and food provisions to advance public health
8. Ensure climate change mitigation and adaptation policies and commitments and environmental protection policies and standards are not threatened or undermined by

- trade agreements. This entails ensuring policy coherence on climate change consistent with the post-2015 SDGs and UNFCCC/COP21 commitments.
9. Ensure that the ability of governments to protect the public interest or regulate health or health care is not limited or impaired by trade agreements
 10. Oppose any provisions, which may limit the access or affordability of pharmaceuticals, biologics, medical devices and/or medical products including:
 - a) Extending market or data exclusivity or patent protection for minor modifications of existing drugs (“ever-greening”);
 - b) Providing data or market exclusivity for biologics;
 - c) Adjustment of patent terms for patent prosecution or regulatory periods that delay entry of generic drugs into the market;
 - d) Patent linkage provisions that compel early patent enforcement and serve as a barrier to generic drug entry into market; and
 - e) Compromising national pharmaceutical benefits schemes;
 - f) Any provision which would undermine TRIPS safeguards or restrict TRIPS flexibilities including compulsory licensing;
 - g) Any weakening of direct-to-consumer advertising regulations or
 - h) Any limits on clinical trial data transparency.
 11. Exclude public services and especially public health and public education from all trade agreements
 12. Ensure the right of governments to regulate essential services such as education and healthcare at any time, including when such services are not provided by the government at the point of signing a free trade agreement.
 13. Continuously support collaborative research and improvements of its methodologies to study the impact of trade on health and its social determinants, and to wisely employ these study findings to improve existing and future trade negotiations and policies. Such research should include analyses of potential indirect effects of trade agreements on countries not directly participating in negotiations and should be used to inform negotiations to mitigate threats to global health.
 14. Ensure diagnostic, therapeutic and surgical procedures are exempt from patent protection when the machine, manufacture or composition of matter itself is not patented
 15. Support trade agreement provisions which would promote universal health coverage and equitable access to new modalities of health services delivery including eHealth, telehealth, mHealth and/or uHealth.
 16. The Members of the European Parliament (MEP) must ask the ECJ (European Court of Justice) to evaluate whether the dispute settlement mechanism fits with EU law before entering any major trade agreement.

IFMSA remarks that should a free trade agreement breach the calls outlined in this statement and should clearly endanger health care, we might have no other recourse but to oppose the treaty in question.

IFMSA therefore calls on members of the Federation (NMOs) and medical students to:

1. Advocate for open and transparent trade agreement negotiations with meaningful and equitable opportunities for stakeholder participation;
2. Participate in trade agreement negotiations as stakeholders in support of the principles described in this policy statement;
3. Engage with national government leaders to urge trade policies and agreements which advance rather than compromise health.
4. Encourage establishment of MoUs for collaborative advocacy with civil society partners in promoting trade agreements that favour health and access to medicines over profits.
5. Consider holding workshops, trainings and courses on trade and health as to promote education and advocacy around the inequitable distribution of money, resources and power that underlies the major social determinants of health.

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