

## **Position Paper on Trade and Health**

Andrew Bresnahan, Justin Neves, Inder Sahota, Sasha Langille-Rowe, Xochitl Hanson  
Pastran, Niel de la Plante, Benjamin Langer



**CFMS**  
Canadian Federation  
of Medical Students

**FEMC**

Fédération des étudiants et des  
étudiantes en médecine du Canada

## **Background**

### **i) Health and International Trade**

As the global economic system has become increasingly integrated, the health of populations is increasingly affected by international trade agreements. A joint study from the World Health Organization (WHO) and the World Trade Organization (WTO) has shown that policymakers in the fields of health and trade can benefit from collaborating to create coherent policies when it comes to key health issue (1). These issues include control of infectious diseases, food safety and security, tobacco control, healthy environment, access to medicines, health services, and biotechnology. The Lancet reinforces this link between health and trade when stating that “trade directly and indirectly affects the health of the global population with an unrivalled reach and depth” (2).

The Agreement on Trade Related Intellectual Property Rights (TRIPS) was the agreement created to internationally regulate Intellectual Property (IP) rights by creating a system of patent legislation and requiring countries around the world to comply with it. These patents were contested by countries, academics, and social movements who expressed concerns that a new intellectual property regime would drastically reduce countries’ capacity to address public health threats and ensure access to essential medicine. Efforts to reconcile these emerging IP norms with the public good and public health led in 2002 to the inclusion of public health exceptions in the Doha Declaration on Trade and Public Health. The Doha Declaration clearly stated that TRIPS “should not prevent members from taking measures to protect public health” and that the TRIPS agreement “should be interpreted and implemented in a manner supportive of WTO members’ right to protect public health and, in particular, to promote access to medicines for all” (3). Over 60 countries have used this flexibility to protect public health, most frequently to facilitate access to essential medicines (4).

However, public health advocates like MSF have observed that “the policy space to use these flexibilities is under relentless attack and in some countries has been shrunk by increasingly stringent IP provisions (“TRIPS-plus”) contained in free trade agreements, investment treaties, other binding legal instruments and through trade pressures” (4). There is strong evidence that drug manufacturer strategies like “evergreening” that extend the life of a patent through minor modifications, often with little or no effect on clinical efficacy, have a powerful effect on the availability of generic alternatives, access

to medicines, and the cost of pharmaceuticals for health systems and the societies that finance them (5). These practices illustrate the need for public action to ensure the protection of public health, including through access to essential medicines.

## **ii) The TPP and CETA's Challenge to Health**

Canada is currently negotiating two new multilateral trade agreements, the Trans Pacific Partnership (TPP) and the Comprehensive Economic and Trade Agreement (CETA). The TPP involves 11 Pacific Rim countries while the CETA involves only the European Union. Both agreements hold the potential to profoundly affect public health, the environment, and access to medicines in the negotiating countries by challenging the spirit of the Doha Declaration. These agreements may also establish a new global model of trade agreements, both in the form of negotiations and the content of the policy.

Based on leaked TPP text (6), it is clear that provisions being pushed by some negotiators would limit access to life-saving generic medications through enhanced patent protections and data exclusivity. Other concerning provisions may force practitioners in low-resource settings to choose suboptimal treatments for their patients due to fear of patent infringement for diagnostic, therapeutic, and surgical methods. Additionally, investor-state dispute settlement provisions may empower multinational companies to challenge national laws that protect public health and the environment if these laws are seen to impose an "unfair barrier to trade". In the context of tobacco and alcohol, this may undermine public health measures, such as laws regulating smoking-related advertising (7).

## **iii) Transparency, Democracy, and Accountability**

In last five years, several countries have initiated negotiations for bilateral and multilateral free trade agreements outside of the World Trade Organization framework. This signals an emerging global norm where countries prefer to negotiate agreements behind closed doors away from the scrutiny of civilian populations and the press. We are concerned that this lack of transparency and citizen involvement in the negotiations limits democratic dialogue on merits and drawbacks of such trade agreements.

## **iv) Case Studies**

### **a) Eli Lilly vs. Canada**

Canada recently attempted to fight for its citizens' rights to affordable and honest public healthcare by revoking the patents on Zyprexa and Straterra. Canadian

courts ruled to invalidate these patents because the drugs either did not live up to their promised utility or did not offer any medical advantage to other generic drugs on the market. In response to the court decision, Eli Lilly accused Canada of violating Chapter 11 of NAFTA and expropriating their property without proper compensation. This accusation led to a NAFTA formed tribunal to determine if Eli Lilly is entitled to the \$500 million they are demanding in compensation for the alleged expropriation (8).

NAFTA's ruling in Eli Lilly's favor would mean that Canada no longer has the authority to decide whether patented drugs actually confer the health benefits initially promised. This severely limits Canada's ability to hold drug companies accountable for the efficacy, safety, and utility of their drugs. If the Canadian government does not have the authority to determine when a drug is efficacious, safe, or competitive with generics it will lose a great deal of public control over the length and number of drug patents. For Canadian and global citizens this could lead to a situation of rising drug costs and decreased public scrutiny of pharmaceutical products.

#### **b) Novartis vs. India**

India, long a source of generic medications for the developing world, brought its intellectual property regime in line with international standards with its Patent Act. While through this legislation patents for medications were granted, some safeguards were put into place to stop the abuse of its patent legislation. One of these safeguards, section 3(d), prevents companies from gaining new patents for modifications of existing drugs. This section was the subject of a lawsuit by Novartis, one of the world's largest pharmaceutical companies, which wanted a patent granted for a modification of a chemotherapy drug. Novartis claimed section 3(d) violated WTO rules and India's constitution. India's courts ruled against Novartis in 2007, and while Novartis appealed to India's Supreme Court, this too ruled against them in 2013. While in this case, India's Supreme Court was able to uphold the law protecting public health, trade agreements that have the kind of intellectual property provisions being discussed in TPP negotiations would make it increasingly harder for countries to decide in favor of public health over pharmaceutical profit (9)

#### **v) Summary**

We, the Canadian Federation of Medical Students, affirm our belief that trade policy should aim to promote public health and expand access to medicines. Trade

agreements, such as the TPP and the CETA, should not prioritize multinational corporate profits over patients and consumers around the world, nor create barriers to accessing the resources necessary for a healthy life, including but not limited to essential medical treatments. As future health professionals it is our duty to use our voices to improve the health of populations around the globe by positively influencing the global economic system.

## **Principles**

1. International trade agreements should prioritize public health and access to medicines above commercial interests.
2. International trade agreements should promote environmental protection and seek to curb climate change.
3. Affordable and accessible medicines are essential to tackle, control and prevent the global burden of both communicable and non-communicable diseases.
4. Global decision-making, trade and economic institutions should become more transparent, accountable and democratic.
5. Strong international and national tobacco and alcohol control measures are necessary to protect public health.
6. Investor-state dispute settlement provisions are anti-democratic by allowing corporations to challenge government policies and actions, and should not be incorporated in trade agreements.
7. Medical students and health professionals play an essential and inevitable role in reducing health inequity and in promoting access to affordable medicines.

## **Recommendations**

CFMS calls on governments to:

1. Ensure any and all trade agreement negotiations are open and transparent with meaningful opportunities for stakeholder engagement.
2. Prioritize the health of nations and populations over commercial interests in all trade agreements.
3. Strengthen their respective capacity to work collectively to recognize and advance public health goals in trade policy.
4. Support research to assess and evaluate the impact of trade on health, and use this evidence to inform trade negotiations and policy.
5. Uphold TRIPS safeguards and allow the use of TRIPS flexibilities to promote access to medicines and public health while opposing TRIPS-plus protections.
6. Oppose any provisions that would further limit access to or affordability of medications including:

- a. Extending market exclusivity or patent protection for minor modifications of existing drugs (“ever-greening”);
  - b. Providing data 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.
7. Ensure diagnostic, therapeutic and surgical procedures are exempt from patent protection when the machine, manufacture or composition of matter itself is not patented;
  8. Encourage the exemption of tobacco and alcohol from trade agreements;
  9. Oppose investor-state dispute settlement provisions in trade agreements
  10. Ensure trade agreements promote environmental protection and seek to curb climate change.

CFMS calls on members of the Federation 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. Establish collaboration with MSF Access Campaign and the Universities Allied for Essential Medicines in promoting trade agreements that favors health and access to medicines over profits.
4. Consider holding workshops, trainings and courses on trade and health as to better understand the inequitable distribution of money, resources and power that underlies the major social determinants of health.

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