

NOTES FROM UK PUBLIC HEALTH NETWORK HEALTHY TRADE CONFERENCE

23 March 2018

Conversation 1: What do we know about trade & investment agreements?	
Led by	Summary
<p>L. Alan Winters UK Trade Policy Observatory / Sussex University</p> <p>Presentation here</p>	<ul style="list-style-type: none"> • UK Trade Policy Observatory role is to comment on policy considerations and to inform government. • Economic growth partly determined by trade and investment – health related to what we can afford. • Trade depends on trust. Trade & investment agreements (TIAs) require that each partner knows how the other will behave with no arbitrary rule-changes. Cooperation may mean restricting behaviour. • TIAs that go beyond tariffs are designed to sort out customs and trade peripherals (IP) and reduce the cost of trade and commit to level playing fields in defined sectors. • Issues: Who writes the rules – Government? Corporations? Difficult to reverse TIAs but the UK has the least constrained government. Regulations are rooted in history and are very sensitive. • Irritants: <ol style="list-style-type: none"> 1) Conditions on how to regulate must be non-discriminatory but law is unclear on what is / isn't legitimate. 2) Producers from outside the country are not at the negotiation table 3) Public services carve out is mostly clear but the NHS buys in services and therefore must be willing to buy from trading partners. 4) dispute settlement processes often give multinationals advantage over national companies and hand-picked lawyers aren't independent and do not have to respect precedence. <p>Discussion</p> <ul style="list-style-type: none"> • Intellectual property: Trade can occur without harmonising IP – only brought into the system through TRIPS. Useful to keep out fake good but creates issues over country of origin (eg: everyone can make “cheddar” cheese). Duration of copyright should not be arbitrated by trade agreements. Capital flow: originally controlled but changed with the EU – eg compare 1970s travel to Europe with travel in 1980s onwards. Freedom of movement: EU freedom of movement is a separate issues. This goes beyond any other trade agreement and gives EU citizens access to EU labour markets. Trade and investment agreements only provide access to labour market in some sectors – eg through intercorporate transfers or for some professions, providing local conditions are met on professional licencing. Investor-State Dispute Settlement: European Court of Justice won't let its powers be compromised and therefore is unhappy with the EU investor court. However, it may be possible for the ECJ to carve out space for an investor court. Brazil has ombudsman system and has never settled an ISDS decision. UK now facing trade-off – constraining sovereignty may mean others might not want to invest in your services/products – eg

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	<p>some countries do not invest in China because they lose IP.</p> <ul style="list-style-type: none"> • Governance: Every country has its own governance. The European Council gives a brief to M. Barnier with decisions then ratified by Parliament and Council – must check each negotiating clause and therefore negotiating with the EU is very lengthy business. UK has had no standing in the process as it is seen as an EU competence. Anything impinging on national courts is considered a national competence and has to be checked at national level first but this is a notional process in the UK, dealt with by Parliament as a statutory instrument without debate unless there are objections. May need more open process post-Brexit that involves Parliament creating a trade brief, taking account of devolved powers. Government would do this on behalf of the Crown. In the USA, Congress now authorises negotiation on its behalf and only votes yes/no rather than go through every clause. Conclusion: • Need an infographic on why public health is important to trade • Need to develop a pragmatic relationship with decision-makers on trade.
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Conversation 2: What do we know about industry positions?	
Speaker	Summary
<p>Modi Mwatsama</p> <p>UK Health Forum</p> <p>Presentation here</p>	<ul style="list-style-type: none"> • Food sector is the largest manufacturer in the UK and would have preferred to stay in the EU. Risk that higher tariffs will raise prices and that lower tariffs will see less UK production and increased imports. • Concerns: divergence from EU standards – eg beef hormones / chlorine chicken were banned by EU • Wine & Spirits Industry: consider EU regulation fit for purpose and have offered to develop model TIA. Public health could adopt similar strategy. • British Beer & Pub: think EU labelling is good, do not want MUP and a lighter-touch regulation • Tobacco: no domestic market but want to lower personal tobacco import limits and reconsider the tobacco products directive • Food industry: challenges over nutrition/warning labels as a barrier to trade through discrimination, industry burden, lacking evidence etc. See Codex as gold standard rather than minimum. • TIAs stifle public health through: <ol style="list-style-type: none"> 1) Direct legal challenges that are very costly to government (eg plain packs) 2) WTO: companies need a sponsoring government in order to raise an issue but support has come from the Dominican Republic and Ukraine. 3) Influencing governments: eg US not ratified the FCTC. • Industry has central role on US trade boards – preventing warning symbols/shapes/colours on packaging.

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- Reduce trade-related challenges:
 - 1) Frame objective with the setting – eg labels providing information not to reduce obesity
 - 2) Precautionary principle to address evidence challenge
 - 3) Engage with trade policy makers
 - 4) Reduce trade restrictiveness through time-frame (eg 3 years to implement labels that can be placed anywhere on a product)
 - 5) Advocate for global standards
 - 6) Evaluate effectiveness of measures

Discussion

- Public health has not had a say in Brexit yet, unlike environment – need to make voice heard
- Precautionary principle isn't included in the EU Withdrawal Bill. Agriculture consultation defines what is "public good" – should include public health.
- Do no harm, based on Article 168 of Lisbon Treaty, used to decide UK plain pack challenge. Ministerial assurance of no rollback on standards but needs further action – can support Faculty of Public Health campaign.
- Lack of government control on accountability & scrutiny. No provision for rejection of trade deals in the Trade Bill.
- BMA working on high level principles for trade
- Need to define what is an acceptable risk on each product – Scotland has sunset clause to provide something is bad within 5 years but risk is geographically/culturally sensitive.
- Politically sensitive research would need independent funding.
- Where should expert committees fit in (eg SACN, COMEAP)?
- How do we get engagement? Where does this happen?

Conclusions

- Ask Department of Health & Social Care for set of principles on trade. Don't try to influence DExEU.
- Frame need to address commercial determinants of health as essential to economic growth.
- May be helpful to define precaution and the level of risk considered acceptable but remember that ambiguity can also be useful for public health.
- Ensure that there is agreement across public health that trade principles agree with each other.

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3. What have we learned so far?	
Led by:	Summary
Ruth Hussey	<ul style="list-style-type: none"> • View trade through health lens – promote this as economic benefit. • Use legislative processes underway –eg do no harm campaign & precautionary principles. • Take account of devolved admin – UK has international responsibility but Wales has explicit policy to grow its food industry by £20bn – how does this reconcile with the Future Generations Act? • Role for scientific bodies like SACN to create good governance but need to find allies. • What are the health protecting clauses we would like to see. Adopt industry approach to define these – likely to be “cut and paste” into TIAs. • Time for a public health manifesto is over – concentrate on specifics. • Need a unified voice and to speak clearly. • DHSC is focussing on health protection but there is need to include the public good in all legislation. • Create language of health in all policies, pay for mitigation, prevent problem occurring. • UK convening four nation TIAs – can Wales say this must be led by Future Generations Act. • Public health as a defensive role in TIAs to mitigate industry-offensive actions but would other avenues deliver more for public health? Eg developing Codex. • Can't ignore TIAs so make them back up public health – need to be compatible with nation's health.

Conversation 3: What do we know about the impact of trade & investment agreements on non-communicable diseases	
Led by:	Summary
Mark Weiss Faculty of Public Health Rhosyn Harris Oxford School of Public Health Presentation here	<ul style="list-style-type: none"> • Faculty of Public Health has long interest in trade – raising concerns about TTIP. • Health impact assessment of TPP identified number of public health challenges. • Issues over goods and services: 1)Markets could be flooded with unhealthy goods 2)Standards could be lowered through competition on cost 3)Food formulation after Brexit. • Can't address everything so need to prioritise. Start with what we want. • Use Australia model on tobacco control and be prepared to accept

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	<p>industry challenges.</p> <ul style="list-style-type: none"> • What are the criteria for determining which risk is more important? How will the impact on public health be measured? Need to frame the economic benefit of health – if UK becomes poorer, its health will be poorer. • Important to uphold precautionary principle. • Lack of democratic control, openness and transparency present issues, especially as there is no rolling back on trade deals. TIAs don't recognise many treaty provisions – these need including in governance arrangements. • Right to regulate needs protecting. Process of dispute settlement absorbs time & resources and leads to delay in implementing anything. If the claim is lost then likely policy will have to change. • Need to define public health as a public good – Scottish Human Rights Commission is looking at public good in relation to human rights. • Work with others (eg environment) as they also recognise the need to include health.
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What are the next steps?	
Chaired by:	Summary
Ruth Hussey	<p>Solutions</p> <ul style="list-style-type: none"> • Important not to be England-centric. Forthcoming paper from Welsh Government on public services provides opportunity to include health message. • Identify model governance framework – engaging civil society so all sectors sign up. • Parliament already been asked to review trade deals with some amendments to the Trade Bill. • Explore mechanisms of the Future Generations Act as a lever. • UK has signed up to the UN Sustainable Development Goals. This also underpins the Future Generations Act. • Public health could be included in the new environment body currently being set up by Government – no need to set up new processes. • Crystallise public health requests – can't be fuzzy. Important to define public health as a public good. • Build momentum – don't assume Brexit being dealt with by Brexit teams. Can build public health into other policies (medicines supply chain / antimicrobial resistance work etc.) • Use initiatives such as childhood obesity plan to future-proof actions. • Frame trade through agriculture, economy etc and start including

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	<p>specifics.</p> <ul style="list-style-type: none">• Talk to government often and be supportive of the agenda.• Learn from levers of other nations and their ability to talk to the UK government.• Can't add difficulty to the overall process and need to make requests positive.• Good work has been done on TIAs so don't reinvent. <p>Next steps</p> <ul style="list-style-type: none">• Little time to get public health on the trade table – need to be aware of Government timetable.• Develop unity of voice• Urgent need to agree public health framework – this would include: do no harm, no rolling back, positive future on leaving EU. Needs to be broad enough for everyone to unite behind but specific enough that it can be easily incorporated in a TIA.• Opportunity to embed public health approach in governance.• Use existing opportunities – eg Trade Bill, new environment body.• Identify who we need to influence. Does this need public campaign? Who do we need to reach? Young people? Public health workforce? Politicians? Must make sure messages land in Parliament.• Develop public health card with messages that can be repeated by everyone when opportunities arise. <p>Immediate actions</p> <ul style="list-style-type: none">• Identify responsible person in Scottish Government – generally supportive of health.• Connections to other groups (eg through Sustain and Trade Justice Movement).• Continue to support Faculty of Public Health do no harm campaign.
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