

HEALTHY TRADE?

A briefing paper for the UK Public Health Network

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About the UK Public Health Network

The UK Public Health Network provides a unique forum for public health professionals in the UK to agree priorities for improving the health of the public and to speak with one voice. It works collaboratively and in partnership with the UK’s umbrella and membership public health organisations, including the statutory agencies across all four countries.

Disclaimer

Readers should be aware that each item covered here is a large subject in its own right. The summary presented in this paper does not do justice to the range and depth of analysis that is available.

Every effort has been made to retain a neutral position on Brexit and wherever possible views on both leaving and remaining in the EU have been taken into account.

Any unintentional bias or inaccuracy is the responsibility of the author.

1. Introduction

- On 23 June 2016 the United Kingdom voted to leave the European Union. The details of the UK's exit and nature of future working relations with the EU are still the subject of much speculation. However, it is clear that one result of leaving the EU will be the need for the UK to develop its own trade agreements and trading relationships.
- Population health and wellbeing is not achieved in isolation but by assessing the impact of all policies, including trade. The UK's socioeconomic conditions will affect the degree to which the country will be able to manage its new trading relationships once it has left the EU. Health should be deemed the UK's greatest wealth.
- Despite a vast wealth of literature on the subject of trade, much of which points to common ground between health and trade, it is not an area in which many UK public health professionals appear to have been very active. There is a window of opportunity for the public health community to 1) deepen its understanding of how trade impacts health and 2) establish a position on the kinds of protections needed in order to protect and improve the health and wellbeing of the public across the UK.
- This briefing looks at the nature of trade and investment agreements, the implications for new trading arrangements for the devolved nations, the public health issues with trade deals and some potential means of redress.
- This briefing is based on an extensive guide to trade and investment agreements that covers the mechanisms of trade and the impact on health and wellbeing, some of the major multilateral agreements, lessons for public health from key disputes and a trade dictionary. See: [A public health guide to trade and investment agreements: Aesclepius meets Mercury](#) London: UK Public Health Network, 2017.

2. About Trade and Investment Agreements

- Trade and investment agreements (TIAs) are contractual arrangements between two or more nations over trade in goods and /or services that remove tariffs and other barriers to trade as well as agreeing quotas. The aims are often stated as being to protect consumers, raise standards of living, prevent the spread of disease, protect the environment and consider sustainability.
- "First generation" TIAs focused on removing or reducing tariffs. As import duties declined, markets opened up to include a wider range of services as well as goods. "Second generation" TIAs now cover goods, services, investment, and public procurement among others. In many respects, international trade agreements replace government decision-making in various areas of public service, including health and environmental protections.¹
- Trade negotiations are conducted in secret and, despite attempts at clarification of issues by the WTO in its agreements, the process is still perceived as tantamount to "chasing a black cat in a dark room, blindfolded."² Texts of the proposals are rarely

made available for public discussion and often shared only with industry-dominated trade advisory committees.

- There are three stages to establishing trade deals:
 - Mandate: to open talks between governments.
 - Negotiation: on the terms. A basic agreement averages four years to negotiate with comprehensive TIAs taking up to a decade to complete.
 - Decision: on the final treaty. Final texts of trade deals are frequently 1500-2000 pages long.
- The two basic principles of the World Trade Organization (WTO) are:
 - Trade without discrimination – using most-favoured nation status to ensure all members treat each other equally.
 - National treatment – treating imported and domestic goods equally once they have entered the market.
- The WTO has the power to decide what constitutes trade discrimination; its agreements are often used as the starting point for bilateral and regional trade and investment agreements.
- Five TIAs currently being negotiated or awaiting ratification cover more than 60 countries and account for around 60% of global gross domestic product.³

3. Trade and the devolved jurisdictions

- Trade arrangements post-Brexit are likely to be negotiated for the UK as a whole, unless any of the devolved nations seek independence from the UK. However, trade agreements may have a different impact on each nation.
- Government procurement is a devolved responsibility and as such may present particularly complex issues if the UK opens up this area up to market liberalisation.

Northern Ireland

- If a seamless border between Ireland and Northern Ireland is not retained, there is a substantial risk of economic insecurity because of the daily flow of people and goods.
- Future trading arrangements in food and agricultural products form some of the greatest concerns. The province currently exports 55% of its products to the EU⁴ with 26% of its milk production going to the Republic of Ireland.

Wales

- 41% of products from Wales are exported to the EU.⁵ Trade in food and agriculture is also of great concern to Wales as these also form a significant percentage of the nation's outputs.
- Brexit raises fewer constitutional issues for Wales than for Northern Ireland or Scotland, creating concern that Wales will have less leverage at the negotiating table.

Scotland

- 39% of products from Scotland are exported to EU countries. The EU is Scotland's most important market for food and drink.
- Foreign direct investments have also been highlighted as being of particular importance to Scotland, with an estimated 40,000 jobs being created over a ten year period.
- Scotland has declared a preference for remaining within the European Economic Area as being the least damaging to Scotland's economy.

4. Trade and health

- TIAs have the potential to carry significant risks to the health and wellbeing of the population. International trade in alcohol, tobacco, medicines, and food for example could have significant impacts in policy-making, health outcomes, and impacts on vulnerable groups and health determinants.⁶
- Non-communicable diseases (NCDs) are the greatest burden of ill-health in the UK. As such, they are a threat to global and domestic economies because of the impacts of ill-health on reduced workforce productivity, increased cost to employers of employee ill-health.⁷

- TIAs present challenges to addressing NCDs in particular, including:

Intellectual property protections that preserve pharmaceutical patents and secure industry's rights to protect the licensing, promotion, labelling and trade-marking of its products, regardless of any health consequences.

Regulatory chill where legislative measures are hindered by the threat of, or actual, trade disputes which can be both lengthy and very costly. Even domestic actions such as food "traffic light" labelling are viewed as a potential barrier to trade.

Trade disputes with resolution systems that frequently favour commercial interests over public health and often prefer current scientific evidence over the precautionary approach.

Lack of transparency and openness, both in treaty negotiations and dispute resolution processes, that make it difficult to present public health advice and evidence to trade negotiators.

Trade "creep" where the impact of trade reduces the policy space in which domestic governments can work to protect and improve health and wellbeing.

- Domestic public health measures must:
 - Be effective. No less trade-restrictive measures to achieve the same public health purpose must be available, however, politically or economically unfeasible.
 - Not be a "disguised restriction on international trade" or "arbitrary or unjustifiable discrimination"⁸

- Appendix 1 summarises the issues for alcohol, employment, environment, inequalities, food & nutrition, gambling, NCDs, sustainability, and tobacco. Lessons from some notable trade disputes are included.

5. Countervailing Trade and Investment Agreements

Regulatory environment

- Although often used retrospectively rather than pre-emptively, legislation may provide a means by which TIAs can be health-proofed. For example:
 - The EU procurement directive and the UK Social Value Act 2012 provide both the framework and legal requirement to consider how government contracts can be used to improve social, economic and environmental wellbeing.
 - Taxation has been considered less trade restrictive than product labelling.
 - Competition law may provide a means of challenging anti-competitive practices from pharmaceutical companies, particularly over pricing.⁹

Carve outs and commitments

- The opportunity to carve out or remove some areas from international trade exists at the time of negotiation. Once a market has been opened to trade and investment, damages are usually liable if that sector is subsequently withdrawn. Tobacco could be carved out in particular but other issues of public health concern could be considered.
- Individual public health measures, such as advertising bans or health warnings on food and drink labels, need to be specified at the time of negotiation to avoid potential trade violations.
- Expectations of global trade may be managed by documenting specific public health commitments in trade deals, such as investing in health and nutrition.

Health impact assessment of TIAs

- Health impact reports are designed to inform decision-making by reporting on the potential health consequences of a policy. A health impact assessment (HIA) was conducted on as much of the text of the Trans Pacific Partnership TIA as was available at the time.¹⁰ It found the potential for negative impacts as a result of negotiated deals covering food, alcohol, medicines and tobacco, indicating a need for greater use of HIA in trade and investment agreements.

International standards

- International standards are often referenced by dispute settlement panels, although the WTO Sanitary and Phytosanitary Agreement accepts that domestic standards may exceed those agreed internationally. Standards can include:

Right to health: this approach has been used successfully in trade disputes with pharmaceutical companies over access to antiretrovirals to manage HIV/AIDS.

Framework Convention on Tobacco Control: used in the 2016 ruling in the Philip Morris vs Uruguay dispute to prove the “reasonableness” of Uruguay’s tobacco control measures.

Codex Alimentarius: used where there are disputes over food safety. However, this fell short of supporting the EU’s precautionary ban on importing either beef from cattle treated with growth hormones or chickens washed in anything but water.

Sustainable Development Goals: there is United Nations agreement to implement the SDGs through a commitment to sustainable trade.

Doha Declaration 2001: WTO members expressed a commitment to interpreting the Trade related Aspects of Intellectual Property Agreement (TRIPS) in line with public health and laying responsibility on claimants to prove that a country has a chronic or acute public health emergency that necessitates trade or service restrictions.

Transparency

- Greater openness in the way that TIAs are negotiated and trade disputes are resolved would help address concerns at the potential impact on population health and wellbeing.

6. Final thoughts

- “A healthy population is an engine for economic growth” and should be considered a capital resource in the economic process.¹¹
- As trade often supplants health in government, the public health system needs to make its voice heard through an increased understanding of trade and use of the language of trade. In particular, there is a need to establish relations with the newly formed [UK Trade Policy Observatory](#) set up to address the challenges of trade post-Brexit.
- Lessons from trade disputes indicate a need for :
 - TIAs to be based on the highest possible health standards from the outset.
 - international standards to allow for continuous improvement to reflect developments in scientific knowledge and understanding.
- The public health system can contribute to the development of healthy TIAs by raising awareness of the need to avoid compromising government’s ability to protect and improve public health and wellbeing. This could include:
 - Addressing NCDs through regulating access to unhealthy foods, alcohol and tobacco without being trade-restrictive or discriminatory.
 - Supporting workplace wellness.
 - Safeguarding environmental protections.
 - Developing the sustainability agenda.
 - Building on current international standards.

7. Next steps

- The next step for the UK public health system should be to produce a consensus position on securing health and wellbeing in trade and investment agreements post-Brexit.
 - Consideration should be given to:
 - The key concerns that trade and investment agreements present to health and wellbeing.
 - The key trade protections required for the health and wellbeing of the public across England, Scotland, Wales and Northern Ireland.
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Appendix 1: Trade and public health perspectives in key determinants of health

Issue	Trade perspectives	Public health perspectives	Lessons from disputes
Alcohol	<ul style="list-style-type: none"> Comprehensive Trade and Economic Agreement (CETA) between the EU and Canada will eliminate all import tariffs on wines and spirits with the potential for increasing the supply of cheaper products. The EU Food Information Regulations exempt alcoholic beverages from listing ingredients or allergens. 	<ul style="list-style-type: none"> Regulatory chill seems to have led Australia not to pursue warning labels about drinking in pregnancy. Free trade increases competition, lowers prices and is likely to lead to increased consumption. 	<ul style="list-style-type: none"> Taxation has been argued to be a less restrictive measure than minimum unit pricing. The EU has found MUP to be acceptable if no less restrictive measure is available. Advertising bans for alcoholic beverages are only non-discriminatory if declared at the time of opening the market. Alcohol-related disputes likely to rise as producers focus on trade liberalisation and challenge any measures that restrict availability.
Employment	<ul style="list-style-type: none"> UK has an economic advantage at present but is less competitive for importers. Regional shifts in job patterns following new TIAs is hard to predict and impact on jobs may differ by sector. Potential for TIAs to improve sustainable employment. 	<ul style="list-style-type: none"> Concern that economic insecurity has been shown to rise with trade liberalisation, leading to increasing levels of stress and chronic diseases. Protection of workers' rights has been stated as a key principle for the UK government in Brexit negotiations. Recent comprehensive TIAs have either not included any labour protection or not provided enforceable sanctions where such protections have been included. 	<ul style="list-style-type: none"> There are no apparent disputes with employment or labour rights at their heart.
Environment	<ul style="list-style-type: none"> WTO recognised importance of protecting the environment from its outset and is currently negotiating an environmental protection agreement. Technical barriers to trade provide for environmental protections. Regional trade deals have ability to work for environment, provided these share 	<ul style="list-style-type: none"> Trade has potential to impact environment through scale, composition and technique of production, transport or if price changes favour a more polluting industry. CE marking and REACH regulations governing health and safety of products within the EU will need clarification on leaving the EU; a means of keeping up with future changes to these EU systems 	<ul style="list-style-type: none"> Climate-related issues have formed only a small number of trade disputes but there are increasing disputes over biofuels and renewable energy – such as the EU's Renewable Energy Directive that appears to favour rapeseed oil producers in Spain and France.

	<p>the same goals.</p> <ul style="list-style-type: none"> • The REACH regulations for chemicals are considered burdensome to industry but it would be of limited value to the UK to trade with the EU without recognising the REACH system. 	<p>in order to avoid having to make both an EU and rest-of-world version will be required. There is a small risk of chemicals previously banned by the EU being reinstated in the UK – although health and safety concerns are likely to prevent this.</p>	
Food & nutrition	<ul style="list-style-type: none"> • Global supplies of food spread the risk, create diversity and keep prices competitive. • Processed, foods are attractive to the market because of their low production costs and long shelf life. • Food and beverages are currently well protected within the EU and there is a high risk of initial disruption on leaving the EU. • Lower tariffs on leaving the EU would lower prices for consumers but this opens the market to greater competition with the risk that food producers look for cheaper ingredients and affect food composition. • The food and beverage sector is subject to a number of non-tariff barriers, covering product labelling, definition, and taxation. • CAP has provided some measure of food and nutrition security and UK farmers would be unable to compete in the market without such subsidies. • EU sugar quotas are due to end in September 2017 and are likely to result in an increase in supply and lower consumer prices. • Sanitary and Phytosanitary Agreement provides for measures to be taken to 	<ul style="list-style-type: none"> • Transnational food companies and supermarkets change food availability, often increasing access to and affordability of processed foods. • Need to ensure consumers have access at all times to sufficient, safe and nutritious food for an active and healthy life at affordable prices but the right to food is considered protectionist by WTO members. • Food needs to be produced in an environmentally-friendly manner and to be resilient to crises. • CAP has not supported farmers in growing fruit and vegetables to same extent as beef and dairy, creating an opportunity to reform CAP to deliver a more sustainable diet. • Fisheries policy will need reforming to improve sustainability. 	<ul style="list-style-type: none"> • A third of all WTO disputes are food-related. • The long-running dispute between the EU and US over importing chicken that has been washed with chlorine demonstrates a reluctance to use the precautionary approach. • The UK's voluntary "traffic light" labelling has been investigated as a trade violation because of its potential to exclude small producers and discriminate against high salt and fat products from other countries.

	<p>protect human, animal or plant health from risks from additives, contaminants, toxins, veterinary drug and pesticide residues, or other disease-causing organisms in foods or beverages.</p>		
Gambling	<ul style="list-style-type: none"> • Gambling is considered subject to trade rules with services operating across borders. 	<ul style="list-style-type: none"> • The lack of harmonisation across the EU may give an opportunity to the UK to establish its own controls. 	<ul style="list-style-type: none"> • A dispute between Antigua and the US found that online gambling is a recreational activity and therefore is not subject to restrictive trade measures. • The ruling also declared that exemptions on public safety grounds must be consistent with domestic legislation in order not to be discriminatory.
Inequality	<ul style="list-style-type: none"> • WTO finds that trade and foreign direct investment have the potential for a significant impact on income distribution within a country. • Socioeconomic conditions affect the degree to which it is able to manage global trade. • TIAs aspire to “raise living standards, promote economic growth and stability, create new employment opportunities and improve the general welfare. 	<ul style="list-style-type: none"> • TIAs may restrict the policy space for governments – although there is no guarantee that such space would be used to improve health and wellbeing. • TIAs affect health services through fragmentation and greater geographic variation in access and quality. • A healthy population is an engine of economic growth and a capital asset. 	<ul style="list-style-type: none"> • Socioeconomic consequences of trade do not seem to have been the subject of a trade dispute.
Infectious diseases	<ul style="list-style-type: none"> • Sanitary & Phytosanitary Agreement provides for the restriction of goods to prevent and manage the spread of infectious diseases. • Globalisation leads to greater cooperation between countries to contain and manage the spread of infectious diseases. 	<ul style="list-style-type: none"> • Under the Trade Related Aspects of Intellectual Property Rights (TRIPS), emergency protocols can be used for compulsory licensing to override patent-restricted medicines that are needed to manage a current emergency. • The Doha Declaration in 2001 states that it should be up to the claimant that a public health emergency exists, noting that such a crisis may be acute or chronic. 	<ul style="list-style-type: none"> • No trade disputes appear to have arisen but any health protecting measures must be applied fairly, least restrictive possible and time limited in order to be non-discriminatory. • However, a number of disputes relate to compulsory licensing where nations have used this to provide medicines for public health emergencies such as HIV/AIDS.

Medicines	<ul style="list-style-type: none"> • Strong intellectual property protections provide for extended patents and increasing commercial confidentiality that protects results of clinical trials, enabling some of the huge development costs to be recouped. • Reduced regulatory environments could improve innovation and reduce the time taken for a product to reach the market. 	<ul style="list-style-type: none"> • Trade arrangements can shift pharmaceuticals from “public good” to one that promotes private investment. • Extended patents restrict the development of cheaper generic equivalents, making affordable access to medicines a significant issue, and a potential issue of the right to health. 	<ul style="list-style-type: none"> • Although pharmaceutical companies are quick to claim a trade violation, they have backed down in the face of global censure that would have cost more to their reputations.
Non-communicable diseases (NCDs)	<ul style="list-style-type: none"> • Reduce economic productivity through ill-health and reduced workforce productivity, increased cost to employers of employee ill-health. • Increasing consumer demand for healthier products. 	<ul style="list-style-type: none"> • Foreign investment is strongly correlated with greater exposure to unhealthy foods, alcohol and tobacco. Increasing availability and accessibility results in increased consumption and an increase in NCDs. 	<ul style="list-style-type: none"> • Public health measures to address NCDs (eg tobacco labelling) can be upheld through the Technical Barriers to Trade and the Sanitary & Phytosanitary Agreement. • But, disputes are not always able to separate public health concerns from action considered protectionist.
Sustainability	<ul style="list-style-type: none"> • WTO recognises key role trade plays in achieving SDGs. • UN agreed the development of international trade to support sustainability. • TIAs now working on including government procurement contracts. 	<ul style="list-style-type: none"> • Trade is referenced in the following SDG goals: 2, 3, 8, 9, 10, 14, 15, 17. • Unclear what action WTO would take. • Social Value Act (2012) obliges government contracts to consider social, environmental and economic impacts. 	<ul style="list-style-type: none"> • By 2012, only three disputes relating to procurement had been raised. However, this could rise if more TIAs cover procurement.
Tobacco	<ul style="list-style-type: none"> • Framework Convention on Tobacco Control is consistent with WTO principles. • Tobacco companies have extensive financial & legal resources to support lengthy challenges to protect their rights. • Intellectual Property rights protect trademarks and trade secrets. • TIAs protect “fair and equitable treatment” of foreign investors. 	<ul style="list-style-type: none"> • Free trade agreements remove barriers to trade, suggesting that TIAs are incompatible with trade in tobacco and it could therefore be carved out of TIAs. • All governments across the UK currently exceed EU directives in tobacco control, by maintaining higher excise duties and introducing plain packaging. 	<ul style="list-style-type: none"> • Although outside most TIAs, the FCTC has been used as an international standard on tobacco control in trade disputes. • Dispute rulings have found in favour of tobacco control measures as reasonable public health protections, providing these are not discriminatory.