Public health and the Transatlantic trade and investment partnership

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What would you do for an extra €120 billion a year? That’s an extra 0.5% GDP across the European Union (EU), or an extra €545 per household per year.1 If you are a European politician facing poor economic conditions, you might be tempted by an international agreement that promises growth, political capital and campaign finance contributions—all with minimal pain. The EU is currently negotiating such an agreement with the United States: the Transatlantic Trade and Investment Partnership (TTIP).

Public health advocates should be wary of TTIP, which carries the risk that important public health protections and principles—from access to essential medicines and medical procedures to tobacco control, food and medical device regulation—could be hampered in exchange for the promise of economic gains. To call TTIP a ‘trade deal’ is to ignore some of its most important features with big consequences for health: regulatory convergence, measures allowing foreign investors to sue governments and strong intellectual property protections.

Regulations with important implications for public health are likely to be affected by the TTIP negotiations. With the exception of agriculture and textiles, traditional barriers to trade between the EU and the USA (such as tariffs) are relatively low. That leaves regulatory barriers to trade—differences in the standards required for products and services sold in the two regions and the way in which they are applied—as a key target for negotiation.

The EU claims that the standards of protection given to public health by the Union and the laws of EU member states will not be diluted by TTIP.2 But this promise may be difficult to keep. Making regulations comparable across borders is practically difficult and politically fraught, with the consequences far from clear. Experts close to the policy process acknowledge that the EU, which has higher standards in many cases, will have to adopt a defensive stance on health issues.3 Through past actions at the World Trade Organization, the USA has demonstrated opposition to EU policy in areas such as food safety and environmental health. The range of issues with public health consequences that could be affected by TTIP is arguably much broader. How would the EU respond under pressure to adopt a more US-centric approach to the scientific evidence that underpins public health rules rather than the precautionary principle? Or to pressure to drop proposals by the European Medicines Agency to publish more clinical trials data?

Second, TTIP is likely to impact health by strengthening the ability of multinational corporations to raise legal challenges against public health regulations. The EU is supporting the inclusion of controversial Investor-State Dispute Settlement (ISDS) measures in the TTIP. ISDS is common in trade agreements and allows foreign investors to sue governments who have allegedly broken their trade commitments. ISDS is damaging because it can be used to challenge democratically created regulations, because arbitration is held in private, and because it can allow companies to bypass national courts. Multinational tobacco firms are currently using ISDS to challenge democratically created tobacco control regulations in Australia and Uruguay, despite national constitutional court rulings in both cases supporting the regulations.4

Third, the TTIP is likely to contain strong protections for intellectual property (IP) holders such as pharmaceutical and medical device companies. Although TTIP negotiations began this year, the USA is much further along in negotiating a similar deal—the Trans-Pacific Partnership (TPP). Thanks to Wikileaks, the public has been able to access text from the TPP that confirms the USA’s aggressive stance on IP. In the draft, the USA pushes for patents for medical procedures, extensive data exclusivity for medicines and measures promoting ever-greening of patents. There is no reason to expect that the USA won’t push for similar clauses to be included in TTIP. Nor should we expect the EU to oppose them.

Finally, the way the negotiations are structured is problematic. The EU and the USA interact on trade issues through a well-established transatlantic dialogue process. The dialogue is designed to allow consultation with non-governmental organizations, but consultation mechanisms for business have been systematically weaker than those for consumer groups, labour and environmentalists. Public health advocates do not have, and never had, their own dialogue mechanism.

Are the projected gains from the TTIP overly optimistic? Almost certainly. Nevertheless, they reflect attempts by officials in Brussels to add momentum to transatlantic trade diplomacy in hard economic times. The risk for public health is that key principles and regulations will be viewed as legitimate bargaining chips in attempts to negotiate economic gains. Whether the EU negotiates directly on health is a moot point—the TTIP negotiations, in shaping the EU’s regulatory environment and the balance between public and private interests in Europe, have strong implications for European public health.

References