

IMPACT OF TRADE AND INVESTMENT AGREEMENTS ON FOOD AND NUTRITION

Dr Anne Marie Thow, University of Sydney, Australia

Food represents a significant component of trade and Gross Domestic Product (GDP), and is thus an economic as well as a health issue. The food supply chain in the EU, for example, generates around 15% of total EU employment and 7% of the EU GDP.¹ New or proposed regional trade and investment agreements, such as the Trans-Atlantic Trade and Investment Partnership (TTIP – currently suspended), thus have substantial implications for the food environment.² These agreements govern trade in food and food-related services (in the TTIP, this falls under ‘Market Access’), the food-related policy options available to governments (‘Regulatory cooperation’), and protection for investors in the food supply (‘Rules’).³

Trade and investment agreements impact upon the food and nutrition environment relevant to cardiovascular disease in two ways:

1. through direct impacts on the **relative price and availability** of unhealthy foods (foods high in fat, salt and sugar and other energy-dense/nutrient-poor foods, generally falling outside of food-based dietary guidelines regarding healthy diets); and
2. through **constraining the policy space** available to governments to implement strong public health nutrition policies.

First, trade and investment agreements affect the relative price and availability of unhealthy foods through reducing the costs and barriers to the supply, marketing and retail of highly processed foods. Highly processed foods dominate the food supplies of high income countries and tend to be higher in fat, salt, and/or sugar than unprocessed foods.⁴ These foods are also the subject of the majority of food marketing, which creates strong incentives for consumption.⁵

The extent of the impact of a new trade and investment agreement will depend on the level of a country’s or an economic region’s pre-existing liberalisation. However, further commitments to trade and investment liberalisation through new agreements will continue to reduce barriers to: physical trade in foods, trade in services relevant to food and nutrition (e.g. fast food franchises, marketing), and food industry investment. Reductions in barriers to trade can increase the availability and affordability of such foods through reducing the costs and barriers to supply. These effects of liberalisation have been shown in other contexts, where availability and affordability of highly processed foods has increased in response to liberalisation.⁶⁻⁸ In submissions to the negotiations for the Trans-Pacific Partnership Agreement (TPPA, finalised in 2015), the food industry identified significant scope for increased market access for sugar and processed foods.⁹ Trade and investment agreements also create incentives for increased investment by multinational food service outlets and retailers, which in turn increase the accessibility and affordability of highly processed foods through increased coverage and efficiencies in supply chains.¹⁰

Second, trade and investment agreements affect the policy space available to governments through constraining domestic policymaking. Policy space refers to the

‘freedom, scope, and mechanisms that governments have to choose, design, and implement public policies to fulfil their aims’.¹¹ There is evidence that trade and investment agreements can constrain policy space for public health nutrition in three ways: direct constraints on available policy options; increased avenues for stakeholder influence in policymaking; and new avenues for recourse by affected stakeholders.

The direct impact of trade and investment agreements on policy space for public health nutrition is through constraining the policy options available to governments. Although such agreements contain allowances for governments to make and implement policies to protect public health, they also contain provisions that require these to be the ‘least trade restrictive’ policies. Particular provisions of concern relate to Technical Barriers to Trade, which focus on ensuring that ‘technical measures’ do not unnecessarily restrict trade. Such provisions can restrict nutrition policy space through requiring stringent justification of measures based on narrowly-defined scientific evidence, and requiring the use of international standards.¹² These requirements undermine the precautionary principle in public health¹³ and constrain innovation in nutrition policymaking at a time when the evidence base for effective public health nutrition policy is being built.^{12,13,14} For example, Weiss reports that ‘the USA and other exporting countries have indicated that they consider national policies to ... tax sugary drinks and junk foods, require nutritional labelling of foods, ... to be unnecessarily trade restrictive’.¹³ Other policy options potentially subject to direct constraints include restrictions on cross-border advertising, which may be contrary to efforts to liberalise trade in services,¹⁵ and policies to provide healthy food in public institutions, which may be contrary to provisions on government procurement.^{12,15}

Trade and investment agreements also contain provisions that increase the range of stakeholders involved in government policymaking. For example, the provisions on regulatory coherence in the TPPA and those proposed by the European Union in the TTIP, create new avenues for the food industry to participate in domestic/EU policy making.¹⁵ These provisions in the TPPA state that ‘Each Party shall allow persons of the other Parties to participate in the development of technical regulations, standards and conformity assessment procedures by its central government bodies... on terms no less favourable than those it accords to its own persons’.

Finally, trade and investment agreements contain provisions for protection of investors that in some cases exceed those afforded to domestic investors. Many recent agreements include a mechanism to resolve disputes between investors and states.¹⁶ This provides an avenue for industry actors to directly sue governments for compensation in certain situations where they have been unduly affected by government action (for a more detailed explanation in relation to nutrition, see Thow & McGrady¹⁷). Provisions for such Investor State Dispute Settlement (ISDS) mechanisms have been identified as a potential avenue for the food industry to contest government policy intervention that reduces the profitability (e.g. sales) of unhealthy foods, such as nutrition labelling.^{14,15,18} A recent analysis of the TPPA identified limitations of the ISDS provisions from a public health perspective, including no exception for public health nutrition, and provisions requiring ‘fair and equitable treatment’ of investors that favour industry rather than governments.

However, there are opportunities for public health norms and policies to support consideration of public health policy goals—not just economic goals—in arbitration

of investor-state disputes. An ISDS mechanism in the Uruguay-Switzerland Bilateral Investment Treaty was recently used by Phillip Morris International to challenge Uruguay's decision to mandate large graphic health warnings on cigarette packaging and a 'single presentation requirement' (a requirement that tobacco manufacturers produce no more than one variant of a single brand family of cigarettes).^{19,20} In a positive outcome for public health, the arbitration tribunal dismissed all of Philip Morris' claims against Uruguay's public health policy initiatives. It is notable that the World Health Organization's (WHO) Framework Convention on Tobacco Control (FCTC) was pivotal in establishing a best practice reference point, in support of Uruguay's stringent tobacco control measures.²¹ The Tribunal also made use of *amicus curiae* briefs from the WHO\WHO FCTC Secretariat and the Pan American Health Organization (PAHO) in informing their decision to dismiss the claims and support Uruguay's public health measure.

Analyses of the impact of trade and investment agreements on nutrition have identified the need for:

- stronger consideration of impacts on public health nutrition in trade policymaking;
- strategic support for regional and global public health norms to support innovation in nutrition policy making; and,
- further research on nutrition and trade.

Research needs include targeted health impact assessments—ideally mandated within trade policy processes—and policy analyses focused on how nutrition could be considered in trade/investment policymaking.^{12,14} Increasing the consideration of nutrition in trade policymaking will require advocacy for transparency and strong counter-arguments to industry advocacy, that give more prominence to health concerns.^{9,14,15} Strong regional and global support for nutrition intervention—in the form, for example, of a global treaty or convention to protect healthy diets—can also provide a counterbalance to regional trade commitments.²²

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