



European free trade agreements and the right to health in the South

Summary

The right to health is a right for all. Even though states have to ensure that all citizens are able to enjoy this right, the right to health is being threatened by economic interests. This is illustrated by the free trade agreements the European Union is negotiating with countries in the South.

The Platform for action on health and solidarity (working group North-South) is concerned about the impact of far-reaching free trade agreements on the right to health in developing countries. Therefore, the Platform for action proposes a number of minimum rules that should be taken into account by the European Union when negotiating, if it does not want to let economic interests prevail over social interests.

“Trade impacts on the right to health in numerous ways. (...) States have to ensure that the trade rules and policies they select are consistent with their legal obligations in relation to the right to health.”¹

Paul Hunt, former UN Special Rapporteur on the right to health, 2004

Assertive trade policy

In the World Trade Organization (WTO), the multilateral framework for the trade liberalization, the progressive liberalization of the international trade encountered more and more resistance from the developing countries. Since a few years, the EU is therefore placing more emphasis on bilateral free trade agreements: agreements between two countries or regions of countries. As a result, the EU was able once again to bring forward requirements that had been blocked successfully by developing countries within the WTO.



Photo : Tineke D'haese

Current negotiations between the European Commission (EC) and developing countries:

- Economic Partnership Agreements: with Central Africa, the SADC countries (Southern Africa), West Africa, the countries of the Eastern African Community, Eastern and Southern Africa, the countries of the Pacific.
- Free Trade Agreement with countries of South-East Asia (ASEAN). Negotiations with the region have been blocked. As an alternative, the EC is now negotiating with individual countries, starting with Singapore and Vietnam.
- Association Agreement with countries from Central America, conclusion expected in May 2010.
- Free Trade Agreement with India. The EC is hoping to conclude this agreement in 2010.
- Free Trade Agreement with Mercosur. Negotiations have been blocked for now.

Finished negotiations:

- EPA with the Cariforum countries. Currently for ratification at the national parliaments of the EU.
- Association Agreement with Colombia and Peru.

Special agreement: Anti-Counterfeiting Trade Agreement (ACTA), trade agreement intending to combat counterfeit goods. In practice it is pursuing a multilateral framework for the enforcement of intellectual property rights. Deadline scheduled in 2010.

Latest update: April 2010

Trade: end or mean?

The EU priorities in terms of trade can be found in two basic documents: the Lisbon Strategy and “Global Europe: Competing in the World”. The Lisbon strategy aims at making the EU the most dynamic and competitive knowledge-based economy, in which the protection of (its own) intellectual property rights is essential.² The focus of “Global Europe”, a strategy adopted in 2006, is on raising the competitiveness of European companies in the world. It is identifying three main areas as priorities: a better market access for European export of goods and services, a better access to natural resources and the fight against non-tariff trade barriers.³

Through bilateral trade agreements, the EU tries to challenge its trade partners’ regulations that are a barrier for European businesses. Therefore, bilateral trade agreements always include a clause arguing that domestic regulation must be “least trade

distorting". This kind of provisions put trade above public interests, such as public health, environmental protection or education.

But health is a human right...

According to the Universal Declaration of Human Rights, the right to health is a right for all. The right to health not only covers health care, but also the underlying determinants of health, such as the access to clean water and sanitary equipment, decent accommodation, nutrition, etc. Free trade agreements have a significant effect on all these aspects.

Impact of free trade agreements on public health

1. Free trade agreements and the social determinants of health

First of all, trade liberalization has an effect on the underlying factors of health, such as employment, food security, income and inequality.⁴

The general pro-liberalization argument is that liberalization leads to economic growth, which creates wealth, which decreases poverty, which improves health and which again increases growth. However, this relation is far from automatic and is strongly linked to the initial inequality in a society. The larger the inequality, the less possible it is to reduce poverty. Moreover, trade liberalization often leads to even more inequality.⁵

2. Bad news for the government budget

Trade liberalization also has an effect on public finances. A significant part of the government revenue in poor countries often comes from customs tariffs by imposing import and export duties. According to World Bank estimates, tariff revenues in sub-Saharan Africa average between 7 and 10 percent of the government budget. EU products represent 40 percent of total imports. The reduction of import tariffs on EU imports lowers tariff revenues considerably.⁶ One cannot overlook the fact that government budgets are already increasingly constrained with the financial and economic crisis.

3. Liberalization of health care

The increasing international trade in health care services takes different forms: health care workers go work abroad, foreign investors invest in hospitals and insurance companies search for new markets. Moreover, more and more countries try to attract consumers from different countries, the so-called health tourism.

Health: a profitable sector

As opposed to what's often thought, health care in developing countries can be very profitable, so commercial interests are on the line. The health sector is one of the fastest growing sectors in the world economy. A report by McKinsey projected the market for private health care in Africa at USD 21 billion a year by 2016, due to the growing middle class. This investment opportunity can be seized by either domestic or foreign investors.⁷ BusinessEurope, an organization that defends the interests of companies in the European Union, also states that the EU needs to address, for instance through free trade agreements, barriers to participation in international public procurement markets in key sectors such as health care and water.⁸

Following the advice of for instance the World Bank and the International Monetary Fund, developing countries privatize their health sector. However, without a regulatory framework there is a real risk that the private sector will concentrate on the wealthy, i.e. profitable, part of the population, as a result of which the poor part of the population will have to rely on the underfinanced public sector or will not have access to health care at all.⁹

Countries can decide to open up parts of their health system to foreign investors, either in a unilateral way or through a binding trade agreement. The GATS agreement (General Agreement on Trade in Services) of the WTO is the international binding framework for the liberalization of services. According to this agreement, services can be traded through four different modes. Each one of these modes entails opportunities as well as risks for the trade in health services:

Trade in health services	Opportunity	Risk
Cross-border supply of services	Providing care in remote areas (e.g. remote diagnosis).	Less resources available for other health services.
Consumption abroad (medical tourism)	Foreign revenues	Diversion of limited resources to service foreign nationals instead of own population.
Foreign presence of companies to supply services	Opportunities for new employment and access to technology	Development of a two-tier health system with an internal brain-drain.
Migration of service-providing personnel	Economic gains from remittances of health-care personnel working abroad	Permanent outflows of health personnel (brain-drain).

Modified version of scheme World Health Organization, 2006¹⁰

The liberalization of services under a free trade agreement follows the same logic as under the GATS agreement. However, there is an additional pressure on countries to make commitments in the health sector. According to article 5 of GATS, which defines the conditions for the bilateral liberalization of services, the agreement should have substantial sectoral coverage.¹¹

Trade agreements are not the cause of the health care privatization. However, as a result of these trade agreements, the commercialization of the sector cannot be reversed. After all, a trade agreement is binding. A foreign investor claiming his rights have been violated can take the matter to court. Companies are thus able to protest against governmental measures limiting their profit. In this respect, a commitment in the service sector also effectively undermines the government's policy space.¹²

4. Stronger intellectual property rights: medicines still unaffordable

“Developing countries and least developed countries should not introduce TRIPS-plus standards in their national laws. Developed countries should not encourage developing countries and least developed countries to enter into TRIPS-plus free trade agreements and should be mindful of actions which may infringe upon the right to health.”¹³

Anand Grover, UN Special Rapporteur on the Right to Health, 31 March 2009

According to the World Health Organization, 25 to 66 percent of the expenses for health care in developing countries go to medicines. Therefore, the price of medicines is not only a crucial factor in the health budget but is also a determinant for the level of health care.

Competition is the key factor to lower the prices of medicines. Generic competition makes prices of medicines drop with an average of 40 to 80%. The protection of intellectual property rights is a barrier to competition and therefore also to the access to medicines, as well as to the development of a local pharmaceutical industry.¹⁴

The TRIPS agreement (Trade Related Intellectual Property Rights) came into effect in 1995. TRIPS forces WTO members to provide patent protection for a minimum term of 20 years. As for the pharmaceutical patents, the least developed countries have until 2016 to turn this agreement into law.¹⁵ Furthermore, the TRIPS agreement also imposes other obligations for intellectual property protection.

However, the TRIPS agreement does not reach far enough for the European Union. In the free trade agreements, the EU is therefore striving for rules that go beyond what was agreed upon in the TRIPS agreement, the so-called TRIPS-plus elements. These are even more in favor of the large monopolies and are limiting the possibility of competition. Some examples of TRIPS-plus standards¹⁶:

- **Patent term extension**, so longer than 20 years as provided in TRIPS.
- **Data exclusivity**: through data exclusivity, a producer of generic medicines cannot make use of the original clinical test data for a number of years, forcing the company not only to submit its own test data if it wishes to bring a medicine on

the market but also to execute new studies, costing time and money.

- **Criminal sanctions** for infringements of intellectual property rights (including patent law). Imprisonment is one of the criminal sanctions.
- **Border measures**: seizure during importation, exportation or transit of goods suspected of infringing any intellectual property right.



Photo: Crispin Hughes/Oxiam

The Platform for action on health and solidarity is calling for minimum rules:

In these matters of life and death, the Platform for action on health and solidarity is urging the EU to respect the following minimum rules:

The liberalization of services linked to health and TRIPS-plus provisions cannot be part of binding free trade agreements. Furthermore, the governments of the South need to receive compensation for the income loss following the elimination of import tariffs, so they don't have to cut back their expenses for social sectors.

Clear criteria. There have to be clear criteria which trade policies have to respect in order to avoid a negative impact on public health. These criteria have to be decided by the European Parliament after public debate.

Transparency. Trade agreements should not be negotiated in secrecy. The European Parliament and all relevant stakeholders, including social movements, have to be informed about the progress of the negotiations at all times.

Independent impact studies. Before free trade agreements are signed, there should be prior independent impact studies that look into potential consequences of these agreements on public health. The results of these studies should be made public before the ratification of the trade agreements.

Flexibility. After trade agreements come into effect, their impact on public health has to be monitored continuously. In case negative impacts on public health become apparent, it should be possible to amend the agreement in question.

Bibliography

- 1 Report on Mission to the World Trade Organization (E/CN.4/2004/49/Add.1) submitted to the Commission on Human Rights on 1 March 2004.
- 2 European Commission: Lisbon Strategy for Growth and Jobs: towards a green and innovative economy. Available on http://ec.europa.eu/growthandjobs/index_en.htm, last accessed on 06 January 2010.
- 3 European Commission (2006a), "Global Europe: Competing in the world", Speaking points by Commissioner Mandelson 4 October 2006. Available at http://ec.europa.eu/commission_barroso/mandelson/speeches_articles/spm117_en.htm
- 4 Labonté R., Schreker T.: "Globalization and social determinants of health: introduction, methodological background (part 1 of 3). Global Health 2007;3;5. <http://www.globalizationandhealth.com/content/3/1/5>.
- 5 Ravaillon M. "Looking beyond averages in trade and poverty debate". *World Dev* 2006;34:1374-1392. PubMed
- 6 L. Hinkle, M. Hoppe, R. Newfarmer: "Beyond Cotonou: Economic Partnership Agreements in Africa." In *Trade, Doha, and Development - A Window into the Issues*; Chapter 22; The World Bank, Trade Department, 2006. Available on http://siteresources.worldbank.org/INTRANETTRADE/Resources/239054-1126812419270/22_BeyondCotonou.pdf, last accessed on 6 April 2010
- 7 McKinsey&Company (2007): How private health care can help Africa. Published in *The McKinsey Quarterly*.
- 8 BusinessEurope (2010): Priorities for External Competitiveness 2010-2014: Building on Global Europe. Available on <http://extranet.businesseurope.eu/Common/GetFile.asp?docID=25752&logonname=guest&mfd=off>. Last accessed on 25/02/2010.
- 9 Oxfam (February 2009): "Blind Optimism: Challenging the Myths about Private Health Care in Poor Countries." Available on <http://www.oxfam.org/en/policy/bp125-blind-optimism>
- 10 World Health Organization, Regional Office for Africa: Poverty, Trade and Health: An emerging health development issue. Report of the regional officer. 17 June 2006. Available on http://www.afro.who.int/rc56/documents/afr_rc56_9_poverty_trade_health_final.pdf Last accessed on 07 January 2010.
- 11 The General Agreement on Tariffs and Trade (1947), Article XXIV. Available on http://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm, last accessed on 06 January 2010.
- 12 Globalization Knowledge Network: "Towards health-equitable globalization: rights, regulation and redistribution. Final report to the commission on social determinants of health." Institute of Population Health. Globalization and Health Equity.
- 13 Office of the High Commissioner for Human Rights. http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.12_en.pdf
- 14 WHO. Public Health, Innovation and Intellectual Property Rights. Commission on Intellectual Property Rights, Innovation and Public Health (CIPRH). Geneva, WHO, 2006.
- 15 World Trade Organization (2002), Decision of the Council for TRIPS of 27 June 2002: Extension of the Transition Period under Article 66.1 of the TRIPS Agreement for Least-Developed Country Members for Certain Obligations with Respect to Pharmaceutical Products. Available on http://www.wto.org/english/tratop_e/trips_e/art66_1_e.htm, Last accessed on 02 February 2010.
- 16 Oxfam International and Health Action International: Trading Away Access to Medicines: How the European Commission's Trade Agenda has taken a wrong Turn. October 2009, available on <http://www.oxfam.org/en/policy/trading-away-access-medicines>

© Platform for action and solidarity, april 2010

This executive summary is drawn from the Platform's report "The EU's bilateral FTA Negotiations are a Threat to the Right to health" (April 2010). It was written by Wim De Ceukelaire and Katrien Vervoort. The text of the full paper can be downloaded from: www.sante-solidarite.be/.

For further information, please contact Wim De Ceukelaire, [intal: wim.deceukelaire@intal.be](mailto:intal:wim.deceukelaire@intal.be) or Katrien Vervoort, Oxfam-Solidarity: kve@oxfamsol.be

Members of the Platform for action on health and solidarity:

11.11.11, ABVV/FGTB, ACOD – CGSP, ACV/CSC, ACW, Africa-Europe Faith & Justice Network, Atelier Santé, Forum Social de Charleroi, BBTK-SETCa, Belgisch Sociaal Forum, CETRI, CNCD-11.11.11, CNE, Dentisterie sociale asbl, Fédération des Maisons médicales, Fédération laïque des Centres de Planning familial, Femmes Prévoyantes Socialistes, Forum Social de Huy-Waremme, FOS/Socialistische Solidariteit, Geneeskunde voor het Volk - Médecine pour le Peuple, Intal/Geneeskunde voor de Derde Wereld, Landsbond van Christelijke Mutualiteiten - Alliance nationale des Mutualités chrétiennes, LBC-NVK, LEF, Le Monde selon les Femmes, Louvain Développement, LUSS, MOC, Nationaal Verbond van Socialistische Mutualiteiten - Union nationale des Mutualités socialistes, OKRA, Oxfam-Solidariteit, Santé chez soi Asbl, Travailleurs Sans Emploi, CSC, Hainaut Occidental, UCOS, UCP, Unité Politiques et Systèmes de Santé dans les Pays en Développement, Ecole de Santé Publique (ULB), Verbruikersateljee, Vereniging van Wijkgezondheidscentra, VSO-Gezondheid vzw, Wereldsolidariteit/Solidarité Mondiale

Mission of the Platform for action on health and solidarity:

Health is a right for all and yet large inequalities persist among the people. That's why trade unions, mutual health insurance funds, community clinics, NGOs and other organizations from across our country's language barrier are linking arms to work for people's health.

Through **analysis, discussion and action**, the Platform for action on health and solidarity wants to advance progressive and equitable health policies in Belgium, Europe and the whole world.