

The Potential Public Health Impacts of the United States-Mexico-Canada Agreement

In late 2018, the United States, Canada, and Mexico signed a new trade agreement (most commonly referred to as the United States-Mexico-Canada Agreement, or USMCA) to replace the 1994 North American Free Trade Agreement (NAFTA). Although not yet ratified, the agreement is widely seen as indicative of how the US will engage in future international trade negotiations.

In 2015, APHA approved Policy Statement 201512, “Ensuring That Trade Agreements Promote Public Health”, which outlines potential challenges posed to public health by contemporary trade agreements and stipulates the safeguards necessary to protect public health. This issue brief summarizes findings from a public health analysis of the USMCA (1) and other literature on the potential health impacts of trade.

Access to medicines. The USMCA locks in rules that make it easier for drug companies to extend the years of patent protection and prevent regulators from using, for several years, the patent drug company’s test data when approving generic versions. Such measures are likely to reduce generic competition, raise prices and thus reduce access to medicines (1).

The USMCA also provides a 10-year guaranteed monopoly for biologics: a new category of costly drugs used to treat cancers and autoimmune disorders. Follow-on versions of biologics, known as “biosimilars”, can cut the price by almost half (2).

Alcohol control. USMCA rules could frustrate efforts to introduce prominent, effective health warning labels on alcohol containers. These rules specify that a Party may require that information provided on supplementary labels on wine and distilled spirits containers “not conflict with information on an existing label”, which may be interpreted to mean that health information should be relegated to an unused space on the container (1).

Environmental protection and climate change. Numerous environmental provisions are stipulated in the USMCA, although they are generally non-binding and unenforceable (1). No link is made to the impact of trade on climate change (3). At best, the USMCA

discourages using weak environmental laws as a trade advantage, but it falls short of promoting active protection of the environment (1). Like provisions in the Labor chapter, environmental provisions are subject to dispute only if the lowering of government standards impacts trade.

Investor-State Dispute Settlement (ISDS) provision. NAFTA played a significant role in promoting ISDS provisions which allow foreign investors to sue governments over domestic regulations they believe compromise the value of their investment (1). The USMCA however, limits the application of ISDS provisions but still allows ISDS between the U.S. and Mexico in some areas (e.g. telecommunications, oil, natural gas, energy sectors) (1).

Labor. Much of the language in the USMCA labor chapter is ornamental (1). The acceptability of labor standards, for example, is to be determined by each individual country. The chapter also neglects important labor rights, notably those pertaining to social protection which can provide a means of mediating the health impact of job loss, for example, through unemployment insurance (4). More positively, the importation of goods produced by forced labor is prohibited and two provisions cover violence against workers. Violations of labor conditions however, can

only be claimed when trade has been impacted. This excludes a number of workers, including public employees and teachers. USMCA text also specifies that in order to avoid US import fees, 40–45% automotive content must be in jobs paying US\$16/h. However, automakers in Mexico may simply opt to pay a low tariff (only 2.5% on cars) to avoid wage increases. It is also unclear how adherence to this provision could be monitored. Further, this auto provision makes no allowance for inflation adjustment and neglects the many other economic sectors that suffer from low wages and wage disparities (1).

Nutrition. Modern trade agreements undermine nutrition by opening domestic markets to food trade and foreign direct investment, thereby increasing entry of transnational food companies and expanding global food advertising (5). Tariff reductions, liberalization of foreign investment, and intellectual property protections within the USMCA could drive undernutrition, obesity and non-communicable diseases through changes in food availability, price, and quality (1, 5). The USMCA also requires mandatory use of regulatory impact assessments for any major new proposed regulations and allows “persons” (e.g. corporate actors) to directly petition a Party’s regulatory authorities if it believes a less trade-restrictive method exists. Front-of-pack nutrition labeling could be considered an unnecessary trade barrier (1).

Right to regulate. Provisions within the USMCA define standards to test whether domestic regulations are not more trade-restrictive than necessary to fulfill a legitimate objective. Where scientific evidence is scarce or inconclusive, countries may lower their standards to avoid a trade challenge. This could expose populations to avoidable health risks, and reduce governments’ exercise of the “precautionary principle” (1).

Other rules open the doors for “persons of another party” to participate in governments’ regulation-setting on “no less favorable terms than its own persons” (1). These provisions potentially open the door for “regulatory capture,” where, for example, transnational

alcohol and food corporations are allowed to be present in the formulation of regulations.

Tobacco control. Importantly, narrowing of the grounds for ISDS in the USMCA means it is unlikely to be used for tobacco challenges, at least after the 3 year legacy period concludes. Additionally, the Framework Convention on Tobacco Control makes clear that it is not appropriate for the tobacco industry to be involved in policy making (as described above) (1).

Trade Promotion Authority (TPA). Allows President to fast track trade agreements by only requiring a yes or no vote for congressional approval in the U.S. TPA was renewed in 2015 and expires on July 1, 2021.

References

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