World Trade and Investment Agreements: Implications for Public Health

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The Canadian Public Health Association this year adopted a resolution calling for inclusion of social clauses in world trade and investment agreements. Social clauses refers to international declarations on such issues as human and labour rights or environmental protection. World trade and investment agreements are those monitored and enforced by the World Trade Organization, and a new Multilateral Agreement on Investments.

The World Trade Organization

International trade agreements are monitored and enforced by a new multilateral body called the World Trade Organization (WTO). The WTO was established in 1995 to monitor, enforce and continue developing global free trade agreements initially negotiated through GATT (General Agreement on Tariffs and Trade). The WTO is governed by a biennial Ministerial Conference of representatives from each of the 130 signatory nations. Unlike other multilateral bodies, such as UN agencies, the WTO imposes penalties on member countries that fail to comply with trade agreements. Rulings are made by an international tribunal, whose deliberations are not public and whose decisions are binding. The intent of the agreements is to remove trade tariffs or other border restrictions on the import and export of goods and services.

The Multilateral Agreement on Investments

Investment agreements form part of the North American Free Trade Agree-

ment (NAFTA) and are now being negotiated by the 29 member nations of the Organization for Economic Cooperation and Development (OECD). This Multilateral Agreement on Investments (MAI) is expected to be completed by April 1998, and rests on two principles: (1) Non-discrimination, meaning investment must be treated the same regardless of where it comes from, and (2) assured protection for investors. Governments will be required to treat foreign investment the same as domestic investment, and will not be allowed to impose performance requirements on investors. Some of these requirements, such as affirmative action or hiring quotas for local workers or legislating that some portion of profits be reinvested locally, have been used by governments in the past to ensure that social benefits arise from multinational investment. The MAI's intent is to create a single global market in investments where money can flow more freely between countries. It also gives investors the right to sue governments before international tribunals for failure to deliver on all of the MAI's benefits. Once again, these tribunals will be closed and their decisions binding.

Why Should Public Health Care About These Agreements?

A growing body of research indicates that disparities in wealth or income within nations is a strong predictor of population health.¹ The greater the slope of inequality, the greater the health risk for everyone, and particularly for those near the bottom. Also, there is increasing health concern over the ecological impacts of economic growth, including greenhouse gas emissions, deforestation, loss of agricultural

land, depletion of food resources, desertification and toxic emissions.² Considerable evidence suggests that legislative and policy interventions by national governments are necessary to balance market forces so that goals related to social equity and environmental protection can be achieved.^{3,4} There are two public health questions, then, that should be asked of world trade and investment agreements:

1. How will they improve economic inequalities and ecological sustainability?
2. How will they strengthen national, and sub-national, governments' abilities to regulate economic activities so that social and environmental objectives can be achieved?

These questions are still open. Current evidence, however, suggests that freer global trade and investment will likely worsen inequalities, decrease environmental protection and weaken national governments.

Globalization, Equity and the Environment

Economic globalization is not new, but has accelerated dramatically in the past decade. During this same period, global income inequalities have more than doubled, income disparities have worsened in all developed countries⁵ except Canada,⁶ and are at their worst recorded levels in England and the United States.⁷ Canada managed to prevent worsening income inequalities through its social spending on health, welfare and education programs, and its various income transfer programs,⁶ but is under economic pressure to reduce both. As Canada's Department of Foreign Affairs and International Trade admits, "governments the world over [must

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now] compete aggressively for foreign investment" which requires "convincing a foreign investor to choose Canada over other locations."⁸ Part of this "convincing" lies in reducing tax burdens to attract investment.⁷ Unless wealth is taxed, it cannot be redistributed. To tax wealth, it must remain within national boundaries. The proposed MAI would give investors greater freedom to move profits out of higher tax countries, reducing even the amount of potentially taxable wealth that remains.

This same pressure applies to governments' abilities to regulate labour, cultural or environmental standards. Recently, both South Korea and Hong Kong repealed labour legislation to make their workforces "globally competitive." Similar arguments are made by politicians in most countries. Initial rulings by WTO tribunals indicate that these agreements may accelerate this deregulation pattern. Canada was told it had to repeal its cultural policy on "split-run" US magazines. The US was told it could not ban gasoline imports from Brazil and Venezuela that failed to meet US clean air legislation. Instead, the US would have to amend its environmental legislation or face retaliatory trade sanctions worth \$150 million a year.⁹ Even traditional public health issues such as tobacco control could be undermined by these agreements. Under GATT, the WTO's predecessor, the US forced the Thailand government to repeal its public health law banning tobacco imports. The ruling allowed Thailand to continue a ban on advertising and public vending machines because the ban's intent was to protect public health, not impede "free trade." But under the MAI, the intent of legislation no longer matters, only the effect: Does the national regulation discriminate against foreign investment or trade in any way? Foreign tobacco companies could use the MAI to sue governments over tobacco control policies because they discriminate in favour of existing or domestic brands.⁷

This is speculation, but it does have a factual basis. NAFTA is currently the only multilateral agreement allowing foreign investors to sue national governments and is the "test" model for the MAI. As soon as

NAFTA was approved, the US-based Ethyl Corp sued the Canadian government for \$350 million in damages (lost potential profits) due to our country's ban of the fuel additive, MMT. Canada's ban was undertaken because MMT increases toxic automobile emissions and may harm human health. The arguments on this case will be behind closed doors. No health or environmental organization will be able to intervene. Our government will have to spend public revenues in legal costs defending itself. The eventual ruling will be final with no opportunity for appeal. A similar case underway involves a US hazardous waste company suing the Mexican government due to Mexico's slow pace of environmental regulations and assessments.⁹ The ability of corporations to sue governments over their legislation, and the lack of public accountability or "transparency" in both WTO and MAI decision-making tribunals, has critics worried that national governments have surrendered too much power to private, transnational corporations, and are continuing to do so.

Who Benefits from These Agreements?

Proponents of free trade argue that, by removing barriers to imports from developing countries, increased wealth will flow from rich to poor countries. Similar arguments are made about the MAI. While increased trade and investment between rich and poor countries could lead to a fairer global distribution of wealth, much depends on how the benefits are allocated. Current projections indicate that wealthier countries will benefit significantly more from WTO free trade agreements, and some regions of the world, such as low-income Asia, Africa and the Mediterranean, will actually fall even further behind.¹⁰ Trade alone does not lead to equitable wealth distribution within nations. Government regulation of economic activities for social and environmental objectives are required. The WTO agreements weaken this regulatory ability, and the MAI may further erode it. Under draft MAI provisions, national governments would lose their ability to direct foreign investment to particular sectors of the economy based on social or environmental objectives, or to give prefer-

ential treatment to local economic initiatives. If Mexico wanted to offer low-interest loans to local farmers to produce value-added products such as canned foods, boxed cereals or prepackaged meals, it would have to offer the same low-interest loans to transnational giants like Kraft or General Foods. These provisions could make it almost impossible for local businesses to develop in poorer countries.

The Social Clause Campaign

The WTO already exists. The MAI is almost certain to pass, though not without some possible health-protecting amendments. More generally, what can health workers concerned about the equity and environment dimensions of trade and investment do?

First, it's important to realize that the WTO and the MAI are among the few multilateral agreements with penalties attached to countries that do not comply. Almost all other multilateral accords, such as Agenda 21 on the environment, the International Labour Code and the Convention on the Rights of the Child, are statements of intent. National governments report to the responsible UN agency on progress towards reaching certain targets, but there are no penalties for failing to do so. One notable exception was the Montreal Protocol on Ozone-Depleting Substances, which so successfully used the "stick" of trade sanctions to obtain rapid national compliance that business interests are arguing "No more Montreal protocols!"¹¹ (Perhaps significantly, the Canadian government opposes use of trade sanctions or penalties for the climate change agreement reached at the Kyoto conference.)

Second, this asymmetry between enforceable agreements for business interests but unenforceable agreements for social or environmental interests has led many non-governmental organizations (NGOs), and even some governments, to argue that social clauses must be appended to trade and investment agreements. These clauses would consist of existing labour, human rights, environmental and health declarations or conventions currently monitored by UN agencies. The clauses would become enforceable by

having access to the same penalty measures in place for the WTO or MAI. While it is unlikely to succeed in the short-term, the social clause campaign is one of the most significant policy issues of the time and begins to counterbalance economic globalization with political globalization.¹²

Many developing nations, however, fear that social clauses could discriminate unfairly in favour of wealthier countries. Wealthy countries already have welfare infrastructures and considerably more national wealth to fund compliance with environmental or social standards. Under WTO and MAI enforcement measures, poor countries that cannot afford to comply with social clauses could face retaliatory trade sanctions by wealthier nations. But this is a technical problem that can be resolved by differential compliance timetables for poorer countries, something already accepted in principle by the United Nations. It can also be aided through a system of global taxation to support poorer countries in infrastructure development. Several global tax systems have been proposed, e.g. a "carbon tax" on fossil fuels disproportionately consumed by wealthier countries, or a "Tobin tax" on unproductive, short-term currency and investment speculation. Such speculation can lead to massive currency devaluations in poorer countries, such as Mexico and Malaysia, which reduces the value of their exports and increases the cost of their imports, causing unhealthy hardship on its farmers, workers and citizens. Moreover, many developing country NGOs support the social clause campaign.

Ensuring fairness in social clause implementation is one thing. Overcoming the "pro-market" bias of most trade and investment negotiators is another. Most government and business groups currently active at the WTO, or involved in MAI negotiations, are aware of the need to take social and environmental issues into account. But they do not believe these issues should complicate trade and investment agreements. This hurdle is more clearly political than technical. Politically, proponents should be called upon to:

1. Demonstrate how the WTO or MAI will strengthen existing social and environmental standards, and governments' abilities to regulate their attainment.
2. Defend why agreements in favour of business should be enforceable, but agreements favouring social equity or environmental protection should not. The social clause campaign represents one strategically simple step that public health, aligned with other public interest NGOs, can take to ensure that equity and environmental goals are not lost in rush to a "global economy."

The Role of the Canadian Public Health Association

The Association would like to hear from members their thoughts on this issue. The social clause campaign could be a lengthy one, and require at least some Association resources at the possible cost of public health initiatives that are more national or local in scope. The social clause campaign is a fundamentally important one, and a logical extension of our historic concerns with social, economic and environmental health determinants. But it is important that the Association hear from members more directly on this. Just as our economy is globalizing, action on this campaign would begin to globalize the work of the Association.

Ronald Labonte is a CPHA Board Member, and moved the resolution on the WTO/MAI approved by the 1996 Annual General Meeting. The Board requested that he write this Commentary to inform members about, and initiate a broader Association discussion on, this issue.

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