

Trade, investment and the global economy: Are we entering a new era for health?

Global Social Policy

1–17

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DOI: 10.1177/1468018117731415

journals.sagepub.com/home/gsp**Ronald Labonté and Arne Ruckert**

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Abstract

Although officially dead due to US withdrawal from agreement, the Trans-Pacific Partnership agreement (TPP) is now in a ‘zombie’ state being resurrected in different ways by most of its remaining 11 member countries. This renders the analysis of its health implications both current and timely. This article, drawing on our own health impact assessment of the TPP and other analyses and commentaries, critically reviews some of the major ways in which the TPP, as a representative of so-called 21st-century regional trade agreements, poses a threat to global health equity. Four specific ways are identified and reviewed: (1) It increases restrictions on public health regulations (despite the tobacco partial carve-out) specifically through changes in the Technical barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS) chapters, and its new Regulatory Chapter. (2) Its flawed Investor–State Dispute Settlement (ISDS) system (with several cases affecting health services/insurance and indirectly health through cases challenging environmental protection) continues to benefit investor over public health and sustainability. (3) Its labour and environmental chapters are largely hortatory and concerned with ensuring increased trade by TPP rules, and not stronger labour rights or environmental protection *per se*. (4) There is little aggregate economic benefit, but disequalizing income distributions, and no accounting for public costs (e.g. trade adjustment compensation for negatively affected economic sectors, increased patent drug costs). The article concludes by locating the content and implementation of agreements as the TPP as a form of international law that entrenches a discredited

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neoliberal economic model of enormous benefit to capital and limited benefit to most of the world's peoples.

Keywords

Agreement, globalization and health, health impact assessment, ISDS, trade and health, Trans-Pacific Partnership

Introduction

When Donald Trump shocked the world by winning the US Presidential election in November 2016, trade sceptics breathed a sigh of relief. The Trans-Pacific Partnership agreement (TPP), at that time the largest regional Free Trade Agreement (FTA), appeared dead. Trump confirmed this in an Executive Order in January 2017, pulling the US out of the signed but not ratified deal. According to the rules agreed upon by its 12-member countries, if either Japan or the US failed to ratify the agreement, it could not enter into force. Trade justice campaigners across the European Union also relaxed their efforts as the similarly massive EU/US Transatlantic Trade and Investment Partnership (TTIP) agreement was pushed into negotiating limbo. Some pundits began declaring the end of 'free trade', the death of neoliberalism, and the dawn of a new round of protectionism and trade wars that might even morph into world wars as they had a century earlier (Hanson, 2016).

We remain unconvinced. A commitment to neoliberal capitalism has proven enormously resilient despite its multiple crises. Neoliberalism was thought to have been thoroughly delegitimized with the 2008 global financial crisis but bounced back quickly with the austerity agenda and has since been reborn in a renewed obsession with procyclical (fiscal consolidation) policies.¹ Yes, there are protectionist rumblings among some populist movements; however, protectionist policies are a persistent feature of the trade policy context – nowhere is this truer than in agriculture. And yes, trade as a percentage of global economic product has declined in recent years; however, this has less to do with systemic anti-trade sentiments than with the post-2008 recession shrinking consumer demand and, with it, the global supply chains that have come to characterize international trade.

As for the 'dead' TPP, it should now officially be considered a zombie, pacing the Asia-Pacific region in search of quick resurrection. The 11 remaining countries have already had two high-level meetings, with a third one planned, to see how the deal might be salvaged more or less intact (Bridges News, 2017). Options include changing the rules to allow ratification by the 11 countries to bring the deal into force, exporting the treaty into a new agreement that could be quickly signed off and ratified, or using the extant provisions as a base for a new lightning round of trade negotiations, inviting other Asia-Pacific countries to enjoin (with many keen to do so). The shadow hanging over the TPP zombie is the expanding power of China, and another very much alive set of treaty negotiations, the Regional Comprehensive Economic Partnership (RCEP). Former US President Obama's unsuccessful attempt at ratifying the TPP before leaving office was

driven foremost by a desire to have US interests, rather than those of Chinese or other Asian nations, define the economic future of the Asia-Pacific region.

The US itself is far from withdrawing into cocooned protectionism. Trump's trade policy approach is clear on this, with its intent to pry open more markets for US goods, increase intellectual property right (IPR) protection for its transnational corporations, restrict state-owned enterprises, and ensure US trade laws are properly enforced by all its trading partners (United States Trade Representative, 2017). The tenor of this policy is redolent of the advantages to Americans that new, bilateral deals (the favoured approach of the Trump administration) must deliver, ignoring that it was US transnational corporations that largely wrote the present suite of US-led regional trade rules, and whose profitable outsourcing of production lay behind the erosion of those US manufacturing jobs – now largely obsolete due to advances in automation (Arntz et al., 2016). The notion that trade should somehow disproportionately benefit the world's poorer countries, the presumed design of the moribund World Trade Organization (WTO) Doha 'Development' Round initiated in 2001, has been replaced in the US with a more mercantilist 'beggar my neighbour' approach, which could include a cut and paste of those sections in the TPP that it likes while excising those it had to concede to other nations' interests.

Simply put, the geopolitical landscape of trade and investment negotiations may be increasingly dominated by national interest and xenophobic rhetoric – notably in the United States and the United Kingdom – but the type of 'new generation' trade and investment liberalization exhibited in the TPP will remain firmly on national agendas. If nothing more, there are huge swathes of the elite capitalist class² who rely upon global supply chains and open borders to continue their own profit accumulation. This includes more than a handful of American transnationals who would look dimly upon a United States/China trade war, including Trump's own business interests. To this end, a retrospective summary of why health analysts in most TPP countries expressed concern about many of its novel or deepening provisions is not merely a backwards glance; it holds as much relevance to the future as it did to the past. But before laying out our arguments in more detail, we first provide a short overview of academic debates about the relationship between trade and health, situating our analysis of the TPP within the literature.³

Trade and health: a contested relationship

The initial case for the health benefits of trade liberalization incentivized through new trade and investment agreements was built on the assumption that increased trade is positively associated with better economic growth, and that social progress derived from economic development and rising incomes would automatically improve population health outcomes. A string of comparative studies carried out under the auspices of the World Bank attempted to prove this positive connection, and argued that the 'globalizers' of the world (as measured by trade openness) were economically performing better than the 'non-globalizers', and that health benefits would trickle-down to the population over time (Dollar, 2001). This would lead to a reduction in mortality due to nutritional gains and better management of infectious diseases (Blouin et al., 2009). This assessment, however, has been questioned, both in terms of liberalization's positive economic impacts and the trickle-down health benefits such impacts might bring (Chang, 2002; Stiglitz,

2009). A widely influential study by the United Nation's Development Program showed little relation between trade liberalization and growth (UNDP, 2002), while the voluminous academic literature on economic growth determinants has failed to establish any clear-cut effect of trade liberalization *per se* (Eicher and Kuenzel, 2016).

At the same time, trade liberalization is associated with growing inequality in most countries around the world (Stiglitz, 2009). This is acknowledged even by proponents of increased global trade, many of whom regard surging income and wealth inequalities as a newly urgent problem that is regrettably feeding an 'anti-globalization' backlash. Such inequalities shrink the capacity of trade's (questionable) impact on poverty reduction through economic growth, as the greater the level of inequalities, the greater the amount of growth required to achieve even a modicum of poverty reduction. Rising intra-country inequalities also have important and direct implications for health. Even when economic growth does lead to better health measured at the aggregate level, profound trade-related changes in labour markets create health risks ('adjustment costs') for those workers losing out under liberalization, for example, when workers lose their jobs or experience heightened insecurity after markets have been opened up to external competition, which induces acute stress.⁴ Various studies have demonstrated the negative health consequences inherent in such adjustments (Blouin et al., 2009).

Another pathway traditionally emphasized in the health and trade literature considers the extent to which immersion into new trade relationship leads to alterations in diet and nutrition. Modifications to the food supply that go hand in hand with opening up food markets have altered the food environments within which people make consumption choices. This has been shown to lead to a pronounced shift towards eating more processed foods, as large multinational supermarket chains enter spaces previously occupied by local retailers (Nestle and Jacobson, 2000). At the same time, fast food retail outlets have proliferated rapidly in countries pursuing trade liberalization, enabling greater availability of highly processed, calorie-rich, nutrient-poor foods, with important (long-term) health implications.

Finally, trade agreements have also been used to harmonize copyright, patent and trademarks laws into a global IPRs regime. This harmonization began in the 1990s when the bloc made up of the United States, Europe and Japan was able to incorporate intellectual property matters in the global trade regime through the signing of the Agreement on Trade Related Aspects of Intellectual Property, more commonly known as TRIPS, as one of over 30 agreements and schedules under the mandate of the WTO. The main health concerns surrounding TRIPS have been provisions requiring stronger and longer monopoly protections, which generate market exclusivity for a longer period of time on more expensive patented pharmaceuticals, delaying the entry of more affordable generic competition into the market (Abbott et al., 2012; Lexchin and Gagnon, 2014; Moir et al., 2014). There are also concerns about diminishing investments by pharmaceutical companies in new drug exploration, as can be observed in the case of antibiotics, and how this might be related to overly generous patent protections (Becker and Posner, 2012). This has led a United Nations High-Level Panel on Access to Medicines to call for the development and production of health technologies and drugs in a way that better balances trade and industry interests with human rights and public health concerns (United Nations High Level Panel on Access to Medicines, 2015).

Even before the disequalizing impacts of the suite of trade treaties under the 1995 WTO umbrella became better established, a critical pushback by civil society activists and some of the developing countries that were gaining little from the new agreements led to the abrupt abandonment of the 1999 WTO Ministerial meeting in Seattle, United States. The next such meeting took place in Doha, Qatar, more difficult for protestors to reach, and led to the creation of a new round of WTO negotiations labelled the Doha Development Round. Unsurprisingly, little progress in multilateral WTO negotiations have been since made, with the US Trade Representative to the WTO 2009 Ministerial meeting, Ron Kirk, clearly stating that ‘tough, sustained bilateral negotiation’ were the way forward for the US (and other high-income countries) to gain better access to developing world markets (International Centre for Trade and Sustainable Development [ICTSD], 2009).

The new world of FTAs

Equally unsurprising given the political and economic muscle of the US and EU, the world’s two dominant liberalizing forces, the trade and investment future envisioned by the US Trade Representative began swiftly to unfold with the emergence of a new generation of so-called ‘21st century’ FTAs. Key among these are the (temporarily abandoned) US/EU TTIP, the zombie TPP, the near-finished Trade in Services Agreement (TiSA), and the completed Canada-EU Comprehensive Economic and Trade Agreement (CETA). The overarching concern with what has been described as a confusing ‘spaghetti bowl’ of overlapping agreements is that, without accounting for the skewed outcomes arising from existing WTO rules, the *raison d’être* for these FTAs is to liberalize and extend provisions beyond what had been established in previous treaties (Panezi, 2016). Much of the specific health concern has been on increased IPRs regime (TRIPS+) that undermine the gains made by developing countries at the 2001 WTO Ministerial meeting in its *Doha Declaration on TRIPS and Public Health* that clarified country flexibilities to override WTO rules on drug patents. One estimate of IPR concessions made in the completed CETA suggests that due to patent term extensions Canadian conventional drug costs will increase by anywhere between 6.2% and 12.9% starting in 2023 (or by at least C\$800 million annually) (Lexchin and Gagnon, 2014). Given the extent of coverage on the TPP’s extended IPRs and their impact on access to essential medicines, notably new generation biologics, we exclude this from our article and refer readers instead to other studies on this topic (Lexchin, 2016). There is already a civil society and academic campaign that, should a TPP-11 or other resurrection occur, these extended IPR provisions that were concessions to the now withdrawn US should be rolled back.

Our own discussion that follows will focus instead on four other key areas of TPP health concern:

1. Increased restrictions on public health regulations.
2. Continued embrace of the flawed Investor State Dispute Settlement (ISDS) system.
3. Weak environmental and labour protection chapters.
4. Little aggregate economic benefit, but disequalizing income distributions, and no accounting for public costs.

Less policy space for public health regulations

Although not as bad as initially feared, the TPP throws more hurdles into the path of new public health regulations which we should expect to see crop up in any new US-led negotiations. The chapter on Technical Barriers to Trade (TBT), for example, goes beyond the ‘necessity’ and ‘least trade restrictive’ barriers already present in the WTO’s TBT agreement, in two ways. First, it creates new avenues for vested interests from other member countries (including private corporations) to participate in developing new regulations and standards ‘on terms no less favourable than those it accords to its own persons’ (art.8.7, ¶1). This could lead to regulatory capture by those whose business practices would be governed by the new regulations (Labonté et al., 2016). Second, there is an assumption in both the WTO and TPP TBT rules that a new regulation that conforms to an existing international standard is not in violation of the agreement. The TPP TBT goes beyond this, however, by calling on member nations to cooperate in international standard setting to ensure that such standards ‘do not create unnecessary obstacles to international trade’ (art.8.5, ¶3). This risks weakening new health, safety and environmental standards by requiring that they be trade-compliant even before being promulgated. The TBT chapter does affirm that ‘nothing ... shall prevent a Party from adopting or maintaining technical regulations or standards’ provided, however, that these are ‘in accordance with its rights and obligations under this Agreement’ (art.8.3, ¶5). This linguistic sleight of hand allows governments to set new regulations only to the extent that they abide by TPP rules.

A similar tightening is found in the rules on Sanitary and Phytosanitary Standards (SPS), which again defer to international standards, primarily those under the World Health Organization (WHO)/Food and Agriculture Organization (FAO) *Codex Alimentarius Commission*. The WTO system earlier flipped the interpretation of the *Codex* health and safety standards from being a level no country should go below to a level no country could exceed without scientific justification. The WTO SPS agreement allows ‘minority’ scientific evidence to suffice in a dispute (WTO, 1998), but the TPP SPS insists that any such non-conforming measures must be ‘based on documented and objective scientific evidence’ (art.7.9, ¶2). In the case of novel risks such evidence may be impossible to provide until the sick or dead bodies start accumulating. This requirement conflicts with the long-established precautionary principle, already a source of contention in WTO disputes between the EU (where the principle remains valued) and other WTO member states (where it does not).

The TPP also includes for the first time a chapter on regulatory coherence – likely to become a fundamental ingredient for any new agreement with the United States – which is similar but not equivalent to the regulatory cooperation chapter in the CETA, and as yet absent in RCEP. Like its TBT chapter, it calls on governments to open their regulation setting to parties from member countries, posing the same risks of regulatory capture (Ruckert et al., 2016). The chapter is presently exempt from dispute settlement rules, rendering it more a place-holder for the future than an enforceable requirement at the present.

Protecting the foreign investor

One of the most controversial elements of the TPP is its chapter on Investment. Treaties allowing foreign investors to sue governments for compensation of losses (including

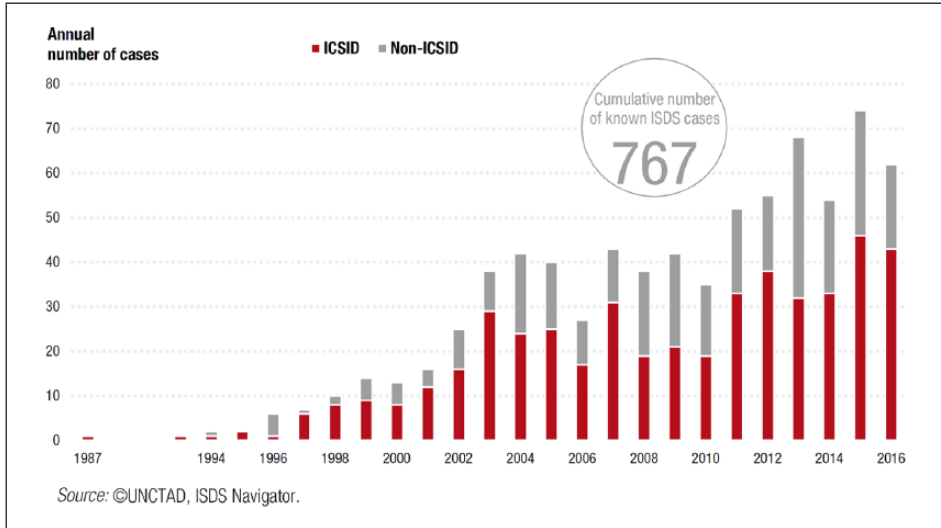


Figure 1. Trends in foreign investor disputes 1987–2016.

ICSID and Non-ICSID refer to differing arbitration forums that hear ISDS cases. Reproduced from UNCTAD *IIA Issues Note*, Volume 1, May 2017.

in some instances anticipated future profits) are not new. The growth in bilateral investment treaties (BITs) dates back to the 1980s, when they were promoted as a way for developing countries to attract much-needed capital at a time when their post-colonial legal systems were feared liable to political capture and direct expropriation (nationalization) of the property invested in by foreign companies (United Nations Conference on Trade and Development, 2015). The majority of investment disputes are still brought under these older BITs, although an increasing number (about one-third) are based on investment chapters in FTAs. The real surge in investment treaties, including enforceable ISDS rules, came in the 1990s until the pace plateaued around 2007. The number of disputes under these rules, however, escalated (Figure 1), along with the value of the claims being sought; and only began declining slightly in 2016. Most of the cases since 1987 have been brought by developed countries, while, with the exceptions of Spain, Canada, the Czech Republic and Russian Federation, developing countries were most often subject to a dispute (United Nations Conference on Trade and Development, 2017). Fifty-nine percent of decisions on merits over this period decided for investors, with an average compensation of US\$545 million. States, while ‘winning’ the rest, only retain the right to the legislation, policy or regulation that investors had challenged while having to pay the costs of their legal defence.⁵ The rise in ISDS cases is attributed, in part, to their promotion by the corporate law firms involved in adjudicating the cases, and which comprise the second most profitable group from these cases after companies with more than US\$10 billion in annual revenue (Van Harten, 2016). A 2013 review of 196 ISDS cases found that over 40 challenged environmental or health protection measures (Van Harten, 2013).

ISDS has been criticized for a lack of transparency, conflict of interest among arbitrators, and limited or no appeals or review process while arbitrating on ambiguous investor rights such as the provision for ‘fair and equitable treatment’, the most commonly cited reason for an investor claim. The TPP’s investment chapter responded to some of these criticisms with efforts to increase the transparency of arbitral proceedings to the public, limit (but not actually eliminate) ‘indirect expropriation’ claims (claims against measures that have an effect tantamount to expropriation or nationalization), and create new (but at time of signing, still to be determined) conduct rules for arbitrators (Labonté et al., 2016). Its ISDS rules, however, did not require investors to exhaust first the legal remedies available in the country whose government they are challenging, and instead allows them to proceed directly to a (still too secretive) international tribunal (Van Harten, 2016).

The TPP investment chapter also lags behind newer reform initiatives, notably the proposed creation of an Investment Court (IC) system under the Canada-EU CETA. Faced with strong civil society and some governmental opposition in the EU to its draft investment chapter, a 2-year ‘legal scrubbing’ of the CETA text led to a change in the ISDS provisions. Unlike current ISDS rules, where each side chooses an arbitrator who then agree upon a third, the IC would randomly select from a pool of ‘judges’ to minimize conflicts of interest. Other reforms include limiting the ability of investors to ‘treaty shop’ among the 3500 extant investment treaties for their best bet, allowing governments to provide binding interpretation notes to tribunals, and creating an appeals tribunal to correct what either party might view as an incorrect ruling (Global Affairs Canada [GAC], 2016b). But there is still no IC requirement that foreign investors exhaust domestic legal remedies before filing a dispute, and the reassurance that ‘nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure ... appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health or other regulatory objectives’ (art.9.15) is once more immediately contradicted by requiring that such measures ‘be consistent with this Chapter’. An analysis of five recent or current ISDS disputes under the proposed IC system of CETA investment chapter text found that it is unlikely that the IC would have prevented these claims from arising (Canadian Centre for Policy Alternatives, 2016). The non-investment chapters of CETA have since moved into ratification, but the IC and investment chapter must be independently approved by 38 European parliaments before these would enter into force, a process taking up to two years and with no guarantee of success.

There is now a junction in the road forward on treaty protection for foreign investors. One path would leave ISDS as it sits in agreements such as the TPP, muddling through with an imperfect and (many would argue) unnecessary system (Lencucha, 2017). Another would abandon such treaties altogether, a decision already made by South Africa, Bolivia, Indonesia, India, and Ecuador to pull out of their existing BITs, largely because gains from investor protections such as increased foreign investment remain uncertain, while costs related to foreign investor challenges to public policy or regulation are indisputable. A third path, not exclusive of the second, would embolden investment treaty reform measures such as those initiated by the CETA ‘legal scrubbing’ and repeatedly advocated for by UNCTAD in recent World Investment Reports (United Nations Conference on Trade and Development, 2015), including new treaty language that would

- Strongly protect governments' right to regulate by excluding from ISDS all non-discriminatory government legislation and regulation protecting health, social, fiscal and environmental conditions, with reference to obligations under the new Sustainable Development Goals.⁶
- Allow governments to sue or to make counter-claims against foreign investors violating the terms of their investment agreements, or their countries' domestic labour, human rights and environmental laws or regulations.
- Incentivize or even require that foreign investments conform to national economic, human and sustainable development goals, that is, writing strong performance requirements into any new investment treaty.

Given the bewildering array of BITs and regional investment chapters, with differing text and definitions allowing for inconsistent interpretations, there is also some discussion of moving towards negotiations for a multilateral investment treaty, assuming it embodies the positive reform measures above and proves that it is actually necessary. ISDS à la TPP, however, deserves a proper zombie burial.

Whither labour and environmental protection?

The 1994 North American Free Trade Agreement (NAFTA) was among the first to include enforceable side agreements on labour and environment, which required the three countries (Canada, the United States and Mexico) to uphold their domestic labour and environment laws. Although these agreements generated many complaints of alleged failures, none have led to a dispute decision, a sanction or improvements in labour law enforcement (Gresser, 2010; McNamara and Labonté, 2017; Polaski, 2003). The US incorporated labour and environment chapters within the core text of subsequent agreements and, since 2007, has specifically called for measures to ensure compliance with the International Labour Organization's (ILO) 1998 Declaration on Fundamental Principles and Rights at Work, and seven multilateral environmental agreements (MEAs).

The TPP's labour chapter repeats this formula, requiring parties to the agreement to 'adopt and maintain' the ILO's Declaration and its key labour rights regarding freedom of association, collective bargaining, elimination of forced labour, abolition of child labour, and elimination of employment discrimination (art.19.3, 1). Signatory nations are expected to maintain regulations governing minimum wages, work hours, and occupational safety and health, although there is no 'floor' below which such regulations should fall. Long-standing developing country opposition to such a requirement is understandable, given the potential for wealthier countries to use lower labour standards in poorer countries as a protectionist tool (Gresser, 2010). However, more recent multilateral agreements, for example, the ILO's *Decent Work Agenda* (ILO, 2017), could provide a normative baseline for minimal criteria, but is ignored in the TPP.⁷ Moreover, enforcement of the labour chapter is only triggered if a country, in failing to enforce its labour standards, gains a trade and investment advantage. This may limit concerns over a regulatory 'race to the bottom,' but makes it clear that the chapter's concern is not with fulfillment of adequate labour standards.

The key weakness of the chapter that renders it more like window-dressing to assuage domestic critics than a step forward in protecting labour rights, is its failure to incorporate ratification of the ILO's eight core conventions. The Declaration is more normative than substantive meaning that, if a labour dispute ever arose, a country's weak labour standards could still be deemed compliant (Cabin, 2009). Conventions, on the other hand, 'spell out concrete and specific rules' along with reporting requirements. Chile and Peru are the only two TPP countries to have ratified all eight conventions, while the US has ratified only two (banning forced or child labour), the least among the original TPP members (McNamara and Labonté, 2017). While the US has long barred imports of goods made in prisons (and has a special WTO exemption allowing it to do so), it actively promotes exports of its own prison-made blue jeans and shirts (Gresser, 2010). There is still debate over whether strengthened and enforceable labour standards should be part of FTAs such as the TPP, or more powers given to other multilateral bodies, such as the ILO, to exercise authority over the interpretation and enforcement of its conventions, either directly or through oversight of trade treaties containing labour chapters.⁸

The TPP's environment chapter fares little better. Like the labour chapter, it does not require (indeed only 'encourages') member states to adopt 'its own levels of environmental protection and ... priorities' (art.20.3¶2). Only one of the seven MEAs in earlier US FTAs is directly enforceable under the TPP: the Convention on International Trade in Endangered Species (CITES), and only three are even cited. Some reference is made to the same subject matter as the other MEAs in the TPP, but is considered weaker and unenforceable (US House of Representatives, 2015). There is no requirement for countries to ratify any MEA that it has not already done so, only to uphold its existing commitments. There is one new element, an enforceable prohibition on subsidies 'that negatively affect fish stocks that are in an overfished condition' (art.20.16, ¶5 (a)).⁹ The chapter is remarkably mute on climate change, pledging only to cooperate on a transition to a low-emissions economy (art.20.15), ironic given the extent to which fossil fuel remains the engine driver of global trade. The chapter's major weakness, consonant with the labour chapter, is that only if failure to uphold its own environmental laws gives a TPP country a trade advantage can it trigger a dispute.

The bottom line is this, labour and environmental protection are secondary to trade, since such protection only matters if it is lowered to confer a trade advantage. Still, the inclusion of chapters on labour and the environment likely reflect the new reality of trade and investment negotiations – seen also in the CETA and the TTIP. Any such chapters modelled on the TPP are less likely to be game changers and more likely to be somewhat novel expressions of the aggressive protectionism that has long underpinned US trade policy and an embodiment of populist rhetoric thinly-veiled as responses to legitimate social critiques. That is, these chapters are '... about protecting US jobs from unregulated labour markets, and protecting US investment from heavily regulated labour markets' (Tham and Ewing, 2016: 24).

Growing the economy for trickle-down wealth and health

The founding document of the WTO made the visionary claim that liberalized trade had the goal of

...raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand...while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development. (WTO, 2016)

Admittedly, this preambular text is normative, and while it has bearing on the legal interpretations of agreement provisions, the WTO's 'overriding purpose is to help trade flow as freely as possible' (WTO, 2017). The means have become ends in themselves, on the assumption that this automatically improves 'economic development and well-being' (WTO, 2017). The evidence, however, is less sanguine on this point. While not claiming cause and effect, the four decades of rapid growth in liberalization has been accompanied by a secular downward trend in the labour share of the economic product (Piketty, 2013), a massive surge in wealth inequality as now widely acknowledged by mainstream global institutions (OECD, 2008), and a contentious decline in global absolute poverty rates that many consider a poor measure of minimal well-being (Labonté, 2016). Consider the WTO's Doha 'Development' Round which, even if it succeeded in completion, would see real income losses in Bangladesh, East Africa and sub-Saharan Africa, while the usual high-income or newly industrialized Asian nations would come out on top (Polaski, 2006). As a 2009 assessment of the contribution of global trade to its visionary ideal concluded, 'Global gains ... are miniscule relative to world GDP and mostly accrue to large and more developed countries' (Sundaram and Von Arnim, 2009).

Yet the same trumpeted claims accompanied the signing of the TPP. To the extent that economic gains benefit all countries, are substantial and 'trickle down' in a somewhat equitable fashion to all workers (and without undermining efforts to achieve the new Sustainable Development Goals and their focus on environmental integrity), there is a potentially powerful health gain in people accumulating more of the resources needed to lead a healthy life. However, most expert assessments attribute little aggregate economic impact to the TPP. The widely cited study by the Peterson Institute predicts only 0.2% gross domestic product (GDP) growth in addition to what the economic trend would have been without the existence of the TPP (Petri and Plummer, 2012). Another study by the conservative Canadian C.D. Howe Institute (2016) reached a similar conclusion, attributing only a 0.08% GDP increase to the TPP in 2018 if fully implemented, with additional output rising to about 0.08 percent by 2035. These estimates have been described as little more than rounding errors. The US International Trade Commission found that, for the US economy, the net GDP gain after 16 years of TPP will be only 0.23%, meaning that 'as a result of the TPP, the country will be as wealthy on January 1, 2032 as it would otherwise be on February 15 of 2032' (McInnis, 2016). Canada's own government analysis of economic gain was a 0.127% GDP boost amounting to CDN\$4.3 billion (but not until 2040) (GAC, 2016a).

All of these estimates rely upon computable general equilibrium models which assume no change in employment, no change (or increases in) average income, and no costs, all empirically dubious at best. Alternative econometric models based on more realistic, dynamic assumptions which acknowledge that not all sectors of the economy will be impacted equally by the TPP come to quite different conclusions. A recent study using the United Nations Global Policy Model database predicts negligible GDP changes but attributable employment losses exceeding 650,000 across all TPP countries (Capaldo

et al., 2016). The study concluded that income and wealth inequalities would likely increase under the TPP, as the share of GDP going to capital rises while the share going to labour declines. This finding is similar to another US study that estimated small wage declines for the bottom 90% of American workers, and larger wage increases for the top 1% of wage earners (Rosnick, 2013) and is consistent with the trend in disequalizing income distributions in most countries that parallels the four-decade period of rapid global trade and investment liberalization. The TPP's econometric modelling similarly ignores known costs associated with implementation of the agreement, such as increased drug prices due to patent term extensions, public costs of defending against investor suits under ISDS provisions, and government adjustment costs to affected sectors. To assuage criticism of the TPP in Canada, for example, the federal government even before the treaty was signed committed CDN \$4.3 billion in compensation payments to two affected agricultural sectors (dairy and poultry)(McKenna, 2015), equivalent to the total estimate of the country's net economic gains from the TPP.

Conclusion

The health concerns we raised earlier when the TPP was a living treaty, and resurrect with its new zombie status, do not infer an 'anti-trade' position. To do so would be to deny the history of human societies which, once settling into surplus agrarianism, has been one of trade. The issue is about the scope, depth and rules of trade, notably since the post-1980 neoliberal era and the shift from border barriers (tariffs) to increasingly 'behind the border' non-tariff 'trade-related' policies and regulations. A critical read on these new generation rules regards them as a nascent global constitutionalism, locking in place enforceable norms that allow transnational firms and investors to increase their control over the global economy and the wealth that it generates (Gill, 1998). It is these two groups, and not nations *per se*, that are now the ones most likely to benefit. Unlike the classical liberalist defence of trade as a non-zero sum game (the 'win/win' rhetoric of today's trade advocates), global trade does generate winners and losers, both among and within nations. For example, while increased market access to Canada and the US under NAFTA was beneficial for many fruit, vegetable, and coffee producers in Mexico that had advantages in climate, geography, and labour costs, Mexican grain producers lost due to disadvantages in climate, mechanisation, and US government subsidies to American domestic producers (Fairbrother, 2007). Equally, while the removal of all tariff-rate quotas in the textile and clothing sector during the phasing-out of the Multi-Fibre Agreement in 2005, saw employment in the textile and clothing sector in India and Bangladesh surge by 21% and 40% respectively, Mexico and Romania experienced employment declines in this sector of 35% and 40% (McNamara, 2015). These wins and losses are neither trivial, nor short-term, with little evidence that government adjustment measures to offset the losses are either sufficient or sustainable.

As the trade and investment treaty space is in a degree of present upheaval and uncertainty, it is worth having governments and the publics they represent debate more openly the *why* and *how* of trade, and to ensure its (revised) past and (negotiated) future rules enhance human well-being, reduce global inequalities, and provide for environmental sustainability. There are hints that this may be occurring, with a potential 'new era for

health' emerging. There is considerable and increased emphasis (at least at the rhetorical level) on the need to strengthen labour and environmental protection within treaties, such as the position taken by Canada as it enters a re-negotiation of NAFTA with the USA and Mexico. Environmental and health civil society organizations are joining with labour groups to articulate protective and progressive trade and investment rules that should be embedded within new or re-negotiated agreements. But the devil, as always, will reside in the details, for a slight tinkering of current treaty language (such as that in the TPP) that fails to confront the limitations noted in this article will accomplish little by way of achieving trade's putative human development goals. If, indeed, we are entering a new era for health in trade and investment rules (time will tell), it will have one simple bottom line: That increasing trade, capital flows and economic growth is no longer a sufficient set of metrics; it is now past time for the ends of trade to reassert their dominance over the means.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

Notes

1. Procyclical policies indicate that government spending as a share of gross domestic product (GDP) increases and taxes decrease during economic booms, while government spending decreases and taxes increase during economic recessions. This is considered suboptimal fiscal policy that contributes to greater macroeconomic instability. Best practice supports counter-cycle spending, such that government spending as a share of gross domestic product (GDP) should decrease and taxes should increase during economic booms, while government spending should increase and taxes should decrease during economic recessions (Alesina et al., 2008).
2. The elite capitalist class referred to here is inclusive of, but not limited to, actors with vested interests in the import and export of goods, services, and capital for the production, manufacturing, processing, distribution, and retailing of goods and services across a diverse array of sectors, such as natural resources, finance, pharmaceuticals, food and beverage, etc.
3. Please note that this is not an exhaustive literature review and is intended to only provide a short overview of the main health-related issues. For a more comprehensive review of the relationship between trade and health, see (Labonté and Forman, 2010).
4. Not all of the labour market transformations (including wage polarization) are due to liberalized trade and investment, and its role in shifting manufacturing employment from high- to low- and middle-income countries. Much of it is due to technological change ('here come the robots') and political policy responses to 'flexibilize' labour markets to reduce 'rigidities' to make them more 'globally competitive' (a sanitized way of saying, reduce labour rights and collective bargaining power). The pendulum may now be swinging slightly back from that position, as post-2008 global economic stagnation is increasingly seen as a lack of demand due to labour's shrinking share of the economic pie.
5. Australia's legal cost against Philip Morris's Investor-State Dispute Settlement (ISDS) challenge to its tobacco plain packaging law, which was subsequently dismissed by a tribunal on jurisdictional grounds, is estimated at over US\$50 million (REF 34 from IJHPM).
6. Interestingly, the Trans-Pacific Partnership agreement (TPP) provides for an 'opt-in' voluntary exclusion of any tobacco control measure from its ISDS rules. Such measures would

still be liable to World Trade Organization (WTO) (government to government) challenge, although WTO panels have been increasingly responsive to health arguments in tobacco-related disputes. If TPP governments were sufficiently wary of ISDS challenges to their tobacco control measures to provide for a carve-out in the treaty, there is little reason why such a carve-out should not also apply to any non-discriminatory measure intended to protect human or environmental health. Although a TPP Annex does add that ‘non-discriminatory regulations...designed for legitimate public welfare objectives do not constitute indirect expropriation, except in rare circumstances’ (Annex 9-B, ¶3(b)), this still leaves to tribunal discretion the determination of a ‘legitimate’ objective or a ‘rare’ circumstance.

7. Curiously, Canada, one of the TPP nations, did include reference to this Agenda in several of its recent Free Trade Agreements (FTAs).
8. There is presently no requirement that countries that have ratified the International Labour Organization (ILO) core conventions enforce them through trade policy, while emphasizing that labour standards should not be used as a means of protectionism against another country’s comparative advantage. These safeguards could legitimate the ILO in the eyes of developing countries as an overseer of trade agreement labour chapters.
9. After more than a decade of stalling, this issue is finally gaining momentum in multilateral WTO talks, perhaps nudged by its presence in the TPP.

References

- Abbott RB, Bader R, Bajjali L, et al. (2012) The price of medicines in Jordan: The cost of trade-based intellectual property. *Journal of Generic Medicines* 9: 75–85.
- Alesina A, Campante FR and Tabellini G (2008) Why is fiscal policy often procyclical? *Journal of the European Economic Association* 6: 1006–1036.
- Arntz M, Gregory T and Zierahn U (2016) *The risk of automation for jobs in OECD countries: A comparative analysis*. OECD Social, Employment and Migration working paper no. 189, 14 May. Paris: OECD.
- Becker G and Posner R (2012) Do patent and copyright law restrict competition and creativity excessively? In: Becker-Posner Blog. Available at: <http://www.becker-posner-blog.com/2012/09/do-patent-and-copyright-law-restrict-competition-and-creativity-excessively-posner.html> (accessed 25 May 2016).
- Blouin C, Chopra M and Van Der Hoeven R (2009) Trade and social determinants of health. *The Lancet* 373: 502–507.
- Bridges News (2017) At Hanoi meet, Asia-Pacific ministers debate future trade integration paths. *Bridges Weekly* 21: 1–3.
- Cabin MA (2009) Labor rights in the Peru agreement: Can vague principles yield concrete change? *Columbia Law Review* 109: 1047–1093.
- Canadian Centre for Policy Alternatives (2016) CETA investment reforms won’t prevent corporate attacks on health and environment. *Canadian Centre for Policy Alternatives*. Available at: <https://www.policyalternatives.ca/newsroom/news-releases/ceta-investment-reforms-won%E2%80%99t-prevent-corporate-attacks-health-and> (accessed 2 June 2017).
- Capaldo J, Izurieta A and Sundaram J (2016) *Trading down: Unemployment, inequality and other risks of the Trans-Pacific Partnership agreement*. Global Development and Environment Institute working paper no. 16-01, January. Medford, MA: Tufts University.
- C.D. Howe Institute (2016) Better in than out? Canada and the Trans-Pacific Partnership. Available at: https://www.cdhowe.org/sites/default/files/attachments/research_papers/mixed/e-brief_236_0.pdf (accessed 25 May 2016).
- Chang H-J (2002) *Kicking Away the Ladder: Policies and Institutions for Economic Development in Historical Perspective*. London: Anthem Pres.

- Dollar D (2001) Is globalization good for your health? *Bulletin of the World Health Organization* 79: 827–833.
- Eicher TS and Kuenzel DJ (2016) The elusive effects of trade on growth: Export diversity and economic take-off. *Canadian Journal of Economics* 49: 264–295.
- Fairbrother M (2007) Making neoliberalism possible: The state's organization of business support for NAFTA in Mexico. *Politics & Society* 35: 265–300.
- Gill S (1998) New constitutionalism, democratisation and global political economy. *Pacifica Review: Peace, Security & Global Change* 10: 23–38.
- Global Affairs Canada (GAC) (2016a) Economic impact of Canada's potential participation in the Trans-Pacific Partnership agreement. Available at: http://international.gc.ca/economist-economiste/analysis-analyse/tpp_ei-re_ptp.aspx?lang=eng (accessed 2 June 2017).
- Global Affairs Canada (GAC) (2016b) Joint interpretative instrument on the comprehensive Economic and Trade Agreement (CETA) between Canada & the European Union and its member states. *GAC*. Available at: <http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/jii-iic.aspx?lang=eng> (accessed 2 June 2017).
- Gresser E (2010) Labor and environment in trade since NAFTA: Activists have achieved less, and more, than they realize. *Wake Forest Law Review* 45: 491–525.
- Hanson S (2016) Neoliberalism is dead. Long live new liberalism! *openDemocracy*. Available at: <https://www.opendemocracy.net/uk/steve-hanson/neoliberalism-is-dead-long-live-new-liberalism> (accessed 2 June 2017).
- International Centre for Trade and Sustainable Development (ICTSD) (2009) *Members aim for Doha 'Stocktaking' in March* (No. Bridges daily update #4). Geneva: ICTSD.
- International Labour Organization (ILO) (2017) Decent work. Available at: <http://www.ilo.org/global/topics/decent-work/lang-en/index.htm> (accessed 2 June 2017).
- Labonté R (2016) Health promotion in an age of normative equity and rampant inequality. *International Journal of Health Policy and Management* 5: 675–682.
- Labonté R and Forman L (2010) *Trade, Growth and Population Health: An Introductory Review*. Ottawa, ON, Canada: Institute of Population Health.
- Labonté R, Schram A and Ruckert A (2016) The Trans-Pacific Partnership: Is it everything we feared for health? *International Journal of Health Policy and Management* 5: 487–496.
- Lencucha R (2017) Is it time to say farewell to the ISDS system? Comment on 'The Trans-Pacific Partnership: Is it everything we feared for health?' *International Journal of Health Policy and Management* 6: 289–291.
- Lexchin J (2016) *Involuntary Medication: The Possible Effects of the Trans-Pacific Partnership on the Cost and Regulation of Medicine in Canada, What's the Big Deal? Understanding the Trans-Pacific Partnership*. Ottawa, ON, Canada: Canadian Centre for Policy Alternatives.
- Lexchin J and Gagnon M-A (2014) CETA and pharmaceuticals: Impact of the trade agreement between Europe and Canada on the costs of prescription drugs. *Globalization and Health* 10: 30.
- McInnis T (2016) Dean Baker's statement on the TPP and latest USITC report. Available at: <http://cepr.net/press-center/press-releases/dean-baker-statement-itc-report-and-tpp> (accessed 25 May 2016).
- McKenna (2015) Canada's dairy farmers can't stop the import tide. *The Globe and Mail*. Available at: <https://beta.theglobeandmail.com/report-on-business/rob-commentary/canadas-dairy-farmers-cant-stop-the-import-tide/article26854685/?ref=http://www.theglobeandmail.com&> (accessed 17 August 2017).
- McNamara C (2015) Trade liberalization, social policies and health: An empirical case study. *Globalization and Health* 11: 42.

- McNamara C and Labonté R (2017) Trade, labour markets and health: A prospective policy analysis of the Trans-Pacific Partnership. *International Journal of Health Services* 47: 277–297.
- Moir HV, Tenni B, Gleeson D, et al. (2014) Assessing the impact of alternative patent systems on the cost of health care: The TPPA and HIV treatment in Vietnam. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2536254.
- Nestle M and Jacobson MF (2000) Halting the obesity epidemic: A public health policy approach. *Public Health Reports* 115: 12–24.
- OECD (2008) *Growing Unequal? Income Distribution and Poverty in OECD Countries*. Paris: OECD.
- Panezi M (2016) *The WTO and the spaghetti bowl of free trade agreements*, CIGI, Policy Brief no. 87, September. CIGI: Waterloo, ON, Canada.
- Petri PA and Plummer MG (2012) The Trans-pacific Partnership and Asia-Pacific integration: Policy implications. Available at: <https://pie.com/publications/pb/pb12-16.pdf>.
- Piketty T (2013) Le capital au XXIe siècle. Le Seuil. Available at: <https://fernandonogueiracosta.files.wordpress.com/2014/05/piketty-thomas-le-capital-au-xxie-siecle.pdf>.
- Polaski S (2003) Protecting Labor Rights through trade agreements: An analytical guide essay. *Journal of International Law and Policy* 10: 13–26.
- Polaski S (2006) *Winners and Losers: Impact of the Doha Round on Developing Countries*. Washington, DC: Carnegie Endowment for International Peace.
- Rosnick D (2013) Gains from trade? The net effect of the Trans-Pacific Partnership agreement on U.S. wages. Available at: <http://cepr.net/documents/publications/TPP-2013-09.pdf>.
- Ruckert A, Schram A, Labonté R, et al. (2016) Policy coherence, health and the sustainable development goals: A health impact assessment of the Trans-Pacific Partnership. *Critical Public Health* 27: 1–11.
- Stiglitz JE (2009) Trade agreements and health in developing countries. *The Lancet* 373: 363–365.
- Sundaram JK and Von Arnim R (2009) Trade liberalization and economic development. *Science* 323: 211–212.
- Tham J-C and Ewing K (2016) Labour provisions in TPP and TTIP: A comparison without a difference? *Melbourne Journal of International Law* 17: 369–403.
- UNDP (2002) *Making Trade Work for People*. New York: UNDP.
- United Nations Conference on Trade and Development (2015) World investment report 2015. Available at: http://unctad.org/en/PublicationsLibrary/wir2015_en.pdf (accessed 2 June 2017).
- United Nations Conference on Trade and Development (2017) Investor-state dispute settlement: Review of developments in 2016. Available at: http://unctad.org/en/PublicationsLibrary/diaepcb2017d1_en.pdf (accessed 2 June 2017).
- United Nations High Level Panel on Access to Medicines (2015) International legal norms: The right to health and the justifiable rights of investors. Available at: <https://static1.squarespace.com/static/562094dee4b0d00c1a3ef761/t/56da14af4d088e1b940103a4/1457132721678/DRAFT+Background+Paper+B.pdf> (accessed 25 May 2016).
- United States Trade Representative (2017) Chapter 1: The President's trade policy agenda. Available at: <https://ustr.gov/sites/default/files/files/reports/2017/AnnualReport/Chapter%20I%20-%20The%20President%27s%20Trade%20Policy%20Agenda.pdf> (accessed 2 June 2017).
- US House of Representatives (2015) TPP issue analysis: Environment chapter. Available at: <https://democrats-waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/TPP%20Issue%20Analysis%20-%20Environment%20Chapter.pdf> (accessed 2 June 2017).
- Van Harten G (2013) *Sovereign Choices and Sovereign Constraint: Judicial Restraint in Investment Treaty Arbitration*. Oxford: Oxford University Press.

- Van Harten G (2016) Foreign investor protections in the Trans-Pacific Partnership. *Canadian Centre for Policy Alternatives*. Available at: <https://www.policyalternatives.ca/publications/reports/foreign-investor-protections-trans-pacific-partnership> (accessed 2 June 2017).
- World Trade Organization (WTO) (1998) EC measures concerning meat and meat products. Available at: https://www.wto.org/english/tratop_e/dispu_e/hormab.pdf (accessed 2 June 2017).
- World Trade Organization (WTO) (2016) Marrakesh agreement establishing the World Trade Organization. Available at: https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm (accessed 25 May 2016).
- World Trade Organization (WTO) (2017) What is the WTO? Who we are. Available at: https://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm (accessed 2 June 2017).

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