

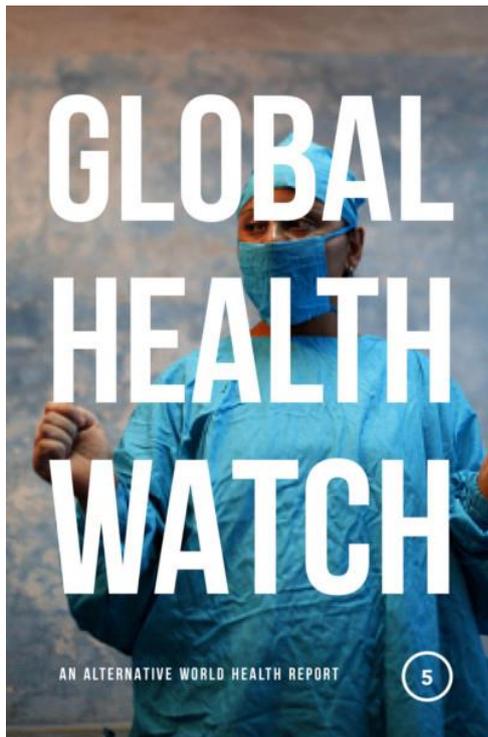


Working Group Determinants of International Health



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Trade agreements and health of workers



In an unequal world, living conditions that promote ill-health and extreme inequity in access to healthcare services prevent a majority of the world's population from leading healthy lives. The collapse of public health systems in many parts of the world and the rising commodification of healthcare in several regions, depict the inability of the current global health governance to address the rising crisis in health. Accompanying these trends is a global order where governance for health is being held captive by private foundations and corporations.

This is the context that informs the contents of the **2017 Global Health Watch report**. Coordinated by the People's Health Movement, Asociación Latinoamericana de Medicina Social (ALAMES), Health Poverty Action, Medico International, Third World Network (TWN) and Medact and now in its fifth edition, the GHW is widely perceived as the definitive voice for an alternative discourse on health. Like its predecessors, it challenges conventional wisdom while pioneering innovative new approaches to the field.

The **working group "Determinants of International Health"** of the Belgian platforms **Be-cause Health** and **Action Platform Health & Solidarity**, contributed to the **Global Health Watch 5 report**, with a chapter on trade agreements and health of workers. The chapter looks at the possible risks that free trade agreements (FTAs) pose to health, and more specifically, to the health of workers. Trade agreements have an effect on employment and working conditions, and them being an important determinant of health, they can have a serious impact on workers' health.

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The opinions expressed in this paper do not necessarily reflect the point of view of all members of Because Health and Action Platform Health & Solidarity.

Trade agreements and health of workers

Trade agreements have substantial effects on many different domains of life, including health. The harmonization of intellectual property protection and its consequences for access to medicines are perhaps the most familiar. But the effects on various social determinants of health—the conditions in which people live, work, and die—are probably more important, yet indirect and much harder to assess. (McNeill et al, 2016)

In this article we take a closer look at the possible risks free trade agreements bring about on the health of workers. First we give an insight in the changing power relations that shaped the global trade framework in the last decades. Before going deeper into the issue of health of workers, we take a short look at the impact of trade agreements on various aspects of our health, such as government revenue, nutritional consumption and access to medicines and health services. Finally, we look at how trade agreements impact employment and working conditions, and them being an important social determinant of health, how they impact the health of workers.

From WTO to the bilateral framework

For almost half of the last century, the General Agreement on Tariffs and Trade (GATT) was the most important international framework shaping the global trade regime. GATT was formed in 1947 with the objective of reducing the barriers to international trade. Therefore, multilateral agreements were negotiated in different “rounds” to reduce tariff barriers, quantitative restrictions and export subsidies.

Since the end of the Cold War, the ascent of neoliberal globalization has accelerated the expansion of international trade. Trade liberalization was promoted by international institutions as an important economic strategy towards development and poverty reduction. Consequently, the Uruguay Round of the GATT negotiations (1986-1993) gave birth to the World Trade Organization (WTO) which came into being on January 1, 1995. Unlike GATT, which only had a small secretariat, the WTO is a strong organization that covers a scope that is much more encompassing. When established in 1947, GATT had 23 contracting parties and was limited to trade in goods. Today, the WTO has 164 members (which account for over 97% of world trade), and includes trade in goods and services and the protection of intellectual property rights. By contrast, global health governance exhibits little structural coherence, a greater diversity of actors and approaches, and weaker legal obligations on states. (Fidler, Drager, Lee, 2009)

The member countries of the World Trade Organization (WTO) are negotiating the Doha Development Round since 2001. The name 'development' was added by the rich countries to bring on board the developing countries which were more interested in assessing the existing WTO agreements than to engage into new negotiations. It also gave the promise to take into account their concerns. However, rich countries never asked so much market access as in this round, with tariff cuts up to 55%. In 2003 in Cancun the tension North-South grew and the developing countries, strongly backed by the growing power of the BRICS upcoming economies, refused to negotiate investment, government procurement and competition (called Singapore issues). The negotiations are stuck since 2004.

Ever since, the USA moved forward bilaterally with countries ready to negotiate. The European Union has followed this trend. As a result, both the EU and the USA are currently pursuing free trade agreements (FTA's) with individual countries and groups of countries. These bilateral agreements do not replace but complement commitments under the WTO and cover a wide range of issues including investments, trade in services, intellectual property rights, competition policy and government

procurement. Moreover, it is often the provisions that were blocked by poor countries at the WTO negotiations that are now being repackaged in the bilateral free trade negotiations. By consequence, multilateral and bilateral trade agreements under the WTO have been criticized for being lopsided to benefit the industrialized countries.

A recent study comparing 74 previous agreements that the TransPacific Partnership (TPP) signatories signed since 1995, concluded that negotiations can best be thought of as a competition among states to insert their vision for trade cooperation into an important new agreement (Allee, Lugg, 2016). This enhances an often made point that FTA negotiations between a developing country and a developed country pose additional reasons for concern (Third World Network, 2009):

- First of all, FTAs are usually negotiated with little transparency or participation from the public. Civil society involvement during the negotiations is generally very limited or even non-existent.
- This stands in big contrast with the involvement of private lobby groups. For example, 85% of the committee members during the TPP negotiations in the USA, consisted of trade advisers of private industry and trade groups.(McNamara, Labonté, 2016)
- Developing countries are usually in a weaker bargaining position due to the lack of capacity of their economies, their weaker political situation and their weaker negotiating resources. These power asymmetries are especially evident in the ISDS provisions¹.
- In the WTO, the principle of special and differential treatment (for developing countries) is recognized. Developing countries are, on paper at least, not obliged to open up their markets (or undertake other obligations) to the same degree as developed countries. Most FTAs, on the other hand, are basically on the basis of reciprocity.
- Even where issues are already the subject of rules in the WTO (intellectual property and services), there were flexibilities and options open to developing countries in interpreting and in implementing obligations in these areas. However, there are attempts by developed countries to remove these flexibilities for developing countries in the FTAs.

As we see that existing power relations between richer and the poorest and low-income countries are reflected in the rules established by trade and trade agreements, they tend to deepen inequalities in multiple ways. The same goes for marginalized populations within countries. (McNeill et al, 2016)

Trade impacts health in several ways²

These new type of agreements between two countries, or groups of countries are considered as blueprints for future bilateral and regional trade agreements and concern a rewriting of the rules that govern the global economy, promoting corporate interests at the expense of public health priorities. These agreements go further than the traditional import and export tariffs, and also influence production rules and standards. Inevitably, their broader scope has much broader consequences for economies and societies. As McNeill et al (2016) claim: “they are influential in shaping employment, access to technologies, environmental pollution and sustainability, and many other social determinants of health”.

First of all, the traditional FTAs caused a **loss of government revenue** by the abolition or lowering of tariffs on cross-border trade. As these represent a significant proportion of government revenues in

¹ ISDS = Investor State Dispute Settlement

² This part is based on De Ceukelaire and Vervoort, 2010.

the poorest countries, this seriously restrains their capacity to implement social policies and to make investments in vital sectors such as health, education and prevention policies.

For many of the developing countries raising public funds through alternative forms of taxation is not feasible due to their weak formal sectors and the social regressive nature of consumption taxes. Moreover, economists of the International Monetary Fund noted that middle income countries are only likely to recover 45-60% of lost revenue from other taxation sources, low-income countries at the best 30% or less. (Baunsgaard, Keen, 2005)

Second, and 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. Consequently, the liberalization of services stays a vast point in FTAs. Clauses on the liberalization of trade in services, including health care, encourage commercialization and privatization of health services. 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. (Pollock, Price, 2003)

Opening the health sector for foreign competition, could make this irreversible. (Legge, Sanders, McCoy, 2009) However, a strong public sector is essential to guarantee health care for all. (Oxfam, 2009)

Thirdly, strong provisions on the protection of **intellectual property rights** are being negotiated throughout bi- and multilateral agreements. These provisions go beyond those of the TRIPS Agreement under the World Trade Organization even though it has been recognized that this agreement has had a detrimental impact on **access to medicines** in developing countries, as they make it more difficult for states to make use of the WTO flexibilities to protect public health. These so-called TRIPS-plus rules are even more in favor of the large monopolies and are limiting the possibility of competition. (Oxfam International and Health Action International, 2009) Access to affordable medicines will be compromised, both by limiting the ability of governments to expand coverage and by limiting the ability of poor people to pay for medicines out-of-pocket. (WHO, 2006)



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Lastly, determinants of health such as lifestyle can dramatically change when trade promotion policies face little competition from a policy environment weak on protection of the public health sphere. For example, trade liberalization is one variable that can lead to alterations in **diet and nutrition**. A study documented how average tariffs in Central America declined from 45% in 1985 to around 6% in 2000. Consequently, total food imports, especially processed foods, into the Central American countries more than doubled. The researchers concluded that "In Central America, liberalization appears to have directly influenced the availability and price of meat and processed foods, many of which are energy-dense and high in fats, sugars and salt". Not surprisingly, these trends were accompanied by rising rates of obesity and chronic diseases such as cardiovascular disease and cancer (Thow, Hawkes, 2009). We should note that poor households are most sensitive to food price changes and thus are likely to change their diet accordingly. Other elements to consider are the penetration of supermarkets or multinational fast-food outlets, availability of processed food, investments in marketing and advertising (Blouin, Chopra, Van der Hoeven, 2009). The same goes for the prevention of abusive consumption of alcohol and tobacco.

Employment and working conditions affect health of workers and their families

Another way in which trade impacts health - at first sight in a less direct way-, is through its impact on employment and working conditions, which are considered fundamental **social determinants of health** (McNamara, Labonté, 2016). Labor conditions can affect health of workers, families and communities in a negative way, certainly if they are what is called, “precarious”. There is no full consensus on the definition of “precarious employment”, but Benach et al (2016) summarize that “precarious employment might be considered a multidimensional construct encompassing dimensions such as employment insecurity, individualized bargaining relations between workers and employers, low wages and economic deprivation, limited workplace rights and social protection, and powerlessness to exercise workplace rights.”

Over the past decade, interesting scientific research has been conducted, demonstrating a consistent association between precarious employment and several dimensions of health (Benach et al, 2016).

In general, precarious work – such as informal work, temporary work, contract work, child labour and slavery/bonded labour – is **associated with poorer health status**. Evidence indicates that mortality is significantly higher among temporary workers compared to permanent workers. Poor mental health outcomes are associated with precarious employment. Workers who perceive work insecurity experience significant adverse effect on their physical and mental health (WHO, 2008).

Nevertheless, there are important differences between countries, according to **the labour standards** and **social protection policies** in place. For example, the relationship between job insecurity and poor health is less in those countries with more extensive social security systems, which improve the ability of individuals to cope with stressful events (Bambra, 2011). For workers losing their employment, health deterioration can be expected, especially in the context of limited social protection (McNamara, Labonté, 2016).

We can say that, as comprehensively shown by Wilkinson and Pickett (2009), redistributive social policies result in better population health outcomes. The fact that precarious and informal employment are becoming more prevalent has important implications for the ability of labour standards and social protection to have a meaningful impact on a growing majority of workers. This is because whereas the enforcement of labour standards is typically restricted to formal markets, the availability of social protection is usually restricted to standard, formal employment relationships, and not to different forms of precarious employment relationships (McNamara, Labonté, 2016).

Trade can lead to an increase in precarious employment and working conditions

If we take a look at history, we see precarious employment was once common. Thanks to increased government regulation, better labour standards and social protection policies, precarious employment declined in the developed countries. Currently, precarious employment is again becoming more common in developed countries, and is still widespread in developing countries. (Benach, Muntaner, 2007)

Main causal factors in the rise of **precarious work are processes of globalization, including trade** (McNamara, Labonté, 2016).

Since the increase in global market integration began in the 1970s, the dominance of neoliberalism has translated into a new model of economic development oriented toward productivity and supply of products to global markets. Institutions and employers wishing to compete in this market argue the need for a flexible and ever-available global workforce. (WHO, 2008; Benach et al, 2007) In this way, a **race to the bottom** for maintaining competitive prices is initiated, on the shoulders of workers. There's a move away from job or employment security towards “flexible” employment practices to facilitate adjustment to market shifts. (Scott-Marshall, Tompa, 2011)

The emergence of a 'new international division of labour' is exemplified by the relocation of labour-intensive production to sites in the developing world selected on the basis of low wages and minimal social protection for workers. (WHO, 2008) A good example of this practice are the so-called *maquilas* (manufacturing companies located in *zonas francas* or free trade zones, producing a.o. garments for export) in Mexico and Central-America, where working conditions are under constant pressure because of lethal competition between companies. The North American Free Trade Agreement (NAFTA), dating from 1994, drastically lowered import tariffs between the United States, Canada and Mexico, making it more beneficial for American business to relocate their production to Mexican Maquiladores and to export their products to the north. Research estimates that the USA and Canada lost up to 750 000 jobs due to NAFTA. 65% of American companies threatened to relocate if they weren't allowed to lower their wages. (Amadeo, 2016)

Working women suffer most

Protection and benefits provided by work, are generally poorer for women than men. Women are typically employed in lower paid, less secure, and informal occupations. Even for equivalent work, women worldwide are paid 20-30% less than men. (WHO, 2008) In this way, when employment and working conditions worsen under pressure of free trade agreements, women are the first to feel it.

In addition, precarious working conditions have a serious impact on workers' social protection. In most countries social security systems are linked to formal employment (ILO, 2013). Informal workers (the majority of the informal workers are women) are not building up a pension, do not get an unemployment allowance, no maternity leave or allowance, no replacement income when sick, no refund of medical expenses, etc. As stated in this paper, trade liberalization leads to more informalization and casualization. This has its undeniable effect on workers' social protection, hitting women particularly hard.



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A particular form of precarious employment occurs in the informal economy – very important in low- and middle income countries - where employment conditions are unregulated (Benach, Muntaner, 2007). In this light, it's also interesting to notice that trade liberalization has contributed to a global increase in **informalization and casualization**. The empirical evidence on this matter has grown considerably in recent years, with most pointing to increased informality as a result of trade liberalization, mainly due to increased competition (ILO, 2016).

At the same time, it's been proven that trade liberalization has negative effects on **unionization and bargaining power of employees** (ILO, 2013). The increasing power of large transnational corporations and international institutions to determine the labour policy agenda has led to a disempowerment of workers and their unions. (WHO, 2008)

The case of the banana workers in Ecuador: work that kills slowly³

Let's take the case of some 90.000 people working in the banana plantations in Ecuador as a concrete example. Ecuador is the world's leading banana-exporting country (30%), mainly producing for the EU-market. Through the global supply chain, big discounters are competing each other, and their buying

³ Case based on several sources: (Oxfam Deutschland, 2016), (Vitali, 2015), (AGU, 2016)



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power allows them to set profitable terms and conditions. Prices paid to banana producers by the supermarkets are forced down. And as producer prices are squeezed, production costs - such as labour costs - need to go down. Although Ecuador has signed ILO conventions on fundamental labour rights - even drafted into national legislation - the level of compliance is inadequate. The systematic violation of environmental, safety and labour standards by many fruit producers is well-known.

Workers testify the work at the plantations is harsh, precarious and low- or underpaid. Most workers are paid under the piece-rate system (i.e. payment by results), and a lot of them don't reach the minimum wage of 366 USD. In most cases, women are paid less for the same work as men. For many workers, the salary isn't sufficient to meet the basic needs of their families, such as healthy nutrition, adequate housing, clothing, etc. Working days of 14 hours aren't an exception, and due to exhaustion, there's an increased risk of suffering occupational accidents. In addition, workers generally don't receive the necessary

protective clothing, which adds to the risk of their cutting themselves, being bitten by insects or snakes, or intoxication by agrochemicals. The use of pesticides poses great risks for the health of workers. A recent study (AGU, 2016), comparing workers exposed to pesticides with workers at organic plantations where no chemicals were used, showed that the workers in the conventional banana production (where the extensive use of pesticides is common) suffer significantly more health problems than the other group. They suffer from eye and skin irritations (banana workers are often called "*los manchados*" - "the speckled", because of the stains on their skin), fatigue and insomnia. They also pose a 6 to 8 times higher risk of suffering from gastrointestinal symptoms such as nausea, vomit and diarrhea. The study also evidenced that, in the long run, health of workers can be very seriously affected, because workers exposed to pesticides are more likely to develop cancer.

The precarious working conditions have become worse over the years and informal work is increasing. Because of this, a lot of workers have no or little access to social protection. Workers are struggling to achieve the goals, and often need the help of their family and children. When workers try to organize to change their situation, they are sometimes blacklisted, or threatened. By consequence, they are afraid to stand up, because losing their job means no income at all.

In 2016, Ecuador accessed the EU's free trade agreement with Colombia and Peru. The agreement includes a Trade and Sustainable Development chapter (Chapter IX), where it is indicated, among others, that "each Party commits to the promotion and effective implementation in its laws and practice and in its whole territory of internationally recognized core labour standards as contained in the fundamental Conventions of the International Labour Organization...". EU-commissioner Cecilia Malmström highlighted that "a new trade and investment framework needs to be complemented by solid and enforceable domestic policies, including on labour rights, human rights and environmental protection".

This sounds promising and makes us think the trade agreement with the EU could be a leverage for improving workers' rights in Ecuador. Could it really be so?

Labour provisions in free trade agreements: a solution?

Over the past two decades labour provisions have been increasingly included in free trade agreements, to counterbalance the negative impact of trade liberalization on employment and working conditions and to make sure it upholds or improves labour standards, rather than puts them at risk. The International Labour Organization (ILO) defines labour provisions as “any standard which addresses labour relations or minimum working terms or conditions, mechanisms for monitoring or promoting compliance, and/or a framework for cooperation.” They are becoming a common tool for promoting labour standards, with over 80 per cent of agreements entering into force since 2013 including them. (ILO, 2016)

But do these provisions really benefit the workers, or are they rather “window dressing”? Some observers argue that they will make trade more socially sustainable, others believe such provisions are intended more to limit domestic opposition to new trade and investment agreements than to ensure protection of labour rights (McNamara, Labonté, 2016).

In its latest report on this topic the ILO (2016) concludes that it’s hard to make general statements about the effectiveness of labour provisions, because labour market outcomes vary according to the context, and depend strongly on governments’ and institutions’ capacity to implement and monitor labour rights and working conditions. Although the findings are not fully generalizable, several case studies showed that capacity-building activities, monitoring and stakeholder involvement in the framework of labour provisions, were associated with **positive institutional and legal changes**, and in some cases, **improvements in working conditions**.

An example of a FTA with a labour chapter that has brought about some positive changes in labour legislation and inspection, is the case of the CAFTA-DR in Honduras⁴. In 2005, Honduras ratified this trade agreement between the United States, Central America and the Dominican Republic. The agreement counts twenty four chapters, one of which is an extensive labour chapter (Chapter 16). In 2012, Honduran trade unions, together with the American Federation of Labour and Congress of Industrial Organizations filed a complaint⁵, stating that several articles of the labour chapter were being violated by the government of Honduras. Labour inspectors from the US Ministry of Labour went to Honduras for an investigation, and found that labour rights were violated in different sectors (such as the maquilas and agroindustry). In order to comply with its obligations under CAFTA, the Ministry of Labour of Honduras had to agree on an Action Plan. An important step, has been the approval of a new Labour Inspection Law, which is much more stringent than the previous one. Representatives from trade unions say this has been an opportunity and an important step forward. Without the support of the American trade unions and the pressure from the United States, the Labour Inspection Law wouldn’t have been revised. However, trade unions warn for the continuous violation of labour rights, which is still omnipresent in Honduras. Important progress is still to be made. Trade unions will remain vigilant, and keep monitoring the full implementation of labour laws and chapters, and the full respect for labour laws.

This proves that the positive impact of labour provisions isn’t general, nor evident. As the ILO report (2016) states, the impact of these provisions **depends crucially on the extent to which they involve stakeholders**, notably **social partners**. A lot of these provisions count with explicit references to their involvement. Nonetheless, the implementation and use of these mechanisms is still very limited in practice. Also, stakeholders feel limited satisfaction with overall transparency, particularly in negotiation processes.

⁴ Sources: Interview with representatives from Honduran syndicalists from Federación de Trabajadores de la Agroindustria (FESTAGRO), CGT (Central General de Trabajadores), RSM (Red de Sindicatos de la Maquila)

⁵ Public Submission to the Office of Trade and Labor Affairs (OTLA) under Chapters 16 (Labor) and 20 (Dispute Settlement) of the DR-CAFTA. <https://www.dol.gov/ilab/reports/pdf/HondurasSubmission2012.pdf>

In a prospective analysis of the labour chapter of TPP, McNamara and Labonté (2016) tried to identify how the TPP could potentially affect health, through labour market pathways. While TPP had the ambition of including one of the most comprehensive labour chapters, the authors find little evidence to support this view. Instead, they find several ways **the TPP may weaken employment relations to the detriment of health**. Their analysis suggests that the agreement's provisions related to labour standards and rights are unlikely to increase the power of workers and thereby improve employment relations important for health. The TPP Labour Chapter refers to the ILO Declaration, but in fact that serves merely as a reaffirmation of countries' membership in the ILO, without providing any incentive or obligation to ratify and implement the 8 corresponding Core Conventions of the ILO. A related concern is that reference to the ILO Declaration can result in weak and elastic interpretations of labour rights. The Declaration, unlike the Core Conventions, references broad and undefined fundamental rights. This means that signatory countries may find potentially divergent, and an inadequate range of domestic measures satisfactory in meeting minimum labour standards. Provisions which deal with the implementation side of the Chapter are found to be largely ornamental and seem to offer little in terms of concrete improvements for employment or working conditions. The Chapter's stipulations are also found to unevenly distribute power to the detriment of workers and establish the priority of trade and market regulation over workers' rights.

A common concern raised by civil society is that labour provisions or the so called Sustainable Development Chapters in trade agreements often **lack binding, stringent rules**, particularly when it comes to the monitoring and enforcement of the provisions. In a recent in depth study intended to document the specific threats to workers' rights embodied in the TTIP, its author finds that the 2016 form of the TTIP "implies disregard for workers' rights". She highlights problems arising against the background of different approaches to labour standards in the US and the EU, the lack of mandatory ratification of core labour conventions, the lack of a sanction mechanism in the case of failure of ratification of core conventions by a Member of the ILO and the lack of a body which could monitor and assess compliance with commitments connected with the protection of workers' rights (e.g. it does not include provisions on civil society participation mandated by the European directives for the negotiation on the TTIP" (Tyc, 2017).

Which future for trade agreements?

It's clear we're engaging in a complex debate. Supporters of free trade agreements say trade contributes to global growth and job creation. But what does this mean, if this growth isn't contributing to improvement of employment and working conditions, better living standards and health for all? Claims that increased trade leads to economic growth and results in improvement of well-being are contradicted by facts. The unacceptably high levels of global inequality, consequence of a failed wealth distribution system, are now recognized as a serious threat by none else than the IMF, long-time champion of neoliberal policies and structural adjustment (Nunn, White, 2016).

Thus if employment growth following implementation of new free trade agreements is mainly situated in precarious or informal employment, as evidence from other trade reforms would suggest, any potential benefits (economic and health benefits) for workers will be limited (McNamara, Labonté, 2016).

From what's written above, we can conclude that trade agreements may result in negative effects on health, through various pathways, such as employment and working conditions. "A flexible workforce may boost economic competitiveness, but brings with it negative effects on the health of workers", concluded the WHO Commission on the Social Determinants of Health (2008) in its final report.

That's why there is an urgent need to think beyond a framework that is bound by the neoliberal recipes of further deregulation, less government control and market liberalization. Adding labour chapters is

in that sense insufficient since their legal status is often less binding than other provisions directly linked to trade, such as ISDS mechanisms.

Treaties on trade, investment, and intellectual property often undermine public health. Provisions that are obviously bad for public health, including TRIPS-plus provisions and the liberalization of health services, should never be part of free -or any- trade agreements. Moreover, compensation for any loss of government revenues by the developing countries arising from the agreement, should be provided by the party making this demand.

By contrast, trade agreements could in fact be a leverage for workers' rights when they really pursue a more just distribution of the wealth produced, for example when they are binding, when they are backed by a strong social protection system and when they actively enforce the power of labour-related civil society organizations such as trade unions, who can play a crucial watchdog function towards their employers and governments. Only by guaranteeing decent work for all, the health of workers and their families will ultimately be improved.

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