

Emerging threats of global preemption to nutrition labelling

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Overconsumption of globalized commodities, including tobacco, alcohol and ultra-processed foods, are among the most important non-communicable disease (NCD) risk factors (GBD 2016 Risk Factors Collaborators 2017). Transnational corporations (TNCs) increasingly market these commodities to vulnerable groups, including the young and the poor, and aggressively lobby governments for trade and investment agreements that constrain regulatory environments. With their expanding international reach, such efforts represent a globally shared NCD risk.

In June 2018, >50 health experts co-signed a letter urging ‘strong health provisions in international trade agreements’ to curb demand for unhealthy commodities (e.g. taxation, marketing restrictions and product labelling) (Friends of the UN HLM on NCDs, 2018). A January 2019 EAT Lancet Commission report emphasized that unhealthy and unsustainably produced food poses a global risk to both human health and the planet (Willett *et al.*, 2019). Recent efforts to revise the North American Free Trade Agreement (NAFTA) illustrate how trade and investment agreements could be used to limit governments’ capacities to enact nutrition-based NCD prevention policies (Thow and McGrady, 2014). In this comment, we look to the history of tobacco control to gauge the potential threat that trade and investment agreements pose to innovative policies regulating nutrition labelling as a case in point.

Trade policy: a cautionary tale of global preemption in tobacco control

Preemption occurs when a higher level of government (e.g. a state) limits the authority of a lower level (e.g. a city) to enact new policies. Global preemption occurs when international treaties, including trade and investment agreements, restrict the authority of nation-states to implement new policies (Crosbie *et al.*, 2014).

TNCs have used the threat of international legal action, known as ‘regulatory chill’, for decades to successfully block, weaken and delay tobacco controls, including restrictions on tobacco advertising, packaging and labelling, and retail display (Crosbie and Glantz, 2014). In 2010–11, Philip Morris International sued the Australian and Uruguayan governments over their tobacco packaging and labelling policies through the World Trade Organization (WTO) and bilateral investment treaties (Crosbie *et al.*, 2018).

Health groups responded by lobbying governments to cite the WHO Framework Convention on Tobacco Control (FCTC) in amicus briefs, which encouraged international trade and investment tribunals to ultimately rule in favour of Australia and Uruguay (Crosbie *et al.*, 2018). They also lobbied governments party to the Trans-Pacific Partnership Agreement negotiations, securing a tobacco carve-out that denies TNCs from directly challenging tobacco controls (Crosbie *et al.*, 2014). Despite such public health victories, Australia and Uruguay paid substantial legal fees to protect their tobacco labelling policies, and the court battles chilled the spread of these policies globally (Crosbie *et al.*, 2018). Furthermore, the safeguards afforded by the FCTC and recent legal victories have not extinguished the threat: Tobacco preemption successfully discouraged, and continues to discourage, some nations from passing tighter restrictions (Crosbie *et al.*, 2019a).

The emerging threat of global preemption to nutrition labelling

Interpretive nutrition labels are an innovative NCD prevention policy. Front-of-package labels provide simplified nutrition text and/or symbols on packaged foods to increase consumer awareness of ultra-processed foods and encourage healthier alternatives. Chile implemented a food labelling policy in 2016 that alerts consumers to foods high in calories, fat, salt and free sugars. Six to 10 months

following implementation, purchases of sugary drinks and cereals had decreased by 25% and 9%, respectively (Universidad de Chile, 2018).

The success of Chile's innovative food labelling approach has shown potential for diffusion. Ecuador and Peru have followed with similar policies, and a host of other countries in the Americas region (Canada, Mexico, Brazil, Panama and Uruguay) are currently deliberating. WTO member states have raised trade concerns in the WTO regarding interpretive nutrition labelling policies (Thow *et al.*, 2018). While these concerns have weakened such food labelling policies in Thailand and Indonesia, Chile successfully defended its own.

Food and beverage TNCs have clearly learned from the successful tobacco preemption strategy (Crosbie *et al.*, 2019b). In 2018, leaked drafts of the NAFTA renegotiations revealed the US's aggressive efforts to chill the spread of interpretive nutrition labels (Ahmed *et al.*, 2018). An American-introduced provision would have prevented any warning symbol, shape or colour that 'inappropriately denotes that a hazard exists from consumption of the food or non-alcoholic beverages' (Ahmed *et al.*, 2018). Although the final text of the treaty revisions dropped this provision, this case shows the very real potential for global preemption in nutrition policy.

Implications for the way forward

Trade and investment agreement preemption is an important, global and shared threat to health. TNCs have already demonstrated their substantial economic influence in lobbying for NAFTA renegotiation provisions that would undermine interpretive food labelling. Nutrition policy does not have a strong countervailing international public health treaty like tobacco policy does in the FCTC. The Codex Alimentarius, a United Nations internationally recognized standard for nutrition labelling, can be used as a reference in trade forums. However, the Codex could be used in ways that both positively and negatively impact health. It could, for example, be used to promote use of the Nutrient Reference Values for salt and saturated fat (Thow *et al.*, 2015). Alternatively, the Codex could be used to promote weak regional labelling regulations in lieu of stronger national labelling policies.

The impact of trade and investment agreements on interpretive nutrition labelling is an important case example, one that is generalizable to other nutrition policies, including dietary guidelines, taxation, food retailer regulations, marketing restrictions and school-based interventions (Thow *et al.*, 2015). Trade and investment agreements have quantifiable health consequences. They present both risks and opportunities: While preemption in food trade and investment policy can threaten health, these agreements could also be structured in ways that promote health. Trade and investment agreements concerning commodities that drive the global NCD burden should be monitored carefully, and public health interests should be represented in these agreements. These are two means by which trade and investment policy could be transformed into a global function for health—one that transcends borders and effectively mitigates transnational health risks (Hatefi *et al.*, 2018).

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