7. Trade, finance, investment and health

Trade relations and foreign investment affect health (population health and health care) in diverse ways. Trade rules (adopted under various agreements) also affect health, both through affecting trade relations and directly. The stocks and flows of global finance, including foreign investment, also affect health, for good and ill, in diverse ways. The policies and rules which guide trade relations and financial flows are subject to debate and contestation, and, in some degree, to international agreement.

Health activists need to understand how trade and finance affect health and where the debates over the governance of these flows are held.

There are progressive civil society organisations and networks which are expert and active in these areas and health activists need to work with them in engaging with the governance structures of trade, finance and investment.

1. Trade relations and foreign investment

People have traded stuff for aeons. Rulers and merchants have sought to shape the rules governing such exchanges, to their own benefit, for many thousands of years.

Bilateral and multi-state agreements governing trade were formed in Europe from the 12th century CE. During its colonial ascendancy England prosecuted a free trade policy signing bilateral trade agreements with many European powers. Britain pushed to include 'most favoured nation' (MFN) provisions in these agreements, meaning that if you agree to favourable provisions for one country you are obliged to offer the same favours to other countries with whom you have agreed MFN provisions.

From the late 19th century to the Great Depression the idea of 'free trade' (being more open to imports; reducing import tariffs; not having quota restrictions on imports) was eclipsed by 'beggar thy neighbour' policies used on a unilateral basis to try to gain commercial advantage. When policies such as restricting imports (with tariffs or quotas) or depreciating your currency to gain export advantages are being used by many countries against each other, trade generally is choked off with the consequence of slowing activity and unemployment.

From the end of the Second World War the US took the lead in driving for a multilateral agreement which would set the scene for trade liberalisation and for binding rules. This led to the General Agreement on Tariffs and Trade which governed global trade from 1948 to 1994 and then to the formation of the WTO.

It is not an accident that it was Britain in the 19th century and the US in the 20th who drove the free trade cause. It is the stronger economy which has most to win from trade liberalisation due to greater productive capacity and greater efficiency.

Before the WTO, trade agreements were largely about trade in material goods (shoes, trucks, oranges, etc) but with the GATS Agreement (General Agreement on Trade in Services) from 1994 cross border trade in services (eg financial services, insurance, consulting) is now subject to WTO disciplines. The GATS Agreement identifies four modes of cross border service delivery (cross border supply, consumption abroad, commercial

presence and the presence of natural persons) and countries acceding to the agreement are invited to identify which services would be subject to GATS rules and under which mode. The GATS Agreement, adopted in 1994, was seen by the finance industry and other advocates for liberalising the trade in services as a first step with the intention that it would be renegotiated periodically and progressively tightened up. The renegotiation of GATS however, has stalled, largely because of the gridlock between developed and developing countries over 'market access' (the developed countries goal) and agricultural protection in Europe, Japan and the US. However, the trade in services agenda is still being advanced but now in the context of regional trade deals.

Foreign investment is an intrinsic part of the expanded trade agenda. The concept of the global value chain celebrates the idea of multinational sourcing, production and marketing so that at all times the transnational enterprise has choices with respect to where it sources its inputs; where it locates its production; how it markets its products in different countries and where it chooses to register its profits. In fact many transnational corporations export their brand and their expertise but source, produce, borrow and sell in the different countries where they are operating. The national jurisdictions where the TNCs invest need to appreciate the role they are playing in the global value chain. Decisions about production and export and about whether and where to pay tax are all made with a view to aggregate corporate profit; not local economic development.

The WTO agreements include much more than rules governing the trade in goods or trade in services. In aggregate they represent a move towards economic integration with the progressive harmonisation of regulations governing customs procedures, intellectual property (IP), investment, government procurement, 'technical barriers to trade' TBT (including sanitary and phytosanitary (SPS) standards). This harmonisation leads towards a regime which is beneficial to global corporations so they can move inputs, products, IP and capital without restraint across the globe.

The promises and risks of expanding trade relations

Conventional wisdom has is that trade is good and free trade is better. It generally depends on where you are standing.

Until David Ricardo and the theory of 'comparative advantage' (1817) the principal logic in support of expanding trade was largely about selling more stuff than we buy so then we are richer and we can buy more stuff from other countries. This win lose logic is referred to as 'mercantilism' (the logic of the merchants).

Ricardo's theory of comparative advantage argues that if both parties stick to what they do best they will both gain in wealth even if total trade volumes are balanced. Ricardo assumes that neither labour nor capital can move and that both labour and capital in both countries are being used at close to full capacity. Under these circumstances if Portugal can make wine more efficiently and England can make cloth more efficiently total productivity will be enhanced if they trade and focus their productive inputs on what they each do best.

It is important to emphasise the assumptions upon which comparative advantage depends. In the present era capital and technology are highly mobile and in many countries labour is far from full capacity. Under these circumstances the win win logic of comparative advantage is less relevant but the win lose logic of mercantilism can still apply.

Actually the logic of mercantilism depends on currency relationships as well. If trade is conducted in gold then the country which sells more than it buys will accumulate gold. If the trade is between countries both of which are inside the Eurozone, then the country that sells more will accumulate Euros. The situation is different where exchange rates are set by market forces. In this situation if you sell more than you buy your currency will appreciate, which means that imports will be cheaper but your exports will get more expensive and presumably will slow down and you will stabilise at a more expensive currency.

Exchange rates are also affected by capital movements including foreign direct investment, repatriation of profits, and the international purchase of bonds (lending money to the bond issuer). The US has run a negative trade balance for many years but the value of its currency has been supported by capital inflow from China, Germany and the Middle East. These are trade surplus countries which do not want to repatriate their trade earnings into their own currencies because it would bid up the value of their currency and make their exports more expensive, so they store their dollar earnings in the US as US Treasury bonds. The inflow of foreign bond purchases helps to maintain the value of the dollar.

From the point of view of individual enterprises free trade promises expanded markets, increased efficiency from scale, leading to increased sales, earnings and profits. Whether the gains of each corporation reflect the win-lose logic of mercantilism or the win-win logic of comparative advantage is impossible to say; it depends on a more comprehensive analysis of trade outcomes across a network of trading partners.

A further argument for trade is to access inputs for domestic production, including commodities, technology and producer machinery. This argument will have greater leverage if the final product is to be exported. This might apply for example to farmers producing for export who need to buy imported machinery which is subject to tariffs.

A powerful logic for free trade is that competition leads to increased efficiency: if companies producing for the domestic market behind high tariff walls are exposed to increased competition from the global best through the dismantling of such protection then they will have to get more efficient or get out. Actually, it is not so simple. If ‘efficiency’ is code for wages levels or employee numbers then competition through lower tariffs may lead to lower wages and/or lower employment levels. These may not matter if free trade also leads to lower prices or new employment opportunities, which it may do. However, if the incoming competition has a superior product or process because of access to advanced technology; or if the incoming competition has advantages in marketing the local producer may have limited options in terms of ‘competition’.

The final argument for free trade is about lower prices and access to better quality stuff. If we drop our tariffs we will pay less for imported stuff and perhaps be able to access better quality stuff than local companies can produce. This is an argument which has more leverage with richer and more secure consumers than with insecurely employed workers (the ‘precariat’).

These are arguments which are structured around the choices of governments. It is important to remember that government strategies are shaped in part by fact and logic but in part by political pressure applied by different interest groups. In the present era of globalisation it is necessary to consider separately the domestic stakeholders and the local

subsidiaries of transnational corporations. Domestic stakeholders will push for different policies according to their specific circumstances. The subsidiaries of TNCs will generally push for trade liberalisation in all circumstances because this corresponds to the interests of the parent company: maximum choice with respect to sourcing inputs; maximum market reach; common marketing strategies; ability to apply downwards pressure on wages, regulation and taxation through the threat of decamping to cheaper, more hospitable climes.

The risks of expanding trade or dropping tariffs are broadly the reverse of those discussed above under 'promises'.

The basic risk is that we buy more than we sell; a negative trade balance. Assuming our exchange rate is set by the market, our currency will fall, and prices of imported goods will rise but our exports will increase because they are now cheaper and we catch up. But this equilibration comes at a cost, to some. The cost of living rises because of the increased price of imported goods but if unions ask for higher wages that would negate the price benefits of the cheaper currency in the export markets.

At the industry level the risk is that cheaper imports lead to industry closures and loss of jobs. From the point of view of TNCs head office strategy, this possibility is a benefit because it adds to the leverage that the corporation can exercise over the state.

The promises and risks of foreign direct investment

Foreign investment is widely represented as boosting prospects for economic development, jobs, growth, exports etc. In accordance with this view *regulatory and tax reform in order to attract foreign investment* is widely recommended as a strategy for economic development. It is not so simple.

It is important to distinguish between foreign direct investment (FDI), where the foreign investor buys all or enough of a business to determine the way it is run, and portfolio investment, where the foreign investors buy shares but not a controlling interest in operating businesses. Within foreign direct investment a distinction needs to be made between acquisition of existing businesses (brownfield investment) and the creation of new operations, new facilities, new employment (greenfield investment).

Portfolio investment will be popular with the banks, stock brokers and the previous owners who are newly cashed up. However, much of this investment is short term speculation in asset price inflation; driving asset prices up and then exiting with the proceeds. In the last two decades many countries have been encouraged or forced to give up controls on capital movements, either in or out. The combination of speculators and uncontrolled capital flows greatly increases the risk of currency instability.

Brownfields investment, foreign investors taking a controlling interest in an operating business (or public service or utility) may lead to the use new technologies, new investment in plant or employment and perhaps greater efficiency. However, it can also be associated with asset stripping, share price inflation and re-sale of a weakened enterprise to gullible locals. Alternatively the purpose of brownfield investment may be consolidation with a view to enhancing market share with loss of employment and loss of competitiveness.

Greenfield investment (involving new jobs and new production facilities) is more likely to add to economic growth and may lead to technology transfer and skills development but

not necessarily. China has successfully imposed conditions on foreign investors which ensure some technology transfer but few countries have the bargaining power to insist on such conditions. It is also likely that greenfield FDI is more secure because the costs of decamping can be significant.

Neoliberal ideology, backed up by big power bullying and IMF conditionalities, urges developing countries to compete for foreign investment as a strategy for economic development. However, there are also costs associated with competitive deregulation and economic integration (including the acceptance of extreme IP policies) and tax competitiveness.

One of the hidden costs of FDI is the growth in corporate debt locally. Much of the funding of 'foreign' direct investment is actually sourced locally through local and foreign banks and investment funds. High levels of corporate debt contribute to the risk of financial instability, particularly in jurisdictions which have abolished capital controls and are exposed to speculative capital flows.

Finally, it is well to recognise the loss of sovereignty and the weakening of democratic accountability associated with the presence of global corporations. Large firms exercise disproportionate lobbying power, ranging from explicit bribes, the threats to leave, to jobs for the boys. When such lobbying power is exercised in the interests of foreign shareholders and executives it can only shrink the space for democratic dialogue and sovereign autonomy.

In addition to this lobbying power, the increasing appearance of 'investor protection' provisions (in particular, 'investor state dispute settlement') in 'free trade' agreements further encroaches upon the policy space available to participating countries in some cases with severe limitations on regulatory powers available to notionally 'sovereign' governments.

Considerations in evaluating trade and investment policy and associated strategies

This discussion of the promises and risks of free trade and liberalised foreign investment highlights a range of considerations which need to be weighted in evaluating trade policy and strategy.

Trade relations, including the negotiation of trade and investment rules, are shaped, at least in part, by power relations between nation states. Inevitably, the more powerful states will deploy their power (including military as well as economic power) to achieve outcomes which benefit their interests.

National trade policy is determined in the melee of domestic politics; stakeholders with a highly focused interest in the outcomes (including local subsidiaries of global corporations) are likely to invest more effort in influencing such outcomes than larger constituencies which may have a more diffused interest in the outcomes but are less well informed in the swirl of uncertainty, knowledge asymmetry and swirling claims about outcomes. All of the claims about risks and benefits are informed by the special interests or priorities of particular stakeholders; none are 'objective' (in the sense of being truths insulated from vested interests). Unequal participation of different domestic stakeholders in trade policy contributes to an unequal distribution of costs and benefits in the domestic economy.

The global economy is a single closed system. Global markets are limited by the buying power of different populations which is in turn shaped by their involvement in production for those global markets. As fewer workers are needed to produce for more consumers the flow of wages into consumption is constrained, particularly if those workers are on subsistence wages. Promises of wealth from exporting into a limitless global market need to be tempered by an understanding of the limits on total buying power.

The limits on buying power are also a function of income distribution; the buying power of the poor is limited by their incomes.

In recent decades the financial sector of the economy has expanded rapidly, feeding off increasing speculation and the increasing flow of profit into lending, mediated by the financial institutions. Some of this lending supports investment in productive enterprise but it has also flowed to government recurrent spending to (to meet the public need for services while responding to the competitive pressure for low taxation); to corporations (often for mergers and acquisitions; also to support consumer credit); and to households (debt funded consumption, including via credit cards, and borrowing against inflated asset values).

The closed character of the global economic system is underlined by global warming and the wider threats to ecological sustainability. These constitute further constraints on aggregate production and consumption.

Trade agreements involve in varying degree economic integration (harmonisation) as well as the exchange of goods; economic integration has implications for national and popular sovereignty. The most egregious examples of this are the investor protection provisions (in particular, ISDS) and the continuing ratcheting up of IP protection both of which involve loss of national sovereignty.

As noted above, trade policy cannot be divorced from global financial flows, both current and capital and exchange rates. The more trade exposed a national economy is the more vulnerable it is to external shocks including: financial crises in other parts of the world, market collapses, price hikes and currency speculation. This is particularly so where countries have committed to not controlling capital flows. On behalf of global finance capital the US and the EU are seeking to include freedom of movement of capital into the current generation of ‘trade’ agreements.

What kinds of trade and investment policies do governments pursue and why?

Trade liberalisation

Trade liberalisation is attractive to export industries looking to persuade other countries to drop barriers.

It is likely to be attractive also to stakeholders who are sensitive to the price impact of tariffs on imported products such as distributors of imported vehicles or miners who need very big machines.

Transnational corporations are generally strong supporters of liberalisation because of the benefits which will flow to the corporation including: global markets, global sourcing, and regulatory harmonisation.

Politicians may be disposed to support liberalisation: if they are concerned to promote efficiency through competition; if they are persuaded that the win-win dynamic of comparative advantage will be promoted; or if they are persuaded of unrealised export potential in terms of employment and earnings.

Protectionism

Protectionism is attractive to: domestic suppliers seeking to limit foreign competition; unions concerned about impact on local employment of foreign competition; and politicians concerned to promote industrial development through the use of tariffs to protect 'infant industries'; or concerned that domestic producers supplying a small domestic market would be swamped by TNCs with massive R&D capacity and global marketing structures.

Protectionism should not be pictured in terms of an 'all or none' logic. There are valid arguments for maintaining some industry protection, either through quotas or through tariffs. There are valid arguments for trade liberalisation at the regional level (as with the EU) but maintaining some level of protection beyond the region.

The Chinese or Indian economies are large and varied and internal trade can promote the win win dynamic of comparative advantage. However, for smaller L&MICs there is a good argument for regional integration with countries at the same level of development but with protection against competition from the advanced economies and their TNCs. Regional trade blocs of this kind include Mercosur, East Africa Community, ASEAN, Southern Africa Community, etc.

Economic integration

Economic integration implies harmonisation of regulatory requirements or even unification of regulatory bodies. It may involve referral of legislative authority from the participating jurisdictions to the 'federal' entity.

However, there is big difference between economic integration between jurisdictions at a comparable level of economic development and the kind of economic integration which is imposed in unequal trade agreements (as in the case of Mexico in NAFTA; or Peru or Vietnam under the TPP). In one case the integration can realise the promise of win win comparative advantage. In the other the purpose of integration is to support the expansion of transnational corporations.

Competing for foreign direct investment

Many countries, including low and middle income countries, place a high premium on attracting foreign investment and appear to be willing to sacrifice regulatory capacity, TRIPS flexibilities, government revenues, capital controls among other concessions in order to attract such investment. Countries who do not adopt such welcoming attitudes may well find themselves coerced into doing so by the money markets, the credit ratings agencies, the financial press, the US Trade Representative or the IMF.

It is also important to consider the different domestic stakeholders who may contribute to such policy decisions and the different interests such stakeholders may have. Those with a structured interest in favour of foreign investment will include: the local executives of global firms who are looking for easy access; the stockbrokers and bankers who will mediate and

feed of such capital flows; the local shareholders whose portfolios will increase in value under competition from foreign capital; unions if they see opportunities to increase memberships and wages; and high income tax payers who are pleased to see any downwards pressure on tax rates.

As I have outlined above there are different kinds of foreign investment and different circumstances all of which need to be considered in evaluating such policies. There will be some cases where foreign investors: facilitate capital raisings for projects which are of economic significance but would not otherwise be funded; bring in new technologies which can be more widely shared and contribute to skills development; or provide access to new markets.

The downsides also need to be considered: the instability associated with foreign speculation in domestic stocks in the absence of effective capital controls; asset stripping and the destruction of viable enterprise; consolidation with a net loss of employment and competitiveness; and the loss of tax revenue and regulatory policy space conceded in the competition to attract foreign investors.

Special and differential treatment for developing countries

There are a variety of provisions in various agreements and treaties which are designed to provide specific advantages to developing countries. These include:

- a period of 'grace' before particular provisions apply (such a period of grace applies to the TRIPS agreement and its enforcement in LDCs);
- preferential tariff rates in accessing advanced economy markets (as in the Generalised System of Preferences or GSP);
- aid for trade promises;
- non-reciprocity;
- technology transfer promises (as in the Kyoto Protocol).

How do trade relations and foreign direct investment affect health?

Trade relations and foreign investment affect population health and health care in a range of different ways:

- economic growth,
- financial crises and austerity,
- intellectual property (IP) and access to medicines,
- public health regulation,
- decent jobs,
- liveable environments,
- social infrastructure,
- food security and nutrition.

Realising the potential benefits of economic growth

Trade and foreign direct investment *may* promote economic growth. Economic growth *may* involve more jobs and increased household income and opportunities for health. Economic growth *may* contribute to improved tax revenue, improved public services and

social security. Economic growth *may* be environmentally sustainable. The benefits of growth, jobs and tax *may* be widely distributed.

These conditions are not inevitable consequences of expanding trade. They depend upon the specific circumstances. Some of the common barriers to realising the potential benefits of economic growth:

- declining terms of trade (Coote 1992); countries who are encouraged or obliged (commonly by the IMF) to focus their development hopes on the export of commodities find that the prices for their exports continue to decline relative to the prices they are paying for manufactured imports; if many developing countries are encouraged to specialise in the export of tea or coffee or sugar it is not a surprise that the supply might increase and the price fall;
- the kindliness of the IMF; during the 1980s and 1990s to indebted developing countries who succumbed to the clutches of the IMF who were advised to cease subsidising farmers and to close and privatise their publicly owned buying authorities and thereby expose their farmers to global market volatility and the speculators who play it;
- the race to the bottom; countries under pressure to reduce tariffs and other taxes (to entice foreign direct investment), wind back public infrastructure development and investment in public services; wind back labour and environmental regulation; all of which contribute to some unevenness with respect to who wins and who loses;
- widening inequalities, corruption (Nelson 1995) and tax avoidance (Shaxson 2012).

Financial crises and austerity

Macroeconomics and the risk of financial crises are matters of concern for health activists because of, first, the immediate loss consequent upon the crash; and second, the 'austerity' regimes which are put in place as part of the 'recovery'.

Keen explains the role of debt (government, household and corporate) and Ponzi-like speculation in setting the scene for financial shocks. The precipitating factors can be different in different crises (collapsing housing bubbles, collapsing stock bubbles, unusual weather affecting harvests, civil unrest, collapse of distant markets) and the impact of the crisis can vary according to the availability of effective capital and other controls. Debt is critical in rendering the economy vulnerable to external shocks, especially where effective controls are not in place.

Harvey explains the larger context, the crisis of relative over production, under consumption and over accumulation, and the increasing flow of funds (profit) through the financial system looking for applications at a time when there is little appetite for real new investment. These funds find their way into lending for consumption (as when increasing housing prices enable home owners to borrow more (and spend more) against (the increasing value of) their home) or lending for Ponzi backed speculation (as when speculators borrow to speculate on increasing asset values) or gambling (applying borrowed money to bet on the changing values of complex indices).

While taxpayer bailouts and money printing can cushion the immediate shock, ultimately someone has to carry the loss corresponding to the inflated values, sales prospects, wages and tax expectations which evaporated in the crash. This takes place in the context of 'deleveraging' as the banks stop lending while they rebuild their depleted reserves.

The distribution of the loss is determined by politics. Ordinary wage earners, tax payers and pension fund members might hope that the banks and speculators whose greed caused the crash might pay. The banks and speculators, however, argue for 'austerity' which means that the re-creation of the wealth which has been lost will be achieved through redirecting government revenues (away from health care, education, public transport, etc) even if this brings the economy to a halt. Because the banks are 'too big to fail' ordinary people will have to pay for the losses, through 'austerity' driven by the troika, the IMF, the financial press, the transnational capitalist class.

As a consequence of this system:

- old people freeze for lack of domestic heating or die of heat stroke for lack of air conditioning;
- pensioners find that despite years of saving their pensions are worthless;
- schools and hospitals are closed;
- jobs and wages plummet; and
- civil cohesion is jeopardised by the stresses of austerity.

The conditions which create financial crises are surely matters for concern by health activists.

Access to medicines

Since the 1970s there has been a dramatic transformation of the global intellectual property protection regime, led in large part by the US transnational pharmaceutical corporations and in particular Pfizer (Paine and Santoro 1992, Drahos 2002). Before then IP protection varied widely both in terms of how easy it was to get a patent, whether you could patent the product as well as the process and the length of time the patent was protected. Drahos (2002) recalls a study undertaken by WIPO in 1988 for the negotiating group that was dealing with TRIPS in the Uruguay Round, that revealed that, of the ninety-eight Members of the Paris Convention for the Protection of Industrial Property (Paris Convention), forty-nine excluded pharmaceutical products from protection... These numbers include developed as well as developing countries. Scherer and Watal (2001) list the developed countries that excluded pharmaceutical products from patent protection until quite recently: Germany until 1968; Switzerland until 1977; Italy until 1978; Spain until 1992; Portugal until 1992; Norway until 1992; Finland until 1995, and Iceland until 1997.

Pfizer was a leading player in a business organisation called the Anti-Counterfeiting Coalition in the 1970s which lobbied first for tighter and more uniform IP protection under WIPO (through the Paris and Berne Conventions) and then from the early 1980s lobbied to include IP protection standards in the trade agreements being negotiated under the Uruguay Round (from 1986-1994). Drahos (2002) comments that in UN fora such as WIPO developing country blocs exercised significant voting power but in the GATT "the United States was the single most influential player. Largely due to the efforts of the United States

and U.S. big business, the Ministerial Declaration which in 1986 launched the Uruguay Trade Round listed the trade-related aspects of intellectual property rights as a subject for negotiation".

The developing countries were reluctant to agree to what became the TRIPS Agreement but were subject to serious arm twisting in the form of US trade sanctions (under Section 301 and Super 301 of the US Trade Act).

The TRIPS Agreement came into operation in 1995, with a 10 year period of grace for China, India and other LMICs and the promise of a longer period of grace for the least developed countries. The TRIPS agreement provided for 20 year patents, for both product and process patents and included provision for compulsory licensing and parallel importation both available ('flexibilities').

Presumably it was evident during the negotiation of TRIPS that the US and TNCs were not going to achieve everything they wanted through the WTO and so TRIPS plus provisions were included in the NAFTA (North American Free Trade Agreement) which was also concluded in 1974 and which heralded a parallel drive, through the preferential trade agreements (PTA) pathway, for higher levels and wider scope of protection. Since the Cancun Ministerial Conference (2003) of the World Trade Organisation (and the deadlock in WTO negotiations) there has been a redoubling of effort into the negotiation of PTAs (such as the proposed Trans Pacific Partnership Agreement (TPPA), the US-EU Transatlantic Trade and Investment Partnership (TTIP), the EU-India FTA) and tighter IP protection ('TRIPS plus') has been a constant feature of these.

Common features of the TRIPS Plus package include:

- extended patent life plus longer periods of data exclusivity;
- longer periods of data exclusivity for biologics;
- availability of new patents for new uses;
- restrictions on use of compulsory licensing;
- extending patents to medical procedures;
- sanctions against use of cost-effectiveness criteria in pharmaceutical reimbursement schemes.

The main impact of tightened IP protection has been increased prices and of course that was the main objective. However there has been resistance. In 1997 a court case was brought by 30 international pharmaceutical companies, see CPT report (Consumer Project on Technology nd) against the government of South Africa alleging that its use of parallel importing was illegal in terms of South African legislation (as adopted to conform to TRIPS). At this time the research based pharmaceutical companies were selling a course of (branded) AIDS treatment in South Africa for $10,000 per year, while Cipla was selling such a course (generics) to MSF for $350 per year. Between 1998 and May 2001 the South African Treatment Action Campaign (Heywood 2009) generated national and international support for the South African government's position, demanding access to treatment and in 2001 the US government withdrew its political support for the drug companies (after ACTUP highlighted the issues in the context of the Al Gore presidential campaign). In May 2001 the drug companies withdrew their suit and agreed to pay the South African government's costs.

Between 1994 (the finalisation of the TRIPS Agreement) and 2001 (the conclusion of the TAC case in South Africa) big pharma suffered a significant loss of standing, clearly reflected in the Doha Declaration on Trade and Public Health (WTO Ministerial Council 2001). The Declaration affirmed that trade rules should not constitute an obstacle to addressing public health needs.

By the late 1990s it was evident that access to treatment would be a basic test of the legitimacy of the neoliberal globalisation in the eyes of the global public. There would need to be a dramatic increase in development assistance for treatment programs if the project of increasing IP protection was to proceed. The report of the WHO Commission on Macroeconomics and Health (in 2001) warned the great powers that globalisation was on trial and cast its report largely as a call for more development assistance for health.

Over the next decade more than 100 'global health initiatives' (sometimes 'global public private partnerships') were created, variously dealing with product development, funding of treatment programs, health system strengthening and public health education and advocacy. The biggest and best known of these are the Global Fund to Fight AIDS, TB and Malaria, the Bill and Melinda Gates Foundation, the World Bank's Multi-country AIDS Program (MAP) and the US President's Emergency Plan for AIDS Relief (PEPFAR).

Within a few years it was evident that, notwithstanding the dramatic increase in development assistance flows, the proliferation of disease specific funding programs was contributing to a new vertical fragmentation of health systems.

Biesma and colleagues (2009) identify as positive effects (from 2002-2007) the rapid scale-up in HIV/AIDS service delivery, greater stakeholder participation, and channelling of funds to non-governmental stakeholders, mainly NGOs and faith-based bodies. However, the negative effects include distortion of recipient countries' national policies, notably through distracting governments from coordinated efforts to strengthen health systems and re-verticalization of planning, management and monitoring and evaluation systems.

A WHO report in 2009 (WHO Maximising Positive Synergies Collaborative Group 2009) offered a positive spin on health system development in the new environment: "If adjustments to the interactions between GHIs and country health systems will improve efficiency, equity, value for money, and outcomes in global public health, then these opportunities should not be missed."

Meanwhile the IP agenda rolled on with predictable consequences for the prices of medicines. Wirtz and colleagues (2009) surveyed the prices of various AIDS drugs in 2007 and concluded that the prices of such medicines depend largely on whether national patent laws facilitate entry of generic manufacturers.

- Efavirenz 600mg (innovator, 2007)
  - Guatemala (LMIC, AIDS prevalence 0.8%): $237 per patient year (PY)
  - El Salvador (LMIC, 0.8%): $665 per PY
- Lopinavir/ritonavir 133/33mg (innovator, 2007)
  - Burundi (LIC, 2.0%): $504 per PY
  - Benin (LIC, 1.5%): $1,051 per PY
- Lamivudine/zidovudine 150/300mg (generic, 2007)
  - Congo (LMIC, 3.5%): $99 per PY
  - Cameroon (LMIC, 5.1%): $210 per PY

Table 1. Comparison of prices across countries with similar characteristics but different patent laws (from Wirtz, Forsythe et al. 2009)

Regulation for public health

It is in the interest of exporters to be able to deliver their product into foreign markets without barriers. Some of the barriers which exporters might object to include:

- unreasonably high standards of purity, eg regarding pesticide residues in food;
- highly specific labelling requirements (meaning that exporters might have to repackage their product for particular markets);
- excessive inspection requirements;
- complex forms to be completed in the language of the destination country; and
- lack of clarity regarding requirements and apparently arbitrary prohibitions and exclusions.

On the other hand, sovereign nation states have legitimate obligations to protect the health of their populations and to pursue other legitimate national objectives.

The objective of trade liberalisation involves reconciling the exporters' interests and the legitimate policy objectives of the sovereign state. From the point of view of the exporters the critical question is whether domestic regulations ostensibly directed to legitimate policy objectives are in fact directed to protecting domestic producers from import competition. In the project of trade liberalisation the objective is to ensure that domestic regulation is least trade restrictive, is based on science, and, as a general rule, are based in internationally agreed standards.

Implementing these principles into the norms of international trade has occurred in three phases:

- trade liberalisation through force of arms, eg the Opium Wars of Britain against China from the 1840s;
- principles written into the GATT in 1948 and clarified and given greater enforcement in the WTO from 1994, in particular the Sanitary and Phytosanitary Agreement (SPS) and the Agreement on Technical Barriers to Trade (TBT);
- the introduction of investor state dispute settlement (ISDS) in the North American Free Trade Agreement (NAFTA) and in many hundreds of bilateral investment agreements (BITs) concluded in the last three decades.

(While the use of force of arms to liberalise trade is generally deprecated, the negotiation of trade agreements often involves quite brutal economic sanctions. See references to the Section 301 and Super 301 provisions of the US Trade Act, discussed below.)

The SPS Agreement deals with food safety and plant and animal health. The agreement does not set standards but privileges those set by the Codex Alimentarius (co-sponsored by WHO and FAO), by the OIE (the Office International des Epizooties, also known as the World Animal Health Organization) and the IPPC (the Secretariat of the International Plant Protection Convention, based in the FAO).

Current issues before the SPS Committee include:

- Korean restrictions on the import of Japanese fish owing to concerns about radioactive contamination from the Fukushima nuclear disaster;
- mad cow disease and Brazil's objection to import restrictions imposed by China, South Africa and Japan following the discovery of the disease; Brazil objected to the import restrictions because it was only one case and no product was being exported from that region;
- Chinese ban on Norwegian salmon because of claims of pathogenic microorganisms and excess residues of veterinary drugs.

Most of the complaints coming before the committee are resolved through mediation but countries can proceed through the WTO's disputes settlement procedures (see under WTO below). Complaints can only be brought by WTO member states, not by individual corporations.

Among the current issues before the TBT committee tobacco plain packaging is of particular significance for health. Cuba has notified the committee of its concerns regarding NZ proposals for plain packaging regulations and Malawi and the Dominican Republic have notified concerns regarding Ireland's proposed plain packaging laws. Both NZ and Ireland will be able to quote the Framework Convention on Tobacco Control in their defence.

Ukraine, Honduras, Indonesia and the Dominican Republic have all commenced disputes with Australia regarding its plain packaging laws. The first stage in such dispute settlement is seeking consultations. These disputes cite a number of different WTO agreements including TBT, TRIPS and GATT. It is reported (Liberman, 4 Oct 2013) that big tobacco is funding all or some of these disputes.

Turkey which proposes to mandate a message on alcohol products, 'Alcohol is not your friend' will be without the defence of an international treaty such as the FCTC. Canada, United States, Mexico and the European Union argued that these requirements will be costly and complex for exporters, and it should be made clear to consumers that only excessive alcohol consumption is dangerous.

Several complaints currently before the TBT committee concern fuel emissions and renewable energy objectives. Canada and the US have expressed concern about a EU directive seeking to discourage fuels which, across their production to consumption life cycle, are associated with higher levels of greenhouse gases. Indonesia and Malaysia are concerned

that a new US renewable fuel standard aiming to control greenhouse gas emissions may discriminate against palm oil biofuels.

More about both SPS and TBT can be found on the WTO website (www.wto.org).

Dispute settlement under the WTO agreements is conducted on a state to state basis, in sharp distinction from the investor state dispute settlement provisions (ISDS) associated with NAFTA (and subsequent FTAs based on NAFTA) and incorporated in hundreds of bilateral investment treaties which enable foreign investors to sue governments for damages in relation to policy initiatives which reduce the profits of those investors.

Kelsey and Wallach (2012) provide a useful review of the operation of ISDS in the context of their concerns regarding the proposed inclusion of ISDS in the proposed Trans Pacific Partnership (TPP).

Kelsey and Wallach describe how Philip Morris Asia has initiated a dispute under the Australia-Hong Kong Bilateral Investment Treaty 1996 aiming to have Australia's Tobacco Plain Packaging Act 2011 repealed and for compensation to be paid to the company for losses incurred until that is done. PMA seeks to have the case heard under a tribunal established under the rules of UNCITRAL (United Nations Commission on International Trade Law) rules. Australia is challenging the tribunal's jurisdiction to hear a dispute under that agreement, on the grounds that PMA acquired its shares in Philip Morris Australia in February 2011 in full knowledge of the proposed plain packaging legislation. The next stage in the case is a hearing in Singapore in February 2014 on whether Australia's jurisdictional objections should be heard prior to or together with consideration of the merits of PMA's claim. A searchable database of publicly known investment treaty cases (to May 2010) can be found at: www.iiapp.org.

Food security and nutrition

Numerous authors have surveyed the ways in which diet and food sovereignty are shaped by trade relations, including:

- the dumping of subsidised agricultural product in Third World markets; with consequential rural poverty and urbanisation leading to huge informal settlements (Madeley 2000, Murphy, Lilliston et al. 2005);
- the slurping up of ocean fisheries at unsustainable rates by rich country owned factory ships, forcing small fisherpersons to go further off shore for declining catches (Nayak and Vijayan 2006);
- patenting existing seed varieties; developing and patenting pesticide resistant seeds and encouraging farmers to become dependent on TNCs for both seeds and pesticides (Madeley 2000);
- exporting cheap, rubbish foods, eg mutton flaps and turkey tails (Thow and Snowdon 2010);
- exporting and locally producing cheap, high energy, snack foods and high energy beverages, supported by intensive marketing (Hawkes 2010);
- exporting of the monopoly supermarket model in retailing, globalising diets, screwing small farmers, corner store operators, and workers;

- degradation of farming land through input-intensive big business mono-cropping (Madeley 2000); and
- speculation in food prices and hunger (GHW 2011).

Similarly a number of authors have considered how trade policies could be used to promote food sovereignty and to address food-related health issues such as non-communicable disease.

- nutrient profiling linked with social marketing and policy encouragement to preserve traditional food ways and prevent the worst of westernisation of diets (James, Rojroongwusinkal et al. 2010);
- legitimisation of using the SPS agreement to restrict food imports which constitute a threat to health (saturated fats, trans fats, high salt, etc) (Lobstein 2010);
- use of flexibilities in the Agreement on Agriculture to address the perverse export price incentives created by developed country subsidies and also to promote domestic agricultural production which makes healthy choices easier (Atkins 2010);
- use of the Codex Alimentarius to promote tighter standards with respect to food quality specifications and food labelling to promote healthier diets (L'Abbé, Lewis et al. 2010, Lobstein 2010);
- codes of practice for the marketing of particular foods to children, perhaps based on the Convention on the Rights of the Child (Lobstein 2010)

Fidler (2010) reviews the application of a range of international trade and investment agreements on the anti-obesity agenda, framing his discussion around the European Charter on Counteracting Obesity.

This is a huge area and it is not possible to provide full coverage in this context. The excellent collection edited by Hawkes, Blouin and collaborators (2010) from which several of the references cited above are taken would be a good starting place for a more detailed survey.

However, in the context of a book on activism it is useful to provide some further insight into the politics of the policy options considered above. Legge (2013) provides a detailed case study of the development and implementation of World Health Assembly Resolution 59.26 on International Trade and Health which sought to authorise WHO to support member states in achieving coherence across the policy objectives of both the trade and health portfolios. The case study includes a discussion of WHO's efforts to apply this principle to non-communicable diseases.

The Western Pacific Regional Committee of WHO in October 2008 had before it the draft of a regional action plan commissioned by the Regional Committee which included a passage (page 13) which says that Member States shall:

> "engage with other Member States and relevant regional and international bodies to address NCD risk factors and disease issues that cross national borders. As examples, consider the public health impact on respiratory health during cross-country discussions on haze control, and *incorporate health impacts of unhealthy products in trade agreements*, such as those arising

from the Association of South East Asian Nations (ASEAN) and the Pacific Island Countries Trade Agreement (PICTA)" [emphasis added].

Further, on p 33, the draft Regional Action Plan included among the recommended actions for WHO:

> "assist Member States to establish and use cross-country alliances, networks and partnerships for NCD capacity-building, advocacy, research and surveillance (e.g. Alliance for Healthy Cities, MOANA). Cross-country alliances can also facilitate unified responses to transnational issues that affect non-communicable diseases, *such as trade issues and global marketing of unhealthy lifestyles*. For example, follow-up on the conclusions of the Meeting of the Ministers of Health of the Pacific Island Countries in Vanuatu, which call for engagement with the food and trade sectors to ensure that the health impact of trade agreements on diet is minimized" [emphasis added].

The intervention of the US in this debate, intervening by virtue of its status as a colonial power in the Pacific, provides some insight into the underlying dynamics (WPRC 2008, page 147-8).

> "Mr Villagomez (United States of America), commenting that effective control of chronic diseases required wise programming and wise use of resources, said that the proposed Regional Action Plan overlapped with a number of others that had been adopted globally. Rather than duplicating those initiatives, the Regional Office should ensure that Member States fulfilled their obligations to implement the global strategies. They were relevant throughout the Region, for all political, language, cultural and at-risk groups; therefore, their implementation would be effective and sustainable and improve health at country level."
>
> "Globalization and urbanization were important factors in the treatment and surveillance of non-communicable diseases, *but they were not "conduits for the promotion of unhealthy lifestyles"*. Furthermore, the document advocated transnational environmental control by regional forums such as the Association of South East Asian Nations (ASEAN), whereas the Regional Office's primary role was to make health-based interventions. The key to reducing morbidity and mortality from non-communicable diseases was prevention. The Regional Office should focus on surveillance, setting norms and standards and designing models for the organization of care. Prevention should be done at the community or even individual level, whereas the document focused on interventions by governments, industry and nongovernmental organizations. *Diet, physical activity and health behaviour involved complex personal choices and individual priorities. The Regional Action Plan should address those complexities and the responsibility of individuals in changing their behaviour*." [Emphasis added]

As a consequence of Mr Villagomez's intervention a new clause was added to the resolution adopting the regional action plan, acknowledging the importance of personal responsibility for individual behaviour. However the Regional Action Plan for NCDs was adopted by the Regional Committee (WPRO 2009).

Decent jobs

In recent decades there have been massive movements of people; farmers to the cities, periphery to metropolis, asylum seekers, refugees, and migrants. There have also been dramatic changes in the distribution, quality and remuneration of work. In the developed

countries there has been an evaporation of well paid jobs in manufacturing, an expansion of low paid, often casualised work in the personal services sector and an expansion of employment in the financial services sector. There has been a widening of income inequality, in large part through the absurd incomes going to business executives. In all of the developed countries there has emerged an excluded class experiencing intergenerational unemployment and profound alienation, however, beyond the excluded and marginalised are the increasingly insecure families, saving for housing, for education, for health care and for retirement and facing increasing uncertainty regarding public provision and their own employment.

In the developing countries there has generally been a shrinkage of employment in farming with migration to the cities, often to huge informal settlements with limited infrastructure (and predictable health consequences). Mass employment in low wage manufacturing has come to some (emerging) economies but many countries remain waiting in the queue. Poverty and instability (and war) have driven a continuing flow of refugees and asylum seekers, many of whom face inhuman treatment in the countries to which they flee, an inhumanity which reflect increasing alienation and insecurity. In the developing countries occupational health and safety is commonly neglected. Chinese miners, Bangladeshi garment workers and Indian shipbreakers are outstanding examples but not unique.

These changing patterns of demography and employment reflect the dynamics of globalisation and the ascendancy of the transnational corporation. Trade and investment agreements play a major role in structuring these outcomes; in part through their influence on the employment and production and partly because of the failure to harness the power of trade agreements to ensure decent work for all.

A recent report from SEATINI (Machemedze and Chizarura 2011) explores the likely impact of the EU – Africa 'Economic Partnership Agreements' (EPAs) on employment in cotton production in Southern Africa. The report identifies over 1m workers at risk of losing their jobs through the liberalisation of imports demanded by EU as a condition for export access to European markets. Employment in cotton production in Southern Africa is already facing continuing competition from US dumping of subsidised cotton on global markets under the Agreement on Agriculture. The implications are further rural to urban migration and larger informal settlements in the cities.

The strength of commitments embedded in trade agreements lies in the sanctions associated with the possibility of trade retaliation. This is why Pfizer and its allies were so keen to move global intellectual property regulation from WIPO to the Uruguay Round and ultimately TRIPS. However the international agreements dealing with labour standards and the distribution of quality employment are either absent or toothless.

There are no agreements in the WTO stable which deal with labour standards. Labour standards were discussed during the Uruguay Round and at the Singapore Ministerial Council meeting of 1996. A recent (2013) report by the ILO and International Institute for Labour Studies (IILS) recalls that:

> The United States, certain European countries, and a number of trade unions, among others, contended that a labour dimension to trade agreements would help to avoid globalization at the cost of workers' rights and aid in enforcing international labour standards. Others, in particular a broad alliance of developing countries, criticized such provisions as protectionism in disguise that might hamper economic development, and

> argued that trade and labour issues should be kept separate [refs deleted]. The compromise reached at the Singapore Ministerial Conference of 1996, however, named the ILO as the competent body for resolving international labour disputes, rather than the WTO.

However, in contrast to this determined exclusion of labour standards from WTO agreements, there has been a significant increase in the number of bilateral and plurilateral trade agreements which include labour provisions; from 4 in 1995 to 58 in June 2013 (ILO & IILS 2013), almost a quarter of the 248 agreements currently in force. In about 40% of these agreements there are economic consequences attached to compliance. These are largely in US and Canadian agreements. In 60% of agreements there are provisions for dialogue and monitoring but no sanctions for failing to comply. These are largely EU and South South agreements. FTAs involving the US generally cite the ILO's 1998 Declaration on Fundamental Principles and Rights at Work but explicitly exclude the more broadly based ILO conventions (some of which the US has not ratified).

The politics of labour standards in FTAs is complex. The principal supporters tend to be the labour unions of the developed countries who express both protectionist and labour solidarity intentions in their advocacy. Trade officials from developing countries are concerned regarding the protectionist potential of binding commitments and I presume in this they are at one with the TNCs.

It appears from the ILO/IILS report that even where there are notional sanctions in support of labour standards in FTAs they are relatively weak and infrequently used.

The dynamic which labour provisions do not address is the race to the bottom; the capacity of TNCs to auction the prospect of foreign direct investment across (would be) developing countries with a view to achieving the best combination of conditions for their 'global value chain' (the Foxconn syndrome).

Closely tied to the 'race to the bottom' is the fact that with globalised production a smaller and smaller number of workers can produce for larger and larger slices of the global market with consequent unemployment for the workers who are not needed and sluggish demand for the products because unemployed workers do not buy so much. In this light it is globalisation per se and not the legalisation of trade unions which is the fundamental barrier to decent work for all.

In the face of mining collapses, factory fires, unemployment and inequality it is important not to lose sight of the ultimate vision of safe, meaningful, environmentally sustainable and adequately reimbursed work for all. This vision implies work which contributes to community. This is not compatible with neoliberal globalisation.

Liveable environments

Many different perspectives on what we might be talking about regarding liveable environments. Not necessarily in conflict and not always comprehensive. I think that the 'Vision' articulated in the People's Charter for Health (People's Health Movement 2000) puts it very nicely:

> *Equity, ecologically-sustainable development and peace are at the heart of our vision of a better world - a world in which a healthy life for all is a reality; a world that respects, appreciates and celebrates all life and diversity; a world that enables the flowering of people's talents and abilities to enrich each other; a world in which people's voices guide the decisions that shape our lives.*

Global trade relationships and financial flows powerfully affect our capacity to realise this vision, both positively and negatively. It is useful to consider three aspects:

- basic social infrastructure: housing, sanitation, water supply;
- culture as environment: equity, peace and security, fulfilment, community
- stable supportive ecosystems: supporting, provisioning, regulating, nourishing.

Social infrastructure

Social infrastructure, including, in particular, housing, sanitation and water supply, depends in large degree on economic development which is critically shaped by trade relations and financial flows. [Cite MDGs here]

The impact of the Agreement on Agriculture on small farmers' livelihoods contributes in direct and indirect ways to shortfalls in infrastructure provision including rural impoverishment from the dumping of cheap commodities (and exclusion from rich world markets) and the consequent urbanisation and the expansion of massive informal settlements in large Third World cities

Building social infrastructure requires economic capability (essentially capital and technology; technological know-how and capital to pay for big machines and workers' wages). Economic capability reflects economic development (accumulated know-how and capacity to mobilise capital to pay for big machines and for labour). We (globally) have unprecedented technology and access to unprecedented capital to pay for machines and labour. Undoubtedly the disciplines of capitalism have contributed to the accumulation of such technology and capital. However, modern capitalism has also created powerful institutions to preserve control of such technology and capital in the hands of a global elite (the TCC) and has created powerful disciplines to prevent those who are excluded from such control from achieving their own economic development (from accumulating capital and necessary know-how).

'Trade agreements' governing IPRs illustrate the institutions designed to control access to knowhow. The provisions in trade and investment agreements governing ISDS also illustrate the shoring up of corporate privilege. The control by the TCC of knowhow and capital is reflected in the choices which are made regarding where such investment will go. When such choices are in private hands investment in housing and infrastructure goes to consumers who can pay for it raising questions about the economic policies which create and perpetuate income inequality. Typically the privatisation of infrastructure is focused on the paying customers and the poor are catered for through second class safety net provisions.

Where infrastructure investment in public hands, investment choices are all too often focused on creating environments which are supportive of private enterprise as in both South Africa and Brazil where massive investments in soccer stadiums as compared to housing contributed to widespread cynicism and protest.

The role of the public sector in infrastructure development is increasingly curbed by the doctrines of small government, leave it to the market and contracting out all of which are backed up by the race to the bottom with respect to tax levels (corporates auctioning the possibility of FDI against the promise of lower and lower tax) and the continued defence of widespread corporate tax evasion.

If population health depends on decent housing, sanitation, reticulated water supply, household access to energy (and it does) then the structures and dynamics of the global economy including trade and finance are matters for public health activism. From this brief survey we might identify fair trade, tax justice, polycentric regionalism, opposition to extreme protection of IPRs, expanding the policy toolkit of the nation state for managing national and global economies and restoration of a central role for the public sector in support for social infrastructure.

Cultural environments

It is self-evident from the quote above from the PCH that liveable environments must include cultural environments if liveability is to encompass equity, peace and security, fulfilment and community. For the purposes of sketching the links between cultural environments and health and the regulation of trade and financial flows I shall consider separately the following choices, continua rather than dichotomies:

- valuing fairness and equity rather than stark and widening inequality;
- finding fulfilment and self-esteem in creativity, contribution and appreciation rather than material possessions and commodified fantasies;
- collectively underwriting people's material security rather insisting on insecurity as a driver of economic participation;
- basing economic participation on the intrinsic rewards of work and a culture of shared responsibility rather than material insecurity and wages as compensation for sacrifice;
- valuing the biosphere for its aesthetic, spiritual and recreational values rather than simply as a source and a sink for industrial process.

Valuing fairness and equity as a condition for better health is familiar idea in public health. The global burden of preventable and treatable disease falls overwhelmingly on those with least access to resources or control over their own destiny. One of the most profound dynamics of global trade negotiations is the insistence of the rich countries on preserving the structured unfairnesses which obstruct the development of poor countries.

As Stiglitz and Charlton (2005) point out:

> *To get a sense of how absurd the [world trading] system is, try the following experiment. Imagine a world without trade barriers or subsidies and think of what would have to be invented to get to where we are now. Imagine a United States senator rising to his feet and asking for $4 billion each year to give to a handful of cotton farmers on the condition that they continue to produce a loss-making crop, even though it can be imported from Africa at half the price. Consider a European parliamentarian asking for subsidies for the sugar industry, even though sugar can be produced much more cheaply in warmer climates. How about if taxes had to rise in order to produce 5m more tonnes of sugar than Europe consumes, a mountain of which is eventually dumped on the world market. It sounds improbable, but we have now reached the stage where the European Commission pays 40% of its budget propping up a group of inefficient industries which employ just 2% of its workforce. The rich countries that make up the OECD give more than £200billion to their farmers each year, and maintain high tariffs to keep cheaper foreign food out. These trade policies are a lesson in incoherence. The US has a huge hole in its budget, but gives billions to farmers, who make up just 1.7% of the population.*

In view of the destabilising trends in the biosphere (in particular global warming and loss of biodiversity) it seems self-evident that humanity needs to move towards a culture in which people find fulfilment and self-esteem in creativity, contribution and appreciation rather than material possessions and commodified fantasies. There may also be direct health benefits from such a cultural shift; particularly for those populations who currently do not find fulfilment or self-esteem from either source. Such a shift in global thinking would represent a significant challenge to the prevailing capitalist system which depends heavily on creating needs for material goods or commodified fantasies and then profiting from meeting those needs. This is a dynamic which underpins the drive for trade liberalisation and the ascendancy of transnational corporations.

Fulfilment through material posessions and the retreat of the state from social protection is a toxic combination as can be exemplified in the xenophobia which greets refugees and the violence of sharply polarised cities. Under materialism there is no ceiling above which enough is enough and there is no threat so small that it does not stoke fear and hatred. Building a culture where basic norms of material security are socially collectively assured would reduce the fear of loss and make more space for generosity particularly if other modes of personal fulfilment were available.

Economic participation is important and not all jobs are so full of intrinsic reward as to attract workers without some material incentives. However, if the drive of materialism were to be wound back it would be important also to move towards a culture in which shared responsibility and mutual obligation were seen as real living principles.

Given current trends in biodiversity and ecological destabilisation the principle of valuing the biosphere for its aesthetic, spiritual and recreational values rather than simply as a source and a sink for industrial process is critically important for liveable environments. Externalising the costs of production to the environment has been part of human practice since well before capitalism but it is only in the last century that it has dawned on humanity that the biosphere is in many respects a closed system. ‘Throwing waste away’ now has a rather hollow ring. It is during the period of capitalism that externalising production costs to the environment has emerged as a critical risk to the biosphere. However, with the advent of competitive globalisation and the race to the bottom the pressures are intense on developing countries to accept less than best practice in life cycle product management. Indeed with the insertion of ISDS provisions into investment treaties and plurilateral trade agreements the regulatory scope of governments to require best practice has been closely curtailed. The so-called Green Fund through which the developed countries would assist developing countries develop or acquire the technology needed to move to a low carbon economy remains under subscribed. The so-called Basel Ban (proposed amendment to the Rotterdam Convention on the Transhipment of Hazardous Wastes) on the OECD countries exporting their hazardous waste remains opposed by the US, Australia and Canada.

Stable ecosystems

While the concept of ‘externalising’ the costs of production is a useful way of thinking about the economics of regulating industrial pollution the concept of ecosystem ‘services’ (Millennium Ecosystem Assessment 2005) provides a much more encompassing way of thinking about the ecosystem dimensions of liveability. According to the 2005 Millenium

Ecosystem Assessment ecosystem services provided by 'the environment' to human settlements and peoples include:

- Supporting services, including nutrient cycling, soil formation, primary production, etc;
- Provisioning services, including food, fresh water, wood and fibre, fuel, etc;
- Regulating services, including climate regulation, flood regulation, disease regulation, water purification; and
- Culturally nourishing services, including aesthetic, spiritual, educational and recreational nourishment.

The supporting, provisioning and regulating 'services' are being used up faster than 'the environment' (some would prefer Mother Earth) can regenerate them. However, the competitive dynamic between corporations and the race to the bottom globally makes it very hard to effectively regulate them. Against this background there is a continuing call from the corporate lobby for deregulation and a drive to implement ISDS as a universal principle which would give the corporations greater power to challenge environmental regulation.

The fourth of these ecosystem services, cultural nourishment, is grossly undervalued under neoliberal globalisation and by capitalism more generally. Where eco-nourishment competes with economic uses of the environment the latter generally prevails. If there is scope for commodifying access to these culturally nourishing ecosystem services the pressure will be on to put up fences to ensure that they are produced as private rather than public goods.

Nevertheless, from the activist perspective, the celebration of our ecosystem as a source of cultural nourishment maybe one of the most important ways of challenging the materialist paradigm and building support for an alternative way of doing business.

2. The governance of international trade and finance

In this section we review the institutional structures and political dynamics through which global trade and finance are presently governed. These are the lynchpins of contemporary global capitalism. The forces that activist draws on in the struggle for health and equity depend on popular mobilisation and rebalancing power relations globally. In this degree the specific details regarding institutional structures might seem of lesser importance but they are in fact of critical importance for strategy: when to engage and where; what demands and what slogans; which alliances and which channels of communication. This is the purpose of this section.

In undertaking this review I draw heavily on the magnificent survey of Braithwaite and Drahos (2000).

Trade agreements

The General Agreement on Tariffs and Trade (GATT) signed in 1948 was the first global agreement on trade. In previous eras trade policy had been focused on the advantages of protection or liberalisation accruing to states and empires and the GATT clearly reflected the policy objectives of the leading industrial nations, in particular the USA. However, there was an additional logic reflecting the experience of competitive protectionism (the use of

tariffs and quotas and exchange rate policy to disadvantage the exports of foreign countries) in the first half of the 20th century which was seen as a contributor to the Great Depression and indirectly to the Second World War.

In 1944 at the Bretton Woods conference John Maynard Keynes argued for an International Trade Organisation (ITO) (in addition to the IMF and WB) to provide a forum which would promote agreed rules to govern global trade. At that time the US was unwilling to proceed with the ITO but from 1948 - 1995 the GATT served as a de facto ITO; nominally merely an agreement, the secretariat established for purposes of the agreement played a significant role in coordinating international trade policy.

From 1948 there were a series of 'rounds' of negotiation culminating in the Uruguay Round from 1986-1994 which led to the Treaty of Marrakesh by which the World Trade Organisation (WTO) was established.

World Trade Organisation

The WTO comprises a secretariat, based in Geneva, headed by the Director-General and the member states (159 member states in 2013). The highest decision body is the biennial Ministerial Conference. Between ministerial conferences the Organisation is governed by the General Council. In addition there are specific councils for each of the agreements administered by the WTO of which there are 23 covering trade in goods and services, finance and investment and putting in place common regulatory frameworks (IP, data flow, government procurement, SPS, TBTs).

There are 13 multilateral agreements on trade in goods. (In WTO-speak multilateral means all member states are bound by these agreements in contrast to plurilateral agreements which only apply to those choosing to participate.) Agreements in this group include:

- the General Agreement on Tariffs and Trade (GATT)
- the Agreement on Agriculture (AoA)
- the Agreement on Sanitary and Phyto-sanitary measures (SPS)
- Textiles and Clothing Agreement
- Technical barriers to trade (TBT)
- Anti dumping agreement
- Rules of origin
- Import licensing

Other agreements include

- Agreement on Trade Related Investment Measures (TRIMs)
- Agreement on subsidies and countervailing measures
- General Agreement on Trade in Services (GATS)
- Agreement on Trade-related Intellectual Property Rights (TRIPs)
- Trade Policy Review Mechanism (TPRM)

There are 5 non mandatory agreements including:

- Trade in civil aircraft
- Government procurement
- Dairy agreement

- Bovine meat

Disputes

Dispute settlement is the heart of the WTO; it is the dispute settlement arrangements, set out in the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), which add discipline to the agreements.

A state which believes it (or its corporations) have been disadvantaged by the policies of another state and that those policies violate some (of the 24,000 pages of) WTO agreements can open a dispute. The procedures to be followed in the event of a dispute (consultation, appointment of a panel, implementation of sanctions, etc) is managed by the Disputes Settlement Body (DSB).

If the dispute cannot be settled through consultation between the parties an arbitration panel is set up comprising a nominee of each side and a nominee agreed to by both sides. Panelists are international trade lawyers who, as well as serving on panels, also provide advice to companies and governments in a consulting capacity and inevitably have conflicts of interest associated with the interests of their sometime clients.

If the panel determines that the complaint is valid it may order that the offending policy be rescinded. If the offending nation refuses to rescind the panel may impose a fine (to be paid as compensation to the complainant or the disadvantaged corporation) and or allow retaliatory trade restrictions on exports from the offending nation. This threat of retaliatory trade sanctions gives the big trading states, the USA, Japan and Europe, asymmetrical power vis a vis small countries. Small trade sanctions imposed by the USA can be very damaging for small economies highly dependent on the US market while the reverse is not the case.

Some of the general principles which are applied to dispute settlement include:

- regulatory objectives should achieved through the least trade restrictive option;
- policy goals should be pursued through voluntary rather than compulsory means and through consumer information rather than bans;
- in general policy goals should be constructed in terms of individual rather than public responsibility.

The asbestos case (decided in September 2000) is illustrative. In January 1997 France imposed a ban on the manufacturing, processing and sale of asbestos within France. Canada complained to WTO on the grounds that it damaged Canadian economic interests and was a barrier to free trade. The panel and DSB determined that the ban was a barrier to free trade but that it was legal on health grounds.

Negotiation processes

The negotiation and renegotiation of the WTO agreements involves first a commitment to negotiate. This takes the form of an agreement to a new ‘round’ of negotiations. The Uruguay Round from 1986 to 1994 was such a round. The Doha ‘Development’ Round was authorised in 2001 at the Doha Ministerial Council meeting; it is presently stalled.

The negotiations take place in a number of parallel committees dealing with particular chapters. The negotiators at this stage are trade lawyers and technical specialists but towards the end of the negotiating process the full agreement will be subject to higher level

negotiation including ministers in the final stages. The focus of the ministers will be on the text which is bounded by square brackets. Under this convention the text which is agreed to is presented in ordinary text while the disagreements are highlighted in the square brackets.

There are some general rules which it is agreed will govern such negotiations. The first principle is the *single undertaking: nothing is agreed until all is agreed*. Participants cannot agree to some provisions but exclude themselves from others. Two further principles are *most favoured nation treatment* (MFN) and *national treatment*. MFN means that countries are not allowed to offer trading privileges to some countries but not to others; every country is entitled to the treatment which is offered to the most favoured nation. National treatment requires that domestically domiciled corporations should not have privileged trading conditions in comparison with foreign corporations.

Once the heads of agreement are agreed the task is one of formulating text. This is usually done through a complicated caucusing process. Typically it may involve the US and the EU agreeing on a draft and then locking in the wider group of leading capitalist economies and then locking in a wider circle of likely supporters and then finally sharing the text with all states. By this stage (it is hoped) the text will be accepted as a fait accompli.

One of the more notorious features of this approach was the Green Room process used to sort out contentious issues. The Green Room is only able to accommodate a relatively small number of negotiators, typically the leading proponents of the text under discussion and perhaps representatives of various groups of countries. Participants have described quite naked bullying and intimidation of developing country representatives in this process. It should be appreciated that while the large advanced economies are able to mobilise hundreds of experts and officials to participate in analysis, strategizing, drafting and lobbying, many of the smaller and developing countries would have much smaller teams and many fewer specialists (Drahos 2002, see p771).

However, while this pattern might have applied during the Uruguay Round by the time of the Ministerial Council meeting in Cancun (Mexico) in December 2003 the emerging economies were no longer willing to succumb to this kind of manipulation. The core issue at Cancun was the tension between rich world agricultural protection and access to developing world markets for manufactured goods from rich world corporations.

Ministerial Council meetings

The Ministerial Council meetings punctuate the history of the WTO.

In 1994 at Marrakesh the WTO was born with the approval by the participating countries of the 23 agreements.

The first meeting of the Ministerial Council took place in 1996 in Singapore. At this meeting the advanced capitalist economies attempted to gain the agreement of the Council to launch a new round of negotiations around the “Singapore issues” (government procurement, trade facilitation, investment, and competition policy). These were issues around which agreement had not been achieved during the Uruguay Round. The Council did not agree to a new round of negotiations but agreed to a program of research on these issues.

The Ministerial Council met in 1998 in Geneva. This was the calm before the storm which was Seattle in 1999. The meeting in Seattle was seriously disrupted by a legion of

protestors from diverse civil society constituencies (including in particular labour and environmental organisations) who it seems were belatedly coming to appreciate the significance of the full suite of WTO agreements.

The next meeting in 2001 in Doha took place under the shadow of 9/11 which may have conveyed to some delegates an appreciation of the vulnerable legitimacy of the new regime of neoliberal globalization being created through the WTO. The delegates were also conscious of the global attention which had been focused on the TRIPS agreement as a consequence of the Treatment Action Campaign in South Africa (see …). Two major outcomes of the Doha meeting were the Doha Declaration on Trade and Health and the commitment to a new negotiating round, the so-called Doha Development Round.

The Declaration on Trade and Health basically affirmed that trade agreements (the TRIPS agreement in particular) should not constitute a barrier to the pursuit of public health goals. The meeting also committed to addressing another limitation in the TRIPS agreement, namely that while it provided for compulsory licensing for the domestic market this did not extend to export, for example, compulsory licensing for export to countries which wanted to grant a compulsory license but did not have domestic manufacturing capacity.

The promise of a new 'development round' was perhaps hollow to begin with but it was a Cancun in 2003 that the debates between the developing countries and the advanced industrial economies became deadlocked. The newly formed G20 stated firmly that they would not agree to binding reductions in tariffs against manufactured goods without significant progress towards the dismantling of agricultural protection in the global North.

After a further inconclusive meeting in 2005 in Hong Kong there was a delay of four years before the next meetings of the Council; in both 2009 and 2011 the Council met in Geneva, relatively secure from the protests of civil society but not particularly productive in terms of new developments in global trading regime.

At the time of writing preparations are in train for the 2013 meeting in Bali. Watch this space.

WTO agreements particularly relevant to health

There are no WTO agreements which deal explicitly with health. However, several agreements have important implications for population health and for health care. Chief among these are the agreements on:

- the Agreement on Agriculture which sanctions the dumping of subsidised products on developing country markets and the continued denial of access to rich country markets for developing country farmers;
- the TRIPs Agreement which protects monopoly pricing of medicines with far reaching implications for access to medicines in poor countries;
- GATS which provides new guarantees for foreign corporations investing in health care financing and delivery; implications for privatisation, foreign ownership, stratification; and
- SPS & TBT which limit the scope for public goods regulation through environmental and food standards.

Agreement on Agriculture

The Agreement on Agriculture is of course not focused on health but it has proved particularly damaging to small farmers in many developing countries through subsidies and protection.

Farm subsidies in rich countries (in the EU, Japan and US in particular) combined with import barriers (tariffs and quotas) prevent small farmers in developing countries from exporting to rich country markets.

Farm subsidies in rich countries (in the US in particular) lead to the dumping by rich countries of subsidised product in poor country markets, in many countries destroying thye livelihoods of domestic producers.

In India 600m farmers live on $US1.00 per day. In Europe the dairy subsidy amounts to $US2.70 per cow per day; in Japan beef producers are paid $US8.00 per cow per day. In the USA: 25,000 cotton farmers receive a total of $US10m per day.

In Europe 80% of food subsidies go to agri-business, not small farmers. Illustrative payments in 2003/04 were:

- Tate and Lyle (sugar): $US404m;
- Arla Foods (Denmark): $US205m; and
- Nestle (UK): $20m.

General Agreement on Trade in Services (GATS)

The liberalisation of 'trade' in services under the GATS was a new feature of the WTO agreements. 'Trade' in this context means companies providing services in other countries. The 'services' which can be included under this agreement include: trade and tourism; business, professional and technical; telecommunications; asset management; education; medical services; energy; and construction. 'Trading' in such services can be undertaken in any or all of four 'modes of supply': (i) cross border supply (eg telemedicine); (ii) consumption abroad (eg patients travel abroad); (iii) commercial presence (eg foreign owned health insurance and health care corporations) and (iv) the presence of natural persons (eg migrating doctors and nurses).

The drive for an agreement on trade in services came largely from financial and insurance corporations seeking new markets for their products. However, the potential scope of the agreement goes well beyond these sectors.

The agreement, as it presently stands, adopts a 'positive list' approach, which means that countries on acceding to the agreement itemise the specific service sectors to which it will apply, in which modes of supply and whether there will be any specific conditions. (There is currently some pressure from the US and Europe for a revision of the agreement to move to a negative list, in other words the agreement would apply to all services except for those which are explicitly excluded.)

A number of general principles apply across the board regardless which service sectors or modes of supply are included by any country. These include:

- most-favoured-nation (MFN) principle;
- national treatment; and

- transparency.

MFN, in this context, means that a country cannot give market access for a particular service sector to one country but not to others. Once one member country is given market access all member countries should be. National treatment means that policies which apply to domestic service industries, for example, subsidies, must also apply to foreign providers who have market access through the GATS agreement. Transparency requires each country to create an accessible and continually updated data bases of laws and regulations so that there are no surprises for foreign providers.

Once a set of services has been included as subject to GATS it is very difficult to remove them from this status.

When the GATS was signed it was agreed that it would be subject to renegotiation at some stage in the future and the revision of GATS was initiated in Doha in 2001. This revision was to follow an offer and request process whereby countries could ask other countries to include a new set of services and if this was agreed then market access in relation to those services would apply for all members. It appears that the volunteering of new services sectors has underwhelmed the would-be exporters and the renegotiation of GATS appears to have ground to a halt; yet another reason for the US and Europe to have turned their attentions to bilateral and regional trade and investment agreements.

The significance of GATS in terms of health services is related to the debates over pathways to universal health coverage and privatisation of health care. If a service industry is funded and provided publicly without private insurance or private providers then GATS would not apply. However, if insurance and medical services have been identified for foreign investment/provision under GATS, then any market opportunities (and subsidies) for domestic private insurers or providers must be also available to foreign corporations.

Agreement on Trade Related Intellectual Property Rights (TRIPs)

The TRIPS Agreement has driven a dramatic strengthening of intellectual property (IP) protection with protection for product as well as process, increasing duration of protection and powerful new sanctions to encourage countries to adopt the new standards. As with the other WTO agreements TRIPS includes the principles of MFN and national treatment.

TRIPS specifies certain standards and provisions which must be enshrined in domestic law. However, national governments have some discretion with respect to how they frame their IP laws. Particularly important, among these ‘flexibilities’ is the scope for compulsory licensing and for parallel importing. However, not all countries have included provision for these flexibilities in their IP laws.

The application of the TRIPS Agreement to pharmaceuticals has contributed to maintaining high prices for longer periods with predictable effects on access to treatment. This represented a huge change in the way pharmaceutical were treated around the world. A study undertaken by WIPO in 1988 for the negotiating group that was dealing with TRIPS in the Uruguay Round revealed that, of the ninety-eight Members of the Paris Convention for the Protection of Industrial Property (Paris Convention), forty-nine excluded pharmaceutical products from protection. These include developed as well as developing countries (Drahos 2002). Likewise Scherer and Watal (2001) point out that many of today’s developed

countries excluded pharmaceutical products from patent protection until quite recently: Germany until 1968; Switzerland until 1977; Italy until 1978; Spain until 1992; Portugal until 1992; Norway until 1992; Finland until 1995, and Iceland until 1997.

The revolution in IP regulation begins in the 1970s with two counter-posed influences: first, the increasingly confident claims of the Non-Aligned Movement (NAM) and the G77, expressed most clearly in the call for a New International Economic Order (NIEO); and second, countering this, was the rising agitation of many of the largest the transnational corporations (TNCs), led by Pfizer among others, for much tighter control over (what they regarded as) counterfeit (but which could also have been regarded as completely legal diffusion of technology).

The NIEO was conceived at the NAM Conference in Algiers in September 1973 and subsequently adopted at a Special Session of the UN General Assembly (UNGA (1974)) in April 1974 sponsored by the Group of 77 (G-77) and opposed by the United States and a small group of advanced industrialized countries:

> However, the remaining vestiges of alien and colonial domination, foreign occupation, racial discrimination, apartheid and neo-colonialism in all its forms continue to be among the greatest obstacles to the full emancipation and progress of the developing countries and all the peoples involved. The benefits of technological progress are not shared equitably by all members of the international community.
>
> The new international economic order should be founded on full respect for the following principles [including]:
>
> * Regulation and supervision of the activities of transnational corporations by taking measures in the interest of the national economies of the countries where such transnational corporations operate on the basis of the full sovereignty of those countries;
>
> * Giving to the developing countries access to the achievements of modern science and technology, and promoting the transfer of technology and the creation of indigenous technology for the benefit of the developing countries in forms and in accordance with procedures which are suited to their economies;

Driven by the increasing activism of the larger TNCs, the US and EEC countries tried to incorporate an ‘anti-counterfeiting code’ into the General Agreement on Tariffs and Trade (GATT) in the Tokyo round of GATT negotiation in 1978. They failed at this time, through the opposition of developing countries (Adede 2003). Wadlow (2007) comments that the proposal for an ‘anti-counterfeiting code’ to be embedded in the GATT represented a significant exercise in “forum shifting”, away from the World Intellectual Property Organisation (WIPO) into the GATT, and later the WTO. In UN fora such as WIPO developing country blocs exercised significant voting power but in the GATT “the United States was the single most influential player. Largely due to the efforts of the United States and U.S. big business, the Ministerial Declaration which in 1986 launched the Uruguay Trade Round listed the trade-related aspects of intellectual property rights as a subject for negotiation.

The shift to the GATT reflected a view among the TNCs, led by Pfizer and speaking through the International Anti-counterfeiting Coalition (formed in 1979) that renegotiation of the Paris Convention under WIPO would never deliver the level of IP protection they wanted.

> *The revision of the Paris Convention that had begun in 1980 was never completed. In the eyes of such key industry players as Pfizer, WIPO had failed to secure the higher patent standards that the large pharmaceuticals players wanted. Even more dangerously, countries such as India, Brazil, Argentina and Mexico had shown that developing countries could lower standards of patent protection and still have a thriving generics industry. In the words of Lou Clemente, Pfizer's General Counsel, "Our experience with WIPO was the last straw in our attempt to operate by persuasion." (Drahos 2002)*

> *When the United States began to push for the inclusion of intellectual property in a new round of multilateral trade negotiations at the beginning of the 1980s, developing countries resisted the proposal. The countries that were the most active in their opposition to the U.S. agenda were India, Brazil, Argentina, Cuba, Egypt, Nicaragua, Nigeria, Peru, Tanzania and Yugoslavia. After the Ministerial Declaration of 1986 which opened the GATT Uruguay Round, these countries continued to argue for a narrow interpretation of the Ministerial mandate on the negotiation of intellectual property. (Drahos 2002)*

> *Breaking the resistance of these "hard liners" was fundamental to achieving the outcome that the United States wanted. Special 301 was swung into action in the beginning of 1989. When the USTR announced the targets of Special 301, five of the ten developing countries that were members of the hard line group in the GATT found themselves listed for bilateral attention. Brazil and India, the two leaders, were placed in the more serious category of the Priority Watch List, while Argentina, Egypt and Yugoslavia were put on the Watch List. U.S. bilateralism was not confined to these countries. By 1989 USTR fact sheets were reporting other successes: copyright agreements with Indonesia and Taiwan, Saudi Arabia's adoption of a patent law and CoIombia's inclusion of computer software in its copyright law. Opposition to the U.S. GATT agenda was being diluted through the bilaterals. Each bilateral the United States concluded with a developing country brought that country that much closer to TRIPS (Drahos 2002)*

Presumably it was evident during the negotiation of TRIPS that the US and TNCs were not going to achieve everything they wanted through the WTO and so TRIPS plus provisions were included in the NAFTA (North American Free Trade Agreement) which was also concluded in 1974 and which heralded a parallel drive, through the preferential trade agreements (PTA) pathway, for higher levels and wider scope of protection. Since the Cancun Ministerial Conference (2003) of the World Trade Organisation (and the deadlock in WTO negotiations) there has been a redoubling of effort into the negotiation of PTAs (such as the proposed Trans Pacific Partnership Agreement (TPPA), the US-EU Transatlantic Trade and Investment Partnership (TTIP), EU-India FTA) and tighter IP protection has been a constant feature of these.

Proponents for increasing IP protection, in particular the research based pharmaceutical manufacturers (RBPM) and their nation-state proxies, argue that it is necessary to support innovation. (Countries such as the US which have exported their manufacturing jobs are increasingly dependent on the export earnings associated with monopoly pricing.)

Opponents to high levels of IP protection argue that:

- monopoly pricing (under patent protection) renders medicines unaffordable for (especially for poor people and low and middle income country (L&MIC)

governments); the abuse by RBPMs of their monopoly pricing power (for example with the prices for AIDS drugs determined on the basis of maximising revenues (as when revenue is maximised by higher prices for a smaller number of wealthier families) rather than ensuring access to treatment);and

- funding R&D on the basis of anticipated profit distorts investment in new medicines; manifest in lack of investment in diseases which mainly affect L&MICs and over investment in me-too modifications, disease-mongering therapeutics, and marginal end of life benefits.
- much of the profit garnered through monopoly pricing is misused in marketing with consequences in overuse, irrational use and antibiotic resistance.

The battle is being fought out in several different domains. The RBPMs have sought to shore up their monopoly pricing powers by lobbying for higher levels of IP protection in PTAs and by attacking the use of generics, including through seizures in Europe, trade sanctions against countries using compulsory licensing and propaganda which conflates questions of IP with issues of quality, safety and efficacy (most notably through the International Medical Products Anti-Counterfeiting Taskforce (IMPACT)).

On the public health side there has been resistance to these strategies including defence of the use of generics (including the full utilisation of the flexibilities of the TRIPs agreement) and a drive to de-link R&D funding from sales revenues (and therefore IP protection), in particular through alternative ways of funding pharmaceuticals R&D.

These forces are engaging at different levels (global, regional, national), in different institutional settings (eg trade negotiation, public health conferences) and in different countries (eg USA, cf Thailand).

In 1997 a court case was brought by 30 international pharmaceutical companies, see CPT report (Consumer Project on Technology nd) against the government of South Africa alleging that its use of parallel importing was illegal in terms of South African legislation (as adopted to conform to TRIPS). At this time the RBPMs were selling a course of (branded) AIDS treatment in South Africa for $10,000 per year, while Cipla was selling such a course (generics) to MSF for $350 per year. Between 1998 and May 2001 the South African Treatment Action Campaign (Heywood 2009) generated national and international support for the South African government's position, demanding access to treatment and in 2001 the US government withdrew its political support for the drug companies (after ACTUP highlighted the issues in the context of the Al Gore presidential campaign). In May 2001 the drug companies withdrew their suit and agreed to pay the South African government's costs.

During the controversy there was a policy debate around the use of TRIPS flexibilities (such as compulsory licensing, parallel importation and price controls) versus drug donations, differential pricing and philanthropy. In April 2001 Dr Brundtland (WHO DG) co-hosted a workshop in Oslo on differential pricing as a solution to price barriers to treatment in low income countries (WHO, WTO et al. 2001); essentially seeking encourage a more charitable approach by the RBPMs.

However, in December 2001 the Ministerial Council of the WTO, meeting in Doha, adopted the Doha Declaration on the TRIPS Agreement and Public Health (WTO Ministerial Council 2001) which stated (para 4):

We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all.

In this connection, we reaffirm the right of WTO members to use, to the full, the provisions in the TRIPS Agreement, which provide flexibility for this purpose.

The Ministerial Declaration from the meeting declared (para 6):

We recognize that under WTO rules no country should be prevented from taking measures for the protection of human, animal or plant life or health, or of the environment at the level it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, and are otherwise in accordance with the provisions of the WTO Agreements.(WTO Ministerial Council 2001).

SPS (Sanitary and Phytosanitary Measures)

The purpose of the SPS Agreement is to prevent covert protectionism under cover of regulatory standards governing human, animal and plant health. The core principles of the agreement are that such standards should be by default based on recognised international bodies such as Codex Alimentarius and more restrictive regulation must be based on scientific risk assessment.

Thus when the EU introduced a ban on the importation of hormone-treated beef and was challenged by the US the dispute settlement panel judged that the ban was not supported by science and was not addressing defined risks (WTO). Accordingly the EU has been paying compensation to the US ever since.

In the salmon case Australia's ban on the importation of fresh chilled or frozen salmon, allegedly to protect the domestic salmon population from a number of diseases was challenged by Canada which claimed that salmon imported for human consumption was very unlikely to lead to the introduction of these diseases. The panel found that the ban was not based on appropriate risk assessment; that the ban was arbitrary and unjustified; and that it was more trade restrictive than necessary. The first two of these findings were upheld by the Appellate Body (WTO).

TBT (Technical Barriers to Trade)

The purpose of TBT agreement is also designed to prevent covert protectionism under cover of unduly restrictive standards applying to product regulation. Regulations must be least trade-restrictive necessary and where internationally agreed standards exist these would be the default standards. These are not necessarily standards sponsored by inter-governmental bodies; they can be industry based bodies such as ISO.

Cantore and Mavroidis (2013) summarise three signal cases under the TBT as follows.

US-Clove Cigarettes. In 2009, the US adopted a new regulation according to which it was prohibited to sell cigarettes containing artificial or natural flavours as constituents or additives, with the notable exception of tobacco and menthol cigarettes. According to scientific studies, juveniles are particularly addicted to flavoured cigarettes, since additives somehow mask the unpleasant taste of tobacco and are more attractive to young people. Indonesia was, between 2007

and 2009, the main exporter of clove cigarettes to the US. It lamented that the domestic measure was inconsistent with Art. 2.1 TBT since it accorded imported clove cigarettes less favourable treatment than that accorded to like domestic goods (menthol cigarettes). The panel understood "likeness" under Art. 2.1 TBT as related to the objectives pursued by the regulator, and found the US regulation to be inconsistent with Art. 2.1 TBT. The AB, upheld the panel's view on the issue of likeness and, hence outlawed the measure. However, it dismissed the argument related to "policy-likeness" and focused on the competitive relationship between menthol and clove cigarettes.

US-Tuna II (Mexico). The US adopted in 2009 a regulation according to which only tuna fished with certain techniques that respect the life of dolphins could be sold with a special label on the packaging ("dolphin-safe" label); tuna products not meeting these requirements could be sold, although without the above mentioned label. Mexico argued that the regulation accorded less favourable treatment to Mexican companies by excluding the techniques adopted by them not to kill dolphins from those eligible to receive the 'dolphin-safe' label. Both the Panel and the AB classified the relevant measure as a 'technical regulation' and judged it as inconsistent with Art. 2.1 TBT by according Mexican companies less favourable treatment when compared to their US counterparts.

US-COOL. US legislation introduced in 2009 a system of labelling meat products according to their origin. The regulation distinguished between meat products wholly obtained in the US (A), born raised or slaughtered in the US (B), imported for immediate slaughter (C) or wholly originating abroad (D). Mexico and Canada challenged the measure before the WTO judiciary and the AB, although dismissing the finding by the Panel that the objective pursued by the US regulation was not legitimate, upheld the view of the judges of first instance according to whom the measure was inconsistent with Art. 2.1 TBT by providing less favourable treatment to meat products originating outside the US.

Bilateral and plurilateral trade agreements

Resistance to the US trade agenda was evident during the Uruguay Round and the WTO package finally adopted was significantly less than the US and the EC had been hoping for. The extreme agenda was further stalled at the 1996 Singapore meeting of the Ministerial Council when the Council refused to commit to a formal round of negotiation on investment, government procurement and trade facilitation. The final straw came in 2003 at Cancun when the so-called Doha 'Development' Round stalled; deadlocked over the developing countries demand for concessions in agriculture and the leading economies demand for access to developing country markets for their manufactures.

The bilateral / regional trade agreements pathway had been an option from the beginning (the North American Free Trade Agreement (NAFTA) involving Canada, the US and Mexico, was concluded in 1994, the same year as the Treaty of Marrakesh) but from 2003 the WTO has been sidelined and the US and the EU have redoubled their efforts to achieve their goals through the bilateral and regional trade and investment agenda.

The US and EU have been the main drivers of this agenda; Japan is said to have a preference for multilateralism. However, China and India have also been active in forging bilateral trade agreements.

South South FTAs, such as ASEAN and Mercosur, have a very different significance than the kinds of North South agreements which the US has pioneered. Trade liberalisation among countries at broadly comparable levels of economic development can create the conditions for win win outcomes with complementary endowments and larger markets.

US FTAs

The US FTAs, widely described as WTO plus, typically include:

- increasing IP protection (data exclusivity, patent extension, evergreening, patent linkage, extension of patents to medical procedures as well as medicines);
- more pressure on developing countries to reduce tariffs;
- continued refusal to reduce agricultural protection and support;
- 'investor protection' provisions, in particular, investor state dispute settlement and corresponding loss of 'policy space' and 'regulatory space';
- prohibition of cost effective pricing or the use of monopsonic purchasing power to set drug prices in government pharmaceutical reimbursement schemes;
- 'reciprocity', meaning no special treatment for developing countries.

The basic template for the US FTAs was set with NAFTA (Canada, US, Mexico) concluded in 1994. Since 2000 the US has concluded agreements along similar lines with Australia, Bahrain, Chile, Jordan, Oman, Morocco, Singapore, Peru, Korea and Panama. The Central American FTA (CAFTA) involving Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua was concluded in 2003 and with Dominican Republic joining in 2004.

The US has proposed a regional FTA with countries of the Middle East (MEFTA) but progress has been slow. It is thought that this MEFTA would be as much about geopolitics as about trade. The EU is also working towards an Eastern Mediterranean FTA.

Other initiatives which appear to have lapsed or are travelling slowly include an agreement with Thailand, the proposed Free Trade Agreement of the Americas (FTAA) and an agreement between the US and the Andean countries. At the time of writing the Obama administration is prioritising the Trans Pacific Partnership Agreement (TPP) and the Trans-Atlantic Trade and Investment Partnership.

The US FTA model carries significant risks for health including:

- increased IP protection (and increased prices for medicines);
- barriers to cost effectiveness pricing in government procurement of medicines and in pharmaceutical reimbursement schemes;
- entrenchment of ISDS which would constitute a major obstacle to effective public health and environmental regulation;
- loss of tariff revenues (a particular detriment for developing countries which typically depend significantly on tariff revenues for government funding;
- further obstacles to economic development for those countries which are locked into liberalisation.

Against these risks are the promises of:

- increased export revenue (as a consequence of other countries dropping their tariffs);
- cheaper imported goods (because we are lowering tariffs); and
- increased exports and stronger local supply industries (because of competitive pressure on trade exposed sectors).

Case Study: Mexico under NAFTA

NAFTA has provided the template for all US trade and investment agreements since 1994 although the language of each chapter has been revised with each agreement. The experience of Mexico under NAFTA provides reasons why developing countries should be cautious about entering in FTAs involving the behemoth economies of USA or Europe.

NAFTA was sold to the North American publics on the basis of economic growth from comparative advantage; each of the three partners would move towards a focus on the things they were better able to do while drawing on their other partners for the things they were better able to do. In aggregate, so the promise went, the region as a whole would see dramatic economic growth.

The reality has been more complex. Yes, Mexico has experienced economic growth since 1994 but not dramatically. Since 1985, Mexico has seen per capita real growth of just 1%, compared to 3.4% from 1960 to 1980. (Wise 2003). Mexico has had one of the lowest growth rates in Latin America. (Zepeda, Wise et al. 2009).

Wise (2003) summarises the impact on employment: 'Job growth has been sluggish. There has been little job creation, falling far short of the demand in Mexico from new entrants into the labor force. Manufacturing, one of the few sectors to show significant economic growth, has seen a net loss in jobs since NAFTA took effect. This is despite a 45% increase in productivity.' In fact it is the increase in productivity which has led to the sluggish jobs growth.

The increase in manufacturing is largely focused in the maquiladora regions on the border of the US. However, maquiladora manufacturing does not articulate richly with the rest of the Mexican economy. Overwhelmingly, it takes its inputs from imports and exports the processed product back over the border.

The rural sector has been devastated by massively increased agricultural imports from the US including corn, wheat, beef, pork and poultry all of which are heavily subsidised by the US taxpayer. As a consequence they hit the Mexican market at prices well below the cost of production in Mexico. Mexican losses due to dumped corn, soybeans, wheat, rice, cotton, beef, pork, and poultry has been estimated at $12.8 billion over the nine-year period 1997-2005. Corn farmers experienced the greatest losses at around $6.5 billion. (Wise 2010)

There has been a massive loss of employment in the rural sector, from 8.1 million in the early 1990s to 5.8 million in the second quarter of 2008, a loss of more than 2.3 million jobs (Zepeda, Wise et al. 2009). 'Four-fifths of rural Mexico lives in poverty, over half in extreme poverty' (Wise 2003).

Rural unemployment has contributed to a dramatic rise in informal employment and migration to the maquiladora regions. This contributes to lower wages in the maquiladora sector and to the continuing migration into the USA. Zepeda and colleagues (Zepeda, Wise et al. 2009) quote estimates suggesting there are 12.7m Mexican born people in the US, over 55% of whom are without papers. Foreign remittances are an important source of income for poor people.

The flow of young people from the farms to the cities and to the maquiladora zones and North to the US has opened up business opportunities for criminal organisations involved in

narco-trafficking. The disciplining of this workforce involves brutal methods of torture, terror and arbitrary mass murder (Wiehoff 2013).

NAFTA has contributed to dramatic changes in the Mexican diet and increasing obesity. 2006 data quoted by Clark and colleagues (2012) show that 40% of Mexican adults are overweight and 30% are obese and that between 2000 and 2006, the combined prevalence of overweight and obesity in Mexican adults increased by approximately 12%.

Most of the corn and soybeans imported from the US (at lower than the cost of production) goes into the production of pork and poultry products, much of which is marketed by US owned fast food chains and supermarket chains. The increased corn imports in the presence of US food chain investors has contributed to an increased production of high fructose corn syrup and the availability of energy rich nutrient poor snack foods and soft drinks (Clark, Hawkes et al. 2012).

There has been a dramatic increase in foreign direct investment (FDI) into Mexico largely from the US. However, this has not translated in increased capital formation in aggregate terms or increased employment. Much of the FDI has gone to acquiring existing firms, particularly in the service sector. Investment in manufacturing has contributed to significant improvements in productivity and a slower demand for labour. There has been some increased investment in agriculture but with limited employment impact because it has been large scale industrialised agriculture.

NAFTA included new investor protection provisions which have since been implemented in all of the US FTAs. The significance of these provisions in terms of domestic autonomy and national sovereignty is brought out clearly in the Metalclad case.

> *In 1993 the U.S. multinational Metalclad Corp. purchased a toxic-waste company with the intention of building a large waste depository in the central state of San Luís Potosí. At the time, Metalclad's investment was touted as a shining example of NAFTA's promise to modernize dangerous toxic-waste management practices in Mexico. It quickly became the first investor-state lawsuit against the Mexican government under NAFTA's controversial Chapter 11 on investment, which gave broad rights to foreign investors.*
>
> *From the beginning, the project faced widespread community opposition. The site had been used as an illegal hazardous waste dump by the previous owner, and geological and hydrological studies had shown the site to be unsafe. Two years before Metalclad's purchase, machete wielding community members had forced the closure of the dump after preventing 20 trucks from unloading their hazardous cargo. Amid charges of bribery and corruption, Metalclad won permission to have the site reopened, despite findings by a Citizens' Technical Committee that the company had violated federal environmental laws regarding site selection. Metalclad persisted even though it did not obtain a local building permit.*
>
> *Metalclad filed suit under NAFTA's Chapter 11, claiming that government actions were "tantamount to expropriation" and discriminated against it as a foreign firm. Though it was local opposition from citizens and elected officials that killed the project, the company's claim cited the state's action declaring the region a Natural Protected Area. After two arbitration panels, widely criticized for their lack of transparency, ruled in favour of Metalclad, the Mexican government agreed to pay the company the panel-mandated fine of some $15 million. The case has become one of the leading examples of the way Chapter 11 undermines local rights, national sovereignty, and governments' ability to regulate the activities of private companies to protect health and the environment. (Wise 2003)*

EPAs

The proposed economic partnership agreements (EPAs) reflect a further stage in the transition of Europe's colonial relationships to a new and contested regime with the EU seeking to impose a form of 'neocolonialism' and the countries of Africa, the Caribbean and Pacific regions (the ACP countries) seeking to navigate a new path towards self-determined political, economic and social development.

Prior to 1976 the European colonial powers provided preferential trading relationships with their former colonies under arrangements which were specific to those colonial relations. In 1976, with the formation of the European Community, a new framework was required so that the former European colonies (the so-called ACP countries; Africa, Caribbean and Pacific) could continue to benefit from such preferential relationships.

The new framework was formulated in the Lomé Conventions (1976, 1981, 1985) which gave the ACP countries access to the European market (for agricultural and mineral commodities) free of duty but subject to quotas in relation to products which competed with European producers. The Lomé Conventions also provided for 'development assistance' and encouraged foreign direct investment.

The US successfully challenged the Lomé Convention in the WTO in 1995 as being incompatible with WTO regulations. Accordingly, a new deal was worked out which was formalised in the Cotonou Partnership Agreement of 2000. This agreement provided for the replacement of the Lomé arrangements with a series of six 'economic partnership agreements' (EPAs) which were to be put in place by 2008. These were to be agreements between the countries of the EU and the countries of each of the six regions defined in the Cotonou Agreement.

In fact in only one of the regions (the Cariforum states of the Caribbean) was an EPA finalised by the deadline of 2008. In Africa (four regions) and in the Pacific there has been widespread resistance to the EU program and while some states have signed 'interim EPAs' there have been no further regional EPAs concluded.

The EU presents its EPA program in very positive terms. It emphasises the development assistance on offer and the prospect of preferential access to the European market for ACP commodities (Machado 2009). The EU requirement that ACP countries sharply reduce their tariff barriers to agricultural and manufactured exports from Europe is presented by the EU as a contribution to food security and economic development.

Critics of the EPAs highlight a range of concerns with the package on offer from the EU and the way the EU negotiates. These concerns include:

- application of the principle of reciprocity in trade relations with no provision for 'special and differential treatment' of developing countries;
- new barriers to regional integration, notwithstanding the claims to the reverse from the EU (arbitrary regional groupings which cut across established regional relationshiops);
- loss of government revenues as a consequence of reducing tariffs with tariff revenues likely to be replaced by inequitable consumption taxes;
- exposure of agricultural producers in ACP countries (including subsistence farmers) to the dumping of subsidised agricultural commodities from Europe

with devastating implications for small farmers (and in particular women who are often the smallest farmers);
- loss of food sovereignty and increased exposure to global market volatility as a consequence of increased import dependence;
- introduction of a range of issues (services trade, intellectual property, investor protection, etc) which were not required in terms of the goal of providing preferential access to the EU in a way which is WTO compatible;
- increased prices of medicines where increased IP protections are included;
- new limits on policy and regulatory space as a consequence of investor protection provisions;
- new barriers to the implementation of industry policies designed to support infant industry development;
- uncertainty about the promises of new FDI and consequent economic development;
- strict 'rules of origin' (RoO) which limit the processed food products and manufactured goods which can be exported duty free to the EU and which create new barriers to intra-regional production chains.

These are all quite complicated debates which cannot be explicated in detail here. Some useful references explaining these concerns include: Pacific Network on Globalisation (2007), South Centre (2007), Carim (2009), Naumann (2009), Ouedraogo (2009), Reid Smith (2010), Machemedze and Chizarura (2011), ACORD: Agency for Cooperation and Research in Development (2013), Melber (2013), Norman Girvan (nd).

Notwithstanding the claims of the EU to be only concerned for the development of the ACP countries (Machado 2009) a strong case can be made to the effect that the EPA program is more about securing market access for EU exporters (including services as well as goods) and securing access to minerals. The EU's Global Europe (European Commission 2006) vision for trade and economic development provides a useful perspective on the EPA project. Certainly there is a salient current of opinion in the USA to the effect that the EPAs are directed to EU interests rather than those of the ACP countries. A recent paper from two authors who have held senior positions with the USTR and the US Foreign Service (McDonald, Lande et al. 2013) argues that the African Union should ensure that the conclusion of EPAs with the EU is postponed until, at least, the next decade. They argue that "If the EU successfully foists EPAs on a critical number of member states through unilateral threats to prematurely withdraw or limit preferential treatment, the negative consequences will be devastating not only to Africa but to many trading partners." In essence they warn that ACP markets will be swamped with cheap EU products, that Africa's regional integration will be set back and that the US will be excluded!

The ACP countries could usefully review the experience of Mexico under NAFTA before proceeding with EPAs on the terms currently on offer from the EU.

Intellectual property

The increasing knowledge content of the modern economy, combined with the emergence of corporation dominated globalisation, has pushed intellectual property

(copyright, patents, rights in plant varieties, designs, semi-conductor chips, trade secrets, trade and service marks and trade names) to the centre of global economic governance.

Monopoly marketing and monopoly pricing exercised through intellectual property laws are important to knowledge intensive industries such as pharmaceuticals, electronics and entertainment and to the marketing of branded products. Global IP laws are of critical importance to transnational corporations producing for the globalised marketplace.

In the pursuit of higher standards of IP protection and enforcement the interests of the transnational corporations have been strongly advanced by the EU, the US and Japan. This reflects in part the increasing dependence of these countries on the export earnings which flow from monopoly marketing and pricing. They also reflect the powerful influence within the domestic polity of large transnational corporations. It is paradoxical that monopoly rights in IP should have been so absorbed into neoliberal ideology, notwithstanding the contradiction between IP monopoly and free markets.

Braithwaite and Drahos (2000, from p57) describe three periods in the development of intellectual property law: territorial, international and global. The territorial period is characterised by domestic protection (varying widely between countries) but no international extension. It is during this time that most of the different categories of IP emerge: eg patent law (from 1474 in Venice); trademark law (England from around 1862); copyright law (England 1709); design (1787). The legal frameworks developing in Europe were disseminated along colonial pathways. The difference between Europe and the USA in patent priority is worth noting: first to invent (USA if the inventor is a US national) versus first to file (everywhere else).

The international period spans the transformation from IP protection vesting purely in domestic law to the range of multilateral treaties which were brought together in the World Intellectual Property Organisation (WIPO) from 1967. Particularly prominent were the Paris Convention for the Protection of [commercial] Intellectual Property (1883) and Berne Convention for the Protection of Literary and Artistic Works (1886). The move to multilateralism was preceded by a proliferation of bilateral IP treaties dealing variously with trademarks, copyright and patents.

The global period starts in the 1970s with corporate disillusionment with the WIPO as the appropriate forum within which to strengthen and harmonise IP protection. The corporate move from WIPO to GATT was led by Pfizer among other knowledge intensive TNCs. The drawback of WIPO was that it is a one country one vote forum. Moving the regulation of IP to the field of trade regulation had two powerful advantages: first, the ability of the USA to use Section 301 (and the threat of trade sanctions) to force the developing countries to agree to (what became) the TRIPS agreement; and second, the ability to use trade sanctions to force countries to abide by their commitments under TRIPS whereas the sanctions in support of the Paris and Berne conventions were much less stringent.

In 1986, when the Uruguay Round was launched, ‘trade related intellectual property’ was firmly on the agenda. The developing countries, led by India, Brazil, Argentina, Cuba, Egypt, Nicaragua, Nigeria, Peru, Tanzania and Yugoslavia had been reluctant to accept a new IP agreement as part of the GATT and during the negotiations fought against the more extreme IP ambitions of the USA.

The move from WIPO to GATT and the development of TRIPS arose from a contest between the developing countries led by India and the TNCs led by Pfizer and represented ably by the US and the EU in the Uruguay negotiations (Drahos 1995).

The 1974 call for a New International Economic Order was explicit about challenging the knowledge monopolies when it called for full respect for "Giving to the developing countries access to the achievements of modern science and technology, and promoting the transfer of technology and the creation of indigenous technology for the benefit of the developing countries in forms and in accordance with procedures which are suited to their economies" (UN General Assembly 1974). The implications of this clause were clearly illustrated in the Indian Patent Act of 1970 which allowed for the patenting of a process but not of a product and which posed high standards for patenting. It was the liberality of the Indian Patent Act which between 1970 and 2005 made India 'the pharmacy of the world'.

This was a direct challenge to the transnational pharmaceutical companies and Pfizer led the fight against this approach to technology transfer. From 1981 the Pfizer CEO Edmund Pratt was the chair of the US Advisory Committee on Trade Negotiations (ACTN) which was a business lobby group closely involved in the development of US trade policy (Drahos 2002). The ACTN, including its Taskforce on Intellectual Property, sought to deploy whatever levers they could to force countries to adopt higher standards of IP protection. In particular the ACTN argued for the US to make access to the US market under its Generalised System of Preferences (GSP) conditional upon approved IP laws. In 1984 the US modified its Trade Act 1974 to ensure that the provisions of Section 301 would apply to IP protection. This mandated the US Trade Representative (USTR) to deny countries access to the US market under GSP (in accordance with Section 301) if they did not adopt approved IP policies. Drahos (2002) describes how Section 301 was used during the negotiation of TRIPS to force the developing countries to accept the new regime.

However, some compromises were made during the negotiation of TRIPS (the so-called TRIPS flexibilities) and the elimination of these flexibilities set the agenda for the continuing prosecution of higher levels of IP protection through TRIPS-plus provisions of the next generation of bilateral and regional free trade agreements.

Counterfeit and the hijacking of medicines regulation

Big pharma has used other pathways to prosecute the IP agenda as well as trade agreements. In particular it has sought to amplify, through scare mongering, (legitimate) policy concern regarding substandard medicines and then to parlay the panic so created into patent linkage and the criminalisation of IP infringement.

The principle of patent linkage is that when a company approaches the national medicines regulatory agency seeking marketing approval the regulatory agency must assure itself that the preparation is not subject to an extant patent held by a third party. Kiliç and Maybarduk (2012) describe two versions of patent linkage: patent linkage lite (as in the US Chile FTA) and heavy duty patent linkage (as in the US proposals for the Trans Pacific Partnership Agreement). Under the US Chile FTA the regulatory body is required to publish on its website applications for marketing approval and indicate if the application corresponds to an existing similar product. Patent holders can screen these registration applications and, on their own initiative, pursue legal measures including injunctions under Chilean law to

block registration. Under the US proposals for the TPP, if the regulatory body receives an application for marketing approval which cites previously submitted efficacy and safety data or previous approval in another territory, then the regulatory body is required to

- identify any patents governing the product or its method of use;
- notify such patent holders;
- defer marketing approval to allow sufficient time to adjudicate disputes;
- provide for administrative or judicial procedures to adjudicate; and
- prohibit the marketing of the product if it is found to infringe a valid patent.

This is a significant escalation with respect to the role of the regulatory agency. In common law jurisdictions intellectual property infringements are civil wrongs which require the wronged party to initiate proceedings to gain redress and this is largely the case in the Chilean model. However, under the TPP proposals the medicines regulatory agency is transformed into a patent police agency charged with the detection, adjudication and policing of any infringement. It is self-evident that for medicines regulators to take on the policing of IP would be of great assistance to big pharma in shoring up its monopoly marketing / pricing privileges.

The World Health Organisation is the major norm setting agency globally in relation to medicines regulation so has been a continuing focus of big pharma's engagement. In 2006 WHO was persuaded to join, host and launch the International Medical Products Anti-Counterfeiting Taskforce (IMPACT) which also included strong representation of the research based pharmaceutical manufacturers. The Taskforce was established in 2006 and work was funded (nearly US$ 2.6 million) mainly by specified contributions from WHO's Member States through the European Commission and the Governments of Australia, Germany, Italy and the Netherlands (altogether 68%) and by WHO (28%). It also benefitted from significant in-kind support from the pharmaceutical industry.

Of relevance to the present discussion of patent linkage was the report on 'Principles and elements for national legislation against counterfeit medical products' endorsed by the IMPACT General Meeting in Lisbon 12 December 2007 (IMPACT 2007). While this report stated that it did not 'specifically address' intellectual property infringements the principles which it recommended be enacted in government legislation included extended references to ensuring that pharmaceuticals are appropriately licensed and authorised. It is not hard to see the issue of patent linkage (and the criminalisation of IP infringement) being developed.

The connections between the establishment of IMPACT and the development of the Kenya Counterfeit Act are obscure but the circumstances suggest that there may have been some connections between the sponsors of IMPACT and an organisation called the Investment Climate Facility for Africa (ICFA).

In 2008, Kenya elected to amend its patent laws to put in place much tighter controls over IP. One of the chief critics of the Kenyan law was Health Action International Africa. Christa Cepuch, the director of programs for HAI Africa explained that the Act "contains a vague definition of counterfeiting which could be read to include generic drugs". The law makes the manufacturing, importation or sale of "counterfeit goods" a criminal offence rather than a civil matter, which is the usual way in which disputes over intellectual property rights are resolved. The onus to verify whether goods are fakes or not has been put on customs

officials and police officers. “We’ll have Kenya Revenue Authority officials trying to figure out if drugs are fakes or not. This increases the risk of products being labelled fakes,” Cepuch says. “The law further gives these officials excessive powers, making the process difficult and expensive. Moreover, the onus to prove the products are not fakes lies with the accused, a price many will not be willing to pay” (Anyangu-Amu 2009). In April 2012 the Kenyan High Court ruled that the Act was too broad and vague with respect to counterfeit and generic medicines (IP-Watch 2012) and it has since been repealed and replaced (Taylor 2012).

The rise of the counterfeit agenda in Africa was in part due to the agitation of the Investment Climate Facility for Africa which was established, “to address key bottlenecks impeding African countries in improving their investment climates”. It is a public-private financial facility involving the UK ($30 million over 3 years), Royal Dutch Shell and the Shell Foundation ($2.5 million over 5 years), and Anglo American ($2.5 million over 5 years). ICF’s development partners also include the governments of Germany, Ireland, Netherlands, Norway, South Africa as well as the Africa Development Bank and the International Finance Corporation.

One of ICF’s public projects has been working with the East African Community to develop an anti-counterfeiting policy and an anti-counterfeiting bill. While EAC officials were upbeat about the need for this bill (Michael 2010, Michael 2010) Musungu (2010) provided a detailed critique of the evidence, policy logic and implications of the proposed policy and Hermann (2013) has since reported that the health departments of the EAC are pushing back.

In parallel with the coming out of IMPACT was the development of ACTA, the Anti-Counterfeiting Trade Agreement. Wikipedia reports (Anonymous 2013) that the USA and Japan had been working on the Anti-Counterfeiting Trade Agreement since 2006. This initiative was unambiguously focused on intellectual property infringements. While the World Health Assembly was absorbing the implications of the Secretariat’s decision to sponsor IMPACT the negotiating partners were preparing for the first formal round of negotiations towards ACTA (3-4 June 2008, also in Geneva). Since the negotiations for ACTA were conducted entirely in secret it is not surprising that some delegates to WHA may not have been aware that it was going on. However, since big pharma was (a) part of IMPACT, (b) involved in the design of ACTA, and (c) present at the WHA, at least they knew what was going on. (Big pharma’s involvement in IMPACT and ACTA was not an isolated initiative. One of the business organisations behind the IP agenda was the International Chamber of Commerce’s (ICC) Business Action to Stop Counterfeiting and Piracy (BASCAP) established in 2004.)

MSF’s Access Campaign (MSF 2012) provides an extended analysis of the implication of ACTA for access to medicines. Two provisions of particular relevance to the IMPACT saga are the provisions requiring seizure in transit where IP infringements are suspected and the obligation on drug regulatory bodies to have regard to the patent status of medicines. From October 2008 to May 2009 there were at least six seizures of Indian generic drugs in transit through European ports but destined for Colombia, Peru, Brazil, Nigeria and Vanuatu (Khor 2009). These were drugs that were legitimate in the source country and the destination country and were not destined for import into the country of transit. The EU claimed that the seizures were required under a 2003 regulation but after India took the EU to the WTO the

EU agreed to amend the regulations (Anonymous 2010) although Baker (2012) believes the amendments don't go far enough.

As the purpose and mode of working of ACTA became more widely known there was a rising rejection of the IP extremism that it represented. Finally the MEPs of the European Parliament voted against ratification and ACTA (as a singular package) was shelved. This of course did not mean that the IP enforcement ambitions of Pfizer had been shelved, nor those of the rest of big pharma and the rest of the knowledge intensive corporate world. Rather the forum was shifted again and new strategies enacted to advance the IP agenda.

Conclusions

The purpose of this section is to describe the structures and dynamics through which the global economy is governed. Our focus here is not so much on the power relations as on the institutions and norms of engagement. The structures through which intellectual property is defined and the 'rights' of IP 'owners' are defended constitute important features of the strategic environment of health activism.

Investment

The tensions between the principle of democratic nation state sovereignty and the dominance of (publicly) unaccountable transnational corporations is nowhere so sharp as in relation to the governance of international investment. In particular the rise and rise of investor state dispute settlement threatens to greatly constrain the policy space available for regulation for public health and other public goods purposes.

International agreements protecting the rights of foreign investors originate in the early post-World War II period and arose out of the threat of nationalisation of privately owned businesses. This was a period of nationalist activism in the European colonies, in Asia and in Latin America, with a strong socialist tendency inspired by the Soviet example. The US and Western European capitalist countries argued that customary international law provided a minimum standard of treatment to which foreign investors were entitled including the payment of a fair market price for expropriated property ('prompt, adequate and effective' compensation). Developing and socialist countries argued that foreign investors should not be entitled to any greater compensation in the event of nationalisation than that which might be paid to domestic investors (UNCTAD 2008).

From 1945 onwards the USA negotiated a series of 'friendship, commerce and navigation' treaties with developing and developed countries which aimed to promote trade and to protect the rights of US investors to prompt adequate and effective compensation in the event of nationalisation.

However, the investment provisions in the Treaty of Rome (1957) were less about protecting 'our capitalists' and more about regional economic integration and the free flow of capital within the Common Market. These were commitments between countries at comparable levels of economic development. Regional economic integration agreements in the Middle East, Latin America and the Caribbean and later in Asia have all included investment provisions as part of economic integration.

By the late 1950s the European capitalist countries were under increasing pressure from their capitalists to negotiate investor protection and from 1959 European countries negotiated

a series of bilateral investment treaties (BITs) with developing countries addressed solely to this purpose. By 1969 a standard format had been developed which included 'guarantees of national treatment, and most-favoured nation (MFN) treatment, fair and equitable treatment, treatment in accordance with customary international law, a guarantee of prompt adequate and effective compensation for expropriation, a right of free transfer of payments related to investment, and provisions for investor-State and State-State dispute resolution' (UNCTAD 2008).

While the primary purpose of these BITs was investor protection they were sold as necessary to attract foreign direct investment (FDI) and through this provided the pathway to economic development. It seems likely that FDI as the key to economic development has been somewhat oversold in the interests of investor protection.

Not surprisingly there was opposition among the developing countries to the constraints on their economic policy options as a consequence of the provisions contained within the BITs. This opposition was expressed in the call for a New International Economic Order, adopted by the UN in 1974 (UN General Assembly 1974) which included the right to expropriate foreign owned property subject only to national law. The threat of the NIEO led the corporations and their countries to redouble their efforts to provide for investor protection through BITs. With the debt crisis of the 1980s the policy principles of the NIEO receded into aspiration, the need for FDI became more urgent, and the march of the BITs proceeded unabated.

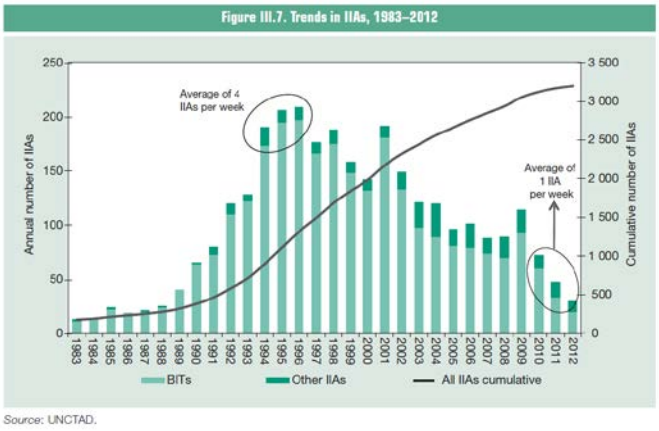
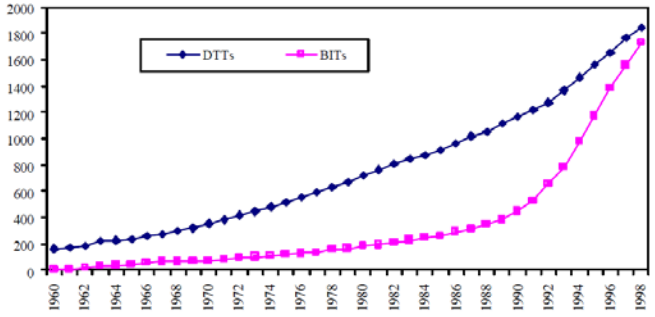


Figure 1. Trends in international investment agreements (IIAs) including bilateral investment treaties (BITs) from UNCTAD (2013)

The march of the BITs is reflected in Figure 1, above. To the end of 2012 there were 3,196 IIAs in place, 2857 BITs and 339 'other IIAs' (generally trade and investment agreements and plurilateral as well as bilateral) (UNCTAD 2013). There were 72 BITs signed between 1959 and 1969; 166 signed during the 1970s and 286 during the 1980s (UNCTAD 2008). The data shown in in Figure 1, above demonstrates the acceleration during the 1990s and the decreasing rate in recent years.

Expropriation is not the only risk that foreign investors are concerned about. Another risk is double taxation, being taxed on the same income in both the home and foreign countries. While there are two model conventions for double taxation agreements (the OECD model and the UN model) the overwhelming majority of double tax agreements are bilateral. The early bilateral double taxation treaties (DTTs) in the early part of 20th century were

between developed countries but from the 1950s DTTs increasingly involved developing countries also. By the end of 1998 there were around 1800 DTTs variously between developed countries, between developed and developing countries and between developing countries (see Figure 2). While the bulk of new DTTs from the 1970s involved developing countries, (as of 1998) the USA and UK are the two countries with the greatest number of such agreements (UNCTAD 2000). The vast majority of BITs exclude taxation from their coverage.



Source: UNCTAD, database on BITs and database on DTTs.

Figure 2. Cumulative number of double tax treaties (DTTs) and bilateral investment treaties (BITs), 1960-1998 (UNCTAD 2000)

The principal motivation driving the development of DTTs in the early period was the allocation of tax revenue between the participating countries and the desire to reduce taxation on the part of the affected corporations. However, by the 1970s there was a rising concern regarding the practices of TNCs (including tax avoidance as well as bribery, the abuse of monopoly power, environmental damage, poor labour practices and irresponsible marketing; see Barnet and Müller (1974)).

This concern led to the OECD Guidelines for Multinational Enterprises in 1976 and the draft UN Code of Conduct for Transnational Corporation developed through the UN Centre for Transnational Corporations in 1975 (Braithwaite and Drahos 2000). The OECD Guidelines included provision for corporations to provide such information as national tax collectors required and exhorted the corporations to refrain from using transfer pricing to reduce tax. Likewise the draft UN Code of Conduct included a provision prohibiting the use of transfer pricing (at other than the arm's length principle), (UNCTAD 2000). Notwithstanding these commitments progress with respect to international agreement to control corporate tax avoidance has been slow.

Braithwaite and Drahos (2000) argue that the dominance of bilateral tax treaties (as distinct from plurilateral or multilateral) and the creation of secrecy jurisdictions (Henry 2012, Shaxson 2012) has prevented effective action on such tax avoidance. They (Braithwaite and Drahos) describe international taxation as a game of one-way transparency: 'corporations knew the rules by which states operated, but the secrecy laws of these rogue fiscal kings meant that corporations operating in their domain did so under the cloak of law, their affairs hidden from the scrutiny of taxing states'. Braithwaite and Drahos cite News Limited as an example of a company which is able to arrange its ownership and internal billing relationships so as to exploit the differences between various DTTs. News, it appears, has forty nine subsidiaries in the British Virgin Islands, another twenty five based in the Cayman

Islands, five more in the US Virgin Islands and four in the Netherlands Antilles (Sydney Morning Herald, 1996, cited by Braithwaite and Drahos (2000, p107)).

Braithwaite and Drahos (2000) comment (p108) that while transfer pricing has figured prominently in discussions of TNC tax avoidance the use of complex derivative transactions to transfer capital beyond the reach of taxation was increasing. It seems self-evident that there is a need for a multilateral agreement with biting sanctions on the full transparency of tax arrangements of all corporations in all jurisdictions.

The multiplicity of bilateral DTTs preserves one of the conditions for corporate tax avoidance. It may be that multilateral regulation of international taxation would also facilitate addressing the problem of tax competition between developing countries. On both accounts it is in the interests of the TNCs to continue to oppose multilateralisation of tax regulation.

In contrast the TNC lobby has worked hard to achieve a multilateral agreement on investment which would presumably provide for all of the protections listed above in relation to the model BIT. In the early years of the Uruguay Round (1986-94) the US Advisory Committee on Trade Negotiations (ACTN), a major conduit for US corporate input into US trade and investment policy, had been arguing for a multilateral agreement on investment as one of the outcomes of the Uruguay Round. Not only was this opposed by the developing countries but it appears that Europe and Japan did not see eye to eye with the US on the framing of such an agreement.

As a consequence there was only limited treatment of investment, limited largely to the General Agreement on Trade in Services (GATS) and the agreement on Trade Related Investment Measures (TRIMS).

The financial services industry was one of the main advocates for the GATS so that international banks, insurance companies and consulting companies could operate wherever their TNC clients operated. The GATS also includes a prohibition (Article XI) on states restricting financial flows consequent on their market access agreements.

The TRIMS agreement concerns the trade in goods as regulated by the GATT. It requires that investment measures shall be consistent with the principle of national treatment and the prohibition on quantitative restrictions. This includes local content requirements and quantitative restrictions on the volume or value of imports such an enterprise can purchase or use.

The argument for a more ambitious multilateral investment agreement was raised again in the context of the Singapore meeting of the WTO Ministerial Council in 1996 but was defeated through the strong opposition of the developing countries, led by India. The Council did agree to set up a working group to study ‘raised by Members relating to the interaction between trade and competition policy’.

As a consequence of the rebuff in Singapore the forum was shifted to the OECD and work was commenced secretly on the proposed Multilateral Agreement on Investment (MAI) with the hope that once the OECD countries had adopted an agreement it could then be inserted into the WTO system (Braithwaite and Drahos 2000, p111). A draft text was leaked to a Canadian NGO in 1997. The draft guaranteed corporations unconditional rights to buy, sell and to sue governments if national health, labour or environment legislation threatened

their interests. The negotiations failed in 1998 when first France, and then other countries, successively withdrew after pressure from a global movement of NGOs, citizens groups and governments of poor countries. MAI opponents saw the agreement as a threat to national sovereignty and democracy and argued that it would lead to a "race to the bottom" in environmental and labour standards (Global Policy Forum nd).

At the same time as the drive for a multilateral agreement on investment was being stalled in the Uruguay Round, a new breed of regional 'FTAs' (actually economic integration agreements) was being modelled in the form of NAFTA, the North American Free Trade Agreement. NAFTA included all of the corporate privileges and investor protections that US business had sought to include first through the Uruguay Round and then though the MAI. Following NAFTA there has been a proliferation of 'FTAs' in which trade and investment provisions are integrated; in some cases bilateral, sometimes plurilateral; and variously including North-North, North-South, and South-South configurations.

In terms of relevance to contemporary health activism, the most salient issues arising from this review of international investment policy include:

- the dangers of investor protection provisions and in particular investor state dispute settlement as barriers to effective public health regulation, including regulatory approaches to the social determination of health;
- need for meaningful multilateral agreement on taxation, to prevent tax avoidance and control tax competition as a 'race to the bottom';
- the use of trade and investment agreements to prohibit the use of capital controls as part of sovereign economic policy, in particular, to manage the risk of financial crisis;
- the role of foreign direct investment in economic development, including a more balanced understanding of the role of FDI allowing a more nuanced approach to the liberalisation of investment;
- the legitimate use of trade and investment policy in industry / economic development, eg, the ability to impose conditions on FDI or to control foreign investment (eg mergers and acquisitions), or to nationalise enterprises with nationally determined compensation;
- the use of regional trade and investment agreements to cultivate regional economic integration.

The principle of addressing the micro and immediate issues (in particular health issues) in ways which also contribute to redressing the macro and longer term issues (including the regulation of investment and capital flows) requires new alliances and new strategies.

The health activist does not have to be a technical expert in all of these areas but should have a broad understanding of the economic environment which shapes health development, including the dynamics of international investment. This broad picture includes the historical legacy which shapes what is possible today; the interplay of interests which drive the movement and use of capital; and the policy debates and main institutional mechanisms through which international investment is governed. Above all we need to keep in touch with the progressive networks globally which are directly engaging with these issues.

Capital flows, taxation and banking

Our purpose in this section is to provide an overview of the structures and dynamics of global economic governance as a necessary input to activist analysis and strategy. Delineating such governance structures involves certain assumptions regarding the harms to be avoided and the directions to be pursued. However, while the effects on the conditions which shape population health which arise from governance of trade, intellectual property and investment are reasonable clear, topics such as currency, capital, taxation and banking might appear too abstruse or technical or somehow too far removed from the conditions which shape population health. This is not the case but it does suggest that we need to structure this section around some of the harms associated with the current governance arrangements in these areas to provide some context for our discussion of governance structures.

This is a useful exercise because the conventional (official) constructions of governance in these areas and official discussions of governance reform focus on relatively minor adjustments while retaining in large degree the status quo. Clearly there is an urgent need for far-reaching change in the structures and dynamics of global economic governance, far beyond the status quo.

In what follows I explore a program of incremental, albeit far reaching, structural reform in the governance of currency, capital, tax and banking. Perhaps this kind of incremental reform is not realistic; perhaps the only chance for meaningful reform lies in big bang structural change (or revolution). However, to wait for (or work for) a god-awful collapse in the hope that the cards will fall right next time is a long shot. Consideration of incremental reform, for example to the Basel Accords on banking regulation, does not mean that more drastic action would not be better, for example, the complete removal of banking regulation from Basel and vesting it in the UN Economic and Social Council (EcoSoc). Developing policies for both the short and the longer term brings these governance structures into focus and can perhaps contribute to developing a constituency for radical change.

The policy ideas presented below are more indicative than definitive. My purpose is to throw light on governance arrangements which are so arcane as to be virtually invisible. If health activists are to ‘address the local and immediate issues in ways which also contribute to redressing the structural and longer term dynamics which reproduce those immediate issues’ then they need some awareness of the broad contours of those structures and a sense of how they shape health care and population health.

I shall approach governance reform in the areas of currency, capital, taxation and banking through five imperatives for change:

- the human cost of economic crises, including the human cost of the ‘recovery’ from the crisis, and the predictable human costs of future crises;
- the global inefficiencies we cannot afford: the failure to direct available capital, technology and labour to the highest priority human needs;
- the political power of the corporations and the money markets to subvert and corrupt democratic nation-state decision making;
- the disgrace of global tax avoidance;
- the need to move to a steady state sustainable economy.

In the following pages we look at each of these and explore: effects, causes, policies, and governance structures.

Economic crises

The capitalist system is intrinsically prone to periodic recession and financial crises but in the context of the looming threat of global over-production (including under consumption and over accumulation, see Chapter 4) such recessions are increasingly frequent, severe and globalised.

The sub-prime mortgage crisis in the US (from 2007) and the sovereign debt crisis in Europe (from 2010) are only the most recent. Previous crises include the US savings and loans crisis (1989), Mexico in 1994, the Asian crisis of 1997, Russia in 1998, Argentina from 2001, and the dot.com stock bubble (2001).

The human costs of economic recession and financial crises are significant and have far reaching health implications. They include poverty, homelessness and hunger. Austerity in Europe has led to high levels of unemployment, retrenchments and cuts in services. While the global financial crisis of 2007-8 started in the US, the loss of markets in vulnerable Third World economies has contributed to further poverty and unemployment. Economic stagnation and collapse contribute to migration, social division, even war.

The causes of financial crises can be thought about in terms of three elements: underlying instability, precipitating factors, and governance failure.

The underlying instability is in part a reflection of the endogenous crisis tendencies of capitalism. This includes the normal business cycle which moves from full production and ebullient consumption to slow down, as businesses realise that they have built up excess production capacity and cease ordering new production machinery which leads to retrenchment which hits consumption which leads to more retrenchment and perhaps recession. Keen (2011, p327) emphasises the role of debt in this process. At the beginning of the business cycle, during the early recovery, the banks are quite risk averse and cautious in lending to build production capability. As the cycle builds their confidence in ongoing growth develops and they are less cautious in lending to both businesses and to consumers; the longer the continuing growth, the lower the standard of lending. The longer the growth phase the more debt accumulates, household, corporate and government, and the greater the risk of a financial collapse being triggered.

In the present period these dynamics are taking place against the background of a structural crisis of global capitalism; the crisis of relative over-production (under consumption, over accumulation). The relative over-production refers to enterprises producing more efficiently for the global market, using fewer workers, lower paid workers, and more technology, with the consequence that the payment of wages as a conduit to support consumption is progressively choked off. The under consumption reflects the lack of demand from those who cannot pay. The lack of demand for new production capacity expresses itself in relative over-accumulation with an increased flow of profit into the financial sector rather than into new production capacity. The increased flows into the financial sector support speculation (and asset price inflation) and also flow to credit to support consumption. The growing role of debt financed consumption creates an appearance of economic growth and confidence and further risky lending.

It is a critical part of Keen's analysis is the insight that banking credit is created by the banks willingness to lend and the aggregate credit which is created is limited only by the bankers' confidence that if there are risks they can be managed (particularly if they can be parcelled up and passed on to others). It is not a case of aggregate deposits setting the limit to aggregate lending.

Through both of these dynamics (debt growth during the business cycle plus the structural crisis of over-accumulation) the system becomes more and more unstable; vulnerable to a wide variety of potential precipitating factors including inclement weather, corporate collapse, political destabilisation or speculative attack.

In the presence of high levels of debt exposure it may only require one crop failure or one corporate collapse or one political shock to cause the banks to reconsider their exposure and to commence 'deleveraging', winding back their exposure. As the deleveraging kicks in the banks or enterprises which were effectively running on Ponzi finance start to collapse with further tightening of credit and further trouble.

The instability is spread globally very fast as banks cease lending globally in order to rebuild their reserves. Exchange rates plummet as money moves out. Reserve banks increase interest rates in order to prevent a collapse in their exchange rate but the increased interest rates further dampen purchasing and production.

The third element in this 'perfect storm' is governance failure, both in contributing to the unsustainable build-up of debt, contributing to the vulnerability to precipitating factors and in managing the crisis. It is a reflection of the contemporary tension between the principle of democratic sovereign government and the reality of the transnational corporate juggernaut. To get re-elected governments are obliged to respond to popular sentiment, eg popular demand for services and programs, while at the same time responding to the demands of the corporate world and its flunkeys, eg the cutting of taxes under the pressure of tax competition. Cutting taxes while increasing spending can only mean increased borrowing.

It is important to distinguish here between Keen's critique of aggregate debt (including public, corporate and household debt) as a source of financial instability and the demand from the money markets and ratings agencies for 'balanced budgets' which is largely about downsizing government in order to create market opportunities for new private investment.

The democratic deficit also contributes to the lifting of capital controls and the deregulation of foreign investment, ostensibly to attract FDI but actually under the pressure of the money markets, the ratings agencies and the coercion of the hegemon. As Malaysia demonstrated during the 1997 Asian crisis the ability to control capital outflows can be critical in insulating the domestic economy from the contagion of financial crisis.

A final example of the democratic deficit is the adoption of pro-cyclical policies of austerity in managing the crisis as has been the case in Europe during the recent sovereign debt crisis, particularly in the peripheral states of the Eurozone. In theory Greek austerity was designed to redirect tax revenues into paying off public debt but actually the austerity led to a collapse in economic activity (unemployed public sector workers and pensioners, facing reduced pensions, stop buying stuff) and a precipitate fall in government receipts.

The role of this structural contradiction between sovereign democracy and transnational capitalism in setting up, precipitating and exacerbating financial crisis points to the fundamental importance of popular mobilisation to shore up the institutions of democratic sovereign governance.

Shoring up democracy is not inconsistent with advocating for more technical policy directions to reduce the risk and the damage of financial crises. These might include:

- downsize the banks so that none of them are 'too big to fail';
- revise the rules of global banking (Basel III) so that irresponsible lenders are share the pain (take the hair cut) in the event of default;
- remove the prohibitions on capital controls from trade and investment agreements;
- strengthen the IMF as a real global economics regulator; change its governance so it is independent from the USA and Europe; give it the power to impose meaningful sanctions;
- return to Keynes's proposal for an independent currency (so-called 'bankcors') for settlements between reserve banks; and
- institute a global financial transactions tax to damp down global speculative capital flows.

This is not the place to debate or decide on such policy suggestions. They are listed here simply to illustrate the kinds of issues that progressive forces need to consider. It is also useful to note the governance fora within which these sorts of issues are determined, including the institutional and political arrangements operating around those fora.

Global inefficiency

The gross misallocation of available capital, technology and labour globally is a measure of the inefficiency of global capitalist system as it presently operates.

The human costs of this inefficiency are seen in the obscene inequality with respect to living conditions globally, bizarre patterns of resource allocation (fashion, 'entertainment', motor sports, etc), and the failure to adapt to our global environment.

The root causes of this global market failure include

    - the ideological delegitimation of government regulation and democratic decision-making; the race to the bottom with respect to taxation and deregulation (in the desperate competition for FDI);
    - the structural crisis of relative over-production (under consumption and over accumulation); the inability to allocate buying power (employment to support buying power) to those populations with greatest needs; and
    - growth of the financial sector and its role in exacerbating economic inequality globally; the increasing flow of resources into speculation instead of investment.
- Some possible policy directions which have emerged in our discussion so far:
    - regional polycentrism with a significant degree of regional self-sufficiency; and appropriate levels of protection at the regional level;

- a return to social and economic planning and away from unrestrained market forces;
- a new multilateral agreement on taxation to control the race to the bottom with respect to taxation, prevent tax avoidance and generate adequate revenues for public expenditure; and
- a financial transactions tax to dampen speculative flows.

It is self-evident that a massive redistribution of political power globally would be needed for such policies to be seriously considered.

Political power of corporations and money markets

The political power of the corporations and the transnational capitalist class stands as a bulwark against any policies directed to a healthier, more equitable and more sustainable world. This power is mediated through:

- money politics and vote buying at the domestic level;
- international corruption;
- corporate ownership of news media;
- the money market / ratings agency veto;
- investor protection and ISDS and the loss of policy space;
- the race to the bottom in terms of taxation and business regulation (and the mirage of FDI).

Among the consequences of this regime are:

- weakened government capacity;
- over-reliance on market forces despite powerful evidence of market failure;
- continued barriers to economic development for many TW countries; and
- continued failure to control the banks, control tax avoidance, prevent crises; address global warming.

The sorts of policy directions that might help to recover the democratic vision include:

- a legal framework and policing capability at the global level to identify, prosecute and prevent international corruption;
- inclusion of standards to prevent money politics and vote buying to be included in trade agreements (replacing investor state dispute resolution);
- defence of, and development of, public media and broadcasting institutions;
- root and branch reform of the IMF including a new sovereign ratings function, to extend beyond credit ratings to include broader economic parameters;
- removal of ISDS from investment and trade agreements;
- new sources of FDI, more effectively directed towards economic development; and
- an international agreement on taxation

A steady state sustainable global economy

Nowhere is the market failure of global capitalism more starkly evident than in our failure to control global warming and restore biodiversity.

Capitalism requires economic growth but the biosphere cannot manage much more growth; the economic and ecologic limitation of the closed system that is our global economy and biosphere are increasingly evident. These are limitations that the carriers of the prevailing discourse cannot countenance; cannot hear; cannot say.

The building of democratic decision structures/processes is a first step; controlling the political power of the TNCs and returning power to the nation states; but with a real informed participatory democracy.

A turn to regionalism may be critical with more South South regional agreements and the acceptance of the role of some protection at the borders of such regions to enable local economies to flourish. (This would have disruptive implications for the metropolitan countries which depend on neo-colonial relationships with the global South; they too would need to return to more self-contained regional economies in the global North.)

Cultural change is equally important; moving away from the individualist competitive materialism which is so much part of capitalism and moving towards different ways of relating to ourselves, each other and our world.

These are broad policy directions, a vision for change. At a closer level of specificity we also need to give attention to resisting and reversing the WTO agreements, FTAs and BITs which defend TNCs against nation state sovereignty.

The governance of trade and finance

This is a book for health activists. Perhaps the central motif is the idea of addressing the immediate and urgent issues (for us these are likely to be health issues) in ways which also contribute to redressing the macro structural and longer term factors which reproduce those patterns of need (in this chapter, the governance of trade and finance).

Clearly there is a need for far-reaching change. Clearly the existing institutions through which trade and finance are governed reflect the status quo both in terms of the policy discourse and the balance of political power.

I can foresee a number of different scenarios of change. Apocalypse is the scariest, not necessarily the least likely. The scenario which combines safety and efficacy most promisingly involves massive popular mobilisation, a new global solidarity, and move to a less materialistic culture.

This is the vision upon which PHM as a social movement is committed. However, as you move from the micro and immediate health concerns to the more structural longer term issues associated with globalised capitalism it becomes clear that social movements in silos are not likely to be effective. There is a need for richer alliances across different social movements; a network of solidarity which will constitute a political movement for change.

In this context a descriptive introduction to the contemporary institutional structures of global economic governance should not be taken to imply that the key to change lies in those structures, that some tweaking of Basel III will be sufficient to discipline the banks. This introduction to the institutional structures of global governance is also important because it demystifies the ‘naturalness’ of the prevailing order and undermines the claim that ‘there is no alternative’.

When the forces for change are sufficiently strong to drive the necessary governance reforms the decision may be to completely abolish the old structures of control or to reform them, I do not know. That is a decision for future activists to take. However, I do think that explicating how the present disaster is governed and how the transnational capitalist class presently maintains its control is part of building that popular movement for change.

3. Specific controversies in trade, finance and health

Purpose of this section

- to review briefly a number of global episodes which illustrate the structures, discourses and dynamics of global economic governance as confronted in the pursuit of health for all;
- introduction to some classic stories in global health that activists should be familiar with and highlight some of the implications of these stories for health activism in this field

The NIEO, Alma-Ata and the Debt Crisis

The 'long boom' lasted from the end of WWII to the early 1970s. It was a period of relatively rapid economic growth as well as political reform with many new nations emerging from colonisation into political independence.

The optimism of the period was reflected in the Bandung Conference of 1955 and the establishment of the Non-Aligned Movement in 1961. Dependency theory was widely followed, particularly in Latin America, and underpinned the New International Economic Order, adopted by the UN General Assembly in 1974. The NIEO was a blue print for a new global economy (in effect, everything that neoliberalism is not).

The adoption of the Alma-Ata Declaration in 1978 was likewise an expression of confidence that a model of health care being pioneered in India, Indonesia, Guatemala, China and other developing countries could be elevated to the status of global health policy.

However the long boom was coming to an end and with the OPEC price rises of 1973 (in part directed at compensating for rising inflation) the debt trap was set. The flush of new cash flowing to the oil producers was lent on to the global banks who set out to lend it on without too much concern for capacity to repay. With interest rates below the rate of inflation the private banks were paying countries (particular in Africa) and companies (for example in Latin America) to borrow generously.

However, the economic crisis of stagflation (economic slow down plus rising inflation) was looming and in 1980/81 Thatcher and Reagan adopted the 'fight inflation first' strategy. This meant raising interest rates until inflation was brought under control. The unemployment created by high interest rates had the added benefit of greatly weakening the labour unions in the UK and the US.

However, for the developing countries the high interest rates were the trigger for the debt trap. As more and more countries were forced to turn to the IMF and were required to implement the IMF's 'structural adjustment' programs the optimism of the long boom receded into the distant past and with it the hopes of the NIEO and the promise of the Alma-Ata Declaration.

This episode is rich with lessons for the health activist, in particular how linked health policy is to the wider economic situation. Remember the reference to the NIEO in the Alma-Ata Declaration. A new international economic order is still a core prerequisite for achieving Health for All.

Asbestos and the Rotterdam Convention

By the 1920s it was known that occupational exposure to asbestos led to fibrous scarring of the lungs (asbestosis) and a high death rate. By the 1950s it was known that occupational exposure was associated with a much higher rate of lung cancer deaths than would otherwise be expected. By the 1960s it was known that occupational exposure led to mesothelioma, a cancer of the lining of the chest wall or abdominal wall. By the 1960s it was also clear that public exposure to asbestos dust (dumped tailings, working with building materials, washing family members work clothes, etc) was associated with asbestosis and probably lung cancer, mesothelioma and other cancers.

Despite the science the asbestos industry, supported by lawyers, spin doctors, occupational physicians, government officials and pliant politicians, continued to deny, diminish and obfuscate the hazards of asbestos.

The exposure of the reality was due to the courage and commitment of unionists and (some) union officials; the integrity of (some) scientists (let Irving Selikoff or Barry Castleman stand for these); the persistence and competence of (some) litigation lawyers; and the professionalism of journalists such as Matt Peacock (2009) in Australia and before him Paul Brodeur in the USA (1974).

In many developed countries it was the pressure of litigation and compensation which forced asbestos out of the supply chain, rather than effective statutory regulation. This left the international trade in asbestos unregulated.

The Rotterdam Convention (1998) provides that for certain hazardous chemicals (those listed on Annex III) ‘prior informed consent’ (PIC) must be obtained from the importing country before those chemicals can be traded. While blue asbestos (crocidolite) and brown asbestos (amosite) are listed and are being progressively replaced in production, the Russian industry is mounting a rearguard action to prevent chrysotile from being listed.

Since 2004 the Russian Federation, on behalf of its asbestos industry and with the assistance of Kazakhstan, Canada and a handful of other countries, has fought to prevent chrysotile (one of the main minerals containing asbestos; also known as white asbestos) from being listed in Annex III of the Rotterdam Convention.

The WHO-sponsored International Agency for Research on Cancer (IARC) advises (IARC 2013) that chrysotile is a human carcinogen but that the expected cancer burden from chrysotile will be mainly lung cancer rather than mesothelioma. It appears that while crocidolite is a powerful cause of both lung cancer and mesothelioma, the cancer burden from chrysotile tilts much more towards lung cancer than mesothelioma.

WHO and IARC have concluded that all forms of asbestos are carcinogenic; that no safe threshold has been identified; and that it is extremely difficult to control asbestos exposure in the workplace (Fukuda 2013). However, Russia and Kazakhstan (supported until recently by Canada) argue that the mining and processing of white asbestos can be made safe

(Ustinov and Karagulova 2013). Even if this contention were supported by the evidence, which it is not, it has no bearing on the logic of Annex III of Rotterdam which is that countries, to which Russia and Kazakhstan hope to export their chrysotile, should have the right to give or refrain from giving prior informed consent.

In a previous round in this debate, a delegation from importing countries lobbied the Canadians over the export of chrysotile asbestos, arguing that many Asian countries have poor or non-existent asbestos regulations in workplaces, and those that exist are poorly enforced (Kirby 2010). More recently (May 2013) a WHO representative warned the 6th Conference of the Parties to the Rotterdam Convention that: "…owing to the widespread use of chrysotile in building materials and other asbestos products it was not possible to prevent the exposure of workers and the general public. Furthermore, the chemical could not be used safely owing to the way in which products containing it were produced and handled and degraded in situ, as well as the challenges that they presented in decommissioning and subsequent waste management. She added that WHO and IARC had conducted an evaluation of fibrous chrysotile asbestos substitutes and had concluded that safer alternatives were available". Nonetheless the chrysotile exporters were able to prevent listing of chrysotile yet again (COP6 2013).

Two particular lessons can be drawn from this story. The first is that lying and cheating is not restricted to the tobacco companies. The second is that health activists need to know about the existing institutional mechanisms of control (in this case knowing about the Rotterdam Convention and the idea of prior informed consent) if they are to protect those from asbestos who are still not protected through either litigation or statute.

Tobacco control

While there was strong anecdotal evidence for the health damaging effects of tobacco smoking before 1956 it was the Doll and Bradford Hill paper in 1956 which demonstrated the link with lung cancer 'and other causes of death'.

For a long period the anti-tobacco struggle was entirely domestic including:

- public education;
- powerful advocacy from the organised medical profession;
- opposition to smoking as a 'professional value' of the medical profession in many countries;
- progressive regulatory action (including increased taxes and progressive restrictions on marketing); and the
- rise of litigation (largely around the hazards of second hand smoke).

With the development of the Framework Convention on Tobacco Control (FCTC, 1993-2005) the focus of tobacco control went global. What was to become the FCTC commenced as a gleam in the eye of Ruth Roemer, a professor of public health law in Los Angeles in 1993 (Roemer, Taylor et al. 2005, WHO 2009). It took ten years of lobbying to get the project to formal negotiation under the aegis of the WHO and a further two years to produce a final text which was signed and ratified by a record number of states in a record short time.

The story is too complex to attempt a summary here but some critical factors are worth mentioning. The official history (WHO 2009) provides a useful overview.

The campaign for a FCTC was greatly boosted in 1998 by the release of thousands of internal documents from the large tobacco corporations as the result of the 'Master Settlement Agreement' between big tobacco and the US state attorneys general association. This was not part of the planning for the framework convention but was a great asset. It reflects the role of serendipity in political engagement.

The campaign for a framework convention was driven by a network of academics (such as Ruth Roemer), NGOs (in particular INFACT, which later became Corporate Accountability International, the International Nongovernment Coalition Against Tobacco and the Framework Convention Alliance) and supportive member states (including Canada, Finland, Brazil, South Africa). Some of the work of the NGOs was supported financially by the UN. In all cases the campaign was driven by the commitment of individuals as well as the support of countries and organisations. People matter.

Even while the FCTC was being negotiated the transnational corporate lobby was pushing for stronger intellectual property protections and 'investor protection' provisions in bilateral investment treaties (BITs) and in trade agreements.

The controversies over Australia's plain packaging initiative illustrate how these provisions work. In April 2010, the Australian Government announced that it would introduce legislation to mandate 'plain packaging' of tobacco products from 1 January 2012 with full implementation by 1 December 2012. The term 'plain packaging' does not really do justice to the full program which includes prohibition on the use of logos and very graphic warnings of the health consequences of smoking.

The legislation was first challenged by Philip Morris in the Australian High Court on the grounds that a registered trademark, the logo, colouring etc, was being confiscated. The Australian High Court rejected this claim affirming that the registration of a trademark served to prevent others from using it but did not include a positive right to use it.

The second forum in which the legislation is being challenged is the WTO. Ukraine, Honduras, Dominican Republic, Cuba and Indonesia have all sought 'consultations' with Australia which is the first stage in WTO dispute settlement. The grounds on which these challenges are based include the 'confiscated trademark' claim and 'geographical indications' provisions of the TRIPS agreement.

The third forum in which plain packaging is being challenged is the Australia Hong Kong Bilateral Investment Treaty using the investor state dispute settlement provisions of that treaty. Thus in the WTO the tobacco companies are challenging Australia through member states of the WTO but under the Australia HK BIT ISDS provisions Philip Morris can challenge directly with the challenge to be adjudicated by a panel set up under the UN Commission on International Trade Law. The claim here is one of indirect expropriation. Article 6(1) of the treaty (Australia and Hong Kong 1993) includes the following:

> *Investors of either Contracting Party shall not be deprived of their investments nor subjected to measures having effect equivalent to such deprivation in the area of the other Contracting Party except under due process of law, for a public purpose related to the internal needs of that Party, on a non-discriminatory basis, and against compensation. Such compensation shall amount to the real*

value of the investment immediately before the deprivation or before the impending deprivation became public knowledge whichever is the earlier.

In his commentary on the case Davison (2013) summarises the Philip Morris Asia (PMA) case thus:

Essentially, when one drills down into the details of PMA's claim, its claim is that the Australian government has directly or indirectly expropriated PML's intellectual property, its intellectual property has not been accorded fair and equitable treatment or that its intellectual property has been impaired by unreasonable measures relating to the management, maintenance, use, enjoyment or disposal of the investments. Similar claims are made in respect of goodwill generated from the use of intellectual property.

The claim is that by legislating for plain packaging the Australian Government has effectively deprived Philip Morris of part of its investment in Australia and should be duly compensated. Australia's defence will rest mainly on the fact that Philip Morris International deliberately rearranged its corporate ownership structures to place Philip Morris in Australia as a subsidiary of Philip Morris Asia *after* the announcement of the Australian Government's intention to legislate for plain packaging *in order* to take advantage of the investor protection provisions of the Australia Hong Kong BIT. Australia will also refer to its obligations under the FCTC as constituting an appropriate exception to the obligations under the BIT.

It is evident from the plain packaging story that investment protection provisions with investor state dispute settlement could significantly curtain national regulatory capacity in many areas, not just tobacco. In this respect the advance of investment protection and intellectual property protection in 'free' trade agreements such as NAFTA and the proposed TPP and TTIP agreements symbolises the transfer of power from the nation state to the transnational corporation.

This is an agenda which is being driven by the TNCs but the case is being carried largely by the USA, supported by the EU, other developed capitalist countries and various ideological organs of the transnational capitalist class. In this degree the tension is not just between nation states and transnational corporations; it is also across a complex class contradiction which cuts across the nation state dimension.

We can draw a number of lessons from the tobacco case.

- First, unless there is something unique about tobacco companies (which operate under the same institutional arrangements as other corporations) it must be presumed that many corporations will lie if they think they will get away with it, even where their products are killing people.
- Second, the tobacco case illustrates a complex interplay between litigation, social marketing, culture change and regulation (in both the FCTC and the plain packaging cases). Likewise successful campaigning in tobacco control has involved close collaboration between academia, the medical profession, governments, nation states, the WHO bureaucracy, NGOs, and academia; with committed individuals in all of these domains playing a critical facilitatory role.
- However, it is also salutary to note how countries can serve as the agents of the corporations; not just the US but also (in the context of the WTO challenge to Australia) the Ukraine, Honduras, Dominican Republic, Cuba and Indonesia.

Canada has played a positive role in relation to tobacco but has been part of the Russia, Kazakhstan, Canada troika seeking to export chrysotile without seeking prior informed consent. Clearly domestic political constituencies are critical in understanding global governance issues.

- Finally, keep in mind the WHO's treaty making powers – and the lack of a big power veto.

International health regulations 2005

The WHO (1958) dates the origins of international public health to the first international sanitary conference in Paris in 1851. It was a period of increasing trade and travel as well as appalling living conditions in the rapidly growing cities of the industrial revolution. The purpose of the conference, attended by representatives from twelve European states, was to prevent the spread of disease through trade and travel (in particular to protect Europe from *Asiatic* cholera) while limiting the degree to which protectionist barriers to trade might be imposed under the cover of public health. The main foci of debate were cholera, plague and yellow fever and much of the discussion was focused on the use of quarantine as a protection. In fact it was not until 1883 that Koch demonstrated that cholera was an infectious disease, spread through contaminated water and so there was little science to support the deliberations. The convention produced by the conference was signed by only five of the twelve countries, ratified by only three and two of these withdrew shortly afterwards.

Further conferences were held at irregular intervals but not very productive until the 11th conference in Paris in 1903 which unified previous conventions into a single International Sanitary Convention. At this conference for the first time delegates were equipped with new understandings regarding the origins and transmission of the three main diseases of concern: cholera and sanitation, plague and rats, and yellow fever and the mosquito.

The 1903 conference gave birth to the Office International d'Hygiene Publique (OIHP), a forerunner to the World Health Organisation. The main functions of the OIHP were to support communications around infectious disease and to support the development of the Convention. In its early years the OIHP recommended the listing of yellow fever as a quarantinable disease, increased attention to urban sanitation, compulsory notification of tuberculosis and compulsory notification of leprosy.

After the first World War and the establishment of the League of Nations, a health committee of the League was established. It proved very hard to achieve agreement between the League Health Committee and the OIHP and it was not until 1936 that a stable configuration was achieved with the OIHP as an advisory council to the League's health organisation. The 1926 Sanitary Convention reviewed the conditions for which quarantine was recommended and adopted a telegraphic system for collecting and disbursing national notification data.

Fidler (2005) describes this as the 'classical regime': limiting the transmission of epidemics (in particular, cholera, yellow fever and plague) while protecting trade and travel. He describes how before the establishment of WHO there was a proliferation of treaties dealing in different ways with these twin objectives.

The WHO was formed in 1948 and the revision of the International Sanitary Convention was one of its early priorities and the new International Sanitary Regulations were finalised in 1951. In accordance with the Constitution of the WHO these are binding on member states as distinct from the recommendations of earlier conventions.

The focus of the ISRs (the International Health Regulations from 1969) was still on travel, trade and transport and the control of transmission of epidemic disease (including cholera, plague, yellow fever, smallpox, typhus and relapsing fever). Its provisions deal with vaccination as a condition of entry, disinsecting of passengers, isolation or surveillance of travellers and measures to be taken in the case of suspect infected ships or aircraft. WHO was held responsible for rapid collection and dissemination of epidemiological information, in the early years, using weekly radio bulletins as well as airmail.

From 1951 to 1981 (the year smallpox was removed from the list of notifiable diseases) the relevance of the IHRs to global public health diminished. Fidler (2005) explains that in view of the wider agenda of the WHO (disease eradication, health systems, primary health care) and the emergence of new trade agreements such as GATT from 1947 the role of health law in support of the trade agendas of the great powers receded in salience. The focus on protecting trade was not coherent with idea of better health through a New International Economic Order. Finally, it was clear by the late 1970s that countries were widely flouting the requirements of the IHRs.

By the 1980s, with the emergence of AIDS/HIV, it was evident that the IHRs were not particularly important part of the global response. With the establishment of the WTO in 1994 and the SPS Agreement in particular it was clear that the trade agenda had shifted forums. In 1995 the WHA authorised the Secretariat to prepare a revised draft which was still under discussion in 2001 when the anthrax scare in the US took place and in 2003 with the outbreak of severe acute respiratory syndrome (SARS). With the experience of SARS the shape of the new regime became clearer:

- from a list of identified diseases the focus moved to situations of public health risks of urgent international concern (including but potentially going beyond infectious disease);
- allowing the WHO to receive and act upon information from a range of sources, not just from governments; a step towards making governments more accountable;
- a range of human rights protections; and
- obligations on states parties to develop and maintain core institutional capacity with respect to surveillance and outbreak control (specified in Annex 1 of the IHRs; see also Core Capacity Monitoring Framework).

The IHRs were adopted in 2005 to come into force in 2007. States parties were given until 2012 to develop the required surveillance and control capabilities. There would be a two year (or at the maximum four year) extension for states parties needing extra time to develop the required capabilities.

The EB reviewed the Implementation of the IHRs in Jan 2012. They were advised that most states parties were far from having fully acquired the required capabilities. The shortfalls in the development of capacity were worst in Africa and South-East Asia. Globally

the capacities relating to 'points of entry' and chemical events were least well developed. By January 2014 it was clear that many states parties would need a further extension of time to fully put in place the required capabilities.

Under the 'classic regime' (1851-2005) the authority of public health was deployed to protect the trading interests of the European powers. With GATT and the WTO the IHRs were no longer required for this purpose. However, with the threat of biological weapons terrorism and SARS the authority of WHO was newly deployed to guarantee global health security. However, the new regime requires all countries to develop surveillance and control capabilities that in some cases may require a disproportionate reallocation of resources.

Meanwhile there may be scope for wider uses of the new Regulations which have yet to be explored. In 2007 Raviglione and Smith (both senior officers inside WHO) flagged the possibility of using the IHRs to address extensively drug resistant tuberculosis. In 2011 Wernli and colleagues called for action more broadly; to apply the IHRs to the global threat of anti-microbial resistance generally.

There may be more to be gained by using the IHRs to address anti-microbial resistance than to continue harassing small developing countries who have not established the laboratory facilities and port of entry controls required by Annex 1 of the IHRs.

Lesson. WHO has significant regulatory and treaty making powers, without hegemonic veto; they should be used more extensively and more strategically.

Code of Marketing of Breast Milk Substitutes[1]

The health benefits of breast feeding include a range of nutrients, immune boosting, maternal bonding, and birth spacing. Unnecessary use of bottle feeding denies mother and child these benefits but in addition it carries a serious risk of diarrhoea in settings where a clean water supply is not assured. A 1910 study in Boston showed that bottle fed babies were six times more likely to die than breast fed babies. This was later confirmed in a similar study across eight US cities.

Nestlé and other companies were selling milk based infant foods around the world from late 19th century. In the latter part of 20th century breast feeding rates were declining and, particularly in developing countries, babies were dying as a result. Declining breast feeding rates reflected social and medical fashion undoubtedly influenced by infant formula marketing. Public understanding of the benefits of breast feeding has been greatly strengthened in the last several decades by the global movement which grew up around the advocacy for the Code and for full implementation of the Code.

By the late 20th century infant formula manufacturers had developed a powerful mix of marketing strategies which included: a narrative which sought to exploit women's anxieties about mothering and breast feeding; associating pictures of healthy thriving babies with infant formula; disguising sales persons as 'mothercraft nurses'; and displaying medical endorsement of bottle feeding.

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[1]. This section on the Code is taken largely from Judith Richter's excellent book on corporate accountability (Richter, J. (
2001). Holding Corporations Accountable: Corporate Conduct, International Codes and Citizen Action. London and New York, Zed Books and UNICEF.)

By the 1970s paediatricians were increasingly aware of the burden of preventable infant deaths, particularly in developing countries, consequent upon the aggressive marketing of infant formula.

The struggle to curb the marketing practices of infant formula companies was driven by a global social movement which, in the course of struggle, became progressively better organised, better informed and more adept strategically. This social movement worked with professionals and government (and WHO and UNICEF) officials. Advocates for regulating the marketing of infant formula confronted a powerful business lobby of TNCs, peak bodies and supportive governments, in particular, the USA.

The focus of engagement moved through a range of venues:

- In 1970 an initiative by paediatricians under the aegis of the UN Protein Advisory Group went nowhere.
- In 1972 the International Union of Consumer Organisations presented a draft code to the Codex Alimentarius Commission but they judged that it lay outside their mandate.
- In 1973 Oxfam's *New Internationalist* ran a story entitled 'Baby food tragedy', referring largely to Africa.
- In 1974 the UK NGO War on Want published a report entitled 'The baby killer'.
- A Swiss version of this report was produced by the Swiss NGO Third World Action, entitled 'Nestlés kills babies'. Nestlés sued and the case was finalised in 1976. Nestlés was forced to drop most of the libel charges and on the one remaining charge, symbolic penalty only was levied.
- Infant formula manufacturers formed an industry peak body in 1975 which published a voluntary code.
- A documentary film 'Bottle babies', based largely on Kenya, was produced in the US in 1974.
- Also in 1974 the US National Council of Churches established the Interfaith Centre on Corporate Responsibility (ICCR) aiming to use the shareholding power of the churches to influence TNC practices. In 1974 Bristol Myers was sued by an order of Catholic nuns, as shareholders, regarding its use of direct to consumer advertising and salespersons disguised as 'mothercraft nurses', contrary to what shareholders were told. The case was settled in 1978 with BM sending an agreed statement to its shareholders.
- In 1977 INFACT (Infant Formula Action Coalition, which was later to become Corporate Accountability International) launched the boycott of Nestlés.
- A US Senate committee hearing in May 1978 (with Senator Edward Kennedy in the chair) investigated the issues at stake in the boycott, following which Senator Kennedy wrote to Dr Mahler at WHO suggesting a conference to review the issues with the suggestion that such a conference might come up with a code of ethics.
- A conference involving all interested parties including the civil society groups was held in October 1979 co-sponsored by WHO and UNICEF. The conference resolved to ask WHO and UNICEF to develop a code.

- In the context of this conference a number of dispersed activist groups came together to form IBFAN (the International Baby Food Action Network).
- The negotiations involved in the development and adoption of the code were brutal with the manufacturers, their peak body and the US government lobbying and arm twisting to prevent WHO from developing a code and when it was clearly going ahead lobbying to ensure that it was as open and weak as possible. The Code was finally adopted by the WHA in May 1981 with 118 countries voting for, three abstentions (Argentina, Japan, Korea) and the USA the sole vote against.

The key provisions of the Code as adopted are:

- No advertising of breast milk substitutes or bottles or teats to the general public;
- No pictures of babies on packages idealising breast feeding;
- Clear statement on labels that breast is best;
- No free samples;
- No contact between sales and marketing persons and mothers;
- No promotions within the health system;
- Product information provided to health professionals to be limited to scientific information;
- No gifts to health professionals; and
- Full disclosure of grants made for fellowships, travel, conferences, research and journals.

The implementation of the code, first, getting it written into domestic law, and second monitoring and pressure regarding compliance, has been a continuing struggle. The role of IBFAN in monitoring implementation and compliance and campaigning around shortfalls has been critical. In 1994 the civil society network driving implementation was strengthened with the establishment of the World Alliance for Breastfeeding Action (WABA) providing a strong internationally linked civil society constituency to support monitoring and advocacy. The work of IBFAN and WABA has been complemented by a series of resolutions in the WHA, continuing support through the WHO and UNICEF secretariats, and strong professional support from paediatricians and nurses.

The corporations have been very active in lobbying governments to water down any provisions being adopted domestically; circulating their own interpretations of the Code; and seeking to reshape public opinion regarding the Code, the accountability of the corporations and infant feeding generally.

The year the Code was adopted was also the year that the debt trap was sprung with high interest rates globally and the beginning of the global ascendancy of neoliberal ideology. With the changing ideological climate the WHA has not elected to re-open the Code to strengthen it, for fear that it might have the reverse outcome.

It seems likely that fewer babies are now dying as a consequence of unethical marketing of breast milk substitutes than would be the case without the Code. However, the force which gives teeth to the Code is the continuing vigilance of the civil society organisations and the wider social movement behind them.

The saga of the Code is rich with lessons regarding the regulation of transnational corporations generally and the role of civil society. The first of these is that it is not just the tobacco and asbestos companies that will lie and kill for profit.

It seems self-evident that where self-regulation and co-regulation have failed it is necessary to proceed to binding regulation. WHO has the capacity to establish such instruments, either as regulations (under the IHRs) or as a convention (like the FCTC).

The commitment, organisation and persistence of the civil society organisations working through and beside IBFAN and WABA and the wider social movement which is their constituency have been critical to getting the code adopted, implemented, monitored and complied with. Undoubtedly such civil society pressure would still have been necessary even if the Code had been mandated through regulation or a convention.

Food and nutrition

Trade in foodstuffs (commodities, ingredients, processed and packaged food) has dramatically influenced diets and nutrition; generally for the better but not always. The contemporary global food trade regime ensures availability for most although many millions are far from food secure, much less in charge of their own food supply (food sovereign). It ensures a wide range of food stuffs for those who can pay but irresponsible marketing and perverse price relativities are driving many millions to unhealthy diets and early death.

Globalisation has complicated this picture with an increasing proportion of global food trade managed within transnational corporations rather than between arm's length buyers and sellers in different countries. With globalisation comes global oligopolies (snacks, beverages, grain merchants, etc), global brands and global marketing, and the 'global value chain', refering to the flexibility that the corporations have with respect to sourcing inputs, locating production, marketing and accruing revenue for tax purposes. Both their size and their flexibility (and the leverage this gives them over smaller nation states) signal a qualitative difference from earlier regimes of trade.

The regulatory challenges in relation to global food trade (and food-related FDI) are nowhere near as clear cut as tobacco or asbestos. The positive contributions that trade in food makes to food security needs to be acknowledged although its implications for food sovereignty are more problematic. The food industry's defence, 'it is unhealthy diets which kill people not junk food', is in a narrow sense valid but needs to be considered in the context of the powerful investment of the transnational food corporations in marketing. The bad foods / bad diets contradiction is essentially an individualising and victim blaming trope; obesity, hypertension, heart disease and diabetes are the fault of the people who choose the bad diets. Personal choice is important but needs to be understood in the context of life pressures and convenience, stress and comfort foods, price relativities, and marketing. Tobacco is, conceptually at least, much easier.

This is not the place for a comprehensive account of these issues. Rather we shall just review two specific questions: first, hunger and second, NCDs and consider causes, policy options and possibilities for health activism.

Hunger, stunting and malnutrition

The UN's MDGs Report for 2013 describes a significant improvement in the proportion of people globally who are malnourished. It is still possible that the MDGs target of halving from 1990 to 2015 the proportion of people who suffer from hunger, will be achieved. However, this leaves 870 million people still suffering from hunger, particularly in Sub-Saharan Africa and Asia.

Globally, an estimated 101 million children under age five were underweight in 2011. This represents 16 per cent of all children under five that year, or one in six. This is a significant improvement on the situation in 1990; the improvement has been most dramatic in West and Central Asia, East Asia and Latin America. However in Southern Asia and Sub-Saharan Africa the rates are still very high.

Globally, more than one quarter (26 per cent) of children under age five were stunted (short for age) in 2011. This represents a proportional improvement in 1990 but still refers to 165 million children. Globally less than half of newborns were breastfed within an hour of birth and only 39% exclusively breastfed for the first six months.

The UN report editorialises as follows (p7):

> *Around the world, abject poverty is found in areas where poor health and lack of education deprive people of productive employment; environmental resources have been depleted or spoiled; and corruption, conflict and bad governance waste public resources and discourage private investment. The international community now needs to take the next steps to continue the fight against poverty at all these various levels.*

This very one sided analysis fails to acknowledge any of the ways in which the global trade and investment regime can contribute to hunger, malnutrition and stunting.

Hawkes and her colleagues (Hawkes, Blouin et al. 2010) comment that liberalisation in food trade may reduce prices which helps the urban poor but where cheap imported foodstuffs undercut locally produced foods it destroys the livelihoods of many small farmers and drives urbanisation (creates more urban poor). Too often, urbanisation is associated with substandard housing, unemployment, and depression and conflict.

The dumping of agricultural commodities (sale at less than the cost of production because of production subsidies) exacerbates these dynamics. The WTO's Agreement on Agriculture provides loop holes which enable rich world protectionism (excluding developing country producers) and allow subsidies for exported products (particularly in the USA) (Murphy, Lilliston et al. 2005, Hawkes, Blouin et al. 2010, Wiehoff 2013).

Much rich world agriculture (Europe, Japan and USA in particular) is protected (at significant cost to domestic consumers) and subsidised (at significant cost to domestic taxpayers). The impact on Third World farmers is a further cost of this model. Notwithstanding these costs, the agribusiness model (large scale, monocrop, mechanised farming with hybrid seeds and selective pesticides) is presently being urged upon policy makers in developing countries, notwithstanding peak oil, ecological degradation, rural unemployment and farmer dependence (Monsanto vassalage).

These choices bring out clearly the debate around food security versus food sovereignty. It maybe that liberalised trade in agricultural commodities increases the

availability of foodstuffs but it also locks the country's food supply into greater dependence on international circumstances (including speculation in food futures (Wahl 2009, GHW 2011, Ghosh, Heintz et al. 2012), and competition from biofuel and feedlot uses).

The concept of food sovereignty places greater weight on local self-sufficiency and democratic local control over the food supply. The debate is clearly outlined in the recent debates around the Indian Food Security Act which authorises the Indian Government to buy from local farmers at relatively higher prices and to distribute foodstuffs at relatively lower prices. The US opposed this program in the Bali WTO Ministerial Council arguing that it was non-compliant with a range of WTO rules. See Wise (2013) for more.

The issue of food sovereignty throws the post-Fordist imbalance into sharp relief. In essence the choice is between producing food for the world in a few intensively cultivated regions using large scale highly mechanised input rich agriculture or placing a greater emphasis on distributed, labour intensive, locally oriented farming. The imbalance in the first model is that since relatively few people make a living from agriculture, unless everyone else gets jobs in manufacturing or services they will not be able to pay for the food which is so efficiently produced. The second model promises greater employment in farming as well as greater local autonomy with respect to food sovereignty.

This brief survey of the global context of hunger is far from exhaustive but it should be sufficient to demonstrate that health activists concerned about the problems of hunger, underweight and stunting need to have regard to the global regime of trade and investment as well as the issues referred to in the UN report quoted above.

The 'nutrition transition'

The idea of the 'nutritional transition' refers to the move from a diet rich in cereals and complex carbohydrates to one rich in which energy dense foods including oils, meats, fats and sweeteners. This is a transition that happened earlier in the developed countries and which is now happening and faster in the developing countries.

The nutrition transition is mediated through the increased use of convenience foods and snack foods, which commonly include high fats (including trans fats), free sugars and salt, and declining whole grain foods, fruits and vegetables, pulses and nuts. The outcomes include an increased prevalence of obesity, hypertension, diabetes, heart disease and cancer. The idea of a nutrition transition is a useful generalisation but of course the speed and character of dietary change is much more specific to local circumstances than the generalisation implies.

Insofar as it is a general phenomenon some of the global factors driving the nutrition transition include:

- taste; by some accounts humans evolved with a taste for salt, sugar and fat because these were critical nutrients but have very limited satiety mechanisms with regard to these tastes; do not have natural 'enough is enough' signals;
- the long shelf life means manufactured foods can travel long distances and the lack of water means that the cost of transport is less than that of fruit and vegetables;
- partly because of subsidised corn (from which the sweeteners derive) junk food can much cheaper than more healthy fruit and vegetables; and

- the availability and marketing of convenience meals, snack foods and sugary drinks.

These features of production shape the political economy of the nutrition transition:

- corporate capture of the food supply, to the exclusion of small farmers, small producers, small retailers;
- restructuring the global value chain so the corporates can extract the most aggregate profit from all the steps along the chain;
- supermarket monopolies;
- cheap sweeteners; subsidised corn in the US means cheap high fructose corn syrup; subsidised sugar in Europe;
- capture of food chain assisted by long shelf life and low water content (low weight) and therefore cheaper transport costs.

The standard policy response to this situation is food labelling and public education. This formula recognises 'no bad foods, just bad diets' by ensuring that the purchaser can choose a healthy diet. It is clearly an inadequate policy strategy not least because of the challenges of mandating meaningful food labelling and the cost of meaningful public education and social marketing regarding dietary choices.

The international policy authority regarding food labelling is the Codex Alimentarius which is co-sponsored by WHO and FAO. It is also strongly influenced by the transnational food giants who generally oppose meaningful labelling. The Codex is not mandatory on member states so the food companies have a further opportunity to oppose even the minimal standards recommended in the Codex.

Even if meaningful labelling were mandatory there are still mortal weaknesses in the standard policy.

The resources that the food industry can call upon for marketing far outweighs the resources most governments (or health promotion bodies) have for social marketing and public education. The advertising and media companies would love to have a bidding war between food marketing and health messages but it would be a serious waste of resources. The alternative has to be significant restrictions on food marketing.

When the price relativities favour junk food it can be very hard for low income people to put together a healthy diet. This can be tackled at the level of production subsidies (through trade agreements); it can also be tackled through excise taxes and food subsidies in the domestic economy, similar to the Indian Public Distribution System, referred to above.

Social patterns of eating and drinking fit in with broader patterns of social practice and these also need to be considered. The introduction of television had a powerful impact on the formalised rituals of family meals. For many families longer hours of work reduces the time for meal preparation with weaker transmission of those skills to the next generation as a consequence. Dense urban living makes growing backyard fruit and vegetables much more difficult.

In many respects the reshaping of social practices around eating has been driven by the convenience, marketing and price relativities of various sectors of the junk food industry. However, reworking these social practices towards more convivial and healthier ways of

living involves community and societal choices which are in turn affected by prevailing ideological assumptions. For example, a small community seeks to prevent a new McDonalds store opening in their township but are over-ridden by central planning authorities. These are issues at the very soul of participatory democracy.

A particular example of this principle of reworking the rituals of eating within the broader rhythms of social practice are the debates between global and local food systems; the choices between global sourcing and year round availability versus slow foods, farmers' markets, and 100 km foods. These may be seen as issues of balance rather than exclusive alternatives.

These policy choices all point towards ways in which action around NCDs is necessarily embedded in political and ideological contestation at all levels from local to global. Big food (plus their media allies) will oppose marketing restrictions; big food will oppose any developments in the social context of eating which weaken market share and the power to squeeze profits from suppliers. Such debates will be coloured by ideological contestation over local community action versus the magic beneficence of the invisible hand of market forces.

At the global level trade and investment agreements already in place (and spreading) include provisions which are designed to support the interests of the transnational corporations generally but clearly including the transnational food corporations. Investor state dispute settlement is one such mechanism.

The US which is the leading nation-state sponsor of the TNCs, has consistently opposed any policy strategies beyond 'labelling plus education plus consumer choice'. Richter (2002) quotes Neil Boyer, a spokesperson for the US State Department as saying, in 1986, that:

> *The World Health Organization should not be involved in efforts to regulate or control the commercial practices of private industry, even when the products may relate to concerns about health. This is our view regarding infant foods products, and pharmaceuticals and tobacco and alcohol.*

These reflections point to a number of useful conclusions for health activists:

- food labelling and public education are essential but not sufficient;
- restrictions on marketing, eg a binding code of practice, are necessary;
- taxes and subsidies can be used to reverse price relativities;
- social and political choices about food supply and about the rituals of eating within our culture are critical aspects of moving collectively to healthy diets.

All such strategies will be opposed by commercial interests and their nation state spokespeople. The ideological framing of these debates is critical.

International regulatory structures including the Codex Alimentarius and trade and investment agreements constrain what can be achieved in the short term. Changes being driven by the TNCs in new trade and investment agreements continue to put in place new barriers to healthier ways of managing our food supply and healthier ways of eating.

Medicines governance

Medicines policy has been a regular presence on the WHO agenda and the tensions between the profit on the one hand and access, innovation, quality, safety and efficacy on the other have never been far from the surface. In this section we shall review a number of these recurring issues before drawing some conclusions about the role of WHO in global health governance.

Medicines regulation

Statutory medicines regulation is a core principle of medicines policy and WHO has been involved since the early 1950s.

One of WHO's earliest projects (from 1948) was assembling an international pharmacopoeia, a step towards standardisation in pharmaceutical preparations. In 1955 the need for a single authority to assign non-proprietary names was recognised and this function vested in WHO. A study group was convened in 1956 to develop principles which should be expressed in governments approving drugs for marketing. A further study group on evaluating the safety and efficacy of drugs was commissioned in 1962.

WHO's role in assuring manufacturing standards can be traced back to the early 1950s and guidance around the production of penicillin (World Health Organization 1958). The work program which led to standards for good manufacturing practice (GMP) was commissioned in 1967. The evaluation of efficacy and safety, adverse drug reaction reporting and post-marketing surveillance were hot topics during the 1960s and 1970s, driven in part by the thalidomide disaster in 1961. The first International Conference of Drug Regulatory Agencies was held under WHO patronage in 1976.

Essential medicines, rational use and ethical marketing

WHO has had an essential medicines program since 1975 (Laing, Waning et al. 2003). The purpose of the essential medicines list (EML) is to provide guidance to government authorities as to the priority drugs based on health needs, efficacy, safety and cost. These are the drugs which should be given priority in government supply chains, in subsidy and reimbursement programs, and in programs to promote rational use. Of course the obverse of an inclusive list is an implicit list of excluded drugs; not necessarily denied marketing rights but facing an additional hurdle in marketing.

During the discussion of the Executive Board in January 1975, concern was expressed about the pressure exerted on developing countries to purchase drugs. Despite their best efforts, one African member said, "they were none the less exposed to unscrupulous activities on the part of certain pharmaceutical industries, and he wondered whether WHO could not help in that connexion." (World Health Organization 2008).

The essential medicines list (EML) was developed and revised frequently in the years that followed although big pharma was concerned about how far it might go. Laing and colleagues (Laing, Waning et al. 2003) recall that

> *In 1987, the International Federation of the Pharmaceutical Manufacturers Associations (IFPMA) called the medical and economic arguments for the EML fallacious and claimed that adopting it "could result in sub-optimal medical care and might reduce health standards". The pharmaceutical industry was concerned that the EML would become a global concept applicable to*

public and private sectors in developing and developed countries, and were especially opposed to attempts by developed countries to introduce limited medicines lists.

During the 1980s there was continuing controversy over WHO's promotion of the rational use of pharmaceuticals (WHO 2012) and ethical criteria in pharmaceutical marketing (WHO 1988). Judith Richter (

2001)describes the opposition of big pharma and of the US to the relatively weak 'ethical criteria' for medicinal drug promotion adopted by the WHA. Neil Boyer of the US State Department is quoted as saying:

The WHO should not be involved in efforts to regulate or control the commercial practices of private industry, even when the products may relate to concerns about health. This is our view regarding infant foods products and pharmaceuticals and tobacco and alcohol.

In order to underline its opposition to the essential medicines list and the proposed ethical criteria the US in 1986 and 1987 withheld large portions of its contributions to the budget of WHO but the DG, Dr Mahler, went ahead with the ethical criteria project nonetheless (Richter

2001).

From TRIPS flexibilities to policy coherence

The TRIPS Agreement was adopted in 1994. This introduced longer periods of patent protection and required patents on product as well as process. TRIPS establishes certain principles which have to be reflected in patent law but there is some flexibility regarding details.

From 1996 there was concern in the World Health Assembly regarding the impact of TRIPS and other WTO agreements on access to medicines and a resolution in 1999 asked the DG to assist member states in developing policies and regulations which address the implications for pharmaceutical and health policy objectives from trade agreements and assist countries to 'maximize the positive and mitigate the negative impact of those agreements'.

In 1997 a court case was brought by 39 international pharmaceutical companies (Consumer Project on Technology nd) against the government of South Africa alleging that its use of parallel importing was illegal in terms of South African legislation (as adopted to conform to TRIPS). At this time the research based pharmaceutical manufacturers were selling a course of (branded) AIDS treatment in South Africa for $10,000 per year, while the Indian generic manufacturer Cipla was selling such a course (generics) to MSF for $350 per year. Between 1998 and May 2001 the South African Treatment Action Campaign (Heywood 2009) generated national and international support for the South African government's position, demanding access to treatment and in 2001 the US government withdrew its political support for the drug companies (after AIDS activists in the US (including ACTUP) highlighted the issues in the context of the Al Gore presidential campaign). In May 2001 the drug companies withdrew their suit and agreed to pay the South African government's costs.

During the controversy there was a vigorous policy debate around the use of TRIPS flexibilities (such as compulsory licensing, parallel importation and price controls) versus drug donations, differential pricing and philanthropy.

In April 2001 the DG of WHO co-hosted a workshop in Oslo on differential pricing as a solution to price barriers to treatment in low income countries (WHO, WTO et al. 2001); essentially seeking encourage a more charitable approach by big pharma. However, in December 2001 the Ministerial Council of the WTO, meeting in Doha, adopted the Doha Declaration on the TRIPS Agreement and Public Health (WTO Ministerial Council 2001)which stated (para 4):

> *We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all.*
>
> *In this connection, we reaffirm the right of WTO members to use, to the full, the provisions in the TRIPS Agreement, which provide flexibility for this purpose.*

In 2002 WHO and WTO issued a report (WTO and WHO 2002) on the intersections between trade and public health which provides clear descriptions of TRIPS flexibilities in the context of a joint project of supporting 'policy coherence' across trade and health.

In May 2003 the debate over IP, pricing and access found its way onto the WHA56 Agenda. The WHA adopted resolution WHA56.27 which urged member states: to reaffirm that public health considerations are paramount in pharmaceutical policies; to adapt national legislation to enable the full use of TRIPS flexibilities; and to encourage research on diseases that affect developing countries; and requested the DG to establish an expert inquiry into IPRs, Innovation and Public Health, and to monitor and analyse trade agreements.

The expert inquiry became the WHO Commission into IPRs, Innovation and Public Health with a remit focusing on pharmaceutical innovation for conditions disproportionately affecting people in developing countries. The Commission's report was considered by the WHA in May 2006. The Commission confirmed that for conditions disproportionately affecting developing countries, with small markets and limited buying power, the profit motive was insufficient incentive for the innovation which was needed.

The recommendations of the Commission went through a tortuous bureaucratic pathway before the WHA accepted at least in principle the logic of delinking pharmaceutical R&D from monopoly pricing and debated the proposal for a binding treaty to raise and disburse funds for research and development for conditions disproportionately affecting developing countries. The proposed treaty has been largely supported by Latin America, Africa and Asia. The opposition, led by the US and Europe, has taken the form of continued re-examination of old proposals, continued assertion that other mechanisms to boost investment in drugs could be explored.

It is clear that monopoly pricing is not an effective way of funding of innovation to meet the needs of developing countries and the case for delinking and a binding agreement is strong; see Velásquez (2012). However, it is clear that delinking for drugs of relevance to developing countries would establish a precedent that could be extended to other pharmaceuticals to which the research based pharmaceutical corporations and their host countries would be strongly opposed. The binding treaty has been shelved for the time being. Clearly it will return.

Trade and health policy coherence

Meanwhile there was progress on the wider issue of 'policy coherence' across trade and health as broached in the 2002 WHO/WTO report (WTO and WHO 2002). In October 2004 SEARO hosted an inter-regional workshop on trade and health which explored the full range of issues associated with trade health policy coherence including extended treatments of TRIPS and treatment access (SEARO 2007). This workshop laid the ground work for what became the Trade and Health resolution, adopted as WHA59.26 (WHA 2006) in May 2006.

This resolution affirmed the importance of achieving an appropriate balance between trade interests and health objectives. It urged member states to promote multi-stakeholder dialogue; address the challenges posed by trade agreements and take advantage of such flexibilities as they offered; to build capacity for closer coordination between the trade and health. It urged the Director-General to support members in seeking to achieve coherence between trade and health.

A mix of activities, some driven from Geneva and from some of the regional offices, followed the passing of A59.26 although it is not clear that all of them were a consequence of the resolution. The WHO Secretariat had been working with the WTO Secretariat on trade and health issues since well before A59.26 and this cooperation and with WIPO has continued. What has been achieved in terms of ensuring treatment access is less clear. However, it is clear that the WHO Secretariat has been subject to strong pressure from the US to prevent effective implementation of the resolution (Legge 2013).

Counterfeit & QSE

An item appeared on the agenda of WHA in May 2008 which surprised a number of member states. The item, headed 'Counterfeit medical products', had not been mandated by any resolution of the Assembly, but had been included on the agenda at the request of UAE and Tunisia without substantive discussion.

The accompanying report provided a survey of the problem of counterfeit medical products and described with some pride the establishment of the International Medical Products Anti-Counterfeiting Taskforce (IMPACT) and the work which had been progressed through IMPACT since its launch in 2006. The document listed the IMPACT 'stakeholders' including strong representation of the research based pharmaceutical corporations.

The Taskforce had been established in 2006 and work was funded (nearly US$ 2.6 million) mainly by specified contributions from WHO's Member States through the European Commission and the Governments of Australia, Germany, Italy and the Netherlands (altogether 68%) and by WHO (28%). It also benefitted from significant in-kind support from the pharmaceutical industry.

Of particular interest to many member states was the IMPACT report on 'Principles and elements for national legislation against counterfeit medical products' which included a number of references to ensuring that pharmaceuticals are appropriately licensed and authorised. The language is quite general but many observers commented that it could be taken as implementing patent linkage, harnessing the power of national drug regulatory bodies to police intellectual property rights.

Several countries expressed their reservations about WHO's role in IMPACT in the 2008 discussions but it returned to the agenda in May 2010 with a resolution (sponsored by Gambia, Ghana, Nigeria, Tunisia and the United Arab Emirates) congratulating WHO and other IMPACT stakeholders and urging further support for IMPACT. Most of the early speakers in the following debate were positive. However, India and Argentina expressed some concerns and Thailand asked how this item had made it to the agenda of the WHA when it had not been mandated by previous resolutions and had not been discussed at the Executive Board. Finally Brazil stated that it did not recognise the legitimacy of IMPACT or of the resolution. It was agreed to defer further consideration and refer it to the EB.

While delegates at the WHA were wondering where IMPACT had come from preparations were in full swing for the first formal round of negotiations around the proposed Anti-Counterfeiting Trade Agreement (ACTA) which the USA and Japan had been working on since 2006. This initiative was unambiguously focused on intellectual property infringements. While the above debate was progressing at the WHA (May 2008) the negotiating partners were preparing for the first formal round of negotiations towards ACTA (3-4 June 2008, also in Geneva).

Big pharma's involvement in IMPACT and ACTA was not an isolated initiative. One of the business organisations behind the IP agenda was the International Chamber of Commerce's (ICC) Business Action to Stop Counterfeiting and Piracy (BASCAP) established in 2004.)

MSF's Access Campaign (MSF 2012) provides an extended analysis of the implication of ACTA for access to medicines. Two provisions of particular relevance to the IMPACT saga are the provisions requiring seizure in transit where IP infringements are suspected and the obligation on drug regulatory bodies to have regard to the patent status of medicines. This latter provision appears to constitute a strategy for linking approval for marketing to inspection of IP status (so-called 'patent linkage').

The provisions for seizure in transit were extremely topical since from October 2008 to May 2009 there were at least six seizures of India generic drugs in transit through European ports but destined for Colombia, Peru, Brazil, Nigeria and Vanuatu (Khor 2009). These were drugs that were legitimate in the source country and the destination country and were not destined for import into the country of transit.

The EU claimed that the seizures were required under a 2003 regulation but after India took the EU to the WTO the EU agreed to amend the regulations (Anonymous 2010).

In the same year, 2008, as formal negotiations towards ACTA were commenced and the drug seizures in European ports, Kenya elected to amend its patent laws to put in place much tighter controls over IP. Kenya had been a challenge to big pharma since it legislated for parallel importation in 2001, a flexibility which was used in 2002 to import generic ARVs from India. Kenya came close to issuing a compulsory licence for ARVs in 2004. There were repeated efforts from 2002 to change the law to make parallel importation dependent on approval from the patent holder ('t Hoen 2009).

The new legislation was challenged in 2009. Christa Cepuch, the director of programs for Health Action International Africa (HAI Africa) explained that the Act "contains a vague definition of counterfeiting which could be read to include generic drugs". The law makes the

manufacturing, importation or sale of "counterfeit goods" a criminal offence rather than a civil matter, which is the usual way in which disputes over intellectual property rights are resolved. The onus to verify whether goods are fakes or not has been put on customs officials and police officers. "We'll have Kenya Revenue Authority officials trying to figure out if drugs are fakes or not. This increases the risk of products being labelled fakes," Cepuch says. "The law further gives these officials excessive powers, making the process difficult and expensive. Moreover, the onus to prove the products are not fakes lies with the accused, a price many will not be willing to pay" (Anyangu-Amu 2009). In April 2012 the Kenyan High Court ruled that the Act was too broad and vague with respect to counterfeit and generic medicines (IP-Watch 2012).

The rise of the counterfeit agenda in Africa was in part due to the agitation of an organisation called the Investment Climate Facility for Africa which was established "to address key bottlenecks impeding African countries in improving their investment climates". It is a public-private financial facility involving the UK ($30 million over 3 years), Royal Dutch Shell and the Shell Foundation ($2.5 million over 5 years), and Anglo American ($2.5 million over 5 years). ICF's development partners also include the governments of Germany, Ireland, Netherlands, Norway, South Africa as well as the Africa Development Bank and the International Finance Corporation.

One of ICF's projects has been working with the East African Community to develop an anti-counterfeiting policy and an anti-counterfeiting bill. While EAC officials are upbeat about the need for this bill (see Wambi Michael interview with Juma Mwapachu, secretary general of the East African Community (EAC), part 1 (Michael 2010) and part 2 (Michael 2010)). Musungu (2010) provides a detailed critique of the evidence, policy logic and implications of the proposed policy and Hermann (2013) reports that the health departments of the EAC are pushing back.

It is evident that patent linkage (actually criminalising IP infringements) is high on the agenda of the research based pharmaceutical corporations, their industry partners (such as ICC) and their state sponsors. Leaked US negotiating text from the Trans Pacific Partnership Agreement negotiations reveal that the US is seeking to implement 'patent linkage' which means that drug regulatory agencies would be required to ascertain the IP status of any product being brought forward for marketing approval and to notify any parties who may hold IP rights in that product (Kiliç and Maybarduk 2012).

When WHO's Executive Board considered Agenda Item 4.11 'Counterfeit medical products' in Jan 2009 it had before it a report from the Secretariat including a draft resolution commending the Secretariat for its work in IMPACT and proposing to continue to work down the same pathway. It is not clear where the draft resolution came from.

There was a long vigorous and in-depth discussion with many interventions. In the end the DG commented that there was consensus that the Secretariat should focus on the public health concerns and continue to support Member States in strengthening their drug regulatory authorities in that regard. She promised a new report addressing the public health dimension of the issue of counterfeit medical products, without a draft resolution.

The issue was considered by WHA63 in May 2010 where three draft resolutions were tabled from Latin America, Africa and SEARO (India and Thailand). The Latin American

draft called for an intergovernmental working group to work of falsified medical products from a public health perspective, excluding consideration of intellectual property. The African resolution did not mention IMPACT but congratulated the Secretariat for its leadership in these matters and urges continuation. The SEARO draft noted that the TRIPS Agreement defines 'counterfeit' as a trade mark infringement and urged that the term not be used to refer to medical products compromised in quality, safety and efficacy (QSE). The draft urged WHO to cease its involvement in IMPACT and focus on the challenge of QSE compromised medical products. There was a long and interesting debate but no agreement on the three resolutions. In the end a compromise decision drawn up by India (for SEARO) and Ecuador (for UNASUR) was adopted for a working group to consider the issue further.

WHA 64 (May 2011) received a report from the WG under the new portmanteau term, 'Substandard/spurious/falsely-labelled/falsified/counterfeit medical products' (SSFFCMPs). The WG reported that it had considered WHO's role in relation to quality, safety, efficacy and affordability; it had considered QSE compromised products such as SSFFCMPs; and it had considered but not achieved consensus regarding WHO's role in IMPACT. The WG requested an extension of time.

The WG reported to the EB130 in Jan 2012 and proposed a draft resolution for the EB to recommend to the Assembly. The resolution would mandate a new Member State mechanism for "international collaboration among Member States, from a public health perspective, excluding trade and intellectual property considerations, regarding "substandard/spurious/falsely-labelled/falsified/counterfeit medical products" in accordance with the goals, objectives and terms of reference annexed to the present resolution". There was a long debate over the draft resolution after which the resolution was adopted as amended and was subsequently approved at the WHA in May 2012.

The MS Mechanism on SFC was launched in Buenos Aires 19-21 Nov 2012 and reported to the EB132 (Jan 2013). There was general agreement on how the MSM would operate but there were a lot of square brackets in the draft Work Plan. The meeting had not been able to establish a Steering Committee (waiting on nominations from each region of two vice-chairpersons) and did not have a Chairperson. The meeting had decided to establish an open-ended working group to identify the actions, activities and behaviours that result in SSFFC medical products.

By May 2013 a Steering Committee had been established but there was no agreement on the chairperson. (Rumor has it that Nigeria wants the Chair and Africa is supporting Nigeria but that Latin America was reluctant to accept Nigeria because it had been a strong supporter of IMPACT.) The May 2013 Assembly decided to recommend that the chairmanship of the Steering Committee of the Member State mechanism on substandard/spurious/falsely-labelled/falsified/counterfeit (SSFFC) medical products should operate on the basis of rotation, on an interim basis.

The donor chokehold over WHO

The World Health Organisation is a critically important global institution. It has a unique role to play in addressing the health needs of people around the globe, vulnerable populations in particular.

In the area of medicines WHO has played a unique role in standardising names, promoting good manufacturing practice, standardising marketing approval protocols, and promoting essential medicines, rational use and ethical marketing. With the advent of TRIPS WHO urged countries to use to the full the flexibilities inherent in TRIPS and promoted policy coherence across trade and health.

In the ongoing struggle between public health and pharmaceutical profit the push for an R&D treaty to support innovation for conditions which disproportionately affect developing countries might be viewed as an 'offensive' manoeuver from the public health side while the counterfeit and TRIPS plus agendas are clearly an offensive moves from big pharma and its nation state sponsors.

WHO has never used its binding treaty making powers in the field of medicines but came close to it in the 1970s in relation to essential medicines. Of particular concern to big pharma is that there are no Security Council vetos at the World Health Assembly.

However, while no countries exercise a veto in the World Health Assembly for over thirty years the rich countries have sought to control the Organisation by refusing to fund the priorities of the membership as a whole while selectively funding those programs which are consistent with their interests and perspectives. Generous funding is supplied to projects which are designed in part to protect the intellectual property rights of European and US pharmaceutical giants while programs directed to the effective and efficient use of medicines and quality of care are seriously underfunded.

Health system development is one of the critical areas of work in developing countries and WHO has taken the lead in promoting integrated health systems and primary health care. However, the World Bank promotes a stratified model of health care (private for the rich, social insurance for the middle and safety nets for the poor) and the Global Fund for AIDS, TB and Malaria promotes a vertical fragmented model of health care focused solely in three priority diseases. However, WHO's work in support of PHC and integrated health systems has been seriously limited by lack of funding (Walt 1993, Legge 2012).

In a Catch 22 twist, the funding crisis has contributed to undoubted inefficiencies in the work of WHO which are then taken as the reason for not untying its funding. The issue of WHO Reform was re-opened for official discussion at the May 2009 World Health Assembly (WHA) when the focus of concern was WHO's increasing dependence on earmarked funds from donor countries and foundations. Since then the range of issues at stake has been widened to encompass a broad approach to WHO reform.

Some conclusions arising from this discussion of medicines and WHO

There are real contradictions between the profit maximisation agenda of big pharma and the objectives of access, innovation, quality, safety and efficacy.

Big pharma is creative, powerful and persistent in progressing their agenda and defending their interests. Big pharma works though IFPMA, ICC, ACC, etc.

In the USA and Europe big pharma has powerful advocates, defenders. The interplay of TNCs and hegemonic capitalist states is well illustrated in relation to medicines

WHO has real powers which are seen as serious enough by big pharma and its allies to justify serious attention.

Big pharma uses front organisations such as IAPO, peak bodies such as IFPMA, ICFA, etc and small countries, eg Panama to advance its cause (see Psoriasis)

The donor chokehold is a major restraint over the capacity of WHO to do its job properly.

The second major constraint is the lack of MS accountability and the lack of CS pointed advocacy. Need for greater strength.

For activists the chief lesson is to strengthen MS accountability, in particular, to defend the independence of the organisation.

Access to AIDS treatment in Brazil

AIDS/HIV in Brazil and scaling up treatment

Since 1996 Brazil has offered universal free ARV treatment. In 2005 170,000 people were treated with ARV drugs. AIDS mortality was reduced by 50% from 1996 to 2002. The MOH estimated in 2005 that from 1997 to 2004 the country saved over $US2 bn in health care costs as a consequence of AIDS-related hospitalisations avoided ('t Hoen 2009).

The Brazilian achievements in HIV have had wide ramifications beyond AIDS treatment in Brazil and are rich with lessons for other countries and sectors, including for health activists globally.

However, to draw out these lessons requires some untangling of a complex history which includes several interweaving stories: legislation; treatment programs; price negotiations; TRIPS disputes; and various streams of civil society activism including HIV solidarity and legal RTH activism.

AIDS emerged at the same time as Brazil was emerging from the dictatorship in the early to mid 1980s. Health activists had been part of the democracy movement and ensured that the new 1988 Constitution included a commitment to a universal right to health and a unified national health service (SUS). Some of the health activists from the democracy movement moved into senior positions in government and were ready to work with civil society organisations to give effect to the commitment to the RTH (Chaves, Vieira et al. 2008, Nunn 2009, Pisani 2009).

A further legacy of the democracy movement was an active civil society movement demanding action around AIDS/HIV. Two of the early civil society organisations, from 1985/86 were the AIDS Prevention Support Group (Grupo de Apoio á Prevenção á AIDS or GAPA) in São Paulo and the Brazilian Interdisciplinary AIDS Association (Associação Brasileira Interdiciplinar de AIDS or ABIA) in Rio de Janeiro (Chaves, Vieira et al. 2008).

The first treatment program in 1983 and CSOs such as GAPA and ABIA were involved from very early on (Reis, Terto Junior et al. 2009). The National AIDS Program (NAP) was formally established in 1986. NAP was originally established as a vertical program which may have helped to protect it in early years but it would eventually need to integrate with mainstream health care (Nunn, da Fonseca et al. 2009).

While the early focus of the CSOs was on treatment by 1996 they were also involved in law suits, gaining leverage from the Constitutional RTH in driving the development of treatment programs (Chaves, Vieira et al. 2008).

Prior to the TRIPS Agreement Brazil did not grant patents for pharmaceuticals. However, while the TRIPS Agreement was signed in 1994 and came into effect in 1995, developing countries which did not previously grant patents for pharmaceuticals had a 'period of grace' of 10 years, to 2005, before they were required to put in place laws that were consistent with TRIPS.

In fact Brazil enacted its new patent laws in 1996 to come into effect in 1997 and even more surprisingly (apparently under US pressure) the new laws failed to incorporate all of the flexibilities available to it under TRIPS. The new laws included a number of loopholes through which pharmaceuticals which did not meet the principles of the new law could nonetheless gain patents (Chaves, Vieira et al. 2008).

From 1996 NGOs such as (ABIA) and PelaVIDDA (Grupo pela Valorização, Integração e Dignidade do Doente de Aids) had used the courts to gain legal recognition that the right to health as enshrined in the 1988 Constitution includes rights to prevention, treatment, and care for people living with HIV/AIDS. Brazil's courts have consistently ruled that the right to health includes drugs for AIDS treatment. (Nunn, da Fonseca et al. 2009)

In February 2001, the US took Brazil to the WTO Dispute Settlement Body over the provision in Brazilian IP law which allowed for compulsory licensing. This provision requires patent holders to manufacture the product in Brazil; if they don't do so after three years of patent holding a CL may be issued unless they can show that local production was not feasible or reasonable, in which case parallel import by others would be permitted. The US came under fierce pressure from the international NGOs such as MSF. In June 2001 the US withdrew its action ('t Hoen 2009). In November 2001 the Ministerial Council of the WTO issued the Doha Declaration on trade and public health (WTO Ministerial Council 2001).

From 2001 the focus of civil society turned to law reform with the formation of the Working Group on Intellectual Property (GTPI) of the Brazilian Network for the Integration of Peoples (REBRIP an umbrella network of social movements, NGOs and labour unions in Brazil) (Reis, Terto Junior et al. 2009). Since then GTPI/REBRIP has promoted legal analysis to identify necessary legal reforms, has built up an international network with other civil society organisations in other countries, in particular in the Global South, and has promoted public awareness of the relevance of IP protection and access to treatment (Chaves, Vieira et al. 2008).

As of 2009 17 ARV drugs were in use within Brazil's Unified Health Service (SUS), eight of which had been produced as generics from before the time Brazil introduced pharmaceutical patents in 1997. Brazil has negotiated lower prices for patented drug through repeated threat of compulsory licences for generic equivalents. However in 2005 80% of the budget for ARVs was spent on imported branded products and 20% on the 8 locally produced drugs ('t Hoen 2009). During this period there was increasing pressure from GTPI and other civil society organisations on the Brazilian government to carry out its oft repeated threat to

issue compulsory licenses and for the first time it was actually used was in 2007 when a CL for efavirenz was issued. The price per patient year fell from $US580 (from Merck) to $165.

During the period since TRIPS public health officials in Brazil have played a prominent role, particularly within the World Health Organisation, in promoting the full use of the flexibilities built into TRIPS. Likewise GTPI has provided advice to advocacy groups in other developing countries about the full use of TRIPS flexibilities (Nunn, da Fonseca et al. 2009).

Meanwhile Brazilian IP law remained a source of concern and consultation and legal analysis was proceeding regarding the possibility of a substantially remodelled patent act. Finally a bill to reform the Patent Act was introduced in 2013 (Baker, Kapczynski et al. 2013). The proposed amendments:

- limit patent terms to 20 years;
- clarifies subject matter which is not 'inventive' including new uses of old drugs;
- increases the standard of 'inventive step;
- creates an effective pre-grant opposition mechanism;
- permits the use of undisclosed test data in determining marketing approval of generics;
- strengthens the public health input into the patenting of pharmaceutical products; and
- authorises non-commercial public use.

During 2013 there was an international lobbying effort mounted among progressive lawyers and across the AIDS/HIV networks in support of these reforms.

There are important lessons for health activists from the Brazilian experience, including:

- productive links can be developed between a political movement (the movement for democracy) and a more focused social movement (identified variously as 'the health movement', the RTH movement and the HIV solidarity movement);
- social movement activism, including legal activism, can be very effective, particularly where it includes collaboration between activists within government and those in academia and civil society;
- in a globalised world international solidarity can prove critical, including Brazilian political engagement in global governance fora; Brazilian support for other developing countries; and international support for Brazil.

The Treatment Action Campaign in South Africa

In February 1998, the South African Pharmaceutical Manufacturers Association and 40 (later 39, as a result of a merger) mostly multinational pharmaceutical manufacturers brought suit against the government of South Africa, alleging that the 1997 Medicines Act violated the TRIPS Agreement and the South African constitution ('t Hoen 2009).

Provisions in the Act included generic dispensing of off-patent medicines, transparent pricing for all medicines, and the parallel importation of patented medicines ('t Hoen 2009).

During 1998 and 1999 the US and the European Commission added to the pressure on the South African government, imposing trade sanctions and threatening to impose more if they did not repeal the act ('t Hoen 2009, Consumer Project on Technology nd).

From February 1998 there was a boisterous and growing Treatment Action Campaign within South Africa and a broadly based network of global activists criticising the law suit, criticising the US and EU, supporting the South African government and the TAC and building a powerful global sentiment against TRIPS and the WTO (Consumer Project on Technology nd).

In the US where Gore and Bush Jr were campaigning for President the support of the US government for the drug companies was extremely embarrassing. At this time the companies were selling a person year of first line treatment in South Africa for around $US10,000 while the India generic manufacturer Cipla was selling the same package to Medicins Sans Frontieres (MSF) for $US350. In the US the network of activists campaigning included MSF and Oxfam (large NGOs with high public standing and far reaching networks), Consumer Project on Technology (CPTech, since renamed Knowledge Ecology International or KEI, a small but powerful think tank specialising in intellectual property), Health GAP (AIDS activist network) and ACT UP (and AIDS NGO specialising in high profile publicity actions). This network brought analysis, public standing, reach into a range of constituencies and high profile actions against US support for the drug companies. By September 1999 US government support for the law suit was waning.

The inequity of profits before access was embarrassing to the WTO as well as to the US government and in December 1999 to abortive Ministerial Council meeting in Seattle attracted a large contingent of demonstrators motivated by the injustice of a global treaty which supports profits over access to treatment to this degree.

By early 2001 the MSF petition against the lawsuit had collected 250,000 signatures.

In March, 2001 TAC (supported by MSF and CPTech) was granted ‘friend of court’ status. On April 18, the companies sought an adjournment (indicating that they needed to do more work to address the evidence that TAC proposed to bring). The following day, April 19, 2001, the companies withdraw their lawsuit and agreed to pay the government's legal costs. The case had not been resolved but it was likely that a wide range of transnational business interests were watching in horror as the law suit inflamed the campaign against the WTO and TRIPS.

In September 2001 the Al Qaeda attack on the Twin Towers and the Pentagon highlighted the existence of a significant constituency globally who were far from convinced regarding the universal beneficence nor the morality of the New World Order announced by George Bush Senior in 1990. The report of the WHO Commission on Macroeconomics and Health, released in December 2001, commented that ‘globalisation is under trial’ .

In November 2001 at the Ministerial Council of the WTO in Doha, UAE, the world’s trade ministers adopted the Doha Declaration on Trade and Public Health (WTO Ministerial Council 2001), reassuring the world that trade considerations need not necessarily override public health goals.

The Treatment Action Campaign, as an organisation, has consolidated and grown in the years since the 1998 law suit (Heywood 2009). Since then it has successfully campaigned around a range of issues such as treatment access in pregnancy to prevent mother to child transmission (PMTCT); and has undertaken successful constitutional litigation around PMTCT, universal access to ARVs, treatment access for prisoners, and other cases. One of the most inspiring achievements of TAC is its promotion of 'treatment literacy' including programs driven by treatment literacy practitioners. It has created a community based movement which brings together community action for health informed by a high level understanding of the technical dimensions.

This story is rich in lessons for health activists:

- International solidarity can be very powerful;
- High level technical analysis and critique, disseminated globally through the internet, can be very powerful;
- Practical cases of self-evident injustice - people can be denied treatment because corporations need to maximise profits and the companies are protected by an international treaty – can be more motivating than more abstract grievances; and
- The structures of neoliberal global governance are vulnerable to loss of perceived legitimacy – delegitimation.

4. Health activists engaging with the global governance of trade and investment

We opened this chapter with an overview of trade relations and foreign investment, exploring the promises and risks of associated with these dimensions of international relations; evaluating the policies which governments may adopt in these fields; and reviewing the ways in which trade and investment can shape the social conditions of health and health services. We then proceeded to an overview of the international governance structures and power relations through which trade and investment relations are stabilised and developed.

What emerges from these two sections is the significance of the dominant role of transnational corporations in mediating trade relations and foreign direct investment. The rise of the TNCs and the challenges it presents to the nation state as the fundamental unit of international relations has been widely commented upon. In fact it is more complex than simply TNCs versus nation states, for two reasons: first, because of the alliances between the hegemonic capitalist nation states, USA and Europe in particular, and the TNCs; and second, because of the class dimension and the emergence of a globally coherent transnational capitalist class, with strong affiliations with the TNCs and disproportionate influence over the nation state.

This conjunction of unregulated TNCs, USA and European hegemony, and the emergent transnational capitalist class carries serious threats to population health, to fairness in terms of access to resources, and to the stability of the biosphere as a nest for humanity.

My underlying hypothesis is that the most promising way in which this threat can be managed will involve the shoring up of democratic practice (and the sovereign democratic nation state) and the establishment of an effective regulatory framework globally to ensure that international trade and investment are regulated with a view to equity and sustainability.

This will require new alliances, in particular, between progressive nation states and social and political movements nationally and globally, including the people's health movement.

It is for this reason that the third section of this chapter presents a review of some specific episodes where trade and investment relations have been seen to have serious health implications and where debate and conflict has arisen around those implications and where such debate and conflict has revealed these large scale formations in action, including social movements and civil society organisations oriented around health and progressive governments in the developing world.

My principal goal in this final section is to reflect upon the implications of these stories for the practice of health activists who identify as part of the global people's health movement. I have structured these implications for practice around nine precepts:

- prepare for the unexpected;
- cultivate a vision which will give coherence to dispersed incremental change;
- collect and develop a library of partial stories;
- follow the debates (and maybe join the struggles) taking place in specialised fields and other sectors;
- build collaboration between social movements and progressive governments;
- build links with friendly political movements;
- defend and support WHO;
- alert and mobilise the health professions and institutions; and
- build the people's health movement.

Prepare for the unexpected

The world is impossibly complex. We can develop strategies and programs of action around current configurations and instabilities and we put these programs into action. In many cases our strategies, including awareness raising and support for local struggles, are directed at creating the conditions for change, creating windows of opportunity, which, if we are prepared for, may yield significant social change.

However, we must expect to be surprised. New windows of opportunity will open unpredictably; examples include: the groundswell of support for the FCTC; the willingness of trade ministers to sanction the Doha Declaration; the global support for Jubilee 2000; the emergence of AIDS and the growth of the AIDS/HIV movement; the sub-prime mortgage collapse).

How to prepare for the unexpected? In essence it is about having an open mind and a flexible creative approach to strategy: research and study; project the vision; imagine, dream, explore; follow the debates; build the alliances.

The principle of 'thinking global while working locally' is paramount. As local health issues arise we need to be conscious of the global economic governance structures which shape such issues; conversely we need to be conscious of the movements at the global level and the implications of these for health, equity and sustainability.

Cultivate the vision and broad analysis which will give coherence to incremental change

Change takes place in a myriad of different settings, sectors and levels, often in small incremental steps, less often through 'big bangs'. This kind of dispersed incremental change is taking place all the time. Building a popular movement, with global consciousness and global solidarity, is directed to influencing such change but the circumstances of change in those different settings are different and it is for those who are involved in those struggles to determine what to aim for and what to settle for.

Local strategy in these different settings can be pragmatic and ad hoc or it can be part of a coherent program of change. What gives coherence to these dispersed foci of action is a broadly shared vision and a broadly shared analysis. It is this shared vision and shared analysis which defines social and political movements.

Building a shared vision and a shared analysis depends on opportunities for sharing; depends on a culture of respect and listening; depends on a culture of study and discussion. Leadership plays a role, not in handing down tablets of stone or distributing instructions from Moscow, but in articulating the vision and the analysis and, more importantly, helping to put in place the culture and practices out of which the vision and analysis will emerge.

Collect and develop your library of partial stories

It is sometimes easier to focus on the local and immediate because 'at least here it is clear what is going on'. Trying to understand the global context, the global forces which frame the local and immediate (and which are constituted by the local and immediate) involves great complexity and many unknowns. The risk is one of being disempowered by the complexity of the big picture and worse, being captured by the confident expert who explains that this is the way things must be.

Part of the problem here is the assumption that there is a singular truth about the big picture and that the experts have access to that truth and that since I cannot make sense of the experts' explanations, therefore it is all too hard, too complex.

I see it differently. The knowledges that people claim about society and politics are always framed by a particular world view, centred around a particular set of experiences and aspirations, and carrying a particular set of interests and purposes. There is no single truth about the real world that somehow corresponds on a one-to-one basis to the real world and is therefore somehow objective, outside, not of the real world.

Humans put together stories to make sense of their experiences and concerns and to help them think through what they will do next. These are variously stories of description, stories of explanation and interpretation and scenarios of action, stories of strategy; in each case stories which are structured around a particular subject position. These stories are assembled from other partial stories to serve a purpose: to describe, explain, understand and plan.

There is no single truth that we must absorb before we are entitled to speak; there are only partial stories all of which are told in a particular voice, framed within a particular way of seeing the world; partial stories of explanation, structured around specific circumstances and values; partial stories of strategy, structured around context, purpose and agency.

Rather than striving for the all encompassing truth, the task is to develop our collections of partial stories, like the case studies presented above and to work together in putting together the stories of description, explanation and strategy that we need. It is a very ordinary approach.

Follow the debates and join the struggles taking place in specialised fields and in other sectors

Our purpose in this chapter is to reflect upon activist practice in relation to the structures of global governance where the regulation of trade and finance is determined.

It is clear therefore that we need to follow what is happening in the various fora where global decisions regarding trade and finance are taken including the various intergovernmental organisations such as WHO, UNCTAD, WIPO, UNDP, G20, IMF, World Bank, etc. Likewise we need to follow the main stakeholders sitting around those tables including the organs of the transnational capitalist class such as the OECD, the International Chamber of Commerce, the World Economic Forum. We need to follow the current events (treaties, new programs, etc) and speculate on what is forthcoming.

This is not a program for one person; it is a set of functions which need to be shared across the movement. In doing so we need to build links with other social movements and engage with the various specialist CSOs that are already working in these areas, at all levels. Examples:

- REACT and antibiotic resistance
- HAI and essential medicines
- KEI and innovation
- MSF and access
- Health GAP and AIDS
- Corporate Accountability International and the regulation of TNCs
- Tax Justice Network and tax avoidance / capital flight
- Bilaterals.org and various treaties and agreements regarding trade and investment;
- Public Citizen and consumer advocacy.

Build collaboration between social movements and progressive governments

According to the analysis presented in this book a critical condition for progressive change will involve collaboration between global social movements such as the people's health movement and progressive governments around the kinds of issues explored in this chapter.

This is a complex relationship because within the domestic polity civil society groups are often seen as confronting governments including for example the public interest litigation mounted by civil society in Brazil over access to treatment. On the other hand at the international level Brazil has argued for containing the extreme IP agenda promoted by big pharma and the US and in doing so has collaborated with international civil society networks who are arguing for the same objectives.

The need for confrontation at the domestic level cannot be avoided because there are always domestic stakeholders driving for inequitable and self-interested policies and if there is not a strong domestic constituency for the Health for All agenda the local affiliates of the transnational capitalist class will prevail.

Here lies one of the advantages of the social, as opposed to the political, movement. The social movement is one step removed from electoral engagement and consequentially may be able to retain civil relationships with politicians from different parties, even while agitating for policy change. Such relationships may be critical in building alliances at the global level.

Southern intergovernmental bodies such as the South Centre, Mercosur and the G77 also provide a kind of neutral space where political officials can explore the benefits of closer collaboration with global civil society movements.

Build links with friendly political movements

This is not an argument for some kind of apolitical approach to social change.

Political movements, including those who choose to participate in electoral politics, play an essential role in engaging across a broad front of political change and the providing a place where the concerns of different social movements can be integrated.

Nonetheless there is a role for more narrowly focused but broadly inclusive social movements focusing on the specifics of a particular sector, such as health. This 'broad church' character of the social movement gives it mass appeal and a legitimacy in relation to its specific mandate.

However, there is rich potential which can emerge from the informal links between social movements and political movements which arise from overlapping memberships, with the social movements feeding in policy ideas and holding the politicians to account and the political movements driving the broader political agenda. Making this work depends on preserving independence and integrity.

Defend and support WHO

The World Health Organisation is a critical asset for promoting the social conditions for health and decent health care. The Constitution of the WHO projects a vision and gives powers to the member states that could not be achieved in the present period. Of particular note are the regulatory and treaty making powers which are built into the Constitution.

It is because of the potential power of the Organisation that the rich countries, led by the USA, have sought to maintain a financial chokehold over WHO since it was established. Since 1980s there has been an explicit freeze on the obligatory 'assessed contributions' by member states to WHO with increasing dependence on tied voluntary donations from rich countries, various philanthropies, other UN agencies and the World Bank. As a consequence assessed contributions support the basic administrative structures and programmatic work depends on finding a willing donor.

The freeze on assessed contributions has been dictated by the USA against the threat of withholding US funding from WHO. Since US funding (assessed and voluntary contributions) constitutes around 25% of the Organisation's income this is a significant

threat, especially since other rich countries could well follow the US lead. The risk of having to contribute more funds or accept a sharp reduction in the WHO budget has to this point deterred the other member states from calling the US bluff.

The cover story which is promoted by the rich countries in justifying the freeze is that WHO is inefficient and financial discipline is necessary to encourage WHO to remedy its inefficiencies. There are real inefficiencies in WHO's work but in large part they are the consequence of the dependence on donor funding and lack of financial autonomy.

The main reason for the freeze / donor chokehold is to prevent WHO from implementing programs of which the US and its allies disapprove, in particular those which challenge the ascendancy of the transnational corporations and the contemporary regime of neoliberal globalisation.

Among the WHO initiatives which have incurred US financial sanctions or elicited US strictures (and the implied threat of sanctions) are:

- a reference in a WHO publication to health insurance in 1952
- the Essential Medicines policy from 1986 which sought to protect small developing countries from aggressive pharmaceutical marketing;
- the adoption of the Code on the Marketing of Breastmilk Substitutes in 1986 and its subsequent implementation;
- the Ethical Criteria for Pharmaceutical Promotion;
- the 2006 Trade and Health Resolution;
- references to the regulation of food and alcohol marketing as a strategy for addressing noncommunicable diseases.

WHO is a forum within which global civil society networks working towards Health for All can build alliances and collaborations with progressive developing country governments. Such collaboration can focus on analysis and strategy or extend to collaborative projects or campaigns.

However, member state representatives participating in WHO governing bodies are often not accountable to any domestic constituencies for the policies they support in those fora. This includes member state representatives from developing countries who sometimes advance poorly considered positions. It also includes representatives from rich countries who are not accountable for positions they adopt nor for their role in hog tying the Organisation.

Alert and mobilise the health professions and institutions

The health professions and institutions, in particular public health institutions, constitute an important constituency in working towards Health for All. The role of established professional bodies in driving a public health agenda, from basic sanitation and clean water to tobacco control points towards the potential of such bodies in the contemporary struggle for global health and including perhaps the global governance of trade and investment.

Clearly there is a wide range of political perspectives within the health professions including many who are deeply imbued with neoliberal ideology. However, there are also

many idealists who are strongly committed to values of equity, community and sustainability and who may be open to a more radical agenda.

These considerations point to the following kinds of principles for the health activist:

- hold the ministry of health and health promotion authorities accountable for the position they take in relation to global factors in the determination of population health, including trade and investment agreements;
- hold research funding bodies accountable for the research priorities being funded; encourage them to look at the global and economic determination of population health;
- (in donor countries) hold bilateral foreign aid agencies accountable for the advice and support they offer in relation to the health implications of trade and investment agreements (eg the price of medicines and the loss of policy space associated with investor state dispute settlement;
- (in recipient countries) hold foreign aid agencies accountable for their integrity and policy coherence between concern for 'development' and the role of home governments in driving a trade and investment agenda;
- maintain a profile and outreach program within various health professions and in training programs, in particular, within public health professional groups, highlighting the broader global determinants of population health concerns;
- maintain a profile within international public health organisations; and
- build links with primary health care agencies and practitioners and build collaborations around the micro and macro determination of community health.

Build the people's health movement

In Chapter 14 I have explored the building of the people's health movement from a range of different angles. Our focus here is on the ways in which global trade relations and patterns of foreign investment shape population health and health care.

In this respect capability building is a priority:

- trade-health relations: knowledge of the ways international trade, investment and finance relations currently shape population health (domestically and internationally) and could shape population health, for better or worse;
- regulatory strategies: knowledge of the methodologies, instruments and institutions for the regulation of trade, investment and finance sufficient to critically assess current regimes and to identify regulatory strategies for public health;
- the language of trade: familiarity with the world view and rationalities of the economists and trade officials who have the carriage of trade negotiations (necessary for constructive communication);
- political mobilisation: capacity to communicate directly with the constituencies whose health may be at stake in trade negotiations;
- broader political engagement: capacity to engage in the wider political, economic and ideological discourse which shapes trade negotiation; and

- international collaboration: open channels of communication and collaboration with public health-and-trade advocates in other countries.

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