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Analysis

The CPTPP trade deal is a major threat to public health and warrants a health impact assessment

Courtney L. McNamara¹

Liz Green²

Pepita Barlow³

Mark Bellis⁴

1 Population Health Sciences Institute, Newcastle University, Newcastle Upon Tyne

2 Policy and International Health, WHO Collaborating Centre on 'Investment in Health and Wellbeing', Public Health Wales; Department of International Health, Care and Public Health Research Institute – CAPHRI, Maastricht University, The Netherlands

3 Department of Health Policy, London School of Economics and Political Science, London, UK

4 Public Health Institute, Faculty of Health, Liverpool John Moores University, Liverpool, UK

Correspondence to:

Courtney McNamara
Population Health Sciences Institute, Newcastle University, Newcastle Upon Tyne
Email: Courtney.McNamara@newcastle.ac.uk
Phone: +44(0)7470170342

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KEY MESSAGES

- The UK is set to join one of the world's largest free-trade agreements, known as the CPTPP, in early 2023.
- This agreement contains many of the same provisions that made a potential US-UK free trade deal so controversial from the perspective of public health.
- Joining the CPTPP could make it more difficult for governments to regulate in the name of health, increase industry influence in public health standard setting,

increase the costs of medicines, and generate economic insecurity and potentially, job losses, with knock-on effects on health.

- The government should pause the accession process and undertake a health impact assessment. In the highly unlikely event that this will happen, this task should be taken up by public health scholars.

Contributors and sources

This article draws on social scientific research at the intersection of trade and health. CM has published widely in this area and co-authored recent public health analyses of contemporary free trade agreements. CM is supported by the Norwegian Research Council for her project 'Trade, Labor Markets, and Health' (Grant Reference: 274995). LG is a Consultant of Public Health at Public Health Wales and carrying out a PhD in Health in All Policies and Health Impact Assessment at Maastricht University. She has carried out a number of health impact assessments, including on Brexit, COVID-19, and climate change. MB is Director of Policy and the WHO Collaborating Centre on 'Investment for Health and wellbeing', Public Health Wales and Professor of Public Health, Bangor University. CM and LG conceptualized the article and led the writing. All authors contributed to successive drafts. CM is the guarantor.

Patient and public involvement

Neither patients nor the public were involved in this research.

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The CPTPP trade deal is a major threat to public health and warrants a health impact assessment

Standfirst

*Before the UK joins one of the world's largest free trade agreements, a health impact assessment should be undertaken argue **Courtney McNamara, Liz Green, Pepita Barlow and Mark Bellis***

Introduction

In early 2023, the UK government is likely to join one of the world's largest free-trade agreements, known as the Comprehensive and Progressive Agreement on Trans-Pacific Partnership (CPTPP). The CPTPP is not a new trade agreement waiting to be negotiated, but an already active one among 11 Pacific-Rim countries (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam). Joining the CPTPP would commit the UK to a number of rules concerning trade in goods and services that have important implications for health. Although the US is not a member of the CPTPP, the agreement evolved from the Transpacific Partnership (TPP), a trade deal that initially included – and was shaped by – the US (before President Trump withdrew the US from the deal in 2017). As such, many provisions, and even entire chapters, of the CPTPP are near carbon copies of other US-negotiated free trade deals. But while much alarm was raised over the potential health impacts of a free trade agreement with the US¹, there has been little public health-oriented discussion of the UK's accession to this new deal.

A primary force driving free trade agreements is the promise of economic growth. Free trade, according to mainstream economic thinking, produces a rising tide that lifts all boats by lowering consumer prices and creating new export and employment opportunities. Joining the CPTPP became a main trade policy priority for the UK in 2022 after a potential UK-US deal was pushed to the back burner by the Biden Administration. In acceding to CPTPP, the government hopes to boost trade, improve economic growth, and strengthen the UK's strategic position as a global rule setter. Free trade deals, however, have significant and wide-ranging implications for public health and policymaking since they commit countries to certain regulatory and legal obligations.^{2,3} In particular, they can make it more difficult for governments to regulate in the name of health, they can increase industry influence in public health standard setting, and also increase the costs of medicines. Additionally, trade deals often have deleterious economic impacts on individual industrial sectors which can translate into economic insecurity and job loss, with knock-on effects on health.

Close scrutiny of the health impacts of the CPTPP is especially important as the UK is already facing multiple high-stakes health challenges, both in terms of new realities related, for instance, to the cost-of-living crisis, Brexit, and the COVID-19 pandemic, and to more long-standing ones, like tenacious health inequalities and an acceleration in the impacts of climate change. Joining the CPTPP has ramifications for health that intersect with these issues and may constrain the extent to which the UK can intervene on them. A way to limit the health harms of trade deals is to conduct health impact assessments, but one has not been done for the UK's accession to the CPTPP. We argue that the government should take seriously its commitment to 'do no harm' and pause the accession process to commission a health impact

assessment. In the highly unlikely event this will happen, this task should be taken up by public health scholars.

The CPTPP poses threats to health

There are several threats to public health in the UK posed by the CPTPP (Table 1).

[Table 1 about here]

One of the greatest threats is that the agreement is likely to make it more difficult for the UK government (and governments of all signatory countries) to enact regulatory policies to decrease consumption of tobacco, alcohol, and unhealthy food and drinks. For example, if the UK government wanted to implement an anti-obesity measure, such as calorie labelling requirements, it would need to adhere to a provision in the CPTPP which requires that foreign corporations be allowed to contest any such regulations.² While this does not provide corporations with veto power over a proposed regulation per se, it will create new opportunities for health-harming industries to influence public health standard setting. Further, while it might not be the ambition of the current government to decrease the consumption of health-harming products, joining the agreement would 'lock in' these rules, undermining the efforts of any future government that did have this ambition.

There are other ways that this new agreement benefits foreign corporations and threatens public health. For example, the CPTPP imposes on signatory countries the highly contentious Investor State Dispute Settlement (ISDS) system. This system provides foreign corporations with special legal rights to sue the UK government whenever it believes that a regulation has undermined its profits. This stands in contrast to standard WTO rules which only allow states to initiate legal proceedings against other states. To date, foreign investors have used this system to challenge a wide range of public health regulations, including measures on tobacco control, taxation and health insurance.⁵ For example, in 2012, Philip Morris International brought an ISDS claim against the government of Australia over the country's proposed public health legislation to strip tobacco products of logos and brand images. While the court ultimately ruled in Australia's favour (albeit over a procedural technicality), the Australian government spent approximately £13 million defending the claim and was only awarded half of this in costs and legal fees. Entering into a free trade agreement that enforces the ISDS system may therefore have a chilling effect on public health policies, with policy makers unwilling to consider public health measures that may lead to expensive legal proceedings.²

Health concerns have also been raised in relation to food quality. Rules around what is termed 'Sanitary and Phytosanitary (SPS)' measures outline how governments can use public health measures to restrict trade without violating trade rules. They are meant to protect human health, for example, by allowing governments to require that imported products do not contain harmful ingredients. Under standard WTO SPS rules, a precautionary approach is allowed whereby member countries can adopt protective measures (e.g. banning a product) when scientific evidence about a health hazard is uncertain. Language in the CPTPP, however, specifies that public health regulations, like product bans, must be based on 'documented and objective scientific evidence' which effectively rules out the use of the precautionary principle.² It is with reference to this CPTPP language, for example, that Canada is putting pressure on the UK to remove its ban on hormone-treated beef.⁶

Other health risks relate to the agreement's impact on generic medicine availability and drug affordability. Specifically, the agreement requires that member countries extend the time a drug is under patent any time a pharmaceutical firm makes even minor – often trivial – modifications to an existing medicine.^{7,8} This type of patent term extension is called 'secondary patenting' and can reduce drug affordability by delaying the introduction of cheaper, generic

alternatives. Researchers have estimated that in Canada, similar rules will increase the costs of medicines by an average of \$410 million annually (with a minimum estimate of \$40 million and a maximum of \$1.4 billion).⁹ While the UK already allows for secondary patenting, it is unclear whether further changes are required to comply with the CPTPP rules. However, even if no changes are necessary, joining the agreement means that future governments will be unable to amend these rules.

Finally, like all trade deals, the CPTPP will create economic opportunities for some while creating harms for others. The UK government has conceded as much, indicating that the beverages and automotive industries are expected to be beneficiaries of the agreement, while the processed food and agricultural sectors are expected to lose out.¹⁰ Thus, whilst some sectors may see expansions in employment, the agreement is likely to also generate economic insecurity and, potentially, job losses. The health implications of insecurity and job losses are well-established.⁶ In the US, increased trade with China raised unemployment in sectors that were unable to compete with cheaper imports. This unemployment, in turn, was associated with increases in fatal drug overdoses.¹² Health inequalities predating and exacerbated by the COVID-19 pandemic could thus, further intensify if industries in already disadvantaged communities are negatively impacted.¹³

Superficial health protections and small economic gains

To be sure, the UK government has said the agreement will not mean lower health or food standards in the UK. And sure enough, the CPTPP contains stipulations which give the impression that domestic objectives, like protecting the public's health, will not take a back seat to elements of the agreement intended to facilitate trade. However, a large number of caveats render such protections essentially forceless and superficial. For example, in a chapter of the agreement on regulatory measures, a provision reads that 'nothing in this Chapter shall prevent a Party from adopting or maintaining technical regulations or standards, *in accordance with its rights and obligations under this Agreement* (Art. 8.3, ¶5, *our emphasis*).² In other words, governments can regulate as they wish, but only as long as it does not violate anything else in the agreement. It is precisely this type of caveat that is so often used to challenge regulation of unhealthy products.¹⁴

But what about the economic case for joining the CPTPP? The GDP boosting consequences of a FTA could conceivably have positive health impacts. Based on the UK government's own calculations, however, the economic case for joining the CPTPP amounts to no more than a 0.08% increase in the country's GDP over a 15-year period.¹⁵ In other analyses of free trade agreements, economists have characterized changes in GDP of this magnitude as "little more than rounding errors".¹⁶ More problematically, the government's calculations fail to account for the implementation costs of joining the agreement. For instance, unaccounted for in these calculations are the potential higher drug prices and the exorbitant public costs of defending ISDS claims. To our knowledge, no national evaluation has been done to account for implementation costs with respect to changes in regulatory, drug patent terms, and dispute settlement rules.

The critical role of Health Impact Assessment

If a priority of the government is to 'do no harm', a commitment made explicit during Brexit negotiations,¹⁷ then it should take account of the health implications of its trade policies. This is something that has also been called for by the Faculty of Public Health and Public Health Wales.^{18,19} Thus far, however, there has been no health evaluation of the new trade deals the government has agreed to or is negotiating. The only impact assessment of the CPTPP

undertaken by the government, and discussed in the previous section, simply estimates the overall economic benefits of the agreement, with no mention of effects on health.

Health Impact Assessment (HIA) is a well-established public health tool that can be used to identify the potential health impacts of free trade agreements and areas for health mitigation. Specifically, an HIA collects input from health experts—as well as from government and industry stakeholders—to evaluate the potential benefits and harms of legislation and policy initiatives. It then uses this information to suggest how potential benefits can be supported and to recommend harm mitigation strategies. HIA findings also make health trade-offs transparent and a matter for the public to evaluate.

In Australia, an HIA undertaken during the negotiation of the CPTPP sparked a massive media response and helped suspend several provisions in the agreement which will go some ways to protect the affordability of medicines (though there remains the possibility that they will be reinstated in the future) and to ensure that member countries retain a right to regulate tobacco products without the fear of industry litigation.²⁰ Australia even went so far as to negotiate a side agreement with New Zealand to rule out the use of ISDS between the two countries.

If the UK accedes to the CPTPP, it too will benefit from these modified rules, but to protect public health from the numerous concerns outlined here, the government should pause the accession process and undertake an HIA. Even if it is unlikely that, given the government's poor track record on public health, findings would influence its accession decision, evidence produced by the HIA will still be extremely valuable by pointing to at-risk populations and communities whose health may be safeguarded during the agreement's implementation. Failing this, it will fall to public health scholars and advocates to mobilise and act to undertake this important work.

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Tables

| Threat | Rationale | Example(s) |
|--|---|---|
| Difficulties in regulating tobacco, alcohol, and unhealthy food and drinks | The agreement contains clauses, including ISDS, that can and have previously been used to challenge public health policies, including those targeting NCD prevention via reduced consumption of tobacco, alcohol, and unhealthy food and drinks | <ul style="list-style-type: none"> • CPTPP members have regularly opposed alcohol health warning labelling and front-of-pack nutrition labelling citing trade clauses¹⁴ • Australia's plain packaging legislation was disputed by Philip Morris citing ISDS clauses |
| Reductions in generic medicine availability and drug affordability | CPTPP contains provisions related to patent extensions and expansive intellectual property rights | <ul style="list-style-type: none"> • In a recent review article, such provisions were found to have negative impacts for access to medicines, including increased government health care expenditure, increased drug prices, and delays in drug availability²¹ |
| Food quality | The agreement contains provisions that effectively rule out a precautionary approach to food safety | <ul style="list-style-type: none"> • On the basis of these provisions, bans on products like hormone treated beef, or chlorinated chicken, can be challenged² |
| Mental and physical health harms for select workers in least competitive sectors | CPTPP will liberalise trade across diverse sectors of the economy. Whilst some workers may benefit from a boost in exports and demand, which might increase wages, those working in industries that are undercut by cheaper imports and unable to compete are likely to experience economic insecurity and potentially even job losses. | <ul style="list-style-type: none"> • When the USA liberalised trade with China, US counties heavily exposed to increased import competition experienced escalating mortality from drug overdoses – a well-known 'death of despair' linked to deteriorating economic opportunity¹² |