

## **Trade related aspects of public goods**

Submission to USTR and the Trade Policy Staff Committee (TPSC)

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March 8, 2022

### **Introduction**

One can think of the economy as including both public and private goods, each valued by society. There are trade related aspects of both, but also a significant asymmetry on the extent that the global trade agreements deal with them. In short, private goods get most of the attention, and public goods are relatively neglected.

### **Definitions of public goods**

Before going further, a few words about definitions. Governments and other non-profit organizations play a significant role in providing a diverse set of goods and services, subsidies, and incentives, and income transfers. No one would imagine a government restricting its role to goods which are both non-rival in consumption and non-excludable, Paul Samuelson's elegant 1954 [1] and 1955 [2] discussions of "pure" public goods notwithstanding.

Public goods are not limited to Paul Samuelson's well known and often misunderstood "extreme polar case." Samuelson himself noted that "the legitimate functions of government" include, in his view, such things as redistributions of incomes, paternalistic policies, situations "where 'atomistic competition' is not realistic" and "Myriad 'generalized economic and diseconomy' situations where private pecuniary interest can be expected to deviate from social interests." [2]

Writing in the Financial Times, in 2012, Martin Wolf said "The history of civilization is a history of public goods," [4] and this is a useful reminder of their importance.

For trade policy, public goods are largely ignored, even though they are as important globally as they are domestically.

The COVID 19 pandemic saw the desperate need to develop safe and effective vaccines, drugs and diagnostic tests, and to make them available globally. The Russian invasion of Ukraine has among its many elements the need to provide shelter and care for millions of refugees. Discussions of global public goods include such topics as:

1. The need to patrol the high seas to protect against piracy,
2. mobilization of resources and measures to respond to natural disasters,
3. measures to reduce carbon emissions to combat global warming,

4. protecting wilderness areas and endangered species,
5. development of new drugs to overcome antimicrobial resistance to existing antibiotics,
6. open source distance education tools,
7. digital libraries and archives for education and research,
8. creating DAISY (the Digital Accessible Information System) format versions of books for persons who are blind or have other disabilities,
9. transparency of corporate activities,
10. disarmament and arms control,
11. research and development and other measures to control locust damage to crops, and
12. funding of basic science in all fields.

More examples are discussed below.

The public's need for public goods, local, regional and global, are enormous.

In the context of trade policy, there are an impressive array of agreements regulating the rights of investors, protecting the holders of patents, copyrights and trademarks, and measures to reduce tariffs and non-tariff barriers for trade in private goods. The USMCA, for example, includes a preamble, 34 chapters, 13 Agreement Annexes and 16 side letters. The WTO has the GATT, the GATS, the TRIPS, and agreements on government procurement and civil aircraft. Neither the USMCA or the WTO have a chapter or agreement on the supply of public goods, although these and other agreements may even sanction some government funded research and development activities.

The United States Trade Representative (USTR) and the Directorate General for Trade of the European Commission (DG-Trade) both maintain lists of countries that do not adequately protect intellectual property rights. The new European Commission's "Report on the protection and enforcement of intellectual property rights in third countries" Brussels, SWD(2021), is the EU version of USTR's Special 301 list.

KEI has been involved in a series of proposals to enhance global cooperation to enhance the supply of public goods. A common challenge is the need to overcome the free rider problems when mobilizing resources or committing to policies that have cross border benefits.

One important negotiation in 2022 is the WHO consideration of a possible treaty for pandemic preparedness and response. Among the many areas where the WHO pandemic treaty could support the supply of global public goods are possible norms in R&D funding contracts to address access to inventions, know-how, data and biologic resources, agreements to share sequences of pathogens, enhanced public sector funding of countermeasures, cooperation among governments to provide public sector funding to support independent clinical trials to evaluate drugs or vaccines, and global cooperation on the funding of patent and know-how buyouts [6] or new incentives to invest in R&D that require open licensing of intellectual property, data and know-how.

Earlier KEI has worked with others to propose an agreement within the WTO on the supply of public goods. To this end, an experts meeting was held from March, 28, 2015 to March 29, 2015 at the Heinrich Böll Foundation (HBF) in Berlin, to consider a text for a World Trade Organization (WTO) Agreement for the Supply of Social/Public Goods (SGA). [9] Eighteen experts from eleven countries attended, and provided specific recommendations including possible text for an agreement, modeled partly on the WTO agreement on trade in services (the GATS), for WTO members to make voluntary binding commitments to supply public goods. The 29 page report from that meeting includes as its Annex A the Draft proposal. The definition of public/social goods is included here as an annex.

In earlier years, the USTR has engaged and offered feedback on proposals for a WHO biomedical R&D treaty and the proposed WTO Agreement on the Supply of Public Goods.

### **Suggestion**

USTR is invited to have a meeting with KEI and others interested in this topic, to discuss the trade related issues for public goods in more detail.

### **Selected References**

[1] 1954. Paul A. Samuelson, The Pure Theory of Public Expenditure, *The Review of Economics and Statistics*, Vol. 36, No 4 (Nov., 1954), pp. 387-389.

[2] 1955. Paul Samuelson, Diagrammatic Exposition of a Theory of Public Expenditure, *The Review of Economics and Statistics*, Vol. 37, No 4 (Nov., 1955), pp. 350–356

[3] 1958. Paul Samuelson, Aspects of Public Expenditure Theories. *The Review of Economics and Statistics*, Vol 40, No 4 (Nov 1958), pp. 332–338.

[4] 2012. Martin Wolf. “The world’s hunger for public goods: It is unclear whether today’s states can—or will be allowed to—provide what we now demand,” *Financial Times*, January 24, 2012.

[5] 2020. James Love. The Use and Abuse of the Phrase “Global Public Good,” *Developing Economics*, July 16, 2020.

[6] 2021. James Love, Buying Know-How to Scale Vaccine Manufacturing. *Medium*. March 20, 2021.

[7] 2015. Thiru Balasubramaniam, Trade Agreements and the Supply of Public Goods: Report of the Berlin meeting to consider a possible WTO Agreement on the supply of public/social goods, Berlin, Germany, March 28 – 29, 2015

[https://www.boell.de/sites/default/files/final\\_report\\_wtoagreementpublicgoods.pdf](https://www.boell.de/sites/default/files/final_report_wtoagreementpublicgoods.pdf)

[8] 2008. KEI Proposal: A WTO Agreement on the Supply of Knowledge as a Global Public Good. June 2008 [https://www.keionline.org/wp-content/uploads/kei\\_wto\\_agreement\\_on\\_public\\_goods.pdf](https://www.keionline.org/wp-content/uploads/kei_wto_agreement_on_public_goods.pdf)

[9] 2014. Thiru Balasubramaniam, “New UK Parliamentary report on Global TB urges the United Kingdom to explore a WTO Agreement on the Provision of Public Goods, July 14, 2014.

<https://www.keionline.org/22537>

[10] 2016. James Love, Contribution to the United Nations Secretary General’s High Level Panel on Access to Medicines: Trade Agreements and the Supply of Public Goods.

<https://www.keionline.org/wp-content/uploads/WTO-PublicGoods-UN-HLP-28Feb2016.pdf>

#### **ANNEX, the Definition of public/social goods from the 2015 Berlin text.**

1. For the purposes of this Agreement, public/social goods are defined as:

a. goods and services that are directly supplied, financed, subsidized, mandated or the supply is otherwise induced for the benefit of the public, and is limited to

b. goods (or services) for which consumption is not decided by the individual consumer but by the society to address a social purpose or public interest.

c. The definition of public/social goods shall be interpreted broadly to be inclusive of goods and services provided on a non-commercial basis by governments and intergovernmental organizations.

d. The definition public/social goods includes but is not limited to goods and services that are non-excludable and non-rivalrous in consumption.

e. The definition of public/social goods shall include goods and services relating to the production of and access to knowledge, the provision of security, humanitarian services, public health programs, the protection and enhancement of the environment, programs to promote development and alleviate poverty, and other purposes.

2. For the purposes of this Agreement, international public/social goods are defined as public/social goods that are directly or indirectly supplied by one Member for the benefit of the public in the territory of any other Member.