

**CONTRIBUTION TO THE UNITED NATIONS SECRETARY-GENERAL'S HIGH LEVEL
PANEL ON ACCESS TO MEDICINES**

TRADE AGREEMENTS AND THE SUPPLY OF PUBLIC GOODS

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Section 1: ABSTRACT (limit 300 words)

This submission describes efforts to create a new agreement in the World Trade Organization (WTO), or in other trade agreements, on the supply of public goods. Public goods are defined broadly, and are described in the submission as social/public goods.

Such an agreement or agreements would expand the supply of social/public goods that have global or cross-border benefits. The mechanism would be a schedule where governments could voluntarily agree to make binding commitments to supply a heterogeneous set of social/public goods. These commitments would then be subject to dispute resolution under the trade agreement framework, with certain modifications. The objective of such a schedule would be to enhance the confidence among governments that the commitments necessary to enable collective action to supply social/public goods will be credible and sustainable over time.

There is considerable interest in the health community in finding a way to undertake the production of knowledge as a public good, particularly as this relates to new drugs and vaccines, and to address the vast inequalities in access to medicines, vaccines and medical care in general. Such efforts require considerable resources, and collaboration among countries on funding. A schedule on the supply of social/public goods within a trade framework offers an innovative way to make such collaborations more credible in terms of the scale, duration, and sustainability and reliability of the commitments that are needed.

An agreement on the supply of social/public goods within the WTO or other trade agreements will strengthen, perhaps dramatically, the ability of governments to create new ways to funding R&D for new drugs and vaccines, and to progressively delink the costs of R&D from the prices of products. This proposal can be seen as a complement to others addressing the funding of medical R&D or care as a public good.

SECTION 2: CALL FOR CONTRIBUTIONS

SUBMISSION OF YOUR CONTRIBUTION (limit 3,000 words) *

Introduction

The chronic undersupply of goods that have public and social benefits is a persistent problem at all levels of society. Governments have tools to address these issues through taxation and regulatory measures on the local and the national level, but the international dimension suffers from a lack of enforceable mechanisms to ensure that collective action to supply social/public goods will be credible and sustainable over time.

The proposal to create an agreement on the supply of social goods, as described in this submission, was motivated in part by evidence that global public goods and social investments are often underfunded and undersupplied, and secondly, by experiences and frustrations related to negotiations at the World Health Organization (WHO) for an agreement on funding biomedical R&D.

In the WHO negotiations, some governments were clearly uncomfortable with obligations to fund biomedical R&D that did not match their own specific priorities, and wanted to express their preferences regarding the management of funds, including the possibility of using domestic institutions, or the pooled funding mechanism of their choice.

There was also of a lack of confidence that other governments would follow through on funding commitments, and a resistance among some to create new institutions that would require additional investments in time, money and diplomatic skills to manage and monitor.

We considered first, and are currently evaluating, the possibility of creating an agreement within the World Trade Organization (WTO) to address the issue of the enforceability of commitments to fund or otherwise supply social/public goods in a wide range of areas, including but not limited to health.

The WTO is a well-funded institution with its own secretariat, designed to enforce a number of diverse agreements. There are currently 162 members of the WTO, and another 22 countries seeking membership. The WTO is notable for being a club that nearly every country wants to join, and which has the most important enforcement powers of any multilateral international organization.

The proposed agreement within the WTO would permit governments to make binding and enforceable commitments to supply social/public goods that have global or cross-border benefits, among coalitions of like minded countries and around specific initiatives where there are shared interests in projects or standards.

The proposal was modeled in part on the WTO's General Agreement on Trade in Services (GATS). The GATS has schedules that are populated with offers by WTO members to undertake certain actions, some very narrow, to liberalize trade in the services sector. The voluntary offers become binding once placed on the schedule. These offers may be unique to one WTO member, or negotiations may create de facto or soft standards.

In discussions with a former lead USTR negotiator on services and intellectual property, Joe Papovich, the question was posed, "why would a WTO member agree to make binding commitments on services, where they can be subject to dispute resolution and fines, when a country can undertake the policies voluntary, without the liability of a WTO commitment?" The answer provided by USTR was, "you might think no one would make offers in the GATS, but they do. This is because, every country that agrees to meet a commitment wants something else." The commitments one can make in the GATS become part of the "asks" and "offers" that can be traded for other things in WTO negotiations, which involve several different agreements.

In looking at the GATS model, a few things seemed highly relevant. First, countries could make commitments to fund or embrace standards that matched their own priorities. For example, countries interested in funding R&D for Chagas disease, or new diagnostic tools for fever, could move forward in collaboration with other coalitions of the willing and interested. Second, once a schedule was created, there would be no need to create a new governance structure. Additionally, the WTO has stronger enforcement mechanisms than any multilateral institution. One journalist described the proposal as a "hack" of the WTO. [1]

In the original presentations, the proposal was described as an agreement on the supply of public goods, noting that this included a liberal definition of a public good, including goods that were designed to address challenges in climate change, health, knowledge generation, international security, and measures to address poverty, underdevelopment and the needs of marginalized populations.

Public Goods or Social Goods?

The proponents of the proposal are also considering changing the name to social goods, to avoid controversies over the definitions of public goods.

The term global public goods can lead to confusion, in part because of an influential definition offered by the economist Paul Samuelson in the mid-1950s as a special case of market failure.

In 1955, Samuelson published a paper [2] that presented an "extreme" and "polar" definition of "pure" public goods, which had as their most important characteristics that they were both non-rival in consumption and it was impossible to exclude access to the good. In defending his definition, Samuelson said:

"Doctrinal history shows that theoretical insight often comes from considering strong or extreme cases. The grand Walrasian model of competitive general equilibrium is one such extreme polar case. We can formulate it so stringently as to leave no economic role for government. What strong polar case shall the student of public expenditure set alongside this pure private economy?"

. . . A public consumption good, like an outdoor circus or national defense, which is provided for each person to enjoy or not, according to his tastes. I assume the public good can be varied in total quantity, and write X_2 for its magnitude. It differs from a private consumption good in that each man's consumption of it, X_1 and X_2 respectively, is related to the total X , by a condition of equality rather than of summation. Thus, by definition, $X_1 = X$, and $X_2 = X$.

Obviously, I am introducing a strong polar case. We could easily lighten the stringency of our assumptions. But on reflection, I think most economists will see that this is a natural antipodal case to the admittedly extreme polar case of traditional individualistic general equilibrium. The careful empiricist will recognize that many - though not all -of the realistic cases of government activity can be fruitfully analyzed as some kind of a blend of these two extreme polar cases.”

Paul A. Samuelson, "Diagrammatic Exposition of a Theory of Public Expenditure," The Review of Economics and Statistics, Vol. 37, No. 4. (Nov., 1955), pp. 350-356.

It is ironic that Samuelson's efforts to create an extreme and very limited definition of public goods has had a significant and often unhelpful influence on many policy makers seeking to consider frameworks for the supply of public goods, since in practice, only a limited subset of goods fit the narrow definition offered by Samuelson in 1955.

In an 2015 draft of a proposed agreement, the following definitions for social/public goods were considered:

1. *For the purposes of this Agreement, social/public 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 social/public 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 of social/public goods includes but is not limited to goods and services that are non-excludable and non-rivalrous in consumption.*
 - e. *The definition of social/public 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.*
 - f. *The definition of a social/public good shall include goods and services for which it is rational, from the perspective of a group of nations collectively, to produce for universal*

consumption, or to expand production and/or consumption due to positive externalities or to achieve a social purpose.

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

3. *For the purposes of this Agreement:*

(a) *"measures by Members" means measures taken by:*

(i) *central, regional or local governments and authorities; and*

(ii) *non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.*

The benefits of a WTO agreement on public goods would be several. For an interesting set of collective action challenges, it could eliminate the need to set up a separate treaty or agreement, and allow coalitions of governments to use the WTO's existing governance structure and secretariat. On the other hand, a WTO schedule on the supply of social/public goods could complement separate treaties or agreements by lending the WTO's enforcement powers to third party agreements. If the WHO is successful in negotiating R&D funding agreements (and we hope they are), the members signing could register the WHO agreement as a commitment in the WTO schedule on the supply of social/public goods.

By introducing social/public goods into the WTO environment, the culture of the WTO may also be profoundly changed. "Asks" and "offers" in the WTO negotiations would no longer be exclusively about the private goods market, or about the privatization and enclosure of knowledge itself. There would be a shift to consider the competing benefits of greater openness, and a larger global commons. Knowledge that was produced to be "free" would have a new value as a trading chip in the WTO environment.

In the health sector, for example, potential asks/offers could include collaborative funding of biomedical research in areas of priority, such as new antibiotics; vaccines for avian flu; treatments or vaccines for Ebola, Zika or HIV/AIDS; sustainable funding for UNITAID or the Global Fund for HIV/AIDS, Tuberculosis and Malaria; funding for independent clinical trials to evaluate the safety and efficacy of drugs; creating databases and libraries to advance medical science; and countless other projects.

There are several challenges in this proposal, including not only the path to accepting such an agreement within the WTO (or another trade agreement with enforcement powers), but also in addressing modifications in the dispute resolution mechanisms that may be necessary for social/public goods.

Implementation

KEI proposed an agreement on public goods within the WTO in 2008, and has made several presentations of the proposal since. In between 2008 and 2013, KEI worked a variety of other topics, including a negotiation at the World Intellectual Property Organization (WIPO) on a new UN treaty on copyright

exceptions for persons who are blind or have other disabilities." Following the 2013 successful conclusion of the WIPO Marrakesh Treaty for the Blind, KEI has revised the WTO project. In 2015, KEI Europe collaborated with the Heinrich Böll Foundation (HBF) to convene two consultations in Berlin and Geneva on a proposed text for such an agreement. The meetings were attended by a diverse group of experts, including negotiators from governments in Europe, Africa, Asia and the Americas, as well as academic experts and stakeholders from a variety of NGOs with a connection to global social/public goods.

The next steps will include new drafts of a proposed agreement; modeling and simulating possible negotiations among countries to specific social/public goods commitments; and additional discussions regarding the possible modalities for the negotiations on such an agreement within the WTO. There is also the possibility of considering such a schedule in regional trade agreements, including for example, the Transatlantic Trade and Investment Partnership (TTIP).

III. Policy Coherence

There is considerable interest in the health community in finding a way to undertake the production of knowledge as a public good, particularly as this relates to new drugs and vaccines, and to address the vast inequalities in access to medicines, vaccines and medical care in general. Such efforts require considerable resources, and collaboration among countries on funding. A schedule on the supply of social/public goods within a trade framework offers an innovative way to make such collaborations more credible in terms of the scale, duration and sustainability and reliability of the commitments that are needed.

IV. Impact on Access to Medicines

An agreement on the supply of social/public goods within the WTO or other trade agreements will strengthen, perhaps dramatically, the ability of governments to create new ways of funding R&D for new drugs and vaccines, and to progressively delink the costs of R&D from the prices of products. This proposal can be seen as a complement to other proposals that relate to the funding of medical R&D or care as a public good.

SECTION 3: REFERENCE AND BIBLIOGRAPHY

Please provide your references and bibliography *

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10. July 6, 2014. Duncan Green, *Jamie Love's Next Big Idea: Making the WTO into a force for good in Public Health*.
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