



MODEL WTO

TRADE & PUBLIC HEALTH

TOPIC PRESENTATION

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Public Health & the WTO

As the world becomes more and more interconnected, it is not possible anymore to deny the linkage between multilateral trade and public health. Sometimes the link is obvious: diseases crossing a border together with traded goods. Sometimes the link is more indirect: a change in international rules concerning patent protection that may affect the prices of medicines.

This linkage is being further emphasized by the current covid-19 pandemic notably as states compete for access to drugs, medical equipment and vaccines. There is a crucial need for greater cooperation and coordination between states. Thus, the role of the WTO is to find a balance between trade and protection of health, which is not an easy task. While ensuring public health is the absolute priority, this must not be a reason for countries to set-up protectionist measures in disguise.

The Model WTO 2021 will address issues particularly relevant in the context of the on-going pandemic, namely export restrictions on medical goods, Research & Development subsidies, Technical Barriers to Trade and Intellectual Property rights. Finally, this year's topic, not only focused on health, will also use the current covid-19 pandemic as a basis case study to examine more broadly how the WTO system can respond to a global health crisis.

What has been done?

The issue of public health is high on the agenda of the WTO and as Mike Moore, former director-general of the WTO stated in 2002 in the joint report by the WTO and WHO WTO agreements & Public Health: *"The endorsement by the international community of the Doha Declaration on the TRIPS Agreement and Public Health is a very visible expression of governments' commitment to ensuring that the rules-based trading system is compatible with public health interests."*

Article 20 of the **General Agreement on Tariffs and Trade (GATT)** allows governments to act on trade in order to protect human, animal or plant life or health. Furthermore, WTO jurisprudence, on several occasions, has confirmed that WTO Members have the right to determine the level of health protection they deem appropriate. Human health has been recognized by the WTO as being *"important in the highest degree"*

Below, you will find examples on how WTO agreements relate to health:

- **The TRIPS Agreement**

The **WTO Doha Declaration on the TRIPS Agreement and Public Health of 2001** helped framing the health policy context of the intellectual property system. It stressed the need for the TRIPS Agreement to be part of the wider national and international action to address public health problems afflicting developing countries and least-



developed countries. The declaration thus identified specific options called “flexibilities” to allow governments to address public health needs.

One such flexibility is the “right to grant compulsory licenses” for export of medicines which mean that a government authority can allow the use of a patented invention without the consent of the patent holder in the pharmaceutical field.

Originally mostly restricted to domestic markets, the amendment of the TRIPS agreement in 2017 created a new compulsory license especially tailored for the export of medicines to countries in need. The new Article 31bis of the TRIPS Agreement allows low-cost generic medicines to be produced and exported under a compulsory license exclusively for the purpose of serving the needs of countries that cannot manufacture those products themselves.

- **Sanitary and Phytosanitary Measures Agreement**

The SPS allows countries to set their own standards and to restrict trade to achieve health objectives provided regulations are based on science. They should be applied only to the extent necessary to protect human, animal or plant life or health. And they should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail.

As part of the Sanitary and Phytosanitary Measures, The Standards and Trade Development Facility (STDF), was developed as a joint initiative by the WTO, World Bank, FAO, World Health Organization and the World Organization for Animal Health. It aims to assist developing countries establish and implement SPS standards to ensure health protection and facilitate trade expansion. It also aims to act as a forum for coordination and information sharing on SPS-related technical assistance.

The agreement contains specific rules for countries that want to restrict trade to ensure food safety and the protection of human life from plant- or animal-carried diseases.

- **The Agreement on Technical Barriers to Trade (TBT)**

Under the TBT, taking regulatory action to protect health is a legitimate policy objective. In fact, of all draft trade measures notified to the WTO under the TBT Agreement, the largest single group relates to human health and safety.

Hence, the WHO has an important role as observer in the TBT Committee and regularly attends its meetings. Moreover, the Codex Alimentarius standards can be used as a basis for trade measures covered by the TBT Agreement (e.g., labelling, nutrition and quality).

The WTO has also followed relevant work in the WHO. For instance, during the negotiation of the Framework Convention on Tobacco Control (FCTC), the WHO created an Inter-Agency Task Force on Tobacco Control for greater coordination between negotiators at an early stage.

Dispute settlement rulings have also confirmed that WTO agreements give priority to health and safety over trade, such as one that upheld a ban on asbestos products.



Issues yet to address

- **Health & Social Services**

International Trade in health services is growing in many areas whether it is health professionals moving to other countries, foreign investment by hospital operators or insurance companies in search of new markets or health consumers seeking treatment abroad.

Despite its growing importance, Health and social services have attracted very limited attention in the services negotiations, which began in January 2000. It is the only major sector where no negotiating proposal and no collective request have been tabled.

In the Special Session of the Council for Trade in Services, some members have identified the removal of limitations relating to non-portability of insurance schemes under Modes 1 (Cross-Border supply of services) and 2 (treatment of foreign patients entering their territory) as objectives for the market access negotiations in this sector (TN/S/23).