

Workshop on Democratising Global Health Governance

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Trade and Health

Amit Sengupta
Peoples Health Movement

Trade and Human Civilization

- Trade has always been a feature of Human activity since dawn of civilization
- In the 17th century **Colonialism** gave rise the **first wave of globalisation** – led to division between the First World, of, by and large, colonial nations, and the Third World, of colonised ones.
- After the Second World War, **newly liberated nations attempted to break free** of the colonial chains
- Policies of **self-reliant development** were put in place in the newly independent nations that minimised dependence on the developed nations for import of resources and technology.

Trade in the "New" Phase of Globalisation

North America and Europe engulfed in an **economic crisis** in **1970s** – **transferred impact** to developing countries.

Forced **open markets** of these countries by dangling promise that a "**borderless world**" will benefit everybody.

Rich countries and the large banks they controlled had already used **bait of easy loans** to entrap developing countries in a **debt crisis**.

Future loans linked to **Structural Adjustment Programme**

- Govts. Must **spend much less** on social sectors like food security, health and education.
- **Open markets to goods and services** from the rich countries.
- **Produce for exports** and not worry about producing food grains for their own people.

Trade in "New" Phase of Globalisation (contd.)

- **Industrial sector**: forced governments in developing countries to **withdraw support** to their own industries, dismantle the public sector, and hand them over to multinational corporations.
- **Capital** (money) across the globe was **concentrated** in fewer and fewer hands
- **Remove restrictions on the flows of this capital** -- speculative capital invested for short term profits -- without any intention to create facilities that would promote manufacturing capabilities.
- Economies of poor countries became **captive** in the hands of **those who have huge amounts of money** - who have the ability to shut down these economies in matter of days

Promise of the World Trade Organisation

- The World Trade Organisation came into being, riding on the **promise of "Free Trade"** that would set in motion processes designed to promote economic growth and thereby alleviate poverty across the world.

The promise was flawed on two crucial counts:

- The WTO was **not constructed to promote "Free" Trade**,
- **Neither** was it designed to **only promote "Trade"**.

Neoliberal View of Trade and Economic Growth

- The link between trade and economic productivity draws justification from the theory of **"Comparative Advantage"**, proposed by the 19th century economist, **David Ricardo**.
- Posits that nations can optimise productivity by **specialising** in areas where they have a comparative advantage.
- Such specialisation should translate into countries producing or manufacturing and then **trading select commodities** where they have an advantage.
- Countries encouraged **not to build capabilities** in areas where they do not have a "comparative advantage"

Neoliberal View of Trade and Economic Growth (contd.)

- A linkage between global trade and economic growth on these terms **assumes** that those who have a "comparative advantage" **will always maintain this advantage**.
- Assumes that nations that are disadvantaged due to historical reasons will **continue to remain disadvantaged**.
- This serves to **maintain the presence balance** between developed and developing nations.

Neoliberal View of Trade and Economic Growth (contd.)

- Evidence that **no nation has successfully industrialised** under a regime of **unrestricted trade**.
- **US** in the 19th century, **Japan** in the 20th century, **Korea** and **Taiwan** in the late 20th century – economic and technological development in a climate where domestic industries were sheltered from foreign competition.
- Further, in the **post-war** world, **economic growth** has tended to **contract as free trade has expanded** -- no direct relation that can be drawn between economic growth and greater trade liberalisation.
- Economic growth does not translate necessarily into development -- growth brought about by trade liberalisation **favours a small elite** and increases the difference between them and the disadvantaged.

Transition from GATT to WTO

- Thus, what is described as “Free Trade” is **not really “Free”** but an attempt to **perpetuate an unequal division of labour** in the global market.
- This is the story about the WTO – a story about a global treaty that is not just about Trade.
- The story of the transition from a body that **regulates global trade to a body that encompasses a number of other spheres**, is also the story of the transition of the GATT (WTO's predecessor – The General Agreement on Trade and Tariff) into the WTO

Transition from GATT to WTO (contd.)

- **GATT** concerned with trade issues -- **cross border flow of goods** and **not** issues **internal to the domestic economy**.
- For the **first time**, in the Uruguay round of negotiations in GATT, **Intellectual Property Rights, Investments and Services** were introduced.
- Allows use the **Dispute Settlement Process of GATT** and the **threat of trade sanctions** in **changing domestic laws** and practices of developing countries
- The WTO, thus, was conceived as a global regime that would promote the **flow of capital** across borders and secure the **monopoly over knowledge** in a few hands through the medium of Intellectual Property Rights

Principles of the WTO – “Rule-based” Trading Regime

- **Most favoured nation (MFN)**: members extend the same treatment to imports from all the other members, i.e., all members are treated equally as well as the “most favoured” among them.
- **National treatment**: imported goods, once they have met all the requirements of whatever border regime is in place and have entered into the internal (domestic) market will be treated no less favourably than domestic goods are treated in the domestic market.
- Elimination of Quantitative Restrictions (**QRs**) and Non Tariff Barriers (**NTBs**) and reliance on tariffs as the sole instrument of border protection: *Tariffication*.
- “**Transparency**” which is achieved through publication of trade laws and regulations.

Principles of the WTO (contd.)

Decision Making in the WTO

- Single Undertaking: **Nothing is Agreed unless Everything is Agreed**
- Decision Making Process
 - Ministerial Conference
 - General Council
 - Agreement-Specific Negotiating Committees
- Decisions by consensus but if a decision cannot be reached, arrived at through majority vote
- Unfortunately this system of decision by **consensus** is often reduced to a system where the US and EU put **bilateral pressure** on DCs and LDCs

WTO Agreements that relate to Health

- Technical Barriers to Trade (TBT)
- Sanitary - Phyto-Sanitary Measures (SPSM)
- Trade Related Intellectual Property Rights (TRIPS)
- Trade in Services (GATS) and the four modes

WTO Agreements that relate to Health (contd.)

Trade Related Intellectual Property Rights (TRIPS):

- TRIPS Agreement requires members to establish **minimum standards** for protecting and enforcing intellectual property rights.
- First instance of trying to **enforce similar Patent Laws** across the globe
- All sectors need to be provided Patent protection **(countries like India cannot continue to keep medicines out of Patents)**
- TRIPS includes several areas such as: Patents, Trademarks, Copyrights, Geographical Indicators

Patents and prices

- **The effect of market competition:** Introduction of **generic versions** of antiretroviral therapy is credited with triggering off **price reductions** from multinational drug companies.
- Cipla's offer of triple therapy in February 2001 was for **US\$350** per patient per year (against **\$10,000** offered by MNCs). Current prices for 1st line triple ARV therapy is approx. **US\$99** in January 2005.

TRIPS Agreement and Doha Declaration

TRIPS-consistent policy options for affordable medicines: flexibilities or public health safeguards available in TRIPS and affirmed by Doha Declaration

- ✓ Government use
- ✓ Compulsory licences
- ✓ Parallel importation
- ✓ Exceptions to patent rights (e.g., Bolar exception)

Government use

- The government's right to use a patented invention, **without consent** of the patent holder, is allowed under TRIPS (Article 31).
- This permits government agencies or a party authorised by the government to use an invention, for public, non-commercial purposes. e.g., public sector production of generic medicines, or import of generics for use in public hospitals.
- Allows for "**fast-tracking**" of **compulsory licences**, subject to compensation to patent holder
- State practice: Broad government use provisions in the US and (Crown use) UK laws.

Compulsory Licence

- Compulsory licences are **non-voluntary licences** granted by the government to permit **3rd parties** to use a patented invention, without the patent holder's consent.
- Governments have the **right to determine grounds for compulsory licence, NOT just for emergencies.**
- e.g., local pharmaceutical companies may produce generic versions of patented medicines, or import generic versions of medicines from foreign manufacturers
- Conditions for grant: prior negotiations with patent holder, payment of compensation and an appeals procedure. No need for injunctive relief.

Parallel Import

- Parallel import is the **import and resale of patented product** in another country, without consent of patent holder. Import of patented medicine from country A to country B, where it is sold at a higher price.
- TRIPS does not prohibit parallel imports, Article 6 allows countries to decide which regime for exhaustion of rights adopt: national, regional or international exhaustion.

Exceptions to patent rights

- Exceptions to patent rights allow **limits to use of a patent** in specific circumstances. TRIPS allows for exceptions to patent rights under Article 30.
- The "**Bolar**" exception allows the production of generic medicine for testing and approval, to enable speedy introduction of generic product once the patent expires.
- Exceptions for research, and experimental use.
- Exceptions must be provided for in national law. Once there, it is automatically applicable

Use of Safeguards

- Most developed countries already **have TRIPS safeguards** and have used them (e.g. rich US compulsory licensing experience).
- **Not all developing countries have** included TRIPS safeguards in their national laws.
- Challenge is to make sure that ALL available safeguards are provided in national laws to enable countries that need them to use them.

How to make use of Safeguards

- Review, compare and amend laws to:
 - Fully exploit the flexibility in TRIPS
 - Adopt clear, easy to apply, and transparent guidelines for setting compensation rates
 - Appeal procedures that do not suspend execution of licence
 - Adopt straightforward, transparent and speedy procedures
- Least-developed countries need not provide for, or enforce, pharmaceutical patents until 2016.

Challenges to use of Safeguards

- Lack of appropriate and adequate administrative and legal infrastructure in developing countries, makes it difficult to determine patent status of medicines.
- Changes to national laws to incorporate TRIPS safeguards are slow or inadequate.
- External pressures, including TRIPS-plus obligations in free trade agreements, inhibit the use of safeguards.

Health Issues in the WTO General Agreement on Trade in Services (GATS)

- Imposes limited general obligations on Members -- free to choose which services to open up and which modes of services to liberalise.
- These negotiations are based on exchange of offer and request lists.

GATS - Modes

Mode 1

Cross-border supply, e.g. provision of diagnosis or treatment planning services in country A by suppliers in country B, via telecommunications ('**telemedicine**')

Mode 2

Consumption abroad, e.g. movement of patients from country A to country B for treatment (**medical tourism**)

Mode 3

Commercial presence, e.g. establishment of or investment in hospitals in country A whose owners are from country B

Mode 4

Presence of natural persons, e.g. service provision in country A by health professionals who are nationals of country B (**medical migration**)

Why GATS? In Whose Interest

- In recent years in as, in developed countries, **manufacturing** has **ceased to be profitable** because of global competition
- The service sectors accounts for **two thirds of economy** and jobs in the **European Union** (EU), almost a **quarter of the EU's total exports** and a half of all foreign investment flowing from the Union to other parts of the world.
- In the **US**, more than a **third of economic growth** over the past five years has been because of service exports.

Why GATS? In Whose Interest

- As the service sectors of the economies of developed countries grew, trade in various types of services has grown.
- Multinational Corporations started lobbying for new trading rules that will expand their share of the global market in services as governments everywhere spend a considerable amount of their budget on social services.
- This is what the General Agreement on Trade in Services (GATS) under the WTO is targetting today. **GATS cover some 160 separate sectors.**

Why GATS? In Whose Interest

- GATS contains provisions which allow further **deregulation** of any **national legislation** which is seen to be hostile to free trade.
- GATS identify the specific commitments of member states that indicate on a sector-by-sector basis the extent foreigners' may supply services in the country.
- The negotiating process in GATS allows for countries to decide, through **'request offer'** negotiations, which service sectors they will agree to cover under its rules.
- This refers to the extent to which member states want their these services like health and education to be opened up to free trade.

Why GATS? In Whose Interest

- Private insurance companies, managed (health) care firms; health care technology companies and the pharmaceutical industry of the developed countries are looking for opportunities to expand health care markets.
- Markets expand where there is an affluent elite willing to pay or where there exists a private health service base.
- This move to open up the health and social sectors to allow privatisation and competition from the private sector will mean that, the latter will take over health and social services of countries for profit undermining the equitable distribution of healthcare.

Why GATS? In Whose Interest

Two major areas proposed as beneficial for developing countries:

- Medical Tourism
- Opportunities for Medical Personnel to work in Developed Countries

BOTH actually undermine the public health system

- Medical Tourism draws resources to the private sector to treat rich foreign patients
- Medical Migration denudes poor countries of scarce human resources

Agreement on Agriculture -- Assault on Food Security

- The AoA ensured that support provided to domestic agriculture by developing countries (as **quantitative restrictions**) would be **phased out** while those being provided by developed countries (as **direct subsidies**) would be **retained**.
- Resulted in exports of **primary commodities** by **developing countries** becoming **uncompetitive** while their domestic markets are being **flooded by subsidized imports** from developed countries.
- In the past decades global prices of agriculture exports from developing countries have fallen steadily -- **farmers get less and less for their products**
- At the same time the **growth in production of staple food grains** has fallen sharply.

Trade and the Global Food Crisis

- Billions of dollars are being poured in as **hot money** into **food commodities**
- **Investment funds** (through stock market trading) control up to **60% of the wheat traded** on the world's biggest commodity markets.
- **Speculative money in commodities futures** – has ballooned from **US\$5 billion in 2000 to US\$175 billion to 2007**

Free Trade Agreements

- Concerned with those between Developed and Developing Countries
- US and the EU, especially, have signed (or in process) of several such FTAs
- ALL have consequences for IP Protection

Require:

- Data Exclusivity
- Patent term extension
- Broader Definition of Patentability
- Restriction on Flexibilities

i.e. TRIPS + + Measures

Can WE make a Difference?

YES!

Issues around Trade and Health have **Legal and Technical components**, but more importantly they are **Political in nature**

Activists from PHM and other Civil Society Organisations need to:

- **Understand the issues** and not leave it to lawyers and “experts”
- Need to **mobilise** around these issues in association with other movements and peoples organisations
- Need to build **international solidarity** on these issues

Thank You!