



# Strengthening the Resilience of Pandemic- Related Medical Product Supply Chains: Assessing the Relationship between the WHO Pandemic Agreement and the WTO



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# Introduction – The COVID-19 Pandemic and the Medical Products' Supply Chain

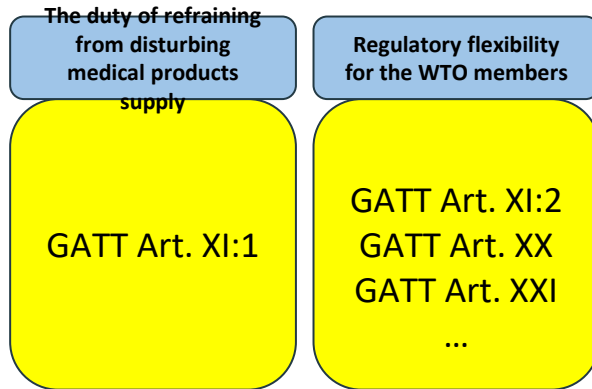
## The COVID-19 Pandemic Exposed Fragile Supply Chains

- The unprecedented pandemic disrupted the international economic activities and the distribution of needed medical products..
- In the post-pandemic era, countries highlighted the need for improved pandemic preparedness.
- Revealed WHO and WTO's deficiencies in responding to public health crisis.
- Sparked the development of a new WHO pandemic agreement.
- How about the WTO?
- Research Question:

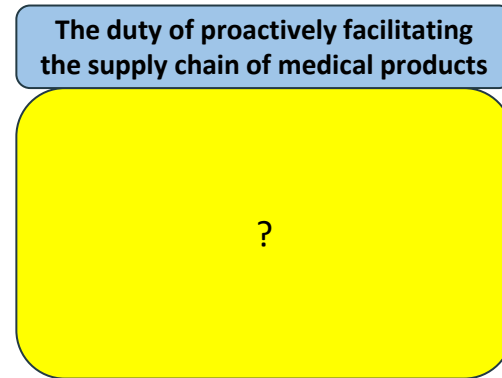
**Should, and how the WTO play a more proactive role in promoting public health resilience by enhancing pandemic-related medical products' supply chain resilience?**

# Introduction – The COVID-19 Pandemic and the Medical Products' Supply Chain

What the WTO laws have now:



What the WTO laws do not have now:



# The WHO Draft Pandemic Agreement – Key Goals

The WHO Pandemic Agreement: A Legal Framework for Better Public Health Resilience

- Aims to strengthen states' capacity in pandemic prevention, preparedness, and response. (Preamble)
- Ensures equitable and affordable access to essential medical products. (Art. 9.5)
- Emphasizes humanitarian principles in enhancing the accessibility of pandemic-related medical products. (Arts. 3 & 13 )
  - Enshrined in the UN General Assembly Resolutions (46/182 & 58/144)
    - Principle of humanity
    - Principle of neutrality
    - Principle of impartiality
    - Principle of independence

# The WHO Draft Pandemic Agreement – Key Goals

## The Global Supply Chain and Logistics Network: Ensuring Equitable Access to Needed Medical Goods

- Establishes the Global Supply Chain and Logistics Network. (Art. 13)
- Five primary functions:
  - Collaboration among stakeholders
  - Task delegation to the most suitable organizations
  - Addressing the needs of developing nations and vulnerable populations
  - Fair distribution of health products
  - Accountability and transparency in governance
- Prioritizes public health needs and emphasizes medical products distribution and sharing.
  - In the normal time, the Supply Chain Logistic Network shall serve as the platform for states to exchange information regarding their needs and potential deficiencies.
  - During the pandemic, states shall proactively facilitate medical product supply chains in a manner consistent with international humanitarian principles.

# The WHO Draft Pandemic Agreement – Key Goals

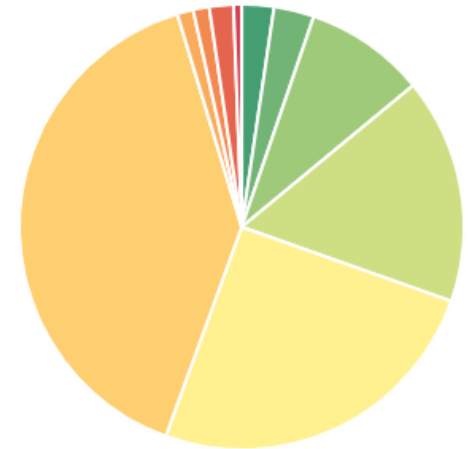
## The Global Supply Chain and Logistics Network: Ensuring Equitable Access to Needed Medical Goods

- Outlines the relationship between trade and public health
  - Measures affecting medical goods supply chain shall be reasonable, transparent and necessary. (Art. 13)
  - States shall refrain from stockpiling pandemic-related products that unnecessarily exceed the domestic need. (Art. 13bis)
  - States shall strive to harmonize relevant technical and regulatory requirements and procedures in relations to pandemic related products. (Art. 14.5)

# WTO Responses During the Pandemic – Strengths and Weaknesses

The roles that WTO played during and after the pandemic

- During the pandemic
  - Established a reporting system for trade-restrictive measures.
  - No judgments to the legality of these measures under the WTO.



# WTO Responses During the Pandemic – Strengths and Weaknesses

The roles that WTO played during and after the pandemic

- After the pandemic
  - The adoption of “Geneva Package” after the MC 12 in 2022.
    - “Ministerial Declaration on the WTO response to the COVID-19 pandemic”
    - “Ministerial Decision on TRIPS Agreement”
  - The Ministerial Declaration acknowledged the fact that trade restrictive measures on medical products may adversely disrupt accessibility of these needed products.
    - Hence, such restrictive measures should be exercised with due restraint.
    - Call for WTO to take a more active role in supporting the expansion and diversification of production of essential goods.
    - Still failed to address the questions of strengthening supply chain resilience in normal time, and proactive distribution of medical products during the public health crisis.



# WTO Responses During the Pandemic – Strengths and Weaknesses

## WTO's Current Legal Structure is Insufficient for Pandemic Response

- Reliance on exceptions-oriented justification paradigm
  - Trade measures relating to pandemic preparation, prevention and response may be justified by GATT Art. XX(b) & (j), GATT Art. XXI..., etc.
  - The exceptionism implies that international economic law generally prohibits the adoption of public health measures if it affect international trade.
  - Only when the measures meet the conditions under the exception clauses then it can be exceptionally justified.
- Lack of specific provisions to ensure resilience of essential medical product supply chains.
  - GATT Art. XI:1 only addresses the passive aspect regarding medical products' supply chain. E.g., Not to impose export restriction on pandemic-related medical products in principle.
  - To what extent the WTO members right to restrict the export of medical products shall be restrained (i.e., GATT Art. XI:2, GATT Art. XX(b) and XX(j)), and further bear the duty of actively distributing medical products to the countries in need?

# Proposals for Closer Collaboration

## The Common Ground for Proactively Enhancing Supply Chain Resilience: The Humanitarian Principle

- States must adhere to the principles of humanity, neutrality, impartiality, and independence when providing humanitarian assistance (WHO Pandemic Agreement, Art. 13.5)
- The humanitarian principles should also serve as guiding principles for the WTO and its members when adopting measures in response to future public health emergencies.
  - Current WTO covered agreements have incorporated certain elements in relevant clauses.
    - WTO Agreement, Preamble
    - Non-discrimination principles
    - The prohibition on export restrictions
    - ...

# Proposals for Closer Collaboration

## The Common Ground for Proactively Enhancing Supply Chain Resilience: The Humanitarian Principle

- The humanitarian principles serve as the a legal foundation for encouraging or even mandating the WTO members and adjudicators to adopt a more proactive role in securing supply chain resilience during global public health crises.

# Proposals for Closer Collaboration

Short-Term Proposals: A more inclusive approach should be adopted by the WTO adjudicators

- WTO adjudicators should bear humanitarian principles in mind when assessing disputes in relation to medical products distribution.
- More thorough assessment of relevant WTO provisions by adopting humanitarian principles
  - Stricter scrutiny of export restrictions under GATT Article XI:2.
    - While members have the right to adopt export restrictions to prevent or alleviate critical shortages of medical products, such measures' WTO consistency should be subject to strict scrutiny.
  - More comprehensive assessment of GATT Art. XX
    - The purpose of the measure (public health protection) & Necessity test (GATT Art. XX(b))
    - Whether the measure is “consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products” (GATT Art. XX(j))
    - Determining whether discriminatory distributions based on receiving countries' demands violate GATT Art. XX chapeau.

# Proposals for Closer Collaboration

## Medium-Term Solutions: Supplementing the 2022 Ministerial Declaration

- The proposal that does not require immediate modification of the WTO laws.
- Integrate relevant provisions from the WHO Pandemic Agreement to supplement the 2022 Ministerial Declaration.
  - The 2022 Ministerial Declaration does not adequately guide members in facilitating the fair and equitable distribution of pandemic-related products.
  - The principles of equity, solidarity, inclusiveness, and transparency should serve as guiding principles for actively facilitating the distribution of essential medical products
  - Highlighting the notion of trade facilitation that can facilitate the custom procedures
- Incorporate the spirit of “common but differentiated responsibilities” doctrine to to the context of pandemic prevention, preparedness, and response.
  - Countries with advanced technology and sufficient capacity to produce pandemic-related medical products should bear primary responsibility for manufacturing goods that meet the needs of other regions.
  - Benefits should be provided to incentivize these technologically advanced countries to support the timely and equitable distribution of essential medical goods.

# Proposals for Closer Collaboration

Long-Term Proposal: A Plurilateral Agreement that reimagines the relationship between trade and health within the WTO framework

- The new legal instrument strengthening medical products supply chain resilience:
  - Define the scope of “essential medical products” or “pandemic related medical products”
  - Reinforce the current operation of the reporting mechanism
  - Disciplines applicable in normal time:
    - Establishing the “Supply Chain Council” to identify supply chain vulnerabilities and work together to prevent, mitigate, and respond to disruptions.
    - Pursuing regulatory coherence or mutual recognition of medical products among WTO members
    - Bottom-up approach, including private sectors.
  - Disciplines applicable in public health emergencies:
    - Implementing procedures for rapid customs clearance for imports and exports of pandemic-related medical goods;
    - Facilitating the electronic submission of relevant documentation; and
    - Refraining from imposing restrictions on the transit of goods destined for members
  - Establish “Trade and Public Health Committee” to enhance the coordination between the WTO and the WHO

# Conclusion

## Strengthening Collaboration: A Path to Resilient Supply Chains

- The COVID-19 pandemic highlighted the critical need for enhanced cooperation among different international regimes on pandemic preparedness and response.
- The WHO and WTO must collaborate to create a more resilient framework for medical product supply chains, prioritizing humanitarian principles and equitable access.
- The proposed short-term, medium-term, and long-term recommendations aim to strengthen the synergy between trade and public health law, ultimately contributing to a more resilient global governance.



**Thank You!**

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