SDGs – linking UHC to trade and investment agreements (TIAs)

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Framing of UCT in global debates

- ‘ultimately a political choice. It is the responsibility of every country and national government to pursue it. Countries have unique needs, and tailored *political negotiations will determine domestic resource mobilization*’.

  Tedros, WHO DG

- Current debates frame challenge as domestic issue, focuses on financing and benefits. Off the table issues: global governance and their effects on national policy space; rising costs. Reasons: silo thinking; political resistence.

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SDGs - potential to reframe debate

- Targets for UHC (3.8) including access to essential medicines, promote research and innovation (3.b.

- “The interlinkages and integrated nature of the SDGs are of crucial importance in ensuring that the purpose of the new Agenda is realized”

- Agenda 2030: more than a list of 17 goals, 169 targets; an integrated, transformative, universal agenda.

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TIAs reduce national UHC policy space

- TRIPS agreement - tension between stronger IP and public health priorities (access, priorities for R&D)
- New TIAs e.g. RCEP, CAFTA-DR, KORUS, EFTA, US-Jordan FTA, JEFTA, TPP, TTIP:
  - TRIPS plus IP standards
  - Government procurement
  - ISDS
  - Marketing
  - TISA - Private sector health care service providers

Note: builds on Panel work: McNeill et al, 2017, Journal of World Trade

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FTA	Status	Intellectual Property	Data Exclusivity	Patent term extension for regulatory delays	Procurement	Health services / medical devices	Dispute mechanism
TTIP	In negotiation	Yes	Likely	Likely	Yes	Unknown	ISDS, unknown method
TISA	In negotiation	Unknown	Unknown	Unknown	Unknown	Likely health services treated as financial services	ISDS, unknown method
CAFTA-DR	In force 2007	Yes	5 years	5 years	Yes	No	ICSID or UNCITRAL
KORUS	In force 2012	Yes	5 years	3-4 years	Yes	Medical devices	ICSID or UNCITRAL
JEFTA	In negotiation	Likely	Likely 5 years	Likely	Likely	Unknown	Likely joint committee
CETA	In ratification process	Yes	6 years	2-5 years	Yes	No	Joint committee
RCEP	In negotiation	Yes	Proposed 5 years	Proposed 5 years	Unknown	Unknown	Unknown
US-Jordan FTA	In force 2012	Yes	No	Yes, no time listed	Defers to WTO agreement	Defers to WTO agreement	Joint committee
EFTA-India	In negotiation	Likely	In negotiation	In negotiation	Unknown	Unknown	Unknown

IP – TRIPS plus standards

Common provisions:

- evergreening – secondary patents on existing medicines
- patent term extension – accomodate delays in approval
- data exclusivity – monopoly protection on test data
- biologics – longer data exclusivity
- restrictions on revoking patents
- patentability of animals and plants
- no language on flexibilities

Overall effect:

- strengthens monopolies and retards generic introduction
- reduces policy space for patent standards, but also management of patents

Government procurement

Included in most treaties as own chapter or in other chapters, with various clauses. e.g.:

- KORUS – reimbursement rate for medicines and devices based on 'competitive market derived prices': eliminates ability to set prices.

- TPP – transparency chapter. requires disclosure of methodology and experts used in setting prices:
  - erodes/endangers ability to negotiate with pharmaceutical companies.
  - No requirement for companies to reveal methods for setting 'market' prices.
  - Produces assymetry of information and power imbalances in negotiations.

Effect: reduces policy space to negotiate pharmaceutical prices and ensure affordability to citizens.

Government procurement policy and practice

Government involved in acquiring medicines, setting prices, negotiating reimbursements. Many have regulatory reimbursement regimes, price negotiations, procurement of medicines - Important part of national health systems.

- New Zealand – PHARMAC - negotiate med pricing and determine which drugs will be funded
- France – MOMEDIMS – determines which products will be included in insurance and at what price
- UK – NICE – decides which drugs to include on NHS formulary and at what cost.
- Japan – sets national fee schedule for drugs and services

- Varying practices and controls, negotiations, leading to variable prices. E.g. OECD study on sofosbuvir (2015) from $28,000 Norway to $38,000 France, $65,00 US, $70,000 Turkey. Much depends on negotiating power.

Dispute settlement

- IP considered investment and further reinforces assymetry of power
- ISDS cases increasing, developing countries disproportionately challenged, pay more in damages
- costs: average cost $8 million, negative trading relationships
- TIAs introduce new arrangements beyond ISDS

Effect: regulatory chill that reduces policy space

Effects of TIAs on policy space: Bangladesh example

- Bangladesh used policy space of LDC exemption from TRIPs to implement medicines policy to ensure accessibility and encourage domestic industry:

  - IP policy (2008) – 16 years, excludes pharmaceuticals, allows foreign patents to be cancelled after 4 years if product not manufactured in Bgd; allows compulsory licenses by any part not just state, no patenting of animal and plant varieties.

  - Drugs policy (1940; 1982; 2005) – prohibits import of a drug without formula displayed; right to regulate mode of labeling imported drugs; allows government to control drugs prices; restricts imports of medicines produced in country.

Domestic industry

- Stratetic importance for diversification and sustainable growth
- Drugs and patent laws led to departure of multinationals
- Dramatic fall in prices
- Only LDC with significant pharmaceutical industry
- Largest white collar employment sector
- Promise of diversifying exports
- 97% drugs supplied through domestic production
- Reverse engineered sofosbuvir for supply to other LDCs

Implications of TRIPS and TIAs

- changes in national patent law for TRIPS compliance
- Constitutional commitment to provide health care
- Fledgeling pharmaceutical industry will lose infant industry protection
- Import licensing practices already under watch by USTR, WTO
- Realistic potential of joining TIA with TRIPS plus, procurement and transparency provisions, Agreement on Procurement requiring equal treatment, etc.

SDGs agenda on access to medicines and innovation

- achieve UHC including access to meds (3.8)
- promote R&D for medicines and vaccines for diseases that primarily affect developing countries and provide access to affordable essential medicines and vaccines, 'in accordance with the Doha Declarations on the TRIPS agreement..."

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Indicators weaken targets

- access to medicines measured by:
  - 3.b.a immunization rates
  - 3.b.c availability and affordability of 'essential medicines'

  shifts away from branded medicines
- promoting R&D measured by:
  - ODA for basic medical R&D and basic health sector

  shifts away from R&D to basic health support

SDG trade agenda

- export share, WTO Doha Agenda as priority
- bilateral/plurilateral TIA issues ‘off the table’’
- includes target for respecting national policy space but weakened by indicator: use of ‘country owned results framework and planning tools’ by donors

Case of global governance for health - Political origins of incomplete SDG framework

- Power assymetries: corporations and their home countries; aid donor community; middle income countries; G-77; activists
- Negotiations through open process (OWG)
- Strong commitment to integrated agenda, means of implementation, universality, voice.
- Slippage - Unraveling goals and principles in targets and indicators
- Forum shifting strategies from WTO/WIPO to bilateral/pluri-lateral TIAs; forum segmentation

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Thank you!

UN CDP Background Paper 2018:38
Trade agreements and policy space for achieving universal health coverage (SDG target 3.8)

https://www.un.org/development/desa/dpad/publication/background-paper-38-trade-agreements-and-policy-space-for-achieving-universal-health-coverage/

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