International Trade and commercialization of healthcare services: the case of TTIP

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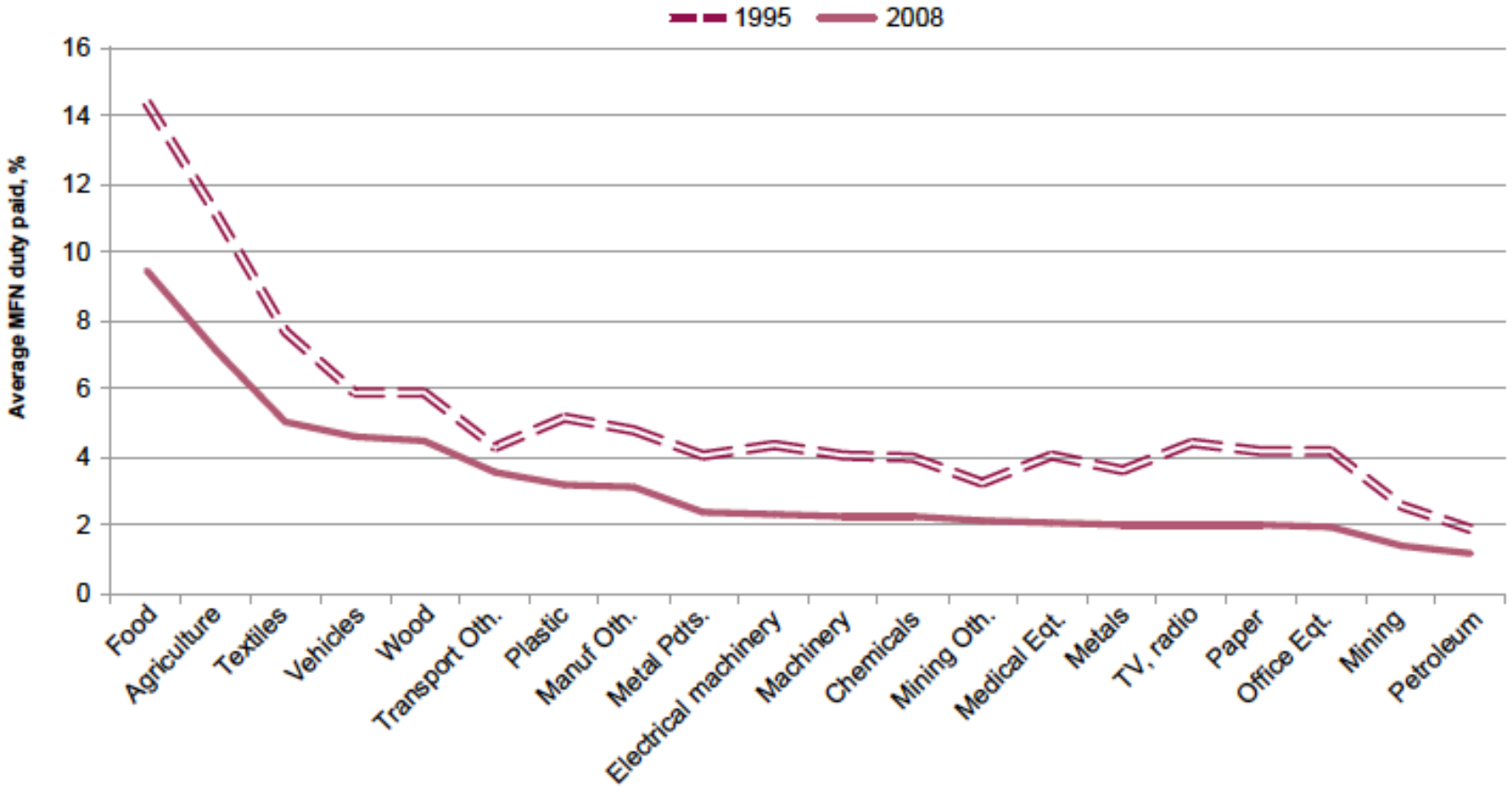
Global trade governance

General Agreement on Tariffs and Trade (GATT)

Year	Place/name of trade round	Subjects covered	Participant Countries
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13
1951	Torquay	Tariffs	38
1956	Geneva	Tariffs	26
1960-1961	Geneva Dillon Round	Tariffs	26
1964-1967	Geneva Kennedy Round	Tariffs and anti-dumping measures	62
1973-1979	Geneva Tokyo Round	Tariffs, non-tariff measures, "framework" agreements	102
1986-1994	Geneva Uruguay Round	Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, **creation of WTO**, etc	123
2001 -	Geneva Doha Round	Tariff reductions, agriculture and a number of other areas	155

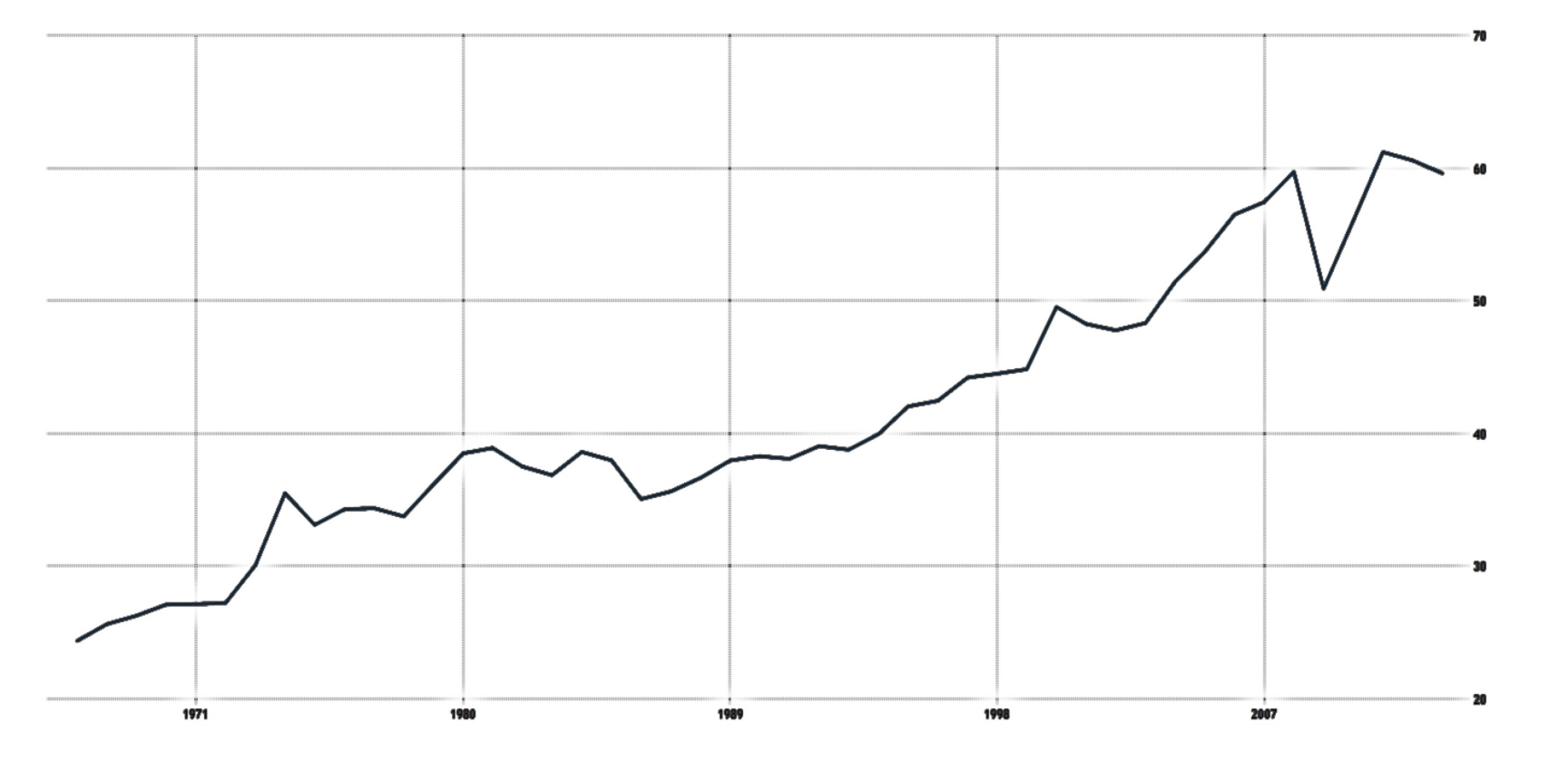
WTO, 2016

Global trade, average MFN tariffs by sector



WTO - World Tariff profiles 2015

Global trade, % world GDP



World Bank, 2013

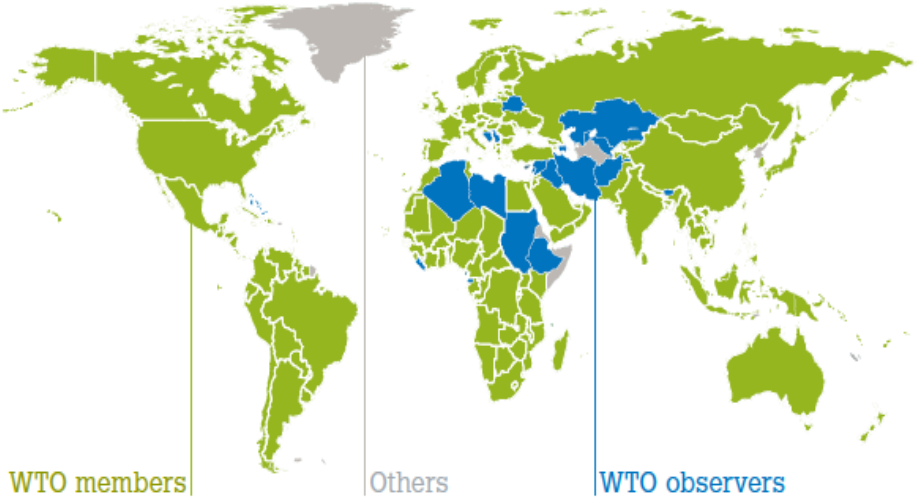
Global trade governance

World Trade Organisation (WTO)

- Established in 1995, replacing GATT
- 162 member countries
- Based in Geneva; 500 staff; annual budget of US$220 million

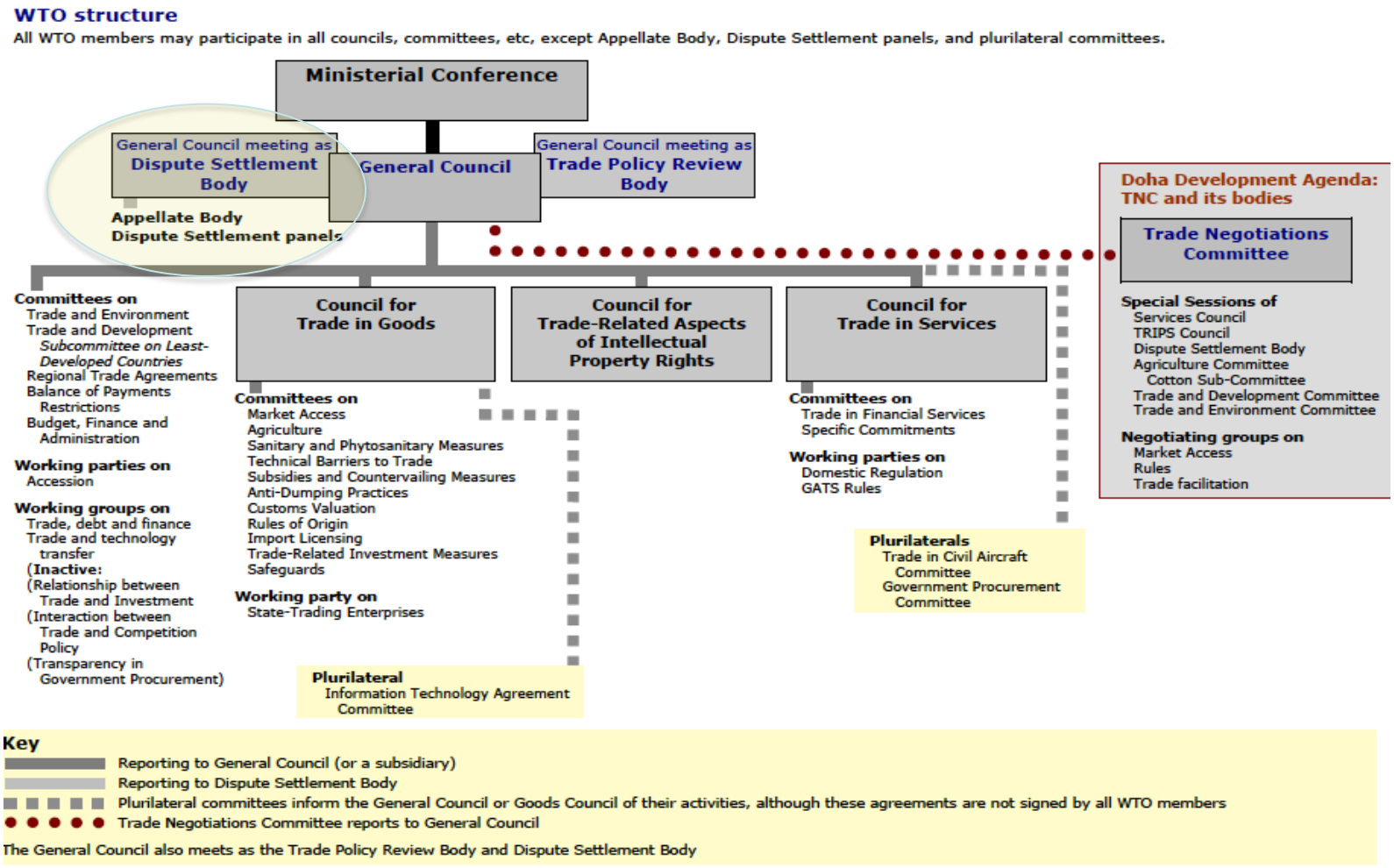
- **17 main multilateral agreements** covering issues such as tariff and non-tariff barriers on goods and services, protection of intellectual property rights, use of trade-related investment measures

- **Main functions**:
  - Forum for trade negotiations
  - Administration of trade agreements
  - Assistance for the implementation of trade agreements
  - Settlement of disputes
  - Promotion of trade-policies' transparency



WTO, 2016; Fidler D, Drager N, Lee K 2009; Lee K, Sridhar D, Patel M 2009

Global trade governance



WTO, 2016

Global trade governance

Table 1: US corporate lobbyists – the top ten spenders (1998-2004)[30]

	Companies and business lobby groups	Reported lobbying expenditure
1	**US Chamber of Commerce** (cross-industry lobby group)	$205,000,000
2	**Altria Group** (food and tobacco)	$101,000,000
3	**General Electric** (general products and services)	$94,000,000
4	**Northrop Grumman** (defence)	$83,000,000
5	**Edison Electric Institute** (electricity utilities lobby group)	$83,000,000
6	**Verizon Communications** (telecommunications)	$82,000,000
7	**Business Roundtable** (cross-industry lobby group)	$80,000,000
8	**Pharmaceutical Research & Manufacturers of America** (pharmaceutical industry lobby group)	$73,000,000
9	**National Association of Realtors** (real estate lobby group)	$69,000,000
10	**ExxonMobil** (oil)	$60,000,000

Box 7: Through the TRIPS revolving door

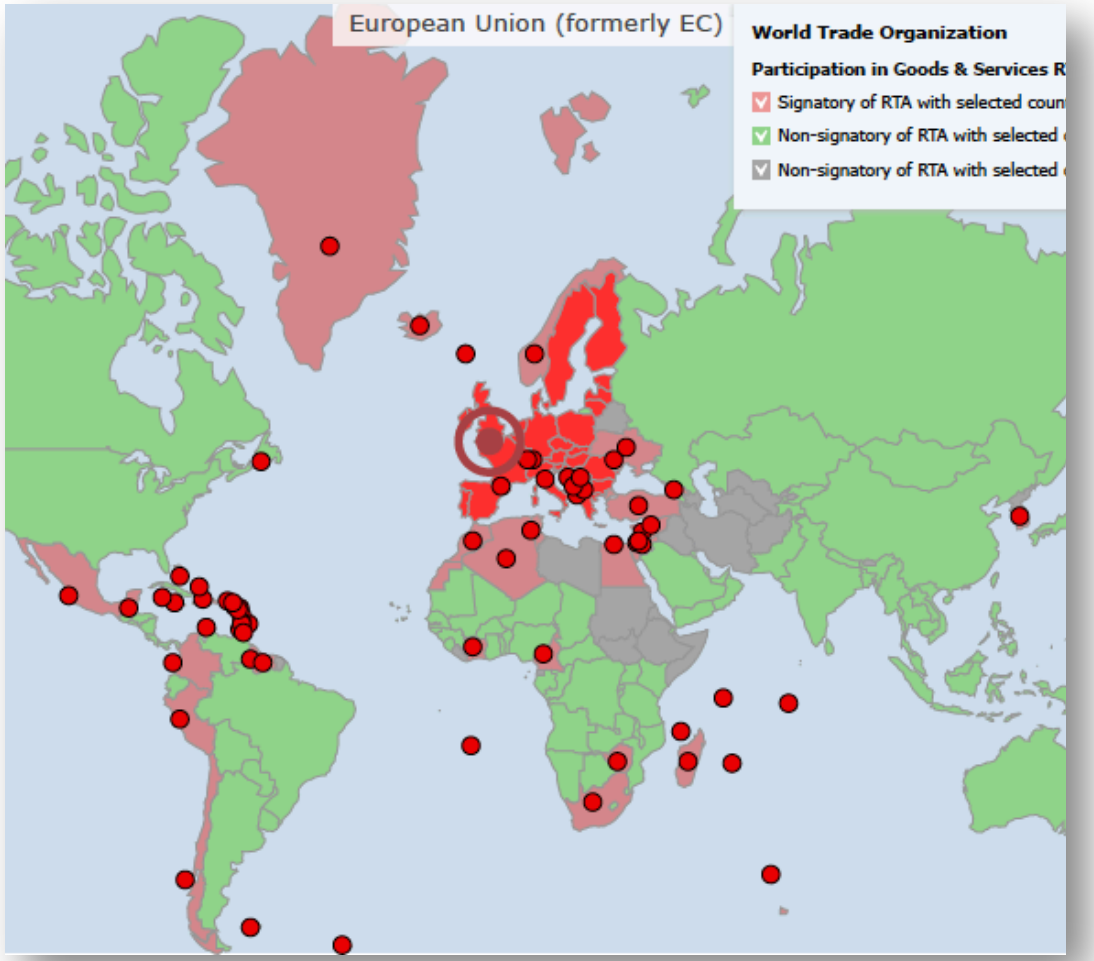
Harvey Bale, currently director-general of industry pressure group the **International Federation of Pharmaceutical Manufacturers and Associations**, used to be a high-level TRIPS negotiator for **USTR**, where he worked for 12 years. After leaving USTR, Bale went on to become senior vice-president of the industry association **Pharmaceutical Research and Manufacturers of America** (PhRMA).

Deborah Steelman lobbied the US government on behalf of PhRMA while she was already serving in the US administration as senior healthcare adviser to **US president George Bush**. PhRMA paid her consultancy firm $200,000 in 1997-98, which also collected $240,000 in lobbying fees from another of its drug industry clients **Pfizer** during that time. While he was chief executive officer for Pfizer, **Edmund Pratt** chaired USTR's **Advisory Committee on Trade Negotiations** and played a pivotal role in bringing TRIPS onto the WTO's agenda. After officially retiring from Pfizer but remaining its 'chairman emeritus', Mr Pratt took a post as special adviser to USTR.

Global trade governance

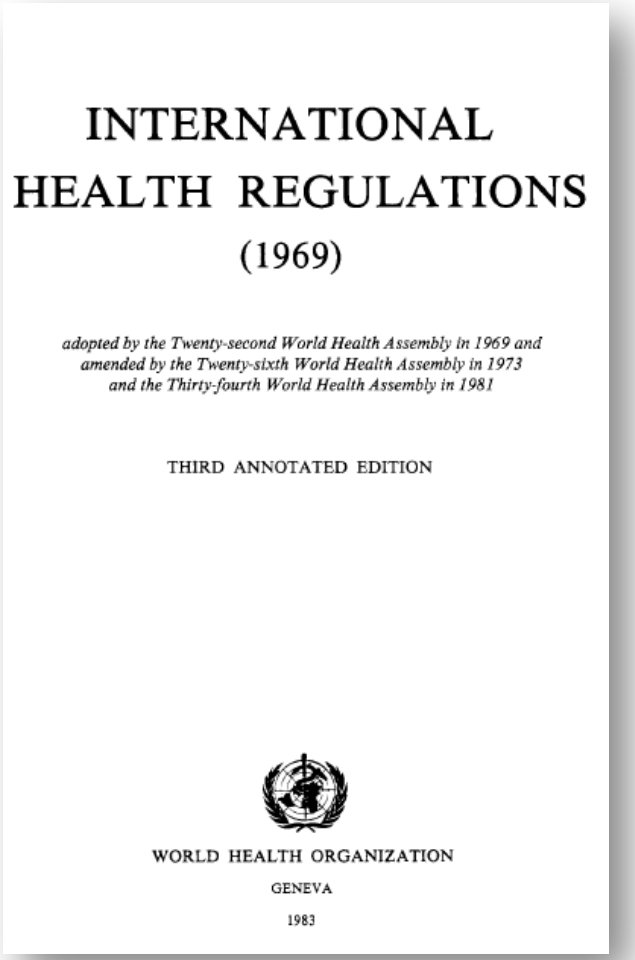
Regional Trade Agreements (RTAs)

- Are reciprocal trade agreements between two or more partners. They include free trade agreements and customs unions
- RTAs have become increasingly prevalent since the ’90s
- In 2015, 625 RTAs were notified to WTO; 419 were in force
- The majority of world trade goes through RTAs



WTO - RTA database 2016

Global trade and public health



WHO, 1983

Global trade and public health

GATT – Article XX (***General Exceptions***):

"*… nothing in this Agreement shall be construed to prevent the* ***adoption or enforcement by any contracting part of measures****":*

*(b) "****necessary to protect human, animal or plant life or health****"*

(i) "... Provided that ***such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry****, and shall not depart from the provisions of this Agreement relating to* ***non-discrimination****"*

(j) "... and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist"

GATS – Article XIV:

General Exceptions

" …nothing in this Agreement shall be construed to prevent the ***adoption or enforcement by any Member of measures****":*

(a) "necessary to protect public morals or maintain public order"

*(b) "****necessary to protect human, animal or plant life or health****"*

GATT, 1986; GATS 2013

WTO agreements and public health

Agreement on Technical Barriers to Trade (TBT)	
Date	Since **1995** (an older version of the TBT came into force in 1980; signed only by 46 countries)
Countries	All WTO members
Objective	Restrictive measures on trade, for the **protection of human health or safety**; measures to be applied in a **non-discriminative way**; measures should **avoid unnecessary obstacles** to trade
Relevance to health	**Product safety**; by setting mandatory ("technical requirements") or voluntary ("standards") requirements for products

Agreement on the Application of Sanitary and Phytosanitary measures (SPS)	
Date	Since 1995
Countries	All WTO members
Objective	Restrictive measures on trade, to ensure **food safety safety and the protection of human life from plant- or animal-carried diseases**; measures should be **scientifically justified**
Relevance to health	**Food safety** from toxins or disease-causing organisms; protection from **zoonoses**; protection from pests, diseases; protection from damage caused by the **spread of pests**

Based on WHO-WTO, 2002

WTO agreements and public health

Trade-Related Aspects of Intellectual Property Rights (TRIPS)	
Date	Since January **1995**
Countries	All WTO member countries
Objective	**Protection and enforcement of intellectual property rights (IPRs)**; covering a wide range of subjects including **copyrights, trademarks, patents, and trade secrets**
Relevance to health	**Pharmaceutical products are granted full IPRs**; pharmaceutical companies are granted the legal means, as patent owners of new drug products, to prevent others from making, using or selling the new invention for a certain period of time
	Pharmaceutical patent protection has to last at least 20 years from the date the patent application was filled
	TRIPS flexibilities (Doha Declaration, 2001): under the article 8 "to adopt measures necessary to protect public health and nutrition" countries have the right to • **Compulsory licenses**: allowing third parties to produce or sell drugs, without the permission of the patent holder, when drugs are not sufficiently supplied or are not affordable • **Parallel imports**: importing of drugs at reduced prices without the consent of the patent holder

Based on WHO-WTO, 2002; Smith D, Correa C, Oh C, 2009

RTAs and public health

TRIPS – plus standards in RTAs	
Date	Depending on the RTA
Countries	Almost **all US free trade agreements** (e.g. CAFTA, FTAs with Chile, Jordan, Bahrain, Morocco, Singapore) **EU free trade agreements** (e.g. with South Africa, Tunisia, Palestinian Authority)
Objective	**Higher level of IPRs protection for medicines**; on the basis that current levels of protection do not permit adequate recovery of R&D costs
Relevance to health	**Pharmaceutical patents extended for more than 20 years**
	Data exclusivity: parties are obliged to grant IPRs over data (e.g. clinical data providing the efficacy of a drug) for at least 5 years (regardless if the drug is patented or not)
	Linkage between drug registration and patent protection: national health authorities must refuse marketing approvals to a generic drug if a patent is in force (regardless if its valid or not)
	Limitations for granting compulsory licenses **Limitations for parallel importing**

Based on Correa C, 2006

WTO agreements and health services

General Agreement on Trade in Services (GATS)	
Date	Since **1995**
Countries	All WTO member countries
Objective	The main scope of GATS is to **facilitate competition and liberalization of trade in services.** Article I of the agreement defines four types (modes) of supply of a service: • **Mode 1 – Cross border supply**: the provision of services in country A by suppliers in country B • **Mode 2 – Consumption abroad**: consumption of services in country A by consumers coming from country B • **Mode 3 – Commercial presence (or Foreign Direct Investment – FDI)**: supply of services in country A through commercial presence of suppliers in its territory, whose owners are from country B • **Mode 4 – Presence of natural persons:** supply of services in country A through presence of natural persons in its territory coming from country B
Relevance to health	Mode 1 – **"Telemedicine" services**
	Mode 2 – **Medical tourism**
	Mode 3 – **Direct foreign investment in hospitals**
	Mode 4 – **Migration of health professionals** from less to more developed countries

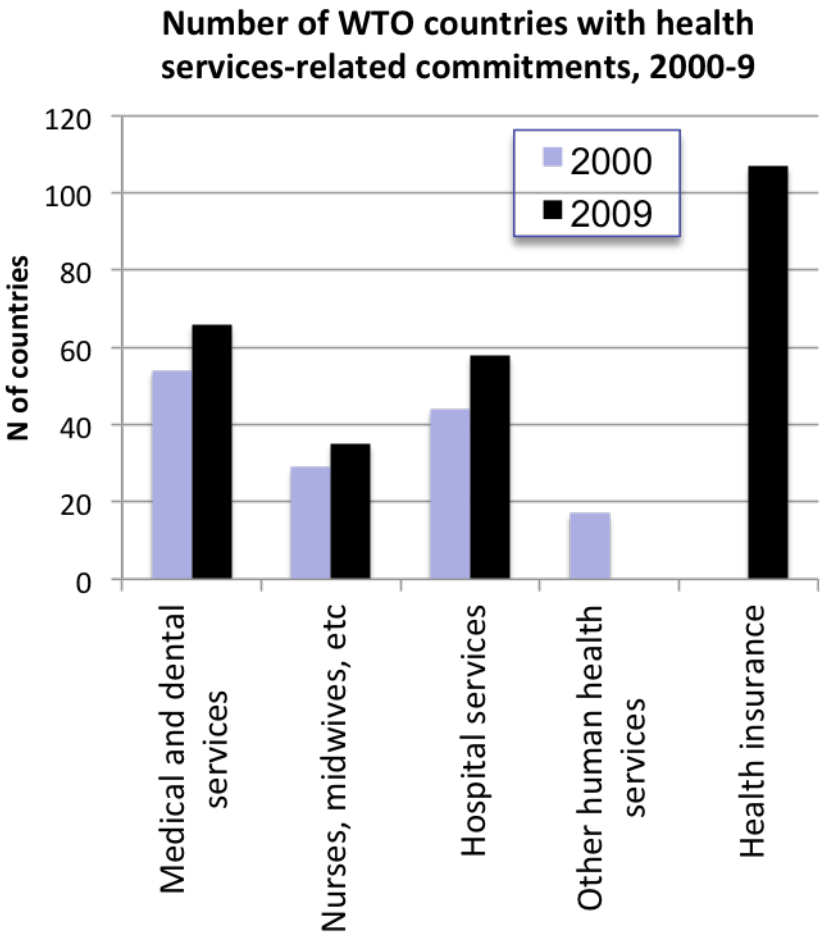
Based on WHO-WTO, 2002; GATS, 2013

WTO agreements and health services

Main principles of GATS

Public services exception	**Article I:3;b-c** • **Services of "governmental authority" are excluded** from the Agreement • Defined as **any service "which is supplied neither on a commercial basis, nor in competition with one or more service suppliers"**
Most Favoured Nation principle	**Article II** • If a Member permits trade or applies restrictions or sets requirements in services in a specific sector, then **all suppliers from other Members (including domestic ones) must be treated on equal terms**, regardless of country of ownership or origin
Progressive liberalization	**Articles XIX, XX** • **GATS allows WTO Members to choose which service sectors to open up to trade** and foreign competition and which modes of services to liberalize • These exemptions should not last more than 10 years; they are also subject to modification

Based on WHO-WTO, 2002; GATS, 2013



Based on Adlung R, Carzaniga A, 2001; Adlung R, 2009

WTO agreements and health services

Trade liberalization of health services		
Type	**Benefits**	**Risks**
Mode 1	• Lower-cost services for importing countries	• Low quality of services provided, related to licensure procedures in exporting countries • Patient privacy and confidentiality risks; data security risks
Mode 2	• Alleviation of waiting lists for importing countries • Increase in patient choice for importing countries • Increased income for exporting countries • Reversing of brain drain by attracting home health workers who had emigrated	• Quality concerns of provided services in exporting countries (e.g. lack of follow up care, limited resource for compensation in case of medical errors etc) • "Two-tier system" (high quality for foreign patients, poor quality for the host population) • "Internal brain drain" (health professionals leaving the public sector to work for private hospitals that attract medical tourists)
Mode 3	• Additional resources for LMIC • Increased expertise for LMIC • Wider provision of services	• Privatization risks (uncontrolled expansion of the private sector) • "Two-tier system" (high quality for the rich, poor quality for the poor) • "Internal Brain Drain" • Risks in resolving disputes with Transnational Corporations • No additional resources, in the cases where FDI is related to the acquisition of existing domestic firms
Mode 4	• New opportunities for health professionals' training and personal development	• "Brain drain" – flow of health professionals from less to more developed countries

Based on Smith R, 2004; Smith R, Chanda R, Tangcharoensathien V, 2009; Smith R, Alvarez M, Chanda R, 2011

TTIP and healthcare services

Transatlantic Trade and Investment Partnership (TTIP)	
Date	Under negotiation since **2013** (15th round of negotiations recently concluded)
Countries	USA and European Union (affects almost 50% of global GDP)
Objective	The main scope of TTIP is to reduce tariffs and harmonize standards, regulations and investor protections
Relevance to healthcare	**Tariff Reductions – reduction of tax-raising capacity of governments to invest on healthcare and social welfare**
	"Evidence-based" trade restrictions in cases of public health risks – abolishment of precautionary actions
	TRIPS Plus provisions – **extension and expansion of patents for pharmaceutical products, delayed availability of generic drugs, abolition of compulsory licensing and parallel imports**
	Trade In Services provisions – **further exposure of public services to competition (abolition of public services exemption), "ratchet clause" - prohibition of nationalization of private corporates**
	Investor to State Dispute Settlement (ISDS) – **mechanism that allows foreign investors to sue states hosting their investment**

Based on Hilary J, 2014; De Vogli R, Renzetti N. 2016

RTAs under negotiation