

G2 HACKATHON CHALLENGE

How to Make the WTO
Fit for Future Trade



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ECONOMIC LAW
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Geneva Trade
Platform

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2021 Hackathon Submission

Preferential Treatment for Trade in COVID- 19 Combating Goods

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Question #1

Define the substantive issue that your team is addressing, why it's a problem, and why your team believes the WTO is the right forum to address it.

Public health is an integral aspect of humanity and is one of the fundamental rights under both the Universal Declaration of Human Rights and the International Convention on Economic, Social and Cultural Rights. This year, one of the greatest threats to public health and indeed human health occurred, which is the spreading of the of the novel COVID-19 virus.

The prevalence of the virus has caused a need for regulation of trade of personal protective equipment for COVID-19 treatment and prevention, COVID-19 Vaccines and COVID-19 Vaccine Components (hereinafter, 'COVID Combating Goods' or 'CCGs'). These are extremely essential goods to public health and therefore the efficient, equitable and fast trade in these goods must be enabled by the global diaspora as a matter of urgency. This is particularly so as regard developing countries which are among those mostly affected by the COVID-19.

It is understood that governments have two major interests in the trade of medicines which are the promotion of public health and the promotion of economic welfare. Balancing these interests is performed through balancing trade restriction/protective measures. There is therefore a need to ensure that there is access to CCGs there is need for a relaxation of trade barriers among states which relates to the reduction of tariffs, the reductions of customs and excise duties and of technical barriers to trade. These are protective measures but, in this case, there is evidently a need to ensure that they do not act as an incumbrance to the global effort of combatting COVID-19.

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The problem is that many states import goods through other states - the increase in tariff and customs measures increase the prices of goods once received by the second importing country. An illustration of this is with the active pharmaceutical ingredients (APIs) of the COVID-19 Vaccines. The impact of the vaccine will only be felt if the components used to produce the vaccine are readily available. As stated by the WTO, components from vaccines are sources from about 300 suppliers from across 30 different countries.

A system of specific measures with exemptions for developing countries would allow for effective trade to combat the virus in the most vulnerable states. The WTO already has regulations and systems that allow for preferential treatment to be effected and states thereunder have taken individual measures reflecting this need. There is need to take advantage of this elaborate system and to develop a bespoke system to address COVID-19 for states in dire need of assistance.

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Question #2

Propose a specific treaty text, or more informal commitment/declaration text, that addresses either the concern or a particular, detailed aspect of it.

AGREEMENT ON TRADE IN COVID-19 COMBATING GOODS

1. Members recognize the plight of developing and least-developed countries ('DLDCs') in accessing COVID-19 medical supplies including personal protective equipment, vaccines and vaccine components, diagnostics, therapeutics, equipment and devices (hereinafter, COVID-19 Combating Goods or 'CCGs').
2. Notwithstanding the provisions of Article I of the GATT, Members shall accord differential and more favourable treatment to developing and least-developed countries in the trade of Covid-19 vaccines and other medical products, without according such treatment to developed countries.
3. Members shall establish appropriate mechanisms to ensure that DLDCs have equitable access to CCGs.
4. Mechanisms shall include a Reciprocal Trade Initiative ('RTI') as follows:
 - (a) DLDCs shall exempt CCGs from tariff restrictions, customs and excise and VAT;
 - (b) Developed countries shall exempt exportation charges and taxes on CCGs destined for DLDCs; and
 - (c) This initiative shall lapse upon declaration by WHO of the ceasure of COVID-19 as a pandemic.
7. Members further agree that any differential and more favourable treatment provided under paragraph 2 shall not:
 - (a) impede upon the other tariff and trade restrictions with regard to non-CCG goods; and

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(b) limit import and export authorisation and licensing requirements reasonably imposed for public health purposes.

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Question #3

Suggest a legal/technical or institutional way to implement your textual proposal within the broader WTO framework (500 words)

Institutional Framework for G2 Treaty

1. Establishment of the G2 Tribunal

Having recognised the need to have a specialised adjudication body to determine trade related issues with regards to medical supplies, the WTO hereby establishes the G2 Tribunal.

2. Jurisdiction of the G2 Tribunal

The G2 Tribunal shall have jurisdiction to determine trade related issues that deal with the manufacture, supply and distribution of medical supplies.

3. Institutional Framework of the Tribunal

The institutional framework for the implementation, administration, facilitation, monitoring and evaluation of the G2 Treaty shall consist of the following:

- a) Monitoring and Compliance Panel;
- b) Dispute Resolution Panel; and
- c) Appellant Panel.

4. Monitoring and Compliance Panel

4.1. There shall be a monitoring and compliance panel with advisory powers to:

- a) Determine whether a member state is complying with the provisions of this treaty;
- b) Ensure that there is compliance with recommendations of the Dispute Resolution Panel;

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- c) Recommend remedial action for bringing national law into conformity with the provisions of this treaty; and
- d) Refer a dispute to the Dispute Resolution Body for an interpretation of a substantial question of law.

Qualifications of Members

4.2. The Monitoring and Compliance Panel shall comprise of various experts in international trade law and nominated independent observers.

5. Dispute Resolution Panel

5.1. For the purposes of the implementation of this treaty, there shall be a Dispute Resolution Panel which shall be responsible for determining disputes that may arise from the application of this treaty.

Composition of the Panel

5.2. The panel shall comprise of a three-member committee comprising of the following:

- a) Presiding officer; and
- b) Two assessors.

Qualifications of Members

5.3. For a person to qualify for the position of presiding officer or assessor, he or she shall have the following qualifications;

- a) A sufficiently qualified person with a background in law;
- b) A private trade law practitioner; and
- c) An independent person without any affiliation or ties with the contracting parties.

Duties of the Dispute Resolution Panel

5.4. The duties/powers of the panel shall include;

- a) Adjudication of disputes before it; and

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- b) Provide advisory opinion on matters referred to it Monitoring and Compliance body.
- c) Subject to (a) and (b) the parties to a dispute may withdraw the case before judgment/ruling is passed by the Body.

6. Appellant Panel

For the purposes of the implementation of this treaty, there shall be an Appellant Body which shall determine all Appeals from the Dispute Resolution Panel whose decisions shall be final.

Qualifications of Members

6.1. The Appellant Body shall comprise of a five-member panel which shall comprise of the following members:

- a) Presiding officer;
- b) Two judges;
- c) One independent observers; and
- d) One secretariat.

Powers of the Appellant Panel

6.2. The Appellant Panel shall have the powers to inter alia;

- a) Determine Appeals from the Dispute Resolution Panel; and
- b) Review the interpretation of the Monitoring and Compliance Panel's interpretation of the treaty.