Globalization and Health Knowledge Network:
Research Papers

WHO Commission on Social Determinants of Health

Globalisation and policy space for health and social determinants of health

Globalization Knowledge Network

Meri Koivusalo
Ted Schrecker
Ronald Labonté

Institute of Population Health
Globalization and Health Equity

uOttawa
L'Université canadienne
Canada's university

Preface

The Globalization Knowledge Network (GKN) was formed in 2005 with the purpose of examining how contemporary globalization was influencing social determinants of health. It was one of nine Knowledge Networks providing evidence-informed guidance to the work of the World Health Organization's Commission on Social Determinants of Health (2005-2008): like most of the Knowledge Networks, its operations were financed by an external funder (in this case, the International Affairs Directorate of Health Canada, Canada's national ministry of health). The GKN conducted two face-to-face meetings to debate, discuss, outline and review its work, and produced thirteen background papers and a Final Report. These papers and the Final Report underwent extensive internal and external peer review to ensure that their findings and policy inferences accurately reflected available evidence and scholarship.

This GKN publication series was prepared under the general editorship of Ronald Labonté, with assistance from Vivien Runnels and copy-editing provided by Wayne Harding. All views expressed are exclusively those of the authors. A complete list of titles in the publication series appears on the inside back cover of this monograph.

Globalization Knowledge Network
Ronald Labonté (Chair)
Ted Schrecker (Hub Coordinator)

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Rhonda Carscadden: rhocaDESIGNS.com

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Authors

Meri Koivusalo
Globalism and Social Policy Programme
Helsinki, Finland

Ted Schrecker
Associate Professor
Department of Epidemiology &
Community Medicine
University of Ottawa

Ronald Labonté
Canada Research Chair
Globalization and Health Equity
Institute of Population Health
Professor, Faculty of Medicine
University of Ottawa

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CALPERS	California Public Employees' Retirement System
CBO	United States Congressional Budget Office
FAO	United Nations Food and Agriculture Organisation
FDI	Foreign Direct Investment
GATS	General Agreement on Trade in Services
GATT	General Agreement on Trade in Goods
GDP	Gross Domestic Product
IFI	International Financial Institution
IMF	International Monetary Fund
IPR	Intellectual Property Rights
ILO	International Labour Organisation
ISO	International Standards Organisation
MDG	Millennium Development Goals
NAMA	Non-Agricultural Market Access Negotiations
OECD/PUMA	OECD Public Management Programme
PRSP	Poverty Reduction Strategy Paper
R&D	Research and Development
SPS	Sanitary and Phytosanitary Agreement
TIAA-CREF	Teachers' Insurance and Annuity Association-College Retirement Equities Fund
TRIPS	Agreement on Trade-related Aspects of Intellectual Property Rights
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UN/DESA	United Nations, Department of Economic and Social Affairs
UNRISD	United Nations Research Institute for Social Development
WEF	World Economic Forum
WIDER	World Institute of Development Economics Research
WTO	World Trade Organisation

Abstract

This paper covers the concept of policy space and its potential relevance for health and social determinants of health. It first articulates issues with respect to policy space as a concept and its relationship to globalisation and social inequities in health. It then continues with a more specific assessment of issues with respect to global trade and economic policies. Restriction of national policy space must not be seen only in a negative light, but needs to be assessed in terms of the contents and the context in which external influence take place. Human rights treaties or global measures on labour rights and child labour can as well be seen as measures to limit national policy space. Global regulatory measures and treaties could be further utilised to enhance health and social determinants of health (SDH). Availability of national policy space, however, does not necessarily imply that it is or will be used for the benefit of health or SDH. Whether or not it is used is a matter of national politics; our concern in this paper is the role of policy space as an important if only potential means by which governments and their citizens can implement health policy aims that improve social determinants of health.

The focus of our paper is on the effects of globalisation, specifically global economic integration on policy space primarily through economic, trade and industrial policies. We conclude on the basis of theoretical and empirical evidence that: 1) globalisation is likely to expand social inequalities, 2) although there is some flexibility and presence of public health exceptions, global trade agreements do limit the policy scope that national governments have to intervene for health and social determinants of health, 3) economic policies influence the magnitude of public health spending as well as the focus of health spending within countries, 4) ideas matter, in other words, the diffusion of policies and assumptions of possible alternatives need to be seen as a part of globalisation and 5) there are means and mechanisms that can protect national and global policy space for health.

WHAT IS POLICY SPACE ?

Policy space can be defined in different ways depending on context. In this chapter we focus on policy space defined as the freedom, scope, and mechanisms that governments have to choose, design and implement public policies to fulfil their aims. Our concern is with how globalisation and the processes that comprise it are influencing the availability of such space, particularly with respect to the health equity and the social determinants of health (SDH). Questions of policy space have been raised mainly in the context of economic, trade and development policies. The standard assumption in global policy-making has been that multilateral trade and economic policies do not negatively affect health and its social determinants, or will have a positive effect as a result of economic growth. This paper examines these assumptions.

Globalisation-related restrictions on policy space are not necessarily inimical to improvements in health equity. Agreements entered into by governments, such as human rights treaties, core standards in labour conventions and environmental protocols can all contribute to improvements in SDH. Prevention of conflicts and maintenance of peace can have a profound influence on health and SDH and, again, may require restricting a nation's ability to act unilaterally (e.g., in the case of United Nations [UN]-sanctioned peace-keeping efforts). At the same time, the policy space that is available for protecting or improving health and SDH may not be used by governments for a variety of reasons that may be unrelated to globalisation per se. For example, even without external pressure governments may make choices in macroeconomic policy, trade, agriculture, or other sectors that restrict policy space for protecting and enhancing health and SDH. Policy space for health thus differs from national policy space as such; governments may choose, for example in trade negotiations, to favour their industrial or agricultural priorities above health and SDH. While the above points are important in understanding policy space more generally, the particular focus of this chapter is on the constraining effects of globalisation on policy space for health and its social determinants.

Policy space *for health* differs from the more general emphasis on policy space since it relates, in part, to the degree of freedom that sectoral ministries can exercise and maintain. Policy space for health can actually become constrained due to national policy choices in the sphere of economic, trade or agriculture even without external pressure or influence.

Globalisation and changes in national policies and policy processes

Policy space for health is influenced by both real and presumed shifts of power associated with globalisation. These power shifts influence the kind of action that can be taken with respect to health and SDH policies. Policy space for health is also influenced by processes and mechanisms by which policy priorities are determined within government. This is particularly the case for SDH, since these are influenced by policies implemented in other sectors and governed as part of broader decision-making processes. We suggest below four factors which may shape and frame capacities for utilising and understanding national policy space for health in the context of globalisation:

1. **Transparency and democratic accountability of decisions made.** The scope for national policy space may become restricted by global economic and trade policies irrespective of the nature of governance and democratic accountability within the country. However, it is important to consider the impact of transparency and democratic accountability for the scope of national policy space for health as this may either strengthen or weaken the scope of decisions that governments can take and, in particular, the scope of decisions addressing health or SDH. This issue of democratic process and accountability is separate from that of deliberative process (see point 3).

2. **The level of decision-making.** Crucial decisions affecting health, SDH and health systems are made at all levels of governance: local, sub-national, regional and global. One aspect of national policy space for health relates to the extent to which the accountability and authority for health and SDH policies are located at the same level as decisions made in other key policies that may affect health. For example, health policies and responsibilities for health often reside at a local level, whereas commercial policies are increasingly defined at national, regional and global levels as part of economic priorities and trade-related negotiations.

3. **Public participation and dialogue in the context of decision-making process.** Mechanisms of public

participation and dialogue can either strengthen or weaken the scope for health policy space depending on the nature, context and means of participation. For example, health and SDH concerns are not likely to be on the agenda of industrial policy-making and may be more easily undermined as part of the sectoral policy process, implicating the importance of public participation to strengthen the role of health considerations. On the other hand public participation involves all stakeholders and the ways in which often powerful industrial lobbyists and organisations are included in national and global policy negotiations, may have substantial relevance to health and public policy decision-making and scope.

4. Understanding public policies. Health policies and health systems are often poorly defined and understood even amongst proponents of health, yet such an understanding is essential for the articulation of policy space for health. There is a danger that health and social issues are discussed only in the context of targeted programmes for the poor, for particular diseases or in relation to access to particular technologies and medicines. This may bias the overall approaches towards residual social policies and provide less scope for broader redistributive measures or longer term action tackling health inequities and SDH.

The use of policy space in current global policy debates

The concept of national policy space was used, although not precisely defined, in the so-called São Paulo Consensus document that emerged from the 2004 United Nations Conference on Trade and Development, in recognition that:

> The increasing interdependence of national economies in a globalizing world and the emergence of rule-based regimes for international economic relations have meant that the space for national economic policy, i.e. the scope for domestic policies, especially in the areas of trade, investment and industrial development, is now often framed by international disciplines, commitments and global market considerations. It is for each Government to evaluate the trade-off between the benefits of accepting international rules and commitments and the constraints posed by the loss of policy space. It is particularly important for developing countries, bearing in mind development goals and objectives, that all countries take into account the need for appropriate balance between national policy space and international disciplines and commitments. (United Nations Conference on Trade and Development [UNCTAD], 2004, ¶ 8)

While the UNCTAD Conference consensus document sets the context for national policy space it tell us little about how (or how extensively) trade regimes constrain opportunities for economic (and social) policy, or about the content of the "appropriate balance" referred to.

A subsequent UNCTAD report emphasized the contraction of national policy space related for development as a consequence of the growing number of trade treaties, noting that:

> There are widespread concerns that the international trade rules and regulations, which are emerging from multilateral trade negotiations and a rising number of regional and bilateral trade arrangements, could rule out the very policy measures that were instrumental in the development of today's mature economies and late industrializers. This would imply a considerable reduction in the flexibility of national governments to pursue their development objectives. Another concern is that these rules and commitments, which in legal terms are equally binding for all countries, in *economic* terms might impose more binding constraints on developing than on developed countries, because of the differences in their respective structural features and levels of industrial development. (UNCTAD, 2006, p. XII)

The issue of policy space, particularly as a means of improving overall development goals, was stated again in one of the most recent UNCTAD Conferences (the so-called 'Accra Accord'), which emphasized that:

> The increasing interdependence of national economies in a globalizing world and the emergence of rules-based regimes for international economic relations have meant that the space for national economic policy, that is, the scope for domestic policies, especially in the areas of trade, investment and industrial development, is now often framed by international disciplines, commitments and global market considerations. It is for each Government to evaluate the trade-off between the benefits of accepting international rules and commitments and the constraints posed by the loss of policy space. It is particularly important for developing countries, bearing in mind development goals and objectives, that all countries take into account the need for appropriate balance between national policy space and international disciplines and commitments. (UNCTAD, 2008, p. 2)

A frequently stated concern is that World Trade Organization (WTO) disciplines either already in place or under negotiation will restrict the ability of developing country governments to utilize a range of policies that favor domestic producers and industries with the potential for rapid growth. This point is relevant to SDH because of the possibilities that rapid growth creates for poverty reduction and social provision in low-income countries, and because historical evidence shows that such policies including (but not limited to) highly flexible intellectual property protection regimes were routinely used by today's high-income countries during their process of industrializing. For this reason Chang (2002) describes the foreclosing of such options by today's trade policy disciplines as "kicking away the ladder" and warns of the impact of ongoing WTO negotiations that could further limit developing countries' remaining flexibilities (Chang, 2005).

To provide context for this debate: some of the most successful late-industrializing countries, notably South Korea, Taiwan and (more recently) China, have benefited from relatively dirigiste policies at least some of which would not be allowed under the current WTO regime (Akyüz, 2005; Rodrik, 2005). Looking to the future, Chang warns that many remaining policy flexibilities could be eliminated by the outcome of current WTO negotiations on non-agricultural market access (NAMA), thus "re-introducing precisely the trade rules employed by the imperial powers to stifle the development of poor countries" (Chang, 2005, p. 62). A similar concern has been expressed by the former director of the Division on Globalization and Development Strategies of UNCTAD, who notes that: "The principles espoused by developed countries in current negotiations on NAMA do not conform to their historical experience regarding the use of tariffs for industrial development" (Akyüz, 2005, p. 6).

However, identifying the hypocrisy of the industrialized world's trade policy stance is not the same as demonstrating the existence of meaningful constraints on developing country economic policies. In principle, it is clear that trade agreements can substantially limit the range of economic policy instruments available to governments, which is precisely their intent if such policy instruments restrict the cross-border flow of goods, capital or services. There is both concern and evidence over the constraining effects of trade treaties on access to medicines or health and safety regulation. Examples are harder to find of situations in which governments have been prevented by current WTO disciplines from implementing objectives related to economic development or redistributive social policy to which they were genuinely committed. The extent to which such measures are now in fact impermissible is less clear.

With respect to industrial policy, it has been argued that most of the requisite legal flexibilities still exist, and that the problem lies rather in the lack of "an explicit alternative vision" of development policy. An authoritative overview on the issue in relation to industrial policies is provided in Box 1. In terms of industrial policy the constraints might not be so much on ability to implement these, but on willingness to do so (Rodrik, 2004, p. 32). These observations, however, fail to explain why the necessary willingness or alternative vision remains absent, an issue revisited later in the paper.

In parallel with these developments, the term "fiscal policy space" has emerged—in the first instance in the context of sound macroeconomic policies as defined by the International Monetary Fund (IMF), but also in the more general context of "implicit conditionality" (Griffith-Jones & Stallings, 1995) demanded by financial markets. These issues are addressed in Section 4 of the paper.

Box 1. The WTO and Policy Space: An Assessment

It is generally held that many of the industrial policy instruments widely used by both mature and late-industrializers to reach their current levels of development are no longer available to developing countries because of multilateral rules and obligations, particularly in the WTO. While this is basically true and there is an urgent need for an overhaul of the multilateral system, closer examination shows that multilateral rules and practices allow wider policy space than is commonly believed or used. Here the main points are summarized.

First of all, a number of important areas of policy remain outside multilateral disciplines. There are hardly any rules in the international monetary and financial system obliging countries to adopt a particular exchange rate or capital account regime. Similarly there are no hard multilateral rules in several areas such as labour mobility, FDI, trade in services and competition policy. Constraints over policy in these areas are due to loan conditionalities by the Bretton Woods Institutions (BWI), bilateral or regional agreements, or unilateral commitments.

However, except for low-income countries dependent on official assistance, many of these constraints result from deliberate policy choices or from domestic policy failures to resolve deep-seated structural problems. For instance most middle-income countries in Latin America have been unable to remove their fiscal, savings and foreign exchange gaps and have become heavily dependent on foreign capital while others at similar levels of development, notably in Asia, have been able to do so and achieved a relatively high degree of autonomy vis-à-vis international financial markets and the BWIs.

There are important difference among countries in their willingness to put on the "Golden Straitjacket of Globalization" and to exploit the policy space allowed by existing multilateral rules and practices, and this explains in large part why there is still considerable policy diversity in the developing world. This is particularly so in money and finance. The variation in the degree of financial openness in developing countries cannot be explained solely by differences in the extent to which these countries have been subjected to IMF pressures for financial opening. Deliberate policy choices to find quick fixes for chronic fiscal, savings and balance-of-payments deficits by attracting private capital, have played an important part. Again, differences in the treatment given to short-term capital inflows between, say, Chile and Thailand in the 1990s cannot be explained by differences in the policy space available to them. Similarly, Malaysia did not have a greater space than Korea in adopting an unorthodox policy response to the 1997 crisis.

In WTO-related issues multilateral constraints are certainly tighter, but vary considerably among the four key areas of policy; industrial tariffs, subsidies, investment-related policies and technology-related policies. Moreover, the room is again wider than is often portrayed or used.

For most developing countries industrial tariffs are either unbound or bound at relatively high levels in the WTO while their tariffs actually applied are much lower because of voluntary unilateral liberalisation or the IMF and the World Bank conditionality. There is, however, considerable diversity. Average bound industrial tariffs for developing countries (excluding LDCs and first-tier NIEs) vary between 5 and 70 per cent while average applied tariffs vary between 2 and 31 per cent. Many countries which have undertaken voluntary and unilateral trade liberalisation still have considerable space in the WTO, but such space is rarely used even at times of serious balance of payments difficulties. Developed countries have been seeking to remove such flexibility by binding all industrial tariffs of developing countries at drastically reduced levels on the basis of the so-called Swiss formula, in effect translating unilateral liberalisation into multilateral obligations.

In industrial subsidies multilateral constraints are tighter. Here developing countries are quite ambivalent because, unlike richer countries, they often lack financial resources to provide support. The rules of the agreement on SCM (Subsidies and Countervailing Measures) apply not only to government subsidies but also to intra-private transfers resulting from government regulations. However, they impose few constraints on those countries seeking to subsidise development of a fledgling industry that may not yet be export-oriented or subject to significant import competition. This can be particularly important for small firms which usually begin by supplying local markets. Exceptions granted to poorer countries provide them more space than they can possibly exploit given their financial constraints. On the other hand even though the constraints brought by the agreement are particularly biting for middle-income countries in nourishing dynamic, high value-added industries, ambiguities surrounding the concept of specific, as opposed to general, subsidies allow considerable space which is often exploited by developed countries. Moreover GATS contain no subsidy discipline for services, and this leaves considerable room to developing countries in supporting industry-(production)-related services.

There are two main sources of WTO disciplines on investment-related policies; the agreement on TRIMs and specific commitments made in the context of GATS negotiations for commercial presence of foreign enterprises. A number of other agreements also provide disciplines, directly or indirectly, on investment-related policies such as the prohibition of investment subsidies linked to export performance in the agreement on SCM. The TRIMs provisions are particularly biting for FDI in manufacturing for domestic and/or international markets, but not for countries receiving FDI mainly for the exploitation of mineral resources, as in Africa. However, it is possible to design entry conditions of foreign enterprises in such ways as to circumvent restrictions over domestic content requirements. Besides, there are no restrictions over requirements for local procurement of services.

Several WTO agreements contain provisions that circumscribe technology-related policies in developing countries, but attention is focussed almost entirely on TRIPs. The TRIPs agreement does not constrain all possible instruments of technology policy, and several policies for technological capability-building at the firm level still remain outside WTO disciplines. More importantly, as extensively discussed in the literature on the impact of the TRIPs agreement on policy space, there are several flexibilities which the developing countries can turn to their advantage in the design and application of a regime for the protection of IPRs

In all these areas there is considerable diversity in the developing world. While some countries pursue an open door policy for FDI others pick and chose where to allow the TNCs to invest, how much they can own and how they should produce. Technology policies, including R&D subsidies, are seen as a key instrument of upgrading in more dynamic economies whereas in others unbridled competition is expected to settle the matter. Generally, policy diversity spans across the entire spectrum between the neoliberal approach advocating rapid liberalisation and full integration into the global markets, and the approach that recognizes the limits of both markets and government intervention, and advocates a strategic integration. Unlike the predictions of free-market pundits, economic globalisation is not leading to the demise of the nation-state, and putting all policy-makers in the "Golden Straitjacket" of free markets, even though there has been a certain degree of harmonisation of policies in the direction dictated by the dominant neoliberal ideology.

The above discussion implies that return of the development paradigm to replace free market ideology requires action on three fronts. First, there is a need to restructure multilateral disciplines to widen the boundaries of policy intervention for development. This should be an exercise in rationalisation, rather than doing away with multilateralism. Second, for some countries there may be both the need and scope to regain the policy space and flexibility lost through unilateral action. It is true that policy reversal can be quite costly, but this may be worth considering when potential benefits are large. Finally, it is important to use the space that is available and to innovate– something that calls for a fundamental rethinking of economic policy in many developing countries.

(Source: Contributed by Yilmaz Akyűz, based on Akyüz, 2007)

Policy space as means to address social determinants of health

Action on SDH can be sought through public policies that involve regulatory power or the mobilisation of public spending and governments' administrative resources. It can also be sought through voluntary measures, public-private partnerships, encouragement of savings and individual responsibility, and subsidies to individuals within a more market friendly environment. The ways in which social determinants are tackled are embedded in political structures, priorities and preferences that differ among nations. Common among nations is the fact that SDH tend to be beyond the reach of policy instruments available to health ministries (or agencies at a more local level similarly concerned with health), yet they influence health outcomes substantially. Our emphasis in this particular context is not so much in terms on how trade or economic policies influence health as such, but on how these may - or may not - limit the scope of public policies to address health priorities or actions to tackle SDH. There is some evidence that public health issues are increasing in importance in global trade and economic policy discussions, ranging from recognition of the substantial costs of epidemics to the economy (World Health Organization [WHO], 2007) and the subsequent revision to International Health Regulations (IHR). Concerns over the health hazards and economic costs of tobacco consumption led eventually to the Framework Convention on Tobacco Control which imposes some regulatory limits over the tobacco industry (though not on trade in tobacco products per se). As well, several WTO agreements contain specific health-related exceptions. As this paper will both show and argue, however, these indications of public health presence in global trade and economic policies are too few and too weak at present to adequately protect policy space for health.

GLOBALISATION, TRADE AND SOCIAL INEQUALITY

The relationships between globalisation, trade and social inequality are becoming more widely recognised. Rodrik (2007), for example, highlights the importance of policy space as a means of addressing some of the negative social impacts that trade openness creates without falling into full protectionism. The issue of policy space is part of broader debates on social inequalities, globalisation and trade.

The debates on globalisation and social inequalities, in turn, are embedded within a longer and broader one concerning the impact of global economic and trade policies on poverty reduction (see e.g., Birdsall 2006a, 2006b). In the late 1990s, for example, it was claimed that trade liberalisation is beneficial for poverty reduction based on the now well-known Dollar and Kraay studies (Dollar & Kraay 1999, 2002). More generally, even the proponents of trade liberalisation who argued that *poverty* would be reduced, conceded that economic *inequality* would increase. Birdsall makes the point even more emphatically, stating that "[a] fundamental challenge posed by the increasing reach of global markets (globalisation) is that global markets are inherently disequalizing, making rising inequality within developing countries more rather than less likely" (2006b, p. 18). This disequalizing effect is indirectly important with respect to policy space, since it reduces the bargaining power (and hence future policy space) of those developing countries that fall behind. It also reduces governments' fiscal capacity to use what policy space remains. According to Birdsall (2006b, p. 22), this disequalizing effect exists because:

1. Global markets reward more fully those countries and individuals with more of the most productive assets. (Call this, for simplicity, the market works.)

2. In the global economy, negative externalities raise new costs for the vulnerable and compound the risks faced by the already weak and disadvantaged. (Call this, for simplicity, the market fails.)

3. In the global economy, existing rules tend to benefit most those countries and individuals who already have economic power. It is natural that the richer and more powerful manage to influence the design and implementation of global rules – even those rules meant to constrain them – to their own advantage.

This advantage extends beyond "hard" legal and economic influences, such as trade treaties or conditionalities associated with loans or aid, to "softer" influences: what is assumed as possible in the context of globalisation and the imperative of maintaining national competitiveness. Thus, as the 2005 report of the United Nations Department of Economic and Social Affairs concluded, the current international trade and financial system is exerting at least some constriction on policy space, in part because "decisions or actions required to advance social policies and social equality are usually perceived as unnecessary costs … in conflict with the preservation of a country's international competitiveness," a perception the report further noted as "mistaken" (United Nations Department of Economic and Social Affairs [UN/DESA], 2005, p. 105).

This has implications for high-income, as well as low- and middle-income, countries. For example, comparative research on welfare state programs in the industrialized world generally concludes that globalisation's influence on spending levels and the extent of "decommodification" has been limited, and that domestic politics and institutions are at least as important in explaining the changes in social provision that can be observed (Genschel, 2002, 2004; Pierson, 2001; Swank, 2001, 2005). However, a study of industrialized welfare states for which data are available found that they failed to compensate for the effects of growing inequality in market incomes during (roughly) the post-1980 period of contemporary globalisation; all they did was to blunt its impact (Kenworthy & Pontusson, 2005). A further concern is that some quantitative measures of redistributive impact may understate the extent of what Hacker (2004) has called "privatization of risk" as an element of welfare state retrenchment in the US; there and elsewhere, it is exemplified by policy-driven changes in access to health care arising, e.g., from increased deductibles and co-payments or reduced coverage, which may have important long-term consequences for both health status and economic mobility.

Globalisation and social inequalities debate

Accepting that trade treaties are specifically designed to limit policy space in some areas, it is important to ask whether this limitation is negatively affecting health. Other papers produced by the Globalisation Knowledge Network address part of this question (e.g., Blouin, Bhushan, Murphy, & Warren, 2007). Our focus here relates to the debate and emphasis on poverty reduction in defence of trade liberalisation, which was prominent, in particular, in the late 1990s. The core claims that trade liberalisation - and further negotiation of trade agreements - are beneficial for the poor were based on the now well-known Dollar and Kraay studies, noted above, and the claims that liberalisation of trade benefits the poorest sections of society proportionally as much as it helps the richer (Dollar & Kraay, 2002). The initial studies and their further elaboration have been critiqued by several other economists and researchers in terms of methods, data and choice of countries and time-frame (Lubker, Smith, & Weeks, 2002; Milanovic, 2003; Nye, Reddy, & Watkins, 2002). Included as part of the criticism were the observations that the basic result of this research was problematic in terms of poverty reduction, since there was an implicit recognition that social inequalities would grow. This was due to the proportional nature of the argument: that the while the income of everybody was to increase, this was *proportional to existing income status.* Thus even on the basis of this most mainstream assessment used for promoting trade and globalisation as part of broader poverty reduction, the absolute level of social inequalities was predicted to increase.

The relationship between globalisation and inequalities has been debated since the early 1990s, often with reference to the broader impacts of global economic integration, the influence of international financial institutions and measures to increase trade liberalisation. In this context, an earlier WIDER study by Cornia and Court (2001) concluded that globalisation's main impact on poverty and social inequalities was mediated by the financial and economic reform policies and influence of the international financial institutions and the opening of financial markets. The impact of trade agreements was considered of lesser importance.

Irrespective of the debate concerning the relationship between social inequalities and trade, there is now increasing evidence on global disparities both between and within countries. A recent WIDER study has further drawn attention to the increasing global inequalities on the basis of world distribution of household wealth (Davies, Sandstrom, Shorrocks, & Wolff, 2008). According to the survey, this distribution is highly concentrated, much more so than the distribution of income. The richest 2% of the adults in the world own more than half of global household wealth and the richest 10% of adults accounted for 85% of the world total. In contrast the bottom half of the world adult population owned barely 1% of global wealth. While the distribution of household wealth tells us little about direct impacts of globalisation as such, it does give us a perspective and basis for further concern over growing global social inequalities.

Active redistribution policies do matter, as shown by a recent analysis of economic statistics for 18 countries in Latin America and the Caribbean, a region where intra-national economic inequality is either the highest in the world or close to the highest (Hoffman & Centeno, 2003). The analysis concluded that even modest initiatives to redistribute income to the poorest residents would have a more substantial impact on their standard of living than many years of solid economic growth if current levels of income inequality remained unchanged (Paes de Barros et al., 2002) – an application at the regional level of the New Economics Foundation's insight about the relative ineffectiveness of growth in reducing poverty worldwide (Woodward & Simms, 2006). This has, however, not gained as much attention as the more recent promotion of trade, globalisation and economic growth as main means to reduce poverty.

Globalisation and its impacts on poverty reduction measures

One of the main linkages between globalisation and social inequalities involves the impact of globalisation on social regulation and the means of redistribution. Basu (2006) has argued that the current process of globalisation and promotion of trade liberalisation increasingly compromises social interventions or poverty reduction measures. She calls for stronger global governance to coordinate social policy measures and interventions, emphasising in particular the absence of existing global normative actors with a focus on social inequalities and poverty.

The United Nations Department of Economic and Social Affairs publishes every second year an assessment on the world social situation, the Report on the World Social Situation. In 2005 this report was compiled with a focus on social inequalities, stating that:

> Policy space in most countries is somewhat constricted under the current international trade and financial system. Global competitive pressures tend to restrict a country's policy choices and often have an

adverse effect on social development, since decisions or actions required to advance social policies and social equality are usually perceived as unnecessary costs. Put simply, social development policies are often mistakenly considered to be in conflict with the preservation of a country's international competitiveness. (UN/DESA, 2005, p. 105)

General assumptions about the (free-trade) impacts of globalisation on public policies are usually based either on the positive assumption of longer-term upward convergence (e.g. wages and working conditions) or the negative assumption of so called "race to the bottom" argument. The latter is based on the assumption that liberalisation of trade empowers global corporations and investors and enables them to shift - or threaten to shift - investment towards countries with less regulatory measures, lower tax rates and cheaper labour costs that enable lower overall production costs. This argument assumes that production costs are the main costs of core relevance to corporations. This may not always be the case in practice, especially if transport costs and closeness to markets are significant. It is further argued that in order to lower production costs and so respond to global competition, and to constrain the mobility of high-earning individuals, the capacities of governments to tax and regulate industries become more limited. Reduced government fiscal capacity constrains the capacity to implement broader social policies. Variants of the race to the bottom - or downward harmonisation - argument have been brought up in the following contexts:

1. regulatory standards and standard setting and safety of goods,

2. labour rights, flexibilities and conditions of production

3. government abilities to tax and collect revenue and

4. collective organisation of social security, pensions, unemployment benefits and social care due to increased individual mobility.

Assessment of the impacts of globalisation is often based on assumption rather than reality, but these assumptions may themselves be influential, to the extent that governments or electorates (in democracies) accept and act upon them.

Other policy space concerns relate to what could be described as a "race to the top," at least with respect to protection of intellectual property rights which has been strengthened substantially in the context of economic integration and globalisation. The policy space issue is thus not about free trade and its impacts on national regulation *per se*, but on the implications of specific economic policies and trade agreements on resources, organisation, regulatory measures and standard setting in policies affecting health and its social determinants. In other words the issue is not merely about free trade and deregulation, but how globalisation introduces and expands global regulatory measures for the purposes of increasing global economic and trade policies.

The impact of trade on SDH and national policy space is related to the scope and nature of existing government policies and willingness of governments to use the available scope for change. This willingness is not only a result of pressure from multinational firms or other external actors, or of their anticipated responses to government use of available policy space, but also of the positions taken by domestic industries and of governments' other policy and political priorities. Industrial policy considerations and the quest for foreign direct investment arguably help to explain why, for example, few governments have made use of policy flexibilities in TRIPS, as clarified in the Doha Declaration on TRIPS and Public Health. In practice, it is often difficult to separate clearly the role of domestic and external influences.

Globalisation as such does not preclude government action or larger public sectors. In practice large public budgets and rather comprehensive labour policies have been shown to be possible in the current context of globalisation. The Nordic countries, for example, have been identified as effective globalisers in spite of their large public sector and high taxation rates (A.T. Kearney, Inc., 2006). While it is also clear that globalisation has created pressure to lower taxes and re-structure the public sector within these countries (Dreyer Lassen & Birch Sorensen, 2002; Valtioneuvosto, 2004), ideas and expectations are often equally powerful in legitimating decisions, especially those required due to assumed unavoidable pressures from globalisation.

A series of cross-national comparison studies of the relation between globalisation and core labour rights identified by the International Labour Organization[1] failed to find negative effects of global economic integration, as measured by openness to trade and foreign direct investment (Neumayer & De Soysa, 2005, 2006, 2007). Openness to trade was in fact associated with higher respect for women's economic rights, a lower prevalence of forced labour (Neumayer & De Soysa, 2007) and higher respect for free association and collective bargaining (Neumayer & De Soysa, 2006); higher levels of foreign direct investment were associated with lower prevalence of child labour (Neumayer & De Soysa, 2005); and no statistical support was found for the 'race to the bottom' hypothesis. While the findings by Neumayer and De Soysa do not support the hypothesis that globalisation creates a strong constraint on national policy space as it relates to labour rights, the authors are emphatic about the limited inferences with respect to causation that can be drawn from their findings. More importantly, the findings cannot be used to infer that globalisation is beneficial in terms of labour outcomes as distinct from process-related variables such as free association and collective bargaining: "It is entirely possible, of course, perhaps even likely, that globalization boosts the bargaining power of capital at the expense of labor, which would put downward pressure on outcome-related labour standards such as wages, working times and other employment conditions. These have not been the subjects of our analyses" (Neumayer & De Soysa, 2007, p. 1532). Stated another way, the assumption of convergence may not hold in a more liberalised policy environment, where developing countries become confronted with pressure from multinational industries and capacity to shop for the lowest regulatory pressure.

Because labour markets, employment and working conditions are being examined in more detail in other KN papers, our focus here is on trade agreements, economic policy priorities and capital movements, and to the scope for regulatory measures that are available to governments.

TRADE AGREEMENTS AND POLICY SPACE FOR HEALTH AND SOCIAL DETERMINANTS OF HEALTH

General issues

Multilateral, plurilateral and bilateral agreements made in the context of trade and investment policies and intellectual property rights protection represent the "hard law" at the core of global economic integration. These agreements form the global commercial legal framework for governments to which they are accountable, and have been called the "legalisation" or "constitutionalisation" of global governance in the economic sphere (see e.g., Coicaud & Heiskanen, 2001; Goldstein, Kahler, Keohane, & Slaughter, 2001). Gill and Bakker describe "new constitutionalism" as an approach that "seeks – in the terminology used by the World Bank – to 'lock in' the rights and freedoms of capital (or large property owners); and to extend and to secure those rights from political threats" (2006, p. 36). This new constitutionalism involves interrelated measures that combine to provide some of the legal and political means to minimise investor uncertainty across different jurisdictions, and more fundamentally to expand the scope of operation of corporations and investors to new markets in order to facilitate and extend profit-making. Keohane, Moravcsik, and Slaughter (2001) have further pointed out that while in GATT and WTO governments nominally control access to the legal processes, in practice, and at least in the United States, injured industries are closely involved both in the initiation and the conduct of the litigation by their government.

Negotiation processes and influence of power relations

Even if more policy flexibility is available under WTO agreements as they are currently written than more pessimistic assessments conclude, reasons exist for concern. WTO negotiations are ongoing and flexibilities that exist today may be precluded tomorrow on the basis of bilateral agreements or further negotiations. This is a special concern because of the inequalities in resources and bargaining power that characterise the trade policy arena. Developing countries as a rule do not have access to the professional expertise either in Geneva or in their capitals that is needed to participate effectively in multiple trade negotiations[2]; lack of resources also limits their ability to pursue dispute resolution (Jawara & Kwa, 2003). Furthermore, differences in national market size affect not only initial bargaining positions but also the ability to

[1] Freedom of association and collective bargaining, elimination of child labour, elimination of forced or compulsory labour, elimination of discrimination in employment and occupation.

[2] Interviewed in 2005 by a *Financial Times* reporter, Zambia's trade minister compared the size of his staff with the number of journalists covering trade issues for the paper: "The FT has more capacity to do trade policy than we do" (Beattie, 2005).

make use of dispute resolution even when the outcome is favourable: "The sanction for violating a WTO agreement is the imposition of duties. If Ecuador, say, were to impose a duty on goods that it imports from the United States, it would have a negligible effect on the American producer; while if the United States were to impose a duty on goods produced by Ecuador, the economic impact is more likely to be devastating" (Stiglitz & Charlton, 2004, p. 504). Moreover, flexibilities that exist *de jure* in trade treaties may not be available *de facto*, because of such factors as lender conditionalities (section 2.2.ii) and competition for foreign direct investment (section 2.2.iii).

The WTO is only part of the international trade policy regime; bilateral and regional agreements, including hub-and-spoke agreements between industrialized and developing countries, are increasing in number and importance. In late 2004 approximately 230 regional trade agreements (RTAs) were in place. According to the World Bank, trade between RTA partners made up nearly 40 percent of total global trade in 2004 (World Bank, 2004, p. 27; see generally pp. 27-56). According to Choudry (2005), by the end of 2002 more than 2,200 bilateral investment agreements were in place. In many such negotiations and relationships, disparities in bargaining power and resources may be even more imbalanced than at the WTO, and "WTO-plus" provisions emerging from these settings may vitiate whatever gains in terms of market access and domestic policy flexibility that developing countries are able to secure within the WTO framework.

Bilateral and regional agreements have actively sought to incorporate intellectual property protections that go beyond those contained in the WTO TRIPS Agreement (Fink & Reichenmiller, 2005; Krikorian & Szymkowiak, 2007; Roffe & Spennemann, 2006). In a study of agreements between the United States and developing countries, in particular NAFTA, (Shadlen, 2005a) contrasts the industrial policy flexibility that developing countries still retain as members of the WTO with much more restrictive provisions on such areas as investment and intellectual property in bilateral and regional accords. Indeed, both the EU and the United States appear to be using such agreements as the first stage of a strategy in which their provisions subsequently become *de facto* minimum standards of market access and investor protection. This is partly because of the most favoured nation provisions of the WTO regime, and partly because "[o]nce a number of countries are already committed to tougher trade and investment rules through a bilateral agreement, it will be more difficult to mount the kind of concerted opposition to US proposals which Brazil helped to lead at the WTO Ministerial in September 2003" (Choudry, 2005, ¶27). On this view, even under the best of circumstances subsequent multilateral trade agreements are likely to reflect the asymmetrical relationships that characterized previous bilateral and regional negotiations – a point worthy of special consideration when developing country governments consider what trade policy stances to adopt, and members consider proposals for reform of the WTO regime.

Systemic impacts of trade agreements on national policy space for health and social determinants of health

Recognition of power politics in trade negotiations is important, but there are also five main aspects of the content and focus of trade agreements that must be considered:

1. The impact of trade agreements on social inequalities and the scope for redistributive and social interventions addressing distributional issues, due to the overall policy framework of enhancing trade liberalisation and competitiveness.

2. The impact of trade agreements on national and global mechanisms on environmental, health and other safeguards, and on standard setting levels for health protection, occupational health and safety and working conditions.

3. The impact of trade agreements covering services on the scope of domestic regulation and mechanisms of government procurement that can be used to address SDH.

4. The impact of trade agreements on governments abilities to regulate or limit the free movement of goods and services, including goods hazardous to health and goods and services related to financing and provision of health services and movement of health professionals.

5. The impact of protection of intellectual property rights on access to technologies, research and development for public health needs and purposes, including access to data concerning the process of licensing of medicines and costs, quality and safety of medicines, and on the abilities of

governments to manage overall health care costs through national policies.

Trade agreements, such as the General Agreement on Trade in Services (GATS), do contain statements recognising the right of governments to regulate for the purpose of achieving their set aims. Such assurances, however, need to be seen in the context of ongoing negotiations and *how* these aims are to be met. Moreover, as is the case with GATS, many of these claims are made in the preambular statements of treaties, which make them weaker in the context of dispute settlement case. It is thus important to assess the actual stipulations within the legally binding text of the treaties themselves.

Even though regulatory measures for stated aims are granted, trade agreements may still influence the capacities of governments to implement public policies on the basis of 1) competitive forces and 2) *how* governments will be able to tax, gather resources and regulate. It is the distinction between the vague definition of the right to regulate and the lack of explication under which conditions this regulation is allowed, which creates broader confusion in the area, and at times possibly false assumptions that policy space is not compromised by trade treaties. This is occasionally confirmed by explicit stipulations emphasising the right to regulate, provided it is done in line with the stipulations of the particular trade agreement.

The very purpose of trade agreements, of course, is to regulate government actions so as to liberalise trade and ensure protection of intellectual property rights. This implies, by necessity, that commitments made within the scope of trade agreements do restrict *how* governments can regulate, subsidise and interfere with markets or limit access of foreign goods or service providers to national and local markets. This does not imply that there is no flexibility or scope for government measures. Some agreements, such as GATS, give substantial initial leeway in how far and which sectors governments might wish to include as part of the agreement and what kind of conditions they wish to set. Others, such as TRIPS provide leeway in the context of exceptions and flexibilities which governments may introduce to their national legislation. . In contrast to lowering tariffs, however, the implications of enhancing services trade and protection of intellectual property rights extend much further into the national policy arenas.

The *interpretation* of trade agreements is an important part of their use, engendering some major debates in relation to health. The interpretation of the right to use compulsory licensing is one example. Until the Doha Declaration on TRIPS and Public Health, there was an alternative interpretation of Article 31 that compulsory licensing was permissible *only* in cases of national epidemics or emergencies. This interpretation was evident, for example, in the European Union submission to the negotiation documents of the Geneva follow-up to the Copenhagen Social Summit. No such claim, however, is actually made in the TRIPS Agreement (World Trade Organization [WTO], 1995a). The Doha Declaration thus was helpful in clearing up interpretational issues, but others remain on the agenda, for example, interpretations concerning the requirements for the protection of test data (Correa, 2002, 2007a, 2007b). The Doha declaration on TRIPS agreement and public health in the paragraph 4 did emphasise that:

> We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm **that the Agreement can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all.**
>
> In this connection, we reaffirm the right of WTO members to use, to the full, the provisions in the TRIPS Agreement, which provide flexibility for this purpose. (WTO, 2001b, our emphasis)

The importance of the Doha Declaration language is thus that it set the balance of interpretation and implementation of TRIPS to be supportive to the right to protect public health and to promote access to medicines for all.

Trade agreements and standard setting

The impact of trade agreements on national and global standard setting mechanisms is a highly contested area. A general assumption on the part of those involved in negotiating or interpreting trade agreements is that higher standards are or may be used against other countries as disguised means of protectionism. World Bank research papers have pointed out how European health and safety legislation, in particular, can be seen as contrary to developmental priorities (Otsuki, Wilson, & Sewadeh, 2000; Wilson & Otsuki, 2003). While a case can be made that health standards applied to imported products should take into account the positive effects of access to global markets on SDH in the exporting countries, this opens up scope for the potential undermining of health and environmental legislation.

GATT Article XX does allow stricter regulations to protect public health; however, the chapeau[3] that has been set to limit its use requires a country using this right to respond to stringent scrutiny of the measures and to carry the burden of proof that they have assessed the risks and that no lower standards prevail in "like" countries. The use of this chapeau was further elaborated in relation to the Article XX (b) in the Agreement on Sanitary and Phytosanitary Measures (SPS) in 1994. It is in this context that the WTO dispute on hormones in meat products has taken place (WTO, 1998, 2008a, 2008b). The European Union banned the use of the hormones within its borders and so also banned imports of beef from other countries that used these hormones, that is, the ban was non-discriminatory (non-discrimination, or treating imports the same as domestic products, is one of the key axioms of all trade treaties). The USA and other countries nonetheless argued successfully that the European Union had not carried out sufficient risk assessment studies (as required by the SPS) to warrant the EU's more stringent standards than those applying in the USA, considered a "like" country. This dispute has been an ongoing one, with the latest panel decision in early 2008, initiated by the EU to end the continuing sanctions imposed by Canada and the US, reiterating that the European Union ban was still inconsistent with the SPS Agreement. (WTO, 2008a, 2008b).

Problems with standard setting and precautionary measures are as much an issue between rich countries as between rich and poor ones, as can be seen in the case against legislation banning products containing asbestos brought by Canada against the European Union (WTO, 2001a). In this dispute it was claimed that the European Union Member States' asbestos ban was against trade rules, since these countries permitted the use of glass fibre insulation which are "like" products to asbestos and so covered by the non-discrimination principle of all WTO agreements. The European Union lost the initial case in the dispute settlement, but the WTO's Appellate Body (which must authorise dispute panel decisions), after receiving many complaints about the dispute panel's decision, allowed the EU to maintain its asbestos ban (WTO, 2001a).

Another example in relation to environmental health can be found in the ongoing case of the European Community vs. Brasil regarding used (retreaded) tires (WTO, 2007a, 2007b). In this case Brasil prohibited the importation of used tires on the basis of environmental health concerns, arguing that their shorter life spans (compared to new tires) accelerated the accumulation of discarded tires which became breeding grounds for insect-borne diseases. Brasil lost this case in the dispute settlement, which the EU took as well to the Appellate Body (WTO, 2007a, 2007b). Neither panels disagreed with the health concerns and arguments presented, but with how the ban was implemented. Due to an earlier trade agreement with neighbouring countries (the MERCOSUR agreement), imports of retreaded tires from these countries were allowed on the basis of court injunctions. This legal requirement resulted in the import ban on retreaded tires from the EU being applied in a manner that constituted arbitrary or unjustifiable discrimination within the meaning of the chapeau of Article XX. In other words, while the public health case for the ban was approved, the implementation of this ban due to the court-imposed exemption for MERCOSUR countries violated other requirements of WTO agreements. To address this violation, Brasil will have to change the MERCOSUR agreement.

What all three of these cases imply is that imposing a ban or a national measure for public health purposes, in the context of trade agreements, is no longer only a national issue. Furthermore, it emphasises the complexity of issues across regional, bilateral and global trade agreements.

Other concerns exist with respect to particular goods known to be harmful to health, such as tobacco and alcohol, for which governments may have clear aims to restrict or limit marketing and consumption. Public policies in relation to alcohol and tobacco products have already been the subject of several trade disputes concerning national policies to tax or limit availability (WTO, 1999, 2005a, 2006) with direct constraints on national policy space. The Chilean case, for example, dealt with how taxation limits on the basis of alcohol content gave more beneficial tax treatment to the local product (Pisco) with lower alcohol content in comparison to imported alcohol products (WTO, 1999). While restriction of availability and taxation are known to be

[3] A chapeau is a leading sentence or preambular part of text which sets the context and basis for interpreting and using particular stipulations. In this case the chapeau sets the requirements for the use of Article XX.

effective strategies to reduce consumption of health-damaging products, such policy measures are also more vulnerable to challenge in the context of trade policies in comparison to more individualized and less market restrictive forms of intervention (see e.g., Babor et al., 2003; Shaeffer et al., 2005; Yach & Bettcher, 2000)

WTO agreements are concerned about the mobility (cross-border trade) of goods and services - not with their production practices. This is a more widely recognised issue with respect to environmental and labour policies, but bears relevance also to health policies. The lack of focus on production practices implies that in the context of WTO the means of addressing labour rights, safety and otherwise problematic production methods are very limited so long as the end products can be considered safe. This has been an issue with respect to animal rearing practices and the beef-hormone case between the USA and European Community (WTO, 1998) described earlier. The prohibition of unsafe, dangerous or inappropriate production *practices* on the basis of public health concerns in the context of WTO is difficult and, according to the current interpretation, applicable only if these lead to clear hazards that can be recognised as *health hazards* in the *end products*, and only then if identified as such through appropriate risk assessment studies (see e.g., WTO, 2008a, 2008b).

Labour and employment issues are of crucial relevance in trade liberalisation. Two reinforcing agendas have been argued for protecting labour standards: an 'offensive' agenda of enforcing core labour standards on the basis of WTO agreements, and a 'defensive' agenda of ensuring that WTO agreements do not undermine existing labour standards, occupational safety and employment conditions. Efforts to integrate core labour rights or labour standards into trade agreements, notably by way of social clauses, have been strongly opposed by lower income countries as means of protectionism by the industrialised countries. Such efforts have also been opposed on the basis that using WTO-enabled trade sanctions to enforce labour rights or other multilateral standards (including human rights) is not the correct means to address the problem (see e.g., Basu, 2005); rather, for labour rights and occupational standards, the International Labour Organisation and not the WTO would be the appropriate forum, albeit one lacking the enforcement mechanisms available through the WTO dispute settlement process. The WTO Singapore Ministerial meeting in 1996 explicitly emphasised the ILO as the forum where labour standards are defined and that "We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question" (WTO, 1996, ¶4).

The emphasis on the use of the WTO "muscle" as means to all non-trade standard-setting has two problems. The first is that the WTO mandate applies only to tradable goods and services, i.e., to the export sector of production. While improvements here might trickle down to the domestic production sector, this is not guaranteed. The second is that it is probable to assume that standards and regulatory aims approved in the context of the WTO, where the institutional emphasis is on ensuring least trade restrictive practices, would be less comprehensive than what could be achieved through other global normative UN specialised agencies with responsibilities in particular substantive fields, such as the ILO, WHO, FAO and UNESCO.

A second aspect of the standard setting applies to global decision-making power on standards which indicates a shift towards more industry owned or oriented organisations, such as the International Standards Organization (ISO), or towards voluntary measures outside the global normative organisations operating in the field. This shift is complemented by an increasing emphasis on voluntary codes and industry driven mechanisms as priority means for seeking coherence in technical and other standards, rather than on regulatory frameworks. It is problematic if national standards can become challenged on the basis of reference to global corporate standard-setting work. Particular attention has been drawn to the ISO, a nongovernmental organisation dominated by industry associations with less government, in particular developing country government, participation than is found in intergovernmental organisations (see e.g., Mattli & Büthe, 2003; Nadvi, 2008; Yates & Murphy, 2007). The expanding role of ISO standards in the fields of environment, services sector and occupational health and safety has implications for how standards are set that may then be invoked during trade disputes (Braithwaithe & Drahos, 2000; International Standards Organization [ISO], 2006). In health, particular attention has been given to the relation the role of the tobacco industry in determining the evidence and standard setting on tobacco and tobacco products in the ISO, including the measurement of cigarette tar and nicotine yield (Bialious & Yach, 2001).

Another instance of this is how trade policy interests influence standard-setting at global level. Two WTO agreements, the SPS and the Agreement on Technical Barriers to Trade (TBT), defer to the *Codex Alimentarius Commission,* a joint FAO and WHO food standard-setting organisation. This changed the global relevance of the Codex substantially as until then it dealt only with voluntary standards. Veggeland and Bogen (2005) have pointed out that while national and economic interests have always been part of Codex decision-making process, since the establishment of the WTO countries have argued more in favour of norms that to a large extent are compatible with their national interests as manifested in the WTO negotiations. They further note that this is a development which may conflict with the mandate of Codex (Veggeland & Borgen, 2005). This raises two issues in relation to national policy space, firstly in terms of the increasing relevance of standards set by Codex and secondly, the ways in which this process is itself becoming increasingly shaped by trade policy interests.

Policy discussions in one forum may also be shifted to another forum where particular interests could be met more easily. Braithwaithe and Drahos (2000) describe this practice of "*forum shifting*" as part of international policy-making in a context of global regulatory action, with examples of how crucial intellectual property rights issues were shifted from UNESCO to the World Intellectual Property Organisation (WIPO) at the same time as issues related to pharmaceutical policies were shifted out of the WHO. The WHO Intergovernmental Working Group on Public Health, Innovation and Intellectual Property Rights (IGWG), in turn, has been blamed for forum shifting by returning these debates, at least in part, back to WHO oversight, although with differing reasons from developed and developing countries. In the context of the IGWG work, developed countries argued that issues of trade, technology transfer and intellectual property rights should not be part of WHO business, while developing countries expressed concern with WHO engagement on issues related to removal of taxes and tariffs related to medical goods, and how counterfeiting of drugs was dealt with.

Global trade-related standard setting and regulatory work in other "non-trade" substantive areas have surfaced, especially in relation to multilateral environmental agreements and commitments, and further attention has also been drawn to human rights aspects of trade agreements (Cottier, Pauwelyn & Bürgi, 2005; Dommen, 2002; WTO, 2001a). Pauwelyn (2003) in analysing conflicts between trade and other international law concluded that, in the event of conflict involving WTO provisions, WTO provisions may not always prevail, including before a WTO panel. Being a framework agreement in respect of most trade matters, it will often have to give way to, for example, multilateral environmental agreements (MEAs) or other conventions imposing obligations or granting explicit rights in terms of trade restrictions applied to particular products or for particular reasons. The negotiations of the UNESCO convention on the protection and promotion of the diversity of cultural expression provides an example, as this convention specifically seeks to ensure that national policies to protect and promote cultural diversity and heritage would not be undermined by trade-related requirements for non-discrimination in market access for cultural goods and services (United Nations Educational, Scientific and Cultural Organization [UNESCO], 2005). Following on from this example, a *global* articulation of the importance of national policy space for health and actions to improve the SDH could be of importance in reducing trade agreement erosion of such policy space.

Trade agreements and scope of public policies and regulatory measures

Changing context of public provision

The impact of liberalisation of trade in goods remains limited to border and subsidy measures, with less effect on national regulatory policies apart from standard setting. However, national policy space and regulatory freedom are more likely to be constrained by measures respecting government procurement and domestic regulation covering trade in services. The impact of negotiated agreements needs to be set in the context of global changes in public administrative practices, which increasingly favour more contractual arrangements in public services and decentralisation of administration. While trade agreements do not directly oblige or force privatisation of public service and do leave substantial scope for governments to act, they do facilitate privatisation and/or make it harder to retreat from earlier administrative reforms, especially in light of ongoing service sector trade negotiations. The General Agreement on Trade in Services (GATS), for example, includes an umbrella commitment towards progressive liberalisation of all services as an aim of the treaty. Thus, while GATS allows member countries to specify which service sectors and under what conditions they will open their borders for trade, allowing them the ability to protect certain sectors from trade commitments, the commitment towards progressive liberalisation envisions a future in which *all* service sectors would eventually be open for global trade.

The new public management's conventional wisdom that governments should 'steer, not row' with respect to the provision of public services has contributed to this change. International initiative and influence in this field have been reflected in the OECD Public Management Programme (PUMA) and OECD work on public governance, modernisation and regulatory reform (Organisation for Economic Co-operation and Development [OECD], 1980, 1992, 2005a). Domestically, advice from management consultants has been used in many countries as the basis for structural change in provision and delivery of public services. New public management has also been part of health sector reforms and aid policies (see e.g., Batley, 1999a, 1999b; Khalegian & Das Gupta, 2004; Russel, Bennet, & Mills, 1999). The globalisation of ideas of effective public management, in other words "globalisation of new public management," has promoted changes towards contractual provisioning and expanded the scope for global markets in services. The UN World Public Sector report, which discusses the relationship between globalisation and the new public management, classifies the 1980s and 1990s administrative reforms under four main themes: privatisation and deregulation, use of market-like mechanisms, decentralisation and de-bureaucratisation (UN/DESA, 2001).

This implies that WTO exceptions with respect to public services may no longer apply to the modern context of service provision, in which services which are increasingly contracted out or are organised so that they could be contracted out under a separation of (public sector) purchasers and (private sector) providers. The public services exclusion in GATS is in practice rather narrow and expressed in the form of "a service supplied in the exercise of governmental authority". This, according to the GATS Article 1.3(c), applies to any service, which is supplied neither on a commercial basis, nor in competition with one or more service suppliers (WTO, 1995b). Thus, and contrary to many governments' interpretation of this exclusion, publicly funded services cannot simply be assumed to be outside of the scope of GATS' commitments if their provision is contracted out to the private sector. Several legal analyses have similarly concluded that public services, if contracted out to private providers, would be bound by GATS if the sector was otherwise scheduled for liberalisation (Fidler, 2003; Krajewski, 2003; Luff, 2003).

The inclusion of key public services as part of WTO agreements, and the implications of this for health services, has been discussed in another KN paper (Blouin et al., 2007). However, in terms of SDH, the ability of governments to ensure universal access to other key services, such as water, electricity and education, are also of major importance. The inclusion of these as part of WTO trade agreements would affect the policy space for governments to regulate markets, especially if foreign providers are involved. This is also the reason why WHO has supported the position that governments should not commit health services as part of GATS unless they have carefully assessed the implications not only to health services, but to other health-related services as well (Drager & Fidler, 2004).

Government procurement and trade agreements

Similar concerns about loss of policy space exist with respect to government procurement. Government procurement negotiations in services were scheduled as part of the initial GATS agreement (WTO, 1995b). The push towards inclusion of government procurement, put back on the agenda in Hong Kong in 2005, is from developed countries, notably the European Union. The new European trade policy opening draws explicit attention to new areas of growth, requiring a sharper focus on market opening and stronger rules in new trade areas of economic importance to European Union, notably intellectual property (IPR), services, investment, public procurement and competition, as explicitly emphasized by the European Commission:

> [P]ublic procurement is an area of significant untapped potential for EU exporters. EU companies are world leaders in areas such as transport equipment, public works and utilities. But they face discriminatory practices in almost all our trading partners, which effectively close off exporting opportunities. This is probably the biggest trade sector remaining sheltered from multilateral disciplines. (2006, p. 8)

Thus, while government procurement is not yet addressed in the context of the WTO agreements, it is likely to be an area that will rise in negotiating importance, assuming the recent financial banking crises does not prolong the already stalled Doha round of negotiations. The health and SDH role and relevance of national policy space in the area of government procurement depends very much on the aims of such procurement policies. On the one hand, government procurement policies could be important for addressing SDH as such policies offer one way of supporting local smaller providers or offering opportunities for meeting universal service provision needs in poorer areas for water, electricity and sewage. On the other hand, government procurement can also be a means of buying local constituencies or promoting corruption ('cronyism'). The main message regarding national policy space for health, however, is that inclusion of government procurement in the negotiations is likely to limit the scope and freedom of governments to decide *how* and *what* they procure. Where cronyism is wide-spread short-term impacts or reducing policy space for government procurement are likely to be positive, but it is also likely that subsidies and mechanisms of cross-subsidising service provision between richer and poorer groups/areas would become more difficult and inequitable.

Negotiation practices and sectoral commitments

Regional and bilateral FTAs may also include provisions on government procurement, as was the case with the in the EU-Mexico FTA (EUMEXFTA, 2000). This FTA, however, is more important for what it reveals about the role that negotiation practices play in regard to constraining policy space. Specifically, different negotiation mechanisms can lead to more horizontal or extensive commitments on the basis of existing legislation, or block scheduling or other measures by failing to clearly indicate their extensive nature. Such mechanisms are a concern for national policy space for health, as they may lead to inadvertent commitments to be made as part of trade negotiations. In the case of the EU-Mexico Free Trade Agreement, which covers government procurement and investment, the parties are committed to not enact legislation that is more restrictive than what is in already force in the services sectors, thus making a kind of "stand still" horizontal commitment across sectors on the basis of their existing legislation (EUMEXFTA, 2000). Yet a country's existing services legislation may be more open to foreign providers than what governments might want to bind within a trade agreement, which restrains their future ability to reinstate public provision or expand regulation should such actions harm the commercial interests of foreign providers. The issue is thus not merely about market access to a particular sector, but *the scope to regulate, tax, subsidize and, if necessary, return to public provision*.

Trade negotiations that simultaneously cover several sectors can lead easily to more extensive commitments than were intended. This contributes to what one of us[4] has termed "outside own priority setting" (OOPS) commitments, where the scope and extent of commitments is not realized by those to whom it applies at the time when they are made. Strong and explicit trade policy guidance on health and social development could reduce future OOPS commitments that arise from insufficient prioritisation of health issues in trade negotiations.

The capacities of Ministries of Health to tackle detailed and complex wording of trade agreements or to assess their full implications remains limited in most countries. The particular regulatory concerns within the health sector also often remain poorly understood by those working on trade and external policies, and who are are likely to be better informed by corporate export than by public regulatory interests within the sector. However, these private interests may not be the same as health policy interests and may even run counter to national regulatory interests within health sector, for example, to control costs of medicines. Developing countries tend to have fewer administrative capacities and human resources to focus on details and implications of such sectoral commitments during negotiations and so remain particularly vulnerable towards OOPS commitments. However, the problem of anticipating the potential reach of commitments made in GATS or other services sector liberalisation treaties is not an issue only for developing countries as can be seen in the case of gambling and GATS (see Box 2).

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[4] Meri Koivusalo

Box 2. General Agreement on Trade in Services, gambling and market access

The sovereignty of governments to impose domestic regulatory measures even when these apply similarly to domestic and foreign providers has been challenged in a recent WTO dispute settlement case on gambling. The case applies to the panel and Appellate Body decisions responding to the Antigua and Barbuda complaint concerning certain United States federal and state measures that restrict the ability of suppliers located outside the United States to remotely supply gambling services to consumers within the US. The Appellate Body decision effectively upheld the earlier finding of the dispute panel that a prohibition of the supply of gambling and betting services is a "limitation on the number of service suppliers" within the meaning of Article XVI:2(a), and that such a prohibition is also a "limitation on the total number of service operators or on the total quantity of service output" within the meaning of Article XVI:2(c) (WTO, 2005b). What this implies is that banning online gambling equally from domestic and foreign suppliers was no longer an issue of domestic regulation or discriminatory treatment between different providers, but an issue of market access. The broader relevance of this decision to national policy space is that there is a future danger that any domestic regulatory measure that prohibits provision of a service - even though it would apply equally to both domestic and foreign providers - or that otherwise influences market access of foreign providers, could become challenged within the WTO dispute settlement process if the service sector has been scheduled (committed). Pauwelyn (2005a) has argued that this is a failure in dispute settlement body (DSB) judgment as it mixes up market access issues in GATT with those of domestic regulation in GATS, where more leeway should be provided. This may well be the case, but the decision nonetheless stands.

Another crucial issue in relation to the same dispute settlement case is the relevance of interpretational issues and whether Member States are aware of all that they are committed to in terms of scheduled services. In this case there was disagreement whether the US had given full market access to gambling and betting services as part of its schedules (WTO, 2004, 2005b). While Antigua claimed - and this was agreed by the dispute panel and Appellate Body - that the US had scheduled these as part of market access commitments in "other recreational services (except sporting)," the US considered that it made no such commitments and that gambling and betting services fall within sporting services, which had been excluded from the US schedule. Ortino (2006) argues that while the Appellate Body appears to be trying to emancipate itself from a rigorous textual approach, it has not yet embraced a more holistic approach to treaty interpretation. He further argues that this would allow the necessary flexibility for the WTO adjudicating bodies to accommodate broader policy considerations underlying any interpretative exercise which would be necessary, in particular, in light of the growing interface between different social values, such as the promotion of trade and investment, the advancement of labour standards and human rights, and the protection of the environment and of cultural diversity.

While future implications of this decision remain to be seen, it is clear that countries should be careful in making assumptions on where particular services belong and when these can be considered to be part of scheduled services. In this context particular attention should be given to the known uncertainty with respect to public services. Pauwelyn (2005a, 2005b) has elsewhere pointed out a problem of considering domestic regulations as market access restrictions with the example of domestic driver's licence requirements for taxi permits, the implication being that because this has the effect of lowering the number of foreign taxi drivers it may represent a *per se* prohibited market access restriction. He then further argues that the decision may mean that the validity of scores of domestic services regulations, including those that are non-discriminatory, is threatened (Pauwelyn, 2005b).

Domestic regulation and issues with respect to regulatory measures

At the end of the day, WTO-hosted trade agreements aim to limit unnecessary trade-restrictive government intervention on the free mobility of goods and services, while also ensuring protection of intellectual property rights. WTO dispute settlement cases have also required Member States to respond with detailed provisions of proof that these measures have been necessary and not more trade restrictive than is required to achieve the aim (see e.g., WTO, 2001a).

The basic framework of WTO action and influence on regulatory space is focussed on the ways in which discriminatory impacts or "like" goods and services are judged. The emphasis on *de facto* implications is important to policy space as it considers not only legal or *de jure* discriminatory measures against foreign providers of goods and services, but as well those which *de facto* discriminate proportionally more against foreign providers.

The recent dispute settlement case on online gambling has been hailed as a success to developing countries as small Antigua and Barbuda won the case against large United States. However, further problematic aspects have been raised in terms of the policy space that trade agreements give to governments to limit all activities - treating domestic and foreign actors similarly - without becoming blamed for limiting market access and applying a "zero quota" (see Box 2 for a more detailed discussion).

In the asbestos dispute settlement case between Canada and EC, the Appellate Body decision actually dealt with this issue by deciding that considering just the role of products in markets is not sufficient: a carcinogenic product (asbestos) is not "like" a non-carcinogenic one (glass fibres), even though these would in practice be competitors in the market (WTO, 2001a) The concept of likeness, its usefulness in the context of addressing national treatment and the relationship between national treatment and the reasonableness principle, have also been under discussion and debate in the context of services trade, as concepts pertaining to trade in goods may not be directly applicable to trade in services (Cossy, 2006; Ortino, 2005; Pauwelyn, 2008). Others have emphasised the role and relevance of the necessity test (that regulatory policies allowed under trade agreements should be "not more burdensome than necessary") as the key mechanism in "drawing the line between legitimate regulation and protectionist abuse" (see e.g., Delimatsis, 2008).

The focus on government procurement and services is likely to raise more issues regarding domestic regulation and sovereignty. The stipulations of GATS Article VI and the continuing negotiations on domestic regulation set the scope and extent to which governments may interfere with markets[5]. In terms of public policy measures affecting SDH, it is likely that proportionality or necessity arguments, which require that less market restrictive measures be applied, could limit policy space to impose and implement new regulations if these new regulations were more trade restrictive than what had been at place. It is thus important to make the difference between the right to regulate for the purpose of set aims and the broader context in which this right to regulate is set.

Increased contracting and outsourcing of local government functions (to other local government bodies, cooperatives, local corporations or NGOs) and to international commercial operators complicates the situation in many countries. Under GATS, nongovernmental actors may not be treated differently from for-profit operators, unless specified as such initially. While GATS provides flexibility in bottom-up approaches in relation to what is scheduled by governments and how, this flexibility can become compromised by negotiation processes. Governments also need to know exactly the scope and nature of commitments they make, and what kind of temporary restrictions they would like to apply (it is expected that specific exceptions are not to be permanent in GATS and will be revisited for removal during future rounds). The practice of revisiting commitments also implies a tightening ratchet in terms of making more and deeper commitments during each negotiation round. However, the commitments made are not necessarily permanent or totally "locked in;" they can be altered or removed, although this could become costly for countries as in exchange for limiting or removing previous commitments in one area they are required to expand commitments in another area.

The nature of GATS, domestic regulation and policy space for health is that the more commercialised and internationalized service provision is allowed to become, the more GATS is likely to matter. There has been relatively little focus on GATS and control of public expenditure, even though means for cost-containment

[5] GATS has a specific Article VI on domestic regulation, which has relevance to regulatory measures especially in the context of stipulations in Articles VI.4 and VI.5. According to Delimatsis (2008) more than any other GATS provision, Article VI touches the interface between services trade liberalisation and domestic autonomy. The legal mandate contained in this provision seeks to guarantee that measures related to licensing, qualifications, and technical standards are based on criteria, which in practice constitutes an indicative list of minimum characteristics that regulation on services should exhibit. Other aspects of GATS may also have relevance to services, such as Article VIII on monopolies and exclusive service suppliers (see e.g., Fidler, 2003; Luff, 2003).

could become more problematic under GATS. The observation by Luff (2003) that it is unlikely that denying patients the freedom to choose their doctors could be accepted under full GATS commitments is a clear example of potential unanticipated implications, as most health systems presently limit this freedom in practice. The complexity of regulatory needs in health sector, as well as the necessity of knowing everything before scheduling services, supports the overall views that the most secure regulatory option is not to make any services commitments in sensitive sectors (Luff, 2003). While this would address concerns within health systems, it would, however, not cover those in relation to addressing social determinants of health.

National policy space and protection of intellectual property rights

Intellectual property rights are relevant to SDH not simply with respect to access to medicines, but also in relation to development and industrial strategies (see e.g., Lall, 2004; Shadlen, 2005b; UNCTAD, 2007). Other IPR aspects relate to biodiversity, seeds and transfer of technology (see e.g., Commission on Intellectual Property Rights, 2002). It is also likely that the economic consequences of TRIPS will increase inequalities as in 2001 only five developed countries (France, Japan, Germany, United Kingdom and the United States) accounted for 83.6 percent of the total patent applications filed in the EU, Japan and the United States. (UNCTAD, 2006) The relevance of IPRs to SDH is not limited to the TRIPS agreement, which is often seen as defining minimum requirements, but applies as well tp bilateral agreements as well as to work undertaken by the World Intellectual Property Organisations (WIPO). Our focus will be on national policy space for health, and more narrowly on pharmaceutical policies. Our concern is with the ways in which IPRs affect 1) the ability of Ministries of Health to ensure access to pharmaceuticals and 2) how research and development on health and health-related products respond to broader health needs and priorities without inappropriately constraining health budgets and resources that could be used to promote health more effectively otherwise.

In the common interest

In all countries pharmaceuticals are paid predominantly by the public sector or by those who are ill. In OECD countries pharmaceuticals are mostly paid by public sector reimbursement or other arrangements that limit direct costs to individuals, but in many low income countries most pharmaceutical costs are paid out of pocket and thus have a particularly regressive impact. Pharmaceutical costs are also relatively more important in developing countries as a proportion of the health budget. However, prices of pharmaceuticals are growing everywhere and represent a major concern for cost containment (Congressional Budget Office [CBO], 2006; OECD, 2005b).

Proposals have been made to exclude essential drugs as listed by the WHO from patentability (Correa, 2005). The focus on essential drugs in WHO has traditionally meant that in practice the choice of essential drugs was made partly on the basis of cost; thus almost by definition, essential drugs are largely off patent, although new (and patented) HIV/AIDS drugs have recently been added to the list. However, there is no particular reason why new pharmaceuticals should and could not be added to this list, if there are no prior treatments or new treatments provide major change in terms of clinical value. In addition to HIV/AIDS drugs the availability of new treatment options for particular cancers for which there is no other treatment could be seen as potential new entries to the essential drugs lists (see e.g., Mueller, 2007).

IPRs are currently considered as important means for ensuring investment in R&D on pharmaceuticals. In the commercial sector these decisions do not need to be health needs driven, but they can and do respond more to expected markets and profit margins. The WHO Commission on Public Health, Innovation and Intellectual Property Rights concluded that current incentive mechanisms for innovation do not work for problems and diseases for which there are no markets for treatment (WHO, 2006). This concern has gained additional support from observations that the pharmaceutical industry is no longer investing in antibiotics research due to insufficient expected profit margins (Norrby, Nord, & Finch, 2005; Wenzel, 2004). The US Congressional Budget Office has expressed further concern about the lack of new innovations in the pharmaceutical industry and the fact that industry R&D investments have not actually risen substantially during the last 20 years as a proportion of sales revenue (CBO, 2006). The concern over access thus needs to be complemented by concern over requirements that relate to health and health policy needs-driven R&D.

An additional issue regarding IPRs and health are data exclusivity measures and definition of the scope of patenting, which both of which have become important elements in bilateral trade treaties (see e.g., Fink & Reichenmiller, 2005; Roffe & Spennemann, 2006). The former has become an issue in terms of interpretation of TRIPS requirements for protection of test data (see e.g., Correa, 2002, 2007a, 2007b; WHO, 2006), while the latter has become reflected more in terms of patenting practices, use of inappropriate patents, patenting of genes, plants and life-forms and analysing public health aspects of patentability (see e.g., Correa, 2007c; Jaffe & Lerner, 2004; Shiva, 2001). Enhancement of patenting and intellectual property rights is seen as particularly problematic in terms of more general access to data and sharing of information (Jensen & Murray, 2005; Koo et al., 2004; Paradise et al., 2005). Attention to problems of patent "stacking" and defensive patenting has also become more common place within the research community in particular areas (see e.g., OECD, 2004).

Implementing national pharmaceutical policies

Trade-related agreements on intellectual property rights do not influence all of these aspects equally. As noted earlier, national policies and priorities unrelated to health may come into play as well. As TRIPS is considered often as a minimum requirement, bilateral or regional agreements have consisted of requirements that extend beyond TRIPS. These TRIPS-plus requirements are also creeping into the national space of pharmaceutical policies, for example, in terms of the requirements for data exclusivity periods, conditions for measures concerning patentability or restrictions in the use of compulsory licenses (see e.g., Fink & Reichenmiller, 2005; Roffe & Spennemann, 2006). Trade negotiations may also apply to and cover more detailed considerations with respect to national reimbursement or pricing programmes in developed countries (see e.g., Doran & Henry, 2008; Drahos & Henry, 2004). Trade considerations that exceed existing agreements can also be used as threats by interested parties, such as pharmaceutical industry. Norway was added in 2008 to the United States Trade Representative (USTR) 301 watch-list on lack of product patent protection for medicines patented prior to 1992 (The Office of the United States Trade Representative [USTR], 2008). In Finland the local pharmaceutical industry threatened that Finland was on the way to the same list should it implement planned reference pricing policies without exclusion of such products patented prior to 1994 which had only process patents from this list, even though the measures proposed were consistent with all international agreements (Lääketeollisuus, 2008).

US government (2004-2008) trade policy documents have also taken up and discussed European policies on reference pricing and price controls as a trade-related matter, noting that:

> Historically, the Special 301 process has focused on the strength of intellectual property protection and enforcement by our trading partners. However, **even when a country's IPR regime is adequate,** price controls and regulatory and other market access barriers can serve to discourage the development of new drugs. These barriers can raise in a variety of contexts, including reference pricing, approval delays and procedural barriers to approvals, restriction on dispensing and prescribing, and unfair reimbursement policies. (USTR, 2006, p. 13, emphasis added)

Thus, legitimate measures to lower the price of pharmaceuticals based on public health concerns may be considered in conflict with trade policies, even if the IPR regime would comply with TRIPS. Maskus (2006) has in this context brought up two fundamental misconceptions that: 1) patents are like tangible property and that owners of such property have the basic right to sell and license - or not - as they wish and that 2) more patent protection necessarily provides greater incentives for innovation and commercialisation of technologies. According to him neither argument makes good policy. While US FTAs have so far drawn more attention, the European Union has similarly become more involved in negotiating stronger provisions in FTAs on IPR, including enforcement of IPRs along the lines of the EC Enforcement Directive (European Parliament and Council, 2004).

The direct impact of TRIPS on access to pharmaceuticals apart from HIV/AIDS drugs in low income countries remains more limited due to a variety of issues; lack of human and financial resources, aid policies, procurement practices and lack of organisational and manufacturing capacity are often more important. In many of these countries even access to ordinary off patent essential drugs is problematic, and implementation of TRIPS has been delayed in many of these countries until 2016. In Sub-Saharan Africa, ARV patent barriers can be avoided through several means such as non-enforcement or discounting of prices of drugs, in particular for first-line ARVs (Chien, 2007). It is thus important to note that TRIPS – or other means to enhance IPR protection - is likely to have more direct impact on middle income countries such as Brasil, Thailand and South Africa, and those lower middle income countries with capacity to compete in the field such as China and India. It is estimated that Brasil saved through the use of compulsory licenses around $1 billion in its free and universal access to HIV/AIDS treatment programme between 2001 and 2005 (Nunn, Fonseca, Bastos, Gruskin, & Salomon, 2007). In this context the emphasis on the poorest countries with lack of organisational structures, regulatory capacity and functional health systems may take attention in the wrong direction, incorrectly assuming that access issues overall and in all countries are mostly, if not only, due to deficiencies of national pharmaceutical policies and health systems functioning.

In terms of health policy priorities it is also necessary to distinguish between benefits for industrial policies and those of health policies. While industries might find scope for growth on the basis of IPR driven strategies, this does not imply that these would benefit either health in general or the health of the poor in particular. In India pharmaceutical company interests and focus on R&D have become more geared towards lucrative markets in developed countries than in addressing diseases of the poor within their own country (Chaudhuri, 2005).

Enhancing R&D on the basis of health needs

Enhancing R&D on the basis of health needs and health policy priorities is a task that has relevance both to national and global health policies. Publicly funded research tends to provide the basis on which further applied research builds. Government funded research may also be accompanied by conditions with respect to access to knowledge and restrictions on future intellectual property rights. It is thus up to national policies to determine how public funds will support *inter alia* access to data, knowledge and research technologies.

The issue in research and development is not only related to the guidance of R&D efforts, but also to the increasingly high costs of R&D. The costs of R&D and estimates of costs of bringing new pharmaceuticals to the market have become increasingly high, although the relative share of R&D has reportedly remained between 15-20% of sales revenue during the last 20 years (CBO, 2006; DiMasi, Hansen, & Grabowski, 2003). The inclusion of capital costs to estimates of R&D costs is a standard practice in industry, resulting in substantially high estimates. This has been observed both by critics of the initial DiMasi estimates as well as by the pharmaceutical industry supported response to the critique (Ernst & Young, 2001; Public Citizen, 2001). At the same time new estimates of division of costs suggests that pharmaceutical industry spends almost twice as much on marketing than on research and development (Gagnon & Lexchin, 2008).

In Europe, the European Commission has channelled public funds through an "innovative medicines initiative" in order to support competitiveness and innovation of the industry (Innovative Medicines Initiative [IMI], 2007). This reflects the more broadly recognised worry over the decline in the numbers of new molecular entities (CBO, 2006; IMI, 2007). In light of increasing costs and decreasing returns of the pharmaceutical industry, Baker (2004) has suggested that, from the public financing point of view, a threshold of costs should be established to determine when alternative publicly funded or other measures could provide more value for money in terms of R&D. The cost of clinical trials has also increased and the research has shifted from universities to corporate research organisations (CROs). The easier management of IPRs in CROs in comparison to universities has been raised as one explanation (see. e.g., Angell, 2004). However, the process of commercialisation of research and clinical trials has also gained criticism in particular in relation to ethical concerns with the process (see e.g., Freemantle & Stocken, 2004; Petryna, 2007).

The interface between intellectual property rights and the potential for new means to enhance innovation on the basis of health priorities to address the lack of R&D on diseases relevant to developing countries, formed substantial part of the debates and discussions within the WHO Intergovernmental Working Group in 2006-2008. While national policy space was not explicitly on the agenda, many of the issues discussed dealt with the constraints and scope that governments have to enhance accessibility and affordability of medicines as well as means to gain sufficient resources to fund neglected and key research and development priorities on the basis of public health concern. Two years of difficult negotiations starting from recommendations of the Commission on Intellectual Property Rights, Innovation and Public Health resulted in the adoption of a resolution on the matter, including a call for a global strategy on public health, innovation and intellectual property, in the World

Health Assembly in 2008 (World Health Assembly [WHA], 2008).

Commercial policy and health priorities

Where health policy priorities are not in line with commercial priorities, trade negotiations may cause the former to become - knowingly or unknowingly - compromised by the latter. This is not particular to intellectual property rights, but is also prominent in negotiations surrounding trade in goods and services and the continuing economic emphasis on global competitiveness.

Trade policies are in practice promoted on the basis of export interests and key national trade policy priorities. These form the main core interests in terms of efforts towards trade liberalisation. The extent to which this takes place and on which sector negotiations focus is further shaped by domestic and so called defensive interests (e.g. agriculture). The lack of presence of those representing priorities concerning health and SDH in these discussions, or their inability to articulate these priorities, means that policy space or "defensive interests" in these areas may not be considered as serious matters.

The implicit understanding of social and health concerns within trade agreements has been based on an emphasis on shared benefits arising from economic growth, in other words health and social policies have been seen as beneficiaries from the economic growth created on the basis of trade. This approach has now become complemented by an emphasis on health services as a sector with commercial potential (see e.g., Mattoo & Rathindran, 2006; Wolwaardt, 1998). The same applies to other sectors with importance to SDH, such as provision of water, electricity and other utilities, housing, education and social security. This line of emphasis is also clearly present in the recent World Bank research work on health services and GATS (Mattoo & Rathindran, 2006).

Understanding the health and SDH impacts of economic policies, trade agreements and related measures in the field of intellectual property rights requires new capacities within Ministries of Health that differ from the usual skills in the administration of public health programs. These capacities extend to an understanding of both economic and legal provisions of trade treaties and their economic and legal consequences on the functioning and priorities not only of health systems, but also of those government sectors with greater responsibility over the SDH. However, it is important to note that this concern is being increasingly recognised in both developing and developed countries. This is reflected in the already accepted language in paragraph 5.1(g) of the outcome document of the WHO Intergovernmental Working Group on Public Health, Innovation and Intellectual Property Rights (IGWG) to "promote active and effective participation of health representatives in intellectual property-related negotiations, where appropriate, in order that such negotiations also reflect public health needs" (WHA, 2008, p. 16). In addition to government departments and their engagement, this concern has been raised with respect to participation by health advocates and NGOs. The US Government Accountability Office concluded in 2002 that "[n]ew stakeholders in the trade process, such as public health, development, and gender advocates, have limited or no participation in the formal committee system, even though topics such as intellectual property are of interest to them" (US General Accounting Office [US/GAO], 2002, p. 40). The issue was later discussed also in the particular context of policies concerning intellectual property rights (US/GAO, 2007). In European Union, the European Commission has organised trade policy consultations, however, participation of nongovernmental organisation has in the area of trade been described as inclusion without influence; while NGOs have enjoyed better access to decision-makers, their ability to influence actual decision-making has been more limited (Dur & de Bievre, 2007).

ECONOMIC POLICIES AND NATIONAL POLICY SPACE

We have previously suggested that so far impacts of economic integration and globalisation in developing countries could be more important to health and social determinants of health than the direct influence of trade policies or agreements. This influence is mediated through, for example, the influence of international financial institutions such as World Bank and the International Monetary Fund on economic reforms, influence of transnational corporations, emergence of global production practices and capital mobility.

The influence of the international financial institutions[6]

The role of the World Bank and the International Monetary Fund (IMF) has been a central feature of the debates and economic policy landscape in many developing countries over the past 25 years. They are closely identified with structural adjustment – a term that entered the international development lexicon in 1980, when the World Bank and IMF began lending to countries needing to reorganize their economies in order to repay external creditors (Kahler, 1992). From the point of view of rich countries, the urgency of such lending grew after 1982, when Mexico's announcement that it was prepared to default on billions of dollars in loans raised concern about the stability of their financial institutions, especially in the United States. Conditionalities attached to such loans, and the associated rescheduling of loan payments to the World Bank and IMF, emphasized reduction of subsidies for basic items of consumption such as food; rapid removal of barriers to imports and foreign direct investment; reductions in state expenditures, particularly on social programmes such as health, education, water/ sanitation and housing; and rapid privatisation of state-owned enterprises, on the presumption that private service provision was inherently more efficient, and that proceeds from privatisation could be used to ensure debt repayment (Babb, 2005; Milward, 2000).

Differences exist in roles and mandates of the World Bank and the IMF. The IMF is a last resort lender, not formally concerned with development as part of its mandate, unlike the World Bank. Historically, the two have (a) promoted multiple, more or less coordinated domestic policies of integrating national economies into the global marketplace (Woods, 2006a), and (b) at least until very recently placed creditor interests (repayment of debts) ahead of the ability of debtor governments and societies to meet basic human needs.[7] Jeffrey Sachs, an economist with considerable direct experience in such matters, including his role in promoting "shock therapy" for the economy of the former Soviet Union, has described the role of the IMF in a passage that is worth quoting at length:

> In most of the developing world the IMF is not a figure that swoops in for a quick rescue. On the contrary, for perhaps half of the developing world outside of China and India, the IMF is an all-too-constant presence, almost a surrogate government in financial matters. Not unlike the days when the British Empire placed senior officials directly into the Egyptian and Ottoman finance ministries, the IMF is insinuated into the inner sanctums of nearly 75 developing-country governments around the world -- countries with a combined population of some 1.4 billion. These governments rarely move without consulting the IMF staff, and when they do, they risk their lifelines to capital markets, foreign aid, and international respectability. (Sachs, 1998, ¶8)

The influence of the IMF has extended beyond formal conditionalities, because private investors view IMF approval of a country's macroeconomic policies as a seal of approval (Woods, 2006b, pp. 375-376) and, indeed, the resources at their disposal have been needed to complement those of the IMF (Gould, 2003). While IFIs emphasise their role and independence as non-political economic institutions, they have gained broader criticism on the basis of ideological stands and political alliances within their work. In the words of an interdisciplinary group of social scientists convened in the early 1990s to examine the challenges facing new democracies: "An alliance of the international financial institutions, the private banks, and the Thatcher-Reagan-Kohl governments was willing to use its political and ideological power to back its ideological predilections" (Przeworski et al., 1995, p. 5). Woods reaches a similar conclusion in a study based on primary documentary sources, research literature and interviews (22 cited, others not cited)(2006a, pp. 47, 142-143), and further notes that this development was possible at least in part because of the dominant role played by a few industrial countries, in particular the United States, in Bank and Fund decision-making (2006a, pp. 15-38).

Clearly lender conditionalities created constraints on the policy space available to national governments; that was their intent. However, several evidentiary problems complicate assessment of the severity and impact of those constraints. Conditionalities have often been implemented imperfectly, or resisted for substantial periods of time (Kahler, 1992; Killick, 2004). For

[6] Portions of this section are adapted from (Labonté, Schrecker, Sanders, & Meeus, 2004; Schrecker & Labonté, 2006).

[7] Recent proposals to define developing countries' external debt obligations with reference to the amount of government revenue that is likely to be available *after* basic needs have been provided for lead to estimates of necessary levels of debt cancellation far higher than those currently on offer from the industrialized world (Hanlon, 2000; Mandel, 2006; United Nations, 2005; UN Millennium Project, 2005). These proposals provide an important and explicit counterfactual against which policy performance to date can be assessed.

analytical purposes, it is difficult to separate the effects of conditionalities from those of the economic crises that preceded structural adjustment. Any assessment of their effects presupposes one or more counterfactuals – assumptions about what would have been the case if no intervention by the World Bank and the International Monetary Fund had been undertaken, or if some other set of interventions had been chosen (Huber & Solt, 2004). In many countries lender conditionalities have contributed to the reorganizing of national economies in ways that did not reflect popular or electoral priorities, and indeed provoked widespread popular resistance (Walton & Seddon, 1994). In at least a few cases, the constraints associated with lender conditionalities were also intended by national governments, which pursued agreements with the IMF so that they could create an aura of inevitability about policy changes that they might otherwise not have been able to implement (Vreeland, 2003).

International Monetary Fund and fiscal policy space for health

Attention has recently been focused on how public expenditure ceilings on which the IMF insists as an element of national macroeconomic policy may restrict the ability of national governments to hire urgently needed teachers and health professionals. The rejoinder that such expenditure ceilings do not specify which sectors of government spending should be restrained ignores the usually large share of public spending that goes into health, education and other services important to the SDH; inevitably such ceilings will have an impact on such spending. The concern over the impacts of ceilings with respect to overall public spending in the context of aid policies has been articulated in the context of fiscal policy space as this may limit the scope of allocation and support of public sector policies and programmes in health or imply that particular measures and support for health, for example in terms of HIV/AIDS drugs, may crowd out public sector investments in other areas of importance to social determinants of health.

Supposedly, the IMF is primarily concerned about the size of public sector budgets. In this context Heller (2005) has defined 'fiscal space' as "the availability of budgetary room that allows a government to provide resources for a desired purpose without any prejudice to the sustainability of government's financial position" – a position that presents formidable constraints for low-income countries and some middle-income countries seeking to meet basic needs, and is also ethically problematic. Notably, as dramatic increases occurred in HIV/AIDS financing a briefing paper for the Overseas Development Institute in 2005 warned about the potential conflict with fiscal constraints imposed by the IMF (deRenzio, 2005). A civil society organisation professional with extensive field experience in Mozambique (Ooms & Schrecker, 2005) and Kenya's Assistant Minister of Health (quoted in Ambrose, 2006) are among those who have drawn attention to this constraint (see also Wood, 2006, summarizing studies of IMF expenditure constraints in Zambia, Uganda, Kenya and Ghana). The criticisms were disputed by the World Bank and IMF (Sarbib & Heller, 2005), but a March 2007 report by the IMF's Independent Evaluation Office on IMF programs in 29 countries in sub-Saharan Africa found that in several countries "macroeconomic conditions, as proxied by the inflation rate," (p. 9) led the IMF to mandate that some of all of incremental increases in aid not be spent, but be allocated instead to reducing domestic public debt or increasing foreign exchange reserves. Although the IMF was found to have displayed some flexibility on this point, its analyses of "aid absorptive capacity" were found to focus on macroeconomic variables with "almost no attention to sectors such as education, health and infrastructure" (p. 10) – in other words, confirming much of the external criticism.

More generally, it is clear (a) that health priorities may not receive the priority they deserve in larger discussions of fiscal space and fiscal sustainability; (b) that calling for further investments in health is problematic if this results in less investment in, for example, education on the basis of overall fiscal sustainability; and that (c) an international order that imposes such constraints on developing countries cannot be defended on ethical grounds, Fiscal policy space has become an issue in the context of increasing external support to health care and availability of large scale funding for health. However, it needs to be distinguished from the debate *within* health sector due to the large scale of funding for particular health problems within the health sector, which in the case of HIV/AIDS in some countries has exceeded other health funding (Lewis, 2005). Although critically important, this is not an issue of sustainability in the fiscal sense.

International financial institutions, poverty reduction strategies and national policy space

The preceding discussion is of special importance because, although poverty reduction has replaced structural adjustment in the vocabulary of the World Bank and IMF, and structural adjustment has been superseded by the provisions of supposedly more participatory Poverty Reduction Strategy Papers (PRSPs), the evidence shows that the bad old days have not been left behind. Rather, the PRSP process exhibits similarities to earlier lending conditionalities. PRSPs must be approved by the World Bank and IMF as a condition for receiving debt relief under the Heavily Indebted Poor Countries initiative (now the Multilateral Debt Relief Initiative), and increasingly determine eligibility for other forms of development assistance as well.

Commentaries by civil society organisations and some UN system agencies on the early experiences with the PRSP process were often highly critical (Labonté et al., 2004, pp. 26-29). In 2004, the leader of the team that produces UNCTAD's annual Least Developed Countries report described the PRSP process as "a compulsory process in which governments that need concessional assistance and debt relief from the World Bank and the IMF find out, through the endorsement process, the limits of what is acceptable policy, [T]here is an inevitable tendency for Government officials to anticipate the endorsable" (Gore, 2004, p. 282). Cheru, who in a 2001 UN report that examined eight interim PRSPs was harshly critical of the process as "a new form of structural adjustment" (Cheru, 2001, p. 9-14), had by 2006 muted this criticism somewhat, based on a review of 12 African PRSPs. He observed that growth strategies were not sufficiently pro-poor and that "[m]ost PRSPs do not include decisive measures to redistribute wealth and promote equality" (Cheru, 2006, p. 359) by way of such measures as land reform, but emphasized as well the potential value of the process and the importance of domestic policy reforms related, for example, to anti-corruption efforts and governmental capacity. Griesgraber and Ugarteche (2006) point out that while many middle-income countries in Asia and Latin America are now largely beyond the potential reach of IMF conditionality because of their large foreign exchange reserves and early repayment of their debts to the Fund, low-income countries "remain bound to the IMF" (p. 352) through the PRSP process, and the new conditionalities associated with the Multilateral Debt Relief Initiative (MDRI) announced by the G8 in 2005. Notably, a recent study found that some PRSPs "include trade-related conditions that are more stringent, in terms of requiring more, or faster, or deeper liberalization, than WTO provisions to which the respective country has agreed" (Brock & McGee, 2004, p. 20). In other words, in addition to the effects of expenditure ceilings (discussed in a previous section of the paper), it appears that the industrialized countries are still using the international financial institutions to pry open developing country markets, in a context where the countries in question are in an even worse position to hold out for some form of reciprocity than they would be within the WTO process.

Globalisation and changing production practices

The spatial reconfiguration of manufacturing and service provision across multiple national borders has been perhaps the single most prominent characteristic example of globalisation (Dicken, 2003). Early stages of this process were described a quarter century ago in terms of a new international division of labour between industrialized and developing countries (Fröbel, Heinrichs, & Kreye, 1980). Today, that division of labour involves not only complex transactions among various subsidiaries and affiliates of transnational corporations, but also contractual relationships with external suppliers and service providers ('outsourcing'), with the latter expanding rapidly in importance.[8] The result is an increasingly fine-grained process of "slicing up the value added chain" (Krugman, 1995, p. 333): locating each step of the production process where it contributes most to overall returns while reducing risks. Trade liberalisation has been a necessary condition for these developments, but not a sufficient one: it has been driven by such technological advances as drastic reductions in shipping costs associated with containerisation and in the costs of sophisticated information and communication technologies needed for real-time management of global production.

Global reorganisation of production creates constraints on policy space that are distinct in at least three respects from those contained in trade agreements and dispute resolution procedures.

[8] One important consequence for research on globalization is that indicators such as the value of foreign direct investment (FDI) and the percentage of trade volumes accounted for by intrafirm trade substantially understate the extent of cross-border integration of production: neither figure captures the growing volume of outsourced production (Milberg, 2004).

First, transnational corporations enjoy multiple opportunities to minimize their tax burden by manipulating transfer prices in intrafirm trade, charging artificially high (or low) prices in order to concentrate profits in tax havens. This process results in negative impacts on governments' fiscal capacity and is further discussed later in the next section.

Second, quite apart from trade policy and globalized production, the economic environment for countries that are only starting to industrialize may now present distinctive challenges. Collier argues that while late-industrializing Asian exporters of manufactured goods were able to use drastically lower labour costs (relative to the OECD countries) as a source of competitive advantage, countries that have yet to begin the process of industrialisation "have no wage advantage whatsoever over established [industrial] agglomerations" in Asia (Collier, 2006, p. 1437). The approximate doubling of the global labour force associated with the integration of India, China and the former Soviet bloc has been seen as potentially exerting worldwide downward pressure on wages that is not confined to 'unskilled' workers (Freeman, 2004). One example of possible shifts is the relocation of 300 *maquiladora* manufacturing plants that employed approximately 250,000 workers from Mexico to China between 2001 and 2003 (Loser, 2005). *The Economist*'s 2006 annual review of the world economy credits China's labour supply with helping to hold down wages worldwide (Woodall, 2006a), and its 2006 survey of the world economy expands on this dynamic with reference not only to the distribution of labour income but also to the shift in income from labour to capital.[9]

Too much can be made of this point. Labour costs are only one variable affecting the location of production costs, and despite China's large pool of surplus labour, wage inflation is prompting some manufacturers to locate or relocate elsewhere in Asia (Anonymous, 2007), appearing at least for the moment at least the World Bank's prediction that wage increases "will create space for low-income countries to move into the lowest-skill activities vacated by producers in the large emerging countries" (World Bank, 2007, p. 102). Over time, some firms in developing countries may also be able to 'move up the value chain' within global production networks (Arrunada & Vazquez, 2006). However, it is not clear that all firms or countries will be able to pursue such a strategy successfully (Kaplinsky, Morris, & Readman, 2002; Nadvi, 2004) or that the benefits will be shared by more than a minority of households.

In addition to these effects on labour markets, which are examined in greater detail in a separate paper for the Globalization Knowledge Network (Schrecker, in press), the global reorganisation of production may be creating or intensifying a third, more general problem. To the extent that economic growth is (*or is perceived to be*) contingent on ability to attract foreign direct investment (FDI) and the need to appear 'business-friendly' may limit governments' ability to adopt labour standards, health and safety regulations, or indeed any other social policy measure that does not demonstrably contribute to the 'bottom line' of return on investment . It is worth noting the World Bank's view that: the "open production environment" created by the global reorganisation of production "mercilessly weeds out those centers with below-par macroeconomic environments, services, and labor-market flexibility" (World Bank, 1999, pp. 35-36, 50). If uncertainty remains about the nature and extent of constraints on policy space created by the need to compete for direct investment and export markets, far less uncertainty exists about the effects of global financial markets.

The role of global financial markets: Implicit conditionalities

Globalisation has drastically increased the ease and speed with which money can move around the world. The liberalisation of financial markets has taken place as result of the breakdown of the Bretton Woods regime of fixed exchange rates and the subsequent pursuit by industrialized countries, especially Britain and the United States, of domestic deregulation and capital account liberalisation in order to attract and retain capital and financial businesses (Helleiner, 1994). This has been accompanied by the efforts of industrialized countries,

[9] "Like so many other current economic puzzles, the redistribution of income from labour to capital can be largely explained by the entry of China, India and other emerging economies into world markets. Globalisation has lifted profits relative to wages in several ways. First, offshoring to low-wage countries has reduced firms' costs. Second, employers' ability to shift production, whether or not they take advantage of it, has curbed the bargaining power of workers in rich countries. In Germany, for example, several big firms have negotiated pay cuts with their workers to avoid moving production to central Europe. And third, increased immigration has depressed wages in sectors such as catering, farming and construction" (Woodall, 2006b)

through the International Monetary Fund, to promote financial liberalisation by developing countries; the emergence of private banking, which was described by *The Economist* in 1990 as "essentially the business of taking deposits from rich individuals living in the third world" (Anonymous, 1990); and the growing importance of large institutional investors and investment managers on the global stage (Gilpin, 1994; Mosley, 2003, pp. 25-37; Useem, 1996). To illustrate the magnitude of resources and transactions involved, the two largest pension fund managers in the United States, TIAA-CREF (which offers a range of other services as well) and CALPERS, manage a combined total of approximately US $600 billion in assets. The world's hedge funds, which are much more likely to contribute to financial volatility, hold about $1.5 trillion in assets; roughly $150 billion are managed by the five largest of these funds (Anonymous, 2007). The *daily* value of foreign exchange transactions was estimated in 2007 at over $3.4 trillion (Bank for International Settlements, 2008). Recent financial crises showed that such short-term flows could overwhelm the ability of any national government to defend the value of its currency using foreign exchange reserves; financial innovations such as hedge funds and a variety of derivatives have further magnified the influence of owners of liquid financial assets (Kelly, 1995; Koelble & Lipuma, 2006). [10]

Currency crises are the extreme effect of this constraint. Speculation against the pound by institutional investors drove British central bankers to raise the base lending rate from 10 percent to 15 percent in a single day in 1992, and they still could not avoid a devaluation that forced Britain out of the European exchange rate mechanism. However, developing economies have borne the brunt of currency crises generated by the operations of global financial markets. Such a crisis halved the value of the Mexican peso relative to the US dollar between December 1994 and March 1995, as investors, many of them based in Mexico, shifted their assets out of Mexican government debt securities and forced further devaluation of the peso (US/GAO, 1996). Immediate damage to Mexicans' purchasing power was compounded by the wage reductions, workforce economies and public sector austerity measures needed to restore investor confidence (Cypher, 2001; Dussel Peters, 2000; Grinspun & Cameron, 1993). The Asian financial crisis of 1997-98 involved comparable depreciation of the Thai and Korean currencies, and an even more drastic depreciation of Indonesia's (Martinez, 1998), again with effects on the economically vulnerable that were compounded by austerity measures needed to restore 'investor confidence.'[11] The damage done by financial crises in terms of lost GDP (hence government revenue) and employment is substantial: (Griffith-Jones & Gottschalk, 2006) estimate the cost of the Asian financial crisis to the affected economies at US $917 billion over the period 1997-2002, and a comparison of financial crises in 10 countries by (van der Hoeven & Lübker, 2005) showed that employment tends to recover much more slowly than GDP in the aftermath of financial crises. A further effect is that the value of external debt obligations denominated in dollars or other hard currency climbs with any devaluation, creating additional economic constraints on domestic public sector budgets (Koelble & Lipuma, 2006).

The power dynamic underlying financial crises created by large flows of short-term capital ('hot money') was described by Michel Camdessus, then managing director of the International Monetary Fund, in the aftermath of the collapse of the Mexican peso in 1994-95:

> Countries that successfully attract large capital inflows must also bear in mind that their continued access to international capital is far from automatic, and the conditions attached to that access are not guaranteed. The decisive factor here is market perceptions: whether the country's policies are deemed basically sound and its economic future, promising. The corollary is that shifts in the market's perception of these underlying fundamentals can be quite swift, brutal, and destabilizing. (Camdessus, 1995)

This blunt observation about the power of markets is notable for its author as much as for its content, which is now almost universally acknowledged. Development scholar Peter Evans (2005a, 2005b) has argued that even if [financial] crises are averted, the assessments of the most

[10] The accumulation of foreign exchange reserves that has reduced the vulnerability of some economies to the threat of financial crisis has not come without costs. Accumulation of foreign exchange reserves has contributed to net financial outflows from the developing world, primarily from Asian countries, of more than $480 billion in 2005 (UN/DESA, 2006, pp. 65-88). This loss is partly explained by the fact that governments receive very low interest rates on these reserves (e.g. when held in US treasury bills) while having to borrow domestically at higher rates – thus, in effect, poor countries are lending to rich ones at a net loss, losing opportunities for domestic investment and growth in the process.

[11] For a description of the pathways that lead from financial crises to negative health outcomes and reductions in health equity by way of the social determinants of health, see (Hopkins, 2006).

powerful global financial actors are systematically biased in a way that stifles developmental initiatives in the global South (Evans, 2005b, p. 196). Policies pursued by newly elected governments in two middle-income countries, Brazil and South Africa, arguably illustrate the results (Koelble & Lipuma, 2006), albeit with important country-specific differences.

In the Brazilian case, Evans argues that: "As the Workers' Party (PT) gained electoral strength" in advance of the 2002 elections that brought it to power, "the major banks' aversion to the possibility of redistributive developmentalism was translated into negative recommendations with regard to Brazil's currency ... Having experienced a 40 percent fall in the value of Brazil's currency in the course of a few months, the Workers' Party (PT) 'learned its lesson' and, once elected, pursued only the most timid macroeconomic policies for the next few years. The PT chose to suffer low growth, high unemployment and flat levels of social expenditure," all of which negatively affect health equity, "rather than risk retribution from the global financial actors who constitute 'the markets'" (Evans, 2005b, p. 196; citation omitted). Paiva (2006) and Koelble and Lipuma (2006, pp. 623-625) provide similar assessments. A more nuanced discussion by (Amann & Baer, 2006) gives greater weight to domestic political factors in explaining the inability of the PT government to reduce economic inequalities, but nevertheless emphasizes the need "to attract international capital inflows" by keeping interest rates high and running a substantial primary budget surplus – the latter condition being one demanded by the IMF, and illustrating the influence wielded by that institution. This discussion assumes special importance against the background of recent research, cited earlier, showing that even modest economic redistribution in Latin America and the Caribbean would contribute more to poverty reduction than many years of sustained economic growth (Jubany & Meltzer, 2004; Paes de Barros et al., 2002), and a recent Asian Development Bank report suggesting that inequality in many Asian economies countries is rising toward Latin American levels (Development Indicators and Policy Research Division, 2007). Reporting on a multi-year research program that relied on a variety of statistical data as well as interviews with institutional investment managers (Mosley, 2003), Mosley (2006, p. 90) warns that the power of financial markets means that that "those societies most in need of egalitarian redistribution may have, in terms of external financial market pressures, the most difficulty achieving it."

Like Brazil, South Africa is a middle-income country characterized by recent democratisation, extremely high levels of economic inequality and the rise to power of a party with overtly redistributive aims. In 1996, the African National Congress (ANC) government adopted a Growth, Employment and Redistribution (GEAR) strategy that in practice combined restrictive monetary and fiscal policies, in the process with repudiating many redistributive policies demanded by the Congress of South African Trade Unions (COSATU) and the South African Communist Party (SACP), historically key constituent elements and supporters of the ANC. GEAR at least partly responded to investor apprehensions about South African stability, which had weakened the Rand and led to fears of further capital flight (Koelble, 2004, pp. 69-71; Koelble & Lipuma, 2006, pp. 619-622; Streak, 2004). Between 1996 and 2000, GEAR resulted in "dismal development and excellent macroeconomic outcomes" (Streak, 2004, p. 271) with the former including negative employment growth in every year and an official unemployment rate of over 30 percent. In explaining GEAR the actual or anticipated reaction of financial markets was probably less important than domestic political compromises reached between the new government and two sets of important domestic actors: (a) an economic elite defined by its relationship to a few large corporations that dominated South Africa's economy (Terreblanche, 2002, pp. 95-139; see also Carmody, 2002; Handley, 2005; Koelble, 2004) and (b) a larger stratum of affluent (and overwhelmingly white) South Africans actively resistant to the higher levels of taxation that would be necessary to support more extensive redistribution (Terreblanche, 2002, pp. 116-117). This analysis cannot, of course, answer the question of how international financial markets would actually have responded to a more redistributive and expansionist policy on the part of the new ANC government.

Griffith-Jones and Stallings (1995) have described the constraint on policy space created by financial markets as "implicit conditionality," as contrasted with the explicit conditionality attached to lending from multilateral financial institutions. Like other constraints on policy space, implicit conditionality often operates by way of the mechanism of anticipated reaction: even governments committed to improving access to basic health-related needs are reluctant to risk the effects of displeasing the financial markets, just as they may be reluctant to implement policies that might be viewed negatively by sources of foreign direct investment. The examples of Brazil and South Africa suggest that the extent to which the operation of financial markets constrains national policy space is likely to vary depending on both domestic political factors and the vulnerability of a particular national economy – for instance, the opportunities for capital flight (see section 2.2.v, below) and past inflows of short-term portfolio investment. Dieter (2006) argues that since the 1997-98 crisis many East Asian countries have accumulated large enough foreign currency reserves to limit their exposure, thus incidentally contributing to what he sees as a worldwide reduction in the power and relevance of the IMF.

The influence of global financial markets is not restricted to countries outside the industrialized world and what is considered as credible is of importance to national policiy space for health. According to Eatwell (1995), credibility has become the keystone of policy making in the nineties. A credible government is a government which pursues a policy which is 'market friendly,' that is, a policy which is in accordance with what the markets believe to be 'sound'. More generally, Eatwell argues that the pursuit of credibility has had far-reaching consequences in the industrialized countries because, in contrast to the managed exchange rate environment that permitted expansionary full employment policies in the 1960s, "[t]he demands of credibility [had] imposed broadly deflationary macroeconomic strategies on the G7," at least through the early 1990s (p. 279). In a later paper on the OECD as a whole, Eatwell argued that neither technological change nor competition from newly industrializing countries provide sufficient explanations for the rise in unemployment throughout the OECD, and again concluded that financial deregulation "resulted in a significant increase in risk aversion in the public sector and in the private sector. This, in turn, is the major source of deflationary pressures and persistent unemployment throughout the world" (Eatwell, 2000, p. 349; for a similar analysis see Felix, 1998, pp. 183-184).

Economist Dani Rodrik (2002) describes a "political trilemma", created by the incompatibility of the nation-state system, deep economic integration and democracy.

> We can have at most two out of these three. If we want to push global economic integration much further, we have to give up either the nation state or mass politics. If we want to maintain and deepen democracy, we have to choose between the nation state and international economic integration. And if we want to keep the nation state, we have to choose between democracy and international economic integration. (pp. 13-14).

Whether low- and middle-income developing countries have the same degree of freedom is a distinct question; we have identified several reasons for thinking they do not. Further complicating the issue, not all observers view the constraints that globalisation creates as negative. Management consultant Kenichi Ohmae, for instance, celebrates a global marketplace in which "governments have become the major obstacle for people to have the best and the cheapest from anywhere in the world" (Ohmae, 1991, p. 11), and "duty-free shops are the precursor to what life will be like in a genuinely borderless environment" (p. 27). And the disciplinary effect of international capital mobility is sometimes viewed, by both investors and right-wing governments, as a salutary constraint on the (supposed) predisposition of governments and electorates to unsound or 'populist' economic policies and profligate spending (Helleiner, 1994, pp. 309-10; Mosley, 2003, pp. 161-163).

By way of synthesis of the constraints identified so far: it has been argued that high mobility of portfolio investment has combined with constraints created by the need to attract and retain FDI and outsourced production to create a situation in which the formal operations of democracy coexist with more or less severe constraints, created by global economic conditions, on the content of public policy (Koelble & Lipuma, 2006; Weyland, 2004). Sassen (1996, p. 40) describes the constraints in terms of "a sort of global, cross-border economic electorate," whose power over governments derives not from formal political participation but rather from the ownership of mobile assets. The policy implications of tax competition and capital flight represent two specific manifestations of this power shift, although as for its other manifestations the severity of the associated constraints on public policy will vary depending on the specific country context.

Local owners, global opportunities: Capital flight and tax competition

The potential of capital flight on the one hand and arguments on tax competition on the other constrain the scope and nature that national redistributive policies can take. In the recent past, revenue losses from tariff reductions associated with trade liberalisation have compounded the problem in many developing countries. John Williamson, probably best known for having codified the so-called Washington Consensus on development policy in 1990 (Williamson, 1990, 1993), recently said in the Latin American context that the idea of "levying heavier taxes on the rich so as to increase social spending that benefits disproportionately the poor" is conceptually attractive, but "it would not be practical to push this very far, because too many of the Latin rich have the option of placing too many of their assets in Miami" (Williamson, 2004, p. 13). This is an instance of (at least anticipated) capital flight: the process in which domestic investors shift their assets abroad, and foreign investors repatriate them, when threatened by economic uncertainty or offered the prospects of higher returns elsewhere.

Tax avoidance is only one of several motivations for capital flight; Beja defines it as:

> [T]he movement of capital from a resource-scarce developing country to avoid social control. 'Social control' means the actual or potential, as well as formal and informal, control on capital that includes, among others, taxation, regulation of the use of foreign exchange, the capacity to direct resources into productive activities, thus engendering growth, enhancing competitiveness, and consequently, realizing economic development. (2006, p. 265)

Whatever the motivations, the resource flows in question are substantial. For example, Ndikumana and Boyce (2003) estimated the value of capital flight from Sub-Saharan Africa – a region that includes many of the world's poorest countries – between 1970 and 1996 at $186.8 billion (in 1996 dollars), noting that during the period "roughly 80 cents on every dollar that flowed into the region from foreign loans flowed back out as capital flight *in the same year*" (p. 122; emphasis added); they have also concluded that the accumulated value of flight capital from 25 African countries between 1970 and 1996, plus imputed interest earnings, was considerably *higher* than the entire value of the combined external debt of those 25 countries in 1996 (Boyce & Ndikumana, 2001). Using a similar methodology, Beja (2006) estimates the accumulated value of flight capital from Indonesia, Malaysia, the Philippines and Thailand over the period 1970-2000 at $1 trillion; the flight in question occurred not only during periods of financial crisis, as expected, but also during periods of economic growth and stability.

Capital flight has contributed to the severity of debt crises in many developing countries. Economic historian Thomas Naylor (1987) stated flatly in the 1980s that "[t]here would be no 'debt crisis' without large-scale capital flight" (p. 370). As a more recent illustration of the magnitudes involved, at the end of 2001, while Argentina was undergoing an economic collapse that saw the value of the peso lose more than 60 percent of its value against the US dollar and GDP decline by 11 percent in 2002, it was estimated that the value of assets held abroad by Argentine residents equalled the total value of the country's foreign debt (Centro de Estudios Legales y Sociales, 2003). In any event, when governments borrow on external markets in order to finance their operations while private investors are shifting assets abroad, the effect is to reduce domestic savings and foreign exchange available for development; to increase inequalities in income and wealth, as governments must cut back services or tax the population as a whole to finance debt service charges; and to create downward pressure on exchange rates that further reduces the purchasing power of those who do not have the option of diversifying into foreign assets (Rodriguez, 1987).

Box 3: "Fiscal Termites"

Vito Tanzi, who retired in 2001 as Director of the IMF's Fiscal Affairs Department and was subsequently a senior consultant to the Inter-American Development Bank, has identified eight "fiscal termites" that in the future will gnaw at the fiscal capacity of industrialized and developing country governments alike, if they have not already begun doing so. They are:

1. Increased travel, with increased opportunities for cross-border shopping, notably for luxury items by the world's wealthy.

2. Increases in the amount of work done by "some highly skilled individuals" outside their own countries, with the associated underreporting of incomes and opportunities for investment of savings offshore.

3. Growth in the value of electronic (Internet) commerce, with the associated difficulty of levying taxes, e.g. on product downloads or high value services provided online.

4. Expansion of offshore financial centres and tax havens, combined with the ease with which funds can be transferred electronically to such locations.

5. Growth of new financial instruments and institutions, such as derivatives or hedge funds, that are incompletely regulated and complicate identification of the owners of financial assets.

6. Increased importance of intra-firm trade among components of transnational corporations, which according to one estimate accounted for one-third of total world trade in the late 1990s; this creates multiple opportunities for tax minimisation through transfer pricing, which were not explored in detail by Tanzi but are outlined in the present paper.

7. The hypermobility of financial capital and of high-income individuals with "highly tradable skills. High tax rates on financial capital or on highly mobile individuals provide strong incentives to taxpayers to move the capital to foreign jurisdictions that tax it lightly or to take up residence in low tax countries."

8. "The gradual substitution of real money with electronic money in transactions requiring money," for instance by way of electronic cards.

Although Tanzi does not say so, these difficulties are likely to interact. Thus, for example, the difficulty of collecting sales or value added taxes on electronic commerce (item 3) would seem to argue for a shift to taxing the income of service providers. However, providers could well relocate their personal or corporate presence to jurisdictions with lower tax rates (termite 7) and/or hold their financial assets in tax havens (termite 4).

Source: Tanzi, 2001, 2002, 2004, 2005; quotations from Tanzi, 2002

Williamson's observation referred specifically to the anticipation of capital flight as a constraint on taxation. The ability of the wealthy to shift assets among jurisdictions is, in fact, only one of several challenges to national fiscal capacity associated with globalisation that have been identified by the former Chief of the IMF's Fiscal Affairs Department (Box 3). A further challenge, which he did not identify, is the potential to minimize tax liability by manipulating transfer pricing (in transactions among firms that are part of the same corporate structure or value chain) that is a corollary of the global reorganisation of production. Detailed analyses of US customs data on transactions involving Brazil have indicated that under pricing of exports and overpricing of imports[12] may be an important mechanism of income shifting, tax and duty reduction and capital flight (de Boyrie, Pak, & Zdanowicz, 2004; Zdanowicz, Pak, & Sullivan, 1999). More recent research using similar methods, reported at a conference in 2006 but not yet published (S. Pak, personal communication, December 2006) estimated that such mispricing accounted for capital outflows of over $31 billion from Africa to the United States between 1996 and 2005 (Pak, 2006).

Policy interventions exist to reduce such impacts; they require systematic inspection and auditing of imports and exports, and the availability of "price filter matrices," based on detailed trade transaction data, which can identify prices that are abnormally low or high based on the average price of a specific kind of product or commodity. As in the case of other forms of capital flight, whether states have the institutional capacity or - in the case of destinations for flight capital - the will to devise and implement such measures is another matter.

GLOBALISATION OF IDEAS: GLOBALISATION AND DIFFUSION OF NEOLIBERALISM

[12] To illustrate the magnitude of under- and over-pricing involved, "during 1995 a shipment of 24,000 automobile windshields from Brazil came into the U.S. with a declared price of $0.91 each. In another transaction, 450 kg of green peas were sent to Brazil from the U.S. at a price of $117.82 per kg." These are not isolated examples (Zdanowicz, Pak, & Sullivan, 1999).

Ideas matter: the influence of framing alternatives

Ideas matter in public policy and globalisation is also about the worldwide diffusion of ideas, assumptions about external changes as well as appropriate measures to respond to them. It is in this context that it is useful to recall the famous statement by Keynes (1936):

> The ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than it is generally understood. Indeed, the world is ruled by little else. Practical men, who believe themselves to be quite exempt from any intellectual influences are usually the slaves of some defunct economist.

Over (roughly) the period since 1980 neoliberal or market-oriented ideas have clearly been ascendant in international development policy discourse, and in domestic policy in countries rich and poor alike. Przeworski et al. noted in the foreword to their report on the sustainability of democracy that the embrace of rapid economic liberalisation, "particularly but not only in Eastern Europe," represents the implementation of a neoliberal ideology "developed within the walls of the North American academia and shaped by international financial institutions. .... For the first time in history capitalism is being adopted as an application of a doctrine, rather than evolving as a historical process of trial and error" (1995, p. viii).

Williamson (2002) has further argued that the basic ideas that he attempted to summarize in the Washington Consensus have continued to gain wider acceptance over the past decade, to the point where the current Brazilian President Lula has had to endorse most of them in order to be electable. We have earlier pointed to the material role that international financial markets may have played in this apparent conversion – a perspective that is not inconsistent with the argument of Fourcade-Gourinchas and Babb (2002) that financial crises have magnified the appeal of neoliberal economic policy ideas as the only ones that 'work,' and hence increased their acceptability to electorates. Simply put, the "asymmetries" of economic power in the international frame of reference (Birdsall, 2006a, 2006b) may mean that for some countries, all the feasible policy options are in fact incompatible with equity concerns.

The diffusion of neoliberal ideas raises more specific questions of *how and why* they have spread rapidly and been embraced even by nominally left-wing or social democratic governments. We have already described constraints created by global reorganisation of production, by lender conditionalities, and by financial markets. The World Bank and the IMF have also played important roles: they exercise influence not only in their role as lenders, but also in the realm of ideas as well-funded definers of conventional wisdom, knowledge producers (Broad, 2006; Mehta, 2001; Wade, 2002) and nodes in transnational networks of professionals who share assumptions (mostly those of neoclassical economics), training experiences (notably in the economics departments of US and British universities) and career paths (Lee & Goodman, 2002; Woods, 2006a, pp. 53-56).

The combination of the two sources of influence – financial and knowledge and norm-based - was evident in the World Bank's advocacy on pension reform in Latin America, following the lead of Chile under Pinochet. Although the Bank sometimes made loans contingent on pension 'reform,' its major effect was rather as a "teacher of norms" and as a promoter of economic liberalisation more generally (Brooks, 2004, pp. 54-65; Mesa-Lago & Müller, 2002, pp. 709-712). In order to be transformed into domestic policy, ideas must have the backing of interests, which may be both domestic and international, although in the absence of formal democracy only a narrow range of domestic interests may matter. Writing about international interests in the Mexican context, Babb noted that "the success of economists in the Mexican government" as promoters of economic liberalisation "must fundamentally be traced to their legitimation by resource-bearing constituencies," such as "[f]oreign investors, multilateral institutions, and U.S. government officials [who] are the gatekeepers controlling access to vital resources, without which the Mexican government would face grave macroeconomic difficulties" (Babb, 2002, p. 20).

Lee and Goodman (2002) have focussed in particular on health care reforms and the role of transnational networks and institutions in promoting health care reforms. The OECD has also been raised as a key actor in the context of health care reforms and the globalisation of health care reforms (Moran, 1996). Another area with OECD influence has been on promotion of broader public sector reforms and management practices through the PUMA programme. The OECD work has since become reflected also in the World Bank focus on health care and public sector reform. However, in comparison to the OECD, the

World Bank influence has been enhanced through its position as lending agency, structural adjustment policies and sectoral reform programmes. The role of World Bank in influencing development thinking and policies was prominent especially in the 1990s. This was reflected also in how international advice and aid policies were understood. The preference for markets and market mechanisms as mechanisms for resource allocation was present in the landmark document of 1993 World Development Report on *Investing in health* (World Bank, 1993, p. 65).

The same implicit emphasis on priority of market-based mechanisms is also prominent in the World Bank 2000 *Social Protection Sector Strategy.* This document invoked the need for "[a] new conceptualization of social protection that is better aligned with current worldwide realities" in support of the position that: "In an ideal world with perfectly symmetrical information and complete, well-functioning markets, all risk management arrangements can and should be market-based (except for the incapacitated)" (Holzmann & Jörgensen, 2001, p. 16). Social policies to help the non-incapacitated poor can be justified, it was argued, only because of market failures resulting from the fact that the poor "are more vulnerable than other population groups because they are typically more exposed to risk and have little access to appropriate risk management instruments" (p. 10) such as diversifying their income streams, marriage, and private insurance. As the World Bank documents tend to be important source amongst policy actors and consultancy companies in the field of aid policies the basic assumptions easily remain in the background of policy discourses years and even decades after. The Social Protection Sector Strategy, in particular, is also and example of how globalisation-driven distributions of economic power and property rights also *create* the "worldwide realities" that globalisation is claimed to invoke.

In the case of Latin American pension reform, the domestic interests involved included government officials who had become convinced (rightly or wrongly) that pension privatisation would increase the supply of domestic savings needed for investment and growth, at a time when national economies had become increasingly vulnerable to capital flight as a result of economic liberalisation. "Once capital mobility and market-oriented policies had become established as the dominant economic paradigm in Latin America, this context generated its own set of incentives for policymakers to adopt the market model of pension provision" (Brooks, 2004, p. 65). Foreign investors entered the policy dynamic as well: pension privatisation began to be seen by financial markets as one of the signs of macroeconomic policy credibility, thus strengthening the linkage between ideas and interests (Brooks, 2004).

Although the effective backing of interests is a precondition for the transformation of neoliberal (or any other) ideas into public policy, identifying the interests backing the ideas is not sufficient to explain *how* ideas transform public policy. It is also important to analyze the internal structure of policy discourses. The term 'discourse' is a convenient portmanteau word for the interaction of linguistic structure and content to produce meanings that may be intuitively resonant and politically influential. "Discourses usually have implicit rules about who is allowed to speak, from what point of view, what is allowed and not allowed to be said, and in which form" (Avilés, 2001, p. 164). In the public policy context discourses are usually organized around a set of initial presumptions or baselines (Sunstein, 1987).

More often, they remain at the level of complex shared understandings like those described by feminist legal scholars (Fudge & Cossman, 2002), who explicate privatisation in a way that provides a useful connection between macro- and micro-level elements of the neoliberal world view. For them, privatisation as a concept and a process involves not only the sale of state assets but also, and more centrally, a shift in the presumed locus of responsibility for social provision to the individual and the household – a description of the problématique that closely parallels Hacker's decscription of the "privatization of risk" in the United States.

Box 4. Privatization

According to Fudge and Cossman, privatization comprises six distinct but conceptually and institutionally related processes:

1. Reprivatization: "processes whereby once public goods and services are being reconstituted as private, that is, as more appropriately located in the private spheres of market, family, and/or charity."

2. Commodification: "the process whereby once public goods and services are being reconstituted as market goods and services." Others use the term marketization to describe a similar phenomenon, and the welfare state literature often refers to recommodification, in keeping with Esping-Andersen's identification of decommodification, which "signals a citizen's relative independence from pure market forces" (Esping-Andersen, 2000) as a central characteristic of 20th-century welfare states

3. Familialization: "the process whereby once public goods and services are being reconstituted as naturally located within the realm of the family. It involves the normative claim that families ought to take care of their own."

4. Individualization: "the process whereby a broad range of social issues is being reconstituted, both with respect to causes and solutions, in highly individualized terms. Health care and poverty are treated as individual shortcomings, products of poor individual choices, to be remedied by emphasizing individual responsibility. Social and structural analyses are displaced in favour of individual solutions to individual problems valorizing individual choice and markets."

5. Delegation: "the process whereby decision-making authority is shifted from visible to invisible public agents and from public to private agents," with a consequent reduction in transparency. Although Fudge and Cossman do not cite it, the role of Britain's National Institue for Clinical Excellence (now the National Institute for Health and Clinical Excellence) in legitimizing health care rationing while avoiding inquiry into the origins of the cost containment imperatives driving the process is a case in point (Syrett, 2003).

6. Depoliticization: "the process whereby a range of issues, goods and services are removed from political contestation," e.g. by recasting them "as 'naturally' located within the market or the family."

Their references to "public goods" are a terminologically imprecise effort to describe goods and services previously been provided by a government or quasi-governmental agency with at least partial public financing from general tax revenues. In economics, a public good is defined more narrowly as one that is non-rivalrous and non-excludable. Thus, neither health care nor child care is a public good, although within the neoclassical economic frame of reference some public support for provision of each may be justified with reference to spillover effects (positive or negative externalities).

Source: Fudge & Cossman, 2002

Health and social policy measures within the competition state

Cerny has captured the anticipated effects of the multiple, interacting dynamics described in the previous sections of the paper on national policy space by claiming that globalisation will lead to convergence of national social and economic policies toward the ideal of what he calls the competition state. "The main focus of the competition state is the promotion of economic activities, whether at home or abroad, which will make firms and sectors located within the territory of the state competitive in international markets" (Cerny, 2000, p. 136). Cerny argues that national governments, deprived of many policy instruments that are no longer effective in a global economy, now must compete for investment in much that same way as the various United States compete among themselves.

However, success in economic or financial policy may be defined quite differently than in health and social policy. A broader debate on the purpose and role of social protection systems has tackled the aims, benefits and problems of pension reforms and the role of international financial institutions in encouraging governments towards more private savings and accounts based systems since the 1990s, with particular reference to the Chilean pension system (Mesa-Lago & Müller, 2002; Minns, 2001; Orenstein, 2001; Orzag & Stiglitz, 1999). A related question suggested e.g. by the work of Amann and Baer (2006) asks whether a 'successful' domestic economic policy as defined by financial markets may be fundamentally incompatible, at least for some countries, with policies that give priority to income redistribution, social provision and other policy modalities organized around meeting basic needs.

The consideration of social policies primarily as way of enhancing competitiveness is not merely an issue with respect to developing countries. In Canada the shift toward a "social investment state"[13] that implicitly triages recipients of social protection based on their expected future rate of return has been evident (Jenson & Saint-Martin, 2003).The social investment state involves applying the logic of the competition state, as described by Cerny, to individuals and households that must now enhance their own competitiveness ('human capital') within an emerging international labour market. The focus on pension systems as means for providing savings for financial markets or health systems as means for increasing trade and business opportunities can also be seen as part of the broader globalisation process and diffusion of ideas what can be done, what should be done and what are considered as credible policies.

CONCLUSIONS: CREATING POLICY SPACE FOR HEALTH AND SOCIAL DETERMINANTS OF HEALTH

Globalisation affects not only the capacities of governments to act, but also ideas of what governments and polities are about, of what is preferable and achievable in the context of globalisation. Globalisation does not take place in a political vacuum. It is in this context essential to remind the necessity of priorities of government policies, which has been made, for example, in the following observation by Bhaduri (2005), who argues that a greater emphasis on domestic demand with equity in the context of globalisation implies greater emphasis on the welfare role of the state. This is different from the usual view that the disruptions caused by unrestrained globalisation need to be moderated by creating safety-nets (mitigating impacts). He thus argues that:

> The priorities should be on the other way around: governments need to spend more on the social sector of welfare, health, unemployment, and old age insurance without being constrained drastically by an artificial fiscal discipline. It is not a change in the level of spending but rather a change in the composition of spending that increases the social component of income.

The concern over policy priorities is an issue especially when measures to accommodate globalisation are promoted without recognition of compromises and policy choices that are made at national level. These can take place, for example, in relation to economic policies and subsidies to key industrial sectors, consequences of liberalising capital movements, tight monetary policies or promotion of trade and industrial policy priorities in the context of trade negotiations at the cost of health priorities. This is of particular importance to health and addressing social determinants of health as we have earlier pointed out how globalisation is associated with both growing social inequalities and more limited means to address these.

We can distinguish different interests between public interest and individual interests or those of particular population groups, corporations or other interest groups within the society. It is important that is if clearly recognised that these interests are not equal to corporate interests. These do not necessarily divide only between commercial and public sector actors, but as well between different substantive areas and between different Ministries within government. This applies to priorities between, for example, Ministries of trade and industry and Ministry of Health. Measures of productivity in the commercial sector are not necessarily appropriate for measuring performance of the public sector. Productivity and related measures do not necessarily give the appropriate understanding of the contribution of health policies to national welfare and growth. On the other hand, it is likely that more similar interests can be found within public administration amongst those with focus on education, housing, poverty reduction, social security and environment.

To conclude this paper, we draw attention to the importance of an understanding and use of policy space for health as a parallel but not equal concept to that of

[13] A term that was originally used, approvingly, by (Giddens, 1998) to describe the privatization of risk that he viewed as a necessary element of the "Third Way" strategy for the future of social democracy.

national policy space. Decisions made at a purely national level in the context of economic or trade policies may, on the basis of national policy decisions, still restrict the national policy space for health. In terms of national policy space for health and its social determinants, we emphasise twelve key issues.

1. In many areas, and in particular with respect to developing countries, there remains substantial formal policy space that could be used in support of social determinants of health and for health.

2. The lack of using this space is a result of both global and national policy priorities and choices, both with respect to assumed, formal and real limits on national policy space in terms of threats of taking investments or production elsewhere even if measures implemented would be according to international trade law.

3. On the other hand, it seems reasonable to argue that on the basis of both empirical evidence and more theoretical work globalisation has indeed worsened social inequalities both in terms of widening inequalities within and between countries as well as in terms of weakening of the basis of policy measures to counteract this process.

4. Particular global measures and agreements in the context of trade, investments and commercial policies are geared towards limiting national policy space. A case of example is emphasis on domestic regulation in the context of GATS and measures concerning government procurement. Thus specific focus needs to be put on the negotiation processes and respective working groups within the WTO.

5. National governments and in particular health policymakers need to know better the contents and implications of policies made in the context of trade and commercial policies on their sector, to better articulate their policy priorities more clearly and to take greater part in the negotiation process across different sectors and with corporate stakeholders.

6. Health and pharmaceutical policy needs and priorities should be addressed in relevant negotiations concerning intellectual property rights and related industrial policies which could, for example, influence access to medicines, affect reimbursement, or limit use of generic medicines. If trade-offs are made between industrial and health policy aims with cost implications to health sector, these should be covered by respective resource shifts to health sector.
7. The promotion of national health policy priorities may need recognition and enlargement of global policy space for health and social determinants of health as a more systemic issue that relates to economic and trade policies. This includes not only trade policies, but also economic policies and the policies of the international financial institutions, notably the IMF and World Bank.

8. Impacts of liberalisation of capital markets have been more problematic than liberalisation of trade in goods in many countries. This requires further attention, particularly with respect to ensuring sustainability and equity in the financing of health systems and social security.

9. The concept of fiscal policy space for health needs to be further explored in global economic and aid policies so as to ensure that priorities and requirements for fiscal measures do not lead to unsustainable or less efficient measures in the financing and organisation of health systems.

10. Ideas and institutions matter. National policy space for health and social determinants of health is framed by assumptions about what is economically sound, effective, feasible or possible. Capacities to assess, follow and analyse policy implications are crucial and require sufficient capacities from health researchers at both global and national levels.

11. The focus on competitive states and competitiveness has implications for how health systems and social security systems are considered and whether these are seen primarily through the aims of productivity and growth or on the basis of how these fulfil their own stated aims and functions of health and social security.

12. The capacity to utilise policy space for health requires that, firstly, health policy concerns are recognised in policy-making and, secondly, that policies can be and are articulated so that they can be defended. In other words, Ministries of Health need to understand better the legal and economic context in which they operate and to articulate better their own priorities within these contexts.

In the light of the literature on globalisation and national policy space reviewed in this paper, we conclude with a few possible recommendations for the consideration of how to tackle these issues at national and at global levels.

1. *Defining health policies and policy priorities with respect to SDH.* If there is no direction, any road will do. Only if Ministries of Health - or administration responsible for health policies and their implementation - know what they want and are able to articulate this to the other sectors, they can expect to have the issues considered. Different mechanisms of formal or informal consultations, joint committees, participation in hearings for decision-makers, for example, exist and can be utilised on the basis of national priorities and aims. This applies as well to any global measures to support or tackle the issue.

2. *Creating better understanding of what health and SDH related processes take place in other sectors.* Those acting on behalf of health and social determinants for health need to be able to analyse health and health implications of other policies as well as be able to operate in the context of public policies and the legal and economic assumptions on the basis of which provisions are made. While negotiation and dialogue across sectors is of importance, it is as important that health issues do not become run over by experts of other sectors with focus on their own aims or merely become informed by decisions already made.

3. *Having sufficient expertise which can understand both health and SDH priorities as well as detailed legal provisions and assumptions in other policies.* Member States should build up capacities and skills to beyond public health in order to relate to other policy areas, in particular those related to trade and economic policies so as to ensure better consideration of crucial issues and their relevance to health and SDH. The possibilities of engagement and policy space are lost if health argumentation does not communicate with legal and economic policy-making practice. Capacities to understand what is actually negotiated in trade agreements is important if health proponents are to articulate their views fully as even with all possible policy space, utilisation of this may become compromised due to lack of understanding of key legal issues or implications during negotiations.

4. *Tackling public policy issues within the public domain and enhancing probability that health arguments are heard and supported.* In terms of national policy space Ministries of Health - or administration responsible for health policies and their implementation – may be weak actors or lack capacities to follow up processes appropriately. Achieving sufficient voice and influence may in this context also require that issues are tackled through open debates, coalitions with like minded parts of government or intergovernmental organisations, nongovernmental organisations and taking issues to broader policy debates amongst decision-makers in comparison to closed executive or cabinet decisions within government.

CODA

The research and analysis for this paper were completed in 2007 and early 2008, well before the severity of the worldwide financial crisis that began with the collapse in 2007 of the US market for securitized sub-prime mortgages had become apparent. At this writing, it is not yet possible to predict the consequences for economic growth, poverty, economic insecurity and other important influences on health. The crisis dramatized the interconnectedness of most of the world's economies and societies, and brought home to millions of people in the high-income countries what their counterparts elsewhere in the world have known from bitter experience for at least a generation: their lives could be transformed and their livelihoods wiped out by events in financial markets over which they had absolutely no control, and whose workings they did not understand.

It is also too early to say much about the impact of the crisis on policy space as defined in this paper. Some governments will probably become more concerned with protecting the policy space that remains under the current trade policy regime for supporting domestic productive sectors, and will become correspondingly reluctant to enter into agreements that further reduce their options in that regard. Conversely, the long-term impact on the fiscal capacity of many governments in countries rich and poor alike may be profound. They have sustained major revenue losses as a result of recession and the collapse of commodity prices, while facing increased need for social protection expenditures and often having to stimulate domestic demand and rescue their financial institutions using huge amounts of borrowed money. Unless recovery is extraordinarily rapid and robust, the effect is likely to be a 'debt overhang' that constrains expenditures addressing social determinants of health for many years, while leading to intensified domestic distributive conflicts.
TS, February 2009

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