**Session 45: Proposal for a WTO agreement on the supply of knowledge as a public good**

**Sub-theme IV: What next for the multilateral trading system?**

**Moderator**

Mr Sisule Musungu, President, IQsensato

**Speakers**

Mr James Love, Director, Knowledge Ecology International (KEI)

Mr José Estanislau do Amaral, Counsellor, Permanent Mission of Brazil to the WTO and other economic organizations in Geneva

Ms Shandana Gulzar Khan, Legal Affairs Officer, Permanent Mission of Pakistan to the WTO

Mr Antony Taubman, Director, Intellectual Property Division, WTO

**Organized by**

Knowledge Ecology International (KEI)

IQsensato

**Report written by**

Mr Thiru Balasubramaniam, Geneva Representative, KEI

Wednesday, 21 September – 16.15-18.15**Abstract**

The objective of the session was to establish a new paradigm under which the WTO could host an international instrument to address the chronic under-supply of global public goods, providing a timely solution to a pressing global challenge.

The global community is confronted with an under-supply of global public goods, including, but not limited to, those involving knowledge goods. The current architecture of international trade lacks the capacity to address free riding or the general under-supply of global public goods. Mr Love presented a proposal for a WTO agreement on the supply of knowledge as a public good, andMr do Amaral, Ms Khan and Mr Taubman responded to it. While the panellists saw this proposal as being perhaps premature for the Doha Round, they recognized its merit as an innovative solution to a global challenge and recommended that the proponents refine the concept further into an agreement with draft articles for further examination by WTO members. The proponents agreed to refine the proposal with input from interested WTO Members, academics, civil society and other stakeholders.

**1. Presentations by the panellists**

*(a) Mr James Love, Director, Knowledge Ecology International (KEI)*

In his opening remarks, Mr Love, presenting a proposal for a WTO agreement on the supply of knowledge as a public good, described this proposal as an agreement that would combine voluntary offers with binding commitments to supply public goods, analogous to existing WTO commitments to reduce tariffs, subsidies or liberalizing services. He suggested that it could be modelled in many respects on the WTO General Agreement on Trade in Services (GATS).

Mr Love noted that the classic definition of a global public good includes the characteristics of non-rivalry and non-excludability. He remarked that the International Task Force on Global Public Goods (GPGs) defines these as issues deemed important to the international community with the following characteristics: they cannot be adequately addressed by countries acting on an individual basis, and they must be addressed collectively on a multilateral basis by both developed and developing countries.

Mr Love stated that, while the focus of the KEI proposal was for a mechanism to address the under-supply of certain types of knowledge resources as public goods, the concepts underpinning the proposal were applicable to wide range of public goods. Mr Love posited that the reasons there exist a chronic under-supply of global public goods are manifold, ranging from sovereignty issues, countries’ differing preferences and priorities, and the free rider problem. He noted that governments have greater incentives to increase the welfare and consumption of their own citizens than to contribute to the entire world.

Mr Love noted that the WTO’s primary focus is on liberalizing trade in private goods where countries negotiate and aggregate binding commitments. In the WTO, the collective benefits of engaging in trade liberalization are large while the costs of exclusion from the process are prohibitive. On the interface of the WTO and knowledge, Mr Love stressed that the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement is largely about the “supply of knowledge as a private good, and not about trade liberalization”, as the TRIPS Agreement is “largely about promoting the enclosure and privatization of knowledge”.

The KEI proposal on a WTO Agreement on the supply of knowledge as a global public good would focus on the creation of a schedule of voluntary but binding commitments to enhance the supply of a heterogeneous set of public goods. This mechanism would be modelled in some ways on the WTO GATS (for example, a country would not have to make an offer). It would provide benefits such as allowing countries to aggregate willingness to pay or supply certain goods when dependent upon matching offers by a third party, and introducing other “asks” or counter-offer elements into broader WTO negotiations. The GATS model is appealing because it offers flexibility in terms of what types of asks or priorities (whether these be leprosy, malaria, public databases or course syllabi, etc) WTO members could set on the schedule.

Mr Love elaborated on two types of offers envisioned in the proposal: *sui generis* offers and standardized offers. He explained that provisions for *sui generis* offers were needed because, unlike tariffs or other measures similar enough to lend themselves to formulae or general approaches, many interesting and important public goods projects are by their nature so unique that general approaches are too difficult to manage. Mr Love explained that, in some cases, the provision of standardized offers for specific public goods or norms was needed. He posited that the “existence of the standardized offer would make it more efficient to negotiate and would provide an opportunity for improving the nature of the offer, making it more useful and appealing to other WTO members, and thus more valuable as a bargaining chip”. As an example of a standardized offer, Mr Love cited the US National Institutes for Health (NIH) open access policy which required that grantees who have published academic papers place these papers in a public database for free 12 months after publication.

Mr Love provided numerous examples of offers envisioned under the proposal: collaborative funding of inducement prizes to reward open source innovation in the areas of climate change, sustainable agriculture and medicine; patent or copyright buy-outs in the areas of health and energy, governments to collectively to buy out e-book rights to access course materials in critical areas of education; biomedical research in areas of priority, such as new antibiotics; independent third-party clinical trials on medicines and vaccines; funding Wikipedia server costs; projects to improve functionality and usability of free software; open public domain tools for distance education; open access databases of satellite images or climate data; and open royalty-free licensing of government-funded research for green technology, health and agriculture.

In conclusion, Mr Love reiterated that global public goods are under-supplied, a situation that will not change without a global mechanism to address the free rider and prisoner’s dilemma issues. He stressed that the WTO should not be limited to just promoting the trade and consumption of private goods, but should be expanded to supply GPGs, especially given that the WTO possesses strong enforcement mechanisms (dispute settlement understanding) and useful models for inducing voluntary but binding offers (GATS).

*(b) Mr José Estanislau do Amaral, Counsellor, Permanent Mission of Brazil to the WTO and other economic organizations in Geneva*

Mr do Amaral indicated that the objectives of KEI’s GPG proposal are worth pursuing but he emphasized that the proposal needed further refinement, with the next revision taking the form of a draft treaty including draft articles and key definitions with a clear articulation of the scope. Mr do Amaral contended that the proposal contains two important suggestions, for creating more knowledge goods (supply side), and increasing access to knowledge goods (access side). He suggested that these objectives should be separated, and noted that access to existing knowledge should not have to wait for the supply of new knowledge. He posited that the WTO does not have much experience in the “supply side” of knowledge and requested KEI and IQsensato to conduct further research into alternative modes of carrying out research and development. Mr do Amaral agreed with the assumptions of the KEI proposal, which noted that governments have greater incentives to increase the private wealth of their citizens than commitments to supply global public goods; remedying this would present a difficult challenge. Amaral exhorted KEI to provide more precision in using the terms “knowledge” and “applied knowledge”. He noted that KEI would need to further develop how IPRs could be reconciled with GPGs. In conclusion, Amaral reaffirmed that the objectives of the proposal are “absolutely worth pursuing”, and he suggested that, in order to have a more concrete discussion, the current elements of the proposal need to be refined and converted into a draft treaty. He volunteered to provide drafting inputs for the next phase of the proposal.

*(c) Ms Shandana Gulzar Khan, Legal Affairs Officer, Permanent Mission of Pakistan to the WTO*

Ms Khan’s presentation examined whether the WTO had the mandate to work on an agreement on the supply of global public goods. In terms of establishing the context, Ms Khan asked the following questions:

* Who is the “demandeur”?
* Why the WTO?
* When is the right time?
* How can it be done?

In response to the question on “demandeurs”, Ms Khan quoted the WTO Director-General, Pascal Lamy:

*“The world has changed. The political, economic, and social contours of the world we live in today are very different to those that existed a decade ago. As a result there is a widening gap between existing trade rules and the new realities.”*

In Ms Khan’s view, the real “demandeur” for an instrument on GPGs is the “reality of today”. She noted that “an acute lack of access, or even restrictions to public goods, is indeed the reality of the majority of the world’s population”.

Ms Khan asked whether there is room for an in-built mandate within the WTO for a work programme on global public goods. She noted that a “surgical splicing of the legal texts is unnecessary”, but cautioned that asserting that the WTO did not have any mandate to work on public goods would be “glossing over the legal texts”.

In response to the question, “does the WTO have the mandate to deliver”, Ms Khan cited provisions from the Marrakesh Agreement, the General Agreement on Tariffs and Trade (GATT), GATS and the TRIPS Agreement, and asserted that, read as a whole, these agreements provide a textual basis for a WTO work programme on public goods. She concluded by noting that, once the WTO membership was confident in the proposal, including a possible legal text and possible failings and best practices, the “paradigm shift would become a reality”.

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*(d) Mr Antony Taubman, Director, Intellectual Property Division, WTO*

Mr Taubman concurred with a multilateral approach to addressing GPGs. He cautioned against conflating GPGs with the “public good”. Mr Taubman noted that the classic definition of public goods did not lend itself to prioritization, and that this created difficulties in making informed choices on the financing of GPGs. He contended that a rules-based trading system, such as the WTO, predicated upon notions of non-discrimination, fairness, equity, could also be considered a public good. Design considerations of the GPG proposal need to take into account the nature of the WTO and the broader challenge of international cooperation in terms of pooling resources to supply under-supplied GPGs. Mr Taubman advised that general principles should be applied in the creation of a GPG instrument before designing standardized offers. Practical considerations included how this approach would liberate new funds and new commitments, and whether contributions would be commensurate with the ability to pay. He acknowledged that the promise of the KEI proposal was that it provided the possibility to move beyond the zero sum game that characterizes trade negotiations. Depending on the nature of the outcome, Mr Taubman remarked that one advantage of the WTO system is that it provides a mechanism to hold countries accountable in their commitments to fund global public goods.

**2. Questions and comments from the audience**

Ms Rachel Marusak Hermann from IP-Watch asked Mr Love what the next step would be in the next iteration of the proposal. Mr Love answered by noting that KEI and IQsensato would seek inputs from delegates, IGOs, NGOs and others in revising the proposal into a treaty with draft articles as explicitly requested by the panellists.