Draft 04.03.2011 (5982 words) – not for citation without permission of the author.



This research has been made possible through funding from the European Research Council under the European Community's Seventh Framework Programme - Ideas Grant 230489 GHG.

All views expressed remain those of the author.

Deal Breakers: When is a role for business (in)appropriate in global health governance?

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Abstract

In light of proliferating public-private partnerships, privately-funded charitable foundations, and corporate social responsibility (CSR) initiatives, it is widely recognised that the business sector has become an important player in global health. In some cases, these roles have extended to contributions to global health governance (GHG). At the same time, there remain considerable concerns about the appropriate role of private sector interests in what is a core area of public policy. There is strong consensus that certain health-harming businesses, such as the tobacco industry, are fundamentally at odds with the goal of protecting and promoting population health. There are more contested views regarding the food, alcohol and pharmaceutical industries.

The purpose of this paper is to explore potential parameters for deciding the appropriateness of contributions by the business sector to GHG. The paper begins by examining the activities of the tobacco industry as reasons for its marginalisation from public health policy making. As well as producing a product that is inherently harmful to health, it is argued that tobacco industry activities can be considered "deal breakers" because of their purposeful intention to undermine public policy. The paper then explores more fully the specific functions of GHG, and whether certain functions should be "off limits" to the business sector.

Deal Breakers: When is a role for business inappropriate in global health governance?

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INTRODUCTION

The flourishing of so-called public-private partnerships in global health has opened the way for a diversity of corporate sector actors to participate in governance arrangements. The nature of this participation has included financing of global health initiatives, consultative roles in the setting of health policies, and even formal membership on the governing bodies of global health institutions. Overall, the broad trend has been towards a larger number of corporate actors playing a broader range of roles in global health governance (GHG), not simply as the subject of regulation but active contributors to the setting, implementation and enforcement of governance frameworks.

The appropriate role of the corporate sector in global health has been the subject of much debate. This has elicited a wide range of views, from whole-scale condemnation, to the welcoming of private sector involvement as giving a much needed boost to hitherto state-led efforts. Yet there is much that is unsatisfactory about current discourse. Private sector actors are very diverse in the nature of their businesses and how they conduct them. Too often debates have seen ideology lock horns with claims of pragmatism and evidence-based practice with little effect. The current state of the debate is further confused by imprecision regarding what is defined as the "private sector". Definitions range from an exclusive focus on for-profit entities (e.g. PepsiCo), to those which encompass non-state actors including charitable foundations and even civil society organisations (CSOs).

The purpose of this paper is to contribute to fuller understanding of the parameters for deciding the inappropriateness of contributions by the business sector to GHG. The paper focuses on the reasons for the exclusion of the tobacco industry, drawing on empirical research of industry activities. It is argued that, as well as producing a product that is inherently harmful to health, tobacco industry activities can be considered "deal breakers" because of their purposeful intent to undermine public policy. Finally, the paper explores the specific functions of GHG, and whether there are certain functions inappropriate for the business sector to engage in.

BACKGROUND

The early history of business sector involvement, in what was known as "international health", was largely in the form of philanthropy. From proceeds generated by business earnings, charitable foundations such as the Rockefeller Foundation (1913), Ford Foundation (1936) and Wellcome Trust (1936), became prominent supporters of research, education and practice related to tropical medicine and international public health.² More recently, foundations with large-scale interests in global health have redefined the institutional landscape led by the Turner Foundation (1990), Bill and Melinda Gates Foundation (1994), Clinton Foundation (2002), Bloomberg Initiative (2006) and many others.³ Health has been the cause of choice for aid donors, rising from US\$8 billion to US\$27 billion from 1995-2010, with corporate philanthropy a major component.⁴ The Gates Foundation alone has donated almost US\$14 billion to global health since its founding.⁵

Along with this new wave of foundations has been a variety of corporate social responsibility (CSR) initiatives⁶ which have proliferated as part of the business sector's engagement in the "strategic use of philanthropy" as "a component of long-term competitiveness". This has led, for example, to the creation of non-profit initiatives sponsored by corporate interests (e.g. Avon Breast Cancer/Women's Health campaign). Pfizer's Global Health Fellows international volunteering programme, for example, is

seen as a "win-win" scheme to the benefit of recipient organisations and the company (i.e. enhanced employee skills, corporate reputation, employee motivation and professional development, accountability for company's social performance). As Simon writes, "companies are selecting non-profit partners for their strategic fit and providing them with management technology, communications support, product packages and volunteer teams, rather than simply handing out cash donations." Further efforts have been made by the UN to harness corporations directly in "good causes" at the global level through the UN Global Compact, launched in 2000. Today, the UN Global Compact boasts around 2900 companies and 3800 members.

Another important way that the business sector has engaged in global health has been through public-private partnerships. A diverse range of institutional arrangements have been formed by which government and private sector actors have come together in pursuit of agreed global health goals. Pharmaceutical companies, in particular, have engaged in collaborative research and development activities to improve access to existing drugs, or to develop new products and treatments, to serve the public good. New compounds, technical expertise and knowhow, and innovative financing have been attributed to the health community's engagement with the business sector. 11,12

Finally, and perhaps more controversially, has been the involvement of corporate actors in regulatory activities related to global health. Amid an alarming rise in non-communicable diseases, many governments have sought to engage with the food and drink industries, for example, in an effort to encourage the development of healthier products, to improve labelling, and that aid This is illustrated by recent developments in the UK where the Coalition Government has invited companies such as McDonalds, PepsiCo and Unilever to advise on the setting of voluntary codes to address the growing health problems associated with obesity, hypertension and inactivity. Philip James, head of the International Task Force on Obesity, refers to Lansley's approach as creating a "Department of Big Macs" A Lancet editorial calls the decision to invite "the companies who have profited the most from the epidemics of obesity and alcohol misuse" to be part of "setting the agenda on public health" as "bizarre" and beggaring belief. Lansley, in response, argues that "business has a clear role to play in improving people's health' given that "commercial organisations have influence and can reach consumers in ways that government cannot." "15

Overall, the engagement by the business sector in global health is characterised by diversity of actors and activities. Activities have advanced far beyond philanthropy to highly sophisticated CSR initiatives to, more recently, engagement in setting the rules governing global health. Innovative institutional arrangements have proliferated as a result which require more careful critical reflection.

STRIKE ONE: PRODUCING GOODS AND SERVICES HARMFUL TO HEALTH

The nature of a business activity is one criterion for assessing the inappropriateness of involvement in GHG. Tobacco has been described as "the only legally available consumer product that is harmful to one's health when used as intended". Tobacco currently kills 5.4 million people annually, with half of regular smokers eventually dying from the habit, a figure predicted to rise to 8-10 million by 2030. Tobacco currently kills 5.4 million people annually, with half of regular smokers eventually dying from the habit, a figure predicted to rise to 8-10 million by 2030.

Although the cigarette industry has spent much of the past fifty years denying a link between smoking and disease, it has also committed substantial resources to develop a "safer" cigarette. The greater safety of such products has not been supported by evidence but this has not prevented the industry from making such claims. For example, industry claims that "light", "low" and "mild" cigarettes (referring to tar levels) pose less of a health risk have now shown to be false. In 2010, the US Food and Drug Administration (FDA) prohibited the use of such terms on cigarette labels and in advertising, recognising them as misleading and detrimental to cessation efforts. In addition, the industry has dedicated significant resources to develop "safe" cigarettes, seeking to satisfy smokers' demands for taste and nicotine delivery while addressing concerns about public health. Smokeless tobacco products (e.g. snus), nicotine replacement therapies and e-cigarettes are all examples of such products. To date, there

remains much debate about the health impacts of "harm reduction" strategies, with insufficient evidence that such products are genuinely safer or that they do not encourage new smokers. ¹⁹

The inherent harmfulness of tobacco products to health, as a reason for excluding related business interests from GHG, is not easily transferrable to other industries. With the exception, perhaps, of the arms industry, no other industry's products can be described as harmful to health when used as intended. Efforts have been made, in particular, to extend arguments put forth against the tobacco industry to the food and drink industry, given the rise in diet- and increasingly alcohol-related diseases. According to the International Union of Nutritional Sciences, there are more than 300 million obese people world-wide, ²⁰ with the consumption of foods high in fat, sugar and salt as a major contributor to this rising epidemic. Obesity is defined as a condition of excess body fat and is associated with a large number of debilitating and life-threatening disorders. Childhood obesity has become a particular concern, leading to calls for stronger regulation in the production and marketing of food products consumed by children. However, describing any food product as comparable to cigarettes in their inherent harmfulness remains problematic. Food products, even those high in salt, fat and sugar, may pose little if any harm if eaten "in moderation". Moreover, the consumption of food is necessary to sustain life. Similarly, alcohol products are not inherently harmful if consumed within the recommended limits, and there is evidence that moderate consumption of red wine, for instance, bestows health benefits. For these reasons, the food and drink industries have strongly challenged efforts to draw direct analogies with the tobacco industry, and to adopt binding regulations, based on the harmful nature of certain products.

There is a great deal of annoyance within the industry about the level of criticism coming our way, particularly when many of us provide a whole array of products. Those include both products which are beneficial to health and others which any right thinking consumer realises should be eaten as a special treat. Our worry is that this criticism is getting out of control, to the point where there is a fear that responsibility could one day be taken away from the consumer all together.²¹

Instead, many companies have sought to engage with the public health community, advocating voluntary codes on product labelling, marketing to children, and the development of "healthier" products. With long experience of tobacco industry-led efforts to use such efforts to delay or weaken binding regulation, many parts of the public health community remain sceptical.

Overall, the argument that industries that manufacture products inherently harmful to health should be excluded from GHG would seem warranted. However, with the exception of tobacco and the arms industries, this criterion does not apply widely. Its application alone would seem insufficient for determining the inappropriateness of business sector involvement more generally.

STRIKE TWO: UNDERMINING PUBLIC POLICY

The engagement by business interests in lobbying, or advocating with the intention of influencing decisions made by legislators and government officials, is a recognised and, indeed, accepted part of public policy making within western democracies. However, there are strict rules in most countries about such activities. For example, unequal resources available to different interest groups have led to rules on how much individual industries can spend on lobbying. There are also legal rules on what kinds of activities are deemed appropriate – hospitality, gifts, political donations and so on.²²

Since the late 1990s, revelations from internal documents have shown the extent to which the tobacco industry has actively, and strategically, sought to influence a wide range of public policies worldwide. In terms of lobbying, the sums spent by the tobacco industry in the US, for example, are large in absolute terms and in comparison with resources available to public health advocates.²³ However, if the amounts are comparable to other major industries then this, in itself, would not be grounds for exclusion from GHG.

Privileged access to policy makers, however, has been a longstanding concern. Aguinaga Bialous et al. assessed the perceived effect of tobacco industry allegations of illegal lobbying by public health professionals on policy interventions for tobacco control. They conclude that public health professionals need to educate themselves and the public about the laws that regulate lobbying activities and develop their strategies, including their policy activities, accordingly.²⁴ More concerning has been evidence that tobacco industry efforts to influence public policy has gone far beyond legal lobbying activities. Research on industry documents show that the tobacco industry has frequently engaged in activities that go beyond agreed and even legislated rules. The tobacco industry, for example, has sought to undermine individual public health scientists, officials and health organisations (including WHO, the International Agency on Research on Cancer [IARC] in an effort to undermine their perceived legitimacy as public health advocates. In established markets, such as the European Union, weak legislation on marketing...²⁵ However, it is in so-called "emerging markets", where tobacco control efforts have been formative, that the industry has focused more recent efforts to prevent implementation of the FCTC. In Lebanon, industry interests have been strongly represented in the parliamentary health select committee where repeated efforts to adopt tobacco control legislation have been thwarted at the earliest stages of public debate.²⁶

In addition, there is accumulating evidence that the tobacco industry has engaged in activities undermining the science on tobacco and health which underpins policy decisions. In Asia, Philip Morris (PM) and other tobacco companies formed Project Whitecoat to covertly recruit scientists as credible spokespersons to cast doubt on the harmful effects of second hand smoke.²⁷ In Germany, for example, research programs have been organized by individual tobacco companies and through the industry association, leading to an extensive network of scientists and scientific institutions with tobacco industry links.^{28,29} In China, BAT have initiated briefing sessions for scientists and civil servants on "indoor air pollution", and donated funds for liver disease research to divert attention from the need for smoke-free public places.³⁰ A similar tactic has been used in the industry's financing of stress research since the 1960s, alleging it is a causal factor in coronary heart disease and cancer.³¹ Overall, there is extensive evidence of the industry funding of research projects, individual scientists, scholarships, scientific meetings, publications and front organisations with the purpose of "creating controversy" and sowing public doubt about the links between tobacco and health.³²

As an extension of the above efforts to wage a battle for "hearts and minds" in public health, the tobacco industry has also engaged in CSR initiatives to regain its own credibility and restore access to strategically important policy makers within the UK government.³³ In China, for example, BAT funded liver disease research by donating through a prominent local charity.³⁰ Similar tactics have been used in Mexico, ³⁴ Thailand³⁵ and South Korea.^{36,37} Perhaps most concerning has been evidence of the industry's complicity in the illicit tobacco trade which has been linked to organised crime and support for terrorist activities. As well as earning the industry US\$ billions, cigarette smuggling has served to undermine policy measures such as increasing tobacco taxes.^{38,39} Akin to the "green washing" of companies via minimal, and somewhat ineffective environmental standards setting, many corporations involved in global health have similarly benefited from affiliation with global health causes. TTCs have been actively involved, for example, in campaigns to address environmental issues, HIV/AIDS, child labour, human rights⁴⁰ and domestic violence. In some cases, these efforts have even been rewarded with external recognition, such as membership in the UN Global Compact or accreditation by ethical investment indices.⁴¹

To what extent are such revelations, which have contributed significantly to the tobacco industry's exclusion from public health policy making, applicable to other industries? At present, there is no substantial access to the internal documents of other industries so comparable analysis cannot be undertaken. However, some parallels can be drawn from a small number of leaked documents. Documents revealed in 2009 suggest pharmaceutical companies received non-public documents of the WHO Expert Working Group on R&D Financing prior to member states, suggesting privileged access above governments. Another leaked US embassy document suggest McDonald's tried to delay the US

government's implementation of a free trade agreement in order to exert pressure on the government of El Salvador to appoint neutral judges in a \$24 million lawsuit against a former franchisee. Other documents suggest that Pfizer threatened to expose corrupt behaviour by the Nigerian federal attorney general which led the government to drop a legal case against the pharmaceutical company concerning harmful effects on children of the antibiotic Trovan®. 43,44

All of this suggests, according to Brownell and Warner, that major food companies (increasingly referred to as "Big Food"), followed Big Tobacco's "playbook". Based on analysis of empirical and historical evidence pertaining to tobacco and food industry practices, messages, and strategies to influence public opinion, legislation and regulation, litigation, and the conduct of science, they write that the "decades of deceit and actions" practiced by the tobacco industry offers lessons in dealing with the food industry.

The tobacco industry had a playbook, a script, that emphasized personal responsibility, paying scientists who delivered research that instilled doubt, criticizing the "junk" science that found harms associated with smoking, making self-regulatory pledges, lobbying with massive resources to stifle government action, introducing "safer" products, and simultaneously manipulating and denying both the addictive nature of their products and their marketing to children. The script of the food industry is both similar to and different from the tobacco industry script....Food is obviously different from tobacco, and the food industry differs from tobacco companies in important ways, but there also are significant similarities in the actions that these industries have taken in response to concern that their products cause harm. Because obesity is now a major global problem, the world cannot afford a repeat of the tobacco history, in which industry talks about the moral high ground but does not occupy it.⁴⁵

For many public health advocates, these revelations have affirmed the appropriateness of excluding large corporate interests from the food, drink, pharmaceutical and other sectors from public policy making. For the food industry, however, such direct parallels are firmly rejected:

Food is obviously different from tobacco....It would be irresponsible to say that all industry funded research is bad, however, some studies have shown that there is an influence in the results or even the publication of research when it is funded by industry. Public confidence in science could be hurt if influence issues aren't looked at....It's important for research publications to have a series of checks and balances and peer-review processes to ensure that the science that is being published is accurate and free from bias.⁴⁶

As a criterion for assessing the appropriateness of business sector involvement in GHG, the nature of efforts by an industry to influence public policy is an important one. Good governance is guided by principles of representativeness, transparency, accountability, and due process. Evidence from the tobacco industry suggests these principles have been directly undermined. The extent to which other industries adhere, or act contrary, to these principles offer a useful criterion for assessing them.

STRIKE 3: "PUBLIC" FUNCTIONS IN GLOBAL HEALTH GOVERNANCE AS OFF LIMITS TO PRIVATE INTERESTS?

GHG concerns the setting and enforcement of agreed rules and procedures for promoting collective actions in the pursuit of agreed global health goals. GHG, as such, entails a wide range of functions. Haas' matrix of functions provides a useful heuristic framework for defining the roles of different types of actors in global governance (Table 1). Applied to an analysis of civil society organisations in GHG, first, CSOs have played the biggest roles in initiating, formulating and implementing formal rules in GHG. Second, there are certain functions that require fulfilment by state

institutions to ensure GHG instruments are effective. Finally, more detailed understanding of the respective roles of state, market and civil society actors is needed in terms of specific functions, and across different GHG institutions and instruments.⁴⁷

Extended to the business sector, are there certain functions in which business sector actors should or should not play a role? Of the twelve functions identified, Haas argues that business/industry interests might contribute to seven – issue linkage, developing usable knowledge, rule-making, norm development, capacity building (technology transfer and organisational skills) and financing. Five others – agenda setting, monitoring, policy verification, enforcement, and promoting vertical linkages – are seen as inappropriate roles for business/industry interests.⁴⁸

This distinction by GHG function is difficult to apply to the tobacco industry because of its now pariah status. Few would argue that the industry should play a role in *any* of the seven functions cited above. This exclusion has been largely the result of knowledge of the industry's interference with, and undermining, of good governance principles underpinning public policy. Moreover, it might be argued that, in doing so, the industry has straying heavily into functions deemed as reserved for public bodies. By diverting attention away from the harmful effects of tobacco, towards environmental, genetic or individual behavioural factors, for example, the tobacco industry was seeking to shift the policy agenda to the regulation, for example, of indoor air quality and provision of health education. The industry's long-time advocacy of voluntary codes,⁴⁹ over binding regulation, has been intended as a means of retaining control over the enforcement of rules. The industry's engagement with CSR initiatives can be seen as industry-set criteria for monitoring industry activities (e.g. use of child labour) which have little to do with impact on public health.

To what extent might this distinction by GHG function be applied to other industries? Haas' framework suggests that the business sector can play a supportive, and even major, role in the creation of rules and procedures governing global health. Gupta and Taliento, for example, argue that "companies that seek to benefit from globalization also have a vested interest in helping to manage the global health crisis – indeed, a moral, strategic, and financial responsibility to do so." They argue that "[a]lmost every global business has something it can and should contribute to organizations on the front lines of the global health crisis." However, setting priorities, oversight and enforcement is seen to remain in the domain of public institutions which serve the interests of society as a whole. As Algazy et al. argue,

only governments – national, regional, and local – have the scope, scale, and mandate to ensure the participation and collaboration of all stakeholders. Governments are in a uniquely powerful position to encourage local organizations to undertake initiatives to promote healthy weights and to lay the foundation required to allow those efforts to succeed."⁵¹

The extent to which there may be conflicts of interest is also an important consideration. Where an industry seeks to contribute to an aspect of GHG that does not impinge on its own business interests (e.g. food industry supporting HIV/AIDS prevention and treatment), the industry might be permitted to contribute to a fuller spectrum of functions. Where an industry seeks involvement in GHG, on a matter of concern related to the industry's own interests (e.g. food industry supporting initiatives to reduce obesity), a more circumscribed perspective might be taken. It is in this light that the UK Coalition Government's decision, to invite McDonalds and other purveyors of "junk food" to help create voluntary codes to address the obesity epidemic, is seen as equivalent to inviting foxes to guard a chicken coop.

CONCLUSIONS: THREE STRIKES AND YOU'RE OUT

This paper argues that there is need for far deeper and concerted reflection on the business sector and GHG, with more nuanced consideration of the nature of the business activity, its past record on involvement in public policy, and the specific functions of GHG. The tobacco industry, by virtue of its

health-harming product and documented record of efforts to undermine and distort public policy, and the importance of protecting key functions of GHG from conflicts of interest, has been shunned by most sections of the public health community. The negotiation of the WHO Framework Convention on Tobacco Control (FCTC), and related protocol on the Illicit Trade in Tobacco, has been firmly closed to industry interests. The exceptions to this have been circumscribed public hearings prior to FCTC negotiations which permitted oral and written submissions by tobacco companies; the attendance of the International Tobacco Growers Association (ITGA) as a recognised nongovernmental organisation; and the presence of industry representatives on certain member state delegations (e.g. Turkey, China). The latter two have been seen by public health advocates as the infiltration of industry interests into an intergovernmental negotiation process.

As well as international negotiations, there have been wide-ranging efforts by public health related institutions to require declarations of links to, and to divest from any involvement with, the tobacco industry. The taint of tobacco industry connections are having increasingly far reaching consequences. In April 2010, for example, the Gates Foundation withdrew a US\$5.2 million grant to the Canadian International Development Research Centre (IDRC) on the grounds that its chair Barbara McDougall was a former board member of Imperial Tobacco Canada. An Australian tobacco control conference subsequently refused IDRC funds, claiming a "tobacco link," and WHO requested two IDRC representatives to withdraw from a tobacco control conference. Despite efforts at self-rehabilitation via rebranding (e.g. Philip Morris renamed as Altria) and CSR initiatives, levels of public trust have also reached an all-time low. The annual Harris Poll on public trust in industry sectors asks, ""Which of these industries do you think are generally honest and trustworthy - so that you normally believe a statement by a company in that industry?" The tobacco industry has consistently scored the least trusted since 2003 (2% in 2010).

To what extent is the tobacco industry exceptional? The lack of comparable collections of the internal documents of other industries prevents similar candid scrutiny of their activities. Litigation cases in the US against food and alcohol companies have led to the disclosure of discrete collections of documents which merit close analysis. Parallels between the strategies of the tobacco and food industries have been increasingly noted.⁵⁵ Even without such analysis, public distrust of certain industries is high. A 2010 Harris poll suggests that perceptions of the oil, pharmaceutical, and health insurance industries are seen most as industries requiring greater regulation. Apart from the tobacco industry, these industries, along with the telecommunications and automobile industries, are the least likely to be thought of as honest and trustworthy.⁵⁶

All of this suggests that the high hopes from many parts of the private sector and public health community for a "new global health", 4 with business contributing more actively to GHG, faces important challenges. The lack of clear principles guiding the diversity of activities bringing together public and private actors in global health has led to considerable confusion and uncertainty. There is a dual risk from tarring all industries with the same brush as the tobacco industry, and from bestowing a "halo effect" on all companies scrambling to jump onto the global health bandwagon. This paper seeks to further this debate by arguing that this role could be made dependent on the nature of the business activity; how the corporate actor has engaged with public policy; or the specific function of GHG concerned. In this way, we can begin a fuller debate on whether participation is appropriate or indeed desirable.

Table 1: Matrix of Functions

Function	Formal/direct	Informal/indirect
Issue linkage	 By inter-governmental negotiations By new information provided by epistemic communities Through financial mechanisms (GEF) By IOs (GEO/WEO) 	By scientistsBy business/industry
Agenda setting	By IOs and member statesBy scientists	By NGOsBy mediaBy scientists
Developing usable knowledge	By scientists	By scientistsBy NGOsBy business/industry
Monitoring	 By IOs By committees nominated by MEA secretariat By MEA signatory governments 	By NGOs (particularly in developing countries)By Scientists
Rule making	 Negotiations by national governments By NGOs (principled standards) 	 By Business/Industry (de facto standards) By NGOs (principled standards)
Norm development	Epistemic communities	 By NGOs (equity & environmental preservation) By Business/Industry (efficiency)
Policy Verification	Governments	NGOs IOs
Enforcement	(Hard) LawWTO and MEA rules	NGO campaigns
Capacity building (tech transfer)	 Official technical assistance (national and local government) Business/Industry Science community (education/training) 	Business/Industry (joint venture)
Capacity building (organizational skills)	 By IOs By NGOs Science community (education/training) 	By Business/Industry
Promote vertical linkage	 IOs National and Local Governments	NGOsScientific community
Financing	 Government (ODA) Regional Development Banks Multilateral bodies 	By Business/Industry

<u>Source</u>: Peter M. Haas, *Is there a Global Governance Deficit and What Should be Done About It?* (Geneva: Ecologic, 2003).

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