

UNCTAD Public Symposium 2010 **Responding to global crises: new development paths**

Breakout session, 10 May 2010

Is there development in trade agreements? A look at the Doha Development Agenda and Free Trade Agreements

Greetings!

My agenda today:

- A short theoretical excursion on the nexus between trade and human rights
- An illustration: cotton then (beginning of the Millennium) – now
- Cotton policies and human rights obligations
- Some reflections on the way forward

Nexus trade – human rights

Legal, institutional and policy cultures of international human rights law and international trade, financial and investment law have developed largely in isolation from each other:

- Human rights law is often seen as a weaker part of international law than trade law. Within this weak part of international law, economic, social and cultural rights are seen as less strong than civil and political rights. And the right to development is perceived to be at the very bottom of this hierarchy.
- HR are often perceived as anti-liberal, mere wishful thinking

In fact, as a matter of international law, both the WTO and related economic treaties and HR covenants are treaty regimes, thus there is no hierarchy. For example, treaty norms in the International Covenant on Economic, Social and Cultural Rights (ICESCR) have an equal legal status to those in the WTO.

Need to interpret and develop these regimes in a complementary and consistent fashion to the extent possible:

- At least: one treaty regime should not undermine the existing effectiveness of the other
- At best: restructure intl trade and economic regime to enhance the capacity of states to fulfil their obligations towards the enjoyment of HR for all

Or in other words: trade is a means, not an end in itself, and human rights should be at the core of what is done and negotiated in trade negotiations.

Cotton then (2000)

This month exactly six years ago (May 2004), our association, together with “Realizing Rights – The Ethical Globalization Initiative”, published a paper titled “US and EU cotton

production and export policies and their Impact on West and Central Africa: Coming to grips with international human rights obligations”.

In a nutshell, that paper discussed the impact of US and EU cotton production and export policies on the lives of farmers in West and Central African (WCA) countries and how these policies were undermining efforts by those very countries to implement their international human rights commitments.

The cotton story is a long and complex one – and one that many of you probably know well – so what I present here is necessarily a simplification. It also does not dwell upon the policies of two other major cotton producers: India and China. But this should not distract us from the fact that despite a lot of talking, neither the WTO nor any free trade agreement has done much to support the development of affected people in the WCA countries.

At the beginning of the new Millennium, in Benin and Mali, it cost 21 US cents to produce one kg of cotton. In Burkina Faso, the cost was 22 cents per kg, in contrast to the USA, where it cost 68 cents per kg (and nearly double of that for Europe). Nevertheless, the USA was the largest exporter and second largest producer of cotton worldwide. How was that possible? The magic wand is called subsidies. A vicious circle ensued: subsidies led to overproduction, which reinforced already declining world prices, which contributed to a loss of revenues in WCA countries, which in turn harmed livelihoods in the region. For example, in 2001, when US cotton prices were 54 cents per pound below the cost of production, Burkina Faso lost 1% of its GDP and 12% of export earnings; Mali lost 1.7% of GDP and 8% of export earnings and Benin lost 1.4% of GDP and 9% of export earnings. You can imagine what incidence such revenue losses have on poverty and livelihoods.

Meanwhile, at the WTO

So how does this square with WTO obligations? And what has been done to remedy this clearly inequitable situation?

Again, for the sake of time, I have to limit myself to a few highlights. At the time, the cotton production and export policies of the USA other countries were to a large extent contrary to the spirit and the letter of WTO law. Broadly speaking, there are two possible ways to seek remedy at the WTO: to negotiate or to litigate. In the cotton case, both paths have been tested. One has shown some results, the other none so far.

1. In the case of negotiation, the goal is to improve the situation for all members in the future.

Some of the affected WCA countries went down this path. In 2003, Benin, Burkina Faso, Chad and Mali presented a “Sectoral Initiative in Favour of Cotton” to the WTO, describing the damage caused to them by cotton subsidies in richer countries and calling for the subsidies to be eliminated and for compensation to cover economic losses caused by the subsidies. At the WTO Ministerial meeting in Hong Kong in 2005, WTO members promised an **ambitious, expeditious and specific** decision on cotton.

2. In the case of litigation, the objective is to seek compliance with existing rules. Any outcomes (for example sanctions, compensations) are bilateral and do not apply to the other members of the WTO.

This is the path that Brazil took. In 2002, it brought a case against US cotton subsidies to the WTO Dispute Settlement Body. An eight year long legal battle followed that has only very recently reached a seeming high point.

Cotton 2010

So, nearly ten years after the Doha Development Agenda was launched, what are the results? Are the cotton growers in Mali, Benin, Burkina Faso and Chad any better off today than they were ten years ago?

Last month, Brazil was going to impose penalties (retaliatory tariffs) on more than 100 goods from the USA. In a last-minute deal to suspend the sanctions temporarily, the US administration agreed to offer Brazil nearly US\$ 150 million per year in technical assistance, to negotiate a change in its cotton export credit programme and to possibly open up the US market to imports of Brazilian meat. Although the final verdict on the Brazil-US cotton deal is still out, many commentators are doubtful that much will change in US agricultural subsidies even after 2012, when the new Farm Bill will be negotiated in the US Congress.

At the same time, the Brazil-US agreement leaves the WCA countries out in the cold: they continue to suffer from the market distortions caused by subsidies. On the one hand, they are too impoverished to address the structural challenges of their cotton industry on their own. On the other hand, their markets are too small to be able to use the WTO negotiation and dispute settlement mechanisms effectively. Thus, as time goes by and no solution is in sight for the WCA countries, the cotton sector in those countries is slowly going down the drain, threatening the livelihoods of almost 20 million cotton farmers and their families.

By the way, the US\$ 147 million per year offered to Brazil in technical assistance corresponds more or less to the estimated annual welfare boost that sub-Saharan Africa would gain if cotton subsidies and tariffs were to be fully removed. Thus, American taxpayers will not only continue to subsidise wealthy American corporations and farmers, but also relatively rich cotton growers in Brazil!

So, at least for the time being, one could conclude that the multilateral trading system is not responsive to legitimate development concerns and that multilateral trade rules do not protect the weak from arbitrary use of economic power. The example of cotton also shows that in international policy making, there is no such thing as friendship, but only interests.

Cotton policies and HR obligations

Let us now go back to the human rights framework, which was applicable at the beginning of the Millennium and is still applicable today.

All States have ratified at least one of the main human rights treaties. These treaties all contain provisions relevant to the impacts of the way cotton is produced and traded. Under the International Covenant on Civil and Political Rights (ICCPR) for instance, which the USA and all the countries of WCA have ratified, States must respect and ensure the right to life by taking positive measures, for example, to reduce infant mortality and to increase life expectancy, especially by adopting measures to eliminate malnutrition and epidemics. Through the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC), States are also required to move as expeditiously as possible towards guaranteeing the right to adequate food and the right to the highest attainable standard of health.

As we have seen, although they are not the only problem in the cotton industry, production and export subsidies do affect the ability of WCA countries to protect and fulfil the rights to life, to food and to health. They also contribute to retrogressing from achieving protection of these rights. Finally, they defeat the purpose of aid programmes, which is another obligation under international human rights law. In this sense, the cotton policies of the USA and the EU, but also of other countries, are inconsistent with international human rights obligations.

From a human rights perspective, it is simply unacceptable that 20 million African farmers and their families are held hostage by the commercial interests of some 25'000 cotton growers in the USA, 90'000 in Greece and 10'000 in Spain and a few agribusiness corporations.

The way forward?

So what could be done? To bring more development into trade agreements, 3D promotes the use of the human rights framework in trade, not as a new issue to be added to trade negotiations, and not as a conditionality [or reward for 'good' behaviour], but as a reference and a tool to evaluate the gains and losses of liberalization implied in most trade policies and agreements, with a special concern for the situation of the poorest and most vulnerable sectors of society.

Indeed, applying the human rights framework to economic development issues moves the emphasis from charity (optional) to law (mandatory). It also helps to highlight the human rights obligations of States when they negotiate and implement trade policies and agreements. Finally, it ensures that trade agreements contain necessary flexibilities – for example safeguards.

One way of doing this is to more systematically conduct human rights impact assessments (HRIAs) of trade policies and agreements. Such assessments endeavour to measure the positive and negative impacts on the enjoyment of human rights that are likely to happen or have already occurred in relation to a specific trade policy or agreement. The goal is to provide policymakers with a better understanding of consequences that their actions can have on human rights and also help identify mitigating measures if needed.

In lieu of a conclusion

“The idea of human rights is the unstoppable force of the modern world. It is part of the future. The extent to which human rights are respected is the only yardstick by which progress in the world can be measured.” Hans-Dietrich Genscher (*1927)