

Chapter 7 Righting Trade – Avenues for Action

After reading this chapter you will be able to

- find out what your country is proposing and being asked to agree to in international trade negotiations
- understand how to assess the human rights implications of these proposals
- know where to look to find out about other public interest groups' experience in working with the WTO
- identify what type of approach to trade issues is best suited to your organization's objectives and capacity
- design activities to promote an international trading system that is consistent with human rights

This chapter presents different avenues which groups can follow to ensure human rights are protected as WTO rules are developed and applied. These are not the only actions that can be taken, nor is the WTO the only actor in trade liberalization. The purpose of this chapter is to provide some useful ideas, but most of all, encourage human rights advocates to be creative and seek other ways to ensure that trade and trade rules promote human rights.

7.1 Use human rights tools

The fact that the words 'human rights' are not mentioned in the text of WTO agreements does not mean that these rights are not affected by trade or should not be taken into account in trade negotiations. Nor does it mean that the WTO is not required to respect human rights. Quite the contrary: the WTO is made up of its Member States, all of which are legally bound by at least one international human rights treaty. Thus, WTO Members are bound by international law to agree only to rules in the WTO context that are consistent with human rights. This also means that the way these rules are developed must respect human rights, i.e. any new rules must be based on public consultation and with opportunity for affected groups to be informed and make input. It also means that States should carry out an assessment of what human-rights effects new WTO rules are likely to have, and again according to human rights law, these assessments should pay particular heed to the effects on the poorest and most vulnerable members of society.

As well as the general obligations that underlie all trade and economic policy, additional human rights requirements apply to negotiations in specific areas: for instance, liberalization of trade in primary and secondary education must be undertaken in a way consistent with the Convention on the Rights of the Child.

Human rights advocates have extraordinarily potent accountability tools at their disposal, in the form of international, regional and national human rights mechanisms. The use of these mechanisms is particularly valuable because they can be used by NGOs to hold trade policy-makers accountable, as well as by governmental representatives as a tool to shield their country from being pressured by stronger countries into trade agreements that are not in their countries' interests.

The range of different mechanisms available includes national constitutional courts and national human rights institutions, as well as international human rights monitoring bodies. Two promising mechanisms are the UN's human rights treaty monitoring bodies, known as 'treaty bodies,' and the Rapporteurs of the UN Human Rights Commission.

Treaty Bodies

The treaty bodies are the specialist Committees charged with overseeing the implementation of the UN's human rights treaties, and have been described as the 'guardians' of the human rights treaties. There are currently seven treaty bodies, each of which focuses on one of the seven core human rights treaties. The treaties most relevant to economic and trade issues are the Committee

To find out if your country is a party to the CRC or the CESC, visit www.ohchr.org/english/bodies/docs/RatificationStatus.pdf

Information about which countries treaty bodies will be examining at future sessions is available via the Office of the High Commissioner for Human Rights website. Go to www.ohchr.org/english/bodies/treaty/index.htm and click on CESC, CRC or the treaty body you are looking for in the right-hand column, or on the full name in the middle of the page. This will take you to each treaty body's home page, from which you can find the list of forthcoming sessions. For the CESC, the direct link is www.ohchr.org/english/bodies/cescr/sessions.htm.

Asian countries due to be examined by the Committee on Economic, Social and Cultural Rights in 2005 are Uzbekistan, China, Hong Kong China and Macao. In 2005 and 2006, the Committee on the Rights of the Child will examine of a number of Asian countries including China, Mongolia, Nepal, Thailand and the Philippines.

If you have a particular trade-related human rights concern regarding a country that is due to be examined by one of the treaty bodies in the coming years, it is useful to document it and submit the information to the treaty body. This can be done by sending it to the Office of the High Commissioner for Human Rights, addressed to the Secretary of the relevant treaty body.

on Economic, Social and Cultural Rights (CESCR) and the Committee on the Rights of the Child (CRC), but the others may also be relevant.

These Committees meet twice a year, in sessions that last for three or four weeks, in Geneva. The members of treaty bodies are independent experts, so do not represent their government. Treaty bodies examine the human rights situation in all the countries which have ratified the treaty it monitors, on a regular basis. They consider the country on the basis of a report submitted by the country itself. However, treaty body members also rely on other sources of information, including from NGOs, in assessing the human rights situation in a country.

After its examination of the human rights situation in a country, the treaty body issues 'concluding observations' which include recommendations to the country. Concluding observations have some legal weight, but most of all, they can constitute a very useful advocacy tool. For an example of how concluding observations relating to a trade agreement is being used by Ecuadorian human rights advocates, see Chapter 4.6.

Many treaty body members have expressed concern about the effects of the international economic environment on the enjoyment of human rights, and several would be prepared to raise the issue explicitly in the treaty bodies. One of the reasons why trade-related issues have not been raised more often is lack of information. NGOs can play a large role in shaping the areas on which treaty bodies focus. Yet so far, few have presented the Committees with clear information on how international trade rules have resulted in human rights problems. Once the treaty bodies do receive more detailed information they will no doubt focus increasingly on the effects of trade and trade rules on human rights.

Identifying specific human-rights-unfriendly trade rules and making them public by bringing them to treaty bodies' attention can also serve a broader purpose: concerns about the impacts of trade on human rights have only emerged recently, and there is still a shortage of empirical evidence that would help better frame the problem, and advance the quest for constructive solutions.

Rapporteurs of the UN Human Rights Commission

The Human Rights Commission has several 'special procedures' entrusted with studying different themes or countries. For the most part, these take the form of individuals appointed as 'Special Rapporteurs' on different issues such as the right to food, the right to education, the right to housing, the effects of dumping of toxic products and wastes, or country situations such as Uzbekistan, Burma or Cambodia.

The Commission's Rapporteurs study the phenomenon with which their mandate is concerned, usually through analysis of factors conducive to human rights violations, as well as the relevance

The accession terms for Cambodia

The Special Representative is troubled by the terms of Cambodia's accession to WTO and its potential impact on human rights, including the right to health. The opening of the country's health-care system to foreign health-care providers and drug companies could damage efforts to establish a viable health-care system for all. The introduction of intellectual property protection might also negatively affect drug prices and availability. There is a need for informed public debate on these issues, as they will potentially have widespread impact. As a norm, the Cambodian people should be given ready access to details of this and the other international agreements, treaties and conventions to which their Government commits itself. It is hoped that when members of the new National Assembly come to ratify the terms for WTO admission, a Khmer Rouge tribunal and other upcoming agreements, they will pay close attention to ensuring that the interests of all Cambodia's people are catered for. This means working harder to promote open and democratic government.

UN Commission on Human Rights, *Report of the Special Representative of the Secretary-General for Human Rights in Cambodia*, Peter Leuprecht, 2004

full report available via http://ap.ohchr.org/documents/dpage_e.aspx?m=107

Box 7.1 Thematic Special Rapporteurs with mandates relevant to trade

- Special Rapporteur on the Right to Health (Paul Hunt)
- Special Rapporteur on the Right to Food (Jean Ziegler)
- Special Rapporteur on the Right to Education (Vernor Muñoz Villalobos)
- Special Rapporteur on the Right to Housing (Miloon Kothari)
- Special Rapporteur on the Human Rights of Indigenous Peoples (Rodolfo Stavenhagen)
- Independent Expert on Human Rights and Extreme Poverty (Arjun Sengupta)

A full list of country and thematic Rapporteurs is available at www.ohchr.org/english/bodies/chr/special/index.htm

of various administrative and legal – national or international – provisions or structures to increasing or preventing violations.

The Rapporteurs can deal with individual cases of human rights violations or threatened violations. Although some Rapporteurs' mandates do not allow them to take action on individual cases, information on such cases may serve as a basis for discussions with the authorities of the State in question, or to build up a picture across countries of what kinds of measures or policies are having adverse human rights effects. Rapporteurs all rely heavily on information they receive from NGOs or other civil society representatives. As indicated in Chapters 4 and 5, several of the Rapporteurs are concerned about adverse human rights impacts of trade rules and would readily raise them more often in their reports if they receive more information about them.

In addition to using information they receive from non-governmental sources as a basis for discussions with States, Special Rapporteurs often report on the issues raised by NGO communications in their annual reports to the Human Rights Commission or the UN General Assembly.

7.2 Intervene at the national level

NGOs are allowed access neither to WTO meetings nor to informal negotiating sessions. For this reason, as well as because of the cost for a non-Geneva based NGO to travel to Geneva to seek to lobby WTO delegates, NGOs can have more effect by intervening at the national level.

Indeed, in many cases it is not the actual WTO rules that are human rights-inconsistent but the way in which they are applied. 3D -> Trade – Human Rights – Equitable Economy has, for instance, documented how Uganda is implementing new and stringent intellectual property rules that will in all likelihood increase the cost of medicines there, although WTO rules allow it to delay implementation of new IP rules until 2016 at least. Other countries are coming under pressure to liberalize more than WTO rules require.

Human rights advocates can request their ministries to ensure that trade-related rules are implemented in a way that is consistent with human rights. Trade rules that affect health, for instance, could be transmitted through a health ministry, which could inform the trade ministry and in turn influence the position of a country at the WTO on trade-related health matters. Some NGOs have developed particular areas of expertise, for instance on trade and environment, and can help governments develop positions and craft proposals to bring to relevant WTO processes. NGOs in these countries as well as those with offices in Geneva can also help raise awareness, build coalitions and bring matters to the attention of trade negotiators.

In cases where government officials are not able to say whether or not the result of new trade-related rules are human rights consistent, the officials should be reminded of the government's obligation to monitor the country's human rights situation and have policies in place that are designed to improve human rights. If it is not known whether a proposed policy is likely to promote or undermine human rights, human rights law requires that an assessment be carried

It would be wise to consult other, experienced NGOs to find out which is the most appropriate Rapporteur to contact for your needs.

All the Rapporteurs can be contacted c/o Office of the High Commissioner for Human Rights, Palais Wilson, 1211 Geneva 10, Switzerland.

NGOs with information on concrete instances where trade or trade rules have had adverse effects on human rights would be doing the broader human rights community a service by making this empirical evidence available.

Points to look out for in trade-policy formulation and application:

- what is my country's position in current trade negotiations?
- who is being consulted in the process of formulating negotiating positions?
- has there been an assessment of the likely impacts of the proposed policy?
- who is involved in applying international trade rules into national law?

¹ See for instance, Committee on Economic, Social and Cultural Rights, *Concluding observations: Ecuador*, E/C.12/1/Add.100, June 2004, available at [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/96eebfc193941cc2c1256ec1003a2d58?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/96eebfc193941cc2c1256ec1003a2d58?Opendocument)

Box 7.2 General Comments explained

General Comments are the UN human rights treaty monitoring Committees' interpretations of provisions of the treaty they supervise. They clarify the meaning, content and practical application of human rights treaty provisions. All the treaty bodies adopt General Comments. For those most relevant to trade see Box 7.3.

General Comments are considered authoritative interpretations of the provisions they cover, and have been used as guides for national policy as well as in domestic court cases. Such cases include *Equal Opportunities v. Director of Education* (Hong Kong, 2001), and a number of cases in South Africa such as *Grootboom* (2000), *Treatment Action Campaign v. Minister of Health and others* (2001), and *Bon Vista Mansions* (2002).

out. That this is the case has been confirmed by the Committee on the Rights of the Child, specifically in relation to trade, as discussed in Chapter 5.6, as well as by the Committee on Economic, Social and Cultural Rights.¹ In other cases, as in the case of Thailand described in Chapter 4.3, advocates have used legal procedures to challenge the human rights-consistency of trade-related rules.

The General Comments of the human rights treaty monitoring bodies provide useful guidance regarding the content of specific human rights and what they require governments to do or refrain from doing. As they are considered authoritative interpretations of human rights treaty provisions, General Comments have strong weight as an advocacy tool as well as a guide to how laws that affect human rights should be applied. General Comments have been used in domestic

Box 7.3 General Comments relevant to work on trade

General Comments relevant to work on trade include:

Human Rights Committee (HRC) General Comment No 28 (2000) *The Equality of rights between men and women*

HRC General Comment No 25 (1996) *Participation in public affairs and the right to vote*

HRC General Comment No 14 (1984) *The right to life*

Committee on Economic, Social and Cultural Rights (CESCR) General Comment No 15 (2002) *The right to water*

CESCR General Comment No 14 (2000) *The right to the highest attainable standard of health*

CESCR General Comment No 13 (1999) *The right to education*

CESCR General Comment No 4 (1991) *The right to adequate housing*

CESCR General Comment No 3 (1990) *The nature of States parties' obligations*

Committee on the Rights of the Child (CRC) General Comment No 3 (2003) *HIV/AIDS and the rights of the child*

CRC General Comment No 1 (2001) *The aims of education*

The full text of these and other General Comments are available at: www.ohchr.org/english/bodies/hrc/comments.htm, www.ohchr.org/english/bodies/cescr/comments.htm and www.ohchr.org/english/bodies/crc/comments.htm

court cases, including in Hong Kong, South Africa and Mauritius. The Committee on Economic, Social and Cultural Rights has adopted several General Comments including on the rights to food, housing, health and water. Other treaty bodies have also adopted General Comments that can support human rights advocates work on trade. Some of these are listed in Box 7.3.

One point that public interest NGOs are increasingly watching out for relates to technical assistance. Indeed, many agencies providing trade-related technical assistance are wedded to the liberalization dogma, or, in the case of bilateral assistance, are serving their own countries' economic interests (see Chapter 3.7).

7.3 Intervene at the negotiating stage

When a WTO negotiating process is underway, as is now the case, it offers openings to introduce new values and approaches into the WTO. For instance, it was during the negotiation of the Declaration of the Doha Ministerial Conference, in mid- to late-2001, that access-to-medicines advocates succeeded in having the Declaration on TRIPS and Public Health adopted.

As discussed in the preceding chapters, key negotiations are currently taking place in the WTO on agriculture, services, as well as on TRIPS issues relating to seeds, food production and traditional knowledge. This represents a unique opportunity to introduce human rights concerns into the process at a relatively early stage, particularly in areas such as GATS and agriculture, when a number of key rules and specific commitments are still being negotiated. These are areas in which many human rights groups have valuable expertise that they could share to positive effect with their trade negotiators.

It is worth noting that countries are bound by the international law principle of 'presumption of good faith,' which means that in trade negotiations such as those currently underway in the WTO, countries must act consistently with their human rights obligations.

If human rights advocates decide, in spite of the cost and limited access, to seek to influence the negotiations at the international level, they should assume that they would need to spend days, if not weeks, in Geneva, to get to know the relevant country delegates. Geneva-based NGOs can provide advice on who the key delegates on different issues are, and who is likely to be interested or sympathetic to a human rights perspective.

The WTO's Ministerial Conference is often a focus of negotiating efforts. Negotiations on Ministerial Declarations begin months in advance in Geneva, with growing intensity of consultation between delegations as the Ministerial approaches. Often, when the political sensitivity of issues to be included in the Declaration increases, the negotiations take place directly between capitals, through phone calls or visits of Ministers or high level officials of one country to another.

Trade-oriented NGOs can request accreditation to Ministerial Meetings. However, the number of passes is limited, and was restricted to one per NGO at Cancún. Given the large number of meetings going on at any one time, this limits considerably lobbying efforts.

Non-profit groups conducting reporting activities can sometimes qualify for press passes to the conference press centre (usually located in the Conference centre itself), but this remains at the discretion of the WTO Secretariat. Past Ministerial Conferences have included an NGO Cen-

Whilst this Guide focuses on the WTO, many of the approaches it suggests are equally valid for bilateral or regional trade-related negotiations.

For pointers on how to learn about what issues are currently 'live' in WTO negotiations, visit the websites of the organizations listed in Chapter 8 or at the end of Chapters 4, 5 and 6.

Human rights advocates wishing to influence negotiations should focus on ensuring that their own country's position is consistent with human rights

The contact details of countries' Geneva delegations can be found on the following websites:

www.itu.int/TIES/services/missionweb.html

www.geneva.ch/missions.htm

www.unog.ch/genet/permis/misset.htm

Capital-based lobbying

This is important, particularly if there are formal or informal consultation processes that one can participate in. Another way of influencing WTO negotiations is to target a few country negotiators who you think you may be able to persuade to adopt your line of thinking. A key to achieving this is cultivating relationships. This takes time... Alliances with bigger influential organizations would also be good for developing a human rights network. Of course messages would need to be succinct, with recommendations and not just criticisms.

Aimee Gonzales, Senior Policy Adviser on Trade and Investment, WWF International

Going to Ministerial Conference gives you access to two important targets:1) *The media*

To get your points across to the public, you really have to have some media coverage of what you are trying to say.

2) *Governments*

If you want to influence governments, you have to have access to the conference centre.

In the Ministerial Conferences, the pressure is so high on some countries. The governments need all the support they can get to actually withstand the pressure. The four West African governments working on the cotton issue in Cancún were under extreme pressure from big countries. You gave them strength by being there to show solidarity, to speak to the media, and to seek support from the media.

Of course some of the NGOs might not want this kind of strategy. If you don't want the WTO to continue to exist at all, you would probably want to be outside and demonstrating.

Celine Charveriat, Head of Oxfam's Geneva Office, interview, April 2004.

Human rights advocates wishing to influence the contents of a Ministerial Declaration should start well in advance.

Most of the successful WTO campaigns are those that have been carried out by several NGOs working together. Human rights advocates would do well to join forces with other groups with shared concerns.

tre; this can be an effective place to present materials and consult with other groups. Government officials and the media are often invited to public events at the NGO Centre. However, usually only the larger delegations from developed countries can afford time to make outreach efforts to civil society. In addition, so many activities take place concurrently in the NGO centre that it is hard to get attention from government delegations, the press or even other NGOs. In Cancún for instance, many high-quality events only drew an audience of a dozen people as there were so many events on at the same time. This is not helped by the fact that the NGO Centre is usually located relatively far from the conference venue, limiting the exposure of NGOs to both governments and the media.

For this reason, unless an NGO has excellent contacts with government delegations and a clear set of issues it is following at the Ministerial, it may not be worth its while to travel to the Ministerial as its work can have more impact through ongoing contacts at the national level, for instance by regularly raising human rights concerns with the ministry responsible for trade throughout the year.

In some cases, human rights advocates concerned about a particular human rights issue relating to trade, and facing resistance in their home countries, could consider looking to Members such as Canada, the EU, New Zealand or Norway or Switzerland, or to civil society groups working in these countries.

7.4 Ask for an assessment of the impact of liberalization on special groups

While the dominant view in trade policy – that liberalization improves standards of living – may be correct in some cases, there is now a vast body of evidence to show that it does not automatically bring benefits to all: liberalization in some areas can be particularly harmful for the livelihoods of the poor or vulnerable groups, such as women, children, indigenous groups and geographically isolated populations. At the same time, liberalization and other trade-related rules such as those on intellectual property can increase the market share of already rich and powerful private transnational corporations.

From a human rights perspective, therefore, it is always worth asking whether a specific proposed liberalization measure has been assessed for its impact on different sectors of the population, particularly on the most poor and vulnerable. Gender groups are amongst those that have developed ways of assessing the different impacts of trade liberalization on different groups, and their work could be one starting point for human rights advocates (see Box 7.4). Another methodology for carrying out human rights impact assessments has been prepared by the Halifax

Box 7.4 How to do a gender analysis of economic policies

- Examine what is happening to men and women separately in order to compare changes in their status and responses to the changes. Do not focus exclusively on women and girls.
- Consider other variables such as race and class. Do not oversimplify by focusing exclusively on gender.
- Do not focus solely on quantitative measures. Consider issues of empowerment, well-being, cultural integrity/identity, environmental integrity and the quality of reproductive work and nurturing.
- Consider how economic policies impact on prices, the types and quantities of goods available, and the provision of services, and consider how each of these impacts on household incomes and quality of life.
- Explore how gender relations and poverty impact on economic policy implementation and effectiveness. Explore why the expected positive benefits of trade liberalization do not materialize.
- Choose appropriate indicators in empirical work, including human rights-based indicators and indicators related to everyday life. Obtain accurate sex-aggregated data which accurately reflects how resources are allocated between men and women.
- Consider economic policies in their broader context, not in isolation, and highlight constraints imposed by women’s socially constructed roles.

Source: AWID *Women’s Rights, the World Trade Organization and International Trade Policy*, 2002
www.awid.org/publications/primers/factsissues4.pdf

Human rights strategies to respond to trade concerns are discussed on the ESCR-Net trade and investment listserv. To subscribe, send a blank email to ESCR-TRADE-subscribe@yahoogroups.com

Initiative, an NGO in Canada. Information about this can be found at www.halifaxinitiative.org/updir/Final_background_paper.doc.

7.5 Ensure that Dispute Settlement cases take human rights into account

One recurring question of human rights activists is that if a dispute were brought to the WTO about a human rights measure that is inconsistent with trade liberalization, would the DSM apply international human rights law, and if so, would it prevail over trade law?

To date, this question has remained unanswered because there have been so few WTO disputes that raised human rights issues in the WTO. Given the *Shrimp-Turtle* case (see Chapter 1.7), one might reasonably assume that if a dispute was brought to the WTO about a trade rule that had human rights implications, the DSM would apply human rights law. Other disputes that have touched on human rights issues include the GSP dispute between India and the EU (discussed in Chapter 1.7), the Asbestos dispute (see below), and the Cotton dispute (see Chapter

Some pros and cons of using a DSM approach are discussed in Chapter 1.7

The Asbestos Case

Canada challenged a French ban on imports of asbestos on the grounds that the ban was inconsistent with WTO rules. The WTO Appellate Body, on 12 March 2001, ruled that the French ban was justified under the exception to WTO rules which authorises trade limitations if their objective is to protect human health. The Appellate Body’s findings were welcomed by the European Commission, which defended the French ban before the WTO, as a “ruling that shows that the WTO is responsive to our citizens.”

To track WTO disputes chronologically, by subject, or by country on the WTO website, refer to the Frequently Asked Questions in Chapter 8.3.

To find out which countries are due for their WTO Trade Policy Review in the coming months, see www.wto.org/english/tratop_e/tpr_e/tpr_e.htm

6.5). These were however resolved in a way favoured by public interest advocates, without the panel or Appellate Body having had recourse to human rights law.

In reaching a ruling, DSM panels and the Appellate Body have to apply all relevant international law, including human rights law. If in some future case, the DSM had to rule on the WTO-consistency of another Member's human rights measure, human rights advocates could take steps to ensure that panellists and the WTO secretariat have the information about human rights law that they would need in order to apply it appropriately. Although the panellists in any given case are not known in advance of the case, the WTO does publish an indicative list of panellists, i.e. people who can be called on to adjudicate a WTO dispute. Human rights advocates could contact those from their country and provide them with information about human rights law. The list is contained in a document entitled Indicative List of Governmental and Non-Governmental Panelists. The most recent list was issued on 6 March 2003 under document symbol WT/DSB/33. The document is available via the WTO website's 'Docsonline' service, as described in Chapter 8.1.

Human rights advocates could also contact their governments to request them to include on the indicative list of panellists, persons who have knowledge of or an interest in human rights law and processes. If a dispute does come to the WTO which has a bearing on human rights issue, human rights lawyers might consider preparing and submitting an *amicus* brief.

7.6 Ensure human rights are included in Trade Policy Reviews

Apart from the ICFTU's experience, regularly submitting reports to WTO Members on countries being considered in the Trade Policy Review is an unusual approach, which human rights advocates might wish to explore further. One strategy would be to prepare independent reports on broader social and economic issues than pure openness to trade of countries due to be examined. Another approach would be to contact governments scheduled for review, to encourage them to include information about adverse as well as positive impacts of trade liberalization on the more vulnerable sectors of the country's population.

7.7 Think twice about including human rights in WTO rules

WTO rules and practices would benefit from being amended to recognize more explicitly countries' broader social and economic obligations beyond trade liberalization, including human rights obligations. In an ideal world, this would be the simple way to ensuring that WTO rules ensure protection of human rights.

However, this could be a dangerous route for human rights, for several reasons. First, the 'no explicit reference' starting point in the WTO/human rights debate has been used to support fundamentally opposing views. Those who do not want to see human rights discussed in the WTO declare that since the legal texts are silent on the issue, the WTO has no human rights-related mandate or obligations. Those who want to see the WTO held accountable to human rights standards say that explicit rights language should be brought into its text. Both seem to assume that the only way that the WTO could be held accountable to human rights standards would be if human rights were explicitly mentioned. The implication is that until the words 'human rights' are explicitly included in WTO texts, the WTO will have no human rights mandate. As noted above, this is incorrect as the Member States who make up the WTO all have human rights obligations regardless of whether these are explicitly mentioned in the WTO.

Second, lessons can be learnt from the experience of the environmental movement. References to the environment in international trade rules first emerged in the mid-1990s. Yet almost no environmentalists are happy with the WTO's work on the environment. Importantly, many environmentalists are now lamenting that bringing environmental issues formally into the WTO's

Include gender clauses in trade agreements?

Environmental and labour groups have pushed this mechanism as a viable way to incorporate their specific concerns. Recently, some women’s groups are supporting gender clauses in trade agreements. IGTN finds this approach problematic for two major reasons: 1) it adds more responsibility to the WTO instead of reducing its scope, and 2) it becomes a way for women to advocate ‘getting a bigger piece of the pie’ without developing a larger political critique of the undemocratic nature and the flawed economic model of the negotiations. Ms. Francisco stated that social clauses punish violating countries without acknowledging the fact that there is not a level playing field among countries at the WTO. Sanctioning poor countries without critiquing the driving causes of poverty would serve to worsen situations for countries and their populations and environment.

Ms. Francisco, Women’s Rights and the Multilateral Trading System: The Politics of Gender Mainstreaming at the WTO, *Geneva, IGTN, March 2004*, available at www.igtan.org/Research/gm_geneva_event_mar04.pdf

ambit has given the organization a large role in developing environment-related policy. Based on this experience, many experts on trade and the environment advise human rights advocates to ensure that any recognition of human rights and related values in the WTO insulates those values from the trade regime, in order to avoid giving the WTO too much competence on human rights-related issues.²

In addition, the words ‘human rights’ are highly charged politically in the WTO and most Members will not want to raise these and risk a political outcry. The main reason for this is that developing countries fear that human rights might be used as a new form of **protectionism** by industrialized countries. A more general reason why human rights advocates may find their energy is better spent elsewhere than on seeking to change existing rules is that WTO members have great difficulty in coming to agreement on even the simplest matters, so changing the WTO legal texts might take a long time, and be extremely time-consuming.

Those who are nevertheless keen to seek a change in the rules might consider a change that promotes more general well-being, for instance by strengthening the affirmation of countries’ right to retain their policy space to introduce measures that promote the public interest, or their right to restrict imports in agricultural goods when these are causing social disruption or threatening livelihoods. It should be borne in mind that it will be easier to change rules that are already being renegotiated in the WTO, as these are up for discussion by Members – such as in the area of agriculture – rather than to try to change the wording of the legal texts on which negotiations are not underway.

7.8 Look twice at other issues: sustainable development and labour standards

The WTO Preamble refers to the requirement of WTO Members to act consistently with the principle of sustainable development. This principle provides an entry point, as well as strong legal and advocacy leverage for human rights advocates: sustainable development is particularly close to the human rights of the poorest and most vulnerable members of society through its requirement that overriding priority be given to the needs of the poor. Members reaffirmed their commitment to the principle of sustainable development in 2001, in the Doha Ministerial Declaration. The WTO’s Dispute Settlement Mechanism (DSM) has also affirmed the importance of sustainable development, most notably in its decision in the 1998 *Shrimp-Turtle* case that pitted India, Malaysia, Pakistan and Thailand against the US.

On the other hand, there is reason to be wary about using trade rules to impose respect for particular human rights, such as minimum labour standards. There are several reasons for this. First, there is cause to be wary about using trade as a tool for conditionality, as success with this tool is much more easily available to those that already wield disproportionate economic power: one could imagine a large country like the USA or China using the threat of trade sanctions to get

Human rights advocates may be best advised to promote human rights-consistent application of trade rules at the national level, rather than trying to change WTO rules.

To locate a DSM decision or comments on DSM decisions, see Chapter 8.3

² See Caroline Dommen, *The WTO, international trade, and human rights*, 2004, at www.3dthree.org/en/page.php?IDpage=13&IDcat=5

Box 7.5 The Kimberly Diamonds waiver

In 2003, the WTO approved a request for a waiver from WTO rules for the Kimberley Process rough diamonds certification scheme. The Kimberley Process is an international initiative established to sever the link between illicit international trade in rough diamonds and armed conflict – a link that has been particularly prevalent in Angola, Sierra Leone and the Democratic Republic of Congo. Launched in May 2000 and endorsed by the UN General Assembly, the Kimberley Process was initiated by several southern African countries to stop the flow of conflict diamonds to the markets, while at the same time protecting the legitimate diamond industry. The Kimberley Process includes approximately 44 countries that produce, process, import and export rough diamonds, accounting for 98% of global trade and production.

The WTO waiver states that “the trade in conflict diamonds is a matter of serious international concern, which can be directly linked to the fuelling of armed conflict, the activities of rebel movements aimed at undermining or overthrowing legitimate governments, and the illicit traffic in, and proliferation of, armaments, especially small arms and light weapons.”

ICTSD, *Bridges Weekly Trade News Digest*, February 2003, available at www.ictsd.org/weekly/03-02-27/story3.htm

what it wants, but it would be hard to imagine that Cambodia or Bhutan could wield a similar level of economic weight. In addition, endorsing the use of economic sanctions to enforce moral values can be dangerous if it is used to enforce values held only by some countries or cultures. The dispute between India and the EU about **GSP** conditionality, discussed in Chapter 2, touched on this issue. This is not to say that sanctions to enforce multilaterally-agreed economic measures might in some cases be acceptable (see Box 7.5 on the Kimberly Diamonds waiver).

In addition, countries have been known to use measures purportedly designed to promote public interest as disguises for discriminatory, protectionist objectives.

Introducing human rights obligations into WTO texts would in effect extend the WTO’s reach and give it more power over non-trade issues. It is preferable that human rights bodies, not trade bodies, should be responsible for human rights.

Box 7.6 Labour standards and the TPRM

The United States included labour standards in its report when its trade policy was reviewed in January 2004. Its Government stated that “there is a connection between labour standards and trade issues; we believe that the subject of implementation of core labour standards is relevant for TPRM reviews”. In reviews of other members, the US has raised questions about the application of core labour standards. The European Union said during the TPRB meeting that it was very pleased to see the issues of trade and labour rights being included in the US report, and it had submitted a number of written questions in this field.

Some developing countries, however, maintain that core labour standards have no place in TPRM. In the case of the US review, both India and Malaysia reiterated this position. The Indian Ambassador declared that ‘the competent body to set and deal with labour standards is the International Labour Organization. It is, therefore, clear that the WTO is not competent to deal with this matter... The TPRM cannot be used as an open forum to discuss non-trade issues or address issues not discussed elsewhere in the WTO.’ India also requested its position to be reflected in the official records of the meeting.