

The World Trade Organization

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1. History of the WTO

The WTO came into being in 1995, replacing the General Agreement on Tariffs and Trade (GATT). GATT was created in 1947, one of the post-second world war institutions for international governance. The United Nations, the International Monetary Fund (IMF) and World Bank were the other institutions created in the 1940s, as world leaders at the time believed that if international institutions had existed that were capable of responding to the economic and social crises of the 1930s, it would have been possible to prevent the international climate from deteriorating to the point of war.

In the 1930s, many countries had imposed arbitrary and increasingly high and discriminatory trade barriers in an attempt to hold the effects of economic depression out of their countries by keeping domestic industries alive and thus maintain domestic employment. But in fact this protectionism (protection of domestic producers at the expense of imports and global welfare) caused the effects of economic depression to spread all over the world.

Rules for international trade were thus seen as a key part of post-war international governance, and GATT aimed to introduce predictability, stability and non-discrimination in international trade. GATT's creators believed that rules to ensure that trade was free and predictable was the best way to share the benefits of economic growth from one country to another. (Some of the assumptions about free trade are discussed in section 5 below).

At first GATT had the modest aim of reducing barriers to trade, with a particular focus on tariffs² as these were the main trade-restricting device used at the time. Eight rounds of tariff reductions

¹ <http://www.law.unsw.edu.au/centres/dtp/about.htm>

² A tariff is a duty or tax imposed by a government on imports or exports.

were negotiated within the GATT. The last of these, known as the “Uruguay Round” resulted in the creation of the World Trade Organization (WTO). The WTO Agreement incorporated the GATT as one element of its broad mandate.

WTO rules reach into just about every area of daily life including food production, water distribution, transport policy, environmental protection, cultural diversity, professional standards and the price of pharmaceuticals. (See Box 1) In addition to including far more subject areas, it also covers more countries. The WTO's current membership of 146 – with another 30 countries in the process of joining – reflects all social and economic systems, whereas communist and socialist countries were never part of the GATT system.

Two processes explain the broader reach of the WTO, one gradual, the other a more abrupt break from the past. As tariffs gradually dropped in the course of GATT's tariff-reduction negotiating rounds, countries turned to non-tariff trade-regulating measures to limit competition from imports. These non-tariff measures (NTMs) include subsidies, technical standards and import licensing. They also include measures such as environmental or health-related standards, or packaging requirements, which can limit imports. These NTMs could also be – and often are – used to disguise discriminatory or protectionist motives. In the 1960s, responding to these new forms of possible protectionism, GATT started regulating and limiting the use of NTMs as well as tariffs, and the WTO has continued to do so.

New issues were introduced more abruptly into the GATT framework during the Uruguay Round. Industrialized countries pushed for including rules on intellectual property, trade in services and investment into the multilateral framework from the 1980s. Although developing countries resisted this at first, they finally relented, and the WTO now contains far-reaching, and still controversial, rules on intellectual property, services and investment. To persuade developing countries to accept these, industrialized countries agreed to bring agriculture and textiles into the GATT and the WTO. Developing countries can produce agricultural products and textiles more competitively than industrialised countries. Both these areas had been excluded from GATT rules, which allowed industrialized countries to subsidise their farmers, and to refuse access to their markets of cheaper textiles from Asia, Africa and Latin America.

Last but not least, the Uruguay Round created a dispute settlement mechanism (DSM) for the WTO, which is binding on all WTO members. The DSM's ability to issue compulsory rulings on the laws, practices and policies of individual countries, backed by trade sanctions, gives the WTO more power than any other international institution.

2. How the WTO Works

The term 'WTO' is used to refer to any one of four distinct things: (1) the WTO as an organisation (i.e. its member states, acting collectively), (2) the WTO secretariat, (3) the WTO Agreement, or (4) the WTO dispute settlement mechanism. It is important to distinguish between these when devising strategies for responding to human rights-adverse impacts of the WTO, as much of the

Box 1

Some of the main texts of the WTO Agreement

Agreement Establishing the WTO (Marrakesh Agreement)
General Agreement on Tariffs and Trade (GATT)
Agreement on Agriculture (AoA)
Agreement on Technical Barriers to Trade (TBT Agreement)
Agreement on Trade-related Investment Measures (TRIMs)
Agreement on Anti-Dumping
Agreement on Subsidies and Countervailing Measures
General Agreement on Trade in Services (GATS)
Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs)
Understanding on Rules and Procedures Governing the Settlement of Disputes (Dispute Settlement Understanding, DSU)
Trade Policy Review Mechanism
Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries
Decision on Trade and Environment

For a summary and full texts of these agreements, see http://www.wto.org/english/docs_e/legal_e/ursum_e.htm or http://www.wto.org/english/docs_e/legal_e/legal_e.htm

criticism directed against the WTO actually concern decisions taken by WTO members themselves, rather than problems with the legal texts of the WTO Agreement.

As an organisation, the WTO's main functions include serving as a forum for ongoing trade negotiations, implementing the WTO agreements and overseeing their implementation, as well as handling trade disputes. The WTO operates through Councils or Committees. The Council on Trade-related Intellectual Property Rights (TRIPs) for instance, oversees the agreement of the same name. The Ministerial Conference, which meets every two years, is the highest decision-making body of the organisation. The fifth Ministerial was in Cancún in September 2003, and the sixth will probably meet in Hong Kong in 2005. In between Ministerial Conferences, the General Council is responsible for general aspects of the WTO's ongoing work. Apart from Ministerial Conferences, all meetings of WTO Councils and Committees take place in Geneva.

The WTO is a 'member-driven' organisation. This means that all its decisions are made by all its members – it has no executive body like the Executive Directors of the World Bank (see the DTP Module on the World Bank and the ADB) or the Executive Board of the UN Development Programme (UNDP). All WTO decisions are made by consensus; although the WTO Agreement does provide for the possibility of decision-making by majority vote, this has never happened. Another aspect of the WTO's member-driven nature is that the Secretariat has no executive power, and can take no initiative of its own without specific instructions from the WTO's membership. The Secretariat merely provides support to WTO members such as background papers and minutes of the meetings. The WTO is based in Geneva; it has no field offices or permanent representation elsewhere.

The WTO Agreement is the term used to refer to the legal texts adopted in 1995 that set out the rules that WTO members must apply, as well as processes for implementing and monitoring the application of these rules. (See Box 1.) In themselves, these rules leave enough latitude for a WTO member to implement them in a way consistent with their own development, social, cultural or environmental goals. Section 3 will explain how it comes to be that in practice, WTO members often implement trade rules in a human rights-inconsistent way.

Finally, any WTO member may challenge another member's trade-related rules and practices in a quasi-judicial process, if the challenging member considers it inconsistent with WTO rules. First an independent panel of 3 or 5 individuals rules on whether or not the challenged measure is WTO-consistent. If either party to the dispute challenges the ruling, it goes to the WTO DSM's standing Appellate Body, which issues the final ruling. If the challenged member is found to have contravened its WTO obligations, the DSM will recommend that it change the law or measure at issue. If the member does not do so, the DSM can authorize the victor in the dispute to impose trade retaliation measures (through 'suspending trade concessions,' in WTO jargon) against the challenged member.

3. WTO-related risks for human rights

Through joining the World Trade Organization (WTO), countries agree to conduct their trade and economic relations with a view to *'raising standards of living, ensuring full employment and a large and steadily growing volume of real income'* while *'allowing for the optimal use of the world's resources in accordance with the objective of sustainable development.'* (Preamble, Marrakesh Agreement establishing the WTO). The preamble also recognizes the particular efforts needed to ensure that developing countries, especially the least developed countries (LDCs) *'secure a share in the growth in international trade commensurate with the needs of their economic development.'* Defenders of the WTO claim that in facilitating trade it promotes wealth creation, supports the rule of law and increases wellbeing worldwide.

Still, disparities between rich and poor countries, and rich and poor within most countries, are widening. Poverty is denying hundreds of millions their basic human rights including the rights to an adequate standard of living, to health and even to life. The WTO has become the target for many of civil society's grievances about economic globalization, and accused of collaborating in the promotion of a corporate-oriented model of economic globalization, putting trade before the environment, democratic processes and human rights.

It is hard to identify any WTO rule that is in itself inconsistent with human rights. However, the way in which these rules are developed and implemented raise real human rights concerns. This section will examine three aspects of these concerns: (1) undemocratic trade policy-making process, (2) restrictions on domestic public interest regulations, and (3) discriminatory impacts of trade liberalization. The next section will look at how human rights advocates can usefully address these concerns.

Despite its broad coverage, the WTO is only one element of international trade regulation. Over the last few years, bilateral regional trading agreements have grown in importance and in number. Some of these – such as the European Union and the North American Free Trade Agreement (NAFTA) – have broader coverage, more far-reaching liberalization objectives or stronger enforcement mechanisms than the WTO. Bilateral agreements have tended to impose far higher standards on developing countries than WTO rules, and to squeeze the flexibility that countries have to regulate in the public interest far more than the WTO.

Undemocratic process

The problem

The WTO is infamous for its untransparent and undemocratic decision-making processes. It is the only international organization to have no formal relations with non-governmental organizations (NGOs), and even intergovernmental organizations have only very limited access to WTO meetings. In fact, even member governments are regularly excluded from key WTO decision-making processes.

In recent years, the WTO secretariat has reached out towards NGOs, providing improved information and opportunities for dialogue. However, these improvements have not changed the basic situation, which is that there is little public scrutiny of, let alone participation in WTO activities. WTO members seem unwilling to make any changes to the organization's untransparent ways of working. An added difficulty for NGOs wishing to have public interest concerns reflected in the WTO is that the WTO treats public interest NGOs on the same footing as private business groups. This means that public interest groups are competing on an equal footing with much better-resourced promoters of private interests. In addition, private business usually has the means to influence governments' trade policy at other stages in its formulation. Thailand and the USA are amongst the countries that invite business groups but few, if any, public interest groups, to participate in national consultations on trade. And business groups are in almost all cases at the origin of governmental challenges in the WTO dispute settlement mechanism of competitors from other countries. This imbalance in non-governmental representation in trade policy is inequitable, undemocratic and often results in outcomes that favour short-term private interests rather than the public interest.

WTO members from developing countries complain of undemocratic trade negotiating processes, which make it hard for them to have their interests reflected. The stronger economic powers, particularly the 'quad' which includes the European Union, the USA, Canada and Japan, often manage to stitch up agreements in advance of formal negotiating sessions and present them to the membership as a *fait accompli*. Developing country delegates are often subject to arm-twisting or threats of withdrawal of aid or economic advantages in other areas if they do not agree to industrialized countries' WTO proposals.

In recent years developing countries have improved their negotiating strength in the WTO. That they refused to accept to sign on to an agreement in Cancún that ignored their views testifies to the fact that they are no longer prepared to be bullied into trade arrangements from which they do not benefit. The snag in their improved strength in the WTO though, is that large economic powers – notably the USA – unable to attain their trade objectives through the WTO are shifting their attention to bilateral or regional trade agreements. From a democracy and human rights point of view, this is a troublesome development as bilateral trade negotiations are far less transparent than multilateral ones. Lack of transparency, combined with starker power imbalances, offers more scope for arm-twisting. The results speak for themselves: bilateral and regional trade agreements recently negotiated are a lot worse than the WTO on key issues of concern to human rights advocates, such as transparency and participation, intellectual property protection for pharmaceutical products which hinder access to essential medicines, and protection of the income of private investors over the public interest.

The Human Rights Context

Lack of transparency, participation and democracy in the WTO stands in clear contrast to fundamental human rights principles including equality, participation, accountability and non-discrimination. The Universal Declaration of Human Rights sets out the right of everyone to take part in the government of their country, and States' legal obligation to enable people to take part in the decisions that affect their welfare has been reconfirmed on many an occasion since.

In its General Comment on the right to food, for instance, the Committee on Economic, Social and Cultural Rights stressed that the formulation and implementation of national strategies for the right to food requires complying with human rights principles including accountability, transparency and people's participation. The Committee added that good governance is essential to the realization of all human rights, including the elimination of poverty and ensuring a satisfactory livelihood for all.

Beyond the legal obligation, participation in trade policy formulation plays an important role in the promotion of development. Experience in many countries confirms this. Uganda, for instance, has a process for civil society participation in national trade policy formulation, involving disadvantaged groups such as small farmers in shaping national positions and backing government officials that go to international negotiations. It is acknowledged that broader stakeholder participation at the national level strengthens developing countries' voices in international trade negotiations and can improve their capacity to resist pressures from larger economies to make commitments in the area of trade that go against development or public interests. Kenya is one country where civil society into trade policy resulted in that country being able to submit timely negotiating proposals to the WTO and thus participate in meaningfully in the negotiations.

The human rights principle of participation also requires States to involve people in domestic trade policy-making processes. National level participation by public interest groups including human rights advocates is particularly important for two reasons. One, given the move towards even more undemocratic and human rights-threatening bilateral and regional trade agreements, a WTO focus will not be sufficient to ensure human rights consistent international trade policy. The other reason, to which the discussion will now turn, is that the problems often lie not so much with the trade agreements themselves but the manner in which they are implemented.

Limiting of policy space

The problem

Whilst it is difficult to find WTO rules that *per se* infringe human rights law, the way in which these rules are applied do raise real human rights concerns. The most common way that rules developed in the WTO affect human rights is through limiting governments' ability to regulate or

to take other measures to promote or protect human rights at the national level. Indeed, in promoting 'free trade' the WTO seeks to do away with possible regulatory interferences with the free flow of goods and services, thus limiting governments' ability to regulate in favour of development, environmental protection, or to defend vulnerable groups. This has given cause for particular concern regarding essential elements of livelihood such as food or health, and provision of basic services such as education, health care or water. This section will look at how and why countries have applied WTO rules in a way that limits their policy space in two areas: intellectual property rules affecting the cost of medicines, and agriculture rules affecting the availability and accessibility of food.

Strict Intellectual Property (IP) rules can increase the cost of medicines, making them unaffordable to the poor and other vulnerable groups. The WTO's Agreement on Trade-Related Intellectual Property Rights (TRIPs) allows flexibility in how IP rules are applied, specifying that the enforcement and protection of IP rights should be conducive to social and economic welfare, and acknowledging that WTO members may adopt laws or measures necessary to protect public health. This was reaffirmed in 2001 by the Doha Declaration on the TRIPs Agreement and Public Health which *inter alia* states that the TRIPs Agreement does not and should not prevent Members from taking measures to protect public health, and recognizes Members' right to protect public health and to promote access to medicines for all.

However, in practice IP rules have been applied in a way that prevents States from fulfilling their obligation to respect the right to health. Pakistan's 2000 Patent Ordinance, adopted to bring the country into compliance with TRIPs, is one example of a national law that does not fully exploit all the public health provisions in TRIPs.³ In some cases not carving out the policy space in IP laws necessary to promote access to medicines may be due to a lack of knowledge on the part of legislators – hardly surprising given the complexity of the subject and the fact that until very recently most developing countries had few, if any, IP laws.

In other cases, lack of use of TRIPs public health flexibilities is due to pressures from the pharmaceutical industry or their governments. USA pressure to provide stronger IP protection for pharmaceuticals than required under TRIPs has been documented in many countries including Cambodia, Nigeria, Thailand and Uganda. Even though Thailand has a domestic pharmaceutical industry, USA pressure and trade threats led to changes in legislation limiting Thailand's capacity to produce medicine for its own people. For the same reason, many of the provisions of the Thai Patent Act, implemented before TRIPs, were more restrictive than warranted by the international agreement.⁴

Another way in which use of TRIPs flexibilities is restricted is through bilateral or regional trade agreements. The USA is pushing for strict IP rules in regional trade agreements in the Americas (Central American Free Trade Agreement – CAFTA – and the Free Trade Agreement of the Americas - FTAA) and is also reported to be doing so in the current⁵ negotiations towards a free trade agreement with Australia. The recently-adopted USA-Singapore Free Trade Agreement reduces the flexibility available under WTO rules for governments to make low-cost medicines available in order to address public health crises.

Like TRIPs, the WTO Agreement on Agriculture (AoA) recognizes public interest needs. Its preamble notes that industrialized countries agree to take fully into account the particular needs of developing countries, and that new WTO commitments on agriculture trade liberalization should be made in an equitable way among all members, having regard to non-trade concerns such as food security and the need to protect the environment.

³ Moreover the law was criticised for being adopted in haste and without public consultation. See Panos (2002) *Patents, pills and public health*, www.panos.org.uk/PDF/reports/TRIPS_low_res.pdf

⁴ Panos (2002) *Patents, pills and public health*

⁵ February 2004.

The real picture looks very different. International agriculture trade plays a key role in how food is produced and distributed, and increasingly takes place to the benefit of the agrochemical industry and the detriment of small farmers. One way this happens is that the world's wealthiest countries subsidize their farmers to the tune of almost US\$1 billion per day. The subsidies encourage over-production in rich countries, who export surpluses to the developing world at far below their cost.

Many developing countries' structural adjustment packages required agriculture trade liberalization, viewing free markets as the best route to food security. Developing countries' agricultural markets were opened on the assumption that trade would allow domestic food consumption to be met more cheaply by less costly imported supplies. In many food producing developing countries imports are indeed now cheaper than domestic goods, but farmers' incomes no longer always cover their costs.

The case of the Philippines provides an example of how 'dumping' of agricultural products into economies heavily dependent on small-scale farming and local markets has actually reduced availability of food, and disrupted communities. Vegetable imports increased as the Filipino government lifted opened the market, lifting quantitative restrictions and reducing tariffs on imports of agricultural products, and vegetable farmers in Northern Luzon now face bankruptcy as a result of the flow of cheap imported vegetables into the country. Producers of grains and fruit around the Philippines are facing a similar fate, and food crop production is marginalized. Those farmers that survive increasingly shift to produce crops for export. But diversification into new crops fails to take into consideration the question of food security, environmental sustainability, and the livelihoods of rural communities. Also, trade-dependent agriculture increases countries' vulnerability to price fluctuations abroad over which they have no influence. And if the cost of food imports rise, or of agricultural exports drop, food will be harder to access. FAO studies in India confirm this by pointing out that food prices rose faster than other consumer prices after 1991, thus poverty rates did not decline since 1991 despite faster economic growth.

Each country has considerable latitude to decide what level of agricultural products it will import. However, once a country has set the level of tariffs or quotas on agricultural imports, it can be difficult to change these. The AoA also offers WTO members mechanisms for protecting themselves against surges of agricultural imports, but again, specific measures needed to have been taken when the AoA was adopted for a country to be able to use these import-limiting mechanisms. But, like in the case of domestic TRIPs legislation, it appears that many developing countries were unaware at the time of the measures they should have taken to enable them to protect their domestic producers later. Other countries are subjected to pressure by other countries or through International Financial Institutions (IFIs) to liberalize their agriculture sector. And once they have made liberalization commitments through the WTO, these commitments are 'locked-in' and very difficult to reverse if subsequent circumstances show the need to restrict imports of agricultural products.

New negotiations in the WTO may offer some possibilities for introducing measures that would benefit developing countries. NGOs and developing countries have proposed that these negotiations introduce measures such as allowing developing countries to retain higher import tariffs to protect small farmers producing basic foods for local consumption ('special products' in WTO jargon), allowing developing countries to apply extra import tariffs to block highly subsidized imports from developed countries like the US and the EU, and heavy reduction of farm subsidies in industrialized countries. However, the WTO agriculture negotiations seem likely to remain stalled until 2005, following the inability of WTO members to reach agreement during the Cancun Ministerial.

The human rights context

Access to affordable medicines is a fundamental element of the right to the highest attainable standard of health, as protected by the Covenant on Economic, Social and Cultural Rights (ICESCR) as well as by the Convention on the Rights of the Child (CRC). All Asian countries have ratified the Convention on the Rights of the Child, and 116 of the WTO's 146 members have ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Similarly, the human right to adequate food is guaranteed by several legally-binding international human rights agreements including the CRC and the ICESCR. The Committee on Economic, Social and Cultural Rights, in its General Comment on the right to food, has stated that this right is inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty.

Furthermore, human rights require policy-makers to focus particularly on the needs of the most disadvantaged and marginalized individuals and communities. The examples above indicate that those who suffer most from adverse effects of trade rules are the poorest, most marginalized and vulnerable sectors of the population and that their needs should therefore be given particular attention by those responsible for trade policy as they develop or implement rules relating to trade.

Discriminatory outcomes of trade liberalization

The problem

Trade liberalization is in theory gender-, class- or race-neutral. But in practice it has more harmful effects on vulnerable or marginalized groups such as subsistence farmers, geographically isolated populations, indigenous groups or women. Indeed, trade liberalization and trade flows do not eliminate existing inequalities in access to resources and power between dominant groups and minorities or less powerful groups in society, but often amplifies them.

A group for which the discriminatory effects of trade liberalization has been amply documented is women. Although in some cases, economic liberalization and globalization has created new employment opportunities for women, these jobs tend to be precarious and dependent on the international economic climate. At the same time, women suffer adverse effects of liberalization in other ways. One important part of trade liberalization is tariff reductions, with a consequent loss to governments of tariff revenues. When government revenues decrease, social spending is usually cut first. Women, who around the world have primary responsibility for the household, are the primary care-givers and are more dependent on men on government services, will suffer more from the impacts of reduced social expenditure.

The relative roles, influence and contribution of men and women in national and international economies play an important but often unrecognised role in the setting of trade rules, the kinds of assumptions on which these rules are based and the consequent diagnosis of development and social issues that follows. This heightens the importance of asking who decides and who is consulted in trade decision-making processes at national and international levels.

The Human Rights Context

Human rights are based on the equality of all persons. For that reason, human rights instruments place great emphasis on protection against discrimination on any grounds including race, gender or religion. The human rights principle of non-discrimination prohibits any distinction, exclusion or preference that impairs or nullifies the enjoyment of human rights. The principle applies to both *de jure* and *de facto* discrimination: in other words, the principle is not only concerned with discrimination in laws and policies, but also discrimination in practice.

Because a human right is a universal entitlement, its implementation is evaluated particularly by the degree to which it benefits those who hitherto have been the most disadvantaged and marginalized and brings them up to the mainstream level of protection. Thus, even where the net social benefit from trade liberalization favours the majority in a certain country, the human rights principle of non-discrimination requires action to protect those who do not benefit.

Moreover, human rights law requires monitoring of the potential and real impacts of trade rules and policies on the enjoyment of human rights – in particular those of poor, vulnerable and marginalized people – in order to devise and implement policies that aim to promote the enjoyment of human rights. It follows from this that monitoring and human rights impact assessments should be carried out to ensure that trade policies are designed and implemented in a way that will not result in *de facto* discrimination against vulnerable groups.

4. What human rights advocates can do

There is much that human rights advocates can undertake to ensure that trade and trade rules do indeed result in *'raising standards of living, ensuring full employment and a large and steadily growing volume of real income'* while *'allowing for the optimal use of the world's resources in accordance with the objective of sustainable development.'*

Trade rules, the negotiating process and their effects are complex, but human rights advocates can achieve positive outcomes with the strong tools at their disposal. The strength of these tools lies in the fact that states themselves – as well as many private companies – have agreed to abide by human rights standards. In addition, the human rights treaties which set out these standards provide unique avenues for accountability and redress. Human rights defenders should not let themselves be discouraged by the fact that until now, there have been few human rights-based responses to iniquities of trade liberalization as a few simple principles can guide their work on trade:

Participation

Human rights law imposes an obligation on States to ensure public transparency and participation in decision-making. Many trade negotiators seem unaware of this obligation, and human rights groups should therefore bring it to their attention. A letter to one's national trade ministry to this effect could be a useful first step. A letter of this type could also ask trade officials what they are doing to ensure that new trade rules will not undermine the governments' ability to protect human rights, or what steps they are taking to ensure that trade liberalization does not have discriminatorily harmful effects on some sectors of the population. Groups or individuals undertaking this kind of initiative can also remind trade policy-makers that evidence concurs that trade policies are more likely to reflect the needs of individuals and communities and respond to the long-term development needs of a country as a whole if there is broad participation in their development

Monitoring

According to human rights principles, states must monitor progress towards the realization of human rights. This monitoring should help them identify difficulties that might affect implementation of their obligations, and to facilitate the adoption of corrective legislation and administrative measures. Few assessments of the social or human rights impact of trade liberalization have been undertaken, despite the fact that WTO agreements require such assessments. Developing countries and NGOs have been calling for these assessments to take place before new WTO negotiations towards additional liberalization commitments. Human rights advocates could add strength to these calls for assessment by stressing the human rights obligation

to monitor human rights and identify and remedy difficulties. They could join with the other international coalitions monitoring the social impacts of trade liberalization and calling for WTO assessments, and strengthen these coalitions by bringing the human rights voice and experience to these.

Information about human rights standards

Human rights treaties require states to make sure that the treaties are widely known. However, trade officials seem to know little about human rights. Human rights advocates can – and do – contribute to efforts to make human rights standards known and better understood, and thus ensure that they are reflected at all levels of trade policy. Even members of the WTO's dispute settlement panels and Appellate Body, who have a strong legal background, are not always aware of how to apply legal obligations in relation to economic, social and cultural rights, and simple information on these obligations could contribute to human rights-consistent outcomes, if any future WTO dispute raises human rights issues.

Accountability mechanisms

Human rights accountability mechanisms could be more systematically used to hold governments accountable to their human rights obligations. The reporting process under the international human rights instruments is one way of doing this – by bringing to public attention the threats to human rights posed by trade liberalization. Another extremely useful way is by bringing trade-related human rights issues to the attention of the Committees set up to monitor country-level implementation of the different human rights treaties. This way, they will reflect the concerns back to the government officials responsible for human rights which, if support work is done in the country in question, should result in improved communications between officials responsible for human rights and those responsible for trade. This process is valuable for keeping the public spotlight on issues that might otherwise go unnoticed.

Human Rights as a shield

Human rights standards and accountability mechanisms can be particularly valuable in that they can clarify the roles and responsibilities of the different economic actors whose conduct can have effects on human rights: private companies, the national government, other governments. As we have seen, the latter is particularly important in the trade context as pressures to apply trade rules a way that is not required by the trade agreement itself and has human rights-inconsistent effects is often due to the pressures of another country, or to pressures by IFIs. Governments' obligations to respect, protect and fulfil human rights can be held up as a shield against pressures from other governments or IFIs to adopt trade-related rules that would constrain their flexibility to regulate in the public interest.

5. The bigger picture

Whilst talking about fair treatment of developing countries, and ensuring that trade or trade rules not discriminate in favour of vulnerable groups, the bigger picture should also be borne in mind. This involves looking at economic systems generally and asking what economic basis a sustainable and equitable trading system should be based on? Should human rights advocates support claims for better developing country access to industrialized country markets, and open up their markets to imports as well? Would it be more human rights-consistent to call for trading only in goods that are surplus to needs, such as consumer goods or flowers, whilst maintaining food and essential industrial production for domestic consumption? Would it be more human rights-consistent to allow countries to restrict imports on grounds that they consider in the moral, or human rights interest? Would a human rights approach favour an urban, industrialized and export-oriented

development model, a model in which small-scale agricultural producers can continue to live as in past centuries, or a mixture of the two?

Human rights advocates are likely to differ in their answers to these kinds of questions. But in any event, finding answers will probably require a basic understanding of the doctrines that underpin the GATT and the WTO, and the inadequacies of these. The multilateral trading system is premised on the theories of 'comparative advantage' and 'mutual gains from trade.' These doctrines say that in the absence of trade restrictions, each nation will gain by specialising in the goods and services that it can produce more efficiently than other nations, and trading the surplus. To work properly, these doctrines need free, competitive markets that accurately price goods and services, as this will enable the producers in each country to measure their real production costs and so to know what they are more efficient at producing. According to the comparative advantage and gains from trade theories, free trade will improve the efficiency of international production and thus provide consumers worldwide with lower prices, greater availability of goods and higher overall welfare.

But many of the assumptions underlying these theories do not find correspond to reality or are regularly breached. For instance, they do not reflect the current situation where private corporations enjoy enormous and increasing concentration of power in the world economy, and where much international trade takes place within different branches of the same corporation. They pay no heed to people's personal preferences about what they do for a living or where they live, and assumes away the effects of international trade on the distribution of income within countries, predicting rather that countries as a whole will gain from trade. In addition, they do not seem to factor in the fact that the 'consumers' who enjoy lower prices worldwide might also be producers – and often the out-of-work producers of products such as food discussed in section 3 above.

In sum, the focus of mainstream economics must change to fully factor in parameters such as social needs, cultural values, human dignity and appropriate use of resources. It must consider the differential impacts of trade and trade rules on different groups: at present, women, minority ethnic groups and rural populations tend to suffer disproportionately from economic liberalization whilst others reap the benefits. Economic actors must be held accountable for the harmful as well as the beneficial impacts of their activities. Human rights advocates can contribute to this happening.

Useful Websites

www.3dthree.org

3D→Trade - Human Rights - Equitable Economy builds dialogue and coalitions amongst trade, development and human rights professionals, with the aim of ensuring that trade rules are developed and applied in ways that promote an equitable economy and support human rights.

www.business-humanrights.org

Business & Human Rights Resource Centre. Provide access to a vast range of materials relating to business and human rights.

www.gatt.org

The pirates: incisive criticism of free trade and the WTO.

www.ictsd.org/weekly/index.htm

Bridges Weekly Trade News Digest, essential reading on developments in trade around the world.

www.igtn.org

International Gender and Trade Network (IGTN). A network of gender advocates working worldwide to promote equitable, social, and sustainable trade.

<http://www.tradeobservatory.org/FAQ/index.cfm>

Fast facts and other information on the WTO, from the Institute for Agriculture and Trade Policy.

www.wto.org

World Trade Organization.

Further Reading

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