

Contradict the WTO Human Rights

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Abstract: Trade relations and the very nature of trade between countries have been largely transformed by the GATT and the WTO agreements. In a world that has adopted global trade as the driving force for economic and social development, the impacts of trade on societies is more than ever, of enormous consequence to human development. Trade inevitably leads to economic growth and social development, argue the most fervent proponents of the liberal trade policy promoted by the WTO. The question which is of fundamental importance, however, is how does liberalized trade as promoted by the WTO relate to world commitments to sustainable development, especially to the sustainable use of natural resources and the protection and promotion of basic human rights? Does everybody benefit equitably from more free trade, particularly from increased and more stringent patent protection, from greater access to markets, and from reduced tariff barriers and subsidies, all key issues on the WTO negotiating table? What are the guarantees of the WTO to ensure that free-trade led development is equitable and sustainable?

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1. Introduction

The World Trade Organisation (WTO) came into being in 1995. It lies at the centre of the global trading system and is one of the most influential international organisations. Its key purpose is to improve “the standards of living” of the people of its Member States by establishing legally binding rules which help trade to flow as freely as possible. The WTO seeks to achieve trade liberalisation through a variety of actions, including the removal of trade barriers and ensuring that all the main participants in the global trading system are aware of the applicable rules. The organisation also serves as a forum for trade negotiations amongst its Members concerning their multilateral trade relations in matters dealt with under the various agreements

annexed to the WTO Agreement, and for settling trade disputes. In recent years the WTO has been the focal point of intense criticism concerning the perceived negative impact of its agreements on people’s livelihoods worldwide. Common criticisms are that the WTO is not working in the interests of the majority of its Members; global trade, as presently organised, only serves the interests of large multinational corporations; the WTO poses a threat to democracy, environmental justice, labour laws and nations’ control of their destinies; and that the global trading system underpinned by the WTO) does not address the concerns of developing countries but exposes them to pressures from powerful countries. Significantly, the WTO has been criticised for lacking

sensitivity towards human rights and for lack of transparency in its processes. It is asserted, among other things, that provisions of WTO agreements concerning agricultural trade and intellectual property directly affect the ability of governments to fulfil their human rights obligations to their citizens. Conversely, supporters of the WTO argue that by expanding global trade the organisation in fact assists in raising living standards around the world. It is notable that developed countries (which mainly advocate free trade) have been calling for a broader international trade agenda encompassing non-trade issues such as environmental standards, labour standards and human rights. They argue that, as currently formulated, the WTO rules do not permit a country to impose trade sanctions to induce another country to improve its human rights practice. Consequently, the WTO rules should be modified to include human rights concerns. However, developing countries oppose these proposals due to concerns that human rights clauses in trade agreements could be used a tool by developed countries to deny market access to products from developing countries. (Chissick , Kelman.2002)

Sustainable Development and the WTO

The Marrakech Agreement establishing the World Trade Organization in 1995 states in its first preamble paragraph that Parties to this agreement recognize, “that their relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, [and] ensuring full employment, ... while allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development”. The text on the Decision on Trade and Environment of the same agreement underlines that, “there should not be, nor need be, any policy contradiction between

upholding and safeguarding an open, non-discriminatory and equitable multilateral trading system on the one hand, and acting for the protection of the environment, and the promotion of sustainable development on the other,” and that members should “coordinate ... policies in the field of trade and environment, ... without exceeding the competence of the multilateral trading system, which is limited to trade policies and those trade-related aspects of environmental policies which may result in significant trade effects for its members.” (Christensen.2002)

Human rights and trade are related in more than one way and there is a plethora of ways to overcome the negative impact of trade on human rights. It must be however added here that all these approaches are not feasible and do not address the present crop of conflicts. Critiques of globalization argue that the WTO does not prohibit the enforcement of human rights by imposing

trade sanctions. Apart from this inability it is also questionable whether trade related measures can improve human rights in the target country. It is also opined that these trade related measures may in reality harm the human rights situation rather than improve it. It then becomes imperative that the only plausible way out is to incorporate the human rights perspective into the work of the WTO. The UN human rights bodies suggest various ways to achieve sustainable development along with improving the human rights records of the WTO. As enunciated earlier, the use of assessment of trade rules both in the negotiation stage and the examination of TPRM reports is a point of beginning. This must be followed by technical assistance in the member states for WTO initiatives. One must also emphasize that the WTO must be ably supported by other international organizations. The role of the ILO and UN human rights bodies is catalytic for not only assessing standards for human rights but also in monitoring implementation. Further, organizations that

possess expertise in labour, human rights and social issues must offer technical assistance, training programs to bolster the initiative by the WTO. It is clear that the WTO is primarily a trade organization and need not transform into a human rights organization, it must incorporate the human rights perspective to improve its credibility. Being a member driven organization, the responsibility lies with member states to infuse human rights framework in the work of WTO councils and Working Groups. IT may be extremely arduous work to arrive at internationally acceptable human rights standards; such a framework would actually make a member state more attractive as a state. Given good conditions to work, education, and health care, the work force in a member state can improve in productivity and also contribute to a climate of political stability. When a member state ensures fairness, transparency and non-discriminatory administrative and legal procedures, the business environment is more conducive for international trade. The authors thus conclude that economic development and promotion of human rights are not at loggerheads but are complementary.(Emily.2001)

Do Human Liberty Rights Protect Individual Freedom Across Frontiers? On Freedom of Trade and “Legal Protectionism”

National and international human rights instruments – from the US Declaration of Independence of 1776 up to the Universal Declaration of Human Rights of 1948 and the Charter of Fundamental Rights of the EU adopted in December 2000 - recognize not only specific liberty rights (cf. Article 16 EU Charter: "freedom to conduct a business in accordance with Community law and national laws"), but also unalienable general human rights to liberty (e.g. Article 2:1 German Basic Law, Article 6 EU Charter, Article 3 UDHR). Most human rights instruments further recognize that "human dignity is inviolable" and "must be respected and

protected" (Article 1 Charter of the EU). If human dignity is interpreted in accordance with the moral "categorical imperative" as requiring maximum equal liberty for personal self-development consistent with equal human rights of all others, it is only logical to construe the general human right to liberty as applying to all areas of personal development which are not protected through specific human rights. Some constitutional texts explicitly provide for such general rights to maximum equal liberty subject to other constitutional restraints and democratic legislation (e.g. Article 2:1 of the German Basic Law). Other constitutional systems (e.g. in the USA) achieve similar results by the constitutional requirement that governmental restrictions of freedom need a legal basis in constitutional law and democratic legislation. Comparative studies of constitutional democracies confirm that in "most of the English-speaking world and most of Western Europe ... there is general acceptance of a principle of maximum individual freedom consistent with equal freedoms for others" subject to democratic legislation.(Karniw.1996)

The Preamble to the US Constitution describes its objectives as, inter alia, to “promote the general welfare and secure the blessings of liberty to ourselves and our posterity.” In view of the logical impossibility of enumerating all areas of individual liberty protected by the Constitution, and in order to reduce the danger of interpreting human rights catalogues as excluding liberty rights not explicitly listed, the founding fathers of the US Constitution made it explicit in the Ninth Amendment of the Constitution that "the enumeration of certain rights in the Constitution shall not be construed to deny or disparage others retained by the people". In the constitutional deliberations, other law-makers considered the Ninth Amendment as unnecessary because the constitutional principle of limited government prohibited governmental restraints of freedom that were not necessary for the protection of

human rights. How justified the concerns of the US founding fathers had been, is illustrated by the denial by US courts of any “vested right to trade with foreign nations”. In European law, it has likewise been claimed that the lack of any explicit legal guarantee of freedom of trade with third countries should be understood as excluding the existence of such a right, without even examining whether the “freedom to conduct a business in accordance with Community law” (now explicitly recognized in Article 16 of the EU Charter of Fundamental Rights) must not be construed in conformity with the customs union principle (Article 23 EC Treaty) to the effect that freedom to conduct a business protects also freedom to import from, and export to, third countries in conformity with EC law. (Ressell et al.1995)

The "double standard" practiced by some courts (especially in democracies with traditionally effective constitutional safeguards of economic freedom, like England and the USA) in favor of a higher degree of judicial scrutiny in the review of governmental restraints of civil and political rights compared with economic rights, is based on grounds of constitutional separation of powers and judicial self-restraint vis-à-vis economic legislation. Domestic judges tend to refrain also from reviewing compliance with WTO law and its underlying economic insight that discriminatory trade restrictions are hardly ever an optimal policy instrument for promoting consumer welfare. Individual rights to maximum equal liberty in all areas of personal development are more frequent in "post-war constitutions" (e.g. the German Basic Law of 1949), "post-revolutionary" human rights instruments (like the French Declaration of Human Rights and the Rights of the Citizen of 1791) and “international constitutions” (like the EC Treaty) designed to prevent the recurrence of historical experiences of "constitutional failures" (e.g. collaboration of cartelized industries in Germany with the Nazi dictatorship). One major advantage of such broad

liberty guarantees is to promote freedom and rule of law by facilitating judicial review of illegal government restrictions. (Wooldridge et al.2003)

CONCLUSION

This article begins with the establishment of world trade organization (WTO) and then it describes the trading system and the purposes of improving it. Further it talks about the process of trade liberalization and making of a free trade policy by supporting the different documents and cases on the given topic. Then it talks about the views of different economist’s towards the trade and human rights. Further it tells the inter-link between trade and human rights by supporting some reports of different organization and committees. Further the author has discussed that in cases of conflict between the two (i.e trade and human rights) which one will be taken into consideration, will be understood by going through various articles of the UN Charter. Then it talks about the trade system, poverty, development with respect to trade and human rights and describes the role of WTO and GATT towards it. And at last but not the least the author wants that this trade and human rights can get advanced in the up-coming future and the International judicial decisions have also reaffirms that the peremptory (or absolute) character of some human rights. For future developments as suggested in this article will help, on one hand by ensure that the WTO does not pose an obstacle in the realization of human rights, and on the other hand it helps to sensitize the organization for human rights consideration.

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