

# Human Rights and International Trade: Right Cause With Wrong Intentions

## *Executive Summary*

The World Trade Organisation (WTO), since its inception, has witnessed many efforts by vested interests in developed countries to burden the bewildered and incapacitated South with extraneous issues like environment and labour standards. These demands have been vociferously rejected by developing countries because the real reason behind them, in most of the cases, is the perception of rich countries that unfair labour and environmental practices may exist in developing countries and these need to be offset by appropriate trade policy measures in order to “level the playing field”.

**Human Rights as Non-tariff Barriers:** The latest demand in this regard by some groups is to link human rights with trade. However, there is concern among the producers in developing countries that, just like labour and environmental standards, this could also be used as a new tool to deny market access to the products from developing countries. They are worried about the potential of human rights clauses in WTO to be misused as non-tariff barriers to trade.

The discussion in this paper will focus on the demand to include human rights clauses in the world trading system and analyse its desirability, practicality and effectiveness. However, the discussion is by no means intended to deny the desirability of improving the prevailing human rights situation. The issue rather is how this can be best accomplished. Nevertheless, linking it with trade is certainly not a clever idea.

**Human Rights and Development:** Sustainable development aims at realisation of all human rights, which include civil, cultural, economic, political and social rights, apart from the greatest possible freedom and dignity of every human being.

It is *vice versa* also; each individual and all people also have the Human Right to ‘Develop’. The other fundamental human rights are, in fact, linked to and dependent upon realisation of the human right to development.

Right to development is one of the most important human rights, which seeks for the realisation of all human rights, i.e. civil, political, economic, social and cultural. It emphasises the issues of self-determination, popular participation in development, resource sovereignty and international co-operation for development.

Additionally, the existing International trading rules are not completely blind in this regard and, in one sense or the other, they do recognise the importance of human rights. Given this, there is no need for fresh proposals to include new rules, which will restrain trade and, in turn, cause further deterioration of the existing human rights situation.

**Impracticality of Linking:** Not only is the linking of trade and human rights undesirable, in practice also, it is inappropriate and inequitable. Some of the practical problems in this regard are, for instance: 1) Genesis of human right in different parts of the World is different and generalisation in this regard is practically impossible, 2) Allowing human rights in the WTO would give many countries greater opportunities to protect their industries unfairly against foreign competition, 3) Sanctions always have the potential to backfire and are in no way a better mechanism to achieve social objectives, 4) Export production in developing countries comprises of only a small portion of the total production and trade rules can affect this portion at the most. Therefore, even if social clauses are inserted in the WTO, only a miniscule portion of the problem will be addressed.

## Introduction

The World Trade Organisation (WTO) came into force on January 1, 1995, fully replacing the previous General Agreement on Tariffs and Trade (GATT). It is committed to improving the standard of living of the people of its member countries by establishing legally binding rules to liberalise international trade. As one of the most important and influential international organisations, the WTO aims to have a more transparent and more predictable trading system to eliminate trade discriminations and reduce tariffs and other trade barriers.

However, the developing countries have been getting a raw deal as they have not been able to secure the market access, which they expected from the system. Whenever it comes to reciprocating market access to developing countries, these economic powers divert the focus of the WTO from implementation of the existing agreements and reducing tariff levels and peaks, by calling for a broader agenda encompassing non-trade issues including environmental standards, labour standards and human rights. While tariff reductions are generally considered to generate economic benefits for both the developed and developing countries, the benefits of including these other issues are much more debatable, and the justification for using trade sanctions to pressurise countries to adopt certain standards is not accepted by most developing countries.

This whole debate on linking non-trade issues with trade is called linkages. Though the issue of linkages has been controversial since the GATT was signed in 1947, it got a renewed thrust in late 1980s and early 1990s. Developed and developing countries have polarised their positions on the issue and the adamant stance of both the groups was the principal reason of the failure of the Seattle Ministerial Conference in 1999. In the Seattle Ministerial Conference, the US and other supporters insisted on inclusion of labour standard clauses in the trade laws while the developing countries opposed any such move.

In the recent past, however, the international trading system has been criticised for its insensitivity towards human rights. A category of critics asserts that WTO rules do not allow one country to impose trade sanctions to put pressure on another country that is considered to be violating human rights and, hence, the WTO rules should be modified to incorporate human right concerns. This category of critics and some human rights groups, supported by domestic business lobbies in the North, have started putting forward a demand to incorporate human rights clauses in the WTO system, which essentially means punishing those countries with poor human rights record by means of trade sanctions.

However, these groups have neglected the fundamental issue of poverty, which is directly related to the human rights situation and cannot be eradicated by trade sanctions. Furthermore, there is concern among the developing countries that, just like labour and environmental standards, human rights would also be used as a tool to deny market access to the products from the developing countries. Numerous examples of developed countries using spurious standards to deny

market access to imports of sensitive products demonstrate that these standards may simply be hidden forms of protectionism.

The discussion in this paper will focus on the desirability, practicality and effectiveness of human rights clauses at the WTO. However, the discussion is by no means intended to deny the desirability of improving the prevailing human rights situation. The issue rather is how this can be best accomplished. Nevertheless, linking it with trade is certainly not a clever idea.

What is important in the immediate issue of linkages is that trade should be based on equitable terms and used as a means of eradicating poverty, which ultimately leads to improved human rights. However, using sanction-based measures to achieve social objectives would only worsen the situation. If these objectives snatch the developing countries' right to develop, then poor people will never be able to come out of the vicious circle of poverty, which itself is a serious violation of human rights.

## Realisation of Human Rights and Development

Sustainable development is a larger issue which incorporates efficient allocation of the world's resources, social and political well being of all individuals and peoples, actions to protect environment, poverty alleviation and so on. It aims at realisation of all human rights, which include civil, cultural, economic, political and social rights, as well as ensuring the greatest possible freedom and dignity of every human being.

It is *vice versa* also; each individual and all people also have the Human Right to 'Develop'. The other fundamental human rights are, in fact, linked to and dependent upon realisation of the human right to development.

In order to have a better understanding the following categorisation would be helpful, wherein experts have divided human rights into three important categories:

### ***Civil and Political Rights***

These rights include the well-recognised human right to life, i.e. not to be subjected to torture, not to be held captive in slavery, not to be deprived of freedom of expression, freedom of thought, conscience and religion, peaceful assembly and freedom of association, and the right to vote.

### ***Right to Work***

This category of human rights includes the right to work i.e. to just and favourable conditions of work, form and join trade unions, strike, social security, an adequate standard of living, including adequate food, clothing and housing, the highest attainable standard of physical and mental health, education, take part in cultural life, and benefit from the protection of the moral and material interests resulting from one's own scientific, literary or artistic production.

### ***Right to Development***

The third important category of human rights is the right to development, which seeks for the realisation of all human rights, i.e. civil, political, economic, social and cultural. It emphasises the issues of self-determination, popular

participation in development, resource sovereignty and international co-operation for development. This is, perhaps, the most difficult challenge to current economic policy and practice.

## Human Rights Linkages in International Trade Rules

Human rights, in their broadest meaning, covering political, economic, gender, social, civic and minority guarantees, have meant securing for all people the right to live a life of dignity. International trade essentially leads to an expansion of people's capabilities to afford a long, healthy and productive life and thereby contributes to development and the human rights situation.

The WTO was created with the objective of increasing international trade and removing existing barriers and thereby improving the quality of life of all. It is certainly important to ensure human rights in all parts of the world. However, incorporating sanction-based-clauses in the WTO will dilute its existing agenda of enhancing trade and greatly reduce the benefits of the freer trade expected to follow from the world trading system. Furthermore, linkages may actually have an adverse impact on the human rights of poor people as with more and more trade barriers and restrictions, the poor countries will never be able to come out of the vicious circle of poverty.

Additionally, it should be remembered that the existing International trading rules are not completely blind in this

regard and, in one sense or the other recognise the importance of human rights. In fact, if we want to analyse them from the human rights point of view, the existing trade rules can be divided into two categories, one which already have some human rights dimension and two which have the potential to act against human rights.

The first category of rules include the Preamble to the World Trade Organisation, which places explicit importance upon "raising standards of living", "ensuring full employment" and "a large and steadily growing volume of real income". However, the legal status of preambular text tends to be more declaratory than binding. But, the possibility of increased reference to the social purposes indicated in the preambular paragraphs of the WTO agreements is open. Box 1 describes the other relevant Articles of General Agreement on Tariffs and Trade (GATT), which have some human rights dimensions.

The second category includes agreements like Trade-Related Intellectual Property Rights (TRIPs), which do have an adverse impact on the human rights of the poor people. For instance, the TRIPs agreement directly threatens the right to access to appropriate healthcare and, in turn, the right to health. TRIPs was included in the WTO at the behest of the US and other developed countries, mainly because of lobbying by multinational companies and against the strong objections of developing countries.

### Box 1: GATT articles having human rights dimension

**1. Article XX** of GATT allows for certain specific exceptions to the rules, which would otherwise be in breach of the terms. The exceptions with some potential relevance to human rights are the following:

- Exception (a) is related to measures necessary to protect public morals. According to the experts, the term "public morals" may be sufficiently wide as to encompass human rights issues, and that the exception may extend to measures intended to protect public morals in other countries as well as one's own.
- Exception (b), on measures necessary to protect human, animal or plant life or health, have got more direct relationship with the protection of human rights. It has to be interpreted very restrictively, and with a particularly strict interpretation of the requirement that any such measures must be "necessary" for the stated purpose only.
- Exception (e), relating to the products of prison labour, has a clear but very limited human rights dimension.
- Exception (f), relating to the protection of national treasures of artistic, historic or archaeological value may, arguably, have significance for the enjoyment of the right to take part in cultural life.

Again, however, any significance would be limited to its very specific subject matter.

- Exception (g), relating to the conservation of exhaustible natural resources, may have an indirect effect upon the future enjoyment of the right to an adequate standard of living, by promoting sustainable resource usage.
- Exception (i), involves restriction on exports of domestic materials necessary to ensure the essential quantities of such materials to a domestic processing industry during periods when the domestic price for such materials is held below the world price as part of a government stabilisation plan.
- Exception (j) is "Essential to the acquisition or distribution of products in general or local short supply..."

Exceptions (i) and (j) may also, indirectly, protect and promote economic and social rights, by protecting domestic industries and consumers in certain circumstances.

**2. Article XVIII** of the GATT deals with assistance to developing countries. A consideration of the various special measures in the WTO for assistance or special consideration to developing countries and an analysis of their

effectiveness are beyond the scope of this article. However, to the extent that such measures may help promote the advancement of developing countries and protect their populations from the negative economic and social consequences of rapid trade liberalisation, they may have, at least indirectly and potentially, positive human rights implications.

**3. Article XXI** allows for measures, which a country considers necessary, relating to its essential security interests, concerning fissionable materials, or the materials from which they are derived, or the traffic in arms, ammunition and implements of war. These provisions have obvious indirect consequences for the enjoyment of human rights, insofar as they allow for the control of armaments and materials, which might result in serious and large-scale violations of human rights through conflict.

**4. Article XXI** also provides an exception for measures taken in pursuance of a country's obligations under the United Nations Charter for the maintenance of international peace and security (i.e. trade controls mandated by the UN Security Council).

The TRIPs agreement obliges all member countries to protect intellectual property rights. It has special implications for human rights when the technology of producing life saving drugs, for instance drugs for AIDS, is controlled by a handful of pharmaceutical companies that can charge prices way above what poor people can afford (See box 2).

In a related case, which has been brought before the WTO dispute settlement panel, the US has challenged Brazil's 1996 industrial property law, which imposes a "local working" requirement, stipulating that a patent shall be subject to compulsory licensing if the subject matter of the patent is not worked in Brazil. The US claims that this discriminates against US owners of Brazilian patents whose products are imported into, but not produced in, Brazil, as well as curtailing the exclusive rights conferred on these owners by their patents. The US claims that this violates article 27.1 and 28.1 of the TRIPs agreement. A ruling on the case is expected by early 2002.

Measures demanded by the US might handicap the successful Brazilian programme to combat AIDS, which is largely based on Brazil's ability to manufacture affordable drugs for AIDS treatment. The US action will also intimidate countries that would like to take up Brazil's offer to help them produce AIDS medicines.

One should not forget that the present industrial countries did not have any patent or IPR laws, or laws as strict as will now be imposed through TRIPs, during their industrialising period. And, this enabled them to incorporate technology designs originating from abroad into their local systems.

A tighter intellectual property regime inevitably raises the price of technology transfer, often excludes developing countries from critical knowledge sectors such as computer software and generic drugs and threatens small farmers' control over their production processes. Technology upgrading is crucial to moving into a positive spiral of economic growth and development

In developing countries, there are already many barriers to access to appropriate health care, which include non-affordability of drugs, poor infrastructure, poor diagnosis and inadequate financing. The TRIPs agreement further aggravates the situation and, ultimately, leads to a range of very negative consequences for the economic and social rights of the poor and marginalised people.

Given their professed concern for human rights in developing countries, it is perhaps surprising how human rights groups in the developed countries, that otherwise support linkages have given little attention to the human rights impact of the TRIPs Agreement.

Hence, there is little justification for inclusion of new human rights rules, which will restrain trade in the WTO, given that all 141-member states have their own legally binding human rights duties and responsibilities within their countries' constitutions. Moreover, for the betterment of the masses living in developing countries, an honest review of existing unequal agreements like TRIPs is more important than demanding new clauses.

## **The Problems: Linking Trade and Human Rights neither easy nor Desirable**

The demand to link human rights with trade sounds innocent enough, but it is not. The intentions with which these demands are being raised are highly ambiguous and, in most of the cases, motivated by economic reasons. These fears about non-trade issues are compounded by the fact that the developed countries are following double standards on the issue, ignoring violations in their own countries in spite of having the resources and capacity to deal with them. For example, European trade unions have opposed health warnings on cigarette packets and limits on tar and nicotine levels for cigarettes destined for foreign markets.

Developed countries could do more to protect human rights by linking trade and poverty reduction. Organisation for Economic Co-operation and Development (OECD) countries are committed, to reducing the level of global poverty by half by 2015, yet there has been little progress in this regard. Developed countries could help by bringing down barriers to developing countries' exports and reducing the debt burdens on these countries and allowing the free movement of labour between countries. If the real motivation for trade-human rights linkages was concern for people's welfare, developed countries would have taken action on these real issues.

Not only is the tie-up of human rights and trade undesirable, in practice also, it is inappropriate and inequitable to link human rights with trade. Some of the practical problems with the sanction-based system in the international trading rules are:

### **1. Genesis of Human Rights is Different**

Different parts of the world having different cultures, traditions and lifestyles have different definitions of human rights as well. Universalising human rights in these circumstances is practically not possible and efforts in this regard would only lead to universality of the privileged only.

Objections have been raised against the specific rights which reflect western cultural bias, for instance, the right to political pluralism, the right to paid vacation and most troublesome of all, the rights of women.

It is next to impossible to have universal women's rights in the face of widespread divergences of cultural practice. In some societies, for instance, marriage is not a contract between two individuals but an alliance between families and the behaviour of the womenfolk is central to a society's perception of its honour.

Similar is the argument with the values and moral preferences, which cannot be the same in different parts of the world. Moreover, powerful countries will be able to impose their values but weaker ones are less likely to do so.

### **2. Trade Protectionism**

In many cases, developed country governments adopt these positions in response to lobbying by powerful

domestic interests. Trade unions in developed countries, for example, have been vociferous in calling for the introduction of labour standards at the WTO. They argue that the poor working conditions in developing countries allow these countries to produce goods more cheaply and, therefore, constitute an unfair competitive advantage for their exports. However, most research that has been conducted on this topic suggests that poor working conditions are not correlated with competitive advantage in production.

Allowing human rights in the WTO would give many countries greater opportunities to protect their industries unfairly against foreign competition. Just like environmental clauses, under the pretext of human rights concerns, some countries might penalise others nations that do not import certain goods from their domestic industry by enacting new regulations.

### 3. Labour Rights Flaws are Everywhere

Developed countries think that everything at their end is right and everything in developing countries is wrong. Nonetheless, in many cases, their own policies or actions have led to deterioration of human rights. New Zealand, the staunch Welfare State, for instance, has introduced the Employment Contracts Act, 1991, which promotes individual employment contracts at the expense of collective bargaining. It does not require to be publicised under secrecy clauses either. Even the ILO has found New Zealand's legislation contrary to ILO conventions.

The US labour laws have a provision that allows employers to replace striking workers and displace permanent workers, which clearly nullifies workers right to strike. Similarly, the UK introduced eight pieces of

legislation between 1980 and 1993, which have piecemeal taken away the rights and functions of trade unions. Under these legislations, sympathy strikes or solidarity strikes are prohibited, trade union members may be denied wage increase for refusing to sign individual employment contracts and workers could be black listed by employer organisations for further recruitment.

Nonetheless, even if sanction based mechanisms are incorporated in the WTO, it is very unlikely that smaller and poorer countries will be able to use them against powerful economies and also expect them to be effective.

### 4. Sanctions do Backfire

Sanctions always have a great potential to backfire and are in no way a better mechanism to achieve social objectives. Consider, for example, just one aspect of human rights: Child labour.

There is a big hue and cry about South's child labour in rich countries, but none of them have ever tried to go to the root of the problem. Sometime back, import sanctions were imposed on the carpet industry employing child labour in some South Asian countries. As a result, children abruptly were thrown out of the industry and the North was happy to note that they have removed child labour. However, the children, working earlier in the relatively safe carpet industry, ended up working in more hazardous units. Some of them who couldn't manage to get jobs turned into beggars, thieves or prostitutes.

### 5. Different Priorities

There is also a North-South argument on the issue. Human rights are seen only as a cover for western interventionism in the developing world. Developing

## Box 2: TRIPs loaded against the poor

The precise effects of TRIPs will vary across countries, nonetheless the average price increases for pharmaceuticals could be in the range of 200–300 percent for many low-income countries. This is a clear threat to the right to access to appropriate healthcare.

The application of strengthened patent rules to medical products is already causing serious problems, notably in relation to the treatment of HIV/AIDS. Patented versions of anti-retroviral therapies which are used to keep HIV in check, and other drugs effective against the diseases which accompany HIV and cause opportunistic infections, typically cost between 3 and 15 times as much as their generic equivalents. In countries with large numbers of HIV-sufferers and chronically over-stretched health budgets, price differentials can mean the exclusion of millions of people from effective treatment.

The problem extends beyond HIV. Prices for non-patented (generic) versions of antibiotics used to treat major childhood killers such as diarrhoea and chest

infections are often marketed at prices less than one-eighth of those for equivalent patented products.

It is hard to argue that HIV/AIDS does not represent a national emergency in South Africa, where it is projected to reduce life-expectancy by 20 years by 2010, or in Thailand, where there are almost one million sufferers. Yet in both cases, efforts to provide cheap generic medicines have been met with legal challenges mounted by formidably powerful corporations.

In Kenya, one quarter of the adult population is HIV-positive, but fewer than two percent receive anti-retroviral treatment. If the country were able to import the drug fluconazole, used in the treatment of cryptococcal meningitis (an opportunistic infection associated with HIV/AIDS), from Thailand, it could reduce the annual cost of treatment from over US\$3000 to US\$104. However, the patent holder for the drug, the Pfizer Corporation, applied pressure to stop such imports taking place.

More recently, pharmaceutical giant

GlaxoSmithKline (GSK) has challenged importers of medical products in Ghana and Uganda. Their 'crime': seeking to import copies of the firm's patented Combivir, an anti-retroviral for the treatment of HIV/AIDS, at half the price of the brand-name product.

These are not isolated cases. The implementation of WTO patent rules is taking place against the backdrop of a sustained campaign led by the pharmaceutical industry, which may well erode the public-health protection offered by safeguard provisions.

This campaign has been led by the Pharmaceutical Research and Manufacturers of America (PhRMA), one of the world's most politically influential and well-financed industrial lobbies. The primary source of PhRMA's power is its influence over the office of the United States Trade Representative (USTR), which has repeatedly backed its claims with the threat of trade sanctions under 'Section 301' of national trade legislation.

Source: Oxfam

countries, as some argue, cannot afford human rights (what western countries define as human rights), since nation building is still unfinished and suspending or limiting human rights is, thus, the sacrifice of the few for the benefit of the many.

### **6. Trade Rules Cannot Guarantee Human Rights**

Export production in developing countries comprises of only 4.5 percent of the total production and so trade rules can, at the most have a very limited influence. Therefore, even if social clauses are inserted in the WTO, only a miniscule part of the problem will be addressed. Moreover, it is practically impossible to measure and relate human rights conditions in a country to trade.

### **Conclusions**

The campaigners for human rights can be broadly divided into two camps: 1) those who want governments to write a clause for human rights into international laws, especially trade laws, and 2) those who argue for creating the real material conditions essential for freedom. This freedom, of course, includes, amongst others, freedom from debt, restrictions on capital and curtailing trade laws that divest the people of their sovereign rights.

There are already allegations that WTO's policies are promoting corporate interests of rich countries. Up to some extent this is correct also, as the developing countries have been getting a raw deal for they are not getting proper market access in the developed world. The new issues added in the Uruguay Round are already resulting in benefits for fewer and fewer people around the world, and in negative impacts on the human rights of others.

Added to this is the demand for non-trade issues like human rights, environment and labour standards, which further attempts to keep developing countries at a disadvantage. The fact of the matter is that when the

conditions for the exercise of freedom and, therefore, of human rights exist, the freedom will be real and enduring. And, hence, before talking about linking trade and human rights, we should focus our energies on eradicating poverty from the world and gradually empowering the people.

Moreover those (mainly a small-westernised minority) interested in linking human rights with trade laws are in fact motivated more by economic reasons rather than concern for humanity. Ironically, the origin of the debate on trade and human rights itself was motivated by protectionism within the rich countries, on the assumption that lax standards in developing countries need to be off-set by appropriate trade policy measures in order to snatch their competitive advantage.

It is evident that human rights cost money and resources to make them real possibilities and these hold little water for impoverished third world countries, which are struggling hard to get out of the vicious circle of poverty. It is the need of the hour that the rich countries stop raising unnecessary issues, which have a great potential for being misused to deny market access to products from developing countries and to disrupt international trade. They, rather, need to show greater sensitivity to the concerns of the developing countries and take positive actions through development programmes, aid and other means to rectify problems of child labour, forced labour and other human rights rather than trade sanctions.

What is important in the immediate issue of linkages is that trade should be used as a means eradicating poverty, which ultimately leads to improved human rights. However, imposing trade sanctions on economies to try to achieve social objectives is likely to backfire. Sanctions are likely to inhibit development and prevent poor people from coming out of the vicious circle of poverty, which itself is a serious violation of human rights.

### **Recommendations**

- The WTO is meant for trade and it should be left to do that only, so that it can achieve its stated goals of raising standards of living, ensuring full employment, ensuring large, and steadily growing real income and demand etc.
- The WTO should concentrate more on monitoring the honest implementation of existing agreements, rather than going in for more and more new areas.
- Non-trade issues such as human rights, environment and labour standards should be kept away from WTO, as they have great potential of being misused by vested interests as trade protectionist devices.
- These non-trade issues which are otherwise very important should be dealt with at proper international forums (other than WTO) which are meant especially for them.
- Poverty is a major problem in the developing countries thus affecting both human rights situation and environment, and it should be addressed through cogent and genuine means.
- Developed countries should come forward to help developing countries in improving their human rights situation and eradicating poverty, and should not attempt to link human rights to trade.

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