

WTO / Human Rights

Literature Review

September 2005

## TABLE OF CONTENTS

<b>1. WTO AND HUMAN RIGHTS (GENERAL)</b> .....	<b>4</b>
<b>1.1 PETERSMANN AND CRITIQUES OF HIS WORK</b> .....	11
<b>1.2 NORTH/SOUTH ISSUES</b> .....	13
<i>1.2.1 Mini-Symposium on Developing Countries in the Doha Round</i> .....	18
<b>1.3 DEMOCRATIC DEFICIT</b> .....	20
<b>1.4 GLOBAL GOVERNANCE AND LINKAGE OF WTO/HR REGIMES</b> .....	27
<i>1.4.1 Symposium: The Boundaries of the WTO, Alvarez (ed.)</i> .....	34
<i>1.4.2 Linkage as a Phenomenon: An Interdisciplinary Approach – Symposium</i> ...	36
<b>2. TRIPS AND HUMAN RIGHTS</b> .....	<b>39</b>
<b>2.1 PUBLIC HEALTH / PHARMACEUTICALS (ACCESS TO)</b> .....	42
<b>2.2 OTHER TRIPS ISSUES</b> .....	45
<b>3. AGREEMENT ON AGRICULTURE AND HUMAN RIGHTS</b> .....	<b>47</b>
<b>4. GATS AND HUMAN RIGHTS</b> .....	<b>49</b>
<b>5. TRIMS AND HUMAN RIGHTS</b> .....	<b>50</b>
<b>6. ARTICLE XX/XXI EXCEPTIONS AND HUMAN RIGHTS</b> .....	<b>51</b>
<b>6.1 EACH PARTICULAR ARTICLE XX CATEGORY</b> .....	53
<i>6.1.1 Necessary to protect public morals;</i> .....	53
<i>6.1.2 Relating to the products of prison labour;</i> .....	54
<i>6.1.3 Imposed for the protection of national treasures of artistic, historic or archaeological value;</i> .....	54
<i>6.1.4 (g) Relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production and consumption AND (b) Necessary to protect human, animal or plant life or health;</i> 54	
<i>6.1.5 (j) essential to the acquisition or distribution of products in general or local short supply</i> .....	57
<b>6.2 ARTICLE XXI – SECURITY CONSIDERATIONS</b> .....	57
<b>6.3 THE PRODUCT/PROCESS DISTINCTION</b> .....	58
<b>6.4 WTO AND TRADE SANCTIONS</b> .....	59
<b>6.5 IDEA OF NEW ARTICLE XX CLAUSES TO COVER CERTAIN HUMAN RIGHTS ISSUES</b> 61	
<b>7. AMICUS BRIEFS BY NGOS IN WTO CASES</b> .....	<b>62</b>
<b>8. LABOUR STANDARDS AND SOCIAL LABELLING</b> .....	<b>65</b>
<b>9. SANITARY AND PSYTO-SANITARY MEASURES (SPS) AGREEMENT</b> .....	<b>71</b>
<b>9.1 BEEF HORMONE CASE</b> .....	72
<b>9.2 OTHER CASES</b> .....	73
<b>9.3 GM FOOD ISSUE</b> .....	73
<b>10. HUMAN RIGHTS AND OTHER TRADE TREATIES</b> .....	<b>76</b>
<b>10.1 NAFTA</b> .....	76
<b>10.2 EUROPEAN TRADE AND HUMAN RIGHTS</b> .....	77
<b>10.3 BILATERAL AGREEMENTS</b> .....	78
<b>11. OTHER TOPICS</b> .....	<b>79</b>

<b>11.1</b>	<b>THE RIGHT TO TRADE</b> .....	79
<b>11.2</b>	<b>RIGHT TO DEVELOPMENT</b> .....	80
<b>11.3</b>	<b>AGREEMENT ON GOVERNMENT PROCUREMENT (US-BURMA CASE)</b> .....	81
<b>11.4</b>	<b>TRADE AND POVERTY</b> .....	82
<b>11.5</b>	<b>FEMINIST PERSPECTIVE / WOMEN’S RIGHTS</b> .....	84
<b>11.6</b>	<b>WTO ACCESSION (CHINA + VIETNAM)</b> .....	86

NB: Articles are listed in reverse chronological order.

## 1. WTO AND HUMAN RIGHTS (GENERAL)

---

### WTO AND HUMAN RIGHTS: EXAMINING LINKAGES AND SUGGESTING CONVERGENCE

*International Development Law Organisation – Jurist Paper Series*, Vol. 2, No. 2 (2005)

Gudrun Monika Zagel

It would not be effective to use trade measures to enforce human rights or social standards. However, the WTO should acknowledge the HR impact of its work and take a ‘human rights approach’ as proposed by UN bodies.

### THE PLACE OF HUMAN RIGHTS LAW IN WORLD TRADE ORGANIZATION RULES

16 *Florida Journal of International Law* 219 (2004)

Stephen J. Powell

The WTO has made “respectable progress” in fitting human rights norms into its rules. Gives the example of the WTO’s legitimate use of general international law in its decision-making. Article XX(a)’s protection of public morals opens possibilities for the application of human rights law (p.3).

### THE ROLE OF INTERNATIONAL LAW IN THE DEVELOPMENT OF WTO LAW.

*Journal of International Economic Law* 7(1), 143-167 (2004)

Jiaxiang Hu

Examines the mutual relationship between WTO and international law. WTO law contributes to the machinery of international cooperation.

### ADVANCING THE LANGUAGE OF HUMAN RIGHTS IN A GLOBAL ECONOMIC ORDER

23 *Boston Third World Law Journal* 57 (2003)

Christiana Ochoa

Human rights ideas are becoming part of the operations of international organisations including the WTO. However, they are often being expressed in an alternative language which may be detrimental to the human rights movement. WTO specific discussion on pp10-13.

### THE APPROPRIATE HIERARCHY OF GLOBAL MULTILATERALISM AND CUSTOMARY INTERNATIONAL LAW: THE EXAMPLE OF THE WTO

44 *Virginia Journal of International Law* 229 (2003-2004)

John O. McGinnis

Argues that global multilateral agreements should prevail over customary international law on both legal and policy grounds. Does not discuss human rights specifically. Discussed in relation to the WTO pp.260-269.

### CHAPTER III: HUMAN RIGHTS

In *International Economic Governance and Non-Economic Concerns* (2003)

Stephan Griller (ed.).

#### CONSTITUTIONAL PRIMACY AND 'INDIVISIBILITY' OF HUMAN RIGHTS IN INTERNATIONAL LAW? By Ernst-Ulrich Petersmann

Effective international governance aimed at a mutually beneficial division of labour across borders requires the protection of human rights.

#### INTERNATIONAL ECONOMIC LAW AS A MEANS TO FURTHER HUMAN RIGHTS? By Stefan Griller

Uses the Government Procurement Agreement as a specific example of the tensions between trade liberalization and the protection of human rights.

### POVERTY REDUCTION, TRADE AND RIGHTS

18 *American University International Law Review* 1399 (2002-2003)

Chantal Thomas

Examines the relationship between global trade and global poverty. Part IV looks at trade and human rights and outlines the benefits of importing human rights (particularly economic, social and cultural rights) into the trade regime. Also outlines (and counters) concerns about human rights in this context.

### RAISING HUMAN RIGHTS CONCERNS IN THE WORLD TRADE ORGANIZATION: ACTORS, PROCESSES AND POSSIBLE STRATEGIES

*Human Rights Quarterly* 24 (2002)

Caroline Dommen

Distinguishes the two types of human rights concerns which arise in the WTO/human rights debate. Sets out areas of conflict between WTO law and human rights law (See Figure Two pp14-15). Focus on right to health and food, and equity/transparency issues. Argues that human rights arguments should be directed to appropriate actors (rather than WTO as a whole) and framed in the context of the WTO's political realities.

### Chapter 14: THE WTO AND THE RIGHTS OF THE INDIVIDUAL

From *Trade Law and Global Governance*

London, 2002

Steve Charnovitz

Examines the way that WTO agreements mandate certain rights for the individual in national law and at the WTO (eg IP rights under TRIPS). Even though private actors lack standing to lodge complaints directly to the WTO, some procedural rights are directly afforded. “Because it enhances both due process and property rights of economic actors, the WTO is more than a commercial agreement; it is also a human rights agreement”.

#### CHINA: TRADE: LAW AND HUMAN RIGHTS

*7 International Trade and Business Law Annual* 301 (2002)

Alice ES Tay and Hamish Redd

Discusses the relationship between the WTO and human rights (p304). Sets out practical and political limitations. As an international organisation the WTO has some human rights responsibilities.

#### SOCIOECONOMIC RIGHTS AND THE INTERNATIONAL ECONOMIC ORDER

*35 New York University School of Law Journal of International Law and Politics* 221 Fall, 2002

Andras Sajo

Do human rights dominate, or should they be read into, WTO agreements? To what extent do trade-related rules and obligations violate human rights law? Are human rights legally capable of transforming the international economic order? Outlines the positions for and against.

#### WTO DISPUTE SETTLEMENT AND HUMAN RIGHTS

*European Journal of International Law* 2002 Vol.13 No.4, 753-814

Gabrielle Marceau

The WTO dispute settlement system can respect international human rights through the good interpretation and application of WTO principles. However, state's human rights breaches are properly assessed by other, rights-specific bodies.

#### MAPPING THE EQUILIBRIUM LINE: FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK AND THE INTERPRETIVE UNIVERSE OF THE WORLD TRADE ORGANIZATION

*65 Saskatchewan Law Review* 369 (2002)

Adelle Blackett

Argues that the Dispute Settlement Body should recognise the hierarchies in international law and apply human rights law, including customary human rights law, in its decision-making.

**TRADE AND HUMAN RIGHTS: A RELATIONSHIP TO DISCOVER**

*Journal of International Economic Law* (2002) 111-132

Thomas Cottier

Explores historical areas of convergence and tension in the relationship between trade regulation and human rights. Are human rights of a higher moral and legal rank than trade rules? Discusses the potential for trade regulation and human rights to be mutually supportive.

**THE WORLD TRADE ORGANIZATION: ELEVATING PROPERTY INTERESTS ABOVE HUMAN RIGHTS**

*The Georgia Journal of International and Comparative Law*, Summer (2001)

Marjorie Cohn

Criticises the WTO's human rights record with reference to ICCPR. Also criticises particular decisions, WTO accountability and globalization generally. Short section (page 5) on TRIPS and human rights.

**TRADE AND HUMAN RIGHTS: WHAT'S AT ISSUE?**

*Journal of World Trade* (2001) 35(2), 275-300

Hoe Lim

Argues that the WTO is linked to human rights aims and outcomes through Article XX, but that the WTO's most significant contribution to the human rights movement is its role in establishing a framework which facilitates free trade. Uses current issue examples of TRIPS and 'right to development'.

**INTERNATIONAL TRADE AND HUMAN RIGHTS – WHICH HUMAN RIGHTS**

*6 International Trade and Business Law Annual* 19 (2001)

Anthony Cassimatis

Examines the question of *which* human rights should be linked to trade. Looks at the legal hierarchy and establishes that core labour standards are not the only human rights issues that should be linked.

**MAKING THE GLOBAL ECONOMY WORK FOR HUMAN RIGHTS**

In *The Role of the World Trade Organization in Global Governance*

Gary P. Sampson (ed.) (United Nations University Press, 2001)

Mary Robinson

The international trading system must contribute to better living standards and a safer world and reflect the needs of all WTO members. Human rights standards should be integrated into economic policy-making.

**BUILDING A JUST TRADE ORDER FOR A NEW MILLENNIUM**  
*33 George Washington International Law Review* 1015 (2000-2001)

Frank J. Garcia

A commitment to justice is a necessary part of trade law and is a matter of moral obligation. Applies theories of justice (Rawls etc.) to international trade norms. Trade and human rights at p.1055.

**PROTECTING HUMAN RIGHTS IN A GLOBAL ECONOMY: CHALLENGES FOR THE WORLD TRADE ORGANISATION, 2000**

Robert Howse and Makau Mutua

Available at: <http://www.dd-rd.ca/frame2.iphtml?langue=0&menu=m07&urlpage=store/>

This paper is frequently cited in other literature. Examines the place of human rights law in the international legal hierarchy. Overview of relevant issues including democratic deficit, labour standards, *amicus* briefs, SPS Agreement and Article XX.

**SEPARATE AND UNEQUAL: TRADE AND HUMAN RIGHTS REGIMES**  
Background paper for HDR 2000 (January, 2000)

Roger Normand

Looks at the foundations of the trade and human rights regimes. '[T]he trade framework has superseded and marginalized the human rights framework to the point where major violations of human rights are being carried out under the legal imprimatur of international trade' Gives recommendations for harmonization.

**HAVING IT ALL, TRADE, DEVELOPMENT, ENVIRONMENTAL AND HUMAN RIGHTS**

*New York Law Journal*, May 2000

Stephen L. Kass and Jean M. McCarroll

The WTO could become more responsive to environmental and human rights concerns by including NGOs in the negotiation and dispute settlement processes and conducting human rights assessments of trade policies. Rights-specific discussion p.6.

**THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AT 50 AND THE CHALLENGE OF GLOBAL MARKETS: TRADING AWAY THE HUMAN RIGHTS PRINCIPLE**

*25 Brooklyn Journal of International Law* 51 (1999)

Frank J. Garcia

Considers the impact of the globalization of trade markets on international human rights law. Part I is fairly general, Part II examines how human rights laws are 'disadvantaged' in WTO disputes (page 8). Offers suggestions on how WTO law could be amended to allow it to encompass human rights law.

FIDH Position Paper: THE WTO AND HUMAN RIGHTS  
World Trade Organisation  
November 1999

Anne-Christine Habbard and Marie Guiraud

Available at <http://www.fidh.org/rapports/wto-fidh.htm>

Outlines the main human rights-based criticisms of the WTO. The 'law of the market' should not overrule human rights laws and standards. Chapter II discusses structural and substantive criticisms.

GLOBALIZATION AND ITS IMPACT ON THE FULL ENJOYMENT OF ALL HUMAN RIGHTS: PRELIMINARY REPORT OF THE SECRETARY GENERAL  
31 August, 2000.

UN document number: A/55/342

WTO focus 3-5. Economic growth does not automatically lead to the greater protection and promotion of human rights. While there are points of convergence between trade and human rights principles, one is not always consistent with the other. Uses TRIPS as an example (p4).

HUMAN RIGHTS PERSPECTIVES OF INTERNATIONAL ECONOMIC LAW  
In *Perspectives in International Law* Asif H. Qureshi (ed.)

Michael K. Addo

Assesses the place and values of human rights law in international economic law. The current trend is to recognise and accept the human rights basis of all international law.

ENVIRONMENT, HUMAN RIGHTS AND THE LIMITS OF FREE TRADE  
In *Environment, Human Rights and International Trade*, Francioni (ed.)

Francesco Francioni

Includes historical survey of the development of human rights law in relation to trade law. Discusses the admissibility of both import and export restrictions based on environmental and human rights concerns. Lists basic criteria which should be used to resolve trade/human rights and trade/environment conflicts.

## HUMAN RIGHTS, GLOBALISATION AND THE STATE

In *The Role of the Nation-State in the 21<sup>st</sup> Century: Human Rights, International Organisations and Foreign Policy* (2001)

Jack Donnelly

General article on changes in the human rights landscape. In the 21<sup>st</sup> century we need to give more attention to the positive role a state can play in human rights and to the threats to human rights caused by globalization (transnational business).

## CANADA AND THE FUTURE OF THE WORLD TRADE ORGANISATION

*Report of the Standing Committee on Foreign Affairs and International Trade*(1999)

Bill Graham M.P. (Chair)

<http://www.parl.gc.ca/InfoComDoc/36/1/FAIT/Studies/Reports/faitrp09-e.htm#toc>

A Canadian report to the Minister on the approach Canada should take to trade negotiations at the WTO. Part III is on the 'social dimensions' of the trading system. Chapter 13 addresses human rights and trade. "While the WTO is not, nor should it become, a human rights organization, its decisions increasingly impact on conditions for the observance of human rights at the domestic and international levels."

## INTERNATIONAL TRADE AND HUMAN RIGHTS FROM THE PERSPECTIVE OF THE WTO.

Chapter 8 in *International Economic Law With a Human Face* Friedl Weiss, Erik Denters and Paul de Waart (eds.)(Kluwer, 1998)

Asif H. Qureshi

The WTO has a limited human rights dimension. Separates trade and non-trade issues and rights (examples include the right to import and export, intellectual property rights). WTO promotes economic rights through encouraging economic growth and democratic processes and transparency.

## INTERNATIONAL TRADE AS AN INSTRUMENT FOR POSITIVE HUMAN RIGHTS POLICY

*Human Rights Quarterly* 4(2) (1982) 155-183

Philip Alston

Old article (1982). Examines the potential for a trade/human rights linkage to be misused to implement protectionist measures. Focus on labour standards and trade sanctions.

## 1.1 Petersmann and critiques of his work.

---

### THE HUMAN RIGHTS APPROACH ADVOCATED BY THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS AND THE WTO: IS IT RELEVANT FOR WTO LAW AND POLICY?

*Journal for International Economic Law* (2004) 7(3), 605-627.

Ernst-Ulrich Petersmann

On the level of principles, human rights law and liberal trade rules do not conflict. More parliamentary and citizen involvement and 'deliberative democracy' is required in trade matters. Human rights may be a relevant context for interpreting WTO rules. Advocates for a WTO Ministerial Declaration on human rights.

### HUMAN RIGHTS AND THE LAW OF THE WORLD TRADE ORGANIZATION

*Journal of World Trade*, New York, April 2003, Vol.37. Iss.2 p.241

Ernst-Ulrich Petersmann

Discussion of the legal aspects of the possibility of or requirement to include human rights law into the WTO practice. Argues that is an issue of balancing economic and non-economic policy goals. Right to health used as an example throughout.

### 'HUMAN RIGHTS IN THE WTO: WHOSE RIGHTS, WHAT HUMANITY. COMMENT ON PETERSMANN'

*European Journal of International Law* (2002) Vol. 13 No.3, 651.

Robert Howse

The relationship between human rights and market freedoms is much more complex than Petersmann acknowledges. Discusses the contention that governments should contemplate greater intervention in international markets in order to achieve social goals.

### TIME FOR A UNITED NATIONS 'GLOBAL COMPACT' FOR INTEGRATING HUMAN RIGHTS LAW OF WORLDWIDE ORGANIZATIONS: LESSONS FROM EUROPEAN INTEGRATION

*Journal of International Economic Law*, Oxford, 2002, Vol.13, Iss. 3, p.621

Ernst-Ulrich Petersmann

Integrated international law should replace the specialized agencies approach taken at Bretton Woods. Takes lessons from the European experience of integration. Discusses democratic legitimacy and human rights. See p.243 for WTO-specific discussion.

RESISTING THE MERGER AND ACQUISITION OF HUMAN RIGHTS BY  
TRADE LAW: A REPLY TO PETERSMANN  
*EILJ* 13 (2002), 815-844

Philip Alston

Criticism of Petersmann's methodologies and theories. Argues that Petersmann's characterization of the state of human rights law is incorrect and is one that could cause serious harm. Alston criticises Petersmann's tendency to detach human rights from its underpinnings in human dignity and his use of human rights to achieve economic policy objectives.

TAKING HUMAN DIGNITY, POVERTY AND EMPOWERMENT OF  
INDIVIDUALS MORE SERIOUSLY: REJOINDER TO ALSTON  
*European Journal of International Law* (2002), Vol.13. No.4, 845-851.

Ernst-Ulrich Petersmann

Answer to Alston's criticisms. Denies everything.

HUMAN RIGHTS AND INTERNATIONAL ECONOMIC LAW IN THE 21<sup>ST</sup>  
CENTURY  
*Journal of International Economic Law* (2001) 3-39.

Ernst-Ulrich Petersmann

Focus on constitutionalism.

LEGITIMACY AND GLOBAL GOVERNANCE: WHY  
CONSTITUTIONALIZING THE WTO IS A STEP TOO FAR  
R. Porter et. At. (eds.) *Efficiency, Equity and Legitimacy: The Multilateral Trading  
System at the Millennium* (2001)

Howse and Nicolaidis

A critique of Petersmann. Includes discussion of the idea that governments should entrench free trade at the international level, despite not having done so in domestic constitutions and the consequences of 'putting the priority of free trade out of the reach of democratic debate'.

THE WTO CONSTITUTION AND HUMAN RIGHTS  
*Journal of International Economic Law*, Oxford, March 2000, Vol.3, Iss. 1, p.19

Ernst-Ulrich Petersmann

Argues that WTO law should be reformed to take civil society and human rights more seriously. Offers both practical and theoretical arguments for an increased role of human rights law within the WTO.

## 1.2 North/South Issues

---

### THE WTO, DEVELOPING COUNTRIES AND THE DOHA DEVELOPMENT AGENDA

Basudeb Guha-Khasnobis (ed.) (2004)

Developing countries are not against freer trade. Rather, developing countries want more balance between what they receive and what they are seemingly forced to offer (See Introduction). Focus on agriculture (Part II) and manufacturing (Part III).

### DEVELOPING COUNTRIES IN THE WTO SERVICES NEGOTIATIONS WTO Research and Analysis: Working Papers

September 2004

No: ERSD-2004-06

Juan A. Marchetti

Available at: [http://www.wto.org/english/res\\_e/reser\\_e/ersd200406\\_e.htm](http://www.wto.org/english/res_e/reser_e/ersd200406_e.htm)

Analyses developing countries' participation so far in the current round of services negotiations under the Doha Development Agenda. Discusses: the essential role of services for economic development; the high costs imposed by trade protection; the benefits of liberalization; the need to make use of the WTO forum to enhance credibility and sustain domestic regulatory reform programmes; the challenges of regulatory reform and the importance of appropriate sequencing; and the benefits arising from seeking further market access overseas in those areas where developing countries have a comparative advantage.

### WTO AND THE INTERESTS OF DEVELOPING COUNTRIES

In *Who's Afraid of the WTO?* (Oxford University Press: 2004)

Kent Jones

Identifies the benefits of WTO membership for developing countries and the elements of WTO membership that relate to economic development. Many developing countries have not benefited from the trading system because they have not been able to take advantage of it.

### DEVELOPING COUNTRIES IN THE MULTILATERAL TRADING SYSTEM: THE INSIGHTS OF ROBERT E. HUDEC

*Journal of World Trade* 37(4) 801-811 (2003)

Patrick Low

Uses Hudec's ideas to analyse the position of developing countries in the trade system. Developing countries have much to gain from the strengthening of the MFN (non-discrimination) principle.

**BROKEN PROMISES: TRADE, AGRICULTURE AND DEVELOPMENT IN THE WTO**

4 *Melbourne Journal of International Law* 299 (2003)

Jordana Hunter

Examines the way in which the multilateral trading system has accommodated development under the GATT. Looks at the way in which north/south issues are played out in reference to the Agreement on Agriculture. Argues that the WTO has not lived up to its promises to developing countries.

**COUNTERING, BRANDING, DEALING: USING ECONOMIC AND SOCIAL RIGHTS IN AND AROUND THE INTERNATIONAL TRADE REGIME**

*European Journal of International Law* (2003) Vol.14 No.1, 35-84

Robert Wai

Explores the role that economic and social rights might play in the international trade regime. Specifically in terms of the trade v non-trade objectives debate and in terms of north-south conflict.

**ENHANCING THE PARTICIPATION OF LEAST-DEVELOPED COUNTRIES IN THE MULTI-LATERAL TRADING SYSTEM**

Sub-Committee of Least-Developed Countries, The World Trade Organization.  
7 May 2003.

Note by the Secretariat

Available at [www.wto.org](http://www.wto.org)

Paper about LDC participation in international trade (including participation in international standard setting bodies). Concludes that the marginal participation of LDCs in world trade is a matter of serious concern. This paper is only indirectly relates to human rights issues.

**A DEVELOPING COUNTRY PERSPECTIVE OF INTERNATIONAL ECONOMIC LAW IN THE CONTEXT OF DISPUTE SETTLEMENT**

In *Perspectives in International Law* Asif H. Qureshi (ed.)

M. Sornarajah

The system of trade-related dispute resolution favours developed states because the rules created are those preferred by developed states and because tribunals deal with values other than those involved in trade and investment. Examines the jurisdictional limitations of the trade tribunals.

DEVELOPING COUNTRY PARTICIPATION IN MULTILATERAL TRADE NEGOTIATIONS: DEVELOPING COUNTRY PERSPECTIVES AND NEGOTIATING FRAMEWORK.

In *Perspectives in International Law* Asif H. Qureshi (ed.)

Sheila Page

The global regulation of trade can work for and against developing countries. Developing countries are usually weaker negotiators – summarises relevant theory. Section 4 examines the conditions under which developing countries can be successful in negotiations (includes the conclusions of developing countries).

SYMPOSIUM: GLOBAL TRADE ISSUES IN THE NEW MILLENNIUM: A HUMAN RIGHTS CRITIQUE OF THE WTO: SOME PRELIMINARY OBSERVATIONS

33 Geo. Wash. Int'l L. Rev. 537. (2001)

Padideh Ala'i

Provides an overview of the UN report, *Globalization and its Impact if on the Full Enjoyment of Human Rights* (below). Also looks at the WTO response to the report. Criticises both. Focus on economic, cultural and social rights. Developing country opposition to civil society involvement in WTO activities (Part III) and also to the tying of trade and environment.

THE REALIZATION OF ECONOMIC, CULTURAL AND SOCIAL RIGHTS: GLOBALIZATION AND ITS IMPACT ON THE FULL ENJOYMENT OF HUMAN RIGHTS

Preliminary Report submitted by J. Oloko-Onyango and Deepika Udagama in accordance with Sub-Commission Resolution 1999/8

E./CN.4/Sub.2/2000/13

15 June 2000

Famously states, “the WTO is a veritable nightmare” (para 15). Recommends reform of the WTO with emphasis on expanding the role of developing countries and non-state actors. Opposes ‘tying’ trade to human rights which “too easily succumbs to the charge by developing countries of neo-colonialism”.

BANGKOK DECLARATION: GLOBAL DIALOGUE AND DYNAMIC ENGAGEMENT

United Nations Conference on Trade and Development, Tenth Session, Bangkok Thailand, 12-19 February 2000

Properly managed globalisation can be a powerful force for growth. Paragraph 10 on trade and the WTO.

Statement of Panitchpakdi  
Minister of Commerce, Thailand  
Ministerial Conference  
Seattle, 1 December 1999  
WT/MIN(99)ST33

Calls for democratic processes and transparent rules. States that the impact of the Uruguay Round agreements has been to benefit developed countries more than developing/least developed countries. Lists ways in which this imbalance should be redressed. States that trade and non-trade issues should not be linked.

#### WTO-UN RELATIONSHIP BECOMES MUDDIED

Oct 12, 1994

Available at: <http://www.sunsonline.org/trade/process/towards/10120094.htm>

Article written shortly after the Marrakech Final Act. Reactions to proposals of specialized agency status for the WTO. In particular developing countries expressed concern that their contractual rights would be eroded in favour of environmental and humanitarian concerns.

#### THE BOUNDARIES OF THE WTO: AFTERWORD: THE QUESTION OF LINKAGE

96 *A.J.I.L* 126 (2002)

Jagdish Bhagwati

The WTO's trade regime was built around the ideas of mutual advantage through trade. The inclusion of non-trade issues such as human rights, environment, intellectual property etc. does not promote mutual advantage – linkage disadvantages the South. Uses labour standards as an example.

#### XI SUMMIT OF THE HEADS OF STATE AND GOVERNMENT OF THE GROUP OF FIFTEEN

Jakarta, Indonesia, 30 – 31 May 2001.

Available at: <http://www.un.org/esa/ffd/themes/g15-2.htm>

Concerns about aspects of the international trade system which adversely affect developing countries: PSP agreement, labour standards, environmental conditionalities, TRIPS etc. Paragraphs 15-25.

#### THE WTO AND DEVELOPING COUNTRIES: PRIORITIES FOR NEGOTIATIONS

Speech to the German Foundation for International Development - Berlin, 23 April, 2001

Michael Moore

Developing countries participate on a reciprocal basis. General remarks about developing countries priorities: agriculture, flexibility, implementation concerns, industrial tariffs and technical assistance.

**THE GLOBAL GOVERNANCE OF TRADE: AS IF DEVELOPMENT REALLY MATTERED**

Prepared for the United Nations Development Program (October 2001)

Dani Rodrik

The purpose of the WTO is to improve living standards rather than maximise trade per se. Argues that 'trade has become the lens through which development is perceived rather than the other way around.' Focuses on broad principles.

**PRELIMINARY THOUGHTS ON DEVELOPING COUNTRIES, NGOs AND WTO**

*33 George Washington International Law Review* 504 (2000-2001)

Daniel D. Bradlow

Explores the tensions between developing countries and northern NGOs. Argues that this tension is based on competing views of development – one which focuses on economic development and the other which also includes the social, cultural and political aspects of development.

**REGULATORY PROTECTIONISM, DEVELOPING NATIONS, AND A TWO-TIER WORLD TRADING SYSTEM.**

*Brookings Trade Forum: 2000.*

Richard E. Baldwin

The liberalization of Technical Barriers to Trade (TBTs) such as regulatory systems will disadvantage poorer nations if done on a hegemonic, regional basis. (Article includes comments and discussion from forum participants).

**DEVELOPING COUNTRIES AND THE WTO LEGAL AND DISPUTE SETTLEMENT SYSTEM: A VIEW FROM THE BENCH**

*Journal of International Economic Law* (2000) 395-401

Julio Larcarte-Muro and Petina Gappah

Outlines the participation and contribution of developing countries in WTO dispute settlement as seen from the AB bench.

**TRIPS AND PUBLIC HEALTH**

Third World Network, June 2000.

Submission by the Africa Group, Barbados, Bolivia, Brazil, Dominican Republic, Ecuador, Honduras, India, Indonesia, Jamaica, Pakistan, Paraguay, Philippines, Peru, Sri Lanka, Thailand and Venezuela

Available at: <http://www.twinside.org.sg/title/drugs3.htm>

Addresses the relationship between TRIPS and public health. Developing country perspective.

**THE TRADE-LABOUR NEXUS: DEVELOPING COUNTRIES' PERSPECTIVES**  
*Journal of International Economic Law* (2000) 377-385

Jose M. Salazar-Xirinachs (former trade minister in Costa Rica)

LAC countries wish to avoid a formal linking of trade and labour issues. The article explains why they hold this position.

### **1.2.1 Mini-Symposium on Developing Countries in the Doha Round**

**INTRODUCTION**

*Journal of International Economic Law* 8(2) 347-362.

Ernst-Ulrich Petersmann

Discusses the question underlying the symposium: how can the development objectives of the Doha Round be defined more convincingly?

**THE DOHA DEVELOPMENT AGENDA: POLITICAL CHALLENGES TO THE WORLD TRADING SYSTEM – A COSMOPOLITAN PERSPECTIVE**

*Journal of International Economic Law* 8(2) 363-375.

Peter Sutherland

Discusses legal and institutional reforms necessary in the WTO for the conclusion of the Doha Round. Does the WTO system have a negative effect on developing countries?

**A DEVELOPMENT PERSPECTIVE ON THE WTO JULY 2004 GENERAL COUNCIL DECISION**

*Journal of International Economic Law* 8(2) 377-404.

Faizel Ismail (Head of the South African Delegation to the WTO)

Applies Amartya Sen's definition of development (the removal of unfreedoms) to the trading system. Evaluates the WTO 2004 General Council Decision in light of this definition. The Decision generally advances development.

OPERATIONALIZING THE CONCEPT OF POLIIOCY SPACE IN THE WTO:  
BEYOND SPECIAL AND DIFFERENTIAL TREATMENT

*Journal of International Economic Law* 8(2) 405-424.

Bernard Hoekman

Discusses options that have been proposed to address country differences and increase the 'development relevance' of the WTO. Recommends the establishment of a mechanism within the WTO which would monitor the effect of trade policy on developing countries.

CHAIRING A WTO NEGOTIATION

*Journal of International Economic Law* 8(2) 425-448

John S. Odell

Suggestions for enhancing the capacity of WTO Chairs to encourage consensus-building. Not particularly relevant.

### 1.3 Democratic deficit

---

Note: This section covers issues of state sovereignty (right to self-determination) as well as internal WTO issues such as transparency and accountability (democratic rights). I have not separated them because the issues are mixed in together in a number of articles.

[Also see the section on the GPA Burma-Massachusetts debate]

CLIMATE CHANGE, REGULATORY POLICY AND THE WTO  
*Journal of International Economic Law* 8(1) 143-189 (2005)

Andrew Green

This article is not specifically about democratic deficit. However, it is about how WTO rules constrain countries ability to address climate change so may be useful as an example. (For other examples section 9.1 *Hormones Case*.)

THE FUTURE OF THE WTO: REPORT BY THE CONSULTATIVE BOARD TO  
THE DIRECTOR-GENERAL  
Chapter 3: Sovereignty  
World Trade Organisation, 2004.

Supachai Panitchpakdi

What WTO members lose in “policy space” at a national level is made up for by the advantages that stem from rules-based multilateral trade.

\*\*\*\*\*

A CLOSE LOOK AT A FEW POINTS  
*Journal of International Economic Law* 8(2) 311-319 (2005)

Steve Charnovitz

Looks at the Consultative Board’s January, 2005 Report, ‘*The Future of the WTO*’ (above) and points out a few omissions and inaccuracies. Section I of the article deals with Chapter 3 of the report.

CHALLENGES TO THE LEGITIMACY AND EFFICIENCY OF THE WORLD  
TRADING SYSTEM: DEMOCRATIC GOVERNANCE AND COMPETITION  
CULTURE IN THE WTO  
*International Journal of Economic Law* 7(3), 585-603 (2004)

Ernst-Ulrich Petersmann

Summary of arguments presented by trade practitioners, economists, political scientists and legal academics. Discusses main WTO governance-related questions (eg parliamentary participation, cosmopolitics and revision of rules).

#### THE WTO AND NATIONAL SOVEREIGNTY

In *Who's Afraid of the WTO?* (Oxford University Press: 2004)

Kent Jones

The chapter responds to (argues against) perceptions that the WTO is an “outrageous intruder” into national sovereignty. Discusses sovereignty in relation to the economy, WTO dispute settlement and global institution building.

#### HOW CAN PARLIAMENTARY PARTICIPATION IN WTO RULE-MAKING AND DEMOCRATIC CONTROL BE MADE MORE EFFECTIVE IN THE WTO? A UNITED STATES CONGRESSIONAL PERSPECTIVE

*Journal of International Economic Law* 7(3) 655-658 (2004)

David E. Skaggs

Some congressional members would like to see a WTO parliamentary entity to address concerns regarding legitimacy, transparency and accountability.

#### DELIBERATIVE DEMOCRACY AND THE WTO

*Review of International Political Economy* 11(3) (2004) 522-541

Ilan Kapoor

The lack of legitimating process and rational deliberation at the WTO produces unjust outcomes. Uses Habermas' method of examining and assessing liberal democratic institutions which focuses on achieving consensus through the force of the 'better argument'.

#### THE HUMAN RIGHTS APPROACH ADVOCATED BY THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS AND THE WTO: IS IT RELEVANT FOR WTO LAW AND POLICY?

*Journal for International Economic Law* (2004) 7(3), 605-627.

Ernst-Ulrich Petersmann

On the level of principles, human rights law and liberal trade rules do not conflict with each other. More parliamentary and citizen involvement and 'deliberative democracy' is required in trade matters.

#### THE WTO, TRADE AND INTERNATIONAL HUMAN RIGHTS

Draft – forthcoming in Michael Windfuhr (ed.) *Mainstreaming Human Rights in Multilateral Institutions* (2004)

Caroline Dommen

Discusses two ways in which the WTO is associated with HR inconsistent actions. The first is the process of WTO negotiations (lack of transparency and participation) and the second is the application of WTO rules (reduction of policy space for public interest regulation).

A FEW THOUGHT ON DEMOCRACY, LEGITIMACY AND THE WTO  
*Journal of International Economic Law* 7(3), 667-673 (2004)

James Bacchus

The WTO is misunderstood to be a powerful juggernaut seeking global dominance. In fact the WTO is a member-driven organization. There are still deficits in the democratic governance of the WTO. Promotes the American model of democratic participation in trade policy.

IMPROVING THE CAPACITY OF WTO INSTITUTIONS TO FULFIL THEIR MANDATES.

*Journal of International Economic Law* 7(3) , 705-716 (2004)

Richard Blackhurst and David Hartridge

Criticises 'green-room meetings' (inner circle meetings attended by around 34 members). These are not the most democratic or effective way of arriving at agreements on important issues. This is not a north/south issue – it is an insider/outsider issue.

TRANSPARENCY, PUBLIC DEBATE AND PARTICIPATION BY NGOs IN THE WTO: A WTO PERSPECTIVE.

*Journal of International Economic Law* 7(3) 683-686 (2004)

Julio A. Lacarte (Former Chairman to WTO appellate body and Ambassador to WTO)

Discusses transparency issues. The WTO should be more open, within the bounds set by practicalities and realism.

THE WTO AND COSMOPOLITICS

*Journal of International Economic Law* 7(3) 675-682 (2004)

Steve Charnovitz

Shows how the WTO already engages in various practices of cosmopolitics. The WTO should act to improve external transparency and participation. The challenge is to connect WTO decision making to the democratic processes (where they exist) of member countries.

**A PARLIAMENTARY DIMENSION TO THE WTO – MORE THAN JUST A VISION?!**

*Journal of International Economic Law* 7(3) , 659-665 (2004)

Erika Mann

The WTO encroaches on the traditional domain of domestic lawmakers. This should be acknowledged by adding a parliamentary dimension to the WTO which would enhance the transparency and democratic legitimacy of WTO activities.

**PARLIAMENTARY OVERSIGHT OF WTO RULE-MAKING: THE POLITICAL, NORMATIVE AND PRACTICAL CONTEXTS**

*Journal Of International Economic Law* 7(3) 629-654 (2004)

Gregory Shaffer

Addresses the issue of parliamentary oversight of WTO rule-making at national and international levels. Addresses the policy arguments for and against the addition of a parliamentary dimension to the WTO.

**DEMOCRATIC LEGITIMACY IN THE WORLD TRADE ORGANIZATION: THE JUSTICE DIMENSION**

*Journal of World Trade* 37(1) at 105 (2003)

Americo Beviglia Zampetti

Justice issues need to play a role in addressing the democratic legitimacy problems of the WTO. Goes in to detail on what is meant by democracy and legitimacy and how these values are/are not incorporated into WTO operation. Includes recommendations.

**CHAPTER II – DEMOCRACY AND LEGITIMACY**

In *International Economic Governance and Non-Economic Concerns* (2003)

Stephan Griller (ed.). Includes articles by Weiler and Motoc, Howse, von Bogdandy, Hafner and Tuerk.

**TAKING DEMOCRACY SERIOUSLY** by Weiler and Motoc:

International law has widened and deepened over the last century. International governance is important, but requires alternative legitimating devices from those used domestically.

**HOW TO BEGIN TO THINK ABOUT THE ‘DEMOCRATIC DEFICIT’ AT THE WTO** by Robert Howse

Analyses four different ‘democratic deficit’ concerns in reference to the Western notion of representative democracy.

**LEGITIMACY OF INTERNATIONAL ECONOMIC GOVERNANCE** by Armin von Bogdandy

Looks at the impact that WTO law has on domestic law and models of construction of WTO law with a view to its legitimacy.

RETHINKING THE SOVEREIGNTY DEBATE IN INTERNATIONAL ECONOMIC LAW

*Journal of International Economic Law* 6(2) (2003)

Kal Raustiala

Explores the idea (which runs counter to popular thought) that the WTO *strengthens* state sovereignty.

THE DOHA DECLARATION AND BEYOND: GIVING A VOICE TO NON-TRADE CONCERNS WITHIN THE WTO TRADE REGIME

*36 Vanderbilt Journal of Transnational Law* 95 (2003)

Larry A. DiMatteo, Kiren Dosanjh, Paul L. Frantz, Peter Bowal, Clyde Stoltenberg

In order to improve its treatment of non-trade concerns the WTO must increase the level of participation of non-trade stakeholders. Looks at sovereignty issues 142-153. Examines the conflict between US law and WTO obligations. Uses the UN as a benchmark (UN enforcement mechanisms are weaker than those of the WTO).

TIME FOR A UNITED NATIONS 'GLOBAL COMPACT' FOR INTEGRATING HUMAN RIGHTS LAW OF WORLDWIDE ORGANIZATIONS: LESSONS FROM EUROPEAN INTEGRATION

*Journal of International Economic Law*, Oxford, 2002, Vol.13, Iss. 3, p.621

Ernst-Ulrich Petersmann

Discusses democratic legitimacy and human rights on page 627.

“The need for more democratic rule-making in world-wide organizations” p.646.

\*\*\* NOTE: Footnote 73 – The International Law Association recommended at its 69<sup>th</sup> conference that an advisory WTO parliamentary committee and advisory civil society committee be set up to address the democratic deficit. The report is available for purchase at [http://www.ila-hq.org/html/layout\\_publication.htm](http://www.ila-hq.org/html/layout_publication.htm)

THE WORLD TRADE ORGANIZATION'S LEGITIMACY CRISIS

*World Trade Review* 1:1, 7-22 (2002)

Daniel C. Esty

The long term success of the WTO depends on its being able to “re-establish its legitimacy within a broader structure of global governance” and measure its success in terms that go beyond narrow economic considerations. Recommends an alternative model of legitimacy.

RAISING HUMAN RIGHTS CONCERNS IN THE WORLD TRADE ORGANIZATION: ACTORS, PROCESSES AND POSSIBLE STRATEGIES  
*Human Rights Quarterly* 24 (2002)

Caroline Dommen

Discusses internal transparency, external transparency and participation (pp41-45).

DEMOCRATIC LEGITIMACY AND CONSTITUTIONAL PERSPECTIVES OF WTO LAW

*Journal of World Trade* 35(1) (2001)

Markus Krajewski

The legitimacy and constitutional functions of WTO law are closely connected and their relationship should be examined. Argues that because of the inherent lack of democratic legitimacy in WTO decision-making, WTO law cannot serve constitutional functions.

INTERNATIONAL INTEGRATION AND DEMOCRACY: NO LOVE AT FIRST SIGHT

*95 American Journal of International Law* 489 (2001)

Eric Stein

Discusses WTO pp.499-508. The WTO's level of integration with other national governments and international bodies has a direct effect on the democratic deficit discourse surrounding its operation. Article also looks at WHO, NAFTA and the EU.

DEMOCRATIZING THE WTO

*33 George Washington International Law Review* 452 (2000-2001)

Jeffrey Atik

Discusses styles of democratic deficit (processes *and* outcome based criticisms) and argues that the WTO must increase its democratic foundation in order to survive. This will require addressing the democratic weaknesses of members and paying more respect to member's policies when they are the outcome of democratic processes.

THE WTO 'CONSTITUTION' AND PROPOSED REFORMS: SEVEN 'MANTRAS' REVISITED

*Journal of International Economic Law* (2001) 67-78

John H. Jackson

Section II examines internal procedures and Section III examines external questions (such as transparency and participation). Makes suggestions about ways of improving the function of the WTO.

THE CLUB MODEL OF MULTILATERAL COOPERATION AND PROBLEMS OF DEMOCRATIC LEGITIMACY

Paper prepared for the American Political Science Convention, Washington, D.C., 31 August – 3 September 2000.

Robert O. Keohane and Joseph S. Nye Jr.

International organisations operate as clubs of negotiators bargaining on specific policy issues – this model has been a success in terms of multilateral cooperation, but is challenged by NGOs and by democratic theory. Uses the WTO as the main example. Regimes must be linked to legitimate domestic institutions.

PARLIAMENTS AND THE WTO: ACCOUNTABILITY IN THE NEW GLOBAL TRADING SYSTEM

*The Parliamentarian* (April 2000)

Mike Moore

Short article which defends the WTO's system of accountability. Likens the WTO to domestic democracies.

THE REALIZATION OF ECONOMIC, CULTURAL AND SOCIAL RIGHTS: GLOBALIZATION AND ITS IMPACT ON THE FULL ENJOYMENT OF HUMAN RIGHTS

Preliminary Report submitted by J. Oloko-Onyango and Deepika Udagama in accordance with Sub-Commission Resolution 1999/8

E./CN.4/Sub.2/2000/13

15 June 2000

Paragraph 16 argues that position and process of WTO excludes the majority of delegates, as does the lack of resources of developing countries.

FIDH Position Paper: The WTO and Human Rights

Anne-Christine Habbard and Marie Guiraud

World Trade Organisation

November 1999

Available at: <http://www.fidh.org/rapports/wto-fidh.htm>

Outlines the main human rights-based criticisms of the WTO. The 'law of the market' should not overrule human rights laws and standards. Chapter II discusses structural (democratic deficit) criticisms.

IDENTIFYING ANTIDEMOCRATIC OUTCOMES: AUTHENTICITY, SELF-SACRIFICE AND INTERNATIONAL TRADE

19 *University of Pennsylvania International Journal of Economic Law* 229 (1998)

Jeffrey Atik

A democratic critique of the international trade regime focusing specifically on dispute settlement. Aims to identify a middle ground between the argument that the WTO should respect the total dominance of national sovereignty and the view that the WTO may “ride roughshod over national impulses”.

#### HARNESSING GLOBALISATION, DO WE NEED COSMOPOLITICS?

Pascal Lamy

Available at:

<http://www.lse.ac.uk/collections/globalDimensions/lectures/harnessingGlobalisationDoWeNeedCosmopolitics/transcript.htm>

International institutions should embrace cosmopolitics (which is like governance but without as much emphasis on ‘control’). Last section deals specifically with WTO – WTO should build its capacity, but is currently too weak to do so.

#### **1.4 Global Governance and linkage of WTO/HR regimes**

---

[Also see section 8 on labour standards and social labelling.]

#### IS THERE A NEED FOR RESTRUCTURING THE COLLABORATION AMONG THE WTO AND UN AGENCIES SO AS TO HARNESS THEIR COMPLEMENTARINESS?

*Journal of International Economic Law* (2004) 7(3) 717-727

Gary P. Sampson

Gives examples of where the work of the WTO and other UN agencies overlap (eg environment, labour, human rights). Discusses what the role of the WTO should be in relations to these overlap issues. Advocates for cooperation within agency mandates.

#### THE PROBLEMS OF WTO HARMONIZATION AND THE VIRTUE OF SHIELDS OVER SWORDS.

13 *Minnesota Journal of Global Trade* 305, Summer, 2004.

Daniel Kalderimis

What role do non-trade values play in the WTO? Argues that non-trade values should only be invoked when there is an actual breach of the GATT and only when they can be tied to an article XX provision.

#### HUMAN RIGHTS, LABOUR RIGHTS AND TRADE POLICY

In *Who's Afraid of the WTO?* (Oxford University Press: 2004)

Kent Jones

Argues that the WTO has neither the design, the capacity, nor the resources to monitor either human rights or workers' rights.

NGOs, MULTINATIONALS AND GLOBAL TRADE GOVERNANCE  
In *Who's Afraid of the WTO?* (Oxford University Press: 2004)

Kent Jones

Examines governance in the global trading system with regard to NGOs and MNCs.

ADDRESSING THE GLOBAL GOVERNANCE DEFICIT  
*Global Environmental Politics* 4:4, November 2004

Peter M. Haas

An argument for more comprehensive global governance structures which can deal with the world's intertwined problems (eg trade and environment). Does not refer to human rights.

CONFLICT OF NORMS IN PUBLIC INTERNATIONAL LAW: HOW WTO LAW  
RELATES TO OTHER RULES OF INTERNATIONAL LAW

Joost Pauwelyn

Comprehensive text. WTO law should not be construed as separate from other international law or international law treaties. Discusses the existence of a 'hierarchy' of international laws and situations of conflict of norms. Examines examples of WTO dispute settlement.

INTERNATIONAL ECONOMIC GOVERNANCE AND NON-ECONOMIC  
CONCERNS: NEW CHALLENGES FOR THE INTERNATIONAL LEGAL  
ORDER

Springer-Verlag Wien, 2003

Stefan Griller (ed.)

This book discusses the changes taking place in international economic governance, the "new issues" in the trade regime and the possibility of an end to "pure" economic governance. Contains chapters on: economic and non-economic principles; democracy and legitimacy; human rights; labour standards; environmental concerns; and transparency.

COUNTERING, BRANDING, DEALING: USING ECONOMIC AND SOCIAL  
RIGHTS IN AND AROUND THE INTERNATIONAL TRADE REGIME

*European Journal of International Law* (2003) Vol.14 No.1, 35-84

Robert Wai

Explores the role that economic and social rights might play in the international trade regime. Specifically in terms of the trade v non-trade objectives debate and in terms of north-south conflict.

**THE DOHA DECLARATION AND BEYOND: GIVING A VOICE TO NON-TRADE CONCERNS WITHIN THE WTO TRADE REGIME**

*36 Vanderbilt Journal of Transnational Law* 95 (2003)

Larry A. DiMatteo, Kiren Dosanjh, Paul L. Frantz, Peter Bowal, Clyde Stoltenberg

In order to improve its treatment of non-trade concerns, the WTO must increase the level of participation of non-trade stakeholders. Looks at substantive issues: environmental concerns 103-119; labour standards 119-129; consumer protection / health and safety 129-139; and sovereignty issues 142-153.

**JUDICIAL ACTIVISM AT THE WORLD TRADE ORGANIZATION: DEVELOPING PRINCIPLES OF SELF-RESTRAINT**

*22 Northwestern Journal of International Law and Business* 353, (2002)

J. Patrick Kelly

Argues that non-trade values should not be included in the WTO trade regime through the judicial activism of the Appellate Body. Looks at two other ways in which non-trade values could be incorporated: the Contract Model (policy decisions are made by member nations under the principle of consent); and the Legislative Model (WTO is empowered to act as a legislature and make policy decision).

**THE WTO CORE AGREEMENT, NON-TRADE ISSUES AND INSTITUTIONAL INTEGRITY**

*World Trade Review* 1:3 (2002)

Kent Jones

The use of trade sanctions to pursue non-trade goals, such as human rights, would decrease the value of the WTO and undermine the trade regime. The solutions to non-trade issues lie outside the WTO.

**THE PROSPECTIVE ROLE OF ECONOMIC AND SOCIAL HUMAN RIGHTS IN THE LAW OF INTERNATIONAL TRADE LIBERALIZATION AND ECONOMIC INTEGRATION: GLOBALIZATION AND HUMAN RIGHTS: LOOKING OUT FOR THE WELFARE OF THE WORST OFF,**

*35 N.Y.U. J. Int'l L. & Pol.* 201 (2002)

Eleanor M. Fox

Considers global questions about the interaction of human rights and global trade. Considers member states' right to derogate and privilege non-trade rights. Considers procedural rights that could usefully be built into the system. At least unfair and artificial trade barriers of the developed world should be eliminated as a trade barrier.

A DEVELOPING COUNTRY PERSPECTIVE OF INTERNATIONAL  
ECONOMIC LAW IN THE CONTEXT OF DISPUTE SETTLEMENT  
In *Perspectives in International Law* Asif H. Qureshi (ed.)

M. Sornarajah

The system of trade-related dispute resolution favours developed states because the rules created are those preferred by developed states and because tribunals deal with values other than those involved in trade and investment. Examines the jurisdictional limitations of the trade tribunals.

INTERNATIONAL GOVERNANCE AND WORLD TRADE ORGANIZATION  
REFORM

*Critical Public Health*, Vol. 12, No. 1 (2002)

Ronald Labonte

An article based on a brief prepared for the International Union of Health Promotion and Education. Discusses general and sector-specific issues associated with the WTO's role in international governance. "WTO Agreements need to be subordinated to human development and environmental sustainability goals, and not allowed to overbear them."

THE ROLE OF PUBLIC INTERNATIONAL LAW IN THE WTO: HOW FAR CAN  
WE GO?

*95 American Journal of International Law* 353 (2001)

Joost Pauwelyn

Article on the relationship between public international law and WTO law (discusses the same issues as his book which is cited above). Discusses human rights law in this context.

JOINT STATEMENT ON THE MULTILATERAL TRADING SYSTEM

1 February, 2001.

Arthur Dunkel, Peter Sutherland, Renato Ruggiero (former GATT/WTO Directors General)

Available at: [http://www.wto.org/english/news\\_e/news01\\_e/statdavos\\_jan01\\_e.htm](http://www.wto.org/english/news_e/news01_e/statdavos_jan01_e.htm)

The WTO has limits and over-expansion of its mandate would risk undermining fundamental trade principles (p.3).

THE 'CONSTITUTIONALIZATION' OF INTERNATIONAL TRADE LAW:  
JUDICIAL NORM-GENERATION AS THE INSTRUMENT OF  
CONSTITUTIONAL DEVELOPMENT IN INTERNATIONAL TRADE.

*European Journal of International Law* 2001 Vol. 12 No. 1, 39-47.

Deborah Z. Cass

Discusses the meaning of 'constitutionalization' (a structure for the division of power). Argues that the WTO judicial dispute resolution process is responsible for the creation of a constitutionalized trade structure.

**THE ROLE OF THE WORLD TRADE ORGANIZATION IN GLOBAL GOVERNANCE**

Gary P. Sampson (ed.) (United Nations University Press, 2001)

Chapters are written by prominent people in international affairs. The book discusses the role of the WTO. 13 chapters on a variety of governance-based topics including: public participation; relationship between trade and the environment; human rights; health, equity and trade; and economic and social development.

**I. TRADE AND THE ENVIRONMENT: IMPLICATIONS FOR GLOBAL GOVERNANCE: HOW NOT TO LINK: INSTITUTIONAL CONUNDRUMS OF AN EXPANDED TRADE REGIME ,**

*Widener Law Symposium Widener Law Symposium*, Spring, 2001,

Jose E. Alvarez

Outlines and responds to Howse and Mutua's linkage arguments (see above).

**MORE POWER TO THE WTO?**

*Journal of International Economic Law* (2001) 41-65

Marco C.E.J. Bronkers

While in principle the WTO could take on additional duties, in its present form it could not responsibly broaden its mandate. A number of fundamental and institutional changes should take place to allow the WTO to take on additional duties (environment, labour, competition etc.) and utilise its unique characteristics (eg package deals, effective dispute resolution).

**THE FUTURE OF THE WTO: A SOCIO-RELATIONAL CHALLENGE**

*Review of International Political Economy* 7(3) (2000)

John H. Dunning

Discussion of the issues that should be taken into account in the debate about the broadening of the WTO's sphere of activity beyond traditional trade issues.

**'UNILATERALISM', VALUES AND INTERNATIONAL LAW**

*European Journal of International Law* (2000) Vol.11, No.1, 291-302

Philippe Sands

When may values be imposed on environmental/natural resources disputes? Examines the Shrimp/Turtle Case. Goes on to discuss the broader debate which involves other values (economic, social and political).

**WHITHER SOCIAL CLAUSE? HUMAN RIGHTS, TRADE THEORY AND TREATY INTERPRETATION,**

Fall, 1999, 31 Colum. Human Rights L. Rev. 1.

Adelle Blackett

Argues that trade policy should situate itself within a context of public international law. Focuses on the 'social clause' and ILO/WTO linkage (with a discussion of Article XX amendments and a re-reading of Article XX according to the Vienna Convention).

**THE DEATH OF THE TRADE REGIME**

*European Journal of International Law* (1999) Vol.10 No.4, 733

Jeffrey L. Dunoff

Discusses the implications of the 'trade and...' debate. Practical and theoretical challenges that 'trade and...' issues pose to traditional ways of understanding the trade regime. In particular the effect of 'trade and...' on the capacity of the trade system to maximise comparative advantage.

Statement of Panitchpakdi  
Minister of Commerce, Thailand  
Ministerial Conference  
Seattle, 1 December 1999  
WT/MIN(99)ST33

States that trade and non-trade issues should not be linked.

**"TRADE AND": RECENT DEVELOPMENTS IN TRADE POLICY AND SCHOLARSHIP – AND THEIR SURPRISING POLITICAL IMPLICATIONS**  
*17 Northwestern Journal of International Law and Business* 759 (1996-1997)

Jeffrey L. Dunoff

Does not refer to human rights. Categorises 'trade and' scholarship into three groups. Suggests that the expansion of the trade regime made threaten its political viability.

**TRADE AND... PROBLEMS, COST BENEFIT ANALYSIS AND SUBSIDIARITY**  
*European Journal of International Law* (1997)

Joel P. Trachtman

Examines the ways in which the EU's common market, US internal market and the WTO deal with trade and... problems. Looks at the role that cost benefit analysis in addressing these problems.

#### TRADE WITHOUT VALUES

*Northwestern University Law Review* 90(2) (1995-1996)

Philip M. Nichols

The WTO's response to conflict between trade values and societal values (eg environment, labour and cultural identity) is inadequate. The article proposes an exception to trade obligations that would allow more space for societal values in the trade regime.

#### CORRUPTION IN THE WORLD TRADE ORGANIZATION: DISCERNING THE LIMITS OF THE WORLD TRADE ORGANIZATION'S AUTHORITY

*28 New York University Journal of International Law and Politics* 711 (1995-1996)

Philip M. Nichols

Old article about how the limits of the WTO's operations should be ascertained. Sets out four criteria. Focuses corruption, but can be applied to other issues.

Srinivasan, T.N. 'Trade and Human Rights' December 1996 (38pp.) Centre Discussion Paper 765, Economic Growth Centre, Yale University (December 1996)

This paper can be ordered (for \$2.00 plus postage) at  
<http://www.library.yale.edu/socsci/egcorder.html>

#### WTO-UN RELATIONSHIP BECOMES MUDDIED

Oct 12, 1994

Available at: <http://www.sunonline.org/trade/process/towards/10120094.htm>

Article written shortly after the Marrakech Final Act. Reactions to proposals of specialized agency status for the WTO. In particular developing countries expressed concern that their contractual rights would be eroded in favour of environmental and humanitarian concerns.

#### INTERNATIONAL TRADE AS AN INSTRUMENT FOR POSITIVE HUMAN RIGHTS POLICY

*Human Rights Quarterly* 4(2) (1982) 155-183

Philip Alston

Old article (1982). Examines the potential for a trade/human rights linkage to be misused to implement protectionist measures. Focus on labour standards and trade sanctions.

#### **1.4.1 Symposium: The Boundaries of the WTO, Alvarez (ed.)**

The contributors to the symposium (prominent WTO Scholars with strong ties to North America) were asked to identify broad frameworks that might illuminate the WTO's present and future boundaries and consider how arguments for or against linkage relate to the mission or mandate of the WTO.

##### **THE BOUNDARIES OF THE WTO: FOREWARD**

*96 American Journal of International Law* 1 (2002)

Jose E. Alvarez

Brief overview of the linkage debate. Outlines the issues covered in the symposium.

##### **INSTITUTIONAL LINKING: TRANSCENDING TRADE AND...**

*97 American Journal of International Law* 77 (2002)

Joel P. Trachtman

Explains linkage. Views 'trade and... problems as institutional problems associated with the allocation of jurisdiction. Sets out a theory (using economic and legal methodology) under which analysis of linkage possibilities should proceed.

##### **THE BOUNDARIES OF THE WTO: AFTERWORD: THE QUESTION OF LINKAGE**

*96 A.J.I.L.* 126 (2002)

Jagdish Bhagwati

The WTO's trade regime was built around the ideas of mutual advantage through trade. The inclusion of non-trade issues such as human rights, environment, intellectual property etc. does not promote mutual advantage – linkage disadvantages the South.

##### **THE BOUNDARIES OF THE WTO: FROM POLITICS TO TECHNOCRACY – AND BACK AGAIN: THE FATE OF THE MULTILATERAL TRADING REGIME**

*96 A.J.I.L.* 94

Robert Howse

All trade is 'trade and...' therefore there is no self-evident way to solve the linkage dilemma. Presents a hypothesis "to describe the broad historical sweep of trade policy institutions".

IT'S A QUESTION OF MARKET ACCESS

96 *A.J.I.L* 56 (2002)

Kyle Bagwell, Petros. C. Mavroidis, and Robert W. Staiger

As a general rule non-market access issues should be handles outside the WTO. Implicit links might be encouraged (depends on the circumstances), but explicit linkage would be disadvantageous. Uses labour and the environment as examples. Approached from an economist's viewpoint.

LINKAGES

96 *A.J.I.L* 5 (2002)

David W. Leebron

Identifies the different kinds of arguments made for linkage, the various means of linkage and the costs and benefits of linkage. Argues that loose modalities for linkage should be sought.

TRIANGULATING THE WORLD TRADE ORGANIZATION

96 *A.J.I.L* 28 (2002)

Steve Charnovitz

Presents an analytic method for considering proposals to expand the scope of the WTO. Any new issues that are being considered for inclusion in the international trading regime should be assessed or 'screened'. Provides a model for a screening process.

AFTERWORD: THE 'TRADE AND...' CONUNDRUM – A COMMENTARY

96 *A.J.I.L*. 134 (2002)

Debra P. Steger

Examines how non-trade issues should be dealt with in the WTO system. Who should be making these decisions (members or the WTO judicial bodies)? Discusses the role of Article XX in the linkage debate. Comments on the symposium contributions.

AFTERWORD: THE LINKAGE PROBLEM: COMMENT ON FIVE TEXTS

96 *American Journal of International Law* 118 (2002)

John H. Jackson

Comments on the works of authors (or groups of authors) in the symposium. Suggests an alternative "bottom-up" approach to the linkage problem.

Afterword: THE WTO AS LINKAGE MACHINE

96 *American Journal of International Law* 146 (2002)

Jose E. Alvarez

Summarises the contents of the symposium contributions.

#### **1.4.2 Linkage as a Phenomenon: An Interdisciplinary Approach – Symposium**

Based on a conference held in December 1997 and sponsored by the International Economic Law Interest Group. The goal of the conference was to examine linkage.

INTRODUCTION: THE TRADE LINKAGE PHENOMENON: POINTING THE WAY TO THE TRADE LAW AND GLOVBAL SOCIAL POLICY OF THE 21<sup>ST</sup> CENTURY

19 *University of Pennsylvania International Journal of Economic Law* 209 (1998)

Frank J. Garcia

Introduction to the symposium and summary of contributions.

TELECOMMUNICATIONS TRADE: REACH OUT AND TOUCH SOMEONE?

19 *University of Pennsylvania International Journal of Economic Law* 209 (1998)

Arthur E. Appleton

Compares social policy linkages (such as trade and human rights) with sectorial policy linkages (trade is linking with a particular business sector – in this case telecommunications). Argues that the distinction between the two categories will become less distinct as the social implications of sectoral linkage are better understood.

IDENTIFYING ANTIDEMOCRATIC OUTCOMES: AUTHENTICITY, SELF-SACRIFICE AND INTERNATIONAL TRADE

19 *University of Pennsylvania International Journal of Economic Law* 229 (1998)

Jeffrey Atik

A democratic critique of the international trade regime focussing specifically on dispute settlement. Tries to identify a middle ground between the argument that the WTO should respect the total dominance of national sovereignty and the view that the WTO may “ride roughshod over national impulses”.

NATIONAL SECURITY AND INTERNATIONAL TRADE LAW: WHAT THE GATT SAYS AND WHAT THE UNITED STATES DOES

19 *University of Pennsylvania International Journal of Economic Law* 263 (1998)

Raj Bhala

Examines the linkage of trade and national security (i.e. the use of trade sanctions against states on the basis of the threat that they pose to national security) with reference to GATT Article XXI.

#### LINKING TOPICS IN TREATIES

19 *University of Pennsylvania International Journal of Economic Law* 329 (1998)

Steve Charnovitz

Examines the merits of linking topics which are of international concern and which are the subject of international agreements. Looks at policy linkages in the past and the reasons for and against linkage. The best justification for linkage is that it can enhance policy effectiveness.

#### LINKAGES BETWEEN ETHICS AND INTERNATIONAL ECONOMIC LAW

19 *University of Pennsylvania International Journal of Economic Law* 319 (1998)

Isabella D. Bunn

Examines the linkages between ethics and international economic law. States that ethics underpins any discussion of trade linkages.

#### RETHINKING INTERNATIONAL TRADE

19 *University of Pennsylvania International Journal of Economic Law* 347 (1998)

Jeffrey L. Dunnoff

Asks whether the trade regime can accommodate non-trade issues, or whether their inclusion would call into question the fundamental premises of the trade regime. Looks and practical and theoretical challenges to linkage. Argues that linkage would herald the “death of the trade regime” as it is currently understood.

#### GLOBALIZING INTELLECTUAL PROPERTY: LINKAGE AND THE CHALLENGE OF A JUSTICE CONSTITUENCY

19 *University of Pennsylvania International Journal of Economic Law* 347 (1998)

Samuel K. Murumba

Examines the global regulation of intellectual property by a “thin bargain linkage” between trade and intellectual property. Uses this to exemplify how linkage needs to be embedded in a ‘justice constituency’ (justice constituency is his phrase and refers to a position somewhere between universalism and cultural relativism).

#### DOMESTIC POLICY OBJECTIVES AND THE MULTILATERAL TRADE ORDER

19 *University of Pennsylvania International Journal of Economic Law* 513 (1998)

Frieder Roessler

Past linkages between trade and other areas have had negative results for both the trade regime and the linked area.

THE FUNCTION-SPECIFIC AND LINKAGE-BARGAIN DIPLOMACY OF  
INTELLECTUAL PROPERTY LAWMAKING  
19 *University of Pennsylvania International Journal of Economic Law* 535 (1998)

Michael P. Ryan

Trade-related diplomacy should not be the sole focus of linkage negotiations. Often specialist knowledge of the linked field is required for the establishment of an effective regime. Uses TRIPS as an example.

## 2. TRIPS AND HUMAN RIGHTS

---

**HUMAN RIGHTS APPROACH TO INTELLECTUAL PROPERTY PROTECTION: THE GENESIS AND APPLICATION OF SUB-COMMISSION RESOLUTION 2000/7**

*5 Minnesota Intellectual Property Review* 1 (2003)

David Weissbrodt and Kell Schoff

The referenced sub-commission resolution called on international organisations to adopt a human rights approach to intellectual property regulation. TRIPS was the sub-commissions central concern. Looks at WTO response (p30).

**GEORGE SOROS ON GLOBALIZATION (1<sup>st</sup> ed.)**

George Soros

Argues that the WTO should not have become involved in intellectual property rights. 'The WTO opened up a Pandora's box when it became involved in intellectual property rights. If intellectual property rights, why not labour rights, or human rights?'

**THE PROSPECTIVE ROLE OF ECONOMIC AND SOCIAL HUMAN RIGHTS IN THE LAW OF INTERNATIONAL TRADE LIBERALIZATION AND ECONOMIC INTEGRATION: GLOBALIZATION AND HUMAN RIGHTS: LOOKING OUT FOR THE WELFARE OF THE WORST OFF,**

*New York University School of Law Journal of International Law and Politics*, Vol. 35 Fall, 2002

Eleanor M. Fox

Part VI(B) (p6) focuses on the right to health.

**THE BOUNDARIES OF THE WTO: AFTERWORD: THE QUESTION OF LINKAGE**

*96 A.J.I.L* 126 (2002)

Jagdish Bhagwati

By the test of mutual advantage TRIPS does not belong in the WTO. (p127)

**POST-TRIPS DEVELOPMENTS: THE TENSION BETWEEN COMMERCIAL AND SOCIAL AGENDAS IN THE CONTEXT OF INTELLECTUAL PROPERTY.**

*14 Florida Journal of International Law* 193 (2002)

Susan K. Sell

The TRIPS agreement represents a great success for the commercial IP agenda. Discusses opposition campaigns based on agriculture and plant varieties and access to essential medicines.

#### HUMAN RIGHTS IMPLICATIONS OF INTELLECTUAL PROPERTY PROTECTION

*Journal of International Economic Law* (2002) 861-882

Audrey Chapman

Discussion of the human rights issues that are affected by the manner in which creative, scientific and cultural intellectual property is protected. Looks the work the UN has done in this area.

#### TRADE AND HUMAN RIGHTS: WHAT'S AT ISSUE?

*Journal of World Trade* (2001) 35(2), 275-300

Hoe Lim

Argues that the WTO is linked to human rights aims and outcomes through Article XX, but that the WTO's most significant contribution to the human rights movement is its role in establishing a multilateral legal framework which facilitates free trade. Uses TRIPS as an example.

#### HUMAN RIGHTS AND INTELLECTUAL PROPERTY.

E/C.12/2001/15 (2001)

Statement by the Committee on Economic, Social and Cultural Rights

Identifies some of the key human rights principles that need to be taken into account in the enactment and interpretation of intellectual property regimes. This is a preliminary report.

#### THE IMPACT OF THE AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS ON HUMAN RIGHTS

E/CN.4/Sub.2/2001/13 (27 June 2001)

Report of the High Commissioner

Focus on the Right to Health. Most WTO members have ratified the ICESCR. Obligations under ICESCR as well as the flexibility inherent in the TRIPS agreement should be considered when establishing domestic IP regimes.

#### THE WORLD TRADE ORGANIZATION: ELEVATING PROPERTY INTERESTS ABOVE HUMAN RIGHTS

*The Georgia Journal of International and Comparative Law*, Summer (2001)

Marjorie Cohn

Criticises the WTO's human rights record with reference to ICCPR. Also criticises particular decisions, the accountability of the WTO and globalization generally. Short section (page 5) on TRIPS and human rights.

**'GLOBALIZATION AND ITS IMPACT ON THE FULL ENJOYMENT OF ALL HUMAN RIGHTS: PRELIMINARY REPORT OF THE SECRETARY GENERAL'**  
31 August, 2000  
UN document number: A/55/342

While there are points of convergence between trade and human rights principles, one is not always consistent with the other. Uses TRIPS as an example (p4).

**THE DEATH OF THE TRADE REGIME**  
*European Journal of International Law* (1999) Vol.10 No.4, 733

Jeffrey L. Dunoff

Discusses the implications of the 'trade and...' debate. Practical and theoretical challenges that 'trade and...' issues pose to traditional ways of understanding the trade regime. Discusses trade and IP as an example.

**GLOBALIZING INTELLECTUAL PROPERTY: LINKAGE AND THE CHALLENGE OF A JUSTICE CONSTITUENCY**  
*19 University of Pennsylvania International Journal of Economic Law* 347 (1998)

Samuel K. Murumba

Examines the global regulation of intellectual property by a "thin bargain linkage" between trade and intellectual property. TRIPS fails to recognise cultural difference.

**THE FUNCTION-SPECIFIC AND LINKAGE-BARGAIN DIPLOMACY OF INTELLECTUAL PROPERTY LAWMAKING**  
*19 University of Pennsylvania International Journal of Economic Law* 535 (1998)

Michael P. Ryan

Trade-related diplomacy should not be the sole focus of linkage negotiations. Often specialist knowledge of the linked field is required for the establishment of an effective regime. Uses TRIPS as an example.

**ADJUDICATING COPYRIGHT CLAIMS UNDER THE TRIPS AGREEMENT: THE CASE FOR A EUROPEAN HUMAN RIGHTS ANALOGY.**  
*39 Harv. Int'l L.J.* 357 (1998)

Laurence R. Helfer

Discusses the structural elements of TRIPS that will contribute to the complexity of IPR dispute settlement. Uses European Court of Human Rights jurisprudence as a

model for the interpretation of TRIPS, but beyond this the article does not refer to human rights.

## **2.1 Public Health / Pharmaceuticals (access to)**

---

### **THE ROAD TO DOHA AND BEYOND: SOME REFLECTIONS ON THE TRIPS AGREEMENT AND PUBLIC HEALTH**

*European Journal of International Law* (2004) Vol. 15, No.1, 123-150.

Haochen Sun

Discusses the global debate on the effect of TRIPS on public health. Focus on the implications and limitations of the Doha Agreement. Argues that TRIPS should be interpreted with maximum flexibility to promote access to pharmaceuticals.

### **WTO DECISION ON IMPLEMENTATION OF PARAGRAPH 6 OF THE DOHA DECLARATION ON THE TRIPS AGREEMENTS AND PUBLIC HEALTH: A SOLUTION TO THE ACCESS TO ESSENTIAL MEDICINES PROBLEM?**

*Journal of International Economic Law* 7(1) 73-107 (2004)

Duncan Matthews

Information on paragraph 6 of the Doha declaration (access to low-cost essential medicines in developing countries) and the subsequent agreement of 30 August 2003 (TRIPS exceptions for public health reasons).

### **TRADE AND HUMAN RIGHTS: EXPLORING THE IMPACT OF WTO LAW ON STATE CAPACITY TO RESPECT, PROTECT AND FULFIL THE HUMAN RIGHTS TO HEALTH**

Master of Arts in Law and Diplomacy Thesis, submitted May, 2004.

Sandra Dawar

Thesis on WTO law and the right to health. Includes a chapter on TRIPS and health. Discusses whether WTO law should incorporate a right to health.

### **RECOGNIZING PUBLIC GOOD IN WTO DISPUTE SETTLEMENTS: WHO PARTICIPATES? WHO DECIDES? THE CASE OF TRIPS AND PHARMACEUTICAL PATENT PROTECTION.**

*Journal of International Economic Law* (2004) 7(2) 459-482

Gregory Schaffer

How will WHO agreements (with focus on TRIPS) be read to promote public good in juxtaposition with private rights? Challenges for dispute settlement panels. Notes structural weaknesses in the ability of developing countries to participate in WTO judicial decision making (parts III/IV).

PHARMACEUTICAL CORPORATIONS AND ACCESS TO DRUGS: THE  
"FOURTH WAVE" OF CORPORATE HUMAN RIGHTS SECURITY.

*Human Rights Quarterly* Vol.25 (2003) [Included for completeness!]

Sarah Joseph

Human rights implications of pharmaceutical corporations' actions in relation to the patenting of essential medicines - particularly HIV drugs. Includes a discussion of recent WTO initiatives (445).

RESHAPING THE TRIPS AGREEMENT CONCERNING PUBLIC HEALTH:  
TWO CRITICAL ISSUES

*Journal of World Trade* 37(1) (2003)

Haochen Sen

Too much IP protection can undermine human rights. Discusses compulsory licensing and article 30 based solutions to public health/IP issues faced by developing countries. Outlines the Doha Round developments.

IMPLICATIONS OF THE TRIPS AGREEMENT FOR DEVELOPING  
COUNTRIES: PHARMACEUTICAL PATENT LAW IN BRAZIL AND SOUTH  
AFRICA

*34 George Washington International Law Review* 191 (2002-2003)

Naomi A. Bass

Examines the effect of TRIPs on pharmaceutical patent laws in developing countries with a focus on South Africa and Brazil. Looks at the legal and socioeconomic effect of TRIPs on pp 215-220.

A CONFLICT OF RIGHTS: INTELLECTUAL PROPERTY UNDER TRIPS, THE  
RIGHT TO HEALTH AND AIDS DRUGS

*6 UCLA Journal of International Law and Foreign Affairs* 463 (2002)

Patrick L. Wojahn

A full guarantee of intellectual property rights would conflict with the right to health. However, the TRIPS agreement can be construed to allow for the protection of the right to health.

RAISING HUMAN RIGHTS CONCERNS IN THE WORLD TRADE  
ORGANIZATION: ACTORS, PROCESSES AND POSSIBLE STRATEGIES

*Human Rights Quarterly* 24 (2002)

Caroline Dommen

Discusses TRIPS and access to pharmaceuticals in relation to the right to health pp23-23-30.

**INTELLECTUAL PROPERTY RIGHTS, THE WORLD TRADE ORGANISATION AND PUBLIC HEALTH: THE BRAZILIAN PERSPECTIVE.**

*17 Connecticut Journal of International Law* 311 (2002)

Jose Marcos Nogueira Viana

A short piece about the Brazilian government's approach and views on the debate (supports right to health – particularly important in developing countries).

**WTO AGREEMENTS AND PUBLIC HEALTH: A STUDY BY THE WHO AND WTO SECRETARIAT 2002**

Available at: [http://www.wto.org/english/res\\_e/booksp\\_e/who\\_wto\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/who_wto_e.pdf)

Part F on page 87 “Access to drugs and vaccines”. The effects of the TRIPS agreement on access to pharmaceuticals. Addresses concern that TRIPS could lead to higher prices for drugs.

**THE GLOBAL AIDS CRISIS: CHANGING ROLES OF STATE AND NON-STATE ACTORS IN THE WAKE OF DRUGS ACCESS DECISIONS IN SOUTH AFRICA AND BRAZIL,**

*17 Conn. J. Int'l L.* 319 (2002)

Cesar Vieira

Very short (2 pgs) article vaguely outlining the relationship between AIDS crisis and trade regulations.

**TRIPS AND PUBLIC HEALTH**

Third World Network, June 2000.

Submission by the Africa Group, Barbados, Bolivia, Brazil, Dominican Republic, Ecuador, Honduras, India, Indonesia, Jamaica, Pakistan, Paraguay, Philippines, Peru, Sri Lanka, Thailand and Venezuela

Available at: <http://www.twinside.org.sg/title/drugs3.htm>

Addresses the relationship between TRIPS and public health. Developing country perspective.

**INTERNATIONAL GOVERNANCE THROUGH TRADE AGREEMENTS: PATENT PROTECTION FOR ESSENTIAL MEDICINES**

*21 Northwestern Journal of International Law and Business* 379 (2000-2001)

Judy Rein

Not about human rights. Discusses the reasons why trade agreements upholding property rights are ill-suited to managing all the interests affected by the regulation of patents on medicines.

## 2.2 Other TRIPS issues

---

THE WTO AND AGRICULTURE: FOOD AS A COMMODITY, NOT A RIGHT  
In *Whose Trade Organisation?* (The New Press, 2004)

Lori Wallach and Patrick Woodall

Argues that TRIPS rules (and patents on seeds and plant varieties) endangers food security 201-208. Includes case examples (eg 'Indian parliament coerced into WTO TRIPS implementation.)

SUBSTANCE WITHOUT PROCESS: ANALYSING TRIPS PARTICIPATORY  
GUARANTEES IN LIGHT OF PROTECTED INDIGENOUS RIGHTS  
86 *Journal of the Patent and Trademark Office Society* 671 (2004)

Erik Bluemel

Part II of this article examines the indigenous right to participation in WTO lawmaking, in particular in relation to TRIPS (which denies participatory rights to indigenous groups).

RAISING HUMAN RIGHTS CONCERNS IN THE WORLD TRADE  
ORGANIZATION: ACTORS, PROCESSES AND POSSIBLE STRATEGIES  
*Human Rights Quarterly* 24 (2002)

Caroline Dommen

Discusses TRIPS, plant variety protection and the rights to food pp38-41. .

IMPLICATION OF THE AGREEMENT ON THE TRADE RELATED ASPECTS  
OF INTELLECTUAL PROPERTY RIGHTS FOR CULTURAL DIMENSIONS OF  
NATIONAL COPYRIGHT LAWS  
*Journal of Cultural Economic* 23, 05-107, (1999)

Pamela Samuelson

National intellectual property laws are often intertwined with cultural values. As a result, TRIPS' aim to harmonise IP laws will be hard to achieve. The article does not refer to the rights dimension of this issue.

THE PROTECTION OF GENETIC RESOURCES AND TRADITIONAL  
KNOWLEDGE: TOWARDS MORE SPECIFIC RIGHTS AND OBLIGATIONS IN  
WORLD TRADE LAW

*Journal of International Economic Law* (1998) 555-584.

Thomas Cottier

Explores the legal challenges related to traditional knowledge, innovation and genetic resources. Suggests some changes in the field of intellectual property and the role that the WTO may play in these changes.

### **3. AGREEMENT ON AGRICULTURE AND HUMAN RIGHTS**

---

**A ROUND FOR FREE: HOW RICH COUNTRIES ARE GETTING A FREE RIDE ON AGRICULTURAL SUBSIDIES AT THE WTO.**

*Oxfam Briefing Paper 76* (July 2005)

Available at:

[http://www.oxfam.org/eng/pdfs/bp76\\_dumping\\_roundforfree\\_050615.pdf](http://www.oxfam.org/eng/pdfs/bp76_dumping_roundforfree_050615.pdf)

The Agreement on Agriculture (AoA) allows rich countries to continue trade-distorting subsidy regimes which harm the agriculture sector in poor countries. Contains an analysis of the AoA, discussion of the impact of dumping on poor countries and looks at current negotiations.

**A DEVELOPMENT PERSPECTIVE ON THE WTO JULY 2004 GENERAL COUNCIL DECISION**

*Journal of International Economic Law* 8(2) 377-404. (2005)

Faizel Ismail (Head of the South African Delegation to the WTO)

Applies Amartya Sen's definition of development (the removal of unfreedoms) to the trading system. Evaluates the WTO 2004 General Council Decision in light of this definition. 382-389 on Agriculture.

**THE WTO AND AGRICULTURE: FOOD AS A COMMODITY, NOT A RIGHT**  
*In Whose Trade Organisation?* (The New Press, 2004)

Lori Wallach and Patrick Woodall

Criticises the Agreement on Agriculture for treating food as a commodity, rather than a right. Argues that rich world subsidies and food dumping causes hunger in developing countries. The AoA is a threat to food security and sovereignty in the developing world.

**THE WTO, DEVELOPING COUNTRIES AND THE DOHA DEVELOPMENT AGENDA**

Basudeb Guha-Khasnobis (ed.) (2004)

Developing countries are not against freer trade. Rather, developing countries want more balance between what they receive and what they are seemingly forced to offer (See Introduction). Focus on agriculture (Part II) and manufacturing (Part III).

**BROKEN PROMISES: TRADE, AGRICULTURE AND DEVELOPMENT IN THE WTO**

*4 Melbourne Journal of International Law* 299 (2003)

Jordana Hunter

Examines the way in which the multilateral trading system has accommodated development under the GATT. Looks at the way in which north/south issues are played out in reference to the Agreement on Agriculture. Argues that the WTO has not lived up to its promises to developing countries.

RAISING HUMAN RIGHTS CONCERNS IN THE WORLD TRADE ORGANIZATION: ACTORS, PROCESSES AND POSSIBLE STRATEGIES  
*Human Rights Quarterly* 24 (2002)

Caroline Dommen

Discusses the AoA in relation to the right to food pp30-38.

THE LAW OF INTERNATIONAL TRADE IN AGRICULTURAL PRODUCTS  
(Kluwer, 2002)

Melaku Geboye Desta

This book does not discuss human rights, but provides a thorough statement of the law with proposals for improvement. Also looks at how the rules affect developing countries.

HAS THE URUGUAY ROUND AGREEMENT ON AGRICULTURE WORKED WELL?

International Trade Research Consortium, Working Paper #01-1 (2001)

Steve Tangermann

Considers how well the rules for agriculture in the Uruguay Round worked. Not about human rights.

WTO FOOD AND AGRICULTURAL RULES: SUSTAINABLE AGRICULTURE AND THE HUMAN RIGHT TO FOOD.

*9 Minnesota Journal of Global Trade*, Winter, 2000,

Mark Ritchie, Kristin Dawkins

The impact of export dumping on the human right to food security (page 8)

'MULTIFUNCTIONALITY' AND 'NONTRADE CONCERNS' IN THE AGRICULTURE NEGOTIATIONS

*Journal of International Economic Law* (2000) 707-713

Fiona Smith

Looks at the problem of incorporating non-trade concerns (eg environment, food security, preservation of rural areas) and not allowing them to become a form of protectionism.

#### **4. GATS AND HUMAN RIGHTS**

---

##### **TRADE IN SERVICES AND DEVELOPMENT IMPLICATIONS**

Doc. No: TD/B/COM.1/71, 20 January 2005.

Note by the UNCTAD Secretariat.

GATS discussed paragraphs 34-39. A thriving services sector can assist poverty alleviation and human development. However, domestic policy reform and specific international commitments are required if this goal is to be achieved.

##### **GLOBALIZING WHAT: EDUCATION AS A HUMAN RIGHT OR AS A TRADED SERVICE**

*Indiana Journal of Global Legal Studies* 12(1) (2005)

Katarina Tomasevski

Trade law defines education as a service; international human rights law defines education as a human right. The article examines the ways that states (particularly developing states) deal with this duality. Argues that global approaches to education often undermine education as a human right and therefore there is a need for human rights mainstreaming.

##### **THE WTO'S GENERAL AGREEMENT ON TRADE AND SERVICES: PERPETUAL SERVITUDE**

*In Whose Trade Organisation?* (The New Press, 2004)

Lori Wallach and Patrick Woodall

GATS is an attack on governments' ability to provide essential services (eg health, education, water). Includes explanation of how GATS works and examples of GATS cases.

##### **SOCIAL SERVICES AND THE GATS: KEY ISSUES AND CONCERNS**

Indian Institute of Management, 2003.

Rupa Chanda

This book responds to criticisms of GATS based on concerns about the potential for GATS to force states to liberalize services (particularly essential services) to the benefit of the corporate world and the detriment of the consumer (see argument in Wallach and Woodall above). Argues that this criticism is misguided and unwarranted.

##### **THE WTO, GATS AND THE GLOBAL EDUCATION SERVICES INDUSTRY**

*Globalisation, Societies and Education* 1(3) (2003)

Susan L. Robertson

This volume focuses on WTO, GATS and the education industry. It discusses the effects of the inclusion of education in the GATS regime.

LIBERALIZATION OF TRADE IN SERVICE AND HUMAN RIGHTS E  
E/CN.4/Sub.2/2002/9, 25 June 2002

Commission on Human Rights  
Sub-Commission on the Promotion and Protection of Human Rights.

Describes a human rights approach to trade. Describes members' obligations under the GATS and examines the obligations of states to promote and protect the human rights most directly affected by the liberalization of trade in services. Overall, 'the liberalization of trade in services presents opportunities as well as challenges to the enjoyment of human rights.' NB: This is an executive summary of the report.

GATS FACT AND FICTION  
*WTO Publication*

Available at: [http://www.wto.org/english/tratop\\_e/serv\\_e/gats\\_factfiction\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/gats_factfiction_e.htm)

Defends the GATS and its effect on human welfare. Contains section on the importance of trade liberalization, misunderstandings and scare stories and the structure and provisions of the GATS.

## **5. TRIMS AND HUMAN RIGHTS**

---

I haven't found anything under this heading.

## **6. ARTICLE XX/XXI EXCEPTIONS AND HUMAN RIGHTS**

---

THE LIMITS OF GAT ARTICLE XX: A BACK DOOR FOR HUMAN RIGHTS?  
*Georgetown Journal of International Law*, Spring, 2004.

Tatjana Eres

Article XX should not be used as a means of incorporating human rights objectives into the international trade regime. The drafters of the GAT did not intend the WTO to concern itself with human rights. Further, human rights would not satisfy the Article XX 'necessary test'. Human rights should remain the domain of the human rights bodies.

HUMAN RIGHTS AND THE LAW OF THE WORLD TRADE ORGANIZATION  
*Journal of World Trade*, New York, April 2003, Vol.37. Iss.2 p.241

Ernst-Ulrich Petersmann

Good discussion of the legal aspects of the possibility/requirement to include human rights law into the WTO's practice. Argues that is an issue of balancing economic and non-economic policy goals. He uses the right to health as an example throughout. Also discusses Article XX exceptions.

NECESSITY REVISITED: PROPORTIONALITY IN WORLD TRADE ORGANIZATION LAW AFTER *KOREA – BEEF*, *EC – ASBESTOS* AND *EC – SARDINES*  
*Journal of World Trade* 37(1) (2003)

Jan Neumann and Elizabeth Turk

Not about human rights, but may be useful background information on necessity and proportionality in Article XX law.

TIME FOR A UNITED NATIONS 'GLOBAL COMPACT' FOR INTEGRATING HUMAN RIGHTS LAW OF WORLDWIDE ORGANIZATIONS: LESSONS FROM EUROPEAN INTEGRATION  
*Journal of International Economic Law*, Oxford, 2002, Vol.13, Iss. 3, p.621

Ernst-Ulrich Petersmann

p.645 "Human Rights Criteria for Interpreting the WTO's Public Interest Clauses"

AFTERWORD: THE 'TRADE AND...' CONUNDRUM – A COMMENTARY  
96 *A.J.I.L.* 134 (2002)

Debra P. Steger

Examines how non-trade issues should be dealt with in the WTO system. Who should be making these decisions (members or the WTO judicial bodies)? Discusses the role of Article XX in the linkage debate. Comments on the symposium contributions.

**ARTICLE XX OF GATT AND THE PROBLEM OF EXTRA-TERRITORIAL JURISDICTION: THE CASE OF TRADE MEASURES FOR THE PROTECTION OF HUMAN RIGHTS**

*Journal of International Trade* 36(2) 353-403, 2002.

Lorand Bartels

Discusses the extra-territorial application of the Article XX exceptions in order to promote the protection of human rights within the territories of other WTO members. While this is acceptable, it should not extend to the trade measures in the form of countermeasures.

**INTERNATIONAL FREE TRADE AGREEMENTS AND HUMAN RIGHTS: REINTERPRETING ARTICLE XX OF THE GATT.**

*10 Minnesota Journal of Global Trade* 62 (2001)

Salman Bal

Human rights and trade are linked. Argues that the GATT (specifically Article XX) can be used to protect human rights

**BUILDING A JUST TRADE ORDER FOR A NEW MILLENIUM**  
*33 George Washington International Law Review* 1015 (2000-2001)

Frank J. Garcia

At p. 1055. A commitment to justice is a necessary part of trade law as a matter of moral obligation. Article XX, and the necessity test in particular, prioritizes trade values over other values. This runs against the idea of the inalienability of human rights. Favours a rationality and/or proportionality test.

**WHITHER SOCIAL CLAUSE? HUMAN RIGHTS, TRADE THEORY AND TREATY INTERPRETATION,**

Fall, 1999, 31 Colum. Human Rights L. Rev. 1.

Adelle Blackett

Focuses on the 'social clause' and ILO/WTO linkage (with a discussion of Article XX amendments and a re-reading of Article XX according to the Vienna Convention).

**QUALITY OF LIFE AT THE MERCY OF WTO PANELS: GATT'S ARTICLE XX AN EMPTY SHELL?**

Chapter 6 in *International Economic Law With a Human Face* Friedl Weiss, Erik Denters and Paul de Waart (eds.)(Kluwer, 1998)

Paul J.I.M De Waart

Examines the extent to which GATT/WTO panels can protect quality of life. Uses examples from the 1995 Social Summit. Discusses the links between economic growth and human development. The WTO panel is not competent to review national priorities.

## 6.1 Each particular Article XX category

---

### 6.1.1 Necessary to protect public morals;

#### THE PLACE OF HUMAN RIGHTS LAW IN WORLD TRADE ORGANIZATION RULES

16 *Florida Journal of International Law* 219 (2004)

Stephen J. Powell

Argues that WTO has made “respectable progress” in fitting human rights norms into its rules. WTO’s legitimate use of general international law in decision-making. Article XX(a)’s protection of public morals opens possibilities for the application of human rights law (p.3).

#### Chapter 13: The Moral Exception in Trade Policy

From *Trade Law and Global Governance*

London, 2002

Steve Charnovitz

The Chapter comprehensively (using the Vienna Convention) explores the meaning and potential use of GATT Article XX(a). Explains and examines DSB decisions.

#### WOMEN'S RIGHTS AND THE PUBLIC MORALS EXCEPTION OF GATT ARTICLE 20

22 *Mich. J. Int'l L.* 219. (2000)

Liane M. Jarvis

There is a legal basis for uniting trade and human rights law. The public morals exception under articles XX should be interpreted in accordance with evolving international law on women’s rights.

#### FOCUSING ON SUBSTANTIVE LAW AND INTERNATIONAL ECONOMIC RELATIONS: THE PUBLIC MORALS OF GATT’S XX(a) EXCEPTION AND “CONVENTIONAL” RULES OF INTERPRETATION.

7 *Minnesota Journal of Global Trade* 75, Winter (1998)

Christopher T. Feddersen

Interprets the term 'public morals' in accordance with the VCLT. Documents the history of the XX(a) exception. Concludes that predictability and uniformity is possible despite initial lack of clarity around this section.

### **6.1.2 Relating to the products of prison labour;**

THE BOUNDARIES OF THE WTO: AFTERWORD: THE QUESTION OF LINKAGE

96 *A.J.I.L* 126 (2002)

Jagdish Bhagwati

US typically engages inmates in work. (p.132)

THE USE OF TRADE SANCTIONS AS AN ENFORCEMENT MECHANISM FOR BASIC HUMAN RIGHTS: A PROPOSAL FOR ADDITION TO THE WORLD TRADE ORGANISATION

11 *America University Journal of International Law and Policy* 1 (1996)

Patricia Stirling

Proposes a WTO-based system for the implementation of trade sanctions to protect basic (defined as 'passive') human rights. Argues that such a system would be GATT-compliant under Article XX(e).

### **6.1.3 Imposed for the protection of national treasures of artistic, historic or archaeological value;**

Nothing on this.

### **6.1.4 (g) Relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production and consumption AND (b) Necessary to protect human, animal or plant life or health;**

NB: There is an overlap between these two section of Article XX, for a discussion of the XX(b)/(g) overlap see the Petros Mavroidis article (below).

ENVIRONMENTALLY MOTIVATED TAX DISTINCTIONS AND WTO LAW  
*Journal of International Economic Law* (2003) 6(2) 419-458.

Reinhard Quick and Christian Lau

Elaborates on the issues of 'like products' PPMs (non-product-related process and production methods) and the question of whether identical products can be considered unlike. Supports the approach taken by the AB. Looks at EU Green Paper on Integrated Product Policy.

'Understanding the WTO' 3<sup>rd</sup> edition,  
World Trade Organisation  
Information and Media Relations Division  
September 2003

Available at: [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/utw\\_chap4\\_e.pdf](http://www.wto.org/english/thewto_e/whatis_e/tif_e/utw_chap4_e.pdf)

Chapter 4, part 2 (entitled *The environment: a new high profile*) contains an overview of the main WTO / environment issues. Discusses dispute settlement and focuses on two relevant cases.

WTO AGREEMENTS AND PUBLIC HEALTH: A STUDY BY THE WHO AND  
WTO SECRETARIAT  
2002

Available at: [http://www.wto.org/english/res\\_e/booksp\\_e/who\\_wto\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/who_wto_e.pdf)

Beginning on page 77 ("The link between environment, health and trade). The 'likeness' principle and non-discrimination. How health is considered when making a determination of 'likeness'. The Gasoline case and the Asbestos Case.

THE WTO'S READING FO THE GATT ARTICLE XX CHAPEAU: A  
DISGUISED RESTRICTION ON ENVIRONMENTAL MEASURES  
22 *University of Pennsylvania Journal of International Economic Law* 791 (2001)

Sanford Gaines

A legal critique of the Appellate Body's analysis of GATT Article XX. Concludes that the WTO must restore Article XX to its "rightful role as a safe harbour for unilateral government actions in pursuit of vital national and international interests..."

'UNILATERALISM', VALUES AND INTERNATIONAL LAW  
*European Journal of International Law* (2000) Vol.11, No.1, 291-302

Philippe Sands

When may values be imposed on environmental/natural resources disputes? Examines the Shrimp/Turtle Case. Goes on to discuss the broader debate which involves other values (economic, social and political).

TRADE AND THE ENVIRONMENT AFTER *SHRIMP-TURTLES* LITIGATION  
*Journal of World Trade* (2000) 34(1), 73.

Petros Mavroidis

Discusses the issues that arose in the AB *Shrimp-Turtles* report. Examines the place of environmentally-based protectionist exceptions within Article XX (the (b)/(g) overlap). The WTO AB should draw on international environmental law to resolve environmental issues. .

**INTEGRATING NATIONAL PUBLIC HEALTH POLICIES INTO THE FRAMEWORK OF WTO AGREEMENTS.**

*Journal of World Trade* 34(5), 89-121 (2000)

Carlos Correa

Trade objectives have dominated debates and decisions where public health has been at stake. Suggests that public health interests need to be better incorporated into the trade system. Discusses Article XX.

**MARINE CONSERVATION VERSUS INTERNATIONAL FREE TRADE: RECONCILING DOLPHINS WITH TUNA AND SEA TURTLES WITH SHRIMP**  
*Ocean Development and International Law* 31, 127-150 (2000)

Christopher C. Joyner and Zachary Tyler

The objectives of trade and the conservation of the marine environment can be harmonized through the adoption of multi-lateral, rather than unilateral approaches. Discussed with reference to dolphin and sea turtle cases.

**TRADE AND ENVIRONMENT: HOW SHOULD WTO PANELS REVIEW ENVIRONMENTAL REGULATIONS UNDER GATT ARTICLES III AND XX?**  
*16 Northwestern Journal of International Law and Business* 441 (1995-1996)

Kazumochi Kometani

Out of date article. Looks at relevant GATT articles: Article III (national treatment) and Article XX (including the 'standard of review' under Article XX).

[The following sources do not focus on Article XX, but are about trade and the environment generally. I have not done an exhaustive search in this area.]

**TRADE POLICY AND THE ENVIRONMENT**

In *Who's Afraid of the WTO?* (Oxford University Press: 2004)

Kent Jones

General article defending the WTO against environmentalist concerns. Dispute Settlement discussed 108-111. Not specifically about Article XX.

**TRADE AND THE ENVIRONMENT IN THE WTO: STATE OF PLAY**  
*Journal of World Trade* 36(1) (2002)

Sabrina Shaw and Risa Schwartz

Looks at the way in which environmental issues are being dealt with in the WTO (in the Committee on Trade and the Environment and in the dispute resolution bodies). Identifies the main issues.

**RECONCILING ENVIRONMENT AND TRADE**

Transnational Publishers Inc, New York, 2001.

Edith Brown Weiss and John H. Jackson (eds.)

A five-part book exploring the clash between environmental and trade law, focusing on key WTO dispute settlement cases.

**ENVIRONMENT, HUMAN RIGHTS AND THE LIMITS OF FREE TRADE**

In *Environment, Human Rights and International Trade*, Francioni (ed.)

Francesco Francioni

Includes historical survey of the development of human rights law in relation to trade law. Discusses the admissibility of both import and export restrictions based on environmental and human rights concerns. Lists basic criteria which should be used to resolve trade/human rights and trade/environment conflicts.

**THE WORLD TRADE ORGANISATION UNDER CHALLENGE: DEMOCRACY AND THE LAW AND POLITICS OF THE WTO'S TREATMENT OF TRADE AND ENVIRONMENT MATTERS.**

25 *Harvard Environmental Law Review* 1 (2001)

Gregory Shaffer

Assesses the accountability of participants in WTO negotiations on trade and the environment. Finds that after the shrimp/turtle case governments have continued to take environmental measures that affect trade (p.80).

**6.1.5 (j) essential to the acquisition or distribution of products in general or local short supply**

Nothing on this.

**6.2 ARTICLE XXI – Security Considerations**

---

**INTERNATIONAL HUMAN RIGHTS LAW IN PRACTICE: NORMS AND NATIONAL SECURITY: THE WTO AS A CATALYST FOR INQUIRY**

Spring, 2001, 2 *Chi. J. Int'l L.* 101, 9009 words.

Ryan Goodman

Argues human rights violations are legitimate security concerns and can constitute an exception under Article XXI. Considers two US trade disputes where the exception was invoked on this basis (*Helms-Burton* and *Burma Case*)

### 6.3 The product/process distinction

---

#### THE LAW OF ENVIRONMENTAL “PPMs” IN THE WTO: DEBUNKING THE MYTH OF ILLEGALITY

*27 Yale Journal of International Law* 59 (2002)

Steve Charnovitz

Examines the WTO law of PPMs. A PPM can be an appropriate instrument of environmental protection under WTO law. Focus on environmental PPMs, though the taxonomy could be applied to human rights based PPMs.

#### ENVIRONMENT, HUMAN RIGHTS AND THE LIMITS OF FREE TRADE

In *Environment, Human Rights and International Trade*, Francioni (ed.)

Francesco Francioni

‘PPM and the protection of human rights’ pp17-20.

#### THE PRODUCT/PROCESS DISTINCTION: AN ILLUSORY BASIS FOR DISCIPLINING ‘UNILATERALISM’ IN TRADE POLICY

*European Journal of International Law* (2000) Vol. 11 No. 2, 249

Howse and Regan

Challenges, from a jurisprudential and policy perspective, the idea that products which are restricted because of the production methods are GATT illegal.

#### COMMENTS ON THE SHRIMP/TURTLE AND THE PRODUCT/PROCESS DISTINCTION

John H. Jackson

*European Journal of International Law* 2000 Vol. 11 No. 2, 303

Comments on Howe/Regan article. Argues that here is a textual basis for the product/process distinction in the GATT. Defends the use of the distinction in certain circumstances and focuses on *Shrimp/Turtle*.

## 6.4 WTO and trade sanctions

---

### GETTING “SMART”: CRAFTING ECONOMIC SANCTIONS THAT RESPECT ALL HUMAN RIGHTS

*Fordham Law Review*, December 2004

Amy Howlett

Not about the WTO. Background article on how sanctions favour civil and political rights over economic, social and cultural rights. Focus on US sanctions.

### TRADE SANCTIONS AND HUMAN RIGHTS – PAST, PRESENT AND FUTURE

*Journal of International Economic Law* 6(4), 797-839 (2003)

Carlos Manuel Vazquez

Discusses historical relationship between trade and human rights law. Examines whether current trade law allows for human rights related sanctions. How should the WTO address this question?

### DEBATING THE LAW OF SANCTIONS

*European Journal of International Law* (2002) Vol.13 No.1, 63-79

Mary-Ellen O’Connell

Discusses the evolution of the debate over the legality of sanctions. Examines the question of whether standards, such as those found in human rights law, should be imposed on Security Council mandated sanctions. The core legal restraint is to be found in the principle of proportionality.

### HUMAN RIGHTS SANCTIONS AND INTERNATIONAL TRADE: A THEORY OF COMPATIBILITY

*Journal of International Economic Law* (2002) 133-189

Sarah Cleveland

Examines the compliance of unilateral trade sanctions to promote human rights with GATT trade liberalization principles. Argues that the GATT text can reasonably be read to accommodate certain sanctions of this nature.

### GLOBALIZING DECENCY: RESPONSIBLE ENGAGEMENT IN AN ERA OF ECONOMIC INTEGRATION

*5 Yale Journal of Human Rights and Development* (2002)

Craig Forcese

Examines the theory and practice of “responsible engagement” with oppressive regimes. Human rights sanctions may be appropriate where economic engagement

with the regime will have a negative net effect on human rights. The legal position of sanctions ('smart sanctions') is uncertain and should be clarified.

**HUMAN RIGHTS SANCTIONS AND THE WORLD TRADE ORGANISATION**  
In *Environment, Human Rights and International Trade*, Francioni (ed.)

Sarah H. Cleveland

Examines the use of unilateral and multilateral trade sanctions to promote human rights and considers the extent to which such sanctions can, or should be, consistent with WTO regulation. Considers US laws conditioning trade privileges on HR compliance. Also offers alternative approaches.

**THE ADVERSE CONSEQUENCES OF ECONOMIC SANCTIONS ON THE ENJOYMENT OF HUMAN RIGHTS (THE BOSSUYT REPORT)**  
E/CN.4/Sub.2/2000/33, June 2000

Prepared by Mark Bossuyt

Looks at the international law and theory behind sanctions (including 'smart sanctions'). In many cases economic sanctions have a harsh effect on the human rights of civilian populations. Indirectly relevant - no discussion of WTO.

**TRADE AND HUMAN RIGHTS: THE CASE FOR CHINA**  
*CATO Journal* Vol.16, Iss.1. (1996)

James A. Dorn

Trade restrictions should not be used to promote human rights. Free trade is itself a human right (he suggests that social and economic rights are not).

**THE USE OF TRADE SANCTIONS AS AN ENFORCEMENT MECHANISM FOR BASIC HUMAN RIGHTS: A PROPOSAL FOR ADDITION TO THE WORLD TRADE ORGANISATION**

11 *American University Journal of International Law and Policy* 1 (1996)

Patricia Stirling

Proposes a WTO-based system for the implementation of trade sanctions to protect basic (defined as 'passive') human rights. Argues that such a system would be GATT-compliant as Article XX(e) already sets up a link between trade and human rights.

**INTERNATIONAL TRADE AS AN INSTRUMENT FOR POSITIVE HUMAN RIGHTS POLICY**

*Human Rights Quarterly* 4(2) (1982) 155-183

Philip Alston

Old article (1982). Examines the potential for the linkage of trade and human rights to be misused to implement protectionist measures. Focus on the use of trade sanctions to link trade and human rights.

NB: Relevant themes are explored in the articles on government procurement issues (below \*\*\*)

### **6.5 Idea of new Article XX clauses to cover certain human rights issues**

---

INTERNATIONAL TRADE AND THE GATT/WTO SOCIAL CLAUSE:  
BROADENING THE DEBATE

14 *Queensland University of Technology Law Journal* 83 (1998)

Johanna Sutherland

Argues that the social clause debate should be broadened to include customary and treaty-based human rights and environmental standards and that these could be brought within Article XX of the GATT.

## 7. AMICUS BRIEFS BY NGOS IN WTO CASES

---

\*\*\* I don't have access to this article:

C.L. Lim, 'The *Amicus Brief* Issue at the WTO' *Chinese Journal of International Law* JUNE 2005; 4: 85 - 120.

THE FUTURE OF THE WTO: REPORT BY THE CONSULTATIVE BOARD TO THE DIRECTOR-GENERAL

Chapter 5: "Transparency and dialogue with civil society"  
World Trade Organisation, 2004.

Supachai Panitchpakdi,

Available at:

[http://www.wto.org/english/thewto\\_e/10anniv\\_e/future\\_wto\\_chap5\\_e.pdf](http://www.wto.org/english/thewto_e/10anniv_e/future_wto_chap5_e.pdf)

Framework of the WTO's relationship with civil society in the context of the transparency debate. Discusses challenges, pros, cons and future directions of that relationship. (8 pages)

AMICUS CURIAE: PARTICIPANT OR FRIEND? THE WTO AND NAFTA EXPERIENCE

Chapter 8 in *Peace Through Trade: Building the WTO* (Cameron May, 2004)

Debra P. Steger

Argues that the emergence of *amicus curiae* in WTO dispute settlement does not constitute a fundamental threat to the system.

TRANSPARENCY, PUBLIC DEBATE AND PARTICIPATION BY NGOs IN THE WTO: A WTO PERSPECTIVE.

*Journal of International Economic Law* 7(3) 683-686 (2004)

Julio A. Lacarte (Former Chairman to WTO appellate body and Ambassador to WTO)

Not about *amicus* briefs, but discusses the possibility of increased NGO participation. Suggests conditions that might make such a development more realistic and attractive to state members.

Also see Part III(A) of Petersmann Article "Due Process of Law in the WTO: The Controversy over Amicus Curiae Briefs" in *Human Rights and the Law of the World Trade Organization* (2003)

RECENT TRENDS AND PERSPECTIVES FOR NON-STATE ACTOR PARTICIPATION IN WORLD TRADE ORGANISATION DISPUTES

*Journal of World Trade* 35(3) 469-498 (2001)

Ernesto Hernandez-Lopez

NGOs play an increasingly important role in WTO disputes. Looks at a number of ways in which non-state actors participate in WTO proceedings. *Amicus* briefs are discussed pp485-495. Argues that a dispute mechanism that incorporates private concerns (including *amicus* briefs) would reach more holistic, 'real world' solutions.

THE PARTICIPATION OF NON-GOVERNMENTAL ORGANISATIONS (NGOs) IN THE WTO DISPUTE SETTLEMENT PROCESS

*Non-State Actors and International Law* 1: 127-151 (2001)

August Reinisch and Christina Irgel

Examines the role that NGOs currently play in the WTO, explains the theoretical basis for the argument that NGOs should be involved in panel proceedings, and looks at arguments for and against NGO involvement. Goes through Dispute Settlement cases where the NGO issue has come up (Gasoline, shrimp/turtle, British Steel, Kodak/Fuji).

PRACTICAL SUGGESTIONS FOR *AMICUS CURIAE* BRIEFS BEFORE WTO ADJUDICATING BODIES

*Journal of International Economic Law* (2001) 155-187

Gabrielle Marceau and Matthew Stilwell

Explores the practical implications of *amicus* briefs and suggests criteria for their use. Looks at main disputes where *amicus* briefs have been received and examines the approach of other international fora.

AN '*AMICUS CURIAE* BRIEF' ON *AMICUS CURIAE* BRIEFS AT THE WTO

*Journal of International Economic Law* (2001) 73-794

Georg C. Umbricht

Analyses the nature of *amicus* briefs, outlines different options available to the WTO in dealing with *amicus* briefs drawing a distinction between policy arguments and legal arguments. Argues that *amicus* briefs should be allowed at the panel level, but not the appellate level.

ISSUES OF *AMICUS CURIAE* SUBMISSIONS: NOTE BY THE EDITORS

*Journal of International Economic Law* (2000) 701-706

Extra information on the *amicus* issue: extract from *Carbon Steel*, relevant DSB and AB working procedures and rules, *amicus* procedures from other jurisdictions, an outline of arguments.

*AMICUS CURIAE* SUBMISSIONS IN THE *CARBON STEEL* CASE: ANOTHER RABBIT FROM THE APPELLATE BODY'S HAT?

*Journal of International Economic Law* (2000) 691-699

Arthur E. Appleton

Reviews past WTO appellate body and panel decisions in which the amicus issue is discussed and takes a critical look at the Appellate Body's decision in *Carbon Steel*. Procedures regulating the submission and treatment of amicus briefs need to be established. (See editor's note below)

**PARTICIPATION OF NONGOVERNMENTAL ORGANISATIONS IN THE  
WORLD TRADE ORGANISATION**

17 *University of Pennsylvania Journal of International Economic Law* 331 (1996)

Steve Charnovitz

Article about NGO participation in WHO policy making and dispute resolution. The WTO should provide systemic participation rights for NGOs.

**RESOLVING THE TRADE AND ENVIRONMENT CONFLICT: THE WTO AND  
NGO CONSULTATIVE RELATIONS**

5 *Minnesota Journal of Global Trade* 219 (1996)

William M. Reichert

Argues that the WTO can best pursue the twin objectives of free trade and sustainable development through consultative relations with NGOs.

## 8. LABOUR STANDARDS AND SOCIAL LABELLING

---

### LABOUR RIGHTS AS HUMAN RIGHTS

Philip Alston (ed.) (2005)

Seven chapters, including: 'Labour Rights as Human Rights: The Not So Happy State of Affairs'; 'Social Rights in a Globalized Economy'; and 'The Right to Bargain Collectively in International Law'.

### LABOUR AND THE WORLD TRADE ORGANIZATION: TOWARDS A RECONSTRUCTION OF THE LINKAGE DISCOURSE

*Deakin Law Review* 10(1) (2005)

Luke L Arnold

Argues that the labour linkage discourse has reached a stalemate as a result of 'conceptual differentiations' (eg trade/non-trade, north/south, liberalisation/protection, WTO/ILO etc.) The paper aims to encourage new directions in the thinking by suggesting a new linkage model.

### HUMAN AND LABOR RIGHTS UNDER THE WTO

*In Whose Trade Organisation?* (The New Press, 2004)

Ashwini Sukthankar and Scott Nova.

Workers in developed and developing countries are disadvantaged by the WTO regime. Discusses the effect of free trade on freedom of association. Argues for the inclusion of a 'social clause'. The WTO needs to engage in labour rights because the ILO is 'toothless'.

'Understanding the WTO' 3<sup>rd</sup> edition,  
World Trade Organisation  
Information and Media Relations Division  
September 2003

Available at: [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/utw\\_chap4\\_e.pdf](http://www.wto.org/english/thewto_e/whatis_e/tif_e/utw_chap4_e.pdf)

Chapter 4, part 5 (*Labour Standards: highly controversial*) explains the deferral of labour standards issues to the ILO. (One page only)

### TRADE UNIONS AND THE TRADE-LABOUR RIGHTS LINK: A NORTH-SOUTH DIVIDE?

*The International Journal of Comparative Labour Law and Industrial Relations* 19/4 (2003)

Gerard Griffin, Chris Nyland, Anne O'Rourke

Explores the claim that a trade-labour linkage has no support amongst trade unions in the developing world – argues that this claim is incorrect.

#### CHAPTER IV: LABOUR STANDARDS

In *International Economic Governance and Non-Economic Concerns* (2003)

Stephan Griller (ed.).

#### INTERNATIONAL TRADE AND INTERNATIONAL LABOUR STANDARDS By Michael J. Trebilcock.

Reviews the policy objectives and instruments and the institutional regimes (favours ILO and UN human rights bodies) available in structuring a trade-labour linkage.

#### TRADE, LABOUR STANDARDS AND GLOBAL GOVERNANCE: A PERSPECTIVE FROM THE AMERICAS By Jose Manuel Salazar-Xirinachs and Jorge Mario Martinez-Piva

Analyses the main arguments and empirical evidence for and against the inclusion of labour standards in trade agreements.

#### THE DOHA DECLARATION AND BEYOND: GIVING A VOICE TO NON-TRADE CONCERNS WITHIN THE WTO TRADE REGIME

36 *Vanderbilt Journal of Transnational Law* 95 (2003)

Larry A. DiMatteo, Kiren Dosanjh, Paul L. Frantz, Peter Bowal, Clyde Stoltenberg

In order to improve its treatment of non-trade concerns the WTO must increase the level of participation of non-trade stakeholders. Looks at labour standards 119-129. The WTO has not fulfilled its role in enforcing global labour standards. Discusses the key GATT provisions: Articles VI (social dumping) and XX.

#### BREAKING THE DEADLOCK: WHY AND HOW DEVELOPING COUNTRIES SHOULD ACCEPT LABOR STANDARDS IN THE WTO.

9 *Leland Junior University Stanford Journal of Law, Business & Finance*, 69 (2003)

Daniel A. Zaheer

Discusses trade-labour linkages. Focuses on the South's objections to such linkages. Proposes a system of WTO/ILO co-operation.

#### THE BOUNDARIES OF THE WTO: AFTERWORD: THE QUESTION OF LINKAGE

96 *A.J.I.L* 126 (2002)

Jagdish Bhagwati

Linkage disadvantages the South. Uses labour standards as an example. WTO is not institutionally capable of tackling the complex issues around core labour standards. Trade/labour linkage is likely to be counterproductive.

TRADE AND HUMAN RIGHT: DID YOUR JEANS ENSLAVE CHILDREN?  
CHILD LABOUR IN INTERNATIONAL TRADE

*2 Asper Review of International Business and Trade Law* (2002) 159

Joseph Langan

Discusses the 'linkage debate' with reference to linking trade law with labour law in an effort to eradicate child labour. North American perspective. Concludes that this is not a realistic goal at the moment and suggests other methods of tackling child labour.

CORE LABOUR STANDARDS IN WORLD TRADE LAW: THE NECESSITY  
FOR INCORPORATION OF CORE LABOUR STANDARDS IN THE WORLD  
TRADE ORGANISATION

*Journal of World Trade* 36(5) (2002)

Hans-Michael Wolfgang and Wolfram Feurhake

"Core labour standards must necessarily be included in the essentials of a global standard system because of their human rights character." This would be best achieved through the incorporation of labour standards in WTO law. The concerns of developing countries can be addressed by employing both trade and development measures (Section II).

THE CORRELATION BETWEEN LABOUR STANDARDS AND  
INTERNATIONAL TRADE

*Journal of World Trade* 36(2) (2002)

Kofi Addo

Can a nexus be established between labour standards and international trade? If so, would sanctions be appropriate and effective labour standard enforcement mechanisms? (Concludes that they would not) Discusses alternatives to sanctions. Looks at the issue in a north/south context.

TRADE-RELATED LABOUR AND ENVIRONMENT AGREEMENTS

*Journal of International Economic Law* (2002) 791-819

Chantal Thomas

The inclusion of IP law in the international trade regime sheds light on the difficulties and potential resolution of legal issues associated with labour-trade linkage.

SOCIAL LABELLING AND WTO LAW

*Journal of International Economic Law* (2002) 719-746

Carlos Lopez-Hurtado

Discusses the legality of government-sponsored labelling initiatives under the WTO agreements.

**PAY ME FAIRLY, KATHIE LEE! THE WTO, THE RIGHT TO A LIVING WAGE, AND A PROPOSED PROTOCOL.**

*20 N.Y.L. Sch. J. Int'l & Comp. L.* 61 (2000)

J.M. Spectar

Proposes a framework for reconciling worker's rights and the WTO's agenda and institutional structure. Suggests a new plurilateral protocol.

**A PERSPECTIVE ON TRADE AND LABOUR RIGHTS**

*Journal of International Economic Law* (2000) 43-62

Christopher McCrudden and Anne Davies

Discusses tensions between trade liberalization and labour rights. Sets out the four ways of dealing with these tensions. Identifies the issue of who should participate in the debate. (Aims to provide a map of the issues)

**THE TRADE-LABOUR NEXUS: DEVELOPING COUNTRIES' PERSPECTIVES**

*Journal of International Economic Law* (2000) 377-385

Jose M. Salazar-Xirinachs (former trade minister in Costa Rica)

LAC countries wish to avoid a formal linking of trade and labour issues. The article explains why they hold this position.

**A CROSSROAD IN INTERNATIONAL PROTECTION OF HUMAN RIGHTS AND INTERNATIONAL TRADE: IS THE SOCIAL CLAUSE A RELEVANT CONCEPT?**

*Melanges en L'Honneur de Nicolas Valticos Droit et Justice* (1999)

Shin-ichi Ago

Can the insertion of a social clause into trade agreements serve the aims of both the WTO and the ILO? Human rights criteria should not be used in WTO-ILO discussion because it is mostly irrelevant in determining economic consequences.

**THE LIMITS OF INTERNATIONAL TRADE MECHANISMS IN ENFORCING HUMAN RIGHTS**

*The International Journal of Children's Rights* 7, 1-29 (1999)

Holly Cullen

Discusses the capacity of trade mechanisms to be an effective tool in the fight against child labour. Social labelling (14-15). Argues that trade mechanisms should not be the main way in which the human rights problem of child labour is addressed. Where sanctions would be an appropriate response to child labour, they are (unfortunately) likely to be legally unavailable.

INTERNATIONALLY RECOGNISED LABOUR STANDARDS AND TRADE  
Chapter 5 in *International Economic Law With a Human Face* Friedl Weiss, Erik  
Denters and Paul de Waart (eds.)(Kluwer, 1998)

Friedl Weiss

The central issue is the legality of the use of trade measures to enforce labour standards. Discusses the evolution of the link between trade and labour rights, GATT panel practice and the selection of standards.

TRADE POLICY AND HUMAN RIGHTS

*Intereconomics* Vol.33, Iss.4 (1998)

Michael Leicht

Human rights are universal. In addition, the pursuit of labour standards would help rather than hinder development. Labour standards are disregarded where dictatorial regimes or poverty make their enforcement difficult. Therefore, labour standards should be enforced through the trade regime.

THE WTO AND THE SOCIAL CLAUSE: POST SINGAPORE

8 *European Journal of International Law* 118 (1997)

Virginia A. Leary

Short article looking at the effects of the paragraph on labour standards in the Declaration of the [Singapore] Conference.

BELABOURED PLAYING FIELDS, LABOUR STANDARDS: GLOBALISATION  
AND NEW WORLD ORDERS.

*The First Annual Australian Conference on International Trade, Education and  
Research*

Melbourne University 5-6 December 1996

Graham Dunkley

Focuses on labour standards. Discusses social labelling on page 14.

BELABOURED PLAYING FIELDS, LABOUR STANDARDS: GLOBALISATION  
AND NEW WORLD ORDERS.

*The First Annual Australian Conference on International Trade, Education and  
Research*

Melbourne University 5-6 December 1996

Graham Dunkley

Outlines the history and politics of the labour standards issue, the key arguments in the debate and the possible forms a labour standards regime might take. Advocates a system which encompasses a range of human and labour rights.

**LABOR STANDARDS IN THE GLOBALIZED ECONOMY: THE INCLUSION OF A SOCIAL CLAUSE IN THE GENERAL AGREEMENT ON TARIFF AND TRADE / WORLD TRADE ORGANIZATION**

*Human Rights Quarterly* 17.3 (1995) at 443.

Erika de Wet

Out of date in some respects, but provides a relevant outline and explanation of some of the main principles involved in the debate (eg. Free trade v fair trade, the political and economic implications of the inclusion of a social clause, proposed content and implementation of the clause and the relevance of ICESCR).

## 9. SANITARY AND PSYTO-SANITARY MEASURES (SPS) AGREEMENT

---

DEVELOPING DISHARMONY? THE SPS AND TBT AGREEMENTS AND THE IMPACT OF HARMONIZATION ON DEVELOPING COUNTRIES.

*Journal of International Economic Law* 7(4) 737-764 (2004)

Graham Meyeda

Discusses harmonization in relation to the SPS Agreement. Mentions the rights-based arguments for harmonization. Focus on the effects on developing countries.

THE WTO'S COMING TO DINNER AND FOOD SAFETY IS NOT ON THE MENU

In *Whose Trade Organisation?* (The New Press, 2004)

Lori Wallach and Patrick Woodall

The WTO has limited the ability of governments to prevent the entry of potentially risky foods onto their domestic markets. In addition, efforts to 'harmonize' food regulations has put downward pressure on countries' food safety standards. Trade trumps public health under SPS.

THE DOHA DECLARATION AND BEYOND: GIVING A VOICE TO NON-TRADE CONCERNS WITHIN THE WTO TRADE REGIME

*36 Vanderbilt Journal of Transnational Law* 95 (2003)

Larry A. DiMatteo, Kiren Dosanjh, Paul L. Frantz, Peter Bowal, Clyde Stoltenberg

In order to improve its treatment of non-trade concerns the WTO must increase the level of participation of non-trade stakeholders. Looks at consumer protection / health and safety 129-139.

PART III – FOOD SAFETY: THE BEEF HORMONES CASE

In *Reconciling Environment and Trade* (2001).

Edith Brown Weiss and John H. Jackson (eds.)

Four chapters on: The EU's position on Agriculture after *Beef Hormones*; WTO Jurisprudence and the SPS Agreement; the standard of review trade restrictive SPS measures; and food labelling.

THE WTO AGREEMENT ON SANITARY AND PSYTOSANITARY MEASURES: WEAKENING FOOD SAFETY REGULATION TO FACILITATE TRADE?

*55 Food and Drug Law Journal* 517 (2000)

Bruce A. Silverglade

Discusses the impact of the PSP on state and federal food regulation in USA. There is a need for an international food safety agreement.

THE WTO AGREEMENT ON SANITARY AND PHYTOSANITARY (SPS) MEASURES AS APPLIED IN THE FIRST THREE SPS DISPUTES: EC - HORMONES, AUSTRALIA – SALMON AND JAPAN – VARIETALS

*Journal of International Economic Law* (1999) 641-664

Joost Pauwelyn

AB interpretation of the SPS agreement – clarification of the rights and obligations of WTO member countries under the SPS agreement.

See Part IV(D)) of Petersmann Article “Primacy of Non-economic values in WTO dispute settlement practice relation to the WTO Agreement on SPS”

### **9.1 Beef hormone Case**

---

THE WTO’S COMING TO DINNER AND FOOD SAFETY IS NOT ON THE MENU

*In Whose Trade Organisation?* (The New Press, 2004)

Lori Wallach and Patrick Woodall

Beef Hormone case discussed 69-72.

RAISING HUMAN RIGHTS CONCERNS IN THE WORLD TRADE ORGANIZATION: ACTORS, PROCESSES AND POSSIBLE STRATEGIES

*Human Rights Quarterly* 24 (2002)

Caroline Dommen

Discusses in the context of the right to health pp.17-22.

RAISING HUMAN RIGHTS CONCERNS IN THE WORLD TRADE ORGANIZATION: ACTORS, PROCESSES AND POSSIBLE STRATEGIES

*Human Rights Quarterly* 24 (2002)

Caroline Dommen

Discusses *Hormones* in relation to the right to health pp17-22.

HORMONES, RISK MANAGEMENT, PRECAUTION AND PROTECTIONISM: AN ANALYSIS OF THE DISPUTE ON HORMONE TREATED BEEF BETWEEN THE EUROPEAN UNION AND THE UNITED STATES

*European Journal of Law and Economics* 14, 83-97 (2002)

Christopher Charlier and Michael Rainelli

Discussion of the notion of risk and the use of the precautionary principle in the *Beef Hormones* case. (This article does not discuss human rights issues).

### PART III – FOOD SAFETY: THE BEEF HORMONES CASE

In *Reconciling Environment and Trade* (2001).

Edith Brown Weiss and John H. Jackson (eds.)

Four chapters on: The EU's position on Agriculture after *Beef Hormones*; WTO Jurisprudence and the SPS Agreement; the standard of review trade restrictive SPS measures; and food labelling.

### HAS THE APPELLATE BODY ERRED? AN APPRAISAL AND CRITICISM OF THE RULING IN THE WTO HORMONES CASE

*Journal of International Economic Law* (1999) 605-639

Reinhard Quick and Andreas Bluthner

Critical analysis of the AB's position in the *Hormones* case. Part IV addresses the relationship between SPS and GATT (particularly article XX).

See Part III E. of Petersmann Article "Judicial Deference vis-à-vis democratic legislation: The example of the hormone beef dispute." In *Human Rights and the Law of the World Trade Organization* (2003)

## 9.2 Other cases

---

### THE WTO'S COMING TO DINNER AND FOOD SAFETY IS NOT ON THE MENU

In *Whose Trade Organisation?* (The New Press, 2004)

Lori Wallach and Patrick Woodall

Australian Salmon (pp72-73): places a heavy financial and scientific burden on the country whose law is being challenged.

Japan Apples: discusses the issues, but not the decision (released June 2005).

Spanish Oranges: Dispute with US pp80-81.

## 9.3 GM food issue

---

### WTO AGRICULTURAL TRADE BATTLES AND FOOD AID

*Third World Quarterly* 25(8) 1439-1452 (2004)

Jennifer Clapp

Discusses agricultural trade issues of contention between EU and USA: export credits and food aid and GM food. These issues have a significant impact upon countries in the South. The concerns of developing countries in relation to these issues should be taken into account in trade talks and negotiations.

**THE WTO'S COMING TO DINNER AND FOOD SAFETY IS NOT ON THE MENU**

In *Whose Trade Organisation?* (The New Press, 2004)

Lori Wallach and Patrick Woodall

GM food issue pp76-81. Discusses generally, with reference to labelling practices and in the context of the US case against the EU.

**GENETICALLY MODIFIED TRADE ORGANISMS AT THE WORLD TRADE ORGANIZATION: A HARVEST OF TROUBLE.**

*Journal of World Trade* 36(7) (2003)

Grant E Isaac and William A. Kerr

Links the GMO issue to the broader trade concerns it embodies – regulatory regionalism and the trade-environment relationship. Discusses the specific and general consequences of a panel ruling on the issue.

**THE ABCs AND NTBs OF GMOs: THE GREAT EUROPEAN UNION – UNITED STATES TRADE DEBATE – DO EUROPEAN RESTRICTIONS ON THE TRADE OF GENETICALLY MODIFIED ORGANISMS VIOLATE INTERNATIONAL TRADE LAW?**

*23 Northwestern Journal of International Law and Business* 239 (2002-2003)

Sarah Lively

Argues that the EC's restrictions on GMOs are lawful under international trade law. Explains the background/science/politics of the debate. Does not discuss human rights.

**THE EUROPEAN UNIONS'S EFFORTS TO SIDESTEP THE WTO THROUGH ITS BAN ON GMOs: A RESPONSE TO SARAH LIVELY'S PAPER 'THE ABCs AND NTBs OF GMOs'.**

*24 Northwestern Journal of International Law and Business* 173 (2003-2004)

Johannes S. A. Claus III

Answer to Lively's article (above). Details reasons why E.U. GMO legislation is not lawful under international trade law.

**PART V – ENVIRONMENTAL RISKS AND BIOSAFETY: GENETICALLY MODIFIED ORGANISMS – A FUTURE CASE?**

In *Reconciling Environment and Trade* (2001).

Edith Brown Weiss and John H. Jackson (eds.)

Three Chapters on: compatibility of GMO import regulations with WTO rules, labelling and the Cartagena protocol on biosafety.

TRADE, LABELLING AND GM FOOD ISSUES

*Journal of World Trade* 34(1) (2000) 111-122.

Runge and Jackson

Impact of GM agriculture on global trade. Discusses labelling options (promotes negative labelling) .

## **10.HUMAN RIGHTS AND OTHER TRADE TREATIES**

---

### **10.1 NAFTA**

---

#### **NAFTA'S INVESTMENT CHAPTER: INITIAL THOUGHTS ABOUT SECOND-GENERATION RIGHTS**

*Vanderbilt Journal of Transnational Law*, November 2003

Charles H. Brower II

NAFTA acts as a vehicle for a competition between civil and political rights and economic, social and cultural rights. Part III discusses the role and contribution of both sets of rights in the text and application of NAFTA. Concludes that contrary to popular opinion, ESCR are being promoted by NAFTA.

#### **LEGAL MECHANISMS FOR ENFORCING LABOUR RIGHTS UNDER NAFTA**

*18 University of Hawaii Law Review* 293 (1996)

Teresa R. Favilla-Solano

Discusses the enforcement of labour standards under NAFTA. Outlines arguments for and against the inclusion of labour standards in NAFTA

#### **SYMPOSIUM FREE TRADE AND DEMOCRATIC VALUES: NAFTA'S EFFECT ON HUMAN RIGHTS: INTRODUCTION**

*27 University of California, Davis Law Review* 791 (1994) (2 pages)

Robert T. Matsui

From a US representative perspective. Only by passing NAFTA could the US ensure a dialogue with Mexico that would improve Mexico's human rights record.

#### **NAFTA AND HUMAN RIGHTS: A NECESSARY LINKAGE:**

*27 University of California Davis Law Review* 793 (1993-1994)

James F. Smith

Examines why the US was unwilling or unable to make any human rights commitments in NAFTA.

#### **NAFTA'S EFFECT ON HUMAN RIGHTS AT THE BORDER**

*27 University of California Davis Law Review* 979 (1993-1994)

Robert L. Martinez

NAFTA involves human rights, but they were not discussed during negotiations. Particularly relevant are labour rights and the rights of immigrants and refugees at the border.

#### NAFTA AND HUMAN RIGHTS IN MEXICO

*27 University of California Davis Law Review 865 (1993-1994)*

Alejandro Sobarzo

Discussion about the inclusion of human rights objectives in NAFTA often paint too bleak a picture of the human rights situation in Mexico.

### 10.2 European trade and human rights

---

#### A LEGAL ANALYSIS OF THE HUMAN RIGHTS CLAUSES IN THE EU'S EURO-MEDITERRANEAN ASSOCIATION AGREEMENT

*Fifth Mediterranean Social and Political Research Meeting (2004)*

Lorand Bartels

The EU has comprehensive external human rights program. Human rights clauses in trade agreements have been used inconsistently. Discusses restrictions and capacities under the E-M human rights clause. Some human rights clauses should be applied positively as well as negatively.

#### HUMAN RIGHTS CLAUSES IN THE ASSOCIATION AGREEMENT: GUARDIAN TO HUMAN RIGHTS IN THE LEAD-UP TO EURO-MEDITERRANEAN FREE TRADE AREAS?

*Workshop XIV – Economic and Social Rights in the Euro-Mediterranean Area and the Impact of the Euro-Mediterranean Free Trade Agreements*

*Robert Schuman Centre for Advanced Studies (2004)*

Federica Donati

The EC should continue to include human rights clauses in its free trade agreements, but the mechanisms should be more transparent, accessible and enforceable. Offers suggestions as to how this could be achieved.

#### TRADE PREFERENCES AND HUMAN RIGHTS

In *The EU and Human Rights*, Philip Alson (ed.)

Barbara Brandtner and Allan Rosas

Focuses on trade preferences – especially the human rights clause - provided in both unilateral and bilateral community instruments. Talks about the development from the “stick” approach (which favours civil and political rights) to the “carrot” approach

(which acknowledges ECS rights). Discusses limitations resulting from the WTO context.

NAFTA AND HUMAN RIGHTS: A NECESSARY LINKAGE:  
*27 University of California Davis Law Review 793 (1993-1994)*

James F. Smith

Part III looks at the EU's integration of trade and human rights.

### **10.3 Bilateral agreements**

---

Nothing on this.

## 11. OTHER TOPICS

---

### 11.1 The right to trade

---

This is one of the main themes in Petersmann's work (also see Alston criticism) above.

Chapter 14: THE WTO AND THE RIGHTS OF THE INDIVIDUAL  
From *Trade Law and Global Governance*  
London, 2002

Steve Charnovitz

Examines the way that WTO agreements mandate certain rights for the individual in national law and at the WTO (eg IP rights under TRIPS). Even though private actors lack standing to lodge complaints directly to the WTO, some procedural rights are directly afforded. "Because it enhances both due process and property rights of economic actors, the WTO is more than a commercial agreement; it is also a human rights agreement".

'FUNDAMENTAL RIGHTS OR POLITICAL WHIM? WTO LAW AND THE EUROPEAN COURT OF JUSTICE'

*The EU and the WTO* (2001) 111. G. de Burca and J. Scott (eds.)

Gabrielle Marceau

Critique of the proposition that there is a freestanding human rights to trade.

TRADE AND HUMAN RIGHTS: THE CASE FOR CHINA

*CATO Journal* Vol.16, Iss.1.

James A. Dorn

Trade restrictions should not be used to promote human rights. Free trade is itself a human right (though suggests that social and economic rights are not).

INTERNATIONAL TRADE AND HUMAN RIGHTS FROM THE PERSPECTIVE OF THE WTO.

Chapter 8 in *International Economic Law With a Human Face* Friedl Weiss, Erik Denters and Paul de Waart (eds.)(Kluwer, 1998)

Asif H. Qureshi

The WTO has a limited human rights dimension. Separates trade and non-trade issues and rights (examples include the right to import and export, intellectual property rights). WTO promotes economic rights through encouraging economic growth and democratic processes and transparency.

## 11.2 Right to development

---

### THE HUMAN RIGHT TO DEVELOPMENT: BETWEEN RHETORIC AND REALITY

17 *Harvard Human Rights Journal* 137 (2004)

Stephen Marks

About the right to development (the article does not discuss trade or the WTO). Focus on US policy.

### HUMAN RIGHTS: THE WTO'S MISSING DEVELOPMENT AGENDA

*International Centre for Human Rights and Democratic Development* (2003)

Available at: [www.ichrdd.ca](http://www.ichrdd.ca)

Pamphlet on WTO and development as a human rights. Argues that trade liberalization, not development, is the driving force behind the Doha round. Discusses in relation to AoA and TRIPS. Includes a table of the ICCPR and ICESCR obligations of WTO members.

### TRADE AND HUMAN RIGHTS: WHAT'S AT ISSUE?

*Journal of World Trade* (2001) 35(2), 275-300

Hoe Lim

Argues that the WTO is linked to human rights aims and outcomes through Article XX, but that the WTO's most significant contribution to the human rights movement is its role in establishing a multilateral legal framework which facilitates free trade. Uses current issue examples of TRIPS and 'right to development'.

### THE RIGHT TO DEVELOPMENT: IMPLICATIONS FOR INTERNATIONAL ECONOMIC LAW

*American University International Law Review* 2000

15. *Am. U. Int'l L. Rev.* 1425

Isabella Bunn

Discusses the right to development and whether this right is or should be recognised in international economic law. Discusses WTO provisions specific to developing countries. Part I is more relevant than Part II.

Commission on Human Rights 'Question of the Realization of the Right to Development' September-October 1997.  
UN Document number: E/CN.4/1998/29

One paragraph on p.5 about the interplay between the trade system and the right to development (highlighted).

### **11.3 Agreement on Government Procurement (US-Burma Case)**

---

**BASIC HUMAN RIGHTS TOOLS ELIMINATED BY WTO RULES.**  
In *Whose Trade Organisation?* (The New Press, 2004)

Lori Wallach and Patrick Woodall

Talks about US Burma case and a similar Maryland human rights proposal (235-238).  
Critical of WTO Agreement on Government Procurement (AGP) for allowing trade to trump human rights.

**INTERNATIONAL ECONOMIC LAW AS A MEANS TO FURTHER HUMAN RIGHTS?**

In *International Economic Governance and Non-Economic Concerns* (2003)

Stephan Griller

Uses the Government Procurement Agreement as a specific example of the tensions between trade liberalization and the protection of human rights.

**INTERNATIONAL ECONOMIC LAW AS A MEANS TO FURTHER HUMAN RIGHTS?**

In *International Economic Governance and Non-Economic Concerns* (2003)

Stephan Griller

Uses the Government Procurement Agreement as a specific example of the tensions between trade liberalization and the protection of human rights.

**INTERNATIONAL ECONOMIC LAW AND THE PURSUIT OF HUMAN RIGHTS**

*Journal of International Economic Law* (1999) 3-48.

Christopher McCrudden

Discusses the issue of selective purchasing by state and local governments in the United States. This is an issue which reflects some of the underlying tensions between trade and human rights law (importance of trade liberalization v human rights, who should control the agenda? etc.)

CROSBY V NFTC: FLYING OVER A JUDICIAL HUMP: A HUMAN RIGHTS DRAMA FEATURING BURMA, THE COMMONWEALTH OF MASSACHUSETTS, THE WTO AND THE FEDERAL COURTS  
*32 Law and Policy in International Business* 51 (2000)

Mark B. Baker

The idea that “trade serves at best as an instrument for achieving the goals that societies seek” has been lost. Argues that strict interpretation of the GPA in a situation of gross human rights violations is not a proper application of the principle of free trade.

#### **11.4 Trade and Poverty**

---

TRADE, INEQUALITY AND POVERTY: WHAT DO WE KNOW?  
In *Brookings Trade Forum 2004: Globalization, Poverty and Inequality*, Collins and Graham (eds.) (2004)

Pinelopi Koujianou Goldberg and Nin Pavcnik

Concentrates on the short and medium term effects of trade liberalization in developing countries.

DO INTERNATIONAL TRADE INSTITUTIONS CONTRIBUTE TO ECONOMIC GROWTH AND DEVELOPMENT?  
*Virginia Journal of International Law*, Vol.44 (2003-2004)

Joel R. Paul

There is no theoretical or empirical basis for the argument that the WTO promotes economic growth and is good for development. The WTO should stop justifying its regime in this way. The WTO’s strength is in conflict resolution and it should use its capacity in this area to promote human rights.

TRADE AND DEVELOPMENT: ASSESSING THE IMPACT OF TRADE LIBERALIZATION ON SUSTAINABLE DEVELOPMENT  
*Journal of World Trade* 38(3) (2004)

Clive George and Colin Kirkpatrick

Describes a new methodology (SIA) for assessing the impact of trade policy reform on economic development. Applies this methodology to the four main negotiation areas of the DOHA round and finds that trade measures are likely to have social and environmental impacts that should be addressed.

THE PROSPECTIVE ROLE OF ECONOMIC AND SOCIAL HUMAN RIGHTS IN THE LAW OF INTERNATIONAL TRADE LIBERALIZATION AND ECONOMIC INTEGRATION: GLOBALIZATION AND HUMAN RIGHTS: LOOKING OUT FOR THE WELFARE OF THE WORST OFF,

35 *N.Y.U. J. Int'l L. & Pol.* 201 (2002)

Eleanor M. Fox

Considers global questions about the interaction of human rights and global trade. Considers member states' right to derogate and privilege non-trade rights. Considers procedural rights that could usefully be built into the system. At least unfair and artificial trade barriers of the developed world should be eliminated as a trade barrier.

GLOBALIZING DECENCY: RESPONSIBLE ENGAGEMENT IN AN ERA OF ECONOMIC INTEGRATION

5 *Yale Journal of Human Rights and Development* (2002)

Craig Forcese

Examines the theory and practice of 'constructive engagement' v human rights sanctions. Does trade with oppressive regimes improve human rights situation in the country?

LEGAL ASPECTS OF THE POVERTY AGENDA AT THE WTO

*Journal of International Economic Law* (2002) 3-21

Joel P. Trachtman

To what extent is the trade system complicit in the creation of a 'global apartheid'? Greater equalization through redistribution must become part of global trade.

POVERTY REDUCTION, TRADE AND RIGHTS

18 *American University International Law Review* 1399 (2002-2003)

Chantal Thomas

Examines the relationship between global trade and global poverty. Part IV looks at trade and human rights and outlines the benefits that would come from importing human rights (particularly economic, social and cultural rights) into the trade regime. Also outlines (and counters) concerns about human rights in this context. .

THE WTO AND LDCs: DELIVERING A BETTER FUTURE THROUGH TRADE.

Speech at the Third United Nations Conference on Least Developed Countries, Brussels, 17 May 2001.

Michael Moore

Available at: [http://www.wto.org/english/news\\_e/spmm\\_e/spmm63\\_e.htm](http://www.wto.org/english/news_e/spmm_e/spmm63_e.htm)

LCDs have gained a lot and have a lot to gain from the global trade system.

THE SUBJECT OF GLOBALISATION AND HUMAN RIGHTS

94 *American Society of International Law Proceedings* 146 (2000)

Anne Orford

“Sketches three ways in which the relationship between human rights and economic globalization might be conceptualised”. (Short piece)

TRADE, INCOME DISPARITY AND POVERTY

WTO Special Studies Series

WTO Publications

1999

Available at:

[http://www.wto.org/english/res\\_e/booksp\\_e/special\\_study\\_5\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/special_study_5_e.pdf)

Based on two expert reports commissioned by the WTO Secretariat, aims to clarify the interface between trade, global income disparity, and poverty.

THE FEASIBILITY AND DESIREABILITY OF GLOBAL FREE TRADE

*The Legal and Moral Aspects of International Trade: Freedom and Trade*, Parry Qureshi and Steiner (eds.)

Ernst-Ulrich Petersmann, Paul Krugman and Brian Barry

Three different views on the feasibility and desirability of global free trade.

POVERTY AND SOCIAL ANALYSIS OF TRADE AGREEMENTS: A MORE COHERENT APPROACH?

Eugenia McGill, (2004) 27 *Boston College International and Comparative Law Review* 371

**11.5 Feminist perspective / women’s rights**

---

THE IMPACT OF TRADE LIBERALIZATION ON WOMEN’S JOB OPPORTUNITIES AND EARNINGS IN DEVELOPING COUNTRIES

*World Trade Review* 2:2 (2003)

Hildegunn Kyvik Nordas

Uses case studies of five developing countries to examine the impact of trade on women. Contends that trade liberalization is likely to create jobs for women over time and increase their relative wages.

FEMINIST PERSPECTIVES ON INTERNATIONAL ECONOMIC LAW

In *Perspectives in International Law* Asif H. Qureshi (ed.)

Mary Childs

Sets out intersections of feminist work and international economic law and some implications of feminist theory for critiques of international trade law. Discusses concepts, institutions and rules.

FURTHER FEMINIST READING ON INTERNATIONAL ECONOMIC LAW

In *Perspectives in International Law* Asif H. Qureshi (ed.)

Fiona Beveridge

Adds to Childs' chapter. International economic law is constructed around a set of binary oppositions.

WOMEN'S RIGHTS, THE WORLD TRADE ORGANISATION AND  
INTERNATIONAL TRADE POLICY

*Women's Rights and Economic Change*, No.4, August 2002.

Association for Women's Rights in Development

Eight page pamphlet arguing that WTO's trade policy is gender-blind. A gender analysis of economic policies should be performed.

WOMEN'S RIGHTS AND THE PUBLIC MORALS EXCEPTION OF GATT  
ARTICLE 20

22 Mich. J. Int'l L. 219. (2000)

Liane M. Jarvis

There is a legal basis for uniting trade and human rights law. The public morals exception under articles XX should be interpreted in accordance with evolving international law on women's rights.

THE EFFECTS OF THE WTO ON WOMEN'S RIGHTS

Third World Network

Vandana Shiva

Available at: <http://www.twinside.org.sg/title/women-ch.htm>

Market value, the paradigm within which the WTO operates, devalues women's work which contributes to the environmental economy and the sustenance economy. Discusses TRIPS.

## 11.6 WTO Accession (China + Vietnam)

---

### DO AS I SAY, NOT AS I DO: THE UNFAIR TERMS OF VIET NAM'S ENTRY TO THE WTO

Oxfam Briefing Paper 74, April 2005.

[http://www.oxfam.org/eng/pdfs/bp74\\_VietNam\\_WTOentry.pdf](http://www.oxfam.org/eng/pdfs/bp74_VietNam_WTOentry.pdf)

Viet Nam is being pushed to meet 'WTO-plus' demands (that go beyond what is expected of member countries). This could threaten the livelihoods of many of Viet Nam's poor and the future development of the country.

### HUMAN RIGHTS AT THE CROSSROADS: WHEN EAST MEETS WEST

29 *Vermont Law Review* 109 Fall, 2004,

Amy J McMaster

China's entry into the WTO. Has this had any effect on the human rights situation in China. Should China have been allowed to enter (on a human rights basis)?

### CHINA'S GROWTH TREADMILL, GLOBALIZATION, HUMAN RIGHTS AND INTERNATIONAL RELATIONS

*The Review of International Affairs* 3(4) (2004)

Ann Kent

China's process of integration into the international community has had unintended consequences for human rights within the country. Argues that the liberalization of China's economy has not been gradual enough. Analyses China's accession to the WTO pp530-533.

### CHINA: TRADE: LAW AND HUMAN RIGHTS

7 *International Trade and Business Law Annual* 301 (2002)

Alice ES Tay and Hamish Redd

Discusses the relationship between the WTO and human rights (p304). Sets out practical and political limitations. Focus on China (p310) – accession will provide incentive for legal reform, though this will not necessarily lead to the alleviation of human rights abuses.

### ARE HUMAN RIGHTS ON CHINA'S WTO AGENDA?

HRIC (Human Rights In China) Publication, June 26 2002

Pitman B. Potter

Available at:

<http://www.hrichina.org/public/contents/article?revision%5fid=2056&item%5fid=2055>

Changes associated with WTO accession may have some positive human rights effects, but are likely to make little contribution to improving human rights protections for the most vulnerable elements of Chinese society. The impact of WTO-driven legal reforms on human rights in China should be monitored.

THROUGH A GLASS DARKLY: CHINA, TRANSPARENCY AND THE WTO  
3 *Asian Law* 59 (2001)

Sarah Biddulph

Examines whether the level of transparency in China's legal system is sufficient to fulfil the requirements of accession to the WTO.