



TRADE AND INVESTMENT

Overview

This briefing note outlines the implications of trade and investment liberalisation for the enjoyment of human rights and social and economic equality. It considers the policies implemented through the World Trade Organisation (WTO), as well as through free trade agreements concluded outside of the WTO (including consideration of intellectual property rights provisions, trade in services, and investor-state dispute settlement). Finally, the impact of trade liberalisation on the right to work and workers' rights is considered.

Also included is a selection of resources that are helpful for understanding the human rights impacts of trade and investment liberalisation as well as the broader political and economic context.

This briefing note was originally developed in August 2016, following a mapping of ESCR-Net members focused on economic policy and human rights in 2015-2016 and reflects one of the key themes identified by members for further analysis and potential collective action.

1. Context and Key Terms

Introduction

Free trade in goods and services has been a key pillar of the neoliberal political and economic project for more than fifty years.¹ During that time, the world's most powerful economic and political institutions² have promoted free trade as a central driver of economic growth, poverty reduction and—most recently—sustainable development. The newly adopted [2030 Agenda for Sustainable Development](#), for example, commits governments to trade liberalisation as a means of realising greater food security, expanding decent work opportunities, and decreasing economic inequality within and among countries.³ For the purpose of this briefing note, **free trade** or trade **liberalisation** is defined as the process of eliminating barriers to trade between countries.

Foreign investment, which is an increasingly important goal of free trade agreements, is defined as investment by a company or entity in one country in a company or entity in another country. As with trade liberalisation, multilateral organisations and governments consistently promote foreign investment as a pathway to sustainable economic development.

Historical Development of Trade and Investment Promotion

The goal of free trade was principally entrenched at an institutional level through the establishment of the **General Agreement on Tariffs and Trade** (GATT) in 1947. The GATT served as an international forum for governments to negotiate trade rules with the objective of lowering **tariffs** (taxes to be paid on categories of goods that are imported or exported).⁴ After several rounds of negotiations, States that were parties to the GATT

agreed to expand its scope and mandate through the establishment of the [World Trade Organisation](#) (WTO) in 1994, discussed further in Part 2.1 below.

Institutions such as the [World Bank](#) and the [International Monetary Fund](#) have also been powerful promoters of free trade during the last 30 years by frequently including trade and investment liberalisation as a condition for their financial support to developing countries.⁵

Finally, in the last two decades, there has been an exponential increase in the number of bilateral and multilateral trade and investment agreements, referred to as **free trade agreements** (FTAs), that are concluded outside the WTO's formal negotiations. Almost every WTO member country is also a party to a FTA,⁶ and there are approximately 3,200 international investment agreements in place.⁷

2. Human Rights Impacts of Trade Policies

International trade policies have the potential to profoundly affect the enjoyment of a broad range of human rights, including the rights to decent work, health, and adequate food. As such, both WTO policies and FTAs have attracted criticism from social movements, NGOs and human rights experts. For example, in 2015, ten UN Human Rights Council mandate-holders voiced their concern in joint and separate statements regarding the impact of trade and investment agreements on the realisation of human rights.⁸

These agreements have often been driven by the interests of powerful corporations and have served to consolidate their profit and market share at the expense of local opportunities for decent work, sustainable and equitable economies, and human rights.⁹ The negotiation of the Trans-Pacific Partnership (TPP) for example is a clear example of the 'corporate capture' of these processes: corporate lobbyists have had considerable influence over the content of the agreement, while most legislators and all representatives of civil society have been completely excluded.¹⁰ Trade agreements promote the interests of the corporate sector in numerous ways, including by driving down wages in developed countries that are made to compete with lower labour costs in developing countries, and entrenching low labour costs in developing countries through provisions in agreements that protect the profits of foreign investors (discussed further in section 2.2).¹¹ This is fundamentally at odds with the obligations of governments to give primacy to their duties to respect, protect and fulfil human rights, and has led to calls for trade policies that are inconsistent with the human rights framework to be abolished.¹²

Further, because of the cross-border impact of international trade, inequitable trade policies put governments at risk of breaching their extra-territorial human rights obligations (ETOs)¹³ as well as their duties within national borders. As stated in the [Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights](#), governments are responsible for the impacts of their policies, wherever they occur, if it is foreseeable that they will affect the enjoyment of economic, social and cultural rights.¹⁴

This principle has also been confirmed by the [UN Committee on Economic, Social and Cultural Rights](#) (CESCR), which—for example—urged Germany during its review 'to fully apply a human rights-based approach to its international trade and agriculture policies, including by reviewing the impact of subsidies on the enjoyment of economic, social and cultural rights in importing countries.'¹⁵ Further, governments are required under Article 2(1) of the [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR) to

take steps towards the full realisation of rights both as individual States and ‘through international assistance and cooperation, especially economic and technical.’

This has led to increasing calls for governments to conduct human rights impact assessments before entering into new trade agreements. The UN Special Rapporteur on the Right to Food, for example, published [Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements](#), which require that impact assessments are conducted by States before any agreements are concluded, with periodic impact assessments to follow. As mentioned above, where agreements threaten to erode the enjoyment of human rights, they should be terminated in line with the primacy of governments’ human rights obligations.

2.1. The World Trade Organisation

The WTO currently has 163 member States, and it remains the largest and most inclusive forum in which governments negotiate and resolve international rules and disputes relating to trade. The dozens of agreement concluded within the WTO are meant to progressively eliminate all barriers to trade, which include tariffs and **non-tariff barriers to trade**, such as labelling laws and measures designed to protect human health and the environment that have trade-restricting effects.

Since its inception the WTO has received sustained criticism for its perceived bias in favour of developed countries. This bias was in fact explicitly acknowledged by the Director-General of the WTO a decade ago when he stated that ‘while political decolonization took place more than 50 years ago, we have not yet completed economic decolonization’, and that more was needed to be done to rebalance the WTO’s rules in favour of developing countries.¹⁶ For example, least developed countries have been estimated to have collectively lost around \$USD600 million per year as a result of the obligations resulting from one round of trade negotiations under the WTO.¹⁷

A key example of the way in which the WTO’s rules have undermined the fulfilment of human rights in developing countries, in this case the right to food, is the impact of the WTO’s rules on agriculture. These rules govern the extent to which government support—largely in the form of financial subsidies—is permitted for local farmers and agricultural producers. As stated by the UN Special Rapporteur on the Right to Food, support for small-scale farmers is crucial for fostering food sovereignty and security in developing countries.¹⁸ In particular, restrictions in the agriculture sector impact on the availability and physical and economic accessibility of food, noted by CESCR as forming part of the core content of the right to food.¹⁹ However, the current rules around permissible support for local farmers were designed with the objectives of developed countries in mind.²⁰ This has resulted, for example, in the US continuing to provide massive financial subsidies to its agricultural industry,²¹ but a highly contested debate regarding the legality of public stockholding programmes in developing countries, whereby governments buy grains from local farmers at a fixed price as a food security measure.²² Moreover, developed countries have historically provided generous support to their local industries to enable their own industrial development over time; precisely the kind of support that they now seek to deny to developing countries.²³ The imbalance in the rules on agriculture was one of the reasons that developing countries specifically pushed in the 1990s for a round of WTO negotiations to better address their national circumstances, known as the Doha Development Round. While that round of negotiations commenced in 2001, most of the issues at its core remain unresolved.

The WTO's rules around intellectual property rights (elaborated in the [Agreement on Trade-related Aspects of Intellectual Property Rights](#) (TRIPS Agreement)) have also been strongly criticised for their impact on the right to health, particularly on the right to affordable essential drugs in developing countries.²⁴ By restricting the production of cheap generic medicines, including anti-retroviral drugs that can be used to manage HIV, life-saving healthcare has been pushed out of reach for millions in the developing world,²⁵ violating the availability and accessibility components of the right to health. The deeply unjust nature of these rules led to the introduction in 2001 of some 'flexibilities' in the WTO's intellectual property agreement that have enabled some developing countries to increase access to affordable medicines.

Developing countries are further disadvantaged by the WTO's dispute settlement procedure. The WTO has a robust dispute settlement mechanism with coercive enforcement measures, and hundreds of disputes have been referred to the WTO for settlement over the last 20 years. If a decision of the WTO's highest dispute settlement body (the Appellate Body) is ignored by a party to the dispute, the Appellate Body may authorise retaliatory trade measures that can exact a heavy economic price.²⁶ This can be contrasted with the very weak international enforcement mechanisms that exist to compel a government to fulfil its human rights obligations.²⁷

The threat of punitive counter-measures has been described by the UN Special Rapporteur on the Right to Food as having a potential 'chilling effect' on governments of countries suffering from food insecurity who wish to adopt policies to redress the situation. Poorer countries are also vulnerable to coercive behind-the-scenes diplomacy by more powerful countries. Further, they are less likely to have the resources to navigate the highly complicated rules of WTO agreements, or to bear the costs of litigation in the Dispute Settlement Body.

2.2. Free Trade Agreements

In recent years, free trade agreements have come under scrutiny for pushing measures that go beyond the level of trade and investment liberalisation embodied in WTO agreements. These measures often seek 'regulatory harmonisation' between countries at vastly different levels of economic development, and confer broad, enforceable rights on corporate investors through investment chapters embedded in FTAs (in contrast with the poorly-enforced human rights of the communities they invest in). Among the common features of these agreements that have serious implications for the enjoyment of economic and social rights are, as discussed below: extensive intellectual property provisions; the liberalisation of trade in services; and the privileged position given to investor rights over human rights via investor-state dispute settlement clauses.

Further, as noted in section 2, despite the broad scope of many of these agreements, there has been very little transparency around the negotiation of many of the recent 'mega trade agreements', including the Trans-Pacific Partnership (which will cover one-third of global trade), the Trans-Atlantic Trade and Investment Partnership (which would cover one-half of global trade), the Regional Comprehensive Economic Partnership (which includes Asia's biggest economies), and the Trade in Services Agreement (which is likely to cover two-thirds of all trade in services). While representatives of powerful industries reportedly had 'privileged access' to the text of the TPP during negotiations, civil society had to primarily rely on leaked drafts to inform their advocacy.²⁸ This not only undermines the ability of civil society to evaluate the impact of these agreements as they're being negotiated; it is itself a violation of the right of citizens to take part in the conduct of public affairs and the right to information.²⁹

➤ Intellectual Property Rights Provisions

FTAs are being used to entrench intellectual property rights provisions that are more expansive than those contained in the WTO's TRIPS Agreement. These so-called 'TRIPS-plus' provisions, which lack the flexibility embedded in the TRIPS Agreement to enable some measures in the public interest, have grave implications for the realisation of the right to health through the restriction of the availability of affordable generic medicines.³⁰ Further, they pose a threat to the food sovereignty of small and indigenous farming communities by consolidating the already extensive commercial power held by large agribusiness companies, reflected in the fact that 10 companies control over three-quarters of the global commercial seed market.³¹

For example, a series of FTAs between developing countries and either the US or EU include standards that provide patent-like legal rights over crop varieties.³² This threatens the conservation and redistribution of seeds practiced by indigenous communities over generations, forcing them to buy seeds for each crop cycle, and undermining informal exchange of knowledge and seed-sharing that has underpinned the food sovereignty of these communities.³³ This can be particularly detrimental for the livelihoods of women farmers: women grow or raise most of the world's food and are considered 'guardians of food security' in light of their role as custodians and users of traditional knowledge in land management.

➤ Trade in Services

The liberalisation of trade in services promoted by FTAs such as the Trade in Services Agreement, currently being negotiated between 23 States including the United States and the European Union, fosters the privatised, for-profit provision of essential social services. The tension between this approach and the human rights obligations of governments to ensure the substantive components of human rights and equal access to, among other things, healthcare, education, water and sanitation is evident in recent decisions to take privatised services back into public hands. For example, an Indonesian court recently annulled water privatisation contracts after the price of water increased four-fold and coverage deteriorated especially badly in low-income areas.³⁴ The court found that the privatisation had led to the violation of citizens' right to water.³⁵ The recent wave of 're-municipalisation' of public utilities in Europe in particular (effectively the reversion of ownership of utilities from private providers back to local governments) further demonstrates the risk that privatised services will fail to operate, or be properly regulated by States, in accordance with human rights standards or on a non-discriminatory basis.³⁶

The liberalisation of trade in services also has the potential to significantly increase women's burden of unpaid care work and deepen women's poverty. The introduction of market-based user fees is not just a regressive measure that deters women from themselves accessing essential services, such as healthcare and education; as services are cut in a bid to increase economic efficiency, women are the ones who are left to fill the gaps in provision.³⁷ As women's burden of care work in the household increases, they are further precluded from seeking employment, education, or exercising a range of other rights, thereby entrenching cycles of poverty.³⁸

➤ Investor-State Dispute Settlement

Perhaps the most controversial aspect of FTAs that entrenches disproportionate protection for the rights of investors is the Investor-State Dispute Settlement (ISDS)

mechanism. ISDS provisions are most commonly found in bilateral investment treaties, but increasingly feature in investment chapters of FTAs that are designed to attract international investment.

ISDS provisions enable investors to bring a claim in an arbitral tribunal against a government for a breach of a provision of the agreement or treaty. The number of claims initiated under ISDS has been increasing in the last decade, and the majority of these cases are brought against developing countries.³⁹ The use of ISDS by investors to infringe on the ability of governments to advance their domestic social and economic policies, including their human rights responsibilities, has led to a recent wave of termination of bilateral investment agreements by Latin American governments, and increasingly strident calls by social movements and civil society more generally to reject or radically revise ISDS provisions in trade agreements.⁴⁰

Critiques of ISDS generally highlight three broad sets of concerns. The first pertains to the scope of the provisions that investors have sought to enforce through ISDS, including for example the requirement that investors receive “fair and equitable treatment.” For example, that provision has been interpreted by an arbitral tribunal to protect expectations of investors that lack any basis in domestic law.⁴¹ Aside from the permissive wording of the provisions themselves, a recent review of the jurisprudence of arbitral tribunals shows that, in interpreting these provisions, tribunals can take an extremely broad view of their scope in favour of the investor.⁴²

The second set of concerns relates to the arbitral process itself, which the [Independent Expert on the promotion of a democratic and equitable international order](#) recently stated could entail a prima facie violation of the principle of legality.⁴³ While not a judicial process, significant concern has been expressed regarding the consistency,⁴⁴ transparency and impartiality of decisions made in ISDS arbitrations.⁴⁵

The final set of concerns relates to the use of ISDS to directly undermine actions taken by governments to protect human rights, the environment, or promote equitable development. ISDS claims have been brought to challenge South African legislation introduced to redress historical discrimination;⁴⁶ Egypt’s proposed increase in the minimum wage;⁴⁷ the introduction of anti-smoking measures in Uruguay;⁴⁸ and El Salvador’s refusal to grant a mining permit on environmental grounds.⁴⁹ Arbitral tribunals have routinely ignored the binding human rights obligations of governments in making their decisions in favour of enforcing the rights of investors. For example, in 2015 Argentina was ordered to pay USD\$405 million to a private water company for freezing the price of water during an economic crisis in the early 2000s that led to mass unemployment.⁵⁰ The tribunal found that, while Argentina argued its actions were in fulfilment of the human right to water for its population, that right was trumped by the rights of Suez under its contract with the government.⁵¹ Even when successfully defended, such cases involve the diversion of substantial government resources and time.⁵²

Private investors have also used ISDS to undermine attempts by governments to restructure their sovereign debt to avert or minimise the impact of financial crises.⁵³ Once again, Argentina serves as an example of this. Despite reaching an agreement with a majority of bondholders as part of its debt restructuring in 2005, a minority of bondholders are continuing to sue Argentina in an arbitral tribunal for more than USD\$2 billion.⁵⁴

2.3. Trade Liberalisation and the Right to Work

The liberalisation of trade shapes domestic economies, industries and labour markets in a way that fundamentally affects the realisation of human rights related to labour and working conditions, including the right to work and the right to collectively organise in the workplace. States obligations in this regard include, for example, the rights to: work;⁵⁵ just and favourable conditions of work (including remuneration which provides fair wages, equal pay for work of equal value, and a decent living, as well as safe and healthy working conditions);⁵⁶ form trade unions and to strike;⁵⁷ and social security.⁵⁸

One of the justifications underpinning trade liberalisation has been that free trade will contribute to the expanded and more efficient production of exported goods, which will in turn increase productivity and opportunities for decent work for men and women. However, while a growth in export-oriented industries may create new job opportunities, in developing countries in particular these jobs have tended to be concentrated in labour-intensive, low value-added, and low-wage export industries.⁵⁹ In developed countries, together with technical innovation, this has meant the loss of industrial jobs paying a living wage.⁶⁰

In the manufacturing sector in developing countries, the expectation that wages will rise as productivity increases has been displaced by evidence that firms operate on the basis of competitive advantage that depends on the lower pay, casualization and informalisation of workers, particularly women workers. For example, employers in export processing zones have been shown to segregate women in unskilled positions that do not provide opportunities for training and promotion and suppress union rights.⁶¹ This is especially detrimental given that women's organising in the workplace has been instrumental to the improvement of wages and working conditions for women, including narrowing the gender pay gap.⁶²

The liberalisation of trade has also led to an increase in the number of people engaged in home-work, which is among the least secure forms of informal work.⁶³ A 2010 study estimated that there are more than 300 million home-workers in developing countries, many of whom work in export-oriented industries such as textile and garment production.⁶⁴ Aside from losing a portion of their wages to intermediaries, like all forms of informal work home-workers lack basic labour rights protections, such as social protection and leave provisions.

At the same time, micro, small and medium-sized enterprises (MSMEs), which are a critical source of employment and livelihood in developing countries, are particularly vulnerable to increased competition from imported goods. MSMEs are generally accustomed to operating in a protected market, and are unable to take advantage of reduced barriers to trade in other countries because of the resources and knowledge required to negotiate exporting procedures. Women-owned MSMEs are particularly disadvantaged in this context because of the structural barriers they face to accessing finance, a lack of access to critical information and training on key issues, and the disproportionate burden of unpaid care work for which they retain responsibility even while working.⁶⁵

3. Key Resources

Below is an initial list of resources on a range of trade, investment and human rights issues. We welcome members and partners to suggest other relevant resources to highlight.

Selected Resources from ESCR-Net Members

Asia Pacific Forum on Women, Law and Development, 'Regional Comprehensive Economic Partnership (RCEP): Robbing Communities to Extract Profit' (2016), available in [English](#).

Overview of the human rights implications of the RCEP, with a focus on the consequences for women's human rights.

Arab NGO Network for Development, 'IMF's Trade and Investment Related Advice to Arab Countries: Trends and Implications' (2013), available in [English](#).

Discussion of the IMF's structural policy advice to Arab countries and the challenges of production, wages, poverty, and inequalities in the Arab region

CIEL, The Trans-Pacific Partnership and the Environment: An Assessment of Commitments and Trade Agreement Enforcement (2015), available in [English](#).

Evaluation of the likely negative environmental and human rights effects of the TPP.

Democracy Center, 'Unfair, Unsustainable and Under the Radar: How Corporations use Global Investment Rules to Undermine a Sustainable Future' (2013), available in [English](#) and [Spanish](#).

Discussion of system of international investment rules and arbitration tribunals that is being used by corporations to undermine citizen and government action on a range of urgent social and environmental issues.

ESCR-Net 'Global Economy, Global Rights' (2014), available in [English](#), [French](#), [Spanish](#) and [Arabic](#).

A practitioners' guide which synthesises and analyses the interpretation of extraterritorial human rights obligations (ETOs) in the context of corporate human rights violations from the perspective of UN treaty bodies.

ESCR-Net, Women and ESCR Working Group Briefing Paper: the intersection between work and women's economic, social and cultural rights (2016), available in [English](#) and [Spanish](#).

Other Resources

ActionAid, Trading Up, Crowded Out: Ensuring Economic Diversification Works for Women (2016), available in [English](#).

A discussion of the relationship between gender inequality and economic diversification policies, including the diversification of export production.

Alternative Trade Mandate, 'Time for a New Vision' (2015), available in [English](#).

An outline by over 50 European NGOs of an alternative model for trade that is consistent with the fulfillment of human rights

ETC Group 'Putting the Cartel before the Horse...and Farm, Seeds, Soil, Peasants, etc.; Who Will Control Agricultural Inputs?' (2013), available in [English](#) and [Spanish](#).

A critique of the industrial food system and the role played by trade policies in concentrating power in the hands of a few powerful businesses.

GRAIN, *New Trade Deals Legalise Corporate Theft, Make Farmers Seeds Illegal* (2016), available in [English](#), [French](#) and [Spanish](#).

A critique of the impact that new trade deals have on the ability of small-scale farmers to save, produce and exchange seeds around the world.

Sarah Joseph, *Blame it on the WTO? A Human Rights Critique* (2012), available in [English](#).
A critique of the impact of WTO policies on poverty alleviation, development and the enjoyment of human rights.

Kalvajt Singh & Burghard Ilge (eds.) *Rethinking Bilateral Investment Treaties: Critical Issues and Policy Choices* (2016), available in [English](#) and [Dutch](#).

An overview of the current impact of investment agreements on economic, health, and social policy and a discussion of alternative approaches to reforming these agreements.

Third World Network, *'Potential Human Rights Impacts of the Trans-Pacific Partnership Agreement'* (2015), available in [English](#).

Extensive analysis of the potential human rights implications of the TPP, including economic and social rights.

UN Commission on Trade and Development, *'World Investment Report: Reforming International Investment Governance'* (UNCTAD) (2015), available in [English](#).

Detailed discussion of the policy challenges in international investment protection and promotion, including the right of governments to regulate, investor-state dispute settlement and investor responsibility.

UN Women, *Progress of the World's Women 2015-2016: Transforming Economies, Realizing Rights* (2015), available in [English](#).

Detailed critique of the impact of the current economic model on women's rights with comprehensive suggestions for alternative policies.

**This paper was originally written in English, so the endnotes are only in English but available for further reference.*

¹ For a discussion by ESCR-Net members of this broader political, economic and social context, see ESCR-Net Social Movement Working Group, *'A Common Charter for Collective Struggle'* (2016).

² This includes the World Trade Organisation and its predecessor, the General Agreement on Tariffs and Trade; the International Monetary Fund; the World Bank; and the United Nations, particularly through the UN Commission on Trade and Development.

³ See, e.g., Goal 10 of the 2030 Agenda for Sustainable Development which is intended to 'Reduce inequality within and among countries'. As a means of realizing that goal, target 10.a requires governments to 'Implement the principle of special and differential treatment for developing countries, particularly least developed countries, in accordance with World Trade Organisation Agreements'.

⁴ For an overview of the evolution of the GATT and World Trade Organisation, see Sarah Joseph, *Blame it on the WTO? A Human Rights Critique* (2012).

⁵ While rising inequalities exist within countries in every region, substantial inequalities also exist between countries, in terms of wealth and consumption of the world's natural resources. Almost all of the world's hungry people, for example, live in developing countries

(<http://www.worldhunger.org/2015-world-hunger-and-poverty-facts-and-statistics/>). The terminology of developed and developing countries is used to highlight an aspect of this inequality, which is central to understanding current trade and investment agreements, despite the view that there are some 'middle income countries,' like China or South Africa, that challenge the dichotomy of developed/developing countries. The vast majority of the world's impoverished people live in developing countries, and while there are large impoverished communities in developed countries in the North, it is important to recognise that developed countries have greater resources at their disposal to address social and economic inequality.

⁶ World Trade Organisation, 'World Trade Report 2011, The WTO and Preferential Trade Agreements: from co-existence to coherence' (2011).

⁷ UN Commission on Trade and Development 'World Investment Report: Reforming International Investment Governance' (2015).

⁸ See, e.g., Office of the High Commissioner for Human Rights, 'UN experts voice concern over adverse impact of free trade and investment agreements on human rights' (2 June, 2015) available at

<<http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=16031&LangID=E>>

⁹ See, e.g., OECD (2004) Promoting SMEs for Development. Promoting Entrepreneurship and Innovative SMEs in a Global Economy: Towards a More Responsible and Inclusive Globalisation. Paper presented at the 2nd OECD Conference of Ministers Responsible for Small and Medium Sized Enterprises, Istanbul, 3–5 June, unpublished report, OECD.

¹⁰ Lori Wallach, Ben Beachy 'Obama's covert trade deal' *New York Times* 2 June 2013 http://www.nytimes.com/2013/06/03/opinion/obamas-covert-trade-deal.html?_r=1

¹¹ Gordon Lafer, 'Partnership or Putsch' *Project Syndicate* 14 Jan 2014, <https://www.project-syndicate.org/commentary/gordon-lafer-calls-attention-to-the-frighteningly-anti-democratic-implications-of-the-trans-pacific-partnership>

¹² Report of the Independent Expert on the promotion of a democratic and equitable international order (2015) UN General Assembly (2015) A/70/285, para. 14.

¹³ In 2014, ESCR-Net members produced a practitioners' guide which synthesises and analyses the interpretation of ETOs in the context of corporate human rights violations from the perspective of UN treaty bodies. The resource is built on the concluding observations of UN treaty bodies issued between 2007 and 2014, as well as the general comments issued by UN treaty bodies from 2000 onwards: ESCR-Net 'Global Economy, Global Rights' (2014) <https://www.escr-net.org/news/2014/guide-extraterritorial-obligations>.

¹⁴ Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, Principle 9.

¹⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: *Concluding observations of the Committee on Economic, Social and Cultural Rights: Germany*, 12 July 2011, E/C.12/DEU/CO/5, para. 9.

¹⁶ Pascal Lamy, 'It's Time for a new "Geneva Consensus" on making trade work for development' Emile Noel Lecture New York University Law School, New York, 30 October 2006 http://www.wto.org/english/news_e/sppl_e/sppl45_e.htm.

¹⁷ Joseph Stiglitz, Andrew Charlton, 'The Right to Trade' A Report for the Commonwealth Secretariat on Aid for Trade (2012). Economist Dani Rodrik also states that it has been estimated that it costs a typical developing country \$150 million to implement requirements under just three of the WTO agreements; [those regarding] customs evaluation, sanitary and phytosanitary measures, and intellectual property. . . . [T]his is a sum equal to a year's development budget for many of the least developed countries: Dani Rodrik, *The Global Governance of Trade: As if Development Really Mattered* (2001) 26.

¹⁸ UN Special Rapporteur on the Right to Food, Briefing Note: The WTO and the Post-Global Food Crisis Agenda (2011).

¹⁹ Committee on Economic, Social and Cultural Rights, 'General Comment 12: The right to adequate food (art.11)', UN doc. E/C.12/1999/5 (12 May 1999).

²⁰ Sarah Joseph, *Blame it on the WTO? A Human Rights Critique* (2012) chapter 6.

²¹ For example, the US is estimated to have provided USD\$14 billion in subsidies to US cotton farmers between 1998 and 2002: Andrea Woodward, *Impact of US Subsidies on West African Cotton Production* (2007).

²² See, e.g., Third World Network, 'US-EU block permanent solution for food security public stockholding' (29 June 2015) <http://www.twn.my/title2/wto.info/2015/ti150701.htm>

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- ²³ For a detailed discussion of this issue, see Ha-Joon Chang, *Kicking Away the Ladder* (2002).
- ²⁴ In its General Comment 14, the UN Committee on Economic, Social and Cultural Rights makes clear that the right to accessible (affordable) essential drugs is a core obligation of governments under the Covenant: Committee on Economic, Social and Cultural Rights, 'General Comment 14: The right to the highest attainable standard of health (art. 12)', UN doc. E/C.12/2000/4 (11 August 2000)
- ²⁵ Sarah Joseph, 'Trade and the Right to Health' in Andrew Clapham and Mary Robinson (eds), *Realizing the Right to Health* (Swissbook, Geneva, 2009).
- ²⁶ Understanding the WTO: Settling Disputes, available at https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm
- ²⁷ Sarah Joseph, *Blame it on the WTO? A Human Rights Critique* (2012) chapter 2.
- ²⁸ Lori Wallach, Ben Beachy 'Obama's covert trade deal' *New York Times* (2 June 2013) <http://www.nytimes.com/2013/06/03/opinion/obamas-covert-trade-deal.html? r=1>.
- ²⁹ These rights are protected, for example, in Articles 19 and 25 of the International Covenant on Civil and Political Rights. See, e.g., the statement of Independent Expert on the promotion of a democratic and equitable international order, who stated: 'I am concerned about the secrecy surrounding negotiations for trade treaties, which have excluded key stakeholder groups from the process, including labour unions, environmental protection groups, food-safety movements and health professionals': available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15883&LangID=E>
- ³⁰ See e.g. Free trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (2011), Chapter 10 and MSF's statement against the TPP: <http://www.doctorswithoutborders.org/news-stories/briefing-document/trading-away-health-trans-pacific-partnership-agreement-tpp>.
- ³¹ ETC Group 'Putting the Cartel before the Horse...and Farm, Seeds, Soil, Peasants, etc.; Who Will Control Agricultural Inputs?' (2013)
- ³² For a detailed discussion of this issue, see GRAIN, 'New Trade Deals Legalise Corporate Theft, Make Farmers Seeds Illegal' (2016).
- ³³ See, e.g., UNDP (2010) 'Intellectual Property, Agrobiodiversity and Gender Considerations: Issues and Case Studies from the Andean and South Asian Regions', New York: UNDP.
- ³⁴ Public Services International, 'Jakarta Court cancels World's Biggest Water Privatisation after 18-year Failure' (25 March 2015) <http://world-psi.org/en/jakarta-court-cancels-worlds-biggest-water-privatisation-after-18-year-failure>
- ³⁵ L Hairani, 'Jakarta Plans to Reorganize Water Resource Management,' (30 March 2015), Indonesia Newsstand, <http://indonesianewsstand.com/news/read/119141/Jakarta-Plans-to-Reorganize-Water-Resource-Management>>
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