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Harnessing Trade to Human Rights: the Challenges of the Doha Ministerial Conference

October 2001

Developments in the trade agenda and implementation of trade agreements, at the international and regional levels or bilaterally have raised increasing concern within the human rights community.¹ While the primacy of human rights obligations over economic policies has been reiterated on several occasions by various United Nations Human Rights mechanisms, in practice, two parallel regimes continue to develop separately, with a risk that the human rights principles, instruments and mechanisms will be marginalized .

Whereas economic integration and exchanges can constitute important elements for the improvement of living standards and the reduction of socio-economic imbalances, both among and within nations, the way the current trade system is being developed and implemented jeopardises the very objectives and rationale for which it has been created.

A lack of transparency and accountability in the functioning of the WTO, a power relationship clearly biased to the advantage of developed countries and corporations, as well as the agreements in themselves and the way they are implemented bear serious implications with regard to the universal enjoyment of all human rights, including the right to health, the right to food, the right to education, the right to an adequate standard of living and the right to work.

The contradiction between, on the one hand, a trade system matching economic integration with liberalisation, and a human rights system calling for regulations, justice and non-discrimination are likely to increase. While the human rights community has been sending several warnings to the WTO about such developments, today, on the eve of the Doha Ministerial Conference, the ball is in the camp of the WTO and its member States.

OMCT believes that if the current trade regime wants to promote sustainable development, and reduce poverty and widespread inequalities, will have to look at its compatibility with the

¹ See U.N. Doc. E/CN.4/SUB. 2/RES/2001/5, Globalisation and its impact on the full enjoyment of all human right; U.N. Doc. E/CN.4/SUB., Intellectual Property and Human Rights; U.N. Doc. E/CN.4/SUB.2/RES/2001/4, Liberalization of trade in services and human rights

human rights system, and take appropriate measures to remedy situations that are likely to lead to human rights violations or clash with its members' legally binding human rights obligations. Doha shall constitute a first step in this direction.

The current implementation of the TRIPs agreement, along with the lack of clarity regarding its interpretation, threaten the enjoyment of the right to health, in particular when access to essential medicine is at stake, but also seriously menaces the protection of indigenous peoples' traditional knowledge. Along with bio-piracy, food security, technology transfer and development, these are but some of the most crucial human rights issues raised by the implementation of the WTO TRIPs Agreement.

Under the International Covenant on Economic, Social and Cultural Rights, States are legally bound to take appropriate steps to ensure the respect for economic, social and cultural rights including the right to education, the right to health, as well as the right to food which comprises the right to safe drinking water. The delivery of basic services, along with regulatory activity of States, bare a fundamental for the promotion and realization of these rights. The liberalisation of trade in services under the GATS agreement might well negatively affect the universal, equitable and non-discriminatory access to basic services. Indeed, liberalisation of trade in services in areas such as health and education, often implies the introduction of user fees, placing these essential services out of reach for the poor, the destitute and vulnerable groups.

For instance, in Zambia, the introduction of user fees in the educational and health sectors has put education and health out of reach for an significant proportion of the population. While these developments were engendered by structural reforms under the auspice of the World Bank and the International Monetary Fund (IMF), the outcome remains the same.² In terms of education, while educational costs represented 7 percent of households' non-food expenses in 1991, it increased to 16 percent in 1993.³ Consequently, many children continue to drop out of school as their relatives or guardians cannot afford to pay the fees.⁴ Similarly, the introduction of users fees in the health sector has led to a drop in attendance at health institutions, as many people cannot simply afford the costs.⁵ Consequently, instead of going to see a doctor and receiving treatment, many patients remain at home, unattended.⁶

Given the significant impacts of trade developments on human rights, the lack of transparency and accountability of the WTO is simply unacceptable.

Moreover, OMCT fears that the opening of a new round, bringing new issues to the negotiating table -such as competition, investment and procurement- would further jeopardise prospects for sustainable development, reduction of poverty and respect for all human rights. The launching of a new round without having carried out an independent and thorough assessment of existing agreements might well erase the prospect of seeing WTO policies come closer to human rights priorities.

² OMCT, *Zambia : Violations of Economic, Social and Cultural Rights, Violence and the Protection Against Torture*, October 2001

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

A failure of the WTO and its member States to fully integrate human rights in their negotiations, implementation of and follow-up to the Uruguay Round agreements would simply push the benefits that can arise from economic integration away from the majority of the world population.

Consequently, OMCT, reminding the WTO and its member States of the primacy of human rights obligations under international law over economic agreements and policies, requests them to fully integrate human rights in their negotiations, implementation and follow-up of existing agreements, notably through:

- The conduct of an independent and thorough assessment of existing agreements before the launching of a new round. This assessment should fully take human rights into account and be based, in particular, on the studies and analysis carried out by the United Nations Human Rights mechanisms;
- The formulation of a binding interpretation of the TRIPs agreement that would guarantee the protection of the social function of intellectual property, with explicit references to human rights and the Convention on Biological Diversity;
- Guaranteeing that the ongoing service negotiations are based on respect for human rights, including the right to health, education, food and safe drinking water;
- Reforming the existing institutional setting in order to guarantee transparency and accountability of the WTO's policies. Among other outcomes, the reforms should in particular lead to the establishment of an accreditation system for non-governmental organisations as well as the creation of observer status for other International Organisations such as the United Nations High Commissioner for Human Rights (UNHCHR) and the International Labour Conference (ILO)

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