

International Conference



30 – 31
October
2003
Berlin
Germany

A Tale of two Human Rights in the WTO: Right to Food and the Right to Health

Kevin Gray, British Institute of International and Comperative Law, United Kingdom

This conference is part of the international research project CAT+E, funded by the 5th Framework Programme of the European Commission - DG Research. In co-operation with the Task Force Global Issues of the German Federal Foreign Office.

Conference organised by Ecologic – Institute for International and European Environmental Policy
Pfalzburger Str. 43/44, 10717 Berlin, Tel.: +49-30-86880-0, www.ecologic.de.



THE ROYAL INSTITUTE OF
INTERNATIONAL AFFAIRS

A TALE OF TWO HUMAN RIGHTS IN THE WTO

Right to Food and the Right to Health

Kevin R. Gray

Sustainable Development Programme, RIIA

CAT-E Conference: 'Moving Forward From Cancun'

31 October 2003

TRADE AND HUMAN RIGHTS - Institutional Link

- No formal recognition in WTO Agreements
- No direct participation by Human Rights Bodies
- Resistance to integration - veiled protectionism
- Institutional Misfits - Gradual implementation vs. Direct Enforceability/Binding
- Horizontal vs. Vertical regimes
- Scope for interpretative role
- Difficult to establish direct linkage between liberalised trade and HR violation

Right to Food

- Subset of right to life but not direct right
- Distribution, accessibility (economic and physical) and availability (production)
- Quality and quantitative elements
- Call for international co-operation to ensure equitable distribution
- Give effect to right in all international agreements



Agreements with Potential Right to Food Violations

- Agreement on Agriculture
- TRIPS (patents on Plant Varieties)
- SPS Agreement (not nutritional and harmful food)
- Competition, fishing subsidies, TRIMs, and Cartagena Protocol

Potential Impacts

- Price variability
- Market Access
- Dumping -inhibiting domestic Production/Investment
- Tarrification and loss of preference margin
- Limits on domestic support
- Drops in food aid due to less excess supply



Potential Impacts II

- Ability to reuse/share seeds or resort to traditional agricultural practices
- Mono-agricultural practices
- Commodification of plant breeding
- Hardships of small scale mixed subsistence farming



AVAILABLE MECHANISMS TO ENSURE RIGHT TO FOOD

- SDT - underinclusiveness of LDC/NFIDC classification
- Exceptions for special products/food staples
- Special Safeguards (SSGs) - limited by historical use of tariffs and NTMs
- Domestic Support - green box subsidies (not directed to increase production)
- Food aid and compensation (related to reform)
- State trading enterprises

Available mechanisms to ensure right to food II

- Development of sui generis system for plant varieties
- Protection of farmer rights
- Breeder Rights
- SPS Measures

Right to Health

- No direct right to be healthy/universal access
- Highest attainable state of health
- Obligations to promote conditions facilitating healthy life
- Provide access to essential medicines
- Equitable distribution of health services
- Dealing with prevention and control of epidemics
- WTO - right to protect public health and promote access to medicines

Available mechanisms to ensure right to health

- Compulsory Licensing - freedom to determine grounds
- Negotiated discounting of prices
- Parallel Imports
- Denial of patents pursuant to TRIPS exceptions
- SPS Measures
- Negotiated solutions (Doha and Para. 6 implementation)

Similarities between rights

- Economic, Social and Cultural Rights
- Violations stem from failure to provide essentials of life
- Not direct rights but subsidiary rights of access, distribution and conditions enabling right
- Parallel development in institutional interaction with WTO
- Parallel criticisms by human rights bodies
- Most impacted by trade in goods and services
- Direct impacts by private distribution, research and monopolisation

Advancing the human rights agenda in the WTO - finding mutual supportiveness

- Acceptance of non-conflictual relationship (reconcile with existing exceptions and mechanisms)
- Need to trace direct impacts (ability to protect and promote)/extra-territorial effects to inform negotiations
- Dispute settlement - link to SPS cases, Asbestos etc.
- Not only application in emergency situations
- Guidance from human rights bodies and instruments
- Look at how rights may collide (eg. Market access vs. health protection measures)

