

Lessons for trade negotiations from development and environmental bodies and processes

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Lessons from Development for Trade

- Impact of trade on various aspects of development
- Position of development focused global institutions (UNCTAD, UN) on trade-related development issues
- Impacts of trade bodies WTO and others on development policies
- Balance of power in trade policymaking process
- A case study of effective advocacy and institutional change: TRIPs advocacy for LDC waiver
- The Aarhus Convention of UNECE (UN Economic Cooperation for Europe) as a possible model for transparency and participation in trade negotiations

A Sample of Major Development Issues Impacted by Trade

- Agriculture (food consumption and export)
- Industrialization and decent job creation
- Access to health, education, and other public services
- Access to medicine
- Access to clean water and a clean environment
- Access to information

Agriculture (food consumption and production/jobs) - major issues

- Developing countries have a much higher percentage of their populations involved in food production.
- Many developing countries that used to be net exporters are now net importers.
- The world's smallholder farmers manage just 12 per cent of all agricultural land, yet they produce more than 80 per cent of the world's food (in value terms).
- Food insecurity is a major issue in developing countries: The United Nations FAO estimates that about 795 million people of the 7.3 billion people in the world, or one in nine, were suffering from chronic undernourishment in 2014-2016.

Agriculture – Development Institutions and Policies

- Human Rights Agreements: International Covenant on Economic, Social and Cultural Rights - “The right to adequate food is realized when every man, woman and child, alone or in community with others, has the physical and economic access at all times to adequate food or means for its procurement.” (CESCR)
- UN: Food and Agriculture Organization and the World Committee on Food Security (CFS)
 - Recommend strong domestic investment in food production in developing countries
 - Uphold the Right to Food
 - Recommend public stockholding
- The Rome Declaration on Nutrition (ICN2) enshrines the right of everyone to have access to safe, sufficient and nutritious food, and commits governments to prevent malnutrition in all its forms.
- Sustainable Development Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture

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- **2.1 By 2030, end hunger and ensure access by all people**, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round
- **2.2 By 2030, end all forms of malnutrition**, including achieving, by 2025, the internationally agreed targets on stunting and wasting in children under 5 years of age, and address the nutritional needs of adolescent girls, pregnant and lactating women and older persons
- **2.3 By 2030, double the agricultural productivity and incomes of small-scale food producers**, in particular women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment
- **2.4 By 2030, ensure sustainable food production systems and implement resilient agricultural practices** that increase productivity and production, that help maintain ecosystems, that strengthen capacity for adaptation to climate change, extreme weather, drought, flooding and other disasters and that progressively improve land and soil quality
- **2.5 By 2020, maintain the genetic diversity of seeds**, cultivated plants and farmed and domesticated animals and their related wild species, including through soundly managed and diversified seed and plant banks at the national, regional and international levels, and promote access to and fair and equitable sharing of benefits arising from the utilization of genetic resources and associated traditional knowledge, as internationally agreed
- **2.a Increase investment**, including through enhanced international cooperation, in rural infrastructure, agricultural research and extension services, technology development and plant and livestock gene banks in order to enhance agricultural productive capacity in developing countries, in particular least developed countries
- **2.b Correct and prevent trade restrictions and distortions in world agricultural markets**, including through the parallel elimination of all forms of agricultural export subsidies and all export measures with equivalent effect, in accordance with the mandate of the Doha Development Round
- **2.c Adopt measures to ensure the proper functioning of food commodity markets** and their derivatives and facilitate timely access to market information, including on food reserves, in order to help limit extreme food price volatility

Development-Focused Trade Policy in Agriculture - 1

- Countries should have the right to support the production of food that is consumed domestically. *Thus, Public Stockholding programs for Food Security must be considered as part of the Green Box, and thus not subject to limits or reductions commitments.*

Development-Focused Trade Policy in Agriculture - 2

- Countries should have the right to support the production of food that is consumed domestically. Thus, Public Stockholding programs for Food Security must be considered as part of the Green Box, and thus not subject to limits or reductions commitments.
- Countries should not have the right to damage other countries' markets. *Thus, export subsidies should be banned, as has already been agreed in the WTO. This includes domestic subsidies that go towards products that are exported.* Domestically subsidized food should not be exported in a way that damages others' markets, whether it was through a public stockholding program or through the use of domestically subsidized feed or other inputs.

Development-Focused Trade Policy in Agriculture - 3

- Countries should have the right to support the production of food that is consumed domestically. Thus, Public Stockholding programs for Food Security must be considered as part of the Green Box, and thus not subject to limits or reductions commitments.
- Countries should not have the right to damage other countries' markets. Thus, export subsidies should be banned, as has already been agreed in the WTO.
- Countries should have the right to protect their domestic markets from dumping by other countries. *For some countries, import surges are a significant problem, and thus they should be able to increase tariffs in the case of an import surge. They should have recourse to a Special Safeguard Mechanism (SSM) that is workable in their context.* The SSM proposed in Rev 4 is inadequate because it has too many onerous conditionalities and triggers that would make it nearly impossible to use.

Development-Focused Trade Policy in Agriculture - 4

- Countries should have the right to support the production of food that is consumed domestically. Thus, Public Stockholding programs for Food Security must be considered as part of the Green Box, and thus not subject to limits or reductions commitments.
- Countries should not have the right to damage other countries' markets. Thus, export subsidies should be banned, as has already been agreed in the WTO.
- Countries should have the right to protect their domestic markets from dumping by other countries.
- Countries should be able to use tariffs to protect domestic food markets. *In any future negotiations, developing countries should not have to cut tariffs. In the case that there would be any future tariff cuts, then developing countries should be able to exclude agriculture products necessary for food security from the tariff cuts.* Developed countries should also be able to maintain tariffs that protect Food Security.

Actual Trade Rules Do the Opposite

- Goal of WTO and FTAs is to increase trade (market access) rather than ensuring that trade rules support development.
- WTO rules allow rich countries to subsidize agriculture and to export subsidized agricultural products, damaging developing country markets.
- WTO rules still allow rich countries' tariff escalation
- Developing countries are not allowed to subsidize food for exports
- Developing countries are not allowed to subsidize food for domestic consumption beyond a limited amount
- Developing countries are not allowed to raise tariffs beyond Uruguay Round levels in the case of an import surge
- Developing countries are pressured to cut tariffs in trade agreements (EPAs, FTAs with the U.S.)

Effect of These Discussions on the Balance of Power: Which International Institutions Make the Rules?

- UN Special Rapporteur on the Right to Food has clashed openly with the WTO about public stockholding and right to food.
- CFS has attempted to keep trade out of the debates there.
- Head of FAO brought in to support “trade” in agriculture without discussing actual rules or negotiations.
- UNCTAD focuses on helping countries use trade rules for development, but along the lines of the WTO without fighting for better rules. Won’t challenge WTO on trade policy.
- SDGs *deferred to WTO* on global trade policy.
- Agribusiness exporters in developed countries set the rules through political influence of US, EU, other developed country policymaking.
- Food security advocates in US, EU not involved in trade policy.
- Most of civil society in agriculture focuses on CFS which has a much more inclusive process. Stakeholders are in the room when decisions are made. Perhaps because they don’t set the rules?

Industrialization & Job Creation

- United Nations Industrial Development Organization (UNIDO)
- UN's International Labor Organization (ILO) has a Decent Work Agenda:
 - Job creation
 - Rights at work
 - Social Protection (safe working conditions, work-family balance)
 - Social Dialogue
- Labor rights are key to development – to ensure that gains from growth go to the workers and not just capital
- WTO argument is that trade increases growth, so goal is to promote trade – without ever evaluating if growth is increased – or if expanded growth leads to job creation or poverty reduction, or increases inequality
- WTO and FTAs – race to the bottom on slashing tariffs but do not include labor rights or social protection
- Tripartite structure of ILO – governments, workers, and employers
- Even ITUC does not have a place at the WTO! Represents 176 million workers in 156 countries and territories and has 325 national affiliates.

Access to Public Services

- Key aspect of many SDGs is access to health, education, energy, sanitation, other services.
- Human Rights to health, education, energy, sanitation, etc.
- WTO and other trade agreements have no mandate to ensure that they facilitate those rights, but instead facilitate more trade in those services - limiting domestic regulation, and facilitating privatization and deregulation.
- No mechanism to evaluate impact on access.
- These are not trade issues but trade agreements include them anyways – mechanism to limit domestic regulation.

Model for Development-Oriented Impact on Trade Policy: Health

- Challenge: Trade-Related Intellectual Property Rules (TRIPS) agreement distorts trade in medicines in favor of patent monopoly holders
- New drug for hepatitis C, sofosbuvir, is sold for USD84,000 for a 12 week course, or USD1,000 a pill. Profits for the company Gilead have run at many billions of dollars already. Though the company has now offered that some poorer countries can have access to generic versions at lower prices, the majority of people in the world, in developed countries and middle income developing countries, cannot have this access. There are 170 million people living with hepatitis C worldwide, and around 350,000 deaths every year.
- Progress: Right to Health includes right to affordable medicine
- WTO includes 2001 Declaration on the TRIPS Agreement and Public Health - positive but inadequate
- Example of success: recent waiver on TRIPS implementation for Least Developed Countries (LDCs) who hold a very tiny minority of global patents
- 46 percent of people in LDCs live below the poverty line (US\$ 1.25 a day), about 50% of health expenditure is out of pocket. At end of 2013, only 36% of the 10.7 million people living with HIV in LDCs had access to antiretroviral therapy.

Model for Development-Oriented Impact on Trade Policy: Health

- LDC's transition period for TRIPS implementation originally 10 years. In 2001, LDCs given extension - specific exemption from patents and test data protection for pharmaceutical products until 2016.
- In 2015, LDCs demanded that the pharmaceutical exemption be extended for as long as countries are LDCs. Also requested for mailbox and exclusive marketing right (EMR) waivers .
- LDC governments and NGOs advocates waged year long campaign including:
 - Tabling straightforward request in time, in line with WTO mandates
 - Constant monitoring and updates of developments by NGOs, particularly from Third World Network, Médecins Sans Frontières and Knowledge Ecology International,
 - Understanding who is opposing the extension and lobbying at that level e.g. in US, Switzerland
 - Holding meetings with relevant missions that may be opposed – US, Switzerland, EC
 - Right to health and development advocacy NGO letters of support (international and LDC NGOs)
 - LDC Group reps lobbying other countries to support
 - Support from international agencies: UNITAID,UNAIDS, UNDP, and WHO
 - Support from members of US Congress
 - Support from a generic supplier to LDCs
 - No official process in WTO for expert policy best practice, scientific input
- Advocates created political climate where longer extension was political reality; US resistance eventually worn down.
- LDCs got 17 years pharmaceutical exemption and waivers from mailbox and EMR! The period is slightly longer than the duration granted in 2001 and got an additional waiver from mailbox which was not granted in 2001.
- Poor in non-LDC developing countries not included

Views on other Development Processes - UNDP

- UNDP has both formal and informal channels to enable CSOs to influence its thinking on major development issues. Annually, we host a 2 day meeting with NGOs – from both North and South – and they decide on the issues they want to cover.
- Usually CSOs make short presentations on issues of mutual interest followed by UNDP's feedback and activities in the same area and a discussion on areas that could be reinforced (or where there may be disagreement).
- On a more informal level, CSOs often send UNDP their policy papers on different topics and we regularly meet with CSO representatives as well as do joint research and joint events/panel presentations on different themes. As is the nature with these things, some UNDP staffers are more open than others but on the whole I'd say we're pretty good and most peoples' door is always open!

Other Development Processes - UN

- The UN policymaking process, in the General Assembly, is by far the most inclusive out of all the international organizations. Civil society makes regular interventions, have transparent access to the negotiation documents and can also conduct advocacy and dialogue directly with government delegates and negotiators.
- The UN's stakeholder input mechanism is structured both formally and informally. Formally, since the Rio+20 negotiations began in late 2011 and early 2012, the "Major Groups" system has been enshrined:
 - Women's Major Group
 - Indigenous People
 - Local Authorities
 - Business and Industry
 - Scientific and Technological Community
 - Youth Major Group
 - Non-Governmental Organizations
 - Workers and Trade Unions
 - Farmers
- There is no guarantee that the advocacy content of the Major Groups is taken up by the government delegates, but the track record in terms of witnessed experience shows that there is indeed a great deal of absorption and impact of CSO input. For example, during the SDG negotiations, when the Women's Major Group organized numerous petitions and campaigns around SRHR (sexual and reproductive health and rights), the impact was tangible when groups of member states lent their support and drafted their own statement supporting SRHR targets and language within the SDG goal for gender equality and women's rights.

Other Development Processes - UN

- The informal channel is through direct advocacy with member states.
- On the MOI - the structural reforms in global trade and finance architectures, systemic issues, right to development - in the SDGs, CSO work received a great deal of traction from key developing country negotiators who took our input and integrated our content, statistics, figures, analysis and language into their proposals of the G77 and China group as a whole (134 country group, the largest developing group).
- In the FFD process there were no major groups, however, there was a generic "CSO" slot during all the negotiations, meaning that a up to a certain number of CSOs could make interventions during the FFD negotiations.
- When the negotiations go into "informal" or even "informal informal" mode CSOs are not guaranteed access. These deliberations often take place in very small rooms where there may or may not be enough seating for CSOs. Even when there are, there may be some objections. However, these are usually put on webcast, so CSOs can always access the deliberations.
- In general, CSOs have a significant and often even powerful impact they can make on policy and language in the negotiations and outcome documents, the normative language and the issues taken up in the UN. However, the process is one of influence and voice. Delivering statements, making interventions, speaking on panels via the formal mechanisms, and dialogue, bilateral advocacy and inputs to the draft negotiation documents in the informal strategy.
- But of course in terms of an actual vote - only member states are allowed to vote in the adoption of General Assembly resolutions.

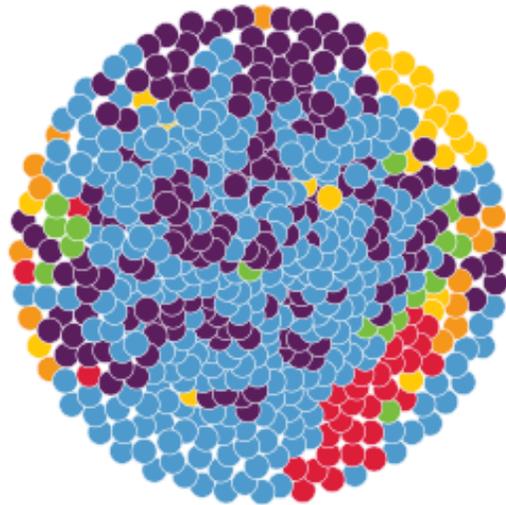
Other Development Processes - CFS

- The CFS decisions, unlike the WTO are largely voluntary and not binding on countries, but it is a good model for member-states led discussions. Unfortunately there is very little by way of direct stakeholder input.
- However, the CFS processes allow for this to happen by having the Civil Society Mechanism (CSM) represented in the room in all the sessions and groups. The agenda of the CFS is also guided by the Advisory Bureau which has CSM representation. It is therefore more participatory. They even have a similar mechanism for the private sector (PSM) though it is still limited in its outreach and work at the CFS. This is a big difference between the WTO and CFS as in the WTO civil society is not in the room in the ministerial, the green rooms or any discussions at all.
- The CSM is comprised of regional representatives (with sometimes more than one region per continent) and constituency representatives (those that are most affected by hunger) - for example pastoralists, fish workers, agricultural labour etc.

“Trade Advisory Committees”

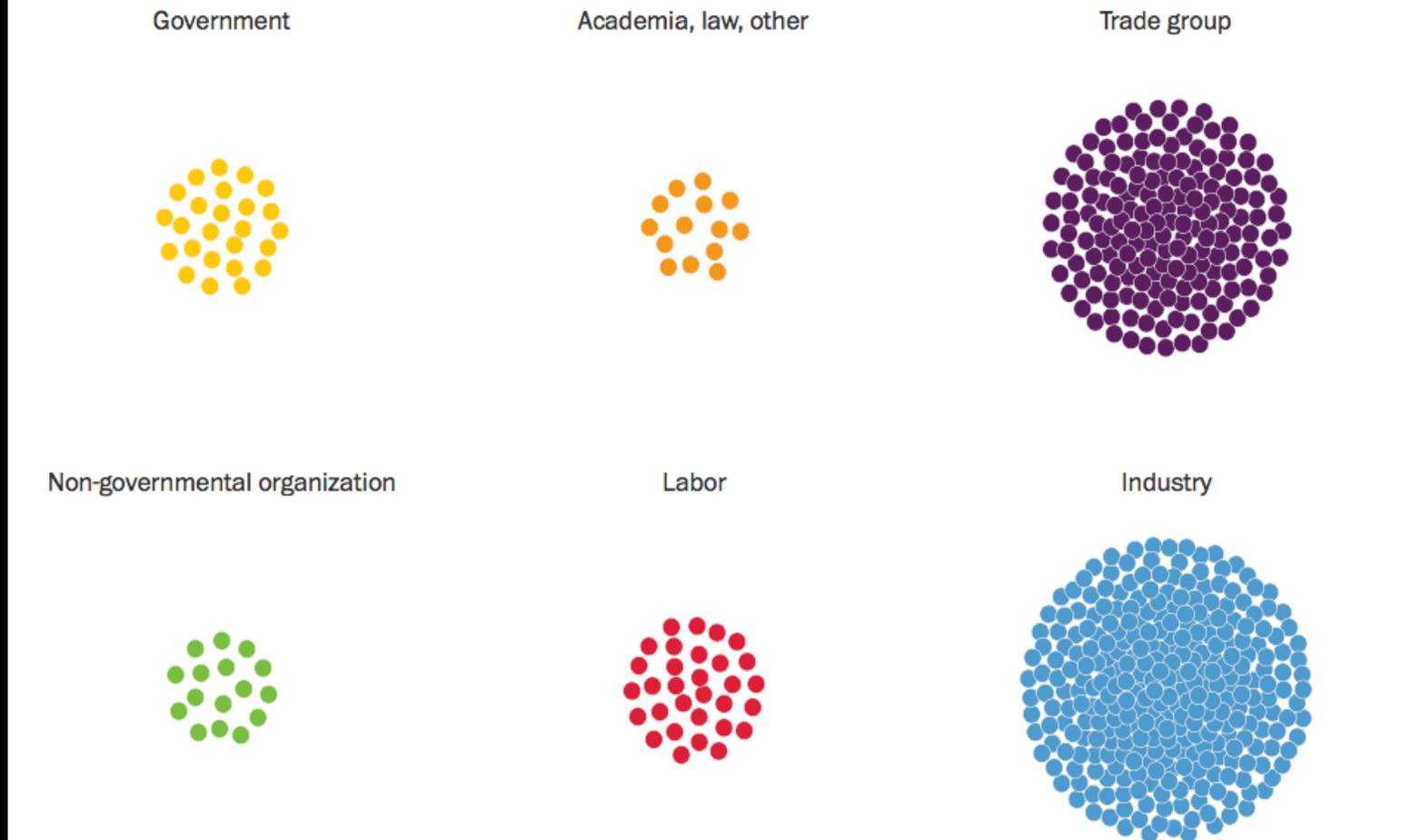
These 566 individuals work with the Obama administration to establish trade policy.

All committee members



“Trade Advisory Committees”

Private industry and trade groups represent the lion's share of committee members - 480, or 85% of the total.



Aarhus Convention of UNECE

- The United Nations Economic Commission for Europe (UNECE) is home of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.
- Whereas most international agreements grant rights only to states, the Aarhus Convention provides significant rights to the public, including:
 - The right to access environmental information (Article 4), coupled with a duty upon each party to collect and disseminate such information (Article 5).
 - The right to public participation in decisions with environmental impact:
 - o relating to specific environmentally-sensitive activities such as mineral extraction or refinement (Article 6);
 - o concerning plans, programmes and policies relating to the environment (Article 7); and
 - o during the preparation of executive regulations and/or generally applicable legally binding normative instruments (Article 8).
- Access to justice -- that is, to independent review of a party's decisions (Article 9).

Lessons from Trade and Development

- Non-trade arenas allow for multi-stakeholder inputs, but CSOs are increasingly concerned about corporate capture (like in the WHO).
- Official trade negotiations have rules which do not allow for multi-stakeholder inputs, as in other arenas; but corporations have influence in agenda-setting and policy deliberations.
- Corporations use trade agreements – increasingly on non-trade arenas of decision-making – to achieve binding policies that would not be approved through democratic processes, and that often it is not in the public interest to have included in trade agreements.
- Corporations use treaty-shopping (WTO, bilaterals, BITs) as mechanism to get their views to be accepted.
- They only need one “win” whereas advocates must win every time.
- Development-friendly policies have been accepted in trade institutions only when developing country governments and strategic civil society (with powerful third-party validators and relevant UN agencies) work together to influence the process as imposed by developed-country governments and corporations.