

## What is Trade and Human Rights? The Legal Viewpoint

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### Abstract

*“Trade and Human Rights” is a concept that may not mean the same thing to everyone. In international economic law, we are generally analyzing how governmental regulation of the movement of products, services, and investment across borders impacts the individual as consumer, laborer, or citizen. It thereby subsumes to a large extent all of the “trade linkage” areas.*

When I say “Trade and Human Rights”, I suspect that I am intending to look at a problem that is not the same one as the problems you all think of when you think “trade and human rights”. Maybe I’m wrong, and part of the reason for having this workshop is to test this assumption.

As an introduction to today’s workshop, let me briefly explain the general legal approach to the issue. First, “trade” refers to the rules governing governmental regulation of the movement of products, services, and investment across borders, whether the rules are multilateral (such as the rules of the World Trade Organization, where my own specialty lies), regional (such as the rules of the European Communities, North American Free Trade Agreement, or those of ASEAN), or bilateral (such as most of the treaties regulating foreign direct investment). It can also cover corporate actions, particularly the use of corporate codes of conduct as instruments to achieve the Corporate Social Responsibility ideal.

The “Human Rights” half of the equation indicates international human rights law – the category of rules that determine the legal relationship between an individual and his/her government, or more expansively, any entity with a substantial ability to affect the conditions of his/her life. Similar to the “individual rights” protected in national legal systems, this area of international law includes political rights such as freedom of expression, and the right to publicly gather in groups; economic rights such as the right to education or the right to food; cultural rights such as the right to practice one’s religion of choice, and the right to speak one’s native language; and group rights such as that to

The intersection of the trading system with that of the human rights system is the concern of the trade and human rights scholar. More narrowly seen, we can try to find areas of direct legal conflict: where one law says “you must not import products made with slave labor” and another law says “you may not prohibit the importation of products” and areas where the two sets of laws support each other (for example where the WTO rules can be used to help remove subsidies on agricultural products that make the competitive position of developing country farmers so poor as to be a threat to their right to life. If we view the question more broadly – going with the NEW LEGAL REALISM approach – we can look at the *effects* of the legal rules of one system on those of another: how does the obligation of offering equal conditions of competition to foreign-made products result in a reluctance to improve labor conditions?

So, what makes this intersection important enough a subject to which to devote substantial financial resources? Of all of the “trade &” questions, the issue of trade and human rights is the one that has brought the most widespread attention to the tensions between the international trading system as it is now under the rules of the WTO and the norms – or at least the aspiring norms – of civilized life. The trade and human rights issue overlaps, and to some degree subsumes, the other “trade linkage” questions: trade and labor, trade and health, trade and gender, and trade and environment debates. It further places each of these sub-linkages on a different moral plane for purposes of discussion and persuasion.

Indeed, it is symptomatic of the trade and human rights debate that “human rights” are broadly defined and viewed as qualitatively different from the trade rights anchored in the WTO agreements: the trade perspective sees the claims of human rights lawyers as overly broad to the point of meaninglessness and the difference as parallels; the human rights perspective sees the breadth of human rights as proof of their significance within any legal regime, lending additional grounds for addressing such rights in the WTO and views the difference in quality of rights hierarchically, with the importance of safeguarding the individual’s rights as superior to the claimed needs of the trading system.

Over the past year, our project has tried to look at the trade and human rights relationship using both case-studies and more general conceptual work. Our plans are to continue along both paths, but I think a broader perspective on the problem – the perspective the speakers today can offer – is going to help us re-view our project and, no doubt, improve it.