

# Human Rights and the Role of International Financial Institutions and the WTO

CAL6009

12 November 2013

Bård A. Andreassen

Norwegian Center For Human Rights

University Of Oslo

# Why the BWIs?

## The larger issue and context:

- Globalization (supporters – critics), trade (investment)
- The impact of international trade on human rights – obvious linkages
- WTO – a norm-producer of trade rules; rules that regulate the global economy

## In essence:

“in promoting free trade and protecting intellectual property undoubtedly enhances the power of MNCs, the major engine of free trade, thus contributing to an environment that promotes ‘permissive conditions for business related human rights abuse’” (Joseph, 3)

# Outline

## **1. Globalization, trade and investment**

What is the state of affairs in world trade –facts and figures

## **2. The Bretton Woods institutions (WB, IMF)**

## **3. On the WTO**

What is WTO?

What is the purpose and structure of the WTO?

WTO – a regulatory regime: main principles

## **4. What are the links to human rights?**

Main human rights issues – proposals?

# What is the state of affairs in world trade?

1. Intra-regional and extra-regional merchandise exports of WTO regions, 1990-2011
2. Share of total trade between regions in world trade in 1990 and 2011

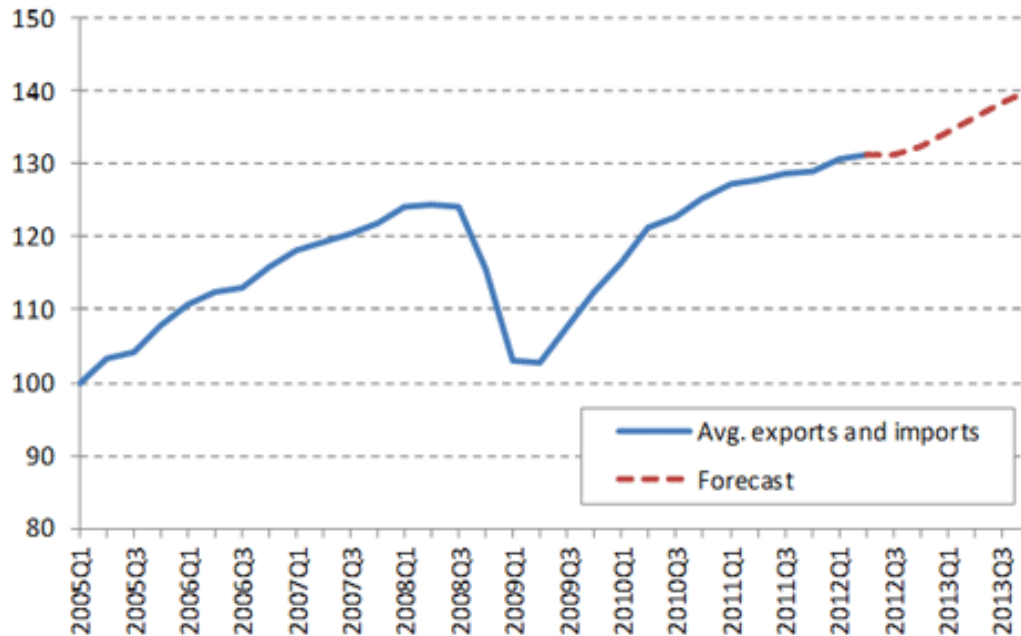
[http://www.wto.org/english/res\\_e/booksp\\_e/wtr13-2b\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/wtr13-2b_e.pdf)

## Preferential trade agreements (PTA)

- trading bloc, reduces tariffs (tax on import, export)
- neo-classical economic theory: tariffs are distorting the free market
- from intra-regional to cross-regional: trade less regional, more global
- but in Asia: increasing intra-regional trade (China)

# Growth in world trade over the last 50

Merchandise exports grew on average by 6% annually. Total trade in 2000 was 22-times the level of 1950



# Main issue in global trade: Free trade vs. protection

Free trade vs protective measures that individual countries introduce to protect their industries and production sectors

Protective measures:

- Agricultural protectionism
- Subsidies of export-sectors – cf. export led growth with subsidies as main mechanisms for the Asian four tigers and still a main controversy
  - Argument: “Countries needs to protect their industries until they are competitive in international markets”
- Development issues:
  - Protection of agriculture sector in rich countries
    - Norway as example
  - International trade is nested inside domestic politics

# Main theoretical foundation

## The founder of modern economic theory

Adam Smith (1723-1790, professor of moral philosophy at Glasgow University (Scotland): invisible hand; and the absolute benefits of trade:

- A country benefits from producing and exporting what it is best at in terms of production costs (particularly labour costs).
- If other countries do the same – trade is beneficial in terms of increasing welfare

The main doctrine of neoclassical trade theory: **Ricardian theory of comparative advantage**

David Ricardo (1772-1823): The theory of comparative advantages

In economics, the “law” of **comparative advantage** refers to the ability of a person or a country to produce a particular good or service at a lower marginal and opportunity costs over another

# The World Bank, the IMF and WTO - background

- Bretton Woods institutions (1944):
  - IMF and World Bank and International Trade Organization (ITO)
  - ITO agreement negotiated, not approved by the US+, did not go into effect
  - General Agreement on Trade and Tariffs (GATT) adopted in 1947 and managed trade in international “rounds of negotiations” till 1995 – reduce tariffs
- Creation of WTO in 1995 – the Marrakesh Agreement, Geneva
  - Mission: to ensure that trade flows “as smoothly, predictably and freely as possible”



# The World Bank and the IMF



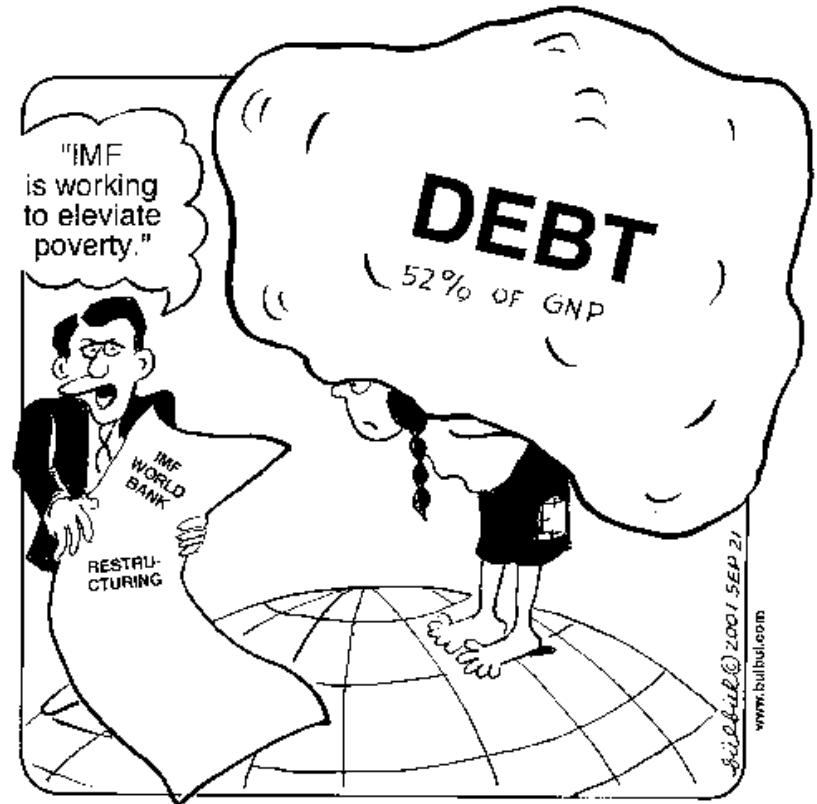
- WB - “ for reconstruction and Development”
- Motto today – “working for a world free of poverty”
- Comprises the International Bank for Reconstruction and development and the International Development Agency (IDA)
- USD 25 billion goes (through IDA) to the world’s poorest countries as loans
- 188 members; voting powers according to contributions

# The International Monetary Fund

## Purpose

Provide loans on policy conditions in order to contribute to international economic stability

- International monetary cooperation
- Exchange rate stability, fiscal assistance to countries in need
- Offers short term balance of payments
- Macroeconomic stability
- Strongly criticised for “rolling back” social programs in the 1980s-90s



# Vietnam and the IMF updated October 10, 2013

On June 24, the Executive Board of the International Monetary Fund (IMF) concluded the consideration of the Article IV consultation with Vietnam.

Under Article IV of its Articles of Agreement, the IMF has a mandate to exercise surveillance over the economic, financial and exchange rate policies of its members in order to ensure the effective operation of the international monetary system. The IMF's appraisal of such policies involves a comprehensive analysis of the general economic situation and policy strategy of each member country

IMF economists visit the member country, usually once a year, to collect and analyze data and hold discussions with government and central bank officials. Upon its return, the staff submits a report to the IMF's Executive Board for discussion.

The Board's views are subsequently summarized and transmitted to the country authorities.

## Statement by IMF Managing Director Christine Lagarde on the Socialist Republic of Vietnam

Press Release No. 13/363. September 26, 2013 Ms. Christine Lagarde, Managing Director of the International Monetary Fund (IMF), issued the following statement after a meeting with H.E. Nguyen Tan Dung, Prime Minister

“It was a pleasure to meet **Prime Minister Dung** and his delegation. We had productive discussions on the **progress Vietnam** has made in **regaining macroeconomic stability** over the past year, and on policies to consolidate these achievements and further Vietnam’s commendable track **record of reducing poverty**. I welcomed the authorities’ efforts to **sustain fiscal consolidation** and achieve the **budget deficit target** this year, which along with maintaining the **current monetary policy** stance, will be instrumental to containing **inflation**.

“I congratulated Prime Minister Dung on his leadership in developing Vietnam’s **reform agenda to begin restructuring the banking system**, improving **corporate governance at state-owned enterprises** and accelerating their equitization, and reforming public investment. Given the external environment, I emphasized the need to move forward quickly, to **preserve financial stability** and lay the basis for broad and sustainable robust growth. The **IMF will continue to collaborate** closely with the authorities on policies to consolidate macroeconomic stability and their reform agenda.”

# The impact of the WB and IMF on human rights

## In conclusion:

- The WB recognised in 2006 that it has obligations to human rights (loose, negative duties): Legal Opinion for the Bank's General Counsel
- Extraterritorial obligations to ensure that the Bank does not violate human rights (negative duty)
- Indirect obligations to support states to fulfil their obligations
- Regional human rights courts – LA – criticised the WB for contributing to violations
- WB and IMF (and IFIs) have an obligation to respect human rights under international law
- HR Impact analysis and due diligence practices can help avoiding IFIs to get involved in HR Violations
- Key elements in such policies: non-discrimination and equality, transparency and accountability
- A matter of IFI legitimacy

# Functions of the WTO

What is its purpose and main principles of WTO as a “regulatory regime”?

- <http://www.wto.org/index.htm>

Functions:

1. Administering WTO trade agreements
2. Forum for trade negotiations
3. Handling trade disputes
4. Monitoring national trade policies
5. Technical assistance and training for developing countries
6. Cooperation with other international organizations

Trade agreements:

- legal ground-rules for international commerce
- contracts, guaranteeing member countries trade rights
- bind governments to keep their trade policies within agreed limits to everybody's benefit

# Functions

Basic feature:

- Three areas of regulation
  - Trade in goods (developed by GATT)
  - trade in services (GATS, an agreement of the WTO))
  - intellectual property (TRIPS)
- Dispute settlement system; system for trade reviews
- Most favored nation principle (MFN) – to give the same treatment of all partners of a trade agreements (not discriminate)

# Examples on Agreements as per sectors

## For goods (under GATT)

- Agriculture
- Health regulations for farm products
- Textiles and clothing
- Product standards
- Investment measures
- Anti-dumping measures
- Customs valuation methods
- Pre-shipment inspection
- Rules of origin
- Import licensing
- Subsidies and counter-measures
- Safeguards

## For services (the GATS annexes)

- Movement of natural persons
- Air transport
- Financial services
- Shipping
- Telecommunications



# Structure

## **Membership**

153 member states, cover 95% of world trade

## **Organizational structure**

Decision based on consensus – three levels:

**Ministerial Conference**, meets every two years

**General Council** (ambassadors, Geneva)

**Goods Council, Services Council and Intellectual Property (TRIPS) Council** report to the General Council

## **Specialized committees, working groups and working parties**

- individual agreements, e.g., environment, development, membership applications and regional trade agreements

## Key rules of the WTO

- Non-discrimination
- More “open” trade – free markets
- Predictable and transparent trade
- Enhance competitiveness
- More beneficial status to developing countries

# What are the links to human rights?

Article 28 of the UDHR: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”

# What are the links to human rights?

According to Pascal Lamy - WTO rules and human rights build on the same principles:

- **Freedom to movement** in good and services (in removing restrictions on trade)
- **Non-discrimination** (in committing WTO members to transparent obligations and an enforceable rules based trading system)
- Economic efficiency leading to **enhanced welfare**

Are these congruent to human rights principles? Sarah Joseph ***Blame it on the WTO*** uses one chapter to argue they are not

OXFORD

# Blame it on the WTO?

A Human Rights Critique



Sarah Joseph

# What are the links to human rights?

## Restrictions on trade:

- General human rights sanctions (Burma)
  - Possible under WTO to some extent: Security, cf. art XXI (b) (iii)
  - The imposing state has some scope of actions (what it “considers” necessary for security)
  - Cf General comment on CESCR 8
- Restrictions on particular products
  - Produced by forced labour, “conflict diamonds”, “tusks”
  - Protect health
- Cases: Tuna case, Shrimp case etc

# Critiques of the WTO as a promoter of human rights

- The freedoms promoted by the WTO are the freedoms of the few, the traders, not “for all”
- The beneficiaries’ interests can clash with those of others: food production, water systems
- WTO rights are of a different nature than HR: Human rights are for individuals and stems from a notion of human dignity; trade right are granted to individuals for instrumental reasons (as economic actors)

# What are the links to human rights?

- WTO rules are often “freedoms” of free traders from government involvement:
  - Human rights usually invokes **government action** to protect people’s interest against powerful actors (e.g., MNC, etc)
  - Example: price restrictions on water or electricity may be suspect from a free trade perspective
- **Non-discrimination of the WTO** is meant to **eliminate protectionism in trade** and of goods and services:
  - This however, may come **into conflict with small-scale farmers needs for protection and favorable support** over agribusiness companies (for instance cheaper fertilizers, better access to finances etc)



# What are the links to human rights?

- **Rule of law – the same – promote trade, a very narrow view of rule of law**
- **WTO talks about the production of wealth but not about equity** and distribution of the wealth, between and within nations – human rights builds on **principles of social justice (equity)**
- A general liberal ideology that the market will resolve the distributive problems in the *long run* (WTO) may tolerate short-term pain for long-term gain (**trade offs in human rights term, and not acceptable** )
- Trade principles are **instrumental** – human rights principles are **inherent**: Pascal Lamy admits this – “WTO norms do not necessarily trump other international norms” (quoted by Joseph)

# What are the links to human rights?

- Restrictions inside the WTO regime
  - Article XX (and XIV of GATS) – allows states to make exception , and pursue “non-trade” objectives
  - Public morals
  - Human, animal or plant life and health
  - To secure compliance with laws that are not in compliance with the WTO agreements
  - Products of prison labour
  - Cases:
    - EC Asbestos Case
    - Tuna Case
    - US Shrimp case

# What are the links to human rights?

Olivier de Schutter (independent expert on the right to food)

December 2011 – Report to the HR Council (A/HRC/19/59/Add.5:

***Guiding principles on human rights impact assessments of trade and investment agreements***