



Developing a Set of Trade Related Questions for State Reporting

Informal Consultation on Trade and Human Rights
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ON 10 November, the UN Office of the High Commissioner for Human Rights, 3DTHREE and the Geneva Office of the Friedrich-Ebert-Stiftung jointly convened a meeting with the Committee on Economic, Social and Cultural Rights (CESCR), discussing the proposal of a draft catalogue of questions on trade and human rights, which could be used for the state reporting.

All States party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) are obliged to report every four years to the Committee on the situation of ESC Rights in their territory and under their jurisdiction. Trade policies of reporting states and their impact on the enjoyment of economic, social and cultural rights have increasingly become issues addressed by committee, be it on the national level or regarding its international implications.

As a basis for discussion 3DTHREE, an NGO specializing in the relations between trade, human rights, and equitable economy, had prepared a template of questions which could serve as a basis to the Committee in systematically including questions on trade policies into the state reporting procedure. Many of the questions of the list have been raised by Committee members for years, particularly with States that have come into the third or fourth reporting cycle. Yet, while topics such as the impact of economic reform and financial policies are regularly on the agenda, questions e.g. scrutinizing agricultural policies have been less focused.

In general, the Committee is faced with the problem that states excuse negative effects of their trade policies with obligations under WTO law. Instead of subscribing to a human rights based approach, most countries still follow a "trade first" mentality. Another common problem is missing data. Real proof of concrete negative effects of trade policies is often not available.

Additionally, the Committee is faced with unclear competencies – while all EU members are party to the Covenant, the EU itself is not; on the other hand it is the EC which is negotiating trade agreements and representing them at WTO level. The WTO in itself was once more criticized for remaining in its technocratic position, which was not seen as very helpful for the work of the Committee.

The most promising moment, Committee members stressed, for bringing human rights concerns into trade debates is when the reporting States are negotiating new trade agreements. In these circumstances, a set of questions to draw from might be helpful. But they also stated that even with a deeper expertise in trade issues and a set of "right questions" it was doubtful that the State party's delegation would be able to respond fully as the Committee is not in a position to request the inclusion of certain experts into the national delegations. The solution to this problem lies most likely in a better networking of information: reports of local or national NGOs are often not available to the Committee and Committee members do not always have the capacity to research all issues in depth. Even within the UN family (e.g. UNCTAD), exchange of information was not necessarily institutionalized.

A Committee Member touched upon the problem that in asking a developing country about the negative effects on the enjoyment of human rights resulting from trade agreements for its population, one would ask the "victim" on its

measures taken. Therefore the international dimension should be strengthened and extraterritorial obligations be addressed, when looking at human rights implications of trade agreements. On the other hand, this attitude of "victimization" was interpreted as an excuse by some governments, neglecting the fact that they concluded trade agreements as sovereign actors who must have seen some macroeconomic advantage for their country in signing the agreement.

In general, Committee Members underlined the usefulness of the draft list of questions and in particular, of questions relating to policy coherence (see complete list in annex). For example, the proposal to ask a member State on "measures taken to ensure that government officials responsible for economic and trade policy know about their State party's obligations under the Covenant." Also, for example, on measures taken to ensure that obligations under new trade agreements are compatible with human rights.

Nonetheless, the questions need to become more concrete if to be used in the judicial approach of the Committee. As a result of the consultation with the Committee the list of questions can now be modified and amended to become more focused and useful for their work.

In concluding the evening's debate, it was stressed that the committee had a strong point in addressing trade questions: it is not favoring any special economic model; thus, the Committee is not taking a position pro or contra liberalization or privatization. It can focus directly on concrete negative effects e.g. on vulnerable groups – if there are any - and call for remedies based on the obligations in the Covenant. And if it had a template of questions relating to the impact of trade policy on the enjoyment of human rights it could systematize its work in this area and sensitize States parties to pay attention to the topic in their reports.

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