

# Trade Liberalization versus Globalization of Human (In)security

Food Safety and Asymmetrical Relations in the  
Contemporary Global Interdependence of  
Nations and Peoples

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# Overview of the Problem

*Integrative tendencies in international life, combined with the widely imagined future of a cyber world, ensure that a global civilization in some form will take shape early in the twenty-first century ...The current ideological climate, with its neo-liberal dogma... suggest that the sort of global civilization that is taking shape will be widely perceived, not as fulfillment of a vision of unity and harmony, but as a dystopian result of globalism-from-above that is mainly constituted by economistic ideas and pressures – **Richard Falk***

*By expediting economic growth, creating jobs and raising incomes, globalization has the potential to advance human development around the world. But globalization has also increased vulnerability and insecurity – **Kamal Malhotra, et al***

# From General Agreement on Tariffs and Trade (GATT) to WTO

- The transformation of GATT to WTO in 1995 marked a paradigm shift, resulting in significant differences between the two regimes.
- GATT focused on goods
- WTO's authority has extended into areas of domestic regulation, legislation, governance and policy-making central to the development process:
  - WTO's extension into new substantive areas,
  - intrusiveness into domestic policy-making,
  - 'single undertaking' mandate,
  - explicit linkage of trade with the protection of investment and intellectual property rights, and
  - strict enforcement of disputes and cross-retaliation

# Trade and Public Health: Can they Co-exist?

- The practice of quarantine by the Italian city-states in the 15<sup>th</sup> Century was driven by fear of cholera, plague and other diseases from the Near and Middle East and other non-European Societies
- 19<sup>th</sup> Century International Sanitary Conferences in Europe, aimed at protecting Europe from:
  - Cholera from Asia
  - Yellow Fever from West Africa

# GATT - 1947

Article XX(b) of GATT provides:

*Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: necessary to protect human, animal or plant life or health*

# The Sanitary and Phyto-Sanitary Measures (SPS) Agreement

- SPS is one of the Uruguay Round trade agreements, negotiated alongside the establishment of the WTO in 1995
- The preamble to the SPS agreement reaffirms that no Member of the WTO:

*"should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade"*

# Food Safety and the Clash of Regulatory Regimes at the WTO

WTO jurisprudence on food safety disputes:

- now a paradoxical convergence and divergence of norms and conventions on trade-related issues
- the World Health Organization and Food and Agriculture Organization jointly administered, among others:
  - *Codex Alimentarius Commission* standards on food safety
  - The UN Convention on Biodiversity and its Biosafety Protocol
  - The Precautionary Principle in International Environmental Law

# Precedents from WTO disputes

- Beef Hormones dispute
  - US/Canada vs EU
- Australia's quarantine case
- Japanese quarantine requirements
  - Apples
  - Agricultural products

# Towards a Humane Food Safety Regime

- North/South asymmetries
- South/South asymmetries

Trade norms must link with, and mutually reinforce other norms that advance human dignity – especially the core provisions of the FAO and WHO constitutions