

## Pace International Law Review

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Volume 21  
Issue 1 *Winter* 2009

Article 7

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January 2009

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### Recommended Citation

Phillip Countryman, *International Trade and World Health Policy: Helping People Reach Their Full Potential*, 21 Pace Int'l L. Rev. 241 (2009)

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# INTERNATIONAL TRADE AND WORLD HEALTH POLICY: HELPING PEOPLE REACH THEIR FULL POTENTIAL

Phillip Countryman<sup>1</sup>

*Globalization is a consequence of increased mobility, enhanced communications, greatly increased trade and capital flows, and technological development. Globalization opens new opportunities for sustained economic growth and development of the world economy, particularly in developing countries. Globalization also permits countries to share experiences and to learn from one another's achievements and difficulties. It promotes a cross-fertilization of ideals, cultural values and aspirations. At the same time, the rapid processes of change and adjustment have been accompanied by intensified poverty, unemployment and social disintegration.*<sup>2</sup>

## I. INTRODUCTION

Since its inception, the World Trade Organization (WTO) has received heavy criticism, some fair and some unfair, for its seemingly anti-human rights position.<sup>3</sup> The latest round of negotiations, known as the Doha Round, has faced its own set of dilemmas, and it is hard not to wonder if the legitimacy of the WTO has been weakened as a result.<sup>4</sup> In light of the long running criticisms of the WTO and the recent dilemmas with its Doha Round of negotiations, it is time for the WTO to revalu-

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<sup>2</sup> World Summit for Social Development, Mar. 6-12, 1995, *Copenhagen Declaration on Social Development and Programme of Action*, ¶14, U.N. Doc. A/CONF.166/9 (Apr. 19, 1995).

<sup>3</sup> See Robert D. Anderson & Hannu Wager, *Human Rights, Development, and the WTO: The Cases of Intellectual Property and Competition Policy*, 9 J. INT'L ECON. L. 707, 708-09 (2006).

<sup>4</sup> See Ernesto Zedillo, Director, Yale Ctr. for the Study of Globalization, Keynote Address at the Columbia University WTO Conference: The WTO's Biggest Problem at 10: Surviving the Doha Round (Apr. 7, 2006).

ate some of its policies and consider updating some of its positions.<sup>5</sup> A good place for the WTO to start is to evaluate and change its position in regards to international human rights standards.<sup>6</sup> Specifically, the WTO must address health issues that have a direct impact on international trade. The WTO must recognize the role human rights plays in influencing business, economic activity, and an individual State's economic development.<sup>7</sup> Conversely, economic realities and the effect economics has on the condition of human life cannot be ignored by the WTO.<sup>8</sup> In recognition of the interrelationship between economics, specifically international trade and human rights, the WTO must require its member States to be parties to the major international human rights treaties. The WTO must also enforce those treaty obligations through the use of its dispute settlement system and trade sanctions. By taking such steps, the WTO will be improving its short-term credibility, enhancing its long-term legitimacy and viability, and more importantly, will be helping to ensure the safety and welfare of our international community.

#### A. *Health and Poverty*

Health and poverty are intertwined issues.<sup>9</sup> Health problems and poverty are related degradations that keep a substantial percentage of our world's population from reaching its full potential.<sup>10</sup> As such, poverty must be reduced and global

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<sup>5</sup> See generally Ernst-Ulrich Petersmann, *Addressing Institutional Challenges to the WTO in the New Millennium: A Longer-Term Perspective*, 8 J. INT'L ECON. L. 647, 658 (2005) [hereinafter Petersmann, *Institutional Challenges*].

<sup>6</sup> See generally *id.*

<sup>7</sup> See generally U.N. Development Programme [UNDP], *Human Development Report 2005: International Cooperation at a Crossroads: Aid, Trade and Security in an Unequal World*, 2 (2005), available at [http://hdr.undp.org/en/media/hdr05\\_complete.pdf](http://hdr.undp.org/en/media/hdr05_complete.pdf) [hereinafter HDR 2005].

<sup>8</sup> See generally Ernst-Ulrich Petersmann, *The 'Human Rights Approach' Advocated by the UN High Commissioner for Human Rights and by the International Labour Organization: Is It Relevant for WTO Law and Policy?*, 7 J. INT'L ECON. L. 605, 612-14 (2004) [hereinafter Petersmann, *Human Rights Approach*].

<sup>9</sup> Ann L. Owen & Stephen Wu, *Is Trade Good for Your Health?*, 15 REV. INT'L. ECO. 660, 660 (2007).

<sup>10</sup> U.N. Econ. & Soc. Council [ECOSOC], *The Millennium Development Goals Report 2006* (2006), available at <http://mdgs.un.org/unsd/mdg/resources/static/products/progress2006/MDGReport2006.pdf> [hereinafter MDGR].

health conditions must be improved.<sup>11</sup> Since there is a direct link between poverty and health-related problems, we can improve global health conditions by reducing poverty.<sup>12</sup> Diminishing health-related problems removes barriers to economic growth and gives people a better opportunity to tackle their poverty-related issues.<sup>13</sup> Improvements in health will allow people the opportunity to participate in economic activity, thus helping to reduce poverty.<sup>14</sup>

### B. *Trade and the Role of the World Trade Organization*

Trade can reduce poverty by acting as a catalyst for economic growth, which in turn can lead to an increase in health-related resources.<sup>15</sup> As the main international trade organization, the World Trade Organization (WTO) – through trade – has the power to reduce international poverty and improve global health conditions.<sup>16</sup> The WTO must take a more proactive approach in protecting health rights within member States. To accomplish this goal, the WTO should mandate that its member States sign and ratify the human rights covenants that compose the International Bill of Rights.<sup>17</sup> Further, the WTO must penalize member States who violate the International Bill of Rights. This can be done through the use of trade sanctions and the WTO's dispute settlement system. Together, such measures will not only improve how the WTO confronts poverty and health-related concerns, but will also enhance the WTO's credibility, reestablish the WTO as a fundamental international body, and enhance the long-term legitimacy of the WTO.

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<sup>11</sup> U.N. Population Fund, *Population and Poverty: Achieving Equity, Equality, and Sustainability*, 1-3, U.N. Doc. 8 (2003) [hereinafter UNFPA].

<sup>12</sup> *See id.*

<sup>13</sup> *See* U.N.D.P., *Annual Report 2007: Making Globalization Work for All*, 5-9.

<sup>14</sup> WTO Secretariat, *WTO Agreements & Public Health*, 23, ¶ 3, (2002) [hereinafter WTO & WHO, *Agreements*].

<sup>15</sup> *Id.* at 23, ¶ 2.

<sup>16</sup> *See generally* Thomas Pogge, *World Poverty and Human Rights*, 19.1 ETHICS & INT'L AFF. 1 (2005).

<sup>17</sup> The International Bill of Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights. These human rights documents will be discussed in greater detail later in the article.

### C. *Outline of Discussion*

Section I introduces some ideas regarding the connection between international trade, health concerns, and the role of the WTO. Section II provides a background on the problem of poverty and its effect on health. Section III discusses the three major covenants that together form the International Bill of Rights. The role that health plays in each of the covenants is highlighted. Section IV provides a brief history of the WTO and its current position on human rights and health. Section IV also documents strategies that the WTO can implement in order to take a more proactive approach when addressing poverty, human rights, and health issues. Section V explains how the WTO can utilize its own resources to improve the health and human rights issues of its member States, with the end goals being both improved quality of life for all people and reinforcement of the long-term legitimacy of the WTO.

## II. THE LINK BETWEEN POVERTY AND HEALTH

*"The biggest enemy of health in the developing world is poverty."*<sup>18</sup>

Statistics provide a good starting point for assessing the impact of poverty on human health.<sup>19</sup> For example, starvation kills 24,000 people every day<sup>20</sup> and chronic hunger affects the lives of over 800 million people.<sup>21</sup> In 2003 alone, AIDS killed 3 million people,<sup>22</sup> with the AIDS pandemic decreasing the life expectancy rate in Botswana by 31 years.<sup>23</sup> Additionally, over one billion people live in slums,<sup>24</sup> where half of the developing

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<sup>18</sup> WHO & World Bank, *Dying for Change*, 2 (prepared by Rebecca Dodd & Lise Munck), available at [http://www.who.int/hdp/publications/dying\\_change.pdf](http://www.who.int/hdp/publications/dying_change.pdf) [hereinafter WHO, DYING].

<sup>19</sup> Even though statistics can be misleading, biased, and do not always tell the whole story, they can be helpful and provide insight. Statistics provided through studies conducted by various international organizations, are helpful in giving us a basic understanding of what is going on in the world regarding poverty and health.

<sup>20</sup> See ANA GONZALEZ-PELAEZ, *HUMAN RIGHTS AND WORLD TRADE: HUNGER IN INTERNATIONAL SOCIETY 1* (Routledge 2005).

<sup>21</sup> MDGR, *supra* note 10, at 5.

<sup>22</sup> HDR 2005, *supra* note 7, at 3.

<sup>23</sup> *Id.* at 4.

<sup>24</sup> U.N. Human Settlements Programme [U.N.-HABITAT], *Annual Report 2005, Responding to the Challenges of an Urbanizing World 5-6* (June 2006) (compiled by Rasna Warah) [hereinafter UNHSP].

world's population lacks access to basic sanitation.<sup>25</sup> Two and a half billion people, 40% of the world's population, live on less than \$2 a day;<sup>26</sup> one-fifth of the world's population lives on less than \$1 a day.<sup>27</sup> Tragically, over 10.5 million children die each year from preventable ailments<sup>28</sup> before their fifth birthday.<sup>29</sup> For example, measles killed almost 500,000 children in 2004 alone.<sup>30</sup> The administration of a simple measles vaccination would have prevented the deaths of those innocent, young children.<sup>31</sup>

Many countries, including those experiencing exponential economic growth, such as China and India, continue to face serious health-related problems.<sup>32</sup> In India, malnutrition "affects half of the country's children,"<sup>33</sup> and despite the prevalence of vaccine availability, only "42% of children are immunized."<sup>34</sup> The wide gap between rich and poor in China marks numerous health disparities that relate to a wide range of issues, including child mortality.<sup>35</sup> Unfortunately, such issues are not isolated to the developing world. As the divide between the rich and poor grows, so do poverty and health-related problems facing those in developed countries. The problems above are only a few of the health-related issues the international community faces.<sup>36</sup> As such, the countless health-related atrocities that our world is facing cannot be ignored.<sup>37</sup>

### A. *Defining Poverty*

As the statistics indicate, poverty is a global problem that affects billions of people all over the world.<sup>38</sup> Even in a devel-

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<sup>25</sup> MDGR, *supra* note 10, at 18.

<sup>26</sup> HDR 2005, *supra* note 7, at 4.

<sup>27</sup> *Id.* at 3.

<sup>28</sup> MDGR, *supra* note 10, at 10.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 11.

<sup>31</sup> *See id.* at 11.

<sup>32</sup> HDR 2005, *supra* note 7, at 4.

<sup>33</sup> *Id.* at 30.

<sup>34</sup> *Id.* at 31.

<sup>35</sup> *Id.* at 63.

<sup>36</sup> *Id.*

<sup>37</sup> *See generally* World Health Org. [WHO], *Working for Health: An Intro. to the WHO*, at 10, (2007) [hereinafter, WHO, *Working*].

<sup>38</sup> Pogge, *supra* note 16, at 1.

oped, wealthy nation such as the United States, poverty is a significant issue and is largely responsible for many social and economic problems.<sup>39</sup> While poverty has significant effects on populations, "poverty" is curiously difficult to define.<sup>40</sup> Traditionally, poverty has been defined by the lack of sufficient income upon which to survive.<sup>41</sup> Now, poverty is more broadly defined within the context of human rights.<sup>42</sup> Instead of merely assessing monetary wealth, the definition of "poverty" has developed to encompass educational levels, physical well-being, and "lack of dignity, self-respect, freedom, or access to power."<sup>43</sup> In effect, the concept of poverty has taken on a human rights-based framework,<sup>44</sup> which is fitting now that poverty is recognized in international documents such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR).<sup>45</sup>

<sup>39</sup> See generally *Dominicans for Justice at the United Nations, States Must Address Poverty With Utmost Urgency, Say UN Independent Experts*, Dec. 11, 2006, available at <http://www.un.op.org/en/node/1268> [hereinafter *Justice*].

<sup>40</sup> J. TIMMONS ROBERTS & NIKKI DEMETRIA THANOS, *TROUBLE IN PARADISE: GLOBALIZATION AND ENVIRONMENTAL CRISIS IN LATIN AMERICA* 105 (Routledge 2003).

<sup>41</sup> WHO, *Human Rights, Health and Poverty Reduction Strategies* at 10, WHO/ETH/HDP/05.1 (2005) (prepared by Penelope Andrea), available at [http://www.who.int/hhr/news/HHR\\_PRS\\_19\\_12-05.pdf](http://www.who.int/hhr/news/HHR_PRS_19_12-05.pdf).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> In the light of the International Bill of Rights, poverty may be defined as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights. While acknowledging that there is no universally accepted definition, the Committee endorses this multi-dimensional understanding of poverty, which reflects the indivisible and interdependent nature of all human rights.

U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc., and Cultural Rights, *Substantive Issues Arising in the Implementation of International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social, and Cultural Rights*, ¶ 8, U.N. Doc. E/C.12/2001/10 (2001), available at <http://huachen.org/english/bodies/cescr/docs/Statements/E.C.12.2001.10Poverty-2001.pdf>.

<sup>45</sup> See International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), at 53-56, U.N. Doc. A/6316 (1966) (entered into force Mar. 23, 1976), available at [http://www.unhcr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhcr.ch/html/menu3/b/a_ccpr.htm); International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A (XXI), at 49, U.N. Doc. A/6316 (1966) (entered into force Jan. 3, 1976), available at <http://www.unhcr.ch/>



There is undoubtedly a legal imperative to stop poverty and disease,<sup>46</sup> since both are responsible for many of the world's problems.<sup>47</sup> Poverty is the foundation for a lack of fulfillment regarding economic, social, and cultural rights (ESCR).<sup>48</sup> Poverty is a vicious cycle that is difficult to break from generation to generation. Without money, it is difficult to obtain food, housing, water, a decent standard of living, and health care.<sup>49</sup> Inevitably, poverty is the result of a lack of education and education is one of the keys to eliminating poverty.<sup>50</sup> The right to education and a realization of that right is a multiplier right, in that, with success, it inevitably improves access to other human rights.<sup>51</sup> As such, the international community must help those stuck in this trap, so they can help themselves.<sup>52</sup> While States have pledged to reduce worldwide poverty, they must do more to combat this international problem.<sup>53</sup> More importantly, in the context of international trade and the goals of the WTO, the reduction of poverty will help improve economic activity.<sup>54</sup>

Poverty is associated with several indicators of poor health. Individuals in lower socioeconomic classes have higher rates of chronic disease and death.<sup>55</sup> Individuals with lower income levels are "more likely to report negative health habits" than those in higher income brackets.<sup>56</sup> Poverty-stricken individuals

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[http://www.unhcr.org/refugees/menu3/b/a\\_ceschr.htm](http://www.unhcr.org/refugees/menu3/b/a_ceschr.htm); Universal Declaration of Human Rights, G.A. Res. 217A (III), at 71, U.N. Doc. A/810 (Dec. 1, 1948) *available at* <http://www.unhcr.ch/udhr/lang/eng.htm>.

<sup>46</sup> See JANET DINE, COMPANIES, INTERNATIONAL TRADE AND HUMAN RIGHTS 1-3 (Cambridge Univ. Press 2005).

<sup>47</sup> The Secretary-General, In Larger Freedom: Towards Development, Security and Human Rights for All, ¶ 23, delivered to the General Assembly, U.N. Doc. A/59/2005 (Mar. 21, 2005) [hereinafter UN, FREEDOM].

<sup>48</sup> See generally Justice, *supra* note 39.

<sup>49</sup> See generally Office of the High Commissioner for Human Rights [OHCHR], Human Rights in Development, *Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies* (Sept. 2002), *available at* <http://www.unhcr.ch/pdf/povertyfinal.pdf> (prepared by Paul Hunt, Manfred Nowak and Sid-diq Osmani) [hereinafter UNHRD].

<sup>50</sup> *Id.* at ¶ 125.

<sup>51</sup> *Id.*

<sup>52</sup> See Evan Smith, *Jeffrey Sachs: The End of Poverty*, YALE ECON. REV., *available at* [http://www.yaleeconomicreview.com/issues/2006\\_summer/sachs.html](http://www.yaleeconomicreview.com/issues/2006_summer/sachs.html).

<sup>53</sup> See generally Justice, *supra* note 39.

<sup>54</sup> See Petersmann, *Human Rights Approach*, *supra* note 8, at 625-27.

<sup>55</sup> See, e.g., David R. Williams, *Socioeconomic Differentials in Health: A Review and Redirection*, 53 SOC. PSYCHOL. Q. 81, 91 (1990).

<sup>56</sup> *Id.*



have higher smoking rates than those in higher socioeconomic classes.<sup>57</sup> Those stuck in poverty experience poor living conditions, malnutrition, and overcrowding, all of which adversely affect health.<sup>58</sup> Poverty carries with it other factors that negatively affect health such as higher crime rates, unemployment, "greater exposure to physical hazards," and accidents.<sup>59</sup> Education is often viewed as an equalizer that helps individuals ascend out of poverty, but the great irony is that individuals in poverty are often faced with inadequate opportunities for education.<sup>60</sup>

Poverty also has other, perhaps more obvious, but equally serious, health-related effects. Namely, individuals living in poverty are forced to "live in environments that make them sick."<sup>61</sup> These individuals often lack basic essentials such as clean water, adequate nutrition, and basic sanitation.<sup>62</sup> Poverty is also associated with a lack of access to health resources, which exacerbates the negative impact poverty has on health.<sup>63</sup> What makes this lack of access even more serious is the fact that the negative health effects of poverty have the greatest impact on children.<sup>64</sup> When all factors are considered together, poverty clearly affects basic health measures that are essential to the well-being of populations.

Based on the above statistics, it is easy to recognize that poverty and health are intimately intertwined. Individuals in lower socioeconomic classes have poorer overall health than their more affluent counterparts.<sup>65</sup> The specific reasons for this disparity, however, are not always clear. Popular notions concerning the "why" behind the negative impact of poverty on health include the effects that poverty has on the individual behavioral level and on the societal public health level. For instance, poverty is associated with higher rates of illness and

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<sup>57</sup> *Id.* at 88.

<sup>58</sup> *Id.* at 84.

<sup>59</sup> *Id.* at 89.

<sup>60</sup> WHO, DYING, *supra* note 18, at 26.

<sup>61</sup> *Id.* at 2.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 32.

<sup>64</sup> See J. Lawrence Aber et al., *The Effects of Poverty on Child Health and Development*, 18 ANN. REV. PUB. HEALTH 463 (1997).

<sup>65</sup> See Pogge, *supra* note 16, at 1-2.

chronic disease,<sup>66</sup> which points to the behavioral individual level. Poverty is also associated with lack of opportunity for education, sanitation, clean water, and adequate shelter, which implicate the societal public health level.<sup>67</sup> While the mechanisms through which poverty affects health may be unclear, the outcomes are impossible to ignore. High levels of poverty mean high incidence of health problems.<sup>68</sup>

### B. *Addressing Poverty through International Trade*

A victory over poverty is crucial, not only for the realization of basic human rights, but also for a country to experience economic prosperity.<sup>69</sup> Poverty is often present where basic human rights are not.<sup>70</sup> Decreased access to food and housing, along with increased susceptibility to disease and health care problems are all related to poverty,<sup>71</sup> but also inhibit a country's ability to be economically active.<sup>72</sup> For example, without access to health care clinics, vaccines, and medications, people who become ill or injured are unable to work and are therefore unable to produce.<sup>73</sup> Without a stable and productive workforce, no chance of economic growth is possible.<sup>74</sup> When means exist to combat such problems, the governments have a responsibility to its people to eradicate such problems.<sup>75</sup>

International trade is central to reducing the health-related problems facing the people of our world,<sup>76</sup> and improvements in our international trading system will help combat global poverty.<sup>77</sup> Economics and health policy are two areas

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<sup>66</sup> See UNHRD, *supra* note 49, at ¶ 112.

<sup>67</sup> *Id.* at ¶ 157.

<sup>68</sup> *Id.* at ¶ 112.

<sup>69</sup> See generally *id.*

<sup>70</sup> Justice, *supra* note 39.

<sup>71</sup> See UNHSP, *supra* note 24, at 6.

<sup>72</sup> See Smith, *supra* note 52.

<sup>73</sup> See *id.*

<sup>74</sup> See John M. Taylor, Under Sec'y of Treasury for Int'l Affairs, Raising Productivity, Improving Standards of Living, and Promoting Job-Creating Econ. Growth in Afr., Speech at African Growth and Opportunity Forum, Mauritius (Jan. 16, 2003).

<sup>75</sup> See generally UN, UN CONFERENCE ON TRADE AND DEVELOPMENT SECRETARIAT, THE LEAST DEVELOPED COUNTRIES REPORT 2004: LINKING INTERNATIONAL TRADE WITH POVERTY REDUCTION 219 (2004) [hereinafter LDCR].

<sup>76</sup> See *id.* at i-iv.

<sup>77</sup> See *id.* at 179-256.

that are not only interrelated, but also interdependent.<sup>78</sup> This is illustrated by the fact that many of the health atrocities inflicted upon our international brothers and sisters arise primarily from States that have serious economic problems.<sup>79</sup> These issues are not limited to economically impoverished States. Economically developed States, such as the U.S.,<sup>80</sup> have faced serious health-related problems as a direct result of unenforced health standards in its international trade activity.<sup>81</sup> Part of the problem is that development and enforcement of effective health policies is hampered by inadequate international trading regimes.<sup>82</sup>

Undoubtedly, health policy and the realization of health rights can be improved and achieved through an increase in availability of financial resources to all countries.<sup>83</sup> While health policy and the realization of health rights may be hampered by an inadequate international trading regime,<sup>84</sup> a well-structured, balanced international trading regime can drastically improve global health policy.<sup>85</sup> Through participation in international trade and the financial resources that become available through such participation,<sup>86</sup> international trade can help individuals attain and realize health rights.<sup>87</sup> Interna-

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<sup>78</sup> See U.N. Population Fund, *Population and Poverty: Achieving Equity, Equality, and Sustainability*, 1-3, U.N. Doc. 8 (2003) [hereinafter UNFPA]; Robert Howse, Comment, *Human Rights in the WTO: Whose Rights, What Humanity? Comment on Petersmann*, 13 EUR. J. INT'L L. 651 (2002); Steve Charnovitz, *International Standards and the WTO*, 11 Geo. Wash. Law Legal Studies Research Paper No. 133, (2002), available at <http://ssrn.com/abstract=694346>.

<sup>79</sup> See generally MDGR, *supra* note 10. See generally LDCR, *supra* note 75.

<sup>80</sup> See Jeff Gerth & Tim Weiner, *Tainted Imports – A Special Report: Imports Swamp U.S. Food-Safety Efforts*, N.Y. TIMES, Sept. 29, 1997.

<sup>81</sup> See Gudrun Monika Zagel, *WTO & Human Rights: Examining Linkages and Suggesting Convergence*, 2 IDLO VOICES OF DEV. JURISTS (Paper Series) 2, 5 (2005) [hereinafter Zagel, *WTO & Human Rights*].

<sup>82</sup> See Tatjana Eres, *The Limits of GATT Article XX: A Back Door for Human Rights?*, 35 GEO. J. INT'L L. 597, 601-02 (2004).

<sup>83</sup> HDR 2005, *supra* note 7, at 38-39.

<sup>84</sup> WTO & WHO, *Agreements*, *supra* note 14, at 137.

<sup>85</sup> *Id.*

<sup>86</sup> See generally Carlos Manuel Vazquez, *Trade Sanctions and Human Rights-Past, Present, and Future*, 6 J. INT'L ECON. L. 797 (2003); see generally LDCR, *supra* note 75; see generally HDR 2005, *supra* note 7.

<sup>87</sup> Anderson, *supra* note 3, at 708.

tional trade then, is a key factor States can utilize in order to help address their health problems.<sup>88</sup>

By increasing participation of States in international trade and increasing the funds they have available, States can better combat their health issues and ultimately improve the lives of their people.<sup>89</sup> With this in mind, when a State is trying to develop in a manner that allows for the advancement of all its people, a State must codify basic human rights, starting with a fundamental national health policy, in its economic framework.<sup>90</sup> For example, if a State was to implement policies that were overly stringent, its citizens and companies would have difficulty in adhering to those policies, slowing economic growth and hampering social improvements.<sup>91</sup> Conversely, if the implemented policies set standards too low, social improvement will not occur or will be slow to develop.<sup>92</sup> However, when a balance is found and appropriate policies are implemented, inefficiency can be avoided, economic activity can be fostered, and social improvement can become a reality.<sup>93</sup> Sound policies and standards are “conducive to both trade and better health outcomes.”<sup>94</sup> Thus, economic and health policies must be developed together.<sup>95</sup> If States neglect to do this, horrid social deprivations, like those in China, will continue to occur.<sup>96</sup>

### III. INTERNATIONAL BILL OF RIGHTS

The first half of the 20th century was riddled with inhumanity, death, and violence.<sup>97</sup> As a result, the international community began to work together to find ways to ensure that

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<sup>88</sup> Francesco Longu, European Public Health Alliance, *Why Trade Isn't Working For Health*, <http://www.eph.org/a/334> (last visited Feb. 24, 2009).

<sup>89</sup> See generally HDR 2005, *supra* note 7, at 2.

<sup>90</sup> See generally GONZALEZ-PELAEZ, *supra* note 20.

<sup>91</sup> See Charnovitz, *supra* note 78 (discussing the impact that international standards can have on a country).

<sup>92</sup> *Id.* Social improvements will occur based on the benefits of such policies, the lack thereof would make such improvements difficult to realize.

<sup>93</sup> *Id.* at 11-12.

<sup>94</sup> Owen & Wu, *supra* note 9, at 676.

<sup>95</sup> See UNFPA, *supra* note 78.

<sup>96</sup> See generally HDR 2005, *supra* note 7.

<sup>97</sup> In the wake of World War II an estimated fifty million people lost their lives. See David Pitts, *The Noble Endeavor*, 3 ISSUES OF DEMOCRACY 35, 35 (Oct. 1998), available at <http://usinfo.State.gov/journals/itdhr/1098/ijde/ijde1098.htm> [hereinafter *Noble Endeavor*].

such atrocities<sup>98</sup> would be avoided in the future.<sup>99</sup> In 1947, these initial efforts culminated in the drafting and adoption of the Universal Declaration of Human Rights (UDHR) – the foundation for what would become the International Bill of Rights – by the United Nations (U.N.).<sup>100</sup> Next, came the creation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) during the 1960s.<sup>101</sup> Following this was the development of the International Covenant on Civil and Political Rights (ICCPR).<sup>102</sup> Together these international human rights documents, spurred by the UDHR, form what is now known as the International Bill of Rights.<sup>103</sup>

### A. *Universal Declaration of Human Rights*

Shortly after the creation of the United Nations in the mid 1940s, delegates from around the world met in San Francisco to find a way to ensure respect for the sanctity of human life.<sup>104</sup> These delegates, led by Eleanor Roosevelt, created the Universal Declaration of Human Rights (UDHR).<sup>105</sup> The UDHR established fundamental rights that all people have a privilege to attain and that all countries must respect. These include the right to equality before the law, freedom of religion, and the right to medical care.<sup>106</sup> The UDHR was a declaration created

<sup>98</sup> *Id.*

<sup>99</sup> See United Nations High Commissioner for Human Rights, Fact Sheet No. 2 (Rev.1), *The International Bill of Human Rights* (June 1996), available at <http://www.unhcr.ch/html/menu6/2/fs2.htm> [hereinafter Fact Sheet No. 2]; Thomas Cottier, *Trade and Human Rights: A Relationship To Discover*, 5 J. INT'L ECON. L. 111, 115-16 (2002).

<sup>100</sup> Fact Sheet No. 2, *supra* note 99.

<sup>101</sup> International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (no. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, available at [http://www.unhcr.ch/html/menu3/b/a\\_ceschr.htm](http://www.unhcr.ch/html/menu3/b/a_ceschr.htm) (entered into force Jan. 3, 1976) [hereinafter ICESCR]. The ICESCR provided for the respect of fundamental economic, social, and cultural rights.

<sup>102</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI), 21 U.N. GAOR Supp. (No. 16) at 53-56, U.N. Doc. A/6316 (1966), available at [http://www.unhcr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhcr.ch/html/menu3/b/a_ccpr.htm) (entered into force Mar. 23, 1976) [hereinafter ICCPR] (the backbone for the recognition that all people have civil and political rights).

<sup>103</sup> Fact Sheet No. 2, *supra* note 99.

<sup>104</sup> *Noble Endeavor*, *supra* note 97.

<sup>105</sup> *Id.*

<sup>106</sup> See Universal Declaration of Human Rights, G.A. Res. 217A (III), at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (1948), available at <http://>

and adopted by the U.N. as a standard by which all its members were to strive to achieve.<sup>107</sup> In 1948, the UDHR was adopted with overwhelming support as a foundational pillar of the United Nations.<sup>108</sup>

Among the many rights the UDHR recognized, health rights were specifically established as a human right.<sup>109</sup> The preamble of the UDHR simply and clearly states:

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.<sup>110</sup>

Article 25 of the UDHR goes further to state that a person has a “right to a standard of living adequate for the health and well-being of himself and of his family, including . . . medical care and necessary social services, and the right to security in the event of . . . sickness [or] disability.”<sup>111</sup> Article 22 states that a person is “entitled to realization . . . of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”<sup>112</sup> As evidenced by these passages, the right to health is a core element of the UDHR that must be respected as any other human right.

### B. *The International Covenant on Economic, Social, and Cultural Rights*

Enacted in 1976, the International Covenant on Economic, Social, and Cultural Rights (ICESCR)<sup>113</sup> protects the right to an adequate standard of living,<sup>114</sup> the right to physical and mental

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[www.unhcr.ch/udhr/lang/eng.htm](http://www.unhcr.ch/udhr/lang/eng.htm) (“Everyone has the right to life, liberty and security of person.”) [hereinafter UDHR].

<sup>107</sup> See Franklin and Eleanor Roosevelt Institute, *Drafting and Adoption: The Universal Declaration of Human Rights* (Aug. 27 1998), <http://www.udhr.org/history/default.htm> (last visited Feb. 24, 2009) [hereinafter *Drafting and Adoption*].

<sup>108</sup> Of the 58 participating delegates, 50 voted in favor of adopting the UDHR and only 8 abstained from voting. The eight abstaining countries, at the time, were almost all controlled by the Soviet Union. *Id.*

<sup>109</sup> UDHR, *supra* note 106, at art. 25.

<sup>110</sup> *Id.* at Preamble ¶ 5.

<sup>111</sup> *Id.* at art. 25.

<sup>112</sup> *Id.* at art. 22.

<sup>113</sup> Fact Sheet No. 2, *supra* note 99.

<sup>114</sup> ICESCR, *supra* note 101, at art. 11(1).

health,<sup>115</sup> the right to participate in cultural life,<sup>116</sup> and the right to education.<sup>117</sup> While the goal of the ICESCR is to protect important human rights, it is weak in the sense that there are no mechanisms in place to enforce the implementation of these rights.<sup>118</sup> The ICESCR simply states that nations must work within their resources to achieve the realization of the rights contained therein, thus giving parties to the covenant a way out of their ICESCR obligations.<sup>119</sup> Despite these implementation and enforcement hurdles, the ICESCR remains one of the most important covenants protecting human rights.

Through the incorporation of international human rights law, the ICESCR is able to act as the backbone for the right to health.<sup>120</sup> Article 12(1) declares that “[t]he States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”<sup>121</sup> Article 12(2) goes on to recommend changes States should make in their endeavor to attain the “highest attainable standard” possible.<sup>122</sup> While Article 12(1) provides the fundamental backdrop for the recognition and respect of the right to health, Article 12(2) lends support by addressing health of children, environmental health, “prevention, treatment and control” of disease, and the assurance of medical care.<sup>123</sup> Article 12(2) also goes on to recommend that, in a State’s endeavor to attain the “highest attainable standard” possible, it should take

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<sup>115</sup> *Id.* at art. 12(1).

<sup>116</sup> *Id.* at art. 15(1)(a).

<sup>117</sup> *Id.* at art. 13.

<sup>118</sup> Moira Rayner, Universal Rights Network, *World Influence of the UDHR: International Covenant on Economic, Social, and Cultural Rights*, <http://www.universalrights.net/main/world.htm#two> (last visited Feb. 24, 2009).

<sup>119</sup> *Id.* The Covenant says:

that governments must act ‘to the maximum of available resources’, to achieve ‘progressively’ the full realisation of the Rights it protects. This gives governments – who have a discretion in how they spend their money – every reason to State that they just cannot afford them.

*Id.*

<sup>120</sup> Committee on Economic, Social, and Cultural Rights [CESCR], *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, ¶ 2, U.N. Doc. E/C.12/2000/4 (July 4, 2000), available at <http://www.publichealthlaw.net/Reader/docs/GenCom14.pdf> [hereinafter *General Comment*].

<sup>121</sup> ICESCR, *supra* note 101, at art. 12(1).

<sup>122</sup> *Id.* at art. 12(2).

<sup>123</sup> *Id.*



on steps to improve “industrial hygiene.”<sup>124</sup> Also, Article 11 discusses human rights in the context of employment safety.<sup>125</sup> These articles are particularly relevant because they address areas that impact economic activity within a member State and ultimately that State’s trade activity.

### C. *International Covenant on Civil and Political Rights*

The International Covenant on Civil and Political Rights (ICCPR) was enacted in 1976 and protects against abuses of fundamental civil and political rights.<sup>126</sup> Like the ICESCR, the ICCPR essentially evolved from the UDHR.<sup>127</sup> The ICCPR protects freedom of expression,<sup>128</sup> freedom from unlawful arrest and detention,<sup>129</sup> the right to vote,<sup>130</sup> and most importantly here, the right to life.<sup>131</sup> The ICCPR also makes sure that the rights the covenant sets out for the territories that are parties to the covenant enjoy such rights while no individuals of such territories are denied such rights on the basis of race, sex, nationality, beliefs, and social or economic standing.<sup>132</sup> The ICCPR also contains two optional protocols that nations may sign in addition to the main covenant.<sup>133</sup> The first optional protocol protects individuals from human rights violations by enabling both States and citizens to lodge complaints about human rights violations.<sup>134</sup> The second optional protocol strives to eliminate the death penalty altogether.<sup>135</sup>

<sup>124</sup> *Id.* at art. 12(2)(b).

<sup>125</sup> *Id.* at art. 6.

<sup>126</sup> ICCPR, *supra* note 102.

<sup>127</sup> HUMAN RIGHTS EDUCATORS’ NETWORK, FROM CONCEPT TO CONVENTION: HOW HUMAN RIGHTS LAW EVOLVES (Nancy Flowers ed., 1998), <http://www1.umn.edu/humanrts/edumat/hredusers/hereandnow/Part-1/from-concept.htm>.

<sup>128</sup> ICCPR, *supra* note 102, at art. 19(2).

<sup>129</sup> *Id.* at art. 9(1).

<sup>130</sup> *Id.* at art. 25(b).

<sup>131</sup> *Id.* at art. 6(1).

<sup>132</sup> *Id.* at art. 2(1).

<sup>133</sup> G.A. Res. 2200A (XXI), ¶ 21, U.N. Doc. A/6316 (Dec. 16, 1966) (entered into force March 23, 1976), *available at* <http://www.ohchr.org/english/law/ccpr-one.htm>; G.A. Res. 44/128, ¶ 207, U.N. Doc. A/RES/44/49 (1989) (entered into force March 23, 1976), *available at* <http://www.ohchr.org/english/law/ccpr-death.htm>.

<sup>134</sup> Moira Rayer, *World Influence of the UDHR: International Covenant on Civil and Political Rights*, <http://www.universalrights.net/main/world.htm#two> (last visited Feb. 24, 2009).

<sup>135</sup> *Id.* The ICCPR itself allows the death penalty in certain circumstances. *Id.*

The ICCPR primarily protects rights and freedoms that are included in the U.S. Constitution's Bill of Rights. For example, the ICCPR protects the right to religion,<sup>136</sup> freedom of association,<sup>137</sup> and protection against cruel and unusual punishment.<sup>138</sup> However, the ICCPR also references rights that can be directly used to support the right to health. For example, the Preamble of the ICCPR references economic, social, and cultural rights<sup>139</sup> which together and individually impact the right to health. The reference to economic, social, and cultural rights directly implicates the notion of health as a fundamental right to be protected by the nations that ratify the covenant.<sup>140</sup> While the ICCPR does not elaborate on the protections that must be afforded to individuals with regard to health, it is important to recognize it does acknowledge the importance of the protection of economic, social, and cultural rights, which encompass the right to health.<sup>141</sup>

#### IV. THE WORLD TRADE ORGANIZATION

*"[T]he WTO is not just about liberalizing trade . . . ."*<sup>142</sup>

As the central international organization on trade, the World Trade Organization (WTO), not only influences and controls international trade, but the WTO plays a key role in ensuring that international trade improves humanity.<sup>143</sup> Specifically, the WTO must promote the value and necessity of health rights, especially in regards to international trade.<sup>144</sup> However, neither the former General Agreement on Tariffs and

<sup>136</sup> U.S. CONST. amend. I; ICCPR, *supra* note 102, at art. 18.

<sup>137</sup> U.S. CONST. amend. I; ICCPR, *supra* note 102, at art. 22(1).

<sup>138</sup> See U.S. CONST. amend. VIII; ICCPR, *supra* note 102, at art. 7.

<sup>139</sup> ICCPR, *supra* note 102, at pmb1. The ICESCR and the UDHR also specifically protect these same rights.

<sup>140</sup> Anita Pereira, *Live and Let Live: Healthcare is a Fundamental Right*, 3 CONN. PUB. INT. L.J. 481, 486-88 (2004).

<sup>141</sup> ICCPR, *supra* note 102, at pmb1.

<sup>142</sup> WTO INFO. & MEDIA REL. DIVISION, WTO, *Understanding the WTO* 7 (3rd ed. 2003, rev. ed. 2007), available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/understanding\\_e.pdf](http://www.wto.org/english/thewto_e/whatis_e/tif_e/understanding_e.pdf) [hereinafter WTO].

<sup>143</sup> See generally PETER VAN DEN BOSSCHE, *THE LAW AND POLICY OF THE WORLD TRADE ORGANIZATION: TEXT, CASES AND MATERIALS* 707 (Cambridge Univ. Press 2006) (2005).

<sup>144</sup> *Id.*

Trade (GATT) agreements nor the WTO recognize the link between basic human rights and trade.<sup>145</sup>

The WTO's multilateral trading scheme is complex and faces many shortcomings.<sup>146</sup> The WTO is constantly criticized by other international organizations, States, non-governmental organizations (NGOs), and scholars for not addressing human rights related concerns that are directly impacted by the actions of the WTO.<sup>147</sup> Many of the problems confronting the WTO stem from the dissatisfaction of the WTO's position against addressing human rights.<sup>148</sup> The WTO has faced a combination of external and internal pressures to change, both of which have acted to undermine the legitimacy of the WTO in the eyes of the international community.<sup>149</sup> To better address such issues, the WTO must make internal changes, not only to better adapt to the current global climate regarding international trade, but also to ensure its future success and its long-term legitimacy.<sup>150</sup>

The WTO has made the obvious statement that it is a trade organization and not a human rights organization.<sup>151</sup> While true, such a position fails to recognize the undeniable link between international trade and social policy.<sup>152</sup> Human rights should be recognized by the WTO for both the betterment of international trade and the betterment of humankind.<sup>153</sup> Through the recognition of human rights, the WTO can better

<sup>145</sup> Zagel, *WTO & Human Rights*, *supra* note 81, at 9.

<sup>146</sup> JOHN HOWARD JACKSON, *SOVEREIGNTY, THE WTO, AND CHANGING FUNDAMENTALS OF INTERNATIONAL LAW* 104 (Cambridge Univ. Press 2006).

<sup>147</sup> Anderson, *supra* note 3, at 708; Eres, *supra* note 82, at 600.

<sup>148</sup> Gudrun Monika Zagel, *The WTO and Trade-Related Human Rights Measures: Trade Sanctions vs. Trade Incentives*, *AUSTRIAN REV. OF INT'L & EUR. LAW* (2004), available at <http://ssrn.com/abstract=859166> [hereinafter Zagel, *Trade Sanctions*].

<sup>149</sup> See generally DINE, *supra* note 46, at 197-98.

<sup>150</sup> See generally Cottier, *supra* note 99, at 132. Cottier states "The long-term legitimacy of the multilateral trading system relies, as much as the law of many nations and the European Union, on democracy and the advancement of human rights." *Id.*

<sup>151</sup> *Id.* at 30. This is an obvious fact, especially since trade is why the WTO was created in the first place. However, the WTO does not seem to be saying this to correct any mistaken presumptions that they are anything other than a trade organization. Rather, the WTO seems to be using this as an excuse not to address basic human rights.

<sup>152</sup> See generally GONZALEZ-PELAEZ, *supra* note 20. The WTO should not greatly deviate from its position as a trade-based organization.

<sup>153</sup> *Contra* Eres, *supra* note 82, at 633-35.

address health-related issues as they apply in regard to international trade.<sup>154</sup> With this understanding, the WTO should recognize basic human rights and incorporate them into its multilateral trading structure.<sup>155</sup>

In adopting such a position, and more importantly here with the incorporation of health policy goals into its trading system, the WTO must require that its member States be a party to the major international human rights covenants that form the International Bill of Rights.<sup>156</sup> Following such action, the WTO must then be willing to enforce the provisions of these covenants and not allow member States to use the organization as a haven for ignoring their human rights obligations. Ultimately, by making such changes, the WTO will be recognizing that international trade can reduce poverty and that human rights atrocities are a result of poverty. Thus, the WTO must recognize, incorporate, and enforce international human rights within its multilateral trading regime.

#### A. *The WTO and Human Rights*

As of May 16, 2008, the WTO consists of 152 member States.<sup>157</sup> Three-fourths of those member States are designated as developing countries.<sup>158</sup> According to the Preamble of the Marrakesh Agreement (the agreement that established the WTO),<sup>159</sup> the WTO was founded upon the premise of liberalizing trade amongst nations, with a specific goal of opening up world markets to developing countries in order for those nations to decrease poverty and become developed.<sup>160</sup> The Preamble of

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<sup>154</sup> *But see generally* WTO, *supra* note 142.

<sup>155</sup> *See generally* Zagel, *WTO & Human Rights*, *supra* note 81.

<sup>156</sup> The Covenants that make up the International Bill of Rights include the UDHR, ICCPR, and the ICESCR. *See* UDHR, *supra* note 106; ICESCR, *supra* note 101; ICCPR, *supra* note 102.

<sup>157</sup> Understanding the WTO, Members and Observers, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm) (last visited Feb. 24, 2009).

<sup>158</sup> Understanding the WTO, Special Policies, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org5\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org5_e.htm) (last visited Feb. 24, 2009).

<sup>159</sup> *See* David Palmeter & Petros C. Mavroidis, *The WTO Legal System: Sources of Law*, 92 AM. J. INT'L L. 398 (1998) (stating that the Marrakesh Agreement was the specific document that established the WTO at the end of the Uruguay Round).

<sup>160</sup> VAN DEN BOSSCHE, *supra* note 143, at 86.

the Marrakesh Agreement specifically states that the purpose of the WTO revolves around:

Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of an trade in goods and services, while allowing for the optimal use of the word's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.<sup>161</sup>

The ideals behind the WTO are clearly in line with goals of developing countries, in that it was meant to help raise standards of living and increase employment through liberalized trade.<sup>162</sup> However, this has not become a reality.<sup>163</sup>

The General Agreement on Tariffs and Trade (GATT) laid the foundation for the establishment of the WTO and the rules that govern its multilateral trading system.<sup>164</sup> The GATT was created to help liberalize trade between countries<sup>165</sup> and aimed to improve the flow of commerce between nations.<sup>166</sup> This agreement established the unofficial, de facto international organization, GATT.<sup>167</sup> GATT largely focused on the trade of goods, but during the last round of GATT trade negotiations, known as the Uruguay Round, member States decided to expand the areas to which GATT would be applied.<sup>168</sup> The WTO was created during the Uruguay Round to take over the role of GATT<sup>169</sup> and covered additional areas, including intellectual

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<sup>161</sup> Marrakesh Agreement Establishing the World Trade Organization, pmbl., Apr. 15, 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994), available at [http://192.91.247.23/english/docs\\_e/legal\\_e/04-wto.pdf](http://192.91.247.23/english/docs_e/legal_e/04-wto.pdf).

<sup>162</sup> VAN DEN BOSSCHE, *supra* note 143, at 86.

<sup>163</sup> Aaditya Mattoo & Arvind Subramanian, *The WTO and the Poorest Countries: The Stark Reality* 3, 7, Int'l Monetary Fund, (Working Paper No. 04/81, 2004), available at <http://imf.org/external/pubs/ft/wp/2004/wp0481.pdf>.

<sup>164</sup> WTO, *supra* note 142, at 10.

<sup>165</sup> *Id.* at 9.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.* at 10.

<sup>168</sup> *Id.*

<sup>169</sup> WTO, *supra* note 142, at 10.

property and trade in services.<sup>170</sup> In 1995, the WTO came into effect and immediately became the controlling organization of the international multilateral trading system established by GATT.<sup>171</sup> The WTO began creating agreements that covered, among other things, product safety issues, food sanitation, anti-dumping issues, and subsidy concerns.<sup>172</sup> By the mid-1990s, through the efforts of GATT, and now the WTO, industrialized member States had reduced their tariff rates on industrial goods to below four percent,<sup>173</sup> proving that enhanced trade relations between member States was desired.<sup>174</sup>

In promoting economic activity, the WTO aims to reduce various trade barriers, such as tariffs and subsidies.<sup>175</sup> These actions by the WTO promote not only interaction between countries, but also interaction between corporations and countries.<sup>176</sup> Countries can benefit from one another by focusing on the things they produce efficiently, then trading with other countries accordingly.<sup>177</sup> As a consequence, countries may become dependent on one another for the products each exports and on companies for the production of such goods.<sup>178</sup> Likewise, companies rely on an efficient work force to produce the specific products that they sell in various markets.<sup>179</sup> Therefore, two separate entities, States and companies, are dependent upon the production of goods and the labor rights required for the production of those goods.<sup>180</sup>

Countries and companies both have tremendous amounts to gain by opening themselves up to the international market.<sup>181</sup> At the same time, both also make themselves vulnerable to devastating harm, such as the loss of current and future in-

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<sup>170</sup> WTO & WHO, *Agreements*, *supra* note 14, at 25, ¶ 8.

<sup>171</sup> *Id.* at 9-10.

<sup>172</sup> *Id.* at 11.

<sup>173</sup> *Id.* at 12.

<sup>174</sup> *See* WTO & WHO, *Agreements*, *supra* note 14, at 28, ¶ 14.

<sup>175</sup> *See generally* WTO, *supra* note 142.

<sup>176</sup> *See generally* DINE, *supra* note 46 (discussion regarding human rights, WTO, and corporations).

<sup>177</sup> GONZALEZ-PELAEZ, *supra* note 20, at 79.

<sup>178</sup> *See generally* Yeomin Yoon & Robert W. McGee, *Incorporating Labor Standards Into Trade Agreements: An Ethical Analysis*, Presented at the Korea Labor Institute: Korea America Economic Association Joint Conference (July 9-10, 2003).

<sup>179</sup> *See generally id.*

<sup>180</sup> *See generally id.*

<sup>181</sup> *See* DINE, *supra* note 46, at 47.

vestors.<sup>182</sup> If a country is going to open its markets up to foreign business,<sup>183</sup> that country needs to know that they will receive some benefit from such an action.<sup>184</sup> For example, unsafe products that are either imported or exported have a direct effect on the economic well-being of a nation.<sup>185</sup> If a country imports unsafe products, then that country places the health of its citizens in grave danger.<sup>186</sup> Similarly, when a country exports unsafe products to other nations, that country places its reputation on the line because foreign consumers lose confidence in the safety of the exporting nation's products and therefore, buy fewer products from that country.<sup>187</sup> Of course, this can have devastating economic effects on the exporting nation. As such, it is important for international organizations, such as the WTO, to alleviate fears that countries and companies may have in opening themselves up to the international community.<sup>188</sup> This can be accomplished through the incorporation of labor standards into trade agreements.<sup>189</sup>

#### B. *A Missed Opportunity – WTO's Failure to Address Labor Standards*

While provisions have been implemented to combat the subsidization of domestic industries by member States,<sup>190</sup> the WTO has failed to address subsidized wages and labor standards, even though those issues comprise the same areas of subsidization.<sup>191</sup> The WTO has stated that labor issues have no role in WTO negotiations and that labor issues are an area the

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<sup>182</sup> See U.S. Sec. & Exch. Comm'n. Office of Investor Educ. & Advocacy, *International Investing*, <http://www.sec.gov/investor/pubs/ininvest.htm> (last visited June 26, 2008).

<sup>183</sup> See generally Mattoo & Subramanian, *supra* note 163, at 10-11, 18.

<sup>184</sup> *Id.* at 18.

<sup>185</sup> See Pete Engardio et al., *Broken China*, BUSINESS WEEK, July 23, 2007, available at [http://www.businessweek.com/magazine/content/07\\_30/b4043001.htm](http://www.businessweek.com/magazine/content/07_30/b4043001.htm).

<sup>186</sup> Eric S. Lipton & David Barboza, *As More Toys are Recalled, Trail Ends in China*, N.Y. TIMES, June 19, 2007, at A1.

<sup>187</sup> *Id.*

<sup>188</sup> See generally WTO, *supra* note 142.

<sup>189</sup> See generally Will Martin & Keith E. Maskus, *Core Labor Standards and Competitiveness: Implications for Global Trade Policy*, 9 REV. INT'L ECON. 317 (2001).

<sup>190</sup> WTO, *supra* note 142, at 49.

<sup>191</sup> *Id.* at 75; Martin & Maskus, *supra* note 189, at 317-18, 325.



WTO should not address.<sup>192</sup> Agreements negotiated within the WTO do not cover “core labor standards.”<sup>193</sup> By “core labor standards” the WTO is referring to everything from child labor laws, to forced labor, to the right to establish trade unions.<sup>194</sup> Rather, the WTO has conveniently deferred all labor issues to the International Labour Organization (ILO).<sup>195</sup> However, GATT Article XX<sup>196</sup> provides a host of exceptions for member States to deviate from their WTO obligations in order to pursue their own public policies, including what can be interpreted as labor concerns.<sup>197</sup> These exceptions highlight some inconsistencies within the WTO. Despite the WTO’s insistence that it does not recognize human rights, WTO provisions seem to be drafted in a manner that concedes the fact that human rights cannot be ignored.<sup>198</sup>

The incorporation of labor standards into trade agreements is highly controversial.<sup>199</sup> For example, a corporation will invest in a State by opening a facility only if the workforce in that State is capable of producing that company’s product<sup>200</sup> and the State has a sustainable infrastructure to support its business investment.<sup>201</sup> If a country does not have these elements in place, a business will be reluctant to invest in that country.<sup>202</sup> As such, despite their controversial nature, labor standards must be adopted by a country to alleviate fears a company may have when entering that market. To help member States make such adoption, the WTO should recognize labor standards as a

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<sup>192</sup> WTO, *supra* note 142, at 79.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> GATT Art. XX is one of the articles that make up The General Agreement on Tariffs and Trade. GATT Art. XX provides a list of general exceptions, that if satisfied, allow WTO member states to adopt trade measures that may otherwise be inconsistent with WTO trade agreements. See PAUL B. STEPHAN, JULIE A. ROIN & DON WALLACE JR., INTERNATIONAL BUSINESS AND ECONOMICS LAW AND POLICY 90-91 (LEXIS NEXIS 2004).

<sup>197</sup> See Zagel, *Trade Sanctions*, *supra* note 148, at 11-17.

<sup>198</sup> See generally *id.* at 12.

<sup>199</sup> See generally Yoon & McGee, *supra* note 178.

<sup>200</sup> See generally Ernest Harsch, *Investors Start to Eye Africa*, AFRICA RE-NEWAL, Jan. 2005, available at <http://www.un.org/ecosocdev/geninfo/afrec/vol18no4/184invest.htm>.

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

crucial element of their international trade system.<sup>203</sup> It would follow then, that member States be required to ensure they have a workforce that can produce, an infrastructure that can support both business and social activity, and policies in place to ensure sustainable economic growth.<sup>204</sup> It is here that basic human rights play an important role. They better ensure that a State can meet the above requirements and provide a foundation by which the WTO is helping both developed and developing member States protect the health of production and consumption.<sup>205</sup>

The WTO faces a dilemma regarding the incorporation of labor standards into WTO provisions; many WTO member States argue that labor standards have no role in provisions created by the WTO.<sup>206</sup> Many WTO member States believe that labor standards are not created to protect the health of a society, but rather to act as protectionist measures against other member States.<sup>207</sup> Protectionist measures are actions taken by governments, such as the funding of subsidies, to protect their domestic industries from foreign competition.<sup>208</sup> WTO member State representatives, who represent their country in WTO proceedings, believe that labor standards enacted by developed countries undermine the advantage of lower wages that some countries rely upon to compete internationally.<sup>209</sup> This adds to the controversial nature of labor standards being incorporated into the WTO and highlights one of the many dilemmas the WTO faces in taking such action in this area.

Curiously, while the WTO takes the position that labor issues have no role within the WTO,<sup>210</sup> its member States agreed to recognize “core labour standards” during the 1996 Singapore Ministerial Conference.<sup>211</sup> Despite this agreement, there are no

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<sup>203</sup> Cf. Yoon & McGee, *supra* note 178.

<sup>204</sup> See generally *id.*

<sup>205</sup> See generally Zagel, *Trade Sanctions*, *supra* note 148.

<sup>206</sup> See WTO, *supra* note 142, at 79.

<sup>207</sup> See *id.* at 79.

<sup>208</sup> *Id.* at 14.

<sup>209</sup> See *id.* at 79.

<sup>210</sup> *Id.*

<sup>211</sup> WTO, *supra* note 142, at 79. The Ministerial Conference is the top decision making organ of the WTO. The Ministerial Body is made up of all WTO members, they make decisions regarding all matters that fall under the umbrella of the WTO trade agreements, and they must meet at least every two years. In 1996 the Min-

WTO committees, groups, or bodies currently working on this issue of “core labour standards,” even though WTO member States recognized it as an important issue that needs to be addressed.<sup>212</sup> This is a curious contradiction within the WTO itself as the WTO has set forth that everything it does is a result of negotiation.<sup>213</sup> Negotiations have occurred regarding labor standards, and it was agreed that labor standards should be addressed. According to WTO policy, such a negotiated agreement should be reflected within WTO action, yet this is not what has occurred. Although the WTO has stated that it takes action based on agreements reached in negotiations, no WTO action has been taken here. It appears that, based on the WTO’s own reasoning, action should be taken, though.<sup>214</sup> Here, the WTO has negotiated and recognized “core labour standards,”<sup>215</sup> but has done nothing to further this position within the organization itself.<sup>216</sup>

The WTO has long held that it is not a human rights organization.<sup>217</sup> Human rights advocates have criticized the WTO for its arms length approach to human rights.<sup>218</sup> Trying to get the WTO to enforce human rights would mean the WTO would have to use trade measures as a means to enforce human rights.<sup>219</sup> The problem is not that the WTO refrains from holding itself out as an international body that monitors and enforces human rights, but rather, the fact that the fundamental aim of the WTO is to promote trade and economics.<sup>220</sup> Thus, it is argued that international human rights agencies should monitor the effects of globalization on human rights, not the WTO.<sup>221</sup> None-

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isterial Body met in Singapore, thus the 1996 Singapore Ministerial Conference. WTO, Ministerial Conferences, [http://www.wto.org/english/thewto\\_e/minist\\_e/minist\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/minist_e.htm) (last visited Feb. 24, 2009).

<sup>212</sup> WTO, *supra* note 142, at 79.

<sup>213</sup> *Id.* at 9.

<sup>214</sup> *See generally id.* at 9.

<sup>215</sup> *Id.* at 79.

<sup>216</sup> *Id.*

<sup>217</sup> *See generally* WTO, *supra* note 142; *see generally* Eres, *supra* note 82.

<sup>218</sup> *See* Anderson, *supra* note 3, at 708.

<sup>219</sup> *See* Eres, *supra* note 82, at 34.

<sup>220</sup> *See generally* WTO, *supra* note 142.

<sup>221</sup> Eres, *supra* note 82, at 34.

theless, the WTO should not completely ignore a responsibility to recognize and promote human rights.<sup>222</sup>

While it should not be the role of the WTO to interpret human rights law,<sup>223</sup> the WTO should neither act as a barrier to the enforcement of human rights agreements, nor act as a haven for countries to ignore their human rights obligations.<sup>224</sup> The WTO has stated that it is an organization not just about liberalizing trade.<sup>225</sup> This is evidenced by the fact the WTO has, at times, supported some trade barriers that have protected consumers from the spread of disease.<sup>226</sup> This leads us to believe that the WTO knows that international trade affects people's lives, and that the WTO plays a role in improving the quality of life. Yet, the WTO still fails to fully acknowledge the connection between international trade and human rights.<sup>227</sup>

In this vein, WTO policy is, in itself, contradictory.<sup>228</sup> The WTO contends that it is not a human rights organization, but will allow trade sanctions if they protect consumers and help prevent the spread of disease.<sup>229</sup> It will not, however, allow for any trade sanctions against any member State that is in gross violation of an international human rights agreement.<sup>230</sup> Thus, since protecting the consumer and the population is not deemed a human rights concern by the WTO, it is an area the WTO is willing to monitor.<sup>231</sup> However, monitoring whether a member State is adhering to its international agreement to not legally allow a six-year-old child to work 12-hour days is deemed a

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<sup>222</sup> See Cottier, *supra* note 99, at 111. "The WTO needs to be put back in its proper place and province; a better balance with human rights concern is wanted." *Id.*

<sup>223</sup> See Eres, *supra* note 82, at 600-03.

<sup>224</sup> See generally Ernst-Ulrich Petersmann, *Time for a United Nations 'Global Compact' for Integrating Human Rights into the Law of Worldwide Organizations: Lessons from European Integration*, 13 EUR. J. INT'L L. 621 (2002) [hereinafter Petersmann, *Global Compact*].

<sup>225</sup> WTO, *supra* note 142, at 3.

<sup>226</sup> *Id.*

<sup>227</sup> See generally Amnesty International, *Human Rights, Trade and Investment Matters* (Amnesty International 2006), available at <http://www.amnestyusa.org/business/HRTradeInvestmentMatters.pdf>.

<sup>228</sup> See generally Vazquez, *supra* note 86.

<sup>229</sup> WTO, *supra* note 142, at 3.

<sup>230</sup> See Vazquez, *supra* note 86, at 62-63.

<sup>231</sup> See generally DINE, *supra* note 46, at 125.

human rights issue by the WTO;<sup>232</sup> it is something the WTO will not address.<sup>233</sup> The distinction between protecting a population from the spread of disease and protecting against child labor abuses is difficult to comprehend, and the WTO is contradicting itself by addressing one area and not the other.<sup>234</sup>

Many international human rights organizations already exist that are designed to specifically monitor human rights issues.<sup>235</sup> The International Labour Organization (ILO), for example, focuses on labor issues.<sup>236</sup> Yet, even though the ILO focuses on labor issues, it has been able to successfully shift itself to a more human rights-based approach with regard to monitoring labor standards.<sup>237</sup> The ILO has made its interpretations and provisions congruent with international human rights standards.<sup>238</sup> The criticism levied against the WTO for not creating provisions that would establish labor standards for its member States<sup>239</sup> is largely based on the fact that human rights, including labor standards and international trade, are all significantly intertwined.<sup>240</sup> In addition, while the WTO has stated all labor issues are to be referred to the ILO, the WTO and ILO have not been able to reach an agreement where the two work together to address such issues.<sup>241</sup>

Competing labor standards would create additional problems and additional work for the ILO, the WTO, and their member States due to the fact that all parties involved would have to interpret each standard and find ways to apply each competing standard without violating the other.<sup>242</sup> The worst outcome would be that member States would be forced to imple-

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<sup>232</sup> DEP'T OF COMM. & PUB. INFO., ILO, THE ILO AT A GLANCE 3, 11 (ILO 2007) [hereinafter ILO].

<sup>233</sup> Zagel, *Trade Sanctions*, *supra* note 148, at 2.

<sup>234</sup> See generally DINE, *supra* note 46, at 125.

<sup>235</sup> See generally Office of the U.N. High Commissioner for Human Rights, The Core International Human Rights Instruments and Their Monitoring Bodies, <http://www2.ohchr.org/english/law/> (last visited Feb. 24, 2009).

<sup>236</sup> See generally Robert M. Stern, *Labor Standards and Trade Agreements*, U. Mich. Gerald R. Ford Sch. Pub. Policy, (Discussion Paper No. 496, 2003), available at <http://www.fordschool.umich.edu/rsie/workingpapers/Papers476-500/r496.pdf>.

<sup>237</sup> See ILO, *supra* note 232.

<sup>238</sup> *Id.*

<sup>239</sup> See Stern, *supra* note 236, at 9-12.

<sup>240</sup> Cottier, *supra* note 99, at 114-16.

<sup>241</sup> Stern, *supra* note 236, at 10-11.

<sup>242</sup> See Petersmann, *Human Rights Approach*, *supra* note 8.

ment and adhere to both sets of standards (those from the ILO and those from the WTO) and face sanctions from both if they were to have any violations.<sup>243</sup> This would be extremely burdensome on both member countries and the organizations. The countries that already have problems understanding and adhering to their international obligations, are the same countries that are facing extreme economic and social difficulties.<sup>244</sup> The existence of competing standards would be especially hard on poor countries, which already struggle to meet the demands of their international requirements. Competing standards would also be overly burdensome on States, and would defeat the purpose of the WTO, which is to promote international trade, not place burdens on its member States.<sup>245</sup>

### C. WTO's Progress in Recognizing Human Rights

While the WTO has been heavily criticized for its seemingly anti-human rights position, the organization has nonetheless implemented a few safety standards.<sup>246</sup> For example, GATT Article XX provides that member States can enact trade restriction measures against other member States, so long as they are not discriminatory or protectionist measures in order to protect human health, animal health, and plant life.<sup>247</sup> Additionally, the WTO has created provisions that deal specifically with food safety, animal health, animal safety, plant health, plant safety, and standard of care for products.<sup>248</sup> These are concrete examples of the WTO creating provisions that specifically aim to protect humanity, but more importantly indicate that human rights provisions are not outside of the WTO's reach.<sup>249</sup>

As mentioned, the safety provisions implemented by the WTO aim to address the safety of food for consumption and to create measures that address animal health and plant

<sup>243</sup> See Petersmann, *Global Compact*, *supra* note 224.

<sup>244</sup> See Marjorie Florestal, *Technical Assistance Post-Doha: Is There Any Hope of Integrating Developing Countries into the Global Trading System?*, 24 ARIZ. J. INT'L & COMP. L. 121 (2007), available at <http://www.ssrn.com/abstract=945309>; see generally Zagel, *Trade Sanctions*, *supra* note 148, at 21-27.

<sup>245</sup> See Zagel, *Trade Sanctions*, *supra* note 148, at 21-23.

<sup>246</sup> WTO, *supra* note 142, at 31.

<sup>247</sup> *Id.* at 31.

<sup>248</sup> *Id.* at 33.

<sup>249</sup> See generally *id.*

safety.<sup>250</sup> The WTO claims these provisions must be based on science, are only to be applied to protect people, animals, and plant life, and are not to be applied arbitrarily or in a manner that discriminates against other member States.<sup>251</sup> When implementing such provisions, member countries are encouraged to use international standards, guidelines, and recommendations in the areas where they exist.<sup>252</sup> Curiously, while animal and plant safety measures have been implemented by the WTO and deemed important,<sup>253</sup> child labor safety measures have not.<sup>254</sup>

The WTO has also developed provisions to combat the dumping of goods on foreign markets. These provisions play a role in a member State's ability to protect the human rights of its citizens.<sup>255</sup> "Dumping" is defined as the selling of a product on a foreign market at an unfairly low price.<sup>256</sup> Article VI of GATT specifically permits member States to defend themselves against "dumping."<sup>257</sup> Other WTO agreements allow a member State to combat against "dumping" when there is material harm to a competing domestic industry.<sup>258</sup> The "dumping" of a good on a domestic market causes the price of that good to drop dramatically, making it difficult for domestic producers to profit from production of their goods. As such, dumping is extremely harmful to developing economies.<sup>259</sup> Consequently, domestic ability to produce such a good is stymied or not developed at all.<sup>260</sup> Without economic development, a country will struggle to implement policies that meet the social needs of its people.<sup>261</sup> This leads to an increase in poverty and human rights viola-

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<sup>250</sup> *Id.* at 31.

<sup>251</sup> WTO, *supra* note 142, at 31.

<sup>252</sup> *Id.*

<sup>253</sup> *Id.* at 31-32.

<sup>254</sup> Zagel, *Trade Sanctions*, *supra* note 148, at 17-18.

<sup>255</sup> WTO, *supra* note 142, at 48-51.

<sup>256</sup> *Id.* at 48.

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> See Liz Stuart & Gonzalo Fanjul, Oxfam Int'l, Oxfam Briefing Paper: A Round for Free: How Rich Countries are Getting a Free Ride on Agricultural Subsidies at the WTO 8 (June 2005), available at <http://www.ppl.nl/bibliographies/wto/files/3750a.pdf>.

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*



tions which, in turn, make it more difficult for that country to develop socially and economically.<sup>262</sup>

Trade measures can be an appropriate instrument to use when addressing human rights issues.<sup>263</sup> The recognition of the social aspect of trade agreements is important and has been addressed from the creation of various international organizations and agreements.<sup>264</sup> For example, both the ILO and original GATT provisions recognize the need to promote human rights.<sup>265</sup> While international human rights law and international trade have been pursuing the same goal, which is improving the quality of human life, they seem to have been developing as separate entities.<sup>266</sup> The WTO, as the main organization on developing and promoting international trade, plays a major role in bringing these two branches of law together as separate but interdependent branches of international development.<sup>267</sup>

#### D. *The WTO'S Secret Weapon: Trade Sanctions*

The GATT was developed soon after the establishment of the U.N. to help promote trade.<sup>268</sup> Just as the U.N. does not allow the use of force upon a State when it violates a human rights agreement, the GATT/WTO does not allow for a State to impose trade sanctions on another State when human rights are violated.<sup>269</sup> The U.N. Charter does not allow for the use of force except for self-defense.<sup>270</sup> The use of force is also not permitted for the enforcement of treaties.<sup>271</sup> If an international law is violated, a respondent State or the U.N. cannot use force to make that State comply with their international agreement.<sup>272</sup> However, the U.N. allows trade sanctions to be imple-

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<sup>262</sup> *Id.*

<sup>263</sup> See generally Petersmann, *Global Compact*, *supra* note 224.

<sup>264</sup> See Adelle Blackett, *Whither Social Clause? Human Rights, Trade Theory and Treaty Interpretation*, 31 COLUM. HUM. RTS. L. REV. 1, 11 (1999).

<sup>265</sup> *Id.* at 6-8.

<sup>266</sup> Cottier, *supra* note 99, at 112; Zagel, *WTO & Human Rights*, *supra* note 81.

<sup>267</sup> Petersmann, *Human Rights Approach*, *supra* note 8, at 625-27.

<sup>268</sup> Chris Rodda, *The World Trade Organization: Economics for International Students*, <http://www.cr1.dircon.co.uk/TB/4/WTO.htm> (last visited Feb. 24, 2009).

<sup>269</sup> Vazquez, *supra* note 86, at 62-63.

<sup>270</sup> U.N. Charter art. 2, para. 4. *Id.* at art. 51.

<sup>271</sup> *Id.*

<sup>272</sup> See *id.*

mented.<sup>273</sup> Thus, by allowing for the use of trade sanctions against a member State for human rights violations, the WTO would be in line with established international law.<sup>274</sup>

WTO member States are largely protected against trade sanctions based on human rights violations, because human rights are not part of the WTO trading system.<sup>275</sup> This illustrates that the WTO deems international trade more important than human rights.<sup>276</sup> Though trade sanctions may not be used against States who commit human rights violations, States are allowed to take measures, such as denial of visas to people coming from States known for human rights violations and denial of airplane landing rights to such countries.<sup>277</sup> To deny landing rights to airplanes from countries known for their human rights violations hardly seems like a measure that ensures a country will adhere to its human rights obligations. The most effective sanctions seem to be those where billions of dollars are at stake.<sup>278</sup>

If a WTO member State were allowed to place a sanction on another WTO member State, such a step would seem to be a protectionist move, because the sanctioned member State may feel that the State creating the sanction is simply trying to protect one of its domestic markets from foreign competition.<sup>279</sup> Human rights should not be a basis for an Article XX exception.<sup>280</sup> However, the current structure of the WTO still has room for a link between human rights and global trade within the current WTO framework.<sup>281</sup> Some contend that if the WTO were to incorporate human rights into its system, its credibility and dispute settlement system would be undermined.<sup>282</sup> This argument is not completely grounded, though, as the WTO currently faces a question concerning its credibility. The WTO's

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<sup>273</sup> *See id.*

<sup>274</sup> Human Rights: The Pursuit of an Ideal, <http://library.thinkquest.org/C0126065/billsanctions.html> (last visited Feb. 24, 2009).

<sup>275</sup> *See generally* Vazquez, *supra* note 86.

<sup>276</sup> *Id.* at 64.

<sup>277</sup> *Id.*

<sup>278</sup> *See, e.g.,* Graham Bowley, *U.S. Faces New Threat of EU Trade Sanctions*, INT'L HERALD TRIBUNE, Feb. 14, 2006, at 1.

<sup>279</sup> Eres, *supra* note 82, at 41.

<sup>280</sup> *Id.* at 47.

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

dispute settlement system especially, has already been questioned and undermined.<sup>283</sup>

One of the WTO's main goals is to liberalize trade.<sup>284</sup> The WTO provides governments with a forum to conduct trade negotiations and create trade agreements.<sup>285</sup> Everything accomplished within the WTO is based on negotiations.<sup>286</sup> The WTO's "overriding purpose is to help trade flow as freely as possible – so long as there are no undesirable side-effects."<sup>287</sup> This seems to create additional dilemmas in regard to human rights.<sup>288</sup> Allowing a member State to explicitly ignore human rights agreements that a State voluntarily pledged to adhere to is an undesirable side effect that the WTO must avoid.<sup>289</sup>

#### E. *The WTO's Other Secret Weapon: Dispute Settlement System*

The WTO Dispute Settlement System has been in existence since January 1, 1995 and was established by an agreement entitled the "Understanding on Rules and Procedures Governing the Settlement of Disputes" (DSU).<sup>290</sup> The DSU has evolved over the years from a concept of dispute resolution at the outset of the GATT, to a three to five member panel between the 1950s and the mid-1990s, and to the final establishment of the DSU during the Uruguay Rounds in 1995.<sup>291</sup> The DSU provides an effective, multilateral solution for the determination of trade disputes, which prevents a single member State from declaring that a trade violation has occurred or from taking unilateral action to remedy the alleged trade violation.<sup>292</sup>

When at all possible, the WTO/DSU encourages the use of alternate procedures, such as negotiation in lieu of litigation, before the dispute settlement body.<sup>293</sup> This enables member

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<sup>283</sup> DINE, *supra* note 46, at 197-98.

<sup>284</sup> WTO, *supra* note 142, at 9.

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

<sup>288</sup> See Petersmann, *Human Rights Approach*, *supra* note 8.

<sup>289</sup> See DINE, *supra* note 46, at 197.

<sup>290</sup> VAN DEN BOSSCHE, *supra* note 143, at 181.

<sup>291</sup> *Id.* at 176-81.

<sup>292</sup> *Id.* at 183.

<sup>293</sup> *Id.*

States to actively communicate about trade-related problems and allows the parties involved to reach a mutually beneficial resolution.<sup>294</sup> In fact, the DSU provides four possible methods for the settlement of disputes.<sup>295</sup> First, parties may engage in consultations or negotiations, as previously mentioned.<sup>296</sup> Second, parties may seek resolution through the adjudication by panels and the DSU Appellate Body.<sup>297</sup> Third, arbitration may be utilized by member States if parties to a dispute have an existing agreement to arbitrate and agree to resolve their dispute through such alternate means.<sup>298</sup> Fourth, parties to a dispute may agree to use mediation as a method to settle their dispute.<sup>299</sup>

Likewise, there are four major steps to the dispute settlement process.<sup>300</sup> First, consultations or “at least an attempt by the complainant to involve the respondent in consultations” must occur. These procedures are favored because they aid in the peaceful and amicable resolution of disputes.<sup>301</sup> If consultations are unsuccessful, the dispute is referred for adjudication by a panel.<sup>302</sup> The panel decision is appealable through appellate review proceedings.<sup>303</sup> Finally, the panel’s decision during either the adjudication stage or appellate review stage must be implemented and enforced by the WTO.<sup>304</sup>

The WTO’s DSU is an extremely effective international dispute resolution system<sup>305</sup> that can be both mimicked by other international bodies and utilized in alternate ways. Namely, the WTO system could be used as a means of effecting change in the human rights arena. If the WTO were to incorporate

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<sup>294</sup> WTO, *supra* note 142, at 56.

<sup>295</sup> VAN DEN BOSSCHE, *supra* note 143, at 186.

<sup>296</sup> Understanding on Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, art. 4, Legal Instruments – Results of the Uruguay Round, 33 I.L.M. 1125 (1994), available at [http://www.wto.org/english/docs\\_e/legal\\_e/28-dsu.pdf](http://www.wto.org/english/docs_e/legal_e/28-dsu.pdf) [hereinafter DSU].

<sup>297</sup> *Id.* at arts. 6-20.

<sup>298</sup> *Id.* at art. 25.

<sup>299</sup> *Id.* at art. 5.

<sup>300</sup> VAN DEN BOSSCHE, *supra* note 143, at 203-04.

<sup>301</sup> *Id.*

<sup>302</sup> *Id.*

<sup>303</sup> *Id.*

<sup>304</sup> *Id.*

<sup>305</sup> VAN DEN BOSSCHE, *supra* note 143, at 173.

human rights measures into its trading regime, then member States may be able to bring complaints that relate to international trade.<sup>306</sup> As such, violations of human rights obligations that affect the health of populations within nations may be adjudicated or resolved through the WTO settlement procedures.<sup>307</sup>

V. THE WTO MUST REQUIRE THAT ITS MEMBERS ADHERE TO THE INTERNATIONAL BILL OF HUMAN RIGHTS AND ENFORCE THIS REQUIREMENT THROUGH TRADE SANCTIONS AND ITS DISPUTE SETTLEMENT SYSTEM.

*“Health is a fundamental human right indispensable for the exercise of other human rights.”*<sup>308</sup>

The WTO is the link between international trade and human rights.<sup>309</sup> Economics and its effect on the condition of human life cannot be ignored.<sup>310</sup> Based on its position of directly influencing economics and its ability to levy trade sanctions, the WTO should not ignore its role in helping member States improve the quality of life for their citizens.<sup>311</sup> The WTO can no longer ignore human rights. The WTO, along with its member States must promote human rights to ensure advancement of human rights and continued legitimacy of this multilateral trading system.<sup>312</sup> To fulfill this obligation, the WTO needs to evaluate its current position on human rights policies.<sup>313</sup> By implementing changes that reflect the reality that economics do affect human rights, the WTO improves its credibility as an in-

<sup>306</sup> For example, Art. XX(a) of the GATT provides a public morals exception, which could be used to justify trade restrictions related to goods that are produced in violation of human rights standards. This would only require that fundamental human rights be included in the interpretation of the public morals exception of Art. XX. Zagel, *Trade Sanctions*, *supra* note 148, at 12.

<sup>307</sup> The WTO has hinted at taking such measures. Refer to the *EC-Asbestos* case, where the WTO allowed for the protection of public health by affirming an import ban on products containing asbestos. Panel Report, *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, WT/DS135/R (Sept. 18, 2000).

<sup>308</sup> CESC, *General Comment*, *supra* note 120.

<sup>309</sup> See generally Petersmann, *Human Rights Approach*, *supra* note 8.

<sup>310</sup> *Id.* at 612-14.

<sup>311</sup> See generally DINE, *supra* note 46, at 125.

<sup>312</sup> Cottier, *supra* note 99, at 131-32.

<sup>313</sup> See Petersmann, *Institutional Challenges*, *supra* note 5, at 658.

ternational organization.<sup>314</sup> In taking such steps, the WTO must require that its member States become parties to major international human rights treaties and enforce those obligations through either trade sanctions or its dispute settlement system.

It is apparent, then, that health issues matter because they directly affect human development.<sup>315</sup> Health-related inequalities restrict people from reaching their full potential.<sup>316</sup> The fundamental idea behind improving international trade relations between countries is to help better the lives of all people.<sup>317</sup> As the single most important international trade organization, the WTO plays a central role in furthering human life, especially within its member States.<sup>318</sup> The interactions between the WTO, developed countries, and developing countries directly affect the lives of people.<sup>319</sup> By incorporating and enforcing human rights standards, the WTO is acknowledging its own fundamental principle that free trade is about improving the quality of life for all people.<sup>320</sup>

Combating poverty is essential if a country is to provide a productive workforce capable of producing a quality good, at a fair price, for a sustainable period of time.<sup>321</sup> Without a "healthy" workforce, a country has no opportunity to develop economically.<sup>322</sup> Flowing from this is the necessity for a country to create an infrastructure that allows for social and economic activity.<sup>323</sup> If roads, water, food, electricity, and facilities are not available, a country cannot develop economically.<sup>324</sup> Without these in place, neither a company nor a State will be able to utilize the available workforce, thus inhibiting the ability to

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<sup>314</sup> See generally *id.*

<sup>315</sup> HDR 2005, *supra* note 7, at 51.

<sup>316</sup> *Id.*

<sup>317</sup> WTO: Shrink or Sink! The Turnaround Agenda, <http://www.tradeobservatory.org/library.cfm?refID=24629> (last visited Feb. 24, 2009).

<sup>318</sup> *Id.*

<sup>319</sup> See generally Petersmann, *Human Rights Approach*, *supra* note 8, at 623-27.

<sup>320</sup> See generally Petersmann, *Institutional Challenges*, *supra* note 5.

<sup>321</sup> See generally HDR 2005, *supra* note 7, at 28-33.

<sup>322</sup> See generally Taylor, *supra* note 74.

<sup>323</sup> See Smith, *supra* note 52.

<sup>324</sup> See *id.*

produce goods for international markets.<sup>325</sup> It is essential that a country build an infrastructure upon which companies and people can rely on to conduct business and benefit from. A developed infrastructure is an important step to economic development.<sup>326</sup> The codification of basic human rights plays a role in creating such an infrastructure because human rights help ensure that a society can be productive.<sup>327</sup>

In addition, with the increased availability of international support, the responsibility to eradicate poverty and disease should not be placed entirely on a government.<sup>328</sup> A governmental entity simply may not have the resources to stop such widespread problems.<sup>329</sup> However, the government bears responsibility for providing the means to its citizens so that they may be able to free themselves from poverty and disease.<sup>330</sup> This responsibility necessarily invokes the need for implementation of basic human rights such as the right to education, right to health, right to food, and right to water. Each of these rights are related to poverty and disease.<sup>331</sup> The fulfillment of these rights will help to eradicate poverty and disease.<sup>332</sup> By doing so, a country gives itself the opportunity to grow economically and trade within the international community.<sup>333</sup> By requiring that a State implement some basic human rights into its domestic policies, the WTO is helping to ensure a State's workforce is productive and that the State can develop economically.<sup>334</sup> The WTO plays a role in helping a government fix such problems by giving it an opportunity to participate in a multilateral trading system, thereby giving that country an opportunity to increase its financial resources through trade.<sup>335</sup>

The WTO has shown that it is not entirely averse to implementing restrictions on member States that jeopardize the

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<sup>325</sup> *See id.*

<sup>326</sup> *See id.*

<sup>327</sup> *See* Anderson, *supra* note 3.

<sup>328</sup> *See generally* Petersmann, *Global Compact*, *supra* note 224.

<sup>329</sup> *See generally* Howse, *supra* note 78, at 655.

<sup>330</sup> *See* Secretary-General, *Freedom*, *supra* note 47, at 3.

<sup>331</sup> *See generally* UNHRD, *supra* note 49.

<sup>332</sup> *See* HDR 2005, *supra* note 7, at 2.

<sup>333</sup> *See* Anderson, *supra* note 3, at 712.

<sup>334</sup> *See generally* Petersmann, *Global Compact*, *supra* note 224.

<sup>335</sup> *See generally* Anderson, *supra* note 3, at 708-15.



health and safety of populations.<sup>336</sup> As discussed earlier, Article XX of the GATT allows member States to take steps that protect "human, animal or plant life, or health."<sup>337</sup> The caveat is that member States cannot take such action and use it as a disguise for what are regarded as protectionist actions.<sup>338</sup> In addition, the WTO created the Sanitary and Phytosanitary Measures Agreement (SPS) as a means for the WTO and its member States to specifically address safety concerns regarding food, animal, and plant health standards.<sup>339</sup> The SPS allows countries to set their own scientifically-based health standards which they can apply to imported goods.<sup>340</sup> The main restrictions on this seem to be that the health standards must be based on science and they must not be applied arbitrarily.<sup>341</sup>

As opposed to just saying that health standards are to be based on science and not applied arbitrarily,<sup>342</sup> the WTO must also state that international trade must be conducted in a manner consistent with the rules and agreements of international law.<sup>343</sup> The WTO only suggests that member States use international standards.<sup>344</sup> But it seems that an organization that is based on promoting universal standards for its member States is contradicting itself by saying when it comes to area "x" all member States must follow this standard, but when it comes to area "y" member States can follow any standard they want. By allowing countries to create different standards, it seems that the WTO is promulgating confusion and hardship on its member States when it comes to them trying to export their goods or services to 151 different countries who all have different standards.<sup>345</sup>

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<sup>336</sup> See VAN DEN BOSSCHE, *supra* note 143, at 625-27.

<sup>337</sup> See General Agreement on Tariffs and Trade, art. XX, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194, available at [http://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_02\\_e.htm](http://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm).

<sup>338</sup> VAN DEN BOSSCHE, *supra* note 143, at 597.

<sup>339</sup> WTO & WHO, *Agreements*, *supra* note 14, at 35.

<sup>340</sup> *Id.*

<sup>341</sup> *Id.* at 36-37.

<sup>342</sup> *Id.*

<sup>343</sup> See Charnovitz, *supra* note 78, at 30. "[G]reater attention to the WTO's interface with international standards is needed." *Id.*

<sup>344</sup> See WTO & WHO, *Agreements*, *supra* note 14, at 37.

<sup>345</sup> See generally Charnovitz, *supra* note 78, at 11-12. "[A]n international standard can help avoid the inefficiency of segmented national markets following different standards." *Id.*

The WTO's statement that "standards can become obstacles to trade" is pertinent and arguably true.<sup>346</sup> The question we must ask ourselves, however, is not whether standards are an obstacle to trade, but whether universal standards that are applied to all WTO member States create less of a barrier to trade than individually created standards that can be applied arbitrarily.<sup>347</sup> The WTO has already stated that member States may develop safety measures that provide a higher standard of care than required by international standards if the member State can show scientific reasons for implementing such higher standards.<sup>348</sup>

The WTO should codify this as part of its rules for participating in its multilateral trading regime, and the WTO should establish international standards for all WTO member States to follow. Then, States need to present arguments concerning areas that they feel are especially pertinent and require additional safety measures. The States could then vote to adopt those measures or refuse them. Either way, all member States would know what additional standards are being implemented and by whom. As additional scientific, social, and moral concerns and developments are made, they can be presented and the standards updated to reflect such changes.

By taking such steps, the WTO would be doing two things. First, it would actually be reducing obstacles to trade, which is its main objective.<sup>349</sup> Second, the WTO would be better aligning itself with international standards that many of its member States have already agreed to follow.<sup>350</sup> As opposed to a detached approach to globalization, the WTO must do a better job of taking on a more "coherence" based approach<sup>351</sup> to interna-

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<sup>346</sup> WTO, *supra* note 142, at 30.

<sup>347</sup> See generally Charnovitz, *supra* note 78, at 11-12 (discussing the impact standard international standards can have).

<sup>348</sup> WTO & WHO, *Agreements*, *supra* note 14, at 35.

<sup>349</sup> Zagel, *Trade Sanctions*, *supra* note 148, at 7-8.

<sup>350</sup> Compare WTO, Members and Observers, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm) (last visited Feb. 24, 2009) with OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, STATUS OF RATIFICATIONS OF THE PRINCIPAL HUMAN RIGHTS TREATIES (2004), <http://www.unhcr.ch/pdf/report.pdf>.

<sup>351</sup> In this context, "coherence" means that the WTO needs to be working in conjunction with other international organizations so that they do not create competing or conflicting standards. If coherence is not achieved, the legitimacy and

tional trade.<sup>352</sup> This would lend support not only to international organizations trying to ensure that policies at the international level are moving in the same direction, but the WTO would also solidify itself within the international community, thus not alienating itself from other international organizations.

The WTO has the capability to implement basic health-related, human rights principles that have a direct impact on the effectiveness of trade sanctions and the success of the WTO's dispute settlement system in enforcing WTO agreements.<sup>353</sup> The WTO has effective mechanisms in place to make sure WTO provisions are followed, but the dilemma is that the WTO's dispute settlement system is currently aimed toward WTO trade violations and not human rights violations.<sup>354</sup> Complicating this issue, many of the international human rights agreements are only aspirational in nature.<sup>355</sup> However, interpretation of WTO provisions should not be strictly made according to what the GATT founders may have intended.<sup>356</sup> Rather, WTO provisions should be interpreted in light of how those provisions are currently understood with respect to the major U.N. human rights conventions.<sup>357</sup> This does not mean that the WTO has to take a rights-based approach to promoting international trade.<sup>358</sup> Rather, the WTO must adopt broad interpretative mechanisms, so that WTO provisions are interpreted and understood in congruence with other international agreements.<sup>359</sup>

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effectiveness of not only the WTO, but all international organizations would be undermined. The WTO needs to work with other international organizations to create a unified front where all people, States, and corporations understand the objectives that are sought. Confusion in this area would only harm and further regress those who are most in need.

<sup>352</sup> See WTO, *supra* note 142, at 74.

<sup>353</sup> Vazquez, *supra* note 86, at 63.

<sup>354</sup> Eres, *supra* note 82, at 34.

<sup>355</sup> Stanford Encyclopedia of Philosophy, Human Rights, (2006), <http://plato.stanford.edu/entries/rights-human/>; Inter-Agency Standing Committee, Sanctions Assessment Handbook, (Oct. 2004) <http://www.humanitarianinfo.org/sanctions/handbook/chapter2-3.htm>.

<sup>356</sup> Eres, *supra* note 82, at 36.

<sup>357</sup> Petersmann, *Human Rights Approach*, *supra* note 8, at 606-11.

<sup>358</sup> See generally WTO, *supra* note 142.

<sup>359</sup> Victor Mosoti, *Institutional Cooperation and Norm Creation in International Organizations*, in HUMAN RIGHTS AND INT'L TRADE 165, 167 (Thomas Cottier, Joost Pauwelyn & Elisabeth Burgi Bonanomi eds. 2005).

## VI. CONCLUSION

*We shall not finally defeat AIDS, tuberculosis, malaria or any of the other infectious diseases that plague the developing world until we have also won the battle for safe drinking water, sanitation and basic health care . . . . The best cure for all these ills is economic growth and broad-based development.*<sup>360</sup>

The potential effect that trade has on reducing poverty in societies is the key to addressing better health through international trade policy. Trade policy seeks to open up global economies to nations all over the world, which has the effect of improving economic conditions in some of the poorest nations. Considering that the improvement of economic conditions is the central policy of the WTO, it is no stretch to infer that poverty reduction is at the heart of the free trade philosophy. If this is in fact an accepted precept that free trade's goal is a reduction in poverty, it follows then, that improved health outcomes are a necessary side effect.

Even if improved health outcomes are not a central driving force of trade and economic policy, it should be no surprise that improved health status is also associated with favorable economic conditions. Where population-based health is good, there is also a more vigorous and productive work force. It therefore makes sound economic sense to attempt to ensure that basic health measures are provided within populations that are being utilized to increase economic output.

The solution to poverty is complex, but it involves policy development at both national and international levels. A key way of improving the economic status of societies, which will in turn positively affect the health of populations, is to provide effective mechanisms through trade policy that recognize the importance not only of expanding the global economy, but also the importance of health. Only when there is a combination of greater awareness of and action in the international community and the WTO concerning the link between poverty, health, and trade, will goals aimed at reducing poverty and improving global health actually be met.

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<sup>360</sup> WHO, *Dying*, *supra* note 18, at 3.