
Challenging unfair Trade Policies with a Human Rights Approach

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policies

The Human Right to Food

- Right to adequate Food is part of Art. 11 of the Covenant on Economic, Social and Cultural Rights
- = physical and economic access *at all times* to *adequate* food or the *means to its procurement*
- Food must be adequate in terms of quantity, quality and cultural acceptability
- Obligations to respect, protect and fulfill the right to food
- Imply obligations towards people in other countries: “extraterritorial state obligations” (ETO)

Human Rights prevail

- Article 103 of UN-Charta: Obligations of the Charta (including Human Rights) prevail over other international obligations of states
- The Vienna Convention on the Law of Treaties: any treaty in conflict with general international law is to be considered void
- The UN-HRC: *“States should make every effort to ensure that [...] international trade agreements do not have a negative impact on the right to food”*

Trade related obligations

- **Respect:** Not to sign FTA that impose measures which lead to infringements of the right to food (excessive tariff cuts or strengthening of IPR)
- **Protect:** Not to sign FTA that precludes the state from preventing private actors from violating the RtF (excessive investor protection)
- **Fulfill:** Not to sign FTA which precludes the state from policies to progressively realize of the RtF (fiscal restrictions, balance of payment)
- **Extraterritorial Obligation:** Not to sign agreements that limit policy space of other countries to respect, protect and fulfill the RtF

Human Rights Impact Assessments

- To conduct HRIA prior to the conclusion of the FTA is a human rights obligation itself
- Minimum **conditions** for HRIA: independence, multidisciplinary expertise, transparency and participation
- **Steps**: Screening, scoping (questions/indicators), evidence gathering, analysis, conclusions and recommendations, monitoring mechanism
- Must **balance** positive and negative impacts
- **Trade-offs** to be decided democratically and must respect do-no-harm principle for vulnerable groups

Possible responses to the HRIA

- **Refuse** or terminate the agreement
- **Remove provisions** that are incompatible with human rights obligations
- Introduce clauses such as **flexibilities and exceptions** that safeguard the respect of human rights
- Insert **safeguards clauses** that allow for revisions after ex post HRIA when violations are evident
- Adopt compensation and **mitigation** measures in full respect of human rights principles

Role of Ecofair Trade Dialogue

- **Expert workshop** resulting in draft guiding principles on HRIA by Olivier De Schutter
- Conduct a **pilot HRIA** on the EU-India FTA based on guiding principles
 - >Pre-studies, consultation, field visits, interviews with officials and additional experts
 - >Draft HRIA available by end of June open for comments
 - >Final HRIA ready by end of August
- Use the HRIA for **advocacy** and **awareness** raising in EU and India