

NEW GLOBAL CONTRACT

VALUES IN CONFLICT: HOW TRADE AND FINANCE RULES CURTAIL OUR RIGHTS

ANDRÉ DU PLESSIS



Institute for Agriculture and Trade Policy

New Global Contract: *Values in Conflict: How Trade and Finance Rules Curtail our Rights*

Author: André du Plessis

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Values in Conflict: How Trade and Finance Rules Curtail our Rights

The following document is part of a project to strengthen civil society organizing to reassert the priority of human rights and environmental protection. The document illustrates the myriad ways trade and investment laws at the multilateral level either block or inhibit appropriate action to protect and promote the public interest. The chart shows a series of trade and financial agreements or institutions on the vertical axis, and then describes how each curtails the realization of public policy goals in one of four areas, set out along the horizontal axis: environment, human rights, health, and food and agriculture. The authors of this table believe societies need a new contract for globalization that prioritizes respect for human rights and the protection of environmental resources, rather than commercial gain. Many social and environmental justice activists work in one or two of the boxes illustrated here; our intention is to illustrate the scale of the problem, and to suggest the need for a higher level of policy intervention—one that can challenge the dominant paradigm for globalization in multiple arenas simultaneously.

The Trade Regime	The Environmental Regime	The Human Rights Regime	The Health Regime	The Food & Agriculture Regime
<p>(A) GENERAL EFFECTS OF INCREASING MARKET ACCESS</p>	<p>(1) Increased international trade can intensify natural resource use, especially if transportation costs are included. This makes it more difficult for governments to reduce greenhouse gas emissions or to manage finite resources such as water. For example, trade liberalization encouraged the deregulation of Chile's mining sector, causing a host of environmental problems.</p> <p>(2) Free market economists (and many governments) argue that increased trade means more rational use of resources. Only "least trade-restricting" controls are allowed under World Trade Organization (WTO) rules. Yet markets are prone to failures and are often distorted, which undermines free trade assumptions to the detriment of the environment.</p> <p>(3) Tariffs are a major source of government revenue, especially in the poorest countries. Tariff reduction can cut governments' capacity to fund obligations in the area of environmental management.</p> <p>(4) Market access negotiations are usually about numbers and formula, often leaving governments without the flexibility to use tariffs to meet multilateral (and domestic) environmental obligations.</p>	<p>(1) Increased market access can push governments to lower labor standards to compete internationally. This undermines the right to decent work.</p> <p>(2) The trade system presumes tariffs are bad and should be eliminated. Yet experience shows they can be a useful policy tool for governments, particularly for generating public revenues. Adverse impacts on human rights can follow from tariff reductions if a State is unable to find the alternative tax revenue necessary to fund public services such as education or health.</p>		<p>(1) In agriculture, developed countries tend to have mostly low tariffs with a few very high tariffs on sensitive products. Developing countries tend to have higher average tariffs across the board. The Agreement on Agriculture allows the few high tariffs to remain while cutting average tariffs. This has opened developing country markets more than developed countries. A number of countries have experienced big increases in imports that put local producers and processors out of work. The issues are complicated and documentation is growing.</p> <p>(2) Agriculture is widely acknowledged as a vital engine of growth for developing countries. However, to create employment and capital in the poorest countries, local markets must be protected.</p>
<p>(B) GATT PRINCIPLES Most Favored Nation (MFN) GATT Art I (treat all countries alike)</p>	<p>(1) Obligations to ban or restrict trade under Multilateral Environmental Agreements (MEAs) may conflict with obligations under the MFN principle. For example, the proposed Basel Ban would prohibit the export of hazardous waste to non-Organization for Economic Cooperation and Development (OECD) countries, which contradicts the MFN obligation to treat all countries alike for trading purposes.</p>		<p>A state may have domestic health regulations which ban or restrict products from certain territories. Health issues could relate to the final product or service, or to the production and processing methods (eg. workers' occupational health and safety). Restrictions may conflict with the MFN principle.</p>	<p>MFN makes it harder to develop regional markets.</p>

The Trade Regime	The Environmental Regime	The Human Rights Regime	The Health Regime	The Food & Agriculture Regime
<p>National Treatment Principle GATT Art III (Treat Foreign and Domestic Goods Alike)</p>	<p>(1) Governments can create strong environmental regulations for manufacturers if they apply the same standards to local and imported goods. The standard must also be demonstrably justified by scientific findings. Governments are restricted in their ability to promote local production, except through their own procurement decisions.</p>	<p>(1) A ban on products made in breach of human rights obligations is likely to conflict with obligations to treat like goods alike without regard for Production and Processing Methods (PPMs).</p> <p>(2) WTO rules can require governments to change national and local laws that encourage the employment of women, promote indigenous languages, support local artists or assist local entrepreneurs on the basis that importers are <i>de facto</i> excluded from the criteria.</p>	<p>Under this equal treatment principle, a chemical or pharmaceutical may not be banned unless there is also a ban on it in the country of export. Since many states do not have the technical equipment or expertise to assess the safety and efficacy of chemical and pharmaceutical products, their products may not be considered safe by an importing country. There is conflict here between a state's desire to protect the health of its population and its obligations under the trade regime.</p>	<p>The WTO restricts government policies that favor locally produced foods.</p>
<p>General Elimination of Quantitative Restrictions GATT Art XI</p>	<p>Quantitative Restrictions (QRs) allow governments to control trade flows, creating a predictable (if limited) market for exporters while managing internal goals (which could be employment, environment or otherwise related to public policy). Local producers and processors may be unable to compete with imports for a myriad of good reasons, from market failures, to lack of adequate infrastructure, to market distortions created by oligopolies in world markets, none of which are addressed by WTO rules. The general prohibition on QRs—instead of clear rules to guide use of the tool—unnecessarily forecloses important policy options for governments seeking equitable, sustainable and efficient outcomes from their trade policy.</p>			<p>The elimination of QRs was particularly an issue for Indian agriculture when the Uruguay Round Agreements were signed because of India's reliance on the tool. QRs offer a useful tool to manage a stable internal price. Carefully managed, stable internal prices do not "export" price instability onto world markets, though the risk still exists.</p>
<p>Allow Protection of Some Social Values (e.g. General Exceptions—GATT XX)</p>	<p>GATT Article XX allows for MFN exceptions for production made with "exhaustible natural resources." However, the ambiguities of the language in the article makes it difficult to use. There is no notification mechanism for Article XX, which would allow WTO members to discuss when to apply the general exception, whether to expand the general exceptions and what expert advice the WTO should seek in applying Article XX. States are often uncertain as to whether a certain measure is in accordance with the exception.</p>	<p>The social exemptions allowed by GATT Article. XX only explicitly apply to products made with prison labor; there is no more general exemption for products made in violation of human rights or multilaterally agreed labor standards, e.g. indentured labor, slave labor, or child labor.</p>	<p>Reference to health in GATT article XX is too general to be useful. Article XX is inadequate to meet the requirements of World Health Assembly resolutions that call for restrictions on trade in products that damage human health. The article refers to the protection of "ordre publique" or public morals, granting more leeway for cultural or religious concerns than straightforward health needs.</p>	<p>There is no direct reference to agriculture or food security in Article XX of the GATT. Protection of the right-to-food is not included.</p>



The Trade Regime	The Environmental Regime	The Human Rights Regime	The Health Regime	The Food & Agriculture Regime
<p>Production and Processing Methods (PPMs)</p>	<p>The WTO insists that “like” products be treated alike, ruling out the use of tariffs or other trade measures to encourage good environmental practice in the production or processing of goods. For example, more efficient water use or lower production of greenhouse gases during production and processing are not sufficient reason for trade discrimination.</p>	<p>The prohibition on discrimination among products based on how they are produced and processed makes it harder for governments to reward better labor practices or otherwise uphold human rights.</p>		<p>Best agricultural practice will require big changes to industrial production methods, including: fertilizer and pesticide use, water use, soil quality, greenhouse gas emissions. There are many urgent environmental problems associated with mainstream agriculture. The trade system discourages the use of incentives to encourage these changes. The system does not treat organic and non-organic as “like” and so trade measures can discriminate between the two. However, governments cannot treat labeled goods (e.g. “bird-friendly” or “fair trade”) differently, even if independently certified.</p>
<p>(C) TRADE AGREEMENTS Rules on Standards and Labels (e.g. the Technical Barriers to Trade—TBT—Agreement)</p>	<p>(1) There is a tension between non-discrimination (Article 2.1) and “not more trade restrictive than necessary” (Article 2.2) rules on the one hand, and domestic environmental regulations on the other. Proving the “least trade-restrictive” requirement can undermine best environmental practice.</p> <p>(2) There is a tension between TBT disciplines and national labeling schemes (public and private).</p>	<p>National labeling regulations may distinguish between the human rights standards of production methods but there is a general prohibition on PPMs being used as the basis for distinguishing a product in international markets (see the case of EC-Asbestos).</p>	<p>(1) Consumers support food labeling to make informed choices. Exporters tend to express concern about the costs involved in meeting different requirements in each export market. Some manufacturers also dislike the implication that a good that is not labeled is inferior to one that is. The WTO structure and culture gives priority to exporter rather than consumer preferences.</p> <p>(2) The problem of fraudulent labels that may harm human, plant or animal health is largely overlooked by the multilateral system, which assumes that fraudulent trade can be adequately disciplined through domestic courts of law.</p>	<p>(1) The WTO and international standard setting bodies (e.g. Codex) do not recognize a consumer’s right-to-know the origin of a product. Although Country of Origin Labelling (“COOL”) does not directly provide food safety benefits, the level of fraudulent labeling, uncertified transshipment, non-implementation of Sanitary and Phytosanitary (SPS) rules, and infrequency of import inspection means COOL possibly offers some consumer protection, allowing consumers to choose products from a trusted country. COOL labelling is likely to fall foul of WTO rules, if challenged</p> <p>(2) Trade negotiations claim to dislike rules of origin, which allows discrimination on the basis of where the good is produced. However, geographical indicators are allowed and provide a way for local producers to distinguish their products.</p>

The Trade Regime	The Environmental Regime	The Human Rights Regime	The Health Regime	The Food & Agriculture Regime
<p>Rules on Health and Safety (the SPS Agreement)</p>	<p>(1) Tension exists between WTO mandated SPS obligations (e.g. Article 3 and 5) and domestic sanitary and phytosanitary measures (e.g. domestic rules to prevent invasive species, pests, diseases). National standards cannot be higher than the internationally agreed level without meeting a significant burden of scientific evidence. The Precautionary Principle is not recognized by the WTO courts.</p> <p>(2) There is a tension between SPS obligations (e.g. Article 3 & 5) and domestic regulation of GMOs.</p>		<p>(1) The privileging of deregulated trade puts the burden of proof on regulatory authorities to show that measures to protect human, animal and plant health are “necessary” to meet a regulatory objective and that they are justified by a risk assessment. This is at odds with a system that works from a precautionary approach, putting health at the center of policy.</p> <p>(2) Many developing countries lack funding and capacity to participate consistently in international standards setting meetings. NGOs are not encouraged to participate. Developed countries and multinational food corporations dominate the multilateral standard setting process.</p> <p>(3) SPS monitoring is poorly integrated into public health systems.</p> <p>(4) Consumer rights are not protected in the SPS Agreement. The Appropriate Level of Protection is a risk management judgment that is based upon a quantified risk assessment. However, these risk assessments, e.g. for Maximum Residue Level (“MRL”) of a pesticide or a veterinary drug, do not reflect cumulative or interactive exposures. Nor are MRLs set for children or compromised immune systems. Precautionary measures, in the event of uncertainty about or inadequacy of evidence for a risk assessment, are very difficult to apply under the SPS Agreement, which is designed to facilitate trade and is not a public health agreement.</p>	<p>(1) The standards of the Codex Alimentarius Commission, the World Animal Health Organization and the International Plant Protection Convention focus on health issues from a risk assessment perspective. They do not include the Food and Agriculture Organization’s (FAO)’s Good Agricultural Practices or Good Manufacturing Practices for the food industry. Recommended animal husbandry or welfare practices, fertilizer use practices, crop rotation practices affecting plant disease incidence, and manufacturing practices that effect the production of safe and wholesome food are all excluded from evidence in disputes concerning the SPS Agreement because they are not formally part of risk assessment methodologies.</p> <p>(2) Primary producers often do not have the financial capacity, market power, technical capability and/or domestic support to fulfill the requirements of the SPS. The lack of integration among the rules set by standard-setting bodies exacerbates this problem.</p>



The Trade Regime	The Environmental Regime	The Human Rights Regime	The Health Regime	The Food & Agriculture Regime
<p>Trade in Agriculture Goods (the Agreement on Agriculture—AoA)</p>	<p>(1) Allows spending on specific kinds of environmental protection, so long as payments do not affect production. Fails to allow measures that would address over-production, a problem that exacerbates environmental problems.</p> <p>(2) Increased trade in agricultural produce may cause tension with a State's desire to source food locally for environmental reasons (e.g. to cut CO2 emissions.)</p>	<p>(1) The AoA acknowledges the need for food security but defines it as access to world markets, not as an embodiment of the right to food. This conceptual difference creates the potential for conflict.</p> <p>(2) Restructuring agricultural production for export may cause tensions with a State's duty to provide an adequate standard of living for its people. As world prices for agricultural produce fluctuate, incomes may fall and people may be unable to purchase food, particularly if land is moved from a focus on local markets to commodity export production.</p> <p>(3) An increase in imports of agricultural goods can lower prices for farmers and farm laborers. An increase in imports can undermine the right-to-work, the right-to-food and other rights.</p> <p>(4) The deregulation and globalization of agriculture affects men and women differently. There are many examples of how women's right to non-discrimination as well as to work and to an adequate standard of living have been compromised by agricultural deregulation (and some examples of how their lives have been improved as well).</p>	<p>Increased trade in agricultural produce may cause tension with a State's desire to source food locally for health reasons. For example, the World Cancer Report (2003) by the WHO suggests that many countries should encourage consumption of locally produced vegetables, fruit and agricultural products and avoid the adoption of industrialized countries' dietary habits.</p>	<p>(1) Only some 10 percent of food produced crosses an international border. Yet the AoA limits export controls and many forms of import control, undermining national policies that seek to stabilize agricultural prices and agricultural production. The 10 percent that is traded drives policy for the whole sector.</p> <p>(2) Agriculture provides livelihoods for the majority of the world's poorest people. The effects of liberalizing agricultural trade on rural development remain largely unexamined by trade policy-makers. Agricultural policy analysts show mixed and often negative results. Many call for more nuanced and careful trade policies than the WTO rules permit, especially for the poorest countries, where ways to generate local capital are urgently needed and require careful management.</p>

The Trade Regime	The Environmental Regime	The Human Rights Regime	The Health Regime	The Food & Agriculture Regime
<p>Rules for Subsidies (e.g., the Subsidies and Countervailing Measures—SCM—Agreement)</p>	<p>WTO rules do not allow for market failures. A number of environmental problems follow from natural resources and pollution being external to the costing of a product. Attempts to internalize environmental costs are complicated, and create costs for local manufacturers that are difficult to extend to importers under WTO non-discrimination rules. Subsidies might be necessary to redress market failures but must not “nullify or impair” the gains that trade partners expected from trade agreements.</p>	<p>The general prohibition on subsidies, together with the push to privatize and liberalize the basic services provision (see section on trade in services below) could undermine the right-to-water, the right-to-an-adequate-standard-of-living and the right-to-work.</p>	<p>Many national health programs subsidize the costs of providing citizens with health care. Most governments consider this a cost that has to be met from the public purse. Yet differences among the health care systems have been cited in trade disputes. U.S. farmers complain that Canadian farmers are “subsidized” because they do not have to pay for health care. Canadian firms complain U.S. manufacturers are “subsidized” because firms that are less than a certain size do not have to either provide health care or pay a health care tax. The trade system does not allow an adequate distinction between a public investment such as education or universal health care and subsidies that pay a normal cost of doing business (e.g. providing unlimited free or below-cost water to farmers).</p>	<p>The AoA has its own subsidy rules; the SCM applies if agricultural subsidies exceed the AoA limits. The agricultural subsidies debate is long and complicated. One central issue is the WTO prohibition on measures that would limit, or stimulate, production. Yet some countries need such measures to meet public policy objectives, particularly to protect food security and rural livelihoods.</p>
<p>Trade in Services (GATS)</p>	<p>(1) No safeguards to avoid the potential expansion of environmentally harmful services.</p> <p>(2) Rules restrict the scope for domestic regulation, emergency safeguards, government procurement and subsidies. They restrict the degree to which a government can promote environmental aims in its domestic policies.</p> <p>(3) Service-exporter States may bring cases under the Dispute Settlement Understanding to challenge “environmental regulation” of the service industry adopted by governments to meet environmental commitments.</p>	<p>(1) WTO rules can oblige national governments to change national and local laws that allow public finance or subsidy of public services. This may have an adverse impact on the provision of water and other basic necessities for the right-to-an-adequate-standard-of-living.</p> <p>(2) Proposed mode 4 of GATS (trade of “temporary natural persons”) makes no reference to human rights, labor or migrants’ rights conventions. The result creates grossly unequal treatment of unskilled workers, measured against provisions in special business visas granted under bilateral investment agreements for skilled workers.</p> <p>(3) The migration of, in particular, health and education professionals from developing countries could increase the “brain drain” from these countries resulting in adverse effects on governments’ ability to provide health services and education to their people.</p>	<p>In the absence of appropriate national legislation and performance requirements (currently banned by many investment agreements), liberalization may facilitate the privatization of health services or increase the cost and/or reduce the coverage offered by these critical services.</p>	<p>(1) Liberalization of retail and distribution services has opened up developing countries to supermarkets that have driven traditional traders and shopkeepers out of business and their agro-biodiverse foods out of production.</p> <p>(2) Under GATS, governments are restricted in their ability to control zoning and licensing of food markets to ensure that all locales have access to affordable, safe and nutritious foods.</p>



The Trade Regime	The Environmental Regime	The Human Rights Regime	The Health Regime	The Food & Agriculture Regime
<p>(D) INTELLECTUAL PROPERTY</p>	<p>(1) TRIPs article 27.3(b) requires States to implement some form of intellectual property (IP) protection for plant varieties, whether under a U.S. style patent regime or a “<i>sui generis</i>” variant. Neither protection system allows for the sharing of benefits between those who hold the patents and the germplasm or knowledge donors, which is a requirement of the Convention on Biodiversity (CBD). Without benefit sharing the environmental objectives of the CBD cannot be realized.</p> <p>(2) The TRIPs Agreement says patents must be provided for all fields of technology, including the use or exploitation of biological resources. The CBD gives developing countries a legal basis to demand a share of benefits from bio-products, which are usually patented. Developed countries claim that access and benefit-sharing can be maintained under bioprospecting agreements between countries and companies, without multilateral regulation. Experience does not support this optimism.</p> <p>(4) IPRs may limit the transfer of environmentally sound technology as the intellectual property “premium” may make such technology unaffordable.</p> <p>(5) IPRs allow the development of environmentally unsound technologies (e.g. “terminator” seeds).</p> <p>(6) The CBD says States have sovereign public rights over their biological resources. TRIPs says biological resources should be subject to private intellectual property rights and that compulsory licensing in the national interest should be restricted. National sovereignty implies that countries have the right to prohibit IPRs on life forms (biological resources). TRIPs overrides this right by requiring the provision of IPRs on micro-organisms, non-biological and microbiological process, as well as requiring patents and/or <i>sui generis</i> protection for plant varieties.</p>	<p>(1) The CBD says access to biological resources requires the prior informed consent of the country-of-origin and the “approval and involvement” of local communities (including indigenous peoples). There is no such provision in the TRIPs Agreement. TRIPs arguably promotes biopiracy in its failure to protect local communities’ right to control, and share in the benefits derived from, their knowledge.</p> <p>(2) The cost of royalties and licensing fees paid under TRIPs is protected as commercially sensitive, making it impossible to determine the costs and benefits of the IP system in relation to the realization of specific human rights.</p>	<p>(1) The Article 6 amendment to TRIPs (about access to medicines) was to have promoted the realization of the right-to-health. However, the conditions placed in Article 6 and industrialized countries resistance to promoting the right-to-health over IP has made Article 6 extremely difficult to use.</p> <p>(2) The protection of pharmaceutical patents may impact the enjoyment of the right-to-health if drugs are priced beyond the reach of people in need.</p>	<p>(1) The introduction of IP protection for agricultural biodiversity, regulations that did not exist domestically for most WTO members when the TRIPs agreement was signed, may undermine food security by increasing the cost of seeds. Patented seeds were designed for use by cash crop export farmers. Farmers growing local food crops may not be able to afford the cost of purchased seeds.</p> <p>(2) The imposition of the regulatory harmonization of indigenous seeds with U.S. and EU “seed purity” laws is designed to facilitate the entry of GMOs into developing countries. GMOs have a number of potentially negative implications for food security.</p> <p>(3) TRIPs requires that patents apply to all technologies, regardless of their purpose. Traditional knowledge (“TK”) innovations are not protected by multilateral agreements and all attempts to do so have been rejected by those WTO members that have a strong culture of using patents. The contributions of TK and germplasm to global food security and plant-derived medicines are not valued, while IP claims, some trivial or even fraudulent, are asserted, using TK and local plants without consent or remuneration for the local communities involved.</p> <p>(4) There is no requirement for disclosure of the TK and biological resources used in patented products, undermining their contribution to patented genes and technologies.</p>

The Trade Regime

(E) Dispute Settlement: the DSU

The Environmental Regime

(1) The WTO has limited the inclusion of environmental expertise in its dispute settlement bodies.

(2) The WTO has limited its engagement with international environmental organizations (e.g. MEAs) with environmental expertise both generally and when considering specific cases brought to the dispute settlement body (DSB).

(3) Governments have created overlapping jurisdictions between environmental dispute settlement systems and the WTO's DSB. For example the swordfish case highlighted the conflict between the WTO and the International Tribunal of the Law of the Sea.

(4) There is no capacity to resolve conflicts between WTO members attempting to honor MEA commitments and WTO members that are not Parties to MEAs.

The Human Rights Regime

(1) The WTO has limited inclusion of human rights expertise in its dispute settlement bodies.

(2) The WTO has very limited engagement with international bodies protecting human rights (e.g. the International Labor Organization) both generally and when considering a case brought to the DSB.

(3) There are overlapping and conflicting jurisdictions between international human rights courts and mechanisms (for example the U.N. Human Rights Committee) and the WTO.

The Health Regime

The DSU does not require health-related field expert witnesses in trade-related disputes that concern human, animal or plant health, nor does health expertise have to be considered in dispute panel rulings.

The Food & Agriculture Regime



The Trade Regime	The Environmental Regime	The Human Rights Regime	The Health Regime	The Food & Agriculture Regime
<p>(F) Trade and Finance Policy Coherence</p>	<p>(1) Lack of environmental design and auditing of “Aid for Trade” projects has led to environmentally damaging trade policy and practice.</p> <p>(2) Aid for Trade initiatives have given no priority to developing environmental goods and services capacity in developing countries.</p>	<p>(1) International Financial Institutions (IFIs) may fund trade-related projects which violate human rights (for example, if indigenous people are dispossessed of their land to make way for biofuels plantations). In this situation, neither the government borrowing money to build infrastructure, nor the company benefiting from the infrastructure, is subject to financial penalties for their abrogation of human rights. In some cases, the IFI has pulled out of a harmful project, but private funders have replaced the IFI, facing even less accountability to international standards. There is seldom any legal redress or compensation for the affected peoples. This violates the right to an adequate remedy in addition to the violation of the substantive right in question.</p> <p>(2) Each State has a legal obligation to progressively realize the human rights of all people to the maximum of its available resources, including international assistance and cooperation. By diverting Office of Development Assistance (ODA) resources to “Aid for Trade” projects, donor and recipient governments are possibly failing to meet their human rights obligations.</p>	<p>There is no policy coherence between the trade and finance bodies on health matters. There is a discrepancy between what the World Health Assembly deems as financial priorities, (e.g. mitigating anti-microbial resistance, funding health initiatives in rural areas and creating incentives for medical personnel to work in difficult regions) and what the IFIs give priority to (e.g. building health infrastructure).</p>	<p>Although the FAO is the multilateral authority on enhancing agricultural supply capacity for Least Developed Countries (LDCs), it is not a core agency in the Integrated Framework for Trade Related Technical Assistance. Neither the WTO nor the IFIs (who together with UNCTAD and the International Trade Centre are the core agencies for the Framework) are necessarily best placed to direct agricultural trade-related assistance that meets development needs.</p>

The Trade Regime

(G) Regional and Bilateral Trade Treaties

The Environmental Regime

The Human Rights Regime

The Health Regime

The Food & Agriculture Regime

(1) Bilateral and regional trade treaties are used by stronger WTO members to secure more favorable market access and other provisions than are granted under multilateral agreements. Often the provisions are inequitable, disadvantaging the weaker economies involved. Environmental protection provisions are seldom adequate. For example, Japan is accused of concluding bilateral trade agreements with several countries that eliminate tariffs on hazardous wastes such as pharmaceutical wastes and waste oils containing PCBs. This facilitates Japanese exports of such pollutants, in contravention of the Basel Convention.

(2) Bilaterals often require parties to adopt a list of IP conventions, including the UPOV 1991 system of Plant Variety Protection (PVP), which has none of the environmental objectives of the Convention on Biological Diversity.

(3) Bilaterals generally involve no provisions to ensure the treaty does not undermine MEAs.

(1) Bilateral IP chapters often require that Parties enforce IP protection even if a Party lacks the financial and bureaucratic resources to do so. This privileges spending on IPs over other programs, including those intended to meet human rights obligations. IP holders and investors get priority since in bilaterals, patents, even those on germplasm, are defined as “investments.”

(2) Some trade treaties require that even if the trade treaty is terminated, the IP provisions shall continue to protect investments (See ASEAN Investment Protection Treaty, Article XIII(2)) for several years after termination, effectively limiting a State’s right to self determination.

(1) IP rights protection provisions in bilateral agreements often go beyond the TRIPS agreement. This can jeopardize a state’s health policy by requiring strong patent protection of essential medicines.

(2) Bilateral IP provisions prevent public review of test data on the safety and efficacy of a patented product.

(3) Bilateral IP provisions may prohibit the use of compulsory licensing to import or allow the manufacture of generic drugs, at the expense of meeting public health objectives.

The agricultural provisions of bilateral agreements generally require greater market access for exporters based in industrialized countries to developing countries, while refusing all negotiation on reducing domestic support measures in developed countries. Bilaterals lock in unfavorable market access arrangements for developing countries, exposing them to economically ruinous and political destabilizing export dumping.



The Finance Regime	The Environmental Regime	The Human Rights Regime	The Health Regime	The Food & Agriculture Regime
<p>International Monetary Fund and World Bank Conditionalties</p>	<p>(1) IFIs may require a government to change its laws in such a way that it will conflict with international environmental rules.</p> <p>(2) In the day-to-day practices of staff, the pressures of project approval, fund disbursement and the management of relationships with host governments take precedence over development, environmental and poverty-reduction goals.</p> <p>(3) The World Bank has sought to finance projects which are in violation of its own environmental policies when a powerful borrowing country is involved (e.g. the China Western Poverty Reduction Project in 2000).</p>	<p>(1) Crises in provision of basic human rights such as the domestic water supply has been traced back to advice/pressure from the World Bank to rapidly privatize public services. (e.g. in Argentina)</p> <p>(2) The focus of reforms recommended by the World Bank is often on securing the privatization of state-owned enterprises and developing legal frameworks for foreign direct investment. There is no empirical evidence that ensuring private investment rights will further the protection and promotion of universal human rights, although the Bank insists these reforms will benefit the poor.</p> <p>(3) IFIs may require a government to change its laws in such a way that conflicts with international human rights rules.</p> <p>(4) The World Bank may seek to finance projects which are in violation of its human rights policies (e.g. information disclosure, protection of indigenous peoples and involuntary resettlement). For example, the China Western Poverty Reduction Project in 2000.</p> <p>(5) Bank and Fund structural adjustment programs (SAPs) and their successors, Poverty Reduction Strategy Papers (PR-SPs), often require dramatic reform of a borrowing country's economic policy and laws. These reforms can undermine democratic processes.</p>	<p>World Bank and IMF conditionalities may conflict with obligations in international health treaties. For example, the restrictions on the tobacco industry in the World Health Organization's Framework Convention on Tobacco Control (FCTC) compared with the IMF's support for tobacco privatization and its possible consequent increase in production.</p>	

The Finance Regime	The Environmental Regime	The Human Rights Regime	The Health Regime	The Food & Agriculture Regime
<p>IMF Fiscal Targets</p>			<p>IMF Fiscal Targets are imposed on borrower countries to keep inflation low. These targets “force” a State to reduce public spending—including money that has been received as aid. Which often adversely affects public health.</p>	<p>IMF Fiscal Targets are put on countries to keep inflation low. These “force” a State to reduce public spending—including money that has been received as aid. This can adversely affect farmers in receipt of subsidies. For example, Malawi, which recently reintroduced subsidized access to fertilizer to improve productivity, in defiance of IFI advice and program requirements.</p>
<p>Country Policy and Institutional Assessments (CPIAs) by the World Bank</p>	<p>CPIAs do not give any real consideration to environmental obligations on a State, though they provide the basis for the amount of aid the Bank gives to a country.</p>	<p>CPIAs do not give consideration to human rights obligations on a State.</p>	<p>CPIAs do not give consideration to health targets a State may have set.</p>	<p>CPIAs do not give any consideration to domestic agriculture objectives, including expanding production and meeting food security targets.</p>
<p>International Center for Settlement of Investment Disputes (ICSID)</p>	<p>It may be possible to show there are direct legal conflicts highlighted in ICSID, especially if you can show that the tribunal has upheld the adoption by a country of legal measures which conflict with that country’s environmental obligations.</p>	<p>It may be possible to show there are direct legal conflicts highlighted in ICSID, especially if you can show that the tribunal has upheld the adoption by a country of legal measures which conflict with that country’s human rights obligations.</p>	<p>It may be possible to show there are direct legal conflicts highlighted in ICSID, especially if you can show that the tribunal has upheld the adoption by a country of legal measures which conflict with that country’s health policy.</p>	<p>It may be possible to show there are direct legal conflicts highlighted in ICSID, especially if you can show that the tribunal has upheld the adoption by a country of legal measures which conflict with that country’s agricultural policy.</p>



The Investment Regime	The Environmental Regime	The Human Rights Regime	The Health Regime	The Food & Agriculture Regime
<p>Bilateral Investment Treaties (BITs)</p>	<p>Investor-State lawsuits may be launched by foreign investors to challenge “environmental regulation” adopted by governments to meet their environmental commitments.</p>	<p>(1) Rights given to foreign corporations under BITs may undermine the right of a state to decide how it wishes to implement human rights, e.g. restrictions on a state choosing to bring about the right-to-water through the public appropriation of a privatized water company.</p> <p>(2) Government efforts to implement human rights obligations through adoption of laws, policies or programs could run afoul of legal security and stability obligations owed to foreign investors under investment treaties.</p> <p>(3) Investor-state lawsuits may be launched by foreign investors to challenge “affirmative action” policies adopted by governments to meet human rights commitments.</p> <p>(4) Concerns also arise as to how governments manage their competing obligations to provide police protection and security to foreign investors and their countervailing human rights obligations to ensure that local citizens enjoy rights of peaceful assembly, protest and expression.</p> <p>(5) Human rights treaties require that victims of human rights violations have access to effective remedies. Access to appropriate judicial remedy may be constrained by the legal protections enjoyed by foreign investors under investment treaties.</p> <p>(6) Human rights principles require the full and active participation of citizens <i>in desi</i> and active participation of citizens in decision-making but most investment treaties are negotiated behind closed doors, even in democratic countries, and there is little or no public information about the negotiation process until it is completed.</p>	<p>Intellectual property rights protections contained in investment agreements might be used to challenge programs and policies designed to implement human rights obligations. For example, compulsory licensing (i.e. breaking patent protection) of essential medicines by developing countries could be viewed as expropriation.</p>	



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