

## **Civil Society Open Letter to WTO Director General, Pascal Lamy**

### **The impact of trade liberalization on the realization of human rights**

Geneva, 5 February 2010

Dear Mr Lamy,

We appreciated your [speech](#) of 13 January 2010 and willingness to engage in a discussion on the contested and controversial relationship between human rights and trade during the 11-13 January 2010 Colloquium on Human Rights in the Global Economy, co-organized by the International Council on Human Rights and Realizing Rights in Geneva.

We, the undersigned organizations and individuals who participated in the Colloquium and the discussion with you, acknowledge and welcome your openness to dialogue. We also acknowledge your attempts to challenge the policy firewall that has too long been maintained between the discourses of trade and human rights and the ways in which you sought to draw out the connections between these two discourses. At the same time however, we remain concerned by persistent and obvious contradictions between the rhetoric of complementarity between human rights and trade liberalization (as it has been implemented so far), given the real outcomes of liberalization for people and communities around the world, especially in the developing countries.

#### **Trade liberalization is a means, not an end**

We concur with your statement that “trade liberalization is a means to an end, not an end in itself.” The ends should be to meet the objectives outlined in the preamble of the 1994 WTO agreement, such as sustainable development, full employment and a rising standard of living. You argued that *“the opening of markets creates efficiency, stimulates growth and helps spur development, thereby contributing to the implementation of the fundamental human rights that are social and economic rights.”* There was no acknowledgement on your part, however, that where and when trade liberalization undermines these human rights, then such liberalization should be halted. Nor did you recognize that—for all practical purposes—trade liberalization under the WTO has become an end in itself, regardless of any impacts on human rights and its social, economic and ecological costs.

#### **Putting the cart before the horse?**

In your speech, you underlined that *“to be successful, the opening of markets requires solid social policies to redistribute wealth or provide safeguards to the men and women whose living conditions have been disrupted by evolving trade rules and trade patterns. This is what I have called the “Geneva consensus”, under which the opening of markets is necessary to our collective well-being, but does not suffice in itself. It does not suffice unless strong safety nets help correct the imbalances between winners and losers at the national level. It does not suffice unless the countries which do not enjoy sufficient human, technical, and financial resources to build the*

*necessary infrastructure or to put in place such safety nets domestically are assisted by the international community.”*

Your assertion rightly suggests that when countries do not have adequate social protection systems in place, it would be illegitimate and irresponsible to pursue further trade liberalization, irrespective of the *quid pro quo* (or “mercantilistic”) logic of current WTO negotiations. From a human rights perspective, undertaking trade liberalization without these safety-nets in place for the ‘losers’ would violate the principle of “progressive realization” (and the concomitant principle of “non-retrogression”) as applied to the International Covenant on Economic, Social and Cultural Rights. In such a case, a country could not uphold both its human rights obligations and its WTO obligations. But when such a conflict arises, countries must respect human rights in accordance with their obligations under the UN Declaration on Human Rights, the UN Charter and their commitments expressed in the 1993 Vienna Declaration and Programme of Action to uphold the primacy of human rights as the “first responsibility of governments” (Vienna Declaration, art 1). It is clear that multilateral trade agreements cannot exclude or ignore human rights principles and objectives without losing their fundamental claim to legitimacy.

Moreover, from a human rights and development perspective, even in the highly hypothetical situation where adequate social protection systems were in place, it does not always follow that trade liberalization will be “successful,” as your “Geneva consensus” suggests. Trade liberalization has tended to lead to de-industrialization, thus it may (especially in developing countries) well destroy jobs and livelihoods without generating viable alternatives. Instead of “creating efficiency” it can destroy enterprises that are not yet in a position to compete internationally, causing not only direct job losses, but also indirect losses through inter-sectoral linkages with other domestic firms, such as among their local suppliers. Quite simply, it contravenes the objective of full employment to which your own organization is bound, and jeopardises the right to work and a range of economic, social and cultural rights.

You drew temporal parallels between the drafting of the Universal Declaration on Human Rights and the original efforts to establish a multilateral trading system. But in the 1948 Havana Charter, full employment, expansion of productive capacities and domestic demand were seen as *necessary conditions* for more economic integration. Now the thrust of WTO negotiations seem to think that the opposite is true. This is tantamount to putting the cart before the horse.

#### **“Affirmative action” in trade law**

You stated that “*human rights and trade rules, including WTO rules, are based on the same values,*” among which you mentioned “*non-discrimination.*” However, the concept of non-discrimination under international human rights law does not imply that the same rules should always apply to all players in order to create the “*global level playing field, where fairness is the rule*” that you say the WTO aims towards. Full reciprocity and equal trade rules among very unequal players can institutionalize discrimination and marginalization in the very name of non-discrimination! “Positive discrimination” or “affirmative action” is then required to ensure substantive equality and to protect the weakest and most vulnerable.

For the international trading system this requires a much more forceful and meaningful approach to “policy space” for developing countries to make sure trade obligations do not contravene their right to development and do not inhibit their capacity to fulfil their human rights obligations. In the WTO, the principle of ‘Special and Differential Treatment’ and particular provisions for the most vulnerable countries were intended to serve as a form of ‘affirmative action’ and to facilitate building a relatively level playing field among the WTO’s economically unequal members. Unfortunately however, these measures have become subject to the logic of *quid pro quo* compromises and deals, thus deepening the injustices in the global trade regime.

You argued that there is still ample policy space in current WTO rules, given wide gaps between applied and bound tariff rates. However, tariff structures vary considerably from country to country and, in any case, they cannot address non-tariff measures, such as local content requirements under TRIMs and Sanitary and Phytosanitary Standards (SPS) which can act as effective barriers for exports from developing countries which do not have the resources to implement the standards. Further, while you even concede yourself that conclusion of the Doha Round would significantly reduce policy space for developing countries, you continue to push WTO members to conclude the Round as quickly as possible.

#### **A development and human rights audit of the WTO**

At the last WTO ministerial meeting in late 2009, many voices were calling for a ‘development audit’ of the WTO, including a focus on items still under negotiation in the Doha Round. This is not new. There have been calls for human rights, environmental and development impact assessments of the global trading regime at least since the 1999 Seattle Ministerial Conference. In the interest of promoting the coherence between trade, development and human rights that you claimed in your speech to support, we ask that you recognize, in your position as Director General of the WTO and Chair of the WTO General Council, that it is time to agree to an independent and participatory ‘development and human rights audit’ before proceeding with any further negotiations. The “development round” was meant to correct the injustices and imbalances inherited from the Uruguay Round. However, the current round is unlikely to be successful in correcting these injustices, but may also serve to create new injustices. This is simply not compatible with ensuring the capacity of all states to realize and uphold their full human rights obligations.

We would be particularly interested to hear more from you how you think the persistent asymmetries in international trade rules (e.g. heavy protection of agriculture by developed countries), as well as the lack of implementation of rulings of the Dispute Settlement Mechanism of WTO by some industrial countries (e.g. in the case of cotton and in the case of zeroing methodologies), will be resolved.

These reflections on the discussion in which we engaged with you on 13 January 2010 are offered in the same spirit of openness that your participation signalled. Continued dialogue is certainly necessary, and we hope that through such dialogue we can move beyond rhetoric on either side towards a concrete examination of the inconsistencies and conflicts between current models of trade liberalization and fundamental human rights obligations, and to consider ways of dealing practically with these real world issues.

We look forward to receiving your response.

**Signatories (organizations and individuals who participated in the 13 January 2010 discussion with Pascal Lamy):**

1. Center for Economic and Social Rights
2. Center for Women's Global Leadership
3. Global Rights, Partners for Justice
4. Lutheran World Federation
5. Miloon Kothari, Habitat International Coalition (former UN Special Rapporteur on the Right to adequate housing)
6. Roberto Bissio, Social Watch
7. George DeMartino, Professor, University of Denver
8. Claire Mahon, Project on Economic, Social and Cultural Rights, Geneva Academy of International Humanitarian Law and Human Rights
9. Niko Lusiani, International Network for Economic, Social and Cultural Rights (ESCR-Net) Secretariat
10. S. M. Shafaeddin, independent consultant

Cc: WTO External Relations office