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Reforms Within the Current WTO System to Ensure Developing Nation Interests: Labor Standards, Intellectual Property, and Dispute Settlement

Jia Zhong[1,a,*], Xingyu Wu[2,b], Sichun Wang[3,c], Shaoting Chen[4,d]

[1]Stevenson School, Pebble Beach, CA 93953, The United States
[2]Kent School, Kent, CT 06757, The United States
[3]WLSA Shanghai Academy, Shanghai 200243, China
[4]The University of Macau, Macau 247100, China
a. jackzhong821@qq.com, b. xingyuwu2003@gmail.com, c. sichun_jessica@163.com, d. SB92300@UMAC.MO
**corresponding author*

Abstract: The modern international trade framework aims for trade liberalization, that achieving worldwide free trade would help people achieve higher living standards. However, the current WTO system still requires modifications to ensure the rights and benefits of developing countries regarding worker protection, intellectual property protection, and dispute settlement. This paper focuses on analyzing the current labor market, intellectual property policies, and judicialization within international dispute settlement procedures, points out the flaws in each of them and provides a solution for possible enhancement to ensure developing country rights.

Keywords: WTO, labor standards, intellectual property, traditional knowledge, dispute settlement mechanism, developing countries

1. Introduction

The modern international trade framework is based on the idea of economic liberalism, which can be traced back to 18th-century Europe. Its mechanism was settled after the Second World War when countries signed the General Agreement on Tariffs and Trade (GATT) to prevent economic recessions like the Great Depression. GATT was, later on, replaced by the World Trade Organization (WTO), which has been running with the sole purpose of helping its member states improve their people's living standards through achieving international free trade [1]. Different from its predecessor, the WTO includes a much larger body of nations, a dispute settlement body (DSB), and contains more restrictions within the field of intellectual property protection. This paper argues that the current WTO system must be reformed to promote sustainable development concerning worker protection, intellectual property protection, and dispute settlement mechanism (DSM) for developing countries' interests.

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2. The Current Dilemmas: from Worker's Protection to Regional Agreements

2.1. The Race to the Bottom

Developing states took great interest in the lucrative global trade system, namely its promise to stable economic development and the well-being of the whole state. Yet, these developing countries, which generally do not have the technological advantages to be viable in the global market, need to reduce their labor costs by sacrificing wages and social protection for the workers to ensure their products are the cheapest on the market. But unfortunately, inexpensive labor costs often lead to low labor standards. Such a loophole in reducing labor costs and lowering labor standards between the developing states is called the race to the bottom.

Noticeably, the job creation stimulated by international trade and its following wage raises is essential to develop countries' stability and economic development. If countries lose their share of international trade, many workers will become unemployed, sometimes amounting to half of their labor force. According to WTO's report on "the impact of trade on labor market outcomes," export production has created about "15 million [jobs] in the United States, 66 million in the EU, and 121 million in the People's Republican of China (PRC)." The United States had 153.5 million workers during that same year, the EU 151.1 million, and the PRC 925 million [2-4]. This means export production single-handedly increased 10.8% of the US job market, 77.55% of the EU job market, and 15.04% of the PRC job market in 2011. If developing states like the PRC lose their share of international trade, they may face a dramatic financial crisis and a massive wave of unemployment. Also, regarding wages, Aunty and Davis (2012) documented an eight percent increase in wages for the exporters than domestic producers in Indonesian manufacturing from 1991 to 2000. Losing that share again will create dissatisfaction within the domestic community with the government.

When developing countries have competed in the race to the bottom, cheap labor cost has become a concrete factor in gaining a competitive advantage. However, in reality, labor protection standards have gradually deviated from the track of human rights protection, and there are now great difficulties within the enforcement mechanisms.

2.2. Intellectual Property

Intellectual Property Rights (IPRs) are rights given to people for their creations, it is all rights given to an individual or a firm related to their original products. Unfortunately, international IPR protection policies are not created until the agreement establishing the WTO was signed [5]. Although the WTO is already doing much better than GATT in IPR protection, the system remains problematic in developing country protection. This section analyzes the WTO IPR system from two aspects: technological innovations and traditional knowledge.

2.2.1. Technological Monopolies

IPRs can be the "basis for the accumulation of power [6]." As intellectual property protection mechanisms become increasingly accessible, it is common for them to be used as a marketing strategy to suppress competitors.[7] For example, Dyson, a UK-based manufacturer of hoovers, has been a significant player in the Chinese market since 2012. During its years of development in China, the company filed patent lawsuits against several small Chinese enterprises, including PUPPYOO in 2017 [7]. Although Dyson never actually receive exorbitant financial compensation, Dyson has managed to prevent its competitors from becoming listed companies. Many technology companies in developed countries have patents, but rather than using the international IPR system as a tool to defend their rights, they tend to use them as weapons for suppression of competitors from developing nations. Excessive protection of IPRs can easily backfire and reduce public

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enthusiasm for research and development (R&D) investment because expensive and time-consuming technology development is no longer attractive to most companies. Companies in developed countries with enough patents do not need to invest in R&D to capture market share, as the existing ones already provide expected earnings.

2.2.2. Issues regarding Traditional Knowledge

Regarding the protection of traditional knowledge, legislation in the international field will cause problems due to conflicts between interests. The current international organizations concerned with protecting traditional knowledge, such as the World Intellectual Property Organization (WIPO) and the WTO, are all led by developed countries. As a result, developed countries control the discussion of conventional knowledge protection issues, the voting on relevant rules, and implementing specific rules. Thus, in the international community, under such an international treaty that seems to make formal equality, it covers up the inequality of substantive interests. This inequality further weakens the interests of developing countries (the primary holders and users of traditional knowledge resources), which are already disadvantaged in conventional knowledge protection.

2.3. Conflicts between WTO and Regional Trade Agreements

Regional Trade Agreements (RTAs)and WTO have the common goal of trade liberalization, but while RTAs are preferential to some states' interests over others, the WTO always tries to ensure all nations' interests. This may seem like harm to the WTO's goal for global free trade, as not only RTAs are discriminatory but also create boundaries between regional trade groups when countries diverge trade opportunities from each other. However, not only does the WTO not forbid RTAs, but RTAs were also already allowed in Article V and Article XXIV of GATT [8]. This is because RTA's nature tends to be developing country friendly. Developing countries could either join an RTA for more political influence by binding themselves to another stronger country or seek a safe entrance to larger trade markets [9]. In other instances, a country may attempt to make domestic reforms harder by joining an RTA, and by imposing more restrictions, the country could prevent fundamental reform. RTAs are also a safe entrance for developing countries as they gradually enter the larger global market. Recent research has demonstrated that free trade can devastate developing states, halting industrial development, stagnating poverty reduction, and even causing infant industries to compete with developed ones [10]. On the way to becoming developed nations, low-income countries would need an adaptation period that allows them to embrace free trade safely.

The Association of Southeast Asian Nations (ASEAN) is a perfect example of so. The ASEAN political and economic union comprises 10 countries, including Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. Since its formation in the late 1960s, it has managed to help its members solve numerous problems that to all appearances seemed insoluble and achieved shocking economic growth within the region. As a result, it has been generally accepted as one of the most successful RTAs throughout the world. ASEAN has a GDP of $2.5 trillion making up 3.4 percent of the world's GDP. In 2016, the region's GDP growth was 4.6 percent, higher than the global average of 3.2 percent [11]. This, then, makes ASEAN the fifth biggest economic body in the world, well expected to become fourth by 2030. As ASEAN has been achieving remarkable results, it is also worth noticing that most of its member states are developing countries.

As RTAs would be a better choice for developing nations, dispute settlement is where the real dilemma occurs. Dispute settlements between countries are essential in upholding the member states' rights and obligations. If a dispute occurs in an RTA, although developing countries get to choose to either go to the DSM within the RTA or the WTO DSB, neither are good options; DSMs

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only exist in a few RTAs, as developing nations usually cannot build one; The WTO DSB tends to be overly expensive and inaccessible for developing countries. This issue and its impact will be further elaborated on in 2.3.

3. Impacts Behind the Dilemmas

3.1. Human Rights and ILO Enforcements on the Workers' Protection

When developing countries compete to the bottom in the international market, cheap labor cost has become a concrete factor in gaining a competitive advantage. However, in reality, labor protection standards gradually deviate from the track of human rights protection, and there are great difficulties in the enforcement mechanisms.

The Universal Declaration of Human Rights preamble highlights "the recognition of all members' rights to freedom, justice, and peace in the world [12]." If workers are constantly abused of their labor and living conditions without the means to bring up the claim, the state is not promoting freedom and justice of all members, but rather only a few members who benefit from international trade, such as the business owners. On the other hand, if the states improve workers' living standards, the group will, in turn, stimulate the economy more with their inputs in spending and creating more jobs.

More importantly, the practices of work abuses are clear violations of the International Labor Organization (ILO)'s conventions and protection of human rights in the Charter of the United Nations. In the ILO Hours of Work (Industry) Convention (No.1) of 1919, article 2 states that "the working hours of persons employed in any public or private industrial undertaking…, shall not exceed eight in the day and forty-eight in the week" with few exceptions, which include the voluntary agreement between employers and employees [13]. Yet, in the case of Hong's investigation in the People's Republic of China (PRC), he and his fellow workers' working hours consistently go above a hundred hours per week only to meet the minimum standards of wages set by the national government doesn't fall in the category of admissible exceptions [14]. Besides, in the case of India and Indonesia, practices like child labor are also prohibited in the ILO's convention and the UN charter [15].

Such a prevalence of violations proves the lack of binding power of state regulations and ILO's conventions. According to an ILO report in 2005, such failures could be attributed to "the failure to supply reports on unratified conventions, on recommendations and protocols for the past five years" and non-compliance of the state members [16]. In other words, enforcement mechanisms of ILO, such as complaints, are powerless in making its state members comply [17]. The enforcement mechanisms in ILO can also be attributed to states shared economic interests in the manufacturing sector of the trade where no interstate complaints will be brought up, or that violations of conventions, such as working hours, can hardly be traced at a national level. Whatever the underlying reason might be, the system is lacking.

3.2. IPR Flaws

3.2.1. The TRIPS Agreement and Stagnant Innovation

Certain treatments required by the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS Agreement) agreement privilege the developed countries to have a larger and more stable share of the existing market than the developing countries. According to Article 3 of the agreement, "Each Member shall accord to the nationals of other Member's treatment no less favorable than that it accords to its own nationals with regard to the protection of intellectual property, […]." Although all countries are treated to the same standard in terms of the TRIPS Agreement, developing

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countries' companies are subject to more international obligations under the same standards because they have less capital compared to developed countries' companies. A cycle that will lead to the aforementioned problem, namely the stagnant innovation and intellectual monopoly [18].

3.2.2. Legal Issues with the Ownership and Definition of Traditional Knowledge

One clear issue within the current IPR protection policies is the vague definition of traditional knowledge. We need a precise regulation of conventional knowledge in law in the international scope; the other is the indistinction process of determining the actual ownership of power, that is, who should own the interests generated by the protection of traditional knowledge. The second main legal issue is the imbalance of international interests. While western developed countries use modern intellectual property systems to maximize control over new technologies and products, it also precludes the possible legal protection of cultural resources in developing societies. In this case, the developing states are undoubtedly in a weak position under modern economic and legal systems.

TRIPS agreement also makes it possible to protect intellectual property internationally. But WIPO's negotiations on traditional knowledge have been going on for over a decade. The modern intellectual property system mainly covers modern knowledge, and the protection of traditional knowledge is not standardized in form. Traditional knowledge is increasingly important in protecting the ecological environment, promoting economic development, and protecting indigenous human rights. But then there are the problems. The transnational appropriation of traditional knowledge of developing countries by developed countries or biopiracy often occurs. All these improper commercial behaviors show the conflict between the interests of the holders and users of traditional knowledge. It also shows that the international legal protection system of intellectual property rights fails to form a unified national protection system of traditional knowledge and cannot meet the needs of national protection of traditional knowledge. Therefore, how to improve or innovate the existing intellectual property protection system and build a global traditional intellectual property protection system is also the focus of promoting the fair development of world trade.

3.3. Issues Related to Dispute Settlement

Dispute settlements between countries are essential in upholding the member states' rights and obligations. However, only a small number of RTAs would have their DSB, as it requires lots of time and professionals to create one. It is also significant that even after the system is built, it would still likely be unreliable and immature. Therefore, when disputes occur within RTAs, countries also are offered a second choice — the WTO DSB. When the GATT dispute settlement system was replaced with the new DSM, dispute settlement already became much more efficient, and the consultations were already much more effective. Nevertheless, this success is comparative; while the system is effective, it is more friendly toward developed countries than developing nations.

Again, to explain RTA DSMs' problem, we will use ASEAN as an example. The ASEAN DSM was created in 2004 after a dispute from 1995 when Malaysia was charged with breaching Singapore's rights by forbidding petrochemical imports [19]. Singapore attempted to resolve the issue through the WTO DSB, alleging Malaysia violated its rights under GATT. However, WTO's consultation was not satisfying before Singapore revoked its panel request and personally resolved the issue. Even with a functioning DSM, countries in ASEAN still often avoid using it. In the case of the Philippines suing Thailand in which a violation of Article X of GATT results in an unfair cigarette procedure treatment, even when both the Philippines and Thailand are members of the ASEAN, they both decided to use the WTO DSB four years after the ASEAN DSM was created. Likely, ASEAN DSM will never be used if member states decide not to. ASEAN members still

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doubt the credibility of the ASEAN DSB's judgment, as ASEAN does lack international trade law experts.

On the other hand, the WTO DSB may not be as friendly as imagined [20]. Even though countries have equal rights accessing the DSB, some of the least-developed countries still face many constraints. This constraint does not refer to a legislative restriction but is rather the ability to make a move, as Gregory Shaffer has categorized as "constraints of legal knowledge, financial endowment, and political power, or, more simply law, money, and politics." For some of these least-developed countries, even mobilization of available resources could be a problem, and we are now discussing even more serious issues such as inflation, lack of professionals, and even diplomatic experience. Some developing members of the WTO believe money has become more important than anything else. The WTO's judgments do tend to lean against the rich side of the lawsuit; rich countries can even bury their opponents just through evidence finding [21]. Maybe the word evidence finding sounds wholesome, but it can become very expensive. The general cost of WTO litigation is already very high, could be from $100,000 to $1,000,000 with a $250 to $1000 per hour fee, and it may cost up to 10 million dollars if the case is complex.

4. Suggestions for Enhancing the Current WTO System

4.1. Solution to the Race to the Bottom Between Developing States

Incorporating labor standards into the WTO will address developing countries' dilemma of the race to the bottom, as one of the key provisions of the WTO is the national treatment, which requires the same domestic and foreign regulations towards similar products. Therefore, while incorporating the labor standards into the WTO, the policymakers can refer to the experience of enforcing the national treatment through mechanisms to ease the process. In addition, even if states are unwilling to comply, the powerful enforcement mechanism of WTO, which includes panels and consultations, will be able to keep labor standards intact.

The incorporation of labor standards within the WTO can sound contradictory to the core of the organization's belief to promote trade liberalization and eliminate potential barriers. Nevertheless, suppose that every developing country has to comply with the labor standards regulation. The rule itself does not endanger the economic survival of each country because every individual of the state faces higher costs. The concerns of labor standards being the smokescreen of developed countries' protectionism–to steal away developing countries' share in the manufacturing sector– can also be addressed if more lenient labor standards are given to the developing countries [22]. The only concern is that developed countries might reject such proposals due to the possible higher prices of imported products resulting from the higher labor costs of the developing countries.

In the end, the efficient WTO enforcement mechanism, which includes economic countermeasures and sanctions, will create financial incentives for the developing states to comply in the face of potential economic losses without interfering with the sovereignty of individual states.

4.2. Solution Intellectual Property Issues

4.2.1. Solution to Technology Monopoly and Stagnant Innovation

The higher economic development of developed countries has helped them to gain preferential treatment in IP protection. However, most companies in these developed countries face a shortage of human resources and must cooperate with developing country companies. In order to facilitate cooperation, they must provide training and funding to developing states to increase the latter's awareness of IP protection. For example, the established IP system can reduce the incidence of infringement and speed up the filing of national patent applications [23]. However, in some

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developing countries with little awareness of IPR protection, domestic firms are more likely to infringe patents or trademarks on foreign goods. This situation can disincentive for foreign companies to invest directly and share their innovations, as they fear licensing contracts will not be enforced [24]. Therefore, helping to build an established IP system will strengthen international technological collaboration and build trustful relationships.

Developed countries also need financial assistance to the legal departments of core copyright industries in developing countries because the infringement cases often are costly and grinding for both users and infringers. Article 45 of TRIPS requires the infringers to compensate the copyright holders, including attorney's fees [25]. Even if a case is won, the time and financial costs involved, such as court fees and the cost of hiring a lawyer, can be significant. Therefore, for the interests of developed countries, they should help companies in developing countries to prevent cases relating to issues such as IPR.

4.2.2. Solutions to the Issue of Under-protected Traditional Culture

First, to eliminate the conflicts of interests between developed and developing countries and make the international protection of traditional knowledge universal, we need an international organization with specialized functions in the field of intellectual property to form authoritative international legal rules. WIPO and WTO are such institutions. But most importantly, the TRIPS agreement is the most influential and sufficient international treaty. Therefore, based on TRIPS, take it as the core theory to improve:

1) special protection system can be added to the model. In other words, within the current intellectual property system, a unique right protection system can be established for traditional knowledge which does not meet modern knowledge standards. The traditional knowledge can be preserved in how the existing intellectual property system model and the particular protection system model complement each other.

2) modify the TRIPS agreement and introduce the source disclosure system of traditional knowledge into the process of acquiring intellectual property, which can better prevent the theft of intellectual property of traditional knowledge [26].

3) treating traditional knowledge as a national resource or traditional social groups as a subject. TRIPS stipulates that intellectual property rights are private, and the subject system is based on individual rights. This conflicts with the collectivist subjective view of traditional knowledge. Therefore, while in the institutional framework where individualism is still in the core position, the status of the collective subject should be appropriately promoted, and the system of traditional knowledge collectivism should be established.

Furthermore, there are two ways to set traditional knowledge rights protection period. Firstly, allow the protection of traditional IP rights to continue until traditional knowledge is disqualified from protection. Second, the protection period of a trademark patent is stipulated; that is, a specific protection period is stipulated, such as 60 years. The protection can be renewed according to the law after the expiration of the protection. This way, both the time and group limits are overcome.

Though we are elaborate in this paper how to perfect TRIPS within the framework of the specific measures of protection of traditional knowledge, However, in the current situation of international relations, the conflicts and contradictions between developed countries and developing countries around the issue of traditional knowledge protection are still very intense.

1. To seek the basis of international legislation based on the theory of "human rights"

For developing countries, survival and development are the essences of "human rights". TRIPS also reminds governments of the importance of human rights obligations and overall economic policies when formulating policies, The WTO and other international organizations should also take full account of international human rights provisions when evaluating relevant intellectual property

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agreements. Therefore, developing countries should provide a strong legislative basis for protecting traditional knowledge based on the theory of "human rights" and emphasize the interdependent relationship between traditional knowledge and human rights in developed countries. On the one hand, this can provide a legal basis, on the other hand, it creates strong public pressure for developed countries. The human rights weapon has already played an important role in resolving WTO disputes over pharmaceutical patents, so we believe it will be equally useful in protecting traditional knowledge.

2. Use the assisting function of NGOs in international legislation. We are impressed that NGOs contributed greatly to the success of developing countries in the WTO Doha Round of discussions on the public health crisis. They have given developing countries strong public opinion and technical support. We believe that the help of NGOs such as TWN and GRAIN[27] in protecting traditional knowledge will not only form a huge public opinion offensive before the negotiation but also provide necessary technical assistance to some developing countries with limited capacity [27].

3. Strengthen legislative cooperation on bilateral and multilateral agreements.

We can use free trade agreements (FTA) to carry out partial consultations on the issues that have not reached a consensus. Reaching consensus in bilateral and multilateral agreements is still much less difficult than reaching consensus at the international level, developing countries should stand firm when signing agreements on the protection of traditional knowledge with each other. They should not make concessions easily to prevent developed countries from obstructing the existing system. Developing countries should strengthen regional legislative cooperation, In this respect, we can learn from BMSTEC [28], Parties to the BMSTEC have begun to jointly develop a legal mechanism to protect biodiversity and traditional knowledge, Such regional legislative cooperation among developing countries is not only conducive to further strengthening the collective position of developing countries and increasing their collective bargaining power in international legislation, but it also encourages relevant developing countries to incorporate traditional knowledge protection into the scope of intellectual property law as soon as possible [28].

4.3. Solutions to Issues Related to Dispute Settlement

For the benefit of developing countries, there are two possible solutions to the problem: we could either encourage RTAs to develop better DSMs or let the WTO help reduce the cost of litigation. Essentially, the core idea of the solution is to help increase the accessibility of the low-income nations to DSMs, and then encourage them to protect their rights.

In many RTAs, most member states would be developing nations with comparatively fewer resources in general, so it is essential for developed countries bound by these conventions to assist in the process of DSM creation. For example, developed nations could help create an independent DSM within the RTA by providing resources, such as funds, jurists, and international law experts, or frequently use the DSMs as examples to prove to other nations that the DSM within the RTA could work and is credible.

As for enhancing the WTO DSB, one popular opinion is to create a small claim procedure, which would be more of a streamlined procedure [21]. A lot of times, the cost of a lawsuit is increased because WTO's system is slow. Adding a small claim procedure provides less significant lawsuits than others and a faster path for dispute settlement. A good start would be to limit the pages of party submission and a shorter decision from the WTO. As William Davy suggests, a set of non-essential procedures from the current system would be excluded to reduce the time cost [29]. Specific modifications may include reducing the times of DSB meetings from two to one before establishing a panel and adherence to submission deadlines. Some other possible methods include, as suggested by Nordström and Shaffer, limiting oral hearings, pages of party submissions, and lengths of decisions [30]. Additionally, Nordström and Shaffer also suggested getting rid of the

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strict confidentiality rules in the current WTO lawsuit system for the small claim procedure, that by creating a more transparent system, we would be able to allow a timelier result of the consultation. The WTO can also create a database categorizing past cases into cases that could be dealt with through the small claim procedure and cases that could represent a resolved predecessor, both of these would be significantly helpful for initiating a small claim procedure system within the WTO DSB.

5. Conclusions

The current WTO is not perfect, and there are modifications to make in order to fully protect the rights of developing nations. To begin with, the incorporation of labor standards in the WTO would help address the conflict regarding worker rights by setting up a rigid bottom line of labor standards without harming the states' benefits. Moreover, developed country rights are not fully ensured under the status quo of technological monopoly, and assistance from developed states is essential. Traditional knowledge is not fully protected by intellectual property law, so it must be better protected through international intellectual property, either by improving the existing intellectual property system or by formulating a separate and special system under the framework of TRIPS. Finally, as trade dispute settlement mechanisms are often inaccessible for developing countries, the WTO should reform its dispute settlement mechanisms to better protect developing country interests and regional trade agreements, which are often more favorable to developing countries, and establish more effective dispute settlement systems.

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