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GLAWCAL COMMENT #52

IS TRADE LAW INCOMPATIBLE WITH HUMAN RIGHTS (AND RIGHT TO FOOD IN PARTICULAR)?

Based on

Flavia Zorzi Giustiniani: "The Right to Food in International Law and WTO Law: An Appraisal"

gLAWcal

Global Law Initiatives for Sustainable Development

A gLAWcal comment on Flavia Zorzi Giustiniani's *"The Right to Food in International Law and WTO Law: An Appraisal"* in Paolo Davide Farah and Elena Cima (Eds.) China's Influence on Non-Trade Concerns in International Economic Law

In this paper, Professor Giustiniani traces the origins of the right to food, conceived as a human right, and broadly defined as a condition for the safeguard of human dignity, and assesses its weight and its "transformative power" in the current international agenda. In her historical recognition, she takes into consideration multiple international documents, and in particular (a) the 1948 Universal Declaration of Human Rights (notoriously inspired by Roosevelt), (b) the United Nation International Covenant on Economic, Social and Cultural Rights (ICESCR), and (c) the Convention on the Rights of the Child, all with different formulations and thus meanings. The main theoretical challenge here is that the concept of "right to food" – although firmly established in international treaty law – lacks a single, agreed-upon definition, and Professor Giustiniani, therefore, tries to provide one, made up by several aspects: it is to be understood as "the availability of food (a) in sufficient quantity and (b) quantity, and (c) sustainable accessibility for people to care for themselves and their own food needs." A key problem is represented by the relationship between the right to food (understood as a human right, as noted) and trade law. There is, here, a stunning contradiction; despite the It is underlined, indeed, how no WTO agreements regulate or even mention it. In particular, the 1994 Agreement on Agriculture (AoA), that aimed at liberalizing the global agricultural trade – could have potentially serious negative effects for Least-Developed Countries (LDCs) and Net-Food Importing Countries (NFIDCs) in food-related fields. The crucial question here is: is it possible to reconcile WTO trade rules and norms with the right to food? The answer of Professor Giustiniani is that, in principle, no; human rights in general, and right to food in particular, are not incompatible, although several difficulties may arise. What it is emphasized here is that the protection of the right to food in the context of international trade is complicated also by the presence of a multiplicity of non-state actors, NGOs, Transnational Corporations (TNCs) and international organisms (not only the WTO), and this requires constant negotiations and efforts. The conclusion is not simple; State must comply with the obligations to protect, respect and fulfill the right to food. By virtue of their primacy, human rights generally should prevail over the international trade obligation, and enforcement mechanisms on this point should be implemented and strongly supported at a global level. One of the best solution proposed is to conduct human rights impact assessments of every trade agreement.

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