

GLOBALIZATION FAIL – BARRIERS TO FREE INTERNATIONAL TRADE

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Abstract

It is an well accepted fact that no country can survive in isolation and to achieve an economically strong and stable position in the era of globalization , participation in international trade is a must . Though there are international organisations and bodies governing the trade relations between countries , there are still a number of barriers that come in the way of free trade . These barriers can be categorised as Tariff and Non Tariff barriers . This paper covers some of the most relevant non-tariff barriers, i.e. Technical barriers to trade and sanitary and phyto-sanitary measures as well as its effects on the domestic and the international markets of different nations . Along with this , the present paper also critically evaluates other provisions of WTO law relevant to the subject. The researcher has tried to explain how the developed countries use the WTO Agreements to their advantage creating unnecessary obstacles to trade for the developing countries . It also highlights how the states have been exploiting the concept of 'Globalization' for their own benefits but in disguise and how in literal sense the concept of 'Globalization is Failing'. This work is an attempt to prove that the literature and theory of International laws differs from what is practiced to a very large , rather extreme limits .The researcher has also tried to discuss the focus areas wherein no relevant literature is available and much work needs to be done in International scenario as far as unearthing and interpreting literature from the trade perspective of developing and least developing countries is concerned .

Keywords : *Globalization, International Trade, Free Trade, World Trade Organization, Barriers To Trade, Non Tariff Barriers, Literature, Developing Countries*

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If we walk into a supermarket and are able to buy South American bananas, Brazilian coffee or a bottle of South African wine, we are experiencing "International Trade".ⁱ International trade allows us to expand our markets for both goods and services that otherwise may not have been available to us. International trade is the reason why you can pick between a Japanese, German or American carⁱⁱ. This exchange of goods and services between the countries gives rise to "World Economy", in which prices, supply and demand, affects and are affected by global events. Political change in Asia, for example, could result in an increase in the cost of labour, thereby increasing the manufacturing costs of an American sneaker company based in Malaysia, which would eventually result in further increase in the price that you have to pay to buy your sneakers / shoes at your local mall. Trading globally gives consumers and countries the opportunity to be exposed to goods and services not available in their own countriesⁱⁱⁱ. A product that is sold in the global market is 'export' and a product is bought by a country from a global market is 'import'. Globalisation is the intensified cross-border exchange of goods , services, capital, technology, ideas, information, legal systems and people – is both desirable and irreversible^{iv}. Infact, globalisation aims towards Free Trade ; No borders – Open markets . Globalization has brought us closer to 'the end of geography'which might again create a bad 'History' if not controlled.

Going back to the history of international trade, we can find its traces centuries back when barter system existed. But considering the modern era of international trade, i.e., after the World War II, all the countries were completely destroyed and devastated in a way and it was realised that no country could survive in isolation and to regain their lost economy, growth and positions in the world economy, it was very necessary to have trade relations with others. Later in 1946, Breton Woods System was introduced. This international economic model was introduced to stop wars and depressions. Later ITO (International Trade Organisation) was planned to be the formal trade management global organisation in post World War II era. Ultimately, the political disagreements between nations spelled the end of the ITO and thereafter in 1947, as many as 23 countries gave

their consent to implement GATT (General Agreement on Trade and Tariffs) and the World Trade Organization (WTO) was established.

W.T.O.

The World Trade Organisation (WTO) is the only global international organisation dealing with the rules of trade between nations. The World Trade Organisation is the world body to see the comprehensive set of rules and discipline covering every aspect of world commerce. WTO also works to secure the conduct of international trade on the basis of non-discrimination which basically deals with the principles of Most Favoured Nation (MFN), Free Trade, predictability, transparency, promotion, competition and WTO also ensures that the developing countries secure better share of growth in international trade and aims to eliminate the discriminatory treatment in international trade relations, on a par with the substantial reduction of tariffs and other barriers to trade.

The **barriers** to free trade can be categorized as "**Tariff barriers**" and "**Non-Tariff Barriers**". The tariff barriers are comparatively easier to tackle as they can be dealt with (i.e; with experience and expertise) by change in trade patterns, national regulatory measures, economic unions, national policies of development and by cutting down on procedural difficulties. But the most difficult to manage and eliminate are the Non-Tariff Barriers. Some of the major non-tariff barriers are in the form of technical regulations, sanitary- phytosanitary measures, standardization, production and process method, testing procedures, environmental concerns – 'green trade barrier', packaging - marking - labelling requirements etc. The impact of these standards and technical regulations that are failing the concept of globalization - is at forefront of policy discussions over "international trade" throughout the world.

Hence, in this paper the researcher has identified the **problems** faced by the developing countries relating to technical barriers to trade and how these barriers are being used by the developed nations to protect their own markets from competition and destroy the aim of 'globalization' in the disguise of fake concerns. The **objectives** that the researcher intends to address, herein, are as follows :

- To examine the practices of states in creating barriers to international trade and to categorise such barriers into its different types.
- To study the practice of 'protectionism' by the way of technical specifications and standard regulations applied on imported goods and services by the developed nations.
- To prove how the developed countries are failing the concept of globalization.

By giving an eagle's eye view the researcher has drawn a **hypothesis** that most of the provisions in the WTO legal regime that intends to safeguard the human health, animal and plant life are indeed protectionist measures in disguise that create unnecessary barriers to trade. The technologically advanced countries use technical specifications and standard regulations - relating to protection of human, plant and animal health and safety (environment protection at large), for safeguarding their rights to protect their own domestic trade interests and to cut down the competition from other countries. With this protectionist attitude, the developed countries are actually weakening the objective of globalization which was meant for helping all the nations to stabilize and help their economies prosper.

As the WTO, through its various agreements/provisions relating to trade and environment ensures to safeguard every interest of the developing countries to secure their growth in international trade on equal footings as that of the developed countries, but still the developing countries face continued constraint in diffusing best practice information on standards and resources necessary to aid in the adoption of appropriate procedure and method. Domestic as well as international barriers to trade that are reflected in technical regulations have become a dangerous channel through which trade is blocked. For better understanding of technical barriers that the developed countries require the developing countries to be applied on goods and services before they are exported, the researcher has tried to simplify and explain the meaning of technical barriers in the table below:

Types of Technical Barriers to Trade^v

| Technical regulation | Standards | Conformity assessment procedures |
|---|---|---|
| Technical regulations lay down product characteristics or their related processes and production methods. Compliance is mandatory. They may also deal with terminology, symbols, packaging, | Standards are approved by a recognised body which is responsible for establishing rules, guidelines or characteristics for products or related processes and production method . Compliance is not | Conformity assessment procedures are used to determine that relevant requirements in technical regulations or standards are fulfilled. They include procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; and |

| | | |
|---------------------------------------|---|---|
| marketing and labelling requirements. | mandatory. They may also deal with terminology, symbol, packaging, marking and labelling requirements. | registration, accreditation and approval. |
|---------------------------------------|---|---|

Technical regulations set out requirements with which compliance is mandatory. Types and product coverage may vary widely: they may be specific, for example relating to maximum permitted levels of lead in paint used on toys, or prohibiting the use of certain additives in tobacco products. Other measures may be more general in nature, involving, for example, the establishment of criteria for the labelling of organic agricultural products, or emission requirements for diesel engines. What they have in common is that, through some form of government intervention (law, regulation, decree, act), market access is contingent on fulfilling the requirements set out in the technical regulation.^{vi}

Standards can be developed by a large number of different entities, including both governmental and non-governmental bodies. In recent years there has been some discussion in the TBT Committee on the topic of 'private standards'. These types of standards are developed by non-governmental entities, for example to manage supply chains or respond to consumer concerns. They may include environmental, social, food-safety, or ethical specifications. Because they are not enforced by law, private standards are considered 'voluntary', yet they may de facto affect market access. Unlike technical regulations, they are not mandatory. Standards are, however, often used as the basis for both technical regulations and conformity assessment procedures and, in such cases, the requirements set out in the standard become mandatory by virtue of government intervention (via technical regulations or conformity assessment procedures).^{vii}

Conformity assessment procedures are used to determine whether goods such as toys, electronics, food, and beverages fulfil the requirements established by relevant technical regulations or standards. They give consumers confidence in the integrity of products and add value to manufacturers' marketing claims. Typical conformity assessment procedures include testing, inspection and certification procedures. Given that different types of conformity assessment procedures affect trade differently, a key issue from the perspective of the WTO is the choice of which conformity assessment procedure to use in a particular situation.^{viii}

The major problem which exists in international trade is with the developing countries as the developed countries demands or allows products which have gone through certain tests and certifications or which are made by use of prescribed technology. The country that establishes product standards, signals its product characteristics and standards preference to foreign consumers and suppliers. But it is not completely possible for the developing countries to fulfil these criteria as they lag behind in technological expertise, and as a matter of fact, even the infrastructure and finance for such tests.

The developing countries have their markets in the developed countries but if these restrictive conditions are imposed on them, it becomes difficult to compete and survive in the international market. Technical intensive testing and certification system are often needed to assure that final product meets the standards especially in the area of health and safety. Lacking this infrastructure poses clear problem for developing countries in meeting import requirements in conformity assessment as well as mounting defence in WTO cases.^{ix}

The WTO allows every country to make and enforce certain technical standards while importing goods and rendering services but the standards laid down by the developed countries i.e; their domestic standards are higher than the internationally accepted standards and meeting such standards becomes difficult for the developing countries due to various reasons such as economic conditions, lack of technological know-how, scientific labs, assistance in services etc and it acts as a technical barrier to trade. Preferential and discriminatory practices are carried out in the backdrop of such 'required standards'. The developed countries simply fail to transfer technologies that is needed to meet the standards.

It is necessary to discuss here as to 'what are **international standards**?' or 'who decides whether a standard is an internationally acceptable one?'. Unfortunately, the World Trade Organization is absolutely silent on this issue and this question remains unanswered. Of course, governments – being their own masters – have the right to take measures '**necessary**' to achieve their policy objectives at the levels they consider '**appropriate**'. The question that again catches attention is, 'what is the definition of 'necessary' and 'appropriate'? There is **no parameter** for defining the same. Secondly, it can be highlighted that there is **no definition** of 'developed' and 'developing' country in the WTO regime. Members announce for themselves whether they are "developed" or "developing" countries. However, other members can challenge the decision of a member to make use of provisions available in WTO legal regime to developing countries. In practice, it is the preference giving country which decides the list of developing countries that will benefit from the preferences.^x There are again no parameters for unmistakable

identification of a country to be a developed or developing nation. This is a huge **limitation** to this study.

Further, various WTO agreements contains provisions for technical assistance to needy countries and even transfer of technology '**on request**'. WTO does not mandate the states to transfer the technology on equitable principles. WTO Agreements, such as the Agreement on Tariff Barriers to Trade (TBT), Agreement on Sanitary and Phytosanitary Measures (SPS) as well as GATT Article XX (exceptions) that includes the issue of 'transfer of technology' in almost every article which the Members (signatory nations of WTO/ Agreements) are expected to follow. But the thing is 'who would like to share away the very technology that makes them supreme?' Sharing the technology would mean alienating the supremacy of hold a particular technology. The developed countries would never compromise with their superiority as they know that the developing countries have everything else with them, i.e., labour, raw material etc, and if they get the technology too then that would be a big threat to the supremacy of the developed countries. Hence the developed countries are in no mood to share the technology and on other hand the developing countries cannot afford to buy the said technology.

In the name of protection to environment-human, animals and plant health the nations put forward standards that are out of the reach of exporting countries and this '**protectionist attitude**' acts as a big obstacle in the way of free trade. On one hand the environmental law and human rights commission takes a stand for protection of environment and lays down laws for the same which are '**soft laws**' and act as barriers to trade 'in disguise' and on the other hand the trade laws which are '**hard laws**' talk of free trade . In other words, the environmental laws are restrictive in nature in comparison to the trade laws, which are in a way misused by the developed countries for safeguarding their own markets, preventing others from entering their markets and that cuts down the competition and thus developed countries practice discrimination in disguise.

Mandatory regulations imposed by the government at the borders can produce serious distortions in the market. The domestic regulatory system may restrain trade and limit market entry through environmental health or safety mandate, not based on international norms.^{xi} This type of market access may or may not be discriminatory with the context of WTO discipline, including commitment undertaken by WTO members in agreements of Technical Barriers to Trade (TBT) or focused on product or processes standards related to goods and services; but this stands contrary to the trade interests of developing countries.^{xii}

The WTO does not by itself make any law to regulate the arbitrariness practiced by the developed countries in application of technical standards. There are other non WTO

bodies (Standardization Bodies like Codex Alimentarius) that frame norms on the same in such a manner that they get an automatic authentication and recognition in the WTO. Codex Alimentarius is recognized by the World Trade Organization as an international reference standard for the resolution of disputes concerning food safety and consumer protection.^{xiii}

These non WTO bodies mostly belong to the developed nations whose standards are way too high, which comes into main stream law / agreements and become mandatory in a way; creating pressure on the developing countries. Other barriers that are created by the developed countries on the basis of health and technology i.e; in the form of Sanitary and Phytosanitary measures and Technical measures serves application of food safety. All the countries maintain measures to ensure that food is safe for future masses and to prevent spread of pest or diseases among animals and plants. These measures are adopted so as to protect human, plant and animal life (the food that is consumed). In disguise of the environmental concerns, these measures can be again tools in the hands of the developed countries for preventing the developing countries from entering into their markets.

In this manner the developed countries continue to impose such high standards which are beyond the technical competence and scientific know-how to comply with them. The developed countries while framing the standards do not take into account the developmental, financial and trade needs of developing countries or technical and scientific tests related problems that are faced by the developing countries. Even if it is true that the developing countries are involved in the “standards making” process, still it should not be forgotten that these developing countries are politically influenced by the developed nations as these developing countries depend on the developed countries for their existence to a very large extent. Hence, in a way, the developing nations hardly have a say in ‘standard making’ process and their needs and problems are not answered as mentioned in different trade related agreements.^{xiv}

The problem is further compounded because of the lack of willingness on the part of developed countries to transfer to the developing countries more advanced and better technology at “fair and reasonable cost”. None the less, the perspective of developing countries export subsidies are one of the most damaging. Further, various quotas based on technical specifications granted to different countries create barriers in free flow of trade or globalization. But when we talk about Globalization , it has asymmetric effects on rich and poor countries. “The rapid growth of global markets has not seen the parallel development of social and economic institutions to ensure balanced, inclusive and sustainable growth. Labour rights have been less sedulously protected than capital and property rights and global rules on trade and finance are inequitable. Interdependence

among unequal translate into the dependence of some on international markets that function under the dominance of others.^{xv} Hence, Globalization also impinge in an adverse way on economic sovereignty, cultural integrity and social stability.

Coming to the Service Sector, the General Agreement on Trade in Services is intended –

‘to provide a means of overcoming unnecessarily burdensome requirements that create barriers to trade in services. However, this is no mean task, given that barriers to trade in services are embedded in domestic regulation, unlike barriers to trade in goods that are usually imposed at the border.’^{xvi} In light of this, the researcher feels, that it is somewhat unfortunate that GATS is one of the more difficult agreements to understand fully, partly because the term "**domestic regulation**" is not clearly defined.^{xvii}

The GATS provisions^{xviii} contain requirement of applying a given measure in a manner that does not lead to "**arbitrary**" or "**unjustifiable**" discrimination, or a "**disguised restriction**" on trade in services, aims to ensure that a Member's right to invoke Art. XIV of GATS is exercised reasonably and in a manner that does not **unduly** frustrate the rights of other Members.^{xix}

Again it should be noted that there is no equation to decide as to what exactly is the meaning of 'unjustifiable', 'undue' etc. Nor can we make out as to what action of the government of any country amounts to 'arbitrary' and what measure adopted is a 'disguised restriction'. The meanings of the same shall differ from case-to-case. In service sector enormous pressure is being put on developing countries to open up their service markets to powerful foreign based, non profit corporations from the developed countries. This makes a mockery of claims that the General Agreement on Trade in Services (**GATS**) is a flexible agreement in which the countries could elect to put specific services on the key sectors. The developed countries are seeking further commitments from developing countries in finance, energy, environment, water, tourism, distribution and transportation services.^{xx} 'The Big Business lobby machines like the US Coalition of Service Industries and European Service Forum are openly pushing hard for developing countries to make commitments. And once these commitments are made, they are 'effectively irreversible'.^{xxi} As a result, the capacity of developing countries to have their own service industries operating 'competitively' in global market is otherwise also very small or non-existent and is now further becoming negligible making these negotiations very one sided.

The developed countries are exploiting the service sector just as a self serving business interest. The WTO has ignored the repeated requests of developing countries for a

comprehensive assessment of the developmental, environmental, social and gender impact of service liberalisation before continuing with the GATS negotiations. Today's scenario of trade in services questions the promised benefits of privatisation and liberalisation in the service sector. Art. VI (4) of the GATS, for example, makes provisions for governments to challenge unwanted laws and regulations of another country, which may be perceived as a disguised barrier to trade.^{xxii} Yet, such challenges can reduce the policy making and regulatory flexibility security of developing countries. The right to regulate and maintain policy flexibility is essential for developing countries to ensure that their own development priorities and strategies are advanced, especially since most of them do not have optimal policy making and institutional frame works in place.

WTO seems to have failed to attain 'an overall balance of rights and obligations and the initial offers by major trading partners have been disappointing for developing countries. The developing countries were hopeful of enormous gains under mode 4, which refers to the movement of 'natural person' into other countries to supply services. Yet it is now clear that most developed countries, like United States of America, will not make substantial offers, particular in relation to low and unskilled workers and as of fact, lately the skilled workers too; due to internal political pressures. The other hand the potential impacts on developing countries of the loss of skilled workers in health, education or professional services have not been assessed. Nor have the rich countries recognised any obligation to compensate those countries for the cost of training these professionals. The manner in which the GATS negotiations have been proceeding, it gives enough reasons for working people to be concerned about job losses, job insecurities, curtailment of workers' rights, decline in real wages and increased demand in labour flexibility and all the protectionist approach of the developed nations is creating unnecessary barrier to trade.' It is well accepted fact that for strengthening the economy it is necessary for the countries to participate actively in international trade and to make a strong position in the international market. But the norms or regulations laid down by the developed countries to be met by developing ones, are basically trade restricting, preferential and discriminatory practices in the backdrop of technical standards under the garb of protection to human, animal and plant health. As a result the economic condition of the developing countries remain weak as they remain stuck in the perpetual circle of poverty and the developed stand strong, exploiting this condition and politically influencing and controlling the dependent, weak economies and the developing countries are still not well positioned to address these issues .

The World Trade Organization (WTO) is one of the most acclaimed and condemned of international organizations. It has enjoyed considerable success in implementing the Marrakesh accords, extending trade liberalization beyond goods, dealing with non-tariff

regulatory barriers to trade, and securing intellectual property rights. Yet the WTO has also been subject to stringent criticism by civil society organizations and some members for closed decision making, an unduly narrow trade focus, domination by powerful members and economic and financial interests, and disregard of social and environmental values and the interests of many developing countries and their citizens.^{xxiii} "The Agreements in debate (TBT,SPS) leaves each Member the choice of an international standard that it deems **"relevant"** in any given policy-making situation is absolutely problematic: Members not only have different opinions on what a standard is (let alone an international one), but also tend to disagree on which bodies set standards that are "relevant" for the purposes of the WTO TBT Agreement. And who is to decide that a standard is not sufficiently effective or an inappropriate means of achieving a particular policy objective? Indeed, is this not a contradiction? If a standard is inefficient or inappropriate for one group of countries but not for another, is it still capable of being **'international'**? Of course, governments – being their own masters – have the right to take measures necessary to achieve their policy objectives at the levels they consider appropriate. But how, then, should international standards account for the fact that policy objectives may (legitimately) differ because, put simply, people are different – with different preferences, social values, and appetites for risk? In other words, there are always cases where good faith efforts to address legitimate policy objectives (such as the protection of public health or safety and the environment) leads to different levels of protection that cannot, by definition, find expression in one given international standard. Which again contributes in creating barrier to international trade.'^{xxiv}

Even if a **'standard'** (whether mandated or voluntary) is discriminatory in application or effect between domestic and importing firms, the margin of discrimination is still not viewed as unnecessary protection and removed by the developed countries.^{xxv} If not removed or eliminated then it should be at least rationalised . The standards that are chosen by most developed countries are the **'most disruptive'** to trade and indeed **'trade restricting in disguise'**. Use of the Dispute Settlement Body at WTO has revealed procedural gaps, particularly in the compliance phase of a dispute and it can be finally concluded that the analysis of the WTO disputes show that the WTO dispute-resolution process is secretive, biased and exclusive, concentrating power in the hands of the developed few. For the developing countries, lowering all barriers to the tide of the globalisation may end up drowning much of local production. Raising barriers that are too high may be counter-productive , if not futile. Countries that find the golden middle tend to thrive, channelling the enormous opportunities offered by an expanding world economy for the benefit of their citizens. Those who would not, could be marginalised and left

behind.^{xxvi}Hence, finding the right way – balance between openness and regulation requires keeping a watchful eye on all transnational activities.

Foot notes :

ⁱSee <http://www.investopedia.com/articles/03/112503.asp>

ⁱⁱSee www.antiessays.com

ⁱⁱⁱStudent paper submitted to London School of Science and Technology.

^{iv}See www.cigionline.org

^vSee WTO publication at

https://www.wto.org/english/res_e/publications_e/tbttotrade_e.pdf

^{vi} www.wto.org – WTO’s Agreement on Technical Barriers to Trade

^{vii} www.wto.org – WTO’s Agreement on Technical Barriers to Trade

^{viii} www.wto.org – WTO’s Agreement on Technical Barriers to Trade

^{ix}See www.sard.ruc.edu.cn

^xStudent paper submitted to Northumbria at Newcastle

^{xi}See www.sard.ruc.edu.cn

^{xii} See www.sard.ruc.edu.cn

^{xiii}Understanding the Codex Alimentarius Preface. Third Edition. Published in 2006 by the World Health Organization and the Food and Agriculture Organization of the United Nations.

^{xiv}As early as 1997 delegations to the TBT Committee agreed to explore ways and means of enhancing Members' awareness of, and participation in, the work of international standardizing bodies. In 2001 (at the Doha Ministerial Conference), Members urged the Director-General of the WTO to cooperate with international standardizing bodies and other institutions with a view to according priority to the effective participation of least-developed country (LDCs) Members and facilitating the provision of technical and financial assistance for this purpose WTO (2001b), para. 5.3). For further efforts by Members in this regard, see also WTO (2006), 14 November 2006, para. 77 and WTO (2012a), para.8(b) on the "Development Dimension".

^{xv}See www.cigionline.org

^{xvi}See de.scribd.com

^{xvii}See WTOs General Agreement on Trade in Services, Generally speaking, the six paragraphs in GATS Art. VI might be best understood as mandatory “good governance” provisions. Only Art. VI:3 actually mentions the term “regulation”, referring to “domestic law and regulations”. Indeed, para I and 4 of Art. IV refer to “measures”, which are broadly defined under GATS Art. XXVII (definitions) to include laws, regulations rules, procedures, decision, administrative actions, etc.

^{xviii}WTO Analytical Index: General Agreement On Trade In Services at https://www.wto.org/english/res_e/booksp_e/analytic_index_e/gats_02_e.htm

^{xix}See WTO Dispute : US – Gasoline, WT/DS2/AB/R, 22; also US – Shrimp, WT/DS58/AB/R, para. 156.

^{xx} See www.ippmedia.com

^{xxi}See www.appealgroup.net

^{xxii}Global Policy Forum, Civil Society Groups Voice Concerns, Public Agenda, 19th July 2005 <https://www.globalpolicy.org/component/content/article/209-bwi-wto/43786.html>

^{xxiii}Isr.nellco.org

^{xxiv}www.wto.org

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