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TRADE OVER LIFE: WTO'S PANDEMIC-ERA FAILURE AS A BREACH OF THE RIGHT TO HEALTH

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ABSTRACT

The COVID-19 pandemic revealed significant deficiencies in global trade regulation, particularly the World Trade Organization's (WTO) failure to guarantee fair access to life-saving vaccines, treatments, and vital health technologies. This study rigorously analyzes the WTO's deficiencies during the epidemic, including its inability to harmonize intellectual property safeguards under the TRIPS Agreement with the essential right to health and overarching principles of global justice. The topics encompass the impasse about the TRIPS waiver, the ensuing vaccine inequity, and the ongoing stagnation of the WTO's dispute resolution procedure. These failings collectively reinforced entrenched systemic imbalances between rich and developing nations, exacerbating historical patterns of exploitation and exclusion.This study, rooted in John Rawls' theory of justice and Thomas Pogge's critique of institutional damages, contends that the WTO, while presenting an appearance of formal neutrality and market liberalism, really perpetuates and legitimizes global economic hierarchy. It argues that the existing trade framework emphasizes corporate interests and profit above human lives and welfare. In response to these structural inequities, the report advocates for comprehensive reform: incorporating human rights impact evaluations into trade decisions, promoting South-South collaboration, and prioritizing trade justice over market liberalization. The epidemic signifies not merely a health problem but a moral reckoning that necessitates a redefined multilateralism based on solidarity, equity, and cooperation.

Keywords: WTO, Covid-19 Vaccine, Trips, Health, Human rights, TRIPS

1. INTRODUCTION

The COVID-19 pandemic has served as an unprecedented stress test for global institutions, exposing both their strengths and glaring weaknesses. Among these, the World Trade

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Organization (WTO) has faced significant scrutiny for its role or lack thereof in ensuring equitable access to life-saving technologies such as vaccines, diagnostics, and therapeutics. The pandemic underscored the interconnectedness of global health and trade, yet it also revealed structural inequities within theinternational trading system that disproportionately affected low- and middle-income countries (LMICs). Despite its mandate to promote fairness in global trade, theWTO's pandemic-era response has been criticized as inadequate, raising questions aboutitscommitmenttotheprinciplesofinternationalhumanrightsandglobaljustice. The WTO plays a critical role in regulating access to essential health technologies, particularly through its Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). However, during the COVID-19 crisis, the organization's failure to implement timely and effective measures such as waiving intellectual property (IP) rights has been widely condemned. While high-income countries secured vast quantities of vaccines through bilateral agreements, LMICs were left with limited access, exacerbating global health disparities. The TRIPS waiver proposal, introduced by India and South Africa in October 2020, aimed to address these inequities by suspending certain IP protections temporarily. Yet, opposition from powerful WTO members stalled negotiations for over a year, delaying critical access to vaccines and therapeutics for vulnerable populations.[2] This paper seeks to examine whether the WTO's pandemic response constitutes a breach of international human rights law and norms of global justice. Specifically, it investigates whether the organization's actions or inactions violated the right to health as enshrined in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). It also explores howthe WTO's approach aligns with or diverges from principles of distributive justice in global governance.

The research adopts a doctrinal, normative, and critical methodology. A doctrinal analysis evaluates the legal obligations under international treaties such as the ICESCR and TRIPS Agreement. The normative approach assesses the ethical dimensions of the WTO's policies through the lens of global justice theories. Finally,a critical perspective interrogates the structural inequalities embedded within multilateral institutions that prioritize economic hierarchies over moral accountability. As multilateralism faces increasing challenges from

[2] "Improving Access to COVID-19 Vaccines: An Analysis of TRIPS Waiver Discourse among WTO Members,CivilSociety Organizations,and PharmaceuticalIndustryStakeholders"(*Health andHuman RightsJournal*,December6,2022)<https://www.hhrjournal.org/2022/12/06/improving-access-to-covid-19-vaccines-an-analysis-of-trips-waiver-discourse-among-wto-members-civil-society- organizations-and-pharmaceutical-industry-stakeholders/> accessed April 8, 2025.

geopolitical tensions and economic nationalism.[3] This paper argues that "multilateralism without moral accountability becomes a tool of economic hierarchy rather than a mechanism of justice." The critique highlights how the WTO's pandemic-era failures reflect broader systemic issues within global governance structures that must be addressed to ensure equitable responses to future crises.[4]

2. THE RIGHT TO HEALTH UNDER INTERNATIONAL HUMAN RIGHTS LAW

2.1. Article 12, ICESCR–Definition and Obligations

Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right of everyone to enjoy "the highest attainable standard of physical and mental health." This right encompasses both freedoms, such as the right to control one's health and body, and entitlements, including access to a comprehensive healthcare system and the underlying determinants of health, such as clean water, adequate food, and housing.[5] States are obligated to respect, protect, and fulfill this right through deliberate measures aimed at achieving universal health access. The principle of progressive realization under Article 2 of the ICESCR allows states to implement these rights based on their available resources. However, states must meet core minimum obligations immediately, including non-discriminatory access to essential medicines and health care services for marginalized groups. Retrogressive measures are prohibited unless justified by compelling reasons after exploring all alternatives.

2.2. General Comment No. 14–Access to Essential Medicines

General Comment No.14 by the Committee on Economic, Social and Cultural Rights elaborates on Article 12, emphasizing that healthcare must be accessible, available, acceptable, and of good quality. It identifies essential medicines as a core obligation under the right to health, requiring states to ensure their availability andaffordability.[6]States must

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[3] Tom Bernes, "Challenges of Global Governance amid the COVID-19 Pandemic" *Councilon Foreign Relations*(May21,2020)<https://www.cfr.org/report/challenges-global-governance-amid-covid-19-pandemic>accessedApril8,2025.

[4] DebreMJandDijkstraH,"COVID-19and PolicyResponsesbyInternationalOrganizations:Crisisof LiberalInternationalOrderorWindowofOpportunity?"(2021)12GlobalPolicy443 <https://pmc.ncbi.nlm.nih.gov/articles/PMC8441772/>accessedApril8,2025.

[5] "GeneralComment14–IFHHRO"<https://www.ifhhro.org/education/general-comment-14/> accessed April 8, 2025.

[6] "CESCRGeneralCommentNo.14:The Righttothe HighestAttainable StandardofHealth (ARt. 12)" (2000)<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/Health/GC14.pdf>.

also prevent third-party interference that restricts access to these medicines. For example, intellectual property (IP) regimes should not hinder public health objectives.The General Comment highlights that public participation in health-related decision- making is crucial for achieving equitable healthcare outcomes. It also stresses that international cooperation is vital in addressing global health challenges like pandemics.

2.3. UNGA Resolution 74/274– Global Vaccine Access

UN General Assembly Resolution 74/274 underscores the importance of international cooperation in ensuring equitable access to COVID-19 vaccines and medical equipment. It calls for vaccines to be treated as a global public good and urges states to prevent actions that could obstruct access to affordable medicines during health crises.[7] This resolution reflects a commitment to prioritizing public health over commercial interests during emergencies.

2.4. WHO covax and fair Allocation framework

The World Health Organization (WHO), through its COVAX initiative, has sought to address vaccine inequities by ensuring fair distribution across countries based on populationsizeandvulnerabilitylevels.TheFairAllocationFrameworkaimstoprioritizehigh-risk groups globally before expanding coverage.[8]Despite these efforts, vaccine nationalism by wealthier nations undermined COVAX's goals, leaving low- income countries with limited access.

2.5. Interdependence of Human Rights and Global Trade Rules

The interplay between human rights and trade rules is critical in realizing the right to health. Trade agreements often prioritize IP protections over public health needs, creating barriers to accessing life-saving medicines. For instance, the TRIPS Agreement under the WTO has been criticized for enabling pharmaceutical monopolies that limit vaccine production during pandemics.[9] While trade can enhance healthcare access by fostering economic growth, its benefits are unevenly distributed due to systemic inequities.

2.6. Trade law and human rights exist in silos

[7] "AmidCOVID-19Pandemic,GeneralAssembly,inSilenceProcedure,Adopts7Resolutions,13 Decisionsbetween27Marchand14May|MeetingsCoverageandPressReleases"(May14,2020) <https://press.un.org/en/2020/ga12244.doc.htm>accessedApril8,2025.

[8] "CoronavirusDisease(COVID-19):VaccineAccessandAllocation"<https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-(covid-19)-vaccine-access-and-allocation>.

[9] Mjil, "The Link between Trade & Human Rights" (*Minnesota Journal of International Law*, February 9,2023)<https://minnjil.org/2023/02/09/the-link-between-trade-human-rights/>accessedApril8,2025.

The fragmentation between trade law and human rights frameworks is a systemic flaw that allows IP rights to undermine public health imperatives. The WTO's reluctance to waive TRIPS provisions during COVID-19 exemplifies this disconnect. Bridging these silos requires integrating human rights considerations into trade policies through mechanisms like human rights impact assessments (HRIAs) and enforceable legal frameworks prioritizing public welfare over economic hierarchies.[10] While international human rights law provides robust protections for the right to health, its implementation is often compromised by conflicting trade priorities. Addressing this tension is essential for achieving global justice in healthcare access.

3. WTO'S LEGAL STRUCTURE: INCOMPATIBLE WITH HUMAN RIGHTS?

3.1. TRIPS Agreement:Purpose,Provisions,andFlexibilities

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is a cornerstone of the World Trade Organization (WTO) legal framework, aimed at harmonizing intellectual property (IP) protections globally to foster innovation and trade. TRIPS mandates WTO members to provide minimum standards of IP protection, including patents lasting at least 20 years, which extend to pharmaceutical products. While patents incentivize innovation by rewarding inventors, they also create monopolies that can restrict access to affordable medicines in developing countries.[11]

Recognizing these challenges, TRIPS includes flexibilities designed to balance public health needs with IP rights. These flexibilities include compulsory licensing, which allows governments to authorize the production of patented medicines without the patent holder's consent during emergencies, and parallel importing, which permits importing cheaper versions of patented medicines from other countries.[12] The Doha Declaration on TRIPS and Public Health (2001) reaffirmed that TRIPS should not prevent members from protecting public health and clarified the use of these flexibilities. However, the implementation of these

[10] "ProtectingHumanRightsinaGlobalEconomy:ChallengesfortheWorldTradeOrganization" <https://www.iatp.org/sites/default/files/Protecting_Human_Rights_in_a_Global_Economy_Ch.htm>accessed April 8, 2025.

[11] AndrewD MitchellandTania Voon, "PatentsandPublic Healthin theWTO, FTAsandBeyond: TensionandConflictinInternationalLaw"(June1, 2009) <https://kluwerlawonline.com/journalarticle/Journal+of+World+Trade/43.3/TRAD2009023>accessed April 8, 2025.

[12] "WTO|IntellectualProperty(TRIPS) -TRIPSand PublicHealth" <https://www.wto.org/english/tratop_e/trips_e/pharmpatent_e.htm>accessedApril8,2025.

measures remains limited due to political and economic pressures from powerful states and corporations.[13]

3.2. Lack of Human Rights Language in WTO Texts

The WTO legal framework, including TRIPS, lacks explicit references to human rights. Unlike treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), which enshrine the right to health as a fundamental obligation, WTO texts prioritize trade liberalization and economic efficiency over social justice.[14] This omission reflects a systemic disconnect between trade law and human rights law, where the former operates in isolation from broader international legal norms. As a result, WTO agreements often fail to account for their impact on fundamental rights like access to healthcare.[15]

3.3. Absence of Rights-Based Interpretation in WTO Rulings

WTO dispute settlement mechanisms rarely incorporate human rights considerations into their rulings. While exceptions under Article XX of the General Agreement on Tariffs and Trade (GATT) allow for measures protecting public health, these provisions are narrowly interpreted and subject to stringent scrutiny.[16] The lack of authoritative interpretation integrating human rights norms into WTO law limits the ability of member states toprioritize public health over trade obligations. For instance, disputes involving TRIPS flexibilities often focus on compliance with IP rules rather than addressing broader human rights implications.[17] The Doha Declaration attempted to bridge this gap by emphasizing the importance of public health within the TRIPS framework. However, its impact has been constrained by resistance from developed countries prioritizing corporate interests over equitable healthcare access.

3.4. Disconnection Between WTO Obligations and ICESCR Duties

A significant tension exists between WTO obligations under TRIPS and ICESCR duties of member states. While ICESCR signatories are bound to fulfill the right to health through measures ensuring access to essential medicines, WTO rules often compel states to adopt policies that undermine this obligation. For example, stringent patent protections under

[13]ibid.
[14]Sarah Joseph, 'Conclusion' in *Blame it on the WTO? A Human Rights Critique* (Oxford University Press 2011) https://doi.org/10.1093/acprof:oso/9780199565894.003.0011accessed 8 April 2025.
[15]ibid
[16]ibid
[17]ibid

TRIPS restrict the production and distribution of affordable generic medicines, disproportionately affecting low-income populations. [18] This disconnection highlights a broader issue: the fragmentation of international law. Despite overlapping membership in both regimes, states face conflicting obligations that prioritize trade over human rights. Efforts to reconcile these regimes have been limited by political inertia and economic hierarchies that favor wealthy nations and multinational corporations. [19]

3.5. A trade regime that values patents over people's lives reflects a deeper moral deficit

The prioritization of patents over public health in WTO rules is not merely a policy oversight but a reflection of systemic moral deficits within global governance structures. By elevating corporate interests above human rights imperatives, the WTO perpetuates inequalities that undermine its credibility as a multilateral institution. Bridging the gap between trade law and human rights requires a paradigm shift toward integrating ethical considerations into WTO policies. This would involve adopting enforceable mechanisms that prioritize public welfare over profit-driven agendas while fostering cooperation between international organizations like WHO and UN human rights bodies. While TRIPS offers flexibilities aimed at balancing IP protection with public health needs, its implementation remains inadequate due to structural flaws within the WTO legal framework. Addressing this incompatibility requires reimagining trade rules through a human rights lens a necessary step toward achieving global justice in healthcare access.

4. VACCINEAPARTHEIDANDTHETRIPS WAIVERSTALEMATE

4.1. India–South Africa TRIPS Waiver Proposal (October 2020)

On October 2, 2020, India and South Africa submitted a proposal to the World Trade Organization (WTO) seeking a temporary waiver of certain provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This waiver aimed to suspend intellectual property (IP) protections for COVID-19-related health technologies vaccines, diagnostics, and therapeutics to address global inequities in access. The proposal was rooted in the principle that public health emergencies necessitate extraordinary measures

[18] EuropeanJournalofInternationalLaw,'HumanRightsandtheWTO:TheCaseofPatentsand Access to Medicines' (2009) 20(1) *EJIL* 235 https://doi.org/10.1093/ejil/chn080accessed 8 April 2025

[19] Robert Howse, Ruti G Teitel, and Friedrich-Ebert-Stiftung, "Beyond the Divide: The Covenant on Economic, Social and Cultural Rights and the World Trade Organization" [2007] Dialogue on Globalization <https://www.law.nyu.edu/sites/default/files/ECM_PRO_060605.pdf>.

to ensure equitable access to life- saving resources. Supported by over 100 countries and civil society organizations, the proposal was hailed as a humanitarian measure to address vaccine inequities exacerbated by IP barriers.[20]

The TRIPS waiver was seen as a critical step toward enabling LMICs (low- and middle-income countries) to manufacture vaccines locally without the legal constraints imposed by patents. Advocates argued that IP protections were creating barriers to scaling up vaccine production and distribution, leaving billions of people in vulnerable regions without access.[21]

4.2. Opposition from Developed Countries and Pharmaceutical Giants

Despite its humanitarian appeal, the TRIPS waiver faced fierce opposition from developed nations, including the European Union (EU), Switzerland, the United Kingdom, and initially the United States. These countries argued that IP protections were essential for incentivizing pharmaceutical innovation and that waiving them could undermine research and development efforts. Pharmaceutical giants like Pfizer, Moderna, and AstraZeneca echoed these concerns, emphasizing that voluntary licensing agreements and technology transfer initiatives were sufficient to address vaccine shortages.[22]

Critics of this opposition highlighted itsalignment with corporate interests rather than public health priorities. Many developed nations host major pharmaceuticalcompanies whose profits were directly tied to maintaining patent protections. This resistance was widely perceived as prioritizing commercial monopolies over human lives, exacerbating existing inequalities in vaccine access.[23]

4.3. Timelineof Delayandits Consequences

The TRIPS waiver negotiations were protracted, spanning nearly two years due to procedural delays and lack of consensus among WTO members. The milestones inthis timeline include:

October2020:India–SouthAfricasubmittedtheinitialwaiver proposal.

December2020:Vaccinerolloutsbeganinhigh-incomecountries(HICs).

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[20] IndiaandSouthAfrica,"IndiaandSouthAfricaProposalforWTOWaiverfromIntellectual PropertyProtectionsforCOVID-19-RelatedMedicalTechnologies"(2020) <https://msfaccess.org/sites/default/files/2020 11/COVID_Brief_WTO_WaiverProposal_ENG_v2_18Nov2020.pdf>.

[21] ibid

[22] "Nearly30,000PeopleHaveDiedEveryDayfromCOVID-19sinceWTOTalksonVaccine IntellectualPropertyBegan|OxfamInternational"(*OxfamInternational*,June9,2022) <https://www.oxfam.org/en/press-releases/nearly-30000-people-have-died-every-day-covid-19-wto-talks-vaccine-intellectual> accessed April 9, 2025.

[23] HealthandHumanRightsJournal*Supra* note 1

May 2021: The U.S. announced conditional support for a limited waiver focused on vaccines.

March 2022: A compromise text narrowed the scope of the waiver to vaccines only, excluding diagnostics and therapeutics.

June 2022: WTO adopted a watered-down version of the waiver applicable only to developing countries producing less than 10% of global vaccines.[24]The consequences of these delays were devastating. By mid-2021, HICs had vaccinated over 75% of their populations, while LMICs struggled to reach even 10% coverage. This disparity contributed to millions of preventable deaths-Oxfam estimated nearly 30,000 daily deaths during the negotiation period-and prolongedthe pandemic by allowing new variants to emerge in under-vaccinated regions.[25]

4.4. FinalJune2022Decision: LimitedandIneffective

The WTO's final decision on the TRIPS waiver in June 2022 fell far short of expectations. It applied only to vaccines not diagnostics or therapeutics and imposed restrictive conditions that undermined its effectiveness. For instance, countries utilizing the waiver were required to prevent re-exportation of products made under it, limiting broader regional benefits. The decision excluded LMICs with significant manufacturing capacity, such as India, from benefiting fully from its provisions.[26] Civil society organizations criticized this decision as insufficient for addressing systemic barriers like technology transfer and raw materialshortages. It was seen as a token gesture that failed to meaningfully increase vaccine access in LMICs while protecting corporate interests.[27]

4.5. ImpactsonAfrica,LatinAmerica,andSouthAsia

Theconsequences ofvaccine apartheid weremostacutelyfeltinLMICs:

Africa: By late 2021, less than 10% of Africa's population had received a single dose due to reliance on limited supplies through initiatives like COVAX.[28] This inequity contributed to preventable deaths and economic strain across the continent.

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[24] James Love, "The June 17, 2022 WTO Ministerial Decision on the TRIPS Agreement - Knowledge Ecology International" (*Knowledge Ecology International*, June 23, 2022) <https://www.keionline.org/37830>accessedApril9,2025.

[25]OxfamInternational, *Supra* note 21

[26]JamesLove*Supra* note 23

[27] HealthandHumanRightsJournal, *Supra* note 1

[28] "AGlobalDayofActiontoEndVaccineApartheid"(*UniversityofWashington-Departmentof GlobalHealth*,March10,2022)<https://globalhealth.washington.edu/news/2022/03/10/global-day-action-end-vaccine-apartheid>accessedApril9,2025.

Latin America: Middle-income countries like Brazil managed partial coverage through local production deals but faced significant delays due to reliance on imports. Smaller nations struggled with limited access.[29]

SouthAsia: India's roleas a major vaccine producer helped mitigate some inequities; however, export restrictions during domestic surges left neighboring countries vulnerable.[30]These disparities underscore how systemic inequities embedded within global trade rules perpetuate unequal outcomes during crises.

4.6. Vaccineapartheidwasnot accidental

The inequitiesin vaccine distributionwere notincidental butdeliberately orchestrated through legal tools designed to protect commercial monopolies at the expense of human dignity. The TRIPS Agreement's prioritization of intellectual property rights over public health exemplifies this systemic flaw. By delaying meaningful action on the waiver proposal, developed nations entrenched global hierarchies that marginalized LMICs while safeguarding corporate profits. This critique highlights broader structural issues within multilateral institutions like the WTO. Rather than serving as mechanisms for justice, these institutions often reinforce economic hierarchies that privilege wealthier nations at the expense of vulnerable populations. Addressingtheseflawsrequiresreimagining globalgovernanceframeworks througha human rights lens prioritizing equity over profit-driven agendas.

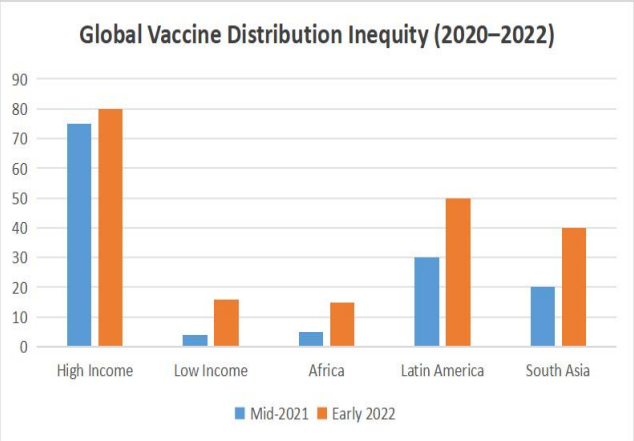
Region	VaccinationRateby Mid-2021 (%)	VaccinationRateby Early 2022 (%)
High-Income	~75	>80
Low-Income	~4	~16
Africa	~5	<15
Latin America	~30	~50
SouthAsia	~20	~40

Data source: Official data collated by Our World in Data (2024); World Health Organisation (2025); Population based on varioussources(2024) –**Note:**Country incomegroups arebasedonthe World Bankclassification. WorldinData.org/covid-vaccinations|CC BY

[29] "AGlobalDayofActiontoEndVaccineApartheid"(*UniversityofWashington-Departmentof GlobalHealth*,March10,2022)<https://globalhealth.washington.edu/news/2022/03/10/global-day-action-end-vaccine-apartheid>accessedApril9,2025.

[30] ibid

Abargraphillustratingvaccine distributioninequitiescouldhighlightdisparities.



Disparities in vaccine accessreveal the moral cost of delayed TRIPS waiver while rich nations achieved booster coverage, vast populations in the Global South awaited first doses.

5. DISPUTE SETLEMENT PARALYSIS AND ACCOUNTABILITY VACCUME

5.1. AppellateBodyNon-FunctioningSince2019

The paralysis of the WTO Appellate Body since December 2019 has created a significant void in the global trade dispute settlement system. The Appellate Body, once regarded as the "crown jewel" of the WTO, ceased functioning after the United States blocked new appointments, leaving it without the minimum three members required to hear appeals. This impasse has undermined the legitimacy of the WTO's rules-based system and left disputes unresolved, as panel rulings appealed by losing parties now fall into a "legal void" without a final binding decision.[31]

The consequences of this paralysis are far-reaching. Without a functioning appellate mechanism, WTO members have resorted to alternative arrangements, such as the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), established in 2020 by the EU and other members. However, MPIA has proven limited in scope and effectiveness, settling only one case as of 2024.[32] This lack of a robust appellate mechanism has reduced members' willingness to litigate disputes, further eroding confidence in the system.

5.2. NoLegalPathwaytoChallengeExportBansorHoarding

The COVID-19 pandemic exposed the WTO's inability to address critical issues such as

[31] TerenceP Stewart, "WTOAppellateBodyImpasse –Howand Why"(*CurrentThoughts onTrade*, January30,2020)<https://currentthoughtsontrade.com/2020/01/30/wto-appellate-body-impasse-how-and-why/>accessedApril9,2025.

[32] "InternationalTradeDisputeSettlement:WorldTradeOrganisationAppellateBodyCrisisandthe Multi-Party Interim Appeal Arbitration Arrangement | Think Tank | European Parliament" <https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2024)762342>accessedApril9, 2025.

export bans and hoarding of essential medical supplies. Article XI of GATT prohibits export restrictions except under specific circumstances, such as preventing criticalshortages.However,theseprovisionsarevagueandinconsistently enforced.[33] During the pandemic, numerous countries imposed export controls on vaccines and medical equipment, exacerbating global inequities in access. LMICs were disproportionately affected, as they relied on imports for essential supplies.The absence of an effective legal pathway to challenge such measures highlighted a systemic flaw in the WTO framework. Export bans and hoarding undermined global solidarity during a public health crisis but remained largely unaddressed due to weak enforcement mechanisms.

5.3. AbsenceofEnforcementofHumanRights-LinkedTradeObligations

The WTO's legal framework prioritizes trade liberalization over human rights considerations. While exceptions under GATT Article XX allow for measures protecting public health, these provisions are narrowly interpreted and rarely invoked successfully.[34] Thelackof explicithumanrightslanguageinWTOagreementsfurther limits their enforceability within the dispute settlement system.

For instance, during the pandemic, vaccine inequities raised questions about whether IP protections under TRIPS violated the right to health enshrined in international human rights law. However, no mechanism exists within the WTO to adjudicate such claims or enforce human rights-linked trade obligations. This disconnect underscoresa broader issue: the fragmentation of international law, where trade rules operate in isolation from human rights norms.

5.4. InstitutionalFailuretoCreateCompensatoryorEmergencyRemedies

The WTO dispute settlement system lacks mechanisms for compensatory or emergency remedies that could address urgent crises like COVID-19. Existing remedies under Article 22 of the Dispute Settlement Understanding (DSU), such as trade retaliation or compensation, are ill-suited for addressing public health emergencies.[35] These measures are designed to

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[33] WTOSecretariat,"EXPORTPROHIBITIONSANDRESTRICTIONSINFORMATIONNOTE" (2020)<https://www.wto.org/english/tratop_e/covid19_e/export_prohibitions_report_e.pdf>.

[34] JanaTitievskaiaand others,"WTO Rules:Compatibilitywith HumanandLabourRights" (2021) reportPE689.359 <https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689359/EPRS_BRI%282021%29689359_EN.pdf>.

[35] "WTO|Disputes-DisputeSettlementCBT-TheProcess-StagesinaTypicalWTODispute Settlement Case - Compensation - Page 1" <https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c6s9p1_e.htm>accessedApril9, 2025

restore balance in trade concessions rather than provide relief to affected populations.

For example, during vaccine apartheid, LMICs had no recourse to seek compensation for delayed access caused by export bans or IP barriers. The absence of emergency remedies reflects an institutional failure to adapt to contemporary challenges that require swift and equitable responses.

5.5. Justicewithoutremedyis theatre

The paralysis of the Appellate Body and the broader shortcomings of the WTOdispute settlement system have rendered justice unattainable for many Global South nations during critical moments. As aptly stated, "Justice without remedy is theatre." Without enforceable mechanisms for redress, LMICs were left powerless to challenge inequitable practices like vaccine hoarding or IP monopolies during COVID-19.

This accountability vacuum highlights deeper structural issues within the WTO's legal architecture. By prioritizing economic hierarchies over moral accountability, the system perpetuates global inequities rather than addressing them. Reforming the dispute settlement mechanism is essential to restore its credibility and ensure it serves as a tool for justice rather than a theater for unresolved grievances.

The paralysis of the Appellate Body and the absence of effective remedies have exposed significant gaps in the WTO's ability to uphold fairness and equity in global trade.Addressing these issues requires not only restoring functionality but also reimagining the system through a lens that integrates human rights and public welfare into its core principles.

6. WTO,HUMANRIGHTS,ANDTRADE-DRIVEN INEQUALITY

6.1. PowerImbalanceinWTODecision-Making

The World Trade Organization (WTO) operates under the principle of consensus, ostensibly granting equal decision-making power to all member states. However, in practice, the organization is heavily influenced by developed countries that wield disproportionate material and institutional power. Wealthier nations dominate negotiations through coercion, side payments, and strategic alliances, ensuring outcomes that align with their interests. This imbalance is exacerbated by the underrepresentation of developing countries, which often lack the resources and expertise to effectively participate in complex trade discussions.[36]The

[36]Prince Kumar, "North-South Dynamics in the WTO: Power Imbalances and Their Implications, Sociology

"Green Room" negotiations—a practice where select powerful nations finalize agreements before presenting them to the broader membership—further marginalize smaller economies. Developing countries are frequently excluded from theseinformal discussions, leaving them with little choice but to accept pre-drafted agreements or risk being sidelined entirely.[37] This dynamic perpetuates a hierarchy within the WTO that undermines its claims of neutrality and inclusivity.

6.2. InfluenceofDeveloped StatesandPharmaLobbies

The influence of developed states is compounded by the lobbying power of multinational corporations, particularly pharmaceutical giants. During the COVID-19 pandemic, pharma lobbies played a critical role in shaping trade policies that prioritizedintellectualpropertyprotectionsoverglobalhealthequity.Forinstance,the TRIPS Agreement was leveraged to maintain vaccine monopolies despite calls for waivers to address urgent public health needs.[38]These lobbying efforts reflect a broader trend where corporate interests dictate international trade rules at the expense of marginalized populations.

6.3. Rawls'Theory of"FairCooperationAmongEquals"vsWTO'sReality

John Rawls' theory of justice emphasizes "fair cooperation among equals,"advocating for institutions that ensure equitable distribution of benefits and burdens. In contrast, the WTO operates as a mechanism that entrenches inequality rather than mitigating it. The organization's rules often favor developed nations by allowing subsidies and protectionist measures that disadvantage poorer countries.[39] For instance, tariff escalation policies penalize Global South nations for attempting to add value to their raw materials, forcing them into perpetual dependency on exportinglow-value goods.[40] Rawls' vision of justice contrasts sharply with the reality of WTO governance, where fairness is subordinated to economic hierarchies rooted in historical colonialism. The WTO's inability to create equitable trade

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Notes By" (*Sociology Institute*, March 28, 2025) <https://sociology.institute/sociology-of- development/wto-north-south-power-dynamics-implications/>.

[37] Saif Al-Islam Alqadhafi and Gaddafi Foundation for Development, "Reforming the WTO: Toward MorDemocratic Governance and Decision-Making"<https://www.wto.org/english/forums_e/ngo_e/posp67_gaddafi_found_e.pdf>.

[38] Mark-Kernan, "Thomas Pogge and the Challenge of Global Justice" *Common Dreams* (January 16, 2023<https://www.commondreams.org/views/2015/04/25/thomas-pogge-and-challenge-global- justice>.

[39]ibid

[40] Grain, "How Colonialism Shaped Free Trade Agreements: From Colonies to Neoliberalism (Part 3/3)" (*bilaterals.org*) <https://www.bilaterals.org/?how-colonialism-shaped-free-trade-48362>accessed April 9, 2025.

systems undermines its legitimacy as a multilateral institution.

6.4. ThomasPogge:InstitutionalHarmsandNegative Duties

PhilosopherThomasPogge critiquesglobalinstitutionslikeTheWTOforperpetuating systemic harms through "negative duties," which refer to obligations not to harm others. Pogge argues that international economic rules disproportionately benefit affluentnationswhileconstrainingdevelopmentopportunitiesforpoorer countries. [41] For example, trade agreements often impose barriers that prevent developing nations from accessing competitive markets or protecting nascent industries. The WTO's treaty system reflects these institutional harms by legitimizing exploitative practices such as subsidies for developed nations' agricultural sectors while barring similar measures in poorer regions.[42] Pogge's analysis underscores the moral imperative to reform global trade rules to prioritize equity over profit-driven agendas.

6.5. WTOasaContinuationof Economic Colonialism

Critics argue that the WTO perpetuates economic colonialism by sustaining exploitative relationships between the Global North and South. Trade rules inherited from colonial-era practices continue to lock developing countries into roles as suppliers of cheap raw materials while preventing them from advancing industrialization.[43] For example, tariff escalation policies penalize efforts by Global South nations to process raw materials domestically, ensuring they remain dependent on exporting unprocessed goods. This neo-colonial dynamic is evident in sectors like agriculture and mining, where developed nations use subsidies and trade agreements to dominate global markets at the expense of local producers in poorer regions.[44] By prioritizing corporate interests over social justice, the WTO reinforces global inequalities under the guise of neutrality.

7. REFORM, RESISTANCE, OR REPLACEMENT? RETHINKING GLOBAL

[41] Marko Grudev, "Pogge and Singer: Differences in Their Accounts of the Duties of Citizens in Affluent Societies to the Global Poor." [2012] Essex Student Journal <https://doi.org/10.5526/esj95>.

[42] Surendra Bhandari, "From the Era of Colonialism to Globalization: Making Rules in the GATT/WTO"[2010]SSRNElectronic Journal<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1657724>.

[43] Grain,"HowColonialismShapedFreeTradeAgreements*Supra* note 39

[44] "ColonizingtheWorld'sEconomy"<https://www.iatp.org/sites/default/files/Colonizing_the_Worlds_Economy.htm>accessedApril9, 2025.

TRADE GOVERNANCE.

7.1. Proposal for TRIPS Reform: Compulsory Licensing and Waiver Simplification

Reforming the TRIPS Agreement is critical to addressing inequities in global trade governance. One key proposal involves expanding the use of compulsory licensing, which allows governments to authorize the production or importation of generic versions of patented medicines without the patent holder's consent during emergencies. While compulsory licensing is already permitted under TRIPS Article 31, procedural barriers such as prior negotiations for compensation often delay its implementation. Simplifying these processes, as outlined in the Doha Declaration, would enable quicker responses to public health crises like pandemics.[45] Another proposal focuses on waiver simplification. The COVID-19 pandemic revealed that existing TRIPS flexibilities are insufficient for addressing urgent global healthneeds.Thecumbersomeproceduresunder Article 31,includingnotificationrequirements and restrictions on re-exportation, hindered equitable vaccine access. Advocates suggest streamlining waiver mechanisms to remove these procedural hurdles and ensure timely access to essential medical technologies.[46]

7.2. IntegratingHumanRightsImpactAssessmentsinWTO Decisions

To align trade policies with global justice principles, integrating human rights impact assessments (HRIAs) into WTO decision-making is essential. HRIAs would evaluate the potential effects of trade agreements on fundamental rights such as health, labor protections, and environmental sustainability. This approach would help reconcile trade liberalization with human rights obligations, ensuring that economic policies prioritize public welfare over corporate interests.[47]

7.3. South-SouthSolidarityandAlternativeFrameworks

South-South cooperation offers a promising alternative to the current WTO-centric model.

[45] MédecinsSansFrontières,"COMPULSORYLICENSES,THETRIPSWAIVERANDACCESS TO COVID-19 MEDICAL TECHNOLOGIES" (2021) <https://msfaccess.org/sites/default/files/2021-05/COVID_TechBrief_MSF_AC_IP_CompulsoryLicensesTRIPSWaiver_ENG_21May2021_0.pdf>.

[46] Jhanvi Tripathi, "The TRIPS Agreement and Public Health: Understanding the Reform Agenda" (*orfonline.org*,December4,2023)<https://www.orfonline.org/research/the-trips-agreement-and-public-health>accessedApril9,2025.

[47] UnitedNationsandJamesHarrison, *HUMANRIGHTSANDWORLD TRADEAGREEMENTSUsing General Exception Clauses to Protect Human Rights* (Steve Charnovitz, Robert Howse and Gabrielle Marceau eds, 2005) <https://www.ohchr.org/sites/default/files/Documents/Publications/WTOen.pdf>.

Organizations like UNCTAD have emphasized the importance of regional integration and mutual support among developing countries to counteract systemic inequalities in global trade. Proposals include creating regional liquidity funds, fostering intra-regional trade agreements, and strengthening value chains to reduce dependency on external markets.[48]Such frameworks empower developing nations to negotiate collectively and carve out policy space for equitable development.

7.4. RoleofCivilSociety,Activists,andDevelopingCountries

Civil society organizations and grassroots activists play a vital role in advocating for trade justice. Their efforts ranging from protests and strategic litigation to policy research have heightened awareness of the adverse impacts of corporate-centeredtradeliberalization.Developingcountriesmustleveragethismomentumbyformingcoalitions that challenge exploitative trade rules and push for reforms prioritizing human rights and sustainable development.

7.5. Long-TermVision:TradeJusticeOver TradeLiberalization

The ultimate goal should be transitioning from a paradigm of trade liberalization to one of trade justice. This involves dismantling exploitative mechanisms like Investor- State Dispute Settlement (ISDS) systems, revising intellectual property rules to prioritize knowledge sharing, and ensuring that trade agreements respect labor, environmental, and human rights standards.[49]A justice-oriented framework would prioritize equitable development over profit-driven agendas, fostering a global economy that serves all nations rather than perpetuating hierarchies rooted in colonialism.

8. CONCLUSION

The World Trade Organization's (WTO) failure during the COVID-19 pandemic is not merely an institutional lapse but a profound ethical and legal shortcoming. Its inability to ensure equitable vaccine access, compounded by the paralysis of its dispute settlement system and the prioritization of intellectual property rights over public health, exposed

[48] "Trade and Development Backstory: The Struggle over the UNCTAD 15 Mandate" (*Institute forNew Economic Thinking*) <https://www.ineteconomics.org/perspectives/blog/trade-and-development- backstory-the-struggle-over-the-unctad-15-mandate> accessed April 9, 2025.

[49]War on Want, TOWARDS TRADE JUSTICE (2023) 4 <https://waronwant.org/sites/default/files/202309/Towards%20trade%20justice%20briefing%20WEB.pdf>.

systemic flaws in global trade governance. These failures are emblematic of a deeper moral deficit within multilateral institutions that perpetuate inequality under the guise of neutrality.The pandemic revealed how the WTO's legal architecture prioritizes corporate and geopolitical interests over global justice. The delayed TRIPS waiver negotiations, vaccine hoarding by developed nations, and the absence of enforceable human rights- linked trade obligations highlighted the organization's inability to respond effectively to a global health emergency. These systemic inequities demand urgent reform to prevent similar failures in future crises.To uphold human dignity, a systemic restructuring of trade regimes is essential. This includes integrating human rights impact assessments into WTO decision-making, simplifyingmechanismslikeTRIPSwaivers,fosteringSouth-Southsolidarity,andempowering developing nations with equitable representation in global trade governance. Thepandemic shouldnotberemembered solelyas ahealth crisisbutasa moral reckoning for global institutions that failed to act in service of humanity.The future of multilateralism must be rooted in justice, equity, and cooperation rather thanhegemony andeconomic dominance. Onlybyprioritizingtrade justiceover trade liberalization can global trade systems evolve into mechanisms that serve humanity rather than exploit it. This is not just a necessity it is a moral imperative for a fairer world.

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