

# G2 HACKATHON CHALLENGE

How to Make the WTO  
Fit for Future Trade



INSTITUTE OF INTERNATIONAL  
ECONOMIC LAW  
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Geneva Trade  
Platform

Akin Gump  
STRAUSS HAUER & FELD LLP

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& KO 법무법인(유) 광장

## 2021 Hackathon Submission

Human Rights, Global Supply-Chains and the  
WTO: The Hidden Burden of Trade

### CzechoSlovak Team

Sara Martini

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Watch the Video



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### Question #1

Define the substantive issue that your team is addressing, why it's a problem, and why your team believes the WTO is the right forum to address it.

The substantive issue to be addressed is human rights violations in global supply-chains.

#### Why?

While there have been undeniable benefits of trade as a result of globalization and the WTO framework, there are increasing concerns raised by academics, civil societies and trade unions about negative aspects of trade agreements, in particular, about human rights violations in global supply-chains. Even though the latter has been a long-standing issue (as evidenced by the Singapore Ministerial Conference in 1996), the current COVID-19 pandemic has highlighted this issue even to more extent. Not only has it highlighted the global linkages in trade but also the fragility of global supply-chains leading to the economic and social disruption that threatens the long-term livelihoods and wellbeing of millions. Due to this, more than ever, there is the need for a global legal framework that will address this pressing issue of human rights.

Due to the lack of rules on respecting human rights in supply-chains on the international level coupled with the lack of enforcement in that regard there is an emergence of a governance gap. This essentially facilitates the way for multinational companies to conduct or ignore wrongful acts against their workers and contractors which may then lead to reducing labor standards as well as poor working conditions, forced labor, child labor and other human rights violations.

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### WTO as the right forum

WTO is the appropriate forum to address this substantive issue as, firstly, it is an organization on international level regulating trade. Secondly, it has become clear that the attempts at for example the national level (such as the French vigilance law) or European level (attempting to introduce the mandatory due diligence) in this regard have not been sufficient yet. Thirdly, as this issue concerns supply-chains under the WTO framework, the most relevant agreements that need to be assessed are GATT and GATS agreements. Both of the agreements provide that nothing in it shall be constructed to prevent any contracting party from taking any action in pursuance of its obligations under the UN Charter (Art. XIV bis 1(c) GATS, Art. XXI(c) GATT). The UN Charter obliges its Members to promote 'universal respect for, and observance of, human rights and fundamental freedoms.' As all WTO Members are also Members of the UN, and the GATT and GATS are an integral part of the WTO Agreement (art. II(2)), the states should therefore comply with the international UN obligation as the laws of the WTO and the UN clearly go hand-in-hand. Following this, the UN issued Guidelines on Business and Human Right which provide guidance on how to best comply with the obligation to respect and promote human rights.

In conclusion, as human rights violations in global supply-chains remain a pressing issue to this day, it is due time and essential to sufficiently tackle this issue for which the WTO could be a suitable forum.

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## Question #2

Propose a specific treaty text, or more informal commitment/declaration text, that addresses either the concern or a particular, detailed aspect of it.

A member should require at least limited liability undertakings to respect human rights by performing due diligence on its supply-chain

Members shall adopt legislation applicable to:

- a. undertakings duly incorporated under the laws of the Member, or
- b. undertakings incorporated in a non-Member which operates in Member's territory. If such undertaking operates in more than one Members' territories, it shall be subject to the legislation of the Member where it has its main trading interest

Members shall ensure that:

- a. an undertaking identifies and assesses, through an appropriate monitoring methodology, whether their operations and business relationships cause or contribute to any human rights risks, and
- b. if the undertaking identifies risks, it shall establish a due diligence strategy and it should at least publicly disclose:
  - the risks' level of severity and urgency thereof,
  - the policies and measures that it intends to adopt with a view to ceasing, preventing or mitigating those risks,
  - relevant information about its supply-chain, subsidiaries, suppliers and business-partners including names and locations,
  - how their due diligence strategy relates to and integrates with their business strategy and their policies



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Undertakings shall perform due diligence proportionately to their activity sector, size and length of their supply-chain, size of the undertaking and leverage.

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## Question #3

Suggest a legal/technical or institutional way to implement your textual proposal within the broader WTO framework (500 words)

GATT/GATS:

The ideal way would be to implement the above provision into the GATT and the GATS as they are the central WTO agreements, and it is crucial for all Members to respect human rights when engaging in global goods and services trade. The proposed article can become an integral part of GATT and GATS where there is a consensus among the members. In such a case, the proposed article would be applicable to all parties meaning that all Members will have an obligation to introduce the due diligence obligation into their national laws. Furthermore, in case of a violation or other nullification or impairment of benefits, WTO Dispute Settlement body will have jurisdiction to hear disputes between the members.

Plurilateral Agreement:

However, it is unlikely that there will be consensus among the members. Thus, it might be more feasible to introduce the proposal into the WTO framework as a plurilateral agreement. This might be a more feasible option because, as has been already mentioned, there is a high chance that some Members will decide not to approve the proposed amendment to the GATT/GATS due to strong opposition by the business sector at the national level as has been pointed out by J. Ruggie, the former UN SG's Special Representative. Nevertheless, the debate on this matters has been topical at the international level such as by the ILO and UN, at European level as well as at national level. Furthermore, there has been vital discussion and criticism by academics, civil societies and trade unions for ignoring the direct consequences of trade liberalisation on labor standards and human rights. Thus, nowadays those various debates and criticisms create pressure on Members to tackle this issue by signing the proposed Plurilateral Agreement.

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In case the proposed article becomes a Plurilateral Agreement under Annex IV, the Members will have a choice to become a party (Art.II(3) WTO Agreement). This means that only Members that agreed to be bound by it will be obliged to adopt the due diligence legislation. With regards to enforcement, to this day, all Plurilateral Agreements in Annex IV of the WTO Agreement are also 'covered agreements' under the Understanding on Rules and Procedures Governing the Settlement of Disputes ('DSU'). In this way, the proposed Plurilateral Agreement would be no exception and it would be a subject to the DSU as well. However, it needs to be noted that the applicability of the DSU to the agreement is subject to the adoption of a decision by the parties. In case of adoption, any party to the proposed Plurilateral Agreement may initiate proceedings against another such party in circumstances where it believes the other party to be in violation of its obligations under the Agreement.

In conclusion, while the ideal situation would be to adopt the article under the GATT/GATS agreements, this is not very likely. Thus, the most feasible option would be to adopt the provision as a plurilateral agreement subject to the WTO Dispute Settlement system.