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**PROMOTION ET PROTECTION DE TOUS LES DROITS DE L'HOMME,  
CIVILS, POLITIQUES, ÉCONOMIQUES, SOCIAUX ET CULTURELS,  
Y COMPRIS LE DROIT AU DÉVELOPPEMENT**

**Rapport du Rapporteur spécial sur le droit à l'alimentation, Olivier De Schutter\***

**Additif**

**Mission à l'Organisation mondiale du commerce\*\*  
(25 juin 2008)**

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\* Soumission tardive.

\*\* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le corps du rapport, qui figure en annexe, est distribué tel qu'il a été reçu, dans la langue originale seulement.

## Résumé

Le présent rapport vise à examiner le lien qui existe entre les accords conclus dans le cadre de l'Organisation mondiale du commerce (OMC), notamment l'Accord sur l'agriculture, et l'obligation des membres de l'OMC de respecter le droit à une alimentation adéquate. Il se fonde sur la mission effectuée à l'OMC par le Rapporteur spécial sur le droit à l'alimentation.

Le Rapporteur spécial y argue que, pour que le commerce puisse contribuer au développement des pays et à la réalisation du droit à une alimentation adéquate, il est nécessaire de reconnaître la spécificité des produits agricoles, au lieu de les traiter comme n'importe quelle autre marchandise, et de donner davantage de flexibilités aux pays en développement pour leur permettre, entre autres, de protéger leurs producteurs agricoles face à la concurrence des agriculteurs des pays industrialisés. Les principales incidences de l'actuel système commercial multilatéral sur le droit à l'alimentation sont: a) une dépendance accrue vis-à-vis du commerce international qui, en cas de baisse des prix des produits d'exportation, peut entraîner un manque à gagner en recettes d'exportation; la mise en danger des producteurs locaux lorsque des marchandises importées à bas prix, dont ils ne peuvent soutenir la concurrence, arrivent sur le marché intérieur; et, pour les pays à excédent d'importations alimentaires, des problèmes de balance des paiements lorsque les prix des denrées alimentaires augmentent; b) de possibles abus de position dominante dans des chaînes mondiales d'approvisionnement alimentaire de plus en plus concentrées et une dualisation accrue de l'agriculture nationale; c) d'éventuels effets sur l'environnement ainsi que sur la santé et l'alimentation de la population, qui, en dépit de leur lien étroit avec le droit à une nourriture adéquate, sont généralement ignorés dans les débats sur le commerce international.

Le présent rapport propose différents moyens de concilier le commerce avec le droit à l'alimentation et examine les insuffisances des mécanismes de gouvernance mondiale pour remédier au manque de coordination entre les obligations relatives aux droits de l'homme et les engagements commerciaux, insuffisances que des mécanismes assurant une meilleure coordination au niveau national pourraient ne pas être à même de compenser. Il invite les États à évaluer les effets des accords commerciaux sur le droit à l'alimentation et à veiller à ne pas prendre dans le cadre de l'OMC des engagements incompatibles avec leurs obligations en matière de droit à l'alimentation.

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## I. INTRODUCTION

1. This report<sup>1</sup> seeks to explore the relationship between the Agreements concluded under the framework of the World Trade Organization (WTO) and the obligation of the WTO members to respect the human right to adequate food, as recognized under international law. Its objective is to assist States in the negotiation and implementation of their commitments under the multilateral trade framework, in order to ensure that their commitments under trade agreements will support, rather than undermine, their efforts to realize the right to food at domestic level.

2. The Special Rapporteur held meetings with staff of the WTO Secretariat and its Director-General, Pascal Lamy, on 25 June 2008, and with a number of representatives of permanent delegations to the WTO between June and October 2008. Those consultations were preceded by an expert meeting, held at the Université de Paris 1-Panthéon-Sorbonne on 16-17 June 2008, and were complemented by various consultations with stakeholders, including non-governmental organizations and farmers' organizations. The Special Rapporteur would like to express his deep appreciation to all those who generously made available their time, knowledge and expertise, and he would like to mention, in particular, the cooperative spirit in which the WTO Secretariat and its Director-General provided assistance to the mission.

3. The Special Rapporteur in this report recalls the normative framework under which the relationship between the obligation to respect the human right to adequate food and the undertakings under the WTO agreements should be analyzed (chap. II). He then describes the challenges that the full realization of the right to adequate food faces in the world today (chap. III). Only if we correctly understand those challenges can we evaluate the WTO agricultural trade liberalization framework (chap. IV) and its current and potential impacts on the enjoyment of the right to adequate food and on the ability of the members of the WTO to realize this right (chap. V). The report concludes by suggesting some of the solutions that may be found to reconcile the right to food with a workable trading system.

## II. THE NORMATIVE CONTENT OF THE RIGHT TO ADEQUATE FOOD

4. The right to adequate food is recognized under article 25 of the Universal Declaration on Human Rights and article 11 of the International Covenant on Economic, Social and Cultural Rights. Under these instruments, States must respect existing access to adequate food, by abstaining from adopting measures which may result in preventing such access; they must protect the right to food by adopting measures ensuring that enterprises or individuals do not deprive individuals of their access to adequate food; finally, they must fulfil the right to food, by pro-actively strengthening people's access to food and utilization of resources and means to ensure their livelihood and, in certain cases, by providing food directly (E/C.12/1999/5, para. 15).

5. The realization of the right to adequate food should guide the efforts aimed at the establishment of the multilateral trading system. Article 28 of the Universal Declaration of Human Rights states that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized". The right to adequate food can only be fully realized by States within a multilateral trading system which enables them to pursue policies aimed at realizing the right to food. Such a system should not only refrain

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<sup>1</sup> A more extended and more fully referenced version of the report is available at [www.srfood.org](http://www.srfood.org).

from imposing obligations which directly infringe upon the right to food. It should also ensure that all States have the policy space they require to take measures which contribute to the progressive realization of the right to food under their jurisdiction, a goal towards which States should move “as expeditiously as possible” (E/C.12/1999/5, para. 9). This obligation must be facilitated, not impeded, by the organization of the multilateral trade regime, as also implied by article 11, paragraph 2, of the Covenant which recognizes the need to ensure that the regulation of trade contributes to the enjoyment of the right to food.

6. An approach to international trade based on the right to food shifts the perspective from aggregate values - from the benefits of trade for the country as a whole - to the impacts of trade on the most vulnerable and food-insecure. It emphasizes the dimensions of participation and accountability in the negotiation and implementation of trade agreements. And it takes into consideration, not only the need to ensure a sufficient intake of calories for each individual, but also the sustainable availability and accessibility of adequate food, i.e., containing the required nutrients for the physical and mental health of individuals and development of children, and culturally acceptable. All these dimensions are generally absent from discussions about the impact of trade on food security. This report seeks to bring them back in.

### **III. THE CURRENT CHALLENGES FACING THE REALIZATION OF THE RIGHT TO ADEQUATE FOOD**

7. The realization of the human right to adequate food currently faces two main threats. First, questions arise as to whether, in the future, agriculture will be able to feed the planet, and as to whether each country will be able to feed its population, through a combination of local production and food imports. Population growth, combined with the switch to more animal-protein-rich diets in a growing number of countries, and the diversion of food crops for the production of agrofuels, increases the pressure on the supply side of the global equation. Climate change threatens the ability of entire regions, particularly those relying on rain-fed agriculture, to maintain current levels of agricultural production. As noted by the International Assessment of Agricultural Science and Technology for Development (IAASTD),<sup>2</sup> the challenge is therefore to produce more food, but to do this in a way which preserves the environment, particularly by reducing the amount of greenhouse gas emissions which contribute to global warming.

8. The second challenge is to ensure accessibility of food for the poor and the marginalized. Food insecurity exists even in countries where there is food in abundance, due to the lack of purchasing power of certain segments of the population. Trading more food will not help them if they are excluded from production and have no means to buy the food which arrives on the markets. The majority of hungry people in the world are located in developing countries, live in rural areas, and depend on agriculture directly or indirectly for their livelihoods. They are hungry because they are poor: they are often net buyers of food,<sup>3</sup> and their incomes, which are on average significantly lower than those of the non-rural populations, are insufficient to buy the food which they do not produce themselves. Fifty per cent of the hungry are smallholders, living off 2 hectares of cropland or less; 20 per cent are landless labourers; 10 per cent are pastoralists,

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<sup>2</sup> See [www.agassessment.org](http://www.agassessment.org).

<sup>3</sup> World Bank, *World Development Report 2008 - Agriculture for Development*, Nov. 2007, p. 109 (box 4.7).

fisherfolk, and forest users; the remaining 20 per cent are the urban poor.<sup>4</sup> Any trade regime which does not benefit these categories or affects them negatively is likely to lead to further denial or violation of the right to food. These groups need to be protected. The idea that the positive impacts from trade liberalization would compensate for its negative impacts on these categories, by leading to net welfare gains which should benefit all categories following redistributive policies, does not correspond to a human rights perspective, which focuses on the most vulnerable; it has not always proven to be correct empirically; and it often overestimates the capacity of States, in the developing world, to operate such redistribution of gains.

#### IV. THE REFORM PROGRAMME IN AGRICULTURE

9. While other agreements concluded under the WTO framework, particularly the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Intellectual Property Rights (TRIPs), may have an impact on the right to adequate food - since they affect access to productive resources by food producers - the Agreement on Agriculture (AoA) constitutes the most important of the WTO agreements in the context of this report. The present report therefore focuses on this agreement.<sup>5</sup>

##### A. The Agreement on Agriculture and the Doha Round

10. The Agreement on Agriculture rests on three pillars and essentially imposes three obligations on the members. First, they must increase market access for agricultural products. All quantitative restrictions or other non-tariff measures except those justified by health and safety reasons should be replaced by tariffs (art. 4.2), which the members are subsequently bound to reduce (art. 4.1). The process of “tariffication” and subsequent lowering of tariffs has not worked for the benefit of developing countries. Producers from developing countries have been facing important obstacles when seeking access to the high-value markets of industrialized countries. Many agricultural products are currently facing tariff peaks and tariff escalation (higher tariffs on processed products) which discourage diversification into higher value-added products, leading developing countries to an excessive dependence on an often limited number of primary commodities.<sup>6</sup> Developing countries have failed to benefit even from preferential schemes such as the African Growth and Opportunity Act or the Caribbean Basin Initiative of the United States of America, the “Everything But Arms” initiative adopted by the European Union in favor of least-developed countries (LDCs), or the Cotonou Agreement between the European Community and the Group of African, Caribbean and Pacific States (ACP).<sup>7</sup>

11. Second, the members must reduce the level of domestic support (calculated through the concept of “Aggregate Measure of Support” or AMS), although such subsidies are treated

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<sup>4</sup> Millennium Project, *Halving Hunger: It Can be Done, Summary Version of the Report of the Task Force on Hunger* (New York: The Earth Institute at Columbia University, 2005), p. 6.

<sup>5</sup> See OHCHR, *Globalization and its impact on the full enjoyment of human rights* (E/CN.4/2002/54).

<sup>6</sup> A.F. McCalla and J. Nash, *Reforming Agricultural Trade for Developing Countries. Key Issues for a Pro-Development Outcome of the Doha Round*, vol. I, World Bank, Washington, D.C., 2007.

<sup>7</sup> For Africa, see UNCTAD, *Economic Development in Africa 2008 - Export Performance Following Trade Liberalization: Some Patterns and Policy Perspectives*, 2008, chap. 2.

differently depending on how much they are considered trade-distorting. All Members may provide product specific support up to a *de minimis* threshold (5 per cent of the total value of production of the good concerned per year for developed countries; 10 per cent for developing countries), and non-specific support for the same percentage, for instance to provide seeds or fertilizers to producers. Few developing countries in fact have the financial means required to reach those levels of support. Beyond the *de minimis* threshold, Members must refrain from the introduction of new forms of support and reduce the existing domestic support they provide to their agricultural producers by 20 per cent from the base period of 1986-1988 for developed countries, and by 13.3 per cent for developing countries (LDCs are not under any obligation to reduce domestic support, although they are to bind support levels). Since these percentages are calculated on the basis of the Base Total Aggregate Measurement of Support in the base period, the arrangement is most beneficial to countries which already had high levels of support during the base period, since their advantage can be to a certain extent maintained.

12. Some measures do not fall under such reduction commitments, which concern the measures under the “amber box”. “Blue box” measures are direct payments made against production-reducing commitments and which, therefore, are considered to be less trade-distorting. They are exempted from reduction commitments under the AoA. Finally, “green box” measures are considered not to distort trade or to distort trade only minimally and they too are exempt. Domestic support measures may be placed in this category (a) if they are “provided through a publicly-funded government programme (including government revenue foregone) not involving transfers from consumers”; and (b) if they do not have the effect of providing price support to producers (annex 2, AoA, 1). Such measures include, for instance, investments in research, in marketing and promotion, or the provision of rural infrastructures (although the “subsidized provision of on-farm facilities other than for the reticulation of generally available public utilities” and “subsidies to inputs or operating costs” are explicitly excluded); but also public stockholding for food security purposes or domestic food aid, provided it is distributed “subject to clearly-defined criteria related to nutritional objectives”.

13. Third, the members must reduce existing export subsidies, and cannot introduce new export subsidies that were not already in operation in the 1986-1990 base period. Since the introduction of any new export subsidies is prohibited, the system has in fact been advantageous to the developed States, which were the only category of States to have significant export subsidies in place prior to the entry into force of the AoA. Export subsidies are the most harmful form of subsidies for the developing countries, since they lead to subsidized products arriving on domestic markets and displacing local production.

14. A number of provisions seek to accommodate what the preamble of the AoA refers to as “non-trade concerns”, among which “food security and the need to protect the environment” are explicitly mentioned. In particular, measures adopted by developing countries which seek to encourage agricultural and rural development, investment subsidies in agriculture, and agricultural input subsidies, are exempted from domestic support reduction commitments that would otherwise be applicable to such measures (art. 6.2). A number of provisions aim at ensuring special and differential treatment for developing countries, in the form of longer implementation periods and reduced commitments (art. 15). Yet, overall, the obligations established under the AoA clearly fit under a programme of trade liberalization in agricultural products. While food security is recognized as a legitimate objective, it is to be achieved in principle not by retreating from the programme of trade liberalization in agriculture, but by

supporting countries through the reform programme. However, whether the domestic policies required to accompany the reform programme can be implemented in the countries concerned, with a speed commensurate to the impact of trade liberalization itself, may be doubted. Developing countries face a series of constraints, which in many cases makes it difficult or impossible for them to implement policies at domestic level, particularly by fully using the flexibilities they are allowed, which would allow them to maximize the benefits from trade, while minimizing its negative impacts.

15. The expectation, when the Uruguay Round was completed, was that this programme would lead to increased prices for agricultural commodities. Article 16 of the Agreement on Agriculture therefore provides that, in order to counteract the negative impacts this might produce on net food-importing developing countries, developed country members shall take the measures provided for under the Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-importing Developing Countries (the “Marrakesh Decision”). This decision establishes four response mechanisms in order to ensure that the LDCs and net food-importing developing countries (NFIDCs) will be able to maintain an adequate level of imports of food commodities. But the Marrakesh Decision has not been adequately implemented. There is no mechanism within the WTO to monitor systematically the impact of the AoA reform process on the NFIDCs.<sup>8</sup> Furthermore, the notion of “adequate supplies” of basic foodstuffs - which NFIDCs should be able to obtain from external sources “on reasonable terms and conditions” throughout the reform process - remains undefined, although it is this notion which should trigger the mechanisms provided for under the decision. Finally, there are difficulties with each of the four mechanisms which the Marrakesh Decision establishes.<sup>9</sup>

16. In the Ministerial Doha Declaration of 14 November 2001, WTO members committed themselves to comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support. They also agreed to make special and differential treatment for developing countries “an integral part of all elements of the negotiations”.<sup>10</sup> At the Hong Kong WTO Ministerial Meeting of 2005, it was agreed that export subsidies would end by 2013; that developing countries could themselves designate some products as “special products” for which tariff reductions will not be very stringent; and that developing countries can retain their permissible *de minimis* level of domestic subsidy. At the time of writing, the Doha Round of trade negotiations still has not been concluded. It is stumbling, particularly on the discussions surrounding the trade-distorting impacts of various forms of domestic support provided by developed countries to their farmers, and on the special safeguard measure which a number of developing countries insist on including in the agreement. This report does not seek to offer any detailed commentary of these negotiations. Rather, it aims to identify whether this agricultural trade reform programme is compatible with the Members’ obligations towards the right to food.

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<sup>8</sup> UNCTAD, Impact of the reform process in agriculture on ldc and net food-importing developing countries and ways to address their concerns in multilateral trade negotiations, TD/B/COM.1/EM.11/2 and Corr.1 of 23 June 2000, paras. 25 and ff.

<sup>9</sup> See main report of the Special Rapporteur, A/HRC/10/5.

<sup>10</sup> WT/MIN(01)/DEC/1, para. 13.



### **B. The illusory notion of a “level playing field”**

17. If trade is to work for development and to contribute to the realization of the right to adequate food, it needs to recognize the specificity of agricultural products, rather than to treat them as any other commodities and to allow more flexibilities to developing countries, particularly in order to shield their agricultural producers from the competition from industrialized countries' farmers. The reason for this is obvious, and it is at the heart of what justifies special and differential treatment for developing countries: even after the removal of existing trade-distorting measures, which currently are disproportionately benefiting developed countries, the productivity per active labourer in agriculture will remain much lower in developing countries, on average, than in developed countries. In 2006, agricultural labour productivity in LDCs was just 46 percent of the level in other developing countries and below 1 per cent of the level in developed countries. In addition, these massive differences in productivity are increasing: labour productivity grew by only 18 per cent in LDCs between 1983 and 2003, by 41 per cent in other developing countries and by 62 per cent in developed countries.<sup>11</sup>

18. In this context, the idea of establishing a level playing field is meaningless. The deepening of the reform programme under the AoA will not result in agricultural producers in developing countries being able to compete on equal terms with producers in industrialized countries, unless wages in developing countries are repressed at very low levels to compensate for a much lower productivity per active laborer. Certain developing countries have a highly mechanized agricultural sector and, particularly since the wages in the agricultural sector remain comparatively low in comparison to those in Organization for Economic Cooperation and Development (OECD) countries, have a strong comparative advantage in agriculture and would clearly benefit from the removal, or at least the lowering, of the trade-distorting subsidies of the developed countries.<sup>12</sup> But in other developing countries, particularly LDCs, agriculture remains a fragile sector. Encouraging these countries to open up their agricultural sector to competition by binding themselves to low rates of import tariffs may therefore constitute a serious threat to the right to food, particularly if we take into account that food insecurity is mostly concentrated in the rural areas and that a large portion of the population in the countries which are most vulnerable depends on agriculture for their livelihoods: in 2000-2003, 70 per cent of the economically active population was engaged in agriculture in the LDCs, as against 52 per cent in other developing countries, and 3 per cent in the developed countries.<sup>13</sup>

### **V. THE IMPACTS OF THE REFORM PROGRAMME IN AGRICULTURE ON THE RIGHT TO FOOD**

19. The impacts of the removal of barriers to trade in agriculture on the right to food are examined at three levels. First, at the macro-economic level, it may increase the vulnerability of countries as a result of their dependency on international trade, and it may further fragilize the situation of agricultural producers in certain developing countries. Second, at the micro-economic level, it contributes to reshaping the global food supply chain in a way which

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<sup>11</sup> UNCTAD/LDC/2006, p. 137.

<sup>12</sup> This is the case, in particular, for countries in the Cairns Group (Argentina, Brazil, Chile, Colombia, Costa Rica, Indonesia, Malaysia, Philippines, South Africa, Thailand and Uruguay).

<sup>13</sup> UNCTAD/LDC/2006, p. 137.

favors transnational corporations, whose freedom to act is broadened at the same moment as the regulatory tools States may resort to are being limited. Finally, international trade in agricultural commodities also has impacts on the environment, and on nutrition and health, which States cannot ignore.

#### **A. The macro-economic impacts of trade liberalization: increased dependency on international trade**

20. Trade liberalization encourages each country to specialize in the production in which it has a comparative advantage. However, whether a country has such a comparative advantage in the production of any particular commodity depends not only on its natural endowments, such as soil or climate, but also, increasingly, on specific public policies, or on the order in which the respective trading partners have achieved economies of scale in particular lines of production. The question therefore is which incentives emerge for States, in the construction of their comparative advantage, from the opening of international trade. On the one hand, States may seek to improve the ability of their producers to benefit from the opportunities of international trade, and particularly, for developing countries, from better access to the high-value markets of industrialized countries. On the other hand, States may find that certain imported goods, such as processed foods, may be cheaper than producing them locally, and they may therefore increase their dependence on imports for feeding their population. Specialization according to comparative advantage thus leads to two forms of dependency: first, for the acquisition of foreign currency, dependency on the value of exports; second, for the ability of countries to feed their population, dependency on the price of imports. In addition, the arrival of cheap imports on domestic markets may threaten the livelihoods of local producers, if they are unable to compete.

21. The example of sub-Saharan African countries is illustrative. Due in part to the highly penalizing structure of tariffs in OECD countries through tariff peaks and tariff escalation, and in part, to the presence on international markets of highly subsidized foods produced in industrial countries, sub-Saharan Africa has remained dependent on traditional non-fuel primary commodity exports such as coffee, cotton, cocoa, tobacco, tea and sugar, and was essentially unable to develop into an exporter of processed food: South Africa, the largest African exporter of processed food, had a global market share of only 1 per cent in the period 2000-2005.<sup>14</sup> At the same time, while many African countries were net food-exporting countries until the 1970s, they have become for the most part net food-importing countries since the 1980s, due partly to the lack of investment in agriculture, and partly to the agricultural subsidies in developed market economies, which in turn discouraged agricultural investment.<sup>15</sup> The result is well known: it has led to increased vulnerability of these countries both to worsening terms of trade and to fluctuations in commodity prices - fluctuations which are particularly important in the agricultural sector due to its sensitivity to weather-related events and the low elasticity of both supply and demand. Such volatility makes the States that are most dependent on international trade the most vulnerable to shocks, such as overproduction or harvest failures in other States. This leads to brutal price increases or declines.

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<sup>14</sup> OECD, *Business for Development 2008, Promoting commercial agriculture in Africa. A Development Centre perspective*, Paris, 2008.

<sup>15</sup> UNCTAD, *The changing face of commodities in the twenty-first century*, TD/428 (April 2008).

22. It is the dependency of countries on food imports for feeding their population which produces the most immediate impacts on the right to adequate food. First, import surges may threaten the ability of local producers in net food-importing countries to live from their crops and therefore the ability to feed themselves and their families, when such import surges lead to such low prices on the domestic markets that they are driven out of business. Agricultural producers from developing countries have been facing unfair competition from highly subsidized products exported by farmers from OECD countries. Government support to farmers in OECD countries has diminished in recent years, but it remains at very high levels, making it difficult for developing countries to compete. Import surges have been a frequent occurrence, both before and after the entry into force of the Agreement on Agriculture. A survey covering 102 developing countries over the period 1980-2003 documented 12,000 cases of import surges. The countries most affected were India and Bangladesh in Asia, Zimbabwe, Kenya, Nigeria, Ghana and Malawi in Africa, and Ecuador and Honduras in Latin America.<sup>16</sup>

23. These import surges are the result of the lowering of import tariffs to levels significantly below the tariffs bound under the Agreement on Agriculture, which these countries consented to as part of the structural adjustment programmes imposed on them as a conditionality to receive loans. Yet the provisions contained in the current version of the AoA are insufficient to allow countries to react to the disruptions caused by import surges. Under the AoA, members which resorted to tariffication of their non-tariff barriers may impose “special safeguard measures” (SSG) in the form of additional tariffs when confronted with import surges of certain products - i.e., imports exceeding a specified trigger level, or whose price falls below a specified trigger price (art. 5). However, since most developing countries did not use tariffication, they cannot rely on that clause; 39 WTO members, including 22 developing countries, have reserved the right to resort to the special safeguard option on hundreds of products. The SSG mechanism was triggered by only 10 members, including 6 developing countries, between 1995 and 2001; and between 1995 and 2004, developing countries triggered the SSG in only 1 per cent of the cases in which they could have applied it.<sup>17</sup> These figures may be compared with the number of import surges experienced by developing countries. As protection against such surges, the current SSG mechanism is ineffective.

24. A second impact on the ability of developing countries to protect the right to adequate food resulting from their dependency on food imports occurs when prices undergo increases on international markets. In such circumstances, net food-importing countries may undergo balance of payments problems: the difficulties these countries encountered through the period of 2007-2008, when these prices rose significantly, provided a vivid illustration of this risk (see A/HRC/9/23, annex I, paras. 6-7). The Marrakesh Decision was intended to provide an answer to such situation. Yet, as noted above, it has not been adequately implemented and the different mechanisms it established face severe difficulties.

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<sup>16</sup> FAO Brief on Import Surges - Issues, available at <ftp://ftp.fao.org/docrep/fao/009/j8675e/j8675e00.pdf>.

<sup>17</sup> See FAO, Trade Policy Briefs on Issues Related to the WTO Negotiations on Agriculture, No. 9 A, Special Safeguard Mechanisms for Developing Countries, available at: <ftp://ftp.fao.org/docrep/fao/008/j5425e/j5425e01.pdf>.

**B. The micro-economic impacts of trade liberalization: the shape of the global food supply chain and the dualization of the farming sector**

25. Increased cross-border trade in agricultural products implies that, as the production of food is reoriented towards serving foreign markets rather than domestic markets, the role of transnational corporations - commodity traders, food processors, and global retailers - increases. This constitutes a source of dependency for the farmers who supply them. That dependency is further increased by the fact that, in order to comply with the standards of global retailers, farmers wishing to be included in global supply chains must use external inputs, including improved varieties of seeds, often supplied by companies which occupy an oligopolistic position on the market. As a result, the farming sector is increasingly divided between one segment which has access to high-value markets and therefore, to the best technologies, inputs, credit, public support and political influence, and another segment which is left to serve only the low-value, domestic markets, and is comparatively neglected and marginalized, particularly as new tastes are introduced through international trade which they cannot satisfy.

26. Concentration in the food system is significant. This results in widening the spread between world and domestic prices for commodities such as wheat, rice, and sugar, for instance, which more than doubled between 1974 and 1994; and, since most large commodity buyers are based in the OECD countries, this limits the portion of the value captured by developing countries. Thus, developing countries' claim on value added declined from about 60 per cent in 1970-72 to about 28 per cent in 1998-2000.<sup>18</sup> In industrialized and developing countries alike, farmers need to go through commodity traders which have a dominant position: two companies control 40 per cent of the grain exports from the United States.<sup>19</sup> Similar trends towards increased concentration occurs in the retail sector,<sup>20</sup> although the speed of concentration here seems to have decreased in recent years.<sup>21</sup>

27. Global sourcing increases the competition between suppliers, allowing buyers to adopt pricing policies which reduce the share of the final value of the product which goes to the producers - the farmgate price, as opposed to the retail price. Transnational corporations impose their prices on producers; they impose standards which many small-scale farmers are unable to meet. Particularly for crops like wheat or soybean, for which economies of scale represent important productivity gains, small-scale farmers are unable to compete and are relegated to the lower-value local markets, unless they end up working as badly paid agricultural labourers.

28. Certain strategies may avoid small-scale farmers being squeezed out by the development of global supply chains: these include cooperatives, outgrower schemes, public-private initiatives

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<sup>18</sup> World Bank, *World Development Report 2008*, p. 136.

<sup>19</sup> Sophia Murphy, "Concentrated market power and agricultural trade", *EcoFair Trade Dialogue Discussion Papers*, 14 (Aug. 2006).

<sup>20</sup> See *Special Feature: Globalization, Urbanization and Changing Food Systems in Developing Countries*, FAO (2004); or, for example, "Horticultural producers and supermarket development in Indonesia", World Bank Report No. 38543-ID, pp. vi and vii (2007).

<sup>21</sup> Tim Reardon and Ashok Gulati, *The Rise of Supermarkets and Their Development Implications: International Experience Relevant for India*, IFPRI Discussion Paper 00752, 17 (2008).

and regional initiatives.<sup>22</sup> However, these strategies are still underdeveloped and clearly not sufficient. This is particularly the case since large buyers seek to minimize transaction costs, which are high when they seek to source from small-scale farmers who are dispersed geographically and are far removed from centralized collection facilities. In addition, large agricultural producers are better equipped to adapt to shifting demand and to comply with volume and traceability requirements, as well as with environmental and food safety standards with which global retailers increasingly seek to monitor compliance.<sup>23</sup>

### **C. The non-economic impacts of trade liberalization: environmental and health dimensions**

29. Reliance on international trade in order to achieve food security cannot ignore its impact on the environment and on nutrition. Climate change constitutes the single most important threat to food security in the future. And international law recognizes the right to adequate food, requiring that the diet as a whole contains an adequate mix of all essential nutrients.

#### **1. Environmental dimensions**

30. Long production chains imply long distances in transport. Road transport and air transport represent respectively 74 per cent and 12 per cent of the greenhouse gases (GHG) emissions produced by transport, which itself is responsible for 23 per cent of the world energy-related GHG emissions.<sup>24</sup> They are typically used for the transport of fresh food and have a serious impact on climate change. This impact is increasing as consumers are encouraged to expect all foods to be available at all times of the year, without regard for the seasons.<sup>25</sup> Such modes of food consumption are not sustainable in the long term.

31. Most importantly, the various modes of agricultural production may have widely different impacts on global warming. If clearing forest to create farmland is included, agriculture is estimated to be responsible for about 30 per cent of total global man-made emissions of GHGs.<sup>26</sup> The conversion of tropical forests to agricultural land, the expansion of rice and livestock production (31 per cent) and the increased use of nitrogen fertilizers (38 per cent) have all been significant contributors to GHG emissions, in the form of methane and nitrous oxide. Intensive modes of agricultural production also lead to accelerated depletion of soils, pollution of groundwater, and adverse impacts on human and animal health. While the progressive switch to more intensive forms of agricultural production cannot be attributed directly to the increase of

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<sup>22</sup> See Oli Brown and Christina Sander, "Supermarket buying power: global supply chains and smallholder farmers", International Institute for Sustainable Development, March 2007.

<sup>23</sup> C. Dolan and J. Humphrey, "Governance and trade in fresh vegetables: the impact of UK supermarkets on the African horticultural industry", *Journal of Development Studies* 37 (2) (2001), p. 175.

<sup>24</sup> These are figures from the International Energy Agency for 2004.

<sup>25</sup> See, Food Ethics Council, "Food distribution. An ethical agenda", October 2008; see <http://www.foodethicscouncil.org/node/401>; L. Milà i Canals, S.J. Cowell, S. Sim, L. Basson, "Comparing domestic versus imported apples: a focus on energy use", *Environmental Science and Pollution Research*, No. 14 (5) (2007), pp. 338-344.

<sup>26</sup> FAO, World agriculture: towards 2015-2030, 2003, [www.fao.org/docrep/005/Y4252E/y4252e00.HTM](http://www.fao.org/docrep/005/Y4252E/y4252e00.HTM).

global trade in agricultural commodities, this is nevertheless a trend which is encouraged by the specialization of countries in cash crops for exports. Instead, as recommended by IAASTD, we should urgently encourage a switch towards more low-carbon modes of agricultural production, which better respect ecosystems.

## 2. Nutrition and health dimensions

32. Partly as a result of tariff escalation in developed countries, developing countries mostly export commodities, including fresh fruit and vegetables, and they import processed foods from developed countries. This has led to shifts in dietary habits in developing countries, whose populations increasingly consume “Western” diets rich in salt, sugar, and fat. Higher rates of obesity have resulted, as well as diseases such as heart disease and type-2 diabetes. Overweight is now “among the top five risk factors for loss of disability-adjusted life years (DALYs) in both developed countries and low-mortality developing countries (although underweight still ranks higher)”.<sup>27</sup> Urbanization and the otherwise welcome development of increased employment of women leads to heavier reliance on foods prepared outside the home, including foods available from supermarkets. Reliance on imported foods has also been a factor, which Governments should take into account in their trade policy decisions.

## VI. RECONCILING TRADE WITH THE RIGHT TO FOOD

### A. The challenge of fragmentation

33. The human rights obligations of WTO members and the commitments they make through the conclusion of agreements under the WTO framework remain uncoordinated. At the international level, this lack of coordination is one example among others of the problem of fragmentation of international law into a number of self-contained regimes, each with their own norms and dispute-settlement mechanisms, and relatively autonomous vis-à-vis both each other and general international law.<sup>28</sup> All too often, this failure of global governance mechanisms is replicated at domestic level: trade negotiators either are not aware of the human rights obligations of the Governments they represent, or they do not identify the implications for their position in trade negotiations.<sup>29</sup>

34. This approach thus leaves it to each State to ensure, in its domestic policies, a consistency which is not pursued in the international legal process. This is not satisfactory. It amounts to treating obligations incurred under trade agreements as equivalent in normative force to human

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<sup>27</sup> Karen Rideout, “Food and trade - an ecological public health perspective”, Oxfam Canada, 27 February 2005, p. 12 (referring to Chopra M, Galbraith S, Darnton-Hill I., “A global response to a global problem: the epidemic of overnutrition”, *Bulletin of the World Health Organization* 80 (2002), pp. 952-958).

<sup>28</sup> See A/CN.4/L.702, report of the Study Group of the ILC on the fragmentation of international law, para. 8.

<sup>29</sup> Only rarely have WTO members referred to the right to food in the context of trade negotiations within the WTO: this was done by Mauritius and Norway (Committee on Agriculture, Special Session, Note on Non-Trade Concerns, WTO Doc. G/AG/NG/W/36/Rev.1, 9 November 2000, paras. 44 and 57; WTO Doc. G/AG/NG/W/101, 16 January 2001, paras. 6 ff.); and by Burkina Faso (WTO Doc. TN/AG/R/10 of 9 September 2003, para. 35).

rights obligations. This fails to recognize that, both as a result of Article 103 of the Charter of the United Nations and because human rights norms have the status of peremptory norms of international law, human rights should prevail over any other international commitments. It also creates the risk that, faced with situations of conflict, States will opt for compliance with their obligations under trade agreements: since these agreements are commonly backed by the threat of economic sanctions - as is the case within the WTO, under the Dispute Settlement Understanding - setting aside their human rights obligations will appear to Governments less costly economically and even, often, politically.

35. One safeguard does exist: commitments under the WTO framework must be interpreted, to the fullest extent possible, so as to be compatible with general international law, as well as with the rules of any treaty applicable in the relationships between the parties to the dispute giving rise to the question of interpretation, as such rules may develop, in particular, through adjudication.<sup>30</sup> In the system of the WTO, the requirement that the agreements be interpreted in accordance with the other international obligations of the members is further strengthened by the fact that the authoritative interpretation of the agreements lies in the hands of the members themselves, within the Ministerial Conference or the General Council,<sup>31</sup> and the members cannot ignore their human rights obligations in providing such interpretations. Yet, this does not provide a satisfactory answer to situations of real conflict which no conform interpretation could avoid. And it is also insufficient because such a principle of integrity in the interpretation of WTO agreements does not address the “chilling effect” which the norms established in these agreements may cause, when the members do not know whether or not any particular measure they take, in order to comply with their human rights obligations, will be considered acceptable by the other members or instead expose them to retaliation.

36. Human rights obligations of WTO members must therefore be taken into consideration at the negotiation stage of trade agreements: later may be too late. On the basis of the findings made above, the following proposals seek to assist States in better taking into account their human rights obligations in the negotiation and implementation of their commitments under the framework of the WTO. A first set of proposals are procedural in nature: they seek to ensure that trade negotiations are conducted in conditions which facilitate taking into consideration the right

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<sup>30</sup> The commitments under the WTO framework cannot be treated “in clinical isolation” from general international law (Appellate Body Report of 20 May 1996, *United States - Standards for Reformulated and Conventional Gasoline (United States v. Brazil and Venezuela)*, WT/DS2/AB/R). Article 3.2. of the Dispute Settlement Understanding confirms that WTO norms may be “clarified ... in accordance with customary rules of interpretation of international law”, which includes article 31, para. 3 (c) of the Vienna Convention on the Law of Treaties stipulating that the interpretation of treaties must take into account “any relevant rules of international law applicable in the relations between the parties”. These rules may evolve, particularly, as a result of legal interpretation: see *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, *I.C.J. Reports 1971*, p. 16, para. 53; *Case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, *I.C.J. Reports 1997*, pp. 76-80, paras. 132-147. On the need for an evolutionary interpretation, see Appellate Body Report, 12 October 1998, *United States - Import Prohibition of Certain Shrimp and Shrimp Products (United States v. India, Malaysia, Pakistan, Thailand)*, WT/DS58/AB/R, para. 129.

<sup>31</sup> See article IX(2) of the WTO Agreement, also referred to in article 3.9. DSU.

to food. A second set of proposals are substantive: they explore solutions to the impacts identified in chapter V above. Together, these proposals should promote the right of peoples and States to democratically determine their own agricultural and food policies, without these choices being dictated by the international trade regime; and they should channel this regime towards one which contributes not only to increased production and allocative efficiency, but also to the realization of the right to food.

## **B. The procedural dimensions: guiding trade negotiations towards the full realization of the right to food**

### **1. Assessing the impact of trade agreements on the right to food**

37. States should ensure that they will not accept undertakings under the WTO framework without ensuring that these commitments are fully compatible with their obligation to respect the right to food. This requires that they assess the impact on the right to food of these commitments.<sup>32</sup> It also requires that any commitments they make be limited in time, and re-evaluated subsequently, since the impacts of trade liberalization on the ability of States to respect the right to food may be difficult to predict in advance, and may become visible only after a number of years of implementation. For instance, whatever the results of the current round of negotiations launched in Doha in November 2001, these results should be explicitly treated as provisional, and a sunset clause should be appended to the outcome in order to allow for a renegotiation, following a period of a few years of implementation, on the basis of an independent review of the impact on the enjoyment of the right to adequate food.<sup>33</sup>

38. Impact assessments are a useful tool in order to help a State understand the implications of the agreements it enters into. They have a powerful democratizing effect, since they should provide an opportunity for civil society to participate in the evaluation of trade policies (see E/CN.4/2005/41), and allow national parliaments and civil society organizations to rely on their results in their dialogue with Governments.<sup>34</sup> To the extent that impact assessments are based on the normative requirements of the human right to adequate food, and the corresponding indicators,<sup>35</sup> they can strengthen the negotiating position of Governments in trade negotiations, particularly since reference to the right to food is an obligation imposed on all States under

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<sup>32</sup> This is recommended by various human rights treaty bodies: see E/C.12/1/Add.100, para. 56; CRC/C/15/Add.232, para. 48; CEDAW/C/COL/CO/6, at para. 29; CEDAW/C/PHI/CO/6, para. 26; CEDAW/C/GUA/CO/6, para. 32.

<sup>33</sup> See art. 20 of the AoA, which partially fulfils this objective in the current agreement.

<sup>34</sup> See OHCHR, Report on indicators for monitoring compliance with international human rights instruments: a conceptual and methodological framework (HRI/MC/2006/7, 11 May 2006), para. 3.

<sup>35</sup> See, for a table of indicators based on the normative content of the right to food, OHCHR, *Report on indicators for monitoring compliance with international human rights instruments* (HRI/MC/2008/3, 16 May 2008), at p. 24.



international law, which they cannot ignore in the context of trade negotiations (see E/C.12/1999/5, paras. 19 and 36).<sup>36</sup>

## **2. International trade as a component of national strategies for the realization of the right to food**

39. Important as they are, impact assessments remain reactive in nature: they are tools to measure the consequences of the decisions which are taken, but they do not indicate, in and by themselves, which trade policies should be adopted in order to further the realization of the right to food. States should define their positions in trade negotiations in accordance with national strategies for the realization of the right to food. The adoption of such strategies is recommended by the Committee on Economic, Social and Cultural Rights (E/C.12/1999/5, para. 21), and their content is further clarified by the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security adopted by the General Council of the Food and Agriculture Organization of the United Nations (FAO) on 23 November 2004. Such strategies should also be seen as tools to guide trade negotiations: only by mapping food insecurity on its territory and identifying which actions should be taken to combat such food insecurity will it be possible for those negotiating trade agreements to ensure that the commitments they make in trade negotiations will facilitate, rather than impede, efforts towards the fulfilment of the right to food of their population. Indeed, the usefulness of adopting such national strategies, based on a reliable mapping of food insecurity and vulnerability, goes far beyond the assistance it would provide negotiators in the WTO context. These strategies also should support the position of Governments in their discussions with international financial institutions, with donors, or in bilateral trade negotiations. It is a particular source of concern that, in a large number of cases, States have been unable to use flexibilities allowed under the WTO agreements - or to apply certain tariffs remaining under their bound tariffs - because of prescriptions from such institutions or because of bilateral free trade agreements. Adopting a national strategy for the realization of the right to food would strengthen the position of States in their discussions with these partners, at the same time that it would improve the accountability of Governments to their constituencies.

## **3. Transparency and participation in trade negotiations**

40. Right-to-food impact assessments and the adoption of national strategies for the realization of the right to food are tools which should support negotiators in ensuring that they will not adopt positions at international level which, at national level, would impede the realization of the right to food for all. In addition however, it is essential that national parliaments and civil society are provided opportunities to monitor the positions adopted by Governments in trade negotiations. They should not be presented, at the very final stage of the negotiation process - once agreement has been reached - with a set of commitments made by the Executive from which, at that stage, from which it would be politically very difficult or impossible to retreat. National parliaments should regularly hold hearings about the positions adopted by the Government in trade negotiations, and all groups concerned, including in particular farmers' organizations, should have an opportunity to take part. The democratizing potential of

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<sup>36</sup> This notes that States must take into account their human rights obligations in the negotiation and conclusion of trade agreements, thus implying that they are also imposed obligations towards persons situated outside the national borders.

right-to-food impact assessments will only fully materialize if such procedures are put in place at domestic level, in order to avoid a disconnect between commitments made at the international level and efforts developed at the national level for the realization of the right to food. This is particularly important in the context of trade agreements relating to agriculture, given the risks of an increased dualization of the farming system as a result of policies geared towards the export sector. These are partly the result of disproportionate political influence being exercised in some countries by a relatively small number of very large agricultural producers - whereas small-scale farmers, in contrast, are poorly organized politically, and often unable to mobilize due to their geographical dispersion.<sup>37</sup>

### **C. The substantive dimensions: taking into account the right to food in the multilateral trade regime**

#### **1. Limiting the dependency on international trade**

41. States should avoid excessive reliance on international trade in the pursuit of food security. Their short-term interest in procuring from international markets the food which they cannot produce locally at lower prices should not lead them to sacrifice their long-term interest in building their capacity to produce the food they need to meet their consumption needs. There are two reasons for this. First, while theories based on allocative efficiency and specialization according to comparative advantage emphasize the aggregate benefits, at country level, of trade liberalization, a perspective based on the right to food requires that we examine the impacts on the most vulnerable. Throughout the developing world, agriculture accounts for around 9 per cent of GDP and over 50 per cent of total employment. In the countries where more than 34 per cent of the population are undernourished, agriculture represents 30 per cent of GDP and 70 per cent of employment.<sup>38</sup> Across all countries, the incomes of agricultural workers are significantly lower than in non-rural areas.<sup>39</sup> Therefore, for the realization of the right to food, there is no alternative but to strengthen the agricultural sector, with an emphasis on small-scale farmers.

42. Second, by developing their capacity to feed their populations, States limit the vulnerability which results from the dependency on the volatility of prices on international markets. As noted by the World Bank, “managing grain price risk is a fundamental requirement in a world characterized by more volatile international grain prices and recurring supply shocks that will likely result from global warming”.<sup>40</sup> Consultations should be held on the need to re-establish commodity stabilizing agreements for tropical products, cereals and oilseeds, sugar and cotton, all of which are of particular importance to developing countries, and should ensure the stabilization of prices for exports of agricultural commodities at levels that are stable,

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<sup>37</sup> See World Bank, *World Development Report 2008*, cited above, p. 43.

<sup>38</sup> FAO, *The State of the Food Insecurity in the World 2003*, p. 16.

<sup>39</sup> M. Ataman Aksoy, “The evolution of agricultural trade flows”, in M. Ataman Aksoy and John C. Beghin (eds), *Global Agricultural Trade and Developing Countries*, World Bank, Washington, D.C., 2005, 17, p. 19.

<sup>40</sup> Framework Document for proposed loans, credits, and grants in the amount of US\$ 1.2 billion equivalent for a Global Food Crisis Response Program (GFRP), 29 May 2008, p. 6.

quitable and remunerative.<sup>41</sup> Measures should also be avoided in order to avoid the negative impacts of non-commercial speculation on those markets. The creation of a virtual global food reserve would constitute a first important step in this direction. For the moment however, we have to draw the consequences from the volatility of prices on international markets.

## 2. Maintaining flexibilities

43. At present, a relatively small proportion of all food produced, estimated at 15 per cent, is traded internationally.<sup>42</sup> Yet, the prices fixed on international markets have an important impact on the ability of farmers in the world to make a decent living, since, as a result of trade liberalization, there is a tendency for domestic and world prices to converge, insofar as imported goods compete with domestically produced goods on local markets. States, particularly developing States, in accordance with the principle of special and differential treatment, must therefore retain the freedom to take measures which insulate domestic markets from the volatility of prices on international markets. Unless the trade agreements they conclude provide for the necessary flexibilities, States may find themselves bound by certain disciplines which will make them vulnerable to the variations of prices on international markets.

44. One risk is that local producers will be driven out by import surges. It is this which the establishment of a special safeguard measure seeks to avoid. Indeed, the measures States may take in order to strengthen their agricultural sector, including the measures which fall under the “green box” of allowable forms of domestic support to agriculture, will remain ineffective in the absence of such flexibility. Measures such as supply-management schemes, which guarantee a certain price to producers, should also be possible, although this requires that States remain free to maintain import tariffs at levels which allow them to protect their agricultural sector from the impact of the arrival on domestic markets of low-priced products. It is particularly perplexing that certain supply-management schemes, which seek to adapt production to demand and shield both producers and consumers from sudden shifts in prices, while at the same time ensuring processors a reasonable profit margin, would be threatened by proposals to reduce over-quota tariffs, even for products designated as sensitive because they are the subject of such a management scheme. Such schemes are an insurance policy for both producers and consumers against the fluctuations of prices on international markets. Their removal would be a regressive step in the realization of the right to food.

45. Another risk is that the net food buyers are made vulnerable to increases in prices, particularly since many developing States have little or no safety nets to protect the poorest segments of the population from such impacts. The Marrakesh Decision should insure net food-importing developing countries against this risk, but the answer it provides remains partial. For this decision to be fully effective, it would need to include a mechanism to systematically monitor the impact of the AoA reform process on the NFIDCs; it would need to define the notion of “adequate supplies” of basic foodstuffs (which, under the decision, NFIDCs should be able to obtain from external sources “on reasonable terms and conditions” throughout the reform

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<sup>41</sup> See art. XX, (g), GATT, and for the current proposals, WTO doc. TN/AG/W/4/Rev. 4, paras. 91 ff. (6 December 2008).

<sup>42</sup> The percentages are 6.5 per cent for rice, 12 per cent for corn, 18 per cent for wheat and 35 per cent for soybeans. M. Ataman Aksoy and John C. Beghin (eds.), *Global Agricultural Trade and Developing Countries* (Washington, D.C., the World Bank, 2005), pp. 177-179.

process) by reference to the need to ensure that each individual has access at all times to adequate food or to means for its procurement - i.e., that the increased prices which may result from the reform process shall not result in violations of the right to food; and it would need to be fully implemented.

### **3. Controlling market power in the global supply chains and counteracting the risk of increased dualization of the farming system**

46. One major imbalance in the current multilateral trade regime is that, while discipline is imposed on States, transnational corporations whose freedom to act has been significantly increased as a result are not subject to any obligations as regards the exercise of their power on the market. This is an important gap in global governance. In the medium to long term, a multilateral framework may have to be established to ensure a more adequate control of these actors. In the short term, States should act in accordance with their responsibility to protect human rights by adequately regulating actors on which they may exercise an influence, including in situations where these actors operate outside the national territory of the States concerned.<sup>43</sup> While the exercise of extraterritorial jurisdiction constitutes one option in this regard, other initiatives could be taken by States, such as the imposition of transparency or reporting requirements, or the imposition of conditions for access to export credits, in order to ensure that commodity buyers, food processors, and global retailers, contribute to the realization of the right to food and abstain from practices which might threaten its enjoyment. In cooperation with the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, the Special Rapporteur will organize inclusive consultations on this issue in order to identify which concrete measures could be recommended in this regard. Such measures could include rewarding or encouraging the best practices identified in the global food supply chain. Particular attention could be paid to the possibility of using competition law in order to protect, not only end consumers but also farmers selling their crops, from excessive concentration or abuse of dominant positions on the market.

47. Another risk which trade liberalization in agriculture entails is that the largest agricultural producers, which will benefit more easily from the opportunities resulting from improved market access, will crowd out smaller farms, for the reasons stated above. In many countries, small-scale farmers are among the most vulnerable segments of the population. States therefore owe them a special responsibility to counteract this tendency by supporting small-scale agriculture, in particular as regards access to land, water, and genetic resources, and access to credit; and by investing in, and improving their access to, rural infrastructure.

#### **D. Towards socially and environmentally sustainable trade**

48. The expansion of international trade in agricultural products may have hidden costs for the environment and for human health and nutrition. The future regulation of international trade in agricultural commodities should take into account the impact of various modes of agricultural production on climate change, in order to allow countries to provide incentives in favour of forms of production, such as organic farming or agro-ecological practices, which better respect

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<sup>43</sup> See E/C.12/2000/4, para. 39; E/C.12/2002/11, para. 31; CERD/C/CAN/CO/18, para. 17.

the environment, while at the same time contributing to food security.<sup>44</sup> Indeed, current agro-industrial forms of production represent a threat to agro-biodiversity, and are heavily dependent on cheap oil. Reversing the trend towards a generalization of these forms of production is important, considering the threat of climate change on our ability to maintain current levels of agricultural productivity in many regions.

49. Similarly, the experience of fair-trade schemes and other incentive-based initiatives should be studied, in order to examine whether they should be expanded and if so, how, in order to encourage socially and environmentally more sustainable trade. It may be asked, for example, whether inspiration could be sought from guidelines such as the Ethical Trading Initiative smallholder guidelines, in order to promote sourcing practices which are more sustainable and which, instead of contributing to the dualization of the farming system, strengthen the capacities and increase the incomes of small-scale farmers. Finally, as they face increased international competition, large food producers employing salaried workers may be tempted to violate fundamental labor standards, as defined in particular in the core conventions of the International Labour Organization. This too may call for specific responses. The Special Rapporteur would like to explore this issue more in-depth in the future.

## VII. CONCLUSIONS AND RECOMMENDATIONS

50. **The Special Rapporteur recommends that:**

(a) WTO Member States:

- **Ensure, notably through transparent, independent and participatory human rights impact assessments, that their undertakings under the WTO framework are fully compatible with their obligation to respect, protect and fulfil the right to food.**
- **Define their positions in trade negotiations in accordance with national strategies for the implementation of the right to food.**
- **Encourage national parliaments to hold regular hearings about the positions adopted by the government in trade negotiations, with the inclusion of all groups affected, including in particular farmers' organizations.**

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<sup>44</sup> See the UNCTAD/UNEP, *Organic Agriculture and Food Security in Africa* ([http://www.unep-unctad.org/cbtf/publications/UNCTAD\\_DITC\\_TED\\_2007\\_15.pdf](http://www.unep-unctad.org/cbtf/publications/UNCTAD_DITC_TED_2007_15.pdf)) showing the potential of organic agriculture in increasing agricultural productivity and raising incomes through reliance on low-cost, locally available technologies, without causing environmental damage, but also highlighting the need for an enabling policy and institutional support in order to scale-up organic agriculture and its associated positive side-effects. This study is only the latest in a series of studies whose conclusions converge on this point. See in particular Jules Pretty et al. (2006), "Resource conserving agriculture increases yields in developing countries", *Environmental Science & Technology*, vol. 40, No. 4 (2006) reviewing 286 agricultural projects in 57 countries and concluding that low external input agriculture improves food crop productivity by an average of 79 per cent.

- **Limit excessive reliance on international trade in the pursuit of food security and build capacity to produce the food needed to meet consumption needs, with an emphasis on small-scale farmers.**
  - **Maintain the necessary flexibilities and instruments, such as supply management schemes, to insulate domestic markets from the volatility of prices on international markets.**
  - **Fully implement the Marrakesh Decision and, in order for it to be fully effective, ensure that it include a mechanism to systematically monitor the impact of the Agreement on Agriculture reform process on NFIDCs and provides a definition of the notion of “adequate supplies” of basic foodstuffs that refers to the need to ensure that each individual has access at all times to adequate food or to means for its procurement - i.e., that the increased prices which may result from the reform process shall not result in violations of the right to food.**
  - **Adequately regulate private actors over which the State may exercise an influence, in discharge of their obligation to protect the right to food.**
  - **Explore ways to reorient trade towards products and modes of production which better respect the environment and do not lead to violations of the right to food.**
- (b) The WTO Secretariat:
- **Maintain and deepen the existing constructive dialogue with the Office of the United Nations High Commissioner for Human Rights.**
  - **Encourage WTO members to conduct human rights impact assessments prior to the conclusion of trade agreements or to accepting new schedules of commitments, with the assistance of the relevant United Nations entities.**
- (c) The international community:
- **Explore means of limiting the volatility of prices on the international commodities markets, particularly for tropical products, oilseeds, sugar and cotton, for instance through commodity-stabilization agreements.**
  - **Take steps towards the establishment of a multilateral framework regulating the activities of commodity buyers, processors, and retailers in the global food supply chain, including the setting of standards by these actors and their buying policies.**
  - **Structure economic interactions to move toward more sustainable agricultural practices, in light of the need to fight climate change and rural poverty.**