Towards a New Balance of Trade in Agriculture

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ABSTRACT
Trade in agriculture is linked to a whole range of economic, environmental, societal and future interests. For this reason, international regulation of trade in agricultural goods is highly contentious. While mainly directed towards an opening of markets, the WTO Agreement on Agriculture also has some entry points for ‘non trade concerns’. However, the agreement still looks like a casual patchwork that allows rather unsystematically for exemptions, without explicitly exposing the grounds that allow for them. The question arises of how the agreement could be drafted in a more structured way, in order to make sure that the economic objectives are efficiently pursued, and at the same time that human rights and environmental concerns are adequately taken account of? The concept of sustainable development provides for a methodical ‘seven step’ framework that gives guidance on integrated decision making processes. In this paper, this framework is partially applied to the Agreement on Agriculture. This working paper served as an introductory note to a brainstorming workshop on the subject that took place on 27 March 2009 at the World Trade Institute, University of Bern.

KEY WORDS
Trade in Agriculture, Concept of Sustainable Development, Integrated Decision Making, Alternative Approaches

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1. Some Features of Trade in Agriculture

International trade in agriculture is highly distorted. While more than half of the population in developing countries obtains its livelihood from agriculture, compared to less than 10% in developed countries, only a small percentage of internationally traded food stems from developing countries. Food price volatility is high. Biofuels promote the increase in food prices. Differences in governmental support are huge. OECD countries spend a significant part of their budget on agricultural subsidies. On average, tariffs on agricultural products are much higher than tariffs on industrial goods. Above all, processed agricultural goods are protected. Many developing countries have liberalised their agricultural sector as a result of conditions linked to structural adjustment programmes.

In agriculture, different actors compete with each other. Differences in productivity between farmers are huge. Intermediary trade is highly concentrated, which impedes competition and weakens the position of the producers.

At the same time, three-quarters of the world’s 850 million undernourished people live in rural areas. Even if producing food, many of them are net food consumers, which makes them sensitive to price fluctuations. Undernourished people in urban areas are often dependent on cheap imports of subsidised food. The GINI index of land concentration shows huge inequalities in the distribution of land in certain areas. On the micro-level, gender inequalities are common. Women often lack access to property, to the credit market or to marketing networks. Furthermore, the world’s population is expected to rise by about 2.5 billion to 8.5 billion in the next thirty years.

In recent decades, the level of biodiversity has decreased significantly. New varieties are developed by breeding or technology. About 10% of the greenhouse gas emissions can be traced back to agricultural production. In the meanwhile, biofuels are said to help in reaching reduction goals. A significant decrease in soil fertility is being seen, and water is scarce in some regions. Struggles over resources will become more intense. Climate change researchers predict more extreme changes in the weather. At the same time, better conditions are expected for agricultural production in some countries with a temperate climate, mainly in the North.

Finally, changes in agricultural structures have an impact on cultural diversity. Diets, ancient customs, education and leisure activities are closely linked to conventional agricultural traditions.

All these aspects and more are influenced by the way in which trade in agriculture is regulated. Objectives related to the various aspects are stated in a broad range of international agreements. Trade regulation can promote or hinder their achievement, depending on how the incentives are set.

2. The Agreement on Agriculture and the Doha Negotiations

International regulation of trade in agricultural goods is highly contentious. The WTO Doha Round got stuck mainly because of imbalances in the options that are on the table.

The structure of the ‘1995 WTO Agreement on Agriculture’ (AoA) is geared towards the dismantling of trade barriers through the three-pillar approach involving tariffs, domestic support and export subsidies. At the same time, the preamble of the WTO and the AoA, as well as AoA Art. 20, call for taking into
account non trade concerns while shaping new rules. For this, exemptions were introduced, such as ‘special and differential treatment provisions’, the green box catalogue of ‘minimal trade distorting measures’, and special safeguard provisions.

Contrary to the dismantling objectives, the current rules legalise supporting measures to a wide extent by allowing for certain levels of protection. Those countries with an open market structure, however, cannot step backwards.

The (basically still mercantilistic) negotiations in the Doha development round follow the given structure of the AoA. The aim is to strengthen the disciplines, to reach further tariff and subsidy reduction commitments and to eliminate export subsidies. In order to protect rural livelihoods from the negative impacts of trade liberalisation, new exemption provisions were put on the table, such as the protection of special products and the introduction of special safeguard mechanisms. Wealthy countries advocate new protection tools such as the introduction of a sensitive product category or the extension of the scope of application of geographical indications, without expressly stating any supporting arguments. Transverse to the general structure lies the cotton initiative which specifically envisages the dismantling of subsidies in the cotton sector. (WTO: 2008)

In this way, despite the underlying trade liberalisation paradigm, exemptions come increasingly into play. If accepted, they would make the AoA look even more like a casual patchwork that allows rather unsystematically for exemptions, without explicitly exposing the grounds that allow for them.

3. Reaction from Civil Society

This patchwork and the deficiencies of the current system of trade in agricultural goods have given rise to uncertainty and criticism. Reactions from civil society organisations are diverse, depending on the particular causes about which they advocate and the perspectives they take.

While the ‘classical trade community’ continues to promote trade opening, NGOs that advocate social or environmental causes are divided. Some focus on the improvement of market access for producers from developing countries and advocate the dismantling of support measures in developed countries. Others focus more on defence from harsh competition and the need for improved protection tools for poorer countries. More far-reaching proposals challenge the fundament of the AoA. This is done for example by the food sovereignty initiative that was brought into the debate by Via Campesina (Rosset: 2006) and has been taken up by a significant number of NGOs. According to them, ‘food sovereignty’ implies the right of countries to determine and implement their own food security policies, corresponding to their required level of protection.

More nuanced approaches have come to the fore as a result of the food crisis. The most prominent will perhaps be the report by the UN Special Rapporteur on the Right to Food, Olivier de Schutter, on the relationship between the WTO and the human right to adequate food (De Schutter: 2008). The report summarises the macro- and microeconomic impacts of trade liberalisation on various dimensions of societies, and contains recommendations that go beyond the official debate. Starting from the point that the notion of a ‘level playing field’ is illusory, it calls for limiting the dependency on international trade, for maintaining flexibilities, for controlling market power in the global supply chain,
for counteracting the risk of increased dualisation of the farming system and for including in the system social and environmental incentives.

Certain features characterize the public debate. Often, the debate takes place along the line between small farmers and agro-industrial producers, without making it transparent. Further, policy interventions are often claimed to be ‘protectionist’, without defining precisely what is meant by this term. Is every policy intervention protectionist or only those that cannot be justified on social and environmental grounds? And what if socially justified measures at the same time allow for the pursuit of national economic interests and undermine the legitimate interest of others?

4. Sustainable Development as an Integrative Concept

All the proposals being debated are attempts to better include ‘non trade concerns’ in the trade regulation system. However, how could this be done more systematically?

The concept of sustainable development provides for a tool for integrated decision making. The preamble of the WTO itself claims that trade rules should promote sustainable development, inter alia. Hence sustainable development instruments should be applied to decision making in trade affairs.

Integrated decision making is a process that makes sure that the outcomes are integrated and thus have taken social, environmental, economic and future concerns equally into account. This does not imply that all the various aspects have to be regulated at once. However, the impacts of a certain agreement on these aspects have to be anticipated, and the agreement has to be shaped in such a way that the various concerns are positively promoted and not undermined. Often cited as good examples of integrated agreements are the 1994 United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, and the 1997 United Nations Convention on the Non-Navigational Uses of International Watercourses. (Cordonier Segger: 2004)

In order to achieve integrated outcomes, certain steps have to be followed that are drawn from the concept of sustainable development. Thus a few words about “sustainable development” in general are merited.

What sustainable development is differs from context to context. There is not one sustainable development. The concept is about facilitating balanced development that allows for economic diversity, viability and innovation and, at the same time, improves the situation of the most vulnerable and promotes social balance. It respects the limits set by nature. In addition, the concerns of future generations have to be taken into account, which leads to short and long term considerations. Unlike the classical 3-dimensional approach, the 4-dimensional approach as developed by Katja Gehne (WTI) puts future considerations on an equal footing with social, environmental and economic concerns (Gehne: forthcoming). This approach is followed here.

The concept of sustainable development looks for the de facto impacts of a certain regulation. It ensures that conflicts between the dimensions are made transparent and are brought to the table. Following the concept, it is necessary to look for synergies and the most balanced, optimal options. It is not assumed that every conflict can be resolved. Totally balanced solutions will often not be possible. Rather it is mostly about approximations. It may be that several optimal options are available. Policy decides in the end.
The concept of sustainable development allows for de-construction of inflexible negotiating positions, for detaching rigid debates from ideologies and for enabling outside-the-box thinking and creativity. It allows complex situations to be dealt with in a nuanced way, but it implies that open minded experts are ready to deal with complexities. It does not admit the primacy of one dimension or of certain instruments. Regarding trade, this constrains e.g. the primacy of the trade liberalisation paradigm.

5. The Concept of Sustainable Development as a Methodological Norm: The Seven-Step-Framework

In law, the sustainable development concept is, although controversial, mostly understood as a methodological norm that provides for a systematic methodological framework. The method it provides can, in principle, be applied to all decision making procedures, including international law.

Besides questions like ‘who should participate?’ or ‘how should minorities be given adequate weight?’, the method is about the path that should be followed when moving towards a decision about policy action or the absence of it. The following discussion focuses upon this ‘path’. It consists of seven steps which are delineated here in a somewhat simplified way:

1. If new regulation is planned, the underlying goals have to be made transparent and to be put on the table. Which goals shall be reached? What shall be promoted by the new regulation? The objectives have to be identified along the lines of the four dimensions. In international law, legal standards codified in international agreements state the objectives. For a better structuring it is important to distinguish between goals, sub-goals and instruments that help one to reach these goals.

2. ‘Preliminary optimal options’, which will do most justice to all of the objectives, have to be developed. It is important to elaborate several ‘preliminary options’ with different weighting, so that they can be compared. Regulatory optimality can be reached soonest when: possible conflicts are made transparent, synergies are sought, and an effort is made to prevent unnecessary trade offs. A regulatory option will never be optimal if one dimension is absolutely favoured or if certain instruments cannot be questioned at all.

3. The preliminary options have to be subjected to ex ante sustainable impact assessments. These assessments must be carried out by a group of persons with a broad range of expertise. Not only do the likely impacts of the regulatory option on the macro-level of a society have to be investigated, but also the impacts on the individuals and the relationships between them.

4. Depending on the outcome of the assessments, the options might need to be adjusted and the most optimal ones identified.

5. The remaining options have to be weighed against each other in a participative process. What are the benefits, what the trade offs?

6. The final step consists in taking a decision. One of the optimal options is chosen and implemented.

7. However, the process does not end with the decision making. Ex post sustainable impact assessments are necessary to verify whether the expected impacts occur. If not, adjustments may be needed.
6. The Trade Sustainable Impact Assessments of the EC: Critique

Mainly as a result of civil society’s criticism of the WTO, the European Community started to subject the Doha negotiation proposals to *ex ante* sustainable impact assessments that examine not only the various impacts on the EC countries, but also on various categories of developing countries. Although methodologically controversial, the studies illustrate how the impacts of further (imbalanced) trade liberalisation are ambiguous. While macro-economic data might mostly improve slightly, the impacts on the social and environmental dimensions are said to be often adverse. (Kirkpatrick/George/Scireci: 2006)

These findings led the studies’ experts to recommend paralleling the new trade provisions with mitigation and enhancement measures (‘M&Es’) such as aid for trade, better education, or infrastructure. The negotiation proposals themselves were not called into question.

According to the seven-step-framework, however, the negotiation proposals should also be open to adjustment. This does not imply that M&Es are not relevant. They are part of the overall regulation package that is subject to examination.

7. The Seven-Step-Framework applied to the Regulation of Agricultural Trade

This seven-step framework can also be applied to the regulation of trade in agriculture.

What might an optimal, integrated option look like? This is difficult to predict as it would imply a comprehensive process with considerable amounts of expertise involved.

In the following, the first step will be taken. After this, some elements of a possible ‘preliminary optimal option’ will be drafted (second step).

7.1. First Step: Underlying Objectives

An internationally recognized social standard that is closely related to agricultural trade is the right to adequate food as enshrined in Art. 11 of the ‘1976 International Covenant on Economic, Social and Cultural Rights’. It covers the aspects ‘enough food’, ‘affordable food’, ‘safe food’ and ‘well-balanced diet’. The food security concept is the related policy concept. The right to water is equally enshrined in Art. 11 of the Covenant. Art. 14 of the ‘1981 Convention on the Elimination of All Forms of Discrimination Against Women’ (CEDAW) contains specific guarantees regarding rural women. Women shall for example have access to agricultural credits and loans and be guaranteed equal treatment in land and agrarian reform. Important standards are contained in the ‘1990 Convention on the Rights of the Child’ and the ILO conventions on adequate working conditions. In general, all human rights codified in binding international agreements are directly or indirectly relevant as benchmarks and can be affected positively or negatively by rules on international agricultural trade, as they are inseparable and closely interrelated.

Furthermore, agriculture has strong connections with culture, and influences the cultural expressions of a society. Cultural objectives set by the international
community are reflected in the ‘2007 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions’. One objective of the convention is to “give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning” (Art. 1 lit g) and to guarantee the sovereign rights of States to adopt policies for the protection of cultural expressions. Of particular relevance in this context are dietary traditions, traditional knowledge that builds the basis for conservation of biodiversity, and education or cultural identity in a more general sense.

Agricultural production is confined by the limits set by nature. Environmental standards seek to set the framework within which production can take place. Internationally recognized environmental standards with close links to agriculture are set out in the ‘1993 Convention on Biological Diversity (CBD)’ and the ‘2001 FAO Treaty on Plant Genetic Resources for Food and Agriculture’ (‘seed treaty’). Key provisions of the seed treaty are Art. 5 and Art. 6 that promote – besides ex situ conservation – in situ conservation of genetic material. For this, “fair agricultural policies” shall “promote […] the development and maintenance of diverse farming systems that enhance the sustainable use of agricultural biological diversity” (Art. 6,2). Forest and soil protection standards are set, for example, by the ‘1992 UNCED forest principles’, or the ‘1994 Convention to Combat Desertification in Countries Experiencing Serious Drought’, but comprehensive international agreements are lacking in this field. The same is true for animal health standards. The ‘1994 United Nations Framework Convention on Climate Change’ (UNFCC) together with the ‘1997 Kyoto Protocol’ set relevant benchmarks for agricultural production regarding its CO₂ and methane emissions. Landscape diversity standards have so far mainly been a matter of regional concern (e.g. the ‘1991 Convention of the Protection of the Alps’).

Food Safety requirements can be regarded as a cross-cutting issue reflecting social, cultural and environmental objectives. The Agreement on the Application of Sanitary and Phytosanitary Measures (‘1995 Agreement on the Application of Sanitary and Phytosanitary Measures’) of the WTO and the ‘2003 Cartagena Protocol’ are particularly relevant in this respect. The ‘1996 World Food Summit Plan of Action’ concludes that mixed-farming systems are required in response to the needs of consumers for properly balanced diets.

Basic economic objectives can be drawn, for example, from the WTO and other trade agreements. The underlying reasoning of such agreements is to obtain a rule-based, open market system which is transparent, predictable and non discriminatory, and provide for a peaceful settlement of disputes. The aim is an increase in productivity, as long as no other relevant concerns demand a slower pace. Efficiency of state measures is key: states shall only intervene if this is necessary to reach the objectives pursued (proportionality). Cost effectiveness is a central aspect.

Particular developmental goals are part of the economic dimension. Developmental objectives are based on the insight that countries do not start with a level playing field. This is reflected in the legal ‘principle of common but differentiated responsibilities’. In addition, the ‘1986 Declaration on the Right to Development’ postulates “the right and the duty to formulate appropriate national development policies” (Art. 2.3). At the same time, states have the duty “to co-operate with each other in ensuring development and eliminating obstacles to development” (Art. 3.3.).

Concerns for future generations are as yet scarcely reflected in international agreements. Such concerns would be about providing future generations with at least the same opportunities as are enjoyed by the present generations, or
about not degrading natural, social or economic capital as a whole. (Weiss: 1989)

All these standards are interlinked. So is conservation of biological diversity not only relevant to the dynamics of the ecosystem, but also to food security and to market innovation. At the same time, food security guarantees a healthy workforce, and lively, innovative markets can improve social and natural conditions. (For more Bürgi: 2007)

7.2. Second Step: ‘Preliminary Optimal Option’

7.2.1 Introduction

If one follows the sustainable development framework described above, the next question is: What international regulation system of trade in agriculture would best guarantee that all the above-mentioned objectives are optimally promoted?

From here on, lawyers skate on thin ice. Experts from various disciplines would need to jointly develop such preliminary options. Here, only some elements of how such a preliminary option could look like will be drafted.

For doing so, it is proposed to begin at zero, as the current AoA is a historically grown patchwork and therefore not suited as starting position. A fully open system should instead serve as the starting point. It shall be assumed that trade in agricultural goods would be totally opened and not further regulated, and this would occur at a single blow. The probable positive and negative impacts of such an open system on the various objectives have to be anticipated. If the likely impacts are said to be negative, regulatory correctives come into play, whereby it is much about setting the right incentives. A preliminary optimal solution, elaborated in this way, can then be compared to the existing AoA. This will help to identify the path that should be followed. In this debate, for once, political feasibility will not be relevant.

If the problems global food production faces were approached comprehensively, many areas would have to be touched upon (eg. Braun: 2008). Besides classical trade rules, one would have to deal with competition rules for the highly concentrated intermediary sector, with regulations for commodity futures markets, or the re-shaping of food aid programmes. From a comprehensive perspective, the debate should further consider price volatility and instruments for its prevention, the establishment of shared public grain stocks, the development of more balanced sanitary and phytosanitary standards, and issues of tariff escalation. The debate should also ask how investment in research and innovation or investment in sustainable agricultural production can be fostered; how micro-credit opportunities and risk insurance can be promoted; and how ODA funding can be re-directed into agriculture. It should deal with property and leasing rights and their limits, with the question of how internal displacement can be avoided, how the production of biofuels should be dealt with, how social safety nets could be strengthened, and how rural education can be improved, among others. Some NGOs promote the idea of a global food convention (Harkness/Spieldoch: 2009) that could touch upon several of these issues.

For a beginning, three points that are closely related to trade are singled out. The assumptions are based upon various empirical studies and their findings. However, they still have to be verified.
7.2.2. Enabling local markets

Empirical studies repeatedly show that small scale farmers in developing countries have to be protected from harsh international competition for food security reasons (eg. IFAD: 2001; FAO: 2003). It is argued that lively local markets that guarantee sale at a predictable price can often do best.

On the other hand, access to an undistorted international market can strengthen poor local markets, and access to rich countries’ markets is said to be key to the improvement of food security.

Similarly, the maintenance of cultural diversity and biodiversity is said to be dependent on the existence of ‘diverse farming systems’, as seen above. In a situation where differences in productivity are huge, diverse farming systems can only survive if certain protection from harsh competition is given.

These assumptions lead to the conclusion that local market structures have to be maintained, while at the same time access to a non distorted international market should be available. But how could such a ‘local market – international market’ dilemma be resolved? For this, the following questions are raised.

What is a ‘local market’, and how can it be defined?

- Is the coexistence of local markets and non distorted international markets possible?
- Would this imply an ‘only to a certain extent’ protection?
- What would be the most efficient policy intervention that could ensure a ‘to a certain extent protection’ and at the same time make sure that the underlying objectives such as ‘food security’ and ‘biodiversity’ are promoted?
- How can it be ensured that the chosen protection tools do not distort world market prices?
- How to make sure that local market protection does not impede necessary structural change, increase in productivity and innovation (Aerni: 2009)?
- And how can local market protection be limited in order to ensure market access where necessary and just?
- Could the degree of ‘self sufficiency’, for example, serve as an indicator? States could, for example, be allowed to protect their markets to a degree of 30% (or a figure corresponding to their level of development) which would amount to a ‘partial food sovereignty’. Would such a ‘policy space’ rule have to be coupled with certain conditionalities in order to prevent the monoculturalisation of the production? What would have to be regulated on an international level and what at a regional or national level?
- Or could the policy measure be directed towards specific products, similar to the special/sensitive product exemptions?
- Should the protection tools be aligned with country owned development programmes?
- How should the local markets themselves be regulated in order to allow for price predictability?
- Does the AoA already allow for adequate protection tools? Or does it provide for too much policy space (eg. green box)?
7.2.3. Good Agricultural Practices

A totally open system would provide an incentive to use the cheapest means of production of agricultural goods. This is not necessarily the most sustainable way of production. It is argued that the pressure exercised by harsh competition often leads to a ‘race to the bottom’ and to the non-compliance with national environmental and social standards.

On the other hand, private standards (‘Good Agricultural Practices’, GAPs) are increasingly imposed on producers by intermediary trade and retailers. Such private GAPs are not multilaterally disciplined and often lead to discrimination in market access against producers from poorer countries, which again undermines food security. (Häberli: 2008)

From both aspects one can draw the suggestion to introduce sustainable standards (internationally recognized GAPs) into the regulation of trade in agriculture. GAPs would consist of core social, environmental and economic standards.

Here are some questions for the discussion:

- If binding ‘Good Agricultural Practices’ were codified, what would they consist of? Is it at all possible to elaborate standards that are relevant to all agricultural production? Would the GAPs have to be regionally adapted?
- Could binding standards be drawn from existing international initiatives, such as the FAO general principles for Good Agricultural Practices that deal with soil and water protection, crop protection, animal health and welfare, energy and waste management, human safety and landscape?
- How can it be ensured that social standards also encompass the property aspects and with them the issue of internal displacement?
- How far could standards be drawn from existing private initiatives, such as fair trade or organic labelling initiatives? Or could existing initiatives be accredited?
- Could mutual recognition of standards be an option?
- Could one draw from national biofuel regulations that seek differentiation based on sustainability?
- How to make sure that GAPs do not exclude small scale farmers out of the market?
- How to ensure that GAPs to not undermine innovation and increase in productivity?
- What institution should decide on the standards? The FAO?
- How can the standards be brought into the trading system? By legal referencing, similar to the SPS references to the Codex Alimentarius?
- If a country does not ensure compliance with the binding GAPs, what would be the consequences? Could their exports be countervailed?
- Or would it just be a case for product differentiation based on accepted process and production methods (PPMs)?

7.2.4. ‘Entry fee’
The GAP example could be extended to the overall state of food security, biodiversity etc. Here, the idea would be to demand from the member countries an entry fee if they wish to participate in the international market. Exports would only be possible if food security or certain biodiversity benchmarks are complied with, or if it can be proved that with the export earnings the situation is better than it would be without. Otherwise, countervailing measures could (or would have to) be applied on the imports. This would force net food exporters, in particular, to comply with their other international obligations.

7.2.5. Concluding Remarks

These are just three examples of the elements a 'preliminary optimal option' could contain. Once the various necessary elements are identified, they have to be put together, and the overall result would have to be examined. This might make conflicts and possible synergies transparent, and adjustments can be made. Of course, political feasibility would have to come into play quite early on. Once several preliminary options are defined, they have to be submitted to the other steps of the seven-step-framework. All this can only happen in a comprehensive, time-consuming process involving lots of expertise, having all relevant perspectives represented.

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