

# AGRICULTURAL TRADE: TAKING INTEGRATION SERIOUSLY<sup>1</sup>

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## SUMMARY

The eradication of poverty worldwide requires overall sustainable development which addresses the root causes of poverty. In this context, international trade (and the way in which it is shaped by international rules) plays a significant role and can contribute to narrowing the gap between poor and rich countries. Trade can also have a positive impact on the distribution of wealth within the countries themselves.

In order to make this happen, however, trade rules need to be shaped in a sustainable way following the concept of sustainable development. This concept has evolved in international law during recent decades. It requires policy-makers to balance the economic, developmental, social and environmental interests of both

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<sup>1</sup> This article is part of the more comprehensive, legal research project on “The Concept of Sustainable Development Applied to the WTO Agreement on Agriculture”. As the research is not yet complete, some sub-questions will be better reflected here than others. In addition, some arguments have been simplified as required for a discussion paper. The paper reflects the personal perceptions of the author and not those of the World Trade Institute.

present and future generations whenever they revise existing rules or shape new ones. The concept of sustainable development applies, in principal, to the WTO agreements, and in particular to the WTO Agreement on Agriculture (AoA).

The preamble of the AoA, on the one hand, calls for a “fair and market-oriented system”, which is generally understood as dismantling trade distortive measures such as domestic support measures and export subsidies and providing market access through an open market system (the “free market paradigm”). On the other hand Member countries shall, according to the preamble, have “regard to non-trade concerns, including food security and the need to protect the environment” and accept “special and differential negotiations for developing countries as an integral element of the negotiations.”

In the current trade negotiations, however, the arguments pushing for a more open market system have a much better chance of being heard than initiatives which take into account public policy objectives that are not directly linked to trade interests. Examples are the initiatives of the G33 (a large group of developing countries with defensive interests in agricultural trade) that promote the protection of “special products” and “special safeguard mechanisms” on the basis of food security, livelihood security, and rural development concerns. A similar approach is brought into the discussion by some net food importing, industrialised countries: they envisage the protection of certain “sensitive products” while referring mainly to cultural and environmental concerns. All these initiatives call for more nuanced approaches rather than simply liberalising markets.

The AoA can certainly contribute to an improved situation especially for small-scale farmers – who are among the most vulnerable – in developing countries by dismantling the widespread trade distortive policies mainly practiced in rich industrialised countries. However, this objective is unlikely to be reached as long as non-trade sensitivities based on social, environmental, developmental or cultural reasons are not seriously taken into account. The article introduces some of the new developments in the current negotiations on trade in agricultural goods. Further, it

attempts to identify the non-trade concerns which are internationally recognised, a necessary precondition if such concerns are to provide a legitimate basis for a careful balancing of interests against the background of the principle of integration, the core element of the concept of sustainable development.

If agricultural trade rules are to be situated within a framework comprising the identified benchmarks, some preconditions will have to be met. Inter alia, the conduct, and serious consideration of, comprehensive impact assessment studies both before shaping new rules and in the aftermath, will be important. For this purpose, major procedural reforms will be required. Similarly, greater transparency, flexibility and a new approach towards the non-discrimination principle as applied in trade law will be essential.

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## **Introduction**

### **1.1 Poverty Eradication and Trade in Agriculture**

The eradication of poverty worldwide requires overall sustainable development which addresses the root causes of poverty. In this context, international trade (and the way in which it is shaped by international rules) plays a significant role. It can contribute to narrowing the gap between poor and rich countries and have a positive impact on the distribution of wealth within the countries themselves. In particular, trade in agricultural goods is commonly attributed a positive impact on the development which enables populations to escape poverty in rural areas. How agricultural trade rules should be shaped in order to contribute to the alleviation of poverty is, however, highly contentious.

### **1.2 International Trade in Agriculture: Some Features**

“Only marginal movement”, “last calls for submissions”, “moment of truth”, “hard talking among a representative group of ministers”, “deadlock”, “we are now in crisis”. These and similar promises, appeals and expressions of resignations were used abundantly by WTO General Director Lamy and other WTO officials, leading up to the end of June 2006, while trying to extricate themselves from the apparently stalled WTO negotiations. Finally, in July 2006 the standstill of the overall negotiations was proclaimed. This happened mainly because no substantial progress had been achieved in the negotiations regarding the WTO Agreement on Agriculture (AoA).<sup>2</sup> It illustrates how controversial the shaping of international trade in agriculture is and has always been at the World Trade Organization (WTO), the institution that stands for multilateral negotiations. But what is the factual background that underlies the controversial situation?

The worldwide population making a living from farming is still huge. While the proportion of people living in urban areas is rapidly increasing compared to the

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<sup>2</sup> WTO Agreement on Agriculture of 1994.

numbers of people living in rural areas, the total rural population has nevertheless grown significantly during the last few decades; mostly in developing countries.<sup>3</sup> Although the share of agriculture in GDP and growth in agricultural sectors has declined in most regions, the share of food and agricultural raw materials in total merchandise exports has remained high in many developing and emerging regions. The livelihoods of many rural people in developing countries are therefore highly dependent on export facilities.

However, the by far highest share in global agricultural trade is still taken by the the high income countries.<sup>4</sup> They continue to protect their agricultural sector with significant subsidies and high tariffs<sup>5</sup>. At the same time the share of expenditure on agriculture has fallen in proportion to total government spending in all developing regions except east and south-east Asia.

The real commodity prices continue to decline as they have over the past 40 years, although trends have slowed since the 1990s.<sup>6</sup> At the same time, high volatility is seen. Agricultural exports are strongly affected by these conditions, which lead to market instability.

Finally, rural areas in developing countries are often affected by inequalities, such as unequal distribution of rural resources (land, water),<sup>7</sup> unequal division of rights and duties between women and men, inequality in education and health care (inequality traps), increasing inequality between the rural and urban areas within the countries themselves (income gap).

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<sup>3</sup> See United Nations Department of Economic and Social Affairs, Population Division, World Urbanization Prospects: The 2003 Revision, New York 2004 (UN).

<sup>4</sup> See World Bank, World Development Indicators 2006, Washington DC 2006 (World Bank).

<sup>5</sup> See the OECD Producer Support Estimates 2006 in: OECD, Agricultural Policies in OECD Countries: At a Glance, Paris 2006 (OECD).

<sup>6</sup> See FAOSTAT food price statistics: <http://faostat.fao.org/site/351/default.aspx> (5 December 2006).

<sup>7</sup> See FAO World Census of Agriculture 2000 (<http://www.fao.org/ES/ess/census/default.asp>) and Robert Eastwood, Michael Lipton, Andrew Newell; Farm Size, Paper prepared for Volume III of the Handbook of Agricultural Economics (forthcoming), Sussex 2004 ([http://www.sussex.ac.uk/Units/PRU/farm\\_size.pdf](http://www.sussex.ac.uk/Units/PRU/farm_size.pdf); 5 December 2006).

Against the background of these realities, liberalisation of the agricultural market is frequently seen as an important tool for accelerating the escape of developing and emerging markets from poverty. "Liberalisation" includes the worldwide elimination of both tariffs and subsidies, such as export subsidies and domestic support measures. This objective shall be pursued within the framework of the WTO and is said to provide developing countries a much greater share in global agricultural trade.

At the same time, the voices of caution are increasing. They stress the negative consequences of unconditional liberalisation on a broad range of poorer countries. Inequalities would not disappear, but may even be exacerbated within and among poorer countries, as competition would become stronger. While some developing countries with good assets could benefit, many would be among the losers, with an even more negative impact on their environment and social conditions. Thus, a recent Carnegie study<sup>8</sup> came to the conclusion that liberalised agricultural trade would not be a panacea for most poor countries, and that the poorest countries might actually lose out from any agreement, if no additional measures were taken.

Similarly, the Food and Agriculture Organization of the United Nations (FAO) conducted several case studies entitled "Agriculture, Trade and Food Security: Issues and Options in the WTO Negotiations from the Perspective of Developing Countries".<sup>9</sup> In the economies of all the countries studied, agriculture plays a central role. The FAO came to the conclusion that the impact of more open markets on the selected developing countries is ambivalent. Whereas it has been shown that productivity and competitiveness is regularly improved, food security may often decline because of displacement and marginalization of farm labourers and creation

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<sup>8</sup> Sandra Polaski, Carnegie Endowment for International Peace, *Winners and Losers: Impact of the Doha Round on Developing Countries*, Washington 2006.

<sup>9</sup> FAO, *Agriculture, Trade and Food Security: Issues and Options in the WTO Negotiations from the Perspective of Developing Countries*, Vol. I and II Country Case Studies, Rome 2000.

of hardship that typically affects small farmers and food-insecure population groups, in a situation where there are few safety nets.<sup>10</sup>

On several occasions, the Human Rights Committee on Economic, Social and Cultural Rights has invoked the discrepancy between macro- and microeconomic data, in noting the existence of growth in agricultural exports together with food security problems in the same country. Brazil for example has been confronted with the following question by the Committee:

“39. Please explain why 7 per cent of Brazilian children suffer from undernourishment, in spite of the fact that the national production of the grains would be sufficient to feed one and a half times the total population of Brazil [...]”<sup>11</sup>

These examples show that the picture is much more complex than frequently believed. Not only developmental and social, but also environmental and cultural concerns are linked to the regulation of trade in agriculture, and significantly affected by it. Some of this complexity was reflected during the last negotiation period, even though the different approaches remained unstructured.

In the following, the main features of the recent AoA negotiation process will be described: What were the main conflicting positions, and how were the negotiations structured? I will then address the question of how it would look if the concept of sustainable development was correctly applied in the WTO decision-making process. The basic task will be to identify the internationally recognized benchmarks that should be taken into account while shaping the framework within which agricultural trade rules should be situated.

## **2 Agricultural Trade Negotiations at the WTO**

### **2.1 Agreement on Agriculture**

Being a recent treaty, the AoA was only signed in 1994 under the umbrella of the then newly established World Trade Organization (WTO). According to the “single

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<sup>10</sup>ibid, Vol. I, p. 12.

<sup>11</sup> See CESCR State Party Report on Brazil (Initial Report), E/1990/5/Add.53, 30<sup>th</sup> session, 18 May 2003, Nr. 39, in: 3D/Magali Fabre, The Committee on Economic, Social and Cultural Rights; References to Trade-Related Issues, A Compilation, Geneva 2006.

undertaking approach”, the AoA can only be amended in a comprehensive process including all the other multilateral agreements of the WTO. It sets multilateral rules for international trade in agricultural goods. The other multilateral WTO agreements such as the GATT<sup>12</sup> or the SPS<sup>13</sup>, as well as the Marrakesh Agreement Establishing the World Trade Organization of 1994,<sup>14</sup> are applicable to agricultural trade, too, as long as the AoA does not regulate a situation definitely.

The AoA mainly contains rules on market access, domestic support and export subsidies. One of the predominant objectives of the AoA is to provide *transparency* and *predictability* of trade rules. Another objective is to get countries to make *concessions in market access* and to *eliminate unnecessary market distortions*.

As agricultural goods were practically excluded from the GATT for many decades, the adoption of the AoA in the 1990s was widely regarded as a big step, although few changes and concessions were achieved during the first implementation period.<sup>15</sup> Art. 20 AoA calls for an assessment of the impacts of the first round and the continuation of the reform process. Art. 20 furthermore declares *substantial progressive reductions in support* of a long-term objective, whereas *non-trade concerns* and *special and differential treatment of developing countries* shall especially be taken into account.

## **2.2 Doha Development Round**

In 2001, a new negotiation round was launched in Doha. Against the background of growing criticism from civil society and developing countries (see in particular the conference in Seattle 1999), the so-called Doha Round was expressly and rhetorically transformed into a “development round” that sought to give priority to the interests of developing countries. Para 2 of the Doha Ministerial Declaration<sup>16</sup> states that “international trade can play a major role in the promotion of economic

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<sup>12</sup>WTO General Agreement on Tariffs and Trade of 1994,

<sup>13</sup>WTO Agreement on the Application of Sanitary and Phytosanitary Measures of 1994.

<sup>14</sup> All the WTO agreements can be found on the web site of the WTO: <http://www.wto.org>.

<sup>15</sup> A major success was the tariffication of the non-tariff barriers (as required in Art 4 para 2 AoA) and the scheduling of subsidies and concessions, which led to a significant rise in transparency.

<sup>16</sup>WTO Doha Ministerial Declaration, 9-14 November 2001, WT/MIN(01)/DEC/1.

development and the alleviation of poverty.[...] The majority of WTO Members are developing countries. We seek to place their needs and interests at the heart of the Work Programme adopted in this Declaration.”

In this context, particular importance was given to the agricultural trade negotiations. Para 13 of the Doha Declaration calls for a “programme of fundamental reform encompassing strengthened rules”, while referring to Art. 20 and the notions it mentions, such as substantial improvement in market access, non-trade concerns and special and differential treatment of developing countries (s. above). According to the Declaration, the developing countries in particular should be enabled to “effectively take account of their needs, including food security and rural development”.<sup>17</sup> The notions of food security, rural development and non-trade concerns were, however, not further defined.

But did the negotiations follow the direction prescribed by the Declaration? The various positions will be summarised below.

### **2.3 Negotiation Positions**

The picture of recent agricultural negotiations can be summarized as follows: the most offensive strategy was embarked on by the G20 (a group of developing and emerging countries led by Brazil, representing the main agricultural exporters among the poorer countries) and the Cairns Group (led by Australia). They mainly fought for a real, worldwide improvement in market access and a substantial reduction of domestic support measures. Whereas the US went alone into the ring and asked mainly for more access to the EC markets while not moving substantially with respect to its own protective measures, the EC took a rather defensive position while trying to maintain policy space in order to protect its own agricultural sector mainly from new imports. The G33 (a group of developing countries with vulnerable agriculture structures and many subsistence farmers, led by Indonesia) fought for tools to protect food security and livelihoods, such as the introduction of

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<sup>17</sup> *ibid*, Para 3.

the concepts of “special products” and “special safeguard mechanisms”, a novel methodological approach, as new rules would apply to certain agricultural products but not to others. The African group (led by Benin), the LDC (led by Zambia), the Caricom group, Cotton 4 (led by Mali) and the ACP group (led by Mauritius) mainly focused on the phasing out of heavily distorting export subsidies and insisted on general and comprehensive preferential treatment. The G10 (representing the so-called “multifunctionalists” (net food-importing, developed countries that were estimated to have the highest levels of support worldwide, led by Switzerland) were defending their current protective tools – mainly tariffs or support measures notified in the green box – while referring to the “multifunctionalist character” of agriculture. They tried to gain support for the concept of “sensitive products” (similar to the concept of “special products”) and a broader protection of geographical indications. Finally, the “Recently acceded Members” (RDMS; led by Croatia) and the Tropical Product Group (led by Costa Rica) fought for their own particular interests. In general, rich countries called for outweighing their “agricultural concessions” – even if only rudimentary – by gains in the services or NAMA<sup>18</sup> negotiations.

## **2.4 Predominant Mercantilism and Negotiation Process**

The following conclusions can be drawn from the overview given above. The objectives set by the Doha Declaration (such as giving priority to development concerns), were not necessarily taken into account in the various negotiation positions, which were used instead to reflect the purely economic interests of the various stakeholders. They were usually governed by a mercantilistic approach, with negotiators giving their own, short-term interests the highest priority. It was mainly the industrialised countries that insisted on applying the concept of reciprocity on the basis of “give and take”.

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<sup>18</sup> NAMA: non agricultural market access.

The discrepancy between the underlying declaration and the actual positions arose because the negotiation process is not formally structured. No formal requirements are in place to ensure that the underlying objectives are respected. The negotiations are not guided by specific objective criteria that would be assessed according to transparent benchmarks. Therefore, the negotiation process is often criticised as being arbitrary.<sup>19</sup> The groups organise themselves,<sup>20</sup> and they meet in continuously changing groups that generally reflect the market powers or the actual political weight of a group in the negotiations. This is one of the reasons why the development concerns of developing countries have not been given priority as required by the Declaration.

The stalling of the world trade talks in July 2006 is seen by some stakeholders and civil society organisations as an important opportunity for WTO members to inject some fresh thinking into the international trading system, and for taking a step back to reflect about the fundamental underlying objectives. This will be discussed below.

### **3 Trade Liberalisation as Underlying Objective or Tool to Reach These Objectives?**

It is often proclaimed and reiterated that the most important aim is to liberalise trade, as liberalised trade is the prerequisite for achieving the “wider objectives”. The most common understanding, reflected in the media and civil society actions, conceives the WTO as an organisation that aims at liberalising international trade. Liberalisation in this context means to remove tariffs, non-tariff barriers and subsidies to the greatest possible extent in every Member State.

However, as already indicated, the underlying objectives governing trade regulation of the WTO and the AoA are manifold. This is reflected in the text of the agreements.

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<sup>19</sup> See eg Fatoumata Jawara/Aileen Kwa, *Behind the Scenes, at the real world of international trade negotiations*, London 2003.

<sup>20</sup> The groups are not fixed. Compositions change frequently, new groups are informally set up and may overlap with others, such as the New Quad, the Fips or G6.

Both the preamble of the AoA and the negotiation clause of AoA Art. 20 declare liberalisation as one of its long-term objectives, while calling for “substantive progressive reductions in support and protection”. The preamble furthermore contains a reminder that the objective is “to establish a fair and market-oriented agricultural trading system”. But what is meant by “fair”?

In this context, both the AoA preamble and the Art. 20 negotiation clause enumerate some further objectives whose fulfilment can be fostered or hindered by international trade rules. On the one hand, the preamble calls for the development needs of developing countries and the existing environmental concerns to be taken fully into account, by shaping the rules appropriately:

*Having agreed that in implementing their commitments on market access, developed country Members would take fully into account the particular needs and conditions of developing country Members by providing for a greater improvement of opportunities and terms of access for agricultural products of particular interest to these Members [...]*

Furthermore, the preamble notes

*“that commitments under the reform programme should be made in an equitable way among all Members, having regard to non-trade concerns, including food security and the need to protect the environment; having regard to the agreement that special and differential treatment for developing countries is an integral element of the negotiations, and taking into account the possible negative effects of the implementation of the reform programme on least-developed and net food-importing developing countries;”*

Reading the open market postulations in this context, liberalisation is one objective among others and not *the* underlying objective which should be given priority.

Underlying benchmarks are also set by the preamble of the Marrakesh Agreement establishing the World Trade Organization, which informs the AoA. It reflects the following recognition of the parties:

*“The Parties to this Agreement,*

*Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development,[...]*

The question of how all the abovementioned objectives might be structured and correlated, and how far they might collide or conflict, will be a subject of further

research. A first analysis, however, that sets the WTO regime in the context of other international law regimes (see para 5), concludes that the directly people-centred objectives are those which stand in the foreground. Trade liberalisation is mainly a *tool* (and therewith a sub-objective) that is thought to serve the main people-centred objectives. If this prioritised instrument does not bring the expected results, *correctives* have to be applied. In this sense, the WTO should be regarded as an institution aiming at fostering people-centred objectives through the *regulation* of trade in the way that best fosters this aim.<sup>21</sup>

The question arises as to how the various people-centred objectives could be further conceptualized and structured. Scholars and WTO dispute settlement bodies see in the wording of the Marrakesh and the AoA preambles, in particular the direct reference to the “objective of sustainable development” and the accentuations of the development needs and non-trade concerns, a reference to the *concept of sustainable development* that has been evolving in international law since the late 1980s.

## **4 Concept of Sustainable Development and Trade in Agriculture**

### **4.1 Concept of Sustainable Development in International Law**

#### **4.1.1 History of Origins**

The Concept of Sustainable Development has evolved from the manifold approaches towards development and environmental protection that emerged during the various UN development decades. The concept was first explicitly mentioned in the Brundtland Report in 1988.<sup>22</sup> The report contains the often cited, broad definition of sustainable development. According to this definition, development is sustainable when it “meets the needs of the present without compromising the ability of future generations to meet their own needs”.<sup>23</sup>

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<sup>21</sup> See eg 3D/IATP, *Planting the Rights Seed: A human rights perspective on agriculture trade and the WTO*, Geneva 2005.

<sup>22</sup> World Commission on Environment and Development, *Our Common Future*, Oxford 1988 (Oxford University Press) (Brundtland Report 1988).

<sup>23</sup> *Ibid*, p. 8.

The concept has been further concretized in the agreements negotiated by governments at the United Nations Conference on Environment and Development (UNCED), held in 1992 in Rio de Janeiro, Brazil, specifically in the Rio Declaration<sup>24</sup> and Agenda 21,<sup>25</sup> which contains concrete action plans.

#### **4.1.2 Content**

Although the concept of sustainability as a normative tool of international law is still vague and its precise content contentious, it has been widely accepted that it aims at the *integration of economic, social and environmental concerns*. The International Law Association (ILA) made an attempt<sup>26</sup> to identify all the legal principles which are part of the concept. Based on this declaration and taking into account further studies done by international lawyers,<sup>27</sup> the concept could be depicted in a flow diagram as follows:

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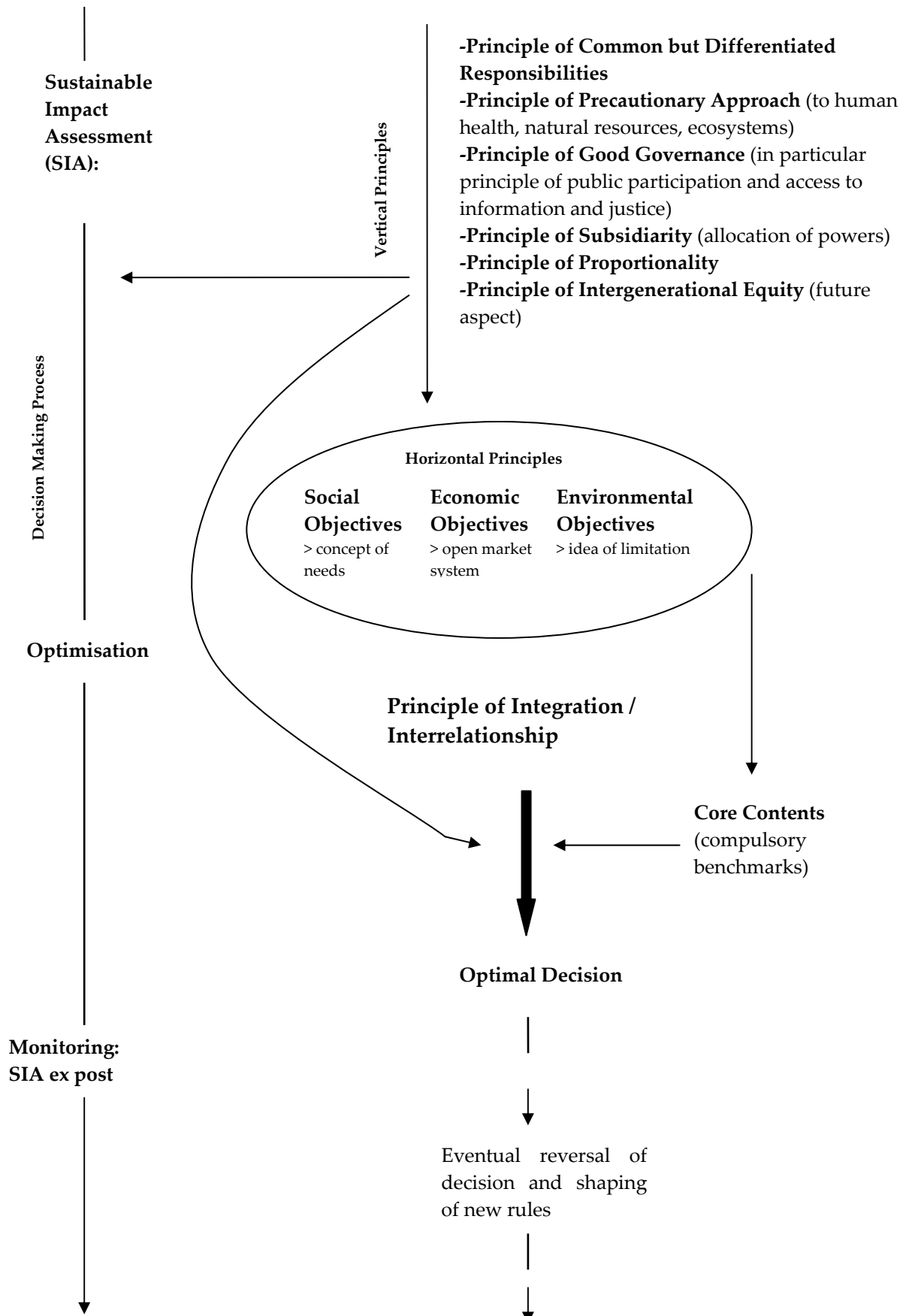
24 Rio Declaration of Environment and Development of 1992, A/CONF.151/26 (Vol. I).

25 UN Agenda 21 of 1992.

26 See International Law Association (ILA), Report of the Seventieth Conference held in New Delhi 2-6 April 2002, London 2002 (including New Delhi Declaration of Principles of International Law relating to Sustainable Development) (ILA report 2002).

27 See in particular the comprehensive study by Katja Gehne, *Nachhaltigkeit als Rechtsprinzip - Rechtstheoretische Analyse und praktische Anwendung am Beispiel der WTO- Rechtsordnung* (forthcoming), who emphasises strongly the procedural and the future-oriented aspects of the concept.

## SUSTAINABLE DEVELOPMENT CONCEPT: Integrative Future-oriented Approach



Following this diagram, the concept of sustainable development consists of a conglomeration of procedural elements and substantive, normative principles, which are all interrelated and inform each other. Applying the concept of sustainable development to a decision-making process requires the application of special procedural rules and the consideration of benchmarks before taking a specific decision. This could happen by drawing up a compulsory framework within which decisions should be settled.

It is beyond the scope of the present paper to go too deeply into the debate on the structure and content of the concept. The following comments are confined to the core principle of the concept, namely the principle of integration, and its impact on the AoA.

#### **4.1.3 In Particular: The Principle of Integration**

If one assumes that the concept of sustainable development applies to the AoA, its principles have to be taken into account both in interpreting the existing rules and in shaping new rules. In this context, the principle of integration – the central element of the concept of sustainable development<sup>28</sup> – has to be considered and concretised in order to make it operational. But what is the purpose of the principle of integration?

##### 4.1.3.1 History of Origins

Although the Brundtland report does not explicitly use the term “principle of integration”, it identifies as a “common theme throughout this strategy for sustainable development [...] the need to *integrate economic and ecological considerations* in decision making.”<sup>29</sup> This integration is seen as a task which has a fundamental impact on the existing structures:

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<sup>28</sup> According to the ILA Report 2002, the principle of integration serves as the very backbone of the concept of sustainable development: p. 390.

<sup>29</sup> The Brundtland Report 1988 also uses the term “merging” instead of integration: eg. “merging environment and economics in decision making”, p. 62.

“(The integration) will require a change in attitudes and objectives and in institutional arrangements at every level”.<sup>30</sup>

At the same time, the report assumes that integration cannot take place successfully without effective public participation:

“The law alone cannot enforce the common interest. It principally needs community knowledge and support, which entails greater public participation [...].<sup>31</sup>

Also, the Rio Declaration on Environment and Development refers to the need to integrate in its principle 3 where it states:

“The right to development must be fulfilled so as to equitably meet *developmental and environmental needs* of present and future generations.”

And Principle 4 of the Rio Declaration states:

“In order to achieve sustainable development, *environmental protection shall constitute an integral part of the development process* and cannot be considered in isolation from it.”

Likewise the International Court of Justice (ICJ) referred to the principle of integration as part of the concept of sustainable development in the Gabcikovo-Nagymaros case:

“This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.”<sup>32</sup>

#### 4.1.3.2 3-Pillar Approach: ILA New Delhi Declaration and CISDL

Earlier definitions of sustainable development were based mainly on the opposition of *economic development* objectives and *environmental* objectives. While economic development has long been a matter of concern for the international community, the environmental aspects only came to the fore in the 1970s and were then added to the political agenda. Later, the concept of sustainable development sought to integrate the two, overcoming the idea that economic development and environmental concerns are necessarily contradictory. Instead, their mutual supportiveness should be emphasized.

Responding to the criticisms of the “developing community” that focusing only on economic development meant that the social concerns were ignored, the “three

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<sup>30</sup> Ibid, p. 62.

<sup>31</sup> Ibid, p. 63.

<sup>32</sup> I.C.J. Reports 1997, p. 78, para. 140.

pillar” approach, which included *social objectives* in addition to *environmental* and *economic objectives*, became widely accepted. The three pillars include the – also widely accepted – international human rights guarantees.

The ILA<sup>33</sup> New Delhi Declaration of Principles of International Law Relating to Sustainable Development, April 2002, follows this approach. Principle 7 of the declaration is named “the principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives”. The Declaration uses a broad definition of integration. It assumes that all the objectives are interdependent. The best resolutions to the apparent conflicts between them should be sought. In this respect, the Declaration highlights the relevance of adequate institutions:

**ILA New Delhi Declaration of Principles of International Law Relating to Sustainable Development**

“7.1 The principle of integration reflects the interdependence of social, economic, financial, environmental and human rights aspects of principles and rules of international law relating to sustainable development as well as of the needs of current and future generations of humankind.

7.2 All levels of governance – global, regional, national, sub-national and local – and all sectors of society should implement the integration principle, which is essential to the achievement of sustainable development.

7.3 States should strive to resolve apparent conflicts between competing economic, financial, social and environmental considerations, whether through existing institutions or through the establishment of appropriate new ones.

7.4 In their interpretation and application, the above principles are interrelated and each of them should be construed in the context of the other principles of this Declaration. [...]”

As emphasized in Para 7.4., the principle of integration is again interrelated to all the other general and specific principles of the concept of sustainable development (s. flow diagram). In particular the *principle of intergenerational equity*, representing the long-term perspective, has to be taken into account both while applying each of the three pillars and while looking for an optimal, integrated solution.

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<sup>33</sup> ILA: International Law Association (<http://www.ila-hq.org/>).

The Centre for International Sustainable Development Law (CISDL)<sup>34</sup> has further developed the integrative approach. Cordonier-Segger et al.<sup>35</sup> assume that a conceptual “continuum” can be designed, depending on the degree to which international regimes integrate economic, social and environmental law. They identified four degrees of integration, ranging from “regimes that envisage international economic, social and environmental law as separate, independent fields to regimes that fully integrate these three areas of law.”<sup>36</sup>

#### 4.1.3.3 Criticism from a Development Perspective

Some critics argue that even the three-pillar-approach does not sufficiently reflect the needs of developing countries, and that the concept of sustainable development as applied in practice neglects the development aspects while assigning much more weight to the environmental aspects. Accordingly, the integration of the three objectives does not happen in equal measure. Ximena Fuentes<sup>37</sup> for example argues that development law has been much less developed than international environmental law and that environmental law might quite often have a negative impact on development, as environmental measures usually entail additional costs. According to Fuentes, while shaping international environmental law, the necessary balancing often does not take place, and it lacks democratic legitimacy. Hence she calls for taking the “principle of common but differentiated responsibilities” (which is part of the broader concept of sustainable development) much more seriously, while seeking an integrated, optimal solution.

Such criticism touches upon a sore point in current international law on sustainable development. Indeed, instead of focusing on the structural root causes of underdevelopment and poverty, greater emphasis in international debates is

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<sup>34</sup> <http://www.cisd.org>

<sup>35</sup> Cordonier Segger/Khalfani, *Sustainable Development Law, Principles, Practices and Prospects*, Oxford 2004 (OUP).

<sup>36</sup> *ibid.*, p. 106–107.

<sup>37</sup> Ximena Fuentes, *International Law-making in the Field of Sustainable Development: The Unequal Competition between Development and the Environment*, in: Nico Schrijver/Friedl Weiss, *International Law and Sustainable Development*, Leiden 2004 (Martinus Nijhoff Publishers), p. 7-37.

currently being given to human rights, environmental conservation and good governance. Economic issues are often not thoroughly discussed from a development perspective, as was done for example during the 1970s and 1980s by the “New International Economic Order (NIEO)”.<sup>38</sup> This argument might best be tackled by the creation of a fourth “development pillar” reflecting the particular, dynamic needs of the development process.

#### 4.1.3.4 ILC Report

The call for integration of international rules of different regimes is not a new one and does not necessary emerge from the concept of sustainable development. To overcome the existing fragmentation in international law, scholars have recently emphasized the significance of the principle of systemic integration as reflected in Article 31, 3, c of the Vienna Convention on the Law of the Treaties (VCLT):

**“Art. 31 (3) (c) VCLT:**

There shall be taken into account, together with the context:

...(c) any relevant rules of international law applicable in the relations between the parties. “

A study group of the UN International Law Commission (ILC), chaired by Prof. Martti Koskenniemi, drafted a report on the fragmentation of international law, which was recently presented to the International Law Commission.<sup>39</sup>

According to the ILC report, the *principle of systemic integration* “goes further than merely to restate the applicability of general international law in the operation of particular treaties. It points to a need to take into account the normative environment more widely.”<sup>40</sup>

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<sup>38</sup> The New International Economic Order (NIEO) was a set of proposals put forward during the 1970s by developing countries through the United Nations Conference on Trade and Development to promote their interests by improving their terms of trade, increasing development assistance, developed-country tariff reductions, and other means. It was meant to be a revision of the international economic system in favour of Third World countries, replacing the Bretton Woods system, which had benefitted the leading states that had created it – especially the United States ([http://en.wikipedia.org/wiki/New\\_International\\_Economic\\_Order](http://en.wikipedia.org/wiki/New_International_Economic_Order); 6 December 2006). The NIEO was, however, never converted in an international, binding instrument.

<sup>39</sup> Martti Koskenniemi, Study Group of the International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, 13. April 2006, A/CN.4/L.682.

<sup>40</sup> *ibid*, p. 176.

In contrast to this approach, the concept of sustainable development embeds the principle of systemic integration in a broader, historical context.

## 4.2 “Entry Points” in WTO law

### 4.2.1 Preambles and Relevant Provisions

As already mentioned in section 3, both the preamble of the Marrakesh Agreement establishing the WTO and the preamble of the AoA explicitly and implicitly refer to the concept of sustainable development, and call for the WTO rules to be set into their wider context. This has been clearly pointed out by the dispute settlement bodies of the WTO, as illustrated in the following.

### 4.2.2 WTO Case Law

The famous references to the concept of sustainable development by the WTO dispute settlement bodies can be found in the shrimp/turtle cases. Some of these references are quoted below. In these cases, the question arose of how far international environmental law should be taken into account while interpreting WTO law, in particular the “general exceptions” provision Art. XX GATT.

#### **Appellate Body, US-Shrimp (India, Malaysia, Pakistan, Thailand), 1998<sup>41</sup>**

*“12 An environmental purpose is fundamental to the application of Article XX, and such a purpose cannot be ignored, especially since the preamble to the Marrakesh Agreement Establishing the World Trade Organization (the “WTO Agreement”) acknowledges that the rules of trade should be “in accordance with the objective of sustainable development”, and should seek to “protect and preserve the environment”.*

17 Furthermore, the Panel failed to recognize that most treaties have no single, undiluted object and purpose but rather a variety of different, and possibly conflicting, objects and purposes. This is certainly true of the WTO Agreement. Thus, while the first clause of the preamble to the WTO Agreement calls for the expansion of trade in goods and services, this same clause also recognizes that international trade and economic relations under the WTO Agreement should allow for “optimal use of the world’s resources in accordance with the objective of sustainable development”, and should seek “to protect and preserve the environment”. The Panel in effect took a one-sided view of the object and purpose of the WTO Agreement when it fashioned a new test not found in the text of the Agreement.

129 While Article XX was not modified in the Uruguay Round, the preamble attached to the WTO Agreement shows that the signatories to that Agreement were, in 1994, fully aware of the importance and legitimacy of environmental protection as a goal of national and

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41 US-Shrimp: United States–Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R, report of the Appellate Body, 6 November 1998.

international policy. *The preamble of the WTO Agreement -- which informs not only the GATT 1994, but also the other covered agreements -- explicitly acknowledges "the objective of sustainable development"*:

153. We note once more that this language demonstrates a recognition by WTO negotiators that optimal use of the world's resources should be *made in accordance with the objective of sustainable development*. As this preambular language reflects the intentions of negotiators of the WTO Agreement, we believe it must *add colour, texture and shading* to our interpretation of the agreements annexed to the WTO Agreement, in this case, the GATT 1994. We have already observed that Article XX(g) of the GATT 1994 is appropriately read with the perspective embodied in the above preamble."

**Panel, US-Shrimp (Malaysia), 2001<sup>42</sup>**

"5.54 In that framework, assessing first the *object and purpose* of the WTO Agreement, we note that the *WTO preamble refers to the notion of "sustainable development"*. This means that in interpreting the terms of the chapeau, we must keep in mind that sustainable development is one of the objectives of the WTO Agreement.

How this objective is to be appreciated can further be elaborated by reference to the Marrakesh Decision establishing the Committee on Trade and Environment (CTE). The preamble of that Decision provides, *inter alia*, that: "*There should not be, nor need be, any policy contradiction between upholding and safeguarding an open, non-discriminatory and equitable multilateral trading system on the one hand and acting for the protection of the environment and promotion of sustainable development on the other.*"

So far it seems to be uncontested that the concept of sustainable development, and in particular the principle of integration, need to be considered whenever WTO law is *applied and interpreted*. In the following it is assumed that this requirement is also valid for the *WTO decision-making process*. I will not further discuss the differences in the application of the concept to decision making and to the interpretation of already existing provisions.<sup>43</sup> Rather, I will examine more concretely how such an integration of rules might look in the context of agricultural trade.

## 5 Integrating Norms in the Agricultural Context

### 5.1 Framework

The negotiating and shaping of new trade rules with respect to agriculture in the WTO usually occurs in a "mercantilistic" way by give and take, as explained in Section 2.4. above. This does not necessarily result in a sustainable outcome that respects the interests at stake adequately and fairly.

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42 US-Shrimp: United States-Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/RW, 21 November 2001.

<sup>43</sup> See in more detail: Katja Gehne, *Nachhaltigkeit als Rechtsprinzip - Rechtstheoretische Analyse und praktische Anwendung am Beispiel der WTO- Rechtsordnung* (forthcoming).

But which are the interests at stake in the agricultural trade context? In the following the social, environmental and economic concerns linked to agricultural trade will be identified. They will be regarded as relevant as far as they are reflected in multilateral agreements and both soft- and hard-law instruments will be considered.

The aim is to provide the basis for a framework composed by benchmarks, within which agricultural trade decisions should be located. The current focus is on the social and environmental benchmarks, whereas the economic and the specific developmental benchmarks still require further elaboration.

## **5.2 Food Security and its Multifaceted Character**

### **5.2.1 Food Security Issues in the Brundtland Report**

What are the existential problems national and international agriculture policies are confronted with?

Under the umbrella term “food security” the various challenges associated with agriculture have been debated hotly in recent decades.<sup>44</sup> The Brundtland report pointed to the social and environmental challenges usually accompanying farming and food production. Although the report was produced more than a decade ago, it gives a good overview of some of the issues at stake, while applying a holistic approach. It is still of value and both the analysis and suggestions are helpful as the challenges have not significantly changed since.

The report explicitly calls for putting the needs of the poorest in the centre:

“Global food security also depends on ensuring that all people, even the poorest of the poor, can get food. [...] Food security is not just a question of raising food production, but of ensuring that the rural and urban poor do not go hungry during the short term of midst a local food scarcity.”

The report identifies a “threefold challenge” that agricultural policies have to meet:

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“Food security requires more than good conservation programmes [...] Food strategies must take into account all the policies that bear upon the *threefold challenge* of shifting production to where it is most needed, of securing the livelihoods of the rural poor, and of conserving resources.”<sup>45</sup>

The Brundtland report recognized the significant progress made in the preceding decades in increasing food production, which had contributed greatly to the alleviation of hunger. At the same time, it pointed at new challenges that should be urgently met. According to the report, agriculture does not lack resources; it lacks policies to ensure that the food is produced where it is needed and in a manner that sustains the livelihoods of the rural poor. It points out the negative impact of subsidies granted to farmers in industrial countries, the neglect of small producers by not tackling the redistribution challenge,<sup>46</sup> and the degradation of the resource base.<sup>47</sup>

According to the report, “the challenge is colossal both in its magnitude and complexity”. It can, however, be met by following certain strategies: not only should global food distribution be reappraised, but the problems of inequitable distribution of production assets, unemployment, and underemployment should also be addressed. The resource base should at the same time be sustained, enhanced and restored. Some further possible strategies would be:

“Strengthening food security from a global point of view requires reducing incentives that force overproduction and non-competitive production in the developed market economies and enhancing those that encourage food production in developing countries. At the same time, these incentive structures must be redesigned to promote farming practices that conserve and enhance the agricultural resource base”.<sup>48</sup>

“Integrated rural development also requires resources to absorb the large increases in rural working populations expected in most developing countries through non-agricultural work opportunities, which should be promoted in rural areas”<sup>49</sup>

“In many countries women do not have direct land rights; titles go to men only. In the interest of food security, land reforms should recognize women’s role in growing food. Women, especially those heading households, should be given direct land rights.”<sup>50</sup>

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45 Brundtland Report 1988, p. 130.

46 *ibid*, p. 124: “But ecologically disadvantaged areas and land-poor rural masses have not benefited from advances in technology and will not until governments are willing and able to redistribute land and resources, and give them the necessary support and incentives.”

47 Through the loss of soil resources, the impact of chemicals, pressure on forests and desertification.

48 *ibid*, p. 132.

49 *ibid*, p. 143.

“New technologies provide opportunities for increasing productivity while reducing pressures on resources. A new generation of farmers combine experience with education.”<sup>51</sup>

The report is sympathetic to an open market system. It calls for taking a global perspective and respecting the comparative advantages of countries while shaping trade, but at the same time the system should include social and environmental incentives:

“Countries must recognize that all parties lose through protectionist barriers, which reduce trade in food products in which some nations may have genuine advantage. They must begin by redesigning their trade, tax and incentive systems using criteria that include ecological and economic sustainability and international comparative advantage. [...] Shifting food production towards food-deficit countries will require a major shift in trading patterns. [...] But specific measures are required to make inputs more effective. This is best done by strengthening the technological and human resource base for agriculture in developing countries.”<sup>52</sup>

The report concludes by reiterating the need of a holistic approach:

“These realities require agricultural systems that focus as much attention on people as they do on technology, as much on resources as on production, as much on the long term as on the short term. Only such systems can meet the challenges of the future.”<sup>53</sup>

Food Security has since evolved into a comprehensive concept, which was further developed during the 1996 World Food Summit in Rome.<sup>54</sup>

### **5.2.2 World Food Summit 1996**

The World Food Summit 1996 resulted in the adoption of the Rome Declaration on World Food Security 1996 and the World Food Summit Plan of Action. Like the Brundtland report, these two soft law instruments call for a holistic, integrative approach towards farming policies and agricultural trade in particular. They highlight the necessity of international trade policies to *foster* food security.<sup>55</sup> The signatories to the declaration committed themselves to the following:

“ ‘Convinced that the multifaceted character of food security necessitates concerted national action, and effective international efforts to supplement and reinforce national action, we make the following commitments: [...] We will strive to ensure that food, *agricultural trade*

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<sup>50</sup> Ibid, p. 141.

<sup>51</sup> Ibid, p. 144.

<sup>52</sup> Ibid, p. 132.

<sup>53</sup> Ibid, p. 144.

<sup>54</sup> In particular regarding the “concept of food security” see Kerstin Mechlem, Food Security and the Right to Food in the Discourse of the United Nations, in: European Law Journal, Vo. 10, No. 5, September 2004, pp. 631–648.

<sup>55</sup> See also para 5.3.2.4 hereafter.

*and overall trade policies are conducive to fostering food security for all through a fair and market-oriented world trade system.”<sup>56</sup>*

The concept of food security is a holistic, broad concept and does not reflect the content of each of the three pillars concretely. The following sections will attempt to do so.

### **5.3 Pillar “Social Objectives”**

#### **5.3.1 In General**

Social objectives are best reflected in the human rights guarantees<sup>57</sup>, which are part of the UN human rights covenants<sup>58</sup> by which most WTO Members are bound.<sup>59</sup> These hard law social benchmarks have to be taken into consideration by Members of the WTO when shaping new AoA rules.

#### **5.3.2 Human Rights**

##### 5.3.2.1 ICESCR

Some economic, social and cultural rights guaranteed in the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>60</sup> have a direct link to agriculture. Art. 6 ICESCR, for example, states a right to work, and Art. 7 recognises the right of everyone to the enjoyment of just and favourable conditions of work. The most important provision is, however, Art. 11 which states the right of everyone to an adequate standard of living for themselves and their families,

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<sup>56</sup> Rome Declaration on World Food Security of 1996. See also commitment 4 of the World Food Summit Plan of Action of 1996, where trade is identified as key element in achieving world food security.

<sup>57</sup> See eg Marie-Claire Cordonier Segger et al., *Weaving the Rules for Our Common Future: Principles, Practices and Prospects for International Sustainable Development Law*, Montreal 2002, p. 33.

<sup>58</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1976, and International Covenant on Civil and Political Rights of 1976.

<sup>59</sup> The United States of America for example has not ratified the ICESCR.

<sup>60</sup> Since Vienna 1993, the division between civil and political rights on the one hand and economic, social and cultural rights on the other hand has become blurred, while the indivisibility of the human rights has been emphasized.

including adequate food, clothing and housing. Art. 11 para. 2 deals specifically with agriculture and food supplies:<sup>61</sup>

*Art. 11 para 2. ICESCR*

The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

5.3.2.2 CEDAW

Art. 14 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>62</sup> contains specific guarantees regarding rural women.

*Article 14 CEDAW*

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

[...]

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

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<sup>61</sup> For the distinction between the two concepts “food security” and the “right to food” see Kerstin Mechlem, Food Security and the Right to Food in the Discourse of the United Nations, in: *European Law Journal*, Vo. 10, No. 5, September 2004, pp. 631-648.

<sup>62</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 1981.

The provision is a reaction to the widespread reality of discrimination against women in rural areas. It envisages an equal allocation of procedural and substantive rights to women and men. Such a reallocation of rights can impact on the trade facilities of a farming community and, conversely, trade rules may have an impact on the gender relations in rural areas.

#### 5.3.2.3 Other Guarantees and Conventions

Other human rights are relevant in the agricultural context, whether codified in the two basic human rights covenants, the CEDAW, the Convention on the Rights of the Child, the ILO Convention on adequate working conditions or other human rights treaties. Basically all human rights codified in binding international covenants are directly or indirectly relevant as benchmarks and can be affected by international agricultural trade rules, as they are inseparable and closely interrelated.

#### 5.3.2.4 International Cooperation and the Fulfilment of Human Rights

Human rights traditionally bind states and require them to respect, protect and fulfil the respective rights. But does this responsibility also extend to the international activities of the states? In other words: Are the states that negotiate new agricultural trade rules responsible for ensuring that the rules do not negatively impact on the human rights records of other states? Or are the negotiating states even urged to shape the rules in such a way that human rights can be better realised?

Several provisions in human rights covenants indicate a state responsibility that goes beyond the national borders, such as Art. 2 para 1 ICESCR:

*“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, [...]”*

Also Art. 11 para 1 ICESCR contains a reference to international cooperation:

*“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living [...]. The States Parties will take appropriate steps to ensure the realization*

of this right, recognizing to this effect the *essential importance of international co-operation* based on free consent.”

The Committee on Economic, Social and Cultural Rights (CESCR), the treaty body of the ICESCR, points out the importance of international cooperation in its General Comments.<sup>63</sup> It specifies that not only is the *requiring* state obliged to seek international assistance, but that the international community and the capable countries have a duty to provide international assistance, too. Such assistance does not only imply development aid, but also reasonable rule making on the international level which does not hinder (and may eventually even promote) the realization of human rights worldwide.

In General Comment 3 on State Parties Obligations,<sup>64</sup> the Committee issues a clear statement regarding the respective obligations of the international community, even referring to the declaration on the right to development. According to General Comment 8 on sanctions,<sup>65</sup> state parties have an obligation to respect the core contents of the covenant whenever sanctions are considered; in other words, countries are bound by the covenant whenever they take actions with an impact on the international level. General Comment 12 on the right to food<sup>66</sup> does not contain any direct reference to international trade negotiations, but only calls for international assistance. General Comment 15 on the right to water,<sup>67</sup> however, contains (for the first time) a *direct* reference to international trade: “Agreements concerning international trade liberalization should not curtail or inhibit a country’s capacity to ensure full realization of the right to water”. This statement is, however, defensive in character as the active *promotion* of the right to water through trade negotiations is not directly required.

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63 The General Comments of the CESCR are available at:

<http://www.ohchr.org/english/bodies/cescr/comments.htm> (6 December 2006).

64 CESCR, General Comment 3, The nature of States parties obligations (Art. 2, par.1), 14 December 1990.

65 CESCR; General Comment 8, The relationship between economic sanctions and respect for economic, social and cultural rights, E/C.12/1997/8, 12 December 1997.

66 CESCR, General Comment 12, The right to adequate food (Art.11), E/C.12/1999/5, 12 May 1999.

67 CESCR; General Comment 15, The right to water, E/C.12/2002/11, 20 January 2003. According to the Committee, the right to water is clearly an element of Art. 15 ICESCR, as the respective enumeration is not exhaustive.

The political human right bodies have expressed their views on this matter too. The Human Rights Commission pointed out that the international obligations of states also require *active* measures. In Resolution 2001/32 on “Globalization and its impact on the full enjoyment of all human rights”,<sup>68</sup> the Commission recognized that while globalization may affect human rights, the promotion and protection of all human rights is first and foremost the responsibility of the State. The Commission recognized, however, that “in addition to States' separate responsibilities to their individual societies, they have a *collective responsibility* to uphold the principles of human dignity, equality and equity at the global level”.

Based on this Resolution, the High Commissioner for Human Rights submitted its own report on “Globalization and its Impact on the Full Enjoyment of Human Rights” with special focus on agricultural trade,<sup>69</sup> a very important document in the context of food safety and agricultural trade. Referring to the FAO case studies,<sup>70</sup> it concludes that the impact of agricultural trade liberalisation is difficult to predict as the determining causes are often hard to identify, and impacts may vary from case to case. However, it identifies as a positive effect of the WTO negotiations, the move towards a more “open, transparent and accountable” system, while identifying as problematic for example:

- the “one-size-fits-all” solutions that create a level playing field among non-equals;
- the different notions of non-discrimination in trade and human rights law (small farmers should not be treated like big farming companies etc.).

According to the report, the AoA should therefore incorporate enough flexibility, to enable it to go further than the S&D approaches, and incorporate different “frame

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68 Commission on Human Rights, Globalization and its impact on the full enjoyment of all human rights, Resolution 2001/32, 23 April 2001.

69 High Commissioner for Human Rights, Globalization and its impact on the full enjoyment of human rights, report submitted in accordance with Commission on Human Rights resolution 2001/32, E/CN.4/2002/54, 15 January 2002.

70 See supra para 1.2.

and pace". The treatment should be well targeted, and enforceable, and human rights should act as compulsory benchmarks.

This report of the High Commissioner for Human Rights could be interpreted in the following way. It is implicitly assumed that the individual states have an obligation to negotiate and create new trade rules in such a way as to secure the promotion and realisation of human rights in all the countries concerned, as far as trade rules can contribute to this objective. In other words: according to the declaration on the right to development, states have an obligation to formulate appropriate national development policies, and trade rules should give enough leeway for the implementation of such policies.

### **5.3.3 In Particular: Cultural Objectives**

Cultural objectives have to be taken into account in this context, too. Cultural objectives of international relevance are reflected in the "UNESCO Universal Declaration on Cultural Diversity"<sup>71</sup> and the "UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions".<sup>72</sup> As the term "agriculture" indicates, agriculture has strong connections with culture. Agricultural livelihoods exist in various forms all over the world. They transfer old customs, traditions and sometimes even languages, in a way that is closely linked to landscape protection. Of particular relevance in this context are the food diversity and food quality requirements and dietary traditions,<sup>73</sup> also linked to food safety concerns.<sup>74</sup> How far these concerns can be measured and should be protected, has so far not been thoroughly examined.<sup>75</sup>

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71 UNESCO Universal Declaration on Cultural Diversity of 2001.

72 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 20 October 2005. The UNESCO Convention is not yet in force.

73 See eg Marsha Echols, Food Safety and the WTO. The Interplay of Culture, Science and Technology, The Hague 2001.

74 See infra para 5.4.3.6.

75 But see for example: Christoph Graber/ Martin Girsberger, Traditional Knowledge at the International Level: Current Approaches and Proposals for a Bigger Picture that Includes Cultural Diversity, in: Schmid/Seiler (eds.), *Recht des ländlichen Raums. Festgabe für Paul Richli zum 60. Geburtstag*, Zürich 2006 (Schulthess), p. 243-282.

## 5.4 Environmental Objectives

In addition to social benchmarks, environmental concerns have to be taken into account. Several studies and actions point out the positive and negative environmental impacts that farming can have. While shaping agricultural trade rules, it is important to be aware of environmental limits and the relevant environmental benchmarks.

### 5.4.1 OECD Study

The OECD in its study “Agriculture and the Environment: Lessons Learned from a Decade of OECD Work”,<sup>76</sup> attempts to answer the question of whether trade liberalisation is good or bad for the environment.<sup>77</sup> It comes to the conclusion that a reduction in trade barriers can have both beneficial and harmful effects on the environment. Impacts were identified in the following areas:

“These impacts occur through changes in the scale of economic activities, the structure of production in countries, the mix of inputs and outputs, and production technologies. Some of the impacts are felt domestically, for example groundwater and surface-water pollution from fertiliser and pesticide run-offs, and changes in land-use that affect landscape appearance, flood protection, soil quality and biodiversity. Others occur internationally, with shifts in production across countries, transboundary spillovers (such as greenhouse gases), changes in international transport flows, and the potential introduction of nonnative species, pests and diseases along with agricultural imports.”<sup>78</sup>

The OECD states that it is a difficult task to measure these various effects. The wide diversity of agricultural production systems, natural conditions and regulatory approaches mean that environmental impacts, both positive and negative, vary between countries, regions and localities. However, some general empirical conclusions can be drawn:

“The available evidence suggests that lower trade barriers will cause production to decrease in countries with historically high levels of fertiliser and pesticide application, thereby relieving environmental stresses in these areas. At the same time, output is likely to increase in countries that can accommodate an increased use of agro-chemicals relatively easily,

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<sup>76</sup> OECD, *Agriculture and the Environment: Lessons Learned from a Decade of OECD Work*, Paris 2004.

<sup>77</sup> The study recognizes that trade liberalisation has been limited and selective since the conclusion of the Uruguay Round in 1994, although OECD domestic commodity prices have fallen on average from around 60% above border prices in the mid-1980s, to just over 30% in 2001-03. This makes it difficult to draw conclusions.

<sup>78</sup> *ibid*, p. 26.

owing to low levels of fertiliser and pesticide application. Some analytical work shows that environmental pressures at regional level may increase in these countries.”<sup>79</sup>

and

“While regional differences are not such a problem for greenhouse gas emissions since here the environmental concern is global, there often exist “hot spots” caused by nutrient pollution of water [...]. Moreover, although trade liberalisation will increase the volume of products transported between countries, and raise greenhouse gas emissions associated with transportation, such an increase is likely to be very small in comparison to emissions generated by production (at farm level), by domestic trade, or by consumption (transport from the retailer to home).”<sup>80</sup>

In its study, the OECD states that benefitting from the positive environmental impacts of trade liberalisation requires that policies redress the negative impacts on the environment.

“Where trade improves the environment through positive (or fewer negative) externalities, the benefits of further reform are clear. In the case of additional negative externalities, there will be a need for policy measures that redress these impacts.”<sup>81</sup>

The measures to address such negative externalities should, according to the OECD, follow these criteria:

“In general, this is likely to involve correcting the externality at source, for example by taxing or regulating production practices rather than by erecting trade barriers or halting their reduction. In the case of global public goods (e.g. biodiversity or climate change) national policies may need to be complemented by international environmental agreements.”<sup>82</sup>

#### **5.4.2 World Food Summit 1996**

At the 1996 World Food Summit, the international community agreed upon its obligation to protect the environment from the negative impacts of farming. Commitment 3 of its Plan of Action states:

“We will pursue participatory and sustainable food, agriculture, fisheries, forestry and rural development policies and practices [...], and combat pests, drought and desertification, considering the multifunctional character of agriculture.”<sup>83</sup>

Further, issues are enumerated, such as the reduction of biological diversity and general degradation of land and natural resources, including water and watersheds — problems which areas that are depleted and overexploited to achieve greater

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<sup>79</sup> *ibid*, p. 26.

<sup>80</sup> *ibid*, p. 26.

<sup>81</sup> *ibid*, p. 26.

<sup>82</sup> *ibid*, p. 26-27.

<sup>83</sup> World Food Summit, Plan of Action, 1006.

production are frequently confronted with. The plan of action issues concrete recommendations on how to tackle such negative effects.<sup>84</sup>

### 5.4.3 Environmental Benchmarks in International Agreements

The OECD study and the World Food Summit Commitments reflect well the environmental challenges which are linked to agriculture. The legal benchmarks, however, have to be drawn from international legal instruments. I will point out the most relevant of these below, but this discussion is not intended to provide an exhaustive list of the relevant instruments in the field of international environmental law.

#### 5.4.3.1 Biodiversity

The Convention on Biological Diversity (CBD)<sup>85</sup> is clearly relevant in this respect. It is aimed at the protection of biological diversity through its conservation, sustainable use and sharing of benefits arising out of its use by third parties.

In the context of agriculture, the CBD has to be understood in combination with the later FAO Treaty on Plant Genetic Resources for Food and Agriculture (“seed treaty”),<sup>86</sup> the objective of which is to protect the genetic resources particularly relevant for food and agriculture. While the CBD envisages the conservation of biological diversity as an aim in itself, the seed treaty’s main objective is food security; biodiversity is just an instrument that leads to this aim being met.

According to both treaties, *sustainable use* of plant genetic resources is a prerequisite to their conservation. Here a direct link to agricultural practices and policies is given. Thus, Art. 6 of the Seed Treaty requires states to promote sustainable use through appropriate policies:

**FaO Treaty Article 6 – Sustainable Use of Plant Genetic Resources**

6.1 The Contracting Parties shall develop and maintain appropriate policy and legal measures that promote the sustainable use of plant genetic resources for food and agriculture.

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<sup>84</sup> See *ibid*, objective 3.1.

<sup>85</sup> Convention on Biological Diversity of 1992.

<sup>86</sup> FAO Treaty on Plant Genetic Resources for Food and Agriculture of 2001.

6.2 The sustainable use of plant genetic resources for food and agriculture may include such measures as:

(a) *pursuing fair agricultural policies that promote*, as appropriate, the development and maintenance of *diverse farming systems* that enhance the sustainable use of agricultural biological diversity and other natural resources;

[...]

The treaty assumes that *diverse farming systems* are necessary to conserve and promote biological resources and thereby food security. Policy measures, including agricultural trade policies, should provide the necessary incentives to pursue this end.

The provisions on access and benefit sharing in both treaties have an impact on farming structures, while not directly related to the AoA, but rather to the TRIPS<sup>87</sup> agreement and to intellectual property rights. Similarly, the Cartagena Protocol<sup>88</sup> has only an indirect impact on the AoA, but is clearly linked to the TRIPS agreement and particularly to the TBT<sup>89</sup> and SPS<sup>90</sup> agreements, especially with regard to products containing genetically modified organisms (GMOs).

#### 5.4.3.2 Landscape Diversity

Protection of landscape diversity has so far been mainly a matter of regional concern. The developments in respect of landscape diversity that have been seen in Europe are an example. The landscape diversity debate is closely linked to the “cultural diversity debate”, as landscape protection is seen as a matter of culture and identity, while also including environmental concerns such as soil protection. As no binding instruments have yet been developed on the international level, arguments on this issue are frequently open to the accusation of providing a pretext for economic protectionism.

In Europe for example, the European Convention for the Protection of the Architectural Heritage of Europe<sup>91</sup> calls for the protection of particular farmhouses,

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<sup>87</sup> WTO Agreement on Trade-related Aspects of Intellectual Property Rights of 1994.

<sup>88</sup> Cartagena Protocol on Biosafety to the Convention on Biological Diversity of 2000.

<sup>89</sup> WTO Agreement on Technical Barriers to Trade of 1994.

<sup>90</sup> See supra note 13.

<sup>91</sup> European Convention for the Protection of the Architectural Heritage of Europe of 1985.

and this can indirectly affect farming policies. The Convention on the Protection of the Alps<sup>92</sup> obliges its parties to “maintain a comprehensive policy of protection and preservation of the Alps and its traditional rural countryside”, which should be attained, *inter alia*, through appropriate management of mountain farming:

**Convention on the Protection of the Alps, Art. 2 para g**

mountain agriculture -- with a view toward assuring in the general interest the conservation, management and promotion of *the traditional rural countryside* and an *agriculture adapted to its site* and compatible with the environment; this while taking into consideration the economic limits of the Alpine region [...]

Appropriate mountain farming is not only attributed a cultural role with respect to landscape preservation, but also an environmentally positive impact against soil degradation:

**Convention on the Protection of the Alps ,Art. 2 para d**

Soil preservation -- with a view toward reducing quantitative and qualitative harms to the soil, and in particular, through using a prudent agriculture and forestry management that prevents erosion and limits the hardening of soils [...]

Similarly, the “Pan-European biological and landscape diversity strategy” (Pan-European Strategy)<sup>93</sup> seeks responses to the decline in biological and landscape diversity in Europe. The strategy was initiated after the Rio Earth Summit and later endorsed at the third pan-European Conference of Ministers of the Environment “Environment for Europe” in 1995 by 54 countries of the United Nations Economic Commission for Europe (UNECE). On this basis, in 2002, the “Final Declaration on the conservation and sustainable use of biological and landscape diversity in the framework of agricultural policies and practices” was adopted.

Furthermore, the new “European Landscape Convention” is relevant to (European) agricultural policies. The Convention was submitted by the Council of Europe and entered into force on 1 March 2004. It has so far been ratified by 19 parties. The purpose of the Convention is to promote landscape protection, management and planning, and to strengthen European co-operation on landscape issues.

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<sup>92</sup> The Convention on the Protection of the Alps of 1991.

<sup>93</sup> Pan-European biological and landscape diversity strategy of 1995.

#### 5.4.3.3 Fisheries

In dealing with agricultural products and practices, fishing also has to be taken into account. Fishing is widely covered by international environmental agreements. The United Nations Convention on the Law of the Sea (UNCLOS)<sup>94</sup> and its enclosed agreements,<sup>95</sup> the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas<sup>96</sup> and the Kyoto Declaration and Plan of Action on the Sustainable Contribution of Fisheries to Food Security<sup>97</sup> are basic documents.

#### 5.4.3.4 Forest and Soil Protection

Furthermore, instruments directed towards forest protection (such as the UNCED forest principles),<sup>98</sup> soil protection (such as the African Convention on the Conservation of Nature and Natural Resources)<sup>99</sup> or against drought or desertification (such as the Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, particularly in Africa)<sup>100</sup> are directly connected to agricultural policies and set benchmarks which have to be taken into consideration in agricultural trade negotiations.

#### 5.4.3.5 Climate Protection

Finally, the instruments aiming at the protection of the atmosphere have to be considered. These include the Montreal Protocol on Substances that Deplete the

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94 United Nations Convention on the Law of the Sea of 1982.

95 Such as the Agreement relating to the implementation of Part XI of the Convention of 1994 and the Agreement for the Implementation of the Provisions of the Convention relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995.

96 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas of 1995.

97 Kyoto Declaration and Plan of Action on the Sustainable Contribution of Fisheries to Food Security of 1995, containing inter alia Codes of Conduct for Fisheries.

98 UNCED Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests of 1992. Forest protection is also contributing to food security: Art. 7(a) "Efforts should be made to promote a supportive international economic climate conducive to sustained and environmentally sound development of forests in all countries, which include, inter alia, the promotion of sustainable patterns of production and consumption, the eradication of poverty and the promotion of food security."

99 African Convention on the Conservation of Nature and Natural Resources of 1968.

100 Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, particularly in Africa of 1994.

Ozone Layer,<sup>101</sup> the prominent United Nations Framework Convention on Climate Change (UNFCCC) and the appended Kyoto Protocol.<sup>102</sup> The latter consists of an attempt to reduce global warming and to cope with whatever temperature increases are inevitable. The goal is to lower overall emissions of six greenhouse gases – carbon dioxide, methane,<sup>103</sup> nitrous oxide, sulfur hexafluoride, hydrofluorocarbons (HFCs), perfluorocarbons (PFCs). Some of these emissions are particularly caused by agricultural production.<sup>104</sup> The climate conventions are also highly relevant to agriculture with respect to the transportation of goods.

#### 5.4.3.6 In Particular: Food Safety Concerns

The Food Safety requirements can be regarded as a cross-cutting issue reflecting social, cultural and environmental objectives. They are closely linked to farming policies. The World Food Summit Plan of Action concludes that mixed-farming systems are required in response to the needs of consumers for properly balanced diets.<sup>105</sup> The SPS agreement of the WTO and also the Cartagena Protocol, are particularly relevant in this respect. The comprehensive work done in this field by the Codex Alimentarius Commission<sup>106</sup> has also been very influential in this area.

### 5.5 Economic Objectives

From a sustainable economic perspective, the basic objectives that should be fulfilled by agricultural trade regulation are: to obtain a rule-based and open market system which is transparent, calculable and non-discriminatory, and provide for a peaceful settlement of disputes. The system should foster productivity and efficiency, as long as no other concerns demand a slower pace. States shall only intervene if necessary to reach the pursued objectives. Protectionist measures are

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<sup>101</sup> Montreal Protocol on Substances that Deplete the Ozone Layer of 1987.

<sup>102</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change of 1997.

<sup>103</sup> Methane for example is – apart from natural sources – also emitted by human-related activities such as animal husbandry (fermentation in livestock and manure management), rice cultivation or biomass burning (<http://en.wikipedia.org/wiki/Methane>; 6 December 2006).

<sup>104</sup> An exception is given for N<sub>2</sub>O from fertilizer.

<sup>105</sup> World Food Summit Plan of Action of 1996, commitment 3, objective 3.1.d.

<sup>106</sup> See [http://www.codexalimentarius.net/web/index\\_en.jsp](http://www.codexalimentarius.net/web/index_en.jsp) (6 December 2006).

justified only if they are transparent and comply with strict criteria. With respect to agriculture, the specific economic objectives are to meet the nutritional requirements of the world's population, to provide durable and decent employment, to offer protection from price volatility etc. Thereby, the paradigm of open markets has to be understood as a relative one. It is not a means in itself, but should be aspired to as long as the impacts on the other objectives are positive. It should be questioned, however, as soon as the impacts violate social or environmental benchmarks.<sup>107</sup>

The WTO and the AoA with its preambles and fundamental principles such as that of Most-Favoured Nation Treatment (MFN),<sup>108</sup> the National Treatment Principle (NT),<sup>109</sup> or tariffication,<sup>110</sup> reflect in principal, as a rule-based regulatory framework, these basic objectives. It is, however, often questioned whether it provides enough flexibilities to member countries as required from a sustainable perspective.

## **5.6 In Particular: Developmental Objectives**

It is generally assumed that ideally, "fair and sustainable development" worldwide will occur if all the principles of the concept of sustainable development are adequately respected while shaping public rules. The term "sustainable development" itself suggests this. The problem that countries start without a level playing field is seen as adequately reflected in the "principle of common but differentiated responsibilities" and the "principle of inter-generational equity" and in particular the human rights standards as reflected in the "principle of integration".

This assumption might be problematic, as the structural causes behind the huge gap between rich and poor countries seem not to be sufficiently addressed. It is doubtful for example whether the responsibility of countries to cooperate in order

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<sup>107</sup> See the extensive considerations with respect to economic benchmarks in Katja Gehne, *Nachhaltigkeit als Rechtsprinzip - Rechtstheoretische Analyse und praktische Anwendung am Beispiel der WTO- Rechtsordnung* (forthcoming).

<sup>108</sup> GATT, Art 1.

<sup>109</sup> GATT, Art 3.

<sup>110</sup> AoA, Art 4 para 2.

to bridge the gap, as stated in the non-binding Declaration on the Right to Development<sup>111</sup>, is adequately reflected in the concept, as the abovementioned “principle of common but differentiated responsibilities” is commonly applied in the context of environmental protection. In this regard one could further examine whether a fourth pillar representing “developmental objectives”, including the particular standards relevant to overcoming the worldwide wealth gap, would make sense.

## 6 Consequences

This display of key elements and benchmarks related to agricultural trade makes it clear that the picture is very complex. Therefore, nuanced approaches towards trade regulation are required – approaches that deal constructively with complexity. But how can such a system evolve, and how should the boundaries be set?<sup>112</sup>

It seems clear that a pure, blind opening of markets cannot address worldwide poverty in rural areas adequately. While some vulnerable groups would gain, others would lose. New inequalities would result, and no improvement in the distribution of assets and resources would be ensured.

Trade rules are, however, not negligible as they *can have* a significant impact on the economic situation of the member countries. The effect, however, varies from country to country, each starting at a different level of development and with its own complexities. Trade rules also have a diverse impact on the various stakeholders *within* a country, in particular on vulnerable groups, and can have a positive or negative effect on environmental resources.

The WTO does not exist in clinical isolation, but is embedded in the international process of moving towards more sustainable development. That demands a broad

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<sup>111</sup> Declaration on the Right to Development of 1986.

<sup>112</sup> Whereas scientific literature has only marginally addressed this basic question, some civil society organisations have made some first proposals. See prominently among them: 3D/Institute for Agriculture and Trade Policy, *Planting the Rights Seed: A human rights perspective on agriculture trade and the WTO*, 2005.

application of the umbrella “concept on sustainable development” to its decision making process. The principle of integration, an element of this concept, likewise requires WTO members to take account of social, environmental, economic and developmental benchmarks which are internationally recognized, or which are on their way to being recognized. In this context, it would be necessary to ensure that trade rules do not impair the social, cultural, environmental or developmental characteristics of countries, but *promote* them. What structural changes would that imply?

In the following, the direction a fundamental reform should strive for will be drafted. It offers some basic, exemplary suggestions which would merit further examination.

If the concept of sustainable development was correctly applied, the decision making process would have to be much more carefully designed, taking account of the considerations the global governance debate brings about. Before taking a decision, the relevant “benchmark framework” would have to be assessed. Comprehensive, nuanced impact assessment studies should be conducted *before* shaping new rules, as well as *in the aftermath*. The procedure should guarantee that the outcome of these studies would be evaluated and taken into account. The diverse interests – even if apparently conflicting at first – would have to be integrated and optimised. Such a procedure could bring about the optimal solution.

This would require major procedural reforms. In the style of other international institutions, committees composed of numerous experts would have to be involved in the preparatory work. Members would have to move away from a purely mercantilistic “way of negotiation”. The composition of negotiation groups would have to comply with strong, well-balanced criteria. Further, the inclusion of other international organisations and civil society representatives would have to be thoroughly examined.

With respect to the substantive provisions, no “one-size-fits-all” rules are likely to prove successful. Flexibility (that goes further than “exceptions”) should be

developed and defined. Nuanced rules and individual solutions should be developed, possibly by strengthening the “list approach”<sup>113</sup>. The paradigm that “there is only a way forward and no way back” should be dismissed: irreversible solutions would fail to take into account the fact that re-assessments can generate new outcomes. Similarly, the basic assumption of “a level playing field” where there is no such thing should be abandoned. In this regard, a new approach towards the non-discrimination principle as applied in trade law would be essential. Equal treatment of equals and unequal treatment of non-equals, as practised in the human rights realm, could be the appropriate approach here, too. This would also be valid with respect to different stakeholders *within* a country, such as small-scale farmers and large-scale farmers, where different treatment should be envisaged.

Similar proposals were made by the High Commissioner for Human Rights in the report entitled “Globalization and its impact on the full enjoyment of human rights”.<sup>114</sup> It is essential to mention the comprehensive report “Making Global Trade Work for Poor People”, drafted by the United Nations Development Program (UNDP),<sup>115</sup> in this context, too. It points out the need for increased market access and reduced domestic support and export subsidies in order to achieve the human development goals in developing countries. At the same time, it calls for greater *flexibility* in crafting policies for agriculture development. Importantly, it alludes to the role of *transnational corporations*, their concentration of market power and the serious challenges this brings about – the importance of this topic is generally underestimated.<sup>116</sup>

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<sup>113</sup> Already today the GATT and the AoA operate with country specific schedules where the country specific obligations are recorded.

<sup>114</sup> High Commissioner for Human Rights, Globalization and its impact on the full enjoyment of human rights, report submitted in accordance with Commission on Human Rights resolution 2001/32.

<sup>115</sup> UNDP, Kamal Malhotra, Making Global Trade Work for Poor People, New York 2003.

<sup>116</sup> *ibid.*; p. 135 ff. See the debate in this respect on corporate social responsibility, eg International Council on Human Rights, Beyond Voluntarism, human rights and the developing international legal obligations of companies, Versoix 2002.

However, negotiations which take the human development goals seriously can succeed only if the cultural, social and environmental concerns of rich countries are also taken seriously. Interestingly, the UNDP report acknowledges that increased flexibility would help to meet industrial countries' needs:

“Increased flexibility would also allow industrial countries to address rural development needs and environmental concerns without hurting farmers in developing countries. This approach would likely also foster agricultural sustainability, because it would probably show greater sensitivity to biodiversity concerns.”<sup>117</sup>

Against the background of the real “non-trade” needs of industrialised countries, the call for the total abolition of all protective measures and incentive policies with respect to agriculture will die away. However, rich countries should be obliged to *motivate* transparently when they decide to go for protective measures. Strong criteria, which have yet to be developed, would prove whether or not the arguments are justified. The protection and support measures should then be accurately measured against the rationale which was put forward. That would call for transparent, clear rules. It is questionable, for example, whether the green box provisions<sup>118</sup> (on the basis of which many industrialised countries notify a broad range of their domestic support measures) would meet these requirements; for example, the somewhat artificial and misleading distinction between the various domestic support boxes<sup>119</sup> or between domestic support measures and export subsidies.<sup>120</sup>

All these suggestions would imply an in-depth paradigm shift with respect to both procedural and substantive rules in the WTO. The whole system would clearly need to be submitted to an in-depth examination and open, non-ideological debate. For the time being, it is not clear whether the suggestions will remain utopian or whether a time will come when WTO will undergo a fundamental reorganisation

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<sup>117</sup> UNDP, Kamal Malhotra, *Making Global Trade Work for Poor People*, New York 2003, p. 112.

<sup>118</sup> AoA Art. 6 para 1 & Annex 2.

<sup>119</sup> Amber, blue, green, development box: The “colour” terms are widely used, but only indirectly reflected in AoA Art. 6.

<sup>120</sup> See the WTO US-Cotton Subsidies Case, 2005, and EC-Sugar Subsidies Case, 2005 (<http://www.worldtradelaw.net/dsc/dscpage.htm>; 6 December 2006).

which would allow it to deal with the complexities in this area and offer the right incentives.