

Trade and Human Rights The Agreement on Agriculture of the WTO and the Right to Food

Context, Conflicts and Human Rights Violations

In January 1995, the Agreement on Agriculture (AoA) of the newly created World Trade Organisation WTO came into force after the closure of the Uruguay Round. Before that time, trade in agricultural products had formally been subject to the rules of the General Agreement on Tariffs and Trade (GATT). However, the GATT had practically been without effect due to the many exception clauses.

When the AoA of the WTO came into force, this situation changed completely. Since then, the agricultural sector also obeys the general WTO principles of liberalisation, non-discrimination and the most-favoured-nation clause. Negotiations towards the AoA proved to be one of the most difficult tasks of the Uruguay Round. Many times during the process, the entire negotiation round was in danger of failing over agriculture. When finally the European Union (EU) and the USA agreed on a compromise text, the other states virtually had no possibility to change the negotiated package. Therefore, they agreed to the AoA although it primarily represented the interests of the EU and the USA, so as not to jeopardise the entire negotiation round.

A balancing of interests between the EU and the USA had been so difficult due to deep rifts over global trade in agricultural products that had marked the 1980s. The Common Agricultural Policy of the EU, which had been agreed upon in the 1960s had begun to lead to ever-growing surpluses in important agricultural goods. The EU therefore wanted to get rid of surplus production on the world market and naturally came into conflict with the USA, which had until then been the world's number one exporter in agricultural products. Both the USA and the EU heavily subsidised their agricultural exports in order to achieve this end. As a consequence, prices of agricultural products plummeted – with dramatic consequences for peasants elsewhere.

Dumping in the North – The Death Sentence for Peasants in the South

The peasants of the South bore the brunt of the trade conflict between the EU and the USA for they could not count on massive state subsidies and therefore quickly lost their competitive edge.

On the one hand, peasants producing staple foods for local or national markets were the first to be affected. Particularly in the eighties, many developing countries had succumbed to pressure from the World Bank and the International Monetary Fund to open up their markets to agricultural imports. Local peasants stood no chance against imports of European beef and US corn that were so heavily subsidised by Brussels and Washington that they could be sold well below production prices. Since then, many peasant organisations and developing countries have been mobilising against this kind of unfair competition but for the protection of domestic production and that of staple foods in particular.

On the other hand, peasants in nations with a tradition of export-oriented production such as Argentina and Brazil also suffered the consequences. They could also not put up resistance against heavily subsidised exports from the EU and USA and therefore lost much of their market share. These countries therefore founded a lobbying group together with equally affected industrial nations such as Canada, New Zealand and Australia, called the Cairns Group¹, which was named after the city in which the first meeting took place.

The wording of the Agreement on Agriculture of the WTO, which has been in force since 1995 gave rise to the hope that these conflicts could be contained. For example, it was intended that the AoA substantially reduce export subsidies, import restrictions and state support for agriculture.

The Agreement on Agriculture of the WTO

The AoA covers three areas: market access, domestic support of agriculture and export subsidies. WTO member states commit themselves to liberalising access to their markets, to reducing state support of their agriculture, and slashing export subsidies. All member states engaged have to take measures to the effect, even though developing countries usually have less strict reduction and liberalisation obligations and least developed countries (LDCs) are totally exempt from some obligations. Industrial nations were given six years (until the end of 2000), developing nations 10 years (until the end of 2004) to implement these measures. These measures were intended to help overcome the problems and market distortions that had existed since the eighties.

Negotiations on domestic support of agriculture proved to be difficult because it had to be clarified which agricultural subsidies had a negative impact on trade and which ones were instances of legitimate support of (peasant) agriculture. The approach adopted was to classify subsidies in order to come to terms with the numerous existing forms of state support for agriculture. Following this model, subsidies were classified into three categories. In the lingo of the WTO, the different categories of subsidies are called „boxes“:

- The „amber box“ contains subsidies that are to be reduced by 20% (industrialised countries) and 13,3% (developing countries) respectively within the six-year and ten-year period mentioned above. The reference time is the mean figure of 1986-88. All transfer payments by states belong into the amber box and are therefore subject to reduction unless expressly classified into another box (see below). Subsidies that are below a certain threshold are exempt. The threshold currently stands at 5% (or 10% for developing nations) of the entire value of agricultural production of a country or 5% of the pro-

¹ By the end of 2002 the following countries were members of the Cairns-Group: Argentina, Australia, Bolivia, Brazil, Canada, Chili, Columbia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, the Philippines, South Africa, Thailand and Uruguay



duction value of a particular product. This regulation is called the „de minimis rule“.

- The „blue box“ contains the payment of income support to farmers when linked to measures aimed at reducing production. These types of subsidies are not yet subject to a reduction obligation in the AoA and can therefore be used without any constraints. However, since these kinds of payment are coupled to production, they are seen as well to distort trade. Subsidies of this kind are a characteristic of the EU's agricultural policy since the early nineties. The USA introduced a new law on agriculture in 1996, which allows the state to make direct salary payments irrespective of production figures, which has pushed this type of subsidy back into the „green box“. Apart from the EU, subsidies of the „blue box“ type are primarily paid by Japan and Switzerland.
- The „green box“ contains subsidies that are of little or no relevance to trade and do not (yet) need to be reduced. Included in this box are environmental programmes, infrastructural support and the payment of direct income support to farmers that is not coupled to production..

In the area of market access the AoA obliges member states to convert all barriers to trade into tariffs (so called tariffication), because tariffs are seen to distort trade less than contingents, quotas or variable duties. However, during the Uruguay Round some nations quickly raised their base tariffs to such levels that they have managed to protect their markets in spite of the obligation to lower tariffs. In the current implementation period, tariffs have to be lowered by an average of 36% by industrial nations while tariffs for each product must be reduced by at least 15%. Developing nations are to reduce tariffs by 24% on average and a minimum of 10% per product. LDCs are exempt from the reduction obligation, however they have to convert all still existing barriers to trade into tariffs. At the same time, every country is obliged to allow a minimum of agricultural imports. Industrial nations have to cover at least 5% of domestic demand through imports, while the percentage for developing nations stands at 3%. The AoA also contains a safeguard clause, which

allows for temporary protection in case of a sudden rise in imports.

During the implementation period until the end of 2000 and 2004 respectively, industrial nations must reduce their export subsidies by 36% in value and 21% in volume (developing countries 24% and 14%). However, it must be taken into account that extremely high export subsidies were paid during the reference period.

Apart from these three main areas the AoA is based on three additional pillars:

Firstly, the AoA contains the so called peace clause (Art. 13). In general, WTO rules allow member states to protect themselves against the use of unjustified subsidies by other states. In the area of agriculture this is not allowed, if subsidies are covered by one of the boxes. The peace clause therefore makes it impossible for countries to access WTO dispute settlement procedures in order to ward off agricultural subsidies by other member states.

Secondly, non-trade concerns of the AoA are listed in the preamble (e.g. food security, rural development, environmental protection). However, it is nowhere stated what the non-respect of these concerns means. The crucial question in this respect is whether countries are allowed to protect (through tariffs) or support (through subsidies) their agriculture by referring to these non trade concerns.

Thirdly, developing countries enjoy special and differential treatment (SDT) - for example in the degree and speed of reduction of „barriers to trade“. However, SDTs are nothing more but the usual reduction obligations that have been reduced in quantity and spread out over a longer period of time. This makes their classification as a separate pillar controversial, more so because the special circumstances under which agricultural production takes place in poorer developing countries are not sufficiently taken into account.

During the Uruguay Round it already transpired that the AoA would have a negative impact on the LDCs and those developing countries that are net food importers. Therefore, a special declaration was adopted at the final conference of the Uruguay Round in Marrakech that prom-

ised additional support to these groups of countries. The „Marrakech Declaration“ contains four mechanisms geared at alleviating the impact of the AoA on such countries: food aid, agricultural export credits, technical and financial support aimed at increasing production, and financial support for the purchase of food imports. So far, the declaration has however not been put into practice.

The Road So Far: Unjust Structures Have Become Fossilised

Industrial nations were supposed to implement the regulations of the AoA by the year 2000, and developing nations by the year 2004. However, implementation so far has been quite disillusioning.

Benevolent observers say that the AoA has at least moved to the centre problems such as the extreme subsidisation of agriculture in industrial nations and thereby intensified the search for solutions. In this vein, the AoA was seen as an effective means to help reduce the subsidies of industrial nations and thereby stimulate the recovery of world market prices for agricultural products. This in turn would benefit peasants in the developing world. However, at the end of the implementation period the facts speak for themselves. The objectives have not been reached and particularly the situation of poor small peasants and their families in many countries of the Global South has visibly deteriorated.

The AoA has even allowed industrial nations to further expand support for their agriculture. OECD figures show that annual subsidies reached an all time high of US\$ 318 billion in 2002, up from an annual average of US\$ 247 billion in 1986-88. The USA and the EU are restructuring their agrarian policies in such a way that it allows them to shift their subsidies out of the restrictive „amber box“. Also, direct payments to peasants that belonged into the controversial „blue box“ have been restructured by the USA since 1996 in such a way that they now fall under the heading of the less controversial „green box“. Likewise, the EU is now following this example with the most recent reform of its Common Agricultural Policy. Today as ever, export subsidies are still allowed, even if the mandate of the WTO negotiation round, which began in 2001 aims at removing them in the long run.



A substantial reduction or removal of subsidies can therefore not be expected before soon. As a consequence of this kind of support, which is only affordable for the rich industrialised countries, many agricultural products will continue to be traded at prices well below the production cost of even the most competitive producers. Dumping practices are all the more devastating in their effects because most developing nations have, contrary to industrialised nations, taken the WTO obligations by the letter and have radically opened up their markets to foreign imports. In many cases, they were forced unto that path by the World Bank and International Monetary Fund if they wanted a rescheduling of their debts. The bizarre result of this kind of policy is that many small peasants have been ruined through European and US American dumping practices.

Peasants in Developing Countries are the Victims

Peasants in the South are the loser of this state of affairs. This holds true for export-oriented producers as well as for those producers, who supply the domestic or local market with staple foods. For example, wheat exporters of Argentina have lost much of their traditional markets to producers in the USA and Europe. At the same time, small peasants, who usually produce staple foods in the rural areas of poorer developing countries, cannot sell their produce anymore because imported food is much cheaper. Incidentally, it is these non-subsidised peasants, who now experience the greatest problems. Women, who are the main producers of food in many parts of the world and feed their families with what they grow, are often hit hardest.

In the North, the opening of markets has not worked in the same to the advantage of Southern producers. Industrialised nations also had to open their markets but during the Uruguay Round they made sure to fix the duties that served as the reference point at such high levels that the following reduction of 36% has virtually had no effect. Apart from that, other

barriers to trade are still in effect. For example duties on coffee imports rise with the degree of processing of the product. While unprocessed coffee beans can be imported into the European Union duty-free, importers of roasted coffee have to pay high duties. This system of progressive tariffication effectively bars producers in developing countries from moving further up on the value chain.

European Milk Powder for India

On the whole, the balance of the AoA is negative for developing nations and the adverse effects are becoming increasingly apparent. In many countries of the South, imports of agricultural products, in particular staple foods, have risen. There is a large number of developing nations, whose imports have risen while domestic production has fallen sharply: since the mid-nineties Indonesia, for example, has become the world's largest importer of rice. Likewise, Mexico's production of beans has fallen by a third and India now imports huge amounts of milk and basmati rice, all of which are products, that the country once was self-sufficient in.

In many countries, amongst them India and Bangladesh, the relation of food imports to revenue generated by food exports has dramatically worsened in favour of the former. In the Philippines imports of rice have risen steeply, although the crop is grown in the whole country. The Food and Agriculture Organisation (FAO) has come to similar conclusions in a study of 1999², in which the effects of the Uruguay Round on fourteen developing countries are analysed. The study found that very few developing countries were actually able to increase their agricultural exports, while many registered an enormous rise in imports (from the USA and Europe). This process is accompanied by the increasing concentration of land in the hands of few and leads to the marginalisation and pauperisation of peasants and rural workers' families.

The Right to Food is Being Violated

The impact of the AoA on the right to food is most immediately felt by marginalised and poor peasants and rural workers, because these groups have no other source of income but the land. Increasing indebtedness or the inability to pay leases forces them to sell their land, factors that drive them into hunger and malnutrition. According to the International Fund for Agricultural Development (IFAD), more than 75% of the hungry live in rural areas³. The effects of the AoA on these rural areas are dramatic. As a general rule, small peasant families, who produce staple foods for the domestic market, are the ones who directly suffer the consequences of market liberalisation. They usually do not benefit from any system of state support or provision of services. The impact of the opening of markets is particularly negative when subsidised agricultural products are sold at dumping prices. Indian milk producers make massive losses due to the dumping of European milk powder, which first goes through a costly drying and extraction process in Europe in order to make it transportable only for it to be mixed with water and once more sold as milk in India. It is not the European farmer who profits from this massive flow of subsidies – only the milk powder industry does.

On the one hand, violations of the right to food are perpetrated in places where local agricultural production contracts so much that vulnerable individuals or groups do not have access to a functioning system of food provision anymore. On the other hand, violations are committed where people's sources of income are destroyed as consequence of the existing trade regime, be it their access to productive resources such as land, water and seeds or be it their jobs.

The complete liberalisation of agriculture, as called for by many economists, would mean a prohibition of any kind of subsidy by the industrialised nations and would reduce the constant downward pressure on world market prices caused by dumping. Many small peasants and their families

² Agriculture, Trade and Food Security: Issues and Options in the WTO Negotiations from the Perspective of Developing Countries, FAO, Rome 1999.

³ Rural Poverty Report 2001, IFAD, Rome, 2001

would however not be able to profit from complete liberalisation because they would then have to compete internationally without any kind of state support. They still are at an enormous disadvantage compared to the agro-business. Developing countries do not have the financial resources to subsidise their agriculture; therefore the protection of the domestic market is the primary means through which food production can be supported.

Conclusions and Demands from a Human Rights Perspective

Any human rights assessment of the AoA must depart from the impact it has on the victims –in particular small peasants and rural workers. International trade in agricultural produce must be structured in such a way that the right to food is not violated. Under international law, states have obligations to protect, respect and fulfil the right to food. Therefore, their ability to implement the appropriate policies must not be curtailed by trade agreements:

- The realisation of the right to food must be at the centre of any agreement on trade in agricultural produce so that its regulations do not contradict the human rights obligations of member states of the WTO. If conflicts arise, human rights obligations must have precedence.
- Any agreement on agriculture must effectively end existing distortions such as the dumping of surpluses. At the same time, countries must have the right to structure their agricultural policies in such a way that the human right to food is not violated. WTO regulations are completely unacceptable if, as is currently the case, they oblige member states to liberalise their markets on the one hand and allow the continuation of subsidisation on the other. In the present system, wealthy countries can maintain their room for manoeuvre, while the ability of poorer countries to implement agricultural policies of their own choice is constantly being curtailed.
- The right to food obliges states to support those, who do not have sufficient access to food or productive resources. Accordingly, human rights law entitles small peasants facing ruin and destitution to special protection and support by the state. To the contrary, the neo-liberal trade doctrine requires equal treatment of all agricultural products, irrespective of their origin in or outside of the country, whether grown by small peasants or multinational agro-business, whether produced in a sustainable or environmentally destructive way.

- The ability of poorer countries to formulate agricultural policies must go far beyond the present special and differential treatment clauses, which are nothing more than “soft” versions of the obligation to remove barriers to trade.
- The possibility must be given to states to limit trade if there are Right to Food concerns. This should be all the more the case where a state cannot afford other forms of compensation such as social security systems.
- International food aid is often used to dispose of agricultural surpluses. This type of food aid must be strictly forbidden.

- Agreements on trade in agricultural produce must be monitored constantly with regard to human rights standards in order to document their impact. The same holds true for assessing the consequences of the accession of new members to such an agreement and should therefore be an integral part of all accession negotiations.

The internationally codified Right to Food entails a number of corresponding national and international state obligations for the agricultural sector. If the Agreement on Agriculture of the WTO does not recognise the primacy of these obligations, then the agreement must be rejected from the human rights perspective.

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FIAN – FoodFirst Information and Action Network

FIAN is the international human rights organization for the right to food. FIAN was founded in 1986 and currently has members in 60 countries. FIAN's objective is to contribute to the worldwide implementation of the Universal Declaration of Human Rights. FIAN works particularly for the right to food and supports people suffering from hunger and malnutrition. FIAN is recognized as a non-profit making organization. Donations are tax-deductible.

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