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Organización
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para la
Agricultura
y la
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**INTERGOVERNMENTAL WORKING GROUP FOR THE
ELABORATION OF A SET OF VOLUNTARY GUIDELINES TO
SUPPORT THE PROGRESSIVE REALIZATION OF THE RIGHT
TO ADEQUATE FOOD IN THE CONTEXT OF NATIONAL FOOD
SECURITY**

Information paper ¹

Rome

Right to Food Principles and International Trade Agreements

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¹ A preliminary version of this paper was made available to the Third Session of the Intergovernmental Working Group with a view to providing information on the topic examined.

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I. Introduction

1. Part of the debate in the Inter-Governmental Working Group (IGWG) for the Elaboration of Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the context of National Food Security has focused on the question of whether and how international factors influence or determine the progressive realization of the right to adequate food within national jurisdictions.²

2. This paper addresses only one aspect of the international environment, namely international trade agreements. Its purpose is to discuss how these agreements influence policies governing agricultural production and trade, food security and ultimately policies necessary for the realization of the right to adequate food.

3. The Uruguay Round Agreements, concluded in 1994, are the most important source of multilateral trade rules governing domestic agricultural and trade policies. Although almost all World Trade Organization (WTO) agreements influence agricultural policies to some extent and have an impact on food security, the following four agreements are most relevant: Agreement on Agriculture (AoA); Agreement on the Application of Sanitary and Phytosanitary Measures (SPS); Agreement on Technical Barriers to Trade (TBT); and Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

4. The paper is divided into four sections. Following this introduction, Section II provides an overview of relevant international agreements and covenants, and the concepts of right to food and food security. Section III, the substantive part of the paper, examines the main question posed in this paper, namely how various international trade rules influence domestic policies in the area of agriculture and food security, and thus have consequences for the realization of the right to adequate food. Section IV concludes the paper.

II. International Agreements and the Right to Adequate Food

5. The right to adequate food is recognized in Article 25 of the Universal Declaration of Human Rights (UDHR) and Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), among several other instruments of a binding and non-binding nature.³ The World Food Summit Declaration reaffirms “the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger”. The Declaration of the World Food Summit: *five years later*, and several United Nations General Assembly resolutions have reaffirmed the same right.

6. Article 11 of the ICESCR recognizes the right of everyone to an adequate standard of living, including food, for themselves and their families. A first explicit link between the realization of the right to food and international trade, although not exclusively limited to it, is expressed in Article 11 (2), which states that “the States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed, 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”.

² Right to food is in this paper taken to encompass both the right to adequate food and the fundamental right to be free from hunger.

³ FAO. 1999. *Legislative Study 68, Extracts from international and regional instruments and declarations, and other authoritative texts addressing the right to food*. Rome. Available at www.fao.org.

7. In response to the invitation of the World Food Summit Plan of Action (objective 7.4), the Committee on Economic, Social and Cultural Rights (CESCR) adopted General Comment 12⁴, in which it developed the normative content of the right to adequate food reflecting the core minimum obligations of states as well as obligations of the international community. As indicated in General Comment 12, the right of everyone to adequate food is realized when everyone has physical and economic access at all times to adequate food or to the means for its procurement (para. 6). Enjoyment of the right implies:

- *The availability of food* in a quantity and quality sufficient to satisfy the dietary needs of individuals (free from adverse substances). Availability refers to the possibility for people to feed themselves directly from the land or other natural resources, or from well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed (paras. 8 and 12);
- *The access to food* in ways that are sustainable and that do not interfere with the enjoyment of other human rights. Access implies both economic and physical access. Economic access implies affordability and that financial costs related to food are not so great or high as to threaten the enjoyment of other basic rights. Physical access implies that adequate food must be accessible to everyone, including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, victims of natural disasters, and other people living in isolated areas and situations that require special attention (paras. 8 and 13).

8. In General Comment 12, the CESCR identified minimum essential levels of the right to food which states have the obligation to ensure. They comprise, at the very least, the fundamental right to be free from hunger and the right to have access to food without discrimination. Although the principal obligation is to take steps to achieve *progressively* the full realization of the right to adequate food, with states having to move as expeditiously as possible towards that goal, every state should ensure for everyone under its jurisdiction non-discriminatory access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger. States should respect, protect, promote and provide the right to food for their people and should also ensure that existing levels of enjoyment of access to food and adequate nutritional status are not rolled back. This imposes the obligation to carefully assess any policy measure that is likely to have an impact on the realization of the right to food in the country, in particular of the most vulnerable.

9. The CESCR also considered that states have responsibilities with respect to the realization of the right to food in other countries. States should take steps to respect, protect and fulfil this right in other countries (para. 36); facilitate access to food and provide necessary food aid where required in a way that does not threaten sustainable local food security; and take into account their obligations regarding the right to food when negotiating and concluding international agreements. This would seem to require states to bear in mind the effects of their national agricultural and food policies, including food aid, on the enjoyment of the right to food in other countries.

10. The most widely accepted definition of food security is articulated in the 1996 World Food Summit Declaration as follows: “*Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life*”. Some defining features of this concept are the emphasis placed on food security at the level of both individuals and households; the three dimensions of availability, access and stability; and nutrition and quality aspects of food. Amartya Sen’s entitlements approach to food security is another widely accepted analytical framework for food security. The four entitlements in his framework are production-based entitlement, trade-based entitlement, entitlement based on the exchange of labour, and transfer-based entitlement. In

⁴ *General Comment 12, The right to adequate food (Article 11 of the Covenant)*, Committee on Economic, Social and Cultural Rights, UN Document E/C.12/1999/5, 5 May 1999.

view of the emphasis on multiple pathways to food security, the latter framework is also useful for assessing the linkage between multilateral trade rules and food security.

11. A human rights approach to food and nutrition problems is considered fundamentally different from basic needs-oriented approaches to development.⁵ The former introduces a normative basis which is obligatory at the state level. It also implies that the “beneficiaries” of development are active *subjects* and “right holders” and stipulates the duties or obligations of those against whom such claims can be made. By placing strong emphasis on the equal rights of everyone without discrimination, a rights-based approach focuses on national and household food security and helps to ensure food security at the individual level (men and women, boys and girls included). Finally, such an approach introduces an accountability dimension not present in basic needs strategies whereby rights holders are able to bring their concerns and interests to their authorities and hold the latter accountable for the policies and actions they take.

12. Thus, while the dimension and causes of food insecurity vary from country to country, leading to different solutions in different settings, it is increasingly recognized that legal recognition and protection of the right to food could be used to further food security in all countries.⁶

13. The adoption of a human rights and, in particular, a right to food perspective to international trade rules and policies implies the application of the above principles of participation, accountability, equality and non-discrimination and recognition of legal rights to the process of elaborating and enforcing those rules and implementing policies.

III. Analysis of Selected WTO Agreements in the Context of Food Security and Right to Food

14. To the extent that trade contributes to increased economic activities that generate employment and incomes for food-insecure population groups, almost all WTO Agreements have an impact on food security to a varying degree. For example, both the Agreement on Textiles and Clothing, and the Services Agreement are important for economic growth, employment and income generation for many developing countries. However, because of the nature of the topic, and in view of the overwhelming importance of the agricultural sector for food security, this paper covers only four WTO Agreements (AoA; SPS; TBT and TRIPS) and the Marrakesh Decision.⁷

A. AGREEMENT ON AGRICULTURE

15. The long-term objective of the AoA is to establish a fair and market-oriented agricultural trading system through substantial progressive reductions in subsidies and protection. Food security is mentioned in the preamble of the AoA in connection with the way in which commitments under the reform programme should be made. The first sentence of the Marrakesh Agreement establishing the WTO states that relations among WTO Members in the field of trade and economic endeavour should be conducted with a view to *inter alia* raising standards of living, which is consistent with the objective of food security. Other international declarations and

⁵ This paragraph draws from the Introduction chapter, *The Right to Food in Theory and Practice*, by Mary Robinson, former United Nations High Commissioner for Human Rights. FAO. Rome. 1998. Available at www.fao.org.

⁶ Consolidated report of six case studies, *Implementing the Right to Adequate Food: The Outcome of Six Case Studies*, document IGWG/RTFG INF/4. FAO, Rome. June 2004.

⁷ The Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries, as agreed as part of the Uruguay Round Agreement.

agreements also reflect this common understanding among the international community, i.e. that trade is not an end in itself but a means to development.⁸

16. The main issue addressed here is how and to what extent AoA rules promote or restrain the ability of states, in particular food-insecure ones, to pursue food security policies at the national level, including from a rights-based perspective. States meeting at UNCTAD XI recognized that “increasing interdependence of national economies in a globalizing world and the emergence of rule-based regimes for international economic relations have meant that the space for national economic policy ... is now often framed by international disciplines, commitments and global market considerations.” While it is left to each government to strike the right balance between international disciplines and commitments, and national policies, it is also recognized that it is particularly important for developing countries to take into account the need for such a balance.⁹ States should, therefore, safeguard adequate policy space to be able to carry out policies and strategies aimed at realizing progressively the right to adequate food for their people.

17. The relation of the AoA to food security is examined by means of the following questions:

- Is the AoA as a whole conducive to food security, i.e. does it contain elements that contribute to food security in food-insecure countries?
- Do the AoA rules limit the ability of food-insecure states to adopt measures aimed at the realization of the right to adequate food and to pursue rights-based approaches to food security?

(a) Is the AoA as a whole conducive to food security, i.e. does it contain elements that contribute to food security in food-insecure countries?

18. In brief, the dominant view is that the AoA is conducive to food security. This conclusion is based largely on analyses that compare a counterfactual scenario (the continuation, in the absence of the AoA, of distortions to world agricultural markets that existed prior to the Uruguay Round) with the post-AoA situation when distortions are disciplined and reduced. The majority of these studies conclude that distortions have negative effects both on countries that subsidize and, more importantly, on other countries. Thus, the reforms initiated by the AoA could make positive contributions to agricultural development and food security. The following two paragraphs summarize the importance of the reform process in general and the need for some pro-active agricultural development and food security measures for food-insecure countries.

19. **Trade distortions introduced by trading partners have an impact on food security in other countries.** Understanding how food-insecure countries are affected by policy distortions of trading partners is important, especially from a rights-based perspective. Many of the negative effects of these distortions, such as depressed and unstable world market prices, reduced access to markets in the distorting countries, and unfair export competition in third-country markets, are well known. It is also well known that while developed countries account for most domestic and export subsidies (about 90 percent), both developed and developing countries contribute to high tariff-induced distortions. A counter argument often advanced is that these distortions have also

⁸ “Trade is not an end in itself, but a means to growth and development. Trade and development policies are an important instrument inasmuch as they are integrated in national development plans and poverty reduction strategies aiming at goals such as growth, economic transformation and production, diversification, export value-added, employment expansion, poverty eradication, gender equity, and sustainable development. Coherence and consistency among trade and other economic policies being pursued at the national, bilateral, regional and multilateral levels by all countries are important for maximizing the contribution of such policies to development.” Sao Paulo consensus, United Nations Conference on Trade and Development, doc. TD/410, 25 June 2004, para. 63.

⁹ Ibid. para. 8. In relation to the need for an appropriate balance between international commitments and national policy space it is also noted that in increasing the participation of developing countries in global export growth their specific needs should be taken into account, considering further that there is no one-size-fits-all trade and development strategy. Paragraph 66.

made some positive contributions to food security by supplying food to world markets at lower prices, thus making food more affordable to the needy. Similar arguments apply to the availability of food aid. These benefits must be assessed against the costs that such distortions create. Given that a majority of developing countries, including both food-insecure countries and those that are large-scale importers of basic foods, have taken a position in the WTO negotiations to reduce these subsidies, it seems that they expect net positive gains from continuing the reform process as a whole.

20. Moreover, distortions, especially of food markets, make it difficult for non-subsidizing countries to achieve reform. Thus, for example, depressed world market prices reduce farm incentives which may lead governments to raise tariffs that can have other economic costs. Similarly, export subsidies are often associated with import surges. The distortions also make non-subsidizing countries less competitive in third country markets.

21. Thus, these distortions may have negative effects on production and trade and make it harder for food-insecure countries to implement sound food security policies. While the Uruguay Round subjected these distorting policies to the rules-based system, it did not reduce the level of distortions to any great extent.¹⁰ The latter is being attempted under the Doha Development Agenda negotiations which could thus have important implications for non-subsidizing, and largely food-insecure, countries.

22. ***Similar or identical trade rules often lead to dissimilar outcomes when there are imbalances in economic conditions across countries.*** Experience since 1995 shows that most developing countries have not been able to take full advantage of the “policy space” provided by the AoA (see (b) below) due to lack of financial resources and institutional capability. Thus, even if the AoA were balanced in terms of “policy space”, the outcome could vary from one country to another because some countries utilize this space fully (e.g. in supporting agriculture), while others cannot afford to do so.¹¹ Similarly, while some countries have the capability to resort to general trade remedy measures, others do not. Another example is the often vast difference in technical standards (e.g. food quality in the context of the SPS Agreement) between rich and poor countries. This difference often leads to an asymmetric response to trade liberalization in that, given the same degree of market opening by both parties, an exporter with higher domestic SPS standards (notably rich countries) would not face market access constraints on SPS grounds, while an exporter with lower standards (notably many poorer countries) may face binding access constraints. As a result, trade response to liberalization becomes asymmetric.

23. The main point made here is that, even where multilateral trade rules are similar, various asymmetries across rich and poor countries make the outcomes dissimilar. While imbalances in the AoA can for example be addressed through multilateral negotiations, this is not enough to reduce or eliminate the asymmetries in outcomes without several pro-active measures targeted at lower-income, food-insecure countries, e.g. investment in agriculture, technical standards, institutional capability etc, that will assist them to improve their capacity to use the opportunities and mechanisms offered by international trade rules.

24. This asymmetry has implications for states’ compliance with obligations on the right to food. States parties to the relevant agreements have a duty to take all appropriate measures to progressively realize the right to adequate food, including by using all possibilities, flexibilities and/or policy space allowed under trade agreements within the limits of their available resources.

25. Recognition of differences across countries in their capacity to respond to trade liberalization has been reflected in international trade agreements and arrangements. For

¹⁰ See *The Uruguay Round Agreement on Agriculture: An Evaluation of its Implementation in OECD Countries* for the analysis and this conclusion. OECD, Paris, 2001.

¹¹ Financial constraints aside, it is also possible that support to agriculture could be delayed because governments do not give adequate priority to this sector.

example, during the 70s, an additional chapter was introduced in the General Agreement on Tariffs and Trade – which was the only agreement at the time regulating multilateral trade on goods - on differential and special treatment of developing countries. The same years saw the birth of the Generalized System of Preferences whereby developed states extended additional tariff preferences to developing countries without demanding reciprocal concessions. Special and differential treatment was also inserted in the various Uruguay Round Agreements, giving developing countries longer periods of implementation and allowing them to undertake lower levels of commitments. One of the main criticisms of these provisions is that they have not always been implemented and are not as effective as expected. In general, special and differential treatment, which has also found an important place in the Doha Declaration, raises problems in deciding which group of countries deserves more special and differential treatment than others and on what account.

26. A final point on the question of whether the AoA contains elements that contribute to food security is the new WTO dispute settlement system. To some extent, the system has been effective in strengthening the capability of the developing countries to defend their rights. These countries have been able to bring complaints to defend their rights and have indeed been successful in several cases. In the context of the AoA, recent examples include successful challenges to *inter alia* domestic and export subsidies given by developed countries to cotton and sugar.

(b) Do trade rules limit the ability of food-insecure states to pursue rights-based approaches to food security?

27. Having noted some of the effects of the AoA, including the issue of asymmetry in outcomes, this sub-section examines the AoA rules in terms of the “policy space” available for pursuing food security policies, including from a rights-based perspective. A number of key concerns expressed both by governments and non-governmental stakeholders in the context of food security are dealt with.¹² The main conclusion is similar in each case – that the AoA does not, in general, at this stage, limit the policy space to implement food security programmes, and that the main constraints are lack of funding and institutional capability, and, to some extent, political will.

28. **The AoA rules and the “right” to produce food and other agricultural products.** The AoA is concerned with reducing distortions such as protection and subsidies; it does not call for limiting production itself except in some specific contexts. Where food production was maintained by virtue of subsidies, reforms could lower production. However, this is not a characteristic of food-insecure countries.

29. Agricultural production is influenced by many trade and domestic policy instruments. Thus, the rules in all “three” pillars of the AoA (domestic support measures, market access and export subsidies) do play a role. Nevertheless, policy instruments that fall under domestic support measures are particularly relevant. The main question asked is to what extent the rules limit the range of support measures as well as the level of financial support provided for agricultural production.

¹² There is a large and growing amount of literature on the linkage between the AoA reform process and food security. See for example “Some issues relating to food security in the context of the WTO negotiations on agriculture”, and “Incorporating food security concerns in a revised Agreement on Agriculture”, both published in *FAO Papers on Selected Issues relating to the WTO Negotiations on Agriculture*, FAO, Rome, 2001. The linkage is also analyzed in *The Medium-term Impacts of the Trade Liberalization in OECD Countries on the Food Security of Non-member Countries*, Document COM/AGR/TD/WP (2001) 74/FINAL, OECD, Paris, 2002. There is also a chapter on this subject in *The State of Food Insecurity in the World, 2003*, FAO, 2003.

30. Firstly, regarding trade-distorting subsidies that are disciplined by the AoA, relatively few developing countries applied these subsidies to a significant extent in the Uruguay Round base period (1986-88), and so they do not have any reduction commitments. The upper limit of subsidies for them is set by the so-called *de minimis* level - i.e. all developing countries can grant subsidies up to 10 percent of the value of production of specific products (e.g. price support for rice, cotton, etc.) and additional non product-specific subsidies (e.g. on fertilizers, seeds, etc.) up to 10 percent of the value of total agricultural production. Experience with the implementation of the AoA since 1995 has shown that most developing countries were able to utilize only a small part of the 10 percent limits.¹³

31. Secondly, AoA's Article 6.2 exempts some subsidies applied by developing countries from the above discipline, e.g. input subsidies to low-income or resource-poor producers, thus further expanding the room for trade-distorting subsidies. Despite this, Article 6.2 has been little used.

32. Thirdly, the AoA does not place any limit on all other subsidies that are considered to have no or minimal production and trade distortions. Commonly known as Green Box measures, these include, for example, research and extension, pest and disease control, training, various infrastructural services (electricity, roads, market and port facilities, etc.), insurance, regional development aids and so on.¹⁴

33. In addition, production is supported indirectly by tariffs and other barriers to trade that, in the case of importing countries, raise the domestic price to producers above world market prices. Though not a subsidy, this is frequently the most powerful instrument used to support production. Typically most developing countries have retained rather high bound tariffs for food products so that they have a considerable margin with which to help protect domestic production under the AoA.

34. The overall conclusion is that the AoA provides ample policy space for raising food and agricultural production. The use of policy space can, however, be severely constrained by a number of factors. One of these is the fairly widespread conditionality under Structural Adjustment Programme (SAP) loans that prevent countries from raising applied tariffs. Another is that the absence of resources can prevent developing countries from taking advantage of policy space available to them. Yet other constraints can be inadequate support to agriculture and/or SAP conditionality which may limit some forms of domestic support. These practical realities emphasize that greater policy coherence should be sought between the WTO and international financing institutions in particular.

35. **Safeguarding domestic markets from disruptions such as import surges.** This is an important food security objective, especially for many food-insecure countries where small farmers predominate, and price and income safety measures are lacking. The phenomenon of import surges, which have increased particularly since the mid-1990s for basic foods, is often linked to trade liberalization.¹⁵ From a rights-based perspective to food security, it can be argued

¹³ This is based on *Developing Country Experience with the WTO Agreement on Agriculture and Negotiating Issues*, Ramesh Sharma, 2002. Paper presented at the International Agricultural Trade Research Consortium (IATRC) summer symposium on *The Developing Countries, Agricultural Trade and the WTO*, Vancouver, Canada, 16-17 June 2002. FAO country case studies also discuss these issues for 23 developing countries that were the subject of the study, *WTO Agreement on Agriculture Implementation Experience: Developing Country Studies*. Rome. 2003. Available at www.fao.org/trade.

¹⁴ Three Green Box measures that are directly relevant for food security-oriented programmes (stockholding, subsidized food distribution and employment generation) are discussed below.

¹⁵ Several cases of import surges were reported in country case studies. See *WTO Agreement on Agriculture Implementation Experience: Developing Country Studies*. FAO. Rome. 2003. Available at www.fao.org/trade. Several national and international civil society organizations have also documented cases of import surges based on field work. See also *Some Trade Policy Issues Relating to Trends in Agricultural Imports in the Context of Food Security*, Document CCP/03/10, 64th Session of the Committee on Commodity Problems, 18-21 March 2003. FAO. Rome.

that farmers have a right to be safeguarded from these shocks. This requires governments to have access to appropriate instruments, which in the WTO framework include the following:

- Raising applied tariffs up to the limit set by WTO bound rates;
- Resorting to the Special Safeguard (SSG) of the AoA; and
- Resorting to general trade remedy measures, i.e. anti-dumping, countervailing and emergency safeguards.

36. Experience since 1995 shows that many developing countries resorted to the first option when faced with import surges, partly because they did not have access to the SSG¹⁶ and partly because they lacked capability to resort to general trade remedy measures. A proposal has been made in the ongoing negotiations for a Special Safeguard Mechanism for developing countries that is expected to be similar to the SSG. Access to this safeguard would be valuable for them from the standpoint of a rights-based approach to food security. At the same time, it is equally important for governments to develop capability in general trade remedy measures.

37. **Stockholding food for stabilizing domestic prices and for emergency food security needs.** The former, i.e. releasing stocks when domestic prices are high and *vice versa*, used to be a popular policy in developing countries; however, this form of market intervention is no longer common. By contrast, maintaining food security stocks for emergency needs is fairly widespread. From the standpoint of a rights-based approach, the question is whether the AoA limits these options.

38. The answer is no. Firstly, the AoA places all expenditures (or revenue foregone) in relation to the accumulation and holding of stocks of products that are part of a food security programme in the Green Box category, i.e. there are no limits to the outlay. This also applies to government aid to private storage as part of such a programme. There is a requirement that the volume of such stocks correspond to predetermined targets related solely to food security, which should not be a difficult condition to meet. Moreover, for developing countries, subject to meeting these criteria, stocks of foodstuffs for food security purposes can be acquired and released at administered prices, provided that the difference between the acquisition price and the external reference price is counted as trade-distorting subsidies (measured as Aggregate Measurement of Support or AMS). Given the considerable scope for raising AMS levels up to the 10 percent level, this is unlikely to be a constraint.

39. **Implementing subsidized food distribution programmes.** This is a fairly common food security programme. In the AoA, it is called “domestic food aid” and falls under Green Box measures. It is stated that the eligibility to receive food aid shall be subject to clearly-defined criteria related to nutritional objectives, and that such aid should be in the form of direct provision of food to those concerned or the provision of means to allow eligible recipients to buy food either at market or at subsidised prices. It is explicitly stated that the provision of foodstuffs at subsidised prices with the objective of meeting the food requirements of the urban and rural poor in developing countries on a regular basis at reasonable prices shall be considered to be in conformity with the AoA. Thus, the AoA does not prevent developing country governments from providing such assistance, including food free of cost to the most needy.

40. **Implementing guaranteed employment schemes for food-insecure population groups.** These are also effective measures to combat hunger, especially seasonal food insecurity. Being guaranteed by law, they are good examples of a rights-based approach to food security. One widely cited rights-based scheme is the Maharashtra Employment Guarantee Scheme of India which came into operation in 1997. Many food-for-work programmes also fit into this category, albeit belonging to the non-guaranteed category. However, probably for budgetary reasons, there are relatively few examples of *guaranteed* schemes in developing countries, despite their attraction both for reducing hunger and for creating rural infrastructure. In the context of this

¹⁶ Access to SSG was made conditional on “tariffication” of non-tariff barriers, which many developing countries did not resort to. As a result, only 21 of them have access to the SSG.

paper, what is important is that neither the AoA nor other WTO agreements restrict this type of scheme.

B. THE MARRAKESH DECISION – SAFEGUARDING AGAINST SOME FOOD INSECURITY RISKS THROUGH A MULTILATERAL TRANSFER MECHANISM

41. During the Uruguay Round, negotiators were concerned that agricultural reform could have negative effects on least-developed and net food-importing developing countries (LDCs and NFDCs) in terms of the availability of adequate supplies of basic foodstuffs from external sources on reasonable terms and conditions, including short-term difficulties in financing normal levels of commercial imports. Several analyses had shown that the reform process was likely to increase food import bills as world prices of basic foods were expected to increase, and that these countries could be more dependent on food imports as they also open their economies, while at the same time food aid would probably decline. The response was the *Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries*. The *Decision* included four response mechanisms: food aid; short-term financing of normal levels of commercial imports; favourable terms for agricultural export credits; and technical and financial assistance to improve agricultural productivity and infrastructure.

42. The *Decision*, however, has not been implemented. Even during 1995-96, when world prices of basic foods soared, none of the response mechanisms was triggered within the framework of the *Decision*. The Doha WTO Ministerial Conference included the *Decision* as one of the implementation issues, and subsequently the WTO formed an inter-agency panel to examine this matter. Some analyses have been conducted by FAO (on a Revolving Fund considered there), but little progress has been made since then.

43. The *Decision*, if it had been implemented, would have been a good example of Amartya Sen's "transfer-based entitlement" to food security at the multilateral level. Having the *Decision* in place as intended would have contributed to food security as this would help developing countries to reform their agriculture by providing an effective safeguard for difficult times.

C. AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)

44. Three aspects related to the TRIPS Agreement are important in the context of food security in general and for a rights-based perspective in particular. These are: protection of plant varieties (Article 27.3b of the TRIPS); right of protection of traditional knowledge; and the public's access to genetic resources and benefit sharing.¹⁷

45. Article 27.3(b) of the TRIPS requires all WTO Members to provide Intellectual Property Rights (IPR) protection to plant varieties, either by patents or by an effective *sui generis* system or by any combination thereof. This *sui generis* option provides valuable policy space for most developing countries because, under a system of patents, farmers would be prohibited from using seeds from patented varieties without the consent of the patent holder. As seeds saved by farmers and exchanged among themselves can account for up to 80-90 percent of the total seed requirements in developing countries, a patent system could severely constrain subsistence farming and food security.

¹⁷ Extending "Geographical Indications" to products other than wines and spirits, especially to traditional products of developing countries, is also relevant to food security as the benefits often extend to marginal and disadvantaged areas.

46. Many developing countries are in the process of formulating *sui generis* legislation. In doing so, they need to take advantage of provisions in other treaties and conventions. For example, the International Treaty on Plant Genetic Resources for Food and Agriculture recognizes farmers' rights, including the protection of traditional knowledge, the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources, and the right to participate in the decision-making process concerning their management. In addition, no limits can be imposed on the rights that farmers have to save, use, exchange and sell farm-saved seeds and propagating material.

47. Looking ahead, the Doha Declaration has directed the TRIPs Council to review Article 27.3(b) in order to examine the relationship between the TRIPs and the Convention on Biological Diversity (CBD), the protection of traditional knowledge and folklore and other relevant new issues raised by WTO Members. Pursuing this in the WTO is very important for developing countries, particularly in view of possible substantive implications for food security and for rights-based approaches.

D. THE SPS/TBT AGREEMENTS

48. The SPS/TBT Agreements and the right to food have two important areas of interaction. First, the right to food requires "safe and nutritious food to meet dietary needs and food preferences". Thus, consumers have a right to safe food, and the SPS Agreement is the main multilateral framework for this. Second, the SPS/TBT Agreements contribute to food security by facilitating trade and thereby raising incomes.

49. Regarding the first point under the SPS Agreement, governments have the right to implement effective legislation and other safeguards to ensure food safety and quality. The SPS Agreement seeks to establish a multilateral framework of rules and disciplines to guide the development, adoption and enforcement of sanitary and phytosanitary measures in order to minimize their negative effects on trade. Such measures are essential for food security from a rights-based perspective, and therefore there are no apparent conflicts between the Agreements and food security.

50. It is an entirely different matter that many developing countries face enormous challenges in meeting food standards in export markets, notably in developed countries, and thus fail to take advantage of trading opportunities. Upgrading the levels of standards can be a very costly undertaking. The SPS Agreement includes non-binding provisions which recommend technical assistance for developing countries in this regard. FAO has been providing considerable amounts of technical assistance in these areas but there is still a large unmet need because of a shortage of finance.

IV. Concluding Remarks

51. The purpose of this paper is to discuss the likely implications of multilateral trade rules for food security in general and for a rights-based approach in particular, as a background paper in the context of the elaboration of draft Voluntary Guidelines on the right to food at the national level. Although all WTO Agreements impact on food security, the paper focuses on four of them with the most direct bearing on food and agricultural policies and trade - the AoA, SPS; TBT and TRIPs – as well as the Marrakesh *Decision*. The main question addressed in the paper was whether and how multilateral trade rules limit the ability of states to pursue the realization of the right to adequate food (within a rights-based approach to food security).

52. The following main points were noted in the analysis of the AoA. The reforms initiated by the AoA have the potential to make positive contributions to food security by limiting trade

distortions which would have been more damaging in the absence of the Uruguay Round. Secondly, the Agreement provides sufficient “policy space” for all countries, including those that are food insecure, to pursue a right to food approach. That policy space, however, has not been used well. A few countries failed to do so because of their own policy choices and despite having resources, and thus neglected their obligations under the right to adequate food. However, in the vast majority of cases, they are constrained in taking advantage of the policy space by a lack of financial resources and weak institutional capability. The implementation experience since 1995 shows that, by contrast, countries with ample financial resources and capability have taken advantage of the policy space. The overall result is an asymmetry in *outcomes*, despite the same or similar *policy spaces*. A sharp divide in income levels between poor and rich countries has led to similar asymmetries in a number of areas, in terms of the ability to take advantage of the Agreements. Another form of imbalance that can lead to asymmetric outcomes in the context of the TRIPS Agreement, is the fact that almost all patents are held by individuals and corporations in developed countries with the result that developing countries will be mainly net importers of technologies for a long time to come. The ongoing agricultural negotiations provide an opportunity to redress some of these imbalances, and thus to contribute to the “development” objective of the Doha Development Agenda.

53. It is worth noting in these negotiations that the CESCR, in General Comment 12, calls on states to be responsible with respect to the realization of the right to food in other countries. Ensuring that damaging export subsidies and dumping do not occur are examples of such obligations.

54. In the case of the TRIPS Agreement, the main concerns from a food security point of view are the protection of plant varieties, the right to protection of traditional knowledge and the public’s access to genetic resources and benefit sharing. The *sui generis* option to protect plant varieties is a valuable provision for most subsistence-oriented, food-insecure countries. It is, however, important for countries in the process of formulating *sui generis* legislation to take advantage of the provisions in other international treaties where the primary concern is with food security and agricultural development.

55. As regards the SPS/TBT Agreements, the main conclusion was that countries have the right to take measures to protect human life or health, and the SPS Agreement provides a framework for this. By also preventing arbitrary protectionism in trade, these Agreements help states to guarantee the rights of traders and farmers to engage in and gain from export trade. Currently, the majority of the developing countries face enormous challenges in meeting international technical standards, but there is little else that can be done here other than upgrading the standards.

56. Overall, it is a fact of life that trade liberalization produces both winners and losers, across countries and within countries. The across-country imbalances and asymmetries should be tackled through appropriate multilaterally negotiated trade agreements while individual states can make a difference in minimizing within-country imbalances. On the whole, the current multilateral trade rules provide considerable space for states to pursue rights-based approaches to food security at the national level, although the majority of these countries are constrained by lack of resources in taking advantage of the policy space. Lastly, the discussion throughout this paper has also stressed the importance for food-insecure countries in particular to participate effectively in the ongoing WTO negotiations so that the new Agreements are more balanced and development-friendly than at present.