

# SPEAKERS' CORNER

## POINT

### THE WORLD TRADE ORGANIZATION AND THE HUMAN RIGHT TO ADEQUATE FOOD: PRINCIPLES VS. PRACTICE

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Some critics say that the trade framework under the World Trade Organization and the human rights framework are inherently incompatible<sup>1</sup>. The concern is especially serious with regard to the human right to adequate food<sup>2</sup>. There can be no doubt that food trade sometimes harms food security. However, on closer examination we see that in principle there are no important incompatibilities between the human right to adequate food and present rules regarding trade within the WTO framework.

#### *The human right to adequate food*

The human right to adequate food is not only a moral right, it is a clear legal right, firmly established in international human rights law, and ratified by most countries<sup>3</sup>.

The articulation of the right to food in modern international human rights law arises in the context of the broader human right to an adequate standard of living. The *Universal Declaration of Human Rights* of 1948 asserts in article 25 (1) that "everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food . . . ."

Article 6 of the *International Covenant on Civil and Political Rights* affirms, "Every human being has the inherent right to life". This clearly implies the right to adequate food and other necessities for sustaining life.

The human right to adequate food was affirmed explicitly in two major binding international agreements. Article 11 of the *International Covenant on Economic, Social and Cultural Rights*, which came into force in 1976 says:

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. 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.
2. 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 nations, to ensure an equitable distribution of world food supplies in relation to need.

The last paragraph means that countries that have ratified this covenant are obligated to consider the impacts of international trade on food security.

Paragraph 2, on taking measures through international cooperation, should be read with the article 28 of the *Universal Declaration of Human Rights*, which says, "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized. Article 2 of the *International Covenant on Economic, Social and Cultural Rights* says, in its first paragraph "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, including particularly the adoption of legislative measures."

In the Convention on the Rights of the Child (which came into force in 1990), two articles address the issue of nutrition. Article 24 says that "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health . . . (paragraph 1)" and shall take appropriate measures "to combat disease and malnutrition . . . through the provision of adequate nutritious foods, clean drinking water, and health care (paragraph 2c)."



Article 27 says in paragraph 3 that States Parties "shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing, and housing."

In 1999 the UN's Committee on Economic, Social and Cultural Rights released its *General Comment 12* on the human right to adequate food<sup>4</sup>. This statement by the committee constitutes a definitive contribution to international jurisprudence. The first sentence of paragraph 6 presents the core definition:

The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.

### **World Trade Organization**

The World Trade Organization takes the leading role at the global level for overseeing the management of international trade. Its primary mandate is trade liberalization, based on the steady reduction of tariffs and other barriers to free trade. The organization has no substantive powers of its own, but rather, it serves to facilitate the implementation of agreements among its member states. The WTO has a comprehensive website, at [www.wto.org](http://www.wto.org). A good way to get an overview of its operations is through its publication, *Understanding the WTO*<sup>5</sup>.

While the WTO has not given much attention to the issue of food security, it is evident that it places its faith in trade liberalization as the means for achieving food security<sup>6,7</sup>. As demonstrated by the breakdown of the WTO ministerial meeting at Cancún, Mexico in September 2003, it is clear that many critics do not agree that trade is in fact a good means for achieving food security<sup>8-11</sup>.

The WTO generally advocates increasing trade, but there is space for maneuver within the WTO framework. It should be noted that:

- 1 The Marrakesh Agreement, establishing the WTO as the final act of the Uruguay Round, made it clear that trade was not to be pursued for its own sake, but as a means for development. In the preamble, the parties recognized 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 parties recognized the need for "positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development...."<sup>12</sup>
- 2 The *General Agreement on Tariffs and Trade* (GATT) includes article XX, on "General Exceptions", which says that:  
"Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:..."  
(b) necessary to protect human, animal or plant life or health;  
  
It is evident that food security is necessary to protect human life.
- 3 At WTO's ministerial meeting at Doha in 2001, it was agreed that "special and differential treatment for developing countries shall be an integral part of all elements of the negotiations . . . to enable developing countries to effectively take account of their development needs, including food security and rural development."<sup>13</sup> Work on a *Framework Agreement on Special and Differential Treatment* is underway in WTO.
- 4 Decision-making in WTO is supposed to be by consensus.
- 5 The fundamental principle of national sovereignty remains intact. The WTO is not supposed to be a world government. Membership in WTO is optional. It is possible to withdraw if participation is viewed as harmful.
- 6 The WTO framework is only one of several relevant normative frameworks. There is no reason to assume that its perspectives must prevail over all others.

A study on *Human Rights and Trade* prepared by the Office of the High Commissioner for Human Rights for the WTO Ministerial Conference in Cancún, Mexico in September 2003 explained that, in terms of law:

All WTO Members have undertaken obligations under international human rights law. This means that WTO Members should promote and protect human rights in the processes of negotiating and implementing trade law and policy. For example, of 146 members of the WTO, all have ratified at least one human rights instrument. 113 WTO Members have ratified the *International Covenant on Economic, Social*



and Cultural Rights (ICESCR) and all but one have ratified the *Convention on the Rights of the Child*. Further, those areas of human rights law recognized as customary international law take on universal application, which means that trade rules should be interpreted as consistent with those norms and standards whatever the treaty commitments of States in trade matters<sup>14</sup>.

At the level of principle, WTO rules and human rights standards are wholly compatible. However, principle and political realities are different matters. The excessive and trade-distorting use of agricultural subsidies by the United States, Japan, and the European Union do not result from WTO principles. Pressures of various kinds have been put on developing countries to comply with the wishes of developed countries in the WTO, so the decision making process has not been open and democratic in practice<sup>15</sup>. The point here is that the *principles* on which the WTO was founded do allow national governments to assert control over their food security situations. It is possible to imagine very different kinds of agreements relating to food and agriculture within the WTO framework. The challenge is to find a path that would gain consensus among many countries with widely varying interests.

### Food sovereignty

The views of trade advocates and those who are concerned with the human right to adequate food may be reconciled through clear appreciation that the core principle in the relationship between food trade and the human right to adequate food is *food sovereignty*.

National sovereignty has been the fundamental principle of the nation-state system since the Treaty of Westphalia of 1648. Sovereignty means that all nation-states are equal in the eyes of the law; there is no legal authority above nation-states, except with their consent; and outsiders may not interfere in their internal affairs without their consent. In their international relations, states are represented by their national governments. Sovereignty is based on the premise that normally national governments are the best judges of what is good for their people.

An essential component of national sovereignty is food sovereignty. All national governments have permanent responsibility for the nation's food security. Since national governments have a fundamental legal and moral obligation to assure their people's food security, they must have the right to make their own decisions in relation to food security. That responsibility cannot be relinquished through, or overridden by, international agreements of any kind.

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## COUNTERPOINT

### WTO: NO DEAL IS BETTER THAN A BAD DEAL

Claudio Schuftan, Ho Chi Minh City

I do not disagree with the point made by George Kent, ie that food trade very often harms food security. As opposed to him, I am more interested in the political implications of what the world was faced with in Cancun, ie in furthering the right to adequate food rather than the principles and international legal aspects involved in the debate. Point and Counterpoint here complement each other.

Dr Kent's call for a focus on the concept of 'food sovereignty' is valid. But more importantly today is to bridge the big political divide in WTO about achieving across-the-board food security in developing countries.

WTO today has 146 members; more than 100 of them developing countries. Most of the latter are not in a position to defend their interests effectively. Despite official equality, WTO principles ultimately reflect the international power imbalance in its procedures. Its rich members often have an aversion to multilateral rules which must be respected. Instead, rich members pursue their trade policy objectives outside the WTO—in bilateral trade negotiations where they can exert their power more freely. Unacceptably, the WTO ends up preventing developing countries from employing the very economic strategies that served the industrialized countries themselves well in the past. For example, poor countries cannot give preferential treatment to their domestic companies.

Related to our interests at the SCN, national autonomy over food is simply not preserved under the WTO's GATTS rules. Food imports and exports do not ensure an equitable distribution of world food supplies in relation to need. Therefore, on the issue of agricultural agreements, positions still stand irreconcilably apart. WTO's faith in achieving food security through trade is simply not good enough: trade does not achieve food security automatically.

WTO's mandate is trade liberalization, exerted mostly in the interest of industrialized countries. The Marrakesh Agreement stating that trade was to be pursued 'as a means of development' has simply been betrayed. The same is true for GATT's Article XX on avoiding unjustifiable discrimination (read: highly unfair agricultural subsidies in the North should have been the core of the Cancun negotiations), and for the Doha Declaration that called for trade to benefit mainly poor countries' development needs—including their food security. The Cancun outcome is living proof of how these empty pronouncements are ignored.

The WTO should, but does not, promote and protect human rights—the right to adequate food included. Those who control the organization do not interpret its rules in agreement with human rights norms—this is a result of the less than democratic decision-making process it uses.

Cancun was supposed to take stock of Doha agreements, but what was offered were only trace elements of it. There was only a myth of a development round left when preparatory negotiations finished in Mexico. The interest of the developing countries for a development-friendly trade was not put at the top of the agenda; it was ignored, pushed aside, and with it all hopes for enabling actions towards a lasting food security in the LDCs. In all honesty, the Cancun meeting was hitched to the train of anti-terrorist fervor. Indebtedness, commodity prices, technology transfer and other matters relevant to the poor received scant attention and were generally couched in vague terms. This round looked more like a menace to development than a cradle of development opportunities.

What became abundantly clear is that, without fair global trade, especially in food, there can be no development for all; and to be fair, global trade has to be embedded in a comprehensive poverty reduction strategy (note that trade policy has not played a major part in the formulation of PRSPs!).

Developing countries need the opening of markets and the dismantling of distorting barriers. It is scandalous that industrialized countries still impose lower duties on imports from each other than on imports from developing countries. This is an unacceptable injustice denying those countries what they desperately need—a fair chance. Agricultural subsidies in the North need to also be done away with; they are a permanent aggression towards the countries in the South. The North cannot preach free trade and then withhold it from poor countries when it does not suit them. At least a moratorium should be called for on such subsidies while negotiations progress. Where is the 'global responsibility' so often waved as a banner? The industrialized countries simply have other interests.

Trade liberalization is not an end in itself. It should make a contribution to poverty alleviation, by increasing the level of participation of LDCs in international trade. They have the right not to agree to liberalization proposals that are not in their interest. LDCs should not yield to any pressure that may be (and is) applied to them; they should find strong negotiation positions that benefit their future development; then, they should be empowered to actually defend such positions.

The stumbling block in Cancun was the political unwillingness of countries from the North to abide by what Doha had proposed. Industrialized countries were simply not willing to commit themselves to liberalization 'with a poor man's face'. As a result, market access will remain asymmetrical for the time-being, especially in agriculture. At the same time that temporary migration of labor (a potential source of foreign remittances) will remain prohibited.

This time, developing countries decided to negotiate from a position of greater power. They decided not to participate as passive onlookers any longer and were united. The weakness of developing countries at the negotiating table may now be over.

After Cancun, it is hoped the developing countries are, at least, being taken seriously. However, doing away with the WTO rules would not make things better for developing countries. International trade would then be governed even more by bilateral agreements exacerbating the imbalance of power. A drastic reform of the WTO is the best option. The WTO needs to advance beyond the phase of mandate interpretation and progress needs to be made visible and, more than anything, tangible for the poor.

**Reference:**

Significant portions taken from D+C (Development and Cooperation), Focus: "Cancun - The so-called development round", Vol 30, No. 8/9, August/September 2003, Inwent, Bonn.

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## SHARPENING THE POINT

**George Kent**

I am always pleased when my good friend, Claudio, agrees with me, but I look for little points of difference because we learn so much in exploring them.

Claudio says that the food sovereignty idea is not helpful now, but at the same time he says that developing countries are not in a position to defend their interests effectively. Why? Brazil, China, and India, in walking out at Cancun, demonstrated that by asserting themselves they can indeed defend their interests.

Why can't poor countries, as distinguished from the rich countries, give preferential treatment to their domestic companies? Is there something in WTO principles that discriminates in this way?

Claudio says that national autonomy over food is not preserved under WTO rules. And he says that food trade does not ensure an equitable distribution of world food supplies in relation to need. Yes, but is the problem in the present rules, or in the fact that many countries have not asserted their food sovereignty?

Claudio seems to be more concerned with what the rules fail to do than with any obstacles they now present. I agree that the WTO does not actively promote realization of the human right to adequate food, but there is nothing in its rules to prevent it from happening. Political work needs to be done to make the world's food trade comply with the human right to adequate food. That work can coexist with current WTO rules and principles.

There is a need now for a radical rethink of the principles that ought to govern world food trade, and the human right to adequate food. A new global conversation must recognize that while trade liberalization may sometimes contribute to food security, often it does not. If the new principles, based on human rights, are clearly articulated, trade liberalization and the WTO can be given their proper role. Those who support food sovereignty and the human right to adequate food need to stand up, both inside and outside the WTO.

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**EDITOR'S NOTE: GEORGE KENT'S BOOK, THE HUMAN RIGHT TO ADEQUATE FOOD, WILL BE PUBLISHED IN 2004 BY GEORGETOWN UNIVERSITY PRESS.**