

**THE WTO AGREEMENT ON AGRICULTURE: RIGHT
TO FREE TRADE Vis - a - Vis RIGHT TO FOOD**

MASTERS IN LAW

SHIRLEY ANNE GENGA

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UNIVERSITY OF NAIROBI

PARKLANDS CAMPUS



DECLARATION

This thesis is my own original work and has not been presented for a degree in any other university.

Shirley Anne Genga

Shirley Anne Genga

23/11/10

Date

This Thesis has been submitted with the approved of:

Mr. Kyalo Mbobu,

Commercial Law

Kyalo Mbobu

28/11/10

Date

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DEDICATION

In loving memory of my beloved mother Mrs. Florence Auma Genga who did not live to witness this occasion.

ABBREVIATIONS

AoA-Agreement on Agriculture

AMS-Aggregate Measure of Support

EU-European Union

FAO-Food and Agriculture Organisation

GATT-General Agreement on Tarrif and Trade

ICCPR-International Convention on Civil and Political Rights

ICESCR-International Covenant on Economic Social and Cultural Rights

LDC-Least Developed Countries

MFN-Most Favoured Nation

NTB-Non Tarrif Barriers

OP-ICESCR-Optional Protocol to the International Covenant on Economic Social and Cultural Rights

SSG-Special Safeguard Clause

SDT-Special Differential Treatment

TRQ-Tarrif Rate Quota

USA-United States of America

UDHR-Universal Declaration on Human Rights

WTO-World Trade Organisation

WHA-World Health Assembly

CASE LAW

Government of the Republic of South Africa and Others V Grootboom and Others, ZACC 19; 2001(1) SA 46; 2001(11)BCLR 1169;(4 October 2000)

Ogla Tellis V Bombay Municipal Council [1985] 2 Supp SCR 51

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CHAPTER 1

INTRODUCTION

1.0 HISTORICAL BACKGROUND

On April 4, 1994, Trade Ministers from more than 100 countries met in Marrakech, Morocco, and signed the Final Act embodying the results of the Uruguay Round Negotiations. The final Act was the culmination of the negotiations launched in Punta del Este, Uruguay in September 1986 to amend the 1947 GATT and to establish a World Trade Organization (WTO). An organisation whose purpose was to oversee the new multilateral trading system and administer the substantive trade agreement which was also negotiated during Uruguay round. The WTO Agreement on Agriculture (AoA) was very significant because it represented, the first time since the creation of GATT in 1947 that agricultural commodities had been subject to the multilateral trading rules. The AoA was supposed to herald a new era of trade liberalisation in the agriculture sector. So when the agreement came into force in 1995, it was hailed as a victory by developing countries because they viewed it as a significant first step towards fairer competition and a less distorted sector¹.

Prior to the Uruguay round, agricultural commodities were largely exempt from the application of GATT requirements as multilateral trade rules applied predominantly to manufactured goods.² Developing countries relied heavily on the taxation of the agricultural sector in order to earn badly needed revenue, whereas industrialized countries utilized a variety of instruments to promote agricultural production, including export subsidies, import tariffs, import quotas, and other non-tariffs barriers. The European Union (E.U) and United States (U.S) for example insisted on exemption and waivers from GATT to allow them to continue providing massive subsidies to their agricultural sectors.³ This would result in artificial maintenance of high levels

¹ WTO Agreement on Agriculture: A decade of dumping, *United States dumping on agricultural markets*, publication No. 1, A series of assessing the world Trade Organisations first ten years 1995 - 2005.

² Ibid at pg 2

³ Carmen G. Gonzalez, *Institutionalizing Inequality: the WTO, Agriculture and Developing Countries*, 2002.

of production which would eventually lead to sale of agricultural surplus on the world market at prices below their cost of production, a practice known as dumping. These types of distortions in agricultural trade is what led to pressure from many countries in the 1980's to push for the establishment of multilateral trade rules in order to create a more fairer market.⁴

At the time many developing country markets were already open to cheap and dumped agricultural products from the U.S and E.C, due to International Monetary Fund and World Bank structural adjustment programmes.⁵ The programmes required developing countries to liberalize their economies and open their markets to foreign products in order to gain access to developed country markets but that never happened.⁶ Developing countries hoped that a multilateral trade agreement would provide additional export earnings to alleviate poverty as it would open up new market opportunities for their agricultural products. Unfortunately 15 years down the line since the AoA came into force and developing countries still find themselves on the sidelines. Developing countries have been unable to access a greater market. The increase in liberalization of agriculture in the last half-century has caused the dismantling of the traditional world structure of food production based mainly on family food production. Hence many countries, especially in the south, became increasingly focused on raw materials and natural resources exports to sustain the increasing consumption patterns of the North, in a process that has facilitated the accumulation and concentration of wealth by a small number of large corporations in the agricultural sector.

Thus, while the U.S. and EU jealously safeguard their production and their domestic markets developing countries have not been given the same options. Developing countries have experienced reduction in their exports and widespread agricultural dumping. Dumping by global agri-business companies based in the US and EU has wreaked havoc on global agricultural markets. The hardest hit is farmers in developing countries who are often pushed off the farm by

⁴ WTO Agreement on Agriculture: A decade of dumping, *United States dumping on agricultural markets*, publication No. 1, A series of assessing the world Trade Organisations first ten years 1995 - 2005.

⁵ Ibid at pg 3

⁶ World Trade Organisation , *Understanding WTO, 3rd edition previously published as "Trading into the Future" September 2003*, revised October 2005

dumped agricultural commodities. This has led to the death of many agricultural industries in developing countries and resulted in major job losses.⁷

Yet the provisions of the AoA at first glance encompass the protection of very key fundamental rights, which include : right to adequate standard of living, right to work, right to health , right to life, right to free trade and right to food being the basis for this project.⁸ These rights which are also set out in a range of legally-binding treaties including the International Covenant on Civil and Political Rights (ICCPR) in Article 11, the International Covenant on Economic, Social and Cultural Rights (ICESCR) in Article 25 and the Convention on the Rights of a child (CRC) in Article 24 .The preamble of the WTO Agreement defines the objective of the WTO to include:

*Raising the standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production 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.*⁹

While many scholars try to find the basis for the connection between human rights and trade law or opt for the human rights approach to development as the solution to the problems created by the AoA, the purpose of this paper will be to show that the AoA already codifies key human rights within its provisions and it is not the lack of human rights within the agreement that is its greatest deficiency. That the problem within the AoA is the conflict of hierarchy that exists amongst WTO members when it comes to the distribution of two major fundamental human rights, the right to free trade and right to food . This paper will aspire to illustrate that although human rights are generally protected within the AoA, there is an imbalance in the application of both the rights when dealing with developed and developing nations and that this imbalance is

⁷ WTO Agreement on Agriculture: *A decade of dumping, United States dumping on agricultural markets*, publication No. 1, A series of assessing the world Trade Organisations first ten years 1995 - 2005.

⁸ Bhagirath Las Das, *Third World agriculture faces unfair competition from first world*, 1982

⁹ *Ibid* at pg 3

the root of the problem with the Agreement.¹⁰ A fact that is clearly enumerated by provisions in the AoA which are openly more favourable to developed countries and unfavourable to developing countries with regard to the application of human rights¹¹. The AoA for example, provides developed countries with avenues that enable them to continue with their export subsidies and provide special protection to their farmers in times of increased imports and diminished domestic prices and thus enabling them to protect their right to food. Developing countries on the other hand cannot use domestic subsidies and the special protection measures beyond a de minimis level, except only for very limited purposes for their farmers. In essence, developed countries are allowed to continue with the distortion of agricultural trade to a substantial extent and even to enhance the distortion; whereas developing countries that had not been engaging in such distortion are not allowed the use of subsidies (except in a limited way) and special protection.¹²

¹⁰ Martin Khor, Director, *Why Developing countries cannot afford new issues in the WTO settle conference*, Third world, Network at the 9th ministerial meeting of the group of 77, Marrakein, 16 September 1999

¹¹ Bhagirath Las Das, *Third World agriculture faces unfair competition from first world*, 1982

¹² Carmen G. Gonzalez, *Institutionalizing Inequality: the WTO, Agriculture and Developing Countries*, 2002

1.1 JUSTIFICATION

The AoA seems to provide for human rights, a fact not clearly enumerated by most research work. Infact most work on the subject is based on trying to find an already existing connection between human rights and trade. With most scholars concluding that the reason for the mess that has been created by the AoA, is in the lack of a human rights approach within the Agreement. Most written work on the subject often ignores or does not acknowledge the fact that a connection already clearly exists. The purpose of this project will be to illustrate the fact that the connection between human rights and trade already exists within the AoA .The paper will then proceed to demonstrate that the inadequacies in the AoA are due to the hierarchy that seems to exist amongst members of WTO when it comes to making provisions for human rights. The AoA may in many ways be viewed as unbalanced and inconsistent in its provisions when dealing with the right to food security and the right to free trade. Often making sure it protects the right to food security of developed countries but ensuring those same avenues are not available for developing countries. And when it suits developed countries needs the right to free trade is advocated for at the expense of developing countries. The paper shall conduct a study of the provisions of the AoA in order to identify the discriminatory provisions with regard to right to food and right to free trade.

1.2 MAIN OBJECTIVE

The inadequacies in the WTO AoA can be identified by examining the hierarchy in the application of the right to food security and right to free trade, when dealing separately with developed and developing countries.

1.2.1 Other Objectives

- a) To illustrate the fact that the right to food security and right to free trade are both institutionalised within the AoA.

- b) To expose the fact that the AoA is discriminatory in nature in its application of both the right to free trade and the right to food security when dealing separately with developed and developing countries.
- c) To establish and justify that the right to food security and right to free trade are the most fundamental rights within the Agricultural Industry.
- d) To document the contribution and effects of the AoA in the last 15 years on developing countries (Kenya).

1.3 HYPOTHESIS

- a) That there exists a hierarchy amongst states when it comes to the protection of the human rights (right to trade and right to food) within the AoA.
- b) That there exists a conflict between the protection of the right to food security and the right to free trade.
- c) That AoA provisions and principles are drafted in a manner that is more favourable to developed countries interests at the expense of developing countries (Kenya).

1.4 Main Research Question

Has the AoA institutionalized inequality with regard to its provisions protecting the right to free trade vis-a-vis the right to food?

1.4.1 Research questions

- a) What has been the contribution and effects of the AoA in the last 15 years on developing countries (Kenya) with regard to food security and free trade?
- b) Is the creation of AoA a deliberate attempt by developed countries to take advantage of developing nations?

1.5 THEORETICAL FRAMEWORK

The project will be built upon natural law school of thought mostly on John Locke's views. He believed that individual human beings as subjects endowed with rights against society and placed them at the centre of legal and social systems. According to Locke the idea of rights of the individual are natural and inherent. These rights include: the right to life, liberty, property, security, happiness.¹³ This theory, which has its roots in the teachings of other scholars like, Thomas Paine, Jean-Jacques Rousseau and other philosophers of the 17th and 18th century, was the driving force behind the French and American Revolutions and is clearly reflected in the human rights documents of that time. The American Declaration of independence' 1776 for example provides: 'we hold these truths to be self evident that all men are created equal: that they are endowed by their creator with certain inalienable rights: that among this life, liberty, and the pursuit of happiness.'¹⁴

Natural law theories base human rights on a "natural" moral, religious or even biological order that is independent of transitory human laws or traditions. Natural law theorists believed that all men are born equal and free. This will be the theory that the study will mainly incorporate in the establishment of the right to food and right to free trade, which are very controversial rights. The second half of the study will attempt to illustrate that human rights within the AoA have a hierarchy that is highly politicized. There is considerable confusion surrounding the question of whether there exists a hierarchy of human rights in contemporary international law. Most human rights studies do not recognize such a hierarchy, mainly because of their emphasis on the indivisibility and universality of human rights. This paper attempts to provide a possible departure from the understanding of human rights. For illustration the study will look at the provisions in the Agreement dealing with right to food and right to trade.

The paper will also rely on the principle of Universality of Human Right, to help illustrate the fact that all nations who are signatories to the AoA should be treated equally. All human rights within the WTO should be fairly distributed. This assertion has its roots in ancient ideas of

¹³ Henry Steiner and Philip Alston, *International Human Rights in context; Human Rights in context; Law, politics, Morals*, Oxford University press, 2009.

¹⁴ Thomas Cottier and Joost Pauwely and Elizabeth Biirgi Bonanomi, *'Human Rights and International Trade'*, Oxford press, 2005



universal justice and in medieval notions of natural law. The Universal Declaration of Human Rights passed by the United Nations in 1948 in Article 1 reads: "All human beings are born free and equal in dignity and rights". Further Article 2 provides that; "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The success of the 1948 Declaration is a sign of the expansive force of the language of rights; almost all political communities on the globe acknowledge it.¹⁵ Thus if the right to food security is made available to developed countries like the U.S.A then the same right should be made available to developing country like Kenya.

1.6 LITERATURE REVIEW

Framing the right to food security as a human right raises numerous questions about the concrete obligations of the respective duty holders. Without such concrete definitions the whole concept is weakened. Nothing will happen as long as responsibilities and corresponding duties are not defined clearly. Although a number of scholars have written on the right to food, I was impressed by the manuscript by Jona Aravvid Dohrmann and Sukhadeo Thorat in their work on the right to food, food security and discrimination in India¹⁶. The article delves deeply in its attempt to create the foundation and justifications for the right to food security. In the article the writers expound on the basics of food security, using India as the case study. India has accepted the concept of a right to food through its constitution, and its legislation and broadest legal meaning to this indispensable right at the practical level. India has achieved independence regarding its food supply and is even able to export excess food grain today. Also the article by Christine Breining Kaufman on the right to food and trade in agriculture makes a strong case for the right to food security arguing that culture, tradition and history of all human civilisations across the world have been deeply influenced by agriculture, which over centuries evolved from subsistence

¹⁵ Jura Gentium, Baccelli, *Theories of Human Rights*, Journal of Philosophy of International Law and Global Politic, ISSN 1826-8269

¹⁶ Jona Ara Vind Dohrmann and Sukhadeo, *Right to food, Food security and discrimination in the India context*, SIEN 102 (January 2007), S. 931

farming to barter and trade with neighbouring communities.¹⁷ Christine further makes the argument that food is a most essential good, and therefore plays important part in each society culture and policies: embedded in several international human rights instruments. It is a cultural statement and a biological necessity.¹⁸ The study will also look at the different international human rights instruments that establish the right to food security.

The establishment of the right to free trade is even more controversial as many scholarly writings seem to concentrate on the dichotomy of trade and human right, choosing to look at them as different entities. Qingjiang Kong makes the argument that there is no dichotomy between trade and human rights because their already exists such a thing as the right to free trade.¹⁹ His article is a breath of fresh air, as it looks at the relationship between trade and human rights in an interesting and new light .The article will be the basis for my argument for the existence for the right to free trade. Unlike most scholars Kong builds up a plausible argument for the existent of right to free trade.

Further the book by Henry Steiner on human rights²⁰ will be the main book the study will use for case study, as it provides, wide and in-depth articles that not only help to raise important questions but provided valuable expert opinions on the project's subject matter. The journal article titled, Institutionalising Inequality: The WTO Agreement on Agriculture, Food security, and Developing countries by Carmen Gonanzalez is also well written paper, that clearly highlights the various articles in the AoA that are discriminative in nature, when dealing with the right to food security and right to free trade.²¹ His article will be the starting point in identifying how the right to food and the right to free trade are discriminatively provided for within the AoA when dealing separately with developing and developed countries.

17 Thomas Cottier and Joost Pauwely and Elizabeth Biirgi Bonanomi, *'Human Rights and International Trade'*, Oxford press, 2005.

18 Ibid at pg 3

19 Ibid pg 3

20 Henry Steiner and Philip Alston, *'International Human Rights in context; Law, politics, Morals'*, Oxford University press, 2009.

21 Thomas Cottier and Joost Pauwelya and Elizabeth Biirgi Bonanomi, *'Human Rights and International Trade'*, Oxford press, 2005.

Dani Rodrik also provides an analysis of the strengths and weakness of the existing trading system. The assumptions underlying trade liberalization and its relationship with growth and poverty are critically analysed.²²

1.7 CHAPTER BREAK DOWN

Chapter one

This chapter will extensively cover the background to the study. It will first deal with the dichotomy of both the right to food and right to free trade. Then it will proceed with a brief look down memory lane with regard to human rights and international trade law. After which it will proceed to delve deeply into the conflicts and interface of the two fields. Further, the most important contribution of this chapter will be to illustrate that the AoA has in fact codified a rights- approach within its provisions.

Chapter two

The chapter will mainly deal with the foundation and establishment of both the right to food security and right to free trade as fundamental rights in the agricultural industry.

Chapter three

The chapter will identify provisions within the AoA that codifies the protection of the right to trade and food security. The chapter will then further deal with the existence of hierarchy amongst member states within the AoA when dealing with human rights, specifically at the right to food security and right to free trade.

Chapter four

Chapter five shall wrap up the discourse with a conclusion of the study and recommendations.

²²

Dani Rodrik, *The Global Governance of Trade as if Development really mattered*, October 2001, UNDP

1.8 RESEARCH METHODOLOGY

The study will make use of secondary data, mainly the library and internet research will be the basic methods used to gather information.

CHAPTER 2

2.0 THE RIGHT TO FREE TRADE AND THE RIGHT TO FOOD

The entire human rights corpus is based on: Universal Declaration on Human Rights (UDHR), ICCPR and the ICESCR. The trio of documents is referred to as the International Bill of Human Rights.²³ In its 30 articles, the UDHR proclaims two broad categories of rights: these are, on the one hand, civil and political rights, and, on the other, economic, social and cultural rights. The two rights fall into two different categories. First-generation rights include, among other things, freedom of speech, the right to a fair trial and freedom of religion. Civil and political rights fall under the first-generation of human rights, which deal essentially with liberty and participation in political life. Economic, Social and Cultural Rights (ESC) fall under second generation rights. Second-generation human rights are related to equality and began to be recognized by governments after World War I.²⁴ They are fundamentally social, economic, and cultural in nature. They are concerned with the material, social and cultural welfare of persons, and also require an active response by the state to provide the conditions for their achievement. Second generation rights include: right to food, right to free trade, right to be employed, rights to housing and care, as well as social security and unemployment benefits²⁵

The ICESCR rights entered into force on 3 January 1976. It commits states parties to promote and protect a wide range of economic, social and cultural rights, including rights relating to work in just and favourable conditions, to social protection, to an adequate standard of living, to food, to education and to enjoyment of the benefits of cultural freedom and scientific progress. It obliges states parties to respect and ensure that all individuals subject to their jurisdiction enjoy all the rights included in the ICESCR, without discrimination. The government has a legal obligation to fulfil and respect human

²³ Henry Steiner and Philip Alston, *International Human Rights in context; Law, politics, Morals*, Oxford University press, 2009.

²⁴ John Cantius Mubangizi, *The Constitutional Protection of Social-Economic Rights in Selected African Countries: A Comparative Evaluation*, 2006

²⁵ Ibid at pg 1

rights upon ratification of International Conventions.²⁶ The UDHR recognizes ESC rights as both natural and legal rights, defining human rights as inalienable by nature while also issuing legal protection. Signatories of the declaration are bound to the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. As of December, 2008, the ICESCR rights had 160 parties, Kenya included. A further six countries had signed, but not yet ratified the Covenant.²⁷ Some states have not signed the ICESCR, and are therefore unwilling to enshrine purported economic, social and cultural rights as legal rights. Further, only 31 States have signed the Optional Protocol (OP-ICESCR), which recognizes the competence of the Committee on Economic, Social, and Cultural rights to consider complaints from individuals. Human rights advocates argue ratification and implementation of OP-ICESCR is a necessary component to ensure these rights.²⁸ The UDHR and ICESCR are not the only mechanisms recognizing economic, social, and cultural rights as fully justifiable. Many constitutions and human rights organizations around the world recognize Economic, Social and Cultural rights. For example, the 1996 South African Constitution includes economic, social and cultural rights; similar to the function of the Committee on Economic, Social, and Cultural Rights. The South African Bill of Rights, contained in its post-Apartheid constitution, is also notable for its emphasis on economic, social and cultural rights.²⁹ The South African constitutional court has subsequently heard claims under these obligations, in cases like the Grootboom case which upheld the right to adequate housing.³⁰ India's constitution, which does not

²⁶ Henry Steiner and Philip Alston, *International Human Rights in context; Law, politics, Morals*, Oxford University press, 2009.

²⁷ Ibid at pg 220

²⁸ Ibid at pg 221

²⁹ John Cantius Mubangizi, *The Constitutional Protection of Social-Economic Rights in Selected African Countries: A Comparative Evaluation*, 2006 pp 130 – 146, African Journal. Volume 2

³⁰ Government of the Republic of South Africa and others V Grootboom and others ZACC 19;2001 (1)_ SA46; 2000 (11)BCLR 1169; (4TH October 2000).



explicitly recognize economic and social rights in their constitution, has nonetheless found that these rights exist, though unenumerated, inferable from the right to life.³¹

It is not possible to participate in the cultural life of the country (Article. 27 UDHR - ESC) if one does not enjoy freedom of expression (Article. 20 UDHR – CPR); or to take part in the government of one's country (Article. 21 UDHR – CPR) if one has not enjoyed the right to education (Article. 26 UDHR – ESC); or to form a trades union (Article. 23 UDHR – ESC) if one has no right of peaceful assembly (Article. 20 UDHR-CPR).³² There is growing international recognition of the universality, interdependence and indivisibility of human rights. Indeed the United Nations World Conference on Human Rights held in Vienna in June 1993 emphasized this recognition by proclaiming that all human rights are universal, indivisible and interdependent and interrelated.³³ What this means is that all human rights should apply to all persons at all times without distinction. It also means that political, economic, social and cultural differences cannot and should not be used as an excuse for the denial or violation of human rights.³⁴

Both the right to food and right to free trade are ESC rights .In order to understand the discriminative nature of the AoA in its application of both the right of food and the right to free trade, when dealing separately with developed and developing countries, both the rights must be concretely established and this is what this chapter, of the project intends to do in great detail.

2.1 THE CASE FOR THE RIGHT TO FREE TRADE

While most scholars believe that there exists a dichotomy between free trade and human rights, such a dichotomy is not only false but also very pretentious. Market exchange

³¹ Oglia Tellis & others V Bombay Municipal Council (1985) 2 Supp SCR 51

³² Thomas Cottier and Joost Pauwely and Elizabeth Biirgi Bonanomi, *'Human Rights and International Trade'*, Oxford press, 2005.

³³ Henry j. Steiner and Philip Alston, *'International Human Rights in context; Law, politics, Morals'*, Oxford University press, 2009.

³⁴ Ibid at pg 230

rests on the principle of private property, which is a natural right. Individuals necessarily claim the right to liberty and property in order to live in a self fulfilling way and to pursue their interests in a responsible manner. The freedom to act without interference, provided one respect the equal rights of others, is the core principle of a market economy and the essence of human rights. Without private property and freedom of contract, other rights, such as free speech and religious freedom, would have little meaning, because individuals would be at the mercy of the state.³⁵

Free trade is a necessity in today's world; no country is rich and autonomous enough to renounce the benefits of liberal trade.³⁶ The welfare of virtually every country depends on liberal trade rules as the legal basis for creating the welfare needed to fulfil basic human rights. The right to free trade is inherent in property rights and a civil right that should be protected as a fundamental human right. Thus the proper function of a government is to cultivate a framework for freedom by protecting liberty and property, including freedom of contract (which includes free trade) whether in National or International dealings, not to use the power of government to undermine one freedom in an attempt to secure others.

Dutch philosopher and scholar, Francisco de Vitoria applied the word "right" to free trade back in the sixteenth-century.³⁷ Vitoria believed that the right to free trade was derived from the natural right of free association enjoyed by all people. Vitoria was of the opinion that free association was essential for human flourishing, and he did not believe national boundaries should unreasonably limit people from freely associating with others, including for economic reasons. Vitoria argument for free trade was in opposition to mercantile policies that prevented the New World's native peoples from freely trading with European merchants.³⁸

³⁵ Thomas Cottier and Joost Pauwely and Elizabeth Biirgi Bonanomi, *Human Rights and International Trade*, Oxford press, 2005.

³⁶ Ibid at page 42

³⁷ Samuel Gregg, *Free Trade as Prosperity, Free Trade as Human Right*, August 25, 2009

³⁸ Ibid at page 4

Victoria's argument for the right of free trade was further strengthened by jurist Hugo Grotius (1583-1645). Together they built a rights-based case for free trade. In their argument in the establishment of the right to free trade, the two jurists claimed that the Portuguese claim to a monopoly of the trade routes to the East Indies was not justified. That, every nation was free to travel to every other nation and to trade with it freely.³⁹ Grotius argument was very convincing and I agree with his view that free trade was a human right because nature does not supply every place with every single necessity of life. The reality on the ground is that some nations will excel in one art, while others will excel in another, thus if the goods of the world were truly to serve everyone, then free trade was a necessity. Almost a century after Grotius's death, we find the same position stated by Vattel in the most important eighteenth-century text on international law, Emer de Vattel's *Le droit de gens* (1758).⁴⁰

Also the fact that some national constitutions directly or indirectly protect the right to free trade further helps to establish free trade as a human right. Examples of constitutions that explicitly protect freedom of trade as a constitutional right of domestic citizens include:

- (a) Freedom of commerce and other 'market freedoms' is also a constitutional guarantee, such as the commerce clause in Article 1, section 8 of the US constitution.⁴¹
- (b) The EU Treaty protects the free movement of goods services, persons and capital, as well as non-services, persons and capital, as well as non-discrimination, as fundamental freedoms at the same, constitutional level as other fundamental rights, without according constitutional primacy to civil and political over economic rights.
 - i) Article 15 and 16 of the EU charter protects 'market freedoms' as constitutional rights and decentralized instruments for achieving a common market.

³⁹ Ibid at page 5

⁴⁰ Ibid at page 4

⁴¹ Thomas Cottier and Joost Pauwely and Elizabeth Biirgi Bonanomi, '*Human Rights and International Trade*', Oxford press, 2005.

- ii) Article 6 provides for the constitutional protection of freedom as a constitutional right while Article 1-4 2004 EU Treaty constitution principle EU provides for market freedom as fundamental freedoms' and Article 4 provides for , of an open market economy with free.
- iii) Everyone has the right to engage in work and to pursue a freely chosen occupation. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment to provide services in any member states. (Article 11 – 15)
- iv) Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions (Article 11 – 77).

The economic case for free trade was codified first by Adam Smith when his *Wealth of Nations* was published in 1776⁴². Adam Smith makes a very strong case for free trade. Smith's point was simple yet revolutionary: free trade would, in the long term, mutually enrich everyone. For one thing, free trade encouraged an ever-increasing depth and sophistication of the division of labour. This facilitated technological development and the ability to grow ever-increasing amounts of wealth. Free trade also created an ever-widening space for individuals, businesses, and entire nations to find, develop, or even change their comparative advantage. According to Smith if governments have some responsibility to protect their citizens' rights, then perhaps they may wish to consider the claim that the liberty to trade goods and services across national boundaries is not a privilege but rather a right.

2.2 THE CASE FOR THE RIGHT TO FOOD SECURITY

Since the adaptation of the Universal Declaration of Human Rights, human rights advocates have always focused on the importance of civil and political rights. Both the right of food security and right to free trade are both Social and Economic rights. In today's world, economic, social and cultural rights are gaining increasing attention. A

⁴² Thomas Cottier and Joost Pauwely and Elizabeth Biirgi Bonanomi, 'Human Rights and International Trade', Oxford press, 2005.Pg 297

fact that has become a necessity as it is becoming clearer that, there is no possible way that one can enjoy political rights if economic, social and cultural rights are also not taken care of. What is interesting about the right to food is that though it took long for it to get established internationally as a human right, ironically culture, tradition and the history of all human civilization across the world have been deeply influenced by agriculture. The nations of the world have evolved from subsistence farming to barter trade with neighbouring communities. The role that food plays in any society, cannot be downplayed, it is the most essential good and therefore plays an important part in each society's culture and policies.⁴³

The movement to codify the right to food began way back in 1948. Numerous conferences, non-binding international declarations and resolutions have helped to shape the emerging international consensus on norms regarding the human right to adequate food. But back then the articulation/establishment of the human right to adequate food was not direct. In the context of the broader human right to an adequate standard of living, for example:

The UDHR states in article 25(1) that: “everyone has the right to a standard of living adequate for the health and wellbeing of himself and his family, including food”

In 1981 World Health Assembly (WHA) approved a series of resolutions to further clarify and strengthen the code. The constitution of the World Health Organization also provides that “...the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being” Implying the human right to adequate food.

In 1974 when the World Food Conference issued a Universal Declaration on the Eradication of Hunger and Malnutrition. The declaration went on to be endorsed by the United Nations General Assembly in Resolution 3348 (XXIX) in December 17, 1974

43

Ibid page 297

(Declaration 1974).⁴⁴ The ICCPR which came into force in 1976: provides in article 1, paragraph 2, "In no case may a people be deprived of its own means of subsistence."

Although all the above provisions helped in the development of the right to adequate food the first ever Convention to directly refer to the right to adequate food as a right on its own was, The International Covenant on Economic, Social and Cultural Rights which came into force in 1976. The Convention provides in article 11, that:

"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 . . ." It recognizes the fundamental right of everyone to be free from hunger . Infact the failure of a State to take into account its international legal obligations regarding the right to food when entering into agreement with other states or with international organizations is incompatible with ICESCR. Article 11(2) specifically identifies the need to ensure that international trade promotes the right to food. Nearly all countries in the world have ratified or acceded to the ICESCR making implementation of the right to food binding on those parties (even for countries) such as the United States that have not ratified the ICESCR. Also the Convention on the Rights of the Child which came into force in 1990 explicitly provides for the right to food in article 24:

"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)."

Later on in 1992 the human right to adequate food was further endorsed when the Food and Agriculture Organization of the United Nations and the World Health Organization held an International Conference on Nutrition, held in Rome in December. Then in November of 1996 when the World Food Summit was held, major strides were made in the recognition of the right to adequate food .The meeting concluded with an agreement

⁴⁴ Sophia Murphy, "WTO, Agricultural Deregulation and Food Security" Washington, DC: *Foreign Policy In Focus*, December 1, 1999

on the Rome Declaration on World Food Security and World Food Summit Plan of Action.⁴⁵

Three years later in April 1999 the United Nations System Standing Committee on Nutrition (then known as the United Nations Administrative Committee on Coordination/Sub -Committee on Nutrition) focused its annual meeting on the human right to adequate food. A month later In May the United Nations' Committee on Economic, Social and Cultural Rights released its landmark General Comment 12 on The Right to Adequate Food (Art 11). The statement, prepared by the Committee on Economic, Social and Cultural Rights, constitutes a definitive contribution to international jurisprudence regarding the right to food.

The Committee provided that the right to adequate food imposes three levels of obligation on States parties (General Comment No. 12):⁴⁶

a) In the first place, States must refrain from taking measures liable to deprive anyone of access to food (the obligation to respect). This obligation would be violated, for example, if the State arbitrarily deprived an individual of his/her land in a case where the land was the individual's physical means of securing the right to food.

Secondly, States must ensure, by adopting legislative or other measures, those third parties, whether other individuals or companies, do not interfere with the right of access to adequate and sufficient food (the obligation to protect).

Thirdly the obligation to fulfil (facilitate) means that States must proactively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood. And it is only when individuals or groups are unable, for

⁴⁵ George Ken, (*Economic, Social and Cultural Rights*) *food is a human right* ,Department of Political Science- University of Hawaii, Honolulu, Hawaii 96822

⁴⁶ Michael Windfuhr, *Trade and Human Rights: The Agreement on Agriculture of the WTO and the Right to Food Context, Conflicts and Human Rights Violations, FIAN International, www.fian.org*

reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, that States have the obligation to fulfil (provide) that right directly.⁴⁷

Then in 2002 in Rome there was a follow-up to the World Food Summit of 1996, also called World Food. It set down voluntary guidelines for attaining the right to adequate food. As a result it was a disappointment to some as it moved away from acknowledging any sort of firm obligation on the part of the international community with regard to the human right to adequate food. State practices confirm that the status of the right to food in customary international law; twenty two countries have expressly recognized the right in their constitutions. Norway for example, has passed legislation positively affirming the right to food in addition; the supreme court of India has recognized that the Indian government has an obligation to provide physical access to food. It also means that political, economic, social and cultural differences cannot and should not be used as an excuse for the denial or violation of human rights. In the African context, the African Charter on Human and Peoples' Rights places special emphasis on the universality of rights and recognises in its preamble that the 'satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.'⁴⁸ Despite such recognition, most challenges to human rights violations in most African countries tend to focus on civil and political rights even though in Africa, as elsewhere, economic and social rights are daily concerns of most people. Given the human rights definition of the right to food, nation states have an obligation to protect the livelihoods of small farmers, enabling them to produce food for their local community and ensuring that they gain a fair share in the commodity chain if they are engaged in production for the export market. Also, the state should have the right to protect the livelihoods of small farmers who suffer from cheap agricultural imports.

There is a new wave of change in some African Countries constitutions (South Africa, Namibia, and Ghana), they now include social and economic rights. Infact South Africa

⁴⁷ George Ken, (Economic, Social and Cultural Rights) food is a human right, Department of Political Science University of Hawaii, Honolulu, Hawaii 96822

⁴⁸ John Cantius Mubangizi, the Constitutional Protection of Socio-Economic Rights in Selected African Countries: A Comparative Evaluation, pp 130 – 146, African Journal. Volume 2



has one of the most Comprehensive provisions of Economic, Social and Cultural rights in the World.⁴⁹ Also while the old Kenyan Constitution was silent on Social, Economic and Cultural rights the new Constitution in Article 43 of the Bill of Rights protects the rights to: Health care, Housing, Reasonable sanitation, Freedom from hunger and adequate food, Clean and safe water, Social security, Education. The new Constitution acknowledges that a constitution cannot suddenly provide all the social and economic needs of people. It does not expect the government to deliver social justice to all Kenyans instantly but Article 43 is not merely a wish list. The Bill of Rights says that the State must take measures to achieve the “progressive realisation” of the social and economic rights listed in it.⁵⁰

Usually courts in developing countries like Kenya like to take a back seat with regard to social and economic rights because their implementation involves policy decisions by legislators and administrators but with the new Constitution provisions, if social and economic rights are not fulfilled people can take their complaints to the Kenyan human rights and equality commission or to court.

Courts in the other countries have shown that social and economic rights have real meaning. So, faced with people who were living in “intolerable or crisis conditions,” the South African constitution court decided that the state housing plan did not comply with the south African government’s obligations under its bill of rights.⁵¹ The state was ordered to implement a housing programme to remedy this. In Argentina, Costa Rica and Colombia courts enforced the right to health care by ordering the state to make certain drugs and treatment available. In India court has led to over 118 million children receiving school lunches.⁵² The most far reaching of these cases is in the Indonesian constitutional court’s decision declaring the national budget unconstitutional because it did not accommodate educational expenditure targets.⁵³ Kenya agreed to protect the

⁴⁹ Ibid pg 10

⁵⁰ Lilian Mwaura, Advocate of the High Court of Kenya ,The Proposed Constitution of Kenya 2010

⁵¹ Ibid page 2

⁵² Ibid page 2

⁵³ Ibid at page 2

rights in article 43 of the proposed constitution when it signed the international covenant on social, economic and cultural rights in 1972. But these rights are not in the current constitution and so people have not been able to insist that the state implements them. The new constitution will change this, and although it would not mean that Kenyans can immediately queue up at the state house kitchen and insist on a plate of food , experience in other countries suggest that including social and economic rights in the constitution is a good foundation for social justice.⁵⁴

There is growing international recognition of the universality, interdependence and indivisibility of human rights. Indeed the United Nations World Conference on Human Rights held in Vienna in June 1993 emphasised this recognition by proclaiming that ‘all human rights are universal, indivisible and interdependent and interrelated.’ What this means is that all human rights should apply to all persons at all times without distinction.⁵⁵

⁵⁴ Ibid 2

⁵⁵ John Cantius Mubangizi , The Constitutional Protection of Socio-Economic Rights in Selected African Countries: A Comparative Evaluation, pp 130 – 146, African Journal. Volume 2

CHAPTER 3

3.0 SENIORITY AND HIERARCHY AMONGST STATES WITHIN THE WTO AoA

The preamble to the WTO AoA claims to address inequities in world agricultural markets by “correcting and preventing restrictions” and “distortions” and “providing” for a greater improvement of opportunities and terms of access for agricultural products of particular interest to developing country Members.” The Preamble claims that the long-term objective is to “establish a fair and market-oriented agricultural trading system ... Through the establishment of strengthened and more operationally effective GATT rules and disciplines”.

This chapter will expose the fact that although the AoA preamble talks about equality and fair market opportunities as illustrated above, that the Agreement instead institutes inequality amongst states within its provisions. Thus facilitating the existence of a hierarchal system amongst WTO members. That the Agreement does provide for both the right to free trade and right to food but the rights are not available for all on an equal platform. Developed countries are treated as being more superior and deserving of both the right to food and right to free trade in other nations markets, while developing countries seem to only qualify for the right to open up their markets. In this chapter we look at the key Articles in the AoA and identify the areas of inequality.

3.1 THE THREE PILLARS OF WTO AoA INCLUDE:

The WTO AoA, in **Annex 1A, Part III** Obligates WTO members to liberalize agricultural trade in three significant respects:

3.1.1 Market Access

The AoA in **Article 4 and Anex I**, requires the conversion of all non-tariff import restrictions, including: quotas, embargoes, variable import levies, minimum import

prices, and non-tariff measures maintained by state enterprises into tariff barriers that provide an equivalent level of protection. After conversion, the tariff equivalents were then required to be bound and reduced below a 1986–88 base level over a period of several years. The precise amount of the tariff reduction is specified in each country's individual tariff schedule. Developed countries are required to reduce these bound tariffs by an average of 36 percent over 6 years (1995–2000), with a minimum reduction rate of 15 percent for each product line.⁵⁶ Remember that by this time (1995) developing countries like Kenya had already reduced their tariffs courtesy of World Bank and IMF lending reforms⁵⁷. In accordance with the principle of special and differential treatment, developing countries are required to reduce these bound tariffs by an average of 24 percent over 10 years (1995–2004), with a minimum reduction rate of 10 percent for each product line. Least developed countries are subject to tariffication and tariff binding, but are not subject to tariff reduction.⁵⁸ The Agreement further prohibits WTO members from maintaining or reverting to the non-tariff barriers which were required to be converted into tariffs.

3.1.2 Existence of Hierarchy amongst states within the market access provisions

From the above it seems as if the AoA has adequately taken care of the needs of both developed and developing countries, providing for the right to free trade but also balancing and providing for the protection of the right to food but that is not the case because:

Although one of the greatest innovations of the Agreement was the conversion of non-tariff barriers to tariffs and the prohibition of any further non-tariff barriers, however many developed countries evaded the underlying objective of these requirements by engaging in “dirty tariffication.” Dirty tariffication is the process by which a country deliberately overestimates the levels of protection provided by Non Tariff Barriers

⁵⁶ Hawkes and Jagjit plane, *The WTO Agreement on Agriculture and the right to food in developing countries*, Working paper 4/10 May 2010, Monash University, Business Economics.

⁵⁷ Jagjit Plahe, *Sacrificing the right to food on the altar of free trade*, 2007-01-04, <http://pambazuka.org/en/category/features/39046>

⁵⁸ Martin Khor, *THE WTO Agriculture Agreement: Features Effects, Negotiations, and what is at Stake*

(NTBs) in order to increase their operative base rate of duty resulting from tariffification. Thus resulting in tariff equivalents for non-tariff barriers at an excessively high level.⁵⁹ This was a result of lack of clarity brought about by the market access provision. Dirty tariffification nullified the benefits of tariff bindings and tariff reduction by creating tariff equivalents, to which subsequent reductions apply.⁶⁰ A survey of tariffification procedures used by developed countries concluded that the majority of developed countries had engaged in dirty tariffification⁶¹ In many instances, dirty tariffification resulted in higher levels of protection than under the old system of quotas and variable import levies. Moreover, the highest tariffs were for sugar, tobacco, meat, milk products, and cereals and, to a lesser degree, fruits and vegetables, precisely the products of particular interest to developing countries.⁶²

Although there were minimum cuts to the levels of tariffs which should be reduced, the AoA failed to make clarifications on averaging tariffs and developed countries took advantage of the situation. Thus developed countries took up reductions in form of averages and in practice they were very different for each product. This meant that tariffs on some key products were reduced by very little in practice, especially where there were high tariff peaks to begin with. As a result the tariff cut of some farm products, which have potential benefit to developed countries, remain on a very low level. For example, on the first year of the AoA being in operate, the tariffs of some developed countries reached very high rates, such as American (sugar 224%, peanut

⁵⁹ Hawkes and Jagjit Plane ,The WTO Agreement on Agriculture and the right to food in developing countries ,Working paper 4/10 May 2010,Monash University, Business Economics

⁶⁰ Hawkes and Jagjit Plane ,The WTO Agreement on Agriculture and the right to food in developing countries ,Working paper 4/10 May 2010,Monash University, Business Economics

⁶¹ AoA Issues Series: Market Access: Tariffication and Tariff Reduction John Wainio USDA, Economic Research Service January 3, 2001

⁶² Hawkes and Jagjit Plane ,The WTO Agreement on Agriculture and the right to food in developing countries ,Working paper 4/10 May 2010,Monash University, Business Economics

174%), EU countries (beef 213%, wheat 168%), Japan (wheat 353%) and Canada (butter 360%, eggs 236%) (World Trade Report, 2003).⁶³

Food aid was also exempted from the export subsidy reductions. The AoA offered few disciplines on food aid and thus encouraged dumping of surpluses. Over half of the US's wheat exports goes to food aid (Article 10.4). The introduction of the US Farm Bill in 2002 provided an additional support of US \$ 180 billion in the next ten years to its domestic producers. The same trend can be seen in the EU.⁶⁴

The manner in which developed countries implemented the Agreement's tariff reductions requirements likewise restricted the market access for developing country producers. The WTO AoA in Article 4 required a 36 percent average reduction in tariffs (subject to a 15 percent minimum reduction on each tariff), and thereby allowed countries to pick and choose which individual tariffs to reduce. Developed countries generally made large tariff reductions on items that were not produced domestically or where tariff levels were already quite low in order to make minimal concessions on imports that competed with domestically produced items. For example, tariff reductions were often lower on temperate-zone products and higher on tropical products.⁶⁵ Food staples, fruits and vegetables, and processed food products remained subject to very high tariffs (tariff peaks). Indeed, the tariff peaks on processed food illustrate the ongoing problem of tariff escalation, whereby tariffs rise as the processing chain advances.⁶⁶ Tariff escalation is problematic from the perspective of developing countries because it relegates them to the production of primary products by excluding them from developed country markets for processed goods.⁶⁷ Thus developing countries like Kenya which export raw materials increasingly face declining terms of trade in the world market; the products they export

⁶³ Xiaozhen Li China Development Bank Guangxi Branch, WTO Agreement on Agriculture: A Developing Country Perspective, Journal of Politics Law, Nanning 530000, China, 2008

⁶⁴ Sophia Murphy, "WTO, Agricultural Deregulation and Food Security" Washington, DC: Foreign Policy In Focus, December 1, 1999

⁶⁵ Ibid at pg 2

⁶⁶ Ibid at pg 2

⁶⁷ Ibid at pg 3

fetch a much lower price in the world market relative to the price of their imports. Moreover, unprocessed commodities like sugar, tea, coffee and cocoa beans for example, constitute a very small portion of the overall price of chocolates, sweet biscuits, processed tea and coffee.⁶⁸ In many cases, farmers engaged in the production of primary products for export are simply price takers and have not shared in the big gains which have taken place in global markets.

Many developed countries also adopted complex tariff systems whose lack of transparency made pre- and post-Uruguay Round tariff comparisons more difficult and may complicate future tariff reduction negotiations. For example, many countries adopted non-ad valorem tariffs, which can vary, based on technical factors such as sugar or alcohol content.⁶⁹ While others like the EU adopted complex import arrangements, such as the “entry price” system for fruits and vegetables, which includes seasonal tariffs.⁷⁰

Article 5 of the AoA provides developing countries with the opportunity to offer ceiling bindings rather than follow the tariffication approach to eliminating non-tariff barriers. Many developing countries did not have non-tariff barriers which they could convert into equivalent tariffs and thus they could not indulge in tariffication and had to opt for ceiling bindings.⁷¹ The downside of this approach was their inability to make use of the Special Safeguard (SSG) Clause because they did not indulge in tariffication. Thereby most developing countries cannot make use of the equivalent high tariff to protect their farmers like most developed countries can.⁷² The AoA Special safeguard allows the imposition of an additional duty on a product subject to tariffication in the event of an import surge or in the event of particularly low prices, compared with 1986-

⁶⁸ Ibid at pg 6

⁶⁹ Jennifer Clapp, *Developing Countries and the WTO, Agriculture Negotiations*, Working Paper No.6 March 2006

⁷⁰ Martin Khor, *The WTO Agriculture Agreement: Features, Effects, Negotiations, and What is Stake*, 2002

⁷¹ Ibid at pag 1

⁷² Xiaozhen Li, *WTO Agreement on Agriculture: A Developing Country Perspective* Development Bank Guangxi Branch, Nanning 530000, China, 2008

88 levels.⁷³ The SSG was designed to address disturbances in domestic markets arising from the removal of non-tariff measures, either in terms of a surge in imports or a decline in domestic prices. Although this type of tool is very important for the protection of the right to food, the application is coincidentally limited to only countries that undertook tariffication. The provision is thus very discriminative in that not all countries had access to an important tool like the SSG. What is even more interesting is the fact that the safeguard provision resembles the variable levy system used by the European Union to protect domestic markets from cheaper foreign imports (Article 5:5). Indeed, the special safeguard provision was inserted into the Agreement at the insistence of the E.U.⁷⁴ The E.U. abused the special safeguard provision by setting trigger prices far above the 1986-88 average world prices used for the conversion of non-tariff barriers into tariffs.⁷⁵ As a result, the E.U. was able to reduce market access by applying additional duties whenever the world market price for sugar was more than 10 percent below the inflated trigger price.⁷⁶ Approximately 80 percent of the tariffied items of the developed countries are subject to the special safeguard provision, which may so easily be abused.

Another provision for increasing market access is the minimum and current access volumes. However, this is contained only in the modality paper and is therefore legally binding only if it is reflected in the specific commitments and detailed in the members' country schedules.⁷⁷ The minimum access obliges a country to provide access opportunities for agricultural products where there have been no significant imports in the past, at lower or minimal tariffs.⁷⁸ This lower tariff is referred to as the "within-quota tariff" and the quantity of goods imported at this lower tariff is called the "tariff-rate quota" (TRQ). The TRQs were to be allocated equally to all countries or on what they

⁷³ Ibid at page 10

⁷⁴ Jennifer Clapp, *Developing Countries and the WTO, Agriculture Negotiation*, Working Paper No.6 March 2006,

⁷⁵ Ibid at pg 4

⁷⁶ AOA Article 5.5(b).

⁷⁷ Ibid

⁷⁸ Arze Glipo, *The WTO-AoA: Impact on Farmers and Rural Women in Asia*, Asia-Pacific Network for Food Sovereignty.

call the most-favoured nation (MFN) basis.⁷⁹ TRQ were incorporated to appease fears that tariffication, in leading to a dramatic tariff increase, would block imports .TRQs set quotas on imports, attracting lower tariff rates, with tariffs defaulting to the higher rate on exceeding the quota.⁸⁰ TRQs which were designed to guarantee minimum market access, likewise were plagued by lack of transparency, and were often used to allocate trading opportunities on advantageous terms to historic suppliers (often commercial importers owned by domestic producers) rather than to create new opportunities for developing country exports. They thus had limited effect in improving access.⁸¹ The AoA itself does not specify any particular rule for the administration of the TRQs; rather, these are covered by Article XIII of GATT 1994, non-discriminatory administration of quantitative restrictions.⁸² This Article provides the overall guideline as follows: "in applying import restrictions to any product, Members shall aim at a distribution of trade in such product approaching as closely as possible the shares which the various Members might be expected to obtain in the absence of such restrictions ..."⁸³ In practice, however, it may be impossible to predict such a share and so this provision mainly serves as a general guideline, while subsequent paragraphs of this Article permit a fairly wide discretion to administer the quotas. Not surprisingly, several methods have been used to allocate the TRQs. Thus there is no regulation on how members manage quotas.⁸⁴ The EU and US for example have applied TRQs to set, or maintain, preferential trade agreements despite WTO Members having to provide equal treatment to all Members.⁸⁵ The end result of market access provisions within the AoA is that all the above ,is that developed countries are allowed to continue to protect their markets and right to food using tariff peaks while developing countries opened their markets with no protection provided.

⁷⁹ Ibid 1 at pg 5

⁸⁰ Ibid at pg 5

⁸¹ Ibid at pg 16

⁸² Ibid at pg 6

⁸³ Michael Windfuhr, *Trade and Human Rights: The Agreement on Agriculture of the WTO and the Right to Food Context, Conflicts and Human Rights Violations*, FIAN International ,www.fian.org.

⁸⁴ Ibid at pg 5

⁸⁵ Ibid at pg5

The AoA simultaneously disarmed developing countries of key tool to respect protect and fulfil the right to food, while diminishing their already limited access to heavily protected Global North Markets.⁸⁶ Developed countries on the other hand were provided with the avenues to avoid their market access obligations within the AoA and thus while they reaped the benefits of market access in developing countries like Kenya, they were able to protect their right to food. Market access is a very important to the right to food in the Global South but the only nations who benefited from market access provision are developed countries. Developed countries were able to protect their market and keep developing countries out while they took full advantage of the open market opportunities in developed countries. Market access is a very important tool for several reasons. Firstly, the ease of implementing import/export taxes, compared to other revenues sees agriculture highly taxed in developing countries. Tariffs are therefore a principal source of government funds and thus affect the ability of the state to source of government revenue. Reduction in revenue negatively affects the ability of the State to fulfill the right to food. So it is discriminative for the AoA to provide avenues for developed countries to continue to apply tariffs but not give developing countries the same options.

3.2 EXPORT SUBSIDIES

Article 8 of the AoA provides that each member undertakes not to provide export subsidies, except when in conformity with the AoA and with the commitments as specified in that Member's Schedule. Article 9 of the WTO Agreement further requires developed countries to reduce their expenditure on exports by 21 percent over six years and 24 percent and 14 percent over ten years for developing countries. LDCs (Least Developed Countries) were exempt. Ironically reductions were set on a 1986 -1990 baseline, when both subsidy outlays and volume were historically high, with developed

⁸⁶ Hawkes and Jagjit Plane, *The WTO Agreement on Agriculture and the right to food in developing countries*, Working paper 4/10 May 2010, Monash University, Business Economics.

countries contributing that vast bulk, the EU for example accounting for over 90 percent of global expenditure on subsidies⁸⁷

3.2.1 Existence of Hierarchy amongst states within the Export Subsidies provision

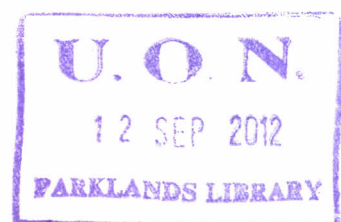
What is baffling is the fact that although subsidies are trade distorting and the complete opposite of the right to free trade and the foundation of the AoA, the agreement did not prohibit the use of export subsidies in the agricultural sector. The AoA merely required the reduction of subsidy levels. Consequently, the WTO Agreement, far from promoting liberalized trade in the agricultural sector, merely established permissible levels of market distortion but only for certain countries(developed countries) not all countries. Export subsidies are tools that developed countries have historically used to protect their markets, whereas developing countries have historically needed to tax the agricultural sector.⁸⁸ So the only people who benefit from the provision on exports subsidies are developed countries alone.

The reductions on export subsidies are based on annual commitments; this enables countries to exceed allowable levels of subsidies, provided that their commitments are met cumulatively over a five year period. The provision has been judiciously exploited by the US and EU.⁸⁹ The AoA failed to prohibit the aggregation of commodities for the purposes of complying with the reduction obligations. For example, some countries have treated wheat, wheat flour and other wheat derivatives as a single group. Consequently, a country that subsidized wheat and wheat products during the base period will have the flexibility to shift subsidies among these products as long as

⁸⁷ Xiaozhen Li China Development Bank Guangxi Branch, *WTO Agreement on Agriculture: A Developing Country Perspective*, *Journal of Politics Law*, Nanning 530000, China, 2008

⁸⁸ Ibid 1

⁸⁹ Ibid 2



it complies with its export reduction commitments with respect to these commodities in the aggregate⁹⁰

The AoA then provides that only countries applying export subsidies in 1986-1990 could retain any form of export subsidy. The Agreement thus exacerbated inequities between developed and developing countries with respect to the availability of export subsidies as a tool of agricultural policy. Developed countries have historically subsidized agricultural production, whereas developing countries have historically needed to tax the agricultural sector thus this type of provision is malicious.⁹¹ By permitting past users of export subsidies to maintain these subsidies, subject to certain reduction obligations, while prohibiting the introduction of new subsidies, the Agreement institutionalized the unfair competitive advantage held by developed country producers. Indeed, the practice of providing export subsidies is heavily concentrated in a handful of countries. Only 25 out of 135 countries have the right under the Agreement to subsidize exports, and three exporting countries account for 93 percent of wheat subsidies, 80 percent of beef subsidies, and 94 percent of butter subsidies.⁹²

The Agreement did achieve export subsidy reductions, but developed countries found other ways to promote agricultural exports as a result of the lack of clarity regarding the status of subsidies which are not listed in Article 9.1 of the AoA.⁹³ While Article 10.1 stipulates that such subsidies shall not be used in a manner which might lead to "circumvention of export subsidy commitments" but it is not clearly stated whether everything else is prohibited.⁹⁴ As a result of this lack of clarity major food exporters, such as the United States, the E.U., and Canada, have reduced export subsidies in accordance with their commitments under the AoA, but they have utilized other devices

⁹⁰ Melinda Smale, Marc J. Cohen, Latha Nagarajan February 2009 Local Markets, Local Varieties, Rising food prices and small farmers Access to Seed, IFPRI Issue Brief 59, FAO, Feb 2009

⁹¹ Ibid

⁹² Carmen G. Gonzalez, Institutionalizing Inequality: the WTO, Agriculture and Developing Countries, 2002

⁹³ Espanol Francais, Multilateral Trade Negotiations on Agriculture-A Resource Manual, FAO Corporate Document Repository.

⁹⁴ Ibid

that are permitted by the Agreement to achieve the goal of export promotion.⁹⁵⁹⁶ The U.S for example has promoted exports by providing government credit on concessional terms, and has resisted any effort to reach agreement on minimum interest rates and maximum length of credit terms, as contemplated by Article 10:2 of the WTO Agreement on Agriculture. From the standpoint of the developing countries, there is a need for clarifying the relationship between agricultural subsidies under the AoA and those listed in the Subsidies Agreement.⁹⁷

The absence of binding obligations with respect to export credits is recognized as a major flaw in the Agreement's export subsidy provisions.⁹⁸ Few developing countries subsidize their agricultural exports and the great majority will not be able to do so in the future on account of the AoA. Further few can afford to subsidize their exports in any case. The AoA effectively favours developed countries treating them like they are of more importance or of a higher hierarchy than developing countries like Kenya. With the AoA on its side developed countries will continue to heavily subsidize their goods, thus protect their markets and their right to food while they also enjoy the free market opportunities available in developed countries that are not given the opportunity or chance to protect their right to food.

3.3 DOMESTIC SUBSIDIES

The WTO AoA in Article 6 and Annex 2 obligates countries to reduce domestic subsidies. However the Agreement exempted many of the subsidies traditionally utilized by developed countries and thereby achieved minimal domestic subsidy reductions. The Agreement required countries to reduce domestic subsidies based on an Aggregate Measure of Support (AMS), a baseline figure that took into account all domestic

⁹⁵ Espanol Francais, *Multilateral Trade Negotiations on Agriculture-A Resource Manual*, FAO Corporate Document Repository.

⁹⁶ Carmen G. Gonzalez, *Institutionalizing Inequality: the WTO, Agriculture and Developing Countries*, 2002

⁹⁷ Ibid at page 16

⁹⁸ Micheal Windfuhr, FIAN, *Trade and Human Rights, The Agreement on Agriculture of the WTO and the Right to Food*, Context, conflicts and Human Rights Violations, September 2003.

agricultural subsidies during the 1986-88 base period. Compliance was measured through the calculation of the Current Total AMS, which included only those subsidies deemed to be most trade-distorting (the “amber box” subsidies) and specifically excluded certain direct payments to farmers under production limiting programs, “blue box” .The Agreement also exempted from the subsidy reduction obligation certain measures deemed to have minimal or no trade- distorting effects, “green box” subsidies. Domestic subsidies that fall within the “blue box” category include: U.S. deficiency payments and E.U. compensation payments, both of which pay farmers the difference between a government target price for agricultural commodities and the corresponding market price, including U.S. deficiency payments and E.U.⁹⁹ “Green box” exemption included certain support measures provided through government programs that are deemed to have minimal or no trade-distorting effects, those that fall under the AoA Annex 2 and certain other measures used by developing countries to promote rural development.¹⁰⁰

3.3.1 Existence of Hierarchy amongst states within the Domestic Subsidies provision

The main form of unfairness within the AoA is found in the area of domestic support. Developed countries with high levels of domestic subsidies are allowed to continue these up to 80 per cent after the six-year period. In contrast, most developing countries (with a very few exceptions) like Kenya, who have had little or no subsidies due to their lack of resources, are now prohibited from having subsidies beyond the de minimis level (10 per cent of total agriculture value), except in a limited way. In addition, many types of domestic subsidy have been exempted from reduction, most of which are used by the developed countries. While these countries reduced their reducible subsidies to 80 per cent, they at the same time raised the exempted subsidies substantially. With regard to export subsidies, the developed countries get to retain 64 per cent of their budget allocations and 79 per cent of their subsidy coverage after six years. The

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Martin Khor , The WTO Agriculture Agreement: Features, Effects, Negotiations, and What is Stake,2002

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developing countries, on the other hand, had generally not been using export subsidies, have not been using domestic subsidies are now prohibited from using them, whilst those that have subsidies of little value have also to reduce the level. The WTO AoA has thus permitted the developed countries to increase their domestic subsidies (instead of reducing them), substantially continue with their export subsidies and provide special protection to their farmers in times of increased imports and diminished domestic prices. The developing countries, on the other hand, cannot use domestic subsidies beyond a de minimis level (except for very limited purposes), export subsidies and the special protection measures for their farmers. In essence, developed countries are allowed to continue with the distortion of agriculture trade to a substantial extent and even to enhance the distortion; whereas developing countries that had not been engaging in such distortion are not allowed the use of subsidies (except in a limited way) and special protection"¹⁰¹ The AoA thus created inequities between developed and developing countries with respect to domestic support, instituting the fact that some countries are better than other or more superior thus creating a form of hierarchy amongst states.

The types of domestic subsidies that developing countries are exempted from reducing include: input subsidy given to poor farmers; land improvement subsidy; diversion of land from production of illicit narcotic crops; and provision of food subsidy to the poor. The scope is very limited and hardly half a dozen of the developing countries use these subsidies¹⁰² Furthermore, subsidies exempted from reduction and used mostly by developed countries (Annex 2 subsidies) are immune from counteraction in the WTO; they cannot be subjected to the countervailing-duty process or the normal dispute settlement process.¹⁰³ But those exempted from reduction and used by Developing countries do not have such immunity, ironically.

¹⁰¹ Meenakshi Raman, *Effects of Agricultural Liberalisation: Experiences of Rural Producers in Developing Countries*, Third World Network, TWN, 2004.

¹⁰² Bhagirath Lal Das, *Doha and Beyond: Incorporating Human Development into Trade Negotiations*, 17-18 December 2007, Regional Centre in Colombo and UNDP Malaysia in partnership with Third World Network

¹⁰³ *Ibid* at pg 10

The “amber box” subsidy reductions required by the Agreement have produced minimal reductions in domestic support because they were based on the 1986–88 period of extremely high domestic subsidies. Because domestic subsidies had declined relative to the 1986–88 base period by the time the Agreement went into effect in 1995, WTO members have had to reduce AMS by only a few percentage points in order to comply with the Agreement.

The exclusion of “blue box” and “green box” subsidies from the Current Total AMS undermined the effectiveness of the Agreement’s subsidy reduction obligations by excluding precisely the types of domestic support most utilized by developed countries, namely U.S. deficiency payments and E.U.¹⁰⁴ Both developed countries use compensation payments, which pay farmers the difference between the actual market price for a given commodity and a higher target price established by the government. In the United States, for example, deficiency payments accounted for over 70 percent of domestic agricultural subsidies in 1990.¹⁰⁵ Consequently, it was not necessary for the U.S. to reduce domestic agricultural subsidies in order to comply with the terms of the Agreement. U.S and other developed countries simply cut the supports in amber box and added lots of the supports in green and blue boxes at the same time. While these programs (green box and blue box) are not directly linked to agricultural prices, they do provide farmers with additional revenue, thereby indirectly subsidizing agricultural production. Example although farmers who live on poultry feed in US and EU have not received support from governments directly, they receive corn for feeding poultry.¹⁰⁶ Such indirect support brings African farmers into trouble and leads to the increasing of the sum of domestic support. As a result of these types of support, farmers from Developing countries can sell their products in a lower price. It disturbs export markets

104 Ibid at pg 6

105 Ibid at pg 6

106 Arze Glipo, *The WTO-AoA: Impact on Farmers and Rural Women in Asia*, *Asia-Pacific Network for Food Sovereignty*
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which do not obtain the subsidies and causes the export dumping in developing countries.¹⁰⁷ A noted Indian food policy analyst, Devinder Sharma, pointed out the gross injustice of this system when he compared the amount of subsidy a cow in Europe and America receives, which is about US \$ 2.70 per cow to the daily income of a small and marginal farmer in the Third World, which is about less than half of this amount.¹⁰⁸ Also the AoA's categorization of subsidies into trade distorting (Amber box) and non-trade distorting (blue box and green box), enabled developed countries to shift their existing trade-distorting subsidies into acceptable boxes that are exempted for reduction such as the green and blue boxes. Thus, while subsidies under the AMS (Amber Box) decreased, there was a corresponding increase in subsidies under the Green and Blue Boxes. In the US, for instance, Green Box subsidies totaled US\$50 billion in 1998, compared to a total of \$10 billion Amber Box subsidies.¹⁰⁹

The AoA has legitimized the trade-distorting subsidies and dumping practices of developed countries by allowing the shifting of directly price-related subsidies to direct payments or decoupled payments that are protected and even allowed to increase.¹¹⁰ As world prices continue to fall, export subsidies of developed countries like the EU inversely rise to offset possible losses of domestic producers. The EU continues to provide export subsidies while the US hides its export support under export credits and food aid.¹¹¹ For both, domestic spending has increased to support their producers, although most of the beneficiaries are the big producers and traders.¹¹² As a result the EU and US continue to dump agricultural products in the world market, which means the selling of products at less than the cost of production. Their massive subsidies in

¹⁰⁷ Ibid

¹⁰⁸ Michael Windfuhr, Trade and Human Rights: The Agreement on Agriculture of the WTO and the Right to Food Context, Conflicts and Human Rights Violations, FIAN International Michael Windfuhr, www.fian.org

¹⁰⁹ Martin Khor, The WTO Agriculture Agreement: Features, Effects, Negotiations, and What is Stake, 2002.

¹¹⁰ Xiaozhen Li China Development Bank Guangxi Branch, *WTO Agreement on Agriculture: A Developing Country Perspective*, Journal of Politics Law, Nanning 530000, China, 2008

¹¹¹ Ibid pg 5

¹¹² Ibid pg 5

agriculture both for domestic producers and exporters lead to dumping which continue to wreak havoc on small farmer's livelihoods in developing countries.¹¹³

The Special and Differential Treatment (SDT) Provisions in the AoA for Developing countries, barks but does not bite. Annex 1 provides for Special and Differential Treatment in the AoA that are to help developing countries in adopting the AoA provision because of their sensitive position.¹¹⁴ There are several ways in which SDT treatment was addressed. They included smaller cuts and longer periods of adjustment; the chance to offer tariff bindings rather than cut tariffs and special assistance under the Decision with food imports. It all looks good on paper but in reality it is not much.¹¹⁵ This SDT were to help to give flexibility to phase-in the reduction commitments gradually. However, in practice, this did not prove to be as useful for a majority of the developing countries because of the way they made their commitments. For example, for a majority of them there was very little to reduce over the implementation period¹¹⁶ The provision was also not relevant LDC as they were not required to reduce anything. Thirdly, the lower reduction commitments in domestic support and export subsidy of developing countries are good for a few countries, which have budgets to use such measures. However, most developing countries cannot make use of them¹¹⁷. The higher de minimis percentage does not have any actual interest for them: most countries do not have enough fund to afford even 5% support of the value of the total agricultural production. Fourthly, although reduction commitments of developing countries were to be implemented a few years later, such schedule is based on political bargaining but not

¹¹³ Ibid pg 6

¹¹⁴ Espanol Francais, Multilateral Trade Negotiations on Agriculture-A Resource Manual, FAO Corporate Document Repository

¹¹⁵ Michael Windfuhr, Trade and Human Rights: The Agreement on Agriculture of the WTO and the Right to Food Context, Conflicts and Human Rights Violations, FIAN International Michael Windfuhr, www.fian.org

¹¹⁶ Espanol Francais, Multilateral Trade Negotiations on Agriculture-A Resource Manual, FAO Corporate Document Repository

¹¹⁷ Espanol Francais, Multilateral Trade Negotiations on Agriculture-A Resource Manual, FAO Corporate Document Repository

real requirement of developing countries.¹¹⁸ The method which could really help developing countries is establishing the measure related the factors and essential of reduction commitments, in other words, but not dogmatic deadline.¹¹⁹ Basically SDT's 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.¹²⁰ 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 promised 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.¹²¹ This would have been more effective than the longer time for implementation but so far, the declaration has however not been put into practice.¹²² While developing countries are accorded what they call special and differential treatment, in the form of slightly lower tariff and subsidy reduction and longer implementation period, it remains grossly negligible compared to the huge concessions and exemptions that are made available to developed countries to protect their existing trade-distorting subsidies and agricultural. Lastly, the benefits which brought by special and differential treatment for developing countries are impaired by the special treatment of green and blue boxes for developed countries. What is ironical about SDT's is the fact that while on

118 Ibid pg 3

119 Arze Glipo, The WTO-AoA: Impact on Farmers and Rural Women in Asia, Asia-Pacific Network for Food Sovereignty What is the WTO Agreement on Agriculture?

120 Ibid pg 1

121 Ibid pg 3

122 Arze Glipo, The WTO-AoA: Impact on Farmers and Rural Women in Asia, Asia-Pacific Network for Food Sovereignty What is the WTO Agreement on Agriculture?

paper it seems like it is developing countries were provided with relevant SDT'S IN Annex 1, practice seems to show that it is infact developed countries who not only got SDTs but effective SDT's .The AoA does not call them SDT's, the Agreement simply gave it other names but they are SDT's nonetheless.

3.4 CHAPTER CONCLUSION

'The right to food V The Right to free Trade', that is the balance that developing countries like Kenya are forced to strike in a globalised world. Increasingly it's the food security of their populations that is being sacrificed, while developed countries get to protect their right to food and get to benefit from the free markets of developing countries like Kenya.¹²³ The AoA is a two edged sword. It enables developed countries to protect their right to food it does not provide developing countries with the same options. Thus creating a sense of hierarchy like some states are more important or superior than others. The AoA enables developed countries to have their cake and eat it too at the expense of the right to food of developing countries like Kenya. The Agreement fails to recognise key factors which affect food insecure countries' capacity to improve their situation, and in fact establishes conditions which perpetuate food insecurity.¹²⁴ While developing countries are struggling to uphold both their internationally recognized human rights and international trade obligations, the AoA enables developed countries to easily meet their commitments as they continue to protect their markets. The three major users of domestic support; the EU, the US and Japan, have not only have managed to protect their right to food but have also managed to meet their AoA requirements. All despite the fact that domestic support has in fact increased in these countries since 1995, when the AoA came into effect.¹²⁵

In terms of food security, the WTO's AoA does not acknowledge nation states' food security obligations or needs but indirectly enables developed countries to protect their

¹²³ Jagjit Plahe, *Sacrifising the right to food on the alter of free trade*, 2007-01-04

¹²⁴ Ibid pg 2

¹²⁵ Martin Khor, *The WTO Agriculture Agreement: Features, Effects, Negotiations, and What is Stake* 2002.

right to food as illustrated above. Also despite the free market ideology that ostensibly underlies the WTO AoA; the Agreement has enabled developed countries to maintain trade-distorting subsidies and import Restrictions, and has thereby failed to achieve its stated objective of creating a “fair and market-oriented trading system. The AoA was designed to discipline domestic support but the years following the enforcement of the AoA ironically saw the uncharacteristic rise of these subsidies¹²⁶ As a result since the implementation of the AoA in 1995, the capacity of developing countries to ensure their long-term food security has been increasingly eroded. Two patterns that have direct impact on food security and agriculture in the South have clearly emerged. One is the increasing agricultural subsidies in the North, despite the avowed goal of the AoA to curb trade-distorting subsidies.¹²⁷ Another is the massive flooding of artificially cheap food imports in developing countries’ markets that continues to displace domestic food production. A study conducted by the Food and Agriculture Organization (FAO) on the impact of AoA on 14 developing countries in 2001 revealed that AoA’s liberalization policy significantly increased food importation in these countries, with many registering sudden increases in the value of their food imports in the years following their accession to the AoA.¹²⁸ In fact, many Agricultural commodity countries in the 70’s and 80’s like the Kenya have been transformed into net food importers as a result of import liberalization under AoA.¹²⁹ As there were no corresponding dramatic increases in developing countries’ agricultural exports after their accession to the WTO, the massive food imports and import surges contributed to the huge trade deficits in agriculture they incurred during this period. The study also pointed to the general trend towards land concentration as small-scale farms were edged out in the competition. This has led to displacement of small farmers and food-insecure groups, further exacerbating hunger and

¹²⁶ Arze Glipo, *The WTO-AoA: Impact on Farmers and Rural Women in Asia*, Asia-Pacific Network for Food Sovereignty What is the WTO Agreement on Agriculture?

¹²⁷ Shona Hawkes and Jagjit Plane, *The WTO Agreement On Agriculture And The Right To Food In Developing Countries*, Working paper 4/10 May 2010, Monash University, Business Economics.

¹²⁸ Sophia Murphy, "WTO, Agricultural Deregulation and Food Security" (Washington, DC: Foreign Policy In Focus, December 1, 1999

¹²⁹ Gonzalez Macro, *Institutionalizing Inequality: the WTO, Agriculture and Developing Countries*, 2002

food insecurity among rural households. Fertilizer subsidies were removed in countries like Indonesia and Zambia.¹³⁰ State procurement and public food distribution programs have been scaled down while in some countries, procurement centres that are strategically located in farming villages were shut down like in Pakistan. These policies have left poor farmers at the mercy of traders and moneylenders who exact huge profits from under pricing farmer's produce and raising loan interests exorbitantly. In many cases, government stopped procuring from their own farmers and relied upon cheap food imports to replenish their stocks.¹³¹

Thus we are left with a situation where only developed countries are enjoying both their right to free trade in developing countries markets and their right food but developing countries are not given the same options.¹³² The Bizarre result of this kind of policy is that many small peasants have been ruined through European and US American dumping practices.

The principle of free trade upon which the Agreement is built on is faulty and unbalanced, while it requires developed countries to open up their markets the same agreement enables developed countries to protect their markets thus enabling them to protect their right to food and at the same time enjoy their right to free trade, all at the expense of developed countries.¹³³ The trade liberalization commitments in the AoA inherently work against the development and food security needs of developing countries. Under free trade, countries should produce only the goods which they can produce cheaply or with which they have comparative advantage and import those including the food crops which they produce domestically, from others who can produce them cheaper and more efficiently. The implication is that developed countries, which by virtue of their huge subsidies can dump food products in the international market, should continue

¹³⁰ Jagjit Plahe, Sacrificing the right to food on the alter of free trade,2007-01-04

¹³¹ Melinda Smale, Marc J.Cohen, Latha Local Markets, Local Varieties, Rising food prices and small farmers Access to Seed, Nagarajan,FAO, Feb 2009

¹³² Jagjit Plahe, Sacrificing the right to food on the alter of free trade, 2007-01-04.

¹³³ Ibid pg 1

supplying developing countries with their highly subsidized agricultural surplus and developing countries should focus on exporting crops that will earn them the foreign exchange to buy food from rich countries.¹³⁴ Thus, developing countries end up becoming more dependent on imports that continually drain their scarce foreign reserves, stunt the growth of their agriculture and economies and weaken their capacity to feed their own population in the long-term. The AoA focuses merely on further liberalizing markets of poorer countries even as it continues protecting the subsidies and protectionist measures such as tariff peaks and other trade barriers employed by rich countries.¹³⁵ It is almost as if the main purpose of the AoA is to open up markets of developing countries. Reciprocity, which is a core principle of the WTO and which supposedly directs the trade liberalization commitments of members has been rendered meaningless. Many developing countries were misled into rapidly open up their markets to dumped imports from developed countries in order to gain access to the latter's huge markets.¹³⁶ Unfortunately their actions were not reciprocated by the North. Instead, developed countries put up higher tariff walls called tariff peaks and tariff escalation upon tariffication that effectively discriminated against developing countries' exports. What is even more interesting is the fact that the AoA helps to institute this inequalities. Worse, the subsidies employed by developed countries to protect their agriculture, expand their production and gain monopoly control in the international market are accorded more protection with the exemptions introduced in the AoA's subsidy reduction.¹³⁷ Access to the lucrative markets in the North is further restricted by dirty tariffication, use of the SSG facility, use of the SSG facility and weak rules TQRs. The problem was further compounded by developed countries using tariff peaks to protect their markets.¹³⁸

¹³⁴ Sophia Murphy, "WTO, Agricultural Deregulation and Food Security" (Washington, DC: Foreign Policy In Focus, December 1, 1999).

¹³⁵ Jagjit Plahe, "Sacrificing the right to food on the alter of free trade," 2007-01-04.

¹³⁶ Ibid pg 2

¹³⁷ Gonzalez Macro, "Institutionalizing Inequality: the WTO, Agriculture and Developing Countries," 2002.

¹³⁸ Michael Windfuhr, "Trade and Human Rights: The Agreement on Agriculture of the WTO and the Right to Food Context, Conflicts and Human Rights Violations," FIAN International, www.fian.org

It is clear that many developing countries violated their obligation to respect, protect and fulfil the right to food in agreeing to the AoA whose selling point was the right to free trade. The very same tools that developed countries generously employed to achieve food security and food self-sufficiency such as imports controls and higher tariffs are now being denied to developing countries as they are now considered trade barriers under AoA. Subsidies that could have provided support to subsistence and cash-strapped farmers have been withdrawn as these are also considered trade-distorting under the AoA. Indeed in a short span of time, AoA has actually succeeded in reversing policies and measures used by developing countries to achieve food security. In fact, the WTO has succeeded in redefining food security from one of having increased production capacity to meet domestic food consumption to having mere access to food imports supplied by countries which can produce them cheaply.¹³⁹ The US, which instigated the launching of the Uruguay Round to capture greater market for its agriculture exports, has exactly this concept in mind. This was echoed by no less than John Black, the US Agriculture Secretary at that time, when he said at the start of the Uruguay Round negotiations in 1986 that the “idea that developing countries should feed themselves is an anachronism from a bygone era.¹⁴⁰ They could better ensure their food security by relying on US agricultural products, which are available, in most cases, at much lower cost.”¹⁴¹ But as the implementation experience of developing countries would attest, trade liberalization in agriculture in fact has led to increased hunger, starvation and poverty among the rural poor.¹⁴²

¹³⁹ Oxfam Briefing Paper 81, Truth or consequences, Why the EU and USA must reform their subsidies or pay the price,30 November 2005.

¹⁴⁰ Bhagirath Lal Das, Doha and Beyond: Incorporating Human Development into Trade Negotiations, 17-18 December 2007, UNDP Regional Centre in Colombo and UNDP Malaysia in partnership with Third World Network.

¹⁴¹ Ibid at pg 9

¹⁴² Ibid at pg 10

CHAPTER 4

4.0 CONCLUSION

Developing countries are dependent on agriculture as a major source of employment and foreign exchange, and the AoA rules should be changed to allow these countries to nurture their domestic agricultural production and markets. This last chapter discusses some reforms that are necessary to enable developing countries to become food secure. These reforms are designed to address the flaws in the WTO AoA detailed in chapter three:

4.1 MARKET ACCESS

Greater access to developed country markets should be a chief priority in order to increase the trade-based entitlements of developing countries and to address developed countries evasion of the Agreement on Agriculture's market access requirements. Greater market access can be achieved through further reduction of developed country tariffs.

Developing countries like Kenya should take direct import control measures, e.g. quantitative restrictions, on imports of agricultural products from the developed countries, until the domestic support of all types including those included in paragraphs 5 to 13 of Annex 2 to the Agreement on Agriculture and Article 6.5 of the Agreement on Agriculture (the Green Box and Blue Box subsidies) and export subsidies in all forms in the developed countries are eliminated.¹⁴³ With the objective of reducing current severe imbalance caused by the domestic support and export subsidies of the developed countries.

The Agreement should also exempt developing countries from tariff reduction obligations for particularly sensitive agricultural commodities, such as food staples. This exemption

¹⁴³ Michael Windfuhr, Trade and Human Rights: The Agreement on Agriculture of the WTO and the Right to Food Context, Conflicts and Human Rights Violations, *FIAN International*, www.fian.org

would enable developing countries to promote food security by encouraging domestic food production, reducing dependence on world markets, and encouraging diversification of food supply.

International food aid is often used to dispose of agricultural surplus. This type of food aid must be strictly forbidden.

The AoA should provide for a 'top' tariff which should apply to all the products. That means the tariff of any product cannot be higher than the 'top' tariff. As the special and differential treatment, developing countries could have a higher 'top' tariff than developed countries.¹⁴⁴

The AoA in Article 5 safeguard provisions, which has been abused by developed countries and are generally unavailable to developing countries, should be restricted to developing countries, or at a minimum, should be reformed to specify the calculation of the trigger price.¹⁴⁵ Infact there should be a provision that enables developing countries to execute special safeguard measures. Currently the Special safeguard within the AoA is complex to start .The AoA should afford a simple standard of start-up for developing countries. One possible way is if the import level exceeds a certain proportion of the average level of last three years, developing countries could execute special safeguard measure.

In order to address dirty tariffication, application of tariff reductions on a product-by-product basis should be adopted rather than industry-wide averages. This would prevent selective tariff reduction and eliminate tariff escalation on products of export interest to developing countries .Also there should be greater transparency in tariffs in order to avoid abuses.¹⁴⁶

¹⁴⁴ Martin Khor, *The WTO Agriculture Agreement: Features, Effects, Negotiations, and What is Stake*

¹⁴⁵ Arze Glipo, *The WTO-AoA: Impact on Farmers and Rural Women in Asia* *Asia-Pacific Network for Food Sovereignty* What is the WTO Agreement on Agriculture?

¹⁴⁶ Ibid at pg 8

The Agreement's minimum market access requirements should be expanded and clarified in order to ensure that trading opportunities are made available for developing country producers rather than commercial exporters owned by developed country producers.

The WTO Agreement on Agriculture should give developing countries maximum flexibility in the implementation of tariff reductions. This is in recognition of the fact that developing countries frequently rely on tariff revenues to fund measures to boost production-based entitlements and transfer-based entitlements.¹⁴⁷ Developing countries frequently rely on tariff revenues to finance programs to promote domestic food production, such as subsidized or free inputs, research and extension services, irrigation projects, and investment subsidies.¹⁴⁸ Tariff revenues may also be used to finance food price subsidies targeted feeding programs and income safety nets. Consequently, the maintenance of tariff revenues is critical to the ability of developing countries to promote the right to food.

Furthermore, it is critical that any additional tariff reduction in developing countries should not occur until there have been significant reductions in export subsidies and domestic subsidies in developed countries. To do otherwise would thwart the ability of developing countries to use tariffs to prevent the displacement of domestic food production by cheap, subsidized food imports.

4.2 EXPORT SUBSIDIES

The WTO AoA should flatly prohibit developed countries from subsidizing exports. The Agreement should also contain a broad prohibition on measures designed to circumvent this prohibition, such as direct aid to producers that is not contingent on export performance. All kinds of export subsidies, including export credit, export credit guarantee and export insurance, should be cancelled..¹⁴⁹

¹⁴⁷ Xiaozhen Li China Development Bank Guangxi Branch, *WTO Agreement on Agriculture: A Developing Country Perspective*, *Journal of Politics Law*, Nanning 530000, China, 20008

¹⁴⁸ Ibid at pg 12

¹⁴⁹ Xiaozhen Li China Development Bank Guangxi Branch, *WTO Agreement on Agriculture: A Developing Country Perspective*, *Journal of Politics Law*, Nanning 530000, China, 2008

As contemplated by Article 10:2 of the Agreement, the renegotiated Agreement should contain binding obligations with respect to minimum interest rates and maximum credit terms, in order to prevent developed countries from promoting exports by providing government credit on concessional terms.¹⁵⁰

In accordance with the principle of Special and Differential Treatment, developing countries should be permitted some latitude to use export subsidies to nurture agro-export industries, thereby generating export revenues and creating employment opportunities.¹⁵¹ In light of the unfair competitive advantage obtained by developed countries through the use of export subsidies and of various measures to circumvent the Agreement's limitations on export subsidies. It is important that developing countries should not be deprived of this important policy option. In order to avoid wealthier developing countries from benefiting at the expense of developing countries like Kenya, the use of such a provision should be justified by food security concerns, for instance the need to diversify agricultural production in order to reduce dependence on one or two export commodities.¹⁵² This solution would draw a distinction between export subsidies designed to distort world markets in order to increase the market share of established agricultural producers and export subsidies designed to protect the right to food.

4.3 DOMESTIC SUBSIDIES

Developing countries should demand for the immediate elimination of domestic support and all forms of export subsidies of developed countries that result in chronic dumping of agricultural commodities.

¹⁵⁰ Ibid pg 9

¹⁵¹ Martin Khor, The WTO Agriculture Agreement: Features, Effects, Negotiations, and What is Stake?", 2002

¹⁵² Ibid pg 10



The domestic support listed in paragraphs 5 to 13 of Annex 2 to the AoA (Green Box subsidies) and those listed in Article 6.5 (Blue Box subsidies must be subjected to the discipline of reduction and elimination.

In order to protect food security, the AoA should enable developing countries to use domestic supports for products which are for domestic consumption. Such supports should not be restricted by Dispute Settlement Mechanism. To insure the supported products are only used for domestic consumption, only the non-exported products or the products which in the limitation of lowest export (a certain percent of products) could apply such supports.¹⁵³ And the definition of peasant farmer should be determined by idiographic society and economic conditions of developing countries. The de minimis commitment of market access of developing countries should be abolished.¹⁵⁴

The Agreement should require sharp AMS reductions in light of the fact that the original requirements achieved negligible domestic subsidy reductions as a result of the exemptions and of the fact that the 1986–88 base period was one of extremely high domestic subsidies.

The AoA should recognize the pivotal importance of domestic subsidies to food security in developing countries, and should expand the “Special and Differential Treatment” to a “food security box.”¹⁵⁵ The “food security box” should permit all subsidies designed to increase domestic food production (such as subsidized seed and fertilizer) regardless of whether the programs are restricted to low-income or resource-poor farmers and without limitation to de minimis levels.¹⁵⁶ The “food security box” should also include food price subsidies, direct provision of food, and income safety nets. With respect to domestic subsidies that are not included in the “food security box,” developing countries should be

¹⁵³ Bhagirath Lal Das, *Doha and Beyond: Incorporating Human Development into Trade Negotiations*, 17-18 December 2007, UNDP Regional Centre in Colombo and UNDP Malaysiaian partnership with Third World Network

¹⁵⁴ Ibid 1

¹⁵⁵ Bhagirath Lal Das, *Doha and Beyond: Incorporating Human Development into Trade Negotiations*, 17-18 December 2007, UNDP Regional Centre in Colombo and UNDP Malaysiaian partnership with Third World Network

¹⁵⁶ Bhagirath Lal Das, *Doha and Beyond: Incorporating Human Development into Trade Negotiations*, 17-18 December 2007, UNDP Regional Centre in Colombo and UNDP Malaysiaian partnership with Third World Network

allowed to adjust their calculations of AMS levels to account for inflation and should be permitted to use export taxation and price controls (negative AMS) to offset domestic subsidies.¹⁵⁷ Similarly, developing countries should exclude from AMS (or include in the food security box) all costs related to the maintenance of food stockpiles or food security funds to protect against food shortfalls.¹⁵⁸

4.4 PEACE CLAUSE

Now that the AoA has operated for over 15 years, there is no rationale for reintroducing the peace clause. The consequence is that relief through the countervailing duty process/dispute settlement process will be available to countries in case of injury and serious prejudice to their agriculture caused by another country's subsidies. There is no reason to deny this normally applicable relief to agriculture. Hence, the developing countries should not agree to the reintroduction of the peace clause in the AoA.

4.5 SPECIAL AND DIFFERENTIAL (S&D) TREATMENT

It is crucial that developing countries put forward clear and concrete proposals on special and differential (S&D) treatment in the modalities in a manner that ensures (or at least increases the chances) that they are made operationally effective in all the elements, rules and disciplines of the AoA.¹⁵⁹ Until the high protection in developed countries is totally or substantially removed, developing countries will continue to suffer the effects of dumping as well as denied access to the rich countries' markets. This is a fundamental injustice and imbalance in the AoA. It has to be rectified immediately through the current negotiations.¹⁶⁰ The Doha Declaration recognises that S&D treatment "shall be an

¹⁵⁷ Ibid 1

¹⁵⁸ Ibid 2

¹⁵⁹ Martin Khor, *the WTO Agriculture Agreement: features, effects, negotiations, and what is stake 2002*

¹⁶⁰ Ibid pg 8

integral part of all elements of the negotiations” and that it shall be “operationally effective” by being embodied in the rules, disciplines and schedules of commitments. In particular, the S&D measures should enable developing countries to prevent cheap subsidised imports from displacing the products and livelihoods of their farmers.¹⁶¹

Developing countries should be given the right to protect themselves from dumping, cheap imports and import surges. There should also be measures to assist developing countries to realise the goals of food security and rural development.

4.6 PLURILATERAL NEGOTIATIONS

During negotiations developing countries should adopt plurilateral negotiations. Working together, developing countries have much greater negotiating strength than if they were to form small interest groups and negotiate with the major developed countries separately. Such cohesion of strength and strategy can be built up on the basis of mutual trust and recognition of various interests among them.¹⁶² If there are conflicting interests sometimes, there would be a need for rational adjustment. Total transparency among the developing countries and being continuously on guard against mutual suspicion are important preconditions for deepening their cooperation and consolidation in multilateral negotiations.

4.7 CHANGES REQUIRED AT THE NATIONAL LEVEL

Demand for an immediate halt to massive food and agricultural imports by installing protective measures such as higher tariffs, import quotas and other safeguard measures.¹⁶³ It is the duty of national governments to protect their disadvantaged sectors from

¹⁶¹ Bhagirath Lal Das, *Doha and Beyond: Incorporating Human Development into Trade Negotiations*, 17-18 December 2007, UNDP Regional Centre in Colombo and UNDP Malaysia in partnership with Third World Network

¹⁶² Arze Glipo, *The WTO-AoA: Impact on Farmers and Rural Women in Asia*, *Asia-Pacific Network for Food Sovereignty* What is the WTO Agreement on Agriculture?

¹⁶³ *Ibid* at pg 2

dumping and unfair competition that have wrecked the livelihoods of small farmers and small independent producers.¹⁶⁴

Develop national policies on agriculture and trade within the alternative framework for food sovereignty.¹⁶⁵ These policies should be able to protect small farmers' rights and livelihoods and will strengthen their access, ownership and control of land and other productive assets.

Demand for increased support and subsidies in agriculture to secure food security, address hunger and improve incomes of small farmers. There should be strengthened public sector investments in agriculture, particularly in the food crop sector.¹⁶⁶ Policies on price stabilization, price support, food stockholding, food distribution and public investments in agriculture need to be revived and strengthened as these are the measures that are proven to be critical to achieving rural development, food security and food sovereignty.

Demand an immediate halt to the restructuring and privatization of state food trading and distribution enterprises.

Farmers should have control over capital and productive assets. This includes also the development of ecological-based or sustainable agriculture systems to improve small farmers' livelihoods.¹⁶⁷

¹⁶⁴ Ibid at pg 10

¹⁶⁵ Ibid at pg 10

¹⁶⁶ Arze Glipo, The WTO-AoA: Impact on Farmers and Rural Women in Asia *Asia-Pacific Network for Food Sovereignty* What is the WTO Agreement on Agriculture?

¹⁶⁷ Ibid pg 2

CONCLUSION

Agriculture is a very important sector of the economy for most developing countries like Kenya. In terms of jobs, food security, export earnings and potential exports, it is the key sector for many developed countries. Therefore it is crucial that the AoA is supportive of the development needs and efforts of developing countries. Unfortunately, from the analysis in chapter 3 it is clear that in its present form the AoA is unfair and imbalanced. Under the AoA developed countries have increased their subsidies and continue to maintain high protection. Developing countries have been unable to match the subsidies of their rich trading partners in the least, under the AoA they have liberalised their imports, often to the detriment of the local farmers and at the expense of food security.¹⁶⁸

In the current era of globalization, developing countries are struggling to uphold both their internationally recognised human rights and international trade obligations. In terms of food security, the WTO's AoA does not acknowledge nation states' food security obligations or needs, although the Doha WTO Ministerial Declaration reaffirmed the AoA long-term objective to establish a fair and market-oriented trading system.¹⁶⁹ Significantly, the Doha Declaration also acknowledged the importance of taking into account the development needs of non-industrialized nations, including food security and rural development, during the next round of agricultural trade negotiations.¹⁷⁰ In order to achieve these objectives, it is necessary to remedy the asymmetries in the Agreement that institutionalize the subsidies and protections accorded industrialized country agricultural producers while requiring market openness in developing countries. It is also imperative to recognize the underlying inequities in the global trading system that create food insecurity and to craft multilateral trading rules that enable developing countries to utilize a wide array of tools to ensure access by all people at all times to sufficient, safe and

¹⁶⁸ Bhagirath Lal Das, *Doha and Beyond: Incorporating Human Development into Trade Negotiations*, 17-18 December 2007, UNDP Regional Centre in Colombo and UNDP Malaysian partnership with Third World Network

¹⁶⁹ Bhagirath Lal Das, *Doha and Beyond: Incorporating Human Development into Trade Negotiations*, 17-18 December 2007, UNDP Regional Centre in Colombo and UNDP Malaysian partnership with Third World Network

¹⁷⁰ Ibid pg 2

nutritious food.¹⁷¹ The AoA ignores real differences among countries by suggesting that all nations can benefit from following varying degrees of the same liberalization policies. Worse, the agreement allows rich countries to buy themselves extraordinary exceptions to the rules, something developing countries cannot hope to do.¹⁷² The basal problem of AoA is that it is based on a hypothesis that the production and trade of agriculture can be operated under commercial conditions. However, in most of developing countries the agriculture is not commercial.¹⁷³ It is practised mainly by peasant farmers, who live on farming not to earn money but because they do not have other sources of income. It is hard for them to face international competition and this may result to a large scale unemployment and breakdown of the economy.¹⁷⁴ Thus the protection of agriculture in developing countries is even more important than that in developed countries. Therefore, when the AoA is considering the restriction of applying protected provisions on agriculture in developing countries, there should be much caution and fairness. The first thing that should be considered is the particular situations of the various developing countries instead of the political balance between them and developed countries.¹⁷⁵

A state can no longer automatically take measures to protect the right to food, but must negotiate for this right at the WTO. How, when and if states can regulate trade to uphold the right to food will be determined by international trade rules, and not by international human rights standards.¹⁷⁶ The right to food should be fundamental. However, in this era of liberalised trade, it has been compromised. The realization that the right to food must be at the centre of any agreement on trade in agricultural produce so that its regulations

171 Gonzalez Macro, Institutionalizing Inequality: *The WTO Agriculture and Developing Countries*.2002.

172 Ibid pg 18

173 Ibid pg 19

174 Martin Khor , *The WTO Agriculture Agreement: Features, Effects, Negotiations, and What is Stake*

175 Xiaozhen Li China Development Bank Guangxi Branch, *WTO Agreement on Agriculture: A Developing Country Perspective*,Journal of Politics Law, Nanning 530000, China,20008

176 Jagjit Plahe,*Sacrificing the right to food on the altar of free trade* 2007-01-04

do not contradict the human rights obligations of member states of the WTO.¹⁷⁷ Any agreement on Agriculture must effectively end existing distortions such as dumping of surpluses. At the same time, countries have the right to structure their Agricultural policies in such a way that the human right to food is not violated.¹⁷⁸ WTO regulations are completely unacceptable as I have illustrated in chapter 3. In the present system only 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. Achieving the right to food requires a fundamental policy shift away from the present free trade framework of the WTO which advocates for the right to free trade. Also very importantly this is not only to remove an unjust trading regime ruled by the WTO but to transform political and economic structures at the national level that have consigned the majority of peoples to debilitating poverty.

¹⁷⁷ Michael Windfuhr, Trade and Human Rights: The Agreement on Agriculture of the WTO and the Right to Food Context, Conflicts and Human Rights Violations, *FIAN International*

¹⁷⁸ Ibid pg 10

BIBLIOGRAPHY

Arze Glipo, *“The WTO-AoA: Impact on Farmers and Rural Women in Asia”*, Asia-Pacific Network for Food Sovereignty, What is the WTO Agreement on Agriculture, 2002

Bhagirath Lal Das, *“Doha and Beyond: Incorporating Human Development into Trade Negotiations”*, 17-18 December 2007, UNDP Regional Centre in Colombo and UNDP Malaysia in partnership with Third World Network

Bhagirath Las Das, *“Third World agriculture faces unfair competition from first world, 1982 countries: A Survey of Issues”*, International Food Policy Research Institute, Washington D. C.

Carmen Gonzalez, *Institutionalizing Inequality: the WTO, Agriculture and Developing Countries*, 2002

Espanol Francais, *Multilateral Trade Negotiations on Agriculture-A Resource Manual*, FAO Corporate Document Repository.

FAO, (2003a) *“Trade Reforms and Food Security: Conceptualising the Linkages”*, Food and Agriculture Organization of the United Nations, Rome.

FAO, (2003b) *“The State of Food Insecurity in the World, 2003, Monitoring Progress towards the World Food Summit and Millennium Development Goals”*, Food and Agriculture Organization of the United Nations, Rome.

George Ken, *Economic, Social and Cultural Rights, food is a human right Department of Political Science- University of Hawaii*, Honolulu, Hawaii 96822

Gonzalez Macro, *“Institutionalizing Inequality: the WTO, Agriculture and Developing Countries”*, 2002.

Henry Steiner and Philip Alston, *International Human Rights in context; Law, politics, Morals*, Oxford University press, 2009.

Hawkes and Jagjit Plane, *The WTO Agreement on Agriculture and the right to food in developing countries*, Working paper 4/10 May 2010, Monash University, Business Economics

John Cantius Mubangizi, *The Constitutional Protection of Socio-Economic Rights in Selected African Countries: A Comparative Evaluation*, pp 130 – 146, African Journal. Volume 2

2006

IATP, (2005) “*Planting the Rights Seed: A human rights perspective on agriculture trade and the WTO*”, Backgrounder No. 1 in the Thread series.

Jagjit Plahe, *Sacrificing the right to food on the altar of free trade*, 2007-01-04, <http://pambazuka.org/en/category/features/3904>

Jennifer Clapp, *Developing Countries and the WTO*, Agriculture Negotiations, Working Paper No. 6 March 2006

John Wainio, *AoA Issues Series: Market Access: Tariffication and Tariff Reduction*, USDA, Economic Research Service January 3, 2001

Jona Ara Vind Dohrmann and Sukhadeo, *Right to food, Food security and discrimination in the India context*, SIEN 102 (January 2007), S. 9 - 31.

Lilian Mwaura, Advocate of the High Court of Kenya, *The Proposed Constitution of Kenya*, 2010

Matthews, A. (2000) “*Multilateral Trade Reform in Agriculture and the Developing Countries*”, *Trinity Economic Paper Series*, Paper No. 2000/10.

Matthews, A. (2001), “*Developing Countries’ Position in WTO Agricultural Trade Negotiations*”, *Development Policy Review*, 20(1): 75-90

Martin Khor, Director, Third world, Network. *Why Developing countries cannot afford new issues in the WTO settle conference, presentation made*, at the 9th ministerial meeting of the group of 77, Marrakein, 16 September 1999, [http://www.chasque.net/frmtpage/suns/trade/other/martin GTT.h](http://www.chasque.net/frmtpage/suns/trade/other/martin%20GTT.h).

Martin Khor, *The WTO Agriculture Agreement: Features Effects, Negotiations, and what is at Stake*, 2002

Melinda Smale, Marc J. Cohen, Latha Nagarajan, *Local Markets, Local Varieties, Rising food prices and small farmers Access to Seed*, IFPRI Issue Brief 59, FAO, Feb 2009

Meenakshi Raman, *Effects of Agricultural Liberalisation: Experiences of Rural Producers in Developing Countries*, *Third World Network*, TWN, 2004.

Michael Windfuhr, *Trade and Human Rights: The Agreement on Agriculture of the WTO and the Right to Food Context, Conflicts and Human Rights Violations*, *FIAN International*, www.fian.org.

Murphy, S. (2002) “*Managing the Invisible Hand, Markets, Farmers and International Trade*”, Institute for Agriculture and Trade Policy.

OECD (2001b) "The *Uruguay Round Agreement on Agriculture: An Evaluation of Its Implementation in OECD Countries*", Organisation of Economic Cooperation and Development, Paris.

Ohlin, B. (1933) *International and Interregional Trade*, MA: Harvard University Press, Cambridge.

Oxfam (2002) "Boxing Match in Agricultural Trade: Will WTO negotiations knock out the world's poorest farmers?" Oxfam, Briefing Paper 32.

Oxfam (2005) "Kicking Down the Door: How upcoming WTO talks threaten farmers in poor countries", Oxfam Briefing Paper 72.

Stevens, C. Greenhill, R. Kennan, J. and Devereux S, (2002) "The WTO Agreement on Agriculture and Food Security", Commonwealth Secretariat.

Samuel Gregg, *Free Trade as Prosperity, Free Trade as Human Right*, August 25, 2009
Sophia Murphy, "WTO, Agricultural Deregulation and Food Security" *Washington, DC: Foreign Policy In Focus*, December 1, 1999

Thomas Cottier and Joost Pauwely and Elizabeth Biirgi Bonanomi, 'Human Rights and International Trade', Oxford press, 2005.

World Trade Organisation on Agriculture basics, institute for agriculture and trade policy, 05 First are S. Minneapolis, Minnesotal, 5544 USA www.iatp.org.

WTO Agreement on Agriculture: A decade of dumping, United States dumping on agricultural markets, publication No. 1, A series of assessing the world Trade Organisations first ten years 1995 - 2005.

Xia Ozhen Li, China Developing Bank Guangxi Branch, 'WTO Agreement on agriculture: A Developing country perspective, Nanniry 5300', China Journal of Politics and Law. www.ccsenet.org/journal.

