

Report of the Special Rapporteur on the right to food, Olivier De Schutter MISSION TO THE WORLD TRADE ORGANIZATION

Presented to the Human Rights Council, March 9, 2009

Summary¹

“Doha round will not prevent another food crisis”

As negotiations are stalled in Geneva, UN Special Rapporteur on the right to food presents the conclusions of his report on the WTO

In this first-ever report prepared by a UN independent expert on this highly contentious subject, the UN Special Rapporteur on the right to food, Prof. Olivier De Schutter, examines whether the current path of trade liberalization in agriculture complies with the WTO Members' obligations towards the human right to adequate food, as recognized under international law.

The report is the outcome of a mission to the WTO and broad consultations with a range of actors, including a number of Ambassadors to the WTO. It is the first time that the WTO has accepted a request of the UN Special Rapporteur on the right to food to conduct such a mission.

The report argues that, if trade is to work for development and to contribute to the realization of the right to adequate food, it needs to recognize the specificity of agricultural products, rather than to treat them as any other commodities; and to allow more flexibilities to developing countries, in order to shield their agricultural producers from the competition from industrialized countries' farmers. The reason for this is at the heart of what justifies special and differential treatment for developing countries: even after the removal of existing trade-distorting measures, which currently are disproportionately benefiting industrialized countries, the average productivity per active laborer in agriculture will remain much lower in developing countries. In 2006, agricultural labor productivity in least-developed countries (LDCs) was just 46 percent of the level in other developing countries and below 1 percent of the level in developed countries. In this context, the idea of establishing a 'level playing field' is meaningless. The deepening of the trade liberalization path will not result in farmers in developing countries being able to compete on equal terms with producers in industrialized countries, unless wages and agricultural prices in the South are repressed at very low levels to compensate for a much lower productivity per active laborer. This will inevitably result in more violations of the right to food.

1. What can the right to food framework bring to the trade debate?

The report examines trade liberalization in agriculture from the perspective of the human right to adequate food, as recognized in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights. This has four implications. First, it leads to emphasize the need for States to prepare national strategies for the realization of the right to food, in which the role of trade should be determined in reference to human rights and development objectives. Second, it leads to highlight the importance of a collaborative multilateral trading system, and one which should not impose on States commitments that are contrary to their human rights obligations, thereby emphasizing the importance of ensuring that States have a sufficient policy space. Third, the perspective from the right to adequate food

¹ The official report can be downloaded on http://www.srfood.org/index.php?option=com_content&view=article&id=69&Itemid=55&lang=en

requires a shift from abstract aggregates (such as GDP measurements) to focusing on the needs of the vulnerable and food insecure. 963 million people are hungry in the world today. The majority, representing at least 50 % of the hungry, are smallholders living off 2 hectares of cropland or less. 20 % are landless laborers, and 10 % are pastoralists, fisherfolk, and forest users ; the remaining 20 % are the urban poor. Any trade regime which does not benefit these categories, far from solving it, is likely to lead to further violations of the right to food. Fourth, because it focuses on the perspective of the right to adequate food, the report recalls the unique value of safe, nutritious, healthy, culturally appropriate and sustainable food as a fundamental right for all. Impacts on health, nutrition and the environment should therefore be fully integrated in trade discussions.

2. Why does the current multilateral trade regime work against the right to food ?

Isolating the impacts of WTO agreements from other factors discouraging States from seriously implementing their human rights obligations is an impossible exercise, since the disciplines imposed under the Agreement on Agriculture – on which the report focuses – have an impact only in combination with the trade, fiscal and social policies pursued at domestic level. Nevertheless, in order to assist States in implementing the reform programme of the Agreement in compliance with the right to food, the report seeks to identify the impacts of trade liberalization in agriculture on the ability of States to protect this right. It notes the following risks, which States should take into account in developing their national strategies and in defining their position in the negotiations within the WTO:

- 1) **Increased reliance on international trade in order to ensure food security results in a dependency on international trade**, which is a source of various vulnerabilities: loss of export revenues when the prices of export commodities go down, threats to local producers when low-priced imports arrive on the domestic markets, balance of payments problems for the net food-importing countries when the prices of food commodities go up – as we witnessed during the recent food crisis.
- 2) **Increased reliance on international trade in order to ensure food security also reinforces the power of highly concentrated transnational corporate actors**: increased cross-border trade implies an increased role for transnationals rather than domestic agro-food systems. Global sourcing increase the number of suppliers and thus, the competition between them, leading to dominant actors to force outrageously low prices on agricultural producers. The current trade regime also **encourages the segmentation of the farming sector**, increasingly divided between one segment which has access to high-value markets and, as result, to the best technologies, inputs (including land, water, and state support), credit, and political influence, and another segment which is left to serve only the low-value, domestic markets, and is comparatively neglected and marginalized.
- 3) **Finally, increased reliance on international trade in order to ensure food security promotes long supply chains** which imply long distances in transport **and unsustainable modes of production**, with serious implications for climate change and human health and nutrition.

3. A new vision is needed: make trade work for the right to food

The Special Rapporteur goes beyond the technicalities of the Doha round and draws important lessons from both the food crisis and the emerging threat of climate change. These two issues, he argues, are vastly underestimated in the current WTO negotiations. He also proposes, in his report, ways to reconcile trade with the right to food, addressing the failure of global governance mechanisms to tackle the fragmentation of international law. Consistency between obligations imposed under trade agreements and human rights obligations cannot be rescued through domestic policies, if such consistency is not ensured in the preparation of the trade agreement themselves. Indeed, because trade agreements are backed by the threat of economic

sanctions, States, when faced with situations of conflict, generally opt for compliance with their trade obligations at the expense of human rights. This results in a 'chilling effect' : when the Members do not know whether or not any particular measure they take, in order to comply with their human rights obligations, will be considered acceptable by the other Members or instead expose them to retaliation, they will prefer not to adopt such measure, out of fear that they will be facing economic sanctions.

The report presents four substantive recommendations on how to make the international agricultural trade system "human rights-compatible".

(1) The Special Rapporteur calls on States not to accept undertakings under the WTO framework which would be incompatible with their right to food obligations. In order to do this, States should define their positions in trade negotiations in accordance with national strategies for the realization of the right to food and always conduct human rights impact assessments of trade agreements. Far from picturing impact assessments like yet another bureaucratic exercise, the Special Rapporteur highlights the important democratizing effect of open and participatory consultations, emphasizing the role of national parliamentary hearings for example. Peasants' organizations would play a key role in drafting national right to food strategies, and such strategies would serve far beyond the WTO context, supporting the position of governments in their discussions with international financial institutions, with donors, or in bilateral trade negotiations. It is indeed a particular source of concern that, in a large number of cases, States have been unable to use flexibilities allowed under the WTO agreements – or to apply certain tariffs remaining under their bound tariffs –, because of prescriptions from such institutions or because of bilateral free trade agreements.

(2) Safeguard measures are crucial. States, particularly developing States in accordance with the principle of special and differential treatment, must retain the freedom to take measures which insulate domestic markets from the volatility of prices on international markets. Although a relatively small proportion of the food produced, estimated at 15 %, is traded internationally, prices fixed on international markets have a disproportionately negative impact on the ability of small-scale farmers in the world to make a decent living. Indeed, there is a tendency for domestic and world prices to converge as a result of trade liberalization. Unless and until appropriate mechanisms are put in place at the international level to deal with the issue of volatility, it is crucial States have full flexibility to protect their market against import surges. Supply management schemes and other orderly-marketing mechanisms have an important role to play in this regard.

(3) States should avoid excessive reliance on international trade in the pursuit of food security. In building their capacity to produce the food needed to meet consumption needs, States should support in particular small-scale farmers. Throughout the developing world, agriculture accounts for around 9 % of GDP and over 50 % of total employment. In the countries where more than 34 % of the population are undernourished, agriculture represents 30 % of GDP and 70 % of employment. Therefore, for the realization of the right to food, there is no alternative but to strengthen the agricultural sector, with an emphasis on small-scale farmers.

(4) States should control market power in the global supply chains and counteract the risk of increased dualization of the farming system. One major imbalance in the current multilateral trade regime is that, while disciplines are imposed on States, transnational corporations, whose freedom to act has been significantly increased as a result, are not subject to any obligations as regards the exercise of their power on the market. This is an important gap in global governance. In the medium to long-term, a multilateral framework may have to be established to ensure a more adequate control of these actors. In the short term, States should protect human rights by adequately regulating actors on which they may exercise an influence, including in situations where these actors operate outside the national territory of the States concerned.

Note to the editors

The official report of the Special Rapporteur will be presented at the March 2009 session of the Human Rights Council in Geneva. The report is based on both an official mission to the WTO and consultations with several national governments since June 2008.

Professor De Schutter was appointed by the Human Rights Council of the United Nations as Special Rapporteur on the right to food in March 2008, and he inaugurated his mandate on May 1st, 2008. His three-year mandate is to monitor and report on the right to food to the UN General Assembly and Human Rights Council. A specialist in human rights, Olivier De Schutter teaches at the University of Louvain (Belgium) and the College of Europe (Natolin Campus, Poland). He is a Visiting Professor at Columbia University and a Member of the Global Law School Faculty of New York University. He was also previously Secretary General of the International Federation for Human Rights (FIDH).

Press contact :

Federica Donati/Beatrice Quadranti Tel. +41.22.9179496/9179615

Olivier De Schutter Tel. +32.488.482004