

WTO Public Forum 2018

Food Sustainability through Sustainable Trade Relations?

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Sustainable Development Lens on Agricultural Trade

Leverage to unlock agricultural trade agenda?

SDG 2∞ AGRICULTURAL TRADE RULES

2 Zero hunger

End hunger, achieve food security and improved nutrition and promote sustainable agriculture

∞

WTO-Preamble: «while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development»

AoA-Preamble: «having regard to non-trade concerns, including food security and the need to protect the environment»

REFLECTED AT THE DOMESTIC LEVEL

e.g.

Swiss Constitution

Art. 104a «Food Security» lit d: «trade relations that contribute to the sustainable development of the agriculture and the food sector»

Bolivian Constitution

Art. 255II «negotiations [...] of international treaties must be in accordance with principles of [...] harmony with nature, defence of biodiversity [...] food security and food sovereignty for the whole population [...] etc

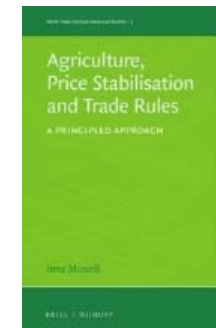
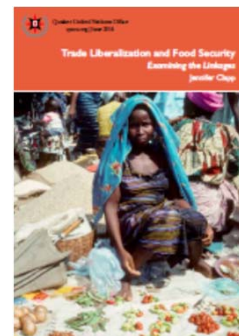
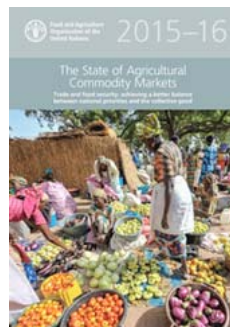
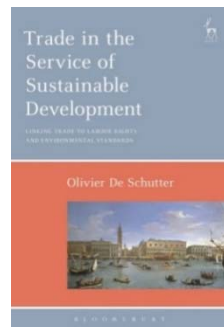
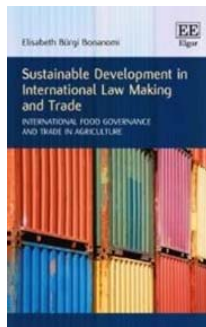
How?





Background

‘SUSTAINABLE DEVELOPMENT AND TRADE IN AGRICULTURE’, E.G.



Bürgi Bonanomi Elisabeth, Sustainable Development in International Law Making and Trade, International Food Governance and Trade in Agriculture, Edward Elgar Publishing 2015.

Trade **towards** sustainability objectives, principled approach, managed trade etc

6 YEAR RESEARCH PROJECT R4D FOOD SUSTAINABILITY – EXPERIENCES FROM BOLIVIA AND KENYA



Bürgi Bonanomi E, Jacobi J, Scharrer B, Food Sustainability in Bolivia through Fair Food in Switzerland? How to Improve Food Sustainability in Both Countries Through Sustainable Trade Relations (Latam forthcoming 2018).

Jacobi J et al, Operationalizing Food System Resilience: An indicator-based assessment in agroindustrial, smallholder farming, and agroecological contexts in Bolivia and Kenya, Land Use Policy 79 (2018), 433-446.



Normative Benchmarks

PERSPECTIVE OF CONSISTENCY IN INTERNATIONAL LAW

Agricultural trade to foster sustainable, resilient food systems 'do':

- uphold peoples **right to food**, including access to water
- sustainable use of **biodiversity**
- employ **low-emission, soil protecting** production methods
- use **water sparingly**
- distribute resources **equitably** and **non-discriminatory** (including access and remuneration)
- strengthen **cultural diversity**

**IN ADDITION:
KEY ELEMENTS EMERGED FROM DEBATE OF SUSTAINABILITY AND TRADE**

Sustainable Solutions should be:

- context appropriate
- result from participatory processes of negotiation

Take global perspective

- Sustainable food systems in the global South are contingent upon sustainable food systems in the global North, and vice versa

Diversity as a core guiding principle

- as opposite to homogeneity: diversity in food systems results in diversity of food, production/processing methods, working/ownership forms etc



How to create **efficient markets** for such food systems?

resp

How to ensure that Agricultural Trade regulation provide for an
enabling environment?

(tariffs, subsidies, standards, IP etc)

'OPTIMAL' SOLUTION SOMEWHERE 'IN BETWEEN'

Take a step back from technicalities

Sustainable agricultural trade rules should

A Discipline policy space, particularly for OECD countries

B Enable necessary policy space

C Underpin domestic governance with sustainability standards

D 'Paket approach': carefully balance multidimensional interests

FAIR FOOD CONCEPT: IMPROVE MARKETS FOR SUSTAINABLY PRODUCED FOOD

In developing countries

lack of remunerative markets as THE key issue

e.g. Resilience Paper of Jacobi et al, s. Slide 8, rel to Kenya and Bolivia

dual market system: agrodiverse production competing with agroindustrial production focusing on commodity export

local market ∞ **access to international market** to a certain degree: eg. Quinoa



FAIR FOOD CONCEPT: IMPROVE MARKETS FOR SUSTAINABLY PRODUCED FOOD

In rich countries

Increased demand

for food diversity

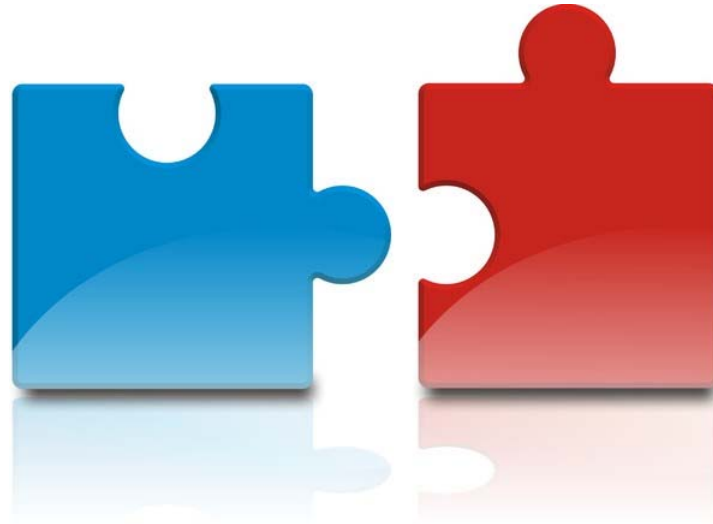
for 'doing good'

for local 'and'..



Growing awareness that domestic production too intensive and ecologically damaging

ENTANGLE?





Strengthen Sustainable Food Markets: Role of the Public Sector?

CONCEPT OF SHARED RESPONSIBILITY AS REFLECTED IN SDGS

Consumers / Citizens

&

Private Economic Actoros

&

Public Sector, at different levels of governance

- domestic
- regional
- international

PRODUCT DIFFERENTIATION BY THE STATE

Distinguish between sustainably and non-sustainably produced Food?

Recently e.g. promoted by the Swiss Fair Food Initiative (rejected 23 Sept 2018)

- Tariff preferences
- Part of (increased) import quotas
- Offtake agreements with processing industry and retail business etc

Based on sustainability criteria

PRODUCT DIFFERENTIATION BY THE STATE

Already existing

- Public procurement schemes
- Some products: **agrofuels** (EU Biofuel Directive), **timber** (EU EUTRM)
- Climate policy/ **green economy**: commodity extraction, some attempts
- Organic agriculture and subsidies (see eg. Swiss organic regulation)
- Palmoil and trade agreements: in discussion



Challenge: how to **avoid protectionist drift**?



Product Differentiation by the State as a PPM (‘processes and production methods’)

DYNAMIC WTO JURISPRUDENCE ON PPMS

- diverse and has become more nuanced in recent years
- implying some legal uncertainty
- political orientation of the WTO is gradually shifting towards greater awareness of sustainability concerns.

DYNAMIC WTO JURISPRUDENCE ON PPMS

In general

- whether a public «sustainability measure» is compatible with WTO law can only be assessed **on a case by case basis**
- Art. XX GATT: Certain **scope of discretion**
- evt also through the notion of like products

DYNAMIC WTO JURISPRUDENCE ON PPMS

General requirements

- protect **relevant public interests**
- **proportional** (e.g. Coea-Beef 2001; US-Gambling 2007; Brazil-Retreaded Tyres; EU-Seals 2014)
- **non-discriminatory** (EU-Shrimps 1998, EU-Seals 2014)
- reference to **international norms and standards**, international engagement (s. EU-Shrimp: «basic fairness and due process»)
- **Consistency**: also towards inside



**Product Differentiation by the public sector:
Which level of governance?**

GOVERNANCE LEVELS FOR PRODUCT DIFFERENTIATION

WTO?

Role to define principles of context adapted, non-discriminatory and effective sustainability criteria derived from international standard setting ?

More realistic:

Domestic 'bottom up' processes

- Bilateral and plurilateral trade agreements
- Unilateral measures

→ trial and error



**Inclusive, development friendly
product differentiation?**

INCLUSIVE PRODUCT DIFFERENTIATION: AN ENABLING ENVIRONMENT FOR ALREADY EXISTING INITIATIVES

See eg.

the emergence of **Participatory Guarantee Systems (PGS)** in many developing countries

- to promote environmentally and socially sound agricultural production
- bottom up processes
- inclusive
- Context adapted

INCLUSIVE PRODUCT DIFFERENTIATION: AN ENABLING ENVIRONMENT FOR ALREADY EXISTING INITIATIVES

E.g.

FAO /INRA, Innovative Markets for Sustainable Agriculture, How innovations in market institutions encourage sustainable agriculture in developing countries, 2016

Examples of

Indonesia, Namibia, Thailand, Trinidad, Uganda, Benin, Bolivia, Tanzania





Product Differentiation in Practice?

PRODUCT DIFFERENTIATION IN PRACTICE

Simplest and most accepted way: in BTAs /PTAs / Partnership Agreements

Unilateral:

- List **basic sustainability criteria**, derived from international agreements/agenda
 - Include **procedural and equity requirements**
 - lower requirements if lower development: «**sustainable by default**»
- Provide **accreditation procedure** for certification
- **Positive list**: benefit of improved market access: public procurement, import quatae for processed products / recognition of equivalence of standards

REPERCUSSIONS ON DOMESTIC AGRICULTURAL POLICY IN OECD COUNTRIES

Consistent application of sustainability criteria to domestic agricultural policy



Less resource and capital intensive
Processing industry less 'rent seeking'



Focus more on locally adapted manner of production



Produce less to a certain degree (gradually)



Import more processed and sustainably produced food (from DCs?)

BEYOND «EITHER OR»: «IN BETWEEN»





Thank you for your attention