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Putting international trade in agricultural products at the service of food security

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Background information...

During the Second World War, President Roosevelt organised three important international conferences designed to form the basis for building a peaceful world. According to him, a peaceful future would be conditioned upon the resolve to treat neither money, labour nor nature as commercial goods. Thus, some time before the conferences of Bretton Woods and Philadelphia, the Hot Springs conference on agriculture and food took place, with the aim of answering the question of how to imagine the post-war world so that each country would be able to develop its agriculture and feed its population. It was at Hot Springs that the creation of the FAO and of an organisation for international trade was decided. For Roosevelt, such an organisation presupposed that agricultural products would not be the object of a system of pure, untrammelled free trade. He therefore initiated the negotiation of an international charter with the aim of creating, within the U.N., an international organisation for trade and laying down rules governing the globalisation of commerce. The negotiation took place after his death and culminated in the signing of the Havana Charter in March 1948 by 53 countries. But since the United States did not ratify it, because of opposition in Congress to Roosevelt's successor President Truman, the other countries did not see the point of doing so either. Nevertheless, part of this Charter had already been implemented as early as autumn 1947, outside the U.N., by the 23 richest countries because they wanted to re-launch world trade without delay. This part of the Charter was given the name GATT. Now GATT was supposed to disappear the moment the whole of the Havana Charter was ratified. We know what became of that, however.

* Le programme Lascaux est un programme européen entant dans le cadre du 7e PCRD - Programme spécifique "IDEES" – ERC (Conseil Européen de la Recherche) – *Grant agreement for Advanced Investigator Grant* (Sciences sociales, 2008). Il porte sur le nouveau droit agroalimentaire européen, examiné à l'aune des problématiques de la sécurité alimentaire, du développement durable et du commerce international. Il est dirigé par François Collart Dutilleul, professeur à l'Université de Nantes et membre de l'Institut universitaire de France (pour plus d'informations, consulter le site de Lascaux : <http://www.droit-aliments-terre.eu/>).

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The Havana Charter

In the Havana Charter was a chapter introducing a special system for international trade in primary commodities: the products of agriculture, fishing, forestry and mining – in other words, for all natural resources. This special system had several objectives, among which were food security, economic development, full employment and the preservation of natural resources.

The Havana Charter was thus intelligent in that it showed a way forward which combined international free trade and humanistic aims. For example, in case of a duly recognised problem of food security in connection with international trade in a primary commodity, the countries directly concerned by such a problem would be allowed to make an agreement providing for temporary measures departing from the rules of free trade. In this regard the Charter gave the FAO powers of initiative and expertise. We could probably not apply the same system today to maize and oil, rare earths or fishing quotas. Nevertheless, concerning agricultural products and the role of the FAO, the Charter is as relevant today as before.

The world has lost much in dropping this Charter for reasons to do with the internal politics of the United States, and things would doubtless be different today if it had been ratified. GATT and the WTO have shaped a globalisation process which has neither allowed the countries of the South to develop, nor ensured full employment or food security, nor preserved natural resources: all aims which the world is desperately pursuing without being able to find a way to negotiate successfully towards them.

Agricultural raw materials are not the same as other goods. They are the very basis of the nourishment of humankind. It is essential to design a free trade system for them which takes full account of States' public debt, of the 900 million people suffering from famine, of the growing numbers out of work or with no means of subsistence, of the future of our natural resources, and consequently of people's basic needs.

After a great deal of research on all five continents, we have concluded that the way towards achieving these objectives should be guided by a return to the spirit of the Havana Charter, as set out in its Chapter VI.

INTER-GOVERNMENTAL AGRICULTURAL COMMODITY AGREEMENTS¹

SECTION A - INTRODUCTORY CONSIDERATIONS

Article 55

Difficulties relating to *Agricultural* Commodities

The Members recognize that the conditions under which some *agricultural* commodities are produced, exchanged and consumed are such that international trade in these commodities may be affected by special difficulties such as the tendency towards persistent disequilibrium between production and consumption, the accumulation of burdensome stocks and pronounced fluctuations in prices. These special difficulties may have serious adverse effects on the interests of producers and consumers, as well as widespread repercussions jeopardizing *food security in any given country*. The Members

¹ This is the part of the original text of chapter VI of the 1948 Havana Charter concerned with "Primary Commodities" (art. 55 & foll.), **with our proposed modifications in bold italics**.



recognize that such difficulties may, at times, necessitate special treatment of the international trade in such commodities through inter-governmental agreement.

Article 56

Agricultural and Related Commodities

1. For the purposes of this Charter, the term "*agricultural* commodity" means any product of farm, forest or fishery, *destined or potentially destined for food for humans*, in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade.

2. The term shall also, for the purposes of this Chapter, cover a group of commodities, of which one is *an agricultural* commodity as defined in paragraph 1 and the others are commodities, which are so closely related, as regards conditions of production or utilization, to the other commodities in the group, that it is appropriate to deal with them in a single agreement.

3. (...)

Article 57

Objectives of Inter-governmental *Agricultural* Commodity Agreements

The Members recognize that inter-governmental *agricultural* commodity agreements are appropriate for the achievement of the following objectives:

- (a) to prevent or alleviate the serious economic difficulties which may arise when adjustments between production and consumption cannot be effected by normal market forces alone as rapidly as the circumstances require;
- (b) to provide, during the period which may be necessary, a framework for the consideration and development of measures which have as their purpose economic adjustments designed to promote the expansion of consumption or a shift of resources and man-power out of over-expanded industries into new and productive occupations, including as far as possible in appropriate cases, the development of secondary industries based upon domestic production of *agricultural* commodities;
- (c) to prevent or moderate pronounced fluctuations in the price of *an agricultural* commodity with a view to achieving a reasonable degree of stability on a basis of such prices as are fair to consumers and provide a reasonable return to producers, having regard to the desirability of securing long-term equilibrium between the forces of supply and demand;
- (d) to maintain and develop the natural resources of the world and protect them from unnecessary exhaustion;
- (e) to provide for the expansion of the production of *an agricultural* commodity where this can be accomplished with advantage to consumers and producers, including in appropriate cases the distribution of basic foods at special prices;
- (f) to assure the equitable distribution of *an agricultural* commodity in short supply.

SECTION B - INTER-GOVERNMENTAL *AGRICULTURAL* COMMODITY AGREEMENTS IN GENERAL



Article 58

Agricultural Commodity Studies

1. Any Member which considers itself substantially interested in the production or consumption of, or trade in, a particular primary commodity, and which considers that international trade in that commodity is, or is likely to be, affected by special difficulties, ***or that a food security risk in connection with that commodity exists***, shall be entitled to ask that a study of the commodity be made.
2. Unless the Organization decides that the case put forward in support of the request does not warrant such action, it shall promptly invite each Member to appoint representatives to a study group for the commodity, if the Member considers itself substantially interested in the production or consumption of, or trade in, the commodity. Non-Members may also be invited.
3. The study group shall promptly investigate the production, consumption and trade situation in regard to the ***agricultural*** commodity, and shall report to the participating governments and to the Organization its findings and its recommendations as to how best to deal with any special difficulties which exist or may be expected to arise. The Organization shall promptly transmit to the Members these findings and recommendations.

Article 59

Agricultural Commodity Conferences

1. The Organization shall promptly convene an inter-governmental conference to discuss measures designed to meet the special difficulties which exist or are expected to arise concerning a particular ***agricultural*** commodity:
 - (a) on the basis of the recommendations of a study group, or
 - (b) at the request of Members whose interests represent a significant part of world production or consumption of, or trade in, that commodity, or
 - (c) at the request of Members which consider that their economies ***or their food security*** are dependent to an important extent on that commodity, unless the Organization considers that no useful purpose could be achieved by convening the conference, or
 - (d) on its own initiative, on the basis of information agreed to be adequate by the Members substantially interested in the production or consumption of, or trade in, that commodity.
2. Each Member which considers itself substantially interested in the production or consumption of, or trade in, the commodity concerned, shall be invited to participate in such a conference. Non-Members may also be invited to participate.

Article 60

General Principles governing ***Inter-Governmental Agricultural*** Commodity Agreements

1. The Members shall observe the following principles in the conclusion and operation of all types of inter-governmental ***agricultural*** commodity agreements:
 - (a) Such agreements shall be open to participation, initially by any Member on terms no less favourable than those accorded to any other country, and thereafter in accordance with such



procedure and upon such terms as may be established in the agreement, subject to approval by the Organization.

- (b) Non-Members may be invited by the Organization to participate in such agreements and the provisions of sub-paragraph (a) applying to Members shall also apply to any non-Member so invited.
- (c) Under such agreements there shall be equitable treatment as between participating countries and non-participating Members, and the treatment accorded by participating countries to non-participating Members shall be no less favourable than that accorded to any non-participating non-Member, due consideration being given in each case to policies adopted by non-participants in relation to obligations assumed and advantages conferred under the agreement.
- (d) Such agreements shall include provision for adequate participation of countries substantially interested in the importation or consumption of the commodity as well as those substantially interested in its exportation or production.
- (e) Full publicity shall be given to any inter-governmental *agricultural* commodity agreement proposed or concluded, to the statements of considerations and objectives advanced by the proposing Members, to the nature and development of measures adopted to correct the underlying situation which gave rise to the agreement and, periodically, to the operation of the agreement.

2. The Members, including Members not parties to a particular *agricultural* commodity agreement, shall give favourable consideration to any recommendation made under the agreement for expanding consumption of the commodity in question.

Article 61

Object of Inter-Governmental Agricultural Commodity Agreements

(...) *An agricultural* commodity agreement is an inter-governmental agreement:

- (a) *which involves* the regulation of production or the quantitative control of exports or imports of a primary commodity and which has the purpose or might have the effect of reducing, or preventing an increase in, the production of, or trade in, that commodity; or
- (b) *which involves* the regulation of prices; *or*
- (c) *whose object is to reserve all or part of the domestic production of a primary commodity for populations which are victims of food insecurity.*

(...)

Article 62

Circumstances governing the use of *Inter-governmental Agricultural* Commodity Agreements

The Members agree that *inter-governmental agricultural* commodity control agreements may be entered into only when a finding has been made through *an agricultural* commodity conference or through the Organization by consultation and general agreement among Members substantially



interested in the commodity, *or through the high-level Group of Experts on food security and nutrition of the United Nations Food and Agriculture Organization, that:*

- (a) a burdensome surplus of a *an agricultural* commodity has developed or is expected to develop, which, in the absence of specific governmental action, would cause serious hardship to producers among whom are small producers who account for a substantial portion of the total output, and that these conditions could not be corrected by normal market forces in time to prevent such hardship, because, characteristically in the case of the primary commodity concerned, a substantial reduction in price does not readily lead to a significant increase in consumption or to a significant decrease in production; or
- (b) widespread unemployment or under-employment in connection with *an agricultural* commodity, arising out of difficulties of the kind referred to in Article 55, has developed or is expected to develop, which, in the absence of specific governmental action, would not be corrected by normal market forces in time to prevent widespread and undue hardship to workers because, characteristically in the case of the industry concerned, a substantial reduction in price does not steadily lead to a significant increase in consumption but to a reduction of employment, and because areas in which the commodity is produced in substantial quantity do not afford alternative employment opportunities for the workers involved; or
- (c) *difficulties as described in Article 55, in relation to an agricultural commodity, have led to, or risk leading to, a state of food insecurity affecting a country, region, duly identified community or category of vulnerable persons, which would not, in the absence of specific government measures, be corrected by normal market forces.*

Article 63

Additional Principles Governing *Inter-governmental Agricultural* Commodity Agreements

The Members shall observe the following principles governing the conclusion and operation of *inter-governmental agricultural* commodity agreements, in addition to those stated in Article 60:

- (a) Such agreements shall be designed to assure the availability of supplies adequate at all times for world demand at prices which are in keeping with the provisions of Article 57 (c), and, when practicable, shall provide for measures designed to expand world consumption of the commodity.
- (b) Under such agreements, participating countries which are mainly interested in imports of the *agricultural* commodity concerned shall, in decisions on substantive matters, have together a number of votes equal to that of those mainly interested in obtaining export markets for the commodity. Any participating country, which is interested in the commodity but which does not fall precisely under either of the above classes, shall have an appropriate voice within such classes.
- (c) Such agreements shall make appropriate provision to afford increasing opportunities for satisfying national consumption and world market requirements from sources from which such requirements can be supplied in *the manner which is the most effective, the most capable of preserving natural resources and the most economical*, due regard being had to the need for preventing serious economic and social dislocation and to the position of producing areas suffering from abnormal disabilities.



- (d) Participating countries shall formulate and adopt programmes of internal economic adjustment believed to be adequate to ensure as much progress as practicable within the duration of the agreement towards solution of the **agricultural** commodity problem involved.

Article 64

Administration of *Inter-governmental Agricultural* Commodity Agreements

1. Each *inter-governmental agricultural* commodity agreement shall provide for the establishment of a governing body, herein referred to as a Commodity Council, which shall operate in conformity with the provisions of this Article.
2. Each participating country shall be entitled to have one representative on the Commodity Council. The voting power of the representatives shall be determined in conformity with the provisions of Article 63 (b).
3. The Organization shall be entitled to appoint a non-voting representative to each Commodity Council and may invite any competent inter-governmental organization to nominate a non-voting representative for appointment to a Commodity Council. ***The FAO shall be a non-voting ex-officio member of each Commodity Council.***
4. Each Commodity Council shall appoint a non-voting chairman who, if the Council so requests, may be nominated by the Organization.
5. The Secretariat of each Commodity Council shall be appointed by the Council after consultation with the Organization.
6. Each Commodity Council shall adopt appropriate rules of procedure and regulations regarding its activities. The Organization may at any time require their amendment if it considers that they are inconsistent with the provisions of this Chapter.
7. Each Commodity Council shall make periodic reports to the Organization on the operation of the agreement which it administers. It shall also make such special reports as the Organization may require or as the Council itself considers to be of value to the Organization.
8. The expenses of a Commodity Council shall be borne by the participating countries.
9. When an agreement is terminated, the Organization shall take charge of the archives and statistical material of the Commodity Council.

Article 65

Initial term, Renewal and Review of *Inter-governmental Agricultural* Commodity Agreements

1. ***Inter-governmental agricultural*** commodity agreements shall be concluded for a period of not more than five years. Any renewal of an ***inter-governmental agricultural*** commodity agreement, including agreements referred to in paragraph 1 of Article 68, shall be for a period not exceeding five years. The provisions of such renewed agreements shall conform to the provisions of this Chapter.
2. The Organization shall prepare and publish periodically, at intervals not greater than three years, a review of the operation of each agreement in the light of the principles set forth in this Chapter.



3. Each *inter-governmental agricultural* commodity agreement shall provide that, if the Organization finds that its operation has failed substantially to conform to the principles laid down in this Chapter, participating countries shall either revise the agreement to conform to the principles or terminate it.

4. *Inter-governmental agricultural* commodity agreements shall include provisions relating to withdrawal of any Party.

Article 66

Settlement of Disputes

Each *inter-governmental agricultural* commodity agreement shall provide that:

(a (i)) any question or difference concerning the interpretation of the provisions of the *inter-governmental agricultural commodity* agreement or arising out of its operation shall be discussed originally by the Commodity Council;

(a (ii)) if the Commodity Council cannot resolve the issue within the terms of the agreement, it shall be deferred by the Council to a Conciliation Commission composed of five members, with the directors-general of the Organization and of the FAO nominating two each and a President being chosen by common consent by the four nominated members. The Conciliation Commission shall decide matters on a simple majority of its members. It shall lay down its own procedure. It shall put forward a proposal for settling the difference, which the voting members of the Commodity Council shall examine in good faith. In case of disagreement over the competence of the Conciliation Commission, the Commission itself shall decide whether it is competent;

(b) if the question or difference cannot be resolved by the Council in accordance with the terms of the agreement, it shall be referred by the Council to the Organization, which shall apply the procedure set forth in Chapter VIII with appropriate adjustments to cover the case of non-Members.

SECTION C - MISCELLANEOUS PROVISIONS

Article 67

Relations with inter-governmental organizations

1. With the object of ensuring appropriate co-operation in matters relating to intergovernmental *agricultural* commodity agreements, any inter-governmental organization which is deemed to be competent by the Organization, such as the Food and Agriculture Organization, shall be entitled:

(a) to attend any study group or *agricultural* commodity conference;

(b) to ask that a study of *an agricultural* primary commodity be made;

(c) to submit to the Organization any relevant study of *an agricultural* commodity, and to recommend to the Organization that further study of the commodity be made or that *an agricultural* commodity conference be convened.

2. Furthermore, FAO shall have the right to sit on the Councils responsible for managing inter-governmental Commodity Control Agreements, as stated in Article 64.3.



Article 67-1

Emergency measures

1. At the request of a Member and following the consent of the Director-general of the World Trade Organization, the Director-general of the United Nations Food and Agriculture Organization may authorize that Member to take measures under Article 61 if such measures are approved by the high-level Group of Experts on food security and nutrition of the Committee on world food security of the FAO, and if they are:

a) necessary for the protection of the health and life of persons in cases of food insecurity duly noted by the Group of Experts; or

b) necessary for the preservation of exhaustible natural resources, where there is a serious risk of exhaustion which may eventually lead to or aggravate a state of food insecurity.

2. Such measures shall not be applied in such a way as to constitute a disguised restriction on international trade;

3. They shall be authorized for a limited period, which may not exceed one year, unless the situation is reexamined by the Group of Experts who then issue a further authorization.

4. They shall be publicized by the United Nations Food and Agriculture Organization.

5. The implementation of such measures shall be monitored and assisted by the United Nations Food and Agriculture Organization.

(...)