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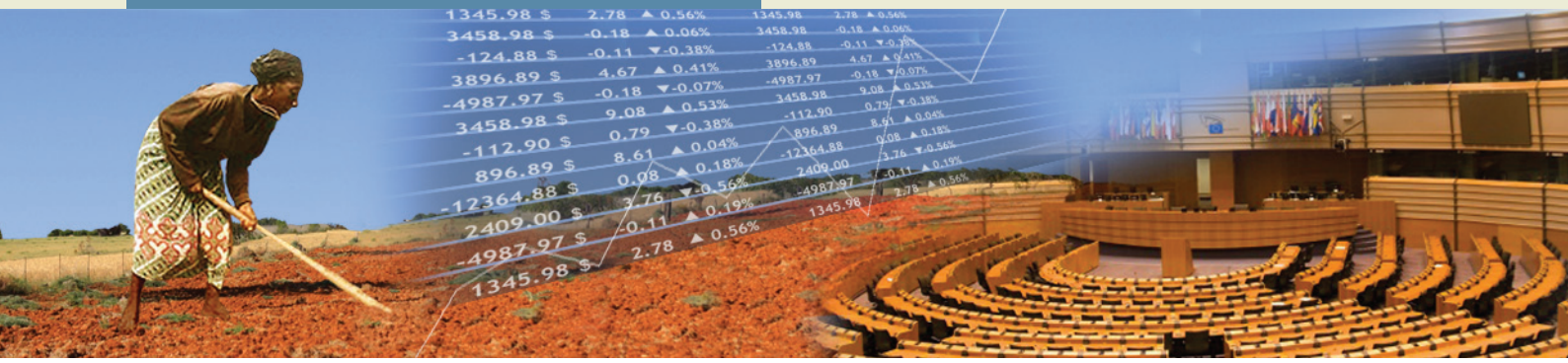

The World Trade Organization and the Post-Global Food Crisis Agenda

Putting Food Security First in the International Trade System

SUMMARY

This briefing note offers a preliminary assessment of the compatibility between the WTO and efforts to protect the human right to adequate food as part of the post-crisis food security agenda. Existing WTO rules do include certain flexibilities for States to pursue food security-related measures. From a right to food perspective, certain elements of the draft modalities in agriculture are an improvement on the Agreement on Agriculture (AoA), most notably proposed changes to the green box criteria on public stockholding for food security. However, many of these modifications to the AoA are relatively modest and even these are by no means assured with the outcome of the Doha Round highly uncertain. Many elements of the AoA and the draft modalities continue to fall short of offering a favorable policy framework for the realization of the right to food, such as the narrow range of policy measures that could be used to potentially establish national and regional food reserves and domestic institutions to manage price and income volatility for poor rural households. Many WTO rules are highly ambiguous and inject a high degree of uncertainty into food security policymaking, thereby discouraging States to develop and implement comprehensive and innovative national right to food strategies. Steps to establish a more certain and transparent policy environment would enhance international cooperation on the right to food. What is at stake is to encourage and strengthen the reinvestment in agriculture, which has been an acknowledged priority of the international community since 2007. The WTO negotiations should clearly reflect the renewed consensus for developing countries to increase public investment in agriculture and develop food security policies. In other words, the outcome of the Doha Round must not discourage policy innovation in food security, it has to nurture it.

The Special Rapporteur on the right to food sets out a number of requirements aimed at ensuring the compatibility of the WTO framework with the pursuit of food security and the realization of the human right to adequate food. These include: (a) ensuring that the future criteria of the green box do not impede the development of policies and programs to support food security and that they are tailored to the specific national circumstances of developing countries; (b) avoiding to define the establishment and management of food reserves as trade-distorting support; (c) adapting the provisions of the AoA and other WTO agreements (in particular, in the area of public procurement) to ensure compatibility with the establishment of food reserves at national, regional and international level; and (d) allowing marketing boards and supply management schemes to be established.

The Special Rapporteur on the right to food has consistently underscored that developing States should be allowed to insulate domestic markets from the volatility of prices on international markets: indeed, they should be encouraged to do so. This requires strengthening and materializing the proposed safeguard measures – Special Safeguard Mechanism (SSM) and Special Products (SPs). But it also requires ensuring that States maintain flexibilities to regulate the volume of imports in order for policies such as marketing boards and supply management schemes to be fully functional, as measures such as the SSM can only be implemented on a temporary basis.

The Special Rapporteur also concludes that, in order to achieve greater compatibility in the long term between the international trade regime and global efforts to reverse food insecurity and realize the right to adequate food, WTO Members should, with the assistance of the WTO Secretariat, convene a panel of experts to systematically analyze the compatibility of existing WTO rules, and those under consideration in the Doha Round, with national and international food security strategies and policies ; assess the impact of trade liberalization on world food prices ; and initiate a substantive discussion at the WTO of the medium and longer-term implications of the lessons learned since the 2007 global food prices crisis for the international trade regime, including the new consensus on the role of States in reinvesting in food security at national level. In no circumstances should trade commitments be allowed to restrict a country's ability to adopt measures guaranteeing national food security and the right to adequate food: a waiver to allow the adoption of such measures should be envisaged.

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Introduction

The 2007-2008 global food crisis threw the relationship between food security and international trade into sharp relief. Most notably, trade measures were the principal form of national response to skyrocketing food prices. Today, international trade and high food prices continue to command international headlines. According to the FAO Food Price Index (FPI) food prices peaked in February 2011, the highest level recorded in both real and nominal terms since January 1990. Although the latest figures indicate a modest decline in FPI since earlier in the year, overall food price levels remain above pre-crisis levels. The overall trend line for food prices over the past decade remains one of sharply increasing and volatile prices[1].

The global food crisis and the likelihood of higher food prices in the future are particularly salient to international trade in agriculture and food[2]. In the post-crisis context, there has been a renewed interest in using international trade rules to support a more enabling environment for food security[3]. The World Trade Organization (WTO) matters considerably in this regard as it sets the basic parameters of trade rules available to governments in pursuit of food security objectives, ranging from border measures to domestic food assistance programs.

Yet the present food security challenge is taking place during a period of profound structural transformation of the global food economy. The intertwining of food, energy and finance, changing global supply and demand dynamics, and greater consolidation in the agri-food sector, are key drivers of today's high food prices. These conditions differ considerably from the conditions in the 1980s and 1990s when the current international trade regime for agriculture was created. Overproduction and declining prices dominated the agenda when States embarked on establishing a new international trade regime for agriculture during the Uruguay round of negotiations of the General Agreement on Tariffs and Trade (GATT). As a result, much of the existing WTO agricultural trade architecture, ranging from border protection, anti-dumping, and support for producers, are anchored within a framework primarily concerned with managing States' policy response to declining agricultural prices.

Today, the challenge facing the international community is to foster resilient national food systems in food insecure developing countries. There is a global consensus that achieving these goals will require significantly increasing the levels of national and international support for small-scale farmers and sustainable and equitable rural development. This may well include creating new types of food security trade-related measures and revising existing trade rules.

In this context, it is critical to have a clear picture of whether current WTO rules on agriculture provide States with sufficient flexibility to allow them to meet their obligation under international human rights law to respect, protect and fulfill the right to food. This picture remains unclear. Indeed, many provisions in the Agreement on Agriculture (AoA) are ambiguous, highly complex and open to considerable interpretation. Achieving WTO consistency is that much more difficult in practice than is commonly acknowledged. Further uncertainty is introduced by the protracted state of the Doha Round negotiations, as the future framework of agricultural policy is yet unknown. It is very difficult for States to determine how a future agricultural agreement will impact their food policies in advance, particularly when key issues remain outstanding. Uncertainty and complexity are particularly acute for developing countries, many of which tend to lack sufficient technical and legal capacity to fully assess the implications of WTO rules for their domestic policies[4].

Such uncertainty is highly undesirable given the potential chilling effect of WTO rules on food security policy. Although the likelihood of a trade dispute resulting from food insecure WTO members adopting new food security policies may be low, policymakers are risk averse. They are unlikely to pursue agricultural and food security policies they perceive as being in the gray zone of WTO legality. Under WTO law, violations are not self-evident but are determined by the Dispute Settlement Body (DSB) after a Member has initiated dispute proceedings. Therefore, States are less likely to initiate creative policies without strong assurances and confidence that new policies will not negatively affect third parties' commercial interests and leave them exposed to potential litigation. It is in practice very difficult for poorer developing countries to assess and make confident determinations about current implications and future scenarios. This is why when it comes to WTO matters, most developing country States err on the side of caution in order not to violate their WTO commitments that are binding under international law and which, if violated, could lead to punitive counter-measures. Moreover, poorer developing countries are less likely to push the envelope of WTO rules compared to richer and/or better-resourced countries. Poorer countries have less financial and human resources to engage in lengthy litigation and navigate the highly complex terrain of WTO law. In addition, poor countries are much more vulnerable to, and less able to withstand,

coercive threats that take place behind closed doors from powerful WTO members (especially when such powerful countries disapprove of policies that may threaten their commercial interests).

In previous statements, including in his address to the World Summit on Food Security held in Rome on 16-18 November 2009, the United Nations Special Rapporteur on the right to food called for a "compatibility review" between the existing WTO agreements and the range of agricultural and trade policies developing countries are implementing, or are encouraged to implement, in response to the global food crisis. He considers such a review to be of the utmost importance to ensuring the international trade regime operates in lock step with multilateral and national efforts to address food insecurity. This briefing note offers a preliminary and illustrative effort to assess this compatibility/incompatibility with the purpose of prompting greater debate and analysis on the issue among all relevant actors[5]. Due consideration is given to the question of whether existing WTO rules, or the framework that could result from the completion of the Doha Round of trade negotiations, support measures that States are putting in place to improve food security.

The briefing note is organized in three parts. Part 1 explores the compatibility of the key food security instruments with existing WTO rules and in the light of those under negotiation in the Doha Round. Part 2 discusses how food security and the issue of high food prices have been addressed at the WTO. The note concludes with recommendations to WTO Members and the WTO Secretariat.

1. Compatibility review of WTO rules and efforts to bolster national food security

This section discusses the compatibility of WTO rules with some of the policies countries have been recommended to undertake to improve food security. The principal focus is on developing countries given that food insecurity and vulnerability to price spikes is most acute in these countries. The analytical focus here is on the implications of the broader policy framework for agriculture set by the Agreement on Agriculture (AoA) and current draft modalities in agriculture[6] and how this framework may influence policies designed to improve food security on the national, regional and international level.

Five issues in particular deserve attention and are explored in turn. These issues include the following: (1) reinvestment in agriculture and general support schemes to small-scale farmers; (2) safety-nets and income-insurance for the urban and rural poor; (3) the establishment of food reserves at national or regional levels to allow governments to cushion the impact of price shocks and to limit volatility of prices for agricultural commodities; (4) orderly market management, including marketing boards and supply management schemes, as another measure to combat volatility; and (5) limiting excessive reliance on international trade in the pursuit of food security.

These measures are not exhaustive. But they are selected because they are either among the policy options under consideration by multilateral institutions and that governments are recommended to consider for adoption, or they are among the proposals put forward by the Special Rapporteur on the right to food[7]. There are divergent views about their potential effectiveness and feasibility and how these measures should be best implemented. But the message of this briefing note is that, quite apart from such disagreements on policy, the constraints that could result from the WTO framework may need to be more explicitly analyzed, deliberated and potentially acted upon, as States have a duty to progressively realize the right to food.

Food security is explicitly mentioned in several provisions of the AoA, and is referenced in other parts of the WTO framework. These include the *Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Net-Food-Importing Countries* (also referred to as the Marrakech Decision), which was designed to assist developing country food importers with rising food prices. Other key provisions in the AoA include: the explicit mention of food security as a non-trade concern in the preamble; Article 10.4 which establishes the criteria for differentiation between legitimate international food aid and disguised government export subsidies; Article 12, which sets out the consultation process for implementation of export restriction or prohibitions, specifying these policies are permitted solely to relieve critical shortages of foodstuffs or essential products; and Annex II, which lays out the conditions for public food stockholding and domestic food aid programs. These provisions confirm that the WTO has international legal authority for certain aspects of food security policy. During the Doha Round, food security has loomed large in the negotiations of new rules on international food aid and on additional tariff protection for agricultural goods critical to food security in developing countries.

The five issues examined below extend beyond the provisions in the WTO most commonly associated with food security[8]. Many aspects of the WTO framework are critical to food security, even if these policies are not directly framed as food security-related measures. Agriculture policy and food security are largely inseparable for most developing countries, so a focus only on the provisions officially linked to food security in the AoA is likely to be too narrow in scope[9]. Changes to the agricultural policies of developing countries are likely to have significant effects on food security outcomes. Table 1 below identifies how the five issues are linked to various agricultural trade rules under the WTO framework.

1.1. Reinvestment in agriculture and support to smallholders through government provision of inputs, extension services and infrastructure

There is overwhelming agreement that achieving food security in developing countries requires increasing support to enhance the productive capacity of, and economic opportunities for, small-scale farmers. There are approximately 500 million small-scale farmers in developing countries making them not the only the vast majority of the world's farmers but, taking into account their families, responsible for the well-being of over two billion persons[10]. Improving the access of small-scale farmers to productive inputs (including mineral and organic pesticides and fertilizers), extension services, and credit, plus public and private investments into basic infrastructure, storage, processing and transportation holds significant potential to lead to sustainable improvements in production and food security. There is considerable commitment at the national level to increase public investment in agriculture, such as the pledge by African states in the 2003 Maputo Declaration to increase public investment in agriculture to an equivalent of 10% of total government spending. The international community has also made commitments to increase development assistance to support investment in agriculture.

Many of the measures to support small-scale farmers and public investment in agriculture fall under the scope of domestic support rules in the AoA. Domestic support rules basically divide public spending on domestic agriculture under two categories. The first category is non- or minimally trade-distorting support and the criteria for such policies are set out in Annex II of the AoA. This is generally referred to as the green box. WTO members have no spending limits on the amount of green box support measures they can provide to their domestic agriculture sectors. The second category includes measures considered to be trade and production distorting. This either falls under the blue box in Article 6.5 of the AoA or as amber box measures that includes all other trade-distorting measures. For the purposes of the discussion here a simple distinction between these boxes is that amber measures are considered to be more trade-distorting than blue box measures. In the AoA, WTO members with high levels of trade-distorting support agreed to spending limits and to progressive reductions on this spending over time. Meanwhile, developing countries have additional flexibility under Article 6.2 of the AoA in the exemption from domestic support reduction commitments of investment subsidies which are generally available to agriculture, agricultural input subsidies generally available to low-income or resource-poor producers, and support to encourage diversification from growing illicit narcotic crops.

Table 1: Selected policy responses to the global food crisis and links to WTO provisions

	Recommended Responses	Links to WTO agricultural trade rules
1	Reinvestment in agriculture and support to smallholders through government provision of inputs, extension services, and infrastructure	Green box and limits on domestic support
2	Safety-nets and income-insurance for the urban and rural poor	Direct payments and income support
3	Food reserves	- Public stockholding for food security - State trading enterprises (STEs)
4	Orderly market management including supply management schemes and marketing boards	- Tariff rate quotas - Special safeguards
5	Limiting excessive reliance on international trade in the pursuit of food security	Tariffs on food imports

Many of the policy recommendations to support small-scale farmers are likely to fall under the green box. Most public investment in agriculture is covered in the provisions for general government services such as research, extension services, infrastructure and transport, environmental programs and investment programs. Provisions under the green box also include the types of spending allowed under domestic food aid, stockholding, direct support to producers, safety-nets, disaster relief, and structural adjustment programs. Annex II of the AoA sets out broad criteria for how such programs are to operate in practice. Programs that meet the criteria are considered to be non-trade distorting, whereas programs that fail to meet the criteria are interpreted as trade-distorting support under WTO law.

Developing countries already made significant use of green box measures prior to the global food crisis: green box support accounted for roughly 60% of the total support developing countries provided to their agricultural sectors[11]. This percentage is bound to increase substantially in the medium-term as developing countries embark on reinvesting in agriculture. Developing countries vary in the types of green box measures they use: most developing countries spend primarily on general services such as research, disease and pest management and extension services, whereas large developing countries like China and India also invest significantly in public stockholding for food security.

There is a general perception that because green box measures are not subject to spending limits the primary constraint for WTO developing country members is their limited fiscal resources. Budgetary constraints are a general problem for all developing countries, especially for least developed countries (LDCs), when it comes to implementing green box measures. But there is also a growing recognition that existing measures under the green box are not well tailored to the specific national circumstances of developing countries. Existing green box criteria are largely derived from the policies developed countries had in place during the negotiation of the Uruguay Round when the primary focus was to cap developed countries' support to producers[12]. Designing criteria well-suited to developing countries was not a major priority for negotiators during the Uruguay Round. At that point in time, many developing countries were undergoing structural adjustment and public investment in agriculture experienced a major decline; this was hardly indicative of a future scenario in which developing countries would be major users of green box measures.

As a result, current green box and domestic support rules are unbalanced : they provide more flexibility to developed country farmers than to developing country farmers. This is the reason why developing countries have asked for changes to the green box and negotiated for additional safeguards to better address their national circumstances ever since the launch of the Doha Round in 2001. The main objective of these efforts has been to revise domestic support rules in order to better support their national efforts to protect food security and rural livelihoods[13]. These efforts are part of a larger agenda by developing countries to reform the green box to make it much more "user friendly" for all countries, rather than solely developed countries as it traditionally has been.

The current draft modalities include specific revisions to the green box criteria negotiated by developing countries. One of these changes is directly relevant to supporting small-scale farmers. The draft modalities include a new blanket provision to cover a range of many common agrarian reform and rural development policies in developing countries. The proposed amendments would expand the scope of general government services under Annex II, paragraph 2 in the AoA and make the following programs exempt for reduction commitments: *"policies and services related to farmer settlement, land reform programmes, rural development and rural livelihood security in developing country Members, such as provision of infrastructural services, land rehabilitation, soil conservation and resource management, drought management and flood control, rural employment programmes, nutritional food security, issuance of property titles and settlement programmes, to promote rural development and poverty alleviation."*[14]

The policies covered under this blanket amendment are hardly earth-shattering. If anything, they simply update the green box criteria to better reflect the types of policies developing countries currently use and which are recognized and encouraged under several international declarations. However, the work leading up to this proposed amendment significantly preceded the recent food crises. There has not been a substantive debate or analysis to determine if further additional amendments may be required given the current food insecurity situation. Still, this amendment is a necessary starting point, since unless a domestic policy meets specific criteria under the green box, it is considered trade-distorting support. This is regardless of whether the policy actually distorts trade. Developing countries have therefore felt it necessary to invest negotiating

capital during the Doha Round towards ensuring such commonly used rural development and food security policies are listed under the green box.

If countries adopt domestic policies to address food security that do not meet all existing green box criteria they will find themselves in various possible scenarios. First, if the developing country in question already has domestic support commitments under the AoA, the new measure would count as part of their total trade-distorting support subject to spending limits and to additional reductions in spending under the draft Doha deal (and also in future negotiation rounds). This particular scenario is limited to a small number of developing countries that have commitments to reduce domestic support spending[15].

Another scenario that would apply to the other 100+ WTO developing country members, is that new policies would have to be notified to the WTO as trade-distorting support. Whereas green box measures are currently exempt from spending limits and also from reduction commitments, other forms of trade-distorting support have legally bound ceilings. For most developing countries this amounts to a cap of up to 10% of the total value of agricultural production and 10% of the value of any specific crop in a given year. This 10% ceiling on trade-distorting support is known as *de minimis* level of support in the AoA. Admittedly, were developing countries to introduce new domestic agriculture and food security programs that failed to meet the green box criteria, the overall level of spending for these programs would have to be very high to move countries close to or beyond their *de minimis* ceilings. Some trade experts emphasize that *de minimis* levels for developing countries are very generous and point to the very large gap between developing countries' actual and permitted spending on domestic support. However, others have suggested that in the future the 10%+10% cap may not be sufficient. Given the way the green box is formulated, many new food security policies are likely to be classified as trade-distorting support (e.g. fertilizer subsidies and other forms of price support). As such, it is expected that developing countries' total notifications of trade-distorting support will increase. In principle this means that new food security spending will need to fit under existing *de minimis* limits or be exempted under Article 6.2. For countries that are already close to their *de minimus* limits it would entail perhaps less spending on existing other forms of domestic support. This of course is not desirable if existing spending had a positive food security impact.

The Special Rapporteur is convinced that developing countries should be encouraged to spend more on reasonably effective food security programs, not less. And unlike developed countries that have far more flexibility in how they account for trade-distorting support in their Aggregate Measure of Support (AMS) commitments, there is no scope for developing countries to negotiate for AMS commitments in the Doha Round.

Yet from a right to food perspective there is larger normative concern. It is critical to distinguish between the likelihood of developing countries hitting their *de minimus* ceilings, and the more problematic precedent being established under international law if new food security programs were to be classified as trade-distorting support. The AoA does not recognize food security as an overarching objective of international cooperation. Whereas the preamble of the AoA recognizes that food security concerns are legitimate, the actual provisions of the agreement treat food security as a deviation from the primary objective of agricultural trade liberalization. The way food security is addressed therefore is more likely to discourage policy innovation than nurture it. From a right to food perspective this is undesirable. Food security programs should be assessed on their capacity to contribute to the realization of the right to food. Whether new policies distort markets should be a secondary consideration and accorded much less weight in political decision-making. This suggests a need for revising how the WTO defines trade-distorting support vis-à-vis food security programs, including the existing approach that requires developing countries to negotiate piecemeal changes to green box criteria : instead, a more comprehensive approach as advocated by the Special Rapporteur would mainstream achieving food security as a key objective of the AoA.

1.2. Safety-nets and income-insurance for the urban and rural poor

Implementing safety-net and social protection programs in developing countries to address vulnerability to food insecurity is now widely supported. Although these policies were used less frequently than trade measures during the global food crisis[16], considerable national and international efforts are underway to expand the scope and coverage of these programs. In the context of existing rules on domestic support, this introduces some uncertainty over how green box criteria on direct payments, income-support and safety-net programs for agricultural producers overlap with broader social protection and safety-net programming related to food security in developing countries. In developing countries, small-scale farmers, many of them net-food

buyers, account for more than half of the total number of food insecure persons. However, most existing green box criteria were designed on the basis of programs in developed countries, where farmers account for less than 5% of the population. Given the current state of food insecurity in developing countries, policymaking that seeks to distinguish between "producers" and the "vulnerable populations" in these countries presents a false dichotomy. This suggests the need for a more careful consideration of the appropriateness of WTO provisions to the current situation.

Farmers in developed countries are vulnerable to price, income and weather-related risks, but these differ considerably from the types of vulnerabilities experienced by small-scale farmers in developing countries. As discussed above, most green box criteria related to direct support to producers and insurance programs were designed based on programs in developed countries with large farms and significant operating costs associated with industrial agricultural production. Such rules are less applicable to the conditions and challenges facing small-scale farmers in developing countries who primarily grow crops on small plots of land using labor intensive methods.

Take safety-nets for example. Safety-nets in the context of international agricultural trade differ conceptually from safety-nets in addressing vulnerability and food insecurity. In developing countries where small-scale farmers are also the food insecure, these safety nets conceptually blur together. But at the level of national policy implementation, the AoA provisions would apply because they cover any transfer from a *"publicly-funded government program to a producer of agricultural products"* defined in paragraph 1 of Annex II. Unlike the general blanket provisions on government services related to rural development and food security, government transfers to producers are covered by a more extensive set of criteria.

Under existing green box rules, producers are only eligible for safety-net related transfers under income insurance programs and under very specific conditions, including demonstrating that net income loss exceeded 30% of income calculated on a three-year average based on the preceding five-year period. In the current draft modalities, this may be reduced to less than 30%. Nevertheless, it would be very difficult for developing countries to easily make use of these provisions. Many government departments lack the human and financial resources to maintain detailed accounts on farmers' incomes. Moreover, many small-scale farmers are net-food buyers who derive some income from non-farming activities, and live near or at the poverty line, rendering such complex calculations meaningless. This illustrates some of the basic ways that the green box criteria are not easily applicable to the particular national circumstances facing developing country policymakers. While WTO rules do not prevent developing countries from implementing safety-net programs, they do not provide a very helpful framework either. Yet the AoA applies nonetheless and it would be to the benefit of national policymakers, and their regional and international partners, to operate in a policy environment with greater precision and clarity. A better understanding of how international trade rules may limit the range of options for new safety-net programs would provide a basis for a longer-term process of identifying which elements of the AoA may require further updating and revision in the context of supporting increased public investment in agriculture and food security programs in developing countries.

Guaranteeing food security can require a combination of farmer-led and consumer-led safety net policies; attention must therefore be granted to ensuring that net-food buying smallholders are not disqualified from needed support by virtue of their presence in both groups. The Special Rapporteur therefore considers that the specific food security conditions of developing countries must now be built into the Green Box criteria. While this was already a concern for developing countries prior to the Doha Round, the current emphasis on scaling-up domestic agriculture programs in developing countries makes it even more important and urgent to ensure green box criteria do not impede the development of innovative programs to support food security.

1.3. Food reserves

The global food crisis has renewed interest in food reserves as a policy instrument to address price volatility and/or facilitate emergency food distribution in situations of crisis. Food reserves can play a key role in food security. They provide a buffer between international and national markets, particularly in minimizing the impacts of price spikes on consumers and by providing a strategic secure food supply during times of food shortages. Over the course of the last two years, discussions have examined how to improve food reserve policies at the national level and establish food reserves at the regional and international level[17]. Where disagreement does exist is with respect to how to best structure these mechanisms and their scale of operation : this is why the Committee on World Food Security requested, at its 37th annual

session held on 17-22 October 2011, that "relevant international organizations, in consultation with all relevant stakeholders, ... further assess the constraints and effectiveness of local, national and regional food reserves" (final report, para. 51, j)).

Existing WTO rules are relevant to the discussion on food reserves. This includes domestic support provisions, primarily paragraph 3 of Annex 2 of the AoA, which set out the criteria under which States may maintain public food stockholding for food security. These rules apply equally to developed and developing country WTO members. The AoA requires that public stockholding for food security purposes meet the following conditions: 1) the level of stocks must correspond to predetermined levels – and these targets be explicitly set out in national legislation ("The volume and accumulation of such stocks shall correspond to predetermined targets related solely to food security"); 2) they must be financially transparent; and, 3) food purchases by governments or their agencies must be made at prevailing market prices and sales cannot be made at less than the prevailing market price for the product in question. The first two conditions appear straightforward and serve to assure WTO members that stockholding programs are legitimate domestic programs and meet minimum standards of governance and transparency[18]. The green box has some built in flexibility for the third condition by relaxing this condition for developing countries. They are permitted to acquire and release food stocks at administered prices (i.e., prices set by national authorities) instead of market prices. However, they must include the difference between the acquisition price and the external reference price as part of their aggregate measure of support (AMS). Again, this raises some concerns that existing *de minimis* levels may be a future constraint.

During the Doha Round, developing countries have sought to exclude the acquisition of foodstocks from what is considered trade-distorting support. The current draft modalities reflect this shift and state that: *"Acquisition of stocks of foodstuffs by developing country Members with the objective of supporting low-income or resource-poor producers shall not be required to be accounted for in the AMS"*[19]. A footnote in the draft modalities adds the condition that only foodstocks acquired from low-income or resource-poor producers that are later provided at subsidized prices to urban and rural poor consumers meet the standard of non or minimally-trade distorting support in the green box[20]. A change to the AoA along these lines, excluding food reserves from trade-distorting support subject to WTO disciplines, would be an improvement on existing rules and provide a greater flexibility to use food reserves as a tool for improved food security. However, this requires that the WTO adopts a definition of "low-income or resource-poor" that is appropriate to the agricultural contexts and challenges of food insecure countries.

Even if a country's food reserve program were to meet all the green box criteria, other WTO provisions would still need to be met to make such programs operationally effective. A recent study by the Institute for Agriculture and Trade Policy identified several provisions in the AoA and in other WTO agreements critical to establishing food reserves[21]. This included rules on state-trading enterprises (the institutions most likely to manage the everyday operation of reserves) and public procurement that would permit countries to provide exclusive rights to domestic producers to bid for contracts related to acquiring foodstuffs on the market. This introduces a lot of technical and legal complexity for governments seeking to establish food reserves, and may require a more careful consideration of whether in certain cases it may be appropriate to simply adopt a statement that procurement rules do not apply to public stockholding of foodstuffs for food security purposes, or to waive the application of such rules.

A more immediate concern is whether WTO trade negotiations are conducive for devising international trade rules that are more supportive of national reserves. Although this point applies more generally to all food security policies – since in the context of trade negotiations food security is just one of a multitude of negotiation issues that are vulnerable to political horse-trading – the case of food reserves is different because the Doha Round has previously resulted in outcomes that have not been supportive of innovative efforts. In the early stages of the Doha Round, countries discussed several proposals aimed at establishing a framework for international food-stockholding under the AoA[22]. In 2002, Japan proposed the creation of an international food stock reserve for emergency assistance to be negotiated at the WTO. Côte d'Ivoire, Cuba, Dominican Republic, Egypt, Honduras, Jamaica, Kenya, Mauritius, Morocco, Pakistan, Senegal, Sri Lanka, St. Lucia, Trinidad and Tobago, Tunisia and Venezuela made a joint proposal at the WTO in 2001 which called for a food reserve mechanism that would release stocks at reasonable prices in times of high world market prices (see G/AG/W/49). However, WTO members failed to reach consensus on whether an international food reserve was necessary to address world food security and the item was subsequently dropped from the negotiations. Global opinion is now clearly in favor of

national and international food reserves but it is unlikely that if the issue were to be put back on the WTO agenda today it would produce a different outcome. However, governments also do have other options that have been underexplored such as intergovernmental commodity agreements that could be applied to food crops[23]. The official positions of many WTO members have not changed in any noticeable way since the global food crisis. In particular, the major grain exporters remain unconvinced of the need for international food reserves, unless explicitly earmarked for humanitarian crises. The political climate remains lukewarm in support for such measures at the WTO, despite the greater attention to food reserves at the other fora such as the G20 and Committee for World Food Security.

Much of the current work on food reserves is being advanced outside the WTO and instead under regional cooperation bodies. These include the Association of Southeast Asian Nations (ASEAN), the South Asian Association for Regional Cooperation (SAARC), the South African Development Community (SADC), and the West African Economic and Monetary Union (UEMOA) and Economic Community of West African States (ECOWAS-CEDEAO) with the Sahel and West Africa Club (SWAC) hosted within the Organisation for Economic Cooperation and Development (OECD), which are either implementing new, or strengthening existing, regional food reserves. The WTO has specific provisions to ensure coherence and harmonization between its treaties and those of regional trade agreements and/or custom unions[24]. However, regional efforts to establish food reserves to date have not been pursued under trade frameworks but through other legal instruments such as memoranda of understanding between States. It is unclear whether WTO rules apply to regional reserves that are not part of regional trade agreements. But given the fact that many regional food reserves require acquisition of foodstocks by participating countries and involve cross-border flows of agricultural commodities, there are likely to be many areas of overlap with trade rules. It should not be discounted that there could be potential conflicts between an individual country's WTO trade obligations and their cooperation, at regional level, for the establishment of food reserves. Therefore, it would be particularly useful to have clarity on how this overlap of responsibilities and commitments can be reconciled in order to ensure individual WTO members are not liable to disciplines or the risk of trade disputes in situations where they are legitimately contributing to improving food security.

1.4. Orderly market management

The global food crisis has prompted interest in scaling up developing countries' food production but also in enhancing their capacity to effectively manage and coordinate food production, distribution and trade policies. Well-functioning domestic institutions are required to improve food security at the national level: increased production alone does not guarantee food security unless it is accompanied by a policy framework targeted at matching food production to the needs of food insecure and vulnerable households and improvements in marketing and transportation links. Increased institutional capacity at the national level is also desirable because food policies that are over reliant on international markets do not always lead to optimal outcomes. The global food crisis was an extreme example of this, with the prices of imported staples moving beyond the reach of most poor households in poor net-food-importing countries.

There is now a more general concern over price volatility by policymakers that requires concerted action, given that excessive price volatility can have profound negative effects on food security. Upward price swings like the ones experienced in 2007-2008 and in 2010-2011, present unique problems such as making food unaffordable and significantly reducing access to food. Since small-scale farmers are often net-food buyers and, as producers, have a generally weak bargaining position vis-à-vis the buyers, upwards price swings do not necessarily benefit them and make them better off: as sellers, the farm gate prices they receive are substantially below the retail price (with the increase in prices mostly captured by traders and processors) whereas as food purchasers they must pay the full retail price. But downward swings in food prices present other critical challenges: while downward movement in prices decreases the overall food bills of poor households it can also depress income for rural households.

Farming is an intrinsically high-risk and unpredictable enterprise and farm output and incomes are subject to a wide range of intervening factors including climatic factors (such as extreme weather), pest and disease issues, and more standard macroeconomic factors such as supply and demand forces. States have long relied on a range of policies aimed at establishing orderly markets as a frontline response to price, supply and market volatility. Agricultural marketing boards can play a significant role in this regard. While marketing boards are most often associated with the management of commodity exports, they can play a key direct role in domestic food security by providing a policy framework

to support production of key or strategic foodstuffs and stabilize prices to guarantee fair prices for consumers and income for producers. In general, these institutions operate similarly to producer cooperatives, however a main difference is that they are backed by national and/or sub-national legislation and sometimes include direct government financial support. Some of the policy instruments commonly used by boards are direct regulation of domestic supply through an administered system of quotas. Marketing boards can play a role in providing risk-management support for producers. They also provide a forum for negotiating prices between producers, processors and retailers that in theory is more attuned to the public interest. Moreover, marketing boards can provide a policy framework to support the viability of sustainable small and medium-scale farming in light of various examples of trade liberalization resulting in greater consolidation and concentration in the agricultural sector, which is not always in the best interest of producers and consumers.

A serious policy debate about the potential for marketing boards to assist in scaling-up food security in developing countries will have to take into account the lessons from the 1980s and 1990s, when the shift towards agricultural trade liberalization included a major reversal in the way policymakers thought about marketing boards and similar policies aimed at stabilizing agricultural prices and supply. In the case of developing countries, structural adjustment policies included the dismantling or privatizing of marketing boards[25].Policy recommendations by the international financial institutions were colored by a school of economic thought that viewed marketing boards as protectionist, inefficient and distorting market signals. During the Uruguay Round marketing boards were also targeted for being by definition trade-distorting since these policies regulate markets and steer supply and price to meet national policy priorities instead of market-determined outcomes. At that particular time, there was a major concern about US and EC domestic programs such as administered prices, which encouraged production far in excess of domestic demand that was often dumped into third markets with the aid of export subsides.

Marketing boards and similar domestic measures were not always effective or well managed. But beyond these instances of mismanagement, corruption and clientelism, the policy shift in the 1980s and 1990s reflected an ideological hostility to these programs. Greater emphasis was put on dismantling than reforming these programs. The current policy paradigm discounts several of the potential benefits that these policies offer in terms of their capacity to address market failures and support food security. For example, supply management regimes in Canada for dairy, poultry and eggs have been successful in ensuring fair prices for small- and medium-scale producers and consumers alike while also providing for adequate and safe supply of food on the domestic market. While the example is not directly applicable to developing countries, where the administrative capacity of farmers and the state is lower, marketing boards may still offer poor and small-scale farmers one of the few forms of bargaining power to obtain fair prices from processors and traders. In light of the global food crisis the case for robust domestic institutions to support orderly markets and food security has grown. Recent decades have also placed a greater emphasis on accountability, transparency and efficacy in policymaking and governance. In the current policy context and in light of major strides to strengthen governance in developing countries, it may be appropriate to revisit the potential of marketing boards as viable institutions to address current and future challenges, such as the threats to food security posed by climate change, by providing a mechanism to manage domestic food markets in a manner oriented towards encouraging sustainable food production and consumption.

It is the conditions imposed on specific countries by international financial institutions, rather than the WTO, which have been the biggest impediment to flexible use of marketing boards and supply management schemes. However, while such schemes are not prohibited under the AoA, the trade rules governing tariffs and quotas serve to limit their relevance. For marketing boards to be fully functional and effect supply and price levels they require an overarching framework to regulate the volume of imports. The most relevant provisions affecting the viability of marketing boards fall under market access commitments in the AoA. Under the AoA countries were obligated to replace all border measures with tariffs, which were then subject to overall cuts[26]. Many WTO members opted for tariff-rate quotas (TRQs) for products they deemed strategic for domestic production, food security and/or rural development. TRQs differ from regular import tariffs: one standard import tariff rate applies to a predetermined minimum level of imports and a second higher tariff rate applies to all additional imports beyond the minimum level. The objective of TRQs is to provide a high level of protection to domestic producers but also a minimum level of access to foreign imports.

Currently 43 WTO members have access to TRQs negotiated in the AoA, although in practice countries do not make use of all their TRQs. Many developing

countries have TRQs but developed countries designated a larger number of products eligible for TRQs. Few LDCs or low income developing countries negotiated for TRQs, in part because these measures require substantial administrative capacity and resources which many of these countries lack. In addition, most developing countries were dismantling rather than preserving their domestic agricultural institutions during the Uruguay Round, so there was little incentive from them to negotiate for TRQs. The AoA provides countries with significant flexibility as to how they administer TRQs given the diversity of institutional and legislative approaches to domestic market management[27]. Additional cuts to import tariffs are a major objective of the Doha Round. This includes proposed cuts to TRQs by 50% for developed counties and 15% for developing countries. The draft modalities also include more rigorous criteria for TRQ administration in an effort to harmonize policies. Flexibilities on TRQs exist in that countries are able to designate a limited number of tariff lines as sensitive products that would in theory allow a country to negotiate for lesser tariff cuts in exchange for providing a greater level of minimum imports.

The future direction of liberalization points to more stringent requirements and complex criteria for the management of TRQs. In the post-global food crisis context it is unclear whether these rules facilitate or prevent developing countries from implementing domestic mechanisms to address price and income volatility. Only countries that negotiated for TRQs in the AoA (or in their accession commitments if they joined the WTO after 1995) have the right to implement TRQs. As a result the majority of WTO members do not have recourse to TRQs, in particular LDCs and low-income developing countries. In theory, developing countries could opt for new TRQs in the Doha Round. In practice this may prove difficult since TRQ administration is very complex and can be very costly for some low income developing countries. In addition opening a TRQ may require food insecure countries to make additional concessions. Such concessions, however, should not result in diminishing the capacity of states to promote food security. The Doha Round negotiations have primarily focused on disciplining and minimizing the long-term viability of TRQs as a policy option rather than facilitating a broader use of this type of policy. Moreover, the technical work in the Doha Round negotiations has focused on how to discipline TRQs based on the experience of TRQ management in developed countries. The existing TRQ regime at the WTO is quite complex and is unlikely to be well suited to the conditions and technical capacity in developing countries.

While it is possible to pursue domestic orderly market arrangements without TRQs, it is difficult to conceive of doing so effectively without recourse to a policy framework that includes TRQ-style arrangements. Tariffs remain the only policy available under the WTO to affect the flow of trade since all non-trade barriers are forbidden.

Some trade experts suggest that developing countries would have sufficient access to flexibility on tariffs under the proposed Special Safeguard Mechanism (SSM), which is supposed to counter the risk of agricultural dumping on the domestic markets of developing countries. in addition, Special Products (SPs) provisions have been introduced to achieve lower tariff reductions on goods designated as critical to food security, rural development and rural livelihoods. However, both tools are of limited relevance to building up domestic orderly market measures. The purpose of the SSM is to address situations where there is dramatic downward volatility in prices and for situations when agricultural dumping is more likely to occur. The SSM is not designed to address the upward swings in prices, which is the new environment facing most countries. Negotiations to date suggest that the SSM which could arise from potential conclusion of the Doha Round would likely see its usage restricted to only the most extreme of price or volume fluctuations, and only on a temporary basis. Establishing strong domestic institutions requires longer-term policy actions to address upward price spikes. Such measures have yet to be explored in the Doha Round. Meanwhile, without Doha, developing countries continue to lack any viable safeguard tool to guard against import surges.

Fluctuations at either extreme of the range can be highly corrosive for food security. Determining the appropriate range of food prices at the national level that balances affordability for poor households and livelihoods for poor rural producers is a significant policy challenge. Yet a major impediment is the general apprehension among policymakers to break with the orthodoxy of trade liberalization and there is significant skepticism over the viability of policy efforts to combat price volatility. The technical, institutional and political challenges should not be underestimated. However, it is clear that at present many developing countries lack the necessary public policy frameworks to address price volatility[28]. There may be lessons to be learned from developing countries' earlier successes with marketing boards that should be revisited in light of recent changes to the global agricultural economy: it is time that, in this debate, ideological presuppositions are separated from empirical findings. In addition, there are also lessons to be learned from the historical success of

price-pooling and other price risk management systems developed by farmers' cooperatives and single-desk sellers in the United States, Canada and Australia. The recent emphasis by the international financial institutions for financial risk management instruments may not be the most appropriate or effective mode to address price volatility in developing countries; States should not discount the viability and benefits of well designed and transparent public policy instruments[29]. Orderly marketing arrangements, if properly designed, could be a key resource for national food security by providing greater certainty over domestic food supply, making food more affordable and ensuring livelihoods for small framers by setting fair prices.

1.5. Limiting excessive reliance on international trade in the pursuit of food security

Over the past several decades there has been an observable shift in the way many countries have approached trade and food security. This approach has been marked by an increased reliance on international trade and food markets to meet domestic food needs. In hindsight, the decline in world food prices from the mid-1970s to the mid-2000s gave rise to international market conditions that tipped the scales in favor of arguments for agricultural trade liberalization over domestic food production. With imported food less costly than domestically produced food and with a greater volume of food readily available on international markets as a result of subsidized overproduction in developed counties, a shift towards greater food imports appeared as a secure and low-cost policy to secure provision of food. This led many developing countries to restructure their domestic agricultural sectors away from food production for local consumption to specialized commodity production for exports.

The impacts of this policy shift are well documented. World agricultural trade has grown exponentially; the value of world agricultural exports doubled between 1990 and 2004[30]. Food trade is now the world's fifth largest export sector and valued at over 1.1 trillion USD[31]. During this period the composition and geography of world agricultural trade were redrawn. Processed foods now account for the majority (over 80%) of world agricultural trade whereas grains and commodities as a share of total world agricultural exports have declined. Contrary to the perceived competitive advantage developing countries have in agriculture, developed country exports accounted for most of the expansion of agricultural trade in the 1990s and early 2000s. Meanwhile, developing countries' share of total agricultural trade has decreased over the same period. Developing countries shifted increasingly towards non-food agricultural production: there has been a noticeable intensification of traditional export commodities such as coffee as well the development of new exports such as fresh fruit and vegetables, cut flowers, and semi-processed agricultural goods. These changes in agricultural trade are most striking in the case of least developed countries (LDCs), as this group of countries transitioned from being net agricultural exporters to becoming food importers[32]. LDCs import approximately 20% of their total food consumption on average and their food import bills more than doubled as a percentage of gross domestic product even prior to the global food crisis[33]. The FAO's *Food Outlook* of November 2011 reports that Least Developed countries (LDCs) who have seen their food import bill soar by almost a third from the previous year : the pressure on these countries is thus increasing as prices remain at high levels.

The increased dependency on international trade by many countries with significant food production capacity can have a number of direct and indirect impacts on the realization of the human right to adequate food. This may lead to loss of export revenues when the prices of export commodities rapidly fluctuate downwards. When low-priced imports arrive on the domestic markets –- against which local producers are unable to compete—, local producers suffer ; and when the prices of food commodities go up, balance of payments problems for the net food-importing countries[34]. High food import dependence also further exposes producers and consumers to increased vulnerability both to worsening terms of trade and to fluctuations in commodity prices. Such situations significantly reduce the capacity of States that are highly dependent on international trade and imports to buffer external shocks, such as overproduction or harvest failures in other States.

The long-term sustainability of overreliance on food imports under conditions of high and rising food prices is now a major issue of concern in global food policymaking[35]. While the risks associated with the dependence on food imports may have appeared low or negligible when world food prices were low, these risks have been aggravated by higher and more volatile food prices. This is evident in the rising cost of food import bills for developing countries and the increasing difficulties they face in securing and financing food imports. As a result, many of the policy recommendations in response to the global food crisis have placed greater emphasis on increasing food production in developing countries in order to decrease their long-term dependence on food imports[36]. There is a renewed global consensus on the

need to increase public investment in agriculture and food, and scale-up the capacity of the State in food policy-making to achieve food security, in addition to the importance of seizing the opportunities of increased private investment in agriculture, which must also be regulated[37].

In the report following his mission to the World Trade Organization, presented in March 2009 to the Human Rights Council, the Special Rapporteur on the right to food encouraged States to avoid excessive reliance on international trade in the pursuit of food security. While it must be acknowledged that not all States have the natural endowments to increase domestic food production, many do. If international trade can play a key role in addressing food insecurity, it must also be stressed that countries can reduce the vulnerability of small-scale farmers and consumers by maximizing their domestic food production capacity. The Special Rapporteur has emphasized that short-term interest in procuring from international markets the food which they cannot currently produce locally at lower prices should not lead States to sacrifice their long-term interest in building their capacity to produce the food they need to meet their consumption needs[38].

Yet, understandably, reactions guided by the most short-term considerations prevailed in response to the global food prices crisis: most food deficit countries applied tariff reductions[39] and loosened import restrictions on basic foods to offset rising prices. These tariff reductions provided a modest but limited countermeasure as applied tariffs on basic foods were already low in most food deficit countries prior to the crisis[40]. During the peak of the global food crisis the price of grains doubled (e.g., wheat, corn) to tripled (e.g., rice) and upward swings of these magnitudes dwarfed whatever price relief could be gained from reducing already low tariffs. If food prices remain high, as current market conditions tend to indicate, then States are likely to consider keeping food import tariff rates at very low levels or potentially applying no import tariffs at all, as many did during the global food crisis. Although lowering tariffs on imported foods can be considered a necessary emergency response, States should carefully consider whether such measures are consistent with their long-term objective of raising national food production and reinforcing the capacity of smallholders. Indeed, increasing food production in developing countries will not only require significant amounts of reinvestment in agriculture; it will also likely require States to apply tariffs on certain food imports as complementary measures to protect smallholders from import surges, which otherwise threaten the ability of smallholders to live from their crops and feed their families.

2. Addressing food security and higher food prices in the Doha Round/at the WTO

Much of the debate surrounding the Doha Round's potential effects on world food prices and supply acknowledges the unique role of the WTO as the only multilateral forum where States negotiate their tariff profiles and farm subsidies. However, the WTO's authority extends far beyond traditional border measures: to a large extent, it sets the policy framework for WTO members' agricultural policy. The primary objective of the AoA is to progressively liberalize agricultural trade; it seeks to explicitly limit state intervention in the agricultural sector in order to bring agriculture and food under greater market discipline. Following the global food crisis, there is a renewed consensus on the need to increase public investment in agricultural and food and scale-up the regulatory capacity of the State in food policy-making to achieve food security. Although there are very different policy orientations between the AoA and the post-global food crisis consensus, the AoA continues to provide the overall framework for domestic agricultural policy and countries are still required to meet the standards and obligations set out by the AoA.

Even though higher food prices and levels of food insecurity have been recognized as a major agricultural trade policy issue by WTO members, there has been limited substantive work and discussion on the issue at the WTO.

2.1. Monitoring the impacts of trade liberalization on food prices

Whether the Doha Round shall arrive at a conclusion or whether WTO Members shall aim at a less comprehensive agreement covering only some of the agenda of negotiations, how these developments may impact future food prices deserves much more serious consideration by the parties involved.

Trade liberalization can have significant impacts on the structure of the world food economy, the scale and direction of trade flows, and thus on food prices. The magnitude of these impacts is likely to vary significantly between and within countries due to various factors ranging from border policies, the number of sellers and buyers in the market and households' effective demand. But given the already high level of food prices, it is critical for States to systemically consider how the possible outcomes in the Doha Round negotiations may impact prices.

There is significant precedent at the WTO for such an exercise. During the Uruguay Round, developed and developing countries seriously considered the potential impact of trade reforms on world food prices. During the Uruguay Round, net-food importing countries identified the potential for higher food prices that could result from trade reforms targeting the grain sectors in the US and the EU. At that time it was generally feared that trade liberalization would have negative global welfare effects, as subsidy reforms would result in higher prices. During the negotiation of the AoA, states and international institutions took steps to address these concerns and initiated an evaluation of the potential impacts of agricultural trade reform on food prices[41]. Indeed, this exercise was critical to concluding the Uruguay Round by providing developing countries some assurance that the round's potential effects on food prices would be addressed. This was the basis for the 1994 Marrakesh Decision.

In sharp contrast, the prospect that further agricultural trade liberalization may lead to higher world food prices has not been seriously considered or debated by States during the Doha Round. The issue of food prices has been largely relegated to the margins of the negotiations even though addressing the food security challenges of net-food importers and LDCs is explicitly set out as part of the Doha mandate[42].Two key factors have shaped the lack of debate at the WTO on food prices. The first is the general decline of food prices in the period prior to the global food price crisis. Although food prices did move upwards in 1995-1997, for the most part food prices continued to decline during the implementation of the AoA and in the first several years of the Doha Round negotiations between 2001-2006. As such, trade negotiators assumed this general downward trend would continue, and exploring trade flexibilities to address conditions of high food prices was not on the collective radar of WTO members.

The second factor has to do with the difficulties of measuring the exact magnitude of the impact of trade liberalization on food prices. In the early stages of the Doha Round, WTO members had attempted to quantify the AoA's general impact on food prices in order to determine what if any assistance should be provided to food importers. After the WTO turned to the World Bank and IMF for outside expert opinions, the World Bank argued it was impossible to precisely quantify the impacts of the AoA reform on food prices separated from the effects of other macroeconomic variables. The lack of evidence that the AoA led to higher food prices permitted net-food exporting WTO members to argue there was no basis or need to implement the Marrakech Decision. As a result, the debate about food prices and food insecurity was effectively dropped from the WTO agenda.

Whether future trade reforms will have impacts on food prices is an open question. Some assessments undertaken prior to the global food crisis suggested prices would increase. One model run by the World Bank in 2008 estimated that world grain prices would rise by a further 5% in the event of a full trade liberalization scenario[43]. Other studies have suggested potential negative consequences for the food security situation of net-food importing countries and LDCs[44]. Whether these effects will be greater or lower in the post-global food crisis environment of tight world grain supply and volatile prices remains completely unknown and understudied. This lack of information is particularly concerning. It suggests a major gap in the knowledge required by policymakers to make sound and informed decisions about the future of the international trade regime and its impacts on world food security. While predicting the exact magnitude of food price swings is not an exact science, there are a plethora of analytical tools and information available to policymakers that could provide a basis for determining the potential impact of the current draft modalities on world food prices. Conducting such an exercise would certainly be prudent and critical to ensure the coherence between international commitments to address world food insecurity and trade policy. Doing so would be consistent with the objective of the 2001 Doha Ministerial Declaration that requires food security to be taken seriously into account during the trade negotiations[45]. Any resumption of the Doha Round negotiations that did not consider the future impacts on food prices could be interpreted as in violation of the spirit of the original ministerial declaration to address food security concerns and certainly be out of step with the current global consensus on food security.

Determining the way WTO members should move forward with addressing food security and higher food prices in the Doha Round may require a more comprehensive approach. Discussions on food prices at the WTO have been limited to discussions about implementing the Marrakesh Decision. However, the inability of WTO members to agree on how to implement the Marrakesh Decision in the recent past suggests that countries may need to explore alternative mechanisms to address food prices inside and outside the WTO. At the same time, it is important to realize that improved resilience of national food systems can only result from States' strengthening their ability to feed themselves. This may include a reorientation of agriculture trade policy

for certain countries, potentially transitioning away from dependence on food imports if countries have the capacity to increase food production in a sustainable manner. There may be additional urgency to consider such an approach if the future of the world food system includes even tighter international grain markets and therefore increased exposure to price shocks.

2.2. Addressing food security at the WTO

The WTO's track record of taking food security seriously is mixed. To a certain extent the WTO's track record reflects the dominance of net food exporters in the negotiations for whom food security is a low priority compared to opening markets for their exports. The structure of WTO negotiations themselves, which involve trade-offs between agriculture and other goods trade (e.g., services, industrial goods, etc.) in practice precludes food security from being addressed in isolation and on its own merits instead of as a "bargaining chip" to be leveraged. In addition, the relative lack of expertise on food security among trade negotiators and the WTO secretariat provides a further explanation for the way food security has been ignored.

The lessons from the global food crisis have yet to be substantively discussed by States at the WTO. In fact, formal and informal requests by many food insecure developing countries to address difficulties arising from the global food crisis in the modalities negotiations were not taken up by the WTO membership. Although the topic of food security has been repeatedly mentioned in the meeting of WTO bodies, the fact remains that the global food crisis has been a distant concern in the agriculture negotiations. As discussed above, the AoA sets the general policy framework for States' agriculture and food policies. Any work on short- and long-term measures to address food security is very likely to overlap with policy areas under the scope of the AoA and the WTO. There is nothing preventing WTO members from introducing discussions on agricultural trade policy and the global food crisis into the general work of the WTO and into the Doha Round negotiations. Indeed some WTO members have called for such an initiative but there has been no follow-up[46].

It should be noted that the WTO is formally a part of the multilateral response to the global food crisis: it was an early member of UN High Level Task Force on the Global Food Security Crisis established in April 2008, and it takes part in the Committee on World Food Security (CFS) following the reform of the CFS in November 2009. The WTO as an institution has taken on a greater role in technical cooperation on global good security governance. However, the WTO secretariat has not raised the urgency of the issue among the WTO membership and trade negotiators in particular. It has the discretion to do so and it has led the membership on other issues such as organizing high level meetings to ensure private and public trade financing for developing countries and initiating more stringent monitoring of States' trade measures following the global financial crisis.

The WTO continues to move forward and operate in isolation without sufficient consideration of the consequences of the global food crisis for agricultural trade and food security and how this requires a critical rethinking of trade policy and food security[47]. The Doha Round negotiations continue as if the state of the world food economy is the same as it was in the period 2001-2006. If the Doha Round continues on its present track, future agricultural trade rules are unlikely to be well-suited to support global policy efforts to address food security and may potentially further fragment efforts to develop effective global governance for food security[48].

3. Conclusions and Recommendations

WTO members should redefine how food security is treated in multilateral trade agreements so that policies to achieve food security and the realization of the human right to adequate food are no longer treated as a derivations from but as recognized principal objectives of agricultural trade policy. Food security is presently treated under the WTO as the grounds for exceptions for a very limited range of trade liberalization commitments. A more appropriate reframing of agricultural trade rules would explicitly recognize that market-determined outcomes do not necessarily improve food security and that the purpose of agricultural trade rules should be to facilitate food security-enhancing policies, even though this may require limiting the pace of trade liberalization in some sectors and/or granting States additional policy flexibility in pursuit of international recognized food security objectives.

WTO Members should preserve and create a range of flexibilities in the Doha Round negotiations in order to ensure that the future international trade regime operates in lock step with multilateral and national efforts to address food insecurity. In particular, they should:

1. **Make WTO measures more compatible with the pursuit of food security and the human right to food.** Negotiators should ensure that, for example, the

future criteria of the green box does not impede the development of policies and programs to support food security and the realization of the right to food; and that they are tailored to the specific national circumstances of developing countries. The proposed amendment in the draft agricultural modalities to Annex 2 in the AoA is of vital importance for many developing countries and should be agreed to immediately and without expectation of trade concessions.

2. **Exclude defining the establishment and management of food reserves as trade-distorting support**, when these schemes serve the needs of food-insecure vulnerable groups. States should also **adapt** the provisions of the AoA and other WTO agreements (e.g., public procurement) to ensure compatibility with the establishment of food reserves at national, regional and international level; and they should **bring clarity** to the overlap of responsibilities and commitments which could impact the efforts of countries that engage in efforts to establish food reserves at regional level.

3. **Ensure that marketing boards and supply management schemes are not prohibited** in the future framework for agricultural policy nor precluded under loan conditionality and other policy reforms by the international financial institutions. Options available under the WTO framework to establish such policies should be further explored.

4. **Guarantee the possibility for developing States to insulate domestic markets from the volatility of prices on international markets.** States, particularly developing States in accordance with the principle of special and differential treatment, must retain the freedom to take such measures. The negotiations should i) **strengthen and materialize the proposed safeguard measures –Special Safeguard Mechanism (SSM) and Special Products (SPs)**; and ii) **ensure that States maintain flexibilities to regulate the volume of imports** in order for policies such as marketing boards and supply management schemes to be fully functional, as measures such as the SSM can only be implemented on a temporary basis. In particular, the conditions should be put in place so that it is in the interests of developing countries to adopt **tariff-rate quotas** on key tariff lines, and thus manage import volumes and price volatility more durably. States should also carefully examine the impacts of **additional cuts to tariffs** on national food security. States should refuse such cuts if they are unable to counterbalance negative impacts on food-insecure vulnerable groups with national policies, including social safety-nets and the creation of non-agricultural employment opportunities. States should consider reducing tariffs on key inputs for agricultural production taking into account the need to promote increased food production in a sustainable and socially-inclusive manner.

5. **Take steps to limit States' 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 poor small-scale farmers and the production of staple foods.**

6. **In the case of a failed Doha Round, propose medium and long-term changes to the existing WTO framework to ensure pro-food security programs are not categorized as trade-distorting support.** This should include, for example, changes to the green box criteria and rules on safeguards. Such changes should be fast-tracked and aimed at facilitating access to these measures without requiring additional concessions from food insecure developing countries.

In order to achieve greater compatibility in the long term between the international trade regime and global efforts to reverse food insecurity, WTO Members should, with the assistance of the WTO Secretariat:

1. **Convene a panel of experts to systematically analyze the compatibility of existing WTO rules, and those under consideration in the Doha Round, with best practices and current national and international food security strategies and policies.** This panel should include independent researchers with an adequate geographical representation across all regions, international organizations, national governments from the different regional groups, non-governmental organizations and a wide range of producer organizations. Its findings and recommendations should be disseminated to WTO members, and international organizations, and be made available publicly to inform national policy and international trade negotiations.

2. **Establish a protocol to evaluate and monitor the impact of trade liberalization on world food prices.** WTO members and the international community should devise tools to better assess and monitor the impacts of trade reforms on food prices given the uncertainty surrounding the potential impacts of the Doha Round on food prices. This should also include exploring potential ways to sequence the implementation of future trade commitments in order to minimize negative consequences on the food security of the most vulnerable populations and

establishing mechanisms to revise trade agreements where the potential for negative impacts on the food security of vulnerable groups is significant. The Special Rapporteur on the right to food draws the attention of the WTO Members, in this regard, to the methodology proposed under the draft guiding principles of human rights impact assessment of trade and investment agreements, currently under discussion[49].

3. **Initiate a substantive discussion at the WTO of the medium and longer-term implications of the lessons learned since the 2007 global food prices crisis for the international trade regime, including the new consensus on the role of States in reinvesting in food security at national level.** This exercise should identify how the various proposals made in the current trade negotiations may impact food security at the national, regional and international level. This exercise should include inputs from actors outside the WTO with expertise and experience on food security policy-making. This should also include direct input from food insecure and vulnerable populations.

4. **Consider a food security-based waiver for situations where trade commitments restrict a countries' ability to pursue national food security.** A waiver is one mechanism for WTO countries to opt out of trade commitments without penalties. Discussions should seek to establish criteria for a waiver by WTO members consistent with the responsibility of States and international institutions to protect, respect and fulfill the right to food. This should be done in consultation with other international and regional institutions working on food security to define the appropriate conditions for such a waiver, taking into account the precedence of a State's obligation to ensure food security for its citizens over any obligation to maintain its trade obligation to other parties to the WTO agreements.

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3. FAO (2009), Declaration of the World Summit on Food Security, Rome: FAO; FAO (2008), Declaration of the High Level Conference on World Food Security, Rome: FAO.
4. See Falou Samb, Eloi Laourou, and Mothae A. Maruping (2008), "WTO rules and the food crisis in LDCs: challenges and the way forward," Trade Negotiations Insights, Volume 7, Number 9.
5. This note is limited to the analysis of potential incompatibility between selected international trade rules and food security programs. The analysis does not claim to be exhaustive of all food security-related policies, international trade rules and does not cover trade rules under bilateral or regional agreements. Neither does the analysis assume a unidirectional relationship between international trade and food security. This relationship is a complex one, particularly as any analysis should take into account the role played by both world market conditions and national economic development priorities. For statements and recommendations on food security issues by the Special Rapporteur on the right to food with respect to the WTO see Report of the Special Rapporteur on the right to food, Addendum: Mission to the World Trade Organization, 4 February 2009, A/HRC/10/5/Add.2; on developed country agricultural policies see "The Common Agricultural Policy towards 2020: The role of the European Union in supporting the realization of the right to food" (17 June 2011); on biofuels and financial speculation on agricultural commodities see "Key chance for G20 to tackle negative impacts of biofuels and speculation on human rights" (31 October 2011) and "Food Commodities Speculation and Food Price Crises. Regulation to reduce the risks of price volatility" (23 September 2010) [all documents available at http://www.srfood.org/index.php/en/areas-of-work].
6. WTO (2008), Revised draft modalities for agriculture (TN/AG/W/4/Rev.4), 6 December, Geneva: WTO.
7. Reinvestment in agriculture and support to smallholder farmers, social protection schemes and food reserves are discussed in 'Building resilience: a human rights framework for world food and nutrition security' (UN doc. A/HRC/9/23, 8 September 2008). Supply management schemes and marketing boards as well as other mechanisms to expand the choices of smallholders are discussed in 'Agribusiness and the right to food' (UN doc. A/HRC/13/33, March 2010).
8. For a detailed review of the draft modalities and their implications for food security see Panos Konandreas and Ramesh Sharma (2008), WTO Provisions in the Context of Responding to Soaring Food Prices: FAO Commodity and Trade Policy Research Working Paper 25, Rome: Geneva.
9. Panos Konandreas (2009), "WTO negotiations on agriculture and the stake of food-insecure developing countries," in Alexander Sarris and Jamie Morrison (eds.), The Evolving Structure of World Agricultural Trade: Implications for Trade Policy and Trade Agreements, Rome: FAO, pp. 239-252.
10. International Fund for Agriculture (2010), The Future of World food Security, available at: http://www.ifad.org/hfs/
11. Andre Nassar, Maria Leba Rodriguez-Alcala, Cinthia Costa and Saulo Nogueira (2009), "Agricultural subsidies in the WTO Green Box: Opportunities and challenges for developing countries," in Ricardo Meléndez-Ortiz, Christophe Bellmann and Jonathan Hepburn (eds.), Agricultural Subsidies in the WTO Green Box: Ensuring Coherence with Sustainable Development Goals, Cambridge: Cambridge University Press, pp.329-368.

12. See Robert Wolfe (1998) Farm Wars: The Political Economy of Agriculture and the International Trade Regime, New York: Macmillan Press and Meléndez-Ortiz, R., Christophe Bellmann and Jonathan Hepburn (2009), Agricultural Subsidies in the WTO Green Box: Ensuring Coherence with Sustainable Development Goals, Cambridge: Cambridge University Press.
13. Submission by Cuba, Dominican Republic, Honduras, Pakistan, Haiti, Nicaragua, Kenya, Uganda, Zimbabwe, Sri Lanka and El Salvador (2000), Special and Differential Treatment and a Development Box, Geneva: WTO.
14. See WTO (2008), Revised Draft Modalities for Agriculture, 6 December, Geneva: WTO, pg. 39.
15. This would apply to Argentina, Brazil, China, Columbia, Costa Rica, Mexico, Morocco, Papa New Guinea, South Africa, Thailand, Tunisia, and Venezuela.
16. Perdo de Motta Veiga (2010), Food Security Policies in Latin America, Southeast Asia and Southern Africa and Their Implications for Trade and Regional Integration, Winnipeg: International Institute for Sustainable Development.
17. Regional experiences of food reserves in Africa and Asia have recently been reviewed by the South-West Africa Club (SWAC) in the context of the preparation of the 2010 Sahel and West Africa Club (SWAC/OECD) Forum, "Regional Solidarity to Address Food Crises: South-South Cooperation and Regional aid Effectiveness" held in Accra (Ghana) in December 2010. The background document for this forum presents these initiatives (http://www.oecd.org/dataoecd/38/30/46546442.pdf).These experiences were also discussed in December during a seminar organized by the French public authorities in preparation of their G20 presidencies: "Addressing Price Volatility for Food Security and Development, December 1, 2010, Ministry of Foreign and European Affairs, Paris. Food reserves in particular were also discussed in Brussels in June 2010 by States, farmers organizations and non-governmental organizations at the International Agricultural Workshop "Food reserves: Stabilizing Markets, Investing in Farmers and Achieving Food Security", June 1-2, 2010 Workshop organized by the Collectif Stratégies Alimentaires (CSA), the Institute for Agriculture and Trade Policy (IATP) and Oxfam-Solidarity.
18. In practice it is not always possible for governments to keep stocks at pre-established limits because of unforeseen production fluctuations and other factors. As such, it should be recognized the some variability in stock levels may occur and that these conditions may need to be relaxed or adjusted to address food security realities at the national level.
19. WTO (2008), pg. 39. AMS stands for aggregate measure of support which is the calculation of total trade-distorting support categories (i.e., amber box).
20. Ibid.,
21. Sophia Murphy (2010), Trade and Food Reserves: What Role Does the WTO Play? Institute for Agriculture and Trade Policy, Minneapolis: IATP.
22. In 2002, Japan proposed the creation of an international food stock reserve for emergency assistance to be negotiated at the WTO. Côte d'Ivoire, Cuba, Dominican Republic, Egypt, Honduras, Jamaica, Kenya, Mauritius, Morocco, Pakistan, Senegal, Sri Lanka, St. Lucia, Trinidad and Tobago, Tunisia and Venezuela made a joint proposal at the WTO in 2001 which called for a food reserve mechanism that would release stocks at reasonable prices in times of high world market prices (see G/AG/W/49).
23. See discussion on intergovernmental commodity agreements in Siddhartha Mitra And Tim Josling (2009), "Agricultural Export Restrictions: Welfare Implications and Trade Disciplines," IPC Position Paper Agricultural and Rural Development Policy Series, pgs. 21-23. They argue that under existing provisions it would be possible for importing and exporting to enter agreement to hold stocks.
24. The WTO includes a Committee on Regional Trade Agreements which considers the consistency of regional trade agreements with Article XXIV of General Agreement on Tariffs and Trade (GATT) and Article V of the General Agreement on Trade in Services (GATS).
25. Christopher B. Barrett and Emelly Mutambatsere (2005), "Marketing Boards," in Lawrence E. Blume and Steven N. Durlauf (eds.), The New Palgrave Dictionary of Economics, 2nd Edition, London: Palgrave Macmillan. The New Palgrave Dictionary of Economics Online. Palgrave Macmillan. Available at: <http://www.dictionaryofeconomics.com/article?id=pde2008_M000078> doi:10.1057/9780230226203.1037.
26. Article 4.2 of the AoA required governments to transform "quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state-trading enterprises, voluntary export restraints, and similar border measures other than ordinary customs duties" into tariffs.
27. See WTO (2001), Tariff Quota Administrati on Methods and Tariff Quota Fill. Background Paper by the Secretariat. Geneva: WTO.
28. Julie Dana and Christopher L. Gilbert (2008), "Managing Agricultural Price Risk in Developing Countries," Department of Economics Working Papers 0819. University of Trento, Italy.
29. See Mark R. Manfredo, Timothy J. Richards, Scott McDermott (2003), "Risk Management Techniques For Agricultural Cooperatives: An Empirical Evaluation," Paper presented to the Conference on Applied Commodity Price Analysis, Forecasting, and Market Risk Management. St. Louis, Missouri.
30. FAO (2007), State of Agriculture and Food, Rome: FAO.
31. WTO (2010), International Trade Statistics 2009. Geneva: WTO.
32. FAO (2005, 2006, 2007), State of Agricultural and Food, Rome: FAO
33. United Nations Conference on Trade and Development (2009), Least-Developed Countries Report, Geneva: UNCTAD.
34. United Nations Special Rapporteur on the right to food, Mission to the World Trade Organization (WTO), report presented to the Human Rights Council (U.N. doc A/HRC/10/5/Add.2), March 2009.
35. OECD-FAO (2010), Agricultural Outlook 2010-19, Paris: OECD.

36. See for instance United Nations High Level Task Force on the Global Food Security Crisis, Updated Comprehensive Framework for Action (CFA), September 2010 ; FAO, Final Declaration of the World Summit on Food Security, 18 November 2009, Rome.
37. See United Nations Special Rapporteur on the right to food, 'Agribusiness and the right to food', Report presented to the Human Rights Council, [UN doc. A/HRC/13/33], March 2010 ; United Nations Special Rapporteur on the right to food 'Large-scale land acquisitions and leases: a set of minimum principles and measures to address the human rights challenge'. Report presented to the Human Rights Council [UN doc. A/HRC/13/33/Add.2], March 2010
38. See United Nations Special Rapporteur on the right to food, 'Building resilience: a human rights framework for world food and nutrition security', report presented to the Human Rights Council in accordance with resolution S-7/1, adopted by the Human Rights Council on 22 May 2008 at its Special Session on the global food crisis (UN doc. A/HRC/9/23, 8 September 2008). See also United Nations Special Rapporteur on the right to food, 'Crisis into opportunity: reinforcing multilateralism'. Report presented to the Human Rights Council, Follow-up session on the Global Food Crisis at the 12th session, September 2009 (UN doc. A/HRC/12/31). These reports were submitted in accordance with Human Rights Council resolution 9/6 on the follow-up to the seventh special session of the Council on the negative impact of the worsening of the world food crisis on the realization of the right to food for all, adopted by the Council at its ninth session. See also other reports on www.srfood.org.
39. Most developing countries apply some sort of tariff on food imports. Import tariffs are a source of national revenue for many developing countries, especially those without income tax systems. Tariffs are also used to encourage domestic food production either by insulating domestic food producers from lower-priced imports and/or by limiting vulnerability to subsidized and dumped imports. States have significant flexibility to set their tariff levels. The 153 countries that are parties to the WTO agreements have bound tariffs under the AoA, which means there is a maximum tariff they can impose on imports but nothing prevents them from lowering their tariffs.
40. FAO (2008), National Policy Responses to High Food Prices, Economic and Social Perspectives Policy Brief 1. Rome: FAO.
41. GATT (1993), An Analysis of the Proposed Uruguay Round Agreement with Particular Emphasis on Aspects of Interests to Developing Countries, Geneva: GATT.
42. WTO (2001), Ministerial Declaration on Implementation-Related Issues and Concerns, Geneva: WTO, paragraph 2.2.
43. World Bank (2008), World Development Report, Washington: WB, pg.106.
44. Sandra Polaski (2006), Winners and Losers: Impact of the Doha Round on Developing Countries, New York: Carnegie Endowment for International Peace.
45. WTO (2001), Ministerial Declaration, 14 November. Geneva: WTO, paragraph 14.
46. Group of 33 (G33), Ministerial Communiqué, 29 November 2009; Group of Ten (G10), Ministerial Meeting Press Statement, 30 November 2009; Sixth LDC Minister's Meeting, Dar Es Salaam Declaration, 20 October 2009.
47. Baris Karapinar & Christian Häberli (2010). Food Crises and the WTO. Cambridge: Cambridge University Press.
48. Weiss, T.G., Tapio Kanninen, and Michael Busch (2009), "Sustainable Global Governance for the 21st Century", FES Occasional Paper 45; Jennifer Clapp and Marc Cohen (2009), The Global Food Crisis: Governance Challenges and Opportunities, Waterloo: Wilfrid Laurier University Press.
49. Draft Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements," Draft by the UN Special Rapporteur on the right to food; available on http://www.srfood.org/index.php/en/component/content/article/1-latest-news/1543-human-rights-impact-assessments-public-consultation.

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Olivier De Schutter was appointed the UN Special Rapporteur on the right to food in March 2008 by the United Nations Human Rights Council. He is independent from any government or organization, and he reports to the Human Rights Council and to the UN General Assembly. All reports are available on http://www2.ohchr.org/english/issues/food/annual.htm. See www.srfood.org for a thematic classification of all reports and statements of the Special Rapporteur. The Special Rapporteur can be contacted on srfood@ohchr.org.