
Editorial: Adoption of non-trade concerns in WTO agricultural negotiations: integration of human rights in resolution of the conflicts

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1 Introduction

This is a critical time at the World Trade Organisation (WTO) concerning agricultural trade, the lynchpin of the Doha Development Agenda of multilateral trade negotiations. The crucial issues at stake are part of the larger controversy over management of globalisation so that domestic social and political stability will be improved. This is the overriding issue of our time, and agricultural trade can be viewed as a case in-point. Globalisation includes an emphasis on the benefits of the free flow of goods, capital and services. But the social concerns and tensions arising from this process must not be overlooked. This is what is meant by calls for 'balance' by many developing nations, and by economically developed countries that are substantial net food importers.

The excesses of globalisation regarding food and agriculture can be managed only by paying adequate attention to what are termed 'non-trade concerns' (NTC), and the ultimate Agreement on Agriculture (AoA) of the Doha Development Agenda will have to be balanced to achieve success. A balance must be struck in the WTO between agricultural trade liberalisation, on the one hand, and NTC on the other. The concepts of 'NTC', 'multifunctionality of agriculture', 'rights to self-determination in production and consumption of food', and even considerations about 'animal welfare' are central in attempts to balance the economic dimensions of trade with non-economic values.

To some, including many trade theorists and net food exporting countries, NTC are simply trade protectionism in disguise. To others, particularly net food importing countries at risk of basically losing one of their three economic sectors under heavy trade liberalisation, it truly is a major issue that cannot be resolved without careful consideration of long-term consequences. NTC are mandated to be taken into account in the current round of negotiations and they must be addressed in order to get a new AoA. They are legitimate concerns for their own sake and cannot be ignored regardless of cynics decrying them as a means to disguise protectionism. Thus, it is crucial to deal with the NTC issue from a conflict resolution standpoint to further the goal of trade liberalisation, yet take into account what in classical economics was considered 'political economy'.

One vexing issue is that while NTC are supposed to be taken into account in the negotiations regarding agricultural trade, as set forth in the Work Programme adopted at the WTO Ministerial Conference in Doha, Qatar November 2001 questions still abound about how to incorporate them in any meaningful way.

2 Issues and problems in NTC

The Preamble to the Uruguay Round Agreement on Agriculture (URAA) recalls that the long-term objective ‘is to establish a fair and market-oriented agricultural trading system’ and notes that:

“commitments under the reform programme should be made in an equitable way among all Members, having regard to NTC, including food security and the need to protect the environment; having regard to the agreement that special and differential treatment for developing countries is an integral element of the negotiations. . .” (World Trade organisation, 1994)

A problem – and an opportunity to assure that the key words ‘fair’ and ‘equitable’ are incorporated in an Agreement on Agriculture (AoA) – is that the URAA only states that NTC will be taken into account; it does not provide any definition or indication of what they are.

The WTO Ministerial Declaration from the Doha Conference is not much more help in defining NTC, for Article 13 merely states that:

“We recall the long-term objective referred to in the Agreement (Article 20 in the URAA) to establish a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions in world agricultural markets.” (World Trade organisation, 2001)

It is important to note that the word ‘protection’ has been added as it is especially important for the defining statement:

“We take note of the NTC reflected in the negotiating proposals submitted by Members and confirm that NTC will be taken into account in the negotiations as provided for in the Agreement on Agriculture.” (*ibid.*)

The mandate about taking NTC into account is clear and yet, well into the actual WTO negotiations (the modalities, i.e. the agenda of what can be discussed were agreed upon in Geneva on August 1, 2004), the role of NTC has been minimised, for several reasons. The *first* problem is lack of a clear or even accepted definition of NTC. The *second* difficulty is lack of clarity about how NTC fit in with the 1994 Uruguay Round Agreement on Agriculture (URAA), a vital concern since it provides the point of departure for the current negotiations. *Third*, there are no accepted criteria for their use. *Fourth*, advocates for substantial trade liberalisation do not even want to consider them. These are the problems addressed in this Special Issue of *IJARGE*.

3 Developing countries

There are 148 members of the WTO of which about 117 are considered developing countries. Article 13 of the Doha Development Agenda states:

“We agree that special and differential treatment for developing countries shall be an integral element of all elements of the negotiations. . .”

Difficulties abound, not the least of which is their diversity. At one end of the spectrum are those with a significant comparative advantage in agricultural production and, as such,

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primarily are interested in greater market access for their agricultural exports as well as reduced domestic and export subsidies (primarily by developed countries) to improve their terms of trade. At the opposite end of the spectrum are net food importing countries concerned about the inability of their agricultural sectors to compete at the world level. The majority of developing countries fall in the middle of the spectrum. They are struggling to feed their citizens, and are faced with the spectre that one day – if they are successful in achieving some reasonable level of economic development – they too will be required to open their borders to tariff levels set in this or other rounds of trade negotiations.

Very small developing countries are particularly at risk because no matter how much their economies grow, they can never compete with developed countries due to the small scale of their agricultural enterprises and very high transportation costs, aspects made abundantly clear in a World Bank conference on how to utilise trade liberalisation in economic development (Ingco and Winters, 2001).

In brief, it has become abundantly clear that virtually all developing countries have legitimate concerns stemming from the URAA and contemporary international pressures. The question facing most of them – and ironically a number of developed countries – is how the demands on their governments, aspirations of citizens, and agricultural sustainability can be met in a fair, equitable and balanced manner.

4 Special treatment for net food importing countries

It is logical to ask why NTC have grown to the extent that a decision was taken by the WTO General Council on August 1, 2004 to reserve for *special treatment* certain ‘sensitive’ agricultural products. There is no hard evidence, but it seems that the ‘Friends of Multifunctionality’ (Japan, Korea, Mauritius, Norway and Switzerland), was formed after the URAA in recognition that their agricultural sectors were going to get hammered in the next round if action was not taken. These net food importing countries, with their low food self-sufficiency rates (not to be confused with autarky, the goal of self-sufficiency) needed some way to validate their right to some protection of certain facets of their agricultural and food sector. The problem was how.

If countries with high dependency on food imports due to high costs beyond their control had simply stood up and said ‘we have a right to decide how to use our natural resources and determine the level of food security we deem appropriate’ they would have been deemed protectionist – a terrible label – even now despite Article 13 of the Doha Agenda mandate that deals with agriculture stating there will be, ‘specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets.’ The approach they took was to open the concept of ‘multifunctionality’ of agriculture to international debate. The result, as Sakuyama describes in his fascinating paper in this special issue, is that the concept has become legitimised.

It is important to realise that NTC, and within it the multifunctionality concept, are widely recognised as being very important. For example, 40 WTO members and observers met in Doha during the Ministerial Conference and held their own NTC Ministerial (Conference) from which a statement was released about the need to secure the coexistence of various types of agriculture, as foreseen in Article 13 of the Doha

Declaration. Another major step was the 4th International Conference on NTC in Agriculture at Ministerial Level, held in Rome, June 14 2002. This turned out to be a significant meeting as 54 ministers and representatives from WTO members and observers attended and reaffirmed their support for NTCs.

These meetings (not to mention the dramatic protests at the WTO Ministerial in Seattle, Washington that resulted in failure to set a new trade agenda) reveal wide acceptance that food is different than manufactured products, and farms are different than factories. In effect, while increased trade and efficiency are desirable, other values should also be taken into account, since materialistic progress is just one aspect of maximising quality of life in this world. Economic efficiency is a value, and it is a good value. However, ethically and legally it should be balanced against other values, and it should not violate human rights. The concept that people and countries, regardless of whether they are rich or poor, have a right to use their natural resources in the way they feel best meets their needs, desires and values, is evolving – but it is not part of WTO law – as Schoenbaum explains in his paper.

Article 5 of the Doha Ministerial Declaration states, ‘We are aware that the challenges Members face in a rapidly changing international environment cannot be addressed through measures taken in the trade field alone. . .’ The keywords highlighted earlier, ‘fair’ and ‘equitable’, in the Preamble to the URAA are simple, but vital for a plethora of countries at all levels of economic development that are worried about how their small-scale, high-cost agricultures will ultimately be affected by trade liberalisation. They are crucial for countries bent on deciding for themselves how to organise their use of natural, human and capital resources. In effect, NTC are a first line of defence for high net food importing nations (and in some cases food exporters) to prevent unfavourable, and in many cases disastrous, outcomes of current and future negotiations.

5 Common grounds and remaining gaps

A wide range of issues are covered in this Special Issue, and thus it is not possible to determine consensus on NTC as a whole, except that it is a very important and legitimate topic, and that it does need to be taken into account in agricultural trade negotiations. The papers in this Special Issue show that a great deal of thought has gone into theoretical aspects particularly on developed country problems, ranging from land use conservation to bargaining about who pays for what. A recurring theme is the problem of whether NTC are production oriented, such as income support to farmers, or whether justification of them is a wide-scale societal one. A big remaining gap is suggestions on the practicalities in how the topics discussed can be incorporated in current or future trade negotiations.

Other gaps are the practical ones related to the pillars of current negotiations; market opening, domestic subsidies and export subsidies. There are numerous contentious ones that that will have to be taken into account such as rules about what, and how much, to include in the blue, green and amber boxes to accommodate NTC. How about adding a ‘development box’ for the developing countries? Should there be a ‘flexibility box’ or a ‘security box’ for net food importing countries with low food self-sufficiency rates? These are very serious concerns among numerous countries facing an onslaught of imports (and loss of ability to compete in some food sub-sectors) are tariffs are reduced.

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Another gap in the papers is virtually no discussion about whether food is somehow different than other commodities and thus warrants special considerations in trade negotiations. It would seem that the whole basis for NTC is that food, and production of it, are somehow different and thus member countries have rights related to those differences. The following section has been developed as a thought piece intended to stimulate debate while reading the many and varied topics in this Special Issue.

6 Human rights dimensions: thinking outside the boxes

What are NTC? To many people the term equates to ‘multifunctionality’ of agriculture. But this is just a superficial way of thinking of NTC. In reality, the root concern is about human rights, and the issues that stem from this concept. More specifically, the issues are about whether a country or ‘peoples’ have a right to decide how to use their resources. Should this even be a topic in WTO?

There are several international covenants such as ‘The Universal Declaration of Human Rights’, and a later document promulgated by the United Nations called the ‘International Covenant on Economic, Social and Cultural Rights’ (ICESCR) that provide a human rights framework for NTC. Several sections of the ICESCR brought into effect a quarter of a century ago pertain to present day food production and WTO member proposals on multifunctionality. Article 1 states:

“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. All Peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.”

The term ‘Peoples’ is legally different from nations. The idea is that the rights covered are group rights that do not depend on the nation-state for their validity and recognition. The term ‘Peoples’ is better than nation states because it means that nation states cannot make derogations from the rights in covenants. The rights belong to the ‘Peoples’ and thus are inalienable.

There is also Article 6 which says:

“The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”

Common sense says improvement of economic welfare through international trade shifts will lead to losers in some countries and gainers in others. But this is different than worldwide imposition of regulations that could eventually emasculate a whole sector of a country’s economy, or at least most of it.

Article 11 deals specifically with food by saying:

“The States Parties to the present covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

Certainly the term 'continuous improvement of living conditions' must include the right to a nationally decided level of domestic food production as part of living a stress-free life, provided it is shown the citizens want it. This aspect is further reinforced by Article 11 which also exhorts States Parties to take into account 'the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of food supplies in relation to need.'

This article should be enough to show that a 'true level playing field' (a term often used by the agricultural exporting countries bent on drastic market opening measures) should include, for example, the right for countries to set minimum domestic food production levels they want as an integral part of fair and equitable agricultural trade rules.

Much of the controversy swirling around the WTO centres on grave concern about globalisation leading to homogenisation of cultures, disappearance of diversity, a feeling of helplessness and being controlled by powerful international forces. 'The International Covenant on Economic, Social and Cultural Rights' states, in Article 25, 'Nothing in the present covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilise fully and freely their natural wealth and resources.' This article may be interpreted as ensuring the right of any country, no matter what its economic status, to organise and protect a minimal portion of its agriculture the way it wants to, even to the extent of maintaining high-cost, small family farms if that is its citizen's choice. Virtually the entire developing world, and substantial aid agencies, support and promote small size farms in their development programmes.

There is a basis in the UN Charter that the human rights guaranteed in the Covenants have a special and higher status than other international agreements. Articles 2 and 55 of the UN Charter guarantee universal respect for human rights (Steiner and Alston, 2000). The UN Charter is a kind of international constitution and higher than the WTO agreements. Thus, all intergovernmental organisations must respect human rights principles.

Despite the foregoing, a reasonable question is whether in practicality the human rights argument can be used for NTC purposes in WTO agreements; for example, the right of a country to set some minimum level of food self-sufficiency, or to set other restrictions on imports as is the case with countries espousing the multifunctionality concept. The answer is that, at present, there is no precedent set for using the Covenant to override other international agreements. The WTO and human rights covenants are two different legal regimes. They are autonomous and do not generally collide. There is no court or authority to rule on which is higher. The WTO is only concerned with 'covered' agreements, i.e. the WTO agreements (Matsushita et al., 2003).

There are no cases on food security under the International Covenants and there are not likely to be. The covenants are enforced by each country filing a report with the UN Human Rights Committee. This group, as well as other UN members, can investigate to some extent and can always castigate a country for not living up to human rights norms. But, as can be imagined, no country or the Human Rights Committee has ever criticised any country for importing too much of its food supply. Of course, any country can make this argument under the Covenants, but the Catch-22 is that there is no way to litigate it or assert it before any international tribunal (Simpson and Schoenbaum, 2003).

The WTO dispute settlement apparatus does not have jurisdiction or the ability to decide such a human rights request because there is no provision in the WTO AoA

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asserting a food security right. There is none, so a country or group of countries would have to assert a rights related position during WTO negotiations and successfully have it included in a new AoA.

The WTO has never addressed the food security issue although there is considerable discussion about a 'development box' and ways in which the problems of lesser-developed countries can be addressed. NTC are only mentioned – referred to – and that is about all. In fact, it is impossible for a WTO member to assert or complain about lack of legislation related to food security or NTC to the WTO Dispute Settlement Body. The upshot is there is no international law on the issue of food security or NTC.

The problem is how to create the international law. The three agricultural pillars of market access, domestic support and export subsidies have specific provisions and precise legal criteria governing them. NTC on food and agriculture, which arguably can and should be the fourth pillar will always will be ignored, dismissed or, as is happening in the current round, cloaked in the veil of 'sensitive products' unless and until specific criteria are developed and inserted into a WTO agreement.

There is a conflict in this round and it is not about disagreements between developing countries and developed countries. It is not about some recalcitrant protectionist countries refusing to be 'team players on a level playing field.' It is about the right to decide that food is different from other commodities, that decisions on production of it and preservation of a country's culture, landscape and definitions of food security are inviolate human rights – and that human rights should count as much in the WTO as in the UN.

The authors in this Special Issue on NTC have invested a great amount of time and effort, and the fine contributions are testimony of how seriously they have undertaken their tasks. Yet, questions still abound. Is food different than manufactured goods or services? How about focusing on food (consumption side) rather than on agriculture (production side) in negotiating NTC? Should the WTO be a forum simply for deal-making and reducing barriers to trade, or should it be a forum for NTC and long-term benefit to all peoples? Should ethical issues – which NTC really are – be included as standards of conduct for 'fair' and 'equitable' trading in trade agreements? Should countries that are significant net food importers be given some leeway beyond the 'box' system to protect their agricultural sectors?

Review of the papers in this Special Issue reveal that almost all of the issues dealt with are from a national economic, farmer and agriculture production perspective. Instead, shouldn't NTC emanate from a consumer, citizen and societal desires and needs orientation? Is such a perspective beyond the intent and capabilities of WTO negotiations? In fact, should rules governing how WTO operates be revised to simplify its decision-making procedures? Is there a crisis that necessitates drastic market opening measures to the benefit of major food exporting nations? Resolution of these conflicts will be tough and arduous.

7 Contributors to this special issue on NTC

The arguments against NTC are well-known and have been made by many economists. They are alluded to and even examined by authors of most papers in this Special Issue; however, the purpose of this collection of articles is to provide a forum for implications of addressing them in trade agreements as opposed to dismissing them. The validity of these concerns is taken as genuine and (as shown in a paper by Sakuyama) is now also

taken as being legitimate, with the problem being how to deal with them. In brief, the quandary facing all contributors – all of whom are well-known agricultural economists with substantial experience in trade issues – is the way to include NTC in social welfare functions in addition to traditional concerns that have simply focused on improving economic efficiency at national and global levels.

This Special Issue of *IJARGE* includes papers on the four problems defined earlier and reasons why NTC are such a vexing part of agriculture in the Doha Agenda, and why agriculture is the most difficult of sectors in negotiations. The first problem, lack of clear or even accepted definitions of NTC is taken up in the next two papers. The first of those is by Jostein Lindland, a Norwegian national who is currently Senior Advisor to the Norwegian government. An agricultural economist with extensive work on the Uruguay Round of trade negotiations and in FAO, his paper is aimed at clarifying NTC concepts and providing a basis for the negotiations. He suggests some implications about *why* the market access provisions are of particular relevance to NTC, and *how* the market access modalities should reflect such concerns.

The great confusion about NTC and multifunctionality, two related concepts often considered synonyms, is the subject of the next paper by Takumi Sakuyama, a Japanese national. He has wide experience as agricultural attaché to OECD and as a core member of Japan's negotiating team leading up to current negotiations. Now serving as an economist at FAO, he reviews the historical debate on multifunctionality and concludes that its legitimacy is no longer controversial. He explains the reasons for the divergent positions in current negotiations and concludes with three justifications for gradual trade reform in light of the mandate to take account of NTC in this Doha Agenda.

The second reason NTC have been minimised – lack of clarity how they fit in with the URAA – is the topic of the paper by Thomas Schoenbaum, a US national. He is Professor of International Law at International Christian University in Tokyo, Japan as well as Professor Emeritus, University of Georgia, USA. A specialist on WTO, in addition to many other facets of international law, he explains how negotiations take place within the established WTO framework, and what that means for incorporation of NTC in the next AoA.

The third problem regarding incorporation of NTC in negotiations is lack of accepted criteria for and about them. Multifunctionality of agriculture has dominated the debate, and because of the extensive issues involved, eight papers are included in this Special Issue.

The first of the papers related to multifunctionality is co-authored by three agricultural economists. The lead author, Kathy Baylis, born in Canada and holding dual Canadian and US citizenship, is a member of the Faculty of Agriculture at the University of British Columbia, Canada. She has worked in high level positions concerning agricultural policy for both the US and Canadian governments. Gordon Rausser, a US national and professor at the University of California, Berkeley, have served on the President's Council of Economic Advisors, among many distinguished positions. Leo Simon, an Australian national, professor at the University of California, Berkeley is a well-known academic whose research ranges from formal economic theory to political economy. These three provide a comparison of US and EU agri-environmental programmes, focusing on how differences in flexibility that governs the ease – or lack of it – to which the two regions can accept a trade agreement that mandates greater reductions in trade-distorting price supports.

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The next paper is also a collaborative work. The lead author, David Blandford, born in the UK, but now a US citizen, is a professor at Pennsylvania State University, USA. He has been a member of Cornell University in the USA, and with the OECD Secretariat in Paris. Richard Boisvert, a USA national, is a professor at Cornell University. His long and distinguished career has included being Associate Editor of the *American Journal of Agricultural Economics*. They identify NTC that fall in the categories of market failure and misallocation of resources, and analyse domestic policies that can be used to address them. They conclude that WTO agreements are seen to play a secondary role to domestic policies for addressing NTC.

Implementation of multifunctionality is the topic of another co-authored paper. The lead author, John Lee, a professor of Purdue University, has received many national awards in his research area of natural resources and policy including being a Berg Fellow of the *Soil and Water Conservation Society*. Philip Paarlberg, also a professor at Purdue University, has worked extensively in analysing international trade policy issues. He has received many distinguished citations including a USDA Superior Service Award. Maury Bredahl, a professor at the University of Guelph, has a long career in agricultural research including being Professor and Director of the Center for International Trade at the University of Missouri in the USA. All three are US nationals. Their paper focuses on implementation of a policy designed around multifunctionality and its integration into trade rules. Three issues are addressed: identification of problems, techniques to quantify and place values on the problems, and determination of precise linkages between commodity output levels and externalities.

Ernst Nuppenau, a German national, is a professor at the University of Giessen, Germany. A resource and environmental economist that specialises in institutional economics, he has also served as lecturer at the University of Zimbabwe. His paper provides ways and models to specify the objective functions of farmers, consumers and government in various institutional set-ups with regard to bargaining on taxes and amenity provisions to achieve effective trade provisions in trade agreements.

Sjur Spildo Prestegard, a Norwegian national, provides a clear explanation of the problem about criteria for use of NTC by distinguishing between policies that aim to improve farmer's income, and those intended to enhance NTC and a multifunctional agriculture. His conclusions are that multifunctionality hardly can justify the use of market support although it may justify budget support, and that it does not seem that the issues on NTC and multifunctional agriculture play any significant role in the negotiations even though the issues, according to neoclassical economic theory, certainly deserve attention.

A very balanced paper on the issue is provided by Andrew Schmitz, a Canadian national, and his co-author Charles Moss, a US national, both professors at the University of Florida in the USA. They provide a clear, theoretical framework for the discussion of multifunctionality in agriculture. One model demonstrates that protectionism could be used to increase social welfare by increasing the quantity of non-traded goods produced and consumed. However, they conclude that, generally, multifunctionality arguments cannot support protectionism if externalities can be targeted more efficiently with other policy instruments.

The fourth reason NTC have been minimised is that many advocates of substantial trade liberalisation do not even want them to be considered. One group that has been pushing for substantial trade liberalisation is countries eager to increase their export

volume. The rationale for their position on NTC is obvious. Trade theorists, particularly those steeped in neoclassical theory regarding trade often argue vigorously that food and agriculture are no different than any other commodity, and thus competitive advantage is the criterion upon which WTO negotiations on agriculture should be based. Two country studies that provide rationales for why some countries should receive special dispensation to protect their agricultural sectors are included in this section, contending that their special cases should be considered. Lim Song-Soo, a Korean national, is Senior Fellow at the Korea Rural Economic Institute, Korea. He has considerable experience in both micro- and macro-economics research and policy issues, and comes well-prepared to deal with his topic, which is Korea's approach to NTC in the WTO negotiations. He concludes that food security, based partly on small-scale family farms and rural vitality, is a legitimate issue for Korea, and that the well-being of the rural area, in the way Koreans want to define it, must be incorporated in reform commitments.

James Simpson, a US national, is Professor of International Agriculture and Economics at Ryukoku University in Japan and is Professor Emeritus, University of Florida in the USA. He has had long-term assignments abroad for a decade and a half and has worked in nearly 40 countries. His paper highlights the problems faced by Japan, and countries in similar situations in their struggle to keep some modicum of an agricultural sector. It is concluded there are compelling reasons for doing so in light of changing world conditions.

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