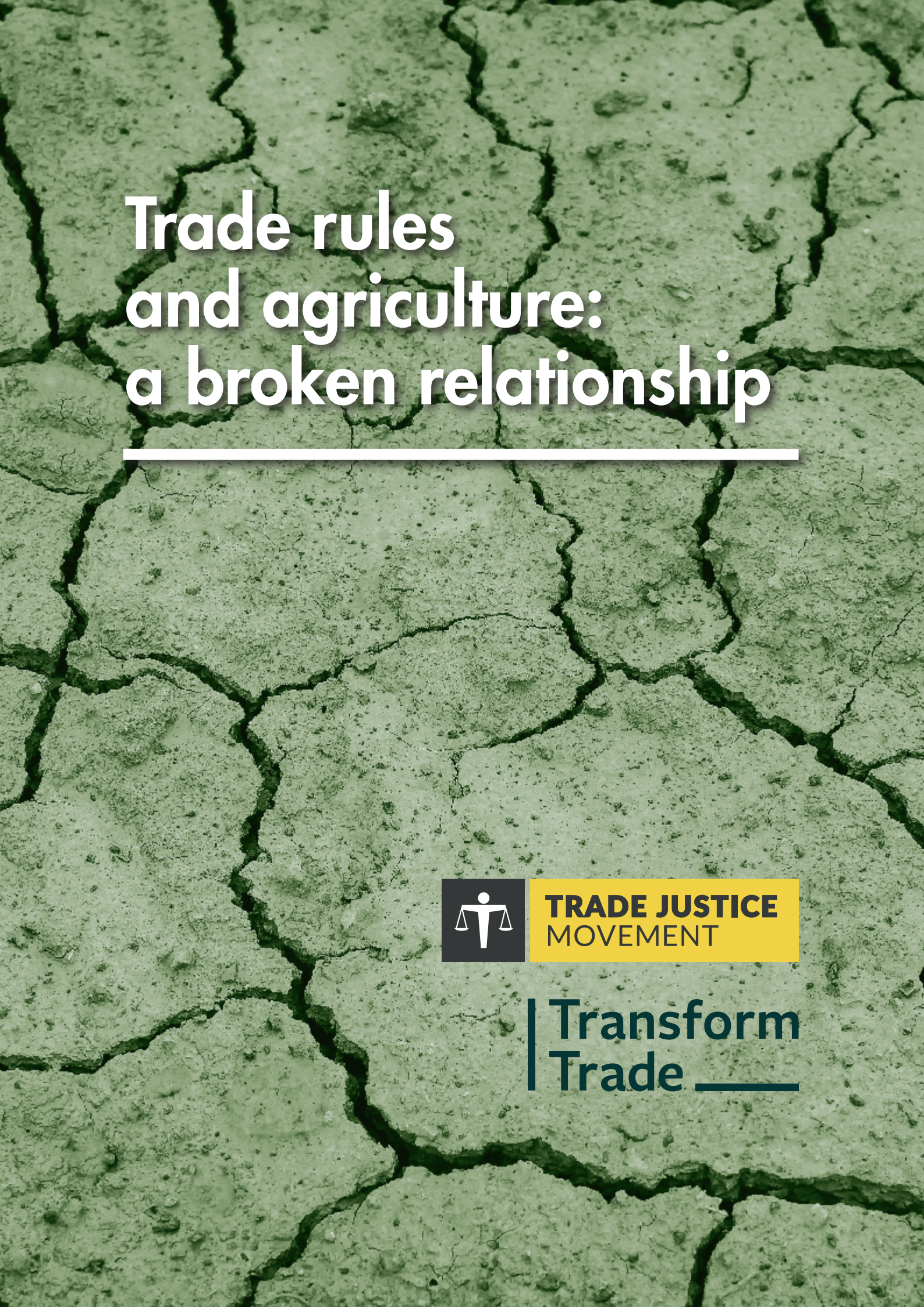


Trade rules and agriculture: a broken relationship

TRADE JUSTICE MOVEMENT

Transform Trade

Contents

Executive Summary

Trade rules govern both the movement of agricultural produce across borders and the policy space that countries have to shape their own agri-food systems, including to shift them to more sustainable or resilient agricultural systems and to respond to the priorities of women and smallholder farmers.

It is well-recognised, including in the Paris Climate Agreement (PCA) and the Sustainable Development Goals (SDGs), that changes to the agri-food system will be critical to tackling climate change and achieving poverty reduction. At the same time, trade rules have a significant impact on agricultural production, both as a traded commodity and in terms of the policy space available to countries to deliver a just transition to sustainable agriculture.[1] However there has been little action in the UK or internationally to consider how these two critical systems interact, particularly in a way that is informed by commitments to Common But Differentiated Responsibilities (CBDR) and Special and Differential Treatment (SDT): these commitments, found in the PCA and World Trade Organisation (WTO) agreements are meant to ensure that the different needs and priorities of developing countries are fully recognised and actioned.

This briefing aims to set out the most significant ways in which trade rules influence agricultural policy and makes preliminary recommendations for a UK strategy.

A broken system …

It is clear that the current globalised agri-food system is not working for the climate and poverty reduction. Despite promises that trade liberalisation would ensure efficient distribution of food, one in nine people today have an insufficient calorie intake, one in five suffer from micronutrient deficiencies, and yet more than 672 million adults are obese.[2] In recent years, failures in the global agri-food system have led to price shocks as major exporters of staples such as wheat close their borders. In addition, agriculture is responsible for nearly one-quarter of climate emissions.[3]

… produces unjust rules …

International agri-food markets are dominated by a small number of very powerful corporations, concentrated in a handful of countries.[4] These corporations and their lobbyists influence multilateral and bilateral trade rules, including the World Trade Organisation's Agreement on Agriculture (AoA), covering all 164 country members and forming the basis of bilateral Free Trade Agreements. The Agreement has resulted in an excessively complex trade system which has undermined developing countries' systems of domestic support, tariff regimes and ability to combat import surges while allowing richer nations to continue to subsidise their farming industries. In almost thirty years since the AoA, disagreements between WTO members mean this imbalance has never been redressed. Smallholders and women farmers, and workers in supply chains have had little if any voice in the development of these rules.

… which make it hard for farmers to make a sustainable living and help protect the environment …

Large agri-corporations, mostly owned and operated from Europe and North America, also benefit from extensive protections in areas such as science and technology. For example, the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement guarantees 20-year patent protections for innovations, and encourages members to use controversial plant

and seed patenting rules as a model for their intellectual property protections.[5] The provisions of the TRIPS agreement have formed the basis of provisions in bilateral trade agreements, including twelve UK agreements.

The United Nations has made some efforts to rebalance the global agri-food system in favour of small-scale farmers but whilst trade agreements have sharp teeth, UN agreements have struggled to have an impact. As a result, small-scale farmers are left with shrinking space to save and exchange seeds, whilst at the same time being excluded from access to new technologies that might help them to adapt to challenges such as climate change. As a result, smallholders are too often prevented from saving and exchanging seeds, and are excluded from accessing new technologies which might help them adapt to climate change.

… and now we're building castles on the sand.

Emerging issues such as climate-related trade measures and liberalised digital trade provisions for agri-tech are being discussed at the WTO and in bilateral trade negotiations which may exacerbate current inequities. Without significant change, developing country priorities are unlikely to be reflected in these measures.

Meanwhile, the proposals of developing countries, including those that were supposed to be part of the Doha Round of WTO negotiations in 2001, and more recently for a waiver to support public stockholding for food security continue to be resisted by developed countries.

The UK is not giving this issue sufficient priority …

The UK Government has no published trade strategy, while its strategy on agriculture and development dates back to 2015. Little consideration has been given to the issues raised in this report, and the UK farming sector was highly critical of the UK's first new post-Brexit Free Trade Agreement, with Australia.

… but a quiet revolution is happening.

Against the backdrop of climate change, a corporate-driven trade agenda and soaring food prices, farmers and other civil society groups are mobilising for agri-food systems change and food sovereignty across the world. For example, in 2020-2021, millions of farmers in India protested against the introduction of farm laws which sought to liberalise agricultural markets in the country, undermining farmer incomes. International farmer-led movements are calling for food sovereignty and a transition to agroecology. It is also widely recognised by governments and multilateral institutions such as the UN that the future of agriculture must be sustainable, although the means of getting there is contested. It's a critical time to influence positive change in the global agri-food system.

List of Acronyms

ACCTS	Agreement on Climate Change, Trade and Sustainability (WTO)
AMS	Aggregate Measure of Support (WTO)
AoA	Agreement on Agriculture (WTO)
CAADP	Comprehensive Africa Agricultural Development Programme (African Union)
CARIFORUM	The Caribbean Forum of the African, Caribbean and Pacific Group of States
CBAM	Carbon border adjustment mechanism (EU)
DCTS	Developing Countries Trading Scheme (UK)
CPTPP	The Comprehensive and Progressive Agreement for Trans-Pacific Partnership
EPA	Economic Partnership Agreement (EU/UK)
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FTA	Free Trade Agreement
IFAD	International Fund for Agricultural Development
IISD	International Institute for Sustainable Development
IPCC	Intergovernmental Panel on Climate Change
IP	Intellectual property
LDC	Least Developed Country
OHCHR	Office of the United Nations High Commissioner for Human Rights
SDG	Sustainable Development Goal (UN)
SSM	Special Safeguard Mechanism (WTO)
TAC	Trade and Agriculture Commission (UK)
TRIPS	Trade-Related Aspects of Intellectual Property Rights (WTO)
UNCTAD	United Nations Conference on Trade and Development
UNFCCC	United Nations Framework Convention on Climate Change
UNICEF	United Nations Children's Fund
UPOV	International Union for the Protection of New Varieties of Plants
US	United States
WFP	World Food Programme
WHO	World Health Organization
WTO	World Trade Organisation

The problem: industrialised agriculture, driven by globalisation and trade

> *"The Special Rapporteur on the right to food, in his interim report submitted in July 2020 to the seventy-fifth session of the General Assembly, invited States to advance trade policy from a right-to-food perspective. Noting that the Agreement on Agriculture of the World Trade Organization had been unable to provide adequate outcomes in terms of trade results and food security, the report, among others, recommended winding down the Agreement and negotiating new international food agreements."*
>
> United Nations Conference on Trade and Development (UNCTAD), 2021[6]

> *"For too long, we believed that trade liberalisation would lead to a gradual improvement in environmental protection as countries grew wealthier from increased trade flows. But the reality is that the system itself creates an incentive to compete by maintaining lower standards. Or worse yet, by lowering those standards even further."*
>
> Katherine Tai, United States (US) Trade Representative, 2021[7]

> *"Global trade rules on the support governments can provide to their farm sectors need urgent reform if countries are [...] to end hunger and malnutrition, achieve food security, and promote sustainable agriculture. Trade rules must balance the need to ensure that domestic support does not harm producers elsewhere with the need to increase public investment in agriculture and food systems. With the coronavirus pandemic and climate related volatility affecting global markets, improved rules on domestic support would also help improve stability and predictability in the global food system."*
>
> International Institute for Sustainable Development (IISD), 2020[8]

Agricultural produce has been traded for centuries, and in recent decades has delivered increased amounts of relatively lower priced food, mostly for consumers in developed countries. However this has often come at a high cost, historically relying on the slave trade, more recently on human rights abuses, poor working conditions, climate emissions and biodiversity loss. In addition, over recent decades, prices have been increasingly volatile, with a spike over 2022-23 that has been felt around the world.

It is well recognised that modern forms of industrialised agriculture have a significant

impact on climate change and biodiversity, for example through the widespread use of chemical fertilisers and the conversion of land from biodiversity-rich forests to monoculture cropping. According to the Intergovernmental Panel on Climate Change (IPCC), between 2007 and 2016, agriculture, forestry and other land use activities accounted for around 13% of global carbon dioxide, 44% of methane and 82% of nitrous oxide emissions, representing 23% of total net manmade greenhouse gas emissions.[9] The United Nations Framework Convention on Climate Change (UNFCCC) recommends the shift towards sustainable agriculture as one of the most important ways for countries to tackle climate change and biodiversity loss.[10]

Trade rules govern both the movement of agricultural produce across borders and the policy space that countries have to shape their own agriculture industries, including to shift them to more sustainable or resilient models and to respond to the priorities of women and smallholder farmers. These rules have been heavily influenced by the most powerful actors in the global industry: rich countries and their agricultural lobbies. As a result, trade rules prioritise liberalisation of markets, promoting competition and providing short-term profits for corporations trading internationally.

Not only has the increased industrialisation and globalisation of agriculture been responsible for significant climate and environmental harm, it has not been able to redress the imbalance which continues to see large numbers of people experience hunger and malnutrition: one in nine people (some 821 million worldwide) have an insufficient calorie intake, and one in five (1.5 billion) suffer from micronutrient deficiencies, while more than 672 million adults are obese.[11] Furthermore, in some cases export-oriented agriculture has exacerbated hunger by decreasing the resilience of countries in the face of famine: a 2019 study estimated that a 10% increase in food trade openness could increase global hunger by 6%.[12] In recent years, failures in the global agriculture trade system have led to price shocks as major exporters of staples such as wheat close their borders in response to droughts, or produce becomes unavailable due to war. This is contributing to extreme rates of hunger in many parts of the world, most notably in the Horn of Africa.[13]

Rich countries dominate agricultural export markets in terms of value: at around US $148bn, the United States (US) is by some distance the largest exporter, the Netherlands comes in second at US$101 billion.[14] The only developing countries in the top 10 exporters are Brazil (US$85 billion) and China (US$67 billion).[15] In terms of total overall production, including for domestic consumption, China and the European Union (EU) top the table.[16] Major agriculture exporters also tend to be the largest providers of domestic support such as subsidies.[17] They are also responsible for around two-thirds of global greenhouse gas emissions from agriculture.[18]

Agricultural trade is in addition highly concentrated amongst a few large multinational corporations mostly based in the global North. For decades, four corporations (Archer-Daniels-Midland, Bunge, Cargill and Louis Dreyfus) dominated the global grain trade, covering at least 70% of the market.[19] The group has been joined more recently by China's state-owned COFCO and a couple of other Asian corporations. Whilst many communities struggle to afford food, and smallholder farmers struggle to earn a living income, profits for corporations in the industry have remained high through recent crises: Cargill reported a 23% increase in revenues to a record $165bn by mid-2022; during the second quarter of the same year, Archer-Daniels-Midland had its highest profits ever.[20]

Although developing countries and their producers do not feature in the major players of the global agricultural industry, they have increased their share of the global agri-food market, from around 32% in 1990 to 46% in 2019.[21] However this change is led by a small group of higher-income developing countries,

including Brazil, China, India, Mexico and South Africa. Least Developed Country (LDC) share of global agrifood export is 1.5% and most LDCs are now net agricultural importers.[22] They nevertheless remain highly dependent on agriculture as a source of income and livelihoods: agriculture accounts for between 30 and 60 percent of gross domestic product in LDCs and employs an average of 59% of workers in low income countries.[23] In addition, smallholder farmers feed between 35%-70% of the global population, producing around a third of the world's food.[24] The Food and Agriculture Organisation (FAO) identifies "poor infrastructure, limited adoption of technologies, lack of access to inputs and financial resources, and weak institutions" as the key factors limiting LDC productivity growth and competitiveness.[25]

This lack of growth and competitiveness has significant human consequences. Of the 2.5 billion people in poor countries whose livelihoods are dependent on the agri-food systems, 1.5 billion people live in smallholder households, many of which are extremely poor.[26] Women make up, on average, 43% of agricultural labour in developing countries. Yet women smallholders face a range of barriers such as lack of land ownership, access to finance and access to markets, which mean they produce 20-30% less than men; equalising this gap could boost agricultural output and decrease global hunger by 17%.[27] Women and smallholder farmers will be central to achieving the transition to sustainable agriculture, yet they have little voice in policy debates.

What is 'sustainable agriculture'?

There are a range of definitions of what sustainable agriculture should look like, including agroecology, regenerative agriculture and nature-based solutions. The International Panel of Experts on Sustainable Food Systems suggest that agroecology "has reached the furthest in conceptual maturity and definitional clarity", including recognising and seeking to address power differentials in agri-food systems.[28] They suggest it has the greatest acceptance by international and technical advisory bodies.

The UN Food and Agriculture Organisation calls for a system "in which food is nutritious and accessible for everyone, and where natural resources are managed in a way that maintains ecosystem functions to support current, as well as future human needs. In this vision, farmers, pastoralists, fisherfolk, foresters and other rural dwellers have their voices heard, benefit from economic development and enjoy decent employment. Rural men and women live in security, have control over their livelihoods and equitable access to resources which they use in an efficient way."[29] The approach is based on five principles that balance the social, economic and environmental aspects of sustainability.

Since one of the primary functions of the current trade system is to 'provide certainty' for corporations trading internationally, a lack of firm agreement on the definition of sustainable agriculture could lead to a greater likelihood of challenges through the trade system. This is exacerbated by the significant concentrations of production amongst countries and corporations.

This report uses the term 'sustainable agriculture' as an umbrella term, however an important consideration is how to ensure policy space for different approaches can be maintained in the trade system.

How trade and agriculture interact

This section outlines the WTO rules and provisions within Free Trade Agreements (FTAs) which affect the production and trade of agricultural goods and obstruct the transition to sustainable agriculture.

Formed in 1995, the WTO brought agriculture into the multilateral trading system in a more comprehensive way than previous agreements. Over three-quarters of the 164 WTO members are developing countries or LDCs.[30] Previously agricultural trade was shaped by unilateral policies and measures, or inconsistent bilateral or plurilateral deals. In theory, creating a more limited set of rules should have created a system that was easier for developing country producers to navigate. However a number of studies have found that in practice the negative impacts on these farmers outweighed the positive.[31]

Key principles

There are a number of key principles which apply to trade in agricultural produce and to trade-related domestic policies:

- Under the agreement on sanitary and phytosanitary measures, members are allowed to take measures necessary to protect human, animal or plant health. However these measures must not be "applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination" and should not amount to "a disguised restriction on international trade";
- Measures must be based on scientific principles and not maintained without sufficient evidence;
- Members have also committed to working towards regulatory harmonisation through international agreements such as the Codex Alimentarius, the International Office of Epizootics and the International Plant Protection Convention[32];
- Under the WTO's Technical Barriers to Trade agreement, measures taken must in addition "not be more trade-restrictive than necessary to fulfil a legitimate objective.".

The above principles can combine to make it difficult for countries to introduce new regulations into the agri-food system. For example:

- The EU's ban on hormone treated beef has been challenged by the US on the grounds that it is not based on scientific evidence and instead on the EU's 'precautionary' approach[33];
- The US ban on purse seine fishing, brought in to protect dolphin populations, was challenged by Mexico. The challenge was ultimately unsuccessful but it took almost 20 years for the US to defend the measure, at a likely cost of millions of dollars[34];
- India's domestic support measures for sugarcane and sugar producers, which includes price supports, a minimum selling price, production subsidies to offset sugarcane price arrears and the maintenance of buffer stocks, have been challenged by Guatemala, Australia and Brazil because India's original schedules, submitted to the WTO, did not include export support commitments. India should, according to WTO rules, limit its support to 10% of the total value of production and have zero export supports.[35]

The majority of disputes brought under the WTO AoA are between larger economies. This could be for a number of reasons, for example the resources available to a complainant country to bring cases or the relative size or importance of the farming sector in the exporting countries. Power dynamics also impact on the outcomes of disputes: when the US was successfully challenged by Brazil for its continued use of trade-distorting cotton subsidies, instead of facing retaliatory border tariffs on goods it was exporting to Brazil, it instead offered significant compensation to the Brazilian cotton industry.[36] Although the 2014 US Farm Bill eliminated direct and countercyclical payments, a significant insurance system was maintained, with no upper limit on potential payouts.[37]

Similarly, the EU has been found in breach of WTO rules for its ban on hormone-treated beef but has been able to withstand retaliatory tariffs from the US and then negotiate a compromise which keeps the ban in place.[38] In effect, more powerful countries can work around the system without necessarily addressing their 'trade-distorting' measures, as they are ostensibly committed to in line with WTO rules. Indeed, the US has effectively brought the WTO's dispute settlement mechanism to a standstill by refusing to appoint one of the judges. Although some developing countries including Brazil, China, India, Russia and South Africa, are sometimes able to exert similar degrees of influence, this is impossible for smaller economies.

Another important principle which underpins the international trading system is the equal treatment of products both foreign and domestically-produced. WTO rules often prevent countries from taking into account the methods of production and processing of products, unless they have a direct impact on the final product. For example, maximum residue levels (MRLs) for pesticides in food are determined by the EU and other countries on human health grounds. This can in theory lead to a de-facto 'ban' on the use of a certain pesticide in the production of a food product for EU import if the MRL is set at too low a threshold.[39] However, the EU cannot prohibit outright the use of a certain pesticide in the production of food products which it imports due to health or environmental impacts in the producer country.

There is currently an active debate around the legitimacy of trade measures which discriminate against products on the basis of "process and production methods". This is likely to increase in importance as countries move towards sustainable agriculture, discrimination based on the carbon footprint of a product, the use of environmentally friendly packaging or the use of fair labour practices could be found to be in breach of international trade law.[40]

The WTO Agreement on Agriculture

The AoA is the primary agreement under the WTO that applies to agriculture. It sets the baseline of liberalisation below which WTO members must not fall. It covers market access (primarily tariffs); domestic support (market price support, investments in infrastructure such as irrigation systems, storage and transportation infrastructure or information and monitoring systems, research, development and technology, income support programmes and public stockholding programmes) and export competition (limiting the use of export subsidies).[41]

'Dirty Tariffication' and dumping

The AoA seeks to reduce both border tariffs and other non-tariff measures such as subsidies. WTO members agreed to 'convert' the latter into tariffs, referred to as 'tariffication'. However there was little agreement as to the most appropriate methodology and significant difficulties in agreeing reference prices in the context of a highly volatile market.[42]

The AoA focused on reductions in 'bound' tariffs: the upper limit which countries agree not to

exceed. Developed countries were required to make an average 36% reduction to their bound tariffs, with a minimum 15% cut for any individual tariff over a six year period. For developing countries it was an average 24% reduction, with a minimum 10% reduction for an individual tariff over a ten year period. LDCs bound their tariffs but were exempt from reduction commitments.

In practice, during the Uruguay Round of negotiations which culminated in the formation of the WTO, countries based tariffs on their own tariffication calculations. Unless another WTO member objected, these could come into effect. Many exporting developing countries lacked the resources to undertake detailed examinations of the draft tariff schedules of other WTO members and found themselves faced with prohibitively high tariffs on the products which they intended to export. Because of the use of a reference period when the difference between the world market price and the domestic price was wide, in many cases tariffication did not result to a lowering of trade barriers. In addition, some WTO members set lower tariffs on raw materials and higher tariffs on processed agricultural products so as to protect domestic processing industries. These three "side effects" of tariffication are known as "dirty tariffication", "tariff peaks" and "tariff escalation".[43] Because levels of protection were extremely high, the overall impact of the agreement was to leave in place significant barriers to market access for both developed and developing countries. This situation has never been resolved and tariffs on agricultural products continue to be much higher than those on industrially processed goods.

In addition, developed countries succeeded in securing a Special Safeguard Mechanism (SSM) allowing them to temporarily raise import duties on agricultural imports if they undercut domestic farmers or risk dumping. The SSM is only available to 39 countries – no LDC is part of the list and South Africa, Namibia, Swaziland and Botswana are the only sub-Saharan African countries that benefit from it. The EU lists 685 products (31.1% of all agriculture tariff lines) under the SSM, and has made significant use of the provision, for example for poultry and sugar products.[44]

Import surges

The combination of developing countries being compelled to lower their tariffs whilst developed countries use the trade system to protect domestic subsidies has led to a huge imbalance in agricultural production. One of the outcomes of this ongoing imbalance in agricultural trade is that developing country sectors have been hit by import surges from developed countries.

This was well documented by Olivier de Schutter during his time as UN Special Rapporteur on the right to food. For example, in Cameroon, poultry imports increased nearly 300 percent between 1999 and 2004. 92% of poultry farmers dropped out of the sector and 110,000 rural jobs were lost each year between 1994 and 2003.[45] Developing countries have long argued for an improved SSM to allow them to tackle import surges or sharp falls in prices. This issue has been pursued, primarily by the G-33 group of developing countries, in recent WTO negotiations, but with little success.

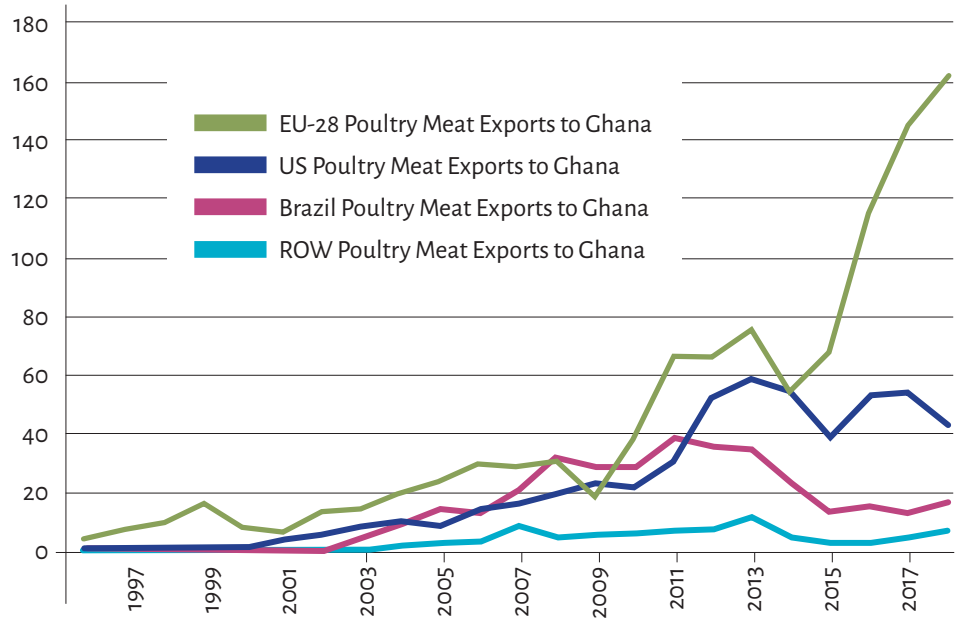
CASE STUDY: Ghana poultry industry

Imports of frozen chicken from the EU, Brazil and the US into Ghana exploded in the early 2000s, after the Ghanaian government reduced import tariffs for poultry to 20% in the late 1990s. Frozen chicken imports, priced at up to 30% lower than local poultry meat, decimated the domestic poultry sector. In 1992, the local industry supplied 95% of Ghana's poultry requirements, by 2002, the local industry supplied just 11%.[46]

In response, the government implemented a package of measures to protect local producers, including introducing tariffs of 40% in 2004, reducing tariffs on imported farm inputs (feed, additives, medicines), improving access to veterinary services, and withdrawing foreign exchange support to importers. However, the tariff increase was reversed after just two months because the International Monetary Fund opposed higher tariffs on the grounds that it would hurt Ghana's Poverty Reduction Program.[47]

The poultry sector then took the Government to court and the higher tariffs were reinstated. They also succeeded in getting poultry excluded from liberalisation in the Ghana-EU Economic Partnership Agreement and the Ghana-UK FTA. However the measures were too little, too late, and were not accompanied by the necessary investments in addressing supply side constraints and market challenges to make the domestic Ghanaian poultry industry more competitive, or to increase production enough to meet the growth in local demand. Although the poultry meat tariff today stands at 35%, the local industry has not recovered and imports have continued to surge, as shown in the graph below.

Figure 1: Main exporters of poultry meat to Ghana 1996-2018 (1000 tons)[48]



Distorted rules on agricultural support measures

The WTO differentiates between different kinds of agricultural support which governments offer to farmers:

- **Green Box:** measures that cause no more than minimal trade distortion, these are exempt from all limits;
- **Amber Box:** support that is trade-distorting because it is linked to production and prices and should be kept below agreed thresholds;
- **Blue Box:** measures that might otherwise be in the amber box but can be placed here because the supports are accompanied by production-limiting constraints. There are no limits on the amount of blue box supports.[49]

The AoA created rules around the support which governments can offer to their agricultural producers. Generally speaking, this has been to the benefit of richer countries, which have been able to adjust support for their agriculture sectors within the rules, negotiate additional support entitlements and historically commanded more financial resources to support their farming sectors. There has been a systemic failure to protect more vulnerable WTO members from food insecurity and threats from cheap imports, or to ensure richer members do not distort trade in agricultural commodities.[50]

The OECD's Agricultural Policy Monitoring and Evaluation report 2022 finds that overall support for agriculture continues to increase in absolute terms for the 54 developed and emerging economies it studied. It finds a 2.4-fold increase in support, compared to a 3.3-fold increase in the value of agricultural production over the previous 20 years. It finds that agricultural policy reforms in OECD countries have stalled or reversed and support levels in emerging economies, particularly China, have increased significantly. It is of note that they also find that a smaller percentage of these supports has been allocated to 'general services' for the farming sectors, which implies that relatively less funding has been made available for climate change and agri-food systems goals.[51]

Green box supports which can be proven to be non-trade distorting could be used to support the transition to sustainable agriculture, however this assumes that countries have the resources to offer such support. The Comprehensive Africa Agricultural Development Programme (CAADP) demonstrates that developing countries often struggle to allocate sufficient support to their farming sectors: CAADP has a target of 10% of public expenditure being directed towards agriculture but in 2017 the figure for Africa was just 6.7%.[52]

'Amber box' or trade-distorting subsidies have been controversial since the formation of the WTO thirty years ago. Under the Aggregate Measure of Support (AMS), price support is measured relative to a fixed base period, and not against current market prices. Domestic support under the AoA concentrated on reducing total AMS by 20% over the implementation period for developed countries and by 13.3% for developing countries over 10 years from their 1986–88 averages. As a result, members with large absolute AMS levels in the base period (such as the European Union, the United States, and Japan) were left with large absolute bindings and modest commitments to reduce these.[53] Developed countries were able to retain product-specific high AMS levels, allowing them to heavily subsidise agricultural production of certain products whilst remaining within WTO rules (e.g. beef production in Japan and dairy production in Canada).[54]

Other countries did not have an automatic ability to provide support under this WTO category and had to negotiate the ability to do so. The majority of developing countries in the WTO have a set de minimis level of direct support of 10% with no additional AMS entitlements.

Photo: Ronile, Pixabay

Often this threshold is too low. In particular, where food insecure countries see a need to buy commodities from their domestic farmers in order to prevent hunger among their population.

While a country buying produce for public stockholding could be compliant with Green Box rules if it is bought at market price, this is often too expensive. What happens in reality is that it may only be able to afford to buy food from domestic producers at lower than market prices, which would fall under Amber Box, or 'trade distorting' rules. This means that food insecure countries are more likely to exceed their domestic support thresholds, because their populations are more vulnerable to hunger and malnutrition than those of wealthy countries. This imbalance was recognised by WTO members and was supposed to be addressed in future negotiating rounds, however the EU in particular resisted reopening negotiations. As a result, the imbalance has never been addressed.

Over time, changes under the AoA have resulted in significant reductions in Amber Box, or trade-distorting, support. However the impact of this reduction is debatable, given that countries can use other levers to protect their domestic farming sectors. In particular, some developed countries have switched from paying for productivity increases (e.g. through subsidising fertiliser), to paying for other 'non distorting' measures (e.g. environmental protection), thus maintaining relatively high levels of support overall. For instance, the EU has decreased its Amber Box support from €81 billion in 1995 to €5.3 billion in 2019/2020. At the same time, it has increased its notifications of Green Box (permitted) support by approximately €68.5 billion in 2019/2020, representing 85.7% of its total support.[55] This demonstrates that developed countries in particular are able to comply with the AoA while still maintaining high levels of support for their farming sectors.

In some cases, members have also sharply reduced their AMS levels by eliminating price support programmes, but maintained price support through high tariff levels. Developed countries managed to negotiate a very high maximum tariff on key commodities. This means in practice they protect their own agricultural industry due to a reduced threat

from cheaper imports. For example, Japan (rice) and Canada (poultry) have maintained relatively high commodity support, though at negligible AMS levels, because they eliminated their price supports for those commodities while maintaining high tariff protection.[56]

Permitted levels of overall trade-distorting support remain high.[57] Actual support levels in some large developing countries have also grown significantly over the past 25 years. This allows producers in countries providing support to compete unfairly with those elsewhere and undermines efforts to allocate global resources more sustainably, equitably, and efficiently.[58]

Public stockholding for food security

Many developing countries have programmes to acquire food for the purposes of providing a buffer against volatility in global prices, which helps support low-income farmers and allows governments to combat hunger and malnutrition. However, depending on how the programmes operate, they can fall foul of issues in the AMS calculations, as outlined above.[59] The G-33 bloc of developing countries at the WTO has long lobbied for rules to allow this stockholding. There are a number of specific proposals designed to build resilience against international price and climate shocks, such as exempting LDCs from AMS provisions as well as revising the definitions and calculations that sit behind AMS provisions.

In a 2013 agreement, WTO members agreed to "exercise due restraint" in the initiation of complaints to challenge the compliance of a developing-country member with obligations under the AoA. The agreement also committed members to agree to a permanent solution by 2017. However this deadline was missed and there has been little progress since then.[60]

This section illustrates that the SSM is not tailored to the needs of developing countries, and there is a need to address the disparity in agricultural support between WTO members.

The WTO TRIPS Agreement - Intellectual Property rules and UPOV

Intellectual property (IP) rights, covering everything from seeds to medicines, protect the profits of corporations by limiting the extent to which competitor countries and corporations can copy them.[61] However, this is a highly contested area: whilst corporations argue that protecting these rights is critical for ensuring the development of important new technologies, others point to the fact that a significant proportion of knowledge development is publicly-funded in its early stages whilst the profits often end up in private hands, and that corporations often claim rights over knowledge which had already been available to communities for centuries. It is also recognised, both in the Paris Climate Agreement and the UN Sustainable Development Goals (SDGs), that the transfer of intellectual property, in the form of know-how and technology, will be critical to addressing the climate crisis and to achieving sustainable agricultural production. This is inconsistent with current IP protections.[62]

The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the IP chapters of FTAs provide binding protections for intellectual property, for potentially all fields of technology, and for their extension and expansion. For example TRIPS enforces a minimum 20 year protection for patents and 10 years for industrial designs.[63]

The WTO encourages members to adopt international standards as a way of harmonising rules across countries and promotes the International Union for the Protection of New Varieties of Plants (UPOV). UPOV rules prevent farmers selling or exchanging seeds. Although there are exceptions, these are difficult to navigate: countries may grant licences to breed a protected variety for non-commercial purposes, but only if they follow 'due process' and ensure 'adequate compensation' for the patent holder. In practice, this can create significant barriers

to the development of generic versions of important technologies. Countries which don't comply with the UPOV Convention, or which attempt to withdraw, may be subject to the arbitration and sanctions systems built into trade agreements, such as fines or retaliatory tariffs.

The 2001 International Treaty on Plant Genetic Resources for Food and Agriculture was created partly in response to WTO/UPOV rules, in order to rebalance protections in favour of peasant farmers. The 2018 UN Declaration on the Rights of Peasants and Other People Working in Rural Areas offers further protections, including the right to "maintain, control, protect and develop their own seeds and traditional knowledge".[64]

In theory, because these two treaties identify and protect human rights, they should take precedence over the intellectual property rules laid out by the WTO. However implementation in national law is uneven. Because TRIPS is a binding agreement with mechanisms in place to challenge countries that break the rules, WTO members have protected intellectual property on plant varieties in their national laws. In doing so, some states have opted for patents, while most of the others have adopted laws to protect breeders' rights that are UPOV-compliant. In contrast, the Plant Treaty protecting farmers' rights has not seen the same level of legislative response from countries.[65]

Signatory countries that do not comply with the terms of the FTA provisions on the UPOV Convention are subject to the arbitration and sanctions systems that are built into the trade agreements, such as fines or retaliatory tariffs – whether they are UPOV signatories or not. This practice pushes countries to change their domestic laws to comply with UPOV 1991. It could be even more problematic for signatory countries because if a country decides to leave UPOV 1991, it cannot do so without breaching

Women store seeds in a community seed bank, Jharkhand, India. Photo: GMB Akash/Transform Trade

the terms of the FTA, or getting agreement from FTA partner countries to change the text of the FTA. Finally, IPRs are frequently protected in international investment agreements, such as Bilateral Investment Treaties or investment chapters in trade agreements that include controversial investor-state dispute settlement mechanisms.

Emerging issues

Climate-related trade measures

A number of climate-related trade measures are currently under discussion. The majority of these measures are being proposed unilaterally or plurilaterally by developed countries, and there is a risk that developing country priorities are not reflected in the implementation or design of such measures, meaning they are likely to reinforce and potentially exacerbate current inequities.

The introduction by developed countries of core environmental standards, which all imports would have to meet, has direct implications for trade in agricultural goods. Other measures which carry a potential impact include:

- a carbon border adjustment mechanism (CBAM);
- a climate waiver;
- the trade and sustainability agreement (ACCTS);
- the liberalisation of green goods and services.

Such measures may not immediately impact on agricultural commodities but could have wide ranging future impacts on the cost and availability of agricultural inputs. Whilst the EU's CBAM, set to take effect from 2026, does not include agricultural products, some EU countries have signalled they would be keen on doing so in the future.[66]

Furthermore, although enabling technology transfer is a major commitment of the UN climate process, rules in trade agreements create obstacles to this by giving disproportionate protection to intellectual property rights.

Digital trade rules

Trade agreements governing the digital sector are increasing in number and scope. For small scale sustainable farming, access to technology and data tools can be empowering, for instance by providing more up-to-date weather or market information. However, digital provisions in trade agreements tend to reflect the priorities of big tech corporations (typically based in the US, the EU and China) and are already contested by a number of developing countries. For example, African countries have raised concerns that e-commerce negotiations will not bring benefits to developing countries and could constrain their policy space to regulate and tax tech corporations.[67]

The digital chapters of FTAs seek to limit the ability of signatories to ban cross-border data sharing or require that corporations disclose the source code and algorithms that are the building blocks of software. This is problematic from a data protection and health and safety perspective. However, in echoes of the raw materials 'resource curse', developing countries might also find themselves producing raw data for the use of foreign corporations, unable to direct that valuable data towards their own tech corporations and forced to import expensive new technology.[68] Farmers using digital technology will therefore be generating a valuable resource for big tech corporations which control the data.

It will be important for stakeholders and governments to carefully monitor and scrutinise the impacts of digital trade agreements.

Workers rights

Agricultural value chains have long been linked with human rights abuses and environmental degradation.[69] The WTO does nothing to balance the extensive rights offered to corporations with

Smallholder tea farmers pick tea leaves in rural Bangladesh. Photo: GMB Akash/Transform Trade

new obligations when it comes to respecting rights. In some cases, WTO rules undermine the ability of countries to impose restrictions on products if they are linked to poor working conditions or human rights violations. It is clear that in increasingly global food supply chains, human rights and labour rights need to be addressed through trade policy. Without binding rules on labour rights and human rights, FTAs have so far failed to respond to abuses arising within global food value chains in any comprehensive or meaningful way.

However, there has been an encouraging trend towards countries enacting unilateral trade-related measures designed to tackle human rights abuses and sustainability. The EU has introduced a regulation on 'deforestation-free' products (and the UK committed to do the same under its Environment Act 2021), while the European Parliament is currently examining a proposal from the Commission to ban all imports and exports of products made with forced labour. The Tariff Act in the US allows border officials to impound goods suspected to have been produced using forced labour. In 2021, the US went further by introducing legislation to prohibit all goods produced in China's Xinjiang region, unless an importer can provide sufficient evidence that their shipment is not tainted with forced labour.

Countries are also beginning to implement more comprehensive domestic legislation aimed at holding corporations accountable for their supply chain practices. France, Germany and Norway have already passed such laws, and the EU, with its Corporate Sustainability Due Diligence Directive, is not far behind.[70] The UN is also currently negotiating a Binding Treaty on Business and Human Rights which aims to hold corporations accountable for abuses that occur in their global operations and supply chains. However, developing countries have long raised concerns about such unilateral measures, arguing that they are the least able to bear the burden of administering them and depending on how they are implemented, could lead to a number of negative effects.[71] For example, without adequate financial and technical support, small and medium enterprises could be economically excluded due to the high cost of compliance.[72]

Aside from UN processes, the trend that's emerging is one where developed countries are unilaterally introducing trade-related measures to tackle human right abuses. It is clear that

under increasingly globalised food value chains, human rights and labour standards need to be addressed in trade policy. However, there are critical questions arising about where and how trade policy should and could address these issues in a way that benefits particularly more marginalised groups in agricultural supply chains such as smallholder farmers.

UK Context

UK agri-food system

International trade in agricultural goods is significant for the UK: it is heavily dependent on imports for both domestic food consumption and food and drinks manufacturing. The UK imports roughly 46% of the food its population consumes and the UK agri-food sector contributed 6% to the UK's Gross Value Added in 2020.[73] The vast majority of UK food exports are highly processed, meaning they are often dependent on complex supply chains. Additionally the UK agri-tech industry is worth an estimated £26bn, while the UK chemicals industry, including fertiliser and pesticides, is the country's largest manufacturing exporter (in 2020, UK exports of chemicals were worth $59.22bn).[74]

UK trade strategy

The UK is a full member of the WTO and is able to set an independent approach to international trade. To date, the UK has no published trade strategy to guide its approach and the most recent strategy focused specifically on agriculture and development dates back to 2015.[75] More recently, its approach has been incorporated into the 2022 Strategy for International Development and the 2021(23) Integrated Review of Security, Defence, Development and Foreign Policy. These documents tend to emphasise the increasing consolidation and commercialisation of the agri-food system. The 2015 strategy envisages that most rural poor people will leave farming to take up employment in other sectors. This approach has been criticised for ignoring the vital contribution that small farmers, particularly women, make to agricultural sustainability and the availability of food, and for unrealistic expectations in terms of opportunities in other sectors available to rural communities.[76] Part of the Government's Overseas Development Assistance funds its 'aid for trade' programmes, some of which are aimed at promoting better access to agricultural markets for developing countries. However, it is generally acknowledged that it has funded projects which benefit large agri-corporations and UK interests, rather than smallholders.[77]

UK approach to agriculture in trade policy

The lack of a published strategy makes it difficult to summarise the UK approach. The UK's FTAs to date suggest that the Government does not view agriculture as a key strategic industry. Indeed, George Eustice, former Environment Secretary, has criticised the Government for not giving priority to its own farmers in negotiations.[78] Other analysis suggests that the UK plans to move away from the EU's approach to agri-food and pursue instead a much more free market approach to agri-food trade policy.[79]

Significant concerns have been raised about the likelihood of trade agreements leading to downward pressure on UK agricultural standards. If trade agreements allow the import of products produced to lower standards (e.g. lower animal welfare standards disguised through the use of chemical washing; higher levels of hormone treatment; higher levels of pesticides) UK farmers would find themselves undercut, unable to compete with goods produced under less stringent regulation. Many UK farmers are already struggling to make a profit from their produce whilst being asked to improve their environmental management.[80]

In response to these concerns, the Government established the Trade and Agriculture Commission (TAC), a body with the remit to

consider the impact of trade deals on the UK's ability to maintain its existing standards for animal health and welfare and environmental protections. The TAC produces a report on each new UK trade agreement, to which the Government is required to respond. However, the TAC has been criticised for its narrow remit, for lacking the power to require the Government to take action in response to its findings and for a membership which excludes important areas of expertise, including international development.[81] In practice the Government did not take on board the recommendations of the TAC in respect of the UK-Australia and UK-New Zealand FTAs.[82]

UK approach to agriculture in bilateral deals

Agriculture in UK FTAs has not to date been dealt with via a stand-alone chapter. Instead, agriculture is impacted by elements of chapters covering trade in goods, rules of origin, trade facilitation, sanitary and phytosanitary measures, technical and barriers to trade. It is outside the remit of this briefing to conduct such an extensive review and we have not been able to identify comprehensive work that has already been completed in this area, however it is clear that more analysis should be undertaken.

Given ongoing debates about the importance of seed sovereignty, it is worth noting that 21 UK trade agreements reference UPOV.[83] There is significant variety in the language, from strongly binding for example in the UK-Andean Community FTA, to softer language, for example the CARIFORUM agreement commits signatories to "consider acceding to" UPOV. A number of other agreements also commit parties to join the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.[84]

UK trade deals to date

The UK has 38 trade agreements in full or provisional application with 69 countries. In addition, it is in the process of acceding to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Agreements listed as 'trade agreements' vary in the scope and depth of coverage:

- 21 full FTAs;
- 16 Association Agreements. Association Agreements tend to be less comprehensive in terms of liberalisation but include a greater degree of commitment to cooperation on more political issues;
- 2 goods-only agreements;
- 8 Economic Partnership Agreements (EPAs). EPAs are mostly goods only agreements with non-LDC developing countries, the exception is CARIFORUM, which includes 14 Caribbean countries and goes beyond goods to cover issues like services;
- In addition to the above, the UK offers Least Developed Countries (LDCs) unilateral trade preferences under its Developing Countries Trading Scheme (DCTS).

Conclusion and Recommendations

Trade rules have a significant impact on agriculture, both in terms of commodities traded internationally and the ability of countries to make policy decisions in support of sustainable agriculture. However, the global trading system is failing to ensure that trade plays its part in the transition to a sustainable agri-food system that works for people and planet, especially smallholder farmers.

Many of the agriculture-related trade rules at the WTO have not been updated since its founding in 1995. The WTO has failed to deliver for developing countries and is unlikely to produce timely responses that will be adequate to ensure trade plays its part in supporting a just transition to sustainable agriculture.

UK trade policy must pursue a different approach. The UK's FTAs should aligned with the Paris Climate Agreement and the SDGs, while the UK should use its membership of the WTO to help shape multilateral rules along similar lines, in dialogue and partnership with developing countries.

UK unilateral action

The UK can take action right now to ensure trade is supportive of a transition to sustainable agriculture. The UK must:

- Publish a trade strategy that requires the Government to assess the impact of its trade arrangements on the just transition to sustainable agriculture;
- Ensure bilateral trade agreements are fully aligned with the Paris Climate Agreement and the SDGs;
- Remove all requirements to sign up to UPOV from its current agreements and refrain from including them in new ones;
- Ensure the UK approach to intellectual property protections in trade agreements is shaped by commitments to tech transfer in the Paris Climate Agreement and the SDGs.

Multilateral action

The UK should use its membership of the WTO to promote the long-held priorities of developing countries around sustainability and agriculture:

- Trade rules which enable regional integration, strengthening local and regional agricultural markets and reducing exposure to volatile global food prices;
- A dedicated SSM for developing countries which is tailored to their needs and not open to abuse by developed countries;[85]
- Reform of the AMS system so that it tracks actual prices and allows countries greater policy space to support their agriculture sectors;
- A waiver for public stockholding for food security;
- Explore the potential benefits of multilateral initiatives including a WTO climate waiver.

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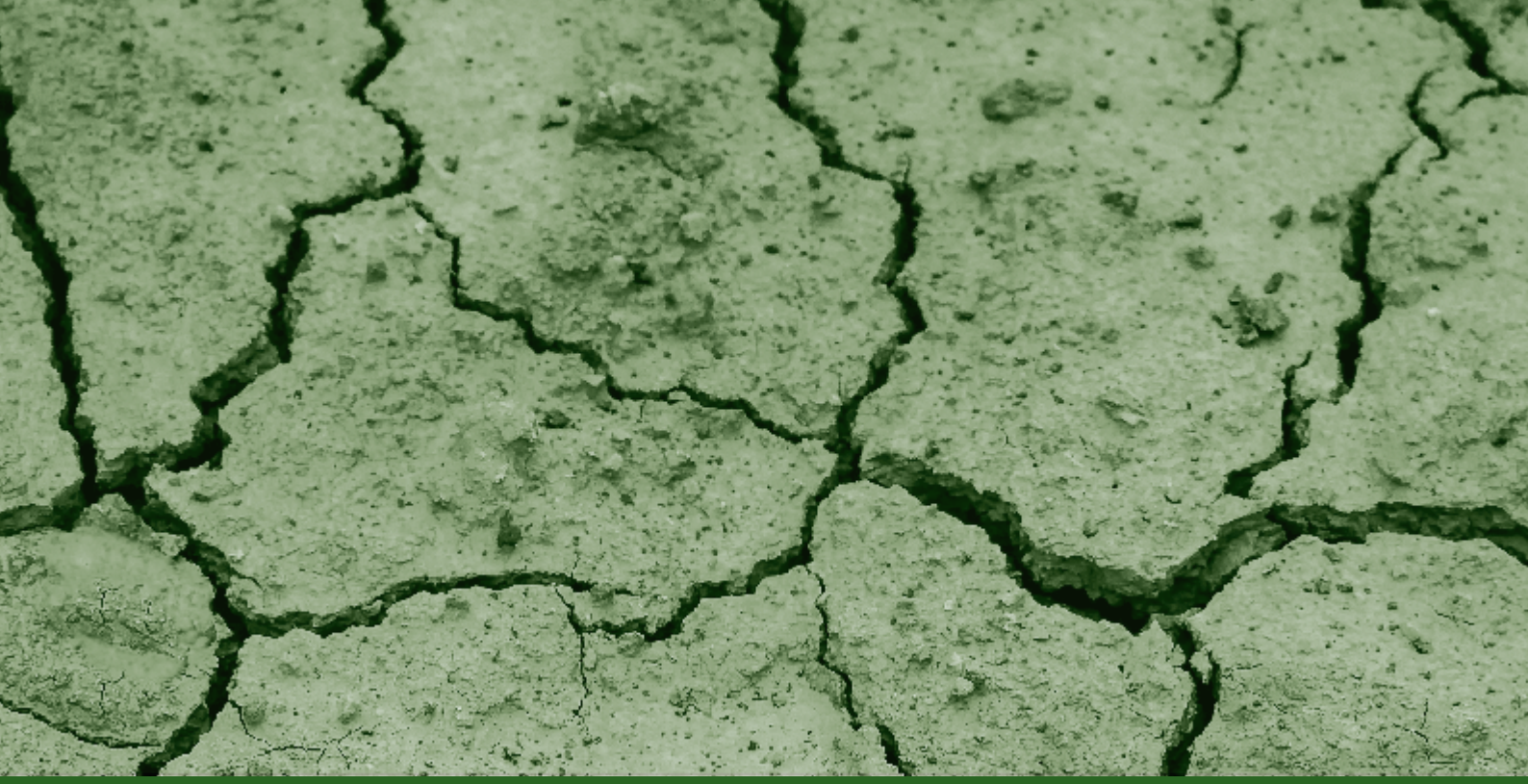

Trade Justice Movement and Transform Trade

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TRADE JUSTICE MOVEMENT

The Trade Justice Movement is a network of nearly 60 organisations, including trade unions, environmental groups and justice campaigns, who push for trade policy that works for people and planet.

www.tjm.org.uk

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Transform Trade

Transform Trade work alongside communities experiencing injustice, and fight for trade that values people over profit. Their roots are in the alternative trade movement in the North East of England and draw support from across the UK and beyond. Transform Trade work in partnership with networks of workers, farmers and social entrepreneurs in South Asia and East Africa to transform trade so that everyone benefits, focussing on Fashion, Tea and Farming. Transform Trade used to be known as Traidcraft Exchange.

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