

DRAFT – PLEASE DO NOT CITE OR QUOTE

Multilevel governance of food security regulations

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1. Food security - in a multilevel governance framework

Achieving food security, that is, meeting the challenge of feeding nine billion people by the year 2050, is taking a predominant role in both national and international agendas. The challenge of ensuring food supply is not only a future concern for a growing population, but even today people are still suffering from hunger and malnutrition, even though there is said to be enough food for the population as it is now. Despite the fact that a sufficient amount of food is being produced globally, it is alarming that malnutrition is estimated to be the cause of 30% of infant deaths and that approximately 850 million people are undernourished.² However, not only undernourishment and malnourishment, but also overweight and bad nutrition are concerns since globally there are more people overweight than there are underweight.³ This is a challenge in Asia, which was home to 65% of the world's undernourished people in 2010-2012 (Asia having the greatest population), but also in Africa, where the prevalence of

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² OECD, *Global Food Security* (Paris: Organization for Economic Co-operation and Development, 2013), 22, <http://www.oecd-ilibrary.org/content/book/9789264195363-en> (accedido 28 de enero de 2014).

³ *Ibid.*, 14.

undernourishment is 23%, compared to 14% in Asia and 8% in Latin America and the Caribbean.⁴ And even though the proportion of the population in developing countries that is undernourished has fallen over the past two decades, statistics show that the pace of decline has slowed. This situation presents a challenge for a growing middle class in developing countries faced with increasing urbanization and growing nutritional needs, greater meat consumption⁵ and less land,⁶ while also suffering the effect of climate change.⁷

In a world where famines and undernourishment are causes of poverty, crucial questions arise as to how to address food security and in this sense; the discussion is anchored in three dimensions: food production, food trade and investment in food. How this toolbox works in the battle against food insecurity from a regulatory standpoint is a complex issue. As a first step, the definition of food security has a political dimension and different approaches have made it difficult to reach a consensus in regulation. For some, food security needs small farmer protection⁸ and therefore trade should not interfere with national policies for small farmer protection. For others, farmers cannot feed themselves alone, they also need trade and trade liberalization rules should allow food access, whereas distorting policies potentially impede the achievement of long-term food security.⁹ Thus the approach to food security is not always coherent and integrative between internal policies that are consistent with trade rules.¹⁰ This work looks at some of the policies found in multilevel governance precepts with special emphasis in WTO regulations from the Agreement on Agriculture (AoA) that have an impact on food security and it provides with an example on how this multilevel governance operates in the practice.

⁴ Ibid., 23.

⁵ Feeding animals takes up to 1700 calories per person out of the chain whereas livestock adds only 500 calories. In: Craig Pearson, «A Fresh Look at the Roots of Food Insecurity», en *The Challenge of Food Security: International Policy and Regulatory Frameworks*, ed. Rosemary Gail Rayfuse (Edward Elgar Publishing, 2012), 23.

⁶ However, here is important to note that it is debatable whether there will be a shortage of food or not and whether these factors really have an influence on food security. FAO states that “the amount of food needs to increase by 70% by 2050” but studies from the IASA show that there could be 1.3 billion hectares of grassland and open woodland suitable for agriculture if needed, and this means 80% of the current crop fields. Even so, most authors coincide that the best approach is agricultural intensification and not extensification, in: Paul McMahon, *Feeding Frenzy: The New Politics of Food* (London: Profile Books, 2013), 79-81.

⁷ Whether climate change will make such an impact on food security is debatable and is subject of further discussion.

⁸ Olivier De Schutter, *International Trade in Agriculture and the Right to Food* (Geneva [u.a.]: Friedrich-Ebert-Stiftung, 2009), FALTA, <http://library.fes.de/pdf-files/bueros/genf/06819.pdf> (accedido 27 de enero de 2014). Olivier De Schutter, «The World Trade Organization and the Post Global Agenda Putting Food Security First in the International Trade System» (noviembre 2011): Briefing Note 04. In this sense, De Schutter says that “existing WTO rules do include certain flexibilities for States to pursue food security-related measures”, however he also affirms “in no circumstances should trade commitments be allowed to restrict a country’s ability to adopt measures guaranteeing national food security”. The critic by some relates to the wrong solutions for instance in Christian Häberli, «The WTO and Food Security: What’s Wrong with the Rules?», en *The Challenge of Food Security: International Policy and Regulatory Frameworks*, ed. Rosemary Gail Rayfuse (Edward Elgar Publishing, 2012), 150.

⁹ Häberli, «The WTO and Food Security: What’s Wrong with the Rules?», 149.

¹⁰ In Ibid., 161-67. Who calls for a food security impact assessment for each negotiating proposal, also proposes later reforms in stockpiles, TRQ fills and export restrictions. In: Christian Häberli, «Three “Bali Deliverables” for more Food Security» (nccr trade regulation, octubre 31, 2013).

For ensuring food security, policies have been targeted across the dimensions of its definition, namely food availability, accessibility, utilization and stability.¹¹ Some of the discussion examines how food production policies increase yield¹² by increasing productivity per area, reducing waste¹³ and having governmental support for farming policies and technologies. However, in the availability pillar there is some evidence that over the last two decades, food supplies have grown faster than the population in developing regions, resulting in rising food availability per person. Average dietary energy supply adequacy – dietary energy supply as a percentage of the average dietary energy requirement – has risen by almost 10 percent over the last two decades in the developing regions as a whole.¹⁴ Adding to this, it is said that the issue of food availability is a reachable goal.¹⁵ Although the world's population will increase to 9.3 billion by 2050, which will require an agricultural growth of 60% (meaning an additional 1.1% per year), taking into account the current portions of arable land and its potential, it is said that the world can still produce enough food to feed the increase in population.¹⁶

Concerning the pillar of food accessibility the literature points out that the challenge lies in raising the incomes of the poor¹⁷ and has to do with household entitlements¹⁸ and proper distribution.¹⁹ As a proof that raising incomes is crucial, is the fact that there were as many hungry people in the world in the early 2000s when international food prices were at all times low, as there are today with higher food prices.²⁰ In this sense, and addressing the accessibility of vulnerable populations to food, part of the literature states that among some of the keys to improved access are higher incomes,²¹ better trade rules²² and increasing

¹¹ Food security exists when all people, at all times, have physical, social and economic access to sufficient safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life. In: FAO World Food Summit, «Rome Declaration on World food Security» (FAO, United Nations, noviembre 13, 1996).

¹² Pearson, «A Fresh Look at the Roots of Food Insecurity».

¹³ *Ibid.*, 27.

¹⁴ FAO, *The State of Food Insecurity in the World, The State of Food Insecurity in the World, The State of Food Insecurity in the World* (Rome, 2013).

¹⁵ McMahon, *Feeding Frenzy*. Also evidence supporting the literature: Organisation for Economic Co-operation and Development, *OECD-FAO Agricultural Outlook* (Paris, 2012), <http://www.oecd-ilibrary.org/content/serial/19991142> (accedido 28 de enero de 2014).

¹⁶ Much has been written in terms of food availability. Starting with Malthus who predicted a gloomy panorama where food would had not been available for this generation. However, according to FAO over the past 50 years the amount of food per person has actually increased. OECD, *Global Food Security*, 32.

¹⁷ *Ibid.*, 11.

¹⁸ See below Sen

¹⁹ Also in hand with literature from Sen Amartya Sen, *Development as Freedom* (Oxford University Press, 1999); Amartya Sen, «Food and freedom», *World Development* 17, n.º 6 (1989): 769-81; Amartya Sen, *Inequality Reexamined* (Harvard University Press, 1995); Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford University Press, 1982).

²⁰ OECD, *Global Food Security*, 22.

²¹ *Ibid.*, 27. For example, through investment opportunities.

²² In this sense Häberli, «The WTO and Food Security: What's Wrong with the Rules?». Also, see: T. Josling et al., «Understanding International Trade in Agricultural Products: One Hundred Years of Contributions by Agricultural Economists», *American Journal of Agricultural Economics* 92, n.º 2 (marzo 18, 2010): 424-46. Also in the same line, Stefan Wager, «International Agricultural Trade Liberalization and Food Security: Risks Associated with a

investment in food.²³ Part of the regulatory challenges lie in the fact that some institutions dealing with food security issues have different approaches to it and therefore come with several regulatory alternatives. In the next lines some of these instruments are analyzed pointing out diverging regulatory views.

2. Regulatory instruments contributing to food security

The history of the concept of food security can be tracked back to the 20th century after the Second World War, when reconstruction and decolonization was taking place.²⁴ There was a need for a food regime and some institutions took over the task of defining it, such as the International Monetary Fund (IMF), World Bank (WB) and then other organizations took over the task of developing a transversal conceptualization through institutions like the Food and Agriculture Organization (FAO), the OECD and WTO. However, the term food security was first incorporated into international policies in the early 70s after there was a shortage of wheat and states started to secure their own food supplies.²⁵ This event revealed how volatile and unreliable food supply could be and led to initiatives of international instruments to eradicate hunger, such as the World Food Conference from the FAO and the International Fund for Agricultural Development (IFAD). Finally, after a series of attempts to address food security, the 1996 World Food Summit produced the current definition: “Food security exists when all people, at all times, have physical, social and economic access to sufficient safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.”²⁶ This definition includes the dimensions of: availability of food (availability), if this food is available then people should have access to it (accessibility) and it should well utilized for people’s health (utilization). Also, a fourth requirement is the stability of those dimensions over time.

The proliferation of international institutions and concepts reveals a patten of “punctuated, rather than gradual growth”²⁷ with institutions appearing such as the WFP and the FAC followed by the seventies where the CFS, IFAD, World Food Council and CGIAR were established. Then with the 1996 World Food Summit and after the food crisis, the UN High-Level Task Force on GFS and the G8 Global

Fully Liberalized Global Marketplace», *Aussenwirtschaft: Schweizerische Zeitschrift für Internationale Wirtschaftsbeziehungen/The Swiss Review of International Economic Relations* 64, n.º 2 (2009): 139.

²³ UNCTAD, *Investment Policy Framework for Sustainable Development*, 2012, http://unctad.org/en/PublicationsLibrary/diaepcb2012d5_en.pdf. And other previous UNCTAD and World Bank texts

²⁴ In this sense: William D. Schanbacher, *The Politics of Food: The Global Conflict Between Food Security and Food Sovereignty* (ABC-CLIO, 2010), viii.

²⁵ Matias E. Margulis, «The Regime Complex for Food Security: Implications for the Global Hunger Challenge», *Global Governance* n.º 19 (2013): 53-67.

²⁶ World Food Summit, «Rome Declaration on World food Security».

²⁷ Matias E. Margulis In: Rosemary Rayfuse y Nicole Weisfelt, Edward Elgar Publishing, *The Challenge of Food Security: International Policy and Regulatory Frameworks* (Cheltenham: Edward Elgar Pub. Ltd., 2012)

Partnership on Agriculture, Food Security and Nutrition were created. Some of these institutions had structured mandates and complex structures involving state and non-state actors. Other later institutions developed voluntary guidelines and international codifying efforts creating a spider web of regulations in food security. This paper focuses on the trade aspect regulated by such institutions with special attention to divergent approaches to the trade aspect and visions from WTO and the FAO.

Regarding trade, FAO states, “open markets have a pivotal role to play in raising production and incomes. Trade enables production to be located in areas where resources are used most efficiently and has an essential role in getting product from surplus to deficit areas.”²⁸ However it also points out that even though the rapid income growth when is sustained for a long period actually leads to poverty reduction and, food security and nutritional improvement of the population, they see that the problem lies in the fact that the link of growth to food security and nutrition may be blunted by unfavorable income distribution, as well as limited access of the poor to some of the benefits of trade, such as infrastructure, improved technology, and human capital formation. In this sense, FAO considers in its policies that rising inequality, left unchecked, could even dampen subsequent growth where trade would actually produce negative consequences to those.²⁹ The reason being that some of the negative effects of trade liberalization would be seen evidently in some groups, for instance for protected farmers, liberalizations would mean exposition to lack of competitiveness, for protected exports and they would mean a price raise for the consumer.

Some other movements have been promoted in several countries an extremist view, where protection should be given to farmers and farmers only in order to achieve food security. These views are based on that idea that because food security has not been possible for hundreds of millions of the world’s poor, then other models of food sovereignty model should take center stage in the fight against global malnutrition.³⁰ In their opinion, models such as the *Via Campesina* which promote food sovereignty, “demonstrate how farming communities are founded on community gatherings, the exchange of knowledge, and social events that express the cultural traditions of an agrarian livelihood”³¹ and they see this way as the way towards guaranteeing the human rights of peasants and farmers in order to provide them with food security.

²⁸ FAO, Executive Summary FAO, p. 16

²⁹ FAO, *Poverty alleviation and food security in Asia: Lessons and Challenges* (Rome, diciembre 1998), 2 ff, <ftp://ftp.fao.org/docrep/fao/004/ab981e/ab981e00.pdf>. See also: Emmanuel Jimenez, *Development and the next generation* (World Bank Publications, 2006), <http://books.google.com/books?hl=en&lr=&id=xR9IcNw-rQUC&oi=fnd&pg=PR11&dq=%22capabilities+and+second%22+%22numbers+matter%3F+How+demographic+changes%22+%22preparation+of+youth+for+work+and+life+is%22+%22to+broaden%22+%22should+policy+makers+focus+on%3F+The+%EF%AC%81ve%22+&ots=AYk0N5WH4N&sig=fq-kJaMR4ZOSwahGrSFMEqar2vo> (accedido 18 de abril de 2014).

³⁰ Schanbacher, *The Politics of Food*, ix.

³¹ Schanbacher, *The Politics of Food*.

As simplistic as this may seem, there is some sense to this thinking: there has been a strengthening of dispute resolution systems at a multilateral, regional and bilateral level, which means more protection of private interests, more protection to trade and more protection to economic interests. There has also been a strengthening of some human rights *forums* such as the creation of an International Criminal Court to punish genocide and other crimes against humanity. And yet, there is no system to punish massive violations of human rights when there is famine, hunger and malnutrition even though the right to food has been recognized by the international community in the ICESCR. And yet, within this international trade system, there is no mention to the right to food or to food security. And yet, despite of trade regulation, despite of global programs and food aid, national food security is still at stake. This is why it is understandable how some authors go back to the concept of food sovereignty and subsistence economy, because to them the international system has “failed to deliver.”

Also promoting a higher input in local food systems but taking a milder position, former spokesperson, Olivier De Schutter calls “for a reform of the international trade system”, to “strengthen agriculture” and to “turn away from further liberalization.”³² De Schutter, who was UN Special Rapporteur on the Right to Food, had the merit of bringing food security to various fields and drawing a connecting line, as well as promoting intensively the reform of regulations in the AoA, but he also called to restrain from more trade liberalization. De Schutter argued that WTO rules can conflict with food security, because current green box and domestic support rules are unbalanced: they provide more flexibility to developed country farmers than to developing country farmers.³³ In his thinking, the multilateral trade regime as well as regional and bilateral trade agreements must allow countries to develop and implement ambitious food security policies including public food reserves, temporary import restrictions, active marketing boards, and safety net insurance schemes, in support of the progressive realization of the right to food.³⁴

These two positions, the food sovereignty model and the milder position calling to strengthening agricultural systems have been also criticized for not taking into account that income inequality plus raising incomes of food insecure people cannot be solved by solely focusing on internal food systems, but with an integrative view that also considers trade and investment to be used as tools to contribute to food security. All groups: farmers, producers and consumers need trade. However, the discussion is centered on imbalances present in the current trade rules, hindering the real economic growth and poverty reduction strategies of developing countries. Below, some of those regulations in AoA are mentioned and how they conform a regime complex of multilevel regulations, which may conform obstacles for food security.

³² In: De Schutter, «The World Trade Organization and the Post Global Agenda Putting Food Security First in the International Trade System».

³³ Ibid.

³⁴ Olivier De Schutter, «The FAO Must Do More to Promote Food as a Basic Human Right», *The Guardian*, s. f., Global development sección, <http://www.theguardian.com/global-development/poverty-matters/2013/mar/04/fao-food-basic-human-right> (accedido 13 de febrero de 2014).

In the case of the OECD, it also deals with some food security matters, for instance it has supported the respective presidencies of the G8/G20/AFSI (which has a food security multi-donor trust) sessions on issues related to food security, food price volatility and agricultural productivity. It is also involved in the UN High Level Task Force on the Food Security (HLTF) on food security, and participates in the Global Donor Platform on Rural Development. In 2011 and 2012 it held meetings in the Global Forum on Agriculture, with focus on poverty reduction and policy coherence for food security in developing countries. In the case of the FAO, its involvement with food security is crucial since it has the main objective of “raising levels of nutrition and standards of living of the people under their respective jurisdictions; securing improvements in the efficiency of the production and distribution of all food and agricultural products; bettering the condition of rural populations; and thus contributing towards an expanding world economy and ensuring humanity’s freedom from hunger.”³⁵ Also, its committee on food security (CFS) has been very active in drafting principles for responsible agriculture. Whereas FAO deals directly with food security issues, the WTO deals with the trade aspect of it raising some higher level of discussion with the Doha Development Round and just recently in the Bali agenda.³⁶ Some of the provisions are analyzed in the following lines.

3. The role of WTO in food security regulation and the regime complex

The AoA mentions in its preamble “commitments under the reform programme should be made in an equitable way among all Members, having regard to non-trade concerns, including food security and the need to protect the environment.” It is however the only mention to food security and does not provide with guidelines on how to achieve it. Additionally, former WTO Director General, Pascal Lamy referring to food security expressed that “...trade plays or can play a better role in addressing the rise in food prices and tackling food insecurity. Trade is part of the solution, and not part of the problem. Very broadly, this is the analytical framework that I would set out for our common reflection.”³⁷ His statement recognizes the fact that trade has an impact on food security and could contribute to it, but like the AoA, he does not state how is trade part of the solution and does not give any roadmap to achieve this goal. Moreover, it does not address some of the problems of the AoA that have consolidated the *status quo* of some countries but has left others without room space, and he did not address the specific issues of developing and least developed countries, like neither did the Doha Development Agenda.

³⁵ More information on this available at:

http://cic.nyu.edu/sites/default/files/page_global_governance_public_good.pdf

³⁶ Christian Haberli, «After Bali: WTO Rules Applying to Public Food Reserves», enero 2014, http://www.wti.org/fileadmin/user_upload/wti.org/news/140130_Haerberli_Stockpiles_Final_for_FAO.pdf.

³⁷ Pascal Lamy, «Lamy on the rise in food prices: “Trade is part of the answer, not part of the problem”», *Director-General Pascal Lamy, in his opening address to the Berlin Agriculture Ministers’ Summit on 22 January 2011* (Berlin Agriculture Ministers’ Summit, enero 22, 2011), http://www.wto.org/english/news_e/sppl_e/sppl183_e.htm.

At this Doha Development Round, discussions about development and trade took place in November 2011, where ministers supported the role of free trade in promoting economic development and alleviating poverty, some of the subjects included trade in agricultural products, trade and technological transfer, intellectual property, health and preferential treatment for developing country exports. However the discussions did not materialize into actual regulations and the AoA has kept some of the provisions that affect food security in some developing countries. The Agreement required members to liberalize agricultural trade across the three main areas of market access, export subsidies and domestic support, including converting non-tariff import restrictions to tariffs, binding and reducing them. But many developing countries because of lack of tariffication were not permitted to use the special safeguard mechanisms in the future, which gave them less room to act to protect sensitive agricultural products while other developed nations were allowed to. The Agreement also prohibits the use of exports subsidies, which were not subsidized in the period 1986-90. These regulations has been criticized by scholars stating that in fact the AoA institutionalized existing inequalities by prohibiting some to use those measures while consolidating developed countries' situation. Even though now some developing nations are also using the mechanisms and even though subsidies are also subject to criticism, the problem is not to have the same playing field for all. Some said that some of the trade liberalization these measures actually displaced local productions and created price increases for importers.

In this sense, the AoA allowing for subsidies consolidated the situation of some larger or rich countries having a negative influence on food prices and consequently creating price volatility, Also it maintained obstacles in the form of technical barriers to trade and bureaucratic measures had an impact on small-scale farmers and farmers from developing countries. And allowed subsidies created a negative impact on farmers, by artificially supporting them when they could be given support in long-term ways, like providing technology and education for a more competitive future,³⁸ not to mention that when subsidies are the only way out for small economies then they are not allowed to use them.³⁹ Moreover, regulations on internal support and export competition pose unanswered questions where there is much room for improvement. In the case of export restrictions, it gives *carte blanche* for countries to impose export restrictions even in cases of food aid, where some LDC's may depend on food aid for their consumption. Export restrictions then lead to a shortage or even lack of food not only in the market but also in the form of food aid.

Regarding the impact of trade distortion according to OECD in 2006, when prices were lower than today, it found that "the price depressing effects of OECD country policies caused cereal and meat prices to be 2-

³⁸ Häberli, for example in: Christian Häberli, «Do WTO Rules Improve or Impair the Right to Food?», en *Research Handbook on the WTO Agriculture Agreement: New and Emerging Issues in International Agricultural Trade Law*, ed. Joseph McMahon (Edward Elgar Publishing, 2012), 81. Also, on subsidies' impact on farmers: Kym Anderson, *Reducing Distortions to Agricultural Incentives: Progress, Pitfalls, and Prospects* (World Bank Publications, 2006).

³⁹ This is when "trade becomes part of the problem". In this sense: Häberli, «Do WTO Rules Improve or Impair the Right to Food?», 90-98.

3% higher than they would otherwise be” and in the case of dairy products “...50% cuts causing prices to increase by 13%...”⁴⁰ and even though in other products, the consequences were not as evident, where welfare effects of reform on developing countries are complex and would vary by country, but the main conclusion from this study was that OECD countries should reform primarily because of their own interest to do so.⁴¹ On a balance, OECD’s analysis concluded that most developing countries would gain from OECD country liberalization, although the gains were small relative to the benefits of reforming their own policies...⁴² In this sense, policies across the board whether from WTO, FAO or OECD that look for better regulatory systems in a coherent manner have an impact on food security. In the field of export restrictions, even though the FAO states they are no longer a primary concern in OECD countries, mostly used by emerging economies, it should still be taken into account how much of the price support and export restrictions shaped the current system and even from emerging economies, how much impact they have on small developing economies.⁴³

To name some further difficulties, even measures that are found in the Amber Box, which is said to allow only minimal distortions, may have effects on the world’s trade or effects on production. The same applies for the case of domestic support to food reserves. It has led many researchers to wonder how big “minimal” distortions would have to be before such distortions shift a measure into the *Amber Box*”⁴⁴ which has not been properly defined in the text of the AoA, or in dispute resolution cases.⁴⁵ Then, *de minimis* sets a limit for contributions of 10% approximately in developing countries and 5% in developed countries, and also the *Developing Country Green Box* in Article 6.2 is very limited. Some authors state the *de minimis* is in reality so limited that most developing countries cannot make use of this window for subsidies available for poor producers in small economies,⁴⁶ whereas larger economies are. For those countries to make use of it, measures must be provided through a publicly-funded government programme without the effect of providing price support to producers,⁴⁷ whereas subsidies provided by larger economies do have a bigger distortion potential than small subsidies given by small developing nations in times of crisis. Literature can be found that even in the Green-Box support mechanisms may have a

⁴⁰ OECD, *Global Food Security*. 72

⁴¹ Ibidem

⁴² OECD, *Global Food Security*, 72.

⁴³ In this sense, there have been numerous studies on a case by case and product by product basis. This thesis does not attempt to go into detail in this point; it looks to point out some of concerns in regulation, for a basis to investment law. Further information on this can be found in: Kym Anderson y Ernesto Valenzuela, *Do global trade distortions still harm developing country farmers?*, vol. 5337 (World Bank Publications, 2006), (accedido 25 de julio de 2014). And M. Ataman Aksoy y John Beghin, *Global Agricultural Trade and Developing Countries* (Washington, D.C: World Bank, 2004).

⁴⁴ Häberli, «Three “Bali Deliverables” for more Food Security», 22.

⁴⁵ Ibid.

⁴⁶ Ibid

⁴⁷ World Trade Organization, *Agreement on Agriculture* (Geneva: WTO, 2000).

negative impact on farmers in developing countries let alone Amber-Box support.⁴⁸ Regarding export competition, there is some evidence that they were one of the causes of the food crisis, by causing an impact especially on net food-importing developing countries (NFIDC), but also everywhere where consumers were hit by high prices and small farmers did not have the response capacity to increase production. Also, given that export restrictions are mechanisms to disincentive production, then they cannot improve food security. At least food aid purchases should be allowed without export restrictions.⁴⁹ In brief, the importance of the regulations at this point in such a complex system and contradicting, overlapping rules, where different regulatory layers are given, is that at least the minimum standard that these measures should seek is to fulfill the principle of “do no harm,”⁵⁰ meaning that any international regulations should at least avoid negative spillovers over national food security and vice versa. In this sense, the starting point is that any trade reform should be directed towards doing “no harm” to developing and least developed countries in their pursuit towards food security.

The different layers of governance and international bodies dealing with food security matters only at international level (not to mention the national ones) not only constitutes a system of multi-level or multi-layered governance,⁵¹ but also this collage of sources, results in what some authors denominate a “regime complex”⁵² of food security precepts. Regime complexes are an “indirect, unintentional outcome as a result of institutional proliferation at the global level, rescaling of authority from the state to the transnational-level, and a tendency for mission creep among existing institutions to expand into new policy domains.”⁵³ The problems arising from a regime complex are among others, the interlocking of governance, its diffusion making it difficult to define roles of each institution, policy making problems, ruling complexities, overlapping of rules, difficulties finding the hierarchy of international bodies in the subject, problems in resolving conflicts, and lastly, the proliferation of different sometimes incoherent definitions and objectives according to each institution’s own agendas and mandates.

⁴⁸ Kym Anderson, «Reducing distortions to agricultural incentives: progress, pitfalls, and prospects», *American Journal of Agricultural Economics* 88, n.º 5 (2006): 1135-46. And Joseph F. Francois, *AGRICULTURE AND NON-AGRICULTURAL LIBERALIZATION IN THE MILLENNIUM ROUND*, s. f.

⁴⁹ Also in this sense, Häberli, «Three “Bali Deliverables” for more Food Security».

⁵⁰ In this sense: Sandra Polaski, «Agricultural Negotiations at the WTO: First, Do No Harm», *Korea (Democratic People's Republic)* 3, n.º 11,676 (2005): 27-95. And also mentioned in Häberli.

⁵¹ Ernst-Ulrich Petersmann, *Human Rights, Constitutionalism and International Economic Law in the 21st Century* (Oxford: Hart, 2010), 5-57. Also in this sense: Thomas Cottier, «Poverty, Redistribution, and International Trade Regulation», en *Poverty and the International Economic Legal System: Duties to the World's Poor*, ed. Krista Nadakavukaren Schefer (Cambridge University Press, 2013), 50.

⁵² Margulis, «The Regime Complex for Food Security: Implications for the Global Hunger Challenge», 57. and others. The Regime Complex is defined as an “array of partially overlapping and non-hierarchical institutions governing a particular issue-area” Raustiala, Kal and David Victor. 2004. The Regime Complex for Plant Genetic Resources. *International Organization* 58 (2): 277-310.

⁵³ Margulis, «The Evolving Global Governance of Food Security», 3. And Margulis, «The Regime Complex for Food Security: Implications for the Global Hunger Challenge».

So, although some may think that food security is actually “over-ruled”, others may see this multi – level ruling system as an obstacle hindering the real precepts that are needed to ensure food security at an international and national level, or some may consider some of the initiatives as “soft law”⁵⁴ that lacks real implementation and enforcement. However, soft law instruments not only serve as means of interpretation⁵⁵ but they are also the basis for enforceable rules to be drafted and for *lagunae* for instance in areas such as investment law and investor – State arbitration. In an ideal regulatory system, all institutions should have a coherent speech with connecting points that allow them to integrate other organizations’ regulations. For this, food security should be regarded as the end of the avenue where a series of roads, traffic lights and trains are connected, and designed carefully by pairing the regulations and avoiding any harm on other ones. Only this way can a regime complex find its way to coherence. Below is an example of this multilevel governance and how regulations across levels affect each other, including multilateral, regional and national rules.

4. The example of rice in Costa Rica: multilateral system - DR-CAFTA – internal food security policies and results

Food security approaches are very diverse not only in levels of governance within the international order and among institutions but also when regulations collide at different levels: the multilateral, the regional and the national. In some cases, overlapping institutions may add to the discussion in the field, in others the result is an incoherent regulatory system. It does contribute when regulations are coherent and if the level field was leveled among countries and when regulations are adopted as part of a food security strategy. This case exemplifies such regulations at various levels and how both the international and national system would benefit from greater coherence. The rice case serves to identify these different regulations and their outcomes.

In order to understand where rice is positioned, it is important to mention that according to the National Income and Expenditure Survey, rice is not only an essential product in the daily diet of Costa Ricans but us one of the most important ones for the lowest income quintiles. Rice cultivation accounts for 3.9% of total value added of agricultural, livestock and fisheries production in Costa Rica according to SEPSA

⁵⁴ Regarding definitions of soft law, there is plenty of literature but some examples are found in: Kenneth W. Abbott y Duncan Snidal, «Hard and soft law in international governance», *International organization* 54, n.º 3 (2000): 421-56. Gregory Shaffer y Mark Pollack, «Hard Versus Soft Law in International Security», *Boston College Law Review* 52 (2011): 1147.

⁵⁵ Abbott y Snidal, «Hard and soft law in international governance». Andrea K. Bjorklund y August Reinisch, *International Investment Law and Soft Law* (Edward Elgar Publishing, 2012). And about sources in general: Moshe Hirsch, «Sources of international investment law», en *International Investment Law and Soft Law* (Edward Elgar Publishing, 2012).

2012. Micro and small farmers represent 80% of the total but cultivate only 20% of the total rice.⁵⁶ National policies of rice are based on a combination of tariffs, a performance requirement for the import of paddy rice and a price fixing mechanism. The level of distortionary subsidies resulting from the minimum producer price in Costa Rica exceeds by more than five times the level stipulated in WTO commitments, which has already led to consultations at the WTO.⁵⁷ Also, several studies have specifically analyzed the policies for instance Umaña⁵⁸ analyzed that import protection and price controls for rice have not increased yields, but they have created significant rents for rice millers by transferring income from consumers to producers and by maintaining local prices above international prices for years. In this study, it was found that because most mills are vertically integrated, they have favoured imports instead of dealing with rice farming. Gains from trade thus have benefited millers who have gotten the rents from lower international prices.⁵⁹ Other authors like Arroyo (2013) have concluded in the same sense that the pricing scheme is not contributing to important policy objectives, nor they have increased productivity, nor they have improved access to consumers, in this sense, producers receive lower prices compared to the fixed price due to the difference in rice qualities, consumers pay prices above international prices, productivity does not increase and the fixed pricing actually increases inputs and services used in rice production. Petrecolla (2006) estimates that income transfers from consumers to the rice industry reached 396.4 million from 1996 to 2005, from which only 20% were captured by farmers. However, in order to fully get an idea of this policy, the background for the case goes back to year 1949 when the government of Costa Rica passed some laws to create more food security in a time of national crisis and with rice being the main staple and international prices for rice that were threatening to increase, then the government created a fixed price for rice adjusted by inflation.⁶⁰ This fixed price was at that time important for rice producers to survive the crisis and for poor consumers to be able to afford their main dietary requirement. Meanwhile and after surviving the crisis in the 80th a time where rice in the United States was highly subsidized⁶¹ it started being exported to Central America at very low prices, lower than the fixed price from the Costa Rican government, but sold to the consumer at the fixed price. This vicious situation caused most of the small farmers to encounter difficulties and the country's rice production to

⁵⁶ Source: Ministry of Agriculture

⁵⁷ See Trade Policy Review by the Secretariat, Costa Rica

⁵⁸ Víctor Umaña, «Food Policy Coherence for Sustainable Development: The Case of the Rice Sector in Costa Rica», *ATDF Journal* 8, n.º 2 (2011): 41-54.

⁵⁹ Ibid.

⁶⁰ Source: Ministry of Agriculture and «Decreto-arroz-MEIC_ELFFIL20130520_0002.pdf», s. f., http://www.elfinancierocr.com/economia-y-politica/Decreto-arroz-MEIC_ELFFIL20130520_0002.pdf (accedido 21 de julio de 2014).

⁶¹ REBECCA P. JUDGE, ANTHONY D. BECKER, AND SEAN T. D'EVELYN» (s. f.), <http://documents.apec.umn.edu/rjudgeenvsp04.pdf> (accedido 6 de octubre de 2014).

disappear.⁶² Some farmers became rice traders and others were forced to diversify into other products. With the negotiation and entrance into force of the DR-CAFTA free trade agreement between Dominican Republic, Central America and the United States, the situation was consolidated in a contingent of rice from the US that could enter with zero duties to Costa Rica⁶³ and therefore it became clear that rice production was not going to be an option anymore. Rice fields were not suitable for other crops and then they were sold, used for real estate developments or just as natural landscape. For instance, between the harvests of 2000-2001 and 2005-2006, Costa Rica experienced a downward trend in paddy rice yields, which fell annually by 2.2 per cent, reaching 3.35 metric tons during the 2005-2006 harvests.⁶⁴ According to the FAO, average yields in metric tons over 2008-2011 were much higher in several other countries compared to Costa Rica, including Uruguay, Argentina, China and Nicaragua. It is much lower than that from the United States.⁶⁵

The quota under DR-CAFTA, which escalates throughout the years, is big enough to cope with internal rice consumption.⁶⁶ For instance, according to CONARROZ consumption of rice in 2011-2012 was estimated at 247,892 metric tons of milled rice, equivalent to per capita consumption of 53,71 kg and this is the highest amount reached than in previous periods, which amounts to the increase in population. According to the DR-CAFTA, in its liberalization Annexes with mention to the Notes in Annex 3.3 list of Costa Rica, there is a contingency of rice to the US that enters without tax and which for instance by year 20 of entry into force of the DR-CAFTA is unlimited.⁶⁷

All of this has resulted in: a decreasing production of rice throughout the years having an impact especially in small farmers and their families on one hand. On the other hand, with subsidized rice coming from the U.S., farmers had no chance of competing, especially given that it is foreseen that by year 20th of entry into force of the DR-CAFTA, the contingency will be unlimited. And lastly, there is a regulatory advantage for rice handlers who are able to import rice at a low price from the U.S. and to sell

⁶² Kym Anderson y Alberto Valdés, *Distortions to Agricultural Incentives in Latin America* (World Bank Publications, 2008); Umaña, «Food Policy Coherence for Sustainable Development»; JUDGE, «US RICE PRICES AND RICE PRODUCTION IN COSTA RICA REBECCA P. JUDGE, ANTHONY D. BECKER, AND SEAN T. D'EVELYN»; Carlos Eduardo Umaña-Alvarado, «Welfare effects of a change in the trade policy regime for rice in Costa Rica», *TRADE POLICIES, HOUSEHOLD WELFARE AND POVERTY ALLEVIATION* (2014): 197.

⁶³ Source: DR-CAFTA Agreement available at www.comex.go.cr and http://www.sice.oas.org/tpcestudies/USCAFTACHl_s/CAFTADR_S/TLC_EEUU_DRCAFTA_Capitulo_3_ListasDesgravacion_anexo3-3-CR-notas.pdf

⁶⁴ It should be said that the decrease was not only a result of the regulatory situation but also due to an acarus that affected rice crops.

⁶⁵ <http://faostat.fao.org/site/339/default.aspx>.

⁶⁶ Also: «Costa Rica Milled Rice Domestic Consumption by Year (1000 MT)», s. f., <http://www.indexmundi.com/agriculture/?country=cr&commodity=milled-rice&graph=domestic-consumption> (accedido 6 de octubre de 2014).

⁶⁷ See above lists of Costa Rica available at: http://www.sice.oas.org/tpcestudies/USCAFTACHl_s/CAFTADR_S/TLC_EEUU_DRCAFTA_Capitulo_3_ListasDesgravacion_anexo3-3-CR-notas.pdf To note is that this should be close to year 8th of entry into force of the treaty for Costa Rica, however, some of the provisions were already in place. More information in: http://unctad.org/en/PublicationChapters/gds2014d3_06_CostaRica_en.pdf

it in the national market at the fixed price for a profit. By now, and given that rice production has not increased in the country; then the fixed price is causing imbalances in the possible benefits from trade. Important is to mention that several governments have tried to deal with the situation and there is a law to change the fixed price policy for rice, moreover it has been pointed out in the Trade Policy Review. However, it has not been possible to achieve this change in the last two governmental periods.⁶⁸

After this panorama has been examined, the current situation is that the DR-CAFTA would actually be better taken advantage of by taking out the price fixation and letting consumers pay less for rice.⁶⁹ Traders will lose subsidies but may continue as rice importers and millers will keep on importing rice from the United States using the performance requirement applied for the DR-CAFTA quota to keep the mills operating.⁷⁰

5. Concluding remarks

For food security concerns and the challenge of feeding the world by 2020, it is important to note that farmers and consumers have different interests, which lead them to support different causes in trade liberalization. While farmers and traders could benefit from high prices in food, poor consumers applaud policies for price reduction and even price subsidies, or they call for more employment and raising income conditions. In this balance, then the crucial role that trade regulation plays and the important policy objective when drafting different governance layers by the various institutions dealing with food security issues is the basic principle of no-harm. In this regard, the current wording regulations set by the AoA have been highly criticized. Even though regulations cannot benefit all groups equally, the minimum principle would be that they do not expressly harm other groups by creating situations of disadvantage like seen in the rice case. For instance at the WTO, one of the keys is to have a balanced playing field for all member countries, where countries that “have the means” to subsidize are given stronger limits, and where countries that do not have the means are given more flexibility, keeping in mind that trade liberalization is not the only avenue towards food security and it won’t automatically lead to recovery of food production in poor countries,⁷¹ but it should be accompanied by other internal policies especially

⁶⁸ «Gobierno pospone 6 meses más decreto para liberalizar precio del arroz», s. f., http://www.elfinancierocr.com/economia-y-politica/Gobierno-pospone-decreto-precio-arroz_0_445155482.html The decree can be found at: (accedido 25 de junio de 2014). «Decreto-arroz-MEIC_ELFFIL20130520_0002.pdf».

⁶⁹ The news have said that Costa Rican rice is the 7th most expensive in the world. «Precio del arroz en Costa Rica es el séptimo más caro en el mundo», *La Nación* (s. f.), http://www.nacion.com/economia/agro/Arroz-nacional-setimo-caro-mundo_0_1412658734.html (accedido 25 de junio de 2014).

⁷⁰ Umaña, «Food Policy Coherence for Sustainable Development»; Umaña-Alvarado, «Welfare effects of a change in the trade policy regime for rice in Costa Rica».

⁷¹ “trade liberalization alone won’t lead to automatic recovery of domestic production in poor countries or more investment in food crops” Häberli, «The WTO and Food Security: What’s Wrong with the Rules?», 165. See also:

concerning income distribution and unbiased farmer support. National production and investment policies are also important to food security and trade is just part of the solution. However, regulations in the AoA are what authors call “a job half done”⁷² and other policies at various levels should take this into account. In the example of Costa Rican rice, the situation is now that of a big affectation to poor consumers where the only way would be to transform national food security policies that are obsolete. Since subsidies are present in other economies and even the closest deals at trade development rounds have not come to a good port, then national policies are meant to cope with this imbalance and take advantage of the free trade agreements in place so that benefits can reach all groups. Given the actual situation, then for the case of Costa Rica and in order to take advantage of rice prices, free trade and for consumers’ food security, price liberalization seems to be the way forward. For other cases it may be more complex but then at the minimum some urgent reforms to the AoA should take place if countries are to take seriously food security objectives for the future.

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⁷² Christian Häberli, «God, the WTO and Hunger», en *Poverty and the International Economic Legal System: Duties to the World’s Poor*, ed. Krista Nadakavukaren Schefer (Cambridge University Press, 2013), 103.

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