



Mandate of the Special Rapporteur on the right to food

The Common Agricultural Policy towards 2020: The role of the European Union in supporting the realization of the right to food

Comments and Recommendations by the United Nations Special Rapporteur on the right to food
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The Special Rapporteur on the right to food has been requested by various parties to contribute to the debate launched on the reform of the Common Agricultural Policy (CAP), now framed in particular by the Communication of the European Commission, *The CAP towards 2020*, of 18 November 2010.¹ One underestimated part of the debate on the CAP reform concerns its impacts on the right to food in developing countries, particularly on poor, net-food-importing countries that are in particularly vulnerable situations. The reform of the CAP offers a unique opportunity to take into account explicitly these impacts on the agricultural policies of the European Union (EU).²

The EU is a leading agricultural goods exporter at the international level, accounting for 17 per cent of total global trade³ and with agri-food exports representing 6.8 per cent of total EU exports.⁴ It also is a major agricultural goods importer. In 2007, taking into account inward processing trade, the EU imported products worth over €78 billion (around 20 per cent of world agriculture imports),⁵ making the EU the largest importer of farm products.⁶ This important role implies responsibilities. Future changes in the European agricultural policy framework will affect food security and the right to food in other parts of the world, and it will have consequences for consumers and farmers in developing and least developed countries. The stated objectives of the CAP reform are: (i) to ensure viable food production while at the same time; (ii) to improve the sustainability of natural resources management and pursue climate change mitigation and adaptation actions; and (iii) to reach balanced territorial development. The Special Rapporteur suggests several measures that could be adopted to ensure that the EU contributes to the realization of the right to food globally in seeking to fulfil these objectives.

Section I considers the EU as an agricultural products exporter. Section II envisages the EU as an agricultural commodities importer. Section III presents the conclusions and recommendations.

I. The EU as an agricultural commodities exporter

A. The strategic objective today should be to support developing countries to “feed themselves”; not be to “feed the world”

Noting projections by FAO that world food demand may increase by 70 per cent by 2050, the Communication lists among the objectives of the CAP reform the contribution of the EU to meeting world demand (in addition to the objectives cited above).⁷ In the view of the Special Rapporteur, this widely cited estimate should be placed in appropriate perspective. The question of global food security cannot be reduced simply to a problem of supply or production. What matters is not only how much is produced, but also who produces, for whom, at which prices, and according to which share of the value along the supply chain linking the producer to the consumer. It is these questions that are most relevant from the perspective of the right to adequate food. The right to food requires that each individual, alone or together with others, has the means either to produce food to satisfy his or her needs or has a purchasing power sufficient to procure food from the markets. It is a matter of appropriate distribution, social justice and human rights, and not simply a matter of food availability. If increases in food production rise in tandem with further marginalization of small-scale farmers in developing countries, the battle against hunger and malnutrition will be lost.

In addition, the estimate cited does not consider the losses and waste in food systems. It is estimated globally that roughly one-third of the edible parts of food produced for human consumption gets lost or wasted, which is about 1.3 billion ton annually.⁸ The projected increase in food production also takes the current demand curves as a given. But this is highly questionable, and it obfuscates the impact of western consumption patterns on the global equation. Nearly half of the world's cereal production is used to produce animal feed, and by mid-century, 50 per cent of total cereal production may have to go to increasing meat production.⁹ Reducing losses and waste in food chains, as recommended by the European Parliament,¹⁰ together with a reallocation of cereals used in animal feed to human consumption,¹¹ including through a broader promotion of diets that better balance proteins from plant and animal origins, could go a long way towards meeting the increased needs.

The Reform of the CAP, therefore, should be grounded in a detailed analysis of the situation of world food insecurity. It also should be grounded in a sound understanding of the situation that developing countries are currently facing. These countries are confronted with a tension between the short-term objective of importing cheap food to supply local markets in order to make food affordable for people living in poverty (particularly the urban poor or the important proportion of the rural poor that are net food buyers), and the long-term objective of reducing dependency on international food markets in order to limit vulnerability to price and climate shocks. The Special Rapporteur in his report on his mission to the World Trade Organization (WTO)¹² has shown how this transition could be achieved by helping small-scale producers improve their productivity and strengthen their access to local markets while shielding them from the negative impacts of the arrival of cheap, imported food commodities on these markets. Improving the productivity of the small-scale agricultural producers, which still represent a majority of the food insecure in many least developed countries, not only will support them by allowing them to have higher incomes, but also will benefit other sectors of the economy since increased incomes in rural areas generally raise demand for locally-traded goods or services, in effect creating a market for the secondary and tertiary sectors that then can expand.¹³

The main difficulty that poor, net-food importing countries face today is how to ensure the transition towards a relocalization of food systems, which can lead to better incomes in rural areas and limit dependency on international markets. The EU should support this transition. The Special Rapporteur recalls in this regard that during the 1980s and until the mid-2000s, oversupply on international markets, particularly by heavily subsidized producers from countries of the Organisation for Economic Co-operation and Development (OECD), led to price decreases on international markets. In the absence of strong tariff protections, this resulted in import surges that threatened the ability of less competitive local producers in net food-importing developing countries to live from their crops, when such import surges led to such low prices on the domestic markets that they were driven out of business (see Appendix 1). This should not be allowed to reoccur. The recommendations made in section III of this note include mechanisms that to closely monitor impacts of EU food products exports on the local markets of developing countries.

B. The CAP should be placed in the broader framework of the EU's Policy Coherence for Development

The Special Rapporteur fully acknowledges the delicate position of the EU vis-à-vis food-importing developing countries. In its role as one of the world's most important agricultural products exporters, the EU faces a major dilemma. On the one hand, as already noted, exports from the EU could make it more difficult for developing countries to strengthen their agricultural sectors. Such efforts in this regard may require that Governments shield local producers from the dumping of agricultural products on the local markets, which likely will result in unfair competition given that local producers generally do not benefit from the same levels of governmental support. On the other hand, in many low-income countries that are net-food importers, the availability of cheap food on the international markets, on which these countries depend, allows Governments to ensure the affordability of food for people living in poverty, particularly those in the urban areas. For example, from 2005 to 2007 within the Economic Community of Western African States (ECWAS), 14 per cent of total agricultural and food imports came from the EU.

The Special Rapporteur encourages poor, net-food-importing countries to strengthen their agricultural sectors by investing in storage facilities and infrastructure to improve the ability of small-scale producers to be linked to markets; to support their farmers through extension services; to encourage small-scale farmers to form cooperatives in order to achieve economies of scale in the processing, packaging and marketing of food. He also encourages these countries to support the urban consumer's access to affordable and nutritious food by setting up or strengthening social protection schemes providing income support, and by connecting local food producers to nearby urban markets.

This transition will take time, and it will require investments. And although it is in the long-term interest of the countries concerned, it may be in tension with their short-term interest of continuing to rely on cheap food imports, even at the expense of their agricultural sector. The EU has a responsibility to facilitate such a transition. This means encouraging developing countries, who currently depend on food imports, to feed themselves in order to gradually reduce such dependency. Depending on each country's situation, this could mean increasing import tariffs on agricultural products to better protect their producers from the impacts of import surges, and using the revenues from such tariffs to finance rural development and infrastructure benefiting farmers, and investing heavily in social protection for non-food-producing households living in poverty. Such actions are incompatible with pursuing an agenda of trade liberalization in agricultural commodities, which has resulted in the marginalization of large numbers of less competitive production units—smallholders in developing countries, who effectively were crowded out by imports subsidized by OECD countries—and in an increase in inequality and poverty in rural areas of developing countries.¹⁴

The Special Rapporteur notes in this regard that past reforms of the CAP have led to a phasing out of export refunds, which currently represent only a minor fraction of European support to the farming sector. Although the total amount of export refunds remains significant (representing €26 million in 2008), export refunds represented less than 2 per cent of CAP expenditure according to DG AGRI figures in 2008, a significant decrease as they represented 50 per cent of the total expenditure in 1980s and approximately 30 per cent in 1990.¹⁵ In addition, since the first major overhaul of the CAP in 1992–1993, traditional market management and transitional tools (such as coupled direct aid payments) were replaced by an increased use of decoupled direct payments, an expansion of investment support tools and new policy initiatives. Recent reforms of the CAP have also led to a shift towards policy instruments compatible with the “Green Box” of the Agreement on Agriculture of the WTO, most notably decoupled direct aid payments and increased rural development spending. For instance, according to latest notification of the EU to the WTO regarding its commitments for 2006–2007, a total of €6.5 billion of its domestic support falls into the Green Box, in addition to €5.7 billion in the Blue Box and €6.6 billion in the Amber Box. The majority of the EU's support to agriculture for 2010–2013 will be in the form of direct aid payments (69 per cent), and 24 per cent in the form of rural development expenditures; and by 2013, at least 92 per cent of its direct payments paid will be decoupled from production.¹⁶

Despite this general trend, there are exceptions. Thus, export subsidies were reactivated in the dairy and pork sectors in 2008 and 2009, when the European Commission used export refunds to address specific market events. One analysis, based upon official EU statistics, concludes that export refund allocations for pork, eggs and poultry reached €200.5 million in 2008, their highest level since 2001.¹⁷

In addition, it should be acknowledged that the negative impacts of export refunds are not the only source of distortions that could produce negative impacts on developing countries' markets, although such effects are particularly important, which explains why reference was made to their abolition by 2013 as part of a global trade deal at the Hong Kong Ministerial Conference of the WTO in December 2005¹⁸. Direct payments in 2008 were on average slightly above €200/ha, representing 28 per cent in agricultural factor income for the EU, and total subsidies account for 40 per cent. This is in addition to market price support policies, such as import tariffs, which ensure protection against lower-price imports. Without these various forms of support, the EU producers would not be in a position to compete on world markets, since the social and environmental conditions under which they operate

would not allow them to be competitive. For instance, it has been estimated that the “dumping rate” for cereal exports by the EU in 2006 was on average 54.7 per cent, when the EU-27 exported 27.345 Mt of cereals as raw materials or processed products (approximately 10 per cent of its production).¹⁹

This underscores the need for the CAP to be placed in the broader framework of the EU's Policy Coherence for Development commitments. As noted by the European Parliament, the Policy Coherence for Development launched in 2005 aims at ensuring “that all EU policy areas with an external impact must be designed to support and not contradict the fight against poverty and the achievement of the Millennium Development Goals, as well as the fulfilment of human rights, including gender equality and social, economic and environmental rights.”²⁰ This should be reflected by a close monitoring of the impacts of the CAP on EU agricultural exports to developing countries. Adequate supply management schemes in the EU aimed at avoiding overproduction could go a long way towards limiting the negative impacts of EU support to its farmers (in order to stabilize their incomes and to help them meet various requirements imposed on them) on the local markets of developing countries. The Special Rapporteur, however, considers that mechanisms should be established immediately to shield local agricultural producers in developing countries, to the maximum extent possible, from the negative impacts of EU export policies.

III. The EU as an agricultural commodities importer

The EU plays a major role in international agricultural trade as an importer of agricultural commodities. The current situation, however, is unsatisfactory for a number of reasons. With regard to the products that EU farmers could produce in sustainable conditions, outsourcing food production makes little sense. First, it allows large commodity buyers to pit EU producers against foreign producers. This weakens the position of producers in food chains both within the EU and in EU trading partner countries, and it allows commodity buyers and, more broadly, agribusiness corporations dominating the global trade system, to capture an increased portion of the added value. Second, it increases pressure on the natural resources of developing countries, and competition for land and water resources between large producers, who have access to export markets, and small-scale farmers, who are easily priced out of the land markets as a result. Third, it encourages developing countries to maintain export-led agricultural policies, at the expense of strengthening local and regional markets that could provide major benefits for the poorest farmers, as well as ensuring access to food for local communities, including fresher and more nutritious food for urban populations.

The EU dependence on protein plant imports, particularly soy, illustrates some of the problems associated with EU imports of agricultural products to meet consumer demand within the EU (or, sometimes, to re-export meat or dairy products, or processed foods). In the EU, meat and dairy production is largely dependent on protein feed imports, in particular soy imports from Brazil, Argentina and the United States that are combined with cereals to provide energy-rich feed to animals. The EU imported 45 million tonnes of feed materials in 2008. Twenty-four million tonnes of proteins were imported for intensive animal keeping systems, representing almost three quarters of EU demand for protein feed crops, which is satisfied by imports. It has been calculated that an area of 20 million hectares of land outside of Europe is needed for this production, equivalent to 10 per cent of Europe's arable land.²¹ These imports are made possible by very low import tariffs on oilseeds and protein crops, discouraging EU farmers from producing such crops. But in the EU, this policy favours intensive cattle feeding and the separation of animals from pastures, which is the source of well-known environmental problems. The negative environmental impacts in exporting countries are equally considerable, and the current policy increases pressure on natural resources in exporting countries. Altogether, it has been estimated that for 2007–2008, EU net food imports required 35 million hectares to be produced, equivalent to the entire territory of Germany.²² This is neither inevitable nor necessary. The European Parliament in fact has highlighted the need to study the possibility of “increasing domestic protein crop production in the EU by means of new policy instruments (also taking into account the use of oil seeds and their by-products and the potential extent for substituting imports),” noting that a change in current policies could have positive impacts on farmers' revenues; could contribute to climate change mitigation, as leguminous protein crops can

help to reduce greenhouse gas emissions by fixing nitrogen in the soil and thus reducing the use of synthetic nitrogen fertilizer (the most important cause of nitrous oxide emissions, a particularly potent greenhouse gas); and could positively contribute to biodiversity and soil fertility.²³ Major benefits would result from reducing EU dependency on protein crop imports, which are causing massive environmental destruction in countries currently exporting to the EU.

Even insofar as they concern tropical products, current EU import policies could be improved in significant ways. In their current shape, they raise at least three sets of concerns:

1. Existing tariff peaks and tariff escalation lead to a situation in which sub-Saharan African countries, although they are predominantly agricultural, have remained dependent on traditional non-fuel primary commodity exports such as coffee, cotton, cocoa, tobacco, tea and sugar, and were essentially unable to develop into processed food exporters. South Africa, the largest African exporter of processed food, had a global market share of only 1 per cent in the period 2000–2005.²⁴

2. Most of the benefits from global supply chains accrue to commodity buyers, food processors and retailers rather than to producers in developing countries, as a result of imbalances in food chains and, in particular, of important power concentration along certain points of food chains. In developing countries, it is typically the largest producers that are advantaged in export-led agriculture. Given the increased market power concentration in the hands of commodity buyers and large retailers within the agricultural commodities system, these actors, who dominate the global food chains, impose their prices on producers. They impose standards that many small-scale farmers are unable to meet. Particularly for crops like wheat or soybean, for which economies of scale represent important productivity gains, small-scale farmers are unable to compete, and are relegated to the low-value, local markets, which strongly disadvantages them in the competition for land, water or other productive resources, unless they end up working as poorly-paid agricultural labourers. Certain strategies could be developed to avoid small-scale farmers being squeezed out by the development of global supply chains, which include: cooperatives, outgrower schemes, public-private and public-public initiatives and regional initiatives.²⁵ These strategies, however, often have limited impact because of certain structural factors that are obstacles to small-scale farmers benefiting from the development of global supply chains. Large buyers seek to minimize transactions costs, which are high when they seek to source from small-scale farmers, who often are dispersed geographically and far removed from centralized collection facilities. In addition, large agricultural producers are better equipped to adapt to shifting demand and to comply with volume and traceability requirements, as well as with environmental and food safety standards on which global retailers increasingly seek to monitor compliance.²⁶ The result is that, unless strong policies aimed at linking small-scale farmers to markets are implemented, the development of these supply chains will likely increase dualization in the farming systems of developing countries, and risk further marginalization of the poorest farmers.

The EU could make a major contribution to improving the sustainability of food supply chains by better protecting farmers from abuse of buyer power and by using, where appropriate, competition law to tackle excessive concentration in the food system. Elsewhere, the Special Rapporteur shows how disproportionate buyer power, which arises from excessive concentration in food supply chains (among commodity buyers, food processors and retailers), tends to depress prices that food producers at the bottom of those chains receive for their produce. This in turn means lower incomes for these producers, which may have an impact on their ability to invest for the future and to climb up the value chain, and it may lead them to lower wages that they pay to the workers that they employ. There is thus a direct link between the ability of competition regimes to address abuses of buyer power in supply chains, and the enjoyment of the right to adequate food. The Special Rapporteur concluded that developed countries, including the EU—where the main commodity buyers are domiciled, acting as the “gatekeepers” to the high-value markets of the OECD—could more effectively apply competition law to address the creation, maintenance and abuse of such buyer power not only to protect suppliers, particularly in developing countries, from the impacts of abuses of dominant positions, but also to ensure the longer term stability of supply for consumers.²⁷

3. Where competitiveness of agricultural products is only a function of price and compliance with certain food safety and quality standards, responsible farming practices that comport with certain environmental, social and human rights standards are not rewarded. A system of positive incentives could be established to encourage agricultural commodity imports to the EU that comply with such standards, in particular to ensure fair revenues for producers and living wages to agricultural workers.

Biofuels policies are another area in which the impact of increased demand for agricultural commodities could be questioned and reviewed in the light of the Policy Coherence for Development commitments. Like other major developed economies, the EU has decided to encourage the biofuels production through subsidies and fiscal incentives, and it has adopted a target of 10 per cent of renewable energies in the transportation sector by 2020, the bulk of which will be met by relying on biofuels.²⁸ This goal has significant implications for global agricultural markets, including by increasing the tension between supply and demand. Biofuel production is already resulting in more pressures on land and water resources in developing countries,²⁹ whether directly for biofuel production, or indirectly in response to the need within the EU for more agricultural imports that it is not producing internally because of agricultural production switching to energy crops. In the view of the Special Rapporteur, it is unconscionable that these effects are not given greater attention. While the EU announces its intention to contribute to feeding the world, its biofuels policy has the potential of making it more difficult for communities in developing countries to feed themselves, as their right to food competes with those of consumers in rich countries.

III. Conclusion and recommendations

The possible positive and negative impacts of the CAP reform on the realization of the right to food in developing countries should be an integral part of the impact assessment to be conducted by the Inter-Service Steering Group in 2011. The Special Rapporteur expresses his readiness to contribute to defining the methodology that could be adopted in this regard.

A. The Special Rapporteur makes the following specific recommendations with regard to the role of the EU as an *exporter* of food products :

1. The EU should closely monitor the impacts of the CAP on EU agricultural exports to developing countries. Adequate supply management schemes in the EU aimed at avoiding overproduction could help limit negative impacts of EU support to its farmers farmers (in order to stabilize their incomes and to help them meet various requirements imposed on them) on the local markets of developing countries. The Special Rapporteur, however, considers that mechanisms should be established immediately to shield local agricultural producers in developing countries, to the maximum extent possible, from the negative impacts of EU export policies.

2. Farmers' organizations in developing countries that are EU trading partners should have access to grievance mechanisms. As part of the EU's development cooperation policies, farmers organizations in the countries that are EU trading partners should be given the possibility of informing the European Parliament's standing rapporteur on policy coherence for development of situations where imports of EU products have a negative impact on local markets. They also should be given the possibility of contributing to policy coherence for development (PCD) assessments, both directly by communications to the standing rapporteur and through PCD focal points in European Union delegations in third countries. The possibility for farmers organizations in developing countries to address the standing rapporteur on policy coherence for development is especially important since concerned developing countries face a number of obstacles in relying on WTO dispute settlement mechanisms, and capacity and resource constraints. Moreover, given the weight of political considerations, WTO dispute settlement mechanisms are unlikely to be used, even in situations where it would be legally feasible.³⁰ Adequate resources should be devoted to the PCD mechanism, including research capacity, which is not the case today. The EU trading partners in the developing world should also be encouraged to establish mechanisms through which their farmers organizations

could file complaints regarding the effects of import surges on their markets, and request that their Governments activate the flexibilities permissible under the relevant trade agreements.

3. Economic Partnership Agreements should allow and encourage net-food-importing developing countries to rebuild and strengthen their agricultural sector. This is fundamentally incompatible with demands imposed on developing countries that they further liberalize their markets to imports, or that they renounce using certain tools, such as supply management schemes or tariffs. The Economic Partnership Agreements (EPAs) proposed by the EU to the African, Caribbean and Pacific Group of States (ACP) should be assessed against this background. The Special Rapporteur is concerned that EPAs include commitments that go beyond the disciplines imposed under the WTO agreements, such as tariff standstill provisions, bans on export restrictions and export taxes, caps on remedy sizes available under the bilateral safeguard clause, and fail to discipline the use of export subsidies by EU partners. A proper assessment of the impact of the CAP reform on the right to food in developing countries should consider this reform in its wider context. It should be seen as an opportunity to reexamine choices made in the past in the light of the new consensus on how to improve global food security and the imperative to realize the right to food for all.

4. The EU should align its export strategies with national strategies for the realization of the right to food of net-food-importing developing countries, and it should support the adoption of such national strategies where they do not yet exist. The Committee on Economic, Social and Cultural Rights, has insisted on the need for States to work towards “the adoption of a national strategy to ensure food and nutrition security for all, based on human rights principles that define the objectives, and the formulation of policies and corresponding benchmarks.”³¹ Such a national strategy should comprise the establishment of appropriate institutional mechanisms, particularly in order to: (i) identify, at the earliest stage possible, emerging threats to the right to food through adequate monitoring systems; (ii) enhance coordination between relevant ministries and between the national and sub-national levels of government; (iii) improve accountability, with a clear delineation of responsibilities, and the setting of precise timeframes for the realization of the various dimensions of the right to food, which require progressive implementation; and (iv) ensure meaningful, inclusive and transparent participation by all segments of society, particularly the most food-insecure. In the 2004 Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security adopted by the 127th session of the FAO Council, Governments unanimously committed to the adoption of nationally-owned strategies. The Final Declaration adopted at the November 2009 Rome Summit on World Food Security reiterates this commitment (para. 9).

Such strategies can play an important role in the realization of the right to food by ensuring adequate resource mobilization, improving coordination across different branches of government, setting timebound objectives, and establishing participatory bodies to ensure that policies address the real needs of people. Most importantly in the current context, such multi-year strategies for the realization of the right to food are particularly relevant when a transition is to be organized towards food systems that benefit the most vulnerable segments of the population and that reduce vulnerability.

The EU export policies should be aligned with those national strategies and support them, and the compatibility of EU export policies with these strategies should be assessed regularly as part of the PCD biennial reviews. In the view of the Special Rapporteur, this is the most effective means by which the EU, as a major food exporter, can help net-food-importing developing countries rebuild their agricultural systems and reduce their current vulnerability to price shocks.

5. The EU should integrate the CAP reform into a broader strategy to improve food systems. This strategy should, in particular, seek sustainable ways to reduce losses and waste in food chains, and reallocate cereals used in animal feed to human consumption.

B. The Special Rapporteur makes the following specific recommendations with regard to the role of the EU as an importer of food products:

1. The EU should review its existing tariff structure with the view to encourage diversification of economies of developing countries into higher added-value products and the emergence of a food processing industry, which will create employment opportunities that can contribute to the realization of the right to food for the urban poor.

2. The EU should address power imbalances in food chains by more effectively applying its competition law to address the creation, maintenance and abuse of buyer power not only to protect suppliers, particularly in developing countries, from the impacts of abuses of dominant positions, but also to ensuring the longer term stability of supply for consumers.

3. The EU could put in place a system of positive incentives to encourage the import of agricultural products to the EU that comply with certain environmental, social and human rights standards, in particular by ensuring fair revenues for producers and living wages for agricultural workers.

4. The EU should mitigate the negative impacts of increased biofuel production that are encouraged by EU subsidies and fiscal incentives and by the adopted target of 10 per cent of renewable energies in the transportation sector by 2020.

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Olivier De Schutter was appointed the UN Special Rapporteur on the right to food in March 2008 by the United Nations Human Rights Council. He is independent from any government or organization, and he reports to the Human Rights Council and to the UN General Assembly.

For more on the work of the Special Rapporteur on the right to food, visit www2.ohchr.org/english/issues/food/index.htm or www.srfood.org

Appendix 1. Import surges and dumping on the local markets of developing countries³²

12,000 cases of import surges were documented in a survey covering 102 developing countries over the period 1980–2003. The FAO concluded that the frequency of import surges exceeded 20 per cent (i.e., one every five years) for all basic food commodities, with particularly high frequencies for rice (40.1 per cent), sugar (40.4 per cent), palm oil (36.6 per cent), cheese (36.4 per cent) and wheat (35.9 per cent).³³ These frequencies have increased for most commodities in the post-1994 period, after the entry into force of the WTO Agreement on Agriculture, except for wheat, rice, maize and palm oil. The countries most affected were India and Bangladesh in Asia; Zimbabwe, Kenya, Nigeria, Ghana and Malawi in Africa; and Ecuador and Honduras in Latin America.³⁴

Such import surges threaten the livelihoods of farmers and agricultural labourers living off these crops.³⁵ For instance, in Ghana, rice imports increased from 250,000 tonnes in 1998 to 415,150 tonnes in 2003. Domestic rice, which had accounted for 43 per cent of the domestic market in 2000, captured only 29 per cent of the domestic market in 2003. As a result, 66 per cent of rice producers recorded negative returns.³⁶ Also in Ghana, tomato paste imports increased by 650 per cent from 3,300 tons in 1998 to 24,740 tons in 2003, with a significant proportion (36 per cent) coming from Italy. Local producers – mostly small-scale farmers, suffering from a lack of competitiveness and investment – lost 35 per cent of the share of the domestic market. In Cameroon, poultry imports increased nearly 300 per cent between 1999 and 2004. Some 92 per cent of poultry farmers dropped out of the sector. 110,000 rural jobs were lost each year from 1994 to 2003. In Côte d'Ivoire, poultry imports increased 650 per cent between 2001 and 2003, causing domestic production to fall by 23 per cent. The falling prices forced 1,500 producers to cease production and led to the loss of 15,000 jobs. In Mozambique, vegetable oil imports (palm, soy and sunflower) saw a fivefold increase between 2000 and 2004, as local production was unable to supply the rapidly increasing local demand. In a context of declining prices and with domestically refined oils following the price movements of imported refined oil, the profit margins of local producers shrank drastically, leading to plant closings and to an overall volume reduction of locally produced oil.

These import surges experienced by developing countries resulted from structural adjustment programmes that lowered import tariff barriers at levels significantly below the tariffs bound under the Agreement on Agriculture, which these countries were forced to accept as a conditionality to receive loans. Combined with declining prices on international markets, partly attributable to subsidies provided to their agricultural producers by OECD countries and the resulting overproduction, this precipitated the arrival of cheap commodities on domestic markets with which local producers in developing countries were unable to compete. The supply-side constraints facing these producers vary from country to country, but they include low productivity due to reliance on low agricultural technology, lack of access to credit and agricultural inputs, lack of training and technical assistance, and lack of rural infrastructural services. While these constraints could be removed partly by increased investments in agriculture and public policies supporting farmers, this represents a medium- to long-term perspective that does not constitute an adequate response in the short term to the inability of farmers affected to increase supply in response to demand and to improve their competitiveness in the face of competition from imports.

¹ Communication of the Commission, *The CAP towards 2020: Meeting the food, natural resources and territorial challenges of the future*, COM(2010)672 final, 18.11.2010 (hereafter “Communication *The CAP towards 2020*”).

² The Commission Communication of November 2010 makes no direct reference to the right to food, a human rights recognized in international law, particularly under Article 25 of the Universal Declaration of Human Rights (G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948)), and under Article 11 of the International Covenant on Economic, Social and Cultural Rights (adopted on 16 December 1966, G.A. Res. 2200(XXII), U.N. GAOR, 21st sess., Supp. No. 16, U.S. Doc. A/6316 (1966), 993 UNTS 3). This stands in contrast to earlier communications, in particular the March 2010 Communication on “An EU policy framework to assist developing countries in addressing food security challenges” that clearly states that “key issues in the current food security agenda, such as nutrition, price volatility, social protection and safety nets, biofuels, food safety, research and innovation, large-scale land acquisition, and the ‘Right to Food’ concept need integration into an overall policy framework” (COM(2010)127 final, 31.3.2010, p. 2), and that refers to Article 11 of the International Covenant on Economic, Social and Cultural Rights, to which all EU Member States are parties. It is also in contrast with the resolution adopted by the European Parliament on the CAP and global food security: the Parliament

emphasised that “agricultural development must be based primarily on the right to food” and stressed the importance of the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security adopted by members of the FAO in November 2004 (European Parliament, Resolution of 13 January 2009 on the Common Agricultural Policy and Global Food Security (2008/2153 (INI)), paras. 53 and 54). The Declaration adopted at the World Summit on Food Security convened in Rome on 16-18 November 2009 called upon Governments to “collectively accelerate steps ... to set the world on a path to achieving the progressive realization of the right to adequate food in the context of national food security.”

³ European Parliament, Report on the future of the Common Agricultural Policy after 2013 (2009/2236(INI)), Committee on Agriculture and Rural Development, Rapporteur: George Lyon, 21 June 2010, Para. M.

⁴ European Commission. The CAP towards 2020: Meeting the food, natural resources and territorial challenges of the future, COM(2010)672/5, Brussels, 2010, p 4.

⁵ European Parliament, Report on the future of the Common Agricultural Policy after 2013, cited above, Ibid, Para L. Inward processing trade represents the agricultural products that are imported duty free on the condition that they are re-exported after processing in the EU.

⁶ European Commission, The EU's Common Agricultural Policy (CAP) on the move in a changing world. How the EU's agriculture and development policies fit together, 2010, p. 7 (noting that around 71 per cent of the EU's agricultural imports originate from developing countries).

⁷ See “Communication *The CAP towards 2020*”: “Given that demand worldwide will continue rising in the future, the EU should be able to contribute to world food demand” (p. 4).

⁸ Per capita food loss in Europe and North-America is 280-300 kg/year, and more than 40 per cent of the food losses occur at retail and consumer levels. In Sub-Saharan Africa and South/Southeast Asia the losses, more than 40 per cent of which occur at post harvest and processing levels, is 120-170 kg/year. The total per capita production of edible parts of food for human consumption is, in Europe and North-America, about 900 kg/year and, in sub-Saharan Africa and South/Southeast Asia, 460 kg/year. See FAO with the Swedish Institute for Food and Biotechnology, *Global food losses and waste. Extent, causes and prevention*, Rome, 2011.

⁹ FAO, *World Agriculture, towards 2030/2050*, 2006, FAO, Rome.

¹⁰ European Parliament resolution of 7 September 2010 on fair revenues for farmers: A better functioning food supply chain in Europe (2009/2237(INI)), OP 61 (urging the European Commission “to analyse, in a report to the European Parliament and the Council, the huge waste of food in the food chain, which in most Member States comprises up to 30 per cent of produced food, and to take action via an awareness-raising campaign about the essential value of food”).

¹¹ Keyzer et al., ‘Diet shifts towards meat and the effects on cereal use: can we feed the animals in 2030?’, *Ecological Economics*, vol. 55 (2) (2005): 187-202.

¹² See Mission to the World Trade Organization, Report presented by the Special Rapporteur on the right to food to the Human Rights Council, A/HRC/10/5/Add.2.

¹³ See Luc Christiaensen, Lionel Demery & Jesper Kuhl, “The (Evolving) Role of Agriculture in Poverty Reduction—An Empirical Perspective,” *Journal of Development Economics* (2011), 8-9 (forthcoming). This “consumption linkage” is particularly likely where agricultural growth is spread widely across large segments of a very poor population. But it presupposes that the rural population will buy locally produced goods and locally provided services, and that supply can meet this increase in demand. Therefore, investment in agriculture should be seen as part of a broader concept of economic development that should aim at a diversification of the economy of the country as a whole.

¹⁴ See European Parliament, Resolution of 13 January 2009 on the Common Agricultural Policy and Global Food Security (2008/2153 (INI)), paras. 30 and 63-64.

¹⁵ European Parliament, Report on the future of the Common Agricultural Policy after 2013 (2009/2236(INI)), Committee on Agriculture and Rural Development, Rapporteur: George Lyon, 21 June 2010, Graph 1, p. 25.

¹⁶ European Commission, The EU's Common Agricultural Policy (CAP): on the move in a changing world. How the EU's agriculture and development policies fit together, 2010, p.12.

¹⁷ South Centre, EU's Common Agricultural Policy (CAP): Tools Protecting European Farmers. Analytical Note (SC/TDP/AN/AG/13), March 2011, Geneva, Switzerland, paras. 25-27 (at p. 9).

¹⁸ Ministerial Declaration adopted on 18 December 2005, WT/MIN(05)/DEC, para. 6.

¹⁹ Jacques Berthelot, The dumping rate of the EU-27 exported cereals in 2006, Solidarité paper, May 2010, pp. 1-4, available from <http://www.solidarite.asso.fr/IMG/pdf/The-dumping-rate-of-the-UE-27-exported-cereals-in-2006.pdf>. The methodology in order to arrive at this calculation of the “dumping rate” takes into account the sum of export refunds on cereals (€206 million), direct payments on cereals (€1.642 billion), subsidies on cereals stockholding (€34.4 million) as well as the part of non product-specific subsidies of Green and Amber boxes, knowing that cereals have accounted in 2006 for 10.1 per cent of the whole agricultural production value (€13.5 billion); and it takes into account only the fraction of these subsidies that are embodied in exports. Export subsidies represent therefore only 10.5 per cent of the total subsidies to exported cereals (€1.960 billion).

²⁰ European Parliament resolution of 18 May 2010 on the EU Policy Coherence for Development and the ‘Official Development Assistance plus’ concept (2009/2218(INI), 18 May 2010), OP 8.

²¹ See, for these figures, the Report presented to the European Parliament by the Committee on Agriculture and Rural Development (rapp. M. Häusling), *The EU protein deficit: what solution for a long-standing problem?*, EU doc. A7-0026/2011, 4.2.2011, and Aprovech EU CAP 2013 reform - CAP Lobby brief 4.

²² Id.

²³ See the resolution adopted by the European Parliament on 8 March 2011 the basis of the above-mentioned report, *The EU protein deficit*, OP 2.

²⁴ OECD, *Business for Development 2008, Promoting Commercial Agriculture in Africa: A Development Centre*

Perspective, Paris, 2008.

²⁵ See, highlighting the measures which could facilitate cooperation between supermarkets and smallholder farmers, Oli Brown & Christina Sander, *Supermarket Buying Power: Global Supply Chains and Smallholder Farmers*, *International Institute for Sustainable Development* 11 (March 2007).

²⁶ C. Dolan & J. Humphrey, "Governance and Trade in Fresh Vegetables: The Impact of UK Supermarkets on the African Horticultural Industry", *Journal of Development Studies*, 37(2) (2001), at p. 175.

²⁷ See further "Addressing Concentration in Food Supply Chains. The Role of Competition Law in Tackling the Abuse of Buyer Power," Briefing Note by the Special Rapporteur on the right to food, December 2010.

²⁸ Directive 2009/28/EC of 23 April 2009 on the promotion of the use of energy from renewable sources and amending, OJ L 140 of 5.6.2009, p. 16.

²⁹ In a report presented in September 2010, the World Bank reviewed 405 investment acquisitions and found that thirty-seven percent focus on food crops, twenty-one percent on industrial or cash crops, and twenty-one percent on biofuels. The remainder is distributed among conservation and game reserves, livestock, and plantation forestry, often in order to capture carbon credits. See Klaus Deininger et al., World Bank, *Rising Global Interest in Farmland: Can It Yield Sustainable and Equitable Benefits?* (Washington DC, 2010), at p. 51.

³⁰ Under Article 12, al. 2, of the Partnership Agreement between the ACP and the European Commission signed in Cotonou on 23 June 2000 (and revised in Luxembourg on 25 June 2005), the Governments of ACP countries may request consultations with the EU whenever decisions are adopted by the EU that could affect their interests with regard to any of the objectives of the Agreement. To this end, the EU has committed to notify in advance the proposals that could lead to any such interests being affected. The Special Rapporteur encourages ACP countries to use the possibility of such consultations where their agricultural sector could be impacted by export surges.

³¹ E/C.12/1999/5, para. 21.

³² Adapted from the report of the Special Rapporteur on the right to food, *Mission to the World Trade Organization*, presented to the tenth session of the Human Rights Council, A/HRC/10/5/Add.2.

³³ In reaching such conclusions, the FAO used the definitions contained in Article 5 of the Agreement on Agriculture concluded as part of the Marrakech Agreements establishing the World Trade Organization.

³⁴ FAO Brief on Import Surges - Issues, No. 2 : Import Surges: What is their frequency and which are the countries and commodities most affected?, FAO, Rome (October 2006), available from: http://www.fao.org/es/esc/en/378/406/highlight_423.html.

³⁵ See, for a series of case studies, the FAO Briefs on Import Surges cited above. See also Ramesh Sharma, *Overview of reported cases of import surges from the standpoint of the analytical content*, FAO Import Surge Project Working Paper No. 1, Commodities and Trade Division, FAO, Rome, 2005.

³⁶ See also A. Paasch (ed) et al., *Trade Policies & Hunger. The impact of trade liberalisation on the Right to Food of rice farming communities in Ghana, Honduras and Indonesia*, FIAN and the Ecumenical Advocacy Alliance, October 2007.