

# Transforming Trade Law for Sustainable Food Systems

Prof. Heather McLeod-Kilmurray  
Centre for Environmental Law and Global Sustainability

[uOttawa.ca](http://uOttawa.ca)





## MAIN messages/questions

- ▶ Food sovereignty, food justice, right to food, ecologically sustainable agriculture **IN CANADA** - a lot of POLICY ACTION now at municipal and federal levels in Canada, lots of consultation
- ▶ Seems to bump up against international trade policy and the incentives it creates – industrialization, corporatization/financialization/concentration

Q: How can we get domestic governments to

- ▶ CONFRONT/address how domestic agri-food policy affects international food justice
- ▶ Create domestic agri-food policies and international trade postures to play fair domestically and internationally – and adhere to our international law obligations

## THE PROBLEM and the **SCOPE** of “acceptable” questions

- ▶ “the current [global trade] regime [in relation to agriculture] is severely distorted in favor of industrialized countries and ... it should be mended urgently.
- ▶ BUT we FIRST cannot avoid asking the more fundamental question of ***whether more trade is a desirable objective***, or *whether the incentives it creates for states to invest in an export-oriented model of agricultural development do more damage than they bring about benefits.*”

Olivier de Schutter,  
UN Special Rapporteur on the Right to Food

“Why has free trade produced record profits for multinational corporations while increasing rural poverty and fueling social dislocation in developing countries?”

Carmen Gonzalez “Institutionalizing Inequality”



## SDG2 – Zero Hunger



- ▶ through “resilient agricultural practices.” ***This includes correcting the distorting effects of trade policies*** (SDG Knowledge platform <https://sustainabledevelopment.un.org/sdg2>.)

## ALL SDGs have links to food





## RIGHT TO FOOD

- ▶ “Right to have
  - ▶ regular, permanent and unrestricted **access**, either directly or by means of financial purchases,
  - ▶ to quantitatively and qualitatively **adequate and sufficient** food
  - ▶ corresponding to the **cultural** traditions of the people to which the consumer belongs, and
  - ▶ which ensure a physical and mental, individual and collective, fulfilling and **dignified life** free of fear.”

UN Special rapporteur on the Right to Food



## Binding International Legal Obligations

- ▶ *Universal Declaration of Human Rights* 1948 art 25 – (part of rgt to adequate standard of living)
- ▶ General Comment No. 12 on Art 2 of the International Covenant on Economic, Social and Cultural Rights
- ▶ The obligation
  - ▶ **to respect** existing access to adequate food requires States parties not to take any measures that result in preventing such access;
  - ▶ **to protect** requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food;
  - ▶ To fulfill (**facilitate**) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security;
  - ▶ whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfill (**provide**) that right directly. This obligation also applies for persons who are victims of natural or other disasters.



## Sustainable Agriculture

“A sustainable food system, reconciles **ecological, social and economic** imperatives, and is based on a hierarchy of nested objectives:

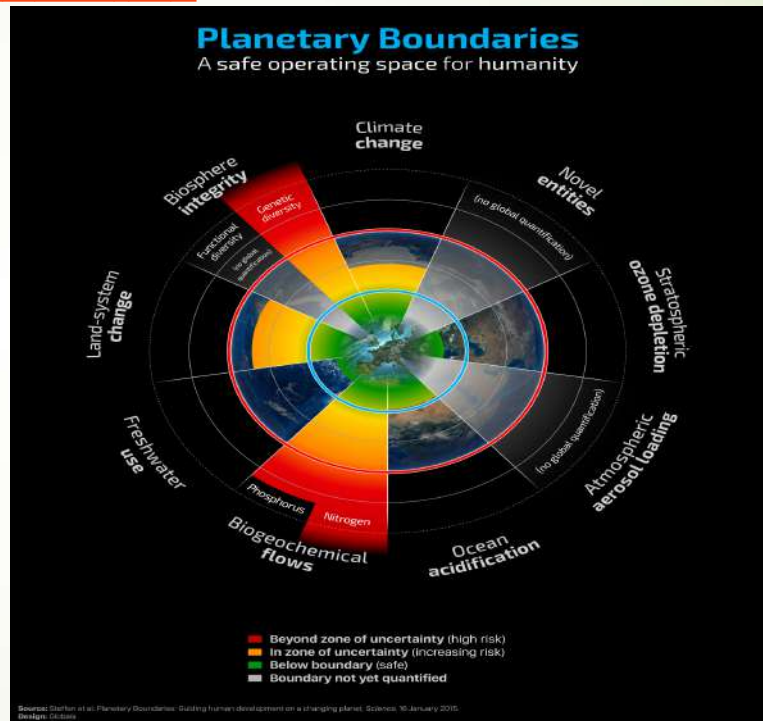
- equitable access to local and seasonable produce
- access to local, organic produce both in local markets and local supermarkets
- access to diverse year-round local farmers' markets
- access to local and seasonable, and organic produce sold in local supermarkets
- enriches biodiversity at all levels, micro-organisms to soil to animals
- minimizes animal suffering through local access to processing, thus also mitigating GHG emissions
- committed to humane treatment of all animals
- integrated into local restaurants, hospitals, schools and public institutions”

[https://crcresearch.org/sites/default/files/u641/definition\\_of\\_a\\_sustainable\\_food\\_system.pdf](https://crcresearch.org/sites/default/files/u641/definition_of_a_sustainable_food_system.pdf)

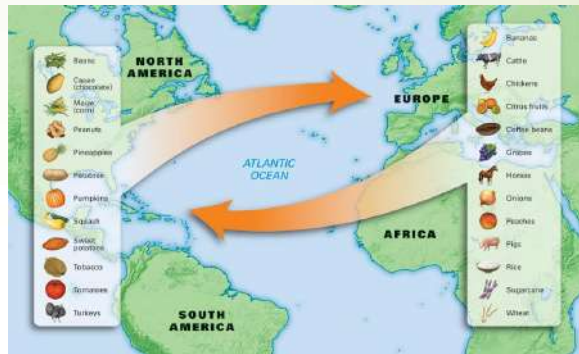


# Agrifood and Planetary Boundaries

<https://stockholm.university.app.box.com/s/v8a2nqnktkw60a3uikwy3ixz7fvc68>




# A Brief History of Food Trade





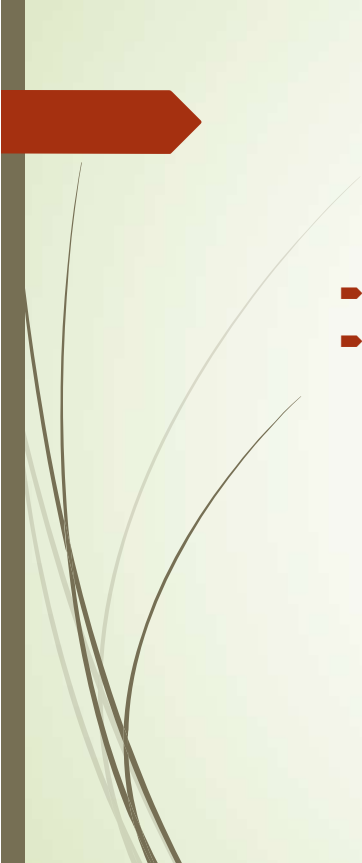
## ADVANTAGES of globalized food trade

- Safe, abundant food
- Stable/reliable supply
- Affordable prices
- Greater variety/choice
- Nutritional benefits
- Reduced waste (science, refrigeration, freezing, canning)
- Climate Change – may make production of certain foods impossible in some regions



## Brief History of Trade Law relating to Food/Agriculture

- Current system of *globalized* food trade **VERY RECENT – highly contingent**
- GATT 1947 – agriculture enjoyed many exemptions
- Multilateral and bilateral treaties existed
- WTO established in 1994 (Uruguay Round)
  - Goals: “establish an orderly and transparent framework within which barriers to trade would be gradually reduced and international trade expanded” (FAO)
  - for agriculture specifically: “to establish a fairer trading system that will increase market access and improve the livelihood of farmers around the world.”  
[https://www.wto.org/english/tratop\\_e/agric\\_e/agric\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/agric_e.htm).
  - 4 main principles:
    - (1) Most favoured nation treatment;
    - (2) reciprocity (of rights and obligations);
    - (3) transparency;
    - (4) Tariff binding and reduction (FAO)


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- ▶ Multi-lateral (**free trade**, other) agreements – eg NAFTA, CETA
  - ▶ **Foreign Direct Investment**
    - ▶ Land grabbing
    - ▶ Investor protection



## WHY was agriculture excluded from GATT?

- ▶ “the drafters of the GATT were well aware of the *unique political status* that agriculture enjoyed in some major countries at that time” (esp EU and USA)
- ▶ **“Agriculture was seen as a unique sector of the economy that, for various reasons including national food SECURITY, could not be treated like other sectors.”**
- ▶ **“SPECIAL TREATMENT” for agriculture “appeared to have tailored to the US farm programmes then in existence”**

FAO (Multilateral Trade Negotiations on Agriculture: A Resource Manual)

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- ▶ **BASICALLY GATT exemptions:** “licensed countries to: subsidize their farmers to the extent they wished; provide border protection as desired; and export the surplus thus generated with export subsidies.” ( THESE ARE THE 3 AREAS FDDRESSED BY THE AoA)
  - ▶ **RESULT – HUGE SURPLUSES that had to be DUMPED with the help of export subsidies**
    - ▶ Impacts on developing world:
      - ▶ Artificially low international prices drove incomes down
      - ▶ Reduced local agricultural production
      - ▶ Threatened livelihoods of small scale producers
      - ▶ Increased dependence on cheap food imports (Gonzalez)
      - ▶ Many more trade disputes (60% of all trade disputes at GATT 1980-1990 were re AGRIC – p 6)
      - ▶ PLUS ecological harms, which in turn make producing adequate food more challenging
      - ▶ Drive toward industrialization, corporatization and concentration, commodification, financialization of agrifood

## Current structure of Food/Ag Trade Law

*Agreement on Agriculture – AoA 1995*

- 3 main areas:

- **enhance market access**

- supporters argue that small farmers in developing countries will benefit

- **reduce domestic supports that promote production**

- opponents argue this systematically favours agricultural producers in industrialized countries, subjecting farmers in developing countries to unfair competition

- **reduce export subsidies** (similar effects)







## Positive elements

- “takes into account **non-trade concerns**, including food security and the need to protect the environment, and provides ***special and differential treatment*** for developing countries, including an improvement in the opportunities and terms of access for agricultural products of particular export interest to these Members.”

World Trade Organization, "Introduction", online: <[https://www.wto.org/english/tratop\\_e/agric\\_e/ag\\_intro01\\_intro\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/ag_intro01_intro_e.htm)>.



## Main Critiques of Trade Law governing Food/Ag

- Olivier de Schutter
- Jennifer Clapp
- Carmen Gonzalez
- Geneviève Parent



Need for an ALTERNATIVE Trade  
Agenda





## Olivier de Schutter – Trade Law should ensure the ***Right to Food***

### 1) Food AVAILABILITY: quantitative issue:

- Massively invest in agriculture in Africa
- Improve capacity of affected food producing countries to cope with CC

### 2) Food ACCESS – distributive issue:

- “produce food in a way that preserves the environment”
- “organize [sustainable food] production so that it raises the incomes of those who are...most food insecure”

QUESTION: **“Which measures can be taken to *channel* international trade in a direction ... more conducive to the realization of the right to adequate food?”**



## Jennifer Clapp

- Dominant voices are promoting increasing the **industrial** agriculture model – eg:
  - more production
  - more biotech
  - more public-private partnerships
  - freer markets
  - more CSR (rather than less corporate concentration)
  - “sustainable intensification” (World Bank, G8, G20...)
- She looks to the potential of **alternative models**: food sovereignty, new global governance (see below)



## Carmen Gonzalez

- “[d]espite the fact that the South bears a disproportionate share of the **environmental consequences** of trade liberalization, much of the opposition to the integration of environmental protection into the international trade regime has come from developing countries ...
- this opposition is due to the North's historic use of trade sanctions to impose its environmental preferences on the South while neglecting to address the North's far more ecologically damaging behavior.”

Carmen G Gonzalez, “Beyond Eco-Imperialism”




## Geneviève Parent – Food **Security** Exceptionalism

- “Agricultural normalism” (ag is just another commodity) vs agricultural exceptionalism
- She says the AoA shows the emergence of a (likely permanent) **“food security exceptionalism”**
  - may be emerging a “global *normative order* in relation to food
  - Definition of food security greatly enlarged recently
  - **Bali and Nairobi decisions re WTO –**
  - India (& G33) said in 2013 – “food security is non-negotiable”
  - Worried about these 3 goals in developing countries:
    - Food security
    - Rural development
    - Poverty reduction
- HISTORY of agricultural exceptionalism
  - UN Charter of Havana 1947 – never adopted – GATT adopted instead – but Havana proposed trade liberalization that DID take into account econ, soc and envir aspects, including exceptional treatment for agric and food, AT LEAST until no longer necessary (RECOGNIZED inequalities of production and consumption etc.)

She says “the history of the liberalisation of agricultural trade shows to what extent

**globalization is a REVERSIBLE phenomenon**” Parent & Modou)



What is Canada doing to fulfil its obligations on the Right to Food (and the Paris Agreement....)





## CANADA

- What is Canada's role in the existing world food trade structure, and its potential to influence trade law for sustainability and justice?
  - **Barton report** – Advisory Council on Economic Growth
    - [Dominic Barton](#), global managing partner of McKinsey & Company, and Chair of the Canadian Minister of Finance's Advisory Council on Economic Growth
    - Report: “**Unleashing the Growth Potential** of Key Sectors”
    - identified “Agriculture and Food: a vital sector and growth driver for Canada's economy”



■ “Canada ranks 5th in agriculture exports and 11th in agfood exports—behind smaller countries like Holland and behind less economically advanced countries like Brazil in both categories. Enabling the sector to move up **to 2nd place in agriculture and to 5th place in agfood** would imply an additional US \$30 billion in exports in today’s distribution of global export shares, equivalent to nearly 2 percent of current GDP.


■ **Recommendations** that would unleash growth potential:


- □. Adopt a new and focused approach to sector development, based on removing obstacles and setting bold ambitions in collaboration with the private sector
- Identify a small number of high-potential sectors that would benefit from this approach, based on inclusive growth criteria
- □. Launch an agfood pilot by convening private and public sector stakeholders, identifying major obstacles to growth, setting an aspiration (a vision and quantified goals), and recommending concrete actions.
- The Council's recommendations provide a “toolkit” that should be leveraged to support growth – e.g., a federal infrastructure bank, a foreign direct investment agency, and a method for catalyzing “innovation marketplaces”



## Federal Government GOALS

- ▶ 2017 federal budget:
  - ▶ “This budget will help farmers and food processors continue to grow their businesses, create jobs and foster long-term growth for the sector, strengthening its potential to be an even stronger economic engine for the Canadian economy.
  - ▶ To support Canada's farmers and food processors, Budget 2017 sets an ambitious target to **grow Canada's agri-food exports to at least \$75 billion annually by 2025**, and launches several initiatives, from investments in science and innovation to value-added processing and infrastructure.”
- ▶ GMO, industrial meat and other food policies/models that we EXPORT and promote in trade negotiations

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- Emphasis on production and export GROWTH
  - **NO mention** of food sovereignty, right to food, trade equity ....



How we can Transform Trade Law to  
achieve SDG2 and sustainable food  
system(s)?

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- Clapp: “As the world food economy has become more global, food itself has in many ways become detached from the societal goals food has traditionally served, such as providing nourishment for people and serving as a cultural medium.”
  - “3 problematic characteristics of the dominant system as lever points for change:”
    - Challenge commodification of food – relocalize food systems
    - Imbalances in global food economy – more equitable food systems
    - Ecological damage of industrial agriculture – ecologically sustainable agriculture
  - **Re-IMBED FOOD within SOCIETY**



# Alternative Food Movements

## ■ Fair trade

- Eliminate the middle agents from the food commodity system (esp MNCs)
  - Non-corporate approaches, alternative commodity chains, (labelling, certification)
  - Maintains international food trade, but raises awareness of consumers, enhances direct links between farmers and consumers
  - Some elements of ecological sustainability as well

## ■ Food Sovereignty

- La Via Campesina - Direct response to Uruguay Round
- rights of farmers and communities to choose their own food system, rejects commodification of food
- Reduce dependence, fill local needs – so can include SOME trade but focus is on local production and consumption
- Nyeleni Declaration 2007: food sovereignty "puts those who produce, distribute and consumer food at the heard of food systems and policies rather than the demands of markets and corporations"
- Explicitly supports ecological agriculture, rejects industrial ag

## ■ Global food justice advocacy – NGOs seeking to improve international food governance structures

- Use binding law to "re-set" the system, reduce power imbalances – esp for farmers and consumers
- E.g. RIGHT TO FOOD (above)
- Food Justice movement



## Change CONSUMER BEHAVIOURS

- Gonzalez : in addition to enhancing power of producers, food sovereignty and food equity, especially in developing countries, we must also CHANGE consumption behaviours:
- “Northern environmentalists and policy-makers [should] focus their energies on **scaling back the North’s appropriation of the world’s resources** rather than imposing their environmental preferences on the South through unilateral trade restrictions or through demands for harmonization of environmental standards.
  - Regulating the conduct of transnational corporations and
  - adopting strategies to promote sustainable consumption”

C Gonzalez “Beyond Eco-Imperialism”



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- ▶ DOMESTICALLY:
    - ▶ resistance through lobbying, through consumer behaviours (shop local, organic, small producer when possible)
    - ▶ **Require FULL FOOD SYSTEM COST ANALYSIS** – of policies at home and internationally – include environmental and social as well as economic costs and benefits, including long term analysis – what are the **TRADEOFFS** for domestic and international producers and consumers of these policies?
    - ▶ Transparency – REPORTING these analyses of proposed Canadian policies, domestically and in international trade realm
  - ▶ International human rights litigation for breaches of international obligations re: fight to food?
  - ▶ **USE COMPETITION LAW** to challenge corporate agri-food power?
  - ▶ COLLABORATIVE resistance and alternative food system advocacy/movements globally



## Conclusion

- Need to bring these insights and pressure to bear in order to re-structure the global industrial agri-food system to achieve
  - Legally binding right to food
  - Food sovereignty
  - Resilient, ecologically sustainable food
  - Food justice



➤ <https://lop.parl.ca/content/lop/researchpublications/prb0536-e.htm>



## Carmen Gonzalez

- Agreement on Agriculture - perceived as allowing the United States and the European Union to continue to subsidize agricultural production and to dump surpluses on world markets at artificially depressed prices while requiring developing countries to open up their markets to ruinous and unfair competition from industrialized country producers.
- This results in the
  - displacement of local food production in developing countries by cheap imported food,
  - increases dependence on food imports, and
  - produces a decline in food self-reliance.
  - countries that rely on export revenues to finance the importation of food could face severe dislocation when a drop in the world market price of key exports makes it difficult to purchase imported food.

Gonzalez "Institutionalizing Inequality" at 438.