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Paths to Local Food Security: A Right to Food, A Commitment to Trade

Marsha A. Echols

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Paths to Local Food Security: A Right to Food, A Commitment to Trade

Marsha A. Echols*

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I. INTRODUCTION

International bodies and nation-states attending international meetings on the subject have agreed that there is a “right to food.” The first Millennium Development Goal, in which members of the United Nations General Assembly agreed to halve the number of persons without adequate food by the year 2015, complements this right to food.¹ Many persons believe that the right to food—especially at the national level—is linked to national food self-sufficiency. Opponents of this view argue that self-sufficiency is economically irrational in many territories.² Others believe that for many countries, particularly nations in sub-Saharan Africa, a government’s obligation to ensure food security can be achieved only through

* Professor of Law, Howard University School of Law and Director, The World Food Law Institute.

1. United Nations Millennium Declaration, G.A. Res. 55/2, ¶ 19, U.N. Doc. A/RES/55/2 (Sept. 18, 2000).

2. See Arcangelo Travaglini, *Reconciling Natural Law and Legal Positivism in the Deep Seabed Mining Provisions of the Convention on the Law of the Sea*, 15 TEMP. INT’L & COMP. L.J. 313, 317 (2001) (recognizing that self-sufficiency may create a national paranoia that other states are hostile to the indigenous way of life).

markets open to basic food imports, combined with some local production and probably with biotechnology.³ While this belief in the need for markets that are open to food imports as well as local production is the prevailing view, the experience of Mexico under the North American Free Trade Agreement⁴ has created some concern for the viability of this system. The Mexican market has opened to U.S. feed corn imports, which would normally lower the price. However, prices for maize have escalated as maize becomes a feed stock of choice in the fight against climate change, driving up demand. This brief article considers a few of the legal and policy issues connected with trying to balance the right to food and the commitment to free trade.

II. THE RIGHT TO FOOD

Most international experts agree that there is a right to food, and categorize it as one of the basic human rights.⁵ The 1948 Universal Declaration of Human Rights declares that “everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food.”⁶ In 1963, the International Covenant on Economic, Social and Cultural Rights added, “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food. . . . The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.”⁷ The 1966 International Covenant on Economic, Social and Cultural Rights reiterated “the right of everyone to . . . adequate food,” and emphasized “the fundamental right of everyone to be free from hunger.”⁸ The 1996 Rome

3. See Carmen G. Gonzalez, *Institutionalizing Inequality: the WTO Agreement on Agriculture, Food Security, and Developing Countries*, 27 COLUM. J. ENVTL. L. 433, 484–85 (2002) (calling for greater access for developing countries to developed countries’ markets in order to increase food security).

4. The North American Free Trade Agreement was signed in 1992 and became effective in January 1994. North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289 (1993), available at <http://www.sice.oas.org/Trade/NAFTA/naftatce.asp>.

5. Cassandra LaRae-Perez, Note, *Economic Sanctions as a Use of Force: Re-evaluating the Legality of Sanctions from an Effects-based Perspective*, 20 B.U. INT’L L.J. 161, 175 (2002).

6. Universal Declaration of Human Rights, G.A. Res. 217A (III), art. 25, U.N. Doc. A/810 (Dec. 12, 1948), available at <http://www.un.org/Overview/rights.html>.

7. International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A (XXI), art. 11, U.N. Doc. A/6316 (Jan. 3, 1976).

8. International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A (XXI), art. 11, U.N. Doc. A/RES/2200(XXI) (Dec. 16, 1966).

Declaration on World Food Security adds “the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger.”⁹

Several agreements concerning the welfare of children have addressed food security.¹⁰ The U.N. Convention on the Rights of the Child, for example, directs that “States Parties shall . . . take appropriate measures . . . to combat disease and malnutrition . . . through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods.”¹¹

The obligation of governments is mentioned in Article 27 of the 1984 United Nations Convention on the Rights of the Child: “States Parties, in accordance with national conditions and within their means . . . shall in case of need provide material assistance and support programmes, particularly with regard to nutrition.”¹²

The United Nations Food and Agriculture Organization (FAO) has a unique role related to the right to food and food security. According to the FAO Constitution, the FAO is comprised of members that are “determined to promote the common welfare by furthering separate and collective action on their part for the purpose of: raising levels of nutrition and standards of living . . . and thus . . . ensuring humanity's freedom from hunger.”¹³

FAO has developed nineteen related voluntary guidelines.¹⁴ The guidelines include advice and recommendations concerning institutions, a legal framework, and access to resources and assets.¹⁵ In describing the legal framework, FAO states that “[i]ndividuals should be able to claim this right and States are accountable for the elaboration and implementation of policies for the immediate and progressive liberalization of the right to food.”¹⁶

9. World Food Summit, Nov. 13-17, 1996, *Rome Declaration on World Food Security*, U.N. Doc. A/52/132, E/1997/57 (May 5, 1997), available at <http://www.fao.org/docrep/003/w3613e/w3613e00.htm> [hereinafter Rome Declaration].

10. See, e.g., *id.* ¶ 17 (promoting the standards of child welfare established by the 1990 World Summit for Children through food security programs).

11. U.N. Convention on the Rights of the Child, G.A. Res. 44/25, art. 24, ¶ 2, U.N. Doc. A/RES/44/25 (Nov. 20, 1989), available at <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

12. *Id.* art. 27.

13. Food & Agric. Org. of the U.N., Constitution art. 1 (2000).

14. Food and Agric. Org. of the U.N., *The Voluntary Guidelines*, http://www.fao.org/righttofood/vg/b3_en.htm (last visited July 2, 2007).

15. *Id.* ¶¶ 5, 7, 8.

16. *Id.* ¶ 7.

III. DEFINING FOOD

Most governments, as well as the Codex Alimentarius Commission, have defined food.¹⁷ These definitions agree, in varying degrees of specificity, that a food is a substance that is consumed or ingested by humans.¹⁸ With the constant changes in food technology, one current difficulty with this definition is distinguishing a food from a food used as a drug.¹⁹

The Codex Alimentarius defines food as “any substance, whether processed, semi-processed or raw, which is intended for human consumption, and includes drink, chewing gum and any substance which has been used in the manufacture, preparation, or treatment of ‘food,’ but does not include cosmetics or tobacco or substances used only as drugs.”²⁰ The U.S. definition of food is simpler: “The term ‘food’ means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.”²¹ In Europe, “food” (or “foodstuff”) means any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be, ingested by humans.²²

The diets of many people, particularly those in urban areas, are evolving. Trade and world media are partially responsible for these changes.²³ Food “grown in one country can now be transported and consumed halfway across the world. People demand a wider variety of foods than in the past, they want foods that are not in season and they often eat out of the home.”²⁴

At the same time, millions of people continue to survive on traditional, local foods, such as corn, rice, tubers and fish. In affluent

17. The WHO and the FAO established the Codex Alimentarius Commission in 1963 to create standards and definitions for use in the Joint FAO/WHO Food Standards Programme. Codex Alimentarius, http://www.codexalimentarius.net/web/index_en.jsp (last visited Oct. 3, 2007).

18. See, e.g., *infra* notes 20-22.

19. See Joseph G. Contrera, Comment, *The Food and Drug Administration and the International Conference on Harmonization: How Harmonious Will International Pharmaceutical Regulations Become?*, 8 AM. U. ADMIN. L.J. 927, 932 n.19 (noting the effect of defining “food” and “drugs,” when interpreting the Tea Importation Act of Mar. 2, 1897).

20. CODEX ALIMENTARIUS COMMISSION, PROCEDURAL MANUAL 41 (16th ed. 2006), available at ftp://ftp.fao.org/codex/Publications/ProcManuals/Manual_16e.pdf.

21. 21 U.S.C. § 321(f) (2007)

22. Council Regulation 178/2002, art. 2, 2002 O.J. (L31), 1 (EC).

23. See Emily J. Schaffer, *Is the Fox Guarding the Henhouse? Who Makes the Rules in American Nutrition Policy?*, 57 FOOD & DRUG L.J. 371, 388-89 (1993) (chronicling the steps of the meat industry to combat recent press on the adverse health effects of consuming meat).

24. M. Elmi, *Food safety: current situation, unaddressed issues and the emerging priorities*, 10 LA REVUE DE SANTÉ DE LA MÉDITERRANÉE ORIENTALE 794, 795 (2004), available at <http://www.emro.who.int/Publications/EMHJ/1006/PDF/13%20Food%20safety.pdf>.

communities of developed countries, the interest in natural, organic, and locally grown foods is increasing.²⁵ One manifestation of this increased interest is the Slow Food Movement. Slow Food says that our “defense should begin at the table with Slow Food. Let us rediscover the flavors and savors of regional cooking and banish the degrading effects of Fast Food.”²⁶

IV. FOOD SECURITY

Food security is taking on greater significance in policy circles. The increase in global attention to the rich-poor divide and the idea that poverty, including inadequate food and diets, might contribute to terrorism are each partially driving the concern:

The number of people without enough to eat on a regular basis remains stubbornly high, at over 800 million, and is not falling significantly. Over 60% of the world's undernourished people live in Asia, and a quarter in Africa. The proportion of people who are hungry, however, is greater in Africa (33 percent) than Asia (16 percent). The latest FAO figures indicate that there are 22 countries, 16 of which are in Africa, in which the undernourishment prevalence rate is over 35 percent.²⁷

FAO has a broad definition of food security: “Food security exists when all people, at all times, have access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.”²⁸

In its Millennium Declaration, the United Nations General Assembly pledged to halve, between 1990 and 2015, the proportion of people who suffer from hunger.²⁹ In the 2007 Millennium Development Goals Report, the United Nations Secretariat reported:

Globally, the proportion of children under five who are underweight declined by one-fifth over the period from 1990-2005. Eastern Asia showed the greatest improvement and is surpassing the MDG target, largely due to nutritional advances in China. Western Asia and Latin America and the Caribbean have also demonstrated significant progress, with underweight prevalence dropping by more than one third. The greatest proportions of children going hungry continue to be found in Southern Asia and sub-Saharan Africa. Poor progress in these regions means that it is unlikely that the global target will be met. If

25. Andrew J. Nicholas, Note, *As the Organic Food Industry Gets Its House in Order, the Time Has Come for National Standards for Genetically Modified Foods*, 15 LOY. CONSUMER L. REV. 277, 298 (2003).

26. CARLO PETRINI, SLOW FOOD: THE CASE FOR TASTE, at xxiv (William McCuaig, trans., Columbia U. Press 2003) (2001).

27. Food & Agric. Org. of the U.N., The Special Program for Food Security, Frequently Asked Questions, http://www.fao.org/spfs/faq_en.asp (last visited Sept. 2, 2007).

28. Rome Declaration, *supra* note 9, ¶ 1.

29. United Nations Millennium Declaration, *supra* note 1, ¶ 19.

current trends continue, the world will miss the 2015 target by 30 million children, essentially robbing them of their full potential.³⁰

V. FOOD SECURITY AND TRADE

There are certain foodstuffs that are staples of local diets; corn,³¹ rice,³² and potatoes³³ are among the staples of many developing countries. However, often these staples are not the agricultural products that are exported.³⁴ Instead, exotic fruits, fresh cut flowers, cacao and coffee beans, seafood, and juice concentrates are among the export industries for which market access is sought in bilateral, regional, and multilateral trade negotiations.³⁵ There is some debate among policy makers concerning the appropriate balance between programs that promote local food security and those that target production for the export market.³⁶ Do the latter detract from production for the local market and hinder steps toward (at least limited) food self-sufficiency?

VI. NAFTA, CORN TRADE, AND FOOD SECURITY IN MEXICO

Under the North American Free Trade Agreement (NAFTA), signed on January 1, 1994, the United States eliminated its tariff of 0.2 cents per kilogram on corn imports from Mexico.³⁷ Mexico

30. The Secretary-General, *The 2007 Millennium Development Goals Report*, at 8 (2007), available at <http://www.un.org/millenniumgoals/pdf/mdg2007.pdf>.

31. See James E. Beard, Note, *An Application of the Principles of Sustainability to the Problem of Global Climate Change: An Argument for Integrated Energy Services*, 11 J. ENVTL. L. & LITIG. 191, 196 (noting that corn is a staple crop in Africa).

32. ROY W. HAMILTON, *THE ART OF RICE: SPIRIT AND SUSTENANCE IN ASIA* 11 (UCLA Fowler Museum of Cultural History 2003).

33. LARRY ZUCKERMAN, *THE POTATO: HOW A HUMBLE SPUD RESCUED THE WESTERN WORLD* 6 (Faber & Faber 1998).

34. See Michael R. Taylor & Jerry Cayford, *American Patent Policy, Biotechnology, and African Agriculture: The Case for Policy Change*, 17 HARV. J. L & TECH. 321, 329 (2004) (blaming distorted market prices for the inability of developing countries to export staple products).

35. See, e.g., Michael Cornell Dypski, *The Caribbean Basin Initiative: An Examination of Structural Dependency, Good Neighbor Relations, and American Investment*, 12 J. TRANSNAT'L L. & POL'Y 95, 120 (2002) (listing some of the trade items produced by Caribbean nations); Emily B. Simmons, *Linking Trade and Sustainable Development*, 18 AM. U. INT'L L. REV. 1271, 1275 (2003) (stating that many developing countries are extremely reliant on their coffee exports).

36. See, e.g., Gonzalez, *supra* note 3, at 471 n.236 (noting that striking a balance between food security and exports is further complicated by gender inequalities in various cultures).

37. North American Free Trade Agreement, *supra* note 4, art. 302, app. at annex 302.2.

converted its import licensing regime to a transitional tariff-rate quota (TRQ) for corn imports from the United States and Canada, with the intention of maintaining the quota for fifteen years.³⁸

In reality, all corn imports since 1994 have been tariff-free. During the six-year transition period, the Mexican agricultural sector experienced a reduction of public support for credit, infrastructure, research and development, and technical assistance.³⁹ The key public-sector agency used to regulate support prices for basic agricultural commodities was dismantled in 1998.⁴⁰ Mexico ended the TRQ early, which affected corn farmers in Mexico and, to some extent, consumers due to an increase in food prices when domestic subsidies were eliminated.⁴¹

The possible effect of the North American Free Trade Agreement on corn (maize), a staple of the Mexican diet, is an interesting study. While maize is a dietary staple in Mexico, it is a major export crop for the United States⁴²: “Today, more than half the world’s maize is grown in the U.S.A. ‘Corn Belt’—the states of Iowa, Ohio, Indiana, Illinois, Nebraska and South Dakota. The grain known to the Indians as ‘The Sacred Mother’ and ‘The Provider of Life’ is one of the most important buttresses of the international economy.”⁴³

After several trade disputes in NAFTA⁴⁴ and the World Trade Organization,⁴⁵ as well as concerns about the effect of NAFTA on food

38. The initial tariff-free quota of 2.5 million tons was to increase by 3% each year. Foreign Agric. Serv. & U.S. Dept. of Agric. [USDA], *NAFTA Agriculture Fact Sheet: Corn*, <http://www.fas.usda.gov/itp/policy/nafta/corn.html> (last visited Sept. 2, 2007).

39. Alejandro Nadal, *Mexican Corn: Genetic Variability and Trade Liberalization 6* (Programa sobre Ciencia, Tecnología y Desarrollo, Working Paper No. 1-06, 2000), available at http://www.ase.tufts.edu/gdae/publications/working_papers/procientec/seedling.pdf.

40. *Id.*

41. *Id.* at 5.

42. CHRISTIAN BOUDAN, *GEOPOLITIQUE DU GOUT: LA GUERRE CULINAIRE* 223, 232 (Presses Universitaires de France 2004).

43. Corn is described as “the ultimate livestock and poultry feed; the source of corn meal, corn oil, corn syrup, and cornstarch; a dehydrated or hydrogenated ingredient in numerous commercial soft drinks, ice creams, breakfast cereals, bottled sauces, canned fruits and vegetables, and candies, and a constituent polymer in many plastic, cardboard, and paper products.” SUSIE WARD, ET AL., *Maize: The New World’s Gift*, in *THE GOURMET ATLAS* 47 (Macmillan 1997).

44. *In re* The U.S. Safeguard Action Taken on Broom Corn Brooms from Mexico, Secretariat File No. USA-97-2008-01 (NAFTA Ch. 20 Arb. Panel 1998), available at <http://www.sice.oas.org/DISPUTE/nafta/english/us97801a.asp>.

45. The disputes include Mexico—*Anti-Dumping Investigation of High-Fructose Corn Syrup (HFCS) from the United States*, WT/DS101/1 (Sept. 4, 1997) - WT/DS101/132 (May 8, 1998) [hereinafter WTO HFCS Anti-Dumping Dispute], and European Communities—*Tariff-Rate Quota on Corn Gluten Feed from the United States*, WT/DS223/1 (Jan. 30, 2001).

security and about the genetic modification of corn,⁴⁶ the debate is now concentrated on the effects on food availability and the price of corn as a feedstock for biofuels.⁴⁷ The Mexican Congress approved the Bioenergetics Promotion and Development Law in April 2007 to encourage the use of ethanol from corn and sugar cane as biofuel.⁴⁸ A successful Doha Development Round of multilateral trade negotiations will not alter this focus.⁴⁹ It is unlikely that a new farm

46. Within the NAFTA context, a milestone was the report of the CEC, *Maize and Biodiversity: The Effects of Transgenic Maize in Mexico*. Much has been written about the legal, moral and social aspects of the genetic modification of the food supply. For two skeptical policy views, see, e.g., KATHLEEN HART, *EATING IN THE DARK* 3-9 (Pantheon Books 2002) (contrasting the USDA's inability to regulate genetically modified foods that have unknown effects on humans with the general aversion of Europeans to genetically altered foods); MARC LAPPÉ AND BRITT BAILEY, *AGAINST THE GRAIN: THE GENETIC TRANSFORMATION OF GLOBAL AGRICULTURE* 140 (The Tides Center/CETOS 1999) (criticizing the arbitrary nature of gene selection in genetic food engineering and corporate focus on short-term economic benefits of genetic food engineering at the expense of long-term public benefits). For views in support of the use of biotechnology, see, e.g., Clayton Yeutter, *The Politics of Food and Biotechnophobia*, in *NEW TECHNOLOGIES AND THE FUTURE OF FOOD AND NUTRITION* 91, 91-92 (John Wiley & Sons, Inc. 1991) (remarking that biotechnology allows food production in climates traditionally unfit for agriculture); Food and Agric. Org. of the U.N., *Statement on Biotechnology*, <http://www.fao.org/biotech/stat.asp> (last visited Sept. 3, 2007) ("Biotechnology provides powerful tools for the sustainable development of agriculture, fisheries, and forestry, as well as the food industry."); ORG. FOR ECON. CO-OPERATION AND DEV., *BIOTECHNOLOGY FOR SUSTAINABLE GROWTH AND DEVELOPMENT* ¶ 2 (2004), available at <http://www.oecd.org/dataoecd/43/2/33784888>. PDF ("[Biotechnology] has the potential to enable better outcomes for health, the environment, and for industrial, agricultural and energy production.").

47. Alexandra Spieldoch, Dir. of the Trade and Governance Program, Inst. for Agric. & Trade Policy, *Speech at the Environmental and Energy Study Institute's Meeting on Biofuels and Tortillas: A US-Mexican Tale of Chances and Challenges* 1 (Mar. 16, 2007), http://www.globalfarmer.org/Uploads/biofuels_and_tortillas_-_march_20.pdf (last visited July 23, 2007); C. Ford Runge & Benjamin Senauer, *How Biofuels Could Starve the Poor*, *FOREIGN AFF.*, May-June 2007, at 41, available at <http://www.foreignaffairs.org/20070501faessay86305/c-ford-runge-benjamin-senauer/how-biofuels-could-starve-the-poor.html>.

48. Mexico Approves Corn and Sugar Cane Ethanol Law, http://www.treehugger.com/files/2007/04/mexico_approves.php (last visited Sept. 3, 2007).

49. On July 17, 2007 the Chair of the Agriculture Negotiations released his "Draft Modalities for Agriculture." Special Session of the Committee on Agriculture, *Draft Modalities for Agriculture*, http://www.wto.org/english/tratop_e/agric_e/agchairtxt_17july07_e.doc (July 17, 2007). The Chair of the U.S. Senate Committee on Agriculture, Nutrition and Forestry said, in response to the Draft Modalities text,

The lack of progress in the Doha Round over the last year now means that it is very unlikely that the Round will be completed before Congress finishes work on the 2007 farm bill. As Chairman of the Senate Agriculture Committee, I feel obligated to try to ensure that the provisions of the farm bill are consistent with our commitments under existing WTO rules, but not with provisions of a draft text that may or may not be reflected in a final Round agreement, if one is reached at all.

bill in the United States will alter the balance appreciably, although it is a target of some non-governmental organizations.⁵⁰

In 2005, the U.S. Department of Agriculture perceived that the NAFTA corn trade retained many of its pre-NAFTA characteristics, with the majority of U.S. corn exports still consisting of yellow feed corn and a substantial (though declining) quantity of white corn for tortillas.⁵¹ A declining number of agricultural producers in Mexico participate in the corn trade, but the Mexican corn sector still strives for a large number of subsidized small-scale producers, the expansion of hog and poultry production due to better market access for U.S. yellow corn, and an increasing role for Mexico's large flour companies in tortilla production in the United States as well as in Mexico.⁵² Another branch of the U.S.D.A. paints a different picture:

Sales of U.S. corn to Canada and Mexico increased 175 percent and fifteen-fold in value, respectively, between 1993 and 2004. In 1993, Mexico and Canada were ranked 16th and 9th, respectively, in U.S. corn markets worldwide. By 2004, they had risen to 2nd and 4th, respectively. Mexico chose to expedite its market openings for corn under NAFTA in order to provide lower cost food to its increasingly urban population and to ensure sufficient animal feed.⁵³

Opponents of the consequences of the NAFTA arrangement claim:

NAFTA opened Mexico's maize sector to the dumping of millions of tons of cheap U.S. corn by multinational agribusinesses. This caused the price paid to Mexican corn farmers to drop by 70%, contributing to the loss of over 1.5 million Mexican farm livelihoods in the first 10 years of NAFTA alone. During that same time, the price of corn tortillas—the most important staple food in Mexico—rose by 50% and higher.

Press Release, Agriculture, Nutrition & Forestry Democratic Committee, Harkin: WTO Draft Agriculture Modalities Agreement Unlikely to Restart Doha Round (July 17, 2007), available at <http://agriculture.senate.gov/news2/record.cfm?id=279133>.

50. In July 2007, the House Committee on Agriculture voted out of committee H.R. 2419: *To provide for the continuation of agricultural programs through fiscal year 2012, and for other purposes*. H.R. 2419, 110th Cong. (2007), available at http://agriculture.house.gov/inside/Legislation/110/FB/h2419ag_rh_xml.pdf. The Senate Committee on Agriculture, Nutrition, and Forestry had not acted on a bill as of July 23, 2007.

51. According to the USDA the decline might be the result of Mexican government support for domestic white corn production. STEVEN ZAHNISER & WILLIAM COYLE, USDA, U.S.-MEXICO CORN TRADE DURING THE NAFTA ERA: NEW TWISTS TO AN OLD STORY 4 (2004), <http://www.ers.usda.gov/publications/FDS/may04/fds04D01/fds04D01.pdf>.

52. *Id.* at 1.

53. Foreign Agricultural Service, USDA, *FAS Backgrounder: Benefits of NAFTA* (Nov. 18, 2005), http://www.fas.usda.gov/itp/Policy/NAFTA/nafta_backgrounder.htm (last visited Sept. 3, 2007).

Dumping of U.S. corn into Mexico—including GM corn—has also had serious environmental implications.⁵⁴

U.S. exporters also have grievances.⁵⁵ Their complaints about market access for high fructose corn syrup illustrate the significance of the market for corn-based products and the accuracy of viewing corn as the “most important buttress of the international economy.”⁵⁶

Mexico’s 1997 antidumping duties on high fructose corn syrup (HFCS) led the United States—partially at the urging of the corn refining industry—to challenge Mexico’s measures at the NAFTA and the WTO.⁵⁷ The challenges were successful: In 2002, Mexico replaced the antidumping duties with a twenty-percent tax on all beverages that were sold in Mexico and sweetened with HFCS.⁵⁸ As a consequence of the tax, U.S. exports of HFCS were priced out of the Mexican market, as were U.S. exports of bulk corn previously purchased for HFCS production in Mexico by U.S.-owned firms.⁵⁹ The United States and Canada argued that the taxes were inconsistent with Article III (in particular, the first and second sentences of Article III:2)⁶⁰ and Article III:4 of the General

54. ROBERT GRONSKI, NATIONAL CATHOLIC RURAL LIFE CONFERENCE, FREE TRADE VS. FOOD SECURITY: NAFTA at 12, available at http://www.worldhungeryear.org/why_speaks/ws_load.asp?file=76&style=ws_table (last visited Sept. 3, 2007).

55. See Press Release, Senator Chuck Grassley, Grassley Introduces “Tequila Tariff” Bill Over Mexican Barrier to U.S. High Fructose Corn Syrup (Nov. 25, 2003), available at <http://grassley.senate.gov/releases/2003/p03r11-25.htm> (calling for tariff on tequila in response to trade barrier created by Mexican taxes on high fructose corn syrup).

56. WARD, ET AL., *supra* note 43, at 45.

57. WTO HFCS Anti-Dumping Dispute, *supra* note 45; Review of the Final Determination of the Antidumping Investigation on Imports of High Fructose Corn Syrup, Originating from The United States of America, Mex.-U.S.-98-1904-01 (NAFTA Binational Panel 2002), available at <http://www.worldtradelaw.net/nafta19/hfcs-dumping-remand-nafta19.pdf> [hereinafter NAFTA Antidumping Investigation].

58. See *id.* (showing successful NAFTA antidumping challenge); WTO HFCS Anti-Dumping Dispute, *supra* note 46 (showing successful WTO antidumping challenge); Ley del Impuesto Especial sobre Producción y Servicios, Diario Oficial de la Federación [D.O.], 1 de Enero de 2002 (Mex.).

59. See Press Release, United States Trade Representative, USTR—U.S. Wins Mexico Beverage Tax Dispute (Mar. 2006), available at http://www.ustr.gov/Document_Library/Press_Releases/2006/March/US_Wins_Mexico_Beverage_Tax_Dispute.html (stating that the 20% tax effectively made the use of HFCS in Mexican soft drinks cost-prohibitive).

60. The products of the territory of any contracting party imported into the territory of any other contracting party shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no contracting party shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.

Agreement on Tariffs and Trade of 1994.⁶¹ The WTO Appellate Body eventually ruled in 2006 that the Mexican tax violates Mexico's WTO commitments and therefore is a WTO violation.⁶² Meanwhile, in October 2005, Mexico established a tariff rate quota of 250,000 metric tons of HFCS access for U.S. exporters.⁶³ The Corn Refiners Association was pleased with the shift, but "continues to assert that significantly greater access to Mexico is necessary to rectify the near closure of the Mexican market for the past four years."⁶⁴

VII. CONCLUSION

The North American Free Trade Agreement has had a significant impact on commerce in corn, the diets of Mexican consumers, and prices. The effects seem to vary, depending in part on their scope and on the country's ability to take advantage of the opportunities that trade liberalization present. Mexico has a strong and wealthy industrial sector that seems to be benefiting from some aspects of NAFTA. However, it also has a population that is faced with a lack of food security and that has been hurt by the changes in tax and subsidy structures necessitated by trade liberalization. Mexico has varied its policy measures to try to find the best balance between trade liberalization and local food security needs. Its options

A tax conforming to the requirements of the first sentence of paragraph 2 would be considered to be inconsistent with the provisions of the second sentence only in cases where competition was involved between, on the one hand, the taxed product and, on the other hand, a directly competitive or substitutable product which was not similarly taxed.

General Agreement on Tariffs and Trade of 1994, Apr. 15, 1994, art. III, ¶ 2, available at http://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm; *Mexico—Tax Measures on Soft Drinks and Other Beverages*, Summary of the Dispute to Date, http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds308_e.htm (last visited Sept. 3, 2007).

61. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.

General Agreement on Tariffs and Trade of 1994, *supra* note 60, art. III, ¶ 4.

62. See Appellate Body Report, *Mexico—Tax Measures on Soft Drinks and Other Beverages*, ¶ 80, WT/DS308/AB/R (Mar. 6, 2006) (holding that Mexico's 20% tax on HFCS beverages was not a measure "to secure compliance with laws or regulations", within the meaning of Article XX(d) of the GATT 1994").

63. Corn Refiners Assoc., *Cost of Mexico Sweetener Dispute to the U.S. Corn Industry* 1 (Mar. 2006), <http://www.corn.org/DamageAssessmentQA-March2006.doc> (last visited Sept. 3, 2007).

64. *Id.*

are limited legally by the rules of NAFTA and the WTO, as well as practically by constant changes in the market situation. It is possible that the decision by many U.S. farmers and by large Mexican producers to grow corn for ethanol production instead of for food will have a larger effect on local food security in Mexico than the NAFTA has had.