



## Agricultural Trade and Human Rights

*'Business and human rights is not an ephemeral issue to be considered at some future date. It is and must remain at the core of our concerns today.'* Professor John Ruggie, UN Special Representative on business and human rights.<sup>1</sup>

### Introduction

Debates about the impact of business, particularly as conducted by transnational corporations, are not new. Long before the first large-scale anti-globalisation demonstrations at meetings of the World Trade Organization in Seattle in 1999 and the World Economic Forum in Melbourne in 2000, questions had been raised about the effects of international trade and the internationalisation of production on vulnerable communities and people in developing countries. Many recognise the positive influence of international trade on the lives of consumers and producers alike – the right to food, to a livelihood, to an adequate standard of living can all be bolstered by the integration of an economy into international trade and business. But the negative effect on human rights, direct or indirect, remains a reality, with severe consequences for individuals, families and communities around the world.

The main focus in relation to the practices of multinational companies operating in developing countries has been on labour and

environmental standards, and the impact of their activities on the local community. Less attention has been paid to the complex supply chains in which the large businesses are several steps removed from the producers and the workers, and their families and communities. Yet the decisions taken by these businesses can have profound effects across borders, on the lives of people living thousands of kilometres away who depend on trade for their livelihoods.

### One-third of the world's workforce is employed in the agricultural trade

This paper looks at two facets of agricultural trade: firstly, commercial challenges that undermine human rights and policy avenues to address them; and secondly, human rights issues resulting from agricultural supply chains servicing the European Union market and solutions to these problems.

### Agricultural Trade

The trade in agricultural products touches a large portion of the world's population, be it as consumers or workers and their

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dependants. It remains the largest sector of employment in most developing countries and employs one-third of the world's workforce, according to the International Labour Organization (ILO).<sup>2</sup> Even more people rely on agriculture as family dependants, as traders in the local market, or as transport and shipment workers or packers.

However, agricultural production is a vulnerable sector with high cost and price fluctuations. Producers, who lack alternative livelihoods, have to contend with fluctuations in climate conditions and crop yields as well as shifts in demand, competition from across the world and unforeseen transportation crises, such as the flight stoppages after the eruption of Iceland's Eyjafjallajökull volcano in 2010. They sometimes face situations in which they have to export even though the market price is below the cost of production.

## A relatively small number of buyers control the food retail market, particularly in Europe

Agricultural supply chains are international, long and complicated. As with any market the behaviour of the buyers – the businesses that source their products through imports – can have profound effects on people living thousands of kilometres away who depend on agriculture for their livelihoods. The actions of a few large buyers and retailers can shape the incentive structure in the international market to the point where it undermines the will and capacity of suppliers to meet international labour and human rights standards.

In the agricultural sector, this situation is more intense due to the relatively small number of buyers (when compared to the large number of suppliers, farmers and potential consumers) who control the

food retail market, particularly in Europe. For instance, in the UK four retailers hold 80 per cent of the country's food market, and Austria, Estonia, Finland, France, Germany, Ireland, Slovenia and Sweden each have five retailers holding 70 per cent of the market. This puts them in a powerful position that can be abused, even if only inadvertently.

The UK Competition Commission has investigated the consequences of this market situation and reported a multiplicity of restrictive practices. In 2000, following investigations into four UK supermarkets, the Commission's report<sup>3</sup> found 52 types of restrictive practices and noted there was 'a climate of fear' among suppliers, who relied heavily on the business retailers. The report of a 2006–2008 investigation<sup>4</sup> found a similar situation with 50 of the 52 restrictive practices still occurring. Furthermore, it found that supermarkets were 'transferring excessive risks and unexpected costs' on to their suppliers.

### *Supply chains in the Commonwealth*

Producers and suppliers taking part in a symposium at the Commonwealth Secretariat in London in September 2010 endorsed these findings. The Agricultural Symposium on Market Access Challenges and Sustainable Procurement brought together representatives of farmers and food supply chain associations from around the Commonwealth to explore ways of improving access to markets in Europe with policy-makers and regulators. The concerns and challenges that participants articulated reflected the power imbalance in the trading relationships of buyer and supplier (see Box 1) and echoed the findings of the 2000 and 2008 UK Competition Commission reports. Priority concerns of Commonwealth suppliers related to the ambiguous contracts, which allow the buyers to take arbitrary actions such as to terminate contracts and orders, and to set prices. It could be said that suppliers in Commonwealth countries are the

epitome of price-takers; they must accept the price terms or lose access to important markets.

There are strong similarities between the concerns of Commonwealth producers and

farmers in Europe. The distinguishing feature of producers in Commonwealth countries exporting into Europe is distance – their supply chains can be longer and more complex resulting in greater

### Box 1: Overview of concerns of Commonwealth suppliers

#### Power

**Suppliers are the most vulnerable parties in the supply chain:** The poorest depend on production for export and many others have only limited alternatives. The dominance of a small number of buyers renders producers almost powerless in the negotiation and determination of terms of trade.

**Retailers are able to pass risk down the supply chain:** They can demand that producers increase standards but have no responsibility for any related costs.

#### Volume

**Retailers make late changes to the volume of goods ordered:** They order more than required and only pay for the amount they take, and they demand delivery at short notice.

#### Pricing

**Contracts contain indicative prices only, leaving open the possibility for later deviation:** When retailers demand prices lower than originally discussed they might also require higher quality standards in output and higher wages for workers; retailers often request suppliers to share promotion costs and there are high deductions when the product is delivered damaged.

#### Payments

**There are frequent delays in the payments to suppliers:** Buyers fail to pay or extend payment terms; suppliers feel unable to influence these patterns.

#### Contracts

**Terms favour buyers and retailers, and suppliers feel too vulnerable to contest this:** The contracts are negotiated to allow for selling below cost, and they can be terminated without notice; contractual terms are often unclear or misleading, and buyers feel free to change them retroactively.

#### Standards and certifications

**There are high costs involved with multiple certifications** but there is little harmonisation between the accreditation standards demanded by different retailers, who also demand food safety standards above the official level set by governments on scientific and technical grounds.

#### Other

**Goods can be rejected on delivery** for reasons that are not made clear to the supplier or due to the buyer having over-ordered.

There is a **high turnover of negotiating staff among buyers**, which affects continuity in the transactions.

**Supplier brands are rendered invisible to consumers:** Such products are often de-branded to accommodate an increase in supermarkets' own brand.

**Poor information sharing along the supply chain** often leaves consumers with little understanding of a product's origin or the means of production, and suppliers unaware of changes in European regulations or individual supermarket requirements.

There are so many intermediaries in the supply chain (importers and exporters), **communication between suppliers and retailers is highly mediated.**

distance between consumer and producer, between market regulators and producers, and even between buyers and producers. In addition, they may not know enough about how the EU functions. As such the Commonwealth suppliers have significantly less political and market influence and a lower level of organisation than European farm lobbies.

### **The Consequences of the Market Power Imbalance**

Within the context of the international agriculture market suppliers see their margins being reduced as further risks, burdens and costs are transferred to them. It is rational that they therefore look for ways to reduce cost in their business. In seeking greater benefits they might, for example, opt to use short-term, or seasonal, workers instead of permanent employees to provide greater benefits or to hide rights breaches, such as undercutting living wages. And when a buyer changes the terms or quantity of an order at short notice one possible consequence is that workers have to do high levels of, and/or unexpected, overtime.

be difficult to arrange alternative sales. Producers are at the mercy of decisions made by actors further up the supply chain, and as their margins are squeezed they pass the pressure down the chain to workers in the form of low wages and diminished working conditions. In the Commonwealth Symposium, producers highlighted the following key human rights fields negatively impacted by the ripple effect of market imbalance:

- Labour rights in general, including temporary and casual labour;
- Right to adequate standard of living (living wage);
- Right to safe and healthy working conditions;
- Right to health (particularly in relation to pesticides);
- Women's rights; and
- Migrant workers' rights.

### **International Initiatives to Address the Challenges**

As yet there are no international regulatory or policy systems charged with investigating buying and contracting practices in agricultural trade. There is potential, however, for these issues to be addressed through broader national and international initiatives in the fields of business and human rights and in competition and market access policy.

#### *Initiatives at the United Nations*

In June 2011 the United Nations unanimously endorsed a framework for states and enterprises to ensure that business activities do not harm human rights. Developed by the Special Representative of the Secretary-General (SRSG) on business and human rights, Professor John Ruggie, [the UN Guiding Principles on Business and Human Rights](#)<sup>5</sup> cover 'three pillars' to address the connections between human rights, transnational corporations and other business enterprises:

## **UK supermarkets were found to be 'transferring excessive risks and unexpected costs' on to their suppliers**

The perishable nature of agricultural products heightens the vulnerability of the sector. Standards in production and packaging differ across countries in Europe and across different supermarkets, thus if goods are rejected on arrival, or the volumes and prices change after the order has been placed, it may

1. The state's duty in international law to protect citizens from abuses by third parties, including business;
2. The corporate responsibility to respect human rights; and
3. Greater access by victims to effective remedy, both judicial and non-judicial.

and remedying human rights issues involving businesses. Non-judicial mechanisms include:

- Ombudsman offices or arbitration tribunals;
- National human rights institutions;
- Processes within the private companies concerned;
- Processes through industry bodies; and
- Processes through international bodies like the ILO.

## Producers, squeezed from further up the supply chain, pass the pressure down the chain in the form of low wages

While this framework to 'protect, respect and remedy' provides valuable overarching principles, the practical impact for agricultural producers might appear limited. However, as the framework is operationalised it could produce positive mechanisms for suppliers. In particular, concepts of remedy through grievance mechanisms could offer the means to address the concerns of producers. Already five companies are running pilot projects based on the SRSG's guidance for company-based grievance mechanisms. One example is Tesco, the UK supermarket, which is supporting a grievance mechanism pilot in its South African fresh fruit supply chain.

### *Grievance mechanisms*

Often grievance mechanisms are linked with courts and the judicial system. In some jurisdictions, however, the judicial system is associated with high costs, long delays and/or limited access based on geographical remoteness or low levels of awareness and confidence in the system. Non-judicial mechanisms can offer more accessible approaches to mediating, resolving

Grievance mechanisms provide important communication channels for victims to have their concerns adjudicated and receive a remedy for genuine infringements on their rights. For companies, such mechanisms can help them to avoid escalated disputes that are played out in negative media and publicity. They are a source for a credible assessment of the human rights impact.

SRSG Professor Ruggie has laid out the guiding principles for grievance mechanisms. They must be:

- Legitimate
- Accessible
- Predictable
- Equitable
- Rights-compatible
- Transparent.

At company level mechanisms should be based on engagement and dialogue.

### *A grievance mechanism for farmers and workers*

A grievance mechanism is being developed that would enable Commonwealth farmers and workers organisations to raise anonymous complaints about anti-competitive trading practices by UK supermarkets.

In February 2010 the UK implemented the Groceries Supply Code of Practice (GSCOP), which applies to the relationship between the 10 largest food retailers in the UK and the first tier in their

**Table 1: Proposed actions to improve Commonwealth suppliers' access to EU markets**

Areas of concern	Proposed actions	Lead organisations
<b>Unfair trading practices</b>	Formation of a coalition of suppliers, farmers, trade unions and NGOs working with farmers and agricultural workers, to: <ul style="list-style-type: none"> <li>• Influence policy-makers to introduce regulation to provide an additional incentive for companies to avoid anti-competitive practices;</li> <li>• Develop a 'good practice' code with responsibilities for suppliers and buyers;</li> <li>• Enhance the capacity of suppliers to negotiate contracts to better equip them to manage their relationships with supermarkets.</li> </ul>	Commonwealth Secretariat to: <ul style="list-style-type: none"> <li>• Support, host and facilitate further dialogue after suppliers prepare their proposal;</li> <li>• Provide technical assistance to build capacity in negotiating contracts.</li> </ul>
<b>Aligning incentives (of purchasers and suppliers) with socially responsible trade</b>	<ul style="list-style-type: none"> <li>• Build the capacity of suppliers and create incentives that consider other factors in addition to price and quality.</li> </ul>	Retailers, NGOs, suppliers and the Commonwealth Secretariat.
<b>De-branding of producer products</b>	<ul style="list-style-type: none"> <li>• Get agreement from supermarkets to feature producer details on products;</li> <li>• Work with consumer organisations to build appreciation of product origins.</li> </ul>	Retailers, the Department for Business, Innovation and Skills (BIS), the EU Commission, consumer organisations and the Commonwealth Secretariat.
<b>Lack of information and communication in the supply chain</b>	<ul style="list-style-type: none"> <li>• Raise understanding and awareness of farmers, workers, exporters and civil society of how supply chains operate, in order to increase communication and enable more informed negotiations and problem solving.</li> </ul>	Supplier coalition, retailers, trade unions, NGOs (e.g. Traidcraft Exchange) and the Commonwealth Secretariat.
<b>Workers' lack of knowledge of labour rights</b>	<ul style="list-style-type: none"> <li>• Educate workers about their rights, and potential remedies.</li> </ul>	NGOs, trade unions and suppliers.

<p><b>Lack of enforcement of in-country rights</b></p>	<ul style="list-style-type: none"> <li>• Retailers to write in support of good human rights to governments of sourcing countries;</li> <li>• Build capacity of workers to prevent abuses;</li> <li>• Develop good practice grievance mechanisms;</li> <li>• Create multi-stakeholder dialogue and action on improving rights and working conditions.</li> </ul>	<p>Suppliers, governments (through high commissions), retailers, trade unions and the Commonwealth Secretariat.</p>
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supply chains. The GSCOP was the result of the 2006–2008 investigation of supermarkets by the UK’s Competition Commission, which found there was an adverse effect on competition due to a number of market practices that were detrimental to suppliers. Key aspects of GSCOP include:

- An overarching ‘fair dealing’ principle prohibiting duress and emphasising certainty and risk minimisation for suppliers.
- Retailers prohibited from making retrospective adjustments to terms and conditions of supply.
- Reasonable notice, in writing, of any changes to supply chain procedures or full compensation for costs incurred as a result of the failure to give reasonable notice.
- Several provisions relating to promotions, prices and payments.

Although GSCOP is a significant step towards addressing the concerns of suppliers, it currently lacks a credible enforcement mechanism.

In August 2010, the UK Government agreed on the need for a Groceries Code Adjudicator (GCA) with powers to receive complaints from anyone in the supply chain, at home or overseas, and to deal with them anonymously. The GCA will be given powers to introduce financial penalties if experience indicates that negative publicity on retailers does not offer a sufficient deterrent. The fair and appropriate funding of the GCA by retailers will be considered further.

Based on its investigations, the GCA will be able to update the code as well as provide recommendations and clarification to retailers on how to comply. GCA will produce an annual report on its activities. Due to a large schedule of legislative activity for the UK parliament, the adjudicator is unlikely to be in place until 2012 at the earliest.

For Commonwealth suppliers, though, the establishment of the GCA might not meet expectations. As it stands, GSCOP and GCA do not have the mandate to provide redress to intermediaries and primary producers. This means that only concerns between first tier agents – that is, between retail buyers and distributors or importers – would be addressed. Producers in Commonwealth

**The UN framework to ‘protect, respect and remedy’, when in operation, could produce positive mechanisms for suppliers**

countries sometimes are several steps removed from the process. The Competition Commission has made recommendations for a complementary code that would cover primary producers and their intermediaries. This would provide Commonwealth suppliers with a much needed grievance mechanism. The UK Government has not yet explored this recommendation.

### Way Forward

At the Commonwealth Agricultural Symposium, participants identified the main areas of concern and proposed actions to be taken. The actions, listed in Table 1, may form the elements of a roadmap for human rights and trade related work on agricultural supply chains.

### Conclusion

International agricultural trade presents unique challenges to the field of business and human rights. Businesses in importing countries make decisions that weaken producers' incentive to meet human rights standards; yet these businesses remain far removed from the human rights consequences of the decisions. Any analysis of the supply change would be strengthened by recognition of the issues faced by workers, and how their issues link to those of producers and suppliers higher up the chain. Too often these issues are viewed separately, which puts suppliers, including in Commonwealth countries, in the difficult position of being required to protect and respect the human rights of workers while facing constraints imposed by buyers. There appears to be a strong appetite in the Commonwealth to address the supply chain as a whole with the appropriate grievance mechanisms. When supply chains are international, they are best developed, amended or strengthened with the meaningful participation of all parties that stand to gain or lose from the

arrangements made. Relationships of trust that mark the Commonwealth provide an excellent foundation to explore ways of developing such approaches.

### Notes

- <sup>1</sup> United Nations. 2009. Business and human rights: Towards operationalising the 'protect, respect and remedy' framework. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. a/HRC/11/13. 22 April.
- <sup>2</sup> International Labour Organization. 2009. Global Employment Trends. January.
- <sup>3</sup> UK Competition Commission. 2000. Supermarkets: A report on the supply of groceries from multiple stores in the UK.
- <sup>4</sup> UK Competition Commission. April 2008. Groceries Market Investigation: Final Report.
- <sup>5</sup> United Nations. 2011. Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and their business enterprises, John Ruggie. A/HRC/17/31. 21 March.