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**FAILURE OF NEGOTIATIONS ON AGRICULTURAL TRADE AT THE WTO,
OF THE FAO SUMMIT AND OF THE COPENHAGEN CLIMATE CHANGE CONFERENCE
IN NOVEMBER AND DECEMBER 2009 -
ANALYSIS AND "ROADMAP" PROPOSITION OF THE LASCAUX PROGRAM***

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After the latest failure(s) of negotiations on agricultural trade at the WTO in December 2009, of the FAO summit in Rome on food security in November 2009, and of the Copenhagen climate change conference in December 2009, what conclusions can we draw from these successive failures and what questions do they lead us to ask in the implementation of the Lascaux program?

At the crossroad of these three negotiations, there is the problem of farmers' access to productive land and the access for all individuals to a healthy and sufficient food. This is partly an issue concerning the ineffectiveness of economical and social human rights. During the 4th World Forum on Human Rights (held in Nantes on 28 and 29 June 2010), we will query this ineffectiveness, its causes and the legal remedies to fix it. This task is difficult but necessary. This will be a major "roadmap" of the Lascaux program: understanding followed by suggestion...

The principles that govern trade in the WTO severely limit the possibility for States to treat differently competing products based on their environmental costs. Therefore, under the rules of international trade, it would be very difficult for a State to enforce, at its borders, a carbon tax on imports of products whose production has resulted in more

* *The Lascaux program (2009-2014) is linked to the 7th Framework Programme of the European Research Council ("IDEAS"). "Lascaux" is headed by François Collart Dutilleul, Professor of Law at the University of Nantes (France) and Member of the University Institute of France (to know more about Lascaux : <http://www.droit-aliments-terre.eu/>).*

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GHG emissions than national competing products. If we wanted to achieve this, we should pursue simultaneously, and not separately, the trade and environment negotiations.

Moreover, the WTO negotiations on agriculture stumble on the openness level of developing countries to products from rich countries. This is the counterpart for the dismantling of subsidies in the latter – especially in Europe and USA. The prospect of food crises in southern countries imposes to limit trade liberalization on their territory. For that reason, the trade negotiation provides the opportunity for each State to implement a safeguard mechanism allowing it to increase its customs tariffs in case of increased imports of agricultural products on its internal market. Each State should thus be able to restrict imports of agricultural commodities that compete with domestic production. Nevertheless, there is still a significant disagreement regarding the threshold to launch this safeguard mechanism. But this threshold depends on the trade negotiations in the WTO as well as the negotiations on food security in the FAO.

This close and necessary link between negotiations – that are conducted separately – probably explains in part their failure or, at least, increases difficulties to reach their success. It would be required that the organizers of the various negotiations coordinate their actions, draw together the arguments of possible compromise by linking together the benefits from one of them to counterparties which may come from another.

Thus, the three linked negotiations must necessarily be jointly analyzed. Then, under the implementation of the right to land and food, there is a double synergy between the trade negotiations in the WTO on one side and those on global warming and food security on another side.

This opens, for the Lascaux program, two research directions.


The first direction will analyze the tangle of negotiations and the common reason for failure. These negotiations bind together the fate of an economic issue – the development of trade and international trade, an environmental issue – that of global warming, and a social issue – that of poverty related to food crises. These three issues are precisely those that make up the concept of **sustainable development**. So how can we link the three economic, environmental and social issues in the search for compromise covering the various negotiations? And what legal forms might give them a compulsory binding force?


The second direction leads to analyze the concepts implemented in the common field of economic, environmental and social negotiations. These concepts will not have the same legal and political office as they will serve the expanding law of market or its regulation.

To some, the food trade liberalization can only benefit the richest countries, as it is always the case in other sectors subject to law of market. It should rather to limit the expansion of the law of market by a legally binding regulation.


For others, all solutions must involve greater trade liberalization. The liberalization of trade in environmental goods and services would be expected to have a positive effect on global warming. And liberalization of trade in agricultural products is expected to be conducive to development – and thus help reduce the prospect of food crises.

That liberalization is a cause of problems, or their solution instead, it is necessary to analyze concepts able to establish legal principles especially those of sovereign land, food security and food specificity:

 The **sovereignty of land** determines the means by which states can maintain control of agricultural land – in particular to prevent its capture by foreign private or public powers. This form of sovereignty is thus intended to be in opposition to a new form of colonization that is confined to the rich lands of poor areas i.e. what this earth contains (rare metals, oil ...) or what it can produce (food, biofuels ...). Such sovereignty is thus directly resulting from the territorial sovereignty of the state and legitimized by it. In this context we must examine the legal ways of access to productive land for farmers, by browsing patterns of ownership (acquisition), of provision (lease, loan ...), of allocation of land to agricultural use (public- or collective control of use) and of water supply (collectivization, water collection,). The land law is based and built on the legal concept of property. The **property** can be understood as an almost absolute monopoly to the private owner, as a public good where the land belongs to the State or as a collective good if the land is a customary ownership. In reality, the central question is whether land should - or should not – be considered as a simple commodity since it is quantitatively non-extensible and its use should be shared between a more and more growing number of people. In many parts of the world, this issue is still unresolved and it oscillated between customary and a modern **land law**. What land law to choose and what conception of property to retain if one wants simultaneously: - secure farmers' access to productive land, - develop agriculture to feed the population, - ensure legal stability for those who exploit the land?

 **Food security** allows states to provide at once an adequate supply of food for the whole population and the food safety. Food security necessarily presupposes that the state retains some degree of control over agricultural products entering or leaving its territory. This is expressed through **food sovereignty**, which determines how the state can define public policies to ensure adequate access of population to a safe and healthy food, taking into account the requirements and principles of international law. Food security also requires the State to enforce in its territory, a food public order (and / or humanitarian) to ensure the quantity and quality of food destined for the population. But it is not easy to determine the nature of this public order (management order or protection order, it characterizes an assumed degree of protectionism) and its reach across borders (in particular ensured by the mechanisms of private international law and limited by international trade law). Can

we reconcile a national imperative of food security with the international trade, and by what legal ways?

 The **food specificity** can pose a fundamental question: Does trade in agricultural products (because they are vital for people) must be covered by a special legal treatment? Overall, these products are now regarded rather as a commodity like others. Their trade is an ordinary trade, as is also the trade of agricultural land in many countries. But the least we can say is that this view of trade has not stemmed the tide of poverty and famine in southern countries. There is a need to consider a correction of the general Law to implement a **special law for agricultural goods**. The food specificity may already occur at the stage of **intellectual property** (broadly defined), - including tailoring patent law applied to seeds, - specifying the plant variety protection law applied to agricultural products, - expanding internationally legal ways to promote products. The food specificity could also affect the mechanisms of **price formation** in order to remove at least the basic food products on the evils of speculation. We forget too quickly that speculation only concerns successive increases and decreases of prices. Price stability suppresses any speculative attempt. Therefore, speculation on commodities (whose populations, especially in southern countries, eat to live or survive) certainly leads to instability and volatility of prices and, consequently, to successive and inevitable food crises. This specificity could also involve the **mechanisms of competition**, especially when it is necessary to limit exports of a product in the name of security of supply, or to restrict imports on behalf of the survival of domestic producers.

If the agricultural products were subject to specific legal regulation, this would probably be a step in the direction of effective human rights to land and food. This is the way the Lascaux program tries to explore, which will track "from land to food and from values to rules" with the next stage at Forum Lascaux held in Nantes on 28 and 29 June 2010.