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GOOD CORPORATE PRACTICES IN CONTRACT FARMING

Consultation Workshop on the UNIDROIT / FAO Legal Guide on Contract Farming

Rome, Italy – UNIDROIT HQ, Via Panisperna 28

10 October 2014

Report

OVERVIEW	2
• The Basics of Contract Farming	2
• The Forthcoming Legal Guide on Contract Farming	3
• The Consultation Workshop in Rome – 10 October 2014	3
SUMMARY OF PRESENTATIONS	5
• Welcome and Opening Remarks	5
• Session 1: Private sector commitments in promoting good contract practices	6
• Session 2: Procurement policies and the farming contract	8
• Session 3: Critical issues in contract farming	11
• Closing Remarks	14
SUMMARY OF DISCUSSIONS	15
• Scope, approach, purpose and form of the Legal Guide	15
• Regulatory approach	16
• Fairness in contract drafting and operation	17
• Contract enforcement	17
• Dispute management and resolution	17
• Remedies for breach	18
• Additional specific issues	18
Annex 1: Presentations	
Annex 2: Programme	
Annex 3: Panel Lists of Issues	
Annex 4: List of Participants	

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SUMMARY OF PRESENTATIONS	5
• Welcome and Opening Remarks	5
• Session 1: Private sector commitments in promoting good contract practices	6
• Session 2: Procurement policies and the farming contract	8
• Session 3: Critical issues in contract farming	11
• Closing Remarks	14
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• Scope, approach, purpose and form of the Legal Guide	15
• Regulatory approach	16
• Fairness in contract drafting and operation	17
• Contract enforcement	17
• Dispute management and resolution	17
• Remedies for breach	18
• Additional specific issues	18
Annex 1: Presentations	
Annex 2: Programme	
Annex 3: Panel Lists of Issues	
Annex 4: List of Participants	

Report on the Workshop

“Good Corporate Practices in Contract Farming”

Rome, 10 October 2014

OVERVIEW

This report summarizes the Consultation Workshop, entitled “Good Corporate Practices in Contract Farming”, which was organised by UNIDROIT,¹ in partnership with the Food and Agriculture Organization (FAO)² and the International Fund for Agricultural Development (IFAD).³ The Workshop took place at UNIDROIT headquarters, on 10 October 2014, focusing on the legal and business aspects of the parties’ agreement based on practical experiences and the treatment of contract farming in various sectors and geographical contexts.

The Rome Consultation Workshop on contract farming was the third of a round of consultation events⁴ with stakeholders in contract farming relationships, primarily farmer communities and private sector representatives, in the process of preparing a UNIDROIT/FAO Legal Guide on Contract Farming. The Guide is currently being developed by UNIDROIT within a Working Group together with FAO and IFAD, and the participation of other multilateral organisations.

The Basics of Contract Farming

The practice of producing under a contract has acted as an essential mechanism for the development and modernization of agriculture in industrialized countries over the past fifty years. It has also developed very significantly in many developing and emerging economies in the world. Most of today’s agribusinesses are organised in value chains, and at the bottom of these chains, more and more farmers produce under contracts with buyers. Virtually every commodity may be produced under contract farming, including crops, livestock, aquaculture and forestry – both for human and animal consumption as well as for industrial use.

¹ The International Institute for the Unification of Private Law (UNIDROIT) is an intergovernmental, Rome-based organisation specialising in the harmonisation and modernisation of private law rules at the global level, through international treaties and soft law instruments in various areas, including contract law.

² FAO will be co-authoring the Guide together with UNIDROIT and has provided support through the sharing of expert knowledge and the participation of delegations of experts providing comments and inputs on the drafts.

³ IFAD has also provided support through the sharing of expert knowledge and the participation of delegations of experts providing comments and inputs on the drafts. In addition, IFAD is providing substantial support to the preparation of the Guide through a grant to FAO (recipient).

⁴ The first consultation workshop took place in Buenos Aires (Argentina) on 25 March 2014, entitled “Contract Farming Today, the Right Equilibrium”, which was organised jointly by the World Farmers’ Organisation (WFO) and UNIDROIT, with the cooperation of FAO and IFAD. WFO has participated as a key partner representing the professional and trade interests of farmers and has also provided support through the sharing of expert knowledge and the participation of delegations of experts providing comments and inputs on the drafts. The report of the first workshop is available in English at <http://www.unidroit.org/english/documents/2014/study80a/wg03/s-80a-wg03-18-e.pdf> and in Spanish at <http://www.unidroit.org/spanish/documents/2014/study80a/wg03/s-80a-wg03-18-s.pdf>. The second consultation workshop took place in Bangkok (Thailand) on 26 September 2014, entitled “The Legal Dimension of Contract Farming”, which was organised by UNIDROIT, in partnership with FAO and IFAD. The report of the second workshop will be available soon in English on the UNIDROIT website.

Contract farming operations are based on an agreement, an “agricultural production contract,” whereby an agricultural producer undertakes to engage in production and deliver at a future time goods meeting designated specifications, while the purchaser – typically a food processor, an exporter or a retailer – commits itself not only to acquire the product or pay for the producer’s service for an agreed price, but also to provide a certain level of control during the production process, typically by supplying inputs, technology or supervision.

From a contract law perspective, the agricultural production contract presents original features because it involves a variety of interlinked obligations on the parties (not only the parties to the contract but often also other participants in the value chain), and is approached in a variety of manners under domestic law. Under many legal systems, the production contract is subject to traditional legal categories such as a sale or a contract for services, while others recognise its sui generis nature, and yet others have developed a special contract type to regulate such contracts.

The Forthcoming Legal Guide on Contract Farming

In accordance with the authorization given by the Governing Council at its 91st session (Rome, 7 to 9 May 2012), the Secretary General of UNIDROIT set up a Working Group for the preparation of a Legal Guide on Contract Farming composed of contract law experts representing different jurisdictions and legal backgrounds, relying also upon the active cooperation of partner multilateral organisations and including an appropriate representation of the agricultural producers and of the private sector. The Working Group is placed under the chairmanship of Professor Henry Gabriel (Elon University School of Law, Greensboro, USA), member of the UNIDROIT Governing Council.

The forthcoming Legal Guide has three broad objectives. First, it will provide a legal analysis of the type of arrangement upon which the contract farming relationship is based, as well as information and advice on good contract practices with a view to promoting the legal empowerment of agricultural producers during the negotiation and drafting of contracts. Second, the Guide also aims at providing advice for lawmakers and public authorities dealing at a public policy level with contract farming, in particular in the context of law reform. Last, the Guide is intended to serve as an additional tool available to international organisations and bilateral cooperation agencies, as well as nongovernmental organisations and farmers’ organisations, engaged in strategies and capacity building programs in support of contract farming, especially in developing countries.

Accordingly, the Guide will describe common contract terms and discuss legal issues and critical problems that may arise under a variety of situations; analyse substantive law issues and identify problem areas and possible solutions in light of current trade usages and legislation; and provide guidance in the form of an internationally-recognised benchmark for assessing the fairness and overall balance of contract practices and relevant public policy instruments.

The Consultation Workshop in Rome – 10 October 2014

The workshop had the following objectives: considering private sector commitments in promoting good contract practices and discussing lessons learned by professionals in their field (Session 1); discussing how procurement and sourcing policies influence arrangements between agricultural producers and their buyers (Session 2); sharing experiences on critical issues, recommendations, and best practices in relation to the various aspects of the farming contract (Session 3); and informing the content, scope, and purpose of the forthcoming UNIDROIT/FAO Legal Guide on Contract Farming with the inputs and discussions of the workshop. This and additional

consultation rounds will also explore the future use of the Guide and serve to build a network within target groups that will participate in the future implementation of the Guide.

Participants: The workshop was primarily addressed to a broad audience of representatives of the private agribusiness sector, but also included various stakeholders, i.e. producer organisations, IGOs and development agencies, NGOs, public entities and legal academic circles. Altogether, nearly 70 persons participated in the workshop.

Speakers included representatives of stakeholders, particularly private sector representatives, and multilateral organisations (UNIDROIT, FAO and IFAD), as well as law professors and practitioners from different countries.

Material: The following documents were provided at the meeting:

- A project note, a flyer for the Workshop, and the full-fledged programme prepared by UNIDROIT. The programme is attached in Annex II.⁵
- An abstract of the future Guide with an executive summary of chapters as a basis for discussion at the Workshop. The abstract document is accessible on UNIDROIT'S website.⁶
- A selection of informational material on contract farming, reference documents, sample issues for consideration, and resource materials on contract farming and the work of international partners, were made available to the participants through the event website.⁷

⁵ Also available on the UNIDROIT Webpage at:
<http://www.unidroit.org/english/documents/2014/study80a/meetings/20141010-rome-unidroit-fao/programme-e.pdf>.

⁶ <http://www.unidroit.org/english/documents/2014/study80a/meetings/20140926-bangkok-unidroit-fao/abstract-e.pdf>.

⁷ <http://www.unidroit.org/work-in-progress-studies/current-studies/contract-farming>.

SUMMARY OF PRESENTATIONS

Welcome and Opening Remarks

Mr José Angelo Estrella Faria (Secretary-General of UNIDROIT) began by welcoming participants to the workshop, jointly held by UNIDROIT, the Food and Agriculture Organization (FAO), and the International Fund for Agricultural Development (IFAD). He then invited the partners on this project to make opening remarks.

Mrs Eugenia Serovia (Director, Rural Infrastructure and Agro-Industries Division, Food and Agriculture Organization of the United Nations) thanked UNIDROIT for hosting the workshop and stated FAO's appreciation for the level of collaboration on this project. She observed first that contract farming was a key part of FAO's strategic objectives and was very high on FAO's agenda, and that private sector partnerships also were a very high priority. She announced that FAO's Committee on World Food Security would meet during the week following the workshop and would include a meeting on 15 October 2014 regarding the private sector, inclusive business models, and contract farming. Further demonstrating the importance to FAO of promoting contract farming, she noted that the Director-General of FAO was expected to participate at that meeting. She concluded her remarks by providing best wishes for the workshop and hoping for good progress in the development and dissemination of the Legal Guide.

Mr. Idés de Willebois (Director, West and Central Africa Division, International Fund for Agricultural Development) thanked the Secretary-General for leading this very important exercise and noted that development of the Legal Guide was IFAD's first partnership project with UNIDROIT and an excellent occasion for joining forces. Referring to the enormous problem of price volatility in 2008 and subsequent years and the resulting endangerment of food security, he observed that contract farming is one of the instruments for addressing this problem. He stated that it is very important to deepen the experiences and best practices on contract farming and that he had never seen such a comprehensive overview of the options and possibilities of contract farming as that set forth in the draft Legal Guide. He observed that, while the current Legal Guide was useful for private sector companies and large cooperatives, he was looking forward to the next step of tailoring the Legal Guide for smallholder farmers and to less formal legal environments in which IFAD mostly works. Noting then that African agricultural exports had increased significantly in value over the past decade, he observed that contract farming would be an important part of ensuring that these production trends continue. He further observed that contract farming had significant potential to stabilize domestic food markets, expand regional trade, and reduce price volatility, leading to long term predictability and increased investment. Contract farming could also help to improve financing possibilities for farmers because, where a contract exists, it could be used as security. He concluded by stating that the Legal Guide had a crucial role to play not only in the developed world, but also in the developing world, and that it was a very opportune instrument for IFAD.

The Secretary-General of UNIDROIT then expressed UNIDROIT's appreciation for the partners' involvement in the work. He noted that, compared to FAO and IFAD, UNIDROIT was a very small multilateral intergovernmental organization based in Rome with eighty years of history. He described UNIDROIT's mandate to harmonize and unify private law. UNIDROIT's focus, he stated, is mainly to facilitate international transactions, in particular commercial transactions, and is based upon finding sound legal and economical solutions that work with different legal systems. He highlighted, for example, UNIDROIT's successful line of work on developing mechanisms for taking security over high-value mobile equipment and noted that, in at least 60 countries, aircraft leasing and purchasing is financed with the benefit of an instrument developed at UNIDROIT in partnership with the International Civil Aviation Organization (ICAO).

The Secretary-General described the history and progress of the contract farming project, which began with a seminar organized with FAO and IFAD in Rome in 2010 to canvass any private law aspects that

may influence agricultural investment and to consider how the legal framework could facilitate such investment. Contract farming was quickly identified as one area where the organisations could right away start a partnership project, making use of FAO and IFAD's practical and theoretical expertise on technical assistance to agricultural projects in the developing world and policy-setting regarding food and agriculture together with UNIDROIT's expertise in the area of contract law. He described that the Legal Guide was developed by a core group of legal experts that participate in the drafting of the chapters with the involvement of the organisations, as well as farmers and industry. He noted that industry became involved with the project in its later stages, but expressed his thanks for the now significant presence of the private sector. To ensure that the Legal Guide was not produced in the abstract, multiple rounds of consultations had been jointly organised outside of Rome, including workshops in Buenos Aires in March 2014, Bangkok in September 2014, and Addis Ababa in October 2014, for gathering experiences and feedback from the particular regions. He noted that, following these consultations, the Working Group on Contract Farming would meet for the fourth time in November 2014 to finalize the Legal Guide and that it would be important to hear from the participants their perspective on the approach to inform the deliberations of that group. He expressed his hope that the Legal Guide would be finalized next year and then become a tool which FAO, IFAD, the World Farmers' Organisation can use and adapt to their particular needs in their own technical assistance projects.

The Secretary-General then described the Legal Guide, which is a soft law instrument intended to promote best practices and possibly inform technical assistance and legislative activities in countries interested in developing their legal framework to facilitate private sector involvement. Contract farming could also help to stabilize prices and allow farmers to use their receivables under the contract as a collateral for raising funds for additional activities. He provided an overview of the chapters of the Legal Guide, which included coverage of the legal framework, the parties to the contract and its formation, the mutual obligations of the contractor and the producer, the excuse of performance, the remedies in case of breach, the effect of one party's breach on the other party's performance, termination and extension of the contract, and dispute resolution methods in contract farming. He noted that the Guide seeks to help parties to negotiate contracts that are advantageous to both sides, even though one party may be in a weaker or stronger position than the other, and to take the interests of both sides into account. He concluded by soliciting feedback on the draft, both at the meeting and through the online consultation mechanism on UNIDROIT's website,⁸ and thanking all attendees for their participation in the meeting.

Session 1: Private sector commitments in promoting good contract practices

Dr Rudolf Gotzen (Senior Legal Counsel, Belgian Boerenbond, and Professor, University of Leuven) introduced the Belgian code of conduct for fair relationships between suppliers and purchasers in the business-to-business agro-food chain sphere. The first of its kind, he noted that it had served as an example for similar models at the European level. The code provides guidance, among other things, on information exchange, payment practices, change of contractual terms and dispute resolution through mediation.

Particular emphasis was put on the private and voluntary character of the code, which is ultimately free of binding intervention by the government or administration. An example of this flexibility is in derogation from the code itself, based on a principle of "comply and explain," whereby a party can justify non-compliance by clarifying its motivations. Other provisions in the code cover the writing of

⁸ To participate in the online consultation, please visit UNIDROIT's webpage at the following address: <http://www.unidroit.org/work-in-progress-studies/current-studies/contract-farming>.

agreements, local sourcing and sustainability, and other guarantees for purchasers. Practical examples of contract farming in Belgium were presented, showing that farmers could gain greater contractual fairness by proposing model contracts and achieving flexibility through use of a combination of contracts and free markets for different parts of the production. In terms of dispute resolution in Belgium, there is a preference for amicable, non-judicial resolution, including arbitration and out of court settlements in order to avoid serious repercussions in long-term relationships.

Mr Peter Erik Ywema (General Manager, SAI (Sustainable Agricultural Initiative) Platform) presented the SAI Platform, created in recent years by the food, drink, and retail industry to support the development of sustainable agriculture worldwide. The Platform promulgated Principles and Practices, which define sustainable agriculture practices in the areas of green coffee, dairy and beef, crops and fruit and water management. The idea of sustainability is seen not simply as a corporate social responsibility tool but also from the perspective of securing supply chains. The implementation of these principles is based on three elements: a simple assessment tool, describing the scope and content of farm sustainability, an impact measurement assessment, and an educational element, in particular provision of a training manual. He explained how the industry is increasingly harmonised and the number of initiatives is growing around the world. Based on some of these considerations, he commented on the importance of bringing a long-term perspective and establishing long-term relationships with a view to creating economic security and potential for investments. This final consideration should not trump, however, the need for reducing complexity, drawing a line after which contract farming may not add value but act as a detriment.

Mr Dennis Kredler (Director General, European Supply Chain Initiative) presented the background to the European Supply Chain Initiative, including its recent establishment and voluntary nature and its focus on good trading practices in the business-to-business context. The recent interest in balancing practices has contributed to the Initiative's introduction in 2011 of Ten Principles of Fair Trading Practice developed from all parts of the food supply chain. The Principles are comprised of seven specific principles, relating to practical aspects such as written agreements, and three general principles, regarding ideas such as freedom of contract, with an overall element of compliance with applicable laws including competition law. Following the publication of the Principles, the Initiative was asked by European Commission to develop their implementation. In this respect, two objectives were delineated, those of prevention and cure, with two commitments on members of the Initiative: respect of the Principles and respect of the process. Although membership to the Initiative is voluntary in nature, the Governance Group monitors the commitments and the system includes practical remedies that depend on the type of commitment breached. The Governance Group is composed of representatives in the stakeholder association, and has supervisory and monitoring functions over the Initiative. It operates according to the principles of consensus, confidentiality, anonymity, and legal compliance. Mr. Kredler then described the possibility of a special type of dispute, called an aggregate dispute, arising from several similarly affected companies for an alleged serious breach of Principles. The procedure involves collecting relevant information for the investigation and ensuring interpretation regarding the principle. The Initiative promotes, among others things, two sets of tools: a self-assessment tool, at the moment of joining the Initiative, and an e-learning one, designed for company staff interacting with suppliers and/or business customers. The final point was made that one lesson to learn is that collaboration in the supply chain is extremely important. The self-regulatory Initiative came as a solution to an urgent problem and this self-regulatory structure was chosen because the effect in the market could be seen more quickly than through other methods.

Dr Kliment Petrov (Integrity Assessment and Training, GLOBALG.A.P.) introduced the partnership's experience, which concerned working to promote safe and sustainable agriculture. The Partnership's contributions involve establishing good practices and standards for agricultural production as a business-to-business tool, reassuring the retailer that the purchased product is compliant with specified requirements. The Partnership develops voluntary standards with a worldwide focus on food safety, traceability, worker safety, environment, and animal welfare. The scope of the Partnership's standards includes mostly crop production, but also livestock, aquaculture, and others areas. Among the

certifications available, the certification open to producer groups formed, for example, by cooperatives or exporting companies is the most applicable to contract farming. Dr Petrov made the point that for the moment there is no legal difference between contract farming and other situations, such as partnerships, but that the interplay between external and internal control is very important. He then suggested some ideas on how to adapt Global G.A.P. to a contract farming situation involving a Quality Management System (QMS) established for all group certifications. The role of QMS is to establish the rules, policies, and procedures to control the implementation of the common mechanisms to all the group members. Dr Petrov emphasised a two-step approach, with the responsibility on the producer group for internal monitoring of compliance and on a certification body for external monitoring. He concluded by noting that possible challenges arise from the numbers involved in these situations and actual applicability on a farm level because of the centralised management by the contractor.

Mr Puvan J Selvanathan (Head, Food and Agriculture, UN Global Compact) discussed the role and focus of the UN Global Compact in creating a set of food and agriculture principles, as well as related factors. Ten Principles of the Global Compact seek to connect the business community in assisting the intergovernmental process of achieving the Millennium Development Goals. A further Six Business Principles for Food and Agriculture have since arisen as a result of consultation with about 1000 stakeholders (80% of which business and companies). These Principles were developed as a common language between different actors: the public sector, the private sector and civil society groups. Sixteen factors were also developed and mapped against all the possible outcomes and this has resulted in having a more focused reach and by developing through the Food and Agriculture Business Principles a necessary relationship of reciprocity with governments. Dr Selvanathan explained how in some situations asking the companies why their supply chains are not working is not conducive to understanding their inherent limits. A bottom up mechanism might be better suited, whereby governments are informed of certain basic criteria that need to be fulfilled in order to build the farmer's capacity and skills. He also raised the point that there are a variety of interacting players, beyond the contract farmers, in the supply chain and that they need to be recognised and included as that would benefit overall performance.

Session 2: Procurement policies and the farming contract

Mr Fabrizio Cafaggi (Professor of Law, National School of Administration & European University Institute, Italy, and Member of the UNIDROIT Working Group on Contract Farming) welcomed the panelists and, noting that he was responsible for the chapter on remedies in the Legal Guide, stated that the panel would consider questions that had come up during the drafting process.⁹ The first question concerned the degree of contracts' formality and the associated mechanisms of dispute resolution. Along the agrifood supply chain, different styles of contract drafting can be observed, including different institutions responsible for dispute resolution. Moving from upstream to downstream in the supply chain, the formality of contracts changes significantly, starting upstream with short and even oral contracts under which disputes are resolved without formal institutions, possibly by intermediaries, to downstream where distributors and retailers have more formal contracts and use arbitration and to some extent courts. He observed that all of the panelists are contract drafters, in different capacities and whether professionally or as part of their institution, and solicited their insights on how remedies should be addressed in light of the differing level of formality of the contracts and dispute resolution mechanisms. He then addressed briefly other related questions, including whether different business models, particularly for large companies with a sophisticated multilevel structure, reflect different contract drafting strategies. Finally he specifically asked whether production contract breaches call for cooperative remedies to a larger extent than conventional ones like damages and specific performance.

⁹ See Annex 3 for Professor Cafaggi's template of issues for the session.

Mr Felipe Medina (Food Chain Manager, Spanish Supermarkets Association (ASEDAS)/EuroCommerce) described ASEDAS, which is comprised of Spanish retailers, particularly supermarkets, includes about 16,000 shops, and represents roughly 65% of food distribution in Spain. He observed that there is a very important diversity and balance in the size of retail shops across different European countries, as well as within the food chain in Spain, which includes, for example, roughly 760,000 farmers and fishers, 3,800 agri-cooperatives, and 29,000 manufacturers. Regarding business-to-business trading practices at the European level, the voluntary framework of The Supply Chain Initiative sought to promote fair business practices. At the national level, Spain's new food chain law requires use of written, signed contracts, created a new agency for monitoring the food chain, and prohibits some unfair practices, including unilateral modification of contracts and inappropriate use of confidential information. He then described ASEDAS's vision for dealing with unfair practices, noting that such practices can appear in all links of the food chain, are not generalizable, and are not necessarily a consequence of the size of operators. While increased regulation might generate additional costs, auto-regulation of unfair practices had a very important capacity to correct unfair behaviours: increased retailer and supplier collaboration could help to correct such behaviours, stabilize the food supply, and drive innovation. He also proposed that dealing with unfair practices alone is not enough to ensure a sustainable food chain and that long term contracts could be the most relevant solution.

Ms Valentina Maglio (Senior Counsel International Business Law, Lavazza) began by providing her background in the coffee sector, which includes chairing the European Coffee Federation's committee responsible for drafting general conditions for the purchasing of green coffee. She noted that the coffee sector was different from other commodity sectors, in that coffee is generally grown, with the exception of large producers in Brazil, mainly by smallholder farmers and that green coffee prices are characterized by high volatility. As a result, the approach in this context may differ regarding contracts. The coffee supply chain can be quite long and includes farmers, intermediaries, exporters, importers, and roasters. As smallholder farmers do not have direct access to international markets, intermediaries typically play an important role. For larger producers or cooperatives, however, it is possible for them to access the international market and engage more directly in sales. She explained that the European coffee industry generally is not able to contract directly with smallholder farmers because they need sizeable containers and shipments of coffee and not smaller volumes. With this background, she described the European Coffee Federation, which represents the industry, and its publicly available European Contract for Coffee (ECC), which consists of General Terms of Purchasing drafted and updated mainly by coffee buyers. According to those terms, disputes are resolved through specialized arbitrations where coffee business experts (non-lawyers) typically serve as arbitrators and from which the failure to comply with an arbitral award may result in a defaulter being blacklisted. It is important to keep in mind that the black list is available only to the European Coffee Federation members and is not open to everyone. Noting the important analysis that the Legal Guide provides on remedies, she detailed the different remedies under the ECC, which depend on the type of breach. For the failure of a buyer to provide shipping instructions, for example, the seller may, upon providing notice, terminate the contract as time is of the essence. For non-conformity in quantity, as another example, the coffee is re-weighed and the price is adjusted.

Mr Dirk Straathof (Standards and Legal Counsel, UTZ Certified) began by thanking the contributors to the Legal Guide and noting that it provided helpful tools for his work at UTZ Certified, which is a certification organisation that promotes sustainable farming worldwide. UTZ Certified focuses on particular crops, specifically coffee, tea, cocoa, and hazelnuts, and on the three pillars of sustainability known as the people, planet, profit (PPP) triplet. For coffee and cocoa, for example, 10% of global production is certified as sustainable and UTZ Certified issues roughly 50% of those certifications. He said that the Legal Guide should be about promoting both sustainable contracting and sustainable farming and then shared some experiences from the field. He noted that traditionally a farmer cooperative organisation held the sustainability certificate, but that a new development was an increase in traders as the certificate holder. As the Legal Guide pointed out, contract farming offered numerous benefits, including increased sustainability, the possibility to reach smallholder farmers, better

management, greater technical input, and a guaranteed offtake. There were also constraints in the practice, such as a shortage of producer representatives and empowerment, exclusivity concerns, and pricing issues, if fixed lower than the market price. He further observed that conflicts arose regarding premiums and the purchase of only part of the production under certification, leading to side selling by producers, as well as conflicts regarding quality. For the resolution of conflicts, he noted that some contracts do not mention dispute resolution at all, some mention national or regional courts, and some require amicable resolution prior to judicial resolution. UTZ Certified plays no formal role in dispute resolution but sometimes acts as an intermediary and is considering new terms and conditions to require UTZ members to engage in fair contracting and adhere to agreements. He stated that remedies, as covered by the Legal Guide, are rightly aimed at repair in order to ensure compliance and prevent future breaches. Termination, however, remains the ultimate remedy. He concluded by saying that the objective for smallholder farmers is contracts that are simple, straightforward, and short and proposed that finalization of the Legal Guide should be followed up with the drafting of sample contracts, training and awareness programs in which UTZ would be happy to cooperate, and promotion of accessible and affordable dispute resolution mechanisms, such as peer review or a community-based approach.

Ms Giulia Di Tommaso (General Counsel, Unilever) began by giving an overview of Unilever's sustainability strategy, which consists of improving health, reducing environmental impact, and enhancing livelihoods. A key component of the strategy is sourcing, as two-thirds of Unilever's raw material comes from agriculture, and Unilever has committed to procure all crops from sustainable sources by 2020. Smallholder farmers were already a part of Unilever's supply chain and Unilever's goal was to have at least 500,000 such farmers in its supply network and to help them improve their agricultural practices. She provided examples of Unilever's smallholder footprint and interventions for tea, cocoa, dairy, and other products. Unilever is working with its suppliers and traders, with whom it contracted, to try to reach directly to smallholder farmers and ensure that they are included in the supply chain. She noted that it would be interesting to consider how contract farming and the desire to reach smallholder farmers was influencing inclusive business models. She then observed that Unilever was in the process of reviewing its relationship with more than 160,000 suppliers around the world, redrafting contracts to embed fundamental labour and environmental principles from the Guiding Principles on Business and Human Rights, and making sure that breaches of these principles are reported.

Mr Jonathan Waters (Head of Legal, Grain and Feed Trade Association (GAFTA)) began by describing his background as a barrister, in-house lawyer, and qualified arbitrator and noted that he was coming from a commercial perspective in drafting contracts and dealing with disputes, particularly in the grain industry. GAFTA is an international grain and feed trade association promoting free trade; it has been estimated that 80% of the world trade in grains takes place under its standard contracts, of which there are, approximately, over 80 models and a significant number of its members are multinational companies. He explained that parties are free to negotiate changes to the terms of GAFTA contracts, which are very detailed and typically prescribe damages as the remedy and how they are to be calculated. He noted that GAFTA contracts tend to support stable relations, but noted that disputes nevertheless arise, such as when a force majeure situation is alleged to have occurred and where a seller finds a buyer willing to pay a higher price. When a dispute arises, GAFTA contracts include an international arbitration service and call for the application of English law, so there is greater certainty because no issue arises as to which law applies. Although mediation was available, most disputes were resolved by confidential arbitration, before a panel of three specialists and with a right of appeal to a panel of five specialists. Lawyers were regularly involved in drafting arguments, but did not appear on behalf of their clients at the panel hearings. Recent disputes had resulted in awards in the tens of millions and GAFTA awards could, in limited circumstances (such as an error of law), be challengeable in the English courts.

Session 3: Critical issues in contract farming

PANEL 1

Ms Marieclaire Colaiacomo (Counsel, Office of General Counsel, International Fund for Agricultural Development (IFAD)) introduced the focus of the third session on critical issues in contract farming. Mrs Colaiacomo addressed some salient aspects in this area by asking the panellists specific questions. She asked the first speaker about the importance of trust as a foundation in the contractual relationship and in ensuring the successful resolution of many critical issues. Her question to the second speaker pertained to the particular contents of the contract, with a view to explaining also the advantages of contract farming. For the third speaker, she inquired about the importance and impact of a regulatory framework and monitoring. Lastly, for the final speaker, she asked about the way contracts have evolved in certain markets to be beyond an identification of responsibility of parties.

Mr Suhas Joshi (Sustainable Business Development Officer, Bayer Group, India, member of the UNIDROIT Working Group on Contract Farming) relayed his experience in setting up direct contract farming operations in India and dealing with realities on the ground, and further discussed the importance of trust in managing contract farming relationships and whether it can ensure a successful resolution of many critical issues. He said that two points are important in contract farming in developing countries: the partners in a contractual relationship and the business of contract farming. For the first point, the majority of farmers in India are at a subsistence level and illiterate. For the second point, one should bear in mind that contract farming depends on a biological process that can be unstable at times. It would be unthinkable, given these two points, to expect perfect and comprehensive contracts between both parties in a situation where a written document is of limited use. The idea of trust therefore becomes essential to supplement the voids in these situations and is developed through seeing a balanced contract and protecting each party's interest, which is beneficial to both parties. In developing trust, Mr Joshi delineated three elements: (1) transparency, providing the farmer with all possible information in order to promote cooperation, (2) open communication, maintaining a constant channel of communication about clauses, terms and conditions with the farmer, and (3) close collaboration, ensuring that the farmer is given the possibility to succeed in the partnership. Once trust is obtained then it can promote high productivity, quality, improvement in quality parameters, and compliance. It was recommended, therefore, that the Guide give importance to relationship and trust elements.

Mr Gary Jay Kushner (Partner, Hogan Lovells US, LLP, General Counsel, National Chicken Council (USA)) presented the US system in chicken contract farming and the benefits of the US legal structure. The National Chicken Council (NCC) represents 95% of the chicken processing industry, which mostly operates under contract farming. The interesting characteristic of the US legal structure is the specialised statutory and regulatory framework, with the interplay between contract and competition law at different state levels and at a federal level. Chicken farming in the United States primarily uses a vertically integrated model, where the integrator owns most elements revolving around the contract farming and the farmers are only under contract to raise the chickens. Commonly the contract contains safety and animal welfare provisions and payment in terms of a base rate plus performance based adjustments. There are also dispute resolution terms including the voluntary use of arbitration, which has become quite common in agriculture sectors. The benefits of the US structured system include efficiency in allocating risk and rewards, stability for the grower against contract and market abuse, and flexibility in various aspects such as performance.

Mr Roger Peltzer (Head, Special Programs Department, DEG – German Investment and Finance Corporation) presented on contract farming of cotton in sub-Saharan countries, focusing on how to

make contract farming work and the importance of price fixing mechanisms. An initial comparison was drawn between cotton sectors in western Africa and eastern and southern Africa, showing higher yield levels in the former area. An important correlation was identified between input, assistance, and yield. When considering the organization of contract farming arrangements in a highly competitive context, if a legal system allows completely unregulated competition, then a high risk of side-selling practices and breaches of contract would arise leading to a decrease in investment. Legal redress in courts for the breach is seen as almost impossible, so the only other option is to establish a framework that allows a contract to be honoured and which gives incentives to all partners to respect the contract. Mr Peltzer then talked about three voluntary framework conditions including: (1) setting up a centralised database recording all contracted farmers and tracking contract arrangements, (2) implementing a system to measure yield and production, and (3) establishing price setting systems where everyone agrees on a unified purchasing price during harvesting season, regulating competition. The governments can support this by enabling parties to set prices and allowing operations for parties who offer extension and input financing to farmers. The comparative example of Cote d'Ivoire (where yields are higher) and Zambia (where yields are lower) shows how important framework and regulatory conditions are and, therefore, it was suggested that the Guide have best practices for contract but also best practices for sector regulations.

Mr Jim Kirke (Director, Sustainable Agricultural Supply Chains Ltd.) addressed how contracts have evolved in certain markets beyond identification of responsibility of parties. Some of the earlier comments were echoed about the Guide, which provides an opportunity for more direction and separation between best practices and weak practices. He emphasised that a discussion of contract farming is essentially for the sake of an improved supply chain and to work in a more efficient and equitable manner with all who are involved in it. Very often, in countries with deficient governance and regulation, a formal agreement between a farmer and contractor then leads to some form of stability, planning and transparency, from which a huge amount of other stakeholders in that land, including banks, landlords, and governments, can benefit. This idea should not be ignored when looking at how the whole agreement can add value to business. Contracts, therefore, might have different levels of use and incorporation of sets of principles. It is important to keep in mind, however, that the fundamental enabler for farmers to implement principles on human rights and environmental rights is their own ability to forecast their livelihood. Without this ability, the farmers will not pay more than formal consideration to the principles, and the change intended will not take place. Mr Kirke then emphasised the importance between contracts and efficiency in the supply chain by explaining that the basic rules of contract drafting, working on how to get penalties to deliver a result, are ineffective in this context because penalties are not the solutions. The idea behind drafting a contract is to deliver a domain in which developing world agriculture and first world agriculture can work in a transparent and organised manner.

PANEL 2

Mr Carlos A da Silva (Senior Agribusiness Economist, Rural Infrastructure and Agro-Industries Division, Food and Agriculture Organization of the United Nations (FAO)) began by expressing his appreciation for the value that the Working Group had brought to FAO's work on contract farming. He explained that FAO is seeking to promote farming to market linkages and that contract farming can do a lot to build such linkages. For those reasons, FAO was very engaged in this joint effort with UNIDROIT and IFAD. He emphasized that FAO's presence around the world gave it a privileged position to gain experience in how contract farming works in different places with respect to the issues being discussed, such as non-compliance, dispute resolution, and the legal framework. With this context, he noted that the panelists, who came from different backgrounds, would enrich the discussion by sharing their own experiences on contract formation and obligations. He expressed his hope that the panelists' experiences to be discussed could be incorporated into the draft Legal Guide and further improve it.

Mr Cesare Ronchi (Senior Purchasing Manager, Barilla) presented his perspective as a buyer for Barilla, which has a large number of plants around the world that manufacture grain-based products

such as pasta and bakery products. He noted that Barilla focuses on key strategic raw materials, including cereals and tomatoes, as well as sugar, milk, and eggs, for which it contracts for production. Since the 1990s, Barilla has been entering into more and more farming contracts, particularly in Italy, but also in Greece and Turkey for durum wheat where Barilla has specific needs in terms of quality and volumes. Speaking as a non-lawyer and buyer, he expressed that over time suppliers do not simply remain sellers but become real partners and that this is a key aspect of the ongoing relationship. Barilla's perspective on contract farming had evolved from being concerned with the "what and when" to recently also being concerned about how the raw materials are produced. He explained that Barilla sought to share its perspective with its suppliers, noting that there was a lot of information in the market, but not much knowledge of exactly how it works in order to improve the sustainability for the people, profit and planet. This was important for Barilla because keeping both buyers and suppliers better informed actually helped to manage risk and to have a win-win relationship. He noted that erratic pricing could cause huge problems not only for the suppliers, but also for the buyers. If the supply chain is not economically sustainable, then it is a problem for the buyers too. In discussing some of the weaknesses found in Barilla's experience, he mentioned that, in some countries, there was a lack of useful template contracts for the parties to use and, as a result, sometimes the producers expected the buyers to provide the necessary information. This practice could lead to difficulties and it would be preferable to have template reliable conditions that could then be made suitable to local conditions. To promote stability in contracts and pricing, he suggested that the participation of local authorities could be helpful in guaranteeing the contract or providing a premium and noted that Barilla pays some premiums itself. This flexibility was another risk management tool. He concluded by noting that education for farmers and suppliers was very important and that the sharing of best agriculture practices would increase the efficiency of the process.

Mr Roberto Vega (Head of Product Policy and Performance, Syngenta Crop Protection) offered his perspective on contract farming as a representative of Syngenta, a company that seeks to promote good agricultural practices for efficient production. He stated that, although Syngenta's work may not fall fully within the realm of contract farming, some elements could be applied to it. He then described FrijolNica, a project targeted at subsistence farmers of beans in Nicaragua who lacked credit and technical assistance and involving Syngenta, Rappacciolli McGregor SA, and Esperanza Coop. The aim was to provide access to smallholder farmers in five areas: technology, credit, technical support, safe use of the technical products, and market access. Under the project, farmers were extended credit for periods longer than that necessary for the beans to be produced, inputs were sold to the farmers at a price slightly lower than the market price, and the farmers shared the input and transportation costs. The project grew rapidly, from 300 farmers in 2007 to 6,500 farmers in 2012, and that productivity increased substantially. He suggested that this technical advice element could be easily incorporated into a contract farming scheme, in which players other than the producer and contractor could have an important role. He then mentioned a newer initiative, known as the "Mediador" Strategy, in which large-scale producers lend land to landless farmers, who then share input costs and profit. These initiatives demonstrated how the private sector could take action and help to move the farming system from subsistence to an improved business model. He concluded by briefly describing The Good Growth Plan of Syngenta composed by six specific targets related to improving resource efficiency, rejuvenating ecosystems and revitalizing rural communities.

Mr Sureel Singh (Liaison Officer for Central and North India, Fairtrade International) presented on his experience as an actor in the global fair trade system and described Fairtrade International's vision to promote a sustainable ecosystem and secure future for producers. Fairtrade works with small producers that contract with an intermediary organization, such as an exporter, processor, private enterprise, or NGO, that is able and willing to assist them in complying with the Fairtrade Standard for Small Producer Organizations. He described some of the preconditions to Fairtrade certification, including legal registration for the contractor and the maintenance of an internal structure or bylaws that call for participation, transparency, and non-discrimination. Any contracts must treat Fairtrade as an integral part of the contract and include, among other things, reference to established Fairtrade prices and premiums, a description of mechanisms for financing and dispute resolution, and a discussion of

sourcing plans. The contractor, in particular, is obligated to prepare a contract in a language that the registered producer understands and that meets these requirements, unless such producer requests to be involved in the preparation. Contractors must provide pre-financing up to 60% of the value of the contract, if requested, unless there is a sufficiently high risk of non-repayment or non-delivery as verified by a third party lender. He then discussed Fairtrade minimum prices, which protect producers if market prices fall, and noted that, if the prices go up, then the contractor still has to pay that higher price. He also discussed how, in most conventional contract production, contractors are more eager to contract with large farmers because their production cost is lower and compliance level is higher. In the Fairtrade system, however, 50% of the production has to come from smallholder farmers.

Ms Paola Grossi (Head of Legislative Affairs, Confederazione Nazionale Coldiretti, Italy, member of the UNIDROIT Working Group on Contract Farming) thanked the group for their work on the upcoming Legal Guide. She stated that Coldiretti farmers had maintained good cooperation with Barilla in contract farming, but noted that other relationships were not always fair and that this was a critical issue for contract farming. She first emphasized the problem of unwritten contracts, which are prohibited under Italian law, because of the misunderstandings that can arise and the lack of a description of the obligations of both parties. Next, she emphasized that parties should avoid unclear measures and specifications within the contract and should pay particular attention to points related to prices and payments as they are a key element of any contract. This includes clear specification of when and where payments to farmers are to be made as late payment is an issue that often arises and negatively affects liquidity, competitiveness, and stability. Clear specification promotes stability and, in turn, as the representative of Barilla pointed out, environmental and economic sustainability. Payment terms, moreover, should be tailored to the crops produced, particularly the timing of payments for perishable and non-perishable foods. She then described some of the unfair practices in the food supply chain identified by the EU Commission, including, for example, refusing to put essential commercial terms in writing, applying contractual sanctions in a non-transparent manner and imposing disproportionate damages, unilaterally changing the cost or price of products or services, imposing a requirement to fund the cost of a promotion, and threatening business disruption to gain an advantage or to punish another party for exercising its rights under the contract. She stated that unfair practices are an impediment to market security and an abuse of economic strength and concluded by mentioning a recent case where an unfair practice was sanctioned by the relevant Italian authority.

Concluding Remarks

Mr José Angelo Estrella Faria (Secretary-General of UNIDROIT) concluded by thanking participants for the wealth of information that they shared and reflecting on the internal coherence and observing the numerous threads running through the various panels that would inform the finalization of the Legal Guide. The first panel turned around the ways and means in which the private sector industry itself is developing through either standards or self-assessment tools. This could be seen as a way to make sure that various obligations that arise out of international standards find their way into the supply chain and that, in doing so, the private sector avoids negative consequences. Attention was also drawn to the certification issue and its role in ensuring transactions within the confines of those standards.

The second panel set the tone on the need for cooperation in the supply chain, informing the Working Group's understanding of how the legal mechanisms that are established in the contract may not necessarily be the ones that the parties feel to be most useful for preserving their relationships. Resorting to legal remedies, moreover, may be of last resort. Emphasis was put on the important differences between commodities and locations and the way in which the Legal Guide is formulated and tailored. Some of the presentations also dealt with having accessible and affordable mechanisms of dispute resolution that preserve the contractual relationship and do not necessarily involve the presence of lawyers.

The third panel shifted the focus to cooperation and trust in dealing with some of the contract farming realities and to the importance of regulatory frameworks that can promote transparency, stability, and fairness in the parties' dealings. The panel discussed, however, that very high levels of competition among buyers may create difficulties as producers are tempted to breach their contracts and side-sell at the higher price, thereby making clear that a clear and fair contract might not solve all potential problems. The panel also dealt with the variety of parties and stakeholders that have an interest and are somehow involved in the transaction, touching upon a similar theme from the morning sessions and suggesting a reality that is often beyond the simple bilateral contract structure. The importance of risk mitigation and the need for reasonableness was another key thread, especially in light of remedies and with a view to preserving the integrity and smooth operation of the supply chain.

The concluding panel presented experiences on how risk management has become part of a long-term purchasing policy and how it drives an organisation towards promoting contract farming. Like the example provided by one of the panelists, companies have started to shift their approaches on procurement contracts from only being concerned with what products are procured and when they are to be received, but now also with how the product is made and how the transaction will be conducted. This shift, in turn, drives companies' policies towards contract farming. The usefulness of guides, templates, and best practices was also stressed as a way to help to educate farmers about the potential benefits of contract farming. Good examples were presented of how certification may go beyond simply ensuring compliance with certain standards, once again demonstrating the variety of third parties that may be involved in a given transaction, and how it may have a substantive impact on the terms of contract. A fair trade pricing mechanism was just one of those possible terms that is significant and such terms should be taken into account in the Legal Guide. Panelists also discussed unfair clauses and imperfect contracts, which may require additional elements like government action, legislation, and regulatory frameworks to re-establish the balance between the parties.

The Secretary-General then thanked the participants for their interventions, which would greatly inform the process of finalizing the drafting of the Legal Guide and solicited any further comments. He concluded by noting the upcoming workshop in Addis Ababa and that, even after its finalization, implementation with respect to the Legal Guide would occur through FAO and IFAD, in particular through their information and technical assistance programs for the farmers so that the Guide could find its way into practical applications.

SUMMARY OF DISCUSSIONS

The elements reported in this section are organised by subject matter and reflect the exchanges among panel members and workshop participants during the workshop on 10 October 2014.

Scope, approach, purpose and form of the Legal Guide

- It was pointed out that the circumstances surrounding the production and distribution of certain commodities may result in different contracting practices. For this reason, it was proposed that the Legal Guide should be prepared in a general way and could be further customised by users to their particular circumstances. Another participant noted that the Legal Guide was only a first step and that, in incorporating the Legal Guide into implementation projects, it could be further tailored for specific commodities or conditions. According to one participant a clear proposal emerged to go industry by industry or commodity by commodity. This would be a logical idea from an industry standpoint, but it was said that an objection could be raised when it comes to policy (financing, technologies, assistance and other matters). It was suggested that if the issues were approached mainly from the commodity viewpoint, such an approach could make the implementation process too fragmented.

- Another point concerning whether the Legal Guide should move from a general framework into a more specific one related to literacy and size. A number of participants stressed that, because many smallholder farmers lacked sufficient levels of education and literacy, the Legal Guide should be drafted in an accessible way, with a view towards its implementation in a manner that could be useful to such farmers. Another participant said in this regard that lawyers are needed to assist in the development of a helpful document such as the Legal Guide, but implementation of the Legal Guide should be a much more practical thing with which non-lawyers can and want to work.
- On the question of whether the Guide could expand to have a global reach starting from European principles, implementation and governance models, through examples like the European Food Supply Chain Initiative and Global G.A.P, it was said that, if it was shown the principles worked on a European level, it would be possible for them to be exported on a global level. It was stated that it would be interesting to see the role of international bodies such as the UN and World Bank. It was suggested that such initiatives started from the European level as an answer to European complexities and that those complexities would reach a larger scale when brought to the global level. Other practical issues were addressed, such as how to reach and implement the principles and who would appoint a governing or management body. It was said that interest was increasing in such initiatives in other parts of the world, thereby showing an idea or model could be expanded globally. This was also confirmed by another participant, who emphasized the awareness of a need to produce at a sustainable farming level and introducing models and principles to do so.
- A question was posed whether countries of production and their good practices, laws and regulations could feed into the policies from a country level. It was suggested that the Legal Guide could be used as an entry point for enhancing collaboration with other partners at a country level. It was said that presently there is some collaboration between the private sector and the local or country level, but that this should be developed and expanded more.
- The point was raised that the Legal Guide could also focus on an indication of practical examples of good practices that work, those that do not, and the reason for their inability to work. Once this is established, it would be very helpful to have some reflection on how to replicate, adapt or expand those good practice examples in different parts of countries and in the world. It was suggested that this would be helpful for the groups that were present and for governments.
- A question was raised on the purpose of contract farming and the variety of potential contracts to reach the same goal of a long-term contract relationship. In addition, it was asked whether there are alternatives that are more appropriate to solving recurring issues. In response, a participant suggested that contract farming was not the only solution, but noted that in practice many smallholder farmers who are party to a contract can use such contract to get access to financing or technical advice.

Regulatory approach

- The role and importance of commodity associations was raised, in relation to a potential trend of increased legal scrutiny in the contracts and in the regulation of their commodity sectors. It was discussed whether the industry players would appreciate an increased legal role in these areas.
- Some participants were not in favour of additional governmental regulation of the agricultural industry and contract farming, stating that it was too costly and slow to develop and implement. Instead, those participants favoured self- or auto-regulation and described the successes of voluntary regulatory frameworks such as the European Supply Chain Initiative, which had been taken up with considerable speed by a good number of operators throughout the food supply chain. Other participants, however, suggested that the government and local authorities had an important role to play in ensuring a level playing field and in possibly guaranteeing a contract. This involvement, it was stated, could promote stability in pricing and in the food supply chain as a whole.

- There was a general interest and discussion on the relationship between the regulation of markets, competition and price setting, and what would be the potentially positive and negative outcomes. A question was raised on whether certain pricing models were at all possible in particular commodities or whether they stifle positive market conditions and competition. A participant replied that increased regulation in aspects like price setting is not contrary to competition, as the farmer will have the choice in many situations of who to contract with and, as a result, consider what investment packages and incentives are offered. It was said that good regulation guarantees stability for investments and pre-input financing, whilst still allowing some degree of flexibility.
- Another participant noted possible difficulties caused by parties reaching price setting agreements and its potential illegality in some countries. It was confirmed, however, that greater stability in prices is achieved through either informal understandings or acknowledgments between farmers as to prices, or with farmers joining cooperatives.

Fairness in contract drafting and operation

- It was recommended that the Legal Guide emphasize the importance of drafting particular provisions clearly and fairly to minimize potential misunderstandings and disputes.
- It was noted that prior to any signing of a contract, an agreement should be presented, reviewed, and agreed by both parties. In that agreement, the strength of negotiating parties should be at the same level. It was said that the agreement is important because it would determine the balance of the contract in terms of expectation and return to both parties. It was suggested that this should be discussed in the Legal Guide, including arrangements to be put in place to prepare the farmer for negotiations on the draft of the contract.
- The importance of literacy and its influence on the Legal Guide was discussed, including how it could affect fairness in contract drafting. This issue would affect implementation and the move from an idea of a contractual practice that is written and formalised to one that takes into account other factors, both from the drafting perspective but also in dispute resolution. The issue of literacy was also addressed as relevant because an important aspect of the contract would be a description of expectations and outcomes for the farmer. At the same time, it was expressed that in some cases there are very few instances of contract signing without the intervention of third parties, such as farmer cooperatives or non-governmental organizations.
- Several examples of unfair or abusive clauses were discussed, as well as unfair or abusive practices under contracts.

Contract enforcement

- The role of collaboration between producers, producer organisations, and the private sector was consistently emphasised in providing capacity building and technical assistance. It was stated that this collaboration was essential to the success of contract farming initiatives, which in turn would promote compliance and stability.
- Although the importance of trust and cooperation was consistently emphasised, it was suggested that even longstanding producer-contractor relationships and contracts could be difficult to enforce and subject to breaches if producers were able to get a significantly higher price for their product from another buyer.

Dispute management and resolution

- It was observed that at different points in the supply chain the formality of the dispute resolution mechanisms generally differed significantly. Upstream disputes were typically

resolved less formally by intermediaries, whereas downstream disputes were typically resolved more formally, either in arbitration, by judicial courts, and to a lesser extent, by mediation. It was said that the drafters of the Legal Guide should take into account these varying levels of formality, which could affect how a contract is drafted, interpreted, and applied.

- A participant queried whether informal dispute resolution mechanisms were working and, if so, whether it was better not to step back and leave such mechanisms undisturbed. It was observed, however, that many disputes resolved informally were not resolved in a fair or otherwise good way, so there is a need to establish and describe alternative mechanisms in the Legal Guide and to promote them in particular regions.
- It was noted that some of the arbitral dispute mechanisms discussed excluded lawyers from certain roles. Lawyers were not to appear on behalf of clients before a GAFTA arbitration panel and were not to serve as arbitrators in the specialized coffee arbitrations mentioned by the representative of Lavazza. In response, it was observed that lawyers typically play an important role in contract drafting and formation, but that heavy involvement by lawyers in dispute resolution may increase antagonism and affect the quickness of an arbitration.
- Some commentators noted that amicable dispute resolution was favoured in their respective regions and jurisdictions. The reasons for this were varied, including a desire to resolve a dispute quickly and confidentially and to get the focus back to production and supply.
- A question was asked about ways to promote alternative mechanisms of dispute resolution such as arbitration. It was said that contracts, as negotiable instruments, could include some incentives, for example, in the form of premium so that the party opposing arbitration is willing to give the other party a risk mitigating technique in exchange.

Remedies for breach

- It was generally agreed that termination of the contract should only be a remedy of last resort. Repair was to be favoured, in other words, giving a party an opportunity to cure any potential or real breach of the contract. Nevertheless, it was acknowledged that termination was a suitable remedy for persistent non-performance.
- It was observed that the appropriate remedy depended on surrounding circumstances, including, for example, the particular commodity, whether it is perishable or non-perishable, and whether it was a matter of short shipment or non-shipment. In instances of short shipment, for instance, it was suggested that that should not result in the termination of the contract, but instead lead to a decrease in the amount paid under the contract.

Additional specific issues

- Role of third parties: it was observed that third parties played an important role even though they were not a party to the contract. This role could vary, including certification of products as sustainable and fair trade, implementation of minimum prices to protect producers from volatile pricing, technical assistance, training, and financing. It was suggested that the Legal Guide be drafted in a way that captures the reality that contract farming may not only involve the parties to the production contract itself.
- The general role of intergovernmental agencies and governments: the point was introduced of being able to have legal elements and standards that can be used on the ground and with governments in a way that is not only limited to a number of companies. The question was posed of ways of working with governments to enable a structure offering what cannot be offered at present. It was said that this could be achieved by a collaboration between the private sector, their partners and intergovernmental agencies first. Once a common alignment of the problem is achieved, then a systemic response as a community could be asked from the governments. A further question was asked on the added value of this approach, especially when considering the vast international obligations that may have already been ratified by governments. It was stated in reply that enforcing those obligations

was challenging on the international level and that a hybrid model between knowing the capabilities of governments and how to incentivise them to act in a particular way, coupled with the dynamism of the private sector, would be a preferable course of action.

- Uniting small farmers: an important consideration was raised on how to bring small individual farmers into legal forms, in order to have on one hand a higher possibility of products relating to the standards and certifications, and on the other hand an opening of more markets and acceptable prices. The question was raised whether it would be advisable to focus also on instances of family smallholder farming, in its contribution to the sustainability and development of the farming and agriculture sectors. It was replied that there are many practical examples of overlap between family and commercial farming and that the best support is provided with legal forms like cooperatives and contract farming.
- Promoting contracting with smallholder farmers: it was observed that, although many of the large, multinational companies had smallholder farmers in their supply chain, most did not directly contract with those farmers. Instead, such companies were more likely to implement joint technical assistance programs to support smallholder farmers or to purchase products certified by a third party. Participants discussed how large companies could ensure that smallholder farmers were involved in the supply chain, benefitting from it, and producing in a sustainable and environmentally friendly way. A representative of a large company responded by describing how, with the help of local and international non-governmental organizations and other key stakeholders, work was undertaken to ensure promotion of smallholder farmers and sustainable farming. This work and coordination included use of criteria and assessments to monitor and ensure that there is a positive social impact on the ground. Under what was called a “ladder approach”, steps were also taken to add mandatory requirements to the contracts with the suppliers and processors, who in turn were to ensure best practices with smallholder farmers. The importance of collaboration and cooperation was consistently emphasized. It was also suggested that a manner in which to promote or even force better practices would be to allow members of the public to sue companies for procuring falsely certified or non-certified products.
- Sharing of risk: it was queried whether there should be a sharing of the risk in the contract and, if so, how to embed that in the contract, in particular with respect to the risk caused by natural calamities. In response, there was an acknowledgment that natural calamities are an issue for both producers and contractors and there was a discussion about the need for insurance schemes, such as those required in European countries, to protect against such risk. Such insurance, it was stated, would be external to the contract. Another participant stated that a more developed regulatory framework could help by having a system of contributions to insure production.
- Supervening events fundamentally upsetting the economic balance of the contract: an increase in the amount of parties arguing over whether a force majeure event had occurred, thereby excusing performance was discussed. Because of this increase, it was suggested that the Legal Guide should treat force majeure carefully and with clarity.

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GOOD CORPORATE PRACTICES IN CONTRACT FARMING

ANNEX 1: Presentations

Rudy Gotzen (KU Leuven / Boerenbond)
Peter Erik Ywema (SAI Platform)
Dennis Kredler (European Retail Round Table)
Kliment Petrov (GlobalGAP)
Puvan Selvanathan (UN Global Compact)
Felipe Medina (ASEDAS / EuroCommerce)
Valentina Maglio (Lavazza)
Dirk Straathof (UTZ Certified)
Giulia Di Tommaso (Unilever)
Gary Jay Kushner (Hogan Lovells / [US] National Chicken Council)
Roger Peltzer (DEG Invest)
Roberto Vega (Syngenta)
Sureel Singh (Fairtrade International)

UNIDROIT

CONTRACT FARMING

Rome, october 10/10/2014

Professor Dr.R.Gotzen
KU Leuven/Boerenbond (Belgium)

- Code of conduct for fair relationships between suppliers and purchasers in the agro-food chain.
- Signed by the farmers associations, the transforming industry, the food industry and the retail.

Contents of the code

- Purchasers and suppliers exchange information on markets.
- Purchasers comply with the contractually agreed payment delay.
- Purchasers and suppliers don't impose unilateral changes to contract conditions.
- All parties agree to use mediation in case of conflict.

- The code is managed by a committee composed of representatives appointed by the undersigning parties.
- Discussions will be led by the principle "comply or explain". Every party can provide for derogations of the code as long as they clarify their policy on this.

- Agreements should be in writing.
- Purchasers source local products where these are competitively positioned and where they fit the commercial strategy.
- Purchasers guarantee a careful handling of food products.

- The minister and the administration get information about the use of the code.
- There is no binding intervention possible by a government or administration. There is no regulation by hard law .
- The code is a purely private code in the B2B sector. (soft law).

Contract farming in Belgium

- Contracts are important for farmers in certain areas (potatoes,sugar beets, corn,fruit and vegetables, porc and veal, chicken,...).
- Contracts are not always written.
- Farmers try to obtain fair contracts by proposing model contracts.
- Farmers use contracts for a limited amount of the production,in combination with the free market for the other part of the harvest.

Dispute resolution

- In the most cases dispute resolution is organised in a non-judicial way.
- Amicable dispute resolution in many cases.
- Arbitration can be used.
- The judicial way stops in many cases before a judgment,with an agreement between the parties.



Contract farming & Sustainable farming: *Potential allies?*



UNIDROIT, Rome, Oct 2014
Peter Erik Ywema
General Manager

History and Structure

- Created in 2002 by the **food and drink industry** to support the development of sustainable agriculture worldwide.
- Works on a **pre competitive basis**, on technical issues.
- **60+ members**: food and drink companies, retailers + affiliate members
- **5 Working Groups**: Beef, Coffee, Fruit, Dairy, Arable and Vegetable Crops
- **4 Committees**: Biodiversity, FSA, Farmer and Supplier Partnership, Water



2

SAI Platform Members (sept 2014)



SAI Platform Principles and Practices

- agreed definitions of sustainable agriculture practices



How to implement the P&Ps?

1. Simple Assessment tool that describes scope & content of farm sustainability (FSA)
2. How to measure impact? (SPA)
3. 'How to get started?' training manual (Guide & Partnership)



5

What is Farm Sustainability Assessment?

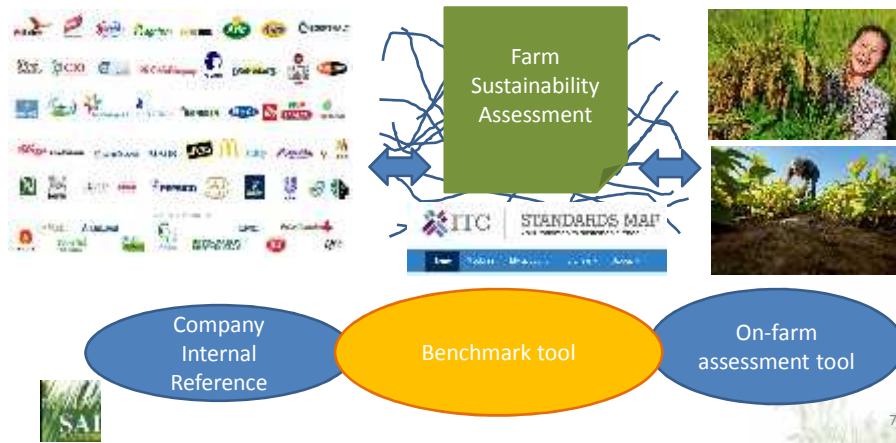
- A **simple tool** to assess farm sustainability.
- Multi Use Tool covering **environmental, social and economic** aspects.
- An **easy scoring** mechanism to provide an overview of the farm's sustainability.



6

Why Farm Sustainability Assessment?

One industry aligned assessment of agreed sustainable agriculture practices



Customized online self-assessment tool on ITC's website

The screenshot shows the customized online self-assessment tool on ITC's website. The interface includes a sidebar with navigation options: Home, About, Contact, etc. The main content area displays a questionnaire with questions about soil sampling and record-keeping. The questions are in English and include options for "Yes", "No", and "Not applicable". There are also links to "Download" and "Upload" documents. The right sidebar contains a "Documents" section with a link to "FARMER SELF-ASSESSMENT" and a "Recommendations" section with a link to "FARMER SELF-ASSESSMENT".

What is Sustainability **Performance** Assessment (SPA)?

SPA is set of guidelines designed to

- Provide guidance for a good tool to help farmers assess the level of implementation of the Principles and Practices.
- Identify practical, quantifiable indicators of sustainability performance.
- Assess the impact on the environmental (and social and economic TBD) pillars of their farm sustainability.



9

Guide on sustainable sourcing & Farmer partnership Ctee

For practitioners who want to:

- Implement sustainable sourcing
- Develop a sourcing strategy



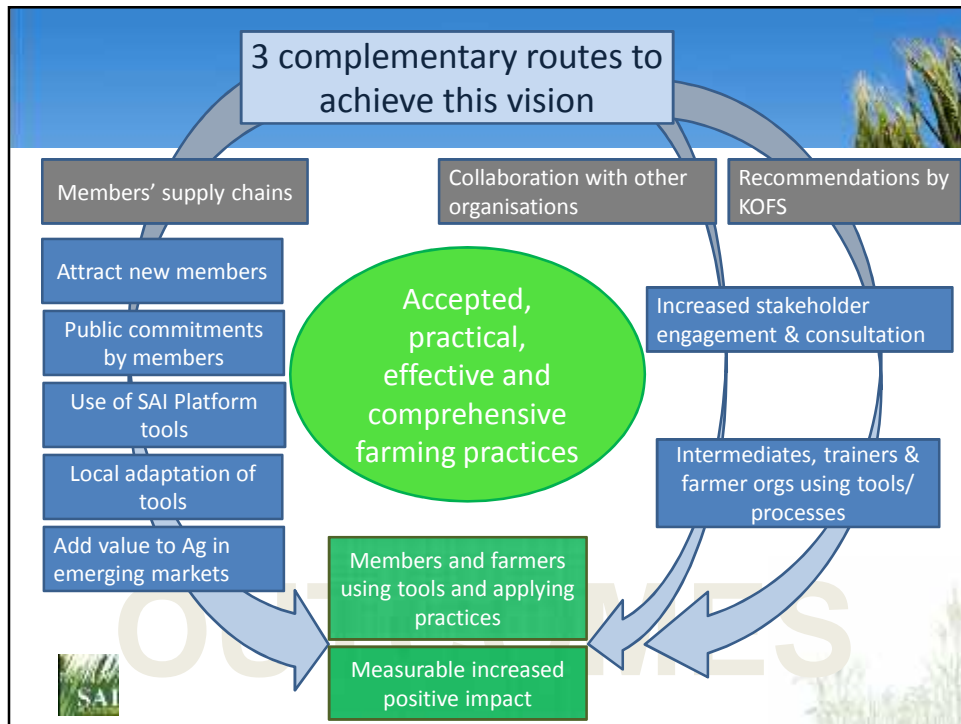
Farmer & Supplier Partnership Committee

There is more to create real change.....

- Understanding hurdles to change
- Behavioral change
- From certification and auditing towards 'self propelling'
- Reconnecting value chains
- (re)Appreciation of farmer craftsmanship



10



The trees and the wood.... (personal draft)

initiative	initiators	target	Kind of intervention
SAI Platform	Food & Drink Retail	farmer	Consensus about farm sustainability requirements
GlobalGAP	Food & Drink Retail	farmer	Food safety & farm audit system
UN GlobalCompact	Food & Drink Retail	the food system	Consensus on High level principles
NVA (WEF)	Food & Drink Retail	the food system	High level principles
TSC	Food & Drink Retail	the food system	Sustainability info at product level
AIM Progress	Food & Drink Retail	the food system	Shared requirements labor conditions

Contract Farming & Sustainable Farming

Some thoughts (from a non-expert)....

- ✓ Both bring a longer term perspective
- ✓ Both seek long term relationships
- ✓ Both (thus) create economic security & potential for (co)investments
- BUT...Adding complexity? Where can that be reduced?
- Adding value?
- When to choose for contract farming/ when does become 'a strangler'?



13

Thank you!



14



▶ Ten Principles of Fair Trading Practice

3 General Principles

1. Consumer Interests and sustainability
2. Freedom of Contract
3. Fair Dealing













7 Specific Principles

1. Written agreements
2. Predictability
3. Compliance with agreements
4. Information exchange
5. Confidentiality
6. Responsibility for risk
7. Justifiable request

Compliance with applicable laws including competition law

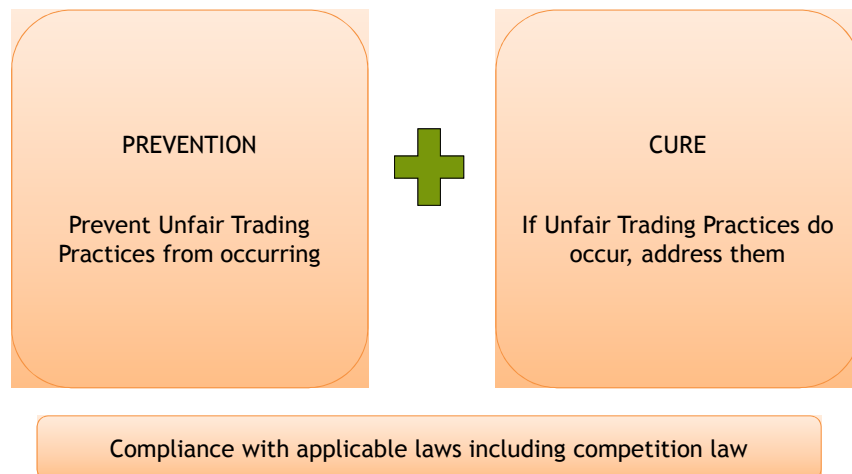
Examples of fair and unfair practice

-  Agreements – written / unwritten
-  General terms and conditions
-  Termination
-  Contractual sanctions
-  Unilateral actions
-  Information
-  Listing fees
-  Threatening business disruption
-  Tying
-  Delivery and reception of goods

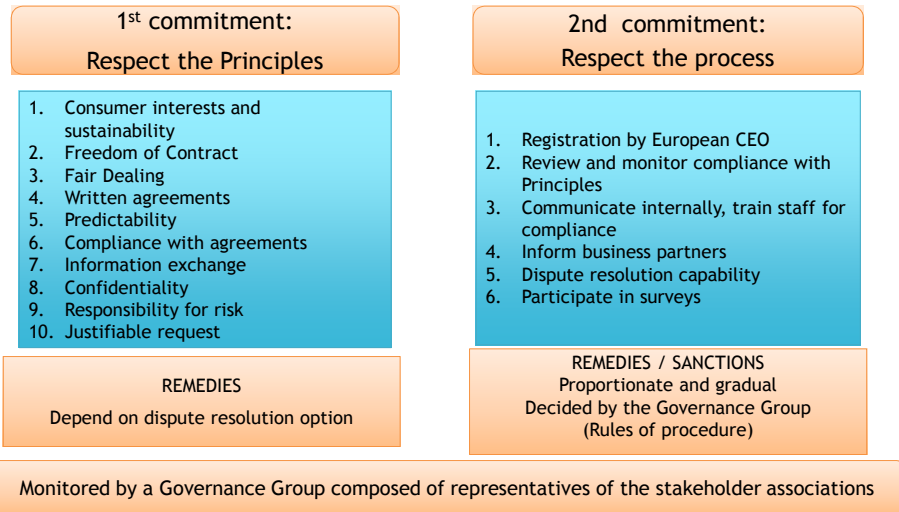
Source: http://ec.europa.eu/enterprise/sectors/food/files/competitiveness/good_practices_en.pdf



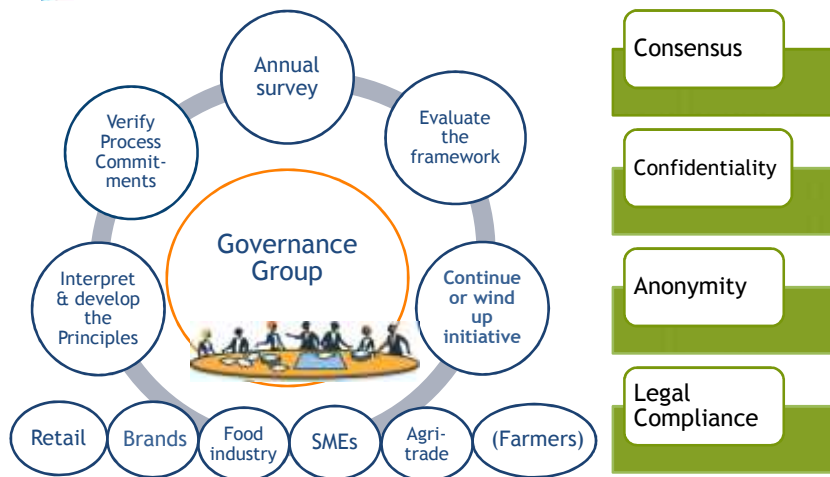
Two Objectives



The commitments



Governance



▶ Aggregated dispute

■ Definition

A dispute regarding an alleged serious breach of a Principle introduced by several companies similarly affected.

■ Procedure

- Collect the relevant information in a legally compliant manner in order to verify that the complaint has substance
- Ensure that interpretation or guidance regarding a principle or example is required
- Respect of **confidentiality** and **anonymity**

■ Which level?

- Operators in the same country → National level
- Cross border dimension and cases for which there is no national stakeholder platform in place → European level

▶ Tools

■ Self-assessment

■ E-learning : <http://www.saiglobal.com/cs4-supplychain-initiative/>



Website

www.supplychaininitiative.eu



Companies that have already registered or committed to register



- ▶ Companies that have already registered or committed to register








GLOBALG.A.P. MISSION



“We want to be the preferred solution for farm assurance world-wide.”

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WHAT IS GLOBALG.A.P.?

Non-profit Private Sector Body	Voluntary Standards
Good Agricultural Practices (G.A.P.)	Worldwide
Business – to – Business Initiative	Covers the whole production process of non-processed product
Re-Assure Consumers about how the product was produced	Food Safety / Traceability / Workers Health and Safety/ Environment /Animal Welfare

“The Global Partnership for Safe and Sustainable Agriculture”

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OUR STRATEGIC PILLARS

- ★ PARTNERSHIP
- ★ INTEGRITY
- ★ BENCHMARKING
- ★ STAKEHOLDER PARTICIPATION
- ★ EFFICIENCY AND EFFECTIVENESS



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GLOBALG.A.P. MEMBERS

RETAIL & FOOD SERVICE MEMBERS



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GLOBALG.A.P. MEMBERS

PRODUCER AND SUPPLIER MEMBERS



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GLOBALG.A.P. MEMBERS

PRODUCER AND SUPPLIER MEMBERS



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GLOBALG.A.P.
The Global Good Agricultural Practices standard for export agriculture

GLOBALG.A.P. MEMBERS

ASSOCIATE MEMBERS (CBs, Consultants, Industry)



Updated April 2014 | www.globalgop.org

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GLOBALG.A.P.
The Global Standard for Good Agriculture

STATISTICS

COUNTRIES WITH GLOBALG.A.P. CERTIFIED PRODUCERS



Aval. January 2014

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PRODUCTS AND TOOLS

GLOBALG.A.P. - THE IFA STANDARD



Crops



Aquaculture



Livestock



Chain of Custody



Plant Propagation Material



Comp. Feed Manufacturing

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PRODUCTS AND TOOLS

GLOBALG.A.P. - THE IFA STANDARD: CERTIFICATION OPTIONS



Option 2/4: Producer Group

- Farmer group is the certificate holder



Option 1/3: Individual Producer

- The individual producer is the certificate holder



Updated April 2014

More than two third of the GLOBALG.A.P. certified growers are organized in producer groups.

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HOW CAN CONTRACT FARMING BE CERTIFIED UNDER GLOBALG.A.P. ?

- A QMS (rules, policies, procedures, responsible staff, training, etc.) – implemented
- All producers must be registered
- Internal inspections
- External audit by CB auditor(s) and inspection of sample of producer members by CB inspector(s).
- The certificate holder will be the buyer with an annex of all the producers registered in the GLOBALG.A.P. database.

HOW CAN CONTRACT FARMING BE CERTIFIED UNDER GLOBALG.A.P. ?

Rules specific to Option 2 Contract Growing

- The QMS audit will include, based on the risk, and where the decision power is, Control Points and Compliance Criteria corresponding to the input from the buyer.
- The Control Points and Compliance Criteria CL against which the producer will be inspected will be shortened to reflect activities that the producer is responsible for.
- The Certificate holder must a GLOBALG.A.P. member



GLOBALG.A.P.
The Global Standard for Good Agricultural Practices

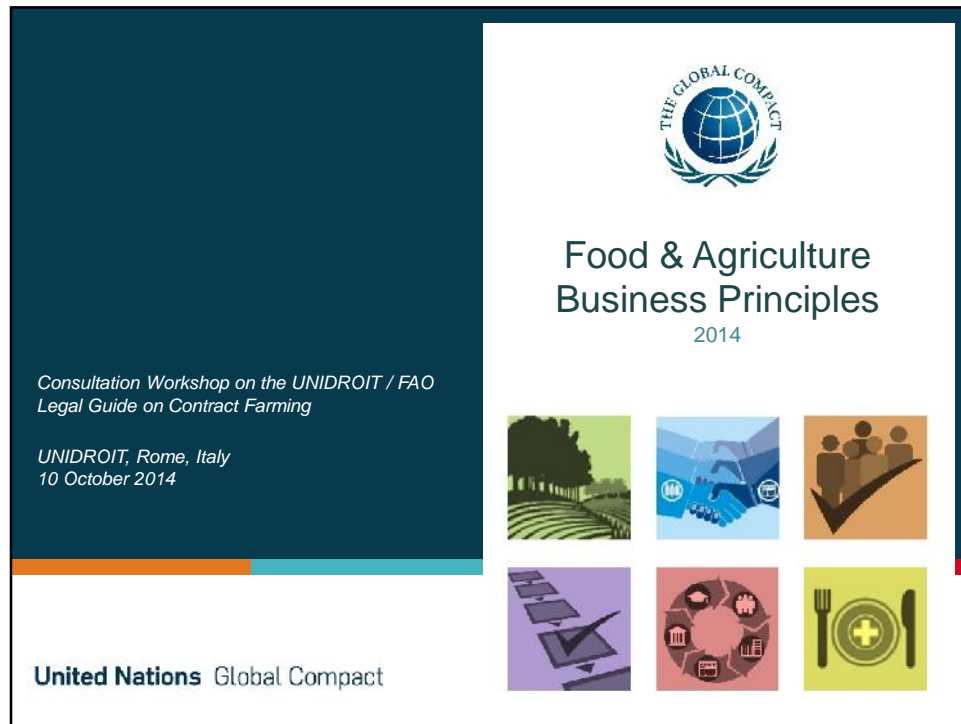


THANK YOU FOR YOUR ATTENTION!

QUESTIONS – DISCUSSION – CONTACT US

Email: info@globalgap.org
+49 (0) 221 57993 25
www.globalgap.org

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The UN Global Compact 10 Principles

HUMAN RIGHTS

- Principle 1 Businesses should support and respect the protection of internationally proclaimed human rights; and
- Principle 2 make sure that they are not complicit in human rights abuses.

LABOUR

- Principle 3 Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- Principle 4 the elimination of all forms of forced and compulsory labour;
- Principle 5 the effective abolition of child labour; and
- Principle 6 the elimination of discrimination in respect of employment and occupation.

ENVIRONMENT

- Principle 7 Businesses should support a precautionary approach to environmental challenges;
- Principle 8 undertake initiatives to promote greater environmental responsibility; and
- Principle 9 encourage the development and diffusion of environmentally friendly technologies.

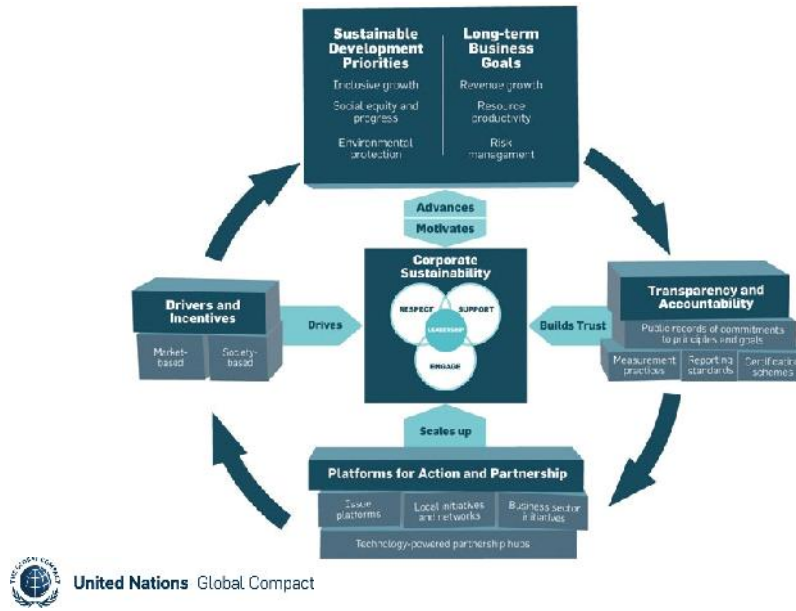
ANTI-CORRUPTION

- Principle 10 Businesses should work against corruption in all its forms, including extortion and bribery.



United Nations Global Compact

UNGC Architecture for a Better World



UNGC FABs



AIM FOR FOOD SECURITY, HEALTH AND NUTRITION

Businesses should support food and agriculture systems that optimize production and minimize wastage, to provide nutrition and promote health for every person on the planet.



BE ENVIRONMENTALLY RESPONSIBLE

Businesses should support sustainable intensification of food systems to meet global needs by managing agriculture, livestock, fisheries and forestry responsibly. They should protect and enhance the environment and use natural resources efficiently and optimally.



ENSURE ECONOMIC VIABILITY AND SHARE VALUE

Businesses should create, deliver and share value across the entire food and agriculture chain from farmers to consumers.



RESPECT HUMAN RIGHTS, CREATE DECENT WORK AND HELP COMMUNITIES TO THRIVE

Businesses should respect the rights of farmers, workers and consumers. They should improve livelihoods, promote and provide equal opportunities, so communities are attractive to live, work and invest in.



ENCOURAGE GOOD GOVERNANCE AND ACCOUNTABILITY

Businesses should behave legally and responsibly by respecting land and natural resource rights, avoiding corruption, being transparent about activities and recognizing their impacts.



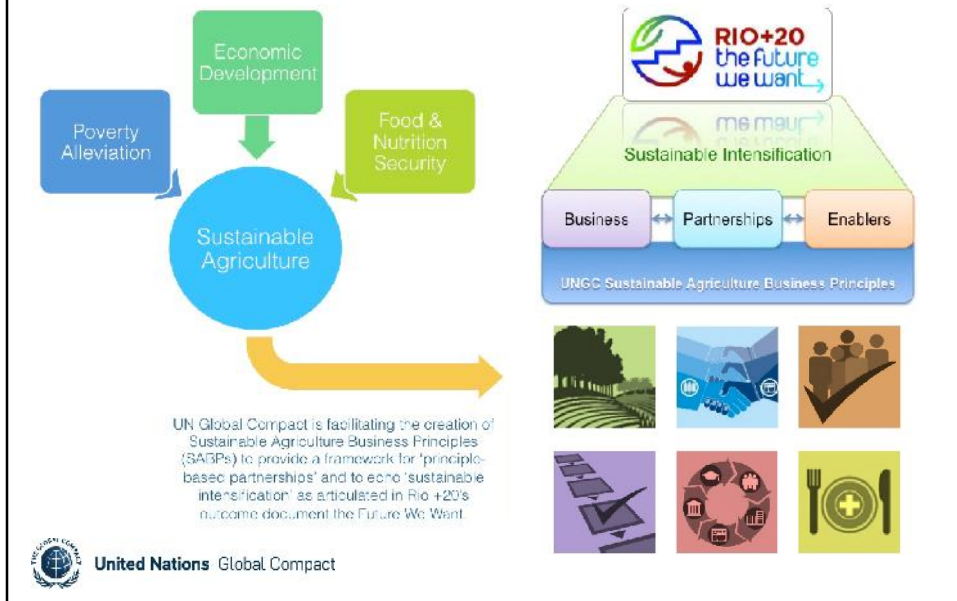
PROMOTE ACCESS AND TRANSFER OF KNOWLEDGE, SKILLS AND TECHNOLOGY

Businesses should promote access to information, knowledge and skills for more sustainable food and agricultural systems. They should invest in developing capacities of smallholders and small- and medium-sized enterprises (SMEs), as well as more effective practices and new technologies.

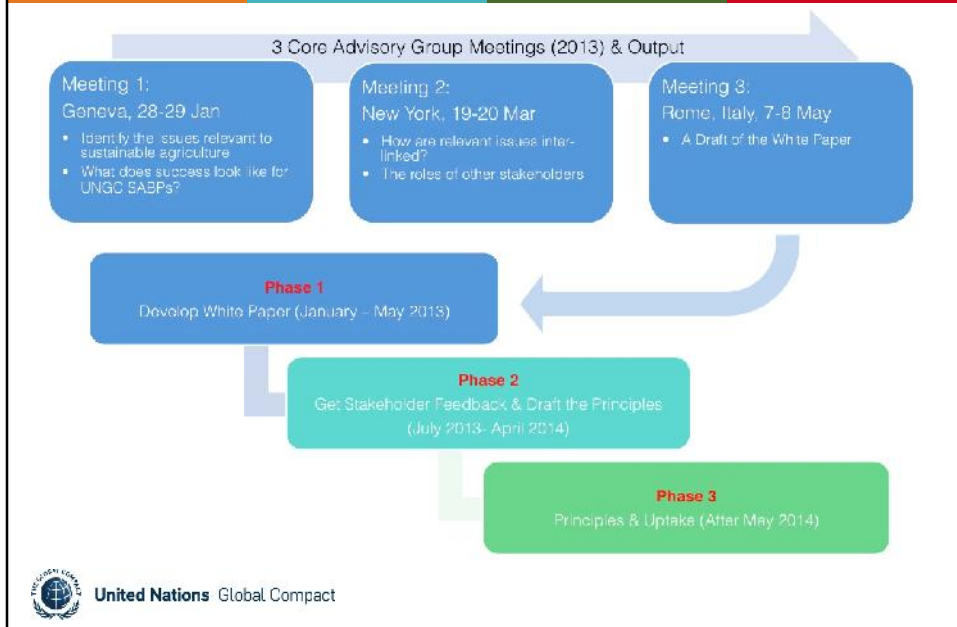


United Nations Global Compact

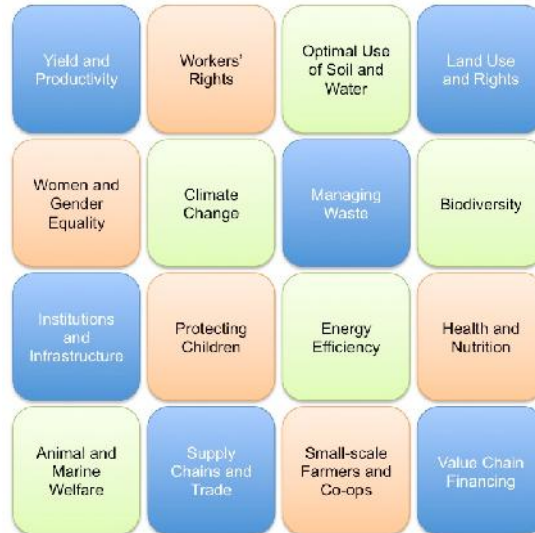
Why Business Principles for Food & Agriculture?



The Process for the FABs



FABs – 16 Factors



United Nations Global Compact

FABs – 16 Factors (detail – 1 of 4)

Small Scale Producers, Family Farmers and Cooperatives

Sustains grower communities and keeps farmers farming.

Land Use and Rights

Essential to good governance and enabling environment for business to deliver sustainable agriculture.

Climate Change – Mitigation and Adaptation

Implement climate responsible practices, e.g. reducing greenhouse gas emission and adapting production systems to changing weather patterns.

Health and Nutrition

- Produce sufficient, diversified and nutritious food for the health of the world's population.
- Provide for the health and nutrition of workers and their families throughout the supply chain, particularly in rural areas.



United Nations Global Compact

FABs – 16 Factors (detail – 2 of 4)

Maintaining and Enhancing Biodiversity

- Address accelerating loss of biodiversity vs. our increasing demand for food, fuel and fibre.
- Protect natural and agricultural ecosystems and use existing land and resources more efficiently.

Protecting Children and Supporting Youth

- Protect children from child labour.
- Develop decent work opportunities in agriculture for young people reaching working age.

Agricultural Value Chain Financing

- Greater access to finance for small-scale producers, marginalised groups and poor rural communities.
- Investments and finance should be directed to more sustainable activities for larger businesses.

Yield and Productivity Improvements

- Creating more food of better quality with less land and inputs.
- More revenue, better pricing, better livelihoods and food security for grower communities.



United Nations Global Compact

FABs – 16 Factors (detail – 3 of 4)

Supply Chain and Trade

Important in managing waste, ensuring access to affordable and nutritious food, and making sustainable products more accessible to consumers.

Women's Empowerment and Gender Equality

Provide equal and equitable opportunities, including access to land, finance and other resources.

Waste Management and Reduction

- Reduce post-harvest losses from storage, transport and consumption.
- Promote better consumption, reuse and recycling.
- Improve distribution and trade networks throughout.

Optimal Use of Soil and Water

- Maintain soil fertility and water availability.
- Avoid further degradation and over-exploitation.



United Nations Global Compact

FABs – 16 Factors (detail – 4 of 4)

Workers' Rights, Welfare and Migrant Workers

- Offer decent working conditions for all workers.
- Address disadvantages such as poor pay and working conditions, lack of representative organizations and job security, etc..

Institutions and Infrastructure

- Innovation and improvement in practices require robust basic services to undertake R&D.
- Good infrastructure is also key to growing supply chains and trading.

Energy Efficiency

- Increased usage of field waste products to generate energy.
- Development of alternative and renewable sources of energy.

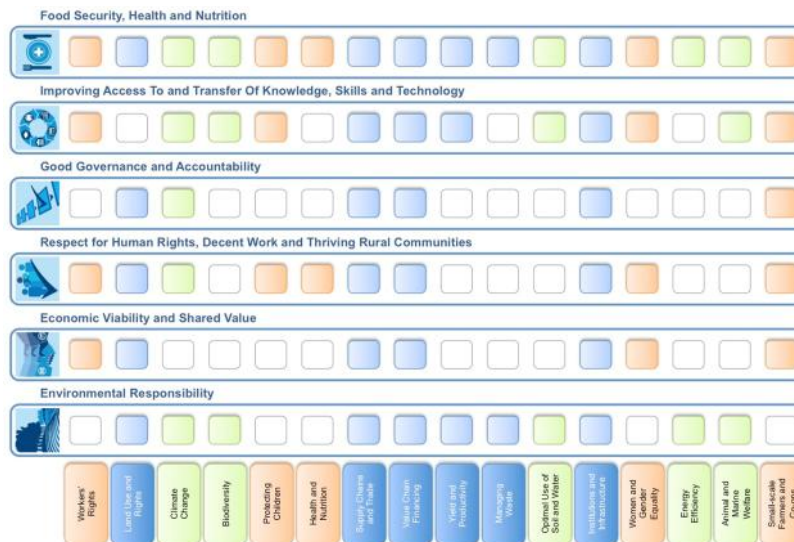
Animal and Marine Welfare

Good practices for humane raising, handling and slaughtering.

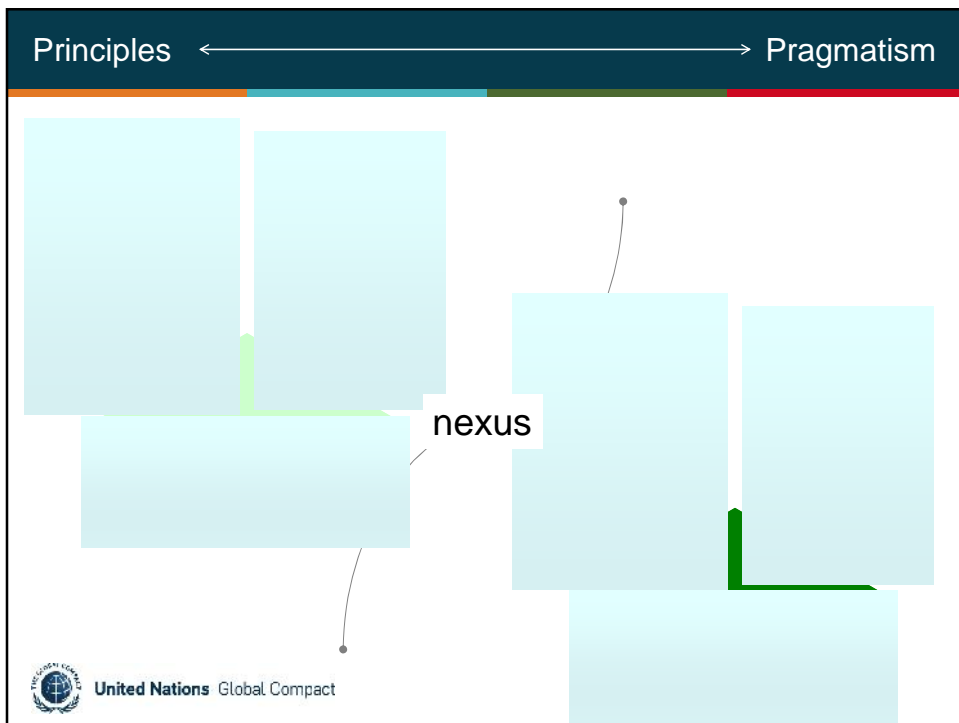


United Nations Global Compact

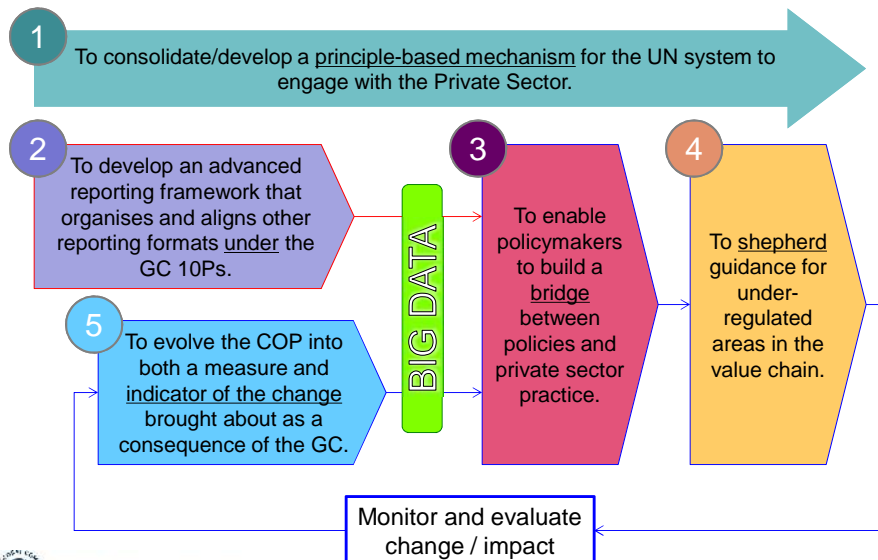
Which Factors Are Most Material to Each Outcome?



United Nations Global Compact



What Next for the FABs?



United Nations Global Compact

FABs 1+10 Questions

- FAB 1 Question - do you believe in the importance of Food Security? Y/N
- FABs 2 – 6 Questions:
 - (a) Do you have policies on the elements in this FAB? Y/N
 - (b) Do you have practices related to this FAB? Y/N

FABs Q&A template populates a public database of information provided online by suppliers globally.

The data provided by each supplier is captured as a profile like a Facebook or LinkedIn page.



United Nations Global Compact

FABs Launch High-Level Meeting



UN HQ – New York - 22 Sept 2014



United Nations Global Compact

"New relations between retailers and suppliers: our vision"



Felipe Medina Martín

Rome, 10th October 2014: **UNDROIT - FAO**



Members of ASEDAS



DATA ASEDAS 2014

Number of food shops: 16.000

Commercial surface: 10.000.000 m²

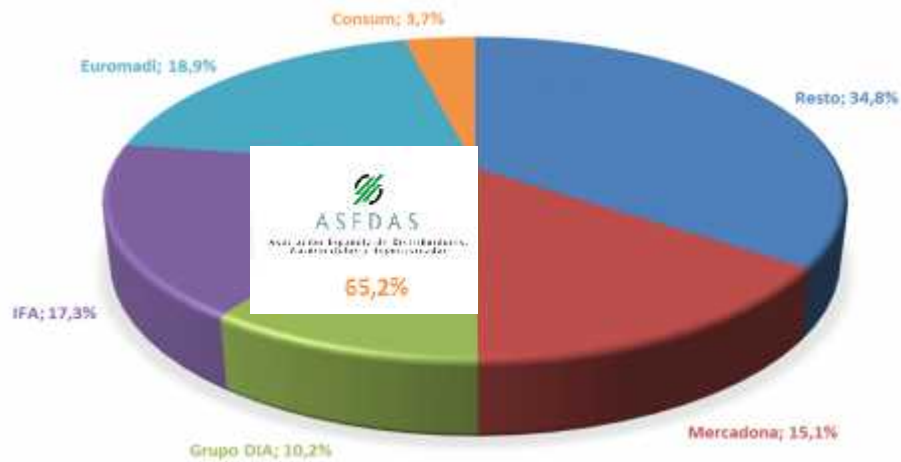
Workers: 250.000



Members of ASEDAS in Spain



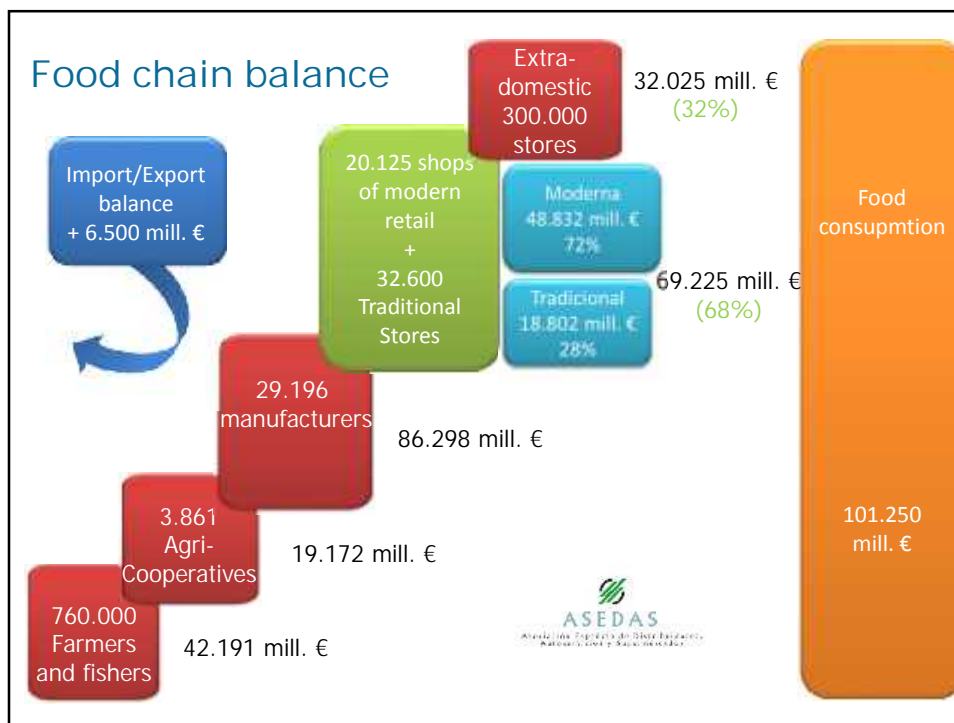
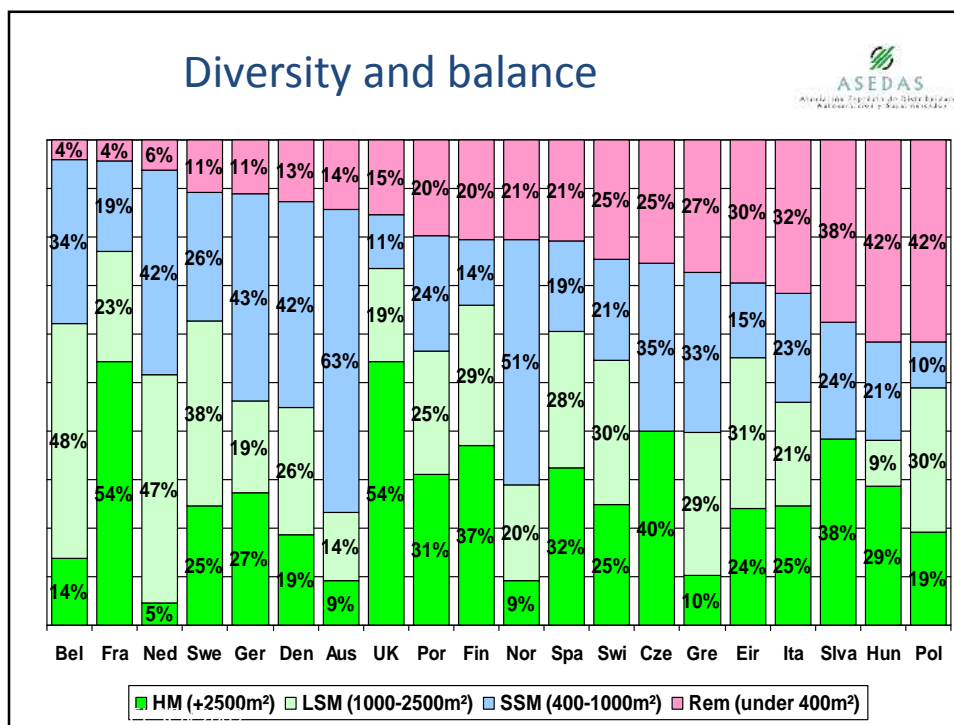
SUPERFICIE DE VENTA (%) DE LAS EMPRESAS DE ASEDAS



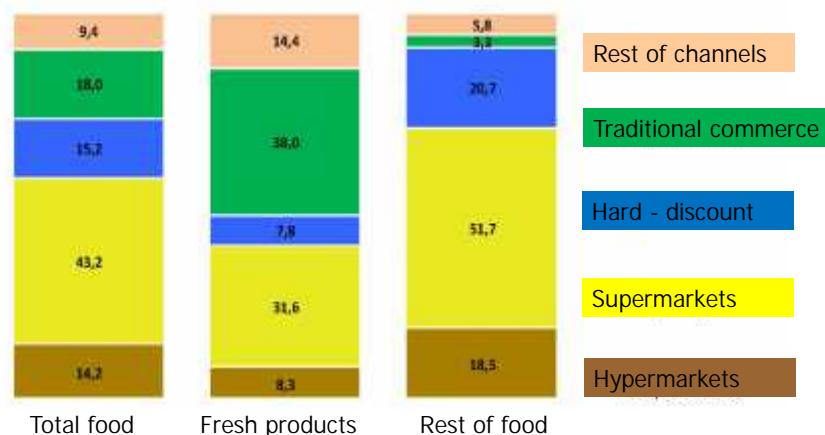
Fuente: Alimarket 2013

2-. The food chain functioning





Sails share by formats



9

RETAIL CONCENTRATION IN EUROPE



Country	Number 1	Number 2	Number 3	Combined Market Share (%)
Switzerland	MIGROS	COOP	WOLU	92%
Sweden	ICA	SPARBO	WALMART	88%
Denmark	COOP	DANISH SUPERMARKET	SUPERBRUGS	82%
Finland	SEUR	REXPO	WALMART	82%
Norway	NORWEGIAN GROUP	COOP	ICA	81%
Austria	SPAR	SPAR	WALMART	77%
Netherlands	ALDI	CARREFOUR	PIJL	77%
Ireland	WALMART	ESCO	WALMART	82%
UK	TESCO	ASDA	WALMART	87%
Germany	EDEKA	REWE	ALDI	82%
Spain (OTM)	CARREFOUR	WALMART	WALMART	85%
France	CARREFOUR	LECLERC	CASINO	82%
Netherlands	ALDI	WALMART	WALMART	82%
Sweden	ICA	TESCO	WALMART	77%
Portugal	WALMART	WALMART	WALMART	77%
Greece	ALDI	TESCO	WALMART	77%
Czech	WALMART	ALDI	WALMART	77%
Hungary	TESCO	WALMART	WALMART	77%
Italy	COOP	CONAD	CARREFOUR	82%
Poland	WALMART	ESCO	CARREFOUR	77%

Fuente: NIELSEN 2009

RETAIL CONCENTRATION IN EUROPE

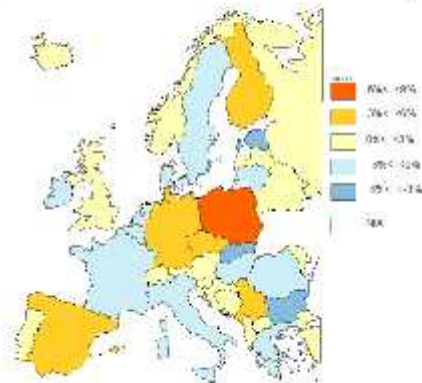


Mixed evolution of retailer concentration at national level

Retailer concentration at national level

- Modern retail concentration (HHI) has evolved between 2004 and 2012:
 - Decrease in 18 EU MS
 - Increase in the other 10 MS

Evolution of modern retail concentration across Europe



Source: EY, based on data from the European Commission, and EY ITEM, November 2013.
The report is based on modern retail concentration data in the EU food sector.
Key findings: October 2014



SUPPLIERS CONCENTRATION IN EUROPE



Increase of supplier concentration at national level

Supplier concentration at national level: 1.3% annual increase

- Growth of 1.0% during the pre-crisis period and 0.6% over the crisis period
- Everywhere in the 14 MS except Finland
- Frozen ready-cooked meals, baby food, cereals and coffee have the highest concentration levels over the last decade

Evolution of supplier concentration across Europe



Source: EY, based on data from the European Commission, and EY ITEM, November 2013.
The report is based on supplier concentration data in the EU food sector.
Key findings: October 2014



Choice capacity for consumers



Choice in shops, alternative products and brand suppliers has increased in the majority of sampled MS

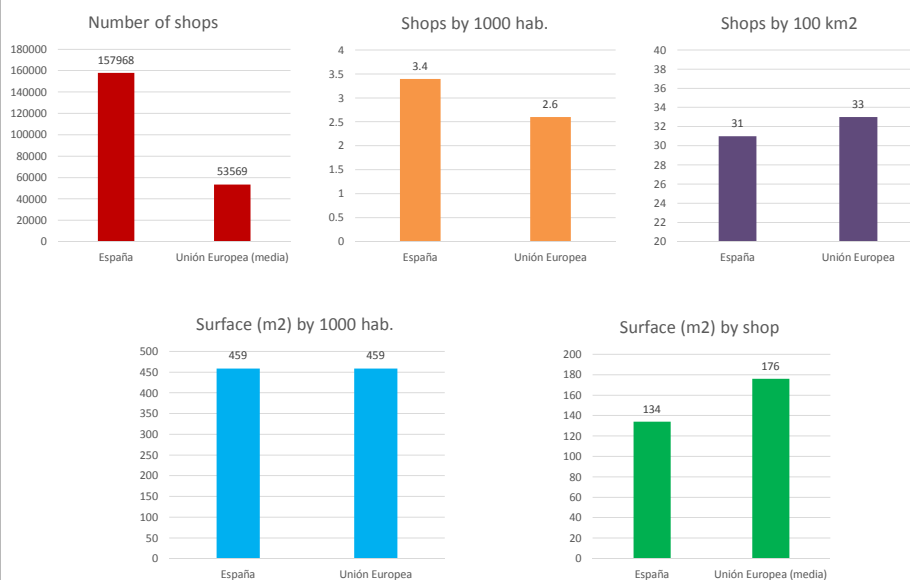
Type of choice	Component	2004-2008	2008-2012	2004-2012	Trend
Food Choice	Choice in alternative products ^{a,b}	7,9%	2,4%	5,1%	↗
	Choice in packaging sizes	5,0%	2,0%	3,5%	↗
	Choice in alternative suppliers ^{a,b}	5,6%	1,5%	3,5%	↗
	Choice in prices per product category ^c	+	-	-	↘
Shop Choice	Choice in shops ^a	1,8%	1,3%	1,6%	↗

+ Positive CAGR; - Negative CAGR; ++ CAGR is twice as much as average growth value; - CAGR is twice as less as average growth value.
 (*) Results based on an comparison with country's forecasts of macroeconomic trends in data.

The economic impact of market trend on choice and knowledge in the EU food sector.
 Key Findings. October 2, 2014



Choice capacity for consumers



European System of Central Banks



Precedents



1. Important pressure made by farmers at European and national level
2. Retailers and manufacturers recognize some unfair practices but regulation is not needed
3. Different positions of European and MS legal authorities: Europe vs Spain
4. European Commission Communication 2014: does not find evidence of market affectation by B2B unfair practices

At European level...



1. High level forum of better functioning of supply chain
2. Voluntary framework – Supply Chain Initiative

EU level initiative developed by 7 EU level organisations to:

- **Promote** fair business practices in food supply chain as basis for commercial dealings
- **Integrate** principles of good practice into company day-to-day operations, and control their application
- Ensure companies address disputes in a **fair and transparent manner**



17

At Spanish level...



1. Mixed regulation framework of relations through the food chain
2. New food chain law (January 2014) based on the obligation of signing written contracts by all the operators
3. Creation of the new Food Chain Control Agency with sanctioning power
4. Voluntary code of good practices actually being negotiated (probably mediation mechanisms will be included)

18

Spanish food chain law



Obligations

- To sign written contracts
- To include a minimum content (parts, subject, price, discounts, payment conditions, delivery,..)
- Regulation of electronic auctions
- Obligation of conserving documentation (2 years)
- Higher support for farmers and SMEs

19

Spanish food chain law



Prohibition of some unfair practices

- Unilateral modification of signed contracts
- Inappropriate use of confidential information
- Category management, referring the regulation of competition



20



Unfair practices: our vision



- Can appear in all links of the food chain
- Are not necessarily consequence of size, power market or the position of the operators
- High level of diversity, low concentration and competence level allow the isolation and no generalization of unfair practices

Unfair practices: our vision



- Do not provide advantages to consumers
- Normally they suppose additional costs for companies (time / money)
- It is important to distinguish correctly unfair practices from those that are not
- Suppose a disloyal competence between different companies

Unfair practices: our vision



- Auto-regulation of unfair practices has a very important capacity to identify and correct unfair behaviors
- The Supply Chain Initiative establishes a relevant way to act
- Regulation must establish the limits and correct very unfair behaviors but its possible affection in the market is limited and may generate additional costs, solution?

Retailer – Supplier Collaboration Why?



- It is crucial for stable supply of goods and services
- Drives innovation and improvement
- Extends choice to consumers AND delivers greater benefits to society
- Ensures long-term competitiveness of retailers and suppliers

25

Retailer – Supplier Collaboration What can we do?



- Long term and fair relations secure stability of supply: we must develop them
- Retailer activities with farmers: standards setting, meeting consumer demands together, role of regional productions...
- Collaboration needed for transferring know-how and joint innovation with impact down to farm level
- Principles of good practices

26

Food chain in the future: our vision



- Agri-food sector is one of the most important sectors of the European Economy
- Claiming its sustainability is an essential requirement for guarantee the future well-being of the society
- Unfortunately, our lack of vision of the food chain as a whole, does not allow the civil society to perceive the importance that this sector really has

27

Food chain in the future: our vision



- Economic crisis has influenced so much in consumers behavior
- Only food chain with high levels of cooperation will have the flexibility and the capacity for the adaptation to these changes
- Facing unfair practices is not enough for assure the sustainable future of the food chain
- Long term contracts are one of the most relevant solution

28

Food chain in the future: our vision



- The conception of the food chain as a whole begins preserving the future of the weakest link (farmers) as their sustainability is in risk
- We must help farmers to balance costs and prices and make the consumers appreciate their products: long term contracts, stability, fair relations
- Last CAP reforms has carried farmers to a weak position, but modify market conditions is not the solution

29



Coffee



Valentina Maglio
Senior Counsel International Business Law
ECF President

LAVAZZA

October 10th 2014

Coffee supply chain: key numbers

- ✓ Coffee is the world's **second** most important traded product after crude oil
- ✓ Coffee is produced in about **70 countries**
- ✓ More than **100 million people** in the coffee growing areas worldwide directly or indirectly derive their income from coffee
- ✓ Coffee is grown mainly by **smallholder farmers**
- ✓ Green coffee prices are characterised by high **volatility**

LAVAZZA

Coffee production



Brazil



Honduras



India

except for Brazil (the no. 1 coffee producer) coffee is grown by **smallholder farmers**

LAVAZZA

Coffee supply chain



Farmers



Intermediary



Exporter



Importer



Roaster

LAVAZZA



The European Contract for Coffee



European Coffee Federation

- ✓ ECF represents the whole coffee industry (green coffee trade, coffee roasting industry, soluble coffee manufacturers and decaffeinator).
- ✓ ECF publishes General Terms of Purchasing, which are used by all European coffee buyers: the “European Contract for Coffee”.
- ✓ Such terms are drafted and updated mainly by coffee buyers.
- ✓ Conflicts are solved through specialised coffee arbitrations; people from the coffee business (not lawyers) serve as arbitrators.
- ✓ Failure to comply with an arbitration award may have the posting in the “defaulters’ list” as a consequence. Such black list is available to all ECF members.

<http://www.ecf-coffee.org>

LAVAZZA

The European Contract for Coffee



European Coffee Federation

The ECC provides for different remedies, depending on the type of breach:

- ✓ Failure by the buyer to give shipping instructions (FOB/CIF): the seller may – after a short notice – terminate the contract (*time is of the essence*)
- ✓ Failure by the seller to transmit shipping advice: the buyer may – after a short notice – terminate the contract (*time is of the essence*)
- ✓ Non conformity in quantity: the coffee is re-weighted and price is adjusted
- ✓ Quality claims: price reduction
- ✓ Severe quality claims which may be connected with food safety: termination is possible

<http://www.ecf-coffee.org>

LAVAZZA

The European Contract for Coffee



European Coffee Federation

Art 10 – Declaration of port of destination

.....

(c) Where a declaration of destination is not received within the time limit as stipulated under Article 10(a) or (b), the following procedure shall be adopted.

(i) Not later than **7 days after the time limit** as stipulated under Article 10(a) or (b) the sellers shall advise the buyers accordingly and give **3 clear working days' notice** that in the event of a declaration of destination not being received they will have the right to declare the buyers to be in default with damages.

(ii) Should a declaration of destination still not be received, the declaration of default shall be given not later than 2 working days following expiry of the notice period, as stipulated in Article 10(c)(i).

<http://www.ecf-coffee.org>

LAVAZZA

The European Contract for Coffee



European Coffee Federation

Art 10 – Quality

(a) Quality shall be in accordance with the contract description.

(b) All goods contracted for shall be of sound merchantable quality unless otherwise stated in the contract or shown to the contrary by the sale sample or samples.

(c) Any difference in quality established by arbitration shall entitle buyers to an allowance which may **include compensation for costs and expenses**.

(d) Where there is specific evidence that **the coffee is unsound** and/or there is a radical difference in quality, the buyers may seek an allowance or that **the contract be discharged by invoicing back the coffee**. One criterion as to whether coffee is unsound is an excessive moisture level.

Where arbitrators establish that the coffee is unsound and/or there is a radical difference in quality, in awarding invoicing back, they shall establish the price having in mind all the circumstances concerned.

<http://www.ecf-coffee.org>

LAVAZZA



Thank you for your attention

LAVAZZA

Contract Farming

some thoughts and ideas

Dirk Straathof
Standards and Legal Counsel



1

UTZ Certified



- sustainable coffee, tea, cocoa + hazelnuts
- social, economic, environmental (PPP)
- start in 2002 – aim: mainstream
- 500.000 farmers
- 50% of certified production (coffee + cocoa)
- 10% of global production (coffee + cocoa)
- mostly group certification (cocoa 99%)



Contract farming

- Tradition: group is a farmer based organization (coop) and holds group certificate
- New development: Trader as certificate holder
- Approach to reach independent smallholders



Benefits

- Upscale – mainstream sustainability
- Reach unorganized smallholders
- Professional management
- Technical / input assistance
- (Guaranteed) off take



Constraints

- No producer representative
- No influence on premium spending
- No producer empowerment
- Exclusivity
- Fixed price



Conflicts

- Premiums
- Traders buy only partly as UTZ
- Side selling by producers
- Quality



Resolution

- Contract
 - Some do not mention dispute resolution
 - Some just mention national / regional court
 - Some mention first amicable, then judicial
- UTZ
 - No formal role
 - Sometimes intermediate
 - New T&C: UTZ members must engage in fair contracting and must adhere to agreements with other members



Remedies

- Aimed at repair (absolutely)
 - ensuring compliance
 - preventing future breach
 - learning element
- CB has room to operate
- UTZ' aim: make sustainable farming the norm
- Credibility vs. Development
- Termination is ultimate remedy
 - because malpractice will continue
 - better to keep farmer in and help him to overcome



Farmer contracts

- Simple
- Straight
- Short



Conditions – Follow up

- Training and awareness
 - can become part of existing schemes
- Accessible and affordable dispute resolution mechanisms
 - national / official route may not work
 - role of standard organizations limited (resources / cultural understanding)
 - look for alternative mechanisms
 - cost restraints
 - “peer arbitration” similar to “peer review”



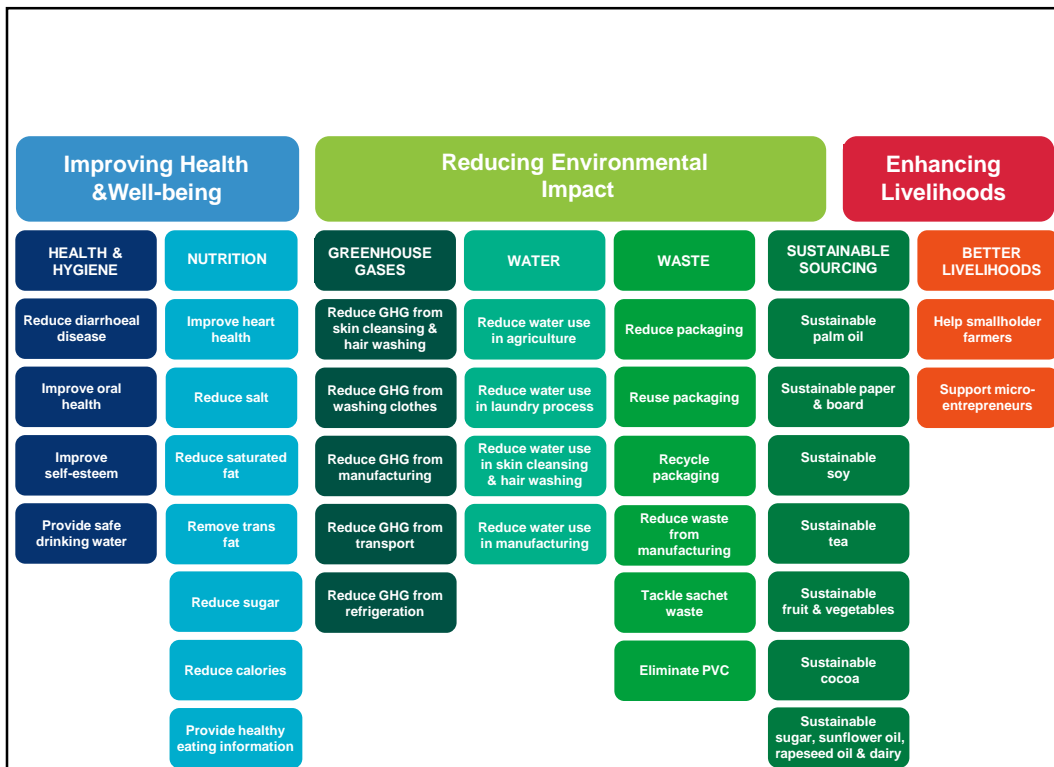
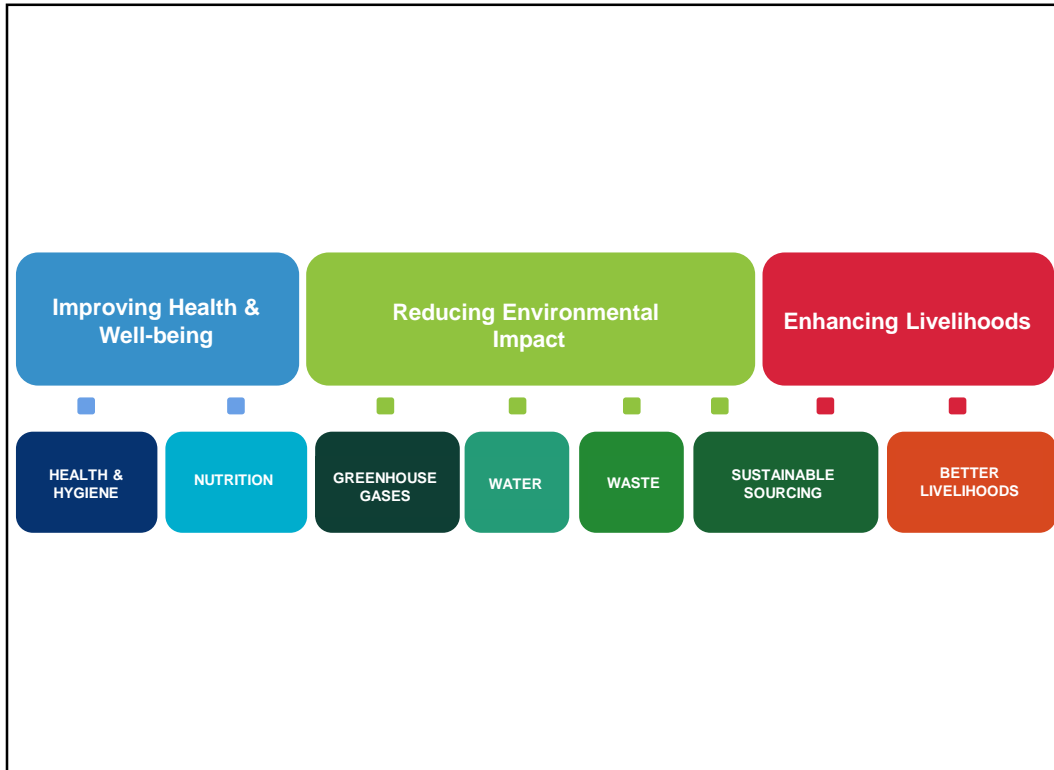
Procurement policies and farming contracts – Unilever approach

Giulia Di Tommaso Unidroit, 10th October 2014

**IMPROVING
HEALTH
& WELL-BEING**

**REDUCING
ENVIRONMENTAL
IMPACT**

**ENHANCING
LIVELIHOODS**



SMALLHOLDERS FARMERS

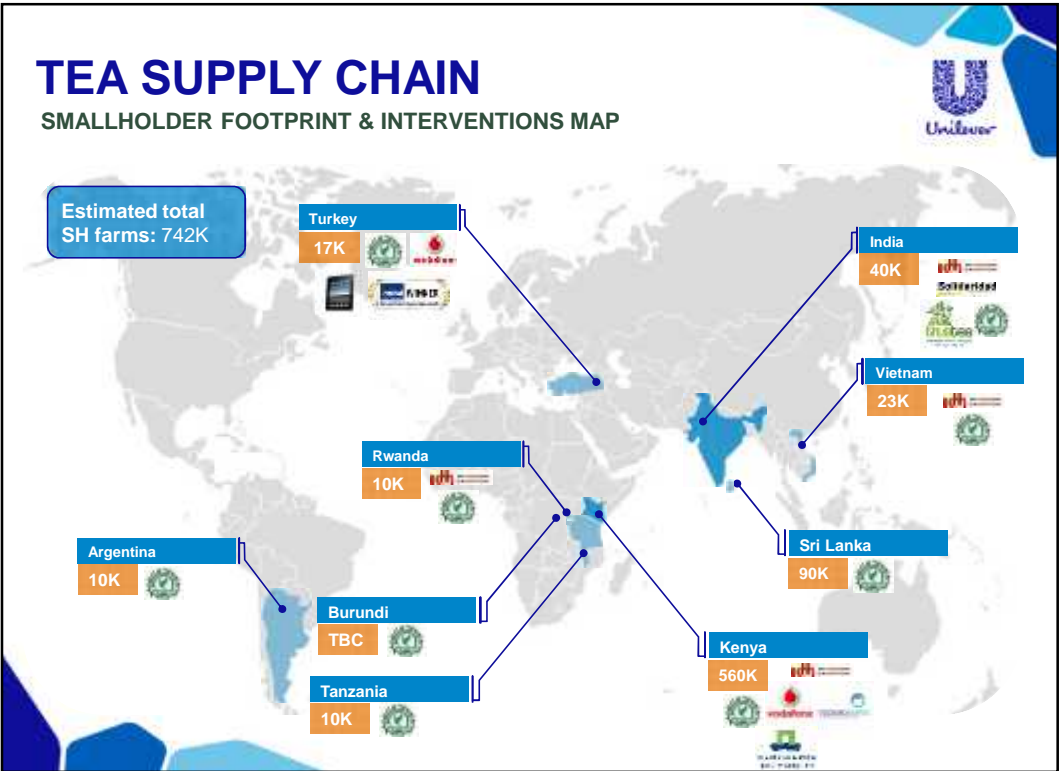


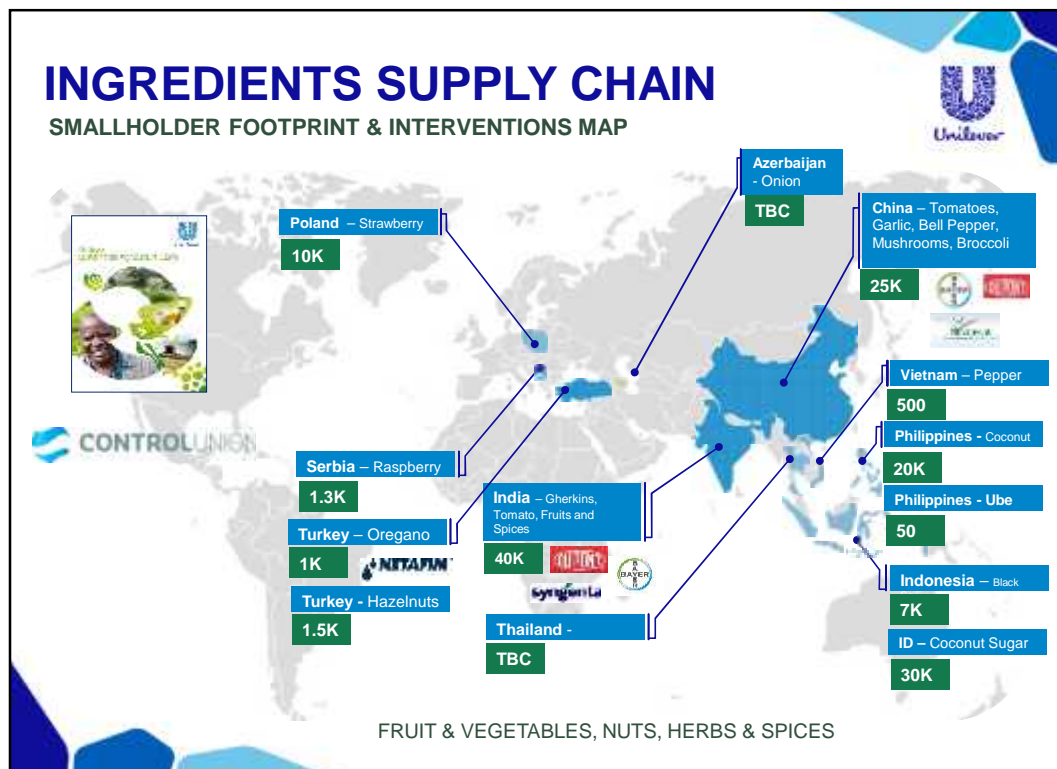
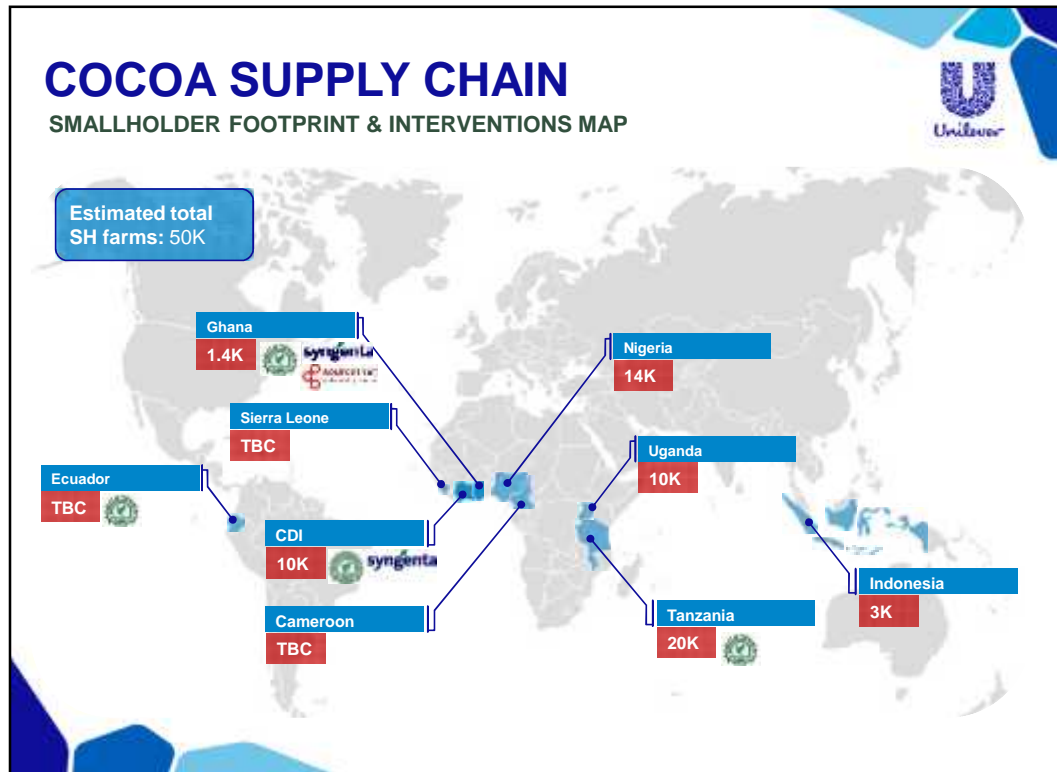


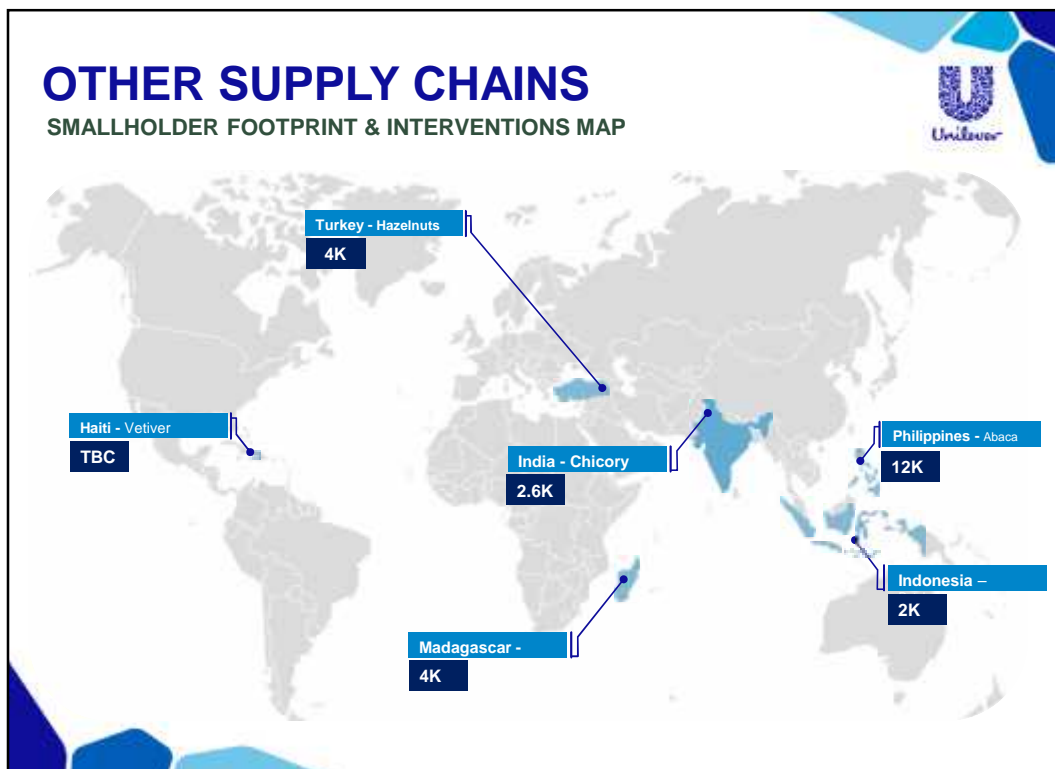
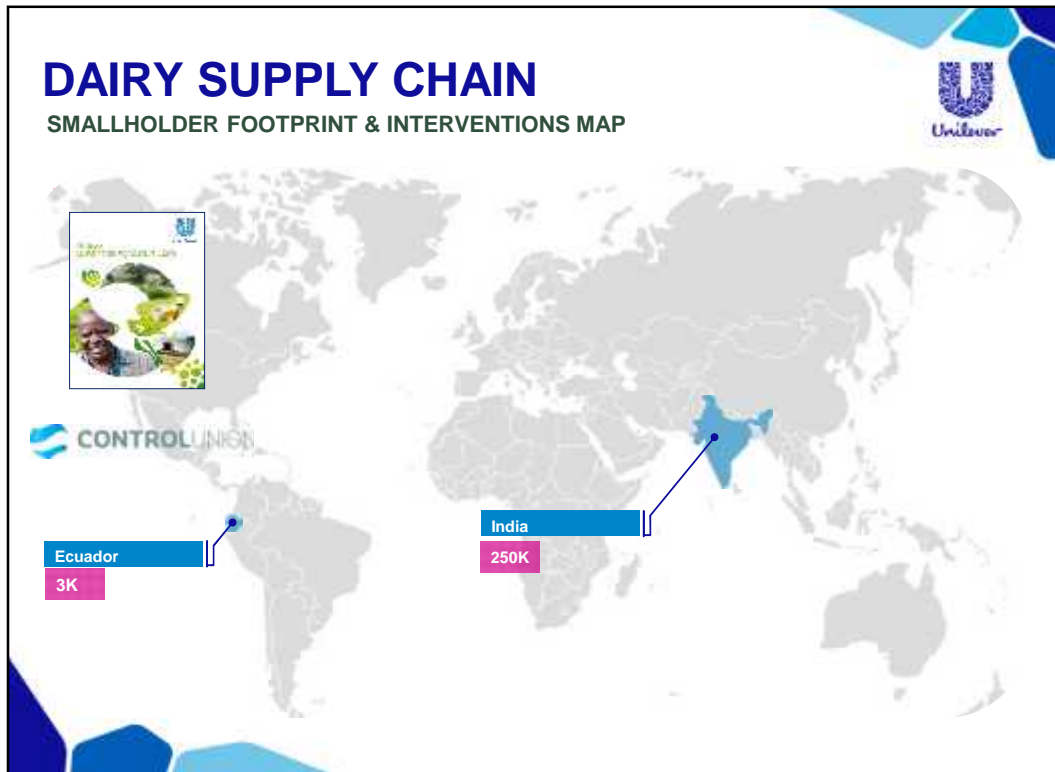
HELPING SMALLHOLDER FARMERS

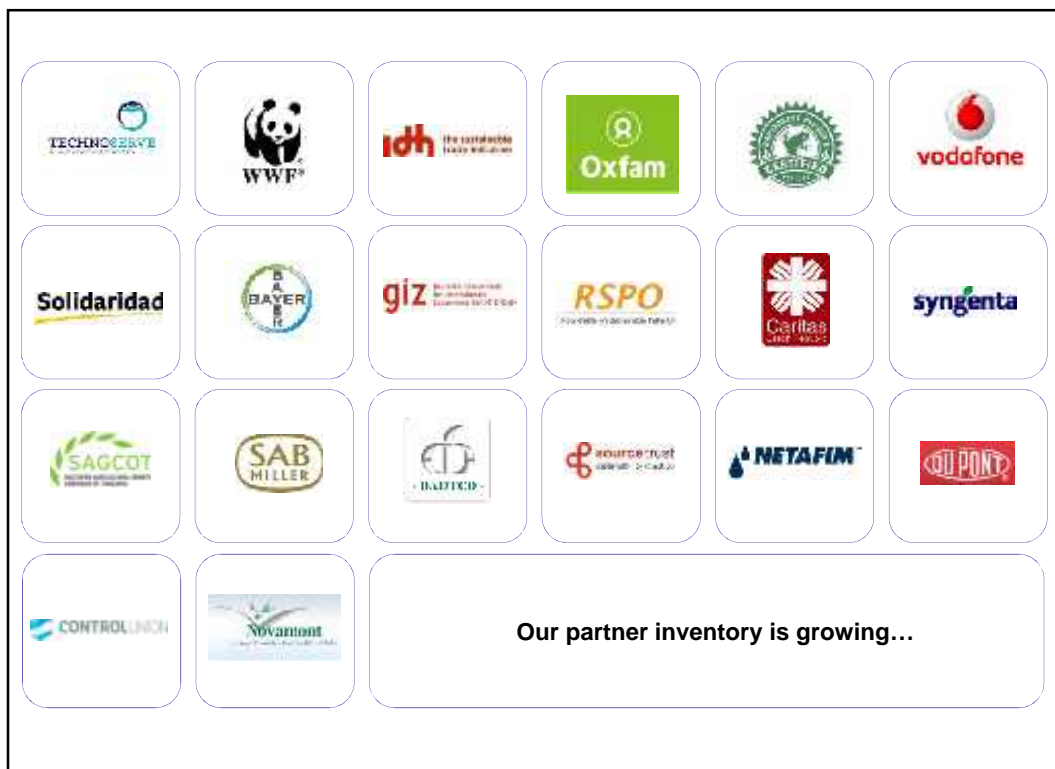
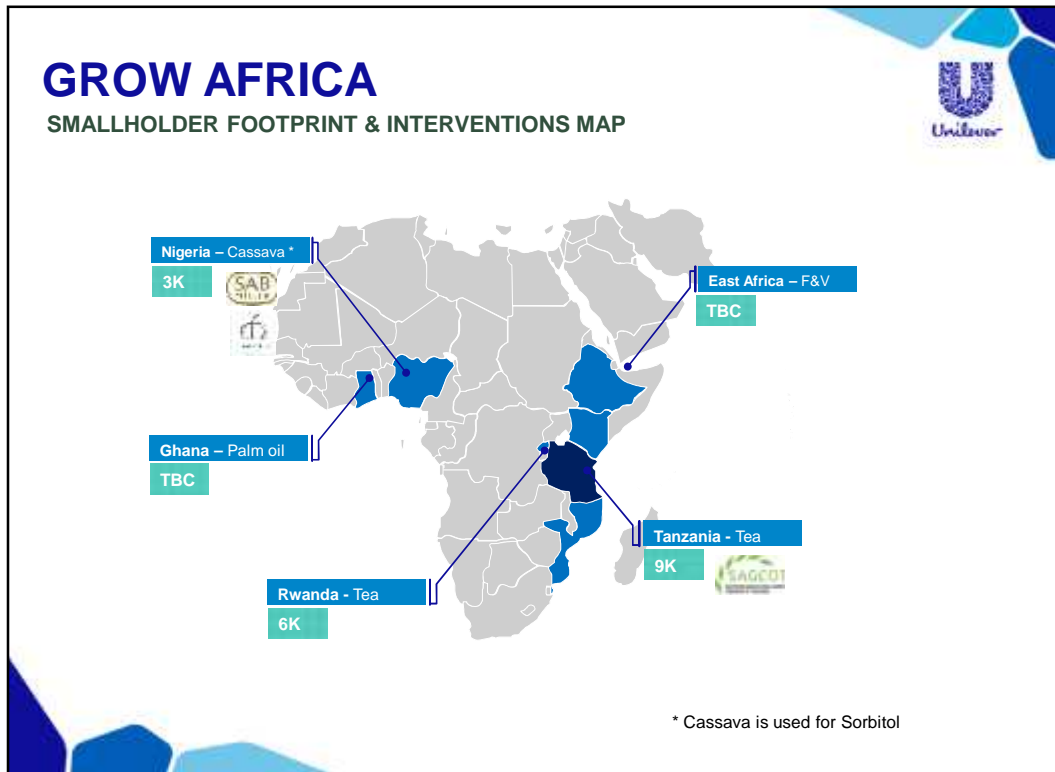
OUR TARGETS

Our goal is to engage with at least 500,000 smallholder farmers in our supply network. We will help them improve their agricultural practices and thus enable them to become more competitive. By doing so we will improve the quality of their livelihoods.









INTERCONNECTED SUCCESS FACTORS FOR SMALLHOLDERS



1	A clear business strategy for inclusive procurement
2	Alignment of the lead firm's procurement practice with strategy
3	A relationship-based procurement model
4	Tailoring the approach to product and supply chain structure
5	Pilots that are implemented with a view to scale and mainstream business

UNILEVER RESPONSIBLE SOURCING POLICY



“LADDER APPROACH”

1. MANDATORY REQUIREMENTS
2. CONTINUOUS IMPROVEMENT BENCHMARK
3. REPORTING BREACHES



Contract Farming in the United States

Performance-Based Growing Contracts

Gary Jay Kushner, Partner, Hogan Lovells US LLP
General Counsel, National Chicken Council

10 October 2014



Introductory Remarks

- National Chicken Council (NCC) and U.S. Chicken Farming
- Common in Other Agriculture Sectors
- U.S. Legal Framework
- Benefits of U.S. Legal Structure

NCC and U.S. Chicken Farming

- NCC is the national trade association representing 95% of the U.S. chicken processing industry
- U.S. broiler chicken farming uses a vertically integrated model
 - The integrator owns the breeder flock, operates the hatcheries, and operates the processing plant
 - Chickens are contracted out to farmers for raising
 - The integrator owns the birds throughout the process

U.S. Legal Framework

- Specialized statutory and regulatory framework governs chicken farming
 - General federal and state contracting and competition law
 - Packers and Stockyards Act (P&S Act)
 - Livestock and Poultry
 - Grain Inspection, Packers & Stockyards Administration (GIPSA)
- Provides safeguards against contract abuse while allowing flexibility and market-based structures

Common Features of U.S. Broiler Contracts

- Grower responsible for providing facilities; integrator responsible for providing birds, feed, and veterinary care
- Integrator can inspect facilities
- Animal welfare provisions
- Payment terms
 - Base rate
 - Performance-based adjustment (e.g., feed efficiency, average weight)
- Arbitration – Not used uniformly across the industry; by law grower can opt out
 - Common in other agriculture sectors

www.hoganlovells.com

5

Benefits of the U.S. System

- Efficient
 - Allocates risk and rewards to the parties best able to manage them
- Performance-based
 - Rewards growers who can produce a premium product
 - Lets integrators incentivize desired bird characteristics
- Decreases risk and upfront cost to grower
 - Grower does not have to buy birds, feed, or medical care
 - Grower insulated from input price shocks
- Flexible
 - Can quickly adjust placements based on market conditions

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6

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Brussels	Ho Chi Minh City	Mexico City	Rio de Janeiro	Warsaw
Budapest*	Hong Kong	Miami	Riyadh*	Washington DC
Caracas	Houston	Milan	Rome	Zagreb*
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Denver	Jeddah*	Moscow	São Paulo	
Dubai	Johannesburg	Munich	Shanghai	

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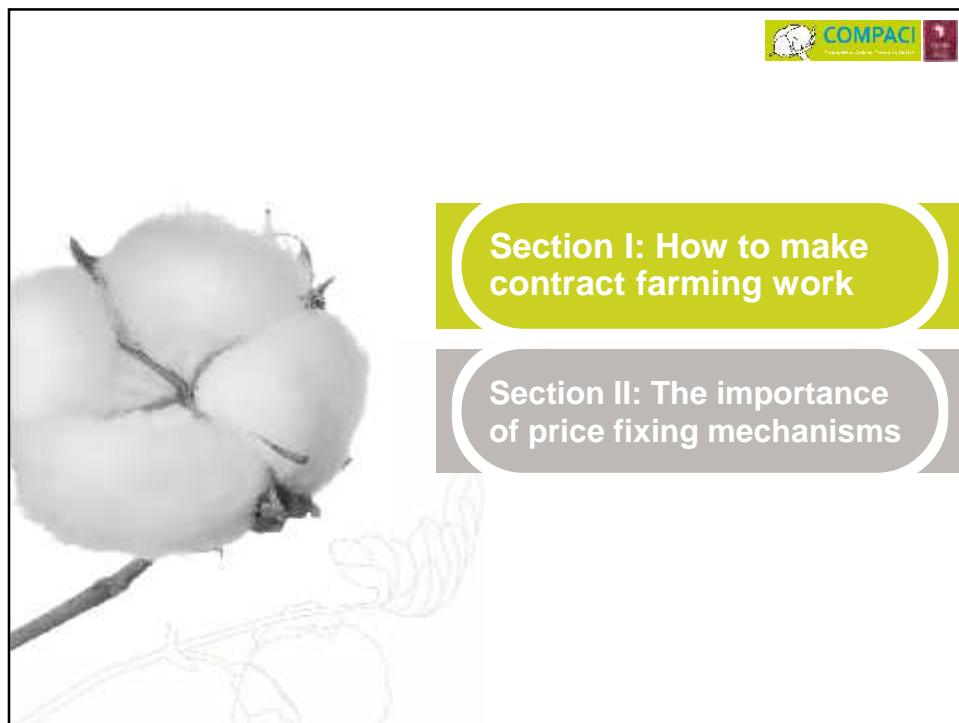
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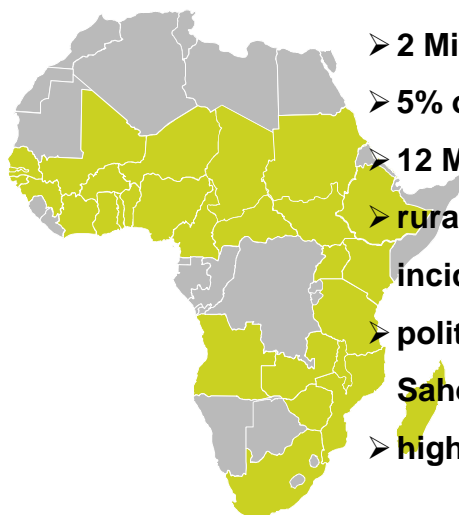
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*Associated offices



Relevance of cotton in SSA

3



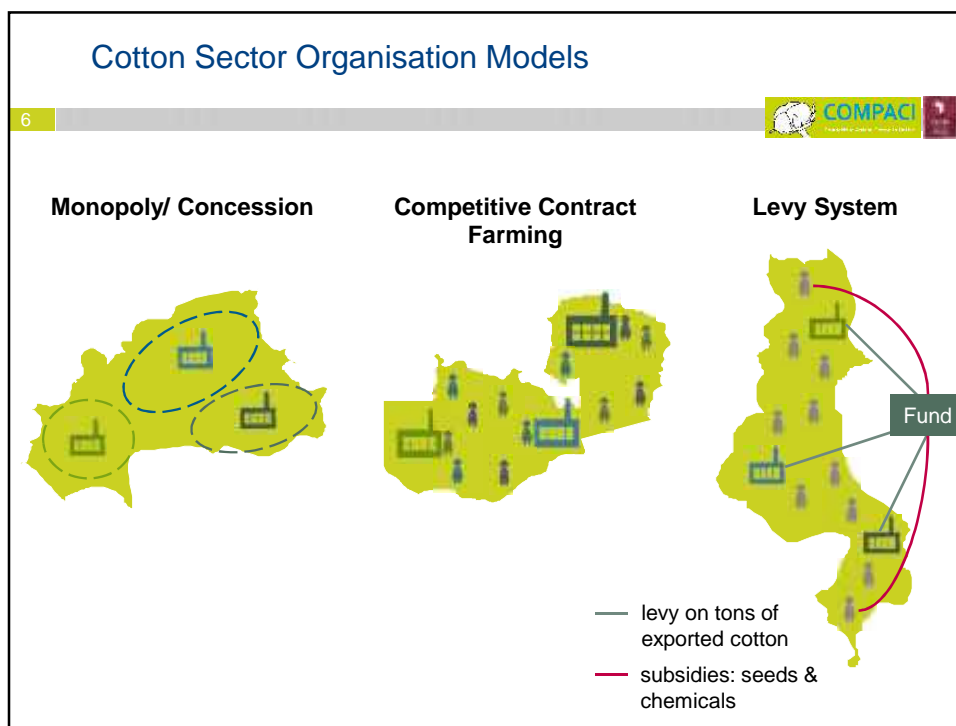
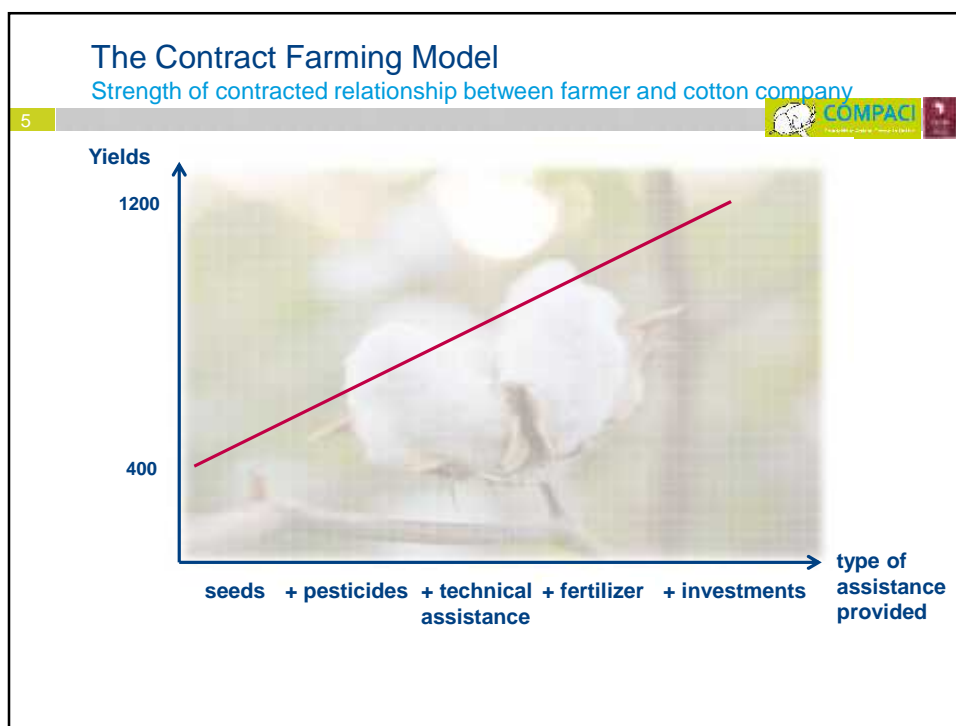
- 2 Mio. cotton smallholder farmers
- 5% of land utilized for agriculture
- 12 Mio. family members
- rural areas with high poverty incidence
- politically sensitive countries: Sahel states
- high impact on food security

Key characteristics of cotton sectors in SSA

4



	West Africa	East/ South Africa
Yields (t/ha)	900 – 1200	400 – 700
Prefinancing of seeds/ chemicals	✓	✓
Prefinancing of fertilizer & investments	✓	-
Technical Assistance	✓✓	✓





Optimisation of Sector Organisation

8

- **no „one fits for all“ solution → historical and social context important**
- **however, need for regulation with adapted solutions for each model**

I. The Concession Model


- Monitoring of concession holders by performance indicators → penalties!
- Example: FIRCA (Côte d'Ivoire) & IAM (Mozambique)


II. The Competitive Contract Farming Model

- Limitation of license for those companies, that provide quality prefinancing and extension services/ strict monitoring
- centralized database of prefinancing contracts to avoid side-selling

III. The Levy Model

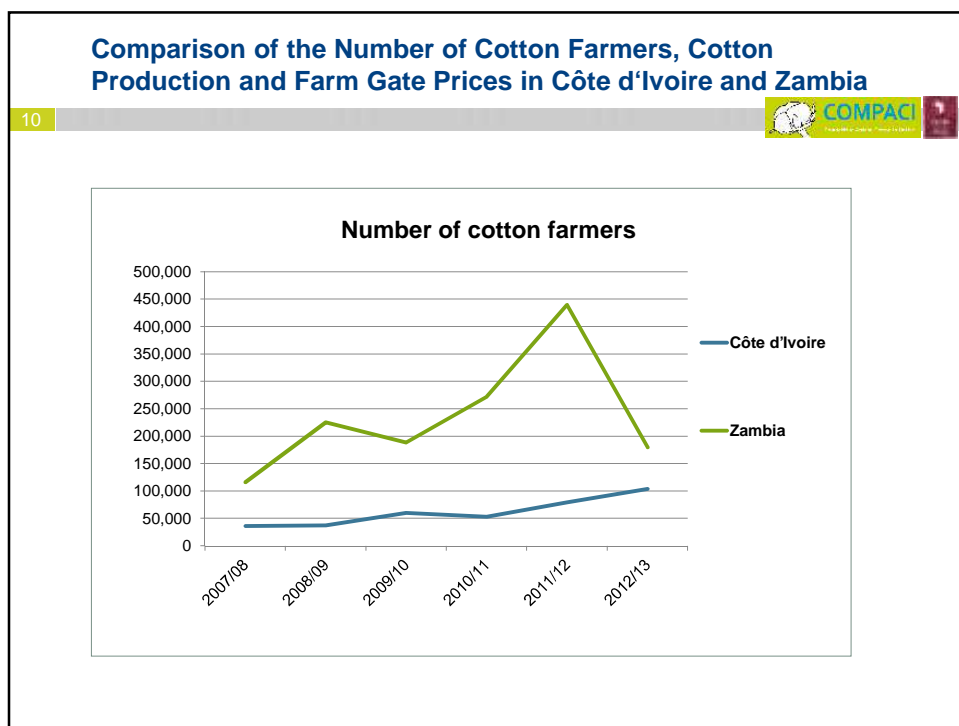
- Transparent management of levy funds
- no 100% subsidized inputs
- combination with contract farming to provide extension and prefinancing

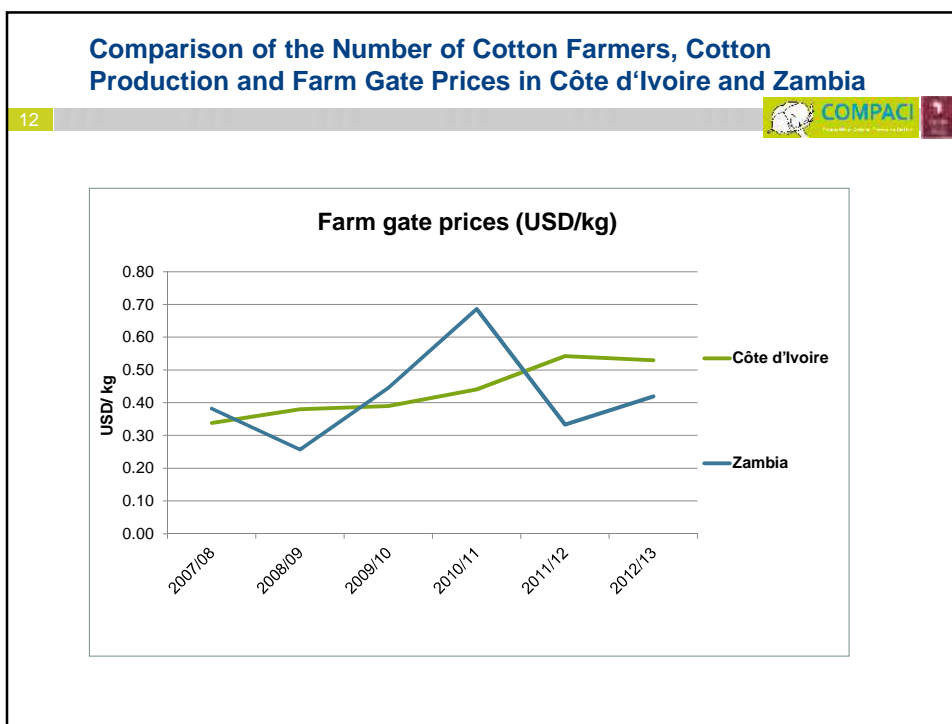
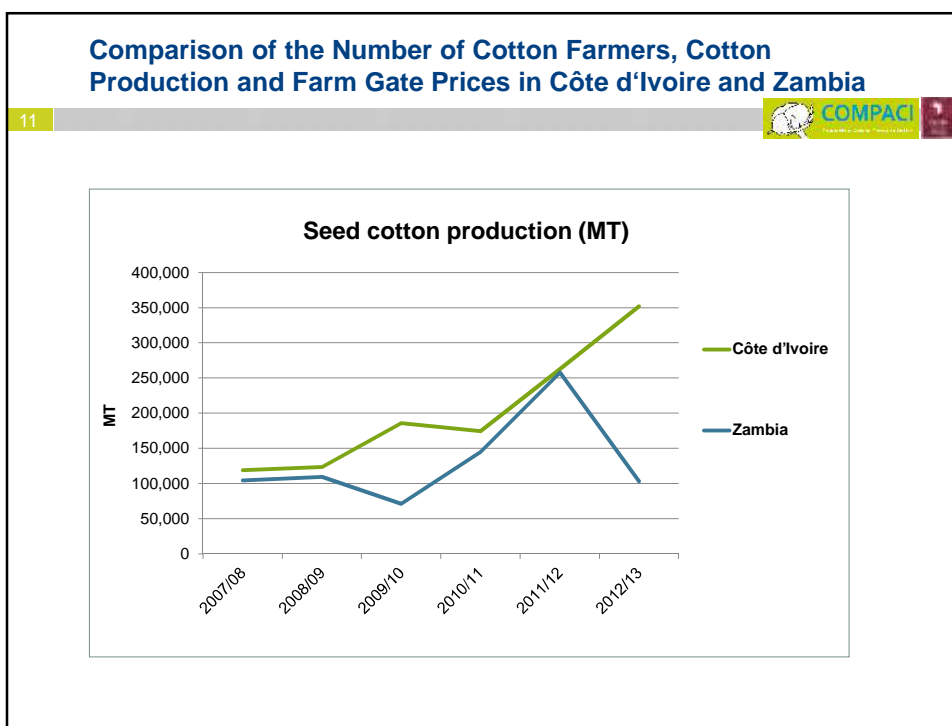


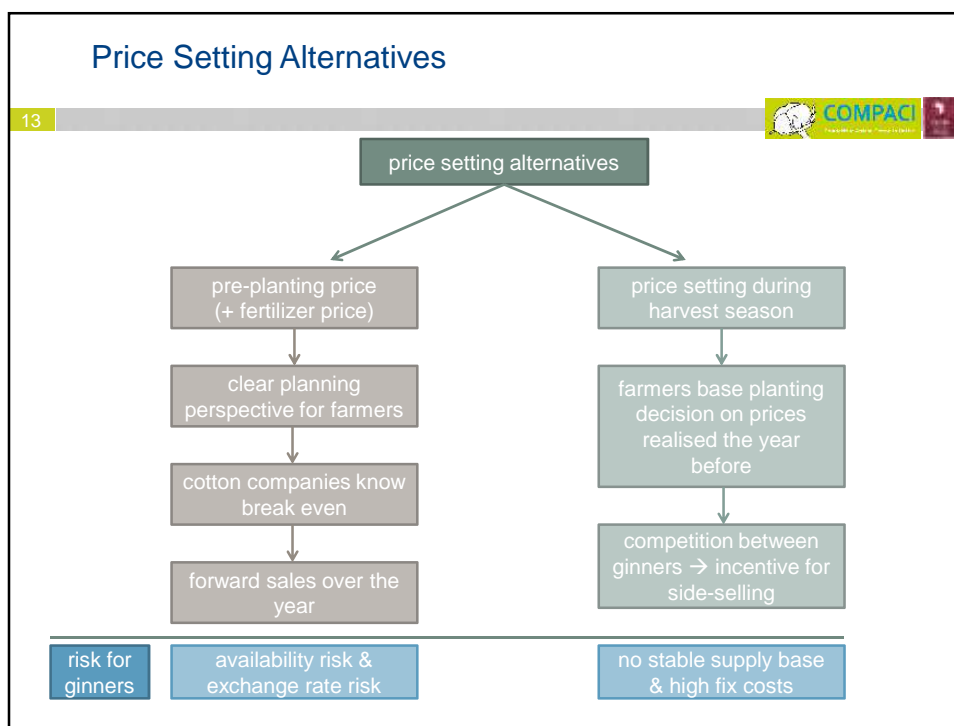


Section I: How to make contract farming work

Section II: The importance of price fixing mechanisms







Thank you very much for your attention!

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www.deginvest.de

KFW DEG





syngenta

UNIDROIT
Critical Issues in Contract Farming:
Case Study: FrijolNica

Rome, October 10, 2014

Roberto Vega

Classification: PUBLIC

FrijolNica

Nicaragua – 70% of beans consumed in Central America.

Lack of credit and technical assistance: subsistence farming.

Frijol Nica program initiated in 2006:

- Syngenta: CP Producer
- Rappaccoli McGregor, S.A. (RAMAC): CP and fertilizers supplier
- Esperanza Coop (2008): seeds supplier, link to RAMAC, export trader

Frijol Nica:

- Technology
- Credit
- Technical support
- Safe Use

6.500 bean growers organized mainly in Coops

FrijolNica

Credit scheme:

- Bean production: 120 days
- RAMAC: 120-150 days – backed by Coops
- Syngenta: 180 days

RAMAC prices around 6% lower than the market .

Growers buy products through Coops.

Transportation of beans and inputs shared by growers.

Extension cost is shared among the private stakeholders.

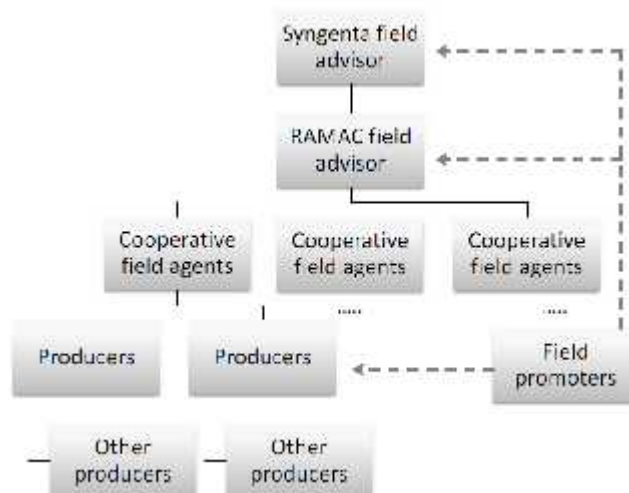
Growing program:

- 2007: 300 farmers - 1.400 hectares
- 2012: 6.500 farmers – 13.000 hectares

3 Classification: PUBLIC



Flow of Information and Knowledge - FrijolNica



Source: The Role and Capacity of the Private Sector in Agricultural Extension: Successes and Limitations
Yuan Zhou and Suresh Chandra Babu, August 2014

4 Classification: PUBLIC



FrijolNica

«Mediador» Strategy:

- Large-scale producers lend land to landless farmers: sharing input costs and profit

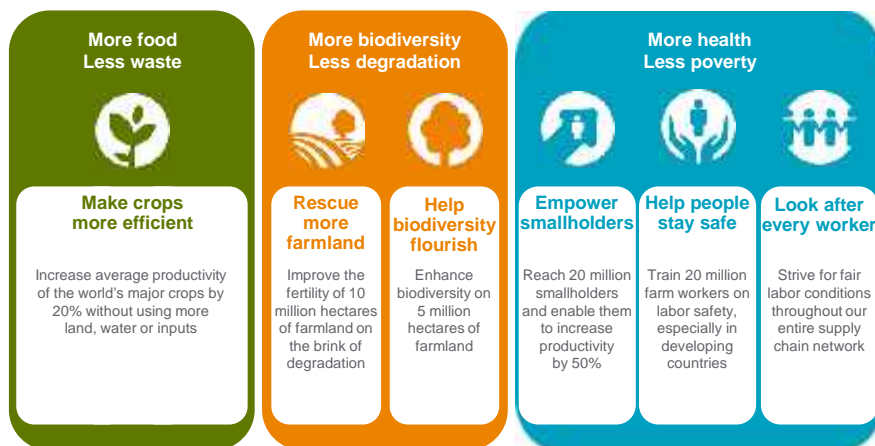
Farming system moved from subsistence to business model.

2010:

- alliances with international NGOs such as CARE, OXFAM, Save the Children: reached 500 technicians and program up to 10.000 growers by 2014.
- Inter-American Development Bank credit lines to extend the reach.

In a country with limited public extension, private extension has provided a solution to growers.

The Good Growth Plan



One planet. Six commitments.

Visit the website: www.goodgrowthplan.com

THANK YOU!



The Global Fairtrade System

Presenter:

Sureel Singh

Fairtrade International



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Introduction to Fairtrade

Our Vision

'A world in which all producers can enjoy secure and sustainable livelihoods, fulfill their potential and decide on their future.'



Cidra Samaniego Yancallaco, CEPICAFE coffee cooperative, Peru. © Linus Hallgren / Fairtrade Sweden

Fairtrade is a global movement and product certification with a people first approach to trade.

Fairtrade offers fairer trade conditions to farmers and workers in developing countries. This allows them the opportunity to improve their lives and plan for their future.



© Fairtrade 2010

**Fairtrade International Annual Report
2012-13 - Highlights**

Contract Production- Definition

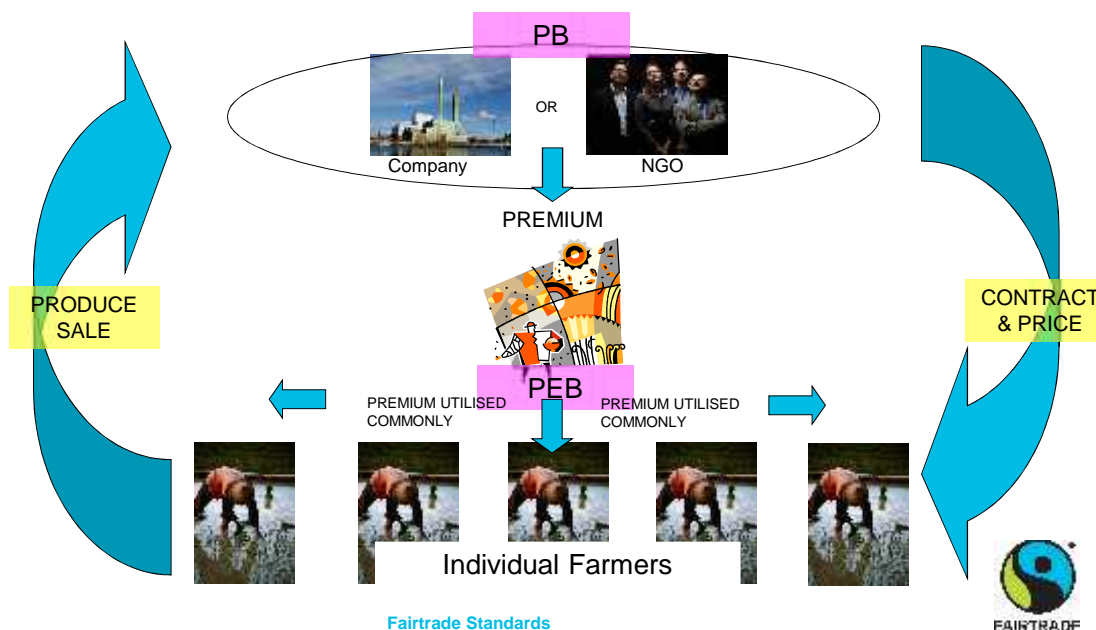
Small producers that are unorganized or organized into non formal structures can participate in Fairtrade if they have a partnership with an intermediary organization (exporter, processor, private enterprise, NGO or other) that is able and willing to assist them. This intermediary organization, called the promoting body, commits to and is responsible for supporting the producers to organize into autonomous producer organizations that are over time able to comply with the Fairtrade Standard for Small Producer Organizations

© Fairtrade 2010

Fairtrade International Annual Report
2012-13 - Highlights



Contract Production Structure



© Fairtrade 2010

Fairtrade Standards



Contract Production- Precondition for Certification

- **Certificate of legal registration 4.2 of CP Standards: Democracy, Participation and Transparency (ILO Recommendation R193 “on the promotion of cooperatives”)**
- **Statutes / constitution Section 4.2 of CP Standards: Democracy, Participation and Transparency & 4.3 Non-Discrimination**
- **Updated list of members Section 1.2 of CP Standards: Members are Small Producers indicating:**
 - name of producer
 - location
 - total area of production in ha/acre
 - total area of production of the product being applied for in ha/acre,
 - estimated volume per ha/acre of product being applied for,
 - number of permanent, temporary, seasonal workers

© Fairtrade 2010



Producer Certification Requirements

1/2

Contract

Until the producer organization is able to purchase directly from its registered producers, contractor must sign a binding contract with each registered producer or with the producer organization that represents them. The contract must include at least the following:

- **reference to Fairtrade as an integral part of the contract**
- date of the contract
- duration of the contract
- product description
- agreed volumes
- quality specifications of the product
- **prices with reference to specific Fairtrade Prices and Premiums**

© Fairtrade 2010



Producer Certification Requirements

2/2

Contract

- terms and conditions of payments
- reference to sourcing plans
- terms and conditions of purchase and delivery
- description of any pre-finance mechanism
- definition of “force majeure”
- description of mechanisms for dispute resolution
- description of all inputs and services provided and indication of any deductions that may be relevant as a result of the provision of these inputs and services
- mechanism to resolve conflicts separate from jurisdiction agreed with the registered producers

© Fairtrade 2010



Obligation on Contractor

- Contractor must draw up the contract, unless the registered producers request to do it themselves
- Contractor must write the contract in a language that the registered producers understand
- Contractor must ensure that the registered producers know and understand the terms of the contract and the Fairtrade conditions
- If a contract is only signed with the producer organization, Contractor must at least provide a verbal explanation of the contract to the registered producers
- The written contract between Contractor and the registered producers must not restrict any registered producer from selling to other buyers. Contractor must not make the purchase of certified products dependent on the purchase of non-certified products
- When contractors provide credit or pre-finance, the interest rate and conditions attached to the offer must be agreed in advance with the registered producers. In case contractor charge an interest rate, it must also be agreed with the registered producers and it must not be higher than contractor cost of borrowing

© Fairtrade 2010



Trade Standard Requirements

Contract

Contractual obligations are honoured

Contractual obligations are

- mutually agreed,
- well documented, clearly understood by the contracting parties AND must as a minimum clearly indicate the:
 - agreed volumes,
 - quality,
 - Price & payment terms,
 - Premiums
 - Party responsible for paying price and premium to producer
 - Delivery conditions
 - Stipulated mechanism to resolve disputes separate from jurisdiction

© Fairtrade 2010



Trade Standard Requirements

Contract

- The price may be fixed, by mutual agreement, for any future delivery date, unless otherwise stated in the product standards.
- Contract valid only if signed before suspensions. Maximum validity – 6 months
- Contracts with a decertified operator that have been fulfilled before the date of decertification shall be accepted.
- Producers must have access to the contracts signed between conveyors and Fairtrade payers

© Fairtrade 2010



Trade Standard Requirements (Contract)

Sustaining Trade

- In case of purchase of both certified and non certified products from the same producer, the operator does not purchase non – certified products at distinctly disadvantageous terms to the producer as a condition for certified purchases
- Buyers (including those making purchases via marketing boards) must provide a sourcing plan to each producer they plan to buy from, as well as to conveyors, if applicable

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Trade Standard Requirements (Contract)

Pre-Financing

- Producers may request pre-finance from Fairtrade payers against agreed time periods and, where required, against specific quantities unless otherwise specified in the product Standards
- Fairtrade payers must provide pre-finance up to 60% of the contract value if requested. The minimum percentage of the pre-finance must be defined by the producer
- Conditions when pre-finance not given
 - Sufficiently high level of risk of non-repayment or non-delivery of producer,
 - Risk Assessment done and verified via a third party lender
- Interest charges – both parties to agree and not to exceed the buyer's current cost of borrowing (including administrative costs),
- Buyers are encouraged to make pre-finance available on better terms (at lower rates of interest) to the producer
- When pre-finance is agreed upon, the Fairtrade payer must document either
 - A separate pre-finance section within the contract or
 - A separate credit agreement with the producer.

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Fairtrade certified producers receive a Fairtrade Premium, additional funds above the purchase price that they invest in social, economic and environmental projects. Farmers and workers democratically decide on the use of the Fairtrade Premium according to their needs. The premium is most often invested in education and healthcare, agricultural improvements, or processing facilities to increase income. Workers on plantations elect representatives to a Joint Body to decide, with input from management, how to use the Premium for the benefit of the workers, their families and their communities.

Fairtrade Standards



© Fairtrade 2011

Other key components:

- **Fairtrade Minimum Price:** a price floor to protect producers if market prices fall
- **Democratic decision-making** at the producer level
- **Long-term, stable contracts** with buyers
- Protection of the **environment**
- Adherence to **core International Labour Organization** conventions



Trade Standard Requirements

Premium - Whom To Pay?

- Account for which the Promoting Body (Contractor) or its nominee responsible
- By derogation for all producer set-ups, payment may also be made to a premium trust fund or Premium channel or to another agreed third party with the written permission of the Producer

HOWEVER - No deductions from Premium!!

© Fairtrade 2010



Trade Standard Requirements

Premium - Who Pays?

- **Organisations that buy Fairtrade products from producers directly**
 - Condition: If the Fairtrade price is Ex works/ Farmgate
 - Condition: If the buyer agrees in contract to be the payer when the prices are at FOB levels
- **Organisations that buy products from other traders who are termed "Conveyors"**
 - Condition: When the product is at the FOB levels and the payer agrees to pay as per contract
- **IMPORTANT:**
 - Ensure that you are aware of the payer in the contract when purchasing directly from producers
 - Ensure that the premium payer is identified in the premium chain when you buy the Fairtrade product

© Fairtrade 2010



Members of Toledo Cacao Growers' Association in Belize, voting at their annual general assembly.

vp6



FAIRTRADE

THANK YOU !!

GOOD CORPORATE PRACTICES IN CONTRACT FARMING

Consultation Workshop on the UNIDROIT / FAO Legal Guide on Contract Farming

ROME, ITALY – UNIDROIT HQ, Via Panisperna 28

10 October 2014

Presentation

The practice of engaging in crop or animal production based on contract farming arrangements has developed very significantly in many developing and emerging economies. Under agricultural production contracts, agricultural producers undertake to engage in production and deliver, at a future time, goods meeting designated specifications. The purchaser – typically a processor, an exporter or a retailer – commits itself not only to acquire the product for an agreed price, but also to provide a certain level of guidance and support during the production process, typically by supplying agricultural inputs, technology, or agronomical supervision. While the success of contract farming may depend on many elements, one key element is the ability of the parties to build stable, commercially-sound and fair relationships based on clear commitments and mutual compliance. The cornerstone of the relationship is the agreement.

This consultation will focus on the legal and business aspects of the parties' agreement based on practical experiences and the treatment of contract farming in various sectors and geographical contexts. It is addressed to a broad audience of representatives of the private agribusiness sector.

Notably, this workshop will inform the drafting of the **UNIDROIT/FAO Legal Guide on Contract Farming** which intends to provide soft guidance and an internationally-recognised reference with a fair and balanced approach against which contract practices and relevant public policy instruments could be assessed. The *Guide* is being prepared by the International Institute for the Unification of Private Law (UNIDROIT), together with the Food and Agriculture Organization (FAO), and the participation of the International Fund for Agricultural Development (IFAD).

At the workshop, a full "zero draft" of the forthcoming *Guide* will serve as a reference for the discussion. The zero draft will be accessible on the UNIDROIT webpage at <http://www.unidroit.org/work-in-progress-studies/current-studies/contract-farming> after 24 September 2014. Participants are invited to actively take part in the workshop by sharing experience and knowledge. Comments or relevant material such as commodity-specific regulations, good contract practices and guidelines, model contracts, sample contracts or contract clauses, as well as literature and case-studies may also be sent to UNIDROIT (b.garthwaite@unidroit.org) before or after the workshop.

EVENT PROGRAMME

8.30 – Participant registration

9:00 – 9:30 Welcome and objectives

Mr. Jose Angelo Estrella Faria

Secretary-General

International Institute for the Unification of Private Law (UNIDROIT)

Mrs. Eugenia Serova

Director, Rural Infrastructure and Agro-Industries Division

Food and Agriculture Organization of the United Nations (FAO)

Mr. Idés de Willebois

Director, West and Central Africa Division

International Fund for Agricultural Development (IFAD)

9:30 – 10:40

Session 1 – Private sector commitments in promoting good contract practices

Speakers will discuss lessons learned in their fields, and how they should inform the development of international standards, in particular the drafting of the Legal Guide on Contract Farming, for maximum usefulness for stakeholders.

Moderator

Dr. Rudolf Gotzen

Senior Legal Counsel, Belgian Boerenbond

Professor, University of Leuven, Belgium

Presentations

SAI (Sustainable Agricultural Initiative) Platform

Mr. Peter Erik Ywema

General Manager

SAI Platform

European Supply Chain Initiative

Mr. Dennis Kredler

Director General

European Retail Round Table (ERRT)

GLOBALG.A.P.

Dr. Kliment Petrov

Integrity Assessment and Training

GLOBALG.A.P.

UN Global Compact – Food and Agriculture Business Principles

Mr. Puvan J Selvanathan
Head, Food and Agriculture
UN Global Compact Office

10:40 – 11:00**Refreshment break provided by UNIDROIT****11:00 – 12:30****Session 2 – Procurement policies and the farming contract**

A moderated panel, as well as the full group of participants, will discuss how the structure of the chain and procurement and sourcing policies influence arrangements between agricultural producers and their buyers

Moderator

Professor Fabrizio Cafaggi

Professor of Law
National School of Administration & European University Institute, Italy
Member of the UNIDROIT Working Group on Contract Farming

Panelists

Mr. Felipe Medina

Food Chain Manager
Spanish Supermarkets Association (ASEDAS)

Ms. Valentina Maglio

Senior Counsel International Business Law
Lavazza

Mr. Dirk Straathof

Standards and Legal Counsel
UTZ Certified

Ms. Giulia Di Tommaso

General Counsel
Unilever

Mr. Jonathan Waters

Head of Legal
Grain and Feed Trade Association (GAFTA)

12:30 – 14:00**Lunch provided by UNIDROIT**

14:00 – 16:30**Session 3 – Critical issues in contract farming**

Two moderated panels, as well as the full group of participants, will share experiences on critical issues, recommendations, and best practices in relation to the various aspects of the farming contract: formation, parties' obligations, enforcement, excuses for non-compliance including force majeure, cooperative remedies, damages, termination, dispute resolution mechanisms, etc.

Panel 1: 14:00 – 15:15*Moderator***Ms. Marieclaire Colaiacono**

Counsel, Office of the General Counsel
International Fund for Agricultural Development (IFAD)

*Panelists***Mr. Suhas Joshi**

Sustainable Business Development Officer
Bayer Group – India
Member of the UNIDROIT Working Group on Contract Farming

Mr. Gary Jay Kushner

Partner, Hogan Lovells US, LLP
General Counsel
National Chicken Council (USA)

Mr. Roger Peltzer

Head, Special Programs Department
DEG – German Investment and Finance Cooperation

Mr. Jim Kirke

Director
Sustainable Agricultural Supply Chains Ltd.

Panel 2: 15:15 – 16:30*Moderator***Mr. Carlos A. da Silva**

Senior Agribusiness Economist, Rural Infrastructure and Agro-Industries Division (AGS)
Food and Agriculture Organization of the United Nations (FAO)

*Panelists***Mr. Cesare Ronchi**

Senior Purchasing Manager
Barilla

Mr. Roberto Vega

Head of Product Policy and Performance
Syngenta Crop Protection

Mr. Sureel Singh

Liaison officer for Central and North India
Fairtrade International

Ms. Paola Grossi

Head of Legislative Affairs
Confederazione Nazionale Coldiretti, Italy
Member of the UNIDROIT Working Group on Contract Farming

16:30 Closing Remarks**Mr. Jose Angelo Estrella Faria**

Secretary-General
International Institute for the Unification of Private Law (UNIDROIT)



UNIDROIT is an intergovernmental organisation that prepares draft harmonised rules of private law as well as softlaw guidelines and principles to assist in the modernisation of domestic legal frameworks. UNIDROIT is coauthoring the Guide and serves as primary project organizer.



**Food and Agriculture
Organization of the
United Nations**

FAO focuses on achieving food security for all. FAO devotes resources to contract farming by implementing development programmes, issuing publications and running a Contract Farming Resource Centre. FAO is coauthoring the Guide and has provided support through the sharing of expert knowledge and the participation of delegations of experts and providing comments and inputs on the drafts.



Investing in rural people

IFAD mobilises and deploys resources to fight rural poverty. IFAD has provided support through the sharing of expert knowledge and the participation of delegations of experts providing comments and inputs on the drafts. In addition, IFAD is providing substantial support to the preparation of the Guide through a grant to FAO (recipient)

More detailed information about this project can be found on UNIDROIT website at:

<http://www.unidroit.org/workinprogressstudies/currentstudies/contractfarming>

Check out FAO's Contract Farming Resource Centre for more information:

<http://www.fao.org/ag/aqs/contract-farming/en/>

For any questions or comments regarding this project, please contact: info@unidroit.org

GOOD CORPORATE PRACTICES IN CONTRACT FARMING

ANNEX 3: Issues for Panel Discussions

GOOD CORPORATE PRACTICES IN CONTRACT FARMING

Consultation Workshop on the
UNIDROIT / FAO Legal Guide on Contract Farming

ROME, ITALY – UNIDROIT HQ – 10 October 2014

Template of issues for participants

Fabrizio Cafaggi,
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Dear participants to the panel,

First let me thank You for having accepted to take part in the panel. It is a privilege to be able to discuss the findings and the proposal with such a distinguished group of practitioners.

In order to have a fruitful discussion around a common core I propose to focus on a set of questions whose answers will be given from the different perspectives of each participant. I attach the chapter on remedies in a preliminary draft taking the opportunity to ask You to make (critical) comments and help me improving the current text.

The chapter is based on the following findings concerning dispute resolution.

A) Production contracts incorporate obligations concerning compliance with environmental, social and safety standards that require additional remedies and shift the focus from product to process. These obligations are generally defined in codes of conduct, suppliers codes, procurement policies incorporated by reference into the contracts.

B) Domestic legislation, suppliers codes, sustainability policies, have introduced specific rules for smallholders. These rules have only partially affected hierarchy of remedies (prohibition of termination).

C) Enforcement before courts and arbitrators is very rare.

D) Most of the conflicts are solved directly by the parties or informally via intermediaries that link buyers and sellers. For instance in case of seller's default intermediaries find the goods from alternative sources and ask producers to make it up the following years.

E) Remedies vary significantly in one shot and long term relationships.

F) Damages are almost never sought in long term relationships. Neither party is interested in compensation rather in ensuring compliance.

In the light of the foregoing conclusions (subject to verification and debate) I would like to ask the following sets of questions.

(1) How does the lack of judicial enforcement change contract design? Do contract drafters design the contract in order to prevent judicial enforcement when conflicts arise? For example, do they define procedures parties can follow to engage into joint solving problems and avoid going before courts? Can you provide examples of contractual clauses that 'internalize' lack of judicial enforcement? If and when these clauses are not explicitly drafted, do parties anyway adopt these joint problem solving procedures?

(2) Which remedies are mostly used in agricultural production contracts? To what extent do contracts reflect the remedial scale of priority envisaged by the parties (e.g. first corrective remedies, then substitution, then damages, then termination)? If and when this escalating rule is not reflected in the contract, why is it the case? Do corrective measures play an important role in case of breach and do contracts explicitly provide for the adoption of these measures? Please notice that we distinguish between corrective measures (as process-related measures aimed at problem solving) from product replacement. If and when contracts do not explicitly provide for these corrective measures, why is it the case?

(3) What is the role of chain's intermediaries (traders, agents, associations, Ngos, certifiers, etc.) in addressing problems related to breach of contract? To what extent do contractors and large producers 'delegate' to certification bodies, quality assurance schemes the solution of problems related to breach of contract by suppliers?

(4) What are the specificities of remedies in production contracts with smallholders? Are different liability standards applied? Is termination less used? Do contracts provide so? Which dispute resolution mechanisms are specifically designed or used for smallholders, if ever?

(5) Given that the breach of production contract occurs at local level, what is the role of local procurement offices of global food manufacturers (MNCs) in defining access to the chain and exit when standards are not met? How do they interact with central entities to decide whether to preserve or terminate the relationship?

Additional questions to be addressed in the presentation

CONTRACTUAL STRUCTURE

In which circumstances and why do retailers or large scale manufacturers prefer to engage into a direct contractual relationship with agricultural producers (farmers)?

In which circumstances and why do retailers or large scale manufacturers prefer to rely on intermediaries, due to engage into a contractual relationship with agricultural producers (farmers)? Which type of intermediaries (trading subsidiaries, independent traders, agents, etc.)?

DIRECT CONTRACTING

In the former case (direct contracting) to what extent do retailers/manufacturers engage into a contract with several farmers (e.g. for the same type of commodity and/or in the same area)? If and when it occurs, are farmers mostly part of a cooperative company, that signs the contract on their behalf or interest, or do farmers act directly as a group of individuals?

What are the aspects and terms that entail higher attention and more intense negotiation among the parties a part from the definition of quantity, quality and price of agricultural goods? Are passing of risks, remedies for breach and dispute resolution mechanisms among the matters attracting material attention during contract negotiation?

Do contractors influence or instruct the choice of input providers by producers? When they do so, do they prefer to have a direct contractual relation with the input provider or to delegate the producer to engage into such relationship itself? Who is responsible for monitoring over defective inputs in either case?

THE ROLE OF INTERMEDIARIES (NO DIRECT CONTRACTING)

When the retailer or large scale manufacturer purchases agricultural products through traders, to what extent does he influence or provide instructions to the intermediary when breaches occur? What are the main aspects and terms on which those instructions focus if any? Could you please provide examples?

At which stage of the contractual relationship is normally the retailer/manufacture informed about non-performance occurred in the relation between producer and contractor? Does it happen during the production phase or only before delivery? Does the trader deal with non-performance on independent basis or does it involve its own buyer (manufacturer/retailer)? In which circumstances do they cooperate to deal with non-performances? Could you please provide examples?

THE ROLE OF CERTIFIERS

What is the role of certifiers, if any, during the negotiation phase, the production phase and, most particularly, in case of non-compliance with standards that can imply a breach of contract in the relation between producer and contractor?

With regard to negotiation, do certifiers know the contractual terms under which the due-to-be certified producer operates? Is there any case in which certifiers suggest to adapt the contract taking into account the need to comply with standards (e.g. incorporating good agricultural practices, avoiding disproportionate sanctions for breach that could discourage corrective compliance with standards)?

With regard to the production phase, do certifiers inform contractors about incurred non-compliance with standards? Are they informed by contractors about contractual breaches? Do certifiers and contractors cooperate to help the producer to correct practices so that both compliance with standards and performance of contractual obligations are achieved?

Are there cases in which non-compliance with standards does not coincide with contractual breaches? Could you please provide examples? How do contractors deal with these violations, if ever? Could they ever terminate a contract if a social standard is not met although the product is not defective under any other perspective?

DISPUTE RESOLUTION

Which type of disputes are dealt within the direct relation between producer and farmer, which are dealt with an arbitration court, which are dealt within a judiciary proceeding?

Which remedies (e.g. corrective measures, goods replacement, damages, termination) are more often sought through direct contacts with the party in breach, mediation processes, arbitration, judiciary proceedings?

Does the involvement of certification (and certifier) change the way parties approach dispute (e.g. fostering amicable solution)?

Do dispute resolution mechanisms change depending on the existence of a direct relation between the producer and the large scale manufacturer/retailer? In case of no-direct contracting, do large scale manufacturer/retailer influence the choice of DR mechanisms at the farmer-trader level? Could you please provide examples?

Please feel free to add, integrate, modify the questions.
This mail is meant to begin a common discussion.

I would like to thank You again for the participation to the panel.

Best wishes,

Fabrizio Cafaggi

UNIDROIT/FAO Legal Guide on Contract Farming

GOOD CORPORATE PRACTICES IN CONTRACT FARMING

Consultation Preparation: Sample Issues for Consideration

Session 3: Critical Issues in Contract Farming

The following are a few examples of the types of issues and questions that participants in the session on *Critical Issues in Contract Farming* may wish to discuss or consider. With each of these sample questions and issues, we welcome your inputs based on your professional experience, the experience of your company or organization, and the experiences common in your industry or sector. Although the focus of the Guide is on legal aspects, we welcome inputs and experiences on both legal and practical business aspects.

You may wish to share with us in advance your intention to focus on certain aspects. If so, please inform us ahead of time if possible, by email to b.garthwaite@unidroit.org, or to the moderator for your panel. The moderators for the two panels are:

- Panel 1: Ms. Marieclaire Colaiacomo (m.colaiacomo@ifad.org)
- Panel 2: Mr. Carlos da Silva (carlos.dasilva@fao.org)

In order to make sure that a broad range of topics are covered during the session, in Panel 1, panelists are invited to focus on the negotiation process, the conclusion of the contract and the definitions of reciprocal contractual obligations (items 1 to 4 below). In Panel 2, panelists are invited to focus on the performance of parties' obligations under the production contract, nonperformance situations and dispute resolution mechanisms (items 5 to 10 below). However, it may be noted that, depending on the perspective, a number of issues could either be addressed under Panel 1 or Panel 2. Therefore, these divisions are merely suggestions and no strict delimitation will apply.

More information about the project, as well as the “zero draft” of the chapters of the forthcoming UNIDROIT-FAO *Legal Guide on Contract Farming* can be found on UNIDROIT website at: <http://www.unidroit.org/work-in-progress-studies/current-studies/contract-farming>

Below, references are made to an “*agricultural production contract*” as the contract underlying contract farming. Please note that the following terms are used below for the two parties to the agreement in contract farming:

- *Producer*: unless specifically indicated, may be an individual farmer or a producer organization;
- *Contractor*: the company entitled to delivery of the commodities produced by the producer.

Sample Questions and Issues Organized by Topic

1. The legislative framework

- Does specific legislation on contract farming in different countries create obstacles for more flexible and attractive contracting, or has it led to ready-made solutions facilitating a successful relationship?
- What kinds of regulations achieve the former or the latter?
- Do you have specific examples of either?

2. Parties involved in contract farming operations

Often, multiple other parties, such as public authorities and facilitators, finance and input providers, intermediaries, and certification entities, participate in the agricultural production contract.

- What role do the parties besides the contractor and producer play in the formation of the contract?
- How is dealing with an individual different from dealing with a farmers' organization (or equivalent) and how does this reflect on the contract clauses?
- What are the benefits and risks involved in contracting indirectly with an individual farmer through a farmers' organization?

3. Market structure

In some countries, contract farming has been found to make producers dependent on contractors and to reduce competition in agribusiness.

- Do you have experience dealing with antitrust or special legislation passed to protect farmers?
- How great is the difference in bargaining power between the contractor and the producer?
- How does the difference change from product-to-product or country-to-country?
- How much flexibility usually exists in the formation of the terms of a contract?
- Are negotiations typically on a take-it-or-leave-it basis, or do the negotiations often lead to major changes to the offered standard contract terms used by your company?

4. Content of the obligations of the parties

The overall risks and potential benefits for each party result from a balance of rights and obligations under the contract. Essential elements include economic viability and the duration of the contract relationship (whether long term or renewable).

- Is there a typical risk allocation matrix your industry uses for production risks (e.g. crop failure) and commercial risks (e.g. price fluctuation)?
- Has side-selling been a prevalent problem, and what kinds of clauses have been successful or unsuccessful in combatting it?
- What kind of clauses do you use to protect your own intellectual property rights (IPRs) or limit your liability on the producer's possible infringements of third party IPRs?
- What are the most common price mechanisms used by your company, and what do you see as their associated problems and advantages?
- What are the implications of price discounts and/or price premiums?

5. Understanding the obligations of the parties

Seeing that the interest of a contractor is to receive the right quantity and the right quality of the product which has been produced according to the contractual specifications and delivered at the right time at the right place, it is important to make sure that the producer understands these clauses.

- What kinds of contractual clauses and practices have been either successful or unsuccessful in conveying these requirements in a manner understandable to producers?
- How well do the producers (in general) understand their contractual obligations?
- Which clauses are among the hardest to understand for producers?
- What methods do you employ to ensure that the obligations and rights arising from the contract are properly understood by both parties? (For example, is the language legalistic or natural? Do you encourage third parties to be present when the contract is formed/signed? Do you offer oral explanations to supplement the written agreement, etc.?)

6. Additional obligations

- Besides core obligations (identified as the requirements for quality and quantity of the product, provision of inputs, compliance and control of production methods, clauses on intellectual property rights, delivery, and price and payment) what other kinds of obligations do you regularly include in your agricultural production contracts?
- Do you allow for transfer of obligations, and if so, on what basis?

7. Unforeseen events

- Under what circumstances should the parties be exempted from liability for failure to perform?
- Would *force majeure* events be generally contemplated by the parties in the agreement?
- What difficulties may arise in this context?
- When the contractor has supplied the inputs (for example, the seeds) and the production is lost, how would this be treated?
- Can you provide concrete examples (in contract or in case law) where the contractor could claim *force majeure* to exempt liability?

8. Non-performance situations

- What are the most common causes of contract breach, according to the type of commodity?
- Have you encountered problems with the enforcement of limitation or exclusion of liability clauses and penalty clauses in different legal systems?

9. Remedies for breach

There are many possible situations where one of the parties will be in breach.

- What are the most effective remedies for given situations?
- Can you provide examples of guarantees in favor of the contractor to secure the producer's non-performance, either under the law or under the contract?
- Can you provide examples of guarantees in favor of the producer to secure the contractor's non-performance, either under the law or under the contract?
- Can you provide examples of situations where the producer and/or the contractor have been held liable toward third parties (explain the ground and legal basis for liability, such as safety defects, environmental damage, etc.)?

10. Contract duration and renewal

- What critical issues are involved in determining the appropriate duration and conditions for renewal of the agricultural production contract?
- How prevalent are unilateral termination clauses, and have there been issues with their enforceability in different domestic settings?
- Would termination based on a contract provision be treated in the same way irrespective of whether the contract is for a short term, or when the contract has been renewed on a continuing basis over a long period of time?

11. Dispute resolution methods

- Besides courts, what kinds of dispute resolution forums do you include in contract clauses?
- What are the advantages and disadvantages of traditional court proceedings in comparison to arbitration, mediation and other alternative dispute resolution mechanisms?

12. Enforcement

- Given that in some countries the legal enforcement of even fair and balanced contracts can be difficult, either because of corruption or general ineffectiveness of the legal system, what kinds of contract clauses or processes you use to enforce the contract in case of a breach?
- Do you require collateral (for example a bag of maize to be returned after conclusion of the contract) as a guarantee of performance?

GOOD CORPORATE PRACTICES IN CONTRACT FARMING

Consultation Workshop on the UNIDROIT / FAO Legal Guide on Contract Farming

ROME, ITALY – UNIDROIT HQ, Via Panisperna 28

10 October 2014

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