



Note

Agriculture Negotiations and WTO MC12: A Common Path Forward for Select South and South-East Asian Countries

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Abstract

This note examines the ongoing negotiations in the Committee on Agriculture from the perspective of seven South and Southeast Asian countries. It identifies several commonalities among the agricultural sectors of these countries including the economic importance of the sector in providing employment, the resilience of the sector throughout the COVID-19 pandemic, and the importance of the sector in post COVID-19 recovery plans. The note then suggests that these commonalities can be the basis for delegates from these countries to identify and advance a common agenda within the agriculture negotiations at the WTO, and thus provides several concrete recommendations for delegates to pursue ahead of WTO MC12 and beyond.

Introduction

The agricultural sector is a key driver of sustainable development and rural employment in many developing countries, who thus view agricultural trade as a particularly important aspect of their overall trade policy and export strategy. The importance of the sector has been highlighted by COVID-19 which has disrupted the agri-food supply chain, undermined food security in many developed and developing countries, and increased global malnutrition by 1.5% in 2020¹. Considering both this and the mounting political pressure ahead of the World Trade Organisation's (WTO) Twelfth Ministerial conference late this year, there is a clear opportunity for delegates to the WTO to enhance global food security through negotiating towards agricultural trade reform

To this end, this note will examine ways in which delegates from Bangladesh, Cambodia, Lao PDR, Nepal, Pakistan, Sri Lanka, and Vietnam may facilitate the development of their respective agricultural sectors through advancing a common agenda at the WTO. In doing so this note is split into two distinct sections. The first identifies two broad commonalities of the respective agricultural sectors of each country: the relative importance of the agricultural sector in the context of COVID-19, and a shared dependence on international markets for domestic food security. These commonalities suggest that each country's interests are sufficiently aligned that they may be served by adopting a common position in the WTO agriculture negotiations. The second section outlines several priority areas within these negotiations, namely domestic support reform, public stockholding programmes, export restrictions, market access, export competition, sanitary and phytosanitary measures, and transparency obligations. For each area the interests of countries in this note are identified and the broader context to the negotiations are discussed. From these recommendations are provided of possible

concrete actions which delegates may wish to pursue at MC12 and beyond.

Commonalities and Shared Interests of South and South-East Asian Countries

Relative Importance of the Agricultural Sector in the Context of COVID-19

The agricultural sector is of similar importance for all countries within this note. It contributed an average of 17% to GDP in 2020, during which it was the sole sector to not contract except in Sri Lanka². Therefore, the agricultural sector played an important role in imbuing the wider economy with a degree of resilience and partially mitigating the economic damage wrought by COVID-19. This was mainly due to the high share of informal and subsistence agriculture in overall production, which provides substantial employment in rural areas and allowed the sector to absorb many workers laid off in the manufacturing and services sectors. This increased the importance of the sector in providing employment for large swathes of the population, as reflected in Figure 2. The sector employs an average of 45% of the labour force for countries in this note and is particularly important in Lao PDR where it employs 69% of workers. Moreover, the sector generally employs a higher share of women than men, making it an important source of female employment.

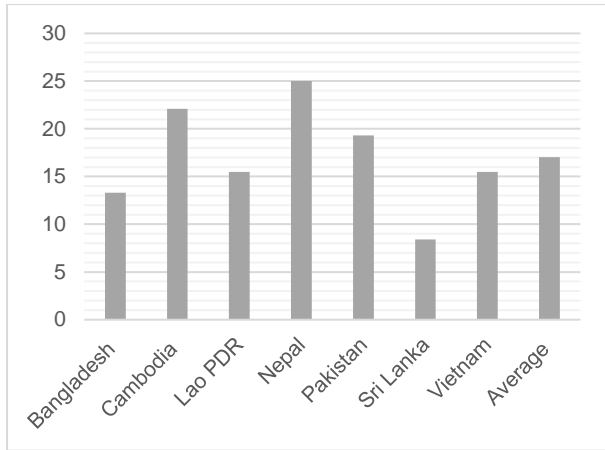
Given its resilience throughout the pandemic and its centrality in providing employment, the sector has been earmarked as an integral part of each country's COVID-19 recovery plans. These plans generally intend to develop the sector by promoting the cultivation of cash crops, developing agro-processing facilities, and encouraging subsistence farmers to

¹ Deep Ford, "Domestic Support in the WTO Agriculture Negotiations: Outcomes for MC12."

² de Klerk, "The Impact of COVID-19 on Agricultural Trade and Employment of Selected South and South-East Asian Countries."

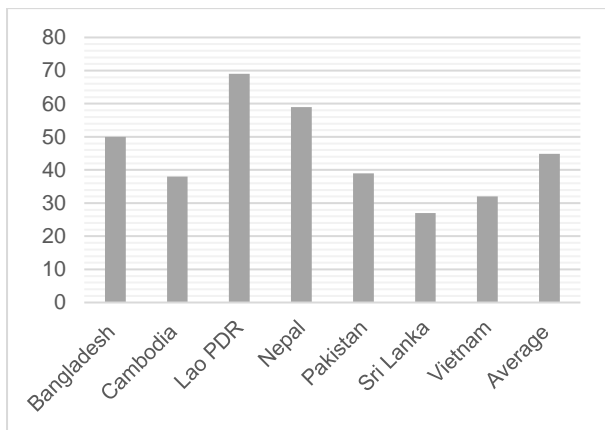
commercialise and thus increase sectoral productive potential³.

Figure 1: Agriculture Share of GDP for Select Countries in 2020 (%)



Source: de Klerk, “The Impact of COVID-19 on Agricultural Trade and Employment of Selected South and South-East Asian Countries.”

Figure 2: Agriculture Share of Total Employment for Select Countries in 2020 (%)

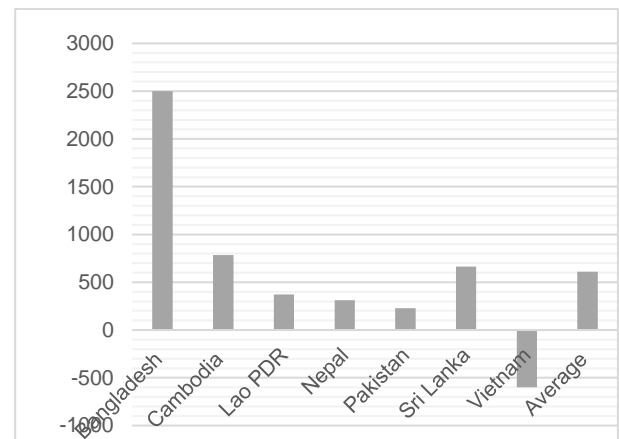


Source: de Klerk, “The Impact of COVID-19 on Agricultural Trade and Employment of Selected South and South-East Asian Countries.”

Agri-food Trade Deficits and External Dependence for Food Security

While the informal nature of the agricultural sector allows it to easily absorb displaced workers, it renders the sector dependant on the production of staple crops with little value-addition through forward production linkages. Therefore, the agri-food exports of all countries in this note (except for Vietnam) are dominated by low-value agricultural commodities, while imports primarily consist of processed food ready for consumption⁴.

Figure 3: Agri-Food Trade Deficit for Select Countries in 2020 (Million \$)



Source: ITC, “Trade Map - Trade Statistics for International Business Development.”

As a result, countries in this note are net agri-food importers with an average agri-food trade deficit of \$609 million in 2020, with Vietnam the sole net-exporter of agri-food products. However, Vietnam’s largest agri-food import is maize (\$2 billion), which suggests it is still partially dependant on imports for the provision of staple foods⁵. This shared dependence on international markets for domestic food security suggests that countries in this note have a collective interest in minimizing the volatility of international agri-food markets and promoting their further

³ de Klerk.

⁴ ITC, “Trade Map - Trade Statistics for International Business Development.”

⁵ ITC.

liberalisation. Moreover, given the importance of developing the sector as part of COVID-19 recovery plans, there is an additional shared interest in increasing the market penetration of respective agri-food exports and addressing market distorting measures which undermine their global competitiveness.

To this end, delegates from these countries have the opportunity to address these shared interests through their work at the World Trade Organisation (WTO), and to advance a common agenda within the agriculture negotiations ahead of MC12. The following section will examine how this may best be achieved by recommending several actions which may be taken in different issue areas of the overall negotiations.

Agriculture Negotiations: Priority Areas for MC12 and Beyond

Negotiations on agriculture have been ongoing since 1999 as per Article 20 of the Agreement on Agriculture (AoA) which mandates continued negotiation towards the long-term objective of increasing market access and substantially reducing agricultural support⁶. These were included in the Doha Development Agenda which was launched in 2001⁷, yet negotiations have made little to no progress since then as countries remain unable to find compromise. However, mounting pressure for a substantive outcome on agriculture for MC12 provides an opportune moment for delegates to take advantage of renewed political appetite and push for agricultural reform. This section identifies potential outcomes in several key areas which delegates may wish to pursue.

⁶ WTO, "Agreement on Agriculture."

⁷ Doha Ministerial Declaration of the WTO, paragraphs 13-14, available at https://www.wto.org/english/thewto_e/minist_e/min01_e/minddecl_e.htm#agriculture

⁸ Cahill and Tangermann, Stefan, "New Pathways for Progress in Multilateral Trade Negotiations in Agriculture."

Domestic Support Reform

In the Uruguay round in 1986, members identified the need to introduce disciplines on domestic agricultural support which had an outsized distorting effect on global agricultural markets. Domestic support in the form of direct or indirect subsidies lowers the cost of production for producers, which incentivises overproduction and lowers the price at which they remain profitable. This encourages overexploitation of natural resources, overconsumption of harmful inputs such as agro-chemicals, increased deforestation, and exacerbates climate change⁸. Trade-distorting domestic support also makes it difficult for non-subsidised agricultural producers and exporters to compete against artificially depressed global prices, while subsidised imports lower domestic prices and undermine the incomes of domestic agricultural producers and the development of the greater agricultural sector. This is particularly harmful for the developing countries in this note, as it deprives them of their comparative advantage in the sector given that they do not have the fiscal resources to compete with the domestic support provided by larger economies⁹. For example, a 2013 study found that agricultural subsidies provided by the European Union (EU) distorted the prices of cereals by 10%, beef by 200%, poultry by 23%, and dairy by 10% in African, Caribbean, and Pacific countries¹⁰.

Introducing new disciplines on domestic support would improve market access for agriculture exports from countries in this note and facilitate the growth of the sector. Ultimately, the reduction of market distortions and negative environmental externalities associated with the provision of domestic support constitutes a win-win for members, and thus should have the highest priority within the agriculture negotiations.

⁹ Balchin and Mendez-Parra, "AGRICULTURE: THE IMPLICATIONS OF CURRENT WTO NEGOTIATIONS FOR ECONOMIC TRANSFORMATION IN DEVELOPING COUNTRIES."

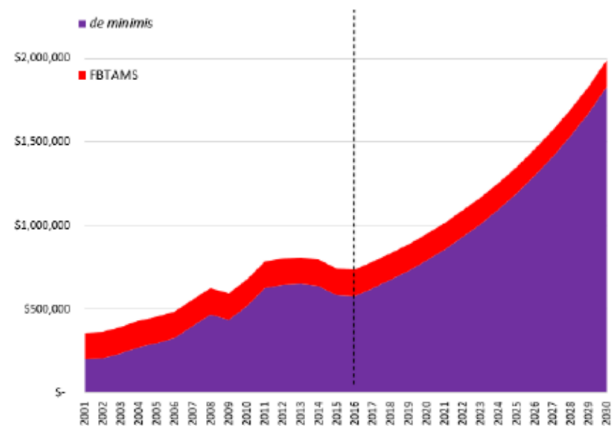
¹⁰ Balchin and Mendez-Parra.

To this end, negotiations have centred around ways in which to further reduce domestic support beyond the limits set within the AoA. These limits are set in Article 6.3 and 6.4, with the former specifying the Bound Total Aggregate Measure of Support (AMS) certain countries may use, while the latter sets a *de minimis* quantity of support relative to the final value of the product. The Art 6.3 AMS provision committed an original 32 countries¹¹ to reduce agricultural subsidies in the form of price support by 20% for developed members over 6 years, and 13.3% for developing members over 10 years relative to a base price set as the average price between 1986-1988. On the other hand, Article 6.4 and 7.2b specify a *de minimis* quantity of support a country may provide relative to the value of the final product according to current prices. Developed countries may only provide up to 5% of final value in support, while developing countries¹² may provide up to 10% in support¹³. Domestic support subject to the limits set by these two articles is known as ‘Amber box’ support.

However, the AoA contains three provisions which allow a country to exempt their domestic support from the ‘Amber box’. First, Article 6.2 exempts subsidies which are deployed to stimulate rural development in developing countries, such as input subsidies on water or fertilizer. Second, Article 6.5 (‘Blue box’ subsidies) exempts subsidies which do not distort production, such as direct payments to producers where the market price is below the income needed to survive. Last, Annex II to the AoA (‘Green box’ subsidies) exempts those subsidies which have a minimal effect on production and trade¹⁴. For a full classification of subsidies under the AoA see Annex I.

From this subsidy classification breakdown one can identify three distinct areas for reform. First, since the AoA was implemented in 1995 domestic support for agriculture has more than doubled. In addition, domestic support provision has concentrated to the extent that 80% of global agricultural domestic support is provided by just 5 members – the US, the EU, Japan, China, and India – who notify most of their domestic support under the ‘Green box’ exemption. The use of the ‘Green box’ is unsurprising as it allows the provision of potentially limitless domestic support unless another member can prove that the support is production or trade distorting, something which is difficult to do and has never been challenged through the Dispute Settlement Mechanism. This has led to a situation where 94% of members have notified ‘Green box’ support to the WTO compared to 38% of members notifying ‘Amber box’ support which points to the need to increase the stringency of requirements to notify ‘Green box’ support and enhance transparency in this area¹⁵.

Figure 4: Total Trade-Distorting Domestic Support Ceilings for WTO Members



Source: Deep Ford, “Domestic Support in the WTO Agriculture Negotiations: Outcomes for MC12.”

¹¹ Nine are original WTO developed country members – Australia, Canada, European Union (representing 28 countries), Iceland, Japan, New Zealand, Norway, Switzerland and Liechtenstein, United States. Thirteen are original developing country members – Argentina, Brazil, Colombia, Costa Rica, Israel, Korea, Mexico, Morocco, Papua New Guinea, South Africa, Thailand, Tunisia, Venezuela. Ten of the countries acceded later into the WTO - six as developed countries, Moldova, Montenegro, N. Macedonia, Russian Federation,

Chinese Taipei, Ukraine; and four as developing countries, Jordan, Saudi Arabia, Tajikistan and Viet Nam.

¹² China and Kazakhstan are the exception, as each committed to ceiling of 8.5% in their protocols of accession.

¹³ WTO, “Agreement on Agriculture.”

¹⁴ WTO.

¹⁵ Deep Ford, “Domestic Support in the WTO Agriculture Negotiations: Outcomes for MC12.”

Second, access to AMS allows a certain subset of members to exceed the *de minimis* threshold to which other members must abide. Only 13 developing countries have access to AMS, including Vietnam as the only country in this note. However as per Vietnam's most recent notification it does not provide support under AMS and instead provides a relatively modest amount of developmental and 'Green box' support¹⁶.

Thus, both it and the other countries in this note are still disadvantaged relative to the large, developed economies which provide trade-distorting support under AMS which may exceed the *de minimis* threshold (by up to 10%) that other members are bound by¹⁷.

Third, while the AMS threshold is fixed to the 1986-88 reference price, the *de minimis* threshold fluctuates according to the value of the agricultural output. This effectively allows developed countries with a higher share of value-added agriculture to provide more domestic support than those countries which export lower-value agricultural commodities. Moreover, this may lead to a snowball effect whereby an initial advantage conveyed by larger subsidies may continuously confer larger and larger subsequent advantages as the sector develops and produces higher value agricultural products. This pattern is reflected in the growth of *de minimis* support depicted by Figure 4.

Given these three areas of concern, this note provides the following recommendations for delegates when negotiating domestic support reform.

Recommendations

1. Maintain policy space by steering negotiations away from the reform of Art 6.2 (Development exemption).
 - Multiple countries in this note have relied on providing domestic support under Art 6.2 as part of their COVID-19 responses¹⁸.
2. Increase scrutiny of 'Green box' support.
 - Delegates may wish to build on proposal JOB/AG/173¹⁹ by the Africa group which introduces stricter criteria for 'Green box' notifications.
3. Push for the limitation of AMS above the *de minimis* threshold which arbitrarily discriminates among members.
 - Delegates may wish to build on the proposals JOB/AG/173²⁰ by the Africa group and JOB/AG/216²¹ by India which suggest ways in which AMS may be capped.
4. Support the reform of *de minimis* away from value-relativity
 - Delegates may wish to build upon proposal JOB/AG/199²² by Costa Rica which introduces the concept of a fixed monetised limit to the *de minimis* threshold.
5. Encourage the move towards a possible ceiling for total domestic support
 - Delegates may wish to support the adoption of JOB/AG/177²³, which sets the goal of halving total domestic support in proportion to a country's share of total agricultural support by 2030.

¹⁶ Delegation of Vietnam to the WTO, "Notification on DS:1 Domestic Support for 2017."

¹⁷ Deep Ford, "Domestic Support in the WTO Agriculture Negotiations: Outcomes for MC12."

¹⁸ de Klerk, "The Impact of COVID-19 on Agricultural Trade and Employment of Selected South and South-East Asian Countries."

¹⁹ See: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/AG/173.pdf&Open=True>

²⁰ See: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/AG/173.pdf&Open=True>

²¹ See: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/AG/216.pdf&Open=True>

²² See: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/AG/199.pdf&Open=True>

²³ See: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/AG/177R1.pdf&Open=True>

Public Stockholding Programmes

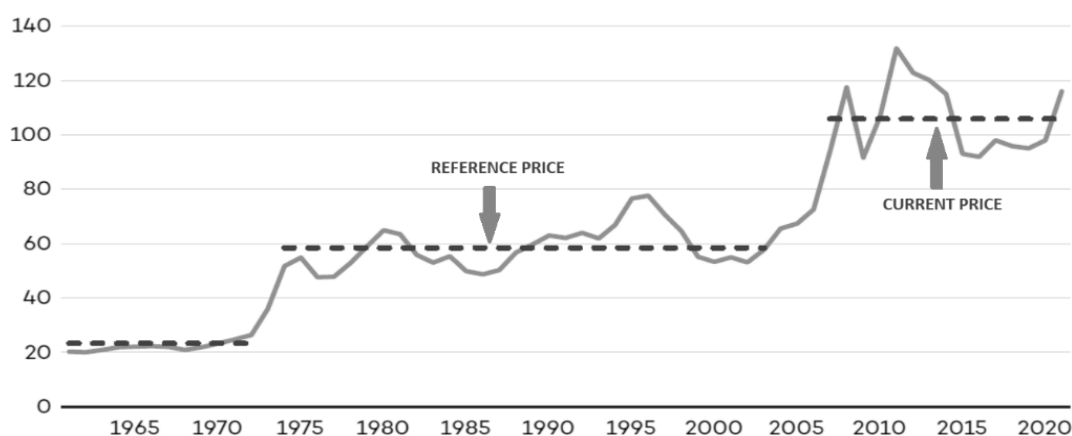
Public Stockholding Programmes (PSP) refer to government food procurement programmes at or below market prices, with the intention that procured food is distributed to the poor and vulnerable. Many members consider PSPs an important tool for food security and protecting rural livelihoods, particularly for net-food-importing countries whose domestic food security is exposed to volatility on international markets. While 32 WTO members have notified their use of PSP (see Annex II for a full list), China and India account for 98% of the total value of PSPs according to data from 2016²⁴.

The major concern with PSPs is that governments may procure food above the market price which may artificially increase the price of agri-food products in the short term and exacerbate market instability and food shortages. Moreover, if domestic producers which receive price support are also exporters, then domestic inflation may partially transfer to international markets and

thus undermine food security elsewhere²⁵. In the long run, price support may also encourage farmers to plant more than they would have otherwise, which may lead to oversupply and price volatility in the future when harvested²⁶.

PSPs are generally included under the ‘Green box’ of domestic support measures provided that they meet the following three criteria: 1) they have minimal trade distorting effects, 2) they are provided as a publicly funded government programme, and 3) they do not provide market price support for producers. If PSPs do not meet all three criteria, they should be included in the ‘Amber box’. However, the third criterion is extremely controversial as the reference price used in the AoA to determine whether a measure provides price support or not is fixed at 1986-1988 average price. Therefore, the reference price does not account for general inflation over the past 30 years²⁷, leading to a situation whereby a member may be procuring food below the current market price yet over the reference price and thus deemed as providing price support. See below for a visualisation of this phenomenon.

Figure 5: FAO Food Price Index (2014-2016=100)



Source: Glauber and Sinha, “Procuring Food Stocks Under World Trade Organization Farm Subsidy Rules.” and author edits

²⁴ Deep Ford, “Domestic Support in the WTO Agriculture Negotiations: Outcomes for MC12.”

²⁵ Balchin and Mendez-Parra, “AGRICULTURE: THE IMPLICATIONS OF CURRENT WTO NEGOTIATIONS FOR ECONOMIC TRANSFORMATION IN DEVELOPING COUNTRIES.”

²⁶ Glauber and Sinha, “Procuring Food Stocks Under World Trade Organization Farm Subsidy Rules.”

²⁷ Art 18.4 does call for members to ‘give due consideration to the influence of excessive rates of inflation’. However, this seemingly does not apply to gradual inflation over long periods of time and has not been tested in panel proceedings.

At the 2013 Bali ministerial conference this quirk was addressed through the introduction of an interim mechanism which exempted developing country PSPs from being challenged with the goal of finding a permanent solution by MC11. However, this permanent solution continues to elude members who opted to renew the interim mechanism at MC11 instead²⁸. With MC12 on the horizon, members have an opportunity to explore updating the reference price used in the AoA. Updating the reference price would allow concerned members to better identify whether PSPs are truly distorting markets and modernise

the AoA to better reflect the reality which it governs.

Ultimately members need to work towards balanced outcome on PSPs, one which ensures that members have sufficient policy space to achieve legitimate public policy goals yet does not exceed limits which would undermine the food security of other members, particularly for net agri-food importing countries in this note. To this end the following recommendations are provided.

Recommendations

1. Explore ways to ensure that the provision of food below market prices through PSPs do not impact international markets.
 - Delegates could build on JOB/AG/173²⁹ tabled by the Africa group. This suggests the concrete outcome that “developing Members undertaking programs under the Permanent Solution shall ensure that no exports are made from products benefitting from this provision”.
2. Propose that LDC PSPs are exempt from future domestic support calculations
 - PSP production support by LDC’s, even if exceeding the ‘Amber box’ ceiling would have a minimal impact on global prices, production, and trade
3. Work towards updating the reference price used by the AoA to calculate AMS and price support.
 - Delegates could build upon JOB/AG/204³⁰ by the Africa group, which suggests using a moving average of the prior three years or an Olympic moving average of the prior 5 years. However, delegates should advocate for a two-year lag to ensure data is always available when calculating reference prices.

Export Restrictions

Given the dependence of countries in this note on agri-food imports for food security, these countries are particularly vulnerable to agri-food export restrictions in other countries. They can reduce the quantity of available food on international markets and cause global food prices to increase. Moreover, export restrictions may lead to a cascading effect whereby importing countries are forced to implement their own export restrictions to ensure domestic food security, which further exacerbates international market volatility. On the other hand, several developing countries also express the need to occasionally resort to some form of export

restrictions to ensure the availability of essential domestic supplies.

Export restrictions may consist of quantitative restrictions such as export quotas or bans, or export taxes. Quantitative export restrictions on agriculture are generally forbidden by WTO GATT Article XI except for those imposed temporarily for food security purposes. However, export taxes are largely not regulated by the WTO. Within the Committee on Agriculture, delegates may wish to engage in negotiations related to export restrictions i.e., the exemption of purchases by the World Food Programme (WFP) for humanitarian aid from any form of export restriction. This focussed approach will balance

²⁸ WTO, “Agreement on Agriculture.”

²⁹ See: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/AG/173.pdf&Open=True>

³⁰ See:

<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/AG/204.pdf&Open=True>

the needs and concerns of a larger number of developing countries. This may also build momentum to further limit the imposition of

export restrictions which are particularly harmful in the context of globalized supply chains and times of crisis.

Recommendation

1. Push for the exemption of WFP purchases for humanitarian aid from export restrictions.
 - Delegates could join ongoing discussions departing from JOB/AG/201³⁴, with the aim of building momentum for further discussions on limiting restrictions.

Market Access and the Special Safeguarding Mechanism

Increasing market access for the agricultural exports of developing countries has been a staple of the agriculture negotiations since 2000, as developing countries generally have a comparative advantage in agricultural production rendering agriculture exports especially competitive in international markets. While increasing market access for developing countries has obvious economic benefits, a recent FAO, UN Development Programme (UNDP) and UN Environment Programme (UNEP) report found that eliminating all border measures on agri-food trade would reduce deforestation, reduce GHG emissions by 55.7 million tons by 2030, and reduce global malnutrition³².

Increasing market access is not simply about reducing tariffs but also involves tariff simplification³³. Many countries implement non-ad valorem tariffs, such as specific tariffs which impose a fixed duty according to the quantity or weight of the good imported. These are often combined with ad valorem tariffs to create compound/mixed tariffs and alternative tariffs, all of which need to be converted into ad valorem

equivalents for purposes of comparison, analysis, and negotiation at the WTO. The current chair of the agriculture negotiations has pointed out that there is chronic lack of data on the ad valorem equivalents of the non-ad valorem tariffs imposed by members, and that this has hindered negotiations on increasing market access³⁴. In addition, non-ad valorem tariffs and their ad valorem equivalents are more difficult to calculate for parties wanting to engage in trade, particularly for exporters in developing countries and LDCs³⁵. This increases uncertainty for market actors and thereby unnecessarily constrains exports from these countries.

Many developing countries have also called for the creation of provisions which allow for the imposition of a Special Safeguarding Mechanism (SSM). SSMs would allow only developing countries to temporarily increase tariffs to counter import surges or price falls which would harm their domestic agricultural sector. A mandate to negotiate SSMs was adopted at the Nairobi ministerial³⁶, but members are still unable to agree a compromise between the need to protect domestic industry versus the imposition of protectionist measures.

³¹ See: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/AG/201.pdf&Open=True>

³² FAO, UNDP, and UNEP, "A Multi-Billion Dollar Opportunity - Repurposing Agricultural Support to Transform Food Systems."

³³ Cahill and Tangermann, Stefan, "New Pathways for Progress in Multilateral Trade Negotiations in Agriculture."

³⁴ WTO, "Draft Chair Text on Agriculture."

³⁵ Cahill and Tangermann, Stefan, "New Pathways for Progress in Multilateral Trade Negotiations in Agriculture."

³⁶ See: WT/MIN(15)/43, available here: https://www.wto.org/english/thewto_e/minist_e/mc10_e/1978_e.htm

Recommendations

1. Negotiate towards the conversion of members' non-ad valorem tariffs into ad valorem tariffs, and/or enhance obligations for members to convert and notify ad valorem equivalents.
2. Renew the push for tariff reductions on agricultural products.
 - Delegates could encourage use of the 'Swiss Formula' for gradual tariff reduction, as was used in Tokyo round.
3. Push for the adoption of SSM provisions as mandated by the Nairobi decision.
 - Members could build on JOB/AG/205 tabled by the Africa group, and/or support recent suggestions that provisions for an interim trial period for SSMs is included in the MC12 declaration.

Export Competition

Export subsidies are market-distorting measures that undermine competitiveness in both exporting and importing countries. From the perspective of countries in this note, agricultural export subsidies in other countries exert downward pressure on world agricultural prices, which reduces incomes and undermines the development of domestic export-oriented agri-food industries. Agri-food export subsidies may also lead to a form of a zero-sum game, as competing domestic agri-food industries may require subsidies of their own exports to remain competitive.

Export subsidies were generally prohibited in the 2015 Nairobi decision. Developed countries retained the right to subsidize the export of a handful of agricultural products, while developing

countries retained the right to cover the marketing and transport costs of agricultural exporters until 2023. This window is extended until 2030 for LDCs and net-food importing developing countries³⁷. However, 6 years on from the Nairobi decision some members have still not submitted their updated schedules of commitments which reflect their less-than-complete implementation of the decision. Therefore, members could expedite the implementation of the Nairobi decision by enhancing notification obligations related to export subsidies. Members could also avoid imposing an additional burden on developing and LDC members by including provisions which allow the WTO secretariat to assist those members which lack the capacity to notify timeously.

Recommendation

1. Work to increase transparency regarding the abidance of members to the Nairobi decision
 - Delegates could enhance notification obligations with the proviso that these will be complied by developing countries only if they receive the required assistance

³⁷ Glauber, "Negotiating Agricultural Trade in a New Policy Environment."

Sanitary and Phytosanitary Measures

Sanitary and Phytosanitary Standards (SPS) are those standards implemented by countries which ensure the quality and safety of imported foodstuffs. However, these standards may impose non-tariff barriers for exporters in developing countries which often lack the capacity to construct laboratories and acquire requisite certifications needed to access developed economies. However, if an importing nation recognises the equivalence of an exporting nation's own standards it removes this burden.

Equivalence in the context of SPS is the recognition that another member's standards provide an acceptable level of protection even when different from one's own. Member states are legally bound to recognize equivalence under Article 4.1 of the SPS Agreement, yet this rarely occurs in practice as agri-food exports from developing countries are often hampered by the perceived unwillingness of importers to recognize equivalence. Recognizing equivalence would reduce technical barriers to agri-food exports (often substantial given the difficulty and cost of ensuring compliance for developing countries) and contribute to the growth of agri-food sectors³⁸. Therefore, delegates could push for the recognition of the need for equivalence in the draft MC12 SPS statement³⁹. The draft statement also acknowledges that LDCs may require assistance in implementing SPS measures but

doesn't go further. Thus, delegates could negotiate towards the inclusion of stronger language regarding capacity building in LDCs, as well as possibly extend the scope of SPS capacity building to other developing countries.

In a similar vein to equivalence, New Zealand has recently tabled a proposal to create a procedure that monitors the process of international harmonization⁴⁰. This proposal includes list of topics to discuss at an upcoming thematic session on international harmonization for which all members have expressed support. It is important to note that harmonization and equivalence are distinct issues: the former is concerned with the adoption of *common* SPS measures, while the latter is the recognition that *different* measures may have the same effect.

However, given that harmonization and equivalence both aim to reduce friction between different SPS regimes, delegates have an opportunity to participate in this session and raise the need for equivalence recognition⁴¹. In addition, delegates could submit a joint proposal for a dedicated thematic session on equivalence in 2022. Members have been encouraged to submit proposals for future thematic sessions to the SPS committee to be discussed and finalised in the SPS meeting on the 3rd of November 2021. Thematic sessions have already been proposed by the EU⁴², Australia⁴³, and a joint session by Australia, Colombia, Paraguay, and the US⁴⁴.

³⁸ de Klerk, "The Impact of COVID-19 on Agricultural Trade and Employment of Selected South and South-East Asian Countries."

³⁹ WTO, "Sanitary and Phytosanitary Declaration for the Twelfth WTO Ministerial Conference."

⁴⁰ WTO, "Procedure to Monitor the Process of International Harmonization."

⁴¹ For the proposed programme of the session see: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=:/G/SPS/GEN1950R1.pdf&Open=True>

⁴² See: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=:/G/SPS/GEN1951.pdf&Open=True>

⁴³ See: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=:/G/SPS/GEN1949.pdf&Open=True>

⁴⁴ See: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=:/G/SPS/GEN1947.pdf&Open=True>

Recommendations

1. Push for a recognition of equivalence in the draft SPS ministerial statement.
 - Delegates may also wish to negotiate towards the inclusion of stronger language related to capacity constraints faced by LDCs and developing countries.
2. Attend the upcoming thematic session on international harmonization to use it as a possible occasion to raise awareness regarding the need for recognition of equivalence.
3. Urgently submit a joint proposal for a dedicated thematic session on equivalence to the SPS committee to be held in 2022.

Enhancing Transparency

The progress made in implementing the AoA in the Uruguay round was largely made possible by availability of agricultural policy data. Availability of information ensured that members made informed commitments with full knowledge of the implications for both themselves and their trading partners⁴⁵. However, this is no longer the case, as the poor state of notifications to the WTO creates uncertainty which undermines the willingness of members to make binding commitments in negotiations. Thus, enhancing transparency by ensuring members abide by their notification obligations is a cross-cutting issue for all facets of the agricultural negotiations. For example, members are obliged to notify their imposition of export restrictions, their provision of all forms of domestic support, any changes to market access measures, and changes to their SPS requirements. Unfortunately, there is a chronically low level of compliance with these obligations: 34% of domestic support notifications and 31% of export subsidy notifications remain outstanding. Only 24 of the 164 WTO members are fully compliant with domestic support notification obligations, while 28 members have not even notified once⁴⁶.

Enhancing transparency is often seen as politically unambitious yet achievable, and thus constitutes a 'low hanging fruit' in negotiations. However, enhancing transparency may affect real

change by creating a culture of trust which permeates and facilitates negotiations. This effect was noted by the former chair of the agricultural committee, Ambassador Falconer, who considered notification obligations as 'confidence building measures'⁴⁷. Additionally, enhancing scrutiny may affect real change when members are pressured to abide by commitments. For example, enhanced scrutiny of support measures submitted under the 'Green box' may prevent abuse of the exemption, and thus affect a real reduction of agricultural domestic support.

It is important to note that building a culture of trust requires that developing and LDC countries do not feel unfairly overburdened by enhanced transparency obligations. These members may struggle with notifications not for want of political will, but due to a lack of the requisite technical, financial, and institutional resources needed to timeously prepare and submit them. Therefore, any decision regarding enhanced notification obligations must be accompanied by offers of additional assistance and leeway for capacity-constrained developing countries, while LDCs may remain exempt.

Ongoing negotiations in the Committee on Agriculture have revolved around two transparency-enhancing areas. The first is regarding the changing of a member's applied tariffs for shipments en route, with members

⁴⁵ Cahill and Tangermann, Stefan, "New Pathways for Progress in Multilateral Trade Negotiations in Agriculture."

⁴⁶ WTO, "Compliance with Notification Obligations."

⁴⁷ Glauber, "Negotiating Agricultural Trade in a New Policy Environment."

discussing options to provide advance notice and allow the pre-payment of border charges. The second pertains to the notification of COVID-19 related export restrictions, particularly the use of a ‘best endeavour’ clause to provide other members advance warning of restrictions⁴⁸. This could be of particular importance to the food security of countries in this note, as it would allow them to pre-emptively locate alternative sources of imports and thus minimize disruptions to food supply.

Delegates may also consider identifying lessons learnt from the Specific Trade Concern (STC) mechanism adopted in the SPS and TBT committees. While members in the Committee on Agriculture can file counter notifications under Article 18 of the AoA, implementing a formal mechanism akin to the STC would strengthen the oversight function of the committee⁴⁹. This may enhance the review process which is currently of limited efficacy given that 104 questions raised in the committee remain unanswered, with some stretching back to 2013⁵⁰.

Recommendations

1. Negotiate the inclusion of enhanced transparency obligations for changes to members’ applied tariffs for shipments en route
 - Delegates could build on JOB/AG/212⁵¹ which is currently being used as the basis for negotiations
2. Work towards the adoption of a ‘best endeavour’ clause in the ministerial declaration to provide advance warning of incoming quantitative export restrictions.
3. Identify best practices of the STC mechanism used in the SPS and TBT committees and explore ways in which this may be implemented in the committee on agriculture.

⁴⁸ WTO, “Chair Highlights Key Challenges as Agriculture Talks Enter Critical Phase.”

⁴⁹ Cahill and Tangermann, Stefan, “New Pathways for Progress in Multilateral Trade Negotiations in Agriculture.”

⁵⁰ WTO, “List of Outstanding Responses to Questions Raised under the Review Process of the Committee on Agriculture Meetings During 2013-2020.”

⁵¹ See:
<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/Jobs/AG/212.pdf&Open=True>

Annex I: Classification of Subsidies under the AoA

Table 1: Classification of Subsidies under the Uruguay Round Agreement on Agriculture (AoA)				
Article 1,3, 6 and 7, Annex 1-4 of the AoA				
1. Subsidies exempted without limits for specific national and development goals*				
Article 6 of the AoA	Box	Subsidy Type/Effect	General Discipline	Subsidy type-examples
6.2	Development Box Exemption	subsidies that have production and trade distorting effects but allowed with the goal of stimulating agricultural and rural development for poor farmers in most** developing countries	Investment subsidies must be generally available to agriculture ; input subsidies generally available to low income resource poor farmers, and support for diversification from growing illicit narcotic crops.	Fertilizer subsidies; Credit and water subsidies.
6.5	Blue Box Exemption	Less production distorting given that they are administered under production limiting programs, are direct payments to producers	Direct payments based on fixed area and yields on 85% or less of production; livestock payments on fixed number of head	Compensatory payments to farmers when market price levels fall below an average considered needed to protect their incomes - based on production-limiting conditions in terms of a target level of production
Annex 2	Green Box Exemption	At most minimally production and trade distorting - delinked from prices and production	Must be public funded government programs and not have the effect of providing price support to farmers. Three kinds of policies distinguished: (i) expenditures on general services;(ii) expenditures on public stockholding for food security purposes; and (iii) direct payments to producers.	research, extension, roads, food aid, public stockholding for food security, direct payments, income support,
2. Subsidies with limits set by the AOA				
Article 6 of the AoA	Box	Subsidy Type/Effect	General Discipline	Subsidy type
6.3	Scheduled Bound Total AMS(AMS)***	Production and trade distorting	Limited Final Bound Total Value Commitment specified in Members Schedule (32 countries)	Market price support, interest rate subsidies, input subsidies, crop/production insurance subsidies
6.4	De Minimis****	Production and trade distorting	Limited Product specific (5%) and Non-product specific domestic support (5%) for developed countries and 10% respectively for developing countries	Producer price support, interest rate subsidies, input subsidies, crop/production insurance subsidies Maintained below 10 % by developed countries and 20% by developing countries.
3. Article 1 - Definition of Terms				
AMS	refers to support provided for an agricultural product, to the producers of the basic agricultural product			
EMS	equivalent measure of product specific AMS for which the AMS methodology is impracticable			
* There is much disagreement of the extent to which there is any difference in production and trade distorting impacts between subsidies that are treated under the AoA in different categories, including those as "without" versus "with" limits.				
**In keeping with their Protocol of accession China and Kazakhstan must include this type of support in the calculation of their AMS support.				
***This flexibility that 32 countries that scheduled AMS have is seen as an area of imbalance that is a priority for reform. in the WTO agriculture negotiations.				
**** The limits for De Minimis are set by the percentages of product and total value of production allowed for subsidies. Three percentages apply - 5% for developed countries, 10% for developing countries (Article 6.4 of the AoA) and 8.5% for China and Kazakhstan (set during accession agreements). There was no commitment in the AoA to reduce these percentages.				

Source: Deep Ford, "Domestic Support in the WTO Agriculture Negotiations: Outcomes for MC12."

Annex II: WTO Members Who Have Notified Public Stockholding Programmes

Developed	Developing	Least Developed
Croatia*	Albania	Nepal
Estonia*	Armenia	Zambia
European Union	Botswana	
Hungary*	Brazil	
Iceland	China	
Japan	Costa Rica	
Norway	Cyprus	
Slovenia*	India	
Switzerland	Indonesia	
	Israel	
	Kenya	
	Korea, Republic of	
	Kyrgyz Republic	
	Moldova, Republic of	
	Namibia	
	North Macedonia	
	Pakistan	
	Philippines	
	Romania	
	Russian Federation	
	Saudi Arabia, Kingdom of	
	South Africa	
	Sri Lanka	
	Ukraine	
	Vietnam	

*These members have since acceded to the EU.

Source: Glauber and Sinha, "Procuring Food Stocks Under World Trade Organization Farm Subsidy Rules."



CUTS International, Geneva

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