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TRADE AND AGRICULTURE: A SNAPSHOT OF THE WTO RULES

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TRADE AND AGRICULTURE: A SNAPSHOT OF THE WTO RULES¹

Sachin Kumar Sharma², Teesta Lahiri and Talha Akbar Kamal

ABSTRACT

The WTO Agreement on Agriculture (AoA) serves as the pivotal multilateral framework setting out the rules and principles governing agricultural trade. It contains detailed rules regarding domestic support, market access, and export subsidies in agriculture, among others. Currently, the WTO members are actively negotiating improved disciplines on agricultural trade to ensure the AoA rules are effective in addressing contemporary challenges. However, concerns persist regarding perceived asymmetries and imbalances in the AoA, while ongoing agricultural negotiations remain fraught with divergences. This chapter explains the framework of the AoA and highlights the main issues raised by members regarding the rules on domestic support, market access and export competition.

Keywords: Agreement on Agriculture, Domestic Support, Market Access, Export Subsidies, WTO Negotiations.

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LIST OF ABBREVIATIONS

ABBREVIATION	DEFINITION
AMS	Aggregate Measurement of Support
AoA	Agreement on Agriculture
AAP	Applied Administered Price
CoA	Committee on Agriculture
CoASS	Committee on Agriculture-Special Sessions
EC	European Communities
EU	European Union
ERP	External Reference Price
FBTAMS	Final Bound Total Aggregate Measurement of Support
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
LDC	Least Developed Country
LIRP	Low-income and Resource-poor
MPS	Market Price support
NFIDC	Net Food-Importing Developing Country
NPS	Non-Product-specific Support
PSS	Product Specific Support
SSG	Special Agricultural Safeguards
S&DT	Special and Differential Treatment
SSM	Special Safeguard Mechanism
STE	State Trading Enterprise
TRQ	Tariff Rate Quota
TDDS	Trade-Distorting Domestic Support
USA	United States of America
VoP	Value of Production
WTO	World Trade Organization

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1. INTRODUCTION

Agricultural trade rules have generally been contentious in the multilateral arena, particularly given their significant policy implications across countries. For the majority of low and middle-income countries, the agricultural sector remains a vital component in Gross Domestic Product, employment, rural development, and food security, among others. Moreover, farmers in these countries face a plethora of challenges, ranging from small landholding size, climate change, subsistence agriculture, subsidised imports, and a general lack of infrastructural support, making them exceptionally vulnerable to geopolitical and climatic shocks (Wegren, 2023; Smith, 2012). Additionally, with global hunger on the rise, ensuring food security remains a critical priority for many countries (WTO, 2018a). In this regard, legally binding multilateral rules under the WTO Agreement on Agriculture (AoA) play a significant role in overseeing agricultural trade issues and non-trade concerns such as food security.

Before the Uruguay Round, agricultural trade largely remained excluded from the ambit of trade rules under the General Agreement on Tariffs and Trade (GATT) 1947 (Anderson, 2016). Specifically, many countries had sought waivers and special clauses when participating in the GATT system, to safeguard their agricultural policies from any legal challenges (Hathaway and Ingko, 1996). Consequently, the absence of effective rules allowed members to freely subsidize their farm sector, and employ numerous non-tariff barriers. Countries such as Japan, the European Communities (EC), the USA, and Canada provided massive subsidies which often supplemented more than 40 percent of their farm income (UNCTAD, 2011). The excessive subsidization of agricultural production and exports, coupled with the unbridled use of protectionist measures created volatility in agricultural markets, favouring exports of major subsidisers, and impeding exports of others (Anderson et al., 2006; Clapp, 2006). These trade distortions and protectionism prompted the realization of the necessity for concrete disciplines in agricultural trade (Swinnen et al., 2012).

The mandate of the Uruguay Round in 1986, laid the foundation for establishing new rules for agricultural trade. Resultantly, the AoA emerged after eight years of arduous negotiations, intending to create a 'fair and market-oriented agricultural trading system' and achieve

‘substantial progressive reductions in agricultural support and protection’ to ensure ‘correcting and preventing restrictions and distortions in world agricultural markets’.³

To fulfil these preambular objectives, the AoA encompasses rules across three main pillars of agricultural trade: (i) domestic support, (ii) market access, and (iii) export subsidies (Table 1). These rules serve three primary objectives. First, rules on domestic support seek to cap specific trade-distorting forms of domestic support under stringent financial limits while establishing clear rules to identify exempt support. Second, market access rules aim to replace non-tariff barriers in agriculture with tariffs, and progressively reduce them over time. Finally, the AoA caps the use of export subsidies and prohibits their application to previously unsubsidized products. Members’ commitments under the AoA including tariffs on agricultural commodities, flexibilities regarding domestic support and export subsidies, and entitlements to special provisions are delineated in their respective Schedules of Commitments.⁴

Table 1: Summary of Provisions under the AoA

<i>Preamble</i>	Sets out the objective of “ <i>Establishing a fair and market-oriented agricultural trading system</i> ”
<i>Domestic Support</i>	Article 6&7: Commitments and disciplines on domestic support Annex 2: Green box measures Annexes 3 & 4: Calculation of Amber box support.
<i>Market Access</i>	Article 4: Elimination of non-tariff barriers and conversion into tariffs Article 5: Special Agricultural Safeguards (SSGs)
<i>Export Competition</i>	Articles 8 & 9: Commitments and disciplines on export subsidies Article 10: Anti-circumvention measures
<i>Export Restrictions</i>	Article 12: Disciplines regarding export restrictions on foodstuffs
<i>S&DT</i>	Article 15: S&DT in all commitments, implementation and negotiations. Article 16: Related to Marrakesh LDC and NFIDC Decision.
<i>Committee on Agriculture and Review of Implementation</i>	Article 17: Establishes the CoA Article 18: Sets out the review of implementation of commitments.
<i>Continuing Reform Process</i>	Article 20: Mandates negotiations as part of the reform process.

Source: Authors’ Compilation based on the AoA.

Additionally, the AoA also incorporates disciplines concerning the imposition of export restrictions on foodstuffs, a mandate for Special and Differential Treatment (S&DT) and provisions to implement the Marrakesh Decision on Measures Concerning the Possible

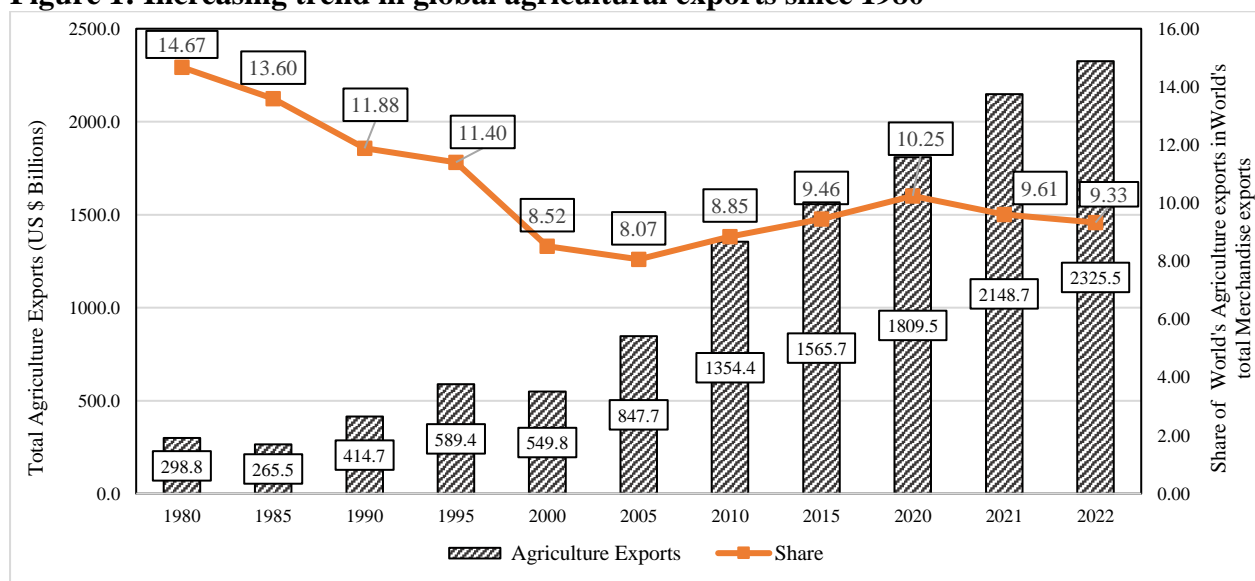
³ Preamble, WTO Agreement on Agriculture (hereinafter AoA).

⁴Members’ Schedules of Commitments along with the AoA determine their flexibilities and obligations related to agriculture.

Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries (hereinafter “Marrakesh LDC and NFIDC Decision”). Presently, the AoA covers trade in all agricultural products enumerated in Annex 1 of the agreement and explicitly excludes fisheries and forestry products.

Undoubtedly, the AoA represents a cornerstone in establishing a rule-based regime for agricultural trade and played an important role in significantly increasing global agricultural exports (Figure 1). Notably, the share of agriculture in global merchandise export has declined from 14.67 percent in 1980 to 9.33 percent in 2022.

Figure 1: Increasing trend in global agricultural exports since 1980



Source: Authors’ compilation based on WTO Stats.

However, the overall objectives of the AoA are yet to be fully realized. Scholars highlight that the AoA disciplines while appearing even-handed, are asymmetric and have been insufficient in addressing the emerging challenges (Polaski, 2022; Sharma et al., 2021). The drafters of the AoA recognized, that these rules may fall short of the ulterior aims embodied in the preamble, especially with the evolving nature of agricultural markets. Thus, the agreement contains a special provision under Article 20, which mandates continuing the reform process of progressively reducing agricultural support and protection.

The agreement also establishes a Committee on Agriculture (CoA) tasked with reviewing and monitoring members’ agricultural policies and compliance with multilateral regulations. Further, to carry forward the negotiations under Article 20, members deliberate upon and negotiate future rules under the Committee on Agriculture-Special Sessions (CoASS).

Initially, negotiations on agricultural reforms began with the Doha Development Agenda in 2000, intending to reduce distortions in agricultural trade and ensuring developmental concerns were addressed through ‘fairer’ trade rules (Watkins, 2003). Currently, WTO members are deeply engaged in negotiating improved disciplines under the AoA while negotiating on non-trade concerns such as food security. Fruitful negotiations during several WTO ministerial conferences have led to the modification and improvement of agricultural trade rules. However, in light of the reform process under Article 20, emerging challenges such as rising food insecurity and insufficient progress to achieve various SDGs, revisiting the existing rules is crucial for future negotiations.

In this context, this study comprises five sub-sections. Section 2 delves into disciplines on domestic support, Section 3 addresses rules on market access, and Section 4 discusses export subsidies. The final section summarizes the chapter.

2. DOMESTIC SUPPORT

Under the AoA, disciplines on domestic support remain the most controversial. Before the Uruguay Round, unregulated subsidization of agriculture by a handful of members was cited as the primary cause of the agriculture market crises in the late 1970s. Thus, by the 1980s the need for specific disciplines on agricultural domestic support had become evident (Tangermann et al, 1997; Tangermann et al., 1987).

Domestic support encompasses all measures directly or indirectly subsidizing agriculture, excluding export contingent subsidies (Brink, 2014). These measures vary in their impact on distorting competition, affecting production and prices. Consequently, the AoA categorizes domestic support measures into the Amber, Green, Blue, and Development boxes, based on their effects on trade, production, and prices (Benitah, 2019). Programs falling within the Green, Blue, and Development boxes are not subject to financial limitations. Conversely, support measures under the Amber box are subject to strict financial constraints (Table 2).

Table 2: Classification of Domestic Support under the AoA ‘boxes’

Category	Financial Limit	Coverage
Green box (Annex 2)	no limit	General services; public stockholding for food security; domestic food aid; direct payments to producers
Development box (Article 6.2)	no limit for developing countries	Agricultural investment subsidies; Input subsidies to low-income or resource-poor farmers; and

		Subsidies to diversify from illicit crops.
Blue box (Article 6.5)	no limit	Direct payments under production-limiting Programmes
Amber box (Article 6.3 and 6.4)	strict financial limit	Market price support, price deficiency payments, other budgetary support, non-product specific support, and equivalent measurement of support.

Source: Authors' Compilation based on the AoA.

Members have been using the various boxes to support their agricultural sector as per their socio-economic needs as outlined in Table 3.

Table 3: Domestic Support provided by select Members as per their notifications

Members	Latest Notification	Final Bound AMS	Actual Support Provided					Total Support
	Year		Current AMS	Amber Box (including <i>de minimis</i>)	Green Box	Blue Box	Development Box	
	Million US\$							
Developed members								
European Union	2020-21	75527	8443	11116	77205	5244	0	93565
Japan	2021-22	36200	1897	5095	18509	0	0	23605
USA	2021-22	19103	3842	23640	216215	0	0	239856
Developing Members								
China	2020	0	0.00	9094	18210	13018	0	40322
India	2021-22	0	7549	14883	40763	0	32079	87725
Indonesia	2022	0	0.00	671	3363	0	2974	7008
Pakistan	2015-16	0	0.00	959	223	0	0	1182
Thailand	2016	539	130	130	2425	0	1833	4389
South Korea	2020	1262	2	757	6787	0	0	7544

Note: Exchange rate extracted from IMF database for Domestic Support calculation.

Source: Domestic Support Notification of WTO Members.

2.1 UNDERSTANDING THE BOXES

The Green box comprises measures which (i) have negligible or minimal trade and production distorting effects, (ii) are administered through publicly-funded government programs, and (iii) do not have the effect of providing price support to the producers, provided the measures satisfy other policy-specific criteria under Annex 2, AoA. It may be further divided into measures on general services, public stockholding for food security purposes and domestic food aid programs, decoupled income support, and other direct payments as shown in Table 4. Direct payments under the Green box shall not be linked to current production, and therefore are considered the least trade-distorting.

Table 4: Classification of Green box Measures under Annex 2, AoA

Paragraph	Broad category	Specific Measures
Para 2	General Services	Research and training Pest and disease control systems Extension and advisory services Inspection services Marketing and promotion services General Infrastructure
Para 3 and 4	Public Stockholding and Domestic Food Aid	Expenditure on accumulation, storage and distribution of foodgrains.
Para 5-13	Direct Payments	Decoupled income support (Para 6) Income-insurance programs (Para 7) Relief from natural disasters (Para 8) Producer and resource retirement programs (Para 9 and 10) Investment aids (Para 11) Compliance costs for environmental programs (Para 12) Regional assistance programs (Para 13).

Source: Authors' Compilation based on Annex 2, AoA.

Certain payments containing specific production-limiting conditions are categorized under the Blue box based on any of the following sub-conditions: (i) fixed area and yields; (ii) 85 percent or less of the base level of production; or (iii) a fixed number of livestock heads. Over the last 25 years, only a handful of WTO members, mainly the European Union (EU), Norway, Japan and Iceland, have used this box to support their producers (OECD, 2015). In 2016, China became the first developing member to use Article 6.5 to support corn producers (WTO, 2016), and subsequently cotton producers (WTO, 2019a).

Under the Development box, developing members can provide (a) investment subsidies generally available to agriculture; (b) agricultural input subsidies generally available to low-income or resource-poor producers; and (c) subsidies given to producers to encourage diversification from producing illicit narcotics. China and Kazakhstan are not entitled to the use of the development box. Notably, many developing members generally utilize this box to provide input subsidies like irrigation, fertilizer, and electricity subsidies to its low-income or resource-poor (LIRP) farmers. Also, since the AoA does not provide any specificities to define LIRP farmers, developing members enjoy the flexibility in setting their criteria for the same. For instance, India has set a landholding-based threshold, classifying all farmers holding less than 10 hectares of land as LIRP farmers (Govt. of India, 2019). Consequently, more than 99.43 percent of Indian farmers are eligible to receive input subsidies under Article 6.2.

All domestic support measures that are not covered by the aforementioned uncapped boxes are classified as Aggregate Measurement of Support (AMS) or Amber box and are subject to financial capping. Product-specific support (PSS) and non-product-specific support (NPS) are the main components of the Amber box. PSS refers to the measures that are targeted towards specific products such as rice, wheat, milk etc. in the form of price support, deficiency payments, and budgetary support. Any general trade-distorting support such as input subsidies falls under NPS as these are not targeted to producers of a specific product. Although the policy space under the Amber box is capped, the AoA allows WTO members to provide Amber box support up to a certain limit called the '*de minimis limit*' exempt from the AMS calculation. *De minimis* is the minimum level of policy space available to WTO members to provide Amber box support. The product-specific *de minimis* limit is based on the value of production (VoP) of a specific product while for non-product specific *de minimis* limit is based on the total value of agricultural production in a member country. *De minimis* support for developed members is capped at five percent while the limit is ten percent for most developing members. Only Kazakhstan and China have *de minimis* limits of 8.5 percent.

To illustrate the calculation of current AMS, assume that a developing country provides support of US\$400 million to its wheat producers under the Amber box, amounting to eight percent of the VoP of Wheat. Since the support provided is within the *de minimis* limit, such support would be entirely exempt from the calculation of AMS. However, if the said country is providing US\$700 million to rice, amounting to 16 percent of the VoP of rice, the entire support will be considered in calculating AMS. In this given scenario, if the country is providing PSS within the *de minimis* limit to all other commodities, and its NPS is also less than ten percent of the total agricultural VoP, then the said member's current total AMS for the year would amount to US\$700.

2.2 ASYMMETRIES IN THE AMBER BOX

At this juncture, a pertinent query may arise concerning the flexibility of members to provide Amber box support beyond their respective *de minimis* limits.

Under the Uruguay Round modalities, members were required to compute the average AMS support during the base period (1986-88), also called Base total AMS. In case, a member had been providing average Amber box support beyond their respective *de minimis* limits, then the amount was considered in the base total AMS calculation. The base total AMS was required to be reduced by Developed and Developing country members by 20 percent and 13.3 percent

respectively to arrive at their respective Final Bound Total AMS limits (FBTAMS). For acceding members, the historical base period could be different. Notably, most developed and a handful of developing countries enjoy the flexibility under the FBTAMS limit to provide support beyond the *de minimis* limit based on their historical level of trade-distorting support (WTO, 1993). Since most developing members were not providing any Amber box support beyond the *de minimis* limit in the base period (1986-88), these members are not entitled to the FBTAMS limit and therefore, they are prohibited from providing support exceeding their *de minimis* limit under Article 7.2(b). Notably, developing members hold only a five percent share in the global FBTAMS entitlements (Sharma et al, 2021).

The FBTAMS entitlement provides two major advantages. First, the countries entitled to FBTAMS are not constrained by the applicable *de minimis* limit in providing support to specific products. In contrast, the maximum amount of subsidy that a developing country with no AMS entitlement can provide to each product cannot exceed the *de minimis* of ten percent of the value of production of the concerned product. Secondly, the entire financial amount under the FBTAMS can be concentrated as product-specific support on a single commodity or a select group of products. The flexibility accorded by the FBTAMS limit becomes clear when one compares a country like Indonesia which can only provide product-specific support to rice or wheat up to 10 percent of the VoP of rice, against the USA, which may provide product-specific support to rice up to its entire FBTAMS limit of US\$19.1 billion. This shows that countries with FBTAMS entitlement have complete freedom to choose particular products in which to concentrate their support (Stoler, 2010).

The trade-distorting effect of FBTAMS emerges clearly when the high levels of product-specific support provided by some members such as the USA and EU are considered. For example, the USA has provided support for more than 50 percent of the VoP for rice, cotton, sugar, and dry peas. Similarly, the EU has used this flexibility to subsidize butter, milk, apple, rice and sugar up to more than 65 percent of the respective VoP (WTO, 2017; Sharma et. al, 2021). Thus, many developing members often raise concerns regarding the FBTAMS entitlements benefitting those players that have historically distorted markets at the cost of the other members of the WTO (WTO, 2017; WTO, 2018b; WTO, 2023a).

2.3 ISSUES RELATED TO MARKET PRICE SUPPORT

Another issue that has been highlighted by several members in the domestic support negotiations pertains to the market price support methodology under the Amber box. Generally, measures under the product-specific Amber box include (i) market price support (MPS) where the government directly buys agricultural commodities from producers at administered prices, (ii) Non-exempt direct payments based on price gaps, and (iii) other non-exempt measures. The methodology to calculate these components of the Amber box is provided in Annex 3 and 4 of the AoA.

Generally, many developing members rely on providing market price support to farmers to shield them from price fluctuations and implement public stockholding programmes for food security purposes. These price support programs often prove critical both for food security and livelihood security in these developing countries. Most developing country members find it constraining to implement price-support measures due to the MPS methodology alongside the limited *de minimis* policy space.

The AoA prescribes under Annex 3 para 8, that MPS is to be calculated by multiplying the difference between the Fixed External Reference Price (ERP) and the announced price, called the applied administered price (AAP) with the production eligible to receive the AAP.

$$\text{MPS} = (\text{AAP} - \text{FERP}) * \text{eligible production}$$

The fixed ERP is based on the average import or export price of a product during the base period of 1986-88 depending on whether a country was a net exporter or a net importer of that product. Thus, essentially the AoA mandated the comparison of the current administered price with a fixed ERP that existed more than 35 years ago to calculate the trade-distorting support being provided to a product (Hopewell & Margulis, 2023). Most developing members have witnessed widespread inflation, and often consequent currency devaluations that have increased the gap between the fixed ERP and the AAP (Sharma & Shajahan, 2024). Using decades-old FERP to compare against current prices results in situations where despite farmers being underpaid in terms of real international prices, are depicted as receivers of huge subsidies (Brink & Orden, 2023; WTO, 2023b).⁵ However, if recent external reference prices or

⁵ Also, Counter Notifications to India's invocation of the Bali Peace Clause have portrayed PSS for Rice in India to be above 93.9 percent under the MPS methodology, while India has only been providing support up to 15.21 percent of the VoP in 2021-22. See WTO, 2023b.

inflation-adjusted fixed ERPs are considered, then market price support would be well below the *de minimis* limit for many developing countries (Sharma & Shajahan, 2024).

Notably, as per Article 18.4 of the AoA, “Members shall give due consideration to the influence of excessive rates of inflation on the ability of any member to abide by its domestic support commitments,” in the course of the review process. This helps build a strong case for consideration of inflation to address the constraints imposed by the outdated MPS methodology. In recent years, some member countries, for example, Jordan and Turkey have considered inflation for calculating the current AMS. However, many members have alleged, that consideration of inflation under Article 18.4 is not a unilateral right and is subject to review under the CoA.

Additionally, there is also ambiguity regarding the definition of the ‘eligible production’ component. In certain cases, the WTO jurisprudence has held ‘eligible’ production as the quantity which is entitled to receive the support (WTO, 2004; WTO, 2019b). As a result, in the absence of pre-determined procurement targets, the entire value of production of a commodity may be considered ‘eligible’ to receive price support and be considered in the calculation. However, many developing countries such as India and Pakistan object to this interpretation and only notify the actual procured quantity at the AAP as eligible production.

Overall, many countries have realised that reforming the current MPS calculation methodology and replacing the outdated FERPs with dynamic ERPs based on recent reference prices or consideration of inflation is vital to computing a realistic level of agricultural support.

2.4 NEGOTIATIONS AND NARRATIVES TO REDUCE TRADE-DISTORTING SUBSIDIES

While members unanimously agree on a need for domestic support reform, the membership is divided on the coverage and approaches of such reforms. At present, broadly two approaches that have been intensely discussed at the WTO are the sequential and proportionate reductions approach.

The first approach, advocated by members such as India, China, and the African Group proposes the elimination of the FBTAMS entitlements as a pre-requisite to any further domestic support reforms. Further, it also states that the development box, being an integral part of the treaty-embedded special and differential treatment should remain exempted from any reduction commitments (WTO, 2017; WTO, 2018b, WTO, 2023a).

On the other hand, many members of the Cairns Group, are proposing the ‘Proportionate Reductions’ methodology to halve the global Total Trade-Distorting Domestic Support (TDDS) by 2034. To achieve this, members would make reductions proportionate to the size of a member’s current entitlements (WTO, 2023b). The member-specific reduced TDDS limit would cap the total support under the Amber (including *de minimis* limits), development and blue boxes (WTO, 2021a; WTO, 2021b). As many developing countries have strong reservations about capping the Development box, among others, this approach is not acceptable to many members. Owing to prevailing divergences, members have failed to agree on new disciplines on domestic support.

3. MARKET ACCESS

Given that the main goal of multilateral trade rules is to make trade more predictable and liberal, the market access rules under the AoA form the second most important pillar of the AoA. Before the AoA, a considerable portion of trade in agriculture escaped the disciplines of multilateral trade rules, and consequently, market access for agriculture operated in an opaque and unregulated manner. Members rampantly used several forms of quantitative restrictions and other grey area measures to create entry barriers to their markets, and tariffs on agricultural commodities were mostly unbound, allowing members to impose very high tariffs on any agricultural imports (Yeats & Amzadi, 1999). Thus, the need for disciplines to regulate the use of non-tariff barriers, bind agricultural tariffs and eventually reduce them over time forged the main demands for market access rules.

Discussions on market access can generally be classified into four areas, (a) conversion of Non-tariff barriers (NTBs) to tariffs, (b) tariff rate quotas, (c) discussions on other aspects of market access opportunities and, (d) Special Agricultural Safeguards (SSGs).

3.1 CONVERTING NON-TARIFF BARRIERS TO TARIFFS

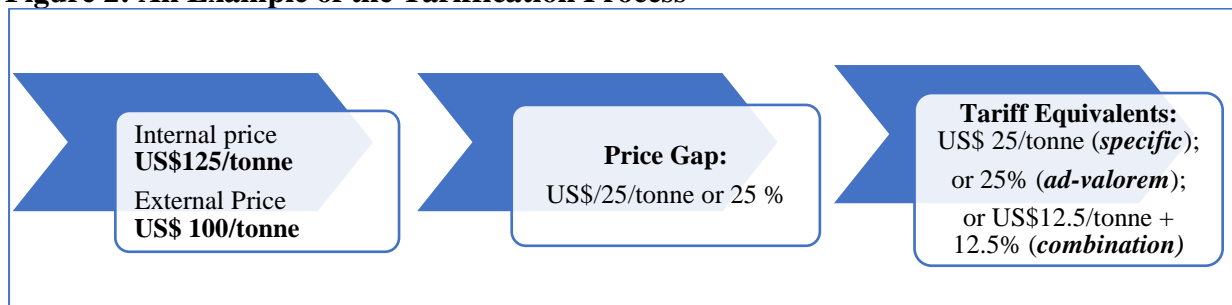
Since it is widely accepted that ordinary customs duties are more transparent and quantifiable than non-tariff barriers and that tariffs are easier to reduce than non-tariff barriers, the AoA mandates the conversion of all members’ non-tariff barriers on agricultural products such as quantitative restrictions, discretionary import licensing, variable import levies and voluntary export restrictions to ordinary customs duties under Article 4. Therefore, this provision has

been hailed as a cornerstone achievement of the AoA, and is recognized as “the legal vehicle for requiring the conversion into ordinary customs duties of certain market access barriers affecting imports of agricultural products.” (WTO, 2007)

To convert their existing non-tariff barriers into ordinary tariffs, members were expected to use the method of ‘tariffication’. Customs duties adopted through the tariffication process were to be treated as bound tariffs. Members could convert their non-tariff barriers into tariffs that would provide the agricultural products an equivalent level of protection as accorded under the non-tariff barriers using a specific formula laid down in Annex 3 of the Uruguay Round Modalities (WTO, 1993).

Using this formula, tariff equivalents of non-tariff measures – whether as ad-valorem or specific duties, were to be calculated based on the actual difference between internal and external market prices. Para 2 of the Modalities states tariff equivalents are to be calculated ‘using the actual difference between internal and external prices in a transparent manner’ based on data from the base period of 1986-88. For example, assume that Country A has an internal price of US\$125 and an external price of US\$ 100 for wheat (Figure 2). The tariff equivalent created could either be in the form of a specific duty, an ad-valorem tariff, or a combination of the two.

Figure 2: An Example of the Tariffication Process



Source: Authors’ compilation

The resultant bound tariffs were to be reduced over the implementation period. Developed members were mandated to reduce tariffs by 36 percent from the bound rates within 6 years while developing members needed to take cuts of 24 percent over 10 years.

Alongside tariffication, an additional option of adopting ‘ceiling bindings’ was also available for developing members under which they would simply state the ‘bound tariffs’ on agricultural products without using the tariffication formula. Most developing members chose this option to bind their tariffs on agricultural commodities that had been previously unbound.

However, despite converting all non-tariff barriers to tariffs, agricultural commodities were still largely protected due to high bound tariffs resulting from the tariffication process. Some members had also been indulging in a practice of ‘dirty tariffication’ by using artificially high domestic prices and low world market prices to arrive at higher tariff equivalents (UNCTAD, 2003).

3.2 TARIFF RATE QUOTAS AND NEGOTIATIONS ON TARIFF REDUCTIONS

To ensure a certain level of market access opportunities could be maintained despite the high tariff bindings arising from the tariffication process, members decided to create a system of tariff rate quotas (TRQs) during the Uruguay Rounds. These quotas were supposed to help ensure existing market access opportunities were not denuded due to the tariffication process.

Importantly, TRQs are not ‘quotas’ in the sense of non-tariff barriers. TRQs only imply that up to a certain fixed ‘quota’ quantity, lower tariffs would be applicable, while all imports beyond the quota will face the applied tariffs. There are several methods to administer these quotas including first come first served basis, license on demand, auctioning, and based on historical importance (Skully, 2001).

Initially, only 36 WTO members had TRQ commitments in their schedules with a total of 1370 quotas with developed members accounting for at least 67 percent of the TRQs (Pearce & Sharma, 2000). However, certain members undertook TRQ commitments after the AoA came into force due to other circumstances that made them renegotiate tariffs under Art XXVIII of the GATT. For example, India had to renegotiate its tariff rates in 2001, as it had extremely low bound tariffs on certain products and continued to impose quantitative restrictions on these products on the grounds of adverse balance of payments situations. However, after losing a WTO dispute in 2001, India had to remove its quantitative restrictions on rice, maize, milk and cream powder, and certain oil seeds. Consequently, India renegotiated to raise its bound tariffs on the aforementioned products under Art XXVIII. Finally, while India succeeded in raising tariffs on 15 agricultural commodities, it also committed to TRQs on milk and cream powder, maize, rapeseed, colza or mustard oils, and sunflower seed and safflower oils. Currently, 41 members have TRQs across 1200 agricultural commodities (WTO, 2022a).

Notably, TRQs in many countries often remain chronically underfilled due to non-transparent methods of TRQ administration and market conditions. As a result, members agreed on a TRQ underfill mechanism to address the low TRQ fill rates at the Bali Ministerial Conference

(WTO, 2013a). Furthermore, through a General Council Decision in 2022, members further enhanced the disciplines on chronically underfilled TRQs (WTO, 2022b).

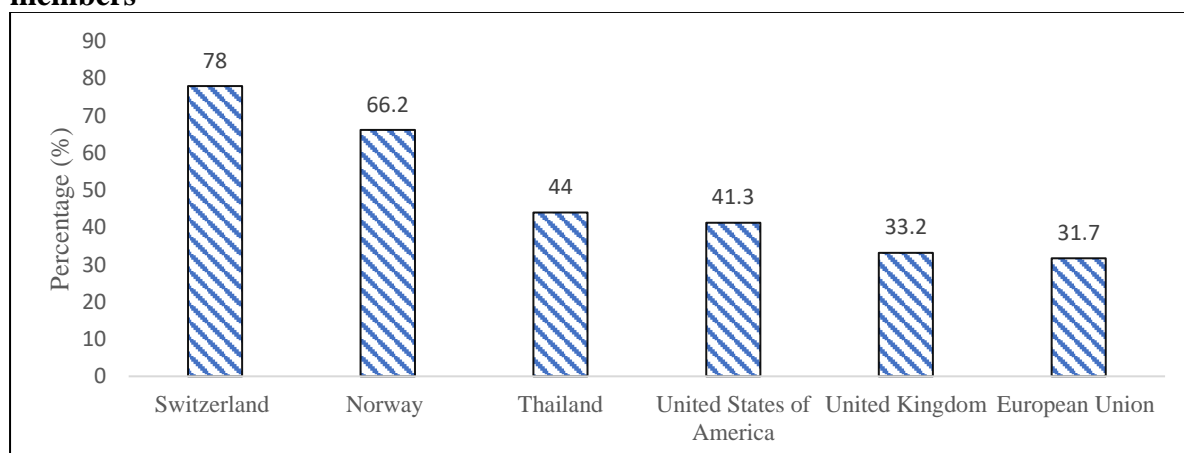
3.3 OUTSTANDING ISSUES IN MARKET ACCESS

Despite the provision of TRQs to help improve access to agricultural markets, the real success of Art 4 in enabling greater market access opportunities has been limited. Thus, members continue to negotiate improvements to market access rules, seeking additional disciplines to address outstanding issues. For the last three decades of the WTO, despite the liberalization of agricultural trade through the AoA, agriculture remains subject to tariff peaks and tariff escalation (UNCTAD, 2001).

Tariff peaks are generally observed when certain products are placed at tariffs much higher than the average tariff level of the member. Thus, certain sectors like Dairy, sugar, and cereals continued to have very high bound tariffs, showing a clear tendency of protectionism towards these sectors (UNCTAD, 2022; WTO, 2023c). Also, as a result of tariff peaks, market access beyond TRQs was largely rendered ineffective, as gaps between in-quota and out-quota rates often crossed 100 percent (WTO, 2022a).

Tariff escalation, on the other hand, is a different form of protectionism, where tariffs are increased with the degree of processing that a commodity undergoes. As a result, tariff escalations provide effective protection to domestic producers in value-added processes, and prevent the inclusion of developing members in the higher ends of agricultural supply chains (Cheng, 2007; Elaimin and Khaira, 2003).

Figure 3: Percentage of non-ad-valorem duties in total agricultural tariff lines for select members



Source: World Tariff Profiles 2023

Further certain countries also continue to implement a high percentage of non-ad-valorem tariffs (Figure 3). Given that non-ad-valorem tariffs are generally considered less transparent, some members have been demanding that members using non-ad-valorem tariffs convert these into ad-valorem duties.

Some members have been demanding disciplines on all residual forms of tariff protection including rules on converting non-ad valorem tariffs, disciplining tariff peaks and tariff escalation tendencies, while also seeking disciplines on increasing transparency in the TRQ fill-rates and TRQ administration processes (WTO, 2023c; WTO 2021c). However, traction on these outstanding issues in market access remains low.

3.4 SPECIAL AGRICULTURAL SAFEGUARDS

Under Article 5 of the AoA, only members who had adopted the tariffication process had gained flexibility in the form of special agricultural safeguards (“SSG”) to deal with the adverse impact of import surges or price dips. These SSGs can be applicable in two ways, (1) Volume-based SSGs which may be invoked in cases of specific levels of import surges based on market access opportunities; and (2) Price-based SSGs which may be invoked when prices of a product fall below 1986-88 import prices. Unlike ordinary safeguards under Art XIX of the GATT and the Agreement on Safeguards, or other trade remedy measures available, there is no requirement to prove injury to the domestic industry under the provision on SSGs. Presently, only 39 members have SSG entitlements across 6,156 agricultural tariff lines (Table 5).

Table 5: Members entitled to SSGs

Australia (10)	Indonesia (13)	Poland (144)
Barbados (37)	Israel (41)	Romania (175)
Botswana (161)	Japan (121)	Slovak Republic (114)
Bulgaria (21)	Korea (111)	South Africa (166)
Canada (150)	Malaysia (72)	Swaziland (166)
Colombia (56)	Mexico (293)	Switzerland-Liechtenstein (961)
Costa Rica (87)	Morocco (374)	Chinese Taipei (84)
Czech Republic (236)	Namibia (166)	Thailand (52)
Ecuador (7)	New Zealand (4)	Tunisia (32)
El Salvador (84)	Nicaragua (21)	United States (189)
EU (539)	Norway (581)	Uruguay (2)
Guatemala (107)	Panama (6)	Venezuela (76)
Hungary (117)	Philippines (118)	
Iceland (462)		

Source: WTO Secretariat background paper “Special Agricultural Safeguard” [G/AG/NG/S/9/Rev.1](#).

Since most developing members had not used the tariffication method, they do not enjoy a right to SSGs. Therefore, developing countries have been demanding a Special Safeguard Mechanism (SSM) along the lines of SSGs. Given the SSM's role in food security and development, it is presently being expeditiously negotiated in dedicated CoA-SS sessions after several ministerial mandates (WTO, 2005; WTO, 2015a; Das et al., 2020)

4. EXPORT SUBSIDIES

Agricultural export subsidies only had very limited disciplines under Art XVI of the GATT 1947. While export subsidies on manufactured products were prohibited, such subsidies were permissible for 'primary products', as long as such subsidies were not used by a party to gain 'more than an equitable share' in world exports of that product. Since such a provision did not per se amount to any prohibition, some countries rampantly used agricultural export subsidies, and many developing countries faced the threat of having their domestic markets captured by the subsidized exports from the developed countries (Paaz, 2016).

Exporters receiving such subsidies have the advantage of selling products below the cost of production and undercutting unsubsidized exports from other countries (Peters, 2006). Further, by allowing exporters to keep supplying even when world market prices for the product are falling, and shielding exporters from ordinary demand-supply fluctuations, it can exacerbate price swings in the world market (Messerlin & Hoekman, 2006). The need to discipline the use of these distortive subsidies led to strict disciplines on export subsidies under the AoA.

4.1 EXPORT SUBSIDIES UNDER THE AOA

The AoA provides a comprehensive list of measures considered to be export subsidies, and imposes reduction commitments on all identified forms of export subsidies, both in terms of the volume of subsidized exports and the budgetary expenditure on subsidizing exports. These reduction commitments have been undertaken on a product-specific basis by grouping agricultural products into 23 product groups such as wheat, sugar, coarse grains, oilseeds, etc. Some members also took commitments on a more disaggregated level.

Art 9.1 contains an exhaustive list of agricultural export subsidies subject to reduction commitments. The following subsidies are listed under the article:

- a) Direct subsidies including payments in kind contingent on export performance,

- b) Sales of non-commercial stocks of agricultural products for export at prices lower than comparable prices for such goods on the domestic market,
- c) Payment on the export of a product financed through government action, including producer-financed subsidies such as programmes where a levy on production is used to subsidize exports of a portion of quantity produced,
- d) Subsidies to reduce marketing costs including cost of handling, upgradation, and international freight,
- e) Subsidies on internal transport and freight applying to exports (for eg. to bring the commodity from the hinterland to the port,) and
- f) Subsidies on incorporated products (for eg. a subsidy on fruits to produce canned juice)

It is worth mentioning that only members who had been historically providing export subsidies in the base period of 1986 to 1990 were entitled to provide further subsidies under the AoA (Article 3.3 and Article 8), albeit subject to the limits set out in the members' schedules of commitments. 25 WTO members had scheduled export subsidy commitments on listed products. This meant that even though members could continue to provide export subsidies on scheduled products subject to reduction commitments, they would not be able to introduce new subsidies on products not listed, exceed scheduled limits, or transfer existing commitments to unscheduled products. For developing members, export subsidies for marketing and internal transport under Art 9.1 (d) and (e) were permitted as a special and differential treatment accorded by Article 9.4 of the AoA.

Rules on export subsidies under the AoA also contain an anti-circumvention provision under Art 10 which prevents members from using export subsidies not listed under Art 9.1. The rule specifically states that subsidies not listed in Article 9 or any other non-commercial transactions shall not be applied in a manner that results in or threatens to lead to circumvention of export subsidy commitments. Further, Article 10 also prescribes the need for additional disciplines on measures such as export credits, export credit guarantees, and export insurance programs to strengthen the anti-circumvention commitment. It also contains rules on providing international food aid, mandating that such aid should be provided to the extent possible in grant form, and should not be tied to commercial exports of the donor member.

4.2 NEGOTIATIONS ON ELIMINATING AGRICULTURAL EXPORT SUBSIDIES

One of the significant achievements in the agricultural negotiations in the last three decades has been disciplining export subsidies to agriculture.

To provide a brief chronology, members had agreed to eliminate export subsidies by 2013, in the 6th WTO Ministerial Conference held in Hong Kong in 2005 (WTO, 2005). However, the date of elimination was subject to the completion of negotiations on the modalities for the elimination of such subsidies. In the 9th WTO Ministerial Conference at Bali (2013), members recognized all export subsidies as ‘a highly trade distorting and protectionist form of support’, with members committing to ‘exercise utmost restraint concerning any recourse to all forms of export subsidies and all export measures with equivalent effect’. Further, the decision contained an Export Competition Questionnaire aimed at enhancing transparency across export measures including export credits, export credit guarantees, insurance and food aid (WTO, 2013b).

Members achieved a most significant breakthrough at the Nairobi Ministerial Conference (2015) in terms of the decision to eliminate all agricultural export subsidies and to set disciplines on other export measures such as export finance and international food aid. This decision stated developed member countries had to immediately eliminate export subsidies on all products (by 2016), except certain products like swine meat and dairy, on which an extended timeline stretching to 2020 was allowed for eliminating export subsidies. Developing member countries with export subsidies entitlement were mandated to eliminate their export subsidies by the end of 2018 (WTO, 2015b).

Further, the Decision allowed developing members to use the S&DT provisions under Article 9.4 as far as marketing cost subsidies and internal transport subsidies till the end of 2023, with an extension up to 2030 for the Least Developed Countries. The Nairobi Decision also laid down additional disciplines on export credits, export financing, State Trading Enterprises (STEs) and international food aid, stating specific conditions regarding the use of these measures. At present, all export subsidies thus stand eliminated as of December 2023 and only LDC members are allowed to provide marketing and internal transport subsidies up to 2030. Members are expected to change their agricultural schedules to reflect the elimination of all scheduled export subsidies (WTO, 2023d).

Post Nairobi, negotiations under the export competition pillar mainly focus on additional elements of transparency regarding STEs, food aid, export credits, and export financing that

are not circumvented. However, these negotiations are no longer very intense, particularly given that many critical issues in domestic support and market access pillars remain unresolved.

5. CONCLUSION

It is undeniable that the multilateral rules on trade and agriculture under the WTO AoA stand as a testament to the progress achieved in regulating agricultural trade on a global scale. The rules-based agricultural trading system under the AoA has not only led to substantial growth in agricultural trade but also implemented crucial disciplines on domestic support, export subsidies, and the use of non-tariff barriers.

The AoA has also played an important role in reducing trade frictions over the years. More than 80 trade disputes have been raised under the AoA, and the WTO dispute settlement system has been instrumental in enriching the AoA rules through its interpretations at the panel and appellate levels (Josling, 2009). Some significant cases which contributed to the rich jurisprudence on various topics under the AoA include *EC-Bananas* and *Chile-Price Band* regarding market access, *US-Upland Cotton* and *Korea-Beef* on domestic support, and cases like *EC- Sugar* on export subsidies. There have also been disputes involving cross-cutting issues such as the implementation of the SPS Agreement in coherence with the AoA such as *Japan Apples*, *EC-Hormones* and *EC-Biotech*. The effective resolution of these disputes ensured further predictability in the agricultural trade system, guaranteeing a members' non-compliance with the AoA would face legal consequences at the multilateral level. However, presently, many important disputes in agriculture such as *India- Sugar and Sugarcane* and *Indonesia-Chicken* lie undecided at the Appellate level, as the Appellate body has been rendered defunct due to the ongoing Dispute Settlement Crisis. Resultantly, the chance of non-compliance to multilateral rules and consequent trade frictions has increased, potentially jeopardizing the hard-earned predictability in agricultural trade.

In addition to the dispute settlement process, rules under the AoA have also been strengthened through extensive multilateral negotiations at the CoASS, under the agricultural trade reform mandate in Article 20 of the AoA. These negotiations have led to some milestone successes in rule-making. For example, the Bali Peace shielding developing countries' procurement under public-stockholding programmes from a legal challenge at the WTO has provided some much-needed policy-space to enable members to continue price-support-backed stockholding

programmes for food security. Similarly, the Nairobi Ministerial achieved the monumental success of eliminating export subsidies across the board in the interest of fairer trade, marking a watershed moment in the agricultural trade reform.

However, presently divergent positions among countries have hindered progress in the agricultural negotiations with no outcomes emerging in the past nine years. Many critical developmental issues remain an unfinished agenda in the negotiations, including a Permanent Solution on Public Stockholding for Food Security Purposes and SSM. Due to the stalled progress in the multilateral negotiations, there are attempts to include rules on safeguards, domestic support disciplines, and issues on sustainable food trade under free-trade agreements (FTAs). While FTAs have been vital in negotiating tariff reductions in agriculture, rules on domestic support or sustainable agriculture cannot be sufficiently addressed at the bilateral level. Effective rules to resolve the outstanding issues in agricultural trade can only evolve through active multilateral engagement.

To ensure multilateralism in agriculture trade remains relevant in addressing twenty-first-century challenges, constructive dialogue and cooperation to devise new rules that promote equitable, development-oriented agricultural trade is an imminent need. Thus, countries must unite at the WTO to develop fair and inclusive rules on agricultural trade, capable of addressing the present and future concerns of the international farming community and promoting the sustainable development goals 2030.

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