

Promoting Food Security through the Multilateral Trading System: Assessing the WTO's Efforts, Identifying its Gaps, and Exploring the Way Forward

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Abstract:

The Covid-19 pandemic and the conflict in Ukraine have unveiled the vulnerabilities of global food systems, resulting in food shortages, price spikes, and worsening food security. The World Trade Organization can play a key role in addressing these challenges through its developed body of rules. Its regulatory framework on agriculture, however, is affected by shortcomings and asymmetries that pose challenges to the long-term achievement of secure and sustainable food systems. Despite extensive negotiations among countries in the Committee on Agriculture ahead of the 12th Ministerial Conference, few concrete proposals were made to reform trade rules on agriculture. Additionally, the 12th Ministerial Conference itself failed to produce satisfactory results with respect to food security. The ongoing stalemate in agricultural negotiations since the outbreak of the Covid-19 pandemic indicates the need for a new, holistic approach to address food security at the World Trade Organization, particularly in preparation for the upcoming 13th Ministerial Conference in 2024. This approach should be informed by equity considerations and grounded in the notion of sustainable development and the human right to food. While a comprehensive reform of the Agreement on Agriculture informed by this approach is the ultimate goal, it is unlikely to occur in the short- to medium-term due to disagreement among countries on how to reform the three pillars of the Agreement. Therefore, an incremental approach could be adopted by prioritising issues for which short- to medium-term reforms are more likely to garner consensus, such as sustainable agricultural production, and by employing soft law instruments. The latter favour a flexible approach and promote cooperation and trust among countries.

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I. Introduction

Food insecurity is on the rise after decades of development gains.¹ The Covid-19 pandemic and the conflict in Ukraine demonstrated that action is urgently needed to create a world free of hunger by 2030.² The trade-restrictive measures adopted to limit the spread of Covid-19 have had a significant impact on food supply chains and access to food.³ Lockdowns and supply chain disruptions have resulted in food shortages and price spikes.⁴ This has highlighted the vulnerability of global food systems and the need to improve resilience and sustainability to ensure adequate food supplies during crises. The conflict in Ukraine has disrupted local agricultural production, with farmers facing difficulties accessing their land and markets. Infrastructure networks have also been damaged, hindering transportation and food storage. This has contributed to food shortages and price increases, especially for staple foods. Additionally, the conflict has contributed to global food price volatility, particularly for wheat and other grains, of which Ukraine is a major exporter. This has undermined food security globally, especially in developing countries, least-developed countries (LDCs), and net food-importing developing countries (NFIDCs).⁵

According to the Food and Agriculture Organization (FAO) and the World Food Program (WFP) data, 11.7 per cent of the world's population faced severe food insecurity in 2021, with LDCs and NFIDCs suffering the most. In 2022, these countries were confronted

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- ¹ FAO, IMF, WB, WFP and WTO, 'Joint Statement by the Heads of the Food and Agriculture Organization, International Monetary Fund, World Bank Group, World Food Programme, and World Trade Organization on the Global Food Security Crisis' (*The World Bank*, 8 February 2023) <<https://www.worldbank.org/en/news/statement/2023/02/08/joint-statement-on-the-global-food-and-nutrition-security-crisis>> accessed 22 December 2023; Food security is defined when all people, at all times, have physical and economic access to sufficient, safe, and nutritious food that meets their dietary needs and food preferences for an active and healthy life. Accordingly, there are four main dimensions of food security: physical availability of food, economic and physical access to food, food utilisation, and stability of the three previous dimensions over time. See FAO, 'An Introduction to the Basic Concepts of Food Security' (*Food and Agriculture Organization*, 2008) <<https://www.fao.org/3/a1936e/a1936e00.pdf>> accessed 22 December 2023.
- ² See SDGs targets 2.1 ('By 2030, end hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round') and 2.2 ('By 2030, end all forms of malnutrition, including achieving, by 2025, the internationally agreed targets on stunting and wasting in children under 5 years of age, and address the nutritional needs of adolescent girls, pregnant and lactating women and older persons'). See UNGA Res 70/1 (21 October 2015) UN Doc A/RES/70/1.
- ³ Ilaria Espa, 'Export Restrictions on Food Commodities during the COVID-19 Crisis: Implications for Food Security and the Role of the WTO' in Amrita Bahri, Weihuan Zhou, and Daria Boklan (eds), *Rethinking, Repackaging, and Rescuing World Trade Law in the Post-Pandemic Era* (Bloomsbury Publishing 2021) 43.
- ⁴ UN, 'Policy Brief: The Impact of COVID-19 on Food Security and Nutrition' (*United Nations*, 2020) 2-4 <<https://unsdg.un.org/sites/default/files/2020-06/SG-Policy-Brief-on-COVID-Impact-on-Food-Security.pdf>> accessed 22 December 2023; Anita Regmi, Nina Hart, and Randy Schnepf, 'Reforming the WTO Agreement on Agriculture' (*Congressional Research Service*, 2020) 13 <<https://crsreports.congress.gov/product/pdf/R/R46456>> accessed 22 December 2023; UNGA, 'State of Global Food Insecurity: Draft Resolution by Brazil, Egypt, Fiji, Kenya, Lebanon, Pakistan, Qatar, Senegal, South Africa and Tunisia' (9 May 2022) UN Doc A/76/L.55.
- ⁵ Caitlin Welsh, 'Russia, Ukraine, and Global Food Security: A One-Year Assessment' (*Center for Strategic and International Studies*, 2023) <<https://www.csis.org/analysis/russia-ukraine-and-global-food-security-one-year-assessment>> accessed 22 December 2023; WFP, 'War in Ukraine Drives Global Food Crisis: Hungry World at Critical Crossroads' (*World Food Programme*, 2022) <https://docs.wfp.org/api/documents/WFP-0000140700/download/?_ga=2.120252239.630776563.1695902477-1182851192.1695902477> accessed 22 December 2023; WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 15-16 March 2022' (12 April 2022) UN Doc G/AG/R/10 paras 1.6, 3.8, 3.10.

with a worsening situation, with record food import bills.⁶ In both 2022 and 2023, the WFP warned that the world is facing ‘the largest hunger and nutrition crisis in modern history’.⁷ To address this crisis, FAO recommended that countries pay particular attention to long-term food security, sustainability objectives, and the damaging effects of trade-restrictive measures.⁸

In this context, the multilateral trading system is key in promoting food security, thanks to its developed, technical, and enforceable rules. Due to its limited scope, this paper addresses exclusively how the World Trade Organization (WTO) Agreement on Agriculture (AoA)⁹ and other agricultural-related instruments at the WTO impact the advancement of food security.¹⁰

The paper proceeds as such. Part II analyses the WTO framework on agriculture ahead of Ministerial Conference (MC) 12 with a focus on the AoA and other WTO decisions relevant to the pursuit of food security. The framework covers numerous issues that are crucial for the achievement of food security, including import barriers, domestic support measures, export subsidies, safeguard mechanisms, public stockholding programs, investment subsidies, export restrictions, international food aid programs, and measures to protect LDCs and NFIDCs. The analysis shows that the WTO framework on agriculture is hampered by deficiencies that hinder the attainment of food security. These inadequacies arise from a variety of factors, such as Members circumventing rules and manipulating trade-distorting measures, certain rules lacking appropriate differentiation based on Members’ different levels of development, some rules being temporary or yet to be put into practice, and others lacking comprehensiveness or a well-defined scope of application.

Part III delves into the proposals advanced by Members ahead of 12th Ministerial Conference (MC12)—between 2020 and 2022—to amend the described WTO framework on agriculture with the aim of better protecting food security interests. The analysis reveals that Members had divergent views on most issues and lacked the ability to make concrete reform proposals, except for public stockholding and international food aid. Market access, safeguard mechanisms, export subsidies, and export restrictions were widely debated, although no concrete proposals for reform were made. Domestic support, due to its sensitive nature, received little attention. Notably, Members discussed other key issues for food security, including transparency, special and differential treatment (S&DT), and sustainability.

Part IV examines the outcomes achieved at MC12 and highlights the shortcomings of the Members in attaining any significant progress beyond the regulation of international food

⁶ WTO, ‘Members Maintain Focus on Food Security, Discuss Farm Policies, Transparency’ (*World Trade Organisation*, 28 March 2023) <https://www.wto.org/english/news_e/news23_e/agri_28mar23_e.htm> accessed 22 December 2023.

⁷ *ibid*; WTO Secretariat, ‘Summary Report of the Meeting of the Committee on Agriculture Held on 21-22 November 2022’ (17 January 2023) UN Doc G/AG/R/104 para 3.25. Women are disproportionately affected by hunger and food insecurity, in part as a result of gender inequality and discrimination. While women contribute more than 50% of the food produced worldwide, they also account for 70% of the world’s hungry; See UNGA, *State of Global Food Insecurity* (n 4).

⁸ WTO Secretariat, ‘Summary Report of the Meeting of the Committee on Agriculture Held on 27-28 June 2022’ (8 August 2022) UN Doc G/AR/R/102 para 4.13.

⁹ Agreement on Agriculture (concluded 15 April 1994) 1867 UNTS 470 (AoA).

¹⁰ Other agreements that are relevant for the achievement of food security but that fall outside the scope of the present paper include the General Agreement on Tariffs and Trade (concluded 15 April 1994) 1867 UNTS 187; the Agreement on Technical Barriers to Trade (concluded 15 April 1994) 1868 UNTS 120; the Agreement on the Application of Sanitary and Phytosanitary Measures (concluded 15 April 1994) 1867 UNTS 493 (SPS Agreement); the Agreement on Trade Facilitation (concluded 27 April 2014) 2317 UNTS 69.

assistance. Members only agreed to exempt foodstuffs purchased for humanitarian purposes by the WFP from the imposition of export prohibitions or restrictions. No meaningful advancements were made on most of the key issues mentioned above. This is the reason why MC12 had a modest impact on food security.

In light of Members' failures to make relevant progress over the past years, part V advocates for the need to craft a comprehensive legal framework grounded in sustainable development and the right to food that goes beyond market access, subsidy regulations, and export measures in addressing the multifaceted nature of food security. This framework would be grounded on the premise that treating food security as an exception to the WTO rules is undesirable. Accordingly, part V explores the theoretical foundation and the legal basis for implementing a holistic approach to food security in the WTO framework on agriculture and proposes recommendations for adopting this innovative approach in the AoA. It also sheds light on the possibility of moving toward this approach at the 13th Ministerial Conference (MC13).

Part VI concludes by showing that a shift toward the aforementioned approach would be possible at MC13. Progress will not happen all at once but will rather be incremental due to the consensus-based decision-making at the WTO. To streamline this process, Members could prioritise the issues that need to be discussed. This can be done by giving precedence to those issues that are more likely to gain consensus in the short to medium term, such as sustainable agriculture, which has witnessed a renewed push following MC12. Additionally, Members could explore the use of soft law instruments, such as guidelines on good practices and voluntary commitments, to expand the legal tools employed. These instruments would favour a flexible approach that promotes cooperation, trust, and confidence among Members.

II. The WTO framework on agriculture ahead of the 12th Ministerial Conference

During the Uruguay Round, Members negotiated the AoA to both liberalise agricultural trade and address food security concerns.¹¹ The AoA is based on three pillars—market access, domestic support, and export subsidies. Each of them provides S&DT to developing countries and LDCs.¹² The following sections critically analyse the key provisions of each pillar, as well as other matters relevant to food security covered by the AoA. Table 1 summarises the key findings.

Table 1

Issue	The WTO framework on agriculture ahead of MC12	Limits
<u>Market access</u>	<ul style="list-style-type: none"> • Import barriers are converted into tariffs and then reduced. • Commitments (reductions and time frame) are differentiated for developed 	<ul style="list-style-type: none"> • Non-product specific tariff reduction has resulted in 'tariff peaks'. • Many Members have maintained higher tariffs on processed

¹¹ WTO, 'Agriculture: Fairer Markets for Farmers' (*World Trade Organization*) <https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm3_e.htm> accessed 22 December 2023.

¹² AoA (n 9) art 15.

	<p>countries, developing countries, and LDCs.</p>	<p>products than on raw materials ('tariff escalation').</p> <ul style="list-style-type: none"> Members artificially inflated their tariffs during the base period or overestimated the tariff equivalent of their non-tariff barriers ('dirty tariffication').
<u>Domestic support</u>	<ul style="list-style-type: none"> Amber Box: programs that directly impact production and trade (to be reduced). Green Box: programs that have minimal or no effects on trade (exempt from limitations). Blue Box: Amber Box programs that have conditions to mitigate trade distortions (exempt from limitations). 	<ul style="list-style-type: none"> Trade-distorting measures have been manipulated to meet Green Box requirements. Blue Box programs have been used almost exclusively by developed countries.
<u>Export subsidies</u>	<ul style="list-style-type: none"> Capping of existing subsidy programs and commitment to decrease expenditure and product coverage. At the 10th Ministerial Conference (MC10), Members committed to eliminating their remaining scheduled export subsidy entitlements, with different time frames for developed countries, developing countries, LDCs, and NFIDCs. 	<ul style="list-style-type: none"> Export subsidies can be substituted with domestic ones by eliminating the export contingency (this issue has not been addressed). All countries, irrespective of their level of development and specific needs, are required to eliminate their export subsidies (no S&DT).
<u>Safeguards</u>	<ul style="list-style-type: none"> A safeguard against sudden import surges or decreases in import prices is provided through additional tariffs on the products impacted (AoA, Article 5). 	<ul style="list-style-type: none"> Use is restricted to products subject to the safeguard according to the country's tariff schedule. Use is restricted to products that have been 'tariffed'. Safeguards do not mitigate price increases.

<u>Public stockholding programs</u>	<ul style="list-style-type: none"> • May be classified as Green Box programs if they do not rely on supported or administered price systems. • At the 9th Ministerial Conference (MC9), Members temporarily committed not to challenge public stockholding programs in developing countries. 	<ul style="list-style-type: none"> • No permanent solution has been found. • Members hold divergent opinions regarding the role of public stockholding programs.
<u>Investment subsidies</u>	<ul style="list-style-type: none"> • Excluded from domestic support reduction commitments to promote agricultural and rural development subject to certain conditions (AoA, Article 6(2)). 	<ul style="list-style-type: none"> • Limited and unclear scope of application. • The investment subsidies exception does not constitute a comprehensive 'food security box'.
<u>Export restrictions or prohibitions</u>	<ul style="list-style-type: none"> • Allowed but subject to due consideration of the effects on importing Members' food security (AoA, Article 12). 	<ul style="list-style-type: none"> • Lack of transparency in the notification of export restrictions.
<u>International food aid</u>	<ul style="list-style-type: none"> • Must be needs-driven, provided in full grant form, not connected to the commercial export of other products, not linked to market development, and not re-exported (with exceptions). 	<ul style="list-style-type: none"> • Aid providers independently assess the needs of recipient countries. • An exception intended to grant Members 'maximum flexibility' in the provision of aid might ease practices that distort local markets. • Export restrictions on foodstuffs purchased for humanitarian purposes are not addressed.
<u>Measures to protect LDCs and NFIDCs</u>	<ul style="list-style-type: none"> • The Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net-Food Importing Developing Countries (NFIDC Decision) implemented measures to facilitate access to food for LDCs and NFIDCs. 	<ul style="list-style-type: none"> • The NFIDC Decision has not been operationalised yet.

A. Market access

The AoA sets up a mechanism where import barriers are converted into tariffs and then reduced.¹³ Developing countries were required to make smaller reductions and were given more time than developed countries (ten years versus six years), while LDCs were not obliged to reduce tariffs but had to establish tariff bindings for agricultural goods.¹⁴ Furthermore, for products with imports accounting for less than 5 per cent of domestic production, Members agreed to allow a minimum amount of imports under low or minimal tariffs through the implementation of tariff-rate quotas.¹⁵ Annex 5 to the AoA describes the special treatment provisions regarding market access. In essence, its Section A allows Members to keep barriers in place and abstain from tariff reduction commitments with regard to primary agricultural products and their worked products.¹⁶ The permission to apply special treatment for these products reflects their significance for food security.¹⁷ Additionally, Section B provides an exemption from the obligations in Article 4.2 of the AoA for agricultural products that are the main staple in the traditional diet of a developing Member.¹⁸

Loopholes in the AoA have enabled market access practices that do not serve the objective of furthering food security. First, tariff reduction is not product-specific, as it is based on the general tariff level. Accordingly, Members can maintain higher tariffs on certain products, such as sensitive crops, while making greater tariff cuts on less significant products.¹⁹ This has given rise to 'tariff peaks', whereby specific products face exceptionally high tariffs amongst a trend of otherwise low tariffs.²⁰ Tariff peaks curtail the ability of products from developing countries to compete with similar products in the importing country.²¹ Second, many Members have maintained higher tariffs on processed products than on raw materials ('tariff escalation').²² This hinders the ability of developing countries to transition from the production of primary agricultural products to higher value-added products.²³ Third, Members have engaged in 'dirty tariffication', ie, they have artificially inflated their tariffs during the

¹³ AoA (n 9) art 4; see also Melaku Geboye Desta, *The Law of International Trade in Agricultural Products: From GATT 1947 to the WTO Agreement on Agriculture* (Kluwer Law International 2002) 67-70.

¹⁴ AoA (n 9) arts 1(f), 15(2); see also WTO, 'Agriculture: Fairer Markets for Farmers' (n 11).

¹⁵ In a tariff-rate quota system, a specific amount of a good is subject to a low tariff. Once the predetermined amount has been imported, any further imports of that good will be subject to a higher tariff rate. Tariff-rate quotas are sometimes considered a deceptive market access instrument because they can create uncertainty and limit transparency in international trade. For example, tariff-rate quotas can be used to manipulate trade flows by creating uncertainty for foreign exporters, who may not know how much they will be able to export to a particular market at the lower tariff rate, or whether they will be subject to the higher tariff rate. Tariff-rate quotas can also be used to favour certain exporters over others by allocating the low-tariff quota among different countries.

¹⁶ AoA (n 9) annex 5.1.

¹⁷ *ibid* annex 5.1(d).

¹⁸ *ibid* annex 5.7.

¹⁹ Rhonda Ferguson, *The Right to Food and the World Trade Organization's Rules on Agriculture: Conflicting, Compatible, or Complementary?* (Brill 2017)166.

²⁰ WTO, 'Glossary' (*World Trade Organization*) <https://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm> accessed 22 December 2023; see also Geboye Desta (n 13) 62.

²¹ Ferguson (n 19) 166.

²² WTO, 'Glossary' (n 20).

²³ Olivier De Schutter, 'International Trade in Agriculture and the Right to Food' (2009) 46 *Dialogue on Globalization* 17.

base period or overestimated the tariff equivalent of their non-tariff barriers. As a result, Members made reduction commitments based on an inflated rate.²⁴ Developed countries have often been the protagonists of dirty tariffication.²⁵ Lastly, tropical products tend to face higher and more complex tariffs compared to products from temperate zones.²⁶ This creates challenges for countries that produce a small number of crops.

B. Domestic support

The AoA allows domestic support programs (subsidies) that do not directly impact production and limits those that do.²⁷ Members agreed to reduce domestic support programs that directly impact production and trade, referred to as Amber Box programs, on the basis of a calculation called the ‘aggregate measurement of support’.²⁸ As with the provisions on market access, developing countries were allowed to make smaller reductions and were given a longer implementation period, while LDCs were not required to introduce any cuts.²⁹ Additionally, the AoA allows Members to maintain *de minimis* levels of subsidies, which are set at 5 per cent of the value of agricultural production for developed countries and 10 per cent for developing countries.³⁰

Programs that have minimal or no effects on trade, referred to as Green Box programs, are exempt from limitations and challenges under the AoA.³¹ However, they may still be challenged under other agreements due to the expiration of the ‘peace clause’ in Article 13 of the AoA.³² The peace clause regulated the application of other WTO agreements to subsidies in respect of agricultural products, preventing countervailing duty action or other subsidy action under the WTO Agreement on Subsidies and Countervailing Measures,³³ as well as actions based on non-violation nullification or impairment of tariff concessions under the General Agreement on Tariffs and Trade (GATT).³⁴ Members’ opinions on the Green Box’s future vary widely. Some appreciate the policy space offered to support vulnerable industries and regions.³⁵ Others contend that some Members have exploited the Green Box by

²⁴ Geboye Desta (n 13) 75.

²⁵ Kevin Gray, ‘Right to Food Principles vis-à-vis Rules Governing International Trade’ (*British Institute of International and Comparative Law*, 2003), 17 <<https://www.scribd.com/document/58576402/RIGHT-TO-FOOD-PRINCIPLES-VIS-A-VIS-RULES-GOVERNING-INTERNATIONAL-TRADE>> accessed 22 December 2023.

²⁶ De Schutter, ‘International Trade in Agriculture and the Right to Food’ (n 23) 13.

²⁷ AoA (n 9) art 6, annex 2.

²⁸ Ferguson (n 19) 211. For a detailed analysis of the contradictions and complications affecting the ‘aggregate measurement of support’, see 211-217.

²⁹ AoA (n 9) arts 1(f), 15(2).

³⁰ *ibid* art 6(4).

³¹ *ibid* art 6(1), annex 2.1. As per AoA annex 2, any support falling under the Green Box category must be financed through a government program and must not result in providing price support to producers.

³² Dominic Coppens, *WTO Disciplines on Subsidies and Countervailing Measures: Balancing Policy Space and Legal Constraints* (Cambridge University Press 2014) 331; See also WTO, ‘Subsidies and Countervailing Measures: Overview, Agreement on Subsidies and Countervailing Measures’ (*World Trade Organization*) <https://www.wto.org/english/tratop_e/scm_e/subs_e.htm> accessed 22 December 2023.

³³ Agreement on Subsidies and Countervailing Measures (concluded 15 April 1994) 1869 UNTS 14.

³⁴ General Agreement on Tariffs and Trade (concluded 15 April 1994) 1867 UNTS 187 (GATT). See WTO, ‘Other Issues’ (*World Trade Organization*) <[https://www.wto.org/english/tratop_e/agric_e/ag_intro05_other_e.htm#:~:text=The%20Agreement%20in%20Agriculture%20contains,agricultural%20products%20\(Article%2013\)](https://www.wto.org/english/tratop_e/agric_e/ag_intro05_other_e.htm#:~:text=The%20Agreement%20in%20Agriculture%20contains,agricultural%20products%20(Article%2013))> accessed 22 December 2023.

³⁵ Coppens (n 32) 317.

manipulating their trade-distorting measures to meet the requirements.³⁶ Some also argue that Green Box programs resemble the programs of developed countries and do not encompass the type of support required by developing countries.³⁷

Lastly, Blue Box programs, which are essentially Amber Box programs that have conditions to mitigate trade distortions, are not subject to limitations.³⁸ Historically, developed countries have been the main users of Blue Box programs, and currently, they are exclusively utilised by the European Union (EU), Iceland, Norway, Japan, the Slovak Republic, and Slovenia.³⁹ Countries are divided on the future of the Blue Box as well. Some would transfer these measures to the Amber Box, as they are technically linked to production, which is generally not allowed under the AoA.⁴⁰ Others advocate for keeping the Blue Box in place.⁴¹ Blue Box measures can also be subject to challenge due to the expiration of the peace clause in Article 13 of the AoA.

MC9 made clear that some general service programs that offer specific services or advantages to agricultural or rural communities might be eligible for exemptions from domestic support restrictions.⁴² These exemptions could apply to programs that pertain to land reform and rural livelihood security, such as measures for soil conservation and drought management, intended to encourage rural development and alleviate poverty.⁴³

C. Export subsidies

The AoA capped the existing subsidy programs and committed Members to decrease their expenditure and product coverage.⁴⁴ This includes direct subsidies linked to export performance, export sales of non-commercial agricultural stocks below domestic market prices, payments for exported agricultural products, programs aimed at reducing the cost of producing export goods, preferential internal transportation and freight charges for exported

³⁶ Coppens (n 32) 321-22. For example, between 1995 and 2010, the EU's expenditure on Green Box subsidies surged from €9.2 billion to €68 billion. See Ferguson (n 19) 208.

³⁷ Olivier De Schutter, 'The World Trade Organization and the Post-Global Food Crisis Agenda: Putting Food Security First in the International Trade System' [2011] WTO Activity Report, Briefing Note 4, 6 <https://www.wto.org/english/news_e/news11_e/deschutter_2011_e.pdf> accessed 22 December 2023; See also Sarah Joseph, *Blame it on the WTO? A Human Rights Critique* (Oxford University Press 2011) 185.

³⁸ AoA (n 9) art 6(5); See also WTO, 'Agriculture Negotiations: Background Factsheet, Domestic Support in Agriculture' (*World Trade Organization*) <https://www.wto.org/english/tratop_e/agric_e/agboxes_e.htm> accessed 22 December 2023; Coppens (n 32) 316-317.

³⁹ WTO, 'Domestic Support: Amber, Blue and Green Boxes' (*World Trade Organization*) <https://www.wto.org/english/tratop_e/agric_e/negs_bkgnd13_boxes_e.htm> accessed 22 December 2023.

⁴⁰ WTO, 'Agricultural Negotiations: Background, The Issues and Where We Are Now', (*World Trade Organization*) <https://www.wto.org/english/Tratop_e/agric_e/negs_bkgnd00_contents_e.htm> accessed 22 December 2022. If the Blue Box were to be eliminated, developing countries would lose the chance to support their agricultural sectors in the same ways as the developed countries did.

⁴¹ *ibid.*

⁴² AoA (n 9) annex 2.2.

⁴³ WTO, 'Ministerial Decision of 7 December 2013: General Services' (11 December 2013) UN Doc WT/MIN(13)/37.

⁴⁴ AoA (n 9) arts 8 and 9. The measures subject to reduction requirements are listed in AoA art 9(1); See also Terence Stewart and Stephanie Manaker Bell, 'Global Hunger and the World Trade Organization: How the International Trade Rules Address Food Security' (2015) 3(2) Penn State Journal of Law & International Affairs 113, 132.

goods, and subsidies on products that are components of exported goods.⁴⁵ Developing countries committed to making smaller reductions over a longer period of time, while LDCs are not required to make reductions.⁴⁶

At MC10, further restrictions were imposed on agricultural export subsidies. Developed countries were required to eliminate their remaining scheduled export subsidy entitlements, while developing countries were instructed to eliminate their export subsidy entitlements by the end of 2018.⁴⁷ LDCs and NFIDCs can use export subsidies until the end of 2030.⁴⁸ This decision contributed to progress on Sustainable Development Goal (SDG) 2.b, which calls for governments to address trade restrictions and distortions in agricultural markets as part of their efforts to ensure food security and promote sustainable agriculture. Although the achievement is noteworthy, distinguishing between export and domestic subsidies is not as straightforward as it may seem.⁴⁹ Subsidies can be designed and presented in multiple formats, which means that an export subsidy can be substituted with a domestic one by eliminating the export contingency.⁵⁰ Regrettably, domestic agricultural subsidies have not been curtailed. These subsidies persist and are increasing.

One of the primary reasons why it took so long to abolish export subsidies is the differing priorities of policymakers in developed and developing countries. In developed countries, policymakers often prioritise the interests of farmers, whereas their counterparts in developing countries tend to focus more on the well-being of consumers. In developing nations, food prices are politically sensitive matters that can have significant implications for the livelihoods of their citizens and potentially lead to political instability. Conversely, in developed countries, food prices are a political concern for farmers.⁵¹ This explains why farm subsidies have historically been more substantial in developed countries in comparison to developing countries.

D. Other matters relevant for food security

In addition to the three pillars above, the AoA tackled several other matters, including food security to a limited extent, specifically with respect to LDCs and NFIDCs. The AoA's preamble emphasises the importance of addressing non-trade concerns, such as food security, recognising that S&DT is crucial and taking into account the potential adverse consequences of the AoA on LDCs and NFIDCs.⁵² Accordingly, the AoA incorporates some provisions that try to safeguard countries' ability to address food security concerns. The sections below provide an overview of such provisions.

⁴⁵ AoA (n 9) art 9(1).

⁴⁶ WTO, 'Agriculture: Explanation, Export Competition/Subsidies' (*World Trade Organization*) <https://www.wto.org/english/tratop_e/agric_e/ag_intro04_export_e.htm> accessed 22 December 2023.

⁴⁷ WTO, 'Ministerial Decision of 19 December 2015: Export Competition' (21 December 2015) UN Doc WT/MIN(15)/45 paras 6, 7.

⁴⁸ *ibid.*

⁴⁹ Simon Lester, 'Is the Doha Round Over? The WTO's Negotiating Agenda for 2016 and Beyond' (2016) 64 *Herbert A Stiefel Center for Trade Policy Studies* 1.

⁵⁰ *ibid.*

⁵¹ Heinz Strubenhoff, 'The WTO's Decision to end Agricultural Export Subsidies is Good News for Farmers and Consumers' (*Brookings*, 8 February 2016) <<https://www.brookings.edu/articles/the-wtos-decision-to-end-agricultural-export-subsidies-is-good-news-for-farmers-and-consumers/>> accessed 22 December 2023.

⁵² AoA (n 9) preamble.

1. Safeguards

The AoA provides a safeguard provision against sudden import surges or decreases in import prices.⁵³ This provision allows Members to impose an additional tariff on the products impacted, provided that certain criteria are met. The safeguard is triggered without any need to test for injury or negotiate compensation.⁵⁴ However, it has some limits that may hamper the ability of developing countries to protect domestic producers.⁵⁵ The safeguard can only be used for products identified as being subject to the safeguard in the country's tariff schedule.⁵⁶ Additionally, it is restricted to products that have been 'tariffed' (eg, quantitative restrictions converted to equivalent tariffs). Many developing countries that had unbound products, however, chose to offer ceiling bindings on those products, and they were not required to reduce their base rate.⁵⁷ As a result, these countries relinquished their right to use the safeguard.⁵⁸ Moreover, the implementation of safeguards does not mitigate price increases.⁵⁹

In 2015, Members agreed in the Ministerial Decision on Special Safeguard Mechanism for Developing Country Members to negotiate the implementation of a Special Safeguard Mechanism (SSM) for developing countries.⁶⁰

2. Public stockholding programs

Public stockholding programs may be classified as Green Box programs under Annex 2 to the AoA if they meet the general requirements—ie, they are administered via a government program that is publicly funded and does not offer price support to producers—together with program-specific requirements.⁶¹ However, food security programs that rely on supported or administered prices (ie, purchasing foodstuffs for stockholding at fixed prices) are not covered by the Green Box.⁶² This means that developing countries need to limit their spending to specific *de minimis* levels for each product.⁶³

A temporary solution was adopted at MC9, where ministers agreed that, on an interim basis, public stockholding programs in developing countries aimed at procuring primary

⁵³ AoA (n 9) art 5.

⁵⁴ WTO, 'Agriculture Agreement: Explanation, Market Access' (*World Trade Organization*) <https://www.wto.org/english/tratop_e/agric_e/ag_intro02_access_e.htm> accessed 22 December 2023.

⁵⁵ Carmen Gonzalez, 'Institutionalizing Inequality: The WTO Agreement on Agriculture, Food Security, and Developing Countries' (2002) 27 *Columbia Journal of Environmental Law* 433, 479.

⁵⁶ WTO, 'Agriculture Agreement: Explanation, Market Access' (n 54).

⁵⁷ Stephen Healy, Richard Pearce, and Michael Stockbridge, *The Implications of the Uruguay Round Agreement on Agriculture for Developing Countries: A Training Manual* (Food and Agriculture Organization 1998) para 3.2.1.

⁵⁸ See WTO, 'Agriculture: Negotiations, An Unofficial Guide to Agriculture Safeguards' (*World Trade Organization*) <http://www.wto.org/english/tratop_e/agric_e/guide_agric_safeg_e.htm> accessed 22 December 2023..

⁵⁹ De Schutter, 'The World Trade Organization and the Post-Global Food Crisis Agenda' (n 37) 12. Food prices have been rising over the past fifteen years and there is no effective response under AoA art 5.

⁶⁰ WTO, 'Ministerial Decision of 19 December 2015: Special Safeguard Mechanism for Developing Country Members' (19 December 2015) UN Doc WT/MIN(15)/43. The introduction of a special safeguard mechanism for developing countries has been debated also in the meetings of the WTO Committee on Agriculture ahead of MC12. See below, section III.B

⁶¹ AoA (n 9) annex 2; see also WTO, 'Domestic Support' (*World Trade Organization*) <https://www.wto.org/english/tratop_e/agric_e/ag_intro03_domestic_e.htm> accessed 22 December 2023.

⁶² Panos Konandreas and George Mermigkas, 'WTO Domestic Support Disciplines: Options for Alleviating Constraints to Stockholding in Developing Countries in the Follow-Up to Bali' (2014) 45 *FAO Commodity and Trade Policy Research Working Paper* 6.

⁶³ Ferguson (n 19) 213.

agricultural products that are predominant staples in the traditional diet would not be challenged, even if a country's agreed limits for trade-distorting domestic support were breached.⁶⁴ This commitment was reaffirmed at MC10, where Members were encouraged to agree on a permanent solution.⁶⁵ The interim agreement has sparked controversy. For example, India relied on it to provide support to rice cultivators in excess of its domestic support limits, and the United States (US) contested that India did not adequately report the costs of its stockholding program to the WTO, which is a pre-condition to be exempt from challenges.⁶⁶ Disagreement about compliance with the interim agreement has impeded WTO Members from reaching a permanent agreement.⁶⁷

3. Investment subsidies

Similarly to Annex 2 to the AoA, Article 6(2) of the AoA acknowledges that investment subsidies that are generally accessible to agriculture in developing Members, as well as agricultural input subsidies that are generally accessible to low-income or resource-poor producers in developing Members, shall be excluded from domestic support reduction commitments for the purpose of promoting agricultural and rural development.⁶⁸ However, the AoA fails to specify who should be considered a resource-poor producer.⁶⁹

4. Export restrictions or prohibitions

Although Article XI of the GATT allows for certain export restrictions or prohibitions, Article 12 of the AoA requires Members to consider the impact of an export restriction or ban on foodstuff on the food security of importing Members. Prior to enacting such a measure, a Member should submit written notice to the Committee on Agriculture (CoA) and, upon request, engage in consultations with importing Members.⁷⁰ The provision does not apply to developing Members, except where the Member is a net-food exporter of the specific foodstuff.⁷¹ Countries are increasingly seeking greater transparency on the imposition of export restrictions.⁷²

5. International food aid

Article 10 of the AoA provides that Member donors shall ensure that the provision of international food aid is not tied to commercial exports of agricultural products to recipient

⁶⁴ WTO, 'Ministerial Decision of 7 December 2013: Public Stockholding for Food Security Purposes' (11 December 2013) UN Doc WT/MIN(13)/38 para 2; see also WTO, 'Food Security' (*World Trade Organization*) <https://www.wto.org/english/tratop_e/agric_e/food_security_e.htm> accessed 22 December 2023; WTO, 'The Bali Decision on Stockholding for Food Security in Developing Countries' (*World Trade Organization*) <https://www.wto.org/english/tratop_e/agric_e/factsheet_agng_e.htm> accessed 22 December 2023.

⁶⁵ WTO, 'Ministerial Decision of 19 December 2015: Public Stockholding for Food Security Purposes' (21 December 2015) UN Doc WT/MIN(15)/44; see also WTO, 'Food Security' (n 64).

⁶⁶ Regmi, Hart, and Schnepf (n 4) 12.

⁶⁷ WTO, 'Ministerial Decision of 19 December 2015: Public Stockholding for Food Security Purposes' (n 65) para 2.

⁶⁸ AoA (n 9) art 6(2), known as Development Box.

⁶⁹ FAO, *WTO Agreement on Agriculture: The Implementation Experience—Developing Country Case Studies* (Food and Agriculture Organization 2003).

⁷⁰ AoA (n 9) art 12(1).

⁷¹ *ibid* art 12(2).

⁷² See below, section III.F.

countries and, to the extent possible, is provided in full grant form.⁷³ Food aid that meets these criteria is not considered an export subsidy and hence is not limited.

At MC10, Members reaffirmed their food aid responsibilities in an attempt to ensure that aid is available in humanitarian crises but does not serve as a covert export subsidy. Accordingly, Members agreed to maintain adequate levels of aid, take into account the interests of food aid recipients, and not unintentionally impede the delivery of food aid in emergencies.⁷⁴ They also agreed that food aid must be needs-driven, provided in full grant form, not connected to the commercial export of other products or services, not linked to market development, and not re-exported (with some exceptions).⁷⁵ Moreover, governments must refrain from providing in-kind international food aid when it could negatively impact local production.⁷⁶ In addition, food aid can be monetised—ie, sold to fund development initiatives—only where there is a demonstrable need for the purpose of transportation and distribution of food assistance, or to tackle the causes of hunger and malnutrition in LDCs and NFIDCs.⁷⁷

This framework has some notable weaknesses. First, food aid providers can independently assess the need of recipient countries for aid—no international or regional organisation is involved in such assessment. Second, an exception intended to grant members ‘maximum flexibility’ in the provision of aid might serve to continue undesirable practices that distort local markets.⁷⁸ Third, re-exportation is allowed in many circumstances whose rationale is not always clear.⁷⁹ Lastly, the imposition of export restrictions on foodstuffs purchased for humanitarian purposes was addressed only at MC12, where WFP purchases were exempted from these measures.⁸⁰ Some authors have lamented that the WTO keeps influencing international aid policies, even though it is not its ‘business’, and have further pointed out that, despite the renewed commitment to provide food aid and consider the needs of importing countries, this remains a ‘best endeavour’ under the AoA.⁸¹

6. Measures to protect least-developed countries and net food-importing developing countries

Under Article 16 of the AoA, developed Members are required to adhere to the NFIDC Decision,⁸² which deals with measures related to the potential adverse impacts of the AoA on LDCs and NFIDCs. The NFIDC Decision acknowledges that such countries may face

⁷³ AoA (n 9) art 10(4).

⁷⁴ WTO, ‘Ministerial Decision of 19 December 2015: Export Competition’ (n 47) para 22.

⁷⁵ *ibid* para 23.

⁷⁶ *ibid* para 24.

⁷⁷ *ibid* para 27.

⁷⁸ *ibid* para 30.

⁷⁹ *ibid* para 23(e). Re-exportation is allowed in the following circumstances: the agricultural products were not permitted entry into the recipient country; the agricultural products were determined inappropriate or no longer needed for the purpose for which they were received in the recipient country; re-exportation is necessary for logistical reasons to expedite the provision of food aid for another country in an emergency situation.

⁸⁰ See below, section IV.A.

⁸¹ Christian Häberli, ‘Food Security and the WTO Rules’ in Baris Karapinar and Christian Häberli (eds), *Food Crises and the WTO: World Trade Forum* (Cambridge University Press 2010) 316.

⁸² WTO, ‘Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net-Food Importing Developing Countries’ (15 April 1994) UN Doc LT/UR/D-1/2 (hereinafter NFIDC Decision).

challenges in terms of acquiring sufficient supplies of essential foodstuffs from external sources under fair conditions.⁸³ The NFIDC Decision implemented various measures to facilitate access to food, including periodic reviews of the adequacy of food aid provided to developing countries, guidelines to ensure that LDCs and NFIDCs are provided with basic foodstuffs on appropriate concessional terms, the evaluation of requests made by LDCs and NFIDCs for financial and technical support, and S&DT with respect to rules governing agricultural export credits.⁸⁴ Developing countries have claimed that the NFIDC Decision has not been operationalised and has brought little benefit.⁸⁵ At MC12, Members committed to operationalising the NFIDC Decision.⁸⁶

III. Members' proposals on food security ahead of the 12th Ministerial Conference (2020-22)

The following sections analyse Members' proposals on food security ahead of MC12. Since the Covid-19 pandemic and the conflict in Ukraine sparked renewed attention to the topic, the analysis is focused on submissions made between January 2020 and June 2022, when MC12 took place.⁸⁷ Countries' submissions are grouped thematically.

Members mainly addressed the issues reported in section II. Market access, safeguards, export subsidies, and export restrictions have been widely debated, although no concrete proposals for reform have been made. Some countries have, however, advanced reform proposals with respect to public stockholding programs and international food aid. Domestic support, due to its sensitive nature, has received little attention. This is one of the major drawbacks of the debate ahead of MC12, since several Members resort extensively to domestic support measures, which can be very trade-distortive.⁸⁸ However, Members also discussed other key issues for food security, including transparency, S&DT, and sustainability, although no detailed proposals have been made on these issues. The key findings of the analysis are summarised in table 2 below.

Table 2

Issue	Views expressed	Limits
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⁸³ NFIDC Decision (n 82) para 2; see also WTO Secretariat, *The WTO Agreements Series: Agriculture* (World Trade Organization 2003) 22.

⁸⁴ NFIDC Decision (n 82) paras 3(i)-(iii), 4.

⁸⁵ James Hodge and Andrew Charman, 'An Analysis of the Potential Impact of the Current WTO Agricultural Negotiations on Government Strategies in the SADC region' in Basudeb Guha-Khasnobis, Shabd Acharya, and Benjamin Davis (eds), *Food Security: Indicators, Measurement, and the Impact of Trade Openness* (Oxford University Press 2007) 239, 258.

⁸⁶ See below, section IV.B.

⁸⁷ The analysis is based on the minutes of the meetings of the WTO CoA, as well as other relevant communications submitted by the Members.

⁸⁸ One of the most striking examples is provided by the EU and its Common Agricultural Policy, which has seen a considerable increase in funding over the years. See European Parliament, 'Fact Sheets on the European Union: Financing of the CAP' (*European Parliament*) <<https://www.europarl.europa.eu/factsheets/en/sheet/106/financing-of-the-cap>> accessed 22 December 2023.

<p><u>Market access and supply chains</u></p>	<ul style="list-style-type: none"> ● Many Members favoured keeping markets and supply chains open. They called for emergency measures to be no more trade-restrictive than necessary. ● Some Members, on the other hand, emphasised that open trade is a complement to domestic production, which plays a critical role in ensuring food security. Accordingly, they advocated for greater policy space to protect local production. 	<ul style="list-style-type: none"> ● No proposals were made to either keep markets open in times of crises and/or introduce greater flexibilities to protect domestic markets.
<p><u>Special safeguard mechanism</u></p>	<ul style="list-style-type: none"> ● Some Members conceive the SSM as a means of safeguarding highly vulnerable farmers against price volatility. Accordingly, the SSM should be user-friendly, offer effective remedies to counteract sudden surges in imports and price drops, and more generally remedy the existing distortions. ● Other Members see the SSM as a time-bound tool, meant to increase market access. Accordingly, its use should be constrained, and it should not be triggered by normal price fluctuations or regular trade expansion. 	<ul style="list-style-type: none"> ● No proposals were made to advance negotiations on a SSM.
<p><u>Export subsidies</u></p>	<ul style="list-style-type: none"> ● Members stressed the need to implement the Ministerial Decision on Export Competition of 19 December 2015. ● Members also reaffirmed their concern on transparency in the notification of export subsidies. 	<ul style="list-style-type: none"> ● No proposals were made to address transparency issues.
<p><u>Public stockholding programs</u></p>	<ul style="list-style-type: none"> ● The African Group, the G33 Group, and the African-Caribbean-Pacific Group suggested to amend the AoA to change the formula for calculating the amount of domestic support generated by public stockholding programs to increase their accessibility. ● Brazil, on the other hand, suggested to restrict the use of domestic support in public stockholding programs to LDCs, NFIDCs, and countries requiring external assistance for food. 	<ul style="list-style-type: none"> ● Despite the detailed proposals, convergence toward a common solution is unlikely due to divergent views.

<u>Export restrictions or prohibitions</u>	<ul style="list-style-type: none"> • Many Members warned against the adoption of export restrictions as they are harmful to developing and low-income countries that rely on imports for their food needs. • Some developing Members, however, upheld the importance of export restrictions in protecting domestic markets from food shortages during worldwide crises. 	<ul style="list-style-type: none"> • No proposals were made, including on transparency and notification issues, due to the different views on the impact of export restrictions on food security.
<u>Transparency</u>	<ul style="list-style-type: none"> • Most Members acknowledged the need for greater transparency in the notification of trade-restrictive measures to the WTO. • Views differed as to how transparency and notification mechanisms could be improved, especially with respect to the WTO Secretariat's role. 	<ul style="list-style-type: none"> • No proposals were made.
<u>International food aid</u>	<ul style="list-style-type: none"> • Many Members supported Singapore's proposal, ultimately adopted at MC12, to exempt foodstuffs purchased by the WFP for humanitarian purposes from export prohibitions and restrictions. 	<ul style="list-style-type: none"> • Only the WFP was exempted. • Trade barriers other than export restrictions were not addressed.
<u>S&DT</u>	<ul style="list-style-type: none"> • S&DT received little attention. 	<ul style="list-style-type: none"> • No proposals were made.
<u>Sustainability</u>	<ul style="list-style-type: none"> • A statement supporting a reform of the AoA to promote an 'inclusive' vision of sustainable agricultural production was submitted. 	<ul style="list-style-type: none"> • Only 16 Members joined the statement. • No proposals on how to reform the AoA were made.

A. Market access and supply chains

In the aftermath of the Covid-19 pandemic, many Members, including Canada,⁸⁹ expressed views in favour of keeping markets and supply chains open. These proposals emphasised the importance of ensuring that production levels are maintained and safeguarding the ability of

⁸⁹ Argentina, Australia, Brazil, Chile, Colombia, Costa Rica, Ecuador, European Union, Georgia, Hong Kong, Indonesia, Japan, Korea, Malawi, Malaysia, Mexico, New Zealand, Nicaragua, Paraguay, Peru, Qatar, Saudi Arabia, Singapore, Switzerland, Taiwan, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay.

Members to import agricultural products to fulfil their domestic needs.⁹⁰ The Cairns Group called on all Members to refrain from implementing unjustified trade barriers on imports of agricultural products.⁹¹ Russia also argued that, in tackling the pandemic, Members should keep food supply chains open and minimise the adoption of measures that impact global trade.⁹² The EU also took a stance in favour of maintaining open and predictable trade in agricultural products.⁹³ Many countries, both developed and developing, called for making sure that emergency measures related to agricultural products designed to address Covid-19 be targeted, balanced, proportionate, transparent, temporary, WTO-consistent, science-based, not more trade-restrictive than necessary, and not harmful for the food security of other countries.⁹⁴

Other countries, while expressing views in favour of preserving market openness, also emphasised that local production plays a critical role in ensuring food security. The Philippines and Indonesia view open trade as a complement to domestic production.⁹⁵ Indonesia argued that countries should not rely excessively on international trade for attaining food security, particularly to address small farmers' vulnerability.⁹⁶ With respect to Covid-19 measures, Pakistan supported their temporary nature but also affirmed Members' right to invoke their policy space under WTO law to ensure the food security of their populations.⁹⁷

⁹⁰ WTO Committee on Agriculture, 'Responding to the Covid-19 Pandemic with Open and Predictable Trade in Agricultural and Food Products' (29 May 2020) UN Doc WT/GC/208/Rev.2 paras 1.2, 1.3, 1.6; see also WTO Secretariat, 'Summary Report of the Special Meeting of the Committee on Agriculture Held on 18 June 2020' (17 August 2020) UN Doc G/AG/R/94, para 1.2; WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 15-16 March 2022' (n 5) para 3.9. This group of countries emphasised that open and interconnected supply chains play a pivotal role in ensuring the movement of agricultural goods, which avoids food shortages and ensures global food security.

⁹¹ WTO Committee on Agriculture, 'Communication on Behalf of Members of the Cairns Group—Covid-19 Initiative: Protecting Global Food Security Through Open Trade' (17 June 2020) UN Doc WT/GC/218 G/AG/31, annex para 5. The Cairns Group is composed of Argentina, Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand, Uruguay, Vietnam.

⁹² WTO Secretariat, 'Summary Report of the Special Meeting of the Committee on Agriculture Held on 18 June 2020' (n 90) para 1.10.

⁹³ *ibid* para 1.15.

⁹⁴ *ibid* paras 1.2, 1.4, 1.10, 1.11, 1.22, 1.25, 1.28, 1.29, 1.34. Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Ecuador, the EU, Georgia, Hong Kong, India, Japan, Korea, Malawi, Malaysia, Mexico, New Zealand, Nicaragua, Norway, Paraguay, Peru, Qatar, Russia, Saudi Arabia, Singapore, Switzerland, Taiwan, Ukraine, United Arab Emirates, United Kingdom, US, Uruguay, the ACP Group, and the Cairns Group; see also WTO Committee on Agriculture, 'Responding to the Covid-19 Pandemic with Open and Predictable Trade in Agricultural and Food Products' (n 90) para 1.6; WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 22-23 September 2020' (22 December 2020) UN Doc G/AG/R/96 para 2.22; WTO Committee on Agriculture, 'Communication on Behalf of Members of the Cairns Group—Covid-19 Initiative: Protecting Global Food Security Through Open Trade' (n 91) para 1.6, annex para 1.

⁹⁵ WTO Secretariat, 'Summary Report of the Special Meeting of the Committee on Agriculture Held on 18 June 2020' (n 90) para 1.30.

⁹⁶ *ibid* para 1.35.

⁹⁷ *ibid* para 1.27.

B. Special safeguard mechanism

While the 2015 Nairobi Decision on a Special Safeguard Mechanism for Developing Country Members pushed for the implementation of an SSM,⁹⁸ disagreement among Members has prevented any meaningful progress.⁹⁹

G33 members have advocated for flexibilities in opening markets through a simple and accessible SSM as a means of addressing price instability risks and counterbalancing distortions in global agricultural trade.¹⁰⁰ Other Members believe that discussion on SSM should be part of the broader debate on liberalising agricultural markets and contend that an agreement is unlikely to be reached if there are no outcomes on market access more generally.¹⁰¹

The disagreement reflects two different views on the rationale for an SSM. Some Members see the SSM as a means of safeguarding vulnerable farmers against price volatility. They believe that the SSM should be user-friendly, offer effective remedies to counteract sudden surges in imports and price drops, and remedy the existing distortions, including the subsidies provided by wealthy countries.¹⁰² Other Members see the SSM as a time-bound tool, meant to increase market access. They believe that the use of the SSM should be constrained and that tariffs should not be raised beyond the levels agreed upon before the Doha Round. Additionally, the SSM should not be triggered by normal price fluctuations or regular trade expansion. This perspective is rooted in the idea that enhanced market access is crucial for farmers striving to overcome poverty.¹⁰³

Due to these different perspectives, no progress has been made since 2020 on the SSM negotiations, and few countries have addressed the issue. South Africa urged for advancements in the negotiations, stating that developing countries should be permitted to implement tailored approaches within their WTO commitments.¹⁰⁴ Similarly, Jamaica noted that Covid-19 highlighted the urgency to address SSM to achieve a balanced outcome in the agriculture negotiation with S&DT at its core.¹⁰⁵ Egypt also flagged the need to deliver on SSM.¹⁰⁶

⁹⁸ WTO, 'Ministerial Decision of 19 December 2015: Special Safeguard Mechanism for Developing Country Members' (n 60).

⁹⁹ WTO Committee on Agriculture, 'Committee on Agriculture in Special Session: Report by the Chairperson, H.E. Ms Gloria Abraham Peralta, to the Trade Negotiations Committee' (23 November 2021) UN Doc TN/AG/50 para 7.1.

¹⁰⁰ WTO, 'An Unofficial Guide to Agricultural Safeguards' (*World Trade Organization*) <https://www.wto.org/english/tratop_e/agric_e/guide_agric_safeg_e.htm> accessed 22 December 2023. The G33 Group, also called 'Friends of Special Products' in agriculture, is a coalition of developing countries (forty-seven WTO Members) pressing for flexibility to undertake limited market opening in agriculture.

¹⁰¹ *ibid.*

¹⁰² *ibid.*

¹⁰³ *ibid.*

¹⁰⁴ WTO Secretariat, 'Summary Report of the Special Meeting of the Committee on Agriculture Held on 18 June 2020' (n 90) para 1.7.

¹⁰⁵ *ibid* para 1.11.

¹⁰⁶ *ibid* para 1.36.

C. Export subsidies

Since MC10, where stricter rules on export subsidies were established, no progress has been made. Since 2020, Members have focused on the implementation of the Nairobi Decision on Export Competition,¹⁰⁷ as well as on transparency in the notification of export subsidies.

The EU has emphasised that the modification of export subsidy schedules in accordance with the Nairobi Decision should result in the complete eradication of such subsidies, ‘not only de jure, but also de facto’, advising developing countries against using these tools.¹⁰⁸

The EU, together with Switzerland, the US, and Ukraine, has also called for increased transparency and more stringent requirements toward the implementation of the Nairobi Decision and the use of Article 9.4 of the AoA. These Members are concerned about the lack of notifications related to export subsidies under Article 9.4 of the AoA, which received a more extended phase-out period in the Nairobi Decision.¹⁰⁹ Article 9.4 of the AoA grants S&DT to developing Members with respect to export subsidies.¹¹⁰ The provision allows them to provide marketing cost subsidies and internal transport subsidies, as long as these subsidies are not utilised to circumvent the commitment to reduce export subsidies.¹¹¹ Export subsidies must be notified each year to the CoA and, as part of this obligation, Members also have to provide a list of those measures that may be used under Article 9.4 of the AoA.¹¹² Many countries, however, have not complied with these obligations.

D. Public stockholding programs

Public stockholding is one of the most controversial subjects in agricultural negotiations. Stockholding per se is not a problem. Issues arise when governments set prices for purchases into the stocks (so-called ‘administered prices’), thereby involving domestic support, rather than relying on market prices.¹¹³ Since 2020, Members have expressed different views on how to permanently regulate public stockholding programs for developing countries.

Many Members have urged developing countries to exercise restraint when introducing domestic food stocks of agricultural products that are typically exported in order to prevent disruptions or distortions in global trade.¹¹⁴ The Cairns Group also called for transparency and consistency with the WTO agreements and the Nairobi Decision on Export

¹⁰⁷ WTO, ‘Ministerial Decision of 19 December 2015: Export Competition’ (n 47).

¹⁰⁸ WTO Secretariat, ‘Summary Report of the Meeting of the Committee on Agriculture Held on 22-23 September 2020’ (n 94) para. 2.5.

¹⁰⁹ *ibid* paras 2.5, 2.7, 2.8; see also WTO, ‘Ministerial Decision of 19 December 2015: Export Competition’ (n 48) para 8.

¹¹⁰ WTO, ‘Agriculture: Explanation, Export Competition/Subsidies’ (n 47).

¹¹¹ *ibid*.

¹¹² *ibid*.

¹¹³ WTO, ‘Food Security’ (n 64).

¹¹⁴ Argentina, Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Ecuador, European Union, Georgia, Guatemala, Hong Kong, Indonesia, Japan, Korea, Malawi, Malaysia, Mexico, New Zealand, Nicaragua, Pakistan, Paraguay, Peru, Philippines, Qatar, Saudi Arabia, Singapore, South Africa, Switzerland, Taiwan, Thailand, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Vietnam. See WTO Committee on Agriculture, ‘Responding to the Covid-19 Pandemic with Open and Predictable Trade in Agricultural and Food Products’ (n 90) para 1.6; WTO Committee on Agriculture, ‘Communication on Behalf of Members of the Cairns Group—Covid-19 Initiative: Protecting Global Food Security Through Open Trade’ (n 91) annex para 3.

Competition in the disposal of food stocks built up in public storage facilities, or as a result of the public subsidisation of private storage facilities.¹¹⁵ Egypt, India, and South Africa called for more engagement on public stockholding but did not clarify how they would address the issue.¹¹⁶ Despite these general remarks, only two concrete (and divergent) proposals have been advanced.

The African Group,¹¹⁷ the G33 Group, and the African-Caribbean-Pacific Group (ACP Group),¹¹⁸ suggested amending the AoA to make the calculation of domestic support less stringent.¹¹⁹ However, they also emphasised that public stockholding ‘shall not substantially distort trade or adversely affect the food security of other [Members]’.¹²⁰ The proposal suggests changing the formula for calculating the amount of domestic support generated by (i) redefining the base price reference used to calculate how much price support is given and (ii) redefining ‘eligible production’ to encompass only the amount actually purchased, instead of the amount that could potentially be purchased.¹²¹ The current base reference price, fixed at prices in 1986-88,¹²² would be replaced with either more recent prices or adjustments that consider inflation.¹²³ This would reduce the disparity between the reference prices and the current government-fixed prices, leading to a decrease in the level of trade-distorting domestic support.

Brazil submitted the first-ever counter-proposal due to its concerns that the proposal from the African Group and its allies could enable major producers to distort markets and negatively impact food security.¹²⁴ Rather than proposing amendments to the AoA, Brazil suggested restricting the use of domestic support in public stockholding programs to those countries that rely on food imports or are not major traders, while also introducing stricter rules, including additional transparency obligations. On the one hand, Brazil’s proposal is more radical than the one advanced by the African Group and its allies, as it suggests that the difference between the acquisition price of food stocks and the external reference price should not be included in the calculation of domestic support.¹²⁵ However, this would only apply to a select group of eligible countries, namely, (i) LDCs, (ii) NFIDCs,¹²⁶ and (iii) countries

¹¹⁵ See WTO Committee on Agriculture, ‘Communication on Behalf of Members of the Cairns Group—Covid-19 Initiative: Protecting Global Food Security Through Open Trade’ (n 91) annex para 4.

¹¹⁶ WTO Secretariat, ‘Summary Report of the Special Meeting of the Committee on Agriculture Held on 18 June 2020’ (n 90) paras 1.7, 1.36; WTO Secretariat, ‘Summary Report of the Meeting of the Committee on Agriculture Held on 22-23 September 2020’ (n 94) para 2.31.

¹¹⁷ The African Group comprises the African Members and Observers of the WTO (forty-four).

¹¹⁸ ACP comprises African, Caribbean and Pacific countries with preferences in the EU (sixty-two WTO Members).

¹¹⁹ MC12, General Council, ‘Public Stockholding for Food Security Purposes: Proposal by the African Group, the ACP, and G33’ (6 June 2022) UN Doc WT/MIN(22)/W/4 para 11.1.

¹²⁰ *ibid* para 5.1.

¹²¹ *ibid* para 3.

¹²² WTO, ‘Agriculture: Fairer Markets for Farmers’ (n 11).

¹²³ MC12, General Council, ‘Public Stockholding for Food Security Purposes: Proposal by the African Group, the ACP, and G33’ (n 119) para 3(a)-(b).

¹²⁴ It is interesting to note that, two years before submitting this proposal, Brazil was claiming that, despite needing updates, the AoA already provided Members with ample policy space and the tools to manage food crises in the least distorting way possible. See WTO Secretariat, ‘Summary Report of the Special Meeting of the Committee on Agriculture Held on 18 June 2020’ (n 90) paras 1.18, 1.31.

¹²⁵ MC12, General Council, ‘Communication from Brazil’ (6 June 2022) UN Doc WT/MIN(22)/W/5 para 2.

¹²⁶ See WTO, ‘Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net-Food Importing Developing Countries’ (n 82).

requiring external assistance for food (as defined by FAO) at least once in the past two years.¹²⁷ In order to meet the criteria for the last two categories, the country must not be a major player in the relevant product, based on its share of exports (not exceeding 2 per cent of global exports in any case) and the size of its stockpiles compared to the product's total production.¹²⁸ Under this system, for example, India would meet the eligibility requirements for wheat based on the 2020 figures, as its share of exports was roughly 0.5 per cent, but not based on the 2021 figures, as its share of exports exceeded 3 per cent. In the case of rice, India would not be eligible at all, as its export share exceeds 30 per cent.¹²⁹

Overall, the proposal presented by the African Group appears preferable, as it ensures that public stockholding programs are accessible to a larger number of countries. However, Brazil's proposal is worthy of consideration, not only because it is more impactful with respect to the calculation of domestic support, but also because it highlights certain aspects of food security that have frequently been overlooked. Brazil stressed that food security issues are 'multifaceted', and, for this reason, they require the adoption of a 'comprehensive approach' to be effectively tackled. Public stockholding is merely one component of such a 'comprehensive package'.¹³⁰ Brazil's statements draw attention to the lack of a holistic approach in the way food security has been addressed at the WTO. This shortcoming will be further addressed in section V below.

E. Export restrictions or prohibitions

In the aftermath of the Covid-19 pandemic, many countries resorted to food export restrictions to ensure food supplies for their own populations, prevent shortages, and stabilise prices within their markets.¹³¹ Countries reacted differently to the introduction of such measures.

Many Members warned against the adoption of export restrictions due to their negative impact on global food security. Canada, together with other countries,¹³² argued that export restrictions on agricultural products create an unpredictable trading environment that might result in a widespread food security crisis due to supply chains disruptions, price spikes, price volatility, and shortages.¹³³ Vulnerable populations would bear the brunt of increased export restrictions.¹³⁴ Brazil, similarly, noted that export restrictions rarely achieve the desired

¹²⁷ MC12, General Council, 'Communication from Brazil' (n 125) para 5.

¹²⁸ *ibid* para 6.

¹²⁹ Peter Ungphakorn, 'Two Last-Minute Agriculture Proposals Land as WTO Conference Approaches' (*Tradebetablog*, 2022) <<https://tradebetablog.wordpress.com/2022/06/01/two-proposals-ag-wto-conference/>> accessed 22 December 2023.

¹³⁰ MC12, General Council, 'Communication from Brazil' (n 125) preamble.

¹³¹ Jonathan Hepburn and others, 'COVID-19 and Food Export Restrictions: Comparing Today's Situation to the 2007/08 Price Spikes' (*International Institute for Sustainable Development*, 2020) <<https://www.iisd.org/system/files/2020-08/covid-19-food-export-restrictions.pdf>> accessed 22 December 2023.

¹³² Argentina, Australia, Brazil, Chile, Colombia, Costa Rica, Ecuador, European Union, Georgia, Hong Kong, Indonesia, Japan, Korea, Malawi, Malaysia, Mexico, New Zealand, Nicaragua, Paraguay, Peru, Qatar, Saudi Arabia, Singapore, Switzerland, Taiwan, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay.

¹³³ WTO Committee on Agriculture, 'Responding to the Covid-19 Pandemic with Open and Predictable Trade in Agricultural and Food Products' (n 90) para 1.3; WTO Secretariat, 'Summary Report of the Special Meeting of the Committee on Agriculture Held on 18 June 2020' (n 90) para 1.1.

¹³⁴ WTO Committee on Agriculture, 'Responding to the Covid-19 Pandemic with Open and Predictable Trade in Agricultural and Food Products' (n 90) para 1.4.

objectives and rather distort international trade.¹³⁵ Along the same lines, the ACP Group held that export restrictions could have aggravated the Covid-19 crisis.¹³⁶ The EU highlighted that export restrictions are particularly harmful to developing and low-income countries that rely on imports for their food needs and urged Members to promptly notify those measures to the WTO.¹³⁷ Japan urged Members to withdraw their export restrictions due to their potential to cause artificial food shortages.¹³⁸ Switzerland emphasised, both after the outbreak of the Covid-19 pandemic and the conflict in Ukraine, that export restrictions amplify food insecurity concerns, especially for vulnerable populations.¹³⁹ The FAO, the International Monetary Fund (IMF), the World Bank (WB), the WFP and the WTO also stressed that export restrictions can impede access to food for poor consumers in low-income food-importing countries.¹⁴⁰ Lastly, the WFP noted that export restrictions result in increased costs and longer delivery times for its procurement operations.¹⁴¹

Not every Member, however, especially developing economies, upheld the view that export restrictions are always a threat to food security. Pakistan highlighted the significance of these measures in protecting domestic markets from food shortages during worldwide crises. By citing the research of Amartya Sen on the famines in Ireland and Bengal, Pakistan emphasised that market failures and food shortages during global crises jeopardise the ability of poor people to access food, as purchasing power becomes the primary factor in acquiring food from the market.¹⁴² Similarly, India warned against the narrative of prohibiting export restrictions to facilitate the access of developing countries to agricultural products. India contended that this narrative overlooks the practical reality that, in times of scarcity, producers would prioritise selling their products to the highest bidders, who may not originate in developing countries.¹⁴³

The different views on the impact of export restrictions on food (in)security prevented any meaningful reform, including on transparency and notification, which are crucial during crises.

¹³⁵ WTO Secretariat, 'Summary Report of the Special Meeting of the Committee on Agriculture Held on 18 June 2020' (n 90) para 1.5.

¹³⁶ *ibid* para 1.11.

¹³⁷ *ibid* para 1.24; WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 17-18 June 2021' (13 July 2021) UN Doc G/AG/R/99 para 5.7. The EU referred to the Export Restrictions Tracker released by the International Food Policy Research Institute and expressed its concern over the fact that several measures documented on the tracker had not been reported to the WTO since the beginning of the Covid-19 pandemic.

¹³⁸ WTO Secretariat, 'Summary Report of the Special Meeting of the Committee on Agriculture Held on 18 June 2020' (n 90) para 1.22; WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 22-23 September 2020' (n 94) para 2.45; WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 15-16 March 2022' (n 5) para 3.11.

¹³⁹ WTO Secretariat, 'Summary Report of the Special Meeting of the Committee on Agriculture Held on 18 June 2020' (n 90) para 1.23; WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 15-16 March 2022' (n 5) para 3.12.

¹⁴⁰ FAO, IMF, WB, WFP and WTO, 'Joint Statement' (n).

¹⁴¹ WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 30 November-1 December 2020' (4 February 2021) UN Doc G/AG/R/972.9.

¹⁴² WTO Secretariat, 'Summary Report of the Special Meeting of the Committee on Agriculture Held on 18 June 2020' (n 90), para. 1.27.

¹⁴³ *ibid* para 1.34.

F. Transparency in the notification of trade-restrictive measures

The Covid-19 pandemic has unveiled the inadequacy of the existing provisions on transparency and notification of trade-restrictive measures to the WTO. Without sufficient transparency, it is not possible to assess Members' compliance with WTO rules.¹⁴⁴ Since 2020, many countries have adopted restrictive measures to deal with the pandemic without giving proper notification to the WTO, especially with respect to export restrictions.¹⁴⁵ Members have generally acknowledged the need for greater transparency. However, views differ as to how transparency and notification mechanisms could be improved, especially with respect to the WTO Secretariat's role in facilitating information collection and management.

Canada, together with other countries,¹⁴⁶ encouraged Members to share with the WTO information on their trade-restrictive measures affecting agricultural products, as well as information on their levels of food production, consumption, stocks, and food prices.¹⁴⁷ Canada held that information-sharing should be Member-driven.¹⁴⁸ Similarly, the EU held that greater involvement of the WTO Secretariat is unrealistic in the absence of Members' inputs,¹⁴⁹ and the US contended that the Secretariat's monitoring should not prejudge how Members should notify their measures.¹⁵⁰ Along the same lines, India held that the information-sharing process should remain Member-driven, to avoid an 'overarching role' for the Secretariat,¹⁵¹ and Indonesia cautioned against turning information-sharing into a 'policing mechanism.'¹⁵²

Setting forth a different view, Australia encouraged the WTO Secretariat to assist Members by compiling information on their agricultural trade-restrictive measures. The country noted that, due to the capacity constraints of developing countries and LDCs, formal notifications to the Secretariat can take too long. For this reason, greater assistance would be

¹⁴⁴ WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 28 July 2020' (19 October 2020) UN Doc G/AG/R/95 para 3.3.

¹⁴⁵ WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 22-23 September 2020' (n 94), para 2.35; WTO Secretariat, 'Summary Report of the Special Meeting of the Committee on Agriculture Held on 18 June 2020' (n 90) para 1.22.

¹⁴⁶ Argentina, Australia, Brazil, Chile, Colombia, Costa Rica, Ecuador, European Union, Georgia, Hong Kong, Indonesia, Japan, Korea, Malawi, Malaysia, Mexico, New Zealand, Nicaragua, Paraguay, Peru, Qatar, Saudi Arabia, Singapore, Switzerland, Taiwan, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay.

¹⁴⁷ WTO Committee on Agriculture, 'Responding to the Covid-19 Pandemic with Open and Predictable Trade in Agricultural and Food Products' (n 90) para 1.6; see also WTO Secretariat, 'Summary Report of the Special Meeting of the Committee on Agriculture Held on 18 June 2020' (n 90) para 1.2.

¹⁴⁸ WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 28 July 2020' (n 144) para 3.5.

¹⁴⁹ WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 22-23 September 2020' (n 92) para 2.35.

¹⁵⁰ WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 30 November-1 December 2020' (n 141) para 2.14.

¹⁵¹ WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 28 July 2020' (n 144) para 3.15; WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 22-23 September 2020' (n 94) para 2.31.

¹⁵² WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 28 July 2020' (n 144) para 3.13.

valuable.¹⁵³ New Zealand and Chile also called on the Secretariat and Members to work together.¹⁵⁴

Allowing the WTO Secretariat to play a greater role in the collection and management of information on trade-restrictive measures and their effects on food security has potential benefits and drawbacks. While it could enhance transparency and facilitate informed trade policy decisions, as well as monitoring and impact assessments, there are also considerations around resource limitations and sovereignty concerns among some Members.

G. International food aid

In 2020, Singapore proposed to not impose export prohibitions and restrictions on foodstuffs purchased by the WFP for non-commercial, humanitarian purposes.¹⁵⁵ Singapore emphasised the importance of exempting WFP's food purchases to contribute to the SDG 2 on 'zero hunger', especially in light of the increased humanitarian food needs as a result of the Covid-19 pandemic.¹⁵⁶ The Cairns Group supported this proposal and encouraged other Members to do so.¹⁵⁷ Singapore's proposal was ultimately adopted at MC12.¹⁵⁸

H. Special and differential treatment

S&DT for developing countries did not receive great attention in the aftermath of the Covid-19 pandemic. South Africa called for progress on S&DT, noting that developing countries need 'tailored approaches' within their WTO commitments.¹⁵⁹ The ACP Group stressed the vulnerabilities of developing countries and their need for S&DT.¹⁶⁰ However, no concrete reform proposals have been advanced.

I. Sustainability

Argentina, Australia, Brazil, Canada, Chile, Colombia, Ecuador, Guatemala, New Zealand, Paraguay, Peru, the Philippines, South Africa, Ukraine, Uruguay, and Vietnam are the only Members that devoted significant attention to sustainability through a joint statement.¹⁶¹

¹⁵³ WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 28 July 2020' (n 144) para 3.4.

¹⁵⁴ *ibid* paras 3.7, 3.19; WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 22-23 September 2020' (n 94) para 2.34; WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 30 November-1 December 2020' (n 141) para 2.13.

¹⁵⁵ WTO Committee on Agriculture, 'Proposal on Agriculture Export Prohibitions or Restrictions Relating to the World Food Programme: Draft General Council Decision' (4 December 2020) UN Doc WT/GC/W/810.

¹⁵⁶ WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 17-18 June 2021' (n 137), para. 5.5.

¹⁵⁷ WTO Committee on Agriculture, 'Communication on Behalf of Members of the Cairns Group—Covid-19 Initiative: Protecting Global Food Security Through Open Trade' (n 90) annex para 8; see also WTO Secretariat, 'Summary Report of the Special Meeting of the Committee on Agriculture Held on 18 June 2020' (n 90) paras 1.25, 1.29.

¹⁵⁸ See below, section IV.A.

¹⁵⁹ WTO Secretariat, 'Summary Report of the Special Meeting of the Committee on Agriculture Held on 18 June 2020' (n 90) para 1.7.

¹⁶⁰ *ibid* para 1.11.

¹⁶¹ WTO Committee on Agriculture, 'Submission by Brazil: Joint Statement—The Contribution of International Agricultural Trade to Sustainable Food Systems' (26 March 2021) UN Doc G/AG/GEN/186; Brazil also introduced a concept paper on 'Food Security, Agriculture Trade and Stability of Agricultural Markets in the Long term' (21 September 2020) UN Doc RD/AG/79. The document, however, is not publicly available.

Relying on FAO's recommendations, they supported the need to reform the AoA to ensure agricultural production that is economically, socially, and environmentally sustainable to contribute to poverty reduction and the responsible use of natural resources,¹⁶² in line with SDG 1 on 'no poverty' and SDG 12 on 'sustainable consumption and production'. However, they warned against the adoption of 'one development model that can be applied to all nations', arguing instead that it is fundamental to have an 'inclusive vision of the sustainability of food systems', with solutions 'adapted' to local needs.¹⁶³ On this basis, the transition toward sustainable production systems should be 'gradual' and follow the format and timeframes decided by each Member.¹⁶⁴

In line with SDGs 2.b and 2.c,¹⁶⁵ these countries also supported the elimination or reduction of unjustified import barriers, export restrictions, and trade-distorting subsidies to achieve sustainable food systems.¹⁶⁶ In light of the challenges posed by climate change, they also acknowledge the need to focus on adaptation, in order to ensure the resilience of food systems.¹⁶⁷ This group of countries also acknowledged the role of rural women in food security, particularly in family, rural and indigenous production, and urged Members to agree on effective mechanisms to close gender gaps, which are key to reducing poverty and achieving sustainable food systems.¹⁶⁸

IV. Outcomes achieved at the 12th Ministerial Conference on food security

At MC12, two main outcomes were achieved on food security.¹⁶⁹ The two documents, analysed below, were intended to complement the Draft Ministerial Decision on

¹⁶² *ibid* paras 1.2, 7; see also WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 29-30 March 2021' (12 May 2021) UN Doc G/AG/R/98 para 4.10.

¹⁶³ WTO Committee on Agriculture, 'Communication from Argentina, Brazil, Chile, Paraguay and Uruguay: Principles and Values of the Region Regarding the Production of Food Within the Framework of Sustainable Development' (1 June 2021) UN Doc G/AG/GEN/187 para 1.4.

¹⁶⁴ *ibid* para 1.4.

¹⁶⁵ To end hunger, achieve food security and improved nutrition, and promote sustainable agriculture, SDG 2.b requires to '[c]orrect and prevent trade restrictions and distortions in world agricultural markets, including through the parallel elimination of all forms of agricultural export subsidies and all export measures with equivalent effect', while SDG 2.c promotes the adoption of 'measures to ensure the proper functioning of food commodity markets and their derivatives and facilitate timely access to market information, including on food reserves, in order to help limit extreme food price volatility'.

¹⁶⁶ WTO Committee on Agriculture, 'Submission by Brazil: Joint Statement—The Contribution of International Agricultural Trade to Sustainable Food Systems' (n 162) para 5.

¹⁶⁷ WTO Committee on Agriculture, 'Communication from Argentina, Brazil, Chile, Paraguay and Uruguay: Principles and Values of the Region Regarding the Production of Food Within the Framework of Sustainable Development' (n 163) para 1.1.

¹⁶⁸ *ibid* para 1.6.

¹⁶⁹ Other important results have been achieved on issues that indirectly impact food security and the achievement of sustainable food systems. In particular, Members agreed on a multilateral Agreement on Fisheries Subsidies, which responds to the SDG 14.6, and on a Declaration on Responses to Modern SPS Challenges. See, respectively, MC12, 'Ministerial Decision of 17 June 2022: Agreement on Fisheries Subsidies' (22 June 2022) UN Doc WT/MIN(22)/33; MC12, 'Ministerial Declaration adopted on 17 June 2022: Sanitary and Phytosanitary Declaration for the Twelfth WTO Ministerial Conference: Responding to Modern SPS Challenges' (22 June 2022) UN Doc WT/MIN(22)/27.

Agriculture.¹⁷⁰ However, due to Members' disagreement, the agriculture package of MC12 is incomplete and misses its primary component on agricultural negotiations. This is the reason why no meaningful advancements were made on most of the issues addressed under section III, including market access, safeguards, export subsidies, public stockholding programs, export restrictions, transparency, S&DT, and sustainability. Progress was made only with respect to the regulation of international food aid. Overall, MC12 had a modest impact on food security.

A. The Ministerial Decision on World Food Program food purchases exemption from export prohibitions or restrictions

Due to its role in offering a lifeline to the most disadvantaged communities, Members agreed to endorse Singapore's proposal¹⁷¹ and decided to not impose export prohibitions or restrictions on foodstuffs purchased for non-commercial humanitarian purposes by the WFP.¹⁷² Specifically, the WFP was selected as it provides critical humanitarian support and always makes procurement decisions guided by the principles of avoiding harm to the supplying Member and promoting local food procurement.¹⁷³

The Decision strikes a delicate balance by, on the one hand, granting the aforementioned exemption, and, on the other hand, reaffirming that Members retain the right to implement measures aimed at securing their food security, provided that these measures comply with WTO law.¹⁷⁴ The hope is that the WFP exemption will be interpreted in good faith and that Members will ensure that the domestic measures enacted to promote food security do not hinder the exemption. However, it remains to be seen whether this will always be the case.

The WFP exemption represents a symbolically important achievement that demonstrates the determination of Members to address the ongoing food crisis. According to the WFP, the exemption could help save time and guarantee that crucial aid reaches those most in need.¹⁷⁵ By agreeing on this exemption, Members showed that the WTO can serve as a platform for advancing non-trade concerns. This outcome is also in line with SDG 2 on the achievement of food security and improved nutrition. Despite its symbolic importance, however, the Decision could have been more ambitious. First, it could have exempted not only the WFP but also other humanitarian organisations.¹⁷⁶ Second, it could have also addressed other trade barriers aside from export prohibitions or restrictions that may hinder the procurement efforts of the WFP.

¹⁷⁰ MC12, 'Draft Ministerial Decision on Agriculture' (10 June 2022) UN Doc WT/MIN(22)/W/19.

¹⁷¹ See above section III.G

¹⁷² MC12, 'Ministerial Decision on World Food Program Food Purchases Exemption from Export Prohibitions or Restrictions' (22 June 2022) UN Doc WT/MIN(22)/29.

¹⁷³ *ibid.*

¹⁷⁴ *ibid.*

¹⁷⁵ Export restrictions have negatively impacted the WFP's ability to procure food efficiently, resulting in longer processing times, increased transportation expenses, and, in cases of export bans, meal losses and higher procurement costs. See WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 30 November-1 December 2020' (n 141) para 2.9.

¹⁷⁶ WFP food purchases represent less than 1 per cent of global food purchases. This is probably one of the reasons why Members managed to reach an agreement to ban export prohibitions or restrictions on WFP's purchases. See Facundo Calvo, 'Global Food Crisis May Take Centre Stage at MC12 Agriculture Negotiations' (*International Institute for Sustainable Development*, 7 June 2022) <<https://www.iisd.org/articles/policy-analysis/global-food-crisis-mc12-agriculture-negotiations>> accessed 22 December 2023.

B. The Ministerial Declaration on the Emergency Response to Food Insecurity

The Ministerial Declaration on the Emergency Response to Food Insecurity (WTO Food Security Declaration) emphasises the importance of open agricultural trade flows and urges avoiding export restrictions that are inconsistent with WTO law.¹⁷⁷ Notably, it commits Members to establish a dedicated work program in the CoA to operationalise the NFIDC Decision.¹⁷⁸ Among other things, the work program shall consider ‘the best possible use of flexibilities’ to enhance the agricultural production and domestic food security of LDCs and NFIDCs.¹⁷⁹

Despite the above positive statements on minimising trade-restrictive measures, the WTO Food Security Declaration does not contain any binding and enforceable provision on the use of export restrictions.¹⁸⁰ Although it is commendable that Members expressed a commitment to ensuring that emergency measures introduced to address food security ‘minimise trade distortions as far as possible’ and are ‘temporary’, ‘targeted’, and ‘transparent’,¹⁸¹ this is a non-binding commitment that is part of a broader best-endeavour declaration. Members could have at least committed to prohibiting the imposition of export restrictions by Members who are major exporters of certain food products when such products are purchased by LDCs and NFIDCs for their domestic use.

The International Food Policy Research Institute noted that developing countries are the main users of export restrictions, which have severe consequences for other developing countries. Such restrictions commonly target commodities and staple food and, therefore, place LDCs that rely on these products to fulfil their dietary needs at the greatest

¹⁷⁷ MC12, ‘Ministerial Declaration on the Emergency Response to Food Insecurity’ (22 June 2022) UN Doc WT/MIN(22)/28 para 4.

¹⁷⁸ See above, section II.D.6.

¹⁷⁹ MC12, ‘Ministerial Declaration on the Emergency Response to Food Insecurity’ (n 177) para 8; see also above section II.D.6; A work program containing the thematic outline and working methods has been approved, and can be found in WTO, ‘Work Programme Pursuant to Paragraph 8 of the Ministerial Declaration on the Emergency Response to Food Insecurity’ (23 November 2022) <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/AG/35.pdf&Open=True>> accessed 22 December 2023. The work program outlines four primary themes to guide future discussions: access to international food markets, financing food imports, agricultural and production resilience of LDCs and NFIDCs, and a set of horizontal issues to foster collaboration. It also aims to facilitate the identification of the challenges faced by LDCs and NFIDCs, as well as the responses of Members to food insecurity in these countries, through questionnaires. The finalised questionnaire is available in WTO, ‘Questionnaire on LDC and NFIDC Members’ Utilization of WTO Flexibilities (Work Programme-Paragraph 8 of MC-12 Declaration on Food Insecurity)’ (88 December 2022) <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/AG/GEN214.pdf&Open=True>> accessed 22 December 2023.

¹⁸⁰ Facundo Calvo, ‘How Can the WTO Contribute to Global Food Security?’ (*International Institute for Sustainable Development*, 22 June 2022) <<https://sdg.iisd.org/commentary/policy-briefs/how-can-the-wto-continue-delivering-good-outcomes-on-food-security/>> accessed 22 December 2023.

¹⁸¹ MC12, ‘Ministerial Declaration on the Emergency Response to Food Insecurity’ (n 177) para 5.

disadvantage.¹⁸² To ensure that positive food security outcomes are achieved at MC13, Members could consider clarifying existing regulations on export restrictions, including by amending Article XI of the GATT and Article 12 of the AoA.

The WTO Food Security Declaration symbolically shows that Members could collectively respond to acute challenges in today's agricultural markets. However, its weak and non-binding commitments prevent it from bringing about any significant improvement.

V. The way forward at the WTO

The lack of progress since 2020 in promoting food security concerns at the WTO suggests that a new approach is needed in the way these concerns are addressed. The following sections elaborate on the necessity for a new, holistic approach and its potential implementation in the WTO framework on agriculture.

A. The need for a new approach

Section IV reveals that the food security outcome at MC12 has been rather disappointing. Essentially, Members only agreed to (i) avoid implementing export prohibitions or restrictions on foodstuffs purchased by the WFP for humanitarian purposes and (ii) establish a specific work program in the CoA to implement the NFIDC Decision.

This outcome is especially unsatisfactory considering the extensive negotiations that have occurred in the CoA since the outbreak of the Covid-19 pandemic. During these negotiations, Members discussed all the significant issues related to the food security part of the WTO framework on agriculture, such as market access, safeguards, domestic support, export subsidies, public stockholding, investment subsidies, export restrictions, international food aid, measures to protect LDCs and NFIDCs, transparency, and S&DT. They also addressed issues that have been traditionally overlooked, particularly sustainability. The lack of any relevant progress in reshaping the fundamental pillars of the AoA demonstrates that the negotiation strategy typically employed for agricultural and food security concerns, based on conceiving the various issues as being 'autonomous' and not interrelated, is not the most effective.

The WTO regulatory framework on agriculture and food security, the debate ahead of MC12, and the outcomes achieved there, reveal that food security is still treated as an exception, while commercial transactions are the rule.¹⁸³ The multilateral trading system lacks a comprehensive legal framework that addresses food security beyond market access, subsidy disciplines, and export measures. After the Covid-19 pandemic, the conflict in Ukraine has further highlighted the necessity of placing food security at the forefront of trade discussions. As Brazil outlined in its submissions to the CoA ahead of MC12, food security issues are 'multifaceted', and they need to be addressed through a 'comprehensive approach'.¹⁸⁴ Brazil's remarks highlight the lack of a holistic approach in the way food security has been addressed at the WTO.

¹⁸² Joseph Glauber, David Laborde, Abdullah Mamun, Elsa Olivetti, and Valeria Piñeiro, 'MC12: How to Make the WTO Relevant in the Middle of a Food Price Crisis' (*International Food Policy Research Institute*, 11 June 2022) <<https://www.ifpri.org/blog/mc12-how-make-wto-relevant-middle-food-price-crisis>> accessed 22 December 2023.

¹⁸³ De Schutter, 'The World Trade Organization and the Post-Global Food Crisis Agenda' (n 37) 16.

¹⁸⁴ MC12, General Council, 'Communication from Brazil' (n 125) preamble; see also above, section III.D.

B. The development of a holistic approach to food security for implementation in the WTO framework on agriculture

The sections below explore the theoretical foundation and the legal basis for implementing a holistic approach to food security in the WTO framework on agriculture. Following this analysis, the paper proposes recommendations for implementing this innovative approach in the AoA, with a particular focus on its three pillars.

1. The theoretical foundation for a holistic approach to food security

To address food security holistically, the notion of sustainable development, which encompasses an economic, social, and environmental pillar,¹⁸⁵ is a useful tool to go beyond the 'pure' market-based trade law perspective and embrace a cross-cutting approach that draws on human rights law and the right to food.¹⁸⁶ The traditional trade tools aimed at improving access, distribution, and market stability are insufficient to frame a holistic approach to food security. The implementation of this approach would result in a greater focus on all the dimensions of sustainability, not only the environmental one, and on the intra- and inter-generational equity implications of agricultural and food security policies.¹⁸⁷ Intra-generational equity refers to the fair distribution of resources, opportunities, and benefits among individuals and groups within the same generation or time period. Inter-generational equity, on the other hand, focuses on the fair distribution of resources and the responsibility for sustainable development between different generations. Greater attention to equity considerations would shift the focus from market dynamics to farmers and resource-poor countries.¹⁸⁸

A rights-based approach would also conceive food as an entitlement rather than a commodity, and it would require examining food systems in their entirety, together with the ways in which people interact with those systems.¹⁸⁹ In this respect, the notion of food sovereignty provides a stimulus for thinking outside the boundaries of trade law by placing greater emphasis on bottom-up approaches, the local level, and sustainability in food production, access, and distribution. Food sovereignty focuses on local food production as

¹⁸⁵ Sustainable development is 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'. See World Commission on Environment and Development, *Our Common Future* (1987) (Brundtland Report) <<https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>> accessed 22 December 2023.

¹⁸⁶ See Katrin Kuhlmann, 'Trade, Sustainable Development, and Food Security' (Presentation at Georgetown's International Economic Law Colloquium, Georgetown University, 2022); According to Rayfuse, realising the right to food presumes sustainable agricultural development, which ensures that the small-scale farming sector is not left out. Similarly, also biodiversity protection requires 'diverse' farming systems. See Rosemary Rayfuse and Nicole Weisfelt, *The Challenge of Food Security: International Policy and Regulatory Frameworks* (Elgar 2012) 87; For an overview of the different conceptions of the right to food, especially as an individual right versus a community right, see Anne Saab, *Narratives of Hunger in International Law: Feeding the World in Times of Climate Change* (Cambridge University Press 2019) 123-24.

¹⁸⁷ Kuhlmann, 'Trade, Sustainable Development, and Food Security' (n 186).

¹⁸⁸ Katrin Kuhlmann, 'Mapping Inclusive Law and Regulation: A Comparative Agenda for Trade and Development' (2021) 2 *African Journal of International Economic Law* 48, 81.

¹⁸⁹ Priscilla Claeys and Nadia Lambek, 'Introduction: In Search of Better Options: Food Sovereignty, the Right to Food and Legal Tools for Transforming Food Systems' in Nadia Lambek and others (eds), *Rethinking Food Systems: Structural Challenges, New Strategies and the Law* (Springer 2014) 1-25.

opposed to mass production by large corporations, the practice of small-scale sustainable agriculture that is environmentally and culturally appropriate, agroecology principles as opposed to advanced and expensive technologies to increase food production, the protection of biodiversity, and the recognition of the role of small farmers for achieving food security.¹⁹⁰ Giving more consideration to these aspects would lead to increased focus on matters such as biodiversity, genetic resources, agricultural inputs, the role of farmers, and the significance of local markets as a complement to non-distorted international markets.¹⁹¹

This approach links with several SDGs, including SDG 1 on ending poverty, SDG 2 on achieving food security and promoting sustainable agriculture, SDG 3 on ensuring healthy lives, SDG 12 on ensuring sustainable consumption and production patterns, and SDG 15 on promoting the sustainable use of ecosystems and protecting biodiversity.

2. The legal basis for a holistic approach to food security

The foundational agreements of the WTO provide the legal hooks for advocating in favour of a holistic approach to food security. The preamble to the Agreement Establishing the WTO adopts a comprehensive approach to sustainable development and tries to balance trade needs with non-trade values.¹⁹² The preamble acknowledges that trade relations should be aimed at promoting higher standards of living, full employment, and higher incomes, while also ensuring the optimal use of natural resources according to sustainable development.¹⁹³ The preamble also specifies that international trade should benefit the economic development of developing countries and LDCs.¹⁹⁴ This is the basis for the many S&DT provisions in several WTO agreements, focused on intra-generational equity.

The preamble to the AoA reaffirms some of these concepts.¹⁹⁵ It acknowledges that the aim of the AoA is to establish a 'fair' and 'equitable' agricultural trading system, having regard to 'non-trade concerns', such as 'food security'.¹⁹⁶ In implementing market access commitments, developed Members should consider the 'needs' of developing Members through S&DT provisions and mechanisms to tackle the adverse effects of liberalisation on LDCs and NFIDCs.¹⁹⁷

¹⁹⁰ See World Food Summit Nyéléni, 'Declaration of the Forum for Food Sovereignty' (27 February 2007) <<https://nyeleni.org/IMG/pdf/DeclNyeleni-en.pdf>> accessed 22 December 2023; Saab (n 186) 41-42; Peter Halewood, 'Trade Liberalization and Obstacles to Food Security: Toward a Sustainable Food Sovereignty' (2011) 43(1) *University of Miami Inter-American Law Review* 115, 134-36.

¹⁹¹ Katrin Kuhlmann and others, 'Re-conceptualizing Free Trade Agreements Through a Sustainable Development Lens' (*New Markets Lab*, 27 July 2020) 13, 22-23 <<https://www.unescap.org/sites/default/files/145%20Final-Team%20Katrin%20Kuhlmann-USA.pdf>> accessed 22 December 2023; IFAD, 'Rural Poverty Report 2011—New Realities, New Challenges: New Opportunities for Tomorrow's Generation' (*International Fund for Agricultural Development*, 1 December 2010) 94, 115 <<https://reliefweb.int/report/world/rural-poverty-report-2011-new-realities-new-challenges-new-opportunities-tomorrows>> accessed 22 December 2023.

¹⁹² Marrakesh Agreement Establishing the World Trade Organization (concluded 15 April 1994, entered into force 11 January 1995) 1867 UNTS 154 (WTO Agreement); see also Emily Barrett Lydgate, 'Sustainable Development in the WTO: From Mutual Supportiveness to Balancing' (2012) 11(4) *World Trade Review* 621, 623-25.

¹⁹³ WTO Agreement (n 192) preamble.

¹⁹⁴ WTO Agreement (n 192).

¹⁹⁵ Ahmad Mukhtar, Policy Space for Sustainable Agriculture in the World Trade Organization Agreement on Agriculture (Food and Agriculture Organization, 15 July 2020) 9 <<https://www.fao.org/3/ca9544en/CA9544EN.pdf>> accessed 22 December 2023.

¹⁹⁶ AoA (n 9) preamble.

¹⁹⁷ *ibid.*

Both preambles provide Members with the legal hooks to move away from the current conception of food security as an exception, as they both acknowledge the importance of pursuing social and environmental interests, in addition to the economic ones, including by providing flexibilities to developing countries, LDCs, and NFIDCs. What is missing, however, is an approach to address concerns for future generations.¹⁹⁸ The principle of intergenerational equity, established in international law, envisages the right of future generations to enjoy a fair level of common patrimony.¹⁹⁹ When it comes to agriculture, intergenerational equity means ensuring that future generations have access to comparable opportunities as the current generation, while also avoiding the deterioration of natural, social, or economic capital as a whole.²⁰⁰

3. The implementation of a holistic approach to food security in the WTO Agreement on Agriculture

The following sections set forth some proposals to reform the three pillars of the AoA according to a holistic and comprehensive approach to food security grounded in the notion of sustainable development.

i. Market access

Despite commitments to reduce tariffs on agricultural products, tariff levels remain high, and it is therefore difficult for developing countries to benefit from the current tariffication system. Further tariff cuts could be aimed at increasing the access of producers from developing countries to markets in developed countries, while also ensuring that these reductions do not hinder the ability of developing countries to use tariffs for the promotion of food security.

Greater access to markets in developed countries should be a priority. This can be achieved through further reductions in the tariff levels of developed countries in order to address dirty tariffication.²⁰¹ Farmers' improved ability to access developed country markets would result in higher incomes for them.²⁰² Higher incomes would incentivise them to grow more products, thereby increasing agricultural productivity. In turn, increased production would facilitate the achievement of the right to food, as more individuals would find participation in agriculture lucrative.²⁰³ Market access could also be enhanced by implementing product-specific tariff reductions to prevent selective tariff cuts,²⁰⁴ by eliminating tariff escalation on products that are of export interest to developing countries, and by

¹⁹⁸ Rayfuse and Weisfelt (n 186) 84.

¹⁹⁹ ILA, *Report of the Seventieth Conference held in New Delhi 2-6 April 2002* (Cambrian Printers 2002) 22-29.

²⁰⁰ Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Transnational Publishers 1989); Keith Aoki, 'Food Forethought: Intergenerational Equity and Global Food Supply – Past, Present, and Future' (2011) 2 *Wisconsin Law Review* 399.

²⁰¹ See above, section II.A; see also Guled Yusuf, 'The Marginalization of African Agricultural Trade and Development: A Case Study of the WTO's Efforts to Cater to African Agricultural Trading Interests Particularly Cotton and Sugar' (2009) 17(2) *African Journal of International and Comparative Law* 213 239.

²⁰² It has also been argued, however, that some protections should be granted to small farmers in developing countries to be protected from international competition. See Rayfuse and Weisfelt (n 186) 87.

²⁰³ Shelton Mota Makore, Patrick Osode, and Nombulelo Lubisi, 'Re-Theorising International Agricultural Trade Regulation to Realise the Human Right to Food in Developing Countries' (2022) 47(2) *Journal for Juridical Science* 88, 106.

²⁰⁴ See above, section II.A.

increasing tariff transparency to prevent abuses and promote fair trade.²⁰⁵ Developed Members could also be required to establish a generalised system of preferences for developing countries that would allow a specific percentage of their goods to enter the market.²⁰⁶ To support LDCs, the percentage could be set higher. This would ensure a minimum level of free and fair agricultural trade.

The AoA could provide developing Members with flexibility in implementing tariff reductions, as they rely on tariff revenues to fund measures to boost domestic production and promote food security. Any additional tariff reduction in those countries should also be subject to careful evaluation of the risk of displacing domestic production with cheap imports from developed countries that heavily rely on domestic subsidies. This displacement could have detrimental effects on domestic farmers, rural livelihoods, and national food security goals. Developing countries could also be exempt from tariff reduction obligations for sensitive agricultural commodities, including food staples such as rice, wheat, maize, and other essential food items that are critical for ensuring a stable food supply and affordable prices for the population.²⁰⁷

To promote sustainable development, market access could be made contingent upon adherence to transparent sustainability standards, such as internationally recognised good agricultural practices tailored to the needs and capacities of developing countries.²⁰⁸ This ensures that the requirements are realistic and achievable, taking into account factors like resource availability, technological capacity, and the socio-economic conditions of small-scale farmers. This approach would ‘qualify’ market access and ensure small farmers’ participation.

ii. Domestic support

The need for reform in domestic support to agriculture becomes apparent when considering the annual worldwide expenditure, exceeding USD 500 billion, with only 35 per cent of these funds reaching farmers.²⁰⁹ Much of this support incentivises inefficient use of resources, distorts global markets, or undermines environmental sustainability, public health, and agricultural productivity.²¹⁰ This funding could be repurposed towards temporary, better-targeted programs for global food security and sustainable food systems, considering the key aspects of efficiency, cost and fiscal sustainability, flexibility, administrative complexity, equity, and strengthened resilience and sustainability.²¹¹ The strategy of inducing every

²⁰⁵ Gonzalez (n 56) 485.

²⁰⁶ Emmanuel Asmah and Brandon Routman, ‘Removing Barriers to Improve the Competitiveness of Africa’s Agriculture’ (*Brookings*, 2016) <https://www.brookings.edu/wp-content/uploads/2016/06/0601_improving_agoa_asmah_routman.pdf> accessed 22 December 2023.

²⁰⁷ Gonzalez (n 55) 485-86.

²⁰⁸ FAO attempted to develop some balanced and worldwide applicable good agricultural practices. See FAO, ‘Development of a Framework for Good Agricultural Practices’ (13 March-4 April 2003) UN Doc COAG/2003/6.

²⁰⁹ OECD, ‘Governments Should Renew Efforts to Reform Support to Agriculture’ (*Organisation for Economic Co-operation and Development*, 2019) <<https://www.oecd.org/agriculture/oecd-ag-policy-monitoring-2019/>> accessed 22 December 2023; Madhur Gautam and others, *Repurposing Agricultural Policies and Support: Options to Transform Agriculture and Food Systems to Better Serve the Health of People, Economies, and the Planet* (World Bank, 2022) vii.

²¹⁰ FAO, IMF, WB, WFP and WTO ‘Joint Statement’ (n 1).

²¹¹ For example, domestic support could target the adoption of good agricultural practices, research and innovation (including on fertilisers), extension and advisory services, improved infrastructure and logistics, and digital technologies that improve productivity sustainably.

Member to reduce domestic support measures, irrespective of its level of development, should however be avoided, as it risks hampering development since it does not sufficiently account for the food security needs of developing Members.²¹²

With specific regard to developed countries, the Green Box and Blue Box rules could be redesigned. These countries are the major users of domestic subsidies,²¹³ which have been employed to indirectly support agricultural production by boosting farmers' income (Green Box) and directly subsidise agricultural production (Blue Box). For this reason, they could be re-categorised as trade-distorting Amber Box subsidies, and they could be reduced. In the alternative, a more precise definition of Green Box measures could be adopted and an expenditure limit set, since countries have easily transformed Blue Box subsidies into Green Box subsidies. The latter could also be more closely tied to sustainability goals by requiring countries to demonstrate how their Green Box programs contribute to environmentally friendly and sustainable agricultural practices, such as organic farming, conservation farming, or agroforestry.²¹⁴

With regard to developing countries, a revised AoA could acknowledge the role of domestic subsidies in promoting food security and could expand the investment subsidies exception in Article 6(2) of the AoA to turn it into a 'food security box'.²¹⁵ This box could allow for subsidies that increase domestic food production, particularly those directed toward low-income or resource-poor farmers, as well as food price subsidies, direct food provision, and income safety nets.²¹⁶ With regard to domestic subsidies falling outside the 'food security box', developing Members could be afforded the flexibility to adjust their aggregate measurement of support in response to inflation.

A revised AoA could also allow for a smoother shift from product-specific to non-product-specific measures of support, considering the non-trade concerns of agriculture, including sustainability and the right to food.²¹⁷ Product-specific subsidies incentivise farmers to adopt mechanised production techniques that rely on fertilisers and pesticides to maximise their income from the subsidies. This results in environmental degradation, biodiversity loss, and ultimately undermines the realisation of the right to food.²¹⁸ Product-specific measures could be turned into an exception to the general rules. Accordingly, WTO members would be allowed to use this type of support only in situations where such measures would be beneficial for developing Members.

²¹² See above, section II.D.2.

²¹³ See above, section II.B.

²¹⁴ Timothy Josling, 'Rethinking the Rules for Agricultural Subsidies' (*International Trade Center*, 2015) 4-5 <<https://ageconsearch.umn.edu/record/320153/>> accessed 22 December 2023.

²¹⁵ See above, section II.D.3.

²¹⁶ Gonzalez (n 55) 489.

²¹⁷ James Simpson and Thomas Schoenbaum, 'Non-Trade Concerns in WTO Trade Negotiations: Legal and Legitimate Reasons for Revising the "Box" System' (2003) 2(3/4) *International Journal of Agricultural Resources, Governance and Ecology* 399.

²¹⁸ Christophe Bellmann, 'Subsidies and Sustainable Agriculture: Mapping the Policy Landscape' (*Chatham House*, 2019) 6 <<https://www.chathamhouse.org/sites/default/files/Subsidies%20and%20Sustainable%20Ag%20-%20Mapping%20the%20Policy%20Landscape%20FINAL-compressed.pdf>> accessed 22 December 2023.

iii. Export subsidies

Despite Members' obligation to refrain from incentivising the export of agricultural products through export subsidies,²¹⁹ countries still heavily subsidise their exports. Export subsidies, in the form of direct payments, export loans, and tax benefits, have distorted market prices leading to higher-than-market prices and surplus production in exporting countries and lower prices and less production in importing countries.²²⁰ In the long-term, this system undermines competitiveness of food production in both exporting and importing countries. The outcome achieved at MC10—a commitment to eliminate export subsidies, with different time frames for developed countries, developing countries, LDCs, and NFIDCs—has room for improvement.

On the one hand, Articles 8 and 9 of the AoA could be revised to implement a comprehensive ban on export subsidies for developed countries, which hinder the realisation of the right to food in developing countries due to cheap imports that undermine the development prospects of local producers.²²¹ The AoA could also include a prohibition on measures that aim to evade this ban, like direct subsidies to producers that are not linked to export performance. As contemplated by Article 10(2) of the AoA, a revised AoA could also have binding obligations on minimum interest rates and maximum credit terms to avoid developed countries from promoting exports through government credit on concessional terms.²²² If developed countries decreased export subsidies and measures alike, the products of developing countries would gain competitiveness in both domestic and global markets, ultimately leading to increased production of both cash crops and subsistence crops.²²³ Nevertheless, it should not be ignored that a decrease in export support by developed countries may lead to higher food prices, resulting in higher import costs and greater food insecurity for food-importing countries. For this reason, a revised AoA could include a commitment to provide financial aid to LDCs and NFIDCs to offset the effects of higher prices.²²⁴

On the other hand, pursuant to S&DT, developing countries should have leeway to utilise export subsidies to promote their agro-export industry and generate employment and export revenues.²²⁵ Export subsidies could encourage developing countries to diversify their exports beyond primary agricultural products. By subsidising the export of value-added or processed agricultural products, these countries could move up the global value chain and increase the value of their exports, which could lead to higher export revenues and economic resilience. However, this proposal faces the problem that only a minority of the developing countries have the necessary resources to subsidise their exports, and it would thus favour only

²¹⁹ AoA (n 9) art 8. See also the exceptions in AoA, Articles 9 and 10.

²²⁰ Heinz Strubenhoff, 'The WTO's Decision to end Agricultural Export Subsidies is Good News for Farmers and Consumers' (*Brookings*, 2016) <<https://www.brookings.edu/articles/the-wtos-decision-to-end-agricultural-export-subsidies-is-good-news-for-farmers-and-consumers/>> accessed 22 December 2023.

²²¹ James Scott, 'The Future of Agricultural Trade Governance in the World Trade Organization' (2017) 93(5) *International Affairs* 1167, 1175.

²²² Gonzalez (n 55) 487.

²²³ *ibid* 475.

²²⁴ UNCTAD Secretariat, 'Impact of the Reform Process in Agriculture on LDCs and Net Food-Importing Developing Countries and Ways to Address their Concerns in Multilateral Trade Negotiations' (23 June 2000) UN Doc TD/B/COM.1/EM.11/2 1.

²²⁵ The use of export subsidies should, however, be moderate, as an excessive focus on exports risks making small-scale farmers even more vulnerable. See Rayfuse and Weisfelt (n 186) 87.

the wealthier ones, exacerbating inequalities within the group of developing countries.²²⁶ One solution may be to allow subsidies only when justified by food security concerns, including the necessity to diversify agricultural production and reduce reliance on a few export commodities. A diverse agricultural sector is better equipped to withstand external shocks and market fluctuations, helping to protect the livelihoods of farmers and maintain economic stability.

C. The road ahead to the 13th Ministerial Conference

It might be ambitious to expect that, at MC13, Members will agree to move toward a holistic approach to food security, grounded in sustainable development, the right to food, and enhanced flexibilities to address the needs of all. However, there are optimistic signs that Members are increasingly aware of these needs.

Already ahead of MC12, Argentina, Australia, Brazil, Canada, Chile, Colombia, Ecuador, Guatemala, New Zealand, Paraguay, Peru, the Philippines, South Africa, Ukraine, Uruguay, and Vietnam, delivered a joint statement urging to reform the AoA to boost sustainable agricultural production on the basis of an 'inclusive vision' of sustainability that provides flexible solutions tailored to the specific needs of different local contexts.²²⁷ In the aftermath of MC12, Members further demonstrated interest in moving toward a holistic and inclusive approach to food security.

Paraguay urged Members to move toward 'sustainable production', gradually and in line with their 'developmental needs'. The country stressed that the transition toward sustainability should respect "local realities", including their 'social, economic, and environmental' peculiarities. Paraguay also advocated for the introduction at the WTO of the environmental law concept of 'common but differentiated responsibility' for the implementation of environmental measures, in line with internationally established norms.²²⁸

New Zealand shared the need to enable small agricultural producers to participate 'fairly' in global trade and grant them adequate policy tools to improve agricultural productivity and resilience.²²⁹ Essentially, it called for the adoption of flexibilities and exceptions that meet the needs of small-scale farmers.

China urged Members to make progress toward environmental sustainability. The country warned against the 'detrimental impacts' of fertilisers and pesticides. Accordingly, it called for 'a framework and a formula' to reduce those detrimental effects.²³⁰

Nigeria suggested that Members should make efforts to address existing asymmetries in the AoA and provide additional flexibilities and policy space to developing countries, LDCs, and NFIDCs, to enable them to upscale their agricultural production capacities.²³¹

²²⁶ This problem also draws attention to the broader issue of the inappropriateness of the current three-fold country classification at the WTO. See Fan Cui, 'Who Are the Developing Countries in the WTO?' (2008) 1(1) *The Law and Development Review* 124.

²²⁷ WTO Committee on Agriculture, 'Submission by Brazil: Joint Statement—The Contribution of International Agricultural Trade to Sustainable Food Systems' (n 161) paras 1.2, 1.4, 7; see also above, section III.I.

²²⁸ WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 21-22 November 2022' (n 7) para 3.59.

²²⁹ *ibid* para 3.30.

²³⁰ *ibid* para 3.38.

²³¹ WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 14-15 September 2022' (31 October 2022) UN Doc G/AG/R/103 para 3.23. See also para 3.45.

Egypt also addressed the need for greater flexibilities and the proper implementation of those already existing.²³²

Lastly, Japan, New Zealand, and China recognised the importance of reaching an agreement on well-targeted and appropriately safeguarded public stockholding programs.²³³

Although some of the major players at the WTO, such as the US and the EU, have not spoken up yet in favour of a new approach to food security centred around sustainability and inclusivity, the statements above signal an initial shift in the approach to food security. This will, in any case, require time, as decisions are ordinarily made by consensus at the WTO.

VI. Conclusion

Despite some progress being made at MC12, the current WTO framework on agriculture is still affected by shortcomings and asymmetries that pose challenges to the achievement of food security. This paper's proposals suggest a redesign of this framework, particularly the AoA, to ensure that the multilateral trading system facilitates all Members' access to adequate, safe, and nutritious food at all times. To attain this objective, there needs to be a shift toward a holistic approach to food security to ensure that 'all our peoples' benefit from the welfare gains that the multilateral trading system generates.²³⁴

Although a comprehensive reform of the AoA is the ultimate goal, it is unlikely to occur in the short to medium term. This is due to the consensus-based mechanism for amending treaties at the WTO, where it is challenging to gain agreement among Members due to the political considerations that come into play when decisions are taken.

The challenges associated with decision-making at the WTO have become increasingly apparent in recent years. Between 2020 and 2022, no proposals were presented by Members to reform the disciplines on market access, safeguards, domestic support, export subsidies, export restrictions, transparency in the notification of trade-restrictive measures, and S&DT.²³⁵ While detailed submissions were made on public stockholding, a lack of agreement among Members prevented any progress. This suggests that it is unlikely that any headway will be made on these issues during MC13. Accordingly, an incremental approach could be adopted to achieve short to medium-term reforms on other topics while long-term agreement on these issues is more feasible.

In the short term, particularly in preparation for MC13, Members could consider discussing other issues that are more likely to garner consensus, such as sustainability. Prior to MC12, several countries supported an 'inclusive' vision of sustainable agriculture that includes solutions tailored to local contexts.²³⁶ The MC12 Ministerial Declaration on the Emergency Response to Food Insecurity urges Members to 'promote[] sustainable agriculture and food systems' and "implement resilient agricultural practices".²³⁷ The MC12 Ministerial Declaration on Sanitary and Phytosanitary (SPS) Measures is more detailed and provides that

²³² WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 27-28 June 2022' (n 8) para 4.29.

²³³ WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 14-15 September 2022' (n 233) paras 3.40, 3.41; WTO Secretariat, 'Summary Report of the Meeting of the Committee on Agriculture Held on 21-22 November 2022' (n 7) para 3.38.

²³⁴ MC4, 'Ministerial Declaration Adopted on 14 November 2001' (20 November 2001) UN Doc WT/MIN(01)/DEC/1 para 2.

²³⁵ See above, section III.

²³⁶ See above, section III.I.

²³⁷ MC12, 'Ministerial Declaration on the Emergency Response to Food Insecurity' (n 177) preamble.

the SPS Committee should explore how the implementation of the SPS Agreement can 'facilitate global food security and more sustainable food systems, including through sustainable growth and innovation in agricultural production and international trade, and through the use of international standards, guidelines, and recommendations [...]'.²³⁸ Following MC12, there has been a renewed push toward sustainable agriculture. Paraguay, for example, advocated for a transition toward sustainability that respects 'local realities' and proposed the adoption of the environmental law concept of 'common but differentiated responsibility' at the WTO. Similarly, China urged progress toward environmental sustainability.²³⁹

In preparation for MC13, Members could discuss what role the CoA could play in facilitating a transition toward sustainable agricultural production and how this goal could be implemented in its work program on food security.²⁴⁰ They could also reflect on the role of the Trade and Environmental Sustainability Structured Discussions as a new avenue that facilitates debate.²⁴¹ One way to establish a solid foundation for promoting sustainability in agricultural systems is by strengthening cooperation efforts, ideally under the supervision of a dedicated committee.²⁴² In such a forum, Members could discuss various issues, including the role of voluntary sustainability standards, regulations, and conformity-assessment procedures. For instance, they could explore how recognised voluntary standards could be utilised to demonstrate compliance with mandatory regulations, providing producers with more flexibility, lower compliance costs, and improved mutual recognition and equivalences.²⁴³ Other potential topics for discussion include granting additional market access for sustainably produced goods, developing guidelines for sustainable agricultural practices, and promoting their adoption through capacity-building and technical assistance programs. In general, addressing these issues would favour a shift in the way the WTO approaches sustainability—from being an exception to becoming a rule.

Other issues raised by countries after MC12 are less likely to result in any tangible outcomes at MC13. New Zealand, for instance, raised the issue of the participation of small

²³⁸ MC12, 'Ministerial Declaration adopted on 17 June 2022: Sanitary and Phytosanitary Declaration for the Twelfth WTO Ministerial Conference: Responding to Modern SPS Challenges' (n 169) para 8.

²³⁹ See above, section V.C.

²⁴⁰ See above (n 179).

²⁴¹ The Trade and Environmental Sustainability Structured Discussions are a series of informal and open-ended discussions that take place within the WTO to facilitate dialogue and exchange of information between Members on the intersection of trade and environmental sustainability. See WTO, 'New Initiatives Launched to Intensify WTO Work on Trade and the Environment' (*World Trade Organization*) <https://www.wto.org/english/news_e/news20_e/envir_17nov20_e.htm> accessed 22 December 2023.

²⁴² This approach has been adopted by the EU since 2021 when the European Commission published a proposal for a 'Sustainable Food Systems' chapter to be included in its new preferential trade agreements. See Robert Francis, 'EU FTAs: Commission Unveils New Chapter on Sustainable Food Systems' (*Borderlex*, 14 June 2021) <<https://borderlex.net/2021/06/14/eu-ftas-commission-unveils-new-chapter-on-sustainable-food-systems/>> accessed 22 December 2023. To date, the only finalised (but not yet in force) agreement containing a 'Sustainable Food Systems' chapter is the EU-New Zealand Free Trade Agreement (signed 9 July 2023) ch 7 <https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement/text-agreement_en> accessed 22 December 2023.

²⁴³ Christophe Bellmann, 'Fostering Cooperation on Sustainable Agriculture and Trade at the WTO' (*International Institute for Sustainable Development*, 14 April 2023) <<https://www.iisd.org/articles/policy-analysis/fostering-cooperation-sustainable-agriculture-trade-wto>> accessed 22 December 2023.

farmers in global trade and the implementation of policy tools that meet their needs.²⁴⁴ Although an important issue to discuss in the long run, finding short-term solutions to enable small farmers to participate fairly in global trade poses significant practical difficulties. One of these is how to consult small farmers and what questions to ask them. Another challenge is the likely lack of resources and capacity of small farmers to engage in complex policy discussions. Furthermore, the diversity of farming systems and practices across different regions can make it difficult to develop policies that are specifically tailored to their individual needs and contexts. This fits into the larger debate on the purpose of WTO rules and the interests they should serve—the interests of the people on the ground, who are the ultimate recipient of the rules, in addition to state-level interests.

Similarly, Nigeria's and Egypt's call for additional flexibilities and policy space for developing countries fits into a broader issue that Members should start discussing, that of reconsidering exceptions that enable countries to justify trade restrictions individually, as the simultaneous use of exceptional measures by several countries can harm food security.²⁴⁵

The current WTO rules on agriculture were created during times of overproduction and decreasing prices, while current challenges include disruptions in supply chains, high prices, volatile markets, and limited resources.²⁴⁶ The current rules need to be reshaped to ensure that during crises, importing countries can rely on international markets while also developing more resilient agricultural systems that can withstand external shocks like climate change.

Relevant issues to address include regulations on market access, domestic subsidies, export restrictions, public stockholding programs, food aid, and sustainable agricultural production. Progress will not happen all at once but will rather be incremental due to the consensus-based decision-making at the WTO. To facilitate this process, Members should prioritise the issues that need to be discussed. This could be done by giving priority to those issues that are more likely to gain consensus in the short to medium term. Additionally, Members could explore the use of soft law instruments, such as guidelines on good practices and voluntary commitments, to expand the legal tools employed. These instruments would favour a flexible approach that promotes cooperation, trust, and confidence among Members.

²⁴⁴ See above, section V.C.

²⁴⁵ Katrin Kuhlmann, 'Critical Questions: Trade and Food Security—What is the Debate on Trade and Food Security About?' (Center for Strategic and International Studies, upcoming).

²⁴⁶ Christophe Bellmann, 'Fostering Cooperation on Sustainable Agriculture and Trade at the WTO' (n 243).