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# Evaluating Nairobi:

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What Does the Outcome Mean for  
Trade in Food and Farm Goods?



June 2016

International Centre for Trade  
and Sustainable Development

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June 2016

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## Foreword

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On 19 December 2015, members of the World Trade Organization reached agreement on the “Nairobi Package” - a declaration and a set of decisions on a range of topics on the multilateral trade agenda. One of the most significant areas in which members achieved progress relates to trade in food and agricultural goods, including on long-standing farm trade issues such as export subsidies, food aid and cotton. Arguably, the ministerial successfully demonstrated that trade ministers are capable of reaching agreements in the WTO framework. Furthermore, Nairobi indicated that governments may also be able to take meaningful steps forward on the far bigger global trade agenda on food and agriculture, even though many important issues remain unresolved.

Trade negotiators in Geneva - as well as the broader trade and development policy community – now need to assess properly the implications of the Nairobi outcome on food and farm goods, and what this could mean for future talks on trade. For example, to what extent might these commitments actually result in changes in global cotton markets that affect producers and consumers in LDCs and beyond? Or on export subsidies, how significant was the agreement reached, in the light of policy reforms to date and likely future trends? This set of papers seeks to provide concrete answers to some of these questions, in the context of recent changes in global markets.

At the same time, some of the agreements reached in Nairobi took the form of commitments to continue negotiations, as was the case with the decision on a ‘special safeguard mechanism’ and on a permanent solution to the problems some countries have said they face in buying food at administered prices as part of their public stockholding programmes for food security purposes. In these areas, the Nairobi outcomes relate back to the broader challenge of revitalising the global trade agenda in ways that enable it to respond meaningfully to current and future public policy objectives, including those set out in the new Sustainable Development Goals, while bearing in mind new forms of market integration mechanisms such as new preferential and regional trade agreements.

The following compilation of short pieces therefore intends to provide policy-makers, negotiators and other stakeholders with an impartial, evidence-based analysis of the potential trade, food security and rural development implications of the agriculture outcomes of the WTO’s Nairobi ministerial conference. We hope that the studies will help trade officials and others to situate these outcomes in the longer-term systemic context, and to anticipate potential implications for future efforts to design more equitable and sustainable rules on farm trade.



**Ricardo Meléndez-Ortiz**

Chief Executive, International Centre for Trade  
and Sustainable Development (ICTSD)

## Abbreviations and Acronyms

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ACRE	Average Crop Revenue Election Payments
AMS	Aggregate Measurement of Support
AoA	Agreement on Agriculture
ASCM	Agreement on Subsidies and Countervailing Measures
AWP	Adjusted World Price
BTAMS	Bound Total Aggregate Measurement of Support
CAP	Common Agriculture Policy
CBM	Confidence Building Measure
CCP	Counter-Cyclical Payment
CIF	Cost, Insurance and Freight
CNCRC	China National Cotton Reserve Corporation
CoA	Committee on Agriculture
COMESA	Common Market for Eastern and Southern Africa
DDA	Doha Development Agenda
DDR	Doha Development Round
DPP	Direct Payments Programme
DSM	Dispute Settlement Mechanism
ECOWAS	Economic Community of West African States
ELS	Extra-Long Staple
FAC	Food Assistance Convention
FAO	Food and Agriculture Organization
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
ICAC	International Cotton Advisory Committee
ICTSD	International Centre for Trade and Sustainable Development
IFPRI	International Food Policy Research Institute
IMF	International Monetary Fund
LDC	Least Developed Countries
MFN	Most-Favoured Nation
MUV	Manufacturers Unit Value
NAMA	Non-Agricultural Market Access
NFIDC	Net Food-Importing Developing Countries
OECD	Organisation for Economic Co-operation and Development
RCEP	Regional Comprehensive Economic Partnership
RMA	Risk Management Agency
SADC	Southern African Development Community
SCM	Subsidies and Countervailing Measures
SDG	Sustainable Development Goals
SDR	Standard Drawing Rights
SSG	Special Safeguards
SSM	Special Safeguard Mechanism



STAX	Stacked Income Protection Plan
STE	State Trading Enterprises
TPP	Trans Pacific Partnership
TRQ	Tariff Rate-Quota
TTIP	Transatlantic Trade and Investment Partnership
USDA	United States Department of Agriculture
WFP	World Food Programme





# Overview

Christophe Bellmann and Jonathan Hepburn



## Introduction

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The tenth Ministerial Conference of the World Trade Organisation (WTO) held in Nairobi, Kenya, in December 2015 produced a set of specific decisions including most significantly new rules on export competition, cotton, and incremental progress on a few issues of particular concern to least developed countries (LDCs). Beyond these decisions, a significant challenge in Nairobi consisted in overcoming persistent divergences on the future of the Doha Development Agenda (DDA) and in defining possible parameters for future negotiations including in the area of agriculture.

## What was agreed in Nairobi?

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The most significant Nairobi outcome is without a doubt the agreement reached on export competition. After years of lengthy negotiations, Ministers finally agreed on an immediate standstill and gradual phase out of agricultural export subsidies over specific timelines.<sup>1</sup> As special and differential treatment, developing countries were allowed to maintain marketing cost subsidies and internal transport subsidies (Art. 9.4 subsidies) until 2023. Least developed countries (LDCs) and net food importing developing countries (NFIDCs) can maintain such support until 2030. Cotton has a separate clause providing for an immediate elimination in developed countries while developing countries have until 1 January 2017 to do so. Besides export subsidies, the decision also introduces initial disciplines on export credits - establishing maximum repayment periods<sup>2</sup> and criteria for self-financing - and on food aid with provisions aimed at avoiding displacement of locally produced food. Finally, the Nairobi outcome includes some generic language on agricultural exporting state trading enterprises (STE), requiring WTO Members not to use them to circumvent disciplines on export subsidies or other commitments.

Besides export competition, a separate decision on cotton requires developed countries and developing countries declaring themselves in a position to do so to provide LDCs with duty-free and quota-free (DFQF) market access for cotton and a list of products derived from cotton "*to the extent provided for in their respective preferential trade arrangements*".<sup>3</sup> Besides market access, no tangible progress was achieved on domestic support. Finally, Ministers reaffirmed the Bali decision on public stockholding and the Hong Kong declaration giving developing countries the right to use a special safeguard mechanism in agriculture under modalities to be agreed upon.

On the future of the broader agricultural talks, paragraph 31 of the Nairobi Ministerial Declaration reaffirms the strong commitment by all Members to advance negotiations on the remaining Doha issues including the three pillars of agriculture – namely market access, domestic support, and export competition. At the same time, Members remained at odds over the reaffirmation of the

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1 Developed countries shall immediately remove their existing export subsidies entitlements. However, Canada, the EU, Norway, and Switzerland can extend them for processed products, dairy, and swine meat up to 2020 provided they eliminate them for LDCs in 2016. Developing countries have until 2018 to remove their export subsidies and up to 2022 for products or groups of products for which a Member has notified export subsidies in one of its three latest export subsidy notifications.

2 This period is defined as 18 months except for LDCs, NFIDCs, and a few additional developing countries for whom the maximum repayment term will be between 36 and 54 months, or an unlimited period in the case of Cuba.

3 China has declared itself in a position to do so to the extent provided for in its preferential trade arrangements.

Doha mandate, with paragraph 30 explicitly acknowledging opposing viewpoints in this area without reconciling them. The declaration also reflects a view held by some that new approaches need to be explored as a way to "achieve meaningful outcomes." Finally, paragraph 34 states that some Members "wish to identify and discuss other issues for negotiation," while others do not.

## What is the economic significance of the Nairobi outcome in agriculture?

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### *Export competition*

As far as export competition is concerned, the use of export subsidies has declined significantly compared to the early 1990s when the EU alone would spend more than 10 billion euros a year. Today, the use of this instrument has practically disappeared. As highlighted by Díaz-Bonilla and Hepburn, several product groups such as grains and oilseeds that were the main recipients of subsidies have not received such support in recent years, and several countries with export subsidy entitlements only used a small proportion of their allowed levels. This decline is largely due to policy reforms such as the dismantling of market price support schemes in the EU, but also to the fact that agricultural and food prices increased significantly between 2000 and 2011, reducing the need to dispose of production surpluses in world markets. However, with prices trending downwards since 2011 (as a result of slowing demand for commodities in major economies such as China, falling oil prices, and a robust supply-side response to high prices for farm goods) maintaining the possibility to use such instruments could have resulted in significant increases in the use of export subsidies.<sup>4</sup>

Laborde and Díaz-Bonilla (2015) have found for example that if countries were to increase such support gradually up to their maximum allowed entitlement, the amounts spent could reach US\$11.5 billion with significant downward effects on world prices, agricultural investment, and the wages of unskilled workers in rural areas, highlighting the negative impact of such subsidies on poverty alleviation and food security in developing countries.<sup>5</sup> Furthermore, with market price-support schemes becoming more prevalent in several large developing countries, the new disciplines on export subsidies may prove critical to protect farmers from the disposal of unwanted surplus farm products originating in other parts of the developing world.<sup>6</sup> For all these reasons, the Nairobi outcome clearly represents a significant achievement, at least in the medium to long term.

In the short term, some distortions may, however, persist not least due to longer transition periods granted to Canada, the EU, Norway, and Switzerland for processed products, dairy, and swine meat. In the case of the EU, the Nairobi decision also allows for a phasing out of sugar quotas by 2017 to be consistent with the outcome of previous WTO dispute rulings and subsequent reforms of the EU's Common Agricultural Policy. In a similar vein, the flexibilities granted to developing countries to maintain article 9.4 subsidies covering transport and marketing costs until 2023 may affect several

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4 See Díaz-Bonilla and Hepburn in this volume.

5 See Laborde, David; Eugenio Díaz-Bonilla; (2015); "Catastrophic flood or inoffensive drizzle: Assessing the impact of countries using the existing water in export subsidies." MTID Working Paper; International Food Policy Research Institute, Washington, D.C.; available at <http://ebrary.ifpri.org/cdm/ref/collection/p15738coll2/id/130074>.

6 See Díaz-Bonilla and Hepburn in this volume.

commodities, although delays in notifying support mean that it is difficult to obtain a clear picture in this area.<sup>7</sup> Finally, footnote 5 allows a developing country to maintain export subsidies until 2022 for products or product groups for which such support has been notified to the Committee on Agriculture in one of the three latest notifications prior to the adoption of the Nairobi Decision.<sup>8</sup>

The Nairobi Agreement also saw new disciplines on export credit guarantees and insurance programmes, most of which have traditionally been provided by the US on products such as cereals and oilseeds. The agreed language here is weaker than that originally envisaged under the 2008 draft Doha Accord, but the decision has the merit of establishing initial disciplines in this area. It also effectively locks in Washington's current practice of providing an eighteen-month maximum repayment term for export financing. Finally, food aid has been declining since the turn of the millennium, with total amounts falling from 14.6 million tons in 1999 to just 4.8 million tons in 2011. Movement away from coupled support payments in some jurisdictions and a series of food price spikes from 2006 to 2011 have also significantly reduced the extent to which donor governments have had recourse to food aid to dispose of surplus production.<sup>9</sup> As with export subsidies, however, the embryonic disciplines agreed in Nairobi may serve as an insurance policy against the resurgence of disruptive food aid practices as prices move downwards.

## Cotton

The language on duty-free, quota-free market access (DFQF) for cotton is relatively weak, as it does not oblige Members to go beyond their existing preferential schemes. Overall, cotton tariffs are already very low on all major importing markets. China is the only exception with a duty of 1 percent on the first 894,000 tons of imports of cotton. Beyond this tariff rate quota (TRQ) China applies a sliding-scale duty of between 5 percent and 40 percent.<sup>10</sup> The extent to which China will grant LDCs full DFQF remains unclear at this stage not least because cotton is currently not included in its DFQF scheme. Besides cotton, the other products covered in the decision do not include any major exportable item with cotton representing 96 percent of all LDC exports of the goods listed. Regarding export competition, the immediate prohibition is an important step forward even if no country has provided direct subsidies to upland cotton exports since the United States eliminated its "Step 2" programme in 2006. The current US export credit scheme on the other hand already seems to comply with the requirements of the Nairobi decision.<sup>11</sup>

In contrast, the absence of a binding outcome on domestic support will mean that cotton producers will continue to be affected by policies in countries such as the US, China, and to a lesser extent the EU or India. According to Townsend, payments under the new 2014 farm bill are expected to

7 India reportedly has used this type of support for sugar, pepper, tea, fresh and processed fruit and vegetables, plants and flowers, and animal products; Mexico for wheat, beans, maize, sorghum, and sugar; Morocco for flowers, fruit and vegetables, and olive oil; South Korea for fruit, flowers, kimchi, vegetables, livestock, and ginseng. In a number of cases, the support programmes and policies concerned may have been discontinued since the original notification to the WTO was made.

8 Countries that could be concerned by this provision might include Israel (cut flowers, fruit and vegetables); Turkey (fruits and vegetables, olive oil, pastes and preserves, fruit juices, preserved fish, poultry meat, eggs, among others); or Mexico (wheat and maize).

9 See Díaz-Bonilla and Hepburn in this volume.

10 See Townsend in this volume.

11 Ibid.



decline in the US. Cotton acreage and production have also been declining for the last 10 years or so. But the new insurance scheme for cotton – the STAX programme – which replaces previous programmes, such as direct payments, will have a greater impact on production and thus may distort trade to a higher degree in years of greatest risks.<sup>12</sup> Beyond the US, China's policy combining TRQ, price support, direct payments, and national buffer stocks essentially aims at supporting domestic prices and production. Given that China is not a large exporter, the effects of its cotton policy on foreign exporters remain unclear: however, Beijing's interventions to date seem to have maintained world prices higher than they would otherwise be.

## What next?

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How governments implement the Nairobi outcome could be key to determining its actual impact around the world. In this respect, WTO Members which currently have export subsidy entitlements will need to update their schedule of commitments to reflect the undertakings made in Nairobi. From a legal perspective, disciplines on export credit or food aid would have to be read in conjunction with relevant disciplines under the Agreement on Agriculture (AoA) or other covered agreements at the WTO. In this respect, Article 10 of the AoA refers to food aid, with a definition and certain criteria that must be followed. It also covers export credits, guarantees, and insurance programmes, with WTO Members committing to develop internationally agreed disciplines on these topics and then operate in conformity with them. In this respect, the Nairobi decision could be seen as representing the "internationally agreed disciplines" to which this article refers.

Discussions on public stockholding for food security purposes and on the special safeguard mechanism (SSM) defended by the G33 coalition of developing countries will have to follow their own course. In Nairobi, ministers reaffirmed their 2013 commitment taken at the Bali Ministerial Conference to find a permanent solution by 2017 on the way to account for price support payments under public stockholding programmes. While this issue has been hotly debated, little consensus has emerged so far. In the meantime, Glauber remarks that commodity prices as measured by the FAO food price index have fallen by about 25 percent since Bali, with cereal prices reaching their lowest levels since 2009/10. While this might result in high administered prices potentially distorting production and pushing prices even lower, declining prices and rising inventory levels have also made price support policies more expensive, causing several countries to rethink their domestic schemes.<sup>13</sup> At the same time, if prices continue their downward trend and reach levels below the fixed external reference price, the trade distorting nature of price support schemes could be largely underestimated under existing WTO rules.<sup>14</sup> In this context, Glauber suggests a few immediate steps, including the possibility of explicitly allowing countries to notify their support in a different currency (e.g., USD, so as to offset inflation), to restrict production eligible for support by announcing procurement volumes when administered prices are announced or to set administered prices lower than market prices. In

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12 See Lau, Schropp, and Sumner (2015), "The 2014 US Farm Bill and its Effects on the World Market for Cotton." ICTSD, Geneva. [www.ictsd.org/node/95169](http://www.ictsd.org/node/95169)

13 See Glauber in this volume. For example, China has recently announced reforms for cotton, rapeseed and now corn.

14 While this might not happen immediately for most Members, it is worth recalling that recently acceded Members, such as China or Russia, use more recent reference periods (1996-98 for China and 2006-08 for Russia) with current prices already below or close to such levels.

addition, WTO Members should agree to exempt LDCs from having to report public stockholding programmes as part of their AMS and to broaden the Bali Decision on public stockholding to include all developing country Members.

In a similar vein, as shown by Dhar, concerns around import surges and price declines have become more present since 2011, when commodity prices began a steady downward trend, strengthening the case for an SSM.<sup>15</sup> Beyond reaffirming the Hong Kong Ministerial declaration giving developing countries the right to have recourse to such a mechanism under modalities to be agreed, Ministers also decided to pursue negotiations in this area in dedicated sessions of the Committee on Agriculture in Special Session. The extent to which such discussions will effectively happen in isolation from broader discussions on other agricultural trade issues remains, however, unclear.

Third, Members will need to agree on how to advance the broader reform agenda in the post-Nairobi context. With Ministers disagreeing on the Doha mandates, the approach or even the topics to be discussed, negotiators have come back to Geneva with no specific deadline between now and the next Ministerial, no clear parameters for future engagement, and persistent uncertainty about the overall negotiating framework. With a significant step forward achieved in Nairobi on export competition, Members will probably prioritise discussions on domestic support and to some extent on market access. Some have flagged the need to address non-tariff measures such as SPS and TBT requirement – an area of increased relevance for exporting developing countries – while others have raised issues such as export restrictions.

The main challenge, however, will consist in bringing the major players back to the negotiating table. As described by Falconer, large developed economies, whatever they may say in public, have by now lost interest in the Doha Round at least under its current form. This is primarily due to their proven ability to pursue market access gains and closer economic integration through bilateral or regional free trade agreements, such as through the so-called mega-regionals (TPP and TTIP, or the Japan-EU FTA). Traditionally, trade issues among those advanced economies were addressed through multilateral talks.<sup>16</sup> However, the preferential and plurilateral negotiations that have been pursued since 2008 not only have tended to result in more ambitious liberalisation outcomes, they have also conveniently excluded politically sensitive issues such as agricultural domestic support, while embracing a wider set of issues including investment or regulatory convergence. Once those agreements have been concluded and ratified, their instigators have achieved most of their liberalisation objectives without losing any multilateral “bargaining chips” at the WTO.<sup>17</sup> Developed countries have to contend with the reality that mega-regionals do not include some key emerging economies: however, under the Doha negotiations the real market access gains that could realistically have been expected from emerging economies would have been quite small based on an assessment of the latest draft text.<sup>18</sup> Moreover, several developing countries may try to join those new regional agreements, as illustrated by the number of governments expressing interest in joining the TPP when its conclusion was announced.

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15 See Dhar in this volume.

16 See Falconer in this volume.

17 Ibid.

18 See Laborde, D. (2014) “Implications of the Draft Market Access Modalities on Bound and Applied Tariffs,” in Meléndez-Ortiz, R., C. Bellmann and J. Hepburn (eds.) (2014) *Tackling Agriculture in the Post-Bali Context: A Collection of Short Essays* (Geneva: ICTSD), pp. 87–102.

The fact that large trading powers appear to have lost interest in the Doha Round and that elements have been gradually removed from the negotiating equation significantly diminishes the opportunities for countries to achieve progress through trade-offs within the agricultural pillar, and particularly in the area of agricultural domestic support. In other words, the chances of achieving ambitious outcomes in agriculture in the immediate future are particularly low, and this is likely to result in Members recalibrating their level of ambition or seeking new types of innovative linkages and trade-offs in the talks. Recent discussions focusing on reducing "water" (i.e., the difference between existing levels of tariffs or subsidies and the maximum allowed under current rules) may be indicative of the likely direction of future talks in the absence of broader consensus on a multilateral negotiating agenda.

In this context, Falconer has suggested an approach focusing on a series of "confidence building measures" (CBMs) by taking a series of small steps in the form of non-binding commitments undertaken by individual WTO Members and applicable initially over a one- or two year period going in the direction of what is currently envisaged in the draft negotiating texts of the Doha Round.<sup>19</sup> One could start with domestic support – an area where the gap between applied and bound levels is enormous – and progressively move to market access. While not a binding commitment, it would be a serious undertaking by the participants not to exceed a certain level during the life of the undertaking. It would be understood that any party breaching that undertaking would, following immediate consultations, permit all other parties to withdraw their CBMs.<sup>20</sup> An approach like this would be politically more palatable and would enable Members to show goodwill by initiating small concrete steps towards future reform. It would also help re-inject confidence in the negotiations as a necessary condition for reviving a multilateral approach.

## Conclusion

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The Nairobi outcome in agriculture represents a significant step forward, even though it is only a partial attempt to address the much bigger agenda of outstanding issues related to trade in food and agriculture. Among other things, it demonstrates that negotiators at the WTO are capable of making incremental progress in developing meaningful global disciplines on policies that affect global markets for food and agriculture – and that these disciplines can respond, at least in part, to concerns expressed by some of the world's poorest countries.

The Nairobi package comes at a moment when the dynamics of global markets continue to evolve, with prices seemingly returning to a secular downward trend as a result of slowing demand in large emerging economies, low oil prices, and a strong supply response among producers to previous price spikes. Arguably, while the return of these market dynamics may have contributed to negotiators' ability to clinch a deal at Nairobi, they have also increased the urgency of making progress on other unresolved issues, such as the resurgence in domestic support measures in a number of developed and developing countries, or barriers to market access that affect otherwise competitive producers in countries around the world. New challenges such as climate change are only likely to intensify the need for countries to agree on disciplines that help ensure global markets function in ways that help

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<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

poor consumers to access safe, sufficient, and nutritious food at all times, while also helping raise rural incomes and create jobs for producers. As Dhar points out, the adoption of the Sustainable Development Goals (SDGs) and the commitments that governments have undertaken on food security will require action to ensure that policies affecting food and agricultural markets do indeed contribute to realising the ambitious targets set out in Agenda 2030.

The tensions among governments that were apparent at Nairobi are not new – for example, the differences of opinion over how best to treat different types of developing countries, or over whether the Doha issues should continue to be addressed as part of a single package. There is also nothing new about the expressed desire of some countries to push for new issues or new approaches in the negotiations. The main difference this time — besides the fact that Members' divisions have been explicitly reflected in the declaration — was that ministers fell short of agreeing on a possible way forward. Negotiators will now also need to engage with the reality that a number of large economies seem to have lost interest in the DDA negotiations – a situation that is largely explained by developments in preferential trade negotiations. In this context, the post-Nairobi reflection phase offers a valuable opportunity to look at possible ways forward and identify which issues should be pursued either multilaterally or plurilaterally. In agriculture, this could include a systematic review of existing concerns, commodity by commodity, possibly starting with the ones which play a critical role from a food security perspective and identifying in each area priorities to be addressed in the coming years, so as to begin moving towards global markets for food and agriculture that are equitable, sustainable, and efficient.



# **Export Competition Issues After Nairobi**

**Eugenio Díaz-Bonilla and Jonathan Hepburn**



## Introduction

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In December 2015, the Tenth World Trade Organization (WTO) Ministerial Conference in Nairobi, Kenya took significant steps forward on four topics, which together have been referred to as "export competition" at the global trade body. Specifically, the conference agreed a new Ministerial Decision on Export Competition<sup>1</sup>, setting out new rules on: a) export subsidies; b) export credits, guarantees, and insurance (called collectively "export financing support"); c) exporting state trading enterprises; and d) food aid.<sup>2</sup> This paper discusses the Nairobi outcomes related to these four areas.<sup>3</sup> It first looks at how export competition issues have been treated at the WTO to date, then examines how countries have been using these policy instruments in practice during recent years, and finally looks at the significance of the Nairobi package in establishing new rules governing trade in these areas.

## How Has Export Competition Been Treated at the WTO to Date?

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It is important to review the treatment of export competition at the WTO, not just to provide a basis for assessing the significance of the Nairobi outcome, but also because many lawyers have argued that the conference outcome would need to be read in conjunction with other 'covered agreements' at the global trade body in the event of a challenge to non-compliance through the WTO's dispute settlement process.<sup>4</sup>

The world trade legal framework has long presented a peculiar situation in that export subsidies for industrial and agricultural products were treated differently. Export subsidies for industrial goods were prohibited under the WTO agreements — and under the WTO's forerunner, the General Agreement on Tariffs and Trade (GATT) — while such subsidies for agricultural products were allowed under GATT and only partially disciplined under the WTO Agreement on Agriculture, including both primary farm products and processed items, which are arguably more akin to industrial goods.<sup>5</sup>

The potentially trade-distorting effects of state trading enterprises (STEs) were also recognised in GATT. Article XVII accepted the existence of these entities under the trade regime, provided they acted in accordance with the general principles of non-discrimination and based their decisions on commercial considerations. The agreement also stipulated that STEs should not diminish or nullify the commercial value of negotiated tariff concessions and should not be operated in a way that creates quantitative restrictions on imports, export subsidies, and other WTO-inconsistent measures. Governments had to notify GATT about the operations of their STEs on a regular basis.

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1 WT/MIN(15)/45 — WT/L/980, online at [https://www.wto.org/english/thewto\\_e/minist\\_e/mc10\\_e/l980\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/mc10_e/l980_e.htm).

2 A fifth related area, export restrictions and taxes, has been treated differently at the WTO, and is examined in greater detail in Anania, 2014.

3 This paper draws extensively on Díaz-Bonilla and Harris, 2014. Food aid issues are discussed in more detail in Clay, 2014.

4 See for example discussion online on the International Economic Law and Policy blog, here: <http://worldtradelaw.typepad.com/ielpblog/2016/02/the-ministerial-decision-on-export-competition.html>

5 From 1986-1997, European and United States (US) export subsidies amounted to about US\$135 billion, or the equivalent of almost 13 percent of the value of all agricultural exports by the developing countries of Africa, the Latin American and Caribbean (LAC) region, and Asia (minus China) combined, during the period (Díaz-Bonilla and Reca, 2000).



During the Uruguay Round, export subsidies in general were considered in greater detail in the Agreement on Subsidies and Countervailing Measures (ASCM) and their prohibition was reaffirmed. Countries using export subsidies for agriculture, however, were allowed by the Agreement on Agriculture (AoA) to keep doing so, although the total value and volume of these payments were capped and then subject to reduction commitments.<sup>6</sup>

With respect to STEs, the Uruguay Round agreements included an "Understanding on the Interpretation of Article XVII" that tried to clarify the original definition of GATT 1947 and made an important change. While before a STE was a "state enterprise" or one receiving exclusive rights or privileges, the new definition obliged notifications in the case of "governmental and non-governmental enterprises, including marketing boards, which had been granted exclusive or special rights or privileges..." (emphasis added). The "or" of the original article was replaced by "which," thereby excluding government-owned companies not granted those special privileges.

In summary, the Uruguay Round agreements maintained the more permissive treatment for export subsidies of agricultural and agro-industrial products;<sup>7</sup> introduced the topics of food aid and export credits and related programmes as part of export competition; and changed the definition of STEs.

After the creation of the WTO, agricultural trade negotiations continued on several topics (as mandated in Article 20 of the AoA), including on how to place agricultural export subsidies on the same level as non-agricultural subsidies (i.e., as prohibited practices under the WTO legal framework).

The 2008 "Revised Draft Modalities for Agriculture"<sup>8</sup> was the last attempt to reach an agreement on agriculture before the general Doha Round talks reached a stalemate in that same year. The draft 2008 text determined that developed countries would reduce by half the budgetary outlays for export subsidies by 2010 and then completely eliminate them by 2013.<sup>9</sup> It also indicated that no new markets or products may receive subsidies. Developing countries would have until 2016 to comply.

The draft also defined different categories of export credits, and stipulated which entities would be subject to disciplines under an eventual new agreement. The text also defined a maximum repayment term of 180 days (or, for developing countries, 360 days), which should not exceed four years after implementation. However, least-developed countries (LDCs) and net food-importing

6 While countries were allowed to apply countervailing duties to industrial goods, agricultural subsidies were given a different treatment, which limited the possibility of imposing those duties until 2003 if the exporting country operated within the quantity limits agreed in the Uruguay Round. The AoA also included Article 10, on anti-circumvention measures. This provision expanded the consideration of export competition to food aid, with a definition and certain criteria that must be followed to avoid being considered in violation of the anti-circumvention provisions. It also covered export credits, guarantees, and insurance programmes, with WTO members committing to develop internationally agreed disciplines on these topics and then operate in conformity with them. It remains unclear whether members, or indeed a dispute settlement panel, would see the Nairobi decision as representing the "internationally agreed disciplines" referred to under paragraph 2 of this article.

7 Although there are several developing countries among those WTO Members that notified export subsidies (14 out of the 25 WTO Members with such notifications) and therefore were permitted to use export subsidies for agricultural products, industrialized countries represent 84 percent of the values allowed under the current AoA (only the European Union amounted to 62 percent of the total value of allowed agricultural export subsidies) (FAO, 2000). Considering that most of the export subsidies have been utilised by industrial countries this fact, along with other advantages in domestic support and market access instruments has been referred, with irony, as "special and differential treatment" (SDT) for industrialised countries' agriculture.

8 TN/AG/W/4/Rev.4, December 6, 2008. [https://www.wto.org/english/tratop\\_e/agric\\_e/agchairtxt\\_dec08\\_a\\_e.doc](https://www.wto.org/english/tratop_e/agric_e/agchairtxt_dec08_a_e.doc)

9 As agreed in the 2005 Hong Kong ministerial declaration, [https://www.wto.org/english/thewto\\_e/minist\\_e/min05\\_e/final\\_text\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm)

developing countries (NFIDCs) would be able to receive longer repayment periods. It also indicated that all export financing support programmes would be self-financing (for developed countries, the premium rates they charge must be sufficient to cover operating costs for a four-year rolling period, or eight years for developing countries).

The Uruguay Round definition of agricultural-exporting STEs was maintained (it should be noted that the draft 2008 text did not cover importing STEs). The disciplines included a prohibition on the use of export subsidies. Exporting STEs would also not be able to receive government financing or capital at below market rates, and governments could not underwrite losses. Agricultural export monopoly powers for STEs would end by 2013 (unless the exported product represented not more than 0.25 percent of total world trade in agricultural products in the 2003-2005 base period, the STE had been notified, and it was not being used effectively to circumvent obligations). More favourable 'special and differential treatment' for developing countries included the possibility of continuing to use monopoly powers if they were "to preserve domestic consumer price stability and to ensure food security." However, if the objectives of the developing country STE were different, its share of world exports of the agricultural product(s) concerned should be less than 5 percent for three consecutive years. Agricultural-exporting STEs were permitted for LDCs and "small and vulnerable economies" (a set of countries identified in paragraph 157 of the draft 2008 text and listed in its Annex I<sup>10</sup>).

During the process leading to the 2013 Bali Ministerial, several developing countries that are agricultural exporters asked for specific steps to comply with the 2005 Hong Kong Ministerial Declaration, which defined 2013 as the deadline for eliminating exports. A small number of developed countries opposed this option, arguing that they were not ready to make firm commitments in the absence of a more comprehensive reform of all agricultural issues in a finished Doha Round.<sup>11</sup> In the end the Bali Ministerial adopted a Ministerial Decision on Export Competition,<sup>12</sup> which only committed WTO members to apply "utmost restraint" when using export subsidies, to maintain them at the lower levels of the early 2010s (when, because of high world prices, they were less utilised), and to improve information about their use. Therefore, the exceptional treatment of agricultural export subsidies under the WTO legal framework continued.

On international food aid, Article 10.4 of the AoA sets out three requirements, under the broader heading "prevention of circumvention of export subsidy comments." The article requires food aid donors to ensure that the aid they provide is not tied, directly or indirectly, to commercial exports of agricultural products. The same paragraph also specifies that food aid transactions shall be carried out in accordance with the Food and Agriculture Organization of the United Nations (FAO) "Principles of Surplus Disposal and Consultative Obligations." This explicitly includes food aid that has been 'monetised' — i.e., in-kind aid that is sold to raise funds for aid or development projects.

10 The SVE are those countries that, in the period 1999 to 2004, had an average share of (a) world merchandise trade of no more than 0.16 percent or less; (b) world trade in non-agricultural products of no more than 0.1 percent; and (c) world trade in agricultural products of no more than 0.4 percent. Those countries were listed in the draft 2008 text.

11 The 2005 Hong Kong WTO Ministerial meeting the Ministerial Declaration (WT/MIN(05)/DEC, 22 December 2005) stipulated in paragraph 6 that Ministers "agree to ensure the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect to be completed by the end of 2013." But, it added immediately that "this will be achieved in a progressive and parallel manner, to be specified in the modalities, so that a substantial part is realised by the end of the first half of the implementation period." Therefore, while the first part appeared to define a clear deadline for the exports subsidies in agriculture, the second part, referring to the "implementation period" seemed to link that end date to the completion of the trade round.

12 (WT/MIN(13)/W/12), [https://www.wto.org/english/thewto\\_e/minist\\_e/mc9\\_e/desci40\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/mc9_e/desci40_e.htm)

Finally, the agreement specifies that aid should be provided under terms that are no less concessional than those set out in the 1986 Food Aid Convention. This agreement was updated and replaced by a successor agreement in 1999 with the same name and then subsequently by a new Food Assistance Convention, after governments that were parties to the original Food Aid Convention allowed this instrument to expire. Clay (2014) discusses in further detail how the emerging food aid governance regime relates to existing WTO agreements.

As part of the Doha Round efforts to establish disciplines on export competition, WTO members sought to negotiate new rules on food aid, which are set out in Annex L of the 2008 draft negotiating text. This was aimed at creating a 'safe box' for food aid in humanitarian emergencies, while stricter disciplines would apply to aid in non-emergency situations. It also established some general disciplines that would apply to all food aid transactions and would require food aid donors to notify "all relevant data" to the Committee on Agriculture on an annual basis.

## How Have Countries Been Using These Policy In-Struments Recently?

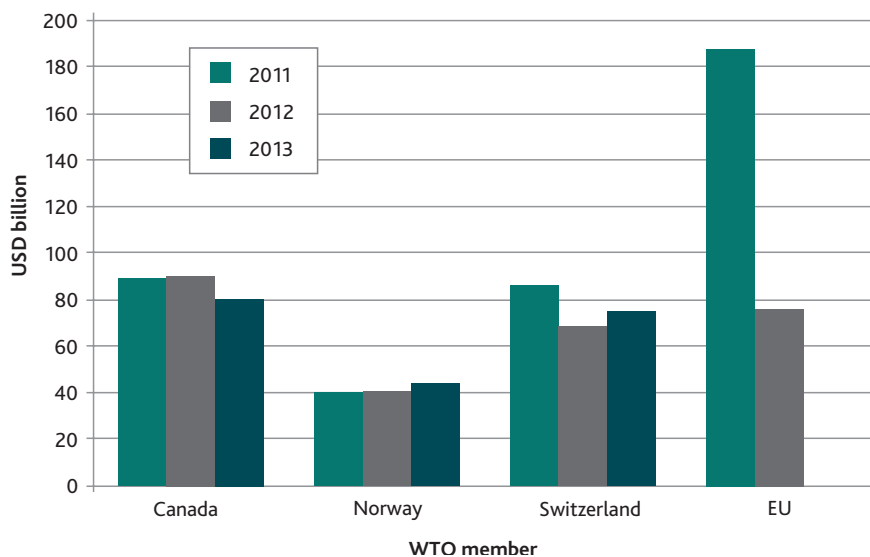
As part of the Bali commitments to improve transparency in export competition, the WTO Committee on Agriculture asked the Secretariat to send a questionnaire on all aspects of export competition and tabulate answers. The results of this exercise were published and subsequently updated, most recently in July 2015 and May 2016, and the main findings are presented in the following section.<sup>13</sup>

### *Export Subsidies*

The use of export subsidies has declined substantially. The available data indicate that several product groups that were main recipients of subsidies, such as grains and oilseeds, have not received export subsidies in recent years; and many, but not all, of the countries using subsidies are using only a small proportion of their allowed levels. Still, the information collected by the WTO showed a total of US\$881 million in export subsidies for the period 2011-2013, with the European Union (EU) and Canada each providing about US\$260 million in export subsidies, followed by Switzerland-Liechtenstein with US\$230 million, and Norway with US\$125 million. Figure 1 below gives further details.

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13 G/AG/W/125 and annexes, and subsequent updates, including G/AG/W/125/Rev.3, July 2015, and G/AG/W/125/Rev.4, May 2016.

**Figure 1. Notified use of export subsidies, 2011-13**

Source: G/AG/W/125 and annexes, and subsequent updates

The May 2016 WTO secretariat document includes notifications for 2014 only from Canada (US\$73.4 million); Israel (US\$6.3 million); and Norway (US\$30.7 million).

It should be noted that the EU has not used export subsidies since the new Common Agricultural Policy was approved in December 2013, but domestic legislation allowed for these measures to be used again as an “exceptional measure.” After, Nairobi, however, that option has been limited and will be eventually eliminated.<sup>14</sup> It should also be noted that the EU notified 1.35 million tons of sugar as quantities exported under export subsidies that are not counted in the budgetary notification. These represented 98.2 percent of the quantity commitment levels in 2013, according to G/AG/W/125/Rev.4, footnote 12; also, as discussed below, those exports are accorded special treatment under the Nairobi Ministerial Decision on Export Competition).<sup>15</sup>

Excluding the EU sugar, the main product categories receiving subsidies during 2011-2013 were “incorporated products,” followed by poultry meat and pig meat, with the other important categories being skim milk powder, cheese, and bovine meat. It should be noted that WTO members do not seem to have provided subsidised exports of bovine meat in 2012 and 2013, while subsidised exports of poultry meat appear minimal in 2013. The countries that reported export subsidies in 2014 (the

14 The information provided to the WTO by the EU before Nairobi stated that those export subsidies would be “only available to the extent and for the time necessary to address threats of market disturbance caused by significant price rises or falls on internal or external markets or other events and circumstances significantly disturbing or threatening to disturb the market” (see page 32 footnote G/AG/W/125/Rev.3. 27 July 2015). G/AG/W/125/Rev 4, however, states that “upon adoption of the Nairobi Ministerial Decision the EU has been bound by the disciplines of the Decision” (Rev 4, page 34).

15 Three related WTO disputes on EU export subsidies for sugar (DS265, DS266 and DS283) found that the EU was in effect providing export subsidies to sugar in ways that contravened the bloc’s WTO commitments, despite not providing direct budgetary outlays under its relevant policies and programmes. The EU has subsequently notified this support accordingly. Further details can be found on the WTO website: [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_status\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm). The most recent reform of the EU’s Common Agricultural Policy confirms a previous decision to phase out sugar production quotas in 2017, a deadline which is reflected in footnote 3 of the Nairobi Ministerial Decision on export competition.

latest year covered in the more recent WTO exercise) focused on dairy products (Canada); fruits and vegetables (Israel); and pork and cheese (Norway). The data compiled, however, may be incomplete.

The decline in the use of export subsidies was mainly related to the fact that as agricultural and food prices increased significantly since the lows of the early 2000s, those instruments were not needed to dispose of production surpluses in world markets.<sup>16</sup> With prices since 2011 trending downward, and if there are further drops in those values, countries would still legally have been able to increase their use of export subsidies significantly in the absence of meaningful disciplines on export subsidies. Indeed, Laborde and Díaz-Bonilla (2015) found that a decline in prices that allows the full use of export subsidies may displace almost US\$11.5 billion in agricultural production in middle- and low-income countries while supporting the expansion of the sector in high-income countries (particularly in the EU, which has the largest level of allowed export subsidies under WTO rules). The simulations also show that those export subsidies would put further downward pressure on world food prices, and the implicit redistribution of income from high-income countries embedded in the export subsidies leads to marginal increases in aggregate welfare in middle- and low-income countries (0.03 and 0.11 percent of their respective incomes in 2020). However, export subsidies — in addition to displacing production in other countries directly — also disincentivise agricultural investment in developing countries and suppress the wages of unskilled workers in their rural areas. In aggregate, therefore, export subsidies would have a negative impact on low-income countries' attempts to alleviate poverty and attain long-term food security. Furthermore, export subsidies are used when world prices are low but not when they are high, exactly the opposite from the sort of intervention that would benefit vulnerable consumers in poor countries.<sup>17</sup>

### *Export Credits and Guarantees*

As to export credits and similar measures, 15 WTO members are listed with programmes related to export credits and guarantees in G/AG/W/125/Rev.4.<sup>18</sup> The quality of the data collected by the WTO secretariat on these programmes has been improving since the first exercise in 2014.<sup>19</sup> However, further clarity and more homogeneity still may be needed with respect to the value of exports supported by type of programme, specific products, and export markets covered.

One of the programmes that has received more attention is the United States (US) GSM102<sup>20</sup>. According to G/AG/W/125/Rev.3 (July 2015), in 2013-2014 the scheme covered an annual average of exports amounting to US\$2600 million, of which about 50 percent went to Latin America and the

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16 Reforms to farm policy, such as the dismantling of market price support schemes, in the EU have also helped WTO members reach the deal that was struck in Nairobi.

17 Laborde and Díaz-Bonilla (2015) also show that poor consumers in developing countries would be far better if supported by a global food stamp (GFS) programme with vouchers that can be utilised to buy domestic production in their own countries. A scheme costing only half the amount spent in the export subsidy scenario (about US\$6 billion) would achieve the same food consumption gains in developing countries of the export subsidies. Furthermore, the GFS leads to increases in agri-food value added in high, middle, and low-income countries, while export subsidies led to increases in high-income countries but to declines in middle- and low-income ones.

18 G/AG/W/125/Rev.3 identifies 14 such countries. The countries included in Rev.3 were Australia, Brazil, Canada, Colombia, the EU, Japan, Malaysia, New Zealand, Peru, Russian Federation, Switzerland, Turkey, the US, and Vietnam. Jamaica was added in G/AG/W/125/Rev.4.

19 Reported in Díaz-Bonilla and Harris, 2014.

20 For example, a May 2016 submission from Canada (JOB/AG/68) examined this programme in detail.

Caribbean (LAC). In terms of individual countries, Turkey received about 28 percent of the covered exports, followed by Mexico (18 percent) and Korea (15 percent).

In G/AG/W/125/Rev.4 (May 2016), the amount of credit provided under GSM102 reportedly declined to about US\$1800 million, but the notification did not provide the geographical distribution as before. On the other hand, the US information added the Export Credit Insurance of the Export-Import Bank for an annual average coverage of somewhat more than US\$600 million of agricultural products.

Oilseeds and related products and cereals have been the main products benefitting from export credits and related measures under GSM102, while the credit insurance of the Export-Import Bank appears to be more concentrated on dairy, meat, and miscellaneous products.

Other programmes with substantial coverage are those of Canada (about US\$410 million on average for 2014-15 for various credit schemes, although the value jumps significantly to some US\$3550 million if short-term credit insurance is included), and Turkey (which reported for 2015 about US\$740 million in export credit insurance and some US\$1060 million in export credit). Although it is difficult to put the information provided by the rest of the countries on the same footing (for instance some gave the value of loans outstanding instead of annual flows), other countries with significant programmes registered in Rev.4 include Colombia (almost US\$300 million); the aggregate of several EU countries with reported programmes (about US\$50 million); Brazil (somewhat less than US\$100 million); New Zealand, Japan, and Australia (with between US\$30 and US\$60 million each).<sup>21</sup>

The data in G/AG/W/125/Rev.4 and successive exercises will allow a more informative disaggregation between export credits and different forms of export credit guarantees and insurances, all of which would have different economic implications for trading operations. Conceivably, reporting requirements will be more detailed in terms of products and markets covered for those programmes with larger potential impacts on trade.

## *State Trading Enterprises*

According to G/AG/W/125/Rev. 3, 20 members reported that they operated agricultural-exporting STEs, with 67 of them in total. In the most recent notification from May 2016, 17 members reported 60 STEs<sup>22</sup>. The countries reporting the most STEs were China (25) and India (14), followed by Colombia (4) and Israel (3). The main product categories concerned were tobacco (20 STEs); fruits and vegetables (14); "other agricultural products"<sup>23</sup> (8); and wheat and wheat flour, coarse grains, and rice (5).

Several of the STEs declared as such did not, however, have export operations (for example, in the cases of Indonesia and Ecuador); operated mostly internally (like in the 11 STEs in India dealing with onions); were specialised sub-national companies exporting local spirits (such as the reported

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21 The values correspond to 2014, or 2015, or the average of both countries, depending on the years notified.

22 Brazil, Morocco, and Vietnam were dropped from the list. The STE previously notified by Brazil seemed to operate internally without export activities or operations, and therefore, its elimination from the list appears justified; it is less clear why the previously notified STEs by Morocco and Vietnam are now excluded; it has been argued that they did not engage in export operations.

23 A category that encompasses a variety of products, including hard liquors, cocoa, groundnuts, and olives.

Colombian STEs); or appeared to be managing export quotas granted under trade treaties (the case of the Tunisian STEs exporting olive oil to the EU, and, partially, the Costa Rican STE exporting sugar mainly to the US). The reported STE from New Zealand appears to represent 36 percent of world exports by value of the product involved (kiwi) during the period considered (2011-2013). Two of the Vietnamese STEs mentioned in G/AG/W/125/Rev.3 were reported as handling about half of Vietnam's rice exports (which during 2011-2013 would have been somewhat more than 6 percent of world exports of rice by value). However, as noted, Vietnam was dropped from the G/AG/W/125/Rev.4 list of countries with STEs, apparently because they did not engage in export operations.

Other countries with STEs that at least potentially have global reach include Canada (cereals); China (several products); and India (sugar). Rev.4 noted, however, that the Canadian Wheat Board ceased to exist as a STE and was replaced by a "fully independent commercial entity" in mid-2015. The notification related to China's STEs indicated that their export prices were "usually constructed based on such costs as domestic procurement prices plus circulation costs (including warehousing, transportation, bank interests, inspection fees etc.), with prices of the international markets taken account of as reference." This may raise some questions as to the commercial orientation of those STEs.<sup>24</sup> In the cases of India, China, and several other countries, certain information requested in the template prepared by the WTO Secretariat was left blank (for example, in the areas of the value, volume, prices, and destinations of exports).<sup>25</sup>

Hopefully, as members seek to implement the instructions provided by ministers in Nairobi, there will be more information available about existing STEs, including those with a large global presence.

## *Food aid*

Clay (2014) discusses how food aid commitments have been falling steadily, in part owing to the 'pro-cyclical' nature of contributions ("least available when most needed"), but also because of an increasing focus among donors on moving away from in-kind food aid toward other forms of cash-based food assistance. In part, this is reflective of an emerging consensus on the importance of 'untying' aid and improving aid effectiveness. Drawing on data from the World Food Programme, Clay finds that food aid has tended to decline steadily since the turn of the millennium, with total amounts falling from a peak of 14.6 million tons in 1999 to just 4.8 million tons in 2011. At the same time, changing global market conditions and policy reforms may have played a role in reducing the total volumes of in-kind aid provided by donors, with a movement away from coupled support payments in some jurisdictions and a series of food price spikes from 2006 to 2011 reducing the extent to which donor governments were able to use food aid to dispose of surplus production. These trends have coincided with an increase in the need for food assistance in humanitarian emergencies, in which cash-based aid has become the main focus of donor efforts (FAO, 2014).

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24 The ruling of the WTO Appellate Body in the case brought by the US against the Canadian Wheat Board found that the primary discipline of the WTO on STEs was nondiscrimination; operating under "commercial considerations" was not an independent obligation, but the potentially non-commercial nature of some operations could be used as a test of discrimination (see Hoekman and Trachtman. 2007).

25 China's notification indicated that such information was "subject to commercial confidentiality."

## The Nairobi Package

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The negotiations leading to the Tenth WTO Ministerial Conference in Nairobi, Kenya, included proposals on export competition from a group of countries including the EU, Brazil, and other agricultural exporters; the Philippines; the US; Australia and Chile; and Tunisia.<sup>26</sup> The negotiators worked from the draft 2008 text, and the result was the Ministerial Decision of 19 December 2015 on Export Competition (WT/MIN(15)/45 – WT/L/980).

### Export Subsidies

While the Nairobi package commits developed countries to end immediately all export subsidies (as of 1 January 2016), there are two footnotes with exceptions. One relates to sugar from the EU covered in dispute settlement agreements (which extends the deadline to September 2017). The other establishes the end of budgetary payments for export subsidies to dairy products, swine meat, and processed products until the end of 2020, if countries comply with several conditions (see Table 1 below).

Developing countries would have to phase out their own use of export subsidies by the end of 2018, with an extra five years for certain export subsidies covering transport and marketing costs (AoA Article 9.4).<sup>27</sup> Notifications to the WTO indicate that developing countries using this provision in the past decade have included India, Mexico, Morocco, Pakistan, and South Korea,<sup>28</sup> although delays in notifying support mean it is difficult to obtain a clear picture of current practice in this area.

However, a footnote establishes an extended deadline for developing countries who have notified to the WTO their export subsidies in at least some of their recent notifications. Footnote 5 allows a developing country to maintain export subsidies until 2022 for products or product groups for which it has notified export subsidies in one of its three latest export subsidy notifications examined by the Committee on Agriculture by the date of adoption of the Nairobi decision.<sup>29</sup>

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26 For more details see *Bridges Weekly*, vol. 19, no. 42, "Towards new rules for agricultural markets?" 10 Dec 2015. <http://www.ictsd.org/bridges-news/bridges/news/towards-new-rules-for-agricultural-markets>

27 Developing countries may wish to reconsider Article 9.4 of the AoA from a policy perspective: rather than subsidising logistic and transportation costs, it may be more cost-effective to invest in necessary infrastructure upgrades, which could furthermore benefit products and services from different economic sectors.

28 India reportedly has used this type of support for sugar, raw cotton, pepper, tea, fresh and processed fruit and vegetables, plants and flowers, and animal products; Mexico for wheat, beans, maize, sorghum, and sugar; Morocco for flowers, fruit and vegetables, and olive oil; Pakistan for wheat; and South Korea for fruit, flowers, kimchi, vegetables, livestock, and ginseng. Pakistan's programme has not yet been notified but was described in the WTO committee on agriculture as having been terminated. In a number of cases, the support programmes and policies concerned may have been discontinued since the original notification to the WTO was made.

29 Countries that could be affected by this provision might include Israel (cut flowers, fruit and vegetables, described in G/AG/N/ISR/53); Turkey (numerous products including fruits, vegetables, olive oil, pastes and preserves, fruit juices, preserved fish, poultry meat, eggs, chocolate and other preparations, macaroni and vermicelli, described in G/AG/N/TUR/13); Venezuela (numerous products specified in G/AG/N/VEN/21); Mexico (wheat and maize, described in G/AG/N/MEX/25). Again, as in some cases the notifications are very old, they may relate to programmes and policies that have since been discontinued.



Cotton has a separate clause in this decision (also appearing in the Cotton – Ministerial Decision of 19 December 2015 – WT/MIN(15)/46 – WT/L/981) which requires export subsidies to be ended immediately in the case of developed countries and by the beginning of 2017 for developing countries (see Table 1 below, and the separate paper by Townsend in this compilation).

**Table 1. Export subsidies deadlines**

Countries	Products/Types	By when?	Criteria
Developed (general)	All; there is specific mention of cotton	End 2015	See exceptions
European Union (footnote 3)	Sugar	September 2017	Covered by dispute settlement (DS265, 266, 283)
Developed (footnote 4)	Processed products, dairy products, and swine meat	Budgetary use ends 2020	1) "not exported to LDCs"; 2) "reported use of export subsidies in 1 of 3 latest WTO notifications"; 3) standstill commitment on quantities (relative to 2003-05 base period); 4) no export subsidies for new markets or new products.
Developing (general)	All; cotton has a shorter deadline	End 2018; for cotton 1 Jan 2017	
Developing (footnote 5)	Products in 1 of 3 latest notifications before Nairobi decision	End 2022	
Developing (general)	Transport and marketing costs (Art. 9.4)	End 2023	
LDCs and NFIDCs	Transport and marketing costs (Art. 9.4)	End 2030	

With market price-support schemes becoming more important in a few large developing countries and South-South trade expanding, in the medium to long term, the new disciplines on export subsidies could be important in protecting farmers in the world's poorest countries from the disposal of unwanted surplus farm products originating in other parts of the developing world.

### *Export Credits and Export Financing*

The deal also saw the US agree to new disciplines on export credits, export credit guarantees and insurance programmes, which effectively lock in Washington's current practice of providing an 18-month maximum repayment term for export financing.<sup>30</sup> As noted before, cereals and oilseeds are among the products that have benefited most from this type of programme to date. For developed countries, these obligations start the last day of 2017, while developing countries using these practices have until 2020 to adjust to a maximum repayment term of 18 months, but which in any case should not exceed 36 months. All credit insurance and guarantee programmes must also be self-financed.

The repayment periods allowed are about three times longer than the ones envisaged in the draft 2008 text. However, it may be a reasonable compromise between making export financing support more commercially oriented, while allowing financing for developing countries that helps lift

30 The 2014 Farm Bill allows for longer periods, but the US accepted an 18-month repayment period in its framework agreement on cotton with Brazil (see Memorandum of Understanding online here: <https://ustr.gov/sites/default/files/20141001201606893.pdf>).

somewhat the borrowing constraints experienced by those countries.<sup>31</sup>

The decision envisages some flexibility for LDCs, NFIDCs, and some other countries in footnote 10 that can receive financing for up to 54 months, which could also be extended when those countries “face exceptional circumstances.”<sup>32</sup>

## *Exporting State Trading Enterprises*

The Nairobi outcome includes some generic language on agricultural-exporting STEs, requiring WTO members not to use them to circumvent disciplines on export subsidies or other commitments in the Nairobi decision. While the draft 2008 text included some language aimed at limiting the extent to which governments could grant monopoly powers, the Nairobi decision simply commits governments to “make their best efforts to ensure that the use of export monopoly powers by agricultural exporting state trading enterprises is exercised in a manner that minimizes trade distorting effects and does not result in displacing or impeding the exports of another Member.”

Furthermore, the Nairobi decision does not require that governments refrain from providing exporting STEs with financing or capital at below market rates or underwriting their losses — both of which would have been subject to disciplines under the draft 2008 text.

In addition, and again in contrast to the 2008 text, the Nairobi decision makes no attempt to establish more rigorous disciplines on products that are especially important in global trade. The draft language tabled at that time would have imposed restrictions on developed countries' STEs in cases where the exported product represented more than 0.25 percent of total world trade in agricultural products in a predetermined base period. While the percentage may seem small, it in fact translates to a value of about US\$ 1.5 billion (or between 8 and 12 percent of world trade in products such as wheat, maize, or soybeans). Developing country STEs would have been subject to similar but more flexible rules, although again could have allowed the operations of some STEs to affect global trade — including potentially to the detriment of producers and exporters in other developing countries.

While the Nairobi decision does not include commitments on greater transparency for STEs, this issue could be an area where future disciplines could usefully be strengthened to ensure “commercial confidentiality” arguments are not used to shield STEs from providing adequate information that may help determine whether their operations comply with WTO commitments.

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31 The analytical debate about export support financing is whether it can be considered to reduce the unitary price for the buyer (pushing world prices down and affecting other exporters) or is expanding demand otherwise not able to manifest itself because of lack of finance (which may not necessarily lead to declines in world prices). It must be noted, however, although G/AG/W/125/Rev.3 and G/AG/W/125/Rev.4 do not always carry adequate information on the export markets covered by these programmes, a cursory review of the cases that do have that information would suggest that the countries receiving a large share of the export credits and guarantees are developed or upper-income developing countries that do not seem particularly credit constrained. Therefore, the second rationale for these operations may not apply in those cases.

32 The countries identified include Belize, Bolivia, Ecuador, Fiji, Guatemala, Guyana, Nicaragua, Papua New Guinea, and Suriname. A further note 11 gives Cuba the possibility of acceding to even longer periods of financing.

Finally, although the Nairobi decision only refers to exporting STEs, it might be important in the future for WTO members also to examine the implications of importing STEs for global markets for food and agriculture.<sup>33</sup>

## *International Food Aid*

The Ministerial decision on export competition also covers international food aid, setting out new principles that countries must follow. The deal builds on previous efforts at the WTO to ensure that aid is available in humanitarian emergencies, but also does not effectively serve as a disguised export subsidy.

According to the Ministerial decisions, food aid must be needs-driven, provided in fully grant form, and not 'tied' to commercial exports of other goods and services. Also, it should not be linked to market development, or be re-exported.

A draft text circulated during the ministerial had raised concerns among humanitarian agencies and other aid effectiveness proponents, who criticised the non-binding and 'aspirational' language in which the new commitments were framed.<sup>34</sup> However, changes made to the text in the final stage of negotiations might have alleviated some of these concerns.

The agreement states that governments must not provide in-kind international food aid in situations where this would adversely affect local or regional production. It also states that food aid can be 'monetised' — or sold to raise cash for development projects — "only where there is a demonstrable need" for the transport and delivery of food assistance, or to address factors giving rise to hunger and malnutrition in least-developed and net food-importing developing countries.<sup>35</sup> The text also requires a market analysis to be completed before any food is sold in this way.

One important food aid issue that was not addressed in the agreement relates to the imposition of export restrictions. In 2011, the leaders of the G-20 group of major economies agreed not to impose these measures on humanitarian food aid being procured by the World Food Programme. However, subsequent efforts to adopt this agreement by the entire WTO membership were unsuccessful — not least due to opposition from some large G-20 members that at that time were uncomfortable with the same decision being adopted at the WTO. The trade body's members could usefully revisit the G-20's 2011 declaration and explore options for adopting this or similar language in their post-Nairobi work.<sup>36</sup>

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33 McCorrison and MacLaren (2006) find that, in the case of rice in Korea, the operations of the STE implied an ad valorem tariff equivalent to 178 percent and a producer subsidy of 25 percent.

34 See, for example, comment by Edward Clay online here: [https://disqus.com/by/disqus\\_GLYNVF3ASY/](https://disqus.com/by/disqus_GLYNVF3ASY/)

35 Nine other countries are also specified as having access to this provision: Belize, Bolivia, Ecuador, Fiji, Guatemala, Guyana, Nicaragua, Papua New Guinea, and Suriname.

36 See also Anania (2014).

## Conclusions

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Arguably, the Nairobi conference allowed governments to take a meaningful 'bite' out of the far bigger global trade agenda on food and agriculture, even though many issues remain unresolved.

In particular, negotiators managed to obtain concrete concessions that could contribute toward more equitable and sustainable global markets for food and farm goods, including on long-standing farm trade issues, such as export subsidies, food aid, and cotton. How governments now implement the commitments that have been made will be key to determining their actual impact around the world.

It should also be noted that, if global economic growth remains weak or declines even further in the next couple of years, agricultural and food prices could continue to trend downwards — which in the absence of a Nairobi deal in this area might have seen policymakers in some countries tempted to reintroduce export subsidies again, despite the movement away from market price support in many jurisdictions.

The conference declaration acknowledges the "strong commitment" of all members to advance negotiations on remaining Doha issues,<sup>37</sup> while also recognising disagreement over whether to reaffirm the Doha mandates or to discuss other issues for negotiation. Indeed, despite the advances in Nairobi, WTO members still have a large and growing agenda of unresolved issues that need to be tackled, including key issues such as domestic support and market access.<sup>38</sup>

Among these outstanding issues, governments could usefully explore tighter disciplines on export restrictions — which are crucial to maintaining the confidence of net agricultural and food importing countries in the global trading system (Anania, 2014).

Another topic that requires further consideration is the operation of STEs. The Nairobi Ministerial decision lacks the precision and specificity of the draft 2008 text on topics, such as monopoly powers and government financial support at below market rates (including the full underwriting of losses). Further, if WTO members decide to pursue this topic, the disciplines envisaged in the draft 2008 text may need additional strengthening, including the consideration of importing STEs (see Díaz-Bonilla and Harris, 2014).

Trade negotiators seeking to advance future talks in this area will need to be cognisant of the fast-changing landscape of global markets for food and agriculture, including the evolution of the regulatory frameworks that govern them. The conclusion of numerous bilateral and regional preferential trade agreements — including, in particular, the Trans-Pacific Partnership (TPP) — is likely to have a significant impact on the dynamics of future talks on trade at the multilateral level, including in the area of agricultural export competition.

It can be argued that members have shown through the Nairobi outcome that they are capable of striking more focused deals at ministerial conferences on key topics on the global trade agenda — and, indeed, that this is *de facto* how WTO members have successfully proceeded since the stalemate on Doha in 2008.

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37 Including, in paragraph 31, all three pillars of agriculture (domestic support, market access, and export competition).

38 See, for example, Tangermann (2016) and Meléndez-Ortiz, Bellmann, and Hepburn (2014)

From that perspective, the Nairobi outcome on agricultural export competition is cause for cautious optimism about the future of the multilateral trading system as governments seek to identify how best to address both new challenges and the remaining long-standing policy issues affecting markets for food and agriculture.

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# Evaluating the WTO Nairobi Outcome on Cotton

Terry Townsend, Cotton Analytics





## Introduction

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As is always the case, as of 2016 many factors are affecting the world cotton industry and the outlook for prices and incomes earned by producers in developing countries. The world cotton yield rose to approximately 800 kilograms of lint per hectare in 2007/08, but eight seasons later the world yield is approximately 12 percent lower, while the costs of inputs such as fertilizer, pesticides, and labour have been rising. Because of biofuel mandates in developed countries, prices of grains, oilseeds, and sugar are structurally higher relative to prices of cotton than they were a decade ago, encouraging declines in the cotton area. International trade in cotton was harmed by volatility in prices during 2008 and again in 2010 and 2011, and the cotton industry continues to experience negative effects from those episodes in the form of increased risk premiums on contracts for trade in cotton.

However, at the current time, the factor having the greatest negative impact on the world cotton industry and prospects for income growth among producers in developing countries is the growth of polyester production.

Accordingly, the issues specific to cotton that were discussed during the Tenth WTO Ministerial Conference, Nairobi, 2015, (WT/MIN(15)/46) (the elimination of export subsidies and the granting of duty-free and quota-free access) will be of little immediate relevance to producers in Least Developed Countries (LDCs). Nevertheless, there are long-term benefits of the Nairobi Ministerial.

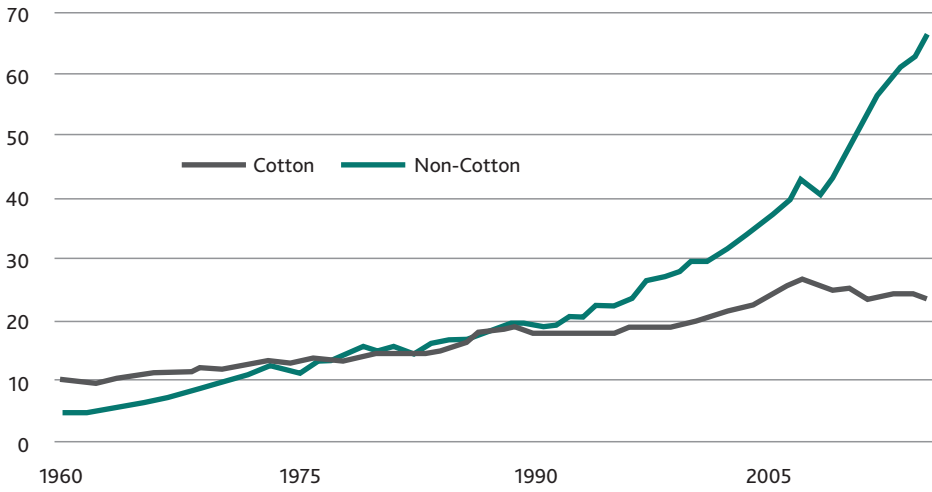
## The Importance of Competition from Manmade Fibres

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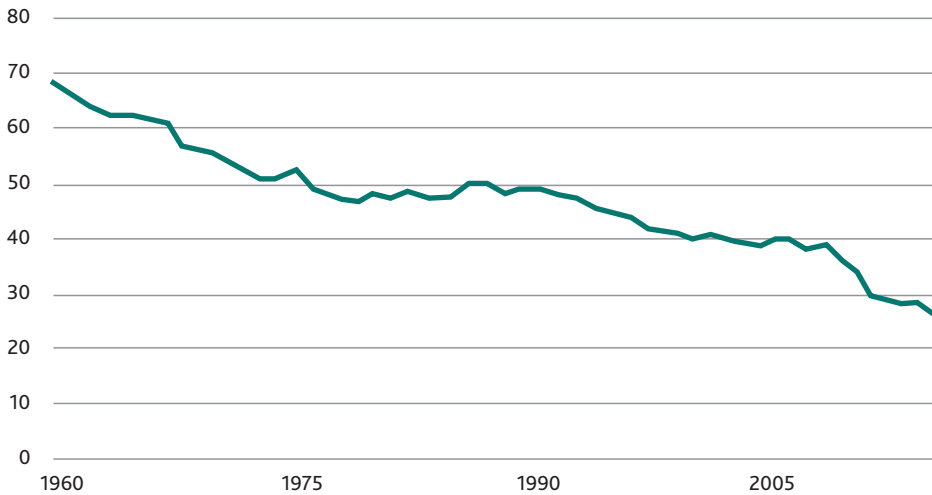
Prior to the invention of manmade fibres, all fibres were natural, and in the 1800s and early 1900s cotton probably accounted for 75 percent of world fibre use, with wool, linen, jute, silk, and other natural fibres composing the balance. However, with the development of nylon, rayon, polyester, and other manmade fibres, cotton's share has fallen. In the 1960s, cotton still accounted for two-thirds of all apparel fibre use. (Apparel fibres do not include bagging material such as polypropylene or construction material such as fibreglass.)

By the 1980s, cotton's share had fallen to half, and today cotton's share of world apparel fibre consumption is less than 30 percent and falling. World cotton consumption reached 26.6 million tons in 2007, but eight years later in 2015, despite population growth of 8 percent or 600 million, and cumulative world real GDP growth of 18 percent, world cotton consumption had still not recovered from the recession and was 2.9 million tons or 11 percent less than it was at its peak. The world may realise years from now that Peak Cotton has passed.

**Figure 1. World Fiber Consumption, Million Tons**



**Figure 2. Cotton's Share of World Fiber Use, Percent**



Source: International Cotton Advisory Committee.

## Nairobi Outcomes on Cotton

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### *Export Subsidies*

The Tenth WTO Ministerial mandates that all countries prohibit cotton export subsidies by 2017. Since the United States eliminated a programme called "Step 2" in 2006, no country has provided direct subsidies specifically for Upland Cotton exports. (Almost all cotton in the world is classified as Upland.)

The United States guarantees loans to buyers of agricultural commodities, including cotton, under a programme called GSM 102. Under the Nairobi package (WT/MIN(15)/45 — WT/L/980), export credit guarantees are permitted if the maximum repayment term is no more than 18 months and provided that the credit guarantees are self-financing, meaning that the long-term operating costs and losses under the programme are covered by the fees charged. The U.S. government asserts that GSM 102 is compliant with both requirements.

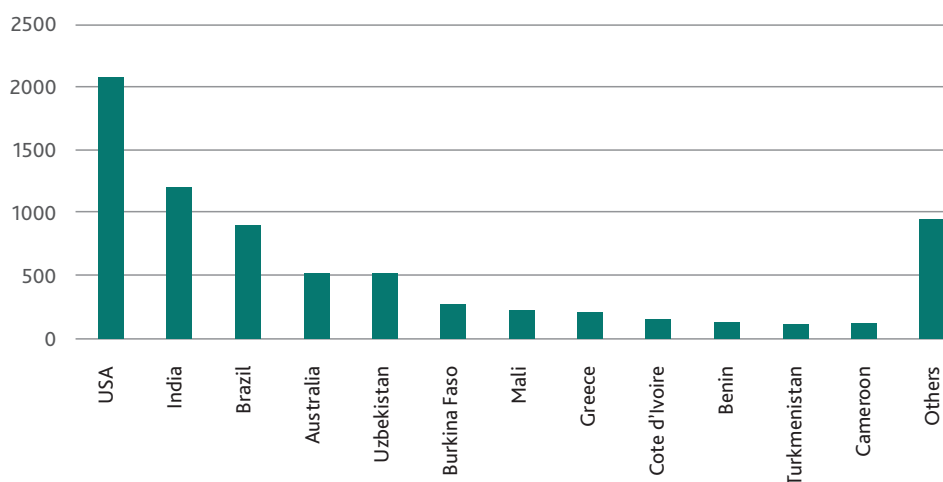
The long-term benefit of export subsidy prohibition is that no WTO member will be eligible to provide export subsidies for cotton and other agricultural products in the future.

An export promotion subsidy for U.S. Pima cotton is still available. (Pima is a separate species of cotton and represents about 3 percent of total U.S. production.) U.S. legislation provides for payment of a subsidy to domestic users and exporters of ELS cotton under special circumstances. However, no payments under the U.S. Pima competitiveness programme have been made since May 2010.

During the current cotton season from August 2015 to July 2016, world exports are estimated at 7.4 million tons.<sup>1</sup> Of the total, exports by the United States are estimated at 2.1 million tons, India 1.2 million tons, Brazil 925,000 tons, Australia and Uzbekistan about 500,000 tons each, Burkina Faso 265,000 tons, Mali 220,000 tons, Greece 200,000 tons, Côte d'Ivoire 150,000 tons, Benin 130,000 tons, Turkmenistan 120,000 tons, and Cameroon 110,000 tons. An additional 42 countries will account for 950,000 tons of exports during 2015/16.

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1 COTTON: This Month, International Cotton Advisory Committee, May 2, 2016.

**Figure 3. 2015/16 Cotton Exporters, 000 Tons**

Source: International Cotton Advisory Committee

### Duty-Free/Quota Free Access

The Tenth WTO Ministerial mandates that developed countries, and those developing countries declaring that they are able to do so, provide duty-free and quota-free access for cotton and other commodities from LDCs as listed in Annex: WT/MIN(15)/46 • WT/L/981 of the Nairobi Declaration.

As of 2016, no developed country imposes either duties or quotas on imports of cotton (HS: 520100), and China is the only developing country of any market significance to do so.<sup>2</sup> China imposes a duty of 1 percent on the first 894,000 tons of imports of cotton from all origins each calendar year, and for cotton imports of more than 894,000 tons each calendar year, a sliding-scale duty of between 5 percent and 40 percent is in effect.

Members of the South American trade group known as Mercosur have a 9 percent duty on imports of cotton from outside Mercosur, but this duty is not commercially effective because the trade group is a cotton-exporting region. Likewise, the Common Market for Eastern and Southern Africa (COMESA) has an import duty of 6 percent on cotton, but again, it is not commercially relevant.

Of the items listed in Annex: WT/MIN(15)/46 • WT/L/981, only cotton, not carded or combed (HS: 520100) is of commercial significance. There is little international trade in cotton waste (5202), yarn waste (520210), garneted stock (520291), other (520299), and cotton that has been carded or combed (520300).

Cotton waste consists of short fibres removed during carding and combing, which are the first stages of cotton yarn production. Carding is a process of brushing fibres straight and parallel, and combing is a second process of removing short fibres and further straightening the remaining fibres in order to produce fine yarns. Waste factors differ enormously from factory to factory, but on average waste collected in the carding process is about 7 percent of the starting amount by weight, and comber

2 As of April 2016, the Government of Turkey has announced that a countervailing duty of 3 percent will be assessed against imports of Upland cotton from the United States.

waste typically equals about 18 percent of fibres by weight. Yarn waste consists of short lengths of yarn collected on the ends of cones and spindles and snippets of yarn collected from the edges of woven fabric.

While these products are called "waste," they aren't wasted in the sense of being thrown away. Instead, the cotton waste and yarn waste are collected and blended with longer fibres to produce products such as mops, shop rags, and coarse fabric. Garneted stock is often used in non-woven applications, such as filters or mats. Most textile mills produce many different kinds of yarn destined for different end uses, and they are able to recycle much of their own waste. Of the waste that cannot be used internally by a textile mill, the rest is transported a relatively short distance to a neighbouring textile mill because the value of waste and garneted stock is not high enough to justify long-distance shipment.

Cotton, carded or combed, is the product of the carding and combing processes after the "waste" fibres have been removed. To trade these products, it would be necessary to pack the carded and combed cotton back into bales for economical shipment, and then the next textile mill would have to start over again opening a bale and carding and combing the fibres preparatory to producing yarn. Besides, any textile mill operating carding and combing machinery will have its own spinning equipment to make yarn, and so there is little reason for cotton, carded or combed, to ever appear in international trade.

Of the other products listed in the Annex under cotton shells, husks, oil, and other food products, there is very little international trade because the ratio of value to weight is too low to permit long-distance transportation, and because cottonseed contains a natural insecticide called gossypol. Gossypol is toxic to animals and must be removed from cottonseed and cottonseed oil prior to human consumption. The process of refining is expensive. Because of the presence of gossypol, most cottonseed is fed whole to cattle or other ruminants that are able to tolerate some gossypol as part of a feed ration.

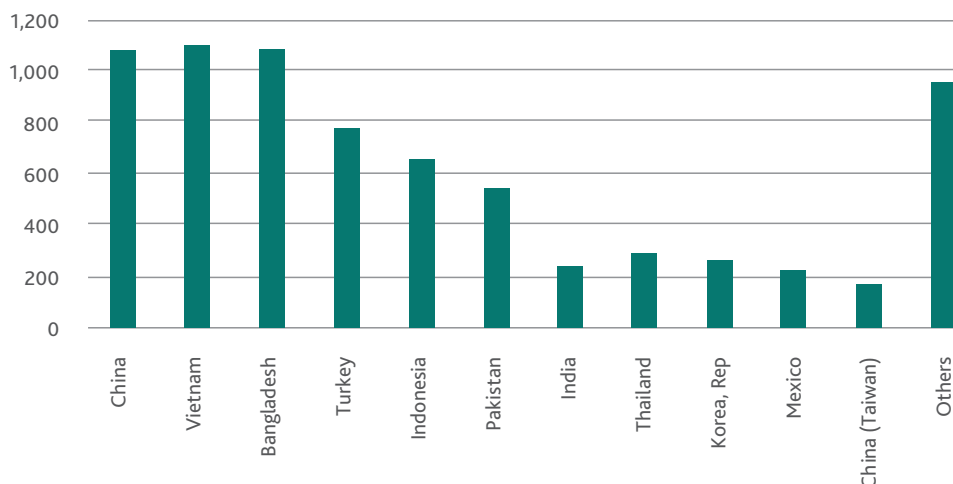
Footnote 3 to Annex: WT/MIN(15)/46 • WT/L/981 says, "This list does not alter Members' existing WTO obligations and requirements."

As of March 2016, world cotton imports during 2015/16 are estimated at 7.4 million tons. Of the total, imports by China, Vietnam, and Bangladesh are each estimated at approximately 1.1 million tons, imports by Turkey 780,000 tons, Indonesia 660,000 tons, Pakistan 540,000 tons, India 240,000 tons, Thailand 290,000 tons, Korea 270,000 tons, Mexico 220,000 tons, and Taiwan 165,000 tons. Fifty-nine countries account for the remaining 950,000 tons of imports.

As of 2015/16, 11 countries that export at least 1,000 tons of cotton per year are listed as being among the Least Developed: Benin, Burkina Faso, Chad, Mali, Mozambique, Senegal, Sudan, Tanzania, Togo, Uganda, and Zambia.<sup>3</sup> These 11 LDCs are accounting for a combined 870,000 tons of cotton exports to all destinations in 2015/16. Based on trade patterns in previous years, it is likely that less than 100,000 tons of cotton exports from LDCs are being imported by China during 2015/16. In recent seasons, India, Australia, and the United States have supplied most of the cotton imported by China.

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3 [http://www.un.org/en/development/desa/policy/cdp/ldc/ldc\\_list.pdf](http://www.un.org/en/development/desa/policy/cdp/ldc/ldc_list.pdf)

**Figure 4. 2015/16 Cotton Importers, 000 Tons**

Source: International Cotton Advisory Committee

A footnote to the Nairobi Declaration referring to the mandate to provide duty-free/quota-free access states that, "In this regard, China declares itself in a position to do so to the extent provided for in its preferential trade arrangements and political commitments."

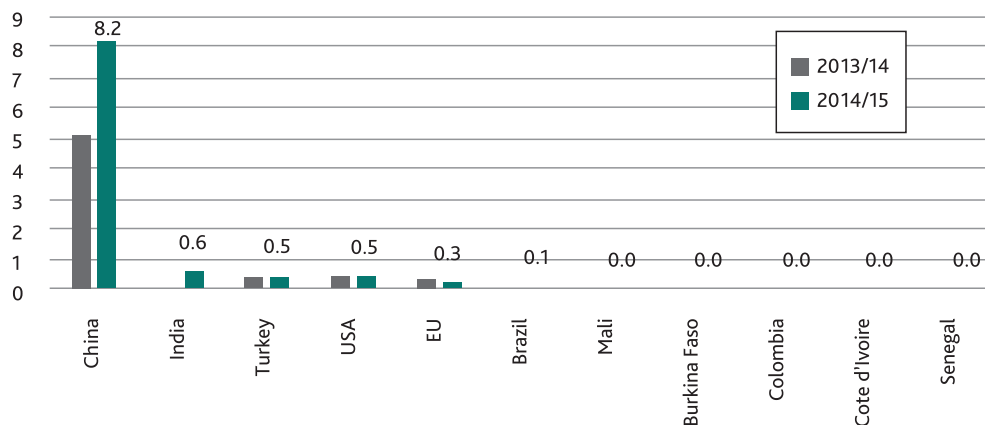
## Domestic Support for Cotton

Much of the discussion in the Talks on Agriculture during the Doha Development Agenda has been focused on subsidies provided by the governments of developed countries (the United States and the European Union) to cotton producers. All subsidies distort, and cotton farmers in the United States and the European Union still receive subsidies as of 2016.

The International Cotton Advisory Committee reports that measures to support the cotton sector used by governments, including direct support to production, border protection,<sup>4</sup> crop insurance subsidies, and minimum support price mechanisms, reached a record \$10.4 billion in 2014/15, up from the previous record of \$6.5 billion in 2013/14.<sup>5</sup>

4 The ICAC considers "border protection" to constitute a subsidy, in the same way that an equivalent direct payment would be. This differs from definitions used by other organisations, including the WTO.

5 Production and Trade Policies Affecting the Cotton Industry, ICAC, December 2015. As is the case each year, the ICAC report issued in December 2015 covered the most recent complete cotton season, 2014/15. In 2014/15, owners of land classified as being devoted to upland cotton, known as base acres, and farmers who produced cotton in 2014/15, received benefits under a continuation of the 2008 farm bill, which included Direct Payments and could potentially have included Countercyclical payments if prices had dropped below the programme threshold. In 2015/16, Direct Payments and Countercyclical payments have been eliminated and replaced by STAX. For 2015/16 at least, benefits paid to the cotton sector under STAX will be, in round numbers, \$500 million less than the payments that would have been received if the provisions of the 2008 farm bill were still effective.

**Figure 5. Direct Assistance to Cotton, \$Billion**

Source: International Cotton Advisory Committee

## United States

On February 7, 2014, President Obama signed the 2014 U.S. farm bill into law. The 2014 farm bill fundamentally changed the way that subsidies are provided by eliminating Direct Payments, Countercyclical Payments, and Average Crop Revenue Election Payments and substituting revenue insurance programmes, including the Stacked Income Protection Plan (STAX) for upland cotton.

According to the United States Department of Agriculture (USDA), STAX addresses U.S. obligations under the WTO (USDA, ERS, 2014). In October 2014 the Government of Brazil signed an agreement with the United States effectively ending the cotton case.

STAX provides revenue insurance to producers of upland cotton. Indemnities are calculated as the difference between projected prices at planting time multiplied by historical yields in each county and actual prices at harvest multiplied by actual yields in each county.<sup>6</sup>

Under STAX, if revenue in a county falls below 90 percent of the estimated revenue at planting time, upland cotton farmers in that county who have paid the premiums to buy STAX insurance will receive indemnity payments equal to the difference, but no more than 20 percent of the expected revenue. STAX is available for purchase on all acres planted to upland cotton.

Crucially, STAX does not provide insurance against declines in cotton prices from one season to the next. STAX is essentially a government-operated and subsidised programme to assist cotton producers in hedging their crop for five or six months between planting and harvesting each season. Farmers participating in STAX will be able to pledge to a bank any resulting indemnities as collateral against production loans, and therefore banks will more readily make such loans for cotton production.

The premiums for STAX are calculated on an actuarially sound basis, which means that over several seasons indemnities are expected to equal premiums. However, the government will pay 80 percent

<sup>6</sup> A county is a unit of government in the United States. For example, the State of Texas is divided into more than 200 counties. Cotton is produced in about 700 counties across the United States.



of the premiums, and the government will cover all administrative costs, which will be substantial, given that there are about 9,000 upland cotton farmers in the United States operating about 250,000 separate cotton farms in about 700 counties, and separate calculations must be made in each county.

### *Other U.S. Cotton Programmes*

The only subsidy received by U.S. cotton producers in recent years has been for crop insurance.<sup>7</sup> The U.S. government provides subsidised crop insurance to protect producers against declines in crop yields caused by natural disasters. The insurance is sold to farmers through private companies, but the Risk Management Agency (RMA) of the U.S. Department of Agriculture pays more than half of the premiums. Additionally, the RMA pays the private companies for their administrative and operating costs, as well as the RMA's own administrative costs under the programme. On average, more than 90 percent of planted cotton acreage is enrolled in this programme.

The crop insurance programme is statutorily mandated to be actuarially sound, meaning that total premiums are supposed to cover total indemnities over time. However, loss ratios are consistently greater than 1.0, meaning that insurance premiums are consistently too low. Underwriting gains and losses are allocated between the companies and the government according to formulas contained in the reinsurance agreement between the parties. The estimates of subsidies attributable to crop insurance made by ICAC include insurance losses from premiums that are too low, subsidised premiums, and administrative costs.

In addition, the upland cotton marketing loan programme continues, just as it has since 1986. However, under the 2014 farm bill, the national average loan rate can range between 45 cents and 52 cents, depending on a simple two-year moving average of the adjusted world price (AWP). The loan rate for upland cotton was previously fixed at 52 cents per pound.

Finally, the programme known as "Economic Assistance to Mills" continues. This programme provides 3 cents per pound in direct subsidy to U.S. textile mills using upland cotton.

### *Impacts of STAX on Farm Revenue*

The Marketing Loan and crop insurance provisions of the 2014 farm bill are largely unchanged from previous farm bills, and so those provisions will presumably have the same impacts on production decisions as in the past.<sup>8</sup> The aspects of the 2014 farm bill that are new are that Direct Payments and Counter-cyclical Payments have been eliminated and replaced with STAX.

Because the 2014 farm bill was enacted after the deadline by which the new provisions could have been implemented for 2014, STAX was not available until the 2015/16 (August/July) season. From the perspective of a U.S. cotton farmer, the impact of the 2014 farm bill is shown by comparing the payments that would have been expected by upland cotton producers during 2015/16 if the provisions of the 2008 farm bill were still in place to the indemnities that are likely to be collected during 2015/16 under STAX.

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7 Production and Trade Policies Affecting the Cotton Industry, ICAC, December 2015.

8 The Marketing Loan rate can fall from 52 cents to 45 cents per pound, but because of lags in the data used to calculate the loan rate, the first change will not occur until 2017.

Under the provisions of the 2008 farm bill, the cotton target price was 71.25 cents per pound. The current projection for the 2015/16 average cotton farm price by USDA is about 60 cents. Assuming the projection of 60 cents per pound proves to be correct, owners of upland cotton base area would expect to receive direct payments of approximately 6 cents per pound and producers would receive deficiency payments of about 5 cents per pound on 85 percent of their base acres. Total support to the sector would be about 10 cents per pound, or around \$80 per acre at average yields, resulting in payments of about \$650 million. Subsidies associated with crop insurance are estimated at \$300 million for 2015/16, indicating that under a continuation of the 2008 farm bill, the U.S. cotton sector would be receiving around \$1 billion in total support this season.

In contrast, under STAX, benefits will be lower in 2015/16. Premiums average about \$10 per acre. The average closing value of the December 2015 ICE cotton futures contract was about 63 cents per pound from mid-January to mid-February 2015. By mid-October 2015, the December 2015 cotton futures contract was still around the same level. Consequently, cotton yields in any county would have to drop 10 percent below average levels before participating farmers in that county would be eligible for an indemnity. The national average yield in the United States was about 5 percent below the five-year average in 2015/16, and most farmers will not receive a STAX indemnity on the 2015 crop. Further, only about one-fourth of planted acres were even enrolled in STAX during 2015. Consequently, even if yields had fallen sufficiently to trigger STAX indemnities, three-fourths of cotton area would not qualify anyway.<sup>9</sup> As a consequence, U.S. cotton farmers will receive less than \$100 million in STAX indemnities for 2015/16 cotton production, and support from crop insurance in 2015/16 is estimated at about \$300 million. Total support for cotton in 2015/16 will be about \$450 million, or about \$500 million less than if the 2008 farm bill were still in effect.

As noted in Lau, Schropp, and Sumner, distortions to production and trade cannot be measured by programme payments alone. It is well established that farmers respond rationally to the potential for payments under government programmes. By subsidising the premiums and administrative costs of STAX, the U.S. government is subsidising risk, and thus encouraging an increase in risky behaviour in the form of greater plantings of upland cotton than would occur in the absence of STAX. STAX, and the counterpart revenue insurance programmes for other crops, will be plagued by adverse selection, both geographically and temporally. Farmers operating on land prone to greater-than-average variation in yields, seasons in which farmers fear a decline in prices of more than 10 percent between January/February and October, and seasons for which long-term weather forecasts issued prior to planting are negative, will be more likely to purchase STAX insurance than other farmers in other seasons. By its very nature, STAX will have a greater impact on production, and thus will distort production and trade to a higher degree, in years of greatest risk. Accordingly, it is incontestable that cotton farmers in the United States still receive subsidies and that these subsidies distort production and trade.

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9 A study by Lau, Schropp, and Sumner published by ICTSD (Issue Paper No. 58, September 2015) concluded that subsidies provided to the U.S. cotton sector under the 2014 farm bill are still highly distorting and will depress world prices. The authors reported that at a futures price for cotton of 70 cents per pound, U.S. cotton producers would expect to receive more than \$1.5 billion in subsidies annually, resulting in a reduction in the world cotton price of 6.9 percent. All economic estimates are based on assumptions. The results reported by Lau, Schropp, and Sumner are based on an assumption of severe declines in cotton prices and yields such that maximum formula benefits would be triggered, not just once, but each year of the life of the 2014 farm bill. No effort is made here to model possible subsidy payments in future seasons. Rather, the actual results for the first season of implementation of STAX, 2015/16, are reported in this paper. Also, the focus of this paper is on STAX, not crop insurance, because STAX is cotton specific and crop insurance is not.

Nevertheless, it is also valid to observe that Direct payments and Counter-cyclical payments contained in prior farm bills have been eliminated, and that the revenue expectation on which STAX indemnities are calculated resets every year and does not provide protection against year-to-year declines in prices, as previous farm bills did.

Further, regardless of what might have been forecast by economists or expected by farmers, actual payments in 2015/16 under STAX will be less than payments would have been under the 2008 farm bill, and they will be about one-third of the \$1.5 billion that most readers of Lau, Schropp, and Sumner probably understood as a likely outcome under the 2014 farm bill.

Regardless of cause, cotton acreage in the United States has been trending downward for a decade, and U.S. cotton production of 2.8 million tons in 2015/16 represents about 13 percent of world production, the lowest share of the world total since the 1790s. Under the 2014 farm bill, U.S. cotton acreage is likely to continue trending downward.

## European Union

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Production in Greece and Spain in 2015/16 is estimated at 274,000 tons. Changes were introduced in the EU Common Agricultural Policy starting in 2006/07, with significant revisions in 2009/10. Cotton producers receive 65 percent of EU support in the form of a single decoupled payment (income aid) and the remaining 35 percent in the form of an area payment (coupled, or production aid). Greece and Spain are the major cotton producers in the EU. For production aid the maximum base eligible areas are set at 250,000 hectares for Greece and 48,000 hectares for Spain. To be eligible for aid, the area must be located on agricultural land authorised by the EU member states for cotton production, sown under authorised varieties, and actually harvested under normal growing conditions. The aid is paid for cotton of sound, fair, and merchantable quality. The aid is paid per hectare of eligible area by multiplying fixed reference yields by the reference amounts fixed for each country. For the purpose of calculation of aid, the seed cotton yield per hectare is fixed at 3.2 tons per hectare for Greece and at 3.5 tons per hectare for Spain. The amounts per hectare are fixed at 251.75 euros for Greece and 400 euros for Spain. If the eligible area exceeds the maximum base area, the aid per hectare is reduced proportionally.

## China

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The Government of China supports domestic cotton production by controlling cotton imports by applying quotas and sliding scale duties, with an effective tariff of between 5 percent and 40 percent on cotton imports greater than 894,000 tons in any calendar year. In addition, China maintains a strategic reserve of cotton, serving as a national buffer stock, which is managed by the China National Cotton Reserve Corporation (CNCRC). China releases cotton to the domestic market from the reserve through a system of auctions when there is a shortage, and replenishes the reserve in times of abundance, thus supporting prices.<sup>10</sup>

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10 Production and Trade Policies Affecting the Cotton Industry, ICAC, December 2015.

During 2011/12 through 2013/14, China supported domestic cotton prices, and thus domestic production, by implementing a price floor that was substantially above the equivalent world market price. Beginning in 2014/15 and continuing to the present, the Government of China is making compensatory direct payments to cotton producers when prices fall below a certain "target price." Beneficiaries include producers in the far western region known as Xinjiang, as well as other provinces, although production in Xinjiang accounts for about 60 percent of the national total.

However, China is not making direct payments to farm households in the Eastern producing provinces because cotton farm size is very small, averaging just one-fifth of a hectare, and the number of cotton-producing households is in the millions. Since direct payments are impractical in the Eastern part of the country, the Government of China continues to support market prices by regulating the domestic supply through the operation of the buffer stock.

The buffer stock operations of the government of China support domestic prices above world market levels and encourage domestic production of cotton, which might otherwise depress world prices. However, the same buffer stock operations prevent the use of cotton held in the State Reserve, and the Government of China prevents cotton imports from flooding into the domestic market to take advantage of the high domestic prices by imposing the 5 percent to 40 percent sliding scale duty.

The result is that cotton consumption in China is being discouraged through a process of rationing associated with the operation of the State Reserve. At the same time, the same State Reserve withholds cotton from the world market, and therefore world cotton prices are being maintained above a level to which they would otherwise fall in competition with polyester.

Under the terms of its accession agreement to the WTO, China is obliged to establish a calendar year tariff rate-quota (TRQ). The in-quota tariff is 1 percent for the first 894,000 tons of imports each year. Additional import quotas are released by China based on requirements. The additional quotas can carry a tariff of 1 percent, or quotas can be based on a sliding scale of between 5 percent and 40 percent. The purpose of the sliding scale duty is to ensure that the effective cost of imported cotton exceeds domestic market prices and thus boosts domestic prices paid to farmers in China.

Cotton imports by China are estimated at 1.1 million tons in the current season. Production in China is estimated at 5.2 million tons in 2015/16, and mill use (use of cotton by textile mills) is estimated at 7.1 million tons. If it were not for the imposition of sliding scale duties, and ignoring stock changes that would occur if the Reserve were liquidated, cotton imports by China would be around 2 million tons, the difference between domestic production and mill use. If price and income support provided to Chinese cotton farmers were discontinued, the gap between domestic production and mill use would be much greater than the current gap, and imports would likely be greater than 2 million tons.

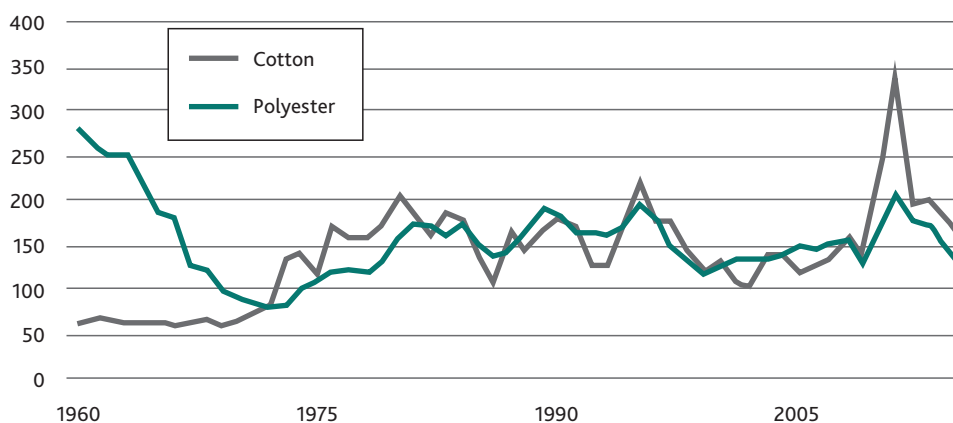
As of May 2016, the average domestic price of a representative quality of cotton delivered to textile mills in China is approximately 86 cents per pound when calculated using a market exchange rate. The comparable quality of cotton from other countries delivered to Chinese mills is approximately 71 cents. Accordingly, the border protection provided to domestic cotton producers in China is currently about 15 cents per pound, or about one-sixth of the international price.<sup>11</sup>

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11 Cotton Outlook, May 2, 2016 and CottonChina.org May 2, 2016.

Relative fibre prices are extremely important in determining fibre market shares. When introduced in the 1950s, prices of polyester were far higher than those of cotton, but prices of polyester reached parity with cotton in 1972 and have been correlated in the decades since. The most recent 8-year interval, from 2008 to 2015, has been brutal to the competitive interests of cotton. During this period, cotton prices have averaged 42 cents per kilogram more than prices of polyester, a premium of 26 percent.

**Figure 6. Fiber Prices, Cents/Kg**



*Source: Cotlook Limited, publisher of Cotton Outlook.*

High cotton prices are undermining the competitiveness of cotton relative to polyester. Since 2007, cotton's share of world apparel fibre consumption has fallen from 38.4 percent to 27.6 percent, a staggering loss of market share of more than 10 percentage points. The volatility in cotton prices during 2008 and 2010/11, before China began building a state reserve in 2011, caused much demand destruction. Arguably however, China's persistence in maintaining a state reserve at a time while polyester prices have fallen to less than 45 cents per pound in China is contributing to a continued slide in market share that now threatens the long-term viability of cotton as an industry.

## Conclusions

The greatest strategic challenge facing all cotton producing countries at this time is the loss of market share to polyester.

The Tenth WTO Ministerial mandates that all countries prohibit cotton export subsidies by 2017. Since the United States eliminated a programme called "Step 2" in 2006, no country has provided subsidies for Upland cotton exports.

The Tenth WTO Ministerial mandates that developed countries, and those developing countries declaring that they are able to do so, provide duty-free and quota-free access for cotton from LDCs. As of 2016, no developed country imposes either duties or quotas on imports of cotton, and China is the only developing country of any market significance to impose quotas or duties.

All subsidies distort, and cotton farmers in the EU and the United States still benefit from subsidies. However, the subsidies received by farmers in the EU and the United States are now mostly decoupled from current production decisions, and depending on price patterns, are likely to be significantly less than subsidies received in earlier decades.



# Prospects of the Nairobi Decision on Special Safeguard Mechanism

Biswajit Dhar





## Introduction

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The 10<sup>th</sup> Ministerial Conference of the member countries of the World Trade Organization (WTO) held in Nairobi in December 2015 decided that “developing country Members will have the right to have recourse to a special safeguard mechanism (SSM) as envisaged under paragraph 7 of the Hong Kong Ministerial Declaration.” The Ministers agreed that the negotiations on SSM would be held in dedicated sessions of the Committee on Agriculture in Special Session and directed the General Council to review the progress of the negotiations.

This decision has two facets. One, it brought back the focus on an issue that developing countries consider vitally important for protecting their resource poor farmers from the volatilities of the international market. At the same time, however, the Nairobi decision on SSM needs to be seen within the larger context spelt out in the Ministerial Declaration, which is that the Doha Round does not have the full backing of the WTO membership.<sup>1</sup> Thus, the challenge for the demanders of the SSM is to provide guidance to the post-Nairobi process in order that the Ministerial Decision is given a workable shape.

The SSM owes its genesis to the Doha Round mandate for agriculture negotiations, which stated:

*“special and differential treatment for developing countries would be an integral part of all elements of the negotiations and would be embodied in the Schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development.”*

A key concern voiced by most developing countries is that small farmers, the backbone of their agricultural systems, do not have effective safeguards against volatile price movements in agricultural commodities of the kind available under Article 5 of the WTO Agreement on Agriculture (AoA). This article introduced special safeguards (SSG), extending the use of the safeguards clause of the General Agreement on Tariffs and Trade (GATT)<sup>2</sup> to agriculture. However, the scope of this Article was limited: the use of SSG is restricted to the countries that had converted the non-tariff barriers imposed on specific products in the pre-WTO phase into tariffs (so-called “tariffication”). Only a small set of developing country membership has the right to use the SSG<sup>3</sup> and this was the trigger for this group to argue that special agricultural safeguards must be able to take advantage of a newly crafted SSM. These countries further pointed out that the proposed mechanism should be broader in scope than the existing SSG, especially in respect of the product coverage. This step, in their view, would help in strengthening the special and differential treatment provisions in keeping with the

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1 WTO (2015), Nairobi Ministerial Declaration: Adopted on 19 December 2015, WT/MIN(15)/DEC, 21 December, Paragraph 30.

2 Safeguard clause (also called the “Escape Clause”) is one of the trade remedies that the WTO Members are allowed to use to protect their domestic producers in the non-agricultural sector against sudden surges in imports. Provided in Article XIX of the GATT, the safeguard clause can be invoked after the claims of an industry that its interests are adversely affected by import surges and its claims are investigated by the designated authority. However, in the case of agricultural products, which are covered under Article 5 of the AoA, safeguard action can be taken automatically based on the price and the volume triggers that have been specified.

3 Only 39 WTO Members have the right to use SSG. Of these, 23 are developing countries (counting Korea and Mexico).

Doha Round mandate.<sup>4</sup>

This paper reflects on the prospects for the SSM issue from two perspectives. First, it looks at discussions on SSM since it was first proposed before the Seattle Ministerial Conference. This discussion enumerates the approaches suggested by the demandeurs, in particular by the G-33 group of developing countries, to operationalise this instrument and the responses by some of the other members of the organisation. The positions taken by various groups of WTO Members on the issue of SSM were quite divergent, which explains the lack of any progress in the negotiations on this issue. The second perspective would be the post-Nairobi context, which examines the possibility of this decision to be acted upon in the ensuing deliberations. While the softening of commodity prices during the past few years provides an ideal platform for the G-33 and its supporters to push for a credible way forward for overcoming the impasse over the SSM, the waning interest in the Doha Round is a serious challenge that these countries have to contend with.

## Proposals for the “Special Safeguard Mechanism”

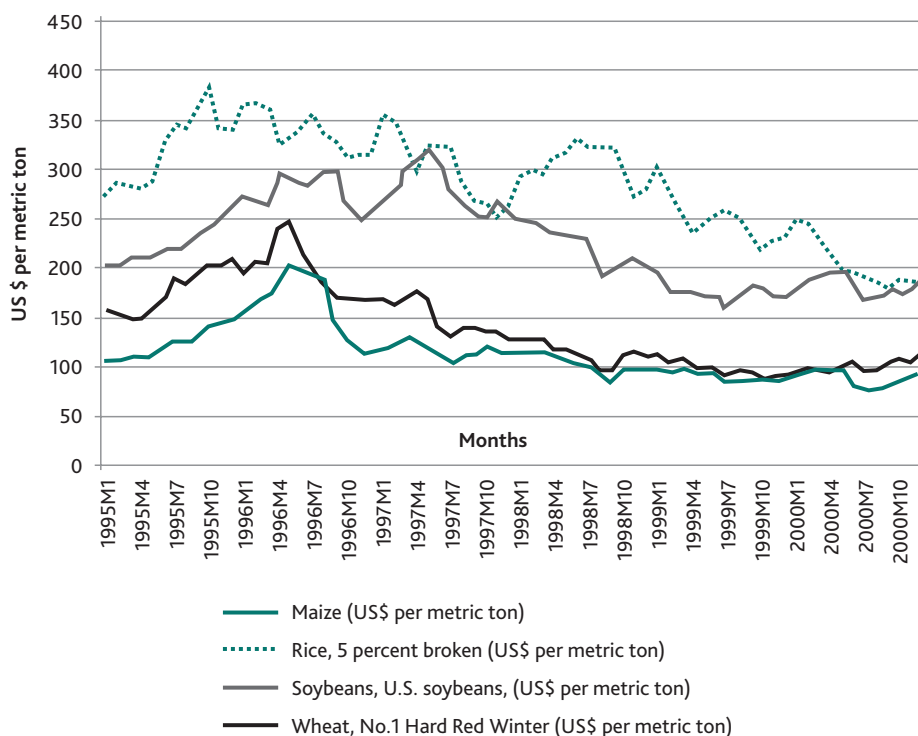
The first proposals for enabling all developing countries to use the provisions of special agricultural safeguards were made in the run-up to the Third Ministerial Conference held in Seattle in 1999.<sup>5</sup> India, in its submission, argued that the *“non-availability of the special safeguard clause for the large majority of developing countries, together with the pressure that they have to reduce their tariff bindings, limits their means of cushioning against possible world market instabilities, which in turn could have serious implications for domestic price stability and consequently for food security and rural employment.”* India, therefore, proposed that developing countries should be allowed to take recourse to safeguard mechanisms *“to minimize the deleterious effect that possible surges of import could have on food security and rural employment.”*<sup>6</sup>

Importantly, India's proposal for enabling developing countries to use special agricultural safeguards was made against the backdrop of high volatility, accompanied by a declining trend of international prices of major commodities after they had peaked in 1996, which has been captured in the chart below.

4 WTO (2002), Summary Report On The Fifteenth Meeting of The Committee On Agriculture Special Session Held On 22 November 2002, TN/AG/R/5, 19 December.

5 It may be mentioned that the discussions on agriculture in preparation for this Ministerial Conference were held against the backdrop of the built-in review of the AoA as mandated in Article 20 of the Agreement. During this review, developing countries had focused their attention on Article 20(c), according to which the review had to take into account *“non-trade concerns, special and differential treatment to developing country Members, and the objective to establish a fair and market-oriented agricultural trading system, and the other objectives and concerns mentioned in the preamble to [the] Agreement.”*

6 WTO (1999), Preparations for the 1999 Ministerial Conference – Proposals Regarding Food Security in the Context of Paragraph 9(a)(ii) of the Geneva Ministerial Declaration: Communication from India, WT/GC/W/342, 29 September, paragraphs 4, 6 and 10.

**Figure 1. Trends in International Prices of Major Agricultural Commodities (1995-2000)**

Source: IMF data

The first formal proposal for introducing SSM exclusively for developing countries was made by Jamaica in the run-up to the Third Ministerial Conference held in Seattle. Jamaica proposed a “special safeguard mechanism for developing countries that is relatively simple and inexpensive to invoke [which] continues to be essential to rendering liberalization acceptable among developing countries.”<sup>7</sup> Jamaica argued that this mechanism “will constitute an important element of the special and differential provisions for the developing countries, particularly as it relates to their food security and genuine non-trade concerns.”

Indonesia’s proposal in the year 2000 provided further justifications for the use of SSM by developing countries.<sup>8</sup> This proposal pointed out that developing countries need flexibility to ensure that their small farmers can continue to make a livelihood out of agriculture while adjusting to trade liberalisation. Indonesia’s view was that developing countries require “differential modalities” that include lower levels of reduction commitments as compared to the developed countries as well as more flexible implementation timetables; and preservation of a special safeguard mechanism for developing countries, whether or not they have taken recourse to tariffication during the Uruguay Round. Indonesia argued that these modalities were essential since the removal of non-tariff barriers

7 WTO (1999), Preparations for the 1999 Ministerial Conference – Agreement on Agriculture: Communication from Jamaica, WT/GC/W/370, 13 October, paragraph 9.

8 Fourth Special Session of the Committee on Agriculture – 15-17 November 2000: Statement by Indonesia, G/AG/NG/W/71, 30 November.

in the developing countries exposed small farmers to the risk of import surges, which could adversely affect their production capacities. Use of the safeguard mechanism of GATT 1994 to protect the farmers from import surges would be inadequate in Indonesia's view, "as the injury may be technically difficult to be demonstrated in such dispersed production as agriculture."

In the post-Seattle negotiations, developing country members made a number of proposals for the introduction of SSM. These proposals argued, as did the three submissions mentioned in the foregoing, that agricultural sectors in developing countries would be seriously affected if they did not have instruments like the SSM to protect themselves from surges in imports and substantial declines in international prices, the latter often resulting from dumping of highly subsidized imports.<sup>9</sup> Importantly, these proposals found support from Australia, a leading member of the Cairns Group of agricultural exporting countries, in whose view, "special safeguard mechanism should be preserved for developing countries to assist with agricultural reform efforts and to counter the impact of subsidised competition."<sup>10</sup>

The proposal for introducing SSM for developing countries took a concrete shape in the post-Doha negotiations. The first of these submissions, one which spelt out some of the details of the proposed mechanism, was a joint proposal of eight countries,<sup>11</sup> namely, Cuba, Dominican Republic, Honduras, Kenya, Nicaragua, Pakistan, Sri Lanka, and Zimbabwe, which was elaborated in subsequent submissions.<sup>12</sup>

According to this proposal, any developing country Member would be eligible to use SSM for all agricultural products. The proposal supported both volume and price triggers. The volume trigger could be applied if the imports of the product concerned over a year were above a fixed percentage (to be agreed in the negotiations) of the average import level of the immediate past three years. The price trigger could be applied independently of the volume trigger if the price of imports of the product concerned, as determined on the basis of the cost, insurance, and freight (CIF) import price of a shipment, fell below a trigger price equal to the average CIF unit value of the product concerned over the immediate past three years or the average domestic price for the product concerned the year the measure was invoked. Developing country Members invoking the SSM would have been entitled to use additional duties or even quantitative restrictions on imports of the product concerned.

The issue of SSM, which until then had figured only in the submissions of interested developing countries, found legitimacy when the then Chairman of the Committee on Agriculture, Stuart Harbinson, included it in the draft modalities in 2003. The Harbinson modalities<sup>13</sup> spoke of the

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9 These proposals were made by Swaziland, Mauritius, Cuba, Honduras, the Dominican Republic, Pakistan, and Burkina Faso. See for example, WTO (2001), Sixth Special Session of the Committee on Agriculture – 22-23 March 2001: Statements by Cuba, Honduras and the Dominican Republic, G/AG/NG/W/163, 6 April and WTO (2001), Proposal by Burkina Faso on the Negotiations on Agriculture, G/AG/NG/W/185, 16 May.

10 WTO (2001), Sixth Special Session of the Committee on Agriculture – 22-23 March 2001: Statements by Australia, G/AG/NG/W/166, 6 April.

11 WTO (2002), Market Access (further commitments): Specific Drafting Input by Cuba, Dominican Republic, Honduras, Kenya, Nicaragua, Pakistan, Sri Lanka, and Zimbabwe, JOB(02)/103, 3 September, pp. 10-11.

12 WTO (2002), Comprehensive Reform in the Areas of Market Access, Domestic Support and Export Competition, with Effective S&D for Developing Countries, in Agriculture Negotiations: Specific Input: Proposal presented by Dominican Republic, Honduras, Nicaragua, Nigeria, Pakistan, Sri Lanka, and Venezuela, JOB(02)/174, 18 November.

13 WTO (2003), Negotiations on Agriculture – First Draft of Modalities for the Further Commitments: Revision TN/AG/W/1/Rev.1, 18 March.

SSM in two parts. First, it proposed the use of SSM by developing countries in respect of "strategic products," considered vital for meeting food security, rural development, and/or livelihood security concerns. Harbinson also proposed a review of Article 5 of the AoA "with a view to ensuring that these provisions are operationally effective and enable developing countries to effectively take account of their development needs, including food security, rural development and livelihood security concerns."<sup>14</sup>

However, the SSM proposed in the Harbinson modalities was less ambitious than that envisaged by the developing countries in their later submissions.<sup>15</sup> While the developing countries argued that SSM should cover all agricultural products, as defined in the AoA, the Harbinson modalities advised that the proposed instrument could only be used in respect of a clearly identified set of products. The least developed countries (LDCs) could designate larger number of products as compared to the more advanced developing countries.

The Harbinson modalities introduced two substantive conditions for the use of SSM. First, whether price or quantity triggered, SSM was not to be applied in a manner which reduced import access opportunities to a level below that corresponding to average annual imports during the period 1999-2001. Secondly, special safeguard measures were not to be used to curb imports of designated products originating in other developing countries.

As regards the volume trigger, additional duty of not more than 30 percent ad valorem could be imposed in any year on any quantity of imports in excess of 125 percent of the average volume of imports in the immediately preceding three-year period. This additional duty could not be applied beyond the end of the year in which it was imposed.

The demand for SSM was put on the centre-stage by the two major groupings of developing countries, namely the G-20<sup>16</sup> and the G-33, which came into existence around the Fifth Ministerial Conference, held in Cancún in 2003. The former grouping included Brazil, a large agricultural exporter, and India, whose agriculture was focused primarily on preservation of domestic food security and rural livelihoods. In contrast, the latter grouping was more homogenous; over the years, vulnerabilities of their domestic agricultural systems had threatened the attainment of the objectives of food security and rural livelihoods, and this was reflected in G-33 submissions.

The group of countries that eventually became the G-33 was initially a 22-member "Alliance for Strategic Products and Special Safeguard Mechanism."<sup>17</sup> These countries proposed, at the Cancún Ministerial Conference, the establishment of the SSM (together with identification of the so-called "strategic products"), as an integral part of any special and differential treatment for developing countries.

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14 WTO (2003), Negotiations on Agriculture – First Draft of Modalities for the Further Commitments: Revision TN/AG/W/1/Rev.1, 18 March, p. 6.

15 WTO (2003), Negotiations on Agriculture: Report by the Chairman, Mr. Stuart Harbinson, to the TNC TN/AG/10, 7 July, pp. 37-38.

16 WTO (2003), Agriculture - Framework Proposal: Joint Proposal by Argentina, Brazil, Bolivia, Chile, China, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, India, Mexico, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand, and Venezuela, WT/MIN(03)/W/6, 4 September.

17 WTO (2003), Ministers' Communiqué Alliance for Strategic Products and Special Safeguard Mechanism - 9 September 2003, Cancún Mexico: Communication from Indonesia, WT/MIN(03)/14, 9 September.

The July Decision of 2004 and the Hong Kong Ministerial Declaration ensured that SSM was an integral part of Doha Round negotiations. In the Hong Kong Ministerial Conference, the Ministers agreed that "Developing country Members will also have the right to have recourse to a Special Safeguard Mechanism based on import quantity and price triggers, with precise arrangements to be further defined."<sup>18</sup> This statement became the basis of the subsequent technical discussions on the structure and contents of the SSM. Below two perspectives on the technical details are provided for a better understanding of the negotiating dynamics. The first of these is taken from the submission of the demandeurs of the SSM, namely, the G-33 group of countries. The second is the view(s) of the then Chair of the Committee on Agriculture, Crawford Falconer, as reflected in the draft modalities that he had submitted to break the impasse in the negotiations.

### *Detailed proposal of G-33 on SSM*

The G-33 made a detailed proposal on the SSM in 2006.<sup>19</sup> The proposal was a relatively simple approach for making the SSM work, the details of which are given in the Annex tables. The thresholds for the imposition of additional duties were kept at relatively low levels while the duties were relatively higher, primarily because of small-scale producers in the developing world, for whom even small changes in the quantities of imports can be deeply destabilising. This can, in turn, affect their food and livelihood securities resulting in further economic distress. The focus on the small farmers was in keeping with the mandate for agriculture negotiations, which, as we have mentioned earlier, spoke of allowing developing countries to "effectively take account of their development needs, including food security and rural development."

G-33's proposal met with considerable opposition from some of the large exporters. For instance, the United States opposed the coverage of products and the determination of both the triggers for invoking the instrument and the additional duty to be imposed. The United States argued that the SSM should be available for a "*limited number of products at the detailed tariff line level*" and should cover "*products that are produced domestically or are close substitutes of products produced domestically.*"<sup>20</sup> As regards the thresholds for imposing price-based SSM, the United States proposed a fairly high level of volume trigger, proposing that the mechanism should be used when imports exceeded 130 percent of the normal levels. Similarly, stringent price triggers were proposed (details in Annex tables). And, finally, the United States proposed that the additional duties must be below the Uruguay Round bound rates of the products concerned.

What this proposal did was to expose the deep differences between the proponents of the SSM and some of the other WTO Members. Clearly, this issue was a major challenge for Crawford Falconer as the Chair of the Special Session of the Committee on Agriculture as he tried to move the agricultural negotiations forward.

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18 WTO (2005), Doha Work Programme: Ministerial Declaration, WT/MIN(05)/DEC, 22 December, paragraph 7.

19 WTO (2006), G-33 Proposal on Article 5: Special Safeguard Provisions Mechanism for Developing Countries JOB(06)/64, 23 March.

20 WTO (2006), United States Communication on Special Agricultural Safeguard (SSG) and the Special Safeguard Mechanism (SSM): Article 5 of the Agreement on Agriculture, JOB(06)/120, 24 April, p. 1.

## *The Falconer Modalities and the July 2008 Mini Ministerial*

The divide between the proponents of the SSM and the other Members was reflected in the Falconer modalities.<sup>21</sup> While the Chair went along with the proponents in proposing that the instrument could be used for all agricultural products, the triggers and the additional duties for both volume and price triggers were at considerable variance with the G-33 proposal.

The Falconer modalities sought to find the middle ground between the positions of G-33 and the United States, but strong ownership of the proponents to their respective positions was not helpful in narrowing the gaps. Two developments, both occurring during the Mini Ministerial in July 2008, made the differences irreconcilable.<sup>22</sup>

The first of these was the so-called "25 July package" of the then WTO Director General, Pascal Lamy, which proposed a compromise solution to what was one of the most controversial issues in the talks, namely, the circumstances under which additional duties could exceed bound duties. Lamy proposed that this could happen only when the import surge went beyond 140 percent of a three-year rolling average. Countries could then impose additional duties that were 15 percent of the bound tariff or 15 percentage points, whichever was higher.

Secondly, the United States argued that if the developing countries as a whole were to be allowed to impose remedies that would raise import duties beyond their bound rates, the safeguard action should only be triggered when the import surge was at least 150-155 percent of their average annual imports.

The issue of increase of duties above the Uruguay Round bound levels as a remedy under the proposed SSM has been deeply divisive. For the G-33, this was the only effective remedy to counter import surges, and was therefore included in their proposal, but for several other Members, this can only be agreed under exceptional surge of imports.

## **Recent Developments and the Future of the SSM Proposal**

The protagonists of the SSM proposal, the G-33, have made a strong pitch in support of their proposal, especially since the discussions were held on the future of the "Bali package" in July 2014. Indonesia, on behalf of G-33, submitted a proposal on SSM "for the post-Bali work programme."<sup>23</sup> This proposal, which was re-submitted during the run-up to the Nairobi Ministerial,<sup>24</sup> included somewhat moderated volume and price triggers as compared to the earlier proposals, and the additional duties proposed under various thresholds of volume-based SSM were also lower (see Annex tables for details).

21 This discussion is based on the July 2008 version of the "Revised Draft Modalities for Agriculture," document number TN/AG/W/4/Rev.3.

22 ICTSD (2008), Agricultural Safeguard Controversy Triggers Breakdown in Doha Round Talks, Bridges, volume 12, number 27, 7 August. Accessed from: <http://www.ictsd.org/bridges-news/bridges/news/agricultural-safeguard-controversy-triggers-breakdown-in-doha-round-talks>.

23 WTO (2014), G 33 Textual Proposal on Special Safeguard Mechanism (SSM) for the Post-Bali Work Programme, JOB/AG/29, 17 July.

24 WTO (2015), Special Safeguard Mechanism for Developing Country Members: Submission by the G-33, WT/MIN(15)/W/19 and & JOB/AG/49, 18 November.

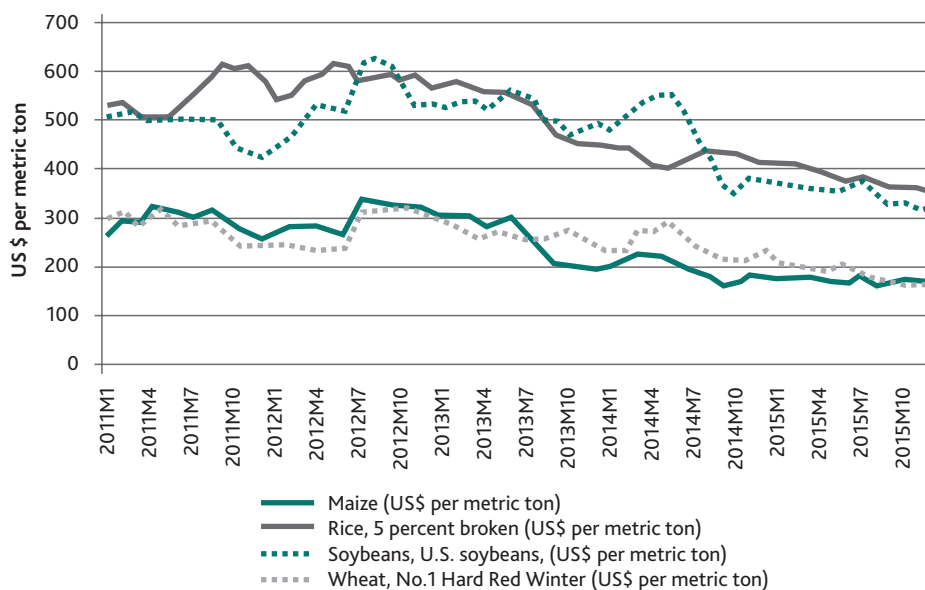


There are two interesting facets of the above-mentioned proposals made by the G-33 group: one, the triggers and remedies proposed were identical with those of the Falconer modalities, and two, the G-33 was prepared to be flexible in proposing both the triggers and the remedies. The latter suggestion was made prior to the Nairobi Ministerial, wherein the grouping indicated that the number of products having access to the SSM in any given 12-month period could be limited; and, limiting the "application and duration of SSM, including through possible 'SSM holiday/break' after consecutive applications subject to certain conditions."<sup>25</sup>

Immediately prior to the Nairobi Ministerial, the G-33 proposed a Ministerial Decision which spoke of amending the AoA so as to include the SSM.<sup>26</sup> While making this proposal, the G-33 indicated that the group was willing to negotiate the three key elements of the SSM, namely, the coverage of products, the triggers (both volume and price), and the remedies. This proposal indicated that products originating from LDCs and other vulnerable countries could be exempted from the purview of the SSM.

The renewed thrust of the G-33 on the SSM has an important context, although the submissions of the grouping do not refer to it. This pertains to the perceptible decline in international prices of major agricultural commodities together with a degree of volatility that has been witnessed between 2011 and the end of 2015 (see charts below). During this period, cotton prices in the international markets have declined by over 60 percent, while that of wheat by close to 45 percent. In all other commodities, prices have declined by over a third. Importantly, cotton prices have continued to decline in the first quarter of 2016.

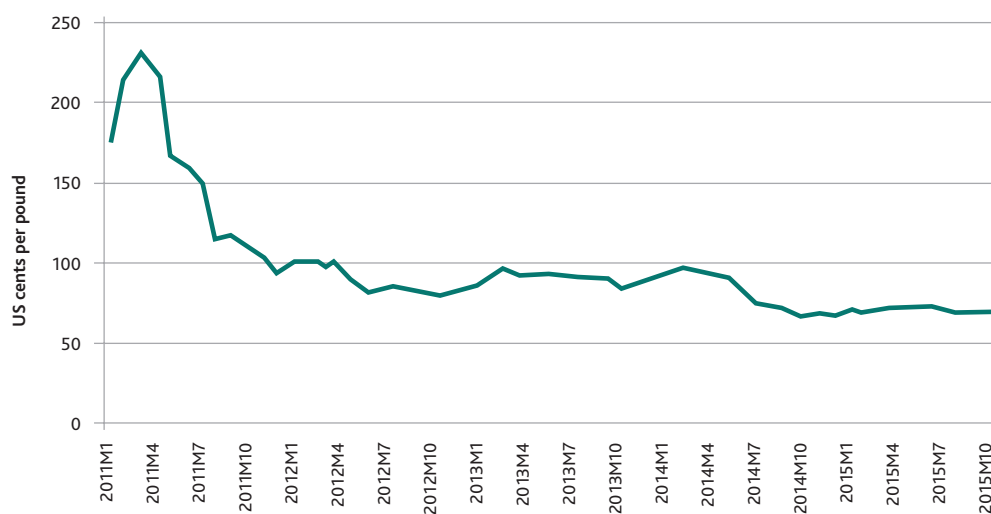
**Figure 2. Trends in International Prices of Major Agricultural Commodities (2011-2015)**



Source: IMF data

25 WTO (2015), SSM: For a Balanced, Development-Centred and Credible MC10 Outcome in Nairobi: Submission by the G-33, JOB/AG/44, 19 October, p. 1.

26 WTO (2015), Special Safeguard Provisions for Developing Country Members: Submission by the G-33, WT/MIN(15)/W/34 & JOB/AG/65, 9 December.

**Figure 3. Trends in International Prices of Cotton (2011-2015)**

Source: IMF data

There is, therefore, ample evidence to argue that the small farmers in developing countries are exposed to the steep volatilities in international commodity prices. In fact, price swings have been of such an order that only high tariffs, which exist in only a handful of countries,<sup>27</sup> would be able to protect the livelihoods of small farmers.

The G-33 has been able to keep the issue of SSM alive in the WTO and their efforts were rewarded as the Ministers adopted the Decision on "Special Safeguard Mechanism for Developing Country Members"<sup>28</sup> at the conclusion of the Tenth Ministerial Conference. The Ministers decided that "developing country Members will have the right to have recourse to a special safeguard mechanism (SSM) which was envisaged in the Hong Kong Ministerial Declaration. They also decide to "pursue negotiations on an SSM for developing country Members in dedicated sessions of the Committee on Agriculture in Special Session."

Given the deep divisions amongst the membership on the issue of SSM, it seems unlikely that these endorsements in favour of SSM by the Ministers would bring the focus on to this issue in the post-Nairobi process. The difficulties of restarting any discussions on SSM would become clear if the following two factors were taken into consideration. The first is the weakened support for the Doha Development Agenda, under the rubric of which the discussions on SSM have been taking place. The second, and a related issue, is the fact that several of the major economies have been looking beyond the WTO to develop rules for the conduct of trade, the most recent of which have been the efforts to forge the mega-regional trade agreements, or the "mega-regionals."

The weakening of the support for the Doha Round was demonstrated at the conclusion of the Nairobi Ministerial Conference. The Ministerial Declaration included a significant observation on the

27 India, which has one of the highest tariff levels in agriculture, had average applied tariffs of 33 percent in 2014.

28 WTO (2015), Special Safeguard Mechanism for Developing Country Members: Ministerial Decision of 19 December 2015

Doha Round: "We recognize that *many Members reaffirm the Doha Development Agenda*, and the Declarations and Decisions adopted at Doha and at the Ministerial Conferences held since then, and reaffirm their full commitment to conclude the DDA on that basis. *Other Members do not reaffirm the Doha mandates*, as they believe new approaches are necessary to achieve meaningful outcomes in multilateral negotiations. *Members have different views on how to address the negotiations. We acknowledge the strong legal structure of this Organization*"<sup>29</sup> (emphasis added). This paragraph of the Nairobi Ministerial Declaration can have an impact not only on the future of the Doha Round, but also on the functioning of the WTO, especially during a phase when the institution is facing the toughest challenges to its existence.

The first point to be noted is that for the first time Ministers were unable to arrive at a consensus regarding the basis for a future work-programme of the WTO. Importantly, the disagreement concerned the future of the Doha Round, which has been the core of WTO activities for nearly a decade and a half. This disagreement could adversely impact the Doha Round since the WTO functions on the basis of consensus among the member states. This follows a convention that has existed since the establishment of the multilateral trading system under the General Agreement on Tariffs and Trade (GATT) in 1948. However, the Marrakesh Agreement Establishing the WTO, states that when consensus eludes the membership, decisions of the "Ministerial Conference and the General Council" are to be "taken by a majority of the votes cast."<sup>30</sup> The architects of the WTO may have anticipated the emergence of extremely divisive issues, like the SSM, and had provided a legal remedy to break a logjam.

An air of uncertainty over the future of the proposed SSM remains since there is as no evidence yet that the opposition to key elements of the proposed mechanism has waned.<sup>31</sup> More importantly, WTO Members have done little to endorse the view that the Ministers expressed in the Nairobi Declaration: "there remains a strong commitment of all Members to advance negotiations on the remaining Doha issues," which "includes advancing work in all three pillars of agriculture."<sup>32</sup> Notwithstanding the directions given by the Ministers to engage on the "Doha issues," and in particular on SSM, a credible way forward to resolve the differences in the positions between the G-33 and the other members does not seem to be on the anvil. Under the circumstances, the demandeurs need to provide the added incentive for the membership at large to consider engaging on the issue of SSM with a view to finding an acceptable solution.

Over the past few years, bilateral and regional free trade agreements (FTAs) have been strongly endorsed by most of the major economies for their ability to effect greater economic integration among themselves. However, the proliferation of these agreements and therefore the possibilities

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29 WTO (2015), Nairobi Ministerial Declaration: Adopted on 19 December 2015, WT/MIN(15)/DEC, 21 December, paragraph 30.

30 GATT (1994), Agreement Establishing the World Trade Organization, Article IX.1.

31 The Chair's Report of the Informal Meeting of the Committee on Agriculture held in March 2016, informs that "other Members' positions on [SSM has] not changed since our Ministers met in Nairobi." The Chair further reports "that there remains a lack of clarity from Members about what an eventual outcome might look like." For details see, WTO (2016), Committee On Agriculture In Special Session: Informal Meeting, 8 March 2016 - Report By The Chair, JOB/AG/67, 15 March.

32 WTO (2015), Nairobi Ministerial Declaration: Adopted on 19 December 2015, WT/MIN(15)/DEC, 21 December, Paragraph 31

of the so-called “noodle-bowl syndrome”<sup>33</sup> were swiftly cast aside through the mega-regionals. The new generation FTAs have gathered momentum after the conclusion of the negotiations for the Trans Pacific Partnership (TPP),<sup>34</sup> together with the imminent formation of the Regional Comprehensive Economic Partnership (RCEP)<sup>35</sup> and the Transatlantic Trade and Investment Partnership (TTIP).<sup>36</sup> These agreements are providing a serious challenge to the WTO, as a substantial volume of world trade would be covered by the rules set by them.

The mega-regionals have also challenged the basis of multilateralism in trade by ignoring issues that form the core of the development dimension in the covered agreements of the WTO. Following this pathway, the TPP and the RCEP have excluded special and differential treatment, the cornerstone of the development dimension in the WTO. Consequently, issues like the SSM have not been a part of the narrative of the mega-regionals.

In the G-33, most of the major economies backing the SSM (including Indonesia, China, and India) are moving swiftly towards the mega-regionals. Whether this new involvement would alter their support for the SSM would be watched with some interest.

## Conclusions

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The proposal for introducing a special safeguard mechanism (SSM) that the developing countries could use for promoting their food security and rural livelihoods was one of the major negotiating planks for these countries in the Doha Round. The SSM was intended to provide both volume and price-based safeguards, so as to provide the resource poor farmers in developing countries with a degree of protection against the volatilities of international markets through the imposition of additional duties, when the situation so demanded. Two factors justified the demand for SSM. The first was the volatility, together with pronounced downward movements, of prices of all major agricultural commodities, seen especially during the years following the establishment of the WTO. The second was the fact that most developing countries did not have the right to use the special agricultural safeguards under Article 5 of the WTO Agreement on Agriculture (AoA), which allowed additional duties to be imposed when actual or potential surges in imports took place.

Although the first demand for introducing SSM was made during the built-in review of the AoA in 1999, support for this issue became more pronounced after the Doha Round was launched. It was the G-33 (currently a group of 48 countries) that coordinated the support for SSM by enumerating the details of the mechanism. G-33 proposed a relatively simple mechanism for operationalising the SSM, which was based on the premise that resource poor farmers in the developing world have

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33 Jagdish Bhagwati first used the term “spaghetti bowl,” which is now better known as the “noodle bowl,” to describe the phenomena where proliferation of preferential trade agreements give rise to a complex array of rules and end up cluttering up trade. See Bhagwati, Jagdish N. (1995), *US Trade Policy: The Infatuation with FTAs*, Columbia University Academic Commons, accessed from: <http://academiccommons.columbia.edu/catalog/ac:100125>.

34 The TPP has been negotiated between 12 countries: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, the United States, Vietnam, and New Zealand.

35 The RCEP brings on a common platform, the 10-member Association of South East Asian Nations (ASEAN) and its six FTA partners, namely, China, Japan, Korea, Australia, New Zealand, and India.

36 The principal focus of the TTIP is on regulatory coherence between the United States and the European Union.

very low capacities to face the uncertainties of global markets and, therefore, their food security and livelihood concerns must be taken care of. Thus, the SSM proposed by the G-33 countries was intended to cover all agricultural commodities and this mechanism could be invoked even when relatively small surges of imports took place or commodity prices fell, causing threats of potential imports. This framework was opposed by several WTO members, in particular the United States, which proposed that import surges must be sufficiently large in order to justify the use of SSM.

The gap between the proponents of the SSM and those opposing the mechanism has proved too large for any compromise to take place, although it must be pointed out that more recently, the G-33 has shown some flexibility to move from its earlier position. The efforts made by the proponents of the SSM received a boost when the Ministers of the WTO member states took a decision at the conclusion of Tenth Ministerial Conference in December 2015, to pursue negotiations on SSM.

Would these recent developments help in sealing a deal on SSM in the WTO? While a definitive answer to this question may not be possible, it needs to be pointed out that the overall context within which the Ministerial Decision on SSM is to be implemented does not look too favourable for at least for two reasons. The first is that the support for the Doha Round within the WTO Members is waning. The second is that most of the major economies are engaged in striking trade deals outside the WTO, which seems to be reducing the buy-in for multilateralism in trade. Moreover, instruments like the SSM are not a part of the current generation of trade agreements like the Trans Pacific Partnership or the Regional Comprehensive Economic Partnership.

And, yet, there is a very compelling case for developing country groupings to pursue issues like the SSM in the multilateral trading system in the interest of reducing the development gaps between countries. The adoption of the Sustainable Development Goals (SDGs)<sup>37</sup> and the underlying message that the global community has given to reduce food insecurity and to provide decent livelihoods is possibly a stark reminder that global trade rules must be responsive to the needs of the marginalised. The efforts of the G-33 for the establishment of the SSM could well provide the trigger for changing the orientation of trade rules.

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37 In September 2015, the United Nations General Assembly unanimously adopted Resolution 70/1, Transforming our World: the 2030 Agenda for Sustainable Development.

**Annex Table 1: Thresholds for Volume Triggers and Remedies**

<b>G-33 Proposal (JOB(06)/64)</b>	<b>Falconer Modalities (TN/AG/W/4/Rev.4)</b>	<b>United States (JOB(06)/120)</b>	<b>G-33 (WT/ MIN(15)/W/34)***</b>
<b>Product coverage:</b> All agricultural products	<b>Product coverage:</b> Maximum remedies for only 2-6 products, at 6-digit Harmonized System of Trade Classification	<b>Product coverage:</b> Limited number of products	<b>Product coverage:</b> All agricultural products
<b>Volume trigger:</b> 105 percent to less than 110 percent of average import volume*  <b>Additional duty**:</b> 50 percent of the bound tariff or 40 percentage points	<b>Volume trigger:</b> More than 110 percent to 115 percent of base imports*  <b>Additional duty**:</b> Up to 25 percent of bound tariff or 25 percentage points, whichever higher***	<b>Volume trigger:</b> At least 130 percent of average imports* or 130 percent of the average imports during 2002-2004  <b>Additional duty**:</b> Up to 50 percent of the difference between the Uruguay Bound Rate and Current Bound Rate	<b>Volume trigger:</b> More than 110 percent and up to 115 percent of base imports*  <b>Additional duty**:</b> Up to 25 percent of current bound tariff or 25 percentage points, whichever higher
<b>Volume trigger:</b> 110 percent to less than 130 percent of average import volume*  <b>Additional duty**:</b> Not exceeding 75 percent of the bound tariffs or 50 percentage points	<b>Volume trigger:</b> More than 115 percent and up to 135 percent of base imports*  <b>Additional duty**:</b> Up to 40 percent of bound tariff or 40 percentage points, whichever higher		<b>Volume trigger:</b> More than 115 percent and up to 135 percent of base imports*  <b>Additional duty**:</b> Up to 40 percent of current bound tariff or 40 percentage points, whichever higher
<b>Volume trigger*:</b> More than 130 percent of average import volume  <b>Additional duty**:</b> Not exceeding 100 percent of the bound tariffs or 60 percentage points	<b>Volume trigger:</b> More than 135 percent of base imports*  <b>Additional duty**:</b> Up to 50 percent of bound tariff or 50 percentage points, whichever higher		<b>Volume trigger:</b> More than 135 percent of base imports*  <b>Additional duty**:</b> Up to 50 percent of current bound tariff or 50 percentage points, whichever higher.

\* for the most recent three-year period preceding the year of importation

\*\* imposed on applied tariffs

\*\*\*Higher thresholds proposed for the least developed countries (based on UN classification)

Annex Table 2: Thresholds for Price Triggers and Remedies

G-33 Proposal (JOB(06)/64)	Falconer Modalities (TN/AG/W/4/Rev.4)	United States (JOB(06)/120)	G-33 (WT/ MIN(15)/W/34)
Price trigger: Difference between CIF import price* of each shipment and the trigger price** less than or equal to 10 percent  Additional Duty: 0 percent			
Price trigger: Difference between CIF import price of a shipment and the trigger price was 10 percent but less than or equal to 40 percent  Additional Duty: 0 percent	<b>Price trigger:</b> CIF import price* of a shipment fell below a trigger price equal to 85 percent of the average monthly MFN sourced price for that product for the most recent three-year period  <b>Additional duty:</b> Up to 85 percent of the difference between the import price of the shipment concerned and the trigger price	Price trigger: Smaller of 70 percent of the average MFN CIF import price* over the most recent thirty-six month period, or 70 percent of the 2002-2004 average MFN CIF import price*  Additional duty: Up to 50 percent of the difference between the Uruguay Bound Rate and Current Bound Rate	<b>Price trigger:</b> CIF import price* of a shipment fell below a trigger price equal to 90 percent of the average monthly MFN sourced price for that product for the most recent three-year period
Price trigger: Difference between CIF import price of each shipment and the trigger price less than or equal to 10 percent  Additional Duty: 30 percent of the amount by which the difference between CIF import price of each shipment and the trigger price exceeded 10 percent			

\* expressed in terms of the domestic currency

\*\* average 1986 to 1988 monthly reference price

\*\*\* Maximum remedies could be used for only 2-6 products, i.e., tariff lines identified at 6-digit level of the Harmonized System of Trade Classification.

# After Nairobi: Public Stockholding for Food Security

Joseph W. Glauber





## Introduction

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The Nairobi Ministerial saw WTO Members reaffirm their commitments to negotiate a “permanent solution” on public stockholding for food security purposes, as well as previous decisions which commit Members to refrain from bring trade disputes under WTO rules on farm subsidies until a lasting agreement can be found. Yet positions have not changed much between WTO Members since an interim compromise was agreed to at the Bali Ministerial in 2013. Some developing countries led by the G-33 coalition argue that the way in which farm subsidies are currently calculated at the WTO fails to take into account the impact of price inflation that has occurred since reference prices were established in the Agreement on Agriculture (AoA) over two decades ago. Developed countries and many developing country exporters are concerned that such programmes may distort production and trade and are thus reluctant to exclude food purchases from domestic support calculations.

Since the Bali Ministerial, commodity prices, as measured by the FAO food price index, have fallen by about 25 percent. After successive years of global record harvests, cereal prices are at their lowest levels since 2009/10. While world prices have come down significantly since the peaks in 2011/12, minimum support levels in countries such as India and China have remained high, which has kept domestic prices higher than world levels. With build-ups in government-held grain stocks in emerging markets such as China, questions have arisen as to the sustainability of such policies. To that end, China has recently announced reforms in domestic support policies for maize (Shuping and Stanway, 2016).

Do changing world market conditions make it more or less likely to get a permanent fix to the public stockholding issue? The public stockholding issue has been subject of much discussion,<sup>1</sup> but little consensus has emerged. This paper reviews the problem, discusses some of the options that have been discussed, and highlights some potential paths forward.

## What is the issue?

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The issue of public stockholding concerns how expenditures for public stockholding for food security purposes are reported to the WTO and whether they are subject to discipline like other forms of domestic support. The Agreement on Agriculture allows for certain publicly-funded government programmes with no (or at most minimal) trade distorting effects or effects on production to be exempted from domestic support reduction commitments provided they also meet policy-specific criteria laid out in Annex 2 of the AoA. The criteria for public stockholding programmes for food security purposes are laid out in paragraph 3 of Annex 2. Diaz-Bonilla (2014) and Matthews (2014) provide a careful discussion of the full implications of paragraph 3. What is of particular concern is how countries procure food for stockpiling purposes. Footnote 5 to paragraph 3 states that if purchases are made at administered prices, then the difference between the acquisition price and the external reference price is to be accounted for in the Aggregate Measurement of Support (AMS).

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1 See, for example, Bellmann et al., 2013; Diaz-Bonilla 2014; Montemayor, 2014; Matthews, 2014.

Rules for calculating the AMS are laid out in Annex 3 of the AoA. For price support measures, support is defined as the difference between the administered price and the fixed external reference price, times eligible production:

$$\text{Support} = [\text{Administered Price} - \text{Fixed External Reference Price}] \times \text{Eligible Production}$$

where the fixed external reference price is based on the average price of the commodity over 1986-1988. That support is counted as part of the Member's Bound Total AMS (BTAMS) if total support for that commodity exceeds *de minimis* levels. The *de minimis* level for developing countries (except China) is calculated as 10 percent of the value of production for that commodity in that year. China uses 8.5 percent and developed country *de minimis* levels are set at 5 percent. Countries with no BTAMS are subject to the limits specified in Article 7.2(b) of the AoA, which state that no commodity-specific (or non-commodity specific) AMS may exceed the country's *de minimis* level for the given year.<sup>2</sup>

The price support formula has posed problems for countries whose domestic price levels have increased due to inflationary pressures or other macroeconomic factors such as currency devaluations. Some countries such as India have switched to reporting price support outlays in US dollars rather than domestic currency to minimise the inflationary impact (Hoda and Gulati, 2013).

Price levels for most commodities were relatively flat in the first 10 years of AoA implementation (Figure 1). For example, the FAO food price index in 2002 was only 3 percent higher than the 1986-88 average. Over the period 2005-2011, prices for many cereals and oilseeds more than doubled due to a number of factors including the biofuel boom, strong energy prices, strong global growth for feed grains and oilseeds, and production shortfalls in key exporting countries (Meyer and Schmidhuber, 2013). Many countries reacted by raising administered prices to keep pace with price increases. As a result, they found themselves facing large gaps between the administered price and the 1986-88 reference price base. Because the AMS calculation is based on the price gap, calculated support levels increased. That increase was particularly problematic for countries that had no bound Total AMS in their WTO schedules of concessions and commitments.<sup>3</sup>

As early as 2007, concern about breaching *de minimis* limits caused many countries to express concern over the vulnerability of public stockholding programmes under Annex 2. The draft modalities of December 2008 (Rev4) contained changes to paragraphs 3 and 4 in Annex 2 that would have exempted developing country Members from reporting expenditures for public stockholding programmes with the objective of supporting low-income or resource-poor producers in their AMS, but the breakdown in negotiations thwarted efforts to modify the provisions.

In 2012, in anticipation of the Bali Ministerial in December 2013, the G-33, led by India, pushed again for changes to paragraphs 3 and 4 to exempt from AMS calculations public stockholding measures "with the objective of supporting low-income or resource-poor producers" (WTO 2012). The changes were strongly opposed by a number of developed countries and exporting developing countries who expressed concern that if administered prices are set high enough they would distort producer

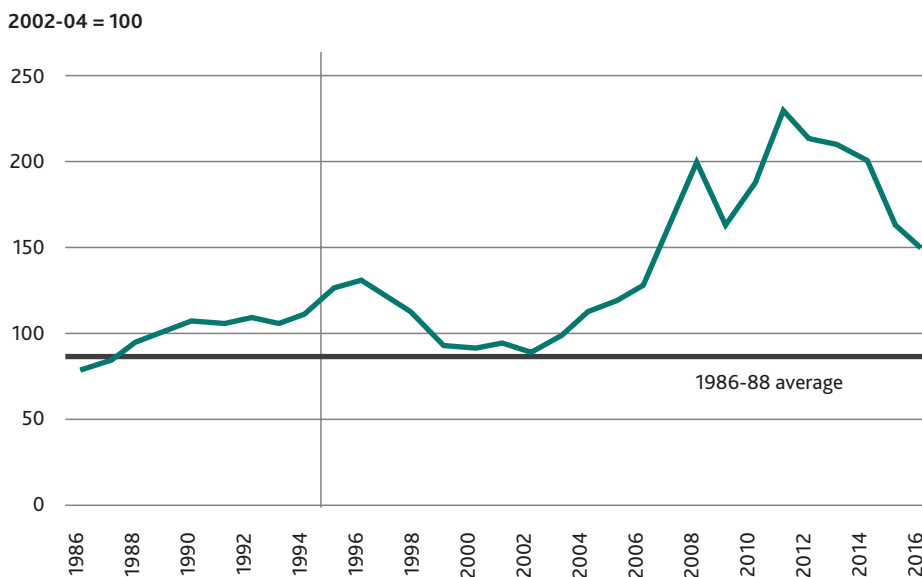
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2 An excellent discussion of how the AMS is calculated can be found in Brink (2015).

3 Of the 16 developing countries who have notified to the WTO expenditures on public stockholding schemes at least once since 1995, 10 had no bound total AMS (Matthews 2014; Brink, 2015)

production decisions potentially leading to surpluses that could depress global market prices.<sup>4</sup> After a contentious debate, which nearly resulted in a failed Ministerial, Members were able to agree to an “interim” mechanism for public stockholding for food security purposes.

**Figure 1. FAO Food Price Index**



Source: UN FAO

## The Bali Ministerial Decision

At the Bali Ministerial, Members agreed to put in place an interim mechanism while they negotiated a permanent solution for adoption by the 11th Ministerial (scheduled for 2017). Under the Ministerial Decision, WTO Members cannot challenge developing country Members under the Agreement on Agriculture regarding compliance with their obligations to not exceed their AMS (Article 6.3) or *de minimis* levels (Article 7.2 (b)) for “support provided for traditional staple food crops in pursuance of public stockholding programs for food security purposes.”

Significantly, the Agreement applies only to those programmes in place at the time of the Ministerial decision (7 December 2013) though a permanent solution would be applicable to all developing country Members. Programmes must be consistent with the criteria of paragraph 3, footnote 5, and footnotes 5 and 6 of Annex 2 to the AoA. Lastly, the Ministerial Decision does not preclude Members from introducing new public stockholding programmes consistent with Annex 2, paragraph 3, but they would not be protected under the temporary peace clause.

<sup>4</sup> A fair question is why the same provisions that were considered “stabilised” as part of the Rev4 text were so opposed four years later. Part of the answer is that many Members had grown concerned that the proposed changes to paragraphs 3 and 4 would undermine the intent of the green box and were simply unacceptable, particularly outside of the context of acceptance of the entire Rev4 text.

To qualify for peace clause exemption, an eligible developing Member must:

- have notified the Committee on Agriculture that it is exceeding or is at risk of exceeding either its BTAMS or (for those with no BTAMS), their *de minimis* level of support for that commodity;
- have fulfilled and continued to fulfil its domestic support notification requirements;
- have provided, and continue to provide on an annual basis, additional information on the operation of the public stockholding programmes; as well as
- provide any additional relevant statistical information regarding operation of the programme.

Developing Members seeking coverage of their stockholding programmes under the peace clause must ensure that "stocks procured under such programs do not distort trade or adversely affect the food security of other Members." Importantly, that means support schemes can still be challenged under the WTO Agreement on Subsidies and Countervailing Measures, through the trade body's Dispute Settlement Mechanism - if they contribute, for example, to serious prejudice or constitute prohibited export subsidies.

Finally, a developing Member benefitting from the Decision shall upon request hold consultations with other WTO Members on the operation of any of its public stockholding programmes.

While acknowledged as a step in the right direction, the Bali decision was criticised by some as containing problematic provisions, such as overly stringent reporting requirements and the fact that public stockholding programmes could be challenged under the SCM Agreement.<sup>5</sup>

## Permanent Solution for Public Stockholding Programmes

A number of recent papers have explored options into how the AoA could be modified to accommodate public stockholding programmes within Annex 2 without undermining domestic support obligations (Bellmann et al., 2013; Montemayor, 2014; Matthews, 2014; Diaz-Bonilla, 2014; Brink, 2014). A brief summary of the options is presented here.

1. *Increase de minimis percentage.* While increasing the *de minimis* percentage for developing countries (for example, from 10 to 15 percent) would increase policy space, it is unlikely that Members would agree to such a solution since the *de minimis* percentages apply to all forms of domestic support. Because of its general application, Matthews (2014) points out it would be far preferable to fix the specific problem rather than increasing the *de minimis* percentage.
2. *Update the base period.* Critics of the formula for calculating price support point to the fact that, as seen in Figure 1, global commodities prices were low in 1986-88. Updating the base period to a more representative period would arguably produce a more representative measure of price support. In fact, while most WTO Members utilise the 1986-88 base period to calculate support,

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<sup>5</sup> See, for example, Correa (2014).

Members who have acceded to the WTO since 1995 have more recent base periods over which their support is measured. For example, China based its fixed external reference prices on the 1996-98 base period. More recently, the Russian Federation established its domestic support bindings using a 2006-08 base period. Table 1 shows average prices for wheat and rice over various base periods.

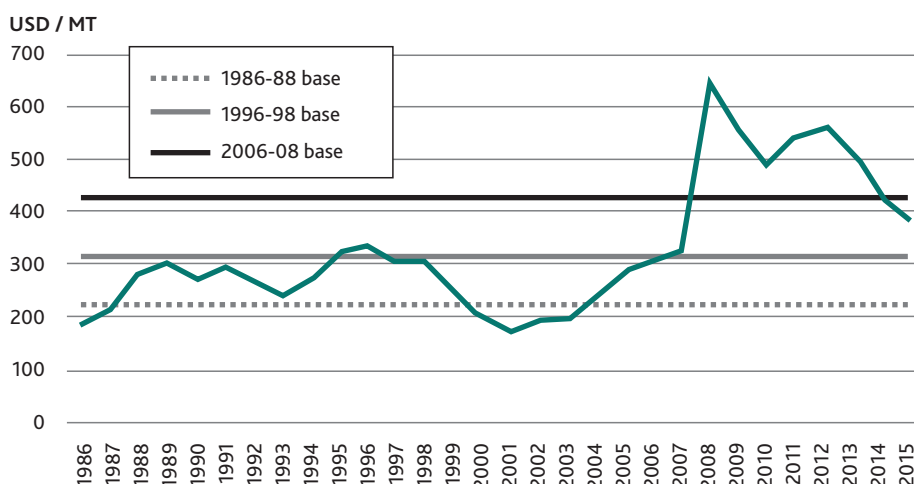
**Table 1 — Prices for Selected Staple Crops and Base Periods (USD per tonne)**

Period	Rice, Thai 5%	Rice, Thai 25%	Rice, Thai A.1	Wheat, US SRW	Wheat, US HRW
1986-88	226.11	147.56	159.31	123.74	124.34
1996-98	315.51	267.68	218.70	147.53	164.40
2006-08	427.17	291.81	324.70	223.03	257.76

Source: World Bank Group, *Pink Sheet*. SRW—Soft Red Winter; HRW—Hard Red Winter

Two issues arise with allowing Members to update base periods. First, a Member's BTAMS is calculated based on the original base period. To be consistent, therefore, any change to the base period for price support calculations would have to be accompanied by a recalculation in the underlying BTAMS. Second, picking a more recent base period may potentially grossly understate support if prices were to fall below the base period. Figure 2 shows rice prices over the period 1986-2015 compared to average prices over the three base periods in Table 1. Note that the average price for the 1986-88 base period lies below the rice price over most of the period since 1995 except for the period 1998 to 2003 when global prices were depressed because of large supplies and depressed demand due to the Asian Financial crisis in the late 1990s. By contrast, the 2006-08 average lies above rice prices in all periods except for the period 2007 to 2013, when prices rose to record (nominal) levels. A support price set equal to the 2006-08 average could provide substantial support to producers if prices were to fall, yet if the base period were realigned to 2006-08, the calculated support level would be zero. Thus, much depends on expectations concerning future price movements.

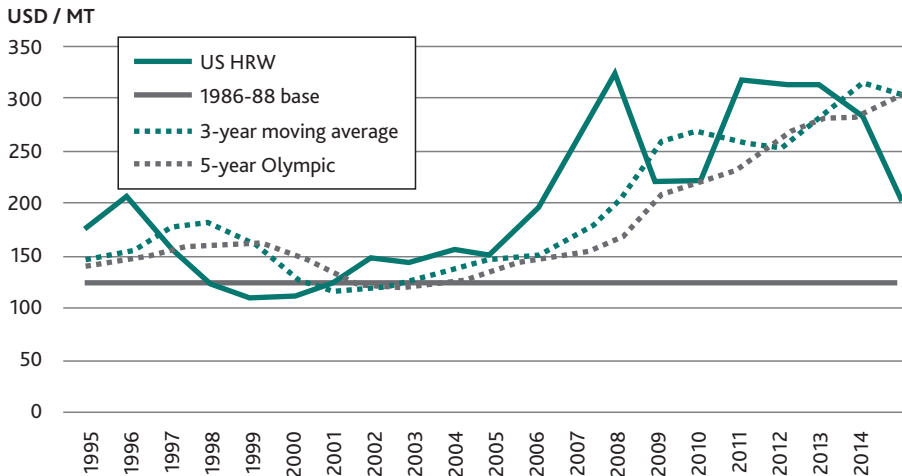
**Figure 2. World rice price (Thai, 5%)**



Source: World Bank Group, *Pink Sheet*

3. *Allow the Fixed External Reference Price to move with prices.* One such option would be to set the external reference price equal to the current year price much like the Producer Subsidy Equivalent measure as calculated by the OECD. Other alternatives would be to base the external reference price on a moving average of past prices, such as a three-year moving average or a five-year Olympic average (where the high and low values are discarded). Lastly, one could update the 1986-88 average by a price index such as the World Bank's Manufacturers Unit Value (MUV) Index used by the FAO and others to deflate commodity prices. Similar to the criticisms for option two, formulas based on moving prices may overshoot prices when prices begin to decline and underestimate support (Figure 3). Indexing the 1986-88 reference price to a commodity price index such as the MUV could also be problematic. Because of productivity gains over the past 50 years, agricultural commodity prices have declined relative to overall prices in the economy. Indexing the reference price to a broad price index could overstate price inflation for a specific commodity and hence understate the level of price support.

**Figure 3. World wheat prices (US, HRW)**



Source: World Bank Group, Pink Sheet

4. *Calculate price support in a more "neutral" currency such as US dollars or Standard Drawing Rights (SDR).* Reporting rules under the AoA require that Members report domestic support in the same currency as under their original schedule of commitments. Matthews (2014) points out that a few countries reported their commitments in USD at the time of scheduling (Argentina, Brazil, Columbia, Costa Rica, Turkey, and Venezuela). However, a number of Members have switched from reporting in their own currency and now report in USD (Galtier, 2015). Reporting in a more stable currency can reduce price inflation caused by devaluations in volatile currency movements.
5. *Restrict eligible production.* In the *Korea beef* case, the Panel concluded that under price support programmes all production qualified for support unless strictly specified.<sup>6</sup> Thus by specifying in advance the amount that would be purchased or supported under the price support programme,

<sup>6</sup> Discussions of the Korea beef case can be found in Matthews (2014) and Diaz-Bonilla (2014).

a Member can limit the amount of price support to be notified to the WTO. Montemayor (2014) has recommended limiting purchases to a portion of domestic production that is "marketed commercially," but how to determine that portion would likely be contentious. Given the fact that demand for most staples is relatively insensitive to price movements, removing even small portions of domestic supplies can have large price impacts (and thus distort production decisions).

6. *Set administrative price lower than market prices.* Under paragraphs 3 and 4 of Annex 2, purchases at market prices do not constitute price support. To ensure adequate supplies, however, many countries prefer to announce acquisition prices in advance.<sup>7</sup> Diaz-Bonilla (2014) has suggested that a potential compromise would be that Members announce acquisition prices that are below market prices. The problem is that the acquisition price provides a market floor and potentially significant support if prices fall.<sup>8</sup>
7. *Exempt Least Developed Countries from including expenditures for public stockholding programmes in their AMS calculations.* A large number of LDCs maintain public stocks for food security purposes (World Bank 2012). In addition, regional emergency reserve stock schemes have also been proposed (for example, by the Economic Community of West African States and the Southern African Development Community).
8. *Make the interim solution permanent.* Under this option, the Bali Ministerial Decision would be extended to all developing countries but, as under the interim solution, Members would be required to notify annually with detailed information about the operation of their programme and those programmes would be vulnerable to challenge under the SCM Agreement. In the words of the old Russian proverb "Trust, but verify."

## Way Forward

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Over the past few years, agricultural prices have come down by over 50 percent from their highs in 2001 and 2012. Nonetheless, they remain well above 1986-88 levels and because of this notifying public stockholding programmes remains problematic for many developing countries. And forecasts suggest that agricultural prices will return to their downward trend (adjusting for inflation) at least over the next 10 years (USDA/OCE, 2016; OECD-FAO, 2015). In an environment of declining prices, high administered prices could potentially distort production and push prices even lower.

Declining world prices and rising inventory levels has caused many countries to rethink price support policies. For example, China recently has announced reforms for cotton, rapeseed, and now corn. Further decisions on wheat and rice are forthcoming (Shuping and Stanway 2016; Gale, 2015). The long-term sustainability of India's current food security policies has been questioned as well (Hoda and Gulati, 2013). Nonetheless, the inherent problems of measuring agricultural support will likely persist until further reforms are made in overall domestic support disciplines or the disciplines themselves are incorporated into the more general rules on subsidies in the SCM agreement (Josling, 2015).

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7 See Hoda and Gulati (2013) for the case of India; Gale (2013, 2015) for China.

8 Westcott and Price (2001) demonstrate how US price supports bolstered prices during the 1980s even though the loan rate (support price) was often below the market price.



Until then there are many immediate options discussed above that Members can take to minimise price support for public stockholding programmes:

- Allow countries to notify in neutral currency (for example, in USDs or SDRs).
- Restrict production eligible for support by announcing procurement volumes when administered prices are announced.
- Set administered prices lower than market prices.

In addition to these options, WTO Members should agree to exempt LDCs from having to report public stockholding programmes as part of their AMS and to broaden the Bali Decision on public stockholding to include all developing country Members. Such an option could be what Falconer (2015) has referred to as a "confidence building measure." Members with public stockholding programmes can demonstrate how their programmes provide food security to poor families rather than provide price support or create externalities in the form of public stocks ending up as exports on world markets. In return, Members would agree not to count such support towards that Member's BTAMS. While far less than many Members may want, the option gives much flexibility and policy space while maintaining assurance for others that the programmes will not undermine domestic support disciplines.

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# **From Nairobi to Confidence- Building Measures in Geneva**

**Crawford Falconer**



*This piece was originally published by ICTSD in December 2015, immediately before the Nairobi ministerial conference.*

I visited my old stamping grounds, Geneva, briefly in November. I was a bit taken aback at what I encountered. There seemed, to me at least, to be an enormous gap in perception between wish and reality.

Don't get me wrong. Such a gap has always been present in Geneva. A serious capacity for entertaining it could even be described as an essential job requirement to function in that town. But, even allowing for that, this seemed to me uncharacteristically so.

The most fundamental reality is that the major developed economies, whatever they may say in public about it, have by now lost interest in pursuing the World Trade Organization (WTO) Round — the Doha Development Agenda (DDA) — in its present form anymore.

It is less clear with developing countries. Certainly, a very large number of these countries at least say they are committed to it and still want it to proceed.

But the major developed economies have moved on, primarily to bilateral or regional free-trade agreements (FTAs). Secondly to plurilateral agreements, the two so-called mega-regionals — the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP) agreements represent a qualitative and a quantitative shift in that respect.

The TPP, which has been concluded, changes the trade landscape. It brings together Japan and the United States (US) with a cohort of other economies (representing 36 percent of global GDP we are told). No trade negotiation that big has been successfully concluded since the accession of China (and Taiwan) to the WTO 13 years ago.

People scoffed at the whole idea that it would ever happen. They are eating their words now.

The TTIP between the US and the European Union (EU) is under intense negotiation. People scoffed at the whole idea it would ever happen too. They are not scoffing now.

The advent of the TPP can only hasten the TTIP's negotiation, and there is already evidence this is happening.

The EU has seemingly already essentially concluded an FTA with Japan, although it appears to be lost in translation somewhere.

So, the three largest developed economies have now pretty much dealt with their core trade issues through FTAs. I leave aside the plethora of other small and medium-sized economies from Canada to Korea to Peru to New Zealand that are part and parcel of the same kinds of deal.

To someone like me that has lived and worked through the duration of the DDA, it is stunning.

This is a situation that is a million miles away from the one that prevailed at the commencement of the Doha Round. It is a million miles away even from the situation that prevailed at the decisive breakdown of the DDA in 2008.



Up to that point, the only real negotiating forum for trade negotiations among these three parties was the WTO. It had always been like that.

That is over.

There is nothing complicated about what this means for the DDA. It means that those economies simply do not need a WTO Round to deal with those issues among themselves. They have dealt with them together, outside the WTO.

Market access on agriculture? Dealt with. NAMA tariffs? Dealt with. Trade rules? Dealt with. Trade-related regulatory rules? Dealt with. Services trade? Dealt with. Foreign Direct Investment? Dealt with.

Moreover, it is much more far-reaching than simply dealing with their own issues.

A WTO Round doesn't achieve success, because there is precise mathematical reciprocity in each and every individual element. On the contrary, the whole logic of a single undertaking Round is precisely that it enables an overall package that is accepted as a totality.

The converse of course holds. Take a huge wedge of potential achievement out, and it has diminution effects that go beyond the precise parameters of the wedge that is extracted.

An illustration might help.

In crude terms, a Doha deal that involved cuts in US domestic support would have been sold, for example, in Washington, because, inter alia, the US could see that it was going to get access to the Japanese pork market and the EU beef market.

Such trade-offs are no longer possible in a Doha Round, because they have been taken care of bilaterally. And, the ramifications are not simply that you have a lesser residual Doha market access deal; you have a lesser prospect, for example, for a domestic support deal, because the total package has shrunk dramatically.

That is just an illustration. That has happened all over the DDA agenda. The NAMA and the Agricultural Agreement have actually been made.

The above speaks for itself. But, there is more. Much more

If you are not party to those agreements, you are now in a worse position, generally.

At the most basic level, the participants have preferential advantage over MFN suppliers. So, MFN suppliers are worse off. Now, it is true that many developing country members already have preferential access in any case. So, the worst that would happen to them is that previous MFN suppliers will now get closer to what they have been achieving. So, it is still worse even for them, albeit in a diminished sense.

Also, the active prosecution of FTAs, together with their successful achievement has hardened the attitude to making any multilateral concessions without full reciprocity. You don't worry so much about that if you don't do FTAs or do them kind of casually. When they come at the core of your trade negotiating strategy — as they now have — this becomes a central consideration.

So, the big three have strengthened their attachment to keeping their remaining MFN trade measures as “negotiating coin.” It was always a factor. But, it was not really a compelling consideration in 2002 or even in 2008.

It is now.

There has been a step change in unwillingness to diminish margins of preference. And, this has been intensified by their actual achievements in negotiating terms.

Just restricting it to market access alone, the FTA model works on the serious premise that the participants go to zero. Sure, there are exceptions and there are phase-ins. And, some of the former are egregious.

But, let's not kid ourselves: these liberalisation outcomes are light years away in their scope and depth from anything that was even dreamt of multilaterally, let alone what ended up in the texts of the Agriculture Agreement and NAMA in 2008. No “lesser cuts.” No haggling about how much “water” is acceptable. It is real cuts to applied rates and most often all the way to zero. No argument. The only real debate is how long it takes. And, they apply to developed and developing countries.

That has utterly changed the mindset within the big three. To put it brutally: once you have acquired the taste for red meat, you aren't so ready to settle for a side salad.

And, that applies to what was contemplated in the DDA. They have simply lost whatever appetite they might have had for that.

Some might argue that that is all very well, but that only applies to themselves. It means they don't get access to developing country markets, so they will still be obliged to come to the table for them.

Wrong. Dead wrong. They simply don't rate anything that is seemingly left on offer in Doha, and they rate it even less now that they have plucked the juiciest fruit out of it via their own deals and are contemplating more plums to come.

Nothing happening in the DDA on agriculture suits them down to the ground. The big three don't particularly want to do anything to discipline their trade-distorting agricultural subsidies or their heavily protected agricultural market access sectors for that matter.

The only reason these were under negotiation in the DDA in the first place was because unsubsidised exporters (most of which were developing countries) in groupings such as the Cairns Group and the G20 insisted on it.

And, the only reason the big three grudgingly went along with this in 2002 was because they could see that it was “the price to pay” for other things they wanted. Cotton was not put on the table voluntarily by the US in the DDA. The special terms for it were extracted at a time when there was real leverage in a live round, and there were no other serious alternatives.

But, they can now get just about all those other things — and a lot more besides — by other means. One of the beauties of FTAs from their perspective is that they simply do not deal with trade-distorting subsidies.

So, they have very little interest in putting themselves back in the dock in the DDA context on domestic support when any potential counterweights to their political pain have been extracted or evaporated.

They do occasionally complain about some developing country domestic support. But, it is not serious. It is purely tactical to provide a convenient excuse to do nothing about their own programmes. If they were seriously worried, they have ample headroom in their existing Uruguay Round commitments to seek to make a deal. Have they tried seriously to do so? Have they made a serious offer? Of course not.

As for agricultural market access, as noted above, the DDA access possibilities are seen to be tepid by comparison with what is now manifestly achievable in an FTA context. Agricultural market access for developing countries in the DDA was dominated by debate about special products, the Special Safeguard Mechanism (SSM) and even how often you might or might not be able to go above your WTO bound rate.

There is no SSM in these agreements. Nobody is haggling about how often you might be able to go above your bound rate. It's all about applied rates. They can use their own high rates as leverage in negotiations. And, one way or the other, they get a much more far reaching deal for their exports to developing countries. It's another world.

They see the draft NAMA outcomes as scarcely making any difference to applied rates in any significant markets and therefore as making no real difference to their commercial market access aspirations in those markets.

At the same time, they see that there is, in fact, no shortage of developing countries that are prepared to negotiate with them in FTAs and to undertake far more sweeping market opening than anything that was ever seriously on offer in the Doha Round.

Indeed, they have seen the very same countries that make small liberalisation offers in Geneva prepared to make much more far-reaching ones in FTAs. So, who can be surprised if negotiators put two and two together and figure out where they are going to get the better deal?

And, for those developing country partners that have not already negotiated, are in negotiation, or are on the threshold of negotiation with them, the major developed economies figure out it is only a matter of time before the rest come knocking on the door also.

So, the last thing they are going to do is give them any impression that such economies can get liberalisation in the markets of the major developed economies at a DDA discount rate as it were.

On the contrary, they will be incentivised to sit tight with their remaining market access barriers and recognise that with more and more countries joining FTAs, the outsiders have even more incentive to play ball, because they are suffering more and more competitive disadvantage.

Just look at the immediate reaction to TPP alone. Within only weeks, the governments of the Philippines and Indonesia were already publicly saying they want to join. China says it is open-minded. Indian textile and apparel manufacturers are voicing their anxiety about being competitively disadvantaged. Ditto for Thai motor vehicle component manufacturers. It will go on and on like this.

Many developing countries have been, and are, exhibiting the same revealed preference. Many are actively negotiating in these FTAs, whether with developed countries or developed. They too are more than ever anxious to maintain their negotiating leverage. They too are, if anything, even less inclined to make market access concessions of any sort in Geneva, because they would rather exercise them in current or future FTAs.

This is the brutal reality of the so-called competitive liberalisation model.

But, there is something else (and it is rather fundamental) that needs to be taken into account. Those traditional market access barriers are still of interest to the major developed economies. They would prefer to see them gone. But, they are of much less relative interest to them than they were in the past.

What matters much more in those major developing economies are such issues as foreign direct investment (FDI) barriers, services barriers, disciplines related to state-owned enterprises (SOEs), regulatory impediments, intellectual property protection, and transparency — not to mention such areas as environment and labour.

This reflects the evolution that has occurred in the real world of trade over the past decade. And, the DDA has pretty well zero to offer in any or all of these areas. They are matters that are either outside the WTO (such as FDI) or with a DDA mandate that is lightweight (such as trade in services).

So, it is not just a matter of keeping their negotiating coin for trade-offs on subject areas that are within the DDA as described above. Actually, they have a totally different strategic perspective from that which existed at the start of the DDA. To the extent that negotiating "coin" is relevant, it is related to policy areas that are not even under serious discussion, let alone substantive negotiation in the DDA.

For all these reasons (and more), it is a serious mistake to think that there is any genuine oxygen in these negotiations at the moment. Nothing could be further from the truth.

It is true that, as late as 2013, there was a real demand at least for the trade facilitation package. There was a bit of potential to and fro then. But, perhaps surprisingly, nobody really exercised it.

India did insist on a weak and economically insignificant undertaking, which absurdly whipped up the view that somehow the heavens would fall if it was agreed to. But, nothing really significant elsewhere in the DDA had to be paid by the US and others to get that: nothing on market access; nothing on NAMA; nothing on trade rules; nothing on export competition; and nothing on domestic support.

It is hard to disagree with the view that once agreement to that element of the DDA was achieved, the major developed economies had secured about the only thing left that they wanted out of the DDA. And they have subsequently shut up shop.

Which is where we are today.

At night on a dead end. And, let us be clear, with precious little leverage to change this state of affairs.

A bleak situation. But, why dwell on it?

Because my sense is that the way many or most are behaving, there seems to be either some kind of presumption that there is indeed some real life in this, or a sense that we can just carry on with a Kabuki play scenario, because there is nothing much really at stake anyway.

But, it is surely seriously adrift to the point of total loss. And, there is surely still a great deal at stake (not the subject of this note). But, one has no chance of improving things if one has a completely erroneous diagnosis of the situation.

I have taken a serious look at the reality. And, it is pretty sobering. But, I do stop (just) short of the view that it is completely dead.

If you took that view you could draw one of two conclusions, depending on where you sit.

On the one hand, you could take the view that the DDA is no longer fit for purpose, and it should be disposed of. Something else should be started, or we just deal with matters outside the WTO elsewhere in bilaterals or plurilaterals.

On the other hand, you could deny that characterisation of the quality of the DDA but, recognising it will not happen, want to make sure that those you view as the culprits in this exercise should be obliged to take the blame for its failure.

To which I have two objections.

First, it is not actually irrevocably gone. The very fact that participants still argue that it needs to be disposed of (or more polite words to that effect) alone tells you that it is not in fact already the case.

Second, neither of the derived conclusions will in fact work.

It is a total fantasy that there will ever be agreement to agree to dispose of it. If there had been any such prospect, it would have happened by now. To force this line only obliges others to dig their toes in ever stronger. And, in operational terms, it is not really necessary as long as nothing actually happens anyway.

It is just as much a total fantasy that any participant or any group of participants can ever make all the dirt stick on one or a few other countries. Various players have been trying that game for years, and it has never worked. The mud is everywhere. One might even add that outside the Geneva beltway in the wider world nobody actually cares that much anyway. This is sad, but true.

So, one could divine from this that, despite my sober assessment of the state of play, I still harbour the prospect, however slight, that something more can come of this DDA exercise.

I do. Which is why I would argue we should still try not to succumb to the above courses of action I see all too readily unfolding.

That said, I am guessing that the die is pretty well cast by now. So, there is not a lot that can be done to substantively improve prospects. In this case, the most one can aspire to in the short term is a matter of salvage.

In that respect, the best I can suggest is four major elements.

First, there are some tangible outcomes that need to be fronted up to in Nairobi.

Export competition seems almost doable. Developed countries have been distorting and stealing markets for decades with these instruments. In recent years this practice has, thankfully, much diminished. Formalising it by reaching a contractual agreement to refrain from it would be welcome. But, obviously, it has to be balanced.

The undertaking to reach a lasting agreement on public stockholding is not something to be brushed under the carpet.

It is long past time to have something serious to say about cotton.

Second, there is a need to accept, rightly or wrongly, that there is still major attachment in a number of quarters to the DDA. There is zero chance that it is going to be obliterated overnight. And, treating anyone that happens to feel otherwise as benighted or recidivist is just as guaranteed to create acrimony and divisiveness as unrealistic demands.

There is also a need to accept that there is zero chance of negotiating some substantive wish-list of demands as if anybody could possibly really believe that this could ever happen. All that will do is create acrimony and guaranteed failure. It will crowd out any other possibility for constructive engagement.

I can well understand that those who feel aggrieved can be driven by a powerful wish to express that grievance to the exclusion of all else.

I happen to share the view that major developed economies need to do more than they have been doing to improve the credibility and functioning of the WTO. But, this should not be left only to developed economies; major developing countries have too often looked for too easy a ride in this exercise. There is enough guilt to go around on this one.

But, if you want to change that situation, you do yourself no favours if you make it easy for the target of your strategy to just carry on doing what they are doing, or what they have not been doing.

Nothing could be easier to deal with than a series of demands that developed economies must do a selective smorgasbord of things out of the DDA agenda. If you think you have some kind of leverage to induce them to do that, it may make sense. But, absent that leverage what does it achieve? You have absolutely no way of making it happen. So, you have a so-called strategy that is guaranteed to achieve absolute failure.

The targets can listen to all of those demands. They can even do so politely, but it will be like water off a duck's back. And, the day everybody slouches back to Geneva on their post ski-holiday crutches in late January, nothing has changed. There is complete disagreement on everything. Nothing has happened, and there is absolutely no prospect whatsoever of anything happening in the future.

If you share my diagnosis above, that is, in fact, precisely the outcome that the targets of that so-called strategy are perfectly comfortable with. It puts anybody who wants to do nothing multilaterally under no pressure whatsoever.

I can just as well understand that those who are dealing with what they see as a world that has moved on can be driven by a powerful sense of impatience with what they see as the weak, the halt, and the lame.

There is indeed a real world of international commerce beyond the Geneva auto route that creates political and economic demands that the DDA has not and, indeed cannot, meet. And the plurilateral and regional agenda has proven capable of dealing more effectively with that reality. Yet, the Geneva processes prove resolutely and stubbornly incapable of adapting to that powerful reality. And yes, there are cases of backtracking and obstructiveness to go with it that create a palpable sense of frustration.

I profess no easy answer to how that situation might be improved from here. But, any belief that this can be modified let alone transformed by just calling the whole thing off puts no real pressure on anyone. Nothing can be easier in a consensus-based organisation than stopping that happening. And, it lends itself all-too-easily to the claim that participants' past undertakings are being renegeed on.

But it is, in the end, to no good purpose to wallow in dispute and guaranteed failure, because that is all it will get you.

Third, start an honest dialogue based on a sound analysis of the real situation.

There has been too much tactical blame-shifting going on. Parties need to be much more straightforward with each other.

Those who have moved on need to be frank about that, and explain the reasons why, rather than all-too-readily just blaming the other guy for being unreasonable. That might even involve acceptance of responsibility for not living up to past commitments. Sometimes the mere fact of an honest admission can make all the difference. Those who have not moved on need to be at least ready to listen to what those reasons are rather than simply insist on their engrained version of entitlement. They need to start thinking about what might actually help reluctant partners to come around to a different view.

It is time to start a truth and reconciliation process in Geneva? Why not?

Fourth, on the back of that, I would suggest coming back to Geneva to develop what I have tentatively called medium-term confidence building measures (CBMs). This would hold out a perspective that could prove to be considerably more constructive than trying to deal with the consequences of a series of failed demands in Nairobi.

The reality will be that everyone will have to come back to Geneva. There will still be those who want the Round to be continued and concluded. There will be those who want a line drawn under it. I am guessing that neither extreme in that debate will have succeeded in persuading others of their viewpoints in Nairobi.

You will get nowhere trying to relitigate that in Geneva. So, you respect the differences. Those that want the Round to be continued and concluded will work to that end. Meetings will be held, and work will continue. Those who don't share that view will doubtless drag their feet in those meetings. But, so be it.

Without prejudice to that view, someone (the Director-General, the Chair of the General Council, selected wise heads-whatever) is granted (or assumes) the responsibility to consult on the way ahead. I think at least this will be needed anyway. The then-Chair of the General Council, Carlos Perez Del Castillo, undertook such an exercise to great effect after Cancun in 2003. Mike Moore undertook it to great effect after the Seattle debacle ultimately getting the DDA launched on Doha.

But, I would suggest that consultation could go somewhat further, along the lines below. But, some other approach or variation could obviously work just as well or even better.

The idea is that you would seek to develop confidence-building commitments applicable, for example, over an initial period of one or two years.

Everyone knows that current (Uruguay Round-inherited bound commitments) are (in many cases) way above existing applied measures. And, of course, unless and until we reach another multilateral outcome, those bound levels are not going to reduce. For the time being, that is not going to happen.

It doesn't mean that participants stop trying. And, I am not in the business of discouraging that.

But, in the meantime, participants could try to develop CBMs in the form of undertakings which, while formally short of contractually binding commitments, can, over time, progressively build much-needed confidence that can still stabilise and improve the system.

Who knows? That may even, in time, actually make it easier than anyone currently imagines to take the final step to reach fully binding commitments.

I have in mind that you start with domestic support for agriculture and then move on to market access for agriculture and NAMA. (If, for whatever reason, it becomes impossible to achieve a sensible outcome on export subsidies in Nairobi that is of a binding nature, it would be sensible to start there. But, let us assume that a fully contractual deal is achieved for export competition.)

Starting with domestic support for agriculture makes the most sense, because it offers the greatest opportunity in technical terms to get the CBM show on the road. In this area, the gap between applied and bound is enormous.

Consultations could be undertaken in order to achieve initial CBMs, for example on overall trade distorting domestic support, on the aggregate measure of support, or whatever seems, following consultations, the most viable vehicle to begin with.

The person undertaking the consultations would then propose the CBM.

They could arrive at, for instance (and this is purely a hypothetical example) that participants make a CBM to reduce overall trade distorting domestic support by 25 percent. That undertaking could be made for an initial period of 12 months.

That undertaking would not be a formal bound commitment. But, it would be a serious undertaking by the participants not to exceed that level during the lifetime of that undertaking. It would be understood that any party breaching that undertaking would, following immediate consultations with the aim of reversing that breach, permit all other parties to withdraw their CBMs.



I believe that, sovereign governments acting in good faith would, if they had bought the basic philosophy of trying to establish CBMs, be most loathe to be held responsible for the failure of such a serious project.

To be clear, this would not be a substitute for negotiated bound commitments coming from the DDA or an abandonment of it.

That process of negotiation would continue on its own track.

These CBMs would be arrived at in parallel. And, because they are short of binding commitments in legal terms and would be pitched at levels that do not infringe on actual applied levels of protection or support, they would not require formal treaty undertakings from sovereign legislatures.

In addition, the CBMs even at those reduced and non-contractual levels are time-bound. The idea would be that after the expiration of the period (I would imagine either 12 or 24 months would be the realistic time period) any government would be free to withdraw the CBM if, for whatever reason, it became unable to sustain it.

But, of course, the idea is that, once governments get a bit used to this idea, and to the fact that the heavens do not fall once they have had such CBMs in place for 12 months or more, they could be open not only to extending these measures for a further period, but also to taking a further measured step forward on the same basis for another period of time.

So, you could have a further tranche of another 10 percent.

Then, you could turn to the obviously more difficult issue of market access.

Even here, it is a matter of starting small and seeing if you could work up step by step. There are a number of areas where you could use that same approach of taking CBMs that are not themselves fully contractual but are feasible due to an existing gap between applied and bound measures.

My guess is that, in this area, it would be more of a mix and match approach. Some could take straightforward steps to undertake not to raise their tariffs above a level that is still higher than their current applied levels but still somewhat lower than their Uruguay Round commitments. Others might be able to take CBMs bearing on market access other than on tariffs.

Remember, again, this is a step by step 12 month by 12 month tentative programme forward. In this area, it could even be a case of like-minded smaller and medium-sized economies coming together to make such undertaking voluntarily, reflecting this philosophy, precisely to encourage or challenge the reluctant larger ones to join the exercise.

Now is not the time to predefine all the possible modalities. The above is just meant to open the way to thinking about intermediate possibilities that create confidence and trust over time. The point is to find a way to narrow the absurdly wide gap between where things were at the end of the Uruguay Round and where they are now in the real world and to do it in a way that precludes the frequent excuse that nothing whatsoever can be done, because the only measure that can be taken that is worth anything is a fully contractually bound measure.

Yes, that is ideally where we still head for as we always have done in the past. But, the alternative does not have to be nothing at all pending actually arriving at that point. That is where we have been languishing hopelessly for the last 13 years.

An approach of the kind suggested above would surely improve the situation by giving at least some improved stability and security together with demonstrating that sovereign states acting in a concerted way multilaterally can still arrive at tangible improvements after all. Not the best measures. But at least better measures.

That is above all what we need now, and who knows where, over time, it might lead. We know all too well where doing nothing will lead.

## About the authors:

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# Evaluating Nairobi

## What Does the Outcome Mean for Trade in Food and Farm Goods?

On 19 December 2015, members of the World Trade Organisation reached agreement on the "Nairobi Package" - a declaration and a set of decisions on a range of topics on the multilateral trade agenda. One of the most significant areas in which members achieved progress relates to trade in food and agricultural goods, including on long-standing farm trade issues such as export subsidies, food aid and cotton. At the same time, some of the agreements reached in Nairobi took the form of commitments to continue negotiations, as was the case with the decision on a 'special safeguard mechanism' and on a permanent solution to the problems some countries have said they face in buying food at administered prices as part of their public stockholding programmes for food security purposes.

Trade negotiators in Geneva - as well as the broader trade and development policy community - now need to assess properly the implications of the Nairobi outcome on food and farm goods, and what this could mean for future talks on trade. This compilation of short pieces therefore intends to provide policy-makers, negotiators and other stakeholders with an impartial, evidence-based analysis of the potential trade, food security and rural development implications of the agriculture outcomes of the WTO's Nairobi ministerial conference, and to help them situate these in the longer-term systemic context.



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