Negotiations on food security at the WTO: a never-ending story?

Joseph A. McMahon
Sutherland School of Law, University College Dublin, Dublin, Ireland

Abstract

Purpose – The purpose is to chart the negotiations on the issue of food security which was identified as a non-trade concern by the Agreement on Agriculture (AOA) and how developing Members of the World Trade Organisation (WTO) suggested that that concern should be addressed.

Design/methodology/approach – The history of negotiations at the WTO is examined through the lens of official documents submitted during various phases of negotiations since 1996 beginning with the Analysis and Information Exchange process to the Doha Round up to the latest Ministerial Conference in Abu Dhabi in February 2024.

Findings – The negotiations have yet to complete despite beginning over 20 years ago. The focus moved since 2008 to look at specific issues which were addressed at a number of Ministerial Conferences but the latest of these indicate that an answer can only be found in the re-negotiation of the AOA as a whole.

Research limitations/implications – By focusing on official documents, the rich literature on food security has not been addressed.

Practical implications – The piece concludes by looking at issues which need to be resolved ahead of agreement on overall reform and suggests solutions for example in the area of safeguards and public stockholding for food security purposes.

Originality/value – The focus almost exclusively on official (and public) documents during the discussion is noteworthy. It also confirms that the WTO is not really that different from its predecessor - the GATT - which took nearly 50 years to reach AOA.

Keywords WTO, Food security, Public stockholding, Special safeguard mechanism

PAPER TYPE Research paper

1. Introduction

Adopted in November 1996 the widely-accepted definition of food security derives from paragraph 1 of the World Food Summit Plan of Action which provides that:

Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life. [1]

The Plan of Action recognised that trade was a key element in achieving world food security and echoing the Preamble to the Agreement on Agriculture (AoA), concluded as part of the Uruguay Round which led to the establishment of the World Trade Organisation (WTO),...
noted that countries would “strive to ensure that food, agricultural trade and overall trade policies are conducive to fostering food security for all through a fair and market-oriented world trade system” [2]. Objective 4 of the Plan encouraged countries “[t]o support the continuation of the reform process in conformity with the Uruguay Round Agreement, particularly Article 20 of the Agreement on Agriculture” and to fully implement the Marrakesh Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries (NFIDC). A month later, at the first WTO Ministerial Conference because the conclusion of the Uruguay Round, the WTO Members declared that with respect to agriculture progress had been made across the three pillars of the AoA – market access, domestic subsidies and export subsidies [3]. The Declaration initiated a process of analysis and exchange of information which would allow Members “to better understand the issues involved and identify their interests before undertaking the agreed negotiations and reviews” [4]. The AoA introduced reforms across three pillars as part of a process referred to in the Preamble of establishing a fair and market-oriented agricultural trading system [5].

On market access, there would be a move to a tariff-only protection regime as a range of non-tariff measures were to undergo a process of tariffication and this would be accompanied by a series of reduction commitments [6]. Existing import access opportunities were to be maintained through tariff quotas and Article 5 AoA created a Safeguard Mechanism under which certain Members could impose additional tariffs if certain criteria were met [7]. On domestic support, rules were introduced to discipline and reduce domestic support with a distinction being drawn between such support which has no, or minimal, distortive effect on trade (the Green Box) and trade-distorting support (the Amber Box). Support placed in the Amber Box was expressed in terms of the total Aggregate Measurement of Support which was subject to reduction commitments [8]. In addition to the measures listed in the Green Box, a number of other categories of domestic support measures were exempt from reduction commitments e.g. developmental measures, direct payments under production-limiting programmes (the Blue Box) and de minimis levels of support [9]. Finally, in the export competition area, the right to use export subsidies was limited to those situations listed in Article 9 alongside reduction commitments expressed in terms of both volume and budgetary outlay for the covered products. Article 10 AoA is an anti-circumvention provision which, inter alia, allows to the continuation of food aid operations. In each of these three areas, Members are subject to notification obligations.

The Preamble to the AoA referenced the possible negative effects of the reform process on the NFIDC with the Marrakesh Decision recognising that although the AoA would generate economic growth, there was a possibility that the reforms could lead to negative effects for these countries with respect to the availability of basic foodstuffs from external sources on reasonable terms and conditions [10]. Under the Decision, Members agreed to review, for example, the level of food aid and its conditions and possible technical and financial assistance to these countries to improve their agricultural productivity and infrastructure. Article 20 AoA mandated negotiations for continuing the process of fundamental reform to realise “substantial progressive reductions in support” with paragraph (c) indicating that these negotiations would take into account “non-trade concerns [and] special and differential treatment to developing country Members”. The Preamble to the Agreement lists food security as a non-trade concern.

This article addresses the negotiations on food security from the beginning of the mandated negotiations through the analysis and information exchange (AIE) process initiated by the 1996 Ministerial Conference (Part II), the negotiations under the Doha Declaration (Part III) to the negotiations focusing on public stockholding for food security
purposes, the Decision on Food Insecurity reached at the 2022 Ministerial Conference and the outcome of the latest Ministerial Conference held in Abu Dhabi in February 2023 (Part IV). The Conclusion will offer some reflections on these negotiations. The lack of any substantive agreement raises the question of whether moving forward the WTO is the most appropriate forum to address the problem of food security.

2. The mandated negotiations (1996–2001)

The AIE process initiated in 1996 revealed differences between Members on how to specifically address food security [11]. For example, Australia considered that a distortion-free agricultural trading system was the best means to address food security [12]. This position was supported by the USA (US) who proposed that stronger disciplines on export taxes were needed to keep prices reasonable during food shortages and it emphasised that “food self-sufficiency is not food security” [13]. In contrast, Kenya pointed out that the AoA could not by itself overcome the problems of food security, advocating flexibility being given to developing countries to adopt policies providing food security [14]. India suggested that such policies would address such matters as the use of inputs, infrastructure development and market support [15]. The submissions of Japan, Korea and Norway offer some support to this approach, with Japan suggesting that stockpiling would be part of short-term solution to the problem of food security and Norway arguing for the adoption of mutually agreed principles for policy measures that would safeguard national food security [16].

More generally on non-trade concerns, the multifunctionality of agriculture, recognised in the reference to non-trade concerns, led some Members to suggest that the Green Box would be sufficient to address these concerns given that measures under this Box have no, or minimal, effects on production and trade [17]. On this theme, supporting the proposal of India for a Development Box, a submission by a group of developing countries suggested that their non-trade concerns (food security, living standards of the rural population and the environment) would be addressed through exemption from the AoA’s reduction commitments [18]. Jamaica proposed a special safeguard mechanism for developing countries to address their non-trade concerns [19].

As for the implementation of the NFIDC Decision, a list of beneficiaries of the Decision was set out in a Committee of Agriculture Decision on 3 April 1996 – the list included the forty-eight least-developed countries as recognised by the United Nations Economic and Social Committee plus 15 other net-food importing developing Members [20]. One of its original beneficiaries, Egypt, complained about the lack of progress in implementing the Decision which was impacting on the credibility of the system [21]. An earlier communication from Egypt had noted a decline in food aid deliveries to these countries because the conclusion of the AoA the effect of which was amplified by rising prices on the world cereal market [22]. It suggested that negotiations on the Decision should not be tied to the negotiations for a new Agreement [23]. A proposal across the three elements of the Decision (food aid, access to financing facilities and technical and financial assistance to increase agricultural productivity and infrastructure) was made by a number of the NFIDC beneficiaries [24]. It suggested, for example, that all food aid should be in grant form and an inter-agency revolving fund would be established as financing mechanism. A subsequent submission proposed that the proposed fund could be used by NFIDCs to increase their domestic production thus making them less dependent on food imports [25]. This call would be repeated when the negotiations began under Article 20 AoA [26].

Given the differences of opinion between the Members as to the future scope of the negotiations on agriculture (and on the implementation of the NFIDC Decision), it came as no surprise that the 1999 Ministerial Conference in Seattle ended without a Ministerial
Having taken the time out suggested by the Chair of the Conference, the General Council decided to launch a new negotiating round in February 2000 with the negotiations being conducted in Special Sessions of the Committee on Agriculture which would report regularly to the General Council. After seven meetings of the Special Session, the second phase of the negotiations began with ten issues being identified for specific discussion – food security was included in this list.

Proposals in this area were made by a number of Members. For example, a submission made by Cuba on behalf of a number of other Members suggested a Development Box that would provide:

Developing countries with flexibility of import controls, tariffs barriers and domestic supports for items which are already being produced in sufficient quantities or which countries would like produced in sufficient quantities locally, until such time they are exporters of these products.

More specifically, Japan suggested that:

The idea of a possible framework for international food stockholding should be examined, in order to complement existing bilateral and multilateral food aid schemes and to enable loan of food in the case of temporary shortage.

Food aid was acknowledged by the US as an element of promoting food security as part of an overall package aimed at continuing the liberalisation started by the AoA. A wider proposal for a Food Security Box for developing Members was proposed by India; it would exempt developing countries from various reduction commitments across the pillars of the AoA. The European Union (EU) also proposed a similar exemption whilst submissions from other developing Members returned to the idea of a Development Box with another merely suggesting reduced commitments being assumed by developing Members.

In December 2000 the General Council instructed the Committee on Agriculture to examine possible means of improving the effectiveness of the NFIDC Decision. Having reviewed the proposals made by Members and received input from the International Monetary Fund (IMF), the World Bank and the FAO, it proposed action on food aid, for example, such aid to least developed countries be in grant form and a Fund for technical and financial assistance. The Report was noted at the fourth Ministerial Conference held in Doha in November 2001 which approved its recommendations in all three areas of the Decision and an inter-agency panel (the IMF, World Bank, FAO, International Grains Council, UNCTAD and the WTO) would submit its recommendations by June 2002. The Ministerial Conference would also set the agriculture negotiations on a new path as they would part of a comprehensive round of multilateral trade negotiations. On agriculture paragraph 13 of the Ministerial Declaration recognised that the negotiations would build on the work already carried out and would “take note of the non-trade concerns reflected in the negotiating proposals submitted by Members” and that they would be taken into account in the negotiations “as provided for in the Agreement on Agriculture”. The Declaration continued in paragraph 14 to suggest that comprehensive draft Schedules based on modalities for the further commitments, which were to be established by the end of March 2003, would be submitted for the fifth Ministerial Conference to be held later in 2003.

3. The Doha negotiations (2001–2008?)

Of the deadlines set in the Doha Declaration the report of the Inter-Agency Panel was issued on time. It made a number of recommendations to address the short-term financing difficulties facing the NFIDCs including the possible extension of the product coverage of the IMF’s Compensatory Financing Facility and an ex ante rather than an ex post financing
mechanism for food importers [39]. In its discussion of the Report, the General Council referred the question of the feasibility of the ex ante mechanism for further discussion to the Committee on Agriculture [40]. Several of the NFIDCs followed up with a communication addressing a number of issues with the proposed financing mechanism which it was hoped would resolve differences of opinion on its viability [41]. Further discussions would be necessary to reach agreement on the mechanism [42].

Divergences of opinion within the Committee on Agriculture throughout 2002 was mirrored by similar divergences within the Special Session on the negotiations for a new AoA. The Chair’s summary of the latter negotiations noted, for example, the call for the implementation of the NFIDC Decision, whilst also noting differences between developing countries on appropriate provisions for special and differential treatment and different views on how non-trade concerns, such as food security, would be taken into account [43]. The Chair concluded that “as matters stand, a major negotiating effort and flexibility on all sides will be of the essence to be able to establish modalities within the mandated time-frame” [44]. A first draft of the Modalities was produced by the Chair in February 2003 but, despite their revision, overall agreement was not reached in accordance with the timetable set by the Doha Declaration [45].

The Modalities addressed food security, for example, through flexibility in the tariff reduction formula although some Members thought that the Modalities overall played insufficient attention to this non-trade concern [46]. Food security would be a factor in the identification of Special Products, the operation of the Special Safeguard Mechanism (SSM) in Article 5 AoA and the public stockholding provision in the Green Box. It was no surprise that the Ministerial Statement issued at the Ministerial Conference held in Cancun in September 2003 rather than approving the Schedules based on agreed Modalities noted that:

More work needs to be done in some key areas to enable us to proceed towards the conclusion of the negotiations in fulfilment of the commitments we took at Doha. [47]

Progress would be made in 2004 with agreement being reached not on the Modalities but on a Framework for Establishing Modalities in Agriculture which references food security as a factor to be taken into account mostly in the area of market access [48]. The General Council Decision establishing the Framework concluded by calling on Members to “redouble their efforts towards the conclusion of a balanced overall outcome of the Doha Development Agenda in fulfilment of the commitments Ministers took at Doha” with a further assessment to be undertaken at the Sixth Ministerial Conference which would be held in Hong Kong in December 2005 [49]. Progress was indeed made at this Conference with the resulting Declaration reaffirming the mandate of the Doha Declaration alongside indications of progress across the three pillars of the Agreement [50]. However, the references to food security continued to decline with it now being referred to only in the context of the designation of Special Products in the market access pillar.

The Hong Kong Ministerial Conference did add impetus to the negotiations and in July 2006, the Chair of the Special Session issued Draft Modalities recognising that the document was not “in a formal sense agreed by Members, even as a draft” nor, given the divergent views of the Members, was it “an elegant document” [51]. A further revision was issued in 2007 and the hope was expressed that further revisions would be the next step in the process of getting an agreement – these revisions were issued in February, May and July 2008 [52]. In the wake of the last revision, a mini-Ministerial was convened in July in the hope of bringing the Members closer to agreement but it failed to do so. Among the reasons for this failure were disagreements about two particular proposals in the agriculture modalities – Special Products and the SSM. Both of these were seen as key to the development dimension
of the Doha Round as the former would have allowed a more gradual liberalisation that would have protected vulnerable producers whilst the latter would have allowed developing countries to cope with import surges and fluctuating prices. Both would have addressed food security concerns.

At the mini-Ministerial, attended by over thirty Members, disagreements continued on the scope of both of these measures. On Special Products the latest revision by reducing the range of tariff lines covered and eliminating the two-tier approach in favour of one tier was less generous to developing countries. Developing countries also objected to the triggers in the SSM and the remedies available. For example, under the existing mechanism in Article 5 AoA no limits were to be placed on how often a Member could breach their Uruguay Round bound tariff rates, yet the modalities of the new mechanism suggested that the ability of developing countries to breach their bound rate would be limited as would the number of times the mechanism could be used. The contrast between the two mechanisms reinforced the perception that the AoA favoured developed Members, although it must be noted here that 22 developing Members are able to use Article 5 AoA. Attempts to bridge these differences within a group of seven Members – composed of Australia, Brazil, China, the EU, India, Japan and the US – failed and so, after nine days of negotiations, the meeting ended without agreement on the modalities.

Reflecting on the mini-ministerial, the Chair of the Special Session of the Committee on Agriculture in his report to the Trade Negotiations Committee concluded that there was no alternative other than “picking ourselves up, dusting ourselves off, and trying again” whilst recognising “the enormity of the task” [53]. On revisiting the SSM, he noted that major efforts would need to be made and continued:

But in doing so we must recognize that it was not, for any of the participants involved (and those participants include Members that were not in the G7, it should be added), a purely technical breakdown. It was a political divide. In fact there was progress made on it politically, and technically, during that week. But it was simply not sufficient to bridge a political divide that had been enduring since at least Hong Kong. So illusion number one to guard against is that it can be resolved essentially technically. The technicalities will need to be addressed but will only work with the same level of political investment that was evident in many other issues where technical and political are inseparable.

The progress made at the mini-Ministerial was captured in a further revision of the Draft Modalities issued in December 2008 indicating a number of areas in which further discussion would be necessary to reach an agreement – these included the SSM [54]. It would be wrong to conclude that the mini-Ministerial failed solely because of disagreements on the SSM as the December Modalities reveal ten areas across all three pillars of the AoA in which further discussions would be needed to reach agreement [55]. However, agreement became all the more essential given the financial crisis, and more importantly, the food crisis, which engulfed the world in late 2008 [56].

Despite the encouragement offered by the 2009 Ministerial Conference in Geneva to conclude the negotiations in 2010, this did not happen [57]. A change the approach was necessary away from a focus on Special Products and the SSM to one more attuned to food security. The 2011 Ministerial Conference emphasised the need to explore different negotiating approaches [58]. To this end, at the 2013 Bali Ministerial Conference the Members issued a Decision on Public Stockholding for Food Security Purposes under which, pending the adoption of a definite solution, Members would exercise due restraint with respect to legal complaints if a developing Member exceeded its Amber Box limits as a result of building
stockholdings for food security purposes [59]. Whilst Members are to exercise due restraint under the AoA, it leaves open the possibility of action being taken under the Agreement on Subsidies and Countervailing Measures. Developing countries using the Decision were required to meet a number of conditions relating, for example, to notification and paragraph 4 of the Decision requires that beneficiaries of the Decision “shall ensure that stocks procured under such programmes do not distort trade or adversely affect the food security of other Members”.

The Bali Decision was not “new” as elements of it featured throughout the negotiations in various drafts of the Modalities. For example, in the first draft an addition to paragraph 6 of the Green Box would have effectively introduced market price support for food security purposes whereas in the final version of the modalities amendments were offered to paragraphs 2 (General Services) and 3 (Public Stockholding for Food Security Purposes) [60]. The latter amendment provided that: “acquisition of stocks of foodstuffs by developing country Members with the objective of supporting low-income or resource-poor producers shall not be required to be accounted for in the AMS”. This would effectively exclude such measures from the calculation of the Aggregate Measurement of Support and thus reduction commitments. It did not prove possible to reach agreement on a definitive measure ahead of the Bali Conference as a number of Members had expressed concerns about the effects of stockholding on prices and exports [61]. Hence, the interim nature of the Decision which was disappointing to its proponents, the G-33 [62]. In the year after the Bali Ministerial Conference little progress was made in the negotiations for a permanent solution and eventually the General Council adopted a Decision on 27 November 2014 which confirmed the Peace Clause, altering the text from “shall refrain” to “shall not challenge” whilst leaving the conditions unchanged [63]. The due restraint clause introduced at the Bali Ministerial thus became permanent pending a solution which does not appear to be emerging. The change of wording was confirmed at the Nairobi Ministerial in 2015 despite the proposal by the G-33 for a permanent solution in this area which they characterised as “watered down” to reflect the concerns raised by various Members [64].

Irrespective of whether public stockholding is the most efficient method of promoting food security, there are a number of issues with this proposed course of action. Annexe 2, better known as the Green Box, exempts various programmes from reduction commitments provided that they meet “the fundamental requirement that they have no, or at most minimal, trade-distorting effects or effects on production” and the support offered is “provided through a publicly-funded government programme (including government revenue foregone) not involving transfers from consumers”. Paragraph 3 of the Green Box provides that public stockholding for food security purposes must “form an integral part of a food security programme identified in national legislation”, be “made at current market prices” and that “sales from food security stocks shall be made at no less than the current domestic market price for the product and quality in question” [65]. Failure to meet these requirements will mean that the programme will fall within the Amber Box and the Decision does not increase entitlements under that Box.

The Bali Decision ends with the establishment of a work programme that would take into account “existing and future submissions” to reach a permanent solution. Such a programme would not be limited to a discussion of public stockholding programmes but would address the fundamental issues of food security. This requires work across all three pillars i.e. import tariffs under the market access pillar, the adequacy of exemptions for developing countries in Article 6 AoA and the Green Box under the domestic support pillar and greater disciplines under the export competition pillar in relation to food aid and export prohibitions. Whilst welcomed, the Bali Decision can only be seen as first step in how to
address the non-trade concern of food security at national, regional and global levels for both existing and new programmes in this area [66].

Progress was made in the export competition pillar at the 2015 Nairobi Ministerial Conference with the adoption of a Decision that would eliminate export subsidies immediately by developed Members, by 2018 for developing Members and by 2030 for the NFIDC countries [67]. The Decision also contains rules on other areas of export competition, such as export finance and agricultural exporting state trading enterprise, that seek to ensure that Members do not circumvent their obligations and minimise the impact of these policies on international trade [68]. The Decision also offered a commitment to:

Maintain an adequate level of international food aid, to take account of the interests of food aid recipients and to ensure that the disciplines contained hereafter do not unintentionally impede the delivery of food aid provided to deal with emergency situations [69].

It goes on to provide, for example, that such aid would be needs-driven, in fully grant form and not tied to commercial exports of agricultural products or other goods and services [70]. The food aid aspects of the Decision are to be reviewed by the Committee on Agriculture as part of the monitoring of the NFIDC Decision [71].

The package of measures adopted at the Nairobi Ministerial was completed by a Decision on the SSM which indicated that whilst developing Members will have the right to use this mechanism, negotiations on its modalities would be continuing [72]. The divergences of views on both Public Stockholding and the SSM would continue throughout 2016 and 2017, so it was not surprising that these issues did not feature at the eleventh Ministerial Conference in Buenos Aires in December 2017 [73]. The twelfth Ministerial Conference was postponed until June 2022 by which time the landscape had changed significantly not only as a result of the outbreak of COVID-19 but also as a result of the February 2022 invasion of Ukraine by Russia – another food crisis had emerged [74]. The twelfth Ministerial Conference adopted a Decision exempting food purchases by the World Food Programme (i.e. non-commercial purchases for humanitarian purposes) from export prohibitions or restrictions [75]. It is worth noting here that a similar Decision had been proposed at the 2011 Ministerial Conference but was not adopted [76].

The Ministerial Conference also issued a Declaration on the Emergency Response to Food Insecurity which recognised the impact of recent events on food security and on progress towards realisation of the United Nations Sustainable Development Goal 2 (Zero Hunger) [77]. As for the substance of the Declaration, there was a commitment to taking "concrete steps to facilitate trade and improve the functioning and long-term resilience of global markets for food and agriculture". The Declaration in paragraph 8 mandated the establishment of a work programme to help the NFIDCs increase their resilience to food insecurity. A work programme was approved by the Committee on Agriculture in November 2022 with the goal being the issuance of a set of recommendations by the end of November 2023 [78]. The Working Group decided that there would be four thematic areas: access to international food markets; financing of food imports; agricultural and production resilience; and, a number of horizontal issues.

A questionnaire to assess the food security needs and challenges of NFIDCs and their use of flexibilities in WTO agreements and decisions was sent to Members and a series of workshops organised [79]. Throughout these workshops, there appeared to be a familiar tension between those who viewed trade as a natural driver for achieving resilience and those arguing for additional policy space within the AoA to achieve greater food security. The Coordinator of the Working Group submitted a Report in July 2023 with suggestions...
Food security at the WTO

across each of the thematic areas [80]. For example, on access to international food markets it suggested that when considering the imposition of new export restrictions on foodstuffs:

Members are encouraged to ensure that the choice of measure is commensurate with its domestic food security needs and that recourse to complete export prohibition should be the last option, rather than the first. [81]

Also in July 2023 the Chair of the Special Session of the Committee on Agriculture highlighted the opportunity for the next Ministerial Conference “to take ‘concrete steps’ to facilitate trade and improve the functioning and long-term resilience of global markets for food and agriculture”. [82] However, there remain differences remained between the Members on the SSM and public stockholding for food security purposes [83].

The signs for a positive outcome for the Abu Dhabi Ministerial Conference were not promising. The Chair of the Special Session of the Committee on Agriculture introduced a draft negotiation text on 30 January with a report on the state of play being issued 8 February ahead of a revised negotiating text being issued on 16 February 2024 which was further revised on 29 February [84]. Referencing the work of the FAO, the Preamble to the revised text expresses “deep concern that the share of people facing hunger in the world was around 9% of the global population, concentrated predominantly in developing countries, including least developed countries”. It also referenced SDG2 – enhancing global food security whilst addressing “contemporary sustainability challenges” and the limited progress to date in the agriculture negotiations since they were launched. Specifically, the revised negotiating text on the SSM, recalls the Nairobi Ministerial Decision and suggests that enhanced technical discussion were still necessary if Members were to agree the modalities and adopt them at the next Ministerial Conference or work towards achieving the modalities by that time [85]. As for public stockholding, the same document suggested a permanent solution or intensified discussions around specific issues (e.g. domestic food security targets, product coverage, safeguards and anti-circumvention) to achieve a permanent solution [86]. The Ministerial Conference did not adopt a text on agriculture; negotiations will have to continue to the next Ministerial.

5. Conclusions

Despite over 20 years of negotiations, there has been no real progress on how the WTO should address food security – there is still an assumption that the trade promoted through the AoA will be sufficient by itself to promote greater food security. This same assumption underlined the treatment of agriculture (and food security) in the General Agreement on Tariffs and Trade (GATT) [87]. It is tempting to view the AoA as an attempt by some Members to control their expenditure on agriculture, especially in relation to export competition. This may help to explain the Nairobi Decision on the Export Competition but this did not amend the AoA. The permanent solution to public stockholding promised in the Bali Decision and an SSM for developing counties, have yet to emerge, the logical conclusion may be that if greater food security cannot be realised through the existing provisions of the AoA, then a different solution must be pursued.

The NFIDC Decision has never really been effective. Negotiations on financing proved fruitless and greater GATT disciplines in areas that would benefit NFIDCs, such as export restrictions, has proved elusive. Indeed, it was not until 2022 at the twelfth Ministerial Conference that the Members agreed to exempt WFP purchases from these restrictions. At the recent Ministerial, a Decision proposed by the African Group on promoting agricultural production and trade in NFIDCs and least-developed countries across the four areas of the NFIDC Decision was not adopted [88]. A submission by the WFP to the Committee on
Agriculture in late 2023 noted that 70% of food insecure people, some 234 million people, lived in NFIDCs and that 30% of NFIDCs were experiencing annual food inflation of 10% or more [89]. A submission from the IMF noted the challenges faced by many food-importing countries arising from resort to protectionist measures by exporting countries in response to the invasion of Ukraine and committed itself to continue its work other institutions (e.g. FAO, WFP and WTO) whilst using all elements of its “lending toolkit” to assist those countries affected by food insecurity [90]. The WTO will be one aspect of the solution to the problems faced by NFIDCs.

Turning to the SSM, although the Nairobi Decision recognised the importance of the negotiations on this mechanism to developing countries, it is worth noting that the majority of the potential users of Article 5 AoA are developing countries [91]. For those developing countries unable to use this provision, there is an alternative – Article XIX GATT, the safeguard provision. This provision, alongside the Agreement on Safeguards, allows Members to take emergency action in those instances in which increased imports cause, or threaten to cause, serious injury to a domestic industry. The action taken includes possible increase in tariffs above bound rates, albeit both on a temporary basis and a most-favoured-nation basis, for which compensation must be offered to affected countries. The Agreement on Safeguards offers definitions of relevant terms (e.g. serious injury) and requires that there be an investigation allowing interested parties to present their views ahead of the imposition of safeguard measures. A maximum period of application of the measures (usually four years) is set in the Agreement with provision being made for their progressive liberalisation and for a review of the measures at their mid-term if the duration is longer than three years. There are also rules on the repeated use of safeguard measures.

As for special and differential treatment offered to developing countries using the Agreement, under Article 9(2) it may extend the application of a safeguard measure for an extra two years beyond that normally permitted and such measures are not to be applied to developing Members whose:

- Share of imports of the product concerned in the importing Member does not exceed 3 %, provided that developing country Members with less than 3 % import share collectively account for not more than 9 % of total imports of the product concerned.

All safeguard investigations and measures are to be notified to the Committee on Safeguards. Article XIX GATT and the Agreement on Safeguards may afford developing Members a remedy ahead of any potential agreement on the SSM. In contrast to Article 5 AoA and the proposed SSM, this remedy requires that the surge in imports is causing injury or threatening to cause injury and there is a requirement to offer compensation. This may seem like an unconventional remedy for agriculture but it has been used since 1995 on a number of occasions by developing countries; by Chile, Egypt and India and by those developing countries that can use Article 5 AoA including Costa Rica, Indonesia and South Africa [92]. Given its intimate connection with Article 5 AoA, resolution of this problem rests with the WTO.

Finally, the Bali Decision on public stockholding for food security purposes. Although a number of Members have made notifications under this Decision, the Indian notification invoking the Decision has met with a significant number of questions from other Members [93]. Given the impasse in the negotiations, an important question here is; are the current rules in paragraph 3 of annexe 2 AoA sufficient for public stockholding purposes? Under this provision, such stocks must “form an integral part of a food security programme identified in national legislation”, and be “made at current market prices” with sales from these stocks are to “be made at no less than the current domestic market price for the
product and quality in question”. A footnote to this paragraph specifies that developing countries have the right to operate such schemes at administered prices, but only as long as “the difference between the acquisition price and the external reference price is accounted for” in the Amber Box (AMS). The fourth revision of the Modalities would have added the following sentence to the footnote to paragraph 3:

However, acquisition of stocks of foodstuffs by developing country Members with the objective of supporting low-income or resource-poor producers shall not be required to be accounted for in the AMS.

The concerns raised by Members about India’s measures under the Bali Decision mostly relate to questions about possible breaches of India’s AMS commitments, which include the de minimis level of 10%.

In contrast to the SSM, progress on public stockholding has been made on a regional basis. For example, there is the ASEAN plus Three Emergency Rice Reserve addressing food security across thirteen Asian countries in one specific commodity set up as a reginal response to the food price crises of the 2000s. It has been suggested that the Reserve has been a factor in promoting greater food security, especially in the wake of the COVID-19 pandemic. A food reserve was also established in 2013 as part of ECOWAS regional integration in West Africa. Irrespective of the success of these schemes, they point to the possibility that public stockholding can be addressed not only at a national and at a regional level but also at a multilateral level. The Abu Dhabi Ministerial Conference suggests that agreement on public stockholding will only come in context of agreement on all aspects of agricultural trade reform. For example, land-locked developing countries had emphasised ahead of the Conference that an important tool to promote their development was:

The continuation of the reform process in order to promote market access, a reduction of distortive domestic support measures, the total elimination of all forms of export subsidies, and the promotion of fair rules for agriculture sector.

This statement could have been made in 1996 as the Members started the AIE process and shows that the negotiations on food security at the WTO appear to be a never-ending story.

Notes
1. (Rome Declaration and Plan of Action fao.org), paragraph 1 of the Plan of Action.
2. (Rome Declaration and Plan of Action fao.org), Commitment 4, objective 4.3 and 4.2 respectively.
3. wto.org/english/tratop_e/minist_e/min96_e/wtodec_e.htm, para 10. See also Declaration after 1998 Ministerial Conference WT/MIN(98)/DEC/, para 9(a)(ii) which proposed that the General Council, meeting several months later, would submit recommendations on the WTO’s work programme which would include that negotiations mandated by the Uruguay Round agreements would begin on schedule.
4. wto.org/english/tratop_e/minist_e/min96_e/wtodec_e.htm, para 19. See also G/L/131 (report of the Committee on Agriculture, para 12.
5. Available at WTO | legal texts – Marrakesh agreement
6. Article 4 AoA. The list of measure to be tariffed is contained in a footnote to Article 4.2. The reduction commitments for developed countries were to be 36% on average of all agricultural products, with a minimum cut of 15% for any product, over a six-year period. For developing countries, the reduction commitments were 24% and 10% over a 10-year period.
7. Members who engaged in tariffication had to indicate the products subject to this provision.
8. The reduction commitments were a 20% reduction over six years for developed countries and 13% over 10 years for developing countries.

9. Article 6 AoA.

10. Available at WTO | legal texts – Ministerial Decisions & Declarations. The Committee on Agriculture was tasked with monitoring the Decision.


12. G/AG/NG/S/17, p. 6. It also noted that diverse sources of supply were more reliable than food self-sufficiency.


15. G/AG/NG/S/17, p. 6. These points were also made in India’s first submission (WT/GC/W/114, p. 2). See also further submissions by India in WT/GC/W/152 and WT/GC/W/342.

16. G/AG/NG/S/17, pp. 7–8. See also submission of Japan in WT/GC/W/220.

17. G/AG/NG/S/17, pp. 1–5, see in particular submissions of Australia and New Zealand, the EU and the US.

18. G/AG/NG/S/17, p. 2. See also WT/GC/W/120 and 163 submissions by Cuba, Dominican Republic, El Salvador, Honduras, Nicaragua and Pakistan. See above n 8 for the Indian proposals.

19. G/AG/NG/S/17, p. 3. See also WT/GC/W/370.

20. G/AG/5. The list is reviewed regularly, the latest revision in 2023 indicates that the number of net-food importing countries has risen to 30, see G/AG/5/Rev 12.

21. WT/GC/W/135, p. 3.

22. WT/GC/W/109, paras 42-47. See also submission by the FAO, G/AG/GEN/36, for further discussion and G/AG/W/42 a report by the Secretariat on the implementation of the Decision.

23. Above n 21. A similar sentiment was expressed by Pakistan in WT/GC/W/161, para 10.

24. G/AG/W/49 a submission by Côte d’Ivoire, Cuba, Dominican Republic, Egypt, Honduras, Jamaica, Kenya, Mauritius, Morocco, Pakistan, Senegal, Sri Lanka, St. Lucia, Trinidad and Tobago, Tunisia and Venezuela.

25. WT/GC/W/374, para 17. This was a Communication from Cuba, Dominican Republic, Egypt, El Salvador, Honduras, Sri Lanka, Uganda and Zimbabwe.

26. See for example, G/AG/NG/W/107, p. 3.

27. See https://www.wto.org/english/tratop_e/minist_e/min99_e/english/about_e/resum03_e.htm

28. WT/GC/M/53, para 39.

29. G/AG/NG/7, para 4.

30. G/AG/NG/W/14, submission by Cuba, the Dominican Republic, Honduras, Pakistan, Haiti, Nicaragua, Kenya, Uganda, Zimbabwe, Sri Lanka and El Salvador, p 7. See also G/AG/NG/W/13.


32. G/AG/NG/W/15, p. 5.

33. G/AG/NG/W/102, pp. 4–5. See also papers 3 and 5 in G/AG/NG/W/36/Rev.1 a note on non-trade concerns submitted by a large number of Members both developed and developing. See also a statement on this paper by Brazil (G/AG/NG/W/62).
34. See, EU proposal (G/AG/NG/W/90, paras 13 and 23); G/AG/NG/W/136 submission by Kenya and for a different view see G/AG/NG/W/130 submission by Nigeria, pp. 2 – 3.

35. WT/L/384, para 1.2.

36. G/AG/11.

37. WT/MIN(01)/17, Decision on Implementation-related Issues and Concerns, para 2.2. See also G/AG/12 for detailed terms of reference.

38. WT/MIN(01)/DEC/1, para 13.


40. WT/GC/M/76, paras 63 and 64.

41. G/AG/W/58, Submission by Bangladesh, Cuba, Egypt, Jordan, Kenya and Sri Lanka on behalf of the NFIDCs and LDC Group of the WTO.

42. WT/GC/M/81, para 169. See also G/AG/16, paras 11 – 19.

43. TN/AG/6, para 9.

44. TN/AG/6, para 50.

45. TN/AG/W/1 and TN/AG/W/1/Rev.1.

46. TN/AG/10, paras 11 and 15. See also TN/AG/W/1/Rev.1, para.

47. WT/MIN(03)/20, para 3.

48. WT/L/579, Annex A. See, for example, para 41 on Special Products.

49. WT/L/579, Annex A. para 3.

50. WT/MIN(05)/Dec, Annex A.

51. TN/AG/W/3, p. 2.

52. TN/AG/W/4 and respectively, TN/AG/W/4/Rev.1, Rev. 2 and Rev 3.

53. See JOB(08)/95, paras 27 and 28.

54. TN/AG/W/4/Rev.4. See also TN/AG/W/7 on the SSM.

55. TN/AG/25. The ten areas were the Blue Box (product-specific limits), Cotton, Sensitive Products, Tariff Caps, Tariff Quota Creation, Tariff Simplification, Special Products, the SSM and Diversification Products.

56. See G/AG/W/90, Communication from the NFIDCs, African and Arab Groups The WTO Response to the Impact of the Food Crisis on LDCs and NFIDCs. See also WT/GC/140/Rev.1 and a response in G/AG/R/64.

57. See WT/MIN(09)/18 for the Chair’s Concluding Statement. See also TN/AG/26 for the Chair’s assessment of the state of the negotiations ahead of the 2011 Ministerial Conference.

58. WT/MIN(11)/11, p. 3.


60. TN/AG/W/1, p. 23 and TN/AG/W/4/Rev.4, p. 39.

61. See for example, JOB/AG/23 (reproduced in TN/AG/W/8, pp. 6–7) and G/AG/W/119, pp. 10–11.

62. See WT/MIN(13)/11, the G-33 Ministerial Communique.
63. WT/L/939, para 2.

64. WT/MIN(15)/44 for the Nairobi Decision. For the G-33 proposal see WT/MIN(15)/W/22 and TN/AG/GEN/40.

65. The footnote to paragraph 3 provides that developing countries have the right to operate such programmes at administered prices so long as “the difference between the acquisition price and the external reference price is accounted for in the Aggregate Measurement of Support”.


67. WT/MIN(15)/45. Some flexibility on the 2018 deadline was offered in para 8.

68. WT/MIN(15)/45, paras 13 – 21.

69. WT/MIN(15)/45, para 22.

70. WT/MIN(15)/45, para 23.

71. WT/MIN(15)/45, para 32.

72. WT/MIN(15)/43. See also TN/AG/GEN/35/Rev.1 a submission by G-33 on in which it stated that it “would not be in a position to negotiate any proposal that omits its expectations on [Special Products] and [special Safeguard Mechanism] which should be integral parts of any outcome”. P. 3.

73. See TN/AG/37/Rev.1 Report of Chair of the Special Session to the Trade Negotiations Committee for discussion of progress in Public Stockholding (para 2.1) and the SSM (para 2.5). For statements to the Conference, see WT/MIN(17)/39 (NFIDCs), 38 (G-33) and 50 (Philippines).

74. See, for example, G/AG/GEN/169, 175, 184 and 199/Rev.1, FAO submissions on COVID-19 and Agriculture. See also JOB/AG/187 Implications of COVID-19 and Continuity of COA-SS negotiations.

75. WT/MIN(22)/29. Paragraph 2 of the Decision noted that it was “not be construed to prevent the adoption by any Member of measures to ensure its domestic food security in accordance with the relevant provisions of the WTO agreements”.

76. Above n 58, p. 5. The proposed Decision would have committed Members “remove and not to impose in the future, food export restrictions or extraordinary taxes for food purchased for non-commercial humanitarian purposes by the World Food Programme”.

77. WT/MIN(22)/28.

78. See G/AG/35.


80. G/AG/W/240. See also Nigerian proposal for an MC-13 Decision, WT/GC/W/918.

81. G/AG/W/240, pp. 2 – 3. See also JOB/AG/244, Communication from the UK, Why MC13 needs to address Export Restrictions on Agricultural Products and a similar proposal from the LDC Group, JOB/AG/251.

82. See WTO | 2023 News items – Chair praises” more concrete” farm trade talks as members explore ways forward and JOB/AG/249. For earlier reports, see JOB/AG/215 Draft Chair Text on Agriculture and JOB/AG/202 The way forward towards MC-12.
83. TN/AG/58, para 5 and 8. See for example, JOB/AG/222 (paras 38–46) and JOB/AG/223 (para 45–53).
84. WT/MIN(24)/W/13/Rev.1.
85. WT/MIN(24)/W/13/Rev.1, para 9.
86. WT/MIN(24)/W/13/Rev.1, para 21.
87. For further discussion, see for example, Margulis (2017).
88. WT/MIN(24)/W/19.
90. G/AG/GEN/231, pp. 1–2. See also FAO submission, G/AG/GEN/230.
92. See SG_MeasuresSectoralByRepMember.pdf(wto.org), just over 20% of safeguard measures have involved the agricultural sector.
93. See, for example, G/AG/R/106, Table 2. The Indian notification (G/AG/N/IND/29) led to questions from, for example, Australia, Brazil, Canada, the EU, Japan, Paraguay, Thailand and the US.
94. Above n 54, Annex B (p. 39). Also added is the following sentence “the acquisition of foodstuffs at subsidised prices when procured generally from low-income or resource-poor producers in developing countries with the objective of fighting hunger and rural poverty […]”.
95. Further details on the Reserve is available at Home–Asean Plus Three Emergency Rice Reserve (AP Terr). Each Member contributes to the stocks of rice which are distributed across three programmes; anticipated emergencies (Tier 1), unanticipated emergencies (Tier 2) and severe emergencies and humanitarian crises (Tier 3).
96. For discussion see, for example, Kim (2021) and Vidi (2021).
97. See 2021_The_West_African_Food_Security_Storage_System_Summary_of_less_x16zR2T.pdf (ecowas.int) for details of the scheme. See also Kornher and Kalkuhl (2016).
99. WT/MIN(24)/41, p 4. See also WT/MIN(24)/33 Work Programme on Small Economies which allows for the discussion of food security as part of the work programme in this area.

References


Corresponding author
Joseph A. McMahon can be contacted at: joseph.mcmahon@ucd.ie