

# Penn State Journal of Law & International Affairs

---

Volume 3

Issue 2 *The 9 Billion People Question: The Challenge of  
Global Resource Scarcity*

---

February 2015

## Global Hunger and the World Trade Organization: How the International Trade Rules Address Food Security

Terence P. Stewart

Stephanie Manaker Bell

ISSN: 2168-7951

---

### Recommended Citation

Terence P. Stewart and Stephanie Manaker Bell, *Global Hunger and the World Trade Organization: How the International Trade Rules Address Food Security*, 3 PENN. ST. J.L. & INT'L AFF. 113 (2015).  
Available at: <http://elibrary.law.psu.edu/jlia/vol3/iss2/9>

*The Penn State Journal of Law & International Affairs* is a joint publication of Penn State's School of Law and School of International Affairs.

# Penn State Journal of Law & International Affairs

---

2015

VOLUME 3 NO. 2

---

## GLOBAL HUNGER AND THE WORLD TRADE ORGANIZATION: HOW THE INTERNATIONAL TRADE RULES ADDRESS FOOD SECURITY

*Terence P. Stewart and Stephanie Manaker Bell\**

### INTRODUCTION

The Ninth Ministerial Conference of the World Trade Organization (WTO) held in Bali, Indonesia in early December 2013 was the focus of much global attention, as many believed that the inability of the Members to adopt an agreement could signal the end of the WTO as a legislating forum. While a package was ultimately adopted, negotiations almost unraveled at the eleventh hour when a consensus could not be reached over part of the package relating to public stockholding for food security in developing countries. The public stockholding agreement, intended to serve as a temporary fix until a permanent solution can be agreed upon, protects developing Members from challenges through the WTO Dispute Settlement system for measures taken relating to support provided for certain foods in pursuit of public stockholding programs for food security

---

\* [Terence P. Stewart](#), Managing Partner of the Law Offices of Stewart and Stewart. Mr. Stewart holds a J.D. from Georgetown University, an M.B.A. from Harvard University, and a B.A. from the College of the Holy Cross. Mr. Stewart also received an honorary doctorate from the Ukrainian Academy of Foreign Trade and an honorary doctorate of political science from the Russian Academy of Sciences and was awarded the Order of the 3rd Degree by the government of Ukraine. [Stephanie Manaker Bell](#), Associate at the Law Offices of Stewart and Stewart. Mrs. Bell received her J.D. and M.A. from American University and her B.A. from the University of Virginia.

purposes. While all WTO Members recognized the importance of food security and agreed that countries should have the ability to provide food to their most vulnerable populations, there were concerns over the public stockholding agreement due to the lack of disciplines in the agreement and the possible resulting trade-distorting practices that could harm other Members.

The concerns that were displayed during the negotiation of this agreement highlight the interplay of global trade rules and the pursuit of food security, as well as the challenges that can arise in developing such rules. As the production, price, and movement of food has obvious implications for addressing global hunger, the international trade regime has played an influential role. While the WTO and its predecessor, the General Agreement on Tariffs and Trade (GATT), have sought to promote liberalization, international trade rules have also been developed with the recognition of, and in support of, nations' and the global community's ability to address food security issues. As the global community continues to fight toward the eradication of hunger, the role of the international trade regime as a catalyst for achieving food security must continue to be pursued. The trading rules that have been developed, as well as changes and new rules that can be implemented through further negotiations, have been playing, and will continue to play, a role in the fight to end world hunger and to establish a system in which global food security is sustainable. This paper reviews the ways in which the international trade regime has sought to address food security issues, as well as additional developments that have been discussed as part of further negotiations. The paper is being published in conjunction with the 2014 *Penn State Journal of Law and International Affairs* Symposium, titled "The 9 Billion People Question: The Challenge of Global Resource Scarcity."

## I. GLOBAL HUNGER AND THE INTERNATIONAL RESPONSE

During the period of 2011-2013, an estimated 842.3 million people were undernourished, with the vast majority—826.6 million—

living in developing regions.<sup>1</sup> Indeed, while developing regions account for about eighty-two percent of the world's population, they account for ninety-eight percent of the world's undernourished peoples.<sup>2</sup> The consistently large number of people facing hunger has been and continues to be a major concern within and among countries, inter- and intra-national organizations, and non-governmental entities alike, with numerous national and multilateral entities working individually and together to help eradicate hunger across the globe. These entities have worked for decades to alleviate hunger through programs such as growing small-scale agriculture, providing food aid to vulnerable populations and during emergencies, monitoring food prices, and developing infrastructure.

The factors contributing to global hunger and creating barriers to achieving food security are numerous and complex. These include issues affecting global and regional supply—such as weather, trade policies, energy prices, and agricultural research and development—and demand—such as consumption patterns, financial markets, and biofuel policies.<sup>3</sup> Not only do these issues create difficulties in and of themselves, but they can also interact in ways that exacerbate each other. For example, the decrease in funds available for agricultural research and development over recent decades has contributed to lower supplies, as it can stifle development in areas like higher yields, more weather resistant crops, and better storage techniques. At the same time, the effects of climate change will have implications for when and where products can be produced, leading to an even greater need for increased financing of research and development and placing additional pressures on already limited resources.

---

<sup>1</sup> *The State of Food Insecurity in the World*, FOOD AND AGRIC. ORG. OF THE U.N. (FAO), 8, Table 1 (2013), <http://www.fao.org/docrep/018/i3434e/i3434e.pdf> [hereinafter *State of Food Insecurity*].

<sup>2</sup> *Food Security Indicators*, FAO, Tables A\_1 & A\_2 (Dec. 20, 2013), <http://www.fao.org/economic/ess/ess-fs/ess-fadata/en/#.VNf0SnacM9d>.

<sup>3</sup> See generally Terence P. Stewart & Stephanie R. Manaker, *2010-2011 Return of High Food Prices: Implications for the Future and Steps That Are Being or Could Be Taken to Reduce the Impact*, 43 *Geo. Wash. Int'l L. Rev.* 587, 597-612 (2011).

These factors affect and interact with issues of availability, access, and price to create complex challenges. For example, in terms of the availability of food, the Food and Agriculture Organization of the United Nations (FAO) estimates that during the 2011-2013 period there was a sufficient supply of food worldwide to meet the dietary needs of the world population; yet one in eight people on earth is undernourished, and for a number of individual countries the supply of food was not sufficient to meet the needs of that population.<sup>4</sup> Accordingly, although global supply is not the present problem to solving global hunger, at a macro-level it clearly is part of the problem on the undernourished country level (and, within countries, in specific areas of those countries). Trade policy and rules play a role in limiting the continued adverse effects that produce hunger to such an extent.

In addition, as the population increases and demand for basic foodstuffs grows, the growth in supply will have to keep pace—in fact, an estimated sixty percent more food will be needed by 2050.<sup>5</sup> Part of that can be addressed through a reduction in waste in all countries. One report estimates that, if food loss and waste were cut in half, the resulting food saved would account for twenty-two percent of the increased amount of food needed in 2050.<sup>6</sup> Trade policy and rules can also play a role here, as they can help address non-tariff barriers that create delays when goods are crossing borders. One report highlights the immense impact that border delays can have on food prices: “Border delays have significant impacts on the movement of food, especially in developing countries. For example, the Burundi-Rwanda border adds the equivalent of 174 kilometres

---

<sup>4</sup> *Food Security Indicators*, *supra* note 2, at Table V\_1.1.

<sup>5</sup> See *Feed the Future*, The U.S. Government’s Global Hunger and Food Security Initiative, *Progress Report June 2013, Growing Innovation, Harvesting Results*, 6 (June 2013), [http://issuu.com/usaaid/docs/feed\\_the\\_future\\_progress\\_report\\_201](http://issuu.com/usaaid/docs/feed_the_future_progress_report_201) [hereinafter *Progress Report*].

<sup>6</sup> *Enabling Trade: From Farm to Fork*, WORLD ECONOMIC FORUM 11 (Jan. 2014), <http://reports.weforum.org/enabling-trade-from-valuation-to-action/wp-content/blogs.dir/38/mp/files/pages/files/2-enabling-trade-from-farm-to-fork.pdf>.

(km) in terms of increasing food prices; the Democratic Republic of Congo-Rwanda border adds a staggering 1,600 km.”<sup>7</sup>

A second complexity concerns access. The FAO estimates that there is a sufficient supply of food available in a number of developing countries and least-developed countries (LDCs) to meet the dietary needs of the population; still, millions of people in these countries suffer from hunger. Thus, access to food poses a significant barrier to achieving food security. In other words, food may be available to certain populations in theory, but a lack of infrastructure and proper storage and transportation systems may prevent those in need from actually being able to access what is available. Access is also particularly problematic in countries involved in conflict and among displaced and politically vulnerable populations, where getting food to those in need is affected by additional complications. Indeed, as shown in the table below, of the forty-one developing countries with twenty percent or more of their population undernourished in 2011-2013, twenty countries were identified by the World Bank as fragile and conflicted areas within the past five years, compared to eleven of the eighty-seven developing countries with less than twenty percent of their population undernourished.

---

<sup>7</sup> *Id.* at 7 (footnote omitted).

Percent of Population Undernourished in Developing Countries (2011-2013)				
>35%	20% - 34.9%	10% - 19.9%	5% - 9.9%	<5%
<b>Burundi*</b>	<b>Angola*</b>	<i>Antigua &amp; Barbuda</i>	Bahamas	Algeria
<b>Comoros*</b>	Bolivia	<b>Bangladesh</b>	Belize	Argentina
<b>Eritrea*</b>	<i>Botswana</i>	<b>Cambodia</b>	<b>Benin</b>	Armenia
<b>Ethiopia</b>	<b>Burkina Faso</b>	Cameroon	Brazil	Azerbaijan
<b>Haiti*</b>	<b>Central African Rep.*</b>	China	Cape Verde	<i>Barbados</i>
<b>Mozambique</b>	<b>Chad*</b>	Colombia	Costa Rica	Brunei Darussalam
<b>Sudan (former)*</b>	Congo*	<i>Dominican Rep.</i>	<i>Gabon</i>	Chile
<i>Swaziland</i>	<i>Côte d'Ivoire*</i>	Ecuador	Guyana	<i>Cuba</i>
<b>Timor Leste*</b>	Dem. People's Rep. of Korea	<i>El Salvador</i>	<i>Honduras</i>	<i>Dominica</i>
<b>Zambia</b>	<b>Djibouti*</b>	<b>Gambia*</b>	Indonesia	<i>Egypt</i>
	Guatemala	<i>Grenada</i>	<i>Jamaica</i>	Fiji
	Iraq*	<b>Guinea*</b>	<b>Kiribati*</b>	French Polynesia
	<i>Kenya</i>	<b>Guinea-Bissau*</b>	Kyrgyzstan	Ghana
	<b>Lao People's Dem. Rep.</b>	India	<i>Maldives</i>	Iran
	<b>Liberia*</b>	<b>Lesotho</b>	<b>Mali*</b>	<i>Jordan</i>
	<b>Madagascar*</b>	<b>Nepal*</b>	<b>Mauritania</b>	Kazakhstan
	<b>Malawi*</b>	<b>Niger</b>	<i>Mauritius</i>	Kuwait
	<i>Mongolia</i>	<i>Pakistan</i>	<i>Morocco</i>	Lebanon
	<i>Namibia</i>	<i>Peru</i>	Nigeria	Libya*
	Nicaragua	Philippines	Panama	Malaysia
	Occupied Palestinian Territories	<i>Saint Kitts &amp; Nevis</i>	<i>Saint Vincent &amp; the Grenadines</i>	Mexico
	Paraguay	<i>Saint Lucia</i>	<b>Sao Tome &amp; Principe*</b>	New Caledonia
	<b>Rwanda</b>	<b>Solomon Islands*</b>	Seychelles	Rep. of Korea
	<b>Senegal</b>	Suriname	Syrian Arab Rep.*	Samoa
	<b>Sierra Leone*</b>	<b>Togo*</b>	Taiwan	Saudi Arabia
	<i>Sri Lanka</i>		Thailand	South Africa
	Tajikistan*		<i>Trinidad &amp;</i>	<i>Tunisia</i>

			<i>Tobago</i>	
	<b>Tanzania</b>		Uruguay	Turkey
	<b>Uganda</b>		Uzbekistan	Turkmenistan
			<b>Vanuatu</b>	United Arab Emirates
			Viet Nam	<i>Venezuela</i>

Countries listed in **bold** are those identified by the U.N. as LDCs; countries listed in *italics* are those identified by the WTO as net food-importing countries (other than LDCs); countries marked with “\*” have been identified as fragile and conflict-affected areas by the World Bank within the last five years.

Source: Terence P. Stewart, *Global Food Security & the World Trade Organization*, Slide 8 of PowerPoint presented at the 2014 Penn State Journal of Law and International Affairs Symposium: The 9 Billion People Question: The Challenge of Global Resource Scarcity (Feb. 7, 2014).

Another layer of complication arises where food may be available (and accessible), but high and rising food prices have made it increasingly difficult for populations in developing regions to obtain sufficient food. High and volatile food prices are especially problematic for poorer populations because they spend a larger portion of their income on food. As highlighted by Professor Carmen G. Gonzalez, food insecurity is a function of poverty: “The problem is inequality and land ownership, lack of employment, lack of income. To address food security, it’s necessary to address the problem of poverty.”<sup>8</sup> The effect of food prices on hunger is illustrated in part by the relative decrease in the percent of the developing world population that lives in extreme poverty versus the percent of the developing world population that is undernourished. Between 1990-1992 and 2011-2013, the percent of the developing world population that is undernourished decreased by about thirty-

---

<sup>8</sup> Carmen G. Gonzalez, Remarks at the Penn State Journal of Law and International Affairs Symposium: The 9 Billion People Question: The Challenge of Global Resource Scarcity (Feb. 7, 2014), <http://mediasite.dsl.psu.edu/Mediasite/Play/623941f54f854efaaa7bcd1a9805b0de1d> (starting at 04:14:25).

nine percent; in comparison, during the same period, the percent of the population living in extreme poverty decreased by about fifty-three percent.<sup>9</sup> The relatively greater reduction in poverty suggests that higher food prices have resulted in certain populations remaining undernourished even though their incomes may have increased. Moreover, food price volatility can create a ripple effect that exacerbates its impact on hunger. Political instability often results as a consequence of high food prices and food price volatility; where there are political conflicts, however, it becomes increasingly difficult to get food to populations in need. Thus, a reaction to an inability to obtain food—political upheaval—can make it even more difficult to remedy the underlying problems.

As there is no single factor causing global hunger, there is no single solution. The multitude of causes interact to create significant complexities, and the global community thus faces no shortage of challenges in addressing global hunger. But as trade is certainly one of the factors involved, trade policy and the WTO rules have worked to facilitate the eradication of global hunger.

#### A. Millennium Development Goals

In September 2000, heads of state and other high-ranking officials from 189 countries gathered for the United Nations Millennium Summit. During the summit, participating countries unanimously adopted the United Nations Millennium Declaration, which identified a number of values and objectives that the international community should seek to promote and achieve in the twenty-first century.<sup>10</sup> The objectives identified related to peace, security, and disarmament; development and poverty eradication; protecting our common environment; human rights, democracy, and good governance; protecting the vulnerable; meeting the special

---

<sup>9</sup> U.N. DEP'T OF ECON. & SOC. AFFAIRS, THE MILLENNIUM DEVELOPMENT GOALS REPORT 2013 U.N. Sales No. E.13.I.9, at 7, 10 (2013), <http://www.un.org/millenniumgoals/pdf/report-2013/mdg-report-2013-english.pdf>.

<sup>10</sup> G.A. Res. 55/2, U.N. Doc. A/RES/55/L.2 (Sept. 8, 2000).

needs of Africa; and strengthening the United Nations.<sup>11</sup> The identified goals were “derived from the global conferences of the 1990s and from the international norms and laws that had been codified over the past half-century[]” and eventually became known as the Millennium Development Goals (MDGs).<sup>12</sup>

There are eight MDGs, each of which includes specific targets.<sup>13</sup> The first MDG is to eradicate extreme poverty and hunger. One of the targets identified to achieve this goal is to halve, between 1990 and 2015, the proportion of people who suffer from hunger.<sup>14</sup> Considering that 23.3 percent of the population in developing countries (approximately 995 million people) was undernourished in the 1990-1992 period, meeting this goal would have a tremendous impact on global hunger. Since the establishment of the MDGs, substantial progress has been made, with the proportion of the population in developing countries that is undernourished decreasing to 14.3 percent (about 826 million people) by the 2011-2013 period.<sup>15</sup> While a number of countries are not expected to meet the MDG target if current trends continue or have shown no progress or deterioration, the United Nations has reported that the MDG target

---

<sup>11</sup> *Id.* Peace, security and disarmament (*Id.* ¶¶ 8-10); poverty eradication (*Id.* ¶¶ 11-23); human rights, democracy, good governance (*Id.* ¶¶ 24-25); protecting the vulnerable (*Id.* ¶ 26); meeting the special needs of Africa (*Id.* ¶¶ 27-28); strengthening the U.N. (*Id.* ¶¶ 29-32).

<sup>12</sup> U.N. Secretary-General, Road Map Towards the Implementation of the United Nations Millennium Declaration, ¶ 6, U.N. Doc. A/56/326 (Sept. 6, 2001), <http://www.un.org/documents/ga/docs/56/a56326.pdf>.

<sup>13</sup> The eight MDGs are (1) eradicate extreme poverty and hunger; (2) achieve universal primary education; (3) promote gender equality and empower women; (4) reduce child mortality; (5) improve maternal health; (6) combat HIV/AIDS, malaria, and other diseases; (7) ensure environmental sustainability; and (8) global partnership for development. See generally *We Can End Poverty: Millennium Development Goals and Beyond 2015*, UNITED NATIONS, <http://www.un.org/millenniumgoals/> (last visited Apr. 20, 2014).

<sup>14</sup> The other targets identified for this goal are to halve, between 1990 and 2015, the proportion of people whose income is less than \$1.25 a day and to achieve full and productive employment and decent work for all, including women and young people.

<sup>15</sup> *State of Food Insecurity*, *supra* note 1, at 8, Table 1.

is still “within reach,” as a number of developing countries have already met or are expected to meet or exceed this goal.<sup>16</sup>

B. Developments After the 2007-2008 Food Price Crisis

Following the food price crisis in the 1970s, the world experienced more than three decades of relatively low and generally declining food prices. During 2007 and 2008, however, food prices jumped dramatically, creating another food price crisis. Estimates suggest that the increase in food prices during this period contributed to tens of millions additional individuals falling below the poverty line and into chronic hunger.<sup>17</sup> The food price crisis of 2007-2008 thrust global food insecurity back into the spotlight and reignited the focus on food prices and the factors that affect prices in the context of combating global hunger. In its wake was a renewed effort by the international community to revisit and reconsider what was needed to address global hunger, leading to a number of new international initiatives focusing on the causes of, and possible solutions to, high and volatile food prices.

Perhaps the most expansive of these new initiatives was the United Nations’ High-Level Task Force on the Global Food Security Crisis (HLTF). The HLTF was established in April of 2008 as a means for bringing together the heads of various United Nations agencies and other international entities—twenty-two in all—addressing global hunger and related issues to develop a unified response by the international community. Since its inception, the HLTF has developed a Comprehensive Framework for Action (CFA) (and an updated CFA) that lays out both short-term and long-term needs. The updated CFA identifies ten principles as key to achieving sustainable food security: (1) a “twin-track” approach of addressing both immediate needs and long-term resilience, (2) a comprehensive approach, (3) a focus on smallholders, (4) an increased focus on the resilience of household livelihoods, (5) increased and better investments in food and nutrition security, (6) open and well-

---

<sup>16</sup> *Id.* at 54, Table A1.1.

<sup>17</sup> *See* Stewart & Manaker, *supra* note 3, at 590.

functioning markets and trade, (7) multi-stakeholder and multi-sectoral partnerships, (8) sustained political commitment and good governance, (9) country-led strategies with regional support, and (10) accountability for results.<sup>18</sup> The HLTF also conducts country-specific work through which it reviews the needs and current activities of individual countries and identifies areas for better coordination and additional action.<sup>19</sup>

A few months after the establishment of the HLTF, the FAO held the High-Level Conference on World Food Security: The Challenges of Climate Change and Bioenergy. During this conference, the attendees—including officials from 181 countries and the European Community—adopted a declaration “calling on the international community to increase assistance for developing countries, in particular the least developed countries and those most negatively affected by high food prices.”<sup>20</sup> The declaration reaffirmed the parties’ commitment to addressing global hunger—including achieving the MDGs—and identified short- and long-term measures to be undertaken, such as increased humanitarian and emergency food assistance, balance of payment support, increased funding for investment in agricultural science and technology, and further liberalization of agricultural trade.<sup>21</sup>

---

<sup>18</sup> High-Level Task Force on Global Food Security, Food and Nutrition Security: Comprehensive Framework for Action, Summary of the Updated Comprehensive Framework for Action (Aug. 2011), [http://un-foodsecurity.org/sites/default/files/OUTLINE\\_Summary%20UCFA\\_EN.pdf](http://un-foodsecurity.org/sites/default/files/OUTLINE_Summary%20UCFA_EN.pdf).

<sup>19</sup> See Secretariat of the U.N. System High-Level Task Force for the Global Food Security Crisis (HLTF), In-Country Work of the High-Level Task Force on Food Security (HLTF): intentions, actions and expected results (June 18, 2009), [http://un-foodsecurity.org/sites/default/files/country\\_informationnote.pdf](http://un-foodsecurity.org/sites/default/files/country_informationnote.pdf) (last visited Aug. 29, 2014).

<sup>20</sup> *High-Level Conference on World Food Security: The Challenges of Climate Change and Bioenergy*, FAO (June 3-5, 2008), <http://www.fao.org/foodclimate/hlc-home/en/>.

<sup>21</sup> Declaration of the High-Level Conference on World Food Security: The Challenges of Climate Change and Bioenergy (June 5, 2008), [http://www.fao.org/fileadmin/user\\_upload/foodclimate/HLCdocs/declaration-E.pdf](http://www.fao.org/fileadmin/user_upload/foodclimate/HLCdocs/declaration-E.pdf).

The HLTF and the FAO's high-level conference were far from the only steps taken to address food prices following the 2007-2008 crisis.<sup>22</sup> The multitude of efforts pursued by the international community reflect not only the continued priority placed on addressing food security, but also the ever-present challenges that must be overcome to eradicate global hunger.

In addition to the efforts of the international community, national governments have taken extensive steps as well. As explained by Jonathan Shrier, Acting Special Representative for Global Food Security at the United States Department of State, the United States is:

leading a global effort along with multi-lateral organizations, partner countries, other donors, the private sector, and civil society to increase support for food and nutrition security in the global policy agenda and to work with our partners to end extreme poverty in the next two decades, a target President Obama identified in his State of the Union address [in 2013].<sup>23</sup>

Following the G8 summit in 2009, the United States developed the Feed the Future initiative, stemming from the commitment to pledge an additional \$3.5 billion over three years to combat poverty and hunger.<sup>24</sup> Through the Feed the Future

---

<sup>22</sup> Other actions adopted after the 2007-2008 food price crisis include the Statement on Food Security issued at the G8 leader's summit in July 2008, the "L'Aquila" Joint Statement on Global Food Security adopted at the G8 meeting in July 2009, the Declaration of the World Summit on Food Security issued in November 2009, the Multi-Year Action Plan on Development endorsed by the G20 at its November 2010 summit, and the launching of the Agricultural Market Information System as part of the G20 leader's summit in November 2011.

<sup>23</sup> Jonathan Shrier, Acting Special Representative for Global Food Security, U.S. Department of State, Keynote Address at the 2014 Penn State Journal of Law and International Affairs Symposium: The 9 Billion People Question: The Challenge of Global Resource Scarcity (Feb. 7, 2014), <http://mediasite.dsl.psu.edu/Mediasite/Play/623941f54f854efaaa7bcd1a9805b0de1d> (starting at 02:06:50).

<sup>24</sup> See *Progress Report*, *supra* note 5, at 5.

program, nineteen “focus” countries have been selected thus far—based on the level of need, opportunity of partnership, potential for agricultural growth, opportunity for regional synergy, and resource availability—for which country-led plans have been established.<sup>25</sup> The country plans focus on inclusive agricultural sector growth, gender integration, improved nutrition, private sector engagement, research and capacity building, and climate smart development.<sup>26</sup> In 2012, Feed the Future launched the New Alliance for Food Security and Nutrition, which is a joint partnership program focused on investment in African agriculture through commitments by the target-countries’ national governments, private sector companies, and other donor partners, with a goal of lifting fifty million people out of poverty by 2022.<sup>27</sup>

Similarly, the European Union has also undertaken significant efforts to address global hunger. EuropeAid is the European Commission’s body responsible for designing and implementing the European Union’s development policies and aid programs.<sup>28</sup> Under EuropeAid, between 2007 and 2013, the European Union financed global food security projects through three types of instruments: national and regional development funds, such as the European Development Fund and the Development Co-operation Instrument; the Food Security Thematic Programme (FSTP), which addresses the structural causes of continental and regional food security issues; and the €1 billion Food Facility, which provides rapid assistance to countries that are most affected by the crisis.<sup>29</sup> While the development funds and the FSTP focus on longer-term goals, the

---

<sup>25</sup> See *id.* at 8.

<sup>26</sup> *Approach*, FEED THE FUTURE, <http://feedthefuture.gov/approach/Inclusive%E2%80%9494Agriculture%E2%80%9494Sector%E2%80%9494Growth> (last visited Aug. 30, 2014).

<sup>27</sup> *The New Alliance for Food Security and Nutrition*, FEED THE FUTURE (May 19, 2014), <http://feedthefuture.gov/lp/new-alliance-food-security-and-nutrition>.

<sup>28</sup> *About Development and Cooperation – EuropeAid*, EUROPEAN COMMISSION, [http://ec.europa.eu/europeaid/about-development-and-cooperation-europeaid\\_en](http://ec.europa.eu/europeaid/about-development-and-cooperation-europeaid_en) (last visited Sept. 11, 2014).

<sup>29</sup> *Development and Cooperation – EuropeAid*, EUROPEAN COMMISSION, [http://ec.europa.eu/europeaid/sectors/food-and-agriculture/food-and-nutrition-security/funding\\_en](http://ec.europa.eu/europeaid/sectors/food-and-agriculture/food-and-nutrition-security/funding_en) (last visited Apr. 4, 2014).

Food Facility was developed in response to the food crisis in 2007-2008.<sup>30</sup> The European Union established this fund primarily to address the time-period between emergency aid and medium-to-long term assistance, with a focus on “encourag[ing] a positive supply response from the agricultural sector in target countries and regions, mitigat[ing] the negative effects of volatile food prices . . . and[] strengthen[ing] the productive capacities and the governance of the agricultural sector to enhance the sustainability of interventions.”<sup>31</sup> By May 2010, all funds had been committed, with 232 projects executed in forty-nine countries.<sup>32</sup>

The above-described actions taken by the United States and European Union in the wake of the 2007-2008 food price crisis represent only some of the many steps that have been taken by these governments as well as governments of numerous other countries around the world.

## II. FOOD SECURITY AND THE INTERNATIONAL TRADE REGIME

Since the establishment of the GATT and the development of the modern international trade regime, agriculture has been part of the system, but for many years was not subject to meaningful disciplines or broad liberalization requirements. With the start of the WTO in 1995, Members adopted the first agricultural goods agreement to discipline trade-distorting policies and begin trade liberalization through tariff reductions. Due in part to food security concerns, the GATT and the WTO have always had special carve-outs to permit countries to limit exports to deal with food shortages. In addition, in the Uruguay Round Agreements, the Agreement on Agriculture acknowledges the special needs of developing

---

<sup>30</sup> *Id.*

<sup>31</sup> *Report from the Commission to the European Parliament and the Council: Final Report on the Implementation of the EU Food Facility*, EUROPEAN COMMISSION 3 (Apr. 11, 2013), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0194:FIN:EN:PDF>.

<sup>32</sup> *Id.* at 4, 10.

countries—particularly LDCs and net-food importing developing countries (NFIDCs).<sup>33</sup> Resulting provisions have been aimed at ensuring that trade rules would not inhibit countries' ability to obtain food security and helping developing countries obtain the full benefit of liberalized trade rules. Still, as barriers to agriculture tend to be high compared to industrial goods, and because the GATT/WTO negotiating process encourages progressive liberalization over time, the reduction in barriers to agriculture lags compared to what has been achieved in non-agricultural goods.

#### A. General Agreement on Tariffs and Trade

When the GATT was first implemented in 1947, it encompassed agricultural goods. In reality, however, numerous exceptions meant that few disciplines were actually put in place on trade in agriculture:

In some cases, the GATT adopted special rules with respect to agriculture; in other cases, nations gained special treatment by explicit waivers, reservations in accession agreements, or informal 'grandfather' agreements. Still other policies [were] nominally addressed by the GATT, but in practice the provisions [had] little or no effect.<sup>34</sup>

Differing treatment for agricultural goods with respect to export subsidies and import restrictions, as well as limited disciplines on state-trading enterprises and measures, such as voluntary export

---

<sup>33</sup> Net-food importing countries are least-developed countries as identified by the U.N., plus additional countries designated as such by the WTO. See Committee on Agriculture, *WTO List of Net Food-Importing Developing Countries for the Purpose of the Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries* ("The Decision"), G/AG/5/Rev.10 (Mar. 23, 2012), [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=106907&CurrentCatalogueIdIndex=0&FullTextSearch=](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=106907&CurrentCatalogueIdIndex=0&FullTextSearch=).

<sup>34</sup> John M. Breen, *Agriculture, in THE GATT URUGUAY ROUND: A NEGOTIATING HISTORY* (1986-1992) 125, 134 (Terence P. Stewart ed., 1993).

restraints and variable import levies, allowed governments to continue to provide protection to their domestic agriculture sectors. For example, the general prohibition on export subsidies (effective January 1, 1958) excluded “primary products,” which included “any product of farm, forest or fishery.”<sup>35</sup> Most countries employed a number of policies aimed at assisting their domestic agriculture sectors, taking different approaches depending on the circumstances of the particular nation. While many developed countries implemented border measures to increase domestic prices and used export subsidies when domestic supply exceeded demand, developing countries tended to utilize policies that would lower prices for consumers coupled with subsidies for agricultural inputs.<sup>36</sup> The “GATT rules pertaining to agriculture were originally drafted to be consistent with the agricultural policies of the major signatories, rather than vice versa.”<sup>37</sup>

The differing treatment afforded to agriculture is unsurprising given the role of agriculture not only in the economy, but also in people’s everyday lives. “The general consensus of opinion was that agriculture was a unique sector of the economy, that, for reasons of national food security, could not be treated like other sectors.”<sup>38</sup> Indeed, since its initiation, the global trade regime has recognized the importance of promoting nations’ ability to protect their food sources and sought to develop rules that work with food security goals. In addition to the flexibility of the GATT rules when it came to agriculture, the agreement also included a provision explicitly recognizing countries’ ability to take steps to protect their

---

<sup>35</sup> General Agreement on Tariffs and Trade, Oct. 30, 1947, 55 U.N.T.S. 194, art. XVI(A)(4), Annex I, art. XVI(B)(2), [http://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm) [hereinafter GATT].

<sup>36</sup> Dale E. Hathaway & Merlinda D. Ingco, *Agricultural Liberalization and the Uruguay Round*, in *THE URUGUAY ROUND AND THE DEVELOPING COUNTRIES* 30, 30-31 (Will Martin & L. Alan Winters eds., 1996).

<sup>37</sup> Breen, *supra* note 34, at 134 (footnote omitted).

<sup>38</sup> Stephen Healy et al., *The Implications of the Uruguay Round Agreement on Agriculture for Developing Countries – A Training Manual* (Training Materials for Agricultural Planning – 41), at §1.1.3 (FAO 1998), <http://www.fao.org/docrep/w7814e/w7814e00.htm#Contents>.

populations from food shortages. GATT Article XI, which generally prohibits quantitative restrictions, does not extend to “[e]xport prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party.”<sup>39</sup> The result of the GATT’s limited effect on agricultural trade, however, was that trade in agriculture remained heavily affected by trade-distorting policies used around the globe.

#### B. Uruguay Round Agreements and the Agreement on Agriculture

The limited disciplines placed on agriculture under the GATT created problems within the international trade regime, and there was recognition among the parties to the GATT that the system did not adequately address agricultural trade. Agriculture was the focus of a number of trade disputes, and increased subsidization by developed nations negatively affected developing country agricultural exporters that could not compete with heavily subsidized products.<sup>40</sup> The declaration adopted at the 1982 Ministerial identified a number of problems with the trade regime, including “widespread dissatisfaction with the application of GATT rules and the degree of liberalization in relation to agricultural trade, even though such trade ha[d] continued to expand.”<sup>41</sup> Having recognized the need for further liberalization, adjustments, and/or reforms in many areas, the parties to the GATT launched the Uruguay Round negotiations in 1986. Among other areas, these negotiations placed agriculture squarely on the agenda.

---

<sup>39</sup> GATT, *supra* note 35, art. XI(2)(a).

<sup>40</sup> See Terence P. Stewart, *Introduction and Overview*, in *THE GATT URUGUAY ROUND: A NEGOTIATING HISTORY (1986-1992)* 1, 7 (Terence P. Stewart ed., 1993) [hereinafter *Introduction and Overview*]; Healy, *supra* note 38, §1.1.3 (noting that sixty percent of all trade disputes under the GATT between 1980 and 1990 were related to agriculture).

<sup>41</sup> General Agreement on Tariffs and Trade, Ministerial Declaration of 29 November 1982, L/5424, 1-2 (1982), [http://www.wto.org/gatt\\_docs/English/SULPDF/91000208.pdf](http://www.wto.org/gatt_docs/English/SULPDF/91000208.pdf).

The special needs of developing countries, and the need to grant these countries preferential and differential treatment, were acknowledged from the outset of the Uruguay Round negotiations,<sup>42</sup> including in the negotiations on agriculture.<sup>43</sup> In addition, in the course of the negotiations, net-food importing countries—both developed (such as Japan) and developing (such as Egypt)—as well as other developing nations made clear the importance of food security concerns in the context of the agriculture negotiations.<sup>44</sup> These concerns related to the ability to protect domestic production of basic foodstuffs (and domestic farmers), as well as access to and the cost of food imports.<sup>45</sup> The ultimate agreement reached at the conclusion of the Uruguay Round negotiations establishing the WTO included the Agreement on Agriculture (AoA), which started the process of liberalizing trade in agriculture and also aimed to help promote food security concerns.<sup>46</sup>

1. *The Agreement on Agriculture: The Basics.* – The AoA is based on three pillars—market access, domestic support, and export subsidies—through which greater liberalization is pursued. The differential treatment provided to developing countries, and to LDCs in particular, is present in each of these aspects of the agreement. With respect to market access, the AoA establishes a system where import barriers, such as quantitative import restrictions, are converted to tariffs (known as “tariffication”) and then reduced. Specific targets were identified for both the average cut in tariffs on agricultural goods as well as a minimum cut per product. Developing countries were committed to making smaller reductions and were provided with more time than developed countries (ten years versus

---

<sup>42</sup> *Id.* at 2, 5.

<sup>43</sup> See *Introduction and Overview*, *supra* note 40, at 11-13.

<sup>44</sup> See Breen, *supra* note 34, at 186-91; see General Agreement on Tariffs and Trade, *Negotiating Group on Agriculture: Statement Made by the Delegation of Egypt on Behalf of a Number of Net Food-Importing Developing Countries*, GATT Doc. MTN.GNG/NG5/W/101 (July 31, 1989), available at [http://www.wto.org/gatt\\_docs/English/SULPDF/92080019.pdf](http://www.wto.org/gatt_docs/English/SULPDF/92080019.pdf).

<sup>45</sup> See Breen, *supra* note 34, at 186-93.

<sup>46</sup> See *In a Nutsell: How to Follow Current Issues in Agriculture*, WTO (Dec. 2, 2011), [http://www.wto.org/english/tratop\\_e/agric\\_e/ag\\_issues\\_e.htm](http://www.wto.org/english/tratop_e/agric_e/ag_issues_e.htm).

six years); LDCs did not have to make a commitment to reduce tariffs, although they did have to establish tariff bindings for agricultural goods. In addition, where imports constitute less than five percent of domestic production for a particular product, Members were committed to allowing a minimum amount of imports of that product under low or minimal tariffs, implemented through tariff-rate quotas.<sup>47</sup>

The AoA also includes a safeguard provision under Article 5. Pursuant to this provision, a Member may impose an additional tariff on products in response to an import surge or a decrease in import prices if certain triggering criteria are met.<sup>48</sup> This safeguard, however, is somewhat limited. The safeguard may only be used for products that a country has designated as subject to the safeguard in its tariff schedule. The safeguard is also limited to products that have been tariffed. Many developing Members chose to impose ceiling bindings (*i.e.*, bindings on previously unbound products) and were not required to reduce the base rate for these products;<sup>49</sup> thus, these countries effectively opted out of the right to utilize the safeguard.<sup>50</sup>

With respect to domestic support, the AoA distinguishes between programs that directly relate to production and those that do not, permitting the latter and limiting the former. Members agreed to reduce domestic support policies that directly affect production and trade, known as “amber box” programs, based on a calculation known as the “aggregate measurement of support” (AMS). As with the market access provisions, developing countries committed to make smaller reductions and were granted a longer implementation

---

<sup>47</sup> Under a tariff-rate quota system, a certain quantity of a good is subject to a low tariff; once the threshold quantity has been imported, additional imports of that good face a higher tariff rate.

<sup>48</sup> Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, Annex 1A, 1867 U.N.T.S. 410, art. 5, [http://www.wto.org/english/docs\\_e/legal\\_e/14-ag\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/14-ag_01_e.htm) [hereinafter Agreement on Agriculture].

<sup>49</sup> Healy, *supra* note 38, § 3.2.1.

<sup>50</sup> See *Agriculture: Negotiations, An Unofficial Guide to Agriculture Safeguards*, WTO (Aug. 5, 2008), [http://www.wto.org/english/tratop\\_e/agric\\_e/guide\\_agric\\_safeg\\_e.htm](http://www.wto.org/english/tratop_e/agric_e/guide_agric_safeg_e.htm).

period than developed countries, and LDCs were not required to make any cuts. In addition, Members are permitted to maintain *de minimis* levels of subsidies—five percent of the value of agricultural production for developed countries and ten percent for developing countries. Programs with little or no impact on trade, known as “green box” programs, are not limited under the AoA. Similarly, “blue box” programs, which are programs that would be considered as “amber box” but have conditions to reduce distortion and limit production, are not limited.<sup>51</sup>

Finally, with respect to export subsidies, the AoA capped existing programs and committed Members to reducing the amount spent on, and the products covered by, such programs. The provision encompasses direct subsidies based on export performance, the export sale of non-commercial stocks of agricultural products for less than the price charged in the domestic market, payment on the export of agricultural products, programs reducing the cost of producing goods for export, the preferential internal transportation and freight charges for exported goods, and subsidies on products incorporated into exported goods.<sup>52</sup> As with the other areas, developing countries committed to smaller reductions over a longer period of time as compared to developed countries, and LDCs are not obligated to make any cuts. A summary of the trade liberalization commitments made under the AoA is below.

---

<sup>51</sup> See *Agriculture: Fairer Markets for Farmers*, WTO, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm3\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm3_e.htm) (last visited Oct. 6, 2014).

<sup>52</sup> Agreement on Agriculture, *supra* note 48, art. 9.

	<b>Developed Countries</b> 6 years: 1995-2000	<b>Developing Countries</b> 10 years: 1995-2004	<b>Least-Developed Countries</b>
<b>Tariffs</b>			
Average Cut For All Agricultural Products	-36%	-24%	Tariff levels must be bound, but no reductions required
Minimum Cut Per Product	-15%	-10%	
<b>Tariff Quotas</b>			
Minimum Access Opportunity As % of Domestic Consumption (Base Period: 1986-1990)	5%	5%	5%
<b>Domestic Support</b>			
Total AMS Cuts For Sector (Base Period: 1986-1988)	-20%	-13%	No cuts required
<b>Export Subsidies</b>			
Value Of Subsidies	-36%	-24%	No cuts required
Subsidized Quantities (Base Period: 1986-1990)	-21%	-14%	

Source: *Agriculture: Fairer Markets for Farmers*, WTO, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm3\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm3_e.htm).

2. *Food Security and the Agreement on Agriculture*. – In addition to the basic pillars of the agreement, the AoA also addressed a variety of other issues as well as food security concerns, particularly within

LDCs and NFIDCs, as was reflected in various aspects of the AoA. Indeed, the preamble to the AoA notes that:

[C]ommitments under the reform programme should be made in an equitable way among all Members, having regard to non-trade concerns, including food security[,] . . . [and] that special and differential treatment for developing countries is an integral element of the negotiations, and taking into account the possible negative effects of the implementation of the reform programme on least-developed and net food-importing developing countries[.]<sup>53</sup>

Thus, the AoA sought to develop rules and commitments that would help protect countries' abilities to address food security concerns.

For example, Annex 2 to the AoA provides that public stockholding for food security purposes<sup>54</sup> and domestic food aid may be treated as "green box" programs if they meet the general requirements—*i.e.*, are provided through a publically-funded government program and do not provide price support to producers—as well as other program specific criteria. Likewise, Article 6 recognizes that, because

encourag[ing] agriculture and rural development are an integral part of the development programmes of developing countries, investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to low-income or resource-poor producers in developing country Members shall be exempt from domestic support reduction

---

<sup>53</sup> *Id.* at pmb1.

<sup>54</sup> If stocks are acquired and released at administered prices, the difference between the acquisition price and a set external price would be included in that country's total AMS.

commitments that would otherwise be applicable to such measures . . . .<sup>55</sup>

In addition, while export restrictions or prohibitions are still permitted under certain circumstances by GATT Article XI, AoA Article 12 requires that any Member imposing a restriction or prohibition on exports of foodstuff “give due consideration to the effects” of such a measure on importing Members’ food security. Additionally, prior to implementing such a measure, a Member should provide written notice to the Committee on Agriculture with information on specifics of the measure and, upon request, consult with other Members that have interests as importers.<sup>56</sup>

Moreover, AoA Article 16 requires that developed country Members follow the framework established in the *Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net-Food Importing Developing Countries (NFIDC Decision)*. The *NFIDC Decision*, which was adopted as part of the Uruguay Round negotiations, was based on the recognition that

while the progressive implementation of the results of the Uruguay Round as a whole will generate increasing opportunities for trade expansion and economic growth to the benefit of all Members, during the reform programme least-developed and net-food importing developing countries may experience negative effects in terms of the availability of adequate supplies of basic foodstuffs from external sources on reasonable terms and conditions, including short-term difficulties in financing normal levels of commercial imports of basic foodstuffs.<sup>57</sup>

---

<sup>55</sup> Agreement on Agriculture, *supra* note 48, art. 6.

<sup>56</sup> *Id.* at art. 12(1); *but see* art. 12(2) (stating that the provisions do not apply to developing countries, except when the developing country is a net-food exporter of the product at issue).

<sup>57</sup> WTO Secretariat, *The WTO Agreements Series: Agriculture*, at 22 (2003), [http://www.wto.org/english/res\\_e/booksp\\_e/agrmntseries3\\_ag\\_2008\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/agrmntseries3_ag_2008_e.pdf).

Thus, the *NFIDC Decision* established a number of mechanisms to help ensure countries would have adequate access to food, including periodic reviews of the sufficiency of the levels of food aid provided to developing countries, the adoption of guidelines to ensure the provision of basic foodstuffs to LDCs and NFIDCs is “in fully grant form and/or on appropriate concessional terms,” the consideration of requests by LDCs and NFIDCs for technical and financial assistance related to agricultural productivity and infrastructure, the provision of preferential treatment for LDCs and NFIDCs regarding rules on agricultural export credits, and recognition that developing countries may need to rely on international financial institutions for short-term financing of imports.<sup>58</sup> In short, in negotiating the AoA, Members aimed to take account of the effect of agricultural trade and trade rules on food security.<sup>59</sup>

### C. Doha Development Agenda

While substantial progress was made with the Uruguay Round negotiations in terms of agricultural liberalization and addressing food security issues, the AoA represents the first real attempt at tackling these issues within the international trade regime. As noted above, the WTO and its predecessor, the GATT, have developed through periodic negotiations that have achieved progressive liberalization. The Uruguay Round negotiations were not intended to, nor would they have been likely to, resolve all issues concerning trade in agriculture. Instead, the negotiations recognized the need for progressive reforms in agricultural trade. In fact, Article 20 of the AoA included an agreement among Members that agriculture negotiations would begin one year prior to the end of the

---

<sup>58</sup> *Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net-Food Importing Developing Countries*, LT/UR/D-1/2, 15 April 1994.

<sup>59</sup> WTO Secretariat, *supra* note 57, at 22-23.

AoA's implementation period.<sup>60</sup> Thus, in 2000, Members again turned to negotiations to further liberalize agricultural trade.<sup>61</sup>

Soon after, during the November 2001 Ministerial Conference in Doha, agriculture became part of the single undertaking known as the Doha Development Agenda (DDA), which encompassed negotiations on a wide variety of areas and put the “needs and interests” of developing countries “at the heart” of the negotiations.<sup>62</sup> With respect to agriculture, the Doha Ministerial Declaration espoused the commitment of the Members to undertake “comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support.”<sup>63</sup> The declaration also recognized that special and differential treatment was appropriate for developing countries and that the rules and disciplines to be negotiated should “enable developing countries to effectively take account of their development needs, including food security and rural development.”<sup>64</sup>

Although the DDA negotiations collapsed in 2008, due in part to an inability to agree on agriculture issues, the multiple rounds of negotiations have resulted in discussions on a variety of agriculture and food security related issues. In addition to achieving further liberalization in the three pillars of the AoA, Members are also seeking to address various other issues related to agriculture, many of

---

<sup>60</sup> See Breen, *supra* note 34, at 166-67 (noting that the problems surrounding agricultural trade “are substantial and wide-ranging” and suggesting that “[c]omprehensive agricultural reform on a global scale” was not likely in the short term); Agreement on Agriculture, *supra* note 45, at art. 20 (“Recognizing that the long-term objective of substantial progressive reduction in support and protection resulting in fundamental reform is an ongoing process, Members agree that negotiations for continuing the process will be initiated one year before the end of the implementation period . . .”).

<sup>61</sup> See *Agriculture: Fairer Markets for Farmers*, *supra* note 51.

<sup>62</sup> World Trade Organization, Ministerial Declaration, WT/MIN(01)/DEC/1, ¶ 2 (Nov. 14, 2001), available at [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm).

<sup>63</sup> *Id.* at ¶14.

<sup>64</sup> *Id.*

which aim to address concerns of developing countries, LDCs, and NFIDCs. Provided below is a review of the main areas of the agriculture negotiations under the DDA. As Members have not been able to come to an agreement, and as many of these topics remain highly contentious, this represents some of the issues and potential provisions that had been discussed as of December 2008.<sup>65</sup> At the Bali Ministerial Conference in December 2013, the Members agreed to develop a work program in 2014 to move the DDA to completion. Whether that effort will succeed and under what time period are, of course, unknown at present.

1. *Market Access.* – With respect to market access, Members have discussed further reductions to bound tariff rates for both developed and developing countries, with developing countries committed to smaller reductions (with even smaller reductions for certain small and vulnerable economies) and LDCs, as well as certain other new Members, not committed to reductions. The amount of the reduction would be tied to the current bound tariff level, with larger reductions required for goods with higher tariffs. Tariff reductions would also be applied to in-quota tariff rates. The discussed provisions contain flexibilities in terms of reduced commitments for politically sensitive products (available to all Members) and special products (for developing country Members), *i.e.*, products related to food security and rural development. The table below provides a summary of the general tariff reduction commitments discussed.

---

<sup>65</sup> See generally Special Session of the Committee on Agriculture, *Revised Draft Modalities for Agriculture*, TN/AG/W/4/Rev.4 (Dec. 6, 2008) (hereinafter *Revised Draft Modalities for Agriculture*), available at [http://www.wto.org/english/tratop\\_e/agric\\_e/agchartxt\\_dec08\\_a\\_e.pdf](http://www.wto.org/english/tratop_e/agric_e/agchartxt_dec08_a_e.pdf); Information and Media Relations Division of the WTO Secretariat, *Unofficial Guide to the 6 December 2008 'Revised Draft Modalities'* (Dec. 9, 2008), [http://www.wto.org/english/tratop\\_e/agric\\_e/ag\\_modals\\_dec08\\_e.htm](http://www.wto.org/english/tratop_e/agric_e/ag_modals_dec08_e.htm) [hereinafter *Unofficial Guide to Revised Draft Modalities*].

Developed Countries 5 Years	Developing Countries* 10 years
Tariffs above 75% cut by 70%	Tariffs above 130% cut by 46.7%
Tariffs between 75% and 50% cut by 64%	Tariffs between 130% and 80% cut by 42.7%
Tariffs between 50% and 20% cut by 57%	Tariffs between 80% and 30% cut by 38%
Tariffs below 20% cut by 50%	Tariffs below 30% cut by 33.3%
Minimum average cut of 54%	Maximum average cut of 36%

\* LDCs and certain recent new Members would be exempt from tariff reduction commitments; small and vulnerable economies would be obligated to further-reduced commitments.

Source: *Unofficial Guide to Revised Draft Modalities*, *supra* note 65.

2. *Domestic Support*. – In terms of domestic support, Members have discussed further reductions to trade-distorting programs, including amber box, blue box, and *de minimis* level programs; there have also been discussions to limit product-specific support for both amber and blue box programs. Larger reductions would be required for countries with larger amounts of support. Developing countries would be subject to smaller reductions, and LDCs and NFIDCs would be exempt from reduction commitments.<sup>66</sup> Revisions to the treatment of programs as green box programs have also been discussed, with the objective of allowing more development-related programs to be characterized as green box and ensuring that green box programs actually are separated from production levels. For example, included among programs that could be considered green box government service programs would be, *inter alia*, programs related to nutritional food security. In addition, there have been proposals to exempt public stockholding and domestic food aid to support low-income or resource-poor farmers for hunger and poverty reduction purposes from developing countries' AMS

---

<sup>66</sup> Recent new Members would be subject to smaller cuts or exempt from reduction commitments.

calculations.<sup>67</sup> The table below provides a summary of the general domestic support reduction commitments discussed.<sup>68</sup>

---

<sup>67</sup> *Revised Draft Modalities for Agriculture*, *supra* note 65, at Annex B.

<sup>68</sup> As this table is intended to reflect only the general commitments, it does not include certain country-specific commitments (such as for recent new Members) nor does it include per-product limits.

<b>Overall Trade-Distorting Domestic Support (Amber Box + Blue Box + De Minimis)</b>				
	Developed Countries	Developing Countries (if support is above <i>de minimis</i> )	Developing Countries (if support is below <i>de minimis</i> )	LDCs and NFIDCs
Timeframe	5 years	8 years	N/A	N/A
Highest Tier (support above \$60 billion)	-80%	-53.3%	No cuts required, but must stay within base amount of support	No cuts required
Middle Tier (support of \$10 billion - \$60 billion)	-70%	-46.7%		
Lower Tier (support below \$10 billion)	-55%	-36.7%		
Immediate Cuts	-33% for highest & middle tier; -25% for lower tier	-20%		
<b>Amber Box Support</b>				
	Developed Countries	Developing Countries (if support above \$100 million)	Developing Countries (if support is below \$100 million)	LDCs and NFIDCs
Timeframe	5 years	8 years	N/A	N/A
Highest Tier (support above \$40 billion)	-70%	-46.7%	No cuts required	No cuts required
Middle Tier (support of \$15 billion - \$40 billion)	-60%	-40%		
Lower Tier (support below \$15 billion)	-45%	-30%		
Immediate Cuts	-25% (for highest & middle tier only)	N/A		
<b>De Minimis Support</b>				
	Developed	Developing	Developing	LDCs

	Countries	Countries (if support is above <i>de minimis</i> )	Countries (if support is below <i>de minimis</i> )	and NFIDCs
Timeframe	Immediate	3 years	N/A	N/A
<i>De Minimis</i> level	2.5%	6.7% (exempt from cuts if almost all support is for subsistence and resource-poor producers)	No cuts required	No cuts required
<b>Blue Box Support</b>				
	Developed Countries	Developing Countries	LDCs and NFIDCs	
Timeframe	Immediate	N/A	N/A	
Maximum Value of Support	2.5% of average total value of agricultural production	5% of average total value of agricultural production	No cuts required	

Source: *Revised Draft Modalities for Agriculture*, *supra* note 65; *Unofficial Guide to Revised Draft Modalities*, *supra* note 65.

3. *Export Subsidies and Other Export-Related Measures.* – Members have discussed eliminating all export subsidies over a set period of time, with more time granted for developing countries than for developed countries. With respect to export credits, export credit guarantees, and insurance programs, these measures would be disciplined to ensure that they do not act as hidden subsidies. Disciplines imposed would be more lenient for developing countries, LDCs, and NFIDCs. In addition, disciplines would be imposed on the activities of state-trading enterprises that engage in agricultural exports, which would require Members to eliminate or reduce export subsidies and the use of monopoly powers for such enterprises.<sup>69</sup> In certain developing countries, LDCs, and small, vulnerable economies,<sup>70</sup> however, agricultural exporting state-trading enterprises that preserve domestic prices for consumers and ensure food security

<sup>69</sup> *Revised Draft Modalities for Agriculture*, *supra* note 65, at Annex K.

<sup>70</sup> Small, vulnerable economies are WTO Members that are especially vulnerable to economic uncertainties and environmental shocks, determined by their share of world trade. See *Briefing note: Small, Vulnerable Economies*, WORLD TRADE ORG., [http://www.wto.org/english/thewto\\_e/minist\\_e/min11\\_e/brief\\_svc\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min11_e/brief_svc_e.htm) (last visited Oct. 7, 2014).

could maintain and use monopoly powers.<sup>71</sup> Finally, tighter disciplines would be imposed for countries implementing an export prohibition or restriction under GATT Article XI(2)(a), and increased transparency regarding and monitoring of such measures would be required. The need for additional disciplines on the use of export restrictions or prohibitions was highlighted during the food price crises of 2007-2008 and 2010-2011, during which a number of countries imposed such measures with only a few apparently providing notification to the WTO. A report on the trade measures of the G20 countries indicates that, between October 2008 and May 2012, fourteen of these twenty countries (all of which are WTO Members) imposed quantitative restrictions on agricultural exports;<sup>72</sup> other reports indicate that during the 2007-2008 food price crisis alone, around forty countries put food export restrictions or prohibitions in place.<sup>73</sup> In comparison, from January 1995 to early 2013, only eight Members notified the WTO of quantitative restrictions on agricultural exports.<sup>74</sup>

4. *Safeguards.* – With respect to the safeguard provision currently in the AoA, Members have discussed reducing the products subject to the provision and implementing a phase-out date. There has also been a proposal for a new special safeguard mechanism (SSM) that would allow developing countries to temporarily increase tariffs to protect domestic producers facing import surges and price drops. While there is agreement that a SSM should exist, there has not been agreement on exactly what can trigger usage of the safeguard, the tariff increase that can be imposed, and how long the

---

<sup>71</sup> *Revised Draft Modalities for Agriculture*, *supra* note 65, at Annex K.

<sup>72</sup> Committee on Agriculture, *Transparency Opportunities – Export Restrictions*, ¶ 1.2, G/AG/W/113 (Sept. 16, 2013) [hereinafter *Transparency Opportunities*].

<sup>73</sup> See Stewart & Manaker, *supra* note 3, at 602-03 (reviewing export restrictions and prohibitions put in place during the 2007-2008 and 2010-2011 food price crises); see also Terence P. Stewart, *The Food Crisis: A Survey of Sources and Proposal for Preventing a Global Catastrophe*, 9-10 (2008), [http://www.ttalk.biz/pdfs/Food\\_Crisis\\_Pamphlet\\_from\\_Stewart\\_and\\_Stewart\\_June\\_2008.pdf](http://www.ttalk.biz/pdfs/Food_Crisis_Pamphlet_from_Stewart_and_Stewart_June_2008.pdf) (reviewing actions taken and implications of imposing export restraints and prohibitions during the 2007-2008 crisis).

<sup>74</sup> *Transparency Opportunities*, *supra* note 72, at ¶ 1.2.

increase should be applied. In particular, there has been contention as to whether a SSM would allow developing countries to impose tariffs above the bound rates agreed upon during the Uruguay Round (or during accession for those Members that joined post-Uruguay).<sup>75</sup>

5. *Food Aid.* – With respect to international food aid, aid would be treated differently depending on whether or not it was provided in response to an emergency. Emergency food aid—based on whether an applicable international organization has declared an emergency—would be treated as being in a “safe box” so as not to impede the provision of such aid. Non-emergency food aid would be disciplined in a manner to prevent it from displacing commercial trade in the recipient country. Specifically, the Members discussed requiring that food aid be needs-driven, in grant form, not tied to commercial exports of agriculture, not linked to the donor’s development objectives, and not re-exported (except in limited situations).<sup>76</sup> Members would also be committed to not providing in-kind food aid that could adversely affect production in the recipient country and would be encouraged to source food aid from within or nearby the recipient country.

6. *Monitoring and Transparency.* – In addition to the specific requirements, most areas of negotiation have also discussed the need for increased transparency in terms of the steps Members take under the various provisions, as well as mechanisms for monitoring the progress and activities under these provisions. Such provisions are aimed at ensuring that Members keep each other informed of measures related to agricultural trade and the AoA obligations. Notification requirements would concern Members utilizing quotas, safeguards, domestic support measures and export subsidies, providing export financing or international food aid, or maintaining agricultural exporting state trading enterprises.<sup>77</sup> Developing countries would also be provided with advice and assistance in

---

<sup>75</sup> See *An Unofficial Guide to Agriculture Safeguards*, WORLD TRADE ORG. 1 (Aug. 5, 2008), [http://www.wto.org/english/tratop\\_e/agric\\_e/ssm\\_explained\\_4aug08\\_e.pdf](http://www.wto.org/english/tratop_e/agric_e/ssm_explained_4aug08_e.pdf).

<sup>76</sup> *Revised Draft Modalities for Agriculture*, *supra* note 65, at Annex L.

<sup>77</sup> *Id.* at Annex M.

pursuit of meeting their notification obligations.<sup>78</sup> In addition, the Committee on Agriculture, as well as other working bodies, would be tasked with “provid[ing] an effective forum for Members to monitor compliance with commitments and disciplines under the [AoA] and [undertaking] surveillance of progress towards the long-term objective of establishing a fair and market-oriented agricultural trading system.”<sup>79</sup> This would include reviewing the implementation of commitments and obligations regarding, *inter alia*, the *NFIDC Decision*, special and differential treatment provisions related to development concerns, and notifications of food aid and export prohibitions.<sup>80</sup>

7. *Trade Facilitation.* – Issues relating to trade facilitation are present in GATT Articles V, VIII, and X, which concern the free transit of goods, the imposition of fees and other requirements relating to imports and exports, and the publication and administration of measures relating to areas such as classification, valuation, and import and export requirements. These provisions, however, do not have specific frameworks for certain areas, such as customs procedures or transparency requirements.<sup>81</sup> The potential to enhance provisions on trade facilitation was raised during the first WTO Ministerial Conference in Singapore in 1996. During this ministerial, the Members agreed to have the Council for Trade in Goods “undertake exploratory and analytical work . . . on the simplification of trade procedures in order to assess the scope for WTO rules” and to give “careful attention . . . to minimizing the burdens on delegations, especially those with more limited resources.”<sup>82</sup> The Ministerial Declaration adopted during the Doha Ministerial also identified trade facilitation as an area in which

---

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Briefing Note: Trade Facilitation – Cutting “Red Tape” at the Border*, WORLD TRADE ORG., [http://wto.org/english/thewto\\_e/minist\\_e/mc9\\_e/brief\\_tradfa\\_e.htm](http://wto.org/english/thewto_e/minist_e/mc9_e/brief_tradfa_e.htm) (last updated Feb. 12, 2014).

<sup>82</sup> World Trade Organization, Ministerial Declaration of 18 December 1996, WT/MIN(96)/DEC, ¶¶ 21-22 (1996).

negotiations should take place, “[r]ecognizing the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area.”<sup>83</sup> Following years of exploratory work, negotiations on trade facilitation were finally launched in July 2004.<sup>84</sup>

The negotiations on trade facilitation aimed to address issues relating to the expeditious movement, release, and clearance of goods; enhanced technical assistance and capacity building; and effective cooperation between customs and other authorities.<sup>85</sup> In addition to acknowledging the need for special and differential treatment regarding the commitments undertaken by developing countries and LDCs, the negotiations also “recognized that the provision of technical assistance and support for capacity building is vital for developing and least-developed countries to enable them to fully participate in and benefit from the negotiations” and sought to require that developed Members ensure that sufficient support and assistance would be provided to developing countries and LDCs during negotiations.<sup>86</sup> As discussed below, an agreement on trade facilitation was adopted as part of the “mini-package” agreed upon during the 2013 Bali Ministerial.

#### D. Aid for Trade Program

During the 2005 Ministerial Conference in Hong Kong, the WTO launched the Aid for Trade program. The program was developed based on the understanding that developing countries, and LDCs in particular, needed to grow their trade capacity and infrastructure to fully benefit from liberalized trade. The focus of the Aid for Trade program is to help the existing development assistance

---

<sup>83</sup> World Trade Organization, Ministerial Declaration of 14 November 2001, WT/MIN(01)/DEC/1, ¶ 27 (2001).

<sup>84</sup> See *Trade Facilitation: Background*, WORLD TRADE ORG., [http://www.wto.org/english/tratop\\_e/tradfa\\_e/tradfa\\_intro\\_e.htm](http://www.wto.org/english/tratop_e/tradfa_e/tradfa_intro_e.htm) (last visited Apr. 20, 2014).

<sup>85</sup> Decision Adopted by the General Council, *Doha Work Programme*, WT/L/579 Annex D (Aug. 2, 2004).

<sup>86</sup> *Id.*

mechanisms work together and more effectively and to ensure that development agencies understand the trade needs of those receiving assistance.<sup>87</sup> Four areas have been specifically identified as needing aid: (1) trade policy and regulation, (2) economic infrastructure, (3) productive capacity building, and (4) adjustment assistance. The program is used to identify needs within recipient countries; act as a bridge between donors and developing countries; and monitor aid flows, commitments, and needs.<sup>88</sup>

The Aid for Trade program was not the first recognition by the international community of the importance of trade assistance, and aid for trade-related assistance has been provided for many years.

During the 1986-1994 Uruguay Round of trade negotiations, trade-related assistance was mainly aimed at technical support to help developing countries negotiate and implement trade agreements. Subsequently, the scope expanded to include building supply-side capacities . . . . Now, the agenda also includes trade-related structural adjustment programmes and other trade-related needs.<sup>89</sup>

However, the adoption of this program highlights the WTO's understanding that the global trade regime "has a clear role and responsibility for ensuring that countries can effectively participate in—and benefit from—world trade."<sup>90</sup> Since the program moved into its first stage of implementation in 2007, the Aid for Trade program has seen positive, wide-reaching results. In the course of

---

<sup>87</sup> See *Aid for Trade Fact Sheet*, WORLD TRADE ORG., [http://www.wto.org/english/tratop\\_e/devel\\_e/a4t\\_e/a4t\\_factsheet\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/a4t_e/a4t_factsheet_e.htm) (last visited Apr. 20, 2014).

<sup>88</sup> See *Aid for Trade*, WORLD TRADE ORG., [http://www.wto.org/english/tratop\\_e/devel\\_e/a4t\\_e/aid4trade\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/a4t_e/aid4trade_e.htm) (last visited Apr. 20, 2014).

<sup>89</sup> *Aid for Trade: Is it Working?*, ORG. FOR ECON. COOP. & DEV., 1 (2013), <http://www.oecd.org/dac/aft/45581702.pdf>.

<sup>90</sup> *Aid for Trade Fact Sheet*, *supra* note 87.

conducting its third annual review in 2010, the Organization for Economic Cooperation and Development (OECD) and the WTO jointly sent out a request for “case stories” relating to the Aid for Trade program; 269 case stories were submitted by countries, bilateral and multilateral donors, regional economic communities, and other entities.<sup>91</sup> These case studies related to projects covering the development of public sector human capacities, improved policies, hard infrastructure (e.g., roads, ports), soft infrastructure (e.g., regulatory frameworks), industry-specific policies, and support for the private sector.<sup>92</sup> Moreover, of the 269 case stories, thirty-three were submitted by LDCs and 123 concerned activities undertaken in LDCs, indicating that LDCs have been significant participants in the Aid for Trade program as was intended.<sup>93</sup>

#### E. Bali Package

Following the collapse of the DDA negotiations in 2008, Members called for a change to the approach of the negotiations during the 2011 Ministerial Conference in an effort to get negotiations back on track.<sup>94</sup> The Members decided to focus on a “mini-package” of issues for which it was believed that agreement would be more likely. The mini-package encompassed a variety of issues that were already part of the DDA, including trade facilitation, agriculture, cotton, development, and LDC-related issues. Despite eleventh hour negotiations and some indications that an agreement would not be reached, the Bali Ministerial Conference concluded on December 7, 2013 with a package of adopted decisions.

---

<sup>91</sup> Liliana Foletti, *Aid for Trade in Action*, ORG. FOR ECON. COOP. & DEV. 20 (2013), <http://www.oecd.org/aidfortrade/Aid%20for%20Trade%20in%20Action.pdf>.

<sup>92</sup> *Id.* at 22.

<sup>93</sup> *Id.* at 23.

<sup>94</sup> See *Briefing Note: Agriculture Negotiations – The Bid to ‘Harvest’ Some ‘Low Hanging Fruit’*, WORLD TRADE ORG. (Nov. 22, 2013), [http://www.wto.org/english/thewto\\_e/minist\\_e/mc9\\_e/brief\\_agneg\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/mc9_e/brief_agneg_e.htm) [hereinafter *Agriculture Negotiations*].

Among the adopted decisions were a number of provisions relating to agriculture, developing countries, and food security. First, Members recognized the continuing need among developing countries and LDCs for trade-related assistance and reaffirmed their commitment to Aid for Trade.<sup>95</sup> Second, Members agreed to expand the list of government programs that could be treated as green box programs to include programs related to land reform and rural livelihood security for the purpose of promoting development and alleviating poverty.<sup>96</sup> Third, there was an interim agreement that Members would refrain from challenging a developing country Member that exceeded its domestic support limits because of public stockholding for food security purposes; this provision is only intended to remain in place until a permanent solution is agreed upon.<sup>97</sup> Fourth, Members adopted additional disciplines regarding the administration and monitoring of tariff-rate quotas, which aim to address situations where quotas are persistently under-filled and to ensure that the quotas do not serve as an additional barrier to trade.<sup>98</sup> Fifth, Members reaffirmed their commitment to eliminate export subsidies.<sup>99</sup> Sixth, Members adopted an agreement on trade facilitation that requires Members to undertake a number of

---

<sup>95</sup> World Trade Organization, Ministerial Declaration of 7 December 2013, WT/MIN(13)/34 (2013).

<sup>96</sup> World Trade Organization, Ministerial Declaration of 7 December 2013, WT/MIN(13)/37 (2013).

<sup>97</sup> World Trade Organization, Ministerial Declaration of 7 December 2013, WT/MIN(13)/38. To rely on this provision, the developing country Member's program must meet the criteria established in Annex 2 of the AoA and the Member must provide notice of, and additional information on, such a measure to the Committee on Agriculture. *Id.*

<sup>98</sup> World Trade Organization, Ministerial Declaration of 7 December 2013, WT/MIN(13)/39; see *Agriculture Negotiations*, *supra* note 94.

<sup>99</sup> World Trade Organization, Ministerial Declaration of 7 December 2013, WT/MIN(13)/40 (2013). Preferential country-of-origin rules for LDC products, preferential trade in services provisions for LDCs, and additional monitoring of the special and differential treatment provided to developing countries and LDCs were also agreed upon. World Trade Organization, Bali Ministerial Declaration and Decisions of 7 December 2013, WT/MIN(13)/DEC (2013), [http://wto.org/english/thewto\\_e/minist\\_e/mc9\\_e/balipackage\\_e.htm#agriculture](http://wto.org/english/thewto_e/minist_e/mc9_e/balipackage_e.htm#agriculture).

commitments to ease the movement of goods, including areas such as enhancing the provision of information on export, import, and transit requirements; further disciplining the imposition of fees and other charges; ensuring interested parties' participation in developing new measures and their ability to challenge customs determinations; and improved cooperation between customs agencies.<sup>100</sup> The trade facilitation agreement also recognizes that developing countries and LDCs should be provided with assistance and support for capacity building and states that LDCs will be required to undertake commitments only "to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities."<sup>101</sup> Finally, the Members encouraged developed country Members to allow duty-free and quota-free access for at least ninety-seven percent of products originating from LDCs and encouraged developing country Members to provide duty-free and quota-free access to products originating from LDCs to the extent possible.<sup>102</sup>

Despite its ultimate success, the Bali Ministerial faced some significant hurdles and required around the clock negotiations to come to a conclusion. One highly contentious area that almost led to a failure at Bali was the treatment of public stockholding for food security purposes. Under the AoA, public stockholdings that are developed through government purchases at supported prices are treated as amber box programs and are thus limited.<sup>103</sup> In November 2012, the G33 Group (a group of forty-six developing countries) proposed an amendment to exempt from limitation government stockholdings and purchases from low-income or resource-poor farmers at supported prices.<sup>104</sup> There were concerns, however, that a

---

<sup>100</sup> World Trade Organization, Ministerial Declaration of 7 December 2013, WT/MIN(13)/36.

<sup>101</sup> *Id.* at sec. II, ¶ 1.3.

<sup>102</sup> World Trade Organization, Ministerial Declaration of 7 December 2013, WT/MIN(13)/44.

<sup>103</sup> Agreement on Agriculture, *supra* note 48, at Annex 2; see *Agriculture Negotiations*, *supra* note 94.

<sup>104</sup> See *Revised Draft Modalities for Agriculture*, *supra* note 65, at Annex B; *Agriculture Negotiations*, *supra* note 94.

lack of discipline on public stockholdings developed by purchases at supported prices could result in excess stock being unloaded on the international market at low prices, depressing global prices and negatively affecting other countries.

The concern over public stockholding was exemplified by India's 2013 Food Security Bill. Faced with hundreds of millions of undernourished people and political pressure via an upcoming election, the Indian government passed a bill aiming to combat the country's widespread hunger. Part of this bill provided for the government purchase of cereals, with a target purchase quantity of sixty-two million tons, which is equal to about twenty percent of India's cereal production in 2012.<sup>105</sup> The substantial quantity of cereal that could be purchased under this program raises the possibility that large amounts of unused stockpiles could be dumped on the international market, negatively impacting other Members, including other developing countries.<sup>106</sup> Indeed, since the completion of the Bali Ministerial, Canada and the United States have raised questions concerning India's exportation of surplus wheat stocks at prices lower than the selling prices of other wheat-producing countries.<sup>107</sup>

---

<sup>105</sup> See Megha Bahree, *How Bad, Really, Is India's New Food Security Bill*, FORBES, Sept. 2, 2013, <http://www.forbes.com/sites/meghabahree/2013/09/02/how-bad-really-is-indias-new-food-security-bill/>.

<sup>106</sup> David Blandford, Professor of Agriculture & Environmental Economics, Penn State University, Remarks at the Penn State Journal of Law and International Affairs Symposium: The 9 Billion People Question: The Challenge of Global Resource Scarcity (Feb. 7, 2014), <http://mediasite.dsl.psu.edu/Mediasite/Play/623941f54f854efaaa7bcd1a9805b0de1d> (starting at 03:35:39) (noting that when excess stockpiles are dumped on the international market, developing countries can be harmed).

<sup>107</sup> Committee on Agriculture, *Points Raised by Members Under the Review Process*, G/AG/W/116, at 8 (Jan. 17, 2014); Amiti Sen, *India Refutes US, Canada Allegations of Subsidised Wheat Exports*, HINDU BUS. LINE, Feb. 10, 2014, <http://www.thehindubusinessline.com/economy/india-refutes-us-canada-allegations-of-subsidised-wheat-exports/article5674465.ece>.

Nonetheless, while some food security-related measures have proven to be highly contentious, these disagreements do not stem from any belief that nations should not be able to protect their populations from food shortages and provide food to those in need. Instead, disagreement reflects concerns that countries can address the needs of their populations in other WTO-consistent ways and thus prevent adding distortions to the trading system.

#### F. Next Steps

While there is hope that the completion of the mini-package at Bali will reinvigorate negotiations at the WTO, the Members still face a long road to completing the rest of the DDA, with agricultural issues providing no shortage of difficulties. At the same time, the WTO (and the global community as a whole) has had to balance the conflicting needs that often arise in the pursuit of trade liberalization, protection from food shortages, and access to food for vulnerable regions. For example, during a year where there is a food shortage due to weather, Country A may impose an export restriction to protect its domestic supply and ensure access to food for its population; this action, however, may mean that Country B is unable to procure a sufficient supply of food for its population. Both nations are aiming to make sure their populations have enough food. Should the trade rules allow Country A to protect its supply, creating problems for Country B? Or should Country A be prohibited from taking such actions so that Country B may get access to food, but at the expense of Country A's population? There is, of course, no easy answer. Instead, rules should aim to balance various needs and ensure that, where one action may create a shortcoming, other acts can fill the void. Many of the areas that are part of the DDA seek to pursue such an agenda by addressing further trade liberalization and additional reduction in the presence of trade-distorting subsidies, as well as issues directly related to food security and non-trade issues aimed at helping developing countries in their development goals.

The importance of completing the DDA negotiations, and of continuing to address food security in the context of trade rules, is demonstrated by the types of measures the DDA seeks to address.

As explained by Professor David Blandford, measures that would be affected by the DDA negotiations are those that have “the biggest economic drawbacks” and “ultimately are self-defeating in terms of improving the competitive position of domestic agriculture.”<sup>108</sup> This is also highlighted by the work of other international organizations. For example, the HLTf’s CFA and updated CFA call for adjustments to trade rules in areas like minimizing export restrictions, reducing import tariffs and other restrictions, improving trade facilitation, promoting agricultural trade, ensuring resources for Aid for Trade, and reducing trade distortions in higher-income countries.<sup>109</sup> These goals are consistent with the objectives of the DDA and, in fact, the updated CFA calls for the completion of the DDA negotiations.<sup>110</sup> Similarly, in May 2011, a group of international organizations<sup>111</sup> prepared a report for the G20 with policy suggestions to address food price volatility concerns. With respect to trade policies, the report recommends that steps be taken to improve market access (but include safeguards for developing countries), reduce trade-distorting domestic support, eliminate export subsidies, and strengthen rules regarding export restrictions on foodstuffs.<sup>112</sup> In 2012, an even larger group of entities<sup>113</sup> made additional recommendations to the G20 regarding sustainable agriculture and small-family farms. In addition to the recommendations provided in

---

<sup>108</sup> Blandford, *supra* note 106, at 03:34:45.

<sup>109</sup> High Level Task Force on the Global Food Security Crisis, *Updated Comprehensive Framework for Action* 6-7 (Sept. 2010), [http://un-foodsecurity.org/sites/default/files/UCFA\\_English.pdf](http://un-foodsecurity.org/sites/default/files/UCFA_English.pdf).

<sup>110</sup> *Id.* at 7.

<sup>111</sup> Contributions were made by the FAO, the International Fund for Agricultural Development, the International Monetary Fund, the OECD, the U.N. Conference on Trade and Development, the World Food Programme, the World Bank, the WTO, the International Food Policy Research Institute, and the HLTf.

<sup>112</sup> Food and Agriculture Organization of the U.N., *Price Volatility in Food and Agriculture Markets: Policy Responses*, 23-25 (June 2, 2011), [http://www.worldbank.org/foodcrisis/pdf/Interagency\\_Report\\_to\\_the\\_G20\\_on\\_Food\\_Price\\_Volatility.pdf](http://www.worldbank.org/foodcrisis/pdf/Interagency_Report_to_the_G20_on_Food_Price_Volatility.pdf).

<sup>113</sup> In addition to the contributors to the 2011 policy report (except for the International Monetary Fund), the following groups also contributed to the 2012 report: Bioversity International, the CGIAR Consortium, and the Inter-American Institute for Cooperation on Agriculture.

the 2011 report, this report also suggested that the G20 governments improve transparency and timely notifications of trade policy and domestic support measures, support the Aid for Trade initiative, and strengthen trade facilitation.<sup>114</sup> Again, the 2011 and 2012 recommendations are consistent with the objectives of the DDA negotiations.<sup>115</sup>

In addition to recommendations that echo many of the areas covered by the DDA negotiations, suggestions have been made with respect to other issues. For example, the E15 Initiative, a partnership between the International Centre for Trade and Sustainable Development and the World Economic Forum, is “a non-partisan, expert-led multi-stakeholder dialogue to explore options for strengthening the governance and functioning of the multilateral trade system.”<sup>116</sup> The E15 Initiative established fifteen expert groups—each covering a different topic—to provide policy options for the international trade regime; one of the expert groups was tasked with addressing agriculture and food security. Through this program, the Agriculture and Food Security Group developed a set of policy options aimed at addressing challenges that emerged after the establishment of the DDA. In addition to encouraging the pursuits of the DDA, the group also provided additional suggestions, such as establishing provisions on support for biofuels, developing provisions directed at smallholders and their access to markets, and

---

<sup>114</sup> Food and Agriculture Organization of the U.N., *Sustainable Agriculture Productivity Growth and Bridging the Gap for Small-Family Farms*, 23 (June 12, 2012), [http://library.cgiar.org/bitstream/handle/10947/2702/Sustainable\\_Agricultural\\_Productivity\\_Growth\\_and\\_Bridging\\_the\\_Gap\\_for\\_Small-Family\\_Farms.pdf?sequence=1](http://library.cgiar.org/bitstream/handle/10947/2702/Sustainable_Agricultural_Productivity_Growth_and_Bridging_the_Gap_for_Small-Family_Farms.pdf?sequence=1). The report also recommended better adherence to science-based sanitary and phytosanitary measures developed by the FAO, the World Health Organization, and the World Organisation for Animal Health and support for sanitary and phytosanitary capacity building. *Id.*

<sup>115</sup> It is important to note that the groups involved in the HLTF and those that contributed to the 2011 and 2012 reports overlap to a large degree and thus one would expect their recommendations to be consistent.

<sup>116</sup> Stefan Tangermann, *A Post-Bali Food Security Agenda*, INT'L CENTER FOR TRADE AND SUSTAINABLE DEV. 38 (Dec. 2013), [http://issuu.com/ictsd/docs/ag\\_post\\_bali\\_policy/1?e=4233984/7260487](http://issuu.com/ictsd/docs/ag_post_bali_policy/1?e=4233984/7260487).

creating measures to address climate change and environmental concerns.<sup>117</sup>

As demonstrated by the recommendations of the E15 Initiative, HLTF, and entities involved in the G20 reports, international trade and the global trade regime can play an important role in addressing food security concerns. Moving forward, the international community should continue to work toward the completion of the DDA negotiations, as well as examine other ways in which the international trade rules can be monitored to ensure they are a positive force in addressing global hunger.

### CONCLUSION

The causes of, and contributing factors to, global food insecurity are numerous and complex. It is clear, however, that the WTO and international trading rules play an important role in the pursuit of global food security. In fact, when the MDGs were developed, it was envisioned that the WTO would be involved in their implementation.<sup>118</sup> The international trade regime has sought to address these issues to the extent that they directly and indirectly relate to trade. The WTO rules and negotiation process are not designed to, nor were they intended to, address any and all trade-distortive practices in one fell swoop. Instead, the rules have been, and should continue to be, progressively developed. Moreover, while global hunger may be a consistent problem, the contributing factors may evolve. The international community must continue to examine how trade rules influence food security issues and how they can be modified to ensure that the evolving needs of the global community are met.

---

<sup>117</sup> *Id.* at 18-26.

<sup>118</sup> G.A. Res. 55/162, U.N. Doc. A/55/L.56/Rev.1 (Dec. 18, 2000).