



OSSERVATORIO SU COMMERCIO INTERNAZIONALE E DIRITTI UMANI N. 2/2022

1. RECENT DEVELOPMENTS ON THE RELEVANCE OF FOOD SECURITY AND RIGHT TO FOOD IN WTO LATEST AGRICULTURE NEGOTIATIONS

1. Introduction

How World Trade Organization (WTO) rules on agriculture should deal with food security in a more effective way? This is an old debate, but many recent events like pandemics, price crises, and wars have constantly reaffirmed global trade and food security relationship and their mutual relevance in the institutional agenda.

Negotiators of international trade rules have always considered treating agriculture products differently. The [GATT 1947](#) contained many exceptions for trade in agriculture, like agreeing for States to use export subsidies on agricultural primary products while export subsidies on industrial products were banned.

On that premise, the Agreement on Agriculture (AoA), which is the main WTO Agreement that regulates agricultural issues, was negotiated during the Uruguay Round, in times of agricultural overproduction for several Member States, and in a different political context.

In the [Ministerial Declaration of Punta del Este of 1986](#), Ministers identified the agricultural system as an important issue for the upcoming [Uruguay Round](#), and the contracting parties agreed «(...) *there is an urgent need to bring more discipline and predictability to world agricultural trade by correcting and preventing restrictions and distortions including those related to structural surpluses so as to reduce the uncertainty, imbalances and instability in world agricultural markets* (...).».

The purpose of the AoA is to contribute «*to establish a fair and market-oriented agricultural trading system and that a reform process should be initiated through the negotiation of commitments on support and protection and through the establishment of strengthened and more operationally effective GATT rules and disciplines*» ([AoA](#), preamble), and expresses in treaty language the political will of the negotiators to bring agriculture closer to the normal WTO regime applicable for goods.

Indeed, the gradual increase of producers' market exposure and the incremental decrease of permissible State aid is what the three operational modules of commitments of the AoA, the so-called "Three Pillars", aim to bring about.

In relation to this set of rules, the most important reform of international trade rules in agriculture since the WTO was established in 1994 was at the 2015 [Nairobi Ministerial Conference](#) where WTO Members agreed on the decision to eliminate agricultural export subsidies.

Against this background, the framework of the AoA has mainly supported certain categories of WTO Members, mostly Countries with heavily subsidized agricultural sectors and significant import rates (J. SCOTT, *The Future of Agricultural Trade Governance in the World Trade Organization, in International Affairs*, 2017, p. 1182). In accordance with the rationale of the AoA, productivity in the sector is not measured in terms of human and environmental health or soil quality, but merely in terms of commodity output and economic growth. All of these aspects and the general approach which is taken in the AoA pose serious challenges to the realization of food security.

However, there are certain provisions in the AoA that could ameliorate the negative effects of trade on particular WTO Members, being special and differential treatment and domestic support rules among the most relevant. These and other provisions are at the core of the current negotiations on agriculture.

2. *The impact of trade on food security*

In the last two decades, the debate around trade, agriculture and food security has been shaped by the activities of the [Special rapporteur on the right to food](#) (on the role and activities of the Special rapporteur see L. MANCA, *Il Relatore speciale delle Nazioni Unite sul diritto all'alimentazione, in Ordine internazionale e diritti umani*, (4) 2015, pp. 630-649).

Olivier De Schutter, mandate holder in the period 2008-2014, has been a prominent critic of relying on trade to pursue food security in developing Countries. He focused on the relevance of a human rights approach for trade, and how the right to food and food security should be part of the global agenda, also in the WTO framework (O. D. SCHUTTER, *A human rights approach to trade and investment policies, in The Global Food Challenge. Towards a human rights approach to trade and investment policies*, Institute for Agricultural and Trade Policy, 2008, pp. 14-28, O. D. SCHUTTER, *International Trade in Agriculture and the Right to Food*, in O. D. SCHUTTER and K. Y. CORDES (eds.), *Accounting for Hunger. The Right to Food in the Era of Globalisation*, Hart Publishing, London, 2011, pp. 137-192, O. D. SCHUTTER, *The World Trade Organization and the Post-Global Food Crisis Agenda: Putting Food Security First in the International Trade System*, Briefing Note 4, 2011). His contribution has also been crucial in arguing for the [emergence of food sovereignty in international law](#) (for an analysis on food sovereignty in international law see A. AZZARITI, *The right to food sovereignty in international law, in Ordine internazionale e diritti umani*, (4) 2021, pp. 990-1012). Within the ramifications of this concept, food sovereignty against trade liberalisation combines the right of people to reclaim control over food systems (right of peasants and alternative food systems) and the intervention of State policy (development and implementation of food policies).

Particular attention towards the implication of trade rules for the realization of the right to food has also been expressed by the current mandate holder, Michael Fakhri. In his first [report \(A/75/219\)](#), *The right to food in the context of international trade law and policy*, he blends trade and human rights perspectives and provides an institutional framework and principles to expand the understanding of the right to food in political, economic and ecological terms. First of all, he recognizes the importance of international trade rules in order to ensure the complete realization of the right to food (A/75/219, cit. para. 6). He criticizes the limits of both trade and human rights policy frameworks as their narrow approaches and lack of institutional proposals for a proper co-existence of the two regimes (A/75/219, cit. para. 5). Finally he pinpoints that, according to the parameters of the trade system (balance of

trade/balance of payment, volume of production), foodstuffs are considered a commodity to be treated as any other good (A/75/219, cit. para. 41).

The last twenty years are also the timeline of the current round of negotiations, the [Doha Round](#). During this latest round of trade negotiations among WTO Members, trade negotiations have been at an impasse since their launch in 2001, and have gotten particularly bogged down over the difficult political and technical characteristics of agricultural trade reform. The Doha Round could bring about much-needed reform to agricultural trade policy and thus contribute to improved global food security. Such results would also show the vital role of WTO in regulating and reforming trade, especially considering current problems with cases adjudications for the appointment of Appellate Body Members ([J. PAUWELYN, *WTO Panels Without An Appellate Body: Can Rules-Based Dispute Settlement Survive Post December 2019 Under the Status Quo?*, IELP Blog, 2019](#), [G. SACERDOTI, *The stalemate concerning the Appellate Body of the WTO: Any way out?*, in QIL, Zoom-out 2019](#), p. 37 ff.). The current institutional gap at the judicial level could thus be balanced by the capacity to be a proper and effective environment for trade discussion and reform (for a general overview over the recent crisis of multilateralism in International Organizations and neo-protectionism see [Le organizzazioni internazionali fra crisi del multilateralismo ed iniziative di neo-protezionismo](#), in [Ordine internazionale e diritti umani, Gli Speciali, July 2020](#), and, for a specific focus on dispute settlement [G. M. RUOTOLO, *La crisi di legittimazione dei sistemi internazionali di soluzione delle controversie economiche nel contesto della "crisi" delle organizzazioni internazionali*](#)).

The starting point of the reform process is that WTO rules on agriculture need revision as they continue to reflect the irregular distribution of agricultural support and economic power expressed at the time of the Uruguay Round. They need updating in the light of the changes in international food systems over the two decades since the AoA was adopted.

The implication of trade on food security can be seen from different perspectives.

First, international trade plays an important role in reducing price risk through enabling Countries to make use of world markets in the face of domestic production variability ([C. BOONEKAMP, *Food Security and the World Trade Organization*, in I. GILLSON and A. FOUAD \(eds.\), *Trade Policy and Food Security - Improving Access to Food in Developing Countries in the Wake of High World Prices*, The World Bank, Washington, 2015](#), p. 135 ff.)

Second, whether trade will play a more or less important role in balancing food supply and demand in developing Countries will depend on comparative trends in food demand and domestic supply capacities in each Country ([S. V. BERKUM, *How trade can drive inclusive and sustainable food system outcomes in food deficit low-income countries*, in Food Security, 2021](#), p. 1542 ff.).

Besides food prices and supply, trade has also been invoked as a driver of diets and food choices, with indirect consequences on food security as well. In this recent debate, implications at the WTO level also involves the provisions of the Technical Barriers to Trade Agreement (TBT), especially for the role of labelling ([WTO Trade Dialogues on Food: Exploring the Nutrition and International Trade Nexus](#)).

However, the role of trade as a tool to modify consumers' behaviour and diet is likely to be more limited compared to impacts on prices and supply. Other aspects of globalisation, like foreign direct investment in food and agriculture sectors, the role of private companies and global food advertising and promotion, are also implicated in the "nutrition transition" as well as changes in lifestyles and other external sources.

In parallel with these implications of trade for food security, the Covid-19 pandemic has brought other elements for discussion and reform within the WTO.

3. Covid-19, WTO and food security

Trade in agricultural products has been more resilient than overall trade during the first year of Covid-19 pandemic ([WTO Secretariat, Covid-19 and Agriculture: A Story of Resilience, Information note, 2020](#)). If we look at data, while overall goods trade fell tight in the first part of 2020, food and agricultural exports increased by 2.5% during the first quarter of the year compared to the same period in 2019 ([WTO Secretariat, Covid-19 and Agriculture: A Story of Resilience](#), cit., p. 1). With that said, the effects of Covid-19 exercised further downward pressure on agricultural and food prices, and consequently on farmers' incomes (WTO Secretariat, Covid-19 and Agriculture: A Story of Resilience, cit., p. 6).

Still, the Special Rapporteur has tracked the Covid-19 pandemic and resulting food crisis in two reports, (A/75/219, cit.) and ([A/HRC/46/33](#)), [Vision report of the Special Rapporteur on the right to food](#). The main view, from a human rights-trade perspective, is that the current pandemic has simply emphasised how the problem that we have with food systems is more an issue of accessibility and entitlement than a question of availability (producing more food).

If we then consider the measures that WTO Members adopted in order to react to the consequences of Covid-19, within the plethora of domestic rules with trade implications, export restrictions are the most relevant for food security. Food export restrictions are first of all a concern for food prices rise. Similar trade policies contributed to the 2007-2008 food price crisis ([P. E. GIORDANI, N. ROCHA, M. RUTA, Food Prices and the Multiplier Effect of Export Policy, in Staff Working Paper ERSD-2012-08](#), 2012). The main consequences of prices increase will be for vulnerable people in food-importing Countries. The other key effect of export restrictions is that they may also negatively affect producers in the export-restricting Countries.

Looking closely at food export restrictions adopted by WTO Members, most of these rules, retracted by mid-2020, were more limited compared to 2007-2008 prolonged trade restrictions. This overview can be done through a scrutiny of Covid-19 related [notifications](#).

Furthermore, given the relevant amount of unilateral restrictions, and the recognition by WTO Members of the strategic importance of the agri-food sector in the pandemic emergency period, there has been a general call for cooperation. In May 2020, within the Committee on Agriculture, a lot of WTO Members stated their commitment «(...) *not to impose agriculture export restrictions and refrain from implementing unjustified trade barriers*», (...) to adopt “*emergency measures related to agriculture and agri-food products designed to tackle Covid-19 [that] must be targeted, proportionate, transparent, and temporary*» (...) and «[to] *engage in a dialogue to improve our preparedness and responsiveness to regional or international pandemics, including multilateral coordination to limit unjustified agriculture export restrictions, in particular at the WTO*» ([Committee on Agriculture, Responding to the Covid-19 Pandemic with Open and Predictable Trade in Agricultural and Food Products, WT/GC/208/Rev.2, G/AG/30/Rev.2, 29 May 2020](#), para. 1.6.)

The other recent factor that puts pressure on food security as a consequence of export restrictions is the Ukraine-Russia war ([P. WEIL, G. ZACHMANN, The impact of the war in Ukraine on food security, in Bruegel, blog post](#), March 2022). With the intensifying conflict, on top of supply chain disruptions, food and fertilizer prices are surging.

In this context, an emerging factor is of particular relevance for the discussion on food security within the WTO. Food security is becoming – again, after many decades – a public

security issue also for many developed Countries. An interesting example in this regard is the European Union contingency plan for ensuring food supply and food security in times of crisis ([European Commission, Contingency plan for ensuring food supply and food security in times of crisis, COM\(2021\) 689 final](#)).

4. *The Revised Draft Negotiation Text of November 19th, 2021*

WTO Member States are currently discussing the [Revised Draft Negotiation Text](#) adopted by the Chair of WTO Agriculture Negotiations Committee, Ambassador Gloria Abraham Peralta, on November 19th, 2021, updating the previous [Draft Negotiating Text](#) of July 29th, 2021.

The [Revised Draft](#) represents an attempt to reaffirm the WTO's credibility and its capacity to address the challenges of the agri-food system (see point 10.5), taking into account the first reactions to the [Draft](#) of July, without the ambition to reach the *consensus* among States but seeking to make progresses in the negotiations. This is true in view of the following Ministerial Conference, initially set for 25 November 2021 and postponed to a date to be decided due to the Covid19 pandemic. The amendments introduced with the [Revised Draft](#) are essentially the result of the five meetings held between July and November 2021 (in particular on September 7th, 8th, 20th and 21st, October 14th, 15th, 28th, and November 15th: *amplius* see documents [JOB/AG/217](#), [JOB/AG/221](#), [JOB/AG/222](#), and [JOB/AG/223](#)) and additional bilateral or small group meetings.

The [Revised Draft](#) incorporates many aspects on which negotiations have focused [in recent years](#), organising them in [seven sections](#) including issues that for a long time have acquired additional and differentiated significance in the context of international trade of agri-food products due to their relevance in meeting food security needs, such as public stockholdings for food security purposes, trade-distorting domestic subsidies and export restrictions ([M.E. MARGULIS, The Forgotten History of Food Security in Multilateral Trade Negotiations, in World Trade Review, 2017](#), p. 27, [J. SCOTT, The Future of Agricultural Trade Governance in the World Trade Organization, in International Affairs, 2017](#), p. 1171, [M. CARDWELL, F. SMITH, Renegotiation of the WTO Agreement on Agriculture: Accommodating the New Big Issues, in The International and Comparative Law Quarterly, 2013](#), p. 865 ff.).

The inclusion of these aspects in the negotiations is essentially linked to art. 20, letter *c*, of the AoA, which provides that negotiations for continuing the reform process – necessary due to certain inadequacies evident since the moment the AoA was signed ([J. SCOTT, The Future of Agricultural Trade Governance](#), cit., p. 1175) – must take into account also non-trade concerns and objectives mentioned in the preamble to the Agreement, including “food security” (see, *ex plurimis*, [J.A. MCMAHON, The WTO Agreement on Agriculture. A Commentary, Oxford, 2006](#), p. 19 ff. and 192 ff. and, more recently, [C. DI TURI, Il diritto all'alimentazione nell'ordinamento giuridico internazionale](#), Napoli, 2021, p. 218 ff.).

The two different general approaches to the issue of the relationship between food security, agriculture and trade include, on the one hand, States that advocate more free trade of food products, pushing for fostering trade liberalisation and the adaptation of national policies to international market dynamics and, on the other hand, States that consider national policies on food security prevailing on the logic of the market ([M.E. MARGULIS, The Forgotten History of Food Security](#), cit., p. 43; [J. SCOTT, The Future of Agricultural Trade Governance](#), cit., p. 1175; [T.P. STEWART, S. MANAKER BELL, Global Hunger and the World Trade Organization:](#)

[How the International Trade Rules Address Food Security, in Penn State Journal of Law & International Affairs, 2015](#), p. 113).

The conflict between food security and trade-liberalising rules of the AoA has existed for a long time and has already manifested itself, for example, in relation to the proposed amendment of the AoA permitting to developing Countries to pay a “higher-than-market price” when purchasing public “food security” stocks (see [S. DAS, Food Security Amendments to the WTO Green Box: A Critical Re-Examination, in Journal of World Trade, 2016](#), pp. 1111-1112).

It seems appropriate to anticipate that the main issue is to establish which level of priority WTO Members want to recognize to by “food security”, in order to verify whether there is convergence on the meaning of this expression (this problem has already been pointed out in doctrine: see [M.E. MARGULIS, The Forgotten History of Food Security](#), cit., p. 28 ff. and B. O’CONNOR, *L’Accordo sull’agricoltura*, in G. VENTURINI (ed.), *L’Organizzazione mondiale del commercio*, Milan, 2015, p. 149).

4.1. Public Stockholding Programmes (PSPs)

With public stockholding programmes (PSPs) governments purchase and distribute, when necessary, foodstuff for “food security” purposes. A clear definition is provided in the Annex 2 of the AoA, which identifies «public stockholding for food security purposes» as «Expenditures (or revenue foregone) in relation to the accumulation and holding of stocks of products which form an integral part of a food security programme identified in national legislation», including «government aid to private storage of products as part of such a programme». According to the AoA, «the volume and accumulation of such stocks shall correspond to predetermined targets related solely to food security (...) shall be financially transparent (...)» and the food purchases by the governments «shall be made at current market prices and sales from food security stocks shall be made at no less than the current domestic market price for the product and quality in question».

The main concern with the use of such instruments is the conflict with WTO rules on agricultural subsidies, which could hamper the ability to implement food purchase programmes at “administered” prices (i.e. minimum prices fixed by governments).

This issue of the negotiations is remarkably relevant for the purpose of guaranteeing food security, particularly in its meaning linked to the fundamental “right to food” ([C. HABERLI, Do WTO Rules Improve or Impair the Right to Food, in MCMAHON-DESTA \(eds.\), Research Handbook in the WTO Agriculture Agreement: New and Emerging Issues in International Agricultural Trade Law, Elgar, 2012](#), p. 79 ff.). This is more about the trade and food availability dimension.

The solution of the conflict between rules on trade liberalisation and guaranteeing food security presumes to identify a correct balance between the two tensions. Indeed, if on the one hand there is no limit to the amount of food that governments can buy at market prices, on the other hand governmental setting of minimum prices can be a trade-distorting measure.

One of the episodes on PSPs that provoked a major clash within the WTO originated from the expansion of domestic food assistance measures adopted by India through a legislation of September 2013 (“Right to Food Act”) concerning the implementation of public food distribution programmes (see, *inter alia*, [G. KRIPKE, Food fight: What the debate about food security means at the WTO, in La Revue canadienne des études sur l’alimentation, 2015](#), p. 77 ff., and, even for similar cases, [J. SCOTT, The Future of Agricultural Trade Governance](#), cit., pp.

1177-1178). This legislation authorized public authorities to buy foodstuffs from small producers at guaranteed prices and sell them to poor people at low prices, in violation of the AoA on PSPs and domestic subsidies provisions. In particular, also in light of the global increase in food prices after 2007, the purchase of foodstuff at administered prices and distribution at very low prices was considered a form of “implicit subsidy” higher than the levels set in the AoA (see [J. SCOTT, *The Future of Agricultural Trade Governance*](#), cit., pp. 1177-1178).

Indian food security legislation (and especially the setting of “administered prices” different from the market prices) has been subsequently qualified as a violation of the WTO commitments on limits to agriculture subsidies (see [G. KRIPKE, *Food fight*](#), cit., p. 78-79). In this context, it should be recalled that WTO Member States at the [2013 Bali Ministerial Conference](#) concluded an interim “peace clause” – contained in the [Ministerial Decision of 7 December 2013 WT/MIN\(13\)/38, WT/L/913](#) – whereby they collectively decided to refrain from submitting to the WTO Dispute Settlement Mechanism the compliance of PSPs with commitments under the Agreement on Agriculture, maintaining notification, transparency, consultation and monitoring obligations on the modalities in which food stocks are procured and distributed, with a view to finding a permanent solution by the 11th Ministerial Conference in Buenos Aires in 2017 ([Ministerial Decision WT/MIN\(13\)/38, WT/L/913 of 7 December 2013](#), paras 3 ff.).

Subsequently, in 2015, during the [Nairobi Ministerial Conference](#), Ministers agreed to *«engage constructively to negotiate and make all concerted efforts to agree and adopt a permanent solution on the issue of public stockholding for food security purposes»*. So, even if States adopted an historic decision concerning the elimination of agricultural export subsidies (see [Ministerial Decision of 19 December 2015: WT/MIN\(15\)/45 – WT/L/980](#)), it has been established that the elaboration of the “permanent solution” on PSPs would have needed subsequent specific and separate negotiating sessions: *«the negotiations on this subject shall be held in the Committee on Agriculture in Special Session («CoA SS»), in dedicated sessions and in an accelerated time-frame, distinct from the agriculture negotiations under the Doha Development Agenda»* ([Ministerial Decision of 19 December 2015: WT/MIN\(15\)/44 – WT/L/979](#)).

The failure to find a definitive agreement on the issue of PSPs by the deadline set for the 11th Ministerial Conference in Buenos Aires in 2017, entails the priority of the pending discussions between States, still divided between those – essentially developing Countries – that consider indispensable and unavoidable the implementation of PSPs and those – to be identified among developed and developing exporting Countries – that reject a solution that would lead to trade distortions, suggesting, conversely, the admissibility of exports of subsidised food purchased for public stocks (see, in this regard, the [WTO briefing note on Agriculture negotiations](#) of December 13rd, 2021).

Despite the importance of this issue, negotiations on PSPs have not made much progress, as also admitted in the [Revised Draft](#) (see point 1.9). Although it is considered a priority because of its usefulness in ensuring food security and rural livelihoods, the PSPs are considered the most complex issue of the negotiations (see point 8.3), as it emerges from the different opinions of States and from the failed attempts to find permanent solutions. The PSPs supporters (mainly the Members of G33 Group, including China and India) ask for a simple and efficient solution that implies wide quantities and varieties of products covered by the purchase programmes.

Differently, a heterogeneous group of non-supporters expressed concerns regarding potential trade distortions and market price support in violation of the Uruguay Round commitments, deriving from the lack of transparency and information about the use of PSPs.

Within this framework, in the [Draft](#) of July 2021, a number of proposals were considered, one of a provisional nature and the others of a permanent nature. In particular, the Chair proposed, as provisional measure, to expand the Bali *interim* solution to the least developed Countries and to the developing Members, eventually after approval of PSPs by the Committee on Agriculture.

This proposal met with strong resistance by several States «*who objected to what they considered as an increasing trend in the WTO to distinguish among developing countries*» (see [Revised Draft](#) point 8.5) and has been therefore deleted.

Recently, some States proposed two options of permanent solutions on PSPs mentioned in the [Revised Draft](#) (see point 8.6).

In particular, the “African Group” highlighted the lack of updating and calculation errors in the estimation of PSPs’ limits and pointed out some shortcomings in the Bali “peace clause”, such as the limitation to PSPs already existing in 2013 and to only very few food crops, and difficulties in meeting transparency requirements. For this reason, the African Group’s proposal focuses on extending the scope of the AoA to all PSPs and to all food products, removing obstacles that make them difficult to use for developing Countries to ensure food security, as this would not be possible if the existing AoA constraints continued to be met (see restricted document JOB/AG/204 of 12 July 2021 and the [IISD Report of August 2021 “Procuring Food Stocks Under World Trade Organization Farm Subsidy Rules: Finding a permanent solution”](#), p. 8)

The G33 Members, very active in submitting proposals on PSPs since 2012 (an overview is provided by the [IISD Report](#), cit., p. 5), recently proposed a new different permanent solution (see restricted documents JOB/AG/214 of 28 July 2021 and JOB/AG/214/Rev.1 of 16 September 2021).

They proposed to confirm the “peace clause” for the support provided to food products under PSPs, to require information, transparency and notification obligations in case of overcoming of certain limits, the introduction of exemptions for exports of food aids.

These two proposals, however, have been criticised for a lack of technical detail and sufficient sharing between States, and this led to almost irrelevant results as shown in the *Draft Ministerial Decision on Trade, Food and Agriculture*, annexed in the [Revised Draft](#) which – recalling the Ministerial Decision of 7 December 2013 ([WT/MIN\(13\)/38 - WT/L/913](#)), the General Council Decision of 27 November 2014 ([WT/L/939](#)) and the Ministerial Decision of 21 December 2015 ([WT/MIN\(15\)/44 - WT/L/979](#)) – only provided an undertaking to intensify the negotiations and put in place more efforts to adopt a permanent solution on the PSPs (see point 45 of the [Revised Draft](#)).

4.2. Domestic support to agriculture by subsidies

Another area in which “food security” is relevant is the pillar of domestic support: this is included in the negotiations and the substantial and progressive reduction of subsidies is expressly recognised as a “*long-term objective*” of the agricultural trade reform process by art. 20 of the AoA in order to avoid trade distortions ([M. CARDWELL, F. SMITH, Renegotiation of the WTO Agreement on Agriculture](#), cit., p. 893).

WTO special rules on domestic support and subsidies to agriculture are undoubtedly central to the negotiations, which is why they are one of the most sensitive issues: subsidies are likely to distort global competition by disadvantaging business operators in non-subsidising States, which is why they are in principle not allowed (with a few exceptions) under the current WTO legal framework. Developing Countries, in particular, are very critical of these principles and propose, on the contrary, to allow large amounts of agricultural domestic support, strongly condemning the AoA restrictions that preclude subsidies to agriculture as considered “trade distorting” (see [S. DAS, *Food Security Amendments*](#), cit., pp. 1111-1112).

As already mentioned, the [Nairobi Ministerial Decision of 19 December 2015, WT/MIN\(15\)/45 – WT/L/980](#), provided the elimination of export subsidy, immediately for the developed Countries and by the end of 2018 for developing Countries (see points 6-7). Not much progress was made after this important result during the subsequent stages of negotiations.

In the [Revised Draft](#) of November 2021 it has been underlined that the strengthening of the disciplines on trade-distorting domestic supports should be balanced by the pursue of general policy objectives such as “food security” (see point 2.2). Even if on this point there is a common view among States there is no agreement on the modalities for achieving this goal.

The latest updates on the negotiations revealed contrasting opinions among States on the quantification of subsidy reductions, the timing, the introduction of proportionality criteria and the categories of subsidies involved (see the [Communication “Framework for Negotiations on Domestic Support”, JOB/AG/177, of January 23rd, 2020](#) from Argentina, Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Pakistan, Paraguay, Peru, The Philippines, Thailand, Ukraine, Uruguay, and Vietnam, and the [Submission by the United States “Notification of Select Domestic Support Variables in the WTO”, JOB/AG/181, of February 19th, 2020](#); on this issue see also [A. REGMI, R. SCHNEPF, N.M. HART, *Reforming the WTO Agreement on Agriculture - Report of the Congressional Research Service, July 20th, 2020*](#), pp. 14-15).

In particular, the exporting Countries of the so-called Cairns Group seem to prefer the introduction of a commitment to halve domestic support by 2030, while others, mainly Countries with emerging economies, propose a more flexible progressive reduction in support, especially for developing Countries, based on Art. 6.2 of the AoA, which provides that « (...) *government measures of assistance, whether direct or indirect, to encourage agricultural 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 commitments that would otherwise be applicable to such measures (...)*» (see *amplius* points 2.4 and 2.5 of the [Revised Draft](#)).

In this regard, in the mentioned *Draft Ministerial Decision* annexed to the [Revised Draft](#) it is stressed the importance not only of the notification obligations (see points 14 and 15), but also and especially of the clarification of the criteria of art. 6.2 of the AoA (on the need to improve transparency in this context see the position of the U.S.A. summarised in [A. REGMI, R. SCHNEPF, N.M. HART, *Reforming the WTO Agreement on Agriculture*](#), cit., p. 15).

4.3. Export restrictions

Similarly, export restrictions can also have an impact on food security. In particular, on the one hand, quantitative restrictions on food exports can be used temporarily to address food shortages (see [M. CARDWELL, F. SMITH, *Renegotiation of the WTO Agreement on Agriculture*](#), cit., pp. 868-869) and, with specific reference to measures adopted in response to the pandemic, ([A. REGMI, R. SCHNEPF, N.M. HART, *Reforming the WTO Agreement on Agriculture*](#),

cit., p. 13), even if the potential negative effects on food importing Countries must be taken into account; on the other hand, export restrictions can weaken the States' legitimate expectations to guarantee national food security (see R. CARDWELL, W.A. KERR, *Can Export Restrictions be Disciplined Through the World Trade Organisation?*, in *The World Economy*, 2014, p. 1186 ff.; [S. MURPHY, *Food Security and International Trade: Risk, Trust and Rules*, in *La Revue canadienne des études sur l'alimentation*, 2015, pp. 88-89](#); [M.E. MARGULIS, *The Forgotten History of Food Security*](#), cit., p. 26).

The discussion on export prohibitions and restrictions focused mainly on two aspects: the concern about the exemption of food purchases for humanitarian purposes by the [World Food Programme](#) (WFP) and the enhancement of the compliance with notification obligations under art. 12 of the AoA ([A. REGMI, R. SCHNEPF, N.M. HART, *Reforming the WTO Agreement on Agriculture*](#), cit., pp. 15-16).

On the first point, States expressed great appreciation and willingness to support WFP in tackling undernourishment, confirmed by a Joint Statement of nearly 80 WTO Members issued on 21st January 2021, with which States recognised the humanitarian function of the WFP, especially during emergency situation such as during COVID-19 pandemic, committing «*not to impose export prohibitions or restrictions on foodstuffs purchased for non-commercial humanitarian purposes by the World Food Programme*» ([Joint Statement on agriculture export prohibitions or restrictions relating to the World Food Programme, WT/L/1109, 21st January 2021](#)). However, even in this regard, difficulties arose due to the concerns of States where food is purchased by WFP, although this is precisely to avoid negative consequences for such Members (see point 5.3).

Concerning the second point, it should be noted that according to art. 12 of the AoA Member States that wish to introduce new export prohibitions or restrictions on food products, in accordance with art. XI.2 *a*) of GATT 1994, are obliged to “give due consideration” to the effects of such measures on importing States' food security (lett. a) and to give notice in writing to the Committee on Agriculture, consulting any other Member State having a “substantial interest as an importer” (lett. b). Thus, food security is given express priority over the possibility of restricting or prohibiting exports (see [M. CARDWELL, F. SMITH, *Renegotiation of the WTO Agreement on Agriculture*](#), cit., p. 893).

To this end, the need to clarify how States must show that they have given «due consideration to the effects on importing Members' food security» (see point 27 of the *Draft Ministerial Decision*) and the procedural obligations on notification, consultation and transparency (see point 28) seem to be instrumental in avoiding negative consequences on food security.

5. Conclusions

To perform specific evaluations on the complex trade-food security relationship, different parameters should be taken into consideration. Besides this there is the urgency to consider whether it is worth bearing the cost of liberalising international trade in agri-food products to the extent that it can significantly hinder the ability of States to ensure food security.

The complexity of negotiations on agriculture that still emerges in the most recent meetings stems from the clash between the view that liberalisation contributes to food security by increasing overall welfare ([S. DAS, *Food Security Amendments*](#), cit., p. 1330 ff.) and

the opinion that considers food security totally prevalent, bearing in mind that rules on trade must be used primarily to achieve food security.

At the same time, similar coalitions among Member States and similar criticalities on the normative content and approach of the AoA already present at the time of the Uruguay Round are still in place, with no great changes.

The positions that emerged during the current negotiations seem to reflect the legal and political trends that made the EU, the US and, more generally, most of developed Countries, very critical towards the least developed and developing Countries, such as India, China, other Members of G33 Group and several African States, as those instead have periodically implemented national policies of agricultural subsidies and quantitative export restrictions to tackle food shortages.

Back in 2011 in his [Activity Report](#), *The World Trade Organization and the Post-Global Food Crisis Agenda. Putting Food Security First in the International Trade System*, the Special Rapporteur on the right to food (2008-2014), Olivier De Schutter, had underlined that for many States «food security is a low priority compared to opening markets for their exports». Recent negotiations show that ten years later the situation does not seem to have changed.

Given that the WTO has the opportunity to play a large role «in technical cooperation on global good security governance» ([Activity Report](#), cit., p. 16), it must take into account the consequences of food insecurity because, as current events show, food crises are occurring more and more frequently even in developed areas of the world.

The WTO has so far adopted a wait-and-see attitude, which seems to be aimed at elaborating a legislative framework to make derogation and exception measures structural and no longer deviations from the normal regime when it is necessary to ensure food security.

Cooperation efforts demonstrated at the beginning of Covid-19 spread and food security as a sensitive issue for developed Countries may be considered as the two main drivers to change the current limited framework of the AoA to effectively deal with food security.

FRANCESCO CAZZINI*
EDOARDO ALBERTO ROSSI*

* I par. 1, 2, 3 sono da attribuire a Francesco Cazzini; i par. 4, 4.1, 4.2, 4.3 a Edoardo Alberto Rossi. Le conclusioni sono frutto di riflessioni congiunte di entrambi gli Autori.