

Understanding WTO provisions for trade in agriculture

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ABSTRACT

The run-up to the twelfth Ministerial conference of WTO to be held in Astana has begun with various committees holding meetings and providing feedback on on-going negotiations. Revisiting the important WTO agreements related to trade in agriculture: Agreement on agriculture (AoA), Agreement on sanitary and phytosanitary measures (SPS) and agreement on trade related intellectual property rights (TRIPs) will help in understanding the current negotiations.

1. Introduction

Agriculture remains an important issue in world trade forums. With the twelfth WTO ministerial scheduled to be held in Astana, Kazakhstan, from 8 to 11 June 2020; preparations and negotiations on various trade related issues are already underway. In this context, the WTO agriculture negotiators met on February 14, 2019 to discuss domestic support and public stockholding for food security purposes. Ambassador John Deep Ford of Guyana, the chair of the Committee on Agriculture pointed out that members reaffirmed the central role of agriculture and their strong commitment to negotiations through their participation in the committee on agriculture. He said, "*Members have demonstrated a high level of interactive engagement in the discussions.*"¹ The US refusal to ratify the Doha Development Agenda at the last WTO ministerial conference in Buenos Aires is still fresh in the minds of the people. Hence compared to the earlier situation when a number of negotiating parties like the US and EU refused to budge from their positions, this is a promising beginning.

Over the years, issues related to agriculture have had an important bearing on the success of ministerial conferences. The Doha round is considered a landmark in highlighting the firm belief of the world community that increased trade and free trade is the way to development. The Doha Development Agenda promised to provide developing countries a more level playing field while recognizing their needs and aspirations. Even after 18 years, the Doha Round has not yet been completed and negotiations are continuing on various aspects of the declaration. The amount of time being consumed is an indication of the complexities involved and is also proof of increasing interest, knowledge and strategic behavior among the stakeholders. It is relevant, in the circumstances, to take stock of the WTO provisions for trade in agriculture. This article attempts to highlight the important relevant agreements and India's stand vis-à-vis these agreements.

The WTO agreement is made up of 29 separate agreements memorandums, declarations and other ministerial decisions. Some important agreements that are relevant to trade in agriculture are:

1. Agreement on agriculture (AoA)
2. Agreement on sanitary and phytosanitary measures (SPS)

3. Agreement on trade related intellectual property rights (TRIPs)

2. Agreement on Agriculture

The Agreement on Agriculture (AoA) simultaneously came into effect in 1995 with the institution of the WTO, but gave members a time frame for implementation of the agreement. The developed countries had six years for undertaking their reduction commitments while the developing countries had 10 years to do so. The least developed countries were exempted from any reduction commitments.

The agreement had three main objectives:

1. To curb border protection which adversely affects imports
2. To control exports supports which directly affect trade
3. To control production support policies that indirectly affect trade

Accordingly, the main components of AoA pertain to market access (article 4), domestic support commitments (article 8) and export subsidy commitments (article 9). These are regarded as **the three pillars** of the AoA and each one of these attempts to make agricultural trade free from protectionist policies and provide a level playing field to all members. Another important aspect of the AoA is the provision of special and differential treatment (S&D) which provides for certain privileges and benefits to the developing and least developed countries in view of their development and welfare concerns.

a. Market Access

The setting up of tariff bindings for agriculture is regarded as a major achievement of the final Uruguay Round. Thus, while industrial tariffs were reduced from 45% to 1945 for nearly 6% in 1978 and 4% in 1994,² the agriculture tariffs on an average were bound over 40% ad valorem only in 1994.

Member countries controlled access to their markets through the use of tariff as well as non-tariff measures. Tariff measures are import quotas, variable duties paid upon entry into a country, minimum import prices and import licensing. Non-tariff barriers include quantitative import restrictions, variable import levies, discretionary import licensing, non-tariff measures maintained through state trading enterprises,

voluntary export restraints, border restraints to control imports etc. All measures other than ordinary custom duties are, in fact, considered as non-tariff barriers (NTBs).

The Agreement on Agriculture provided for the conversion of the NTBs to ordinary tariffs through the process of tariffification. As per the agreement "*all existing and new tariffs were to be bound and subjected to tariffification.*"³

The success of the market access criterion of the AOA depended on:

- a. Replacement of quantitative restrictions with suitable tariffs of equivalent effects.
- b. Setting up of the binding rates for tariffs, which would set the upper limits of tariffs. No further escalation of tariffs would be allowed without prior negotiation.
- c. Reduction of all existing and new tariffs from 1995 onwards. Developed countries were required to reduce their tariffs by 36% in six years with a minimum of 15% in each commodity. Developing countries had to reduce tariffs on an average by 24% in 10 years with the minimum of 10% in each commodity.⁴
- d. The least developed countries were exempted from any reduction commitments. Further, under the Special Safeguards Provision, countries could seek greater protection in the event of imports exceeding a certain trigger level. In such cases, the WTO rules allow members to apply special safeguards by imposing additional duty on those items.⁵

Though tariffification has many benefits and all members had agreed to reduce tariffs in the given time frame, the actual result has been very different. The main issues related to tariffs, which affected actual market access were (i) existence of peak tariffs, (ii) tariff escalation and (iii) the use of non-ad valorem tariffs.

With respect to bound tariffs, advanced developing countries had higher peaks as compared to others. However, in case of applied tariffs, the average peak tariff values of developed countries were much higher.⁶

Tariff escalation, where higher tariff is applied as value addition and processing increase, is evident in case of all countries regardless of the level of development.⁷

The structure of agricultural tariffs has become more complex with different rates applied to different categories of same product such as seasonal, in-quota and above-quota tariffs and increasing use of non-ad valorem tariffs.⁸ The developed countries have tended to make greater use of the non-ad valorem tariffs adversely affecting the access to their domestic markets by the developing countries.

India had unilaterally reduced most of its tariffs as a founding member of the WTO while maintaining some quantitative restrictions under BoP provisions as a developing country, which would be phased out by 2006. However, following a Dispute Settlement Panel ruling, India removed all QRs in 2001.

b. Domestic Support

One of the most contentious issues pertaining to agriculture negotiations was the issue of domestic support given by countries to their agriculture sector. The AoA lays down criteria for kinds of domestic support allowed and requires reduction of trade-distorting support measures and their ultimate removal.

The least distorting policies were encased as *green box policies*. These policies subsidized farmers' incomes on a general basis without influencing production decisions. These were publicly funded programs, not providing any price support to the producers for producing certain type or quantity of produce.⁹

The *amber box policies* were those that had a large detrimental effect on world trade. Hence they had to be reduced drastically. These policies generally involved a degree of transfer from consumers such as government administered by support or taxpayer-funded subsidies for inputs and outputs.¹⁰

Blue box policies were those policies that belonged to amber box. They needed to be reduced as they were highly trade distorting. But the EU and US succeeded in getting a new criterion created solely for their benefit. The direct payment schemes like compensatory payments and land set-aside programs of EU and deficit payment scheme of US are examples of blue box policies.

An analysis of the extent of following commitment levels regarding reduction requirements shows that many countries, including most developing countries, did not have reduction commitments. But, the few that had to reduce their domestic support, mainly developed countries, cleverly changed their policies to comply with the clauses of the agreement instead of actually reducing the supports. For example, US eliminated the target price while Canada brought changes in domestic income-support policies to show compliance with the reduction commitments. By 2000, many countries were well within 85% - 100% commitment levels (as per 1995 to 2000).

But even here, it was seen that many members had reduced aggregate levels of commitments to achieve the AMS reductions through reductions in commodity groups but had not reduced support on specific products, which continued to get the special support.

In contrast to the developed countries, the developing countries have greater need for support policies. Most developing countries had negligible domestic support programs in the 1986-88 period, which was taken as the base level. Due to low binding levels fixed in the country schedules, these countries cannot increase domestic support to agriculture now.

India did not have domestic support reduction commitments, as its total Aggregate Measure of Support (AMS) was much below the *de minimis* levels in 1995-96. Over the years this has risen with greater product specific support (market price support) as well as non-product specific supports

being provided. However, though *Green box support* by India has increased, the non-product specific subsidies (due to rise in fertiliser subsidy, fall in electricity subsidy, irrigation subsidy and seed procurement subsidy) have declined. Further the country has increased targeted subsidies to low-income and resource poor farmers.¹¹ This shows that the country has been targeting policies for upliftment of rural poor keeping in tune with its WTO commitments.

c. Export Subsidy Commitments

The demand for commitments to reduce export subsidies was in response to the developed countries' policies that were detrimental to free trade and lead to a bias against the products of developing countries.

Doing away with export subsidies is regarded as beneficial in the long run, especially for the developing countries. Though some groups like net-importing countries stand to lose out as compared to net-exporters, the larger agriculture reform associated with reduction of export subsidies is expected to bring about a more equitable trade scenario.

The various exemptions and flexibilities provided under the AOA led to developed countries circumventing their reduction commitments through *frontloading*, *banking* and *rollovers*. Developing countries were allowed a longer time frame for reducing support. Also, these countries were permitted to follow policies to encourage exports through the use of subsidies for marketing, processing and transport subject to certain criteria; as long as reduction commitments were not being circumvented in any manner.

An important aspect of the export subsidy reduction commitment is that no country would subsidize agricultural exports in future. For developing countries, this is a major hurdle as *many werenot subsidizing exports earlier* and the *agreement prevents any future attempts to do so*.

Another important facet is that of **export restraints**. Developing countries, at times, place restraints or controls on their exports to control inflation or overcome shortages in the domestic economy. Article 12 of the Agreement on Agriculture mentions export prohibitions and restrictions where certain rules or disciplines have been laid down regarding export restraints. Accordingly, export restraints may not be used for foodstuffs and due consideration must be given on the impact of such restraints on importing countries.

India did not provide export subsidies during the period 1986-1990, so it cannot resort to export subsidization in future. Under the Special & Differential (S&D) measure, as a developing country subsidies for internal transport, freight charge on export shipments, handling and other processing costs related to exports are being provided. But these support measures are within the permissible limits.

3. Agreement on sanitary and phytosanitary measures (SPS)

During the Uruguay Round, it was resolved to minimize the adverse effects that sanitary and phytosanitary regulations and barriers can have on trade in agriculture. The Tokyo round

of GATT had resulted in the 1979 Technical Barriers to Trade (TBT) agreement, also called the Standards' Code. It provided technical rules regarding animal and plant measures and food safety, pesticide residue limits, inspection requirements and labeling. The TBT represents the beginning of the principles of HARMONISATION and TRANSPARENCY in setting up of standards.

The Uruguay Round attempted an opening up of agriculture trade in a fair manner and included control of non-tariff barriers through an international system of discipline. Discussions centered on the simplification and harmonization of SPS measures as well as elimination of all restrictions that lacked any valid scientific basis.

The draft text produced by the working group on sanitary and phytosanitary regulations in 1990 held that, "*SPS measures should not represent disguised trade barriers, should be harmonized on the basis of the generally accepted scientific principles; special consideration should be given to developing countries; transparency should be ensured in setting regulations and in solving disputes; and an international committee should be established to provide for consultations regarding standards.*"¹² Later the Dunkel Text provided more stringent provisions for national regulations and excluded economic considerations in the context of risk assessment for food safety.

SPS agreement came into force on January 1, 1995. The least developed countries were permitted five years and developing countries two years for implementing the agreement.

The SPS agreement recognizes the right of members to apply measures to protect human, animal and plant life and health. It aims to ensure that such measures are consistent with WTO obligations. It prohibits arbitrary and unjustifiable discrimination on trade between countries where same conditions prevail. Further, it prohibits measures that can act as a disguised restriction on international trade. However, it allows countries to choose stricter measures based on scientific justification. The agreement suggests **conformity to standards set by international bodies**, Codex Alimentarius Commission (CAC), International office of epizootics (OIE), and International plant protection convention (IPPC); with **worldwide applicability**. The three important bodies, also called *the three sisters*,¹³ are concerned with food safety, animal life and health and plant life and health respectively.

The goal of SPS was to prevent differential treatment on the basis of whimsical concerns lacking scientific foundation. But in reality, products from Asia, Africa and South America are often prohibited in developed country markets quoting danger to human, animal and plant well being.

Further, these prohibitions are often sought to be applied in a general and indiscriminate fashion. However, often the cause, which results in prohibition on restriction of commodities, is a localized problem and contained in a specific region. But general prohibition adversely impacts the trade concerns of the country.

The SPS agreement talks about transparencies in adopting sanitary and phytosanitary measures, but the developing countries face many hurdles in getting complete information.

It gives leeway to countries to control access to the markets on the basis of food safety and animal and plant health/ security issues giving these a priority over trade.

The SPS agreement permits adoption of SPS measures on a "provisional basis" as a "precautionary step" if that is an immediate perceived risk even though there is insufficient scientific evidence.

The SPS has a very defined scope of application, which limits its extent of usage. However, it is much more rigorous in its requirements as compared to the TBT agreement. It has often been pointed out that when SPS is invoked, it is difficult to differentiate between actual threat and protection of the domestic economy.

Indian exports have often suffered due to the invocation SPS clauses by its trading partners. One of the objectives of APEDA, is to provide information about the SPS measures invoked by other countries, to Indian farmers and exporters.

4. Trade related intellectual property rights (TRIPs)

The Trade Related Intellectual Property Rights Agreement, popularly called the TRIPS Agreement, is a multilateral agreement on intellectual property covering many areas such as copyright and related rights, trademarks geographical indications, industrial design, patents including the protection of new varieties of plants, and undisclosed information including trade secrets.¹⁴ The TRIPs Agreement is part of the Marrakesh Agreement establishing the WTO (Annex 1C) and was signed in Marrakesh in Morocco on 15 April 1994.¹⁵ The stated objective of the agreement is reducing the distortions and impediments to international trade while simultaneously providing protection of intellectual property rights as well as encouraging fair trade by ensuring that *measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade*.¹⁶ Though TRIPS is a vast agreement, certain sections relevant to agriculture are mentioned below.

a. Geographical Indication tag (GI)

The term Geographical indication (GI) is an identifier, used by producers in a place¹⁷ or region, which provides specificity to that place or region, similar to a trademark. But the absence of particular ownership distinguishes the GI from the Trademark. It provides protection or specific safeguard according to the geographical origin of a product and is beneficial to producers as well as consumers.

Recently the government has provided 5 varieties of Indian coffee (Coorg Arabica, Chikmagloor Arabica, Bababundgiris Arabica, Waynad Robusta and Araku Valley Arabica) with GI tag to protect the rights of farmers as well as maintain the country's traditional knowledge exclusivity. Of these the Araku Valley Arabica is grown by the tribals of the region using age-old indigenous farming techniques.¹⁸ The

grant of GI tag will help producers get **better recognition and price in the international market and prevent misuse of the names** worldwide.

b. Patents

The TRIPs establishes a "pioneer" patent regime applicable to sectors related to biological materials and life forms giving recognition to the attempts of commercial breeders and big farmers or companies of improving livestock variety, productivity through selection of better/stronger variety, resistance to diseases etc. The developing country users who then buy such variety of seed and livestock, must recognize internationally claimable rights of foreign technologies suppliers. It *implies a restriction on the ability to obtain and exploit foreign sophisticated technology*. Often it has been pointed out that the statutorily forced recognition of foreign suppliers "implies discrimination against farmers compared to commercial breeders by omitting means of recognition and compensation for efforts and contributions by farmers and indigenous communities."¹⁹ This seriously and adversely impacts the efforts of individual farmers of improving the productivity of their crops and animals and also mitigates knowledge sharing in local groups and areas.

c. Patent protection of Agricultural chemical products

Article 70.8 and 70.9 of the Agreement deal with patent protection of agricultural chemical products.²⁰ Article 70.8 provides for transitional exceptions till the controversies pertaining to use of patents are resolved. Article 70.9 relates to exclusive marketing rights to parties that file *mailbox* applications. The issue of inequity is also associated with conferring such rights. For example, the medicinal properties of plants are being exploited commercially and marketed by the big companies. However, this knowledge was not actually developed by the companies themselves. Indigenous people and local communities have played an important role in development of knowledge. So there should be an equitable sharing of benefits or profits that is only possible through development of a stronger legal system. The implementation of farmers' rights becomes necessary in this regard. Today *the local knowledge developed over centuries of human existence is being devalued and is in danger of being lost*. This kind of "informal innovation" is not recognized and protected under legal structures. Intellectual property rights are a form of formal innovation and provide greater security to the patent or copyright holder but work against the sharing of traditional knowledge which does not have any similar legal protection. Hence, judiciousness in granting of patents, copyrights and mailbox patents becomes imperative.

While considering the efficacy of TRIPS for Developing countries, it is pointed out that the nature of intellectual property and the measurement problems associated with it are still to be understood properly. Secondly, the introduction of high level of IPR protection can only be meaningful in a scenario of long-term growth of economy and improved governance. Thirdly, it is suggested that time and resources like water, sanitation, infrastructure etc. are more important. Hence care should be taken that rent transfer effects due to IPR do not adversely affect development. A fourth viewpoint

suggests following a nuanced approach considering the industry specific and country specific factors.

The well-known cases of *basmati variety of rice* and medicinal properties of *neem* and *turmeric*, where India fought to retain its exclusivity based traditional ayurvedic texts and knowledge are examples of the TRIPs agreement being useful in protecting the interest of developing countries. The latest example in this context is *the granting of Geographical indicator (GI) tag to five varieties of Indian coffees* mentioned earlier, which is expected to help recognition of Indian coffee at the global level.

5. Conclusion

The above sections provide an overview of the main provisions under the WTO for trade in agriculture. The discussion has highlighted that the provisions for trade in agriculture are far reaching in their scope and effects. It was envisaged that the member countries would adhere to the WTO provisions in opening up and allowing free agricultural trade. Numerous studies have been carried out to prove that free agricultural trade would lead to higher overall gains. However, the events of last few years have shown that the *gains have accrued mainly to the developed countries while*

the developing countries have been left with scraps in the name of development and trade opportunities. The later WTO ministerials of Bali, Nairobi and Buenos Aires, are testimony to the increasing discomfort of the developing countries with the current situation where developed countries have hawkishly controlled access to their markets while demanding numerous concessions from the developing world. On the one hand, there is a widespread acceptance of the need for a platform for regulating global trade and formulation of equitable trade rules. On the other however, there is increasing debate and discussions in the multilateral forum. This clearly is an attempt of correcting the current imbalance in favour of the needs of the developing and least developed countries. India has been vocal about its stand on greater opportunities for the developing countries while reiterating the relevance of the multilateral forum for providing a platform for achieving this goal and improving and easing global trade. The upcoming ministerial will have to address the important issues of public stockholding, the 'Peace clause', market access and domestic support without buckling down to the pressure tactics of countries unwilling to shoulder their reduction commitments. Only then can the Doha Development Agenda be finally fulfilled.

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