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NAVIGATING AGRICULTURAL DOMESTIC SUPPORT, FISHERIES SUBSIDIES, AND FOOD SECURITY: A CRITICAL EXAMINATION OF THE WTO RULES

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CONTENTS

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A CRITICAL EXAMINATION OF THE WTO RULES [1]

Sachin Kumar Sharma[2], Ahamed Ashiq Shajahan, and Alisha Goswami

ABSTRACT

The WTO is ambitiously negotiating rules on agriculture subsidies, fisheries subsidies and food security to achieve Sustainable Developmental Goals (SDGs) such as zero hunger, doubling agriculture productivity and preservation of marine resources. However, the negotiations have reached an impasse as reflected in the failure of the 13th WTO Ministerial Conference. This paper explores the reasons for the impasse by critically examining the food security, agriculture and fishery subsidy regimes under the WTO to inform the ongoing negotiations and facilitate the fulfilment of the SDGs. In agriculture, negotiations on domestic support and public stockholding (PSH) remain contentious due to the clashing sensitivities and interests of the WTO members. Under domestic support, there is a strong push for reducing the members' capacity to provide trade-distorting agriculture subsidies. Some members however do not concur as they fear losing policy space to subsidize their poor farmers. Similarly, calls for updating the WTO rules on public stockholding for food security purposes by some developing country members are persistently resisted by raising trade distortion concerns. In the fisheries, though the Agreement on Fisheries Subsidies has been adopted, WTO members remain divided on the disciplines regulating subsidies that contribute to overcapacity and overfishing.

Keywords: WTO, food security, subsidies, agriculture, fisheries, sustainable development goals (SDGs), climate change, sustainability, environment, negotiations.

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Navigating Agricultural domestic support, Fisheries Subsidies, and Food Security: A critical examination of the WTO rules

Sachin Kumar Sharma, Ahamed Ashiq Shajahan, and Alisha Goswami

1. INTRODUCTION

Agriculture and fisheries subsidies, along with food security, have been intensely debated in different forums, including WTO, OECD, UNEP, and FAO, due to their implications on international trade, climate change, sustainability, and livelihood security, among others. Such debates are also linked with various United Nations Sustainable Development Goals (SDGs) such as zero hunger, doubling agriculture productivity, and conservation and sustainable use of marine resources, among others. Meanwhile, global hunger measured by the prevalence of undernourishment remains far above pre-pandemic levels according to the recent Food and Agriculture Organization (FAO) report. It is deeply concerning to note that, around 735 million people, which is 122 million more than the number in 2019, have suffered from hunger in 2022 (FAO, 2023). Currently, the WTO members are intensely negotiating to update the trade rules governing agricultural domestic support, fishery subsidies, and food security to address 21st-century challenges such as widespread hunger, trade distortion, and depletion of marine resources. As the 2030 deadline for SDGs is imminent, it is high time for the WTO members to acknowledge their collective responsibility in steering multilateral negotiations towards achieving the SDGs.

One of the issues which will have far-reaching implications for achieving various SDGs is disciplining agricultural domestic support. International organizations such as FAO, UNEP, and UNDP are concerned that global agriculture support is rising at an alarming rate and is set to reach US$1.8 trillion by 2030. Further, it is asserted that a significant share of this support is trade-distorting and harmful to the environment (FAO, 2021). At the same time, some members such as Australia and New Zealand have raised similar concerns at the WTO by claiming that the total trade-distorting domestic support (TTDS) entitlements have increased sharply over the years (WTO, 2019b). Canada further emphasizes that most of these entitlements belong to the top 10 agriculture trading countries including China, the EU, and India. It is feared that the rising levels of entitlements will result in severe trade distortion and undermine the SDGs (WTO, 2023a). To address this problem, the Cairns group[3] members have suggested to

[3] Group of agricultural exporting nations lobbying for agricultural trade liberalization. It was formed in 1986 in Cairns, Australia just before the beginning of the Uruguay Round of WTO negotiations.

significantly reduce the TTDS entitlements of the WTO members. The reduced flexibilities of the WTO members to provide trade-distorting support would force members to repurpose their subsidies towards minimal trade-distorting support measures. However, most developing members are demanding to address the existing asymmetry in the WTO Agreement on Agriculture (AoA) which provides massive flexibilities to selected members to support their farm sector through trade-distorting measures. Furthermore, in contrast to the Cairns group proposal, most developing country members are seeking an effective special and differential treatment (S&DT) in the agriculture negotiations to support their farm sector. The divergent views of members on disciplining trade-distorting support are based on their sensitivities, flexibilities under the AoA, and prevailing socio-economic situation, among others.

Another important issue in the agricultural negotiations which has significant implications for achieving the zero hunger goal is public stockholding of foodgrains (PSH) programmes for food security purposes. Many developing country members have implemented price support-backed PSH programmes to ensure food security and shield their farmers from price fluctuations. However, these countries argue that the AoA adversely constrains their policy space to implement such PSH measures. Importantly, when a developing country member implements price support backed PSH measure, the support is considered as trade-distorting support under the Amber box. Moreover, the flexibility to provide Amber box support for most developing country members is capped at 10 percent of the value of production of the concerned product. Generally, if the price support provided under the PSH measure exceeds the 10 percent limit, it can be challenged at the WTO dispute settlement for not complying with domestic support commitments. After intense negotiations, members agreed on the Bali peace clause in 2013 as an interim solution to shield the PSH programmes of developing country members from legal challenges if they provide support beyond their domestic support commitments. Since 2013, the WTO members have been negotiating to find a permanent solution to the issue of PSH programmes for food security purposes. In this context, more than 75 WTO members from the G33, ACP, and African Group seek a permanent solution that would provide additional flexibilities over the existing peace clause. On the other hand, it is opposed by some members who argue that it would provide unrestricted flexibility to developing country members to distort agricultural trade. Furthermore, these members are linking the PSH issue with the domestic support negotiations.

Unlike the WTO agriculture negotiations which aim to mitigate trade distortion, fisheries negotiations aim to ensure ocean sustainability by disciplining fisheries subsidies as provided under SDG 14.6. Importantly, fish and fishery products are not agriculture products as provided under Annex 1 of AoA and are consequently excluded from the scope of this agreement. They are classified under the WTO as 'non-agriculture products' and discussed under the Non-Agricultural Market Access (NAMA) negotiations. Notably, fisheries and agriculture products were treated differently during the Uruguay Round for two main reasons. Firstly, both negotiations differed in terms of their goals or priorities. While agriculture negotiations were mainly focused on disciplining agriculture subsidies, fisheries negotiations were focused on improving market access by reducing tariffs. Secondly, unlike agricultural products, fisheries were considered exhaustible natural resources.

International organizations such as FAO, UNEP, and OECD claim that unregulated fishery subsidies result in the depletion of fish stocks and threaten the income and livelihood security of fishermen. To regulate fisheries subsidies, the WTO members adopted the Agreement on Fisheries Subsidies (AFS) in the 12th Ministerial Conference (MC 12) in 2022, under which harmful subsidies that contribute to illegal, unreported, and unregulated (IUU) fishing, and subsidies provided for fishing overfished stocks have been disciplined. However, regulating subsidies that contribute to overcapacity and overfishing (OCOF) remains a thorny issue as members continue to negotiate on this topic.

Currently, there is a clear stalemate in the WTO negotiations on domestic support, public stockholding for food security purposes, and fisheries subsidies as reflected in the 13th WTO Ministerial Conference (MC 13) in Abu Dhabi. This paper is a modest attempt to explain the underlying reasons for the prevailing divergence among the WTO members. Section 2 will explain the agriculture domestic support rules, provide the negotiating history, and highlight the varying positions of different negotiating groups and members. Section 3 will describe the constraining effects of the AoA on the implementation of PSH measures, provide a historical overview of the relevant negotiations, and highlight the various concerns and sensitivities around the topic. Section 4 elaborates on the WTO fisheries negotiations, explains the salient features of the Agreement on Fisheries Subsidies, and highlights the members' concerns in the ongoing negotiation, while section 5 concludes the paper.

2. AGRICULTURE DOMESTIC SUPPORT

Before the establishment of the WTO in 1995, the disciplines under the General Agreement on Tariffs and Trade (GATT) were ineffective in regulating agriculture trade. Many countries used special clauses and waivers under the GATT to heavily subsidize their agriculture sector through massive domestic support and export subsidies. For instance, Japan, the European Community (EC), the US, and Canada were highly subsidizing their agriculture sector, with their share of farm income from subsidies accounting for 75, 50, 42, and 49 percent respectively before the Uruguay Round (Stewart, 1993). High levels of production and export subsidies caused severe trade distortion and depressed international prices of agricultural commodities. It adversely affected the farm income and profitability of the agriculture sector in many developing countries (Sharma & Das, 2022).

2.1. Domestic Support under the Agreement on Agriculture

The Uruguay Round negotiations (1986-94) resulted in the WTO Agreement on Agriculture (AoA) which mainly deals with domestic support, market access, and export competition, among others.

Domestic support for agriculture can be classified into Green, Blue, Development, and Amber boxes. The Green box measures enumerated in Annex 2 of the AoA are considered non or minimal trade-distorting. The support under this box should be provided through a publicly-funded government programme not involving transfers from consumers, and should not have the effect of providing price support to producers.[4] Support measures for general services, public stockholding for food security purposes, domestic food aid, and direct payments fall in this category. The Blue box (Article 6.5) accommodates trade-distorting direct payments under the production-limiting programmes. Such payments can be based on (1) fixed area and yields; or (2) 85 percent or less of the base level of production; or (3) fixed number of livestock heads. The Development box (Article 6.2) exists as a special and differential treatment (S&DT), which allows the developing country members to provide investment subsidies generally to all farmers, and input subsidies exclusively to low-income or resource-poor farmers. Importantly, there are no financial limits for Green, Development, and Blue box, and therefore, members

[4] Annex 2, Para 1 of the Agreement on Agriculture.

can provide unlimited support under these categories provided the relevant conditions are complied with.

Domestic support measures that do not fall under the Green, Blue, and Development box are deemed highly trade-distorting and are recognized as Amber box measures. Importantly, the Amber box is the only category subject to financial limits under the AoA. It is broadly divided into (1) product-specific support such as market price support (MPS), and price-deficiency payments; and (2) non-product-specific support such as fertilizer, irrigation, and electricity subsidies. Importantly, a member's flexibility to provide Amber box support depends on the applicable *de minimis* limit and its aggregate measurement of support (AMS) entitlement.

The term '*de minimis*' refers to the minimum level of Amber box support that a member can provide as per the AoA. The applicable *de minimis* limit for the developing including LDC members to provide product-specific and non-product-specific support is 10 percent of the value of production (VoP) of the relevant product, and total agriculture production respectively. The *de minimis* limit for developed country members is 5 percent, whereas, for China and Kazakhstan, it is 8.5 percent (Table 1).

Table 1: An overview of domestic support flexibilities for WTO members

Group	***De minimis* limit (%)**	**Development box (Unlimited)**	**Blue box (Unlimited)**	**Green box (Unlimited)**
Developed country	5	No	Yes	Yes
Developing including LDCs	10	Yes	Yes	Yes
China	8.5	No	Yes	Yes
Kazakhstan	8.5	No	Yes	Yes

Source: Authors' compilation based on members' commitments for domestic support.

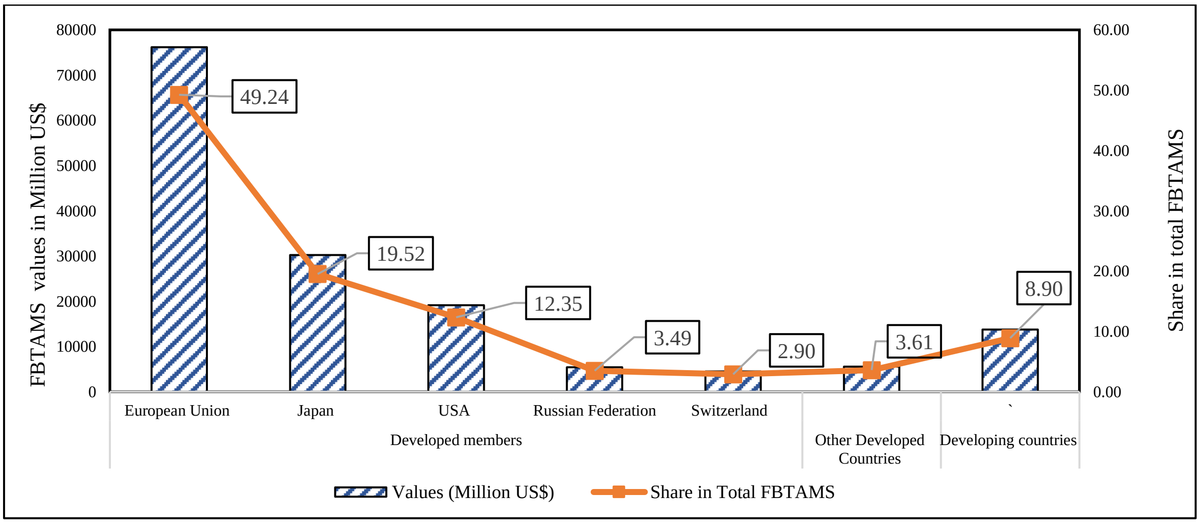
Table 2: Determination of final bound AMS entitlement of the USA

Year	**Value (USD Billion)**
Base AMS (1986-88)	23.88
Reduction Commitment (%)	20%
Final Bound AMS	19.1

Source: WTO Schedule of Commitment of the USA (G/AG/AGST/USA).

The flexibility to provide Amber box support beyond the *de minimis* limits depends on the members' AMS entitlements which were determined based on their respective average Amber box support during the base period of 1986-88. For acceding members, the base period is determined as per their accession protocol. During the Uruguay Round negotiations, some WTO members were providing Amber box support above their respective *de minimis* limit, which was also called Base AMS. The developed and developing country members were required to reduce the Base AMS by 20 and 13.3 percent respectively during the implementation period of 1995-2000 or 1995-2004. For instance, the Base AMS of the US was US$ 24 billion which was reduced by 20 percent to determine the final bound AMS (Table 2). However, the majority of developing including LDC members did not provide the Amber box support beyond their respective *de minimis* limit, therefore, their final bound AMS entitlement was capped at zero.

Figure 1: Final Bound AMS entitlement of selected WTO members in 2022



Source: Authors' compilation based on members' notifications, and schedule of commitments.
Note: Final bound AMS entitlement has been converted to US$ based on the average exchange rate of 2022.

Currently, 33 WTO members have the flexibility to provide support beyond their *de minimis* limit (Brink & Orden, 2023), and for others, the Amber box support is capped at their respective *de minimis* limit. Notably, the top five countries namely the EU, Japan, the US, Russia, and Switzerland accounted for more than 87.5 percent of global AMS entitlement in 2022 (Figure 1). Overall, the members who were providing high levels of trade-distorting Amber box support during the Uruguay Round managed to secure their policy space to provide such support subsequently in the form of AMS entitlements. In contrast, members who weren't distorting trade had to cap their policy space to provide trade-distorting support at *de minimis* level (Berthelot, 2015; Sharma et al., 2021).

2.2. WTO Negotiations on Disciplining Agricultural Support

The long-term objective of the AoA is to establish a fair and market-oriented agricultural trading system through substantial progressive reductions in agriculture support and protection. Article 20 of the AoA allows members to negotiate in pursuance of this objective. However, members have varying views on disciplining trade-distorting support, especially on whether some or all components of Article 6 of the AoA namely the Amber box, *de minimis* limit, Blue box, and Development box would be covered by new negotiating rules. After almost 24 years, WTO members still have no consensus on how to further discipline domestic support.

Table 3: Favourable impact of AMS entitlement on policy space for USA and EU

United States			**European Union**		
Year	**Product**	**Support as % of Value of Production (VoP)**	**Year**	**Product**	**Support as % of Value of Production (VoP)**
2000	Wool	215	2003	Cotton	139
2000	Rice	59	2003	Rice	58
2001	Cotton	74	2006	Sugar	177
2002	Mohair	141	2019	Common Wheat	9.4
2021	Sugar	50			

Source: WTO domestic support notifications.

Reaching consensus is challenging because of the sensitivities and concerns of members on each component of domestic support, and the approach to further discipline domestic support. Many developing country members such as the G33, ACP, African Group, LDC group, and China have strong concerns regarding the existing asymmetries in the AoA which allow some members to provide huge trade-distorting support without breaching their WTO commitments. For example, the applicable *de minimis* limit for a developed country member such as the US is 5 percent of the VoP of the concerned product. However, it can exceed the *de minimis* limit because of its AMS entitlement of US$ 19 billion. Domestic support notifications show that some members have significantly exceeded their *de minimis* limits for many products over the years (Table 3). In contrast, the majority of developing country members cannot exceed their respective *de minimis* limit of 10 percent as they have no AMS entitlements. Additionally, the AMS entitlement gives flexibility to concentrate massive amounts of subsidies on selected products of strategic importance. For instance, the US can concentrate its entire AMS entitlement of US$ 19 billion on a particular commodity and yet be regarded as compliant with the AoA provisions. For this reason, most developing country members including China, India, G33, ACP, African, and LDC groups have demanded the elimination of AMS entitlements beyond *de minimis* (WTO, 2017b, 2023h). From the majority of developing country members' perspective, the elimination of AMS entitlements for developed country members is of utmost importance which would result in capping product-specific support to the *de minimis* limit (WTO, 2017a, 2017c, 2020).

Furthermore, many developing country members argue that effective special and differential treatment (S&DT) should be an integral part of the negotiations. Importantly, developing country members excluding China and Kazakhstan can provide support under the Development box. Any dilution of S&DT provision in the form of capping or dilution of the Development box support is an extremely sensitive issue for them. Furthermore, agriculture domestic support measures of developing country members are frequently challenged and scrutinized in various meetings of the Committee on Agriculture (CoA) as well as through dispute settlement mechanisms. Constraining provisions of the AoA have become more visible to the developing country members in the recent past as many of them experience a lack of policy space to implement various agricultural measures. For instance, domestic support measures of China, and sugar support measures of India were challenged at the WTO dispute settlement body.[5] Moreover, counter-notifications against India's support measures related to rice, wheat, cotton, and pulses highlight the constraining provisions of the WTO (WTO, 2018, 2019a, 2023d). Therefore, most developing country members are cautious in undertaking commitments that might further reduce their policy space from the *de minimis* limits.

On the other hand, some members of the Cairns group call for a complete overhaul of the domestic support provisions in the AoA to address the rising levels of global Total Trade distorting Domestic Support (TTDS) entitlements (Sharma et al., 2022, 2023). These members have been pushing for a TTDS limit which would reduce or cap the policy space to provide trade-distorting support under the AMS entitlement, *de minimis* limit, Blue, and the Development box. They argue that trade-distorting domestic support entitlements of the WTO members have been sharply rising from 2001 to 2016, and are expected to reach US$ 2 trillion by 2030 (WTO, 2019b). It is also highlighted that 78.6 percent of TTDS entitlements belong

[5] WTO Panel Report, China – Domestic Support for Agricultural Producers. (WT/DS511/R); WTO Panel Report, India – Measures concerning sugar and sugar cane. (WT/DS579/R).

to the top 10 members involved in agriculture trade, with China, the EU, and India topping the list in terms of the size of the entitlement (WTO, 2023a). These members are apprehensive of this upward trend in trade-distorting subsidy entitlements as they can cause heavy distortions in the agriculture market, and moreover undermine sustainability and climate goals. Notably, few members such as Australia, Canada, Costa Rica, and New Zealand assert that the upward trend in TTDS flexibility is mainly on account of the combined *de minimis* entitlements. This argument is based on the reasoning that developing and developed country members are entitled to 20 and 10 percent of the VoP respectively under the combined *de minimis* limit, which comprises aggregated product-specific, and non-product-specific *de minimis* support. For a given increase in the VoP, the entitlement in monetary terms under the combined *de minimis* limit would increase at double the rate for developing country members than for developed country members.

To address these concerns, the Cairns group members have proposed to freeze and reduce the TTDS entitlement by 50 percent by the year 2030 or 2034 (WTO, 2021a, 2021b, 2023e, 2024c). This target is to be achieved through the following steps. First, the global base TTDS is to be determined by summing up the trade-distorting domestic support provided by all members in a fixed base year. Second, this base global TTDS needs to be reduced by 50 percent by 2030 or 2034. Third, this target is to be achieved by reducing members' individual TTDS entitlements, and the reduction should be proportional to the size of the member's TTDS entitlement in the base year. Hence, the higher the member's base TTDS entitlement, the greater will be its reduction commitment. Importantly, as special and differential treatment, the proposal exempts LDCs from freezing and reducing their entitlements. Fourth, the reduced TTDS entitlement will serve as the upper limit for the members to provide support under the Amber box including the *de minimis* limit, Blue box, and Development box.

The EU also seeks to discipline all the components of Article 6 of the AoA. As evident from the domestic support notifications, the EU supports its farm sector mainly through direct payments under the Green box. In this regard, the African Group has proposed to cap direct payments under the Green box for the developed country members (WTO, 2023f). However, the EU does not agree with the African Group and maintains that Green box support is non-trade distorting, and hence it should not be curtailed. The US also wants to discipline domestic support, however, it maintains that it should be in the form of an agriculture package which includes a steep reduction in agricultural tariffs under the market access pillar. Notably, the US has a keen interest in market access pillar like the Cairns group (WTO, 2023b, 2023i). In contrast, the EU is extremely sensitive towards tariff reductions under the market access pillar but is interested in new discipline for curtailing the flexibilities to reduce trade-distorting support. The G-10 countries such as Japan, South Korea, Norway, and Switzerland also have strong reservations about undertaking steep cuts in their flexibility to provide domestic support. Also, some countries such as Norway, Iceland, Japan, EU, and China have provided Blue box support and some of these members seek to retain the flexibility to provide blue box support.

Given these sensitivities and concerns, WTO members have been failing to reach a consensus on how to discipline domestic support since 1995. In this regard, MC 13 was no exception.

3. FOOD SECURITY IN AGRICULTURE

Concerns related to food security are deeply intertwined with agriculture negotiations. Members have highlighted various approaches to ensure food security, including implementing public stockholding programmes, disciplining export restrictions, and enhancing trade facilitation (WTO, 2022c, 2023b, 2024c). However, negotiations on the PSH for food security have remained the most contentious.

Public Stockholding (PSH) policy has been an integral part of food security in many countries with procurement, storage, and distribution as its main components (Sharma, 2016b). Over the years, price support-backed PSH has been implemented by many countries wherein, foodgrains are purchased from farmers at a fixed price, called the 'administered price'. The accumulated stocks are then distributed to the poor at subsidized prices. This measure ensures food security by providing adequate food for the poor, as well as, remunerative prices for the poor farmers. For example, Indonesia procures foodgrains through BULOG at an administered price and distributes them to the poor under the RASKIN system (Thow et al., 2019). Similarly, the Indian government procures foodgrains at minimum support price (MSP) and distributes them to 810 million people under the National Food Security Act of 2013. Currently, the government provides free foodgrains to the poor and migrants under the Pradhan Mantri Garib Kalyan Anna Yojana (PM-GKAY).[6] Notably, other countries such as Bangladesh, China, Turkey, and Zambia among others have implemented price support-backed PSH programmes for commodities such as rice, maize, sugar, wheat, soybean, pulses, and barley (Sharma, 2016a; WTO, 2022a). Though many countries have implemented PSH programmes successfully over the years, they have also raised serious concerns at the WTO regarding the constraining provisions of the AoA. In this regard, it is pertinent to explore the underlying concerns and positions of different WTO members on the PSH for food security.

3.1. Constraining Provisions under the AoA

Paragraph 3 of Annex 2 of the AoA provides that the expenditure on PSH programmes for food security is covered by Green box if the foodgrains are procured at the prevailing market prices. However, in many developing including LDC members, the procurement is made at an

[6] For more details see, Department of Food and Public Distribution, Pradhan Mantri Garib Kalyan Anna Yojna (PM-GKAY). https://dfpd.gov.in/

administered price rather than the prevailing market price. To address this issue, the footnote 5 of Annex 2 prescribes that,

"Governmental stockholding programmes for food security purposes in developing countries whose operation is transparent and conducted in accordance with officially published objective criteria or guidelines shall be considered to be in conformity with the provisions of this paragraph, including programmes under which stocks of foodstuffs for food security purposes are acquired and released at administered prices, provided that the difference between the acquisition price and the external reference price is accounted for in the AMS".

In other words, when a developing country member implements a PSH programme at an administered price, the price support is to be covered by Amber box based on the difference between the applied administered price (AAP) and the external reference price for the concerned product. However, a question arises as to how the external reference price (ERP) and price support will be calculated. As per Para 9 of Annex 3 of the AoA, the ERP is the average FOB (free on board) unit value for the basic agricultural product concerned in a net exporting country, and the average CIF (cost, insurance, and freight) unit value for the basic agricultural product concerned in a net importing country during the base period of 1986-1988. In short, the ERP for an agriculture product is fixed based on its average export or import price that prevailed during the base period of 1986-88. The price support provided through the PSH programmes is calculated by multiplying the difference between the applied administered price (AAP) and the fixed external reference price (ERP) with the quantity (Q) of the concerned product eligible for receiving the support.[7] Mathematically, the formula appears as provided below.

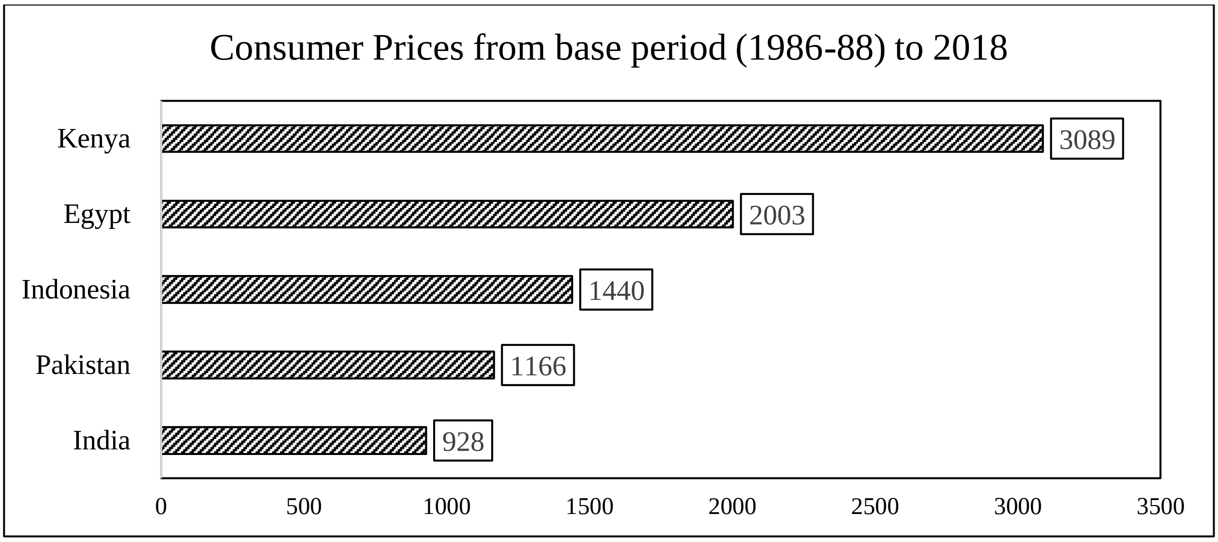
*Price support = [AAP- ERP]*Q*

As the flexibility of most developing country members to provide Amber box support is capped at their *de minimis* limit, price support under the PSH programme cannot exceed 10 percent of the value of production (VoP) for the concerned product. Notably, the expenditure related to the distribution of foodgrains to poor people at a subsidized rate is covered under the Green box (Footnote 5&6, Annex 2). For many developing country members, the policy space to

[7] Annex 3, Para 8 of the Agreement on Agriculture.

implement price support-backed PSH programme has been shrinking due to the comparison of the AAP with the ERP which prevailed four decades ago. While the AAP has increased over the years due to multiple factors such as inflation, rising cost of cultivation, and demand and supply among others, the ERP has remained fixed at 1986-88 prices. For instance, the ERP for rice in Indonesia is IDR 371/kg, whereas the AAP was IDR 7300/kg in 2018 which is 1868 percent of the ERP (Sharma & Shajahan, 2024). Since the base period, the cumulative inflation index has increased significantly for many members which has serious implications for the market price support calculation. Figure 2 shows the increase in inflation (CPI index) for some countries compared to their respective base period

Figure 2: Inflation index in 2018 (as compared to the base period 1986-88).



Source: Based on the Consumer Price Index calculated from (1) World Development Indicators, World Bank, (2) Handbook of Statistics on the Indian Economy, Reserve Bank of India.

Though Article 18.4 of the AoA provides room for considering ‘excessive inflation’, there is no consensus on what constitutes ‘excessive inflation’. Moreover, some argue that members do not have a unilateral right to consider inflation, rather it is up to the CoA to give due consideration for inflation during the review process.

3.2. WTO Negotiations on Food Security

Recognizing the shrinking policy space for the developing country members, India proposed a food security box in 2001 before the commencement of the Doha Ministerial Conference. Subsequently, the Doha Ministerial Declaration recognized the importance of food security for the developing country members, and mandated that special and differential treatment and non-trade concerns including food security shall be an integral part of the negotiations as provided below.

Para 13 of the Doha Ministerial Declaration,

> *'We agree that special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the Schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development. We take note of the non-trade concerns reflected in the negotiating proposals submitted by Members and confirm that non-trade concerns will be taken into account in the negotiations as provided for in the Agreement on Agriculture.'*

Based on this mandate, the African Group proposed a special and differential treatment for developing country members by excluding expenditure incurred on PSH programmes at an administered price from the Amber box calculations (WTO, 2006). As the negotiations continued, there was no substantial outcome on this topic until the Bali Ministerial Conference in 2013.

Before the 9th Ministerial Conference in Bali, the G33 members proposed certain amendments to the AoA to address this issue (WTO, 2012). Since it would take a long time to amend the agreement, the G33 pushed for three options to address the food security concerns until the AoA is amended. Those options were first, dynamic ERP based on trade data of recent years, second, consideration of inflation, and third, a peace clause to shield developing country members from WTO disputes if they breach their domestic support commitments. At the Bali Ministerial Conference, members adopted the peace clause which came to be known as the Bali Ministerial Decision on PSH for food security purposes or simply the 'Bali peace clause' (WTO, 2013).

The Bali peace clause has two parts. First, members committed to a work program to negotiate and adopt a permanent solution for PSH by the 11th Ministerial Conference. Second, the temporary solution through a peace clause where members agreed not to bring disputes against the developing country members who breach their commitments while implementing PSH programmes for food security. The relevant paragraphs of the decision are provided below.

__Paragraph 2:__ 'In the interim, until a permanent solution is found, and provided that the conditions set out below are met, Members shall refrain from challenging through the WTO Dispute Settlement Mechanism, compliance of a developing Member with its obligations under Articles 6.3 and 7.2 (b) of the Agreement on Agriculture (AoA) in relation to support provided for traditional staple food crops in pursuance of public stockholding programmes for food security purposes existing as of the date of this Decision, that are consistent with the criteria of paragraph 3, footnote 5, and footnote 5&6 of Annex 2 to the AoA when the developing Member complies with the terms of this Decision.'

__Paragraph 8:__ 'Members agree to establish a work programme to be undertaken in the Committee on Agriculture to pursue this issue with the aim of making recommendations for a permanent solution. This work programme shall take into account Members' existing and future submissions.'

Despite a commitment to a work program to negotiate a permanent solution for PSH, there was no progress in this regard after the Bali Ministerial Conference. In addition, some members interpreted the peace clause to suggest that it would expire at the end of the 11th Ministerial Conference in 2017, regardless of whether or not a permanent solution was adopted (Sharma, 2016b). In response, India, sensing the absence of bona fide intention among some members to negotiate a permanent solution, decided to block the adoption of the Trade Facilitation Agreement until the confusion regarding the implementation of the peace clause was addressed (Sharma, 2016b).

After intense negotiations, the General Council (GC) decision (WTO, 2014) in 2014 provided legal clarity that the Bali peace clause would continue to be in place until a permanent solution for PSH is adopted if the members failed to meet the mandate by the 11th WTO Ministerial Conference. Notably, the Nairobi Ministerial Conference in 2015 reaffirmed the GC decision and decided to make all concerted efforts to adopt a permanent solution (WTO, 2015).

3.3. Features and Concerns in the Bali Peace Clause

The developing country members seeking to invoke the Bali peace clause are required to fulfill certain conditions. Accordingly, the member seeking to benefit from these decisions should have,

a. Notified the CoA that it is exceeding or is at the risk of exceeding its AMS limits (member's Bound total AMS or its *de minimis*) due to the PSH program.
b. Fulfill and continue to fulfill its domestic support notification requirements under the AoA in accordance with document G/AG/2 of 30 June 1995, as specified in the Annex.
c. Have provided, and continue to provide on an annual basis, additional information by completing the template contained in the Annex, for each public stockholding programme that it maintains for food security purposes.
d. Provide any additional relevant statistical information.

Moreover, a member seeking to benefit from this decision should also ensure that the PSH stocks do not distort international trade or harm the food security of other members. Though the Bali peace clause has shielded the PSH programmes of developing country members, they often underscore the shortcomings in the interim mechanism, and call for intensifying the negotiation to find a permanent solution.

Firstly, the peace clause shields only a limited basket of agricultural products which are 'traditional staple food crops'. The proponents of a permanent solution ask for wider product coverage to address the changing dietary requirements of their population and for effective implementation of PSH policies. Secondly, the decision does not cover the PSH programmes implemented after 7th December 2013. Thirdly, members invoking the peace clause have to ensure that the PSH stocks do not distort international trade or harm the food security of other members. Importantly, since members have no clarity on what constitutes international trade distortion or harming other members' food security, many fear that their PSH programmes would be challenged under arbitrary conditions (Sharma & Shajahan, 2024; Shajahan, 2023).

Notably, India has provided price support to rice beyond its applicable limit for implementing the PSH programme since the marketing year 2018-19 (Table 4). Therefore, India invoked the Bali peace clause to shield its price support-backed PSH programmes from a legal challenge at the WTO (WTO, 2023c). Importantly, more than 75 members from the G33, ACP, and African Group have tabled a proposal to find a permanent solution for PSH, which alleviates many existing shortcomings in the Bali peace clause (WTO, 2022c). The proposal seeks more product and program coverage, less onerous transparency and anti-circumvention provisions, and a dynamic ERP, among others. However, the opponents contend that such a permanent solution could provide unlimited flexibility for the developing country members to subsidize their farmers, export from the PSH stocks, and distort international trade. They seek to limit the flexibility by linking the permanent solution with the members' global export share for the concerned product (WTO, 2022b).

Table 4: India's rice support

Year	Applied Administered Price	ERP	Eligible Production	Total market price support	PSS as a percentage of VoP
	USD/Tonne	**USD/Tonne**	**Million Tonne**	**USD Million**	**%**
2018-19	375.41	262.51	44.33	5004.97	11.46
2019-20	384.0	262.51	52.00	6317.52	13.71
2020-21	377.50	262.51	60.08	6908.60	15.16
2021-22	390.58	262.51	58.94	7549.17	15.22

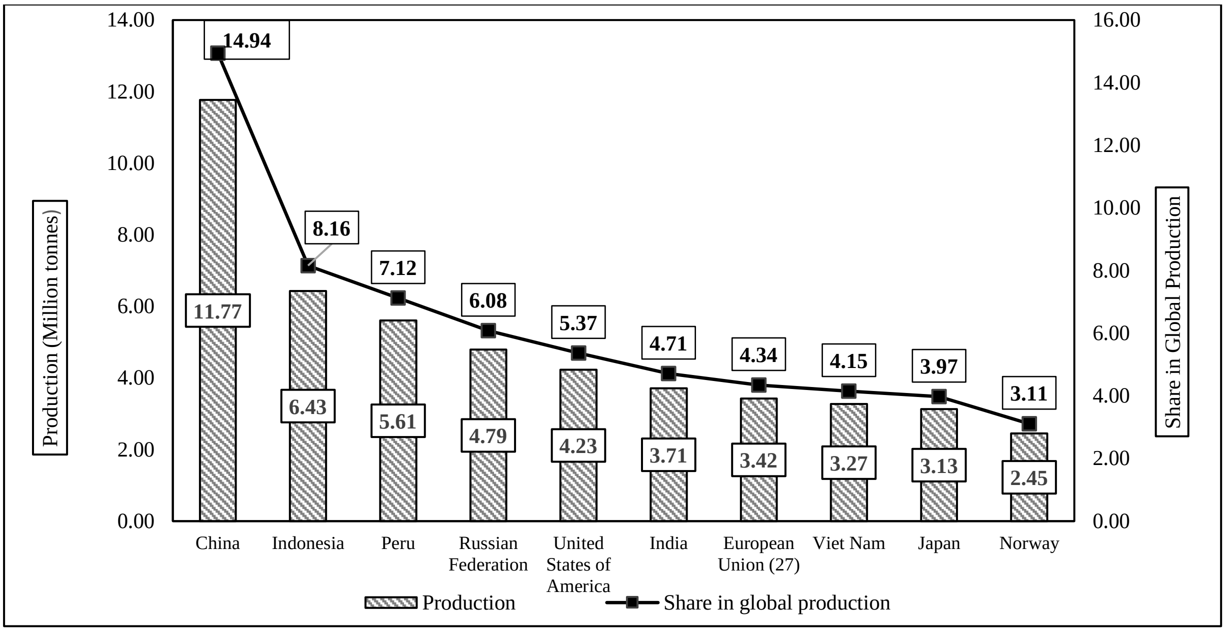
Source: Calculation based on India's Domestic Support (DS:1) Notifications to WTO.

Referring to the Bali, GC, and Nairobi decisions, the proponents of the permanent solution strongly argue that PSH is a mandated issue to be resolved in dedicated sessions, distinct from negotiations on other topics, and in an accelerated time frame. In contrast, the opponents maintain that PSH needs to be negotiated within the wider scope of domestic support negotiations (WTO, 2023e, 2024d). Owing to these differences, the WTO members were unable to secure consensus at the recently concluded MC 13.

4. FISHERY SUBSIDIES UNDER THE WTO

The United Nations under Sustainable Development Goal 14.6 aimed to eliminate subsidies contributing to illegal, unreported, and unregulated (IUU) fishing, and prohibit subsidies contributing to overcapacity and overfishing (OCOF) (WTO, 2024a). The aim was pertinent given the rapid decline in global fish stocks over the years. Notably, 35.4 percent of global fish stocks as of 2019 have been overfished. In other words, fish stocks have been exploited at a rate where the fish population cannot replenish itself (FAO, 2022). As a result, many countries and international organizations have raised serious concerns about the sustainability of global fish stocks. They argue that unregulated government subsidies for fuel, fishing gear, and vessels increase fishing activity and deplete fish stocks, resulting in a loss of income for fishermen (OECD, 2019).

Figure 3: Top 10 marine producers (2020)



Note: Data for the European Union (27) has been extracted from Fish stat, FAO.
Source: Authors' compilation based on FAO, SOFIA 2022.

Historically, several countries such as the US, EU, Canada, Iceland, Norway, Japan, Korea, and Taiwan have provided enormous subsidies for their fishery industries (Kumar, 2017; OECD, 2004). In an attempt to curtail and regulate these subsidies, the WTO members have been negotiating disciplines for more than 20 years. In 2022, they unanimously adopted the Agreement on Fishery Subsidies at MC 12. The disciplines under this agreement can be broadly categorized under three pillars namely, subsidies (i) for IUU fishing ii) for fishing overfished stocks, and iii) for OCOF. While disciplines on IUU fishing and overfished stocks are adopted, the OCOF pillar is still under negotiation. Notably, at present, China tops the list of top 10 marine producers, followed by Indonesia, Peru, and Russia among others as illustrated in Figure 3.

4.1. WTO Fisheries Negotiations before MC 12

Major international organizations such as the FAO, UNEP, WWF, and the World Bank conducted various studies on the exploitation and depletion of global fish stocks in the 1990s. They played a major role in sensitizing the international community of the need to regulate fishery subsidies (UNEP, 2008). Since the creation of the WTO, fish subsidies have been regulated under the Agreement on Subsidies and Countervailing Measures (ASCM) as they were excluded from the scope of the AoA (Westlund, 2004). In the Doha Declaration (2001), the WTO members agreed to clarify and improve the disciplines on fisheries subsidies under the work program on WTO rules, as provided below.

"participants shall also aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries".

Subsequently, members specifically called for the prohibition of subsidies that contribute to overcapacity and overfishing in the 2005 Hong Kong Ministerial Declaration. However, there was no consensus on the approach to be adopted for implementing the prohibition (Bahety & Mukiibi, 2017). While the coalition of 'Friends of Fish'[8] called for the top-down[9] approach (WTO, 2004) with a detailed list of prohibited subsidies and limited exceptions, countries such as Japan, Korea, and Chinese Taipei sought a bottom-up[10] approach (WTO, 2005) with the prohibition applying only to a narrow set of programmes. Following the Hong Kong Ministerial, many technical proposals on a range of fisheries subsidy topics were tabled to continue the negotiations. With the adoption of UN SDGs in 2015, the WTO members in the same year renewed their commitment to advance the fisheries negotiations at the Nairobi Ministerial Conference.

[8] Informal coalition seeking to significantly reduce fisheries subsidies. Members generally include Argentina, Australia, Chile, Colombia, Ecuador, Iceland, New Zealand, Norway, Pakistan, Peru, and United States. From time to time other WTO members also identify themselves as "Friends of Fish".
[9] Top down approach consists of a comprehensive list of prohibited subsidies which includes most fisheries subsidy programmes to be circumscribed by a limited list of exceptions targeting programmes aimed at improving fisheries management and surveillance as well as active capacity reduction.
[10] Bottom-up approach limits the scope of the prohibition to a narrowly defined list of specific programmes.

4.2. The Agreement on Fisheries Subsidies

The MC 12 was a landmark moment as members adopted the Agreement on Fisheries Subsidies to regulate subsidies for 'IUU fishing' and 'overfished stocks'. The 'OCOF' pillar is however under negotiation as members are unable to secure consensus yet. This is problematic since the agreement will be terminated if the negotiation under the 'OCOF' pillar is not concluded within 4 years of the agreement's entry into force. Moreover, though the agreement has been adopted by the WTO, it is set to become operational only when the 2/3rd of the WTO members ratify this agreement by depositing their 'instrument of acceptance' in the WTO. As of March 2024, 72 members have ratified the agreement (WTO, 2024b). Notwithstanding these issues, the agreement is commended for achieving the SDG Target 14.6. It is regarded as an important instrument to enhance marine sustainability and the income security of the fishing community.

With respect to substantial provisions, the agreement prohibits subsidies for fishing or fishing-related activities regarding both IUU fishing and overfished stocks.[11] For IUU fishing, the prohibition takes effect when a costal member or a flag State Member, or a relevant Regional Fisheries Management Organization/Arrangement (RFMO/A)[12] determines that a vessel or a person in charge of the vessel has engaged in IUU fishing activity.[13] Similarly for overfished stocks, the prohibition comes into effect when a costal member or a relevant RFMO/A recognizes a stock as 'overfished'.[14] Notably, subsidies provided for the purpose of rebuilding an overfished stock to a biologically sustainable level are not prohibited.[15] Whereas, subsidies to fishing and fishing-related activities in high seas not within the scope of RFMO/A are prohibited.[16] Owing to Special and Differential Treatment (S&DT), subsidies provided by developing and LDC members for IUU fishing and overfished stocks within their Exclusive Economic Zones (EEZ) cannot be challenged at the WTO in the first two years after the agreement enters into force.[17] The agreement also provides for a voluntary funding mechanism to offer technical assistance and capacity building for the developing and LDC members.[18]

[11] See Article 3.1 and 4.1 of Agreement on Fisheries Subsidies.
[12] RFMO is an international body made up of countries that share a practical and/or financial interest in managing and conserving fish stocks in a particular region.
[13] Article 3.2 of Agreement on Fisheries Subsidies.
[14] Article 4.2 of Agreement on Fisheries Subsidies.
[15] Article 4.3 Agreement on Fisheries Subsidies.
[16] Article 5.1 of Agreement on Fisheries Subsidies.
[17] Article 3.8 and 4.4 of Agreement on Fisheries Subsidies.
[18] Article 7 of Agreement on Fisheries Subsidies.

4.3. Negotiating the Over Capacity and Over Fishing Pillar (OCOF)

After MC 12, the second wave of negotiations began with the OCOF pillar along with some ancillary issues such as non-specific fuel subsidies and forced labor. Many proposals were tabled to negotiate the OCOF pillar. They were broadly based on four approaches namely, list-based, effect-based, *de minimis* or capping, and hybrid.

Proposals adopting a list-based approach prohibited subsidies that covered the operating and capital costs of fishing vessels and fishing-related activities. The list of subsidies for prohibition was drawn from the finding that certain forms of subsidies contributed to increasing fishing capacity (OECD, 2017). Under this approach, many ideas were floated, including prohibiting subsidies for the acquisition, construction, and modernization of fishing vessels, and subsidies for fishing beyond national jurisdiction except when authorized by RFMO (IISD, 2020). An effects-based approach prohibited subsidies only when they adversely affected fish stocks. This approach did not gain much support since there was no clarity on how the actual effect of the subsidy on fish stocks would be assessed. The capping or *de minimis* approach basically provided for members to cap/limit their annual subsidy entitlements and take reduction commitments based on their global marine catch production.

The proposals that combined list and effects-based approaches were known to be adopting a hybrid approach. These proposals were of four types. First, proposals that had a list of prohibited subsidies, with all other subsidies considered as 'actionable' when they harm fish stocks. Second, proposals that adopted effects-based rules to regulate subsidies for fishing within EEZs, and list-based rules to regulate subsidies for fishing in high seas and other members' EEZs. Third, proposals which required members to complete due diligence procedures before providing the subsidy in order to assess their potential impact on fish stocks. Fourth, a sustainability-based hybrid approach called for the prohibition of all forms of subsidies unless the concerned member implements measures to ensure the sustainability of stocks simultaneously (IISD, 2020).

4.4. The Sustainability-based Hybrid Approach

As per the latest draft text of the chairperson (WTO, 2024e), the discipline on the OCOF pillar is based on the sustainability-based hybrid approach, which calls for the prohibition of a list of subsidies with some exceptions. An overarching exception in the form of 'sustainability conditions' applies to both developed and developing members. The underlying idea is that a member can provide prohibited subsidies if it can demonstrate that it is fishing sustainably by fulfilling the 'sustainability conditions'. The sustainability condition requires the concerned member to implement measures that ensure that fish stocks are maintained at biologically sustainable levels, and notify the same along with additional information such as the status of fish stocks and catch data among others. In this regard, many developing members are concerned that they do not have the capacity to fulfill this condition and, as a result, will not be able to utilize this exception. Whereas, most developed members who already have the appropriate mechanisms to manage fish stocks can easily fulfill this condition and continue to provide the prohibited subsidies (Sengupta, 2024).

4.5. Special and Differential Treatment for Developing and LDC Members

The current negotiations also provide some S&DT provisions for developing and LDC members. Notably, developing members with less than 0.8 percent share in global marine capture production and LDCs are exempted from the prohibition. This exemption is permanent and unconditional according to the latest draft. For developing members with more than 0.8 percent share, the exemption from prohibition applies only for a limited period of time called the transition period. Upon expiry of this period, the prohibition will be reinstated regardless of the member's capacity constraints. Furthermore, they can provide the prohibited subsidies to support small-scale and artisanal fishermen within a limited geographical area. However, and most importantly, a developing member can benefit from these two flexibilities only if it had not engaged in distant water fishing (DWF).

4.6. Concerns and Proposals on the S&DT

Many developing members regard these provisions as 'unfair', especially those that discipline DWF. Furthermore, they ask for an effective S&DT to ensure the livelihood and food security of their low-income and artisanal fishermen. Notably, marine fish stocks have depleted because some members have been historically providing high levels of subsidies to their fisheries sector. This rapidly increased their fishing capacity and enabled excessive DWF, resulting in the overexploitation of marine resources. Meanwhile, most developing members were not providing such high levels of subsidies historically. Therefore, there is a call for the big subsidizers of the past to take greater responsibility and reduce their subsidies and fishing capacities in accordance with the principle of 'Common but Differentiated Responsibilities - Respective Capabilities (CBDR-RC) and Polluter Pays Principles'. Notably, the CBDR-RC principle acknowledges that some countries have a higher capacity and higher level of responsibility to address climate change than others. Moreover, the ‘polluter pays’ principle provides that the one whose production causes pollution must bear the cost of managing it to preserve the environment. In this context, a 25-year moratorium on subsidies provided by such Distant Water Fishing Nations (DWFNs) has been proposed (WTO, 2023g).

Furthermore, though subsidies for DWF are prohibited by the draft text, it has serious loopholes that can be exploited by members with high fishing capacity to continue subsidizing DWF. For instance, despite the prohibition, capable members can continue such subsidies through government-to-government payments under access agreements, such as the ones used by the EU (Sengupta, 2024). In effect, the historical subsidizers with ample capacity are allowed to bypass the prohibition and continue exploiting marine resources through subsidized DWF. Whereas, most developing members who haven’t engaged in the practice in the past are now forced to refrain from it to avail of S&DT.

To provide an effective and meaningful S&DT, members have tabled some useful suggestions. India for instance, asks for an unconditional and permanent carve out from the subsidy prohibition for low-income or resource-poor or livelihood fishing and fishing-related activities to address their food security needs (WTO, 2023g). Moreover, a proposal seeking a 25-year transition period for the developing members who have not engaged in DWF till 2022 is also in consideration to address the capacity constraints of developing members.

Besides these fundamental concerns, issues such as non-specific fuel subsidies and forced labor are also discussed in the negotiation. While members such as China and India want to bring non-specific fuel subsidies within the scope of this agreement, many developed members and Gulf countries oppose this suggestion. Similarly, the US and EU among other developed members seek to address concerns regarding forced labor, whereas, China and Thailand strongly oppose the proposal. Despite several months of intense negotiations, members could not bridge the gaps and reach a consensus within MC 13.

5. CONCLUSION

At the WTO, members are intensely negotiating to update the trade rules to address issues related to agricultural domestic support, fisheries subsidies, and food security. Achieving various SDGs such as zero hunger, improving food security and nutrition, ending poverty, doubling agricultural productivity and the income of small-scale producers, correcting and preventing trade restrictions and distortions in world agricultural markets, and sustainable use of marine resources, to a great extent depends on the successful conclusion of these negotiations. In this context, this paper explored the reasons for the stalemate in the negotiations by highlighting the underlying concerns and sensitivities of various WTO members and negotiating groups on agriculture domestic support, PSH, and fisheries subsidies.

In agriculture domestic support negotiations, WTO members remain sharply divided on the scope and approach to reduce trade-distorting domestic support. For most developing country members, the elimination of historical asymmetries in the form of AMS entitlements which allow few selected members to massively subsidize their agriculture is the priority. Additionally, these members have strongly opposed any attempt to dilute the existing special and differential treatment such as the flexibility to support low-income or resource-poor farmers under the Development box. On the other hand, some Cairns group members are demanding to cap and reduce TTDS entitlement to address the distortion in international trade. In essence, these members are seeking a steep reduction in the flexibilities to support under the Amber, Blue, and Development box. There is also divergence on whether to negotiate domestic support exclusively or as a part of a comprehensive agriculture package including market access, export competition, export restrictions, cotton, public stockholding for food security purposes, special safeguard mechanism, and transparency.

Importantly, the majority of developing country members consider finding a permanent solution to the PSH issue as the litmus test for any successful outcome on other agricultural issues. These members argue that finding a permanent solution is a mandated issue that needs to be addressed exclusively and in an accelerated time frame. Therefore, more than 75 members from the G33, ACP, and African Group are demanding a permanent solution that offers additional flexibilities than the existing Bali peace clause as well as addresses their concerns on the fixed ERP in the market price support calculation. However, the opponents argue that it will give unrestricted flexibility to most developing country members to distort international trade, and thus undermine the reform process of the WTO. Therefore, the opponents are linking the issue of finding a permanent solution with domestic support negotiations.

Unlike the agricultural negotiations, members achieved a major breakthrough at MC 12 by adopting the Agreement on Fisheries Subsidies which disciplined the subsidies for IUU fishing and overfished stocks. However, disciplining the subsidies contributing to overcapacity and overfishing remains an unfinished agenda. Members' divergent positions on scope and approach including S&DT led to the failure of negotiations on this issue MC 13. Notably, a failure to conclude negotiations on the OCOF pillar can severely undermine the progress made so far in regulating the fisheries subsidies, which is a major threat to achieving the SDG related to the sustainable use of marine resources.

WTO members need to realize that the stalemate in these negotiations or status quo would further aggravate rather than alleviate the current challenges such as food insecurity and trade distortions. Members need to set aside their differences and move forward to fulfill their commitments to achieve SDGs by 2030 by respecting their mandates at the WTO and updating the trade rules.

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