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Shona Hawkes and Jagjit Kaur Plahe

Abstract

This article explores the implications of the World Trade Organization's Agreement on Agriculture for the right to food in the global South. In a context in which a worldwide backlash has developed against the World Trade Organization (WTO), the politics of the Doha Round negotiations are analyzed from a food rights perspective. It is argued that since 2004 attention in the WTO has shifted from overarching human rights concerns toward a focus on technical detail constraining developing countries from acting to respect, protect, and fulfill the right to food.

Keywords

right to food, Agreement on Agriculture, WTO, developing countries, corporate food regime

Introduction

The World Trade Organization's Agreement on Agriculture (AoA), which was negotiated during the Uruguay Round, was presented as a significant first step toward structural change in global food markets, which would strengthen the global South's food security through free trade. The World Bank (2003) estimated the current Doha Development Round (DDR) negotiations on agriculture to be worth up to US\$350 billion for the global South by 2015. While liberalization of agricultural trade, especially in developed countries, could bring important benefits to the global South, the AoA imposes a one-sided free-trade model on poor countries, while rich countries continue to heavily subsidize their agricultural sectors. The implications of the AoA on the right to food have led to repeated deadlocks in the DDR negotiations, with developing countries, supported by a worldwide food rights campaign, demanding change to the AoA structure. Several studies have analyzed the AoA and the dynamics of the DDR negotiations on agriculture (Beierle, 2002; Clapp, 2006; Gonzalez, 2002). Yet no study has specifically focused on the implications of the

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agreement, and World Trade Organization (WTO) proposals to amend it, from a food rights perspective. This article analyzes the implications of the AoA and the DDR negotiations for the right to food in the global South. It is argued that the AoA in its current form undermines the right to food because it does not recognize the obligation of the state to *respect, protect, and fulfill* this right under international law.

The article begins by examining the right to food and its relationship to alternative concepts of food security. It then analyzes the AoA rules and their impacts on the right to food in the global South. The final section explores how the global South has addressed the right to food in the DDR negotiations and the implications of draft negotiation texts for food rights.

The right to food

The right to food is covered in various human rights conventions. It comprises a right of *availability* and *access* to food, embodying the principles of *sustainability* (ongoing supply) and *utilization* (adequate nutrition for a person's metabolic requirements) (see Table 1). Despite this right existing in international law for some 30 years, it was the 1996 World Food Summit (WFS) that acted as a catalyst for the United Nations system to clarify further and to monitor the right to food, highlighting it as hard law, rather than an aspirational goal (United Nations, 2008). In 2000, the United Nations

Table 1. The Right to Food in International Law

Year	Convention		
1966	International Covenant on Economic, Social and Cultural Rights	Art. 1(2)	'In no case may a people be deprived of its own means of subsistence.'
		Art. 11(1)	State parties recognize 'the right of everyone to an adequate standard of living for himself and his family, including adequate food'.
		Art. 11(2)	Measures may be needed to guarantee 'the fundamental right of everyone to be free from hunger'.
1976	International Covenant on Civil and Political Rights	Art. 6(1)	'Every human being has the inherent right to life.'
1982	Human Rights Committee, General	Comment 6 on Article 6 of the International Covenant on Civil and Political Rights	State parties are required to take steps to 'reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition'.
1989	Convention on the Rights of the Child	Art. 24(2)(c)	States must 'take appropriate measures to combat disease and malnutrition, including through the provision of nutritious foods and drinking water'.
1999	Committee on Economic, Social and Cultural Rights	General Comment No. 12	'The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.'

Source: United Nations (2001).

(UN) established a Special Rapporteur on the right to food (hereafter referred to as the ‘Special Rapporteur’), followed by the Food and Agriculture Organization’s 2004 Voluntary Guidelines on the Right to Food. In 2009, the introduction of an optional protocol for the International Covenant on Economic, Social and Cultural Rights (ICESCR) saw progress toward an international mechanism for addressing right-to-food violations.

Unlike other definitions of food security, the right to food contains specific obligations for states. These obligations are that the state does not prevent access to food (*respect*), protects individuals from enterprises or individuals who may deprive them of such access (*protect*), and works to strengthen people’s entitlements to food (*fulfill-facilitate*). Furthermore, the state must provide food where this is not possible by one’s own means (*fulfill-provide*) (United Nations, 1999). The right to food is a progressive right – it is not expected that the state can guarantee this right absolutely, but that it progress toward this end goal, working against any regressions. States must also equally consider short-term, mid-term, and long-term needs. Of the WTO’s 153 members, 127 have ratified the ICESCR overseeing the right to food. Alternate understandings of food rights and obligations intersect or exist parallel to the right to food. Such definitions are framed by broader social or economic objectives (Holt-Giménez and Shattuck, 2011).

Concepts of food security, entitlement theory, and food sovereignty inform the right to food to the extent that they incorporate or oppose its principles. ‘Food security’ is the term most prevalent in food debates. Emerging in the 1960s, food security equated food-production self-sufficiency with national security and rights to self-determination (Shaw, 2001). The term acquired popular usage during the mid-1970s global food crisis. In the 1980s, national food-security strategies shifted from food self-sufficiency with a focus on food production and global food supply to include securing food supply through trade (Fairbairn, 2011; Stringer, 2001).

In 1981, Amartya Sen injected the human rights perspective into food analysis through his seminal study of four decades of famine. He concluded that starvation occurred ‘not from people being deprived of things to which they are entitled, but from people not being entitled . . . to adequate means for survival’ (Sen, 1984: 73). Entitlement theory presented comprehensive evidence to link food access with broader human rights. Some 15 years later the global peasant alliance, La Via Campesina, launched the concept of food sovereignty to coincide with the 1996 WFS (FAO, 1996). The central tenet of food sovereignty is the right of states or communities to determine their own food policy. Food-sovereignty declarations emphasize the human right to food, land rights, fairer trade rules, social justice, agro-ecology, and the farmers’ role in decision-making (Fairbairn, 2011).

In contrast to rights-based analysis, neoclassical economics argues that the free market is best equipped to address food concerns. This view is explored further in the following section.

The corporate food regime: addressing food security through the market

A food regime is a ‘rule-governed structure of production and consumption of food on a world scale’ (Friedmann, 1993: 30–31). Food-regime analysis was introduced by Friedmann (1987) and Friedmann and McMichael (1989), with two distinct food regimes being articulated. The first, a colonial-settler regime (1870–1930s), was characterized by cheap food and raw materials from the global South to meet Europe’s industrialization needs. The regime was defined by Britain’s model of ‘free trade imperialism’, which was characterized by liberal economic policies in order to access the economies of colonies as well as those of rival imperial powers (McMichael, 2005: 274–5). The regime involved an exchange of food crops from tropical and temperate colonies for manufactured goods from the colonial powers (McMichael, 2004). Also during this time, settler states led

by the USA supplied Europe with wheat, meat, and other staple crops (Holt-Giménez and Shattuck, 2011).

The second food regime (1947–70) emphasized government intervention in agriculture through such means as import controls, export subsidies, and national farm programs, which led to large surpluses. According to Friedmann (1993: 31), this ‘structured a specific set of international relations in which power – to restructure international trade and production in one state’s favour – was wielded in the unusual form of subsidized exports of surplus commodities’. The regime was characterized by North–South flows of food as the USA began directing food surpluses as food aid.

McMichael (2005) identifies a third food regime emerging from the economic shocks in the 1980s. McMichael (2004) defines this corporate food regime as shaped by three vectors: (1) the corporate model of industrial and transgenic agriculture; (2) alternative models which focus on rural livelihoods, ecology, land rights, social justice, and food sovereignty; and (3) a political-institutional context directed by corporate interests as well as geopolitics. The WTO’s AoA is part of the corporate food regime. McMichael (2005: 280) argues that in the mid-1990s food security was ‘redefined, and institutionalized in the WTO as an inter-nationally managed market relation’ to secure the interests of US agribusiness.

Based on the free-trade model, the AoA’s stated objective is ‘to provide for substantial progressive reductions on agricultural support and protection sustained over an agreed period of time, resulting in correcting and preventing restrictions and distortions in world agricultural markets’ (WTO, 1994a: 1).

Among neoclassical economists there are nuanced views on the benefits and parameters of free trade. In general terms, they argue that free trade will reduce market distortions, increase productivity, and create universal rules leading to fairer relations for weak countries. They oppose government intervention as it can distort markets and lead to rent-seeking, rewarding less effective and elite actors (Kreuger, 1974; Tullock, 1967). Neoclassical economists maintain that states can best support human rights by restructuring the global trade system, prioritizing the mid- and long-term gains of free trade over the short-term hardship of transition as a country redirects resources to develop its comparative advantage. They point to the prevalence of free-trade policies and WTO membership as evidence of popular acceptance of free trade (Bhagwati, 2004).

The Uruguay Round concluded with recognition that the AoA was imperfect, but claimed to lay the foundations for freer trade in subsequent negotiations. The AoA does not reference the right to food. The implications of the AoA for food security, particularly during the structural reforms to global food markets, were recognized as a non-trade concern (NTC) to be reviewed in the next negotiating round. Special and differential treatment (S&D), whereby developing countries were allowed longer implementation periods and some exemptions on reform commitments, could also indirectly safeguard food security. Despite various references to ‘food security’, the WTO does not define this term.

The main WTO concession to the right to food was the Marrakesh Decision on Measures Concerning the Possible Negative Effects of the Reform Program on Least-Developed and Net Food-Importing Developing Countries (hereafter referred to as the ‘Marrakesh Decision’). The Marrakesh Decision recognized that by winding back protectionist policies which artificially lowered food prices, agricultural trade liberalization could raise global prices. The decision outlined nonlegally binding commitments and mechanisms to address these impacts for net food-importing developing countries (NFIDCs) and least-developed countries (LDCs). Responses included giving food aid and short-term financing of commercial imports, agricultural export credits, and financial assistance to improve agricultural infrastructure and production (WTO, 1994c). The Marrakesh Decision fits a particular interpretation of free trade in which net gains for ‘winners’ under this

system are considered large enough to compensate 'losers'. The imperative for 'winners' to compensate 'losers' is that even after giving compensation their net gains are greater than if operating outside of perfect free trade (FAO, 2003). In this model, vulnerable states would not directly respect, protect, and fulfill the right to food, but hope to secure entitlements from other states or entities, such as corporate social-responsibility programs, UN agencies, and nongovernmental organizations (NGOs).

Despite world food price spikes in 1996, and the 2007–08 food price crisis, the Marrakesh Decision has never been enacted. This is because there is no WTO-recognized mechanism to determine the AoA's impacts on food insecurity (Häberli, 2010).

The AoA has profound and multifaceted implications for the global South. These implications have led to an intense and bitterly divisive debate on the roles and responsibilities of the state in a globalizing era. The following section explains the implications of the AoA for the right to food in developing countries.

The rules of the AoA and implications for the right to food in the global South

The AoA rules are based on three pillars: domestic support, export competition, and market access. The following subsections examine the implications of these rules for the right to food.

Domestic support

Under AoA rules, any domestic support which effects or provides price support to producers is considered trade distorting because of its direct link to agricultural production. Rules governing domestic support are classified in three boxes: amber, green, and blue. The Amber Box is comprised of trade-distorting subsidies and is the only category subject to cuts. A *de minimis* provision allows some trade-distorting support: up to 5 percent of the total value of agricultural production and 5 percent of support for a given product (10 percent in both cases in developing countries) (WTO, 1994a). Trade-distorting subsidies, such as market price support and direct payments to farmers above the *de minimis* level, are counted in a country's Aggregate Measure of Support (AMS).

The AMS was subject to a 20.0 percent cut over six years from a 1986–88 base period (13.3 percent over ten years for developing countries). During this baseline period (1986–88) trade-distorting domestic support was historically high, particularly in the European Union (EU) (Beierle, 2002). Such rules heavily favored rich countries. As the AMS cannot be increased, only reduced, developing countries are prevented from giving equivalent supports. All but 12 developing countries submitted a zero AMS (WTO, 2000a). The Green Box, which is free of cuts, allowed funding to research and extension services, as well as income payments to producers, provided they were not or minimally trade distorting. The AoA does not define 'minimally trade distorting'. Key features of Green Box provisions are direct payments via state-administered social-security systems. Yet only 20 percent of the global population has social-security access, common where there is a large formal sector and a well-functioning state administrative capacity (ILO, 2006).

Green Box payments were 'decoupled' from trade, meaning that they could not be directly linked to production or price support. However, as the Organization for Economic Cooperation and Development (OECD) notes, any transfer to producers which affects their wealth, liquidity, or attitude to risk indirectly impacts production (OECD, 2001). The USA and other developed countries have used the Green Box to compensate for export-subsidy reductions by shifting from direct

to indirect subsidies (Beierle, 2002). Export subsidies allow goods to be sold below the cost of production – known as ‘dumping’. Dumping has impacts on livelihoods and entitlements that enable access to food in two ways. First, developing-country producers cannot get a fair export price as they must compete with low-priced, subsidized products on the world market. Second, subsidized products are dumped on the global South as food aid or sold below the production cost, leading to reduced local production (Clapp, 2009). Between 1986–88 and 1995–98, OECD Green Box subsidies doubled, with OECD farmers receiving prices 40 percent above world prices in 2001 (Diakosavas, 2004).

The Blue Box was a last-minute compromise between the EU and the USA, and allowed trade-distorting payments, provided that they were not used to expand production, but were limited to a fixed area, or fixed yields, or heads of cattle. The Blue Box allowed payments to producers of the difference between the market price and a higher, government-issued target price (WTO, 1994a). These price supports violated free-trade principles by protecting producers from low prices. Governments could set target prices as high as they liked with no limits on Blue Box expenditure. The EU, Japan, and the USA are key users.

Export competition

Rules on export subsidies were based on budgetary outlay and export quantity. Developed countries were to reduce their expenditure on export subsidies by 35 percent and quantities of subsidized exports by 21 percent over six years (respectively, 24 percent and 14 percent over ten years for developing countries). LDCs were exempt (WTO, 1994a).

Reductions were set to a 1986–90 baseline, when both subsidy outlays and volume were historically high, with OECD countries contributing the vast bulk and the EU accounting for more than 90 percent of global spending (Beierle, 2002: 1096). Only countries applying export subsidies in 1986–90 could retain export subsidies. Cuts to export subsidies were touted as a key success of the AoA. However, in many cases this was achieved by simply shifting to the indirect export subsidies permitted under the Blue Box and Green Box.

The USA also successfully lobbied to exclude government export credit (whereby foreign banks are extended credit to buy approved-donor-country agricultural products) from reforms. An AoA ‘Peace Clause’, pushed by the USA and the EU, prevented WTO members from applying countervailing duties (which offset dumping), until 2004. Agriculture was the only area exempt from the WTO’s export-subsidy ban, providing time for the USA and the EU to shift from direct to implicit subsidies (WTO, 1994b).

From 1995 to 2002, US export dumping in staples increased with dumping peaks in wheat (26 percent in 1994 and 44 percent in 2001), maize (4 percent in 1994 and 33 percent in 2000), and rice (2 percent in 1994 and 34 percent in 2002) (FAO, 2006; Murphy et al., 2005). Smallholders in the EU and the USA point out that government subsidies are largely directed toward transnational companies and large agribusiness. The OECD (2003) noted that the largest 25 percent of EU farms received 75 percent of farm support.

Market access

Central to the AoA’s market-access pillar was a process called ‘tariffication’, whereby countries could convert their nontariff barriers (NTBs), such as quotas, to tariff equivalents. This was to allow a more transparent tariff-based system. The ease of implementing tariffs meant that developing countries had few NTBs. Developed countries were required to convert their NTBs to an

equivalent tariff rate, taken from a 1986–90 base. Developing countries could choose either to undertake tariffication or to nominate their own ceiling for tariffs. The base period, as a time of peak tariffs, favored developed countries, whereas many global South countries had implemented dramatic cuts in import tariffs under Structural Adjustment Program loan conditions (Gonzalez, 2002). Nominating their own tariff ceiling was therefore attractive to developing countries with NTBs. The majority of OECD countries, and a few developing countries, converted the value of their NTBs at a rate higher than the equivalent rate, something known as ‘dirty tariffication’ (Hathaway and Ingco, 1995).

There are several reasons as to why provisions under the market-access pillar undermine the right to food. Members had to bind their tariffs, setting a ceiling on the maximum possible tariff rate.¹ Commitments to reduce tariffs were based on the bound rate, not on tariffs actually applied. Furthermore, reductions were on average tariffs, based on aggregate tariff lines. Developed countries have more heterogeneous tariffs, while developing countries favor simpler tariff structures. This allowed developed countries to apply high bound tariffs (tariff peaks or ‘megatariffs’) on high-volume imported goods, while undertaking a large percentage cut on already low tariffs for products with little or no domestic production (Gonzalez, 2002).

Second, a Special Agricultural Safeguard (SSG) allowed some WTO members temporarily to increase their tariffs above bound-tariff levels. Only countries that undertook tariffication could access the SSG. The SSG used a price trigger (enacted as prices fell) or a volume trigger (activated as volumes increased). The volume trigger allowed higher tariffs until the end of the year, while the price trigger applied to an individual shipment. WTO members registered products they wanted the SSG to apply to before the AoA took effect.

Developing countries’ access to the SSG was limited because few applied NTBs, and among these many chose to nominate their own tariff ceiling rather than undergo tariffication. Of the 66 countries that can use the safeguard only 22 are developing countries (WTO, 2002).

The market-access rules disarmed developing countries of key tools to *respect*, *protect*, and *fulfill* the right to food, while diminishing their already limited access to heavily protected global North markets. Market access is important to the right to food in the global South for several reasons. First, the ease of implementing import or export taxes, compared with other revenues, sees agriculture highly taxed in developing countries. Tariffs are a key source of government revenue. Reduced revenues diminish the state’s resources to *fulfill* the right to food. Second, raising tariffs is developing countries’ main tool to *protect* domestic markets from dumping. By accepting the Peace Clause, states opted out of a legal mechanism to *protect* against dumping. Third, access to markets was restricted by dirty tariffication and the SSG. This was compounded by developed countries’ use of tariff peaks. For example, while achieving average applied tariffs that met or nearly met their WTO obligations, Japan has held applied tariff peaks on agricultural goods of 609, 634, and 781 percent; Canada of 718, 532, and 314 percent; the USA of 350, 164, and 132 percent; and the European Communities of 205, 233, and 236 percent (WTO et al., 2007). High tariffs kept developing-country producers out of export markets for products such as sugar, cereals, meat, and dairy produce.

Although the state agrees to uphold the right to food, in an era of globalized policymaking to what extent do other countries, through their own actions or participation in international organizations, incur an interstate responsibility for the right to food? In 2006, the Special Rapporteur described, at minimum, this responsibility as one of *respect* – in essence, to ‘do no harm’ (United Nations, 2006: 13). He highlighted legal grounds for how WTO members (or third parties under their jurisdiction) violate their right-to-food responsibilities if they undermine another state’s capacity to *respect*, *protect*, or *fulfill* this right (United Nations, 2006). One example of a blatant

breach of the 'do no harm' principle is the 2005 WTO appellate finding that the USA hid more than US\$3 billion in annual cotton subsidies and other supports. This substantially depressed world cotton markets and impacted poor cotton-farming households in Chad, Mali, Burkina Faso, and Benin (Alston et al., 2007).

The next section assesses how the right to food in the global South has featured in the DDR negotiations.

How has the WTO responded to right-to-food concerns in the global South?

Under the AoA, subsequent negotiations were to take into account the experience of the AoA's implementation: the effects on world trade in agriculture; the experience of implementing reduction commitments; S&D mechanisms; and impacts on NTCs. The following subsections examine the different AoA negotiation phases and their implications for the right to food.

Articulating the right to food: the lead up to Doha

Running from March 2000 to March 2001, Phase 1 of the negotiations saw 126 of the WTO's then 142 members submit forty-five proposals and three technical documents, with the global South determined to substantially shape the negotiations (WTO, 2004b). Proposals highlighted a range of shared and specific concerns about the AoA's impacts on the capacity of a state to guarantee the right to food. Developing countries emphasized food production as a social safety net in their Phase 1 and Phase 2 (March 2002 to March 2003) proposals. They also raised links between trade and social protection mechanisms such as state trading enterprises, state marketing boards, and the general system of preferences. The need for sufficient policy space to respond to local food needs was also clear, and linkages were drawn between national security, political and economic stability, and food policy.

Food-aid disciplines were also debated. An end to the Blue Box and reform or removal of the Green Box were common themes (Beierle, 2002). Issues concerning cotton and tropical products were also raised, but are beyond the scope of this article. The SSG was a recurrent topic, with proposals to stop the SSG, provide access to all WTO members, or abolish developed-country access in favor of developing countries (WTO, 2001a).

Proposals discussed expanding S&D provisions, with global South countries advocating specific instruments to protect livelihoods, food security, and rural development (Beierle, 2002). Tensions emerged over whether S&D should apply to all developing countries or favor subsets such as small island developing states (WTO, 2001b). While global South countries identified similar general areas of concern, the diversity of national, geographic, or economic circumstances led to a wide range of negotiating positions.

In June 2000, 11 countries presented a proposal for special and differential treatment and a Development Box. The proposal drew on Article XXI of the General Agreement on Tariffs and Trade (GATT), which exempts national security issues from trade disciplines, stating that food security was integral to national security and political sovereignty. The proposal recommended a Development Box with policy instruments that would protect and enhance developing countries' domestic food-production capacity, particularly in key staples. It called for increased food security; an additional 10 percent *de minimis* support for developing countries; mechanisms to address OECD tariff peaks and escalations; and abolition of SSG access for developed countries, but its use by developing countries; and specifically listed the products and sectors to which disciplines would

apply (WTO, 2000b). In January 2001, India followed with a proposal for a Food Security Box, calling for flexibility for developing countries in how they provide subsidies for key farm inputs, product-specific support to low-income and resource-poor farmers to be excluded from the AMS, and an end to the Green Box (WTO, 2001b). India argued for a Special Safeguard Mechanism (SSM) separate from the SSG, for developing countries to be exempt from any minimum level of market access, and for enabling developing countries to raise low tariff bindings. These papers were seminal in structuring the global South's negotiating position, especially given India's future role in negotiations.

The next subsection explores the role of coalitions in the lead up to the Cancun ministerial meeting.

Global South coalitions and the right to food: from Doha to Cancun

The Doha Round, which began in 2002, saw a North–South divide, transatlantic tensions, and South–South divisions over agriculture. In an effort to bridge the various divides, in February 2003 the Chair of Agriculture, Stuart Harbinson, released a paper that outlined draft modalities for negotiations. Harbinson proposed a 60 percent reduction in trade-distorting subsidies under the AMS with a cap on product-specific support, a 50 percent reduction in the Blue Box subsidies, a Blue Box cap, and a disciplining of the Green Box. He also proposed the elimination of export subsidies over nine years and rules to cover export credit and food aid. On market access, he suggested substantial reductions in tariffs using a tiered approach for both developing and developed countries, with developing countries able to designate an unspecified number of 'Special Products' subject to lower cuts (WTO, 2003a). Furthermore, Harbinson called for an end to developed-country use of the SSG and for an SSM for developing countries to protect food security and livelihoods. While the Harbinson text addressed some concerns articulated by developing countries, it worked within the flawed framework of the AoA and did not incorporate many of their proposals for more fundamental reforms related to food rights.

Even though the Harbinson text fell far short of global South demands, both the EU and the USA rejected it. The EU was not willing to reduce tariffs or eliminate export subsidies. The USA was not ready to reduce domestic support and wanted deeper tariff cuts. In July 2003, the EU and the USA attempted to resolve their differences before the upcoming Cancun ministerial meeting. In August 2003, the EU and the USA produced a joint text. This proposed changes to allow the USA to increase its trade-distorting support under the AMS and changes to the Blue Box to permit the USA to increase trade-distorting support without production limits. Most alarmingly for the right to food, it advocated basing tariff reductions on a blended formula (Aggarwal, 2005).²

The proposal was carefully crafted to ensure that the EU could maintain high tariffs for important exports to developing countries (such as sugar and dairy produce) while undermining the capacity of developing countries to protect their own markets through tariff protection (Aggarwal, 2005). Despite the global South's emphasis on S&D and its pivotal role in the right to food, it was barely mentioned. The text also ignored Harbinson's proposals on 'Special Products' and safeguards. The EU–US text disregarded three years of work by the majority of WTO members in trying to craft an agreement. To add insult to injury, it became the basis of the draft Cancun Ministerial Declaration circulated on 31 August 2003. The official negotiating text of the Cancun meeting had sidelined the vast majority of WTO members.

With only a few weeks until the Cancun meeting, the deadline for concluding a Doha agreement, a backlash occurred against the EU–US stance. A coalition of mainly large agricultural

exporters from the global South, accounting for one-fifth of global farm exports and including China, India, and Brazil, expressed their dissatisfaction by presenting an alternative text on 4 September 2003 (WTO, 2003b). The Group of Twenty (G20), as it became known, urged the WTO to advance a true free-trade agenda. Its proposal addressed fundamental North–South imbalances in AoA trade liberalization. The G20 called for a cap on the Green Box, a reduction in developed-country *de minimis* levels, a reduction on all trade-distorting domestic support on a product-specific basis, an end to the Blue Box, food-aid reform, the use of a blended formula to target high-tariff products for the greatest reductions, and an end to the SSG. It demanded an SSM to enable developing countries more easily to raise tariffs against import surges. The G20 also advocated concessions for ‘Special Products’ to safeguard food security.

Some five days later the G33 (the Alliance for Strategic Products and Special Safeguard Mechanisms), which represents the views of small, vulnerable, and resource-poor farmers, presented its position. Led by Indonesia, the G33 countries sought policy space to manage their food-security obligations, arguing that it is a state’s prerogative to liberalize only to the extent it can best meet its domestic needs. Indonesia argued, for example, that the entire world rice market was smaller than its domestic needs (WTO, 2003c).

At Cancun other negotiating coalitions joined the G33, such as the African Union, LDCs, and the African, Caribbean and Pacific countries. Together they formed the G90, becoming the G100 with the addition of the small vulnerable economies group and representing 80 percent of humanity (Oxfam, 2005). Dissidence among global South WTO members grew as many were again excluded from closed-door negotiations.

Leading up to Cancun, NGOs, unions, academics, and other civil society groups generated a large array of public information and analysis on the negotiations, and their implications for trade, labor, and production-based entitlements. Meanwhile, farmers and other protestors attempted to convey the human face of the AoA. Many food rights advocates contend that the WTO undermined human rights by enacting a system of international trade law that ignores, rather than integrates, human rights law (Dommen, 2002). The WTO has greatly expanded the previous GATT trade mandate into many new areas intimately entwined with the state’s role in facilitating social protections.

While the WTO employs a rigorous dispute-resolution mechanism and various enforcement tools, the human rights structure depends on diplomacy to defend the right to food. This gives states the imperative to prioritize trade commitments above human rights. The WTO dispute-resolution mechanism is also costly, time consuming, and difficult for many developing countries to access. Throughout the Doha negotiations food rights advocates have campaigned for human rights to be an integral feature of trade negotiations.

At Cancun the new global South coalitions were clear that they would not accept the EU–US position as an official ministerial declaration. The talks collapsed. In the following weeks, under pressure from the USA, several Latin American countries left the G20, but the coalition survived. In 2004, negotiations resumed with a revised format, changed from a series of proposals moderated by the chair to direct meetings of members and coalitions, large and small, to collectively negotiate an agreed text. Many felt that the dynamics of the negotiations had shifted. States could now directly represent their specific trade interests and requirements for safeguarding the right to food.

Developing countries had clearly signaled that they were willing to work together to reject a bad deal and capable of crafting a detailed alternative. After Cancun, it appeared that WTO negotiations would have to integrate human rights concerns. Developed countries responded neither by advancing a genuine free-trade agenda nor by accepting equal levels of national protection, but by courting the G20’s political powerhouses. In April 2004, five WTO members formed the Five

Interested Parties (FIP), comprising the USA, the EU, and Australia (representing the Cairns Group) as well as G20 representatives, Brazil and India. India is also in the G33. Since August 2004 the FIP has expanded to include Japan (known as the G6) and China (so forming the G7).

On 1 August 2004, the WTO membership approved the July 2004 Framework. The text mentioned 'Special Products', the SSM, and other key items for the global South. However, negotiators achieved few guarantees on what a DDR AoA would actually entail – the devil would lie in the detail. Modalities would be elaborated through ongoing talks and a series of draft texts. The following subsection analyses the dynamics of negotiations from July 2004 through to December 2008 from a food rights perspective.

Technical details versus paradigm shift: from the July 2004 Framework to the December 2008 draft text

The July 2004 Framework determined the direction of the DDR negotiations on agriculture from 2004 through to the seventh WTO Ministerial Conference in 2009. Table 2 outlines some key meetings and events from 2004 to 2009. Since 2004, the chair has circulated various negotiating texts, including a July 2008 draft modalities text (hereafter referred to as the 'July 2008 text') and a revision of this text in December 2008 (hereafter referred to as the 'December 2008 text').

The July 2004 Framework failed to address the imbalanced domestic support rules. The framework included a change to the Blue Box to allow payments without production limits (WTO, 2004a). This would permit the USA to move its countercyclical subsidies from the Amber Box. Even with a Blue Box cap, the G20 later pointed out that this could allow more than US\$1 billion in US cotton supports already found to generate serious prejudice (WTO, 2006). Given the widespread calls for Blue Box eradication or reform, how the expanded Blue Box entered the framework is unclear. Similarly, the Green Box also escaped discipline (WTO, 2004a). The December 2008 revised draft modalities text proposed a 70 percent reduction in trade-distorting US subsidies from US\$48.0 billion to US\$14.4 billion and an 80 percent cut to EU subsidies from €10 billion to €2 billion. However, this would still permit billions in Green Box subsidies, without cap or reduction. In 2007/08, EU Green Box expenditure was €1.6 billion and the USA spent US\$81.5 billion (WTO, 2010, 2011a).

After protracted negotiations, the July 2004 Framework determined that export subsidies would be eliminated. At the 2005 Hong Kong ministerial meeting WTO members agreed to end export

Table 2. Timeline of Key Events from July 2004 to December 2009

Date	Event	Outcome
1 August 2004	WTO General Council meet to discuss the July Framework	July Framework agreed
13–18 December 2005	Hong Kong ministerial meeting	Hong Kong Ministerial Declaration
24 July 2006	Geneva mini-ministerial meeting	G6 talks collapse
21 June 2007	Potsdam G4 talks	Talks collapse
21–29 July 2008	Geneva mini-ministerial meeting	Draft modalities text
6 December 2008	Revised draft modalities text circulated by the chair	Revised draft modalities text
3–4 September 2009	Delhi mini-ministerial meeting	Pledge to conclude DDR by 2010
30 November–2 December 2009	Geneva ministerial meeting	Commitment to intense work on agriculture negotiations in 2010

subsidies by 2013. However, the export-competition pillar houses a very small proportion of trade-distorting export subsidies. In 2007/08, the EU spent €451 million under the export-subsidies pillar (2008/09), but provided €31 billion in Green Box income support (WTO, 2011a, 2011b).

The July 2004 Framework made a vague commitment to address food aid and the Hong Kong Declaration agreed to 'effective disciplines on in-kind food aid, monetization and re-exports so that there can be no loophole for continuing export subsidization' (WTO, 2005: 2). Food aid can comprise up to 70 percent of a country's total food imports (Zhang, 2004). While the EU, Australia, and Canada have voluntarily moved toward untying food aid, the USA remains resistant to reforms. It provides 50–60 percent of all food aid globally, with 100 percent of its food aid provided in-kind (Clapp, 2009). US monetized food aid increased from about 10 percent in 1990 to 60 percent by 2002 (OECD, 2005). Monetization, whereby food aid can be sold for cash, is a backdoor subsidy leading to more donor products being sold in local markets. Cash-based aid allows recipients to buy food locally or regionally, and is more timely and cost-effective (Clapp, 2009). Cash-strapped LDCs have pressed for continued monetized food aid despite this violating their right-to-food obligations to protect local producers (Clapp, 2009; LDC Group, 2008).

On the market-access pillar, under pressure from India, the USA and the EU abandoned the unpopular blended formula and the July 2004 Framework adopted a tiered formula. However, exactly how tariffs in each tier would be reduced was undecided. Commitments to negotiate 'Special Products', the SSG, and an SSM were vague. Under the AoA, WTO members can enact countervailing duties against import surges; however, analytical standards for proving causality are so high that few developing countries are confident enough to enact such safeguards in case they are later penalized (Sharma, 2005). The G33 has advocated an SSM to overcome structural biases that exclude many developing countries from the same protections against dumping as WTO members with greater technical and administrative capacity. The SSM would enable countries to *respect* the right to food by better protecting local producers from dumping.

The G33 proposed an SSM to allow developing countries to raise tariffs to counteract import surges. Despite the global South's emphasis on the SSM, it was afforded a single sentence in the framework, with no substantive description. In exchange for accepting a tiered formula to reduce tariffs, the EU introduced a last-minute proposal for 'Sensitive Products' (separate from 'Special Products') to allow continued protection of certain products shielded by high tariffs (WTO, 2004a).

The tiered formula applies only to bound, not to applied rates, and 'Sensitive Products' would incur a smaller tariff reduction. Under the December 2008 text, 'Sensitive Products' are self-designated, with no food security or other criteria, and available to all WTO members. Developed countries can designate 4 percent of tariff lines as 'Sensitive Products'. Members with more than 30 percent of their tariffs in the highest tier can increase this by 2 percent, subject to certain conditions. This 4–6 percent range would see developed countries continue to shelter a narrow range of highly protected products (WTO, 2008b). The inclusion of 'Sensitive Products' is representative of the success of key global North negotiators in shifting human rights concerns toward technical issues, and then negotiating on technicalities far removed from the concerns initially expressed. It also highlights differences among developing countries, with lead negotiators such as India and China agreeing to 'Sensitive Products' despite G33 opposition.

Substantial negotiations on 'Special Products' and the SSM, key elements of the global South right-to-food agenda, were left until last. The July 2008 proposal for 'Special Products' allows developing countries to retain their present level of tariffs, or make a lower level of reductions, on a specific group of products. These would be self-designated, based on food-security or rural-development needs, and need to meet certain food-security indicators (WTO, 2008b). The process for reviewing these criteria is not outlined. In July 2008, the WTO membership was close

to agreement on 'Special Products', whereby 5 percent of tariff lines would face no cuts. Given developed countries' 'megatariffs', 'Sensitive Products', the expansion of the Blue Box, and an undisciplined Green Box, the safeguards that 'Special Products' could achieve for the right to food were undermined by the broader text.

While the initial SSG was justified as alleviating the impacts of tariffication, during the negotiations following the Uruguay Round the global South has articulated that safeguards should assist countries to realize the right to food, or related rights. As such, many have called for the end of the SSG, and restricting any SSM to developing countries. The July 2008 ministerial meeting opened negotiations on the SSM, without eliminating the SSG. The December 2008 text finally drew some boundaries, proposing that the SSG be reduced to 1 percent of tariff lines, with almost eight years to cut SSG use altogether (WTO, 2008b). While this is a positive development, it allows developed countries (and a small proportion of developing countries) to protect a narrow range of highly protected products for another seven years.

On the SSM, under the 2005 Hong Kong Ministerial Declaration, the mechanism was to contain both a price and volume trigger. The proposed SSM is time constrained, so does not permit states to *protect* against import surges for their full duration. The FAO (2006) analyzed import surges between 1980 and 2003, comparing the SSG method with the then-proposed SSM. It found a 70 percent increase in actions applying the Uruguay Round SSG compared with the proposed SSM price trigger (from 7000 to 12,000).

The proposed SSM in the July 2008 text was weaker than the SSG (heavily used by the USA and the EU) on triggers, the number of tariff lines to which it could apply, and the permitted response. Negotiations during the July 2008 WTO mini-ministerial meeting focused on the volume trigger, after which developing countries could impose tariffs above their bound rates to protect the right to food. On 25 July 2008, WTO Director-General Pascal Lamy proposed to the G7 that tariffs be raised above bound rates when imports were 40 percent above those in the reference period (ICTSD, 2008). This would require demonstrable harm to food security, livelihoods, and rural development before the SSM could kick in, undermining the role of the SSM to *respect* and *protect* against harm in the first place. Furthermore, developing countries would be constrained on how high they could raise tariffs, rather than matching the surge. Talks soon after met an impasse, with Agriculture Chair Crawford Falconer describing the SSM as less a technical divide than a political divide (WTO, 2008a). Agricultural negotiations have progressed little since July 2008, with the SSM still unresolved.

Concluding comments

Classical and neoclassical trade theories do not explain the outcomes of GATT and the WTO. Luterbacher and Norrlof (1999: 343) argue that it cannot 'be taken for granted that the institutional reform represented by the creation of the WTO will guarantee a continued movement toward further liberalization of world trade'. According to these authors, decisions made at the WTO are determined by economic and political realities as opposed to free-market principles. Countries with market power are able to impose their 'preferred trade regime, which corresponds to a "managed" and not a "free" trade regime' (Luterbacher and Norrlof, 1999: 352).

The global governance of trade through GATT, and later the WTO, followed what Keohane and Nye (2001: 219) term a 'club model' of institutions. Under this model, 'a lack of transparency to functional outsiders was a key to political efficacy' (Keohane and Nye, 2001: 221). With a small number of trade negotiators from developed countries controlling the agenda, developing countries were largely excluded from trade talks. In terms of agriculture, the WTO AoA marked the

transition from the second to the third food regime and has been a fundamental text of the corporate food regime. This article has argued that under this ‘managed trade’ system, the AoA established a set of rules biased against developing countries, constraining the state from acting to *respect, protect, and fulfill* the right to food. While the AoA seeks to reduce agriculture trade barriers, it has carved out protection for the richest players in the global market, blatantly violating the right to food and failing the promise of free trade.

In the negotiations following the Uruguay Round, developing countries have strongly resisted being excluded. It was in the lead up to the Cancun meeting that serious cracks began to show, with the formation of the G20 making history in the multilateral trading system. The G20’s alternative text on agriculture clearly recognized the responsibility of states to uphold the right to food. However, in accepting the July 2004 Framework, the participating global South members agreed to trim around the edges of a heavily flawed agreement, and surrendered their opportunity to wind back the AoA so as to reverse its detrimental impacts on the right to food. The July 2004 Framework fractured the united position of the global South on the right to food, carefully constructed since 2000 and culminating in the G20, G33, and other alliances. Engaging Brazil and India through the FIP marked a shift in the EU–US negotiating strategy to one of divide and rule (Bello and Kwa, 2004). While China, Brazil, and India have a large percentage of their populations engaged in agriculture, they are also emerging industrial economies seeking market access in other areas and therefore are open to certain trade-offs. The ongoing exclusion of the G33 and G90 leadership from G7 negotiations suggests that the majority position on the right to food will be similarly sidelined in a final text.

Developing countries excluded from the WTO decision-making core have few opportunities to represent their interests. The situation is worse for countries that want to join the WTO. Aspiring members must accept accession agreements approved by club players in the WTO working groups. Working groups use accession negotiations to establish new precedents in trade agreements – even when aspiring members have only small, marginal economies (Bhagwati, 2008). New entrants must meet demands far beyond existing member commitments. Tonga’s accession terms are an extreme example, with tariffs having to be dropped to the second lowest rate in the world (Wallis, 2010).

The entry of new club members has slowed WTO negotiations. However, there has been a concomitant rapid proliferation of Free Trade Agreements (FTAs) that undermine the WTO’s most-favored-nation principle by allowing countries to give preferential trading terms to FTA partners. The FTA carrot is to offer improved market access. Yet benefits under these ‘managed trade systems’ can be short-lived if a country also offers these conditions to new FTA partners. Some free-trade advocates, such as Bhagwati (2008), criticize FTAs for destroying the principle of nondiscrimination and highlight that bilateral negotiations disadvantage weaker nations.

A key criticism by food rights advocates is that international trade law developed through the WTO ignored international human rights law (Dommen, 2002; United Nations, 2008). The newly created Office of the Special Rapporteur for the right to food has reported on the implications of the WTO rules. This has spurred new analytical tools in trade debates, such as human rights impact assessments of WTO accession and FTAs (United Nations, 2009).

For all the free-trade talk, the AoA shows that global markets in agriculture are intensely distorted to meet the interests of those with power. In the midst of a global food crisis, in which one in seven humans on the planet lives in hunger, there was an impasse in the WTO negotiations in 2008 over such issues as whether developing countries could take minimum measures to protect livelihoods. Amid another food crisis in 2011–12, the impasse continues.

Notes

1. Developed countries were to reduce their average bound tariffs by 36 percent over six years, developing countries by 24 percent over ten years, and LDCs to bind their tariffs, without reductions.
2. The blended formula is part Uruguay Round (UR) formula (average reduction plus minimum reduction per tariff line) and part Swiss formula (leading to deeper cuts in tariffs), with some duty-free tariff lines (Aggarwal, 2005: 742).

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