5. Stabilization Policies and the WTO

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Summary

This paper tackles the question of the compatibility of public market stabilization instruments with the WTO rules applied to developing countries.

We shall first examine the three pillars of the 1994 Agreement on Agriculture (AoA) (border protection, export regulation, and domestic support measures), then we shall examine whether Regional Trade Agreements (RTAs) and the current negotiations make it possible to take into account international price volatility better than the AoA.

The Agreement on Agriculture's Conceptual Framework: Greater Trade Liberalization and Less Distortive Aid

The AoA organizes the progressive opening to competition of agricultural systems worldwide by transforming all protections into fixed customs duties (tariff setting) and bringing the tariffs thus obtained down to a consolidated level. In addition to this, export subsidies and aid that has an impact on production are lowered.

Border Protection Instruments

Solely Tariff and Fixed Measures

Non-tariff measures on the agricultural product trade (quantitative restrictions and variable import levies, minimum import prices, discretionary import regimes, non-tariff measures applied by state trading companies, self-limitation of exports, similar border measures other than customs duties strictly speaking) are now banned, with a few exceptions.

The impossibility for WTO member countries to use price control measures can be illustrated by the dispute between Argentina and Chile from 2000 to 2007 over the question of the import price bands set up by Chile for several products.

At the same time, the AoA contains provisions that can be used to respond, partially, to market instability. Access to these provisions is not the same for developing and developed countries, and the initial situation of the country when the concession lists were established influences the possibility or impossibility of maintaining protection instruments.

Safeguards for Exceptional and Temporary Situations

The AoA does not forbid recourse to certain non-tariff import restrictions: measured applied under the provisions on the balance of payments, general safeguard clauses, general exceptions, provisions in the Agreement on the Application of Sanitary and Phytosanitary Measures, provisions in the Agreement on Technical Barriers to Trade, and other general WTO provisions.

The "Special Safeguard Clause" permits raising tariffs above their consolidated levels, but only for short periods of time and as a temporary measure. It is therefore not a solution for prolonged drops in international prices. In addition, developing countries that have notified ceiling rates—notably the case for Least Developed Countries (LDCs)—cannot use it.

Special and Differential Treatment for Developing Countries Not Always Advantageous

Developing countries receive special treatment under the special and differential treatment clause. LDCs are not obliged to notify commitments to lower their customs duties. However, they cannot exceed their consolidated level of customs duties.

In addition, developing countries have the possibility of consolidating their duties (making them impassable) at ceiling rates, without reference to the duties actually applied and without reference to past customs duties.

Yet, for ceiling rates to be effective, they must:

- be sufficiently high compared to the duties applied, which is not always the case; and
- be able to be actually used by the developing countries that have notified them, which can be difficult notably for countries subject to structural adjustment.

Maintaining Tariff Peaks and Instruments Other than Ad Valorem Duties

The tariffication mechanism allowed some countries to notify still very high tariffs (tariff peaks) for certain sensitive products. This is especially the case for developed countries, notably the European Union and the United States. Some developing countries, while they were able to notify sometimes high ceiling rates (greater than 100%), apply levels of protection that are among the lowest in the world. For instance, the highest rate in WAEMU's common external tariff (CET) is 20%.

The AoA authorizes in practice protection instruments other than *ad valorem* customs duties that would allow for more effective market protections: specific duties, tariff quotas, seasonal duties, etc. However, most developing countries have not notified these types of instrument and therefore cannot use them.

Finally, the countries that have the means to do so have offset, at least partially, the drop in farmers incomes' due to the opening of borders. However, developing countries have in general not notified such direct decoupled aid.

The Case of Quantitative Restrictions and Export Taxes

Restriction policies and export taxation remain for many developing countries the favored measures to meet diverse objectives, including the preservation of food security. In this way, the 2006-2008 food crisis led various rice exporting countries to limit or ban their exports in order to supply their domestic markets in priority and limit the price hike on these markets. These policies were denounced for their effects on the habitual destination markets.

WTO rules do not forbid export taxes. In addition, exemptions are planned that limit the ban on quantitative restrictions: they may be applied temporarily to prevent or resolve a critical situation due to a shortage of food products or other essential products for the country. As long as the developing country in question is not a net exporter of the product (if it is, certain conditions must be met), countries can therefore , in addition to taxes, set up quantitative restrictions on food product exports.

Production Support Policies and Managing Market Instability

All domestic support measures that have an effect on prices or quantities are subject to reduction.

Under special and differentiated treatment (SDT), developing countries are not obliged to lower:

- investment subsidies and agricultural input subsidies for low-income farmers or farmers with limited resources, or
- support destined to encourage the replacement of illicit narcotic crops.

In addition, the "de minimis" clause allows countries to maintain:

- agricultural product support when the support does not exceed 5% of the production value, and
- support other than product support when it does not exceed 5% of the value of the country's total agricultural production. This rate is 10% for developing countries. LDCs are subject to no reduction obligations but cannot increase "distortive" support.

"Non-distortive" support (Green Box) is exempt from reduction: decoupled aid and direct payments to producers, public service programs of a general nature (research, anti-pest programs, training, extension, etc.), aid in the case of natural disasters, activity cessation aid, environmental protection programs, etc.

Spending on holding public stocks is authorized, but only if these stocks target food security alone. Hidden support via purchase and re-sale prices is therefore not tolerated. What is more, domestic food aid also seems to be among the measures that are exempt from reduction, as long as it is linked to nutrition-related objectives.

In the last two cases, the goal of market stabilization may not be used to justify the use of the two types of measures in question.

In sum, the WTO AoA organizes the transition to a large global market through capped and dropping customs duties, mostly decoupled support, and special safeguards in the case of price or import volume shocks. Only the pace and magnitude of commitments change for developing countries, with the exception of LDCs that are exempt from liberalization obligations. The legal alternative to liberalization is limited to (temporary or permanent) protection. Price stabilization is removed. Developing countries were not mistaken and in the framework of the Doha Round are negotiating exceptions for certain products labeled “special products” and a special safeguard mechanism, rather than instruments such as variable levies or guaranteed price policies. But what about RTAs involving developing countries?

Are Regional Trade Agreements (RTAs) a Better Response to the Challenge of Market Stabilization?

WTO member countries may sign Regional Trade Agreements (customs unions or free trade agreements). In this way, they can depart from the non-discrimination principle as long as the RTAs cover a “substantial part” of the trade and are implemented within a “reasonable length of time.” Are RTAs a better response to the challenge of market regulation? Are public stabilization policies tolerated even though the WTO bans them?

In principle, no, because RTAs must be compatible with WTO rules and refer to these rules.

In practice, RTAs usually only increase trade liberalization among the parties to the agreements compared to their commitments with the WTO. In this way, RTAs are often much more restrictive when it comes to the use of trade policy instruments: they do not address the consolidated tariffs at the WTO but applied tariffs that they lower or eliminate, often with a status quo clause that prevents countries from raising the tariffs applied at the time the agreement was entered into. In addition, the WTO does not impose asymmetry between developed countries and developing countries when a RTA involves both types of countries, contrary to the WTO rules that include special and differentiated treatment. The asymmetry that may exist in the degree or pace of liberalization is the result of the negotiations between the parties.

Policy space is therefore increasingly limited: only food security or the “special” nature of a product for developing countries (in the terms of the current multilateral negotiations still underway) can justify measures influencing prices or quantities outside of support measures that have been capped on a historic basis (“Amber Box”) but are nonexistent in practice.

Are Current Negotiations Evolving Toward Better Consideration of Price Volatility?

The negotiations underway on the AoA have not challenged current rules at all. They aim to continue trade liberalization and further reduce distortive support and export subsidies.

For developing countries, the most important discussions focus primarily on:

- “special products” that could receive special treatment in regard to lowering consolidated tariffs; and
- the special safeguard mechanism that allows them, as does the current Special Safeguard Clause, to temporarily increase their levels of protection in the case of sharp increases in imports or sharp drops in the price of imported products. This mechanism would be available to all developing countries, including those that consolidated their tariffs at ceiling rates, and easier to trigger than the current clause.

The issue of exchange rates has been addressed relatively little in the negotiations whereas they are a crucial stake in international trade.

Beyond WTO rules, some developing countries have implemented measures that bypass or are sometimes incompatible with the WTO’s rules; these measures deal with sanitary or quality criteria or criteria arising formally from agreements between private actors.

In conclusion, the WTO framework, like the RTA framework, cannot create the conditions that would allow for the ambitious use of market stabilization instruments. Indeed, all of the rules established there, including those for developing countries, aim to reduce the use of such instruments. The existing flexibilities and those under negotiation are merely exceptional provisions or special treatment compared to the overall rules. Paradoxically, developed countries, which are least eligible for exceptions to the rules, are the ones that use stabilization instruments the most because they used them during the baseline periods chosen in the AoA. This situation suggests that strong advocacy efforts will be necessary to modify the philosophy behind the AoA to take into account structural market stabilization measures, and notably to authorize developing countries and LDCs to introduce instruments that they have not notified.