

### **Agriculture and Food Security Negotiations Text at WTO MC12: Implications for Developing Countries**

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**Summary:** *The World Trade Organization (WTO) is hosting its Twelfth Ministerial Conference (MC12) on 12 - 15 June 2022. Agriculture and food security issues have always remained a key concern for developing countries and Least Developed Countries (LDCs), but perhaps never before has it been of such critical importance as now. In this context, the negotiations on agriculture and food security leading up to MC12 assume great significance. The WTO leadership and the developed countries have continued to harp on keeping trade open. But the recommendations avoid the necessary review of the very inequitable trade rules especially with regard to domestic support instituted by the Agreement on Agriculture (AoA), measures to strengthen existing mechanisms for resilience building and provide the trade policy space that can help maximise and diversify agricultural production across developing countries and LDCs.*

*The question is which are the deliverables on the table and whether these can meet the needs of developing countries. Currently, there are three tracks under these negotiations: (a) "Draft Ministerial Declaration on Trade and Food Security"; (b) "Draft Ministerial Decision on Agriculture"; and (c) "Draft Ministerial Decision on World Food Programme Food Purchases Exemption from Export Prohibitions or Restrictions". This analysis provides a summary of the three tracks and flags gains and concerns for developing countries and LDCs.*

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The World Trade Organization (WTO) is finally hosting its Twelfth Ministerial Conference (MC12) on 12 - 15 June 2022. Agriculture and food security issues have remained a key concern for developing countries and Least Developed Countries (LDCs) during the entire lifetime of the WTO, but perhaps never before has it been of such critical importance as now. Devastated by the onset of the COVID-19 pandemic and the food crisis triggered by the political conflict in the Black Sea region in quick succession, developing countries and LDCs have found it even more difficult to meet the challenges of meeting the food security needs of their populations, maintaining agricultural production and imports, and supporting livelihoods of their farmers. The impact of these multiple crises is disproportionate for them because they have limited financial resources and policy space to address these necessary objectives.

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In this context, the negotiations on agriculture and food security leading up to MC12 assume great significance. It is clear that countries depend on both domestic production and global trade for securing the necessary food supplies. The WTO leadership and the developed countries have continued to harp on keeping trade open, and even to use these crises in order to push for further market access into developing country markets. But the recommendations avoid the necessary review of the very inequitable trade rules especially with regard to domestic support instituted by the Agreement on Agriculture (AoA), measures to strengthen existing mechanisms for resilience building and provide the trade policy space that can help maximise and diversify agricultural production across developing countries and LDCs. This can directly meet their domestic food security needs but will also stabilize global markets by diversifying supplies, easing concentration and volatility.

The question is which are the deliverables on the table and whether these can meet the needs of developing countries. Currently, there are three tracks under these negotiations. All the three were being negotiated in the so-called “Green Room” with the participation of only a few invited Members under the leadership of the WTO Director-General (DG) Ms Ngozi Okonjo-Iweala, who then released the texts on 30 May to the WTO Membership as a restricted document.

On 10 June, the texts were released openly and submitted for the consideration of the Ministers at MC12. The first of these is a “Draft Ministerial Declaration on Trade and Food Security” (WT/MIN(22)/W/17). The second is the “Draft Ministerial Decision on Agriculture” (WT/MIN(22)/W/19 ) which includes a programme of action regarding the main negotiating issues. The third is a “Draft Ministerial Decision on World Food Programme Food Purchases Exemption from Export Prohibitions or Restrictions” (WT/MIN(22)/W/18).

It is interesting that the drafts have no square brackets i.e. issues on which agreement is not yet reached, even while there are major issues still being discussed especially on the draft World Food Programme (WFP) Decision and on timelines for the permanent solution on public stockholding.

Negotiations are expected to continue perhaps till the end of the Ministerial on 15 June.

A summary analysis of the three tracks is provided below.

#### **A. Draft Ministerial Declaration on Trade and Food Security (WT/MIN(22)/W/17)**

1. In comparison to some earlier versions of the draft, the Preamble of the 10 June version finally recognises the special needs of “developing countries, and particularly in least-developed and net food-importing developing countries”. The richer countries do not face the challenges in the same way as developing countries, in particular Net Food Importing Developing Countries (NFIDCs) and LDCs. This Declaration must be primarily about their needs since first, they cannot often produce enough food to meet their needs, and second, because their financial resources are much more limited and are stretched to finance higher import bill on food especially under a situation of price inflation or supporting needs of their agriculture sector. Under the AoA their policy space also faces greater constraints leading to higher vulnerability under a situation of crisis.
2. The issue of augmenting domestic production in addition to productivity remains critically important and seems to have made it to this version of the document in both the Preamble and Paragraph 4. Increasing domestic production is not only a direct method of meeting domestic food security and livelihood concerns, but also will help support global trade by easing out volatilities by increasing exports and by diversifying sources of exports. It is not against the interest of having a better functioning global trade system. However, this is seen as a major threat by the developed countries as expanding production will surely challenge their market power over global agricultural markets. It is important for developing countries to hold on to this gain.

3. Paragraph 4 reaffirms disciplines on export restrictions. Export restrictions are complex and need balance between the adverse impact on importing countries especially NFIDCs and LDCs, and the domestic food security needs of developing countries which are recognised by Article XI.2(b) of GATT and Article 12 (in particular 12.2) of the AoA. The way this paragraph stands now, it can be taken to imply that even NFIDCs and LDCs should take on additional obligations to not restrict exports even in a situation of crisis. This also pre-judges any outcomes on the negotiations, if any, on export restrictions as outlined under Paragraph 12 of the draft Decision on Agriculture. Even “soft rules” related to export restrictions should not prejudice negotiations in the future and erode policy space provided by the current WTO Agreements.
4. Paragraph 5 is extremely problematic as it advances the language earlier adopted by the G7 countries to “ensure that any emergency measures introduced to address food security concerns shall minimize trade distortions as far as possible; be temporary, targeted, transparent, and proportionate”. This reinforces Paragraph 4 in attempting to limit export restrictions and other emergency measures. More important, without any Special and Differential Treatment (S&DT), all WTO Members including NFIDCs and LDCs are asked to agree to endeavour to restrict the existing flexibilities if they comply with all these additional tests currently not all required by WTO rules. At a minimum, Paragraph 5 is a commitment that will make it politically more difficult for LDCs and developing countries to impose emergency measures to address food security. At worst, these restrictions in Paragraph 5 may lead to a subsequent agreement that affects the interpretation and thus restricts existing flexibilities such as GATT Art XI.2(a).
5. The Nairobi Decision on export competition is re-affirmed in Paragraph 7. However it was already agreed in 2015 and should have been implemented by now. This amounts to a mere re-affirmation and does not provide any additional benefit.
6. The NFIDC Decision of 1994 is reaffirmed under Paragraph 8. This was much needed but it refers only to addressing the adverse impacts brought on by the reform programme under the AoA. It is true that the current challenges are exacerbated by the impact of AoA reform across the developing world. The scope needs to be extended to specifically address current challenges including impacts of crises, for it to offer concrete additional benefits to NFIDCs and LDCs.
7. Paragraph 9 recognises that food stocks “contribute to the realization of Members’ domestic food security objectives and encourage Members with available surplus stocks to release them on international markets consistently with WTO rules”. However, it is WTO rules for example the Bali Peace Clause that prevent Members from doing so. This does not allow exports even for humanitarian aid purposes or requested by a country in need under a situation of crisis. It may be interesting to compare this paragraph with the Safeguard provision in the joint proposal by G33, ACP and the African Group (JOB/AG/229) which includes such a provision.
8. There has been a massive push to include the carrying forward of the “reform” process as articulated under Article 20 of the AoA under paragraph 12. It had been deleted in earlier versions but has made a comeback in the current version. However Article 20 does not take into account the progress made in the Doha Round which is critical for developing countries and may relegate the Rev.4 or the 2008 Draft Modalities text to nothing. The “reform” word is being used by developed countries to mean further opening up of agricultural markets of developing countries and LDCs but does not address the adverse impacts stemming from the current rules and their implementation.

### ***Gaps***

1. This Declaration must include language on the necessity to conclude mandated negotiations on key issues of interest to developing countries and LDCs, outcomes on which are not agreed yet. These include the permanent solution on Public Stockholding for Food Security Purposes; a Special Safeguard Mechanism; issues related to cotton especially with regard to domestic subsidies; and

domestic support disciplines that integrate S&DT. If concluded, these could have provided the necessary tools and addressed much of the perennial vulnerabilities that developing countries and LDCs face which are further aggravated during a crisis.

2. The Declaration also needs to remind the WTO Membership and the world about the need for policy space, with a special focus on developing countries and LDCs, for meeting critical objectives such as maximising and diversifying global production and trade both in terms of products and suppliers, supporting farmers' livelihoods, providing long term food security, and building resilience against crises.

**Overall, this Declaration delivers nothing extra for developing countries.** It just reaffirms existing commitments but provides no new tools to developing countries and LDCs. It advances the interest of developed countries in promoting the issue that they have been pushing even in the negotiations on agriculture which is to extract more obligations related to disciplines on export restrictions. The primary objective of a Declaration on Trade and Food Security should be to benefit developing countries, NFIDCs and LDCs. But unless the language is considerably strengthened this purpose will not be served. It must also highlight the issue of critical interest to them, that of stocktaking of, and addressing, the unfair and inequitable AoA rules and expanding policy space for augmenting production across these countries.

It is important to note that Egypt has submitted a draft Ministerial Decision on WTO Response to Food Insecurity in NFIDCs and LDCs (WT/MIN(22)/W/11, 9 June 2022) on behalf of NFIDCs and LDCs, while Sri Lanka has submitted a draft Ministerial Declaration on the WTO Response to the Food Security Crisis (WT/MIN(22)/W/14, WT/GC/W/848/Rev.1 G/AG/W/220/Rev.1, TN/AG/53/Rev.1 WT/COMTD/W/267/Rev.1, 10 June 2022). These would be important documents to watch and promote as more constructive alternatives to the Trade and Food Security proposal.

## **B. Draft Ministerial Decision on Agriculture (WT/MIN(22)/W/19)**

Key issues on agriculture have been undergoing negotiations for MC12 since 2020-2021<sup>1</sup>. The draft Decision tabled by the DG includes work programmes on the various pillars: Domestic Support, Public Stockholding for Food Security Purposes (PSH), Market Access, Special Safeguard Mechanism (SSM), Export Restrictions, Export Competition, Cotton and Transparency.

1. In spite of strong proposals from the developing countries, the Draft Ministerial Decision on Agriculture again pushes key mandated issues to MC13 and beyond, such as the permanent solution on PSH, the SSM and Cotton, which are absolute "must" for building long-term stability and resilience to crises across the developing world. There is a need to push for MC13 deadlines for SSM and Cotton (assuming PSH will be delivered by MC12, see below), pinning down dates for outcomes and even entry into force.
2. However, the push for disciplines on domestic support which was overtaken by large players within the Cairns group (a group of farm product exporting countries within the WTO), export restrictions, market access and transparency seem to have gained ground.
3. In a win for developing countries compared to earlier drafts of this Decision, the Preamble of the current Draft recognises language from the Preamble of the AoA "that special and differential treatment for developing countries is an integral element of the negotiations". S&DT is also recognized in paragraph 1 of the Decision.

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<sup>1</sup> For an analysis of key issues that were being discussed up to November 2021, see Sengupta, Ranja (2021): "Agricultural negotiations for MC12: A factsheet for developing countries" TWN Briefing for 12<sup>th</sup> WTO Ministerial Conference, [https://twn.my/title2/briefing\\_papers/MC12/briefings/Agri%20factsheet%20TWNBP%20MC12%20Sengupta.pdf](https://twn.my/title2/briefing_papers/MC12/briefings/Agri%20factsheet%20TWNBP%20MC12%20Sengupta.pdf)

4. Another win has been the inclusion of the language on production given the resistance from developed countries. The Preamble recognises the objective to “implement resilient agricultural practices, enhance productivity and production”.
5. Unfortunately, as in the case of the Draft Declaration on Trade and Food Security, the Draft Decision on Agriculture pushes the “reform agenda” based on Article 20 of the AoA without doing a stocktaking of the AoA. This is evident from the language under both the Preamble as well as the Domestic Support pillar which says negotiations will be carried out “...in accordance with the reform programme provided for in Article 20 of the AoA”. In fact even this Decision or track was referred to as one on “*agricultural reform*” by the DG in her list of deliverables whereas such Ministerial Decisions including issue specific decisions and work programmes have always been referred to as Decisions on “Agriculture” in the past.

Below are highlights of some critical issues related to some of the pillars.

### ***Public Stockholding for Food Security Purposes***

The most important battle has been on the deadline for the permanent solution on public stockholding for food security purposes. The mandated outcome was promised to be delivered by the 2017 Buenos Aires Ministerial Conference. However, in spite of several proposals submitted by the G33 over the past few years including in 2021, and another proposal submitted by the African Group in 2021, the opponents had refused to engage in negotiations.

Developing countries and LDCs need to use this policy tool in order to support both producers and poor consumers and such programmes have been much used during the pandemic and the current food crisis. However the Peace Clause under the Bali Decision of 2013 does not cover programmes not in existence in 2013, is limited to staple crops, and includes very difficult safeguard and notification conditions that are almost impossible to meet. Further the problem with a fixed “External Reference Price” (ERP) pegged to 1986-88 prices serving as the basis of calculation of price support subsidies continue to inflate this subsidy in a manner completely detached from the reality of today.

In a recent submission<sup>2</sup>, nearly 80 countries of the African Group, the ACP and the G33 have made a new proposal on Public Stockholding for Food Security Purposes (JOB/AG/229, 31 May 2022). This is an important political statement of serious commitment to resolving this issue. There are many improvements also related to substance, regarding operational Paragraph 2, safeguards, the updating of the ERP and “eligible production” which currently inflate the subsidy irrationally.

Under this Draft Decision, the permanent solution is again postponed to MC13 in 2023, and that deadline is also rather open as the Members “undertake to continue ... negotiations and work towards agreeing and adopting a permanent solution to the PSH issue by MC13” (Paragraph 5).

However there is an interesting footnote shift reflecting the power relations within the WTO. Even in the 8 June version of this Decision (JOB/AG/232) a footnote to the section on PSH said “*In case a permanent solution to the issue of public stockholding for food security purposes is not adopted at MC12. [Comment: This footnote will be reviewed in the final version of the text to be forwarded to Ministers.]*”<sup>3</sup>. This acknowledged the demand from the G33, ACP and the African Group that the permanent solution should be agreed by MC12. This footnote was much opposed by the US, EU and Members of the Cairns group.

In a rapid transformation, the 10 June version of the footnote now says “*this proposed Decision acknowledges that some Members have submitted proposals on a permanent solution on PSH for consideration by Ministers*”. This seems to eliminate all possibility of an outcome on PSH by MC12. It remains to be seen if the MC12 deadline is still pursued by Members of the G33, ACP and the African Group.

<sup>2</sup> <https://twn.my/title2/wto.info/2022/ti220604.htm>

<sup>3</sup> <https://twn.my/title2/wto.info/2022/ti220608.htm>

Another interesting footnote (No.2) relates to the ERF. Footnote 2 says “*this issue would be considered more broadly in the context of current AoA disciplines*”. This is an attempt to link it with broader disciplines on domestic support. There is a need for clarification on what this means. The ERF (as referred in Paragraphs 8 and 9, Annex 3, AoA) refers only to market price support. If it is reviewed and updated it will impact all of Article 6.4 domestic support subsidies, some of which may be shown under extra Aggregate Measurement of Support (AMS) entitlements enjoyed by a few WTO Members. However, the AMS entitlements are themselves fixed and should be reduced on that basis. Further, with a more realistic calculation of Article 6.4 subsidies, developing countries should oppose the current proposals on domestic support that imposes a proportionately higher burden on developing countries and even LDCs<sup>4</sup>.

### ***Domestic Support***

Paragraph 4 on domestic support suggests that modalities will be agreed and adopted by MC13 and that “the needs of low-income or resource-poor farmers in developing countries shall be taken into account in these negotiations”. Now effective and comprehensive S&DT should be integral to any discussion on domestic support, especially in the light of the attack on *de minimis* (Article 6.4) and Development Box (Article 6.2) support, and not be limited simply to exemptions for low-income or resource-poor farmers in developing countries.

There has been an important improvement in the draft. An earlier formulation suggested that “*all Members will be expected to contribute to the outcome in these negotiations according to the modalities to be agreed by Members*” which implied that all Members including LDCs will necessarily need to take on obligations regarding disciplines. The current draft says “*Members’ contributions to the outcomes of these negotiations will be determined according to modalities to be agreed by Members*” which allows more flexibilities and does not pre-judge the outcomes of any future negotiations on domestic support in Special Sessions of the Committee on Agriculture.

### ***Export restrictions***

For the reasons discussed above in section A on Trade and Food Security, disciplines related to export restrictions need to be balanced. Article XI of GATT and Article 12 of the AoA already lay out the disciplines quite clearly and articulates this need for balance through exemption provisions under GATT Article XI.2(b) and S&DT provisions under Article 12.2. Any disciplines on export restrictions should work within the mandate of GATT XI.2 and Article 12, AoA and not go beyond the mandate. It is important to note that if obligations are extended, then even NFIDCs and LDCs may have to take these on and they may not be able to limit exports to ensure domestic food security even in a situation of shortage.

### ***Transparency***

The draft seems to indicate an almost immediate discussion and application of transparency related actions. In addition, as evident in the Chair’s texts circulated in 2021, market access-related commitments are being pushed in through transparency provisions. Higher notification obligations related to the use of tariffs may make it more difficult to respond to critical situations by increasing tariffs. Further, involvement of the WTO Secretariat to provide data on Members should only be at their request and with their consent.

## **C. The Draft Decision on World Food Programme (WT/MIN(22)/W/18)**

The Draft Ministerial Decision on World Food Programme Food Purchases Exemption from Export Prohibitions or Restrictions places obligations not to restrict exports to WFP, but provides safeguards by allowing Members to ensure their domestic food security in accordance with relevant provisions of the WTO Agreements. Given WFP’s work on providing humanitarian food aid this Decision is a step taken to address global food security challenges. It is seen as a low-hanging fruit in MC12.

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<sup>4</sup> For a detailed analysis of the Chair’s 29 July 2021 text on domestic support, see Sharma, S.K., Das, A., Neogi, S., Lahiri, T. and Mathur, P. (2021): “Agricultural Domestic Support Negotiations at the 12th Ministerial Conference: Diluting the Development Agenda”, Working Paper No. CWS/WP/65, Centre for WTO Studies, Delhi.

However, several questions have been raised by many developing countries. First of all, there are questions as to whether this Decision will actually achieve anything and whether it was really needed. Or is it just to get a deliverable at MC12 to show to the world that the WTO still remains an effective institution?

Second, since this is going to be a permanent obligation, there are questions as to how this relates to the permanent solution on PSH which is still languishing. PSH programmes are also a major tool across developing countries and LDCs for ensuring domestic food security and dealing with humanitarian crises. PSH programmes for example have been important tools through the COVID-19 pandemic. Without supporting production and farmers, consumption and food security cannot be supported just by depending on a volatile, concentrated and uncertain global market, the same challenges that the WFP is itself facing. Therefore, the question is: if the WFP Decision is granted a permanent outcome, why not the other (PSH)? Should the Membership then pursue joint delivery of both the outcomes at MC12?

Third, questions have also been raised as to the impact of such obligations on NFIDCs and LDCs as the Decision may also require them to export to WFP when their own domestic food security is at risk. That is why Paragraph 2 of the Decision, especially S&DT provisions in current WTO Agreements, remain critically important and must not be diluted under any circumstances.

Fourth, questions have also been raised as to the impact of such rules on the global markets and whether it can lead to further concentration in global markets or speculation in futures markets, given the close linkage of WFP operations with major agri-business corporations. WFP's current operation size remains too small to perhaps impact global trade in a significant manner, but there are concerns as to whether this can change in the future.

Fifth, there are also concerns about whether this would lead to, and also pre-judge, future obligations related to export restriction disciplines. This should not open the door for broader commitments to discipline export restrictions, as already pushed in the Draft Declaration on Trade and Food Security as well as the Draft Decision on Agriculture. Efforts to have broader disciplines on export restrictions were also evident in the Chair's text from the 2021 Special Sessions of the Committee on Agriculture.

A few countries have expressed reservations on the proposed WFP Decision. India in particular wanted an exemption for exports out of procured stocks for humanitarian aid purposes. It remains to be seen whether the Decision will go through in its current form.

In the final analysis this Decision, though a positive initiative, is of little consequence compared to the mammoth challenge of assuring long-term food security to the poor and hungry, especially those in developing countries, NFIDCs and LDCs. The WTO needs to provide more constructive solutions that address the structural causes of an inequitable global trading system.

### ***In Lieu of a Conclusion***

Based on the lessons learnt from the last 2 years, the WTO Membership needs to look beyond short-term band-aid solutions and address structural issues including the very inequitable rules of the Agreement on Agriculture to ensure food security, especially for developing countries, NFIDCs and LDCs. However, so far it looks like MC12 will be unable to deliver the right solutions.