

# Asymmetries in the WTO agreement on agriculture

Abhijit Das<sup>1</sup>  
Sachin Kumar Sharma<sup>2</sup>

## Abstract

At the WTO, the Agreement on Agriculture (AoA) marked a crucial step towards establishing “a fair and market-oriented agricultural trading system”. However, this agreement is riddled with many asymmetries and imbalances, which have been detrimental to the interests of many developing countries. This chapter identifies how the countries that were distorting markets through high tariffs, a plethora of non-tariff barriers, and high subsidies, prior to 1995, secured the right under the AoA to continue to distort markets through such tariffs and subsidies. On the other hand, countries that were more disciplined in terms of few or no non-tariff barriers and low subsidies in the pre-WTO period, lost the right to protect their farm sector. The paper concludes that if the WTO members have to fulfill the objective of establishing a “fair and market-oriented agricultural trading system”, then the first step in future multilateral negotiations in agriculture must set right the asymmetries and imbalances in the Agreement on Agriculture.

**Keywords:** WTO, agreement on agriculture, asymmetries and imbalances, developing countries

## 1. Introduction

Amidst the spread of the Omicron variant of Covid-19, the 12<sup>th</sup> Ministerial Conference (MC12) of the WTO has been rescheduled from November 2021 to 2022. Given the significance of agriculture in employment, rural development, poverty alleviation and food security, the developing members are seeking fairer rules and a level playing field for low-income or resource-poor farmers for a successful outcome in the upcoming MC12. Developing members have been consistently highlighting the asymmetries in the Agreement on Agriculture (AoA) in the negotiations, which place farmers of the global south at a significant disadvantage in the international trade of agricultural products (Sharma et al., 2020; Das et al., 2021).

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<sup>1</sup> Head, Centre for WTO Studies, IIFT.

<sup>2</sup> Associate Professor, Centre for WTO Studies, IIFT.

Notably, before the establishment of the WTO in 1995, the disciplines under the General Agreement on Trade and Tariff (GATT) were softer for agriculture than the disciplines on industrial products. During the GATT years, the contracting parties to the GATT could not agree on a substantial reduction in the protection for agricultural products. Further, through a plethora of waivers and through special clauses in their protocol of accession, contracting parties, particularly the developed countries, managed to keep their farm policies immune from legal challenges. As a result, the developed countries were almost free to heavily subsidize their farm production and keep their farm sector insulated from the competitive pressures of the world market.

The mandate of the Uruguay round of multilateral trade negotiations launched in 1986 provided a basis for initiating a process of reform of trade in agriculture. An essential outcome of these negotiations was the AoA, which introduced disciplines in three pillars - market access, domestic support and export competition. This marked a crucial step towards establishing “a fair and market-oriented agricultural trading system”. However, it is now generally recognized that the AoA is riddled with many asymmetries and imbalances in all three pillars, which have been detrimental to the interests of many developing countries (Das, 1998). The asymmetries and imbalances rose primarily on account of the modalities document (GATT, 1993), which guided some of the legal provisions of the AoA. While these “asymmetric” provisions appear even-handed on the surface, in reality, they benefit mainly the developed countries and are biased against the developing countries.

In this context, the study seeks to discuss some of the asymmetries and imbalances in the AoA, which developing members have been seeking to address in various ministerial conferences of the WTO. Further, it highlights how these imbalances benefit developed countries. The subsequent sections of this paper discuss some of the asymmetries in market access, domestic support and export competition pillars. The final section concludes the paper and suggests a way forward for India and other developing countries.

## **2. Symmetric provisions: Market access pillar**

Substantial progress in the WTO with respect to market access for agricultural products was the prohibition of quantitative import restrictions, variable import levies, minimum import prices, discretionary import licensing, non-tariff measures maintained through state trading enterprises, voluntary export restraints, and similar border measures other than ordinary customs duties. Further, the modalities agreed by the negotiating parties during the Uruguay Round provided guidelines for converting the quantitative restrictions and non-tariff measures

into tariffs, and the reduction of tariffs, generally referred to as tariffication. The modalities resulted in the following three specific imbalances: tariffication allowed the developed countries to bind their tariffs at very high levels; developed countries bound tariffs on a large number of agriculture products on a non-ad-valorem basis, and developed countries secured the rights to impose Special Safeguards (SSG). These are discussed in detail below:

### 2.1 Tariffication

The objective of tariffication was to enhance market access by removing non-tariff barriers and converting them into tariff equivalents (Art 4.1 and Footnote 1, AoA).<sup>3</sup> However, countries that were maintaining non-tariff barriers managed to convert to tariff equivalents at high levels by choosing suitable options for tariffication. As a result, a plethora of non-tariff barriers were replaced by high tariffs in developed countries, which impeded market access. For instance, Switzerland, Japan and other developed members got the flexibility to impose very high tariffs on their sensitive agricultural products, as shown in table 1. As most of the developing countries did not maintain non-tariff barriers, this mechanism worked to their disadvantage.

**Table 1:** Bound tariff peaks in select WTO members

Member	Specific Product	Maximum Bound Tariff (%)
Switzerland	Cereal and Preparations	637
Japan	Cereal and Preparations	662
Norway	Cereal and Preparations	549
	Dairy	453
Canada	Cereal and Preparations	277
	Dairy	314

Source: Tariff Profiles, WTO

### 2.2 Non-ad-valorem tariffs

WTO members have bound their agriculture tariff lines on a variety of formulations. These are broadly based on ad valorem and non-ad-valorem terms. The WTO Secretariat has estimated that 7,977 agricultural tariff lines are bound in non-ad-valorem (NAV) terms by a total of 34 Members. These lines account for approximately 20 per cent of all the final bound agricultural tariff lines listed in those Members’ Schedules (WTO, 2004). According to some

<sup>3</sup> Article 4.1 and footnote 1 of the Agreement on Agriculture. Also, see paragraph IV of the Modalities Text MTN.GNG/MA/W/24.

WTO Members, NAV tariffs have been “a form of disguised protectionism in agricultural trade” (Bernardino, 2005).

**Table 2:** Average bound and percentage of non-ad-valorem tariff in agriculture

Member	Average Bound Tariff	% of NAV lines
<b>Developed Members</b>		
European Union	11.6	31.7
USA	4.8	41.3
Japan	17.8	15.1
Switzerland	44.4	78
Norway	138.2	66.2
Canada	15.3	18.4
Iceland	113.6	24.5
<b>Developing Members</b>		
India	113.1	0.3
Philippines	35	0
Malaysia	53.6	21.1
Indonesia	47.1	0
Kenya	100	0

Source: Tariff Profiles, WTO

Table 2 clearly shows that a significant percentage of tariff lines have been bound by developed members in non-ad-valorem terms, unlike the ad valorem bound tariffs for the developing and the least developing members. On the surface, it seems that developing members have high bound tariffs on agricultural goods. However, the non-transparent nature of non-ad-valorem tariffs in the developed members has been a major barrier to trade. The developed members have been using a very complex form of non-ad-valorem tariffs to restrict market access for the developing members (Table 3). Overall, it is clear that there is significant non-transparency in the application of customs duties in developed countries because of the extremely high incidence of non-ad-valorem tariffs (Das and Sharma, 2011).

**Table 3:** Example of non-ad-valorem tariff in the USA and the EU

Member	HS Codes	Product Description	Tariff
EU	121291	Sugar beet, fresh, chilled, frozen or dried, whether or not ground	[23 €/100 kg/net] [6.7 €/100 kg/net]
	100110	Durum wheat	[14.8 €/100 kg/net]
	110290	Cereal flours (excl. wheat, meslin, rye, maize and rice)	[16.4 €/100 kg/net] [17.1 €/100 kg/net] [9.8 €/100 kg/net]
USA	170191	Refined cane or beet sugar, containing added flavouring or colouring, in solid form	[3.6606¢/kg less 0.020668¢/kg for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 3.143854¢/kg] [33.9¢/kg + 5.1%] [35.74¢/kg]
	40310	Yoghurt, whether or not flavoured or containing added sugar or other sweetening matter, fruits, nuts or cocoa	[\$1.035/kg + 17%]

Source: Tariff download facility, WTO

### 2.3 Special Safeguards

The AoA provides flexibility to some WTO members to restrict agricultural imports by imposing special safeguards to address the import surges.<sup>4</sup> The special safeguard measures (SSG) are in addition to the general safeguard measures under Article XIX of GATT 1994 and the Agreement on Safeguards. General safeguard measures can be taken only if serious injury or threat thereof to the domestic industry exists. However, SSGs can be applied without demonstrating any adverse effect on domestic production (Das et al., 2021). The initial conditions for a WTO member to apply SSG against a product include the following: tariffication has been done in respect of the product, and a symbol “SSG” has been marked by the member against the particular product in its Uruguay Round schedule of commitments. Based on an analysis by the WTO Secretariat, while the developed countries have access to the SSG for a large percentage of agricultural products, most developing countries do not have such flexibility, as shown in table 4 (WTO, 2017). For instance, India does not have any

<sup>4</sup> Article 5 of the Agreement on Agriculture.

SSG entitlement to protect its farmers from the adverse impact of import surges.

**Table 4:** SSG entitlements across select members of the WTO

Member	Percentage of Agricultural Tariff Lines Covered by SSG (%)
Switzerland	53
Norway	49
Botswana	40
Namibia	39
South Africa	39
Mexico	32
Venezuela	32
European Union	31
Colombia	27
Morocco	23
Barbados	18
Philippines	16
Canada	13
Costa Rica	12
Japan	10
United States	10
Korea, Republic of	8
Indonesia	1

Source: Compiled based on WTO Doc no. TN/AG/S/29/Rev.1.

The overall observation on SSG is that prior to the AoA, the developed countries were protecting their farmers through non-tariff barriers. After the implementation of the AoA, the SSGs became another instrument for achieving the same objective (Das et al., 2021). On the other hand, developing countries that were not protecting their farmers through NTBs, could not acquire the right to protect their farmers through SSG.

### 3. Asymmetric Provisions: Domestic Support Pillar

Nothing highlights the asymmetries in the AoA more than the provision on Aggregate Measure of Support (AMS) entitlement in the domestic support pillar. The AMS includes measures that are popularly called Amber Box sub-

sidies. The methodology for calculating the AMS entitlement for different countries to provide Amber Box subsidies is most contentious under the AoA. How the AMS entitlement was arrived at is an issue that needs scrutiny.

Under the AoA, Amber Box support includes domestic subsidies targeted to specific products (called product-specific support) and trade-distorting domestic subsidies available to all agricultural products (called non-product specific support under Annex 3 of the AoA).<sup>5</sup> All countries are entitled to provide support up to their de minimis level under Art 6.4 of the AoA.<sup>6</sup> For developed members, the product-specific de minimis limit is 5 percent of the value of production of a concerned product, whereas non-product specific support is 5 percent of the total value of agricultural production. The corresponding figure for developing countries is 10 percent for each category of support within the Amber Box. However, if the total amount of domestic support in the Amber Box in the base period of 1986-1988 exceeds the de minimis level, then the country is entitled to an additional amount of subsidy, popularly called the AMS entitlement (Sharma et al., 2020). It is important to emphasize that if a country did not provide Amber Box subsidies exceeding the de minimis levels in the base period, then its AMS entitlement is zero. Thus, the methodology for calculating AMS limits rewarded countries that were distorting agriculture markets by providing huge subsidies in the base period. On the other hand, countries providing a low level of Amber Box subsidies and not distorting markets were penalized (Sharma and Das, 2018).

Which countries have acquired an AMS entitlement? All the developed countries and a few developing countries, such as Argentina and Brazil, have AMS limits under the AoA. However, most of the developing countries have no AMS entitlement; thus, their Amber box support is capped by the de minimis limit. It has been estimated that developed members like European Union, Japan, the US, Russian Federation, Switzerland, Canada and Norway account for more than 96% of the global AMS entitlement. In comparison, the remaining members have less than 4% of it. This has tilted the rules of domestic support against most developing countries’ interests (Sharma et al., 2020).

**Table 5:** AMS entitlement across developed and developing members

Members	Million US\$	% share in global entitlement
USA	19,103	11.96
EU	81,324	50.93
Japan	36,445	22.82

<sup>5</sup> Annex 3 of the Agreement on Agriculture.

<sup>6</sup> Article 6.4 of the Agreement on Agriculture.

Developed members	1,52,924	95.77
Developing members	6,761	4.23
<b>Global entitlement</b>	<b>1,59,685</b>	

Source: Based on the CWS Working Paper CWS/WP/200/56 (Sharma et al., 2020).

How are the countries with an AMS entitlement at an advantage compared to the developing countries with no entitlement? First, the maximum amount of subsidy that a developing country with no AMS entitlement can provide to each product cannot exceed the de minimis of 10 percent of the value of production of the concerned product. In contrast, the developed countries are not constrained by the applicable de minimis limit of 5 percent in providing support to specific products. As a result, these countries can concentrate their AMS entitlement on specific products. This has resulted in a very high level of subsidization as compared to the value of production of a product. Further, the developed countries have complete freedom to choose the products in which to concentrate their subsidies. As table 6 highlights, the developed members frequently use their AMS entitlement to provide high levels of trade-distorting support to agricultural products. This allows the developed members to enjoy artificial comparative advantages in agricultural trade at the expense of millions of poor farmers in the global south.

**Table 6:** Incidences of high Product-Specific Support in members due to AMS entitlements

Member	Product	Year	PSS as a % of VoP
USA	Cotton	2019	18%
	Sesame	2019	16%
	Sugar	2019	66%
EU	Common Wheat	2009	13%
	Apple	2006	42%
	Sugar	2006	177%
Canada	Corn	2000	22%
	Beef	2003	18%
	Milk	2017	10%

Source: Compiled based on domestic support notifications, WTO



The second substantial advantage acquired by countries with an AMS entitlement becomes obvious if we compare their AMS limit with the total value of agriculture production. Developing countries without an AMS entitlement cannot provide non-product specific support beyond 10% of their value of total agriculture production. On the other hand, on account of AMS entitlement, the developed countries can provide a very high level of amber box support as a percentage of their respective total value of agriculture production.

To illustrate, in certain years, Norway and Japan could provide Amber Box support up to 50% of their value of agriculture production and the EU up to 38% (Sharma, 2020). Thus, the more a country distorted agriculture markets by providing high domestic subsidies in the past, the more it stood to gain in the future. No wonder the vast number of developing countries perceive the rules of domestic subsidies under the AoA to be unfair and skewed to promote the interests of the developed countries.

#### **4. Asymmetric provisions: Export competition pillar**

The AoA provides the provisions to discipline export subsidies to agricultural products. Indeed, an elaborate list of the prevalent export subsidy practices are enlisted under the agreement, and the export subsidies not mentioned in the AoA are prohibited. Further, reduction commitments on all identified forms of export subsidies are also imposed, both in terms of the volume of subsidized goods and budgetary expenditure on export subsidies.

However, the imbalances and asymmetries in export subsidies- a critical element of the export competition pillar - is very similar to that in respect of domestic support. Countries that were providing high export subsidies in the base period of 1986-1990 acquired the right to continue to provide export subsidies in the future. On the other hand, most of the developing countries did not provide export subsidies during the base period. As a result, they are unable to provide export subsidies after the establishment of the WTO.

With a high level of product-specific Amber box support and export subsidies, the developed members have dumped their subsidized goods in the international market, essentially displacing products from the developing countries and adversely affecting the farm income and livelihoods of poor farmers. However, the imbalance in the export subsidies provisions has been addressed in the Nairobi ministerial decision in 2015, where all members agreed to eliminate their export subsidies.

## 5. Conclusion and way forward

These imbalances affect all three pillars under the AoA – market access, domestic support and export competition. The common thread running through all these issues is the following: countries that were distorting markets through high tariffs, a plethora of non-tariff barriers, and high subsidies, secured the right to continue to distort markets through such tariffs and subsidies. On the other hand, countries that were more disciplined in terms of few or no non-tariff barriers and low subsidies lost the right to protect their farm sector. Therefore, if the WTO members have to fulfill the objective of establishing a “fair and market-oriented agricultural trading system”, then the first step in future multilateral negotiations in agriculture must set right the asymmetries and imbalances in the Agreement on Agriculture.

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