



Review Paper

Distributive Justice and Fairness for Developing Countries under WTO Agreement on Agriculture: Analysis

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Abstract

The Article aims to discuss the whether trade liberalization is achieved in Agriculture sector especially for the developing countries through the adoption of Agreement on Agriculture. Developing countries were at the disadvantage position as they could not achieve comparative advantage in their agricultural export due to the high degree of protection accorded to the domestic producers by the developed countries. Through the adoption of Agreement on Agriculture, the aim was to achieve fair trading system in agriculture by according differential and special treatment to developing countries. The question which is raised and analysed in the present article is whether AOA facilitates the developing countries in achieving market access in the developed countries in the back drop of environment protection, export subsidies and domestic support clauses in AOA and WTO covered agreements. The effect of AOA Pakistan agricultural export is specially highlighted as the case study for developing country.

Keywords: Distributive, justice, fairness, developing, agreement, agriculture, analysis

Introduction

International trade, regulated under the 'WTO' system, is based on the doctrine of 'Comparative advantage', requiring the country to concentrate on the products over which it has 'comparative advantage' or what it can produce best, then to trade these products for the products that the other country can produce best or have 'comparative advantage'. The developing countries' comparative advantage is seen to lie in agriculture¹, therefore from emergence of 'GATT' till the creation of 'WTO', during all rounds, the protection of their agricultural exports to the markets of developed countries was at the top agenda of developing countries². Even though, just after seven years of emergence of 'GATT', during a thorough review of the 'GATT' framework between 1954 and 1955, Mr. Gomez of Cuba made it clear that under 'GATT' the developing countries are bound by the strict obligations to keep their markets open for industrial products, in response they (developing countries) enjoyed no protection for their fundamental exports such as agricultural goods and raw materials. When these advanced countries are requested for some tariff flexibility, they showed hardly reasonable attitude³. In spite of developing countries resistance, under the old 'GATT' system, the access of agricultural exports of developing countries to the markets of developed countries remained restricted due to high degree of protection which the latter countries accorded to their domestic producers by means of border protection, adoption of export subsidies and presence of arbitrary of domestic agricultural policies⁴.

For the first time, during the Uruguay round, something fundamental was done to change the treatment of agriculture in the international trading system, establishing a whole body of new law for agriculture through the adoption of Agreement on Agriculture ('AoA')⁵. The major negotiating parties, during Uruguay round, realized the difficulties which would be faced by developing countries in the implementation of the reform programme⁶. The Cairns Group which includes developing countries such as Brazil, Chile, Indonesia, Malaysia, Philippines and Pakistan as well agreed on a longer time frame work for the implementation of reform measures) (Joseph, international agricultural trade reforms and developing countries: the case of European Community). During negotiating rounds various developing countries naturally agreed that the adoption of a longer time frame was required, but they also advocated for the removal of all measures which affected their exports to developed countries. (Joseph, international agricultural trade reforms and developing countries: the case of European Community). Thus, the mid-term review document agreed to award developing countries with the special and differential treatment, an integral element of the negotiations⁷. All these elements are covered under the 'AoA', by stressing on the improvement in the areas of market access, domestic support and export competition. (Joseph, international agricultural trade reforms and developing countries: the case of European Community). Thus, the article 15 of the 'AoA', provides differential and more favourable treatment to developing countries, in each of these areas, usually in the form of increased flexibility to implement reduction

commitments over a period of 10 years and waving the less developing countries from undertaking such reduction commitment. Under Article 20 of 'AoA' the members are also required to undertake further negotiations for the purpose of continuing the process of liberalization⁸. These further negotiations should take into consideration 'non-trade concerns, special and differential treatment to developing country Members, and the objective to establish 'a fair and market-oriented agricultural trading system'⁹. These negotiations began in 2000, and incorporated into the Single Undertaking of the Doha Round in 2001 (Maclaren, The role of WTO in achieving equity and efficiency in international market for agricultural products), and still in process. Its aim is to establish fair and market-oriented trading system by preventing restrictions and distortions in the world of agricultural market¹⁰. The developing countries are also involved in these rounds and according to their perspective the satisfactory welfare gains through agricultural products trade can be achieved by improving access to the industrial countries markets. (Maclaren, The role of WTO in achieving equity and efficiency in international market for agricultural products)

'AoA', on its face, by emphasizing on market access, appears to be an important mechanism for the liberalization of agricultural trade, but a question to be answered that whether the developing countries are getting or got satisfactory access for their agricultural products to the markets of industrial countries? In simple words whether the distribution of economic benefits between the developed countries and agrarian developing countries such as Pakistan under 'AoA' is just and fair? This article will discuss these issues in the light of bargaining inequalities with in 'AoA' by analysing the degree to which legal rules, present in 'AoA' and related 'WTO'-covered agreement, have or can be enforced. The article is divided into two parts. The limitation of market access for the agricultural products of developing countries in the pursuance of environmental objectives will be discussed in Part-I. And, the affects of domestic support and export subsidies of developed countries on the agricultural exports of the developing countries will be discussed in Part-II.

Part-I: Environmental protection and 'AoA'

The Preamble of 'AoA' in Para 2 emphasized on 'to establish a fair and market-oriented agricultural trading system' by ensuring in Para 6 of preamble that reforms for international agricultural trade to be 'made in an equitable way among all Members, having regard to non-trade concerns, including food security and the need to protect the environment'¹¹. Here, the preamble of Agreement establishing 'WTO' resembles to the preamble of 'AoA'. At one hand, it promotes free trade to encourage economic growth and raise standards of living by avoiding discrimination and quantitative restrictions in free trade. And, on the other hand, it also makes specific reference to environmental protection.

The relevant part of the preamble of 'AOA' reads: The Parties to this Agreement while 'Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development'.

Article XX of GATT¹² states: 'Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures: Necessary to protect human, animal or plant life or health; Relating to the conservative of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption'

The environmental standards and regulation of their related production methods and processes are covered by Technical barrier to Trade agreement 'TBT' or Sanitary or photo sanitary agreements 'SPS'¹³. These standards include any mandatory regulation relating to the characteristics of a product¹⁴. The 'TBT' Agreement in its preamble Para 3 seeks to ensure that product specifications as well as procedures to assess compliance with those specifications, adopted by the member states, do not create unnecessary obstacles to international trade¹⁵. In Para 4 of preamble the 'TBT' Agreement further confers rights on the member states to adopt such measures to the extent they consider appropriate — for example, to protect human, animal or plant life or health, or the environment on the principle of non-discrimination. (Preamble of 'TBT' agreement). Under article 1 (3) the agricultural products are also subjected to the provisions of 'TBT' Agreement¹⁶.

The 'SPS' Agreement clothes the member state with a right to use 'SPS' measures in the pursuance of environmental objectives. The main purpose of the 'SPS' Agreement is to protect human, animal or plant life or health from being threatened or harmed by products of agriculture, livestock industry, and imported food¹⁷. The important provisions of the 'SPS' agreement are given follow: i. Members of the 'WTO' have the right to adopt the necessary 'SPS measures' for protection of human health, animal and plant life (Art. 2.1) in cases where relevant scientific evidence is sufficient (Art.2.2). ii. Members of the 'WTO' can also adopt the necessary provisional 'SPS measures' for protection of human health, animal and plant life in cases where relevant scientific evidence is insufficient (Art.5.7). iii. These provisional 'SPS measures'

can be adopted to deal with the risks of imports such as those arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms after fulfilling the required procedure mentioned under Art. 5.7. iv. The 'SPS' measures, may, directly or indirectly, affect international trade (Art.1.1), under 'SPS' agreement, therefore in exercising this right, Members shall ensure that their 'SPS' measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail. (Art.2.3). v. For purpose of harmonizing 'SPS' measures on wide basis as possible, the preamble of 'SPS' agreement in its Para 4 encouraged the members to adopt their measures on international standards, guidelines and recommendations where they exist.

After analyzing the above mentioned relevant articles, it would be justified to comment that these articles confer rights on each WTO member state to adopt the required measures to the extent it considers appropriate for the protection of human, animal or plant life or health, or the environment in the international trade of agricultural products. Similarly, the same articles also impose duties on each WTO member state, before exporting its agricultural product, to fulfill the environmental protection standards of importing member state. Theoretically (on paper), the relevant articles regarding the agricultural trade liberalization and protection of environment appear to be based on neutral grounds for all the 'WTO' member states as both are necessary for the welfare of mankind. An emphasis is also made on balance between agricultural trade rules and environmental protection under the preamble of 'AoA'. The UN Conference on Environment and Development in its agenda (1992) also regarded them as mutually supportive by declaring, 'An open multilateral trade provides additional resources needed for economic growth and improved environmental protection. A sound environment, on the other hand, provides the ecological and other resources needed to sustain growth and underpin continuing expansion of trade'¹⁸.

But the question is how these rules, conferring rights on the member states, in practice, will affect the principle of distributive justice under 'AoA'? Of course one could also ask that whether the developing countries, under duty, can fulfill the environmental protection standards of developed countries? In simple words what are chilling affects of these rules on agricultural developing countries such as Pakistan.

The access of agricultural and food exports of the developing countries to the world market are highly restricted due to technical, sanitary, and plant disease controls. For instance, in 1990, 'EU' prohibited the fish and shellfish imports of African countries due to fear of cholera. (Bureau, The consequences of agricultural trade liberalization for developing countries: distinguishing between genuine benefits and false hope). The importation of fruit and vegetables are also very restrictive due to the Phytosanitary barriers. (Bureau, The consequences of agricultural trade liberalization for developing countries:

distinguishing between genuine benefits and false hope). Moreover, in spite of absence of tariffs and quotas, under Generalized System of Preferences 'GSP', most of the poor developing countries have failed to get excess to the markets of developed countries because of inadequacy of compliance with sanitary standards or plant disease controls in the side conditions of preferential agreements¹⁹. For instance, 'everything but Arms' initiative provides considerable preferential margins in the animals and meat sectors, but still there has been no significant export to the EU, because of the sanitary obstacles, even though poor countries have required 'comparative advantage' over beef and live ships. (Bureau, The consequences of agricultural trade liberalization for developing countries: distinguishing between genuine benefits and false hope).

The standards imposed by the developed countries not only concern the final quality of the products but sometimes also concern the processing chain regarding the production of products²⁰. In order to avoid the possibility of rejection or prohibition of food products, the developing countries have to monitor the technical standards even at 'Control Points' procedures, which posed the cost and infrastructures problems for the developing countries²¹. (Bureau, The consequences of agricultural trade liberalization for developing countries: distinguishing between genuine benefits and false hope). Mahmood rightly commented that to get the benefit of Pakistan's export potential for agricultural commodities would require huge investment for improvement in the areas of storage, and especially packaging in order to meet the international standards²². M. Carr, says that the inaction of these agreements could perhaps be influenced to the political nature of the issue since emerging economies need to be persuaded about the importance of environmental issues in trade²³. K. Murphy in his works also showed that developing countries are finding difficulties to trade with developed countries due to differences in quality of equipments, which in turn reflect the nature of government regulation²⁴. Pakistan, a developing country, whose potential comparative advantage, over developed countries, lies in the production of many agricultural products, such as rice, fruits and cotton, also lacks the sufficient ability to fulfill the international standards of the 'SPS' measures which is likely to hinder its exports of agricultural products exports²⁵. No doubt, Pakistan has tried to achieve these standards through adoption of certain laws like Pakistan Standard and Quality Control Authority (PSQCA, 1996)²⁶, pure food ordinance (1960), Agriculture Produce Act (1973) and also Federal health ministry to develop and monitor standards for agricultural and food products, but still a lot is needed to be done at governmental level to meet the 'SPS' challenges, erected by the developed countries²⁷. Moreover, most of the African countries inspected their agricultural and food products prior to export, but still 57% of the African countries indicated that their exports were rejected at borders of developed countries mainly due to microbiological or contamination²⁸. It means that most of the developing countries use outdated

technology, which cannot meet the high standards erected by developed countries. Its replacements, to compete the international standards, needs or requires investment which will ultimately push up production costs, affecting the competitiveness of their goods in the global marketplace. (Carr, Environment versus international trade: where are we now?). For instance, Bangladesh a poor developing country had spent \$ 17.6 million for upgrading the plants during 1997 to 1998 in order to upgrade its sanitary conditions to satisfy the 'EU' and 'US' hygiene requirements²⁹. Such an investment of huge amount by a poor developing country, like Pakistan, would ultimately affect (increase) the price of the agricultural product, which cannot compete at international markets. These problems can be solved either through environmental subsidies for implementation of technologies or free availability of these technologies³⁰. Unfortunately, due to the economic positions and the effect of environmental subsidies on the cost of agricultural product would not bring satisfactory results. Moreover, in the presence of TRIPS, the free availability of the required technologies is now just a dream for developing countries. Though, a Committee on Trade and Environment 'CTE' was also established to carry on the work regarding Environmental Measures and International Trade as carried out by the GATT Working Group. But, 'CTE' 'has failed to accomplish anything beyond acting as mere shop in relation to environmental matters'³¹. It remained unsuccessful to fulfil its two-tired mandate, firstly to make recommendations as whether any change is needed to the present 'WTO' system and secondly, to identify the relationship between trade and environmental measures³². Apart from 'CTE', there is provision, under art.10 of 'SPS' agreement and art.12 of 'TBT' agreement, for the special treatment of developing countries³³, but these provisions contain only obligations of conduct without any defined or specific target, by merely demanding that before the application of these provisions the needs of the developing countries have to be considered³⁴.

Thus, the health and hygiene standards of developed countries could present problems for developing countries to get access to the markets of advanced countries and the claim of developed countries, that they had taken into consideration the needs of developing countries, could not be easily disproved³⁵. As under WTO, it is required to find an appropriate balance between trade liberalization rules and environmental protection measures But L.Cheyne, after analysing different cases³⁶, found that mechanisms by which the precautionary principle, under the 'SPS' and 'TBT' agreements, can be introduced into WTO law are varied, perplexed and not yet fully understood, creating very little opportunity for the panels or Appellate Body to employ the principle independently³⁷. Therefore, it is not appropriate to leave key determinants for the panels or Appellate body without finding an appropriate balance between trade liberalization rules and the environmental policies of the member states (Chayne, Gateways to precautionary principle in WTO law).

Part-II: Export Subsidies and domestic support under 'AoA'

Another measure for achieving liberalization of trade in agriculture, 'WTO' AND 'AOA' emphasises on market access through reduction in domestic support and export subsidies. **Domestic Support under 'AoA'**³⁸.

Under WTO terminology, subsidies are generally divided into three categories, known by their colours, namely red (prohibited), green (permitted) and amber (slow down- to be reduced). As usual, in agriculture, the things are little complicated. There is no red box in 'AoA'. Therefore, Domestic support provided by the government to its producers through subsidies—is classified under 'AOA' into green, amber and blue boxes.

Green Box Measures under AOA: i. These measures are exempted from reduction commitments, ii. These are measures should either have no or minimal trade distorting effects. iii. Support is provided through a publicly funded government programme (including government revenue forgone) to agriculture for purposes of research, pest and disease control and training services etc.

Amber Box Measures (Art. 6) 'AOA': i. These measures are subject to reduction commitments. ii. For purpose of base period, Countries were expected to estimate the total aggregate Measure of Support. Reduction commitments were to be made from this base period estimate. For Developed countries: 20% reduction over a six year period. For Developing countries: 13% reduction over a ten year period. iii. Subsidies shall include budgetary outlays and revenue forgone, iv. Specific agricultural levies or fees paid by producers should be deducted. v. Exemptions – not included in Total 'AMS', Investment and agriculture input subsidies generally available to agriculture in developing countries, Support to producers in developing countries to encourage diversification from growing illicit crops.

Blue Box Measures (Art.6, para.5) 'AOA': i. These measures are also exempted from reduction commitments and calculations of the AMS. These are: Direct payments under production-limiting program that are: i. Based on fixed area and yields, or Made on 85% or less of the base level of production, or Livestock payments made on a fixed number of head.

Agricultural export subsidies (Art.3.3, 9): It is evident from the 'SCM' agreement that the export subsidies are prohibited, but the case is different in respect of agricultural products. A list of export subsidies, mentioned in Art.9 (1) (a) to (f) of 'AoA', are not prohibited but subject to reduction commitments. These subsidies are related to the agricultural products mentioned in Section II of Part IV of the country's 'GATT' schedule of concession³⁹. In pursuance of reduction commitments, developed countries agreed to reduce export subsidies to 36% by value and 21% by volume. Developing countries also agreed

to reduce the export subsidies to 24% by value and 14% by volume⁴⁰. (Petros, The world Trade Organization: Law, Practice and Policy)

After analysing the above mentioned articles, it would be justified to comment that WTO member states are given privileges, under 'AoA', to support their agricultural sectors through domestic support and export subsidies, subject to some conditions. These privileges appeared to be neutral. Indeed, the developing countries are awarded with some preferred privileges over the developed countries. But, the question is whether the developing countries are in a position to take full advantage of the so-called privileges, conferred on them. Or, the developed countries by exercising the given privileges (permissible rule) could affect agricultural products exports of developing countries in the international market?

The advanced countries like 'EU' and 'US' are financially and economically sound; therefore, their ability to support the domestic farmers is more high as compared to the developing countries such as Pakistan and African countries. Mohan highlights that 'the farming sector in the developed world is able to wring remarkably generous levels of financial support, by way of export subsidies and domestic support measures, out of their governments'⁴¹. Between 1996 and 2002, the US and EU's support to agricultures averaged about 90 and 100 billion per annum respectively⁴². Whereas, the developing countries that even more freedom and privilege are given to support the farmers, yet their subsidy level remained decreased for last several years⁴³. For instance, Pakistan, in area of domestic support, is not providing any substantial subsidy to agriculture, and there were no satisfactory export subsidies; meaning thereby that 'AoA' is not affecting internally the agriculture sector in Pakistan⁴⁴. Moreover, Pakistan is not able to use the loans in providing export subsidies due to its commitments with International Financial Institutions such as Asian Development Banks 'ADB', and IMF⁴⁵.

Action Aid showed that the EU and US's agricultural support would ultimately decrease the world price of agricultural products⁴⁶. Once, the world price is decreased then it will not only affects the price of agricultural products of developing countries but the consumer of agricultural developing countries will also prefer to buy the agricultural products of developed countries not only for its low price but also for its better standard. Thus, advanced countries are safeguarding the interests of both their producers and consumers. But, on the other hand the producers of developing country are and would suffer more who could not support high level of payment to support their agriculture sector. For instance, wheat and rice are the major source of food and jobs for around 150 million people in Pakistan, contributing to 13.8 % to value added agriculture and 3.2 % to GDP. According to survey conducted by the 'Food and Agricultural department of the United Nation' 'FAO', in 1991-2005, Pakistan's wheat and rice with slight changes remained at 9th and 12th rank respectively throughout the world.

Rice is also a major export item for Pakistan. Instead of respective prices for rice and wheat, the producers of Pakistan remained un-protected against the low prices and depressed prices at the international markets. (Akhtar, WTO agreement on agriculture impact on Rice –Wheat production system). Similarly, the export of subsidized US and EU wheat to Egypt has greatly affected the producer prices of wheat in Kenya, which also discouraged the domestic wheat production. (Rice, The development impact of agricultural subsidies).Therefore, generally, it is observed that these subsidies are strengthening poverty and hunger in net agricultural exporter developing nations. If US, whose exports amounts to 40% of the world trade, eliminates its domestic subsidies to the domestic cotton producers then the world price for cotton would ultimately be increased. (Bureau, The consequences of agricultural trade liberalization for developing countries: distinguishing between genuine benefits and false hope). Then, it will open a way for cotton producing developing countries to increase their cotton exports at respective prices. Thus, the export subsidies and domestic support by foreigner exporters are creating problems for the domestic agricultural producers of net agricultural export developing countries like Pakistan, discouraging the production of agricultural products, which will and have affected the domestic farmers and increased poverty⁴⁷.

Doha rounds also focused on the effects of 'AoA' on developing countries. The agricultural developing countries demanded for the elimination of subsidies. Pakistan, who is seeking the elimination of all forms of export subsidies, and the substantial reduction of trade distorting domestic support, for real and significant market access, also participated in the Doha round under Doha Development Agenda⁴⁸. The Cairns group emphasized on the elimination of export subsidies and trade distorting domestic support (www.wto.org). Under the Hong Kong Declaration, an agreement was reached among the WTO member states that the farm exports subsidies will be eliminated by 2013 and over half of such subsidies will be eliminated by 2010. After 'WTO' Hong Kong talks, during a press conference, Islamabad, in 2005, Pakistan Minister of Commerce, Humayun Ahmad said 'our GDP will grow and income of farmers increase due to the elimination of farm export subsidies by developed countries'⁴⁹. Also he added that the elimination of subsidies on cotton would also benefit Pakistan since 60% exports of Pakistan are cotton based, which ultimately increase the exports of cotton, enabling growers to produce more and earn more. But, the final results of Hong Ministerial conference has yet not come and negotiations are still under process.

Some commentators argue that elimination of subsidies will not bring satisfactory results for the net import agricultural products developing countries. According to them, once the subsidies by the advanced countries are limited, then the prices for agricultural products will rise and the net import agricultural products developing countries will suffer. The study is agreed with the analysis of these commentators, and no doubt, these developing countries would suffer, but it is also true that the

developing countries whose comparative advantages lie in agriculture will get their due and fair shares, which is the soul and basis of every law and system.

Conclusion

The preamble of 'AoA', with respect to preamble of WTO Marrakesh agreement, article XX of GATT, 'SPS' and 'TBT' agreements, under agricultural trade liberalization, confer rights on the member states to adopt environmental measures for the protection of environment. Similarly, articles 6, 3.3, 9, and 'AoA' grant privileges to the member state to support their domestic agricultures by means of domestic support and export subsidies. The agricultural developing countries like Pakistan, due to economic and political problems, are not in a position to enjoy these rights and privileges (permissible rules) to their best and remained un-profitable. Whereas on the other hand the developed countries, due to their strong economic and political positions, enforced and exercised these permissible rules to their best, at the cost of economic interests of agricultural developing countries, which affected the due and just shares of agricultural developing countries like Pakistan.

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