



TRADE POLICY TECHNICAL NOTES

WTO NEGOTIATIONS

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World Trade Organization (WTO) Agreement on Agriculture: Export Competition after the Nairobi Ministerial Conference

BACKGROUND

Export subsidies, which were mostly used by developed countries in the past, are a market-distorting instrument of agricultural support, with negative implications for trading partners and world markets. While providing incentives to domestic producers, export subsidies tend to depress world prices by boosting the supplies of exportable products, thus affecting the competitiveness of those countries that cannot provide similar support. Historically, although agricultural export subsidies in developed countries may have in the short term benefited net food-importing developing countries (NFIDCs), such subsidies have also constrained the ability of farmers in developing countries to compete in both domestic and international markets. For these reasons, export subsidies have always been at the core of the World Trade Organization (WTO) negotiations on export competition.

Export subsidization affects different countries in different ways. First, in the subsidizing countries, increased exports reduce supply on the domestic market and cause domestic prices to rise. If imports of goods into the domestic market are limited, such as through border measures, then domestic consumers could be negatively affected by the higher prices. Domestic producers might benefit from rising revenues, however when the cost of subsidizing exports is added to the government budgetary outlays, the net welfare effect is expected to be negative. Second, subsidies hurt agricultural exporters in other, non-subsidizing, countries by cutting their market shares and export earnings. Third, export subsidies have different impacts on importing countries, depending on their degree of self-sufficiency. Where the level of self-sufficiency is low, subsidies represent income transfers from the subsidizing country to consumers in the importing countries and may have overall welfare gains for importing countries. There are, however, negative implications for the prospects of developing domestic agriculture as the

prolonged depressed prices and resultant low producer returns undermine investment and growth in agriculture in the importing country. This negative effect is stronger when the level of self-sufficiency is high. In this case, the welfare gains to consumers could be offset by producer losses with an overall negative effect on a country's overall welfare.¹

Within the framework of the WTO, the Agreement on Subsidies and Countervailing Measures (ASCM), in general, prohibits the use of export subsidies, while the Agreement on Agriculture (AoA) permits them on agricultural products under Member- and product-specific constraints. Support to agricultural exports is not limited to export subsidies. Article 10 of the AoA expands the concept of export competition to food aid (with the view to avoid disposal of surpluses) and export credits, guarantees and insurance programmes. Furthermore, an understanding of Article XVII of the General Agreement on Tariffs and Trade (GATT) 1994 clarifies the definition of State Trading Enterprises (STEs).² The aforementioned understanding outlines the disciplines (transparency and notifications) to ensure that the activities of STEs are non-discriminatory as per basic GATT principles. In summary, WTO Agreements maintained a more permissive treatment for export subsidies of agricultural and agro-industrial products; introduced the topics of food aid, export credits and related programmes as part of export competition; and changed the definition of STEs (Diaz-Bonilla and Harris, 2014).

Recognizing that support to agricultural exports may have a trade distorting impact, in August 2004 WTO Members agreed to establish "detailed modalities ensuring the parallel elimination of all forms of export subsidies and disciplines on all export measures

¹ FAO. 2000. Multilateral Trade Negotiations on Agriculture: A resource manual, <http://www.fao.org/docrep/003/x7353e/X7353e00.htm#TopOfPage>, FAO, Rome.

² https://www.wto.org/english/docs_e/legal_e/08-17_e.htm

with equivalent effect by a credible end date.”³ This objective was reiterated in 2005 at the Hong Kong WTO Ministerial Conference, when year 2013 was set as the deadline for eliminating export subsidies.⁴

The December 2013 Bali Ministerial Declaration on Export Competition⁵ was a political statement rather than a binding decision. Members reaffirmed that the subject remained a priority in the WTO agriculture negotiations and agreed to “exercise utmost restraint” in using any form of export subsidies.⁶ Recognizing the positive impact that the reforms undertaken by some members had on the reduction of the use of export subsidies and in order to further support such reforms, they put in place a new process to improve information sharing.

Against this negotiating backdrop, at the 10th WTO Ministerial Conference held in Nairobi in December 2015, the Members agreed on a Ministerial Decision on Export Competition⁷ that introduced prohibitions to agricultural export subsidies similar to the ones applicable to non-agricultural products under the ASCM.

The decision to eliminate export subsidies and discipline other export competition instruments should also significantly contribute to the achievement of Sustainable Development Goal (SDG) Target 2.b⁸ that aims to correct and prevent distortions and restrictions in international agriculture trade.⁹

TRENDS IN THE USE OF EXPORT SUBSIDIES

The issue of export subsidies has always been the centrepiece of the Export Competition¹⁰ pillar. The fact that the actual use of such subsidies has notably declined since the AoA came into force constitutes the main driving force that has allowed progress to be achieved in the negotiations on Export Competition. This section focuses on trends in the use of export subsidies.

Eighteen WTO Members (the European Union is counted as one Member) had export subsidies entitlements upon entry into force of the AoA. This list includes developed Members (Australia, Canada, the European Union, Iceland, New Zealand, Norway, Switzerland and the United States) and developing Members (Brazil, Colombia, Indonesia, Israel, Mexico, Panama, South Africa, Turkey, Uruguay and Venezuela). It is worth noting that New Zealand and Panama had already set their commitments to zero in 2000 and 2003, respectively, while Brazil, Indonesia and Uruguay had notified zero export subsidies.

As Figure 1 below shows, the amount of notified export subsidies has been reduced significantly since 2000. The reduction of subsidies provided by the European Union, the Member with the largest scheduled commitments and the highest use of this measure in the past, is a significant contributing factor to this development. This is the result of cuts in support prices and the decoupling of direct payments, following the Common Agriculture Policy (CAP) 2003 reforms, combined with increases in world market prices for agricultural commodities during 2005-2011.

In July 2013, the European Union set the value of its export subsidies at zero, and the new rules on the Common Organization of Markets (CMO) in Agriculture Products¹¹ state that “without prejudice to the application of exceptional measures, the [export]

³ WTO (2004), General Council Decision. WT/L/579. 2 August 2004.

⁴ WTO (2005), MC5 Ministerial Declaration. WT/MIN(05)/DEC. 22 December 2005.

⁵ WTO (2005), MC9 Ministerial Declaration, WT/L/915. 7 December 2013.

⁶ WTO (2015), “WTO Agreement Series – Agriculture”. Geneva.

⁷ WTO (2015), MC10 Ministerial Decision, WT/L/980. 19 December 2015.

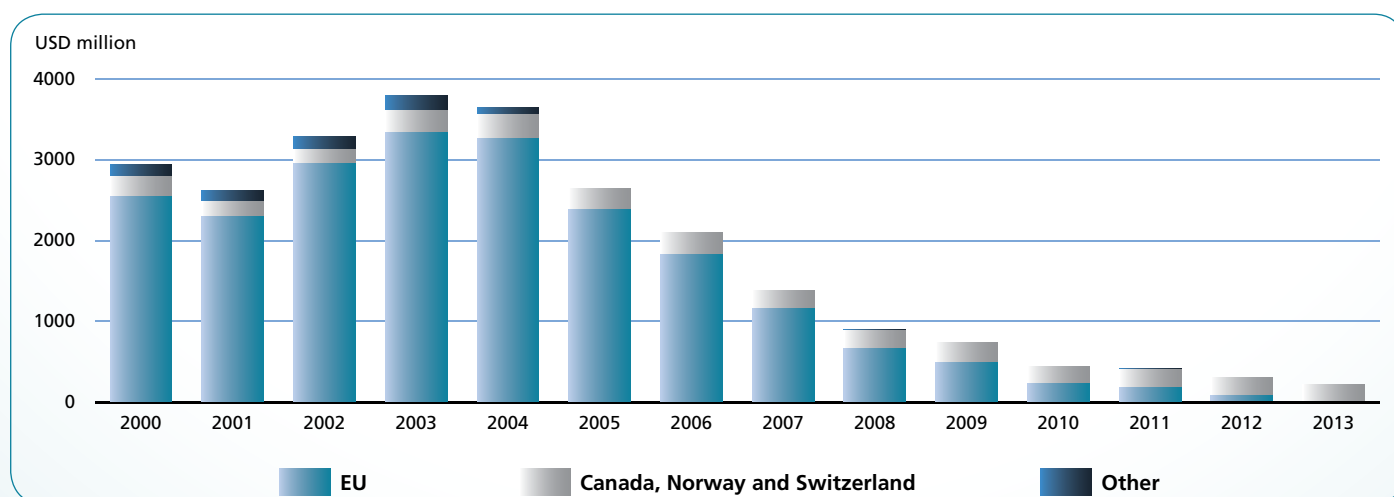
⁸ <https://sustainabledevelopment.un.org/sdg2>

⁹ https://www.wto.org/english/news_e/news16_e/dgra_10nov16_e.htm

¹⁰ The Export Competition pillar, in WTO negotiations, refers to the Export Subsidies, Export Credits and Guarantees, Food Aid, and Export related State Trading Enterprises

¹¹ The CMO is the framework for the market measures provided for under the European Union’s Common Agriculture Policy. Following a series of reforms, 21 separate CMOs were codified into a single CMO, covering all agricultural products, in 2007.

FIGURE 1. NOTIFIED EXPORT SUBSIDIES BY WTO MEMBERS



Source: Calculations based on information from the WTO Secretariat, compiling WTO Members' notifications. Exchange rates from the IMF's international financial statistics.

refund available should be zero" where the exceptional measures, which might include export refunds, are "significant price rises or falls on internal or external markets or other events and circumstances significantly disturbing or threatening to disturb the market, where that situation, or its effects on the market, is likely to continue or deteriorate"; and "emergency measures to resolve specific problems".¹²

While the European Union regulation allows for "exceptional measures" that can be activated in the event of a crisis to address the threat of market disturbances, in recent years these have not included export subsidies even when there were concerns about European exports. For instance, the European Union introduced a series of measures to support farmers in 2014 and 2015 in response to the import restrictions by the Russian Federation, with an additional package of measures to counter declining agricultural prices for some products and the extension of the Russian import ban in March 2016. However, neither of these packages included export subsidies.¹³

While the reduction in export subsidies at the global level has been driven by the decline of this type of support in the European Union, the total for the other users of the instrument (Canada, Norway and Switzerland), although much lower than the European Union's subsidies, has remained largely unchanged over the last few years, averaging slightly above USD 200 million per year. The trend, however, is not the same in these three WTO Members. Canada only started providing export subsidies in 2003; Norway's export subsidies have remained at the same level through the entire 2000-2013 period; and Swiss export subsidies have been reduced to less than half since the early 2000s. The main product categories receiving subsidies by the developed WTO Members during the 2008-2013 period were processed (or "incorporated") products, dairy products (primarily skim milk powder and cheese), and pig meat (Table 1).

¹² WTO (2015) "Trade Policy Review of the EU: report by the WTO Secretariat", WT/TPR/S/317. Geneva.

¹³ The package includes supporting the fixed intervention price for skimmed milk powder and butter and financial instruments for investments to improve competitiveness or introduce structural adjustments. http://europa.eu/rapid/press-release_IP-16-806_en.htm

Until 2013, the European Union also supported exports of poultry and bovine meat. In addition to the subsidy amounts notified in value terms, the European Union also notified 1.35 million tonnes of sugar as quantities under export subsidies in 2013 (Diaz-Bonilla and Hepburn, 2016). These export subsidies will disappear with the adoption of the new EU sugar regime in September 2017. As discussed below, the elimination of export subsidies has already been incorporated into the Nairobi Decision on export competition. Israel, a developing country Member, has provided export subsidies to fruits and vegetables.

THE NAIROBI MINISTERIAL DECISION ON EXPORT COMPETITION

The Nairobi Decision on Export Competition is one of the four agriculture-related Decisions agreed upon by the WTO Members in December 2015. The other three refer to the Special Safeguard for Developing Country Members (WT/L/978), the Public Stockholding for Food Security Purposes (WT/L/979), and Cotton (WT/L/981).

The Export Competition Decision foresees the elimination of export subsidies in different timeframes for developed and developing Members. In this regard, the agreement was considered historic as it has introduced the same regulatory framework applicable to industrial products found in the ASCM to the agricultural export subsidies, even though specific exemptions have been agreed upon for some products and for specific developed and developing Members.

The Decision also covers the other three elements (namely Export Credits and Guarantees, International Food Aid and State Trading Enterprises) of the Export Competition pillar, while at the same time, recognizing that the work on Export Competition is not over yet, it includes provisions for the review of its implementation every three years with the aim of enhancing the disciplines to ensure that "no circumvention threatens export subsidy elimination commitments and to prevent non-commercial transactions from being used to circumvent such commitments". Finally, another important element, which constitutes an integral part of the Decision on export subsidies, is the extension of Article 9.4 of the AoA that includes temporary exceptions for developing Members, allowing

TABLE 1. MAIN PRODUCT CATEGORIES RECEIVING EXPORT SUBSIDIES (USD MILLIONS)

	2008	2009	2010	2011	2012	2013	2014
Incorporated products	224.3	152.6	112.1	122.2	95.6	98.3	99.1
Skim milk powder (SMP)	74.2	72.1	30.2	31.5	31.2	30.1	28.0
Cheese	77.3	67.2	36.7	39.5	38.2	37.5	27.7
Other milk products	167.8	157.8	21.8	22.7	22.5	17.5	17.8
Pig meat	58.9	28.4	37.1	31.3	10.4	14.3	8.0
Fruits and vegetables	16.0	17.5	1.6	2.0	0.7	1.1	1.8
Live animals	5.1	6.3	0.1	0.1	0.1	0.1	0.1
Bovine meat	42.8	42.4	88.1	42.8	2.3	0.0	0.0
Butter and butter oil	95.0	69.1	2.6	0.1	10.4	1.5	0.0
Poultry meat	129.2	137.3	98.8	108.0	71.1	0.0	0.0
Eggs	5.9	5.4	7.3	4.4	3.0	2.8	0.0

Source: Calculations based on information from the WTO Secretariat, compiling WTO Members' notifications. Exchange rates from the IMF's international financial statistics.

them to subsidize marketing, handling, and upgrading as well as international transport.¹⁴

The main elements of each of the Export Competition components are presented below.

A. Export Subsidies

The Decision stipulates that developed countries shall immediately eliminate their remaining scheduled export subsidy entitlements. There is a special provision for the European Union, in the case of sugar, in respect of the relevant WTO Dispute Settlement rulings¹⁵ maintaining the quantity entitlement until the end of September 2017. The developing WTO Members have a transition period until the end of 2018, or the end of 2016 in the case of cotton. Moreover, longer transition periods are foreseen for developing

¹⁴ The validity of this article expired in 2004, but the intention of the Members to extend it was reiterated both in the General Council Decision of 2004 and in the Hong Kong Ministerial Declaration.

¹⁵ DS265, DS266 and DS283 (WT/MIN(15)/46 — WT/L/981

Members concerning the export subsidies that they notified in their three latest notifications before the adoption of the Decision. For developed countries, this derogation is limited to processed products, dairy products and swine meat.

There is also a standstill provision, as per Paragraph 10 of the Decision, which states “Members shall not seek to raise their export subsidies beyond the average level of the past five years on a product basis”. This would apply to all export subsidies including those given under Article 9.4.

A separate Decision addresses all three pillars of the agricultural negotiations (export competition, market access and domestic support) with regard to cotton.¹⁶ On export competition, in particular, it requires developed Members to immediately eliminate export subsidies for cotton while the deadline for developing Members is 1 January 2017.

¹⁶ (WT/MIN(15)/46 — WT/L/981

TABLE 2. EXPORT SUBSIDIES END-DATE PER PRODUCT CATEGORY AS PER THE NAIROBI DECISION

DEVELOPED MEMBERS*		
MEMBER	PRODUCT	END DATE
AUSTRALIA	• All products	• Immediately
CANADA	• Dairy products, processed products • All other products	• End of 2020 • Immediately
EUROPEAN UNION	• Pork meat, processed products • Sugar • All other products	• End of 2020 • September 2017 • Immediately
ICELAND	• All products	• Immediately
NORWAY	• Pork meat, dairy products, processed products • All other products	• End of 2020 • Beginning of 2016
SWITZERLAND	• Processed products • All other products	• End of 2020 • Immediately
UNITED STATES	• All products	• Immediately
DEVELOPING MEMBERS*		
BRAZIL	• Cotton • All other products	• End of 2016 • End of 2018
COLOMBIA	• Cotton • All other products	• End of 2016 • End of 2018
INDONESIA	• All products	• End of 2018
ISRAEL	• Cotton • Fruits and vegetables • All other products	• End of 2016 • End of 2022 • End of 2018
MEXICO	• All products	• End of 2018
SOUTH AFRICA	• Cotton • All other products	• End of 2016 • End of 2018
TURKEY **	• 19 products • All other products	• End of 2022 • End of 2018
URUGUAY	• All products	• End of 2018
VENEZUELA **	• 50 products • All other products	• End of 2022 • End of 2018

* New Zealand and Panama have not been included in the list, as they already set their entitlements to zero in 2000 and 2003, respectively.

** Turkey and Venezuela have not submitted their relevant notifications since 2003 and 1998, respectively, so the list of notified products is longer than those of the rest of the Members. That said, it does not mean that these two Members have made use of the tool during recent years.

On the basis of the above and the information provided by the Members in their three latest notifications before the adoption of the Decision, table 2 below illustrates the export subsidy elimination dates for each of the 18 WTO Members with such entitlements. The products for which the Nairobi Decision allows for longer phase-out periods are the same products for which the countries provided export subsidies in recent years.

As mentioned before, an integral part of the export subsidies Decision is the one in Article 9.4, which includes temporary exceptions for developing Members, allowing them to subsidize marketing, including handling and upgrading as well as internal or international transportation. An extended deadline to year 2023 is provided for these Members, while the Least Developed Countries (LDCs) and the NFIDCs have an additional seven years, until the end of 2030.

It may be noted that until now, only a limited number of developing countries have notified use of this article since 1995. These include Barbados, India, Korea, Mauritius, Mexico, Morocco, Pakistan, Sri Lanka, Thailand and Tunisia. It may also be noted that Article 9.4 is not limited to those Members that have made use of these subsidies in the past but all developing Members have recourse to it.

B. Export Credits and Guarantees

The Decision on Export Credits and Guarantees foresees a maximum repayment term (MRT) of 18 months for the export financing programmes. In addition, export credit guarantee, as well as insurance and reinsurance programmes should be self-financing¹⁷ and cover their long-term operating costs and losses. A similar provision is contained in Annex 1 of the ASCM.

This discipline shall apply from the end of 2017 for developed Members. Developing countries are initially entitled to an MRT of 36 months, gradually reduced to 18 months over a four-year period.

Special and Differential Treatment is included for LDCs, NFIDCs and nine additional Small and Vulnerable¹⁸ (SVEs) WTO Members, comprising an allowance for a repayment term ranging between 36 and 54 months for the acquisition of basic foodstuffs. Cuba has an unlimited repayment period. In exceptional circumstances, which preclude financing normal levels of commercial imports of basic foodstuffs, this time-frame can be further extended.

The use of export credits has been relatively stable over the last several years, with less than half of them having a repayment period exceeding 180 days and covering a great variety of destinations.¹⁹

¹⁷ Self-financing could conceptually be understood as the ability of export financing support programmes to operate in a manner by which all operating costs, losses and any other form of export contingent financial contribution otherwise provided under such programmes are recovered in due course to a commercially viable standard over a period. However, the Nairobi decision does not include any definition of self-financing.

¹⁸ Belize, the Plurinational State of Bolivia, Ecuador, Fiji, Guatemala, Guyana, Nicaragua, Papua New Guinea and Suriname.

¹⁹ Based on information included in WTO document G/AG/W/125/Rev.4 and addenda (May 2016). These documents include information provided by Members on their export subsidies, export finance support, agriculture state trading enterprises and international food aid as part of the WTO Committee on Agriculture's annual

One of the programmes that has received more attention is the United States GSM102, which was included in the United States-Brazil cotton dispute.²⁰ The Memorandum of Understanding (MoU) reached between the two parties in this dispute foresees an MRT of 18 months, while the current farm bill allows for a longer period. By accepting the Nairobi agreement, the United States locked in this bilateral MoU through a multilaterally agreed discipline.

In 2013-2014, GSM102 covered exports for a total value of almost USD 2.6 billion. Half of this amount went to Latin America and the Caribbean, while Turkey was the country that received most of the covered exports (28 percent). Taking into account that Turkey was followed by Mexico (18 percent) and Korea (15 percent), it is clear that at least 60 percent of the exports covered by GSM102 during this period were not destined to LDCs or NFIDCs, and thus would not fall under the relevant derogation of the Nairobi Decision. Beyond GSM102, countries that reported significant coverage of exports were Turkey (in 2015 about USD 740 million in export credit insurance and some USD 1060 million in export credit were reported) and Canada (about USD 410 million per year on average for 2014-2015) (Diaz-Bonilla and Hepburn, 2016).

C. International Food Aid

The Decision on food aid creates a new operational framework for international food aid with well-defined criteria. With the objective to prevent and minimize commercial displacement, it contains general and specific commitments as well as provisions on local markets, production and monetization.

The general commitments refer to the need to maintain adequate levels of international food aid, to take into account the interests of food aid recipients and to ensure that the disciplines contained in the Decision do not unintentionally impede the delivery of food aid provided to deal with emergency and humanitarian situations.

Specific commitments such as that food aid should be needs-driven, in fully grant form, not tied to commercial exports, not linked to market development objectives and not be re-exported (with some exceptions) are trying to ensure that the objective of non-commercial displacement is achieved.

The Decision also refers to the need to take into account local market conditions for the same or substitute products. To achieve that, Members must refrain from providing in-kind international food aid in situations where this would cause an adverse effect on local or regional production. In addition, Members must ensure that international food aid does not unduly affect established, functioning commercial markets of agricultural commodities.

The decision allows the practice of monetization²¹ of food aid but under specific conditions, such as the completion of local/regional

review, established at the Bali Ministerial and reaffirmed in Nairobi. Some WTO Members have not provided any reply or some of the replies provided might be incomplete. As part of the Nairobi decision, developing Members have a five-year derogation to implement this transparency exercise.

²⁰ WT/DS/267

²¹ "Monetization" is the sale of food aid and the use of the revenues to support program-related costs and developmental activities, such as training, technology transfer and incentives for behavior change. This is usually done through cooperating sponsors, which are typically NGOs or the recipient government.

market analysis and the employment of independent commercial or non-profit third party entities to monetize in-kind food aid. Moreover, monetization is allowed only where there is a demonstrable need for it or if it is used to redress short and/or long-term food deficit requirements or insufficient agricultural production situations, which give rise to chronic hunger and malnutrition in LDCs, NFDCs, and the same SVEs outlined concerning the export credits decision.

According to FAO,²² the importance of food aid as a means of resource transfer has declined over the past two decades as its volume declined from 16 million metric tonnes in 1992 to almost 4 million metric tonnes in 2012. For most donors, at least 50 percent of the food aid they provide is in cash and for several of them this reaches nearly 100 percent, while almost 97 percent of total food aid is for emergency operations or in support of projects targeted to vulnerable segments of populations.

D. State Trade Enterprises (STEs)

The main disciplines under relevant paragraphs of the Decision state:

1. Members shall ensure that agricultural exporting state trading enterprises do not operate in a manner that circumvents any other disciplines contained in this Decision, and
2. Members shall make their best efforts to ensure that the use of export monopoly powers by agricultural exporting state trading enterprises is exercised in a manner that minimizes trade-distorting effects and does not result in displacing or impeding the exports of another Member. It may be noted that the second part (use of export monopoly powers) is a best-endeavour clause.

Keeping in mind the limitations in relation to the information available in the WTO trade policy review exercise, the number of STEs seems to be declining, while the volume of trade through STEs appears to be limited in relation to overall trade. In 1995-1996, 30 WTO Members notified approximately 100 STEs, including some with monopoly powers. Since then, their numbers have declined. As per the May 2016 exercise of the WTO Secretariat,²³ 17 Members notified 60 agriculture exporting STEs (China and India are the main contributors to this number, with 25 and 14 STEs respectively). Of the total number, 20 STEs are for tobacco and 14 are for fruits and vegetables.

SIGNIFICANCE OF THE DECISION TO AGRICULTURAL COMMODITY MARKETS

At the global level, the Nairobi Decision on Export Competition constitutes a significant contribution to achieving target 2.b of Goal 2 of the Sustainable Development Goals, which calls for a removal of restrictions and distortions in world agricultural markets. In the words of the Director-General of the WTO,²⁴ "This achievement shows the contribution that trade can make to development – and there are many other areas of the Sustainable Development Goals where trade can make a difference".

²² <http://www.fao.org/3/a-mk965e.pdf>

²³ G/AG/W/125/Rev.4

²⁴ https://www.wto.org/english/news_e/news16_e/dgra_10nov16_e.htm

At the same time, and considering that the use of export subsidies has declined substantially over the last decade, the Nairobi Decision is not expected to result in a substantial additional reduction in the amount of export subsidies, at least until the expiration of the derogation for developed and developing Members.

However, the Decision plays an important role in preventing an expansion in the use of export subsidies to stimulate exports. For instance, in the current environment of sluggish demand and relatively low agricultural commodity prices, and considering that some middle-income countries are registering a growing budget for agricultural support, this type of support could increase in the absence of such a decision.

As many emerging economies apply price support measures to promote agricultural production, the discipline on export subsidies provides a real benefit in terms of precluding their use to dispose of excess production and potentially hurt farmers in other developing countries (Diaz-Bonilla and Hepburn, 2016). The level of farm support, as measured by the Organization for Economic Co-operation and Development's (OECD) Producer Support Estimate (PSE), has been growing in some of the emerging economies, reaching the level of support in OECD countries measured as a share in gross farm receipts and generating some concerns over potential effects on other, less developed trading partners (OECD, 2016).

Abrupt currency fluctuations can also create conditions for a return to export subsidies. For example, the strong appreciation of the Swiss franc against the Euro in 2015 triggered Switzerland's policy response in the form of an export subsidy for processed products. However, consistent with the Nairobi Decision, the Swiss Government has recently initiated a process to replace, by 2020, the export subsidies scheme on processed products (the so-called "loi chocolatière") with a series of measures to support value-added foodstuffs production and to strengthen the competitiveness of the agribusiness sector.

While the elimination of export subsidy entitlements is not expected to induce changes in existing policies that could generate economic benefits for non-subsidizing exporters, it will, however, prevent future use of the measure. This is particularly important considering the long-term downward trend in real agricultural prices foreseen over the next decade. In the absence of a commitment in this area, this could induce some of the countries to revert to the use of subsidies that had been largely phased out over the past two decades or even to introduce new ones.

Some flexibility exists during the phase-out period, since the rules allow for a longer transition for exports of dairy products, pork meat, processed products and sugar from a number of the WTO high-income members, including the European Union. Moreover, developing country Members could subsidize transport and marketing costs until 2023. This means that although the Nairobi Decision demonstrates that Members are assuming long-term commitments to refrain from using export subsidies, there is a transition period where some forms of subsidies could still be used by some Members.

THE WAY FORWARD

As with any new rule, particularly in the context of the WTO agreements, implementation is key to the success of the Nairobi Decision on Export Competition. There are questions raised in many WTO bodies with regard to transparency in the fulfilment of trade commitments due to the absence or delay in obligatory notifications by Members. This is more so in the case of agriculture. Although export subsidies, as mentioned above, have been reduced to a negligible level, there is always a possibility of countries reverting to their use. Thus, an effort is needed to ensure full compliance with the required notifications to the relevant WTO committees in order to effectively implement this Decision, particularly during the transition period. The monitoring and review mechanisms, established in Bali and reaffirmed in Nairobi, constitute a strong tool in this direction of increased transparency.

The 71st Session of the FAO's Committee on Commodity Problems (4-6 October 2016) discussed the issues related to the Consultative Sub-Committee on Surplus Disposal (CSSD) and decided amendments on the way this body works. The objective is to increase transparency on Food Aid transactions.²⁵ This could fill the data and analysis gap that some of the WTO Members have pointed out recently, thus contributing to the effective implementation of the Nairobi Decision on Export Competition.

Concerning the Doha Development Agenda (DDA) negotiations, in paragraph 31 of the Nairobi Ministerial Declaration,²⁶ the Members strongly committed to advancing negotiations in all three pillars of agriculture, recognizing that further work needs to be done even within the export competition pillar. For instance, the relevant section on STEs in the Decision is less ambitious than the negotiating text of the Chairman of WTO Committee on Agriculture Special Session²⁷ in December 2008. Neither has there been significant progress since the Nairobi Ministerial Declaration in 2015. There is also a lack of clarity on continuing the negotiations under the DDA or otherwise. Some Members have submitted new negotiating proposals (without notable position changes) in the areas of domestic support and market access. These proposals have not yet generated any clear path to move ahead in the negotiations on agricultural trade. No negotiating proposals have been submitted so far on the export competition pillar.

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²⁵ <http://www.fao.org/3/a-mr950e.pdf>, paragraphs 39-41.

²⁶ https://www.wto.org/english/thewto_e/minist_e/mc10_e/mindecision_e.htm

²⁷ https://www.wto.org/english/tratop_e/agric_e/chair_texts08_e.htm