

WTO rules and the food crisis in LDCs: challenges and the way forward

Falou Samb,¹ Eloi Laourou² and Mothae A. Maruping³

Developing country policymakers face several key unknown factors relating to the current food crisis and its implications for trade and development. Differing views have been expressed on how the WTO can assist in solving the food crisis in an efficient manner. In April 2008, during the International Monetary Fund (IMF) and World Bank annual spring meetings, the WTO Director General, Pascal Lamy, said that in facing the current turmoil and uncertainties around the world, the rules-based trading system of the WTO "provides a hugely important source of economic stability for governments, for business and for consumers."

Reflecting on Lamy's statement, this article seeks to explore some possibilities for utilising WTO arrangements and rules to solve the current food crisis in developing countries in general, and in least developed countries (LDCs) in particular, as well as to search for alternative arrangements to enhance food security in these countries. The latter would involve the proactive use of WTO rules. This article draws from the joint work undertaken by the LDC Group in the WTO and by experts during a conference on food crisis in Geneva on July 17 2008.⁴

Challenges

Using the trade rules and arrangements to find sustainable solutions to food security for all demands clarity on two sets of questions:

First, it is important to assess what are the trade rules and WTO provisions considered most relevant to the food crisis? From a legal standpoint, WTO provisions in the following areas are most pivotal:

- a) Tariffs, including the issue of tariff escalation and safeguards;
- b) The three pillars of the Agreement on Agriculture (domestic support, market access and export competition);
- c) Export restrictions under GATT Article XI:2; and
- d) The special products along with all the special and differential treatment provisions. Re-examining these provisions could enable formulation of more sustainable solutions to the food crisis. There is little, if any, content in the text of the current draft agreement on agriculture that clearly addresses the implications of the trade rules on the current food crisis in the affected countries.

Second, one needs to look at the impact and collateral damage of national responses to the escalation of food crises in net food importing countries. During the current crisis, the responses vary among countries, especially between food exporters and importers. This crucial distinction between the net food exporters and importers led to a very precarious situation whereby governments were trying to offer localised and short-term responses, in particular, in light of the social unrest and civil disturbances that followed.

Taking these two challenges into consideration, it is even more urgent and imperative to critically examine how - and to what extent - the WTO rules could provide solutions for both the net exporting and the net importing countries. Below, we review the relevant rules and recommend corresponding actions concerning both trade related provisions and institutional mechanisms to help solve the current food crisis.

Export restrictions and prohibitions

While recognising the right of governments to issue export restrictions and prohibitions, such actions have provoked controversy and inflicted collateral damage. They also disrupt the normal course of multilateral negotiations and cause additional uncertainty in international trade regarding regular supply and conditions. GATT Article XI, 2 states that: "The provisions of paragraph 1 of this Article shall not extend to the following: (a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party." The provisions were targeted to prevent members from taking exactly such restrictive measures.

The list of exporting countries using such restrictions includes Argentina, Bolivia, Cambodia, China, Egypt, Ethiopia, India, Indonesia, Mexico, Russia, Thailand, Ukraine, Venezuela and Vietnam. These measures severely affected the ability of the other developing countries, and LDCs especially, to import food products. This also put enormous strain on the current external accounts of the affected countries and changed the patterns of food trade. The GATT Article XI is quite ambiguous - despite the existence of Article XI, 2 (a) - in tackling the food crisis, as it gives both exporters and importers leeway to address the trade restrictions but with a decisive advantage to the exporting countries.

Recommendation: a possible waiver

In order to return to the normal flow of international trade, granting a WTO waiver or an exemption from export restrictions and prohibitions could be considered as being in favour of developing countries and/or LDCs, based on the provisions of Article IX of the Agreement establishing the WTO. Any waiver granted under the current conditions of the food crisis would certainly pass the pre-requisite test to qualify under the "exceptional circumstances justifying the decision." The current food crisis duly qualifies to pass this test!

Asking for a waiver would allow the LDCs to avoid being subject to any export restrictions and prohibitions from the exporting countries. The latter would continue to exercise their right to impose these restrictions under GATT Article XI, but would not impose them on food exported to the LDCs.

Furthermore, a restrictive interpretation of the GATT-relevant provisions would allow the importing countries to take steps to initiate a dispute settlement process at the WTO and/or to enter into consultations with the exporting countries, in particular on transparency. This implies that, from a legal perspective, the WTO is to show flexibility

of the trade rules, in order to accommodate unforeseen circumstances.

The export restrictions constitute such deviation from the core mandate and principles of the multilateral trading system that they require full attention and decisive action from the WTO membership as a whole.

In this context, there is interest in the proposal tabled by Japan and Switzerland on export prohibitions and restrictions.⁵ One interesting element is the need for a “secured implementation of food aid toward the net food-importing developing countries.”

While this proposal attracts strong interest, the operational aspect is missing and should be strengthened if it is to deliver meaningful implementation on the ground. Action and results-oriented text is needed. Elements could be drawn from the recent Decision to extend the procedure to enhance transparency of special and differential treatment in favour of developing countries on the sanitary and phytosanitary measures.⁶ This WTO Decision establishes a systemic linkage between legal obligation, implementation and capacity building. We suggest that if the WTO builds on this momentum, real gains would be induced for developing countries without undermining the system.

Recommendation: a new WTO Decision for the food crisis-plagued countries

Due consideration should be given to drafting a new Decision to assist the food crisis-plagued LDCs and DCs. Such a WTO Decision should take stock and build upon the existing Decision on the net food importing developing countries (NFIDCs). A separate, effective instrument could result from the future negotiations and could even lead to an “early harvest” of the anticipated results. Proper regard to effective special and differential treatment has not been given, contrary to the spirit of the Doha Declaration. This proposal has the potential to provide a unique opportunity to lift the current shortcoming of NFIDCs. Missing this opportunity could drastically restrict the developing countries and LDCs’ sovereign right to fully implement the Doha mandate.

Recommendation: building capacity for food supply

Furthermore, the Enhanced Integrated Framework (EIF) should be activated urgently and Aid for Trade (AFT) should be updated. These initiatives need to be clearly defined and their operations expedited. Additional resources need to be allocated in order to trigger concrete actions in the beneficiary countries. One should not forget that these initiatives must be flexible enough to mainstream the food-related infrastructure deficiencies in developing and least developed countries. EIF and AFT should envisage a shift in the allocation of their resources. The primary target should be to address the supply constraints of the eligible countries for them to sustain food production and security.

Institutional issues

Trade rules could have been part of the solution, but could not address the food crisis in the absence of coherence with a variety of other pertinent measures at different levels. They should interface with the non-trade solutions in order to form a concerted approach involving all the stakeholders at the national, regional and international levels.

Guidelines are also necessary to ensure the involvement of the private sector and civil society in any concerted effort

in this food crisis and to engage governments holding critical views originating from their dialogue with all interested and affected parties. Article V of the Agreement establishing the WTO provides such collaboration: “The General Council may make appropriate arrangements for consultation and cooperation with non-governmental organisations concerned with matters related to those of the WTO.” Yet, against the stark backdrop of the current agricultural negotiations, this crisis underscores the inadequate analytical capacity of developing countries to effectively assess the implications of multilateral trade rules in providing effective solutions to the food crisis. It also highlights inadequate governance capacity to achieve domestic policy coherence to support implementation. In view of the objectives and principles that underline an effective end to the food crisis and counter the escalating consequences of the food shortages, an integrated approach consisting of both trade and non-trade policy interventions is necessary. These measures should not be perceived as ‘trade-distorting’ but as an integral part of any effort to ensure a smooth operation of the food market and to address structural deficiencies in the affected countries.

The WTO momentum

The Doha Development Agenda should establish flexibility with regards to food security and allow developing countries and LDCs to craft appropriate food policy schemes for prospective developing and least developed countries. These measures would give real opportunity to the multilateral trading system to show its responsive and flexible nature and to deliver meaningful development and benefits to the people. This contextualised approach should be endorsed. It has happened in the past and the current circumstances call for the same commitment to use trade as an economic and a development instrument, not just as a tool *per se*!

Taking further steps and acting swiftly in this matter, the WTO would offer a meaningful approach to drive economic development. It is now time to bring about the systemic changes needed to establish alternative multilateral trade rules and to correct the trade distortion currently in play in the agricultural sector.

Freedom from hunger is a basic human right. Food-related trade should receive a different treatment in the WTO rules and multilateral negotiations. The net food importing countries must not be put in front of an unpalatable dilemma between ensuring stable food supplies to their populations or reducing other social expenditures that in the long-term would impact a country’s development potential.

Let’s put the Doha Development Agenda to test by offering a sustained solution to the current and - in some instances - perennial, food crisis!

¹ Dr Falou Samb is currently Senior Advisor to the Trade Policy Governance Programme of the Centre for Socio-Eco-Nomic Development, Coordinator for Africa.

² Eloi Laourou is Founder and President of the International Association for Trade and Sustainable Development.

³ Mothae A. Maruping is the Ambassador of Lesotho and currently the Coordinator for the LDCs Group in the WTO.

⁴ This LDCs conference was jointly organised with the Centre for Socio-Eco-Nomic Development (CSEND) - a Geneva based research and development organisation focusing on global issues (www.csend.org) - and provided a good opportunity to conduct in-depth policy dialogue on the responses or lack thereof, to the food crisis from the relevant stakeholders, at the national, regional and international levels. See the presentations and papers at: www.csend.org/KnowledgeConferences.aspx?id=38

⁵ WTO J0B(08)/34, April 30 2008 and its revised version of July 2008.

⁶ WTO G/SPS/33/Add.1 on February 6 2006.