
FOOD SECURITY AND CONTESTED AGRICULTURAL TRADE NORMS

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Trade policy and food security are linked in complex ways. Their relationship to one another must be examined closely if we wish to understand the ways in which the international trade regime might help or hinder efforts to address hunger and food insecurity. Anne Orford’s contribution underscores the importance of digging deep to uncover the origins of the norms that underpin the international trade governance framework, which in turn have implications for food security and hunger.¹ International norms are widely understood to be “standards of behavior defined in terms of rights and obligations”² and are rooted in actors’ identities and preferences for the structure of rules and institutions.³ As such, international norms have significance for the development of legal regimes. Orford’s analysis suggests that the norm of “free trade” has long historical roots and is inextricably tied to a broader debate about the role of the state and the market in society. Her account of the rise of the “free trade state” helps us to understand why trade

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¹ Anne Orford, “Food Security, Free Trade, and the Battle for the State” (2015) 11:2 J Intl L & Intl Rel 1.

² Stephen Krasner, “Structural Causes and Regime Consequences: Regimes as Intervening Variables” (1982) 36:2 Intl Organization 185 at 186.

³ Martha Finnemore and Kathryn Sikkink, “International Norm Dynamics and Political Change” (1998) 52:4 Intl Organization 887.

liberalization was taken up as a policy in the agricultural sector under the auspices of the GATT/WTO trade regime in recent decades.

Just as it is important to uncover the historical origins of specific norms that shape the trade regime, it is also helpful to examine how those norms are then translated into policy through contemporary rules and agreements. In this commentary, I argue that the articulation of agricultural trade norms into policy is an ongoing and messy process, complicated by multiple and competing norms that are mediated by power and politics. In making this argument, I advance three interrelated points. First, politics and power differentials among competing interests help to explain why the “free trade” norm has been only partially and unevenly applied in the agricultural sector. Second, recognition of the unbalanced agricultural trade regime in recent decades has provided an opening for the expression of alternative agricultural trade norms, in particular the idea of special and differential treatment for food security in developing countries. Third, the recent political battle at the WTO over food security demonstrates that multiple trade norms for food and agriculture continue to collide and shift through political processes and remain deeply contested.

I. URUGUAY ROUND AGREEMENT ON AGRICULTURE: UNEVEN RULES

For much of the 20th century, agricultural trade was not governed by a norm of “free trade,” even if the broader norm was embedded in global economic institutions for other sectors. From the inception of the General Agreement on Tariffs and Trade in 1947 until the mid-1980s, agriculture was effectively exempted from formal rules governing the global trade regime.⁴ Although the trade in agricultural products was technically covered under the GATT rules, in practice member states, developed and developing alike, instituted complex systems of agricultural trade policies that included various mixes of subsidies, tariffs, quotas, marketing boards and taxes.⁵ These policies aimed to support the sector in some cases, and to draw revenue from it in others. Domestic support policies had been in place in the US, for example, since the 1930s, even as the US government pursued mercantilist policies that sought to open foreign markets for its agricultural exports.⁶

The exemption of agriculture from international trade rules reflected a different norm prevalent in government policy frameworks at that time, one

⁴ Fatoumata Jawara and Aileen Kwa, *Behind the Scenes at the WTO: The Real World of International Trade Negotiations* (London, UK: Zed, 2003) [Jawara and Kwa].

⁵ Ataman M Aksoy, “Global Agricultural Trade Policies,” in Ataman M Aksoy & John C Beghin, eds, *Global Agricultural Trade and Developing Countries* (Washington, DC: World Bank, 2005) at 37-53 [Aksoy].

⁶ Harriet Friedmann, “The Political Economy of Food: The Rise and Fall of the Postwar International Food Order” (1982) *Am J Sociology* S248.

that saw food as fundamentally different from other commodities because of its significance for national security. Many democratic states sought to protect their food growing capacity and rural areas for political reasons, and farming groups represented important voting blocs.⁷ Food was also utilized as a tool of foreign policy by the United States, particularly during the Cold War.⁸ More recently, the European Union has promoted the idea of 'multifunctionality' of agriculture, stressing not just food security but also the sector's role in the provision of environmental services and its significance for culture and identity.⁹

Recognition of the unique role of agriculture made governments wary of subjecting the sector to the rules of international trade. This "food is different" norm was in fact dominant in many countries throughout most of the 20th century. The strength of this norm was bolstered by the fact that the United States, as the dominant political power in the international system, was unwilling to subject its own agricultural sector to free trade. To do so would disturb the carefully crafted system of supports that the country had put into place over the previous half century, which had enormous domestic political and economic importance. The European Communities followed the US lead in this respect, and constructed their own complex sets of agricultural policies to support the sector,¹⁰ while many developing countries relied on taxes and marketing boards as a means by which to raise revenue from the sector.¹¹

The rules governing the international agricultural trade regime began to shift in the 1980s with the rise of neoliberal economic policies in many countries.¹² In the mid-1980s, agricultural subsidies in the Organisation for Economic Cooperation and Development (OECD) countries amounted to over US\$300 billion per year, and were widely considered to be highly distortive to international markets.¹³ The US, Europe, and Japan found it increasingly difficult to keep up levels of agricultural subsidies and other protections due to their rising cost, and faced complaints from agricultural exporters such as Australia, Canada and Argentina that those subsidies were depressing

⁷ Bill Winders, *The Politics of Food Supply: US Agricultural Policy in the World Economy* (New Haven: Yale University Press, 2009).

⁸ Nick Cullather, *The Hungry World* (Cambridge: Harvard University Press, 2010).

⁹ Clive Potter and Mark Tilzey, "Agricultural Multifunctionality, Environmental Sustainability and the WTO: Resistance or Accommodation to the Neoliberal Project for Agriculture?" (2007) 38:6 *Geoforum* 1290.

¹⁰ Mlada Bukovansky, "Institutionalized Hypocrisy and the Politics of Agricultural Trade," in Rawi Abdelal, Mark Blyth, & Craig Parsons, eds, *Constructing the International Economy* (Ithaca: Cornell University Press, 2010) at 68-89 [Bukovansky].

¹¹ Aksoy, *supra* note 5.

¹² Harriet Friedmann and Philip McMichael, "Agriculture and the State System: The Rise and Decline of National Agricultures, 1870 to the Present" (1989) 29:2 *Sociologia Ruralis* 93.

¹³ Dimitris Diakosawas, "The Uruguay Round Agreement on Agriculture in Practice: How Open Are OECD Markets?" (2001), online at: OECD <<http://www.oecd.org/dataoecd/54/61/2540717.pdf>> [Diakosawas].

world grain prices to the point of causing harm to their farming sectors.¹⁴ Many developing countries also complained that agricultural trade practices, including heavy subsidies in the industrialized countries and tied food aid, were outcompeting their own farmers and contributing to their rising dependence on food imports.¹⁵ In this context, a range of countries began to call for the acceptance of some liberalization in the agricultural sector under the auspices of the GATT.

The GATT Uruguay Round was launched in 1986 and included negotiations on an Agreement on Agriculture (AoA) that sought to liberalize trade in the sector. But the AoA rules that were eventually agreed upon in 1994 were not a model of free trade, nor did they bring about a balanced process of gradual liberalization. Rather, the rules that were established were uneven in their scope and application, characterized by a high degree of hypocrisy.¹⁶ The agreement reflected a negotiation process that sought two norms—the long-standing approach that saw food and agriculture as different on one hand, and the trade liberalization norm on the other hand—in competition with one another. The outcome was one that was mediated through the power dynamics of the negotiating countries. The agreement that resulted was a curious mix that demanded market-opening measures in developing countries, while at the same time allowing industrialized countries to continue to protect their own markets through a range of domestic support measures.¹⁷

A closer look at the details of the agreement and the political process behind it helps to briefly illustrate how this outcome came about. The AoA called for liberalization across three pillars: market access measures (the conversion of quantitative restrictions and other border measures into tariffs and the reduction of agricultural tariffs), domestic support measures (reductions in trade distorting farm subsidies), and export competition (reduction of export subsidies). Different countries use these tools in different combinations, and more powerful countries successfully pushed for the greatest liberalization in the pillars that their competitors made use of, while minimizing liberalization measures in the pillars that were central to their own domestic farm policies.

The US and EU, for example, as powerful negotiating countries, ensured that the bulk of their domestic support subsidies were exempted from cuts, while at the same time demanding further market liberalization in developing

¹⁴ Robert Wolfe, *Farm Wars: The Political Economy of Agriculture and the International Trade Regime* (London: Macmillan, 1998); Christina L. Davis, *Food Fights Over Free Trade: How International Institutions Promote Agricultural Trade Liberalization* (Princeton: Princeton University Press, 2013).

¹⁵ Jennifer Clapp, *Hunger in the Balance: The New Politics of International Food Aid* (Ithaca: Cornell University Press, 2012).

¹⁶ Bukovansky, *supra* note 10.

¹⁷ Jennifer Clapp and Kim Burnett, "Governing Trade in Global Food and Agriculture," in Manuela Moschella & Catherine Weaver, eds, *Handbook of Global Economic Governance* (New York: Routledge, 2013) at 79-94 [Clapp and Burnett].

countries.¹⁸ They were able to do this by devising a series of “boxes” to classify domestic support measures (amber, blue, and green) that were sorted according to the extent to which they distorted trade. Subsidies that were considered trade distorting were placed in the amber box and subject to cuts. Subsidies that included provisions to limit production, despite being recognized as potentially trade distorting, were placed in the blue box and were also exempt from cuts. Subsidies that were considered non-distorting or minimally-distorting of trade were placed in the green box and were exempted from cuts. Using this box system, the powerful countries were able to define certain types of agricultural subsidies as legitimate within the context of the trade regime. Rather than being forced to reduce their domestic support, they could simply shift their subsidies into those boxes that were exempt from disciplines.¹⁹ This enabled these countries to hang onto the idea that food is different while casting their practices as consistent with trade liberalization.

To give themselves extra coverage as they shifted their subsidies among the boxes, the US and EU secured a ‘Peace Clause’ that protected them from challenges on their subsidy cuts for a period of ten years. It would, after all, take some time to redefine their subsidy policies to ensure that most of their payments in the sector fell into the green box. The industrialized countries also pressed for tariff reduction formulas that allowed them to continue practices that applied higher tariffs on products exported by developing countries, through the practices of tariff peaks and tariff escalation, claiming that these measures resulted in overall liberalization because average rates fell.²⁰ Again, the two norms—trade liberalization and food is different—were cast as being compatible.

But while the norms of liberalization on one hand, and food is different on the other, were pursued side by side in the industrialized countries, the rules for developing countries offered little by way of compatibility. At the same time that they negotiated to keep their existing practices, the industrialized countries pushed hard for rules that required developing countries to make substantial cuts to their own tariffs on imports—the main agricultural sector management tool at their disposal given that they could not afford complex subsidy programs.²¹ Moreover, the tariff cuts that the industrialized countries demanded from the developing countries were on top of tariff cuts made a decade earlier under programs of structural adjustment.²²

¹⁸ Jawara and Kwa, *supra* note 4; Bill Pritchard, “The Long Hangover from the Second Food Regime: A World-Historical Interpretation of the Collapse of the WTO Doha Round” (2009) 26:4 *Agriculture & Human Values* 297 [Pritchard].

¹⁹ Martin Khor, “Analysis of the Doha Negotiations and the Functioning of the WTO, Geneva, The South Centre” (May 2010), online: South Centre <http://www.southcentre.int/wp-content/uploads/2013/05/RP30_Analysis-of-the-DOHA-negotiations-and-WTO_EN.pdf> [Khor].

²⁰ Clapp and Burnett, *supra* note 17.

²¹ Pritchard, *supra* note 18.

²² Khor, *supra* note 19.

This combination of policies—deep market liberalization in the poorest countries and continued subsidy support in the richest countries—has resulted in a highly unbalanced governance framework for agricultural trade that became enshrined in the Agreement on Agriculture when the Uruguay Round was completed in 1994.²³ In the decades that followed, industrialized country subsidies did not decline by much because they were able to shift many of their domestic support programs into the green box, while many developing countries' markets were further opened to imports.²⁴ The result was that many developing countries experienced import surges of basic foodstuffs, namely subsidized grains that were exported by industrialized countries and often 'dumped' at below the cost of production.²⁵ These cheap imports proved to be stiff competition for farmers in developing countries. In this period, many of the world's least developed countries became increasingly dependent on food imports, while their own farm sectors declined.²⁶

Although a norm of liberalization underpinned the initiative to negotiate the AoA, the resulting agreement was hardly a model of "free trade." The lack of balance in the agreement was a product of the ways in which politics mediated the application of two distinct norms. The industrialized countries were able to maintain policies that supported the idea that food is different at home, while painting them as compatible with liberalization in the WTO context. At the same time, developing countries were forced to liberalize while their ability to enact policies that treated food differently in support of their own development needs was curtailed, with negative implications for food security. Completely free trade in the sector would likely have been equally problematic for food security, as I have discussed elsewhere.²⁷ But the problem with the AoA in practice was primarily its uneven nature that enabled industrialized countries to continue to protect their own agricultural sectors while pushing developing countries to liberalize.

²³ Olivier De Schutter, "International Trade in Agriculture and the Right to Food" (2009) online: Dialogue on Globalization, Occasional Paper No 46 Friedrich Ebert Stiftung <<http://library.fes.de/pdf-files/bueros/genf/06819.pdf>>.

²⁴ OECD, "The Uruguay Round Agreement on Agriculture: An Evaluation of Its Implementation in OECD Countries" (2001), online: OECD <<http://www.oecd.org/dataoecd/50/55/1912374.pdf>>; Diakosawas, *supra* note 13.

²⁵ Ben Lilliston, Sophia Murphy, & Mary Beth Lake, "WTO Agreement on Agriculture: A Decade of Dumping" (2005), online: <<http://www.un-ngls.org/ortf/cso/cso7/library.pdf>>; South Centre, "The Extent of Agriculture Import Surges in Developing Countries: What are the Trends?" (Geneva: South Centre, 2009).

²⁶ Timothy Wise and Sophia Murphy, "Resolving the Food Crisis: Assessing Global Policy Reforms since 2007" (January 18, 2012) online: Global Development and Environment Institute (GDAI) <<http://iatp.org/documents/resolving-the-food-crisis-assessing-global-policy-reforms-since-2007>>.

²⁷ Jennifer Clapp, "Trade Liberalization and Food Security: Examining the Linkages" (2014) online: Quaker UN Office <http://www.quno.org/sites/default/files/resources/QUNO_Food%20Security_Clapp.pdf>.

II. DOHA: EXPANDING POLICY SPACE FOR FOOD SECURITY IN DEVELOPING COUNTRIES?

WTO members foresaw the need to continue reform in the agricultural sector, and incorporated a built-in agenda for the next round of trade talks into the final text of the AoA that required the agreement to be revisited. The direction taken in the next round of talks was not a push for full liberalization of the agricultural sector, however. Rather, another norm—special and differential treatment (SDT)—emerged as a key mechanism by which members attempted to strike an appropriate balance between the food is different and liberalization norms as they applied to developing countries. But while SDT in relation to food security was given a prominent place in the Doha Round even before negotiations began, its uptake and operationalization within international trade negotiations over the past 15 years has been anything but smooth.

The broader norm of SDT for developing countries is not new, having been an accepted idea within the trade regime since at least the 1950s.²⁸ Nor is it specific to agriculture. The norm was formalized in 1979 through the adoption of an “Enabling Clause” that specifically called for preferential market access for developing countries as well as exemption from reciprocity “consistent with development needs” of poorer countries.²⁹ SDT, as part of the trade regime, was supposed to be incorporated in the negotiation of the Uruguay Round AoA. In practice, however, it mainly translated into longer times for developing countries to implement liberalization measures and exemptions only for the very poorest countries.³⁰

The 1994 AoA specified that non-trade concerns, including food security and environmental considerations, as well as special and differential treatment, were to be taken into account in future trade negotiations.³¹ This implied an emergent norm that combined some elements of the food is different norm, specifically the food security aspects of agriculture unique to developing countries, with the broader norm of SDT, in a way that would establish greater ‘policy space’ for food security for developing countries within the context of the agreement. The hope was that the SDT for food security would mediate between the unique food security circumstances in developing countries

²⁸ Joseph Senona, “Negotiating Special and Differential Treatment from Doha to Post-Hong Kong: Can Poor People Still Benefit?” (2008) 42:6 *J World Trade* 1041; Andrew Mitchell and Tania Voon, “Operationalizing Special and Differential Treatment in the World Trade Organization: Game Over?” (2009) 15:3 *Global Governance* 343.

²⁹ Bernard Hoekman, Constantine Michalopoulos, & L. Alan Winter, “Special and Differential Treatment of Developing Countries in the WTO: Moving Forward After Cancun” (2004) 27:4 *The World Economy* 481 at 482-483.

³⁰ International Institute for Sustainable Development, “The Development Box” (2003) online: <http://www.iisd.org/pdf/2003/investment_sdc_may_2003_5.pdf> [IISD Brief].

³¹ WTO, “Agreement on Agriculture” (1994), online: <http://www.wto.org/english/docs_e/legal_e/14-ag_02_e.htm>.

and the broader push for trade liberalization.³² The growing emphasis on the right to food within the United Nations following the 1996 World Food Summit also supported the idea of treating food security differently within the trade regime.³³

Prior to the launch of the Doha Round, developing countries, including India and Pakistan, led efforts to advocate for a 'Development Box' and a 'Food Security Box' in a revised AoA, to recognize and legitimize the developing country policies that prioritized food security and rural development over trade liberalization.³⁴ Many developing countries argued that the 1994 AoA ironically reflected a kind of special and differential treatment for the richer countries, and made a strong case that the norm of SDT for developing countries should be taken seriously, particularly in the area of agriculture and food security.³⁵ The idea of SDT for agriculture and food security was formally adopted as part of the "Doha Development Agenda" that set the frame for the broader talks, and was specifically mentioned in the Doha Declaration:

"We agree that special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development. We take note of the non-trade concerns reflected in the negotiating proposals submitted by Members and confirm that non-trade concerns will be taken into account in the negotiations as provided for in the Agreement on Agriculture."³⁶

The attention given to the norm of special and differential treatment for food security early on in the Doha AoA negotiations represented an important shift in the process of defining trade rules for agriculture. But despite the explicit mention of this idea in the WTO texts, tensions remain between the various norms and the exercise of defining and claiming policy space for food security has been fraught with challenges throughout the Doha negotiations.³⁷

³² James R. Simpson and Thomas J. Schoenbaum, "Non-Trade Concerns in WTO Trade Negotiations: Legal and Legitimate Reasons for Revising the 'Box' System" (2003) 2:3 Intl J Agricultural Resources, Governance & Ecology 399.

³³ Matias Margulis, "The Regime Complex for Food Security: Implications for the Global Hunger Challenge" (2013) 19:1 Global Governance 53 [Margulis].

³⁴ IISD Brief, *supra* note 30; Takumi Sakuyama, "A Decade of Debate over Non-Trade Concerns and Agricultural Trade Liberalisation: Convergences, Remaining Conflicts and a Way Forward" (2005) 4:3 Intl J Agricultural Resources, Governance & Ecology 203 [Sakuyama].

³⁵ Sakuyama, *supra* note 34.

³⁶ WTO, "Doha Declaration" (2001), online: <http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm>.

³⁷ Margulis, *supra* note 33.

The power dynamics in the Doha agriculture talks differed from the Uruguay Round in important ways. Rather than bowing to industrialized country demands as they did a decade earlier, a number of developing countries, which had grown to become important economic players, took an aggressive stance early on in the Doha negotiations.³⁸ These countries placed SDT claims for greater policy space around food security and agriculture high on their agendas and organized negotiating groups around these issues. Industrialized countries, however, have been reluctant to embrace SDT for food security in practice and have consistently challenged these proposals. Even though they admit that their past practices did distort trade, they see their current practices that support agriculture as being consistent with the norm of liberalization and they have pressed for the same approach for developing countries. Developing countries see this as a double standard and the talks have been tense throughout. Although proposals for an explicit Development Box or Food Security Box were eventually abandoned, the SDT principles behind the idea have been pursued through other proposals put forward by new negotiating groups led by developing countries.³⁹

Two developing country groupings stood out in this process of claiming SDT for agriculture. India and Brazil have played leadership roles in the Group of 20 negotiating group, initially made up of 20 developing countries that called for substantial reductions in the agricultural subsidies of the industrialized countries, as well as the reduction of unfair tariff practices against developing countries.⁴⁰ Indonesia and India have taken up leadership roles in the Group of 33, a group of developing countries calling for recognition of “special products” that are important for farmer livelihoods, as well as the installation of a special safeguard mechanism (SSM) that would provide a shield from surges in cheap food imports.⁴¹ The G33 also took up proposals seeking to ensure exemptions from trade disciplines for public stockholding programs instituted for food security purposes.⁴² The Group of 20 and the Group of 33 have become key players in the agriculture negotiations and both have extensive memberships behind them that go well beyond their initial numbers.⁴³

³⁸ Amrita Narlikar and Diana Tussie, “The G20 at the Cancun Ministerial: Developing Countries and Their Evolving Coalitions in the WTO” (2004) 27:7 *The World Economy* 947 [Narlikar and Tussie]; Amrita Narlikar and Rorden Wilkinson, “Collapse at the WTO: A Cancun Post-Mortem” (2004) 25:3 *Third World Q* 447; Kristen Hopewell, “Different Paths to Power: The Rise of Brazil, India and China at the World Trade Organization” (2015) 22:2 *Rev of Intl Political Economy* 311 [Hopewell].

³⁹ Rashid Kaukab, “Coalitions and Alliance Strategies for Developing Countries in the Doha Round of Agricultural Negotiations,” in Alex McCalla & John Nash, eds, *Reforming Agricultural Trade or Developing Countries* (World Bank, 2007) at 132-153.

⁴⁰ Narlikar and Tussie, *supra* note 38.

⁴¹ Clapp and Burnett, *supra* note 17.

⁴² Hopewell, *supra* note 38.

⁴³ Membership of these groups is listed on the WTO website at: http://www.wto.org/english/tratop_e/dda_e/negotiating_groups_e.htm.

The specific proposals from these groups for SDT mechanisms within the context of the agriculture negotiations have been constant flashpoints since the early 2000s.⁴⁴ A draft text of the agreement was put forward by the chair of the agriculture talks in 2008—indicating likely areas of agreement—including draft wording for SSM and public stockholding, among others.⁴⁵ But the draft sat idle with no movement for five years, and disagreements over the SSM were widely cited as the reason for the deadlock.⁴⁶ The political tension over food security throughout the Doha negotiations is in some ways not surprising given that emergent and alternative norms are often contested over extended periods of time, shaped and reshaped by politics, before they are widely accepted and institutionalized.⁴⁷

III. RECENT FOOD SECURITY TENSIONS AT THE WTO: BALI AND BEYOND

The fact that food security issues have again become a lightning rod at the WTO in recent years—just as attempts were made to revitalize the trade talks—demonstrates the centrality of agriculture and the ongoing deeply contested nature of the various agricultural trade norms within the trade regime. Pressure for liberalization and special treatment for food security in developing countries came into direct conflict at the Bali Ministerial meeting in late 2013 and gave rise to ongoing tensions in the organization over the matter throughout most of 2014.

The controversy was an outgrowth of an attempt to breathe life back into the WTO negotiations by securing agreement on a small package of what were seen as noncontroversial issues at the Bali Ministerial.⁴⁸ One of the agricultural items on the table, public stockholding for food security purposes, threw a wrench into those plans. India, advocating a G33 proposal to exempt public stockholding programs for food security purposes from trade disciplines, threatened to withdraw its support for a broader trade facilitation agreement unless consensus was also reached on rules for public stockholding.

The G33 and other developing country groups had regularly put forward proposals on public stockholding for food security purposes throughout the entire Doha negotiations, but those proposals faced repeated resistance from the industrialized countries. In the run-up to Bali, the US was adamant that it did not support the G33's latest proposal. The US charged that India's

⁴⁴ Sakuyama, *supra* note 34.

⁴⁵ WTO, "Revised Draft Modalities for Agriculture 2008" (December 6, 2008), online: <http://www.wto.org/english/tratop_e/agric_e/chair_texts08_e.htm>.

⁴⁶ Eugenio Diaz-Bonilla, "On Food Security Stocks, Peace Clauses and Permanent Solutions after Bali" (2014), online: IFPRI Discussion Paper 01388 <<http://www.ifpri.org/sites/default/files/publications/ifpridp01388.pdf>> [Diaz Bonilla].

⁴⁷ Terence Halliday and Gregory Shaffer, eds, *Transnational Legal Orders* (Cambridge: Cambridge University Press, 2015).

⁴⁸ Diaz-Bonilla, *supra* note 46.

public stockholding program, which was part of its new domestic food security policy, was in contravention of 1994 AoA rules because it included a guaranteed government purchase price, a practice that is subject to disciplines if that price exceeds the fixed reference price and is thus considered a subsidy. The issue was complicated by the fact that the reference price in the WTO agreement is set at prices prevailing in 1986-88, which is wildly outdated since the drastic food price rises of 2007-08.⁴⁹ Going into the Bali meeting, both sides refused to back down.

Tensions ran high at Bali, but the impasse was eventually overcome when a 'peace clause' was finally agreed that stipulated that no legal challenges could be launched against existing public stockholding programs until a permanent solution was reached. Although the wording of the peace clause was ambiguous, India took the Bali agreement to indicate that a permanent solution would be sought. But later in 2014, it became clear that India and the US had different interpretations of whether the peace clause was temporary or permanent. India again refused to adopt the trade facilitation measures until it had clarity on the food security issue. India's stance once again resulted in heated and intense discussions at the WTO, but agreement was finally reached in late 2014 to clarify that the peace clause would remain in place until a permanent solution was agreed to, and that attempts would be made to find a permanent solution to the public stockholding programs before the end of 2015.⁵⁰

This most recent blow-up over food security at the WTO reveals the contradictions that result from the coexistence of multiple and at times competing trade norms as well as the shifts in power among the WTO membership. As emerging powers such as India have gained clout within the trade talks, the US has staunchly resisted the norm of special and differential treatment for agriculture and food security on the grounds that it might distort trade, affecting its own export markets in addition to undercutting farmers in poorer developing countries. The US has been especially concerned about the trend of rising domestic support subsidies in emerging economies such as India. In taking this stance, the US has prioritized the norm of liberalization over SDT, deflecting attention from both its past trade distorting practices, as well as the concessions it won for itself in the Uruguay Round. The US fought hard against agreeing to a peace clause on the matter at Bali, even though it had itself benefited from a generous peace clause over agricultural subsidies in the Uruguay Round.

This hypocrisy of the US position is all the more troubling given the significance of food security and livelihood issues in developing countries,

⁴⁹. Timothy Wise, "Battle Won, The War Goes On" (2014) online: <<http://ase.tufts.edu/gdae/Pubs/rp/GC69Jan14Wise.pdf>>.

⁵⁰. Sophia Murphy, "What You Need to Know about the India-US Agreement at the WTO IATP" (2014), online: <<http://www.iatp.org/blog/201411/what-you-need-to-know-about-the-india-us-agreement-at-the-wto>>.

including large emerging economies.⁵¹ India is home to over 240 million chronically undernourished people, over a quarter of the world's 805 million hungry people.⁵² Over 40% of children in India are stunted, meaning they do not acquire enough food to achieve their full growth potential. Stunting has lifelong impact on individual quality of life and affects countries' long-term economic performance.⁵³ A significant proportion of the undernourished people in India, as in many developing countries, live in rural areas and rely on agriculture for their livelihoods.⁵⁴ The importance of addressing issues of hunger and food insecurity in this context cannot be overstated. Industrialized countries once pursued the very policies that India and the G33 are demanding for developing countries. While the former were largely pursuing those policies to advance their export markets, the latter have greater claim to use them due to their pressing food security concerns at home.

IV. CONCLUSION

The process of translating norms into policy is not always linear, as the case of the agricultural trade regime makes clear. Multiple norms coexist within the regime, and power and interests influence how those norms are interpreted and operationalized. It is not at all clear what the outcome for agriculture will be, if the Doha talks are ever completed. The negotiations are muddied by distinct and competing norms that have pitted liberalization against special and differential treatment for developing countries, and the idea that food and agriculture are unique and require alternative arrangements in the trade regime. The industrialized countries claimed that these various norms were compatible for themselves in the negotiation of the Uruguay Round AoA. But they have seen these norms as being in competition with one another when developing countries have tried to claim expanded policy space for agriculture and food security in the Doha Round. The controversy at Bali was a clear illustration of this double standard. The shifting power dynamics at the WTO, however, has kept the norm of SDT for food security and agriculture in play. The fact that the issue gained such a high profile, and was able to bring the rest of the WTO negotiations to a standstill, indicates that these alternative ideas have gained some ground within the trade regime. Thus far, however, developing countries have been more successful at ensuring that the items remain on the agenda, rather than ensuring the wider embrace of alternative norms and their adoption into the legal framework of the agreement.

⁵¹ Timothy Wise, "Why the WTO Needs a Hypocrisy Clause" (2013), online: Triple Crisis <<http://triplecrisis.com/why-the-wto-needs-a-hypocrisy-clause/>>.

⁵² FAO, *State of Food and Agriculture 2014: Innovation in Family Farming* (2014), online: <<http://www.fao.org/3/a-i4040e.pdf>> [FAO].

⁵³ Marie Ruel, "The Oriente Study: Program and Policy Impacts" (2010) 140:2 J Nutrition 415.

⁵⁴ FAO, *supra* note 52.