

NOTES

THE WORLD TRADE ORGANIZATION AND THE MILLENNIUM DEVELOPMENT GOALS: THE ROLE OF MULTILATERAL TRADE NEGOTIATIONS IN ACHIEVING FOOD SECURITY FOR THE WORLD'S MOST VULNERABLE POPULATIONS

BENJAMIN J. BAY*

The Millennium Development Goals set a target of halving the number of people who live with hunger and food insecurity by the year 2015. The Goals also aim to further develop an open and non-discriminatory international trading system, while at the same time addressing the needs of the world's least developed countries. But are these goals compatible given the direct relationship between agricultural trade policy and food security issues, given that the Doha Development Round is currently deadlocked over agricultural trading schemes?

The World Trade Organization's activities, in partnership with the World Bank and other organs of the United Nations, can support efforts to meet the short-term goal of the 2015 Millennium Development Goals targets on food security. But more importantly, they are vital to sustaining the gains made in developing countries beyond the Millennium Development Goals deadline. This Note maps out a basic framework of the issues between trade and food security, the effects of the interests of key players on the trade negotiations, and prior attempts by the World Trade Organization to improve food security in developing nations. Finally, it suggests a pragmatic way to break the Doha Round deadlock while maximizing the potential of the Doha Agricultural Negotiations so the mechanisms put in place can be used to sustain the legacy of the Millennium Development Goals for years to come.

| | | |
|------|--|-----|
| I. | INTRODUCTION | 166 |
| II. | THE MILLENNIUM DEVELOPMENT GOALS AND FOOD SECURITY. . . | 168 |
| | A. <i>Defining Food Security</i> | 169 |
| | B. <i>The Global Economic Downturn and the MDG Targets</i> | 170 |
| III. | MIXING THE DEVELOPING AND DEVELOPED WORLD | 171 |

* J.D., Georgetown University Law Center, expected 2012; M.A., School of Slavonic and East European Studies at University College London, 2003; B.A., Elliot School of International Affairs at The George Washington University, 2001. Special thanks go to Professors Timothy Brightbill and Charles Verrill for their feedback and support on this Note. © 2011, Benjamin J. Bay.

| | | |
|------|---|-----|
| A. | <i>China</i> | 172 |
| B. | <i>India</i> | 172 |
| IV. | PRIOR ACTION OF THE WTO AFFECTING FOOD SECURITY | 175 |
| A. | <i>The WTO Agreement on Agriculture and the Uruguay Round</i> | 175 |
| B. | <i>Action Since the Uruguay Round</i> | 177 |
| V. | THE DOHA ROUND AND CURRENT ISSUES | 179 |
| A. | <i>The Special Agricultural Safeguards</i> | 179 |
| B. | <i>The Special Safeguard Mechanism</i> | 181 |
| C. | <i>A New Twist: the Biofuels Issue</i> | 183 |
| VI. | WHAT NEEDS TO HAPPEN IN THE DOHA ROUND | 187 |
| A. | <i>Focus on Food Aid is Not Sustainable</i> | 187 |
| B. | <i>The SSM Solution</i> | 189 |
| VII. | A NEW FOOD CRISIS, OR A NEW CALL TO ARMS? | 191 |

I. INTRODUCTION

Free trade in agricultural products offers both benefits and complications for developing countries. Lowered trade barriers and increased access to other markets give an opportunity to developing countries to modernize and grow their farming systems while stabilizing food prices to allow for greater food security. However, developing countries can be at risk of increasing poverty and starvation through a flooding of their markets with highly subsidized goods, including those from trade-altering food aid programs from the United States and the European Union, driving small and medium sized farmers out of business and increasing poverty and hunger.¹ This is particularly a threat in developing countries with a significant percentage of their workforce engaged in subsistence farming. These countries need a comprehensive development strategy to promote a sustainable model of development and avoid a potential trade free-for-all, which developing countries will inevitably lose.

The World Trade Organization (WTO) is the international organization created to “regulate international trade, reduce trade barriers, and ensure a level playing field for all its Members, big or small, rich or poor.”² However, the WTO does not operate in a vacuum, and has

1. Lauren Birchfield & Jessica Corsi, *Between Starvation and Globalization: Realizing the Right to Food in India*, 31 MICH. J. INT’L L. 691, 735 (2010).

2. Pascal Lamy, Director-Gen., World Trade Org. [WTO], Speech to the High Level Plenary Meeting on the Millennium Development Goals (Sept. 20, 2010), http://www.wto.org/english/news_e/spp1_e/spp170_e.htm.

emphasized that trade liberalization, the reduction or removal of both tariff and non-tariff restrictions on trade, “should be conducted with a view to raising standards of living.”³ To this end, while working directly to achieve Millennium Development Goal (MDG) 8, specifically “Target 8a: develop further an open, rule-based, predictable, non-discriminatory trading and financial system,”⁴ the WTO is attempting to be mindful of how the MDGs are interconnected, and therefore how trade liberalization will have an effect on other MDGs. In fact, the WTO acknowledges the connection between its activities and the actions to achieve MDG 1, to eradicate extreme poverty and hunger.⁵ When looking at the position of MDG 8 vis-à-vis the other goals, MDG 8 was “born from the recognition that for poorer countries to achieve the other MDGs, it is important to create an international environment that facilitates their attainment by 2015.”⁶

The WTO’s activities (in partnership with the UN, World Bank, and Food and Agriculture Organization (FAO) affect the ability to meet the short-term goals of the 2015 MDGs, but, more importantly, they are vital to sustaining the gains made in developing countries in the long term beyond the MDG deadline. This paper will lay out the ways the Doha Agricultural Negotiations can be used to ensure that the legacy of the MDGs is sustained for years to come: by including the use of a special safeguard mechanism, and moving away from a food aid-centric view of food security by developed countries.

This paper will discuss the WTO’s activities in achieving the Millennium Development Goals (MDGs) related to food security, specifically focusing on whether Goal 8a (further develop an open and rule-based trading system) will hurt or help with MDGs related to food security: Goal 1 (Eradicate extreme poverty and hunger) and Goal 8b (Address the special needs of least developed countries). Part II of this paper will present the basic framework for the MDGs and the trade mechanisms that affect their achievement. Part III will identify the interests of key players on this issue, including China and India, whose food security situations and significant economic power affect international trade

3. Marrakesh Agreement Establishing the World Trade Organization, pmbll., Apr. 15, 1994, 1867 U.N.T.S. 154.

4. *Goal 8: Develop a Global Partnership for Development*, MILLENNIUM DEV. GOALS [hereinafter *Goal 8*], <http://www.un.org/millenniumgoals/global.shtml> (last visited Sept. 11, 2011).

5. *United Nations Millennium Development Goals*, WTO, http://www.wto.org/english/thewto_e/coher_e/mdg_e/mdgs_e.htm (last visited Sept. 11, 2011).

6. *A Global Partnership*, WTO [hereinafter *Global Partnership*], http://www.wto.org/english/thewto_e/coher_e/mdg_e/global_partnership_e.htm (last visited Sep. 11, 2011).

and straddle the traditional developed versus developing trade divide, creating obstacles for trade negotiations. Part IV will look at previous WTO action that affects food security in developing nations, while Part V will look at where the Doha Round currently stands on the issue. Parts VI and VII will suggest pragmatic ways to break the Doha Round deadlock and avoid the complete collapse of the negotiations while maximizing the potential of the Round to address food security issues through trade policy.

II. THE MILLENNIUM DEVELOPMENT GOALS AND FOOD SECURITY

In 2000, the United Nations set targets through the MDGs “by which progress in reducing income poverty, hunger, disease, lack of adequate shelter and exclusion—while promoting gender equality, health, education and environmental sustainability—can be measured,” and created the MDGs.⁷ The MDGs are:

- Goal 1: Eradicate extreme poverty and hunger
- Goal 2: Achieve universal primary education
- Goal 3: Promote gender equality and empower women
- Goal 4: Reduce child mortality
- Goal 5: Improve maternal health
- Goal 6: Combat HIV/AIDS, malaria, and other diseases
- Goal 7: Ensure environmental sustainability
- Goal 8: Develop a global partnership for development⁸

The MDGs break down into twenty-one quantifiable targets measured by sixty indicators to benchmark progress, while providing a “framework for the entire international community to work together towards a common end.”⁹ Relating to the issue of hunger, the MDGs include Goal 1 and within it Target 1.c: to halve, between 1990 and 2015, the proportion of people who suffer from hunger.¹⁰ This goal reaffirms a previous pledge from the 1996 Rome Declaration on World Food Security to “achiev[e] food security for all and to an ongoing effort to eradicate hunger in all countries, with an immediate view to reducing the number of undernourished people to half their present level no

7. *Background*, MILLENNIUM DEV. GOALS, <http://www.un.org/millenniumgoals/bkgd.shtml> (last visited Sept. 11, 2011) (statement of UN Secretary-General Ban Ki-Moon).

8. *What are the Millennium Development Goals*, U.N. DEV. PROGRAMME, <http://www.undp.org/mdg/basics.shtml> (last visited Sept. 11, 2011).

9. *Id.*

10. *See Goal 8, supra* note 4.

later than 2015.”¹¹ Although the percentage of people worldwide affected by hunger has decreased since 1990, from 20% to 16% depending on estimates, this is still far from the goal of a reduction by half.¹² Worse, the overall number of people living with hunger has increased since the creation of the MDGs, growing from 817 million people in 1990 to 830 million people in 2007, with the total number potentially topping one billion in 2010 as a result of the economic downturn and subsequent food crisis.¹³

A. *Defining Food Security*

Founded in 1945, the FAO is the world leader in international efforts to defeat hunger by providing expertise, information, technical assistance and support, and by providing a neutral forum to negotiate agreements and debate policy.¹⁴ The FAO, who also partners with the WTO to give guidance on this topic, defines food security as “the physical and economic access for all people at all times to enough food for an active, healthy life with no risk of losing such access and as such is directly connected with livelihood in the developing countries.”¹⁵ Food security not only deals with the basic issues of malnutrition and hunger, but also the system that a country has to feed itself.¹⁶ Half of the nearly

11. World Food Summit, Rome, Italy, November 13–17, 1996, *Declaration on Food Security*, p.mbl., available at <http://www.fao.org/docrep/003/w3613e/w3613e00.HTM>.

12. U.N. DEP’T OF INT’L & SOC. AFFAIRS, MILLENNIUM DEVELOPMENT GOALS REPORT 2010, at 11, U.N. SALES NO. E.10.I.7 (2010), available at <http://www.un.org/millenniumgoals/pdf/MDG%20Report%202010%20En%20r15%20-low%20res%2020100615%20-.pdf>.

13. *Id.*

14. U.N. FOOD & AGRIC. ORG. [FAO], <http://www.fao.org/about/en/> (last visited Sept. 28, 2011).

15. Negotiations on WTO Agreement on Agriculture, Proposal by India (Food Security), P 1, G/AG/NG/W/102 (Jan. 15, 2001) available at wto.org/english/tratop_e/agric_e/ngw102_e.doc.

16. Within food security are the following four central concepts:

Food availability—The availability of sufficient quantities of food of appropriate quality, supplied through domestic production or imports (including food aid);

Food access—Access by individuals to adequate resources (entitlements) for acquiring appropriate foods for a nutritious diet. Entitlements are defined as the set of all commodity bundles over which a person can establish command given the legal, political, economic and social arrangements of the community in which they live (including traditional rights such as access to common resources);

Utilization—Utilization of food through adequate diet, clean water, sanitation and health care to reach a state of nutritional well-being where all physiological needs are met. This brings out the importance of non-food inputs in food security;

Stability—To be food secure, a population, household or individual must have access to

one billion people in the world suffering from hunger are small-scale farmers, with eighty percent directly engaged in food production and twenty percent working as landless laborers, pastoralists, or fisherman.¹⁷ The ironic but tragic connection between hunger and a life in food production in developing countries highlights how important agricultural trade policy is in achieving the realization of MDG 1.

B. *The Global Economic Downturn and the MDG Targets*

Before the recent world economic crisis began, 1.1 billion people were living on less than one dollar a day, and 923 million people were undernourished.¹⁸ The crisis produced an increase in world food prices that has pummeled the developing world. Prices of wheat, a staple food for most of the planet, increased fifty-six percent from June 2010 to September 2010, and are now higher still, denying those who cannot afford increased access to their basic nutritional needs, decreasing food security in many developing countries, and forcing the World Bank to extend the Global Food Crisis Response Program¹⁹ until at least June 2011.²⁰ Historically, food price volatility has been a constant factor in food security, usually arising from climate volatility causing

adequate food at all times. They should not risk losing access to food as a consequence of sudden shocks (e.g. an economic or climatic crisis) or cyclical events (e.g. seasonal food insecurity). The concept of stability can therefore refer to both the availability and access dimensions of food security.

FAO, *Policy Brief: Food Security 1* (2006), available at ftp://ftp.fao.org/es/ESA/policybriefs/pb_02.pdf.

17. Raj Bhala, *Resurrecting The Doha Round: Devilish Details, Grand Themes, and China Too*, 45 TEX. INT'L L.J. 1, 120 (2009).

18. *Food Crisis: What the World Bank Is Doing*, WORLD BANK, <http://www.worldbank.org/foodcrisis/bankinitiatives.htm> (last updated Sept. 15, 2011).

19. The Global Food Crisis Response program provides expedited relief to countries hit hard by rising food prices. Projects include:

food-for-work schemes, providing supplementary rations and micronutrients for mothers and their children, and school feeding programs for the most vulnerable," . . . "short and medium term support for food production by supplying farmers with seeds and fertilizer, improving irrigation and livestock-related activities for small-scale farmers, and providing budget support for government policies, such as offsetting tariff reductions for food and other unexpected costs.

Press Release, World Bank, Bank to Triple Protection for the Vulnerable in Wake of Economic Crisis, Press Release No: 2009/303/EXC (Apr. 21, 2009).

20. WORLD BANK, *supra* note 18.

THE WTO AND THE MILLENNIUM DEVELOPMENT GOALS

poor production or even crop failures. The problems of the recent economic crisis have exacerbated price volatility, especially in staple goods, increasing the number of people at risk of hunger rather than reducing it.²¹ This increase puts further strain on the development agenda with fewer than five years to meet the MDGs, and highlights that more systemic, longer-term solutions are required by international organizations, including the WTO, in order to meet and sustain MDG 1.

III. MIXING THE DEVELOPING AND DEVELOPED WORLD

The food security interests of WTO member states are more complex than a simple developed world versus developing world relationship. While developing countries with severe food security issues are looking to developed countries to gain international market access while at the same time protecting their fragile domestic markets, developed nations such as the United States believe that the “primary responsibility for reducing food insecurity rests with each country, and that it is critical that all countries adopt policies that promote self-reliance and facilitate food security at all levels, including food availability, access, and utilization.”²² The United States’ view on food security in relation to trade, shared by many other developed countries, is that open markets reduce food insecurity and that developing countries need to clean up any domestic corruption and graft in order to take full advantage of the benefits to food security that increased trade provides.²³

In the middle of these two negotiating positions, and sometimes mixing the two, are China and India. Both are huge trading powers who are facing different challenges to their food security issues: China has the agricultural capacity to achieve its goal of food self-sufficiency for its entire population in the future, while India faces the stagnating fortunes of its agricultural sector and the rural poor who work in it, specifically in the Indian system of small, individually owned farms, even as India’s overall gross domestic product (GDP) continues to steadily grow. The United States’ response to these divergent situations is more complex, promoting the concept of personal responsibility for

21. Javier Blas, *Food Price Shock’ Threat as Commodities Soar: UN Benchmark Index Hits Nominal Record*, FIN. TIMES, Jan. 6, 2011, at 1.

22. U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-08-751, INTERNATIONAL FOOD SECURITY: INSUFFICIENT EFFORTS BY HOST GOVERNMENTS AND DONORS THREATEN PROGRESS TO HALVE HUNGER IN SUB-SAHARAN AFRICA BY 2015, at 53 (2008) [hereinafter GAO REPORT].

23. *Id.*

food security yet skeptical that all of China and India's demands in trade negotiations are purely for food security reasons and are not protectionist measures to cut into previous agreements to open markets for agricultural products.²⁴ Later, in Part V, this article will discuss how the different ways the U.S., China, and India treat food security issues have affected trade liberalization talks.

A. *China*

China's food security fortunes have dramatically changed since the Rome Declaration on Food Security: its food security problems have diminished as its economy has expanded tremendously. In 1996, China was a World Food Program assistance recipient, but through a driven effort to increase agricultural yields and farming efficiency, it reversed that situation by 2005 to become a donor to the program.²⁵ This success story is staggering when considering the fact that China feeds 21% of the world's population with only 9% of the world's arable land, yet still has the ability to produce 95% of the grain yield necessary to feed a population with rice as a staple food.²⁶ Malnourishment dropped from 17% to 11% of the population from 1990 to the year 2000, a reduction of around 6% (or about 74.5 million people).²⁷ Even though China is no longer receiving food under the World Food Program, these malnutrition statistics demonstrate that part of its population remains at risk from food security issues. Therefore, the Chinese view themselves as a developing country on the issue of food security and act accordingly during international trade negotiations, including the Doha Development Round. China has set itself the goal of being completely self-sufficient in providing food to its population and sees food security as a "war people cannot afford to lose."²⁸

B. *India*

Unlike China, India's food security issues are not diminishing as its economy and position in world trade continue to grow. While GDP has

24. Bhala, *supra* note 17, at 63-64.

25. XIAO YUNLAI & NIE FENGYING, A REPORT ON THE STATUS OF CHINA'S FOOD SECURITY, at v (2010), available at <http://www.un.org.cn/cms/p/resources/30/1320/content.html>.

26. *Id.* at 1.

27. *Id.*

28. Mu Xuequan, *In Bid to Boost Food Security, China's Agricultural Guru Vows to Finish Work on New Hybrid Rice in 2012*, XINHUA NEWS AGENCY (June 20, 2010, 23:16:38), http://news.xinhuanet.com/english2010/china/2010-06/20/c_13359672.htm.

been steadily increasing, rates of malnutrition, disease, and death related to starvation have not improved, with some areas having instead seen a decrease in nutritional intake.²⁹ Nearly 60% of the population in India earns its living through agriculture sold on the domestic market.³⁰ Almost 85% of Indians live on less than two dollars per day, with many households participating in an unequal sharing of food resources based on gender, in which women and children facing malnutrition live in a household with a male who is sufficiently fed.³¹

Prior to independence, India was burdened by a feudal system of land ownership where the *zamindaris*, or rent-collecting intermediaries, were given control over large areas of farmland in exchange for revenue sharing with the colonial British power.³² Within this system, individual farmers either owned small and irregular plots of land not in a continuous area, or leased such plots of land on tenancy terms that were, at the very least, unfavorable, such as high rent on lands with low yields.³³

Land reform in India began after independence in 1947, and while successful in abolishing the *zamindar* intermediary feudal system, reform has been less successful at equitably redistributing land through attempts to create a ceiling limit on land holdings, which entail limiting plot size in an attempt to give farmers enough property to maintain a productive, profitable farm while putting the surplus land under the control of landless farmers to maximize productivity while minimizing landless rural laborers.³⁴ Landowners with holdings above ceiling limits avoid losing their “surplus” land through the use of political clout, and evade reforms by any method available, including “registering their own land under names of different relatives to bypass the ceiling, shuffling tenants around different plots of land so that they would not acquire incumbency rights as stipulated in the tenancy law,” and even evicting tenants to prevent them from attaining rights to the land they worked.³⁵ The result of these attempted reforms, and their partial

29. Cf. Lauren Birchfield & Jessica Corsi, *Between Starvation and Globalization: Realizing the Right to Food in India*, 31 MICH. J. INT'L L. 691, 694 (2010).

30. *Id.* at 735.

31. Sukanya Pillay, *India Sinking: Threats to the Right to Food, Food Security & Development in an Era of Economic Growth*, 27 WINDSOR Y.B. ACCESS TO JUST. 127, 146 (2009).

32. See MICHAEL LIPTON, *LAND REFORM IN DEVELOPING COUNTRIES: PROPERTY RIGHTS AND PROPERTY WRONGS* 284 (2009).

33. *See id.*

34. *See id.*

35. See Maitreesh Ghatak & Sanchari Roy, *Land Reform and Agricultural Productivity in India: A Review of the Evidence*, 23 OXFORD REV. ECON. POL. 251, 252 (2007).

failure, is a system of agricultural land ownership in India that continues to hinder the development and productivity of the Indian agricultural sector, maintaining a level of farming-poor with the inability to fully feed itself that threatens India's overall food security.

As a member of the WTO, India has liberalized its trading regime over time, including agricultural products, but the effects have not been beneficial; India has gone from a net exporter of agricultural products in 1991 to a net importer in 2008, losing its "self-sufficiency in wheat, rice, oilseeds, milk, and fisheries [through the] removal of protectionist measures and the corresponding dumping of highly subsidized imports."³⁶ Trade liberalization is seen as a threat to rural jobs for an inefficient and uncompetitive agricultural sector, where farmers cannot adapt to changes in the market, nor can easily rotate crops.³⁷ The Government of India has vocally protested having to open its borders through trade liberalization, such as tariff reduction or elimination, fearing that the increase in food imports from developed countries can create rural job loss, followed by an increase in domestic prices which would further erode food security, to which the only answer they see is government intervention and protectionism to maintain food security.³⁸

Indian efforts on food security must also factor in the "longest written constitution in the world"³⁹ which has taken what most countries have as an aspirational goal, the human right to food, and made it judiciable. The Supreme Court of India is an active player in food security, often enforcing the right to food through its decisions, even when it is at odds with the policies of the Government of India and the requirements of India's international obligations under treaties such as the WTO.⁴⁰ Although India's food security problems cannot be blamed on the WTO or trade liberalization per se, India has been vocal about the need to adapt the trade liberalization process to take developing countries' needs into account when negotiating the Doha Development Agenda.⁴¹

36. Pillay, *supra* note 31, at 165.

37. Birchfeld & Corsi, *supra* note 29, at 738.

38. *Id.* at 740.

39. See M.V. PYLEE, *INDIA'S CONSTITUTION* 4 (5th ed. 1994).

40. See Birchfeld & Corsi, *supra* note 29, at 693. The Indian Supreme Court has held specific government food schemes are legal entitlements under a constitutional right to food. It has also set out minimum allocation levels for food and nutrients, as well as directing how the government schemes should be implemented. *Id.* at 693-94.

41. See *id.* at 740.

IV. PRIOR ACTION OF THE WTO AFFECTING FOOD SECURITY

A. *The WTO Agreement on Agriculture and the Uruguay Round*

The Uruguay Round of 1994, unlike previous agreements, addressed the specific needs of agricultural trade liberalization separately from other non-agricultural products, which materialized as the Agreement on Agriculture (AoA). The AoA attempted to establish a fair, market-oriented trading system for agriculture through the three pillars of (1) increased market access, (2) cuts in domestic subsidies, and (3) reductions in export subsidies.⁴² It intended to enhance market access through “tariffication” (conversion of non-tariff barriers into tariffs), then reduced those tariffs by an average of 36% with a minimum reduction of 15% on each tariff line, complemented by a special safeguard mechanism to protect against import surges or dramatically falling prices, which will be discussed later in this paper.⁴³ To reduce farm subsidies, WTO members were “obliged to reduce the Aggregate Measure of Support over a six-year period by 20% as calculated on a base period of 1986–1988”; however, infrastructure and research programs were exempted from this requirement.⁴⁴ Finally, export subsidies introduced after 1990 were prohibited, while all other export subsidies were subject to a reduction of “36% in budgetary outlays for export subsidies and of 21% in the quantities benefiting from subsidies, as compared to a 1986–1990 base period.”⁴⁵ This program was implemented over a six-year period for developed countries, but kept the needs of developing countries in mind through a 10-year implementation period, with a provision for a “peace clause” in Article 13 that limits the possibility of legal challenges on domestic market subsidies for nine years.⁴⁶

The FAO noted that “[d]uring the Uruguay Round, negotiators were concerned that agricultural reform could have negative effects on least-developed and net-food importing developing countries,” and specifically might affect available supplies of “basic foodstuffs from external sources on reasonable terms and conditions,” or create problems in the short-term in financing normal levels of commercial

42. See Christine Kaufmann & Simone Heri, *Liberalizing Trade in Agriculture and Food Security—Mission Impossible?*, 40 VAND. J. TRANSNAT’L L. 1039, 1043 (2007).

43. See Chris Downes, *Must The Losers Of Free Trade Go Hungry?: Reconciling WTO Obligations and the Right To Food*, 47 VA. J. INT’L L. 619, 631 (2007).

44. *Id.*

45. *Id.*

46. See Kaufman & Heri, *supra* note 42, at 1043.

imports.⁴⁷ Several analyses available at the time indicated that the reform process would likely increase food import costs through the increase of world prices for basic food staples, and that developing countries could become increasingly dependent on food imports as they opened their domestic markets, all while food aid would decline.⁴⁸

To deal with these concerns, in 2001 WTO negotiators adopted the Marrakesh Decision on Least-Developed Countries (LDCs) and Net Food-Importing Developing Countries (NFIDCs), which acknowledges that developing countries can both benefit and be harmed by trade liberalization. This Decision included four response mechanisms to deal with the negative effects of trade liberalization: (1) food aid “to meet the legitimate needs of developing countries during the reform programme,” (2) short-term financing of normal levels of commercial imports, (3) favorable terms for agricultural export credits, and (4) technical and financial assistance to improve agricultural productivity and infrastructure.⁴⁹ The Decision, making an obligation for WTO members in Article 16 of the AoA,⁵⁰ was to counter the negative effects of liberalization on the concerned sixty-four LDCs and NFIDCs at that time.⁵¹ However, the implementation of the agreement after 1994 was so weak that the WTO negotiators were forced to include the Marrakesh Decision as part of the Doha Ministerial Conference in 2001 as an implementation goal.⁵² Marrakesh Decision implementation failed as “three of these four [Marrakesh Decision] mechanisms (technical assistance, export credits, and financial aid) were not put into practice.”⁵³

While the failed implementation of the Marrakesh Decision did not create a dramatic effect on the negative repercussions of trade as intended, it did demonstrate the need to review these issues within the Doha negotiations framework. It put the spotlight on those nations in need of the highest levels of protection vis-à-vis food security, while

47. *Id.* at 1047.

48. *See id.*

49. *Uruguay Round Agreement: Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries*, WTO [hereinafter *Decision on Measures*], http://www.wto.org/english/docs_e/legal_e/35-dag_e.htm (last visited Sept. 30, 2011).

50. *See* Downes, *supra* note 43, at 633.

51. Currently, there are 50 LDCs and 25 NFIDCs as reported by the FAO. *See Marrakesh Decision*, FAO, <http://www.fao.org/economic/est/international-trade/uruguay-round/marrakesh-decision/en/> (last visited Sept. 28, 2011).

52. *See* Kaufman & Heri, *supra* note 42, at 1048.

53. Downes, *supra* note 43, at 633.

supporting the basic idea that there can be agreement on protectionist measures for LDCs and NFIDCs without the process floundering due to China and India bickering with the most developed countries. Most importantly, it acknowledged “that difficulties whose origins are outside the trade field cannot be redressed through measures taken in the trade field alone.”⁵⁴

B. *Action Since the Uruguay Round*

In addition to the attempt to implement the Marrakesh Decision, the Uruguay Round also produced the Coherence Mandate. “Article III.5 of the WTO Agreement identified the achievement of greater coherence in global economic policymaking, in particular through the cooperation with the International Monetary Fund and the World Bank, as one of the core functions of the WTO.”⁵⁵ Initially, this mandate was an express provision promoting cooperation with the World Bank and International Monetary Fund (IMF) to deal with concerns by Uruguay Round contracting parties over exchange rate volatility, current account imbalances, market access, debt repayment, and the link between trade and financial flows, all of which were affecting the parties’ ability to make a case for unilateral reduction of both tariff and quota protectionism.⁵⁶ Since that agreement, the principle of the Coherence Mandate has been applied to subsequent international efforts, including the World Food Summit and the MDGs, with the scope of cooperation between the WTO and other organizations expanding to include the Organization for Economic Cooperation and Development (OECD), as well as other UN system organizations such as the FAO.⁵⁷

Through the Coherence Mandate, the WTO acknowledged that it is a part of a large group of organizations that are working together to achieve the MDGs on multiple fronts. To work cooperatively on food security issues, the WTO created the Aid for Trade program with the International Monetary Fund. The Aid for Trade program provides development and infrastructure assistance to developing countries to allow them to take advantage of the increasing trade opportunities

54. Marc Auboin, *Fulfilling the Marrakesh Mandate on Coherence: Ten Years of Cooperation Between the WTO, IMF, and World Bank* 9 (WTO Discussion Paper No. 13, 2007).

55. *Aid for Trade Factsheet*, WTO [hereinafter *Aid for Trade*], http://www.wto.org/english/tratop_e/devel_e/a4t_e/a4t_factsheet_e.htm (last visited Sept. 17, 2011).

56. Auboin, *supra* note 54, at 6-9.

57. See *Global Partnership*, *supra* note 6.

created by the opening of global markets.⁵⁸ Aid for Trade emerged from the WTO's Hong Kong Ministerial Conference in December 2005, and can take the form of technical assistance or direct loans or grant funding to improve infrastructure, build productive capacity, and offset negative effects of tariff reductions in the developing world.⁵⁹ WTO member countries give technical assistance through their own aid programs while financial aid comes from previously pledged funding amounts diverted to deal with specific obstacles to developing countries' participation in an open global trading regime.⁶⁰ Regional finance organizations such as the World Bank, IMF, and regional development banks distribute the aid.⁶¹ The WTO holds a monitoring and evaluation role for the program, in conjunction with the OECD.

The WTO does not mandate participation in the program, and although participation in the program has been considerable, especially on the technical assistance side, the criticism against the Aid for Trade program (as well as other WTO efforts in development) is that "they encourage industrialized countries to consider the trade-related interests of developing countries and to assist them voluntarily, but" they "do not go beyond a best endeavor promise."⁶² Aid for Trade funding is not additional to the aid a developing country already receives; other areas of development concern suffer from reduced funding.⁶³ Further, although the WTO works with other organizations such as the World Bank, IMF, and specialist organizations, like the FAO for food issues, critics say that the WTO lacks the expertise to fulfill its monitoring and evaluation role for the program.⁶⁴ Without proper evaluation and monitoring, the risk is that valuable development resources within developing countries could be wasted, leading to a disadvantage when it comes to the Doha Round negotiations.⁶⁵

An issue specific to the food aspect of Aid for Trade is the lack of anti-corruption and anti-bribery provisions within the program, an area

58. Andrew Mitchell & Joanne Wallis, *Pacific Pause: The Rhetoric of Special & Differential Treatment, the Reality of WTO Accession*, 27 WIS. INT'L L.J. 663, 673 (2010).

59. *Aid for Trade*, *supra* note 55.

60. *Id.*

61. *Id.*

62. Gillian Moon, *Trade and Equality: A Relationship to Discover*, 12 J. INT'L ECON. L. 617, 635 (2009).

63. CARIN SMALLER, INST. FOR AGRIC. & TRADE POLICY, CAN AID FIX TRADE?: ASSESSING THE WTO'S AID FOR TRADE AGENDA 5 (2006), available at <http://www.iatp.org/tradeobservatory/library.cfm?refID=89070>.

64. *Id.* at 9.

65. *Id.* at 7.

targeted by United States policy on food security and trade liberalization.⁶⁶ While it is important for food security that infrastructure within developing countries is significantly improved, those improvements will not become a reality if developing countries with corruption issues cannot use the funding and technical assistance provided in the directed manner. The evaluation criteria for Aid for Trade do not include the necessary mechanisms to incorporate anti-corruption issues into the overall strategy of the Aid for Trade program, thus weakening the program's overall ability to carry out its mandate effectively.⁶⁷

V. THE DOHA ROUND AND CURRENT ISSUES

The market access provisions in the AoA created the Special Agricultural Safeguards (SSG) to protect markets from surges in imports and downward price volatility. However, the SSG has not been an effective tool in addressing market issues for food security in developing countries. With the shortcomings of the SSG and Article 16's failure to push developed countries to abide by the Marrakesh Decision, the negative aspects of trade liberalization on developing countries' vulnerable domestic agricultural sectors have not been addressed, especially for those nations dealing with food insecurity.

Unlike the Uruguay Round, where developing country issues took a backseat to the intense competition between developed countries such as the United States and the European Union, the Doha Round has taken up the call of the Marrakesh Decision, and has included issues relating to counteracting the negative effects of trade liberalization on developing countries. In the negotiations, the biggest push to address such issues, and what is creating the biggest problem for the completion of this part of the Doha Round, is the Special Safeguard Mechanism (SSM). Before discussing the current attempt to create the SSM, however, it is important to understand the workings of the SSG.

A. *The Special Agricultural Safeguards*

While Article 19 of the GATT and the Uruguay Round Safeguards Agreement provide safeguards for all products, including agricultural, Article 5 of the Agreement on Agriculture is a special provision

66. GAO REPORT, *supra* note 22, at 53.

67. See Alexandra Harrington, *Throwing One Arm Around the World*, 12 TOURO INT'L L. REV. 27 (2009).

creating the SSG to deal with select agricultural products alone.⁶⁸ The SSG is only applicable to “tariffed” agricultural products, meaning those with “quantitative restrictions converted to equivalent tariffs, then cut,” and only on products that the country seeking to use the safeguard put on specific lists or schedules in its agriculture trade commitments.⁶⁹ All countries that fulfill these criteria can use the SSG: it is not limited only to developing countries, as this Note will cover later in the SSM.⁷⁰ The SSG is triggered when imports surge or prices fall and result in a “serious” injury, although the SSG is triggered without a test to determine if there has been an injury as defined in the agreement or the requirement to negotiate compensation.⁷¹ “Serious” injury, as required for all WTO safeguards and interpreted by the WTO Appellate Body, is a much higher level of injury than “material,” making agricultural safeguard mechanisms more difficult to use than their non-agricultural brethren:

“[S]erious injury” in the Agreement on Safeguards is a very high one when we contrast this standard with the standard of “material injury” envisaged under the Anti-Dumping Agreement, the Agreement on Subsidies and Countervailing Measures . . . and the GATT 1994. We believe that the word “serious” connotes a much higher standard of injury than the word “material.” Moreover, we submit that it accords with the object and purpose of the Agreement on Safeguards that the injury standard for the application of a safeguard measure should be higher than the injury standard for anti-dumping or countervailing measures . . .⁷²

After the SSG is triggered, the country using the safeguard is allowed to temporarily raise tariffs to offset the injury.⁷³ As of August 2008, only thirty-nine WTO members have invoked the SSG, with countries in Europe using the SSG on their products most often: Switzerland-

68. See *An Unofficial Guide to Agricultural Safeguards: GATT, Old Agricultural (SSG) and New Mechanism (SSM)*, WTO (Aug. 5, 2008) [hereinafter *Agricultural Safeguards*], http://www.wto.org/english/tratop_e/agric_e/guide_agric_safeg_e.htm.

69. *Id.*

70. *Id.*

71. *Id.*

72. Appellate Body Report, *United States—Safeguard Measure on Imports of Fresh, Chilled or Frozen Lamb from New Zealand and Australia*, ¶ 124, WT/DS177/AB/R, WT/DS/178/AB/R (May 1, 2001).

73. *Agricultural Safeguards*, *supra* note 68.

Lichtenstein (961 products), Norway (581), the European Union (539), and Iceland (462).⁷⁴ Of the countries covered by the Marrakesh Decision, only five NFIDCs have used the SSG (Barbados, Botswana, Morocco, Tunisia, and Venezuela), while no LDC has ever used the SSG.⁷⁵ Overall, 78% of the use of the SSG was made by developing countries.⁷⁶ The SSG may be reduced or eliminated if the Doha Round comes into effect.⁷⁷

B. *The Special Safeguard Mechanism*

In an attempt to protect developing countries, the WTO negotiators have introduced the SSM, a mechanism necessary to protect the food security position of LDCs, which, if included in the final ratified agreement, would allow developing nations (and only developing nations) to impose tariffs on subsidized agricultural products either at or above the current maximum WTO allowed rates (depending on the draft, the tariffs could exceed Uruguay Round or pre-Doha Round bound rates). These tariffs would protect impoverished farming sectors in those developing countries in response to a surge in imports or a drop in prices.⁷⁸ The SSM, as currently framed in Paragraph 123 of the draft agreement, would give developing countries the right to self-designate any product good as “special” without previously listing or scheduling products in international trade commitments, as is required with the SSG, as long as the product met certain criteria.⁷⁹ However, a developing country would not be allowed to use the SSM to protect a product that already has safeguard protection under the SSG or the GATT Safeguards Agreement.⁸⁰ These countries would have to apply three further criteria: “food security, livelihood security and rural development” in order to invoke the SSM on a product.⁸¹ The criteria are to prevent the designation from protecting a politically favored domestic farm sector, and to ensure the advancement of one of the three fundamental purposes.⁸² Additionally, once a product has met

74. *Id.*

75. *Id.*

76. *G33 Paper on SSM Sparks Exporters' Ire*, BRIDGES WKLY. (Feb. 4, 2010), <http://ictsd.org/i/trade-and-sustainable-development-agenda/69735/>.

77. *Id.*

78. See James Grandolfo et al., *India*, 44 INT'L LAW. 663, 676 (2010).

79. See Birchfield & Corsi, *supra* note 29, at 1049.

80. *Agricultural Safeguards*, *supra* note 68, at 4.

81. Bhala, *supra* note 17, at 62.

82. *Id.*

those criteria, the draft SSM would require a country to meet triggers based on the percentage change in price or import volume when compared to the average of the previous three years.⁸³ The largest disagreements over the SSM have to do with trigger levels and proposed remedies.

The conflict over the SSM created a standoff among a group of seven nations attempting to reach an initial settlement before taking a draft to the larger group of negotiators. The group of seven included the United States, India, China, the European Union, Brazil, Australia, and Japan, but negotiations on the SSM among this group broke down in July 2008.⁸⁴ In the larger group of negotiators, a conflict also arose among the G-33⁸⁵ group of developing countries, the main sponsors of the draft SSM in the negotiations, and other developing nations outside of the G-33 who argued that agricultural trade is not only a “north-south” trading issue, but also a “south-south trading issue,” and therefore the SSM should be time-bound to prevent abuse among developing countries to create a special class of states that can dominate the other developing nations in the long term.⁸⁶

However, the biggest conflict is between the United States, China, and India: “[w]hat the Americans see as a trade issue China and India see as a food security issue.”⁸⁷ China and India led roughly 100 developing countries in a demand for an SSM remedy that would allow them to protect subsistence farmers, of which there are 700 million in China and 600 million in India, out of concern of agricultural import surges, as well as surges in subsidized goods from the United States and the European Union.⁸⁸ China and especially India have been advocating that, in contrast to the current trade remedies, the price decrease and volume surge triggers should be lower and allow for greater tariff increases, making it easier to implement the SSM against agricultural

83. *Agricultural Safeguards*, *supra* note 68, at 4.

84. *See* Grandolfo, *supra* note 78, at 677.

85. The G-33 group includes: Antigua and Barbuda, Barbados, Belize, Benin, Botswana, Cote d'Ivoire, Democratic Republic of the Congo, Dominican Republic, El Salvador, Grenada, Guyana, Guatemala, Haiti, Honduras, Indonesia, Jamaica, Kenya, Laos, Mauritius, Madagascar, Mongolia, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, Philippines, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, South Korea, Sri Lanka, Suriname, Tanzania, Trinidad and Tobago, Turkey, Uganda, Zambia, and Zimbabwe. *Groups in the Agricultural Negotiations*, WTO, http://www.wto.org/english/tratop_e/agric_e/negoti_groups_e.htm (last visited Oct. 5, 2011).

86. *See Agricultural Safeguards*, *supra* note 68, at 1.

87. Bhala, *supra* note 17, at 120.

88. *Id.* at 61.

imports.⁸⁹ Specifically, India has “argued for the right to start imposing tariffs above their existing maximum rates when imports exceed ten percent over the previous three-year average and with a permitted increase thirty percent above existing bound tariff rates.”⁹⁰

The United States, backed by other developed states, opposes India and China’s position. The U.S. sees the SSM as a potential tool for misuse in order to get around market access gains developed at other points in the Doha Round, and to mislabel and challenge normal trade growth as a “surge.”⁹¹ The United States has been unwilling to compromise on a “threshold lower than a forty percent increase in imports.”⁹² United Nations Special Rapporteur on the Right to Food, Olivier De Schutter, argues that the SSM is essential “to insulate fragile domestic farm markets [in poor countries] from volatile global prices and import surges,” as they need enhanced capacity to produce food and not suffer from the threats to food security that can be imposed by the global marketplace such as price volatility, import surges, and susceptibility to food that is subsidized and dumped by rich nations.⁹³ The opposing sides have not moved from this stalemate since July 2008. Because the SSM is a make-or-break issue for the sustainability of food security in developing countries moving forward, with concrete effects on the sustainability of MDG 1, it is vital for these large economic powers to break this stalemate.

C. *A New Twist: the Biofuels Issue*

Another issue of international trade affecting food security deals with environmental concerns. Currently, because food is produced not just for human nourishment but also as a power source, the demand for biofuels is “causing an abrupt increase in demand for agricultural commodities traditionally used for food and feed,” which is pushing crop prices up.⁹⁴ In addition, crops that can be turned into biofuels compete for a finite supply of arable farmland on which a country would normally grow its own food, creating a competition between

89. See Birchfield & Corsi, *supra* note 28, at 678; see also, e.g., *Indian Minister Says SSM Not to Blame for Stalled Talks*, BRIDGES WKLY. TRADE NEWS DIG. (Oct. 2, 2008), <http://ictsd.net/i/news/bridgesweekly/30163/>.

90. Grandolfo *supra* note 78, at 676.

91. Bhala, *supra* note 17, at 63-64.

92. Grandolfo, *supra* note 78, at 676-78.

93. Bhala, *supra* note 17, at 120-21.

94. Naylor, et al., *The Ripple Effect: Biofuels, Food Security, and the Environment*, ENV’T, Nov. 2007, at 31, 41.

food security and economic growth.

The crops in demand are staple crops, because the main crops for biofuel production, maize (corn), cassava, sorghum, sugarcane, soy, and palm oil, are also at the top of the list of crops that contribute to the caloric consumption of food-insecure peoples, compromising “30% of mean caloric consumption by people living in chronic hunger.”⁹⁵ In Tanzania, a country with a high rate of malnutrition, over one-third of caloric intake comes from maize, leaving it vulnerable to food security issues due to increasing maize prices.⁹⁶ As Tanzania’s poorest spend 80% of their budget on food,⁹⁷ those at risk for food insecurity lack the adaptability in their budgets to absorb a large increase in maize prices. Therefore, large corn-producing countries such as the United States can have a massive effect on the food insecure in relation to corn production for biofuels. This would increase price volatility and could create further hunger in poorer countries, but can also affect the response to hunger by countries that donate to humanitarian food programs. “Food aid shipments from the United States are inversely correlated with commodity prices,”⁹⁸ because high cereal prices that create need for poor consumers that cannot adapt to price increases reduce the volume of food shipments.

The problem is magnified when countries with food security issues switch production of crops from a food-purpose to a fuel-purpose, which is an increasing problem in energy hungry countries such as China. As discussed before, China has taken great strides in solving its food insecurity problem while dealing with the problem of the world’s largest population and limited arable land. However, China is also the “most rapidly growing consumer of transportation fuels in the world market,” and has a growing faction within the government calling for massive targets for biofuel production to meet its energy needs.⁹⁹ This has already created a conflict between food needs and fuel needs, leading the Chinese Government to implement policies to prevent land traditionally used for staple crop food production to be converted to biofuel production. Yet it is unclear how long these policies can be kept in place while under significant pressure from the pro-biofuel

95. *Id.* (citing FAOSTAT, <http://faostat.fao.org/> (accessed Aug. 4, 2007)).

96. *Id.*

97. Naylor, *supra* note 94, at 41 (citing *Tanzania Human Resource Development Survey*, WORLD BANK, <http://www.worldbank.org/LSMS> (accessed June 1, 2007)).

98. *Id.*

99. *Id.* at 35.

factions.¹⁰⁰ One answer is the use of marginal land, as opposed to prime farmland, to grow crops for biofuels, but China is also looking outside its borders by investing in biofuel production in LDCs such as Laos and Cambodia to meet its needs, a move that could have wide-ranging effects on the rural poor in those countries.¹⁰¹ Additionally, these countries with a developing biofuels sector use tax breaks and subsidies to promote growing that sector of the economy, creating a new level of subsidies that factor into trade negotiations and food security.¹⁰² Adding additional factors into the negotiations such as these makes breaking the stalemate even harder, and could lead to China's forcing LDCs to make concessions beneficial to China's investment in their countries rather than what is best for the LDCs.

Increased trade liberalization also creates an added environmental effect on crops in the form of new agricultural technologies. The Green Revolution, an attempt to introduce new technologies to improve agricultural yields in developing countries, has been criticized for destroying biodiversity, changing farming and eating patterns, and reducing the nutritional value of crops, through promoting the use of seeds, some genetically modified, from transnational corporations.¹⁰³ However, the WTO leadership, in an attempt to move the Doha Round along after a long period of stagnation, has determined that such issues, including those that may relate to trade and food security, are not on the negotiating table.

In an address to the WTO General Council on April 29, 2009, Pascal Lamy ruled out expanding the Doha negotiations to include topics such as "climate change, competition policy, energy, financial protectionism, food security, foreign direct investment, or labor rights."¹⁰⁴ While it is counterintuitive to think that trade specialists in a trade forum could also master multiple issues involving a varied array of expertise in a manner that would balance the needs of the developing world without creating new grey areas that would scale back trade liberalization measures already agreed upon in previous negotiations,

100. *See id.* at 36.

101. *Id.* at 37-38.

102. Zhang Jiawei, *Fuel Ethanol Production Threatens Food Security*, CHINA DAILY (July 8, 2010, 11:51 AM), http://www.chinadaily.com.cn/china/2010-07/08/content_10082132.htm.

103. *See* Carmen Gonzales, *Trade Liberalization, Food Security, and the Environment: The Neoliberal Threat to Sustainable Rural Development*, 14 *TRANSNAT'L L. & CONTEMP. PROBS.* 419, 425-26 (2004).

104. *See* Daniel Pruzin, *Lamy Rules Out Expanding Doha Agenda to Tackle Climate Change, Other Topics*, 26 *INT'L TRADE REP.* (BNA) 603 (2009).

or even earlier treaties,¹⁰⁵ there are some significant voices that claim this is a failing of the Doha Development Agenda, and will limit the Agenda's effectiveness in the long term.¹⁰⁶ Even if certain issues are not addressed in the Doha Round, crossover issues that greatly affect trade must be discussed to make the Doha Round sustainable over the long term: it does no one any good if changes in the energy sector, climate change, and other issues render trade liberalizations useless after they are put into force.

A focus on energy would have the WTO direct attention to an area where it has little effect, and would dilute the progress the WTO can make in food security where it has a direct effect. The reality is that the WTO negotiations do touch upon climate change and energy when dealing with food price volatility because food prices are affected by both weather and the use of crops as biofuels. It is understandable that Lamy wants to leave out larger issues that have less direct influence on food security, such as the Green Revolution, because they allow an already bogged-down negotiation process to stay clear of another potential area of conflict, and an area that is being dealt with elsewhere in the UN system, but the WTO still must deal with the issue of biofuels unless it expects any action towards greater food security to unravel. An effective mechanism to support sustainable price levels of staple crops in developing countries to address hunger and malnutrition cannot be created without including the effects of biofuels, the biggest issue on the horizon and getting closer every day, in the negotiations. Plus, in order to further cut agricultural subsidies, a goal of the Doha Round, biofuel subsidies must be addressed as well, and otherwise they can be used as a substitute to agricultural subsidies removed both in Doha and the AoA.

105. Raj Bhala, *Discovering Great Opportunity in the Midst of Great Crisis: Building International Legal Frameworks for a Higher Standard of Living*, 24 EMORY INT'L L. REV. 147, 155 n.28 (2010).

106. Aaditya Mattoo, the lead economist at the developmental research group of the World Bank and a former economic counselor in the Trade in Services Division of the WTO, declared that "Doha's promise is very limited" and argued against resurrecting the Round because it is an "inconsequential enterprise." Gary G. Yerkey, *WTO Negotiations Need to Be "Repositioned" to Address New Protectionism, Mattoo Says*, 26 INT'L TRADE REP. (BNA) 270-71 (2009). His solution is a change in the DDA to cover other significant issues than just traditional tariff barriers and subsidies, to include such things as exchange rate misalignment and climate change. Aaditya Mattoo & Arvind Subramanian, *From Doha to the Next Bretton Woods: A New Multilateral Trade Agenda*, FOREIGN AFFAIRS, Jan. 1, 2009, at 26.

VI. WHAT NEEDS TO HAPPEN IN THE DOHA ROUND

The United Nations recently called for WTO member countries to complete the Doha Development Agenda and to “ensure the parallel elimination in agriculture of all forms of export subsidies and disciplines on all export measures with equivalent effect to be completed by the end of 2013.”¹⁰⁷ But the WTO, in order to have any effect on food security to support MDG 1, must stop looking at the issue through a food aid-centric lens when tackling trade issues related to food security. After it makes this change, WTO member countries may be better able to agree on a functioning SSM, the elimination of the SSG, reduction or elimination of biofuel subsidies, and overall completion of the Doha Round before it fails completely.

In achieving this, the WTO also needs to avoid catering to the non-committed through voluntary compliance requirements. The WTO needs to make a binding commitment to help developing nations with their food security and agricultural trade issues. As shown by the failure of such actions as the Marrakesh Decision, the international trade system is currently working against the developing countries, but a robust trade in natural resources due to current high prices hides that fact.¹⁰⁸ While beneficial, it is not sustainable, and sustainable should be the name of the game.

A. *Focus on Food Aid is Not Sustainable*

A clear issue with WTO negotiations and how they hinder food security and the realization of MDG 1 is that the WTO members, specifically developed countries, treat food security as something that is detached from trade barriers, instead of connecting sustainable development with food aid that in turn helps their domestic, subsidized, agricultural sectors. In the Marrakesh Decision to alleviate the negative effects of trade liberalization in developing countries, the first support listed, and the only one that did not fail (that the WTO members were willing to follow through on), was food aid “to meet the legitimate needs of developing countries during the reform program.”¹⁰⁹

The AoA itself limits food aid in an attempt to prevent effects that distort commercial trade by permitting food aid that is not tied directly

107. G.A. Res. 65/1, ¶ 78(p), U.N. Doc. A/RES/65/1 (Oct. 19, 2010).

108. WTO et al., *Goal 8 Market Access Indicators*, MILLENNIUM DEV. GOALS, www.mdg-trade.org (last visited Sept. 30, 2011).

109. *Decision on Measures*, *supra* note 49.

to commercial exports.¹¹⁰ Aid must also be fully granted to the recipient country, or at the very least, a minimum of 80% of the donation offered must be in grant form.¹¹¹ “However, these rules are not enforced and are considered to have had little impact in limiting the distortions of the market.”¹¹² Some countries have even raised food aid issues during the Doha Round, an example being the European Union stating that U.S. food aid could potentially “displace normal commercial transactions and local production,”¹¹³ thus inhibiting agricultural development and reform, and ultimately affecting the ability to reach MDG 1.

With staple food prices currently reaching record highs, French President Nicholas Sarkozy made food security a top priority for the G20 group of leading economies as France chairs the group in 2011.¹¹⁴ As part of this move, Sarkozy has asked the World Bank for assistance,¹¹⁵ leading World Bank President (and former United States Trade Representative) Robert Zoellick to suggest that “[t]he answer to food price volatility is not to prosecute or block markets, but to use them better.”¹¹⁶ This clearly demonstrates the muddled thinking that is promoted by the developing countries in the WTO: the way President Zoellick suggests that the G20 promote food security is through removal of export controls for humanitarian aid.¹¹⁷

Developed nations must let go of the concept that the central tool for helping the hungry is through food aid. Food aid is a short-term solution, but must be followed up by sustainable trade mechanisms that allow developing countries to reform and maintain food production systems to create a food secure population. If the WTO negotiators from developed nations do not let go of this reliance on food aid, further action at the WTO level is in jeopardy of being irrelevant. These negotiators will need to take a new view of the issues of food security to be able to realize the potential of the SSM to help achieve MDG 1.

110. See Downes, *supra* note 43, at 682.

111. *Id.* at 683.

112. *Id.*

113. Special Session of the Committee on Agriculture, *European Communities Proposal—Export Competition*, ¶ 16, G/AG/NG/W/34 (Sept. 18, 2000).

114. Kim Yeonhee, *G20 to Tackle Food Prices as Countries Reassure*, REUTERS (Jan. 7, 2011, 6:18 PM), <http://www.reuters.com/article/idUSTRE7051JZ20110107>.

115. *Id.*

116. Robert Zoellick, Editorial, *Free Markets Can Still Feed the World*, FIN. TIMES, Jan. 6, 2011, at 9.

117. *Id.*

B. *The SSM Solution*

The global food crisis and food price volatility have eroded the progress towards achieving MDG Target 1a. WTO members need to look at this reality to see the connection between trade policy and food price volatility as the reason why their efforts to increase food security have failed, and they must negotiate action in the Doha Round that address the needs of the world's hungry if MDG 1 is ever going to be attained. Because food prices depend heavily on trade behaviors, a functioning SSM that both allows food insecure populations to develop an agricultural sector to meet their needs and prevents other nations from treating food security and global hunger as a means to maneuver around trade liberalization rules has led to negotiations that "enshrine Social Darwinism as trade policy," and the attempt at consensus has created trade policy texts that are unworkable and have "crossed the boundary between a necessary evil and pure hell."¹¹⁸

The lack of progress in the Doha Round on the SSM shows that lumping China and India with the other nations of the developing world not only halts the progress of negotiations, it dilutes the ability of any mechanism to meet the needs of LDCs and NFDCs around the globe. Both China and India face fundamentally different food security issues based on agricultural productivity and land use systems; one type of system would not fit both of them adequately, let alone all of the other nations facing a variety of issues that contribute to food insecurity. Regardless of whether use of the SSM is limited only to the LDCs and NFDCs now covered by the Marrakesh Decision, or that the SSM triggers and remedies are separated into different categories to be used by different nations to meet their different needs, it is imperative that WTO negotiators force India and China to acknowledge their true positions in world economics and world trade and to give up the fallacy that they are members of the LDC group. The best situation would see China and India separately negotiating terms dealing with food security to meet their unique needs without negatively affecting the ability for negotiators to meet the needs of other developing countries with greater food security needs.

Additionally, the G-33 group of developing countries need to recognize that allowing tariffs to go above the pre-Doha bound rates is against the basic idea of the WTO to reduce trade barriers and could lead to the worst-case scenario: a total breakdown of the Doha Round. The failure of the Uruguay Round to meet the needs of the LDCs was

118. Bhala, *supra* note 17, at 63.

based on the reluctance of developing countries to “tariffy,” as maintaining ceiling bindings to keep 100% tariffs on a range of products provided more of the protectionism they felt they needed for their domestic agricultural sector.¹¹⁹ As most developing countries did not take advantage of the SSG, access to an SSM on any product they designate, “tariffed” or not, gives them a mechanism that they can use and can protect local production from volume surges or a price fall. However, developing countries still must be pragmatic and accept that the high tariff rates they are demanding are an unacceptable remedy in the eyes of developing nations, and should focus their efforts on other areas, including the elimination of the SSG as part of any agreement on the Doha Round. To maintain the SSG would be to reduce the effectiveness of any SSM put into place to help developing countries, and should be eliminated to prevent developed countries from affecting food prices through protectionist measures with a virtually automatic trigger that requires no test for injury or negotiation for compensation.

Further, if able to use an SSM, developing countries need a lower threshold for injury spelled out in any agreement to direct the WTO Appellate Body that the required injury to trigger the SSM is a “material” injury as required for the Anti-Dumping Agreement, as opposed to the higher “serious” injury standard it now applies to the SSG. Developing countries must be allowed to trigger the higher tariff rates that will be allowed under the draft SSM on agricultural products at the same level of injury required by the WTO Safeguards Agreement to ensure protection of key products in order to protect food security. Additionally, every effort must be made to ensure that large, developed countries with access to lawyers and funding to make complaints to the WTO that developing countries lack cannot bully those developing countries in order to prevent them from using the SSM out of fear of being challenged at the WTO.

Finally, a time limit must be placed on the SSM to both promote reform and development in those countries allowed to use it, but also to ensure that these countries do not abuse the SSM, and use it as a protectionist crutch to maintain inefficient agricultural systems that hinder food security.

Both sides of this issue must compromise to avoid a bigger problem: the complete failure of the Doha Round. An all-member negotiating round is likely to never happen again, leading to smaller rounds and

119. *Agricultural Safeguards*, *supra* note 68.

regional negotiations where the developing world actually loses its bargaining power. If the round were to fail, that would be the death of the concept of poverty and hunger reduction through trade liberalization and would encourage economically powerful nations such as China and the U.S. to continue their current self-centered negotiating stance, leaving the developing world behind.¹²⁰

VII. A NEW FOOD CRISIS, OR A NEW CALL TO ARMS?

In 2007–2008, environmental events affecting crop yields and the economic downturn both dramatically raised global food prices and created the food crisis discussed earlier in this paper. This food crisis increased hunger and malnutrition around the globe, partially reversing previous progress towards the realization of MDG Goal 1, and even though food prices went down after 2008, lack of infrastructure and market access are still preventing food prices from stabilizing in developing countries, especially those in sub-Saharan Africa.¹²¹ In December 2010, the FAO's benchmark index of farm commodities pricing set a new high, surpassing the price index levels hit during the 2007–2008 food crisis.¹²² While the FAO only calls this a “price shock” at this time,¹²³ as only wheat prices have gone above previous highs while rice prices remain below their 2008 peaks, it warns that prolonging this shock over several months could lead to a new food crisis.¹²⁴

This reversal highlights a key issue that the WTO must take into account when dealing with trade that affects food security issues, and therefore affects how MDG Target 1a is achieved: sustainability.

A focus on sustainability should be at the core of any action made by the WTO members negotiating the Doha Round: WTO members must step up and make hard commitments, not voluntary pledges as in the past, to create a scheme allowing market access for products from developing countries to grow the agricultural sector and maintain rural development, while putting in place an SSM system that permits a level of protectionism for a duration that allows countries to develop, and to maintain that development in the long term. This is not just to provide

120. *See id.* at 4.

121. G.A. Res. 65/1, ¶ 20, U.N. Doc. A/RES/65/1 (Oct. 19, 2010).

122. Blas, *supra* note 21, at 8.

123. The FAO also lists a lack of rioting over food as an indicator that we are not yet in a food crisis. *See* Javier Blas & Katrina Mason, *Lack of Riots Allays Concerns on Food Price Rises*, FIN. TIMES, Jan. 6, 2011, at 4.

124. Although the main reason the FAO deems this a “shock” is that rice prices remain stable, it also lists a lack of rioting over food as an indicator that we are not yet in a food crisis. *See id.*

food security for the millions of people living with hunger targeted by the MDGs, but also to create a stronger world trade system of transparency and equality that allows these people to maintain food security in the future.

It is important that the WTO negotiators limit their role in the MDGs to what it is made for, namely trade, in order to achieve all they can on the issue while keeping an eye on the effect that trade can have on achieving the other MDGs. Other international organizations such as the World Bank have attempted to diversify their activities as the challenges to development have become more complicated and deal with more factors over the years. However, as the problems have become more complex, so has the situation for the main industrialized countries in the WTO system. The United States and the European Union, while providing aid and support to developing countries in the realm of trade, have not been willing to give up their competitive advantage and trade security through concrete action in the Doha Round negotiations, partly out of economic necessity, and partly due to the place that India and China now occupy in the international trading system, diluting the negotiation dynamic to the detriment of LDCs and NFDCs.

The WTO must push for sustainable trade and reduce trade effects that increase food price volatility, in addition to using the Cohesion Mandate to push other international organizations with the appropriate mandates to create infrastructure in vulnerable developing countries that address trade needs. Otherwise, China will take advantage of this failure and establish a presence in other developing countries in order to build infrastructure for their own food and energy security, and not to meet the sustainability needs for the domestic food security of the developing nation. Without sustainable trade, places such as sub-Saharan Africa will be left helpless when their minerals run out, which is the only significant trade output at this time.¹²⁵

Most importantly, whatever the WTO members do, they need to do it now. Doha is most likely the last large global negotiating round. Some discussions have taken place since the breakdown of talks in July 2008, with discussions on “issues such as price and volume cross-check, seasonality, price-based SSM, flexibilities for Small, Vulnerable Economies, and pro-rating” as well as initial technical exchanges on “seasonal-

125. *China in Africa: Never too Late to Scramble*, ECONOMIST (Oct. 26, 2006), http://www.economist.com/node/8089719?story_id=8089719.

ity, price and volume cross-check, and [a] price-based SSM.”¹²⁶ There has also been discussion of the compromise necessary for a “fit for purpose” mechanism to get past the stalemate, but to date, no breakthrough at the WTO-global level has been reached.¹²⁷ Some argue that regional free trade agreements would be better for developing countries because they would be a more reasonable option with the capacity for trade that these countries currently have, especially in sub-Saharan Africa.¹²⁸ But regional agreements take international pressure off countries like China to alter their approach to food security and trade issues, empowering China to continue the expansion of its agricultural sector outside its borders for the purpose of maintaining domestic Chinese food security, potentially to the detriment of the food security of the people in the countries it invests in. The failure of the round would not just be a waste of an opportunity to effect change, but would seriously inhibit the realization of the MDGs, specifically Goal 1, in both the short and long terms.

The WTO has recognized the connection between trade liberalization and the achievement of MDG 1, the eradication of extreme hunger. Now there is a small window for the WTO to put in place mechanisms to promote sustainable development in the arena of food security before the end of the Doha Round. The WTO must take advantage of this opportunity, because it is not likely to happen again.

126. Special Session of the Committee on Agriculture, *Report by the Chairman, H.E. Mr. David Walker, to the Trade Negotiations Committee for the Purpose of the TNC Stocktaking Exercise*, ¶ 32-33, TN/AG/25 (Mar. 22, 2010).

127. *Id.* ¶ 36.

128. See Karol C. Boudreaux & Adam Aft, *Fighting the Food Crisis: Feeding Africa One Family at a Time*, 32 ENVTL. L. & POL'Y J. 131, 171 (2008). Boudreaux and Aft note:

For at least three reasons, reducing trade barriers between African nations could help with problems of food insecurity while also expanding markets for smallholders. First, as noted in *Reaching for the Poor*, reducing trade barriers would allow those farmers better able to grow needed crops to ‘respond to structural deficits in neighboring countries.’ Next, in some countries, areas with good agricultural potential are closer to markets in neighboring countries than to large domestic markets, thus making trade across borders a better option (if tariff rates were lower). Finally, if one country experiences a drought or other crisis that limits food supplies, lower tariff barriers would allow producers in other countries to more easily meet the affected country’s food needs.

Id.