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UPDATE ON WTO AGRICULTURAL NEGOTIATIONS AND REGIONAL TRADE AGREEMENTS

I. Introduction

1. The provision of an update on the WTO negotiations on agriculture and Regional Trade Agreements is a regular item on the agenda of the CCP in view of the importance that the Committee attaches to trade issues in the context of agricultural development and food security. This document provides an update on developments since the Seventieth Session of the CCP, focusing on the outcomes of the Tenth WTO Ministerial Conference held in December 2015 in Nairobi. It also briefly explains the treatment of agriculture in Regional Trade Agreements, focusing on the recent Trans-Pacific Partnership (TPP). In the concluding section, it highlights the Secretariat's activities in supporting the formulation and implementation of trade related agreements.

II. Update on the WTO Negotiations

2. Following the strategy adopted at the Ninth Ministerial Conference of 2013, WTO members identified a small package of “doable” issues for the Nairobi Ministerial Conference that concluded on 19 December 2015. This resulted in the successful conclusion reflected in the issuance of a Ministerial Declaration and, among others, four agriculture-related ministerial decisions on: Export Competition, Public Stockholding for Food Security Purposes, Special Safeguard Mechanism for Developing Countries and Cotton.

Nairobi Ministerial Declaration (NMD)

3. In the NMD, WTO members acknowledged their disagreement on the continuity of the Doha Round mandate, stating that while many members reaffirmed the Doha Agenda, others believed that new approaches were necessary to achieve meaningful results. While it was recognized that the members did not share the same views on whether the work should be carried out on the basis of the Doha structure, a strong commitment to advance negotiations on the remaining Doha issues, including all three pillars on agriculture, was reaffirmed. The same stands for the centrality of development and the priority of the concerns and interests of the least developed countries (LDCs). The NMD also recognizes that some members wish to identify and discuss other negotiating issues in the WTO, provided that all members agree to launch such discussions.

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Export Competition

4. The Hong Kong Ministerial Declaration of 2005 foresaw the “parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect” by the end of 2013 and under the condition of achieving a final agreement in the Doha Round, which was launched in 2001. Due to the 2008 impasse in the negotiations, this promise was never carried out. However, the 2013 Bali Ministerial Declaration moved towards this direction as, in a political statement rather than in a binding decision, the members reaffirmed that the subject remained a priority in the negotiations and agreed to “exercise utmost restraint” in using any form of export subsidy. In the Nairobi Decision, adopted in December 2015 by consensus, Ministers agreed on the elimination of export subsidies according to a clear and non-conditional timetable as well as on disciplines on the three other issues of the Export Competition pillar: Export Credits, Food Aid and State Trading Enterprises (STEs).

Export subsidies

5. Export subsidies have been considered as one of the most trade-distorting instruments since the launch of the Doha Round. Their use has been significantly reduced during the last two decades due to the increase in international food prices, but also due to unilateral domestic policy reforms. Against this backdrop, the WTO members agreed in Nairobi that developed members shall immediately eliminate their export subsidies, while the developing ones would have to do so by the end of 2018 (end of 2016 for cotton). The European Union out-of-quota sugar exports, notified as quantities benefitting from export subsidies, are permitted with respect to the existing programme expiring on 30 September 2017. A longer transition period (end of 2020) is provided for the elimination of the export subsidies on processed products, swine meat and dairy products by those developed countries that have notified subsidized exports of these products in their last three notifications to the WTO before the adoption of the Decision. The relevant provision for developing members extends the transition period to the end of 2022 and covers the whole range of product groups included in each member’s export subsidies commitments. Furthermore, the Decision provides for an extended 2023 deadline for the use of Article 9.4 of the Agreement on Agriculture, which includes temporary exceptions for developing countries, allowing them to subsidize marketing, including handling and upgrading as well as internal or international transportation. LDCs and net food-importing developing countries (NFIDCs) get additional flexibility and will have the right to use Article 9.4 export subsidies until the end of 2030.

Export Credits, Export Guarantees or Insurance Programmes

6. The decision outlines that the Maximum Repayment Period (MRP) of this type of support cannot exceed 18 months. This discipline shall apply from the end of 2017 for developed members, while developing countries are initially entitled to an MRP of 36 months, gradually reduced to 18 months over a four-year phase-in period. Special and differential treatment is also included for exports to LDCs, NFIDCs and additional nine Small and Vulnerable Economies (SVEs), comprising an allowance of an MRP ranging from 36 to 54 months, for the acquisition of basic foodstuffs, with the possibility of extending this timeframe under exceptional circumstances (including some specific provisions for Cuba).

International Food Aid

7. The main objective of the food aid provisions is to prevent or minimize the potential for food aid to displace trade and domestic and/or regional production. The decision contains general commitments (i.e. to maintain adequate level of international food aid, to take account of the interests of the recipients and to not unintentionally impede the delivery of food aid in emergency situations) and specific commitments (international food aid to be needs-driven, in fully grant form, not tied to commercial exports or linked to market development objectives and not to be re-exported, with well justified exceptions on the latter). Monetization, the most controversial issue in the run-up to the Nairobi Conference, is allowed when there is a demonstrable need for it or to redress food deficit

requirements and/or insufficient agricultural production situations in LDCs, NFIDCs and nine SVEs. A number of specific requirements and conditions apply.

State Trading Enterprises (STEs)

8. The decision mandates that the operation of members' STEs should not circumvent any other disciplines of the decision. However, it only refers to the best endeavour to ensure that the use of export monopoly powers by the STEs is exercised in a manner that minimizes trade distortions.

Public Stockholding for Food Security Purposes (PSH)

9. Prior to the Conference, the G-33¹ submitted a proposal to add a new Annex to the Agreement on Agriculture, giving coverage to developing members and LDC's current and future public stockholding programmes. A counterproposal submitted by Australia, Canada and Paraguay suggested that the previously adopted Peace Clause would be the basis of negotiations for agreeing on a permanent solution. The final decision commits the members to engage constructively in finding a permanent solution in an accelerated period, distinct from the Doha agricultural negotiations. It essentially reaffirms the Bali Decision of 2013 and the WTO General Council Decision of 2014, which foresee, as a Peace Clause, that Members shall refrain from challenging, through the WTO Dispute Settlement Mechanism, compliance of a developing Member with its obligations in relation to trade distorting domestic support to staple food crops through existing public stockholding programmes for food security purposes. The Decision also reaffirms that the negotiations on this issue shall be held in dedicated sessions of the WTO Committee on Agriculture in Special Session in an accelerated timeframe.

Special Safeguard Mechanism (SSM) for Developing Members

10. The G-33, the main petitioner on this, submitted two revised proposals in the run-up to the Nairobi Conference, alluding to exploring a similar approach to the existing Special Agricultural Safeguard (SSG)². However, the disagreements among the WTO members remained, and it was not possible to find a balance between the flexibilities in market opening and sufficient disciplines within the SSM. The final Decision reaffirmed that developing countries would have the right to have recourse to the SSM, as envisaged in the Hong Kong Ministerial Declaration, and agreed to pursue negotiations on an SMM for developing country members in dedicated sessions of the WTO Committee on Agriculture in Special Session.

Cotton

11. Prior to the Nairobi Conference, the C4 countries (Benin, Burkina Faso, Chad and Mali) who launched the cotton initiative in 2003, tabled a draft decision proposing the elimination of trade-distorting domestic support as well as of the production-limiting "blue box" in different timeframes for developed and developing countries. In addition, duty-free and quota-free (DFQF) market access to LDC cotton exports and elimination of the cotton export subsidies were suggested. The final Decision does not foresee any concrete action on domestic support; however, it acknowledges the need for further work and transparency. On export competition it states that developed members will have to immediately prohibit cotton export subsidies, while developing members have until the end of 2016 to do so. On market access, the decision is specific to LDCs and calls upon developed and developing countries declaring themselves in a position to do so, to grant DFQF access for LDCs' cotton and cotton-related products listed in the annex to the Decision, as of 1 January 2016, "to the extent provided in their respective preferential trade agreements".

¹ A coalition of developing countries with large populations of smallholders' farmers.

² Art. 5 of the Agreement on Agriculture

Follow-up to the Nairobi Conference³

12. Currently, in their Geneva discussions, WTO members are reflecting on the Nairobi Ministerial Declaration and exploring the possibility of new issues to be introduced and new approaches to be followed in the negotiations. Trade & investment and e-commerce are issues that have been put forward, while at the same time discussions within the existing Doha negotiating fora on agriculture-related issues are on-going. Domestic support seems to be a clear priority, while, at the same time, the idea of “cutting water”, i.e. narrowing the gap between bound and applied levels, in both market access and domestic support has been introduced in the discussions.

13. Meetings were also held on public stockholding and SSM, as mandated by the relevant Nairobi Ministerial Decision, but no progress has been reported yet. The members are also discussing the implementation of the Nairobi Decision on Export Competition, in particular concerning the update of the tables of commitments (“schedules of commitments”).

III. Agriculture in Regional Trade Agreements (RTAs)

14. Setting up a Free Trade Area (FTA) would seem to be in contrast to the WTO’s fundamental principle of equal treatment for all trading partners (“most-favoured-nation”). However, Article 24 of the General Agreement on Tariffs and Trade (GATT) allows RTAs as a special exception, under the condition that barriers are not being raised on trade with countries outside the FTA. As the number of RTAs has expanded from less than 20 in 1990 to 267 that are currently in force, the share of global trade taking place through bilateral and regional agreements has increased substantially. Traditional RTAs are typically developed among natural trading partners such as neighbour or historically linked countries. However, this has been changing rapidly, with new approaches such as RTAs among countries from different continents as well as mega RTAs. Concluding the so-called “mega-regionals” should raise this share further.

15. The TPP, the Transatlantic Trade and Investment Partnership (TTIP) between the European Union and the United States of America, and the Regional Comprehensive Economic Partnership (RCEP)⁴, joining the Association of Southeast Asian Nations (ASEAN) with other regional partners, would together represent over three quarters of global gross domestic product (GDP) and two thirds of world trade⁵.

16. By limiting the number of parties involved and focusing on their strategic areas of interest, RTAs tend to go deeper in trade and economic integration provisions, with significant benefits derived from removal of non-tariff barriers, harmonizing standards and facilitating trade, rather than reducing tariffs and other formal market access barriers alone.

17. Regarding the treatment of agriculture, RTAs are generally “WTO-plus” on tariff reduction. However, sensitive subsectors, such as dairy, meat, sugar and cereals, often receive exemptions from liberalization and have tariff-rate quotas applied to regulate import levels. While domestic support commitments and agricultural safeguards have usually been avoided, prohibition of export subsidies is often included. In general, RTAs also deal with the issue of sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT) and often contain deeper commitments than those currently

³ This reflects the status at the time of writing (early July). The Committee will be updated on any developments during the presentation of this paper.

⁴ The ten members of the ASEAN (Brunei, Myanmar, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand and Vietnam) and the six states with which ASEAN has existing FTAs (Australia, China, India, Japan, South Korea and New Zealand).

⁵ K. Ash, and I. Lejarraga, 2014 “Can We Have Regionalism and Multilateralism?” in R. Meléndez-Ortiz, C. Bellmann and J. Hepburn, eds. (2014) *Tackling Agriculture in the Post-Bali Context*. International Centre for Trade and Sustainable Development (ICTSD), Geneva, Switzerland

covered in the respective WTO agreements. Complex provisions on Rules of Origin (RoO) usually apply, determining the eligibility for preferential tariffs.

18. The TPP, which was signed by the twelve Pacific Rim countries on 4 February 2016 is set to become the largest and most comprehensive regional free trade agreement yet, bringing together Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States of America and Vietnam. TPP members have a combined population of 810 million and GDP of USD 28 trillion, which accounted for roughly 11 percent of global population and close to 40 percent of global GDP in 2014.

19. The TPP sets out an ambitious plan for trade and investment liberalization and establishes new disciplines beyond those contained in the WTO agreements. Agriculture is covered in a number of chapters concerning market access (tariff reductions and elimination, higher tariff-rate quotas, safeguards, export disciplines, agricultural biotechnology), RoO, SPS, TBT, intellectual property, (in particular geographical indications, GIs) and export competition (rules on export restrictions, export subsidies, export credits and STEs).

20. Many of the TPP provisions, particularly on non-tariff measures, aim to develop systems and procedures mainstreaming principles of transparency, information exchange and bilateral communication to limit possible trade distortions and resolve trade issues bilaterally. The agreement also affirms consensus of TPP members to work together in the WTO to reach agreements on specific issues.

21. Unlike the TPP, the negotiating process concerning the TTIP is still ongoing. In an effort to limit the number of outstanding issues, the two concerned parties (the United States of America and the European Union) are working on the submission of textual proposals and on their consolidation for as many topics as possible, including those related to agriculture such as market access, rules of origin, regulatory coherence etc.

22. Similarly to the TTIP, the members involved in the RCEP are holding rounds of in-depth discussions trying to bridge their differences *inter alia* on issues related to agriculture such as market access and SPS/TBT.

IV. FAO technical assistance on trade agreements

23. A key objective of FAO's work on trade agreements under Strategic Programme 4 is to support countries' effective formulation of trade policies and participation in trade negotiations through the provision of the evidence base, capacity development, and facilitation of fora for dialogue.

24. Following the publication in December 2015 of FAO's flagship report *The State of Agricultural Commodity Markets (SOCO)*, dedicated to the theme of trade and food security, the Secretariat is conducting analysis on different issues related to the relationship between trade and food security and nutrition, the linkages between trade and decent rural employment, WTO negotiations, and the TPP.

25. FAO also provides technical support to strengthen national and regional capacities to deal effectively with the challenges posed for agriculture by greater trade integration. In Europe and Central Asia region, capacity development is delivered through the Regional Initiative on Agri-food Trade and Market Integration. Examples of results include some 400 participants from government, academia and private sector completing facilitated e-learning courses on trade rules for agriculture, including WTO accession issues. In Africa, capacity development activities are targeted to strengthening the efforts of governments to increase policy coherence for mainstreaming trade, agriculture and food security agendas.

26. Dialogue events on key multilateral and regional trade issues influencing agriculture and food security are organized regularly in collaboration with Geneva-based agencies and country groups. The

Secretariat also organized working sessions at the annual WTO Public Forum on issues related to trade disputes on agriculture and on the challenges that smallholder farmers face when dealing with new and arising trade and market-related challenges.