

**A Critical Analysis of the World Trade Organization Ministerial Decision on Public
Stockholding Programs**

by

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Abstract

This thesis analyzes the World Trade Organization (WTO)'s recent *Ministerial Decision on Public Food Stockholding Programs* (the Ministerial Decision). I argue that the Ministerial Decision does not provide sufficient policy space for the WTO's developing Members to protect their food producers and consumers from dependency on foreign imports and volatile international food prices. Referring to recent policies initiated by the Government of India, I interpret the restrictive terms of the Ministerial Decision as a concession to the economic elite in developing countries, rather than an indication that the WTO's developing Members are incapable of promoting their non-trade interests within the organization. This research speaks to the status of developing Members and non-trade concerns within the WTO, and can be situated within the broader ongoing debate between food sovereignty and food security.

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Acronyms

AAJ	Antyodaya Anna Yojana
ADM	Archer Daniels Midland
AMS	Aggregate Measure of Support
AoA	Agreement on Agriculture
APL	Above Poverty Line
BPL	Below Poverty Line
CIP	Consumer Issue Price
EU	European Union
FAO	Food and Agricultural Organization of the United Nations
GATT	General Agreement on Tariffs and Trade
GOI	Government of India
IMF	International Monetary Fund
MOFPI	Ministry of Food Processing Industries
MSP	Minimum Support Price
NFSA	National Food Security Act
OECD	Organization of Economic Cooperation and Development
PDS	Public Distribution System
SAP	Structural Adjustment Program
TFA	Trade Facilitation Agreement
TWAIL	Third World Approaches to International Law
UN	United Nations
US	United States of America
USD	US Dollars
WTO	World Trade Organization

Chapter 1: Introduction

In this thesis I explore whether the World Trade Organization (WTO) allows developing countries¹ the necessary policy space to protect consumers from dependence on foreign food supplies and volatile international food prices. To accomplish this, I analyze the WTO's recent *Ministerial Decision on Public Food Stockholding Programs* (the Ministerial Decision), which was negotiated at the Ninth Ministerial Conference held in Bali from the 3rd to the 6th of December, 2013.² The Ministerial Decision protects certain developing Members from being challenged at the WTO for exceeding the *Agreement on Agriculture* (AoA)'s³ domestic support reduction requirements. Specifically, the Decision provides protection for those who exceed their reduction commitments due to the expenditures associated with public stockholding programs that purchase food at administered prices.⁴

My analysis focuses on the process of negotiations leading up to the Ministerial Decision, as well as the political action taken by India (one of the Decision's most

¹ The term “developing countries” has often been used to describe nations situated in the Southern portion of the globe that have not achieved the same degree of material prosperity as “developed” or “Western” societies. Terms such as “developing countries” or “third world countries” have been criticised for promoting a false binary between rich and poor countries, obscuring meaningful differences that exist within and between different “developing” countries, and reinforcing an ethnocentric and linear model of social progress (see Jane Parpart and Henry Veltmeyer, “The Development Project in Theory and Practice: a Review of its Shifting Dynamics” (2004) 25(1) *Canadian Journal of Development Studies* 39, and Vicky Randall, “Using and abusing the concept of the Third World: geopolitics and the comparative political study of development and underdevelopment” (2004) 25(1) *Third World Quarterly* 41). Although I recognize the problems associated with relying on the terms “developed” and “developing” countries, I have chosen to make use of them throughout this thesis. I have chosen to do so for two reasons. First, I have yet to find a label that will allow me to differentiate between developing and developed countries while simultaneously capturing the differences that exist between different developing countries, and the similarities between developed and developing nations. Second, these terms are used in official WTO documents, and using them herein enhances the clarity of my arguments.

² WTO, *Public Stockholding for Food Security Purposes*, WTO MIN Dec L/913 9th MC (2013) online: WTO <https://www.wto.org/english/thewto_e/minist_e/mc9_e/balipackage_e.htm> [hereinafter the Ministerial Decision].

³ WTO, *Agreement on Agriculture: 1994* (Marrakesh: WTO, 1994) online: WTO <https://www.wto.org/english/docs_e/legal_e/legal_e.htm> [hereinafter AoA].

⁴ *Ibid*, para 2.

prominent proponents) after the Decision was negotiated. I aim to reveal the internal political tensions shaping India's negotiating position at the WTO. I demonstrate that India's negotiating position was shaped by three main interest groups: social activists, who advocate for food subsidies; India's influential farm lobby, which has traditionally pressured the government to increase the price at which foodgrains for the country's public stockholding program are purchased; and, corporate food producers, retailers, traders, and processors (both foreign and domestic) who seek to expand their global market share.

At face value, the Ministerial Decision appears to be a concession to both India's social activists and their farm lobby. It also presents an example of the WTO's capacity to accommodate the non-trade interests of developing Members. I propose, however, that the contents of the Ministerial Decision will do little to increase the policy space available to developing Members seeking to promote access to food. Furthermore, the domestic political developments that have taken place in India since Bali bring in to question whether the Decision was ever truly intended to make meaningful changes to the terms of the AoA. Combining an analysis of the terms of the Ministerial Decision with a discussion on the domestic political developments in India since the Bali negotiations, I demonstrate that the Decision is part of a wider effort to appeal to the interests of corporate food producers, retailers, traders, and processors.

1.1. Background: Developing Countries, the WTO, and Agriculture

Since coming into force in 1995, the WTO has been described by some as a momentous step toward a more democratic, rule-oriented framework for the regulation of

international trade.⁵ Others, however, have countered that the WTO is dominated by wealthy developed Members whose influence over the negotiation and dispute settlement processes marginalizes developing Members and stifles attempts to have non-trade values represented within the organization.⁶ Some emerging economic powers, such as India, China, and Brazil, have demonstrated the capacity to challenge powerful Members, such as the United States of America (US) and the European Union (EU).⁷ Although these emerging economies have been able to advance some of their interests through the WTO's dispute settlement process and during WTO negotiations, the implications of their success for other developing countries, and for marginalized populations within these emerging economies is not yet clear.⁸

The WTO regulations surrounding the regulation of trade in agriculture have been especially controversial.⁹ By restraining the capacity of the state to protect small producers, the liberalization of the agricultural sector allowed multinational corporate firms to gain an even greater portion of the global market share in production.¹⁰ Large agricultural firms have integrated horizontally and vertically to such an extent that over 70 percent of all farm inputs are produced by just six transnational corporations, and four

⁵ Arie Reich, "From Diplomacy to Law: The Judicialization of International Trade Relations" (1996-97) 17 *NW Int'l L & Bus* 775, at 801.

⁶ Keisuke Iida, (2004) "Is WTO Dispute Settlement Effective?" 10 *Global Governance* 207, at 216-217; Asif H. Qureshi, "Participation of Developing Countries in the WTO Dispute Settlement System" (2003) 47 *J. Afr. L.* 174, at 178-179; Kent Jones, "Green Room Politics and the Crisis of Representation" (2009) 9:4 *Progress in Development Studies* 32.

⁷ Kim Burnett & Sophia Murphy, "What place for international trade in food sovereignty?" (2014) 41:6 *Journal of Peasant Studies* 1065, at 1076-1077.

⁸ Timothy Stostad, "Trappings of Legality: Juridicalization of Dispute Settlement in the WTO, and its Impact on Developing Countries" (2006) 39 *Cornell International Law Journal* 811, at 812-813.

⁹ Nilson de Paula & Huàscar Pessali, "Agricultural Trade Negotiations and the Challenges for Food Security" (2014) 3:3 *Agrarian South Journal of Political Economy* 313, at 314.

¹⁰ *Ibid* at 328.

control over 80 percent of the global grain trade.¹¹ These aspects of economic liberalization proved especially damaging for many of the WTO's developing Members.¹² The flood of cheap, mass-produced food that entered their markets encouraged Western consumption habits, and deepened dependency on foreign food supplies.¹³ In turn, dependency on foreign food supplies made people in developing countries vulnerable to fluctuations in the price of food on the international market.¹⁴

For the above reasons, the WTO's regulation of trade in agriculture and its implications for developing Members has been one of the main points of contention during the WTO's Doha Round of negotiations.¹⁵ Even after more than thirteen years of negotiations, however, little progress has been made towards providing developing Members with more policy space to protect their citizens from dependency on foreign food and exposure to volatile international food prices.¹⁶

1.2. Food Sovereignty and Market-Oriented Food Security Solutions

The debate surrounding the regulation of trade in agriculture is not confined to WTO negotiations. One of the most prominent challenges to the WTO's regulations governing trade in agriculture has come from the food sovereignty movement. The food sovereignty movement has been highly critical of claims made by the economists working for the WTO, IMF, and World Bank, which suggest that the liberalization of trade in agriculture is an important component of the global effort to eradicate hunger.¹⁷

¹¹ *Ibid*; Cargill, Archer Daniels Midland (ADM), Bunge, and Louis Dreyfus. I will discuss these firms in greater detail in Chapter 6.

¹² *Ibid*.

¹³ *Ibid*.

¹⁴ *Ibid*.

¹⁵ *Ibid*.

¹⁶ *Ibid*.

¹⁷ Lucy Jarosz, "Comparing Food sovereignty and Food Security Discourses" (2014) 4:2 Dialogues in Human Geography 168, at 169-171.

These claims are supported by the same theory underlying the liberal policies of the WTO: comparative advantage.¹⁸ In Chapter 3, as part of my analysis of the intellectual and political origins of the WTO, I will explain the concept of comparative advantage in greater detail. For now, it is useful to briefly note that the theory of comparative advantage suggests that ‘free trade’, understood as the lowering or elimination of trade barriers such as tariffs, encourages countries to concentrate on what they can produce best, and to exchange these goods for those products produced best by other countries.¹⁹ This is said to promote economic growth by shifting productive activities to where they will be most efficient and profitable.²⁰ It is also intended to increase the availability of affordable, quality goods by ensuring that producers are making “the best products, with the best design, at the best price.”²¹

By applying the principle of comparative advantage to the production of food, economists working for the WTO, IMF, and World Bank have been able to situate trade liberalization as a means to improve food security.²² They have proposed that trade liberalization will encourage countries to focus their efforts on producing the foods that

¹⁸ WTO, *Understanding the WTO: Basics: The case for open trade*, online: <https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact3_e.htm> accessed 2015-08-16.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² See: WTO (2015) World Food Summit: Trade liberalization and food security, online: <https://www.wto.org/french/news_f/news02_f/speech_rodriguez_mendoza_11june02_f.htm> [WTO, Deputy Director General’s Remarks] accessed 2015-06-12; Clem Boonekamp, “Food Security and the World Trade Organization” in Gibson & Fouad, *supra* note 4, 135 at 135-137, 150 in Ian Gillson & Amir Fouad, eds, *Trade Policy and World Security: Improving Access to Food in Developing Countries in the Wake of High World Food Prices* (Washington, DC: World Bank, 2015), online: <openknowledge.worldbank.org/handle/10986/20537>; Marcos Ivanic and Will Martin, “Ensuring Food Security” (2008) 45:4 Finance and Development 37, at 38. The definition of food security adopted by the WTO states: “When the nutritional needs of a country or population are met consistently.” The WTO is clear to emphasize that “‘Food security’ and ‘self-sufficiency’ are not the same, and a key debate is whether policies aiming for self-sufficiency help or hinder food security.” (WTO, *Glossary Term: Food Security*, online: <https://www.wto.org/english/thewto_e/glossary_e/food_security_e.htm> accessed 2015-08-14).

they can grow most efficiently.²³ In turn, this is predicted to cause global food production to climb and the price of food to fall, thereby increasing the accessibility and availability of food.²⁴ It is also suggested that, by facilitating imports, trade liberalization helps reduce the risk that domestic production shortfalls will impact the ability of people in the affected area to access food.²⁵ The liberalization of trade in agriculture is predicted to come with some short-term negative consequences, such as unemployment and high, volatile food prices; however, these are presented as temporary hurdles that are far outweighed by the long-term net benefits of free trade.²⁶ To mitigate these unintended consequences of trade liberalization, governments are encouraged to implement social safety net programs.²⁷ To maximize the benefits of trade liberalization, it is stated that safety net programs should be targeted only to the poor and vulnerable in order to minimize their trade-distorting effects.²⁸

Food sovereignty proponents do not necessarily dispute the validity of the economic insights that inform the position of the WTO, IMF, and World Bank.²⁹ However, they contend that the merits of economic policies based on theories such as comparative advantage cannot be approached in isolation of the historical inequalities that shape the societies in which they are implemented.³⁰ The food sovereignty movement argues that the market-oriented solutions promoted by the WTO, IMF, and

²³ WTO, Deputy Director General's Remarks, *supra* note 22; Ivanic and Martin, *supra* note 22 at 38; Boonekamp, *supra* note 22 at 136.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Ivanic and Martin, *supra* note 22 at 39.

²⁷ *Ibid.*; see also: Boonekamp, *supra* note 22 at 137.

²⁸ *Ibid.*

²⁹ Philip McMichael, "A food regime analysis of the 'world food crisis'" (2009) 26 *Agricultural and Human Values* 281, at 283, 288; Francisco Menzes, "Food Sovereignty: A vital requirement for food security in the context of globalization" (2001) 44:4 *Development* 29, at 31.

³⁰ *Ibid.*

World Bank privilege efficiency and productivity over sustainability and access to locally produced food.³¹ Positioning trade liberalization as a solution to undernourishment is said to sidestep broader questions of economic, political, and social inequality, ecological sustainability, and the value of maintaining the cultural practices and relations sustained by traditional agrarian lifestyles.³² Food sovereignty advocates suggest that encouraging developing countries to import staple foods and concentrate on the mass-production of export-oriented crops has imperiled smallholder production, contributed to dependency on foreign food supplies, and fostered a reliance on the “the modernist industrial model of agriculture.”³³

Rather than turning to market-based solutions to hunger, the food sovereignty movement seeks to promote local control over agricultural production. To do so, it aims to empower small, family driven producers and “implies new social relations free of oppression and inequality between men and women, peoples, racial groups, social classes and generations.”³⁴ The food sovereignty movement focuses on the conditions by which food is produced and distributed, and the social and environmental relationships that are both constituted by and constitutive of these conditions.³⁵ The movement seeks to dismantle the asymmetrical political power relations that sustain the predominance of

³¹ Jarosz, *supra* note 17 at 169-171; Amy Trauger, “Toward a political geography of food sovereignty: transforming territory, exchange, and power in the liberal sovereign state” (2014) 41:6 *Journal of Peasant Studies* 1131, at 1134.

³² Jarosz, *supra* note 17 at 169-171.

³³ Trauger, *supra* note 31 at 1134.

³⁴ Raj Patel, “What Does Food Sovereignty Look Like?” (2009) 36:3 *The Journal of Peasant Studies* 663, at 666.

³⁵ Marc Edelman, “Food Sovereignty: Forgotten genealogies and regulatory challenges” (2014) 41:6 *The Journal of Peasant Studies* 959, at 965.

state-sponsored corporate agriculture,³⁶ and pushes for a sustainable food system, managed by land *users* (not owners).³⁷

While the Ministerial Decision does offer some additional policy space for developing countries to protect their producers and consumers from volatile international food prices, I argue that it falls short of the holistic approach advanced by the food sovereignty movement. As will be discussed in detail in Chapter 5, the Ministerial Decision contains several limitations that ensure that its provisions only apply to programs that provide relief to consumers who would otherwise not be able to access food on the market. These limitations are evidence that the Ministerial Decision is informed by the same economic logic underlying the WTO. Instead of allowing developing countries a wide berth to tackle the social, economic, and political inequalities that influence access to food, the Ministerial Decision seems primarily designed to minimize the impact that public stockholding programs have on trade.

1.3. The World Food Price Crisis of 2007-2008

The dangers of dependence on foreign food supplies were underscored by the world food price crisis of 2007-2008.³⁸ Between 2007 and 2008, the price of basic food commodities on the international market climbed drastically.³⁹ This caused the price of

³⁶ Patel, *supra* note 34 at 667.

³⁷ Phillip McMichael, "Historicizing Food Sovereignty" (2014) 41:6 *The Journal of Peasant Studies* 933, at 936.

³⁸ De Paula and Pessali, *supra* note 9 at 328.

³⁹ Anuradha Mittal, "The 2008 Food Price Crisis: Rethinking Food Security Policies" (2009) United Nations Centre for Trade and Development (UNCTAD) G-24 Discussion Paper Series No.56, online: unctad.org; FAO, *The State of Food Insecurity in the World 2008: High food prices and food security – threats and opportunities* (2008) at 8-9. [FAO, "SOFI 2008"]; Department of Economic and Social Affairs, *The Global Social Crisis: Report on the World Social Situation 2011*, UNESAOR, ST/ESA/334, at 62-74. [DESA]; Organization of Economic Cooperation and Development (OECD), *Rising Food Prices: Causes and Consequences* (2008), at 3, figure 1; according to the OECD, during this period the price of rice increased by roughly 100 US dollars per ton (USD/t); the price of oilseeds rose by roughly 150 USD/t; the price of wheat by roughly 130 USD/t, and the price of coarse grains by roughly 170 USD/t.

food to increase by nearly 100 percent worldwide.⁴⁰ During the food price crisis, there was always enough food to feed the entire planet.⁴¹ However, because hundreds of millions of people across the world spend a significant portion of their income on food, cooking oil, and cooking fuel,⁴² high food prices pushed many people deeper into poverty and effectively prevented them from purchasing enough food to meet their basic caloric requirements.⁴³ Between 2005 and 2007, the number of undernourished people climbed from 848 to 923 million.⁴⁴ By 2009, the number of undernourished people increased to 1.023 billion.⁴⁵

1.4. The World Food Price Crisis and Public Stockholding Programs

The causes of the aforementioned price spikes and the relationship between the WTO's agricultural regulations and the world food price crisis will be discussed in greater detail in Chapter 4. For now, it is important to note that the spikes in international food prices and the ensuing boom in global undernourishment put the issue of public food stockholding programs in the spotlight during WTO negotiations.⁴⁶ Stockholding programs are often used to support poor rural farmers, to provide food to the poor, and to

⁴⁰ *Ibid.*

⁴¹ FAO, *High Food Prices: the food security crisis of 2007-2008 and recent price increases: Facts and lessons* (2011) [FAO, "Facts and Lessons 2011"].

⁴² Panagiotis Karfakis et al., "Impact of increasing prices of agricultural commodities on poverty" (2011), United Nations Agricultural Economics Division and the FAO, Working Paper No.11-1, at 8-9 online: <<http://www.fao.org/3/a-am320e.pdf>>.

⁴³ DESA, *supra* note 39 at 63.

⁴⁴ FAO, *The State of Food Insecurity in the World 2010: Addressing food insecurity in protracted crisis* (2010) at 8-9. [FAO, "SOFI 2010"].

⁴⁵ *Ibid* at 8-9.

⁴⁶ Raul Montemayor, "Public Food Stockholding for Food Security Purposes: Scenarios and Options for a Permanent Solution" (2014) International Centre for Trade and Sustainable Development Issue Paper No. 51, at 4, online: <<http://www.ictsd.org/sites/default/files/research/Public%20Stockholding%20for%20Food%20Security%20Purposes%20Scenarios%20and%20Options.pdf>>.

serve as a buffer against international shocks to food prices.⁴⁷ The use of stockholding programs is regulated by the AoA, and even prior to the crisis these regulations were the subject of negotiations within the WTO.⁴⁸

The regulations related to food stockholding programs are located in Annex 2(3) and footnote 5 of the AoA. On November 20th, 2002, the African Group presented a proposal to the WTO Committee on Agriculture requesting that footnote 5 of the AoA be amended to allow developing countries to provide an unlimited amount of support to local producers *via* public stockholding programs.⁴⁹ This issue was revisited several times by the Committee on Agriculture between 2002 and 2008, but no satisfactory long-term solution was found.⁵⁰

In November of 2012, the G-33⁵¹ submitted another proposal to amend the AoA.⁵² They put forth that developing countries should be allowed to provide an unlimited amount of support to domestic farmers *via* public food stockholding programs, but suggested that this exemption would only apply to support provided to farmers living below the poverty line.⁵³ They also presented three interim solutions to stand in place while a permanent solution to the issue of public food stockholdings was being negotiated. First, they proposed that the date upon which the external reference price is

⁴⁷ OECD, Agro-food Trade and Markets Division Trade and Agriculture Directorate, *Review of Stockholding Policies*, OECD Global Forum on Agriculture: Issues in Agricultural Trade Policy (Paris: OECD, 2014) at 7 [OECD, Stockholdings].

⁴⁸ WTO, *Agriculture: Negotiations: Informal Meeting: Chair updates on farm issues proposed for Bali meeting: talks continue on key differences* (23 May, 2013), online: <https://www.wto.org/english/news_e/news13_e/agng_23may13_e.htm#proposal> [WTO, Informal Meeting] accessed 2015-07-13.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ According to the WTO, the G-33 is a group of 47 developing countries who have formed a coalition to advocate for flexibility for developing countries to “undertake limited market opening in agriculture.” For a list of WTO Members belonging to the G-33, see: WTO, *Groups in the Negotiations*, online: <https://www.wto.org/english/tratop_e/dda_e/negotiating_groups_e.htm> accessed: 2015-07-08.

⁵² WTO, Informal Meeting, *supra* note 48.

⁵³ *Ibid.*

currently based (1986-88) should be updated.⁵⁴ Second, they stated that the external reference price should be continuously amended to control for inflation.⁵⁵ Third, they supported establishing a temporary “peace clause” to protect developing Members whose support provided *via* stockholding programs caused them to exceed the domestic support reduction requirements established in the AoA from being challenged through the WTO’s dispute settlement process.⁵⁶

The G-33 proposal was the subject of negotiations during the WTO’s Ninth Ministerial Conference, held in Bali from the 3rd to the 6th of December 2013.⁵⁷ India was an especially strong proponent of amending the AoA’s regulation of public stockholding programs. The Government of India (GOI) maintains a public stockholding program that acts as a subsidy to both consumers and producers by purchasing food at administered prices (generally set above the market value of the product in question) and selling them at a subsidized rate to India’s largest food subsidy program, the Public Distribution System (PDS).⁵⁸ India’s public stockholding program will be discussed at length in Chapter 6. Here, I note some of the reasons that India was interested in pursuing an exemption for this program. In response to rising market prices and persistent pressure from India’s farm lobby, the GOI’s Department of Agriculture and Cooperation has steadily increased the support price paid to agricultural producers by its public

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ As will be discussed in Chapter 3, at page 36-37 of this thesis, the Ministerial Conference is one of two bodies with the authority to make decisions for the WTO. Ministerial Conferences also hold the exclusive authority to make amendments to existing WTO agreements.

⁵⁸ Vijay Paul Sharma, “Food Subsidy in India: Trends, Causes, and Policy Reform Options” (2012), Indian Institute of Management Ahmedabad, India, at 2-4 [Sharma, “Food Subsidy in India”] online: <<http://www.iimahd.ernet.in/assets/snippets/workingpaperpdf/5337679172012-08-02.pdf>>.

stockholding program.⁵⁹ Moreover, at the time of the Ministerial Conference, the GOI was in the process of developing legislation to expand the scope of the public distribution system that sells food purchased by the stockholding program at a subsidized price.⁶⁰ It has been reported that the reason that the GOI decided to negotiate an exemption for public food stockholding programs within the AoA is they feared that the rising MSP, coupled with the expansion of their public distribution system, would eventually cause them to exceed the *de minimus* limits established in Article 6(4)[b] of the AoA.⁶¹

As part of their strategy to negotiate an amendment to the AoA's regulation of public food stockholding programs, India refused to sign on to the Trade Facilitation Agreement (TFA).⁶² The TFA was the most prominent and ambitious objective on the agenda for the Bali Conference. It is designed to streamline the movement of goods across borders by setting limits to customs fees and requiring Members to take specific measures to promote transparency, coordination, and efficiency amongst customs agencies.⁶³ The WTO contends that the TFA will reduce the cost of trade by 10 to 15 percent worldwide, producing global economic benefits of \$400 billion to \$1 trillion

⁵⁹ Department of Food and Public Distribution [DFPD]: Ministry of Consumer Affairs, Food and Public Distribution, *Policy & FCI, Minimum Support Prices of Foodgrains*, (New Delhi: DFPD, 2014) online: DFPD <<http://dfpd.nic.in/?q=node/53>> accessed 2014-12-03; Christian Haberli, "After Bali: WTO Rules Applying to Public Food Reserves" (2014) Commodity and Trade Policy Research Division of the United Nations Food and Agricultural Organisation Working Paper No. 46, at 6, online: <<http://www.fao.org/3/a-i3820e.pdf>>.

⁶⁰ Sharma, Food Subsidy in India, *supra* note 58 at 2.

⁶¹ Haberli, *supra* note 59 at 6; see also: Rajanya Bose, "Why is India not Agreeing to the WTO Trade Facilitation Agreement" *DNA India* (1 August 2013), online: <<http://www.dnaindia.com/money/report-why-is-india-not-agreeing-to-the-wto-trade-facilitation-agreement-2005181>>.

⁶² Amy Kamzin, "US and India end WTO stand-off", *The Financial Times* (13 November 2014), online: <<http://www.ft.com/intl/cms/s/0/b0898366-6b0d-11e4-be68-00144feabdc0.html#axzz3KtPkBNlk>>

⁶³ WTO, "WTO: News Items 2013: 5-7 December 2013: Ninth Ministerial Conference: Days 3, 4 and 5: Round-the-clock consultations produce 'Bali Package'", online: <https://www.wto.org/english/news_e/news13_e/mc9sum_07dec13_e.htm> accessed: 2015-05-03.

annually.⁶⁴ The TFA is also significant for symbolic reasons, as it is the first agreement adopted by the WTO since its establishment in 1995.⁶⁵

India was unwilling to bend its resolve until it was finally offered a temporary exemption for its stockholding programs by way of the Ministerial Decision on Public Stockholding Programs.⁶⁶ The Ministerial Decision effectively provides certain public food stockholding programs that use administered prices with temporary immunity from challenges within the WTO,⁶⁷ and confers a requirement upon WTO members to negotiate a permanent solution to “the issue of public stockholding for food security purposes [...] by the 11th Ministerial Conference.”⁶⁸

1.5. Moving Forward

Prior to discussing the significance of the Ministerial Decision, I would like to introduce three questions related to whether the Decision will allow states sufficient policy room to protect their citizens from dependence on imported food and volatile international food prices. By engaging with these questions I will also be able to shed light on the Ministerial Decision’s potential implications for the status of developing Members and non-trade concerns within the WTO.

First, what does it do? What sort of policy space does the temporary exemption granted by the Ministerial Decision actually provide to developing Members?

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Robert Howse, “How India and the US Broke the WTO impasse-Without Either Making any Concessions” (15 November 2014) *International Economic Law and Policy Blog* (blog), online: <<http://worldtradelaw.typepad.com/ielpblog/2014/11/how-india-the-us-broke-the-wto-impasse-without-either-making-any-concessions.html>>.

⁶⁷ Ministerial Decision, *supra* note 2 at para 2

⁶⁸ *Ibid.*

Second, will it help? In what ways, if at all, does the policy space provided to developing Members by the Ministerial Decision allow them to take meaningful steps towards alleviating the problems associated with liberalization, such as dependency on foreign food and vulnerability to international price shocks? To answer this question, it is necessary first to provide a more comprehensive account of the WTO's regulation of the agricultural sector, and the impacts of WTO regulations on developing Members.

Third, whose interests does it serve? In order to determine why it was negotiated, and what implications it may have for the WTO's developing Members, it is important to explore the interests that motivated the GOI to negotiate the Ministerial Decision.

Answering these questions about the Ministerial Decision will allow me to provide a detailed discussion of its terms and to develop a critical interpretation of the interests underlying it. This knowledge will contribute to the wider engagement dedicated to exploring the status of the WTO's agricultural negotiations, including exploration of the status of developing Members and non-trade concerns within the WTO.

At face value, the Ministerial Decision seems to challenge both the critique that the WTO does not consider the needs of developing Members, and the notion that the WTO is not sensitive to non-trade concerns. The fact that the G-33 (led by India) was able to use the negotiations in Bali to advance their demands for greater policy space to administer food stockholding programs could indicate that the powerful Members of the WTO are open to compromise and are willing to accommodate the needs of developing countries. Further, that India and the G-33 decided to use these negotiations to increase the policy space available to them to provide food to their citizens appears to signal that the WTO can be a forum for Members to promote social, as well as economic interests.

Upon closer inspection, however, the situation appears more nuanced. The Ministerial Decision does give the WTO's developing Members some additional policy space to use public stockholding programs to purchase food from producers at administered prices.⁶⁹ This effectively allows them to increase the subsidies they provide to producers without worrying about being challenged within the WTO for exceeding their AoA reduction requirements. However, the Decision also contains several restrictions that limit this protection. I argue that these restrictions prevent developing Members from implementing programs that do not conform to the liberalizing agenda of the WTO, and will likely exclude some developing Members from the protection offered by the Ministerial Decision.⁷⁰ This brings in to question whether the Ministerial Decision will allow developing countries to address some of the problems associated with liberalization, such as dependency on foreign food and vulnerability to international price shocks.

To understand why the Ministerial Decision contains these restrictions, I will explore the domestic policy developments related to public stockholding programs in India, one of the Decision's main proponents. It has been proposed that the limitations of the Ministerial Decision can be attributed to the disproportionate influence held by wealthy developed Members of the WTO, especially the United States.⁷¹ While I do not disagree that this is a valid interpretation of the power-dynamics underlying the WTO, I suggest that it does not fully capture the interests at play during the Bali negotiations.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*; paragraph 2 stipulates that the Ministerial Decision only provides protection to "public stockholding programmes for food security purposes existing as of the date of this Decision."

⁷¹ Mary Louise F. Malig, *Big Corporations: the Bali Package and Beyond: Deepening TNCs gains from the WTO* (Transnational Institute & Serikat Petani Indonesia: 2014) at 19, online: <<https://www.tni.org/en/briefing/big-corporations-bali-package-and-beyond>>.

As discussed above, it has been proposed that the motivations underlying the GOI's decision to negotiate the Ministerial Decision relate to the rising MSP at which food for their stockholding program is purchased and to the expansion of the distribution system that provides subsidized food to their citizens.⁷² I contend that these developments are not the only factors shaping the GOI's position at the WTO. I argue that the GOI's negotiating position was motivated by their desire to manage several competing political interests, some of them unrelated to providing food to their citizens. Specifically, I maintain that recent attempts to transition away from providing subsidized food directly to their citizens, as well as their increasingly aggressive efforts to promote large-scale food production, processing, retail, and exports indicate that the GOI's negotiating position in Bali was also influenced by economic interests. This argument is further supported by the possibility that the restrictive conditions of the Ministerial Decision may ultimately benefit India's corporate food producers, processors, traders, and retailers.

⁷² Haberli, *supra* note 59 at 6; Bose, *supra* note 61.

Chapter 2: Methodology, Chapter Outlines, and Limitations

This Chapter is dedicated to explaining the methodology I use to approach my analysis of the Ministerial Decision. I also outline the different Chapters that comprise this thesis, describe the steps I will take to further contextualize the area of research in which my analysis of the Ministerial Decision takes place, and explain some of the limitations of this research.

2.1. Developing Countries and International Law: the TWAIL Perspective

For this thesis, I have drawn inspiration from the literature on Third World Approaches to International Law (TWAIL). From a methodological perspective, TWAIL is directly relevant to my project insofar as it highlights the importance of observing the domestic contexts that influence the positions of developing countries in international negotiations.⁷³

TWAIL is a mode of inquiry that approaches the study of international law by focusing on its effects on the developing world.⁷⁴ Those writing from the TWAIL perspective have proposed that international law is not equally representative of the various needs and interests of people across the globe. Researchers engaging with TWAIL generally recognize international law as being simultaneously based on and supported by a Western intellectual tradition that has attained a relatively hegemonic status.⁷⁵ They have proposed that nearly everything about international law – including its moral and logical basis as well as the language used to promulgate and justify it –

⁷³ Bhupinder Chimni, “The WTO, Democracy and Development: A View from the South” 261 in Carolyn D. Birbeck, ed., *Making Global Trade Governance work for Development* (New York: 2011), at 264 [Chimni, WTO Democracy and Development]. It is important to note that my reliance on TWAIL is more with respect to inspiration than a substantive set of research guidelines.

⁷⁴ Pooja Parmar, “TWAIL: An Epistemological Inquiry” (2008) 10 Intl Community L. Rev 363, at 365

⁷⁵ B.S Chimni, “Third world Approaches to International Law: A Manifesto” (2006) 8:3 Intl Community L Rev 3, at 15-16. [Chimni, “Manifesto”].

draws from an epistemic perspective that privileges empiricism, reason, and other products of Greco-Roman-Judeo-Christian philosophy.⁷⁶

TWAIL scholars recognize that international law is at the core of the global economy, and propose that it “defines the conditions in which international exchange is to take place.”⁷⁷ This argument is rooted in an observation that has long been broadcasted within the field of critical legal studies.⁷⁸ Critical legal scholars have proposed that markets cannot exist without rules that provide “generally understood and articulated expectations” to guide economic activity.⁷⁹ While some of the rules guiding commerce are created and maintained informally through “private economic relations of exchange”, many are formally established and enforced by states.⁸⁰

TWAIL scholars have argued that the legal rules shaping the global economy have been “designed to protect the corporate actor in the first world from efficient production abroad even as third world markets are being pried open for its benefit.”⁸¹ Authors writing from the TWAIL perspective do not, however, see the international marketplace simply as an imposition of the will of Western economic and political actors over the interests of governments and people in developing countries.⁸² Rather, they have proposed that the political and economic elite in developing countries are often beneficiaries and supporters of economic liberalization.⁸³ Accordingly, rather than presenting capitalism as a purely Western project of accumulation and domination,

⁷⁶ Radha D’Souza, “Imperial Agendas, Global Solidarities, and Third-World Socio-legal Studies: Methodological Reflections (2012) 49 *Osgoode Hall L.J.* 409, at 422.

⁷⁷ Chimni, Manifesto, *supra* note 75 at 10.

⁷⁸ D. Campbell and S. Picciotto, “Exploring the Interaction Between Law and Economics: the Limits of Formalism” (1998) 18 *Legal Studies* 249, at 265.

⁷⁹ *Ibid.*

⁸⁰ *Ibid* at 266.

⁸¹ Chimni, Manifesto, *supra* note 75 at 10.

⁸² Chimni, WTO Democracy and Development, *supra* note 73.

⁸³ *Ibid.*

TWAIL allows us to see ourselves as citizens of a global society that is increasingly structured according to rules that are written for an emerging “transnational capitalist class” (TCC).⁸⁴

The TWAIL literature also provides some specific commentary on the WTO. B.S. Chimni argues that the WTO places “the interest of global capital” ahead of the welfare of people in developing countries.⁸⁵ According to Chimni, there was much optimism that the WTO’s legal characteristics – particularly its dispute settlement process – would protect the interests of developing countries against unilateral action from more powerful Members.⁸⁶ He surmises that this expectation has not come to fruition, largely because developing Members often “lack the expertise and financial resources” to make effective use of the process.⁸⁷

For the purpose of this thesis, Chimni’s most important insights relate not to the discrepancies between developed and developing Members of the WTO, but to the role played by the TCC in structuring international organizations such as the WTO, IMF, and World Bank.⁸⁸ Chimni explains that the TCC’s interests do not always align with the marginalized citizens of the world,⁸⁹ and contends that domestic tensions between the TCC and marginalized groups often shape the approach taken by developing countries during WTO negotiations.⁹⁰ He states that the political influence exercised by the TCC ensures that the WTO is only likely to accommodate interests that align with “the larger

⁸⁴ *Ibid.*

⁸⁵ B.S. Chimni, “The World of TWAIL: Introduction to the Special Issue” (2011) 3:14 Trade, Law and Development 14, at 20.

⁸⁶ Chimni, Manifesto, *supra* note 75 at 13.

⁸⁷ Chimni, WTO Democracy and Development, *supra* note 73 at 267.

⁸⁸ *Ibid.*

⁸⁹ *Ibid* at 264.

⁹⁰ *Ibid* at 266.

goal of realizing its global interests in the realm of international finance and production.”⁹¹

To summarize: TMAIL is a school of thought that views international law as one of the tools used by a class of global elite to facilitate a neo-colonial capitalist project of accumulation.⁹² The insights provided by TMAIL scholarship have prompted me to take a closer look at the different interests at play in the negotiations surrounding the Ministerial Decision. Rather than framing the WTO as an exclusive instrument of the governments and corporations in developed countries, TMAIL has inspired me to explore how and why developing states are sometimes active participants in the expansion of corporate control over their agricultural sectors; a process that has contributed to the exploitation of some of the most vulnerable people living within their borders.

2.2. Exploring the WTO: Technical Details and Critical Insights

In Chapter 3, I provide needed context to the Ministerial Decision by introducing the reader to the WTO. Towards this end, I describe the historical development of the WTO and certain functional aspects of the organization; namely, the decision-making and dispute resolution processes. To provide this information, I refer to a selection of authoritative texts written by Trebilcock, Howse, and Eliason;⁹³ Lester, Mercurio, and Davies;⁹⁴ and, Arie Reich.⁹⁵ I also deliver a cursory analysis of the *Understanding on*

⁹¹ *Ibid.*

⁹² D’Souza, *supra* note 76 at 436; Chimni, Manifesto, *supra* note 75 at 7.

⁹³ Michael Trebilcock, Robert Howse & Antonia Eliason, *The Regulation of International Trade*, 4th ed (New York: Routledge, 2011) at 23-25 [Trebilcock et al.] .

⁹⁴ Simon Lester, David Mercurio & Arwel Davies, *World Trade Law*, 2nd ed (Oxford: Hart, 2012) at 33-34. [Lester et al.] .

⁹⁵ Reich, *supra* note 5 at 781-82.

Rules and Procedures Governing the Settlement of Disputes (DSU),⁹⁶ and the *Agreement Establishing the World Trade Organization* (WTO Agreement).⁹⁷

Then, I briefly discuss some of the prominent critiques of the WTO's dispute settlement and decision-making processes, with special emphasis on the effects of these aspects of the organization on developing Members. This research prefaces my discussion of the Ministerial Decision by demonstrating that, while some emerging powers (such as India, China, and Brazil) have been able to achieve a degree of success in WTO negotiations and the WTO's dispute resolution process,⁹⁸ many of the poorer developing countries remain marginalized within the organization.⁹⁹

Recent research indicates that the negotiating positions of these emerging economies are often influenced by domestic actors who are eager to reap the benefits of liberalization.¹⁰⁰ This finding corroborates Chimni's observations that concessions made to developing Members within the WTO often only come to fruition if they support the TCC's project of accumulation.¹⁰¹ Together, the TWAIL research and the critical scholarship on the WTO underscore the importance of the examining domestic interests influencing the Members of the WTO.

2.3. The WTO AoA: An Overview of the Terms and Critiques of the Agreement

Prior to my analysis of the Ministerial Decision, it is also important to provide some background information about the WTO's regulation of the agricultural sector. In

⁹⁶ WTO, *Understanding on Rules and Procedures Governing the Settlement of Disputes: 1994* (Marrakesh: WTO, 1994) [hereinafter DSU] online: WTO (Marrakesh: WTO, 1994) online: <https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm>.

⁹⁷ WTO, *Agreement Establishing the World Trade Organization* (Marrakesh: WTO, 1994) [hereinafter WTO Agreement] online: WTO <https://www.wto.org/english/docs_e/legal_e/legal_e.htm>.

⁹⁸ Burnett & Murphy, *supra* note 6 at 1076-1077.

⁹⁹ Stostad, *supra* note 8 at 812-813.

¹⁰⁰ Eugénia Da Conceição-Heldt, "Emerging Powers in WTO Negotiations: The Domestic Sources of Trade Policy Preferences" (2013) 27 *The International Trade Journal* 431, at 434.

¹⁰¹ Chimni, *WTO Democracy and Development*, *supra* note 73 at 466.

Chapter 4, I explain the WTO's role in regulating international trade in agriculture, with special emphasis on the AoA. I discuss the three pillars of the Agreement: market access reductions, domestic support reductions, and export competition reductions.

After providing an overview of the terms of the AoA, I summarize some of the critical legal scholarship on the Agreement. This discussion is informed chiefly by the works of Carmen Gonzalez¹⁰² and Penelope Simons.¹⁰³ To provide concrete examples of how people in developing countries were harmed by the conditions of the AoA, I will refer to several case studies conducted by Utsa Patnaik.¹⁰⁴

After discussing the terms of the AoA and the critical scholarship on the Agreement, I summarize some of the literature on the causes and consequences of the world food price crisis of 2007-2008. To do so, I refer primarily to research conducted by the Food and Agricultural Organization of the United Nations (FAO)¹⁰⁵ and the United Nations Department of Social and Economic Affairs,¹⁰⁶ and a research paper presented to the United Nations Centre for Trade and Development (UNCTAD) by Anuradha Mittal.¹⁰⁷

2.4. Analyzing the Ministerial Decision

In Chapter 5, I return the gaze of this thesis to the Ministerial Decision. To provide context to the Ministerial Decision, I will first describe the function and significance of

¹⁰² Carmen Gonzalez, "Institutionalising Inequality: the WTO Agreement on Agriculture, Food Security, and Developing Countries" (2002) 27 Colum J Envtl L 433.

¹⁰³ Penelope Simons, "Binding the Hand that Feeds Them: The Agreement on Agriculture, Transnational Corporations and the Right to Adequate Food in Developing Countries" in Wenhua Shan, Penelope Simons & Dalvinder Singh, eds, *Redefining Sovereignty in International Economic Law* (Oxford: Hart, 2008)

¹⁰⁴ Utsa Patnaik, ed., *The Republic of Hunger & Other Essays* (Monmouth: Merlin Press 2010).

¹⁰⁵ FAO, SOFI 2008, *supra* note 39.

¹⁰⁶ DESA, *supra* note 39.

¹⁰⁷ Mittal, *supra* note 39.

public food stockholding programs.¹⁰⁸ I then explain the AoA's regulations related to public stockholding programs.¹⁰⁹ After, I conduct a detailed analysis of the Ministerial Decision's contents. In this Analysis, I explain that the Ministerial Decision provides a temporary immunity from prosecution within the WTO for public stockholding programs in developing countries. This protection is, however, subject to several restrictions. I demonstrate that these restrictions make it so that the protection offered by the Ministerial Decision will not apply to all developing countries. Moreover, it may not even provide those who qualify for its protection with the policy space to take meaningful steps to lessen dependency on foreign food supplies or protect consumers from volatile food prices.

After analyzing the contents of the Ministerial Decision, I turn to the research of Mary Louise Malig to help explain whose interests it best represents.¹¹⁰ Malig has undertaken an extensive analysis of the Bali Conference, and her insights will help inform my exploration of the interests at play during the negotiations. While Malig does not dwell extensively on the Ministerial Decision, she provides an excellent analysis of the TFA.¹¹¹ Her analysis of the TFA explains that this Agreement was vigorously pursued by influential economic organizations.¹¹² She argues that large transnational corporations whose business operations extend across the globe are the most likely to benefit from the terms of the Agreement, which compels WTO Members to eliminate administrative and financial barriers within their customs processes.¹¹³ Malig contrasts the massive

¹⁰⁸ This aspect of my discussion will be informed by: OECD, Stockholdings, *supra* note 47.

¹⁰⁹ Specifically, I discuss Annex 2(3) and footnotes 5 and 5&6 of the Agreement.

¹¹⁰ Malig, *supra* note 71 at 8-9.

¹¹¹ *Ibid* at 8-16.

¹¹² *Ibid* at 10.

¹¹³ *Ibid* at 13.

economic benefits predicted to flow from the TFA with the restrictive terms of the Ministerial Decision.¹¹⁴ She proposes that the results of the negotiations between the G-33 and the US stand as evidence of the power imbalances within the WTO.¹¹⁵

I have decided to problematize the last aspect of Malig's argument. Drawing inspirations from the TWAIL scholarship and some of the critical research on the WTO, I will explore the domestic interests that shaped India's negotiating position during the Bali Conference. This will reveal that, in accordance with Chimni's observations on the role of the TCC in shaping the outcome of WTO negotiations, legislative and policy developments in India since the Ministerial Decision demonstrate that its restrictive conditions may ultimately benefit India's corporate food producers, processors, traders, and retailers.

2.5. India's PDS and the Ministerial Decision

In Chapter 6, I explore the connections between the Ministerial Decision and India's PDS. The PDS is India's largest food subsidy program, and millions of people depend on it for support.¹¹⁶ As discussed at the outset, the PDS is intimately connected to the Ministerial Decision. The GOI operates a public stockholding program that purchases the food designated for the PDS. This food stockholding program purchases and sells this food at administered prices, thus acting as both a consumer and producer support system.¹¹⁷ As mentioned in Chapter 1, recent changes to the PDS and the rising price at which food stocks are purchased by the stockholding program that supplies it have been

¹¹⁴ *Ibid* at 19.

¹¹⁵ *Ibid* at 19.

¹¹⁶ R. Jha et al., "Food Subsidy, Income Transfer, and the Poor: A Comparative Analysis of the Public Distribution System in India's States" (2013) 35 *Journal of Policy Modeling* 887, at 888.

¹¹⁷ Jos Mooij, "The Political Economy of the Public Distribution System in India" (1998) 25:2 *The Journal of Peasant Studies* 77, at 78.

cited as reasons that the GOI used the Bali Conference as a forum to negotiate an exemption for public stockholding programs.¹¹⁸

I begin Chapter 6 with a description of the function and historical evolution of the PDS.¹¹⁹ After, I explore some of the internal legal and political developments surrounding the program. Doing so will allow me to decipher whose interests are best represented by the Ministerial Decision. Based on this analysis, I explain how India's position in Bali was not necessarily motivated by a desire to help protect consumers from volatile food prices. Rather, I propose that the combined political pressure from the powerful farm lobby, in addition to their legal obligation to abide by a series of Supreme Court mandates to revamp the PDS, prompted the GOI to find a short-term solution to the issue of public food stockholding within the WTO. Further complicating matters, it currently appears as though the GOI is looking to dismantle the PDS in favour of a market-based approach to promoting access to food. This decision fits in with other policy initiatives taken by the GOI that are likely to favour corporate food producers, processors, traders, and retailers.

2.6. Research Limitations

Prior to presenting my research, I would like to acknowledge that this project cannot meaningfully capture the diverse needs and interests that exist within India's vast population and complex political system. India is home to over 1.2 billion people, which,

¹¹⁸ Haberli, *supra* note 59 at 6; see also: Bose, *supra* note 61.

¹¹⁹ To do so, I refer to: Mooij, *supra* note 116; Madhura Swaminathan, "Structural Adjustment, Food Security, and System of Public Distribution of Food" (1996) 31:26 *Economic and Political Weekly* 1665 [Swaminathan, "Structural Adjustment"]; Madhura Swaminathan, "Consumer Food Subsidies in India: Proposals for Reform" (2000) 27:3 *The Journal of Peasant Studies* 92 [Swaminathan, "Consumer Food Subsidies"]; Rahul Parland Mane, "Targeting the Poor or Poor Targeting: A Case for Strengthening the Public Distribution System in India" (2006), 41:4 *Journal of Asian and African Studies* 299; Sharma, *Food Subsidy in India*, *supra* note 58; India, Planning Commission, Government of India, *1st Five Year Plan 1951-56* (New Delhi: Planning Commission, 1951) [GOI, "1st Plan"] online: Planning Commission <<http://planningcommission.nic.in/plans/planrel/fiveyr/1st/1planch9.html>>.

according to the World Bank, makes it the world's largest democracy.¹²⁰ India's population is very diverse. According to the GOI, India is home to every race on the planet, and the country's Constitution recognizes twenty-two spoken languages.¹²¹ India also boasts a large and unique territory that is bordered by the Himalayas to North, the Bay of Bengal in the East, the Arabian Sea in the West, and the Indian Ocean in the South.¹²²

These social and material realities make it extremely problematic to generalize about the needs and interests of any specific subset of the population. As mentioned in Chapter 1, I have chosen to focus on three domestic interest groups that, I contend, influenced the GOI's negotiating position leading up to the Ministerial Decision. These are: social activists; India's farm lobby; and, corporate food producers, retailers, and processors. While this cannot do justice to the variety of interests and perspectives held throughout the country, framing this discussion through use of these categories is, unfortunately, necessary to support my argument within the space and time allotted for this thesis.

Another limitation of this project is that it is inherently problematic to talk about the GOI as if it were monolithic and unchanging. In addition to being the world's most populous democracy, India arguably holds some of the world's most complicated and multifaceted political structures. The country is described by the GOI as a "Sovereign,

¹²⁰ United Nations Statistics Division, *World Statistics Pocketbook: India: Summary Statistics* (United Nations) online: < <https://data.un.org/CountryProfile.aspx?crName=INDIA>> accessed 2015-07-07; World Bank, *Data: Countries: India*, online:< <http://data.worldbank.org/country/india>>.

¹²¹ GOI, National Portal of India: Profile, online: <<http://india.gov.in/india-glance/profile>> accessed: 2015-07-10.

¹²² *Ibid.*

Secular, Democratic Republic with a Parliamentary system of Government.”¹²³ India’s Parliament is divided into two legislative bodies: the Lok Sabha (House of the People) and the Rajya Sabha (Council of States). Members of the Lok Sabha are elected by popular vote during Federal elections.¹²⁴ Members of the Rajya Sabha are appointed by the Legislative Members of the States (who are, themselves, chosen by popular vote during State elections).¹²⁵ Although much of the legislative power is held by the Prime Minister (the leader of the party with a majority in Parliament) the President of India holds the title of “head Executive of the Union.”¹²⁶ The President is elected by a vote between all members of the Rajya Sabha, the Lok Sabha, and the Legislative Assemblies of India’s States and Union Territories.¹²⁷ The country’s twenty-nine states each have their own Legislative Assemblies.¹²⁸ Only two out of seven Union Territories (Puducherry and the National Capital Territory of Delhi) have their own legislatures; the other five are administered by the Central government.¹²⁹

It almost goes without saying that, as with any democracy, the people holding political office in India change over time. It is important to note that the government in power during the time that the Ministerial Decision was negotiated is no longer at the helm of India’s Parliament. In the 2014 general elections the Baharatiya Janata Party (BJP), headed by Narendra Modi, led the charge for the National Democratic Alliance

¹²³ GOI, *Know India: State and Union Territories*, online:

<http://www.knowindia.gov.in/knowindia/state_uts.php> accessed: 2015-07-10.

¹²⁴ GOI, *Parliament of India: Lok Sabha*: <<http://loksabha.nic.in/>> accessed: 2015-07-10.

¹²⁵ GOI, *Parliament of India: Rajya Sabha: Council of States*, online:

<http://rajyasabha.nic.in/rsnew/council_state/council_state.asp> accessed: 2015-07-10.

¹²⁶ GOI, *Know India*, *supra* note 123.

¹²⁷ GOI, *The President of India: About the President of India*,

online:<<http://presidentofindia.nic.in/about.htm>> accessed: 2015-07-10; (GOI, *Know India*, *supra* note 123).

¹²⁸ GOI, *Know India*, *supra* note 123.

¹²⁹ Ministry of Home Affairs, Union Territory Division (GOI) online:

<http://mha.nic.in/union_territory_division> accessed: 2015-07-13.

(NDA) and defeated the incumbent United Progressive Alliance (UPA) government led by Manmohan Singh of the Indian National Congress (INC).¹³⁰ Because the leadership of the GOI has changed hands since the Decision, my argument is vulnerable to being challenged on the grounds that the policies put in place since the Ministerial Decision simply reflect the different positions of the BJP and the INC.

This argument is not without merit. Since becoming Prime Minister, Mr. Modi has been accused of pushing forward a particularly neoliberal agenda focused more on economic growth than social development and sustainability.¹³¹ The fact remains, however, that since the mid-eighties the GOI has engaged in a process of economic reforms designed to promote liberalization and privatization.¹³² During this period of economic reforms, India's political landscape has been dominated by the INC and the BJP. One of these two parties has won every General Election since 1984 (the INC has emerged victorious in five of nine elections, and the BJP captured the other four).¹³³ For these reasons, although the political party that was in charge at the time this thesis was written may be more inclined towards liberalization and market integration than its predecessors, I have decided to group together the GOI's decisions as if they were written by the same author.

¹³⁰ "Live Result" *Times of India*, online: < <http://timesofindia.indiatimes.com/lok-sabha-elections-2014/elections2014.cms>> accessed 2015-05-11.

¹³¹ Varghese K. George, "A Hindutva variant of neo-liberalism" *The Hindu* (4 April 2014), online: <<http://www.thehindu.com/opinion/lead/a-hindutva-variant-of-neoliberalism/article5868196.ece>>

¹³² Parthapratiim Pal and Jayati Ghosh, "Inequality in India: A survey of recent trends" Department of Economic and Social Affairs (DESA) Working Paper No. 45, ST/ESA/2007/DWP/45 (New York: United Nations, 2007) at 1, online at: <http://www.un.org/esa/desa/papers/2007/wp45_2007.pdf>.

¹³³ See GOI, *Previous Lok Sabha Election Results*, for a list of the general election results since Independence, online: <<http://www.elections.in/previous-election-results.html>>.

Chapter 3: Exploring the WTO: Technical Details and Critical Insights

As mentioned at the outset, this thesis aims to decipher whether the Ministerial Decision allows the WTO's developing Members the policy space to protect consumers from dependency on foreign food and fluctuations in global food prices. Prior to discussing the Ministerial Decision, it is important to provide some context about the role of the WTO in regulating international trade. In this Chapter, I give a brief review of the historical development of the WTO, and explore some of the central aspects of the organization; namely: its dispute resolution and decision-making processes.

3.1. The Intellectual and Political Origins of the WTO: A Brief History

The WTO represents the institutionalization of one of the primary components of the liberal model of development: the reduction of international trade barriers. The epistemic basis for most contemporary trade agreements is rooted in the economic theories of classical liberal scholars such as David Hume, Adam Smith, and David Ricardo.¹³⁴ Specifically, countries entering into trade agreements are often guided by the logic of Ricardo's theory of comparative advantage.¹³⁵ The theory of comparative advantage puts forth that each country should focus on producing goods with the lowest associated opportunity costs.¹³⁶ That is to say, although some countries will not have an absolute advantage in any given area of production (eg: there is no good that they are able to produce using fewer inputs than other countries), there will still be some goods that

¹³⁴ Reich, *supra* note 5 at 781-82; Trebilcock et al., *supra* note 93 at 2-4; Lester et al., *supra* note 94 at 33-34.

¹³⁵ Trebilcock et al., *supra* note 93 at 3-4.

¹³⁶ *Ibid*, see also: John Balck, Nigar Hashimzade, and Gareth Myles, *A Dictionary of Economics*, 4th ed. (Oxford: 2013), "comparative advantage" [Black et al.] online: <<http://www.oxfordreference.com.proxy.library.carleton.ca/view/10.1093/acref/9780199696321.001.0001/acref-9780199696321-e-477>>.

they can produce more efficiently than others.¹³⁷ By focusing productive efforts on those goods that it can make most efficiently, it is proposed that a country will maximize total output.¹³⁸

Free trade is a central component of the theory of comparative advantage.¹³⁹ This theory proposes that a country can make the best use of its resources and increase prosperity by concentrating on producing those goods that it can make most efficiently, and then trading with other countries to obtain what is not available domestically.¹⁴⁰ Therefore, free trade allows domestic producers to specialize in order to maximize output, while simultaneously permitting domestic consumers to choose from a wide selection of goods that can be purchased at a relatively cheaper price than domestically produced alternatives.¹⁴¹ For these reasons, free trade is said to promote a more efficient division of labour and allocation of resources, thereby increasing economic prosperity and raising the standard of living in all participating economies.¹⁴²

In the twentieth century, classical liberal economic beliefs, such as the merits of comparative advantage and the importance of free trade, became a central component of a Western political development project.¹⁴³ Nearing the end of the Second World War, realizing that military victory was imminent, the United States and Britain began crafting

¹³⁷ *Ibid*; see also Black et al., *supra* note 136 “opportunity cost” and “absolute advantage”.

¹³⁸ *Ibid*.

¹³⁹ *Ibid*.

¹⁴⁰ *Ibid*; see also Black et al., *supra* note 136.

¹⁴¹ *Ibid*.

¹⁴² *Ibid*.

¹⁴³ *Ibid* at 23; It is important to note that two of trade liberalization’s most ardent proponents, Britain and the US, did not begin to practice free trade until they had built up their own industries through centuries of protectionism (see Ha-Joon Chang, ‘The Double Life of Daniel Defoe: How Did the Rich Countries Become Rich?’ in *Bad Samaritans: The Myth of Free Trade and the Secret History of Capitalism* (Bloomsbury Press, 2008) at 40-64). Moreover, as will be discussed later in this Chapter, even in the twentieth century these countries often took advantage of their power and influence to secure exemptions to free trade agreements in order to continue protecting certain sectors of their economy.

policies designed to rebuild and reshape the world economy.¹⁴⁴ In 1944, they entered into the Bretton Woods Agreement, which provided the framework for three multilateral institutions: the IMF, the International Bank for Reconstruction and Development (IBRD), or World Bank, and the International Trade Organization (ITO).¹⁴⁵

The IMF was designed to ensure that international exchange rates remained stable, and to provide financial assistance to indebted countries that might otherwise be tempted to erect trade barriers as a means of raising revenues.¹⁴⁶ The World Bank was mandated to provide the war-torn countries of Europe, along with Japan, the capital necessary to rebuild economic infrastructure.¹⁴⁷ The ITO was to complete the trifecta by overseeing the establishment of a multilateral organization to promote global trade liberalization.¹⁴⁸

The creation of the IMF and the World Bank took place soon after the signing of the Bretton Woods Agreement; however, the ITO was never established.¹⁴⁹ The United States Congress aimed to prevent their executive branch from wielding the unilateral authority to enter in to an agreement that would impose significant restrictions over state-sovereignty.¹⁵⁰ Without the participation of the United States, the international community was unable to develop a multilateral trade organization.¹⁵¹

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid* at 23-24.

¹⁴⁶ *Ibid* at 23.

¹⁴⁷ *Ibid*; the World Bank has now widened this mandate to providing capital assistance to developing countries.

¹⁴⁸ *Ibid* at 24.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid*; see also: Reich, *supra* note 5 at 784-785.

3.2. The General Agreement on Tariffs and Trade (GATT)

Between 1948 and 1994, the *General Agreement on Tariffs and Trade* (GATT)¹⁵² served as the contractual foundation for multilateral trade negotiations.¹⁵³ Originally intended as a non-binding provisional agreement and precursor to the ITO, the GATT was far less extensive in scope than the eventual WTO Agreements.¹⁵⁴ The GATT lacked clear rules governing non-tariff barriers to trade,¹⁵⁵ and only covered a small and narrowly defined set of subsidies.¹⁵⁶ In addition, disputes about the terms of the contract were often resolved through negotiation and diplomacy between the Contracting Parties.¹⁵⁷

Under the GATT, international trade in agricultural goods was not subject to a coherent set of regulations at the multilateral level.¹⁵⁸ The relative paucity of regulations on trade in agricultural products within the GATT can be attributed to the resistance of the United States towards any commitments that would limit their ability to support agricultural production at home.¹⁵⁹ While some provisions in the GATT were applicable

¹⁵² *General Agreement on Tariffs and Trade*, 30 October 1947, 58 UNTS 187 (entered into force 1 January 1948) [*GATT 1947*] online: WTO <https://www.wto.org/english/docs_e/gattdocs_e.htm>.

¹⁵³ Reich *supra* note 5 at 786-788.

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid* at 789-791.

¹⁵⁷ *Ibid* at 794-799; Trebilcock et al., *supra* note 93 at 174-175; Lester et al., *supra* note 94 at 183. The terms of the GATT required the consensus of *all* Contracting Parties (including the approval of those disaffected by the decision) before a dispute panel ruling came into force. Because it was difficult to achieve consensus on matters related to agriculture, it was difficult to enforce the terms of the GATT that applied to trade in agricultural goods.

¹⁵⁸ Trebilcock et al., *supra* note 93 at 435-447.

¹⁵⁹ *Ibid* at 435-436; according to Trebilcock et al., during the time the GATT was being negotiated the US maintained aggressive subsidy programs aimed at stabilising food prices and supporting producers. These subsidy programs were initiated in the 1930's, during the aftermath of the Great Depression. Had the terms of GATT infringed upon these measures, it is unlikely that they would have signed the agreement. This is evidenced by the US's subsequent actions as a Contracting Party to the GATT. Facing the prospect of having to reduce certain export subsidies on dairy products, the United States threatened to withdraw from the Agreement until it was granted an indefinite waiver from GATT restrictions on agricultural export subsidies in 1955. This made it difficult to promote adherence to the conditions of export subsidy

to trade in agriculture,¹⁶⁰ in practice, these proved difficult to enforce.¹⁶¹ Although the US was perhaps the most prominent opponent of multilateral restrictions on domestic support for agricultural production, many of the Contracting Parties heavily subsidised and protected their agricultural sectors.¹⁶² Domestic political realities encouraged governments to take measures to protect producers, regulate food price stability, and promote self-sufficiency in food production.¹⁶³ As such, many states were unwilling to limit their sovereignty over the agricultural sector.¹⁶⁴ Conveniently, the GATT dispute resolution system allowed any Contracting Party to veto the adoption of any Panel resolution that might negatively affect their interests.¹⁶⁵ Accordingly, countries seeking to protect their agricultural sectors could (and often did) quash interpretations of the GATT provisions that would have required agricultural support reductions or market access concessions.¹⁶⁶

3.3. The Development of the WTO

From 1986 to 1994, one hundred and twenty-three countries engaged in a process of negotiations known as the Uruguay Round.¹⁶⁷ The result of Uruguay Round was an immense package of agreements which effectively subsumed the GATT into the newly-

restrictions amongst the other Contracting Parties. See also: Sarah Harwood, ‘The United States Farm Bill – An Antiquated Policy?’ (2010-2011) 88 U Det Mercy L Rev 377, at 379.

¹⁶⁰ *Ibid* at 435-438; for example, the regulations regarding quantitative restrictions contained in Article XI of the GATT applied, with some exceptions, to agricultural goods. The regulations regarding export subsidies contained in GATT XVI(2)-(5) also applied to agricultural products, if said subsidies had the effect of harming another Contracting Party’s market share of the trade in said product.

¹⁶¹ *Ibid* at 345-346.

¹⁶² *Ibid* at 439-440.

¹⁶³ *Ibid* at 440-443.

¹⁶⁴ *Ibid*.

¹⁶⁵ *Ibid* at 435.

¹⁶⁶ *Ibid* at 435, 437-438; global protection for domestic agricultural sectors was so prolific that it created challenges for GATT Panels trying to estimate the ‘real’ market price of agricultural goods. This made it difficult to determine whether a policy or program had the effect of distorting trade, and, therefore, complicated the process of enforcing any GATT restrictions on agricultural protection.

¹⁶⁷ *Ibid* at 25.

minted WTO.¹⁶⁸ There are four significant ways in which WTO differs from the GATT. First, it is not simply a set of agreements, but a large organization with 161 members, each of whom are required to abide by all of the organization's terms and regulations.¹⁶⁹ Second, the WTO agreements are much farther reaching than the GATT; the WTO has produced precise regulations in areas such as government procurement, dumping, technical standards, and subsidies.¹⁷⁰ The organization also introduced regulations covering to areas once deemed outside the ambit of international trade, such as intellectual property rights, investment, and services.¹⁷¹ Third, the WTO abandoned the rules governing conflict resolution and norm interpretation under the GATT, and established a judicially-oriented process of dispute resolution with a Panel and Appellate Body.¹⁷² Fourth, the *Agreement Establishing the World Trade Organization* (the WTO Agreement)¹⁷³ also made significant modifications to the way that rule-making and enforcement was conducted under the GATT. These characteristics transformed the regulation of international trade from a contractual agreement largely dependent on

¹⁶⁸ Reich *supra* note 5

¹⁶⁹ Robert Wolfe, "The WTO Single Undertaking as Negotiating Technique and Constitutive Metaphor" (2009) 12:4 J Int'l Econ L 835; 'single undertaking' refers to the principle that, upon joining the WTO members agree to all the terms and conditions of the WTO Agreements. It could be argued that China stands as an exception to this policy. Upon its ascension to the WTO, China entered into a unique Protocol that comes with unique responsibilities and concessions (see: Karen Halverson, "China's WTO Accession: Economic, Legal & Political Implications" (2004) 27 *B. C. Int'l & Comp. L. Rev* 319).

¹⁷⁰ Reich, *supra* note 5 at 788, 790.

¹⁷¹ *Ibid.*

¹⁷² DSU, *supra* note 96; according to Reich, *supra* note 5 at 801, the DSU established the Dispute Settlement Body (DSB) as the exclusive interpretive authority with regard to the terms of the WTO Agreement; provided a strict timeline for each stage in the dispute resolution process; revoked the power to block procedures; introduced the duty to terminate activities found to be an infringement of GATT conditions; required the adoption of the DSB panel's recommendations; established an appellate body; required surveillance of the implementation of recommendations and rulings; restricted on the non-legal grounds of complaint; and, introduced the possibility of sanctioned cross-retaliation.

¹⁷³ WTO Agreement, *supra* note 97.

negotiation and diplomacy, into a robust legal regime with an expansive and enforceable framework of rules.¹⁷⁴

3.4. The WTO Dispute Settlement and Decision-Making Processes

In the following section, I provide brief overviews of the process for dispute resolution and decision-making within the WTO. A cursory discussion of these aspects of the organization is integral to understanding the significance of the Ministerial Decision. After a brief overview of the WTO's decision-making and dispute resolution processes, I give a short summary of some of the critical research on these aspects of the organization. This summary will reveal that, despite the modifications that make the WTO a more legally and democratically oriented institution than the GATT, many researchers have argued that not all Members' interests are equitably represented within the organization.

3.4.1. The WTO's Dispute Settlement Process

Members who perceive that the rights granted to them pursuant to the terms of the GATT or any other WTO agreement have been violated by another Member may request consultation with the Member or Members in question.¹⁷⁵ After 60 days of the receipt of the request for consultation, the Member who believes that their rights are being violated may request the establishment of a dispute resolution Panel.¹⁷⁶ After considering submissions from the Members involved in the dispute and any "third-party" Members

¹⁷⁴ Reich, *supra* note 5 at 801.

¹⁷⁵ DSU, *supra* note 96 at Article 4.

¹⁷⁶ *Ibid* at Article 4(7); the criteria for the composition of Panels can be found in Article 8. Article 8(5) establishes that "Panels shall be composed of three panelists." Article 8(6) states that these panelists shall be proposed by the WTO Secretariat, and that Members party to the dispute shall not object to the proposed panelists, "except for compelling reasons." According to Article 8(1), the Panel is composed of individuals whose experience as a government official, or their professional or academic training, renders them qualified to interpret international trade law. As per Article 8(2), Panel members are selected based on their perceived impartiality, diversity of background, and wealth of experience. Article 8(3) prohibits citizens of Members whose governments are either directly involved or third-parties to a dispute from serving on the Panel.

that express an interest in the dispute, the Panel issues a Report.¹⁷⁷ The Panel Report is circulated to the Dispute Settlement Body (DSB), which is composed of all WTO Members.¹⁷⁸ Unless a member directly involved in the dispute (not a third party) notifies the DSB of its intention to launch an appeal, the Panel Report is automatically adopted within a period of 60 days of its circulation amongst the Members.¹⁷⁹

If a Member involved in the dispute disagrees with the Panel Report, they can formally announce their intention to appeal the Panel's decision to the WTO's Appellate Body.¹⁸⁰ The Appellate Body is generally required to submit its Report within 60 days of said announcement.¹⁸¹ Appellate Body Reports "shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to the Members [emphasis added]."¹⁸²

As discussed above, these aspects of the WTO vary greatly from the dispute resolution process under the GATT. The transition from a system that required the approval of *all* Contracting Parties (including the Party disaffected by the decision), towards one where the final Report is automatically adopted unless *all* Members vote it down (including the Member benefitting from the decision) eliminates the ability of one

¹⁷⁷ *Ibid* at Article 10 (Third Parties), Article 11 (Function of Panels), Article 12 (Panel Procedures).

¹⁷⁸ *Ibid* at Article 16(1)-(2).

¹⁷⁹ *Ibid* at Article 16(4).

¹⁸⁰ According to Article 17(1) of the DSU, the Appellate Body is composed of seven people, "three of whom shall serve on any one case". According to Article 17(2), the WTO Membership appoints the members of the Appellate Body, who serve for a period of four years. According to Article 17(3), members of the Appellate Body shall "comprise persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally... be unaffiliated with any government... be broadly representative of membership in the WTO... be available at all times and on short notice... stay abreast of dispute settlement activities and other relevant activities of the WTO... [and] shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest."

¹⁸¹ *Ibid* at Article 17(5).

¹⁸² *Ibid* at Article 17(14) [citation omitted].

Member to veto an interpretation of the WTO agreements that does not suit their interests.¹⁸³

In addition to providing interpretations of WTO rules, dispute settlement Panels and the Appellate Body can also offer relief to Members whose interests have been negatively affected by a violation of the terms of a WTO agreement.¹⁸⁴ The Panel and Appellate Body can provide relief by ordering a Member whose actions violate the terms of an agreement to conform to the rule(s) in question.¹⁸⁵ The offending Member is given a time-period by which they must bring their actions into conformity with the WTO rules.¹⁸⁶ The length of this period of time can be proposed by the offending Member and accepted by the Panel, or it can be agreed upon jointly by the offending and complaining Members.¹⁸⁷ If neither of the above occurs, the time-period by which the offending Member must conform to the WTO rules is established through binding arbitration.¹⁸⁸

Importantly, the Panel and Appellate Body also have the authority to provide Members whose rights under the WTO have been violated with relief by ordering the offending Member to issue compensation.¹⁸⁹ Compensation can be made in the form of a monetary payment, or *via* the provision of additional trade benefits.¹⁹⁰ Compensation is not, however, designed to punish Members for violating the terms of the WTO agreements.¹⁹¹ Rather, it is designed to provide restitution to Members whose interests

¹⁸³ Lester et al., *supra* note 94 at 185.

¹⁸⁴ Trebilcock et al., *supra* note 93 at 205-206.

¹⁸⁵ *Ibid.*

¹⁸⁶ Lester et al., *supra* note 94 at 189-190; see also, WTO Agreement, *supra* note 97 at Article 21.3.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid* at 192.

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.*

and expectations have been nullified or impaired as the result of ‘WTO illegal’ activity.¹⁹²

3.4.1. The WTO’s Decision-Making Process

The WTO Agreement¹⁹³ made significant modifications to the way that rule-making and enforcement was conducted under the GATT. The decision-making process under the GATT required unanimous consent amongst the Contracting Parties before an interpretation of the agreement or an amendment of its terms could be made official.¹⁹⁴

WTO Members are encouraged to pursue decision-making by consensus; however, where consensus cannot be achieved the issue at hand is decided by voting.¹⁹⁵

Within the WTO, decisions and amendments are made by the Ministerial Conference and the General Council. Ministerial Conferences are biennial meetings composed of representatives of all WTO Members.¹⁹⁶ The General Council, composed of representatives of all WTO Members, meets during the intervals between Ministerial Conferences.¹⁹⁷ These bodies “have the authority to decide on all matters relevant to the WTO agreements”¹⁹⁸ and can also make changes to the WTO’s organizational structure.¹⁹⁹

Decisions made by the Ministerial Conference and General Council require the support of the majority of Members.²⁰⁰ Amendments to the WTO agreements must either be decided by consensus or, failing that, must receive the approval of two-thirds of

¹⁹² *Ibid*; see also: Trebilcock et al., *supra* note 93 at 205.

¹⁹³ WTO Agreement, *supra* note 97.

¹⁹⁴ Reich, *supra* note 5.

¹⁹⁵ WTO Agreement, *supra* note 97 at Article IX(1).

¹⁹⁶ *Ibid* at Article IV(1).

¹⁹⁷ *Ibid* at Article IV(2); in addition to its decision-making authority, the General Council is responsible for establishing the rules of procedure that govern the various Committees outlined in Article IV(7).

¹⁹⁸ *Ibid* at Article IV(1).

¹⁹⁹ *Ibid* at Article IX(1).

²⁰⁰ *Ibid* at Article IX(1).

Members.²⁰¹ If an amendment is approved, it is then put forward to each Member for acceptance.²⁰² The Ministerial Conference may decide, upon obtaining the support of three-fourths of its membership, that any Member that has not accepted an amendment within a specified period of time (set by the Ministerial Conference) “shall be free to withdraw from the WTO or to remain a Member with the consent of the Ministerial Conference.”²⁰³ Therefore, three-fourths of the WTO Membership can effectively determine that a Member should be required to leave the organization if they do not adopt an approved decision.

3.5. Critical Reception of the WTO

The information presented last section provided a descriptive account of the structure and function of the WTO. In this section, I will engage further with these subjects by exploring some of the critical literature on the organization.²⁰⁴ Although the scope of the WTO agreements, as well as its dispute resolution and decision-making processes, make it more rule-oriented than the GATT,²⁰⁵ the organization has come under sustained criticism for its perceived “democracy deficit”.²⁰⁶ It has been proposed that the new features of the WTO are simply “trappings of legality” that obscure the vestige of the power-based negotiations that characterized the GATT.²⁰⁷ Here, I briefly discuss some

²⁰¹ *Ibid.*

²⁰² *Ibid.*

²⁰³ *Ibid* at Article X(3); these rules do not apply to some portions of the WTO agreements. Members cannot be forced to accept amendments to the following: the decision-making process outlined in Article X of the WTO Agreement; the most-favoured-nation (MFN) requirement and schedules of concession contained, respectively, in Article I and II of the GATT; or, the MFN requirements contained in Article II of the *General Agreement on Trade in Services* and Article 4 of the *Agreement on Trade Related Intellectual Property Rights*.

²⁰⁴ Stostad, *supra* note 8 at 827; Iida, *supra* note 6 at 216-217; Qureshi, *supra* note 6 at 178-179.

²⁰⁵ Reich, *supra* note 5 at 801.

²⁰⁶ Chimni, WTO Democracy and Development, *supra* note 73 at 270-271; see also, Jeffery Atik, “Democratizing the WTO” (2001) 33:4 *George Washington International Law Review* 451.

²⁰⁷ Stostad, *supra* note 8 at 827.

of the prominent critiques of the WTO's dispute settlement and decision-making processes, with special emphasis on their implications for developing members.

It has been proposed that the WTO dispute settlement process reproduces pre-existing power relations between developed and developing countries.²⁰⁸ This argument is often supported through reference to the fact that fewer developing countries initiate proceedings through the dispute settlement process than their developed counterparts.²⁰⁹ This is because the dispute settlement process is highly technical, and the evidentiary threshold necessary to prove a violation of WTO rules is often burdensome.²¹⁰ Many developing countries are relatively “under-resourced in terms of legal and economic expertise” and, therefore, do not have the professional capacity to consistently make effective use of the dispute settlement process.²¹¹ Corporate interests may also play a role in determining participation in the dispute settlement process; for example, it has been reported that the majority of the costs associated with WTO disputes initiated by developed Members are covered by private firms or trade associations.²¹² While developing Members also receive corporate support to offset the costs of WTO disputes, they are less likely to receive as much assistance.²¹³

²⁰⁸ Marc L. Busch, Eric Reindhardt and Gregory Shaffer, “Does Legal Capacity Matter? A Survey of WTO Members” (2009) 8:4 World Trade Review 559.

²⁰⁹ Iida *supra* note 6 at 216-217; Qureshi, *supra* note 6 at 178-179; Qureshi notes that, although the number of developing countries making use of the dispute settlement process is increasing, this increase is largely due to the activities of “very advanced developing countries, such as Korea, Brazil, and Argentina.”

²¹⁰ Busch et al, *supra* note 208.

²¹¹ Stostad, *supra* note 8 at 826, 834; Iida, *supra* note 6 at 216-217.

²¹² Busch et al, *supra* note 208 at 568; Busch et al. asked seven developing countries “What proportion of the cost of external legal assistance for your government’s WTO disputes have private firms or trade associations financed?”. 71 percent responded “all”, and 29 percent responded “none”. Of 28 developing countries responding to the same question, 21 percent said “none”; 7 percent stated “a small portion”; 11 percent answered “a moderate portion”; 18% answered “a large proportion”; and, 43 percent answered “all”.

²¹³ *Ibid.*

Equally compelling is the research on the process by which the terms of the WTO agreements are negotiated.²¹⁴ It is argued that the decision-making process in the WTO often involves secretive negotiations that are driven by the organization's powerful Members.²¹⁵ In the WTO, a Member's bargaining power is often determined by the size of their economy and their share of global trade.²¹⁶ Therefore, because the US and EU are large, wealthy economies that account for over half of all world trade, they have traditionally been able to wield greater influence than other WTO Members.²¹⁷

While it remains true that the interests of prosperous developed Members, such as the US and EU, are well-represented within the WTO, it has also been noted that countries such as China, India, and Brazil have seen their influence grow alongside their expanding economies.²¹⁸ These countries, especially India and Brazil, have demonstrated the capacity to challenge powerful Members such as the US and the EU.²¹⁹ For example, in 2014 Brazil was able to successfully challenge US cotton subsidies through the WTO dispute settlement process.²²⁰ Another means by which relatively wealthy developing countries have begun to promote their interests within the WTO is through coalition building.²²¹ Coalitions such as the G-20 (spearheaded by Brazil), and the G-33 (led by India and Indonesia) have been vocal about protecting their interests during the current Doha Round negotiations.²²² These groups have been especially adamant about reforming

²¹⁴ Jones, *supra* note 6.

²¹⁵ *Ibid* at 350.

²¹⁶ *Ibid*.

²¹⁷ *Ibid*.

²¹⁸ *Ibid* at 350-351.

²¹⁹ Burnett and Murphy, *supra* note 7 at 1076-1077.

²²⁰ *United States – Subsidies on Upland Cotton*, WTO DS267 [*US – Upland Cotton*], online: <https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds267_e.htm>.

²²¹ Burnett and Murphy, *supra* note 7 at 1076-1077; Eugénia Da Conceição-Heldt, *supra* note 99 at 432.

²²² *Ibid*.

the way that agriculture is regulated in the WTO, and have fought to allow developing countries more control over their agricultural sectors.²²³

Although emerging economies such as India and Brazil have been able to advance some of their interests through the WTO's dispute settlement process and during WTO negotiations, the implications of their success for other developing countries, and for marginalized populations within these emerging economies is not yet clear. For example, although Brazil was able to prove that the US's cotton subsidies were WTO illegal and detrimental to its producers, the US was able to simply negotiate a deal to compensate Brazil financially for its losses rather than having to scale back their illegal subsidy program.²²⁴ While this may have satisfied Brazil, it does little for several African countries (such as Chad, Uganda, and Zimbabwe) whose interests are also affected by American cotton subsidies.²²⁵

In a recent article, Da Conceição-Heldt sheds light on these tensions. Da Conceição-Heldt proposes that the increasing engagement of emerging economies in WTO disputes and negotiations should not be misconstrued as an altruistic attempt to crusade on behalf of less powerful developing countries, or on behalf of marginalized people within these countries whose interests are harmed by economic liberalization.²²⁶ Rather, she argues that these developments can be interpreted as a reaction to internal pressure from powerful interest groups within these countries who wish to benefit from liberalization.²²⁷ For this reason, when analyzing the role of developing countries in

²²³ *Ibid.*

²²⁴ Burnett & Murphy, *supra* note 7 at 1077.

²²⁵ Joseph Stiglitz & Mary Kaldor (eds), *A Quest for Security: Protection without Protectionism and the Challenge of Global Governance* (New York: University of Columbia Press, 2013) at 10.

²²⁶ Da Conceição-Heldt, *supra* note 100 at 434.

²²⁷ *Ibid.*

WTO disputes and negotiations, Da Conceição-Heldt emphasizes that it is important to observe the internal politics that shape their respective positions as well as the international negotiations through which these interests are expressed.²²⁸

3.6. Research Implications

In this section, I explained how the WTO has roots in a Western political development project designed to pursue international stability by encouraging countries to open their economies to trade and investment. The WTO's precursor, the GATT, was a contractual agreement rather than a fully-fledged institution. Moreover, the GATT's regulatory framework had relatively little influence over trade in agriculture.

It has been proposed that the scope of the WTO agreements, as well as its revamped dispute resolution and decision-making processes, make it more rule-oriented than the GATT. Despite these innovations, however, there is a large body of scholarship critiquing the WTO for failing to provide meaningful representation for the interests of developing Members. It is argued that the new features of the WTO simply obscure the power-based negotiations that took place under the GATT. This issue is further complicated by the recent influence wielded by developing Members with large economies, such as India, Brazil, and China. However, while these countries have experienced a degree of success in advocating for their interests within the WTO, it is uncertain whether this will translate into gains for other, less prosperous developing countries, or the marginalized populations within these emerging economies.

²²⁸ *Ibid.*

This research underscores the importance of exploring the domestic context shaping India's negotiation position during the Bali Conference. As mentioned at the outset, during the Bali conference India and the G-33 negotiated a Decision to protect developing Members from being challenged within the WTO if expenditures on their public food stockholding programs caused them to exceed the AoA's domestic support reduction requirements. This may seem to signal a victory for developing Members, and the people within developing countries who depend on public food subsidies for survival. I argue, however, that this agreement may not provide developing Members the policy space to take meaningful steps towards protecting their population from volatile international food prices. To explain why India was willing to accept a temporary concession with restrictive conditions, rather than pushing for a more permissive permanent solution, I explore the domestic interests that shaped India's negotiating position.

Chapter 4: The WTO AoA: An Overview of the Terms and Critiques of the Agreement

During the Uruguay Round (the series of negotiations that led to the establishment of the WTO) a number of agreements were developed to encourage regulatory uniformity and market liberalisation in the agricultural sector.²²⁹ As a whole, these agreements provide a sophisticated framework for the regulation of agriculture.²³⁰ In addition to the AoA, these include the *Agreement on Sanitary and Phytosanitary Measures*,²³¹ which establishes common health and safety standards for plant and animal products, and the *Agreement on Trade Related Aspects of Intellectual Property Rights*,²³² which provides protection for plant patents or “breeder’s rights.”²³³ The AoA is the foremost of the WTO’s agricultural agreements; it is designed to increase market access by reducing barriers to trade and to improve competition by regulating subsidies.²³⁴

In order to discuss whether the Ministerial Decision will be able to protect consumers from dependence on foreign food and volatile international food prices, it is first important to explain the relationship between these problems and the WTO’s regulation of the agricultural sector. Towards this end, I make use of this Chapter to

²²⁹ Bernard van der Meulen, “The Global Arena of Food Law: Emerging Contours of a Meta-Framework” (2010) 3:4 *Erasmus Law Review* 217, at 222-223.

²³⁰ *Ibid.*; according to Trebilcock et al., *supra* note 93, at 447-450, removing barriers to trade in the agricultural sector was one of the main objectives of the Uruguay Round negotiations (at 447). By this time the United States had become perhaps the most ardent proponent for reigning in domestic support and reducing market access conditions. At the time of the negotiations, both the US and the European Union (EU) operated large support programs for their agricultural producers. However, the US wanted to pursue the abolition of all domestic support within ten years, whereas the EU wanted to retain the capacity to protect their agricultural producers (at 448). The Blair House Agreement, signed by the US and the EU on December 7th, 1993, established a compromise between these two countries which formed that basis for the regulation of agricultural support under the WTO (at 449-450).

²³¹ WTO: *Agreement on Sanitary and Phytosanitary Measures: 1994* (Marrakesh: WTO, 1994) online: WTO <https://www.wto.org/english/docs_e/legal_e/legal_e.htm>.

²³² WTO: *Agreement on Trade Related Aspects of Intellectual Property Rights: 1994* (Marrakesh: WTO, 1994) online: WTO <https://www.wto.org/english/docs_e/legal_e/legal_e.htm>.

²³³ van der Meulen, *supra* note 229 at 222-223.

²³⁴ *Ibid.*

provide an overview of the terms of the AoA. I then explore the critical legal scholarship on the Agreement. Finally, I explain how the AoA contributed to the spikes in undernourishment associated with the world food price crisis of 2007-2008.

4.1. The WTO AoA

The AoA regulates agricultural market access (tariffs), domestic support (subsidies), and export competition (export subsidies).²³⁵ The Agreement requires WTO Members to undertake spending reductions in these three areas. These reductions are outlined in Part IV of each Member's Schedule, and are based on an average of the dollar value of a member's aggregate yearly spending during the reference period of 1986-88.²³⁶ The AoA is complex and its terms are subject to a variety of exceptions and conditions. Here, I will simply present a basic overview of the Agreement. Because agricultural subsidies are at the forefront of this research I have chosen to focus mostly on the AoA's domestic support regulations.

4.1.1. The AoA's Market Access Regulations

Pursuant to the AoA, developed countries were required to reduce tariffs by 36 percent of their 1986-88 reference value over a period of six years (1995 to 2000).²³⁷ Tariffs for each product-category (eg: rice, wheat etc...) were subject to a minimum

²³⁵ Sonia Hawkes and Jagjit Plahe, "Worlds Apart: The WTO's Agreement on Agriculture and the right to food in developing countries" (2012) 34:1 International Political Science Review 21, at 25.

²³⁶ WTO, *Trade Topics: Agriculture: Explanation*, online: <https://www.wto.org/english/tratop_e/agric_e/ag_intro00_contents_e.htm> accessed: 2015-01-19; for a complete analysis of the terms of the AoA and an outline of which conditions are set out in the Articles and member Schedules, refer to: WTO, *Key elements of the Agreement on Agriculture and related commitments*, online: <https://www.wto.org/english/tratop_e/agric_e/ag_intro07_summary_e.htm> accessed 2015-01-19.

²³⁷ Hawkes & Plahe *supra* note 235 at 26-28; Trebilcock et al., *supra* note 93 at 462; WTO, *Trade Topics: Agriculture: Explanation: Market Access*, online: <https://www.wto.org/english/tratop_e/agric_e/ag_intro02_access_e.htm> accessed: 2015-01-19.

reduction of 15 percent.²³⁸ Developing countries were required to reduce tariffs by 24 percent of their reference value over a period of ten years (1995-2004).²³⁹ They also committed to reducing product-specific support by at least 10 percent in each product category during this time period.²⁴⁰

4.1.2. The AoA's Export Competition Regulations

Developed countries committed to reducing expenditures on export subsidies by 36 percent of their reference period value, and reducing the volume of products receiving export subsidies by 21 percent.²⁴¹ Developing countries committed to reducing total expenditures on export subsidies by 24 percent, and reducing the volume of products receiving export subsidies by 14 percent.²⁴² As with the market access concessions discussed above, the period of implementation for export subsidy reductions is six years for developed countries and ten years for developing countries, beginning in 1995.²⁴³

²³⁸ *Ibid.*

²³⁹ *Ibid.*

²⁴⁰ *Ibid.*; market access regulations are found in Article 4 and 5 of the AoA. Article 4 requires Members to convert all non-tariff-barriers into tariffs, and to bind all tariffs to their reference value. A system of tariff quotas was also established by guaranteeing minimum market access opportunities for any agricultural products that accounted for less than five percent of domestic consumption during the reference period. Article 5 contains a Special Safeguard provision (SSG). The SSG allows any Member to raise tariffs in relation to an agricultural product if the volume of imports of that product exceeds a predetermined trigger level. Tariffs on a given agricultural product may also be increased if the price at which imports of that product are entering the domestic market falls to a price that is equal to or lower than their reference value.

²⁴¹ Hawkes & Plahe *supra* note 235 at 26; Trebilcock et al., *supra* note 93 at 452-453; WTO, *Trade Topics: Agriculture: Export Competition/Subsidies*, online: <https://www.wto.org/english/tratop_e/agric_e/ag_intro04_export_e.htm> accessed: 2015-01-19.

²⁴² *Ibid.*

²⁴³ *Ibid.*; these reduction commitments apply to all export subsidies enumerated in Article 9 of the AoA. According to Article 9(1), these reduction commitments apply to government subsidies contingent on export performance; non-commercial stocks exported at sale prices below the domestic market price; payments on exports derived from a levy or surcharge on the product concerned, or on like products; subsidies towards the costs of marketing, handling, processing, and transporting exports internationally; favourable domestic transportation costs for export products; and, subsidies for agricultural products that are contingent on their use in exported products. Article 3(3) prohibits the introduction of export subsidies that were not in effect during the reference period of 1986-1988. Any export subsidies that were in effect during the reference period, and not specifically prohibited in Article 9, are subject to the non-circumvention restrictions established in Article 10. Article 10 contains provisions to ensure that export subsidies, non-commercial transactions, and the provision of food-aid are not used to circumvent a

4.1.3. The AoA's Domestic Support Regulations

Within the WTO, subsidies are normally regulated by the *Agreement on Subsidies and Countervailing Measures*;²⁴⁴ however, agricultural subsidies fall under the purview of the AoA.²⁴⁵ The AoA organizes domestic support programs as either trade-distorting or non-trade-distorting.²⁴⁶ Generally, domestic support programs deemed trade-distorting are subject to reductions, whereas those considered non-trade-distorting are not.²⁴⁷ To keep track of which programs qualify as either trade-distorting or non-trade-distorting, the WTO created a classification system consisting of three 'boxes': an Amber box, a Blue box, and a Green box.²⁴⁸

Amber box programs are considered trade-distorting. The combined dollar value of each Member's Amber box programs constitutes their Current Total Aggregate Measure of Support (AMS).²⁴⁹ When calculating their Current Total AMS, Members may exclude Green and Blue box programs (discussed below). Developed countries agreed to lower their Current Total AMS by 20 percent over the course of six years.²⁵⁰ Developing countries agreed to reduce their Current Total AMS by 13.3 percent over ten years.²⁵¹ The value of these reductions is calculated according to each Member's Base Total AMS.

Member's export subsidy reduction commitments. Article 10 also establishes an undertaking towards harmonizing the use of export credits and export insurance programs.

²⁴⁴ WTO, *Agreement on Subsidies and Countervailing Measures* (Marrakesh: WTO, 1994) online: <https://www.wto.org/english/docs_e/legal_e/24-scm.pdf>.

²⁴⁵ Charlene C. Kwan, "Modifying the Farm Bill: Using the "Permanent Provisions" in agricultural law to achieve WTO compliance" (2009) 36 BC Envtl Aff L Rev 571, at 589-590.

²⁴⁶ *Ibid*; see also: WTO, *Trade Topics: Agriculture, Domestic Support*, online: <https://www.wto.org/english/tratop_e/agric_e/ag_intro03_domestic_e.htm#reduction> Accessed: 2015-01-19.

²⁴⁷ WTO, *Domestic Support in Agriculture: The boxes*, online: <https://www.wto.org/english/tratop_e/agric_e/agboxes_e.htm#amber> accessed: 2015-01-19.

²⁴⁸ *Ibid*.

²⁴⁹ *Ibid*.

²⁵⁰ *Ibid*, these reduction requirements are established in Part IV of the Member Schedules. The requirement to adhere to these reductions is found in AoA Article 6(3); see also: Hawkes & Plahe *supra* note 235 at 25-26; Trebilcock et al., *supra* note 93 at 450-452.

²⁵¹ *Ibid*.

The Base Total AMS is determined by calculating the average aggregate value of each Member's support programs, including Green and Blue box programs, during the reference year period of 1986-88.²⁵² Pursuant to Article 6(4) of the AoA, developed countries can also exclude product-specific support that does not exceed five percent of the value of the production of the agricultural product in question from the calculation of Current Total AMS.²⁵³ For developing countries, the ceiling for this exemption is set at ten percent.²⁵⁴ Throughout this thesis, the exemptions contained in Article 6(4) of the AoA are also referred to as the *de minimis* limits.

The Blue box refers to the programs listed in Article 6(5) of the AoA.²⁵⁵ The value of Blue box programs is not included in the calculation of Current Total AMS. Therefore, they are exempt from Members' domestic support reduction commitments.²⁵⁶ The Blue box provides an exemption to direct-payments paid to producers made as part of production-limiting programs, so long as the payments are either based on fixed area and yield reduction, are "made on 85 percent or less of the base level of production", or, are livestock payments "made on a fixed number of head".²⁵⁷

Domestic support programs included in the Green box are also exempt from reduction commitments. The list of programs included in the Green box is found in Annex 2 of the AoA. To qualify for Green Box protection, these programs must "have no, or minimal, distortive effect on trade", "be provided from a publicly-funded government programme (including government revenue foregone) not involving transfers

²⁵² *Ibid.*

²⁵³ AoA, *supra* note 3 at Article 6(4)[a].

²⁵⁴ *Ibid* at Article 6(4)[b].

²⁵⁵ WTO, *Domestic Support in Agriculture: The boxes*, *supra* note 247.

²⁵⁶ AoA, *supra* note 3 at Article 6(5)[b].

²⁵⁷ *Ibid.*

from consumers”, and, “shall not have the effect of providing price support to producers.”²⁵⁸

4.2. Critical Legal Scholarship on the AoA: Exploring the Agreement’s Inherent Structural Inequality

In the section above, I provided a brief overview of the terms of the AoA. To add to this discussion, I explore some of the critical scholarship on the Agreement. This research is important to my thesis, as it examines the material consequences of the AoA, and demonstrates why many developing countries have been dissatisfied with the WTO’s regulation of the agricultural sector.

Critical legal scholars studying the AoA have argued that the Agreement codified and entrenched pre-existing inequalities between developed and developing countries.²⁵⁹ These researchers contend that the US and the EU were able to use their political and economic clout to secure preferential treatment for their agricultural producers within the WTO.²⁶⁰ Their research demonstrates that the terms of the AoA have provided disproportionate benefits to corporations and large-scale producers that were able to lobby powerful governments to promote their interests.²⁶¹ It also outlines how these benefits have come at a great cost to small producers and marginalized populations in developing countries.²⁶²

Although the AoA imposes higher reduction commitments on developed Members, due to the structure of the Agreement, developed Members still have much

²⁵⁸ *Ibid* at Annex 2(1), Annex 2(3)-(13) lists the programs included in the Green Box. They include research, inspection, pest and disease control, marketing, and domestic food aid programs. Also exempt are certain direct government payments to producers, including: payments decoupled from production requirements, insurance and safety net programs, crop insurance schemes for relief from natural disasters, structural adjustment assistance, environmental programs, and, regional assistance programs.

²⁵⁹ *Ibid*.

²⁶⁰ Gonzalez, *supra* note 102 at 441; Simons, *supra* note 103 at 411, 414.

²⁶¹ Gonzalez, *supra* note 102 at 478; Simons, *supra* note 103 at 414-421.

²⁶² Gonzalez, *supra* note 102 at 438.

more leeway to legislate and spend on agricultural issues than their developing counterparts.²⁶³ Because the AoA's reduction commitments are measured according to the support and protection schemes in effect during the base period of 1986-88, the Agreement effectively codifies the inequalities that existed between developed and developing countries when the Uruguay Round negotiations began.²⁶⁴

During the oil crisis of the 1970s and the ensuing debt crisis of the 1980s, a growing number of government defaults prompted many developing countries to take conditional loans from the IMF.²⁶⁵ The conditions of these loans required borrowing states to adopt Structural Adjustment Programs (SAPs), which were designed to reduce state expenditures and promote the liberalization of trade, investment, and finance.²⁶⁶ The objective of these deflationary, liberalizing policies was to make the goods and labour in developing countries cheap and accessible. This strategy was intended to stimulate economic growth by promoting exports and foreign investment.²⁶⁷ The SAPs restricted state spending on agricultural marketing boards, input and food subsidies, special credit facilities, and agricultural promotion agencies such as national grain reserves and marketing boards.²⁶⁸ Unless the borrowing state complied with the conditions of the SAPs, their loans could be cut off by the IMF.²⁶⁹

Many developing countries were subject to IMF SAPs; as such, they lacked both the policy space and the financial capacity to provide large subsidies to their agricultural

²⁶³ Simons, *supra* note 103 at 410-411.

²⁶⁴ Gonzalez, *supra* note 102.

²⁶⁵ IMF, *About the IMF: IMF Factsheet: IMF Lending*, online: <<http://www.imf.org/external/np/exr/facts/howlend.htm>> accessed 2015-05-29, updated 2015-04-10.

²⁶⁶ Mark R. Brawley and Nicole Baerg, "Structural Adjustment, Development, and Democracy" (2007) 9 *International Studies Review* 601.

²⁶⁷ *Ibid.*

²⁶⁸ Mittal, *supra* note 39 at 9.

²⁶⁹ *Ibid.*

sector at the time of the base-year period.²⁷⁰ For this reason, most of the WTO's developing Members do not have reduction commitments in Part IV of their Member Schedule, which means that their domestic support programs (aside from Blue and Green box programs) cannot exceed the 10 percent *de minimis* limit.²⁷¹

Meanwhile, during the reference period of 1986-88, developed Members such as Canada, the EU and the US were providing generous subsidisation programs and protection schemes to their agricultural sectors.²⁷² Moreover, because domestic support reductions are based on the value of Current Total AMS (which does not factor in Blue and Green box subsidies, as discussed in section 2.2.4.) compared to 1986-88 Base Total AMS (which does), many of developed countries were able to meet their domestic support reduction requirements without cutting funding.²⁷³

These aspects of the AoA have allowed developed countries to continue to provide extensive subsidies to their agricultural producers. For example, Canadian federal subsidies for agriculture totalled \$1.454 billion in 1986, \$3.01 billion in 1987, and \$2.543 billion in 1988.²⁷⁴ Subsidies were reduced periodically in the early 1990s; however, between 1995 (when Canada joined the WTO) and 2005, federal agricultural subsidies increased from \$374 million to \$2.113 billion.²⁷⁵ The total value of the support provided to agricultural producers in developed countries climbed from \$240 billion in the mid-

²⁷⁰ Gonzalez, *supra* note 102 at 447; Simons, *supra* note 103 at 411.

²⁷¹ Trebilcock et al., *supra* note 93 at 451.

²⁷² Gonzalez, *supra* note 102 at 460-468; Simons, *supra* note 103 at 409.

²⁷³ Gonzalez, *supra* note 102 at 466; Trebilcock et al., *supra* note 93 at 467.

²⁷⁴ Statistics Canada, *Provincial and Territorial Economic Accounts: Data Tables*, [Archived] 2010 4:1 (13-018-X), at Table 15: Government Subsidies and Capital Transfers, Canada, online: <<http://www.statcan.gc.ca/pub/13-018-x/2009002/t/tab1501-eng.htm>>.

²⁷⁵ *Ibid*; during 2013 (the latest year for which statistics are available) the net value of Canadian payments, rebates, and government programs directed towards the agricultural sector was \$1.55 billion (Statistics Canada, *Direct Payments to Agricultural Producers: Agricultural economic statistics: 2013*, November 2014, 13:2 (21-015-X) at Table 1-33, online: <<http://www.statcan.gc.ca/pub/21-015-x/2014002/t034-eng.htm>>).

1980s to \$258 billion in 2012,²⁷⁶ and expenditures on agricultural subsidies amongst OECD countries increased by 28 percent between 1997 and 2013.²⁷⁷ As of 2013, the US and the EU alone spend a combined 150 billion dollars annually to subsidize their agricultural sectors.²⁷⁸

4.2.1. Developed Country Subsidies, Export Dumping, and Developing Countries

For decades, transnational corporations (mostly headquartered in the US and other developed countries) have engaged in a coordinated effort to promote market concentration and integration in the agricultural sector.²⁷⁹ Within ten years of the creation of the WTO, the world's grain supply was mostly controlled by five corporations.²⁸⁰ Six corporations controlled 40 percent of the coffee trade, and three controlled 85 percent of the trade in cotton.²⁸¹ Through amalgamation and cooperation, many of these corporations have come to control every aspect of the production chain.²⁸² As such, in addition to profiting from generous subsidies, these companies have access to input commodities and manufactures such as oil, pesticides, and herbicides at below market cost.²⁸³

The deflationary macroeconomic policies promoted by the IMF and codified by the AoA provide a framework that accommodates this process of corporate expansion.²⁸⁴ As discussed above, the constraints placed upon the policy space of developing countries by

²⁷⁶ Gillson & Fouad, *supra* note 22 at 98.

²⁷⁷ *Ibid.*

²⁷⁸ Trebilcock et al., *supra* note 93 at 467; according to Trebilcock et al., this increase is at least partially attributable to the US and EU practice of shifting support to “areas not limited by the Agreement” (eg: blue and green box subsidies).

²⁷⁹ Simons, *supra* note 103 at 416.

²⁸⁰ *Ibid.*

²⁸¹ *Ibid.*

²⁸² *Ibid.*

²⁸³ *Ibid.*

²⁸⁴ Simons *supra* note 103 at 422-424; Gonzalez, *supra* note 102 at 477-480.

the cumulative effects of AoA regulations and IMF SAP conditions left them poorly equipped to protect their small farmers from international competition.²⁸⁵ Many of these farmers faced economic hardship when they could not compete with subsidised imports produced by companies based in developed countries with access to cheap industrial input technologies and economies of scale.²⁸⁶

These policies put downward pressure on the incomes and purchasing power of agrarian populations in many developing countries. For example, between 1980 and 1990, the agricultural wage declined by 26.5 percent in Latin American countries that had implemented SAPs.²⁸⁷ During the same time period, the minimum wage in Latin American countries dropped by 31.7 percent, the GDP per capita fell by 9 percent, and the percentage of people living below the poverty line climbed by 44 percent.²⁸⁸ The six most populous countries in Sub-Saharan Africa – Nigeria, Kenya, Tanzania, Ethiopia, and Zaire – also took out IMF loans that required them to implement SAPs.²⁸⁹ Between 1980 and 1990, the SAPs had the effect of restructuring domestic agricultural production from subsistence and smallholder food production towards export-oriented production of non-food crops.²⁹⁰ In subsequent years, however, the global price of the non-food commodities decreased.²⁹¹ This caused the value of local crops and local wages to fall, which meant that many people in these countries were unable to afford to purchase imported food.²⁹² Accordingly, four out of these six countries registered a decline in daily

²⁸⁵ *Ibid.*

²⁸⁶ Simons, *supra* note 103 at 422.

²⁸⁷ Usta Patnaik, “Mass Income Deflation and Burgeoning Food Stocks” in Patnaik, *supra* note 104 at 88.

²⁸⁸ *Ibid.*

²⁸⁹ Utsa Patnaik, “The Loss of Food Security in Sub-Saharan Africa” in Patnaik, *supra* note 104, 57 at 63.

²⁹⁰ *Ibid* at 63-65.

²⁹¹ *Ibid.*

²⁹² *Ibid* at 65.

caloric intake during this period (Zaire's caloric intake remained stagnant and Nigeria was able to benefit from oil revenues to boost its population's caloric intake).²⁹³

In addition to harming many small producers in developing countries, the expansion of corporate agricultural producers has also had a negative effect on consumers. Obesity and diabetes, once relegated principally to developed countries, are spreading as the global market is increasingly saturated with processed food.²⁹⁴ Adult overweightness and obesity has traditionally been a widespread concern in relatively prosperous countries like Canada, the United States, and Australia. Contemporarily, however, many South American, African, and Middle-Eastern countries are experiencing a rapid spread of these illnesses.²⁹⁵

The rates of obesity and diabetes in India have also climbed since the government's transition towards economic liberalization.²⁹⁶ India's experience with structural adjustment and the WTO provides a compelling case study about the negative implications of economic liberalization for rural agrarian populations.²⁹⁷ Beginning in 1991, India implemented SAPs after a debt crisis which pushed them to take out a loan from the IMF.²⁹⁸ The SAPs required the GOI to reduce investment in rural development, which led to a steady increase in rural unemployment and a consistent decline in the country's foodgrain outputs between 1990 and 1994.²⁹⁹ These deflationary conditions

²⁹³ *Ibid.*

²⁹⁴ FAO, *Food and nutrition in numbers 2014* (2014) at 16-17, chart 22-23, Fig 7; the FAO notes that "[t]he global prevalence of overweight and obesity has risen in all regions, and is also increasing in all countries".

²⁹⁵ *Ibid.*; for example, as of 2014, over 20 percent of children in Albania, Lybia, and Egypt were overweight.

²⁹⁶ Seema Gulati and Anoop Misra, "Sugar Intake, Obesity, and Diabetes in India" (2014) 6:12 *Nutrients* 5955.

²⁹⁷ See Chapter 6 of this thesis.

²⁹⁸ Utsa Patnaik, "Theorizing Food Security in an Era of Economic Reforms" in Patnaik, *supra* note 104, 151 at 156-57 [Patnaik, "Economic Reforms"].

²⁹⁹ *Ibid.* at 156-161.

were further entrenched after India became a founding member of the WTO in 1995.³⁰⁰ Upon joining the WTO, India agreed to remove all quantitative restrictions on trade and to convert them to import tariffs by 2001.³⁰¹ They also agreed to lower the import tariffs from 100 percent for crops and 150 percent for processed products to a 35 percent flat rate.³⁰² Between 1995 and 2001 the international price of food crops fell by roughly 40 to 50 percent, and the price of oil crops fell by almost 80 percent.³⁰³ The combined impact of tariff reductions and price declines “meant that producers of rice, fresh fruit and dairy products faced the undermining of their incomes from inflow of heavily subsidized foreign goods.”³⁰⁴

4.3. The AoA and the World Food Price Crisis of 2007-2008

The research surrounding the world food price crisis of 2007-2008 provides a compelling analysis of the negative effects of the liberalization of the agricultural sector. As discussed at the outset of the thesis, beginning in 2007 international food prices climbed steeply and suddenly. These high prices pushed many of these people deeper into poverty and effectively prevented them from purchasing enough food to meet their basic caloric requirements.

These price spikes were spurred by a sequence of events similar to those that drove drastic food price increases in the mid-1970s.³⁰⁵ On both occasions, food prices were influenced by the high price of oil (which impacted the cost of input materials and

³⁰⁰ *Ibid* at 161.

³⁰¹ *Ibid.*

³⁰² *Ibid.*

³⁰³ *Ibid* at 162.

³⁰⁴ *Ibid.*

³⁰⁵ FAO, Facts and Lessons 2011, *supra* note 41.

transportation).³⁰⁶ Food prices were also pushed upwards by series of droughts that slowed production growth and led to diminished world food stocks.³⁰⁷

There are other contributing factors somewhat unique to the food crisis of 2007-2008.³⁰⁸ The relaxation of American investment regulations in the mid-1990s and the low-interest monetary policy of the American government in the early twenty-first century encouraged an increase in financial and speculative investment activity.³⁰⁹ After the collapse of the dotcom market in the early 2000s and the real estate and financial markets in 2007-2008, investors shifted their attention to commodity futures.³¹⁰ The surge in demand for commodity futures caused the market price of food and raw materials used in the production and transportation of food to increase dramatically in a short period of time.³¹¹

Changing global patterns of consumption also helped drive up the price of staple foodgrains upon which the poor rely for sustenance (eg: rice, wheat, and corn).³¹² A growing demand for meat protein has provided an incentive to produce feed for

³⁰⁶ *Ibid.*

³⁰⁷ *Ibid.*; according to Mittal, *supra* note 39 at 3-4, in 2007, these droughts affected several large grain producers such as the Ukraine, Australia, and the EU.

³⁰⁸ Mittal, *supra* note 39 at 6-8.

³⁰⁹ DESA, *supra* note 39 at 67; and Mittal, *supra* note 39 at 5-6; according to Mittal, investments in commodities from pension fund investments alone climbed from \$13 billion in 2003 to over \$260 billion in 2008) as cited in: International Union of Food Workers (IUF), *Financializing Food: Deregulation, Commodity Markets and the Rising Cost of Food* (2008). There are different interpretations as to the respective effects of monetary policy and speculative investment on the crisis of 2007-2008. For a discussion about the effects of monetary policy on financial speculation and the behaviour of commodity prices, see: Jeffrey A. Frankel, "Effects of speculation and interest rates in a "carry trade" model of commodity prices" (2014) 42 *Journal of International Money and Finance* 88. For a discussion of the effects of relaxing investment laws, see: William Spencer Topham, "Re-regulating "financial weapons of mass destruction": Observations on repealing the Commodity Futures Modernization Act and Future Derivative Regulation" (2011) 47 *Williamette L Rev* 133.

³¹⁰ DESA, *supra* note 39 at 67; Mittal, *supra* note 39 at 5-6.

³¹¹ Mittal, *supra* note 39 at 5-6.

³¹² *Ibid.*

domesticated animals instead of food for people.³¹³ Increased global demand for biofuels –exacerbated by the US government’s heavy subsidization of biofuel production – also diverted land away from food production.³¹⁴ Furthermore, leading up to 2008, a series of environmental factors coincided to reduce agricultural output.³¹⁵ In addition to droughts, these included erosion, and the degradation and depletion of freshwater supplies.³¹⁶

The SAPs and the AoA also contributed to the devastation wrought by the food price crisis.³¹⁷ Because the IMF and World Bank had maintained that state programs were inefficient, corrupt, and burdensome, the SAPs curtailed public sector spending in borrowing countries.³¹⁸ While these state-run programs may not have been run efficiently, the spikes in hunger that occurred as a result of the food price crisis of 2007-2008 demonstrate that they served a valid and necessary purpose.³¹⁹ The millions of people harmed by the food price crisis are proof that dismantling (instead of improving) state-funded food and agricultural programs was ill-advised.³²⁰

As discussed earlier in this Chapter, the AoA institutionalised the SAPs by basing market access and support reduction commitments on a time-period when many developing countries were subject to SAPs (1986-88). This allowed producers in developed countries to “capture developing country markets by dumping commodities below their costs of production.”³²¹ Surges of cheap, subsidized imports made

³¹³ *Ibid.*

³¹⁴ *Ibid* at 6.

³¹⁵ *Ibid* at 3.

³¹⁶ *Ibid.*

³¹⁷ *Ibid* at 8-13.

³¹⁸ *Ibid* at 9.

³¹⁹ *Ibid.*

³²⁰ *Ibid.*

³²¹ *Ibid* at 11; “In 2003, the United States exported wheat at 28 per cent below the cost of production, soybeans at 10 per cent below the cost of production, corn at 10 per cent below the cost of production, cotton at 47 per cent below the cost of production, and rice at 26 per cent below the cost of production

subsistence farming fiscally and socially untenable in many developing countries.³²² As their way of life became increasingly redundant, small producers across the world were forced off their lands.³²³ As a result of the decline of domestic smallholder production, many rural and agrarian communities came to depend on the very imports that made their way of life obsolete.³²⁴ For these reasons, at the time of the food price crisis, many developing countries were home to large numbers of displaced, unemployed people without the income or the means of production to compensate for the increased cost of food.³²⁵

The liberalizing conditions of the WTO also intensified dependence on food imports in developing countries by preserving “legacies of colonial plantation-based production and trade structures.”³²⁶ By opening up developing markets to international competition, the AoA intensified the pressure on developing countries to concentrate on export oriented “cash crops” that can be produced more efficiently (or exclusively) in tropical climates.³²⁷ Unfortunately, during the crisis the price of tropical goods did not

[citation omitted]” cited in: Institute for Agriculture and Trade Policy (ITAP), *WTO Agreement on Agriculture: A Decade of Dumping – United States Dumping on Agricultural Markets* (2005) .

³²² *Ibid* at 12-13.

³²³ *Ibid*.

³²⁴ *Ibid*.

³²⁵ *Ibid*.

³²⁶ *Ibid* at 13-14; an estimated 43 developing countries depend on a single commodity crop for over 20 percent of merchandise exports.

³²⁷ *Ibid*; these crops include sugar, cotton, bananas, tobacco, coffee, rubber, cotton etc... For an enlightening discussion on tropical export crops, see: Utsa Patnaik, “The Costs of Free Trade: The WTO Regime and the Indian Economy” in Patnaik *supra* note, 104 at 20-26. Patnaik observes that these export crops are evidence of the faulty logic behind the theory of comparative advantage upon which trade liberalization is premised. Developing countries – due to their tropical climates – are often able to produce much of the food needed for sufficiency, in addition to highly sought-after goods that could not be produced efficiently or at all in the climates of most developed countries. This reality, she argues, is incompatible with a theory that views the productive capacity of developing and developed countries as essentially equal, and encourages them to specialize and trade.

climb as much as the price of cereals, oilseeds, and dairy products.³²⁸ As such, people in developing countries were often unable to compensate for the high price of imports with increased incomes from export revenues.³²⁹

4.5. Research Implications

The research presented in this Chapter demonstrates that the IMF SAPs and the WTO AoA contributed to a process of asymmetrical liberalization that caused widespread displacement, inequality, and undernourishment. One of the prominent themes of this Chapter is that the reference period upon which AoA reduction commitments are based (1986-88) essentially prevents developing countries from adjusting their policy frameworks to protect their domestic agricultural sectors. This is because during this period of time many developing countries were subject to SAPs that restricted public sector spending in many areas, including agriculture.

This aspect of the AoA conferred a distinct advantage upon corporate producers headquartered in developing countries. In addition to receiving generous subsidies, these corporations often have access to industrial technologies. Due to their tendency to integrate vertically and horizontally, they are also able to take advantage of cheap input products and economies of scale to outcompete smaller producers. Therefore, as a consequence of the structural inequality of the AoA, many smallholder producers in developing countries were bankrupted when they couldn't compete with imports of cheap, subsidised goods produced by vertically and horizontally integrated transnational corporations.

³²⁸ FAO, *The State of Agricultural Commodities Markets 2009* (2009) at 10; according to the FAO, the production of cereals, oilseeds, and dairy products are dominated by corporate producers in developed countries.

³²⁹ *Ibid*

During the world food price crisis of 2007-2008, the cheap imports that had hitherto flooded developing markets turned into a wall of prohibitively expensive food. Thus, millions of marginalized people in developing countries (many of whom were unemployed or working for cheap wages as a result of the combined influence of IMF and WTO policies) were unable to access sufficient food, or were pushed further into poverty.

This association between the IMF SAPs, the AoA, and the consequences and aftermath of the world food price crisis will inform my analysis of the Ministerial Decision. The research presented in this Chapter explained some of the dysfunctional aspects of the WTO's regulation of the agricultural sector, and highlighted the pressing need to allow developing Members the policy space to protect their citizens from dependence on foreign imports and volatile international food prices. In the next Chapter, I describe the significance of public stockholding programs and explain how they can be used to accomplish these objectives. I will then conduct an analysis of the Ministerial Decision in order to determine whether it will allow the WTO's developing Members to use public stockholdings to protect their populations.

Chapter 5: The Ministerial Decision

The spikes in international food prices and the ensuing boom in global undernourishment that characterized the world food price crisis put the issue of public food stockholding programs in the spotlight during WTO negotiations.³³⁰ Stockholding programs are often used to support poor rural farmers, to provide food to the poor, and to serve as a buffer against international shocks to food prices.³³¹ The use of stockholding programs is regulated by the AoA and, even prior to the crisis, these regulations have been a prominent point of discussion within the WTO.³³²

In this Chapter, I explain the significance of public food stockholding programs, and describe how they are regulated by the AoA. I then analyze the Ministerial Decision by providing a detailed analysis of its contents, and showing how it affects the conditions of the AoA. Finally, through reference to the insights gained from the research discussed in the last two Chapters, and research conducted by Mary Louise Malig³³³ I engage with the three questions about the Ministerial Decision that were posed at the outset of this thesis: What does it do? Will it help? and, Whose interests does it serve?

5.1. The Significance of Public Stockholding Programs

Prior to discussing the Ministerial Decision, it is necessary to provide a cursory description of some of the different types and functions of public stockholding programs. Stockholding programs come in many different forms, and serve many different purposes. The most commonly used stockholdings are buffer stocks, social safety net

³³⁰ Montemayor, *supra* note 46 at 4.

³³¹ OECD, Stockholdings, *supra* note 47 at 7.

³³² WTO, *Agriculture: Negotiations: Informal Meeting: Chair updates on farm issues proposed for Bali meeting: talks continue on key differences* (23 May, 2013), online: <https://www.wto.org/english/news_e/news13_e/agng_23may13_e.htm#proposal> accessed 20115-07-13.

³³³ Malig, *supra* note 71 at 8-9.

stocks, and emergency stocks.³³⁴ Buffer stocks are designed to protect consumers and producers from volatile international food prices by manipulating the supply of and demand for food within a given market.³³⁵ They operate based on a ‘floor’ price and a ‘ceiling’ price set by the government. When the market price is at or below the floor price, the government purchases food stocks.³³⁶ When the market price is at or above the ceiling price, the government distributes some of the food it has accumulated to the population.³³⁷ By buying food when prices are low and releasing food when they are high, the government is able to limit food price volatility by influencing supply and demand.³³⁸ The ceiling and floor price established by the government also effectively pegs domestic food prices within a set range, which provides both producers and consumers with protection from international price fluctuations.³³⁹ Social safety net stocks and emergency stocks differ from buffer stocks insofar as they are not meant to interfere with market activity. Social safety net stocks are purchased as reserves for government safety net programs, and they are most often used to distribute food to the poorest people in society.³⁴⁰ Emergency stocks are kept to mitigate sudden food supply shocks and to respond to food shortages caused by transitory events such as natural disasters.³⁴¹

In practice, government stockholding programs often serve as a price buffer, social safety net, and emergency supply all at once.³⁴² Stocks that are purchased as buffers are

³³⁴ OECD, *Stockholdings*, *supra* note 47 at 7.

³³⁵ *Ibid.*

³³⁶ *Ibid.*

³³⁷ *Ibid.*

³³⁸ *Ibid.*

³³⁹ *Ibid.*

³⁴⁰ *Ibid.*

³⁴¹ *Ibid.*

³⁴² *Ibid.*

usually also used to provide subsidised food, or provide disaster relief in times of emergency.³⁴³ Buffer stock programs are also often designed to support producers by establishing a floor price that is higher than the market price.³⁴⁴ Meanwhile, stocks used as part of a subsidy or relief program can have a ‘buffering’ effect on domestic food prices: if a subsidy program is expansive it can cause a reduction in demand for food sold on the open market.³⁴⁵

5.2. The AoA and Public Food Stockholding Programs

Now that I have established a brief description of the different types and purposes of food stockholding programs, I will explain how these programs are regulated by the AoA. As discussed in Chapter 4, Annex 2 of the AoA (the Green box) contains several exceptions that allow WTO Members to exclude the cost of programs that are considered minimally trade distorting from the calculation of their Current Total AMS. This means that Green box programs are effectively exempt from the domestic support reduction requirements contained in each Member’s Schedule, and in Article 6(4) of the AoA. These programs are not, however, simply given a ‘free pass’ from the conditions of the AoA. According to Annex 2(1) of the AoA, all Green box programs must be non-trade-distorting, or have a minimal distortive effect. The Green box exemption does not apply to programs that operate at the expense of consumers, and they cannot “have the effect of providing support to producers.”³⁴⁶

Annex 2(3) of the AoA provides public stockholding programs with an exemption from domestic support reduction commitments. In addition to the general limitations

³⁴³ *Ibid.*

³⁴⁴ *Ibid* at 8.

³⁴⁵ *Ibid* at 7.

³⁴⁶ AoA, *supra* note 3, Annex 2(1).

imposed by Annex 2(1), Annex 2(3) contains a series of restrictions designed to prevent food stockholding programs from interfering with market prices or providing price support to producers. According to Annex 2(3), these programs are only eligible for an exemption if food stocks are purchased in order to sustain a “food security programme identified in national legislation.” Food stocks can only be purchased and accumulated according to “predetermined targets related solely to food security” and they must be purchased “at no less than the current domestic market price for the product and quality in question.”

Footnote 5&6 of Annex 2 stipulates that food stockholding and food aid programs that provide food at subsidized prices in order to meet the “food requirements of urban and rural poor in developing countries on a regular basis at reasonable prices” are considered compliant with Annex 2(3). This relaxes the requirement that food subsidies must be related solely to food security, but still prevents them from being used to provide food to anyone but the poor. Footnote 5 of Annex 2 allows developing countries to purchase and distribute food at administered prices, so long as the stockholding program in question is operated transparently and “in accordance with officially published objective criteria or guidelines.” It also requires developing countries to count the difference between the purchase price and the external reference price towards their Current Total AMS. This clause effectively limits the amount of stocks developing countries can purchase at administered prices without exceeding either their domestic support reduction requirements or their *de minimis* limits. The external reference price

referred to in footnote 5 is based on the average unit value of a given food item during 1986-1988.³⁴⁷

5.3. An Overview of the Ministerial Decision

In the following section, I analyse the interaction between the Ministerial Decision, and explain its relationship to the Green box exemption for public food stockholdings, found in Annex 2(3) of the AoA. The Ministerial Decision on public food stockholdings contains six main provisions: protection for the public stockholdings of developing countries; notification and transparency requirements; anti-circumvention requirements; consultation requirements; monitoring requirements; and, a provision establishing a work programme to pursue a permanent solution to the issue of public food stockholdings within the WTO.

5.3.1. Protection and Limitations

Paragraph 2 of the Ministerial Decision provides protection to the stockholding programs of developing countries by compelling other Members to refrain from challenging said programs through the WTO Dispute Settlement Mechanism. This protection is, however, qualified by several limitations. First, only stocks of “traditional staple food crops” are covered under this exemption.³⁴⁸ Second, the food stockholding program in question must serve a “food security purpose”. Third, the program must have existed as of the date of the Ministerial Decision.³⁴⁹ Fourth, the program must be “consistent with the criteria of paragraph 3, footnote 5, and footnote 5&6 of Annex 2 of

³⁴⁷ *Ibid* at Annex 3(9); the external reference price is based on the f.o.b. (‘free on board’) price for net-food-exporting countries and the c.i.f. (‘customs, insurance, freight’) price for net-food-importing countries.

³⁴⁸ Ministerial Decision *supra* note 1 at footnote 2; “traditional staple food crop” is qualified as “primary agricultural products that are predominant staples in the traditional diet of a developing Member.”

³⁴⁹ *Ibid*; the Ministerial Decision is dated December 3rd, 2013.

the AoA.” Fifth, in order to qualify for the exemption provided by the Decision, developing Members must also comply with the notification, transparency, anti-circumvention, consultation, and monitoring requirements contained therein.

5.3.2. Notification and Transparency Requirements

The Decision’s notification and transparency requirements are found in paragraph 3, which sets out four obligations for developing countries that wish to qualify for an exemption. First, they must notify the Committee on Agriculture if their stockholding program is causing them to exceed or putting them at risk of exceeding either their domestic support commitments or their *de minimis* limits.³⁵⁰ Second, they must “have fulfilled and continue to fulfil...domestic support notification requirements under the AoA.”³⁵¹ Third, they must “have provided, and continue to provide on an annual basis, additional information by completing the template contained in the Annex, for each public stockholding programme that it maintains for food security purposes.”³⁵² Fourth, they must provide all “relevant statistical information” about any public stockholding program they maintain “for food security purposes.”³⁵³

5.3.3. Anti-Circumvention Requirements

The Decision’s anti-circumvention safeguards are established in paragraphs 4 and 5. Paragraph 4 stipulates that, to qualify for an exemption, public stockholding programs cannot “distort trade or adversely affect the food security of other Members.” Paragraph 5

³⁵⁰ *Ibid* at para 3(a); the WTO Committee on Agriculture is established in AoA Article 17.

³⁵¹ *Ibid* at para 3(b); according to AoA Article 18 the notifications sent by each Member to the Committee of Agriculture must contain all information relevant to their implementation of AoA reduction requirements and other related commitments.

³⁵² *Ibid* at para 3(c).

³⁵³ *Ibid* at para 3(d); the requisite criteria is established in the Annex of the Ministerial Decision.

prohibits the use of public stockholding programs to increase domestic support for products not mentioned in the notifications sent to the WTO pursuant to paragraph 3.

5.3.4. Consultation, Monitoring, and Establishing a Work Programme

According to paragraph 6 of the Decision, any Member benefitting from an exemption for a stockholding program shall agree to hold consultations with other Members upon request. Paragraph 7 states that the Committee on Agriculture will be tasked with monitoring the information submitted according to this Decision. Finally, paragraphs 8, 9, and 10 establish a work programme to pursue a permanent solution to the issue of public food stockholdings within the WTO.

5.4. Analysis of the Ministerial Decision

In this section, I answer the three questions about the Ministerial Decision that were posed at the outset of this thesis: What does it do? Will it help? And, whose interests does it serve?

5.4.1. What does the Ministerial Decision do?

The answer to this question is perhaps the most straightforward. The Ministerial Decision essentially expands the existing exemptions for developing countries in Annex 2(3), and footnotes 5 and 5&6 of the AoA. This is accomplished in paragraph 2 of the Decision, which protects public stockholding programs in developing countries that operate using administered prices from being challenged in the WTO in the event that the aggregate difference between the purchase price of food stocks and the external reference price causes them to exceed their domestic support reduction commitments. This protection does not, however, apply to all stockholding programs in all developing

countries. To understand the subtleties of the Ministerial Decision, it is necessary to engage with my next question.

5.4.2. Will the Ministerial Decision Help?

In Chapter 1, I explained that one of the core objectives of this thesis was to determine whether the Ministerial Decision provides developing countries enough policy space to allow them to take meaningful steps towards alleviating the problems associated with liberalization, such as dependency on foreign food.

The answer to this question could vary greatly from country to country. The Ministerial Decision only offers protection to programs in existence at the time of its inception. Moreover, the notification requirements contained in paragraph 3 stipulate that to be eligible for protection countries must have reported said program to the WTO in accordance with AoA requirements. Therefore, developing countries that – for whatever reason – had not already established a public food stockholding program with integrated producer support prices by December 3rd 2014, or had not reported this program in accordance with the requirements of the AoA, will not benefit at all from the protection offered by the Ministerial Decision.

During my discussion of the critical research on the WTO, presented in Chapter 3, I explained that one of the main reasons that developing Members have experienced difficulty accessing the WTO dispute settlement process and advocating for their interests during negotiations is their relative lack of legal and administrative capacity. Because the Ministerial Decision only applies to developing Members who have complied with the administrative requirements established in the AoA, it may further exclude those

Members whose lack of legal and administrative capacity has already prevented them from asserting their interests in the WTO.

The interaction between the Ministerial Decision and the AoA also confines eligible stockholding programs to a certain typology. Paragraph 2 tethers the Ministerial Decision to Annex 2(3) and footnotes 5 and 5&6 of the AoA. As discussed earlier, Annex 2(3) requires that food stockholding programs be non-trade distorting, and footnote 5 provides that developing countries can use stockholding programs to provide subsidised food to the poor. Furthermore, the anti-circumvention requirements contained in paragraph 4 of the Ministerial Decision prohibit stockholding programs from distorting trade or adversely affecting the food security of other Members.

These conditions mean that programs using buffer stocks to protect domestic producers and consumers from the effects of volatile international food prices may not be protected by the Ministerial Decision. As discussed in the first section of this Chapter, food stockholding programs designed to serve as a buffer against international fluctuations in food prices are used to artificially manipulate market prices by releasing cheap food to consumers in times of high prices, and buying large quantities of food when prices are low. Due to their design, buffer stock programs could have trade-distorting effects. If a developing Member uses buffer stocks to sell food to the public at below market prices, or to purchase food from producers at above-market prices, this could impact people in foreign markets looking to buy from or sell to that country. For this reason, these programs run the risk of violating the Ministerial Decision's anti-circumvention restrictions and forfeiting the protection provided by the Ministerial Decision.

To summarize: the answer to the question of whether the Ministerial Decision will provide developing Members with the policy space to take meaningful steps towards alleviating the problems associated with liberalization is not straightforward. The answer to this question depends largely on the developing Member in question, and their ability to take advantage of the protection offered by the Decision based on their pre-existing policy choices (such as whether they had an established stockholding program that made purchases at administered prices at the time the Ministerial Decision was enacted) and their administrative capacity (which would have contributed to whether or not they had properly reported said program in accordance with the requirements of the AoA). Moreover, as mentioned above, the Decision's anti-circumvention restrictions may disqualify the very type of stockholding programs specifically designed to mitigate international price fluctuations (buffer stocks). It is therefore questionable whether this Decision will allow Members whose programs qualify for its protection with the policy space needed to protect consumers from volatile food international food prices.

This is a troubling conclusion. As was discussed in Chapter 4, the plummeting food prices that drove smallholders out of business shortly after the creation of the WTO and the soaring prices that starved and impoverished hundreds of millions of people across the globe are evidence of the urgent need to provide governments with the necessary policy space to protect consumers and producers from volatile international food prices. Despite these pressing issues, the Ministerial Decision seems to place trade liberalization ahead of ensuring that developing Members have the flexibility to take action to protect the people living within their borders.

To help understand the structure of the Ministerial Decision, it is helpful to return to the debate between the food sovereignty movement and the economists working for the WTO, IMF, and World Bank. The Ministerial Decision is congruent with the recommendations put forth by economists working for the WTO, IMF, and World Bank. As discussed in Chapter 1, by applying the principle of comparative advantage to food production, some economists have situated trade liberalization as a solution to hunger. From this perspective, by encouraging countries to specialize in making those goods that they produce most efficiently free trade will increase the global availability and accessibility of food. While it is recognized that trade liberalization will have some unintended consequences for marginalized populations living in developing countries (such as high food prices and exposure to global price fluctuations), it is proposed that these downfalls can be mitigated through use of safety net programs targeted to the poor. These programs, it is proposed, will allow governments to protect vulnerable populations without interfering with the market mechanisms that lead to greater efficiency and productivity.

According to these criteria, the Ministerial Decision is a success. It provides exclusive protection to public stockholding programs that provide food to a select population, and operate without distorting market prices. Therefore, the Decision allows developing countries to provide support to the unlucky people who do not benefit from trade liberalization, but prevents them from interfering with the market.

As mentioned in Chapter 1, the food sovereignty movement has challenged the WTO's regulation of trade in agriculture. They have argued that the WTO's approach to agriculture does not meaningfully take into account the historical inequalities within

developing countries, and between the organization's developed and developing Members. They believe that, in order to equitably distribute the risks and opportunities presented by free trade, governments should retain the policy space to promote local control over agricultural production.

The Ministerial Decision falls quite short of the kind of change that is envisioned by the food sovereignty movement. It does not allow developing countries to take meaningful action to promote local control over agricultural production. Rather, it relegates the public sector to simply filling the cracks in the market apparatus. Instead of providing added policy space to developing governments, the Ministerial Decision appears to conform to the maxim of comparative advantage and further entrench the liberalizing mandate of the WTO.

5.4.3. Whose interests are served by the Ministerial Decision?

The answer I provided to the last question makes it problematic to assume that the Ministerial Decision is a positive step for all developing Members of the WTO. Because of its importance to these negotiations, it is necessary to discuss the TFA. As mentioned at the outset of this thesis, the TFA is the first new agreement to be added to the WTO's repertoire since the creation of the organization in 1995.³⁵⁴ Upon entering into force, it will require Members to limit customs fees and take specific measures to promote transparency, coordination, and efficiency amongst customs agencies.³⁵⁵ The WTO predicts that, by reducing red tape and modernizing customs practices, the TFA will cut

³⁵⁴ WTO, "WTO: News Items 2013: 5-7 December 2013: Ninth Ministerial Conference: Days 3, 4 and 5: Round-the-clock consultations produce 'Bali Package'", online: <https://www.wto.org/english/news_e/news13_e/mc9sum_07dec13_e.htm> accessed: 2015-05-03.

³⁵⁵ *Ibid.*

down on the cost of trade by 10 to 15 percent worldwide and produce annual global economic benefits of \$400 billion to \$1 trillion.³⁵⁶

Research conducted by Malig exposes some of the prominent interests behind the TFA.³⁵⁷ She demonstrates that powerful international economic actors, including the world's largest business organization, the International Chamber of Commerce (ICC), are the driving force behind the Agreement.³⁵⁸ Malig proposes that the reason for the ICC's "relentless pursuit" is that the Agreement will provide disproportionate benefits to large transnational corporations.³⁵⁹

Malig explains that large transnational corporations will benefit most from the TFA because they are most likely to incorporate global value chains (GVCs) into their business models.³⁶⁰ She argues that, as a result of declining communication and transportation costs, many transnational corporations are finding it increasingly lucrative to have goods shipped to several different countries to undergo different stages of manufacturing.³⁶¹ Fragmenting business operations and spreading them out across different countries allows these corporations to take advantage of the market conditions that are most amenable to each different stage of production, thereby maximizing their competitive advantage.³⁶² This model of production has become so integral to large

³⁵⁶ *Ibid.*

³⁵⁷ Malig, *supra* note 71 at 8-9.

³⁵⁸ *Ibid.*

³⁵⁹ *Ibid* at 10, 12.

³⁶⁰ *Ibid* at 12-16; 'GVC' is the technical terms for the increasingly popular practice of adding value to a given product in many different countries.

³⁶¹ *Ibid* at 16.

³⁶² *Ibid* at 16; a popular example of a global value chain is the one employed by Apple to produce the iPhone. According to Forbes, Apple still conducts much of the "product design, software development, product management, marketing and other high-wage functions in the US," whereas much of the product assembly takes place in China. Meanwhile, many of the parts it assembles are shipped in from Malaysia, Japan, and even the US.³⁶² See: Kenneth Rapoza, "How Much of the iPhone is 'Made In China'?" *Forbes*

businesses that roughly 80 percent of globally traded goods pass through GVCs.³⁶³ Since many transnational corporations incorporate GVCs into their business model, they have a large stake in the TFA. This is because by reducing the fees and delays associated with sending their goods across national borders, the TFA will make it cheaper and easier for them to conduct different aspects of their operations in different part of the globe.³⁶⁴

While the TFA is likely to add to the profits of the large transnational corporations that lobbied the US to pursue the Agreement,³⁶⁵ Malig states that the Director General of the WTO proposed that the TFA will also be a tremendous boon to developing Members.³⁶⁶ By making it easier for large corporations to conduct certain aspects of their operations abroad, it is proposed that the TFA will encourage corporations to invest in developing countries.³⁶⁷ Malig challenges this assumption, however, by pointing out that developing countries have historically been the recipient of “the ‘low value’ end of the value chain” while the more skilled, better-paying jobs are usually retained in developed nations.³⁶⁸

In addition to her thorough analysis of the TFA, Malig also conducts a brief review of the Ministerial Decision.³⁶⁹ Her arguments mirror many of the observations I have outlined above. Namely, she proposes that the temporary nature of the Decision, coupled with the fact that it only applies to stockholding programs that existed at the time of its inception, make it unlikely that the Ministerial Decision will provide developing

(31 January 2012), online: <<http://www.forbes.com/sites/kenrapoza/2012/01/31/how-much-of-the-iphone-is-made-in-china/>>.

³⁶³ *Ibid* at 10.

³⁶⁴ *Ibid* at 15-16.

³⁶⁵ *Ibid* at 18.

³⁶⁶ *Ibid* at 15.

³⁶⁷ *Ibid*.

³⁶⁸ *Ibid*.

³⁶⁹ *Ibid* at 19.

countries with the requisite policy space to ensure that their citizens have access to food.³⁷⁰

There is, however, one point upon which Malig and I diverge. She argues that the contrast between the lucrative opportunities that the TFA holds for transnational corporations and the meager protection afforded by the Ministerial Decision serves to “highlight the deep hypocrisy embedded within the WTO.”³⁷¹ She proposes that this hypocrisy is underscored by the fact that “India and other developing countries have to beg permission to provide food subsidies to their poor constituents” while many developed Members of the WTO are able to continue to provide generous subsidies to their agricultural producers.³⁷²

Given the depth of Malig’s understanding of the Bali Conference, it is difficult to argue with her conclusion; however, I propose that the dichotomy she creates between India and the US does not capture the subtle realities of the domestic interests that influenced India’s negotiating position at the Bali Conference. Malig suggests that India and the WTO’s other developing Members are the clear losers of the Bali Conference. I aim to demonstrate that, upon closer inspection, the situation appears more nuanced.

To support this position, I make use of the next Chapter to explore the domestic interests behind India’s stance in Bali. I argue that India is not simply the maligned victim of a system bent on thwarting its attempt to rescue its people from starvation. Rather, I propose that the GOI’s negotiating position was motivated by their desire to manage several competing political interests, some of them unrelated to protecting their citizens. Recent political developments indicate that the reason the GOI was willing to

³⁷⁰ *Ibid.*

³⁷¹ *Ibid.*

³⁷² *Ibid.*

accept a restrictive and temporary solution to the issue of public stockholdings could be that the Ministerial Decision's restrictive conditions may ultimately benefit India's corporate food producers, processors, traders, and retailers.

Chapter 6: India's PDS and the Ministerial Decision.

The GOI employs four main forms of intervention in the country's foodgrain markets: public procurement of grains, management of foodgrain stocks through storage and buffer stock operations, state-guided delivery of subsidised food through the PDS, and intervention in trade through the imposition of tariffs, export and import restrictions, and other protectionist policies.³⁷³ In this Chapter, I discuss the PDS and the stockholding program that it draws from to provide food to consumers at subsidized prices. First, I provide an analysis of the function of the PDS. Then, I describe how it has evolved in relation to the GOI's changing economic agenda, which has itself been influenced at many different points by international events and foreign demands outside of the government's control. As I will explain, the PDS underwent a dramatic transformation after the GOI took out loans from the IMF in the early 1990s and joined the WTO in 1995. Exploring how the changes to the PDS were resisted by India's consumers and farmers allows me to shed light upon the interests behind India's negotiating position at the Bali Conference. Equally revealing are the changes to the PDS that were proposed by the GOI after Bali. These developments reveal that, while the interests of consumers and farmers motivated the GOI to pursue a temporary exemption for the PDS in Bali, its end-game may play more to the interests of corporate producers, processors, traders, and retailers.

6.1. The Relationship between India's Stockholding Program and the PDS

Before describing the historical evolution of the PDS, it is important to provide a brief overview of its function and purpose, and to explain how it is related to India's

³⁷³ Swaminathan, Consumer Food Subsidies, *supra* note 119 at 95.

stockholding program. The PDS provides subsidised food staples and other items such as edible oils, kerosene, and sugar; and also serves as a support mechanism for farmers.³⁷⁴ The program's basic configuration has remained much the same since the mid-1960s.³⁷⁵ It is maintained by a partnership between the Central and State governments. The procurement, storage, and allocation of foodgrain are managed by the Food Corporation of India (FCI) – a Central government organisation established under the *Food Corporation Act* (1964).³⁷⁶ The FCI purchases grain from producers at a Minimum Support Price (MSP) set by the GOI.³⁷⁷ The FCI then transports grains to central storage facilities,³⁷⁸ and sells them to the State Governments at a Central Issue Price (CIP), which is also set by the GOI.³⁷⁹ The FCI is subsequently reimbursed by the GOI for the difference between the MSP and the CIP.³⁸⁰ Upon purchase of food stocks, the State government is responsible for transporting foodgrains from the central storage warehouses to regional Fair Price Shops, where they are then sold at discounted prices to people who are eligible for subsidies.³⁸¹ Regional Fair Price Shops are often run by private individuals, businesses, and cooperatives; however, a few are state-owned.³⁸²

6.1.1. The Public Distribution System under Colonial Rule

The PDS has its earliest roots in the tragic confluence of the Bengal famine and the Second World War. Extractive colonial policies contributed to a decline in India's

³⁷⁴ *Ibid.*

³⁷⁵ Swaminathan, Structural Adjustment, *supra* note 119 at 1665; Mane, *supra* note 114 at 300.

³⁷⁶ *Food Corporation Act*, 1964, Ministry of Law and Justice (Legislative Department) Parliament of India, No. 39 of 1964, 10 December 1964, online: Food Corporation of India <<http://acts.gov.in/central/990.pdf>>

³⁷⁷ Sharma, Food Subsidy in India, *supra* note 58 at 4.

³⁷⁸ *Ibid.*

³⁷⁹ *Ibid.*

³⁸⁰ *Ibid.*; according to Sharma, the FCI is also reimbursed for other costs such as storage, handling, distribution, administration etc.

³⁸¹ *Ibid.*; see also Swaminithan, Consumer Food Subsidies, *supra* note 119 at 95.

³⁸² Swaminathan, Consumer Food Subsidies, *supra* note 119.

per-capita food consumption during the 40 years leading up to the War.³⁸³ To make up the difference between national food consumption and production, India relied chiefly on rice imported from Burma.³⁸⁴ The diversion of food to feed the armed forces stations in India exacerbated India's dependence on imports by increasing food prices and reducing availability.³⁸⁵ These factors were further compounded by the fall of Burma in April of 1942, and a food shortage caused by a large cyclone which damaged rice crops in Bengal and Orissa.³⁸⁶

In response to these issues, the colonial government launched the All-India Basic Plan in 1943, which involved the purchase of grain by a government agency and public distribution of these stocks through state-operated fair price shops and a handful of state-sponsored private enterprises.³⁸⁷ Beyond this, however, the All-India Basic plan has little in common with the PDS. This plan was fairly small and aimed almost exclusively at urban centres, particularly Calcutta.³⁸⁸ The logic behind this decision was pragmatic and political. In order to contribute to the war-time effort, colonial India needed to maintain stability amongst the urban population.³⁸⁹ The need to save the lives of starving people was secondary to the need to ensure a steady supply of labour able to contribute to the continued stability of the British empire.

³⁸³ Mooij, *supra* note 117 at 79.

³⁸⁴ GOI, 1st Plan, *supra* note 119 at ch 9, para 11.

³⁸⁵ Mooij, *supra* note 117 at 79-80.

³⁸⁶ Bahabani Shankar Nayak, "Nationalizing Crises: The Political Economy of Public Policy in Contemporary India" (New Delhi: Atlantic, 2007) at 74.

³⁸⁶ Mooij, *supra* note 117.

³⁸⁷ *Ibid* at 80; the government also arranged for the inspection and storage of food, and the financing and administration necessary to ensure the program's functionality.

³⁸⁸ *Ibid* at 80-81; see also Nayak, *supra* note 386.

³⁸⁹ Mooij, *supra* note 117 at 80-81.

6.1.2. The Public Distribution System Post-Independence

In the nineteen-fifties, after achieving Independence, the GOI embarked on a mission to make India more self-sufficient. Led by Jawaharlal Nehru, the INC party presented the first of a series of Five Year Plans on December 7th, 1952.³⁹⁰ This policy framework provided the blueprint for a highly planned and heavily protected economy, and allocated large amounts of state funding for domestic development projects.³⁹¹ Although the GOI claimed to embrace both “public and private sectors,”³⁹² they were adamant that the state would have control over “certain key industries” such as “coal, iron, and steel, aircraft manufacture, shipbuilding, manufacture of telephone, telegraph, and wireless apparatus etc.”³⁹³ Even in sectors open to private industry participation, the GOI maintained “the right to acquire any undertaking in the public interest and to intervene in cases where the conduct of industry under private enterprise is not satisfactory.”³⁹⁴

The GOI felt that strong and decisive state intervention was needed to address the “unbalanced occupational structure” of India’s economy.³⁹⁵ The government was particularly concerned that, although 68 percent of the country’s population were employed in the agricultural sector, India was “not self-sufficient in food and raw materials for industry.”³⁹⁶ India’s foodgrain imports had been expanding each year since

³⁹⁰ GOI, 1st Plan, *supra* note 119 at Introduction, paras 1-13.

³⁹¹ *Ibid.*, at Table, para 9; for example, from 1951-56, pursuant to the 1st Plan, the government allocated 360.45 Rs crore for “Agriculture and Community Development”, and 561.41 Rs crore for “Irrigation and Power”. Roughly 1140 Rs crore were designated for other programs in sectors such as “Social Services”, “Transportations and Communications”, and “Industry”.

³⁹² *Ibid.* at para 9.

³⁹³ *Ibid.* at ch 2, para 15.

³⁹⁴ *Ibid.*

³⁹⁵ *Ibid.* at para 3.

³⁹⁶ *Ibid.*

1948,³⁹⁷ and the GOI estimated that the country would need to increase annual yields by 7.8 million tons in order to become self-sufficient.³⁹⁸

The decision to expand procurement and distribution policies accomplished several of the GOI's purposes at once. These programs served as an economic stimulus mechanism designed to promote the production of raw materials and feed the labour force needed to ensure national growth and self-sufficiency.³⁹⁹ They provided "foodgrains and other essential items to vulnerable sections of society at reasonable (subsidised) prices", and fed the urban labour force necessary to push the state towards modernization.⁴⁰⁰ The large buffer stocks procured by the FCI also insulated India from global commodity price spikes.⁴⁰¹ Stable food prices, in turn, helped prevent inflation in other areas of the economy.⁴⁰²

³⁹⁷ *Ibid* at ch, 9 para 11; foodgrain imports were as follows: 1948: 2.8 million tons, 1949: 3.7 million tons, 1950, 2.1 million tons, 1951, 4.7 million tons.

³⁹⁸ *Ibid* at para 12.

³⁹⁹ Mooij, *supra* note 117 at 85.

⁴⁰⁰ *Ibid* at 84.

⁴⁰¹ *Ibid*.

⁴⁰² *Ibid*; although the GOI was striving towards a self-sufficient planned economy, they were still far from realizing this objective, and relied heavily on food aid from the United States to support their domestic food subsidy programs (Mooij, *supra* note 117 at 83; see also: Nayak, *supra* note 386 at 75-76; David Roll Weaver, *Public Law 480, India, and the Objectives of the United States Foreign Aid, 1954-1966* (Ph.D. Thesis, University of Cincinnati Department of Political Science, 1971) Ann Arbor: UMI Dissertation Publishing, 1971, at 117-120. (PQ). According to Weaver, between 1955 and 1966, India received roughly 3.239 billion dollars of support in the form of US "Government-Financed Agricultural Exports". This aid came with some intrusive conditions (Weaver; at 117-120). Much of this aid came pursuant to United States Public Law 480 (PL-480), which later became the 'Food for Peace Program' (*ibid*). PL-480 was enacted, in part, to help the United States Government unload its surplus agricultural commodities onto the markets of developing countries (*ibid*). Due to production incentives laden into their own agricultural subsidisation scheme, the United States was producing large surpluses of agricultural goods in the 1950s (*ibid*). Giving aid was conceived of as a strategy to help ensure political stability in recipient societies, and to allow the United States to secure favourable trade and investment concessions (*ibid*). For example, pursuant to coercive leveraging of aid, certain American goods (including those that were relatively abundant in India, such as cotton) were granted entry into the Indian market (*ibid*). By leveraging food aid, the US was also able to ensure that certain American goods (including those that were relatively abundant in India, such as cotton) were granted entry into India's market (Mooij, *supra* note 117 at 83). American private firms were given increased investment opportunities in the agricultural sector, and, pursuant to American demands, the GOI devalued the Rupee by 36.5 percent on June 6th, 1966 (*ibid*).

6.1.3. The Public Distribution System and the IMF and WTO

From Independence until the 1980s, India continued to pursue a development strategy centered upon protecting local producers from competition by restricting foreign access to industrial and financial sectors, and by intervening directly in all major industries.⁴⁰³ Although the GOI was spending vast sums of capital on these development projects, India was able to maintain “moderate public sector deficits”, low inflation, and a positive balance of trade until the mid-1980s.⁴⁰⁴ Because the GOI’s policies were protectionist and “inward looking” the country was relatively well-prepared to deal with price fluctuations on the international commodities markets.⁴⁰⁵ Moreover, because India’s debt-to-GDP ratio was kept relatively low it was able to avoid borrowing from commercial lenders.⁴⁰⁶ Instead India generally restricted itself to aid loans (sums of money lent to developing countries at lower, more stable rates).⁴⁰⁷

Between 1984-85 and 1990-91, however, India’s national debt increased from roughly \$35 billion to roughly \$69 billion.⁴⁰⁸ This surge was created by a combination of domestic and international political and economic phenomena. Starting in the second half of the 1980s, India modified its economic policies as part of a “process of gradual liberalization of trade, investment, and financial markets.”⁴⁰⁹ India’s central policy preferences shifted “from import substitution towards export-led growth.”⁴¹⁰ As such, the

⁴⁰³ Valerie Cerra and Sweta Charman Saxena, “What Caused the 1991 Currency Crisis in India?” (2002), IMF Staff Papers 49:3, at 400.

⁴⁰⁴ *Ibid.*

⁴⁰⁵ *Ibid.* at 400, 402.

⁴⁰⁶ *Ibid.* at 401, figure 5 (India’s External debt was worth roughly 11 to 16 percent of its GDP from 1981-1984).

⁴⁰⁷ *Ibid.* at 402.

⁴⁰⁸ *Ibid.*

⁴⁰⁹ *Ibid.* at 400.

⁴¹⁰ *Ibid.*

government began subsidizing exports and removing import restrictions.⁴¹¹ However, India's foray into global markets coincided with some unfavourable geopolitical and market conditions.⁴¹² The Gulf War and the subsequent increase in world oil prices caused the cost of petroleum imports to increase by \$2 billion in 1991.⁴¹³ Furthermore, the global economic growth rate dipped from 4 ½ percent in 1988 to 2 ½ percent in 1991, which had a negative impact on India's export industries.⁴¹⁴

India was caught in a cyclical debt trap. Deficits began to exceed the availability of concessional financing and, consequently, the GOI had to borrow from commercial lending agencies.⁴¹⁵ Unfortunately, the country's climbing debt also caused investor and lender confidence to decline at a time when it was most needed.⁴¹⁶ Financial instability and social and political unrest prompted a downgrading of India's credit rating, which effectively prevented the GOI from acquiring financial support from commercial banks at rates that it could afford.⁴¹⁷ As such, they turned to the IMF for support.⁴¹⁸

The IMF loans came with conditions in the form of SAPs. Many of the SAPs accepted by the GOI promoted deflationary macroeconomic policies.⁴¹⁹ These included "restraint on central government expenditure, limits on credit expansion, and reduction of

⁴¹¹ *Ibid*; "import and industrial licensing requirements were eased, and tariffs replaced some quantitative restrictions."

⁴¹² *Ibid* at 400-402.

⁴¹³ *Ibid* at 402.

⁴¹⁴ *Ibid*, this growth was especially affected by the economic downturn of India's foremost export destination: the United States.

⁴¹⁵ *Ibid* at 402-403.

⁴¹⁶ *Ibid* at 403.

⁴¹⁷ *Ibid*; India's credit rating was also influenced by the social and political unrest in India after the 1989 elections, which culminated in the assassination of Rajiv Gandhi, chair of the INC party, in May of 1991.

⁴¹⁸ *Ibid*.

⁴¹⁹ Patnaik, Economic Reforms *supra* note 104 at 153.

budget deficit to GDP ratio.”⁴²⁰ The SAPs had a profound impact on the GOI’s ability to manage economic and social development.⁴²¹ They introduced funding cuts that directly influenced rural employment programs and irrigation, transportation, and energy projects in agricultural communities.⁴²² As the effects of these policies began to take hold, India experienced “an alarming collapse of rural employment growth.”⁴²³ The IMF SAPs also resulted in changes to the PDS. In 1991, the CIP for subsidised foodgrains began to rise rapidly.⁴²⁴ These price increases had the effect of greatly reducing the difference between the price of subsidised grains and the market price.⁴²⁵ As such, many people who had previously relied on the PDS were forced to turn to the marketplace to purchase food.⁴²⁶

In the mid-nineties, India was further integrated into the global market when it became a founding Member of the WTO.⁴²⁷ Shortly after joining the WTO the GOI introduced the most significant structural change to the PDS since the early 1960s.⁴²⁸ Under India’s planned economy the PDS was mandated to provide subsidized food to the

⁴²⁰ *Ibid* at 154; in the 1980s, the IMF issued similar prescriptions to 78 other developing countries. These policies resulted in “sharp rates of decline in rates of investment in both capital formation and the social sectors, leading to reduced or negative GDP growth and negative impact on human development indicators.”

⁴²¹ *Ibid*; between 1985 and 1990, 4 percent of Net National Product (NNP) was spent on rural development and 7 percent of NNP was invested in infrastructure. By of the mid-1990s, however, investment in rural development was down to 2.6 percent, and investment in infrastructure was down to less than 4.4 percent. In 2000-2001, combined investment in rural development and infrastructure was down to 5.6 percent of NNP. See also Usta Patnaik, “The Republic of Hunger” in Patnaik, *supra* note 103, 115 at 132. [Patnaik, “Republic”].

⁴²² *Ibid* at 133; Patnaik, Economic Reforms, *supra* note 104 at 156.

⁴²³ *Ibid* at 133; rural employment growth shrunk from 2% annually between 1987-88 and 1994-94, to 0.6% annually from 1993-94 to 1999-2000. Rural unemployment increased from -1.9% between 1983 and 1993-94, to 5.26% between 1993-94 and 1999-00 (Patnaik, Economic Reforms, *supra* note 104 at 156).

⁴²⁴ Swaminathan, Structural Adjustment; *supra* note 119 at 1668; according to Swaminathan, “[b]etween 1991 and 1994, the [central] issue price for the price of rice rose 85.4 per cent, and the issue price of wheat rose 71.8 percent.”

⁴²⁵ *Ibid*; see also: Swaminathan, Consumer Food Subsidies, *supra* note 119 at 96.

⁴²⁶ Mooij, *supra* note 117 at 92.

⁴²⁷ Lauren Birchfield & Jessica Corsi, “Between Starvation and Globalization: Realizing the Right to Food in India” (2010) 31:69 Michigan Journal of International Law 691, at 733-734.

⁴²⁸ Patnaik, “Republic”, in Patnaik *supra* note 104 at 136-137; Mooij, *supra* note 117 at 92.

entire population.⁴²⁹ In 1997, however, the GOI introduced subsidy targeting; ensuring that “access to food was no longer universal and instead offered only to a select, government designated population.”⁴³⁰ The new targeted PDS categorised families/households as either Below Poverty Line (BPL) or Above Poverty Line (APL).⁴³¹ In 2000, another subcategory of households, Antyodaya Anna Yojana (AAY), was introduced to target “poorest of the poor families”.⁴³²

While the transition from a universal to a targeted distribution system was conducted soon after India’s membership to the WTO, the official reason given for this change in policy had little to do with India’s international obligations. In fact, the GOI explicitly stated that the terms of the AoA would not “alter the public distribution system in any manner.”⁴³³ According to the FCI, the transition from a universal to a targeted subsidy

⁴²⁹ Reshmy Nair, “Universal to Targeted Public Distribution System: The Experience of the Kerala Model” (2011) 5:4 *The Journal of Applied Economic Research* 477-510. Swaminathan, *Consumer Food Subsidies*, *supra* note 119 at 95; Patnaik, “Republic”, in Patnaik *supra* note 104 at 136-137; Jha, et al, *supra* note 116 at 888. According to Jha et al, anyone with a household address could obtain a ration card which would entitle them to a fixed amount of subsidised food. It is important to note that, under the ‘universal PDS’, people could substantively be denied access to subsidised food if their location and/or lack of mobility prevented them from accessing Fair Price Shops. People could also experience administrative difficulties obtaining a ration card due to corrupt or inefficient officials. However, the criteria for applicability did not formally exclude any clearly defined portion of the population, and can, therefore, be considered relatively universal.

⁴³⁰ Birchfield and Corsi, *supra* note 427 at 736.

⁴³¹ FCI, “Note on Distribution of Foodgrains Under Public Distribution System and Other Welfare Schemes” (New Delhi: FCI, 2014) online: FCI < <http://fciweb.nic.in/upload/Public-dist/Brief%20note%20on%20PDS%20and%20OWS%2004.08.2014.pdf> > at 5; Sharma, *supra* note 58; Patnaik, “Republic”, in Patnaik *supra* note 104 at 136-37.

⁴³² India, DFPD: Ministry of Consumer Affairs Food and Public Distribution, *FAQs: TPDS* (New Delhi: DFPD, 2014) online: <<http://dfpd.nic.in/?q=node/999>> accessed 2014-12-03; India, DFPD, Ministry of Consumer Affairs Food and Public Distribution, *Targeted Public Distribution System: Current CIP*, (New Delhi: DFPD, 2014) online: DFPD <<http://dfpd.nic.in/?q=node/101>> accessed: 2014-12-03.

⁴³³ Ministry of Commerce, *Review of WTO Agreement on Agriculture: Likely Issue for negotiations* (New Delhi: GOI, 1999) online: <<http://commerce.nic.in/wtomay1.htm>> accessed 2015-06-25; see also: Press Information Bureau, Q&A: Trade in Agriculture: Uruguay Round and after: A brief glimpse (GOI: 2001) online: <<http://pib.nic.in/focus/foyr2001/foapr2001/aoa1.html#4>> accessed 2015-06-25.

system was undertaken because of the old system's failure to provide food to the poor, and because of its inefficiency and lack of transparency.⁴³⁴

It is, however, curious to note that their changes to the PDS mirror the requirements for stockholding programs established in the AoA. As mentioned in the last Chapter, the AoA contains exemptions from reduction commitments for certain public stockholding programs.⁴³⁵ Developing countries such as India are allowed to provide support to domestic producers by making food purchases at above market price through a public stockholding program.⁴³⁶ Prior to the Ministerial Decision, the difference between the market price and the purchase price had to be accounted for in a country's Current Total AMS pursuant to footnote 5 of the AoA.⁴³⁷ According to footnote 5&6 of the AoA, developing country food subsidies provided by stockholding and food aid programs must be targeted towards "meeting [the] food requirements of the urban and rural poor."⁴³⁸

⁴³⁴ FCI, *supra* 431; the question of whether the transition from the PDS to the targeted PDS (TPDS) improved these aspects of the program is beyond the scope of this thesis. I will note here, however, that there is a significant body of literature indicating that the TPDS was less efficient and less effective and promoting food access to the poor. Administrative complications are thought to be largely responsible for the fact that the use of the public distribution system amongst the poorest and most food-insecure people has declined since the transition from a universal to a targeted system (India, Ministry of Rural Development. For example, during 2004-2005 administrative errors resulted in the exclusion of roughly 61 percent of those eligible for BPL benefits. Over that same period, roughly 25 percent of those not entitled to BPL benefits were erroneously issued BPL ration cards. In total, nearly 62 percent of BPL and AAY ration cards were held by households above the poverty line (see: Peter Svedberg, "Reforming or Replacing the Public Distribution with Cash Transfers?" (2012) 1552:7 Economic & Political Weekly 53, at 56; Economic & Monitoring Wing), *Report of the Expert Group on the Methodology for the BPL Census 2009*, No.-16015/2/2009/AI[RD] (New Delhi: Ministry of Rural Development, 2009) at 20, online at PRS India <[http://www.prsindia.org/uploads/media/Food%20Security/Report%20of%20the%20Expert%20Group%20\(NC%20Saxena\)%20on%20the%20methodology%20for%20the%20BPL%20Census%202009.pdf](http://www.prsindia.org/uploads/media/Food%20Security/Report%20of%20the%20Expert%20Group%20(NC%20Saxena)%20on%20the%20methodology%20for%20the%20BPL%20Census%202009.pdf)>).

⁴³⁵ AoA, *supra* note 3 at Annex 2(3) .

⁴³⁶ *Ibid* at Annex 2(3), footnote 5.

⁴³⁷ *Ibid*.

⁴³⁸ *Ibid* at Annex 2(3), n 5&6.

6.2. Domestic Resistance to Economic Liberalization

There is a growing consensus that, while the liberal reform policies adopted by the GOI have benefited a small number of urban elite and a host of foreign and domestic corporate interests, these policies were detrimental to India's most vulnerable populations.⁴³⁹ Public action against the harms associated with liberalization has taken many different forms. Some have taken to visceral displays of human agony and despair, such as suicides and organ sales.⁴⁴⁰ Others have engaged in public protest. Between 2007 and 2012 there were at least 59 media-reported food demonstrations in India.⁴⁴¹ Some of these demonstrations were organized by trade unions, some by political parties, and others by civil society groups.⁴⁴² High food prices and perceived corruption also contributed to 'unorganized' demonstrations involving looting and rioting.⁴⁴³

6.2.1. Resistance to Liberal Reforms: the Right to Food Campaign

Others who were dissatisfied with the GOI's liberal reforms chose to seek redress from India's legal system. The case of *People's Union for Civil Liberties v. Union of India & Ors (PUCL v. India)*⁴⁴⁴ began in 2001, when the Right to Food Campaign – a public interest litigation group – submitted a petition to the Supreme Court *via* the

⁴³⁹ Pal & Ghosh, *supra* note 132 at 1; Birchfield and Corsi, *supra* note 427 at 734; Patnaik, "Republic", in Patnaik *supra* note 104 at 132-33.

⁴⁴⁰ Patnaik, "Republic", in Patnaik *supra* note 104 at 135; see also: Vandana Shiva, "The Suicidal Economy of Corporate Globalisation" (19 February 2004) *Z-space* (blog), online: <<http://www.ask-force.org/web/Cotton/Shiva--Suicide-Economy-2004.pdf>>.

⁴⁴¹ Dipa Sinha et al., *Popular Actions, State Reactions: The Moral and Political Economy of Food in India* (New Dehli: Creative Commons, 2014) at 22-25, online: Institute of Development Studies <<http://www.ids.ac.uk/files/dmfile/IndiaReportV.pdf>>.

⁴⁴² *Ibid.*

⁴⁴³ Bappa Majumdar, "Food riots expose how corruption hurts India's poor" *Reuters* (12 October 2007), online: <<http://in.reuters.com/article/2007/10/12/idINIndia-29970920071012>>

⁴⁴⁴ *People's Union for Civil Liberties v. Union of India & Ors (C) 2001 196 [PUCL v. India]* online: <http://supremecourtfindia.nic.in/outtoday/report_cvc17092012.pdf>.

People’s Union for Civil Liberties.⁴⁴⁵ This petition states that “the right to food is a fundamental right of all Indian citizens” and argues that the GOI’s large food stocks (roughly 50 million tonnes of grain at the time) “should be used without delay to prevent hunger and starvation.”⁴⁴⁶ The petitioners propose that the state has been negligent towards its population by allowing the PDS to deteriorate, and by failing to provide adequate food relief to drought stricken areas.⁴⁴⁷ To remedy these perceived shortcomings, the petitioners ask the Supreme Court to direct the government to “provide immediate open-ended employment in drought-affected villages... [and] unconditional support to persons unable to work... raise the PDS entitlement per family, and provide subsidised foodgrain to all families.”⁴⁴⁸ The petition also requests that the foodgrain required to support these programs be provided for free by the government.⁴⁴⁹

The Supreme Court has not yet rendered a decision on this case; however, they have issued numerous interim orders to the GOI since July of 2001.⁴⁵⁰ These include orders directing the GOI to expand and improve several existing programs designed to provide subsidised food to poor and marginalised people.⁴⁵¹ These interim orders have directed the government to make changes to expand the number of people reached by the PDS, to hold officials accountable for the operations of the PDS, and to limit

⁴⁴⁵ Right to Food Campaign, India, *Right to Food Campaign: Legal Action*, online: <<http://www.righttofoodcampaign.in/legal-action>> accessed: 2015-05-12 [Right to Food, “Legal Action”].

⁴⁴⁶ *Ibid.*

⁴⁴⁷ *Ibid.*

⁴⁴⁸ *Ibid.*

⁴⁴⁹ *Ibid.*

⁴⁵⁰ Right to Food Campaign, India, *Right to Food Campaign: Supreme Court Orders*, online: <<http://www.righttofoodindia.org/orders/interimorders.html>> accessed: 2015-05-11.

⁴⁵¹ Right to Food, “Legal Action”, *supra* note 445.

administrative errors that exclude the poor from receiving PDS benefits they are legally entitled to.⁴⁵²

In 2013, the GOI passed the *National Food Security Act* (NFSA)⁴⁵³ a new piece of legislation that made significant changes to their food subsidy programs, including the PDS. The NFSA expands the GOI's mid-day meals program by entitling all children fourteen years of age or younger (and who are attending government-funded schools), all pregnant women, and all lactating mothers to a hot pre-prepared meal each day.⁴⁵⁴ The Act requires that all government-funded schools and childcare facilities be equipped with "facilities for cooking meals, drinking water and sanitation."⁴⁵⁵ It also expands the scope of the TPDS to cover a maximum of 75% of the rural population and 50% of the urban population.⁴⁵⁶ Pursuant to Section 3 of the NFSA, AAY households continue to receive 35 kg of foodgrains per household per month at a subsidised price set by the GOI.⁴⁵⁷ Those who do not belong to an AAY household but nonetheless qualify for subsidies fall under a newly-created category: "priority households." Priority households can receive 5kg of subsidised foodgrains per person per month.⁴⁵⁸ According to Schedule I of the NFSA, for a period of three years (beginning July 5th, 2013) the CIP for AAY and priority households shall not exceed Rs3 per kg for rice, Rs2 per kg for wheat and Rs1

⁴⁵² *Ibid*; see also: Birchfield & Corsi, *supra* note 427 at 722.

⁴⁵³ *The National Food Security Act 2013*, The Gazette of India Extraordinary, 10 September 2013, DL-(N)04/0007/2003-13 (New Delhi: GOI, 2013) online: < <http://indiacode.nic.in/acts-in-pdf/202013.pdf>>

⁴⁵⁴ *Ibid* at Section 5; different age groups are entitled to different servings, see Schedule II of the NFSA for nutritional standards (portions).

⁴⁵⁵ *Ibid* at Section 5(2).

⁴⁵⁶ India, DFPD: Ministry of Consumer Affairs Food and Public Distribution, *National Food Security Act, 2013* (New Delhi: DFPD, 2014) online: DFPD <<http://dfpd.nic.in/?q=node/955>> accessed 2014-12-03.

⁴⁵⁷ NFSA, *supra* note 453 at s.3.

⁴⁵⁸ *Ibid*.

per kg for coarse grains.⁴⁵⁹ After three years of providing support at the aforementioned prices, the rates may be revised to more closely reflect (but not exceed) the MSP.⁴⁶⁰

The NFSA was widely viewed as a strong step towards a rights-based approach to food and agriculture.⁴⁶¹ Its passage was seen as a victory for the Right to Food Campaign and a blow against India's well-established anti-food-subsidy lobby.⁴⁶² The NFSA was also motivating factor behind the GOI's decision to negotiate the Ministerial Decision in 2013. As noted above, the NFSA expands the scope of the PDS. This, combined with the fact that the MSP for foodgrains has been on the rise since 2007,⁴⁶³ put the GOI in danger of exceeding the *de minimus* limits established in Article 6(4)[b] of the AoA.⁴⁶⁴

6.2.2. Resistance to Liberal Reforms: India's Farm Lobby

Subsidy recipients were not the only group to oppose the changes brought forth by the GOI pursuant to its commitments to the IMF and WTO. As mentioned at the

⁴⁵⁹ *Ibid* at Schedule I; for 'priority households' this new CIP is lower than cost of subsidized grain prior to the NFSA, for AAY households the CIP remains the same as prior to the NFSA. Prior to the NFSA the CIPs for APL households were: grade 'A' rice (8.30 rupees/KG); common rice (7.95 rupees/kg); wheat (6.10 rupees/kg); and, coarse grains (4.50 rupees/kg). For BPL households: grade 'A' rice (8.30 rupees/KG); common rice (5.65 rupees/kg); wheat (4.15 rupees/kg); and, coarse grains (3.00 rupees/kg). The CIP for AAY households was: grade 'A' rice (8.30 rupees/KG); common rice (3.00 rupees/kg); wheat (2.00 rupees/kg); and, coarse grains (1.50 rupees/kg). See: DFPD: Ministry of Consumer Affairs Food and Public Distribution, *Targeted Public Distribution System, ch 8: Current CIP*, online: <<http://dfpd.nic.in/?q=node/101>> accessed 2014-12-03.

⁴⁶⁰ NFSA, *supra* note 453, Schedule 1.

⁴⁶¹ Annie Gowenx, "India prepares to guarantee the right to food for 800 million people", *The Guardian* (20 August 2013) online: <http://www.theguardian.com/world/2013/aug/20/india-food-security-bill-subsidised-grain>; Biman Mukheri and Rajesh Roy, "India Introduces Ambitious Food Security Program", *The Wall Street Journal* (04 July 2013) online: <http://www.wsj.com/articles/SB10001424127887324399404578583381205614350>.

⁴⁶² M. Kumaran, "Unpacking India's historic new Food Security law" *Oxfam* (04 October 2013), online: <<http://oxfamblogs.org/fp2p/unpacking-indias-historic-new-food-security-law/>>.

⁴⁶³ Deepak Gopinath, "India's Agriculture on the Brink" *Yale Global Online: MacMillan Center* (27 March 2013), online: <<http://yaleglobal.yale.edu/content/indias-agriculture-brink>>.

⁴⁶⁴ As mentioned earlier in this Chapter, Annex 2, footnote 5 of the AoA requires developing countries to include the difference between the administered price at which food is purchased from producers and the external reference price which is based on the average value of a food item during 1986-88. See also: Abhirup Bhunia & Geethanjali Nataraj, "Indian food security after the WTO deal" *East Asian Forum* (25 January 2014), online: <<http://www.eastasiaforum.org/2014/01/25/indian-food-security-and-the-wto-deal/>>

beginning of the Chapter, the PDS is run using food supplied by the FCI, a state corporation that manages India's public stockholding program. The FCI purchases food from farmers at a guaranteed price (the MSP), sells this food to State-run fair price shops at a subsidised price (the CIP), and is reimbursed by the GOI for the difference. The FCI effectively serves as a producer support system, as well as a mechanism by which consumer subsidies are procured and distributed. If the market price of food exceeds the MSP, the FCI will pay the producer the higher price.⁴⁶⁵ For this reason, the pressure put on the GOI to reduce the scope of the PDS when it took out IMF loans in the early 1990s was hotly contested by farmers across India.⁴⁶⁶

India's farm lobbies are well-organized and influential.⁴⁶⁷ The political clout of India's farm lobby is partially responsible for the fact that, despite the transition from a universal to a targeted subsidy system, the costs of the PDS have continued to rise exponentially.⁴⁶⁸ Between 2007-2008 and 2010-2011, the cost of the PDS climbed from \$7.7 billion to \$13.8 billion.⁴⁶⁹ This not surprising given that, due to rising market prices and lobbying from influential farmer groups, the MSP has also been rising steadily for years.⁴⁷⁰ According to the GOI, between 2007-2008 and 2014-2015, the MSP jumped by

⁴⁶⁵ Gopinath, *supra* note 463.

⁴⁶⁶ Mooij, *supra* note 117 at 85, 93.

⁴⁶⁷ *Ibid.*, at 93.

⁴⁶⁸ Gopinath, *supra* note 463.

⁴⁶⁹ WTO, Notification: Domestic Support: India G/AG/N/IND/10/Corr.1 (1 October 2014), online: <[https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=\(%20@Symbol=%20g/ag/n/ind/*\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#>](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(%20@Symbol=%20g/ag/n/ind/*)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#>).

⁴⁷⁰ Gopinath, *supra* note 463.

87 percent per paddy of wheat; 82.5 percent per paddy of common rice; 59 percent per paddy of grade ‘A’ rice; and, 155 percent for coarse grains (except barley).⁴⁷¹

6.3. Resistance to Liberal Reforms: Implications for Bali

In the last section, I explained that, due to intensive lobbying from farmers, as well as the rising market price of food, the overall cost of the PDS increased drastically over the past years.⁴⁷² The expansion of the PDS pursuant to the NFSA, as well as the GOI’s decision to raise the MSP to placate the influential farm lobby, caused them to become concerned that they would exceed the threshold for domestic support programs contained in Article 6(4)[b] of the AoA.⁴⁷³ As mentioned in the last Chapter, pursuant to footnote 5 of the AoA, developing Members are allowed to make use of stockholding programs for food security purposes; however, if food stocks are purchased at administered prices the difference between the purchase price and the external reference price must be counted towards the Member’s Current Total AMS.

To an extent, this explains why the GOI agreed to the rather meagre protections offered by the Ministerial Decision. While the Decision may not apply to many of the WTO’s other developing Members, who might not have maintained a stockholding program that made use of administered prices prior to the Decision, India’s stockholding program has been in place for decades, and has been reported to the WTO.⁴⁷⁴ India’s

⁴⁷¹ India, DFPD: Ministry of Consumer Affairs Food and Public Distribution, *Policy & FCI: Minimum Support Prices of Foodgrains* (New Delhi: DFPD, 2014) online: DFPD < <http://dfpd.nic.in/?q=node/53> > accessed: 2014-12-03.

⁴⁷² Gopinath, *supra* note 463.

⁴⁷³ Haberli, *supra* note 59 at 2-3; Deepankar Basu & Dbarshi Das, “For a WTO stand with PDS in hand” *The Hindu* (4 September, 2014) online: < <http://www.thehindu.com/opinion/lead/for-a-wto-stand-with-pds-in-hand/article6376896.ece> > [Basu & Das, “PDS in hand”].

⁴⁷⁴ For India’s reporting history, see: WTO, Notification: Domestic Support: India, online: <[https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=\(%20@Symbol=%20g/ag/n/ind/*\)](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(%20@Symbol=%20g/ag/n/ind/*))>

stockholding program could still be challenged for breaching the Ministerial Decision's anti-circumvention requirements or the other limitations established in Annex 2(3) and footnote 5 of the AoA. Nevertheless, the Ministerial Decision seems to be tailor-made to suit the specific political obligations of the GOI *vis-à-vis* the expansion of the PDS and rising MSP.

In a sense, it is difficult to fault the GOI for taking such a pragmatic approach rather than crusading for a solution that would benefit all developing countries. During these negotiations, India had to square off against the US, arguably the WTO's most influential Member. It could very well be argued that, had it not conceded to the restrictive terms of the Ministerial Decision, the GOI would have been left with nothing at all. As discussed above, prior to Bali the GOI had come under mounting political pressure to both increase support to its producers and expand the PDS. If it did not strike a deal to protect its own interests, it would have had to make cuts to the PDS or the MSP. If the GOI had chosen to continue raising the MSP and expanding the PDS without an exemption from its AoA obligations it would have made itself vulnerable to a costly challenge within the WTO.

These pressing concerns aside, I argue that the GOI was in a unique position to negotiate a more flexible and inclusive solution to the issue of public food stockholdings than the one contained in the Ministerial Decision. As mentioned at the outset of this thesis, the GOI's strategy to push for the Ministerial Decision was to leverage support of the TFA in exchange for an exemption for its stockholding programs. The TFA is of great

&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#> accessed 2015-06-18.

value to large transnational corporations who have vigorously lobbied the US government to support the Agreement.⁴⁷⁵

India is just one of the WTO's 161 Members, and the US could technically have pursued the TFA without receiving India's consent,⁴⁷⁶ however, the power politics of the WTO make India's position on the TFA more important than the stances of less prosperous developing Members. As discussed in Chapter 3, each Member's influence within the WTO is largely determined by the size of their economy.⁴⁷⁷ In 2013, India's total GDP was nearly \$2 trillion, making it the tenth-largest economy in the world.⁴⁷⁸ By 2030, India is predicted to be the world's third-largest economy (behind the United States and China), with a GDP of over \$6 trillion.⁴⁷⁹ Therefore, India's refusal to sign on to the TFA likely carried more weight than nearly any other developing Member (and likely many developed Members).

This begs the question: why did the GOI not demand more? According to Malig's assessment, their failure to secure a more flexible and inclusive solution highlights the divide between the WTO's developed and developing Members.⁴⁸⁰ She proposes that the Ministerial Decision is an example of the WTO's wealthy developed Members wringing concessions out of their poor developing counterparts without giving much in return.⁴⁸¹

⁴⁷⁵ Malig, *supra* note 71 at 12-16.

⁴⁷⁶ As mentioned in Chapter 3, page 37 of this thesis, additions to the WTO agreements only require the support of two thirds of the organization's Members. This distinguishes the WTO from the GATT, which required consensus among Contracting Parties to make most decisions.

⁴⁷⁷ Jones, *supra* note 6 at 350.

⁴⁷⁸ World Bank, *Gross Domestic Product 2013*, (Washington: 2015), online: <<http://databank.worldbank.org/data/download/GDP.pdf>> accessed 2015-05-13; updated: 2015-04-14.

⁴⁷⁹ Jenna Smialek, "These Will Be the World's 20 Largest Economies in 2030" *Bloomberg* (10 April 2015), online: <<http://www.bloomberg.com/news/articles/2015-04-10/the-world-s-20-largest-economies-in-2030>>.

⁴⁸⁰ Malig, *supra* note 71 at 19.

⁴⁸¹ *Ibid.*

I argue, however, that the reason the GOI agreed to the restrictive terms of the Ministerial Decision is more complex. Upon closer inspection, the shortcomings of the Ministerial Decision can be interpreted as a sign that the GOI's apparent support of food subsidy recipients and farmers obscures its deeper allegiance to corporate producers, processors, traders, and retailers.

6.3.1. The Ministerial Decision's Surrounding Legal and Policy Framework and The Corporatization of India's Agricultural Sector

To further probe the interests underlying the GOI's negotiating position at the Bali Conference it is necessary to return to the NFSA. As mentioned above, the terms of the NFSA were a motivating factor behind the GOI's decision to pursue the Ministerial Decision. The NFSA contains provisions designed to expand the food subsidies provided by the PDS.⁴⁸² There is, however, one component of the NFSA that has allowed the GOI to take a sharp turn away from the PDS, and towards a subsidy program that is more amenable to corporate interests.

Section 12 of the NFSA enables the GOI to send direct cash transfers to subsidy recipients instead of using a procurement and distribution mechanism to provide them with subsidised food.⁴⁸³ Recently, the GOI proposed a policy framework to substitute direct cash payments for all subsidised products, including food and related inputs such as fertilizer and cooking gas.⁴⁸⁴ The stated objective of switching to a direct cash benefit

⁴⁸² NFSA, *supra* note 453 at Section 3(2).

⁴⁸³ *Ibid* at Section 12; Section 12 of the NFSA stipulates that the TPDS will be reformed to accommodate "schemes, such as, cash transfer, food coupons, or other schemes, to the targeted beneficiaries in order to ensure their foodgrain entitlements."

⁴⁸⁴ ET Bureau, "Direct benefit transfer to cover all cash benefit plans from next financial year", *Times of India: The Economic Times* (18 February 2015), online: <<http://economictimes.indiatimes.com/news/economy/policy/direct-benefit-transfer-to-cover-all-cash-benefit-plans-from-next-financial-year/articleshow/46280457.cms>> ; "FCI rejig: Panel for direct cash

scheme was to reduce the corruption and the administrative, transportation, and storage costs associated with the PDS.⁴⁸⁵ It is interesting to note that these are essentially the same reasons that were given for switching from a universal to a targeted subsidy distribution system in 1997, and are also similar to the rationale used by the IMF/World Bank when introducing deflationary SAPs in the developing world throughout the 1970s, 80s, and 90s.

It is unclear whether the GOI's plan to replace the PDS with direct cash subsidies will actually come to fruition. At the time of the writing of this thesis, the GOI had only just implemented pilot projects in four Union Territories.⁴⁸⁶ Nevertheless, examining the potential implications of this transition helps to shed light on the interests behind the GOI's policy choices.

At face value, switching to direct payments seems rational. Providing direct cash transfers instead of food subsidies would allow the GOI to spend more money on programs for the poor without worrying about exceeding the *de minimus* limit established in Article 6(4)[b] of the AoA. This is because Annex 2(4) of the AoA allows Members to provide direct cash payments to consumers without having the associated expenditures count towards a country's Current Total AMS. While Annex 2(4) only allows

transfer of food subsidy", *Times of India: The Economic Times* (21 January 2015), online: <<http://economictimes.indiatimes.com/news/economy/policy/fci-rejig-panel-for-direct-cash-transfer-of-food-subsidy/articleshow/45970332.cms>>; Simantik Dowerah, "Cash transfer under Central schemes directly to start by April", *First Post* (17 February 2015) online: <<http://www.firstpost.com/business/economy/cash-transfer-under-central-schemes-directly-to-start-by-april-2104595.html>>.

⁴⁸⁵ Bandana Chowdhury, "Impact of Direct Cash Transfer in India" (2013) 3:5 *India Journal of Research* 38, at 38-39.

⁴⁸⁶ Sidhartha Dash & Dipak K Dash, "Govt set to roll out direct cash transfer for fertilizer, food subsidy" *The Times of India* (16 May 2015), online: <<http://timesofindia.indiatimes.com/good-governance/centre/Govt-set-to-roll-out-direct-cash-transfer-for-fertilizer-food-subsidy/articleshow/47304655.cms?>>; according to the *Times of India* the Union Territories chosen for these pilot projects are Puducherry, Daman and Diu, Dadra and Nagar Haveli, and Chandigarh.

governments to provide aid only to those who meet a predetermined “clearly-defined criteria related to nutritional objectives”, footnote 5&6 relaxes this criteria for developing Members by allowing them to provide cash transfers to the “urban and rural poor.”

It is, however, possible to interpret the decision to replace food distribution with cash transfers as an example of political and corporate enmeshment and a strategy to transform citizens into consumers by pushing them towards the market. Direct transfers from the state will allow the corporate sector (consisting of producers, retailers, and value-added industries such as food processing, gas, and fertilizer companies) to have access to a wider base of consumers.

6.3.2. Implications of the GOI’s Transition to Cash Transfers

The decision to replace the PDS (which provided subsidized foodgrains to the poor) with cash transfers carries potential negative implications for both farmers and consumers. If the GOI dismantles the PDS and replaces subsidized food with cash transfers the FCI will no longer need to purchase food from India’s producers.⁴⁸⁷ Without a guaranteed price for their crops, farmers will be left vulnerable to the fluctuations of the market. Cash transfers also promote market competition by allowing customers to seek out the best value, instead of purchasing food from ration shops at government-set prices. This will likely increase pressure on farmers to compete with corporate producers who, due to access to low-cost inputs and economies of scale, are in a better position to offer food at cheaper prices.

The potential negative impacts of the shift from the PDS to cash transfers for consumers is less obvious. In fact, it has been cogently argued that switching to cash

⁴⁸⁷ Basu & Das, *supra* note 473.

transfers would benefit food subsidy recipients by reducing the administrative errors and corruption associated with the PDS.⁴⁸⁸ Studies on the PDS acknowledge that the inefficiency, corruption, and overhead costs associated with the operation of the PDS and regional Fair Price Shops accounted for a large portion of the program's total operating costs.⁴⁸⁹ Direct transfers allow the state to download these costs on to the market.⁴⁹⁰ This system could also empower consumers by widening their dietary choices. Rather than being restricted to state subsidised foodgrains, cash transfers allow them to choose from a host of imports, processed foods, and meats (theoretically, consumers could even use their benefits to purchase goods other than food).⁴⁹¹

While this may be true, it also stands that providing cash transfers so that people can purchase food on the market will leave consumers, as well as producers, vulnerable to global food price fluctuations. If the price of food on the international market climbs rapidly, cash transfers may not be sufficient to allow subsidy recipients to purchase enough food. While not perfect, the PDS provides a better safety net to protect consumers against volatile food prices than cash transfers. Because the CIP for subsidized food is unaffected (in the short term) by global price fluctuations, those receiving subsidized food through the PDS would not have their entitlements reduced as a consequence of global price spikes. Although governments could theoretically increase the amount of cash transferred to subsidy recipients in the event of a spike in international food prices, there is no guarantee that this would occur or that it would be done in a timely manner.

⁴⁸⁸ Svedberg, *supra* note 434, at 59.

⁴⁸⁹ Sharma, *supra* note 58; Mane, *supra* note 114.

⁴⁹⁰ Svedberg, *supra* note 434 at 57.

⁴⁹¹ *Ibid*; see also: Chowdhury, *supra* note 485.

I argue that the overall winners of the GOI's plan to dismantle the PDS and replace it with cash transfers are corporate food producers, processors, traders, and retailers. As a result of this decision, these groups will have access to a wider consumer base. The direct food subsidies provided by the PDS only applied to the purchase of raw foodgrains, sugar, and cooking oil purchased at designated ration shops⁴⁹² While this system benefits farmers who, as discussed above, receive a guaranteed price in exchange for the food used to supply the PDS, it does little for those in the retail and processing businesses. Transitioning towards transfers, on the other hand, will help expand the retail and processed food industries by turning subsidy recipients into consumers who visit grocery stores and can choose to use their entitlements to purchase value-added foods rather than basic staples.⁴⁹³

Goswami's research compliments my interpretation of the interests behind the GOI's transition to cash benefits by providing specific examples of recent programs explicitly designed to help food processors, traders, and retailers.⁴⁹⁴ He proposes that recent infrastructure projects promoted by the GOI's Ministry of Agriculture are evidence that the legislative and policy framework surrounding the NFSA is designed to facilitate the corporatization of the agricultural sector.⁴⁹⁵ Goswami explains that the surge in activity amongst financial commodity traders that contributed significantly to the world food price crisis of 2007-2008 has encouraged the GOI to "forge new compacts with the private sector food industry, whether global, regional, or national."⁴⁹⁶ He argues that high

⁴⁹² Jha, et al, *supra* note109 at 888.

⁴⁹³ Rahul Goswami, "The Food Industry in India and Its Logic" (2010) 45:41 Economic & Political Weekly 15.

⁴⁹⁴ *Ibid* at 16-17.

⁴⁹⁵ *Ibid*.

⁴⁹⁶ *Ibid* at 15.

food prices have created massive opportunities for retailers, processors, and commodity traders; and, consequently, these corporate and financial entities have pressured the GOI's Ministry of Agriculture to facilitate their entry into India's market.⁴⁹⁷ Goswami explains that, to accommodate these interests, over the past decade, the GOI has been engaged in dozens of infrastructure projects designed to transform cities, villages, and communities into "Modern Terminal Markets."⁴⁹⁸

Goswami's research on the infrastructure projects undertaken by the Ministry of Agriculture are underscored by the recent undertakings of India's Ministry of Food Processing Industries (MOFPI). The MOFPI is devoted to "acting as a catalyst to attract quality investments from within India and abroad."⁴⁹⁹ The MOFPI proposes that promoting investment in industrial food processing plays a vital role in reducing crop wastage, enhancing the shelf life of food products, encouraging value-added production, promoting diversification and commercialization of the agricultural sector, generating employment, enhancing farmer's incomes, and increasing the volume of food exports.⁵⁰⁰

The MOFPI has existed for nearly thirty years; however, recent events demonstrate the GOI's growing commitment to promoting corporate investment in the agricultural sectors. First, it is interesting to note that the MOFPI's expenditures have nearly tripled since the world food price crisis, climbing from 182.97 Rs. Crore in 2007-2008 (roughly \$28.5 million USD) to 527.96 Rs. Crore in 2011-2012 (roughly \$82 million USD).⁵⁰¹

⁴⁹⁷ *Ibid.*

⁴⁹⁸ *Ibid* at 17

⁴⁹⁹ Ministry of Food Processing Industries (MOFPI), *About us: Goals and Roles* (GOI:2015), online: <<http://mofpi.nic.in/ContentPage.aspx?KYEwmOL+HGpVlo8u9GICo3lTljUiz7go4/j8IKjJFpxPJf9Sv+Fbz m/7JgUq2xS4wi/O+6DL2h8=>>> [MOFPI, Goals and Roles] accessed 2015-07-24.

⁵⁰⁰ *Ibid.*

⁵⁰¹ MOFPI, *Budget Allocation and Expenditure during XI Plan (2007-12)*, (GOI:2015), online: <http://mofpi.nic.in/H_Dwld.aspx?KYEwmOL+HGoSfui3n78BzvPAnS1KiyHsHoEGMoc+CSncK7UWx kqlCg=>> accessed: 2015-07-24.

The MOFPI has also recently begun to actively promote investment in several “Mega Food Parks.”⁵⁰² Between February and July of 2014, the MOFPI issued an open invitation to those willing to invest in these projects.⁵⁰³ As of now they have implemented twenty-five Mega Food Parks, and have approved another seventeen proposals.⁵⁰⁴ According to the MOFPI, the objective of this program is to “create huge modern infrastructure for food processing sector and provide impetus to the growth of the sector.”⁵⁰⁵ They state that Mega Food Parks encourage the integration of all aspects of food production by “bringing together farmers, processors and retailers.”⁵⁰⁶ The Mega Food Parks are intended to “ensure maximizing value addition, minimizing wastages, increasing farmers’ income and creating employment opportunities particularly in rural sector.”⁵⁰⁷

It is not yet possible to say who will ultimately benefit from the MOFPI’s Mega Food Parks. Some, such as the Srini Food Park in Andhra Pradesh, are developed primarily by State corporations and are designed to provide small producers with access to modern processing and storage infrastructure.⁵⁰⁸ However, projects such as the Indus Mega Food Park in Madhya Pradesh are partnered with multi-billion dollar corporations with well-established production, processing, and export operations.⁵⁰⁹ Others, such as

⁵⁰² MOFPI Press Information Bureau, “17 New Mega Food Parks Sanctioned”, 24 March 2015 (GOI: 2015), online: <<http://pib.nic.in/newsite/PrintRelease.aspx?relid=117632>>.

⁵⁰³ *Ibid.*

⁵⁰⁴ *Ibid.*

⁵⁰⁵ *Ibid.*

⁵⁰⁶ MOFPI, *Assisted projects: Mega Food Parks* (GOI:2015), online: <<http://mofpi.nic.in/SchemeViewPage.aspx?OPsNrN8PJA8n2mxhp5uOjgBjeSI/AAAnpwOCEUYord0g=>>> accessed: 2015-07-24.

⁵⁰⁷ *Ibid.*

⁵⁰⁸ Srini Food Park Pvt. Ltd., online: <<http://www.srinifoodpark.com/index.html>> accessed 2015-08-11.

⁵⁰⁹ Indus Mega Food Park, online: <<http://www.indusmfp.com/>> accessed 2015-08-12; these corporations include the Ananda Group, a conglomerate with companies specializing in (among other things) seafood

the North East Mega Food Park in Bhutan, are backed by large corporations whose operations have little to do with food production.⁵¹⁰

Although it too early to say with any certainty whether these initiatives will be a bigger boon to the large corporations backing them or the small farmers they are intended to serve, through reference to some of the research on the aftermath of the world food price crisis of 2007-2008 it is possible to situate the GOI's plans to build Modern Terminal Markets and Mega Food Parks within a global corporate expansion into the agricultural sectors of developing countries.

To begin, it is first helpful to refer to some of the trends outlined in a recent collaborative study conducted by the OECD FAO.⁵¹¹ The OECD-FAO's data demonstrates that the sudden increase of world food prices in 2007-2008 may not have been an aberration, but a sign of things to come.⁵¹² They indicate that, although food prices have dipped somewhat since the price crisis, they are not likely to return to their pre-2007 levels in the foreseeable future.⁵¹³ The OECD-FAO study proposes that higher food prices are symptoms of the restructuring of global patterns of agricultural production in response to an international demand for alternative energy, and the increasing

export, rice production, biotechnology, hospitality. The Ananda Group is also a stakeholder in the Godavari Mega Aqua Park in Andhra Pradesh.

⁵¹⁰ North East Mega Food Park, online: < <http://www.nefoodpark.com/> > accessed 2015-08-11; for example, one of the investors in the North East Mega Food park is Ozone Ayurvedics, a corporations that manufactures beauty products.

⁵¹¹ OECD/Food and Agricultural Association of the United Nations, *OECD-FAO Agricultural Outlook 2014-2023* (Paris, OECD 2014) at 51. [OECD-FAO]; see also: OECD/FAO, "Agricultural Outlook 2014: Overview of 2014", online: < <http://www.agri-outlook.org/overview.html> > accessed 2015-05-03. [OECD/FAO online].

⁵¹² *Ibid*; the OECD-FAO study provides an analysis of several different foods. For fish, see 278; poultry, see 176; oilseed and vegetable oil, see 147; rice and wheat, see 129.

⁵¹³ *Ibid*; the OECD-FAO forecast that the foods listed above will increase consistently over the next ten years.

consumption of protein, fat, and sugar across the globe.⁵¹⁴ They state that the demand for livestock, processed foods, and biofuel will cause agricultural production to shift “away from staple food crops like wheat and rice” and “toward coarse grains and oilseeds”.⁵¹⁵

The aforementioned patterns of production and consumption are very similar to those responsible for the drastic escalation of global food prices in 2007-2008.⁵¹⁶

Murphy, Burch and Clapp propose that these patterns are currently being shaped by multinational agricultural firms whose influence over consumer tastes and expectations is fueling a demand for high-input processed and pre-packaged foods.⁵¹⁷ They argue that the current era of high food prices represents a tremendous opportunity for corporate food producers, input providers, traders, retailers, and processors.⁵¹⁸ These researchers state that one of the reasons that the global food market remains precarious is that a majority of the world trade in corn, wheat, rice, and soy is controlled by four American companies: Archer Daniels Midland (ADM), Bunge, Cargill, and Louis Dreyfus.⁵¹⁹ Because global agricultural production is dominated by a small network of influential actors, adverse impacts to the operations of any one of the major grain corporations can have dramatic worldwide consequences.⁵²⁰ Even the CEO of Cargill has been quoted as stating that a

⁵¹⁴ *Ibid* at 17.

⁵¹⁵ *Ibid*.

⁵¹⁶ Oxfam, “Food crises doomed to repeat until leaders find courage to fix problems”, Media Advisory August 2012, online: <<https://www.oxfam.org/sites/www.oxfam.org/files/food-price-crisis-oxfam-media-advisory-aug2012.pdf>>; Sophia Murphy, David Burch, and Jennifer Clapp, “Cereal Secrets: The world’s largest commodity traders and global trends in agriculture” (2012) Oxfam Research Reports, August 2012. [Murphy, “Cereal Secrets”].

⁵¹⁷ Murphy, Cereal Secrets, *supra* note 516 at 7-8.

⁵¹⁸ *Ibid* at 7, 22-26.

⁵¹⁹ *Ibid* at 9 (these companies control 73 percent of the global grain trade).

⁵²⁰ *Ibid* at 3.

three or four percent decline in food supplies could cause food prices to increase by 40 to 50 percent.⁵²¹

The profits for the top four grain traders mentioned above increased exponentially during and after the price crisis of 2007-2008.⁵²² For example, ADM's profits increased from roughly \$500 million in 2004, to \$1.78 billion in 2008 and \$1.93 billion in 2010.⁵²³ Bunge's profits also increased from roughly \$500 million in 2004 to \$1 billion in 2008.⁵²⁴ Although their profits dipped to \$361 million in 2009 as a result of the global financial crisis, in 2010 their net income rebounded to an astonishing \$2.35 billion.⁵²⁵ Cargill's record is even more impressive, their profits climbed from roughly \$1.8 billion in 2004 to 4 billion in 2008.⁵²⁶ Cargill's profits dropped to \$3.3 billion in 2009 and to \$2.65 billion in 2010; however, in 2011, annual profits rebounded to \$4.24 billion. Cargill earned profits of \$1.7 billion in 2012,⁵²⁷ \$2.31 billion in 2013,⁵²⁸ and \$1.87 billion in 2014.⁵²⁹

With so much money to be made, the world's agricultural producers are poised to expand their production operations from Northern, developed countries to the relatively untapped markets of the global South.⁵³⁰ The sheer profitability of agricultural production in the current age of high food prices, combined with a lower regulatory threshold and a growing demand for high-input and value-added products, such as meat and processed

⁵²¹ *Ibid*; as cited in: "UPDATE 1-Cargill CEO says US needs to address ethanol mandate" *Reuters* (31 July 2012), online: <<http://in.reuters.com/article/2012/07/31/cargill-ethanol-idINL2E8IV9M020120731>>

⁵²² Murphy, *Cereal Secrets*, *supra* note 516 at 22-26.

⁵²³ *Ibid* at 23-24, Fig 2.

⁵²⁴ *Ibid* at 23-25, Fig 2.

⁵²⁵ *Ibid*.

⁵²⁶ *Ibid* at 23-26, Fig 2.

⁵²⁷ Cargill, "Cargill reports fourth-quarter and full-year fiscal 2012 earnings" (9 August 2012), online: <<http://www.cargill.com/news/releases/2012/NA3065695.jsp>>.

⁵²⁸ Cargill, "Cargill reports fourth-quarter and full-year fiscal 2013 earnings" (7 August 2013), online: <<http://www.cargill.com/news/releases/2013/NA3076321.jsp>>.

⁵²⁹ Cargill, "Cargill reports fourth-quarter and full-year fiscal 2014 earnings" (7 August 2014), online: <<http://www.cargill.com/news/releases/2014/NA31671868.jsp>>.

⁵³⁰ OECD-FAO *supra* note 116 at 17; Murphy, *Cereal Secrets* *supra* note 511 at 56.

foods, make developing countries an ideal place to do business.⁵³¹ Cargill, ADM, Bunge, and Louis Dreyfus have, therefore, already positioned themselves as “important players” in emerging economies such as India, China, and Brazil.⁵³²

India represents an especially lucrative site of investment for food processors. According to the World Bank, India has the world’s largest buffalo herd, and is the world’s second largest producer of “rice, wheat, cotton, sugarcane, farmed fish, sheep & goat meat, fruit, vegetables and tea.”⁵³³ The rate of processing is, however, growing relatively slowly; which presents an opportunity for those looking to invest in relatively untapped markets.⁵³⁴

According to De Schutter, this “green rush”⁵³⁵ marks an interesting change in global patterns of agricultural production. During the period of SAP reforms in the 1980s and 1990s, neither private nor public sectors invested much capital in the agricultural sectors of developing countries.⁵³⁶ Since the food price crisis of 2007-2008, however, wealthy governments and private investors have both come to realize that investing in access to the arable land and freshwater supplies of developing countries could help cement their place in an increasingly lucrative industry.⁵³⁷ Fears of food scarcity and the increasing global demand for energy products are also pushing governments and

⁵³¹ Murphy, *Cereal Secrets* *supra* note 516 at 56.

⁵³² *Ibid.*

⁵³³ World Bank, “India: Issues and Priorities for Agriculture” (17 May 2012) online: <<http://www.worldbank.org/en/news/feature/2012/05/17/india-agriculture-issues-priorities>>.

⁵³⁴ *Ibid.*

⁵³⁵ Olivier De Schutter, “The Green Rush: The Global Race for Farmland and the Rights of Land Users” (2011) 52:2 *Harv Int’l LJ* 503. [De Schutter, “Green Rush”]; see also: Olivier De Schutter, “How not to think of land-grabbing: three critiques of large-scale investments in farmland” (2011) 38:2 *The Journal of Peasant Studies* 249 [De Schutter, “Land Grabbing”].

⁵³⁶ *Ibid* at 510.

⁵³⁷ *Ibid* at 516; see also: Marc Edelman, Carlos Oya, & Saturnino M. Borras Jr., Global “Land Grabs: historical processes, theoretical and methodological implications and current trajectories” (2013) 34:9, *Third World Quarterly* 1517; Saturnino M. Borras Jr., Ruth Hall, Ian Scoones, Ben White, & Wendy Wolford, Towards a better understanding of land grabbing: an editorial introduction” (2011) 38:2 *The Journal of Peasant Studies* 209.

corporations to invest in order to secure access to the precious raw materials necessary for food and biofuel production.⁵³⁸ These investors are not restricted to the corporations headquartered in developed countries. Saudi Arabia has provided generous state-subsidies to companies willing to expand their agricultural operations abroad.⁵³⁹ The Islamic Development Bank has also partnered with Saudi Arabian investment companies to buy land in Mali, Senegal, Uganda, and Sudan.⁵⁴⁰ Corporations in India, China, and South Korea have also invested in large amounts of agricultural land abroad.⁵⁴¹

6.4. Research Implications

Through reference to the above research it is possible to view the GOI as a willing participant in wider a process of corporate expansion into the agricultural sectors of developing countries that has accelerated rapidly since the world food price crisis of 2007-2008. Based on this research, I argue that the GOI agreed to accept the temporary protection and restrictive terms of the Ministerial Decision because it is ultimately more concerned with providing a friendly market for corporations in the food production, retail, and processing sectors than helping other developing Members or ensuring that protecting its consumers from food price fluctuations or dependency on foreign food.

A related (and even more cynical) interpretation is that India may ultimately benefit from the restrictive conditions of the Ministerial Decision because these conditions will help ensure that India's exports are not significantly impacted by foreign stockholding programs diverting consumers away from the market. One of the main objectives of the

⁵³⁸ *Ibid* at 516 (food security), 522 (energy security) .

⁵³⁹ *Ibid* at 515.

⁵⁴⁰ *Ibid*.

⁵⁴¹ *Ibid*; see also: William G. Martin & Ravi Arvind Palat, "Asian Land Acquisitions in Africa: Beyond the 'New Bandung' or a 'New Colonialism'?" (2014) 31:1 *Agrarian South: Journal of Political Economy* 125 at 130 (specifically, the authors discuss India's investment in large areas of farmland in Ethiopia).

Modern Terminal Markets developed by the GOI's Department of Agriculture and the Mega Food Parks developed by the MOFPI is to promote India's capacity to export value-added foods.⁵⁴² Not only is India a net-food exporter; the country has seen "phenomenal" export growth over the past decade.⁵⁴³ According to the United States Department of Agriculture, the value of India's food exports increased in value by over \$30 billion between 2003 and 2013.⁵⁴⁴ Furthermore, a significant amount of this growth has been driven by exports to least-developed countries (valued at \$5.2 billion in 2013).⁵⁴⁵

Because food exports to other developing countries are an important source of revenue, it is easy to understand why the GOI did not hold out for a more expansive arrangement in Bali. The terms of the Ministerial Decision ensure that, even if a developing Member qualifies for its protection, its stockholding programs will be limited to providing food for those who would not otherwise be able to purchase food at market prices. Therefore, they would likely not interfere with India's lucrative food export industries.

While these are just some of the possible interpretations of the interests behind the GOI's negotiation position in Bali, it is useful to note that these arguments fit in well with the research indicating that Indian corporations have become involved in the global rush to invest in arable land in developing countries.⁵⁴⁶ Although India is still a developing country, and home to hundreds of millions of people living in abject poverty, it is also

⁵⁴² MOFPI, Goals and Roles, *supra* note ; Goswami, *supra* note 493 at 17.

⁵⁴³ United States Department of Agriculture, "India Sees Surge in Agricultural Exports to Least-Developed Countries" (Washington D.C.: United States Government), online: <<http://www.fas.usda.gov/data/india-sees-surge-agricultural-exports-least-developed-countries>> accessed 2015-08-13.

⁵⁴⁴ *Ibid.*

⁵⁴⁵ *Ibid.*

⁵⁴⁶ Matrin & Palat, *supra* note 541 at 130.

apparently home to many who are well-situated to take advantage of the lucrative opportunities afforded by economic liberalization.

The notion that the economic elite in India may have influenced the GOI's decision to accept the restrictive terms of the Ministerial Decision is also congruent with the insights offered by the TWAAIL perspective, discussed in Chapter 2. Specifically, this interpretation is coherent with Chimni's insights into the role of the TCC in shaping the legal frameworks that structure international economic institutions such as the WTO. Chimni proposes that the TCC will only accommodate interests that align with "the larger goal of realizing its global interests in the realm of international finance and production."⁵⁴⁷ The Ministerial Decision is a prime example of a WTO concession that does not challenge the TCC's project of accumulation. The concessions contained in the Ministerial Decision are so restrictive that it is unclear which developing Members will even be able to benefit from the protection it provides. Even if a developing Member qualifies for said protection by virtue of having a pre-existing, properly reported public stockholding program that made purchases at administered prices, they are still bound by the Ministerial Decision's broad anti-circumvention conditions. Moreover, programs that qualify for the protection offered by the Ministerial Decision can only be used to provide food for "food security purposes," and are also bound by the conditions of footnote 5 and 5&6 of the AoA, which only allow subsidies to be directed at the "urban and rural poor." Because the Ministerial Decision only protects programs that provide food to the poor, it avoids diverting potential customers from the market. For these reasons, the concessions provided by the Ministerial Decision are so narrow that they are unlikely to interfere with

⁵⁴⁷ Chimni, *WTO Democracy and Development*, *supra* note 73 at 266.

the corporate interests the GOI has been courting through investing in market-friendly infrastructure projects, and by transitioning from providing food subsidies through the PDS to direct cash benefits.

Chapter 7: Conclusion

At the outset of this thesis, I set out to answer three questions about the Ministerial Decision: what does it do? will it help? and, whose interests does it serve. To conclude, I summarize my answers to these questions.

The first question (what does it do?) is the easiest to answer. The Ministerial Decision protects certain developing Members from being challenged at the WTO if the costs associated with public stockholding programs that purchase food at administered prices cause them to exceed the AoA's domestic support reduction requirements. Annex 2(3) and footnote 5 of the WTO provide that, if a developing Member operates a stockholding program that makes purchases at administered prices, the difference between the purchase prices and the external reference price must be counted towards their Current Total AMS. Therefore, this solution should technically provide some Members with more policy room than they previously had under the AoA.

The second question (will it help?) is a bit more challenging. At the beginning of this thesis, I explained that I intended to determine whether the Ministerial Decision provides developing countries the necessary policy space to protect consumers from dependence on foreign food supplies and volatile international food prices. Paragraph 2 of the Ministerial Decision contains several restrictions that limit the scope of the protection it provides to developing Members. These include the requirement that the public stockholding program in question must have been in existence at the time of the Ministerial Decision's creation. Paragraph 3(b) also establishes that said program must have been duly reported to the WTO pursuant to the requirements established in the AoA.

Therefore, some developing Members may not qualify for the protection provided by the Ministerial Decision.

Furthermore, the Ministerial Decision's anti-circumvention safeguards, found in paragraphs 4 and 5, disqualify stockholding programs that have a distortive effect on trade. This may limit the extent to which a developing Member can use a stockholding program as a buffer from volatile international food prices by making large purchases when prices are low and releasing large quantities of food when prices are high. As discussed in Chapter 5, buffer stocks are one of the most common mechanisms through which stockholding programs protect consumers and producers in developing countries. As such, it is possible that the Ministerial Decision's anti-circumvention provisions will limit the effectiveness of those programs that qualify for protection. For these reasons, I contend that the Ministerial Decision may not provide developing countries the necessary policy space to protect consumers from dependence on foreign food supplies and volatile international food prices.

The last question (whose interests does it serve?) is the most difficult to answer. As discussed at the outset of this thesis, the direct impetus for the GOI's negotiating position at the Ministerial Conference in Bali appeared to be the rising price of the MSP and the planned expansion of the PDS pursuant to the NFSA. At face value, this makes it seem as though the Ministerial Decision was designed to serve the interests of India's farmers (who benefit from a higher MSP) and India's poor (who would benefit from the expanded PDS). I propose, however, that the political developments in India since the Ministerial Decision demonstrate that the GOI also had other interests to consider during the Bali negotiations. Their recent decision to begin the transition away from the PDS and

towards cash transfers is evidence that they may be attempting to push subsidy recipients towards the market. This explains why the GOI would have accepted the fact that the Ministerial Decision is tethered to Annex 2(3) and footnotes 5 and 5&6 of the AoA, which limit food stockholding programs to providing food to those who could not otherwise purchase it at market prices. India's citizens are more useful to corporate producers, processors, traders, and retailers as consumers than as subsidy recipients. The large-scale projects undertaken by the GOI's Ministry of Agriculture and the MOFPI further support this observation by illustrating the GOI's eagerness to attract corporate investment in food production, processing, trading, and retail.

Finally, the fact that India is a net food exporter, and that a significant portion of its exports are destined for the markets of other developing countries, indicates that the GOI may have accepted the restrictive conditions of the Ministerial Decision because they will help ensure that customers in other countries will not be diverted away from the market by expansive public stockholding programs.

These findings are coherent with Chimini's assertion that the concessions granted by the WTO generally conform to the organization's overarching economic objectives. They also speak to the literature surrounding the capacity of the WTO to accommodate the non-trade concerns of developing Members. The restrictive terms of the Ministerial Decision have been presented as evidence of the disproportionate influence held within the WTO by wealthy developed Members, specifically the US.⁵⁴⁸ However, my findings problematize this interpretation. While this research is by no means intended to discount the influence wielded within the WTO by wealthy developed Members, it reinforces the

⁵⁴⁸ Malig, *supra* note 71 at 19.

importance of observing the domestic factors underlying the negotiating positions of developing Members. The GOI's domestic policies are evidence that developing countries are also home to interests that benefit from economic liberalization. Observing the domestic interplay between those pursuing non-trade concerns and those pursuing liberalization may be important to understanding the positions taken by developing Members in WTO negotiations.

7.1. Policy Recommendations

Towards the end of Chapter 1, I mentioned that, as part of the Ministerial Decision, the WTO Members agreed to adopt a permanent solution to the issue of public stockholding by the 11th Ministerial Conference.⁵⁴⁹ Here, I would like to recommend some improvements to the Ministerial Decisions that I believe would increase the policy space available to developing Members to protect their populations from dependence on foreign food supplies and volatile international food prices.

First, I propose that, at the very least, the WTO should adopt the G-33's initial request to update and continuously adjust for inflation the external reference price that is used to determine what portion of the total cost of a stockholding program must be counted towards a Member's Current Total AMS. Given the fact that the food prices have remained high since the crisis of 2007-2008, and are not likely to decrease in the foreseeable future, updating the reference period of 1986-1988 is especially important. High food prices mean that, even if the administered price at which a developing Member purchases food for its stockholding program is more or less in-line with the market price

⁵⁴⁹ Ministerial Decision, *supra* note 2 at para 1.

of the food in question, they would still likely have to count a substantial portion of the purchase price towards their Current Total AMS.

Second, the protection provided to public stockholdings should be extended to *all* developing countries – not just those in effect and properly reported to the WTO at the time the Ministerial Decision came into force.⁵⁵⁰

Third, the Ministerial Decision's anti-circumvention safeguards should be eliminated or relaxed to ensure that developing Members are able to use buffer stocks to protect consumers and producers from international price fluctuations.

I would also like to propose some broader changes to the AoA that I believe would help incentivise sustainable smallholder production in developing countries. I propose that developing countries should be allowed to impose additional tariffs, import restrictions, or even bans on foreign agricultural products that are produced by large corporations headquartered in developed countries. This would help prevent these corporations from outcompeting small domestic producers. The AoA's subsidy regulations could also be amended to require all developed Members to reduce or eliminate subsidies to agricultural producers that hold a certain amount of land or assets, and producers whose income exceeds a certain threshold.

Finally, I propose that the reference period upon which the WTO's tariff, export subsidy, and domestic support reductions are based (1986-1988) needs to be amended. As discussed in Chapter 4, the reference period of 1986-88 is one of the most problematic aspects of the AoA because it entrenches the policy frameworks that many developing Members had in place while they were restricted by IMF SAPs, and effectively codifies

⁵⁵⁰ Ministerial Decision, *supra* note 2 at para 2.

the inequalities that existed between developing and developed countries during the Uruguay Round negotiations. In order to eliminate the unfair advantage that the AoA provides to developed Members and the corporations headquartered within their borders, this reference period must be at the very least be updated to reflect the change in food prices and inflation since the creation of the WTO. Ideally, the updated reference period would not only be based on a rigid time-period, but would also allow for continuous flexibility to account for future price fluctuations and inflation.

7.2. Future Research

To better understand the interests at play in the WTO's agricultural negotiations, it would be useful to study how the issue of public stockholdings is addressed by the WTO at the 11th Ministerial Conference. Comparing the progress, or lack thereof, made on the issue of public stockholdings in 2017 (when the 11th Conference is set to take place) with the Ministerial Decision negotiated in Bali would yield further insight into the capacity of the WTO to accommodate the interests of developing Members by giving them the policy space to protect consumers and producers from volatile international food prices. Moreover, comparing India's negotiating position in Bali to its position at the 11th Ministerial Conference would allow me to test my argument that the GOI was amenable to a short-term solution to the issue of stockholding programs due to its desire to promote growth in its food processing, retailing, and trading industries. If the GOI vigorously pursues a permanent solution to the issue of public stockholdings to give it, and other developing Members, the policy space to continue to expand the PDS, my argument would be considerably shaken. If, however, the GOI is a more passive participant in the

negotiations, and is happy to settle for a solution that is equally as the Ministerial Decision, this research could support to my current findings.

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