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**The World Trade Organization and Its Outlook on Agriculture: An Excellent
Neoliberal Case Study or An Organized Hypocrisy?**

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**The World Trade Organization and Its Outlook on Agriculture: An Excellent
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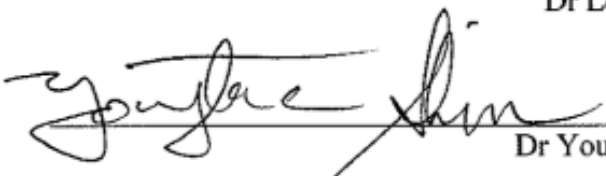
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Abstract

The World Trade Organization is a highly significant global body, acting as a permanent forum for liberalization of trade in goods and services. It recently increased management of global investment and intellectual property rights as well as agriculture. However its growing global power, that historically made it the perfect case study for neoliberals to illustrate the success of institutions in shaping international cooperation, is recently subject to growing public scrutiny where people question its legitimacy and accountability. The latest negotiation round, namely DDA (Doha Development Agenda) was launched in 2001 with an official objective of improving trading prospects for developing countries. After twelve years of negotiations not only has no agreement been reached but the content of the round in terms of possible development perspectives for the global south has significantly shifted. The goal of this research is to try to understand what are the forces and factors behind the impediments of agriculture liberalization. Do the troubles with the DDA possibly reflect the limits of the WTO efficiency as an institution in service of trade liberalization? Or does agriculture simply not correspond with liberalization? After analyzing respectively, neoliberal models, realist paradigms and critical theorist criticism on the WTO, one can make the hypothesis that power politics inside the WTO is the driving force behind agreements; and if an agreement is to be reached in the DDA it will most likely represent an organized hypocrisy.

Table of Contents

Introduction.....	6
Chapter 1 : Theoretical Framework and Literature Review	10
I/ The Neoliberal case study champion	10
▪ The Kantian Influence.....	11
▪ The Neoliberals and Game Theory.....	12
II/ The WTO and the realist paradigm: Is this institution irrelevant?	15
▪ Classical Realism: Exploration of three assumptions	15
▪ Structural Realism and Kenneth N. Waltz.....	18
III/ Limitations of WTO: Critical perspectives.....	20
▪ Habermas and the deliberative democracy concept.....	20
▪ WTO organized hypocrisy Richard H. Steinberg	23
Chapter 2 : WTO Treatment of agriculture, the DDA Perspectives and the AoA Pillars	
.....	27
I/ The failure of the development content at the DDA: From High to insignificant.....	28
▪ The DDA and distribution benefit in number: The computable general equilibrium (CGE model).....	29
▪ The progress of negotiations: a downfall of miss opportunities	30
II/ The special issue of agriculture: Changing everything to change nothing.....	34
▪ The AoA pillars: The global south demands, The EU and US counterproposition	34
▪ The cotton problem	38
III/ The fragile alliance of the global south and the future of WTO:.....	39

▪ The G20 and power politics: the game of alliance and exclusion	39
▪ Pursuing Trade Objectives Through Regional and Bilateral Means.....	43
Chapter 3 : A unique normative approach or what constitute the right to food.....	47
I/ A unique normative approach or what constitute the right to food.....	47
▪ What is the right to Food?.....	47
▪ Food regime and the neoclassic free-trade argument.....	48
II/ Food security and global South.....	50
▪ Does the AoA address food security?.....	50
▪ The AoA' pillars: a negative impact for the global South.....	51
▪ Concluding implication: the AoA is biased	52
Chapter 4 : Brazil's Case Against the U.S. Cotton and its Implications.	57
I/WTO Dispute Settlement Body (DSB).....	57
▪ The dispute claims	57
▪ Sanction and Cross- Retaliation: the innovative demands	61
II/ The dispute Implications: perspective for LDC and the DDA scenarios.....	63
Findings and Concluding Discussion	68
Bibliography	73

Introduction

The World Trade Organization is a very potent global body that serves as a permanent forum for the liberalization of trade in goods and services. It recently increased its participation in the management of global investment and intellectual property rights as well as trade of agriculture. It currently counts a membership of 146 states, with some 30 developing countries in transition eagerly waiting to join. Its members correspond to 90 percent of world trade and investment. However, its growing global power, that has historically made it the perfect case study for neoliberals wishing to illustrate the success of institutions in shaping international cooperation, has recently been the subject of intense and growing public scrutiny wherein critics and scholars have questioned its legitimacy and accountability. The WTO has experienced multiple setbacks, started with the Seattle debacle in 1999. The latest negotiation Round, namely the Doha Development Agenda, commonly referred to as DDA, was launched in 2001 with the mandate and official objective of improving trading prospects for developing countries. After twelve arduous years of seemingly fruitless negotiations, not only has there been no agreement reached but the content of the round in terms of possible development prospects for the Global South has significantly shifted. Some critics see the failure of DDA as signaling major institutional flaws of the WTO, whereas others still believe that the WTO remains the most promising form of institutional cooperation. Whether or not the DDA represents the institutional limits of the WTO, the fact that the agreement is still so very problematic inevitably provokes some examination.

The goal of this research is to try to understand what the forces and factors are behind the stalled liberalization of trade in agriculture. To do so, we need to clarify multiple assumptions about the WTO. The first assumption this research is based on is to accept the principle that before any agreement is reached, the WTO is a forum of traditional international negotiation. Historically, the GATT and its successor the WTO have to come to a multilateral agreement for any WTO rule and implementation to be effective for members' countries. Here I argue that before reaching that multilateral agreement that entails so much of the neoliberal argument¹, the WTO is a regular community of countries, a platform of negotiation such as any other informal diplomacy arriving at consensus² where countries advocate for their best interest. The institutional incentives created by WTO only and strictly apply to members who signed the agreement. As it is today, the WTO's rules or the agreements are the result of negotiations between the members. The current agreements were the outcome of the 1986–94 Uruguay round negotiations which included an important revision of the original General Agreement on Tariffs and Trade (GATT). Goods, services and intellectual property are under the umbrella of the Uruguay round and under very specific rule and regulation. As for the agriculture, it is regulated today by the Agreement on Agriculture (hereafter referred to as the AoA). It was finalized during the Uruguay Round, and entered into force with the establishment of the WTO on January 1, 1995. Therefore the current round DDA is before anything a platform for negotiation where the countries articulate their preferences to be represented in the final draft of the agreement. The starting point of this research inevitably takes the realistic assumption of the role played by

¹ Neoliberals believe that institutions create incentive for international cooperation, moving cooperation from a PD dilemma to an iterated game where retaliation against non-cooperative behavior is possible. Robert O. Keohane. *After Hegemony, cooperation and Discord in the World Political Economy*. Princeton University Press, (1984,2005)

² Amrita Narlikar and Rorden Wilkinson, "Collapse at the WTO: a Cancun post-mortem", *Third World Quarterly*, 2004, p448

power politics in the international arena. The second assumption of this research is based on the commonly known argument of rationality. Both realists and neoliberals assume there is a particular rationality possessed of international actors. Here we assume that countries engaged in that process of negotiation at the DDA are rational actors trying to maximize their benefit. To say it differently before reaching an agreement, WTO negotiation resembles an arena where countries bargain what will be put in the agreement according to their individual country preferences. The last assumption is based on the fact that we need to recognize and accept that the WTO as an organization has its own agenda, which is to promote trade liberalization. The Neoliberal perspective assumes a certain independence of institutions and in the case of the WTO there is multiples evidences that the organization is pursuing its own goal independently of countries national interest, therefore let us take its essence into consideration.

We will attempt to ascertain as to whether the apparent troubles with the DDA are linked to and possibly reflect the limits of the WTO's efficiency as an institution. Furthermore, I will examine the question into whether agriculture as a lone issue is simply a "*no-go-subject*" in as far as liberalization is concerned. After analyzing neoliberal models, realist paradigms, and critical theorists perspectives on the WTO respectively, I then will purpose an the argument backing the hypothesis: Power politics inside the WTO are the driving forces behind agreements or the lack thereof; and consequently, if an agreement is to be reached at the DDA it will most likely represent sentiments of organized hypocrisy rather than a true equity.

Here I refer to power politic in the sense described by structural realists. Their idea is that power is measured by material capability. According to Waltz, the political clout of nations

correlates closely with their economic power and their military might³. Here in our hypothesis we define power politics as that material capability from great powers to use their economic position to influence decision. According to Waltz, making a deal is difficult among states because of the concern with “relative gains”. Cooperation is hard because states worry that the other states will gain a bigger share of the pie and shift the balance of power in the other states favor⁴. With this consideration in mind I argue that power politics and not institutional incentives described by neoliberals such as Keohane is the driving force behind negotiation at the WTO. To do so, I will use the intensive development of the DDA this past twelve years as a case study as well as the concrete example of the Brazil’s cotton dispute case started in 2002.

³ Tim Dunne, Milja Kurki and Steve Smith, “International relations theories discipline and diversity”, (2013). P65

⁴ Tim Dunne, Milja Kurki and Steve Smith, “International relations theories discipline and diversity”, (2013). P 82. Featured book, Kenneth Waltz, “Theory of international Politics”

Chapter 1 : Theoretical Framework and Literature Review

I will present how the WTO reflects the neoliberal paradigm of cooperation and represents a perfect case study. Then, even if the realist perspective did not analyze the WTO specifically, and perceive with a certain irrelevance the role of institutions in international relation, I will nevertheless draw multiple implications from the realist perception. Finally I will present some criticisms of the WTO's from a normative standpoint. After analyzing respectively these three perspectives of international theory, a few observations can be made. The realist perspective on the WTO helps open up the cracks of the neoliberal cooperation model. Classical realist such as Thucydides and Morgenthau give us insight into power politics through the community of identity and norms that are represented at WTO. Overall, the realist perspective on the WTO also helps to open the door for normative criticisms, which question more substantially the objectives and procedures of the WTO, to be taken seriously.

I/ The Neoliberal case study champion

The institutional evolution of the WTO serves as an excellent case study for illustrating the importance of institutional design for pursuing collective goals in an anarchic environment and has been the subject of considerable neoliberal analysis. States developed the General Agreement on Tariffs and Trade (GATT), in order to better obtain their collective economic interest. The WTO's institutional design developed out of the collective experience with GATT. The WTO is a formal inter-governmental organization with a full secretariat and an extensive institutional

structure designed to cover all aspects of trade (not simply tradable goods). It contained one of the most highly developed dispute resolution mechanisms to be found in any international institution⁵.

- **The Kantian Influence**

Liberals proposed more factors that restraints country to go to war. According to the Kantian influence, democracies will refrain from using force against each other; economic trade creates incentives to maintain peace; and thirdly, international organizations can constrain decision-makers by positively promoting peace⁶. Here we will concentrate on the last two statements, namely how the WTO creates incentives to maintain peace and how its organizational structure positively promotes peace. The first argument is that trade depends on expectations of peace with the trading partner. Violent conflicts endanger access to markets, import, and capital. Liberals remind us that it doesn't make war impossible among disputing states but it does raise the risks and costs. The larger the contribution of trade between two countries to their national economies, the stronger is the political base that has an interest in preserving peaceful relations between them. The creation of the GATT then WTO is in itself an example of how countries were willing to institutionalize trade liberalism.

The second argument about international organization refers to the effectiveness of an international governmental organization to promote peace. Here in our case study of the GATT/WTO, it reduces uncertainty by providing information about members' material interest,

⁵ Margaret P. Karns and Karen A. Mingst, "International Organizations, the politics and process of global governance", p 413

⁶ Tim Dunne, Milja Kurki and Steve Smith, "International relations theories discipline and diversity", (2013). p101

as well as guiding those interests in a more inclusive and longer-term direction⁷. This particular purpose can better be analyzed in part by the theory of regime treated in next paragraph within the neoliberal perspective.

- **The Neoliberals and Game Theory**

Neoliberal scholars consider that much of the International Relations prior the twenty century seems to conform the realist expectation, however they highlight two historical developments in the twentieth century that they believe have made realism an increasingly inaccurate description of contemporary global politics⁸. The first historical evolution is the growth of interdependence across a variety of global issues. The relationship among nations is mutually dependent and their actions and interests are increasingly entwined⁹. Interdependence is an important concept for liberal. It explains the reasons behind nations' cooperation. Neoliberal scholars have often used game theory to analyze the difficulties in cooperation among states and how to overcome them, especially the Prisoner's Dilemma (PD) analogy.

Robert Keohane criticizes the realist theory of hegemonic stability, which describes the necessity of the predominance of the single state to maintain order. In his book, *After Hegemony*, Keohane argues that although hegemony can facilitate cooperation, it is not a necessity or a condition for it¹⁰. Keohane developed what he called a functional theory of regimes to explain how cooperation persists, even in the absence of a hegemonic power. He uses examples from

⁷ Tim Dunne, Milja Kurki and Steve Smith, "International relations theories discipline and diversity", (2013). P102

⁸ Tim Dunne, Milja Kurki and Steve Smith, "International relations theories discipline and diversity", (2013). P115

⁹ Tim Dunne, Milja Kurki and Steve Smith, "International relations theories discipline and diversity", (2013). P 117

¹⁰ Robert O. Keohane. *After Hegemony, cooperation and Discord in the World Political Economy*. Princeton University Press, (1984,2005), p12

international political-economic and military-security situations to illustrate empirically how international regimes incorporate the norm of reciprocity; delegitimize defection; and, thereby make non-cooperation more costly. According to him, norms enclose clear injunctions to members about legitimate and illegitimate behavior. For instance the norms of the GATT have not require its members resort to free trade immediately, but incorporate injunctions for members to practice non-discrimination and reciprocity and to move toward increased liberalization.

Keohane makes the same rationality assumptions, as does realism to explain that a substantial amount of cooperation in the international relations of advanced market-economy countries is possible because of the rational-choice theory and the theory of collective good. Those theories help to show why institutions are significant in world politics, and even crucial to successful cooperation. Keohane's contends that international regimes alter the relative costs of transactions. Certain agreements are forbidden. Under the GATT, for instance it is not permitted to make discriminatory trade arrangements except under specific conditions. Due to the absence of a centralized government, states implement such actions, however their lack of legitimacy means that such measures are likely to be costly. Under GATT rules, for instance, retaliation against such behavior is justified¹¹. It becomes a serious violation of GATT with serious implications for a large number of other issues.

In terms of the prisoner's dilemma, the situation has been changed from a single-play to an iterated game. Incentive to violate regimes principles has been reduced. International regimes decrease the transaction costs of legitimate bargains and augment them for illegitimate ones. Regimes can as well influence bureaucratic costs transactions. Successful regimes produce issue-areas so that productive linkages are facilitated, while destructive linkages and bargains that are

¹¹ Robert O. Keohane. *After Hegemony, cooperation and Discord in the World Political Economy*. Princeton University Press, (1984,2005), p 89

in opposition with regime principles are discouraged¹². In world politics, international regimes improve the making of agreements by decreasing barriers created by high transaction costs and uncertainty. Once an international regime has been established, however, it begins to profit from the relatively high and symmetrical level of information that it creates, and from the ways in which it makes regime-supporting bargains easier to consummate¹³. Regimes, such as the WTO's, transform the single-play Prisoners' Dilemma (PD) to an iterated open-ended PD in which cooperation may be rational. Social pressure exercised through linkages among issues, provides the most compelling set of reasons for governments to comply with their commitments. That is, egoist governments may comply with a rule because if they fail to do so, other governments will observe their behavior, evaluate it negatively, and perhaps take retaliatory action. GATT contains provision for retaliation. Even without using those provisions, Keohane explains that governments find it costly to retaliate for the sake of reputation. According to the author GATT was created not so much to influence government behavior, but to permit them to restrict their leaders successors' freedom of action.

In the present case, the latest round DDA, an agreement has not been reached yet. Therefore, the incentive described by Keohane and neoliberals that transform the prisoner dilemma situation to an iterated game where the organization creates incentive for cooperation such as a retaliation mechanism cannot be applied to the DDA because it has no legal authority yet. The assumption of the neoliberal argument can only be applied to agreements that are in service inside the WTO such as the Uruguay round agreements on services and intellectual

¹² Robert O. Keohane. *After Hegemony, cooperation and Discord in the World Political Economy*. Princeton University Press, (1984,2005), p 92

¹³ Robert O. Keohane. *After Hegemony, cooperation and Discord in the World Political Economy*. Princeton University Press, (1984,2005), p 100

property. We are not questioning Keohane's findings, we are only pointing out that those incentive mechanisms only apply to countries that signed those particular agreements. The WTO counts about 60 different agreements, which have an international legal status. Member countries must sign and ratify all WTO agreements on accession. At this point when it comes to agriculture the AoA is the current agreement on service for countries. Therefore, The DDA to follow up on my assumption is only a place of intense bargaining.

II/ The WTO and the realist paradigm: Is this institution irrelevant?

- **Classical Realism: Exploration of three assumptions**

Classical realists stressed the similarities not the differences between domestic and international politics. They have a pessimistic view of the state of nature, and recognize that communal bonds are fragile and quickly frustrated by the pursuit of unilateral advantage by countries. When this happens, time-honored mechanisms of conflict management such as alliances and the balance of power might not only fail to keep the peace but may make domestic and international violence more likely¹⁴. Thucydides and Morgenthau are concerned with questions of order, justice and change; we will try to analyse how the WTO could fit in this perspective through three assumptions.

The first assumption contends that there is no central authority to maintain order (anarchy). According to Thucydides the domestic passions are the same in international level, therefore he would have agreed with Aristotle "the law has no power to compel obedience beside

¹⁴ Tim Dunne, Milja Kurki and Steve Smith, "International relations theories discipline and diversity", (2013). P61

the force of habit”¹⁵. Morgenthau in the same way regards international politics through the lens of domestic politics first and stated “All politics, is a struggle for power that is inseparable from social life itself”¹⁶. For Morgenthau and Thucydides, communities and the identities and norms they help to create and keep are critical factors of order, at home and abroad. In our case, the WTO can be regarded as a community that created its own identity and norms. WTO’s principles of non-discrimination, reciprocity, transparency, safety valves for public health care, national security, domestic industries, and enforcement of obligation (The dispute Settlement Unit)¹⁷ could easily represent those norms and identities to which Morgenthau and Thucydides referred.

The second assumption we observe is the balance of power. Both Thucydides and Morgenthau understand politics as a struggle for power and unilateral advantage. Military capabilities and alliance are necessary safeguards in international relations but guarantee the peace or the independence of actors. Order, domestic and international ultimately rest on the strength of community. The WTO is a status quo type of organization where multilateralism is a key component. Every nation is regarded as equal where decisions are made by consensus. However the latest DDA, has been the stage of multiple alliance among the global South with the creation of the G20 challenging the traditional order of powerful players such as the US and EU. It remains to be seen if the strength of the WTO community is strong enough to close this most controversial round. It will be interesting to see if the developing countries will concede to any last minute deals struck between the USA and EU, or whether some will walk out, forcing a

¹⁵ Tim Dunne, Milja Kurki and Steve Smith, “International relations theories discipline and diversity”, (2013), p 62

¹⁶ Tim Dunne, Milja Kurki and Steve Smith, “International relations theories discipline and diversity”, (2013), p 62.

¹⁷ Margaret, P. Karns and Karen A., Mingst. “International Organizations, the politics and process of global governance”, 2010, p413

failure of this round. In either case, with the fact that the anticipated gains looks small, there remains a risk that the varying interests among different groupings of these countries could break if and when a final deal is brokered¹⁸.

The third assumption examines the tension between self-interest and justice as what differentiate the classical and neorealist points of view. For Classical realists, including Machiavelli justice is important for two reasons. Policy that is constrained by accepted ethical principles and generally supportive of them provides a powerful aura of legitimacy that helps to reconcile less powerful actors with their subordinate status¹⁹. A demonstrable commitment to justice is the most efficient way to create and maintain a kind of community that allows actors to translate power into influence. Justice is also important to provide the conceptual scaffolding on which actors can intelligently construct balanced national-interests. A certain engagement to justice is a powerful self-restraint, which is necessary in direct proportion to one's power. Weak states most often act cautiously because of external constraints. Powerful states sometimes overestimate their ability to control events and are seduced into investing their asset and reputation in dangerous situation. Internal restraint and external influence are thus closely intertwined. Self-restraint in accord with the acknowledged principles of justice both earns and sustains the hegemony that makes efficient influence possible²⁰.

¹⁸ Jennifer Clapp, "WTO Agriculture Negotiations: implications for the Global South," *Third World Quarterly*, 2006p 564

¹⁹ Tim Dunne, Milja Kurki and Steve Smith, "International relations theories discipline and diversity". Oxford university Press, (2013), p 65-66

²⁰ Tim Dunne, Milja Kurki and Steve Smith, "International relations theories discipline and diversity, Oxford university Press, (2013). P 67

- **Structural Realism and Kenneth N. Waltz**

Many contemporary realists believe in the primacy of self-interest over moral principle, and regard considerations of justice as inappropriate, and even dangerous foundations on which to base foreign policies. At best, appeals to justice can serve to justify or mask policies motivated by more concrete material interests²¹.

Kenneth Waltz emphasis on the fact that interdependence is a weak understand of what forces shape international politics.²² Plato's utopias describe neighbors leaving in isolation so that people could construct their collective life uncontaminated by contact with others. With the absence of interdependence, neither conflict nor war is possible. With integration international becomes national politics. Waltz refers to Robert Keohane's and Joseph Nye's term of "asymmetric interdependence" for relationship of dependence and independence among states. Waltz argues that independent states are in a better position than relatively dependent ones. If I depend more on you than you depend on me, you can possess different ways of influencing me and affecting my fate than the opposite. Omitting the word "dependence", to him masks the inequalities that mark the relations of states and makes them all seem to be on the same footing. He states that much of international and national politics is about inequalities.

Realism reveals what liberal institutionalism theory obscures, which is the fact that international institutions serve primarily national rather than international interests. Waltz mentions, the answer to the question that most liberal institutionalism asked: How are we "to account for the willingness of major states to invest resources in expanding international

²¹ Tim Dunne, Milja Kurki and Steve Smith. *International relations theories discipline and diversity*. Oxford university Press, (2013), p 65

²² Kenneth N. Waltz, "Structural Realism after the Cold War", *International Security*, Vol. 25, No. 1 (Summer, 2000), p 14

institutions if such institutions are lacking in significance?" His answer is obvious, to serve what powerful states believe to be their interest²³.

Realists insist that institutions have only minimum effects. They noticed that the efficacy of states depend on the will of the states. Strong states only use institutions in ways that benefit them. According to Waltz, international institutions are created by the more powerful states, and the institutions survive in their original form as long as they serve the major interests of their creators, or are thought to do so.

On the shadow of the future, Waltz continues by arguing that States' perennial uncertainty about their fates presses governments to prefer relative over absolute gains. Without uncertainty, the leaders of states would no longer have to question themselves how they would cooperate tomorrow as well as today. States could combine their efforts amicably and work to maximize collective gains without worrying about how each might fare in comparison to others. They would no longer worry about how the balance might change later. The problems of governments do not come from their short time perspectives. They see the long shadow of the future, but they have trouble reading its contours, perhaps because they try to look too far ahead and see imaginary dangers²⁴. WTO's Doha round can be interpreted as a premise of that consideration of uncertainty. First, in the bargaining arena of the DDA states are considered rational actors that want to maximize their national interest first, and not the international interest. They will not agree on something that seems to undermine potential national gains. Powerful states worry about how liberalization of agriculture might affect their own market and possibly shift the balance of power in the advantage of emerging countries. With the creation of

²³ Kenneth N. Waltz, "Structural Realism after the Cold War", *International Security*, Vol. 25, No. 1 (Summer, 2000), p 21

²⁴ Kenneth N. Waltz, "Structural Realism after the Cold War", *International Security*, Vol. 25, No. 1 (Summer, 2000), p 40.

the G20 and the rising power of developing countries such as China, Brazil and India, which are gaining weight on multilateral negotiations at the WTO, this might reflect precisely this long shadow of the future that makes the tension over potentials gains for countries problematic. However, structural realists predict the collapse of organizations that put national interests in jeopardy and undermine state sovereignty. Ultimately, for structural realist the DDA is doomed to fail because no rational powerful states will sign on an agreement that could potentially undermine their growth in favor of developing countries.

III/ Limitations of WTO: Critical perspectives

- **Habermas and the deliberative democracy concept**

Perhaps more than any other democratic theorist, Jurgen Habermas provides a way of systematically examining and assessing liberal democratic institutions. With the goal of extending and radicalizing democracy, his “deliberative democracy” is a rules-based deliberative process that underscores issues of legitimacy and justice. The concept of deliberative as a standard for assessing decision-making at the WTO is a great way to show the shortcoming of the WTO as a democratic organization. Thus, deliberative democracy helps reveal how inadequate legitimating rules and lack of rational deliberation in the WTO yield power politics, coerced decision making and unjust outcomes.

Habermas develops particular components of the public sphere. He argues for politics as a type of conversation, based on legitimating rules and cognitive dialogue: “democratic will-formation draws its legitimating force ... from the communicative presuppositions that allow the better arguments to come into play in various forms of deliberation and from the procedures that

secure fair bargaining processes²⁵”. For him, corporate and state interests can often coerce legitimacy and public consensus through domination, manipulation or commodification of culture. Such depoliticisation, such removal of critical discourse and limitation of social choices, yield what Habermas calls “ideology²⁶”. The ideal speech situation is aimed precisely at minimizing ideology and maximizing decision making by civil society. He emphasizes the need to institutionalize through legal and constitutional means the formal conditions of the ideal speech situation so as to reduce systematically distorted communication and better regulate, guarantee and expand the public sphere. Thus, consensus is produced through argumentation, not power politics or by the force of an interlocutor's socioeconomic power²⁷. The overall goal is for the community to reflect this consensus in laws and policies.

Kapoor analyses the WTO as a place to discuss rules about the global market, in the same way that a nationally based public sphere may debate regulations governing the national economy. The author argues that the WTO qualifies as a public space, in this case a multilateral sphere where national representatives deliberate (i.e. they make, defend and adjudicate claims), primarily about global economic matters²⁸. WTO is a state-centered institution that claims to be a democratic organization²⁹ based on the fact that there is sovereign equality³⁰.

²⁵ Ilan Kapoor, “Deliberative Democracy and the WTO”, *Review of International Political Economy*, Vol. 11, No. 3 (Aug., 2004), p 523.

²⁶ The suppression of generalisable social interests through systematically distorted communication.

²⁷ Ilan Kapoor, “Deliberative Democracy and the WTO”, *Review of International Political Economy*, Vol. 11, No. 3 (Aug., 2004), p 524

²⁸ Ilan Kapoor, “Deliberative Democracy and the WTO”, *Review of International Political Economy*, Vol. 11, No. 3 (Aug., 2004), p 525

²⁹ Ilan Kapoor, “Deliberative Democracy and the WTO”, *Review of International Political Economy*, Vol. 11, No. 3 (Aug., 2004), p 526

³⁰ It has a one-country, one-vote decision-making system. Since the creation of the WTO in 1995, this practice has been formalized. Article IX of the Marrakesh Agreement Establishing the WTO stipulates that all decisions are to be taken by consensus, which is to say that unless a

Most of the key deliberations have taken place in restricted, “green room” meetings or caucuses. The article notes that several developing countries, especially smaller ones, are “systematically absent from not only informal, but also formal meetings”; and when they are present and make proposals, it is not uncommon for these to be blocked, ignored or excluded³¹. This exclusionary and exclusivity dimensions of the western “green room” caucuses are signs of illegitimacy. According to the author, it is the continual exclusion or neglect of many developing countries in important caucus meetings that is the main issue. Caucuses are unclear and non transparent, making sure that all members are at least invited to them, or if not, breaking down the criteria for inclusion and exclusion. The absence of such rules means, for the author that the most powerful western members can continue their strong-arm tactics with impunity.

Just as there is a politics of inclusion and exclusion that goes on within the WTO's multilateral sphere, the author mentions the same process outside of it. Multinational corporations (MNCs) have had a significant presence in, so to speak, the 'shadows' of WTO deliberations³². In contrast, NGOs, especially critical ones have had a more difficult time accessing the WTO. The conclusion of the article is to say that the WTO's multilateral sphere involves less deliberation and more compromises and trade-offs, resulting in what Habermas calls a 'bargaining' consensus. According to him, “The WTO decision-making process is dominated by bargaining instead of arguing”³³. Negotiators do not reach solutions and

member present formally objects to a proposed measure, it carries. If and when a consensus cannot be reached, a decision is taken by a majority vote (of two-thirds or three- fourths, depending on the nature of the decision). WTO, 1994.

³¹ Ilan Kapoor, “Deliberative Democracy and the WTO”, *Review of International Political Economy*, Vol. 11, No. 3 (Aug., 2004), p 528

³² Ilan Kapoor, “Deliberative Democracy and the WTO”, *Review of International Political Economy*, Vol. 11, No. 3 (Aug., 2004), p 533

³³ Ilan Kapoor, “Deliberative Democracy and the WTO”, *Review of International Political Economy*, Vol. 11, No. 3 (Aug., 2004),p 533

compromises with rational arguments by trying to convince each other on what is the best solution. The claim that free trade, liberalized markets and technology is beneficial to all WTO members may be convincing but reflects an ideology in Habermas sense. This Habermas argument supports our first assumption that the DDA is a place of bargaining, rather than a place of deliberation.

- **WTO organized hypocrisy Richard H. Steinberg**

According to Steinberg, GATT/WTO decision-making rules based on *the sovereign equality of states* are an organized hypocrisy in the procedural context. The powerful countries have dominated GATT/WTO legislative bargaining outcomes and agreed with the consensus decision-making rule, and related rules that are based on the sovereign equality of states³⁴ only in the perspective of generating information that confers legitimacy that can be acceptable by all states³⁵. The author notes that it appears to have been a semblance of law-based negotiating in the launch phases of the trade Rounds, however powerful western states have dominated and coerced most of the rest of the process. Powerful states have controlled agenda setting, and rounds have been concluded in the shadow of power to varying degrees³⁶.

Instead of generating a pattern of Pareto-improving outcomes³⁷ deemed equitable by all states, GATT/WTO sovereign equality decision-making rules may be combined with invisible

³⁴ Richard H. Steinberg, "In the Shadow of Law or Power? Consensus- Based Bargaining and Outcomes in the GATT/ WTO", *International Organization*, (March 2002), p 343

³⁵ Richard H. Steinberg, "In the Shadow of Law or Power? Consensus- Based Bargaining and Outcomes in the GATT/ WTO", *International Organization*, (March 2002), p 360.

³⁶ Richard H. Steinberg, "In the Shadow of Law or Power? Consensus- Based Bargaining and Outcomes in the GATT/ WTO", *International Organization* (March 2002), p 350

³⁷ Richard H. Steinberg, "In the Shadow of Law or Power? Consensus- Based Bargaining and Outcomes in the GATT/ WTO", *International Organization* (March 2002), p 346-347

weighting³⁸ to produce an asymmetric distribution of outcomes of trade rounds. Even if developing countries understand exactly why and how the WTO decision-making process leads to asymmetrical outcomes, the analysis in this article shows there is little they can do about it. The economic power of western countries (together they account for about 40 percent of world imports) allows them to absorb costs or potential threats; while small or weaker countries have much to lose from trade restrictions and much to gain from access to US/EU markets. According to the author, western countries also have at their disposal such “carrots” as increased foreign aid or debt rescheduling to buttress their bargaining arsenals, which they often use to win over developing countries. This argument made by Steinberg, confirm our hypothesis, that power politics is the driving force during trade negotiation.

Conclusion

The neoliberal contribution in understanding the role of institutions in international cooperation is not questionable. Keohane, and game theorists give striking arguments to explain how cooperation is not only possible but rational under an anarchic world of egoists. The multiple incentives created by the WTO have historically been working in favor of cooperation for members’ countries and added a certain sense of fairness to the other world of hegemonic power seeking countries described by realists. However, we argue that those mechanisms or regime incentives are only applicable when countries have signed and are under legal agreements texts. Up to this date, the only text ruling agriculture at the WTO is the AoA, which was under a lot of criticism and contributed to the creation of a new round of negotiation. The new round

³⁸ Richard H. Steinberg, “In the Shadow of Law or Power? Consensus- Based Bargaining and Outcomes in the GATT/ WTO”, *International Organization*, (March 2002),p 346. It basically describes a powerful state bribing, or finding ways to influence weaker states to vote the way they would like them to.

DDA had as an objective to rectify some of the AOA issues and overall strengthening of underdeveloped countries. According to our first assumption, the DDA needs therefore to be considered as a platform where countries bargain their preferences, and until an agreement is reached, power politics is the basis for negotiation. The realists, especially the classical ones such as Thucydides and Morgenthau help us to understand the role that power politics plays inside any type of community. Their view on the dynamic of identities, norms, alliances and community strength is enlightening as to how conflict is generated inside of a community. The latest WTO round (DDA) would definitely illustrate the role of power politics in bargaining negotiation and would be able to taste the strength of the WTO as a community. The question is to examine whether or not the WTO essence (purpose of its creation) has strong enough norms to find a solution to this never ending bargaining process that is the DDA. These realists open the door for normative considerations to take the front row and deeply criticize internal procedures at the WTO. The concept of deliberative democracy helps us to question the roots of decision-making mechanisms. Even though the institutional characteristics of the WTO make it a unique example for international cooperation (multilateralism, dispute settlement unit), some crucial points, such as the fact that the WTO is producing non pareto –improving outcomes³⁹, or that members are excising some invisible weighting, are enough to put WTO under methodic criticism. It is now more than ever the most important moment to look at which final path the negotiations on DDA will take. Does normative consideration on agriculture have a place in the debate over agriculture liberalization? Do powerful western countries frustrate any prospective gains for the South? Does the nature of the WTO as a forum for trade liberalization offer enough to close a deal on the DDA? According to Neoliberals, WTO needs to stick to its principles of

³⁹ (Steinberg, 2002)

trade liberalization and close a deal that benefits collectively all members. According to classical realists the future of the WTO is powerful states using restrain power to better influence a closing on the Doha round beneficial to powerful states. According to structural realists the DDA will most likely have no future. It will collapse if the powerful states cannot impose their interests on weaker states, and if the decision at the WTO goes against national sovereignty. According to the normative and critical theorists, the future of the WTO is to increase deliberative democracy where ethical concerns such as the right to food, civil society such as environmental NGOs have a share in the decisional process to close the round on a note of justice. The future can only tell us if a conclusion of DDA can happened and in what extend will it be beneficial to developing countries, in the meantime based on the latest development of the round and on a case study of Brazil's dispute case against American cotton subsidy, we will look at which scenario is more likely to take place.

Chapter 2 : WTO Treatment of agriculture, the DDA Perspectives and the AoA Pillars

The institutional evolution of the WTO serves as an excellent case study for illustrating the importance of institutional design to collective gains and cooperation in an anarchic environment such as was described in Chapter I. However, we cannot ignore the fact that each of the previous eight Rounds has resulted in asymmetrical deals favoring the largest most economically powerful states relative to and sometimes at the expense of their less powerful counterparts. This is not a surprise given the fact that the countries' members differ dramatically in their capabilities to engage in competitive negotiation platforms as evidenced by the gleanings from Chapter I. In view of these different observations, one can question the DDA in its capacity to truly engage developmental material for the Global South, as stated in the early phase of its creation. This section seeks to analyze the major shortcomings of the DDA and therein understand why twelve years after its launch the Round's closing is still very problematic. In the opening pages, I will present how the development content of the Round dropped from the high benefits to insignificant. Following, I will explain how the particular treatment of agriculture based negotiations appear to change multiples aspect of AoA's pillars but in reality only create situational smokescreens and no real substantial change. And finally, I will address the power-politics interplay during the Round reflecting a certain fragility of the Global South alliance and its long-term implications.

I/ The failure of the development content at the DDA: From High to insignificant

The Doha Development Agenda (DDA) had as its central objectives the improvement of the trading prospects for developing countries. The Round was officially launched at the WTO's Fourth Ministerial Conference in Doha, Qatar, in November 2001. The Doha Ministerial Declaration provided the mandate for the negotiations, including on agriculture, services and an intellectual property, which had began earlier. Its aim was to achieve major reforms to the international trading system through the introduction of lower trade barriers and revised trade rules. The work program covers about 20 different areas of trade. The fact that the DDA has experienced an assortment of issues, problems, and troubles added further fuel to criticisms that the WTO was becoming increasingly unable to serve as a platform for trade liberalization. Some scholars note the fact that moments of crisis and collapse have been part of all multilateral trade negotiations since, and including, the original negotiation of the WTO's predecessor institution, the GATT (General Agreement on Tariffs and Trade) in 1947, it is thus not surprising that DDA should be struggling at this juncture. They also acknowledge the fact that moments of crisis in trade Rounds have actually functioned to reexamine expectations and force the production of alternative nevertheless not always innovative solutions that help move negotiations forward. Let us look in detail at the different points of contention, that is, those key-shifting moments during the past twelve years and the implications thereof, from the perspective of relative gains for countries affected.

- **The DDA and distribution benefit in number: The computable general equilibrium (CGE model)**

The DDA has been the subject of a large number of economic analyses using computable general equilibrium modeling to examine the size and distribution of benefits. These models have over time sponsored the fact that the DDA is developmental. Progressively some estimates show a significant fall of likely benefits that will flow to developing countries from trade liberalization⁴⁰. For example, two of the most recent estimates of the likely Doha scenarios found that the benefits accruing to developing countries from a conclusion of the DDA (in terms of the broad agreement that looks likely to occur) are in the region of US\$6.7–21.5 billion, out of total welfare gains of between \$38.4 billion and \$43 billion. In other world, the DDA is “worth about \$3 per year, or less than a cent a day, for each person in the developing world”⁴¹. The most important is that these mild gains are highly unevenly distributed, with only a couple of large developing countries (primarily China, India and Brazil) gaining the biggest share of benefits, while many of the remaining developing countries, such as Sub-Saharan Africa, are most likely to be left worse off by the DDA. According to the article we can conclude that much of the development component of the DDA has been lost over the course of the negotiations.

The authors also affirm that given the strong consensus among delegates at the Geneva Ministerial Conference that the settled text should state the basis for future negotiations without being altered, the eventual DDA agreement, even if it were ever to be concluded, is likely to

⁴⁰ James Scott and Rorden Wilkinson, “What Happened to Doha in Geneva? Re-engineering the WTO’s Image While Missing Key Opportunities,” *European Journal of Development Research* (2010) 22, 141–153.

⁴¹ James Scott, Rorden Wilkinson, “What Happened to Doha in Geneva? Re-engineering the WTO’s Image While Missing Key Opportunities,” *European Journal of Development Research* (2010) 22, 141–153.

remain within the parameters already set out on which these modeling exercises (CGE models) were constructed. Retrospectively, The Geneva Ministerial meeting could have been a good opportunity and forum to recalibrate from the DDA's original stance and reassess where agreement had been reached and revisit whether or not it was fulfilling its original aims. This, in turn, would have provided a chance for a renewed concentration on the development component of the Round. Instead, the article accused the Geneva Ministerial of been useless; it only restated support for the flawed package that had been arrived at over the past eight years of limping negotiations, and reaffirmed this package as the basis for moving forward.⁴².

Based on the prognosis of the CGE model we can affirm that the potentials gains for developing countries are null, if not insignificant. Therefore we can conclude even without having access to how precisely each countries were negotiating inside a very private setting to assess the balance of power argument, that after eight years of negotiations the first outcome is no materials gain for weaker states. After eight years of negotiation, the first noticeable result is a significant shift in potential economic gains for developing countries. The Geneva Ministerial conference represents a win for powerful states and a significant step back for weaker states.

- **The progress of negotiations: a downfall of miss opportunities**

When the DDA was launched, the majority of developing countries were convinced that the Round should redress the imbalance of the Uruguay Round and previous GATT agreements; enable developing countries to negotiate on the basis of less than full reciprocity; and give

⁴² James Scott and Rorden Wilkinson, "What Happened to Doha in Geneva? Re-engineering the WTO's Image While Missing Key Opportunities," *European Journal of Development Research* (2010) 22, 141–153.

special consideration to the interests of developing countries⁴³. Developing countries especially African one were particular concern about beginning a new round of negotiation at Doha because they would be required to take on further obligations, included new areas such as the environment and labor standards as well as the ‘Singapore issues’ of investment, government procurement, trade facilitation and competition policy. The last Uruguay round has been costly to implement and had failed to give them the benefits they had envisaged. One of the major request from the developing countries was their concerns for the lacked of resources and technical capacity to undertake negotiations in these new areas. When the round was launched, the industrial countries fallowed a tactic of ‘filibustering’ within the Committee on Special and Differential Treatment by automatically postponing the talks on implementation issues and on making the special and differential treatment clauses in the WTO agreements more doable. This tactic was successful⁴⁴. By the time of the September 2003 Cancun ministerial conference, nothing had been agreed⁴⁵.

The main concerns were located on the way in which the industrial countries had implemented key agreements, especially the Agreement on Agriculture (AoA) and the Agreement on Textiles and Clothing (ATC). Both agreements had been implemented in a way as to reduce the liberalization of these heavily protected markets. There is copious and diverse literature capturing how the interest of developing countries slowly dwindled from the DDA’s different negotiating phases. First in the run-up to the Doha conference, articles described during

⁴³ James Scott and Rorden Wilkinson, “The Poverty of the Doha Round and the Least Developed Countries,” *Third World Quarterly*, Vol. 32, No. 4, 2011, p 617

⁴⁴ James Scott and Rorden Wilkinson, “The Poverty of the Doha Round and the Least Developed Countries,” *Third World Quarterly*, 2011, p 618

⁴⁵ James Scott and Rorden Wilkinson, “The Poverty of the Doha Round and the Least Developed Countries,” *Third World Quarterly*, 2011, p 618

subsequent years, a certain lack of progress in the particular matter of implementation issues⁴⁶. By the time of the Hong Kong Ministerial of 2005, nothing really substantial had been reached, and the Ministerial Declaration only agreed to "...redouble efforts to find appropriate solutions as a priority to outstanding implementation-related issues"⁴⁷. Finally, by the 2009 Geneva Ministerial Conference implementation had been very discretely dropped, with only the LDC group referring to the issue. The once absolute requirement for the developing countries to enter into a new Round of multilateral trade negotiations (to enter the DDA) looks like it had been quietly and perhaps intentionally marginalized. We can conclude that the implementation issues went nowhere, however developing countries had some better success with fighting the Singapore issues. Although their successes in this area ensured that they have had to give away somewhere else, thereby contributing further to the emptying out of the development content of the round. Many developing countries had been deeply opposed to the negotiation of the Singapore issues, but these had been included in the DDA primarily at the insistence of the EU, with support from Japan and South Korea, among others. Indeed, it was largely because of the lack of support from the US (except on the issue of Government Procurement), and therefore the lack of a united front by the two most powerful WTO members, that developing countries were able successfully (and eventually) to oppose negotiation of the Singapore issues. However, this was only after the developing countries had played a key role in forcing the collapse of the Cancun Ministerial, resulting in the ejection of three of the Singapore issues from the negotiations, with only trade facilitation continuing.

⁴⁶ James Scott and Rorden Wilkinson, "The Poverty of the Doha Round and the Least Developed Countries," *Third World Quarterly*, 2011, p 617.

⁴⁷ James Scott and Rorden Wilkinson, "What Happened to Doha in Geneva? Re-engineering the WTO's Image While Missing Key Opportunities," *European Journal of Development Research* (2010) 22, p143

Second, a body of literature has taken a different approach than the potentials materials gains, and concentrate on qualitative aspects of gains. Rather than analyzing the projected gains from liberalization based on scenarios drawn from different points in the negotiations such as the CGE models, these studies focus on detailed examinations of the pattern and progress of the negotiations. They basically study the likely opportunities accruing to certain countries from a concluded trade deal⁴⁸. They find an outcome for developing countries that is not only poor overall but also constrains them into specific and predetermined categories of (largely agricultural) production, which also tend to limit the capabilities for diversification. Thus they argue that the focus of negotiations in the Round should not only be on finding ways of increasing the liberalization cut to enhance the projected aggregate gains for the least developed (as is often the case); but also, and most importantly on addressing the invisible barriers to industrial diversification that are thrown up by a particular pattern of negotiating⁴⁹. Scott Wlikinson recognizes that, for the Doha Round to be more successful, and to approximate better the sentiments of the G20, a qualitative shift in the negotiations is more than necessary. This finding encourages us to think that it is not just the fall in the overall levels of gain predicted by CGE models that is alarming when considering the potential outcome of Doha for LDCs. What makes this particularly worrisome is that any liberalization of agriculture under Doha, as seen earlier, is likely to be limited; and focusing on agriculture as the primary vehicle for development instead of looking at industrial diversification and implementation issues of other WTO agreements, only constrains LDCs into an agriculture-based development strategy that simultaneously yields little but reduces the possibility to diversify into other sectors which have

⁴⁸ James Scott and Rorden Wilkinson, "The Poverty of the Doha Round and the Least Developed Countries," *Third World Quarterly*, 2011, p 618

⁴⁹ James Scott and Rorden Wilkinson, "The Poverty of the Doha Round and the Least Developed Countries," *Third World Quarterly*, 2011, p 615

higher value⁵⁰. Here we can conclude that both, quantitative data such as the CGE models and qualitative information such as the fact that the DDA locks LDCs in an undiversified agriculture, both predict irrelevant gains for the weaker countries. Not only the materials gains are almost null, but also the particular interest of weaker countries such the implementation issues discuss early on in the Round has been totally ignored by the Geneva Ministerial conference from the DDA draft.

II/ The special issue of agriculture: Changing everything to change nothing

The incapacity of the WTO's predecessor institution, the General Agreement on Tariffs and Trade (GATT), to liberalize agriculture while permitting the industrial countries to build up large subsidies for their agricultural sectors has been a continued source of pressure and contention between agricultural exporting and importing members. The DDA was supposed to rectify these flaws and come up with the liberalization that the Uruguay Round had failed to create. Originally, even if it were not designed this way, over time the agricultural platform has come to be regarded as the primary "developmental" aspect of the DDA.

- **The AoA pillars: The global south demands, The EU and US counterproposition**

Agricultural liberalization within the DDA's first seven rounds was very limited and considerable high subsidy regimes in the EU and US were constructed without going against DDA rules and with certain indifference to their effects on developing countries. The members committed to specific and comprehensive elements such as:

⁵⁰ James Scott and Rorden Wilkinson, "The Poverty of the Doha Round and the Least Developed Countries," *Third World Quarterly*, 2011, p 617

- Substantial improvements in market access;
- Reductions of, with a view to phasing out, all forms of export subsidies;
- And substantial reductions in trade-distorting domestic support⁵¹.

The authors Sona Hawkes and Jagjit Kaur Plahe, analyze the three pillars that constitute the AoA and the different propositions by the EU, US, and Global South to reform it. The AoA's pillars are namely, domestic support with the Aggregate Measure of Support (AMS)⁵², export competition, and market access. In the first pillar (domestic support), there is a classification of three boxes ruling government support, namely: amber, green, and blue. The Amber Box represents trade-distorting subsidies and is the only category subject to cuts. A *de minimis* provision allows some trade-distorting support: up to 5 percent of the total value of agricultural production and 5 percent of support for a given product (10 percent in both cases in developing countries)⁵³. The green box key feature is to give direct payments via state-administered social-security systems that cannot be directly linked to production or price support⁵⁴. Lastly, regarding the blue box categorization; it allows payments to producers wherein the difference between the market price and a higher government-issued target price protects producers from low prices and is heavily utilized by such players as the EU, Japan, and the USA.

⁵¹James Scott, Rorden Wilkinson, "What Happened to Doha in Geneva? Re-engineering the WTO's Image While Missing Key Opportunities," *European Journal of Development Research* (2010) 22, p 620.

⁵² The authors explain that under AoA any domestic support, which affects or provide price support to producers, is considered trade distortion. Trade distorting subsidies such as market price support and direct payments to farmers above the *de minimis* level (5% of the total value of agricultural production, 10% for developing countries) are counted in a country's Aggregate Measure of Support (AMS). (Shona Hawkes and Jagjit Kaur Plahe, 2013), p 25

⁵³Shona Hawkes and Jagjit Kaur Plahe, "Worlds apart: The WTO's Agreement on Agriculture and the right to food in developing countries," *International Political Science Review* (2013), p 25

⁵⁴ The OECD⁵⁴ realizes that any transfer to producers, which affects their wealth, liquidity or attitude to risk indirectly impacts production. (Shona Hawkes and Jagjit Kaur Plahe, 2013), p 25

The first phase of the negotiations highlighted a range of concerns about AoA's impact on the capacity of a state to guarantee the right to food. Developing countries emphasized on protecting and enhancing their domestic food-production capacity, an end to the blue box, reform of the green box, proposals to stop the SSG (Special Agricultural Safeguard), and create an SSM (special safeguard mechanism), a food security box calling for flexibility for developing countries, etc... EU and USA in particular rejected the Global South demands and produced a joint narrative that proposed a scenario in favor of an increase in trade-distortion supported under the AMS. For example the EU maintain high tariffs for such important exports developing country as sugar and dairy based products. After the Uruguay Round, developing countries have strongly resisted being excluded.

The authors underline that their alternative proposition recognized the responsibility of states to uphold the right to food. In an effort to bring together the various divides, in February 2003 the Chair of Agriculture from the DDA, Stuart Harbinson offered a 60 percent reduction in trade-distorting subsidies under the AMS with a cap on product-specific support, a 50 percent decrease in the Blue Box subsidies, a Blue Box cap, and a disciplining of the Green Box. He also proposed the elimination of export subsidies over nine years and rules to cover export credit and food aid. On market access, he suggested important reductions in tariffs, with developing countries able to signify an unspecified number of "Special Products" subject to lower cuts. Furthermore, Harbinson called for a termination to developed-country's use of the SSG and for an SSM for developing countries to protect food security and livelihoods. Even though the Harbinson text fell far short of Global South demands, both the EU and the USA rejected it. The EU was not willing to reduce tariffs or eliminate export subsidies. The USA was not willing to decrease domestic support and wanted more tariff cuts. In August 2003, the EU and the USA

produced a joint text. The proposal was carefully constructed to ensure that the EU could maintain high tariffs for important exports to developing countries (such as sugar and dairy produce) while undermining the capacity of developing countries to protect their own markets through tariff protection. In addition to this blatant insult, the EU-US text became the basis of the draft Cancun Ministerial Declaration circulated on 31 August 2003. At Cancun the new Global South coalitions were united and agreed that they would not accept the EU–US position as an official ministerial declaration. In 2004, negotiations resumed with a revised format, changed from a series of proposals moderated by the Chair to direct meetings of members and coalitions, large and small, to collectively negotiate an agreed text. Many felt that the dynamics of the negotiations had shifted⁵⁵. In accepting the July 2004 Framework, the participating Global South members agreed to trim around the edges of a heavily flawed agreement, and surrendered their opportunity to wind back the AoA so as to reverse its detrimental impacts on the right to food.

I will go into more depth as to the signification of right-to-food consideration in the following chapter. Here, the important and fundamental point for the research is to understand how, even under a proposed text by Harbinson that was most likely equitable, we observe a strong resistance from the EU and USA against the proposed text, and how they significantly bargained for their own interest rather than talking the global South demands in consideration. After intense years of negotiation and multiple sources of pressure on the south alliance, the shift in negotiation appear to incontestably give the upper hand to powerful countries and present a scenario where the weaker countries give up an important foothold. The commitment of substantial improvements in market access; reductions of, with a view to phasing out, all forms

⁵⁵ Shona Hawkes and Jagjit Kaur Plahe, “Worlds apart: The WTO's Agreement on Agriculture and the right to food in developing countries,” *International Political Science Review*, 2013, p 30

of export subsidies; and substantial reductions in trade-distorting domestic support look far from being achieved by the EU and USA text proposal of July 2004.

- **The cotton problem**

Some highly contentious areas amongst which still some are very problematic is cotton. This particular issue has been, perhaps not coincidentally pushed to one side; and still has to be tackled. Accorded a special place in the DDA following the July Package decision of 1 August 2004, cotton was supposed to be treated “ambitiously, expeditiously and specifically” within the agriculture negotiations (WTO, 2004). As Director-General Pascal Lamy has said, “cotton has become a litmus test of the commitment to make the WTO Doha Round of global trade negotiations a truly development Round”⁵⁶. For the so-called “Cotton Four” (Benin, Burkina Faso, Chad and Mali), which possess enormous leverage and commercial interest as cotton producers, ending US cotton subsidies and the depressive effect they have on world cotton prices is not only a priority but a matter of survival.⁵⁷ They have received strong support from the larger developing countries. However, the position has been that it will be impossible to complete a deal on the DDA without addressing cotton. The Cotton Four want cotton to be dealt separately from the agricultural negotiations and want the issue to be dealt in the early phase to testify the development aspect of the DDA. By contrast, the United States maintains that cotton should be dealt with only after the agricultural deal has been finalized. This represents an issue in that if cotton is left until the other major components of the Round are finalized, the cotton producers will find themselves under extreme pressure not to obstruct the deal. Though the developing

⁵⁶ James Scott, Rorden Wilkinson, “What Happened to Doha in Geneva? Re-engineering the WTO’s Image While Missing Key Opportunities,” *European Journal of Development Research* (2010). P 621

⁵⁷ (International Cotton Advisory Committee, 2002; Oxfam, 2002)

countries have so far been united in demanding a strong deal on cotton if the round is to be concluded, this unity has yet to be tested and will also find itself under severe strain once the other parts of the DDA are concluded⁵⁸. If a few poor African countries find themselves isolated against the massive machine that is the US (and others) opposition, they will find it almost impossible to withstand the pressure to accept a compromise, however weak⁵⁹. What will be the final deal on cotton will illustrate how truly developmental the DDA has been, and constitute a very good indicator of power politics inside the negotiation phase at the DDA. It paints the image of David against Goliath, and will represent the efficacy of the WTO as an institution to truly represent opportunities for collective gains for all members.

III/ The fragile alliance of the global south and the future of WTO:

- **The G20 and power politics: the game of alliance and exclusion**

Jennifer Clapps argue that developing countries were considered as pivotal in changing the dynamic of the agriculture negotiation. In the early phase of the talks the negotiation process was largely “top-down” and the important battles in agriculture were fought between the USA and the EU. Concern over both the process and the content of the talks prompted the global South to walk out at the 2003 Cancun Ministerial Meeting. At this time new developing country coalitions emerged, including the G-20 Group on Agriculture, and have since been key in changing the

⁵⁸ Developing countries’ coalitions and solidarity has traditionally been fragile once negotiations reach the final stages. James Scott, Rorden Wilkinson, “What Happened to Doha in Geneva? Re-engineering the WTO’s Image While Missing Key Opportunities,” *European Journal of Development Research* (2010).

⁵⁹ James Scott and Rorden Wilkinson, “The Poverty of the Doha Round and the Least Developed Countries,” *Third World Quarterly*, p 615

dynamic of the talks to be more bottom- up and consultative⁶⁰. Developing countries were instrumental in changing the dynamics of the agriculture talks, however this change might not be enough to guaranty that the content of the agreement is acceptable to all countries of the Global South⁶¹.

The emergence of key alliances of developing countries just before the Cancun Ministerial was a consequence on the outcome of their ongoing frustration with respect to the early phases of the talks. These groups effectively put pressure on the USA and the EU, forcing a change of dynamic, as was apparent in Cancun⁶². Throughout the post-Cancun phase of the talks, the G-20 has worked hard to show solidarity with other developing country groups. But, while India's and Brazil's membership in the FIPs⁶³ is significant for the Global South coalition in that it demonstrates the importance of incorporating the voice of developing countries, it did bring criticism from other developing countries, and potentially shows fragility on the part of the broader south coalition. It was a demand for a more transparent process and incorporation of developing country views that spawned the G-20 and other groups in the first place, but bringing India and Brazil into the elite group of negotiating countries only sparked new complaints about lack of transparency and inclusiveness. The G-20 acknowledged the tension with other developing country groups, and tried at Hong Kong to reinvigorate the cohesion of all the developing country groups by focusing on their points of agreement on broad issues. While there

⁶⁰ Jennifer Clapp, "WTO Agriculture Negotiations: implications for the Global South," *Third World Quarterly*, (2006), p 563

⁶¹ Jennifer Clapp, "WTO Agriculture Negotiations: implications for the Global South," *Third World Quarterly*, (2006), p563

⁶² Jennifer Clapp, "WTO Agriculture Negotiations: implications for the Global South," *Third World Quarterly*, (2006), p574

⁶³ Which has come to be known as the Five Interested Parties (the FIPs). This group included the USA and the EU, as key players, along with Brazil and India, representing the G-20, and Australia, representing the Cairns Group

are a lot of issues that have still need to be hammered out before the full modalities can be accepted, it is unclear that this alliance will last. Now it appears that no matter what deal will be adopted the gains are most likely insignificant and largely uneven across the Global South. In this context it is ironic that the shifts in the negotiation process to include more developing country representatives may at the end lead to a weakening of developing country solidarity on agricultural trade issues because of the uneven impact within the Global South of a potential agriculture deal. This process illustrates what Habermas and critical theorist deplores about the WTO: the lack of argumentation to resolve trading issues rather than bargaining process based on material perspective gain. It remains to be seen if the developing countries will concede to any last minute deals struck between the USA and EU, or whether some will walk out, forcing a failure of the round. In either case, it now looks as if any developing country gains will be marginal at best and, there remains a risk that the varying interests among different groupings of these countries could fracture if and when a final deal is brokered⁶⁴.

On the other side, structural and political forces balance out against a moderation of the (currently highly problematic) US position in the DDA. The United States continues to suffer from a massive (though reduced) trade deficit, making it politically more and more difficult for the Obama Administration to put a deal through Congress that does not redress what many on Capitol Hill see as ‘unfair’ trade practices of key trading partners, notably China (see Scott, 2007)⁶⁵. Given the extent of political capital required to push a skeptical public and even more skeptical (if not outright hostile) Congress into accepting legislation to decrease US carbon

⁶⁴ Jennifer Clapp, “WTO Agriculture Negotiations: implications for the Global South,” *Third World Quarterly* (2006), p 564

⁶⁵ James Scott, Rorden Wilkinson, “What Happened to Doha in Geneva? Re-engineering the WTO’s Image While Missing Key Opportunities,” *European Journal of Development Research* (2010), p 149

emissions, and the ongoing arguments on health-care reform, it is likely that an unpopular trade deal will be impossible for Obama to tackle⁶⁶. This will be done at the expense of the developing nations fragile alliance. These considerations remind us that national interests are a significant driving force behind negotiation at the WTO. Ignoring the role of national domestic dynamics into the balance of factors pushing trade negotiation is a mistake. American position at the DDA reflects their national interest, as well as EU position.

The strongest members, the United States and European Union, have historically been able to impose the broad shape of trade rounds, however this higher position has been eroded (though, importantly, both still retain a de facto veto on any outcome). According to James Scott and Robert Wilkinson the old order which represent the developed countries has been very unhurried to recognize the changing economic reality and is yet to adjust to their less privileged position⁶⁷. Economic growth, lessons for development policy and new commercial opportunities are all situated in the emerging countries, giving them a much more important position. This very important economic position of certain members of the developing South could reflect the reason of deadlocks in DDA. Waltz argued for a shadow of future that precisely refrain countries to cooperate because of the uncertainty on how the balance of power can shift in the future. The E.U and U.S could not easily capitulate over their agricultural sector protectionism measures in favor of comparative advantages that countries such as Brazil or India have over agriculture production. Despite the stronger position of Brazil, India and China, we need to be careful before

⁶⁶ James Scott, Rorden Wilkinson, "What Happened to Doha in Geneva? Re-engineering the WTO's Image While Missing Key Opportunities," *European Journal of Development Research* (2010), p 149

⁶⁷ James Scott, Rorden Wilkinson, "What Happened to Doha in Geneva? Re-engineering the WTO's Image While Missing Key Opportunities," *European Journal of Development Research* (2010), p 150

concluding that the WTO is getting more inclusive. There is an important distrust among the other developing member countries. They are reticent about the fact that those three, particularly India and Brazil, somehow collectively and comprehensively represent the interests of all developing countries. Other developing countries continue to experience exclusion and criticize the lack of transparency. Including in a few large and emerging economies into the mix, these being the fast-growing developing countries into the exclusive circle of powerful countries does not make the WTO more developmental, nor does it make the institution more inclusive. Rather, it has the worst effect of masking the continued exclusion of the majority of poor members and threatens to lend an unwarranted veneer of greater legitimacy to WTO procedures.

- **Pursuing Trade Objectives Through Regional and Bilateral Means**

There has been a rapid proliferation of Free Trade Agreements (FTAs) that undermine the WTO's most-favored-nation principle by allowing countries to give preferential trading terms to FTA partners. The FTA offers improved market access, however it could potentially present multiple problems for developing countries. Benefits under these 'managed trade systems' can be short-lived if a country also offers these conditions to new FTA partners. Some free-trade advocates, such as Bhagwati (2008), criticize FTAs for destroying the principle of nondiscrimination and highlight that bilateral negotiations disadvantage weaker nations⁶⁸. After eight years in the round and no visible sign of its conclusion, some intimately familiar processes and close observers thereof have sought to pursue market-opening opportunities through bilateral and regional means. The result is that, though bilateral and regional deals may provide more stable

⁶⁸ James Scott, Rorden Wilkinson, "What Happened to Doha in Geneva? Re-engineering the WTO's Image While Missing Key Opportunities," *European Journal of Development Research* (2010), p 148

preferential access to the world's biggest markets for underdeveloped countries, unfortunately, they also frequently further open developing countries' agricultural sectors to subsidized exports. In addition, bilateral trade agreements usually go beyond tariffs and market access to include areas of regulation that are critical to developmental policy space such as intellectual property law, locking developing countries into providing more stringent patent protection than required by the WTO and liberalizing investment rules⁶⁹. Traditionally it is essentially due to these problems, despite some of the WTO's flaws, that developing countries usually choose to regulate their commercial relations with the richest countries within the WTO institutional framework rather than in bilateral and plurilateral trade deals. This new tendency puts the developing countries at a disadvantage in negotiations with rich countries.

Conclusion

The final deal will barely resemble what was envisaged in the original mandate. In fusing together the insights of economic models on the predicted outcome of the DDA with a qualitative analysis of the pattern of the progress of the negotiations we see that the likely gains for weak countries from the Doha Round are both small and deeply problematic. Implementation issues, a key requirement for the developing countries in the run-up to the launch of the DDA, have been dropped out of the negotiations. The move towards a focus on agriculture as the core development content of the Round is deeply questionable. Not only does it lock developing countries in a non-diversify developmental strategy (agriculture is seen as the only developmental prospect), further, it also is problematic because of a lack of commitment on the

⁶⁹ James Scott, Rorden Wilkinson, "What Happened to Doha in Geneva? Re-engineering the WTO's Image While Missing Key Opportunities," *European Journal of Development Research* (2010), p 148

part of the US and EU to truly shift agricultural protectionism. They undermine the capacity for subsidy box shifting, as well as the inadequacy of the attention paid to issues like cotton. LDC participation is both a requirement (for a deal to be agreed on the basis of a single undertaking) and optimal (developmentally, through opening up markets to their exports), the necessity of ensuring their continued participation in this round is crucial. It must give them space to pursue an industrialization strategy, offer real market openings in areas of immediate and future value, and address outstanding implementation issues. The chances of even this bare minimum resulting, however, look slight.

At this point of time, DDA or not, the fact that developmental goals are seriously diminished or nonexistent, that the possible opportunity for agricultural benefits only concern a few developing country (China, Brazil, India) leaving LDC out of potential gains, and giving the fact that power politics in the realists sense have more likely play significant role in the shaping the latest draft of DDA (the 2008 draft), one can conclude that the once neoliberal case study champion in term of cooperation and collective gains theory is more than exposing itself and showing shortcomings that reflect more pessimistic outcomes. The emergence of a push to separate the WTO from the Doha Round in an attempt to salvage the Organization from any negative outcome in the negotiations has been discussed. This option is presented as an absolute necessity and the only way to preserve the liberalization project that the WTO is understood to oversee. While it is doubtful that this option would seriously be considered, it does have significance in pointing out the perceptions of the failure state of the negotiations and the dramatic action required⁷⁰. Through out the years of negotiation the alliance of the developing

⁷⁰ Rorden Wilkinson, "Of Butchery and Bicycles: The WTO and the 'Death' of the Doha Development Agenda," *The Political Quarterly*, (2012).

countries showed more cracked than anything else. After conceding crucial issues, the interest of the powerful states looks more represented in the final draft of the round and the balance of power seems to have shifted away from the LDCs. Therefore, a conclusion of the DDA will not modify substantially the agricultural sector of powerful countries, the shadow of the future look brighter than at the initial stage of negotiation for developed countries and seems not threatening to U.S and European interests. In this light we can assert that our hypothesis of power politics as the driving force behind negotiations at the WTO appears to be confirms based on these developments at the DDA.

Chapter 3 : A unique normative approach or what constitute the right to food

One particular article by Shona Hawkes and Jagjit Plahe analyzes the specific implications of the World Trade Organization's Agreement on Agriculture (AoA) with respect to the right to food for developing countries. Several studies have analyzed the AoA and the dynamics of the Doha Development Round (DDR) however; this article offers a somewhat unique aspect by specifically focusing on the implications of the agreement and WTO proposals to amend it from a food rights perspective. First, we will present the theoretical framework of the authors. We will then discuss the literature employed by the authors to analyze the issue and finally we will assess the pertinence of their argument.

I/ A unique normative approach or what constitute the right to food

- **What is the right to Food?**

First, the originality of the authors' discussion is that they place the traditional economist perspective of the WTO with human rights considerations. Here the authors refer to various human rights conventions that comprise a right of availability and access to food, embodying the principles of sustainability and utilization. The authors noted that even if those conventions in international law existed for 30 years, the United Nations only took action in 2009 to address right-to-food violations. The right to food requires a certain amount or degrees of obligations and accountability for states. Three points define such obligations:

- * "Respect", translated to mean that state does not prevent access to food,
- * "Protect" meaning that state protects individuals from enterprises or individuals who may deprive them of such access, and
- * "Fulfill-facilitate", which implies work to strengthen people's entitlements to food⁷¹.

The authors point out that out of the 153 WTO's members, 127 have ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) supervising the right to food.

Second, the authors contend that the right to food is part of a bigger food security paradigm. Entitlement theory presented comprehensive evidence to link food access and human rights perspective. Food sovereignty declarations emphasize the human right to food, land rights, fairer trade rules, social justice, agro-ecology, and farmers' role in decision-making. The central point of food sovereignty is the right of states or communities to determine their own food policies and destinies. By contrast, the authors represent the argument of rights-based analysis and neo-classical economics that believe free market is the best-equipped engine to address food concerns.

- **Food regime and the neoclassic free-trade argument**

In this section we present the literature that the authors relied on to explore neoclassic economics theory such as Friedmann and McMichael's and their work on food regime. The authors reuse their typology and definition, which describes food regime as "a rule- governed structure of production and consumption of food on a world scale"⁷². The first type of food regime is colonial-settler regime or "free trade imperialism" characterized by cheap food and raw materials from the global South to meet Europe's industrialization needs. The second food

⁷¹ United Nations, 1999.

⁷² "Freidmann, (1993), p30-31

regime emphasized the intervention of government in agriculture such as; import controls, export subsidies, and national farm programs, which conducted to large surplus. The regime is characterized by North/South flows of food as programs directed at distributing food surpluses as food aid.

The authors utilize McMichael's third food regime emerging from the economic shocks of the 1980s and explain that the AoA is part of that third corporate food regime. This regime is described as a corporate model of industrial and transgenic agriculture; an alternative model, which focus on rural livelihoods, ecology, land rights, social justice, and food sovereignty; and a political institutional context directed by corporate interests as well as geopolitics. The authors point out an important fact being that in 1990 food security was "redefined, and institutionalized in the WTO as an inter-nationally managed market relation" to secure the interest of the US agribusiness. They remind us of the objective of the AoA as "to provide for substantial progressive reductions on agricultural support and protection sustained over an agreed period of time, resulting in correcting and preventing restrictions and distortions in world agricultural markets"⁷³.

The authors argue that there is controversial view on the benefits and parameters of free trade among neoclassical economists. In general they argue that free trade will reduce market distortions, increase productivity, and create universal rules leading to fairer relations for weak countries. The authors refer to the work of Kreuger and Tullock to present the neoclassical argument that oppose the intervention of government because it can distort markets and lead to rent-seeking, rewarding less effective and elite actors. They argue that states can best support human rights by restructuring the global trade system, prioritizing mid- and long-term gains of

⁷³ WTO, (1994) p 24

free trade over short-term hardship of transition as a country redirects resources to develop its comparative advantage. After presenting what constitute the right to food and the neoclassical argument that supports liberalization of agriculture, the authors analyze in more specific details what are the consequences or repercussion of the AoA' rules for developing countries and for the right to food paradigm.

II/ Food security and global South

- **Does the AoA address food security?**

The authors made several observations. First, despite various references to food security the WTO does not pay any specific attention or attempts to define the term. Second, the Uruguay Round concluded with recognition that the AoA was imperfect, but claimed to lay the foundations for freer trade in subsequent negotiations. However, the AoA does not reference the right to food, and the security food problem was recognized as a non-trade concern (NTC) and needed to be review at the next negotiation round. The author explains that the main concessions to the right to food by the WTO were made during the Marrakesh Decision on measures concerning the possible negative effects of the reform program on least-developed and net food-importing developing countries where it recognized that stopping protectionist policies, which artificially lower food prices, free trade liberalization could raise global prices. Therefore, the Marrakesh Decision outlined non-legally binding commitments and mechanisms to address such impacts for net food importing developed countries and least-developed countries⁷⁴. Finally, the authors make an important observation by pointing out that even after the world food price

⁷⁴ Such as food aid and short-term financing of commercial imports, agricultural export credits, and financial assistance to improve agriculture infrastructure and production.

spikes in 1996, and the 2007-08-food price crisis, the Marrakesh Decision has yet to be enacted. According to the authors the reason as to why the delay rests on the fact that the WTO does not have a mechanism to determine the AoA's impacts on food insecurity.

- **The AoA' pillars: a negative impact for the global South**

The authors analyze the three pillars that constitute the AoA and look at how they affect the right to food paradigm that we analyzed earlier in Section One. With respect to the first pillar, the USA and EU heavily utilize the green box functionality and composition for export-subsidy reductions by shifting from direct to indirect subsidies. The authors argue these procedures result in "dumping" which has impacts on livelihoods and entitlements that hinder access to food in at least two ways. Not only does it enable developing-country producers to have a fair export price to compete against subsidized products on world market, and ensures their continued sustainability. But, it also allows subsidized products to be dumped on the global south as food aid and therefore sold below local production prices.

With respect to the second pillar, export competition, the authors maintain that even if the cuts to exports subsidies were viewed as a key achievement of the AoA, they believe that in many cases, this was achieved by simply shifting to the indirect export subsidies classification permitted under the blue and green boxes categories. The last pillar of the AoA' market-access is central to the AoA and adheres to a process called tariffication⁷⁵. The authors give us multiple reasons as to why this process under market-access undermines the right to food. First, developed countries have more heterogeneous tariffs, while developing countries favor simpler

⁷⁵ Countries convert their nontariff barriers (NTBs) to an equivalent tariff rate, taken from a 1986-90 base. The majority of OECD countries, and a few developing countries, converted the value of their NTBs at a rate higher than the equivalent rate. (Shona Hawkes and Jagjit Plahe, 2013) p 28

structures and therein allowing developed countries to apply higher bound tariffs on high-volume imported goods while undertaking a large percentage cut on already low tariffs for products with little or no domestic production. Second, only countries that undertook tariffication could access the SSG ⁷⁶ where WTO members registered products they wanted before the AoA took effect, therein, leaving limited access to the developing countries because only a few had NTBs. Of the 66 countries that are eligible to use SSG only 22 comprise of developing countries.

The authors assert different conclusions on the market-access pillar. They argue that it deprived developing countries of key tools to respect, protect, and fulfill the right to food while diminishing their already limited access to heavily protected global North markets. They argue that the ease of implementing import or export taxes (from Developed imported product) has decreasing revenue for government from those tariffs, therefore reducing the resource of developing government programs to fulfill the right to food. They argue that raising tariffs is an inescapable arsenal in developing countries' main toolbox as it ensures to protect domestic markets from dumping. Finally, the authors argue that access to markets was restricted stemming from tactics of dirty tariffication and the SSG. They give a striking example on how those high tariffs kept developing country producers out of export markets for products such as sugar, cereals, meat, and dairy produce.

- **Concluding implication: the AoA is biased**

The authors ask a pertinent question. Although states agreed to uphold the right-to-food, does this mean that their participation in international organizations such as the WTO, compels them the leverage to now incur an automatic responsibility for the right-to-food? Their answer is a

⁷⁶ Special Agricultural Safeguard (SSG) allowed some WTO members temporarily to increase their tariffs above bound-tariff levels. (Shona Hawkes and Jagjit Plahe, 2013), p 27

positive one; as they contend that at a minimum, states should follow the “do not harm” principle. The same way as to highlight legal grounds for how WTO members violate their right-to-food responsibilities if they undermine another state’s capacity to respect, protect, or fulfill this right. The author gives the example of the blatant breach of this principle in the 2005 WTO appellate finding that the USA hid more than US \$3 billion in annual cotton subsidies and other supports. This substantially depressed world cotton market prices and adversely impacted poor cotton-farming households in places such as Chad, Mali, Burkina Faso, and Benin to mention a few.

After the AoA implementation, the authors gave us a recipe on how WTO's recent negotiations responded to the concerns of the right-to-food in the Global South. The authors describe a complicated situation between the Doha Round and Cancun. The first phase of the negotiations highlighted a range of concerns about AoA’s impact on the capacity of a state to guarantee the right to food. Developing countries emphasized on protecting and enhancing their domestic food-production capacity, an end to the blue box, reform of the green box, proposal to stop the SSG, and create an SSM (special safeguard mechanism), a food security box calling for flexibility for developing countries, etc... EU and USA in particular rejected the Global South demands and produced a joint narrative that proposed a scenario in favor of an increase in trade-distorting supported under the AMS, tariff reductions, EU maintain high tariffs for such important exports to developing country as sugar and dairy based products, as seen in chapter 2. After the Uruguay Round, developing countries have strongly resisted being excluded. The authors underline that their alternative proposition recognized the responsibility of states to uphold the right to food. The image described by the authors is one of multiple disagreements between developed and developing countries, as well as a distinct fracture among developing

countries. The authors conclude that classical and neoclassical trade theories do not explain the outcomes of GATT and the WTO. He cites Luterbacher and Norrlof - "it cannot be taken for granted that the institutional reform represented by the creation of the WTO will guarantee a continued movement toward further liberalization of the world trade"⁷⁷.

The author argues that under this managed trade system, the AoA established a set of rules biased against developing countries, constraining the state from acting to respect, protect, and fulfill the right to food. While the AoA seeks to reduce agricultural barriers, it has produced protectionist exceptions for the benefit of the richest players in the global market, blatantly violating the right to food and grossly failing the principle and promise of free trade. The authors conclude that the AoA shows that global markets in agriculture are not only gravely skewed but are intensely distorted to meet the interests of those with power.

To conclude comment on this article, we can say that the authors give a unique perspective on the WTO AoA rules and its recent deadlock in the Doha Round. The normative aspect of the right to food perspective helps us evaluate the neoclassic argument that support free trade in agriculture with no government intervention. It also helps us realize that the AoA is far from being what it claims to be "a free trade agreement", but rather constitutes diverse mechanisms that advantage developed country subsidized agricultural leverage. In addition, the focus on liberalization does not help to address the crucial agricultural issues for LDCs, such as ensuring greater food security and self-sufficiency. At a bare minimum the negotiations must provide the least developed with a means to protect, in the short term, their agricultural sectors in times of import shortages.

⁷⁷ (Shona Hawkes and Jagjit Plahe, 2013), p27

Without trying to take any side on whether or not liberalization of agriculture is better than protectionism, one can make good use of those authors findings only to note that the current agricultural agreement is just purely detrimental to developing countries agricultural endeavors and their right to food. Therefore, the recent development of the different AoA pillars at the DDA will most likely reflect the same conclusions. The fact that free trade in agriculture is subject to debate on whether or not is beneficial for different market is not the question. Here under the framework of the DDA the goal of any reform of the AoA has aimed to rectify any biases that have been caused by the WTO institutional framework. Instead, not only the reforms proposed do not change any of the bias of the AoA but unfortunately takes away the focus of the particular matter that is agriculture. The right-to-food perspective shows us that any reform on the AoA should rightfully bear the normative aspect of the right-to-food. No matter which avenue, protectionism measures versus liberalization measures, this is not the point; the key issue is that reforms on agriculture taking place at DDA should at a bare minimum take in consideration the obligations of respect, protect and fulfill that is the based of the right-to-food argument and human right perspective for all the countries members, as a universal value. Not because a human right perspective should not have its place inside a democratic organization, but on the basic of the fact that the ignorance and absence of such considerations and the fact that the AoA is bias toward powerful countries produce even more asymmetrical outcomes to the disadvantage of weaker countries and jeopardizes the credibility of the WTO as an institution of multilateral collective gains. Some can ask the simple question why is developed countries concerns about liberalization of agriculture harmful repercussions more important that consideration of how harmful and detrimental protectionism

measures are to developing countries farmers? The continual appraisal of protectionism measures from the WTO organization is a reminder of how the interest of powerful states continues to be more relevant. However this failure of the DDA to repossess the true essence of trade liberalization in a sector where trade-distorting farm subsidies have been “universally recognized as intolerable”⁷⁸ is putting the future of trade liberalization and the WTO in jeopardy.

⁷⁸ Sungjoon Cho, “The demise of the development in the Doha Round Negotiations” *Texas International Law Journal*, (2009), p 582

Chapter 4 : Brazil's Case Against the U.S. Cotton and its Implications.

In this Chapter we are looking at Brazil's dispute settlement case at the DSB, (WTO's dispute settlement body), against specific provisions of the U.S. cotton program in 2002. We are analyzing its significance for the advancement of the cotton issue at the DDA and in general, as well as its implication for other developing countries.

I/WTO Dispute Settlement Body (DSB)

- **The dispute claims**

Focusing on six specific claims relating to US payment programs, Brazil argued that the US had failed in its commitments to the Uruguay Round Agreement on Agriculture (AoA) and the Agreement on Subsidies and Countervailing Measures (SCM). Brazil had begun a dispute settlement case at the DSB, WTO's dispute settlement body, against specific provisions of the U.S. cotton program in 2002. By September 8, 2004, the DSB panel ruled against the United States on multiple crucial issues. Partly in response to the March 2005 upheld appeal, the United States has made few modifications to its cotton programs. However, in August 2006, Brazil asked for a review of whether or not the United States had fully complied. By December 2007, the compliance panel determined that the United States had indeed not fully complied with earlier WTO recommendations. Let us explore the main points where Brazil hinges her claims of violation on.

The first claim is the Peace Clause Violation. Brazil argues that the United States was no longer exempt from WTO dispute proceedings under the so-called “peace clause” (Article 13) of the WTO’s AoA because U.S. domestic and export subsidies to its cotton sector were had surpassed the benchmark level. “Prior to its expiry in January of 2004, Article 13 exempted domestic support measures that complied with the AA’s requirements from being challenged as illegal subsidies through dispute settlement proceedings, as long as the level of support for a commodity remained at or below the benchmark 1992 marketing year (MY) levels”⁷⁹. Brazil claimed that the United States was no longer in compliance with those requirements and therefore should stop being under the protection of WTO’s peace clause rule; demonstrating that U.S. cotton subsidies were about \$2 billion in may 1992 compared with over \$4 billion by may 2011⁸⁰. The second important point of Brazil’s dispute case was that they needed to prove that U.S. subsidies had caused them “Serious Prejudice”. Brazil contended that domestic farm subsidies provided to U.S. cotton farmers provoked an overproduction and intensification in U.S. cotton exports, especially between 1999-2002, when unusually large outlays were made under provisions of the U.S. cotton program. Brazil alleged that the increase in U.S. exports contributed to three market conditions, each of which inflicted to grave injury to Brazilian cotton exporters. Those three markets condition are:

- (1) An increase in the U.S. share of the world upland cotton market. (Figure 1)
- (2) A displacement of Brazilian upland cotton sales in third-country markets.

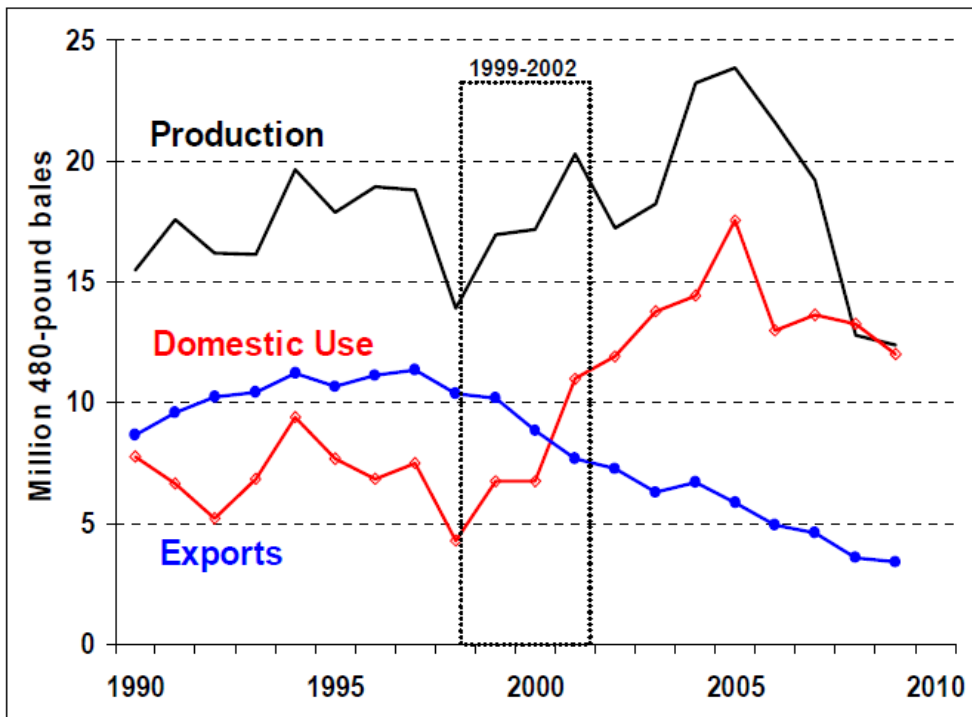
⁷⁹ Brazil’s WTO Case Against the U.S. Cotton Program Randy Schnepf, Specialist in Agricultural Policy June 30, 2010, p 5

⁸⁰ Brazil’s WTO Case Against the U.S. Cotton Program Randy Schnepf, Specialist in Agricultural Policy June 30, 2010, p 5

(3) A steep decline in world cotton prices (see Figure 2 and Figure 3).⁸¹

In addition, Brazil reported that injury to its economy was over \$600 million just for the year 2001. They account for it based on low cotton prices, “measured as the sum of individual negative impacts on income, foreign trade revenue, fiscal revenues, related services (transportation and ginning), and employment”⁸². Brazil insisted that injuries under each of these three categories were in violation of the SCM Agreement, and would even be worst in future years.

Figure 1: U.S. Cotton Production, Use, and Exports

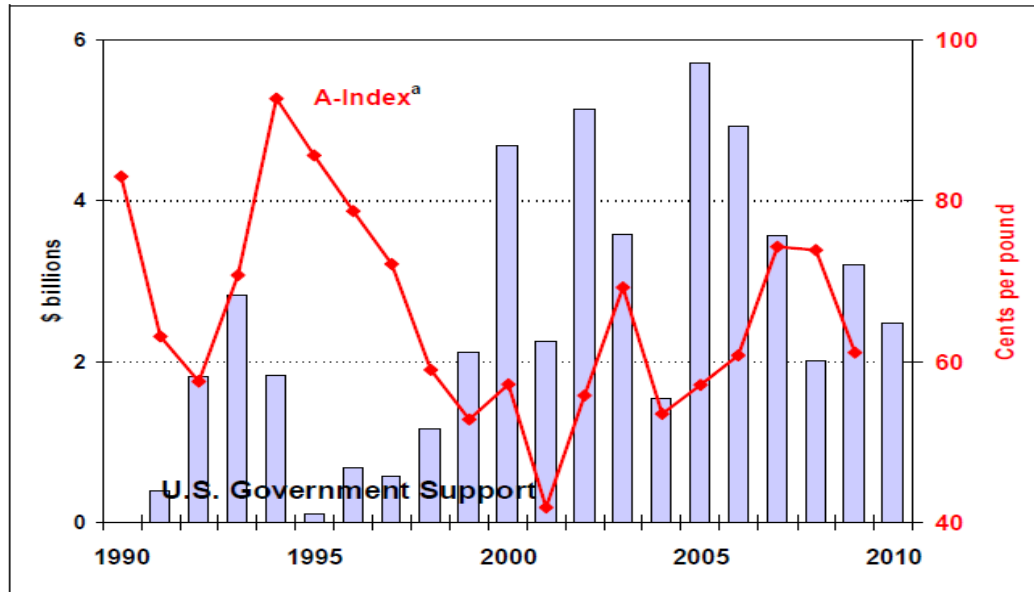


Source: USDA, PSD database, February 11, 2010.

⁸¹ Brazil’s WTO Case Against the U.S. Cotton Program Randy Schnepf, Specialist in Agricultural Policy June 30, 2010, p 9

⁸² Brazil’s WTO Case Against the U.S. Cotton Program Randy Schnepf, Specialist in Agricultural Policy June 30, 2010, p 9

Figure 2: USDA Cotton Support, 1992 to 2010

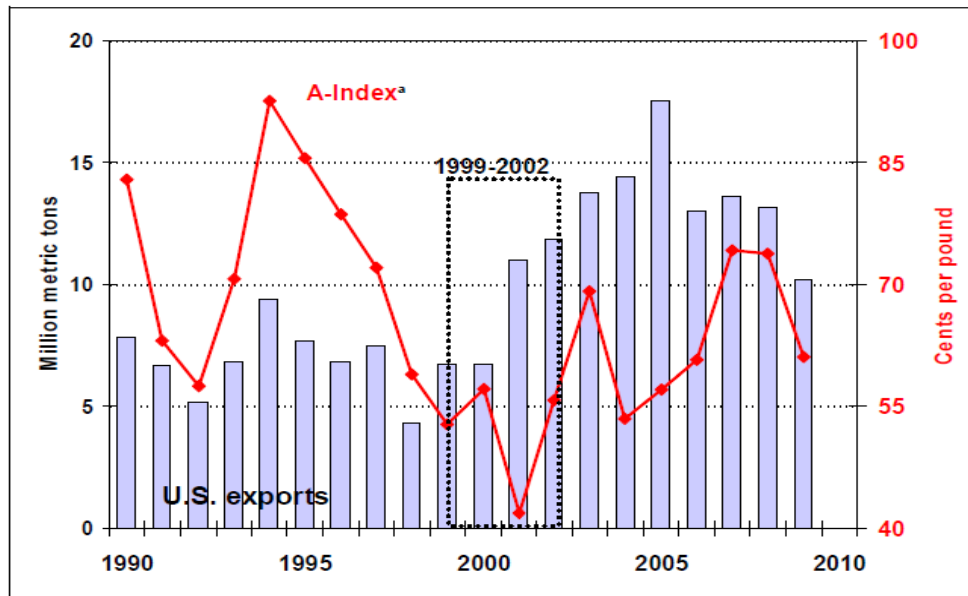


Source: USDA, FSA budget data (cash and non-cash support).

Note: Data for 2009 and 2010 are forecasts.

a. The A-index is an average of the five lowest priced types of 1-3/32 inch staple length cotton offered on the European market from 1990 through 2008, and in Far East markets in 2009.

Figure 3: USDA Support, 1992 to 2010



Source: USDA, PSD online data base, August 12, 2009.

a. The A-index is an average of the five lowest priced types of 1-3/32 inch staple length cotton offered on the European market from 1990 through 2008, and in Far East markets in 2009.

- **Sanction and Cross-Retaliation: the innovative demands**

According to an article by Julian Ku (2010) Brazilian president Lula said during the inauguration of a power plant in near Sao Paulo, “Brazil is not interested in confrontation. We’re interested in respect for the decisions of the WTO. Either we respect institutions or the world will fall into disarray”.⁸³ On March 3, 2009, at a meeting of the DSB in Geneva, Brazil demanded the right to impose \$2.5 billion in retaliatory sanctions against the United States. Brazil’s proposed sanctions can be classify in three sections:

- 1. A one-time countermeasure of \$300 million related to the U.S. Step 2 program,*
- 2. An annual countermeasure of \$1.2 billion based on the prohibited subsidies ruling concerning the U.S. export credit guarantee program, and*
- 3. An annual countermeasure of \$1 billion based on the actionable subsidies ruling concerning price-contingent programs (e.g., the counter-cyclical and marketing loan programs).⁸⁴*

For the first time in trade history, as part of the violation sanction against the U.S, Brazil is seeking “cross-retaliation” rights that would permit retaliation in sector other than just tradable goods, such as intellectual property rights and services agreements. Not surprisingly, the U.S has strongly disagreed with both the amount of the countermeasure demanded, as well as with any “cross-retaliation” procedures. According to Lawrence, a professor of international trade and finance at the Harvard Kennedy School, retaliation in trade has been exclusive to the powerful developed countries, the ones with market power. However this mechanism of potential cross-

⁸³ Julian Ku. “Brazil Gets Ready to Punish the U.S. for Violating International Law” March 11th, 2010

⁸⁴ Randy Schnepf, “Brazil’s WTO Case Against the U.S. Cotton Program”, Congressional Research Service, June 2010.

retaliation of suspending intellectual property protection, gives weaker developing countries a way to enforce their rights under trade rules.⁸⁵ After an arbitration panel (established in October 2008) reviewing countermeasure proposals, the U.S and Brazil ultimately reached an agreement in 2010. The announcement came one day before Brazil was allowed to impose up to \$830 million in sanctions. The arbitration panel had ruled that American subsidies to cotton farmers had violated global trade rules⁸⁶. One major implication of the ruling and the dispute case in general is that it highlighted the fact that US and European Union have used loopholes and creative accounting , or to call it bluntly-cheating, to continue dumping products on developing markets, hurting impoverished developing country farmers in the process. As an example for this specific case of Brazil's against U.S, the WTO dispute settlement panel found that the USA misreported certain programs as 'non trade-distorting', when in fact they were trade-distorting. In addition, there is a certain uncertainty when it comes to the Doha Round, where a successful conclusion of the round would most likely terminate Brazil's interest in continuing its case against the U.S. farm programs. On the other hand depending on the modalities of the final draft at DDA, The American Congress must keep an eye on the aftermath of the compliance panel's final ruling.⁸⁷

⁸⁵ Sewell Chan, "U.S. and Brazil Reach Agreement on Cotton Dispute", *Cambridge Journals Online*, April 7, 2010.

⁸⁶ Sewell Chan, "U.S. and Brazil Reach Agreement on Cotton Dispute", *Cambridge Journals Online*, April 7, 2010.

⁸⁷ Randy Schnepf, "Brazil's WTO Case Against the U.S. Cotton Program", *Specialist in Agricultural Policy* June 30, 2010, p 33

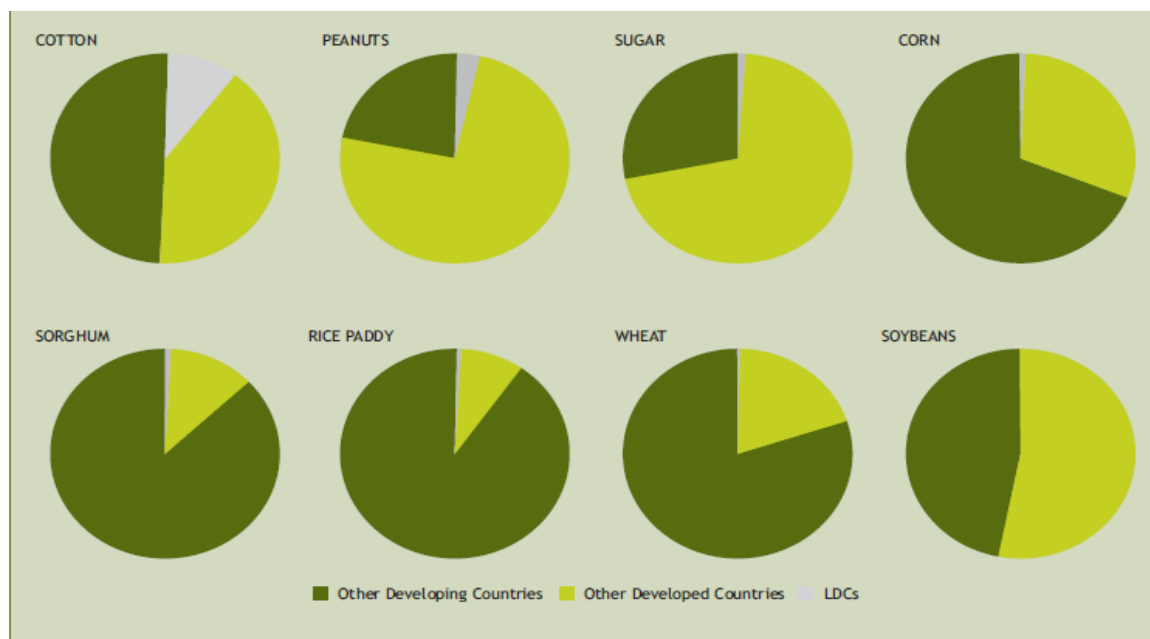
II/ The dispute Implications: perspective for LDC and the DDA scenarios

While addressing the cotton subsidies issue through the Doha negotiations, other countries, based on the success of Brazil's dispute case have considered challenging trade distortions through the DSB. Cotton represent an important part of LDC share of export quantities and is one of the rarely product that they have a comparable advantage, as seen in figure 4. The dispute between Brazil and the U.S has led to significant jurisprudence's developments on subsidies globally at the WTO. It also and more importantly provoked findings about the illegality of multiple US cotton subsidies under existing AoA rules.

Despite successive DSB rulings against certain aspects of US cotton subsidies, Washington has yet to bring cotton payments into conformity with WTO obligations. At the same time, unilateral domestic policy reforms in the EU and US have limited if any impact on world cotton markets. The 2003-04 reform of the EU Common Agricultural Policy (CAP) and subsequent amendments changed the guaranteed minimum price for cotton to a mix of coupled and allegedly decoupled payments. In the US, the 2008 Farm Bill kept cotton subsidies largely unchanged and indicated an unwillingness to comply with the DSB panel rulings or the mandates of the Hong Kong Ministerial Declaration⁸⁸.

⁸⁸ Mário Jales, "How Would A Trade Deal On Cotton Affect Exporting And Importing Countries?", Cornell University, p 6

Figure 4: Shares of World Export Quantities, By Product and Country Category, 2003-2007



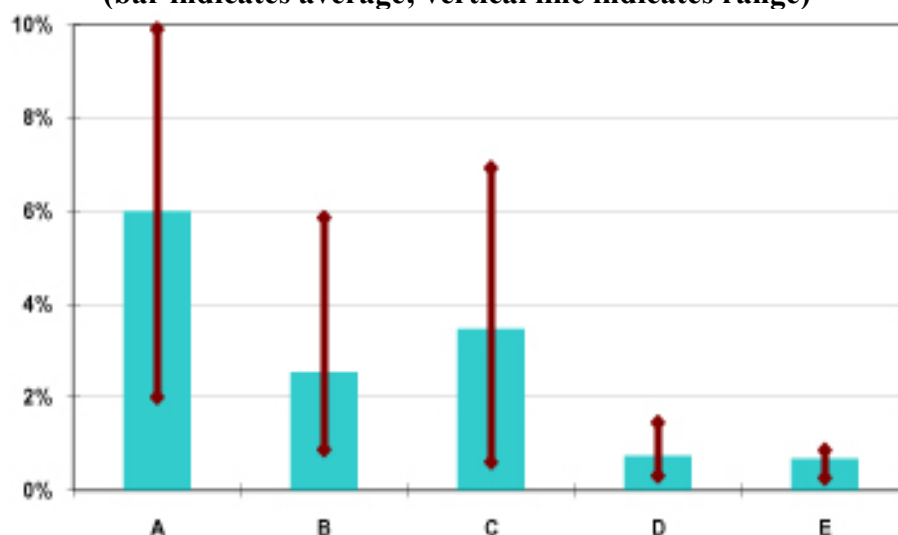
Source: *Ibid*

A study, commissioned by the International Centre for Trade and Sustainable Development and conducted by Mario Jales of Cornell University, suggests that cotton prices would have increased over a 1998-2007 base period if the US had cut subsidies that were considered unlawful by the dispute panel at the WTO, following complaints by Brazil, (see figure 5). According to Jales, farmers in weak countries could have gained from an average 6 percent increase in world cotton prices over the same base period if the US had accepted proposals made by African nations to cut the lavish subsidies to rich country producers.⁸⁹ In the same report, we learn that cotton production in the US could have decreased by as much as 15 percent, if African proposals in the draft Doha accord were applied to historical output levels

⁸⁹ Mário Jales, “How Would A Trade Deal On Cotton Affect Exporting And Importing Countries?”, Cornell University, p 6

over the ten-year period examined by the study, and production in the EU could have dropped by as much as 30 percent, with production volumes estimated to increase as much as 3-3.5 percent in Brazil, Central Asia and West Africa and production values growing by up to 13 percent.⁹⁰ Similarly, if African proposals that are included in the Doha draft were applied to trade flows over the ten-year period that the study examines, US export volumes would have fallen by 16 percent on average. Average export volumes would have increased dramatically for Brazil and India (12-14 percent), and by a lower but still substantial amount in Uzbekistan, the ‘C-4’ West African cotton producing countries (Benin, Burkina Faso, Chad and Mali), and Australia (2-2.5 percent)⁹¹.

Figure 5: Estimated Impact of Alternative Scenarios on the Cotton World Price, 1998-2007 (bar indicates average; vertical line indicates range)



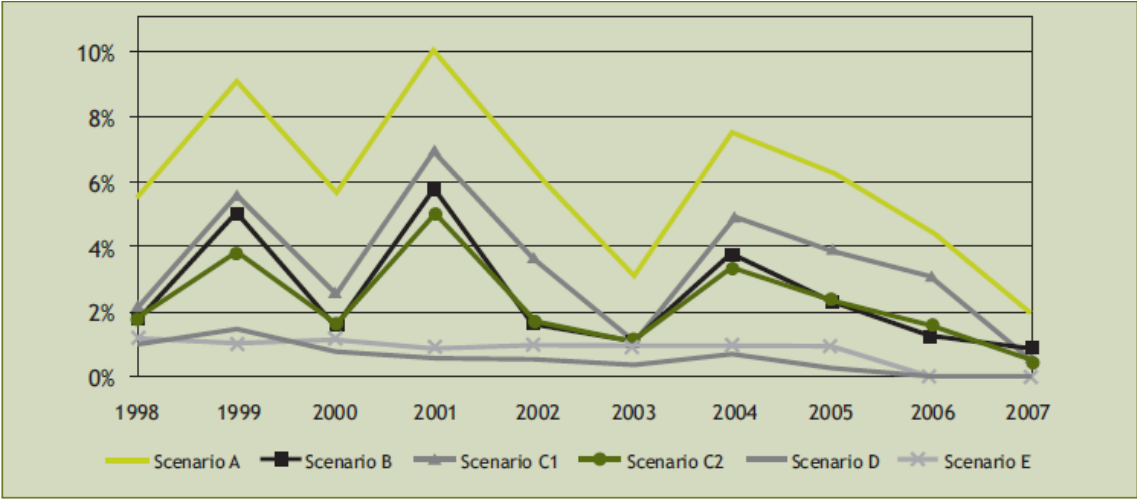
1. A: December 2008 Revised Draft Modalities
2. B: Cotton treated as a standard product
3. C: Hypothetical full implementation of DSB recommendations
4. D: Actual insufficient implementation of DSB recommendations
5. E: Recent internal reforms in the US and EU

⁹⁰ The International Centre for Trade and Sustainable Development, “Cotton: What could a Doha deal mean for trade?” number 11. November 2010, p 15

⁹¹ The International Centre for Trade and Sustainable Development, “Cotton: What could a Doha deal mean for trade?” number 11. November 2010, p 16

The first scenario in figure 5 and 6, (scenario A) showed the largest increases in world prices, with Scenarios B and C following. Scenario D and E have negligible price. The results of this table portray substantial variation on a year-by-year basis. Figure 6 illustrates these results over the range of the years studied (1998-2007). Implementing the draft Doha agriculture deal with treating cotton as a special provisions had the most effect on increasing world price, in individual years and when measuring the average across all years. This potential gains from scenario A reinforces the argument of the Cotton four to urge the treatment of cotton as a separated issue.

Figure 6 : Estimated of Alternative Scenarios on the Coton World Price, 1998-2007 (percentage increase)



Source: Ibid.

The WTO DDA could have a significant positive impact on world cotton prices and provide the expansion of cotton production and exports in developing countries. However, the likelihood of such an outcome is highly correlated with the likelihood of subsidy reductions being adopted by WTO members. The lack of internal policy reforms in key subsidizing countries and the frustrated lack of US compliance with DSB recommendations in the *US Upland Cotton* dispute highlight the importance of multilateral trade negotiations in addressing the deep

distortions that characterize the world cotton market. When dealing with the cotton issue, subsidies should be focus of the negotiations. There is a crucial need to reform existing trade rules that concede developed countries to highly subsidize domestic production, depress world prices, drive farmers elsewhere out of production and harm prospects for economic advancement for developing countries. The adoption of ambitious domestic support reforms for cotton in the Doha Round would be a significant step towards the establishment of a fair and market-oriented trading system⁹².

⁹² Mário Jales, “How Would A Trade Deal On Cotton Affect Exporting And Importing Countries?”, Cornell University, p17.

Findings and Concluding Discussion

Keohane, and game theorists give compelling arguments to explain how cooperation is not only possible but rational in an anarchic world of egoists. The multiple incentives created by the WTO have historically been working in favor of cooperation for members' countries, and to balance out the other world of hegemonic power-seeking countries as described by realists. However, we argue that institutional incentives such as the DSB retaliation mechanisms are only applicable when countries have signed and are under legal obligations. As seen in the arena of bargaining negotiations that constitute the DDA, its initial objective to rectify some of the AoA pillars to overall increase developmental perspective for developing countries has not only failed but represent an organized hypocrisy. The final deal will barely resemble what was envisaged in the original mandate. The commitment of the WTO to engage in a new phase of negotiation to rebalance some of the asymmetrical outcomes caused by previous agreements such as the AOA is simply and purely a façade. Interests of powerful developed countries have slowly taken the front row in the latest Doha. Fusing together the insights of economic models on the predicted outcome of the DDA with a qualitative analysis of the pattern of the negotiation's progress, we see that the likely gains for weak countries from the Doha Round are both small and deeply problematic. The inclusion of fast growing countries such as India and Brazil in the powerful table of negotiation is symptomatic with the strategy of carrot and stick⁹³ describe by critical

⁹³ Richard H. Steinberg, "In the Shadow of Law or Power? Consensus- Based Bargaining and Outcomes in the GATT/ WTO", *International Organization* Volume 56, Issue 02, (March 2002), pp 339 -374.

theorist. Including a few countries in the FIP doesn't make the WTO more inclusive; it actually creates a separation within the developing world's solidarity where benefits envisaged by the DDA will only profit those new powerful club's members. For the rest of developing world, especially for LDC the DDA will most likely leave them worse off. Moreover, it is symptomatic of the fact that to be taking into consideration and be heard at the WTO you need to be an important socioeconomic player.

The realist's perspective (the fact that negotiation at the WTO is power driven) opens the door for normative considerations to take the front row and deeply criticize internal procedures at the WTO. The concept of deliberative democracy helps us to question the roots of decision-making mechanisms. Even though the institutional characteristic of the WTO is a one-of-a-kind example for international cooperation (multilateralism, dispute settlement unit), some crucial points, such as the fact that the WTO is producing non pareto-improving outcomes, or that members are excising some invisible weighting, are enough to put WTO under intense and methodical criticism. Some will question whether normative consideration on agriculture has its place in the agricultural liberalization debate. To this question, emphatically, I answer yes. The normative aspect of the right-to-food perspective not only helps us evaluate the neoclassical argument that supports free trade in agriculture with no government intervention, but it also helps us realize that the AoA is far from being what it claims to be, i.e., "a free trade agreement". It rather constitutes a myriad of diverse protectionism mechanisms that work to the advantage of developed countries subsidized agricultural. Therefore what can we conclude? An organization that is promoting free trade but rather creating the opposite is an example of successful cooperation?

The WTO place greater importance on keeping protectionism measures for developed

country than on addressing the extreme situation of food security and livelihoods for LDC. The reconciliation between agriculture as a special issue and that of the liberalization perspective should have been the goal of the AoA pillars reforms. At a bare minimum, the negotiations should have provided the least developed countries with a means to protect, in the short term, their agricultural sectors in times of import shortages, and not only ensure the protection of rich countries' farmers. Without trying to take any side on whether or not liberalization of agriculture is better than protectionism, one can make good use of normative arguments in so far as to note that the current agricultural agreement is egregiously and purely biased and certainly detrimental to developing countries' agricultural endeavors and their right-to-food. We found that, the recent development of the different AoA pillars at the DDA, will most likely reflect the same conclusions. No matter which avenue, protectionism measures versus liberalization measures, this is not the point; the key issue is that reforms on agriculture taking place at DDA should at a bare minimum take into consideration the basis of the right-to-food argument has a human right issue. Not because a human right perspective should not have its place inside a democratic organization, but on the basis of the fact that the ignorance and absence of such considerations, and the fact that the AoA has repeatedly and historically shown bias toward powerful countries, have produced even more asymmetrical outcomes to the disadvantage of weaker developing countries and have jeopardized the credibility of the WTO as an institution of multilateral collective gains.

Do powerful western countries overwhelm any perspective gains for the South? Does the nature of the WTO as a forum for trade liberalization offer enough to close a deal on the DDA? Those questions even though legitimate are not new to WTO critics as a multilateral institution creating asymmetric outcomes. However in the light of the DDA's failure as a developmental

round, we can seriously question the future of the WTO. Were the WTO to attempt any future new round of negotiation, would future negatives outcomes for farmers in developing countries leads to public outrage and new debacles such as the 1999 “Battle in Seattle” and provoke the WTO to take action? The case study of Brazil’s dispute against the U.S. reflects positive incentives from the DSB and reassesses the power of the WTO as a retaliation type of organization. However, can we conclude that it is enough? After looking at the potential implications of the disputed case for LDC we can assert a negative answer. The cotton case perfectly illustrates the influence of power politics at the WTO. How the U.S goliath (and EU to a certain extent) successfully cheated the AoA rules to keep on subsidizing cotton growers, and practically walked off free, is mind-boggling. We found that the DDA negotiations failed to address cotton expeditiously and efficiently. At this point of time, DDA or not, the fact that developmental goals are seriously diminished or nonexistent, that the possible opportunities for agricultural benefits only concern a few developing country (China, Brazil, India) - leaving LDC out of potential gains - and given the fact that power politics in the realists sense have more likely played a more significant role in the shaping of the latest draft of DDA, one can conclude that the once neoliberal case study excellence in term of cooperation and collective gains theory is more than exposing itself and showing shortcomings that reflect more pessimistic outcomes. Throughout the years of negotiation, the alliance of the developing countries gives more symbolic than substantive results. After conceding crucial issues, the interests of the powerful states seemed more represented in the final draft of the Round and the balance of power seems to have shifted away from the LDCs.

We can say that the conclusion of the Round does not matter in as far as transparency and fairness in development is concerned because, based on the 2008 draft, we already know that the

developmental perspective for weaker countries is null or insignificant. Further research needs to look at the final cotton deal, the AoA pillars final changes to evaluate precisely the omissions and missed opportunities with respect to the initial talks. Lastly the conclusion of a deal at the DDA is everything except a sign of success for the WTO as an organization. If weaker countries repeatedly sign agreements that are in their disfavor, we can draw two conclusions. First, it gives significance to the classical realists' argument, that is the capacity of powerful states to systematically influence weaker states to sign agreement at their disadvantage. Secondly, it gives further fuel to the point that the WTO organization is in need of institutional reforms. For how long would it be able to sustain asymmetrical negotiations without having another effort from developing world new alliance to try to stand against the developed countries? Or how long before consideration of justice take over the organization? The trouble of the DDA reflects deeper considerations that question the WTO's identity. The apparent disorder of twelve years of unfruitful negotiation conducting to no developmental prospect for the LDC illustrates an organized hypocrisy. Classical theorist such as Morgenthau and Thucydides would believe that the apparent troubles of the WTO are symptomatic of a crisis in its value, identities and norms. Therefore it will be beneficial for the WTO to return to its original mission by restructuring, redefining, and reshaping its core values, norms and identities on an enduring basis.

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