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A failure to reach equitable outcomes: Agriculture and fisheries subsidies in MC13

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The 13th Ministerial Conference (MC13) of the World Trade Organisation (WTO) concluded recently in Abu Dhabi without any major outcomes except for the renewal of an e-commerce moratorium till 2026. Two major issues on the table were agriculture and fisheries subsidies. While the WTO agriculture negotiations, having been a battlefield for years, were already in a dismal state, hopes were high for reaching the second part of an agreement on fisheries subsidies. However, even after hectic negotiations and attempted tradeoffs, neither reached a conclusion at MC13.

For developing countries and least developed countries (LDCs), this is a mixed result. On agriculture, mandated outcomes of critical importance to them that had been blocked over the last few Ministerials failed to make it yet again. These include a permanent solution on public stockholding (PSH), a Special Safeguard Mechanism (SSM) and disciplines on cotton subsidies. But at least they did not have to concede more ground on issues of interest to farm exporters (a bloc known as the Cairns Group) and developed countries. On fisheries subsidies, the text that was on the table until the last moment was grossly unfair and inequitable. It failed to offer any effective disciplines on those advanced fishing nations that are historically responsible for industrial-scale fishing, but at the same expected developing countries to pay the cost by squeezing special and differential treatment (S&D). In that respect, having no agreement is clearly a better option that keeps alive the hopes for a more balanced agreement in the future.

Agriculture and food security in MC13

In the run-up to MC13, three agriculture-related issues advanced by developing countries and LDCs with clear and reaffirmed mandates from the Nairobi Ministerial in 2015 – PSH, SSM and cotton subsidies – were on the table. Disciplines on domestic support, a longtime demand of developing countries and LDCs, remain another complex issue, which is also of interest to farm-exporting countries. Other issues of

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interest to developed and farm-exporting countries such as export restrictions and market access were also being simultaneously advanced in the name of free trade.[1]

Of the former three, the permanent solution on PSH was the biggest issue on the table. Public food programmes are a major policy tool to ensure production, livelihoods and food security across developing countries and LDCs. The critical role of such programmes was evident during the recent COVID-19 pandemic and the 2022 food crisis. However, subsidies given to farmers as price support through administered prices on purchases of a specific product for such public food programmes are seen as trade-distorting and must adhere to a *de minimis* limit of 10 per cent of the value of production of that product under Article 6.4 of the WTO Agreement on Agriculture (AoA). However, since this subsidy is supposed to be calculated in relation to a fixed External Reference Price of 1986-88 (ERP), and given the high rates of inflation in the intervening period, the subsidy gets significantly overestimated, putting several developing countries at risk of breaching the *de minimis* limit.

Since the Bali Ministerial of 2013, developing countries (organised under the G33 group) and LDCs have been fighting to get such subsidies exempted from the *de minimis* limit. What they got in Bali is a Peace Clause (PC) that protects them from disputes in case of a breach of this limit, provided they meet complex and ambiguous safeguard clauses and onerous notification requirements. Moreover, the PC is limited only to traditional staples and to programmes that existed before 2013.

But more important, a permanent solution was to be agreed by 2017 which could potentially cover more products and new programmes, and be more effective and user-friendly with easier notification conditions. However, in spite of a strong mandate, reaffirmed by a WTO General Council decision in 2014, such a permanent solution has been repeatedly blocked by farm-exporting countries and developed countries, even as the latter have themselves enjoyed massive subsidy entitlements. In spite of many proposals submitted by the G33 and the African Group between 2015 and 2021, and a groundbreaking joint proposal submitted in 2022 by the G33, the African Group and the African, Caribbean and Pacific (ACP) Group that represent about 80 developing countries and LDCs, this issue was not even discussed at MC13 until the last day, with no outcome agreed.

Similarly, the establishment of an SSM has been proposed to allow developing countries to raise import duties to protect their farmers against a sudden surge in imports. Such surges have repeatedly destroyed livelihoods by crashing prices in domestic markets across developing countries and LDCs and created volatilities and uncertainties. Even though a similar mechanism is allowed under Article 5 of the AoA (the Special Agricultural Safeguard or SSG) mainly for developed countries for a large number of products, the SSM itself – the mandate for which hails from the Hong Kong Ministerial of 2005 – was again blocked at MC13.

The third issue, reaffirmed in Nairobi, is disciplines on cotton subsidies given by the Western countries, most notably the US. These subsidies have led to massive dumping of cotton in global markets and threatened livelihoods of cotton farmers across Africa and Asia. Again, this issue remained outstanding in MC13.

But while such issues have been blocked, issues of interest to the farm exporters and key developed countries that push an agenda of unhindered trade liberalisation have been gaining ground. The various tracks of the agriculture negotiations have been replete with mentions of the need to eliminate all kinds of "trade restrictions and distortions". This catch-all term includes restrictions on exports and imports, as well as distortions created by subsidies.

The most important initiative in this endeavour is the push to limit or eliminate the use of export restrictions. This goes in contravention of the General Agreement on Tariffs and Trade (GATT) principle (under Article XI.2.a) which recognises that export restrictions may be necessary and therefore allowed in a situation of domestic food crisis. The current move aims to raise notification standards and also suggests changes in substantive rules (as proposed by the UK, for example). This push for uninhibited exports will cater to the interest of countries that profit from trading and using agricultural raw materials and low-value products that can be deployed elsewhere for

[1] For a more detailed brief on these issues, see Sengupta, Ranja (2024): "Agriculture and food security in MC13: Going forward or backward?", TWN Briefing for 13th WTO Ministerial Conference, 23 February, available at https://www.twn.my/title2/briefing_papers/MC13/Agriculture%20TWNBP%20MC13%20Sengupta.pdf

value addition in the destination country, as well as those engaged in commodity trading. It is also argued that free flow of exports will benefit net food-importing developing countries (NFIDCs) and LDCs. But it is worth noting that in a situation of global food crises, unrestricted exports may end up in the hands of the highest bidder and not necessarily go to the poorest or most needy countries.

Another issue of interest to the farm exporters and developed countries is of course the push for higher market access and the reduction of import duties. Both "food security" and "reform" were used as buzzwords to push this trade liberalisation agenda as the only solution to the world's food and agriculture problems. But when developing countries asked for greater policy space, to be achieved at least partially through decisions on the mandated issues such as PSH, SSM and cotton, they were rebuffed.

As mentioned, another issue that has seen major political manoeuvring is disciplines on domestic subsidies. The longstanding developing-country demands – first, to eliminate the massive fixed subsidy entitlements (referred to as extra AMS entitlements) enjoyed by developed countries; and, second, to prevent the misuse of exempted subsidies such as the Green Box – have been consistently resisted for more than two decades now. In recent twists, the Cairns Group has been pushing proposals that completely undermine the developing-country approach to target the most unfair and inequitable elements first. It proposes to club all domestic subsidies together – including extra AMS entitlements (enjoyed mainly by the developed countries), the *de minimis*, and the development box subsidies which are S&D entitlements of developing and least developed countries – and then impose the same cut on every WTO Member. This approach does not take into account the development needs of developing countries and LDCs and their right to S&D which forms a core commitment of the AoA, nor does it recognise the need to prioritise tackling the most inequitable and unfair element of such domestic subsidies, which is the extra AMS entitlements.

Leading up to MC13, issues of critical interest to developing countries including the PSH permanent solution came up against a stone wall. Even appeals to update the ERP to adjust for inflation and to peg to current global prices were not considered. The next option was an outcome document on agriculture which could have reaffirmed existing mandates and set a deadline to realise outcomes thereon by MC14, which will take place in two years. But it seemed that similar deadlines were also being pushed for the other issues such as export restrictions and market access even though their mandates are far weaker.[2] Interestingly, even though India – which is usually blamed by the developed countries for any failure in a Ministerial to deliver something on agriculture – did pitch hard for the permanent solution at MC13, it was the developed countries who were having serious rifts among themselves this time. The US and the EU (stung by recent farmers' protests) had difficulties in agreeing on mandates on market access and domestic support.

In sum, MC13 again failed to give developing countries and LDCs the promised agriculture outcomes for which they have already made 'payments' in the past.[3] However, at least an adverse outcome, which would have moved back the clock and placed all issues on the same footing, was not adopted. But it is clear that unless the WTO Membership, in particular the developed countries and large farm exporters, can pay heed to the concerns of developing countries and LDCs and start delivering on their promises, the agriculture track will stop working for the latter. This in turn will not be beneficial to farm exporters either. Moreover, it is also time for the WTO to wake up to the concerns raised by farmers worldwide and get its act together. It is clear that the WTO and its lopsided rules on agriculture have failed to meet the interests of farmers, as opposed to multinational agribusinesses, in both the developing and developed world. MC13 should be an important lesson in this regard.

The fisheries subsidies negotiations: the disciplines on overcapacity and overfishing

Another major issue on the table at MC13 was the disciplines being negotiated on fisheries subsidies that contribute to overcapacity and overfishing (OCOF). These comprise the third and the remaining pillar of fisheries subsidies

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2 These mandates come from the Doha Round but were not renewed in the Nairobi Ministerial (2015) when consensus could not be reached on the continuation of the Round. In contrast, the PSH, SSM and cotton mandates were reaffirmed in Nairobi.

3 For example, developing countries and LDCs agreed to the permanent Trade Facilitation Agreement in Bali (2013) in exchange for the promise of a permanent solution on PSH by 2017.

disciplines that the first part of the WTO's "Agreement on Fisheries Subsidies" (AFS) of 2022 had failed to deliver. These "additional provisions" on OCOF subsidies had been contentious right from the start of the fisheries subsidies negotiations in 2016. Unlike the first two pillars – subsidies to "illegal, unreported and unregulated" (IUU) fishing, and to "overfished stocks" – OCOF subsidies are general in nature and include subsidies on infrastructure, income support and technology. In other words, these are critical subsidies for every fishing country, and remain critically important for the future development of the sector in developing countries and LDCs which have underdeveloped fishing sectors, often catering to livelihoods and food security of large populations.

It is not surprising therefore that the negotiations have been intense on Articles A and B of the OCOF pillar while Article C has also not been uncontested.[4] Article A comprises the disciplines, Article B includes the S&D provisions for developing countries and LDCs, while Article C includes notification requirements which are additional to those already agreed under the 2022 Agreement. However, in spite of the mandate from Sustainable Development Goal 14.6 which outlined an objective to discipline subsidies that contribute to unsustainable fishing and to integrate effective and appropriate S&D, Articles A and B sparked a race to the bottom.

Under Article A, even till the last day of MC13, the proposed rules were grossly inadequate to discipline those subsidies that actually encourage industrial fishing, often in distant waters and on large-scale fleets. The biggest loophole is a sustainability exemption clause under Article A.1.1 that allows subsidies to continue if Members can show they are fishing sustainably. The vagueness of the rules on proving sustainability of fishing activities under footnote 3 is compounded by the hinging of such proof on notifications. Clearly, advanced fishing nations have the wherewithal to monitor the relevant indicators and to make the required notifications through mechanisms that have often been built up with years of subsidising. But most developing countries and LDCs, on the other hand, do not have in place such mechanisms and would thus be unable to make use of such an escape clause. In reality, therefore, this is a form of reverse S&D to advanced fishing countries. While many conditionalities have been proposed on the use of this sustainability clause under Article A.1.1, all remain notification-based and fail to bring effective discipline on those responsible. The notification-only conditions also continue to perpetuate the inequality between advanced and developing marine fishing countries.

In addition, during the hectic parleys in the run-up to and during MC13, the disciplines on distant-water fishing (DWF) got a clean chit. DWF is agreed by all to be the most obvious form of unsustainable fishing and overfishing, which is often powered by historical subsidisation. Fisheries access agreements are already outside the scope of the AFS (under footnote 2, AFS part one). This deservedly benefits smaller countries such as the Pacific island nations which are dependent on revenues that they receive under such access agreements, through which unused waters are leased out to fleets from other DWF countries. But this also benefits large players such as the EU, which is a major user of such access agreements. But in the last days of MC13, even further transfers of subsidies between governments signing such access agreements and national operators were proposed to be kept out. Further, the already weak discipline on DWF was proposed to be made only a "best endeavour"–type commitment, apparently at the behest of China. This last move would render the agreement free of any meaningful deliverable that could meet the objective of SDG 14.6.

At the same time, developing countries were fighting a difficult battle on securing S&D under Article B. While LDCs and countries with no more than a 0.8% share in global marine catch would be exempt from disciplines, the general exemption for developing countries up to their exclusive economic zone (EEZ) faced major hurdles. The United Nations Convention on the Law of the Sea (UNCLOS) allows countries full rights over their EEZ. Based on this, developing countries were asking for either a permanent exemption or at least a transition period of 25 years' exemption on disciplines up to the EEZ. This period was seen as necessary for rebuilding fish stocks, for encouraging financial investment in the fishing sector, or for developing the necessary monitoring and notification mechanisms. But even till the last day of MC13, they were offered only eight years, followed by a two-year Peace Clause and a possible four-year extension by the WTO's Fisheries Subsidies Committee. It is also important to note that the exemption for LDCs and developing countries with shares not exceeding 0.8% implied that their fisheries

[4] For a more detailed analysis of the negotiations prior to MC13, please read Sengupta, Ranja (2024): "Fishing subsidies negotiations towards MC13: Some key issues", TWN Briefing for 13th WTO Ministerial Conference, 20 February, available at https://www.twn.my/title2/briefing_papers/MC13/Fishing%20subsidies%20TWNBP%20MC13%20Sengupta.pdf

sectors must not grow; if their shares grow beyond the threshold and start competing with bigger players, they would lose their S&D.

But the most glaring and unfair proposals were related to Article B.4 which included exemptions for small-scale fishing (SSF), which clearly is not responsible for the unsustainable state of the oceans today. Throughout the negotiations, the developed countries refused to give a full exemption to SSF subsidies up to the EEZ. First, different geographical limits such as 12 or 24 nautical miles (NTM) were placed, whereas small-scale fishers globally go beyond such areas as fish become more and more scarce. Second, the definition was limited to "low-income, resource-poor, and livelihood fishing" and many developed countries were pushing to make this as narrow as possible and to be defined by the WTO. It was only in the last days before MC13 that the definition was broadened to "small-scale and artisanal fishing", with it also being agreed that this would be nationally defined. The geographical limit was lifted only on 29 February, the last day of the original schedule for MC13. However, the notification requirement remained stringent and mandatory only on this S&D clause.

The most shocking proposal came at the same time in the form of a footnote. Footnote 23 of the "Advanced Draft – Additional Provisions on Fisheries Subsidies" (W10 – 29 February 2024) suggested that small fishers could get such exemption only if they were not engaged in "significantly commercial fishing or fishing related activities". This meant they did not have the right to earn livelihoods from their fishing; they had to either eat the fish catch themselves or donate for the good of all. This seems to have been the last straw for India and many other developing countries.

In effect, given the big loophole in the disciplines on subsidy restrictions for the worst offenders, as well as the very limited S&D provisions, the cost of compliance and the responsibility for ensuring sustainability of marine resources were being placed squarely on the shoulders of developing countries. The objective was clearly to protect the dominance of the big players and prevent entry of the smaller players into the arena of large-scale commercial fishing. It was therefore not unexpected that many developing countries did not give in and refused to accept such an unfair and clearly irrational agreement. In spite of the best efforts of some developing countries to reach a fair and acceptable agreement, it was clear that any final text would have fallen far short of this.

It is also to be noted that even after nearly two years, AFS part one has been ratified by only 70 Members, still far from the 110 ratifications needed for it to enter into force. This clearly shows the AFS and the currently un-agreed disciplines on OCOF subsidies still have a long way to go to find legitimacy and acceptability.

Conclusion

In the overall analysis, while the failure to reach any outcome on agriculture remains a major disappointment, MC13 at least has proved that developing countries and LDCs have woken up to the unfair deals they are being meted out at the WTO. But the biggest need of the hour is a strong and supportive alliance between them, and we already have hints of this in the joint proposal on PSH. They need to hold strong and make it clear that before taking up any future or new agenda, for example, a broad WTO reform agenda, sustainability issues or technology-related issues, the WTO Membership must first ensure fair, equitable and rational outcomes on already agreed mandates and deliver on their development promises.

On the fisheries subsidies agreement, a new text has already been circulated by the Chair of the negotiations and talks may start soon. The negotiations in Abu Dhabi showed some narrowing of differences. But some gaps, for example on DWF, the transition period for developing countries in general and exemptions on SSF subsidies, opened wide. The essential tenor of the agreement remains unchanged, unfair and imbalanced. The truth remains that large players with industrial fleets are poised to evade disciplines through the sustainability exemption clause, while developing countries will be bearing the full responsibility of any discipline through a constrained S&D chapter. Further negotiations must dive deep in order to redress this imbalance and meet the mandate of SDG 14.6.

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