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STUDENT NUMBER: 210555744

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MODULE CO-ORDINATOR/ DRE. MNENEY

SUPERVISOR

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**This dissertation is submitted in partial fulfilment for the award of Masters Degree in
Law (Maritime Law)**

Dedication

This work is dedicated to God Almighty who is the source of my strength.

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Abbreviations and Acronyms

ACP	African Caribbean Pacific
AIE	Analysis and Information Exchange
AMS	Aggregate Measure of Support
AoA	Agreement on Agriculture
AoS	Agreement on Safeguards
ACDB	African Corporative Development Bank
CBN	Central Bank of Nigeria
DAF	Department of Agriculture, Forestry and Fisheries
DDAD	Doha Development Agenda
ECOWAS	Economic Community of West African States
EU	European Union
FAO	Food and Agricultural Organization
FMRA	Federal Ministry for Agriculture
FNG	Federal Republic of Nigeria
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
IQTR	In Quota Tariff
ITO	International Trade Organization
LDC	Least Developed Countries.
MFN	Most Favoured Nation
NAI	New Africa Initiative

NAMA	Non-Agricultural Market Access
NIRSAL	Nigeria incentive-Based Sharing for Agricultural Lending
OECD	Organization for Economic Co-operation and Development
PSE	Product Support Estimate
SACU	South African Customs Union
SAP	Structural Adjustment Program
SARS	South African Revenue Service
SCM	Subsidies and Countervailing Measures
SPs	Special Products
SSM	Special Safeguard Measures
TRO	Within Quota Tariff
UN	United Nations
URAA	Uruguay Round Agreement on Agriculture
USA	United States of America
WTO	World Trade Organization

World Trade Organization's Trade Agreement on Agriculture: A Comparative analysis between South Africa and Nigeria

Abstract

Sub-Saharan African nations are highly dependent on the agricultural sector for livelihoods. South Africa and Nigeria depend on agriculture due to the availability of abundant land, labour and natural resources. According to the theory of comparative advantage a state exports the products that it has a comparative advantage in and imports those where it does not have a comparative advantage. This is facilitated by international trade. International trade is defined as trade among nations that enables a nation to buy certain products that it cannot produce from other nations at a cheaper rate. Furthermore, it is expected that every sovereign state would be able to provide not only food and water but also good access to sufficient food and water to its people. Section 27.1b of Chapter 2 of the South African Constitution of 1996 and Article 16 of Nigeria's Constitution of 1999 enshrine this provision.

A number of factors impact food security. The first is international trade. This is spelt out in the World Trade Organization (WTO) Agreement on Agriculture (AoA). The agreement establishing the WTO is commonly known as the "Marrakesh Agreement." It was signed in Marrakesh, Morocco on the 15th of April, 1994, at the end of the Uruguay Round of Multiple Trade Negotiations. The AoA consists of three pillars: market access, export subsidies and domestic support. Market access requires all parties to the AoA to remove non-tariff barriers which comprise of import quotas and restrictions and convert them to tariffs; a process known as 'tariffication'. States are also obliged to reduce export subsidies at the same time as increasing their imports. Domestic support, states are to remove subsidy it gives to its people a process that increases the price of goods.

Another factor is trade liberalization. This study examines the effects of WTO agricultural trade liberalization on food security and the mechanisms available to address this issue. It focuses on the food security implications of the WTO AoA and asserts that the AoA favours agricultural producers in developed countries.

The study seeks to ascertain the extent to which the realization of the objectives of the agreement will promote food security by looking into the abovementioned three pillars and their relationship with food security.

1 Introduction

Agriculture plays a central role in any economy and has the potential to address inequality as it increases earnings and creates employment, especially for the vulnerable, while also conserving natural resources¹. Agriculture is a primary source of livelihoods² and promotes human rights such as the right to a decent standard of living, to food, work; good health and, indeed, the right to life itself.³ An efficient, competitive agricultural sector creates an environment where resource poor farmers access opportunities to improve their income and gain employment.⁴ There is also a need to support small holder farmers in order to encourage more diverse production, and a need to conserve the natural environment by making sure that policies and institutions are in place to ensure the sustainable use of resources. Agriculture promotes rural development by building infrastructure such as a reliable water supply, good roads for easy transportation of goods and services and in general, improves social service delivery in a society.⁵ It is estimated that 16 million South Africans are living in poverty, with 72% of this total residing in rural areas.⁶ Furthermore, 70% of rural inhabitants are classified as poor.⁷ South Africa's Gross Domestic Product (GDP) has decreased over the past four decades and agriculture currently contributes around 2%.⁸ Approximately 638 000 people are formally employed in agriculture (Statistics SA, 2012 Q2) and an estimated 8.5 million South Africans earn an income and are employed in the sector.⁹ Agriculture employs 70 to 80% of the total labour force and accounts for about 35% of the region's GNP and 30% of the country's foreign earnings.¹⁰

¹Ministry for Agriculture and Land Affairs, 'Agricultural policy in South Africa, A Discussion Document' (1998), available at <http://www.nda.agric.za/docs/policy/policy98.htm>, accessed on 25th July, 2013.

²G Toenniessen...et al,' Building an Alliance for a Green Revolution in Africa' (2008) NYAS 1136: 233-242.

³ United Nations Human Rights, 'A UN declaration to promote the rights of people working in rural areas, (1996-2012) OHCHR, available at <http://www.ohchr.org/E...>, accessed on the 30th of September, 2013.

⁴Note 10 above.

⁵ Foreign Affairs Trade and Development Canada, 'Promoting Sustainable Rural Development through Agriculture-policy, 2003, available at <http://www.acdi-cida.gc...>, accessed on the 29th of September, 2-13

⁶South African Agriculture,(2012) available at http://www.southAfrica.info/business/economy/sectors/agricultureral_sector.htm, accessed on 25th July, 2013.

⁷Ibid.

⁸Ibid.

⁹Ibid.

¹⁰Note 1 above.

Agriculture played a major role in Nigeria's development after the country's independence in 1960, but its influence has declined over time.¹¹

- The sector contributed 60 to 70% of Nigeria's total GDP during the 1950s and 1960s;
- This decreased to 43% from 1970 to 1974;
- It decreased by a further 17% between the 1970s and the mid-1980s;
- By 1996, agriculture accounted for only 2% of exports.
- Oil has now replaced agriculture as Nigeria's major export product and source of government revenue.

However, the agricultural sector has witnessed some growth of late, recording a 6.5% increase in agricultural output in 2004 and 2005 respectively.¹² Oil contributed 29% of GDP in 1980 and 52% in 2005 and now contributes about 99% of exports and nearly 85% of government revenue.¹³ However, it is estimated that oil sector only employs 4% of the labour force. An estimated 60% of Nigerians are employed in rural areas and more than 60% of those classified as poor live in these areas.¹⁴ This underlines the need for the revival and growth of the agricultural sector, as it is very risky for the country to depend solely on oil. The decline in agriculture is believed to be due to the effect of international agricultural trade policies, government's prioritization of the oil sector and its unfocussed national trade policy reforms.¹⁵ This is cause for concern because it is the sector that many rural poor people depend on and it employs more than 70% of the active labour force in the country.¹⁶ The former Governor of the Central Bank of Nigeria (CBN), Professor Charles Soludo stated in 2011 that the Federal Government of Nigeria (FNG) had realised that it should focus on developing the agricultural sector¹⁷ and should make this a priority in its plan to eradicate

¹¹A Daramola ...et al 'Agricultural Export Potential in Nigeria' (2008), available at <http://www.csae.ox.ac.uk/books/.../AgriculturalexportpotentialsinNigeria.pdf>, accessed on 25th July, 2013.

¹²Ibid.

¹³Ibid.

¹⁴A Bankola 'Special Products for Nigeria Agricultural Negotiations' (2007) *ILEAP* presented at the workshop on WTO negotiations and Nigeria Negotiation Options in Agriculture, Non-Agricultural products, Special Products and Special Safeguard Mechanism October 9-11, Abuja Nigeria, available at http://www.bankole_sps-for-Nigeria-agriculture.neg... last accessed on 25th July, 2013.

¹⁵K Adebayo 'Institutional Capacity for Designing and Implementing Agricultural and Rural Development Policies and Strategies in Nigeria' (2009) *IFPRI* 8.

¹⁶Ibid.

¹⁷ W Mosadomi 'Nigerian must plan to survive without oil' (2011) available at <http://www.vanguardng...>, accessed on 5th March, 2014.

poverty. He added that it was necessary to diversify the Nigerian economy and not to focus on the oil sector alone.¹⁸

This outline of the situation in South Africa and Nigeria illustrates the dire need for a review of International Agricultural trade policies in South Africa and Nigeria. It finds out why the WTO have an agreement on agriculture, whether trade in agriculture make everyone better off especially South Africans and Nigerians. The study also determines how the agreement on agriculture affect standards of living and why the less developed countries and net food-importing countries the biggest losers in agricultural liberalization. Despite the fact that South Africa is an active participant in the General Agreement on Tariffs and Trade (GATT) and the WTO, no meaningful development has occurred thus far. The continuous decline in the price of agricultural products caused by industrialized nations dumping their excess production due to substantive support their states give to them through granting of huge subsidies¹⁹ impacts the foreign earnings of these states while at the same time triggering trade distortions on the world market.²⁰

This Paper consists of eight chapters. Chapter one is introduction. Chapter two examines food security and trade liberalization while Chapter three discusses food security and WTO AoA. Chapter four focuses on the relevant Ministerial Declarations on agriculture. Chapter five outlines the implementation of the AoA in South Africa and Nigeria and analyses the status of the current negotiations, while Chapter six makes recommendations on the reforms necessary to improve agricultural trade in South Africa and Nigeria. Chapter seven concludes the study.

¹⁸ Ibid.

¹⁹ Article 1 of the Agreement on Subsidies and Countervailing Measures of WTO Subsidies Agreement.

²⁰ Ibid.

2. Food security and trade liberalization

2.1 Trade Liberalization

Trade Liberalization is a process whereby trade barriers that affect a given nation's international trade are curtailed or minimized to the barest minimum.²¹ Tariffs, non tariffs and subsidies are examples of trade barriers.²² Non tariffs comprise import quotas, levies, quantitative restrictions on imports, import bans, state trading measures and subsidies.²³ Even though trade liberalization is believed to increase economic growth, this issue of free trade was seen more than 200 years ago²⁴ to be detrimental to a state economy, especially the poor economies if not properly implemented in international agricultural trade.²⁵ Aid to Trade on the other hand, is employed to give assistance to Least Developed Countries ("LDC") and developing nations because of the fragile nature of these states economies in International Agricultural Trade.²⁶

However, the notion of free trade as contained in the WTO AoA²⁷ has actually broadened the gap between developed and undeveloped economies. It has not fulfilled the roles of agriculture in the eradication of poverty and hunger but instead, free trade has continued to strengthen the developed economies.²⁸

2.1.1 How free trade reflects in WTO agreements.

WTO made provisions for free trade principles and this also reflects on GATT principles as well. According to the principles²⁹ of the organization, it focuses on maintaining a system of trade without discrimination. This it tries to realize by providing for an equal treatment among members a principle known as most-favoured-nation ("MFN")³⁰ and national treatment basis³¹ which disallows an importing nation from applying different tariffs to the

²¹B Marchand, 'Trade Liberalization', UAE 2008.

²²Ibid.

²³Ibid.

²⁴D Sharma, 'Trade Liberalization in Agriculture lessons from the first 10 years of the WTO', *APRODEV*, 290051.

²⁵Ibid.

²⁶Ibid.

²⁷Article 20 of Part XII of AoA.

²⁸Ibid.

²⁹See E Kessie, 'The Institutional Framework & Basic Principles of the WTO', (1994), *UNITAR*, available at http://www.unitar.org/.../WTO_..., accessed on the 30th of September, 2013.

³⁰Article 1 of GATT of 1947.

³¹Article 111 of GATT of 1947. See also, Objectives and organization of the WTO- *SANSAD*, available at <http://www.sansad.org.in/.../...>, accessed on 30th June, 2013.

same commodity of different exporting nations that are WTO members.³² Also, on national treatment, it expects both foreign and local producers of goods to be accorded the same treatment.³³ More so, it maintains a platform for continuous trade negotiation³⁴ and hopes to achieve this by bringing down to the barest minimum, tariffs and non-tariffs to liberalize trade more. WTO creates and enforces international trade rules, issues, settles dispute among trading nations and put in measures to combat unfair trade practices like dumping and export subsidies.³⁵ It also tries to make the organization, its decision and its process very open to the general interest of all parties by being predictable, encouraging corporation among them and assist developing countries by making provisions and compelling the industrialized countries to do so as it believes that all nations are not equal.

The Marrakesh Agreement that established the WTO made provisions on agricultural trade.³⁶ The AoA comprises of 21 Articles, and five annexes.³⁷ The AoA made provisions mandating its members to make and accept some specified binding commitments in three broad areas which are market access,³⁸ domestic support,³⁹ and export subsidies⁴⁰ which will be discussed in the preceding chapter. For a party to adhere to these commitments, it means that it has to reduce its tariffs, tariff-quotas, “tariffication” of non-tariffs, minimize or restrict either its domestic support or subsidies in order to minimize distortions in agricultural trade.⁴¹ It is also believed that this process will enhance and promote trade liberalization in agriculture and will also create a platform that will enhance continuous agricultural negotiations among members.⁴²

Nevertheless, realistically, international trade in agriculture is neither free nor fair.⁴³ Developing nations do not have some facilities that their developed nation counterparts have thereby, making it very difficult for them to compete in the world market. They do not have adequate infrastructures like good road, clean and constant water supply and electricity,

³² Ibid.

³³ Ibid.

³⁴ Article 20 Part XII of AoA.

³⁵ Article V1 of GATT of 1947.

³⁶ K Alexander & M Toesson, ‘The World Trade Organization’, (2008) *BRILL*, 566.

³⁷ United Nations Conference on Trade and Development, ‘Dispute Settlement, World Trade Organization 3.15 Agriculture, 2003, available at <http://www.unctad.org/en/.../>, accessed on 30th September, 2013.

³⁸ Article 4 Part III of the AoA.

³⁹ Article 6 Part IV, Article 7 Part IV and Annexes 2, 3 and 4 of the AoA.

⁴⁰ Articles 3.3 Part II, 8 Part, 9, 10 and 11 Parts V of AoA.

⁴¹ Note 34 above.

⁴² Ibid.

⁴³ R Mazumber, ‘Trade Liberalization & WTO: Impact on Developing Countries’ (2008).

access to loans and enough land for commercial farming. These governments do not support them properly. As a result of all these, the agricultural sectors of both South Africa and Nigeria, have not witnessed growth and development and find it very difficult to compete in the world market.⁴⁴

More disappointing is the fact that the promoters of free trade or trade liberalization namely, the United States of America (USA) the European Union (“EU”), Japan, China, Australia and many others, go extra miles in giving protection to their agricultural products with the view to continuously control the world market.⁴⁵ Subsidies contribute to the development of a nation because they increase employment, goods production, and investment and reduce local food prices. WTO provides an agreement on Subsidies and Countervailing Measures (“SCM”) and this is a process whereby a state gives support either financially or by other means such as the provision of goods and services to farmers and to producers of agricultural products.⁴⁶ The activities of the above-mentioned nations have a serious, disturbing and negative impact on the world market, which is unfair to the developing nations and has actually contributed immensely to the poor conditions of agricultural sectors there, where poverty and hunger threaten the lives of people.⁴⁷ Of greater concern is that WTO AoA trade policies, of which the provisions will be discussed in the next chapter, are full of protectionist trade policies seen in the ways they apply tariffs and subsidies on domestically-produced goods put in place are not enough to combat this. Although nations are allowed to apply some measures such as Safeguards, Sanitary and Phytosanitary measures which provides constraints for parties for food safety, contaminants as well as animal and plant health, industrialized nations mostly abuse this for gain.⁴⁸ According to statistics, subsidies that are given to farmers in developed nations cost developing nations up to 50 billion US dollars yearly.⁴⁹

2.1.2 The effect of trade liberalization on international agricultural trade.

Based on the law of comparative advantage, as earlier pointed out, free trade allows for the supply of goods to places where they are needed at a cheap rate and gives the exporting

⁴⁴ Global Poverty and International Development, 5th October, 2008, available at <http://www.worldsavvy.org/m...>, accessed on 3rd March, 2014.

⁴⁵ X Diao...et al, ‘The Impact of Agricultural Trade Policies on Developing Countries, how much does it hurt’, (2003) *IFPRI*, available at <http://www.ifpri.org>, accessed on 30th October, 2013.

⁴⁶ Article 1 of the Agreement on Subsidies and Countervailing Measures of WTO subsidies Agreement.

⁴⁷ K Bertow and A Schulthesis, ‘impact of EU’s Agricultural Trade Policy on Smallholders in Africa,’ (2007) *GermanWatch*, 37.

⁴⁸ E Petersmann, ‘The Human Rights, International Economic Law and Constitutional Justice: A Rejoinder’, (2008) 9 *EJIL* 5. See also N Kristol ‘Farm Subsidies That Kill’ *New York Times* 5 July, 2002.

⁴⁹ M Brown, Former Head of the United Nations Development Programme (“UNDP”)

country the opportunity to import the products that it does not produce. Nevertheless, in reality, this theory works differently in international agricultural trade. This is because the developed worlds with its multinational companies⁵⁰ happen to consist of the major exporters and importers of agricultural trade. These developed countries provide subsidies⁵¹ in form of grants, tariffs and protections to their agricultural industries. Thus, international agriculture trade does not work as predicted by the law of comparative advantage⁵² because countries like the U.S.A and China that have more buyers and sellers for their products have an effect on the world market and so exert control which has an adverse effect on countries which consume their products and this measure affects the foreign earnings of the LDC and DC nations, thereby, make them to always sort help and borrow loans from the World Bank. This leads to “monopolization,”⁵³ and also causes distortions in the world trade.⁵⁴ If the economically powerful countries wish to gain profit, they can withhold products for some time and make them scarce. In addition to this giving subsidy to producers in developed world makes the situation worst. Normally, it is expected that goods are to be sold in the world market base on their production costs. However, the reverse is the case. Due to the fact that developed nation governments usually give subsidies to their producers to encourage them to produce more and compete at the world market, they end up having an advantage over their counterparts who gets no subsidy and makes the latter unable to compete.⁵⁵

2.2 Food security and trade liberalization

2.2.1 Food Security and its Components.

“Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preference for an

⁵⁰ N Borregaard & M Halle ‘Striking a Balance for Trade and Sustainable Development; (2001) *IIED* 3.

⁵¹ Note 20 above.

⁵² P Samuelson, ‘The Way of an Economist,’ in P Samuelson (ed) *International Economic Relations: Proceedings of The Third Congress of the International Economic Association* (1969) 1-11.

⁵³ Stephen Greenberg ‘Agricultural Trade and Food Security’ *Agricultural Economics Research, Policy and Practice in Southern Africa* 34, available at <http://www.docstoc.com/.../international-...>, accessed on 7th July, 2013.

⁵⁴ *Ibid.*

⁵⁵ G Kinnock, ‘America’s \$24bn Subsidy Damages Developing World Cotton Farmers’ (2011), available at <http://www.theguardian...>, accessed on 7th July, 2013.

active and healthy life”.⁵⁶ For a nation to be food secure, it must have access to nutritious and affordable food that is protected for sustainability.⁵⁷

Food security has some components.⁵⁸ Food availability is one of the components and it consists of types and quality of food an individual within a given society can take.⁵⁹ Food access is another component;⁶⁰ it involves having access to the types, quality and quantity of food one needs. This also includes scale of preference, affordability and planning.⁶¹ Food utilization or adequacy is the third component.⁶² This refers to the situation when an individual or a house hold is able to consume food and also gets satisfaction. It deals with the benefits received from food, such as nutritional values and food safety, while food stability⁶³ refers to the process where food is available all the time.

2.2.2 Trade liberalization in Agriculture: LDC and DC nations.

There is hardly any nation that has not used trade barriers in form of protection like import restrictions, licensing and other trade measures at some point in time to protect its industries against competition from fellow counterparts.⁶⁴ Thus according to Cunningham:

“Following the industrial Revolution of late 1800s and early 1900s, today’s developed nations ...protected their manufacturing industries against global competition. Developing countries used protection as an industrialization strategy when their primary export markets slowed down due to the Great Depression in the 1930s’.⁶⁵

Trade liberalization is a hotly debated issue. It is believed to remove barriers and obstacles to trade and facilitate the smooth movement of goods.⁶⁶ This, in turn, minimizes trade distortions. However, the system of free trade implemented by the WTO threatens food

⁵⁶ Food and Agricultural Organization, (1996), available at <http://www.fao.org/hom...>, accessed on 2nd March, 2014.

⁵⁷ J Premanandh, Factors affecting Food Security and Contribution of Modern technologies in Food sustainability’, (2011) *ADFCA* (15) 91.

⁵⁸ L Cunningham, ‘Assessing the Contribution of Aquaculture to Food Security; A Survey of Methodologies’, *FAO* 2005.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ Note 13 above.

⁶⁵ *Ibid.*

⁶⁶ E Lee, ‘Trade Liberalization and Employment’, (2005) *DESA*, available at <http://www.un.org/esa/desa/...>, accessed on 7th July, 2013.

security.⁶⁷ It does not take the realities of the global agricultural market into account and promotes industrial agriculture at the expense of sustainable agriculture.⁶⁸ Furthermore, it does not consider different nations' needs in the provisions of the agreement on market access⁶⁹, domestic support⁷⁰ and export subsidies,⁷¹ which are discussed in detail in the next chapter.

The connection between trade liberalization under the WTO and food security is difficult to determine in that it differs from country to country. If a country imports food, distortions in the world market could affect its foreign exchange earnings which will automatically have implications for food security.⁷² Nigeria is a good example of a food importing country, although this was not always the case. Previously, small farms in Nigeria produced about 80% of the country's total food needs and the nation were "food-self-sufficient"⁷³; however, it is currently a major importer of agricultural products. Market access through high tariff bindings has an effect on the agricultural protection levels of developing and Least Developed Countries (LDCs) and this has not given rise to liberalization in the true sense.⁷⁴ In South Africa and Nigeria, high tariff binding has a negative impact on stability and the openness of the market.⁷⁵ The volatility of world markets has rendered high bound rates inadequate.⁷⁶ The decrease in Nigeria's agricultural exports is believed to be partly due to the decrease in world food prices caused by the present WTO AoA and huge subsidies from industrialized nations that dump surplus agricultural products on the country,⁷⁷ which violates the general rules on domestic support in the AoA, discouraging the production of Nigeria's major

⁶⁷ D Steen, 'The WTO Agreement on Agriculture plays against the Food Security Programmes. Is it an opportunity to question the most contentious aspects of the agreement?' (2013) CSA, available at <http://www.csa-be.org/s...>, accessed on 30th October, 2013.

⁶⁸ Note 57 above.

⁶⁹ Note 19 above.

⁷⁰ Note 20 above.

⁷¹ Note 21 above.

⁷² C Raghavan, 'Negative Effects of Trade and Capital Market Liberalization' available at <http://www.twinside.org...>, accessed on 30th October, 2013.

⁷³ T Ayode, 'Trade Barriers and small-scale farmers' (2012) available at <http://www.businessdayonline...>, accessed on 26th July, 2013.

⁷⁴ H Amani, 'Critical Issues in Agricultural Trade-WTO: What does Africa Want from Agriculture Negotiations?' (2004) Tralac Trade Brief Agric Conference available at <http://www.tralac.org/...>, accessed on 3rd March, 2014.

⁷⁵ R Sharma, 'Preparing for Negotiating Further Reductions of the Bound Tariffs', (2000) FAO, available at <http://www.fao.org/docr...>, accessed on 30th October, 2013.

⁷⁶ Ibid.

⁷⁷ Article 7 (1a) of AoA Part IV

export products: cocoa, rubber, timber, cassava, and yam and resulting in the disbandment of the Nigerian Cocoa Board.⁷⁸

In order to achieve “food self-reliance or food self-sufficiency,”⁷⁹ a country may increase its export of goods to be able to pay for its population’s food needs. South Africa is an example of food exporting country.⁸⁰ From 2000 to 2004, the country was ranked among the top ten exporters of processed agricultural products and world imports ranked by growth in value.⁸¹ South Africa exports goods like cut protea flowers, contributing half of all the proteas sold in the global market,⁸² citrus, sugar cane, wine and spirits, fruits, nuts, hides and skin. Nonetheless, food security remains a problem, with many citizens unable to secure their food requirements.⁸³ The rate of unemployment in the country is also worrying.⁸⁴ Present WTO AoA policy of huge subsidies for developed nations and the dumping of their surpluses on South African markets due to free trade has made the situation worse, especially for smallholder farmers who have lost faith in farming because they cannot cope with competition from their counterparts in the developed world that have the backings of their governments through domestic support subsidies.⁸⁵ This motivated the South African government to become one of the major backers of the New Africa Initiative (NAI)⁸⁶ to promote sustainable agricultural growth and social development in Africa. The NAI identified agriculture as a priority area. The NAI notes that current trade terms do not favour African countries. It suggests that the development of irrigation systems and infrastructure as well as research can facilitate improvement in

⁷⁸ Corporate Nigeria, ‘Agriculture Cocoa Growing, Nigeria Biggest Agricultural Export is Full of Beans’, (2010) available at <http://www.corporate-ni...>, accessed on 3rd March, 2014.

⁷⁹ K Gayi, ‘Does the WTO agreement endanger food security in sub-Saharan Africa’, (2006) 36 *LIT*, available at <http://www.wider.unu.edu> accessed on 26th July, 2013.

⁸⁰ S Legare, ‘Agricultural Trade Performance Review, South Africa’s Agricultural, Forestry and Fisheries Trade Performance During Quarter Four of 2010’, available at <http://www.nda.agric.za.../international Trade/...>, accessed on the 30th of October, 2013.

⁸¹ A Jooste & D Spies, ‘A South African Export Opportunity Scan for Value-Added Agricultural Products’ (2006) National Department of Agriculture Directorate: International Trade, available at <http://daff.gov.za/docs/.../SAexport.pdf>, accessed on 25th July, 2013.

⁸² South Africa Agriculture, available at <http://www.southAfrica.info/.../agricultural-sect...> accessed on 26th July, 2013.

⁸³ J Koch, ‘Food Security Policy Context in South Africa’ (2011) *IPC*, available at <http://www.undp.org>, accessed on 30th October, 2013.

⁸⁴ N Dladia, ‘Food Security Policy for South Africa (2011) *FSWG*, A discussion Document for the Department of Agriculture and Land Affairs’ (1997), available at <http://www.nda.agric.za...>, accessed on the 30th of October, 2013.

⁸⁵ Note 49 above.

⁸⁶ NAI initiative, this Initiative together with other two initiatives led to the formation of New Partnership for African Development, NEPAD and South Africa and Nigeria are founding members. The objectives of NEPAD are to combat poverty, sustain development, and stop the marginalization of African and empowering African Women. NEPAD was adopted in 2001 by the Organization of African Unity and was ratified by the African Union in 2002, available at <http://www.nepad.org/h...>, accessed on 30th October, 2013.

agricultural products. The South African government also seeks to engage new, young and old people in agriculture, produce highly competitive products and improve market access for South African products, while maintaining the integration of the agricultural sector into the global economy. A 1998 official discussion document stated that the state aimed to improve household food security, provide access to land and water, create employment, promote redistribution to curb inequality, and improve access to agricultural products.⁸⁷ The AoA's Special Safeguard Mechanism⁸⁸ has failed to address the current situation, unlike safeguard measures in other agreements like the Agreement on Safeguard Measures and the Agreement on Subsidies and Countervailing Measures.⁸⁹

In Nigeria, after the nation's independence in 1960 and before the introduction of unilateral trade in 1986, Nigeria had a flourishing agricultural system. The right to food is enshrined in Article 16 of the country's constitution, which provides that "the state shall assure, within the context of ideas and objectives for which provisions are made in the constitution ... that suitable and adequate food, reasonable living wages, are provided for all citizens".⁹⁰ Before the implementation of Structural Adjustment Programs (SAPs),⁹¹ Nigeria and South Africa imposed taxes on producers. They did this by providing a cheaper administered price than other countries.⁹² Following the introduction of the SAP in 1986, the abandonment of this process and input subsidies have had a very negative impact on these two countries' economies as a whole. Input traded subsidies like seeds, crops and fertilizers have been phased off in many African nations. Governments have also withdrawn infrastructure, assistance and research. Nigeria has become a significant importer of food despite the fact that about 65% of the total labour force participates in smallholder production of food which accounts about 35% of GDP. The country is also deeply in debt with the World Bank.⁹³ Nigeria's population stands at more than 160 million and unlike South Africa, it imports many food items, chiefly rice, wheat, maize, dairy products and sugar, mainly from the USA and the EU.⁹⁴ The industrialized nations subsidize their major producers of the above-mentioned food items while at the same time preventing the Nigerian government from subsidizing its agricultural products.⁹⁵ Aside from providing incentives

⁸⁷The 1998 Discussion Document on Agricultural Policy, available at <http://www.nda.agric.za/docs/...>, accessed on 30th October, 2013.

⁸⁸Article 5 of AoA.

⁸⁹Note 33 above.

⁹⁰Chapter II, Art 16 2(d) of the 1999 constitution of the Federal Republic of Nigeria.

⁹¹A Shah, 'Structural adjustment-a Major Cause of Poverty', (2013), available at <http://www.globalissues...>, accessed on 30th September, 2013.

⁹²Note 33 above.

⁹³U Abdullateef & Aljaiya 'Agricultural Trade liberalization and food security in Nigeria' (2010) 2 *JEIF5*, 299-305.

See also, H Friedmann 'Distance and Durability: Shaky foundations of the World Food Economy', in P. McMicheal (ed) *The Global Restructuring of Agro Food Systems* (1994

⁹⁴ *Ibid.*

⁹⁵ *Ibid.* See also, P Raikes & P Gibbon 'Globalization' and African Export Agriculture' 27 *JPS2*, 72.

to multinational companies to secure their support, they also breach the trade agreements under the WTO like Agreements on Intellectual Property, Services, and schedules on future commitments. The USA and EU also smuggle in and under-invoice food imports to Nigeria.⁹⁶ As a result of the activities of the USA and EU through their agro commodities in Nigeria, excess cheap imports have resulted in dumping and this has led to many Nigerian farmers abandoning their farms.⁹⁷ Imports drive the market prices for domestic agricultural products down, leaving many workers with less or no income to buy food and provide for their other needs.⁹⁸ There is growing concern regarding the rising cost of food in Nigeria. Local producers are not able to compete with the imported food items as the developed world has virtually monopolized some items like rice. The high cost of petroleum, poor and inadequate infrastructure and bad roads led to the government paying less attention to agriculture since the sector was liberalized. For example garri, a food item produced from cassava which is a staple consumed daily by most households in Nigeria, has become very expensive. Food security exists when all citizens have sufficient food to live a healthy life.⁹⁹ Food security requires not only that food is available, which is an attribute of total food supply but that it is accessible or obtainable, meaning “farm-gate supply”¹⁰⁰ and has high nutritional value. In South Africa, millions of her citizenry are malnourished, suffer starvation and hunger and struggle to put food on their tables. As noted earlier, Nigeria faces a difficult situation where subsidized agricultural products impact availability and accessibility and the country’s exchange rate depreciated by 95% between 1986 and 2003, negatively affecting trade agreements¹⁰¹. Furthermore, high inflation rates, low levels of agricultural production, deteriorating infrastructure, a high mortality rate and disease prevalence, declining productivity and socio-economic characteristics such as age, gender, level of education, social class and income affect food security in Nigeria.

At the end of 1986, Nigeria reviewed its trade and exchange rate policies in order to bring the country in line with free trade principles.¹⁰² The Nigerian government reduced export duties, cancelled the prohibition of exports and reduced the list of banned products.¹⁰³ Import licensing for many imports, with the exception of fertilizer, was abolished. The end results of these measures were that imported food flooded the Nigerian market; this has had a

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ J Madeley, ‘The Impact of Trade Liberalization on food security and poverty’ (2000) *ITA, Forum Syd, Sweden*, available at <http://www.globalalternatives.nl/file/223> accessed on 26th July, 2013.

⁹⁹ Note 35 above.

¹⁰⁰ J Clarke, ‘Integration and Co-operation benefits the Whole Food-Supply Chain (2013), ADA, available at <http://www.aplus.adas.co.uk/...>, accessed on 30th September, 2013.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

devastating effect on local farmers and producers.¹⁰⁴ Many switched to other businesses or obtained jobs in the cities. Many farmers ended up in the transport business (popularly known as Okada riding), a sector that is already oversubscribed and that the government is concerned about due to its environmental impact and high accident rates.¹⁰⁵

For developing countries like South Africa and Nigeria, food security is an extremely important issue. The liberalization of trade in Nigeria widened the gap between imports and exports.¹⁰⁶ This prompted the government to reform its policies, including “exchange rate misalignment, removal of subsidies on agriculture, expansionary fiscal and monetary policy and entronement of market forces as the policy of free open trade progresses”.¹⁰⁷ The overreliance on imported food in Nigeria is also attributed to the food import price policy, which did not impact positively on the agricultural sector. Furthermore, the major policy reforms did not resolve the main problems confronting food producers.¹⁰⁸

Addressing these issues requires that the Nigerian government supports commercial farming and the producers of goods in the form of subsidies and programs for large and sustainable agricultural enterprises, together with sound policy that reflects international standards. This would enable Nigerian producers to compete with their counterparts in the global market and to reduce imports to feed the country’s large and growing population. Secondly, providing income, inputs and education on new technology will lure small holder farmers and producers back to their farms and businesses and reduce overcrowding in the cities. Government should take international agricultural trade issues seriously and craft improved policies to tackle food insecurity. To protect local food producers, obstacles such as the lack of a constant supply of electricity to preserve and store food should be addressed and incentives should be offered for technological development. Food security is a major global issue, with many people suffering from starvation, malnutrition and hunger due to inadequate food production and substandard products. According to the Food and Agricultural Organization of the United Nations (FAO, UN) in 2010, approximately 925 million people suffer from hunger worldwide.¹⁰⁹ Of these, 578 million were in Asia, 53 million in Latin America and the Caribbean, 239 million in sub-

¹⁰⁴ Angela Mwaniki, ‘Achieving food security in Africa: Challenges and issues’ (2006) Ministry of Foreign Affairs of the Netherlands, Ministry of Economic Affairs, available at www.un.org/.../... accessed on 26th July, 2013.

¹⁰⁵ E Ogunbodede, ‘Urban Road Transportation in Nigeria From 1960 To 2006: Problems, Prospects And Challenges.’ (2008) AJOL, available at <http://www.ajol.info/ind...>, accessed on 2nd March, 2014.

¹⁰⁶ Ibid.

¹⁰⁷ Note 35 above.

¹⁰⁸ Ibid.

¹⁰⁹ A Sasson, ‘Agriculture & Food Security’ (2012) 1:2,, available at <http://www.agricultureandfoodsecurity.com>, accessed on 7th July, 2013.

Saharan Africa and 19 million in North Africa.¹¹⁰ The total figure for the developed nations was 19 million. Food security as earlier said is defined by the World Food Summit, “when people at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.”¹¹¹ The Summit emphasises the importance of trade in achieving food security; however, as will become apparent, it appears that the WTO AoA is not adequate to fulfil this purpose.

In terms of export subsidies, South Africa and Nigeria are no longer permitted to impose export duties except for transportation and marketing assistance because they are developing countries.¹¹² This is due to some flexibility given to LDC and DC nations.¹¹³ Therefore the developed nations should also remove their export duties in order to strike a balance; unless this is done, developing nations, especially Nigeria that is a net food importer, will continue to operate at a disadvantage.¹¹⁴

(2.3) The effect of international agricultural trade)

As noted earlier, based on the law of comparative advantage, free trade enables the supply of goods to places where they are needed at a cheap rate and allows the exporting country to use the payments to import the products it does not produce. However, in reality, this theory works the opposite in international agricultural trade. This is so because through their multinational companies,¹¹⁵ developed countries are the major exporters and importers of agricultural goods and they are able to do so through subsidies¹¹⁶ and protection to their agricultural industries.

2.4 The Trade Liberalization Theory.

“Free trade is based on the principle of demand and supply.”¹¹⁷ It is believed that a given market that is free from state control will meet demand for its goods. The market is the determining factor in effective demand “however, “effective demand” excludes most of the world’s population that lacks a “market-based entitlement” and is unable to purchase food as

¹¹⁰ Ibid.

¹¹¹ World Food Summit, Rome FAO, (1996), available at <http://www.fao.org/docrep/.../v2051e00.HTM>, accessed on 7th July, 2013.

¹¹² Article 9.1 of the AoA.

¹¹³ Ibid.

¹¹⁴ Note 92 above.

¹¹⁵ N Borregaard & M Halle ‘Striking a Balance for Trade and Sustainable Development; (2001) IIED 3.

¹¹⁶ Note 20 above.

¹¹⁷ Note 55 above.

a commodity.”¹¹⁸ If there are no means to increase production, including resources, this renders the theory of comparative advantage fairly meaningless.¹¹⁹

2.5 The true effect of trade liberalization

There is a strong possibility that the benefits of the international trade in agricultural products may end up enriching only those who have access to productive resources on a large scale as well as those who are in the market to buy food items. This means that, at the end of the day, trade liberalization under the WTO AoA favours multinational corporations at the expense of smallholder farmers, “resource-poor producers”¹²⁰ and consumers of goods. Food security requires that production be sustainable; otherwise, production may decrease in the long run. Moreover, subsidised goods from developed nations are major contributors of dumping in South Africa and Nigeria.

2.6 The relationship between food security and international agricultural trade

It is of paramount importance to determine the reasons why nations trade in food, to establish whether or not it is intended to boost their foreign earnings, which leads this agenda and their motives. It is well-known that countries trade through companies for commercial gain. This calls for a distinction to be drawn between food security needs and agricultural export needs. It has been suggested that the “right to export”¹²¹ goods in violation of the trade agreement is incompatible with food security.¹²² Since the WTO is the only agency that can enforce trade agreements, its agenda can either sustain or threaten agriculture; as noted, the WTO AoA distorts trade.

2.7 Free Trade and fair trade

The Developed world should buy agricultural products from the LDC and DC nations and export more sophisticated products to them as well so that a balance could be struck to achieve not only a free trade market place in the world but also a fair market place as well.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

3. Food security and the WTO Agreement on Agriculture

3.1 Background to the agreement

The AoA is one of many agreements created out of the Uruguay Round of negotiations. The WTO was launched in 1995¹²³ and its root came from the GATT. When the Second World War ended, international bodies were needed to help the world economy to recover. There was much trade protectionism at that time and the after-effects of the 1930 worldwide depression were still being felt. During a United Nations Conference on Trade and Employment held in Havana, Cuba in 1947, the International Monetary Fund and the World Bank proposed the establishment of an International Trade Organization (ITO) to facilitate multilateral trade. The ITO was intended to support these two bodies and was given the power to make decisions and settle trade disputes. The ITO was not ratified by any major trading nations and it basically provided for internal economic issues and was not strong enough to constitute a threat to state autonomy.¹²⁴ However, negotiations among nations on reduction of the tariffs which constitute a major barrier to trade had begun under the ITO charter. The outcome of the negotiations was adopted as the GATT in Geneva in 1947. The purpose of the GATT was to craft rules to govern international trade. Initially, 23 nations ratified this agreement. While the WTO succeeded the GATT, it retains its principles and some of its measures.

The WTO has also increased the number of mechanisms for free trade. This is due to the fact that the ITO charter, also known as the Havana Charter that was incorporated into the GATT did not adequately address agricultural trade issues, especially market access.¹²⁵ Due to the increasing number of cases brought before the GATT's dispute settlement system and its inability to deal with them, the GATT's rules do not include disciplinary provisions, as well as the behaviour of the big trading powers like the USA and the EU, a call was made to the GATT in the early 1980s to find a solution to agricultural trade issues.¹²⁶ The 1982 GATT Ministerial Declaration states that "there is wide spread dissatisfaction with the application of GATT rules and the degree of liberalization in relation to agricultural trade"

¹²³Note 15 above.

¹²⁴C Crook, 'The ITO that never was. (International Trade Organization) (A Survey of World Trade), September 22, 1990, available at <http://www.highbeam.c...>, accessed on the 3rd of March, 2014.

¹²⁵Ibid. See also C Ozden, 'Strengths and Weaknesses of the Present Trade System for Developing Countries, Developing Research Group, Trade World Bank Washington, DC 20433, March 2003, available at <http://www.ycsg.yale.edu/documents/.../Ozden....> accessed on 20th August, 2013.

¹²⁶Note 15 above.

and “there is an urgent need to find lasting solutions to the problems of trade in agricultural products”.¹²⁷ The Punta del Este Ministerial Declaration of 1986 launched the Uruguay Round, establishing the WTO.¹²⁸ The WTO provides measures for nations to reform their agricultural trade policies. Agricultural trade is the main agenda for this declaration that states that, “there is an urgent need to bring more discipline and predictability to world agricultural trade by correcting and preventing restrictions and distortions including those that relate to structural surpluses so as to reduce the uncertainty, imbalances and instability in world agricultural markets.”¹²⁹

3.2 Main provisions of the AoA

Although the AoA makes provision for the use of subsidies and other measures to prevent unfair trade practices, some of the provisions are unjust and promote inequality, benefitting industrialized nations. The main issue relates to subsidies rather than market access.

The AoA consists of three main pillars: market access, domestic support and export subsidies.¹³⁰

3.2.1 Market Access

This is provided for in Article 4 of the AoA.¹³¹ All member states are required to remove all their non-tariff barriers which comprise of import quotas or quantitative restrictions on imports and a ban on imports, variable levies, discretionary licenses, state trading measures and voluntary restraint agreements. They are required to be converted to tariffs, a process known as ‘tariffication’ within the WTO. Nations are required to accept the importation of a minimum number of specified food items. However, there are exceptions to this provision. Article 4.2¹³² prohibits the use of non-tariff border measures but once again, there are exceptions to this rule. The non-tariff measures were converted into tariff equivalents in order to minimize their distorting effects. Some goods that have undergone tariffication are

¹²⁷ Ibid.

¹²⁸ General Agreement on Tariffs and Trade (GATT) Punta Del Este Declaration, Foreign Trade Information System, available at <http://www.sice.oas.org...>, accessed on 20th August, 2013.

¹²⁹ Note 15 above.

¹³⁰ A Glijo ‘An Analysis of the WTO-AoA Review from the perspective of Rural Women in Asia,’ Paper presented at the International Workshop on the Review of the WTO AoA, February 19-21, 2003, Geneva, Switzerland, available at http://www.glow-bell.de.../SuS_Arze_..., accessed on 25th July, 2013.

¹³¹ Article 4 of AoA.

¹³² Article 4.2 of AoA.

exempted under the “Special Safeguard provision”,¹³³ which permits a party state to impose more tariffs on their agricultural products anytime their import volume goes beyond certain levels, or if prices of any given state agricultural goods falls below certain levels which made it possible for memberstates to protect local producers against dumping or a drop in the price of imported goods, while in terms of the “Special Treatment” clause, goods not fully exempted from tariffication are allowed to be postponed.¹³⁴ Increased market access is encouraged by compelling nations to find ways to make trade in agricultural products more transparent and competitive, increase production and investment, and ensure the smooth flow of trade at international and national levels, especially where the volume of imports is small by adopting low tariffs. This only applies to countries whose minimum or current access volumes are reflected in their specific commitments schedules. The lower tariff is commonly known as the “within-quota tariff” (TRO) and applies to every member country in adherence with the MFN principle.

Unfortunately, there is no transparency in free trade in agriculture at international level. The developed nations impose higher tariffs on goods from LDC and DC nations more than goods from other developed nations.¹³⁵ Developed countries have free access to markets in developing nations, but the latter do not have the same privilege, resulting in unfair market competition and preventing the smooth flow of goods.¹³⁶ There is no increase in production or investment in developing nations and the industrialized nations do not live up to their commitment to provide assistance to developing countries.¹³⁷

3.2.2 Domestic Support

This refers to the support a government provides to local producers and farmers. This is the main area of the agreement that causes distortions in the world market. Article 6 (1)¹³⁸ provides that the domestic support reduction commitments relating to agricultural producers are applicable to all members, with the exception of those measures that are not subject to reduction in line with the form set out in Article 6 and Annex 2 to the AoA. The WTO and industrialized nations are of the view that subsidies are exempt from reduction because they do not distort trade and form part of the AoA agreement. Paragraph 1 of Annex

¹³³ Articles 5 (1b) and 5.5 Part 111 of AoA.

¹³⁴ Ibid.

¹³⁵ Note 44 above

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Article 6(1) of Agreement on Agriculture.

2¹³⁹ provides that, “Domestic support measures for which exemption from the reduction commitments is claimed shall meet the fundamental requirement that they have no, or at most minimal, trade distorting effects or effects on production.” Again, paragraph 1 (b) of Annex 2¹⁴⁰ states that, “the support in question shall not have the effect of providing price support to producers”.¹⁴¹ However, in reality, this is not the case because subsidized farmers and producers of agricultural products end up selling their products at cheaper rates; this would not be possible without subsidies.

The AoA addresses three types of domestic support. The first is the Amber Box that relates to measures that cause trade distortions and seeks to minimize them. This comprises support measures that have an impact on input subsidies and price support.

Green Box¹⁴² measures are the opposite of the Amber. These do not distort trade and are not required to be minimized because they are allowed under the AoA. Examples include infrastructure and services, marketing assistance, local food donors or aid, and assistance with research. However, developed nations hide behind this provision to provide support to their farmers. Furthermore, there has long been debate on whether or not trade distortions exist under the Green Box. Countries, like the USA, EU, Japan and China rely on this provision to provide support to their farmers; this is confirmed by their notifications to the WTO.¹⁴³ It would appear that Green Box subsidies are trade distorting and encourage member states to provide domestic support in order to give the developed world an advantage. It is believed that though the Green Box has least trade distorting, it does actually affect production or trade.¹⁴⁴

The third set of measures is the Blue Box.¹⁴⁵ This occurs when a government pays money directly to farmers to enable them to address factors that negatively affect their production. This is also allowed under the AoA. The Blue Box is excluded from the general rule which says that all subsidies in connection to production must be within allowed minimal

¹³⁹ Paragraph 1, Annex 2 of Agreement on Agriculture.

¹⁴⁰ Paragraph 1 (b), Annex 2 of Agreement on Agriculture.

¹⁴¹ Ibid.

¹⁴² Annex 2 of Agreement on Agriculture.

¹⁴³ International Centre for Trade and Sustainable Development, ‘Agricultural Subsidies in the WTO Green Box: Ensuring Coherence with Sustainable Development Goals’, (2009)5, available at <http://www.amazon.com/Agricultural-Subsidies...>, accessed on 7th July, 2013.

¹⁴⁴ Z Yumin, ‘Green Box Support Measures Under the WTO Agreement on Agriculture and Chinese Agricultural Sustainable Development’ (2003) CAITEC, available at <http://www.lisd.org>, accessed on 3rd March, 2014.

¹⁴⁵ Article 6.5 of the Agreement on Agriculture.

levels.¹⁴⁶ Meanwhile, some people want this subsidy to be eliminated based on the fact that payments made in this respect are only decoupled from production while some wants a concession to be reached to reduce Blue Box subsidies.

3.2.3 Subsidies

This stipulates member states' commitment to reduce export subsidies. States use this to dispose of surplus production from their countries. This subsidy is sometimes specific, but may vary. It violates the law of comparative advantage by distorting trade flows. Export subsidies make local goods more expensive than imports. Article 8¹⁴⁷ of the AoA states that every member state must provide export subsidies only to the extent permitted by law. Article 9 (1) lists the export subsidies that are subject to the reduction commitment while Article 10.1 notes that if a subsidy is not among those listed in Article 9 which is prone to circumvention of export subsidy commitment, that export subsidy will not be applicable in such situation. If a state violates this provision, trade distortion will result. It also provides that no subsidies should be provided in the future for products that are not subject to the export subsidy reduction commitment and this applies to products that a state has commitment to reduce its subsidies. In 2008, the US, Mexico and Guatemala filed a dispute with China challenging some of the state measures that seemed to be providing export subsidies to the AoA's disallowed products. Export subsidies have a major impact on world market prices and the developed nations' attitude to them has been contentious. They have consistently held on to this practice in order to continue to control world market prices. Brazil, a developing nation, also filed a case with the WTO challenging US cotton subsidies.¹⁴⁸ This provided an illuminating glance into the WTO agricultural subsidies and exposed the negative effects of such a practice on trade. Twenty five countries, South Africa among them, are permitted to subsidize their exports¹⁴⁹ with Nigeria and other developing countries being temporarily exempted.¹⁵⁰

3.3 Implementation requirements and provisions of AoA

¹⁴⁶ D Muzzi, 'WTO Boxes Explained, (2001), available at <http://m.southeastfarm...>, accessed on 3rd March 2014.

¹⁴⁷ Article 8 of Agreement on Agriculture

¹⁴⁸ S Andersen and M Taylor 'The road to Effective Disciplines of Agricultural Subsidies, (2009) *Business Law Brief* available at <http://www.journals-bo>, accessed on 25th August, 2013.

¹⁴⁹ Export Subsidies and Competition available at <http://www.wto.org/eng...>, accessed on 25th June, 2013.

¹⁵⁰ Article 9.4 of Agreement on Agriculture

Market Access: The AoA requires that every member nation's tariff rates should be equal to the barriers provided for in the 1986 to 1988 "base reference period".¹⁵¹ All agricultural products should be bound and all tariffs should be minimized on an on-going basis. States should start with their initial bound rate in 1995 to reach their final rate at the close of the period of implementation.¹⁵² Developed countries were expected to reduce their tariffs by an average of 36% within six years but were allowed to postpone until the year 2000, the end of the implementation period¹⁵³. Developing countries were expected to achieve a 24% reduction over a period of ten years.¹⁵⁴

Domestic Support: Developed nations are required to reduce domestic support by 20% while the rate set for developing nations is 13.3%; this is measured using the Aggregate Measure of Support (AMS). It should be noted that a nation is free to select the products that will be subject to the subsidy reduction provided that the subsidy falls within the permitted rate each year. Furthermore, the AoA provides for a minimum of 5% reduction of the production value for some "product-specific subsidies" and 5% of the total value of agricultural produce for non-product specific subsidies for developed nations and 10% for developing nations.¹⁵⁵

Export subsidy: Developed countries are required to reduce their export subsidy expenditure or value by 36% and its volume by 21% over six years in equal instalments based on their average levels from 1986 to 1990. The reduction for developing country is 24% in value and 14% in volume over a ten year period. The agreement also disallows future subsidies for products that are not subject to export subsidy reduction commitments.

3.4 Impact of AoA on food security

The AoA has not produced positive results in either South Africa or Nigeria, despite the fact that, as will be seen later, South Africa in particular has adhered to almost all the WTO provisions. Demand for food, especially in Nigeria, is more than supply and many Nigerians are vulnerable to food insecurity. While South Africa has large scale commercial farming and is a major exporter of some food items, access to food in the country is a major problem. This section discusses the effect of the AoA on food security in both countries.

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid. See also, D Barker 'WTO Agreement on Agriculture: Threat to Food Security and Sustainability' (2007) *IFG*, available at <http://www.ifg.org>, accessed on 30th August, 2013.

¹⁵⁴ Ibid.

¹⁵⁵ World Trade Organization Agriculture: 'fairer markets for farmers,' available at <http://www.wto/eng...>, accessed on the 30th of August, 2013.

3.4.1. Dumping of less expensive products.

Many families in South Africa and Nigeria engage in farming activities. Small-scale farmers work on inherited or family land. However, trade liberalization is believed to have resulted in the importation of cheap products and dumping.¹⁵⁶ South Africa is a net importer of agricultural products. It imports agricultural products from other nations on the African continent. Ethiopia imports kidney beans and ginger; Nigeria imports ginger, spices, and dried vegetables; Tanzania imports cashew nuts and beans and Mozambique and Zimbabwe import bananas into South Africa. Cheap imports into Nigeria mostly come from the USA.¹⁵⁷ Farmers are abandoning their farms because they cannot compete with their counterparts in the developed world. While some imports enter the country *via* the normal trading route, others are dumped. Dumped products are sold below cost to get rid of surpluses. This negatively impacts local producers as they are forced to lower their prices and suffer reduced income.¹⁵⁸

Trade liberalization has also contributed to an increase in farm inputs. Small-scale farmers are most affected. While they are spending more on inputs, they are receiving lower returns on their produce. In Nigeria, studies have shown that the prices of rice have escalated and have continued to increase due to the fact that the country is not growing rice as it used to do before trade was liberalized. While rice was previously one of the cheapest food items in the country, it is currently out of the reach of many households. During the early days of rice importation, consumers appeared to be winning because imported rice was cheaper than locally produced rice. However, with local farmers abandoning the crop, demand exceeded supply. This led to an increase in the prices of goods.

3.4.2 Reduction in government support to citizens

Prior to the adoption of the Structural Adjustment Program, (SAP) and WTO agricultural trade agreement, governments supported agriculture in the form of investment and research. As noted earlier, SAPs reduced such support to the barest minimum, leaving the fate of

¹⁵⁶ K Obiajiori, 'Manufacturers Frown at China's dumping of Cheap Products, (2010) *Afrik-News*, available at <http://www.afrik-news.c...>, accessed on the 30th of August, 2013.

¹⁵⁷ Note 92 above.

¹⁵⁸ Note 156 above.

farmers, especially the poorest, in their own hands. Many families in South Africa and Nigeria cannot put food on the table.¹⁵⁹

Under apartheid, most land in South Africa was owned by the white minority. While the democratic government is pursuing a land reform program to redistribute land, the small scale farmers who are often beneficiaries of this programme require substantial assistance. In reaction to the negative effects of the reduction in support required by international trade policies on small scale farmers, the government has increased support to the agricultural sector. The government provided R1 billion in support to farmers through the African Cooperative Development Bank (The ACDB) in order to enable them to improve their farming methods and create job.¹⁶⁰ South Africa government also supports research to improve the performance of the agricultural sector. The state also provide access to Agriculture for the youths of the state by initiating a program called Agricultural Youth Development Initiative for South Africa and creation of an Agribusiness industries.¹⁶¹

In Nigeria, the Federal Government has declared its intention to improve the agricultural sector by supporting commercial agriculture, increasing agricultural exports and moving away from its dependence on oil and gas.¹⁶² The government also supports agricultural research and, as noted earlier, aims to halt the importation of rice into the country by 2015.¹⁶³ Through the Federal Ministry for Agriculture (FMARD) the government has created a loan facility of about N450b, known as Nigerian Incentive-Based Risk Sharing for Agricultural Lending (NIRSAL) administered by the Central Bank of Nigeria.¹⁶⁴ These efforts on the part of South Africa and Nigeria aim to address food insecurity which has been exacerbated by trade liberalization. The state has also introduced some other initiatives like Youths Initiative for Sustainable Agriculture (YISA) Nigeria to empower the Nigerian youth in agriculture.¹⁶⁵ There is also, a Central Bank of Nigeria initiative in order to make credits available for

¹⁵⁹ L Gonzalez, Concern over inability to feed the kids', (2013) *MIOL*, available at <http://www.m.iol.co.za/article...>, accessed on the 30th of August, 2013. Note also, 92 above.

¹⁶⁰ South Africa Agriculture available at <http://www.info.gov.za/aboutsa/agriculture.htm> accessed on 25th July, 2013.

¹⁶¹ The Agricultural Youth Development Initiative for South Africa in the South African agricultural Sector (1998), available at <http://www.polity.org.za...>, accessed on 3rd March, 2014.

¹⁶² CADP Nigeria Home, available at <http://www.cadpnigeria.org/> accessed on 25th July, 2013.

¹⁶³ Nigerian Agricultural Sector available at <http://www.Fmard.gov.ng/>, accessed on 25th July, 2013.

¹⁶⁴ Ibid.

¹⁶⁵ Youth Initiative for Sustainable Agriculture in Nigeria (2014) available at <http://www.yarinigeria.wordpress...>, accessed on 9th March, 2014.

agricultural purposes.¹⁶⁶ The state will also benefit from the two new G20 Agricultural Initiatives.¹⁶⁷ These initiatives are Action Plan aimed at “enhancing accuracy, reliability, timeliness and comparability of food market outlook information” and Agricultural Market Information System on markets for improvement of information.¹⁶⁸

3.4.3 Paying more attention to exporting products

Due to the fact that trade liberalization results in agricultural imports, governments have neglected the agricultural food sector. The South African government has prioritized other sectors such as diamonds and coal as well as wine production. However, as noted earlier, this situation is gradually changing and the state is committing more resources to food production.

In Nigeria, the government has prioritized oil production. While the country is the world’s 6th largest producer of oil, this sector employs only 4% of its workforce. Furthermore, oil revenues have not been used to improve the lives of ordinary citizens. People are dying of hunger and starvation every day.¹⁶⁹

Moreover, the fact that South Africa exports wine, sugar and potatoes and that Nigeria exports ginger, rubber and dried vegetables does not mean that the producers of these products receive a fair price for their produce, due to the instability of global food prices. For example, the economic crisis currently confronting the EU, one of South Africa’s major trading partners, will impact South African producers, while Nigerian exporters will also be affected by global price fluctuations when they export ginger and dried vegetables to South Africa.

3.4.4 Increased unemployment and migration

Previously, many people in both South Africa and Nigeria lived and worked in rural areas. They engaged in farming and used the proceeds to buy other commodities and pay their children’s school fees. Cities were not congested. The liberalization of international agricultural trade has left these citizens with no choice but to migrate to the cities in search of a better life. However, unemployment is rife even in the cities. Some have resorted to crime to

¹⁶⁶ Embracing the New CBN Initiative on Agriculture (2014) available at <http://www.247ureports.com/...>, accessed on 9th March, 2014.

¹⁶⁷ K Ori, ‘Nigeria to Benefit from G20 Agricultural Initiatives (2011), available at <http://www.proshareng....>, accessed on 2nd March, 2014.

¹⁶⁸ Ibid,

¹⁶⁹ A Akinfe, ‘Agriculture Offers a Brighter Future than Crude Oil’, (2009) *LCB*, available at <http://www.nigeriavillageesqu...>, accessed on the 30th of August, 2013.

survive. The rural areas of these states are mainly occupied by young and old people nowadays totally different from what it used to be. Again, getting the youth to help in farming this days is very difficult, thereby limiting agricultural productions while at the same time resulting to waste of resources as well.

3.4.5 Benefits multinational companies

Large entities that promote the interests of developed nations benefit from trade liberalization to the detriment of developing nations like South Africa and Nigeria.¹⁷⁰ This is due to the fact that the Developed nations practice large-scale farming with efficient irrigation methods, good roads and storage facilities and advanced technology, among other factors.¹⁷¹ They produce large quantities of goods and dump them in South Africa and Nigeria at the expense of local producers.¹⁷²

3.5 Issues for developing countries

It is clear that the AoA favours developed nations. The three pillars of the AoA, that is, market access, domestic support and export subsidies indirectly contain provisions that protect developed countries' agricultural markets.¹⁷³ Although developing countries, including South Africa and Nigeria, are given "special and differential treatment",¹⁷⁴ allowing them to reduce their tariffs and subsidies by smaller percentages and providing for an extended implementation period, this cannot be compared with the significant concessions and exemptions offered to developed nations, resulting in trade distortions and dumping of agricultural products.

3.5.1 One of the developing nations' issues regarding the AoA is that the free trade compromises their food security.¹⁷⁵ In terms of free trade, it is expected that if a nation produces only commodities, it has comparative advantage and imports products at an affordable rate from another nation. However, this principle is being violated in international markets by industrialized nations like the USA and EU, who continue to subsidize their products and dump excess goods on developing nations.¹⁷⁶ Developing nations depend on

¹⁷⁰Note 96 above.

¹⁷¹Note 44 above.

¹⁷²Ibid.

¹⁷³Note 65 above.

¹⁷⁴ Ibid.

¹⁷⁵S Murphy 'Free Trade in Agriculture: a Bad Idea Whose Time is done'(2009) 61, issue 3, July to August.

¹⁷⁶Note 157 above.

imports, negatively impacting their foreign reserves that are meagre in the first place. Again, this scenario slows down agricultural production in developing countries which impacts agricultural trade and compromises their ability to feed their populace.¹⁷⁷

3.5.2 The provisions of the AoA consolidate the power of developed nations. The “tariff peaks”¹⁷⁸ and other trade measures the developed nations use such as Sanitary and Phytosanitary measures and technical barriers to trade make it very difficult for developing nations to compete. The requirement that the developed nations provide technical assistance to developing countries is either not complied with, or the level of assistance provided is insufficient. There is no reciprocity between developed and developing nations. While the agreement caused developing nations to open their markets to cheap imports and the dumping of products by developed countries, the developed nations have protected their markets against developing countries’ imports.¹⁷⁹ Developed countries have used the exemption provided by the AoA from subsidy reductions under both the Green Box and the Blue Box to provide huge subsidies to their domestic producers and cause severe trade distortions. Given the generally unstable political and fiscal nature of developing countries, they are often unable to use the exemptions applicable to them, widening the gap between them and developed nations.

3.5.3 In the past, developed nations used large agricultural and export subsidies to build strong agric industries, but under the AoA, developing nations are prevented from using any export subsidies in the future.¹⁸⁰ They are also not permitted to increase their subsidies more than the “de minimis level”.¹⁸¹

3.5.4 Furthermore, some of the provisions of the AoA which are Article 5 on Special Safeguard Provisions and Article 13 on Due Restraint make it possible for developed nations to avoid their responsibilities in terms of trade liberalization. One such provision is the “Due Restraint Clause”.¹⁸² The clause accords protection to subsidies that are exempt from reduction

¹⁷⁷ M Salem, ‘Free Trade Barriers: Weapons Used against Undeveloped and Poor Nations, (2012) *BEP*, available at <http://www.buddhasem...>, accessed on 30th August, 2013.

¹⁷⁸ *Ibid.*

¹⁷⁹ R Sharma ‘Developing Country Experience with the WTO Agreement on Agriculture and Negotiating and Policy Issues’, Paper presented at the International Agricultural Trade Research Consortium (“IATRC”) summer symposium on The Developing Countries, Agricultural Trade and the WTO, Whistler Valley, Vancouver, Canada, 16-17 June, 2002.¹⁸⁰ *Ibid.*

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*

¹⁸² Article 13 of the AoA.

and they cannot be challenged. The other provision is the “Special Safe Guard provision” that is applicable to only tariffed products, to the benefit of the developed nations.

3.5.5 Developed nations are better placed in terms of development in general and also enjoy booming agricultural production. Instead of creating a sound platform for developing nations to increase their levels of production and their foreign earnings, the AoA has worsened the situation; even developing nations like South Africa and Nigeria that enjoyed food security and food sovereignty through small-scale and commercial farming have now lost this ability. They are now fighting to prevent local food production from becoming extinct; competing with the developed world in agricultural trade is not an option. As noted earlier, in the mid-1990s, South Africa and Nigeria, as well as other developing nations’ food production began to decline; this threatens food security and exacerbates rural poverty.¹⁸³

Agriculture is crucial to the development of developing countries. The sector provides food and jobs and contributes significantly to GDP. If food security is to be achieved and a decent standard of living sustained, the WTO trade liberalization system that has robbed South Africa and Nigeria and other developing nations of food production, sustainability and sovereignty will require a serious overhaul.¹⁸⁴

Accordingly, WTO’s failure to reduce the trade distorting domestic subsidies of the developed countries has denied developing nations like South Africa and Nigeria the opportunity to boost the expansion of their agricultural production. Furthermore, according to the Food and Agricultural Organization (“FAO”), Africa brings in more emergency food aid globally and the continent spent USD 47 billion on food imports in 2007 and its import has been on the rise till date.¹⁸⁵ The most worrisome part of it is the importation of high subsidized food in developing nations.¹⁸⁶ Nigeria despite its arable land, weather and many natural resources is a major importer of agro-commodities like rice, garri, dairy products, fruits and many more which the effects of free trade reduces agricultural trade and development within the region and frustrates local farmers and producers of those imported products. In South Africa, cheap imports usually come from the EU and other African

¹⁸³ A Desmarais, ‘The WTO...will meet somewhere, sometime. And we will be there’, (2003) *NIC*

¹⁸⁴ *Ibid.*

¹⁸⁵ Why has Africa become a net food importer, available at <http://www.fao.org/docrep/015/.../i2497e00.pdf>...accessed on 25th July, 2013. See also Food and Agricultural Organization Statistics, 2011, COMTRADE, 2010.

¹⁸⁶ *Ibid.*

nations. “South Africa is a net exporter of fruits, wine, sugar but a net importer of all other agric-food products.”¹⁸⁷

¹⁸⁷South Africa, - A potential market for Agric-Food products from Africa, available at <http://www.finalagri-food-products13-12-10.pdf>, accessed on 25th July, 2013.

4. Relevant Ministerial Conferences

A number of ministerial conferences have been convened to promote the objectives of the AoA and to address the problems created by the agreement. These meetings are important because the issues on their agendas could impact either positively or negatively on international agricultural trade. Article 20 of AoA¹⁸⁸ states:

“Recognizing that the long-term objective of substantial progressive reductions in support and protection resulting in fundamental reform is an ongoing process, members agree that negotiations for continuing the process will be initiated one year before the end of the implementation period taking into account:

- (a) The experience to that date from implementing the reduction commitments;
- (b) The effects of the reduction commitments on world trade in agriculture;
- (c) Non-trade concerns, special and differential treatment to developing country members, and the objective to establish a fair and market-oriented agricultural trading system, and the other objectives and concerns mentioned in the preamble to this agreement; and
- (d) What further commitments are necessary to achieve the above mentioned long-term objectives?

Again, the Marrakesh Declaration¹⁸⁹ states that:

“The ministers recall that the results of the negotiations embody provisions conferring differential and more favourable treatment for developing economies, including special attention to the particular situation of least-developed countries. Ministers recognize the importance of implementation of these provisions for the least-developed countries and declare their intention to continue to assist and facilitate the expansion of their trade and investment opportunities. They agree to keep under regular review by the ministerial conference and the appropriate organs of the WTO the impact of the result of the Round on the least-developed countries as well as on the net food-importing developing countries, with a view of fostering positive measures to enable them to achieve their development objectives. Ministers recognize the need for strengthening the capability of the GATT to the WTO to provide increased technical assistance in their areas of competence, and in particular to substantially expand its provision to the least-developed countries.”

¹⁸⁸ Article 20 of WTO AoA.

¹⁸⁹ The Uruguay Round of the AoA, Paragraph 5 of Marrakesh Declaration of 15th April, 1994. This is also provided for under Article 16 of AoA.

Article IV: 1¹⁹⁰ provides that:

“There shall be a Ministerial Conference composed of representatives of all the members, which shall meet at least once every two years. The Ministerial Conference shall carry out the functions of the WTO and take actions necessary to this effect. The Ministerial Conference shall have the authority to take decisions on all matters under any of the multilateral trade agreements, if so requested by a member, in accordance with the specific requirements for decision making in this agreement and in the WTO agreements”.

The following section examines the ministerial conferences and their outcomes.

4.1 Seattle Declaration

Based on the above provisions the first WTO Ministerial Conference was held in 1996 in Singapore.¹⁹¹ It dealt mostly with trade in information technology products and the relationship between trade and investment.¹⁹² The second ministerial conference was held in Geneva, Switzerland¹⁹³. The ministerial conference is usually held once every two years.¹⁹⁴

The Seattle Declaration arose from the third ministerial conference held in Seattle, Washington State, USA¹⁹⁵ from 30th November to 3rd December 1999. This conference discussed international agricultural trade¹⁹⁶. The Singapore WTO Ministerial Meeting of November, 1996 established the Analysis and Information Exchange (AIE) for members to voice their issues and concerns. The AIE was concluded for the Seattle Ministerial Meeting (SMM).¹⁹⁷ The meeting identified the need to extend WTO rules to agriculture and aimed to review WTO tasks and assess current world trade relations to identify the challenges confronting multilateral trade and reach agreement on WTO's work program.¹⁹⁸ It was anticipated that the agricultural trade negotiations would be concluded by 15th December,

¹⁹⁰ Article IV:1 of the Marrakesh Agreement Establishing the WTO.

¹⁹¹ World Trade Organization, available at <http://www.wto.org/eng...>, accessed on 20th August, 2013. The conference took place from 9 to 13 December, 1996. Its decision was adopted on 13th December, 1996.

¹⁹² Ibid.

¹⁹³ World Trade Organization, available at <http://www.wto.org/eng...>, accessed on 20th August, 2013. This took place between 18 and 20th May, 1998. The declaration was adopted on 20th May, basically on Global Electronic Commerce.

¹⁹⁴ M Hernandez, 'From Cancun to Hong Kong: WTO update, Global Policy Forum, Centre of Concern, March 2005, available at <http://www.globalpolicy...>, accessed on 20th August, 2013..

¹⁹⁵ Note 101 above. General information on this is contained in WT/MIN (99)/; WT/MIN (99)/INF/.

¹⁹⁶ Ibid. See also WT/ MIN (99)/ Ministerial Conference Seattle.

¹⁹⁷ Ibid.

¹⁹⁸ WT/GC/W/390 of 15th November on preparations for the 1999 Ministerial Conference, 1999. See T Srinivasan, 'Developing Countries and the Multilateral Trading System After Doha', (2004) Centre Discussion Paper No.84, *EGCYale Uni*. See also, WTO Briefing note, available at <http://www.wto.org/eng...>, accessed on 26th September, 2013.

2002. India was a prominent voice in the debate on this declaration, resisting the inclusion of labour rights and environmental standards in the WTO.¹⁹⁹

The issues deliberated in the Seattle meeting are substantial reductions in export subsidies and domestic support, major improvements in market access especially in developing nations, the need for members to include Special and Differential treatment in their schedules of commitments, providing space for developing nations to cater to their development needs with respect to food security and rural development and the need for non-trade issues to be handled by WTO measures. However, members failed to reach consensus.²⁰⁰ As the negotiations continued, a leadership struggle emerged between the EU and other countries, including Brazil, over the appointment of the session's chairperson. Members were required to submit their proposals before December, 2000. The chairperson of the agriculture negotiating group, Singapore's Trade Minister, George Yeo was able to reconcile the issues relating to the developed nations, but those relating to developing nations, especially African countries, were more difficult to handle. With the support of the Organization of African Unity (OAU), African states refused to discuss the issues listed above on the basis that African countries were being marginalized and that the issues of importance to them and their region were not included on the agenda.²⁰¹

4.2 The Doha Development Agenda

The Doha Development Round (DDR) was launched at the WTO's fourth ministerial conference in Doha, Qatar²⁰² in November 2001. It followed from the Uruguay Round and the Seattle Declaration.²⁰³ At the time of the DDR, negotiations on the AoA were taking place in Geneva.²⁰⁴ All the WTO members were involved.²⁰⁵ Decisions from the round are by consensus; all members must agree before a decision is adopted. Every member was mandated to sign all 20 subjects and none were permitted to choose, a process known as

¹⁹⁹ *Ibid.*

²⁰⁰ A Swinbank, 'The WTO and the Regulation of International Trade (2005), Edward Elgar; Cheltenham 87-105, available at <http://www.lancs.ac.uk>, accessed on 28th August, 2013.

²⁰¹ WTO: Significance of Seattle (200), available at <http://www.bannedthou...>, accessed on 2nd March, 2014.

²⁰² WTO, the Doha round available at http://www.wto.org/english/tratop_e/dda_e/dda_e.htm

²⁰³ *Ibid.*

²⁰⁴ M Will & A Mattoo 'Unfinished Business: The WTO's Doha Agenda' (2011) *CEPR and World Bank*, London.

²⁰⁵ *Ibid.*

a“single undertaking”.²⁰⁶ Agricultural trade dominated the agenda.Paragraph 13,²⁰⁷ of the Doha WTO Ministerial Declaration states that:

“We recognize the work already taken in the negotiations initiated in early 2000 under Article 20 of the Agreement on Agriculture, including the large number of negotiating proposal submitted on behalf of a total of 121 members. We recall the long-term objective referred to in the Agreement to establish a fair and market-oriented trading system through a programme of fundamental reform encompassing on support and strengthened rules and specific commitments on supports and protection in order to correct and prevent restrictions and distortions in world agricultural market. We reconfirm our commitment to this programme. Building on the work carried out to date and without prejudging the outcome of the negotiations we commit ourselves to comprehensive negotiations aimed at: substantial improvements in market access; reduction of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support. We agree that special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the schedules of concessions and negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development. We take note of non-trade concerns reflected in the negotiating proposals submitted by members and confirm that non-trade concerns will be taken into account in the negotiations as provided for in the Agreement on Agriculture”.

Enhanced market access, balanced rules, and well-targeted, sustainable financial, technical assistance and capacity-building programmes have important roles to play.”²⁰⁸ Paragraph 14,²⁰⁹ states that:

“Modalities for the further commitments, including provisions for special and differential treatment, shall be established no later than 31 March 2003. Participants shall submit their comprehensive draft schedules based on these modalities no later than the date of the fifth session of the Ministerial Conference. The negotiation, including with respect to rules and disciplines and related legal texts, shall be concluded as part and at the date of conclusion of the negotiating agenda as a whole.”

²⁰⁶Ibid.

²⁰⁷ Doha WTO Ministerial 2001; Ministerial Declaration WT/MIN (01)/DEC/1, of 20th November, 2001. This declaration was adopted on 14th November, 2001. See also A Bouet& D Laborde, Eight years of Doha Talks: Where do we stand? (2010) 11 *ECJILTP* 2, 349-370.

²⁰⁸Ibid.

²⁰⁹DDA Ministerial Declaration.

Unfortunately, the draft ministerial text prepared by the WTO Chairperson mainly reflected the USA and EU drafts and omitted many aspects of the agreed framework for establishing modalities in agriculture. This led to a group of developing nations led by Brazil to make counterproposals.²¹⁰ Negotiations continued, but no agreement was concluded; the parties hoped to reach agreement at the fifth WTO Ministerial Conference in Cancun.²¹¹

4.3 The Cancun 2003

The fifth ministerial conference's²¹² main task was to assess progress in the negotiations, including the DDA.²¹³ The conference aimed at implementing the DDA declarations and decisions as discussed below.²¹⁴ During the opening session, United Nations Secretary General, Kofi Annan observed that, "We are told that trade can provide a ladder to a better life and deliver us from poverty and despair... Sadly, the reality of the international trading system today does not match the rhetoric."²¹⁵ Mexico's president, Vincent Fox stated that, "We can no longer permit well-being to be limited to a few nations. We can no longer postpone the battle against poverty and marginalization."²¹⁶

The issues raised in this meeting included:

4.3.1. Procedural issues such as the lack of transparency in the meeting processes. Some members alleged that there was a lack of democracy and that members were not given equal opportunities to express their concerns.

4.3.2 Market access for developing nations. The developing nations were of the view that accessing developed nations' markets was difficult and sometimes impossible, while the developed nations were pushing for more access to developing countries' markets.

²¹⁰Note 120 above.

²¹¹ Ibid.

²¹² Paragraph 6 of the Ministerial Statement on WTO Cancun 2003. Also, note 105 above. This conference was held in Cancun, Mexico from 10th to 14th September, 2003. At the conference, the General Council adopted a decision known as the "July Package". This "non-binding" framework agreement was signed on 31st July, 2004 in order to revive negotiations launched in 2001 under the DDA and after the Cancun meeting failed to achieve success in the hope of finalizing a binding agreement by December 2005.

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ A Shah 'WTO Meeting in Cancun, Mexico, 2003,' available at <http://www.globalissues...>, accessed on 26th August, 2013.

²¹⁶ Ibid.

4.3.3. Wide differences between developed and developing countries on all topics of discussion especially on the issue of subsidies as earlier discussed in section 3.2.3 which affects food security and fair trade.

4.3.4 Dumping of agricultural products by the industrialized nations on international markets at prices below the cost of production.

4.3.5 Some countries were given no flexibility in terms of the implementation process. The time frame given to the LDC and the DC nations for the implementation of their AoA commitments is not too good for the Developed nations

4.3.6 Attempts by the developed nations, mainly the USA and the EU, to introduce new issues like the Singapore issues which included “investment, competition, trade facilitation and transparency, agriculture and the sectarian initiative on cotton”²¹⁷ despite the fact that those raised in the previous DDA had not been dealt with. Developing nations were of the view that the USA and EU ignored their demand for the removal of export duties and reductions in domestic support and tariffs in the North.²¹⁸

Final decisions were not forthcoming from this conference. According to the “Derbez text”²¹⁹:

“We reaffirm our commitment to the mandate on agriculture as set out in Paragraph 13 of the Doha Ministerial Declaration. We take note of the progress made by the special section of the committee on agriculture in this regard and agree to intensify work to translate the Doha objective into reform modalities. To this end, we adopt the framework set out in Annex A to this document concerning the further commitments and related disciplines on key outstanding issues on market access, export competition and domestic support as the basis for concluding the work in these areas. We direct the special section of the committee on Agriculture to conclude its work on establishing modalities for the further commitments, including provision for special and differential treatment, by (...) We agree that participants will submit their comprehensive draft schedules based on these modalities no later than (...) and confirm that the negotiations, including with respect to rules and disciplines and related legal texts, shall be concluded as part and at the date of conclusion of the negotiating agendas a whole.”

²¹⁷Note 106 above.

²¹⁸Ibid. Some West African nations namely, Burkina Faso, Benin, Chad and Mali, called for the elimination of subsidies on cotton and for compensation for their losses as a result of the USA and EU’s massive subsidy on cotton.

²¹⁹This unofficial text was distributed at the Cancun Ministerial Conference on 13th September, 2003.

The above meeting is paramount for good implementation of the AoA. It is also vital for policy reviews especially in respect to food security for member states.

Also of note is that the developing and the Least Developed Countries (LDCs) united for the first time against the developed nations. While no final decisions were reached, this conference was regarded as most successful by the developing and LDCs, who resisted the on-going opening up of their markets and the dumping of agricultural surpluses in their regions. South Africa, India and Brazil played an active role in the conference and spoke on behalf of developing nations.²²⁰

4.4 The Geneva Ministerial Conference, 2004

This conference was held in July 2004 in Geneva.²²¹ The General Council of the WTO agreed on 31st July to adopt a “Framework Package” that would guide the next phase of the WTO DDA negotiations in order to revive and conclude the DDA. Annexes were included in the framework package that provides for agricultural negotiation frameworks, non-agricultural market access, services, and trade facilitation. The WTO members agreed on the July Framework and reconsidered the Doha negotiations as well as ways to achieve the implementation of these agreements. While the General Council decision touched on development issues, it was agreed that the so-called three “Singapore issues”, competition policy, investment and transparency in government procurement, would not be addressed at the DDA. Members of WTO decided on the agenda for the next ministerial conference in Hong Kong and noted the need to reflect on and lend support to the objectives and work programs of the DDA²²² in order to address the differences between developed and developing nations. In light of this, the DDA would assess whether or not the July framework had assisted in finding solutions to the issues raised in the DDA and in establishing a balance between developed and developing nations.

However, Annex A²²³ of the July framework²²⁴ contains very vague language and unacceptable provisions in terms of the issues raised with regard to export subsidies, domestic support, the application of tariff reductions and the unfair practice of using food aid to

²²⁰ Pedro da Motta ‘Brazil and the G-20 Group of Developing Countries’ (2003) *CNI Rio de Janeiro, Brazil*, available at <http://www.wto.org>, accessed on 10th August, 2013.

²²¹ Note 106 above.

²²² *Ibid.*

²²³ WT/MIN(05)/DEC of 22 December, 2005.

²²⁴ WT/L/579 of 2nd August, 2004.

dumpsurplus food on the world market, especially in developing nations. An example of the unclear language is the sections relating to Special Products (SPs) and Special Safeguard Mechanism (SSM).²²⁵ The developing nations tabled these two provisions as they impact food security and enable the importation of low priced food, severely affecting local producers. They were of the opinion that SPs would allow them to keep some crops based on the principles of food security, rural development and livelihoods, while SSM would permit developing nations to increase their tariffs on short-term fluctuations in both the volume and the price of imports.

4.5 Hong Kong Ministerial Conference, 2005

The sixth ministerial conference was held in Hong Kong, China.²²⁶ After the Cancun conference, members of the WTO agreed on what is known as the “July Package.”²²⁷ The declaration provides further measures in respect of the DDA.

However, the political and technical issues that emerged following the July Framework were not resolved either in Geneva or at international level. The lack of transparency and failure to include all points of view were also on-going issues.²²⁸ The Hong Kong meeting dealt with agricultural and non-agricultural market access, farm subsidies, boosting developing countries and LDCs’ exports by addressing unfair trade rules, services, WTO rules and new member states.²²⁹

4.6 The Geneva Ministerial Conference of 2009

The seventh ministerial conference was held in Geneva from 30th November to 2nd December.²³⁰ Here, the members deliberated on the activities of the WTO, especially on the issue of transparency, a review of its functions, efficiency and the DDA program as well as the need for successful completion.²³¹ They hoped to conclude DDA issues in 2010. In his statement at the meeting, Pascal Lamy, the then Director-General of the WTO posited that even though the next WTO ministerial conference would not take the form of negotiations, it

²²⁵ Paragraphs 41 and 42 of the Agricultural Annex of AoA.

²²⁶ The Hong Kong conference took place between 13 and 18th December, 2005.

²²⁷ Note 106 above. This meeting took place in July, 2004. The July Package is a framework adopted by the General Council on 1st August, 2004. See also Hong Kong 2005 Ministerial Declaration, WT/MIN (05)/DEC of 22 December, 2005. This Declaration was adopted on 18th December, 2005.

²²⁸ Ibid.

²²⁹ WTO 2005 Hong Kong Ministerial Research Guide, available at <http://www.law.georget...>, accessed on 20th August, 2013.

²³⁰ Ibid.

²³¹ See WT/MIN (09)/W/1 of 16th October, 2009. WT/L/760 of 29 May, 2009.

would be “a platform for ministers to review the functioning of this house,” including the Doha Round, and an opportunity “to send a number of strong signals to the world with respect to the entire WTO waterfront of issues—from monitoring and surveillance to disputes, accessions, Aid to trade, technical assistance and international governance.”²³²

The Trade and Development Symposium was the main event at this meeting, followed by two sessions by the World Bank on Export Diversification in Africa. The conference also discussed the major elements of a measure for competitiveness and how development partners can support one another. Trade facilitation was also discussed as well as the lessons that could be learnt from the experience of low-income nations. The meeting considered the elements of an effective pro-poor trade facilitation agenda for LDC members and sub-Saharan Africa which thus affect their food security.²³³

4.7 The Geneva Ministerial Conference of 2011

The eighth ministerial meeting was held in Geneva, Switzerland from 15th to 17th December, 2011. Members noted the importance of keeping the market open and the need to resist protectionism. They also questioned why the Developed nations especially the USA and the EU wanted to introduce new issues while the DDA negotiations were continuing. The meeting identified the need for a regular monitoring mechanism, for example, a trade policy review. It was also noted that declarations are meant to complement rather than be a substitute for previous measures. The importance of the multilateral trading system and the WTO, trade and development and the DDA were deliberated at this meeting.²³⁴ The ministers regretted that the DDA had not been concluded and agreed that members could use different negotiating approaches such as Inter-governmental negotiations between states and Commercial negotiations between corporations and businesses while respecting the principle of transparency. It was agreed that the conference would look into ways of addressing the challenges confronting particular members in multilateral trade.²³⁵

²³² A zevedo; “Many Pending Bali Issues are Political, Capitals Must Continuously Engaged., WTO News Items, 23 September, 2013.

²³³ Geneva Office Event; WTO Ministerial Conference -7th session

²³⁴ The Eighth WTO Ministerial Conference, available at <http://www.wto.org/eng...>, accessed on 26th September, 2013.

²³⁵ WT/MIN(11)/11 of 17th December, 2011.

4.8 The forthcoming Bali Conference

The ninth ministerial conference will be held in Bali, Indonesia from 3rd to 6th December, 2013.²³⁶ The ministers hope to address the issues of trade facilitation and food security and successfully conclude the DDA. In terms of trade facilitation, they will consider simplifying and harmonizing customs rules and reducing the cost of transportation. Also on the agenda are the administration of the Tariff Rate Quota taking into account G-20 and G-33 proposals on public stockholding for food security and domestic food aid purposes, tighter discipline relating to this issue, and export competition.²³⁷ The DDA has missed its deadline for conclusion. This is partly because of the different views on some issues between the developed and developing nations.

²³⁶ A Mathew 'The Doha Bali Mini-Package in Agriculture, (2013) available at <http://www.capreform.eu>, accessed on 2nd September, 2013.

²³⁷ Ibid. Also, note 150 above.

5. Implementation of the AOA in South Africa and Nigeria

5.1 Market Access

As noted earlier, in terms of market access, the Uruguay AoA converted non-tariff barriers which include quantitative import restrictions, voluntary export restraints, import levies and import licensing into tariffs which are subject to both bound and reduction commitments in order to lower border protection. The export subsidy provisions now apply to agricultural products; this was not previously the case. The purpose for doing so is to reduce export subsidies on agricultural goods. Domestic subsidies for production and agricultural trade were included under some rules and specific functions were outlined for each of the boxes discussed in Section 3.2 above in order to ensure openness and limitations on domestic support while at the same time accepting the need for Special and Differential Treatment²³⁸ for developing nations. Products standards are to be covered by new rules.²³⁹

As developing nations, South Africa and Nigeria have undertaken to convert all non-tariff border measures to tariffs and they will be subject to be bound against being increased²⁴⁰. Bound tariffs are to be reduced by an average rate of 36% and a minimum of 15% per tariff line during the implementation period.²⁴¹ They are obliged to maintain and improve market access. In cases where the level of imported products is very low, they are to provide a lower quota tariff rate (IQTR) and minimum market opportunities equal to 3% of domestic consumption, increasing to 5% within the implementation period.²⁴² Normally, tariffs are imposed to generate government revenue and to protect local industries. After becoming members of the WTO in 1995, South Africa and Nigeria started reforming their domestic legislation in order to fall in line with WTO provisions.

5.1.1 South Africa

In 1996 South Africa enacted the Marketing of Agricultural Products Act,²⁴³ to implement its multilateral agreement on agriculture and limit state intervention in agricultural trade and a

²³⁸Note 78 above.

²³⁹Convention on Biological Diversity 'Assessing the Impact of Trade Liberalization on the Conservation and Sustainable use of Agricultural Biological Diversity', Secretariat for the Convention on Biological Diversity Montreal, January, 2002, available at <http://www.trade.ec.europa.eu/doclib/...>, accessed on 30th August, 2013.

²⁴⁰Note 76 above.

²⁴¹Ibid.

²⁴²World Trade Organization, available at <http://www.wto.org/eng...>, accessed on 28th August, 2013.

²⁴³Marketing of Agricultural Products Acts of 1996

council known as the National Agricultural Marketing Council was created. The Act aims to achieve free access to the market and promote an increase in export earnings. South Africa has had great success in removing export subsidies and domestic support; this is discussed below.²⁴⁴ This is so due to the fact that the Act provides for the establishment of a committee that will oversee and investigate market access. The committee was appointed in 1997 and was given two years to finalize their findings. In July, 1997, the General Export Incentive Scheme was discontinued in order to increase opportunities for market access. Ad valorem tariffs apply to agricultural food products while a tariff quota of 20% applies to agricultural products under minimum market access.²⁴⁵ This protection takes the form of specific and ad valorem tariffs. It includes tariff rate quotas, anti-dumping and countervailing measures and safeguards. While South Africa's average tariff level has decreased over the years and currently stands at 9% on imports,²⁴⁶ below the bound levels of the WTO, it still promotes protection and affects the gains from transparency.²⁴⁷

Certain products like milk, butter, sugar, cheese, bovine meat, and cigarettes, tobacco and sheep meat have tariffs of more than 15% (tariff peaks because it exceeds 15%),²⁴⁸ and this is done to protect the value-adding processing industry. South Africa has also implemented quantitative restrictions on its balance of payments.²⁴⁹ In 2012, its "import tariffs are also lower than the export tariffs that its product incurred therefore amounting to a negative trade balance".²⁵⁰ Sixty one product categories have minimum market access commitments.²⁵¹ South Africa's minimum applied tariff is zero while 105% is the maximum tariff. The country is also committed to other trade agreements within the region, such as the Southern African Customs Union (SACU). South Africa has a 29% tariff peak. This is much lower than industrialized nations like those making up the EU, with a 60% tariff peak. Furthermore, in developed nations, different forms of tariffs apply to the same product, resulting in trade distortions which negatively affect production in the world market.²⁵² Both tariff peaks and

²⁴⁴M Chitiga...et al 'Agricultural Trade Reform in South Africa', African Development Bank, 2008.

²⁴⁵Ibid.

²⁴⁶Tariffs and Subsidies in Agriculture, Forestry and Fisheries, available at www.pmg.org.za accessed on 26th August, 2013.

²⁴⁷Ibid.

²⁴⁸Ibid.

²⁴⁹Article XI of GATT, quantitative restrictions available at www.meti.go.jp/english/.../gCT0003e.pdf, accessed on 25th August, 2013.

²⁵⁰Tariffs and Subsidies in Agriculture, Forestry & Fisheries: briefing by Department of Agriculture, Forestry & Fisheries, 18th September, 2012, available at <http://www.pmg.org.za/>..., accessed on 28th August, 2013.

²⁵¹Ibid.

²⁵²Ibid.

tariff escalation affect exports in developing nations like South Africa and Nigeria, unless the industrialized nations allow duty free access to their exports. Furthermore, most industrialized countries' bound rates are higher than the applied rate in South Africa and Nigeria. South African bound rates are higher than its applied rates. For example, the state can increase applied rates on water as a sensitive product without violating WTO commitments.²⁵³ It also uses Special Safeguards²⁵⁴ on 166 agricultural products.²⁵⁵

5.1.2 Nigeria

Nigeria has also adopted policies on tariffs, foreign exchange regulations and quantitative restrictions²⁵⁶. On 9th October, 2012 the WTO built a new Reference Centre in Abuja, Nigeria.²⁵⁷ This aims to provide training to staff in the Department of Trade to use the organization's information resources as well as training on trade issues and tariffs vital to the nation's economy.²⁵⁸ The Nigeria Investment Promotion Commission (NIPC)²⁵⁹ replaced the Industrial Development Co-ordinating Committee (IDCC). It enables foreign investors to set up business in Nigeria with 100% ownership. A National Planning Commission was also established. Trade in fertilizer was liberalized with effect from 1997 and reforms were introduced in trade related activities like customs, pre-shipment inspection, ports and clearing systems. Foreign exchange and interest rate policy was deregulated in 1996, while a new investment regime, guided privatization, the establishment of a National Committee of Experts on privatization and tax reform are other measures taken by Nigeria to abide by its WTO AoA commitments. The government has continued to take measures to eliminate existing items on the import prohibition list. Nigeria applies import restrictions on some goods, namely, cereal, vegetable oils, wheat flour and minerals. At this point, 19.2% of its tariff line has been bound.²⁶⁰ After the trade review of 1998, the average applied MFN tariff increased from 24% to about 29%.²⁶¹ The average tariff rate for agricultural products is 50%

²⁵³ Ibid.

²⁵⁴ Note 78 above.

²⁵⁵ Market Access: Special Agricultural Safeguard, available at <http://www.wto.org/eng...>, accessed on 26th August, 2013.

²⁵⁶ V Manyong... et al, 'Agriculture in Nigeria: Identifying Opportunities for Increased Commercialization and Investment, (2005) *IITA*.

²⁵⁷ World Trade Organization, 'WTO establishes new reference centre in Nigeria, available at <http://www.wto.org/eng...> accessed on 26th August, 2013.

²⁵⁸ Ibid.

²⁵⁹ This was established in 1995 through Decree 16 of 1995.

²⁶⁰ World Trade Organization, 'Report by its Secretariat, available at <http://www.wto.org/eng>

²⁶¹ Agricultural Policy dimension of the WTO Trade Policy Review for Nigeria, 9th August, 2011, available at <http://www.agritrade.cta.int/Agriculture/.../>, accessed on 25th August, 2013.

and it is 25% for other products. Tariffs in Nigeria generally range from a minimum of 2.5% to a maximum of 150%. This demonstrates that Nigeria applies high tariffs on agriculture and that the country is committed to aligning its tariff structure with that of the Economic Community of West African States (ECOWAS); if achieved, this will introduce substantial liberalization.²⁶² In 2009, the country's average tariffs on agriculture were 15.6%.²⁶³ While Nigeria is not entitled to use the Special Safeguard Mechanism of the AoA as only tariffed countries are entitled to do so, it can resort to safeguard action under the WTO Agreement on Safeguards (AoS) any time that there is a surge in imports that pose a threat to or cause serious damage to local producers.²⁶⁴

5.2 Domestic support subsidy

As noted earlier in section 3.2, the AoA provides for three types of production support. The Green Box is allowed subsidy; the Amber Box is allowed to be reduced with an upper limit and the Blue Box are subsidies linked to production limits.

This process provides a measure of support to farmers and domestic producers using Aggregate Measure of Support (AMS) to measure its distorting effects. According to the AoA, it provides a minimization commitment of total AMS by 20% for developed nations for the period 1995 to 2000.²⁶⁵ A total AMS of 13% is applied to South Africa and Nigeria; this was to be implemented over a period of ten years, from 1995 to 2004, with 1986-88 acting as the base period. In developed nations, domestic support to the agricultural sector is permitted up to 5% and South Africa and Nigeria as developing nations are allowed up to 10%.²⁶⁶

During the 1970s and 1980s, the South African government established incentive programs that increased the volume of agricultural exports.²⁶⁷ However, during the implementation of the URAA of 1994, support for agriculture declined. Table 1 depicts the state's support for agriculture using the Product Support Estimate (PSE), a measure of how much government support and subsidization farmers in different countries received.²⁶⁸

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ Article 5 of the AoA.

²⁶⁵ WTO Domestic Support, available at <http://www.wto.org/eng...>, accessed on 3rd March 2014.

²⁶⁶ Ibid.

²⁶⁷ Note 152 above.

²⁶⁸ Note 154 above.

Table 1: SOUTH AFRICA Support to agriculture (PSE) in US\$ Million²⁶⁹

1994	871
1995	1,539
1996	989
1997	1,068
1998	631
1999	671
2000	372
2001	140
2002	569
2003	487

South Africa's PSE was 5%; lower than the USA, the EU and China.²⁷⁰ About 96% percent of the support currently in place in South Africa takes the form of Market Price Support (MPS) a tool used to maintain domestic prices for farm products at all levels, while farmers usually receive little with respect to input usage and farm earnings.²⁷¹ Some of the products the state supports are raw sugar, wheat, maize, milk, meat, fruits and sugar which had the highest level of support at R1.259 million in 2003, meaning that sugar is subsidized.²⁷²

South Africa has introduced deregulation, which refers to:

“the relaxation of regulations or laws in the economy. In agriculture, government stopped controlling the prices of agricultural products. Government also, committed itself to limiting its agricultural health and safety standards to levels accepted in the rules of international trading bodies.”²⁷³

However, in Nigeria, the AMS is negative because the state has not subsidized the agricultural sector and therefore it is not obliged to reduce the AMS as South Africa has done, but has to remain within 10% of production value, also known as the “de minimis” level

²⁶⁹ Organization for Economic Co-operation and Development (2006), *OECD*.

²⁷⁰ *Ibid*.

²⁷¹ *Ibid*.

²⁷² *Ibid*.

²⁷³ Briefing paper: Agricultural Trade Globalization and farm worker- Centre for Rural Legal Studies. This is provided in the 1996 Marketing Agricultural Products Act of South Africa.

as a developing nation.²⁷⁴ The state Nigeria liberalized and commercialized the agricultural sector and terminated its involvement in the sectors' activities.²⁷⁵

5.3 Export subsidies

Export subsidies commitments are subject to reduction under the AoA. This takes the form of a reduction in production outlay or the volume of exports. Export budget outlays have to be reduced by 36% for developed nations and 24% for developing nations; the volume must be reduced by 21% for developed nations and 16% for developing countries. Since South Africa has a direct export subsidy, they are bound to reduce commitment in order not to cause distortions. The state adopted export incentives during the 1970s and 1980s.²⁷⁶ It increased exports, especially in the manufacturing sector. However, under the WTO obligations, it is obliged to abolish export incentives.

Nigeria has not subsidized the export of agricultural products and is therefore not duty bound to reduce the volume of such exports or affected by export subsidy reduction commitments. Prior to joining the WTO, Nigeria had a marketing board system to regulate the price of cash crops.²⁷⁷ Nigerian exporters are only entitled to profits from exports, income tax exemption, and freight costs for transport.

This discussion illustrates that South Africa is complying with its domestic support commitments and export subsidies but needs improvement in market access. However, Nigeria requires improvements in market access, domestic support and export subsidies.

5.4 Current negotiations

In terms of current trade negotiations, both nations should push for improved market access so that the AoA's provisions do not perpetuate income inequality, unemployment and food insecurity and to ensure a safe nation where a good quality of life is achieved. They should also firmly demand that developed nations reduce both their domestic support and export subsidies that cause distortions in the world market and have an adverse effect on developing and LDC states. Unfair trade practices such as dumping, unfair technical barriers to trade and

²⁷⁴World Trade Organization, 'Domestic support: Amber, Blue and Green Boxes, available at <http://www.wto.org/eng...> Accessed on 26th August, 2013.

²⁷⁵Ibid.

²⁷⁶S Ngqangweni...et al, 'The Uruguay Round of Agriculture; A review of Progress and Challenges in the SADC region (2003) *ELDIS*' available at <http://www.ebook.com> , accessed on 30th August, 2013.

²⁷⁷Note 149 above.

sanitary and phytosanitary measures that impact exports must also be addressed. The WTO dispute settlement process needs to function more effectively in dealing with agricultural issues. The Special Safeguard Mechanism (SSM) should also be provided for protection against import surges. South Africa is a member of NAMA, a coalition of developing countries that seeks the flexibility to minimize market access in the trade of industrial goods and the Cairns group, a coalition of agricultural exporting nations lobbying for agricultural trade liberalization. Both South Africa and Nigeria are members of the African and Caribbean and Pacific Countries (ACP) African Group, G-90, G-20, G-33, also called "Friends of Special Products", and W52. They are part of a coalition of developing countries pressing for the ambitious reform of agriculture with more flexibility for developing nations.

6. Recommendations

It is recommended that the Amber Box be phased out and that the Blue Box subsidies are entirely scrapped in developing nations.²⁷⁸ The measures in the Green Box should be constantly reviewed in order to evaluate their impact on trade and production and to allow for possible adjustment. There should also be a ban on developed nations dumping goods on developing nations. Furthermore, developing nations should only be allowed to apply flexibility in dealing with price volatility and import surges through the use of SSM on all products. LDC and DC nations should also be given the opportunity of long-term flexibility to not include their agricultural products in tariff reductions based on the need for food security, rural development, poverty reduction and sustainable livelihoods.²⁷⁹ This would establish a balance between WTO members by addressing the distorting effects of subsidized food from developed nations.

Developing nations should also have more flexibility in import control and domestic subsidies in order to protect and assist small household farming; Article 3 that deals with incorporation of concessions and commitments and Article 4 on market access need to be either clarified or possibly amended to this effect.²⁸⁰ There is also a need to modify the subsidies of developing nations provided for in Article 6 against countermeasures and countervailing duties.²⁸¹ A fund should be established, with contributions from developed nations, to assist the developing nations and especially LDCs to implement their commitments sufficiently and to provide technical assistance. Furthermore, developing nations should constantly review the impact of trade liberalization and their experience in implementing their AoA commitments; non-trade issues should be excluded from such an assessment.²⁸² South Africa's emerging commercial farmers, who are mainly previously disadvantaged black people, require support from the state to be able to compete with their counterparts in industrialized nations. The AoA impacts such support, especially to small scale farmers since government support to farmers has been reduced to the barest

²⁷⁸ The WTO Agreement on Agriculture (2002) *Action aid*, available at http://www.actionaid.org.uk/51_1_..., accessed on 28th September, 2013.

²⁷⁹ *Ibid.*

²⁸⁰ D Bhagirath Lal, 'Proposed specific changes needed in WTO Agricultural Agreement (2001) *Third World Network*', available at <http://www.twinside.org.sg/title/speci-cn.htm>, accessed on 28th September, 2013.

²⁸¹ *Ibid.*

²⁸² Multilateral Trade Negotiations on Agriculture- A Resource Manual II on Agriculture *FAO*, available at <http://www.fao.org/docr...>, accessed on 28th September, 2013. See notes on Article 20 issues.

minimum.²⁸³ Trade unions should defend workers' interests as many have lost their jobs due to trade liberalization. The private sector and NGOs have a role to play in ensuring that both the government and multinational companies compensate those adversely affected by free trade. It is time that the governments of South Africa and Nigeria recognize the negative effects of free trade and align with other developing and LDC states to challenge the WTO. This will promote both accountability to their citizens and basic human rights.

²⁸³ *Ibid.*

7. Conclusion

The WTO AoA which is binding on all members has implications for food security, poverty and human rights in Africa especially South Africa and Nigeria as developing nations. Market access, domestic support and export subsidies which are the three pillars of the AoA aimed to facilitate free trade is causing distortion in international agricultural trade. Agricultural activities are declining rapidly in both countries and this poses serious threats.

This paper has demonstrated that the AoA has not been of sufficient benefit to developing and LDC countries; rather it has consolidated the power of large agric businesses in developed nations. Even though South Africa and Nigeria have developed legislative measures to fulfil their commitments and to address food security and human rights challenges, no meaningful results have been achieved.

Furthermore, the various Ministerial Conferences convened to address the challenges and problems created by the AoA have failed. The fact that Nigeria's food security is threatened and that it has to import virtually all food items is very disturbing, given that the country is home to more than 160 million citizens as well as those from other countries. South Africa is not exempt from such challenges.

While both Nigeria and South Africa's Constitutions guarantee the right to a decent standard of living, work, health and life, the WTO AoA works against these rights. Therefore, the WTO AoA and South Africa and Nigeria's legislation relating to agriculture should be in accordance with these international provisions. This is clearly not the case, as many households in both countries are hard pressed to put food on the table, let alone cater for their other needs.

These rights should be respected in all countries, be they developed, developing or least developed nations. As developing countries, South Africa and Nigeria have the responsibility to actualize these rights by adopting adequate measures to ensure food security, job creation, affordable, quality health care and the other infrastructure necessary to ensure a decent standard of living. International trade agreement they commit to should reinforce, rather than violate, these principles.

Furthermore, the implementation of the WTO AoA in these states is also a challenge, especially in Nigeria where the WTO has recently stepped in to assist. This should have been done some time ago; other states also require such assistance. Finally, an improved platform

for future negotiations on agricultural trade issues that is open, transparent, and democratic and does not pose a threat to food security, entrench poverty, and violate human rights, is urgently required.

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