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# Key Issues in WTO Agriculture Negotiations

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## Key Issues in WTO Agriculture Negotiations

On July 29, 2021, the chair of the World Trade Organization (WTO) Committee on Agriculture released a draft text on agriculture issues for consideration at the WTO’s 12<sup>th</sup> Ministerial Conference (MC12). If the trade ministers convene as planned from November 30 to December 3, the draft text is likely to provide the basis for negotiations over reform of agricultural trade rules.

Under the WTO Agreement on Agriculture (AoA), which took effect when the WTO was established on January 1, 1995, member countries agreed to reform their domestic agricultural support policies, increase access for imports, and reduce export subsidies in order to reduce barriers to trade. Many countries implemented such measures between 1995 and 2004, for example, by freezing subsidies, tariffs, and domestic farm support programs at agreed-upon levels and then instituting phased reductions from these levels. The July 2021 negotiating text seeks to facilitate an agreement on “principles” that the 164 WTO members could use as the basis for continuing negotiations after MC12 concludes.

The July 2021 draft text identifies several priority areas for negotiations. These include reforming the AoA’s original rules on domestic support, market access, and export competition while continuing to engage with newer concerns, including reforms affecting cotton trade, a special safeguard mechanism to protect poor and vulnerable farmers in developing countries from import competition, and rules permitting limited public stockholding of staple foods to ensure food security in developing countries. Another major MC12 objective, and a particular focus of U.S. trade officials, is enhancing transparency through stricter notification requirements.

Although WTO members hold divergent views regarding further reform in these priority areas, an agreement in principle may be achievable at MC12. Subsequent negotiations over concrete reforms could be more difficult.

For example, while China has made changes to its domestic support and market access policies to comply with the WTO ruling on two cases initiated by the United States, the United States is not satisfied that these will achieve the intended AoA goal of improved market access. In response to a dispute case in which Brazil prevailed against the United States, the United States changed its cotton program with the 2014 farm bill to make it less trade-distorting. However, the 2018 farm bill has included new policy components that India challenges as being potentially trade-distorting. The United States in turn alleges that India may be underreporting its trade-distorting subsidies to the WTO while providing support to its farm sector in excess of its AoA limits. The European Union (EU), on the other hand, has chosen to move away from trade-distorting subsidies, but is launching a new carbon-neutral agricultural policy that could impose new trade barriers. WTO members, including the United States, worry that this policy may cause greater carbon emissions in countries with less stringent environmental regulations or violate the EU’s WTO commitments.

As the United States and other WTO members prepare for MC12, Congress may seek to engage with the Biden Administration to ensure that the outcome of MC12 will pave the way for a future agreement on agriculture. Members of Congress may also consider how the United States could constructively engage with other WTO members to resolve existing irritants and shape the multilateral agenda for further reform. Transparency in implementation of AoA commitments is considered a key deliverable for MC12. More broadly, the Biden Administration trade policy and the WTO reform agenda intersect with policy initiatives on climate, sustainability, inclusivity, and digital trade. Congress may consider how the AoA negotiations could advance U.S. goals in these areas.

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## Introduction

On July 29, 2021, Ambassador Gloria Abraham Peralta of Costa Rica, the chair of the World Trade Organization (WTO) Committee on Agriculture, released a draft text on agriculture issues for consideration at the WTO's 12<sup>th</sup> Ministerial Conference (MC12).<sup>1</sup> If the trade ministers convene as planned from November 30 to December 3, the draft text is likely to provide the basis for negotiations over reform of agricultural trade rules.

Under the WTO Agreement on Agriculture (AoA), which took effect when the WTO was established on January 1, 1995, member countries agreed to reform their domestic agricultural support policies, increase access for imports, and reduce export subsidies in order to reduce barriers to trade. Many countries implemented such measures between 1995 and 2004, for example, by freezing subsidies, tariffs, and domestic farm support programs at agreed-upon levels and then instituting phased reductions from these levels.<sup>2</sup>

The specific commitments made by individual WTO members, including the United States, under the AoA are listed in documents called “schedules of concessions,” which reflect each country’s promised tariff and subsidy reductions and other policy changes. Member countries must notify the WTO regularly regarding the implementation of their commitments,<sup>3</sup> and the WTO must conduct reviews of these notifications on a regular basis.<sup>4</sup>

Since 2004, further reforms in AoA rules governing agricultural trade have been limited due to disagreements among WTO members. The July 2021 negotiating text seeks to facilitate an agreement on “principles” that the 164 WTO members could use as the basis for continuing negotiations after MC12 concludes.

## Agriculture Negotiations at MC12

The draft text identifies priorities for negotiation on three main topics addressed in the AoA, and also suggests other subjects that negotiators might address. This section describes the priority areas identified in the chair’s negotiating text, along with concerns that certain WTO members have identified related to these priority areas.

### Domestic Support

The AoA spells out how countries are to determine whether certain policies that provide support to their agricultural sectors are potentially trade-distorting; how to calculate the costs of any distortion using a specially defined indicator, the “Aggregate Measure of Support” (AMS); and how to report those costs to the WTO. While the AMS for each country is subject to a spending limit, the AoA provides three potential exemptions from the AMS spending limit.<sup>5</sup>

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<sup>1</sup> The World Trade Organization (WTO), “Twelfth WTO Ministerial Conference,” accessed August 2021, at [https://www.wto.org/english/thewto\\_e/minist\\_e/mc12\\_e/mc12\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/mc12_e/mc12_e.htm).

<sup>2</sup> For details on the Agreement on Agriculture (AoA), see CRS Report R46456, *Reforming the WTO Agreement on Agriculture*, by Anita Regmi, Nina M. Hart, and Randy Schnepf.

<sup>3</sup> WTO, “Decision on Notification Procedures,” accessed August 2021, at [https://www.wto.org/english/docs\\_e/legal\\_e/33-dnotf\\_e.htm](https://www.wto.org/english/docs_e/legal_e/33-dnotf_e.htm).

<sup>4</sup> WTO, “Trade Policy Reviews: Ensuring Transparency,” accessed August 2021, at [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm11\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm11_e.htm).

<sup>5</sup> For more information, see CRS Report R46456, *Reforming the WTO Agreement on Agriculture*, by Anita Regmi, Nina M. Hart, and Randy Schnepf.

First, if a program's outlays are considered minimally or non-trade-distorting (in accordance with specific criteria listed in Annex 2 of the AoA), then they may qualify as "green box" programs and need not be included in the calculation of the AMS. Second, if program spending is deemed trade-distorting but has offsetting features (such as area or livestock population caps) that limit the agricultural production associated with support payments, then they may qualify as "blue box" programs and will not be included in the AMS. Third, if AMS outlays are sufficiently small relative to the value of the output—measured as a share of either product-specific or non-product-specific output—then they may be exempted (as de minimis). Any support that does not fall within these three categories constitutes the "amber box" category of trade-distorting subsidies, and must be reported as part of the total AMS.

When the WTO was established in 1995, most members did not provide monetary support to their agricultural sectors. As a result, many countries, particularly those that categorized themselves at that time as developing or least-developed countries, did not specify binding limits on their trade-distorting outlays. Pursuant to the AoA, these countries must therefore limit their agricultural subsidies to the relevant de minimis thresholds—that is, 5% of the value of agricultural production for developed countries and 10% for developing countries. Least-developed countries do not have to bind themselves to any limitations on agricultural support outlays.<sup>6</sup>

Further reform to AoA's domestic support rules has been contentious. Some developed countries with AMS outlays are hesitant to reduce support to their domestic agricultural sectors.<sup>7</sup> The developing countries, which are entitled under the AoA to "special and differential treatment" that allows them to make smaller cuts to subsidies and provides for a longer implementation period, are reluctant to surrender those privileges, even though many of them have become relatively wealthy since claiming developing-country status in 1995.

### *Negotiating Text Proposal*

The MC12 negotiating text seeks to strengthen current limits on trade-distorting and production-distorting subsidies for agriculture at new, lower maximum levels (caps) and then reduce those levels by half according to a framework that WTO members would agree upon in subsequent negotiations. The text also presents an alternative outcome, under which members could agree to make substantial reductions of domestic subsidies with no set caps, but no member would be held to a specific reduction by the agreement reached at MC12. The text states that negotiations should consider all domestic support subsidies covered under the AoA, and that each country's subsidy reductions should be proportionate to its existing subsidy outlays, their potential impact on global markets, and the country's circumstances and its needs. Some perceive this statement to refer to China,<sup>8</sup> whose support of its agricultural sector has substantially increased since it joined the WTO in 2001.<sup>9</sup> The magnitude of China's demand and supply of agricultural products tends to significantly impact world prices of those products.<sup>10</sup>

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<sup>6</sup> Article 15 of the AoA.

<sup>7</sup> For more information, see CRS Report R46456, *Reforming the WTO Agreement on Agriculture*, by Anita Regmi, Nina M. Hart, and Randy Schnepf.

<sup>8</sup> For example, Madeline Harper, "WTO Draft Ag Text Proposes 50 Percent Reduction in Domestic Support," *Inside U.S. Trade*, August 3, 2021.

<sup>9</sup> For example, Fred Gale, "Growth and Evolution in China's Agricultural Support Policies," Economic Research Report, no. 153, U.S. Department of Agriculture (USDA), Economic Research Service (ERS), 2013.

<sup>10</sup> For examples, see *ibid.* and Colin A. Carter, "China's Agriculture: Achievements and Challenges," ARE Update, vol. 14, no. 5, pp. 5-7, at [https://s.giannini.ucop.edu/uploads/giannini\\_public/42/47/42478f51-6d6a-4575-8dae-d88e2dcf174f/v14n5\\_2.pdf](https://s.giannini.ucop.edu/uploads/giannini_public/42/47/42478f51-6d6a-4575-8dae-d88e2dcf174f/v14n5_2.pdf).

The negotiating text proposes that developing countries would continue to receive special and differential treatment. Currently, developing countries are allowed to exempt certain types of subsidies from their AMS calculation. The negotiating text proposes exempting least-developed countries from any subsidy reduction commitments. It also proposes that WTO members review and clarify existing criteria under the AoA for calculating a country's trade-distorting subsidies under simpler reporting requirements. The text urges WTO members to make "necessary efforts" to notify the WTO regarding the implementation of their AMS commitments.

### *Examples of Concerns Identified by WTO Members*

Interpretations of AoA rules on domestic support and fulfillment of notification commitments by member countries have varied widely.<sup>11</sup> A U.S. dispute case against China concerning China's production subsidies for corn, wheat, and rice, in which a WTO panel ruled in favor of the United States,<sup>12</sup> highlights how existing AoA domestic support rules lack clarity and may have led to varying interpretations on implementation by WTO members. Under the AoA, market price support, a policy often used to support the farm sector, is measured by the gap between the government support price and a fixed external reference price. The AoA requires that "the fixed external reference price shall be based on the years 1986 to 1988."<sup>13</sup> In the case brought by the United States against China, China had used 1996-1998 as the base period, stating that its commitments when joining the WTO require the use of these years as the base period. Despite the fact that the United States prevailed in this case, the WTO panel ruled in favor of China on this particular issue, in contradiction to the methodology described under the AoA.<sup>14</sup>

The choice of the base year can change the size of the calculated AMS. For example, China's average AMS for wheat over the 2012-2015 period estimated by the Office of the United States Trade Representative (USTR) using the 1986-1988 reference price is more than three times the one calculated by China using the 1996-1998 reference price.<sup>15</sup> The former Deputy Director-General of the WTO stated that "the world has changed a lot since" the establishment of the WTO and the 1986-1988 reference price may not be appropriate for the current time.<sup>16</sup> As relative prices among agricultural commodities change over time (**Figure 1**), the use of outdated reference prices will result in incorrect measures of relative subsidies across different commodities.

Ten WTO members have reported AMS calculated for 23 agricultural products using reference prices with a base period other than 1986-1988. These countries, China, Jordan, Taiwan, North Macedonia, Saudi Arabia, Vietnam, Ukraine, Laos, Russia, and Kazakhstan, joined the WTO after 1995. The commodities covered by these notifications include wheat, barley, rice, sugar, cotton, tobacco, rye, corn, and certain meat, dairy, pulses, and wine grapes. An analysis by a Canadian

<sup>11</sup> WTO, "Notification of Select Domestic Support Variables in the WTO," JOB/AG/181, February 19, 2020.

<sup>12</sup> CRS Insight IN11469, *U.S. Challenges to China's Farm Policies*, by Anita Regmi.

<sup>13</sup> WTO, Agreement on Agriculture, Annex 3, paragraph 9, accessed August 2021, at [https://www.wto.org/english/res\\_e/booksp\\_e/agrmntseries3\\_ag\\_2008\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/agrmntseries3_ag_2008_e.pdf).

<sup>14</sup> WTO, "China – Domestic Support for Agricultural Producers: Report of the Panel," WT/DS511/R, February 28, 2019.

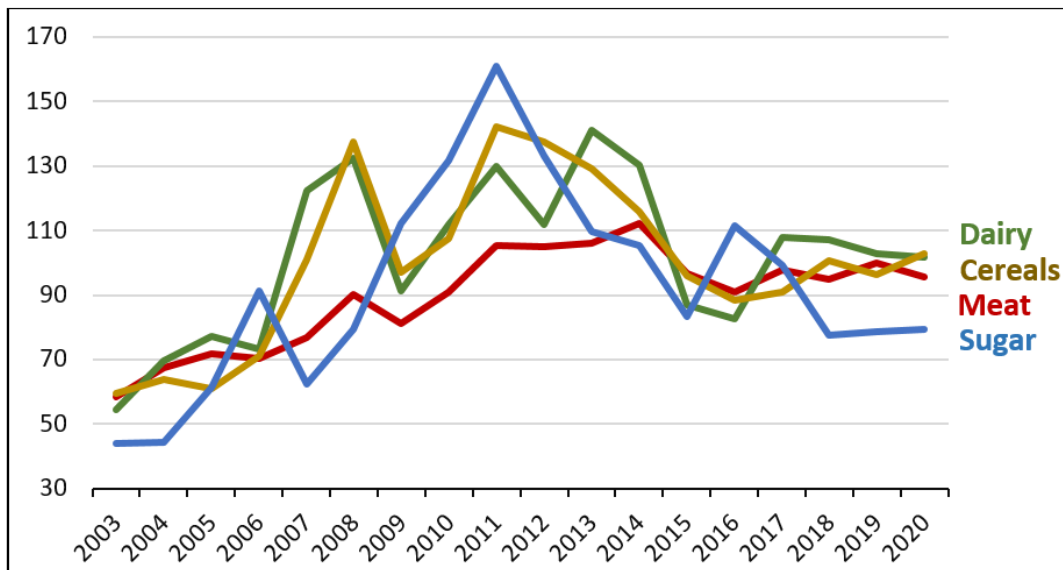
<sup>15</sup> Dukgeum Ahn and David Orden, "China – Domestic Support for Agricultural Producers: One Policy, Multiple Parameters Imply Modest Discipline," *World Trade Review*, May 4, 2021, pp. 1-16, at DOI: <https://doi.org/10.1017/S1474745621000100>.

<sup>16</sup> Alan Wm. Wolff, "Current Challenges and Opportunities for Agricultural Negotiations at the World Trade Organization (WTO)," Remarks at U.S. Grains Council - 61<sup>st</sup> Annual Board of Delegates Meeting, Des Moines, Iowa, July 28, 2021, at <https://www.piie.com/system/files/documents/wolff2021-07-28.pdf>.

economist points out that while the choice of a base period other than 1986-1988 resulted in significant under-calculation of China's AMS, it resulted in slightly lower or even higher AMS calculations for different commodities in other countries.<sup>17</sup> Lack of consistent reference prices that appropriately reflect prevailing market conditions may lead to subsidy estimations across countries that are not comparable.

**Figure I. Global Food Prices, 2003-2020**

Index, 2014-2016=100



**Source:** Food and Agriculture Organization of the United Nations, September 2021, at <http://www.fao.org/worldfoodsituation/foodpricesindex/en/>.

**Note:** Price indices weighted by the average export shares of each category.

The AoA also does not provide guidance regarding whether countries should report inflation-adjusted AMS, and whether the amounts of AMS should be stated in local currency or U.S. dollars.<sup>18</sup> In its submission to the WTO, the United States has raised this issue and pointed out that the use of adjustments for inflation has resulted in lower levels of notified AMS.<sup>19</sup> In particular, the United States has raised concerns that India's AMS notifications in U.S. dollars rather than in Indian currency as stated in its WTO commitments have contributed to lower AMS calculations, leading to underreporting of India's trade-distorting subsidies.<sup>20</sup>

<sup>17</sup> Lars Brink, "Measuring Price Support Under WTO Domestic Support Rules: How Much Advantage From Being an Article XII Member?," Presentation at the International Agricultural Trade Research Consortium (IATRC) Annual Meeting, December 15, 2020.

<sup>18</sup> The guidance is that the WTO's Committee on Agriculture should "give due consideration to the influence of excessive rates of inflation on the ability of any Member to abide by its domestic support commitments." Article 18.4 of the WTO Agreement on Agriculture.

<sup>19</sup> WTO, "Notification of Select Domestic Support Variables in the WTO," Submission by the United States, JOB/AG/181, February 19, 2020.

<sup>20</sup> WTO, "Certain Measures of India Providing Market Price Support to Rice and Wheat," G/AG/W/174, May 9, 2018; "Certain Measures of India Providing Market Price Support to Cotton," G/AG/W/188, November 9, 2018; and "Certain Measures of India Providing Market Price Support to Pulses, Including Chickpeas, Pigeon Peas, Black Matpe, Mung Beans and Lentils," G/AG/W/193, February 12, 2019.



WTO members have also used varying levels of crop production in their AMS calculations.<sup>21</sup> The AoA requires using “the quantity of production eligible to receive” the support price even if the government does not purchase the full quantity.<sup>22</sup> Some countries have used production levels that represent a subset of total production for a crop. For example, China had reported its AMS for certain grains that were calculated using only the quantity of grains purchased by the government,<sup>23</sup> and India has not notified the WTO of any subsidies on sugarcane since 1995, stating that the government has not purchased any—although its price support program could have incentivized Indian farmers to produce sugarcane sold to private buyers.<sup>24</sup>

In its ruling on the U.S. case against China’s support for certain grains, the WTO dispute panel suggested that if China announces the maximum quantity eligible for procurement in advance, the policy can be perceived as not encouraging production beyond that cap and China can then use this quantity for its AMS calculation.<sup>25</sup> This suggestion may raise new concerns, as China can use the flexibility to set the amounts of eligible production annually and maintain its AMS at levels allowed under its AoA commitment while purchasing domestic grains at existing or higher levels than it previously did.<sup>26</sup> Some argue that this illustrates how WTO members can potentially abide by existing AoA domestic support rules but fail to improve access for agricultural products—the main aim of WTO’s AoA.

Some economists have suggested that the methodology considered legal under the AoA for calculating AMS captures the economic intent of market liberalization. As another example, the Organisation for Economic Cooperation and Development (OECD) points out that all farm-sector policies taken together tend to tax crop production in some developing economies, including India, Argentina, and Vietnam, even though the governments in those countries may provide domestic support to certain agricultural producers and report positive AMS calculations.<sup>27</sup> India, for instance, provides input subsidies to farmers and market price support for wheat, maize, sugar, chickpeas and other pulses, and poultry meat; however, marketing inefficiencies outweigh subsidies and function as a tax on most of the agricultural products exported from India.<sup>28</sup>

## Market Access

The AoA obligates members to establish maximum tariff levels that cannot be exceeded (bound tariffs). Developed countries must reduce those tariff rates over six years and developing

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<sup>21</sup> WTO, “Notification of Select Domestic Support Variables in the WTO,” Submission by the United States, JOB/AG/181, February 19, 2020.

<sup>22</sup> WTO, Agreement on Agriculture, Annex 3, paragraph 8, accessed August 2021, at [https://www.wto.org/english/res\\_e/booksp\\_e/agrmntseries3\\_ag\\_2008\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/agrmntseries3_ag_2008_e.pdf).

<sup>23</sup> WTO, “China—Domestic Support for Agricultural Producers,” accessed August 2021, at [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds511\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds511_e.htm).

<sup>24</sup> WTO, “India’s Measure to Provide Market Price Support to Sugarcane,” G/AG/W/189, November 16, 2018.

<sup>25</sup> Lars Brink, David Orden, and Carl Zulauf, “WTO Dispute Panel Report on China’s Agricultural Support,” March 6, 2019, at <https://farmdocdaily.illinois.edu/2019/03/wto-dispute-panel-report-on-chinas-agricultural-support.html>.

<sup>26</sup> Per its AoA commitments, China is allowed total trade distorting subsidies, as measured by the Aggregate Measure of Support (AMS) of up to 8.5% of the total value of production of a given agricultural commodity. Under the WTO ruling, China may vary the amount of production it announces eligible for government purchase and the price at which it purchases this crop from year to year—while abiding by the requirement that the total subsidy outlay is below 8.5% of the total value of crop produced.

<sup>27</sup> Organization for Economic Cooperation and Development (OECD), *Agricultural Policy Monitoring and Evaluation 2021*, at <https://www.oecd.org/publications/agricultural-policy-monitoring-and-evaluation-22217371.htm>.

<sup>28</sup> OECD, *Agricultural Policy Monitoring and Evaluation 2021*, Chapter 13, pp. 304-326.



countries over 10 years; no reductions are required by least-developed countries.<sup>29</sup> To protect products designated as “sensitive” by a WTO member, countries are permitted to introduce tariff-rate quotas (TRQs). A TRQ effectively provides two different tariff rates for a single product: imports within a set quota volume are subject to a lower rate, while imports above the set quota face a much higher (often prohibitive) tariff.

### *Negotiating Text Proposal*

The negotiating text for MC12 seeks commitments to increase transparency in reporting applied tariff changes to the WTO,<sup>30</sup> and a commitment to continue negotiations after MC12 to expand market access. The latter would involve reducing tariffs as well as addressing nontariff barriers that may inhibit imports. For example, policies to stimulate domestic production of a certain agricultural product or tax exports of that product could affect domestic supply and prices, and therefore the volume of imports.

### *Examples of Concerns Identified by WTO Members*

The link between market access and other domestic agricultural policies could be a particularly thorny issue in negotiations following MC12. In a recent article, former U.S. Department of Agriculture (USDA) economist Joe Glauber and Simon Lester of the CATO Institute, a free-market-oriented think tank, assert that the U.S. dispute case against China’s administration of TRQs for rice, wheat, and corn illustrates a number of areas of concern regarding the current WTO market access rules. In particular, the authors concede that although the WTO panel ruled in favor of the United States, the U.S. claim that China’s TRQ administration was not transparent and effectively prevented imports from filling the quotas raises the question of whether the market-based rules in the AoA are effective when dealing with a nonmarket economy. They suggest that prior to the ruling, China subsidized its farmers by purchasing their grain at above world prices while effectively blocking less expensive imports.<sup>31</sup>

China imports grain mainly through state trading enterprises (STEs). USDA asserts that the government of China granted the STEs the right to most of the grain imports entering the country at low tariff rates under its TRQs, forcing private importers in search of feed grain either to import at higher tariff rates or to turn to products without quantitative import restrictions, such as distillers dry grains, sorghum, and barley, as alternatives to corn.<sup>32</sup>

Subsequent to the WTO panel ruling in favor of the United States,<sup>33</sup> China made changes to its TRQ administration in 2020 and allowed companies to apply for both STE and non-STE quotas

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<sup>29</sup> For more information, see CRS Report R46456, *Reforming the WTO Agreement on Agriculture*, by Anita Regmi, Nina M. Hart, and Randy Schnepf.

<sup>30</sup> Applied tariffs are tariffs used in practice by WTO members. They can be the same or different from the tariff levels set out in each WTO member’s list of commitments (known as “bound tariffs”), but legally should not be higher than the bound rate.

<sup>31</sup> Joseph Glauber and Simon Lester, “China-Tariff Rate Quotas for Certain Agricultural Products: Against the Grain: Can the WTO Open Chinese Markets? A Contaminated Experiment,” *World Trade Review*, April 21, 2021, pp. 1-16. doi:10.1017/S1474745621000148.

<sup>32</sup> Fred Gale, *Development of China’s Feed Industry and Demand for Imported Commodities*, FDS-15K-01, USDA, ERS, November 2015; and Fred Gale, James Hansen, and Michael Jewison, *China’s Growing Demand for Agricultural Imports*, Economic Information Bulletin, no. 136, USDA, ERS, February 2015.

<sup>33</sup> WTO, “China – Tariff Rate Quotas for Certain Agricultural Products: Report of the Panel,” WT/DS517/R, April 18, 2019, at [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds517\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds517_e.htm).

and agreed to reallocate unused quotas to potential importers.<sup>34</sup> Following these changes, China's corn imports exceeded its TRQ in 2020, and wheat imports were at over 85% of its TRQ.<sup>35</sup> China's rice imports remained low, at 54% of the total TRQ. With government support of production, purchase, and imports provided mainly by the STEs, it is not clear whether the changes made to quota administration in response to the WTO ruling will have a lasting effect in improving access for grain imports into China. To try to ensure that such reforms result in real market access gains, the United States has urged greater transparency in tariff implementation and TRQ administration at the WTO Committee on Agriculture.<sup>36</sup>

## Export Competition

The AoA seeks to discourage measures that might give market advantages to exporters and therefore distort trade patterns.<sup>37</sup> In particular, in 2015, WTO members agreed to eliminate their export subsidies<sup>38</sup> and to adhere to more commercial conditions on export credits, guarantees, and insurance for products covered by the AoA.<sup>39</sup>

## Negotiating Text Proposal

The MC12 negotiating text seeks a commitment to increase transparency in implementing the commitments made in 2015 to eliminate export subsidies and in introducing new measures that affect export competition. It also seeks to ban export prohibitions or restrictions on foodstuffs purchased for noncommercial humanitarian purposes by the World Food Program, a United Nations organization in charge of providing humanitarian food assistance.<sup>40</sup> Recognizing that many developing countries may not have sufficient capacity to collect necessary data or submit required notifications to the WTO regarding the implementation of their export competition commitments, the text also seeks an agreement to provide technical assistance and capacity-building support to these countries.

## Examples of Concerns Identified by WTO Members

WTO members continue to hold divergent views regarding the scope of the obligations and the exceptions in the AoA. For example, the AoA permits WTO members to restrict exports of

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<sup>34</sup> Joseph Glauber and Simon Lester, "China – Tariff Rate Quotas for Certain Agricultural Products: Against the Grain: Can the WTO Open Chinese Markets? A Contaminated Experiment," *World Trade Review*, April 21, 2021, pp. 1-16. doi:10.1017/S1474745621000148.

<sup>35</sup> CRS Insight IN11469, *U.S. Challenges to China's Farm Policies*, by Anita Regmi.

<sup>36</sup> WTO, "Tariff Implementation Issues – Bound Versus Applied Tariffs," JOB/AG/147, November 9, 2018; "Tariff Implementation Issues – Complex Tariffs," JOB/AG/164, July 31, 2019; "Tariff Implementation Issues – Tariff Peaks," JOB/AG/167, October 24, 2019; "Tariff Implementation Issues – Issues With Tariff-Rate-Quotas," JOB/AG/169, November 22, 2019; and "Tariff Implementation Issues – Issues With Special Agricultural Safeguards," JOB/AG/192, April 6, 2021.

<sup>37</sup> For more information, see CRS Report R46456, *Reforming the WTO Agreement on Agriculture*, by Anita Regmi, Nina M. Hart, and Randy Schnepf.

<sup>38</sup> WTO, "Ministerial Decision of 19 December 2015: Export Competition," WT/MIN(15)/45, paragraphs 7-8, December 2015.

<sup>39</sup> The United States had already made substantial changes in its agricultural export financing programs in response to an adverse decision in a WTO dispute over cotton. For more on this, see CRS Report R43336, *The WTO Brazil-U.S. Cotton Case*, by Randy Schnepf.

<sup>40</sup> See World Food Program, accessed September 2021, at <https://www.wfp.org/overview>.

agricultural products temporarily.<sup>41</sup> Due to fears of food scarcity resulting from disruptions to the food supply chain by the Coronavirus Disease 2019 (COVID-19) pandemic, some WTO members restricted exports of certain food and agricultural products for prolonged periods.<sup>42</sup> Such actions may increase food prices in other countries, with negative unintended consequences for vulnerable people.

## Cotton

Trade in cotton has proved a particularly sensitive area among WTO members. Cotton or cotton-related products have been issues in seven WTO disputes to date,<sup>43</sup> including the 2004 WTO ruling in favor of Brazil in a challenge to certain elements of U.S. domestic support and export credit guarantee programs for cotton.<sup>44</sup> Negotiations to craft rules applicable only to cotton have met with limited success. In 2015, WTO members agreed to export subsidy and export competition disciplines<sup>45</sup> and to provide increased market access for cotton exported by least-developed countries.<sup>46</sup> Negotiations on reducing domestic support on cotton have been unsuccessful to date. A group of cotton-growing West African countries won WTO support in November 2018 for an initiative to develop the economic potential of cotton by-products under the WTO Director-General's Consultative Framework Mechanism on Cotton, with the goal of creating new income streams for cotton farmers and processors.<sup>47</sup> This initiative is outside the purview of the WTO Committee on Agriculture.

## Negotiating Text Proposal

The draft negotiating text for MC12 has relatively unambitious goals, including continued dialogue to reduce trade-distorting domestic support for cotton, to comply with required export subsidy and export competition notifications, and to enhance collection, processing, and circulation of cotton-relevant data. The draft indicates that the development assistance component

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<sup>41</sup> Article XI of the 1994 General Agreement on Tariffs and Trade (GATT) broadly prohibits export bans and restrictions, other than duties, taxes, or other charges. It allows members to apply restrictions temporarily “to prevent or relieve critical shortages of foodstuffs or other products essential” to the exporting country. In the case of foodstuffs, the WTO Agreement on Agriculture requires members to give “due consideration to the effects on food security” of importing countries. See WTO, “How to Address Agricultural Export Restrictions?,” accessed August 2021, at [https://www.wto.org/english/forums\\_e/debates\\_e/debate33\\_e.htm](https://www.wto.org/english/forums_e/debates_e/debate33_e.htm); and CRS In Focus IF11551, *Export Restrictions in Response to the COVID-19 Pandemic*, by Christopher A. Casey and Cathleen D. Cimino-Isaacs.

<sup>42</sup> International Food Policy Research Institute (IFPRI), “COVID-19 Food Trade Policy Tracker,” accessed August 2021, at <https://www.ifpri.org/project/covid-19-food-trade-policy-tracker>.

<sup>43</sup> WTO, “Turkey – Safeguard Measures on Imports of Cotton Yarn (Other Than Sewing Thread),” DS428, February 2012; WTO, “United States – Subsidies on Upland Cotton,” DS267, Resolved October 16, 2014; WTO, “United States – Transitional Safeguard Measures on Combed Cotton Yarn from Pakistan,” DS192, November 2001; WTO, “Argentina – Transitional Safeguard Measures on Certain Imports of Woven Fabric Products of Cotton and Cotton Mixtures Originating in Brazil,” DS190, Settled June 27, 2000; WTO, “European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India,” DS141, April 24, 2003; WTO, “European Communities – Anti-Dumping Investigations Regarding Unbleached Cotton Fabrics from India,” DS140, 1998; WTO, “United States – Restrictions on Imports of Cotton and Man-Made Fibre Underwear,” DS24, 1997.

<sup>44</sup> For more on this, see CRS Report R43336, *The WTO Brazil-U.S. Cotton Case*, by Randy Schnepf.

<sup>45</sup> WTO, “Ministerial Decision of 19 December 2015: Export Competition,” WT/MIN(15)/45, paragraph 12, 2015.

<sup>46</sup> WTO, “Ministerial Decision of 19 December 2015: Cotton,” WT/MIN(15)/46, paragraphs 2, 4, 9, 2015.

<sup>47</sup> WTO, “WTO Members Endorse Joint Initiative to Enhance Economic Potential of Cotton By-Products,” Cotton Sub-Committee, November 29, 2018, at [https://www.wto.org/english/news\\_e/news18\\_e/cott\\_07dec18\\_e.htm](https://www.wto.org/english/news_e/news18_e/cott_07dec18_e.htm).

for cotton will be developed by the Director-General's Consultative Framework Mechanism before MC12 convenes.

### *Examples of Concerns Identified by WTO Members*

The draft negotiating text points out that WTO members have not been able to reach an agreement on the “important goal” of removing trade-distorting domestic support for cotton. In particular, the U.S. cotton industry has not been supportive of this goal. Prior reforms to the U.S. cotton program highlight this dynamic.

In 2014, the farm bill (P.L. 113-79) changed the U.S. cotton program to bring it into compliance with a WTO ruling upholding Brazil's complaints about U.S. domestic support and export credit guarantee programs for cotton. These changes created new insurance subsidies and discontinued production-related payments to cotton producers. However, participation in the U.S. government-supported insurance program was lower than anticipated, and the U.S. cotton industry successfully sought additional changes in the 2018 farm bill (P.L. 115-334) to increase support for cotton in other ways. As a result, “seed cotton”<sup>48</sup> was made eligible for U.S. domestic support program payments.<sup>49</sup> As Congress was debating this change, a former USDA chief economist asserted that the new cotton support program might “have adverse impacts on U.S. trade relations and lead to new WTO disputes and dispute settlements that have spillover impacts into other sectors of the U.S. economy.”<sup>50</sup> Although additional disputes involving U.S. cotton have not yet materialized, at the June 2021 WTO meeting, India questioned whether payments to U.S. cotton producers under the 2018 farm bill may have affected world cotton prices and distorted global cotton markets, potentially placing the United States in violation of the AoA.<sup>51</sup>

### **Special Safeguard Mechanism**

The AoA allows WTO members to impose special safeguards in the form of additional duties on imports of certain sensitive products when import volumes exceed a preset volume or when import prices fall below a preset level.<sup>52</sup> Some 39 WTO members, including the United States, have the right to use special safeguards after notifying the WTO of their existence when they joined the organization. Developing countries have sought a similar mechanism, known as a special safeguard mechanism, which they propose to use to protect their poor and vulnerable agricultural producers from import competition.<sup>53</sup>

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<sup>48</sup> Unginned cottonseed with the attached lint.

<sup>49</sup> USDA, ERS, “Crop Commodity Programs Crop Commodity Programs: Title I,” accessed August 2021, at <https://www.ers.usda.gov/agriculture-improvement-act-of-2018-highlights-and-implications/crop-commodity-programs/>. Prior to 2014, U.S. domestic support payments were based on cotton lint rather than seed cotton.

<sup>50</sup> Joseph W. Glauber, “Unraveling Reforms? Cotton in the 2018 Farm Bill,” American Enterprise Institute, January 29, 2018.

<sup>51</sup> WTO, “Points Raised by Members Under the Review Process: Compilations of Questions for the Meeting on 17-18 June 2021,” G/AG/W/212, paragraph 1.47, June 4, 2021.

<sup>52</sup> WTO, AoA, Article 5, updated in 2004, at [https://www.wto.org/english/tratop\\_e/agric\\_e/negs\\_bkgnd11\\_ssg\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/negs_bkgnd11_ssg_e.htm).

<sup>53</sup> WTO, “Revised Draft Modalities for Agriculture Special Safeguard Mechanism,” TN/AG/W/7, December 6, 2008.

### *Negotiating Text Proposal*

The negotiating text seeks to engage WTO members in facilitator-led “enhanced technical discussions” on a potential special safeguard mechanism. This would be guided by the special safeguard provisions in Article 5 of the AoA.

### *Examples of Concerns Identified by WTO Members*

The limited aspirations of the negotiating text are indicative of the divergent views of WTO members on this issue. In the past, there have been suggestions at the WTO Committee on Agriculture that negotiations over reforms to domestic support rules, existing special safeguards, and a new special safeguard mechanism should be linked. Such a strategy might smooth the path toward an agreement on a special safeguard mechanism for developing countries.<sup>54</sup>

### **Public Stockholding for Food Security Purposes**

Some developing WTO members, most notably India, fear that certain programs for ensuring food security, such as government purchase and maintenance of grain stocks for public distribution (known as public stockholding), might cause them to exceed their domestic support commitments.<sup>55</sup> Major exporting countries, including the United States, have charged that such public stockholding programs may support domestic prices that are higher than those in the world market, thus incentivizing domestic overproduction while squeezing out potential lower-cost imports.

In 2013, WTO members reached an interim agreement allowing developing countries to provide domestic support in excess of their commitments if the support goes to public stockholding programs designed to procure “primary agricultural products that are predominant staples in the traditional diet.”<sup>56</sup> So long as a developing country informs the WTO of the support granted, other WTO members may not file a dispute claiming that the stockholding program is causing the country to exceed the domestic support limit under its AoA commitment.

### *Negotiating Text Proposal*

For MC12, the negotiating draft proposes that WTO members agree that public stockholding of staple foods would be exempt from dispute challenges if the governments concerned are transparent about their policies and provide notice to other WTO members. If the WTO members do not agree to this idea, the negotiating text suggests leaving the interim solution of 2013 in place until future negotiators reach an agreement on how to move forward.

### *Examples of Concerns Identified by WTO Members*

Disagreement about compliance with the terms of the interim agreement and resulting tensions among WTO members have inhibited them from finding a permanent solution concerning public stockholding.<sup>57</sup> For example, India has relied on the interim arrangement to provide support for

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<sup>54</sup> WTO, “Eyeing MC12 for an Outcome, Agriculture Negotiators Focus on Doable Elements and Processes,” February 24, 2020, at [https://www.wto.org/english/news\\_e/news20\\_e/agri\\_24feb20\\_e.htm](https://www.wto.org/english/news_e/news20_e/agri_24feb20_e.htm).

<sup>55</sup> See “Agriculture Negotiations: Fact Sheet on the Bali Decision on Stockholding for Food Security in Developing Countries,” at [https://www.wto.org/english/tratop\\_e/agric\\_e/factsheet\\_agng\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/factsheet_agng_e.htm).

<sup>56</sup> *Ibid.*, paragraph 2, n. 25.

<sup>57</sup> WTO, “Ministerial Decision of 19 December 2015: Public Stockholding for Food Security Purposes,” WT/MIN(15)/44, paragraphs 1-2, December 2020.

rice growers in excess of its allowable AMS cap, and the United States has objected on several occasions that India has not adequately reported the cost of its stockholding program to the WTO.

## Transparency

Article 18 of the AoA requires WTO member countries to notify the WTO Committee on Agriculture regarding the implementation of their AoA commitments. It also requires the Committee on Agriculture to conduct reviews of these notifications on a regular basis to determine whether the governments are sufficiently transparent about their policies.

## *Negotiating Text Proposal*

The negotiating text for MC12 seeks stricter notification requirements, greater technical assistance to help governments prepare notifications, development of information technology tools to facilitate online data submission and processing, and online management of notifications submitted by members.

## *Examples of Concerns Identified by WTO Members*

Enhancing transparency and strengthening notification requirements has been a priority goal for several countries, including the United States.<sup>58</sup> Transparency is a priority for these members because delayed or missing reports make it harder to assess whether WTO members are adhering to their AoA obligations. For example, when China joined the WTO as a developing country in 2001 it agreed to certain commitments that were more stringent than those generally imposed on developing countries. In particular, although developing countries are not required to include input subsidies, such as subsidies to fertilizer production, in their AMS calculations, China committed to include input subsidies in its AMS calculation.<sup>59</sup> However, China failed to include these subsidies in its AMS calculations for rice, wheat, and corn for the years 2012-2015, the relevant period for U.S.-initiated dispute case against China's domestic subsidies for these crops.<sup>60</sup> Even though China reported these subsidies in December 2018,<sup>61</sup> the delayed submission precluded their consideration in the dispute case, which was filed in 2016.

## Prospects for a Path Forward

Based on the negotiating text put forward by Ambassador Peralta, the chair of the WTO Committee on Agriculture, MC12 seems unlikely to lead to a detailed agreement on major reforms to agricultural trade rules. Rather, the document aims to achieve an agreement in principle, which could provide the basis for further negotiations after MC12 concludes.

Enhancing transparency and notification requirements could help winnow the number of irritants among WTO members. Many of the concerns member governments bring to the WTO relate to the lack of sufficient or timely information regarding other members' implementation of WTO

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<sup>58</sup> See, for example, WTO, "Procedures to Enhance Transparency and Strengthen Notification Requirements Under WTO Agreements," JOB/GC/204, November 1, 2018.

<sup>59</sup> WTO, "Report of the Working Party on the Accession of China," WT/ACC/CHN/49, October 1, 2001, paragraph 235.

<sup>60</sup> Dukgeum Ahn and David Orden, "China – Domestic Support for Agricultural Producers: One Policy, Multiple Parameters Imply Modest Discipline," *World Trade Review*, May 4, 2021, pp. 1-16, at DOI: <https://doi.org/10.1017/S1474745621000100>.

<sup>61</sup> China submitted the notification with input subsidies included for 2012-2015 on December 14, 2018. See WTO, G/AG/N/CHN/43, 44, 45, and 46.



commitments. Timely and more detailed notification may enable trading partners to be better informed about other countries' practices. This could either nudge members toward abiding by both the letter and the spirit of their commitments or serve as the basis for a member to raise a dispute before the WTO if it believes another member is not fulfilling its commitments.

At the broader level, there is debate about the potential for disconnect between WTO members' compliance with the letter of AoA rules and the spirit of the intended agricultural market liberalizations. Many past and ongoing dispute cases involve one party that insists it is in technical compliance and another party that believes its trading partner is failing to liberalize as promised. Examples of some areas where WTO members hold divergent views follow:

- After losing two dispute cases filed by the United States, China modified its domestic support and TRQ administration for certain grains as recommended by the WTO dispute panel. However, the United States remains unconvinced that these changes will lead to effective gains in market access, and has requested WTO authorization to take countermeasures against imports from China.<sup>62</sup> China in turn asked the WTO to establish a panel to review its compliance with the dispute panel's ruling on the TRQ case. The WTO has agreed to do so.<sup>63</sup>
- The United States and some other WTO members have expressed concerns that India may be providing a greater level of price support to some crops than allowed under its AoA commitments. The OECD has suggested that the benefits to farmers from India's domestic support programs may be less than the costs inflicted by inefficiencies in its domestic marketing system.<sup>64</sup> To address these inefficiencies, India passed three laws in 2020,<sup>65</sup> the implementation of which was suspended amid farmer protests alleging that the new laws would lead to monopsony power among large buyers of farm output.<sup>66</sup>

Some countries have suggested that U.S. farm support is moving away from less trade-distorting measures to those considered to be more trade-distorting. For example, the new support program for cotton under the 2018 farm bill, created at a time when developing countries are seeking to eliminate all trade-distorting subsidies on cotton, has been questioned by India.<sup>67</sup> Additionally, WTO members have inquired whether recent U.S. payments to the farm sector to compensate for farmers' losses from the COVID-19 pandemic and the U.S.-China trade dispute violate U.S. commitments under the AoA.<sup>68</sup>

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<sup>62</sup> See CRS Insight IN11469, *U.S. Challenges to China's Farm Policies*, by Anita Regmi.

<sup>63</sup> WTO, "Panel Established to Review China's Compliance with Ruling on Certain Farm Product Imports," August 30, 2021, at [https://www.wto.org/english/news\\_e/news21\\_e/dsb\\_30aug21\\_e.htm](https://www.wto.org/english/news_e/news21_e/dsb_30aug21_e.htm).

<sup>64</sup> OECD, *Agricultural Policy Monitoring and Evaluation 2021*, Chapter 13, pp. 304-326.

<sup>65</sup> FAS, USDA, "Government of India Passes Agricultural Market Reforms as Opposition and Regional Parties Protest," GAIN Report No. IN2020-0136, October 1, 2020.

<sup>66</sup> Patralekha Chatterjee, "Agricultural Reform in India: Farmers Versus the State," *The Lancet*, vol. 5, April 2021, pp. 187-189; Sheikh Saaliq, "Explainer: Why Indian Farmers Are Revolting Against PM Modi," AP News, January 27, 2021; and *The Economist*, "Why Are Indian Farmers Protesting?," February 5, 2021, at <https://www.economist.com/the-economist-explains/2021/02/05/why-are-indian-farmers-protesting>.

<sup>67</sup> WTO, "Points Raised by Members Under the Review Process: Compilations of Questions for the Meeting on 17-18 June 2021," G/AG/W/212, paragraph 1.47, June 4, 2021.

<sup>68</sup> WTO, "Domestic Support, Border Restrictions Feature in WTO Farm Committee Review," June 18, 2021, at [https://www.wto.org/english/news\\_e/news21\\_e/agri\\_18jun21\\_e.htm](https://www.wto.org/english/news_e/news21_e/agri_18jun21_e.htm); WTO, "Points Raised by Members Under the Review Process: Compilations of Questions for the Meeting on 17-18 June 2021," G/AG/W/212, June 4, 2021; and Tom Miles, "WTO Members Clamor for More Clarity on U.S. Farm Spending," Reuters, September 20, 2018.



The EU, on the other hand, has continued to move away from trade-distorting subsidies to those considered to be minimally or non-trade-distorting, such as subsidies for conservation agriculture, rural development, agroforestry, and nutrition.<sup>69</sup> It also has taken concrete steps to comply with WTO rulings resulting from dispute cases. For example, in 2004, a WTO panel ruled against the EU on a case filed by several sugar-producing countries alleging that the EU provided subsidies to its sugar exports beyond the amount allowed under its AoA commitments.<sup>70</sup> Subsequent to this ruling, the EU not only changed its sugar program, but also extended duty-free access to sugar from all least-developed countries.<sup>71</sup>

For 2021-2027, the EU is to emphasize sustainable agricultural production that supports greater biodiversity while addressing environmental and climate concerns, with the goal of making the continent “climate-neutral” by 2050.<sup>72</sup> WTO members have posed a number of questions regarding the new EU farm policy, including whether it might seek to become climate-neutral by shifting its sourcing to countries with less stringent environmental regulations.

The EU, the United States, and China have committed to policies, including on agriculture, that have the goal of achieving carbon neutrality over the next three to four decades. These policies vary in their approach and time frame, potentially risking protectionist actions in those countries adopting measures earlier to limit carbon emissions and counteractions by exporting countries that may not have similar policies yet in place—in turn undermining the global trading system.<sup>73</sup> To prevent such friction, the WTO could take on the role to establish guidelines and standards for cross-border trade in carbon-neutral products, including agricultural products.<sup>74</sup> Given their influence on global markets and proposed policies to restrict carbon emissions, it has been suggested that the United States, the EU, and China could provide leadership to advance the WTO reform process by focusing on goals of mutual economic, social, or environmental benefits rather than insisting that agricultural policies strictly abide by the letter of the AoA.<sup>75</sup>

## Issues for Congress

As the United States and other WTO members prepare for MC12, Congress may engage with the Biden Administration to seek outcomes at MC12 that could pave the way for future agreement on agriculture in a manner that is advantageous to U.S. agricultural interests. As expressed in

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<sup>69</sup> CRS Report R46811, *EU Agricultural Domestic Support: Overview and Comparison with the United States*, by Randy Schnepf.

<sup>70</sup> WTO, “European Communities – Export Subsidies on Sugar,” DS266, accessed August 2021, at [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds266\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds266_e.htm).

<sup>71</sup> The European Commission, “Sugar,” accessed August 2021, at [https://ec.europa.eu/info/food-farming-fisheries/plants-and-plant-products/plant-products/sugar\\_en](https://ec.europa.eu/info/food-farming-fisheries/plants-and-plant-products/plant-products/sugar_en). Under the “everything but arms” initiative, the European Union provides duty-free access to all imports from least developed countries, with the exception of arms.

<sup>72</sup> CRS In Focus IF11704, *U.S. Trade Concerns Regarding the EU’s Farm to Fork Strategy*, by Renée Johnson.

<sup>73</sup> Gary Clyde Hufbauer, “Divergent Climate Change Policies Among Countries Could Spark a Trade War. The WTO Should Step In,” Peterson Institute for International Economics, August 30, 2021.

<sup>74</sup> *Ibid.*

<sup>75</sup> For examples, *Ibid.* and Alan Wm. Wolff, “Current Challenges and Opportunities for Agricultural Negotiations at the World Trade Organization (WTO),” Remarks at U.S. Grains Council - 61<sup>st</sup> Annual Board of Delegates Meeting, Des Moines, Iowa, July 28, 2021, at <https://www.pii.com/system/files/documents/wolff2021-07-28.pdf>.

pending resolutions (H.Res. 382 and S.Res. 101) and consistent with the Biden Administration trade policy,<sup>76</sup> Members of Congress may also consider how the United States could provide leadership and constructively engage with China and the EU to resolve existing irritants—while taking into consideration India’s interests—and help move multilateral agricultural negotiations, particularly those concerning reductions of agricultural subsidies. As transparency in implementation of AoA commitments is a priority for additional reforms, that area could be of particular interest to Congress.

More broadly, the Biden Administration trade policy<sup>77</sup> and the WTO reform agenda intersect with policy initiatives on climate, sustainability, inclusivity, and digital trade. Congress may consider how the AoA negotiations could advance U.S. goals in these areas.

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<sup>76</sup> Office of the United States Trade Representative (USTR), “President’s Trade Agenda and 2020 Annual Report,” March 1, 2021.

<sup>77</sup> *Ibid.*