



PhD thesis

The humble rice bowl: a critical analysis of the constitutional and legal effects of the global trading frameworks for rice on the Tolima province of Colombia
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The Humble Rice Bowl: A Critical Analysis of the Constitutional and Legal Effects of the Global Trading Frameworks for Rice on the Tolima Province of Colombia

A thesis submitted to Middlesex University in partial fulfilment of the
requirements for the degree of Doctor of Philosophy in International Economic
Law

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PROLOGUE

What the reader has at hand is the result of a journey of almost five years dedicated to trying to understand some of the particularities surrounding the noblest of cereals, rice. However, this is only a layover if you will. It is a layover because this is a story that is still in the making, as it has been for the last thirteen thousand years.

For obvious reasons, there were many challenges to confront. Academically speaking, just the large number of areas of knowledge that are intertwined with rice would have forced a less stubborn person to capitulate. And although this dissertation has been written to opt for the title of Doctor of Philosophy in International Economic Law, the truth is that in order to understand the predominance of rice in the lives of more than half of the inhabitants of earth, it was necessary to study subjects apparently so dissimilar and distant from law, such as paleobotany, archeology, and biology, not to mention sociology, anthropology, politics and even the economics of the illegal drug trade. Perhaps that is one of the most beautiful things about this research, being able to find that rice can connect the bulk of humanity, regardless of geographical constraints, the limits of modern statehood, or even cultural affinity.

The thesis traverses a considerable timespan that includes a study on domestication and human reliance on rice, as well as early commercial routes of the cereal that allowed it to become arguably the most important source of food for humanity. But even so, through that journey I found that rice's history is full of inconsistencies. While on the one hand it represents a way of life for billions of people, it has traditionally been no more than an afterthought of the international community, including the legal frameworks that permit it to be traded internationally despite its strategic importance. This meant being basically overlooked throughout the establishment and consolidation of the General Agreement on Tariffs and Trade (GATT) and even the World Trade

Organization (WTO), which in conjunction with international public law treaties of bilateral, plurilateral and regional nature, have come during the last seventy years, to form the “spaghetti bowl” of applicable trade law, for better or for worst.

Please come with me and be dazzled by the many complexities, paradoxes and vicissitudes of a cereal that whether you acknowledge it or not has played a fundamental role in the history of humanity.

ACKNOWLEDGEMENTS

Just like many sustained endeavors in life, a doctorate is filled by sets of small battles. In my case, a considerable part of them were fought with myself, “my own worst enemy.” Some were noticeably “won”, some noticeably “lost”, although each one of them was enlightening even if at first, I could not recognize it. And although prospects seemed clearer at the beginning of this journey, they turned very murky at times, so much that I had to layover in order to regain my will, my voice and even my mind. But even so, during the darkest of times there was someone willing to lend me a hand. From the members of my numerous supervisory team over the years, to colleagues, bosses, friends, family and therapists, the list will be long, maybe too long.... To all of you, a heartfelt thank you, you know who you are.

To Marleny and Orlando, who planted the first seeds of curiosity and critical thinking and water them with love, understanding and patience; to Natali, beautiful reminder of a life, long gone but essential part of one that we are building together; to Nohemy, a stark supporter no matter what; to Ines, teacher of tough but necessary lessons. And finally, to Constanza and Tomás, who were willing to complete their first PhD out of pure love, teachers of the most important lessons in life, providers of perspective, and main reasons to strive forward with a smile.

ABSTRACT

Rice is the third most farmed crop in the world after maize and wheat. It is consumed everyday by more than half of the global population, having been a staple of human diets for at least eleven millennia. And while academic literature in the biology and agronomy of rice is more than abundant, regrettably the same does not apply to its trade, or to the effects of international and local legal frameworks within the so called “*spaghetti bowl*” of global trade including the World Trade Organization and Free Trade Agreements on non-Asiatic rice producing nations.

In view of these facts, this thesis asks: What is the nature of the legal framework that allows rice to be traded internationally? What are the legal effects of apparently imbalanced trade agreements between developed and developing nations for a staple like rice? What is the role of Colombian constitutional law in the rice trade amid the somehow recent integration of the country in the legal global economy? And how do the integration of those agreements to Colombian law, via constitutional assessment fit in the entrenched neoliberal philosophies that have come to dominate legal systems and consider them as the main tools for development?

What this thesis finds is that rice is predominantly an inelastic product, with demand remaining constant around the globe from a variety of consumers which include buyers with medium to high purchasing power, but for the most part from the world’s poorest inhabitants. Rice’s supply is also a complicated story. Since for the most part it is consumed within kilometres of where it is farmed, upsetting the availability of the grain for international trading and turning it despite its preponderance in food production and in human diets, into a rather disappointing commodity.

As a result of this, the cereal's political nature is constantly emphasised and explain why it has been practically impossible to discipline its trade from a multilateral perspective, and instead most exchanges of the cereal have taking place for more than a century within the legal frameworks provided by barter, free trade agreements and government to government contracts conducted by state-owned foodstuff enterprises, that are riddled with regulations at the national level in the absence of representative private actors. Furthermore, because of rice's political sensitivity, cultural affinity and place in people's diets, nations historically have shown a marked inclination to overregulate the crop, therefore seriously amplifying ripple effects on markets during times of crisis, as mirrored in the last two global food crises.

Likewise, because rice is an agricultural product, it is plagued by the many imbalances that affect agricultural markets, particularly protectionism. And although for years mounting evidence proved that for the most part protectionist practices were deployed by industrialised nations, with notable examples being the United States, the European Union, and Japan, nowadays it is possible to clearly recognise that as countries develop, they are prone to do the same, therefore distorting global agricultural markets all around.

Similarly, this research corroborates that while the common international economic and trading narrative surrounding agreements of economic and trading nature, indeed portrays them as the main avenues for development, their outcomes are more nuanced and complex than they appear, as they intertwine domestic and international interests. This turns out to be self-evident in the Colombian case-study, of the United States-Colombia Trade Promotion Agreement (USCTPA), as it embraces a wide range of aspects that include dramatically different levels of development,

international division and specialisation of labour; legal traditions and therefore procedures for incorporating international agreements to national legislations; the multifaceted dynamics of illegal drugs trafficking, and in the case of Colombia, the constitutional evaluation carried out by the country's Constitutional Court. Certainly, the Colombian case study shows that at least for rice, the *spaghetti bowl* has become nothing less than *untangled* thanks to the provisions of the USCTPA, even if the correlation between Free Trade Agreements and development in Colombia remains to be proven and that somehow, in the case of the USCTPA continue to be bittersweet for many sectors involved, including rice, despite its emergence as a sensitive and therefore protected product, protection that slowly but surely is running out.

Finally, this research finds that the decision of incorporating the USCTPA to Colombian law via constitutional assessment of the country's Constitutional Court, mostly rested upon the political perspective, rather than a legal one. This is clearly discernible from the arguments replicated by the ruling majority of the bench, which in several instances seemed to bypass the need to consider and apply in a conscientious matter, instruments provided by the national legal system, such as the abstract and concrete control of constitutionality, and the relinquishment of Colombian jurisdiction on many aspects of the USCTPA, in the name of neoliberal arguments, with a deficient legal and economic analysis of the outcomes.

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LIST OF ABBREVIATIONS

AAA	Agricultural Adjustment Act
AIG	Agro Ingreso Seguro/Agrarian Secure Income
AMS	Aggregate Measure of Support
AMTEC	Massive Adoption of Technology Initiative
ASEAN	Association of South East Asian Nations
AoA	Agreement on Agriculture
APTDEA	Andean Trade Promotion and Drug Eradication Act
BIT	Bilateral Investment Treaty
CAF	Development Bank of Latin America and the Caribbean
CAP	Common Agricultural Policy
COL-RICE	Colombian Rice Export Quota Managing System
CRS	Congressional Research Service
DANE	Colombian Department of National Statistics
DDA	Doha Development Agenda
EC	European Communities
ECLAC	United Nations Economic Commission for Latin America and the Caribbean
EEP	Export Enhancement Programme
ELN	National Liberation Army
ETC	Export Trading Company
EU	European Union
FAO	Food and Agriculture Organisation
FARC	Revolutionary Armed Forces of Colombia
FEDESARROLLO	Fundación para la Educación Superior y el Desarrollo
FEDEARROZ	National Federation of Rice Farmers
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GSP	Generalised System of Preferences
IBRD	International Bank for Reconstruction and Development
ICA	Colombian Agricultural Institute

ICTA	International Centre for Tropical Agriculture
IDEMA	Instituto de Mercadeo Agropecuario/ National Institute of Foods Stock
IMF	International Monetary Fund
IRRI	International Rice Research Institute
ISDS	Investor-State Dispute Settlements
ITC	International Trade Commission
ITO	International Trade Organisation
MAI	Multilateral Agreement on Investment
MTS	Multilateral Trading System
NAFTA	North American Free Trade Agreement
NGO	Non-governmental Organisation
OAS	Organization of American States
OECD	Organisation for Economic Cooperation and Development
PPA	Protocol of Provisional Application
RECALCA	Colombian Action Network Against Free Trade
SCM	Subsidies and Countervailing Measures
SDT	Special and Differential Treatment
SFP	Single Farm Payment
SSG	Special Agricultural Safeguards
SSM	Special Safeguard Mechanism
TRIPS	Trade Related Aspects of Intellectual Property Agreement
TRQ	Tariff Rate Quota
URAA	Uruguay Round Agreement on Agriculture
USCTPA	United States Colombia Trade Promotion Agreement
WTO	World Trade Organisation

CHAPTER I: INTRODUCTION

1.1 The Noblest of All Grains: From China to South America and a World In Between

The practice of agriculture has traditionally been regarded as the pivotal turning point for the advancement towards complex social dynamics, which have contributed significantly to the emergence of what is commonly understood as civilization. Agriculture had important implications for the emergence of an assortment of fields of knowledge among which are anthropology, sociology, economics, politics and law, rendering it a fertile but ambitious area of study. Nevertheless, this research aims to study one small, yet very important part of that agricultural universe, the descendent (s) of *Oryza Rufipogon*, two words that at first sight do not mean anything to most people, until their contemporary common name is mentioned - rice. Originally a tough and enduring Asian wild grass, that grew around swampy areas, humans have sustained a longstanding close quartered relationship with this cereal. Archaeological evidence has proven human interaction with it, as far back as 11.500 years¹ and even to 13.500² years during the late Pleistocene.

Therefore, declaring that rice is important for humans would be an understatement. This is partly because our relationship with rice has been evolving and consolidating for millennia, and partly because it spans an array of issues that range from the social, to the cultural and the scientific as well as the economic and the legal. These dimensions are captured in the different representations of rice as a crop, a food-source, a commodity, and even a way of life. The versatility of rice exceeds

¹ Dennis Normile, "Archaeology: Yangtze Seen as Earliest Rice Site", *Science* 275:5298 (1997), doi:10.1126/science.275.5298.309.

² Leping Jiang & Li Liu, "New evidence for the origins of sedentism and rice domestication in the Lower Yangzi River, China", *Antiquity* 80:308 (2006), doi:10.1017/S0003598X00093674.

imagination. It is adaptable to diverse climates, soil conditions, altitudes, farming techniques and irrigation systems, explaining why it is currently

Grown in more than a hundred countries, with a total harvested area of approximately 158 million hectares, producing more than 700 million tons annually (...) Nearly 640 million tons of rice are grown in Asia, representing 90% of global production. Sub-Saharan Africa produces about 19 million tons and Latin America some 25 million tons. In Asia and Sub-Saharan Africa, almost all rice is grown on small farms of 0.5-3 ha.³

This makes rice the third most farmed crop after maize and wheat, but unlike them, the bulk of rice production is destined to be utilized by humans as a source of food, with a relatively small percentage of its output used for animal feed⁴, and a marginal percentage for biofuel with non-commercial applications.⁵ This equates to a total human consumption of 78% of its global production, with an impressive 3.5 billion people eating rice⁶, which accounts for approximately 21% of the global human per-capita energy.⁷ Hence rice is the primary source of calories for more than 50% of the current global population,⁸ a population that continues to grow at a high rate, and therefore will continue to rely on rice, as its primary mean of subsistence.

These numbers, remarkable as they are, take on greater salience when contextualized within the realities of those who are the primary consumers of rice. Aside from being the staple food of the

³ Admin, *Rice as a Crop. Rice Productivity*, 2023, <https://n9.cl/wmv1v>.

⁴ Jay Maclean, Bill Hardy & G Hettel, *Rice Almanac: Source book for one of the most important economic activities on earth*, 4 ed. (Los Baños, Philippines: IRRI, 2013).

⁵ "Research and Markets Adds Report: Analyzing Biofuels from Rice", *Health & Beauty Close-Up* n° (2009).

⁶ Maclean, Hardy & Hettel 2013.

⁷ L Nalley, J Tack, A Durand, G Thoma, F Tsiboe, A Shew & A Barkley, "The Production, Consumption, and Environmental Impacts of Rice Hybridization in the United States", *Agronomy Journal* 109:1 (2017), doi:10.2134/agronj2016.05.0281.

⁸ Nalley, Tack, Durand, Thoma, Tsiboe, Shew & Barkley 2017.

world's most populated regions, it is primarily consumed by its poorest inhabitants. Simply put, rice is a poor people's food. In fact, "In major rice-eating areas of the world, an individual consumes up to 100 kilos or more of rice annually. The world today still has huge concentrations of poverty and most of these pockets are where rice is grown, largely in Asia."⁹ Additional data asserts that about 900 million of the world's poor depend on rice as producers and consumers. Of these 900 million, an approximate 400 million poor are undernourished and rely directly on rice for their subsistence whether by producing it and/or consuming it.¹⁰

And yet, this research touches on one undeniable truth, rice has been no more than an afterthought of international legal frameworks during the last century. In fact, this dissertation highlights after a systematic review of available documents of negotiations throughout forty-seven years of the General Agreement on Tariffs and Trade (GATT), that the cereal only merited discussions in a handful of meetings, without any significant results, despite its strategic importance. Even more surprising is the fact that after almost thirty years of establishment of the Multilateral Trade System (MTS) rice has starred in even fewer cases within the Dispute Settlement Mechanism (DSM), or the cases that actually merited a ruling are scarcer still, therefore underscoring once more the many paradoxes surrounding this grain.

⁹ International Rice Research Institute IRRI, *IRRI and AfricaRice team awarded prestigious Milken-Motsepe Prize for rice varieties that can survive floods*, 2018, <https://n9.cl/42osa>.

¹⁰ CGIAR & Research Program in Rice, *CGIAR*, 2017, <https://n9.cl/fkv977>.

1.2 The Gap in the Literature

In general, research on rice has been conducted from the standpoint of the natural sciences, as well as on the economics and econometrics of agriculture. However, little attention has been directed towards analysing the legal history and consequences of the international legal framework for the rice trade within the scheme of the Multilateral Trading System. This system formally emerged with the advent of the World Trade Organization in 1995, but its genesis can be traced to the mid-20th century with the establishment of the General Agreement on Tariffs and Trade (GATT). The gap in the literature is more profound when it comes to researching the effects of said international framework on the Colombian rice markets. Little, if any literature exists assessing whether being a party state at different levels of what has been dubbed as the “spaghetti bowl”¹¹ of law and regulations in world trade, has had either positive or negative effects for the Colombian rice economy as well as its legal system.

By filling this gap, this research seeks to provide a valid scientific basis for making informed public policies and for assisting private organisations to understand the potential impact of decisions taken in relation to free trade agreements, regional integration schemes, and of course the WTO framework. The objective of the research is to enable informed decisions and actions in the trade arena that maximize positive outcomes for rice producers, consumers and the economy while seeking to identify any potential negative effects on rice producers in the Ibagué Plateau of the Tolima province of Colombia, one of the country’s main rice producing regions. In view of

¹¹ Kloewer, Brad. "The spaghetti bowl of preferential trade agreements and the declining relevance of the WTO." *Denv. J. Int'l L. & Pol'y* 44 (2015): 429.

these facts, this research also aims to contribute to current literature, by striving for new interpretations of entrenched neoliberal narratives, that defend international agreements of trading and economic nature as the main avenue for development, especially when they are subscribed between developed and developing nations, despite their inherent asymmetrical characteristics.

Indeed, it is paramount to probe at the importance of the relationship between humans and rice, our historical dependence on that grain for survival, as well as understanding the origins of such relationship, and the role that they continue to play today, just like several millennia ago. The research focus will be centred on comprehending the effects of global trading practices, and the role of public policy, domestic laws, in addition to bilateral agreements dealing with rice. To this end, the thesis utilizes the case study of the grain produced in Colombia, with an emphasis in the Ibagué plateau, to assess those impacts. The Ibagué plateau is important as it is the Colombian region which is one of the main rice producers of the country.¹²

As mentioned, the general literature on rice trade is scant, and by some metrics outdated, therefore it fails at reflecting many of the complex dynamics of non-Asiatic rice producing and consuming countries. Certainly, in the Colombian case-study the literature is overwhelmingly convoluted, since it touches on factors such as large-scale land accumulation, inequality, political and civil unrest, in addition to the intertwined dynamics of illegal drug trafficking, geopolitics and bilateral trade agreements. To say nothing of the role played by Colombian constitutional law on economic matters, which is mostly palpable after the promulgation of the 1991 Constitution, the main body of law that allowed Colombia to insert itself in the legal global economy, after years of having a

¹² Banco de la República Departamento Nacional de Estadística, *Informe de Coyuntura Económica Regional: Departamento del Tolima* (2014), <https://n9.cl/kxump>.

GDP mostly composed by the exports of illegal drugs. However, even if this has been gradually accomplished by the large number of negotiated and enforced trade agreements, some of which due to the different development levels of the parties can be disproportionally asymmetrical.

Indeed, the thorough study of the general complexities of rice trade applied to the hurdles of the Colombian case-study is what makes this thesis a novel and relevant piece of work. Although it somehow corroborates some greater preconceptions regarding the grain, it manages to separate far enough from them, as to highlight the necessity of reinterpret the common idea of “the global” when it comes to rice’s complexities, and the countless albeit sometimes subtle set of networks connecting the local and the international.

1.3 Research Contribution

This piece of research contributes to knowledge by demonstrating that despite rice being one of the most farmed cereals of the world, and its supremacy in the diets of half the global population, it occupies a meagre position among the commodities of the world, with only a fraction of its yearly output available for international trading. This thesis also contributes to knowledge by elucidating how the aforementioned lack of trade, tends to be compounded by a barrage of political sensitivities that repercuss on national legislations and regulations that can further aggravate the availability of the grain during times of crises, which also compels governments regardless of their level of development to protect their rice sectors, after all, rice is an agricultural product, and as such it is riddled by trade distortions. Likewise, this thesis contributes to knowledge by founding after a systematic analysis of GATT and WTO law, that rice was virtually ignored by all attempts at a multilateral discipline, and instead it has been relegated to the realm of an informal trading

system that relies heavily on barter, bilateral agreements and government to government contracts for almost a century and a half, of which the case study of the USCTPA and its incorporation to Colombian law via constitutional assessment, serves as a perfect example.

1.4 Scope & Rationale

While it is easy to think about rice exclusively in terms of its role as the traditional food of Asia, in fact its production and consumption have grown exponentially in countries outside the Asian continent since the second half of the 20th century, amounting to approximately 44 million tons a year, mostly in Latin-America and Sub-Saharan Africa.¹³ This growth is indicative of how rice has gradually but steadily gained its place among the staples of the world and highlights the importance of the proposed research, as even a “small” fluctuation in international rice production and trade flows can have a direct impact on more than half of the world’s population.

A bad year for the crop, a change in trade flows, or alternations to local and international laws and domestic regulations can have major effects on the millions of people that depend on the cereal for their subsistence. This was evident during the rice crisis of 2008 when the cereal’s price tripled in the span of just a few months¹⁴ when “exporters restricted supplies to the market in order to protect their own consumers from shortages and importers scrambled for supplies to stabilise their own markets.”¹⁵

According to the World Bank, the crisis “pushed an additional 105 million more people into poverty.”¹⁶ This translated into “rice prices tripling when a relatively small disruption of 8%

¹³ Global Rice Science Partnership, *Ricepedia.org*, 2014, <https://n9.cl/wmv1v>.

¹⁴ Dawe, D. "The rice crisis." *Markets, Policies and Food Security*. FAO. Rome (2010) 3

¹⁵ Timmer, C. Peter, and David Dawe. "Food Crises Past, Present (and Future?): will we ever learn?." *The Rice Crisis*. Routledge, 2012. 3-11.

¹⁶ The World Bank, *Global Food Crisis Response Program*, 2013, <https://n9.cl/naz15>.

decrease in the global trade, thanks to trading restrictions in India and Egypt took place”¹⁷ on top of large rice purchases by the Philippines from 2007 to 2009.¹⁸ Hoarding at government and household level combined with a media frenzy¹⁹ also had a part to play in putting millions of people at risk of famine, all under the watch of established local and international legal systems for trade, that have been consolidating for the last one hundred years.

Paradoxically, while rice is the third most farmed crop in the world in addition to possibly being the most consumed cereal by humans, it is not considered to be a major global commodity. To the contrary “it turns out to be a rather disappointing one.”²⁰ It has been noted that “at the peak of its globalization only 5-7 percent of the total world rice production was traded internationally.”²¹ This means that the bulk of the grain produced remains in Asia where it is farmed and consumed, with only a handful of countries supplying the international trading arena as exporters. Among these, Thailand, Vietnam, the United States and India have traditionally led the way, supplying a large and diverse assembly of net importers including the Philippines, Nigeria, Iran, Indonesia, and the European Union.²²

Global legal trading frameworks for agricultural in general, and for rice in particular have fostered those markets to become the living example of volatility, fragility, and disparities, in part due to exports being dangerously concentrated²³ among a few countries, the small quantities of rice

¹⁷ Nathan Childs, *Rice situation and outlook yearbook* (United States Department of Agriculture, 2009).

¹⁸ Maclean, Hardy & Hettel 2013.

¹⁹ Timmer, C. Peter. "Did speculation affect world rice prices?." *The Rice Crisis*. Routledge, 2012. 22-23.

²⁰ Francesca Bray, Peter A Coclanis, Edda L Fields-Black & Dagmar Schäfer, *Rice : Global Networks and New Histories* (New York: Cambridge University Press, 2015).

²¹ Bray, Coclanis, Fields-Black & Schäfer 2015.

²² Maclean, Hardy & Hettel 2013.

²³ Durand-Morat, A., and S. Bairagi. "International rice outlook: international rice baseline projections 2020-2030." (2021).

available for international trading, and the national overregulation of this grain. In other words, global rice markets are thin²⁴, segmented and imperfect, which makes them susceptible to the slightest of shocks as it became evident in 2008.

This means that the smallest of changes can upset supply but can also be compounded by the very nature of humankind's relationship with rice, as both a staple and a way of life. In later years, the global situation regarding rice availability and trading have been surrounded by a halo of tense calm, with the Food and Agricultural Organisation's (FAO) revisions for the international volume of the grain indicating a growth of 2.9 million tons from the 2017 harvests benchmark.²⁵ Nevertheless, those forecasts were not necessarily linked to a significant increase in overall global rice production, as at the time it was expected to modestly exceed 2016's all-time highs by a 0.6 percent only.²⁶ By 2019, market predictions foresaw production cuts by exporters like China (mainland), Bangladesh, Sri Lanka, Egypt and the United States, being offset by expected growth in production from other players like India, Nepal and the Philippines in Asia, and Cuba, Chile and Peru in Latin America.²⁷

However, the memory of the 2008 world food crisis as well as its deep repercussions linger still, especially after the devastating effects of the SARS-COV pandemic which threatened during 2020 alone, to cause widespread "famines of biblical proportions."²⁸ When paired with protracted bans²⁹ to the exports of rice from India, one of the main market suppliers, and the ever-present concern

²⁴ Dawe, D. "The rice crisis." *Markets, Policies and Food Security*. FAO. Rome (2010) 40-42

²⁵ FAO, *Rice Market Monitor*, 2018, <https://n9.cl/l114cb>.

²⁶ FAO 2018. 3-4

²⁷ FAO 2018. 5-6.

²⁸ United Nations, *As famines of 'biblical proportion' loom, Security Council urged to 'act fast'*, 2020a, <https://n9.cl/y7rxl>.

²⁹ Baum, S. and Klimek, P., 2023. India's Rice Embargo as a Threat to Global Food Security.

about the exponential growth in human population, projected to reach from 9.15 to 10.5 billion by 2050³⁰, the salience of this research is unquestionable.

Furthermore, since the establishment of The General Agreement on Tariffs and Trade (GATT), agriculture has been at the centre of negotiations due to its economic and strategic importance. Discussions on the subject have been taking place since the second half of the 20th century at the various negotiating rounds of the multilateral trading system,. And while there is no denying GATT and WTO's achievements in relation to trade and even international diplomacy and political stability,³¹ their shortcomings are more than evident when dealing with agriculture, to say nothing of rice.

Agriculture continues to constitute the most distorted economic sector of all, in which “many of the world's richest countries provide high tariff protection and generous subsidies to their farmers, denying market opportunities to agricultural exporters (mostly developing countries) and delivering them with depressing global prices.”³² These irregularities in agricultural trade are compounded in the context of rice due to its unique features, such as its inelastic supply and demand³³ and the fact that it forms the basis for the livelihood and subsistence of billions of people, which make laws and policies aimed at regulating trade in rice more challenging than for any other crop and equally zealous.

³⁰ Nikos Alexandratos, Jelle Bruinsma, G Bödeker, J Schmidhuber, S Broca, P Shetty & M G Ottaviani, "World agriculture towards 2030/2050: ESA working paper no. 12-03", *UN Food and Agriculture Organization: Rome* n° (2012).

³¹ Ngozi Okonjo-Iweala, "The WTO'S Contribution to the Challenges of Global Commons", *Journal of International Economic Law* 26:1 (2023), doi:10.1093/jiel/jgad005.

³² James Scott, "The future of agricultural trade governance in the World Trade Organization", *International Affairs* 93:5 (2017), doi:10.1093/ia/iix157.

³³ Nalley, Tack, Durand, Thoma, Tsiboe, Shew & Barkley 2017.

However, while the WTO claims that export subsidies (an important part of the problem) have been declining steadily since 2013³⁴, it would be prudent to remember that those incentives are but a fragment of the broader issue. The versatile legal nature of subsidies is well known, as they can be easily disguised through various means. Accordingly, it does not come as a surprise that the core question around agricultural trade remains to be properly tackled within the WTO, or that meaningful amendments to the agreement on agriculture for all of WTO members, that ensures fairness for developing countries, has not yet been reached. Subsidies continue to have an important role in agricultural production and international trade. They are no longer the sole concern of industrialised countries but when it comes to rice have been rapidly proliferating in their developing counterparts including China,³⁵ India, Vietnam and the Philippines³⁶ in later years as they develop.³⁷

In fact, studies³⁸ have demonstrated a preoccupying correlation between greenhouse emissions and booming agricultural subsidies in countries like China, India, Mexico, and Indonesia, with rice production being at the very centre,³⁹ which in developing Asia has been historically riddled by coordination problems regarding local trade policies. These occur at the intersection of steep price fluctuations caused by liberalised trade, that forces deprived farmers and consumers to deal with the shocks, sometimes with long-lasting effects to human capital in developing countries.⁴⁰

³⁴ Mermigkas, Georgios & Krivosos, Ekaterina, *FAO: Trade Policy Briefs, WTO Negotiations* (2017), <https://n9.cl/fc15b0>.

³⁵ Fang, Cheng. "How China stabilized grain prices during the global crisis." *The Rice Crisis*. Routledge, 2012. 256.

³⁶ Balisacan, Arsenio M., Mercedita A. Sombilla, and Rowell C. Dikitanan. "Rice crisis in the Philippines: why did it occur and what are its policy implications?." *The Rice Crisis*. Routledge, 133

³⁷ Andrew Schmitz, Troy G. Schmitz, and Frederick Rossi. "Agricultural subsidies in developed countries: Impact on global welfare." *Review of Agricultural Economics* 28, no. 3 (2006): 416-425.

³⁸ Laborde, D., Mamun, A., Martin, W., Piñeiro, V. and Vos, R., 2021. Agricultural subsidies and global greenhouse gas emissions. *Nature communications*, 12(1), p.2601.

³⁹ Andrew Schmitz, Troy G. Schmitz, and Frederick Rossi. "Agricultural subsidies in developed countries: Impact on global welfare." *Review of Agricultural Economics* 28, no. 3 (2006): 416-425.

⁴⁰

Dawe, David. "Can the next rice crisis be prevented?." *The Rice Crisis*. Routledge, 2012. 353.

On the other hand, protectionism is the very enemy against whom the multilateral trading system allegedly fights. It is regarded as being harmful to both multilateralism and of course to trade liberalisation. Even if it has been considered in recent years as the entrenchment of the neoliberal ideas behind all mighty free market economics influencing legal and political systems around the globe.⁴¹ But even so, it is exceedingly concerning that discussions regarding trade in agriculture were demoted to places unworthy of deliberations, as reflected since the WTO Ministerial Conference held in Buenos Aires in December 2017. And that a global pandemic costing the lives of almost seven million people⁴² was needed to mark the return of deliberations on agricultural trade at the heart of the WTO,⁴³ even if perceived as a public relations move.⁴⁴ Nevertheless, such a trend continues to have negative effects on the weaker members of the WTO, including countries like Colombia.

1.5 Why the Ibagué Plateau of the Tolima Province of Colombia

This thesis focuses on the Ibagué Plateau of the Tolima province of Colombia. According to the Bank of the Republic of Colombia and the National Department of Statistics (DANE), in their Regional Economic Juncture Report, 3% of the country's population is concentrated in the department of Tolima which accounts for 2.1% of the country's total landmass and 2.2% of national GDP. Tolima's economy is based on the agricultural primary sector, although in recent years this segment has lost some of its predominance due to outsourcing, and the growth of tertiary economic

⁴¹ David Schneiderman, "Constitutional Approaches to Privatization: An inquiry into the magnitude of neo-liberal constitutionalism", *Law & Contemp.Probs.* vol. 63 (2000).

⁴² World Health Organization, *WHO Coronavirus (COVID-19) Dashboard*, 2023, <https://n9.cl/hga2n>.

⁴³ World Trade Organization, *Agriculture negotiations*, 2022a, <https://n9.cl/rdr2l>.

⁴⁴ Margulis, Matias E. "Intervention by international organizations in regime complexes." *The Review of International Organizations* 16, no. 4 (2021): 871-902.

activities in the form of services. Meanwhile a secondary sector has emerged in the form of agro-industrial development that consists of processing and transforming raw agricultural materials, albeit with a comparatively small aggregated value.⁴⁵ The topography of Tolima province can be roughly divided in 2 zones: the flatlands next to the Magdalena river, where there is a predominance of agricultural activities specializing in transitory crops like rice, maize and sorghum, and a second zone on the right hand of the central ridge where coffee plantations are the norm.⁴⁶

It is no secret that to grow rice, significant amounts of water are needed.⁴⁷ When coupled with a developed irrigation infrastructure, considerable yields can be achieved. By having both a good water supply and irrigation infrastructure, the Tolima province has consolidated its position as one of the main rice producers of the country.

This activity takes place in three areas of the department, found in the north and south-central zones, the latest contains four irrigation districts: Asoprado (municipality of Prado), Usosaldaña (municipalities of Saldaña and Purificación), Usoguamo (municipality of Guamo), and Usocoello (municipalities of Espinal and Coello) (...).⁴⁸

The economy of the Tolima province relies directly on agriculture and is highly dependent on rice production. This dependency makes it an ideal case study to assess the implications of the international trade regime on rice trade flows, production, and consumption in a non-Asiatic

⁴⁵ Banco de la República Departamento Nacional de Estadística 2014.

⁴⁶ Ibid 73

⁴⁷ Calpe, Concepción. "Rice international commodity profile." *Rome: Food and Agricultural Organization of the United Nations* (2006) 6-7

⁴⁸ Ibid 79

developing country. To this end, it was necessary to conduct an analysis on the constitutional and legal dispositions that have allowed Colombia to gain access to the legal global economy, from the standpoint of the 1991 Constitution.

Such analysis found that the legal rice economy has been forced to coexist with the illegal drug economy.⁴⁹ The illegal drug economy has been deeply involved in the protracted levels of violence that Colombia has experienced during the last forty years of its republican history. These dynamics have intertwined with the entire constitutional and overall developing of the Colombian legal system, since the promulgation of the current political carta in 1991. Colombia's foremost important body of law, which has been criticized extensively for the concomitance of neoliberal and social values.

Many of these philosophical conflicts have been found in the signing and enforcing of international economic treaties at the multilateral and bilateral levels, a defensible albeit questionable source of economic growth that arguably has not translated into development but in just another echo of the dominating narratives of trade liberalisation,⁵⁰ the protection of foreign investment in frank disregard for the underrepresented, not to mention the reduction and in some cases the altogether relinquishment of jurisdiction by Colombian courts of law. All under the necessity of preserving the geopolitical interests of the main economy of the world, and biggest influence in the region, the United States of America.

⁴⁹ Bruce M Bagley, "Colombia and the War on Drugs", *Foreign Affairs* 67:1 (1988a), doi:10.2307/20043675.

⁵⁰ Schneiderman 2000.

1.6 Research Overview

As mentioned above, among the research objectives are to find out how long we as a species have been acquainted to rice, how it became so important, and how nowadays we continue to relate to it at both international and local levels, using the case of the Ibagué Plateau in the Tolima region of Colombia as an emblematic example. When considering these questions, it must be borne in mind that the current rice trade may only be a small expression of the relationship that humans have historically had with the crop over millennia. Even if today, they rest on the legal frameworks constructed over the last century, especially those established by the advent of GATT in the late forties, which marked the beginning of what is now regarded as global trade. Therefore, it is only logical to also conduct a historical and legal analysis of the international and local legal frameworks composing rice trade, starting with the early attempts at international commodification of rice at the beginnings of the 20th century, with a special emphasis on the discussions leading to the creation of GATT.

This research necessitated the systematic examination of the outcomes of the different negotiating rounds of the Multilateral Trading System. These commenced with the Geneva round in 1947 and continued to the Uruguay round and to a greater extent to what has happened during the Doha round, although for very good reasons some have affirmed that it has been “dead and buried” since Nairobi 2015.⁵¹ At the same time, attention will be paid to the WTO cases with respect to rice within the setting of the Dispute Settlement System, among which it is possible to count

⁵¹ Antoine Martin & Bryan Mercurio, "Doha dead and buried in Nairobi: lessons for the WTO", *Journal of International Trade Law and Policy* 16:1 (2017), doi:10.1108/JITLP-01-2017-0001.

controversies such as DS17⁵², DS25⁵³, DS134⁵⁴, DS183⁵⁵, DS197⁵⁶, DS198⁵⁷, & DS366⁵⁸ and most importantly DS295⁵⁹ & DS334⁶⁰ which are the only cases within the multilateral trade system ever to reach a verdict regarding arguably the most significant cereal of all.

Most importantly, this research assesses an equally meaningful component of the ‘spaghetti bowl’ of applicable law within world trade context, the United States Colombia Trade Promotion Agreement (USCTPA), “the most important negotiation ever conducted by Colombia.”⁶¹ Its motivations, outcomes and consequences for Colombian agriculture and particularly for rice, probing how in the greater scheme, decisions to negotiate and subscribe to bilateral agreements of a trade, and therefore economic nature can affect the rice market and performance in a non-Asiatic rice depending economy, and especially how they are allowed and encouraged for the most part by the very principles of a Constitution that embraces traditional neoliberal narratives, counterbalanced by social philosophies, albeit clearly incapable of escaping the political sway set by the superior geopolitical interests of powerful nations.

⁵² World Trade Organization, *DS17: European Communities — Duties on Imports of Rice*, 1995b, World Trade Organization, <https://n9.cl/m3pth>.

⁵³ World Trade Organization, *DS25: European Communities - Implementation of the Uruguay round commitments concerning rice. Request for Consultations by Uruguay*, 1996, World Trade Organization, <https://n9.cl/as5by>.

⁵⁴ World Trade Organization, *DS134: European Communities — Restrictions on Certain Import Duties on Rice*, 1998, World Trade Organization, <https://n9.cl/ketug>.

⁵⁵ World Trade Organization, *DS183: Brazil — Measures on Import Licensing and Minimum Import Prices*, 1999, World Trade Organization, <https://n9.cl/i1vk8>.

⁵⁶ World Trade Organization, *DS197: Brazil — Measures on Minimum Import Prices*, 2000, World Trade Organization, <https://n9.cl/toao0>.

⁵⁷ World Trade Organization, *DS198: Romania — Measures on Minimum Import Prices*, 2001, World Trade Organization, <https://n9.cl/7slx0>.

⁵⁸ World Trade Organization, *DS366: Colombia — Indicative Prices and Restrictions on Ports of Entry*, 2010, World Trade Organization, <https://n9.cl/ei89o>.

⁵⁹ World Trade Organization, *DS295: México — Medidas antidumping definitivas sobre la carne de bovino y el arroz*, 2005a, <https://n9.cl/j7950>.

⁶⁰ World Trade Organization, *DS334: Turkey — Measures Affecting the Importation of Rice*, 2005b, <https://n9.cl/q0681>.

⁶¹ Laura Pasculli Henao & Andrés Espinosa Fenwarth, “Visión agrícola del TLC entre Colombia y Estados Unidos: preparación, negociación, implementación y aprovechamiento”, n° (2013a).

In combining these lines of research, the study aims to evaluate, among other matters, if the so called “changes” to the WTO agreement on agriculture are of any significance for a rice dependent geography like the Ibagué Plateau of Colombia. It also intends to objectively measure whether the country has managed to reap the benefits of liberalisation, in the form of the Multilateral Trading System, and free trade agreements, two key ingredients of the trade spaghetti bowl. Or if contrary to what current globalisation narrative stands for, by opening its borders to manufactures, the disproportionate protection to intellectual property rights, and services of significantly higher added value, in a trade-off for commodities and raw materials resulting from its imposed version of division and specialisation of labour, the country is another example of the traditional template enacted by developed nations over their developing counterparts, and which privileges the interests of the former under the umbrella of the principles of globalisation.

For trade in agriculture in general, and for rice in particular, there is another equally important factor this study probes. The undisputable reality of dealing with the most distorted area within the arena of global trade, organised in a pattern that historically formed over the last two centuries, but rapidly accelerated since the Great Depression, and even more so after the Second World War with the emergence of the Bretton Woods System. So much that has historically allowed the most powerful nations of the world to firstly ignore, and eventually tailor agricultural regulations to their own geopolitical interests, paradoxically after parading the 1995 Uruguay Round Agreement on Agriculture (AoA), as one of the greatest successes of the World Trade Organization, even if closing in thirty years of its foundation leaves everything to be desired.

1.7 Methodology, and Research Questions

This work has been divided into six primary chapters. The research methodology for these consists of the examination of primary and secondary legal sources combined with in-depth economic studies tied by an overarching question, notwithstanding each chapter having its own research inquiries. Particularly, this dissertation utilizes the doctrinal method of research when analysing the laws, regulations and the policies regarding rice trade, as well as the legal incorporation of the USCTPA to the Colombian legal system. This includes a study of the structure of the Colombian Constitutional Jurisdiction, the functions of the Constitutional Court as developer of the charter, the guiding economic principles of the nation, the tools of concrete and abstract control of constitutionality and especially an in-depth analysis of the constitutional rulings that cemented the precedent which allowed the positive assessment of the USCTPA and its incorporation to Colombian law.

The research necessitated the systematic analysis of the origins of rice domestication, coupled with archival legal historical research on the evolution of the treatment of rice since the establishment of the GATT and the WTO. Also, it utilises as an emblematic case study, the United States Colombia Trade Promotion Agreement (USCTPA) to highlight the ever-present entanglements of the “spaghetti bowl” of applicable trade regulations amid a globalised world. In doing so, it highlights that by rice being an agricultural product, it stands as another example of “illiberalities” and distortions caused by the myriad of protectionist measures historically deployed by developed nations and their protracted subsidisation campaigns, in blatant disregard of their developing counterparts. In part fostered by the principles of all mighty neoliberal ideologies that defend cutthroat capitalism, the liberalisation of markets and the free movement of capital as the mirage

of development, when in reality, a closer look demonstrate that many international frameworks privilege the geopolitical interests of industrialised nations.

The structure arose from the study of the arguably most significant of relationship between humans and domesticated cereals, rice. A bond that has been evolving for at least the past eleven millennia, finding within the current international legal frameworks for its trading, another degree of connection with the responsible parties for its widespread dispersal around the globe, and its consolidation as the staple of more than half of the human population.

Therefore, this research asks:

1. What is the nature of the legal framework that allows rice to be traded internationally?
2. What are the legal effects of apparently imbalanced trade agreements between developed and developing nations for a staple like rice?
3. What is the role of Colombian constitutional law for rice trade amid the recent integration of the country in the legal global economy?
4. How does the integration of those agreements to Colombian law fit in the entrenched neoliberal philosophies that have come to dominate legal systems that consider them as the main tools for development?

The focus of the research and some of the key sources to be addressed in each of the chapters are briefly outlined below.

1.8 Literature Review and Chapter Outline

Introductory Chapter I provides the general context of the problem, justifications, and research methodology. Chapter II assesses some of the nuances of the early relationship between man and

agriculture, with an emphasis on rice, addressing questions like: how this relationship came into being and evolved over time? how old is that relationship? Where is rice a dietary and cultural staple? In order to address such queries the works of Ola Olsson and Douglas A. Hibbs⁶² Anne Birgitte Gebauer and T. Douglas Price⁶³, Jared Diamond⁶⁴, Yuval N. Harari⁶⁵, Jack Harland⁶⁶, and classic thinkers including V. Gordon Childe⁶⁷ and Nikolai Vavilov⁶⁸, are paramount as they provide the backbone for understanding the passage from hunter-gathering societies, to those based on agriculture, and the consequences of this, in what has been traditionally called the Neolithic or Agricultural Revolution. It seems that rice has been a long-time companion of humankind, and that on account of such a long and close relationship, we have mutually benefited - rice by having been spread all over the world, and humankind, by having an important and dependable mean of subsistence. This highlights the core of the research conducted by authorities like D. Normile⁶⁹, Leping Jiang and Li Liu⁷⁰, Dorian Q. Fuller⁷¹, Amanda J. Garriss⁷², Megan Sweeney and Susan McCouch⁷³ and Michael J. Kovach⁷⁴, when it comes to rice domestication. Reports of FAO, in particular its annual flagship publication, *The State of Food and Agriculture*, have since the mid 1960s also constituted an important source of information on rice, with some volumes extensively addressing issues related to it, such those ones published in 1964 and 1966, with studies on *Protein*

⁶² Ola Olsson & Douglas A Hibbs, "Biogeography and long-run economic development", *European Economic Review* 49:4 (2005), doi:10.1016/j.euroecorev.2003.08.010.

⁶³ Anne Birgitte Gebauer & T Douglas Price, "Foragers to farmers: an introduction", *Transitions to agriculture in prehistory* n° (1992).

⁶⁴ Jared M Diamond, *Guns, germs and steel: a short history of everybody for the last 13,000 years* (Random House, 1998).

⁶⁵ Yuval Noah Harari, *Sapiens: A Brief History of Humankind* (Vintage, 2015).

⁶⁶ Subodh Jain, "Crops and Man. 2nd ed. 1992. By Jack R. Harlan. American Society of Agronomy, 677 S. Segoe Road, Madison, WI 53711. 284 pp. \$34 hardcover", *American Journal of Alternative Agriculture* 8:1 (1993), doi:10.1017/S0889189300004938.

⁶⁷ V Gordon Childe, "The urban revolution", en *The City Reader*, 6 ed. (Routledge, 2015).

⁶⁸ Nikolai Ivanovich Vavilov, *The origin, variation, immunity and breeding of cultivated plants. Soil Science* (LWW, 1951).

⁶⁹ Normile 1997.

⁷⁰ Jiang & Liu 2006.

⁷¹ Dorian Q Fuller, Emma Harvey & Ling Qin, "Presumed domestication? Evidence for wild rice cultivation and domestication in the fifth millennium BC of the Lower Yangtze region", *Antiquity* 81:312 (2007), doi:10.1017/S0003598X0009520X.

⁷² Amanda J Garriss, Thomas H Tai, Jason Coburn, Steve Kresovich & Susan McCouch, "Genetic Structure and Diversity in *Oryza sativa* L", *Genetics* 169:3 (2004), doi:10.1534/genetics.104.035642.

⁷³ Michael J Kovach, Megan T Sweeney & Susan R McCouch, "New insights into the history of rice domestication", *Trends in Genetics* 23:11 (2007), doi:10.1016/j.tig.2007.08.012.

⁷⁴ Kovach, Sweeney & McCouch 2007.

*and Nutrition*⁷⁵, and *Rice in the World Economy*.⁷⁶ By addressing this information as part of its detailed historical analysis the research will elaborate on the historical and contemporary connection between mankind and arguably the most important cereal of all time.

Chapter III will concentrate on status quo of international agricultural trade, asking questions such as: what do trade distortions mean for agriculture and rice production and consumption? In which way do local and international commitments resulting from legally binding international agreements of commercial and economic nature regardless of the way they occupy the spaghetti bowl⁷⁷ impact the local governance of Colombia? These questions will be tackled by conducting a legal-historical examination covering the early structure and outcomes of the existing Multilateral Trading System, commencing with the early efforts to consolidate an International Trade Organization, and its impact on the General Agreement on Tariffs and Trade. The research then assesses the discussions pertaining to agriculture throughout the various negotiating rounds, commencing with Geneva in 1947 all the way to the creation of the WTO in 1995, at the end of the Uruguay round, and what it has been negotiated so far in the Doha round, including its shortcomings.

To this end, the WTO database⁷⁸ is one of the most valuable sources of information. It includes detailed primary sources of materials on an ample range of pertinent subjects, ranging from the early United Nations Charter on the failed International Trade Organization, to the GATT and

⁷⁵ Food and Agriculture Organization of the United Nations, *The State of Food and Agriculture 1964* (FAO, 1964), <https://n9.cl/oj1g4>.

⁷⁶ Food and Agriculture Organization of the United Nations, *The state of food and agriculture, 1966* (FAO, 1966), <https://n9.cl/a54z3>.

⁷⁷ The "spaghetti bowl effect"⁷⁷ in world trade, was a term originally coined by influential economist Jagdish Bhagwati in his paper titled "US trade policy: The infatuation with FTAs." 4-5 (1995). as a way of describing the intricate network of interjecting free trade agreements (FTA) amid the foundation of the World Trade Organization in 1995.

⁷⁸ World Trade Organization, *Overview*, 1995c, <https://n9.cl/9lccr>.

WTO agreements and negotiation rounds transcripts, as well as the contentious issues pertaining to rice that have been settled under the Dispute Settlement System. This data will be contextualized considering the analysis of Peter Van Den Bossche⁷⁹ and John H. Jackson⁸⁰, both of whom are key referents on the subject. Other secondary sources providing a critical analysis of the system's shortcomings pertaining to agriculture and multilateralism, and rice trade include the works of Kim Anderson⁸¹, Nilson de Paula⁸², Antoine Martin⁸³, Matias E. Margulis⁸⁴, and lately Richard Baldwin⁸⁵ and James Scott.⁸⁶

Chapter IV will concentrate in the place that rice trade has occupied historically within the international legal frameworks that allow it to be exchanged. All under the light of a disappointing reality, international rice trade is small, and political sensitivities and overregulation at the local level are highly responsible. Therefore, it should be noted that after more than one hundred and fifty years of attempts at rice's commodification⁸⁷ and its rise to predominance in world's diets, it continues to fail as a largescale international product, so much that there is perhaps a need to review the very way in which the "global" should be understood, at least for this staple.⁸⁸ "All while dodging common and academic scrutiny even to this day."⁸⁹ There are a few culprits to these

⁷⁹ Peter Van Den Bossche, *The law and policy of the World Trade Organization*, 3 ed. (Cambridge University Press, 2013).

⁸⁰ John Howard Jackson, *The jurisprudence of GATT and the WTO*, digitally ed. (Cambridge: Cambridge University Press, 2007).

⁸¹ Kym Anderson & Will Martin, "Agricultural Trade Reform and the Doha Development Agenda", *World Economy* 28:9 (2005), doi:10.1111/j.1467-9701.2005.00735.x.

⁸² Nilson de Paula & Huáscar Pessali, "Agricultural Trade Negotiations and the Challenges of Food Security", *Agrarian South: Journal of Political Economy* 3:3 (2014), doi:10.1177/2277976014560946.

⁸³ Martin & Mercurio 2017.

⁸⁴ Matias E Margulis, "Trading Out of the Global Food Crisis? The World Trade Organization and the Geopolitics of Food Security", *Geopolitics* 19:2 (2014), doi:10.1080/14650045.2014.920233.

⁸⁵ Richard Baldwin, "The World Trade Organization and the Future of Multilateralism", *The Journal of Economic Perspectives* 30:1 (2016), doi:10.1257/jep.30.1.95.

⁸⁶ Scott 2017.

⁸⁷ Cheung, Sui-Wai. "A Desire to Eat Well: Rice and the Market in Eighteenth-Century China." *Rice: Global Networks and New Histories* (2015): 84-98.

⁸⁸ Riello, Georgio *Rice: Global networks and new histories* (2015): xviii.

⁸⁹ Riello, Georgio *Rice: Global networks and new histories* (2015): xiv

entrenched realities. For once, there is never enough rice to go around worldwide,⁹⁰ since as stated before less than ten percent of all the rice produced in the world is traded,⁹¹ in other words rice markets are thin and residual,⁹² which obviously manifests in the rather disappointing number of cases within WTO forum.⁹³

Another major issue is overregulation at the national level due to political sensitivities,⁹⁴ since country policies are complex and differ from one another⁹⁵ there is a clear dislocation on responses during times of crisis, which continues to be more than evident with the current Indian rice trade bans⁹⁶, or the consideration of Colombian laws 81/1988, 29/1990, 70/1993, 39/1994, 605/2000, 731/2000, 811/2003, 1066/2006 to name a few. When coupled with the well-known lack of predictability of rice production due to overreliance in water resources⁹⁷ in later years affected severely by changing weather patterns around the world⁹⁸ and a continuously growing global population,⁹⁹ there are enough reasons for concern.

For years, experts have been keen on expressing the many complications arising from the meagre literature obtainable to conduct research on rice trade, and how the availability of information is

⁹⁰ Sumner, Daniel A., and Hyunok Lee. "Assessing the effects of the WTO agreement on rice markets: What can we learn from the first five years?." *American Journal of Agricultural Economics* 82.3 (2000): 7010-711.

⁹¹ Bray, Coclanis, Fields-Black & Schäfer 2015.

⁹² Latham, Anthony JH. *Rice: The primary commodity*. Routledge, (2013) 27

⁹³ Gantz, David A., and Simon AB Schropp. "Rice Age: Comments on the Panel Report in Turkey–Measures Affecting the Importation of Rice." *World Trade Review* 8.1 (2009): 145-177.

⁹⁴ Sumner, Daniel A., and Hyunok Lee. "Assessing the effects of the WTO agreement on rice markets: What can we learn from the first five years?." *American Journal of Agricultural Economics* 82.3 (2000): 709-717.

⁹⁵ Slayton, Tom. "The 'Diplomatic Crop' or How the US Provided Critical Leadership in Ending the Rice Crisis." *The Rice Crisis*. Routledge, 2012. 313-341.

⁹⁶ <https://www.ifpri.org/blog/indias-export-restrictions-rice-continue-disrupt-global-markets-supplies-and-prices/>

⁹⁷ Bouman, Bas AM, et al. "Rice and water." *Advances in agronomy* 92 (2007): 187-237.

⁹⁸ Wassmann, Reiner, et al. "Climate change affecting rice production: the physiological and agronomic basis for possible adaptation strategies." *Advances in agronomy* 101 (2009): 59-122.

⁹⁹ Gu, Danan, Kirill Andreev, and Matthew E. Dupre. "Major trends in population growth around the world." *China CDC weekly* 3.28 (2021): 604.

restricted¹⁰⁰ to some country-by-country data and reports on production, exports, and very short-term market performance directed to experts.¹⁰¹ So far as to dub rice trade as an “impenetrable subject.”¹⁰² In fact, much of the data available on legal frameworks and trade flows during the 17th, 18th, 19th and even the 20th centuries has been dubbed as either “nebulous, if not labyrinthine.”¹⁰³ Some notable exceptions include the works of Wickizer and Bennet,¹⁰⁴ Barker and Herdt¹⁰⁵, Morgan;¹⁰⁶ as well as Coclanis whom compiled during the early 1990s,¹⁰⁷ available records from some colonized British territories including India and the former Thirteen Colonies.

By way of contrast, the accessible literature on the grain’s biology, agronomy and related fields as well as on the economic, sociological and anthropological impacts of rice’s nuances¹⁰⁸ are more than ample. After all, it is the third most farmed crop, and feeds half of the world’s population;¹⁰⁹ all while being constantly at the centre of controversy for its shortcomings on the trading side, and especially due to its manifest political sensitivity¹¹⁰ all over¹¹¹ the world.¹¹²

¹⁰⁰ Riello, Giorgio *Rice: Global networks and new histories* (2015): xviii.

¹⁰¹ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 2

¹⁰² Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 3

¹⁰³ Coclanis, Peter A. "Distant thunder: The creation of a world market in rice and the transformations it wrought." *The American Historical Review* 98.4 (1993): 1050-1078.

¹⁰⁴ Wickizer, Vernon Dale, and Merrill Kelley Bennett. "The rice economy of Monsoon Asia." *The rice economy of Monsoon Asia*. (1941).

¹⁰⁵ Barker, Randolph, Robert W. Herdt, and Beth Rose. *The rice economy of Asia*. Routledge, 2014.

¹⁰⁶ Morgan, Dan; Pugliese, Paul J. "Merchants of Grain" (1979)

¹⁰⁷ Coclanis, Peter A. "Distant thunder: The creation of a world market in rice and the transformations it wrought." *The American Historical Review* 98.4 (1993): 1050-1078.

¹⁰⁸ Calpe, Concepción. "Rice international commodity profile." *Rome: Food and Agricultural Organization of the United Nations* (2006).

¹⁰⁹ Maclean, Hardy & Hettel 2013.

¹¹⁰ Sriyakul, Thanaporn, and Kittisak Jermsittiparsert. "Politicization of Rice Price: Who Gain and Who Lose from the Populist Policies to Intervene Rice Price in Thailand?." *Asian Political Science Review* 1.1 (2017).

¹¹¹ Castro Rodríguez, Raúl, et al. "El Impacto del Programa Colombia Siembra sobre la producción primaria del arroz: ¿Quién se benefició más?(Impact of the." *Impact of the " Colombia Siembra" Program on Rice Primary Production: Who Benefited the Most* (2024).

¹¹² Cramer, Gail L., James M. Hansen, and Eric J. Wailes. "Impact of rice tariffication on Japan and the world rice market." *American Journal of Agricultural Economics* 81.5 (1999): 1149-1156.

These features have been further intensified by the copious varieties of the grain,¹¹³ the disjointed pace of production to global population growth ratio,¹¹⁴ and particularly by the extent of national legislations and regulations, which have in turn subjected international rice trade to the realm of political susceptibility among governments, as reflected upon the 2008 rice crisis when “government policies were crucial, in both terms of spill-over effects on world markets and in terms of their heterogeneous effects on domestic prices.”¹¹⁵

Indeed, it has been argued that the sum of all these individual governmental decisions played an important role on speculation and therefore the tripling of rice prices during the crisis,¹¹⁶ and that contrary to common misconceptions it was not driven by either production difficulties or low stocks which paradoxically increased during the crisis, but by policies, panic and speculation.¹¹⁷ These features have historically been compounded by market intervention,¹¹⁸ instability and uncertainty that distort supply,¹¹⁹ time after time turning rice trade into “a mechanism for resolving failures and conflicts among domestic policies.”¹²⁰

When keeping in mind that rice is an agricultural product, many of the same intricacies¹²¹ distorting¹²² agricultural markets,¹²³ stack up on top of rice’s very own, mainly its thinness,

¹¹³ Calpe, Concepción. "Rice international commodity profile." *Rome: Food and Agricultural Organization of the United Nations* (2006).

¹¹⁴ Durand-Morat, A., and S. Bairagi. "International rice outlook: international rice baseline projections 2020-2030." (2021).

¹¹⁵ Dawe, D. "The rice crisis." *Markets, Policies and Food Security*. FAO. Rome (2010) 40-42

¹¹⁶ Timmer, C. Peter. "Did speculation affect world rice prices?." *The Rice Crisis*. Routledge, 2012. 29-59.

¹¹⁷ Timmer, C. Peter. "Did speculation affect world rice prices?." *The Rice Crisis*. Routledge, 2012. 17-18.

¹¹⁸ Sumner, Daniel A., and Hyunok Lee. "Assessing the effects of the WTO agreement on rice markets: What can we learn from the first five years?." *American Journal of Agricultural Economics* 82.3 (2000): 709-717.

¹¹⁹ Slayton, Tom. "Rice crisis forensics: How Asian governments carelessly set the world rice market on fire." *Center for Global Development working paper* 163 (2009).

¹²⁰ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 1

¹²¹ Higgott & Cooper 1990.

¹²² Higgott & Cooper 1990.

¹²³ Ruth Cohen & D G Johnson, "World Agriculture in Disarray", *The Economic Journal* 83:331 (1973), doi:10.2307/2230720.

segmentation, protectionism and flaws.¹²⁴ After all, its lack of elasticity for international trading¹²⁵ and the concentration of exports in a handful of countries,¹²⁶ are features that loom over the crop to the point that those few who are actually in the position to serve international markets, have to constantly balance domestic, international, and diplomatic interests that further politicize this cereal, all while the number of people demanding the grain worldwide continues to grow.¹²⁷

This politization is not new, as research shows that for most of the 20th century, rice was traded under an informal barter system amongst nations¹²⁸ which operated based on bilateral agreements, rather than the multilateral *de facto* GATT structure, and that arguably due to the cereal's political nature it was discussed in only a handful of occasions within this forum.¹²⁹ Granted, the WTO's Marrakesh Agreement was only signed in 1995, but even so, such barter system never disappeared,¹³⁰ and neither did the political complexities surrounding the crop.

When coupled with the lack of private actors¹³¹ that can help alleviate the problems caused by states overregulation, rice's political characteristics are bound to continue, as seen on the effects of the Indian rice bans of later years¹³² exacerbated by the many unforeseen circumstances brought by the COVID-19 pandemic, which among many things highlighted the weaknesses in the Multilateral Trading System, particularly regarding export restrictions and prohibitions¹³³ of

¹²⁴ Dawe, D. "The rice crisis." *Markets, Policies and Food Security*. FAO. Rome (2010) 40-42

¹²⁵ Calpe, Concepción. "Rice international commodity profile." *Rome: Food and Agricultural Organization of the United Nations* (2006) 2-3

¹²⁶ Durand-Morat, A., and S. Bairagi. "International rice outlook: international rice baseline projections 2020-2030." (2021) 12-13

¹²⁷ Durand-Morat, A., and S. Bairagi. "International rice outlook: international rice baseline projections 2020-2030." (2021) 10-11

¹²⁸ Latham, Anthony JH. *Rice: The primary commodity*. Routledge, (2013) 27

¹²⁹ World Trade Organization 1995.

¹³⁰ Dawe, David. "Can the next rice crisis be prevented?." *The Rice Crisis*. Routledge, 2012. 348

¹³¹ Slayton, Tom. "The 'Diplomatic Crop' or How the US Provided Critical Leadership in Ending the Rice Crisis." *The Rice Crisis*. Routledge, 2012. 313-341.

¹³² Durand-Morat, A., and S. Bairagi. "International rice outlook: international rice baseline projections 2020-2030." (2021).

¹³³ Kowalska, Aleksandra, Anna Budzyńska, and Tomasz Białowas. "Food export restrictions during the COVID-19 pandemic: Real and potential effects on food security." *International Journal of Management and Economics* 58.4 (2022): 409-424.

staples, and their impact on thin rice markets and therefore on food security,¹³⁴ demonstrating once more the intensity of the political forces that tore rice trade all-around.

Perhaps, the sum of all these factors may be the most exhilarating thing about rice. While it lives up to many of the preconceived ideas that envelope it, it also manages to separate itself from countless others. This is deeply manifested in the several intricacies shrouding rice within a non-Asiatic country like Colombia.

Chapter V will deal with the Colombian and Tolima context. Firstly, it will provide the historical and legal background illustrating the importance of rice agriculture for the country and the province, as well as examining the evolution of legal instruments and regulations regarding the national rice trade, which during the 80s, 90s and early 2000s occurred within a contexts of overflowed violence inexorably intertwined with drug trafficking, with deep consequences transcending the national spheres gravely affecting the geopolitical interests of the United States, the main influencing power in the region. Questions that will be addressed include: how did rice become paramount for the Colombian economy? What is the relationship between rice predominance and private political influence? What place does rice occupy in the neoliberal narratives fostered by the current Colombian Constitution, amid the ever-present umbrella of globalisation? And finally, how the American sphere of influence managed to dictate a fundamental part of the legal development of the country under the shadow of the war on narcotic crops?

¹³⁴ <https://www.ifpri.org/blog/covid-19-related-trade-restrictions-rice-and-wheat-could-drive-prices-and-increase-hunger>

Chapter VI will concentrate on analysing the United States Colombia Trade Promotion Agreement or USCTPA. Dubbed the most important economic and political negotiation entered by Colombia in recent history, its effects on rice production, and the legal framework spawned from the current Colombian Constitution which allowed it to materialise and to be incorporated to the national legal system. To this end, the thesis analyses the coexistence of neoliberal and social philosophies within the Constitution. From the preamble¹³⁵ to all the main principles under title I¹³⁶, the charter of rights under title II¹³⁷, and the constitutionalization of food security under article 65¹³⁸, all under the umbrella of the substantial changes introduced by the Carta to the Colombian economic system, or the “Economic Constitution” in title XII¹³⁹

Therefore, it is also fundamental to probe on the geopolitical interests guiding Colombo-American negotiations, the stakes for agriculture and rice trade, and particularly the structure and basic functioning of the Colombian constitutional jurisdiction spawned by the current Constitution.

Considering this, chapter VI aims at providing an overview of the main changes to Colombian constitutional law after 1991, since before and for more than one hundred years, Colombia’s main body of law fostered steep centralization, endowed the President with super powers that allow him to bypass congress and harass any political opposition,¹⁴⁰ declared Catholicism as the official religion of the nation, not to mention restricted electoral rights on the basis of wealth and literacy,

¹³⁵ Constitución Política de Colombia, Preamblelo

¹³⁶ Constitución Política de Colombia Título I

¹³⁷ Constitución Política de Colombia Título II

¹³⁸ Constitución Política de Colombia Art.65

¹³⁹ Constitución Política de Colombia Título XII

¹⁴⁰ Melo, Jorge Orlando. *Historia mínima de Colombia*. El Colegio de México AC, 2017. 167

justifying authoritarianism, as the only way to prevent chaos,¹⁴¹ which was prevalent throughout the 19th and 20th Century.

Indeed, the changes to Colombian constitutional order have been vast, if not overly ambitious for a country with such problematic history. The current Colombian Constitution starts by declaring the country under the social rule of law and recognizes an ample catalogue of rights that in many cases has been very difficult to enforce.¹⁴² Under the primary assumption that most citizens need to be protected from difficult conditions and abusive treatment, the charter acknowledges different generations of rights that have been growing in number as constitutional decisions over the course of more than thirty years develop in one sense or another. In other words, the list of rights and liberties protected by Title II of the Constitution is non-exhaustive, further allowing even non-constitutional judges to protect citizens through their decisions, even if the rights recognised are not apparent.¹⁴³ Above all, current Colombian constitutional law is protective of its citizens and can be considered nothing less than revolutionary when comparing it with its 1886 counterpart.

None of that would be possible without considering that Colombian constitutional jurisdiction is grounded on the theories of constitutional supremacy, that allow it to serve both as a closing rule and the very first of norms in the legal system.¹⁴⁴ In other words, the entirety of the Colombian legal system, including all the *lesser norms* are subject to constitutional assessment,¹⁴⁵ and must

¹⁴¹ Melo, Jorge Orlando. *Historia mínima de Colombia*. El Colegio de México AC, 2017. 167

¹⁴² Vergara & Jaramillo 2011.

¹⁴³ Espinosa, M. J. C. (2022). *La Constitución de 1991: viviente y transformadora*. Universidad de los Andes. 119-125

¹⁴⁴ . Alexei Julio Estrada *Los Presupuestos de la Jurisdicción Constitucional: Supremacía de la Constitución, Rigidez Constitucional y Eficacia Normativa de la Constitución* eds. *Lecciones de derecho constitucional Tomo II*. Vol. 2 U. Externado de Colombia, 2019. 490-491

¹⁴⁵ . Alexei Julio Estrada *Los Presupuestos de la Jurisdicción Constitucional: Supremacía de la Constitución, Rigidez Constitucional y Eficacia Normativa de la Constitución* eds. *Lecciones de derecho constitucional Tomo II*. Vol. 2 U. Externado de Colombia, 2019. 490-491

yield to the Constitution. When coupled with the prevalence of fundamental rights and the proclamation of state sovereignty as residing on the people of Colombia, the constitutional jurisdiction assures democratic legitimacy throughout its organic, dogmatic and programmatic sections.¹⁴⁶

Also, by devising a two-tier way of carrying out its constitutional evaluation, which extends to international trading treaties, the Constitution attempted to protect its supremacy, even if in reality, at least for the USTPA, and according to the dissenting faction of the Constitutional Court, “left too much to be desired.”¹⁴⁷ Especially when keeping in mind that it tacitly relinquished its jurisdiction under the banner of the *abstract constitutional control*,¹⁴⁸ casting thick shadows on the “real interests”¹⁴⁹ behind the final examination of the USCTPA, its lack of technical knowledge on economics, or the very essence of its job.

As a matter of fact, it has been argued that the Court fell short of protecting a legal text that paradoxically has been intertwined with economic matters from the core values proclaimed in its preamble and articles I and II, to the entire *economic Constitution* under Title XII. The very title that has forced to coexist the all-out protection of economic activity, private initiative, competition, the overblown protection of foreign investments and overall free market economics, with social values as profound as the social function of private property, the general welfare, economic equality and particularly the social rule of law in the absence of a set economic model.¹⁵⁰

¹⁴⁶ De. Esteban *Tratado de Derecho Constitucional*, I Madrid: Universidad Complutense de Madrid, 1998.

¹⁴⁷ Corte Constitucional *Sentencia C-750-08 24/7 2008*. 458

¹⁴⁸ Corte Constitucional *Sentencia C-750-08 24/7 2008*. 460

¹⁴⁹ Corte Constitucional *Sentencia C-750-08 24/7 2008*. 461

¹⁵⁰ Espinosa, M. J. C. (2022). *La Constitución de 1991: viviente y transformadora*. Universidad de los Andes. 217-218

Questions that will be addressed include what were the real motivations for embarking in bilateral negotiations for trade? What was the treatment conceded to rice during the negotiations and the final agreement? And finally, what were the main arguments presented by the Colombian Constitutional Court for approving the USCTPA in contrast with the dissenting portion of the bench?

The research will draw on data available from The National Department of Statistics DANE¹⁵¹, the National Federation of Rice Farmers (FEDEARROZ)¹⁵² and the Bank of the Republic.¹⁵³ Other relevant primary sources include the Ministry of International Relations' Virtual Library on Treaties ¹⁵⁴ database, and most importantly the Colombian Constitution, as well as the jurisprudence of the Colombian Constitutional Court¹⁵⁵ in relation to the applicability and content of trade agreements with an emphasis on the United States Colombia Trade Promotion Agreement (USCTPA) highly influenced by the ambivalent nature of neoliberal arguments defending the paramount importance of free market economics, and overblown protection of foreign investments, forced to coexist in stark contrast with social narratives that call for the protection of general welfare, and the social function of private property, which leave them very often at odds with a narrowed understanding of economic growth and development.

Lastly, Chapter VII will present the conclusions, final remarks, and recommendations.

¹⁵¹ Departamento Administrativo Nacional de Estadística DANE, *Balanza Comercial: Informacion abril 2023*, 2023, <https://n9.cl/4jai>.

¹⁵² Federación Nacional de Arroceros - Fedearroz, *Importaciones*, 2023, <https://n9.cl/zj1is>.

¹⁵³ Banco de la República, *Reporte de Estabilidad Financiera - Primer semestre 2023*, 2023, <https://n9.cl/67w67>.

¹⁵⁴ Ministerio de Relaciones Exteriores, *Biblioteca de Tratados*, 2023, <https://n9.cl/s3whu>.

¹⁵⁵ Corte Constitucional, *Buscador de Relatoría*, 2023, <https://n9.cl/2xj2j>.

1.9 Conclusions

Chapter one has highlighted the justifications for this research as well as many of the complexities surrounding something as allegedly ubiquitous, humble and taken for granted as a rice bowl. Furthermore, it has capitalised on the pertinence of this piece of academic analysis whilst presenting an overview of the many juxtaposed issues that need to be considered when approaching the subject of rice trade. They range from biology and agronomy to weather patterns, to geopolitics, to constitutional and trade law as well as economics. All of which at first might appear dissimilar, but when contextualized within a bigger picture of the millenary relationship of humans with this cereal, seem to reinforce that the rice bowl is anything but *humble but* actually the noblest of grains.

CHAPTER II

RICE AND THE LONG JOURNEY: FROM THE LATE PLEISTOCENE TO OUR DAYS

The reasons for the emergence of agriculture, continue to be a hotly debated mystery even today. Not to mention the new reinterpretation of once considered dogmas of what means to be *human* and our relations with coexisting ancestors around the world. What is certain is that at least homo sapiens has kept a close relationship with rice for at least eleven millennia, and as such it has deeply impacted our lives and the almost ubiquity of the crop around the world, for a comparable span of time. Indeed, a large portion of the history of rice is that of humans in all latitudes, and the nuances of that longstanding relationship, that has allowed us to rely on rice as a way of sustenance, and to construct all sort of complex economic, political cultural and legal dynamics around the cereal for millennia, one of which today is rice trade.

2.1 A general approximation to rice domestication

Chapter II focuses on providing an overview of the scientific, and historical reasons that fostered rice's ascension to the status of world's staple, to demonstrate that the history of rice is the history of mankind.

Agriculture has long been one of the most complex issues in international trade law, while rice has long been a central feature of agriculture. To contextualise how international trade law addresses rice and to look to the future, it is important to first understand the place of rice in the historical agricultural and trade landscape. That is why as mentioned before this study has centred on the

descendent (s) of *Oryza Rufipogon*, two words that hardly convey a meaning to most people except for a botanist, agronomist or biologist, until its common name – rice - makes it to the conversation.

Originally a tough and enduring Asian wild grass, that grew around swampy areas, humans have sustained a longstanding multifaceted relationship with this cereal. Archaeological evidence has proven human interaction with it, as far back as 11.500 ago¹⁵⁶ and even to 13.500 ago¹⁵⁷ during the late Pleistocene. In addition, historical records enable the tracking of rice trade between the Middle East and the Caliphate of Cordova by 800 AD¹⁵⁸; as well as exchanges of the crop along the most representative Chinese waterways by 900 AD, with exports expanding to Indochina as early as 1200 AD.¹⁵⁹

By the end of the Pleistocene and the start of the Holocene, nearly 11,000 years ago, the withdrawal of the great glaciers meant a warmer and wetter climate.¹⁶⁰ This would prove to have enormous consequences on the economic development of our early ancestors. By then, they had already populated all the major continents of earth; and were skilled at sewing clothes, producing consistent stone instruments as well as spectacular cave paintings.¹⁶¹ Indeed, they continued to migrate to exploit the new opportunities created by the recently brought changes in climate.¹⁶²

¹⁵⁶ Normile 1997.

¹⁵⁷ Jiang & Liu 2006.

¹⁵⁸ Dorian Q Fullerr, "Contrasting Patterns in Crop Domestication and Domestication Rates: Recent Archaeobotanical Insights from the Old World", *Annals of Botany* 100:5 (2007), doi:10.1093/aob/mcm048.

¹⁵⁹ Anthony John Heaton Latham, *Rice: The primary commodity* (Routledge, 2013).

¹⁶⁰ Olsson & Hibbs 2005.

¹⁶¹ Olsson & Hibbs 2005.

¹⁶² Olsson & Hibbs 2005.

The dating of early human interactions with agriculture is derived from years of compiled research. Certainly, Diamond¹⁶³ postulates several reasons as follows: occupation of the main continents did not happen before 11,000 BCE. Also, the Cro-Magnon race is only 200,000 years old and archaeological data shows that their first migrations started to take place around 80,000 BCE.¹⁶⁴ Moreover, there is documented evidence which date glacial withdrawal at about 18,000 years ago; which means that before this, the climate made farming activities centred in domesticated vegetable species nearly impossible.¹⁶⁵ Meanwhile, the skills needed for collecting, moving, preparing and stockpiling cereals, were not available, preceding 11,000 BCE, as well as clear evidence of uneven development amid the populated territories.¹⁶⁶

However, the reasons for the advent of agriculture remain a hotly debated mystery. From the outset, it should be mentioned that to date, a consensus does not exist in respect to the motivations driving the transition from hunting and gathering towards farming, let alone on the totality of agriculture's implications. For example, literature in the field of biogeography even highlights a correlation between the transition from solely food producing activities for survival, and a primitive specialization and division of labour, which eventually impacted even the wealth of nations.¹⁶⁷ Not to mention that 'There are at least 38 distinct and competing explanations on how farming emerged'.¹⁶⁸ Plenty of these theories have a very strong scientific basis, but continue to fall short of providing a comprehensive and definitive answer to the question of why humanity embraced

¹⁶³ Diamond 1998.

¹⁶⁴ Diamond 1998.

¹⁶⁵ Diamond 1998.

¹⁶⁶ Diamond 1998.

¹⁶⁷ Jacob L Weisdorf, "From Foraging To Farming: Explaining The Neolithic Revolution", *Journal of Economic Surveys* 19:4 (2005), doi:10.1111/j.0950-0804.2005.00259.x.

¹⁶⁸ Gebauer & Price 1992.

farming. When reflecting upon this, it is inevitable to wonder on the range of possible outcomes for humans as dominant species of the planet, without the adoption of agriculture.

Nonetheless, the generally accepted paradigm during most of the 20th century was that of a revolution. An agricultural or ‘Neolithic revolution.’¹⁶⁹ This term was originally coined by the historian, linguist and archaeologist V. Gordon Childe. It gave rise to the construction of a hypothesis aiming to explain the transformation of most of the humankind’s lifestyle. Positing that the transition towards agriculture, represented the greatest advantage exploited by humanity in the race to become the dominant species. This theory portrayed Southwest Africa as a stationary epicentre of agriculture, in charge of exporting farming to all the corners of the earth.¹⁷⁰

Works derived from Childe’s theories, in which farming was depicted as the logical move for humanity helped to entrench the common belief that humanity only needed brain power to progress, therefore, eventually the evolutionary process did its part and increasingly fashioned brighter individuals.¹⁷¹ So much in fact that ultimately, they were capable of decoding the mysteries of nature, to the point of effectively domesticating several plants and animal species, over time prompting them to happily discard the exhausting, perilous and starved existence derived from nomadism, in favour of the amiable and quenched one resultant from agrarian societies.¹⁷²

On the other hand, there is now a very conflicting academic narrative postulating that, ‘such story is a fantasy. (...) Because rather than heralding a new era of easy living, the agricultural revolution

¹⁶⁹ Vere Gordon Childe, "Man makes himself", *Watts, London* n° (1937).

¹⁷⁰ Childe 2015.

¹⁷¹ Noah Harari 2015.

¹⁷² Noah Harari 2015.

left farmers with lives generally more difficult and less satisfying than those of foragers.”¹⁷³ Since ‘the body of Homo Sapiens had not evolved for farming. Adapted to climbing apple trees and running after gazelles, not to clearing rocks and carrying water buckets. Human spines, knees, necks and arches paid the price’. ¹⁷⁴ Archaeological evidence, demonstrates that by adopting farming, humans also adopted an assortment of musculoskeletal illnesses, in particular hernias, slipped discs and arthritis.¹⁷⁵ ‘Why farm? Why give up the 20-hour work week and the fun of hunting in order to toil in the sun? Why work harder, for food less nutritious and a supply more capricious? Why invite famine, plague, pestilence and crowded living conditions?’.¹⁷⁶

Harari argues that the success of a species is measured in the number of times individuals reproduce, or the many copies of their DNA helixes, irrespective of the overall condition, or satisfaction of those individuals.¹⁷⁷ This is an irrefutable assertion that supports that the main accomplishment of the agricultural revolution rested upon the possibility of sustaining a larger population under the worst conditions. ¹⁷⁸

Conversely, the traditional narrative in respect to the alleged benefits provided by the agricultural revolution are still highly accepted. By arguing that it allowed for a primitive division and specialization of labour, based upon food excess¹⁷⁹, therefore permitting ‘a new form of economic life, based on a rising population density, (...) and an available food surplus that could be used to feed a non-producing class of chiefs, craftsmen, priests, warriors and bureaucrats.¹⁸⁰’ In time

¹⁷³ Noah Harari 2015. 89

¹⁷⁴ Noah Harari 2015. 91

¹⁷⁵ Noah Harari 2015. 91

¹⁷⁶ Jain 1993.

¹⁷⁷ Noah Harari 2015. 94

¹⁷⁸ Noah Harari 2015. 94

¹⁷⁹ Olsson & Hibbs 2005.

¹⁸⁰ Olsson & Hibbs 2005

‘enabling and even demanding innovations such as writing, metallurgy, city planning and scientific principles, all necessary for the industrial revolution and the accumulation of material wealth.’¹⁸¹

This dominating narrative connects to recent legal historical analysis tracing the true origin of western legal tradition, and which challenges the preconceptions of it being originated mostly out of Greek and Roman backgrounds¹⁸², when in fact evidence calls for the need to look further back and east to forty-five hundred years, to civilizations that arguably needed distinct forms of law¹⁸³ to manage the excess grain that allowed them to thrive, thanks to domestication and agriculture.

Additionally, when comparing Diamond’s research concerning the correlation between the adoption of agriculture and a growth in population¹⁸⁴ to Deevey’s ¹⁸⁵ calculations, the results are staggering. 300,000 years ago, individuals of the genus homo amounted to about one million. However, by the time the agricultural revolution took place 8,000 years ago, those numbers had grown to around five million. By the time the Roman Empire was in full swing, there were 133 million people around the globe. ¹⁸⁶ As a matter of fact, the human population flourished approximately 70 times faster during those 8 millennia than the previous 300,000 years.¹⁸⁷ ‘If we include the 2 millennia taking us to the present day, the average annual growth rate over the past 10,000 years has been more than 123 times that prior to the Neolithic Revolution.’¹⁸⁸ The reason that this is important, is that farming serves to provide an explanation for our success as a species.

¹⁸¹ Weisdorf 2005.

¹⁸² Robin Bradley Kar, "Western Legal Prehistory: Reconstructing the Hidden Origins of Western Law and Civilization", *U.Ill.L.Rev.* n° (2012).

¹⁸³ Kar 2012.

¹⁸⁴ Diamond 1998.

¹⁸⁵ Edward S Deevey, "The human population", *Scientific American* 203:3 (1960).

¹⁸⁶ Deevey 1960.

¹⁸⁷ Deevey 1960.

¹⁸⁸ Deevey 1960.

Besides, ‘no noteworthy plant or animal has been domesticated in the last 2000 years.’¹⁸⁹ ‘Even today with all our advance technologies, more than 90 percent of the calories that feed humanity come from the handful of plants that our ancestors domesticated between 9500 and 3500 BC- wheat, maize, potatoes, millet, barley and rice.’¹⁹⁰ The latter being the most consumed staple by humans, as well as the third most farmed cereal on the planet.

Rice has been intrinsically related to humankind since time immemorial, and given the trajectory of its consumption patterns looks set to continue being so. The exponential growth in human population, and the increasing percentage of that population consuming rice, points to the cereal’s significance. This elevates the importance of international commercial regulation of rice to a whole new level, due to the potential social impacts associated with its accessibility. With global population growth projected upwards of 10.4 billion by 2050¹⁹¹ it is inevitable that rice will continue being increasingly predominant, therefore its regulation under international trade law is more important than ever. A basic understanding of the trajectory of rice’s emergence across the globe up to now can help envisage its future development and will be reviewed in the next chapter.

2.2 Domestication and Rice: From Biology to Law

From a basic biological standpoint modern rice is a starchy plant belonging to the Gramineae family. It is mostly cultivated in tropical and subtropical climates on an annual basis, and can grow up to 1.2 metres in height, with long and flattened leaves made up of spikelets bearing flowers that produce the fruit, or grain.¹⁹² Rice cultivation experiences three growth phases: vegetative,

¹⁸⁹ Noah Harari 2015.

¹⁹⁰ Noah Harari 2015. 89

¹⁹¹ United Nations, *Peace, dignity and equality on a healthy planet*, 2020b, <https://n9.cl/acb762>.

¹⁹² Encyclopedia Britannica, *Rice*, 2023, <https://n9.cl/0id65m>.

reproductive and ripening. A 120-day variety, when planted in a tropical environment, spends about 60 days in the vegetative phase, 30 days in the reproductive phase, and 30 days in the ripening phase¹⁹³. The fact that rice is grown throughout the year in certain countries and topographies, has a direct effect upon the availability of stocks to be traded internationally, and is reflected in the lack of elasticity of both its supply and demand.¹⁹⁴

Genetically, modern cultivated Asian rice or *Oryza Sativa*, represents an array of diversity, which can be further categorised in different subpopulations, each with its own characteristics that set them apart from the rest. Although the two main sub-varieties of *Oryza Sativa*, are *indica* and *japonica*, it has been both studied and accepted that ‘there are five major subpopulations widely recognized: *indica*, *tropical japonica*, *temperate japonica*, *aus* and *aromatic*.’¹⁹⁵ ‘This population structure adds further complexity to our understanding of the domestication process that led to cultivated rice.’¹⁹⁶ Additionally, it is worth mentioning that the documented differentiation between *indica* and *japonica* is not new, since ‘ancient records from the Han dynasty in China show the existence of two distinguishable types of rice, then called *Hsien* and *Keng* respectively.¹⁹⁷ Each of significant importance to the economies of those regions¹⁹⁸ and therefore regulated to allow the functioning of the empire.¹⁹⁹

¹⁹³ Maclean, Hardy & Hettel 2013.

¹⁹⁴ Nalley, Tack, Durand, Thoma, Tsiboe, Shew & Barkley 2017.

¹⁹⁵ Maclean, Hardy & Hettel 2013.

¹⁹⁶ Garris, Tai, Coburn, Kresovich & McCouch 2004.

¹⁹⁷ Kovach, Sweeney & McCouch 2007.

¹⁹⁸ LiangLiang Hou, Ning Wang, Peng Lü, YaoWu Hu, GuoDing Song & ChangSui Wang, "Transition of human diets and agricultural economy in Shenmingpu Site, Henan, from the Warring States to Han Dynasties", *Science China Earth Sciences* vol. 55 (2012).

¹⁹⁹ Raoul McLaughlin, *The Roman Empire and the Silk Routes: The Ancient World Economy & the Empires of Parthia, Central Asia & Han China* (Pen and Sword, 2016).

Commentators have noted that '[r]ice had spread as far as 800 km north of central Zhejiang province by the end of the Shangshan period between 8000 and 7000 BP'²⁰⁰ and that to date, 'there is no evidence of any other crop moving this far north from the Yangtze River.'²⁰¹ In so doing it altered the lives of those prehistorical communities, including their trading practices. The development of these trading practices provides one plausible explanation for rice's long journey from south of the Yangtze basin to the Huai, and the Yellow rivers, as well as its eventual widespread into India and as far as Thailand during the historic period.²⁰²

Domestication is an extensive and complex process that encompasses modifications on a varied range of plant characteristics. Such modifications, at least within biology, range from genetics to morphology, to biochemistry, ecology; and can even extend to the behavioural sciences. Nevertheless, when it comes to plants or botany, domestication involves a series of profound genetic changes, resulting from selection, that make a wild species more amenable for cultivation and consumption by humans.²⁰³ It is widely recognized that domestication is not a single event, but rather a dynamic evolutionary process that occurs over time and in some species of plants and animals, continues to this day.²⁰⁴

Nowadays, domesticated rice from the *indica* variety is mostly cultivated in lands with lower elevations, which explains why it is highly farmed throughout tropical Asia. Whereas *japonica* rice is usually located in lands with higher elevations, making it ideal for farming in more cooler lands

²⁰⁰ GuiYun Jin, WenWan Wu, KeSi Zhang, ZeBing Wang & XiaoHong Wu, "8000-Year old rice remains from the north edge of the Shandong Highlands, East China", *Journal of Archaeological Science* vol. 51 (2014), doi:10.1016/j.jas.2013.01.007.

²⁰¹ Yunfei Zheng, Gary W Crawford, Leping Jiang & Xugao Chen, "Rice Domestication Revealed by Reduced Shattering of Archaeological rice from the Lower Yangtze valley", *Scientific reports* vol. 6 (2016), doi:10.1038/srep28136.

²⁰² Cristina Cobo Castillo, Katsunori Tanaka, Yo-Ichiro Sato, Ryuji Ishikawa, Berenice Bellina, Charles Higham, Nigel Chang, Rabi Mohanty, Mukund Kajale & Dorian Q Fuller, "Archaeogenetic study of prehistoric rice remains from Thailand and India: evidence of early japonica in South and Southeast Asia", *Archaeological and Anthropological Sciences* 8:3 (2016), doi:10.1007/s12520-015-0236-5.

²⁰³ Paul Gepts, "Crop domestication as a long-term selection experiment", *Plant Breeding Reviews* 24:Part 2 (2010).

²⁰⁴ Gepts 2010.

of East and Southeast Asia.²⁰⁵ The traits that have been used to classify *indica* and *japonica* have included grain shape, phenol reaction, sensitivity to potassium chlorate, leaf colour and apiculus hair length.²⁰⁶ In the Colombian context, seed variety has suffered a continued transformation since the second half of the twentieth century on the basis of traditional or “criolla” varieties.²⁰⁷

Rice can be regarded as the epitome of domestication. As a matter of fact, apart from maize and wheat, barely any other crop has been modified by humans to such large extent, with ripple effects on law and economics. These effects are clear from the rising tensions between small rice farmers in developing countries who argue for protection of their livelihoods and way of life and multinational companies that push for the widespread use of their patented agrochemicals and genetically modified seeds.²⁰⁸ These tensions and related debates in terms of the legal and economic dimension of rice trade are prevalent in the Colombian context, and are particularly evident in Tolima, one of its main rice producing regions.²⁰⁹ The story of rice domestication into the future, and the implications of trade regulation for this therefore remain to be seen.

Returning for now to the history of rice domestication and trade, it is important to note that there is a lack of academic consensus on how the cereal developed. Kovach Sweeney and McCouch are keen to recall ‘that as early as the late 19th century, De Candolle suggested that rice cultivation began in China where the oldest historical records could be found.’²¹⁰ By way of contrast, Vavilov designated India as the location of rice domestication.²¹¹ Further studies helped to debunk theories

²⁰⁵ H I Oka, *Origin of cultivated rice* (Japan Scientific Societies Press, Elsevier, 1988).

²⁰⁶ Oka 1988.

²⁰⁷ Federación Nacional de Arroceros Fedearroz, *Beneficios del arroz*, 2023, <https://n9.cl/8az2j>.

²⁰⁸ Kym Anderson & Chantal Nielsen, "Golden Rice and the Looming Gmo Trade Debate: Implications for the Poor", *Available at SSRN* 508463. n° (2004).

²⁰⁹ Publicaciones Semana S. A., "La historia detrás del 970", *Semana*, 23/8 2013, <https://n9.cl/h5yw0e>.

²¹⁰ Kovach, Sweeney & McCouch 2007.

²¹¹ Kovach, Sweeney & McCouch 2007

accepted as dogmas. For instance, by the mid 20th Century, Childe's²¹² studies about an exclusive centre for domestication based out of southwest Africa and the Levant, from which the Neolithic or agricultural revolution was exported and spread to the rest of the earth was nothing less than discredited. It is now accepted that agriculture appeared independently in various locations around the world.

Although early human experiments with agriculture happened most likely as a result of observation, opportunity and necessity,²¹³ it would be myopic to disregard the effects of migration, cultural encounters, and especially barter and trade on their development. In the case of rice, this thesis argues that trade was central to the predominance of the cereal. Early trading between Egypt, China, India and Rome; not to mention the still contentious theories on how the grain reached Spain, with some literature positing on its introduction by the Moors during the 11th Century, while others claiming that archeological records proof that the now Valencia region was producing the grain during the first Century AD.²¹⁴

In any case, there is even research pointing to rice's widespread cultivation in Europe by the 10th Century, as well as long range commerce of the crop between the Chinese Yangzi and other important waterways along southern China between 900-1000 AD.²¹⁵ By 1200 there were regular exports of rice to Indochina; this commercial trend came to a halt by 1720, with rice being then imported to the Yangzi delta from regions as far as Taiwan. By the 19th Century, British controlled

²¹² Childe 2015.

²¹³ Kovach, Sweeney & McCouch 2007.

²¹⁴ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 18

²¹⁵ Latham 2013.

Bengal was exporting rice as far as West Africa, continental Europe, America and the Caribbean.²¹⁶

“The story is clear, once rice arrived in a country where it could be produced, it continued to establish itself, either for domestic production or export.”²¹⁷

More recent literature, up to the year 2007, questioned some of the assumptions regarding rice domestication. It proposed that a “completed” version of rice emerged around 4000 BP, with a short period of pre-domestication of 1000 to 1500 years.²¹⁸ Detailed available data at the time, supported challenging the status quo of rice domestication e.g. China between 7700²¹⁹ and 7000 BP²²⁰; advocating to objectively and thoroughly analyse the data, instead of presuming that all rice samples found at archaeological sites around the Yangzi River basin area, belonged to specimens that had already undergone the domestication process.²²¹

In some legal traditions, people are presumed innocent until proven guilty. In the study of agricultural origins, it is perhaps prudent to presume plants are *wild* until evidence can be found to indicate domestication. This has not, however, been the convention in the archaeology of East Asia, where domestication is taken for granted, unproven and unquestioned.²²²

These postures prompted an emphatic response from the scientific literature, concluding that ‘By the early Holocene (9000 BP) Neolithic people in both north and south China may have been

²¹⁶ Bray, Coclanis, Fields-Black & Schäfer 2015.

²¹⁷ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 20

²¹⁸ Fuller, Harvey & Qin 2007.

²¹⁹ C Chen, Z Chen, H Wang, J B Innes, Z Wang & Y Zong, "Fire and flood management of coastal swamp enabled first rice paddy cultivation in east China", *Nature* 449:7161 (2007), doi:10.1038/nature06135.

²²⁰ Zhao Zhijun, "The Middle Yangtze region in China is one place where rice was domesticated: phytolith evidence from the Diaotonghuan Cave, Northern Jiangxi", *Antiquity* 72:278 (1998), doi:10.1017/S0003598X00087524.

²²¹ Fuller, Harvey & Qin 2007.

²²² Fuller, Harvey & Qin 2007.

harvesting wild rice and initiating rice cultivation that eventually led to domestication.²²³ Such assertions rested upon evidence supporting ‘rice dispersal by 9000-8000 BP, in north China, and the construction of rice paddies in the Middle Yangzi River valley by 6500 BP.’²²⁴ Furthermore, proposing a timeline for ‘an initial domestication that would have occurred even before 10000 BP.’²²⁵ Moreover, it becomes problematic to simply ignore the well-founded argument that ‘without human intervention in its life cycle, rice could not have reached the lower Yellow River region by 8000 BP and the middle Yellow River region by 6000-5500 BP’²²⁶, and that much of that intervention may have included trading between those Neolithic communities.²²⁷ Subsequent scientific literature indicated that ‘rice domestication was underway sometime between 12,500 and 7,500 BP.’²²⁸

2.3 Rice in the Americas and Africa

A discussion on the history of rice would not be complete without touching on its emergence in the Americas and Africa. While the world’s leading cultivated rice varieties belong to the genus *Oryza Sativa* as discussed above, there is another main variety derived from an independent domestication process denominated *Oryza Glaberrima*, or African rice. Though not as widespread and preferred as the subpopulations of its Asian counterpart, it merits attention since *Oryza Glaberrima*, has also been profoundly bound with human communities for generations, and offers a plausible explanation as to how the crop reached the Americas. It has been argued that *Oryza*

²²³ Li Liu, Gyoung-Ah Lee, Leping Jiang & Juzhong Zhang, "Evidence for the early beginning (c. 9000 cal. BP) of rice domestication in China: a response", *The Holocene* 17:8 (2007), doi:10.1177/0959683607085121.

²²⁴ Liu, Lee, Jiang & Zhang 2007.

²²⁵ Liu, Lee, Jiang & Zhang 2007.

²²⁶ Liu, Lee, Jiang & Zhang 2007.

²²⁷ Dorian Q. Fuller, "Pathways to Asian Civilizations: Tracing the Origins and Spread of Rice and Rice Cultures", *Rice* 4:3–4 (2011), doi:10.1007/s12284-011-9078-7.

²²⁸ Yan Wu, Leping Jiang, Yunfei Zheng, Changsui Wang & Zhijun Zhao, "Morphological trend analysis of rice phytolith during the early Neolithic in the Lower Yangtze", *Journal of Archaeological Science* vol. 49 (2014), doi:10.1016/j.jas.2014.06.001.

Glaberrima may have been the first rice introduced to the new world aboard Portuguese slave ships.²²⁹ Although it quickly lost “its predominance to *Oryza Sativa*, in part because of the natural high yielding properties of the Asian rice subpopulations.”²³⁰

It has also been noted that while rice cultivation in Africa dates back more than 3.000 years “[i]nterestingly, African rice is not of the same origin as Asian rice (*Oryza sativa*) but rather is an entirely different species (*Oryza glaberrima* Steud)’. This adheres with the hypotheses which estimates that ‘*O. glaberrima* was domesticated in a single region along the Niger river as opposed to non-centric domestication events across Africa.²³¹’ It is believed that *Oryza glaberrima* ‘was domesticated from the wild progenitor *O. barthi*- 3.000 years ago²³², ‘6.000-7.000 years after the domestication of Asian rice (*O. Sativa*).²³³’

2.4 Conclusions

While even the most recent of these findings do not settle the debate on when and how rice was domesticated and began its traded journey, they certainly demonstrate its social and economic importance, and the close and nuanced relationship sustained between humankind and the crop since time immemorial.²³⁴ What can be concluded is that a mutually beneficial relationship with rice has emerged across the globe in part due to trading practices that started millennia ago, but which have become more intricate in the context of complex legal frameworks regulating trade that emerged in an increasingly globalised world.

²²⁹ Daniel C Littlefield, *Rice and slaves: Ethnicity and the slave trade in colonial South Carolina* (University of Illinois Press, 1991).

²³⁰ Judith Ann Carney & Judith Ann Carney, *Black rice: the African origins of rice cultivation in the Americas* (Harvard University Press, 2009).

²³¹ Muhua Wang et al., "The genome sequence of African rice (*Oryza glaberrima*) and evidence for independent domestication", *Nature genetics* 46:9 (2014), doi:10.1038/ng.3044.

²³² Kovach, Sweeney & McCouch 2007.

²³³ Jack R Harlan, *Origins of African plant domestication* (Walter de Gruyter, 1976).

²³⁴ X. K. Wang and others. 'Origin and differentiation of Chinese cultivated rice' (1996) China Agricultural University Press, Beijing 24

It has been suggested that ‘if our minds are those of hunter-gatherers, our cuisine is that of ancient farmers.’²³⁵ In a similar vein, given its centrality to our development as a species and indeed our continued expansion, it could be argued that the history of rice and its trade embodies much of the history of humankind. From swamps to deserts, to hills to valleys, to flatlands; from China to India, to Africa, to Australia, to the American Continent; from complementary foraged food, to staple crop; from the late Pleistocene to now; from feeding a few thousand around the end of the last ice age, to feeding billions today and into the future, the story of rice is one of rampant success that illustrates on one hand life’s adaptability, whilst allowing us to track a big portion of our history as a species, and within that much of the history of rice trade.

²³⁵ Yuval N. Harari, *Sapiens: A brief history of humankind* (Vintage, 2015)88.

CHAPTER III

WORLD TRADE AND AGRICULTURE

Chapter III comments on the origins of the current international legal framework for trade with an emphasis in agriculture, and the many hurdles that developing nations have tried to overcome, in a struggle (albeit futile) of scaping their position in the global division of labour and comparative advantage. It argues that even if international trading can be considered as the fabric of globalisation, the “one size fits all” approach, fosters many imbalances that allow a preferential treatment of developed nations’ agricultural sectors, due to their economic muscle and their protracted efforts to stall and even eliminate potential competition.

3.1 A Comment on Globalization and Trade

Despite being members of the modern consumer society, we are rarely conscious of the origins of all the things that make modern life possible. From the fruits in our breakfast cereal bowls, (and the bowls themselves), to all the ingredients in a traditional fried rice dish; to utensils, and appliances and even the energy required for cooking, heating and cooling. Everything has an origin and a story, which is often taken for granted. Nowadays there are plenty of things taken for granted, as easy as a run to the store, or just a click away. Often overlooking the origins of those acquirable goods, and particularly all the transactions that make such modern conveniences possible.

Today, commerce and globalisation seem to be a given, without stopping to consider our long entanglements with these practices, which are possibly representations of our natural tendency to trade and exchange in order to fulfil our needs, with some authors willing to go as far as to equate

its importance to our demands for sustenance, refuge and companionship.²³⁶ So much that along the way its practice has moulded the course of history, in turn, boosting human wealth.²³⁷

Examples of this go far and wide. From the theorised commercial flows of the volcanic stone obsidian through regions as disparate as the Yucatan, Armenia and the Fertile Crescent over 8000 years ago²³⁸; through the times of Mesopotamia, cradle of civilization, weighing its acute scarcity on metals, timbers and stone on its traded grain surplus, for the construction of the first empires²³⁹; or the over dependence of ancient Greek farmers on exchanging their abundant wine and olive oil for the grain their land was unable to produce²⁴⁰; not to mention ancient Silk changing hands and prices at dramatically high rates on its long and dangerous journey from China to Rome.²⁴¹ It seems that engaging in trade for the satisfaction of needs comes as naturally to mankind as his ability to question. Still, how to ignore that historically as with any enterprise, trade has been accompanied by inherent risks from ancient times.

Geographical challenges, climatic fluctuations, plenty of political and military instability, high rates of protectionism and even pirates are some of the many perils associated with trading practices. In fact, many of those very perils were extremely prevalent until just 200 years ago, often contributing to the high costs of merchandises. Only with the advent of what is now understood as global trade, did many items (as such in our breakfast and lunch bowls) come to be taken for granted. Such trends started to form during the industrial revolution, speeding up

²³⁶ William J. Bernstein, *A splendid exchange: How trade shaped the world* (Grove/Atlantic, Inc., 2009)18

²³⁷ William J. Bernstein, *A splendid exchange: How trade shaped the world* (Grove/Atlantic, Inc., 2009)18

²³⁸ J. E. Dixon, J. R. Cann and Colin Renfrew. 'Obsidian and the origins of trade' (1968) 218(3) *Sci Am* 38

²³⁹ William J. Bernstein, *A splendid exchange: How trade shaped the world* (Grove/Atlantic, Inc., 2009)23

²⁴⁰ William H. McNeill. 'Plagues and peoples. Anchor' (1976) 51 Garden City, NY

²⁴¹ William J. Bernstein, *A splendid exchange: How trade shaped the world* (Grove/Atlantic, Inc., 2009)5

astronomically just around the mid 20th Century. This in part led to the materialisation of one of the first and arguably the most revolutionary forms of multilateralism - The General Agreement on Tariffs and Trade (GATT). GATT served as an anchor, holding into place for 47 years what would come to be known as the Multilateral Trading System.

Anderson points out that the historical norm has been for countries' to intervene in trade at their borders via highly distorting methods that either create or aggravate gaps between the local and international prices of commodities.²⁴² Such a pattern is even more noticeable when dealing with foodstuffs and especially grains due to their geostrategic value.²⁴³ This continues to be the case and has been partly responsible for the infamous 2008 food crisis, as well as the one derived from the COVID-19 pandemic. When amid fears of maize and rice shortages, some of the few exporting nations of these cereals imposed heavy restriction on international trade²⁴⁴, disrupting agricultural markets even further, and worst of all putting at risk food shortages for millions of people in the process, in a strikingly similar manner to 2008 events.²⁴⁵

To return to the subject, legal historical analysis proves that the abolishment of the British Corn Laws during the mid 1800's joined by the landmark Cobden-Chevalier trade agreement between France and Britain, marked a slow but steady expansion of world trade and an unprecedented economic growth.²⁴⁶

²⁴²Kym Anderson, *Finishing Global Farm Trade Reform: Implications for developing countries* (University of Adelaide Press, 2017)31

²⁴³ Woertz, E., 2022. Virtual water, international relations and the new geopolitics of food. *Water International*, 47(7), pp.1108-1117.

²⁴⁴ World Trade Organization, *WTO report finds growing number of export restrictions in response to COVID-19 crisis*, 2020, <https://n9.cl/5y5jp>.

²⁴⁵ Headey, Derek, and Shenggen Fan. *Reflections on the global food crisis: How did it happen? How has it hurt? And how can we prevent the next one?* Vol. 165. Intl Food Policy Res Inst, 2010.

²⁴⁶ Kym Anderson, *Finishing Global Farm Trade Reform: Implications for developing countries* (University of Adelaide Press, 2017).

By 1852 with the annexation of the province of Burma to the British Empire, exports of rice surged, thanks to the fertility of the soils, and the massive exploitation of its inhabitants which allowed for meagre labour costs.²⁴⁷ Much of the progress attained on international trade during the 19th Century stopped abruptly because of the two World Wars and the advance of the 1930's wave of protectionism.²⁴⁸ All these made it clear in the post-World War II era for the significant economies of the time, that it was necessary to leave many of their differences aside and come together in setting a body of rules aimed to oversee international trade.²⁴⁹ This materialised in the establishment of the GATT by the end of the 1940s.²⁵⁰

Also, the gradual changes towards global trade have been facilitated by 'technological innovations resulting in a dramatic fall in transport, communications and computing costs, the natural barriers of time and space that separate national economies have been coming down.'²⁵¹ For example, the introduction of shipping containers and satellite communications. These changes meant '... that between 1920 and 1990, average ocean freight and port charges for US import and export cargo fell by almost 70 percent. Between 1930 and 1990, average air-transport fares per passenger mile fell by 84 percent.'²⁵² Making international trade cheaper and easier.

This in turn has backed the availability of goods that used to be considered prized commodities in antiquity but have come to be pondered as trivial *as a pinch of pepper*. For example, a pound of rice produced in any farm anywhere from Asia or South America or even a cheap silk scarf bought

²⁴⁷ H. B. Proctor, *Rice: its history, culture, manufacture, and food value* (Kessinger Publishing, 1882).

²⁴⁸ Anderson 2017.

²⁴⁹ Anderson 2017.

²⁵⁰ Anderson 2017.

²⁵¹ Peter Van den Bossche & Werner Zdouc, "The law and policy of the World Trade Organization", *Cambridge Books* n° (2017).

²⁵² Roger B Porter, Pierre Sauvé, Arvind Subramanian & Americo Beviglia Zampetti, *Efficiency, Equity, and Legitimacy: The Multilateral Trading System at the Millennium* (Brookings Institution Press, 2004).

at souvenir shop, under today's globalised standards. Thus, allowing an ampler margin of access first to wares, and eventually to services, bringing into contact an abundant sample of individuals, communities and merchants from all over the globe, at a rate unlike never before in history. This could be considered as a component of the very fabric that according to some globalisation is made of.

Although the exponential fall in some of the inherent costs of trading has been facilitated by the advances noted above, signifying the shortening of distances and ultimately rendering the world flat²⁵³, it is also prudent to add that this is merely deemed as one of the catalysts of globalisation, closely accompanied by trade liberalisation in the form of the dismantling of barriers, and the free movement of capital. The sum of these, arguably account for a phenomenon that today is acknowledged as something that has been taking place for a long time, even before the term globalisation was coined, and that undoubtedly has always been hand in hand with trade, despite nowadays epitomising the chief rationales supporting the excessive freedom enjoyed by markets and investors and their ability to influence and even dictate politics, not to mention reshaping legal systems around the globe.²⁵⁴ Which as it will be shown farther on in this dissertation, Colombia serves as a perfect example.

But even so, globalisation did not happen overnight at the end of the 20th Century with the massification of the internet, and the emerging of huge transnational corporations; instead, it started to take place in antiquity with high-value cargoes, slowly shifting towards less prized and bulky consumable wares, connecting gradually but steadily entire continents along the way

²⁵³ Thomas L Friedman, *The World is Flat: a brief history of the twenty-first century*, First ed. (London: Penguin Books, 2006).

²⁵⁴ Schneiderman 2000.

through trade.²⁵⁵ As one author puts it, ‘[t]oday’s massive container ships, jet planes, the Internet, and an increasingly globalised supply and manufacturing network are just further evolutionary steps in a process that has been going on for the past five thousand years.’²⁵⁶

This line of thought contends that multilateral relations are key to fostering prosperity. This translates evidently when referring to trade as one way in which it is possible to access the goods and services that allow consumers and societies to satisfy their needs. This has implications for State’s economies, and most importantly, for the reaffirmation of the positive values of globalisation, as by creating and strengthening bonds that might have started in the economic and business fields, links are often created that transcend to the social, political and legal.

The Multilateral Trading System (MTS) attests to the importance of trade and especially of multilateral relations. It bridges nations and brings peoples together through the vehicle of trading. These positive outcomes are in addition to offering a forum in which trade related differences between nations can be solved in an amicable and specialised environment, possibly decreasing and in some cases eliminating the propensity for military confrontation.²⁵⁷

Indeed, the success of the WTO’s jurisdictional reach is undeniable. Over 600 disputes have been brought to the MTS, accomplishing 350 rulings²⁵⁸; in addition to a compliance rate of 90%.²⁵⁹, ‘In short, the WTO docket is almost always full, the complainant State almost always wins, and the

²⁵⁵ Porter, Sauvé, Subramanian & Zampetti 2004.

²⁵⁶ Porter, Sauvé, Subramanian & Zampetti 2004.

²⁵⁷ Kelvin Bribena, "The Rebirth of the World Trade Organization (WTO) As Force for Peace or For Exploitation in the 21st Century.", *African Renaissance* (1744-2532) 15:2 (2018).

²⁵⁸ World Trade Organization, *Dispute settlement*, 2018, <https://n9.cl/vrezy>.

²⁵⁹ World Trade Organization 2018.

respondent State almost always complies²⁶⁰. However, all those listed achievements are damped by harsh and sometimes well-deserved criticism that contends the many flaws of a system that allegedly privileges the interests of the global north²⁶¹ under the apparent advantages of disproportionate market liberalisation²⁶² and the lopsided protection of foreign investment as the silver bullet for development, when in fact both are responsible for putting human rights at stake.²⁶³ These askew dynamics have been predominantly concerning for agricultural trade and for rice in particular for years due to its role for benchmarking poverty assessments, even if failing to reach an equitable compromise almost thirty years since the establishment of the WTO.

3.2 Understanding the Origins of the Multilateral Trading System

The origins of the Multilateral Trading System are found at the end of the second world war, when the horrors and devastation of the hostilities had become more than evident. This reflected on a general call for a systemic reconstruction of nations, and their economies alike. This in turn would be embodied in the Bretton Woods conference, the United Nations Economic and Social Council, and of course the early proposals for an International Trade Organization (ITO). The latter was imagined as the third cog in a bigger institutional plan for the post-war financial, economic and market-oriented rebuilding efforts. Sharing this burden with the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD), which were envisioned at the time as the three institutional ‘pillars of the new international economic order.’²⁶⁴

²⁶⁰ Roger P Alford, "The self-judging WTO security exception", *Utah L.Rev.* n° (2011).

²⁶¹ Bribena 2018.

²⁶² Jagdish N Bhagwati, "Reshaping the WTO", n° (2005).

²⁶³ Sarah Joseph, *Blame it on the WTO: a human rights critique* (Oxford University Press, 2013).

²⁶⁴ Roy Santana, "70th Anniversary of the GATT: Stalin, the Marshall Plan, and the Provisional Application of the GATT 1947", *Trade L. & Dev.* vol. 9 (2017).

As a result, as early as February 1946, a Preparatory Committee was created with the sole purpose of working on the construction of a charter for an International Trade Organisation (ITO). This collective would set out to work incessantly from October 1946, first in London, and then in Geneva from April 1947.

Historical research shows that at the 1947 conference held in Geneva, the stakes were very ambitious. The expected outcome was threefold. One part of the efforts was dedicated to the formulation of a charter for an organisation in charge of overseeing global trade, the ITO. A second part oversaw the negotiations for an international instrument dedicated to the mutual and gradual reduction of tariffs; with a final section focusing on the general clauses of obligations. Parts II and III would go on to become the GATT, which clearly established the binding commitment of abstaining from practices that could farther hinder trade.²⁶⁵

However, while negotiations on the GATT, an agreement conceived to help tackle upfront the rampant protectionism of the tariff regimes that thrived during the period in-between the wars, (among which The Ottawa System of Imperial Tariff Preferences and the infamous Smoot-Hawley Tariff act were notable examples), were fruitful, reaching a compromise by the end of 1947, the same did not apply to the ITO's charter, which instead was expected to be concluded only by 1948.

Jackson postulates that this protracted delay in shaping the ITO created a political problem for two main reasons. As negotiations on the GATT were mostly about tariff concessions, the negotiators worried that those agreed so far would begin to be leaked, potentially threatening to disrupt world

²⁶⁵ John Howard Jackson & Royal Institute of International Affairs, *The World Trade Organization, Constitution and Jurisprudence* (Routledge, 1998). 16

trade patterns; also, the United States delegation was negotiating vested on the powers of the US-Trade-Legislation Act, which was scheduled to expire by 1948. These constraints strongly encouraged the United States government to reach an agreement before this source of legitimacy expired.²⁶⁶

This bifurcation in the political efforts dedicated to both the GATT and the ITO, would prove to be an important factor in the demise of the latter as it was decided to bring the provisions of the GATT into force immediately by means of the Protocol of Provisional Application (PPA) for GATT. This instrument was subscribed by six of the twenty-three negotiating participants. Thus, the General Agreement on Tariffs and Trade was born on 30 October 1947, becoming the heart of what later would develop into the Multilateral Trading System.²⁶⁷ Envisioned as a ‘provisional measure’, it ended up serving as the storefront of multilateralism and the legal framework for international trade, during almost five decades. Dubbed as ‘the largest trade negotiation of its time.’²⁶⁸ it has been noted that ‘the negotiations were concluded thanks to a series of innovative approaches bold decisions and a colossal effort by those involved.’²⁶⁹

As for an actual organisation in charge of overseeing global trade, the world would have to wait for almost 50 years to fill that void. Although by March 1948 the final draft for the ITO charter was eventually concluded in Havana, failure by the United States executive to achieve congressional approval during the following years despite repeated attempts, would render futile all the diplomatic and political efforts to establish the International Trade Organization.

²⁶⁶ Jackson & Royal Institute of International Affairs 1998. 16

²⁶⁷ World Trade Organization, *What is the WTO?*, 2021, <https://n9.cl/z0okm>.

²⁶⁸ Santana 2017.

²⁶⁹ Santana 2017.

Finally, in 1951 the Truman administration abandoned its congressional struggles to get the ITO Charter approved.²⁷⁰ This in time translated into a rapid loss of momentum in the overall efforts to consolidate the institution, ‘since no country was interested in establishing an international organisation for trade of which the United States, the world’s leading economy and trading nation would not be a member, the ITO was still-born.’²⁷¹

This was a hard blow to the plans of consolidating a new international economic order which rested upon the IMF, the IBRD and the ITO, but in time helped to establish the GATT as the diplomatic and multilateral recourse for trade liberalisation as well as dealing with the trade related controversies of its signing parties.²⁷² As Van den Bossche and Zhouc have noted ‘[a]lthough the GATT was conceived as a multilateral agreement for the reduction of tariffs, and not an international organisation, it would over the years successfully “transform” itself- in a pragmatic and incremental manner, into a de facto international organisation.’²⁷³

The effectiveness of the GATT is exemplified in its impressive statistics. The GATT membership expanded from six, to twenty-three to one hundred and twenty-eight contracting parties, through eight rounds of negotiations which took place over the course of forty-seven years. During the first two rounds alone, it resulted in the reduction of over 45.000 tariffs, which equalled to \$10 billion in trade, or one fifth of the world’s total.²⁷⁴ By the end of the Tokyo round in 1979 there were no

²⁷⁰ Van den Bossche & Zdouc 2017.

²⁷¹ Van den Bossche & Zdouc 2017.

²⁷² Van den Bossche & Zdouc 2017.

²⁷³ Van den Bossche & Zdouc 2017.

²⁷⁴ World Trade Organization, *The GATT years: from Havana to Marrakesh*, 2019b, <https://n9.cl/tfnhd>.

less than 102 negotiating countries embarked on the project to gradually lower tariffs, which resulted in at least one-third cut in customs duties within the world's major industrial markets to an average tariff of 4.7% for manufactured goods.²⁷⁵

The tariff reduction process was devised to be both gradual and harmonic. This meant that under the GATT's commitments, nations were obligated to reduce their charged custom duties depending on the markup, (the higher the tariff the larger the cut). Protracted phasedown of tariffs meant an unprecedented boost to global trade during the first two decades of the GATT's application, upwards of 8% annually.²⁷⁶ According to the WTO's historical account of events '[t]he rush of new members during the Uruguay Round demonstrated that the multilateral trading system was recognized as an anchor for development and an instrument of economic and trade reform.'²⁷⁷

All this ultimately translated into a "flattening" of the world by helping to ensure the access to industrial wares (and eventually services with the creation of the WTO), directly linking economies, communities and individuals. It thereby fostered economic growth in many regions of the world and helped countries to gain market share for their products in what could be arguably interpreted as a manifestation of the classical posture of the comparative advantage principle vehemently defended by Ricardo²⁷⁸ over two hundred years ago. This was in addition to the important contributions to the reconstruction and furthering stabilisation efforts during the post-war period, by bringing together even former foes by means of trade.

²⁷⁵ World Trade Organization 2019b.

²⁷⁶ World Trade Organization 2019b.

²⁷⁷ World Trade Organization 2019b.

²⁷⁸ David Ricardo, *On the principles of political economy* (J. Murray, 1821).

As mentioned above, the early years of GATT pointed to a future in which reductions of customs duties imposed on industrial goods could boost international trade, in time fostering economic growth. Indeed, such reductions ranged from an average of 40 percent *ad-valorem* during the late 1940's to as low as 3.9 percent *ad-valorem* at the turn of the century.²⁷⁹ In contrast, the same did not apply to trade in agriculture, an economic sector historically plagued by distortions and disparities, and which did not benefit from the multilateral structure created by GATT. Instead, this system arguably exacerbated pre-existing disparities under a framework not equipped to deal with the challenges involved. As for the global rice trade during the period, research conducted for this dissertation shows a paradoxical inversely proportional relationship between the grain's lack of economic elasticity and the meagre considerations at political, diplomatic and legal efforts it merited during the forty-seven years leading to the formation of the WTO.

3.3 Distorted? Global Agricultural Trade During the 20th Century a Legal-Historical Analysis

*"The fertile earth, the straight tree rows, the sturdy trunks, and the ripe fruit. And children dying of pellagra must die because a profit cannot be taken from an orange. And coroners must fill in the certificates—died of malnutrition—because the food must rot, must be forced to rot."*²⁸⁰

Anderson's²⁸¹ historical research shows that although States' interferences in agricultural trade traditionally have been directed towards calming fluctuations in local food prices, there has been a steady inclination to switch from imposing levies on agricultural commodities, to explicitly subsidising producers over time. Examples of this traditional price control behaviour include the

²⁷⁹ Peter Van den Bossche and Werner Zdouc. 'The law and policy of the World Trade Organization' Cambridge Books (2017)81

²⁸⁰ John Steinbeck, "The grapes of wrath", en *A Route 66 Companion* (University of Texas Press, 2012).

²⁸¹ Anderson 2017.

more than 500 years preceding the first industrial revolution, in which Britain imposed heavy export duties, in order to control local food supply, maintaining artificially low prices.²⁸² This in time was aggravated by legislation enacted between the 1660-90 which continued the trend of heavy taxation for agricultural products, peaking with the passing of the British Corn Laws in 1815.²⁸³

As stated, the trend initiated by the abolishment of the Corn Laws, a timid attempt to liberalise trade in agriculture, came to a halt because of the two World Wars. Subsequently, while the GATT heavily concentrated on liberalising trade in industrial goods, this did not apply to agriculture, which in contrast would be directly impacted by the founding of programmes concentrating on greatly subsidising farmers on both sides of the Atlantic using policies like the Agricultural Adjustment Act (AAA) and European Communities Common Agricultural Policy (CAP). This practice characterised the protracted treatment of trade in agriculture throughout the 20th Century, and partially explains the decrease in agricultural trade²⁸⁴ vs its industrial counterparts.²⁸⁵ Though trade of manufactured goods worldwide increased by more than 50% annually during the second half of the 20th Century²⁸⁶, trade in agriculture barely grew at a rate of 3.2%. As a result, it contracted its share of global trading output ‘from 0.5 in 1913 and 1937 to 0.4 in 1951, 0.24 in 1961, 0.12 in 1981 and 0.07 in 2001 and 2011, before rising temporarily to 0.09²⁸⁷ in 2012-14.’²⁸⁸ With rice being at the very centre, in fact rice’s availability has contracted heavily during the last

²⁸² Anderson 2017.

²⁸³ Anderson 2017.

²⁸⁴ Giovanni Federico, *Feeding the world: an economic history of agriculture, 1800-2000* (Princeton University Press, 2008).

²⁸⁵ World Trade Organization, *Agreement on Agriculture*, 1994a, <https://n9.cl/3sxnq>.

²⁸⁶ Anderson 2017.

²⁸⁷ World Trade Organization 1994a.

²⁸⁸ Anderson 2017.

century despite its steep growth in production,²⁸⁹ and even more preoccupying is the fact that any growth in production has been constantly negated by the accelerated growth in global population.

Therefore, when examining GATT's remarkable achievements for trade liberalisation of industrial goods, it is also worth noting that agriculture is noticeably absent from a plain reading of the original agreement's text. The reason for this appears to be a European-wide general post- World War II belief that a ban on quota systems in agriculture was unacceptable on the basis that it could hinder reconstruction.²⁹⁰ In addition, the then political and economic climate in the United States, the GATT's driving force at the time, was hostile to addressing trade liberalisation in agriculture. Certainly, by the time the original negotiations for the GATT were fully underway, so was the implementation of the United States' 1933 Agricultural Adjustment Act²⁹¹ (AAA), a law passed during the Great Depression under President Franklin Delano Roosevelt's New Deal, envisioned to improve market conditions for agricultural products. Consequently, the GATT agreement hardly dedicated any provisions to facilitate trade in agriculture.

One way in which the AAA operated was by locally distributing subsidies to farmers with the goal of discouraging overproduction, to artificially maintain price stability.²⁹² These measures were accompanied by international trade policies that imposed strong qualitative as well as tariff restrictions. This made any attempt to access the United States' agricultural market much more onerous and came to reflect the relationship of the American farmers with their government during

²⁸⁹ Timmer, C. Peter, and David Dawe. "Food Crises Past, Present (and Future?): will we ever learn?." *The Rice Crisis*. Routledge, 2012. 3-11.

²⁹⁰ Dale E Hathaway, *Agriculture and the GATT: Rewriting the Rules* (Institute for international economics Washington, DC, 1987).

²⁹¹ National Archives and Records Administration, *Department of Agriculture. Agricultural Adjustment Administration. (1933 - 2/23/1942)*, 1942, <https://n9.cl/xjlm0>.

²⁹² National Archives and Records Administration 1942.

the 20th Century. The same pattern would soon be emulated by their European counterparts through the establishment of the Common Agricultural Policy (CAP)²⁹³ in the 1960s.

3.4 From Kansas to Strasburg to Uruguay, the Never-ending Reality of Disparities in Agricultural Trade

*The works of the roots of the vines, of the trees, must be destroyed to keep up the price, and this is the saddest, bitterest thing of all. Carloads of oranges dumped on the ground. The people came for miles to take the fruit, but this could not be. How would they buy oranges at twenty cents a dozen if they could drive out and pick them up? And men with hoses squirt kerosene on the oranges, and they are angry at the crime, angry at the people who have come to take the fruit. A million people hungry, needing the fruit- and kerosene sprayed over the golden mountains.*²⁹⁴

When Hurt ²⁹⁵ published his famed history of 20th Century agriculture, he demonstrated that American farmers came to presume that federal aid was nothing less than an entitlement. Under such a view, the United States Government oversaw creating programmes to increase yields, distort competition by both supporting prices and regulating companies; in addition to supervising strategies towards promoting agricultural products; and overall provide direct financial support. In any case, statically speaking, one hundred years of federal programmes, did little to guarantee farmers wealth.²⁹⁶

Likewise, as the surplus of industrial products continued to expand after the Second World War, so did the interests, led by the United States, to find markets to sell all those manufactured goods.

²⁹³ About Parliament European Parliament, *Treaty of Rome (EEC)*, 1957, <https://n9.cl/75hop>.

²⁹⁴ Steinbeck 2012.

²⁹⁵ Melissa Walker & R D Hurt, *Problems of Plenty: The American Farmer in the Twentieth Century*, 2004.

²⁹⁶ Walker & Hurt 2004.

This ultimately dictated many of the agendas followed during GATT's negotiating rounds regarding tariffs on industrial products. It concordantly meant that in principle trade in agriculture was excluded from GATT'S general rules, and therefore that for almost 50 years the treatment received by agriculture was based on the exceptions contemplated in articles XI and XVI.²⁹⁷ All within the framework of an agreement that was clearly not created, nor equipped to deal with the issues of agriculture, notwithstanding its economic and strategic significance. This could partially explain the further failure to address agriculture until the Uruguay Round, prior to the establishment of the World Trade Organization during the mid 1990s and the cited disinterest on rice.

Although agriculture was essentially excluded from the application of GATT's general rules, it is noteworthy that the need for liberalisation of trade in the area was brought to the negotiating table, albeit to no avail. First at the start of the Kennedy round in the 1960s under the hope that 'agriculture would be an integral part of the multilateral trade negotiations for the first time'²⁹⁸ and to the Tokyo round afterwards in the 1970s. However, these efforts met antagonistic responses from the United States, and the European Communities (EC), which had become an important player and was known for fighting tirelessly to "institutionalise" its Common Agricultural Policy (CAP).²⁹⁹

As noted by McMahon citing Hirsch and Shonfeld³⁰⁰, during the Kennedy round, the core of the European Community proposal in respect to international agricultural policies was ill received by

²⁹⁷ GATT Arts XI and XVI

²⁹⁸ Joseph A McMahon, *The WTO Agreement on Agriculture a commentary* (Oxford: Oxford University Press, 2006).

²⁹⁹ McMahon 2006.

³⁰⁰ F Hirsch & A Shonfeld, "International Economic Relations of the Western World 1959-1971. Volume I: Politics and Trade", *The Economic Journal* 86:344 (1976), doi:10.2307/2231486.

the rest of the GATT members. Owing to fears that it was a tactic to get other members to approve the European Communities' Variable Levy System.³⁰¹ This signalled the potential escalation towards the institutionalisation of the European Common Agricultural Policy over time. In the end, such diplomatic and economic struggles only managed to intensify hostilities between the U.S. and the EC³⁰², without achieving anything significant. Both players had a very particular approach on how negotiations regarding trade in agriculture were to be conducted in the future. This meant continuing to engage in highly protective policies of their farmers, consequently generating even more commercial distortions for global agricultural markets.

Another round of negotiations, another futile effort to bring agriculture under a multilateral discipline. By the beginning of the Tokyo round in 1973, negotiations on agricultural trade in the GATT had come to a standstill. McMahon's research attributes the deadlock, for the most part to the inabilities of the principal trading actors to again concede on their views.³⁰³ For example, in 1973, the EC had consolidated its economic and protectionist policies to counteract similar strategies of the United States. In addition to this, the EC Commission to GATT had little room to maneuverer, as the powers vested by its member states did not allow it to negotiate either the CAP's principles or its mechanisms.³⁰⁴ These included the vision of the EC's commercial expansion and stabilisation via international agreements that included, but were not limited to, commodities and marketing arrangements for 'main products. Conversely, the United States' approach was towards the promotion of greater efficiency.

³⁰¹ McMahon 2006.

³⁰² McMahon 2006.

³⁰³ McMahon 2006.

³⁰⁴ McMahon 2006.

These incompatible views meant that at least for agricultural trade, the Tokyo round was a stalemate.³⁰⁵ Nevertheless, Japan was watching and learning, so that by 1979 alone it subsidised exports of more than 564.000 tonnes of rice at a rate of \$2000 dollars per ton³⁰⁶. These practices were perfected through the years, so much that even in 2007 it reported upwards of six hundred dollars per rice hectare in direct payments for the recuperation of discarded land,³⁰⁷ proving once more the versatility of subsidisation.

As for rice, the cereal was prominently absent from the agricultural negotiations, and debatably even meaningful considerations for more than a quarter of a Century. In fact, legal historical research conducted for this dissertation to the available online archives of the WTO (see Table in Section 3.5 for more information), show that the grain was only considered worthy of inclusion in meetings minutes until October 14, 1974, during the Tokyo round at the meeting minutes of the Third Group of Commercial Negotiations in relation to greases, oils, tobacco and rice.³⁰⁸ The group highlighted the need for compiling any available data on supply, demand, production and consumption at the international arena, with the objective of identifying any potential problems amid the mentioned products. One undisclosed member of the group was keen to point that rice prices had been at a centre of a protracted instability since the 1960s, which included deep fluctuations of the price's behaviour.³⁰⁹ While the international rice markets from 1969-1971 dealt

³⁰⁵ McMahon 2006.

³⁰⁶ Ito, Shoichi. "Japan's Rice Policy and its Role in the World Rice Market: Japan Should Act as a Watchdog." *The Rice Crisis*. Routledge, 2012. 299-312.

³⁰⁷

Ito, Shoichi. "Japan's Rice Policy and its Role in the World Rice Market: Japan Should Act as a Watchdog." *The Rice Crisis*. Routledge, 2012. 299-312.

³⁰⁸ Spec(74)60

³⁰⁹ COM.TD/W/353

with low prices due to available surplus production, from 1972 on, prices surged due to high demand for imports and relative restrictions to agrochemicals needed for production and exports.³¹⁰

The group also emphasised the lack of elasticity for the crop in terms of available stocks to trade internationally vs quantities produced, as well as the vital importance of the cereal for developing economies. In addition to this, the group issued a call for the creation and implementation of policies aimed at fostering sustained production that in due time could manage to stabilise production. These strategies should include but were not restricted to research and development of more adaptable and resistant seed variety, stockholding of agrochemicals, as well as irrigation and storage infrastructure.³¹¹ Under those conditions, it was predictable that nations at the end of trade distortions on rice expressed their concern underscoring the well-known unfavourable conditions for exports, allegedly based on articles XI and XVI of the GATT.

While not disputing the concept of reasonable price, one member noted that it was difficult to define. At a given moment, for example, exports at a relatively low price had been subject to considerable levies, whereas later no levy had been charged on exports whose price had doubled. (...) the long-term problem for his country's exports was that of the domestic support prices and export subsidies granted by certain developed countries. In his view it would be useful to identify those measures and their effects, and he requested the secretariat to do so on the basis of information supplied by interested governments.³¹²

Almost a decade later, rice made a shy comeback to the table during the forty fifth meeting of the Committee on Trade and Development in November 1981. The Committee found out what it

³¹⁰ Committee on Trade and Development, *Tropical products: information on the commercial policy situation and trade flows. Rice* (1981), <https://n9.cl/f32pc>.

³¹¹ Committee on Trade and Development 1981.

³¹² Committee on Trade and Development 1981.

already knew. That Asian countries amounted to 94% of global production as well as consumption of rice, including being responsible for 78% of imports under either barter or government-to-government contracts³¹³, therefore rice has been for a very long time an inelastic crop. The report also compiled a list of measures to tackle many of those issues. The “wish list” basically coincided with those stressed at the beginning of the Tokyo round in 1973 emphasising the need for reducing export subsidies, as well as payments and reimbursement that distorted the international trade under the supervision of FAO’s Intergovernmental Group on Rice.³¹⁴ When in fact, trade policy reports showed a privileged access to markets by developed countries, which had benefited since the beginning of Tokyo from close to zero or/and low tariffs under the most favoured nation principle and the Generalised System of Preferences (GSP).³¹⁵ This demonstrated that rice had not been immune to trade distortions, even during the GATT era. This was contrasted with the fact that even if the GSP allowed the same concessions for developing country exports, by the bulk of rice being traditionally consumed where it is produced, such Most Favoured Nation and GSP advantages were only apparent for most countries albeit some exceptions.

By March 26, 1982, during an informal meeting of the Consultation Programme on Rice Trade Liberalisation,³¹⁶ representatives of several nations highlighted the importance of the grain for their economies, including the EC, Japan, and Pakistan. The latter praised³¹⁷ the possibility of accessing imports from developed countries, under the allowances of Tokyo, contributing to further liberalisation of such an important Cereal and the assurance of food security, especially for developing nations dependent on rice under the FAO’s supervision. Nevertheless, at the time, the

³¹³ Committee on Trade and Development 1981.

³¹⁴ Committee on Trade and Development 1981.

³¹⁵ Committee on Trade and Development 1981.

³¹⁶ World Trade Organization, *Programme of consultations on trade liberalization*, 1982, <https://n9.cl/zjfpn>.

³¹⁷ World Trade Organization 1994a.

cereal was caught between multiple strains. On one hand countries were advocating for cheap imports of the grain, while on the other, they were attempting to balance exorbitant amounts of resources poured into rice production programmes which for obvious reasons and given enough time could wind up further distorting markets due to overproduction and dumping. Therefore, the *brilliant* solution was to include parts of that production in international food aid programmes.³¹⁸ A strategy copied to the tee during the negotiation of the “rice clause” in the years leading to the creation of the WTO.

A year later, on October 25, the Committee on Trade and Development called for a farther liberalisation of rice and for considering it a product of special interest for developing countries.

³¹⁹ However, no concrete commitments, actions or policies came out of the work. Meanwhile, rice popped up in conversations again only in 1988³²⁰ and 1989³²¹ during the Uruguay round of negotiations. First, in order to praise the programmed reduction on rice production carried out by developed countries during 1986-1988 and which was contributing to low prices, while at the same time, paradoxically condemning the utilisation of the GSP mechanism for rice urging developed states to not farther distort markets.³²² By 1989³²³, the EC reported the extension of the Common Agricultural Policy CAP for rice. This amounted to 94% of price intervention, counterbalanced by the implementation of a tariff rate quota of ten thousand tons of basmati rice at a 25% lower tariff, in comparison to other long grain rice varieties ³²⁴, in what can only be seen again as another

³¹⁸ World Trade Organization 1982.

³¹⁹ World Trade Organization 1982.

³²⁰ World Trade Organization, *Tropical Products: Background material for negotiations*, 1988, <https://n9.cl/3n1iro>.

³²¹ World Trade Organization 1988.

³²² World Trade Organization 1988.

³²³ World Trade Organization, *Multilateral Trade Negotiations the Uruguay Round*, 1989, <https://n9.cl/92ey6>.

³²⁴ World Trade Organization 1989.

example of apparent advantages for developed countries³²⁵, and even a slap in the face of developing producers.³²⁶

³²⁵ World Trade Organization 1989.

³²⁶ World Trade Organization 1989.

3.5 TABLE OF NEGOTIATIONS ON RICE DURING THE GATT'S ROUNDS OF NEGOTIATIONS

It should be noted that table 3.5 is one of the biggest accomplishments of this dissertation. It is the direct result of a meticulous review of hundreds of archival documents spanning forty-seven plus years of GATT's negotiations. The table spawned from the need to comprehend the treatment received by rice from member states of the agreement. Surprisingly, and defying original biases, despite the crop's strategic importance, my research found that rice only merited discussions (and very vague at best) in six recorded minutes over almost fifty decades of negotiations, which was baffling and hugely disappointing, as it demonstrates that rice is a forgotten or at the very best an ignored commodity in the international trading arena.

ROUND OF NEGOTIATION	DOCUMENT REFERENCE	DATE	TITLE	OUTCOME
Tokyo	Spec(74)60	October 14 1974	Works of Group Three in Relation to Fats and Oils, Rice and Tobacco	<ul style="list-style-type: none"> • Recognition of instability in the rice producing sector since the 1960s • Recognition of the inelastic nature of supply in rice • Recognition of problems derived from trade distortions
N/A	COM.TD/W/353	November 10 1981	Tropical Products: Information on Commercial Policy and Trade Flows	<ul style="list-style-type: none"> • Recognition of the importance of rice • Call for efficiency on rice production and trading policies

				<ul style="list-style-type: none"> • Presentation of data regarding rice • Recognition of problems derived from trade distortions
N/A	Spec(82)26	March 26 1982	Consultation Programme on Rice Trade Liberalisation	<ul style="list-style-type: none"> • Recognition of the importance of rice • Call for efficiency on rice production and trading policies • Recognition of problems derived from trade distortions • The inclusion of rice produced under distorted production in food aid programmes
N/A	COM.TD/W/353/Add.1	October 25 1983	Tropical Products: Information on Commercial Policy and Trade Flows-Note of the Secretariat	<ul style="list-style-type: none"> • Recognition of the need for continued tracking of progress made in relation to rice
Uruguay	MTN.6NG/NG6/W/12/Rev.1	February 26 1988	Tropical Products: Baseline Information for Negotiations: tropical roots, rice and tobacco- Note of the Secretariat	<ul style="list-style-type: none"> • Disapproval of the utilisation of the GSP mechanism on rice
Uruguay	MTN.6NG/NG6/W/31	June 8 1989	Tropical Products: Information on Commercial Policy and Trade Flows-Note of the Secretariat	<ul style="list-style-type: none"> • Report on the expansion of European Common Agricultural Policy (CAP) • Implementation of a tariff rate quota for Basmati rice

3.6 Exceptions Becoming the Norm for Agricultural Trade

To return to the subject of the general issues in global agricultural trade, it is worth mentioning that it has been argued that the exceptions contained in articles XI and XVI of GATT, encompass the three main categories of trade distortions for agriculture. Namely: Export Competition, Domestic Support and Market Access³²⁷. Therefore, they urgently needed to be tackled, as the provisions essentially became a very successful way of maintaining agriculture on the side-lines of the agreement. Indeed, the exceptions to the Agreement in Agriculture allowed nations to inject immense amounts of resources to their agricultural producers, protect their borders to the extent they desired, and to export the surplus via export subsidies³²⁸ as seen with the dubious utilisation of the GSP by developed nations for rice. These issues eventually became the spirit of the Uruguay Round Agreement on Agriculture.³²⁹

Perhaps one of the earliest and most respected works on the effects of agricultural trade distortions arising from GATT's exceptions, could be traced back to the works of Johnson³³⁰ during the 1970's. As Sharma points out, in a book published in 1973, Professor Johnson coined the expression 'disarray in agriculture', to define the distortions plaguing the global agricultural sector. Johnson pinpointed the exemptions contained in articles XI and XVI of the GATT, focusing on the ability to lawfully limit trade, and deliver high sums of incentives in the form of subsidies to farmers, thus creating vast amounts of excess agricultural produce which in time were distributed globally via export subsidies. Johnson made it clear that the distortions were highly concentrated in the

³²⁷ R Sharma, *Agriculture in the GATT: A Historical Account* (FAO, 2000).

³²⁸ Sharma 2000.

³²⁹ Sharma 2000.

³³⁰ Ruth Cohen & D G Johnson, "World Agriculture in Disarray", *The Economic Journal* 83:331 (1973), doi:10.2307/2230720.

temperate-zone food products which traditionally have been produced by developed countries and that for obvious reasons, developing countries could not afford to emulate.³³¹

As a result, GATT's protracted treatment of agriculture proved to have a less than savoury effect for many developing countries, which traditionally have been net exporters of commodities and agricultural goods, while paradoxically being at the same time net importers of food.³³² This contributed to typically leaving them vulnerable to the competing interests of their developed counterparts. Inequality in trading conditions was thus the prevailing characteristic of the most distorted economic sector of all for forty-seven years.³³³

It is worth recalling that during the first wave of the industrial revolution, most countries on their way to industrialisation demoted trade in agriculture to a secondary position in favour of manufacturing in order to maximize their comparative advantage on products with significant added value. Regardless of this and these strategies, nations did not lose sight of agriculture's political sensitivity.³³⁴ In fact, the nuances involved in agricultural trade continued to set the tone for protracted campaigns of protectionism, which in time came to be emulated by other States irrespective of their economic muscle, or even their form of government. As pointed out by Higgott and Cooper '[d]eveloped and developing nations, market-oriented and command economies, and major and minor powers—have been geared to defending the agricultural sector, and international trade rules have been moulded accordingly.³³⁵' So much so in fact, that it has been contended that

³³¹ Sharma 2000.

³³² Kele Onyejekwe. 'GATT, agriculture, and developing countries' (1993) 17(1) Hamline Law Review 77

³³³ World Trade Organization, *Measures concerning the possible negative effects of the uruguay round agricultural reform programme on least-developed and net food-importing developing countries*, 1994c, <https://n9.cl/sbedn>.

³³⁴ Richard A Higgott & Andrew Fenton Cooper, "Middle power leadership and coalition building: Australia, the Cairns Group, and the Uruguay Round of trade negotiations", *International Organization; Int Org* 44:4 (1990), doi:10.1017/S0020818300035414.

³³⁵ Higgott & Cooper 1990.

since the 1970s, at least when it comes to developed States, their agricultural strategies have become nothing less than an arm of foreign policy, with traces of nationalism³³⁶, effectively underwriting prolonged clashes between the major producers, which include the U.S., the E.U., Japan, Australia, Norway, and Canada.

Regarding GATT's agricultural exceptions found in Article XI:2(c), there is plenty of historical evidence supporting the ineffectiveness of the agreement to bring agriculture under a multilateral discipline. Figueroa's³³⁷ research during the 1990's on the work of Filipek³³⁸ and Jackson³³⁹ postulated that arguably the most famous event arose in 1951, when the architect of the Multilateral Trading System, the United States, was breaching its obligations, by restricting imports on dairy products, without curbing its own domestic production, in accordance with section 2(c) of GATT.³⁴⁰

Yet, the American legislative branch amended section 22 of the Agricultural Adjustment Act, known as the 1951 Trade Agreement Extension Act³⁴¹, and made it compulsory for the government to limit agricultural imports that could possibly obstruct the application of any domestic programmes, regardless of any pre-existing obligations derived from international agreements.³⁴²

Under those circumstances, GATT granted the United States an exception in 1955, permitting it to bypass GATT's rules regarding agricultural quotas. That being the case, it also made it tougher for

³³⁶ Higgott & Cooper 1990.

³³⁷ Sharma 2000.

³³⁸ Jon G Filipek, "Agriculture in a world of comparative advantage: the prospects for farm trade liberalization in the Uruguay Round of GATT negotiations", *Harv.Int'L.L.J* vol. 30 (1989).

³³⁹ John H Jackson, *World Trade and the Law of GATT* (Bobbs-Merrill Indianapolis, 1969).

³⁴⁰ Sharma 2000.

³⁴¹ United States Congress, "The Trade Agreements Extension Act of June 16, 1951", 16/6 1951, <https://n9.cl/j538d>.

³⁴² Sharma 2000.

the United States to protest any similar behaviour from other countries³⁴³ and '[t]he waiver has been cited as a reason why other members were compelled to stretch or break GATT rules.³⁴⁴' Hence, it is unsurprising that many have been critical of the waiver.³⁴⁵ It continues to be seen as one of many examples of the double standard applied to the international trade in agriculture over the years. The actions of the United States exemplified the contradictions of the sector, because despite the generalised unrest of agricultural traders around the effects of protectionism, the precursor and founding member of the system was blatantly giving primacy to its domestic interests whilst at the same time condemning the use of quotas by other members.³⁴⁶

3.7 Declining Global Agricultural Output

In addition to trade in agriculture being a highly distorted field, recent empirical research³⁴⁷ has highlighted a growing concern: total global agricultural tradable output has been consistently dwindling since the mid 20th Century. By the mid 1960s, the volume of agricultural foodstuff amounted to 70% of all the tradable goods. This percentage alarmingly decreased below 50% by 1995. Meanwhile, the volume of non-bulk foodstuff almost grew in the same year to about 54%. This same situation can be seen in developing countries, where shared volumes of non-bulk products had hardly grown from 16% in 1965, to about 45% by the end of 1995.³⁴⁸

³⁴³ Miguel Antonio Figueroa, "The GATT and agriculture: past, present, and future", *The Kansas Journal of Law & Public Policy* 5:1 (1995).

³⁴⁴ Figueroa 1995.

³⁴⁵ Miguel Antonio Figueroa. 'The GATT and agriculture: past, present, and future' (1995) 5(1) *The Kansas Journal of Law & Public Policy* 93

³⁴⁶ Hirsch & Shonfield 1976.

³⁴⁷ Anderson 2017.

³⁴⁸ Thomas W Hertel, Kym Anderson, Joseph F Francois & Will J Martin, "Agriculture and non-agricultural liberalization in the millennium round", n° (2000).

Indeed, empirical research demonstrates by compiling the works of Baldwin and Robert-Nicoud³⁴⁹ as well as WTO data³⁵⁰ that the sluggish pace of global agricultural commerce in comparison to world GDP, is mostly the result of vast protectionist practices, as well as the increasing specialisation on processes dedicated to transforming agricultural commodities within the global value chains. Above all, world trade in agriculture only grew a total of 5% during the 1995 to 2010 period, whereas total manufactured traded goods grew 40% during the same time.³⁵¹

3.8 The Cairns Group, and the Uruguay Round as the First Steps Towards Attempting to Level the Field

As noted earlier, historically speaking, agricultural policies have been very contentious. Anderson argues that that is precisely the reason why from the very first Geneva meeting, all the way to Tokyo, agriculture was either virtually ignored, or completely dropped out of negotiations. In addition, most regional and other preferential agreements exclude farm products.³⁵² Indeed, the case study of rice underscores the many absurdities surrounding agriculture, when considering that despite being the most consumed staple of the world, it was basically absent from most of GATT's negotiating rounds, as demonstrated above.

Either way, by the end of the 1980s, protectionism in agriculture had spiralled out of control; so much so that it highlighted the necessity to come up with mechanisms to try and curb the highly distortive practices deployed mostly by industrialised nations, which showed no sign of restraint whatsoever and were set to continue spreading uncontrollably, unless efforts were taken to curb

³⁴⁹ Richard Baldwin & Frédéric Robert-Nicoud, "Trade-in-goods and trade-in-tasks: An integrating framework", *Journal of International Economics* 92:1 (2014).

³⁵⁰ World Trade Organization, *The GATT years: from Havana to Marrakesh*, 1994d, <https://n9.cl/tfnhd>.

³⁵¹ Anderson 2017. 32

³⁵² Anderson 2017. 34

them.³⁵³ Accordingly, agriculture was included for the very first time as a core issue during the Uruguay Round.³⁵⁴

It is not surprising that as the mentioned imbalances of trade in agriculture fostered by GATT's exceptions dragged on during the almost five decades of its existence, so did the constant plea for a systemic change in the way agriculture was to be dealt with within the agreement's structure. Years of dissatisfaction by many developing as well as some developed GATT members concerning agricultural trade distortions, exacerbated by the crossfire generated by the myriad of protectionist measures created by the United States, the EC and Japan, seemed to have peaked around the 1980s.

Some factors to blame and which have been reviewed are the establishment of the American Export Enhancement Program (EEP) as well as the strengthening of the European Common Agricultural Policy (CAP). This crossroad, significantly contributed to uniting several developed and developing nations during the 1980s around a common front, in an unlikely, but albeit very influential, manner. The Cairns Group, a coalition composed of highly diverse agricultural producing nations with one thing in common, undertaking the banners of trade liberalisation for agriculture. The group, established in 1986, played an essential role in the consolidation of a tangible legal framework for agriculture during the final years of GATT and throughout the Uruguay Round.

³⁵³ Anderson 2017. 34

³⁵⁴ Anderson 2017. 34

Recognized during the 1990s as an uncanny alliance in the history of international political economy;³⁵⁵ its diversity transcended any imaginable frontier, despite the polarised climate of the times, and came to include the East-West and North-South, united with the purpose of reforming global agricultural trade.³⁵⁶ The Group's combined trade and financial clout was remarkable, supplying 91.8% of the global market in thirteen different commodities; as well as boasting a combined GDP of \$1.06 trillion, rivalling that of Japan at \$1.3 trillion.³⁵⁷ As a matter of fact, the Cairns Group when combined, had a larger cut of global exports than the U.S. including in the rice sector.³⁵⁸

The Cairns Group came to materialise the sentiment of discontent that had been cultivating for decades within non-traditionally big or economically powerful members of the GATT. The members realised that on their own, they were bound to have little, if no, influence over the outcome of the dominant members policies which generated the highest share of trade distortions. Interestingly, the Cairns Group became a force to be reckoned with when acting collectively. Its influence was based on sheer numbers. Both in terms of value added in agriculture as well as the volumes of agricultural exports, these being in some cases as equal and even superior to those of Japan, the E.C. and even the U.S.³⁵⁹ The members of the Cairns Group managed to show what can be achieved when diplomatic and multilateral efforts are directed towards consolidating

³⁵⁵ The Cairns Group About <https://www.cairnsgroup.org/Pages/Introduction.aspx>

³⁵⁶ Higgott & Cooper 1990.

³⁵⁷ Higgott & Cooper 1990. 589

³⁵⁸ Higgott & Cooper 1990. 589

³⁵⁹ Rod Tyers, "The Cairns Group and the Uruguay Round of International Trade Negotiations", *Australian Economic Review* 26:1 (1993), doi:10.1111/j.1467-8462.1993.tb00771.x.

commonalities that leave aside narrow interests including those of Colombia a founding member.³⁶⁰

As mentioned, the 1980s was a period in which agricultural trade ‘iliberalties’ thrived.³⁶¹ This was mainly attributable to the crossfire generated by the policies implemented by the United States, the European Communities and Japan. Cairns’ Group members admitted that while market access to developed nations was a fundamental issue for trade in agriculture, it was equally important to address the proliferation of measures like the American EEP and the European CAP. They characterised themselves as the real victims of such crossfire, aggravated by their financial inability to either create or sustain their own subsidies programmes on key export sectors including meat, animal feedstuff, wheat, and of course rice.³⁶² To say nothing of the serious consequences for Latin American debtor countries such as Argentina, Colombia and Uruguay, because fulfilling their financial obligations required significant growth of sales in agricultural products.³⁶³

Two main documents are considered the cornerstones of the Group’s purposes. The 1986 Cairns Declaration of the Ministerial Meeting of Fair Traders in Agriculture, and the 1989 Comprehensive Proposal for the Reform of Agriculture, which was later presented to the GATT forum.³⁶⁴

The 1989 Comprehensive Proposal for the Reform of Agriculture symbolised the Group’s determination to reform agriculture by advocating for the decline of unfair established tariff

³⁶⁰ The members of the Cairns Group are Argentina, Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand, Ukraine, Uruguay, Vietnam

³⁶¹ Higgott & Cooper 1990. 589

³⁶² Higgott & Cooper 1990. 595

³⁶³ Higgott & Cooper 1990. 589

³⁶⁴ The Cairns Group, *Cairns Group Ministerial Meetings*, 2022a, The Cairns Group, <https://n9.cl/xy7a>.

barriers, as well as the gradual conversion of nontariff impediments into tariffs, with a set goal for their gradual reduction; the curbing of domestic support; the steady elimination of export subsidies, as well the banning of new ones; in addition to the acknowledgement of the Least Developed Countries status and the special conditions required by net-food importing States.³⁶⁵

The Group's accomplishments remain unquestionable. Their proposals were recognised in the results of the Punta del Este Declaration in 1986 and became the basis for the Uruguay Round Reform Programme for Agriculture, eventually establishing the foundations of the World Trade Organization's Agreement on Agriculture. They comprised the tangible well-intended first steps towards addressing trade distortions in agriculture. This can be easily seen in the chosen words of the preamble of the Agreement on Agriculture³⁶⁶, and further along throughout the provisions and annexes themselves. Arguably none of this could have been achieved without the efforts of the Cairns coalition at the time.

Regrettably, as agriculture started to lose its importance in the economies of the Cairns Group's key actors, namely Australia and Canada, both of which progressively shifted towards manufactures and services, so did the larger influence and successes of the group during the following years. This includes the actual application of most of the accomplishments realised on paper during the Uruguay Round. Indeed, apart from the 2013 Bali Package³⁶⁷ of reform much of the Group's objectives remain unfulfilled. While its past triumphs remain undisputable, the

³⁶⁵ The Cairns Group 2022a.

³⁶⁶ World Trade Organization, *Wto Analytical Index: Agreement on Agriculture – Preamble (DS reports)*, 2022b, World Trade Organization, <https://n9.cl/qo2uc>.

³⁶⁷ Ricardo Meléndez-Ortiz, Christophe Bellmann & Jonathan Hepburn, *Tackling Agriculture in the Post-Bali Context* (Geneva: International Centre for Trade and Sustainable Development, 2014).

Group's loss of cohesiveness and momentum over the years has demoted it to little more than an "in name" presence in subsequent WTO negotiations on agriculture.³⁶⁸

Historical research confirms that agricultural protectionism is neither new, nor very useful. Indeed, it manages to artificially increase the prices of foodstuff for consumers; increase already immense fiscal expenditure; whilst at the same time failing to redistribute wealth, because it costs taxpayers and overall consumers much more than every dollar paid, for every dollar allocated to farmers. In addition, the larger the producer, the larger the fund allocation it receives from the support programmes³⁶⁹ which is true specially for rice.³⁷⁰ Not only this, but the environmental toll is massive, as artificial price support, and overall protectionism clearly encourages higher production, which directly increases the usage of ever larger volumes of chemical fertiliser and pesticides.³⁷¹

Either way, it took approximately nine years of constant negotiations to furnish the first concrete actions concerning the well-known imbalances of trade in agriculture. This is remarkable, especially because those imbalances up until the mid 1980s, seemed destined to be perpetuated in the context of an agreement that debatably disowned agriculture and for decades facilitated the imposition of the law of the strongest. This was particularly the case, within the framework provided by the restricted interpretation and application of Articles XI and XVI - provisions that created the exceptions that became the general rules for agricultural trade.

³⁶⁸ Capling, Ann, and John Ravenhill. "Australia's flawed approach to trade negotiations: and where do we sign?." *Australian Journal of International Affairs* 69, no. 5 (2015): 496-512.

³⁶⁹ Anderson 2017. 33

³⁷⁰ Poapongsakorn, Nipon. "The political economy of Thai rice price and export policies in 2007–2008." *The rice crisis*. Routledge, 2012. 198

³⁷¹ Anderson 2017. 33

The accomplishments of the Agreement on Agriculture were ground-breaking. Not only did it continue the path set by the Punta del Este Declaration, in terms of recognizing the serious problems and implications arising from the GATT's framework, but it also consolidated both the agenda and the optimistic way in which the measures of the Uruguay Round Reform Programme were to be carried out.

It dared to establish that in terms of conflict of applicable provisions, the ones in the Agreement on Agriculture prevailed whilst at the same time integrating it with the rest of the WTO's agreements³⁷²; it established a negotiated schedule of concessions and commitments for agriculture³⁷³ dealing with the prevalent distortions resulting from restrictions to market access³⁷⁴, the proliferation of domestic support³⁷⁵, and export competition and subsidies³⁷⁶ set on the basis of a 20% reduction during a period of up to six years for developed members and 13% reduction during a period of up to 10 years for their developing counterparts³⁷⁷; learning from its big brother (GATT) the WTO implemented a process of 'tariffication' which bound members to convert most of their impediments to trade into tariffs³⁷⁸ in the hope of improving market access. It established a system of classification of legitimate measures for domestic support informally known as 'The Boxes'³⁷⁹; it contemplated preferential treatment for developing and least developed members of the WTO³⁸⁰; it created a package of anti-circumvention measures³⁸¹; it strengthened the figure of

³⁷² World Trade Organization 1994a. Annex 1(a).

³⁷³ World Trade Organization 1994a. Art. 1

³⁷⁴ World Trade Organization 1994a. Art. 4

³⁷⁵ World Trade Organization 1994a. Art. 6-7

³⁷⁶ World Trade Organization 1994a. Art. 8-9

³⁷⁷ World Trade Organization 1994a. Art 1(f)

³⁷⁸ World Trade Organization 1994a. Art. 4

³⁷⁹ World Trade Organization 1994a. Annex 2

³⁸⁰ World Trade Organization 1994a. Art. 15

³⁸¹ World Trade Organization 1994a. Art. 10

the Agriculture Committee³⁸², expanding its membership to all its members; inter alia charging it with overseeing members compliance with their obligations.³⁸³ It even made it mandatory to continue farther negotiations to achieve the long-term objective of substantial progressive reductions in agricultural support and protection.³⁸⁴ But above all, it managed to bring hope that a real change in international trade in agriculture was on the horizon, by positivising a set of well-intended efforts, even if today, many years later, most core issues remain unaddressed.³⁸⁵

The Uruguay Round was praised at the time as an extraordinary accomplishment for trade in agriculture and many other fields.³⁸⁶ The Agreement on Agriculture (AoA; URAA), one of its more remarkable achievements. It aimed, for the very first time in the history of the Multilateral Trading System, to expand the sphere of influence of the international trade regime and to realise the multilateralisation of agriculture. Its objective was to provide a framework within the newly created WTO within which future agricultural policies would be shaped. However, as it has been pointed out time and time again, the AoA, was only the first step in the much-yearned change of direction for agricultural trade.³⁸⁷

The AoA was considered one of the most revolutionary agreements of the World Trade Organization, as for the very first time a specific legal framework for trade in agriculture was established that established it as a matter for multilateral regulation. Despite all this, the AoA is a rather brief document, comprised of only 21 articles and 5 annexes, meant to be interpreted harmonically with the specific members obligations encompassed in Article II of GATT 1994 or

³⁸² World Trade Organization 1994a. Art. 17

³⁸³ World Trade Organization 1994a. Art. 18

³⁸⁴ World Trade Organization 1994a. Art. 20

³⁸⁵ World Trade Organization, *Agricultural trade*, 1994b, <https://n9.cl/xl5mlv>.

³⁸⁶ McMahon 2006.

³⁸⁷ McMahon 2006.

‘Country Schedules of Concessions’. It pertains to most products derived from agriculture, including some transformed goods that were defined in Annex 1, in conjunction with the Harmonized System of Product Classification, but exempted forestry, some soil derived products, as well as fish. Parts III, IV, and V contain provisions dedicated to addressing the 3 main problems with agriculture: market access, domestic support and export competition. A general overview of the way in which the AoA sought to deal with these problems will be presented in following sections.

3.8.1 Market Access

The agreement aimed to facilitate the access of agricultural products to foreign markets by establishing a discipline in which members could legitimately protect their borders and domestic markets via the use of taxes, whilst at the same time agreeing to progressively lower those barriers. Although taxes at borders as a form of protection was not novel by any means, due to the AoA, they became restricted into 2 main categories, namely tariffs, and tariff rate quotas.³⁸⁸ The goal was to limit the amount and categories of duties that foreign agricultural products were charged to gain access to domestic markets in an effort to restrict protectionism.

As mentioned above, the Agreement on Agriculture established the process of tariffication. It consisted of fixed deadlines of 6 and 10 years for the conversion of most trade impediments into comparable tariffs, contingent on the developed, or developing member status. This was accompanied by set commitments regarding the rate at which those tariffs were to be reduced, on average 36% and 24% pertaining to said status.

³⁸⁸ It refers to the amount of imports and exports that are subject to a lesser duty in the form of tariff. All products above the fixed amount are subject to a higher tariff.

Though the efforts concerning market access looked significant on paper, they also opened the door for their circumvention; thereby providing ‘numerous opportunities for backsliding that greatly reduced the effectiveness in the agreed disciplines.’³⁸⁹ In a phenomenon dubbed as ‘dirty tariffication’, most developed members ‘set artificially high domestic prices and artificially low world prices in order to set a particular tariff higher than it should be.’³⁹⁰ This in turn negatively affected developing members, paradoxically the very countries it meant to include and protect. As many of them were unable to conduct protracted and thorough analysis of the drafts, after the signing of the agreement, they encountered exorbitant tariffs on the goods for which they hoped to find market access.³⁹¹

Interestingly, while it is easy to blame all the responsibility for dirty tariffication on developed members, Anderson’s research documents developing countries taking an active role in such a practice, observing that ‘As many of them chose to bind their tariffs on agricultural imports at more than 50% and some as high as 150%, far above the tariff equivalent restrictions actually in place in the 1980s/early 1990s.’³⁹² This arguably hindered the chances of improving trading conditions and market access even among themselves.

Furthermore, it is worth noting that in an additional effort to avoid circumvention of the intended discipline established by the AoA, Article 4.2 explicitly prohibited non-tariff measures in

³⁸⁹ Dale E Hathaway & Merlinda D Ingco, "Agricultural liberalization and the Uruguay Round", *The Uruguay Round and the developing economies* n° (1995).

³⁹⁰ O’Connor, Bernard & UNCTAD. Programme on Dispute Settlement in International Trade Investment and Intellectual Property, *Dispute Settlement, World Trade Organization, 3.15 Agriculture* (2003), <https://n9.cl/b6b7h>.

³⁹¹ O’Connor & UNCTAD. Programme on Dispute Settlement in International Trade Investment and Intellectual Property 2003.

³⁹² Anderson 2017.

agriculture, stating that ‘Members shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties, except as otherwise provided for in Article 5 and Annex 5.’³⁹³ This reaffirmed the commitment of the agreement to multilaterally discipline agriculture, and aimed to maintain in check any future actions of members that could undermine the improvements accomplished pertaining to market access.

Moreover, in order to ease the transition to more liberalised markets for agriculture, the agreement contemplated the legitimate imposition of safeguards. Thus, allowing members under specific conditions to levy additional tariffs on products deemed sensitive. Therefore Article 5 of the Agreement, devised a double tiered mechanism for safeguard imposition. It necessitated the previous tariffication of the product on which the safeguard was to be imposed, as well as the designation of the product with Special Agricultural Safeguard (SSG) in the Country Schedules of Concessions.

Notwithstanding the provisions of paragraph 1(b) of Article II of GATT 1994, any Member may take recourse to the provisions of paragraphs 4 and 5 below in connection with the importation of an agricultural product, in respect of which measures referred to in paragraph 2 of Article 4 of this Agreement have been converted into an ordinary customs duty and which is designated in its Schedule with the symbol “SSG (...).”³⁹⁴

Under those circumstances, members were allowed to impose special safeguards under two mutually exclusive conditions: sudden increases in the amounts of imports; or sinking import

³⁹³ World Trade Organization 1994a.

³⁹⁴ World Trade Organization 1994a. Art. 5-1. (a)

prices. Named ‘volume and price triggers’ respectively, the basic conditions for their implementation were regulated under article 5 a) and b) of the Agreement:

a) the volume of imports of that product entering the customs territory of the Member granting the concession during any year exceeds a trigger level which relates to the existing market access opportunity as set out in paragraph 4; or, but not concurrently:

(b) the price at which imports of that product may enter the customs territory of the Member granting the concession, as determined based on the c.i.f. import price of the shipment concerned expressed in terms of its domestic currency, falls below a trigger price equal to the average 1986 to 1988 reference price for the product concerned.³⁹⁵

3.8.2 Domestic support

The provisions attempting to discipline domestic support were laid in articles 6 and 7 in conjunction with Annexes 2, 3, and 4 of the Agreement. Inter alia, they classified the different types of domestic support as well as the mechanisms to tackle the highly distortive actions of members in terms of subsidies. The agreement devised a very inventive tool extra officially called ‘The Boxes’, to catalogue domestic support by means of tolerated actions. These boxes were thought to metaphorically equate to traffic lights, and concordantly range from green, to amber, to blue, pertaining to their distortive impact and the commitments acquired regarding them.

3.8.3 ‘Amber Box’

Paradoxically, while recognised as highly distortive of trade in agriculture, measures categorised under the ‘Amber Box’ were not prohibited. Instead, they reflected a pledge for their progressive reductions, which were contained under each country’s commitments. The AoA capped the

³⁹⁵ World Trade Organization 1994a. Art. 5-1. (a, b)

expected reductions at 1986-88 average levels and mandated their cutback by 20% over a period of 6 years and 13% over 10 years, for developed and developing member states respectively.³⁹⁶

The way those reductions were to be achieved was by deploying the concept of total Aggregate Measurement of Support (AMS). Under the AMS, the Agreement aimed to calculate the entire funding provided by a member to its agricultural producers, including the member's specific spending on each sub-sector, also constricting said spending to each country's reduction commitments. The definitions and mechanisms for the calculation and application of the AMS, can be found in article 1 and Annexes 3 and 4 of the Agreement on Agriculture.

And yet, as with many of the core issues in the AoA, circumvention has been blunt. Under the calculations of the AMS, a country can be considered as fulfilling its commitments, if it does not go over the calculated cap under the base period formula. Therefore, countries can potentially reduce their support in one sector, in order to inject those funds into another and never be found in breach of the Agreement.³⁹⁷ This consequently has been blamed for the blatant bypassing of the very issues meant to be disciplined, significantly undermining the efforts to minimize domestic support, and creating scenarios for abuses that are reminiscent of those of the GATT years.

The success of the AoA in disciplining domestic support is bittersweet. Research in 2017³⁹⁸ suggests that policy reforms under the umbrella of the AoA have been primarily responsible for the reduction of domestic support measured under the AMS during the last 20 years. Key players

³⁹⁶ O'Connor & UNCTAD. Programme on Dispute Settlement in International Trade Investment and Intellectual Property 2003.

³⁹⁷ Anderson 2017.

³⁹⁸ Lars Brink, "Farm Support, Domestic Policies, and WTO Rules: The World is Changing", en *Handbook of International Food and Agricultural Policies* (2017).

like the United States, the European Union, and even Japan, have deployed efforts to comply with their commitments, therefore limiting the amount of trade distorting domestic support to less than 50% of target bound levels.³⁹⁹ Paradoxically, nowadays the proliferation of domestic support is now significant in developing economic powers such as China, India, Indonesia, and Brazil in key crops like wheat, maize and rice⁴⁰⁰ as well as the possible disguising of ‘Amber Box’ measures in the exempted ‘Green’ and ‘Blue Boxes’ by developed and developing country members alike, seems to mirror not only the versatile nature of subsidies, but once again the double standard that continues to be applied to trade in agriculture with ample concern for rice.

Additionally, in an echo of the 2001 works by Rude⁴⁰¹, countries have continued to voice their concerns regarding the sustained widespread trade distorting domestic support in all WTO members. In a meeting of the Committee on Agriculture as recently as November 2019, Australia and New Zealand, two of the founding members of the Cairns Group, circulated a document that measured the explosion of domestic support from approximately USD 322 billion in 2001 to a colossal USD 740 billion in 2016, with an expected outgrowth in entitlements measured under AMS and de minimis in excess of a staggering USD 2 trillion by 2030⁴⁰² and this was before the constraints placed on global trade before the COVID-19 global pandemic.

3.8.4 ‘Green Box’

Measures categorized under the Green Box were considered to have negligible or no distortive effect whatsoever and therefore were permitted. The preconditions for their application were laid

³⁹⁹ Anderson 2017.

⁴⁰⁰ Anderson 2017.

⁴⁰¹ James Rude, "Under the green box", *J. World Trade* vol. 35 (2001).

⁴⁰² World Trade Organization, *Higher and higher – growth in domestic support entitlements since 2001: Submission from Australia and New Zealand* (2019a), <https://n9.c/62olk>.

out in Annex 2 of the AoA. In order for a member to comply with Green Box measures, it has to prove that: ‘the support in question shall be provided through a publicly-funded government programme (...) not involving transfers from consumers; and, the support in question shall not have the effect of providing price support to producers⁴⁰³’. Nevertheless, as early as 2001, literature addressing the AoA expressed preoccupations on the possible effects of ‘Green Box’ measures regardless of their ‘less threatening’ effects. Such measures were foreseen as an open gate for members to legitimately deploy vast amounts of resources to farmers, increasing distortions proportionally.⁴⁰⁴

Additionally, Annex 2 contemplated a catalogue of domestic support measures exempted from reduction commitments and their respective application criteria. They include established government programmes for pests, disease control and infrastructure; food aid programmes; environmental aid and regional assistance; natural disaster relief; insurance; and the most problematic and contentious of the ‘Green Box’ provisions: direct payments to producers, including the so called ‘decoupled payments’. The latter were not clearly defined by the AoA and came to be ‘understood to include the provision of assistance to producers that is not linked to variables which affect markets including prices, production, factors of production and trade.’⁴⁰⁵

The contentious nature of decoupled payments is unsurprising considering that under that banner billions have continued to be poured into protecting national agricultural sectors. Illustrative of this are both the 2013 United States’ notification of more than 5 billion dollars in decoupled

⁴⁰³ World Trade Organization 1994a. Annex 2

⁴⁰⁴ Rude 2001.

⁴⁰⁵ Rude 2001.

payments⁴⁰⁶, and the European Single Farm Payment (SFP), which by 2011 amounted to 40 billion Euro per year, paying on average nearly 300 Euros per hectare of farmed land including rice.⁴⁰⁷

Likewise, the criticism pertaining to the distortive effects of direct and decoupled payments is neither new nor astounding. Works by Rude⁴⁰⁸, Swinbank and Tranter⁴⁰⁹, Goodwin and Mishra⁴¹⁰, Gardner, Hardie and Parks⁴¹¹, Hendricks and Summer⁴¹², have covered the matter extensively. They have questioned if in truth much of the support reported within the ‘Green Box’, including the so-called decoupled payments, can pass a rigorous test or if, contrary to what has been predicated by the WTO, many members continued to engage in protracted campaigns of subsidisation, in blatant contravention of the AoA. In that case, it is worth remembering that over two decades ago there were deep apprehensions regarding the ‘Green Box’s’ lack of precision, the scope of exempted support, and the very likely possibility of substituting one type of trade-distorting support for another.⁴¹³

3.8.5 ‘Blue Box’

The set criteria for the blue box application can be found in article 6.5 of the AoA. Dubbed by the WTO as the ‘amber box with conditions⁴¹⁴’, measures categorised as within the ‘Blue Box’ are similar to 3.8.3 ‘Amber Box’, they include direct payments made to farmers that constrict

⁴⁰⁶ Anderson 2017.

⁴⁰⁷ Klaus Mittenzwei, Wolfgang Britz & Christine Wieck, "Does the "green box" of the European Union distort global markets?", *Bio-based and Applied Economics* 3:1 (2014), doi:10.13128/BAE-13622.

⁴⁰⁸ Rude 2001.

⁴⁰⁹ Alan Swinbank & Richard B Tranter, "Decoupling EU farm support: does the new single payment scheme fit within the green box?", *Estey Journal of International Law and Trade Policy* 6:1753-2016–141109 (2005).

⁴¹⁰ Barry K Goodwin & Ashok K Mishra, "Are "decoupled" farm program payments really decoupled? An empirical evaluation", *American Journal of Agricultural Economics* 88:1 (2006).

⁴¹¹ Bruce Gardner, Ian Hardie & Peter J Parks, "United States farm commodity programs and land use", *American Journal of Agricultural Economics* 92:3 (2010), doi:10.1093/ajae/aap039.

⁴¹² Gardner, Hardie & Parks 2010.

⁴¹³ Rude 2001.

⁴¹⁴ World Trade Organization, *Domestic support in agriculture: The boxes*, 2023a, <https://n9.cl/ms4lu>.

production. They therefore have not been immune to criticism, especially since there are no limits to the amount of support a member can provide by making use of the 'Blue Box'. They are perceived as another distortion in disguise, justifying the continuation of support in the form of large sums paid by members to their producers. For example, as noted by Anderson, 'Blue box support accounts for about 26% of non-green box support over the period 1995-2000 for the EU, and 14% for Japan'.⁴¹⁵

3.8.6 Export Competition

Export subsidies have been a significant source of controversy among members since the days of GATT and started to spiral out of control around the 1970s. The ways in which players like the EC, the United States and Japan had been ramping up their protracted campaigns of domestic support since the mid 1950s, have been touched on above. As described by Hudec⁴¹⁶, such actions meant that as many members successfully completed their transition from the post-war reconstruction struggles, they were at the same time effectively shifting from efforts to ensure food security, to the generation of agricultural overproduction. This excess produce somehow had to be disposed of in international markets, therefore gravely disrupting them. All this added to the political pressure and discontent from other exporters, which was ignored while the big players cornered developed and developing markets alike.⁴¹⁷ As Hudec pointed out 'unless governments could be persuaded, or forced, to change those programs they were not going to give up the export subsidies that allowed them to solve this problem.'⁴¹⁸

⁴¹⁵ Anderson 2017.

⁴¹⁶ Robert E Hudec, "Does the agreement on agriculture work? Agricultural disputes after the Uruguay Round?", *Agricultural Research Trade Consortium* vol. (No. 943-2 (1998).

⁴¹⁷ Hudec 1998.

⁴¹⁸ Hudec 1998.

Despite that, one undisputable achievement of the AoA for export subsidies was putting an end to the “equitable share” controversy that came up over and over again during the GATT years. According to GATT Article XVI:3, export subsidies for primary products were permitted if the contracting party deploying them was not gaining more than an “equitable share” of world exports in the product, which under ordinary market conditions would not have been achieved. For obvious reasons, this rule proved more than challenging to apply, and was subject of plenty of criticism, and unfruitful challenges in the GATT dispute resolution forum over the years.⁴¹⁹

The efforts to discipline export competition in the AoA were bold, although not very successful. As opposed to GATT that adopted a futile approach by concentrating exclusively on export subsidies, the AoA effectively broadened the list of actions that were deemed export supports, namely: export subsidies; export credits, guarantees and insurance; food aid; exporting State trading enterprises; and export restrictions and taxes. This approach was however inconsistent as it failed to provide for something as basic as a definition to the term ‘subsidy,’⁴²⁰ instead leaving this task, with its complexities in the area of trade in agriculture, to the Agreement on Subsidies and Countervailing Measures (SCM). Under the SCM a subsidy exists if ‘there is a financial contribution by a government or any public body within the territory of a member; there is any form of income or price support in the sense of Article XVI of the GATT 1994; a benefit is thereby conferred.’⁴²¹

⁴¹⁹ Hudec 1998.

⁴²⁰ Article 1 of the WTO SCM Agreement.

⁴²¹ Article 1 of the WTO SCM Agreement.

Early on, this became the subject of criticism by the literature, not to mention a source of contentiousness within the WTO forum.⁴²² First, the difficulties of applying the SCM definition of subsidy to the agricultural context became evident, deeming it ‘as a rather artificial construct without a very solid conceptual foundation.’⁴²³ An example of this is that under the SCM rationale the entirety of State support that increases income or decreases costs could be considered a subsidy. Technically a tariff or a tariff rate quota classifies as a subsidy, as the returns of the beneficiaries are augmented proportionally to the increment in domestic prices that either a tariff or a quota potentially creates.⁴²⁴

Articles 8, 9 and 10 of the AoA laid the foundation for the rules attempting to discipline export competition. Inter alia they provided a list of practices that members were to reduce and/or refrain from, in order to comply with the Agreement, as well the measures to be taken in order to avoid circumvention. Such provisions were tied to each country’s schedule, and expected to be implemented as follows:

Each WTO member had to specify in its Schedule of Commitments the maximum level of budgetary outlay and the maximum quantity exported by product on an annual basis. The export subsidy commitments relate to both the amount of money spent and the quantity exported, or a six-year implementation period. Developed country Members were required to reduce their expenditure on export subsidies by 36 per cent below the levels in the 1986-1990 base period, and to reduce the quantities benefiting from export subsidies by 21 percent. Developing country

⁴²² World Trade Organization, *European Communities — Measures Affecting the Exportation of Processed Cheese* (s. f.), <https://n9.cl/473gc>.

⁴²³ Hudec 1998.

⁴²⁴ Hudec 1998.

Members were required to cut by 14 per cent with respect to volumes over 10 years, and 24 per cent with respect to budgetary outlays over the same period. Least developed country Members were not required to undertake any reduction commitments.⁴²⁵

Presented as a great success of the AoA for export competition, was the widened catalogue of recognised issues affecting trade in agriculture, e.g., export credits and related programmes, food aid, and the potential negative effects of State Trading Enterprises. Unfortunately, deep down the core matter remained unaddressed. The lenient treatment of export subsidies for both agricultural primary products and industrial products during Uruguay Round, and the fact that the former were only partially disciplined⁴²⁶ in the AoA, would continue to haunt the Agreement until Bali 2013 and beyond. Furthermore, a legitimate concern has been raised regarding the protracted usage of export subsidies by industrialised members, which when paired with other advantages like domestic support, and restrictions for market access, embody what has been referred to ironically as the ‘Special and Differential Treatment’ (SDT) for developed members.⁴²⁷ This description is arguably reflective of the overall situation for agricultural trade today.

3.9 The Agreement on Agriculture After Thirty

For decades, members of the GATT and then of the WTO have been aware of the issues concerning trade distortions in agriculture. As stated above, these issues have been broadly characterised as market access, domestic support and export competition. They were the focus of the Cairns Group statements (as discussed above), the Montevideo Declaration, and were encompassed in the

⁴²⁵ United Nations Conference on Trade and Development, *The Bridgetown Covenant: From inequality and vulnerability to prosperity for all*, 2021, <https://n9.c/sqvp6>.

⁴²⁶ Meléndez-Ortiz, Bellmann & Hepburn 2014.

⁴²⁷ Meléndez-Ortiz, Bellmann & Hepburn 2014.

negotiations throughout the Uruguay Round that yielded the WTO Agreement on Agriculture that was considered ground-breaking.

As seen, the Agreement on Agriculture was a huge step forward in so far as it objectively acknowledged the main issues with agricultural trade. It managed to put the subject at the forefront of the international trade discussions and to furnish the first concrete proposals to bring agriculture under multilateral regulation. This was to be accomplished by setting meaningful and comprehensive commitments and timetables in the hope of using them as a platform from which the gross imbalances plaguing trade in agriculture could finally begin to be fixed.

Optimistic predictions were made of a new beginning for agriculture following the Uruguay Round (1986-1994) with assessments of the potential gains offering a motive for change. Paradoxically, shortly afterwards, in depth empirical projections to the year 2005 seemed to dampen some of the prospective achievements of the actual agreement.⁴²⁸ As pointed out at the time, '[e]ven though the Uruguay Round commitments themselves will not result in large cuts in farm protection, attitudes have been irreversibly changed and the foundation has been laid for further reforms.'⁴²⁹

Therefore, it was projected by the turn of the millennium, that the reduction of agricultural protectionism, as a direct result of the AoA, had the potential to generate enormous yields for the world economy by 2005.⁴³⁰ The numbers were impressive, with an estimated \$70 billion increase in trade volumes generated by around a 40% reduction in market access support and domestic

⁴²⁸ Hertel, Anderson, Francois & Martin 2000.7

⁴²⁹ Hertel, Anderson, Francois & Martin 2000. 7-8

⁴³⁰ Hertel, Anderson, Francois & Martin 2000. 13-15

subsidisation.⁴³¹ The anticipated rewards decreased to \$60 billion without the elimination of domestic support. This was so despite agriculture's relatively small contribution to the global economy and reflected the higher rates of protection in the agricultural sector.⁴³²

The Doha Development Agenda (DDA) was launched with much fanfare in November 2001. It optimistically signalled the application of what had been achieved during the Uruguay Round within the then infant WTO, including the core issues of agriculture. Regrettably, by the time the deadline for the process of 'tariffication' was up for developing members (10 years after the Uruguay Round), most of the well-known concerns with agriculture lingered still.⁴³³ High rates of protectionism were no longer solely being attributed to developed countries, but strikingly were proliferating in their developing counterparts, largely due to the emergence of new significant players in the international arena like China, India, Brazil and Indonesia as noted earlier.⁴³⁴

Examples of this protectionism can be found in the estimates of 15 billion dollars poured on the Indian rice sector during the years leading to the 2008 rice crisis⁴³⁵ and the 2007 Chinese policies aimed at stabilising internal rice markets in the form of income support, government purchases, export taxes and public stockholding which ended up further distorting global markets.⁴³⁶ By 2008 direct subsidies on farmed paddy had increased to 450 Yuan per hectare.⁴³⁷

⁴³¹ Hertel, Anderson, Francois & Martin 2000. 12

⁴³² Hertel, Anderson, Francois & Martin 2000. 13-15

⁴³³ Hertel, Anderson, Francois & Martin 2000. 13-15

⁴³⁴ Hertel, Anderson, Francois & Martin 2000. 13-15

⁴³⁵ Gulati, Ashok, and Monica Dutta. "Rice policies in India in the context of the global rice price spike." *The Rice Crisis*. Routledge, 2012. 280-281

⁴³⁶ Fang, Cheng. "How China stabilized grain prices during the global crisis." *The Rice Crisis*. Routledge, 2012. 257

⁴³⁷ Fang, Cheng. "How China stabilized grain prices during the global crisis." *The Rice Crisis*. Routledge, 2012. 258

It is also worth noting that during the first 4 years of the Doha Round, because industrialised nations stood to profit the most, and had both larger capabilities and political weight, they were urged to lead by way of example during the negotiations.⁴³⁸ Showing their will to aid their developing counterparts was paramount. By striving for true liberalisation in agriculture and opening their own markets to the biggest sources of export revenue for poor nations (agriculture and textiles) the positive impact could have been enormous.⁴³⁹ Had developed countries opened their markets, and the U.S., E.U., Norway and Japan had relinquished their protracted subsidisation campaigns, developing nations would have been highly motivated to respond by liberalising their own markets, generating farther possibilities even for the big players, and equally boosting the highly needed South to South trade.⁴⁴⁰

Despite this, another decade went by, and along the way the literature with it. Doha was declared a failure. Authors such as Anderson and Martin⁴⁴¹, Gallagher⁴⁴², Das⁴⁴³ Mercurio⁴⁴⁴, Lanoszka⁴⁴⁵, and Abbot⁴⁴⁶, pointed to a protracted deadlock on most of the subjects that were supposed to be addressed in the round and dubbed agriculture the breaking point. When the year 2015 came, the core of agricultural issues remained unaddressed in practical terms, prompting the WTO to act via the so-called Nairobi Package which resulted from the WTO's Nairobi Ministerial Meeting.

⁴³⁸ Anderson & Martin 2005.19-20

⁴³⁹ Anderson & Martin 2005.

⁴⁴⁰ Anderson & Martin 2005.

⁴⁴¹ Anderson & Martin 2005.

⁴⁴² Kevin P Gallagher, "Understanding developing country resistance to the Doha Round", *Review of international political economy* 15:1 (2007).

⁴⁴³ Dilip K Das, "The Doha round of multilateral trade negotiations and trade in agriculture", *Journal of World Trade* 40:2 (2006).

⁴⁴⁴ Bryan Mercurio, "The WTO and its institutional impediments", *Melbourne Journal of International Law* 8:1 (2007).

⁴⁴⁵ Anna Lanoszka, "The promises of multilateralism and the hazards of single undertaking: the breakdown of decision making within the WTO", *Mich.St.J.Int'l L.* vol. 16 (2007).

⁴⁴⁶ Roderick Abbott, "How to revive Doha with some chance of successNo title", *ECIPE Policy Brief* n° 4 (2009).

Inter alia, the Nairobi Package revived the Special Safeguard Mechanism (SSM) for developing members; attempted to deal with the subject of public stockholding for food security and reintroduced the persistent concern of export competition⁴⁴⁷ – all measures which have been described as useless for several reasons.⁴⁴⁸

The SSM permitted developing country members to temporarily and legitimately increment duties on agricultural products in order to confront an array of issues and protect domestic farmers, including trade distortions, price volatility, and import surges.⁴⁴⁹ This proved highly problematic as neither developing nor developed members managed ‘to determine the maximum temporary tariff level which would be imposed to balance between the protection of fragile farmers and the preservation of liberalisation commitments’.⁴⁵⁰ Some of these effects have been aggravated by the illegal practice of rice contraband⁴⁵¹ within the Colombian context during previous years.⁴⁵²

In terms of public stockholding for food security, the Nairobi Package has been deeply criticized, as in practical terms it limits the issue to a call for ‘Members to engage constructively to negotiate and make all concerned efforts to agree and adopt a permanent solution on the issue of public stockholding (...).’⁴⁵³ It acknowledges the faculty of developing countries to purchase food stocks at regulated prices to provide for food security, and has prompted concerns that named policies go against other World Trade Organization obligations. So much that the Bali Declaration from 2013

⁴⁴⁷ Martin & Mercurio 2017.

⁴⁴⁸ Gallagher 2007.

⁴⁴⁹ Martin & Mercurio 2017.

⁴⁵⁰ Martin & Mercurio 2017.

⁴⁵¹ Carlos Humberto Ortiz Saavedra, *El contrabando de arroz, un cáncer que afecta a los agricultores colombianos* (Trabajo de pregrado, Universidad Militar Nueva Granada, 2014).

⁴⁵² Carlos Fernando Tarache Medina, *Descripción de la situación oligopsonica y el contrabando del arroz en los departamentos del Meta y el Casanare (2000-2009)* (Trabajo de pregrado, Universidad de la Salle, 2011).

⁴⁵³ World Trade Organization 2019b.

had included a “peace clause” excluding public food stockholding from measurements until 2017.⁴⁵⁴

In terms of export competition, Nairobi aimed to eradicate agricultural export subsidies, setting the end of 2018 as a deadline. Exempting transport and marketing subventions, which are supposed to be eliminated by the end of 2023 but are to be extended until 2030 in the case of Least Developed Countries, and net-food-importing developing countries,⁴⁵⁵ “[i]t also included limitations on export credits, export credit guarantees; rules for agricultural-exporting state-owned enterprises; and disciplines to ensure that international food aid does not adversely impact domestic markets.”⁴⁵⁶ However, in terms of export subsidies the WTO claims that they have been declining steadily since 2013.⁴⁵⁷ Nevertheless, legitimate questions have arisen recently, as to whether this could be attributed to the Nairobi Package, or if it is merely the logical result of members not using export subsidies in recent years due to market conditions, and the fact that world prices for agricultural products have been on the rise,⁴⁵⁸ a line of research which has been previously covered with the case study of agricultural products surging in price and their direct relation to rice consumption and food security.⁴⁵⁹

Unfortunately, as of today, the effects of the Nairobi Package, as well as the ideal of a fairer and more liberalised treatment of trade in agriculture remains unattained even despite WTO’s Public Relations strategies.⁴⁶⁰ This adds to greater clamours from countries the world over to reach a

⁴⁵⁴ Martin & Mercurio 2017.

⁴⁵⁵ Anderson 2017.

⁴⁵⁶ Anderson 2017.

⁴⁵⁷ Mermigkas & Krivonos 2017.

⁴⁵⁸ Meléndez-Ortiz, Bellmann & Hepburn 2014.

⁴⁵⁹ The World Bank 2013.

⁴⁶⁰ World Trade Organization, *The Agriculture Committee*, 2023b, <https://n9.cl/cv4ve>.

definitive implementation of that which looks very good on paper, but in reality, has become nothing more than an ode to legalism, calling into question the effectiveness of the WTO, the problems with its ‘one size fits all’⁴⁶¹ policies, its ability to equally benefits stakeholders, and even the need for its existence.

3.10 Rice and the Multilateral Trading System: From Geneva to Nairobi

The display of initiative during the Uruguay Round in terms of levelling the field for agriculture was praiseworthy at the time. It is also notable that for the very first time the Multilateral Trading System openly recognised the special conditions required by developing and least developed countries, including considering the need for special and preferential treatment. Certainly, part of this special treatment can be seen in Annex 5. It has a caveat though, as the provision allowed under specific circumstances and strict oversight, the continuation of highly distortive protectionist practices by four specific nations, on three agricultural products, with rice being the primary product. The exceptions contemplated in Annex 5 of the Agreement on Agriculture were specifically tailored to fulfil the demands of Israel for cheese and sheep-meat, and those of the Philippines (a low-income net importer of rice,⁴⁶²) South Korea and Japan for rice. The exception was informally known as the “rice clause.”⁴⁶³ The clause interestingly permitted the free-riding of Japan, which as seen above, has been identified as one of the main agricultural trade-distorting nations for almost a century.

⁴⁶¹ Dreyfuss, Rochelle Cooper. "TRIPS and essential medicines: must one size fit all? Making the WTO responsive to the global health crisis." (2010): 09-44.

⁴⁶² Balisacan, Arsenio M., Mercedita A. Sombilla, and Rowell C. Dikitanan. "Rice crisis in the Philippines: why did it occur and what are its policy implications?." *The Rice Crisis*. Routledge, 2012. 127.

⁴⁶³ World Trade Organization 1994a. Annex 5

Research shows that when analysing Japan's economic history, there has been a marked inclination to support agriculture above other economic sectors. Japan's path to development was belated and started just after the Meiji Restoration Period around 1868. At the beginning of the 20th Century the country had transitioned from exporting small quantities of food to a noticeable reliance on rice imports, thus generating heated and protracted debates between pro liberalisation and protectionist forces.⁴⁶⁴ As expected protectionism succeeded since "rice is Japan."⁴⁶⁵ As a result, by 1904 high tariff protection was enacted for rice imports. This would only be the beginning. Over the course of the 20th Century, trade distortions in the form of tariff protection grew steadily but exponentially. By World War I, tariff protection for rice amounted to over 30%, and would continue to rise to levels beyond 60% in comparison to global markets by the end of the 1930s.⁴⁶⁶ Japan was not unaware of the then highly protectionist tendencies of other States. Driving its average nominal rate markup for grains and meats from around 50% in the late 1950s to around 100% by the early 1970s and to more than 200% by the late 1980s.⁴⁶⁷

As for the rice clause, in the case of Japan, the special treatment provided by Annex 5 ceased in April 1999, more than a full year ahead of schedule, whereas for South Korea, preferential treatment extended until the year 2005. In respect to the Philippines, when the year 2005 came, the country solicited an extension through 2012 and again until 2017, today it currently continues to heavily protect its rice sector using other means.⁴⁶⁸

⁴⁶⁴ Anderson 2017.

⁴⁶⁵ Ohnuki-Tierney, Emiko. *Rice as self: Japanese identities through time*. Princeton University Press, 1994.

⁴⁶⁶ Anderson 2017.

⁴⁶⁷ Anderson 2017.

⁴⁶⁸ Angie Pacheco Rodríguez, "Balance historiográfico sobre el federalismo en Colombia desde 1810 a 1886", *Artificios. Revista colombiana de estudiantes de historia* n° 4 (2016).

3.11 Rice the afterthought of the Multilateral Trading System

In fact, research carried out for this thesis to the WTO case file database portrays rice, as more of an afterthought than a commodity of strategic importance. Indeed, with the exception of DS295 Mexico-Anti-Dumping Measures on Rice, and Turkey-Rice DS334,⁴⁶⁹ that merited the establishment of a panel, rice has stayed for the most part absent from the dispute settlement forum of the WTO for almost thirty years. Here it is necessary to recognise that those outcomes contradict previous research assumptions from the beginning of this process, which preconceived rice trade as a contentious subject at a multilateral level but turned out to be quite disappointing.

DS295 started out on 16th June 2003, when the United States requested consultations with Mexico due to the latter's treatment of beef and long-grain rice.⁴⁷⁰ According to the United States, Mexico's conduct as to the named products was non-conforming with a number of articles of the Anti-Dumping Agreement, including 3,5,6,9,12,11.1; as well as considering sections 5.8, 6, 6.1.1, 6.8, 7, 9, 9.5, 10.6, 11 of the Mexico's Foreign Trade Act and its Federal Code of Civil Procedure Articles and 11.1 transgressive of the Anti-Dumping Agreement and Articles 11.9, 12.1.1, 12.7, 17, 19, 19.3, 20.6, 21 and 21.1 of the SCM Agreement.⁴⁷¹ The findings of the anti-dumping Mexican regulatory authority investigation, were unsatisfactory to the United States as they were deemed

inconsistent with Article VI:2 of the General Agreement on Tariffs and Trade 1994 (the "GATT 1994"), as well as Articles 1, 5.8, 6.1, 6.2, 6.4, 6.6, 6.8, 6.10, 9.3, 9.4, 9.5, 12.1, and 12.2 of the Agreement on Implementation of Article VI of the General Agreement on

⁴⁶⁹ World Trade Organization DS295 Mexico-Anti-Dumping Measures on Rice, and Turkey-Rice DS334

⁴⁷⁰ World Trade Organization 2005a.

⁴⁷¹ World Trade Organization 2005a.

Tariffs and Trade 1994. In addition, the United States claimed that certain provisions of the Foreign Trade Act of Mexico (the "FTA") and one provision of the Federal Code of Civil Procedure are inconsistent, as such, with various provisions of the *Anti-Dumping Agreement* and the *Agreement on Subsidies and Countervailing Measures* (the "*SCM Agreement*") measures appearing to nullify or impair benefits accruing to the US directly or indirectly under the cited agreements.⁴⁷²

The final appellate panel endorsed the complaining part arguments for both the dumping injury and the shortcomings of the Mexican regulatory authority's investigation, "ruling in favour of the United States on practically all accounts except for the claims regarding the Mexican Federal Code of Procedure."⁴⁷³ Eventually, "At the DSB meeting on 20 January 2006, Mexico stated that it intended to implement the recommendations and rulings of the DSB but that it would need a reasonable period of time to do so."⁴⁷⁴ Notifying a compromise to cease all contraventions of WTO law on 16 January 2007, regarding procedures under Articles 21 and 22 of the DSU.⁴⁷⁵

As for Turkey-Rice DS334⁴⁷⁶, procedures started November 2, 2005, when the United States complained about Turkish treatment of rice imports, contending that the latter required import licenses that failed at being granted at bound rate of duty, and a Tariff Rate Quota mandating to such ends the "purchase of specified quantities of domestic rice including from the Turkish Grain Board (TMO), Turkish producers, or producer associations." According to the United States, the

⁴⁷² World Trade Organization 2005a.

⁴⁷³ World Trade Organization 2005a.

⁴⁷⁴ World Trade Organization 2005a.

⁴⁷⁵ World Trade Organization 2005a.

⁴⁷⁶ World Trade Organization 2005b.

abovementioned actions were transgressive of Article 2.1 and paragraph 1(a) of Annex 1 of the TRIMs Agreement; Articles III (including paragraphs 4, 5, and 7) and XI:1 of the GATT 1994; Article 4.2 of the Agriculture Agreement; and Articles 1.2, 1.3, 1.4, 1.5, 1.6, 3.2, 3.3, 3.5(a), 3.5(b), 3.5(d), 3.5(e), 3.5(f), 3.5(g), 3.5(h), 3.5(k), 5.1, 5.2, 5.3, and 5.4 of the Import Licensing Agreement.⁴⁷⁷

In September 2007, the panel found the Turkish actions contrary to WTO law since

for different periods of time denied, or failed to grant, Certificates of Control to import rice outside of the tariff rate quota, constituting a quantitative import restriction, as well as a practice of discretionary import licensing, within the meaning of footnote 1 to Article 4.2 of the Agreement on Agriculture. Accordingly, it is a measure of the kind which have been required to be converted into ordinary customs duties and is therefore inconsistent with Article 4.2 of the Agreement on Agriculture. The Panel also concluded that Turkey's requirement that importers must purchase domestic rice, in order to be allowed to import rice at reduced-tariff levels under the tariff quotas, accorded less favourable treatment to imported rice than that according to like domestic rice, in a manner inconsistent with Article III:4 of the GATT 1994.

In October 2007, Turkey notified the DSB of the process of adoption of the Panel Report and by the 7th May 2008 informed the panel of an agreement reached under the provisions contained in Articles 21 and 22 of the DSU.

⁴⁷⁷ World Trade Organization 2005b.

When reflecting on these outcomes, one possible explanation could be found on both the lack of rice's economic preponderance as a commodity, when compared to the added value of manufactures and services, and political lobby at the local levels, albeit the grain's strategic importance, especially for food security. When this adds to the natural inelasticity of the cereal on both supply and demand, it turns out to be indeed a *disappointing commodity*.⁴⁷⁸ Also, both rulings from the Dispute Settlement cases incidentally reinforce the idea that the WTO dispute docket is almost always full, the complainant State almost always wins, and the respondent State almost always complies.⁴⁷⁹ When viewed side by side with some of rice's vicissitudes including its role on benchmarking poverty assessments, too many things are left to be desired.⁴⁸⁰

3.12 Conclusions

Examples of agricultural and rice trading are found throughout history, continuously evolving over time. In contemporary society, trade in the cereal is complicated by the dynamics of the global economy, the legal frameworks that facilitate trade from the international to the local levels, as well as the fact that rice belongs to the most distorted economic sector of all, agriculture. The institutional structure created after the Second World War in the GATT, although very laudable in many regards, was far from perfect, and contributed to the perpetuation of the law of the strongest in agricultural trade, to the detriment of many countries in the global south that had long been excluded from participation in the race for development.

⁴⁷⁸ Francesca Bray and others, *Rice : Global Networks and New Histories* (Cambridge University Press, New York 2015) XVIII

⁴⁷⁹ Roger P. Alford. 'The self-judging WTO security exception' (2011) Utah L.Rev. 698

⁴⁸⁰ Hertel, Thomas W., Roman Keeney, Maros Ivanic, and L. Alan Winters. "Distributional effects of WTO agricultural reforms in rich and poor countries." *Economic Policy* 22, no. 50 (2007): 290-337.

By the turn of the millennium and with the advent of the WTO, there were indications that change was afoot for the international legal framework regulating trade in agriculture. The inclusion of the AoA at the core of the WTO, contributed to expectations that for the first time in history agriculture could be brought under the umbrella of a multilateral discipline. Nevertheless, three decades later not much has changed, and the countries, caught in the crossfire between the interests and actions of dominant trading powers, continue to be the poorest countries and therefore weakest members of the international trading system. In addition, despite the inclusion of the AoA and the negotiations on trade in agricultural products, there has been little focus on rice at the multilateral level, despite the focus of the two dispute cases mentioned above. This can be considered a clear reflection of the informal and disregarded way in which rice has been traded for a Century between nations. Therefore, replicating on rice's tendency to scape any multilateral discipline and instead continue to be relegated to the realm of barter, government to government contracts and bilateral trade agreements (which can be deeply unequal), issues that are the heart of the research questions postulated for this thesis, especially questions one and two.

CHAPTER IV

RICE AND WORLD TRADE

This chapter analyses the structure under which rice has been traded for more than a century, stressing that contrary to the expectations arising from its predominance in world diets, its market is thin, segmented and flawed, in equal parts due to production constraints and to the political sensitivities that compound the grain's exchanges. This has played a role in a protracted tendency to overregulated it at the local level, which as the research shows, tends to aggravate its availability during times of crisis, as reflected during the 1970s, and 2008 food crises and lately since times of the Covid-19 pandemic, under the watchful although unsuccessful eye of the Multilateral Trading System, a forum in which contrary to many expectations rice has been mostly absent since its origins in 1947, both in terms of negotiations and disputes.

4.1 Rice: The “Anti-commodity”

Attempts to the international commodification of rice start to be discernible from the nineteenth century on. Rice originating mainly from *Siam* and Vietnam eventually gave way to the one produced in the Yangzi river Delta during the first years of the twentieth century, aiding the founding of the Shanghai market.⁴⁸¹ Nevertheless, that would not have been possible without the dissemination and consolidation of technologies that emerged from the industrial revolution, including steam powered ships that reduced enormously the shipping costs and submarine

⁴⁸¹ Cheung, Sui-Wai. "A Desire to Eat Well: Rice and the Market in Eighteenth-Century China." *Rice: Global Networks and New Histories* (2015): 84-98.

telegraph cables between South-East Asia and Europe, ultimately fostering the creation of a rice futures market out of Rangoon in former Burma.⁴⁸²

However, what this research shows in a paradoxical turn of events and contrary to many preconceptions, is that even after a century and a half international rice commodification, plurilateral legal frameworks for rice trading were basically non-existent, until the WTO's Marrakesh Agreement⁴⁸³ during the 1990s, and the subscription of the "rice clause"⁴⁸⁴ of the WTO's Agreement on Agriculture. But even so, rice is perhaps the most regulated global commodity after oil.⁴⁸⁵ The fact that this regulation takes place at a national level, and can even be imprinted on nations constitutions in the form of food security⁴⁸⁶ demonstrates the prominence of the cereal as a political commodity, which acutely hinders trade flows and consequently access to this staple for people in great need as reflected with the 2008-09 food and rice crisis⁴⁸⁷ and lately with the on-off Indian bans⁴⁸⁸ on rice exports since the days of the COVID-19 pandemic.⁴⁸⁹ Certainly, rice has been dubbed despite its prominence and strategic importance as a "failed global commodity or even a so-called anti-commodity in which global forces lead to the creation of specific "indigenous" forms of production and in which the global is not about the worldwide processes but concerns co-existence of a multitude of different experiences on a global scale."⁴⁹⁰

⁴⁸² Cheung, Sui-Wai. "A Desire to Eat Well: Rice and the Market in Eighteenth-Century China." *Rice: Global Networks and New Histories* (2015): 84-98.

⁴⁸³ World Trade Organization, *The GATT years: from Havana to Marrakesh*, 2019b, <https://n9.cl/tfnhd>.

⁴⁸⁴ World Trade Organization 1994a. Annex 5

⁴⁸⁵ Bin Rahman, ANM Rubaiyath, and Jianhua Zhang. "Trends in rice research: 2030 and beyond." *Food and Energy Security* 12.2 (2023): e390.

⁴⁸⁶ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 64

⁴⁸⁷ Dawe, D. "The rice crisis." *Markets, Policies and Food Security*. FAO. Rome (2010).

⁴⁸⁸ <https://economictimes.indiatimes.com/news/economy/foreign-trade/un-bars-indian-rice-exporters-from-wfp/articleshow/106907185.cms?from=mdr>

⁴⁸⁹ Durand-Morat, A., and S. Bairagi. "International rice outlook: international rice baseline projections 2020-2030." (2021).

⁴⁹⁰ Riello, Giorgio *Rice: Global networks and new histories* (2015): xviii.

International rice trade suffers from many of the same intricacies vexing its production. These can range far from other commodity counterparts and even grains or cereals.⁴⁹¹ Indeed, while maize, wheat, vegetable oils and many of the other products that are included in the FAO's World Food Price Index⁴⁹² are mostly constrained by preoccupations regarding supply,⁴⁹³ those involved in the rice trade are forced to constantly scrutinise the latest data on agronomy, meteorology, but also macro and micro economic statistics at the national level including prices of substitutes, income growth, currency values and foreign exchange reserves that can upset profitability.⁴⁹⁴ In addition to this, international politics as well as over regulation at the national level tend to be the main driver of international rice prices.⁴⁹⁵ These complexities are further compounded by deficient storage conditions around the world that can limit stockholding and planning with effects on available quantities,⁴⁹⁶ and the well-known inelasticity in both supply and demand⁴⁹⁷ which in recent years has been exacerbated by acute changes in rain patterns and climate.

Further perplexing examples of world rice trade paradoxes can be found in the de facto barter system that dominated international markets during a good portion of the twentieth century.⁴⁹⁸ It was characterized by bargains between nations, bilateral agreements, and government to government contracts led by state-owned foodstuff enterprises, aiming to supply immediate needs of the cereal or to conjure crisis.⁴⁹⁹ In fact, by the end of the 1980s it was estimated that upwards of 25% of global rice trade was literally bartered between Asian governments,⁵⁰⁰ which is only

⁴⁹¹ Latham, Anthony JH. *Rice: The primary commodity*. Routledge, (2013) 29

⁴⁹² <https://www.fao.org/worldfoodsituation/foodpricesindex/en/>

⁴⁹³ Latham, Anthony JH. *Rice: The primary commodity*. Routledge, (2013) 31

⁴⁹⁴ Dawe, D. "The rice crisis." *Markets, Policies and Food Security*. FAO. Rome (2010).

⁴⁹⁵ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 98

⁴⁹⁶ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 98

⁴⁹⁷ Nalley, Tack, Durand, Thoma, Tsiboe, Shew & Barkley 2017. 80

⁴⁹⁸ Latham, Anthony JH. *Rice: The primary commodity*. Routledge, (2013) 27

⁴⁹⁹ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 135

⁵⁰⁰ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 26

reasonable when considering that under the banner of self-sufficiency many countries particularly in the developing world have historically maintained tight monopolies on food exports via state-owned enterprises⁵⁰¹ encompassing one of the most critical issues of the WTO's Bali Ministerial meeting in 2013⁵⁰², as well as the Nairobi Package in 2015.⁵⁰³ Also, under the hope of injecting rice markets with a badly needed dose of transparency.⁵⁰⁴

These features explain to a certain degree why private rice traders have been dubbed as an "exclusive and reclusive breed quite different in demeanour and expertise from their counterparts in other grains or sugar."⁵⁰⁵ In a business that requires contacts and ample access to privileged information as well as multiple sets of abilities and knowledge in economics, politics and contract law and with frequent high rates of defaults⁵⁰⁶ "there never has been a rush to become a rice trader."⁵⁰⁷ Under those circumstances, it has been argued that the market could benefit from more private actors and less government intervention, especially during times of crisis.⁵⁰⁸

This in turn has further complicated the possibilities of consolidating anything resembling predictability of available flows of the grain for international trading. Examples of the aforementioned system of exchange can be found in the 1955 Italian exchange of twenty thousand tons of rice with the Philippines against the same amount of sugar, the Spanish swapping of fifty thousand tons of the cereal for the market equivalent price of aluminium products from Japan, the

⁵⁰¹ Anderson 2017.

⁵⁰² Martin & Mercurio 2017.

⁵⁰³ https://www.wto.org/english/thewto_e/minist_e/mc10_e/nairobipackage_e.htm

⁵⁰⁴ Timmer, C. Peter. "Did speculation affect world rice prices?." *The Rice Crisis*. Routledge, 2012. 25.

⁵⁰⁵ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 139

⁵⁰⁶ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 140

⁵⁰⁷ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 140

⁵⁰⁸ Slayton, Tom. "The 'Diplomatic Crop' or How the US Provided Critical Leadership in Ending the Rice Crisis." *The Rice Crisis*. Routledge, 2012. 313-341.

Burma-Iran bargain of rice for sugar; as well as the Burma-Yugoslavia agreement of rice for consumer goods, the Burma-USSR agreement of rice for industrial goods, the three-year bilateral agreement between Burma and Romania of rice for machinery;⁵⁰⁹ let alone the many individual rice exchanges constantly being conducted mostly between Asian countries, either within or outside of cooperation organisations,⁵¹⁰ food-aid structures, or for stockholding reasons.⁵¹¹

4.1.1 Rice Trade During the 20th Century: the never-ending story of limited tradable quantities

Research shows that apart from Indonesia, in which mostly due to Dutch intervention the area of farmed paddy grew from 2.25 m ha to more than 3.5 m ha during the first three decades of the 20th Century, rice production remained fundamentally immobile in the eleven most significant countries of the Asian continent.⁵¹² By end of the 1930s most of the internationally available quantities of the grain, originated from farms located in the water rich regions of the Mekong Delta: China, Myanmar, Lao PDR, Thailand, Cambodia, and Vietnam;⁵¹³ as well as the Chao Phraya and Irrawaddy water systems. With exports concentrating out Burma, which through British colonial rule had been transformed during the previous century into a “natural economy” and groomed for rice;⁵¹⁴ as well as Thailand and Vietnam.⁵¹⁵ Given these facts one cannot ignore crucial research contending that many of the comparative advantages of the aforementioned countries for rice

⁵⁰⁹ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 27

⁵¹⁰ Ito, Shoichi. "Japan's Rice Policy and its Role in the World Rice Market: Japan Should Act as a Watchdog." *The Rice Crisis*. Routledge, 2012. 299-312.

⁵¹¹ Dawe, David. "Can the next rice crisis be prevented?." *The Rice Crisis*. Routledge, 2012. 348

⁵¹² Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 19

⁵¹³ Latham, Anthony JH. *Rice: The primary commodity*. Routledge, (2013) 31

⁵¹⁴ Coclanis, Peter A. "Distant thunder: The creation of a world market in rice and the transformations it wrought." *The American Historical Review* 98.4 (1993): 1050-1078.

⁵¹⁵ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 20

production, historically derived from various degrees of influence⁵¹⁶ by colonial powers,⁵¹⁷ and the many abuses carried out on the populations in the process.⁵¹⁸

From the global standpoint, the post-war period signalled a shift from the traditionally straightforward paradigm of rice markets in which “millers milled the rice and exporters bought milled rice.”⁵¹⁹ In a sense rice was more like vegetable than a grain, going from farm to dinner plate with little processing and little marketing.”⁵²⁰

Certainly, up until then, most exports were comprised of residual stocks originating from very small plots of land in Asia and developing countries.⁵²¹ However, the availability of mechanization and technology applied to rice production coupled with protectionist practices meant the introduction of new dynamics and players like the short-lived United Arab Republic (UAR) and the United States, which took advantage of the demand during the post-war reconstruction efforts, becoming the undisputed larger global exporter of the cereal during the 1960s. Indeed, tripling the farmed acreage of planted rice in a little more than a decade, and reaching its peak in both production and sales during the 1973 harvests,⁵²² partly due to the efforts of the Rice Council for Market Development and the all-out protection and subsidisation of the sector by the US government.⁵²³

⁵¹⁶ Hall, D. G. E. "On the study of Southeast Asian history." *Pacific Affairs* 33, no. 3 (1960): 268-281.

⁵¹⁷ Latham, Anthony JH. *Rice: The primary commodity*. Routledge, (2013) 32-33

⁵¹⁸ Scott, James C. *The moral economy of the peasant: Rebellion and subsistence in Southeast Asia*. Yale University Press, 1977.

⁵¹⁹ Latham, Anthony JH. *Rice: The primary commodity*. Routledge, (2013) 32-33

⁵²⁰ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 97

⁵²¹ Latham, Anthony JH. *Rice: The primary commodity*. Routledge, (2013) 33-34

⁵²² Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 22-28

⁵²³ Siamwalla, Ammar, and Stephen Haykin. "The world rice market: structure, conduct, and performance." (1983).

At the same time, the South Korean domestic market mostly consisted of imported Japonica rice from a pool of less than 10% of the global trade.⁵²⁴ Whereas China had by the 1960s ramped up production and exports to North Vietnam, Canada, and the UK of long grain rice, in an effort to create foreign exchange, while paradoxically the country was still reeling from the effects of the “Great Famine.”⁵²⁵ Meanwhile, from the 1950s to the 1970s, Cuba, the EC, Saudi Arabia, Iraq, Iran and Indonesia were significant importers of rice from countries as diverse as Burma, China, Honduras, Nicaragua and last but not least the US, which as mentioned previously, had managed to effectively consolidate a thriving rice industry of approximately 5000m pounds out of Texas,⁵²⁶ Louisiana, Arkansas⁵²⁷ and Mississippi respectively.⁵²⁸ Only in 1972 did South American nations debut at the small international markets, with an exported surplus of the grain from Argentina and Uruguay.⁵²⁹

Furthermore, it has been noted that these characteristics of the rice trade, historically have taken place against a backdrop of harsh economic realities for farmers in the developing world,⁵³⁰ which usually have also affected available quantities of rice for trading.⁵³¹ These include nebulous property and tenure rights for growers, exorbitant costs of production,⁵³² the explosion of protectionist practices in all corners of the world,⁵³³ and the overreliance on acutely changing weather patterns. In stark contrast, the American rice industry was at the centre of an accelerated

⁵²⁴ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 23

⁵²⁵ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 23

⁵²⁶ Coclanis, Peter A. "White rice: The Midwestern origins of the modern rice industry in the United States." *Rice: Global networks and new histories* (2015): 291-317.

⁵²⁷ Coclanis, Peter A. "White rice: The Midwestern origins of the modern rice industry in the United States." *Rice: Global networks and new histories* (2015): 291-317.

⁵²⁸ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 23

⁵²⁹ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 25

⁵³⁰ Harwood, Jonathan. "Global visions vs. local complexity: Experts wrestle with the problem of development." *Rice: Global networks and new histories* (2015): 41-55.

⁵³¹ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 25

⁵³² Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 25

⁵³³ Anderson 2017.

process of sophistication during the post-war period, the most prominent one in a more than a three-hundred-year history.⁵³⁴ This included the participation of all sorts of stakeholders, from guilds of millers and traders, Congress, government agencies, and even FAO, whom have gathered since the second half of the 20th Century around the capital-intensive nature of American rice,⁵³⁵ in time affecting the already complicated international rice markets, in another example of the confounding realities of agricultural protectionism for both production and trading,⁵³⁶ not to mention that such policies propelled American control of world rice markets upwards of 10-12% nowadays.⁵³⁷

All these factors have contributed to farther thwart a freer flow of rice to more than half of the current global population and are partially to blame for the role of rice in the last two food crises.⁵³⁸ When coupled with overregulation at the national levels and the undeniable feature of a political commodity, due to its dependence on assorted systems of farming, workforce organisations, gender relations, consumption habits and State's concerns,⁵³⁹ it is no wonder that the subject of rice trade continues to be juxtaposed between all kind of forces and interests even to this day, while continuing to "elude both popular and scholarly analysis on a world scale."⁵⁴⁰

Available data shows that between the 1960s and 1970s there was a further segmentation of the obtainable rice for international trade. African countries were importing roughly 9% of global rice trade, whereas Western Europe was around 8% and middle eastern countries roughly 4%, all under

⁵³⁴ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 25

⁵³⁵ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 25

⁵³⁶ Melissa Walker & R D Hurt, *Problems of Plenty: The American Farmer in the Twentieth Century*, 2004.

⁵³⁷ Coclanis, Peter A. "White rice: The Midwestern origins of the modern rice industry in the United States." *Rice: Global networks and new histories* (2015): 291-317.

⁵³⁸ Dawe, D. "The rice crisis." *Markets, Policies and Food Security*. FAO. Rome (2010). 45-47

⁵³⁹ Riello, Giorgio *Rice: Global networks and new histories* (2015): xiv-xv.

⁵⁴⁰ Riello, Giorgio *Rice: Global networks and new histories* (2015): xiv

the umbrella of a preoccupying reality that available quantities of the grain for international trade were dwindling, and were doing it fast even despite increases in production.⁵⁴¹ With the early 1970s political instability in the Asian continent which affected the comparative advantage for rice of most of the Mekong Delta, Pakistan seized the opportunity and partially filled the void.⁵⁴² Moreover, the already organised American rice industry would benefit enormously⁵⁴³ by finding new markets to allocate production,⁵⁴⁴ all while Asian exports of the cereal were in freefall.⁵⁴⁵

As previously mentioned, the 1970s would witness dramatic changes for rice farming and markets. On the one hand, effects of the “Green Revolution”⁵⁴⁶ were started to be plainly felt. With new high yielding rice varieties, more expensive to produce and extremely dependent on agrochemicals hailing mostly from industrialised nations, and the displacement of the traditional dynamics of rice production particularly in Asia.⁵⁴⁷ International prices for rice experienced sharp contrasts, but even despite such innovations, and the production increase, harvests and outputs of the cereal, there was so much that could change in terms of an undeniable reality regarding rice, it remains even today as a crop that is mostly consumed a few kilometres away from where it is farmed. And that even at the peak of its globalisation, it has been estimated that only between 5 to 7% of its production is traded internationally,⁵⁴⁸ highlighting one of its most important features, rice by nature tends to be an inelastic commodity in both demand and supply.⁵⁴⁹

⁵⁴¹ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 26

⁵⁴² Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 27

⁵⁴³ Coclanis, Peter A. "The rice industry of the United States." *Rice: Origin, antiquity and history* (2010): 411-431.

⁵⁴⁴ Coclanis, Peter A. "White rice: The Midwestern origins of the modern rice industry in the United States." *Rice: Global networks and new histories* (2015): 291-317.

⁵⁴⁵ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 26

⁵⁴⁶ Canterbury, E. Ray, and Hans Bickel. "The Green Revolution and the World Rice Market, 1967-1975." *American Journal of Agricultural Economics* 53.2 (1971): 285-294.

⁵⁴⁷ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 26

⁵⁴⁸ Francesca Bray, Peter A Coclanis, Edda L Fields-Black & Dagmar Schäfer, *Rice : Global Networks and New Histories* (New York: Cambridge University Press, 2015).

⁵⁴⁹ Nalley, Tack, Durand, Thoma, Tsiboe, Shew & Barkley 2017.

4.1.2 A Shifting Agricultural Paradigm: All-out protectionism and no more “cheap food”

In addition to the inelastic nature of rice, it has been noted that the establishment of the Organization of Petroleum Exporting Countries (OPEC) in 1974, had a blatant impact on rice markets and trade.⁵⁵⁰ By creating this cartelised structure, member nations could stall, and reduce production in order to hike prices.⁵⁵¹ Since the newly developed agrochemicals from the green revolution relied heavily on oil, food prices started to increase first gradually, and then rapidly.⁵⁵² When combined with the international dollar crisis of 1971 and 1973, the Vietnam conflict and the cracks in the Bretton Woods monetary system, it was just a matter of time for a food crisis, and the end of the “cheap food” post-war regime.⁵⁵³ At the same time, the newly available middle eastern wealth, meant heavy demand from said countries for rice which put even more pressure on the steadily and firmly increasing imports from Nigeria, Indonesia and West Africa.⁵⁵⁴

Considering this, India would shift from being one of the largest rice importers during the 1960s, forcing it to be an early adopter of the Green Revolution,⁵⁵⁵ to becoming a net exporter of rice by the early 1980s,⁵⁵⁶ with an impressive yearly growth in production of 4.3% by 1990.⁵⁵⁷ This was a direct result of government intervention by way of the “seventh plan” policy. The policy included

⁵⁵⁰ Metzler, Mark. "The 1970s macrocycle: Eurodollars, petrodollars, credit booms, and debt busts, 1973–1982." (2022).

⁵⁵¹ Fattouh, Bassam, and Anupama Sen. "The past, present, and future role of OPEC." *The Palgrave handbook of the international political economy of energy* (2016): 73-94.

⁵⁵² Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 27

⁵⁵³ Metzler, Mark. "The 1970s macrocycle: Eurodollars, petrodollars, credit booms, and debt busts, 1973–1982." (2022).

⁵⁵⁴ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 27

⁵⁵⁵ Canterbury, E. Ray, and Hans Bickel. "The Green Revolution and the World Rice Market, 1967-1975." *American Journal of Agricultural Economics* 53.2 (1971): 285-294.

⁵⁵⁶ Minsky, Lauren. "Of Health and Harvests: Seasonal Mortality and Commercial Rice Cultivation in the Punjab and Bengal Regions of South Asia." *Francesca Bray, Peter A. Coclanis, Edda L. Fields-Black, and Dagmar Schafer, eds., Rice: Global Networks and New Histories* (2015): 245-74.

⁵⁵⁷ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 31-33-44

the distribution of high yielding varieties of seeds, heavy subsidisation of farmers, millers and distributors, technical assistance, soft credit procurement via the newly created National Bank for Agriculture, large government purchases of the cereal for poverty alleviation programmes, as well as irrigation infrastructure.⁵⁵⁸ By the mid 1990s, the Indian government had poured a staggering 26.7 billion dollars into its rice industry, illustrating that protectionism in agriculture had been alive and kicking for a very long time, and may have peaked during the 1980s, a period described as “full of illiberalities” for global agricultural trade.⁵⁵⁹

As for Indonesia, its 1945 independence from the Dutch would mark decades of civil and military unrest, impacting the rice industry for years. Fears of food insecurity prompted governments to act in all sorts of ways with various albeit not very prominent results. From intervention on the price ceiling of fertilizers, to distribution of rice to communities, they could not help prevent a sharp decline in rice production due to unprofitable prices and inflationary pressures. This combination of factors had steadily pushed Indonesia to buy rice on international markets wherever it could find it by the end of 1970s.⁵⁶⁰ However, this trend reversed briefly by the mid 1980s when the country achieved self-sufficiency and had surpluses to once more export rice, only to drift once more onto reliance on imported rice by 1990.⁵⁶¹

A slightly similar pattern can be identified in China from the 1970s to the early 1990s. In an effort to reach self-sufficiency, the country went from having a trade deficit due to its large imports of

⁵⁵⁸ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 44-47

⁵⁵⁹ The Cairns Group, *The Cairns Group*, 2022b, <https://n9.cl/39fsf>.

⁵⁶⁰ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 31-33

⁵⁶¹ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 48-49

rice⁵⁶² to the rapid deployment of a barrage of government policies on the rice sector, including cash incentives for farmers, large government purchases, price protection, and substantial investments in irrigation systems which meant that the Asian giant experienced a growth in rice production at an exceptional pace of 4.5% per annum accounting for 40% of global production by 1984, but which still did not cover domestic demand.⁵⁶³ However, such growth did not mean larger quantities of the grain for international trading, but an offset on the effects of the ongoing self-sufficiency policy in Indonesia, during the same period, once, one of the largest importers of Chinese rice.⁵⁶⁴ That is to say that China placed self-sufficiency and food security as a top national priority via price stabilization and higher farm incomes that assure grain availability for a rapidly growing urban population.⁵⁶⁵

Nonetheless, by 1988 Chinese rice production contracted heavily due to a combination of protracted repurposing of rural land for housing and industry, bad weather, unattractive prices for farmers, as well as lack of maintenance of irrigation systems. This reflected on the well-known inelasticity of the international rice trade and forced the Chinese central government to sign several government-to-government contracts with Thailand to offset domestic demand.⁵⁶⁶ By then Thailand had a thriving rice industry in large part due to years of government investment and subsidisation, and the abolition of the rice export tax.⁵⁶⁷ This aided it greatly on its path to predominance in the convoluted and historically underserved international rice markets, in an echo

⁵⁶² Lee, Seung-Joon. "Rice and maritime modernity: the modern Chinese state and the South China sea rice trade." *Rice: Global Networks and New Histories* (2015): 99-117.

⁵⁶³ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 52-53

⁵⁶⁴ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 52-53

⁵⁶⁵ Fang, Cheng. "How China stabilized grain prices during the global crisis." *The Rice Crisis*. Routledge, 2012. 255

⁵⁶⁶ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 53-54

⁵⁶⁷ Poapongsakorn, Nipon. "The political economy of Thai rice price and export policies in 2007–2008." *The rice crisis*. Routledge, 2012. 192

of the previously described unofficial rice barter system⁵⁶⁸ which continues to this day, and does not even account for the large smuggled quantities of the grain especially within Asia.⁵⁶⁹

The Thai Chao Phraya water system has long been a reliable source of spare rice for international trading.⁵⁷⁰ This in time would foster the steadily ascent of Thailand to the selected club of rice exporters of the globe⁵⁷¹, a position that it maintains even to this day.⁵⁷² This trend started to form during the end of the 1960s, due to heavy government investment in irrigation systems. When coupled with massive adoption of higher yielding varieties of the cereal and more effective fertilizers, meant that from 1976 and well into the 1980s the country more than tripled its production from the 1960s benchmark. In addition to this, preference of different staples by the end of the 1980s meant more quantities of the cereal available for exports and trading in addition to a protracted and aggressive governmental policy aimed at export expansion, including the abolition of export customs duties and the consolidation of large trading with China and Indonesia, as well as Senegal and Mauritania.⁵⁷³

On the other hand, in 1982 South American rice production grew approximately by one million tonnes, concentrating out of Argentina and Guyana. That year also marked the very first time in which Colombian surplus production would make it to the international markets out of the Tolima province,⁵⁷⁴ while paradoxically the bigger picture for Colombian rice farmers signalled disastrous

⁵⁶⁸ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 26

⁵⁶⁹ Sea, South China. "OLD ROUTES, NEW RULES." *The Routledge Handbook of Smuggling* (2021).

⁵⁷⁰ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 36-45

⁵⁷¹ Top Rice Exporters <https://www.aljazeera.com/news/2023/9/20/how-reliant-is-the-world-on-indian-rice-exports>

⁵⁷² Dawe, D. "The rice crisis." *Markets, Policies and Food Security*. FAO. Rome (2010).

⁵⁷³ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 36-45

⁵⁷⁴ Federación Nacional de Arroceros - Fedearroz 1992. 103-105

consequences,⁵⁷⁵ as it will be covered in chapter VI. Furthermore, demand for the cereal was concentrated in the European Communities, Nigeria, Iran, and Indonesia, as well as Mexico, Peru, the Dominican Republic, the USSR and Brazil even though the South American nation had worked determinedly for more than two decades to mature its rice industry.⁵⁷⁶ The biggest exporters were Thailand and Pakistan.⁵⁷⁷

As for former Burma, by the early 1990s, its lead as rice exporter had basically disappeared. Unprofitable prices made rice farming unattractive, this pressed growers to move on to planting other crops, eventually causing the dismantling of the once thriving milling and storage industries.⁵⁷⁸ Currently, the Republic of Myanmar derives most its foreign exchange from exports of oil and gas industries, as well as clothing products mainly to China.⁵⁷⁹

4.1.4 Rice Trade and Japan: Corroborating common preconceptions

“Rice is Japan.”⁵⁸⁰ It is even possible to venture out and indulge traditional biases and declare that rice is Asia. So much, that just like in other countries of the continent, even before rapid development and industrialisation was even an option in Japan, the cereal had been tied to the improvement of living standards by being at the heart of the rural economy, which in turn influenced the commercialization of agriculture and manufactures by the late nineteenth century, with palpable weight on all technical aspects of agriculture past the interwar period.⁵⁸¹

⁵⁷⁵ Federación Nacional de Arroceros - Fedearroz 1992. 103-105

⁵⁷⁶ Mandell, Paul I. "The rise of the modern Brazilian rice industry: demand expansion in a dynamic economy." *Food Research Institute Studies* 10.2 (1971): 161-219.

⁵⁷⁷ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 40-41

⁵⁷⁸ CIA Fact Book Burma <https://www.cia.gov/the-world-factbook/countries/burma/#economy>

⁵⁷⁹ CIA Fact Book Burma <https://www.cia.gov/the-world-factbook/countries/burma/#economy>

⁵⁸⁰ Ohnuki-Tierney, Emiko. *Rice as self: Japanese identities through time*. Princeton University Press, 1994.

⁵⁸¹ Francks, Penelope. "Rice and the path of economic development in Japan." *Rice: Global Networks and New Histories* (2015): 318-334.

Government involvement in the sector has historically been concentrated in preferential treatment.⁵⁸² Sometimes under the politically appealing flag of self-sufficiency, and sometimes leaning toward the maximization of the manufacturing comparative advantage after the country's industrialization.⁵⁸³ Nevertheless, always torn by the historical significance of the crop. As a result of this, for decades Japan has deployed all its protectionist arsenal on behalf of its political and cultural crop. In fact, records at the regional level show that by the end of the nineteenth century there were large investments in irrigation systems, improved cultivation tools and techniques, and the use of commercial fertilizers and seed varieties allowing local farmers to get better yields⁵⁸⁴ "in return for increased labour input over the course of the year."⁵⁸⁵

With more trading and commercialization, communities moved towards the establishment of infrastructure to offset the shortcomings of individual householding stockholding, further seeding the basis for cooperatives, which eventually provided marketing and credit services.⁵⁸⁶ This early system, proved crucial at paving the way for farther government intervention in the rice sector⁵⁸⁷ eventually, "the post-war land reform finally gave peasants full ownership of their land and locked them into place, ready to play their part in Japan's economic miracle."⁵⁸⁸

After the interwar period, protectionist policies ranged from production quota allocations by prefectures and provinces, strengthening of cooperatives with public funds, as well as large in-

⁵⁸² Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 70

⁵⁸³ Francks, Penelope. "Rice and the path of economic development in Japan." *Rice: Global Networks and New Histories* (2015): 325-330

⁵⁸⁴ Francks, Penelope. "Rice and the path of economic development in Japan." *Rice: Global Networks and New Histories* (2015): 325

⁵⁸⁵ Francks, Penelope. "Rice and the path of economic development in Japan." *Rice: Global Networks and New Histories* (2015): 325

⁵⁸⁶ Francks, Penelope. "Rice and the path of economic development in Japan." *Rice: Global Networks and New Histories* (2015): 325-330

⁵⁸⁷ Francks, Penelope. "Rice and the path of economic development in Japan." *Rice: Global Networks and New Histories* (2015): 325-330

⁵⁸⁸ Francks, Penelope. "Rice and the path of economic development in Japan." *Rice: Global Networks and New Histories* (2015): 325-330

advance government purchases via the Ministry of Agriculture, Forestry and Fisheries (MAFF) which well into the 1990s controlled exports.⁵⁸⁹ The result of these policies was a highly distorted system that by 1992 alone, cost Japanese taxpayers half of the MAFF's yearly budgetary allowance, and a dislocation of local prices relative to international markets of upwards of 40%.⁵⁹⁰ Predictably, the Japanese government, which by 1995 still imposed a ban on all rice imports,⁵⁹¹ was under pressure from other industrialised agricultural exporters⁵⁹² to liberalise its rice markets during the negotiations leading to the formation of the WTO. Nevertheless, as previously covered, Japan still had a bargaining chip to play - the *rice clause* - and was bound to continue distorting global agriculture from the standpoint of the cereal. Oddly enough, Japan's conquest on imposing the *rice clause* constituted the single most important thing that happened for global rice markets for a little more than a decade,⁵⁹³ until the devastating effects of the global food and rice crisis of 2008-2009.

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The result was that at the end of the Uruguay Round, the minimum market access mechanisms agreed to, required Japan to progressively liberalize its markets with aims on tariffication at a rate of four percent base consumption period (1956-1988) with a yearly increase of point eight percent by 2000.⁵⁹⁵ The goal was that at the end of the six-year grace period, Japan would start increasingly allowing foreign rice with a set goal of 205.000 metric tonnes by 2004.⁵⁹⁶

⁵⁸⁹ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 128

⁵⁹⁰ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 72-73

⁵⁹¹ Dawe, D. "The rice crisis." *Markets, Policies and Food Security*. FAO. Rome (2010).

⁵⁹² Cramer, Gail L., James M. Hansen, and Eric J. Wailes. "Impact of rice tariffication on Japan and the world rice market." *American Journal of Agricultural Economics* 81.5 (1999): 1149-1156.

⁵⁹³ Sumner, Daniel A., and Hyunok Lee. "Assessing the effects of the WTO agreement on rice markets: What can we learn from the first five years?" *American Journal of Agricultural Economics* 82.3 (2000): 709-717.

⁵⁹⁴ Dawe, D. "The rice crisis." *Markets, Policies and Food Security*. FAO. Rome (2010).

⁵⁹⁵ Cramer, Gail L., James M. Hansen, and Eric J. Wailes. "Impact of rice tariffication on Japan and the world rice market." *American Journal of Agricultural Economics* 81.5 (1999): 1149.

⁵⁹⁶ Cramer, Gail L., James M. Hansen, and Eric J. Wailes. "Impact of rice tariffication on Japan and the world rice market." *American Journal of Agricultural Economics* 81.5 (1999): 1152.

By 1998, and in accordance with Annex 5 of the WTO AoA Japan notified the organisation⁵⁹⁷ of the start of its tariffication process, which for some was exorbitant, “dirty”⁵⁹⁸ and mostly used to circumvent its WTO commitments.⁵⁹⁹ Therefore, in another example of its previously discussed well-known protectionist policies, AoA’s provisions were used to basically avoid the imported rice from ever entering the Japanese markets, instead most of the grain was stored, re-exported as food aid, used for industrial products and even used as livestock feed.⁶⁰⁰

4.2 The Usual Rice Trade Issues: Aggravated by pandemic disarray

Global rice markets are thin, segmented and imperfect,⁶⁰¹ this has been proven again and again. The two most recent examples can be traced to the 1970s food crisis and its 2008-2009 counterpart. In fact, it is remarkable that research estimates that a rice crisis occur once every thirty years or so,⁶⁰² and it is usually exacerbated by overregulation and the propensity of governments to “jump the gun” so to speak when it comes to trade policies.⁶⁰³ After all it is a political commodity, and as such it can be at the heart of preoccupations for developed⁶⁰⁴ and developing⁶⁰⁵ countries alike.

⁵⁹⁷ World Trade Organization 1994a.

⁵⁹⁸ O’Connor, Bernard & UNCTAD. Programme on Dispute Settlement in International Trade Investment and Intellectual Property, *Dispute Settlement, World Trade Organization*, 3.15 Agriculture (2003), <https://n9.cl/b6b7h>.

⁵⁹⁹ Sumner, Daniel A., and Hyunok Lee. "Assessing the effects of the WTO agreement on rice markets: What can we learn from the first five years?." *American Journal of Agricultural Economics* 82.3 (2000): 709-717.

⁶⁰⁰ Sumner, Daniel A., and Hyunok Lee. "Assessing the effects of the WTO agreement on rice markets: What can we learn from the first five years?." *American Journal of Agricultural Economics* 82.3 (2000): 709-717.

⁶⁰¹ Dawe, D. "The rice crisis." *Markets, Policies and Food Security. FAO. Rome* (2010) 40-42

⁶⁰² Dawe, D. "The rice crisis." *Markets, Policies and Food Security. FAO. Rome* (2010) 40-42

⁶⁰³ Gulati, Ashok, and Monica Dutta. "Rice policies in India in the context of the global rice price spike." *The Rice Crisis*. Routledge, 2012. 283

⁶⁰⁴ Durand-Morat, A., and S. Bairagi. "International rice outlook: international rice baseline projections 2020-2030." (2021) 13-16

⁶⁰⁵ Sarris, Alexander. "Trade-related policies to ensure food (rice) security in Asia." *The Rice Crisis*. Routledge, 2012. 61-87

According to the World Bank, during 2008 the crisis “pushed an additional 105 million more people into poverty.”⁶⁰⁶ This translated into “rice prices tripling when a relatively small disruption of 8% decrease in the global trade, thanks to trading restrictions in India and Egypt took place”⁶⁰⁷ on top of large rice purchases by the Philippines from 2007 to 2009.⁶⁰⁸ Since “exporters restricted supplies to the market in order to protect their own consumers from shortages and importers scrambled for supplies to stabilise their own markets.”⁶⁰⁹ Whilst paradoxically there were not actual shortages from the production side.⁶¹⁰ When combined with hoarding at government and household level and a media frenzy⁶¹¹ it was the perfect recipe for chaos, contributing to putting millions of people at risk of famine, all under the watch of established local and international legal systems for trade, that have been consolidating for the last one hundred years.

But even so, the many unforeseen events of the COVID-19 pandemic, seemed to have pushed the occurrence of crises in more than two decades, albeit the attentive yet hopeless watch of the WTO. Indeed, while articles XI.1 and XI.2 of GATT contemplated the general elimination of quantitative restrictions and were disciplined by article 12 of the AoA establishing a procedure in which prior considerations and notifications were to take place, to safeguard food security of developing members. The articles also highlighted the deep under regulation of the WTO’s legal architecture

⁶⁰⁶ The World Bank, *Global Food Crisis Response Program*, 2013, <https://n9.cl/naz15>.

⁶⁰⁷ Nathan Childs, *Rice situation and outlook yearbook* (United States Department of Agriculture, 2009).

⁶⁰⁸ Maclean, Hardy & Hettel 2013.

⁶⁰⁹ Timmer, C. Peter, and David Dawe. "Food Crises Past, Present (and Future?): will we ever learn?." *The Rice Crisis*. Routledge, 2012. 3-11.

⁶¹⁰ Timmer, C. Peter, and David Dawe. "Food Crises Past, Present (and Future?): will we ever learn?." *The Rice Crisis*. Routledge, 2012. 3-11.

⁶¹¹ Timmer, C. Peter. "Did speculation affect world rice prices?." *The Rice Crisis*. Routledge, 2012. 22-23.

regarding export prohibitions and restriction and their correlation with global food security⁶¹² and have even been called everything but “pandemic proof.”⁶¹³

Art. XI.1 No prohibitions and restrictions other than duties taxes or other charges whether made effective through quotas, import or export licences or other measures shall be instituted and shall not extend to

Art XI.2 (a) Export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party.⁶¹⁴

1. Where any Member institutes any new export prohibition or restriction on foodstuffs in accordance with paragraph 2(a) of Article XI of GATT 1994, the Member shall observe the following provisions:

(a) the Member instituting the export prohibition or restriction shall give due consideration to the effects of such prohibition or restriction on importing Members’ food security;

(b) before any Member institutes an export prohibition or restriction, it shall give notice in writing, as far in advance as practicable, to the Committee on Agriculture comprising such information as the nature and the duration of such measure, and shall consult, upon request, with any other Member having a substantial interest as an importer with respect to any matter related to the measure in question. The Member instituting such export prohibition or restriction shall provide, upon request, such a Member with necessary information.

2. The provisions of this Article shall not apply to any developing country Member, unless the measure is taken by a developing country Member which is a net-food exporter of the specific foodstuff concerned.⁶¹⁵

⁶¹² Kowalska, Aleksandra, Anna Budzyńska, and Tomasz Białowas. "Food export restrictions during the COVID-19 pandemic: Real and potential effects on food security." *International Journal of Management and Economics* 58.4 (2022): 409-424.

⁶¹³ <https://www.orfonline.org/expert-speak/covid19-export-bans-trade-rules-international-cooperation>

⁶¹⁴ GATT Art. XI.1-X.2 (a)

⁶¹⁵ Art. 12 WTO Agreement on Agriculture

As a result, between April 2020 and June 2021 there were steep variations in the number of export restrictions⁶¹⁶ worldwide.⁶¹⁷ For obvious reasons most of them were originally applied to medical supplies and equipment, but they eventually moved on to foodstuffs.⁶¹⁸ Ultimately impacting rice prices upwards of 17% from the 2019 benchmark period⁶¹⁹ and demonstrating once more the intensity of the political forces that affect the rice trade, especially when considering that thanks to the Indian restrictions and prohibitions to rice exports, rice markets have been virtually in panic mode since 2020. After all, India is now the largest global exporter of the grain, in a pristine reflection of what happened back in 2008.

4.3 Conclusions

As outlined in this chapter, rice markets and trade are inherently flawed, and are very unlikely to change in the near future. The roots of these realities rest upon the lack of elasticity, segmentation and export concentration. When coupled with the often-undiscernible tangle of national regulations and legislation, due to the political nature of the cereal, and the impossibility of constituting a multilateral trade discipline that can encourage a greater flow of rice, prospects can be seen as disheartening. Evidence of this can be found in the consolidation of the unofficial mostly bilateral exchange system for rice established during the 20th century and which continues to this day, the disproportionate use of protectionist practices by developing and developed nations alike, and the utilization of export restrictions and prohibition mostly for political reasons, all while global consumption seems unyielding. Perhaps, by embracing rice's nature as an "anti-commodity"

⁶¹⁶ https://www.wto.org/library/events/event_resources/agri_0205202310/127_536.pdf

⁶¹⁷ <https://crsreports.congress.gov/product/pdf/IF/IF11551>

⁶¹⁸ <https://www.orfonline.org/expert-speak/covid19-export-bans-trade-rules-international-cooperation>

⁶¹⁹ Kowalska, Aleksandra, Anna Budzyńska, and Tomasz Białowąs. "Food export restrictions during the COVID-19 pandemic: Real and potential effects on food security." *International Journal of Management and Economics* 58.4 (2022): 409-424.

and reevaluating the way in which the global should be understood, it would be possible to shed more light on the humble rice bowl. Afterall, “you cannot solve a problem with the same mind that created it.”⁶²⁰ And, in the case of rice it spans mostly from the *informal* way in which the cereal has been traded historically which as seen is based upon barter, bilateral agreements and government to government contracts rather than a multilateral discipline, less constrained by the often political sway of decisions taken regarding the cereal from the overregulated national perspectives which contributes to answer research questions one and two.

As indicated earlier, much of the regulation relating to the trade in rice is at a national rather than international level. With this in mind, the next chapters will provide a legal analysis of legislative changes carried out in Colombia pertaining specifically to rice during the last thirty years with an emphasis on the United States-Colombia Trade Promotion agreement under the larger umbrella of the legalities of the Multilateral Trading System. In so doing, it will explore the economic and social outcomes of these legal developments related to rice trade and ground this analysis in an examination of the experience of producers and consumers in the Ibagué plateau of the Tolima Province, one the main rice producing regions of Colombia.

⁶²⁰ Hoffmann, Banesh. *Albert Einstein: creator and rebel*. Plunkett Lake Press, 2019.

CHAPTER V

THE WAY OF THE GRAIN: THE LEGAL HISTORY OF COLOMBIAN AGRICULTURE THROUGH RICE FARMING IN THE IBAGUÉ PLATEAU

Chapter V delves into the historical importance of rice farming for Colombia, especially for the Tolima province. It illustrates the intertwining dynamics of agriculture, food security, land ownership, illegal drug markets, violence and a poor and indecisive development of the Colombian legal system, with discernible impacts in Colombian society during the twentieth century. It argues that in the face of State idleness, private initiatives were necessary to offset institutional absence, and that without those organised efforts rice production in Colombia might have been at a catastrophic risk of disappearing.

5.1 Rice Farming in Tolima: A History of Four Centuries and Counting

One of the earliest references to rice farming in where the Tolima province of Colombia now sits dates from 1580. Fryar Pedro Simón noted that it was a predominant crop in the Magdalena River Valley, farmed right next to maize in the town of Mariquita,⁶²¹ some 80 kilometres north of the Ibagué Plateau. This highlights the agricultural vocation of the region and explains why it was just a matter of time for the fertile lands of the Ibagué plateau to be colonised and taken advantage of. Unfortunately, ignorance and an acute lack of technification were the norm well into the 19th Century, since many of the techniques used in Europe to grow wheat, were transplanted for

⁶²¹ Carlos Orlando Pardo & Álvaro Osorio, *Manual de historia del Tolima* (Pijao Editores, 2007).

generations to rice paddies, without any regard for the climate and soil differences, therefore, generating many difficulties for farmers.⁶²²

Granted, surely there were always more pressing matters than maize, wheat, potatoes or rice in the territory where the Republic of Colombia now stands. Centuries of neglect and exploitation by Spain, coupled with indiscriminate pillaging by the crown representatives, helped foster the discontent that contributed to the Latin American movements for independence during the 19th Century.⁶²³ From then on, and well into the 20th Century, political instability was rampant. From the failure of the 1821 Constitution of Cúcuta⁶²⁴ which legitimized Bolívar's short-lived experiment known as the Republic of la Gran Colombia⁶²⁵; to decades of civil war⁶²⁶; to the United States of Colombia via the Rio Negro Constitution of 1863 and finally the Republic of Colombia, during Rafael Nuñez's presidency in 1886.⁶²⁷

Indeed, the 19th century was marked by years of instability and civil war⁶²⁸ fostered by inflexible partisan views regarding the way in which the young republic was to be conducted. By 1885 the Rafael Nunez's government hoping to appease the rival conservative party and quench yet another civil war, had conceded control of the national guard to the conservatives. The ulterior motive was later shown in 1886 when he was reelected by a Council of Delegates from both parties to rule the

⁶²² Pardo & Osorio 2007.

⁶²³ Rafe Blaufarb, "The Western Question: The Geopolitics of Latin American Independence", *The American Historical Review* 112:3 (2007).

⁶²⁴ Miguel Malagón Pinzón, "The regime of the intendants in the constitution of Cúcuta of 1821", *Revista de Derecho* n° 30 (2008).

⁶²⁵ David Bushnell, "The development of the press in Great Colombia", *The Hispanic American Historical Review* 30:4 (1950). 178

⁶²⁶ Stephen Randall, "Nationbuilding and Civil War: Diverging Views of State and Society in Late 19th Century Colombia", *Journal of Military and Strategic Studies* 16:3 (2015).

⁶²⁷ José David Cortés Guerrero, "Regeneración, intransigencia y régimen de cristiandad", *Historia Crítica* n° 15 (1997), doi:10.7440/histcrit15.1997.00.

⁶²⁸ Stephen Randall, "Nationbuilding and Civil War: Diverging Views of State and Society in Late 19th Century Colombia", *Journal of Military and Strategic Studies* 16:3 (2015).

country as president through 1892⁶²⁹, marking the beginning of the so called “Regeneration”⁶³⁰, all under the umbrella of a new Constitution.⁶³¹

The 1886 Constitution eliminated federalism and empowered the president to appoint all the governors of the now centralized Colombian republic, as a way of exerting control in the regions. It also restricted electoral rights based on wealth and literacy; nullified Congress; permeated every level of the judicial system; abolished the Declaration of the Rights of the Man and of the Citizen; reinstated the catholic church as the main educator, declaring Catholicism as the official religion of the country; not to mention conceding extraordinary powers to the executive via the *constitutional state of exception* vesting the executive to suspend any law that it deemed necessary and rule via presidential decree.⁶³² A political maneuver that would perpetuate for more than one hundred years, in an echo of the Nuñez’s belief that “authoritarian republics are necessary in order to avoid disarray.”⁶³³ Indeed it has been pointed that the overblown capabilities of the *constitutional state of exception* allowed governments to harass any political opposition, eliminate or banish enemies,⁶³⁴ not to mention blatantly bypass Congress at will until the promulgation of the 1991 Constitution.

The promulgation of the 1886 Constitution⁶³⁵, hoped to appease the pervasive civil and political upheaval of the 19th Century. Thus, such body of law dealt mostly with political matters, apart

⁶²⁹ Melo, Jorge Orlando. *Historia mínima de Colombia*. El Colegio de México AC, 2017. 167

⁶³⁰ José David Cortés Guerrero, "Regeneración, intransigencia y régimen de cristiandad", *Historia Crítica* n° 15 (1997), doi:10.7440/histcrit15.1997.00.

⁶³¹ Cortés Guerrero 1997.

⁶³² Melo, Jorge Orlando. *Historia mínima de Colombia*. El Colegio de México AC, 2017. 167

⁶³³ Melo, Jorge Orlando. *Historia mínima de Colombia*. El Colegio de México AC, 2017. 167

⁶³⁴ Melo, Jorge Orlando. *Historia mínima de Colombia*. El Colegio de México AC, 2017. 167

⁶³⁵ Cortés Guerrero 1997.

from articles 177 and 178 in which private property and freedom of trade were protected (for a few at least). These articles stated:

Article 177.- No one may be deprived of the smallest portion of their property, nor will it be applied to public uses, without their own consent, or that of the Legislative Body; when some legally proven public need requires that the property of some citizen be applied to similar uses, the condition of fair compensation must be presupposed.⁶³⁶

Article 178.- No kind of work, culture, industry or commerce will be prohibited to Colombians, except those that are now necessary for the subsistence of the Republic, which will be released by Congress when it deems it opportune and convenient.⁶³⁷

There was no mention of development, or economic strategies aimed to put the young and convoluted republic in the international trading arena. In the end, the new Constitution of 1886 turned out to be a feeble attempt to ensure the longed-for stability. It also fell short of stopping one of the most violent periods of the country's history, "The Thousand Days War" between 1899 and 1903.⁶³⁸

As a reflection of this, it has been argued that in office governments throughout the 19th Century were more concerned about staying in power, and undermining any political opposition⁶³⁹, than constructing reasonable policies geared towards economic development. Having at its basis

⁶³⁶ Consejo Nacional Constituyente, "Constitución Política de la Republica de Colombia 1886.", , 5/8 1886, <https://n9.cl/i7av>. Art 177

⁶³⁷ Consejo Nacional Constituyente *Constitución Política de la Republica de Colombia 1886*. 5/8 1886. Art. 178

⁶³⁸ Isidro Vanegas, "The Inevitability and Fortuitous of Politic Violence. Liberalism and the War of a Thousand Days", *Memoria y Sociedad* 20:40 (2016), doi:10.11144/Javeriana.mys20-40.ifvp.

⁶³⁹ Nola Reinhardt, "The Consolidation of the Import-Export Economy in Nineteenth-Century Colombia: A Political-Economic Analysis", *Latin American Perspectives* 13:1 (1986), doi:10.1177/0094582X86013001.

agricultural exports as an alternative to mining, as the main comparative advantage of the young country at the time.

Certainly, at the beginning of the 20th Century, Colombia continued to rely on peasantry and subsistence agriculture to offset the pressures of food insecurity; and Government wise there had not been any organised initiatives to consolidate medium to large volumes of exports. Indeed, marginal international trading of products like tobacco, cinchona, and indigo were the norm⁶⁴⁰; in addition to the progressive enlargement of the agricultural frontier in many territories due to the recent “coffee bonanza” that started at the end of the 19th Century⁶⁴¹, and that mostly happened by mere chance.⁶⁴²

5.2 The Ibagué Plateau Setting Paradigms Beyond Subsistence Agriculture

The early 1930s were very interesting times for Tolima. The Tolima Province had pioneered the economic migration from subsistence rice farming to attempting to create a market that could potentially supply the crop as a commodity to other regions of the country, with important results.⁶⁴³ Unfortunately, at the same time, the negative impacts of the Great Depression were hard felt. This, according to Hernandez,⁶⁴⁴ prompted the central government to abandon the classical postures of economic liberalism and all mighty free market from the times of Adam Smith, in favour of considering the theoretical deployment of programmed economic State intervention,⁶⁴⁵ composed by the then *in vogue* ideas of Keynesian economics, as well as a paradigm that favoured

⁶⁴⁰ José Antonio Ocampo Gaviria (Comp.), *Historia económica de Colombia* (FCE - Fondo de Cultura Económica, 1997).

⁶⁴¹ Ocampo Gaviria (Comp.) 1997.

⁶⁴² Charles W Bergquist, *Coffee and conflict in Colombia, 1886-1910* (Duke University Press, 1986).

⁶⁴³ Ocampo Gaviria (Comp.) 1997. 130-135

⁶⁴⁴ Hernando A. Hernández Quintero, *Los delitos económicos en la actividad financiera*, 8 ed. (Ibañez, 2018) 35.

⁶⁴⁵ Hernando A. Hernández Quintero, *Los delitos económicos en la actividad financiera*, 8 ed. (Ibañez, 2018) 36.

the protection of private property and entrepreneurship, as long as they were aimed at the common good.⁶⁴⁶

Regrettably, even by 1933 these theories did not translate into anything for the regions of Colombia. Only by 1934 under the recently elected government of Alfonso López Pumarejo, did the first serious attempts for consolidating policies for a general programmed state intervention started to take form.⁶⁴⁷ The main drivers for such policies were twofold: first, under the banners of the recent political trail, López defended the importance of citizens in the notion of a State, them being the real reason for its existence therefore the government was meant to serve its citizens, and not the other way around. This prompted several amendments to the 1886 Constitution, including the abolition of the restrictions to vote on the basis of literacy and wealth, although for political interests.⁶⁴⁸

Also, the newly appointed liberal Government, recognised the urgent need for agricultural technification, to improve yields, and truly harness idle extensions of land, as an effort to exploit one of the Republic's comparative advantages, farming. These ideas translated into the passing of new legislation, including more amendments to the 1886 Constitution, under the hope of reflecting a social approach to State operation, highlight a different dimension of private property, and support sweeping State intervention in key economic aspects, all under the Legislative Act 01 of 1936.⁶⁴⁹ Moreover the institutionalisation of a programme called *Revolución en Marcha*⁶⁵⁰ aimed

⁶⁴⁶ Hernández Quintero 2018.

⁶⁴⁷ Oliver Mora Toscano, "Los dos gobiernos de Alfonso López Pumarejo: estado y reformas económicas y sociales en Colombia (1934-1938, 1942-1945)", *Apuntes del CENES* n° (2010).

⁶⁴⁸ Melo, Jorge Orlando. *Historia mínima de Colombia*. El Colegio de México AC, 2017. 198-199

⁶⁴⁹ Revolution in Progress

⁶⁵⁰ Revolution in Progress

to modernise Colombia as a whole, emphasising foodstuff production in the countryside; coupled with the passing of law 200 of 1936, or “*Ley de Tierras*”⁶⁵¹ targeting a fairer distribution of land among the dispossessed majority of Colombians living in the countryside, all under the philosophical basis of the “social function of private property.”⁶⁵² Though, this legal institution was not novel by any means, as it is worth considering that since colonial ruling (with laws that were still largely applied well into the 20th Century), the legal system required labour, habitation, and tutelage from the alleged owner of rural land, in order to enjoy its usufruct.⁶⁵³ These proposals demonstrated serious executive initiative to improve the living conditions of the Country for the first time in decades, at least on paper, despite fierce political opposition.⁶⁵⁴ For example,

Article 9: The authorities of the Republic have been instituted to protect each resident of Colombia, in their lives, good name and property, as well as to ensure the accomplishment of the social duties of the State, and its private citizens.⁶⁵⁵

Article 10: Private property rights acquired under just title are guaranteed under civil laws, for natural as well as for legal persons, which cannot be denied by subsequent laws. When the application of a law passed for motives of public utility or social interest conflicts with the rights of private citizens, the private interest shall yield to the public or social one (...). Property is a social function that carries obligations.⁶⁵⁶

⁶⁵¹ Law of Lands

⁶⁵² Toscano 2010.

⁶⁵³ Rodrigo Hernán Torrejano Vargas, "Avatares Económicos y Políticos en el Marco de la República Liberal (1930-1946)", *Revista Republicana* n° (2008).

⁶⁵⁴ Vargas 2008.

⁶⁵⁵ Congreso de Colombia, "Acto Legislativo 1 de 1936. Reformatorio de la Constitución. Diario Oficial No. 23263 del 22 de agosto de 1936", , 5/8 1936, <https://n9.cl/4sy3q>. Art. 10

⁶⁵⁶ Congreso de Colombia *Acto Legislativo 1 de 1936. Reformatorio de la Constitución. Diario Oficial No. 23263 del 22 de agosto de 1936* 5/8 1936. Art. 10

Article 11: The State can intervene through the rule of law in the exploitation of industries or public and private enterprises, with the objective of rationalize production, distribution and consumption of wealth, or in order to protect the rights of workers. Paragraph: the laws promulgated under the capabilities conceded by this provision, require the positive vote of the absolute majority of both chambers of congress.⁶⁵⁷

As for the tangible effects of the *Revolución en Marcha* policy, Botero⁶⁵⁸ is keen to point out that although the 1936 amendment of the 1886 Constitution as well as the legislation that it spawned, constituted the first steps towards devising actual policies on key aspects such as programmed economic state intervention and private property rights, in truth, such policies derived from a context in which such initiatives were only a mere Governmental effort to ease the protracted agrarian and labour conflicts of the Country for political gain, rather than to find systematic solutions to the issues.⁶⁵⁹ As a matter of fact, this turned out to be self-evident by the end of López's first term in 1938, and even more so, with the passing in 1939 of Law 54, in which Congress conceded extraordinary powers to the executive branch to inter alia, reform the provisions on foreign exchange control, including imports and exports, celebrate contracts with the Central Bank, in order to mitigate the adverse effects of World War II; and of course to defend local industries, specially coffee, by all means necessary.⁶⁶⁰ Meanwhile, the other sectors of agriculture continued to be neglected by the government of Colombia especially rice.

⁶⁵⁷ Congreso de Colombia Acto Legislativo 1 de 1936. *Reformatorio de la Constitución*. Diario Oficial No. 23263 del 22 de agosto de 1936 5/8 1936. Art. 11

⁶⁵⁸ Sandra Botero, "La reforma constitucional de 1936, el Estado y las políticas sociales en Colombia", *Anuario Colombiano de Historia Social y de la Cultura* 0:33 (2006).

⁶⁵⁹ Botero 2006.

⁶⁶⁰ Congreso de Colombia, "Ley 54 de 1940. Por la cual se hace una cesión. Diario Oficial No. 24530 del 5 de diciembre de 1940", , 30/11 1940, <https://n9.cl/pgd75>.

Only by 1940, and partly due to the growing concern for the lack of food security, somewhat generated by the futility of the Government's intervention in previous years, did the executive under orders of the President Eduardo Santos, pass decree 1157.⁶⁶¹ This instrument delegated the now extinct Ministry of National Economy to create a development plan for several economic activities, including agriculture. Its ambitions were very high, as it hoped to guarantee basic food access for citizens, which by then were concentrated more and more in the cities⁶⁶², reducing the population of the countryside.⁶⁶³ All this, promised that some volume of agricultural products would be exported as an effort to boost the country's balance of payments. Decree 1157 stated

Article 1: The Government, through the Ministry of the National Economy, in accordance with the studies carried out by that Office and with those carried out in the future, adopts a general plan for the promotion of the economic activities of the country, in such a way as to ensure that the production of food items and industrial raw materials necessary for its internal support and development and at the same time ensure the export of marketable goods in proportions that allow a satisfactory increase in our purchasing power abroad. The fundamental purposes of the plan will be: 1° The knowledge, exploitation and use of food and medicinal products, as well as raw materials of plant, mineral or animal origin that are natural to Colombian territory. 2° The production and cheapening of basic materials for industrial development; motor power, fuels, construction materials and fertilizers; 3° Increase and channel the knowledge and production capacity of Colombians.⁶⁶⁴

⁶⁶¹ Congreso de Colombia, "Decreto 1157 de 1940. Sobre fomento de la economía nacional. Diario Oficial No. 24393 del 20 de junio de 1940", , 18/6 1940, <https://n9.cl/h18vz>.

⁶⁶² Departamento Administrativo Nacional de Estadística DANE, *Estadísticas por tema. Demografía y Población*, 2021, <https://n9.cl/jh6n>.

⁶⁶³ Marco Antonio Palacios Roza, *Entre la legitimidad y la violencia: Colombia 1875-1994* (Editorial Norma, 2003).

⁶⁶⁴ Congreso de Colombia Decreto 1157 de 1940. Sobre fomento de la economía nacional. Diario Oficial No. 24393 del 20 de junio de 1940 18/6 1940. Art 1

Article 2: In order to facilitate development, the plan will be divided into three parts: Agricultural promotion plan, Livestock promotion plan and Manufacturing development plan. In the agricultural development plan, prior to the corresponding technical study, the crops that are socially and economically convenient to promote, the areas where they should be developed and the advisable volume of production, in accordance with internal consumption and commercial possibilities, will be determined. In the livestock promotion plan, prior to the corresponding technical study, the areas of livestock exploitation, the breeds and species and the zootechnical and sanitary orientation in general will be determined.⁶⁶⁵

That is to say that during most of the 1930s the only emphatic responses to avoid food insecurity came from the private sector, through farming staples such as rice⁶⁶⁶, which filled the all-too-common lack of government presence in the regions, by way of large investments in machinery and manual labour. Indeed, from the 1930s on, the rice farmers from the Ibagué plateau pioneered the selection and improvements of rice's biological materials through observation and hard work.⁶⁶⁷

Back then, the State involvement in agricultural production other than coffee was directed to charges for licensing water usage from the rivers only, as it was clear from the passing of decree 1381 of 1940 by the Ministry of National Economy. The extracted water was later channelled through irrigation canals built with substantial private funds. Most of which are still used today, and attest to the resilience, drive and entrepreneurial spirit of personalities of the Department like

⁶⁶⁵ Congreso de Colombia *Decreto 1157 de 1940. Sobre fomento de la economía nacional. Diario Oficial No. 24393 del 20 de junio de 1940* 18/6 1940. Art 2

⁶⁶⁶ Federación Nacional de Arroceros - Fedearroz, *Arroz* (Fedearroz, 1992). 22-24

⁶⁶⁷ Federación Nacional de Arroceros - Fedearroz 1992. 22-24

Guillermo Lazerna and Jorge Ruiz Quiroga⁶⁶⁸, making up for the lack of State presence. By the beginning of the 1940s, rice production and consumption had grown almost twofold in Colombia from approximately 44 thousand metric tons, to about 80 thousand⁶⁶⁹, many of which were produced in Tolima, prompting other Departments to follow suit.⁶⁷⁰ “Rice farming is only one of the many successful activities that a Colombian farmer can undertake. Annual imports of the cereal amount to one million pesos. With such vast sums of money, many peasants could obtain work.”⁶⁷¹ Read a 1939 advertisement of the neighbouring department of Huila’s Agricultural Society, a private company marketing ploughing machinery.

Finally, it is worth mentioning that while well intended, the flexibilization to land titles of ownership that Law 200 created, ended up legitimizing large scale estates that from the onset complied with all the requisites of the law, with some suggesting the acceleration of rural land concentration from 1936 to 1945.⁶⁷² So much that by 1944 Law 100 was passed as a futile attempt to really foster land ownership of small plots, and therefore diversify food production albeit with little to show for itself.⁶⁷³

5.3 Have Another Cup: The Contrast Between Coffee Protection and the Rest of Colombian Agriculture

To provide a better context of Colombian agriculture, it is necessary to mention the star legitimate commodity of the country, coffee. The National Federation of Coffee Growers was born in 1927

⁶⁶⁸ Redacción El Tiempo, "Guillermo Laserna", *El Tiempo*, 21/9 1992, <https://n9.cl/2tpe5>.

⁶⁶⁹ Philippe P Leurquin, "Rice in Colombia: a case study in agricultural development", *Food Research Institute Studies* 7:1387-2016–116086 (1967).

⁶⁷⁰ Leurquin 1967.

⁶⁷¹ Federación Nacional de Arroceros - Fedearroz 1992. 22-24

⁶⁷² Melo, Jorge Orlando. *Historia mínima de Colombia*. El Colegio de México AC, 2017. 203

⁶⁷³ Melo, Jorge Orlando. *Historia mínima de Colombia*. El Colegio de México AC, 2017. 204

with the passing of law 76 of the same year.⁶⁷⁴ This association originally sought to provide some degree of insulation between international markets and coffee growers.⁶⁷⁵ Nevertheless, over the course of its first 13 years, it set the bar for other economic sectors that had started growing in importance, including rice farming. By 1940, coffee was not only the main source of revenue for the Colombian government, but the crop had enlarged the land extension on which it was grown. The grain no longer had its epicentre in the Department of Antioquia, but mostly due to its large profitability, had expanded its frontier up and down the central region of Colombia, to the Departments of Risaralda, Caldas, Quindío and Tolima.⁶⁷⁶

While during more than 50 years all government efforts were deployed towards the protection of coffee production due to its features as an international commodity, the tradition of neglecting other regions and their products continued, with grave repercussions on the country's food security. Throughout the 1930s, food production of staples like wheat, corn and rice were mostly carried out in plots of land of less than 20 hectares⁶⁷⁷, and preoccupying enough was the fact that plenty of potentially productive lands had suffered a long and sustained process of large-scale accumulation over centuries⁶⁷⁸ but remained unproductive and in many cases had even been abandoned.⁶⁷⁹

⁶⁷⁴ Federación Nacional de Cafeteros, *Nuestra Federación*, 2023, <https://n9.cl/ol3okt>.

⁶⁷⁵ Federación Nacional de Cafeteros 2023.

⁶⁷⁶ Federación Nacional de Arroceros - Fedearroz 1992. 36-39

⁶⁷⁷ Samper, Miguel. "Escritos político-económicos, t. III." *Bogotá, Banco de la Republica* (1997).

⁶⁷⁸ Alejandro Reyes Posada, *Guerreros y campesinos el despojo de la tierra en Colombia* (Norma, 2009).

⁶⁷⁹ Ocampo Gaviria (Comp.) 1997.

By the mid 1940s, the issue of food security was finally starting to preoccupy the Government, that is why to assure food availability, it passed law 5 of 1944,⁶⁸⁰ in which inter alia, it created the National Institute of Foods Stock (IDEMA). This institute was charged with “facilitating production, distribution, import, and export of major consumer items and basic necessities, in order to regulate their prices, support agriculture, and increase national production as a way to combat speculation.”⁶⁸¹

5.4 Land Distribution and Conflict

Historically speaking, the legal framework for land ownership in Latin America in general and in Colombia in particular has been dubious at best. More importantly, the practice of land alienation across Latin America⁶⁸² has unique features in the Colombian context. Commencing with the imposition of the agricultural system by the Spanish conquistadors at the end of the 15th Century, vast exploitation rights were granted to a few, via titles of nobility, paving the way for four centuries of large-scale land accumulation. Such rights only began to be challenged by those at the bottom of the social pyramid around the middle of the 19th Century,⁶⁸³ with the expansion of the agricultural frontier arising from coffee plantations. Prolonged violent outbreaks were common during this period due to competition between many large-scale landlords and the peasants who were seeking their emancipation from the landlords who had exploited them for centuries.⁶⁸⁴

⁶⁸⁰ Congreso de Colombia, "Ley 5 de 1944. Por la cual se crea el Instituto Nacional de Abastecimientos. Diario Oficial No. 25716 del 12 de diembre de 1944", , 30/11 1944, <https://n9.cl/x1v3y>.

⁶⁸¹ Congreso de Colombia *Ley 5 de 1944. Por la cual se crea el Instituto Nacional de Abastecimientos. Diario Oficial No. 25716 del 12 de diembre de 1944* 30/11 1944.

⁶⁸² Sam Moyo & Paris Yeros, *Reclaiming the land: The resurgence of rural movements in Africa, Asia and Latin America* (Zed Books, 2005).

⁶⁸³ William Roseberry, Lowell Gudmundson, Mario Samper & Mario Samper, *Coffee, society, and power in Latin America* (Johns Hopkins University Press, 1995).

⁶⁸⁴ Reyes Posada 2009.

Cramer has referred to analogue cases as a generalized historical amnesia.⁶⁸⁵ This amnesia arises because Western, and a big part of liberal civilization, deliberately overlooks having violence at its core, be it through war, slavery, imperial conquest, or primitive accumulation of land and resources.⁶⁸⁶ This amnesia results in a failure to recognize that most contemporary conflicts constitute manifestations of a late transition to Western capitalism, a transition which was bound to generate a dichotomy of interests. This reflects a twin process that ironically consists of establishing individual property rights (for a select few in the Colombian context) as the sacrosanct and unalienable socioeconomic principle, whilst at the same time generating violent explosions, and the displacement of entire populations from their lands, as a by-product of that so called late transition to capitalism.⁶⁸⁷

By contrast, Fitzpatrick argues that most theories in relationship to property rights fail to reflect the social conditions and power dynamics inherent to developing countries.⁶⁸⁸ This is because in such countries the State generally lacks the capacity necessary to protect such rights, let alone the will and infrastructure to guarantee the peaceful resolution of disputes via the judicial system.⁶⁸⁹ This deficiency continues to be abundantly evident in Colombia, with its historical legacy of land rights abuses and problems. Throughout its history, the lack of State presence and its inadequate legal institutions have restricted the recognition and exercise of property rights. Worsening during the last decades of the 20th century, this aggravated the extant violent dynamics, eventually

⁶⁸⁵ Christopher Cramer, *Civil war is not a stupid thing: Accounting for violence in developing countries* (Hurst London, 2006).

⁶⁸⁶ Christopher Cramer, *Civil war is not a stupid thing: Accounting for violence in developing countries* (Hurst London, 2006).

⁶⁸⁷ Cramer 2006.

⁶⁸⁸ Daniel Fitzpatrick, "Evolution and chaos in property right systems: the third world tragedy of contested access", *Yale LJ* vol. 115 (2005).

⁶⁸⁹ Daniel Fitzpatrick, "Evolution and chaos in property right systems: the third world tragedy of contested access", *Yale LJ* vol. 115 (2005).

facilitating the consolidation of paramilitary groups resulting in devastating bloodshed at the turn of the 20th Century, as it will be shown farther below.

Despite these diverging perspectives as to the particularities of property rights, there seems to be an unstated but implicit agreement that the inequality which is pervasive across Latin-America is exceptionally profound in Colombia, where land ownership was one of the historical catalysts for conflict. The process of globalisation has contributed to this problematic land distribution and usage. Oxfam research indicates that across Latin America over 50% of land belongs to only the largest 1% of farms.⁶⁹⁰ The situation in Colombia is even more extreme. Based on data provided in the Colombian National Agricultural Census, it has been estimated that 0.4% of the population owns more than 62% of the arable land,⁶⁹¹ and only 40% of agricultural land is cultivated, with much of the remainder being underutilized and serving primarily for cattle ranching.⁶⁹²

Moreover, there is a documented upward trend of land accumulation since the early 19th century peaking around the 1930s.⁶⁹³ This is not surprising, since while on the one hand Congress enacted legislation such as law 48 of 1882 that allowed peasants to gain ownership of worked wastelands⁶⁹⁴, at the same time, several governments engaged in simultaneous selling off large tracts of land, in

⁶⁹⁰ Oxfam, *Unearthed: Land Power and Inequality Latin-America* (2016), <https://n9.cl/cfub5w>. Oxfam's calculation was based on data published in the First Installment of the Results of the 2014 National Agricultural Census, released by the National Administrative Department of Statistics (DANE) on March 16, 2016, Bulletin 1, graph 34, p. 43, last accessed on November 11, 2016. These figures do not include the territories of ethnic groups. Despite the NGO's repeated requests to the National Administrative Department of Statistics of Colombia, access was not granted to the database of the agricultural census carried out in 2014, and no reply was received about the area occupied by the top one percent of farms, which are the largest.

⁶⁹¹ Oxfam 2016. Oxfam's calculation was based on data published in the First Installment of the Results of the 2014 National Agricultural Census, released by the National Administrative Department of Statistics (DANE) on March 16, 2016, Bulletin 1, graph 34, p. 43, last accessed on November 11, 2016. T

⁶⁹² Oxfam 2016.

⁶⁹³ Ocampo Gaviria (Comp.) 1997.

⁶⁹⁴ Congreso de los Estados Unidos de Colombia, "Ley 48 de 1882 . Sobre las tierras valdías. Diario Oficial No. 5457 del 31 de agosto de 1882", , 28/8 1882, <https://n9.cl/zgk65>.

order to obtain resources to pay their international creditors.⁶⁹⁵ This led to increased tensions for land control between several actors all around the country, and did not become blatant until the 1950s, when insurgency was born.⁶⁹⁶ In many cases, these movements consisted mostly of peasants who had been relegated to the less productive peripheries of Colombia's agricultural lands and had never enjoyed legal ownership of the small plots of land they had been working for generations.⁶⁹⁷

Meanwhile, the Ibagué plateau enjoyed mostly uneventful years of relative peace and prosperity during this period, which partially explains why over the years it would become a beacon of agricultural production particularly for rice, as well as the embodiment for cooperation among producers of the cereal, in an effort to follow the bar set by the National Federation of Coffee Growers during the 1930s.

5.5 Food Security Vs Exportable Rice Surplus: The National Federation of Rice Growers

As previously commented,⁶⁹⁸ when the three-tier structure devised from the Bretton Woods conference failed in achieving an actual ITO, the main interested western parties rushed to save some aspects of the negotiations in the form of GATT. In the case of Colombia it is highly paradoxical that even after being an attending party to Bretton Woods, it only joined the GATT in October 1981.⁶⁹⁹ This late joining of the GATT meant that as a result, Colombia did not have any

⁶⁹⁵ Mauricio Avella Gómez, "Historical Previous of Colombian Foreign Debt. The Pax Britannica", *Revista de Economía Institucional* 5:9 (2003).

⁶⁹⁶ Reyes Posada 2009.

⁶⁹⁷ Reyes Posada 2009.

⁶⁹⁸ World Trade Organization, *What is the WTO?*, 2021, <https://n9.cl/z0okm>.

⁶⁹⁹ World Trade Organization, *Colombia and the WTO*, 1995a, <https://n9.cl/h2dvg>.

serious chance to be a part of any kind of multilateral trading system even a *de facto* one, during the years of European reconstruction and therefore the years of high demand of resources.

Explanations for this can be found in the large-scale application of the United Nations Economic Commission for Latin America (ECLAC) policies,⁷⁰⁰ which highlighted a system for imports substitutions and disproportionate protectionism, deeply influencing the country's foreign commercial policies until well into the 1990s.⁷⁰¹ Not to mention the tight American grip on the execution of the Marshall Plan, in which American exports enjoyed undisputable preferences.⁷⁰² But even so, one unquestionable fact remains, Colombia lost a golden opportunity to consolidate exports of agricultural products at times when the country was still somehow insulated from the newly born signs of agricultural trade distortions and the protectionism of the CAP, which as we have seen,⁷⁰³ continue rampant until today.

Historically, the Tolima Department has had a comparative advantage in agriculture, particularly for rice production over other regions of the Country.⁷⁰⁴ Not only it is rich in water resources, paramount for growing the cereal but it also enjoys a privileged geographic location halfway between every large city within the central region of Colombia demanding the cereal. These factors contributed to the emergence of a new business class during the mid 1940s, which not only invested large amounts of capital in acquiring some sizeable extensions of idle land in order to adapt them to exploit their ample productive potential. But also, by way of constructing large

⁷⁰⁰ Nestor Rubiano P., "La Fábrica de Alfileres de Adam Smith", en *Reflexión sobre libre cambio y trabajo en Colombia y la Región Andina* (Universidad Externado de Colombia, 2000).

⁷⁰¹ Rubiano P. 2000.

⁷⁰² Diane B Kunz, "The Marshall Plan reconsidered: a complex of motives", *Foreign Affairs* 76:3 (1997).

⁷⁰³ About Parliament European Parliament, *Treaty of Rome (EEC)*, 1957, <https://n9.cl/75hop>.

⁷⁰⁴ Banco de la República Departamento Nacional de Estadística 2014.

projects of infrastructure, at times when the State's presence was only in name. Under those circumstances was constructed the Ardila system of irrigation canals which needed the painstakingly labour of removing several tons of rocks with explosives and manual labour along the 47 kilometres on which it extends until this day.⁷⁰⁵

By the end of the 1940s and due to the expansion of rice farming north and south of the Ibagué Plateau, the need for an organisation that could work for the interest of the growing rice producing sector emulating the National Federation of Coffee Growers, (which was already 2 decades old) was more than palpable.⁷⁰⁶ Particularly when accounting for the lack of State presence in many regions. That is why after several years of work and attempts to organise farmers, in 1947 the initiative of Mr. Gildardo Armel of a Federation of the Rice Farmers of the Tolima Department came to fruition.⁷⁰⁷ In view of its rampant acceptance, rice producers rallied behind it and made it a success. As a result, it ended up becoming a national initiative in the form of the National Federation of Rice Farmers (FEDEARROZ) a little over a year later in 1948.⁷⁰⁸

Apart from the coffee producing sector, there had not previously been a show of cohesion and drive to work for a particular economic sector. However, by 1949, the young federation had managed to effectively lobby to repeal decree 1103 which fixed prices for a metric ton of rice produced in frank harm of producers;⁷⁰⁹ the suspension of several license imports that were granted under erroneous data that defended that there was not enough rice for domestic

⁷⁰⁵ Federación Nacional de Arroceros - Fedearroz 1992. 37-38

⁷⁰⁶ Federación Nacional de Arroceros - Fedearroz 1992. 40-41

⁷⁰⁷ Federación Nacional de Arroceros - Fedearroz 1992. 41-42

⁷⁰⁸ Federación Nacional de Arroceros - Fedearroz 1992. 43-44

⁷⁰⁹ Leurquin 1967.

consumption,⁷¹⁰ when in reality the country was producing large quantities of rice, even generating surplus that could be exported.⁷¹¹ In 1950, FEDEARROZ opened chapters in the Provinces of Huila, Bolivar, Caldas, Cundinamarca, Huila, Meta y Valle del Cauca; amounting to a sizable portion of rice producing regions north-south east-west of the Country.⁷¹² And by 1952 scored another symbolic victory when via Presidential Decree the government declared May 28th as National Rice Day.⁷¹³ These successes were followed by a the country-wide initiative of a census of rice producers which took place in 1953, demonstrating the growing importance of the organisation.⁷¹⁴ The data collected included: land extensions, capital invested, machinery availability, seed variety, and even studies on delinquency and security in the countryside.⁷¹⁵

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These first concrete actions of the Rice Federation revealed its autonomous spirit in stark contrast with a State that hardly had a presence in the regions, and did little or nothing to improve production conditions, by failing to establish strategic policies dedicated to safeguard this line of

⁷¹⁰ Leurquin 1967.

⁷¹¹ Leurquin 1967.

⁷¹² Federación Nacional de Arroceros - Fedearroz 1992. 46

⁷¹³ Federación Nacional de Arroceros - Fedearroz 1992. 46

⁷¹⁴ Leurquin 1967.

⁷¹⁵ Leurquin 1967.

its GDP. One example of this, is the poor road infrastructure, although highly necessary to assure competitiveness in transporting products, it is an issue that continues to be present across the nation.⁷¹⁹

There is a notable correlation between the growth of the rice sector and the establishment of FEDEARROZ during the twenty years after its founding.⁷²⁰ Between 1950 and 1954 alone, rice production grew by 85%⁷²¹ thanks to the expansion of cultivated areas. Actually, for the very first time during the 20th Century, the country was starting to witness an aura of self-sufficiency and even surplus to feed its growing urban population, which continued to increase largely due to the explosion of violence in many rural areas up and down the country.⁷²² It has been estimated that in the south of the Tolima Department approximately thirty-five thousand farms were abandoned due to the proliferation of violence.⁷²³

Much of the produced rice surplus could have been exported from Colombia with the right political and diplomatic initiatives. Even with the particularities of the Marshall Plan, European reconstruction demanded many resources, creating export opportunities for third countries. Under this rationale, in a frantic race that since the very beginning was halfway lost, the Colombian farming sector led by rice growers of the Ibagué Plateau pushed for modernisation of farming techniques to take advantage of the international economic realities of the time. Some of these strategies included the introduction of new farming equipment, especially tractors. The number of

⁷¹⁹ Rozo 2003.

⁷²⁰ Leurquin 1967.

⁷²¹ Federación Nacional de Arroceros - Fedearroz 1992. 57-58

⁷²² Federación Nacional de Arroceros - Fedearroz 1992. 57-58

⁷²³ Rozo 2003.

tractors in the country grew from three hundred and three in 1944 to one thousand four hundred and forty in 1953, highly contributing to the growth in rice production.⁷²⁴

5.6 Soft Credits a Futile Partial Solution for Protecting Colombian Agriculture

Under the presidency of Enrique Olaya Herrera, Decree 1998 of 1931 was passed. This body of law created the *Caja Agraria*. A Government bankrolled and operated financial institution specifically fashioned to support coffee growers in order to consolidate exports as the main line of Colombian GDP via soft credits. This institution was partially reformed during the 1950s and diversified into aiding farmers of other agricultural products including rice.⁷²⁵

And yet, it would take the Colombian Government almost thirty years to realise that there was plenty of farming potential in the countryside just waiting to be exploded. Only in 1959, were steps taken to reduce the neglect to which many regions of the country had been subjected to for years. The steps taken by the government included law 20, which formulated a comprehensible framework for land grants and subdivision programmes; as well as establishing plans for making such plots of land productive. In addition to law 20, law 26 was enacted with the goal of promoting agricultural production and industry; not to mention the creation of the National Agrarian Fund⁷²⁶, which by 1960 was allocating funds to the rice and cotton sectors.

⁷²⁴ Federación Nacional de Arroceros - Fedearroz 1992. 61-62

⁷²⁵ Salomón Kalmanovitz-Krauter & Enrique Antonio López-Enciso, "La agricultura en Colombia entre 1950 y 2000", *Borradores de Economía*; No.255 n° (2003).

⁷²⁶ Kalmanovitz-Krauter & López-Enciso 2003.

Part of these funds were utilised in the construction of the very first irrigation districts for rice growing in the Tolima department in towns like Coello and Saldaña.⁷²⁷ Simultaneously, the government strengthened IDEMA and established the Corporation for the Defence of Agricultural Products in 1958.⁷²⁸ However, many of these efforts turned out to be insufficient to offset the biggest issues of them all: a clear lack of macroeconomic strategies aimed at turning the potential capabilities of Colombian farming into commodities. Indeed, well into the 1960s, coffee continued to be the main source of revenue for the Colombian government despite the efforts deployed for rice.⁷²⁹

While soft credits were becoming easy to obtain as an approach to expand the agricultural frontier, hardly the same applied to research and development. On these fronts, FEDEARROZ pioneered studies on rice seeds, in an attempt to expand the two thousand kilos barrier, per farmed hectare.⁷³⁰ This was highly motivated by the illicit conduct of contraband.⁷³¹ Rice was smuggled from Ecuador (which continues until this day) in Colombian trucks, in order to transport the foreign product to town squares and supply centres up and down the country to be packaged or sold in bulk. In addition to this, farmers struggled with redundancy of the crop legally imported from Venezuela in large quantities,⁷³² much of which not even the Colombian Government seemed to have had an accurate account.⁷³³

⁷²⁷ Leurquin 1967.

⁷²⁸ Federación Nacional de Arroceros - Fedearroz 1992. 62-63

⁷²⁹ Roza 2003.

⁷³⁰ Federación Nacional de Arroceros - Fedearroz 1992. 62

⁷³¹ Leurquin 1967.

⁷³² Federación Nacional de Arroceros - Fedearroz 1992. 62-64

⁷³³ Federación Nacional de Arroceros - Fedearroz 1992. 62-64

All of these events occurred under the shadow of the Currie-Hirschman Consultancy Mission of the World Bank to Colombia in 1949.⁷³⁴ And while very influential in the monetary, and financial fields, its leaders failed to recognise the comparative advantage derived from agricultural products other than coffee, proposing a model for development which mostly demoted agriculture to a marginal role at best in the country's GDP, subordinating the Colombian economy mostly to manufactures and construction.⁷³⁵

All this myopically translated into a quota system for the absorption of harvests from local farmers in exchange for import licenses from products cultivated abroad with prices that already had been subject to grave distortions.⁷³⁶ As a result, many questions surfaced in regard to the non-existent capacity of the Colombian economy to absorb both local and imported agricultural goods, and the midterm effects on prices for producers, instead of creating policies that aimed to improve production conditions and yields that could be exported.⁷³⁷ This became one of the biggest concerns of the rice producers throughout the 1950s, and motivated them to take matters into their own hands by pushing for technification in order to increase yields in the hope of improving their economic conditions and to distribute wealth up and down the chains of production, despite the aforementioned lack of macroeconomic policies, and difficult market conditions.

5.7 Scientific Research and Development: Caught Once Again Between Food Security and the Mirage of Exports

Despite the precarity of meaningful Government actions during the 1950s, economic projections carried out by FEDEARROZ in 1960 were more than promising. They showed that at the time,

⁷³⁴ Andres Alvarez, Andres Guiot & Jimena Hurtado, "The Quarrel of Development Experts: Lauchlin Currie and Albert O. Hirschman in Colombia", *SSRN Electronic Journal* n° 39 (2018), doi:10.2139/ssrn.2983873.

⁷³⁵ Alvarez, Guiot & Hurtado 2018.

⁷³⁶ Federación Nacional de Arroceros - Fedearroz 1992. 65

⁷³⁷ Federación Nacional de Arroceros - Fedearroz 1992. 67-68

the country was producing around fifty million dollars' worth of rice, with the potential to double and even triple production, in a little more than two years.⁷³⁸ This theoretically meant completely assuring the needs of the entire local market and generating a rice surplus of around one hundred million dollars' worth of the cereal, to be traded internationally.⁷³⁹ But for these projections to be met, copious amounts of money needed to be invested in commercial, productive and road infrastructure. To say nothing of the research and development of genetic materials and agrochemicals, more suitable for tropical climates, as it is noteworthy that for more than fifty years, the ones predominantly used, came from the United States, and therefore lacked adaptability to tropical conditions, making them highly susceptible to local pathogens and plagues.⁷⁴⁰

Under such preoccupations, FEDEARROZ led initiatives for research and development through the construction and improvement of experimental centres, south of the Ibagué plateau. These initiatives were directed by a newly appointed technical department created with equal halves of public and private funds. Later in 1967 and due to the success of the initiatives, it extended its reach and collaborative alliances to the International Centre for Tropical Agriculture (ICTA) and the International Rice Research Institute (IRRI), which pioneered research during the first green revolution in the 1960s.⁷⁴¹

Unfortunately, by 1962 neither of the goals for rice were met. Although efforts to assure total supply of local markets continued, they were not accomplished. And except for coffee, export strategies were non-existent and lacked policies to counter international commercial isolation from

⁷³⁸ Federación Nacional de Arroceros - Fedearroz 1992. 65

⁷³⁹ Federación Nacional de Arroceros - Fedearroz 1992. 65

⁷⁴⁰ Federación Nacional de Arroceros - Fedearroz 1992. 66

⁷⁴¹ Federación Nacional de Arroceros - Fedearroz 1992. 67

the agricultural markets. Protectionism of local industry was rampant, and there was tremendous over valuation of the Colombian peso. All these ingredients embodied the ECLAC strategy for Latin America and meant copious transfers of wealth from agriculture to the industrial sector, the latter which was already highly protected.⁷⁴²

In 1963, and due to protracted campaigns from the FEDEARROZ, the Government passed Law 101 creating the Rice Sector Development Quota. Also known as the “rice cent”, it made it compulsory for every rice grower in the country, to contribute one cent per kilogram of paddy rice produced. For obvious reasons, this initiative was more than revolutionary as it unburdened the Government from other forms of direct subsidisation, and at the same time guaranteed a degree of economic independence from overreaching and highly ineffective interventionist policies. Not to mention allowing the federation to take samples of rice and redistribute them as certified seeds, this continued the tradition of technification and improvement of the crop.

In 1964, the Government passed decree 1649.⁷⁴³ This body of law established the eagerly awaited National Fund for Rice. The funds of this ground-breaking initiative were to be administered by FEDEARROZ, under strict fiscal surveillance of the Government. The Decree⁷⁴⁴ also created the Colombian Agricultural Institute (ICA), which remains the main institution for the design and execution of policies for sanitary, and phytosanitary protection of the country’s animal, and vegetable species.⁷⁴⁵ But perhaps the most revolutionary aspect of Decree 1649 of 1964,⁷⁴⁶ was the

⁷⁴² Ocampo Gaviria (Comp.) 1997.

⁷⁴³ Presidencia de la República de Colombia, "Decreto 1562 de 1962", , 15/6 1962, <https://n9.cl/h4qrt>.

⁷⁴⁴ Presidencia de la República de Colombia *Decreto 1562 de 1962* 15/6 1962.

⁷⁴⁵ Instituto Colombiano Agropecuario - ICA, *El ICA*, 2023, <https://n9.cl/q90ok>.

⁷⁴⁶ Presidencia de la República de Colombia, "Decreto 1649 de 1964. Por el cual se reglamenta la Ley 101 de 1963. Diario Oficial No.31429 del 4 de agosto de 1964", , 9/7 1964, <https://n9.cl/rt6zs>.

creation of a legal framework proposed to allow international collaboration. This turned out to be a gamechanger for Colombian agriculture in general, but specifically for rice farming. By 1965, there were at least five fronts of collaboration between FEDEARROZ-ICA-ICTA, which allowed transfers of technological partnerships, and applied science, with direct impact up and down Latin America.⁷⁴⁷

These initiatives yielded results almost immediately. Between 1966 and 1971, plots of land increased production from 2.6 to 5.2 metric tonnes per farmed hectare.⁷⁴⁸ This production leap, correlates with the introduction of new varieties of seeds by the Federation, better suited for Colombian farming conditions, and enriched with minerals and protein; the investment on research on disease and pest control, as well as a growth of more than two hundred percent on mechanised rice production.⁷⁴⁹ Furthermore, as the growth in yields and quality of rice improved, consequently prices decreased for bulk buyers, as well as for low income sectors of society which gained access to a source of carbohydrates, and a better source of minerals and proteins to supplement their diets,⁷⁵⁰ increasing rice's consumption from 20 to 38 KG per capita, amounting to a thirteen percent of total protein consumption, whilst only compromising less than seven percent of total food expenditure per capita.⁷⁵¹

Eventually, these developments impacted the fields of research and technology, further bringing down prices, and grain availability, attracting additional private and public spending on

⁷⁴⁷ Peter R. Jennings & James H. Cock, "Centres of origin of crops and their productivity", *Economic Botany* 31:1 (1977), doi:10.1007/BF02860652.

⁷⁴⁸ Federación Nacional de Arroceros - Fedearroz 1992. 80

⁷⁴⁹ Federación Nacional de Arroceros - Fedearroz 1992. 98

⁷⁵⁰ Grant M Scobie, "The impact of technical change on income distribution: The case of rice in Colombia", *American Journal of Agricultural Economics* 60:1 (1978), doi:10.2307/1240164.

⁷⁵¹ Scobie 1978.

infrastructure, and improving employment rates. By 1978, Colombia had finally achieved the longed for rice self-sufficiency, and enthusiasm for rice production had driven a healthy dose of competition, even in the fields of research and development of several rice varieties, agrochemicals and raw materials, from the private sector.⁷⁵²

5.8 The 1980s: Trade Distortions, Challenges and Hope

The 1980s would come with serious challenges for global agriculture in general, and particularly for the Colombian rice sector. As seen before, it was a time in which protectionism was rampant and “iliberalties” peaked, prompting by the end of the decade multilateral initiatives such as the Cairns Group⁷⁵³ an organisation of which Colombia is one of its founding members.

Locally, after twenty years of the rice cent initiative applied on a fixed rate of one Colombian cent per kilogram of farmed paddy rice, its real value had been all but nullified by way of inflationary pressures.⁷⁵⁴ On the other hand, stagnation of rice production due to the complaisance of producers, shortly after reaching the long-desired self-sufficiency goal during the previous decade, had become the norm. Furthermore, overall local demand had begun to slow down, due to a steep contraction in the population, as families, especially urban ones, were gradually becoming smaller.

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⁷⁵² Federación Nacional de Arroceros - Fedearroz 1992. 100-101

⁷⁵³ The Cairns Group, *The Cairns Group*, 2022b, <https://n9.cl/39fsf>.

⁷⁵⁴ Ocampo Gaviria (Comp.) 1997.

⁷⁵⁵ Karla Bibiana Mora Martínez, "Consideraciones de política pública frente a la situación de las familias colombianas en la actualidad", *Observatorio Nacional De familias - Boletín nº 2* (2014).

1982 was an unexpectedly disastrous year for Colombian farmers overall, and rice was no exception. Miserable international prices on sorghum and cotton, unquestionably pushed cultivators toward rice production. This was coupled with ideal climatic conditions that aided bountiful harvests of the cereal up and down the country.⁷⁵⁶ The result was an overflow of production, in a manner hardly remembered. And although for a very short while at least, final consumers benefited with lower prices of the grain, producers in the Departments of Meta, Cauca, Santander and Sucre, in which stockholding infrastructure was basically non-existent, suffered severe economic losses⁷⁵⁷, in addition to those on determination and morale, by having to witness the fruit of their labour perish in their farms, for lack of storage capabilities. Once again, the absence of clear policies to incentivise exports in products other than coffee, had taken its toll, as there was only so much of rice that the local market could absorb.

Rice farmers, and the Colombian Government had suffered its most violent wakeup call, as to the effects of globalisation or the lack thereof. By 1984, agricultural production was practically stagnant. If during the 1970s the agricultural frontier had enlarged by about 50%, it had only managed to grow by 5% during the first years of the 1980s, in addition to a sharp decrease of utilised rural land, which contracted from 4.3 million hectares by 1979 to 3.8 million hectares by 1983.⁷⁵⁸ Paradoxically, Venezuela became the great buffer of Colombia's food security, not due to any particular comparative advantage for agricultural production, but for the simple reason that it was importing large volumes of foodstuffs to be distributed at subsidised prices to its population. Under those circumstances contraband took hold, and large quantities of animal feed, powder milk,

⁷⁵⁶ Federación Nacional de Arroceros - Fedearroz 1992. 103-105

⁷⁵⁷ Federación Nacional de Arroceros - Fedearroz 1992. 103-105

⁷⁵⁸ Federación Nacional de Arroceros - Fedearroz 1992. 106

vegetable oils and cereals, especially rice, flowed freely from Venezuela with grave consequences for Colombian producers, under the negligent watch of the authorities.⁷⁵⁹ Therefore, in a serious case of punitive populism the government opted for amending the national criminal code via presidential decrees, including Decree 51 of 1987.⁷⁶⁰

The decree created a whole new legal statute called The National Criminal Costumes Statute.⁷⁶¹ This body of law meant a total overhaul in criminal justice, by establishing a whole new branch of the judiciary in charge of overseeing all criminal conducts related to contraband, as well the creation of a specialised subdivision within the national police for the enforcement of the statute. These measures included but were not restricted to hardening prison time, pecuniary penalties, to the prohibition of all kinds of economic activities, the expulsion of foreigners caught with, or dealing in contraband, in addition to the creation of a very large bureaucratic apparatus overseeing the enforcement of the statute. The decree included

Article 4. The following are accessory penalties:

1. Home Restriction
2. Prohibition on the exercise of commercial activities
3. Interdiction of rights and public functions
4. Prohibition to the realisation of arts, profession or trade
5. Expulsion of foreigner from the national territory

Article 30 of the Costumes Criminal Jurisdiction

1. The Criminal Cassation Chamber of the Supreme Court of Justice
2. The High Court of Costumes

⁷⁵⁹ Federación Nacional de Arroceros - Fedearroz 1992. 106

⁷⁶⁰ Presidencia de la República de Colombia, "Decreto 51 de 1987. Por el cual se expide el Estatuto Penal Aduanero. Diario Oficial No 37.755 del 13 de enero de 1987", , 13/1 1987, <https://n9.cl/269tg>.

⁷⁶¹ Presidencia de la República de Colombia *Decreto 51 de 1987. Por el cual se expide el Estatuto Penal Aduanero. Diario Oficial No 37.755 del 13 de enero de 1987* 13/1 1987.

3. Superior Judges of Costumes
4. Judges of Criminal Instruction for Costumes
5. Judges from Criminal Costume District

Article 52 Technical Police Corps

In addition to the ordinary authorities, the General Director of Customs, the Customs Administrators, the officials of the Special Investigations Division of the General Directorate of Customs and the Commanders and Agents of the Reservation, in the manner and within the terms of the Statute of the Technical Corps of the Judicial Police.

In the end, the criminal legislation enacted, failed monumentally at tackling the core issues of contraband, particularly for agricultural products. Only with the sudden fall of international crude prices by the end of the 1980s, and the subsequent inability of the Venezuelan Government to continuing subsidising food, did the Colombian authorities wake up to the reality of speculation and skyrocketing prices, which prompted them to buy 400 thousand tons of rice at exorbitant prices in international markets, in what was called a case of “national disgrace”.⁷⁶² Eventually, periodic mass rice imports, which extended to the mid 1990s⁷⁶³ did not do much to stabilise prices, that continued to rise, in time demonstrating the difficulties of price stabilisation via imports, instead of taking advantage of local producers.

Farther demonstrating the government’s failure at preventing speculation and grain hoarding in times of need.⁷⁶⁴ Certainly, the Colombian case study during the 1980s illustrates how it is impossible to guarantee extended price stability with imports of a staple such as rice, without

⁷⁶² Federación Nacional de Arroceros - Fedearroz 1992. 107

⁷⁶³ Roche, Julian. *The international rice trade*. Woodhead Publishing, (1992) 135

⁷⁶⁴ Federación Nacional de Arroceros - Fedearroz 1992. 108

ramping local production, and once more highlights issues of elasticity, overspecialisation of production, as well as the dependency of humans on the grain for millennia.

The tribulations suffered by Colombia in its food security drove the National Ministry of Agriculture via resolution 035 of 1988⁷⁶⁵ to create jointly with FEDEARROZ, the Strategic Plan for Rice Promotion 1988-1990. This Body of law was aimed to recover rice production as soon as possible, in four strategic lines, namely “remake the country’s food strategic stock; expand the rice harvested area in 10.6 thousand hectares; in association with ICA, created banks of specialised machinery, research and technical support; and strengthened the abilities for rice production of regions of Colombia, located in the Departments of Antioquia, Putumayo, and Sucre.”⁷⁶⁶ By 1991, the plan was dubbed an overwhelming success, well above the Governmental expectation, in great part due to the joint commitment of FEDEARROZ and the producers, which for the first time in a very long while, were highly motivated by the national recognition of such a noble, and needless to say strategic labour.⁷⁶⁷

5.9 The 1990s: Violent Fires Rekindled, the Agrarian Legal Economy Under Threat and All Hopes Placed on a New Constitution

The 1990s was a very particular time for Colombia, albeit full of paradoxes. On the one hand by the end of the 1980s, the country was the unrefuted largest producer of narcotic drugs in the world.⁷⁶⁸ Estimates indicate that up to 80% of all the refined cocaine and up to 60% of all the marihuana consumed in the United States market, came from Colombia.⁷⁶⁹ The situation was so

⁷⁶⁵ Ministerio de Agricultura, *Plan de Fomento Arrocero 1988-1990* (1988), <https://n9.cl/567kj>.

⁷⁶⁶ Ministerio de Agricultura 1988.

⁷⁶⁷ Ministerio de Agricultura 1988.

⁷⁶⁸ Ocampo Gaviria (Comp.) 1997.

⁷⁶⁹ Bagley 1988a. 72-74

overwhelming that Colombian exports of illegal narcotic drugs accounted for upwards of 3 billion dollars a year, high above coffee, its main legal commodity at the time with 2.5 billion dollars' worth of exports.⁷⁷⁰

In view of these facts it is not surprising that the South American nation became the epicentre of the Reagan administration's war on drugs.⁷⁷¹ In addition to this, Colombia was one of the most prosperous nations of the southern hemisphere, with a combined growth rate of 10% by the end of the 1980s, notwithstanding being one of the most violent countries in the world with upwards of 16.200 homicides during 1987 alone, with homicide being the main cause of male death in the country at the time.⁷⁷² The civilian population was caught between drug cartel wars, up to six revolutionary guerrilla movements attempting to overthrow the government, and the underwhelming response of the State to control the situation.⁷⁷³ Colombian institutions were losing and were doing it fast. This became impossible to deny after the assassination of the frontrunner candidate to the presidential campaign at the hands of the Medellín drug cartel, Luis Carlos Galán in 1989.⁷⁷⁴

By 1990, it was clear that an inflection point had been reached. If the newly elected Gaviria Government did not act promptly to recover institutionalality, the nation was unmistakably heading deeper into the path of a failed state. Therefore, on the legal grounds of a new Constitution in 1991

⁷⁷⁰ Bagley 1988a. 72-80

⁷⁷¹ Bagley 1988a. 72-80

⁷⁷² Bagley 1988a. 72-80

⁷⁷³ Bagley 1988a. 72-80

⁷⁷⁴ Christian Kortright Barbosa, "Luis Carlos Galán: The last light of hope for Colombia", en *Tinta fresca : selección de ensayos de estudiantes de la Universidad del Norte*, 3 ed. (Editorial Universidad del Norte, 2016).

the government set the course at attempting to transform Colombia from within, looking to guarantee a more fluid relationship with the rapidly globalising world.

It has been argued that the 1991 Constitution was the direct result of the “seventh ballot movement”.⁷⁷⁵ The movement was composed mostly of young law students under twenty years of age, that demanded deep political and legal changes to the country’s institutional structure. The movement was consolidated by way of informally introducing an extra voting ballot at the 1990 election. The movement insisted on the reformation of the 1886 Nuñez’s Constitution, a body of law that as previously mentioned *inter alia* proclaimed Catholicism as the official religion of the country, imposed heavy restrictions on the right to vote, permitted capital punishment and banned divorce; in addition to granting overwhelming powers to the sitting president of electing judges, magistrates, and even governors.⁷⁷⁶ As seen, this was evident with the passing of the Decree 51 of 1987 that created The National Criminal Customs Statute casting a constant shadow on the transparency of the actions of the executive branch of government and its dubious relationships to the judiciary and legislative.

5.9.1 An Overview of Contemporary Colombian Constitutional Law

The 1991 Constitution was a very revolutionary and progressive legal text, though overwhelmingly ambitious for a country with the political, economic, social and legal particularities of Colombia. As such, it was bound to generate contradictions, compounded by the well-known incompetence of the Colombian institutions to guarantee the realisation of the many rights that this body of law

⁷⁷⁵ Juan David López Vergara & Santiago García Jaramillo, "La Constitución de 1991: de un siglo de liberalismo clásico, a dos décadas de un utópico Estado social de derecho", n° (2011).

⁷⁷⁶ Vergara & Jaramillo 2011.

created. Examples of this can be found throughout the new 1991 constitution. Inter alia, the proclamation of Colombia as governed by the “social rule of law”⁷⁷⁷, the “social function of private property”⁷⁷⁸, in addition to the consecration of rights as difficult to enforce as the “free development of personality”⁷⁷⁹, or “the mandatory duty to fulfil peace.”⁷⁸⁰ In fact, it has been argued⁷⁸¹ that the catalogue of rights of the 1991 Constitution were so ample and difficult to coerce that that is precisely why on its article 85, it contemplated that out of 71 rights catalogue, only 21 would enjoy immediate application.⁷⁸²

In fact, it has been argued, that the 1991 Constitution paved the way for the application of a new economic paradigm for Colombia, one that would facilitate relations with the rest of the world and would correct many of the effects of the ECLAC approach of import substitution. In addition to favouring a more Neo-liberal and freer trade interaction with the world, it hoped to achieve macroeconomic stabilisation, the internalisation of production, and the transformation of the productive structure.⁷⁸³ All under the hope that greater macroeconomic prosperity would have positive repercussions in social equality and security in a country with traditionally overwhelming rates of inequality.⁷⁸⁴

⁷⁷⁷ Asamblea Nacional Constituyente, "Constitución Política de Colombia de 1991", , 13/6 1991, <https://n9.cl/opsev>. Preamble

⁷⁷⁸ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Art. 16

⁷⁷⁹ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Art.22

⁷⁸⁰ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Art. 85

⁷⁸¹ Vergara & Jaramillo 2011.

⁷⁸² Vergara & Jaramillo 2011.

⁷⁸³ Alberto Jaramillo Jaramillo, "La apertura económica en Colombia", *Revista Universidad EAFIT* 28:87 (1992).

⁷⁸⁴ Leopoldo Fergusson, Carlos Molina, James Robinson & Juan F Vargas, "The long shadow of the past: political economy of regional inequality in Colombia", *Documento CEDE* nº 22 (2017), doi:10.2139/ssrn.2932228.

Furthermore, under Chapter XII, the Constitution, inter alia established non-renewable natural resources as well as the subsoil property of the State⁷⁸⁵; it gave constitutional range to freedom of economic activity, private initiative and competition, not to mention recognising the right to being protected from inflation, the right to work, freedom of association, the right to choosing a craft or a trade; and the establishing of consumers rights⁷⁸⁶, all while endowing entrepreneurship as a primary component of society.⁷⁸⁷

In respect to agriculture, this body of law constitutionalised the significance of food security⁷⁸⁸, tasking government with the protection of food production. It created favourable conditions for accessing credit for food production⁷⁸⁹; all whilst vesting the State as the ultimate conductor and guardian of the country's economy as well as the functioning of its markets.⁷⁹⁰ It guided the Gaviria Government in the implementation of the “apertura economica” policy.⁷⁹¹ This in time aimed to reduce the exponentially high customs duties for manufactured goods, including machinery and agricultural supplies, hoping to stabilise the value of the Colombian peso against the main currencies of the world; as well as the creation of policies for the reorientation of public spending, towards privileging the rural sector for the production of commodities other than coffee, segments which as discussed before had been protractedly neglected.⁷⁹²

⁷⁸⁵ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Art. 332

⁷⁸⁶ Alzate, J. J. M. (2018). *Derecho económico constitucional colombiano*. Ediciones Doctrina y Ley. 157-158

⁷⁸⁷ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Art. 333

⁷⁸⁸ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Art. 65

⁷⁸⁹ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Art. 66

⁷⁹⁰ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Art.

⁷⁹¹ The first steps towards globalization and the gradual elimination of protectionism Economic Liberalisation

⁷⁹² Federación Nacional de Arroceros. “Arroz” 1st Ed. (1992). 115

Some of the tangible effects of the Colombian trade liberalisation policy during the first 6 years included the growth of national industry and agriculture; accompanied by an increase in the number of small and medium companies; on par with the intensification of non-traditional exports.⁷⁹³ It also had important implications for the imports of large volumes of consumer goods which gradually replaced the ones produced locally; not to mention an increase in public debt and a marked trade deficit, which was clearly seen in the country's balance of payments.⁷⁹⁴

The rice farming sector welcomed these legal, political and economic changes albeit with some reservations due to past experiences. This prompted them to even propose their own strategy to consolidate exports efforts under the silver lining of the results of the Uruguay Round, and the prospects of an increment in south-south trade to other rice consuming countries of the region while guaranteeing an undisrupted local access to the cereal, in regard of the newly established constitutional dispositions for food security.

Under the initiative dubbed the “1992 Rice Indicative Plan”⁷⁹⁵ the FEDEARROZ laid out a set of blueprints to assure its objectives were met. It recommended the facilitation of mechanisms aimed to ease Andean integration, as an obvious first market for Colombian rice. In order to achieve this, it postulated the need for the consolidation of Colombia as a free-trade customs zone that contemplated the free movements of capital, goods, services and labour, based on a common external tariff, a price band, as well as a strong anti-dumping regulation.⁷⁹⁶ All this was coupled

⁷⁹³ Aura Isabel Nájjar Martínez, "Apertura económica en Colombia y el sector externo (1990-2004)", *Revista CENES*; volumen 26, número 41 n° (2006).

⁷⁹⁴ Jaramillo 1992.

⁷⁹⁵ Federación Nacional de Arroceros - Fedearroz 1992. 92

⁷⁹⁶ Federación Nacional de Arroceros - Fedearroz 1992. 92

with much needed public investments on land adaptation, research, development and technology transfer programs, as well as road infrastructure, aiming to prepare the sector to harness the positive aspects of globalisation in a progressive and planned manner.⁷⁹⁷ It also led the way in supporting the creation of regional corporations in charge of collecting, storing, marketing and distributing large quantities of the rice harvested in the two main producing regions of the country, the Colombian eastern plains and the Tolima region.⁷⁹⁸

From 1991 life in Colombia seemed promising across the spectrum. The legal framework was served for fostering political, economic and social changes. There was an atmosphere of hope. Nevertheless, nobody in the South American nation was ready for what was to come. It would soon become evident that no body of law could protect Colombia from a dark shadow looming on the horizon.

5.10 1990's Colombia: Inexorably Heading Deeper into Failed State Territory

Political exclusion, total lack of State presence, multinational enterprises, foreign cooperation agencies, fluctuation of the international prices of commodities, and drug trafficking as a business are but a few of the ingredients for conflict in Colombia. For years, politicians, economists, regular citizens and particularly academics have debated on the matter. Many such as Bergquist⁷⁹⁹,

⁷⁹⁷ Federación Nacional de Arroceros - Fedearroz 1992. 92

⁷⁹⁸ Federación Nacional de Arroceros - Fedearroz 1992. 1-10

⁷⁹⁹ Bergquist 1986.

Gonzalez, Vasquez & Bolivar⁸⁰⁰; Thomson⁸⁰¹; Palacios⁸⁰² have conducted dedicated studies which account for a multiplicity of factors that historically added up, until the result was a unique and infamous conflict.

A conflict which amongst its multiple characteristics, has counted different actors, with numerous motivations, but most of all, that had generated desolation, and victims at every level of society. Official numbers up to the year 2012 accounted for 218.094 deaths, as the direct result of clashes between actors, selective assassinations, and massacres, without even mentioning the over 25 thousand victims of forced disappearances, or the more than 5 million victims of forced displacement⁸⁰³.

These numbers reinforce the argument for the incredible complexity of the Colombian conflict, whilst serving as cautionary tale of the dangers of trying to classify the hostilities in Colombia, by basing its study upon quantitative criteria only. What it has been considered by some as violence and sometimes an armed conflict⁸⁰⁴, has been classified by others as a full-blown civil war.⁸⁰⁵

Many of these issues became even more palpable as the 1990s went on and were only exacerbated by the historical absence of a legitimate apparatus of power in many regions of the country. Under those circumstances, it was not hard to anticipate that illegal actors would rise to fill the power

⁸⁰⁰ Mauricio Archila Neira, "Violencia y política en Colombia. De la nación fragmentada a la contrucción del estado", *Anuario Colombiano de Historia Social y de la Cultura* n° 30 (2003).

⁸⁰¹ Frances Thomson, "The agrarian question and violence in Colombia: conflict and development", *Journal of Agrarian Change* 11:3 (2011), doi:10.1111/j.1471-0366.2011.00314.x.

⁸⁰² David Felipe Peña Valenzuela, "Marco Palacios Roza. Violencia pública en Colombia, 1958-2010", *Anuario Colombiano de Historia Social y de la Cultura* 40:2 (2013).

⁸⁰³ Centro Nacional de Memoria Histórica, *Estadísticas del conflicto armado en Colombia*, 2012, <https://n9.cl/itsq1>.

⁸⁰⁴ Ellen Fadnes & Cindy Horst, "Responses to internal displacement in Colombia: guided by what principles?", *Refuge* vol. 26 (2009).

⁸⁰⁵ Centro de Recursos para el Análisis de Conflictos - CERAC, *Datos del Conflicto Armado en Colombia*, 2023, <https://n9.cl/7rths>.

vacuum. Also, this serves as a partial explanation for the overwhelming growth in narcotic drug plantations during the decade.⁸⁰⁶ These crops became commonly controlled by the guerrilla movements that took over the narco-business after the disbandment of the two main centralised cartels of Medellín and Cali,⁸⁰⁷ namely the Revolutionary Armed Forces of Colombia (FARC) and National Liberation Army (ELN).⁸⁰⁸

In addition to this complex and cluttered scenario, many paramilitary groups emerged, and many existing ones strengthened their grip on the territories that were already under their power, generating even more bloodshed due to their constant attempts to expand their geographical areas of influence. This consequently had a direct result on the production of violence due to the clashes between the actors, therefore it was not difficult to predict an exponential rise in casualties, and overall, the further deterioration of the rule of law and governability of the country.

In fact, the most recent numbers released by the Truth Commission, account for 450.664 direct homicide victims of the conflict between 1985 and 2018, with roughly half of them attributed to paramilitary groups⁸⁰⁹. The report also found that the most violent years took place between 1994 and 2004 with 202.293 victims.⁸¹⁰ Not to mention a projected casualty undercount of around 800.000 people.⁸¹¹

⁸⁰⁶ Francisco E Thoumi & Francisco E Thoumi, *Illegal drugs, economy, and society in the Andes* (Woodrow Wilson Center Press, 2003).

⁸⁰⁷ Mark Peceny & Michael Durnan, "Peceny, M., & Durnan, M. (2006). The FARC's best friend: US antidrug policies and the deepening of Colombia's civil war in the 1990s.", *Latin American politics and society* 48:2 (2018).

⁸⁰⁸ Peceny & Durnan 2018.

⁸⁰⁹ La Comisión, *Cifras de la Comisión de la Verdad presentadas junto con el Informe Final*, 2022, <https://n9.cl/n9ymp>.

⁸¹⁰ La Comisión 2022.

⁸¹¹ La Comisión 2022.

⁸¹¹ La Comisión 2022

That being the case, it has been argued that during the 1990s all the ingredients for the total absence of the rule of law in the country had been combined.⁸¹² Namely “a weak central government, an army incapable of standing up to the insurgents, a police force unable to effectively maintain order, and the ability of the insurgents and paramilitaries to access supplies and weapons from abroad”.⁸¹³ Meanwhile, and just like in previous decades the Ibagué plateau and the rice it produced enjoyed mostly uneventful years of relative peace and prosperity during this period.

5.10.1 Turn of the Millennium: A last Chance at Nation Building

Andrés Pastrana took over the presidency of Colombia on August 7th, 1998, and immediately set to work on three main fronts. Internal security, a peace process with FARC, and rebuilding Colombia’s diplomatic relations with the world, especially the United States.⁸¹⁴ In fact, by the end of 1999, his government had managed to outline a comprehensive strategy alongside the United States government, aimed to tackle the lack of internal security in relation to narco-business, hoping to improve governance and eventually prosperity to specific zones of the country which had been historically neglected hence had fallen prey to illegal actors.⁸¹⁵

“Plan Colombia” as it would come to be commonly known, carried a staggering \$7.5 billion price tag, \$3.5 billion which would be provided by Colombia and the rest by the United States in the form of foreign assistance.⁸¹⁶ It was arguably one of the firmest steps ever taken to push Colombia

⁸¹² Peter DeShazo, Johanna Mendelson Forman & Phillip McLean, *Countering threats to security and stability in a failing state: lessons from Colombia* (CSIS, 2009).

⁸¹³ DeShazo, Mendelson Forman & McLean 2009. (VI)

⁸¹⁴ Carlos Gustavo Rodríguez Salcedo, "Los 15 planes de desarrollo que marcaron la hoja de ruta de la economía nacional", *La República*, 27/2 2019, <https://n9.cl/mky9r>.

⁸¹⁵ DeShazo, Mendelson Forman & McLean 2009. (14-15)

⁸¹⁶ DeShazo, Mendelson Forman & McLean 2009. 15

back from the edge of the precipice, albeit many of its consequences were unforeseen at the time, and still impact Colombian life at every level more than twenty years later.

In respect to the FARC's peace process, the Pastrana Government realised very belatedly after years of fruitless negotiations, that the illegal group's real interest was to overthrow the government at all costs and had no genuine disposition whatsoever to demobilise.⁸¹⁷ The narco-business was above all, simply too profitable. This illicit wealth had continued to permeate every level of society and was largely to blame for the disproportionate financing of insurgents, paramilitaries and drug gangs alike, which kindled the conflict to epic proportions.⁸¹⁸ It was clear that dramatic changes had to take place in order to recover the country's institutions and the rule of law. In hindsight, "The Pastrana years definitely marked the beginning of a turnaround in terms of the exercise of legitimate state authority and many positive steps were undertaken whose results would be manifested only a few years later".⁸¹⁹

When Alvaro Uribe Velez undisputedly won the 2002 presidential election on a platform of a "strong man" he quickly set to work on restructuring the military, under the rationale that "the root of the crisis lay in a weak state unable to assert the rule of law in its territory".⁸²⁰ This included the Democratic Security Policy⁸²¹, which was partially supported on the grounds of the Plan Colombia, laid out by his predecessor, and consequently necessitated deep collaboration from the United States government.

⁸¹⁷ DeShazo, Mendelson Forman & McLean 2009. (vii)

⁸¹⁸ DeShazo, Mendelson Forman & McLean 2009. 8-9

⁸¹⁹ DeShazo, Mendelson Forman & McLean 2009. 11

⁸²⁰ DeShazo, Mendelson Forman & McLean 2009. 16

⁸²¹ Presidencia de la República & Ministerio de Defensa Nacional, *Política de Defensa y Seguridad Democrática* (Ministerio de Defensa, 2003). 5

5.10.2 Democratic Security Policy: Paving the Way for Recovering the Rule of Law

In 2003, President Alvaro Uribe Velez wrote

“To regain order and security, a cardinal requirement for the true enjoyment of liberty and human rights. This is the main concern of this Government. Democratic security is what it is needed in order to guarantee the protection of its citizens. The State must protect every citizen equally and without distinctions, so every Colombian can enjoy their rights”⁸²².

in the official document outlining his Democratic Security Policy. Farther on, the document makes special emphasis on the objectives of the policy, which can be summarised in a set of multiple efforts to reinforce and guarantee the rule of law in the entirety of the country, the strengthening of democratic authority, as well as the guaranteeing of a freer implementation of institutional authority overseen by the rule of law and the active participation of Colombian citizens in national common interest matters.⁸²³

Military expenditure quadrupled to a staggering 4.7% of Colombia’s GDP during the first term of Alvaro Uribe in office alone. This GDP to military spending ratio was only comparable to the United States’ and was well above the regional average of 1.6%.⁸²⁴ Regardless of these efforts, soon it became evident for the Colombian Government, as well as the United States’ that there was only so much that interdictions, military might, and cooperation could accomplish to recover security. Unless both governments managed to comprehend that drug-trafficking was only one of the culprits of Colombian violence and lack of security, and that without addressing inequality, the

⁸²² Presidencia de la República & Ministerio de Defensa Nacional 2003. 5

⁸²³ Presidencia de la República & Ministerio de Defensa Nacional 2003. 12

⁸²⁴ United States Congress, "Andean Trade Promotion and Drug Eradication Act (ATPDEA)", , 2001, <https://n9.cl/z16wp>.

lack of opportunities and the protection of legally established sectors, particularly agriculture as the traditional spearpoint of Colombian economy, yet another chapter of the war against drugs was bound to also fail miserably sooner rather than later.

5.10.3 Conclusions

Chapter V demonstrated how for almost four hundred years, the destinies of Colombians have been interlocked with rice agriculture, especially in the Ibagué Plateau. Consequently, rice farming has played a variety of roles that range from subsistence agriculture to economic initiative on behalf of development, to cooperative efforts to protect a way of life and feed the nation. In view of these facts, rice from the Ibagué plateau has had discernible impacts even on the country's political influence and legal system, amid the shadows of violence that seem to have accompany Colombia since its very inception. Such violence threatened by the turn of the century to continue pushing the country further into failed state territory, thanks to the disproportionate consequences of illegal drug trafficking, to the point of catching the attention of the main geopolitical influence of the region, dominant economy of the world, and primary consumer of Colombian narcotics, the United States of America, in time prompting it to exert influence in conjunction with Colombian governments in an effort to bring Colombia from the brink and justify another chapter in the failed war against drug trafficking, which at least in the Colombian context only looks destined to be perpetuated, which eventually would translate into the negotiation and signing of the United States-Colombia Trade Promotion Agreement (USCTPA).

CHAPTER VI

THE UNITED STATES-COLOMBIA TRADE PROMOTION AGREEMENT: CAUGHT BETWEEN FIXING AND AGGRAVATING COLOMBIAN PROBLEMS

The following chapter utilises the emblematic example of the USCTPA, to illustrate some of the interrelated intricacies of an important part of the spaghetti bowl of world trade, bilateral free trade agreements. It argues that even if at first sight and under neoliberal narratives it could be considered as one of the main tools of development, in reality bilateral free trade agreements tend to be riddled with the nuances of geopolitical interests, that more often than not, end up privileging industrialised nations which from the onset, already enjoy a more advantageous position in global division of labour, and comparative advantage. So much that as posited in the research questions, can make them feel imbalanced. When these particularities are mixed with the complexities of Colombo-American relations, the results cast a thick shadow of doubt on Colombian institutions that extends to all three branches of government, including the role of the Colombian Constitutional Court on the integration of FTA's to the national legal system, and even on their real motivations and undisclosed interests, with rice playing a starring role.

6.1 Six Administrations Aiming to Protect American Interests Overall

One of the main rationales of the United States Colombia Trade Promotion Agreement (USCTPA)⁸²⁵ was as a counter offensive to the illegal drugs issue, as has been previously cited.⁸²⁶ In fact, the agreement was devised as an extension of a broader initiative, APTDEA, or the 2002 Andean Trade Promotion and Drug Eradication Act.⁸²⁷ In the case of Colombia, the USCTPA was designed to support other strategies like Plan Colombia, and the Democratic Security Policy, in a multitrack approach to a bigger end. Indeed, President Alvaro Uribe's speech, marked the inauguration of the negotiations to the USCTPA on March 18th, 2004, noting that

In the Colombian setting, the strength of the agricultural sector is the guarantee of the destruction of illicit drugs. In Colombia, a weak agriculture equals strong terrorism. Here we must fully promote agricultural recovery as an essential condition, in order to defeat drugs and terrorism. (...) In the process of building consensus in the country, we must also look very carefully at the regional issue, so that this agreement is subscribed with the certainty that is going to benefit the Nation as a whole.⁸²⁸

His speech highlighted both the strategies to fight narcotic crops and narco-business, but interestingly also underscores the economic, political and social sensitivities of agriculture, in a country like Colombia, amongst the ambitious path it was about to start with an economic

⁸²⁵ M Angeles Villarreal, "The US-Colombia free trade agreement: Background and issues", (Library of Congress, Congressional Research Service, 2012).

⁸²⁶ Laura Pasculli Henao & Andrés Espinosa Fenwarth, *Visión agrícola del TLC entre Colombia y Estados Unidos: preparación, negociación, implementación y aprovechamiento* (Naciones Unidas, Santiago de Chile, 2013b).

⁸²⁷ United States Congress *Andean Trade Promotion and Drug Eradication Act (ATPDEA)* 2001.

⁸²⁸ Finanzas, "Claroscuros de una negociación", *Portafolio*, 4/1 2006, <https://n9.cl/kw1n7>.

behemoth like the United States. For Colombia, negotiations officially started on August 2004 with the passing of governmental decree 2314 which vested the upcoming proceedings with legality.

Fast Forward to October 3, 2011, the American Congress passed legislation 66-33 approving the USCTPA which marked the start of yet another chapter of Colombo-American relations, now on matters of trade liberalisation. As seen above, the prior phase had started seven years earlier with the official instalment of the first USCTPA round of negotiations by then Colombian President Alvaro Uribe Velez.⁸²⁹ Furthermore, this was a component of a broader and long-sustained effort by three American administrations over the course of thirteen years to bring Colombia back from the brink and therefore combat more efficiently the issue of international drug trafficking, originally within the more ambitious but temporary APTDEA initiative.

The USCTPA was negotiated on six specific sectors namely: textiles, services (including financial), information technology, intellectual property rights, labour and most importantly agriculture, which as will be posited below was particularly contentious during the negotiations. The following analysis will concentrate firstly on agriculture as a whole, then zero in on rice, on the stages of negotiations, obligations agreed to for both parties, and more importantly commenting on the legal and constitutional analysis carried out by the Colombian Constitutional Court.

As stated, by far the most controversial part of the negotiations was conducted in the field of agriculture. This is hardly surprising when remembering the past discussed sensibilities of the

⁸²⁹ Finanzas *Claroscuros de una negociación* 4/1 2006.

sector for developed and developing countries alike.⁸³⁰ These considerations are even more important when assessed in the light of statistical data that show that at the beginning of the discussions in 2004, agriculture amounted to almost eight percent of Colombian GDP,⁸³¹ in addition to the fact that in 2003 the United States reported an staggering 39 billion dollars in decoupled payments to its farmers alone.⁸³² An entrenched subsidisation which was harshly criticized by Colombian political sectors in the final text of the agreement,⁸³³ and works as a vivid reflection of what is deeply flawed with the international trading of agricultural products.

With this in mind, research conducted for this dissertation on the USCTPA's so called "white book of negotiations"⁸³⁴ demonstrated that in the field of agriculture alone, over 1300 documents were produced throughout hundreds of meeting which included those sustained between negotiators, communities, Congressional Commissions, public institutions, as well as the private sector across the board,⁸³⁵ in a process that according to the Government and the Constitutional Court, worked as promises of consent and democracy in a multicultural society.⁸³⁶

6.2 Sitting at the Table

Every international agreement between two States is full of complexities, they go farther still when dealing with trading matters and their intricate connexion to social, cultural, economic, political

⁸³⁰ Thomas W Hertel, Kym Anderson, Joseph F Francois & Will J Martin, "Agriculture and non-agricultural liberalization in the millennium round", n° (2000).

⁸³¹ The World Bank, *Agriculture, forestry, and fishing, value added (% of GDP) - Colombia*, 2023, <https://n9.cl/ptrf2>.

⁸³² Mary E. Burfisher & Jeffrey Hopkins, *Farm Payments: Decoupled Payments Increase Households' Well-Being, Not Production*, 2003, <https://n9.cl/96xy1>.

⁸³³ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 54

⁸³⁴ Ministerio de Industria y Comercio, *Aofert Mej oct10-18 US offer2 pass to Colombia HDO*, 2006, <https://n9.cl/3r1c4>.

⁸³⁵ Industria y Turismo Ministerio de Comercio, *Acuerdo de Promoción Comercial entre la República de Colombia y Estados Unidos de América*, 2018, <https://n9.cl/vuhid>.

⁸³⁶ Corte Constitucional, "Sentencia C-750-08", , 24/7 2008, <https://n9.cl/lar8kk>.

and legal aspects. The USCTPA was no exception. As such, both the American and Colombian delegations, had to go through a rigorous earlier process before even sitting at the negotiating table. From the American perspective, it included the consultancy, guidance and most of all, resources of the mighty International Trade Commission (ITC),⁸³⁷ as well as the Congressional research Service (CRS).⁸³⁸ These institutions produced in depth studies⁸³⁹ on the possible outcomes for the American economy, which included long-range economic models and comparisons, for each sector that took part in the negotiations.⁸⁴⁰

By way of contrast, Colombia had to rely primarily on the studies conducted by the Ministries of Treasury and Agriculture, which even if well intended, certainly did not have the experience, let alone the resources of their American counterparts to conduct a thorough analysis of prospects and possible outcomes of the USCTPA.

Therefore, as an unremarkable strategy to offset those imbalances the Colombian government implemented the “learn by doing plan”.⁸⁴¹ “The Plan” was twofold, on the one hand it would include an external technical consultancy with FAO, which aimed to strengthen policy management, as well as negotiating capabilities, by enrolling key government officials in training sessions with a “group of reputed national and international consultants”.⁸⁴² Furthermore, it would

⁸³⁷ United States International Trade Commission, *US-Colombia trade promotion agreement: potential economy-wide and selected sectoral effects* (2006), <https://n9.cil7ja39>.

⁸³⁸ Villarreal 2012.

⁸³⁹ Villarreal 2012.

⁸⁴⁰ United States International Trade Commission 2006.

⁸⁴¹ Henao & Fenwarth 2013b.

⁸⁴² Henao & Fenwarth 2013b.

use the Andean Community of Nations and Mercosur CAN-MERCOSUR Complementation Agreement N0 59 as a platform to conduct the negotiations of the USCTPA.⁸⁴³

However, after systematic comparative research of the published material produced by both negotiating parties, it is hard not to draw comparisons with the final stages of the WTO's AoA, primarily on the issues of dirty tariffication. As presented before, many developing countries did not conduct protracted and thorough analysis of the drafts, Therefore, after the signing of the agreement, they encountered exorbitant tariffs on the very goods for which they hoped to find market access .⁸⁴⁴ Not to mention the blatant admission by some emerging economies on their lack of technical comprehension of the Trade Related Aspects of Intellectual Property agreement (TRIPS) during the negotiations, or the misguided belief that such an agreement was mostly in relation to counterfeited goods.⁸⁴⁵

To get back to the point, there is a parallel to be drawn in terms of the USCTPA. Indeed, Colombia does not seem to have conducted thorough macroeconomic studies on the long-term consequences of reducing and altogether eliminating its tariff protection from American products. Instead, Colombian institutions concentrated on presenting some short to medium outcomes of the agreement.⁸⁴⁶ Such partial research was pointed out several times by members of the Colombian Congress, unions, associations, and specifically Magistrates of the Colombian Constitutional Court during their legal assessment⁸⁴⁷ emphasizing the difficulties awaiting Colombia down the

⁸⁴³ Henao & Fenwarth 2013b. 18

⁸⁴⁴ United Nations Conference on Trade and Development, 'Dispute Settlement, World Trade Organization, 3.15 Agriculture' United Nations Conference of Trade and Development (New York, Geneva Mar)7

⁸⁴⁵ Narlikar, Amrita. *The World Trade Organization: a very short introduction*. Vol. 135. Oxford University Press, 2005. 12

⁸⁴⁶ Henao & Fenwarth 2013b. 7

⁸⁴⁷ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 450

road, after paradoxically conducting its most ambitious, complex and important negotiation ever.⁸⁴⁸

6.3 The Stakes for Agriculture

From the American perspective, the guiding principles of the negotiations ranged from the reduction and elimination of export subsidies, the preservation of food programmes for rural families that did not distort trade, the maintenance of food aid programmes and the strengthening of the multilateral trading system.⁸⁴⁹ And above all, the plain objective of gaining access to Colombian markets via the reduction or elimination of tariffs diminishing American opportunities.⁸⁵⁰

For Colombia, this would eventually mean that once the USCTPA entered into force, it automatically eliminated duties on 80% of U.S. exports of consumer and industrial products with most remaining tariffs facing an elimination period of ten years,⁸⁵¹ albeit notorious exceptions like rice. Concordantly, this translated in losing an important source of revenue, which notably ranged from 12.5% on average for capital and industrial goods to 15% for sensitive goods, to an eye-watering 35% for automobiles.⁸⁵² All these while keeping in mind that in the arena of developing countries, revenue from tariffs can amount to a third of a nation's budget, as presented by Stiglitz and Charlton.⁸⁵³ Furthermore, the mixture of an inefficient and regressive tax system⁸⁵⁴

⁸⁴⁸ Henao & Fenwarth 2013b.7

⁸⁴⁹ Henao & Fenwarth 2013b. 7-8

⁸⁵⁰ Henao & Fenwarth 2013b. 7-8

⁸⁵¹ Villarreal 2012.

⁸⁵² Villarreal 2012. 2

⁸⁵³ Joseph E Stiglitz & Andrew Charlton, *Fair trade for all: How trade can promote development* (Oxford University Press on Demand, 2005).

⁸⁵⁴ Lars Christian Moller, *Fiscal Policy in Colombia: Tapping its Potential for a More Equitable Society*, 2013.

with disproportionately high rates of informal workers⁸⁵⁵ and unemployment⁸⁵⁶, leaves ample room for concern in the Colombian context, and can also be considered an echo of previous research such as that by Bartel's.⁸⁵⁷ As an illustration, the late Republican senator John McCain, highlighted the significance of approving the USCTPA by the American Congress, so that the USA could stop paying up to one billion dollars' worth of tariffs for exports to Colombia, with chances of those numbers climbing up to twelve billion dollars under the conceded advantages.⁸⁵⁸ In fact, even the dissenting faction of the Colombian Constitutional Court, voiced its concern regarding those numbers during their legal assessment.⁸⁵⁹

6.4 The Colombian Side of the Bargain

In exchange, Colombia received what it already had, for the simple reason that prior to the negotiations and signing of the USCTPA, Colombian goods entered the United States market virtually duty free, or exceptionally with a meagre tariff of up to 3% under the umbrella of the temporary APTDEA initiative. This fact is even more prominent when comparing the nature of the goods both signing parties went on exchanging. While Colombia continued exporting raw materials and commodities with significantly lower added value, thanks to its auto-imposed version of the comparative advantage principle, the United States managed to negotiate elimination, and tariff reduction for agricultural, industrial goods, and services with an indisputably higher added value across the board.

⁸⁵⁵ Carlos Salcedo-Pérez, Fabio F Moscoso-Duran & María P Ramírez-Salazar, "Economía informal en Colombia: iniciativas y propuestas para reducir su tamaño", *Economía* 41:03 (2020).

⁸⁵⁶ Departamento Administrativo Nacional de Estadísticas (DANE), *Registro estadístico de relaciones laborales - RELAB*, 2023, <https://n9.cl/6x4g>.

⁸⁵⁷ Lorand Bartels, *Trade and Human Rights* (Mpepil, 2013).

⁸⁵⁸ Jeff Mason, *Acuerdo de Promoción Comercial entre la República de Colombia y Estados Unidos de América*, 2008, <https://n9.cl/rj0g6>.

⁸⁵⁹ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 458

In fact, recent numbers by the World Bank⁸⁶⁰ reflect an upwards trend in the Colombian trade deficit since the entering into force of the USCTPA, with a steep rise of 35.02% from 2020 alone.⁸⁶¹ However, there have not been any conclusive examinations regarding the said trade deficit as directly correlated to this agreement. Admittedly, any future correlation should consider the abundant geopolitical challenges of the last decade including the COVID-19 pandemic, and therefore the unpredictable and rapid challenges for producers, businesses and states alike, up and down the production, and distribution value chains. Nonetheless, within the Colombo-American trading context, said trend exists, and generates apprehension when comparing it to equivalent research regarding many of the long-term social and economic effects on developing countries who have achieved agreements of a similar nature⁸⁶² with their developed counterparts.⁸⁶³

As matter of fact, it could be argued that within the Multilateral Trading System context, there is a stark parallel. Since a considerable part of the protectionism allowed, is geared toward robbing developing countries of the comparative advantage that their geographical location concedes them for agricultural products.⁸⁶⁴ When coupled with the previously mention agricultural subsidy box-system⁸⁶⁵ the deliberate market restrictions imposed by industrialised nations by way of bilateral trade agreements, the premature exposition of developing countries industries to competition and globalisation⁸⁶⁶ and more importantly the policies of the Bretton Woods institutions, largely

⁸⁶⁰ The World Bank, *Country Profile Colombia*, 2022a, <https://n9.cl/mhiq0>.

⁸⁶¹ The World Bank 2022a.

⁸⁶² Kathryn N Russ & Deborah L Swenson, "Trade diversion and trade deficits: The case of the Korea-US free trade agreement", *Journal of the Japanese and International Economies* vol. 52 (2019).

⁸⁶³ Guglielmo Maria Caporale, Christophe Rault, Robert Sova & Anamaria Sova, "European free trade agreements and trade balance: Evidence from four new European Union members", *The Journal of International Trade & Economic Development* 21:6 (2012).

⁸⁶⁴ Joseph 2013. 146

⁸⁶⁵ World Trade Organization 1994a. Annex 2

⁸⁶⁶ Joseph 2013. 146

controlled by rich countries, mirrors the lack of commitment from the international community for the larger and sustainable development of poor nations.⁸⁶⁷ After all, potentially developed nations, are hypothetical contenders to international markets.

To sum up, it seems that the larger spaghetti bowl, “including the implementation of WTO rules is not currently achieving optimal outcomes regarding promotion of the right to development and the alleviation of poverty because current rules are biased against the poorest States.”⁸⁶⁸ This gains greater salience within the USCTPA context, when considering that one of the key arguments of the Colombian Constitutional Court while conducting its assessment states that even though the USCTPA is a bilateral agreement between two international persons of law, it has been subscribed within the ampler spectrum of the Multilateral Trading System, including previous advantages, concessions, duties and obligations.⁸⁶⁹

Indeed, it seems that the Spaghetti bowl, at least in the Colombo-American context, has become untangled. Its ends are easier and easier to distinguish, and so is the prevailing notion of neoliberal capitalism with all it entails.

⁸⁶⁷ Joseph 2013. 147

⁸⁶⁸ Joseph 2013. 147

⁸⁶⁹ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 226

6.5 The Guiding Constitutional Economic Principles of Colombia, Between Neoliberalism and Social Values

It is difficult not to overstate the impact of the 1991 Colombian Constitution. As seen before, this was a body of law presented to the nation when it needed it the most. Challenges in security, as well as in social, economic and political life, demanded a transformation of the country's legal structure. To say nothing of the implementation of a framework aimed at deepening civil rights and their protection, in a Nation in which their enforcement has always been mediocre at best.

Before this, it had been argued that Colombia lacked the right political and legal tools to truly protect its citizens⁸⁷⁰, let alone to deal with the rapid transformations of the world when the westernised notion of integration was gaining traction,⁸⁷¹ and the prospects of globalization⁸⁷² seemed stronger after the fall of the Berlin wall.

Regardless, the 1991 Colombian Constitution has never been short⁸⁷³ of detractors.⁸⁷⁴ Many of them with powerful arguments that ponder on the actual capabilities of the Constitution to foster tangible changes⁸⁷⁵, not to mention its overreaching nature⁸⁷⁶ or its inability to bridge law,

⁸⁷⁰ Rodrigo Uprimny Yepes & A Sajo, "Should courts enforce social rights? The experience of the Colombian Constitutional Court", *Justiciability of Economic and Social Rights: Experiences from Domestic Systems*. Antwerp: Intersentia-Maastricht Centre for Human Rights n° (2006).

⁸⁷¹ Jamal Shahin & Michael Wintle, *The idea of a United Europe: political, economic and cultural integration since the fall of the Berlin Wall* (Springer, 2000).

⁸⁷² Ruti G Teitel, *Globalizing transitional justice: contemporary essays* (New York: Oxford University Press, 2014).

⁸⁷³ Rodrigo M Nunes, "Ideational origins of progressive judicial activism: The Colombian Constitutional Court and the right to health", *Latin American Politics and Society* 52:3 (2010).

⁸⁷⁴ William C Banks & Edgar Alvarez, "The New Colombian Constitution: Democratic Victory or Popular Surrender", *U.Miami Inter-Am.L.Rev.* vol. 23 (1991).

⁸⁷⁵ Martha I. Morgan & Monica Maria Alzate Buitrago, "Constitution-Making in a Time of Cholera: Women and the 1991 Colombian Constitution", *Yale Journal of Law and Feminism* vol. 4 (1991).

⁸⁷⁶ David Landau, "The two discourses in Colombian constitutional jurisprudence: a new approach to modeling judicial behavior in Latin America", *Geo.Wash.Int'l L.Rev.* vol. 37 (2005).

development and reality.⁸⁷⁷ All within a country with overall weak institutions, and a pitiable State presence still in several far-off regions of its territory.

But if there is field in which the Constitution can be considered as ambivalent if not contradictory, it is in economics. Granted, as mentioned earlier the Colombian charter instituted a whole section dubbed “The Economic Constitution” under title XII. And over the course of forty-one articles set out to present several economic principles for the nation. These ranged from the constitutional protection of private property, competition, and freedom of enterprise,⁸⁷⁸ to the *De Iure* nationalisation of the subsoil’s exploitation,⁸⁷⁹ the programmed State intervention in the economy,⁸⁸⁰ the functions and obligations of the central bank;⁸⁸¹ and the basis in which entrepreneurship and private enterprise were to be created and conducted.⁸⁸² All under the influence of the social function of private property and of course the “social rule of law.”⁸⁸³

Interestingly, the Constitution does not expressly set an economic model, but rather signals boundaries between a centrally planned economy and the overflow of capitalism, this is done by taxing the State with the role of ultimate conductor of the economy with the goal of benefiting the progress of all Colombians.⁸⁸⁴ Furthermore, it introduced profound institutional innovations in the fields of monetary exchange, credit and fiscal policy as well as market regulation including the Board of Directors of the Bank of the Republic; and the general mandate of social spending within

⁸⁷⁷ Katrin Merhof, "Building a bridge between reality and the constitution: The establishment and development of the Colombian Constitutional Court", *International Journal of Constitutional Law* 13:3 (2015), doi:10.1093/icon/mov043.

⁸⁷⁸ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Art. 333

⁸⁷⁹ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Art. 332

⁸⁸⁰ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Art. 334

⁸⁸¹ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Art. 371

⁸⁸² Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Art. 333

⁸⁸³ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Art. 79

⁸⁸⁴ Espinosa, M. J. C. (2022). *La Constitución de 1991: viviente y transformadora*. Universidad de los Andes. 217-218

the framework of a balanced national budget and the National Development Plan. Just like in times of the *Revolución en Marcha*, the market continues to be protected by constitutionalising private property and economic freedom under the oversight of regulatory agencies; all while instituting that essential services such as primary and secondary education as well as health services for the poor are provided free of charge and without discrimination.⁸⁸⁵ All which can be interpreted as the farther constitutional development of the very principles of the republic, established under the preamble, and articles one and two of the charter, and which are intertwined with economic matters. For example, the constitution states that:

The people of Colombia,

Exercising their sovereign power, represented by its delegates to the National Constituent Assembly, invoking the protection of God, and in order to strengthen the unity of the Nation and ensure its members life, coexistence, work, justice, equality, knowledge, freedom and peace, within a legal, democratic and participatory framework that guarantees a just political, economic and social order, and committed to promoting the integration of the Latin American community, decrees, sanctions and promulgates the following:

Political Constitution of Colombia

Art. 1: Colombia is a social State of law, organized in the form of a unitary, decentralized Republic, with autonomy of its territorial entities, democratic, participatory and pluralistic, founded on respect for human dignity, work and the solidarity of the people who make it. Integral and in the prevalence of the general interest.

Art. 2: The essential purposes of the State are: to serve the community, promote general prosperity and guarantee the effectiveness of the principles, rights and duties enshrined in the Constitution; facilitate the participation of all in the decisions that affect them and in the

⁸⁸⁵ Espinosa, M. J. C. (2022). *La Constitución de 1991: viviente y transformadora*. Universidad de los Andes. 217-218

economic, political, administrative and cultural life of the Nation; defend national independence, maintain territorial integrity and ensure peaceful coexistence and the validity of a just order.

The authorities of the Republic are established to protect all people residing in Colombia, in their life, honour, property, beliefs, and other rights and freedoms, and to ensure compliance with the social duties of the State and individuals.

Articles 333 and 334 can be considered the backbone of the economic constitution, since they recognise the importance of economic freedom, private initiative and competition, all while protecting the rights to equal and non-discriminatory treatment between entrepreneurs and competitors, the right to enter or withdraw from the market, business and managerial autonomy, and the right to receive a reasonable benefit from work and/or economic activities.⁸⁸⁶ Also, articles 333 and 334 set the framework in which economic liberties are to be enjoyed with the ultimate goal of the common good, including the legitimate intervention of the state in the economy as long as such intervention complies with the law, does not affect the fundamental principle of freedom of enterprise, and reflects solidarity, fairness and proportionality,⁸⁸⁷ since “it reconciles the private interests of those who participate in the market, with the general interest of the community.”⁸⁸⁸

Being that, a bird’s eye study of the Constitution’s economic principles forecast the incorporation of social and neoliberal philosophies into one body of law. For obvious reasons their harmonisation has been troublesome because their very nature can be at times antagonistic. And yet their coexistence is delicate but real, as seen on the declaration of the very principles of the Constitution, and later articles with economic spirit, as well as decisions and precedents.

⁸⁸⁶ Alzate, J. J. M. (2018). *Derecho económico constitucional colombiano*. Ediciones Doctrina y Ley. 81-82

⁸⁸⁷ Alzate, J. J. M. (2018). *Derecho económico constitucional colombiano*. Ediciones Doctrina y Ley. 95-97

⁸⁸⁸ Corte Constitucional de Colombia Sentencia C-148/15

6.5.1 The Constitutional Court: Developer of the Charter

A constitution, just like any part of the legal order is destined to stay nullified if it lacks development and enforcement. Favourably, the role of guardian and developer of the Carta, was entrusted in the hands of the Constitutional Court, with a performance nothing short of impressive, as it has delivered an astounding forty thousand rulings over the course of little more than three decades.⁸⁸⁹ Unfortunately, the same hardly applies to the legislative branch of Colombian government. Infamous for shying away from its constitutional mandate, leaving such legal uncertainty to be filled by the high bench. As a result of this, the Colombian legal system has struggled profoundly to integrate characteristics of a codified continental law tradition, with the Anglo-Saxon practice of the jurisprudential precedent. In no other fields of Colombian law can these developments be more prominent, than in the protection to the right to health, and on economic matters.

For example, the Constitutional Court has argued several times that establishing Colombia under the social rule of law means creating economic obligations for the State, and as such the State must ensure the wellbeing of its citizens. This must be done by guaranteeing that the State takes an active role to offset social inequalities as well as material limitations.⁸⁹⁰ To say nothing of fighting the social privations and handicaps of several social groups and individuals, by supporting and protecting them, all under the shade of dignity and solidarity.⁸⁹¹

⁸⁸⁹ Corte Constitucional 2023.

⁸⁹⁰ Corte Constitucional, "Sentencia No. C-401/95", , 7/9 1995, <https://n9.cl/cbuddg>. 20

⁸⁹¹ Corte Constitucional *Sentencia No. C-401/95* 7/9 1995. 20

The Court has gone farther still to amplify the scope of the social rule of law, by exhorting the State to deploy “Efforts to build the essential conditions to ensure that all the inhabitants of the country can enjoy a dignified life. To do so, the authorities must act effectively to maintain or improve the standard of living, which includes food, housing, and social security.”⁸⁹² All while constantly urging Congress to perform its Constitutional mandate “of adopting the necessary legislative measures to build a just economic and social order according to the Carta’s preamble as well as article two.”⁸⁹³ This can be interpreted as a plea to Congress do its job and stop playing politics with the law.

Considering this, it is noteworthy that alongside sets of overstressed social arguments, the neoliberal nature of the Colombian Constitution shines like polished bronze. “Colombia cannot escape underdevelopment if it does not open up to internationalise its technology and economy (...) as well as its intercultural relations, the isolation of a State equals stagnation, the main obstruction for the realisation of the right to development.”⁸⁹⁴ These postures clearly coincide with the structures of economic globalisation. And within the Colombian constitutional context would over time become the guiding doctrines for the expansion of the Country’s international economic relations with the world. Consequently, this has permeated the organisation and functions of public and private Colombian institutions alike and manifests itself in the passionate defence of the USCTPA by private organisations, as well as the public establishment. Similarly, such attitudes coincide with the materialisation of what has been dubbed as “the political project called neo-

⁸⁹² Corte Constitucional *Sentencia No. C-401/95* 7/9 1995. 25

⁸⁹³ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Preamble

⁸⁹⁴ Corte Constitucional, “Sentencia C-615/02”, , 8/8 2002, <https://n9.cl/307cp>.

liberalism.”⁸⁹⁵ Geared toward safeguarding foreign investment, and its unified agenda for economic policy, property rights, and constitutionalism.⁸⁹⁶ As Schneiderman notes:

In the post-1989 global scene, political alternatives seem to have narrowed in scope. The structures that influence political and economic life now are shaped by the global consensus that states must be made safe for trade and foreign investment. States are expected to remove regulatory restraints on the movement of capital, goods, and services, to divest themselves of publicly owned enterprises-to privatize or denationalize real or financial assets-and to facilitate the private supply of certain goods and services by "contracting out" and "commercialization."⁸⁹⁷

As stated before, social and neoliberal principles are often at odds. Indeed, when it comes to Colombian trading capabilities, this partially explains why during the more than one hundred years of existence of the 1886 Nuñez’s Constitution, economics, and trade, had to yield to political interests due to the documented instability of the country. This somewhat explains the lack of unified institutional efforts positioned to exploit the Republic’s comparative advantages for products other than mining and coffee.⁸⁹⁸

Meanwhile, in just over thirty years of the current Constitution, Colombia has subscribed to seventeen free trade agreements⁸⁹⁹, and consolidated its membership of the Multilateral Trading System.⁹⁰⁰ Such expansive foreign policy has granted the country access to a market of more than

⁸⁹⁵ Schneiderman 2000.

⁸⁹⁶ Schneiderman 2000.

⁸⁹⁷ Schneiderman 2000.

⁸⁹⁸ Banco de la República Departamento Nacional de Estadística 2014.

⁸⁹⁹ Procolombia, *Colombia’s Free Trade Agreements: 65 countries, 17 agreements, and 1.5 billion buyers*, 2020, <https://n9.cl/pjl6b>.

⁹⁰⁰ Procolombia 2020.

1.5 billion consumers a year, for Colombian products⁹⁰¹ with all it entails. In sheer numbers this could be considered as a rampant success for the 1991 Constitution in the fields of diplomacy, and international trading and economic relations, whereas for development, indeed farther analysis needs to be conducted.

Conversely, it is difficult not to ponder how these converging forces play out for Colombia at times of unescapable economic globalisation in which “state institutions are expected to subordinate political considerations to economic ones.”⁹⁰² To say nothing of how “this subordination signals a shift in the role of the state from a guarantor of progress to a manager of destiny”⁹⁰³, in a neoliberal scheme that according to some “disowns the compromises generated by tripartite corporatism and that treats citizens as undifferentiated consumers.”⁹⁰⁴ Schneiderman notes that:

This enterprise has a transnational dimension. It is a model of constitutional government intended primarily to facilitate the free flow of goods, services, and persons unimpeded across the borders of nation-states -a model long promoted by the leading countries of the Organization for Economic Co-operation and Development ("OECD") and by affluent minorities within developing and less-developed countries. It takes shape via instruments intended to promote and protect foreign direct investment, such as the investment chapter of the North American Free Trade Agreement ("NAFTA"), bilateral investment treaties ("BITS"), and the draft Multilateral Agreement on Investment ("MAI"). The rules and structures of this program of reform resemble domestic constitutions: They bind governments over long periods of time to constitution like rules designed to protect the private property of individuals and firms against discriminatory treatment or takings

⁹⁰¹ Procolombia 2020.

⁹⁰² Schneiderman 2000.

⁹⁰³ Jacques Donzelot, "The mobilization of society", *The Foucault effect: Studies in governmentality* n° (1991).

⁹⁰⁴ Schneiderman 2000.

of investment interests. These rules generate constitution-like entitlements legally enforceable before tribunals and courts.⁹⁰⁵

In other words, the presence of competing economic and social principles has been self-evident since the promulgation of 1991 Constitution throughout the Colombian legal system. However, the case study of the USCTPA shows a heavy tendency to lean toward using neo-liberal principles as the main rationale to justify development goals. From preparation, negotiations, bills of law, constitutional assessment, as well as the regulatory decrees passed to enforce the agreement. Under such logic, the expressway to development must follow a set path of trade liberalisation, heavy protection of international investors and even the denial of jurisdiction for national courts of justice. Above all, this is compounded by the goal of protecting American geopolitical interests intended to eradicate drug trafficking, when years of research have demonstrated that American cocaine habits⁹⁰⁶ carry the heavy burden⁹⁰⁷ of blame for violence⁹⁰⁸ in Colombia.⁹⁰⁹

6.6 Incorporating the USCTPA to the Colombian Legal System: Understanding Colombian Constitutional Jurisdiction

To understand current Colombian constitutional law, it is imperative to consider that its constitutional jurisdiction goes hand and hand with the theories of constitutional supremacy which highlight its character both as a closing rule, as well as a rigid body of law that requires the establishment of special and qualified procedures of amendment; not to mention the imperative

⁹⁰⁵ Schneiderman 2000.

⁹⁰⁶ William M LeoGrande & Kenneth E Sharpe, "Two Wars or One? Drugs, Guerrillas, and Colombia's New" Violencia"", *World Policy Journal* 17:3 (2000).

⁹⁰⁷ Charles Bergquist, Ricardo Peñaranda & Gonzalo Sánchez, *Violence in Colombia, 1990-2000: waging war and negotiating peace* (Rowman & Littlefield Publishers, 2001).

⁹⁰⁸ Bruce M Bagley, "Colombia and the War on Drugs", *Foreign Affairs* 67:1 (1988b).

⁹⁰⁹ Daniel Mejia & Pascual Restrepo, "Bushes and bullets: Illegal cocaine markets and violence in Colombia", *Documento CEDE* n° 53 (2013).

need of accessibility for both citizens and judicial administrators assuring its applicability and effectiveness as its main objective.⁹¹⁰

Constitutional supremacy in the Colombian legal system implies that the Constitution is the very first of norms in the entire legal system, and places it above every other source of law. Such rigidity legitimizes the constitutional evaluation of the *lesser norms*, since modifications to the Constitution require exceptional procedures, unlike ordinary laws, subject to said assessment.⁹¹¹ This is more than evident under the banner of 1991 Constitution but with the caveat that every constitutional evaluation is required to be conducted under the prism of fundamental rights, making the Colombian political carta and especially the constitutional jurisdiction it spawned, a target of stark criticism.⁹¹² Furthermore, constitutional supremacy is the direct outcome of state sovereignty resting on the people being the original constituent, therefore bestowing the constitutional text with the aptitude to be the highest norm of the legal system,⁹¹³ since once the original constitutional act has been exhausted, the only possible way to perpetuate democratic legitimacy of the constitutional structure is the conversion of political sovereignty into the legal principle of constitutional supremacy.⁹¹⁴

The Colombian Constitution is composed of three parts, organic, dogmatic and programmatic.

The first one defines the state's organisation through the organs that represent it, outlining their

⁹¹⁰ . Alexei Julio Estrada *Los Presupuestos de la Jurisdiccion Constitucional: Supremacia de la Constitucion, Rigidez Constitucional y Eficacia Normativa de la Constitucion* eds. *Lecciones de derecho constitucional Tomo II*. Vol. 2 U. Externado de Colombia, 2019. 489

⁹¹¹ . Alexei Julio Estrada *Los Presupuestos de la Jurisdiccion Constitucional: Supremacia de la Constitucion, Rigidez Constitucional y Eficacia Normativa de la Constitucion* eds. *Lecciones de derecho constitucional Tomo II*. Vol. 2 U. Externado de Colombia, 2019. 490-491

⁹¹² William C Banks & Edgar Alvarez, "The New Colombian Constitution: Democratic Victory or Popular Surrender", *U.Miami Inter-Am.L.Rev.* vol. 23 (1991).

⁹¹³ Floralba Padrón Pardo, "El Sistema Normativo Colombiano, *Lecciones de derecho constitucional Tomo II*." Vol. 2 U. Externado de Colombia, 2019. 103-104

⁹¹⁴ De. Esteban *Tratado de Derecho Constitucional*, I Madrid: Universidad Complutense de Madrid, 1998.

functions and reach, including legislative, executive and judiciary activity, as seen in Title V. The dogmatic section enlists the guiding principles of the constitution, including constitutional values, recognised liberties and rules aimed at guaranteeing rights with an ample scope that includes those comprised in international treaties and agreements e.g. title II and article 94. Finally, the programmatic section is composed of *declarations of value* like those contained in the preamble, as well as in article I.⁹¹⁵

Chapter IV of the Constitution dictates that constitutional jurisdiction in Colombia is mainly vested upon the Constitutional Court, albeit some exceptions deemed problematic⁹¹⁶ and even overreaching.⁹¹⁷

To fill the seats of the Constitutional Court, Chapter IV created a multipart process inclusive of all the branches of public power. This means that the Senate chooses an odd number of magistrates from a shortlist presented by the President of the Republic to the Supreme Court and the State Council, for individual periods of eight years without re-election. Chapter IV article 239 also mandates that the bench must be integrated by magistrates who specialise in different branches of law.⁹¹⁸ This provision must be interpreted with articles 232 and 240, that respectively mandate for every magistrate of the Colombian high courts of justice to be a Colombian citizen by birth, a participating citizen, a lawyer, not having been convicted to prison (with some exceptions) and have judiciary, litigious or professorship experience in officially recognised establishments of no

⁹¹⁵ Flóralba Padrón Pardo, "El Sistema Normativo Colombiano, Lecciones de derecho constitucional Tomo II." Vol. 2 U. Externado de Colombia, 2019. 104-105

⁹¹⁶ Alexei Julio Estrada Los Presupuestos de la Jurisdicción Constitucional: Supremacía de la Constitución, Rigidez Constitucional y Eficacia Normativa de la Constitución eds. Lecciones de derecho constitucional Tomo II. Vol. 2 U. Externado de Colombia, 2019. 505

⁹¹⁷ David Landau, "The two discourses in Colombian constitutional jurisprudence: a new approach to modeling judicial behavior in Latin America", *Geo.Wash.Int'l L.Rev.* vol. 37 (2005).

⁹¹⁸ Chapter IV Art. 239 Constitución Política de Colombia

less than fifteen years;⁹¹⁹ and prohibit having served as a government minister or in any other high court within the previous year. This constitutional provision was amended by legislative act 02/2015 to include inter alia the positions of the National Electoral Council, Attorney General, Ombudsman General, and to discard the possibility to run for popularly elected office within the year after leaving a high court seat.⁹²⁰

Article 241 cements the Constitutional Court as the protector of the integrity and supremacy of the Constitution.⁹²¹ Accordingly, the functions of guardians of Colombia's supreme body of law can be categorized into (i) those related to the abstract control of constitutionality, (ii) those related to the concrete control of constitutionality, (iii) the dispensation of excuses provided for in Article 137, (iv) the resolution of conflicts of jurisdiction between the different jurisdictions and (v) the disciplinary and administrative powers of a collegiate body of a judicial nature.⁹²² This comes with a caveat though, since such functions can be considered as *expressed but not exhaustive powers*, therefore leaving residual constitutional control in the hands of the State Council, a subject of several controversies through the last three decades of constitutional jurisdiction.⁹²³

Article 241 notes that the Constitutional Court can:

1. Decide on unconstitutionality claims filed by citizens against reforming acts of the Constitution, whatever their origin, only due to procedural defects in their formation.
2. Decide, prior to the popular pronouncement, on the constitutionality of the call for a referendum or a Constituent Assembly to reform the Constitution, only due to procedural defects in its formation.

⁹¹⁹ Art. 232 Constitución Política de Colombia

⁹²⁰ Acto Legislativo 02 de 2015

⁹²¹ Art. 241 Constitución Política de Colombia

⁹²² Alexei Julio Estrada *Los Presupuestos de la Jurisdicción Constitucional: Supremacía de la Constitución, Rigidez Constitucional y Eficacia Normativa de la Constitución* eds. *Lecciones de derecho constitucional Tomo II*. Vol. 2 U. Externado de Colombia, 2019. 509

⁹²³ Alexei Julio Estrada *Los Presupuestos de la Jurisdicción Constitucional: Supremacía de la Constitución, Rigidez Constitucional y Eficacia Normativa de la Constitución* eds. *Lecciones de derecho constitucional Tomo II*. Vol. 2 U. Externado de Colombia, 2019. 511

3. Decide on the constitutionality of referendums on laws and popular consultations and plebiscites of the national order. The latter only due to procedural defects in their convocation and execution.
4. Decide on unconstitutionality claims presented by citizens against the laws, both due to their material content and due to procedural defects in their formation.
5. Decide on unconstitutionality claims presented by citizens against decrees with the force of law issued by the Government based on articles 150, paragraph 10 and 341 of the Constitution, due to their material content or due to procedural defects in their formation.
6. Decide on the excuses referred to in article 137 of the Constitution.
7. Decide definitively on the constitutionality of the legislative decrees issued by the Government based on articles 212, 213 and 215 of the Constitution.
8. Decide definitively on the constitutionality of bills that have been objected to by the Government as unconstitutional, and of draft statutory laws, both for their material content and for procedural defects in their formation.
9. Review, in the manner determined by law, judicial decisions related to the action for protection of constitutional rights.
10. Final judge on the enforceability of international treaties and the laws that approve them. To this end, the Government will refer them to the Court, within six days following the enactment of the law. Any citizen may intervene to defend or challenge its constitutionality. If the Court declares them constitutional, the Government may carry out the exchange of notes; Otherwise, they will not be ratified. When one or several rules of a multilateral treaty are declared unenforceable by the Constitutional Court, the President of the Republic may only express consent by formulating the corresponding reservation.
11. Modified. Legislative Act 2/2015, art. 14. Resolve jurisdictional conflicts that occur between different jurisdictions
12. Added. Legislative Act 2/2015, art. 14. Regulate itself.

6.6.1 On the Abstract Constitutional Control

Legal rules are the subject of the abstract control of constitutionality in the Colombian legal system, and can be deployed by either the Constitutional Court or the State Council in an assessment that contests the rule against the text and interpretation of the charter. It occurs either automatically or

by citizen challenge and fact consideration has a negligible outcome on the decision, e.g. Art. 241 num. 1,4,5,7,8,10.⁹²⁴ Numeral 10 entitles the Constitutional Court to assess the USCTPA.

Abstract constitutional control occurs prior to the perfection of the treaty, but after presidential sanction. Such assessment encompasses a two-dimensional analysis that include determining the legitimate representation of the Colombian State during the stages of negotiation, celebration and signing, as developed in rulings C -574/92, C-280/94 and C-184/2016, and complete adherence to the legislative process of its approving law.⁹²⁵ It is worth noting that material review includes text contrast between the international agreement and its approving law, as well as with the higher constitutional provisions in order to determine compliance. Only after the constitutional assessment is the President allowed to ratify the treaty provisions that are in line with the Constitution, as defined in ruling C-227/93. Nevertheless, when constitutional assessment has been conducted on a multilateral instrument, presidential faculties are farther restricted to express state consent or to formulate the corresponding reservations to the clauses that failed the Court's evaluation.⁹²⁶

⁹²⁴ Quinche Ramírez, M. F. (2020). *Derecho constitucional colombiano de la Carta de 1991 y sus reformas: Séptima edición*. Ed Temis. 651-653

⁹²⁵ Alexei Julio Estrada *Los Presupuestos de la Jurisdicción Constitucional: Supremacía de la Constitución, Rigidez Constitucional y Eficacia Normativa de la Constitución* eds. *Lecciones de derecho constitucional Tomo II*. Vol. 2 U. Externado de Colombia, 2019. 532-534

⁹²⁶ Alexei Julio Estrada *Los Presupuestos de la Jurisdicción Constitucional: Supremacía de la Constitución, Rigidez Constitucional y Eficacia Normativa de la Constitución* eds. *Lecciones de derecho constitucional Tomo II*. Vol. 2 U. Externado de Colombia, 2019. 532-534

6.6.2 On the Concrete Constitutional Control

Authors⁹²⁷ have pointed to title II of the Constitution being the most important one. The charter of rights fundamentally assumes that most Colombian citizens need protection from difficult conditions and abusive treatment, and therefore abundantly recognizes an extensive list of civil and political rights, individual and collective freedoms as well as economic and cultural liberties, all under the banner of the international treaties concerning human rights (block of constitutionality) ratified by the republic, deeply separating it from its 1886 counterpart.⁹²⁸ Indeed Colombian Constitution is so generous in the recognition of rights, that it was decided that not even title II extinguishes the rights of Colombians, and judges are entitled to go further still in the protection of the ones they recognize in their decisions, as seen in ruling C-719/03.⁹²⁹

Consequently, in no other way can concrete constitutional control seem more alive than in the *acción de tutela* (guardianship action). The Colombian Constitution created in the tutela action a precise and new kind of jurisdiction presided by the constitutional bench according to articles 86 and 241 paragraph 9, and amended by article 33 of decree 2591/91, constitutional agreements 01/92, 01/97 and 01/30/2015. It entitles a discretionary power to select and review the tutela rulings of the Colombian judiciary with the purpose of unifying the nation's jurisprudence especially regarding fundamental rights and liberties; as well as to review and possibly correct wrongful interpretations and applications of the law from *lesser* judges.⁹³⁰ Article 86 notes that:

⁹²⁷ Alexei Julio Estrada *Los Presupuestos de la Jurisdiccion Constitucional: Supremacia de la Constitucion, Rigidez Constitucional y Eficacia Normativa de la Constitucion* eds. *Lecciones de derecho constitucional Tomo II*. Vol. 2 U. Externado de Colombia, 2019. 532-534

⁹²⁸ Espinosa, M. J. C. (2022). *La Constitución de 1991: viviente y transformadora*. Universidad de los Andes. 119-125

⁹²⁹ Espinosa, M. J. C. (2022). *La Constitución de 1991: viviente y transformadora*. Universidad de los Andes. 119-125

⁹³⁰ Alexei Julio Estrada *Los Presupuestos de la Jurisdiccion Constitucional: Supremacia de la Constitucion, Rigidez Constitucional y Eficacia Normativa de la Constitucion* eds. *Lecciones de derecho constitucional Tomo II*. Vol. 2 U. Externado de Colombia, 2019. 546-548

Every person is entitled to the tutela action for their protection of their fundamental and constitutional rights before the judges at all time and places through a preferential and summary procedure, either by themselves or via someone acting in their behalf, whenever they have been threatened and violated by action or omission of any public authority. Protection will consist of an order for the person in respect of whom guardianship is requested to act or refrain from doing so. The ruling, which will be immediately complied with, may be challenged before the competent judge and, in any case, it will be sent to the Constitutional Court for eventual review. This action will only proceed when the affected person does not have another means of judicial defence, unless it is used as a temporary mechanism to avoid irreparable harm. In no case may more than ten days pass between the request for guardianship and its resolution. The law will establish the cases in which the protection action proceeds against individuals in charge of the provision of a public service or whose conduct seriously and directly affects the collective interest, or with respect to whom the applicant is in a state of subordination or defencelessness.

Indeed, the tutela action has been considered as a total overhaul to the Colombian judiciary,⁹³¹ by accomplishing inconceivable results, such as the rapid acceleration of justice administration. Certainly, it attests to both efficiency and efficacy, with rulings that used to take years to reach being pronounced in just a matter of days, since lethargic decisions are punished with contempt that includes a pecuniary penalty as well as arrest for the alleged offenders.⁹³² In addition to this, the tutela action has contributed to granting access to the legal system to the dispossessed by providing them with a concrete, and effective mechanism to guarantee the realisation of their rights, which used to be highly restricted behind mountains of bureaucracy within the Colombian legal system, in a proof of inclusion and simplification of the national decision making process, since the eventual reviewing process carried out by the Constitutional Court sets precedents to the law that

⁹³¹ Espinosa, M. J. C. (2022). *La Constitución de 1991: viviente y transformadora*. Universidad de los Andes. 125-130

⁹³² Espinosa, M. J. C. (2022). *La Constitución de 1991: viviente y transformadora*. Universidad de los Andes. 125-130

can be applied to similar legal controversies. Indeed, establishing the Court as an “an instrument for peace”⁹³³ in a country with the proclivity to violence.⁹³⁴

Ironically, in the case of the USCTPA, it is worth mentioning that the Constitutional Court, tacitly resigned its jurisdiction on matters of such treaty. Since it declared constitutional the treaty’s arbitration clause that mandated this form of justice for any controversy that might arise from the developing and application of the USCTPA, therefore allowing them to bypass Colombian reach.⁹³⁵

6.6.3 The Presidential Role

The Colombian Constitution bestows upon the President of the Republic, the safeguarding of the States’ interests, as well as its representation abroad. Article 9 of the Political Carta farther develops the concept of national sovereignty, as well as the right to self-determination of peoples, in addition to the principles of international law binding the Republic. This provision is to be interpreted in conjunction with article 189 which also confers powers on the President, as head of State, to direct international relations, appoint diplomatic and consular agents, and celebrate agreements with other States and entities of international law. Additionally, article 189 makes it mandatory to submit any agreement celebrated as a result of said faculty to the Congress for approval. Once the proposed agreement is submitted to Congress, the legislation proceeds on the grounds of its Constitutional faculties, as stated on article 150. However, article 224 allows the

⁹³³ Espinosa, M. J. C. (2022). *La Constitución de 1991: viviente y transformadora*. Universidad de los Andes. 125-130

⁹³⁴ Sanín, F. G., Acevedo, T., & Viatela, J. M. (2007). *Violent liberalism: State, conflict and political regime in Colombia, 1930-2006: An analytical narrative on state-making*. Crisis States Research Centre.

⁹³⁵ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 460

President to provisionally apply treaties of economic and commercial nature, such as the USCTPA. If the President decides to provisionally apply the treaty, such provisional nature extends until Congress emits its final decision regarding the agreement.

Furthermore, articles 11-17 of the 1969 Vienna Convention established the way in which a treaty enters into force. The consent of a State to be bound by a treaty is manifested by ratification, acceptance or approval.⁹³⁶ On the other hand, Colombian Law 7 of 1944 states that treaties will not be considered binding unless they have been perfected by the Government through the exchange of ratifications or the deposit of the ratification instruments or another equivalent formality. Likewise, according to Article 14 of the Vienna Convention on the Law of Treaties, approved by Colombian Law 32 of 1985, consent to be bound by a treaty is manifested through ratification, acceptance or approval. In the Colombian legal system, once a treaty is agreed upon, it has to be approved by law. Once these procedures are exhausted, the text must be cleared by the Constitutional Court, triggering the respective exchange of notes. Above all, the *pacta sunt servanda* (agreements must be kept) principle must be the guiding light throughout the whole process.

In consequence, the Constitutional examination of the USCTPA took place at the end of the lengthy Congressional process identified as bill of law 178-06. The bill's process to become law began on February 20th, 2007. It included nineteen sessions at the proper commissions, as well as the mandated debates in both chambers of Congress in accordance with the procedure mandated by Law five of 1992, and all the jurisprudence of the Constitutional Court pertaining to bills of law

⁹³⁶ United Nations Treaty Collection, *Law of Treaties*, 1969, <https://n9.cl/mue6v>.

aimed to incorporate international treaties to the internal legal system. What follows in the next section is a comment on the legal arguments put forward by the Constitutional Court for approving the USCTPA.

6.7 The Colombian Constitutional Process of Adoption

One of the strongest arguments justifying the celebration of the USCTPA spawned from its trading nature, and the highlighted convenience for attaining goals of development within the current globalisation. Its position within the legal system was framed under the scope of articles 226 and 227 of the Carta. In these, it was made abundantly clear that the importance of the promotion of international relations in the political, economic, social and ecological spheres, as well as the Constitutional mandate to strive for integration, especially with other countries of Latin America and the Caribbean, as well as for the creation of supranational organisations, if these endeavours were governed by principles of equity, reciprocity and national convenience.⁹³⁷

Interestingly, many of these arguments were balanced with advocacy for the constitutional principles of economic freedom and freedom of enterprise and competition, which in conjunction with the social rule of law are the foundation of economic and social development. It was argued that the protection of these principles also serves as the capital assurance of a pluralist and democratic society.⁹³⁸ Regardless, such liberties are not without restrictions, and must yield to the general interest, the environment, and even the cultural heritage of the nation. Without disregarding that companies have a social function, and as such it carries obligations.⁹³⁹

⁹³⁷ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Art 224

⁹³⁸ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 8

⁹³⁹ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 8

This trend was plain, from the very filing of law bill 178-06. The projected law was accompanied by a passionate statement of reasons that according to the government justified the importance of signing of the USCTPA. Some arguments that are worth highlighting are that it tied the development strategy of the country to the celebration and enforcement of international commercial treaties, as a way of fostering sustained economic growth, and deemed them necessary to reduce poverty and unemployment to “tolerable levels”.⁹⁴⁰

A closer look at this statement is hardly surprising, since the Uribe Government’s national development plan contemplated in Law 812/03 had as one of its main pillars, economic growth spawning from international treaties of an economic nature. The Uribe Government’s basic argument for the signing and implementation of Free Trade Agreements (FTAs) in general and the USCTPA in particular, when presented to Congress can be boiled down to the idea that when accompanied by other economic policy decisions,⁹⁴¹ they contribute to the expansion of trade thanks to preferential treatment, as well as to the attraction of foreign investment which in time would incentivise local production and gain a bigger share of the international markets for Colombian exporters.⁹⁴²

Nonetheless, the notion that the main or only way to generate economic growth is via international treaties that attract foreign investment, lower national tariffs, and privatize the economies, has been

⁹⁴⁰ Congreso de Colombia Bill of Law 178/06

⁹⁴¹ These policy decisions are left to the imagination of the Court, since they are not presented in the governmental statement of reasons for Bill of Law 178/06

⁹⁴² Congreso de Colombia Bill of Law 178/06

challenged time and time⁹⁴³ again,⁹⁴⁴ specially within the current framework of a “fairer globalisation”⁹⁴⁵, and the economics of development.⁹⁴⁶

Furthermore, it is noteworthy that the Government’s statement of reasons cites the case of biofuels within the NAFTA context.⁹⁴⁷ And it paraded it as a success story for the promotion of trade and creation of jobs. This sold a speculative narrative for Colombia, in which hypothetically the development of the sector could generate copious amounts of wealth up and down the value chains. The Government stated that since biofuels had the potential to incentivise the planned extensions of sugar cane, African palm, cassava, maize, and potatoes, which needed to be processed at plants and factories as well as stored and transported, to then being exported, that the sector alone could potentially generate an important amount of permanent jobs, increasing the purchasing power of Colombians and therefore generating an ample base of taxable income for the State, not to mention the revenue resulting from international exporting operations.⁹⁴⁸

Fast forward to the mid 2010’s the whole narrative of biofuels turned out to be a fallacy. Indeed, biofuels are not cheaper to produce, nor environmentally friendly as the public was led to believe,⁹⁴⁹ not to mention the deep scars the industry has left in terms of food insecurity around the globe. After all, in later years world agricultural and energy markets have become deeply intertwined, so much that deep concerns have been expressed on the real possibility of the latter

⁹⁴³ Paul Collier, *The Bottom Billion: Why the Poorest Countries are Failing and What Can Be Done About It* (Oxford University Press, 2008).

⁹⁴⁴ Joseph 2013.

⁹⁴⁵ Joseph Stiglitz, *People, power, and profits: Progressive capitalism for an age of discontent* (Penguin UK, 2019).

⁹⁴⁶ Stiglitz 2019.

⁹⁴⁷ Congreso de Colombia Bill of Law 178/06

⁹⁴⁸ Congreso de Colombia Bill of Law 178/06

⁹⁴⁹ Marcus Belmond & Iowa Nevada, "The craze for maize", *The Economic*, 10/5 2007, <https://n9.cl/1vys9>.

driving the former in the future therefore contributing to their volatility.⁹⁵⁰ Especially when reflecting upon the “craze for maize” that had a profound impact on the 2008 food crises putting at risk of starvation more than a hundred million people according to the World Bank.⁹⁵¹ As for the promised millions of jobs and taxable income from the industry, fifteen years later these are nowhere to be seen.⁹⁵²

Consequently, under that passionate justification of the agreement, the Constitutional Court was called to guard the Carta, objectively, legitimately, lawfully, and most of all free of political sway. In fact, so much was expected of the Court, that FEDESARROLLO, one of the most influential centres for economic and social research, considered that the biggest challenge for the Court when assessing the USCTPA, laid on pondering several valid positions without taking sides, whilst always measuring the scope of the agreement from the standpoint of the constitutional principles of reasonableness and proportionality.⁹⁵³

Nevertheless, from the onset the Court seemed to coincide with the Governmental rationale for the agreement, and in a self-forgiving movement during the opening remarks of its decision, restricted the scope of its assessment merely to possible conflicts of applicable law, between the Constitution, the Colombian legal system as a whole, and the USCTPA, leaving “aspects of convenience, timeliness, effectiveness and usefulness”⁹⁵⁴ out of its latitude.

⁹⁵⁰ Dawe, D. "The rice crisis." *Markets, Policies and Food Security*. FAO. Rome (2010) 2

⁹⁵¹ The World Bank 2013.

⁹⁵² Mohd Nur Ashraf Mohd Yusoff, Nurin Wahidah Mohd Zulkifli, Nazatul Liana Sukiman, Ong Hwai Chyuan, Masjuki Haji Hassan, Muhammad Harith Hasnul, Muhammad Syahir Amzar Zulkifli, Muhammad Muhtaba Abbas & Muhammad Zulfattah Zakaria, "Sustainability of palm biodiesel in transportation: a review on biofuel standard, policy and international collaboration between Malaysia and Colombia", *Bioenergy research* n° 14 (2021), doi:10.1007/s12155-020-10165-0.

⁹⁵³ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 94

⁹⁵⁴ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 5

In an echo of the landmark decision C-178/95, the bench highlighted once more, the specific functions of the President and the Congressional authority, in accordance with articles 189-2, 150-6. Farther on, the bench remembered that previous constitutional analysis entailed an abstract nature, and as such it was of no concern for the Court the examination of specific factual situations imbued with matters of utility, effectiveness or efficiency of the actions of public authorities. The Court also recalled that it was not entitled to conduct analysis of practical opportunity nor political expediency, which fall outside of normative elements, and in fact were under the scope of functions of the Head of State, as well as Congress.⁹⁵⁵ Nevertheless, the neoliberal influence of the Colombian economic system was palpable up and down the Constitutional assessment of the USCTPA as will be presented below.

6.8 National Treatment clause in the USCTPA as the backbone of international economic relations

By 1989 it was noted that world trade within the framework of GATT was governed by over 150 treaty instruments that all things considered, gave cohesion and legitimacy to the most important trade principles, Most Favoured Nation and National Treatment.⁹⁵⁶ These sets of rules were not invented by GATT by any means, in fact, there has been research tracing the utilisation of these clauses and obligations dating to hundreds of years, even to the 12th Century.⁹⁵⁷ So widespread are the application of these principles, that nowadays they are still considered as the foundation of all trade related agreements at the bilateral, plurilateral, regional and of course multilateral level, even if they sometimes aggravate the spaghetti bowl.

⁹⁵⁵ Corte Constitucional, "Sentencia No. C-178/95", , 25/4 1995, <https://n9.cl/lavsm>. 40

⁹⁵⁶ John H . Jackson, "National Treatment Obligations and Non-Tariff Barriers", *Michigan Journal of International Law* 10:1 (1989).

⁹⁵⁷ P VerLoren van Themaat & E U Petersmann, "The Changing Structure of International Economic Law", *Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America* n° (1984).

Indeed, the Constitutional Court has noted that the implicit national treatment clause is attuned with the Constitution, as its prime objective is to abolish any possible discriminatory treatment amongst nationals and foreigners regarding trade in goods.⁹⁵⁸ The national treatment clause does so, by placing national and foreign investments under conditions of legal equality. Accordingly, national treatment allows for the application of clear constitutional mandates for upholding economic integration, equity, reciprocity and international relations, which are grounded on national sovereignty, self-determination of the peoples and the recognition of the principles of international law accepted by Colombia.⁹⁵⁹ In fact, this could be farther interpreted under articles thirteen and one hundred, in which the Charter recognised and protected equality for Colombians and foreigners alike.

Similarly, the Constitutional analysis of the USCTPA included a study on the role of tariff elimination for preferential market access. The High Court highlighted tariff elimination as a prerequisite for accessing mutual markets in a preferential matter.⁹⁶⁰ Nevertheless, it emphasised the necessity for such a process to be conducted gradually, and mutually especially for the agricultural sector.⁹⁶¹ In doing so, it called attention to the inherent economic asymmetries between the two contracting parties, but interestingly leaned towards accentuating the potential beneficial results for the least developed party e.g. Colombia.⁹⁶² It did this, by highlighting the mere expectation of widening the spectrum of the exportable goods, (ultimate winners of the

⁹⁵⁸ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 10

⁹⁵⁹ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 10-11

⁹⁶⁰ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 10-11

⁹⁶¹ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 10-11

⁹⁶² Corte Constitucional *Sentencia C-750-08* 24/7 2008. 10-11

agreement) which in the case of Colombia would continue to centre on commodities, and agriculture, in any case asking for guarantees of compliance with the principles of equity and reciprocity, previous steps leading to economic and trade integration.⁹⁶³

The Court defended the viability of the USCTPA as an approach to clarify mutual trading rules.⁹⁶⁴ Not to mention the stabilisation of the temporary and unilateral preferential treatment clauses contained in the APTDEA initiative, which for obvious reasons according to the Court, acted against Colombian interest, in terms of the legal insecurities they produced for accessing American markets.⁹⁶⁵

Also, the Court pointed out that the establishment of a free trade area with the United States, intended to make the Colombian economy more competitive, indeed contributing to a positive climate of mutual dependency between two signing parties that had come to the table under a voluntary basis.⁹⁶⁶ Further justifying the agreement as the logical and foreseeable move for Colombia, in order to get closer to its historically biggest ally and business partner.⁹⁶⁷

Indeed, this rationale was backed up by a Constitutional interpretation which found the USCTPA in line with an array of Constitutional dispositions such as the social rule of law⁹⁶⁸; the development of exterior policy, international relations of the nation and integration; national sovereignty⁹⁶⁹, and

⁹⁶³ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 10-11

⁹⁶⁴ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 232-234

⁹⁶⁵ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 232-234

⁹⁶⁶ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 232-234

⁹⁶⁷ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 232-234

⁹⁶⁸ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Art 1

⁹⁶⁹ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Art. 9

even considered the USCTPA in line with the essential objectives of the State⁹⁷⁰ and a guarantee of a just economic and social order⁹⁷¹ in a reflection of the Constitutional preamble of the Carta, which contains many of the general principles of the main legal statute of Colombia.

Furthermore, the Court cited a previous constitutional assessment conducted in decision C-864/06⁹⁷² to justify the fact that even in the presence of economic asymmetries, international commercial treaties could not be considered from the onset contrary to the Colombian Constitution. Indeed, when within the context of decision C-750/08, reference to ruling C-864/06 attempted to draw a parallel between what the Court considered an analogous case studies, since both pronouncements evaluated tariff elimination on foodstuffs that potentially could disrupt national markets. And while C-864/06 dealt with wheat and barley and C-750/08 with the USCTPA, they both entailed the presence of agricultural commodities, which have always been a sensitive issue. The Court attempted to offset the natural presence of economic losses as a result of international agreements with the potential benefits deriving from such arrangements. Also, the bench recalled that each party was fully in charge of deciding the interests that it was willing to negotiate and eventually yield in exchange for obtaining market access for other products as the logical result of complex negotiations.⁹⁷³

In view of these facts, the Court obviously transferred the burden of responsibility in the first place to the Uribe Government which negotiated the USCTPA, and then to the Colombian Congress in charge of passing the law under scrutiny. This result is very clear when assessing reinforced

⁹⁷⁰ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Art. 2

⁹⁷¹ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Preamble

⁹⁷² Corte Constitucional, "Sentencia C-864/06", 19/10 2006, <https://n9.cl/r5x79>.

⁹⁷³ Corte Constitucional *Sentencia C-864/06* 19/10 2006.

arguments contending that the tribunal was conducting this evaluation in an “abstract manner”⁹⁷⁴ therefore, without the actual agreement being applied they were not concrete factual elements of assessment, nor had the Court the ability to foresee the multiple and complex consequences arising from the application of such a multifaceted agreement.⁹⁷⁵ In other words, the Court contended it did not have all the evidence in order to reach a complete decision,⁹⁷⁶ nevertheless that did not stop it from reaching one, regardless of stark warnings on the potential losses for agriculture in particular, even if as it will be posited below, rice, the most important of cereals emerged victorious.

Under those circumstances, the coherent move would have been to halt the constitutional examination of the USCTPA altogether, until farther economic and social analysis were presented in order to shed a better light on the controversial subjects, as asked by the dissenting faction of the bench.⁹⁷⁷ Instead, the Court restricted the scope of its analysis by once again pleading to all the other intervening authorities to act within the framework of the Constitution during the fulfilment and execution of the agreement, in order to protect fundamental rights for all Colombians; leaving farther Constitutional assessment to be implemented on a case-by-case basis⁹⁷⁸, at the same time preserving its jurisdiction over any developing law or clause that could eventually harm the Constitution, without the prejudice of *res judicata*.⁹⁷⁹ As the court stated:

“Indeed, the validity of this treaty does not prevent future judicial decisions, including those regarding constitutionality, as well as popular or group actions, at the ordinary or

⁹⁷⁴ Corte Constitucional *Sentencia C-864/06* 19/10 2006.

⁹⁷⁵ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 232-234

⁹⁷⁶ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 232-234

⁹⁷⁷ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 460

⁹⁷⁸ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 174

⁹⁷⁹ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 171

administrative jurisdiction, which could arise from the application of this international instrument and that carry the possible violation of constitutional rights.”⁹⁸⁰

It is worth mentioning that the Court’s assumed position regarding its role on the assessment of the USCTPA, is a mere reflection of previously exposed rationales. Research conducted for this thesis shows that in ruling C-175/95, the bench indicated that constitutional analysis of international instruments, was indeed a complex matter involving a multifaceted evaluation of formal, procedural, as well as substantive and material reasons contained both in internal laws approving the agreements, and agreements themselves.⁹⁸¹ As such, the nuanced and transversal nature of international economic agreements make them continuous targets for interpretation by administrative, legislative and judicial authorities, as well as private institutions.⁹⁸²

This position could only be seen as one in which once again the Court distributed the burden of possible outcomes up and down Colombian institutions for the transversal nature of international agreements of an economic kind, which indeed can potentially affect in nuanced ways the very lives of citizens.⁹⁸³ Furthermore raising the question on the level of awareness that being entrusted as guardian of the Constitution meant.

On the other hand, the Tribunal stressed that these types of legal instruments should not be constitutionally assessed on the grounds of each term they covered, but rather needed a degree of

⁹⁸⁰ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 180

⁹⁸¹ Corte Constitucional *Sentencia No. C-178/95* 25/4 1995.

⁹⁸² Corte Constitucional *Sentencia No. C-178/95* 25/4 1995.

⁹⁸³ Corte Constitucional *Sentencia No. C-178/95* 25/4 1995.

flexibility embedded on the executive branch and its representatives as a result of their very own constitutional mandates.⁹⁸⁴

But even so, the Court attempted to balance out some of these arguments with a somehow vague explanation of how it had interpreted the principles of reciprocity and equity within the agreement. On the one hand, it defended the principle of equity, as an irreplaceable factor directed to equalise an ensemble of benefits and burdens for the signing parties. Though the tribunal once more highlighted the difficulties derived from this form of previous and abstract Constitutional control.

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The bench emphasized that there was no point in carrying out an isolated analysis of each clause of the treaty, because this could potentially translate into many of those clauses being deemed unconstitutional, since indeed plenty of them outright do not reflect equity and reciprocity when assessed one by one.⁹⁸⁶ Such evaluation would yield different results when studied from an all-embracing perspective that included the diversity and special characteristics of each signing party, which was tied to the specific levels of economic development of the countries.⁹⁸⁷

Farther study of the Court's position, begs the question of whether the bench was shying away from conducting a thorough analysis of the agreement, and if so, did not fulfil its mandate for lack of technical understanding of many of the repercussions derived from it. This was a key argument from the Court's dissenting faction, and it will be covered farther below.

⁹⁸⁴ Corte Constitucional *Sentencia* No. C-178/95 25/4 1995.

⁹⁸⁵ Corte Constitucional *Sentencia* No. C-178/95 25/4 1995.

⁹⁸⁶ Corte Constitucional *Sentencia* C-750-08 24/7 2008.182

⁹⁸⁷ Corte Constitucional *Sentencia* C-750-08 24/7 2008.182

A closer look at these rationales ponders a variety of questions regarding the thoroughness of the Constitutional assessment., was the court swayed by the studies presented by the Uribe government regarding possible effects? Did the Court understand them? Would not a battered economy as a result of the losing of taxable revenue from imports mean losing money for social programs therefore affecting the quality of life of the very Colombians the Court swore to protect? And most worrisome of all, would not sacrificing entire sectors of the Colombian economy mean eternal underdevelopment. All these questions are concerning when considering that as stated multiple times before, Colombia went on exporting commodities and raw materials, while it ended up at the receiving end of manufactures, services, and intellectual property rights with an unprecedented added value.

Above all, seems like the deep cuts and even altogether elimination of tariffs, in order to preserve the preferential treatment of APTDEA, and thus strengthening foreign relations with the United States within the war on drugs, made it excusable to overlook multiple flaws. A more astute analysis of the context begs the question regarding the actual alternatives that the United States had at the time. One way or another, drug trafficking was going to continue from Colombia. It is the most prevailing of economic laws, where there is demand, any actor will rise to meet it.

Moreover, the constitutional examination of the USCTPA applied previous rationales within the scope of economic globalisation, to defend the importance and even necessity of the agreement. It remembered that integration at the regional and global levels, was nothing less of a constitutional

mandate according to articles 226 and 227.⁹⁸⁸ At the same time, it underscored that the promulgation of the current Constitution, marked the insertion of the Colombian economy in the globalised world while at the same time obligating the State to undertake processes of internationalisation at the political, economic, social and ecological spheres, particularly with other Latin American and Caribbean nations.⁹⁸⁹ Also, coupling this argument with the many agreements of the same nature entered by Colombia, which likewise “had been declared according to the Constitution”.⁹⁹⁰ The Court defended this as strategy for fighting isolationism and integration to global markets as a way of expanding the Colombian economy, as well as the country’s sphere of influence in the region and the world.⁹⁹¹

In this regard, the bench ventured farther still in its validation of the USCTPA under the framework of article 226-227, remembering that according to previous judicial decisions C-323/97, C-279/01 and C864/06, there is a clear recognition that economic, social and political matters have been following a trend in globalisation, which distinctly points to the gradual disappearance of the constraints generated by the geographical borders of nation-states, instead gravitating toward the creation of large geographical and economic blocks.⁹⁹²

Also, the Court argued that as long as the core principles of equity, reciprocity and national convenience were present in international instruments of an economic and commercial nature entered by Colombia, they would help counteract the detrimental effects of isolationism, and

⁹⁸⁸ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 180

⁹⁸⁹ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 180

⁹⁹⁰ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 180

⁹⁹¹ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 180-181

⁹⁹² Corte Constitucional *Sentencia C-750-08* 24/7 2008. 180

therefore could be considered as the characterisation of fundamental constitutional values as the principle of self-determination.⁹⁹³ This assessment is predictable when keeping in mind the role of the 1991 Constitution on the global footprint of the country, when compared to the humble margin of manoeuvre that the 1886 Nunez's Constitution allowed.

Unsurprisingly, the Court also referenced previous decision C-369/02⁹⁹⁴, which constitutionally assessed law 170 of 1994, in charge of incorporating the WTO's Marrakesh agreement to Colombian law. Inter alia the bench defended the advantages of belonging to a multilateral organisation "that stimulates free trade between countries, on the basis of reciprocity and mutual advantages and the elimination of discriminatory treatment"⁹⁹⁵. In fact, the tribunal implied that by both Colombia and the United States belonging to the WTO the "important benefits" arising from such membership could only increase, because of the very core values of the Multilateral Trading System.⁹⁹⁶ This goes hand in hand with the fact that the USCTPA was subscribed within the legal framework of obligations and concessions of the WTO, and recognised it as a comprehensive background under which the agreement was signed, including definitions, agriculture, intellectual property rights, rules of origin, and last but not least sanitary and phytosanitary measures.

Furthermore, the bench followed a previous line of precedent, established in judgment C-621/01.

⁹⁹⁷ The referenced decision assessed the diverse current nature of the constitutional principle of

⁹⁹³ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 180-181

⁹⁹⁴ Corte Constitucional, "*Sentencia C-369/02*", , 2002, <https://n9.cl/8675qy>. 13

⁹⁹⁵ Corte Constitucional *Sentencia C-369/02* 2002. 13

⁹⁹⁶ Corte Constitucional *Sentencia C-369/02* 2002. 13

⁹⁹⁷ Corte Constitucional, "*Sentencia C-621/01*", , 13/6 2001, <https://n9.cl/qt2hj>. 7-8

national sovereignty⁹⁹⁸. Underlining that long had passed the times of rigid classic constitutional theory, voided from the factors of market globalisation, which nowadays imbued it with the recognition of the important roles of multilateral institutions, the development of relations with the international community, their subsequent role in human rights, environmental issues, not to mention world peace and security.⁹⁹⁹ In this current version of constitutionalism, States have agreed to redefine sovereignty, without prejudice of the fundamental principles of respect and equality among states as equal subjects of international law.¹⁰⁰⁰

The international order confers rights and obligations for the States, who enjoy autonomy and independence for the regulation of their internal affairs, and can freely accept, without foreign impositions, in their condition of equal subjects of the international community, reciprocal obligations aimed at peaceful coexistence and the strengthening of relations of cooperation and mutual aid. Therefore, sovereignty is not a power to ignore international law, no matter how great the economic or warfare capacity of a State, but rather the exercise of certain powers full and exclusive, without interference from other States. This has consequences in different areas, such as the relationship between the principle of the supremacy of the Constitution, expression of sovereignty, and respect for the international law.¹⁰⁰¹

It is worth pointing out that in a similar matter, decision C-309/07¹⁰⁰² recalled that countries in strictly attempting to uphold the traditional national borders, and set on imposing economic protectionism, were condemned to “ostracize themselves” and even to become “outcasts of

⁹⁹⁸ Corte Constitucional *Sentencia C-621/01* 13/6 2001. 7-8

⁹⁹⁹ Corte Constitucional *Sentencia C-621/01* 13/6 2001.

¹⁰⁰⁰ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 60

¹⁰⁰¹ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 60

¹⁰⁰² Corte Constitucional, “Sentencia C-307/09”, , 29/4 2009, <https://n9.cly0sit>.

international society”, because of the complex nature of international economic relations and their potential positive impact for growth.¹⁰⁰³ Integration was nothing short of a necessary aspect “for the survival and development of states that transcends ideologies and political programmes.”¹⁰⁰⁴ In this ruling the Court unrelentingly defended the integrity of an open economic system in which the unimpeded mobility of consumer goods, services and capital, alongside the reduction in transaction costs and the transfer of technology, complemented the national economies according to their comparative advantages, attracting foreign investment, in time producing benefits in relation to productivity, quality and costs, ultimately translating into “sustainable economic growth for the State” while at the same time complying with the constitutional mandate of articles 9, 226 and 227 of the Carta.¹⁰⁰⁵

6.8.1 Coffee and Rice Agriculture, the Golden boys of the USCTPA

Chapter two of the USCTPA regarding “National Treatment and Market Access for Goods” could be considered as the heart of the agreement. It is composed of eight sections and four annexes that cover an array of subjects from general definitions, interpretations, exempted merchandises, specific tariff elimination, imports of refurbished and altered goods; as well as import licences, administrative procedures and most importantly, trade in agriculture. Section G is dedicated to agriculture and deals with the scope, administration and implementation of tariff rate quotas, schedules of concessions, agricultural export subsidies, export state trading enterprises,

¹⁰⁰³ Corte Constitucional *Sentencia C-307/09* 29/4 2009.

¹⁰⁰⁴ Corte Constitucional *Sentencia C-307/09* 29/4 2009.

¹⁰⁰⁵ Corte Constitucional *Sentencia C-307/09* 29/4 2009.

agricultural safeguards measures, sugar compensation mechanism, consultations on trade in chicken, and the committee on agricultural trade.¹⁰⁰⁶

Interestingly, much of the global stalemate of agricultural trade can be seen clearly within the USCTPA, even after the passing of the “Nairobi Package” as discussed in Chapter 3.¹⁰⁰⁷ This is unsurprising considering that as stated before, the USCTPA, was signed under the larger framework of the Multilateral Trading System, even though in principle it deals with bilateral economic interests. Chapter one of the USCTPA, Initial Provisions and General Definitions, Section A. article 1.2 makes this clear noting that “The Parties affirm their existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which such parties are Party.”¹⁰⁰⁸

But even so, farther research on the agreed final text shows a series of exceptions to previously mentioned guiding principles like national sovereignty, reciprocity, most favoured nation and national treatment clauses, present both at the bilateral as well as multilateral levels. Indeed annex 2.2 deals with specific allowances bypassing the mentioned guiding principles.¹⁰⁰⁹

The United States demanded that such exceptions be applied to very specific provisions pursuant to the control of export of logs of all species; the Merchant Marine Act of 1920, 46 App. U.S.C. 883; the *Passenger Vessel Act*, 46 App. U.S.C. §§ 289, 292, and 316; and 46 U.S.C. § 12108, to the extent that such measures were mandatory legislation at the time of the accession of the United

¹⁰⁰⁶ Foreign Trade Information System, *Colombia - United States Trade Promotion Agreement*, 2022, <https://n9.cl/fgx0y>.

¹⁰⁰⁷ World Trade Organization, *Nairobi Package*, 2015, <https://n9.cl/vsbcc>.

¹⁰⁰⁸ Foreign Trade Information System 2022.

¹⁰⁰⁹ Foreign Trade Information System 2022.

States to the General Agreement on Tariffs and Trade 1947 (GATT 1947) and have not been amended so as to decrease their conformity with Part II of the GATT 1947; (ii) the continuation or prompt renewal of a non-conforming provision of any statute referred to in clause (i); and (iii) the amendment to a non-conforming provision of any statute referred to in clause (i) to the extent that the amendment does not decrease the conformity of the provision with Articles 2.2 and 2.8; and (c) actions authorized by the Dispute Settlement Body of the WTO.¹⁰¹⁰

Meanwhile, the negotiated exceptions for Colombia, included:

(b) measures relating to the taxation of alcoholic beverages pursuant to the national sales tax under Law No. 788-2002 and Law No. 223-1995, until four years after the date of entry into force of this Agreement; (c) controls on the importation of used and imperfect goods, remainings, scraps, wastes, and residues pursuant to Resolution No. 001-1995;²(d) controls on the importation of automotive vehicles, including used vehicles and new vehicles whose importation occurs more than two years following their date of production, in accordance with Resolution No. 001 of 2 January 1995; and (e) actions authorized by the Dispute Settlement Body of the WTO.¹⁰¹¹

In addition to these, the most important negotiated exception for Colombia in annex 2.2 a. resulted from the exclusion of law 9 of 1991 regarding control on the exports of coffee, in which over the course of seven articles and nine subsections it laid out all its protectionist guns in defence of the traditional Cinderella of the Colombian economy, coffee. Inter alia, the law provides a set of regulations which range from easing restrictions for the export operations of the grain including massive foreign exchange payments, a higher contribution to the National Coffee Fund and overall,

¹⁰¹⁰ USCTPA Annex 2.1

¹⁰¹¹ USCTPA Annex 2.2

a complete regulatory structure for the export of the grain; in a clear reflection of what has driven the Colombian economy since the end of the 19th Century.

When the Uribe Government presented the USCTPA to the Constitutional Court for assessment, it positioned agriculture as the net winner of the agreement. All within the framework of Constitutional article 65, obligating the State to protect food production by prioritising investments for the development of livestock, forestry, and agro-industrial activities, including the construction of physical infrastructure.¹⁰¹² In addition to this, article 65 directed governments to foster strategies for the transfer of research and technology for the intensification of production of foodstuffs, and raw materials, which allegedly would be a logical result of the agreement¹⁰¹³ in time allowing a more robust agricultural sector especially for rice.

This position was highlighted by the Court in its constitutional analysis. According to the government, amongst the biggest winners from the USCTPA were flowers, tobacco and cigarettes, fruits and vegetables, meat preparations, dairy products, sugar, ethanol, palm-oil, wheat pasta, cookies, cocoa, chocolate, panela sugar, aromatic herbs, coffee, cotton and of course rice.¹⁰¹⁴ According to the government during the previous decade, the sum of all these products amounted to 61% of the entire added value of Colombian agriculture.¹⁰¹⁵ When in fact, the strongest opponents to the agreement dubbed those framed successes as apparent advantages only.¹⁰¹⁶

¹⁰¹² Corte Constitucional *Sentencia C-750-08 24/7 2008*. 60

¹⁰¹³ Corte Constitucional *Sentencia C-750-08 24/7 2008*. 60

¹⁰¹⁴ Congreso de Colombia Bill of Law 178/06

¹⁰¹⁵ Congreso de Colombia Bill of Law 178/06

¹⁰¹⁶ Corte Constitucional *Sentencia C-750-08 24/7 2008*. 468

That is why in the USCTPA for rice agriculture, the government highlighted the elimination of the 80% base tariff within a six-year period in which such tariff was not to be reduced.¹⁰¹⁷ Noticeably, a Tariff Rate Quota (TRQ) of 79 thousand tons of white rice or its paddy equivalent was awarded to the United States in the form of the newly created “COL-RICE Auction System”¹⁰¹⁸ an achievement that has been paraded as the biggest success for Colombian rice ever since.¹⁰¹⁹

The Colombian rice export quota managing system or COL-RICE, was a direct result of the so called “room next door”.¹⁰²⁰ Within the Latin-American context, “the room next door” was a strategy first employed by the Mexican Government during the negotiations of the originally dubbed North America Free Trade Agreement (NAFTA)¹⁰²¹ during the early 1990’s. This approach consisted in reuniting several stake holders in a venue adjacent to where the formal negotiations were being conducted, in order to provide an open backchannel of communications with government officials, and therefore facilitating access to information regarding what was being discussed as well as the possible upcoming obligations and therefore permitting a previous assessment of outcomes as well as counter proposals.¹⁰²² Regrettably, access to the room next door was by invitation only and has been considered as a reflection of political influence.¹⁰²³

¹⁰¹⁷ Congreso de Colombia Bill of Law 178/06

¹⁰¹⁸ Colombia Rice Export Quota COL-RICE, ¿Qué es COL-RICE?, 2015, <https://n9.cl/vlcov>.

¹⁰¹⁹ Federación Nacional de Arroceros - Fedearroz, *Planta de Secamiento, Almacenamiento y Trilla Planta Puerto López*, 2023b, <https://n9.cl/h3bz8>.

¹⁰²⁰ Jaime Serra Puche, *El TLC y la formación de una región/NAFTA and the Building of a Region: Un ensayo desde la perspectiva mexicana/An Essay from the Mexican Perspective* (Fondo de Cultura Económica, 2015).

¹⁰²¹ International Trade Administration, *USMCA*, 2020, <https://n9.cl/c18qq>.

¹⁰²² Puche 2015.

¹⁰²³ Jorge Reinol Pulecio, “La estrategia Uribe de negociación del TLC”, *Colombia Internacional* n° 61 (2005).

That being said, from the very first hint of a long-term commercial agreement with the United States, FEDEARROZ stressed the importance of assuring a place at the negotiations.¹⁰²⁴ One of its main arguments, depended on the fact that rice was the third most farmed legal crop in Colombia, amounting to 4% of farming GDP as well as 5% of the entire job generator in the whole agrarian sector, on top of being the most consumed staple in Colombian diets.¹⁰²⁵

More importantly, FEDEARROZ capitalised on the clearest rationale for the agreement, by emphasising its concern for the historical closeness of illicit crops to rice.¹⁰²⁶ Outright stating that leaving the rice sector unprotected could eventually translate into an exponential growth in illicit crop areas.¹⁰²⁷ Therefore, rendering any understanding as counterintuitive, and even meaningless. Such a stance could be considered a reverberation of focalised academic studies¹⁰²⁸ regarding the forced coexistence of two types of economies with diverse and intertwining degrees of complexity.¹⁰²⁹ Such constitutional rationales allowed the federation to successfully include the designation of the grain from the very beginning as a sensitive product. This guaranteed adequate lapses for tariff relief, tariff rate quotas, safeguards, and grace periods, in addition to the extended protection period of nineteen years. The longest in the agreement.¹⁰³⁰

¹⁰²⁴ Federacion Nacional de Arroceros - Fedearroz, *TLC aprobado*, 2023c, <https://n9.cl/vsbcc>.

¹⁰²⁵ Gustavo Adolfo Díaz Valencia, "Impacto del TLC con Estados Unidos en el sector agrícola colombiano, más riesgos que oportunidades (caso arroz)", *Revista CIFE: Lecturas de Economía Social* 14:20 (2012), doi:10.15332/s2248-4914.2012.0020.03.

¹⁰²⁶ Federacion Nacional de Arroceros - Fedearroz, *El TLC y la Competitividad*, 2023a, <https://n9.cl/1wg31>.

¹⁰²⁷ Federacion Nacional de Arroceros - Fedearroz 2023a.

¹⁰²⁸ Christian Rene Losada Suárez, *Un acercamiento a la sustitución de cultivos ilícitos para Colombia, con enfoque en Puerto Rico, Caquetá* (Tesis de Maestría, Universidad Santo Tomas, 2017).

¹⁰²⁹ Suárez 2017.

¹⁰³⁰ Federacion Nacional de Arroceros - Fedearroz 2023a.

COL-RICE's structure is that of non-profit Export Trading Company (ETC) under the American Export Trading Act of 1982.¹⁰³¹ As mentioned, the company was created to oversee the import of the 79 thousand tons of rice awarded to the United States under the TRQ and uses an independent administrator for the allocation of the TRQ via public auction.¹⁰³² As such, it is subject to the periodic review and certification of the United States Department of Commerce for the renewal of its export trading certificate. The final text of the USCTPA reflected a progressive augmentation of the TRQ starting at the end of 2017 until reaching 166,957 metric tons, preceding a complete elimination in 2030, with an equal progressive reduction of the 80% base tariff during the same period.¹⁰³³ The company is governed by a board of 16 directors appointed by members of the United States rice industry¹⁰³⁴ as well as the Colombian Rice Producers Association FEDEARROZ.

The triumph of the COL-RICE enterprise has been remarkable. Especially due to the considerable amount of funds awarded to the Massive Adoption of Technology Initiative (AMTEC).¹⁰³⁵ The initiative was conceived as a model for the transfer and implementation of technological advances aimed to improve efficiency by increasing yields and reducing net costs of production. Its main pillars are sustainability and social responsibility, conceived as tools for achieving an inclusive way of spreading information comprised of traditional knowledge coupled with technical support to the communities. All within a structure that allows members of the rice farming community to farther transmit knowledge via courses, technical workshops and tours, as well as field days.¹⁰³⁶

When coupled with massive investments on research and development of agrochemicals, seed

¹⁰³¹ United States Congress Export Trading Act 1982

¹⁰³² Colombia Rice Export Quota COL-RICE 2015.

¹⁰³³ Colombia Rice Export Quota COL-RICE 2015.

¹⁰³⁴ Colombia Rice Export Quota COL-RICE 2015.

¹⁰³⁵ Federación Nacional de Arroceros - Fedearroz, *Los aportes a la competitividad obtenidos con recursos COLRICE y del FNA, que algunos pretenden desconocer*, 2021, <https://n9.cl/lkogn>.

¹⁰³⁶ Federación Nacional de Arroceros Fedearroz, *Adopción masiva de tecnología. ¿Qué es AMTEC?*, 2020, <https://n9.cl/tw0hd>.

variation and adaptability; as well as drying, threshing and milling infrastructure up and down the country it results unquestionable that indeed the rice producing sector of Colombia, emerged from the USCTPA as one of the net winners.¹⁰³⁷

The Court highlighted these successes for rice in its analysis, by recollecting a similar precedent. Decision C-864/06 studied the reach of the economic complementation agreement between the Andean Community and Mercosur. In this instrument, Colombia also managed to negotiate a longer preferential treatment of twelve years for vehicle parts, textiles, clothing, leather products, beverages, tobacco, paper products and publications, forestry, fruits and vegetables, sugar, dairy products and rice, in comparison to the eight-year deadline agreed to by Argentina and Brazil for the same products.¹⁰³⁸ A trend of protection that will continue a few years down the road with the *Colombia Siembra* programme.

6.8.3 Colombia Siembra: A Mixed Bag of Results

Rice production in Colombia has been growing at a steady pace during the last twenty years from the previous century benchmark.¹⁰³⁹ By 2016 it amounted to a 3.2% of the agrarian GDP,¹⁰⁴⁰ and was the main source of income for approximately five hundred thousand families.¹⁰⁴¹ Nevertheless it remains less efficient and therefore competitive than its American counterpart.¹⁰⁴² Two main reasons have been pointed for Colombian rice's lack of competitiveness. For one, yield per farmed mechanised hectare is around 4.7, whereas American rice sits at almost double that amount with

¹⁰³⁷ Federación Nacional de Arroceros Fedearroz 2020.

¹⁰³⁸ Corte Constitucional C-864/06 7-8

¹⁰³⁹ <https://fedearroz.com.co/es/fondo-nacional-del-arroz/investigaciones-economicas/estadisticas-arroceras/area-produccion-y-rendimiento/>

¹⁰⁴⁰ <https://www.dane.gov.co/index.php/estadisticas-por-tema/agropecuario/encuesta-de-arroz-mecanizado>

¹⁰⁴¹ Castro Rodríguez, Raúl, et al. "El Impacto del Programa Colombia Siembra sobre la producción primaria del arroz: ¿Quién se benefició más?(Impact of the " *Impact of the " Colombia Siembra " Program on Rice Primary Production: Who Benefited the Most* (2024) 3

¹⁰⁴² Castro Rodríguez, Raúl, et al. "El Impacto del Programa Colombia Siembra sobre la producción primaria del arroz: ¿Quién se benefició más?(Impact of the " *Impact of the " Colombia Siembra " Program on Rice Primary Production: Who Benefited the Most* (2024) 4

8.1, secondly, production cost of mechanized rice is usually 50% higher in Colombia and includes technical assistance, rent, land preparation, sowing, fertilization, weed control, pest and disease control, transportation, administration, and other variable costs according to the production system.

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Rice consumption in Colombia, suffers from the well-known inelasticity of the grain, and by 2023 reached 46 kg per capita.¹⁰⁴⁴ The most recent available numbers show that demand is being met by 94% of national production, and the remaining 6% has been increasingly covered by American imports of the grain, partly due to the concessions of the USCTPA.¹⁰⁴⁵ Nevertheless, those numbers are bound to continue rising dramatically, as the 2030 deadline for zero tariffs¹⁰⁴⁶ rapidly approaches.

As tariffs continue to fall for American rice, the logical result is a direct correlation to the exported quantities to Colombia, which will enter in direct competition with local grain. Also, a combination of imported higher quality rice at competitive prices, can potentially disrupt the sector, by attracting more demand than the locally produced rice, which in time could potentially benefit consumers in terms of competition, variety, and availability.¹⁰⁴⁷

Colombian officials were aware of those risks while negotiating the USCTPA, and so was FEDEARROZ, after all, tariff concessions are the essence of FTA's. As a result of this,

¹⁰⁴³ Castro Rodríguez, Raúl, et al. "El Impacto del Programa Colombia Siembra sobre la producción primaria del arroz: ¿Quién se benefició más?(Impact of the." *Impact of the "Colombia Siembra" Program on Rice Primary Production: Who Benefited the Most* (2024) 4

¹⁰⁴⁴ <https://fedearroz.com.co/es/publicaciones/editoriales/2024/04/19/efectos-del-fenomeno-el-niño-en-las-siembras-del-2024/>

¹⁰⁴⁵ Castro Rodríguez, Raúl, et al. "El Impacto del Programa Colombia Siembra sobre la producción primaria del arroz: ¿Quién se benefició más?(Impact of the." *Impact of the "Colombia Siembra" Program on Rice Primary Production: Who Benefited the Most* (2024) 3

¹⁰⁴⁶ Federación Nacional de Arroceros - Fedearroz 2023a.

¹⁰⁴⁷ Phillips, Juliann E. *Consumer Valuation of Rice Quality in Colombia*. MS thesis. University of Arkansas, 2023. 9-10

FEDEARROZ lobbied in 2015 for the inclusion of rice as a sensitive product in the agrarian economic agenda for the *Colombia Siembra* programme (*Colombia Sows*).¹⁰⁴⁸ Under those circumstances, the *Colombia Siembra* programme was cemented on the Ministry of Agriculture's resolutions 1,2,3,4, and 5 of 2016. It consisted of a general call to sugar cane, cotton, maize, forestry, soya and rice farmers to increase farm hectareage by one million¹⁰⁴⁹ with the main goal of guaranteeing food security.¹⁰⁵⁰

In order to achieve such an ambitious goal, and just like in times of Olaya Herrera, as previously covered¹⁰⁵¹ the main tool used was the assuring of soft credits to farmers, that took different shapes and included preferential interest rates, capital subsidies and additional financial guarantees directed to growers previously indebted with financial institutions.¹⁰⁵² The main rationale of the programme was that by increasing production via the mentioned incentives in the selected sectors, it would generate wealth, improve living conditions and augment the agricultural share of the GDP.¹⁰⁵³

Consequently, rice farmers massively answered the call. By the end of 2018, the programme reported an increase of 29.8% or 595.371 farmed hectares, from years prior to *Colombia Siembra*,¹⁰⁵⁴ which could be considered nothing less than successful. As for who reaped the

¹⁰⁴⁸ <https://www.minagricultura.gov.co/Colombia-Siembra/Paginas/default.aspx>

¹⁰⁴⁹ <https://www.minagricultura.gov.co/Colombia-Siembra/Paginas/default.aspx>

¹⁰⁵⁰ <https://www.minagricultura.gov.co/Colombia-Siembra/Paginas/default.aspx>

¹⁰⁵¹ Salomón Kalmanovitz-Krauter & Enrique Antonio López-Enciso, "La agricultura en Colombia entre 1950 y 2000", *Borradores de Economía*; No.255 n° (2003).

¹⁰⁵² Castro Rodríguez, Raúl, et al. "El Impacto del Programa Colombia Siembra sobre la producción primaria del arroz: ¿Quién se benefició más?(Impact of the " *Impact of the " Colombia Siembra " Program on Rice Primary Production: Who Benefited the Most* (2024) 4

¹⁰⁵³ FAO *Colombia Siembra Strategic Document N01* <https://faolex.fao.org/docs/pdf/col178896.pdf>

¹⁰⁵⁴ Castro Rodríguez, Raúl, et al. "El Impacto del Programa Colombia Siembra sobre la producción primaria del arroz: ¿Quién se benefició más?(Impact of the " *Impact of the " Colombia Siembra " Program on Rice Primary Production: Who Benefited the Most* (2024) 5

benefits of the copious amounts of taxpayer's money poured into the programme, that is a totally different story.

Recent research highlight that mainly due to the oligopsony like organisation of the Colombian rice milling industry, and therefore the few existent millers demanding the cereal for the transformation of the paddy, they were the ones who truly benefited the most from the programme.¹⁰⁵⁵ The reasons for this is the undisputed advantageous position from the demand side that allows them to define prices and quantities demanded, meaning that the millers leverage has an equal part to play than elasticity (or lack thereof) of supply and demand of final consumers within the Colombian context.¹⁰⁵⁶

The study showed that for every Colombian peso injected to the rice producing sector, millers kept 0.83 cents, which is reminiscent of the previously presented research on the distorting effects of protectionism, and how powerful sectors gain the most from subsidies to agricultural productions,¹⁰⁵⁷ or the “lion's share of the taxpayer's money.”¹⁰⁵⁸ Fortunately, the *Colombia Siembra* programme, was not surrounded by corruption allegations, unlike other earlier initiatives resulting from the USCTPA's agricultural strengthening initiatives, such as *Agro Ingreso Seguro* (AIG).¹⁰⁵⁹ Although well intended the outcomes of government programmes like the AIG and

¹⁰⁵⁵Castro Rodríguez, Raúl, et al. "El Impacto del Programa Colombia Siembra sobre la producción primaria del arroz:¿ Quién se benefició más?(Impact of the." *Impact of the " Colombia Siembra" Program on Rice Primary Production: Who Benefited the Most* (2024) 3-4

¹⁰⁵⁶Castro Rodríguez, Raúl, et al. "El Impacto del Programa Colombia Siembra sobre la producción primaria del arroz:¿ Quién se benefició más?(Impact of the." *Impact of the " Colombia Siembra" Program on Rice Primary Production: Who Benefited the Most* (2024) 3-4

¹⁰⁵⁷ Anderson 2017. 33

¹⁰⁵⁸ Anderson 2017. 34

¹⁰⁵⁹ Agrarian Secure Income

Colombia Siembra, emphasise the many complexities of rice production and its deep connection with the political economy of a non-Asiatic rice producing developing country.

6.8.4 Commercial Asymmetries Between the Signing Parties: The Struggle Between Constitutionalised Neoliberal and Social Values

When assessing the legal arguments put forward by the Court in both ruling C-864/06 and C-750/08 the common ground seems to be the recognition of the so called “economic asymmetries” present in international trade. Deeming them as an undeniable reality arising from the different levels of growth and economic development of the signing parties but adding that they should not stand in the way of commercial liberalisation.¹⁰⁶⁰ Instead, the bench argued that such agreements point towards the facilitation of the trade in goods and a better harnessing of the factors of production under conditions of competition that lead to both the expansion and diversification of trade, as well as the elimination of barriers that have traditionally hindered trade.¹⁰⁶¹ And since asymmetries have always been nothing less than a reality “under no circumstance can they be considered detrimental to the Constitution nor the rights to independence and self-determination of the Colombian people”.¹⁰⁶²

The tribunal reinforced this argument by remembering that even “under WTO law, an organisation of which both the United States and Colombia are members, inequality arising from different levels of development is a given.”¹⁰⁶³ But even so, within the framework of trade agreements, can help boost national enterprises, and therefore employment, generating economic growth as well as

¹⁰⁶⁰ Corte Constitucional *Sentencia C-864/06* 19/10 2006.

¹⁰⁶¹ Corte Constitucional *Sentencia C-864/06* 19/10 2006.

¹⁰⁶² Corte Constitucional *Sentencia C-307/09* 29/4 2009. 3-12

¹⁰⁶³ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 266

development.¹⁰⁶⁴ Which shows how neoliberally charged was its interpretation of global trade, and the lack of knowledge of the nuances derived from the relationship between economic history, growth and development, rendering once again the question regarding its capabilities to understand what it was up against when assessing the agreement, let alone the consequences of the “most important agreement ever subscribed by Colombia”¹⁰⁶⁵ for sectors other than coffee and rice.

Moreover, the Court highlighted many of the strategies and programmes created within the framework of the agreement, aimed to offset asymmetries, and therefore provide the Colombian agrarian economy with a healthy dose of resources, in order to face the many challenges arising from the agreement.

Some of the most notable examples included the Committee for the Strengthening of Commercial Capabilities whose efforts yielded the financing of seventy-four projects including the “necessary adjustment to public policy and legislation”¹⁰⁶⁶ A staggering sixty-four of those projects were to be financed by the United States and multilateral institutions like ECLAC, OAS, IBD, and the CAF. With many of the projects including funds for the improvements of public administration, agriculture and rural development including infrastructure; as well as strengthening the sanitary and phytosanitary capabilities of the country, which was a central part of the agreement.¹⁰⁶⁷

In the end, there is an argument to be made regarding the actual intent of those offsetting strategies, especially when proclaiming COL-RICE, as one of the biggest success stories for Colombian agriculture within the frame of the USCTPA. It could be considered overly defensive if not

¹⁰⁶⁴ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 266

¹⁰⁶⁵ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 450

¹⁰⁶⁶ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 450

¹⁰⁶⁷ United States International Trade Commission 2006. Annex 7

dismissive of the strong opposition faced from the dissenting faction of the Court as well as the fierce opposition of various sectors of the country, from minorities, collectives, unions, economic sectors, and everyday citizens who for obvious reasons were neither invited¹⁰⁶⁸ nor consulted on the convenience of the agreement. It seems like the room next door could only hold so many people.

6.8.5 The Nonconforming Arguments of the Dissenting Faction of the Constitutional Court Albeit the Inevitable

As hinted, the USCTPA was never short of detractors ever since the very first time the Colombian government announced its intentions to enter negotiations with the United States. The general ideas behind the opposition are well presented in a range of arguments of social, political, legal and economic nature.¹⁰⁶⁹ Such arguments were mainly collected and voiced by the disagreeing faction of the Colombian Constitutional Court in their dissenting opinion and were for the most part compiled from the general antagonistic sentiment for the agreement during the entire process.

According to the Uribe government, one of the biggest virtues of the negotiating procedures of the USCTPA, was the level of inclusion of stakeholders and Colombian society in general “as a way of creating consensus within a democratic and pluralistic society.”¹⁰⁷⁰ The choice of words in this statement partially explain the sheer amount of meetings attended to by government officials during the whole process, according to the white book of negotiations.¹⁰⁷¹ Also, once the USCTPA had been signed into law and according to Constitutional procedure, the Court sent out a general call to institutions and citizens in order to provide a forum to express opinions and concerns, pertaining to the agreement in a matter of general and national interest.

¹⁰⁶⁸ Pulecio 2005.

¹⁰⁶⁹ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 30-104

¹⁰⁷⁰ Congreso de Colombia Bill of Law 178/06

¹⁰⁷¹ Ministerio de Comercio 2018.

Regardless, even with all this alleged democratic participation, the dissenting opinions reflects harsh criticism as to the process developed for issuing such calls, as well as the proper inclusion and consideration of points of view opposing the agreement.¹⁰⁷² In the end, it was absolutely clear that the Uribe Government was set on making the USCTPA a reality, as it was a crucial part of its foreign policy, coupled with its inability to affect in any way the everlasting bond to its biggest historical ally, commercial partner, and in some ways failsafe of destiny, even if it meant disowning bigger interests, so much so that it even prompted at the time serious doubts on apparent undisclosed interests from the consenting portion of the bench.¹⁰⁷³

The list of intervening organisations and citizens during the constitutional analysis was vast, and exponentially diverse across the board of Colombian and Latin-American society. From the legally mandated concept of the National Attorney General; to the Bank of the Republic, organised unions, universities, credit unions, and specialised NGO's; to Government officials, and chambers of commerce of different nature; they all had a voice in the Constitutional process, at least on paper.

The Court devised a method in which it grouped the interventions according to their formal or material nature. Interestingly, out of the thirty-three interventions selected for the constitutional analysis, sixteen were pro USTCPA, fifteen against, and two of them did not lean for a position but called for impartiality and the prevalence of the rule of law.¹⁰⁷⁴

¹⁰⁷² Corte Constitucional *Sentencia C-750-08* 24/7 2008. 450-500

¹⁰⁷³ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 451-452

¹⁰⁷⁴ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 30-104

Of all those interventions, only three fall within the spectrum of this work, and they could not be more diametrically opposed. On the one hand, the Colombo-American Chamber of Commerce advocated for the approval of the USCTPA¹⁰⁷⁵ on everything related to agriculture. According to the guild, the fact that agricultural production was considered as a sensitive sector from the very beginning of the negotiations, guaranteed that the obligations contained in the agreement reflected inter alia adequate times for tariff relief, tariff rate quotas, safeguards, as well as grace periods which indeed could be considered as upholding the Constitutional mandates contained in articles sixty-four and sixty-five. Clearly the guild was referring to the generous treatment received by sectors like coffee and evidently rice, the latter, which was awarded an extended protection of nineteen years.¹⁰⁷⁶

As mentioned before, Constitutional articles sixty-four and sixty-five, created the obligation for public institutions to promote the progressive access of workers to the land and to the official coverage of education, health, housing, social security, recreation, credit, communications, as well as technical assistance, with the objective of improving the living conditions of the rural citizens of the country.¹⁰⁷⁷ Not to mention the constitutional mandate of protecting the production of foodstuff, and the prioritization of rural activities, including those resulting from fisheries, forestry and agro-industrial enterprises, which according to the constitutional mandate, also entail the construction of infrastructure and the transfer of research and development aiming to increase overall productivity in the sector.

¹⁰⁷⁵ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 40-42

¹⁰⁷⁶ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 40-42

¹⁰⁷⁷ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Art. 64-65

In stark contrast, there was a completely different interpretation of the same Constitutional articles spearheaded by the Colombian Action Network Against Free Trade (RECALCA).¹⁰⁷⁸ The network argued that since Colombia had agreed to the elimination of tariffs on foodstuffs, it meant losing the ability to protect Colombian markets from crops that had been produced partially with subsidisation from the United States Government, gravely affecting Colombian food security. This constituted a blatant violation of articles sixty-four and sixty-five¹⁰⁷⁹ of the Constitution, by prioritising trade liberalisation over food security, not to mention submitting the country to a farther division and specialisation of labour in the form of monocultures, which do not represent the huge social, cultural and economic diversity of Colombian farmers.¹⁰⁸⁰ And which obviously reflects the well-deserved criticism faced by global agricultural markets.

Furthermore, one of the most critical voices of the USCTPA since the beginning of negotiations, was former senator Jorge Enrique Robledo. Robledo's historical fierce opposition to the whole agreement took greater salience when it came to defending agriculture. Robledo argued that the lack of a general special agricultural safeguard triggered by either/both prices and quantities signified a disproportionate concession by the Colombian government. Nevertheless, his most compelling argument was based upon the so-called elephant in the room, and which was previously discussed. There were no American commitments other than those already agreed to within the framework of WTO law, to either change or reduce the eye watering sums of money that American farmers receive from their government. As seen before, this distorted way of agricultural production has had grave consequences on international markets during more than a century,

¹⁰⁷⁸ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 64

¹⁰⁷⁹ Asamblea Nacional Constituyente *Constitución Política de Colombia de 1991* 13/6 1991. Art. 64-65

¹⁰⁸⁰ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 64

because the excess product in many cases end up in competing countries affecting local producers and industries, in classic examples of dumping.¹⁰⁸¹

Robledo's assessment went on par with many of the effects derived from the eminently flawed system of "boxes" created in the AoA and which was covered extensively before in chapter III. In the case of Colombia, Robledo argued, the country committed to eliminate tariffs equivalent to 77% of the aid received by the agricultural sector, once the programmes created within the framework of the USCTPA were phased out¹⁰⁸², whereas the United States' obligation did not cover those areas, or anything outside of what had already been agreed to under WTO law. As seen before, such commitments mean practically nothing in practise, while looking brilliant on paper¹⁰⁸³ emphasising once more the existence of apparent advantages.¹⁰⁸⁴

Robledo voiced an additional level of concern for Colombian agriculture, by highlighting that the fact that provisional tariff levels during the grace periods of the agreement were calculated by averaging several previous years' worth of low prices. As a result, the base tariffs were located at the lower spectrum for duties which worst of all would eventually be phased out, gravely affecting Colombian producers. This could be considered an echo of previously presented research in which it has been established that the percentage of agriculture in global GDP is shrinking.¹⁰⁸⁵ Not to mention that all these occur within the context of markets already plagued by commercial distortions.

¹⁰⁸¹ Anderson 2017

¹⁰⁸² Corte Constitucional *Sentencia C-750-08* 24/7 2008. 54

¹⁰⁸³ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 54

¹⁰⁸⁴ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 54

¹⁰⁸⁵ Anderson 2017.

Also, it begs the question of a case of “inverse dirty tariffication” deepened by the unlikelihood of the Colombian cereal sector to reasonably compete with crops distorted by the enormous amounts of American subsidies. When coupled with the removal of Colombian tariffs, it was expected to destroy Colombian sorghum and particularly maize. Understandably, there was no mention of rice, since as seen before it was one of the most protected products of the agreement.

This evaluation has gained great importance at the national level in recent years. Particularly, it has been tied to the severe challenges faced by humanity originated from the global COVID-19 pandemic, surging levels of inflation and geopolitical instability at the European level, in a military conflict between Russia and Ukraine, which by the time in which these words are being written, is close to entering its third year with no sign of ending. Such conditions have gravely impacted chains of production and distribution of cereals around the globe, including Colombia. Indeed, begging the question of a much different reality were the negotiations of the USCTPA to take place under today’s geopolitical conditions, including average global foodstuff prices of the last few years.

By now, readers are sufficiently aware of how for the most part, the Constitutional assessment of the USCTPA seemed like a plot pulled out of a bad mystery novel. The bench telegraphed the outcome of its evaluation since the very beginning of ruling C-750/08 and throughout the decision, based on the general arguments presented before.¹⁰⁸⁶ These included leaving matters of opportunity and convenience to the executive and legislative branches of government, recognising

¹⁰⁸⁶ Corte Constitucional *Sentencia C-750-08 24/7 2008*. 8-60

the USCTPA as just another cog in a broader international commercial and economic strategy pursued by Colombia, the impossibility of preventing obvious conditions of inequality and recognised economic asymmetries between the signing parties; and the paramount importance of economic integration under the light of globalisation, as a strategy to foster growth and development, in line with the principles of sovereignty free determination of peoples, reciprocity and equality.¹⁰⁸⁷ All while constantly remembering that the nature of its analysis was abstract and previous and as such did not mean surrendering its capacity as guardian of Colombia's main body of law through future and concrete constitutional assessments, while portraying rice as an indisputable winner in frank complacency with the executive branch of government.

By the way of contrast, and much in line with previous critiques, the most important arguments against the USCTPA wielded by the dissenting branch of the Court found the USCTPA as a flawed and overall unequal agreement for Colombia.¹⁰⁸⁸ It was particularly concerning that the establishment of a free trade area, creating general obligations for Colombian institutions, which would eventually translate to its people, compromising sovereignty and independence.¹⁰⁸⁹

Moreover, when the bulk of those obligations at least for Colombia, entailed its position in the global division of labour, which historically specialised in the production of raw materials, specifically of agricultural nature; in addition to the deep economic asymmetries between the signing parties that impeded competition under a frame of equality.¹⁰⁹⁰ This assessment is equally important when considering the higher degree of industrialisation and technology of the United

¹⁰⁸⁷ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 8-60

¹⁰⁸⁸ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 450

¹⁰⁸⁹ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 450

¹⁰⁹⁰ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 450

States, which in many cases is deployed to the production of food, in conjunction to the well-known trade distortions created by the copious amounts of money allocated to its farmers.

Indeed, the dissenting faction of the Court even called into question the accuracy of the main studies¹⁰⁹¹ produced regarding the challenges that Colombian agriculture had to face if the USCTPA got approved, by citing Lord Kelvin's work:

When you can measure what you are speaking about, and express it in numbers, you know something about it; but when you cannot measure it, when you cannot express it in numbers, your knowledge is of a meagre and unsatisfactory kind: it may be the beginning of knowledge, but you have scarcely, in your thoughts, advanced to the stage of *science*, whatever the matter may be.¹⁰⁹²

Certainly, drawing attention to the fact that although there had been statistical studies, they did not present the whole picture of economic consequences that Colombia was setting itself to face. Fascinatingly, the dissenting faction argued that “despite having asked to the executive branch of government to provide critical and quantified economic studies for an agreement of such importance in multiple opportunities, the ever-present answer was that “even though the agreement might be partially unconstitutional, it was not so as a whole”.¹⁰⁹³

Overall, the dissenting opinion considered the USCTPA “violating over 100 articles of the Constitution in both formal and substantial matters”¹⁰⁹⁴ including articles 1,2,3,4,7,8,9,13; the

¹⁰⁹¹ F Barberi & L GARAY, "El agro colombiano frente al TLC con Estados Unidos", n° (2004).

¹⁰⁹² Thomson, William. "Electrical units of measurement." *Popular lectures and addresses* 1.73 (1883).

¹⁰⁹³ Corte Constitucional *Sentencia C-750-08 24/7 2008*. 458

¹⁰⁹⁴ Corte Constitucional *Sentencia C-750-08 24/7 2008*. 459

entire Title II as well as articles 58,72,78,79,333,335,365 and especially article 65 by overlooking the constitutional mandate of assuring the country's food security, since everything was set to transition from being a self-stocked, net exporter of food, to a nation actually importing it, in a clear transgression to matters of national security.¹⁰⁹⁵

As stated above, the Uribe Government argued that there was a halo of transparency surrounding the process of the USCTPA. But even so, the dissenting faction cast a deep shadow as for the “real motivations” of the agreement and the fact that it had been approved by Congress in the first place, not to mention it had approved the Constitutional evaluation carried out by the conforming members of the Court when in fact it was evidently disruptive of Colombian legal order, not to mention flagrantly harmful to the Constitution in formal and material matters.

For this reason I must express my perplexity and astonishment not only upon the signing and ratification of this Treaty by the State and Colombian Government, but even more, by the declaration of enforceability by this Court, which has carried out an uncritical control of constitutionality, despite the fact that it is the highest body that has been entrusted with the guardianship of the supremacy of the Constitution, and yet ends up validating a treaty such as this Trade Promotion Agreement between Colombia and the United States United States, which has such harmful effects on our Nation, which is why this magistrate does not understand what kind of interests are being served with this decision.¹⁰⁹⁶

¹⁰⁹⁵ Corte Constitucional *Sentencia C-750-08 24/7 2008*. 459-468

¹⁰⁹⁶ Corte Constitucional *Sentencia C-750-08 24/7 2008*. 480

Either way, it is worth noting that most of the process for incorporating the USCTPA to Colombian law, including Congressional debates, and particularly the Constitutional assessment, was conducted amid the vicissitudes and uncertainties of the 2008 global financial crisis, the worst one since the Great Depression. This could partially explain the extra dose of caution advised by the dissenting faction of the bench, as well as the overconfident exhibition of virtues derived from the agreement. Its portrayal as the cure to Colombia's ailments, even though if paradoxically, many of them have been historically caused by the voracious appetite for narcotic drugs of the United States of America, the true net winner of the USCTPA.

Interestingly, the dissenting opinion mentions rice. Specifically, that during the negotiations, frictions regarding this product were so high, that they even prompted the general manager of the Rice Federation, to stand up from the "room next door", for the simple reason that it seemed inevitable that the USCTPA was going to gravely affect a sector that was producing two million tons a year, with an accumulated growth of 35%.¹⁰⁹⁷ However, research on the white book of negotiations did not show record of such a statement. The truth is that in the final text of the agreement, rice emerged victorious and protected.¹⁰⁹⁸ Meanwhile, as projected by then Senator Jorge Enrique Robledo, hardly the same applied to sorghum and maize. Sorghum¹⁰⁹⁹ and maize¹¹⁰⁰ show an overall decrease in production since the USCTPA entered into force. Indeed, begging the question of the motivations behind the fierce American protection of maize during the negotiations, when the craze for maize in biofuels was all the rage.¹¹⁰¹

¹⁰⁹⁷ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 480

¹⁰⁹⁸ Federacion Nacional de Arroceros - Fedearroz 2023a.

¹⁰⁹⁹ Foreign Agricultural Service, *Colombia Sorghum Area, Yield and Production*, 2023b, <https://n9.cl/b0vk2>.

¹¹⁰⁰ Foreign Agricultural Service, *Colombia Corn Area, Yield and Production*, 2023a, <https://n9.cl/6q992>.

¹¹⁰¹ Belmond & Nevada *The craze for maize* 10/5 2007.

Finally, the dissenting opinion argued that because the USCTPA created an arbitration clause with special emphasis on investments, any controversies that might arise from its application and interpretation of obligations, bypass Colombian legislation and courts of law.¹¹⁰² This explains why there had not been any judicial challenges at the Colombian legal level, despite the asymmetrical nature of the agreement, and after more than a decade of its application. Also, since those types of dispute settlement mechanism include non-disclosure agreements, it makes it even harder to track those causes and decisions.

Such structures are a vivid example of how Free Trade Agreements, as well as Bilateral Investment Agreements operate when subscribed under the larger framework of the WTO. They hardly guarantee fundamental rights such as due process, defence, contradiction, equality and publicity. Instead, they contradict the principles of national judicial sovereignty, and fundamental human rights in favour of economic interests, since judicial arbitration is a historical evolution of the law of merchants.¹¹⁰³ This has been partly addressed by the Biden administration in the “Latin American Deal”¹¹⁰⁴ which in fact recognises the lion’s share that the United States continues to enjoy with developing countries that have signed FTA’s with it, due to precisely obligations derived from the Investor-State Dispute Settlements (ISDS).

The dissenting opinion concluded that contrary to what the executive, Congress and the conforming side of the Constitutional Court worked hard to portray, the United States did not

¹¹⁰² Corte Constitucional *Sentencia C-750-08* 24/7 2008. 461

¹¹⁰³ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 461

¹¹⁰⁴ Public Citizen, *Will Biden’s Proposed Latin America Deal Seek to Repair Past ‘Free Trade’ Failures?*, 2022, <https://n9.cl/iapej>.

relinquish anything, and ended up strengthened, while Colombia received what it already had, in exchange for opening its commercial borders¹¹⁰⁵ with dire consequences for agriculture, except for coffee and rice, in a clear violation of the Constitutional Principles of equality, reciprocity and sovereignty, contemplated in articles 150, 226 and 227.¹¹⁰⁶

6.8.6 Conclusions

Chapter VI proves that the USCTPA was a strategy devised within the context of Colombo-American relations, to tackle the issue of drug trafficking from an angle other than military might and interdictions, which by the turn of the century had failed miserably. Instead, it was an attempt to strengthening lawful economic relations which could deter the proliferation of narcotic drugs directed to the American market.

Moreover, chapter VI has highlighted many of the problems behind privileging what sometimes governments tacitly denominate as *superior* political and diplomatic interests over national ones, as an extension of neoliberal ideologies, which in the Colombo-American context of the USCTPA, even pushed the Constitutional Court, towards an approving ruling with a deficient technical and legal depth, to the point of ignoring the dispositions of the very body of law it had sworn to protect e.g. concrete control of constitutionality, and instead clinging to a somehow *weaker* argument of abstract control of constitutionality, relinquishing its jurisdiction and also resigning from allowing the application of a revolutionary and praised legal mechanism like the *tutela action*.

¹¹⁰⁵ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 470

¹¹⁰⁶ Corte Constitucional *Sentencia C-750-08* 24/7 2008. 470

In the end, the results seem to favour the notion of the US benefiting the most, and Colombia, receiving what it already had as a result of the USCTPA, which seem to maintain the previously exposed rationale of the dubious relationship between economic and trading agreements amongst disproportionally asymmetrical parties and development.

CHAPTER VII

CONCLUSIONS, FINAL REMARKS AND RECOMENDATIONS

7.1 Conclusions

This piece of research has deeply contributed to knowledge by managing to prove that for all its predominance in world's diets, rice remains a distressingly minor global commodity. This perhaps elucidates the need to contemplate the many forces surrounding it, other than economics and laws, and perchance also consider the cultural connections of billions of people around the world with this staple and way of life. And yet, for all human reliance on the cereal and stark political sensitivity, the rice trade has succeeded in circumventing much of the badly needed academic scrutiny, until now.

This thesis also highlights one undeniable reality, the fact that there is never enough rice to go around globally, which obviously replicates on overregulation at the national level, and the lack of private actors on the international trading side, two culprits that also impede a more efficient flow

of the cereal, making rice markets extremely flawed, thin, residual and prone to overreact to the slightest of disturbances, as reflected on the central role of the grain during the last global food crises.

When examined under the scope of the problems resulting from the marked dependency of the cereal on scarcer water resources in a world with disrupting weather patterns, and particularly the fragmented pace of production to population growth ratio, many trepidations about the world's future food security become inevitable.

Furthermore, this thesis demonstrates how rice's own characteristics are aggravated by the many protectionist practices surrounding global agricultural trade. Which clarifies many of the motives behind overregulation at the national level, in time turning rice into an instrument for the resolution of flops and conflicts between domestic policies, replicating on the handful of countries in which exports are concentrated and the diplomatic and political examinations that often must be considered before serving international rice markets.

Moreover, this research contributes to knowledge by showing that historically governments have tried endlessly to tread lightly when it comes to rice's political sensitivities. Possibly, it is what justifies why for decades, the international legal framework that allows the grain to be traded internationally has been based on barter, bilateral agreements, and government to government contracts rather than the GATT and eventually the WTO structures, and why for more than seventy years of multilateral trading system, this cereal has been mostly absent from negotiations.

Such indifference was later translated into the few cases within the WTO forum, and the even fewer rulings regarding the cereal, despite the many additional complexities brought about by the recent COVID-19 pandemic and the contravention of WTO law in the form of trade restrictions and prohibitions from some of the few largescale exporter of the cereal, underscoring that international politics and overregulation at the national level can be the main drivers of international rice prices, sometimes in a matter even more pronounced than inelasticity. Indeed, further substantiating the inability of the current multilateral regime to discipline agriculture in general and rice in particular.

Additionally, it is worth considering that while the international community led by the world's richest economies has an important role to play in the development of the global south, it would be naïve, and even obtuse to declare that the entirety of solutions must come from the borders of emerging nations.¹¹⁰⁷ This is very noticeable within the Latin American context, and partially explains the continent's nuanced relationship with the predominant power of the region, the United States. Colombia has not been the exception. Just a quick survey of the last one hundred years of history¹¹⁰⁸ on the matter,¹¹⁰⁹ provided a clear picture of such particularities.¹¹¹⁰ From the United States backed independence of Panama, to the APTDEA, the Plan Colombia and the USCTPA, they were all aimed at serving American geopolitical interests, even if it seemed that Colombia was getting something in return, albeit not remotely equal in value, all under the ever-present shadow of the current "cutthroat" capitalism fostered by mighty neoliberal ideologies which ironically even permeate the profitable though bloody business of narcotics.

¹¹⁰⁷ James A Robinson & Daron Acemoglu, *Why nations fail: The origins of power, prosperity and poverty* (Profile London, 2012).

¹¹⁰⁸ Stephen J Randall, *Colombia and the United States: Hegemony and interdependence* (University of Georgia Press, 1992).

¹¹⁰⁹ Arlene B Tickner, "Colombia and the United States: From counternarcotics to counterterrorism", *Current History* 102:661 (2003), doi:10.1525/curh.2003.102.661.77.

¹¹¹⁰ Mario A Murillo, *Colombia and the United States: War, unrest and destabilization* (Seven Stories Press, 2003).

The case of the USCTPA, serves as another example of this imbalanced quid pro quo relationship with the United States, as well as the undeniable accountability of the weak, corrupted, and mostly inoperative Colombian institutions. Even if one of the biggest successes of the agreement was the creation of the Colombian Committee for the Strengthening of Commercial Capabilities, and the American funding of more than sixty-four projects predominantly directed at making Colombian agriculture competitive.¹¹¹¹ In the end, corruption scandals¹¹¹² like the aforementioned *Agro Ingreso Seguro* (AIG)¹¹¹³ in which millions of dollars originally intended to such purpose were either squandered or embezzled¹¹¹⁴ highlight that feasible answers to under development, should result from a joint effort, in which the weakest economies finally understand that they play an equal part on both the problem and the solution.

The biggest irony in terms of the fragility of Colombian institutions rests on the fact that even if those funds had fulfilled their purpose, it would have been like throwing a grain of sand into the ocean. Since at times of the negotiations of the USCTPA, the American subsidies to agriculture amounted to 75 billion dollars, which equalled to almost 80% of Colombian GDP.¹¹¹⁵ Indeed, the United States was throwing Colombia a bone, and Colombia was eager to chew it up, even if it meant perpetuating its over reliance on exports of raw materials, and commodities of lower added value, as well as resigning itself to find sustainable and committed ways to develop, which

¹¹¹¹ Foreign Trade Information System 2022.

¹¹¹² Redacción Judicial, "¿Y la plata de Agro Ingreso Seguro?: esto es lo que se ha recuperado", *El Espectador*, 28/10 2020, <https://n9.cl/lsc08>.

¹¹¹³ Agrarian Secure Income

¹¹¹⁴ Redacción Judicial ¿Y la plata de Agro Ingreso Seguro?: esto es lo que se ha recuperado 28/10 2020.

¹¹¹⁵ The World Bank, *GDP growth (annual %) - Colombia*, 2022b, <https://n9.cl/ay6ii>.

arguably it is at the heart of the discussion regarding global trade in agriculture, especially within the Multilateral Trading System.

As for rice, it has been demonstrated that the preferential treatment that the crop received in the USCTPA agreement, was not due to the government, but to the organisation of private efforts, that realised very early on, the dangers and the impossibility to compete with their American counterparts on the same terms. Indeed, FEDEARROZ was so successful, that the protection for the rice sector was substantial, from the denomination of the grain as a sensitive product, to the negotiation of longer lapses for tariff relief, tariff rate quotas, safeguards, and grace periods, in addition to the extended nineteen-year protection period. Nevertheless, hardly the same protection applied to the sacrificed sectors of Colombian economy, inter alia: Colombian manufactures, intellectual property, pharmaceuticals, and arguably the ancestral knowledge of indigenous populations. When added to the exclusion of jurisdictional competence for Colombian courts of law for investments, it explains the mixed feelings toward the agreement. A word of caution though, such victory might be short-lived, since the preferential treatment this remarkable cereal received will expire completely by 2030, just a few years away.

This research has demonstrated that Plan Colombia and the USCTPA were examples of focalised strategies to combat the bigger issue of drug trafficking. As it is well known, this is a war that has been primarily waged by American governments regardless of their political spectrum for the past fifty years. For obvious reasons, such prolonged State policy became the guiding principle for the planning and execution of American foreign policy toward narcotic drug producing countries, which unsurprisingly are at lower levels of development.

Within the Colombian context, this has historically translated into a prolonged escalation of military, political, diplomatic, financial and legal efforts for the past thirty years. All searching to satisfy both national and international American interests under threat, due to the instability that a country like Colombia represented for the region, despite the effects that the disproportionate consumption of illegal drugs of Colombian origin continues to play in a broader spectrum.

The price tag for this intervention has been colossal in American dollars as well as in Colombian lives. This reinforces the general argument regarding how by the mid 2000s it had become more than evident that there was only so much that military interdictions and coercive initiatives could achieve in terms of the war against drugs. Therefore, APTDEA, Plan Colombia and eventually the USCTPA were extensions of this war.

Certainly, the agreement was meticulously framed by the Colombian government as an initiative aimed at improving the country's economic growth, even if that did not necessarily mean development. Also, if along the way the United States could find another market for its exports, it was a welcome gain. This became more than obvious by the estimates of 2.5 billion dollars' worth of growth in its GDP according to official numbers¹¹¹⁶ which do not repay the billions poured into Colombia over the years, to fight narcotics production, but it was a welcome start.

The protracted interpretation of the constitutional principle of national sovereignty under a scope that favours neoliberal trends in internationalisation, therefore praising agreements of trading and economic nature as the main tools for national development, economic growth, and the reduction

¹¹¹⁶ Office of the United State Trade Representative, *Overview of the U.S.-Colombia Trade Agreement*, 2010, <https://n9.cl/f0a32>.

of poverty and unemployment, has dominated constitutional assessment in Colombia for more than thirty years. Granted, this is the logical result of a constitution embedded in such ideologies, which hardly considered different paths to development, other than those that dominated the mainstream of international diplomatic relations during the last thirty years, including the creation of the WTO, the consolidation of the economic aspects of the European Union, and a plethora of agreements at the bilateral, regional and plurilateral levels.

Unquestionably, rice got caught in the middle, which somehow reflects on the ubiquitous influence of the cereal, even today, amid ever so complex scenarios of legal systems, foreign policy, diplomacy, and globalisation. Its presence is clear and directly related to issues as dissimilar as the geopolitics of recreational drugs. Interestingly, at least within the context of Colombo-American bilateral trading relations, it turned out victorious, unlike the situation for forty-seven years of GATT leading to the formation of the Multilateral Trading System.

Overall, it has been established that exporters and some unions had plenty more to win from the USCTPA, than those at the lower ends of the production, commercialisation and distribution chains, due to their bigger political influence. These results from the undeniable preferential treatment that agrarian sectors like coffee and rice received at the end of the agreement. Also, it propels questions regarding the purpose and effectiveness of institutions like Congress, and the highest bench of Colombian justice, the Constitutional Court. The Constitutional Court was allegedly willing to misinterpret the potential consequences of an agreement deemed deeply unequal, and willing to relinquishing its jurisdiction based on ideas that epitomised the rationales of current capitalism and neo-liberal ideologies. On this, the USCTPA serves as a perfect illustration of the trade-off of

sovereignty, fundamental human rights and civil liberties for political, economic, and geopolitical interests.

The case study of the USCTPA for bilateral trading relations, reinforces once more the complicated and multifaceted connexion between man and agriculture. For obvious reasons, and as exposed in this thesis, this relationship is even more nuanced when dealing with a cereal as predominant as rice, a staple and a way of life for more than 3.5 billion people. It also illustrates the concessions States must make when pressured by well-established and unionised sectors of their economy. Although, it begs the question of how willing would have been the Colombian government to protect rice agriculture out of its own accord. Arguably, if the rice federation had not done everything to “protect itself”, the chances are the story for Colombian rice agriculture would have turned out to be very different. Therefore, it is necessary to reflect on the many other sectors of the Colombian economy, who did not have the political influence of the rice federation, and thus got traded off during negotiations, in order to preserve so called “bigger interests” of Colombia as another piece in American geopolitics.

The fact that the rice producing sector managed to stay protected after the most ambitious international trading negotiation of Colombia in all its existence, highlights the political influence of the FEDEARROZ guild. This private Institution managed to assure a place in the room next door¹¹¹⁷ and consequently had an ample participation in the negotiations. In doing so and maybe unknowingly, scored for collaboration and most importantly, the Constitutional principle of freedom of association. In other words, the guild knew its rights as a legal person, took advantage

¹¹¹⁷ Pulecio 2005.

of them and manage to uphold them. Yet, considerations go out to all the other stakeholders who did not have a say in Colombia's future and fell through the cracks for lack of economic muscle and political influence.

As demonstrated, the 80s and 90s were some of the most challenging decades in Colombian history. Arguably that is why for the very first time, Colombian society rallied as a whole behind the need for change and demanded a transformation of the country from within. These clamours included the promulgation of a whole new constitution in 1991. Colombian integration to the global economy would not have been possible without the 1991 Constitution. Whereas in over one hundred years of the 1889 Constitution, only a few agreements indirectly covering matters of trade were signed, in a little over 30 years of the current Constitution, that number amounts to more than seventeen and counting.

It has been argued that this is the logical result of the neoliberal nature of the economic principles regulating those sections of the political carta, and all they entail. As such, international trade agreements entered by Colombia for the last three decades, and which include but are not restricted to APTDEA, Plan Colombia, and the USCTPA, have travelled the path laid by the current political carta, even if the relationship between economic growth, development and the wellbeing of Colombians as a result, continues to be questionable. In a way it could be argued that USCTPA was a necessity and a "lesser evil" so to speak amidst the political climate between the United States and Colombia, and their shared perspective on the failed war on drugs.

Paradoxically, the endless cycle of violence brought about by such conflict has meant funding for Colombia's overgrown military bureaucracy and inoperant institutions, even amidst a clear

compromise of its sovereignty at multiple levels and plenty of lives. One thing is certain though, current frameworks for trade in general and rice within the context of the USCTPA, can still be considered in words of Kym Anderson, “as another arm of foreign policy.”¹¹¹⁸

Finally, the story of rice agriculture in Colombia and the Ibagué Plateau is much more than the story of a cereal and the territory who has it as their staple. It is the story of a whole country and its people. It is a story of cooperation, hard work and strategic thinking. It is the story of a few who fight the odds and do what it takes to feed a country. It is also a story of love for the Tolima region, its abundant rivers and its sun washed soils. Even if somehow due to the very nature of the most important food in the history of mankind, it has been caught in geopolitics that exceeds the orbit of its picturesque landscapes, for better or for worst.

One thing is for certain though, agricultural trade despite its ever so complex networks and challenges, finds in rice many more to conquer amongst pressures of an ever-growing population that today just like more than thirteen thousand years ago, continue to depend on it for its survival. That is what the rice of the Ibagué plateau has in common with the world, and it propels one final question regarding how much in fact the human-rice relationship has really changed at its core during the last thirteen millennia.

As a result of the above Research questions have been answered as follows:

1. What is the nature of the legal framework that allows rice to be traded internationally? This thesis found that historically, international rice trade has circumvented most attempts to a

¹¹¹⁸ Anderson 2017.

multilateral discipline, and instead it continues to rely even to this day on overregulated arrangements between nations in the form of barter, bilateral trade agreements and government to government contracts, constantly exacerbating the well-known constraints regarding production and availability.

2. What are the legal effects of apparently imbalanced trade agreements between developed and developing nations for a staple like rice? This thesis also found that at least within the Colombian context, rice was only a piece in a much bigger geopolitical puzzle, that also includes the spaghetti bowl of world trade, meaning that national interests must yield to *superior* ones in the name of development as reflected on the negotiation, signing and incorporation to national law of the USCTPA, for better or for worst
3. What is the role of Colombian constitutional law in the rice trade amid the somehow recent integration of the country in the legal global economy? The Colombian Constitutional Court, and the Political Carta it sworn to protect have played a fundamental role in the integration of Colombia to the global legal economy, this spawns from the explicit mandate of the Constitution itself of submitting any international agreement entered by the country for constitutional assessment, to assuring, total compliance with national law, which is further proven by the sheer number of trade and economic related agreements entered by the country in the only thirty five years of its promulgation, in sharp contrast with its 1886 counterpart.

4. How do the integration of those agreements to Colombian law, via constitutional assessment fit in the entrenched neoliberal philosophies that have come to dominate legal systems and consider them as the main tools for development?” Undoubtedly, the once considered dogma of a direct correlation between trade and development for developing nations has gone through stark reinterpretations in later years. Nevertheless, by the time the 1991 Constitution was being discussed as well as at the beginning of negotiations of the USCTPA, seemed to have been considered the panacea for development, becoming the guiding rationale behind economic international relations, even if within the context of the USCTPA, was also highly related to superior geopolitical interests of the United States, and its failed war against drugs.

7.2 Final Remarks and Recommendations

Over the course of more than one hundred years, the legal and political background of the Colombian Republic rested on a constitution that left much to be desired in many aspects. Such shortcomings translated to economics and trade and made it hard for the country to position itself at the global sphere, instead perpetuating the overreliance on raw materials and primary goods for export especially coffee. The constitutional overhaul caused by the promulgation of the 1991 Political Carta rippled at every level of Colombian society and meant the renovation of the legal system as whole, including economics and trade under the influence of neoliberal narratives that came to define the very legal soul of the country.

For reasons previously discussed, the coexistence of neoliberal and social principles into one body of law was bound to cause ambivalence as to the weight conceded by the legal system to each, not to mention their respective enforcement. Granted, the 1991 geopolitical arena was entrenched with arguments pro liberalisation, globalisation and the unification of the world heralding “the end of history,”¹¹¹⁹ these influences were increasingly tied to narratives proclaiming that the expressway for development rested upon the spaghetti bowl of economic agreements at bilateral, regional and multilateral levels, which explains the proliferation of these treaties entered by Colombia during the last thirty plus years.

However, the relationship between economic growth and equal development¹¹²⁰ remains dubious at best. The trickle-down effect in economics has been reshaped¹¹²¹ in later years foreshadowing many uncertainties.¹¹²² Within the Colombian context it has translated into a sustained call for the revision¹¹²³ and in some cases the renegotiation¹¹²⁴, of many¹¹²⁵ if not all¹¹²⁶ the economic and commercial agreements signed since the promulgation of the 1991 Constitution. Colombia is not alone in this trend.¹¹²⁷ The renegotiation of the United Kingdom’s trade and economic relationships with the European Union amid Brexit¹¹²⁸, and the renegotiation¹¹²⁹ of the once named NAFTA

¹¹¹⁹ Francis Fukuyama, "The end of history?", *The national interest* n° 16 (1989).

¹¹²⁰ Tatyana P Soubbotina, *Beyond economic growth: An introduction to sustainable development* (World Bank Publications, 2004).

¹¹²¹ Philippe Aghion & Patrick Bolton, "A theory of trickle-down growth and development", *The review of economic studies* 64:2 (1997).

¹¹²² Joseph 2013.

¹¹²³ Roberto Casas Lugo, "Revisar, pero no renegociar: la petición del TLC con EE. UU.", *Portafolio*, 14/7 2022, <https://n9.cl/te8on>.

¹¹²⁴ José Manuel Álvarez, *La ruta para la renegociación del TLC*, 2022, <https://n9.cl/qh64c>.

¹¹²⁵ Federación Nacional de Arroceros Fedearroz, *Renegociar TLC y Acuerdo de la CAN, piden productores de arroz al concluir el XXXVI Congreso Nacional Arrocero*, 2017, <https://n9.cl/mjrc0>.

¹¹²⁶ Sebastian Montes, "¿Colombia realmente necesita renegociar sus tratados de libre comercio?", *Forbes Colombia*, 15/6 2022, <https://n9.cl/23l3e>.

¹¹²⁷ Giovanni Maggi & Robert W Staiger, "Optimal design of trade agreements in the presence of renegotiation", *American Economic Journal: Microeconomics* 7:1 (2015), doi:10.1257/mic.20120232.

¹¹²⁸ Meredith Crowley, Oliver Exton & Lu Han, "Renegotiation of trade agreements and firm exporting decisions: Evidence from the impact of Brexit on UK exports", *Society of International Economic Law (SIEL), Sixth Biennial Global Conference* (2018).

¹¹²⁹ William Reinsch & Catherine Tassin de Montaigu, *Does the United States Renegotiate Its Trade Agreements after They Are Signed?* (JSTOR, 2019).

agreement¹¹³⁰ during the Trump administration to name a few, has put such a possibility at the storefront of discussions.

Given these points, the so-called expressway for Colombian development has come in recent years under scrutiny, by being considered as counterproductive to competitiveness, equality¹¹³¹ and development, even within the rice producing sector¹¹³², the once dubbed “net-winner” of Colombo-American trade liberalisation. This somehow mirrors similar preoccupations from large consumers of rice like South Korea¹¹³³ and reinforces once more the deep relationship between the cereal and mankind after thirteen millennia.

Moreover, there is a profound argument to be made by recommending the re-evaluation of public policies and laws constructed around the entrenched notion that the main avenue for development rests on free trade agreements with most developed nations due to their recognisable economic and geopolitical interests and instead should be aimed at strengthening institutions at the national level, aspiring at constructing long-term solutions from within.

To put it another way, the very same Constitution provides the tools for action under articles 150.19 a,b,c,d when it commands the legislative branch to create the legal framework under which public credit should be organised, as well as the regulation of international exchange, tariffs and customs.

¹¹³⁰ Simon Lester & Inu Manak, "The rise of populist nationalism and the renegotiation of NAFTA", *Journal of International Economic Law* 21:1 (2018), doi:10.1093/jiel/jgy005.

¹¹³¹ Daniel Salazar Castellanos, *TLC de EE.UU. y Colombia: ¿se puede renegociar como dice Petro y qué puede cambiar?*, 2023, <https://n9.cl/nnrdf>.

¹¹³² Cristian Medina Atuesta, *Arroceros piden al Gobierno que renegocie los TLC y detenga importaciones del cereal*, 2021, <https://n9.cl/27e4a>.

¹¹³³ Byung Min Soon, Patrick Westhoff & Wyatt Thompson, "The impact of potential Korea-US free trade agreement renegotiation on the Korean rice market and trade", *Journal of Agricultural and Applied Economics* 51:3 (2019), doi:10.1017/aae.2019.8.

When these provisions are analysed in the light of article 334 mandating programmed state intervention for the functioning of the economy as an instrument for fulfilling the main goals of the state, it should be clear that if the institutions uphold their constitutional mandates there is still hope.

As a result of this, State institutions should not be so quick to abandon investments, and the overall strengthening of the agrarian economy based on past experiences riddled with corruption.¹¹³⁴

Quite the opposite, those past experiences should serve as a stark reminder of the fragility of Colombian institutions, the need for reinforcing them, and must be the main motivation to strive for positive outcomes. The conception of a mixed public and private structure including agricultural trading enterprises, mechanism for stockholding, commercialization and distribution that respects the Nairobi Package as well as article XVII: (a) of the AoA, still have the potential for good, which in the case of Colombian rice could mean in the long-run a basic assurance of food security amid undeniable fears of global supplies of foodstuffs due to climate change and the projected global demographical growth.

Finally, even if obvious that through ruling C-750/08 the Colombian Constitutional Court left much to be desired in safeguarding the Political Carta, along the way demonstrating its lack of technical expertise, and conceivably a political leniency protected under the argument of the “abstract control of constitutionality”, more than a decade has passed since the entering into force of the USCTPA. Thus, today there are plenty of factual elements that could allow for a revision of the decision that considers the now present objective and concrete matters on the grounds of

¹¹³⁴ Redacción Judicial *¿Y la plata de Agro Ingreso Seguro?: esto es lo que se ha recuperado* 28/10 2020.

Accord 02/2015-39-59-61 in conjunction with article 241 of the Constitution, when coupled with the fact that the highest bench of Colombian justice no longer houses the same magistrates, there is hope for change.

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