

WTO'S MC9: ANALYSIS OF THE FOOD SECURITY 'PEACE CLAUSE' TEXT

SYNOPSIS

The Peace Clause is time-limited (4 years) and partial in coverage (no inclusion of the WTO's Agreement on Subsidies and Countervailing Measures- ASCM). Countries can still be taken to dispute. It also has onerous and intrusive transparency and information requirements and conditions. Furthermore, in order to use it, countries have to effectively make an admission of 'guilt' - they have to notify that they have exceeded or are at risk of exceeding their very limited ceiling levels for trade-distorting domestic supports. Such an admission would not stand them in good stead after the 4-year 'Peace Clause' has lapsed!

If agreed to, this would have been a lost opportunity for the global community to right some of the problems in the current WTO rules in such a way that food security, the plight of small farmers across the developing world and the precariousness of their livelihoods could have potentially been supported by governments through public stockholding programmes. Most developing countries that had not provided trade-distorting domestic supports at the time of the Uruguay Round bound themselves at zero levels of such supports and today, remain constrained by these commitments. They only have a 10% *de minimis* allowance of the value of production of a crop.

This is a major imbalance in the context of the continued huge sums of domestic supports provided by the US (USD 130 billion in 2010) and the EU (79 billion Euros in 2009) to their producers.

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I. INTRODUCTION

1. The text for the Peace Clause that is not yet agreed to, but is being transmitted to the WTO's Ninth Ministerial Conference is extremely weak. Effectively, it will not shield countries providing public stockholding programmes from being challenged at the Dispute Settlement! This is because the Agreement on Subsidies and Countervailing Measures (ASCM) has not been included and countries can be challenged under this ASCM and GATT Article XVI on subsidies. Worrying too is para 3 that these programmes should not distort trade. Exporters could possibly sue developing countries on grounds that they have not been able to export to your markets because of these programmes.
2. In addition, the Peace Clause is only valid for 4 years. Although G33 Members had wanted it to be in force until a permanent solution has been found, the US has not agreed to this formulation.
3. Also worrying is mention that the Work Programme on this issue to obtain a permanent solution will be undertaken in the context of the 'broader post-Bali agenda'. This suggests that developing countries may find themselves in the position where they will have to pay a price in order to obtain either a renewal of the Peace Clause or to obtain a permanent solution. Some have speculated that this could be the way in which developing countries can be pressured in the future to allow for new issues to enter the WTO's negotiating agenda.
4. The Peace Clause also has onerous intrusive transparency and information requirements and conditions that would be very difficult for many developing countries to comply with. In addition, this extent of transparency and information is not required of developed countries even though they provide tens of billions of domestic supports under the Amber or Green Box! Furthermore, in order to use it, countries have to effectively make an admission of 'guilt' - they have to notify that they have exceeded or are at risk of exceeding their very limited ceiling levels for trade-distorting domestic supports. Such an admission would not stand them in good stead after the 4-year 'Peace Clause' has lapsed!
5. If agreed upon, this would have been a lost opportunity for the global community to right some of the problems in the current WTO rules in such a way that food security, the plight of small farmers across the developing world and the precariousness of their livelihoods could have potentially been supported by governments through public stockholding programmes. Most developing countries that had not provided trade-distorting domestic supports at the time of the Uruguay Round bound themselves at zero levels of such supports and today, remain constrained by these commitments. They only have a 10% *de minimis* allowance of the value of production of a crop.
6. This is a major imbalance in the context of the continued huge sums of domestic supports provided by the US (USD 130 billion in 2010) and the EU (79 billion Euros in 2009) to their producers (figures are according to these countries' latest WTO notifications, see Annex 1 on US and EU's notifications).



II. TEXTUAL ANALYSIS OF THE 'PEACE CLAUSE'

South Centre's analysis is in the boxes below.

JOB/TNC/29

25 November 2013

PUBLIC STOCKHOLDING FOR FOOD SECURITY PURPOSES

1. Provided that the conditions set out below are met, Members shall refrain from challenging through the WTO Dispute Settlement Mechanism, compliance of a developing Member with its obligations under Articles 6.3 and 7.2 (b) of the Agreement on Agriculture (AoA) in relation to support provided for traditional staple food crops¹ in pursuance of public stockholding programmes for food security purposes that are consistent with the criteria of paragraph 3, footnote 5, and footnote 5&6 of Annex 2 to the AoA when the developing Member complies with the terms of this Decision.

No ASCM and Article XVI Coverage

The Peace Clause should give real and effective coverage to developing countries providing public stockholding programmes from being challenged at the WTO's dispute settlement body. This text asks countries to refrain from taking other Members to the WTO's Dispute Settlement Body under the Agreement on Agriculture. This exposes developing countries to challenges under other WTO agreements. The Peace Clause must also give coverage from challenges through (to be inserted into para 1):

- Article XVI of GATT 1994 (subsidies); and
- WTO's Agreement on Subsidies and Countervailing Measures (ASCM).

The ASCM says that income or price supports provided by WTO Member governments should not cause adverse effects (Article 1.2 and Article 5). Adverse effects include 'serious prejudice to the interests of another Member' (Article 5c).

The ASCM enumerates several circumstances where serious prejudice may arise. One of these is that 'the effect of the subsidy is to displace or impede the imports of a like product of another Member into the market of the subsidizing Member'.

That is, if an exporting country deems that it should have been able to export (or export more) to a developing country with such programmes but cannot do so due to these

¹ This term refers to primary agricultural products that are predominant staples in the traditional diet of a Developing Member.



programmes, it can challenge the developing country at the WTO's dispute settlement body.

Therefore, despite having this 'Peace Clause', it would not be difficult for countries providing public stockholding programmes to be taken to the DSU - i.e. the 'Peace Clause' is not effective in giving coverage to developing countries.

Coverage Limited to 'Staple Crops'

The clause only gives coverage to government's public stockholding programmes in relation to staples crops - and even this is narrowly defined as 'primary agricultural products that are predominant staples in the traditional diet of a developing Member.' This is inadequate as diets are now changing, and developing country governments also provide income supports in sectors such as cotton, poultry and dairy etc. These are not staple crops. Instead, the coverage should be for all crops and agricultural commodities that are related to food security and rural development.

Food security and rural development are in the Doha Declaration mandate: Recall Doha Declaration para 13 'We agree that special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development.'

NOTIFICATION AND TRANSPARENCY

2. A Member benefiting from this Decision must:

- a. have notified the Committee on Agriculture that it is exceeding or is at risk of exceeding either or both of its Aggregate Measurement of Support (AMS) limits (the Annual Bound Total AMS or the *de minimis* level) as result of its programmes mentioned above;

This is asking countries to admit their guilt. After the four years, when the Peace Clause has expired, it would be difficult if not impossible for these countries to claim 'innocence' - that they are not contravening their WTO bound AMS / *de minimis* limits.

- b. have fulfilled and continue to fulfil its domestic support notification requirements under the AoA in accordance with document G/AG/2 of 30 June 1995, as specified in the Annex;
- c. have provided, and continue to provide on an annual basis, additional information by completing the template contained in the Annex, for each public stockholding programme that it maintains for food security purposes; and
- d. provide any additional relevant statistical information described in the Statistical Appendix to the Annex as soon as possible after it becomes available, as well as any information updating or correcting any information earlier submitted.



The notification and reporting conditionalities are overly burdensome and will make it difficult for countries to be eligible to use the Peace Clause. For example, countries are asked to provide information not only on what their administered or release prices are, and the volume of stocks purchased, but how they arrived at these figures! This could unnecessarily expose countries' domestic policies and priorities to being questioned in the WTO's Committee on Agriculture.

Such detailed notification and transparency requirements have not been requested of the developed countries. The information requirements should not be more than what developed countries have been asked to provide in their use of Annex 2 (Green Box) or AMS subsidies.

If such requirements are agreed to, it would mean that developed countries would actually enjoy Special and Differential Treatment regarding transparency and notification!

ANTI-CIRCUMVENTION/SAFEGUARDS

3. Any developing Member seeking coverage of programs under paragraph 1 shall ensure that stocks procured under such programs do not distort trade.

'Such programs do not distort trade' must be deleted because it is too broad and is another way of bringing countries to dispute settlement.

This language is also much broader than the language in the Agreement on Agriculture's Green Box (Annex 2) which says that the programmes 'meet the fundamental requirement that they have no, or at most minimal, trade distorting effects...'. This wording would be preferable to 'do not distort trade'.

4. This Decision shall not be used in a manner that results in an increase of the support subject to the Annual Bound Total AMS or the *de minimis* limits provided under programmes other than those notified under paragraph 1.

This is a highly problematic paragraph. It means that developing countries are agreeing to a standstill in their other programmes not notified under this Peace Clause, but which fall under the AMS or *de minimis* supports category.

CONSULTATIONS

5. A Member benefiting from this Decision shall upon request hold consultations with other Members on the operation of its public stockholding programmes notified under paragraph 1.

MONITORING

6. The Committee on Agriculture shall monitor the information submitted under this Decision and report annually to the General Council.



WORK PROGRAMME

7. Members agree to establish a work programme to be undertaken in the Committee on Agriculture to pursue this issue with the aim of making recommendations for a permanent solution.

8. In the context of the broader post-Bali agenda, Members commit to the Work Programme mentioned in the previous paragraph with the aim of concluding it no later than the 11th Ministerial Conference.

Mixing this issue with 'the broader post-Bali agenda' is problematic. This means that this issue will be negotiated ahead of the 11th Ministerial Conference together with other issues and G33 and developing country Members are likely to be asked to pay yet again, if they want a solution. At that stage, developing countries could be asked to pay by way of the entry of 'new issues' into the WTO eg. the Singapore issues or other new issues.

9. The General Council shall report to the 10th Ministerial Conference for an evaluation of the operation of this Decision, particularly on the progress made on the work programme.

10. This Decision will remain in force until the 11th Ministerial Conference, at which time we will decide on next steps in view of the General Council's further report on the operation of this Decision and of the Work Programme decided in paragraph 7.

The Peace Clause is valid only for 4 years till the 11th Ministerial Conference. This language does not guarantee that by this time, a permanent solution would have been found.



III. ANNEXES

Template

[Developing Member's name]

General information

1. Factual information confirming that DS:1 notifications and relevant supporting tables for the preceding 5 years are up-to-date (e.g. date and document details)
2. Details of the programme sufficient to identify food security objective and scale of the programme, including:
a. Name of the programme
b. Traditional staple food crop(s) covered
c. Agency in charge of implementation
d. Relevant laws and regulations
e. Date of commencement of the programme
f. Officially published objective criteria or guidelines
3. Practical description of how the programme operates, including:
a. Provisions relating to the purchase of stocks, including the way the administered acquisition price is determined
b. Provisions related to volume and accumulation of stocks, including any provisions related to pre-determined targets and quantitative limits
c. Provisions related to the release of stocks, including the determination of the release price and targeting (eligibility to receive procured stocks)
4. A description of any measures aimed at minimising production or trade distortive effects of the programme
5. Statistical information (as per the Statistical Appendix below)
6. Any other information considered relevant, including website references

STATISTICAL APPENDIX (PER CROP) (DATA FOR THE LATEST THREE YEARS)

	Unit	[Year 1]	[Year 2]	[Year 3]
[Name of the crop]				
a. Opening balance of stocks				
b. Annual purchases under the programme (value)				
c. Annual purchases under the programme (quantity)				
d. Annual releases under the programme (value)				
e. Annual releases under the programme (quantity)				
f. Purchase prices				
g. Release prices				
h. End-year stocks				
i. Total production (quantity)				
j. Total production (value)				
k. Information on population benefiting from the release of this crop and quantities released:				
- Estimated number of beneficiaries at national level and, if possible, at sub-national level				
- Quantity released to the beneficiaries at the national level and, if possible, at the sub-national level				
- Other				
l. In the case of government aid to private storage, statistics on the support granted and any updated statistics				
m. Total imports (value)				
n. Total imports (quantity)				
o. Total exports (value)				
p. Total exports (quantity)				

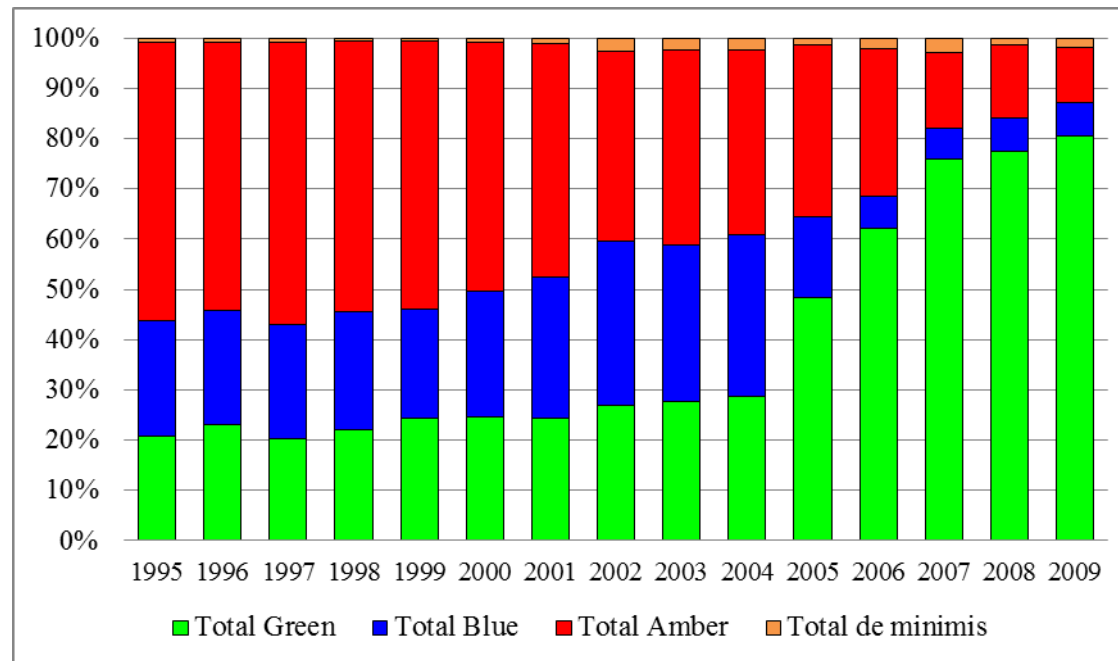
TABLE: EU DOMESTIC SUPPORT (BASED ON WTO NOTIFICATIONS)

Figures in EUR million

Marketing year starting in ...	Total Amber	Total Blue	Total de minimis	OTDS	Total Green	Total domestic support
1995	50,181	20,846	825	71,852	18,779	90,631
1996	51,163	21,521	761	73,445	22,130	95,576
1997	50,346	20,443	733	71,521	18,167	89,688
1998	46,947	20,504	525	67,975	19,168	87,143
1999	48,157	19,792	554	68,502	21,916	90,419
2000	43,909	22,223	745	66,876	21,848	88,724
2001	39,391	23,726	1,012	64,128	20,661	84,790
2002	28,598	24,727	1,942	55,266	20,404	75,670
2003	30,891	24,782	1,954	57,626	22,074	79,700
2004	31,214	27,237	2,042	60,493	24,391	84,884
2005	28,427	13,445	1,251	43,123	40,280	83,404
2006	26,632	5,697	1,975	34,304	56,530	90,833
2007	12,354	5,166	2,389	19,909	62,610	82,519
2008	11,796	5,348	1,083	18,226	62,825	81,051
2009	8,764	5,324	1,402	15,489	63,798	79,288



EU - Distribution of domestic support



The EU billion. The OTDS cut to be undertaken is 80% (Rev.4, para 3a) and thus the bound level will be **€22 billion**.

However, in EU's marketing year 2008/2009, the actual or applied OTDS of the EU was **€15.5 billion**, which was below the bound level. Thus, the EU need not cut its actual OTDS under the new rules. It would only be cutting "water."

See also South Centre Analytical Note 'Present Situation of the WTO Doha Talks and Comments on the 21 April Documents', April 2011

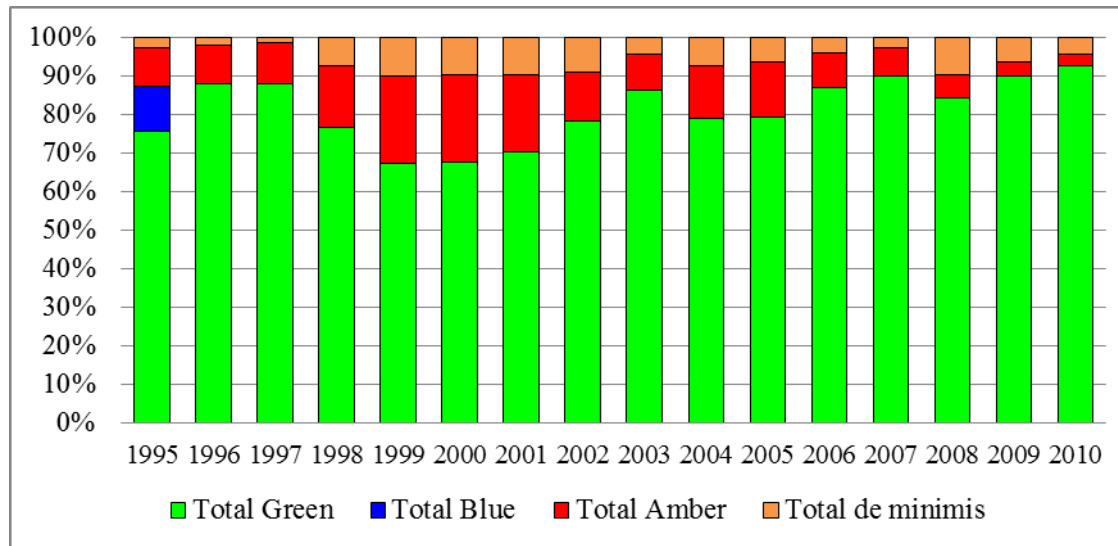
**TABLE : US DOMESTIC SUPPORT (BASED ON WTO NOTIFICATIONS)**

Figures in USD million

Marketing year starting in ...	Total Amber	Total Blue	Total de minimis	OTDS	Total Green	Total domestic support
1995	6,214	7,030	1,643	14,887	46,041	60,928
1996	5,898	-	1,175	7,072	51,825	58,897
1997	6,238	-	812	7,050	51,252	58,302
1998	10,392	-	4,750	15,142	49,820	64,962
1999	16,862	-	7,435	24,297	49,749	74,046
2000	16,843	-	7,341	24,184	50,057	74,241
2001	14,482	-	7,054	21,536	50,672	72,208
2002	9,637	-	6,690	16,328	58,322	74,650
2003	6,950	-	3,237	10,187	64,062	74,249
2004	11,629	-	6,458	18,087	67,425	85,512
2005	12,943	-	5,980	18,923	72,328	91,251
2006	7,742	-	3,601	11,343	76,035	87,378
2007	6,260	-	2,260	8,520	76,162	84,682
2008	6,255	-	6,697	12,952	81,585	94,537
2008 revised	6,255	-	9,971	16,226	86,218	102,444
2009	4,267	-	7,258	11,525	103,214	114,739
2010	4,119	-	5,665	9,784	120,531	130,315



US - Distribution of domestic support



The US' current bound level of OTDS is US\$ 48.3 billion. The 60% cut it is asked to undertake (para 3b, Rev.4) will bring the bound OTDS level to \$14.5 billion. However, the applied OTDS was only US\$ 9.78 billion in 2010 .

In the meantime, total domestic support soared from US\$ 60.9 billion to US\$ 130.3 billion between 1995 and 2010.

See also South Centre Analytical Note 'Present Situation of the WTO Doha Talks and Comments on the 21 April Documents', April 2011



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