



## **THE WTO'S BALI MINISTERIAL AND FOOD SECURITY FOR DEVELOPING COUNTRIES: NEED FOR EQUITY AND JUSTICE IN THE RULES ON AGRICULTURAL SUBSIDIES**

*The following is a report that has drawn upon discussions in two Expert Group Meetings on the Multilateral Trading System organised by the South Centre. This is one section of a larger integrated report on issues that are of concern to developing countries in the preparation of the WTO's 9<sup>th</sup> Ministerial Conference in Bali in December 2013.*

*The food security issue linked to public stockholding in the WTO's Agreement on Agriculture is one of the key issues being negotiated. It has major implications for food security and agriculture in developing countries.*

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### **A. BACKGROUND TO THE ISSUE**

An important issue for the WTO's Bali Ministerial meeting relates to one significant aspect of food security for developing countries, which is brought up in a proposal by the Group of 33 developing countries within the framework of the Doha Round multilateral trade negotiations.

According to the WTO Agreement on Agriculture which was negotiated during Uruguay Round and currently in force, public stockholding for food security purposes is included as one of the items under Green Box, with certain conditions. The Green Box (described in Annex 2 of the Agreement in Agriculture) sets out domestic support measures that are considered minimally or non-trade distorting, and WTO Members are allowed to take recourse to these measures without limitations. In fact, government spending under these measures can be increased to any extent. However in the case of public stockholding, a significant condition, causing enormous problems to Developing Countries, has been attached.



One condition is that food purchases by the government shall be made at current market prices and sale from public stockholding shall be made at prices not lower than current domestic market price. It is also stipulated in this context that the difference between the procurement price and external reference price should be accounted for in the calculation of Aggregate Measurement of Support (AMS), or so-called “trade distorting domestic support.” This stipulation negates the objective of including “public stockholding for Food Security purposes” in the Green Box, since effectively the difference between procurement price and the external reference price is treated as a subsidy to the farmer and included in the AMS. This is especially because the external reference price has been defined as the international price prevalent on average in 1986-88. Food prices internationally, as well as domestically, have increased very significantly since then. Thus, this stipulation limits the ability of developing countries to implement schemes to assist their small farmers.

The main element of the G-33 proposal is that acquisition of stocks of foodstuff by developing countries with the objective of supporting low-income or resource-poor producers should not be included in the calculation of AMS. The G33 proposal if adopted would thus enable developing countries to formulate or implement such schemes to help their poor producers or families without the present restraints placed by the WTO agriculture rules. It would advance the cause of national food security, promotion of small farmers’ livelihoods as well as fulfilling the Millennium Development Goals of reducing hunger and poverty.

We thus consider this proposal to be worthy of support and of great importance in contributing to the success of the WTO’s 9<sup>th</sup> Ministerial Conference and to the reputation of the WTO as an organisation that is concerned with development and poverty reduction.

## **B. THE IMPORTANCE OF PUBLIC STOCKHOLDING PROGRAMMES IN DEVELOPING COUNTRIES**

This issue is of major importance not only in terms of trade but also the livelihoods of millions of small farmers and the food security of people in developing countries. The acquisition of food stocks has always been an important instrument for development and was also used by many developed countries during their development process. It remains an important policy tool for developing countries for the following reasons:

- (1) In the face of volatility of food stocks on the global market today and fluctuations in global food prices, building national reserves has been widely acknowledged to be a critical part of developing countries’ food security strategy. Today’s global food market is structurally different from the market when the Uruguay Round was completed. In the 1990s and early 2000s, food on the global market was cheap and stocks were plentiful. It is no longer so.
- (2) Acquiring surpluses from some regions of the country and sending these supplies to other regions of the country that are food deficit has been and remains an important food security instrument for developing countries.
- (3) Many developing countries continue to struggle with widespread rural poverty. At least 1.5 billion individuals depend on small-scale farming for



their livelihoods<sup>1</sup>. This remains a major issue especially when the share of the population engaged in agriculture continues to be significant and the industrial or services sectors cannot provide sufficient employment. For broad-based development to take place, countries must ensure that the living standards and purchasing power of the majority can be increased. Governments' programmes acquiring foodstuffs at administered prices are therefore an important avenue whereby resource poor farmers' incomes can be stabilised and even guaranteed.

- (4) Article 11 of the International Covenant on Economic, Social and Cultural Rights imposes on States three levels of obligations in the realization of such right: to respect existing access to adequate food, to protect and to fulfil the right to food; they 'must facilitate it by proactively strengthening people's access to and utilization of resources and means to ensure their livelihood, including food security'<sup>2</sup>. The adoption of the G33 proposal will be instrumental to the realization of the human right to food. Preserving the current situation under the Agreement on Agriculture might, in fact, force WTO members to violate their human rights obligations.

### **C. THE G33 PROPOSAL TO CORRECT THE PRESENT TREATMENT OF PUBLIC STOCKHOLDING**

At present "**Public Stockholding for Food Security Purposes**" is included in the Green Box, the category of subsidies that are minimally or non-trade distorting. There are many other items also in this Green Box, including measures to protect the environment and subsidies to farmers that are not directly tied to production, most of which are used by the developed countries, which provide very large amounts of subsidies under this Box. WTO member countries are allowed to provide all these other Green Box subsidies without limit. However only in the case of the Public Stockholding for Food Security Purposes does the Agriculture Agreement place the condition that the difference between the acquisition price and the external reference price should be accounted for in the AMS.

This treatment of the developing countries' support for public stockholding is discriminatory and there is thus much logic in the G33 proposal not to count this expenditure as part of the trade distorting subsidy which goes into the calculation of AMS. Just like the treatment for other Green Box measures such as decoupled supports, insurance, environmental protection and other support instruments provided by developed countries under the 'Green Box', Public Stockholding for Food Security Purposes should all the more be treated as a Green Box measure without any conditions attached to it.

It is important and pertinent to note that the G33's proposal (JOB AG/22 13 November 2012) is not a new proposal only recently formulated by the group. In fact the proposal reproduces a part of the last version of the WTO's Doha agriculture modalities text of 6 December 2008

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<sup>1</sup> See 'The right to food. Seed policies and the right to food: enhancing agrobiodiversity and encouraging innovation', A/64/170, 23 July 2009, p. 9.

<sup>2</sup> Id. p. 4.



(TN/AG/W/4/Rev.4, Annex B). The text on this issue had been included by the Chair of the Agriculture negotiations in this modalities draft, without square brackets, denoting that it enjoyed consensus and that the text on this issue had there was already ‘stabilised’.

The G33 proposal therefore is being put forward as a text that had already been agreed to by the membership, and that should be part of an “early harvest” of the Doha work programme.

The proposal is also in line with the 2001 Doha Ministerial mandate and the subsequent mandate from the 2005 Hong Kong Ministerial recognising the need of developing countries to safeguard food security, rural livelihoods and rural employment

The G33 proposal would also provide a solution for the discrimination in the way the Agreement on Agriculture rules stipulate how the AMS is to be calculated when developing countries undertake public stockholding programmes. The present formula in the Agreement leads to an artificial and inflated figure, making it very difficult for developing countries to provide for or to implement these programmes in an adequate manner or to an adequate extent. The reasons for this problem is that prices of agricultural commodities, especially staple foods, and including vegetables and meats, have increased manifold, in some cases by three or four or more times, compared to the period when the Uruguay Round was negotiated. Yet the benchmark used to calculate the AMS supports as stipulated by the Agreement is still the prices of 1986 – 1988. Thus there would be a very significant difference between the prices at which the government presently purchases food items from the farmers or the traders, and the reference prices which are based on 1986-88 levels. Such large price differences would be used to count the amount of subsidies. With this type of calculation, which is clearly unfair, the government schemes could easily exceed the maximum level of AMS or any *de minimis* that the developing countries could have.

This is especially because most developing countries declared zero or low amounts of AMS in their Uruguay Round schedules, as they were too poor to provide subsidies in the past periods and their negative support was not reflected in their AMS schedules. Thus many of them have to rely on the *de minimis* subsidies (which are limited only to 10% of the production value for the majority of developing countries, and 8% in the case of China). The G33 proposal sidesteps these problems by making developing countries’ public stockholding programmes a Green Box measure without any conditions thereby bringing this Green Box measure in line with other Green Box measures largely used by Developed Countries. This implies that the Developing Countries will not have to restrict their Public Stockholding programmes fearing that they may breach their 10% *de minimis*.

#### **D. NEED TO CORRECT IMBALANCE IN THE TREATMENT OF SUBSIDIES**

At a systemic level, the proposal in its original form, if accepted, would have injected a small dose of ‘equity’ in the Agreement on Agriculture. A major and glaring loophole created in the Uruguay Round’s Agreement on Agriculture to the benefit of the developed countries was the ‘Green Box’ (or Annex 2 of the Agreement on Agriculture). The Green Box allows countries to provide a range of support programmes in agriculture, and these supports can be provided without limits. However, the programmes elaborated upon under the Green Box (Annex 2) are those provided by developed countries. They include direct payments to producers,



decoupled income support (supports given to landowners whether or not they produce as these subsidies are not tied to production); insurance payments of various forms and structural adjustment assistance to retiring producers or resource retirement programmes. The programmes that developing countries provide – government purchases from producers at administered prices-- though included in the Green Box, has to be ‘counted’ under a country’s AMS (footnote 5 of Annex 2), if the administered price is more than the external reference price, determined on the basis of 1986-88 prices.

Thus, the current Agreement on Agriculture imposes a triple jeopardy on developing countries. First, a subsidy is alleged when foodstuffs are procured from low-income or resource-poor producers at an administered price by artificially comparing this price with 1986-88 prices. This is most inappropriate. Second, in some cases, the subsidy is calculated on the total production and not on the quantity actually procured, which also inappropriately magnifies the amount of the alleged subsidy (see Box below). Third, this alleged subsidy is required to be counted as a trade distorting subsidy, whereas huge and real subsidies given by developed countries to their farmers under similar or equivalent programmes are not to be counted as a trade distorting subsidy.

This inequity in the rules is further compounded by the fact that most developing countries bound themselves at zero AMS in the Uruguay Round (this was the case for 61 out of 71 developing countries when the WTO came into effect). Since then, most acceding developing countries have also had to bind their AMS at zero. Those developing countries which have declared providing some AMS in fact only provided very small amounts due to their fiscal limitations. As a result, developing countries effectively bound themselves to not being able to provide ‘trade-distorting’ (AMS) domestic supports aside from the ‘de minimis’ amount.

In stark contrast, developed countries in the Uruguay Round declared high levels of AMS. Their Uruguay Round commitment was a reduction of AMS supports by only 20%, over the implementation period of 6 years 1995 – 2001. Since 2001, there is no commitment for them to reduce their AMS. After reductions, at the end of its Uruguay Round implementation, the US has a bound AMS ceiling of USD 19 billion. The EU (27) has a bound AMS ceiling of 72 billion euros.

Since the understanding in the Uruguay Round is that the developed countries would have to progressively reduce their AMS, there has been a move by the major developed economies to shift more of the supports to the Green Box, while maintaining very high levels of their overall subsidies. WTO data show that the total domestic support of the United States grew from US\$61 billion in 1995 (of which \$46 billion was in the Green Box) to US\$130 billion in 2010 (\$120 billion in the Green Box). The European Union’s domestic support went down from 90 billion euro in 1995 (19 billion in the Green Box) to 75 billion euro in 2002 and then went up again to 90 billion in 2006 and 79 billion in 2009 (of which 64 billion euro was in the Green Box). A broader measure of farm protection, known as total support estimate, which is used by the OECD in its reports on agricultural subsidies, shows the OECD countries’ agriculture subsidies soared from US\$350 billion in 1996 to US\$406 billion in 2011.

In sum, while those developing countries declaring zero trade distorting domestic supports were locked into providing zero amounts of supports apart from the 10% de minimis product-



specific AMS), developed countries providing large amounts of AMS could still continue doing so with a 20% reduction, while also moving large parts of the subsidies to the Green Box.

During the negotiations at the WTO, several WTO members, mostly developed countries, have argued against the G33 proposal, with some stating that it might lead to a distortion of trade. They have sought to drastically narrow the scope of the proposal, and to attach many conditions. One of the suggestion is to provide an interim measure, in particular a peace clause (i.e. that there be no dispute settlement cases taken against a country undertaking public stocktaking) for a limited period e.g. two or three years.

The prevention of a permanent solution along the lines of the G33's original proposal would lead to a lost opportunity to attaining some small amount of re-balancing to an iniquitous Agreement. If such an interim 'peace clause' solution is accepted, it should only expire upon the conclusion of the agricultural negotiations mandated under Art. 20 of Agreement on Agriculture in accordance with para 13 of the Doha Ministerial Declaration and a permanent solution along the lines of the original G33 proposal has been found. It should also not be accompanied by cumbersome conditions that would reduce its usefulness when it is put into operation. In addition, the Peace Clause should cover any dispute arising from the Agreement on Agriculture as well as the Agreement on Subsidies and Countervailing Measures (ASCM).



### ***Annex: Distortions in Calculations Pertaining to Acquisition of Foodstocks***

If a fair method of estimating subsidies was used, when a government procures from producers, the subsidy amount should be calculated as the difference between the government's procurement price (administered price) and the current market price, multiplied by the volume the government had actually purchased. This, however, is not the formula in the Agreement on Agriculture. Annex 3 paragraph 8 states:

*'Market price support shall be calculated using the gap between the fixed external reference price and the applied administered price multiplied by the quantity of production eligible to receive the applied administered price.'*

- The fixed external reference price was fixed upon the conclusion of the Uruguay Round. It is the average f.o.b. (free on board) price that has been notified by a country for a product for 1986 – 1988. Due to the time that has lapsed, this price is often much lower than the present price.
- The applied administered price can be the acquisition price announced by the government in advance. This is the price paid by the government to producers when they would sell the product directly to the government.
- The 'production eligible to receive the applied administered price' has been interpreted by some as 100% of total production in a country (as illustrated in the calculations on [http://www.wto.org/english/tratop\\_e/agric\\_e/ag\\_intro03\\_domestic\\_e.htm](http://www.wto.org/english/tratop_e/agric_e/ag_intro03_domestic_e.htm)). That is, even if a government only procures only a small portion of a product from producers, they have to calculate the AMS supports as if they had provided price supports for the entire domestic production of that product.

The end result is that the amount of subsidy attributed to the government is not what that government has actually provided as subsidy, but a much bigger, inflated figure. With these rules, it is almost inevitable that developing countries will surpass their allowed 10% product-specific de minimis, even if they procure only very small volumes of a product.