



## **IMPROVING THE BALI PEACE CLAUSE ON PUBLIC STOCKHOLDING FOR FOOD SECURITY**

### **SYNOPSIS**

Since Bali and particularly in the last few months, there has been much attention on the Decision Ministers had taken at the WTO's Bali Ministerial Conference (2013) on Public Stockholding for Food Security Purposes.

At Bali, Ministers had agreed to a Peace Clause for existing Public Stockholding programmes provided by developing countries for food security purposes. I.e. if they have these programmes, countries should not be brought to the WTO's dispute settlement if they are going beyond their domestic support commitments under the WTO's Agreement on Agriculture rules.

The key issue raised recently has been the duration of the Peace Clause, and ambiguity in the language as to whether it lasts only till 2017 or beyond 2017 if a permanent solution has not been found. Yet, despite this headline issue, there are also other very important areas in the text of the Peace Clause that are problematic, and especially for countries that do not have these existing programmes. Some changes can include:

- 1) Delete 'existing' programmes' in paragraph 2 so that all countries can benefit from this Peace Clause.
- 2) Expand 'traditional staple food crops'. Ideally, it should be replaced by 'agricultural commodities that are related to food security and rural development' (since this is provided for in the Doha mandate).
- 3) The transparency conditions should be reduced and should not be in addition to what developed countries have to do.
- 4) Paragraph 4 on 'do not distort trade' should be deleted. At the least, it should be softened.
- 5) The Public Stockholding Peace Clause should also give the same coverage from dispute settlement challenges to developing countries as Article 13 of the Agreement on Agriculture had provided the developed countries.

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**TABLE OF CONTENTS**

I.	Introduction.....	3
II.	The Peace Clause only covers ‘existing’ public stockholding programmes (para 2) .....	3
III.	Coverage of the Peace Clause is limited to ‘traditional staple food crops’ (para 2).....	4
IV.	Onerous transparency conditions (para 3).....	4
V.	Public stockholding programmes must not distort trade (para 4) .....	5
VI.	Countries could still be taken to the WTO’s Dispute Settlement despite having the Peace Clause .....	5
VII.	Recommendations .....	6



## **I. Introduction**

1. Since Bali and particularly in the last few months, there has been much attention on the Decision Ministers had taken at the WTO's Bali Ministerial Conference (2013) on Public Stockholding for Food Security Purposes.
2. At Bali, Ministers had agreed to a Peace Clause for existing Public Stockholding programmes provided by developing countries for food security purposes. I.e. if they have these programmes, countries should not be brought to the WTO's dispute settlement if they are going beyond their domestic support commitments under the WTO's Agreement on Agriculture rules.
3. The key issue raised has been the duration of the Peace Clause, and ambiguity in the language as to whether it lasts only till 2017 or beyond 2017 if a permanent solution has not been found.
4. Yet, despite this headline issue, there are also other very important areas in the text of the Peace Clause that are problematic, and especially for countries that do not have these existing programmes.
5. The following are comments suggesting other improvements that can be made to the Peace Clause.

## **II. The Peace Clause only covers 'existing' public stockholding programmes (para 2)**

6. Paragraph 2 of the Peace Clause says that 'Members shall refrain from challenging through the WTO Dispute Settlement Mechanism, compliance of a developing Members... in pursuance of public stockholding programmes for food security purposes existing as of the date of this Decision...'.
7. That is, countries without public stockholding programmes by 7 December 2013 will not be covered by the Peace Clause if they introduced these programmes after 7 December 2013. For countries already providing public stockholding programmes, any new programmes they may want to introduce after 7 December 2013 will also not be covered by the Peace Clause.
8. Note that footnote 26 of the Peace Clause says that 'This Decision does not preclude developing Members from introducing programmes of public stockholding for food security purposes in accordance with the relevant provisions of the Agreement on Agriculture'. This means that countries can introduce new public stockholding



programmes in line with their Agreement on Agriculture (AoA) commitments. However, these new programmes would not be covered by the Peace Clause.

9. This is a major inequity. There are many countries which do not have such programmes or only have them in very limited ways, but may decide that they want to introduce these programmes at a later stage. It would only be fair that if they wanted to do so, they would be covered by the Peace Clause.

### **III. Coverage of the Peace Clause is limited to 'traditional staple food crops' (para 2)**

10. The Peace 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'.
11. 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.'

### **IV. Onerous transparency conditions (para 3)**

12. A Member may benefit from the Peace Clause only when it has notified to the WTO's 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 (public stockholding) programmes...'
13. There is also a very detailed template in the Annex that countries must fill in every year. This goes far beyond the notification requirements of the developed countries' domestic supports. This is tantamount to asking countries to admit their guilt and opens the way for countries to be vulnerable to be taken to dispute settlement, for instance, under the ASCM.



**V. Public stockholding programmes must not distort trade (para 4)**

14. Paragraph 4 notes that 'Any developing Member seeking coverage of programs under paragraph 1 shall ensure that stocks procured under such programs do not distort trade.'
15. This language is extremely broad, and 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...'. (The Green Box is where most developed countries' agricultural subsidies have been classified).
16. This sentence should be deleted or it could make the Peace Clause ineffective -- it would not be so difficult for an exporting country to claim that its exports have been impeded because of a country's public stockholding programme.

**VI. Countries could still be taken to the WTO's Dispute Settlement despite having the Peace Clause**

17. The Agreement on Subsidies and Countervailing Measures (ASCM) is not covered by this Peace Clause. I.e. countries providing public stockholding programmes could be taken to dispute settlement under the ASCM.
18. 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).
19. 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 programmes, it may be able to challenge the developing country at the WTO's dispute settlement body under the ASCM.
20. It is important to note that in the Peace Clause that was provided to mostly developed countries in the Uruguay Round (Article 13 of the Agreement on Agriculture), countries were provided coverage from being challenged under both the Agreement on Agriculture and the ASCM.



## VII. Recommendations

- i.* Delete 'existing' programmes' in paragraph 2 so that all countries can benefit from this Peace Clause.
- ii.* Expand 'traditional staple food crops'. Ideally, it should be replaced by 'agricultural commodities that are related to food security and rural development' (since this is provided for in the Doha mandate). This change would be necessary to cover for instance, public stockholding programmes in cotton which some African countries do have. Or at the least, the word 'traditional' should be deleted so that it takes into account the issue of changing diets and new foods that have become staples in recent times.
- iii.* The transparency conditions should be reduced and should not be in addition to what developed countries have to do.
- iv.* Paragraph 4 on 'do not distort trade' should be deleted. At the least, it should be softened to say that these programmes are for food security and have 'no or at most minimal trade distorting effects' (which is the criteria for green box programmes).
- v.* The Public Stockholding Peace Clause should also give the same coverage from dispute settlement challenges to developing countries as Article 13 of the Agreement on Agriculture had provided the developed countries. Article 13 covered countries from challenges under the Agreement on Agriculture, and also the relevant parts of the ASCM, and the GATT.



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Chemin du Champ d'Anier 17  
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Switzerland  
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**SOUTH  
CENTRE**

**Chemin du Champ d'Anier 17  
Case postale 228, 1211 Geneva 19  
Switzerland**

**Telephone: (41 22) 791 8050**

**Fax: (41 22) 798 8531**

**Email: [south@southcentre.org](mailto:south@southcentre.org)**

**Website:**

**<http://www.southcentre.org>**