

## **WTO's MC10: Agriculture Negotiations- Public Stockholding**

Public stockholding programmes have over the past decades proven themselves to be very effective instruments for supporting domestic producers in agricultural production. Studies have shown that in fact, countries that are still in the process of development, where markets are not well developed, need such public stockholding programmes to support their farmers.

Many developing countries do have these programmes. This non-exhaustive list includes Africa (e.g. Botswana, Egypt, Ghana, Kenya, Malawi, Morocco, Tunisia, Zambia, Zimbabwe); the Middle East (e.g. Jordan, Saudi Arabia) and Asia (e.g. Bangladesh, India, Indonesia, Nepal, Sri Lanka, China, Philippines).

On 24 November 2015, the G33 submitted a new proposal (WT/MIN(15)/W/22; or JOB/AG/54), suggesting an amendment to the Agreement on Agriculture so that it contains a new Annex 6. This Annex 6 would give coverage to developing Members and LDCs' current and future public stockholding for food security programmes.

The G-33's proposal, if adopted as the permanent solution, will be a significant contribution to the improvement of international trade rules for food security.

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## **PUBLIC STOCKHOLDING**

At the Ninth Ministerial Conference in Bali (6 December 2013), a Ministerial Decision (WT/MIN(13)/W/10) was agreed to in the area of Public Stockholding for Food Security Purposes, also called the 'Peace Clause'. This decision was an interim solution, pending agreement on a Permanent Solution.

On 27 November 2014, WTO Members agreed to some changes to the December 2013 Peace Clause Decision, notably that if the issue public stockholding for food security purposes is not agreed and adopted by the 11<sup>th</sup> Ministerial, the Peace Clause '*shall continue to be in place until a permanent solution is agreed and adopted*'.

Furthermore, the November 2014 Decision also expedited efforts towards concluding the permanent solution: '*Members shall engage constructively to negotiate and make all concerted efforts to agree and adopt a permanent solution on the issue of public stockholding for food security purposes by 31 December 2015*'.

Given this language from the November 2014 Decision, text for a Permanent Solution in Public Stockholding is on the table in the Nairobi Ministerial.

### ***Importance of Public Stockholding When Countries are Still Developing***

Public stockholding programmes have over the past decades proven themselves to be very effective instruments for supporting domestic producers in agricultural production. Studies have shown that in fact, countries that are still in the process of development, where markets are not well developed, need such public stockholding programmes to support their farmers.

Many developing countries do have these programmes. This non-exhaustive list includes Africa (e.g. Botswana, Egypt, Ghana, Kenya, Malawi, Morocco, Tunisia, Zambia, Zimbabwe); the Middle East (e.g. Jordan, Saudi Arabia) and Asia (e.g. Bangladesh, India, Indonesia, Nepal, Sri Lanka, China, Philippines).

The irony is that despite developed countries' opposition or deep reluctance to reform the current WTO rules to allow for these Public Stockholding programmes by developing countries, they themselves had used these programmes to build their own agricultural sector and their producers. For some, these programmes lasted over several decades (see box below).

**Developed Countries' Use of Public Stockholding Programmes when they were still Developing****US: 1930s to 1990s**

For 50 years, farm legislation included price supports and supply control provisions. The primary means to stabilise crop prices and farm incomes were support prices. Since 1980s, US could not compete on the world market due to their high price supports. The 1985 Farm Bill drastically reduced price support levels, and introduced direct payments. (This explains the domestic support rules in the Uruguay Round which introduced the Green Box for US' direct payments to their producers.)

**UK: 1940s -1970s**

State marketing boards bought agricultural produce in many sectors - eggs, milk, potatoes. Domestic prices were kept low at world prices. Governments paid farmers the difference through 'deficiency payments'.

**European Economic Community (EEC): 1960s - 1990s**

Europe's Common Agricultural Policy (CAP) was for decades premised upon the payment of a minimum purchase price. If farmers could not sell their output, there was a guarantee that their output could be purchased. Tariffs were used to ensure that import levels were strictly controlled.

***Problematic Rules in the WTO's Agreement on Agriculture in Public Stockholding***

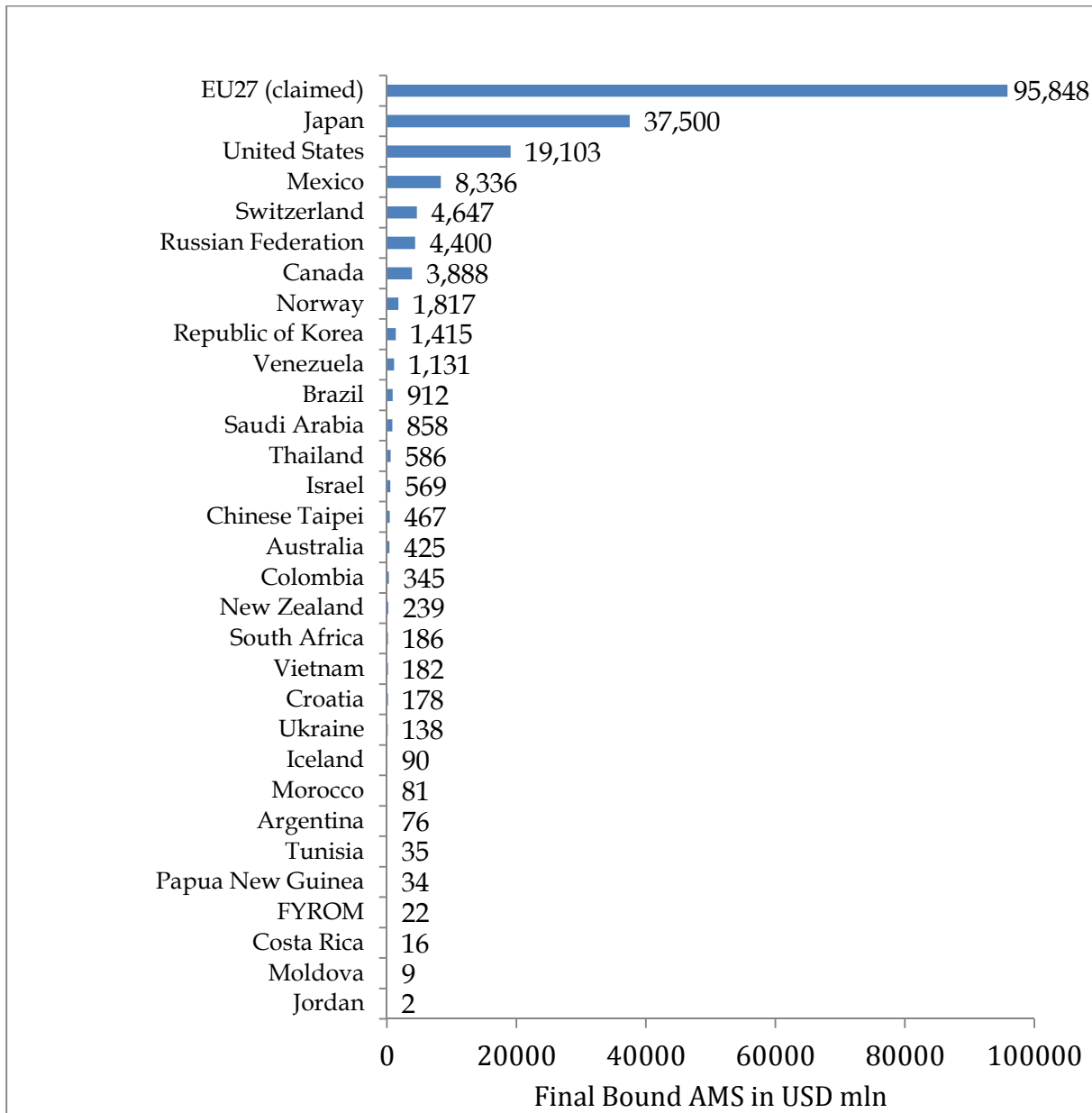
The problematic rules in the WTO for developing countries in relation to public stockholding begin with the fact that most developing countries scheduled zero trade-distorting domestic supports (or AMS) in the Uruguay Round. Given this, they only have a '*de minimis*' that they can draw on, which is 10% of the value of production of a product.

In contrast, there is a major imbalance. Most developed countries scheduled a significant amount of AMS in the Uruguay Round. Countries with bound AMS and the level of AMS entitlement in the WTO are illustrated in the diagram below.

In the case of EU for instance, their AMS - the right to provide more than the *de minimis* amount of 'trade-distorting subsidy' - accounted for 25% of their value of production in 2012.



**Table - WTO Members' Bound AMS in USD million**



Source: WTO Members' Schedules, domestic support notifications.

Note: Converted to USD at 2013 exchange rates. In WTO, the EU27 (and EU28) does not have yet a consolidated schedule (its latest certified schedule for European Union is for the EU15, contained in WTO document WT/LET/666). The amount shown is the amount claimed by European Union for EU27 in its domestic support notifications (i.e. excluding Croatia, the 28<sup>th</sup> EU member state)

This imbalance means that developing countries run into difficulties when it comes to utilising AMS (trade distorting) type of supports, but in contrast, many developed countries have no problems providing AMS supports because of their entitlements in their WTO commitments.

Aside from this imbalance, the rules on Public Stockholding in the WTO make no economic sense, are locked into a 1986 - 1988 context and are in need of being updated.

Food procured for public stocks are often at minimum prices or ‘administered prices’, sometimes known as ‘(minimum) support prices’. For instance, National Food Buffer Stock Company (NAFCO) of Ghana procures paddy rice, soya beans, maize at minimum prices.

The following are areas where the current rules of the Agreement on Agriculture are in need of updating:

- 1) The subsidy for public stockholding programmes is NOT calculated as the monetary amount spent by government for procuring food, but calculated according to an artificial formula leading to inflated numbers**

According to the WTO’s Agreement on Agriculture, minimum or administered prices used by governments to procure food from producers are considered ‘trade-distorting’ subsidies. If, as in the case of most developing countries, a Member has zero AMS (trade-distorting supports), the rules as noted earlier allow developing country governments to provide *de minimis* subsidies of up to 10% of the value of agricultural production for a product. Their public stockholding programme subsidy will have to be limited to this 10% value of production.

When using minimum prices for the procurement of food, the Agreement on Agriculture obliges countries to calculate their ‘subsidy’ in the following manner.

$$\text{‘Subsidy’} = (\text{Administered price} - \text{Reference Price}^*) \times \text{Eligible production}$$

\*i.e. import/export price of foodstuff during 1986-1988 (depending on whether country was a net importer or net exporter during 1986-1988)

The following is an example of how a developing country quickly contravenes its WTO obligations with such an outdated and rather strange formula.

In **Kenya**, maize fetched USD 100 per Ton on average during 1986, 1987 and 1988. Its current administered price is around USD 400. Thus, the Agreement on Agriculture considers that the government provides a trade-distorting subsidy of USD 300 per Ton of maize. If the government does not set a clear purchasing limit well in advance of the planting season, USD 300 needs to be multiplied by total production.

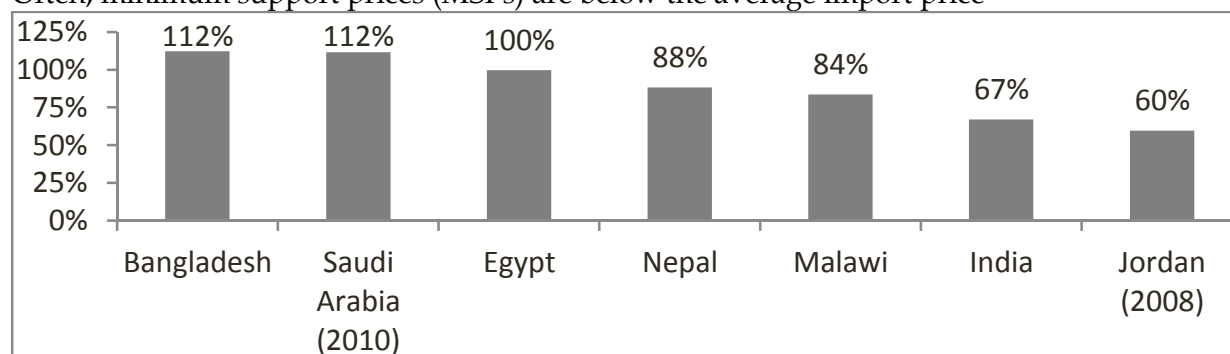
Kenya’s annual maize production is around 3.3 million Tons. Thus, according to the Agreement on Agriculture, Kenya provides a ‘trade-distorting’ subsidy of 990 million, close to USD 1 billion, to its maize farmers. Kenya’s maize production equals roughly USD 750 million (in 2010), i.e. Kenya has a ‘*de minimis*’ of trade-distorting domestic supports of USD 75 million. The country is therefore in violation of its WTO commitments.

## 2) The presumption in the Agreement on Agriculture that administered /minimum prices are by definition 'trade-distorting' is false

The Agreement on Agriculture presumes that 'administered prices' or the minimum support prices are by definition 'trade-distorting'. However, in many cases, the administered prices provided by developing countries are actually relatively low, even lower than the international market price (see below graph).

### Government price as percentage of average import price

Often, minimum support prices (MSPs) are below the average import price



These rules therefore need to be updated. If not, all developing countries that have public stockholding programmes will have to declare artificially high amounts of 'subsidies' which in reality they do not provide, and which would bring them into contravention with their existing WTO commitments (based on these outdated rules).

### *Doha Negotiations as Captured in Rev.4; Africa Group and G33 Proposals*

In the course of the Doha negotiations, developing countries successfully managed to make a minor change to a footnote Annex 2 (Green Box) of the Agreement on Agriculture which would address the problem in the rules. They added into the footnote 5 of Annex 2 of the Agreement on Agriculture the following which is in Annex B of Rev.4:

*'However, acquisition of stocks of foodstuffs by developing country Members with the objective of supporting low-income or resource-poor producers shall not be required to be accounted for in the AMS.'* (Annex B, TN/AG/W/4/Rev.4).

In their 2006 proposal, the African Group also advocated for inclusion of this solution in the negotiation text.

As the Doha negotiations stalled after 2008, this amendment has not materialised. On 30 November 2012, the G33, a group of 46 developing countries that speak for the cause of food security, rural livelihoods and rural employment submitted a proposal (JOB/AG/22) with the same language proposal as the Rev.4 language.

In October 2013, as the negotiations were not making sufficient progress ahead of the Bali Ministerial Conference in December 2013, the G33 submitted a follow-up position (JOB/AG/25) offering 3 solutions as *interim* solutions:

- i) Calculating the external reference prices not using the 1986-88 price, but a more recent price
- ii) Readjusting the calculation of the administered price by taking into account and adjusting the numbers for 'excessive inflation'.
- iii) Peace Clause - public stockholding programmes will be exempt from action under the WTO's DSU.

In Bali (December 2013), the Peace Clause was adopted by Ministers, although this was not without the G33 paying a high price by way of agreeing to the Trade Facilitation Agreement.

### *More on the 2013 Interim Options of the G33*

#### Peace Clause

The Peace Clause option was agreed to in the Bali Ministerial Conference in December 2013; however many stringent conditions were attached to the usage of the Peace Clause - provision of information including on alternatives to procurement methods, the obligation not to 'distort trade' etc.

These conditions in the Peace Clause make it extremely difficult for developing countries to completely insulate their existing schemes from challenge under WTO's Dispute Settlement Mechanism, especially if procurement is done on the basis of minimum prices (which is considered 'trade-distorting' in the Agreement on Agriculture!). Further, new schemes introduced after 2013 and aimed at addressing the problem of food security will not benefit from the Peace Clause (for example, Nigeria).

#### 'External reference price'

In this option, the administered price should be compared with more recent prices. I.e. in our Kenya example, USD 400 should not be compared with USD 100, but with international prices that are more recent. This makes the gap with USD 400 smaller, and in many cases, even negative (subsidy does not exist). This solution seems to work for most countries with food reserves, but not for **Egypt** or **Turkey**. This is by no means an exhaustive list - there are probably other countries for which this solution would not work, for example, other countries in a similar position - relatively low import prices for cereals and relatively high support prices for cereals due to climatological conditions.

#### 'Excessive inflation adjustment'

In this option, the administered price is corrected for 'excessive' inflation so it can be better compared with the 1986-1988 prices. One dollar in the 1980s was worth much more than one dollar in 2015. I.e., in our example, USD 400 in current terms is perhaps USD 100 or less in 1986-1988 prices because of compounded annual inflation. The question in this option is what can be considered 'normal' inflation - OECD inflation, global inflation or a country's inflation. Depending on the outcome of negotiations on the definitions of 'excessive' inflation and 'normal' inflation, this option may not work for many countries including China, Barbados, possibly even Botswana, Indonesia etc.



Given these difficulties, the G33 post-Bali has sought to find a permanent solution. This was reaffirmed in the General Council Decision of 28 November 2014.

### *Ahead of MC10 – the Nairobi Ministerial Conference (December 2015)*

In 2015, the G33 resubmitted its permanent solution Public Stockholding proposal of November 2012, JOB/AG/22 calling for Public Stockholding programmes to be notified under the Green Box.

Opponents to the proposal have been maintaining that they do not want the Green Box to be touched or changed. It should be noted that the AoA's Annex 2 (Green Box) actually contains the issue of 'Public stockholding for food security purposes' - item 3 in that Annex (Green Box), but that the footnote to that item says differences between the administered price and the 1986-88 price '*is accounted for in the AMS*'.

On 24 November 2015, the G33 submitted a new proposal (WT/MIN(15)/W/22; or JOB/AG/54), suggesting an amendment to the Agreement on Agriculture so that it contains a new Annex 6. This Annex 6 would give coverage to developing Members and LDCs' current and future public stockholding for food security programmes.

### **The New Annex 6**

The new annex 6 has the following criteria:

1. Programmes for public stockholding for food security shall include:
  - a. Programmes for the acquisition of foodstuffs at administered prices by the Government in developing country Members/Least Developed Country Members with the objective of supporting low income or resource poor producers;
  - b. Programmes for the acquisition of foodstuffs at administered prices by the Government in developing country Members/Least Developed Country Members and its subsequent distribution at subsidised prices with the objective of meeting food security requirements of urban and rural poor, and of maintaining adequate availability of foodstuff and/or ensuring food price stability.
2. The operation of programmes referred to in paragraph 1 above shall be transparent and conducted in accordance with officially published criteria or guidelines.
3. Programmes referred to in paragraph 1 above shall not be required to be accounted for in the Aggregate Measure of Support.
4. Members shall notify programmes maintained under this Annex to the Committee on Agriculture on an annual basis.

Reference: WT/MIN(15)/W/22; JOB/AG/54, 24 November 2015

Not wanting the G33's latest proposal to be the only text on the table that forms the basis of text-based discussions, on 4 December 2015, Australia, Paraguay and Canada put forward a proposal where the Peace Clause (adopted in at the Bali Ministerial) would be the basis of negotiations for the permanent solution.

### *Serious Limitations of the Peace Clause as the Permanent Solution (Australia et al's Proposal)*

There are many problems with the Peace Clause and despite attempts by the G33 to negotiate for better terms before and after the Bali Ministerial Conference, the US has refused.

It is therefore difficult to envisage how this Peace Clause can be the basis for a solid permanent solution. If in the circumstances that the G33's partners are willing to improve the terms of the Peace Clause, and the following would have to be changed if it were to be a useful permanent solution:

- i) The application of the Peace Clause only to 'existing programmes' should be deleted (para 2 of Peace Clause)
- ii) The limitation of the Peace Clause only to 'traditional staple food crops' is very narrow (para 2 of Peace Clause). This should be broadened to 'crops related to food security, livelihood security and rural employment'. Eg. there are public stockholding programmes in cotton. This would not be covered under 'traditional staple food crops'.
- iii) If the Peace Clause is the permanent solution, the language must be binding, not best endeavour. Para 2 says that 'Members shall refrain from challenging through the WTO Dispute Settlement Mechanism'. Binding language could be along the following lines: Members 'shall not' challenge through the WTO DS Mechanism.
- iv) The Peace Clause gives coverage in relation only to the AoA - 6.3 on AMS commitments and 7.2b on Members' de minimis entitlement level. For it to be effective, it must also provide developing country Members coverage from challenge under the Agreement on Subsidies and Countervailing Measures (ASCM) Agreement, otherwise legal challenges could still take place.
- v) Notification and Transparency requirements in the Bali Peace Clause are onerous to the point of making the instrument too difficult to use. Besides, the developed countries have been providing domestic supports without similar transparency and notification requirements.

The onerous transparency and notification paragraphs include Para 3 a,b,c,d of the Peace Clause. Instead standard AoA notification requirements that all Members follow could be along the following lines:

- Notify the COA of any existing public stockholding programmes
- New Public stockholding programmes 'shall be notified promptly. This notification shall contain details of the new or modified measure and its conformity' with the terms set out in this Decision. (based on language in Art 18.3 of the AoA on notification).
- Delete para 4 - 'ensure that stocks procured under such programmes do not distort trade or adversely affect the food security of other Members'.

### *In Conclusion*

The G-33's proposal, if adopted as the permanent solution, will be a significant contribution to the improvement of international trade rules for food security.



