

Briefing Paper

Offer of a Truce: The Peace Clause Agreement on Food Stockholding in Bali

By Martha Getachew Bekele

Summary

The Bali Ministerial Decision on Public Stockholding for Food Security Purposes provides legal shield to some developing countries with public food stockholding programmes, albeit in the form of a temporary respite until a permanent solution is agreed upon by the 11th Ministerial Conference in 2017. This briefing paper explores implications of the Peace Clause and uncertainties arising from a scenario whereby WTO Members fail to reach a permanent solution between now and 2017.

Introduction

In the run up to the Uruguay Round Agreements in 1994, negotiations on agriculture were dominated by differences between the USA that was for elimination of all agricultural subsidies -the 'zero option' – and the EC for protection of its farmers from international competition. After a series of bilateral discussions, the two reached an agreement, commonly referred to as the Blaire House Accord, paving the way for the Agreement on Agriculture (AoA) during the Uruguay Round. All along, developing countries' main demand during the talks was on the need for special and differential treatment to allow agricultural growth through government support policies.

The AoA provides guidance on domestic support commitments and general disciplines on domestic support under Articles 6 and 7, respectively. To limit trade distorting support measures, Members agreed to curb their policies by quantifying and gradually reducing all domestic support measures through the Aggregate Measure of Support (AMS). The total AMS is the sum of product-specific support provided for each individual agricultural commodity; non-product specific support directed at the agricultural sector as a whole; and the equivalent measure of support, the calculation of which in accordance to the AMS methodology is impracticable. The main bone of contention in the calculation of the Total AMS currently is the use of the base period 1986-1988 as the external reference prices, which are not reflective of recent rise in inflation rates. This is discussed in length later in the brief.

In reference to the text box on the right, not all Amber Box supports are included in the calculation of the AMS provided that they are below a certain level. A Member's support measure for a commodity (or value of non-product specific support) is exempted from the current total AMS calculation if it is not greater than 5 percent of the total value of production of the commodity (or total value of agricultural production) for developed countries. At the time of the Agreement, developing countries had no significant support measures classified under the Amber Box and committed not to raise supports greater than a 10 percent de minimis level.

While in an attempt to curb the impact of domestic support policies of developed nations on international trade, the Agreement also locked in the future policy space of developing countries, that were not in a position to have huge policies by then as the US and EU, from attempting to formulate any domestic support policy, without contravening the international Agreement on Agriculture.

Fast forward to the present, developed countries continue to subsidise their agriculture heavily through policies such as the US Farm Bill and the EU Common Agricultural Policy (CAP), where government subsidy expenditure is on average nearly half of their agricultural gross domestic product¹. However, support measures by the developed nations presumably fall largely under the Green Box, Blue Box, or within the permissible though very high levels of Amber Box and the 5 percent de minimis threshold. Although in the past developing countries did not have the financial muscle to adopt significant domestic support measures, the emergence of strong economies among developing countries saw countries like India adopt huge food security programmes. Indian farmers are offered remunerative prices and cheap inputs, estimated to be around one-tenth of what the US provides as subsidy. Though developing countries, such as India, spend far less amount on subsidies, the support measures fall largely in the Amber Box since the administered prices paid to farmers are above market prices and food sold to poor consumers are below market prices².

Categorisation of Support Measures

The AoA guides Members on permissible and prohibited subsidies, categorised in coloured boxes.

Amber Box support measures aimed at distorting production and trade are prohibited; and included in the AMS calculation.

Blue Box support measures that would normally be in the Amber Box but that also require farmers to limit production fall under the Blue Box since such conditions reduce distortion. These are exempted from the AMS calculation.

Green Box support measures that have no or minimal trade- and- production distorting effects are permissible and can be provided without limits. This Box is of interest to developing countries as it contains measures for food stockholding for food security. Measures in this box therefore are exempted from the AMS calculation.

Background

The Peace Clause

Another important provision of the AoA was the Due Restraint or 'Peace Clause' under Article 13, which temporarily shields countries providing domestic support measures in accordance with the AoA provisions from being challenged at the WTO under the Subsidies Agreement and the General Agreement on Tariffs and Trade (GATT). The temporary Peace Clause came to an end in 2003 as scheduled in the AoA. The implication of which was, after the expiry of the provision, an aggrieved Member could initiate investigations and take the case to the WTO Dispute Settlement Body (DSU), under the subject of countervailing duty action³ or subsidy action under the WTO Agreement on Subsidies and Countervailing measures⁴; or based

on non-violation nullification or impairment of tariff concessions accruing to another Member under GATT⁵.

Since then, intense negotiations have been underway between the group of emerging economies, commonly referred to as G33 nations and led by India, demanding for an amendment of the AoA to allow developing Members to provide support and subsidies for food security without attracting legal actions; and, on the other side, the US and other Members opposing such a push because it could lead to artificial lowering of world food prices if subsidised agricultural produce are exported.

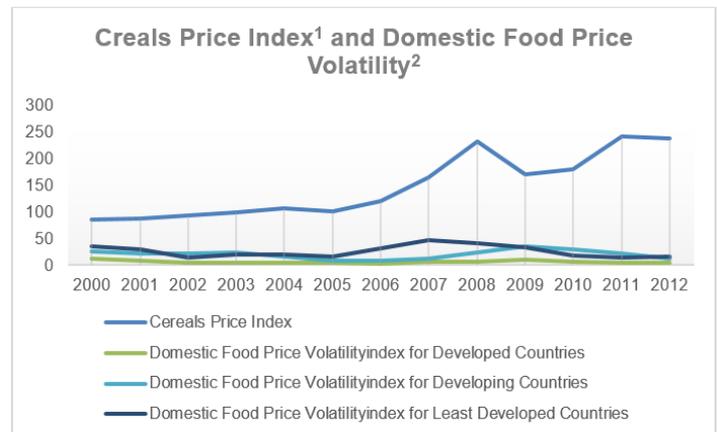
The Bali Agreement

Developing countries have always been demanding for a change in AoA rules to allow governments purchase and stock foods from their farmers without legal challenges. In the draft modalities for agriculture, the G33 group of developing countries proposed for public stockholding programmes for food security purposes to be treated as Green Box measures and to exclude them from AMS calculations, which was not accepted by the WTO Ministers in December 2008. At the Special Session of the WTO Committee on Agriculture in 2012, however, the G33 group proposed food stockholding to be taken up for a formal decision at the 9th Ministerial Conference (MC9) in Bali.

Stakes were too high at the Bali meeting in terms to the relevance of multilateralism in general and the WTO as an organisation in particular. The Bali meeting was basically a showdown between food-security-plus demands by developing nations versus trade-facilitation-plus demands mainly by Western nations. The political commitment among negotiators to reach a deal for the first time in eighteen years saw agreements reached on public food stockholding, albeit in the form of a temporary respite until a permanent one is agreed upon; while developed countries clinched a deal on trade facilitation, which was initially resisted by developing countries for its cost implications.

Consequently, in the Ministerial Decision on Public Stockholding for Food Security Purposes in Bali

(adopted on 7 December 2013), Members agreed to put in place an interim mechanism and negotiate on an agreement for a permanent solution, which will be applicable to all developing Members. In the interim, Members will refrain from challenging a developing Party through the WTO for exceeding



1 FAO Cereals Price Index; 2 FAOSTAT

its bound AMS or the de minimis level in relation to support provided for traditional staple food crops in pursuance of public stockholding programmes for food security purposes existing as of the date of the Decision. In essence, therefore, the interim solution is more of a 'standstill' clause implying that other developing countries that had no similar programmes prior to the Decision would not be allowed to adopt a new one; and for those that already have programmes, they are not to be allowed to include non-staples that are not strictly predominate staples in the traditional diet of a developing Member.

Recent price surges and their implications

The argument by developing countries for domestic support measures is based on food security. Such measures provide safety nets to millions of small scale farmers through for instance assured minimum support price to make nutritious food cheaper and available.

Recent surges in food prices and agricultural input prices have made food security utmost priority for developing countries to cushion both farmers and poor households. World food prices have been

rising by three digits and peaked during the 2007-2008 food crisis, making the quest for food security imperative, particularly for countries with huge populations.

Two implications could be drawn from food price spike and high volatility. First, the impact of high food prices is huge on food security of the most vulnerable households. Food price surges though may benefit farmers, when rapidly overtaken by higher agricultural input prices, as has been the case, necessitate countries to resort to safety net programmes to shield vulnerable households. The second implication of recent price surges is on the AMS calculation. While the AoA allows stocks of foodstuffs for food security purposes to be acquired and released at administered prices, it comes with a condition that the difference between the acquisition price and the external reference price based on the average of the 1986-88 period is accounted in the AMS calculation. Due to inflation, current administered prices are way above the fixed external reference prices thereby exaggerating the current AMS levels and in excess of the de minimis threshold.

Interim due restraint agreement on food stockholding

Implications for India

India has been at the centre of public stockholding negotiations. The country adopted its National Food Security Act of 2013, which entitles two-thirds of its population for food subsidies through provision of 5 kilogram of rice (at Rupees 3) or wheat (at Rupees 2) or coarse cereals (at Rupees 1), procured from low income- resource poor farmers at a total cost of US dollar 21.13 billion government support, which is expected to surpass the AMS levels allowed by the AoA, at 24 percent minimum support price. India's argument all along has been the procurement of public stocks from low-income resource-poor farmers at administered prices higher than the market price is part of the country's food security strategy for its more than 800 million food insecure population. Under the temporary respite, this could continue as long as subsidised produce are not sold at the international market, for which the country

has to notify the Committee on Agriculture that it is exceeding or is at risk of exceeding either or both of its bound total AMS or the de minimis level as a result of its programmes⁶.

Implications for other countries

Though in theory the temporary agreement on food stockpiling applies to all developing countries equally, it applies to only few emerging countries like India, Thailand and Indonesia that have existing food security programmes⁷. Countries in South Asia may be affected by negative spill-overs of such programmes in terms of market destabilisation and negative effects to domestic producers due to weak customs administration if some subsidized grains find their way to regional markets. Moreover, being one of the major exporters of food grains, India's programme to build food stocks may hurt South Asian countries that traditionally import farm products from India⁸.

With regard to implications to least developed countries (LDCs), though the Peace Clause is for developing countries, it has direct impact on LDCs, which are the most food insecure and vulnerable to food price volatility. The interim provision may end up exposing the already vulnerable countries to more food insecurity either through higher food price surges as a result of shortages of grains at the international market; or dumping of subsidised grains or foreign aid in grant form adversely affecting poor farmers⁹.

Nonetheless, public procurement for food stock holding might have positive implication to food security of other countries affected by high spike in staple food prices through government to government deals¹⁰.

In summary however it is expected that a permanent solution to due restraint or review of the AoA rules would certainly ensure policy space for developing countries; and potentially reduce the negative implications of such programmes to the food security other developing countries and LDCs.

What to expect if no permanent solution is reached

The Bali decision on the Peace Clause allows the interim solution to continue until a permanent solution is agreed upon within four years until the 11th MC in 2017. By end of the interim period, Members will either come up with a permanent solution or fail to reach a permanent solution between now and 2017. What is uncertain is the plausible scenario if no permanent solution is agreed upon.

While Members committed to establish a work programme with the aim of making recommendations for a permanent solution no later than the 11th MC, the Bali Agreement did not limit the duration of the interim agreement to four years. If no solution is reached, one likely scenario is a fresh round of Peace Clause agreement that will have specific timeframe until a permanent solution is reached as well as one that will be legally binding, unlike the Bali Decision on Food Security, which some deem as a political commitment¹¹. Therefore, one interpretation of the Bali Agreement is negotiations will continue well beyond the 11th MC until a permanent solution is reached.

An alternative legal interpretation is that the temporary provision under the Bali Agreement will expire if no permanent solution is reached by 2017 which implies that any developing country found providing domestic support in contravention of the AoA could risk being taken to the DSU. Yet again, Members could still invoke the Agreement on Subsidies and Countervailing Measures against the Member committing trade distortion or adversely affecting food security of other Members.

This legal ambiguity makes it difficult to authoritatively conclude what will exactly play out in 2017. Clarity is certain only if the issue is taken to either the WTO General Council for authoritative interpretation or the DSU for a panel ruling.

Conclusion

Developing countries demand for the right to provide food assistance to millions of low income households procured from low income–resource poor farmers through government price support; whereas developed and some developing nations demand for trade rules that facilitate the multilateral regime. Therefore, finding a permanent solution is a delicate balance of achieving fair and freer agricultural trading system without undermining food security for millions of poor people.

It remains then to be seen whether a permanent solution will be reached by amending the AoA through review of the 1986-1988 fixed external reference, adjusted for inflation; review of the *de minimis* threshold; allowing the use of US dollars in AMS calculations; or expanding the Green Box for developing countries. Studies are emerging that it is possible to find a permanent solution and that developing countries have many options, some that do not even involve amendment of the AoA. A simulation study by Montemayor (2014) for instance shows that the most feasible and least contentious option for developing countries to continue providing support to their farmers is if an agreement is reached to set levels of eligible production and design price support programmes in a way that the impact is confined to target sectors and areas¹².

At this point in time, one may not authoritatively declare what to expect if no agreement is reached by the 11th MC except to note that the optimal outcome is to find a permanent solution. Indeed, four years is a long time to find a solution if there is good will and compromise from negotiators.

One thing is certain though- there will be intense negotiations and lobbying in the run-up to the 11th MC.

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Endnotes

1. Excluding price support, CAP subsidies accounted nearly 44% of the entire budget of EU in 2011, (World Watch Institute, 2014)
2. Annex 2 (3) of AoA on Public stockholding for Food Security Purposes stipulates "Food purchases by the government shall be made at current market prices and sales from food security stocks shall be made at no less than the current domestic market price for the product and quality in question"
3. Article VI of GATT 1994 Anti-dumping and Countervailing Duties
4. Part V of the Agreement on Subsidies and Countervailing Measures
5. Article II of GATT 1994, in the sense of paragraph 1(b) of Article XXIII of GATT 1994
6. Paragraph 3.a. of the Public Stockholding for Food Security Purposes Ministerial Decision (7 December 2013)
7. The Bali Ministerial decision stipulates that support can only be provided for traditional staple food crops in pursuance of public stockholding programmes for food security purposes existing as of the date of the 07 December 2014 Decision.
8. SAWTEE(2013). Bali package: Implications for South Asia
9. Häberli (2013) finds for poor countries like Ethiopia, foreign aid schemes have a price depressing effect on local farmers.
10. India exported 400 thousand tonnes of rice to Bangladesh at half the world price. Read more on The Rice Crisis: Markets, Policies and Food Security (2010).
11. Häberli (January 2014) considers the Bali Decision on Food security as a political commitment; Benitah (December 2013) in response to the question: 'Is the Bali Ministerial Decision on Food security a Legal or a Political Document?' argues in favour of the latter since the Decision is not an interpretation, nor a waiver, and certainly not an amendment (cited in Häberli, 2014)
12. Based on the Appellate Body ruling on Korea Beef case

CUTS International, Geneva

37-39, Rue de Vermont 1202 Geneva, Switzerland
Ph: +41 (0) 22 734 60 80 | Fax: +41 (0) 22 734 39 14
Email: geneva@cuts.org | Web: cuts-geneva.org
Skype: cuts.grc

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