



# Note

## **Public Stockholding for Food Security**

Options for Small Developing Countries and LDCs Towards a Permanent Solution at MC11

### **Summary**

This note analyses options for small developing countries and Least Developed Countries (LDCs) in the negotiations towards a permanent solution on Public Stockholding Programs for security purposes (PSH), which is mandated to be concluded at the forthcoming eleventh World Trade Organisation (WTO) Ministerial Conference (MC11).

## Introduction

The purpose of this issue note is to analyse options for small developing countries and Least Developed Countries (LDCs) in the negotiations towards a permanent solution on Public Stockholding Programs for security purposes (PSH), which is mandated to be concluded at the forthcoming eleventh World Trade Organisation (WTO) Ministerial Conference (MC11).

Among WTO Members, there is a broad consensus that small developing countries and LDCs should enjoy Special and Differential Treatment when maintaining PSH programs. With regard to the increasing quantity of food products procured under PSH programs in developing countries, both developed and food exporting developing countries have been repeatedly expressing their major concern that food surpluses might be released from public stocks on the global food market, thereby depressing global food commodity prices. However, this concern is only justified with regard to populous developing countries, which acquire large quantities of food products. If they released a larger share of food products from their public stocks, this would have a considerable impact on the prices on the global food market.

In the case of small developing countries and LDCs, the quantities procured for their PSH programs would unlikely affect global food prices, even if completely released on the global market. Nonetheless, small-developing countries, just like LDCs, need PSH programs to improve the food security of their people. For these reasons, this issue note is based on the assessment that small

developing countries and LDCs should be treated similarly with regard to WTO rules on the procurement of food products under PSH programs.

## Definition of Public Stockholding and its relevance

As part of Public Stockholding programs for food security purposes (PSH), governments purchase crops and food products from local farmers and sell them (sometimes at subsidised prices) or distribute them free of charge to poor and food insecure households.<sup>1</sup> PSH programs are important for the basic responsibility of governments to address hunger and fight volatility in both food prices and availability, and therefore contribute to the achievement of Sustainable Development Goal 2 (SDG 2), which inter alia calls for ending hunger, achieving food security and improved nutrition, as well as promoting sustainable agriculture by 2030. Presently, the relevance of PSH programs towards achieving SDG 2 is greater than ever as global hunger is on the rise again.<sup>2</sup>

Recently, a whole series of factors have created a new context in which discussions on food security are highly relevant for (small) developing countries and LDCs.<sup>3</sup> Among these are the rising subsidies provided by developing countries in the agricultural sector which have a steadily increasing influence on the global food market. Due to the rules on a country's "Aggregate Measure of Support" (AMS) calculation for a specific product, many (small) developing countries and LDCs that provide price support under their PSH programs run into danger of breaching their commitments on domestic

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<sup>1</sup> Galtier, Looking for a Permanent Solution on Public Stockholding Programs at the WTO, p. 1.

<sup>2</sup> FAO/IFAD/UNICEF/WFP/WTO, The State of Food Security and Nutrition in the World.

<sup>3</sup> In the course of this issue note, the term "(small) developing countries" refers to both small and large developing countries.

support under the Agreement on Agriculture (AOA).<sup>4</sup>

Furthermore, the oversupply of (cheap) food products on the global market which was prevalent in the 1980s is no more, with recent trends indicating a lack of food products, which is driven by, inter alia, a decreasing agricultural productivity growth and an increasing demand for agricultural products in international markets.<sup>5</sup> With the growing importance of bio fuels and the impacts of climate change on agricultural productivity (prolonged droughts and extreme floods), the latter having contributed to severe global food price crises in 2007/08<sup>6</sup> and between 2011 and 2014<sup>7</sup>, the global food market has been and will be characterised by scarcity of products, as well as high and volatile prices in the short and medium-term future.<sup>8</sup> As a consequence, the (small) developing countries and LDCs have been striving to become more self-reliant in food security issues.<sup>9</sup>

In combination, all the mutually dependent factors mentioned above ensure that food security is and will be of outstanding importance for all developing countries. This is why a permanent solution on PSH programs is highly relevant to the short-term future work of the WTO.

## History of PSH at the WTO and rules existing

The journey of food security at the WTO began with the implementation of the AOA, an outcome of the Uruguay round (1986-1993), in 1995. Within the AOA, paragraphs 3 and 4 of Annex 2 set up three conditions that a developing country must fulfil to make sure that its PSH program is perceived to be an element of the unlimited green box subsidies:

- The volume and accumulation of such stocks shall correspond to predetermined targets related solely to food security.
- The accumulation and disposal of stocks shall be financially transparent.
- 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.

In those cases where food products are procured for the stocks at administered prices, the given market price support (MPS) is perceived to be part of the “amber box subsidies”. In particular, the calculation of a product's MPS is based on the product of the difference between the administered price and fixed external reference price (FERP) and the quantity of eligible production. For most of the members, the mentioned FERP is based on the period 1986-1988.

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<sup>4</sup> Konandreas/Mermigkas, WTO Domestic Support Disciplines, p. 8. / Glauber, After Nairobi: Public Stockholding for Food Security, p. 72.

<sup>5</sup> Chatterjee/Murphy, Trade and Food Security, p. 2.

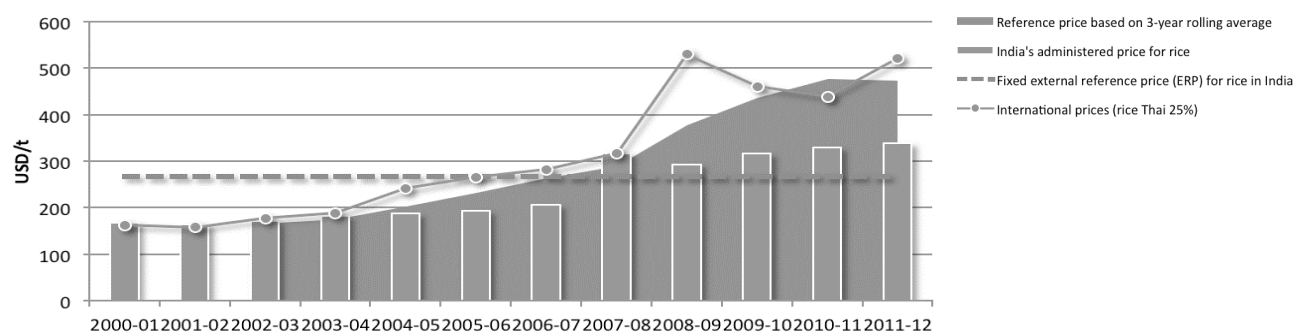
<sup>6</sup> Kerr, Food Security, Strategic Stockholding and Trade-Distorting Subsidies, p. 6.

<sup>7</sup> Mishra, Ensuring Food Security Through WTO Rules, p.17.

<sup>8</sup> *Ibid.*, p. 18.

<sup>9</sup> Konandreas/Mermigkas, WTO Domestic Support Disciplines, p. 22.

**Figure 1: India's administered rice and the FERP, 2000-2012 (USD)**



As Figure 1<sup>10</sup> illustrates for the case of Indian rice, food prices were much lower back then which results in an overestimation of domestic support when comparing current prices at which governments purchase food products for the stocks with the FERP from 1986-1988. For those developing countries with no AMS, the AOA states that the resulting amount of the trade-distorting domestic support calculation has to be within 10 percent of the value of production, the so-called de minimis level.

Despite these serious restrictions of developing countries' policy space when maintaining PSH programs, the issue of PSH was not of outstanding importance at the WTO until the early 2000s.<sup>11</sup> This was mainly due to the fact that most of the developing countries had not arranged PSH programs until then and global food prices were low and stable.<sup>12</sup> However, over the years, due to changing circumstances on the global food market, more and more (small) developing countries and LDCs arranged PSH programs. With rapidly increasing subsidies under the expanding PSH programs, developed countries articulated their concern of possible trade distortive impacts of the PSH programs. On the other hand, (small)

developing countries and LDCs have been countering these concerns by emphasising that the looming breaching of their commitments under the AOA is mainly due to imbalances and structural weaknesses of the AOA itself, which must be fixed.

With the launch of the Doha round, the African group was the first to request the inclusion of food purchases at administered prices under PSH programs in the unlimited green box in 2002. Since then, this claim has been the basis of different proposals by developing countries, especially an initiative of G33 members led by India, however, some members are of the view that such a step would override AOA, which is the basis of all disciplines on trade-distorting agricultural policies.

The issue of PSH gained momentum towards the ninth Ministerial Conference (MC9) in Bali in 2013. Following the India proposal to make progress towards a permanent solution on PSH, members agreed on a peace clause which should offer protection to developing countries from legal challenges against potential breaching of their commitments under WTO rules when undertaking certain PSH programs until 2017. It is important to mention, that this legal protection only covers

<sup>10</sup> Bellmann, The Bali Agreement: Implications for Development and the WTO.

<sup>11</sup> Montemayor, Public Stockholding for Food Security Purposes, p. 3.

<sup>12</sup> Mishra, Ensuring Food Security Through WTO Rules, p. 17.

primary agricultural crops that are central in the traditional diet of the respective member administering the program, as well as applying only to programs which already existed as of the date of the Ministerial Decision in Bali. In 2014, the members agreed on a firmer formulation, clarifying that the peace clause mechanism would stay in place until a permanent solution is found.

To qualify for the interim mechanism, developing countries must have informed the Committee on Agriculture (COA) of a potential breaching of their Bound Total AMS or de minimis level for a specific food commodity, must not distort trade or affect the food security of other countries with their food stocks and must have fulfilled and continue to fulfil its domestic support notification requirements under the AOA.<sup>13</sup> Finally, the peace clause gives a mandate to members to agree on a permanent solution by the eleventh Ministerial Meeting (MC11), which will be held in Buenos Aires, Argentina.

## Proposals on the table

Since July 2017, a number of proposals for a potential permanent solution on PSH have emerged. While the first proposal was submitted by the EU and Brazil, by the time of this note, two others had followed from Indonesia, speaking on behalf of the G33 members<sup>14</sup>, and Russia and Paraguay, respectively. All the present proposals touch upon the issues of program, country and product coverage of PSH, safeguard and anti-circumvent measures, as well as notification and transparency.

## Program, Country and Product Coverage

The proposals of the G33 initiative emphasise that PSH programs should give price support to local producers without such price support counting towards a product's AMS.<sup>15</sup> Along these lines, the most recent proposal discussed here suggests the insertion of a new Annex 6 in the AOA, that allows for market price support by the government under PSH programs in both developing countries and LDCs, if they serve the following objectives: on the one hand, low-income and resource poor producers shall be supported. On the other hand, governments shall ensure that poor urban and rural inhabitants have 1) adequate access to food products at 2) constant prices. The criteria for PSH programs developed in Annex 6 cover both already existing and future programs.

Annex 6 does not put any additional restrictions on developing countries when arranging their stocks and allows the acquisition of foodstuffs under PSH programs. It follows that (small) developing countries and LDCs enjoy much freedom when selecting the products to be stocked.

Finally, the G33 proposal underlines that as long as the new protocol is pending entry into force, members shall not challenge developing country members through the WTO Dispute Settlement Mechanism if they do not comply with their obligations under the AOA.

Like the G33 proposal, the proposals submitted by Russia and Paraguay, as well as the EU and Brazil exempt LDCs from regulations on trade-distorting

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<sup>13</sup> Glauber, After Nairobi: Public Stockholding for Food Security, p. 74.

<sup>14</sup> The G33 proposal was submitted without prejudice to the position of Pakistan.

<sup>15</sup> Matthews, Food Security and WTO Domestic Support Disciplines post-Bali, p. 10.

domestic support. However, the former states that the support supplied under PSH programs by any other developing Member is only covered by the proposal if the value of the stocks procured does not exceed X% of the average value of the production of that product in the three latest domestic support notifications. The Brazil/EU proposal determines this value to be 10 percent.

Additionally, both proposals state that only those PSH programs can enjoy exemption from a product's AMS calculations, that already existed at the time of MC9, have been respecting the requirements of the Bali Decision so far and only procure traditional staple food crops. Furthermore, the Russia/Paraguay proposal preserves the legal protection from challenges through the WTO Dispute Settlement Mechanism for those PSH programs, which meet the criteria just mentioned.

## **Safeguard and anti-circumvention measures**

Contrary to the G33 proposal, the EU/Brazil and the Russia/Paraguay proposals define several safeguard and anti-circumvention measures. The main rationale behind these measures is to “ensure that stocks procured under [PSH] programs do not distort trade or adversely affect the food security of other members”<sup>16</sup>, which is a key component of the AOA rules on PSH programs. Furthermore, both proposals add that “no direct exports from the stocks shall occur upon the release of products from the stocks”.<sup>17</sup> The Russia/Paraguay proposal is the strictest of the examined proposals with regard to safeguards and below mentioned additional measures are all to be found only there.

Most importantly, the proposal suggests that every member must be in full compliance with its notifications on the respective PSH to the COA within a tightly-set timeframe (90 days after each fiscal or calendar year) to benefit from the legal protection. Moreover, a limit in annual export increase of a product to a PSH program is set, the previous year's export being the reference period; if a country's export of a product procured under a PSH program exceeds this limit, the protection of PSH programs from legal challenges shall not be provided.

Furthermore, article 4.f in the Russia/Paraguay proposal states that if a developing country accounts for five percent or more of the global export share of a product procured under PSH programs, the protection from legal challenges for this product will not be provided. Last but not least, applied tariffs for the products procured under PSH shall not exceed a still undefined percentage of the average applied tariffs in the period of 2013-17.

## **Notifications and Transparency**

Across all proposals, there is a demand for developing countries and LDCs arranging PSH programs for different food products to notify the COA about all of their arranged and maintained PSH programs in intervals of one year. These notifications shall include comprehensive statistical information on purchases and releases of the program (prices, volumes).

While the G33 proposal does not give any additional requirements on notifications and transparency, the other two proposals state explicitly that the COA shall be in charge of monitoring the developing

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<sup>16</sup> Proposal on Domestic Support, Public Stockholding for Food Security Purposes and Cotton by Brazil and EU, July 2017.

<sup>17</sup> Proposal by the Russian Federation and Paraguay on Public Stockholding for Food Security Purposes, October 2017.

countries' compliance with the rules on PSH programs. Additionally, they require that members notify the COA of the value of production and acquired stocks of products concerned under a PSH program prior to its implementation.

Moreover, the EU/Brazil proposal demands that members commit themselves to join annual dedicated discussions on PSH programs. The same holds true for the Russia/Paraguay proposal that requests any developing country benefitting from the proposed permanent solution on PSH programs to hold consultations with other members that are potentially affected by the operation of its PSH programs.

## Implications and interests for small developing countries

Literature dealing with the issue of negotiations of a permanent solution for PSH programs has examined which potential changes of the existing rules on PSH programs would serve the interests of small developing countries and LDCs the most. While some discuss benefits and problems of a potential update of the FERP<sup>18</sup> or the development of a new formula to calculate AMS<sup>19</sup>, others propose a complete elimination of the current FERP<sup>20</sup>, suggesting that the FERP should be defined in more stable currencies like the US-Dollar<sup>21</sup> or that the calculation of AMS should account for excessive inflation rates.<sup>22</sup> Since most of these proposed

solutions would require to override the AOA, experts do not consider them to be realistic. Never the less, certain key aspects could be the focus of small developing countries and LDCs in negotiating a permanent solution on PSH at MC11, these are highlighted below:

### Program, Country and Product Coverage

To achieve the maximum policy space for small developing countries and LDCs when maintaining PSH programs, the provisions by all discussed proposals to ensure that PSH arranged by LDCs shall not be required to be accounted for in the AMS are to be considered expedient. However, since small developing countries are in an equal need for PSH programs to improve the food security of their people, they could strive for similar preferential treatment.

Along these lines, the provision included in the Russia/Paraguay proposal that members provide domestic support under certain PSH programs should not be challenged under the WTO Dispute Settlement Mechanism ties in with small developing countries' and LDCs' interests.

The main purpose of PSH programs is to ensure that the maximum possible number of people from the bottom part of the society has access to sufficient quantities of food products at stable prices. In this regard, small developing countries and LDCs could push for the G33 proposal to allow for the

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<sup>18</sup> Konandreas/Mermigkas, WTO Domestic Support Disciplines, p. 20. / Montemayor, Public Stockholding for Food Security Purposes, p. 32. / Glauber, After Nairobi: Public Stockholding for Food Security, p. 76.

<sup>19</sup> Galtier, Looking for a Permanent Solution on Public Stockholding Programs at the WTO, p. 11.

<sup>20</sup> Berthelot, Reconciling the Views on a Permanent Solution to the Issue of Public Stockholding for Food Security Purposes, p. 12.

<sup>21</sup> Montemayor, Public Stockholding for Food Security Purposes, p. 32. / Diaz-Bonilla, On Food Security Stocks, Peace Clauses, and Permanent Solutions after Bali, p. 46.

<sup>22</sup> Konandreas/Mermigkas, WTO Domestic Support Disciplines, p. 21.

procurement of food products under PSH programs which do not only aim at supporting low-income and resource poor producers, but also seek to ensure that the remaining people in the lower class of the society, namely the poor urban and rural society, has access to sufficient quantities of food products at stable prices.

On the proposal of unfettered exemption of domestic support provided by developing countries from AMS calculations, as made by Berthelot<sup>23</sup> and the G33 initiative, the examined literature is quite split. On the one hand, although de minimis allowances for developing countries and LDCs are perceived to run contrary to the idea of minimising trade-distorting domestic support, Montemayor and Matthews recognise that exempting PSH programs from AMS calculations if actual procurement is not above a certain percentage of local production is in the interest of small developing countries as greater market price support is permitted and higher expenditure on non-exempt programs possible.<sup>24</sup> Another suggestion for WTO member countries is to opt for a mechanism that exempts their PSH from WTO disciplines under certain circumstances (collapsing exchange rates or sharply increasing international prices).<sup>25</sup> Such a mechanism would be favourable for small developing countries and LDCs.

On the other hand, the proposal of unfettered legal protection of PSH programs in developing countries should be treated with caution, given that large developing countries have the potential to distort domestic prices and thereby trade when procuring large quantities of food products. A possible way to

take care of this issue is provided by the EU/Brazil proposal which states that support provided by developing countries must not exceed a certain percentage of the average value of the production of that product to be exempted from AMS calculations.

Additionally, a permanent solution should not only cover already existing PSH programs, but also those to be arranged in the future (as proposed by G33 members), given that the issue of food security is unlikely to disappear in short-term future.

## **Safeguards and anti-circumvent measures**

Developed countries will only accept a permanent solution which includes safeguards that limit the acquisition of stockholdings and protect other members from direct exports from public stocks at artificially low prices.<sup>26</sup> It is therefore necessary to consider a potential compromise between the proposals that recommend strict prohibition of (direct) exports and the G33 proposal which does not mention any limitations on the amount of food products acquired and their release from the stocks.

On exports, following the EU/Brazil and Russia/Paraguay proposals to require the members' commitment 1) not to directly export food products from procured stocks and 2) to ensure that stocks procured under PSH programs do not distort trade via other channels could be an interesting option for small developing countries and LDCs. However, since food products cannot be stored for a very long time, there must be a way for members to release their stock surpluses before they go bad or suffer

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<sup>23</sup> Berthelot, Reconciling the Views on a Permanent Solution to the Issue of Public Stockholding for Food Security Purposes, p. 11.

<sup>24</sup> Montemayor, Public Stockholding for Food Security Purposes, p. 1. / Matthews, Food Security and WTO Domestic Support Disciplines post-Bali, p. 15.

<sup>25</sup> Galtier, Looking for a Permanent Solution on Public Stockholding Programs at the WTO, p. 11.

<sup>26</sup> ICTSD, Public Stockholding for Food Security Purposes, p. viii. / Kerr, Food Security, Strategic Stockholding and Trade-Distorting Subsidies, p. 7.



from mice and rats. Along these lines, article 4.f in the Russia/Paraguay proposal offers a new approach as it measures the amount of export of food products procured under PSH programs against the total global export of the respective product. In doing so, small developing countries and LDCs are offered the possibility of exporting surpluses from their food stocks, as their small amount of stocked products do not and/or are unlikely to distort international market prices.

Another possible compromise could lie in the establishment of a certain threshold on quantity and price which has to be followed when acquiring and releasing the food products for or from public stocks, respectively.<sup>27</sup> Below these thresholds, it could be argued that the procurement and release of food products does not affect domestic and global market prices, as well as the food security of other countries. Most importantly, small developing countries and LDCs could strive for a certain flexibility regarding these thresholds, meaning that they will still benefit from legal protection even if they are not in full compliance with their notifications.

A permanent solution that allows small developing countries and LDCs to export (limited) quantities from their food stocks, as well as protect both their domestic and the global market from price-depressing, direct exports from large food stocks would be favourable for these countries. With regard to the latter, the Russia/Paraguay proposal reaffirms the willingness to consider small developing countries and LDCs, as a provision similar to its article 4.f could protect small developing countries and LDCs from direct exports from food stocks in

populous developing countries.

## Notifications and Transparency

With regard to notifications and transparency, a permanent solution should put the smallest possible burden on small developing countries and LDCs.<sup>28</sup> In general, the COA should be in charge of collecting all notifications on PSH programs, as well as monitoring members' compliance with the rules. Coming along with the notifications, basic statistical information on the operation of PSH programs could make them transparent. An annual update of the notification could help to build mutual trust among members and to easily detect rule violations.

## Conclusion

WTO is mandated to find a permanent solution on PSH by MC11. For small developing countries and LDCs, an ideal permanent solution would offer them Special & Differential Treatment, containing the following components:

- Both, existing and future PSH programs are covered. This is of particular importance.
- Members shall not challenge through the WTO Dispute Settlement Mechanism domestic support provided under certain PSH programs.
- Domestic support under PSH programs provided by small developing countries and LDCs is not accounted for in their AMS calculations/de minimis calculations.

<sup>27</sup> Konandreas/Mermigkas, WTO Domestic Support Disciplines, p. 20.

<sup>28</sup> South Centre, WTO's MC10: Agriculture Negotiations- Public Stockholding, p. 10.

- Programs for the purchase of food at administered prices by the government in small developing countries and LDCs with the objective of offering the entire bottom part of the society permanent access to sufficient quantities of food at constant prices, are allowed.
- Direct exports from public stocks are prohibited. However, a mechanism governing surpluses of food stocks and their potential release on international markets should be put in place.
- Procured stocks do not distort trade.
- Members must commit themselves to notify programs to COA, including relevant statistics on the operation of PSH.
- The COA monitors members' compliance with the rules established under the permanent solution.

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