

FREE TRADE v. FAIR TRADE: AN INSIGHT INTO THE FOOD SECURITY ISSUES INVOLVING INDIA, USA AND WTO

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ABSTRACT

Food security has been an issue not only at the national level but also at the global level. However in the recent times, this issue has also been the basis of discussion in the international trade regime due to varying interests of the developed and the developing countries. Various forums including the WTO Ministerial Conferences have conducted detailed discussions on the same; however no concrete solutions have been laid down. This has also led to impasse between US and India. This paper would thus look through the lens on the Bali Ministerial Conference of 2013 that dealt with the issue of food security and public stockholding and its effects. The paper is also a humble effort to also look into the legal aspects of such an issue and to find out suitable and durable solutions to the same.

INTRODUCTION

The Bali Ministerial Conference of WTO held in December 2013¹ resulted in the first multilateral agreement reached by WTO² ever since its inception in the year 1995. Known as Bali Package, the trade agreement intended to make trade among countries easier, irrespective of them being developed or developing in nature. The Bali accord has thus been rightly termed as a conclusion to the Doha Development Round of WTO negotiations³ which have been in progress ever since 2001. Since these Pre –Bali negotiations were not successful in reaching an end result regarding concerns that have immense importance in the international trade regime, there was immense pressure on the negotiators to conduct a detailed analysis of these set of issues and arrive at a concrete conclusion. Consequently, agreements regarding three main pillars of work

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¹ Christophe Bellmann , *The Bali Agreement : Implications and Development for WTO* , available at <http://poldev.revues.org/1744>

² As stated by US Trade Representative Ambassador Michael Froman after the Bali Conference.

³ European Commission , *Ninth WTO Ministerial Conference (Bali , Indonesia 3-6 December 2013)* , available at http://europa.eu/rapid/press-release_MEMO-13-1076_en.htm

i.e trade facilitation, agriculture with special emphasis on food security and special development provisions for least developing countries⁴ were decided upon.

Though the Bali accord was successful in achieving that aim of laying down concrete policies, the developing countries, especially the G-33 felt that the trade facilitation agreement did not provide the developing countries with sufficient policy space to address their already existing food security concerns.⁵ India, in specific felt that some of the agreed provisions could hamper India's much needed adequate protectionist strategies in respect to food security. Further the interim solution provided by the way of a '*peace clause*' was not acceptable to India and developing countries and demanded a permanent solution for the same. Additionally, the provisions of the agreement which was agreed upon at Bali were in contrast to the several food security measures followed in the country.

This impasse was especially in reference to US and resulted in negatively affecting the trade relations between the two countries. However, in 2014 this deadlock was resolved in a manner that addresses India's concerns. This paper would thus, look through the lens on this entire process of resolution of these differences with special focus on each and every facet involved like the needs of both developing and developed countries, the global issue of food security and elucidate on the final agreement reached. The paper would also analyze the legal aspects of such an agreement including the provisions of GATT.

THE ISSUE OF FOOD SECURITY AND PUBLIC STOCKHOLDING IN THE INTERNATIONAL TRADE REGIME

UN and other international agencies have initiated numerous World Food Summits and other conference to address the issue of food security in the global scenario and ensure that food is available to all. However, inspite of many such measures being undertaken at the national and international level, some countries, especially developing and least developing countries have not been able to ensure the same to their citizens due to many factors like increasing population, economical crisis etc. Therefore, these countries are seeking all the possible measures like

⁴ Ravikanth Devarakonda, *Asymmetries mark WTO's Bali accord*, Asia Times, December 17, 2013, available at http://www.atimes.com/atimes/Global_Economy/GECON-02-171213.html

⁵ FAO Trade Policy Briefs on issues related to the WTO negotiations on agriculture, No. 16 The Bali Package – implications for trade and food security, available at <http://www.fao.org/docrep/019/i3658e/i3658e.pdf>

subsidies in the international trade regime for ensuring food security to its citizens. Sometimes when countries resort to international trade there seems to be a conflict between trade and their food subsidy measures. One such situation arose in the case of the recent Bali conference. India has therefore declined to ratify the Trade Facilitation agreement as they would result in compromise its food security.⁶

This is due to the existence of a clause that limits farm subsidies to not more than 10 percent of the value of agricultural production. This limit as provided is in contravention and contrast to the National Food Security Act, 2013 and the Minimum Support Price system implemented by the Department of Food and Public Distribution.⁷ To understand why India is opposing the agreement it is imperative to understand how the system of consumer and farmer subsidies works in India. The Government buys produce from farmers at a price which is above the market price (known as Minimum Support Price), stocks it up in warehouses and then distributes these grains to state-run shops where they are sold at cut-rate prices to the consumers which is essentially the process of public stockholding in a nutshell.⁸ Further, the National Food Security Act, 2013 aims to provide subsidized wheat and rice to roughly two-thirds of India's total population of 1.2 billion at Rs. 3 and Rs. 2 a kilo for rice and wheat respectively. To achieve a target as grand as this, the Government will have to keep increasing the MSP as well as reducing prices of food grains.⁹

The statistics indicate that in this process of providing security to both consumers and farmers, India's current subsidy to the farmers is about 20 per cent of the overall food subsidy.¹⁰ India's

⁶ Rajanya Bose , *Why is India not agreeing to the Trade Facilitation Agreement* , DNA , August 1 , 2014 , available at <http://www.dnaindia.com/money/report-why-is-india-not-agreeing-to-the-wto-trade-facilitation-agreement-2005181>

⁷ Minimum Support Price System , Department of Food and Public Distribution , available at <http://dfpd.nic.in/?q=node/9>

⁸ Alexis Foundation , *A Snapshot of India's WTO Showdown* , August 4, 2014 , available at <http://alexis.org.in/a-snapshot-of-indias-wto-showdown/>

⁹ *Ibid*

¹⁰ Deepankar Basu and Debarshi Das , *For a WTO Stand with PDS in hand* , The Hindu , September 4,2014 , available at <https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCAQFjAA&url=http%3A%2F%2Fwww.thehindu.com%2Fopinion%2Flead%2Ffor-a-wto-stand-with-pds-in-hand%2Farticle6376896.ece&ei=eMDVZrONtSGuATX5YGABg&usq=AFQjCNHPt8FNKlaCWZjqtllZIF-vUKhSEw&bvm=bv.88198703,d.c2E&cad=rja>

current stockpile reserves stand at 21.2 million tonnes and 39.8 million tonnes of rice and wheat respectively, which is twice the amount recommended by WTO and will only get bigger as the National Food Security gets implemented.¹¹ These figures exceed the 10% limit as given by Article VI of Agreement on Agriculture (AOA) which is an international treaty which formed part of the Uruguay Round of WTO negotiations¹².

Another issue that arose is that the cap is put at farm sector at 10% of the value of farm production based on prices prevailing during 1986-88. Given that actual subsidy calculations are based on current market prices and that the NFSA is expected to increase the procurement burden, there is a serious danger of India breaching the 10% farm subsidy cap, ultimately jeopardising the livelihoods of farmers and food security in the country.¹³

PEACE CLAUSE AND THE CORRESPONDING IMPASSE

One of the features of this landmark Trade Facilitation Agreement was the '*peace clause*'. In fact, it could be rightly said that this entire impasse between India and US has been regarding the time period of the *peace clause* and not on the question of subsidies *per se*. According to the peace clause agreed to at the Bali Conference, the developing countries would be provided interim relief measures by the way of a four-year respite from the harsh provisions of the WTO law that limits market distorting farm subsidies at 10% of the aggregate production.¹⁴ Thus, this concession to developing countries would end in the year 2014 after which breach of the cap could be challenged under the WTO Dispute Resolution System and consequently trade sanctions can be imposed on them.¹⁵

¹¹ *Ibid*, see note 9

¹² Focus on the Global south , *India (G-33) proposal on Food security : A wrong move can jeopardize India's food security forever* , available at <http://focusweb.org/content/india-g-33-proposal-food-security-wrong-move-can-jeopardize-india%E2%80%99s-food-security-forever>

¹³ . Rajashekhhar , *India makes historic assertion at WTO* , The Sunday Guardian , available at <http://www.sunday-guardian.com/analysis/india-makes-historic-assertion-at-wto>

¹⁴ Dilasha Seth , *WTO 'peace clause' puts India's food policies under scrutiny of rich nations* ,Economic Times, November 23 , 2013 , available at http://articles.economictimes.indiatimes.com/2013-11-22/news/44365764_1_india-s-peace-clause-food-security-act

¹⁵ *Ibid*

However, India demanded that the 4 year period provided under peace clause should be turned into indefinite so as to benefit the developing countries. Thus essentially, India supported by the G-33 wanted a system where the food security programmes would not be challenged under WTO rules until a permanent solution regarding this issue has been agreed and adopted.¹⁶ There was almost a year of deadlock between India and US over this issue of adopting a permanent solution. However this impasse has now been solved and US has now agreed that India's right to protect its right to food security cannot be denied by the WTO, and thus but acknowledging the same, paved the way for removing the imperfections in the Bali Ministerial package.¹⁷

This view of India would be now supported by US at the WTO. However the peace clause still suffers from certain lacunae. The peace clause gives coverage to government's public stockholding programmes in relation to staples crops. Many have felt that this is inadequate and coverage should be for all crops and agricultural commodities that are related to food security and rural development and not just staples.¹⁸

JUSTIFICATION OF STANDS

India and other developing countries are justifying their stand by focusing on the fact that since the entire basis of Doha rounds was 'development' in a holistic manner of all countries with respect to agriculture, such agreements by WTO to limit the amount of subsidy provided would make such goals futile. This is because development at an international scale cannot be achieved without first achieving development at a national level. To accomplish the latter, it is essential that certain concessions should be provided to developing countries. Thus, domestic subsidy should be allowed. Further, countries like US still provide subsidies to their farmers. For example, while India provides about \$12 billion farm subsidy to its 500 million farmers, the US provides around \$120 billion to its 2 million farmers.¹⁹ Therefore, such agreement at

¹⁶ HT Correspondent, *India US settle row over food security*, Hindustan Times, November 14, 2014, available at <http://www.hindustantimes.com/business-news/wto-impasse-ends-india-us-reach-agreement-on-food-subsidies/article1-1285521.aspx>

¹⁷ Puja Mehra, *India US Deal paves the way for global trade pact*, The Hindu, November 14, 2014, available at <http://www.thehindu.com/news/national/us-resolve-impasse-over-food-security-issues-at-wto/article6594065.ece>

¹⁸ *Supra*, see point 14

¹⁹ Asit Ranjan Mishra, *7 reasons why India's WTO food security stand is right*, Livemint, July 29, 2014, available at <http://www.livemint.com/Politics/R1fIXweMJHelr9NVITyoqL/7-reasons-why-Indias-WTO-food-security-stand-is-right.html>

international trade platforms is hypocritical on their part. Additionally, even for providing subsidised food, India will have to open up its own stockpiling to international monitoring.²⁰ These terms were not acceptable to India.

WTO, on the other hand justifies the Trade Facilitation Agreement by stating that the Bali Package was fundamentally aimed to remove red tape and provide seamless crossborder trade to member countries.²¹ Further economically, it could add \$1 trillion to global gross domestic product and 21 million jobs, by cutting down red tapes. WTO argues that if the developing countries continue to give prices to farmers which are higher than the market prices, it might harm the poor farmers in other parts of the world.

Viewing these two views through the lens, both these stands are justifiable at their own levels. The reason behind two such views emanates from the long existing divide between the developed and the developing countries. Further, the conflicting international and the national goals also lead to such a divide.

However, at this juncture it is important to take a decision regarding which of these should be held at a higher pedestal. This has to be done not only keeping the factual situation in view but also the international legal scenario in mind. A detailed discussion of the same has been done below.

LEGAL ANALYSIS

The original General Agreement on Tariffs and Trade (GATT) of 1947 did not expressly give any special focus to agriculture specifically and agricultural trade was treated essentially like trade in other goods.²² GATT of 1994 though does not expressly talk about food subsidies, under Article XVI deals with the issue of subsidies. Section A of Article XVI deals with subsidies in

²⁰ Rajanya Bose , *Why is India not agreeing to the Trade Facilitation Agreement* , DNA , August 1 , 2014 , available at <http://www.dnaindia.com/money/report-why-is-india-not-agreeing-to-the-wto-trade-facilitation-agreement-2005181>

²¹ ET Bureau , *India says no to trade facilitation agreement if food security agreement not resolved at WTO* , Economic Times , July 4, 2014 , available at http://articles.economictimes.indiatimes.com/2014-07-04/news/51076064_1_public-stockholding-trade-facilitation-agreement-food-security

²² R Sharma , *Agriculture in GATT : A historical account* , FAO Corporate Document Repository , available at <http://www.fao.org/docrep/003/x7352e/x7352e04.htm>

general.²³ This essentially states that the extent of the subsidy, the effect of such subsidization and any prejudice caused to others due to the subsidization should be notified to the other contracting party. This clause can be followed in the food security and public stockholding issue in a very general manner. In addition, Article 1.1(a)(2) of the Agreement on Subsidies and Countervailing Measures (SCM) also defines a subsidy as any form of income or price support in the sense of Article XVI of GATT 1994.

Agricultural subsidies are however have been given special emphasis in the provisions of Agreement on Agriculture (AOA). It has three pillars essentially market access, domestic support and export subsidies. Domestic support deals with the issue of subsidies. Under domestic support, the AoA classifies subsidies into three boxes: Amber Box(Restricted subsidies linked directly to production) ,Blue Box(Monitored restrictions on programmes giving out production subsidies) and Green Box(Exempted subsidies, fully permitted).²⁴

The G-33 wants the government expenditure on public stockholding programmes for food security purposes to be categorised under the WTO's 'Green Box' which contains no conditionalities on subsidy limits.²⁵ US's last notification of 2010 to the WTO showed that it provided USD 130 billion of agricultural domestic supports. They have classified 90% of this under the Green Box. The EU's last notification of 2009 showed total domestic supports of 79 billion Euros, of which 80% is in the Green Box. This shows the disparity that exists even in the international agencies like the WTO with respect to developed and developing countries. This demand by the G-33 has not been considered till now.

²³ If any contracting party grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the CONTRACTING PARTIES in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary. In any case in which it is determined that serious prejudice to the interests of any other contracting party is caused or threatened by any such subsidization, the contracting party granting the subsidy shall, upon request, discuss with the other contracting party or parties concerned, or with the CONTRACTING PARTIES, the possibility of limiting the subsidization.

²⁴ Alexis Foundation , *A Snapshot of India's WTO Showdown* , August 4, 2014 , available at <http://alexis.org.in/a-snapshot-of-indias-wto-showdown/>

²⁵ Aileen Kwa , *A Peace Clause without peace in food security* , 19 November 2013 , available at <http://www.ourworldisnotforsale.org/en/article/peace-clause-without-peace-food-security>

Another anomaly that arises is with respect to Clause 3 of Annex 2 of Agreement of Agriculture talks about public stockholding for food security purposes and states that

Expenditures (or revenue foregone) in relation to the accumulation and holding of stocks of products which form an integral part of a food security programme identified in national legislation. This may include government aid to private storage of products as part of such a programme.

The volume and accumulation of such stocks shall correspond to predetermined targets related solely to food security. The process of stock accumulation and disposal 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.

Reading this clause along with the PDS system in India, it could be seen that there are many contraventions. Neither is stockholding done for a predetermined quantity in India, nor is the stock sold to the consumers at 'current market prices'. The PDS system sells it at a cost less than the market price so as to benefit the poor. If it is sold at the same price then the entire rationale behind the PDS system would become futile which would consequently make the problem of food security worse.

Hence, the provisions of Annex 2 are not followed while implementing the PDS system in India. This also indicates towards the fact that if these issues are touched upon, then the 'subsidies' move away from the protection of the green box into the sharper confines of the amber box.²⁶ These are grave legal issues that need to be figured out and solved along with the major issue of food security and public stockholding.

CONCLUSION

In our general ecosystem, the big animal eats the small animal. Similarly even in our trade environment the big and developed countries take advantage of the developing and least

²⁶ *Ibid*

developing countries imposing on them the rates , tariffs and subsidies that they want and denying of the benefit of the same to them . However, in the recent time the latter have awakened to their rights in the international trade regime and the denial of the ratification by India and other developing countries was an indication of the same. Though as of now India and US have settled their impasse but the key condition over which both shook hands which is ‘no legal action for breach of subsidy cap till a permanent solution is reached’ , what this permanent solution is still needs to be figured out. Once that is done and the same is agreed by all, the Bali Package could be finally said to be successful.