

THIRD WORLD *Economics*

TRENDS & ANALYSIS

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WTO conference adopts Bali package

The ninth Ministerial Conference of the WTO, which took place in Bali, Indonesia, on 3-7 December, approved a set of decisions, including on the contentious issues of food security and trade facilitation. While it has been touted as a success for the WTO as a negotiating forum, the “Bali package” is seen as a modest accord and one that is also imbalanced in its distribution of benefits.

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WTO conference closes after adopting Bali package

The WTO's ninth Ministerial Conference, held in Bali on 3-7 December, approved a set of outcomes that included texts on trade facilitation and public food stocks. *Kanaga Raja* reports.

GENEVA: The ninth session of the Ministerial Conference of the World Trade Organization (WTO) came to a close on 7 December morning after adopting a Ministerial Declaration, the entire Bali package of 10 texts, and five other Ministerial decisions.

The conference, which was scheduled to end on 6 December, spilled over into the following day when a very small group of countries, citing some concerns, had refused to join the consensus on the draft Bali package at an earlier informal heads-of-delegation (HOD) meeting.

The proposed Bali package was presented to WTO member state delegations at an informal HOD meeting at around 8 pm on 6 December. Another informal HOD meeting was held at around 1 am on 7 December.

However, at this informal meeting, according to trade diplomats, Cuba, Nicaragua, Venezuela and Bolivia said that they could not go along with the texts.

Trade diplomats said that two issues were raised, one being a point of procedure (when Cuba was denied the floor at an earlier HOD meeting) and the other being the issue of transit under trade facilitation when the text relating to transparency and non-discrimination (the US trade embargo against Cuba) had been deleted.

(According to a trade diplomat, at the informal HOD meeting at around 8 pm when the draft Bali package was presented to members, Cuba, which had wanted to speak, was denied the floor. Cuba then said that it would not join the consensus in relation to the texts, according to the trade diplomat.)

An informal HOD meeting that was later scheduled for 4.30 am on 7 December was postponed to 10 am the same day, and this was followed quickly by the closing plenary session.

At the closing plenary, the Conference Chair, Indonesian Trade Minister Gita Wirjawan, paid tribute to the late Nelson Mandela, and South African Trade Minister Rob Davies was also

given the floor.

The Chair then proceeded to take action on a revised draft Ministerial Declaration (which had been circulated on 7 December morning), the five draft Ministerial decisions, and the Bali package of 10 texts. All were duly adopted to a standing ovation.

The revised Bali Ministerial Declaration had added the following paragraph under the trade facilitation sub-heading: "In this regard, we reaffirm that the non-discrimination principle of Article V of GATT 1994 remains valid." According to trade officials, this paragraph was included to address the concerns voiced by Cuba.

The five Ministerial decisions were on TRIPS non-violation and situation complaints, work programme on electronic commerce, work programme on small economies, aid for trade, and trade and transfer of technology.

The 10 texts comprising the Bali package were the agreement on trade facilitation; general services; public stockholding for food security purposes; understanding on tariff rate quota administration; export competition; cotton; preferential rules of origin for least developed countries; operationalization of the waiver concerning preferential treatment to services and service suppliers of least developed countries; duty-free and quota-free market access for least developed countries; and monitoring mechanism on special and differential treatment.

Decision on public food stockholding

On the critical issue of food security, paragraph one of the Ministerial Decision on public stockholding for food security purposes states: "Members agree to put in place an interim mechanism as set out below, and to negotiate on an agreement for a permanent solution, for the issue of public stockholding for food security purposes for adoption by the 11th Ministerial Conference."

A footnote to this paragraph states that the permanent solution will be applicable to all developing members.

The second paragraph of the decision states: "In the interim, until a permanent solution is found, and provided that the conditions set out below are met, Members shall refrain from challenging through the WTO Dispute Settlement Mechanism, compliance of a developing Member with its obligations under Articles 6.3 and 7.2 (b) of the Agreement on Agriculture (AoA) 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 this Decision, that are consistent with the criteria of paragraph 3, footnote 5, and footnote 5&6 of Annex 2 to the AoA when the developing Member complies with the terms of this Decision."

A footnote to this paragraph states: "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."

On notification and transparency, the decision states:

"3. A developing Member benefiting from this Decision must:

"a. have notified the 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 Member's Bound Total AMS or the *de minimis* level) as result of its programmes mentioned above;

"b. have fulfilled and continue to fulfil its domestic support notification requirements under the AoA in accordance with document G/AG/2 of 30 June 1995, as specified in the Annex;

"c. have provided, and continue to provide on an annual basis, additional information by completing the template contained in the Annex, for each public stockholding programme that it maintains for food security purposes; and

"d. provide any additional relevant statistical information described in the Statistical Appendix to the Annex as soon as possible after it becomes available, as well as any information updating or correcting any information earlier submitted."

With respect to anti-circumvention/safeguards, the decision states:

"4. Any developing Member seeking coverage of programmes under para-

graph 2 shall ensure that stocks procured under such programmes do not distort trade or adversely affect the food security of other Members.

"5. This Decision shall not be used in a manner that results in an increase of the support subject to the Member's Bound Total AMS or the *de minimis* limits provided under programmes other than those notified under paragraph 3.a."

As to the work programme, the decision states:

"8. Members agree to establish a work programme to be undertaken in the Committee on Agriculture to pursue this issue with the aim of making recommendations for a permanent solution. This work programme shall take into account Members' existing and future submissions.

"9. In the context of the broader post-Bali agenda, Members commit to the work programme mentioned in the previous paragraph with the aim of concluding it no later than the 11th Ministerial Conference.

"10. The General Council shall report to the 10th Ministerial Conference for an evaluation of the operation of this Decision, particularly on the progress made on the work programme."

"A real stimulus"

At a subsequent closing press conference, Minister Gita said that what was accomplished represented a historic achievement – the Bali package. "These agreements will provide a real stimulus to the global economy at a time when many countries are experiencing sluggish growth and high unemployment. These benefits are real and they will be durable. Just as importantly, we have proved that the multilateral trading system and the WTO can deliver."

"The deal that we have struck will benefit all WTO Members. It will provide new opportunities for business in our poorest members, the LDCs [least developed countries]. Provides governments with assurance that they can implement food security programmes without fear or facing dispute action in the WTO. But it also offers a safeguard that such programmes will not be used in a manner which distorts trade and adversely affects farmers in other countries," he said.

Developing-country farmers will have enhanced market access through an improved system of administering im-

port quotas in developed countries. The agreement on trade facilitation will streamline customs procedures by reducing unnecessary fees, paperwork and practices, said Gita.

"This week has been about high level diplomacy, long nights and considerable drama. But it has also been about ensuring that the gains of the multilateral trading system reach our small businesses and our most vulnerable economies. It is moreover an international agreement that will have local impact."

Speaking at the same press conference, WTO Director-General Roberto Azevedo said that in recent weeks the WTO had come alive, and "we have seen, I think, the organization the way it should be. Negotiating, dynamic, working hard to get an agreement. And in recent weeks we really lived up to our name."

"Instead of small groups of countries negotiating in closed rooms, the entire membership came together to negotiate. And this is why all members have ownership of the outcomes. And this is why they all fought for it. And we have put the world back into the World Trade Organization."

"We prepared a set of texts which was championed by members from all over the world, of all stages of development, and so I am delighted to say that for the first time in history, the WTO has delivered. We're back in business," he said.

"With these measures on trade facilitation, agriculture and development, we have achieved something very significant. People all around the world will benefit from the package that the WTO members have delivered today, especially the unemployed, the poor and the vulnerable," said the Director-General.

In his assessment of the overall Bali package, one trade diplomat told the *South-North Development Monitor (SUNS)* that he could not say it was balanced, adding that trade facilitation was the highest denominator.

According to the trade diplomat, there remained some unfinished work that needed to be sorted out in Geneva.

What was more worrying, said the trade diplomat, was the time period for the post-Bali work programme (within the next 12 months, as set forth in the Ministerial Declaration). If no urgency was put into that, the rest of the Doha Development Agenda risked going into oblivion, the diplomat cautioned. (SUNS7713) □

WTO makes a small deal

The Bali outcome is one that is not only modest but also lacking in balance, writes *Martin Khor*.

The Ministerial Conference of the World Trade Organization in Bali ended with a small deal, hailed by many for reviving the WTO as a viable venue for trade talks. The results are however very modest, and there are also imbalances in gains and losses.

The conference was mainly conducted behind closed doors, with the WTO Director-General Roberto Azevedo holding meetings issue by issue with a few countries. Participants were given the final draft only a few hours before a final plenary meeting.

Most of the week was spent on the "food security" issue, with the Director-General being the go-between between the United States and India.

India was the most prominent among the developing countries that wanted to change the present WTO rules on agricultural subsidies that hinder the ability of governments to purchase and stock staple foods from farmers.

It was agreed that a permanent solution involving changes to the rules would take more time, so Bali discussed an interim measure – a "peace clause" whereby WTO legal cases will not be taken against countries having a public food stockholding programme.

The issue was how long this peace clause would last. India, backed by many developing countries, wanted it to last till the permanent solution is found. The US and others wanted the peace clause to expire in four years.

The final agreement was that the WTO would negotiate a permanent solution within four years, and countries will refrain from taking cases until that solution is found.

Thus the "food security" developing countries won the battle of duration, but in reality the peace clause is of limited value.

First, it applies only to the WTO's Agriculture Agreement; countries can still sue under another agreement on subsidies.

Second, the peace clause applies only to "existing programmes." Thus countries that have no programme and want to start one will not be covered.

Third, there are cumbersome conditions, including the country providing a lot of information and notifying that it has reached its allowed subsidy limit,

that may make it not worthwhile to use the peace clause.

What is more important is that serious work be done to find a permanent solution.

On another agriculture issue, the WTO failed to live up to the deadline set by the 2005 Ministerial Conference to eliminate export subsidies by 2013. Instead the weak Bali decision on export competition regretted the missed deadline and undertook to maintain progress.

Trade facilitation pact

With the food issue cleared, the Bali conference was able to adopt a trade facilitation treaty which obliges all countries to streamline their customs procedures and upgrade their technology and infrastructure so that imported goods can be cleared faster and more easily.

The new obligations can be easily met by developed countries that already have the measures and technology, but are onerous on poorer countries that don't have the capacity.

The trade facilitation agreement will be of greater benefit to those countries which are net exporters as their goods will clear faster in other countries. Net

importers can be expected to see their imports rising faster than their exports, with adverse effects on their trade balance, a concern raised by some developing countries.

Developing countries are able to designate which specific obligations they need more time to implement, and there is also promise of technical assistance for them, but there is only a more vague and less explicit commitment to provide them with "financial assistance".

The Bali meeting also approved decisions to assist least developed countries on market access, rules of origin, cotton and services. However, the decisions are not binding and thus have little practical benefit. These LDC decisions should be seen as a starting rather than an end point, with further negotiations for future decisions that are more useful.

Overall the Bali deal lacks balance, as the trade facilitation treaty advocated by developed countries is binding (with those not fulfilling their obligations facing WTO legal cases) while the decisions on LDC issues and export subsidies favoured by developing countries are not binding in nature, while on food security only an interim measure (peace clause) with limited value was obtained. □

Martin Khor is Executive Director of the South Centre, an intergovernmental policy think-tank of developing countries, and former Director of the Third World Network.

Differences emerge, MC9 fate hangs in balance

Uncertainty had hovered over the Bali Ministerial Conference as to whether the meeting would yield an accord, with calls for striking a deal countered by complaints that the texts on the table were imbalanced. The following article, written on 5 December, sets out the state of affairs prevailing then.

by *Kanaga Raja*

BALI: The fate of the WTO's ninth Ministerial Conference (MC9) in Bali hung in the balance on 5 December as member states set out at an informal plenary meeting of heads of delegation (HOD) differing views on whether to conclude a "package deal" in the final days of MC9, or be ready to pass the unfinished work over to trade diplomats in Geneva.

While normal media briefings suggested a large majority backed the WTO Director-General's efforts to end the

meeting with a "package", a more sombre picture – one very far from that painted in the mainstream media and some of the posts on the WTO website since the end of the General Council meeting on 26 November – emerged here from information from other sources.

The information, provided non-attributively by delegations that had participated in the meeting and from representatives of non-governmental organizations with access to their country del-

egations and their meetings, brought out in clearer focus some key points made by some of the countries at the HOD meeting.

According to these sources, both the Chair of MC9, Indonesian Trade Minister Gita Wirjawan, and WTO Director-General Roberto Azevedo called on ministers to close the gaps in remaining areas and adopt a package in Bali. Many countries that spoke echoed this view, and some asked the DG to hold consultations and make proposals on issues where differences still existed. There was however no consensus on this course.

Several other countries at the HOD meeting made clear their view that the proposed texts on the three main issues were "imbalanced". They complained that the text on trade facilitation was couched in legally binding language whereas the texts in areas of interest to developing countries only had "best endeavour" terms or a temporary lifespan (the food security "peace clause").

Some members were also reluctant or opposed to giving a mandate to the DG to come up with "clean" texts for adoption by the Ministerial Conference.

At the end of the HOD session, Azevedo said it was not time to give up, and he would intensify his consultations, hoping to find "landing zones". He asked delegations to be ready to convene at any time between now and the closing ceremony.

Conference Chair Gita called on ministers to build on the progress and close the remaining issues, urging them to work with the Geneva texts.

"Extremely close"

Participants at the HOD meeting said Azevedo, in "briefing" them, laid out his views on the documents and state of play on the three issues: agriculture, trade facilitation and development/LDCs.

While none of the texts could be said to be cleared, he suggested "we are extremely close." The overall message in Bali, according to him, "is a call for delivering the package." The type of political calls needed for this could not be made in Geneva.

Jamaica said it was ready to work on resolving the remaining gaps and urged the DG to intensify consultations on the issues with those members "attached" to those issues with a view to finding landing zones.

Nepal said the LDCs had never said

the outcomes met their expectations but they accepted to go forward in Bali. Food security was a concern of the poor and there was a need to find a positive outcome. On LDC aspects of the trade facilitation text, it was a result of consultation among LDCs, the European Union and the United States. The LDCs were fully committed to finalizing the entire package.

Nigeria said they were close to a package. It wanted export competition to be binding, and would push for it post-Bali. On public stockholding, it was still possible to link this issue to a permanent solution but with a definite timeframe. Nigeria was ready and willing to support a positive outcome on a single package.

Egypt wanted a deal in Bali. The stumbling block was in agriculture, as the current text did not fully take into account the food security concerns of developing countries. The Ministerial Conference should address this issue and concentrate discussions on it and work around the text to reach a compromise, while all technical issues could be included in a post-Bali agenda.

Brazil was determined to get a balanced package. The Bali package was an essential step, it said. The negotiators should be mandated to prepare a post-Bali work programme to continue the Doha Round. Brazil counted on the wisdom of the Indonesian Minister and DG to get the Ministerial Conference there.

China believed the Ministerial Conference should fully understand the concerns of members on food security, and would encourage the concerns of "small members" to be addressed. China supported a package in Bali.

Saying "almost" every member strongly supported a deal in Bali, Australia supported the DG preparing a text to reflect the landing zones.

Mexico wanted to conclude an agreement in Bali, as it was not useful to take the text to Geneva.

India called for "horizontal balance" in the texts. In Section I of the draft trade facilitation agreement, "there are areas of concern to us and other Members, namely penalty disciplines, release of goods, expedited shipments". Until these were resolved there could be no meaningful resolution of the trade facilitation agreement.

Public stockholding of food was a central issue, and finding a permanent solution was important. At present there were various texts at various stages of

maturity and thus not ready to be harvested. India had been given to understand "there would be no negotiations" in Bali, but that the DG could continue consultations among delegations that raised concerns. However, further draft texts should first fully meet the concerns and only then could they be multilateralized. They should also agree on the post-Bali issues and these should be concluded in a time-bound manner.

Singapore said a vast majority wanted a deal concluded in Bali, but it recognized that some issues were politically sensitive. However, the DG could strike the right balance and was best placed to be "the broker" to help cross the finish line.

Switzerland suggested that those with specific problems should try to solve it or ask for the DG's assistance.

Chinese Taipei supported a positive Bali package as a stepping stone for the post-Bali agenda.

Uganda said it was important to send a strong message to address the outstanding issues within a realistic timeframe over the post-Bali process, including the conclusion of a permanent solution on food security, elimination of all forms of export subsidies and financial assistance for trade facilitation.

Chile said there was no point going back to Geneva without a substantive decision in Bali. It expected the DG to hold consultations. If they failed, there would be a high price to pay.

Pakistan said members should refrain from taking extreme positions. Pakistan was constructively engaged on the stockholding text and ready to consider balanced text, with production distortions allowed for very short periods.

Norway said a deal had to be finalized here. If they left Bali with no agreement, the package would be lost and the implications for the multilateral trading system in the long run would be serious.

Rwanda said the package at hand may not be fully balanced, particularly on development issues. It recognized the modest result, but the package reflected a strong commitment by all to reactivate the dialogue. Food security was a global priority, but it could not understand how a global priority could be delaying the process of the Doha Development Agenda. Food security was being threatened by subsidized food from a number of countries. There should be a deadline for an end to subsidization of agriculture in developed countries.

Cuba did not agree with the DG's

assessment, and was surprised by his comment that only a few issues were left to be resolved. The documents produced in Geneva were the result of complex negotiations and they had come to Bali with a number of issues of vital importance that were yet to be resolved. Cuba noted in Bali there were to be no negotiations but the DG claimed to present documents that had been resolved. Members were called to have a result under pressure, as a "take-it-or-leave-it" package. The Bali package as it stood was a serious threat to the WTO's credibility. The Ministerial Conference was not the framework that allowed for adoption of a package and they must continue work in Geneva. At the same time Cuba could accept the Ministerial Conference adopting the documents on the LDC issues.

Benin said Bali must have an outcome and asked countries to make compromises.

Imbalanced package

South Africa said the role of the Ministerial Conference was fundamentally to provide political input and guidance including for resolution of the text issue, and also on the nature of the post-Bali work programme. The package was imbalanced, with a legally binding trade facilitation agreement but with other issues like agriculture and LDCs having only "best endeavour language"; further work was required after Bali. The balance must involve firm and binding commitments with a clear time frame that would prioritize the issues of agriculture and LDCs. On public stockholding, the balance that was struck should give confidence to millions of poor farmers. South Africa was committed to working to restore the developmental balance in the package.

Costa Rica said there was a balanced package of benefit for all members of WTO, and it trusted the DG to identify the landing zones.

Namibia joined those with the position that the balance in trade facilitation was not as desired and rendered the "trade-offs" unequal. It had worries on the agriculture and food security proposals. Food security and agriculture linkage needed to be underpinned in this agreement. The "peace clause" did not live up to its expectation and needed further work. The post-Bali process should focus on bringing about the desired outcome between and within the various pillars.

Bolivia said it could not agree with the DG's assessment for the following reasons: The situation had not changed since Geneva, except for some progress on the LDC aspect of trade facilitation, and there were pending bracketed texts (indicating lack of consensus) in Sections I and II of the draft trade facilitation agreement. While the trade facilitation agreement would be binding, on the food security and agriculture issues there were no legally binding provisions. This was like a "free lunch" for developed countries. Bolivia would not be "an accomplice" in such an unfair package. Bolivia could only adopt a package for LDCs. Any consultation in Bali should be, as in Geneva, in full inclusiveness.

Argentina said although it was important to reach a multilateral agreement on trade issues, such an agreement should be fair. There was a need for a strong political decision to turn the agriculture part of the package into a binding decision. If this happened, they would be able to have a far more balanced agreement and that would make it possible for Argentina to support it. In trade facilitation, there were some red lines it could not accept, such as consularization and expedited shipments, as they ran counter to the Argentine legislation.

Japan said texts should not be opened up. Hong Kong wanted a package agreed in Bali, saying political will was what mattered. The US said the next few days would be challenging but could succeed. The US was prepared to ask the DG to find landing zones.

The EU said a solution could be achieved only if they were pragmatic; among all issues to be solved, the most sensitive obstacle was food security. The EU could live with the text of Geneva, but if needed it was willing to give certain concessions. The EU could not accept an interim solution of an indefinite period and said it should be with final dates allowing for negotiating a permanent solution. The DG should be entrusted to take initiatives.

Zimbabwe said the texts remained very unbalanced and needed further work. The gaps remaining, particularly in trade facilitation, could not be closed in Bali and it agreed with those who emphasized the need to come up with a time-bound post-Bali programme. It also proposed that the meeting adopt an LDC package.

The Solomon Islands said failure in Bali would have ramifications for all. A successful conclusion to the Bali meet-

ing was needed and it encouraged donor partners to assist LDCs to take part in the overall trading system.

Russia believed a package could be concluded in the next 48 hours. It requested the DG to hold consultations with interested parties and remove brackets from the trade facilitation text.

Ecuador said Bali must not become "a negotiating forum". There were unbalanced results in the texts. On trade facilitation, it was impossible to undertake commitments under expedited shipments. It must be made a priority to work on completion of the Doha agenda as the only item on the post-Bali agenda.

No surprises

Venezuela said its understanding was that Bali would not be a negotiating Ministerial. The proposed package was unbalanced. It satisfied developed countries that had no mandatory obligations. Venezuela did not want surprises at the conference and insisted on negotiating after Bali on Doha issues and only Doha issues. It considered inappropriate the proposal to draft text at the last minute. Any decision should be taken by consensus and solely by consensus. But it supported the proposal on the LDC package.

Saudi Arabia urged more flexibility to finalize the Bali package.

Kenya said the WTO was about balance and inclusion and members should all negotiate, taking national realities into account. On food security, Kenya called for linking the peace clause to a permanent solution. More should be done on export competition. Kenya truly feared for the future of the WTO.

Colombia thought this might be the last opportunity for the Doha Round. Malaysia trusted the DG's role to deliver the Bali package in Bali. Gambia also supported the efforts of the DG to reach common ground in Bali.

Nicaragua said developing countries were taking binding commitments and they wanted developed countries to do the same, as they were committed to a fair result.

Thailand said it was still possible to achieve the Bali package as the finish line was very close. Uruguay believed the agreement should be balanced; it had concerns over gaps on export competition, and with regard to food security, a peace clause should be limited in time.

Chad did not feel that the three elements of the package (i.e., agriculture, trade facilitation and development/

LDCs) were balanced. There were binding obligations on trade facilitation and it wished the other two elements were of such nature or else the landing zone could not be found.

New Zealand said there was a need to finish the work here and supported the DG's efforts to resolve issues.

The DG said he detected strong support for trying to do the deal here. He would intensify his consultations and see where they led. He asked delegations to be ready to convene in this form at any time between now and the closing ceremony, saying they would be informed formally or informally.

Following the HOD meeting, some delegates said they expected the DG to produce "clean texts" by 5 December evening or 6 December morning. However, others believed that while this was possible for some aspects of trade facilitation, the food security issue was not one of text but of fundamental differences. If these differences could not be bridged, then it would be difficult or impossible to paper over the differences with some language.

In other actions at Bali, the Ministe-

rial Conference on 4 December approved the accession of Yemen as the 160th member of the WTO.

Meanwhile, the conference's most quotable quote came from an observer delegation at the plenary, from Archbishop Silvano M. Tomasi, Apostolic Nuncio and Permanent Observer of the Holy See to the United Nations and Other International Organizations in Geneva.

In his speech, Archbishop Tomasi echoed the recent 84-page apostolic exhortation of Pope Francis and said the apostles of the markets were expounding at the WTO ideologies of "absolute autonomy" of the marketplace and of financial speculation, and, consequently, an outright rejection of the right of states to exercise any form of control.

"A new tyranny is thus born," Archbishop Tomasi said, "invisible and often virtual, which unilaterally and relentlessly imposes its own laws and rules. An even worse development is that such policies are sometimes locked in through trade rules negotiated at the WTO or in bilateral or regional FTAs [free trade agreements]." (SUNS7712) □

gotiated agreement which allays the apprehensions of the developing countries and the poor countries particularly with regard to their vulnerability to archaic rules or dated rules," he said.

Non-negotiable right

As India had maintained throughout, the right to food security was non-negotiable, Sharma stressed. This was a right which the United Nations recognized, and that was why the UN had a Special Rapporteur on hunger and food security (Olivier de Schutter), and reports on hunger and food security issues were regularly presented to the UN.

"We also have a commitment to the Millennium Development Goals (MDGs). The countries which are represented in the WTO are also signatories [and] have also made commitments to the MDGs, as well as to the right to food. Therefore, any decision which we make while putting in place the agreements, particularly in agriculture, on food security [has] to be in harmony with the MDGs and the right to food security, [and] cannot and must not be in conflict with these noble goals of the global community as a whole."

This was a principled position for India and it should not be misinterpreted as India entering into a dispute. "We have urged with respect all members to consider this aspect so that the decisions that we make resonate in the poor and developing countries where people are genuinely concerned as to what will emerge out of Bali."

In India, there was a food security programme, and the public stockholding for food security was the proposal which was under discussion.

Sharma underlined that out of the 10 draft texts that were negotiated in Geneva, India had endorsed eight. "This is just to underscore that India is as much committed as any other nation to have a successful outcome in Bali." But at the same time there were issues on trade facilitation where some countries like India may be required to change their domestic laws, and countries found it difficult to make those commitments.

The crunch was the issue of public stockholding for food security, he said.

He then went on to explain the manner in which the issue of food security was addressed under the WTO rules. He said that countries were allowed to have public stockholding and public procurement but there was a threshold called the *de minimis*. This was linked to the past

Minister Sharma explains India's position on food security

During the Bali meeting, the Indian trade minister had underscored the importance of public food procurement schemes, stressing the need to uphold the right to food security and reform the "inherently flawed and unfairly balanced" WTO farm trade rules.

by Kanaga Raja

BALI: Indian Commerce and Industry Minister Anand Sharma on 5 December reiterated his country's position on the issue of food security.

At a media briefing in a packed room, Sharma said that India had been engaged in the ongoing negotiations for many months in Geneva with all sincerity and in the most constructive manner.

India had made an acknowledged contribution in taking forward not only the agenda for this meeting in Geneva but also on all the three pillars on which negotiations were going on to arrive at a solution which was acceptable (and) which embraced all, he added.

"We live in a world where countries have different levels of development and their challenges differ from nation to nation and continent to continent but the vast majority of the world lives in poor countries, in developing countries, in

Asia, in Africa, in South America and the Caribbean."

"It is a fact that those engaged in agriculture in these countries happen to be resource-poor and subsistence farmers," he said.

In agriculture, technologies in many of the poor countries – not in India – may not be as available for farming in many of the developed countries. When talking about a country like India, "we talk on behalf of similarly placed countries whom I will refer to as our partners in this coalition of countries which are developing countries which have a challenge of food security; countries which have the issues concerning the subsistence farmers."

"This is one issue which we thought should be and needs to be addressed so that past distortions can be corrected by putting in place through consensus a ne-

Uruguay Round agreement, and for the calculation of *de minimis*, the reference prices used were of 1986-88. So, in 2013, all countries had to calculate the *de minimis* for the eligible procurement based on 1986-88 prices!

"We have been pleading that these prices need to be updated," he said, adding that the last agreement (Uruguay Round) was a flawed agreement – it had an inherent imbalance loaded against the developing and poor countries.

Pointing out that most countries had seen an escalation of prices in 2013, Sharma said: "If anybody says that the food prices have not changed in the last three decades, I most respectfully would strongly disagree with that."

He explained that what India procured was from the subsistence farmers. It was only a limited percentage of the food grain that was produced by the farmers or the different staple foods which were procured to feed the poor. It was procured at a Minimum Support Price (MSP), which was not the income support or market support that developed countries had been practising for decades.

And what was procured was distributed as part of food security – until recently it was through the public distribution system – where subsidized food grain was made available to the poor so that they did not go to bed hungry.

The Indian parliament had enacted a food security act. It was a legal entitlement given to citizens – over 700 million Indian citizens were poor and legally entitled – and the government was obliged to ensure that the prescribed notified quantity of food per month was made available as per their entitlement.

"We cannot possibly be expected to negotiate something which is in direct conflict with our food security," the Indian minister stressed.

India was not the only country which gave MSP to its farmers. A large number of countries had similar programmes. At least 15-odd countries, if not more, had notified schemes for food security and public procurement.

"We have been discussing a number of possible options so that we come, while negotiating these things, to the second decade of the 21st century and not be held hostage to the 1980s."

Sharma further said that India had been talking to various groups, its coalition partners and various stakeholders.

It had had a number of negotiations with the EU, the US and also with the African and ACP (African, Caribbean and Pacific) groups and the LDCs.

He noted that in the past when there had been a shared concern over the stalemate in the Doha Round of negotiations, it was India which took the initiative and he had the honour of hosting ministers and leaders in New Delhi in September 2009 with an effort and objective to re-energize the stalled talks and it did help as the negotiators returned to Geneva.

"India is for the strengthening of the multilateral trading system. India stands for the strengthening of the WTO. We are for a rule-based multilateral trade system which corrects historical distortions, which is fair, which is just, which is equitable."

Stacked against the poor

Responding to a question, Sharma said that the Agreement on Agriculture (AoA) reached in the Uruguay Round was "inherently flawed and unfairly balanced" against the poor in developing countries, hence "the ongoing negotiations, that's why we want this calculation to be not dated but updated and to be brought to the 21st century."

Sharma was also asked whether India would be worse off if there was no deal in Bali as it risked being challenged at the WTO. To this, he responded, "Why are we having any negotiations then? The same would apply then also to trade facilitation. Why do we have a multilateral trading organization and should we have decisions frozen in time?"

"We're negotiating because the food prices have gone up ... We're negotiating because [of] the legal entitlement to food security. This is primarily a sovereign right and a sovereign space. But as a responsible nation, as a rule-based and rule-governed democracy, we are discussing this G33 proposal [on public stockholding for food security] so that the rules as such and the agreements of the multilateral trade organization are connected with the realities on the ground of the 21st century."

Unlike rich countries, he said, "our agriculture is primarily rain-fed" and agricultural holdings of Indian farmers were on average of 1.2 acres of land in a nation of 1.25 billion people.

Asked if, politically speaking, his position was related to the upcoming

Indian election, Sharma said he thought that this again was a "misperception". Democracies did have elections, but they also had principles and convictions.

He said that the proposal on food security emanated from the WTO's Hong Kong Ministerial Conference of 2005. India had not suddenly remembered that there were going to be elections and "pulled a rabbit out of the hat". This was an eight-year-old proposal which had been discussed, rediscussed, negotiated and renegotiated many times. The G33 had shown flexibility and lowered the ambition just to ensure there was a consensus. It was the unbracketed portion, the consensus position, in the 2008 revised fourth draft on agriculture – this meant that it was the settled part of the AoA as on December 2008. "And people must respect what was accepted after negotiations in the year 2008."

In response to a question about the texts on the table, Sharma asked that, when out of 10 texts, India had endorsed eight and was willing even to negotiate the outstanding issues on trade facilitation, "can we barter away or compromise when it comes to a fundamental right to food security?"

"I would like to make this absolutely clear that we have not come here as petitioners to beg for a peace clause ... That it is binding on us to accept 1986 to 1988 prices and make ourselves vulnerable to disputes and calculations? The answer is a firm 'NO'. This is a fundamental issue, we will never compromise."

He said he found it very amusing that a country which was standing up for a right acknowledged by the UN and the MDGs, "should be blamed for speaking for the right to food security for hundreds of millions, or rather billions, of poor people on this planet. We are not in conflict. We are urging not for a compromise but for a consensus on this fundamental issue."

To another question, the Indian Minister said that there would not be a collapse and that the WTO would survive. There had been past meetings without any result. "We did not come here to collapse any meeting. India is committed to a positive outcome in Bali. India is committed, but also to a balanced and fair outcome."

On public stockholding for food security, Sharma said there had to be a fair and balanced agreement. "It is better to have no agreement than a bad agree-

ment.”

In response to a question, Sharma said that India had a public procurement of food grains using public funds for stockholding for distribution among the people entitled for food security. The stocks procured using this public money could not be given to trade for export purposes.

Replying to another question, he said that both Pakistan and India exported rice. But for basmati rice (that India exports), there was no public procurement. That was high-quality rice which was never procured for food security or public distribution in a subsidized manner.

Asked if India was alone, Sharma said that the countries that had stood up and spoken were all big countries with huge populations, and in that context, it may be more than 75% of the world’s population who stood by India on this issue.

Asked about the interim arrangement and it being linked to a permanent solution, he said that India never sought a “peace clause”. It was being erroneously referred to as one. On the interim solution, he said that his understanding of the English language was that “interim” was meant for the present, for the intervening period until the permanent was put in place. There was no dictionary meaning which described “interim” as “temporary”. Interim was interim until the permanent was put in place.

The WTO Director-General’s draft made it clear that the parties would commit to engage in negotiations for a permanent solution. But all that India and other countries were saying was that this was a must-have for them.

“We’re only saying how can there be a ‘sunset clause’ when you have binding commitments in trade facilitation and ‘interim’ is described as four years ... I cannot accept this as a new dictionary meaning of the word ‘interim’,” said Sharma.

Policy space for food security

Meanwhile, in a letter sent to Indonesian Trade Minister Gita Wirjawan on 3 December, the Our World Is Not For Sale (OWINFS) global network of civil society groups called upon him to pay urgent attention to the matter of food

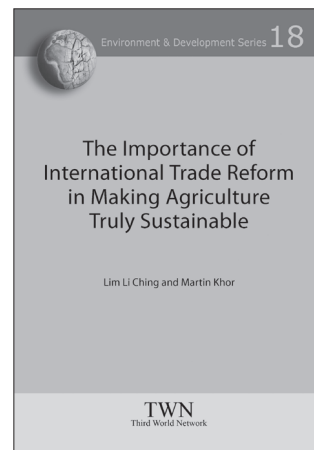
(continued on page 16)

The Importance of International Trade Reform in Making Agriculture Truly Sustainable

Lim Li Ching and Martin Khor

Reforms of the international trade regime require a significant reduction or removal of harmful subsidies currently provided mainly by developed countries, while at the same time allowing special treatment and safeguard mechanisms for developing countries in order to promote their smallholder farmers’ livelihoods. Such reforms, coupled with policies in support of sustainable small-scale agriculture in developing countries, would improve local production for enhancing food security.

There is also a need for regulatory measures aimed at reorganizing the prevailing market structure of the agricultural value chain, which is dominated by a few multinational corporations and marginalizes smallholder farmers and sustainable production systems. Policies that increase the choices of smallholders to sell their products on local or global markets at a decent price would complement efforts to rectify the imbalances. In addition, a shift to more sustainable and ecological agricultural practices would benefit smallholder farmers by increasing productivity while strengthening their



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resilience to shocks, such as climate change, and reducing the adverse impacts of conventional agricultural practices on the environment and health. The trade policy framework should therefore support such a shift.

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The uncertain gains from trade facilitation

Proponents of a WTO agreement on trade facilitation, which has since been adopted at the Bali Ministerial Conference, claimed that such a deal would raise global income by \$1 trillion and create 18 million jobs in developing countries. *Jerolim Capaldo* examines the veracity of these headline-grabbing figures.

On the eve of the ninth WTO Ministerial Conference the International Chamber of Commerce reiterated its claim that trade facilitation would add \$1 trillion to the world's income.¹ The estimate is based on a study published by the ICC, which also claims that trade facilitation can create 18 million jobs in developing countries.²

Unfortunately, these figures depend on too many unjustifiable assumptions to be relied on. Inaccuracy accumulates in several stages of the estimation process: in estimating the gains from trade facilitation for a sample of countries, in scaling up the gains to the global level and in estimating the employment gains. The resulting figures are too uncertain to underpin any policy decisions.

Furthermore, the estimates only refer to gross gains excluding the costs – in terms of both investment and employment – associated with implementing trade facilitation. Yet, under a current proposal, developing countries are required to sustain the entire implementation cost without financial participation by developed countries.

It is hard to see how uncertain gains and unequal distribution of costs can justify diverting resources to trade facilitation from badly needed policies such as the strengthening of social safety nets.

ICC estimates of export, income and employment gains

The ICC estimates are summarized in Table 1. Export gains are obtained estimating a gravity equation that relates trade flows to measures of different dimensions of trade facilitation. Both GDP and employment impacts are based on these estimates.

Increases in GDP are calculated as a fixed proportion of two-way trade (46% for all countries), which is in turn obtained by doubling the estimates of export gains. The fixed proportion chosen is the average of the proportions estimated in different studies, ranging from 11% to 109%, and mostly based on Computable General Equilibrium models. This is old wine in new barrels, as CGE estimates are notoriously not ro-

Table 1: ICC estimates of gains from trade facilitation

	A	B	C	D	E	F	G	H
	Export gain	Two-way trade gain (Ax2)	Trade multiplier	GDP gain (BxC)	Employment intensity of GDP	Jobs created (AxE)	Jobs destroyed	Employment gain/loss (F-G)
	\$billion	\$billion		\$billion	Employees/\$bn of value added in industry	'000	'000	'000
East Asia	267	534	0.46	246	41,500	11,081	?	?
East Europe and Central Asia	101	202	0.46	93	20,500	2,172	?	?
Latin America and Caribbean	151	301	0.46	138	20,000	2,935	?	?
Middle East and North Africa	15	30	0.46	14	12,500	188	?	?
South Asia	5	10	0.46	5	122,500	613	?	?
Sub-Saharan Africa	30	60	0.46	28	34,500	1,035	?	?
Developing-country total	569	1,137	0.46	523	31,673	18,022	?	?
Developed countries	475	949	0.46	437	5,500	2,610	?	?
World total	1,043	2,086	0.46	960	19,781	20,632	?	?

bust to changes in elasticities.³

Increases in employment are calculated for each country by multiplying its estimated export gains by the average labour-output ratio of its industrial sector.

All estimates obtained in this way are obviously very sensitive to changes in the parameter values, making the estimation of the latter a critical matter.

Estimating the gains from trade facilitation

The first source of inaccuracy in estimating the gains from trade facilitation is the measurement of trade facilitation itself. Differently than exports, imports or production costs, trade facilitation is comprised of a variety of dimensions, such as availability of information on the Internet or homogeneity of documentation, that are typically measured on an arbitrary scale. Such indices of trade facilitation may be useful for understanding broad patterns but they hardly contain the information necessary to establish accurate correlations with other variables.

Further inaccuracy in the estimation comes from the data used in the calculations. Widely cited empirical studies of trade facilitation⁴ go back to pre-crisis years, when growth of GDP and commodities trade were significantly different than today. Even when not included directly in the estimation, growth and commodity prices may influence merchandise trade and relevant elasticities strongly.

Scaling up and aggregating results

Additional inaccuracy derives from scaling up to the global level the results obtained for a sample of countries. In particular, the ICC study makes the following two assumptions:

(a) The ratio of developed countries' export gains to developing countries' gains is assumed constant. Relying on findings that gains for developed countries are about 84% of those for developing economies, the \$1,137 billion estimated gains for these countries are readily transformed into \$949 billion for developed countries. Such invariance assumption strongly affects the estimates but has no justification.

(b) Once the gains are so calculated for each country bloc of the sample, they are brought up to the global scale by applying a proportion.

Clearly, both assumptions further widen the interval encompassed by the estimates, compromising their meaningfulness.

Employment impact

The ICC study estimates a positive employment impact from trade facilitation in the order of 20 million jobs, 90% of which will be in developing countries. Unfortunately, these estimates suffer from flaws that make them hardly relevant to the trade policy debate.

Fundamental flaws affecting many official estimates of the gains from trade have been clearly highlighted in the last round of debate on liberalizations.⁵ In that context, it became evident that liberalization may lead to higher unemployment by tilting income distribution in favour of workers in the exporting sectors. In economies where aggregate demand comes mostly from workers producing non-traded goods, redistributing in-

come from these to workers in exporting industries may lead to lower economic activity. In this context job destruction is likely to outweigh job creation.

The ICC acknowledges these effects⁶ but its estimates of employment creation only refer to jobs "supported" or, using a common term, jobs "created". Unfortunately, there is no reason to expect that these will outnumber the jobs destroyed as developing economies become more open to international trade.

Uncertain export, income and employment gains

Implementing trade facilitation reforms is a costly process, likely requiring teams of specialized personnel and, in many countries, large international consultancy fees. This requires diverting resources from other services such as healthcare and education.

Although it is reasonable to expect that trade facilitation would lead to higher trade flows, there is no indication of large net benefits. The \$1 trillion increase in global income estimated by the ICC is based on too many unjustified assumptions to determine any policy changes. The same is true for the estimate of 18 million jobs in developing countries. On the other hand, developing countries would be required to bear the entire cost of trade facilitation without participation by developed countries. In this context, it is hard to see why trade facilitation should become anyone's policy priority. □

Jerom Capaldo is Senior Researcher in the Globalization programme at the Global Development And Environment Institute (GDAE) at Tufts University in the US. His research focuses on a wide range of macroeconomic issues, including fiscal austerity, financial crises and international trade agreements. The above first appeared as a GDAE Policy Brief (No. 13-02, December 2013).

Notes

1. See ICC statement at: <http://www.iccwbo.org/News/Articles/2013/Business-gives-last-push-to-seal-Bali-deal-and-salvage-Doha-Round/>, accessed on 2 December 2013.
2. See Hufbauer and Schott (2013).
3. See Taylor and von Arnim (2006).
4. Two widely cited studies are Wilson, Mann and Otsuki (2004) and Hufbauer, Schott and Wong (2010).
5. See Taylor and von Arnim (2006) and Ackerman and Gallagher (2008).
6. In the words of the authors (p. 55): "two-way trade expansion will *realign* the labor force between sectors [emphasis added]".

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Bali food security deal a first step towards WTO rule reform?

Despite its limitations, the Bali decision on public food stockholdings can create an opening to overhaul the WTO's inequitable rules on agricultural trade, contends Jacques Berthelot.

The agricultural issues in the ninth WTO Ministerial Conference focused essentially on changing the current rules on public stockholding for food security purposes and, secondarily, on export competition. We will show that, despite an unsatisfactory result on the public stockholding rules, it is nevertheless a first step to changing totally the unfair rules for developing countries (DCs) under the WTO Agreement on Agriculture (AoA), provided that they change their mindset to adopt an offensive stance against the developed countries in the working group which will pursue the issue within the WTO Committee on Agriculture. For this to happen, the civil society of North and South should intensify their concrete support to the WTO developing-country members.

An unsatisfactory result but a first step to changing the Agreement on Agriculture

India, on behalf of the G33 – a group of 46 DCs formed shortly before the WTO Ministerial Conference of September 2003 in Cancun and prioritizing the protection of their domestic agricultural markets – proposed in the informal meeting of the Special Session of the WTO Committee on Agriculture of 14 November 2012 that the provisions on public stockholding for food security purposes, already included in the revised draft modalities of 6 December 2008, be taken up for a formal decision by the Ministerial Conference in Bali in December 2013.

India asked for modification of the last sentence of footnote 5 of paragraph 3 of the AoA Annex 2 as follows: "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." The AMS is the Aggregate Measurement of Support or "Amber Box" of domestic agricultural supports regarded as trade-distorting and subject to a reduction of 20% from 1995 to 2000 for developed countries and of 13.3% from 1995 to 2004 for DCs other than the least developed countries (LDCs), which are not bound to any reduction because they have very little means to subsidize their farmers, the more so as they represent the majority of their active population. More precisely what is considered a trade-distorting subsidy here is the difference between "the acquisition price and the external reference price" – the average border price (the FOB price if the country was a net exporter and the CIF price if it was a net

importer)¹ from 1986 to 1988, base period for the calculation of reduction commitments of the Uruguay Round – multiplied by the quantity likely to benefit from the purchase price of food security stocks which are then distributed at subsidized prices to poor consumers. India proposed deleting "the difference between the acquisition price and the external reference price is accounted for in the AMS".

As the revised draft modalities of 6 December 2008 already reached an agreement on this issue, including by the US and the EU, its definitive adoption in Bali should have been a mere formality. But the US, followed by the EU and other developed countries, are not prepared to make concessions to DCs on some AoA rules, fearing that this would open all the rules to question and reduce their room for manoeuvre to impose an opening of DCs' domestic markets to US and EU exports of non-agricultural products and services. This is the ambiguity of the WTO negotiating rounds where all WTO members must accept all texts – the "single undertaking" principle with adoption of all texts by consensus, which camouflages the huge pressures from developed countries on DCs – where each member is supposed to lose on some issues and gain on others. In fact, however, the developed countries are always winners and DCs are almost always losers, especially LDCs.

But the US and the EU found in front of them the Indian Minister of Commerce, Anand Sharma, who showed an extreme firmness in his statement to the Bali Ministerial Conference: "For India food security is non-negotiable. Governments of all developing nations have a legitimate obligation and moral commitment towards food and livelihood security of hundreds of millions of their hungry and poor. Public procurement at administered prices is often the only method of supporting farmers and building stocks for food security in developing countries. Need of public stockholding of food grains to ensure food security must be respected."² This firmness is due to several factors: the implementation in India since 12 September 2013 of the National Food Security Act which expands to 820 million Indians heavily subsidized food aid of 60 kg of rice or wheat per year; strong political pressures due to legislative elections in May 2014; and the large mobilization of civil society in India and of international civil society present in Bali, both within and outside the conference centre.

However, as India's firm stance in Bali was only supported by a score of other DCs, and this only softly and rarely pub-

licly, Sharma eventually yielded to intense pressures from developed countries – a powerful US agribusiness delegation lobbied US Trade Representative Michael Froman – accepting concessions in the final text of the agreement, which remains ambiguous on several points, including the following:

- Will the “peace clause” – during which WTO members commit themselves not to sue at the WTO over the subsidies related to public procurement of food commodities in DCs at administered prices higher than domestic prices – only last for four years? This is the dominant interpretation of media but also of many civil society activists advocating the closing down of the WTO or at least taking agriculture out of the WTO remit. But this interpretation is disputed by India and other delegations, including France.

Indeed, the text adopted in Bali says: “Members agree to put in place an interim mechanism as set out below, and to negotiate on an agreement for a permanent solution ... for adoption by the 11th Ministerial Conference ... In the interim, until a permanent solution is found...” If really the intent was to limit the interim period to four years, this last phrase would have read “In the interim, up to at most four years”. If a permanent solution is not found before the 11th Ministerial Conference in 2017 – these conferences are held every two years – the interim period will continue. Anand Sharma said during his press conference: “My English is not very good but my English teacher was good and he told me that ‘interim’ means not temporary but something that lasts until a permanent solution is found.” The four years before the 11th Ministerial Conference must therefore be understood as the period during which the working group to be set up within the Committee on Agriculture will seek a permanent solution satisfying the G33 and in particular India. However, it is doubtful that it will succeed, let alone in four years, without radically questioning the main AoA rules, including the definition of the different types of subsidies according to their alleged level of trade distortion.

- The peace clause will apply only to “public stockholding programmes for food security purposes existing as of the date of this Decision”. Hence the DCs which do not run such programmes presently will not be able to implement them “until a permanent solution is found”, and those which run some, like India, cannot extend them to products other than “primary agricultural products that are predominant staples in the traditional diet” of the population.

For Indian civil society, including the Right to Food Campaign, the text excludes pulses and oilseeds but this is questionable because the concept of “predominant staples” is not defined and pulses (such as beans and lentils) are clearly staples complementing cereals in the daily diet of the poor. But it is true that these products are not subject to public procurement for stockholding in India, except at a small scale in some states like Chhattisgarh.

And the fact that the Bali agreement requires publication of very detailed statistics for the last three years of each public stockholding programme for food security purposes is a real threat to the possible expansion of products eligible for coverage under the peace clause. If there were not this requirement of statistics over the last three years, the text does not say explicitly “programmes already implemented”, so that one could extend them to all the provisions, including for the future, of the National Food Security Act – which is a “programme existing as of the date of this Decision” – which, in Chapter 13,

provides: “(2) Notwithstanding anything contained in this Ordinance, the State Government may continue with or formulate food or nutrition based plans or schemes providing for benefits higher than the benefits provided under this Ordinance, from its own resources.”

- Another constraint: “Any developing Member seeking coverage of programmes under paragraph 2 shall ensure that stocks procured under such programmes do not distort trade or adversely affect the food security of other Members.” This is mainly because Pakistan had lobbied against the G33 request, claiming that India is dumping its public stocks of rice, outcompeting its own exports, which is highly questionable.³

Finally, if the agreement on export competition adopted in Bali did not change anything with regard to the statement already made at the Hong Kong Ministerial Conference of December 2005, it is appropriate to remember that the WTO Appellate Body condemned Canadian dairy exports in 2001 and 2002, US cotton exports in 2005 and EU sugar exports in 2005 on the basis that domestic subsidies have a dumping effect as well as explicit export subsidies.

Some excerpts of the Appellate Body’s rulings:

- “The distinction between the domestic support and export subsidies disciplines in the Agreement on Agriculture would also be eroded if a WTO Member were entitled to use domestic support, without limit, to provide support for exports of agricultural products ... If domestic support could be used, without limit, to provide support for exports, it would undermine the benefits intended to accrue through a WTO Member’s export subsidy commitments.”⁴

- “Article 9.1(c) addresses this possibility by bringing, in some circumstances, governmental action in the domestic market within the scope of the ‘export subsidies’ disciplines of Article 3.3.”⁵

- “Upholds the Panel’s finding, in paragraphs 7.1416 and 8.1(g)(i) of the Panel Report, that the effect of the marketing loan programme payments, Step 2 payments, market loss assistance payments, and counter-cyclical payments (the ‘price-contingent subsidies’) is significant price suppression within the meaning of Article 6.3(c) of the SCM [Subsidies and Countervailing Measures] Agreement.”⁶

- “The effect of the mandatory price-contingent United States subsidy measures – marketing loan programme payments, user marketing (Step 2) payments, MLA payments and CCP payments – is significant price suppression in the same world market within the meaning of Article 6.3(c) of the SCM Agreement constituting serious prejudice to the interests of Brazil within the meaning of Article 5(c) of the SCM Agreement.”⁷

- “d) Upholds the Panel’s finding, in paragraph 7.334 of the Panel Reports, that the production of C sugar receives a ‘payment on the export financed by virtue of governmental action’, within the meaning of Article 9.1(c) of the Agreement on Agriculture, in the form of transfers of financial resources through cross-subsidization resulting from the operation of the European Communities’ sugar regime.”⁸

However, if these precedents have not yet been used by DCs, they could do so after Bali.

Negotiations will begin, allowing challenge to the AoA’s unfair rules

Despite all these constraints and limitations, the Bali decision

on public food stockholding constitutes a first step: DCs have put a foot in the door of the AoA rules and they now have to open it completely in the post-Bali programme to rebuild all the rules. Every cloud has a silver lining: it is owing to this very ambiguous and incomplete agreement on food security stocks that a working group will be set up within the WTO Committee on Agriculture to find a permanent solution to the G33 request.

No doubt the US and the EU will put many hurdles in the work of the group so as not to jeopardize the other AoA rules which these two accomplices had concocted face to face during the Uruguay Round and which are very unfair to DCs. DCs must now take the offensive against the US and the EU, which have everything to lose because it is easy to show that they did not comply with the AoA rules to a huge extent, and this will encourage DCs, starting with India, to sue them at the WTO so as to force them to rebuild these rules on food sovereignty.

All the forces of civil society, including those such as Via Campesina which have campaigned to take agriculture out of the WTO or to put an end altogether to the WTO, should now become more realistic by joining all those which, particularly within the Our World Is Not For Sale network, support all DCs struggling within the WTO to change the rules in the direction of food sovereignty.

The first rules to change are related to administered prices. Paragraph 9 of the AoA Annex 3 states: "The fixed external reference price shall be based on the years 1986 to 1988." Indeed, the very low world prices of wheat and rice – the two cereals of the Indian food grain programme – in 1986-88 were due to massive US dumping of rice and wheat and EU dumping of wheat, with US dumping rates of 137% on rice and 89% on wheat and the EU dumping rate of 134% on wheat. As the US is a price maker worldwide for wheat and strongly influences the global price of rice, and as the US and EU accounted for 53.2% of global wheat exports in that period, to consider as a trade-distorting subsidy the gap between the current administered price paid to Indian small farmers and its CIF import prices of 1986-88 is economically absurd and politically unjustifiable. Moreover, the low world prices in dollars of rice and wheat in that period were also due in large part to a 23% dollar depreciation from late December 1985 to late December 1988, 30% of which was on the effective exchange rate for US rice exports.

One can also amend paragraph 4 of AoA Article 18 – "Members shall give due consideration to the influence of excessive rates of inflation on the ability of any Member to abide by its domestic support commitments" – by deleting "excessive", as recommended by the eminent Indian trade experts Anwarul Huda and Ashok Gulati. As inflation in India was 8% on average over the past 25 years, updating the 1986-88 border prices on the basis of this inflation rate would raise these prices to levels exceeding by 94% and 74% respectively the minimum support prices of rice and wheat in 2012-13, so that these highly negative AMS would not put at risk the implementation of the new National Food Security Act.⁹

But we must go beyond this by calling into question the very concept of administered prices, which is not defined in the WTO agreements and which works in opposite ways in developed countries and DCs. Whereas in DCs the administered prices are fixed *above* market prices to ensure remunerative prices to small farmers, particularly just after the harvest,

and to oblige private traders to pay higher market prices, in developed countries they are minimum prices, fixed *below* the prevailing market prices in order to reduce their level. But – here lies the fundamental difference – these lower administered prices were accepted by Western farmers only because they were offset by domestic subsidies, including by the alleged *decoupled* fixed direct payments in the EU and US plus *coupled* subsidies, such as the US' various types of marketing loan benefits, countercyclical payments and insurance subsidies.¹⁰ In developed countries administered prices are always triggering subsidies, apart from the other means necessary to render them effective: import duties, export subsidies and restrictions, land set aside, production quotas, etc. Indeed the US Farm Bills and EU Common Agricultural Policy (CAP) reforms since the 1990s have consisted in lowering by steps their administered prices to increase their domestic and external competitiveness – importing less and exporting more – through massive compensatory alleged non-trade-distorting subsidies under the Blue and Green Boxes.¹¹

So a balanced comparison between the US (EU) and Indian administered prices should be made by internalizing in the US low administered prices the subsidies triggered by them. It is what the OECD has done in a 2011 report where the concept of domestic prices is defined as "producer prices plus payments linked to the production of a specific commodity"¹² – a concept that we propose to define as the "comprehensive domestic farm price". However interesting this approach might be, it is still too restrictive and biased because it does not take into account the decoupled subsidies that have substituted for more and more coupled subsidies since 1998 in the US and 2005 in the EU.

Similarly, an October 2013 report by the Food and Agricultural Policy Research Institute (FAPRI, a US research centre dependent on the US government) assessing the two Farm Bills adopted in 2013 by the House of Representatives and the Senate presents tables of the expected "average crop revenue in dollars per acre" for several crops for the period 2014-18.¹³ In these tables coupled aids are added to market sales, which, divided by the yield per acre, gives the comprehensive price per crop, although FAPRI does not use this concept but that of "revenue per acre". And FAPRI expects that they would increase by 9% for rice and 6.6% for wheat over the period 2014-18, compared to the expected price if the current Farm Bill were not to change.

The combination of the high rate of US and EU dumping on wheat and US dumping on rice in 1986-88 with the large dollar depreciation in that period justifies updating the 1986-88 CIF prices of India (and of other DCs) by multiplying their levels by the US and EU dumping rate, which again would raise these updated CIF prices above the Indian minimum support prices for rice and wheat in 2012-13, thereby yielding negative AMSs which would not prevent India from implementing its National Food Security Act.

Beyond these necessary adjustments of the AoA rules on public procurement of food security stocks, DCs must above all join forces, in the working group on that issue within the WTO Committee on Agriculture as well as outside, to denounce the huge violations of the AoA rules by the US and the EU. Without going into too much detail, let us enumerate the main ones:

1. As the US fixed direct payments were ruled by the WTO Appellate Body in 2005 as not being decoupled, hence

not in the Green Box, it is clear that the EU's allegedly decoupled payments – mainly the Single Payment Scheme (SPS) – which reached 37.7 billion euros in 2012, would be much more easily ruled not to be in the Green Box, as will be the case from 2014 on for the new Basic Payment Scheme (BPS). And although both Farm Bills of the House of Representatives and Senate have eliminated the fixed direct payments, the House keeps direct payments on cotton for 2014 and 2015.

2. Contrary to the AoA Article 6.2 provision on input subsidies for developed countries, the US and the EU did not notify in the AMS their huge direct payments to feedstuffs – which reached 13.7 billion euros in 2009-10 in the EU27 – even though they are by far their main input subsidies which have conferred large AMSs to all their animal products (meats, dairy and eggs), especially in the EU where these subsidies are hidden in the allegedly decoupled SPS.

3. The US and the EU did not notify in their AMS the huge input subsidies to cereals and oilseeds processed into agrofuels, ethanol and biodiesel, the first being explicitly an agricultural product and the second an agricultural product by destination (AoA Annex 3 paragraph 7).¹⁴

4. We have seen that the WTO Appellate Body has ruled four times that domestic subsidies to exported agricultural products must be considered as export subsidies, so that practically all EU exports can be sued at the WTO on dumping grounds.

5. The WTO revised draft agricultural modalities of 6 December 2008, which are the base for pursuing the agriculture negotiations of the Doha Round, stated that the allowed product-specific *de minimis*¹⁵ exemption was 5% of the value of total production in developed countries (10% in DCs) when in fact the AoA Article 6.4 states that it is only 5% (10%) of the production value of each product having an AMS. This “cheating” has a large impact on the level of the allowed overall trade-distorting domestic support (OTDS) in the base period 1995-2000 for the domestic support reduction commitments during the Doha Round implementation period. The OTDS is a new indicator of all trade-distorting domestic support decided by the WTO in July 2004 as the sum of the final bound total AMS at end 2000, the average product-specific *de minimis*, the average non-product-specific *de minimis* and the Blue Box in the same 1995-2000 period.

6. The US is cheating each year since 2008 in its notifications of market price support on dairy products as it has reduced by \$2.1 billion (or 42%) the level reported in previous years, after having decided in the 2008 Farm Bill not to notify any longer this dairy AMS on the basis of the whole milk production value but only on the basis of the production value of skimmed milk powder, butter and cheddar cheese. This change is not permitted by the AoA Annex 3 paragraph 5: “The AMS calculated as outlined below for the base period shall constitute the base level for the implementation of the reduction commitment on domestic support.”

Conclusion

To conclude, despite its limitations, the Bali decision on food security stocks paves the way for an overhaul of the AoA. But, for this to happen, it is necessary that civil society of North and South join forces around this extremely important issue. To be sure, it will be difficult for the European Coordination Via Campesina and its members such as the Confédération

Paysanne in France to participate directly in this fight, given that denouncing the non-compliance of the EU's massive direct payments with the AoA rules and the Appellate Body rulings is obviously not a comfortable situation for their farmer members. Facing the risk of a collapse in their incomes, the EU farmers may react strongly by demanding that the EU authorities rebuild them on remunerative prices, on food sovereignty, as was the case up to 1992. But this would imply raising import protection and radically changing the AoA, coming back to the situation prevailing before the WTO, where the agriculture sector benefitted from exceptions to the GATT rules, without any constraint regarding the level and types of import protection, the EU having used extensively variable levies and the US import quotas. But this time the exception allowing unlimited use of export subsidies should be totally deleted. □

Jacques Berthelot is a civil society activist based in Toulouse, France. He is an agricultural economist and a former lecturer in economics at Ecole Nationale Supérieure Agronomique De Toulouse (ENSAT), and a former Jean Monnet Chair in European economic integration at the National Polytechnical Institute of Toulouse.

Notes

1. FOB (free on board) price of the exported merchandise loaded on board, ready to leave; CIF (cost+insurance+freight) price of the imported merchandise still on board before paying port charges and import duties.

2. http://www.wto.org/english/thewto_e/minist_e/mc9_e/stat_e/ind.pdf

3. “Pakistan is shooting itself in the foot when it follows suit the developed countries’ fight against the G-33 proposal” and “Indian food security stocks of rice and wheat do not distort trade”, Solidarité, 22 November 2013, http://www.solidarite.asso.fr/Papers-2013?debut_documents_joints=10#pagination_documents_joints

4. Paragraph 91, Dairy products of Canada, WT/DS113/AB/RW, 3 December 2001

5. Paragraph 148, Dairy products of Canada, WT/DS103/AB/RW2, 20 December 2002

6. US cotton case, WT/DS267/AB/R, 3 March 2005

7. US cotton case, paragraph 8.1(g)(i) of the panel report WT/DS267/R, 8 September 2004

8. EU sugar case, WT/DS265/AB/R, WT/DS266/AB/R, WT/DS283/AB/R, 28 April 2005

9. “Updating the Indian CIF prices of 1986-88 is fully justified”, http://www.solidarite.asso.fr/Papers-2013#pagination_documents_joints

10. A subsidy is “coupled” when related to the production or price levels, and “decoupled” in the opposite case.

11. The “Blue Box” corresponds to the EU fixed direct payments per hectare (cereals and oilseeds), cattle head (bovines and ovines), or litre of milk decided by the CAP reforms of 1992, 1999 and 2004 to offset the reduction of guaranteed (“intervention”) prices, but farmers received them only if they produced the corresponding products. The “Green Box” covers two types of allegedly non-trade-distorting subsidies: 1) the traditional Green Box of in-kind aid to general agricultural services benefitting farmers collectively: agricultural infra-

structure, schools, research, agri-environment, calamities, phytosanitary warnings, etc.; 2) the Green Box of decoupled income support in place in the US since 1999 and in the EU since 2005 where farmers continue to receive the average amount of Blue Box direct payments received in 2000-02 without being obliged to produce anything or being allowed to produce other products than those having benefitted from the Blue Box payments.

12. Jean-Pierre Butault, "Evolution of Agricultural Support in Real Terms in OECD Countries and Emerging Economies", OECD, 2011, <http://www.oecd-ilibrary.org/docserver/download5kgkdgf25x20.pdf?expires=1385386110&id=id&accname=guest&checksum=476FE82E1A92E7409C7AAE4E85F48958>

13. http://www.fapri.missouri.edu/outreach/publications/2013/FAPRI_MU_Report_06_13.pdf

14. Jacques Berthelot, *Réguler les prix agricoles*, L'Harmattan, 2013.

15. When the calculated AMS of a product is lower than 5% of its production value in developed countries (10% in DCs), the product is considered without product-specific AMS as lower than the *de minimis* level. And when the non-product-specific AMS (e.g. interest on loans) is lower than 5% of the whole agricultural production value (10% in DCs), it is not counted in the total AMS. But these product-specific and non-product-specific *de minimis* are counted in the overall trade-distorting domestic support (OTDS).

(continued from page 9)

security across developing countries.

They urged him to pursue, as the leader of the G33, a permanent solution to the proposal on food security tabled by this group.

"As you know, billions in developing countries across the world today face poverty, hunger and malnutrition. It is important for governments to secure the necessary policy space to provide food to their needy population. For this, they must focus on strengthening both production and distribution of food, and in a vast majority of cases, provide this support through the public stockholding of food."

The OWINFS groups noted that enabling farmers to earn their livelihoods through food production, especially small and marginal farmers, across developing countries was a key ingredient of this policy prescription.

"Along with the direct goal of poverty reduction, this must form the core development agenda of a developing and least developed country."

However, the civil society groups said, the lopsided WTO rules did not allow developing countries to give such subsidies beyond a very meagre 10% of production, in sharp contrast to the huge domestic subsidies given by developed countries.

"As you already know, the G33 under Indonesia's leadership tabled the proposal on food security and asked that such subsidies be allowed to be given without limit by placing these in the Green Box. Needless to say this limitation on essential subsidies to producers is a huge challenge for several LDCs and most G33 members, including Indonesia which covers 15 million households in its food programme providing for 60

million people on an average."

However, they pointed out, the US had made a mockery of this proposal by refusing to discuss the permanent solution, nor did it allow discussion on the subsequent elements proposed by the G33, i.e., on reference price being shifted to current market prices and adjustments for inflation. Talks therefore were brought down to the peace clause that offered a temporary reprieve from disputes initiated by other member states.

"In this context, we believe that the Peace Clause which is on the table is grossly inadequate as it is time bound and does not ensure a permanent solution. It is also burdened with severe conditions and transparency commitments, much above those that developed countries have to fulfill for the Green Box. Further it does not cover the Agreement on Subsidies and Countervailing Measures (ASCM) and so, in effect does not give the users the protection it claims to provide. It extends only to a few crops and cannot be extended."

Under these conditions, the groups believed strongly that such a peace clause would do the G33 countries more harm than good as they would be bound

up in onerous conditions but would not be free from disputes.

"Countries therefore should be free to say 'NO' to such a worthless Peace Clause. This does not mean that developing countries are collapsing the talks, it is the refusal by developed countries such as the USA to address historical inequities in subsidies that has brought us to this situation."

"Therefore, we call upon you urgently to respond to the needs of the G33, and ensure that food security is not violated across the developing and least developed world. The only option for the WTO community is to allow a permanent solution and a Peace Clause that automatically leads to this permanent solution can be the only choice," said the NGO letter.

The G33 needed to take a strong and united position upholding the demands by countries such as India. It was an issue for all countries, since by the ancient rules of subsidy calculation based on 1986-88 reference prices, most countries would breach the allowed subsidy limit very soon, if they were not breaching it already, the OWINFS civil society groups added. (SUNS7711/7712) □

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