

Food Security and WTO Domestic Support Disciplines post-Bali

By **Alan Matthews**
Professor Emeritus, Trinity College Dublin

ICTSD
International Centre for Trade and Sustainable Development

Issue Paper No. 53

Food Security and WTO Domestic Support Disciplines post-Bali

By Alan Matthews
Professor Emeritus, Trinity College Dublin

ICTSD

International Centre for Trade and Sustainable Development

Issue Paper 53

Published by

International Centre for Trade and Sustainable Development (ICTSD)
International Environment House 2
7 Chemin de Balexert, 1219 Geneva, Switzerland

Tel: +41 22 917 8492 Fax: +41 22 917 8093
E-mail: ictsd@ictsd.ch Internet: www.ictsd.org

Publisher and Director: Ricardo Meléndez-Ortiz
Programme Manager: Jonathan Hepburn

Acknowledgments

This paper has been produced under the ICTSD Programme on Agricultural Trade and Sustainable Development. ICTSD wishes gratefully to acknowledge the support of its core and thematic donors, including: the UK Department for International Development (DFID), the Swedish International Development Cooperation Agency (SIDA); the Netherlands Directorate-General of Development Cooperation (DGIS); the Ministry of Foreign Affairs of Denmark, Danida; the Ministry for Foreign Affairs of Finland; and the Ministry of Foreign Affairs of Norway.

ICTSD and the author would like to thank Lars Brink for helpful discussions on some of the issues discussed in this paper, and Christophe Bellmann, Eugenio Diaz-Bonilla, Monika Hartmann and Jonathan Hepburn for constructive comments. The author also wishes to convey that any remaining errors and interpretations are his own. A shorter version of this essay appears in Hartmann, M. and Hesse, J., Agriculture and Food in the 21st century: Economic, Environmental and Social Challenges, Festschrift anlässlich des 65. Geburtstags von Prof. Dr. Dr. h.c. P. Michael Schmitz, Frankfurt am Main, Peter Lang GmbH.

For more information about ICTSD's Programme on Agricultural Trade and Sustainable Development, visit our website at http://ictsd.org/programmes/agriculture/

ICTSD welcomes feedback and comments on this document. These can be forwarded to Jonathan Hepburn at jhepburn [at] ictsd.ch

Citation: Matthews, Alan; (2014); *Food Security and WTO Domestic Support Disciplines post-Bali*; ICTSD Programme on Agricultural Trade and Sustainable Development; Issue Paper No. 53; International Centre for Trade and Sustainable Development, Geneva, Switzerland, www.ictsd.org.

ISSN 1817 356X

TABLE OF CONTENTS

LIST OF ABBREVIATIONS AND ACRONYMS

AMS	Aggregate Measurement of Support
AoA	Agreement on Agriculture
EAAE	European Association of Agricultural Economists
EU	European Union
G-33	Group of 33
GHG	Greenhouse Gas Emissions
IATRC	International Agricultural Trade Research Consortium
ICTSD	International Centre for Trade and Sustainable Development
LDC	Least Developed Countries
MPS	Market Price Support
NPR	Nepalese Rupee
OECD	Organization For Economic Cooperation and Development
PSE	Producer Support Estimate
SL	Sri Lanka
UNCTAD	United Nations Conference on Trade and Development
US	United States
WTO	World Trade Organization

FOREWORD

The relationship between international rules on trade and the achievement of national and global objectives in the area of food security has long been a subject of contention at the WTO. Over the years, this debate has matured considerably, moving from a rather simplistic discussion of whether market opening is intrinsically good or bad for food security, towards a much more nuanced appreciation of the complex implications that various trade policies and rules may have for different types of food producers and consumers, in different places and at different times. ICTSD has sought to help foster this more sophisticated discussion by sharing impartial, timely and policy-relevant analysis with trade policy-makers and negotiators, and by fostering dialogue between different policy actors at both the national and international level.

While food security is mentioned in the preamble to the WTO Agreement on Agriculture, as well as in a number of other places in the same agreement, talks in the early years of the Doha Round and immediately beforehand focused primarily on the issue of how trade-distorting subsidies in certain developed countries might undermine food security in poorer parts of the world, and on the question of the extent to which developing countries should be granted exceptions from trade liberalisation commitments on food security and related grounds. More recently, in the wake of successive food price spikes and the threat of further climate-induced disruptions to global markets in years ahead, the issue of food security has once again shot to the top of the agenda of leaders around the world. The FAO and other international agencies have nonetheless underscored the fact that - despite progress - a substantial proportion of the world's population has continued to lack adequate food and nutrition, both before the recent price spikes and since then.

WTO members have struggled to find ways in which to ensure that the rules of the multilateral trading system on agriculture respond effectively to the new challenges of today's world, and to those of the future. The difficulties in doing so are arguably compounded by the continued inability of governments to conclude the long-running Doha Round of trade talks – in which agriculture is a central component. At the same time, there is a growing awareness among many trade policy actors that the changing market environment requires new policy responses and new international rules, in areas ranging from biofuels and agricultural export restrictions to rules on 'green box' support and the reporting and monitoring of farm subsidy payments. Arguably, the rise of food stockholding schemes to the top of the trade policy agenda in the run-up to the Bali ministerial conference can be seen as symptomatic of the inability of WTO members to agree on equitable and effective solutions for updating farm trade rules in ways that would address new trends in markets and policy design.

During 2013, debate therefore focused on the extent to which existing rules on public stockholding for food security purposes were adequate for developing countries to achieve public policy objectives in this area. The G-33 coalition, as part of an initiative that was led by India, called for current rules to be relaxed in order to take account of price inflation that had occurred since thresholds on trade-distorting support were agreed some two decades ago. Others – including some developing countries – expressed concern that resulting trade distortions could undermine producers in other countries, and potentially also affect food security as a consequence.

Trade ministers agreed an interim solution to the problem in Bali, but also committed to begin discussions on a 'permanent solution' once the ministerial conference was over. This paper, by Professor Alan Matthews of Trinity College Dublin, seeks to help negotiators and policy-makers in their journey down this road, first by providing a careful overview of the background to the discussions in this area, secondly by discussing the interim agreement in Bali, and thirdly by reviewing options that members could consider as they begin to examine how best to craft a permanent solution to the problem that members face in this area. As such, we believe it represents a useful and important contribution to the broader debate over how trade rules and governance frameworks can best support food security goals at the international level.

Ricardo Meléndez-Ortiz
Chief Executive, ICTSD

EXECUTIVE SUMMARY

This paper discusses the background to the controversy at the WTO Bali Ministerial Conference in December 2013 over accounting for producer support when a government implements a public stock-holding scheme for food security purposes. It describes the interim mechanism that was agreed and reviews some possible options for the permanent solution that was mandated in the Ministerial Decision adopted at Bali.

The premise of the paper is that adapting the rules on exempt policies where this can be shown to be justified to enable developing countries to pursue their food security objectives is a preferable approach to simply increasing the limits on current Aggregate Measurement of Support (AMS). The latter is an ad-hoc approach to dealing with potential inconsistencies between WTO rules and food security policies. It gives no guidance and makes no distinction with regard to how countries might use this increased policy space. If WTO rules are framed so that they do not restrict developing countries from adopting appropriate policies to address their food security needs, then the case for larger AMS entitlements falls away.

A number of possible options have already been put on the table. One option would be to roll-over the interim solution and extend it to all developing countries by an interpretation that purchases at administered prices for the purposes of public stock-holding for food security purposes would not be deemed to be price support and would not be required to be included in a product's AMS. This would meet with the strong objection that it would breach the criterion for green box (exempt) support that it should not have the effect of providing price support to producers. The opposition to the G-33 proposal in the run-up to Bali suggests that it would be difficult to get the agreement of WTO members to such a radical change, and hence other options should be explored.

Another option suggested by some G-33 members prior to the Bali conference would be to allow explicit adjustment of notifications for excessive inflation. Another suggestion from a sub-set of G-33 countries focused on the possibilities for revising the calculation of the market price support (MPS) component in the AMS through modification of some of the four variables that enter into that calculation subject to the *de minimis* limit, such as the *de minimis* level, the external reference price, or the volume of eligible production. The idea that administered prices at safety net levels that are below domestic market prices, in the context of procurement of public stocks, might be exempt from inclusion in the product-specific AMS (put forward by Diaz-Bonillo, 2013) is also examined. A more radical suggestion would be to remove the MPS element completely from the AMS calculation.

Two of the proposals reviewed in this paper deserve further consideration in this context. The first would make explicit allowance in the AoA for countries to adjust their measured support for excessive rates of inflation. The drafters of the AoA recognised that this could be a problem, but did not provide a solution. The second would make a distinction between the use of administered prices for price support and as a safety net in the context of procurement for public food security stocks. Farmers in developing countries are as exposed to price risk but have fewer opportunities to manage this than farmers in developed countries. Where administered prices operate as a safety-net rather than the incentive price to which farmers respond, AoA rules could recognise (along the lines of the blue box) that this use of administered prices is not likely to lead to additional trade distortion and could be permitted.

WTO rules already exempt a wide range of policies which address food security needs but are more restrictive about features of those policies that have great potential to distort production and trade. These further amendments could sufficiently adapt the domestic support disciplines to address developing countries' remaining concerns about their ability to pursue their food security goals.

1. INTRODUCTION

The consistency of WTO rules and disciplines with the policy environment needed in developing countries to pursue their food security objectives has long been a source of controversy. Although food security is recognised in the preamble to the WTO Agreement on Agriculture (AoA) as a non-trade concern which must be taken into account in the reform process to establish a fair and market-oriented agricultural trading system, various commentators as well as developing countries claim that this is not the case or, at least, that it has been inadequately recognised (De Schutter 2009; Díaz-Bonilla and Ron 2010; Gonzalez 2002; Häberli 2010). Criticisms range from arguments that the AoA rules are lop-sided and favour developed countries in allowing them to continue to heavily support their agricultural sectors, that they unduly constrain the ability of developing countries to pursue their agricultural development and food security policies, and even that they undermine the right to food of developing countries.

Against this background, food security concerns have played an important role in the Doha Round negotiations to revise the AoA (Matthews, 2012a, 2012b). Developing countries sought exemptions from tariff reductions for products they saw as important for their food security, as well as for the right to protect themselves from destabilising import competition. In a June 2000 submission to the WTO Committee on Agriculture, eleven developing countries suggested extending special and differential treatment to allow developing countries greater flexibility to tackle food security and to protect the rural poor (WTO, 2000a). Their concerns were reflected in the WTO General Council Decision of 1 August 2004 (the Framework Agreement) which stated that developing country members "must be able to pursue agricultural policies that are supportive of their development goals, poverty reduction strategies, food security and livelihood concerns" (WTO, 2004a). It went on to specify that "developing country Members will have the flexibility to designate an appropriate number of products as Special Products, based on criteria of food security, livelihood security and rural development needs. These products will be eligible for more flexible treatment." The Framework Agreement further states that a "Special Safeguard Mechanism will be established for use by developing country Members." The failure to reach agreement on revised modalities in December 2008 has been blamed, in part, on disagreements over the design of the Special Safeguard Mechanism which many developing countries saw as an essential instrument to underpin their food security (Wolfe, 2010).

Following the failure to agree on a set of revised modalities in 2008, the Doha Round negotiations appeared to have stalled. The latest effort to break the stalemate took place in the run up to the 9th WTO Ministerial Conference held in Bali in December 2013 when members were asked to agree on a 'mini-package' of issues seen as a down-payment to try to build momentum for the completion of the broader Doha agenda. The origin of this idea was a plan by the WTO Director-General Pascal Lamy for an early harvest of deliverables with a particular focus on the least developed countries (LDCs) in the months preceding the 8th Ministerial Conference in 2011. While this proposal failed to find support, feedback from the negotiating group Chairs and from members indicated that a small package for the 9th Ministerial Conference in Bali built around trade facilitation, an element on agriculture, and an element on development/ LDCs might be feasible (Matthews, 2013).

Three submissions were eventually made as the agricultural elements of the mini-package (in addition, cotton was addressed as part of the LDC element). Two of these were put forward by the G-20 group of developing countries; many of these countries are exporters and have offensive interests in the negotiations.[1] Their proposals were concerned with ensuring the maximum utilisation of tariff rate quotas and making an advance down-payment on the elimination of export subsidies. The other submission was put forward by the G-33 group of developing countries which generally holds rather defensive positions in the negotiations

and seeks to maximise the policy space that developing countries have with respect to the use of agricultural policies. Their submission was to advance two measures included in the 2008 revised draft modalities intended to facilitate developing countries in addressing food security issues (Bellman et al., 2013). One measure was to add a range of schemes primarily used by developing countries – such as farmer settlement, land reform and other programmes to promote rural development and poverty alleviation – to the general government services classed as green box expenditure which is exempt from disciplines on the overall amount of spending. The other measure would exempt schemes of food purchases at administered prices from low-income or resource-poor producers for food security purposes from counting towards a developing country's maximum permitted ceiling on trade-distorting support.

The suggestion to disregard purchases at official prices for public stocks for food security purposes when calculating a country's total amount of trade-distorting support was particularly contentious; disagreement over this issue nearly derailed the Bali package. In the earlier negotiations in Geneva, India had apparently agreed to a temporary 'peace clause' which would have prevented challenges to schemes for public food security stocks even where procurement took place at minimum official prices. However, widespread opposition in India and elsewhere to the temporary nature of this protection led to India strengthening its stand just before the Bali meeting (Wall Street Journal, 2013). In the end, the conference extended into a further day to allow agreement to be reached.[2] Ministers agreed to an interim mechanism while they worked to find a permanent solution for the issue of public food security stocks for adoption by the 11th Ministerial Conference in 2017.

This paper discusses the background at Bali to the controversy over accounting for producer support when a government implements a public stock-holding scheme for food security purposes, describes the interim mechanism that was agreed and reviews some possible options for a permanent solution. The work programme to be undertaken in the Committee on Agriculture will be based on members' existing and future submissions. There is thus potentially an opportunity to take up more broadly the relationship between WTO rules and food security, and to assess the extent to which revisions to these rules are desirable to permit countries to pursue their food security objectives without damaging the food security ambitions of other members. This agenda covers all three pillars of the AoA, including market access, domestic support and export competition, but the work programme will address the domestic support pillar which was at the centre of the Bali controversy (for the market access issues including Special Products and the Special Safeguard Mechanism, see Matthews (2012a), and for a discussion on export restrictions, see Anania (2013)).

Important issues are at stake. Domestic support, including market price support, has been rising rapidly in a number of the more advanced developing countries. Some fear that providing more policy space to developing countries runs counter to the expressed objective of the WTO AoA to encourage progressive reductions in agricultural support and protection over time. Some take the normative view that if WTO rules stand in the way of food security, then the rules should be changed (De Schutter, 2011). Rule changes in the WTO are the outcome of a bargaining process among members. There is no consensus on whether particular rule changes are necessary to promote food security. Increasing the flexibility of some countries to provide support to their farmers is opposed by those for whom this means greater competition in the future. Even if it were agreed that developing countries should be granted greater scope to use, for example, price support measures, there is no obvious standard to suggest where the new limits should be drawn. This paper does not try to prejudge the outcome of the negotiations in Geneva on a permanent solution. The more modest objective is to evaluate those changes that have been suggested to address some developing country concerns that current AoA domestic support rules are compromising their food security.

2. POLICY SPACE AND WTO DOMESTIC SUPPORT RULES

Under the AoA, a country's domestic support policies are disciplined through commitments based on the Aggregate Measurement of Support (AMS) (Brink, 2011). An individual AMS is calculated for each basic agricultural product receiving either market price support, non-exempt direct payments, or any other subsidy not exempted from the reduction commitment, using a methodology which is set out in Annex 3 of the AoA. Market price support (MPS) is calculated using the gap between a fixed external reference price and the applied administered price multiplied by the quantity of production eligible to receive the applied administered price. The fixed external reference price is based on the years 1986 to 1988 (or as defined in the accession agreement of a member) using the average f.o.b. unit value for the basic agricultural product concerned in a net exporting country and the average c.i.f. unit value for the basic agricultural product concerned in a net importing country in the base period. In the case of deficiency payment schemes, which involve direct payments to producers but which use a support price to determine the level of payment, countries may use either the price gap methodology or budget outlays to determine the level of support. Non-exempt direct payments which are based on factors other than price are measured using budgetary outlays. Other non-exempt measures, including input subsidies and other measures such as marketing cost reduction measures, are also measured using government budgetary outlays. Support which is non-product specific is totalled into one non-product-specific AMS in total monetary terms.

A country calculates its Current Total AMS in any year by summing the individual AMS's for each product and for non-product specific support. In making this calculation, a country is allowed to exempt *de minimis* AMS. For developing countries (excluding China), the *de minimis* level for product-specific exempt support is 10 percent of the value of each product's production, and 10 percent of the value of total agricultural production for non-product-specific support. In the case of China, these percentages are 8.5 percent in each case. If the support provided exceeds the *de minimis* levels, then all of that support (and not just the excess amount above the *de minimis* level) must be counted in a country's Current Total AMS. For most but not all developing countries, the *de minimis* levels are upper limits on their AMS's. For most but not all developed countries, the *de minimis* levels are thresholds, and it is the Current Total AMS that is subject to the country's limit set out in the country's schedule of commitments.

A WTO member's policy space is defined by its right to exempt support under some policies when calculating its current AMS as well as by the size of its limits on AMS support (Brink, 2013). Exempt policies include the following:

- Annex 2 policies (green box)
- Article 6.5 policies (blue box)
- Article 6.2 policies (development box)

Green box policies must meet a number of criteria set out in Annex 2 of the AoA. These measures must have "no, or at most minimal, trade distorting effects or effects on production". Furthermore, green box measures should be provided through a publicly-funded government programme not involving transfers from consumers, and should not have the effect of providing price support to producers. For individual green box measures, these general criteria are complemented by specific criteria which individual programmes must meet. Different specific criteria apply to policies under different headings. One heading covers general government services, including research, extension services, infrastructure and transport, pest and disease control, and marketing and promotion. Other headings include spending on domestic food aid, public stockholding, direct support to producers, income insurance and safety-nets, disaster relief, investment aids, agri-environment measures, regional assistance and structural

adjustment programmes. The Doha Ministerial Conference specifically urged members "to exercise restraint in challenging measures notified under the green box by developing countries to promote rural development and adequately address food security concerns" (WTO 2001, Para. 2.1).

Most measures that developing countries will want to take to promote small farm development and food security will fall into one of the exempt categories in the AoA. The WTO places no limits on countries' use of these policies. The main policy instrument not exempt, and which therefore counts towards a country's AMS, is price support. Developing countries which use policy measures that do not fall into one of the exempt categories, such as price support, find themselves in one of two positions. If they are one of the 17 developing countries with a Bound Total AMS as the upper limit on the country's Current Total AMS, the support would be included in the AMS's, and those AMS's above the *de minimis* levels would be summed into the Current Total AMS.[3] The majority of developing countries do not have a Total Bound AMS; their use of non-exempt measures is limited to their *de minimis* levels.

Brink (2011) highlights another difference between Bound Total AMS and *de minimis* limits. The former are fixed in nominal terms, and thus the amount of real policy space they provide diminishes over time with inflation. Because the *de minimis* limits are fixed as a percentage of a country's value of production (of individual products, for product-specific *de minimis* and for total agricultural production for non-product-specific *de minimis*), they automatically increase with inflation and with growth in the volume of agricultural output.[4] For example, the value of production in India has increased by 156 percent since 2001, and by 210 percent in China (Brink, 2013). Thus, for the majority of developing countries whose use of non-exempt measures such as price support is constrained by their *de minimis* limits, these limits automatically adjust for inflation and increase further with real growth in the volume of output.

The AoA rules negotiated in the Uruguay Round were designed to address the main sources of trade distortion in the mid-1980s which were subsidies in the European Union (EU) and the United States (US). During the Uruguay Round negotiations and the early years of the Doha Round, developing country subsidies were relatively small and were generally considered to have little effect on international markets. This situation is changing rapidly. EU and US trade-distorting subsidies have been falling, in part due to policy reform and in part due to high world market prices (Bureau et al., 2013). At the same time, there has been a major increase in domestic support among advanced developing countries. Support in some countries for certain major commodities is now comparable to levels seen previously in the EU and the US. The OECD reports that in 2012 in China, the share of support in producer receipts is now 17%, for Indonesia 21% and for Kazakhstan 15% (for comparison, the EU figure in 2012 was 19%). However, in other developing countries, such as Brazil (5%) and South Africa (3%), producer support remained at low levels (OECD, 2013).

Product-specific support has been well below allowed levels in India, China, the Philippines and Brazil. But if administered prices continue to rise compared to fixed reference prices, positive MPS may need to be notified by India or China or may increase for the Philippines or Brazil. Difficulties may arise in meeting their commitments, at least for some commodities in one or more of these countries (Orden et al., 2011). India, in particular, feared that it would be in breach of its *de minimis* limits once it begins to implement the National Food Security Act 2013 (Narayanan, 2013). The Act is intended to extend the provision of subsidised foodgrains under the Public Distribution System to up to 75 percent of the rural population and 50 percent of the urban population. Foodgrains equivalent to around 30 percent of India's total production would be procured for this purpose at minimum support prices. Thus, while the *de minimis* percentages, at 10 percent instead of 5 percent for developing countries, seemed to provide

generous policy space at the conclusion of the Uruguay Round, the subsequent increases in certain kinds of domestic support in some of the more advanced developing countries now mean that a number of countries are likely to exhaust their policy space for that kind of support in the near future, if indeed they have not already done so. At the same time, there remains no limit on measures which are consistent with the green box criteria or, in the case of developing countries, on certain kinds of investment and input subsidies. This is the background against which the G-33 put forward their Bali mini-package proposals.

3. A MORE COMPREHENSIVE GREEN BOX

The first part of the G-33 submission was to extend the list of general government services covered by the green box and thus exempt from an expenditure ceiling. For many developing countries, the primary constraint in making use of green box measures is their limited fiscal capacity. However, there is also a view that the list of measures eligible for the green box mainly reflects those used in developed countries and are not well tailored to the specific circumstances of developing countries (De Schutter, 2011; G-33, 2012). The first agreement to review green box criteria in the Doha Round negotiations was included in the 2004 Framework Agreement with a view to ensuring that these have "no, or at most minimal, trade-distorting effects or effects on production" (WTO, 2004a). Developing countries argue that developed countries were able to make use of the rather loose criteria specified for some green box programmes to shelter programmes which potentially could have quite significant trade-distorting effects. In the following year, at the Hong Kong Ministerial Council meeting, members further agreed that this review should also ensure developing country programmes were effectively covered (WTO, 2005a). This reflected a submission from the G-20 group of developing countries to better adapt the green box to developing country needs (WTO, 2005b).

The 2008 draft modalities include some modest revisions to expand the scope of general government services under Annex 2 in the AoA. It recommended that the following programmes should be exempt from the AMS calculations: "policies and services related to farmer settlement, land reform programmes, rural development and rural livelihood security in developing country Members, such as provision of infrastructural services, land rehabilitation, soil conservation and resource management, drought management and flood control, rural employment programmes, nutritional food security, issuance of property titles and settlement programmes, to promote rural development and poverty alleviation" (WTO, 2008).

De Schutter (2011) notes that these programmes mainly reflect the provision of public goods. It might seem surprising that countries worry that the inclusion of such expenditures in the green box might be challenged, especially given the specific admonition by ministers in 2001 for members to exercise restraint in challenging developing countries' green box measures. However, he points out that a domestic policy must meet specific criteria under the green box if it is to be considered as non-trade-distorting support, regardless whether the policy actually distorts trade or not. Developing countries have therefore felt it necessary to invest negotiating capital during the Doha Round towards ensuring such commonly used rural development and food security policies are listed under the green box.

As part of the Bali mini-package, the G-33 countries wanted to fast-track agreement on the additional paragraph in the revised modalities which would extend the general services exemption to cover domestic support related to rural development, land reform and infrastructure services in developing countries. This was probably the least contentious of the agricultural issues considered in the Bali mini-package. The final agreement took the form of a Ministerial Decision pursuant to Article IX.1 of the WTO Agreement on 'General Services' (WTO, 2013a). The Decision reads in full:

"Members recognize the contribution that General Services programmes can make to rural development, food security and poverty alleviation, particularly in developing countries. This includes a range of General Services programmes relating to land reform and rural livelihood security that a number of developing countries have highlighted as particularly important in advancing these objectives. Accordingly, Members note that, subject to Annex 2 of the Agreement on Agriculture, the types of programmes listed below could be considered as falling within the scope of the non-exhaustive list of general services programmes in Annex 2, paragraph 2 of the AoA.

General Services programmes related to land reform and rural livelihood security, such as:

i. land rehabilitation;

ii. soil conservation and resource management;

iii. drought management and flood control;

iv. rural employment programmes;

v. issuance of property titles; and

vi. farmer settlement programmes

Infrastructural services, while mentioned in the 2008 revised modalities and in the G-33 proposal, are not explicitly mentioned in this list, presumably because a qualified list of infrastructural services is already included under the general services heading in the AoA. There is also some uncertainty about what legal implications flow from this Decision. The Decision is not an interpretation of the general services paragraph in Annex 2 (in the sense of Article IX.2 of the WTO Agreement) as this Article is not explicitly referenced. It is also not a waiver nor an amendment to the AoA, which are other possible legal covers. It seems that the Decision should be seen primarily as a political statement. Decisions of a Ministerial Conference are "definitely sources of WTO law and must be taken into account by panels and the Appellate Body" (Van den Bossche, 2008, p. 56). However, according to the same author, a Decision does not generate specific rights and obligations for WTO members which can be enforced through WTO dispute settlement. Nonetheless, it seems that the effect of the Decision will be to give members assurance that exempting expenditure on these programmes will not be open to challenge in the future. The Decision applies equally to developed and developing country members.

4. PUBLIC STOCK-HOLDING FOR FOOD SECURITY PURPOSES

The G-33 proposal to exclude purchases at official prices for public stock-holding programmes for food security purposes from a country's Current Total AMS was a much more controversial element of the Bali agricultural mini-package. Indeed, in the weeks up to the Ministerial Conference, it seemed that disagreement on this issue threatened to derail an overall agreement. There are two relevant food security provisions in Annex 2 of the AoA. They are the rules on public stockholding for food security purposes (paragraph 3) and the provision of domestic food aid (paragraph 4).

Public stockholding for food security purposes covers "expenditures (or revenue foregone) in relation to the accumulation and holding stocks of products which form an integral part of a food security programme identified in the national legislation". This can include government assistance to private storage of products as part of a food security programme. All such operations have to be conducted subject to three conditions: (i) the volume and accumulation of such stocks has to correspond to predetermined targets in relation solely to food security; (ii) the processes of stock accumulation and disposal have to be financially transparent; and (iii) food purchases by the government have to be made at current market prices and sales from food security stocks have to be made at no less than the prevailing domestic market price for the product and quality in question. However, programmes in developing countries which provide food at subsidised prices with the objective of meeting the food requirements of the urban and rural poor are assumed to be in conformity with this paragraph. A further footnote allows programmes in developing countries to be considered in conformity with all of the above conditions (i), (ii) and (iii) simply if their operation is transparent and conducted in accordance with official published objective criteria or guidelines, i.e. a less stringent set of criteria that those required for developed countries. However, if the stocks of foodstuffs are acquired and released at administered prices, the difference between the acquisition price and the external reference price will have to be accounted for in the product's AMS.

Domestic food aid is also included under the green box. It is defined as expenditures (or revenue foregone) in relation to the provision of domestic food aid to sections of the population in need. Eligibility to receive the food aid should be subject to clearly-defined criteria related to nutritional objectives. Such aid should be in the form of direct provision of food to those concerned or the provision of means to allow eligible recipients to buy food either at market or at subsidised prices. Food purchases by the government should be made at current market prices and the financing and administration of the aid should be transparent.

The G-33 argued that requiring the inclusion of public stocks purchased at administered prices in the product's AMS means that several developing countries are in danger of reaching or exceeding their permitted limits. Specifically, the G-33 wanted to fast-track amendments in the revised draft modalities that would allow developing country governments to buy food from low-income or resource-poor producers at government-set prices (therefore providing price support for producers) with the objective of stocking it for food security purposes or distributing it as food aid — without having to count a price difference in the product's AMS, which is subject to limits.

The draft modalities would add a sentence to the footnote to Annex 2, paragraph 3 dealing with public stock-holding that: "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". A further amendment would allow "the acquisition of foodstuffs at subsidised prices when procured generally from low-income or resource-poor producers in developing countries with the objective of fighting hunger and rural

poverty" to be deemed to be in conformity with the conditions for public food stocks to be eligible for the green box (WTO, 2008).

Food reserves can play an important role in developing countries faced with volatility in both food availability and food prices, and food assistance programmes provide a vital safety net for food-insecure families. Hence it is important and appropriate that current AoA rules recognise that the creation of food reserves and the provision of domestic food aid which meet the specified conditions should not be restricted. If food for public reserves or food assistance programmes is purchased at market prices, then these programmes qualify as green box programmes without restriction.

However, the rationale of the G-33 proposal is that these programmes should also be able to provide price support to producers, or at least low-income and resource-poor producers without this price support being required to count towards the product's AMS (South Centre, 2013). It is not surprising that the suggestion received a mixed reception given that it would breach a basic criterion for green box programmes that they should not provide price support to producers. Countries critical of the G-33 plan focused on the systemic impact of changing the current rules to such an extent outside of a wider negotiation. They also highlighted the potential trade-distorting consequences of any such change. Developed countries in particular expressed concern that the move could allow countries to provide unlimited sums of trade-distorting farm support to their farmers – potentially undermining producers in other countries (Oryza, 2013).

In the weeks leading up to the Bali Conference, negotiations focused on a possible 'peace clause' that would provide some additional flexibility for specific members on the basis that this would be time limited, non-automatic, and create no or minimal trade or production distortions. The intention was to provide some additional breathing space for members having trouble respecting their commitments in respect of public food security stocks while working to find a more lasting solution. But key differences remained until the last moment, including whether the flexibility delivered under such a mechanism should be automatic or non-automatic, and on what would happen when the peace clause expired.

At Bali, WTO members agreed on an interim solution, and committed 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 in 2017 (WTO, 2013b). The Ministerial Decision declared that, as an interim solution, WTO members shall refrain from challenging through the WTO dispute settlement mechanism compliance of a developing member with its Total AMS or *de minimis* AMS limits 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, provided it complies with a number of conditions set out in the Decision.

The conditions relate to notification and transparency requirements, anti-circumvention and safeguards, consultation and monitoring. A WTO member which wants to benefit from this Decision must have notified the Committee on Agriculture that it is exceeding or is at risk of exceeding either or both (sic) of its AMS limits (the Bound Total AMS or the *de minimis* limits) as a result of a stockholding programme for food security purposes.[5] The country must also have fulfilled its domestic support notification requirements under the AoA by ensuring that its notifications for the previous five years are up-to-date. It is required to provide detailed information, on an annual basis, on each public stockholding programme that it maintains for food security purposes as well as relevant statistical information in a format which is set out in an annex to the Decision. Stocks procured under such programmes must not distort trade or adversely affect the food security of other WTO members. Finally, a developing country benefiting from the Decision shall upon request hold consultations with other WTO members on the operation of any of its public stockholding programmes.

Some of the key elements in this Decision are worth underlining. First, it does not address the issue of domestic food aid, where the G-33 proposal would similarly have exempted the acquisition of any foodstuff at subsidised prices when procured generally from low-income or resource-poor producers from a product's AMS. Second, support does not have to be limited to low-income or resource-poor farmers; indeed, market price support by definition will benefit all farms. Third, it only covers stock-holding programmes dealing with staple food crops. Fourth, it only applies to public stockholding programmes for food security purposes existing as of the date of the Decision. Thus it does not provide carte blanche for developing countries to initiate new price support programmes linked to public stock-holding activities. Fifth, beneficiary countries are subject to on-going provision of information to allow WTO members to monitor each country's situation. For some countries this will mean a dramatic change in their notification practices; India, for example, had only submitted domestic support notifications up to 2003 by 13 September 2013 (WTO, 2013c). Sixth, the Decision only protects eligible countries from challenge to their commitments under the Agreement on Agriculture. Support schemes can still be challenged under the Subsidies and Countervailing Measures Agreement if such schemes result in adverse effects for third countries.

The period of validity of the Decision was a particularly vexed issue. The original suggestion hammered out in Geneva in the weeks prior to the Conference was that the interim solution would take the form of a 'peace clause' with a limited validity of four years, after which the protection of the Decision would become void. India, however, on behalf of the G-33 insisted that the interim solution would remain in place until a permanent solution was found. In the debate during the weeks leading up to the Bali agreement, the provision that a country had to admit that it was likely to breach its AMS commitments in order to benefit from the protection of the 'peace clause' was dubbed a 'Trojan Horse' by some commentators. They feared that, if a country invoked the Decision, then in four years' time its effective admission that it had violated the AoA would make it a sitting target for a complaint in dispute settlement (Howse, 2013). The final text avoids this outcome by adopting the Indian position. Either option would change the dynamics of the negotiations around a permanent solution. In the first case, India, as the demandeur and a likely beneficiary of the Decision, would have come under strong pressure to reach an agreement, even an unsatisfactory one, before the expiry of the Decision. Now it can negotiate from a stronger position, knowing that its programmes are protected from challenge until a permanent solution is found.

Table 1 shows the developing countries that potentially might benefit from this Decision. These are the countries which have reported making use of public stock-holding for food security purposes at any time since 1995 (for the reasons mentioned in the footnote to the table, this may be an incomplete list because of delays in notifications to the WTO). Some of these countries did not report programme expenditures in recent years, either because a notification was not made (India, Kenya, Sri Lanka) or it was made and no expenditure was reported (Costa Rica, Pakistan, Philippines, South Africa). It appears that only a small handful of developing countries are potential beneficiaries of the interim solution, which is confined to countries which are implementing public stock-holding schemes for food security purposes at the date of the decision. Even fewer of these countries are likely to need the exemption introduced by the Decision, either because food is procured at market prices or because their Total AMS or *de minimis* limits are not restraining. Given the notification and reporting obligations associated with the Decision, it would not be surprising if India turns out to be the only country which makes use of it during the next four years. The practical consequence of the interim solution will therefore be very limited.

Figure 1. Expenditure on public stock-holding schemes for food security purposes in the period 2005-2010 by WTO developing country members which had notified such expenditure at least once since 1995

Member Name	Currency Unit	2005	2006	2007	2008	2009	2010
Botswana	P million	6.4	4.7	3.2	4.3	6.8	-
Brazil	US$ thousand	147,932	156,739	180,941	234,159	236,785	
China	Y million	44,087	50,378	54,200	57,932		
Costa Rica	US$ thousand	-	-	-	-	-	-
India	US$ million						
Indonesia	Rp billion	847	1,078	1,225	698		
Israel	US$ thousand	15,401	9,715	8,512	12,046	12,932	12,590
Kenya	K Sh million						
Kingdom of Saudi Arabia	SRl million		32.6	35.8	24.3	10.2	16.6
Korea, Republic of	W billion	169.8	143.6	163.8	137.1		
Namibia	N$ million	-	-	10.0	5.0	9.0	
Nepal	NPR thousand	260,000		260,000		354,000	67,761
Pakistan	PRs million	-	-				
Philippines	P thousand						
South Africa	R thousand	-	-	-	-	-	-
Sri Lanka	SL Re million						

Note: A '-' symbol in a cell indicates that a notification was received from that country in that year but no expenditure on public stock-holding for food security purposes was reported. A blank cell means that no notification has yet been received from that country, so it is possible that the country made use of a public stock-holding scheme in those years. Burundi, Cambodia and Mali reported expenditure on public stock-holding for food security purposes in their supporting tables used to derive their schedule of commitments but did not report expenditure in any notification since 1995. There may also be countries which never reported expenditure on public stock-holding schemes in any notification but have begun to make use of this measure in recent years but have not yet notified it. For example, Thailand introduced a paddy rice pledging scheme in the 2011/2012 marketing year but it is not yet clear if it will notify this scheme as a public stock-holding scheme for food security purposes. Thailand has not notified its domestic support since 2007 as of January 2014.

Source: Author's elaboration based on WTO domestic support dataset: Table DS:1 and the relevant supporting tables, cut-off date 28 February 2013, downloaded from http://www.wto.org/english/tratop_e/agric_e/transparency_toolkit_e.htm.

5. TOWARDS A PERMANENT SOLUTION ON PUBLIC STOCK–HOLDING

The Ministerial Decision recognises that the interim solution is a stop-gap measure and it establishes a work programme to be undertaken in the Committee on Agriculture with the aim of making recommendations for a permanent solution. This work programme will take into account suggestions already made by members as well as future submissions. It is intended that a permanent solution will be ready for approval no later than the 11th Ministerial Conference in 2017. The permanent solution will apply to all developing country members, and not only to those with public stock-holding programmes for food security purposes already in place.

A number of possible options have already been put on the table. One option would be to roll-over the interim solution and extend it to all developing countries by an interpretation that purchases at administered prices for the purposes of public stock-holding for food security purposes would not be deemed to be price support and would not be required to be included in a product's AMS (Option 1). Another option suggested by some G-33 members prior to the Bali conference would be to allow more explicit adjustment of notifications for excessive inflation (Option 2). Another non-paper by a sub-set of G-33 countries focused on the possibilities for revising the calculation of the MPS component in the AMS through modification of some of the four variables that enter into the MPS calculation subject to the *de minimis* threshold, namely, the *de minimis* level (Option 3a), the external reference price (Option 3b) and eligible production (Option 3c) (Bridges Weekly, 2013).[6] The idea that administered prices at safety net levels that are below domestic market prices, in the context of procurement of public stocks, might be exempt from inclusion in the product-specific AMS (put forward by Diaz-Bonillo, 2013) is also examined (Option 4). A more radical suggestion would be to remove the MPS element completely from the AMS calculation (Option 5). The pros and cons of these alternatives are now briefly discussed.

Option 1 - Make the interim solution permanent

One option for the permanent solution would be to simply make the interim solution permanent but open it to all developing countries. In other words, developing countries which procured food at administered prices for public stock-holding schemes for food security purposes would not be challenged through the dispute settlement mechanism for a breach of their AMS limits due to this expenditure provided they complied with the conditions set out in the Decision. For those countries which had such programmes in place in December 2013, this would be the effect of the Ministerial Decision if no permanent solution can be agreed. This option would extend this protection to all developing country members.

The effect of this solution would be to classify public expenditure on price support as green box expenditure (exempt from AMS limits) and therein lies the major objection. Annex 2 of the AoA which sets out the basis for exemption from reduction commitments states that eligible domestic support measures shall not have the effect of providing price support to producers. Legitimising price support, even in the context of procurement for public stock-holding schemes, would thus be a major breach with one of the main principles behind the definition of exempt support. The opposition to the G-33 proposal in the run-up to the Bali Ministerial shows that it would be difficult to get support for such a major revision of the Agreement. Other options which might give additional flexibility to developing country members without directly breaching this green box requirement should therefore be explored.

Option 2 - Adjusting for inflation

Developing countries are often prone to high rates of domestic inflation which they argue puts them at a disadvantage when calculating their Current Total AMS using the method set out in the AoA. It requires administered prices to be compared to a fixed 1986-88 external

reference price in order to calculate the level of AMS support. The argument is that an increase in administered prices which simply reflects domestic inflation has no economic significance in terms of increasing distortions on world markets. In other words, the increase in the administered price does not correspond to an increase in economic price support in real terms. However, it has a legal impact because, as the administered price is raised to follow the rate of domestic inflation, so the gap with the fixed external reference price becomes larger, increasing the size of the measured current AMS. The non-paper by some G-33 countries would allow WTO members to take into account excessive rates of inflation, for example, higher than 4 percent, in calculating the contribution of food stockholding programmes towards overall farm subsidy commitments (Bellman, et al., 2013). This suggestion claims to draw on Article 18.4 of the AoA which reads: "In the review process [of the implementation of Uruguay Round commitments undertaken by the Committee on Agriculture] 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."

Inflation is already factored into the AMS calculation, but only partially and depending on how a country has presented its schedule of commitments (WTO, 2000b). In the case of non-exempt budgetary outlays (such as expenditure on a product-specific fertiliser subsidy) where the subsidy payment is indexed to the movement in the inflation index, there is an automatic inflation adjustment in those cases where the subsidy expenditure is below the *de minimis* limit. This is because the value of domestic production (and hence the *de minimis* limit) also rises with the inflation rate. However, this adjustment only partially works in the case of market price support below the *de minimis* limit. Because of the use of the fixed external reference price in local currency, market support in the context of high inflation increases much more rapidly than the nominal value of the *de minimis* limit. Even if a country was compliant in the base year, sooner or later it would breach its commitment even if the only thing that had changed was the indexation of prices to inflation. These conclusions apply a fortiori to those countries where the discipline is specified as a Bound Total AMS because this nominal value remains fixed and does not even increase in line with inflation.

Setting AMS disciplines in nominal terms in the AoA was not accidental and presumably reflected the drafters' intention that over time the value of AMS entitlements would be gradually eroded by inflation. However, if there are significant differences in inflation rates, and some countries experience much higher rates of inflation than others, then the real value of the AMS entitlements of the rapid-inflation countries is eroded much more quickly. One way a country could have protected itself against excessive inflation was to express its Bound Total AMS in terms of a more stable foreign currency by denominating its foreign external reference price in the foreign currency (WTO, 2000b). The country in calculating its Current Total AMS converts its applied administrative prices (in domestic currency) into the foreign currency using the exchange rate of the notification year. For countries with excessive inflation, the rate of domestic price increase and the rate of exchange rate depreciation are usually inversely related. If they happen to exactly offset each other this would provide an automatic inflation adjustment. However, only a handful of developing countries have specified fixed external reference prices or AMS ceilings in foreign currency in their commitments (Argentina, Brazil, Columbia, Costa Rica, Turkey and Venezuela) (WTO, 2000b). Only these countries arguably have access to a built-in inflation adjustment mechanism.[7] Some WTO members have switched from calculating their support in domestic currency in the base period to using a foreign currency in their yearly notifications. For example, by India's switch to notifying in the US currency, its nominal increases in subsidy expenditures and nominal support prices do not show up as increases in notified support to the extent that they are offset by nominal rupee devaluation (Gopinath, 2011). However, this practice appears to be

contrary to the requirement that the AMS should be calculated taking into account the constituent data and methodology used by the country for its base period.

The recourse to Article 18.4 is not sufficient as this Article does not extend any right to a member to modify its domestic support calculations. The paragraph simply allows the Committee on Agriculture to give "due consideration" to the influence of excessive rates of inflation on the ability of any member to abide by its domestic support commitments. The Committee does not have the power either to compel an errant member to bring itself into compliance, or to give protection to a member which finds itself in violation of its commitments. However, some legal weight must presumably be given to the fact that the AoA drafters included this paragraph in the Agreement and thus indicated their awareness that excessive inflation could create problems for a country to remain within its commitments. The suggestion by some G-33 countries would give the same protection to countries which specified their schedule commitments in local currency as is now available to countries which specified in a foreign currency. As this right does not exist in the current AoA, it would require an interpretation of or an amendment to the Agreement specifying how this might be done.

Option 3A - Raise the *de minimis* limit

Another option put forward by some G-33 countries is to raise the limit for developing countries' de minimis support currently set at 10 percent of the value of production for all developing countries apart from China, which has a lower limit of 8.5 percent. Their proposal is that this might be raised to 15 percent for all developing countries. Similarly to changing the base period for the fixed external reference price to a more recent period, this would allow a once-off increase in the ceiling for trade-distorting support for developing countries. However, the distribution of the additional policy space across countries, commodities and programmes would be very different. For example, raising the *de minimis* limit would permit both greater market price support as well as higher expenditure on non-exempt programmes such as input subsidies which do not qualify under Article 6.2, while changing the period for the external reference price only gives greater scope for market price support. It would no doubt be difficult to get political agreement to increase the scope for trade-distorting support in this way. The Doha Round draft modalities (WTO, 2008) provide that the *de minimis* limits for developing countries with Final Bound AMS commitments would be reduced by one-third. However, no reduction in *de minimis* limits would be required for countries with no Final Bound AMS commitments, or for countries with such commitments which allocate almost all of their support to subsistence and resource-poor producers, or are Net Food-Importing Countries in WTO terms. If a higher *de minimis* limit were pursued in the negotiations on a permanent solution, one possibility might be to allow a temporary increase in the *de minimis* limit but then to gradually reduce it again over time.

Option 3B - Review the basis for the external reference price

A further option could be to review the 1986-88 reference prices that are used as a benchmark in calculating countries' MPS. The G-33 countries say that because this yardstick does not capture increases in food prices over the last few decades, it "grossly exaggerates and overstates the economic subsidy provided." Various alternatives might be envisaged. One option is to change to a variable external reference price. Some G-33 countries proposed that developing countries could use a three-year rolling average of world market prices in their MPS calculation. Alternatively, they might be allowed to use the previous year's average price in the three largest suppliers of foodstuffs in the domestic market. Using a variable external price arguably better captures the economic significance of a country's domestic support policy. For example, it is the benchmark used by the OECD in its calculation of a country's agricultural support (the Producer Support Estimate) (OECD, 2010).

The drawback of using a variable external price is that a country's measured AMS is no longer completely the result of its own policy setting.[8] It also makes it more difficult for other countries to evaluate the significance of their trading partners' commitments to bind domestic support. World market prices are currently high, making the use of recent prices attractive to those countries which wish to increase their policy space to be able to provide more price support, but this could change in the future. If world market prices start to trend downwards, this could force countries to lower administered prices in order to stay within their AMS limits. For the proponents of variable external reference prices, this is precisely their advantage. Changing the basis for the MPS calculation in this way would de facto lead to a renegotiation of countries' domestic support commitments under the AoA. This makes it less likely that agreement would be reached on a stand-alone basis as part of a permanent solution to the question of public stock-holding for food security purposes, outside of an overall Doha Round agreement.[9] Further, if it were decided to change the legal basis for the MPS calculation in this way, it would be hard to argue that such a fundamental change should be confined to developing countries. Developing countries would then need to evaluate the overall effect of providing greater policy space both for themselves and for developed countries, which have been the greatest users of domestic support to date. An alternative, less dramatic alternative, would be to allow a once-off change in the base period for the fixed external reference price, from 1986-88 to a more recent three-year period during which world market prices were higher. Such a change could be confined to developing countries under special and differential treatment provisions. It is, however, an arbitrary and ad-hoc 'solution' and does not address the fundamental compatibility of WTO rules with food security objectives.

Option 3C - Change the definition of eligible production

One of the parameters in the calculation of the MPS element of the AMS is the quantity of eligible production – which is multiplied by the difference between the fixed external reference price and the administered price to give the value of market price support provided. Countries in their notifications sometimes use total production as the eligible quantity, and sometimes the actual quantity purchased by the government at the administered price. In *Korea-Beef*, the panel argued that, in general, market price support benefits all production of the type and quality supported by the administered price unless there is a legislatively predetermined limit on the quantity eligible for support. In this case, the Appellate Body clarified that it is the quantity that the government has announced is eligible for purchase which constitutes the eligible production in this case, even if it then actually purchases only a smaller quantity. As here the legal view is consistent with economic reasoning, there does not appear to be a strong case to allow actual purchases as the eligible quantity.

Option 4 - Qualifying the administered price

A different way to address the G-33 concern about policy space has been suggested by Diaz-Bonilla (2013). His proposal is to clarify the relationship between 'market prices' and 'administered prices' by affirming that administered prices that are at or below market prices should not be seen as providing price 'support'. The specific language he offered is as follows:

"Administered prices in the context of this paragraph will be considered rebuttable presumed in compliance with the conditions that they do not offer price support, and therefore, they will not have to be counted against the aggregate measure of support, if they do not exceed the appropriate domestic market price or the import parity equivalent based on the world market price of the product considered."

Such a paragraph would mean that, in order to challenge a food security program of another WTO member, a complainant would have to show that the administered prices were above the appropriate market price, thus offering

'price support' to producers. Given volatility in market prices, it is possible that a pre-announced administered price could turn out, in a year with excellent domestic harvests or very low world market prices, to be higher than the subsequent market price. Thus it would be desirable to define the market price on the basis of a rolling average to even out the effects of year-to-year volatility. In any event, as Diaz-Bonilla (2013) notes, if a developing country is buying significantly above market prices and selling below market prices in order to help poor and vulnerable populations, there is a strong probability it will get into fiscal problems long before a trade case is brought against it.

The justification for this suggestion is that, in developing countries, in the absence of futures markets, the only coordinating device for developing country farmers' expectations about market conditions and for their production decisions may be pre-announced government prices (Diaz-Bonilla, 2013). Provided these prices are below market prices, then in an economic sense there is no price support.[10] How market prices are defined is clearly relevant. There is an important difference between the import parity price and the domestic market price which also depends on the extent of applied border protection. The argument that no support is provided by an administered price strictly holds only if it is below the import parity price; even if it were below the domestic market price, if it is above the import parity price then it does provide price support. However, it can be argued that this is not additional to that provided by the border protection alone so that its incremental trade-distorting effect is minimal.[11] Whichever benchmark might be adopted, the general requirement in Annex 2 that measures in the green box cannot provide price support would need to be qualified to allow this exception. The blue box provides a possible precedent in that this shelters an otherwise non-exempt payment to producers by attaching specific conditions which limit its production and trade-distorting impact.

One attraction of this proposal as part of the permanent solution is that it would be straightforward to apply it to public stockholding policies without necessarily requiring a wholesale change in the AMS calculation (though it would be consistent also to apply this interpretation of administered prices to domestic food aid programmes under paragraph 4 of Annex 2). It would allow any developing country to procure foodstuffs from farmers at administered prices provided that (a) it is an integral part of a food security programme identified in national legislation, such that the volume and accumulation of public stocks corresponds to predetermined targets related solely to food security, and (b) provided that the administered price is set below either the import parity or domestic market price. There would, of course, be strong political economy pressures from farm groups over time to raise the level of administered prices, or not to reduce it when import parity or domestic prices are falling. The EU experience of intervention price support is instructive in this regard, where over time the intervention price began to determine the market price and government purchases became a significant element of market demand. The Indian experience is also relevant where purchases of rice and wheat at minimum support prices have resulted in actual stocks that are far in excess of minimum food security norms (Hoda and Gulati, 2013). The danger in permitting any kind of economic price support is that there is a strong probability that it leads to trade distortion for the political economy reasons mentioned above.

Option 5 - Remove the MPS component from the AMS

Separately from any discussion of the desirability of granting additional policy space to developing countries, the MPS component of the AMS calculation has been widely criticised on the grounds that it represents double counting, that it is open to abuse, and that it is does not correctly capture the direction of policy change (de Gorter et al., 2004). Some analysts have suggested removing the MPS component from the AMS calculation altogether on the grounds that those policies are already disciplined under the market access pillar of the AoA. While the market access pillar disciplines border tariffs,

the double counting argument is based on the economic logic that a country will be unable to maintain administered prices above world market prices for any lengthy period in the absence of tariff protection. Hart and Beghin (2006) point out that the current 'double counting' has the trade benefit of allowing either the market access or domestic support commitments to be binding. A market price support program may be acceptable under the market access commitments, but it may breach a country's domestic support commitments (or vice versa) and support reductions would be warranted. This highlights the fact that there is no necessary consistency between the disciplines which may apply to a country's market access policies and to its domestic support policies. In different states of the world, different pillars may become binding. For developed countries, the AMS discipline has often been the more limiting one in the past. Countries have been able to remain in compliance with their Bound Total AMS commitment by the simple expedient of eliminating the administered price, even if the level of economic support has remained unchanged.[12] While removing the MPS component from the AMS would eliminate the possibility of such gaming, it would also require a complete renegotiation of countries' schedules of commitments and the formulae included in the draft agricultural modalities in the Doha Round negotiations. This does not seem a sensible approach at this point in time.

Blue box

In enumerating the policy space available to developing countries, the possibility of replacing some market price support with payments under AoA Article 6.5 (the blue box) should be highlighted. As noted earlier, very few countries (and no developing country) have made use of the blue box. Several reasons may explain why the blue box is not more popular (UNCTAD, 2003).

Measures which qualify for the blue box must be direct payments. This means that the expenditures must be publicly funded. Such payments can be burdensome for government budgets. Market price support weighs less heavily on the budget because it is financed by the consumer (who pays higher prices) and often from import taxes.[13] Measures must also be "under production-limiting programmes", which could suggest that only countries facing a production surplus will be interested in using such programmes and thus they are of little interest to developing countries. This is a misunderstanding, however, as there is no requirement in the blue box conditions to limit supply; it is the volume of supported production which must be limited. Under the EU measures reported in the blue box, farmers were at liberty to increase production beyond the blue box limits but received only the market price for these marginal quantities. A stronger disincentive for the wider use of the blue box in developing countries is that these measures are administratively demanding: farmers have to apply for their aid entitlements; this must be processed, checked and then paid. This requires a detailed accounting of production by each farmer and the heavy demands on record-keeping, inspection and payment systems are a challenge even in developed countries. Particularly for low-income developing countries, the higher budget expenditure required by the use of blue box support as well as its administrative complexity explain why it is not a widely-used policy instrument. For more advanced developing countries, use of the blue box could in future provide a way within existing AoA rules to provide exempt support to farmers. The Doha Round draft modalities (WTO, 2008) provide that the maximum permitted value of blue box support should be 5 per cent of the average total value of agricultural production in the 1995-2000 or the 1995-2004 base period as selected by the country concerned.

6. CONCLUSION

The compatibility of WTO rules with the food security objectives of developing countries has been a recurring source of controversy. It has now been firmly placed on the WTO agenda by the Decision at the Bali Ministerial Conference to initiate a work programme to find a permanent solution to the question of procurement at official prices for public stock-holding for food security purposes. Although the context for this Decision was a request to exempt such procurement from a product's AMS, the issue raises broader questions about whether and how developing countries should have more policy space to adopt non-exempt and potentially trade-distorting domestic policies. The debate about policy space for developing countries cuts across all three pillars of the AoA. In the market access pillar, it revolves around the role of Special Products and the Special Safeguard Mechanism. In the export competition pillar, it focuses on disciplines on the use of export restrictions. This paper has focused on the debate on policy space in the domestic support pillar which was the issue addressed in the Bali Ministerial Conference. To what extent, and in what ways, should the domestic support rules and commitments in the AoA be modified to ensure that developing countries are not unduly constrained in pursuing the important goal of food security?

The paper has reviewed the various proposals made so far for a permanent solution to the treatment of the procurement of public food security stocks at administered prices under WTO rules. Their intention is to provide more flexibility (policy space) for developing countries to pursue currently non-exempt policies where this is justified for food security purposes. Policy space for a WTO member is defined by its right to exempt support under some policies when calculating its current AMS as well as by the size of its limits on AMS support. A country's policy space can be increased either by enlarging the scope of exempt policies, or by increasing the limits on its AMS support.

Three arguments are used to justify increases in developing countries' AMS entitlements. First, any country that uses market price support is disadvantaged in the context of rising food prices by the use of the fixed 1986-88 external reference price as compared to countries that use budget payments to provide farmers with an equivalent level of economic support. This tends to disadvantage those countries, often developing countries, which have few budgetary resources. Second, in spite of the more generous exemptions that developing countries can use in calculating their AMS support, and the higher *de minimis* limits and thresholds, the current distribution of 'rights' to use trade-distorting support as between developed and developing countries is arbitrary and without a legitimate justification. WTO ceilings that allow a country a greater right to use trade-distorting support because it was a bigger sinner in the past understandably contributes to the sense of grievance among developing countries that the rules are skewed against them. Third, there is the normative argument that, if particular policies (and especially producer price support polices) are required to ensure the food security of poor populations, then from a right to food perspective these policies should not be constrained by trade rules which are only intended as a means to an end (De Schutter, 2011).

Countering these arguments is that the deliberate intention of WTO rules is to encourage countries to use less trade-distorting policies in the pursuit of their agricultural and food security policies. With the growing importance of south-south trade, allowing greater scope for developing countries to implement trade-distorting policies will increasingly be to the detriment of other developing countries and their food security. The rapid growth in the amount of domestic support provided by some of the more advanced developing countries underlines the importance of this concern. Other critics point out that price support is an inappropriate way to address food security

concerns in the first place. Price support has no impact on subsistence producers and low-income producers are often net purchasers of supported foodstuffs yet these are the groups most vulnerable to food insecurity. Resources devoted to price support can be used to support agricultural production in more productive ways. Yet other critics argue that, given the very different situations of different developing members, with most of them having no immediate risk of breaking their commitments, changing the existing rules would be both hasty and disproportionate to address the concerns raised.

The premise of this paper is that adapting the rules on exempt policies where this can be shown to be justified to enable developing countries to pursue their food security objectives is a much preferable approach to simply increasing the limits on AMS support. The latter is an ad-hoc approach to dealing with potential inconsistencies between WTO rules and food security policies. It gives no guidance and makes no distinction with regard to how countries might use this increased policy space. Even if an argument can be made that the distribution of entitlements to trade-distorting support as between developed and developing countries is unfair, increasing AMS limits for developing countries (rather than reducing AMS limits for developed countries) runs counter to the overall objective to establish a fair and market-oriented agriculture trading system. If WTO rules are framed in such a way not to restrict developing countries from adopting appropriate policies to address their food security needs, then the case for larger AMS entitlements falls away.

Enlarging the scope of exempted general government services that have relevance to food security was one outcome of the Bali Ministerial Conference. The more controversial question was the treatment of administered prices when procuring public stocks for food security purposes. Two of the proposals reviewed in this paper deserve further consideration in this context. The first would make explicit allowance in the AoA for countries to adjust their measured support for excessive rates of inflation. The drafters of the AoA recognised that this could be a problem, but did not provide a solution. The second would make a distinction between the use of administered prices for price support and as a safety net. Farmers in developing countries are as exposed to price risk but have fewer opportunities to manage this than farmers in developed countries. Where administered prices operate as a safety-net rather than the incentive price to which farmers respond, AoA rules could recognise (along the lines of the blue box) that this use of administered prices is not likely to lead to significant trade distortion and should be permitted. A minimal adaptation of the rules would be to allow this interpretation in the context of public food security stocks, as Diaz-Bonilla (2013) has suggested. WTO rules already exempt a wide range of policies which address food security needs but are more restrictive about features of those policies that have great potential to distort production and trade. These further amendments could sufficiently adapt the domestic support disciplines to address developing countries' remaining concerns about their ability to pursue their food security goals.

ENDNOTES

1 The members of the G-20 and G-33 as well as other country groups in the WTO are set out in the WTO website http://www.wto.org/english/tratop_e/dda_e/meet08_brief08_e.htm.

2 The extension was also required to deal with Cuba's concern to include language in the trade facilitation text to address the US embargo on Cuban goods, see ICSTD (2013).

3 This applies to Argentina, Brazil, Colombia, Costa Rica, Israel, Jordan Korea, Mexico, Morocco, Papua New Guinea, Saudi Arabia, South Africa, Tajikistan, Thailand, Tunisia, Venezuela and Viet Nam.

4 The 17 developing countries with Bound Total AMS can also make use of the *de minimis* exemptions. However, their overall policy space is less than the sum of their *de minimis* levels and their Bound Total AMS. This is because if a country reports support above the *de minimis* limit for a specific product, it cannot at the same time claim a *de minimis* exemption for that product (Brink, 2013).

5 The implication that a country can have both a Bound Total AMS and *de minimis* limits seems to be a drafting error and probably reflects the rather chaotic circumstances in which the Decision was drafted.

6 The fourth variable that enters into the MPS calculation is the level of the administered price. Lowering the administered price in order to reduce the MPS element of the AMS would not address the desire of the proponents of the proposal to gain additional policy space so it is not included as an option.

7 The AoA requires that an AMS be calculated by taking into account the constituent data and methodology of the calculations in the country's base period (Article I (a) (ii)).

8 The panel ruling on the Brazil-US cotton dispute explains the reasons for the choice of a fixed external reference price for a country's AMS as follows: ".. a prime consideration of the drafters was to ensure that Members had some means of ensuring compliance with their commitments despite factors beyond their control" (WTO, 2004b, p. 134).

9 While this objection applies to any proposal to change the basis for the MPS calculation, altering the choice of external reference price would have the most dramatic effect.

10 In the presence of uncertainty the existence of a pre-announced support price, by reducing risk, will stimulate supply. In countries with more developed market infrastructure, farmers can shift this risk using futures markets for a small fee. It might be argued that the supply effect of this reduced risk, on its own, is sufficiently small not to violate the green box criteria. However, in *Korea-Beef*, the panel noted that "the minimum price support will be available to all marketable production of the type and quality to which the administered price support programme relates, including where actual market prices are above the administered minimum price level" (para.827).

11 Thus, a country which procures supplies for food security stocks at domestic market prices which are above import parity prices because of applied border protection provides economic price support to its producers, although such purchases are not constrained in the AoA. It appears that, in India, minimum support prices for rice and wheat have generally been below import parity prices in the past decade (Hoda and Gulati, 2013). More recently, there has been a rapid increase in minimum support prices which now tend to exceed market prices during the

procurement season, so that selling to the government has become the first rather than the last resort for farmers especially in the main grain-producing states (Gopinath, 2013).

12 Examples include Japan's abolition of its official price for rice and the EU's reduction in its safety net intervention price for beef.

13 This objection is not relevant in the case of the programmes under discussion here where a country procures food supplies for public food security stocks (or food assistance programmes) at official prices above domestic market prices as in this situation the market price support is financed by the government and does weigh on its budget.

REFERENCES

Anania, G., 2013. Agricultural Export Restrictions and the WTO: What Options do Policy-makers have for Promoting Food Security?, ICTSD Programme on Agricultural Trade and Sustainable Development; Issue Paper No. 50. International Centre for Trade and Sustainable Development, Geneva.

Bellman, C., Hepburn, J., Krivonos, E., Morrison, J., 2013. G-33 Proposal: Early Agreement on Elements of the Draft Doha Accord to Address Food Security, ICTSD Programme on Agricultural Trade and Sustainable Development; Information Note. International Centre for Sustainable Trade and Development, Geneva.

Bridges Weekly, 2013. WTO: Ag Talks Chair Seeks to Reconcile Conflicting Visions for Bali. Bridg. Wkly. Trade News Dig. 17, 2 May.

Brink, L., 2011. The WTO disciplines on domestic support, in: Orden, D., Blandford, D. and Josling, T. (eds), WTO Disciplines on Agricultural Support. Cambridge University Press, Cambridge.

Brink, L., 2013. Policy space in agriculture under the WTO rules on domestic support. Presented at the International Agricultural Trade Research Consortium (IATRC) Annual Meeting, December, Clearwater, Florida.

Bureau, J.-C., Laborde, D., Orden, D., 2013. The subsidy habit: US and EU farm policies, in: 2012 Global Food Policy Report. International Food Policy Research Institute, Washington, D.C.

De Gorter, H., Ingco, M., Ignacio, L., 2004. Domestic support: economics and policy instruments, in: Ingco, M. and Nash, J. (eds), Agriculture and the WTO: Creating a Trading System for Development. World Bank, Washington, D.C.

De Schutter, O., 2009. Mission to the World Trade Organization. United Nations Human Rights Council.

De Schutter, O., 2011. The World Trade Organization and the Post-Global Food Crisis Agenda: Putting Food Security First in the International Trade System. United Nations Special Rapporteur on the Right to Food, Geneva.

Diaz-Bonilla, E., 2013. Some Ideas to Break the Stalemate on Agricultural Issues at Bali [WWW Document]. Food Secur. Portal. URL http://www.foodsecurityportal.org/some-ideas-break-stalemate-agricultural-issues-bali (accessed 1.2.14).

Díaz-Bonilla, E., Ron, J.F., 2010. Food security, price volatility and trade: some reflections for developing countries, ICTSD Programme on Agricultural Trade and Sustainable Development Issue Paper No. 28. International Centre for Sustainable Trade and Development, Geneva.

G-33, 2012. Statement on Public Stock-holding [WWW Document]. URL www.onuperu.org/wto/wto/coass_g_33_16_11_12.pdf (accessed 12.20.13).

Gonzalez, C., 2002. Institutionalizing Inequality: The WTO Agreement on Agriculture, Food Security, and Developing Countries. Columbia J. Environ. Law 27, 433–489.

Gopinath, D., 2013. India's agriculture on the brink, Yale Global Online 27 March, URL http://yaleglobal.yale.edu/content/indias-agriculture-brink, accessed 18 February 2014.

Gopinath, M., 2011. India, in: Orden, D., Blandford, D. and Josling, T. (eds), WTO Disciplines on Agricultural Support. Cambridge University Press, Cambridge.

Häberli, C., 2010. Food security and WTO rules, in: Karapinar, B. and Häberli, C. (eds), Food Crises and the WTO. Cambridge University Press, Cambridge.

Hart, C.E., Beghin, J.C., 2006. Rethinking agricultural domestic support under the World Trade Organization. Agric. Trade Reform Doha Dev. Agenda 221–244.

Hoda, A., Gulati, A., 2013. India's Agricultural Trade Policy and Sustainable Development. International Centre for Trade and Sustainable Development, Geneva.

Howse, R., 2013. The Peace Clause a Trojan Horse [WWW Document]. Int. Econ. Law Policy Blog. URL http://worldtradelaw.typepad.com/ielpblog/2013/11/the-peace-clause-a-trojan-horse.html (accessed 1.2.14).

ICSTD, 2013. Historic Bali Deal to Spring WTO, Global Economy Ahead, Bridges Daily Update #5, 7 December [WWW Document]. URL http://ictsd.org/i/wto/wto-mc9-bali-2013/bridges-daily-updates-bali-2013/180991/ (accessed 1.4.14).

Matthews, A., 2012a. The Impact of WTO Agricultural Trade Rules on Food Security and Development: An Examination of Proposed Additional Flexibilities for Developing Countries, in: McMahon, J., Desta, M. (Eds.), Research Handbook On The WTO Agriculture Agreement : New and Emerging Issues in International Agricultural Trade Law. Edward Elgar Publishing, London.

Matthews, A., 2012b. Trade Agreements, WTO Rules and Food Security. Presented at the International Agricultural Trade Research Consortium (IATRC) Annual Meeting, December, San Diego.

Matthews, A., 2013. Doha Negotiations on Agriculture and Future of the WTO Multilateral Trade System. Presented at the Challenges for the Global Agricultural Trade Regime after Doha, 135th EAAE Seminar, Belgrade.

Narayanan, S., 2013. In the Balance: The National Food Security Act vis-à-vis the WTO Agreement on Agriculture. Indira Gandhi Institute of Development Research, Mumbai, India.

OECD, 2010. OECD's Producer Support Estimate and Related Indicators of Agricultural Support: Concepts, Calculations, Interpretation and Use (The PSE Manual). Organisation for Economic Cooperation and Development, Paris.

OECD, 2013. Agricultural Policy Monitoring and Evaluation 2013. Organisation for Economic Cooperation and Development, Paris.

Orden, D., Blandford, D., Josling, T., 2011. WTO Disciplines on Agricultural Support: Seeking a Fair Basis for Trade. Cambridge University Press, Cambridge.

Oryza, 2013. Bali Package on Foodgrain Stockpiling Against WTO Ideals, Claim Pakistan Rice Growers [WWW Document]. URL http://oryza.com/news/bali-package-foodgrain-stockpiling-against-wto-ideals-claim-pakistan-rice-growers (accessed 1.3.14).

South Centre, 2013. The WTO's Bali Ministerial and Food Security for Developing Countries: Need for Equity and Justice in the Rules on Agricultural Subsidies. South Centre, Geneva.

UNCTAD, 2003. An Analysis of the Agricultural Domestic Support under the Uruguay Round Agreement on Agriculture: The Blue Box. United Nations Conference on Trade and Development, Geneva.

Van den Bossche, P., 2008. The Law and Policy of the World Trade Organization: Text, Cases and Materials. Cambridge University Press.

Wall Street Journal, 2013. India Says Developing Countries Want More From WTO [WWW Document]. URL http://online.wsj.com/news/articles/SB10001424052702304579404579233640256964118 (accessed 1.15.14).

Wolfe, R., 2010. Sprinting during a Marathon: Why the WTO ministerial failed in July 2008. J. World Trade 44, 81–126.

WTO, 2000a. Agreement on Agriculture: Special and Differential Treatment and a Development Box: Proposal to the June 2000 Special Session of the Committee on Agriculture by Cuba, Dominican Republic, Honduras, Pakistan, Haiti, Nicaragua, Kenya, Uganda, Zimbabwe, Sri Lanka And El Salvador, G/AG/NG/W/13. World Trade Organisation, Geneva.

WTO, 2000b. Inflation and Exchange Rate Movements in the Context of Domestic Support Commitments, G/AG/NG/S/19. World Health Organisation, Geneva.

WTO, 2001. Ministerial Decision on Implementation-related Issues and Concerns, WT/MIN(01)/17. World Trade Organisation, Geneva.

WTO, 2004a. Doha Work Programme, Decision Adopted by the General Council on 1 August, 2004, WT/L/579. World Trade Organisation, Geneva.

WTO, 2004b. United States - Subsidies on Upland Cotton, Report of the Panel of the Dispute Settlement Body, WT/DS267/R. World Trade Organisation, Geneva.

WTO, 2005a. Ministerial Declaration on the Doha Work Programme, Hong Kong Ministerial Conference, WT/MIN(05)/DEC. World Trade Organisation, Geneva.

WTO, 2005b. Review and Clarification of Green Box Criteria, G20 /DS/Greenbox. World Trade Organisation, Geneva.

WTO, 2008. Revised Draft Modalities for Agriculture, TN/AG/W/4/Rev.4 6 December 2008,. World Trade Organisation, Geneva.

WTO, 2013a. General Services: Ministerial Decision of 7 December 2013, WT/MIN(13)/37. World Trade Organisation, Geneva.

WTO, 2013b. Public Stockholding for Food Security Purposes: Ministerial Decision of 7 December 2013, WT/MIN(13)/38. World Trade Organisation, Geneva.

WTO, 2013c. Compliance with Notification Obligations: Note by the Secretariat, G/AG/GEN/86/Rev.15. World Trade Organisation, Geneva.

ICTSD's Programme on Agricultural Trade and Sustainable Development aims to promote food security, equity and environmental sustainability in agricultural trade. Publications include:

- The 2014 Agricultural Act: U.S. Farm Policy in the context of the 1994 Marrakesh Agreement and the Doha Round. By Vincent H. Smith. Issue Paper No. 52, 2014.
- Public Stockholding for Food Security Purposes: Scenarios and Options for a Permanent Solution. By Raul Montemayor. Issue Paper No. 51, 2014.
- Agricultural Export Restrictions and the WTO: What Options do Policy-Makers Have for Promoting Food Security? By Giovanni Anania. Issue Paper No. 50, 2013.
- India's Agricultural Trade Policy and Sustainable Development. By Anwarul Hoda and Ashok Gulati. Issue Paper No. 49, 2013.
- Global Biofuel Trade: How Uncoordinated Biofuel Policy Fuels Resource Use and GHG Emissions. By S. Meyer, J. Schmidhuber, J. Barreiro-Hurlé. Issue Paper No. 48, 2013.
- Agricultural Domestic Support and Sustainable Development in China. By Ni Hongxing. Issue Paper No. 47, 2013.
- The 2012 US Farm Bill and Cotton Subsidies: An assessment of the Stacked Income Protection Plan. By Harry de Gorter. Issue Paper No. 46, 2012.
- Potential Impact of Proposed 2012 Farm Bill Commodity Programs on Developing Countries. By Bruce Babcock and Nick Paulson. Issue Paper No. 45, 2012.
- US Farm Policy and Risk Assistance. The Competing Senate and House Agriculture Committee Bills of July 2012. By Carl Zulauf and David Orden. Issue Paper No. 44, 2012.
- Net Food-Importing Developing Countries: Who They Are, and Policy Options for Global Price Volatility. By Alberto Valdés and William Foster. Issue Paper No. 43, 2012.
- Trade Policy Responses to Food Price Volatility in Poor Net Food-Importing Countries. By Panos Konandreas. Issue Paper No. 42, 2012.
- Trade Policy Options for Enhancing Food Aid Effectiveness. By Edward Clay. Issue Paper No. 41, 2012.
- Possible Effects of Russia's WTO Accession on Agricultural Trade and Production. By Sergey Kiselev and Roman Romashkin. Issue Paper No. 40, 2012.

About the International Centre for Trade and Sustainable Development, www.ictsd.org
Founded in 1996, the International Centre for Trade and Sustainable Development (ICTSD) is an independent think-and-do-tank based in Geneva, Switzerland and with operations throughout the world, including out-posted staff in Brazil, Mexico, Chile, Senegal, Canada, Russia, and China. By enabling stakeholders in trade policy through information, networking, dialogue, well-targeted research and capacity-building, ICTSD aims to influence the international trade system so that it advances the goal of sustainable development. ICTSD co-implements all of its programme through partners and a global network of hundreds of scholars, researchers, NGOs, policymakers and think-tanks around the world.