



**Assessment and outlook of the Agreement on public stockholding adopted
at the WTO Ministerial Conference in Bali from 3 to 7 December 2013**

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The agricultural issues in the WTO 9th Ministerial Conference focused essentially on changing the current rule on public stockholding for food security purposes and, secondarily, on export competition. We will show that, despite an unsatisfactory result on the present public stockholding rules, it is nevertheless a first step to change totally the unfair rules for developing countries (DCs) of the Agreement on agriculture (AoA), provided that they change their mindset to adopt an offensive stance against the developed countries in the working group which will pursue the issue within the Committee on agriculture. But, for this to happen, the civil societies of North and South should intensify their concrete supports to the WTO DCs members.

1) An unsatisfactory result but a first step to change the Agreement on Agriculture

India, on behalf of the G-33 – Group of 46 DCs formed shortly before the WTO Ministerial Conference of September 2003 in Cancun and prioritizing the protection of their domestic agricultural markets – proposed in the informal meeting of the Special Session of the Committee on Agriculture of 14 November 2012 that the provisions on Public stockholding for food security purposes, already included in the Revised Draft modalities of 6 December 2008, be taken up for a formal decision by the WTO ministerial conference (MC9) in December 2013 in Bali. India asked to modify the last sentence of the footnote 5 of paragraph 3 of the AoA Annex 2 as follows: "*Acquisition of stocks of foodstuffs by developing country Members with the objective of supporting low-income or resource-poor producers shall not be required to be accounted for in the AMS*". AMS is the "Aggregate Measurement of Support" or "amber box" of domestic agricultural supports regarded as trade distorting and subject to a reduction by 20% from 1995 to 2000 (6 years) for developed countries and by 13.3% from 1995 to 2004 (10 years) for DCs other than the least developed countries (LDCs), which are not bound to any reduction because they have very little means to subsidize their farmers, the more so as they represent the majority of their active population. More precisely what is considered a trade distorting subsidy here is the difference between "*the acquisition price and the external reference price*" – the average border price (the FOB price if the country was a net exporter and the CIF price if it was a net exporter)¹ from 1986 to 1988, base period for the calculation of reduction commitments of the Uruguay Round –, multiplied by the quantity likely to benefit from the purchase price of food security stocks, which are then distributed at subsidized prices to poor consumers. India proposed to delete "*the difference between the acquisition price and the external reference price is accounted for in the AMS*".

As the Revised Draft modalities of 6 December 2008 reached already an agreement on this issue, including by the US and EU, its definitive adoption in Bali should have been a mere formality. But the US, followed by the EU and other developed countries, are not prepared to make concessions to DCs on some AoA rules, fearing that this would question all the rules

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

and reduce their room for manoeuvre to impose to DCs an opening of their domestic markets to the US and EU exports of non-agricultural products and services. This is the ambiguity of the WTO rounds where all WTO Members must accept all texts – the single undertaking principle with adoption of all texts by consensus, which camouflages the huge pressures from developed countries on DCs –, where each Member is supposed to lose on some issues and to gain on others. In fact, the developed countries are always winners and DCs are almost always losers, especially LDCs.

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

However, as India's firm stance in Bali has only been supported by a score of other DCs, and this only softly and rarely publicly, Anand Sharma has eventually yielded to intense pressures from developed countries – a powerful delegation of US agribusiness lobbying the US Secretary of Commerce Michael Froman –, accepting concessions in the final text of the Agreement which remains ambiguous on several points, among which the following.

* To what extent the "peace clause" – during which WTO Members commit themselves not to sue at the WTO the subsidies related to the public procurement at administered prices, higher than domestic prices, of food commodities in DCs – will only last 4 years? This is the dominant interpretation of media but also of many civil society activists advocating to close the WTO or at least to take agriculture out of the WTO. But this interpretation is disputed by India and other delegations, including France. Indeed, the text adopted in Bali on "*Public stockholding for food security purposes*" says: "*Members agree to put in place an interim mechanism as set out below, and to negotiate on an agreement for a permanent solution... for adoption by the 11th Ministerial Conference... In the interim, until a permanent solution is found*". If really the intent was to limit the interim at four years this last sentence (the first of the second paragraph) would have been: "*In the interim, up to at most four years*". If a permanent solution is not found before the Ministerial Conference 2017 – these conferences are held every two years –, the interim period will continue. Anand Sharma said during his press conference: "*My English is not very good but my English teacher was good and he told me that "interim" means not temporary but something that lasts until a permanent solution is found*". The four years before the 11th Ministerial Conference must therefore be understood as the period during which the working group to be set up within the Committee on Agriculture will seek a permanent solution satisfying the G-33 and in particular India. However, it is doubtful that he will succeed, let alone in four years, without questioning radically the main AoA rules, including the definition of the different types of subsidies according to their alleged level of trade distortion.

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

* The peace clause will apply only to "*public stockholding programmes for food security purposes existing as of the date of this Decision*". Hence the DCs which do not run such programmes presently will not be able to implement them "*until a permanent solution is found*" and those who run some, like India, cannot extend them to products other than "*primary agricultural products that are predominant staples in the traditional diet*" of the population. For the Indian civil society, among which the "Right to Food Campaign", the text excludes pulses and oilseeds but this is questionable because the concept of "predominant staples" is not defined and pulses (beans, lentils...) are clearly staples complementing cereals in the daily diet of the poor. But it is true that these products are not subject to public procurement for stockholding, except at a small scale in some states like Chhattisgarh. And the fact that the Bali Agreement requires to publish very detailed statistics for the last three years of each public stockholding programme for food security purposes is a real threat to the possible expansion of products eligible to the peace clause. If they were not this requirement of statistics over the last three years, the text does not say explicitly "programmes already implemented" so that one could extend them to all the provisions, including for the future, of the National Food Security Bill – which is a "*programme existing as of the date of this Decision*" – which, in Chapter 13, provides: "(2) *Notwithstanding anything contained in this Ordinance, the State Government may, continue with or formulate food or nutrition based plans or schemes providing for benefits higher than the benefits provided under this Ordinance, from its own resources*".

* Another constraint: "*Any developing Member seeking coverage of programmes under paragraph 2 shall ensure that stocks procured under such programmes do not distort trade or adversely affect the food security of other Members*". This mainly because Pakistan lobbied against the G-33 request, claiming that India is dumping its public stocks of rice, outcompeting its own exports, which is highly questionable³.

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

Some excerpts of the Appellate Body's rulings:

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

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

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

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

- "Upholds the Panel's finding, in paragraphs 7.1416 and 8.1(g)(i) of the Panel Report, that the effect of the marketing loan program payments, Step 2 payments, market loss assistance payments, and counter-cyclical payments (the 'price-contingent subsidies') is significant price suppression within the meaning of Article 6.3(c) of the SCM Agreement"⁶.

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

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

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

2 – But negotiations will begin, allowing to challenge all the AoA unfair rules

Despite all these constraints and limitations, this Agreement constitutes a first step: DCs have put a foot in the door of the AoA rules in Bali and they have now to open it completely in the post Bali programme to rebuild all the rules. Every cloud has a silver lining: it is owing to this very ambiguous and incomplete agreement on food security stocks that a working group will be set up within the WTO Committee on Agriculture to find a permanent solution to the G-33 request. No doubt the US and the EU will put many hurdles in the work of the group so as not to jeopardize the other AoA rules that these two accomplices have concocted face to face during the Uruguay Round and which are very unfair to DCs. DCs must now take the offensive against the US and the EU which have everything to lose because it is easy to show that they did not comply with the AoA rules to a huge extent and this will encourage DCs, starting with India, to sue them at the WTO so as to force them to rebuild these rules on food sovereignty.

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

The first rules to change are related to administered prices. And first to paragraph 9 of the AoA Annex 3 that "*The fixed external reference price shall be based on the years 1986 to*

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

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

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

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

1988". Indeed, the very low world prices of wheat and rice – the two cereals of the Indian food grain program – in 1986-88 were due to the massive US dumping of rice and wheat and the EU huge dumping of wheat, with US dumping rates of 137% on rice and 89% on wheat and the EU dumping rate of 134% on wheat. As the US is price maker worldwide for wheat and strongly influences the global price of rice, and as the US and EU wheat exports accounted for 53.2% of global wheat exports in that period, to consider as a trade distorting subsidy the gap between the current administered price paid to Indian small farmers and its CIF import prices of 1986-88 is economically absurd and politically unjustifiable. Moreover, the low world prices in dollars of rice and wheat in that period were also highly due to a 23% dollar depreciation from late December 1985 to late December 1988, of which 30% on the effective exchange rate for US rice exports.

One can also amend paragraph 4 of the AoA Article 18 – "*Members shall give due consideration to the influence of excessive rates of inflation on the ability of any Member to abide by its domestic support commitments*", by deleting "excessive", as recommended by the two eminent Indian trade experts Anwarul Huda and Ashok Gulati. As inflation in India was 8% on average over the past 25 years, updating the 1986-88 border prices on the basis of this inflation rate would raise these prices to levels exceeding by 94% and 74% respectively the minimum support prices of rice and wheat in 2012-13, so that these highly negative AMS would not put at risk the implementation of the new national food security bill⁹.

But we must go beyond by calling into question the very concept of administered prices which is not defined in the WTO agreements and which works in opposite ways in developed countries and DCs. Whereas in DCs the administered prices are fixed *above* market prices to ensure remunerative prices to small farmers, particularly just after the harvest, and to oblige the private traders to pay higher market prices, to the contrary in developed countries they are minimum prices, fixed *below* the prevailing market prices in order to reduce their level. But – here lies the fundamental difference – these lower administered prices were accepted by Western farmers only because they were offset by domestic subsidies, including by the alleged *decoupled*¹⁰ fixed direct payments in the EU and US plus *coupled* subsidies, such as the US various types of marketing loan benefits, countercyclical payments and insurance subsidies. In developed countries administered prices are always triggering subsidies, apart from the other means necessary to render them effective: import duties, export subsidies and restrictions, land set aside, production quotas, etc. Indeed the US Farm Bills and EU CAP reforms since the 1990s have consisted in lowering by steps their administered prices to increase their domestic and external competitiveness – importing less and exporting more – through massive compensatory alleged non-trade-distorting subsidies of the *blue* and *green* boxes¹¹.

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

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

¹¹ The *blue box* corresponds to the EU fixed direct payments per hectare (cereals and oilseeds), cattle head (bovines and ovines), or litre of milk decided by the CAP (common agricultural policy) reforms of 1992, 1999 and 2004 to offset the reduction of guaranteed ("intervention") prices but farmers received them only if they produced the corresponding products. The *green box* covers two types of alleged non-trade distorting subsidies: 1) the traditional *green box* of in-kind aid to general agricultural services benefitting to farmers collectively: agricultural infrastructures, schools, research, agri-environment, calamities, phytosanitary warnings, etc.); 2) the *green box* of decoupled income support in place in the US since 1999 and in the EU since 2005 where farmers continue to receive the average amount of blue box direct payments received in 2000-02 without being obliged to produce anything or being allowed to produce other products than those having benefitted of blue payments.

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

Similarly, a FAPRI (US Research Center dependent from the US government) Report of October 2013 assessing the two Farm Bills adopted in 2013 by the House of Representatives and the Senate presents tables of the expected "*average crop revenue in dollars per acre*"¹³ for several crops for the period 2014-18. In these tables coupled aids are added to market sales, which, divided by the yield per acre, gives the comprehensive price per crop, although FAPRI does not use this concept but that of "revenue per acre". And FAPRI expects that they would increase by 9% for rice and 6.6 % for wheat over the period 2014-18, compared to the expected price if the current Farm Bill were not to change.

The combination of the high rate of US and EU dumping on wheat and US dumping on rice in 1986-88 with the large dollar depreciation in that period justifies fully to update the 1986-88 CIF prices of India (and of other DCs) by multiplying their levels by the dumping rate of US and EU, which again would raise these updated CIF prices above the Indian minimum support prices for rice and wheat in 2012-13, hence with negative AMSs which would not prevent India to implement its national food security bill.

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

1- As the US fixed direct payments have been ruled by the WTO Appellate Body in 2005 as not being decoupled, hence not in the green box, it is clear that the EU alleged decoupled payments – mainly the SPS (Single Payment Scheme) –, which reached €37.7 billion in 2012, would we much more easily ruled not to be in the green box, as will be the case from 2014 on for the new BPS (Basic Payment Scheme). And although both Farm Bills of the House of Representatives and Senate have eliminated the fixed direct payments, the House keeps direct payments on cotton for 2014 and 2015.

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

¹² Jean-Pierre Butault, *Evolution of Agricultural Support in Real Terms in OECD Countries and Emerging Economies*, OECD, 2011, <http://www.oecd-ilibrary.org/docserver/download/5kgkdgf25x20.pdf?expires=1385386110&id=id&accname=guest&checksum=476FE82E1A92E7409C7AAE4E85F48958>

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

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

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

5- The WTO Revised Draft of 6 December 2008 on agricultural modalities, which is the base to pursue the agricultural negotiations of the Doha Round, lied by saying that the allowed product-specific *de minimis*¹⁵ exemption was of 5% of the value of total production in developed countries (10% in DCs) while the AoA Article 6.4 states that it is only of 5% (10%) of the production value of each product having an AMS. This cheating has a large impact on the level of the allowed "overall trade-distorting domestic support" (OTDS) in the base period 1995-2000 for the reduction commitments of domestic supports during the Doha Round implementation period. The OTDS is a new indicator of all trade-distorting domestic supports decided by the WTO in July 2004 as the sum of the final bound total AMS at end 2000 + the average product-specific *de minimis* + the average non-product-specific *de minimis* + the blue box in the same 1995-2000 period.

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

To conclude, despite its limitations, the Bali Agreement on food security stocks paves the way for an overhaul of the AoA. But, for this to happen, it is necessary that civil society of North and South join forces around this extremely important issue. Even if it will be difficult for the European Coordination Via Campesina and its members such as the Confédération Paysanne in France to participate directly in this fight given that to denounce the non-compliance of the EU massive direct payments with the AoA rules and the Appellate Body rulings is obviously not a comfortable situation for their farmer members. The bet is that, facing the risks of a collapse in their incomes, the EU farmers will react strongly by demanding to the EU authorities to rebuild them on remunerative prices, on food sovereignty, as this was the case up to 1992. But this would imply to raise import protection and to change radically the AoA, coming back to the situation prevailing before the WTO, where agriculture benefitted of exceptions to the GATT rules, without any constraint regarding the level and types of import protection, the EU having used extensively variable levies and the US import quotas. But this time the exception having allowed an unlimited use of export subsidies should be totally deleted.

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

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