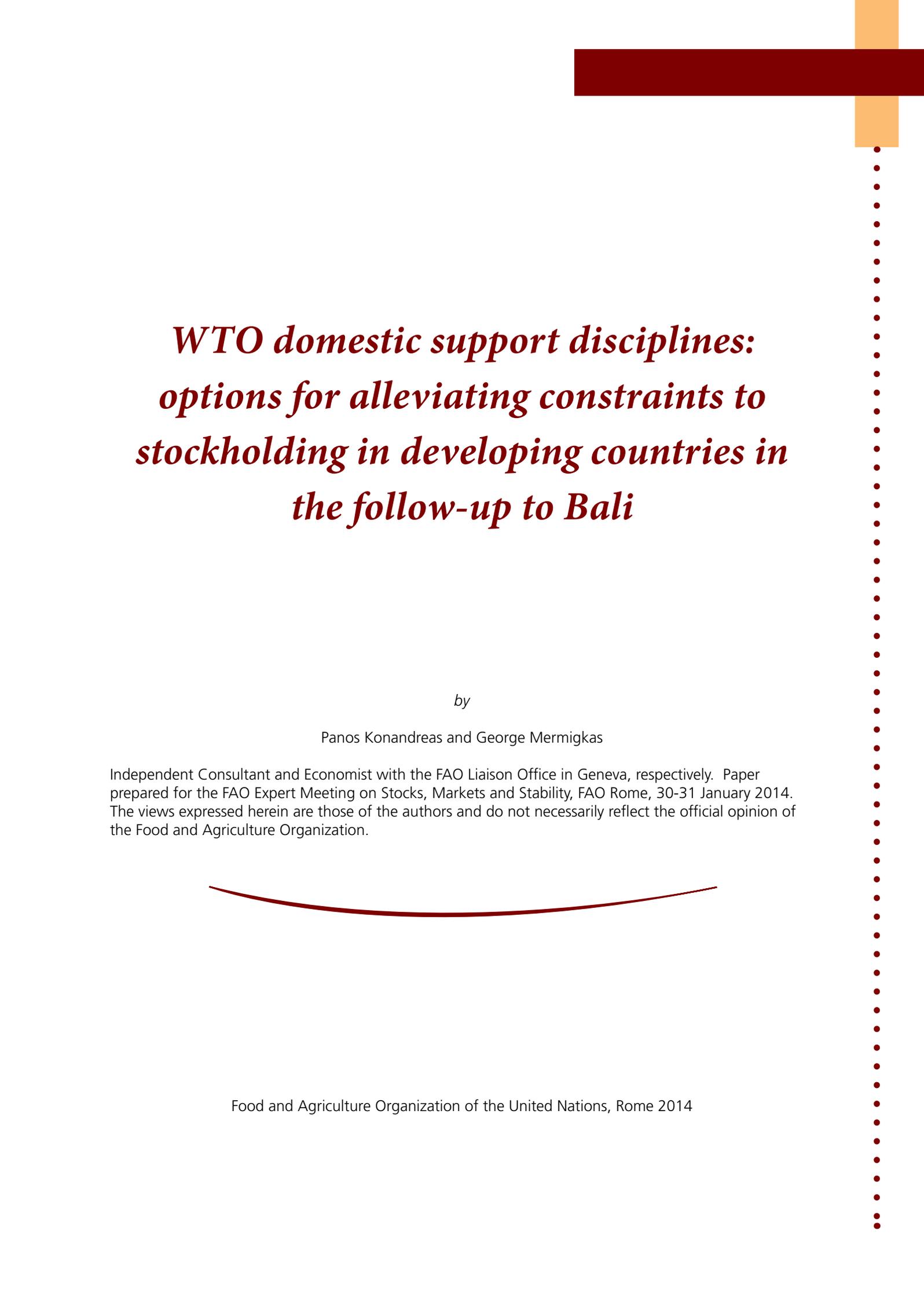


WTO DOMESTIC SUPPORT  
DISCIPLINES:  
OPTIONS FOR ALLEVIATING  
CONSTRAINTS TO STOCKHOLDING  
IN DEVELOPING COUNTRIES IN  
THE FOLLOW-UP TO BALI







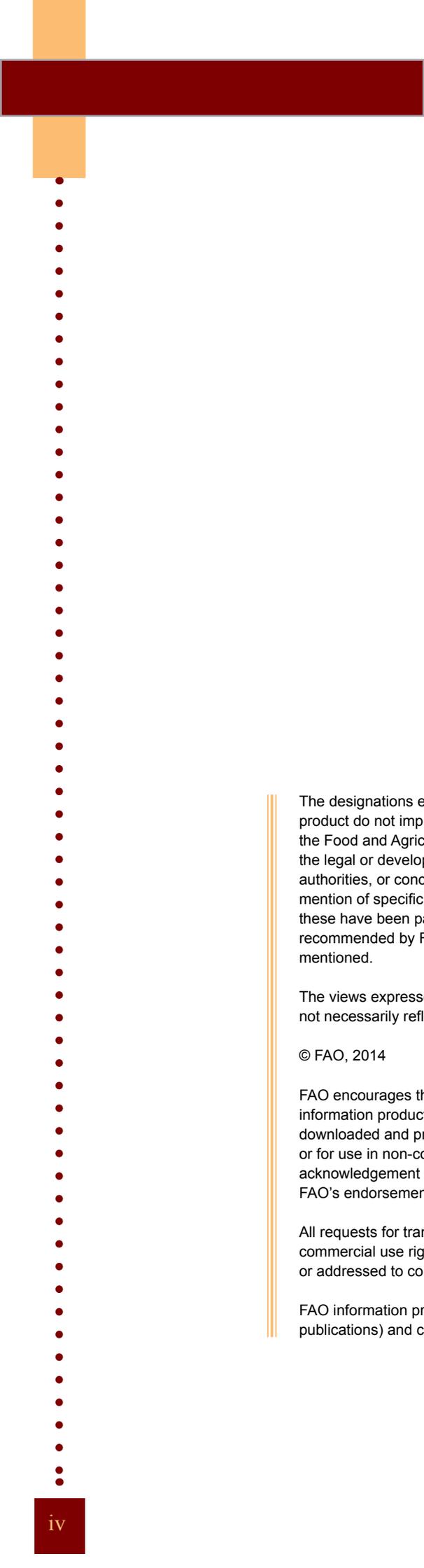
***WTO domestic support disciplines:  
options for alleviating constraints to  
stockholding in developing countries in  
the follow-up to Bali***

*by*

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# 1. INTRODUCTION

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In the context of the WTO, domestic support has been an issue for developing countries from the very beginning, following the conclusion of the Uruguay Round (UR) that brought agriculture into the multilateral trading system with the signing of the Agreement on Agriculture (AoA). Developing countries realized then that they had signed up to an agreement that gave the right to developed countries to continue supporting their agriculture more or less by as much as they did prior to the UR through very generous Aggregate Measurement of support (AMS) levels (inflated by the relatively low prices prevailing during the 1986-88 base period), unlimited access to the Blue box, as well as unbound support under Green box measures.

So, when the Doha Round was launched in 2001, one of the key demands of developing countries was that these established privileges of developed countries would be substantially curtailed. The Doha Ministerial Declaration called for substantial reductions of the level of trade-distorting domestic support. It also recognized the need for special and differential treatment (SDT) for developing countries in all areas of the negotiations. Effective reductions in developed countries' subsidies and stricter disciplines to prevent members from circumventing commitments remained the most important domestic support issue for developing countries under the Doha Round.

Thus developing countries negotiated from an offensive position on domestic support and in the 2008 Draft Modalities in agriculture<sup>1</sup>, developed countries were prepared to give away considerable room of their trade distorting support. This involved substantial reduction commitments on the Overall Trade Distorting Support (OTDS) which, in addition to AMS included also the Blue box and *de minimis*, as well as specific reductions of individual boxes, thereby preventing shifts from more disciplined to less disciplined types of support.

At the same time, developing countries had introduced some important improvements as regards their own rights under the AoA, notably in the form of the new instruments of Special Products (SPs) and Special Safeguard Mechanism (SSM), but also on domestic support as regards acquisition of stocks of foodstuffs with the objective of supporting low-income or resource-poor producers.

While many details on agriculture remained unresolved, there was a presumed balance in what was contained in the 2008 Draft Modalities text. This however was not tested in practice as the mini-Ministerial in July 2008 collapsed on the Non-Agriculture Market Access (NAMA) package. NAMA became then the main culprit of the failed talks.

It is not clear whether agriculture would have also become a stabling block in 2008 had negotiations advanced beyond NAMA<sup>2</sup>, but it nearly became one in the 2013 Bali Ministerial, threatening not only the collapse of the conference but in breaking the Multilateral Trading System (MTS) and the WTO itself. What has happened in the intervening period since 2008 and how demands by developing countries on domestic support for food security purposes have become the pivotal issue in the final Bali agreement and a major item in the WTO agenda for the next four years or until this issue is satisfactorily resolved?

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<sup>1</sup> Revised Draft Modalities for Agriculture, TN/AG/W/4/Rev.4, 6 December 2008.

<sup>2</sup> The pre-Bali discussion proved that the presumed balance in 2008 was due to the lack of full understanding of what was in the 2008 Modalities text. For instance, the G33 proposal on exonerating domestic support for the acquisition of stocks of foodstuffs with the objective of supporting low-income or resource-poor producers originates in Rev. 4 and was not seriously challenged at that time but it has been characterized as a "poison pill" during the pre-Bali discussions at the WTO.

Two developments since mid-2008 have been responsible for this radical shift in positions. The first is the steep increase in world food market prices and increased volatility in these prices; the second is how the world food system (i.e. exporting and importing countries) behaved in response to these new market realities. Export prohibitions and restrictions became the order of the day by a large number of countries, including key suppliers of the world market. At the same time, large amounts of grains were diverted to biofuel production and large funds entered in the grain market as short-term profit-making transactions, further contributing to higher prices and volatility.

It is this reality that food insecure and largely net food importing countries had to face. Their trust to the world food market was seriously shaken. Not only they became less willing to provide greater access to their market but many of them also began looking inwards by reconsidering their own production strategies and related support systems, especially for food security stocks to fend-off externally generated volatility.

Hence the highly uncompromising defensive position on domestic support by a group of developing countries in the run-up to the Bali Ministerial. These countries put as a precondition for moving forward on other issues a commitment by WTO Members to offer them more policy space on domestic support and specifically on stockholding for food security purposes<sup>3</sup>.

With this background in mind, the paper provides first a succinct description of existing WTO provisions on domestic support applicable in general and the special treatment of developing countries including provisions for stockholding operations. This is followed by an assessment of difficulties these provisions pose for developing countries, considering their expressed needs for certain types of interventions necessary to meet food security objectives which may be constrained by their AoA commitments. The controversy surrounding the various variables involved in its calculation of Market Price Support (MPS) is highlighted, drawing on different interpretations by WTO Members. In the sequel, the main practices that have been followed by selected countries in their MPS calculations are assessed together with some ideas for revisions in this calculation, as contained in the proposals that have been advanced by developing countries in the run-up to the Bali Ministerial. The paper then addresses the general applicability and desirability of what was agreed in Bali, considering non-MPS choices that several developing countries have made in providing domestic support, their notification record and the choices some of them have already made as regards the MPS parameters in question. In this connection, some options are discussed on the controversial issue of MPS calculation based on the legal texts, the practice by WTO Members in their notifications as well as the findings of this study. Finally, some general conclusions are drawn as regards the necessary convergence in the search for the middle ground on domestic support for food security purposes, challenging expectations and raising aspirations following the Bali agreement.

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<sup>3</sup> It would have been better perhaps for the functioning of the food system if these countries had spent their negotiating power to remove some of the distortions that were responsible for the problem (e.g. export prohibitions) instead of trying to introduce yet more distortions into the system. However, it became evident that the first 'best option' would not fly and they opted for the 'second best'. It was also not necessarily a uniform position on the part of developing countries in pursuing the same single option. Some of them (especially self-sufficient countries like India) were keen on the domestic support policy space in view of their specific food security concerns, irrespective on what may have been the outcome on sorting out other market conduct issues (e.g. export prohibitions).

## 2. WTO PROVISIONS ON DOMESTIC SUPPORT FOR DEVELOPING COUNTRIES

The WTO Agreement on Agriculture (AoA) seeks to establish a fair and market-oriented agricultural trading system. This is to be achieved through the negotiation of commitments on domestic support, market access and export competition, by establishing and strengthening operationally effective rules and disciplines.

The general philosophy of the AoA on domestic support is not to ban any specific policies, even if they are production and trade distorting, but to discipline them. The first step is to define the types of policies that are considered to have no or minimum effect on production and trade. These are not subject to reduction commitments. All other policies are to be disciplined, subject, for example, to specific time-bound reduction commitments or to production limiting constraints<sup>4</sup>.

### 2.1 Potentially considerable policy space in overall domestic support

The AoA contains numerous provisions specifically applicable to developing countries<sup>5</sup> on a special and differentiated treatment (SDT) basis, aiming at providing more policy space and more flexibility in the implementation of the agreement. As part of it, developing countries undertook smaller reduction commitments during a longer implementation period than developed countries. Those WTO members under the UN defined category of Least Developed Countries (LDCs) were exonerated altogether from any reduction commitments.

Schematically, the AoA disciplines on domestic support as they apply to developing countries are depicted in Figure 2.1.

The Green box (Annex 2 of the AoA) which describes measures for which unlimited support can be provided, is essentially the same for both developed and developing countries. A special derogation for developing countries is contained in paragraph 3 which refers to public stockholding measures for food security purposes (see Text Box 2.1). A specific reference to developing countries is made in footnote 5 of this paragraph, whereby programmes under which stocks of foodstuffs for food security purposes are acquired and released at administered prices are in conformity with the agreement, provided that the

<sup>4</sup> Two Articles and three annexes of the AoA deal with Domestic Support:

- Article 6 is the basis for the domestic support disciplines and includes:
  - the general framework for the calculation of AMS and its reduction commitments (“Amber box”);
  - the exception for developing countries allowing them to provide support to resource-poor producers in the form of investment and input subsidies without any commitment (“SDT box”);
  - the *de minimis* provision of 5% for developed and 10% for developing countries. Under this provision there is no requirement to reduce trade-distorting domestic support in any year in which the aggregate value of the product-specific support does not exceed the *de minimis* share of the total value of production of the agricultural product in question. In addition, non-product specific support which is less than the *de minimis* share of the value of total agricultural production is also exempt from reduction;
  - the parameters for production-limiting (“Blue box”) programmes;
- Article 7 refers to the treatment of new Domestic Support measures;
- Annex 2 (“Green box”) describes the criteria in order for a measure to be exempted from the reduction commitments;
- Annex 3 describes the methodology and the formula for the calculation of the product-specific AMS;
- Annex 4 describes an alternative method to calculate the so called “Equivalent Measurement of Support (EMS)” “where market price support as defined in Annex 3 exists but for which calculation of this component of the AMS is not practicable”.

<sup>5</sup> There is no recognized definition of developing countries at the WTO. Each country establishes its designation as developed or developing at the time of its accession to the WTO and that applies thereafter. Israel, Turkey, Korea and Mexico are still designated as developing at the WTO (and thus enjoy developing country privileges) although they have long become members of OECD.

TEXT BOX 2.1. PARAGRAPH 3 AND FOOTNOTE 5 OF ANNEX 2 OF THE AoA

3. *Public stockholding for food security purposes 5/*

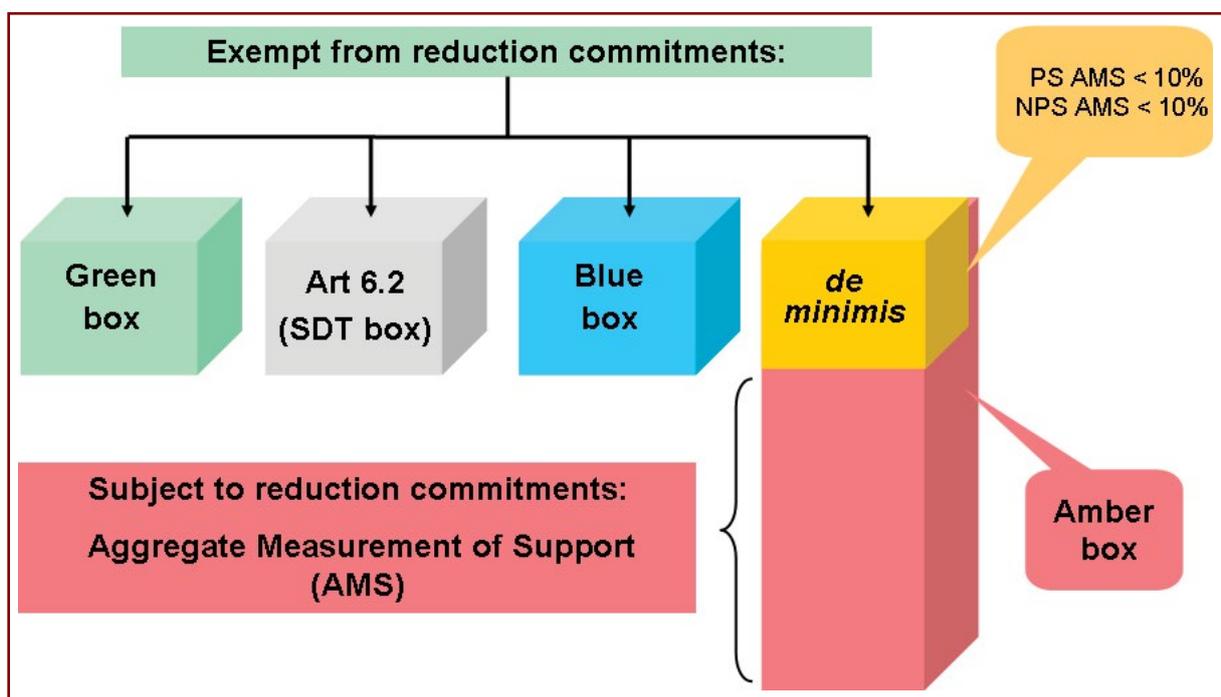
*Expenditures (or revenue foregone) in relation to the accumulation and holding of stocks of products which form an integral part of a food security programme identified in national legislation. This may include government aid to private storage of products as part of such a programme.*

*The volume and accumulation of such stocks shall correspond to predetermined targets related solely to food security. The process of stock accumulation and disposal shall be financially transparent. Food purchases by the government shall be made at current market prices and sales from food security stocks shall be made at no less than the current domestic market price for the product and quality in question.*

*5/ For the purposes of paragraph 3 of this Annex, governmental stockholding programmes for food security purposes in developing countries whose operation is transparent and conducted in accordance with officially published objective criteria or guidelines shall be considered to be in conformity with the provisions of this paragraph, including programmes under which stocks of foodstuffs for food security purposes are acquired and released at administered prices, provided that the difference between the acquisition price and the external reference price is accounted for in the AMS.*

difference between the acquisition price and the external reference price is accounted for in the AMS. Depending on the interpretation of this paragraph, it can offer considerable flexibility to developing countries or it can be of no significance (more on the implications of this below).

Figure 2.1 Policy space in Domestic Support for developing countries under existing WTO rules



### TEXT BOX 2.2. ARTICLE 6.2 OF THE AoA

2. *In accordance with the Mid-Term Review Agreement that government measures of assistance, whether direct or indirect, to encourage agricultural and rural development are an integral part of the development programmes of developing countries, investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to low-income or resource-poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures, as shall domestic support to producers in developing country Members to encourage diversification from growing illicit narcotic crops. Domestic support meeting the criteria of this paragraph shall not be required to be included in a Member's calculation of its Current Total AMS.*

Article 6.2 is another case of specific provisions for developing countries on an SDT basis (see Text Box 2.2). Provided that the conditions spelled in this Article are adhered to, a developing country has no limitations in providing investment subsidies, agricultural input subsidies and assistance for diversification from growing illicit narcotic crops. This is an important derogation of the AoA, however its wider applicability may require resolution of certain definitional issues, in particular that of “low-income or resource-poor producers”.

The Blue box refers to exemptions to reduction commitments of production limiting programmes. This was introduced into the AoA to ease the reform process in certain developed countries. While its applicability is general, including the developing countries, in practice it is of no significance to them as their vast majority has the opposite problem, namely they are in need of expanding and not limiting their production.

### TEXT BOX 2.3. GENERAL CONTENTS OF AMBER BOX AND CALCULATION OF TOTAL AMS

#### **Product-specific AMS (PS AMS)**

- market price support (MPS)
- non-exempt direct payments
- other product specific support

#### **Non-product specific AMS (NPS AMS)**

- credit subsidies
- input subsidies
- fuel subsidies
- etc.

$$\text{Total AMS} = \sum \{ \text{PS AMS}_i \text{ (if PS AMS}_i > \text{de minimis)} \} \\ + \text{NPS AMS (if NPS AMS} > \text{de minimis)}$$

Having defined what is excluded from reduction commitments, all remaining policies fall under the Amber box and are subject to reduction commitments based on the Aggregate Measurement of Support (AMS) concept. Text Box 2.3 illustrates indicative measures included under the Amber box and how Total AMS is calculated. What is important to highlight is the *de minimis* concept within the Amber box. For developing countries, product-specific policies whose value is less than 10% of the farmgate value of the production of that product are exempt from the AMS. Similarly exempt are non-product-specific policies whose production is less than 10% of the total value of agricultural production in a country<sup>6</sup>.

Under the AoA, those WTO Members that had declared an AMS in the base period (average of 1986-88) undertook to cap it at that level and reduce it by 13% over 10 years up to 2004 for developing countries (20% over six years up to 2000 for developed countries). Domestic support reduction concerned total AMS and not product-by-product reductions.

## 2.2 But highly constrained on Market Price Support (MPS)

Those Members that had not declared any AMS for the base period, have no AMS rights and are only entitled to provide production and trade distorting support up to their *de minimis* levels. As long as their product-specific support and non-product-specific support do not exceed their *de minimis* level they are in compliance with their commitments.

Therefore, unlike Members that have an AMS entitlement which acts as a ceiling for their total distorting domestic support (whether product or non-product specific), those without an AMS have to face two separate checks in the WTO obligations. They are in breach of their commitment if any of their product-specific supports or the aggregate non-product specific support is in excess of *de minimis*.

As only 14 developing countries<sup>7</sup> have declared an AMS under the Uruguay Round (Figure 2.2), the remaining fall under the second category mentioned above whereby their *de minimis* limits are their de facto upper limits of domestic support under non-exempted Amber box policies.

This may have not been of great significance considering that developing countries have considerable flexibility in other types of support, especially under Article 6.2 where there is no ceiling. However, it does become a constraint (as we will see below) for pursuing certain stockholding policies which can only be implemented as product-specific, such as Market Price Support (MPS) under a system of administered prices. Such a policy falls squarely under the AMS and, depending on the scope of national food security objectives, the *de minimis* level may not be adequate.

Nearly all of the most populous developing countries with expressed food security concerns, such as India, Pakistan, Philippines, Turkey and Egypt are excluded from the AMS category (Figure 2.2).

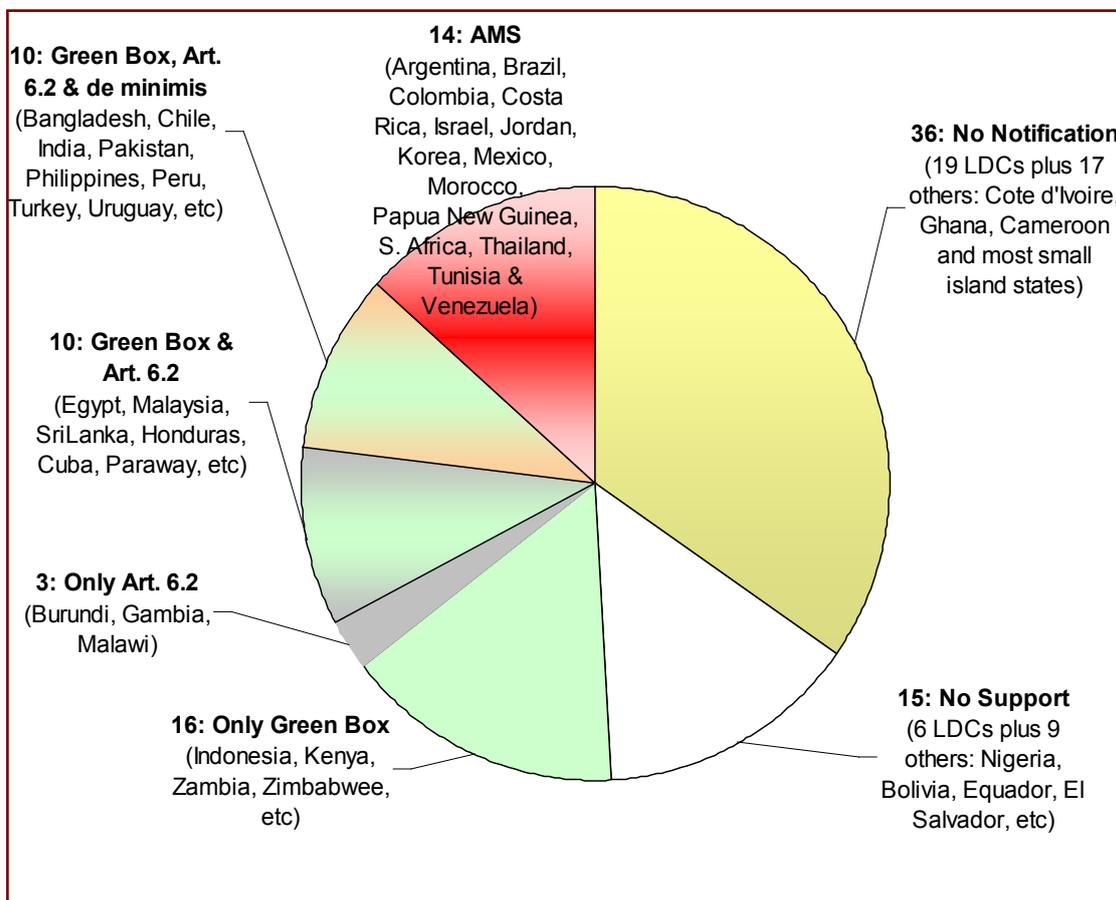
Another important point that should be retained is that about half of the developing countries either have not scheduled any support or they have declared that they provided no support at all during the 1986-88 base period (including Nigeria, Bolivia, etc.) As this is unlikely to be the case, it puts into question the validity of the established domestic support rights and obligations of countries under the

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<sup>6</sup> Both *de minimis* levels for developed countries are 5%. Also, for some developing countries that joined the WTO after the AoA went into effect in 1995, *de minimis* levels may not be 10% but as actually negotiated (e.g. China with a transitional level of 8.5%, eventually dropping to 5%)

<sup>7</sup> Including Israel, Korea and Mexico among them which are designated as developing under the WTO.

Figure 2.2 Types of support notified by 104 developing countries



AoA. It also puts into question whether these countries were fully aware of the significance of the information they submitted some 25 years ago when the AoA was negotiated or they had the knowledge and the foresight to see the implications.

### 3. ISSUES INVOLVED IN THE CALCULATION OF MPS AND PROPOSED SOLUTIONS

As already mentioned, Market Price Support (MPS) is the main policy instrument in developing countries in relation to the accumulation and holding of stocks of basic foodstuffs forming an integral part of national food security programmes. Such stocks are normally acquired at administered prices, which may change from year to year depending on domestic and global market conditions as well as depending on the specific policy objectives pursued by the government. The AMS associated with such operations is calculated by the formula:

$$\text{MPS for a product} = (\text{administered farmgate price} - \text{fixed external reference price}) \times \text{eligible production}$$

Also, considering that every time a product-specific AMS is calculated a comparison has to be made with the value of domestic production (VoP) of the product in question, the calculation of that value is also necessary, as follows:

$$\text{VoP for a product} = \text{farmgate price} \times \text{total production}$$

Although the methodology appears to be fairly simple, different countries appear to follow different approaches in the way they calculate their MPS as well as the VoP. Except for total production, there are differences in the interpretation of all other variables involved in the calculation.

While the CoA at its regular sessions of monitoring Members' compliance with their AoA obligations has dealt with a variety of issues involved in the above formulae (based on Members' practice in their notifications), there was no systematic assessment of these issues with a view of arriving at commonly applicable practices.

### 3.1 Challenging developing countries' practices on domestic support

A serious debate on the subject started in 2011 when the US initiated an informal discussion on this issue. The main claim of the US was that major developing countries were providing support to their farmers in violation of their AoA commitments. The base of the US argumentation was a study carried out by DTB Associates<sup>8</sup> on behalf of the US wheat producers.

The study notes the contrasting trends in subsidization between key subsidizing countries in the past (US and EU) and advanced developing countries. The former had reduced considerably their domestic support in recent years while there has been a major increase in subsidization among advanced developing countries. The study claims that support in some countries for certain major commodities is now comparable to levels seen previously in the EU and the US.

The main findings of the study are based on four major developing countries, namely India, Brazil, Turkey and Thailand. The study calculates MPS as well as other types of product-specific supports for a number of commodities produced by these countries and arrives at total AMS levels for each commodity which are compared with *de minimis* levels. Based on the methodology followed, out of the 25 commodities examined, in only one case (cotton in Turkey) the calculated product-specific AMS turned out to be within the *de minimis* threshold. In all the 24 cases, the breaching of *de minimis* was on account of the MPS component (i.e. the MPS alone was well above *de minimis* levels even without consideration of any other components of distorting support comprising total AMS for each commodity). Also, all four countries exceed their AMS limits by a substantial margin as shown in Table 3.1.

The main reasons for the high values of estimated MPS levels in the DTB study are the assumptions made on eligible production and the external reference price. Eligible production was assumed to be the total production of the respective commodities in the country. The argument in favor of that approach (a practice used by developed countries such as the US and EU, for example) is the DSB ruling in the

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<sup>8</sup> Domestic Support and WTO Obligations in Key Developing Countries, prepared by DTB Associates, LLP, June 2011. [www.uswheat.org/policyStatements/doc/7EA62298232B834685257C1500595F70/\\$File/Domestic%20support%20in%20advanced%20developing%20countries.Final.pdf?OpenElement](http://www.uswheat.org/policyStatements/doc/7EA62298232B834685257C1500595F70/$File/Domestic%20support%20in%20advanced%20developing%20countries.Final.pdf?OpenElement)

Table 3.1 Estimated total AMS levels in relation to AMS commitments

Country	AMS Limit (\$ billion)	Estimated Total AMS (\$ billion)	Number of commodities examined
India	zero	37.3 to 91.5	7
Brazil	0.912	3.9	4
Turkey	zero	9.2	10
Thailand	0.634	15.3 to 17.1	4

Source: DTB Associates study, op. cit.

Korea-beef dispute case<sup>9</sup>. The complaining countries, which included the US, had argued that the AoA methodology required Korea to use total production and not the actually procured.

The appellate body in the Korean-beef case ruled that, except in special specific circumstances, all production, not just the amount of product procured by government, should be used in the calculation of the MPS. According to the rulings, “eligible production” is the quantity “fit or entitled” to be purchased<sup>10</sup>.

As regards the issue of fixed external reference price (ERP), this was also dealt with in the Korea-beef case. The Panel noted that Korea had not notified an ERP for beef in its schedule of commitments (for the base 1986-88) and had overestimated this price in subsequent domestic support notifications, thereby resulting in reduced MPS levels. The Panel recommended the use of an alternative lower ERP. This ruling also established the notion that countries are not free to set their reference prices unilaterally. Such ERPs may be subject to challenge by other Members.

### 3.2 The G33<sup>11</sup> response to the challenge

This discussion on the breaching of commitments by developing countries came at a time when world market prices of major food commodities were at historically high levels, there was considerable volatility in the market and even uncertainty about gaining access to available supplies. It should be

<sup>9</sup> Appellate Body Report, Korea – Measures affecting imports of fresh, chilled and frozen beef (“Korea– Various Measures on Beef”), WT/DS161/AB/R and WT/DS169/AB/R, adopted 10 January 2001.

<sup>10</sup> The Appellate Body stated:  
*“We share the Panel’s view that the words ‘production eligible to receive the applied administered price’ in paragraph 8 of Annex 3 have a different meaning in ordinary usage from ‘production actually purchased’. The ordinary meaning of ‘eligible’ is ‘fit or entitled to be chosen’. Thus, ‘production eligible’ refers to production that is ‘fit or entitled’ to be purchased rather than production that was actually purchased. In establishing its programme for future market price support, a government is able to define and to limit ‘eligible’ production. Production actually purchased may often be less than eligible production.”*  
 In principle, this means that a country can limit eligible production by establishing a maximum purchase quantity. Then the maximum quantity defined should be used in the calculation even if the quantities actually purchased were smaller. If no maximum purchase quantity is set, then the total production is the eligible one.

<sup>11</sup> Coalition of 46 developing countries, led by India, with relatively large populations of smallholder farmer pressing for flexibility or developing countries to undertake limited market opening in agriculture: Antigua and Barbuda, Barbados, Belize, Benin, Bolivia, Botswana, Ivory Coast, China, Congo, Cuba, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, India, Indonesia, Jamaica, Kenya, Korea, Madagascar, Mauritius, Mongolia, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sri Lanka, Suriname, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia, Zimbabwe. It is worth mentioning that 30 out of the 46 are considered to be NFIDCs for the purposes of the relevant Marrakesh Decision. The only G33 members with AMS rights are Korea and Venezuela.

recalled that during this period several key suppliers to the world market of basic foodstuffs had imposed export prohibitions and restrictions to the dismay of net-food importing countries. Many developing countries started having second thoughts about the world market being a dependable source of supplies and began looking inwards by reconsidering their own production strategies and related support systems.

Several grievances that developing countries had from the conclusion of the UR resurfaced, especially as regards domestic support where they had felt that the existing provisions were unbalanced. Their argument revolved around the fact that developed countries were allowed to maintain their support to the farmers pretty much as they did prior to the UR, by having access to inflated entitlements on AMS support. In contrast, most developing countries have had little or no AMS subsidies due to their lack of resources in the past and thus, they were now prohibited from providing such support beyond the *de minimis* level.

Developing countries claimed that the AoA rules do not provide them with sufficient policy space to pursue essential public interventions in the food market which would ensure availability of food for their populations. An additional more basic problem identified by the developing countries was that agriculture in developing countries is not a commercial operation but is carried out mainly by small-scale and resource poor farmers with no other source of livelihood. These and other arguments were also made by the G33 in the run-up to the Bali Ministerial.

Implicit in the G33 argumentation was the fact that if developing countries were in danger of breaching their AoA commitments as developed countries claimed, this was due to the systemic weaknesses of the AoA. Thus, these weaknesses had to be addressed in order for developing countries to be in a position to effectively pursue their food security and rural development objectives. The additional argument made by the G33 was that the MPS does not correspond to how much a government actually spends on domestic support, but a difference between the government's current administered price and an outdated external reference price of 1986-88.

The G33 had initially proposed in November 2012<sup>12</sup> an amendment to footnote 5 of paragraph 3 of Annex 2 (see Text Box 1) to the effect that acquisition of stocks of foodstuffs by developing country Members with objective of supporting low-income or resource-poor producers shall not be required to be accounted for in the AMS.

In a follow-up non-paper by the G33 in May 2013, raising the *de minimis* level itself was suggested as one of the solutions to ease the difficulties faced by developing countries in breaching their commitments. Thus it was suggested that the *de minimis* threshold be raised from 10% to 15% for developing countries.

When it became clear that an amendment of the AoA along the above lines was not possible before the Bali Ministerial, the G33 in a non-paper submitted in October 2013 outlined three options for the Ministers in Bali to consider, as follows<sup>13</sup>:

<sup>12</sup> Job/AG/22 dated 30 November 2012.

<sup>13</sup> Job/AG/25 dated 3 October 2013.

#### Option A. Redefining the external reference price in the context of footnote 5

Under this option the G33 argued that for purposes of footnote 5, the “external reference price” shall be understood to mean differently from or be less prescriptive than the specified “fixed external reference price” in the general calculation of AMS (under paragraphs 8 and 9 of Annex 3) which is based on the 1986-88 average. The proposed definition of the external reference price for the purposes of footnote 5 was either (a) a three-year average<sup>14</sup> based on the preceding five-year period, excluding the highest or the lowest entry or (b) last-year’s average producer/farmgate price in the 1-3 largest suppliers of a foodstuff in the country.

#### Option B. Defining excessive rates of inflation

The justification for this was based on Article 18.4 of the AoA which requires WTO Members 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 essence of the G33 proposal on that was to compare the actual rate of inflation in a country with a “comparator normal” level of inflation and adjust administrative prices based on the gap between actual and normal levels of inflation.

#### Option C. Peace clause

Under this option, the acquisition of stocks of foodstuffs by developing country Members and its subsequent release at administered prices, undertaken with the objective of meeting food requirements of urban and rural poor in developing countries would be exempt from challenges by other Members, and that exemption would remain valid for a period till a final mechanism is established.

There was no mention of eligible production in the above three options, presumably assuming that this issue had been settled de facto, based on actual practices by several developing countries. Be that as it may, this issue is of critical importance to developing countries to ensure compliance (see next section). Also while in the G33 non-papers the main issues raised were in the context of footnote 5 relating to stockholding for food security purposes, the issues involved are not separate from those in the calculation of MPS<sup>15</sup>, thus moving the center of gravity of their concerns from the Green box to the AMS. Hence, the methodology involved in the calculation of the MPS (whether in the context of footnote 5 or in general) has become the main controversy on domestic support as regards the position of developing countries.

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<sup>14</sup> FOB if a country is a net exporter and CIF if a country is a net importer.

<sup>15</sup> In fact, the non-paper submitted in May 2013, referred explicitly to issues involved in the calculation of MPS. Even more ambitious proposals calling for a modification of the MPS formula have been suggested by others. In one such suggestion, actually proposed subtracting from the MPS the implicit tax to farmers in years when accumulated supplies are released in the market (F. Galtier, “The need to correct WTO rules on public stocks”, CIRAD, September 2013).

## 4. EXPLORING MPS-RELATED CONSTRAINTS

The significance of the issues identified above and an assessment of some practices followed by developing countries will be explored by calculating the MPS for a sample of commodities in selected countries. Data for this exercise are based on the replies of Members to the questionnaire of the WTO Secretariat on January 2013, the Members' schedules and notifications as well as publicly available information.

The countries for which analysis has been carried out and MPS were calculated for selected commodities include India, Turkey, the Philippines, Pakistan and Egypt. The choices made by these countries in relation to the parameters involved in calculating MPS and in checking compliance are illustrated in Table 4.1.

### 4.1 India rice

India has been a proponent of modifications in the calculation of the MPS and one of the key countries behind the G33 proposals over the last few years. It is also one of the countries identified in the DTB study as breaching its WTO commitments. It is therefore important examining the margins that India has to provide MPS, especially for the case of rice, a commodity often mentioned prior to the Bali Ministerial.

Table 4.2 shows the calculated MPS levels for rice under different assumptions. Based on these calculations, the following indicative observations can be made:

- India is in breach of its commitments in rice if the notification was to be made in INR and not in US\$. This element is a clear indication that the issue of inflation, identified by the G33 in the run-up to Bali, is a crucial one for India as regards its compliance with the WTO commitments<sup>16</sup>.

Table 4.1 Choices made by the sample countries in relation to the elements of MPS calculation

Country	Commodity	Notified AMS?	ERPs specified in schedules?	Currency used in the schedules	Currency of subsequent notifications*	Eligible production notified	Market price used in the calculation of value of production
India	Rice	No	Yes	INR	US\$	Procured	Admin.
Turkey	Wheat	No	No	TL	US\$	Procured	Wholesale
Philippines	Rice	No	Yes	Pesos	Pesos	Procured	Wholesale
Pakistan	Wheat	No	Yes	PR	US\$	Total	Admin.
Egypt	Wheat	No	No	No MPS calculated	No MPS calculated	Procured	Admin. (assumed)

\* Some developing members have opted to notify their AMS in US\$, in an apparent effort to address the effect of inflation

<sup>16</sup> The conclusions reached here are in line with an assessment made by S. Narayanan, "The National Food Security Act vis-à-vis the WTO Agreement on Agriculture", *Economic & Political Weekly*, vol. xlix no 5, February 1, 2014.EPW

- This conclusion holds true whether the calculation is made with total production or procured production (which is what India actually does in its notifications).
- With a notification in INR, India would be in breach of its commitments even under the assumption that the *de minimis* level is increased to 15%.
- India is also in breach of its commitments in rice even when its notification is made in US\$, when total production is used in the calculation of MPS.
- The only case where India is not in breach of its commitments is when its notification is made in US\$ and the actually procured quantity is used in the calculation of MPS. In that case with an MPS of \$1,880 million against a *de minimis* of US\$3,318 million, India still has some unused policy space.
- As India is beginning to implement its New Food Security Act, which foresees the distribution of foodgrains to almost 2/3 of the Indian population, such a policy space with regard to the acquisition of food stocks could be of crucial importance. It would imply that India could increase procured supplies of rice by some 75% from present levels before it breaches its commitments.
- An increase in the *de minimis* level to 15% adds considerable policy space to India but again only in the case when MPS is calculated in US\$ and procured quantities are used in the calculation of MPS.
- There is also some room in increasing the administered rice price, however again this only applies under the assumption of a notification in US\$ and actually procured quantities.

## 4.2 Turkey wheat

Turkey is also one of the countries identified in the DTB study as being in breach of its commitments. It is one of the big G33 members and has not notified its Domestic Support to the WTO since 2001. In this context it is interesting to examine the current MPS levels for wheat and compare them with its WTO

Table 4.2 Market Price Support (MPS) for Rice in the case of India

Administered Price		10% <i>de minimis</i> threshold (15% in parenthesis)	Based on total production	Based on actually procured production (33%)
	US\$/MT	MPS calculation in US\$ (million)		
2012/13 level	318	3,318 (4,977)	5,772	1,880
2012/13 level +20%	381	3,981 (5,972)	12,408	4,041
INR/MT		MPS calculation in INR (million)		
2012/13 level	18,750	195,750 (293,625)	1,590,012	517,820
2012/13 level +20%	22,500	234,900 (352,350)	1,981,512	645,320

(1) US\$-Rupee exchange rate = 1US\$/59 rupees (2013 Average from the Indian Reserve Bank)

(2) External Reference Price in US\$ from Indian Domestic Support Notifications

(3) External Reference Price in Rupees from Indian Domestic Support Schedule

(4) The administered price is set for paddy rice. To convert it to milled rice price a coefficient of 1.5 was used derived from India's notification.

Source: Own calculations

Table 4.3 Market Price Support (MPS) for Wheat in the case of Turkey

	Administered Price	10% <i>de minimis</i> threshold (15% in parenthesis)	Based on total production	Based on actually procured production (8%)
	US\$/MT	MPS calculation in US\$ (million)		
2012/13 level	369	565 (847)	5,446	443
2012/13 level +20%	443	565 (847)	6,931	564

(1) US\$-TL exchange rate = 1US\$/1.8 TL (2012 Average from World Bank)

(2) External Reference Price in US\$ from Turkish Domestic Support Notifications

Source: Own calculations

commitments. Turkey has not provided a reply to the WTO Secretariat questionnaire, but a great deal of information is publicly available on the websites of the Turkish Grain Board and the Turkish Statistical Institute. Unlike in the case of India, no calculation can be carried out in TL as ERPs were only available in US\$. Table 4.3 shows the calculated MPS for wheat under different assumptions.

The conclusions in the case of Turkey are similar to those of India and highlight the key importance of the definition of eligible production in the calculation of MPS.

Turkey is in clear breach of its commitments if the total wheat production is to be used in the MPS calculation. Its estimated MPS for wheat is almost 10 times the *de minimis* threshold.

When actual procured production is to be used, its calculated wheat MPS is within Turkey's *de minimis* commitment.

However, while the focus in this exercise is on MPS, according to the USDA<sup>17</sup>, the government of Turkey provides additional support to the wheat farmers in the form of a premium payment as well as subsidies for seeds, soil analysis, fuels and fertilizers. Clearly, since the MPS alone brings Turkey close or above its *de minimis* level in the best of circumstances, any additional support would make its compliance even more difficult.

### 4.3 Philippines rice

The Philippines is an important global player with regard to rice and unlike India and Turkey has recently submitted Domestic Support notifications to the WTO covering the period until 2010. In this context, it is interesting to examine the cases under which it would violate its commitments, taking as an example the case of rice<sup>18</sup>. Table 4.4 shows the MPS for rice in the Philippines.

- The Philippines is in clear breach of its commitments if the total rice production is to be used in the MPS calculation. Its estimated MPS for rice is nearly 8 times the *de minimis* threshold.

<sup>17</sup> [http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Grain%20and%20Feed%20Annual\\_Ankara\\_Turkey\\_4-4-2013.pdf](http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Grain%20and%20Feed%20Annual_Ankara_Turkey_4-4-2013.pdf)

<sup>18</sup> Shadow notifications for the Philippines up to 2012, applying the same methodology used in the official notifications with regard to eligible production, are available in a paper by C. B. Cororaton, "WTO Disciplines on Agricultural Support Update: Philippine WTO Domestic Support Notification", Virginia Polytechnic Institute and State University, April 2013. [www.gii.ncr.vt.edu/docs/PhilippineUpdates%20Final.pdf](http://www.gii.ncr.vt.edu/docs/PhilippineUpdates%20Final.pdf)

Table 4.4 Market Price Support (MPS) for Rice in the case of the Philippines

	Administered Price	10% <i>de minimis</i> threshold (15% in parenthesis)	Based on total production	Based on actually procured production (2%)
	Pesos/Kg	MPS calculation in Pesos (million)		
2012/13 level	26.2	34,870 (52,305)	253,056	4,963
2012/13 level +20%	31.4	34,870 (52,305)	314,357	6,169

(1) External Reference Price in pesos from the Domestic Support Schedule of the Philippines

(2) Paddy is converted into rice terms based on 65% milling recovery rate, derived from the Domestic Support notification of the Philippines

Source: Own calculations

- However, when actually procured production is used (as the Philippines did in its actual notification in 2010), then its rice MPS is within its *de minimis* commitment.
- Also under the assumption of using procured quantities and not total production in the MPS calculation, the Philippines has a large policy space to increase procured rice supplies and/or to increase its administered price without breaching its *de minimis* threshold.

#### 4.4 Pakistan wheat

Unlike the previous three countries analysed, Pakistan uses the total production in the calculation of its MPS. The last Domestic Support notification submitted by Pakistan covers the 2006/07 period at which time Pakistan was within its commitments. Table 4.5 shows the calculated MPS for wheat under different assumptions.

Table 4.5 Market Price Support (MPS) for Wheat in the case of Pakistan

	Administered Price	10% <i>de minimis</i> threshold (15% in parenthesis)	Based on total production	Based on actually procured production (34%)
	US\$/MT	MPS calculation in US\$ (million)		
2012/13 level	321	777 (1,166)	3,538	1,155
2012/13 level +20%	385	933 (1,399)	5,093	1,662

	PR/MT	MPS calculation in PR (million)		
	2012/13 level	30,000	72,600 (108,900)	650,206
2012/13 level +20%	36,000	87,120 (130,680)	795,406	259,657

(1) US\$-PR exchange rate = 1US\$/93.40 PR (2012 Average from the World Bank)

(2) External Reference Price in US\$ from Domestic Support Notifications

(3) External Reference Price in PR from Domestic Support Schedule of Pakistan.

Source: Own calculations

- Pakistan is in breach of its commitments in wheat in all cases examined, regardless of the notification being made in US\$ or in PR.
- This conclusion holds true whether the calculation is made with total production or procured production.
- Pakistan is not in breach of its commitments only if there is an increase of *de minimis* by 50% and the notification was to be made in US\$. Even in this case, though, Pakistan is at the margins of breaching the commitments.

#### 4.5 Egypt wheat

Egypt is a completely different case than the four other members analyzed. In its schedules of commitments Egypt declared that no subsidy programme was in place during the 1986-88 period and thus no reduction commitments were required. In its last WTO notification, dating back to 1998, Egypt notified only Green box and measures covered by Art. 6.2 of the AoA.

The wheat data used for Egypt was derived from the Grain and Feed Annual GAIN Reports prepared by USDA in relation to the total and procured production<sup>19</sup>. Due to lack of information on the ERPs, the relevant prices used by Turkey in its notifications are used. Some 35% of wheat production was procured in Egypt<sup>20</sup>. Due to the high share of domestically produced wheat being procured, the administered price was actually used as the market price for wheat in the calculation of VoP used to derive the *de minimis* threshold. Table 4.6 shows the calculated MPS for wheat under different assumptions.

The case of Egypt reinforces the conclusions reached for the other countries:

- Egypt is in clear breach of its commitments using either the total or the actually procured production. Its estimated MPS for wheat is nearly 8 times the *de minimis* threshold if the total production is used, or 2.5 times if the actual procured production is used.

Table 4.6 Market Price Support (MPS) for Wheat in the case of Egypt

	Administered Price	10% <i>de minimis</i> threshold (15% in parenthesis)	Based on total production	Based on actually procured production (33%)
	US\$/MT	MPS calculation in US\$ (million)		
2012/13 level	418	356 (533)	2,718	959
2012/13 level +20%	502	427 (640)	3,074	1,085

(1) Purchase Price, Total Production and Procured Production from USDA

(2) The administered price was used for the calculation of the VoP

(3) US\$-EL exchange rate = 1US\$/6,06 EL (2012 Average from World Bank)

(4) ERP from the notification of Turkey.

Source: Own calculations

<sup>19</sup> [http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Grain%20and%20Feed%20Annual\\_Cairo\\_Egypt\\_4-4-2013.pdf](http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Grain%20and%20Feed%20Annual_Cairo_Egypt_4-4-2013.pdf)

<sup>20</sup> In addition, according to the USDA GAIN report, the Egyptian government procured imported wheat, however the latter are considered in the calculation of the MPS.

- Even with an increase of *de minimis* by 50%, Egypt would not be in a position to comply in the case of wheat.

#### 4.6 Some overall conclusions

The analysis carried out above was not meant to provide a comprehensive account of MPS for the countries considered, but to illustrate the problems developing countries have in complying with their WTO obligations on domestic support. To the extent that the orders of magnitude of breaching (or remaining within) commitments are large, derived conclusions would likely to be sound qualitatively but not necessarily quantitatively.

In this respect, the analysis has clearly demonstrated the significance of the definition of *eligible production*. In none of the cases the countries considered remain below their *de minimis* levels when total production is considered in the calculation of MPS. When eligible production is assumed to be the procured quantity, the situation improves considerably but not for all countries considered. Some of them are still in breach of their *de minimis* or are fairly close in doing so.

While in India the procured quantities of rice (almost 1/3 of domestic production) are apparently considered adequate for the implementation of its National Food Security Act<sup>21</sup>, it is not clear that the amounts presently procured in the other countries considered are adequate (2% of rice in the Philippines, 8% wheat in Turkey, 33% wheat in Pakistan and 34% wheat in Egypt). These countries may face compliance problems to the extent that they chose to increase their procured quantities, especially those (Turkey, Pakistan and Egypt among those considered) where even at present levels of procurement, MPS for wheat is already fairly close or even exceeds *de minimis* levels (even without counting other non-price related product-specific support measures).

The other general conclusion is the importance of the currency of calculation of MPS. When calculations are made using national currencies, *de minimis* commitments are exceeded multi-fold especially when total production is used in the calculation. One common practice used to avoid this problem was to express MPS in US\$ terms. Adjustments in the administered price in relation to the external reference price to account for inflation could be another approach.

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## 5. THE BALI AGREEMENT AND ITS IMPLICATIONS

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Among the three options contained in the G33 proposal of October 2013 (see Section III) to the only one that was seriously taken up in Bali and eventually agreed upon was the “peace clause”. This was a last moment decision on the part of the Ministers after repeated permutations of how this clause would be formulated to be acceptable to all concerned.

### 5.1 The agreed “peace clause”

WTO Members in Bali agreed to put in place an interim mechanism on the issue of public stockholding for food security purposes, and to negotiate on an agreement for a permanent solution, for adoption by

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<sup>21</sup> S. Narayanan, op. cit.

the 11th Ministerial Conference<sup>22</sup>. In a rather ambiguous language, the agreed Decision establishes that, until a permanent solution is found, and provided that transparency obligations are met (see below), Members shall refrain from challenging through the WTO Dispute Settlement Mechanism, compliance of a developing Member with its obligations in relation to trade-distorting domestic support<sup>23</sup> to traditional staple food crops through existing public stockholding programmes for food security purposes.

A number of transparency obligations and safeguard provisions (see below) form an integral part of this Decision, presumably in an effort to limit abuse and possible negative effects to the food security of other Members and to global markets. The Decision also commits Members to establish a work programme with the aim of reaching an agreement on the permanent solution in four years, at the 11th Ministerial Conference. The ambiguity of the agreed text leaves open whether the interim mechanism will remain in place in case of no agreement by the 11<sup>th</sup> Ministerial Conference.

The post Bali work programme foresees that Members develop, in the next twelve months, a clearly defined agenda on the remaining DDA issues, as well as the issues on which a specific work programme was established in Bali, including Public Stockholding for Food Security Purposes. The discussions for a permanent solution are likely to be initially based on the two submissions by the G33 (the May 2013 non-paper and the document Job/AG/25 of October 2013) in which the group identified provisions in the AoA constraining the policy space of developing countries in pursuing public stockholding programmes for food security purposes.

## 5.2 General applicability and desirability of what was agreed

An interesting question arises, on whether the solution reached in Bali will be of interest to all developing countries, at least in the short or medium term. As agreed, if a developing Member in breach of its WTO commitments or in danger to do so, wants to have recourse to the peace clause, it has to completely fulfill its normal notification obligation and in addition to provide a set of additional data on stocks, imports, exports, prices, production etc for the last three years<sup>24</sup>.

As discussed in Section II of the paper, the notification record of developing countries on domestic support is highly incomplete, with about half of developing countries not having notified at all or notified simply that they do not have domestic support programmes. As regards those developing countries that have notified domestic support, substantial delays are common for all of them as illustrated in Table 5.1 for some major countries among them.

The non-submission of notifications and the long delays in the submission by those developing countries that choose to do so, is a clear indication of the technical difficulties that some of them face when compiling their notification. However, this is also a reflection of a policy choice related to the

<sup>22</sup> Public Stockholding for Food Security Purposes, Ministerial Decision of 7 December 2013, [WT/MIN\(13\)/38 — WT/L/913](#).

<sup>23</sup> This refers to obligations under Articles 6.3 and 7.2 (b) of the AoA to comply with bound AMS and de minimis commitments, respectively.

<sup>24</sup> A developing Member benefiting from this Decision must:

- a. have notified the Committee on Agriculture that it is exceeding or is at risk of exceeding either or both of its Aggregate Measurement of Support (AMS) limits (the Member's Bound Total AMS or the de minimis level) as result of its programmes mentioned above;
- b. have fulfilled and continue to fulfil its domestic support notification requirements under the AoA in accordance with document G/AG/2 of 30 June 1995, as specified in the Annex;
- c. have provided, and continue to provide on an annual basis, additional information by completing the template contained in the Annex, for each public stockholding programme that it maintains for food security purposes; and
- d. provide any additional relevant statistical information described in the Statistical Appendix to the Annex as soon as possible after it becomes available, as well as any information updating or correcting any information earlier submitted.

Table 5.1 Dates of latest domestic support notifications of major developing countries

Brazil	2010	Korea	2008
China	2008	Malaysia	2007
Egypt	1998	Pakistan	2006
India	2003	Thailand	2007
Israel	2010	Turkey	2001

Source: WTO website

ambiguities in the interpretation and significance of the various elements of domestic support obligations, especially that of MPS calculation and related parameters. For some developing Members the option to avoid notifying to the WTO is perhaps safer than submitting a notification and exposing themselves to possible challenge by other Members.

The above conclusion is reinforced also by the limited responses to the Secretariat Questionnaire on stockholding for food security purposes where only 13 developing countries chose to reply (of which 8 among the G33<sup>25</sup>). Of the 13 developing countries that replied, some of them did not provide new information but simply reiterated the data of their last notification to the CoA and two of them informed that they do not implement public stockholding for food security purposes.

The case of Costa Rica could also be used as an example. Costa Rica, in recent years had notified that it was in breach of its commitments with regard to MPS for rice, a product for which Costa Rica is a minor global player. Even so, while the membership expressed its appreciation in relation to the demonstration of transparency by Costa Rica, the country was under huge and repetitive pressure for over several CoA sessions to reduce its MPS in rice and to return within the AMS committed limits.

In this context, the transparency obligations agreed in the Bali package do not provide an attractive incentive (if at all they are a disincentive) for countries to notify and take recourse to the peace clause if they are concerned about a possible violation of their domestic support obligations. Their preferred option would likely be to continue not notifying or delaying notifications until they are challenged by other Members, and until the shape of the sought-after permanent solution takes a more concrete form.

### 5.3 Some issues in the envisaged follow-up work at the WTO

As already noted, there are several ambiguous elements in the Bali agreement on stockholding for food security purposes which the WTO Members would have to address as they face actual situations where this agreement be put to test.

For example, the Decision is specific as regards its scope, namely that it applies to support provided to “primary agricultural products that are predominant staples in the traditional diet of a developing Member”, and “in pursuance of public stockholding programmes for food security purposes existing as of the date of this Decision<sup>26</sup>”. The latter is clearly subject to interpretation as regards the meaning of the term “existing”. Does it refer simply to the mere existence of such programmes or also the size of public intervention? Also, does a recognized registry of existing public stockholding programmes

<sup>25</sup> China, Cuba, India, Indonesia, Korea, Mauritius, Pakistan and the Philippines.

<sup>26</sup> Footnote 1 of the Decision states however that “the permanent solution will be applicable to all developing Members”.

exist? A possible confusion on this issue may also arise by what is stated in footnote 3 of the Decision which states that “This Decision does not preclude developing Members from introducing programmes of public stockholding for food security purposes in accordance with the relevant provisions of the Agreement on Agriculture”.

Beyond these issues of interpretation, which are of short-term nature while the peace clause remains in effect, Members are committed to finding a permanent solution and this would require consideration of what is already on the table as well as other proposals that are likely to emerge. What is already on the table provides a fairly good inventory of the issues involved and what options may be considered in addressing them. These have to do with the parameters involved in the calculation of Market Price Support (MPS) whether that is in connection with general AMS obligations or in connection with support provided explicitly in the context of stockholding for food security purposes. These issues are discussed in turn.

### *Eligible production*

The legal basis: Annex 3, para 8 of the AoA states that “market price support shall be 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 DSB ruling on the “Korean-beef” was that, unless specific conditions are met, the overall production of a product is cross-subsidized regardless of the actual procured quantities.

The practice: developed WTO Members (e.g the EU, US) use the total production of a product in calculating MPS. On the contrary, many developing Members (e.g. Turkey, India) use the actual procured production in the calculation.

As demonstrated in the analysis above, the size of eligible production is one of the key parameters in the calculation of MPS responsible for developing countries breaching their commitments, especially for Members with high national production and small procured quantities (as is the case of rice in the Philippines). It is doubtful in such cases that the small quantities being procured from highly geographically-dispersed areas have an impact on overall market prices everywhere in the country. On the other hand when large quantities are procured (e.g. India) cross-subsidization could be an issue.

Possible solutions and implications: The G33 has not included a proposal on eligible production in its non-paper prior to the Bali Ministerial, presumably on the grounds that the quantity actually procured is de facto acceptable in the calculation of the MPS. As this may not be acceptable in view of its potential cross-subsidization when large quantities are procured, a possible solution could be in negotiating a threshold on the quantity procured (as a percent of total production). Procurement below that threshold would be considered as having minimum influence on domestic prices. This threshold may be universal for all countries or preferably country-specific, however, based on agreed upon transparent criteria which may relate to legitimate food security uses of the procured supplies.

### *External Reference Prices (ERPs)*

The legal basis: Annex 3, para 9 of the AoA states that “the fixed external reference price shall be based on the years 1986 to 1988 and shall generally be 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”. However, there is a variation to that

when it comes to footnote 5 of Annex 2 (Green box) dealing with Public Stockholding for Food Security Purposes (see section II of the paper), which refers to simply an “external reference price” without specifying the relevant period, in contrast to the “fixed external reference price” being the average over the 1986-88 period.

The practice: footnote 5 is of no relevance to developed WTO Members and therefore they have used the fixed 1986-88 average of external reference prices. Many developing countries, especially those with high levels of inflation, have scheduled their domestic support commitments in US\$ terms. Some of those with commitments in their national currency but with no scheduled ERPs, chose to introduce ERPs in US\$ when they subsequently notified MPS programmes. A priori, this is in violation of AoA rules<sup>27</sup>.

As demonstrated above from the sample of developing countries, how ERPs are defined is of great significance for staying within their WTO commitments.

Possible solutions and implications: The main argument of the G33 is that the fixed ERPs being historical figures, do not capture the rise in food prices from 1986-88 onwards (see Table 5.2) and grossly exaggerate and overstate the economic subsidy provided by a Member<sup>28</sup>. G33 proposed that the ERPs should be updated to reflect the most recent period before the year of the notification. It is not clear whether the rebasing being proposed by the G33 would be of general applicability or simply in the context of footnote 5 for Public Stockholding for Food Security Purposes. In any case, creating two external reference prices would be highly impracticable as to which applies to what and for what reasons, as well as difficult to monitor compliance. However, it is clear that rebasing the ERPs could significantly increase the policy space of developing countries with regard to their MPS. Alternatively, a general acceptance of calculating MPS in US\$, as many have done already, could offer a way out. In any case, a solution on this issue has to be seen in the contest of the following issue of excessive inflation rates.

Table 5.2 Price evolution of basic food commodities since the 1986-88 base period

		86-88 average	10-12 average	% change
Wheat	(\$/MT)	124.34	284.37	128.71
Maize	(\$/MT)	90.09	258.73	187.20
Rice	(\$/MT)	229.11	550.83	140.42
Barley	(\$/MT)	57.63	201.27	249.24
Sugar	(\$ cents per pound)	7.67	22.83	197.81

Source: [www.indexmundi.com](http://www.indexmundi.com)

<sup>27</sup> Article I (h)(ii) of the AoA specifies that in calculating the current AMS the constituent data and methodology used in the original notification or supporting tables have to be used.

<sup>28</sup> The argument that there is no economic logic in calculating MPS by taking the current administered prices and comparing them to external reference prices of the 1986-88 period is certainly a valid one. On the other hand, there was a need to introduce a relatively simple and transparent way to discipline trade-distorting domestic support through an efficient monitoring and surveillance mechanism, which required comparison with fixed outlays during a reference period.

### Excessive Inflation Rates

The legal basis: Article 18.4 of the AoA requires WTO Members 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”. However, what could constitute excessive rates of inflation has not been specified.

The practice: As already mentioned, in an effort to remain within their commitments, many developing countries have chosen to notify their MPS in US\$ even if their commitments were undertaken in their national currency. Some WTO members, more recently Ukraine and Jordan, have notified deflated administered prices, claiming application of Article 18.4. This practice has generated reactions in the Regular Session of the CoA. Australia, Canada, US and the EU has raised the issue claiming that Art. 18.4 cannot be interpreted in a way that will allow unilateral adjustments of figures.

This issue of excessive rates of inflation is directly linked to the ERPs discussed above where developing countries used different imaginative options to stay within their commitments.

Possible solutions and implications: The G33 has submitted a very interesting proposal on how to deal with excessive inflation rates, which entailed a comparison of the actual rate of inflation in a country with a comparator “normal level” of inflation and adjust administrative prices based on the gap between actual and normal levels of inflation. Table 5.3 illustrates the reduction of the administered rice price for India if this methodology was to be followed, under two assumed levels of normal rates of inflation<sup>29</sup>. Although potentially heavy in terms of data requirements, a priori, this proposal merits careful consideration. In any case, a solution to this issue has to be seen in conjunction with the definition of external reference prices discussed above.

In terms of the legal implications, the introduction of an automatic adjustment for inflation under the “due consideration” clause, would involve only a decision by the Committee of Agriculture in interpreting Article 18.4 of the AoA. In contrast, the option to introduce a new base year for the external reference price is more difficult as it would necessitate an amendment in the AoA itself<sup>30</sup>.

### Increase in the *de minimis* threshold

This proposal for an increase in the *de minimis* level has been made in the May 2013 non-paper of the G33, however, it has not been re-introduced later in the run-up to Bali. The reason is perhaps due to the fact that it cannot by itself provide a solution to the compliance problems faced by key developing countries. This was clear from the analysis carried out in section IV. However, it may be considered as part of a solution package in conjunction with changes in the definitions of eligible production, external reference prices and excessive rates of inflation.

Table 5.3 Administrative price of rice in India adjusted by excessive rates of inflation

Administered price in 2012 (rupees)	Reduced administered price in 2012 (rupees)		EPR (1986-88) (rupees)
	4% normal inflation rate	6% normal inflation rate	
18,750	3,893	5,629	5,280

Source: Own calculations on the basis of the methodology illustrated in Job/AG/25

<sup>29</sup> Apparently India would remain well within its *de minimis* limits on both wheat and rice under the assumption of an inflation-adjusted ERP (in INR) (S. Narayanan, op. cit.)

<sup>30</sup> S. Narayanan, op. cit.

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## 6. CONCLUDING REMARKS

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Some of the problems of developing countries in complying with their obligations under the AoA relate to its architecture, the way it was constructed at the time of negotiating the Uruguay Round. Agriculture then was in disarray as a result of the prevalence of production and trade distorting policies in a number of OECD countries. These had led to an excess supply in the world market, in a number of commodities, to the detriment of efficient exporters.

By and large, developing countries had the opposite problem. They produced well below their needs, often as a result of disincentive policies of their own as well as because of unfair competition from subsidised imported commodities. Most of them were too poor to subsidize their farmers; on the contrary they taxed them.

Disciplining domestic support was considered as a prerequisite (*sine qua non*) for any real reform in OECD agriculture, and because of the highly complex armoury of measures pursued in the subsidizing countries, an equally complex set of disciplines had to be created to reform them. The structure that was agreed, although principally directed to developed country problems, applied equally to all countries, even those that had nothing to do with the problem of overproduction (i.e. the majority of the developing countries).

This is the legacy of the AoA and something that all countries now have to live with.

Meanwhile, the world did not remain still. Formerly poor developing countries advanced economically and they could afford looking after the food security of their vulnerable populations as well as helping their own farmers who had been so disadvantaged in the past. At the same time the oversupply in the world market disappeared and periods of scarcity, high prices and price volatility ensued. Agricultural and food markets have evolved, but trade rules have not.

The provisions of the AoA and more generally those of the WTO have proven to be rather weak in safeguarding the interests of importing countries under these new market conditions. There is a clear asymmetry in the current disciplines for agriculture – and this is most obvious in the disciplines on export restrictions (unbound) and import restrictions (bound). Existing disciplines can deal primarily with the challenges of structural over-supply and not with the prospect of scarcity, rising and volatile food markets which are expected to continue in the future. Exporters can rely on well defined rules to address distortions in the import side, but not vice versa. This is a severe barrier to increasing trust to the multilateral trading system and in world food markets, and consequently in convincing food insecure countries to surrender their options on domestic support.

It is of no surprise then that developing countries, especially the most populous of them with large segments of their population being food insecure, would wish to become more self-reliant in meeting their food needs and in developing a capacity to cushion against external volatility. The real issue is not the desirability of this objective but how it can be best achieved with the minimum adverse impact on the world market and on the food security of other countries.

In its face value, the G33 proposals on more flexibility in distorting domestic support and in public food stockholding reflect the preoccupation of these countries in responding to the food security challenges they now face. The extent to which the G33 are successful in responding to these challenges with well-targeted and effective programmes, would be important not only for them but for the world

at large. It would reduce the risks of greater volatility in world markets from an erratic participation of several populous G33 countries if they are unable to smooth out fluctuations in domestic production on their own.

On the other hand, developed and some of the smaller non-G33 countries see a derogation from existing rules<sup>31</sup> not only in terms of a distortion but also as a possible cause of more volatility in the world market. The prospect of such an outcome is high when large quantities are procured in the name of national food security objectives, without regard to world market conditions, thus potentially exacerbating price hikes in the world market to the detriment of importing countries. Additionally, to the extent that leakages from public stocks to the market are large, as allegedly being the case in some situations<sup>32</sup>, these can cause price depressions in the world market to the detriment of efficient producers everywhere.

Achieving balance in this area is what is at stake post-Bali. A common understanding and convergence on the above differences is critical for WTO Members in responding constructively in their post-Bali commitment to come up with a permanent solution. To be acceptable by all, a permanent solution would certainly involve introducing in the AoA measured, least trade distorting and transparent provisions on public stockholding for food security purposes to the benefit of all.

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<sup>31</sup> Although, as discussed in this paper, the presumed balance in existing rights and obligations of WTO Members raises many questions as regards developing countries' understanding of the rules when the UR was negotiated and signed.

<sup>32</sup> For example, the biggest concern on food subsidy in the massive Indian public procurement and distribution system is leakages. A reported estimate of such leakages are as much as 36.4% of the subsidized food grain (Hoda, A. and A. Gulati, "India's Agricultural Trade Policy and Sustainable Development Goals", ICTSD Issue Paper No 49, 2013; and "Performance Evaluation of Targeted Public Distribution System (TPDS)", Planning Commission, Government of India, New Delhi March 2005 <[http://planningcommission.nic.in/reports/peoreport/peo/peo\\_tpds.pdf](http://planningcommission.nic.in/reports/peoreport/peo/peo_tpds.pdf)>.

