

# THE DEVELOPING DILEMMA: WTO'S PRUDISH OUTLOOK TO THE PRICE SUPPORT MECHANISM

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*Abstract*

*The majority of the developing countries including India have repeatedly been challenged for their domestic price support measures related to agricultural products. Today, as the World Trade Organization and the Developed Members gear up for a long drawn dispute about the breach of support related commitments by the food insecure countries, the authors attempts to uncover the layers of possible rationales of the developing nations to continue with such support practices. The paper will discuss whether these commitments need to be reviewed, in light of the efforts made by the developing countries to provide food security for its people. The authors attempt to test the justification given by the developing nations for reconsideration of the WTO rules. This paper goes in depth to analyze the problems faced in their compliance and assess the corresponding effects of inflation on their ability to maintain their support levels. The authors further evaluate the recourses adopted by affected countries to tackle the market volatilities by usage of the instrument of Art-*

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*18.4 of the Agreement on Agriculture. The focus of this article is upon the question of why all these possible measures need to be catered to uphold the core values of WTO, with the authors concluding by suggesting the scope for resolution of these contentious issues to ensure free and fair global trade.*

**Keywords:** Developing Countries, Price Support, Agriculture, WTO, Inflation

With the demand for food expected to rise by 60 per cent by the end of 2050,<sup>1</sup> the global challenge that nations face today is to ensure food security to their people. The Food and Agriculture Organization (“FAO”) of the United Nations states that: “*Food security exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food.*”<sup>2</sup> Thus, governments principally focus on agricultural policies, focused towards achieving national food security goals.

## I. DOMESTIC SUPPORT REGIME OF THE WTO:

### INTRODUCTION

The most fundamental ways in which the World Trade Organization (“WTO”) seeks to contribute to global trade, is by ensuring a system of non-distorting and efficient trade practices. The key goal of the WTO has been to discipline and reduce domestic support, while

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<sup>1</sup>Keith Breen, *Food Security and Why it Matters*, World Economic Forum, WE FORUM (Jan 18, 2016), <https://www.weforum.org/agenda/2016/01/food-security-and-why-it-matters/>.

<sup>2</sup>United Nations Food Agriculture Organization, *Towards a Food Insecurity Multidimensional Index (FIMI)*, FOOD AGRICULTURE ORGANIZATION (Nov. 1974), <http://www.fao.org/fileadmin/templates/ERP/uni/FIMI.pdf>.

simultaneously leaving sufficient scope for governments to design domestic agricultural policies,<sup>3</sup> in accordance with the specific conditions prevailing in these individual countries. However, considering their welfare-driven domestic interests, developing countries in the absence of sufficient resources often end up providing domestic price support beyond their entitlements.<sup>4</sup>

This is done to create a safety net for their farmer population to ensure that if their stocks remain unsold in the markets due to cheaper prices in the world market, then the government would buy this domestic produce at reasonable support rates from the farmers agricultural trade practices. The WTO facilitates this process through its balancing role by evening out the fluctuations in the supply of agricultural trade and thus containing the volatility that exists in the market prices of agricultural goods.<sup>5</sup> The WTO conducts a multilateral Ministerial Conference for all its Members every two years to discuss such contemporary issues. Through the multilateral agricultural rules negotiated at the Uruguay Multilateral Conference Round, the WTO Members concluded a set of binding rules and regulations relating to the subsidies on domestic agricultural trade.<sup>6</sup>

Additionally, a majority of the developing nations suffer from high levels of inadequacy of resources and unaffordable prices adversely affecting its population. This can be resolved by the price support mechanism that seeks to incentivize the farmer to produce more crops

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<sup>3</sup>World Trade Organization, *Understanding the WTO: The Agreements, The Agriculture Agreement: new rules and commitments*, WORLD TRADE ORGANISATION,

[https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm3\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm3_e.htm).

<sup>4</sup>Panos Konandreas & George Mermigkas, WTO Domestic Support Disciplines: Options for Alleviating Constraints to Stockholding in Developing Countries in the Follow-up to Bali, FAO 18 (hereinafter WTO Domestic Support Disciplines).

<sup>5</sup>INTERNATIONAL TRADE AND FOOD SECURITY: EXPLORING COLLECTIVE FOOD SECURITY IN INDIA 15-27 (Michael Ewing Chow & Melanie Vilarasau Slade ed. Edward Elgar 2016) (hereinafter Trade and Food Security).

<sup>6</sup>Agreement on Agriculture, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, 1867 U.N.T.S. 410 (hereinafter AoA).

so as to ensure food security of its population. The government procures the food crops from the farmers and then utilizes it for welfare purposes by distributing among its impoverished population at subsidized prices.<sup>7</sup> These measures have highly protectionist implications since they provide insulation to the domestic farmers, thus creating an imbalance in the international trade regime and a distortionist impact on other nation states.<sup>8</sup>

Such price support insulates the domestic farmers against the international market forces of demand and supply, and also creates a disincentive for them to trade with other countries,<sup>9</sup> thus acquiring the nature of Other Trade Distorting Domestic Support (“OTDS”).<sup>10</sup> This stimulates them to change their original trade patterns and rather sell their produce directly to the government, thus eliminating the possibility to tread into the world markets. This is when the WTO steps in as a regulatory body to formalize the international trade regime. The regulations related to Domestic Support were negotiated in the Uruguay Round Reform Programme and included commitments for reductions in subsidies and protection, as well as imposing other disciplines on the trade.<sup>11</sup>

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<sup>7</sup>Food Corporation of India, Procurement: Policy and System <http://fci.gov.in/procurements.php?view=86>.

<sup>8</sup>Kirsten Urban et al., Evaluating the Effect of Domestic Support on International Trade: A Mercantilist Trade Restrictiveness Approach, Annual Conference on Global Economic Analysis (Jun. 2015, Melbourne, Australia).

<sup>9</sup>Lars Brink, The Evolution of Trade-Distorting Domestic Support, Tackling Agriculture in the Post-Bali Context ICTSD (Ricardo Meléndez-Ortiz et al., October 2014).

<sup>10</sup>*In agriculture, OTDS refers to Amber Box + de minimis + Blue Box support*, WORLD TRADE ORGANIZATION, GLOSSARY TERMS, [https://www.wto.org/english/thewto\\_e/glossary\\_e/glossary\\_e.htm](https://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm).

<sup>11</sup>World Trade Organization, *Trade Topics, Agriculture: Explanation, Domestic Support*, WORLD TRADE ORGANIZATION, [https://www.wto.org/english/tratop\\_e/agric\\_e/ag\\_intro03\\_domestic\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/ag_intro03_domestic_e.htm). (hereinafter “Domestic Support”).

These have been laid down in the Agreement, to which all the Members of the WTO are signatories. The Agreement seeks to establish a fair and market-oriented agricultural trading system<sup>12</sup> and hence imposes specific curtailments on the autonomy of a Member to make use of its price support criteria. It further creates a classification under two sub-categories:

- i) Countries providing Domestic Support during the base level period of 1986-88, and thus having specified reduction commitments to meet.
- ii) Countries that did not provide any level of support during the base period and thus having no reduction commitments.

Among the existing 164 Members of the WTO, no other country apart from 14 WTO Members provided any kind of Domestic Support<sup>13</sup> and thus resultantly the WTO specifies that other countries are not required to reduce their levels of support.<sup>14</sup> They merely have to ensure that the price support provided by their government does not exceed the specified levels as specified in the Schedule of each Member.<sup>15</sup> In this paper the authors seek to analyze the regulatory measures adopted by the WTO and the reasons behind the inability of the majority of developing Members to abide by these commitments.

## II. VIOLATING OBLIGATIONS, ENSURING FOOD SECURITY

The Agreement of Agriculture lays down a *de-minimis* threshold specifying the eligibility granted to different countries based on their level of development. These values have been set at 10 per cent of the

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<sup>12</sup>AoA, *supra* note 6, at Preamble.

<sup>13</sup>Joseph McMahon, *The WTO Agreement on Agriculture, A Commentary* (Oxford Commentary on The GATT/WTO Agreements, 2007).

<sup>14</sup>Domestic Support, *supra* note 11.

<sup>15</sup>AoA, *supra* note 6, at art.7.

total value of production for the developing countries.<sup>16</sup> According to this, a Member is not required to reduce such trade-distorting domestic support in any year in which the aggregate value of the product-specific support does not exceed 10 per cent limit. This effectively means that the domestic support provided by the government to its producers should not exceed the 10 per cent threshold. However, today a majority of the developing nations are facing difficulties in meeting these standards because of the reasons mentioned below:

- Non- uniformity in Calculation Mechanism
- Stringent limits set as Commitment Levels
- High levels of Inflation prevailing in the countries.<sup>17</sup>

This issue came to the forefront in 2011 when USA initiated discussions on this issue with the major claim being that the majority of developing countries were providing Domestic Support to their farmers in violation of their WTO commitments.<sup>18</sup> The basis of their claim was that though the developed nations had substantially reduced their levels of support in the recent years, there had been a major increase in subsidization in the developing countries. However, a closer look provides justification for such non- compliance.

#### *A. Non- Uniformity in the Calculation Mechanism*

Within the domain of International Trade, domestic price support (known as Aggregate Measurement of Support)<sup>19</sup> exists in two forms: either through administered prices (involving transfers from consumers) or through certain types of direct payments from

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<sup>16</sup>AoA, *supra* note 6, at art.6.

<sup>17</sup>Alan Matthews, *Food Security and WTO Domestic Support Disciplines post- Bali*, ICTSD PROGRAMME ON AGRICULTURAL TRADE AND SUSTAINABLE DEVELOPMENT, ISSUE PAPER No. 53 (2014).

<sup>18</sup>WTO Domestic Support Disciplines, *supra* note 4.

<sup>19</sup>Domestic Support, *supra* note 11.

governments. Calculation of the Domestic Market support requires following this certain methodology.<sup>20</sup>

**MPS for a Product = (Administered Price - Fixed External Reference Price) x Production Amount**

Here, the price support is generally measured by multiplying the gap between the government administered price and a specified fixed external reference price or “world market price” by the quantity of production eligible to receive the administered price.<sup>21</sup> Though the methodology appears to be fairly simple, this has been the bone of contention. Since different countries appear to follow different approaches in the way they calculate their Market Price Support (“MPS”), the WTO suggests that this formula requires usage of the Total Value of Production for finding the MPS. The latter formula, using the Total Production value methodology also derives support from the Appellate Body ruling in the *Korea- Beef*<sup>22</sup> case which laid down that except in special specific circumstances, all production, and not just the amount of product procured by government, should be used in the calculation of the MPS. The WTO argues that the Production levels to be used should be the actual total quantity which is “fit or entitled to be purchased” and not merely the quantum receiving the administered price.<sup>23</sup>

However, the developing countries have been arguing that such usage leads to over estimation of the Total Market Price Support. When the total value of production is used, a country seems to have exceeded its *de-minimis* threshold though the support remains within limits when

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<sup>20</sup>AoA, *supra* note 6, at Annexes 3- 4.

<sup>21</sup>*Id.*

<sup>22</sup>APPELLATE BODY REPORT, KOREA – MEASURES AFFECTING IMPORTS OF FRESH, CHILLED AND FROZEN BEEF, WT/ DS161/AB/R and WT/DS169/AB/R (Jan. 10 2001) (hereinafter Korea– Various Measures on Beef).

<sup>23</sup>WTO Domestic Support Disciplines, *supra* note 4.

instead the Actual Quantity procured is used for such calculations.<sup>24</sup> For instance, even India is in breach of its commitments in rice even when its notification is made in USD, when total production is used in the calculation of MPS.<sup>25</sup> However, considering the 2014 levels, when the actually procured quantity is used in the calculation of MPS, in that case with a MPS of USD 1,880 million against a *de minimis* of USD 3,318 million,<sup>26</sup> India still has some unused policy space.

Similar trends are also seen in case of wheat crop of Turkey wherein it is in clear-cut violation of its commitment levels of 10 per cent if the total wheat production is to be used in the MPS calculation. However, when actual procured production is to be used, its calculated wheat MPS is within Turkey's *de-minimis* commitment.<sup>27</sup> A similar trend is also seen in the case of Pakistan wheat and Philippines rice. In the latter case, if Philippines uses its actually procured production for calculation of domestic support, then its rice MPS is within its *de minimis* commitment. However, under the assumption of using procured quantities and not total production, the Philippines easily manages to have a large policy space to increase procured rice supplies and to increase its administered price without breaching its *de minimis* threshold.<sup>28</sup>

Both the methodologies depict highly differing results, which in turn substantially affects the capacity of the developing countries to meet their commitments.<sup>29</sup> This is because the calculations reflect inflated

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<sup>24</sup>AGRICULTURE, DEVELOPMENT, AND THE GLOBAL TRADING SYSTEM 285- 324 (Antoine Bouet et al eds., 2017) (hereinafter Agriculture Development).

<sup>25</sup>WTO Domestic Support Disciplines, *supra* note 4, at 12.

<sup>26</sup>WTO Domestic Support Disciplines, *supra* note 4, at 13.

<sup>27</sup>USDA Foreign Agricultural Service, *Turkey Grain and Feed Annual* (2013) [https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Grain%20and%20Feed%20Annual\\_Ankara\\_Turkey\\_4-4-2013.pdf](https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Grain%20and%20Feed%20Annual_Ankara_Turkey_4-4-2013.pdf).

<sup>28</sup>C. B. Cororaton, *WTO Disciplines on Agricultural Support Update: Philippine WTO Domestic Support Notification*, VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY, WORKING PAPER (2013).

<sup>29</sup>Agriculture Development, *supra* note 24, at 284-324.



degrees of support when effectively the government is not supporting to that extent. Thus, the authors, in line with the opinion of the WTO Appellate Body,<sup>30</sup> proposes that the formula should instead incorporate the usage of production that was actually purchased.

*B. Stringent Limits for meeting commitment levels*

Developing countries have also expressed their grievance regarding the existing domestic support provisions under the WTO, and how they are highly unbalanced and favorable to the developed countries.<sup>31</sup> Contrary to the intent of the AoA, USA and nations in the European Union have managed to retain and rather increase their annual level of farm related subsidies by around 70-80 million tons<sup>32</sup> by classifying them under different exemptions including Blue Box, Green Box, etc. Where on the one hand the developing and the Least Developed Countries were forced to lower their tariffs and at times dismantle their tariff walls to be in consonance with the WTO Rules, the developed countries managed to escape unaffected.<sup>33</sup>

Though there should have been a reduction in the overall support being provided, the developed countries have instead witnessed an exacerbation in the already persisting problem of overproduction.<sup>34</sup> While the developing countries have attempted to ensure compliance with all possible liberalization measures by not invoking any kind of Special Safeguards,<sup>35</sup> developed countries managed to retain their

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<sup>30</sup>Korea– Various Measures on Beef, *supra* note 22.

<sup>31</sup>Agricultural Subsidies in the WTO Green Box: Ensuring Coherence with Sustainable Development Goals (Ricardo Meléndez-Ortiz, Christophe Bellmann, & Jonathan Hepburn eds., 2009).

<sup>32</sup>*Ten Years of the WTO Agreement on Agriculture: Problems and Prospects*, IGTN- ASIA, WTO ANNUAL PUBLIC SYMPOSIUM (2005) (hereinafter *Agriculture: Problems and Prospects*).

<sup>33</sup>Prema Chandra Athurokala, Asian Developing Countries and the Global Trading System for Agriculture: Uruguay Round Achievements and Post- Uruguay Round Issues, in *TRADE AND AGRICULTURE: NEGOTIATING A NEW AGREEMENT?* 121- 142 (Cameron May, 2008).

<sup>34</sup>*Agriculture: Problems and Prospects*, *supra* note 32, at 2.

<sup>35</sup>*Id.*

protectionist walls by setting tariffs at a very high level from the base year of implementation.

The effect was that they were required to ensure only a negligible tariff reduction, having distorting effects on the market access for the exports of developing and least developed countries. It was the developing who had to bear the brunt since the WTO rules<sup>36</sup> have failed to ensure that these Members are provided with sufficient policy space to perform the required public interventions in the crop market. Agriculture in developing countries often may be carried out by resource deficient farmers working on a small scale.<sup>37</sup> Since such agro- based activities are performed not only with the sole objective of commercial operation, such policies created a barrier for them to ensure availability of food for their populations.

Also, the threat faced by the pool of developing countries was because of the systemic weaknesses of the WTO provisions as under the Agreement of Agriculture. The calculation methodology does not take into consideration the government's actual spending on Domestic Support but rather determines it on the basis of an out-dated external reference price which was set way back in 1986-88.<sup>38</sup> There have been no attempts to revise or amend these rates, often leading to distorted results.

### *C. Inability to account for inflationary aspects*

The inability to comply with these standards is also due to steep increase in world food market prices accompanied by the increased volatility in these prices. Majority of developing Member states have seen high levels of inflation in their price indexes with corresponding

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<sup>36</sup>AoA, *supra* note 6, at art.6.

<sup>37</sup>Aileen Kwa, *Agriculture in Developing Countries: Which way forward?*, in TRADE RELATED AGENDA, DEVELOPMENT AND EQUITY (UNDP, June 2001).

<sup>38</sup>AOA, *supra* note 6, at Annex 3.

fall in their currency rates and overall weakening of their currency.<sup>39</sup> As such on-paper findings continue to depict highly distorted figures, these countries argue that their commitments relating Aggregate Measurement of Support have been eroded,<sup>40</sup> and thus propose that the adverse implications of inflationary should be built into their commitment requirements.

For instance, the first major case dealing with inflation affecting domestic support was of Turkey, which experienced inflation rates between 88 and 55 per cent between 1995 and 1999.<sup>41</sup> Similarly, it was seen that India would be in breach of its commitments in rice if the notification was to be made in INR and not in US\$.<sup>42</sup> This is the result of the inflationary trend in currency rates, which leads to distortions with respect to the current product-specific AMS levels, as elaborated in Section IV of this paper.

Moreover, such uncertain market forces have a unidirectional effect and do not affect the developed countries because of their comparatively larger capacity to insulate their markets. It is usually the developing countries who have had to bear the brunt with their trust on the world food market having seriously shaken. In such a scenario where the trade regulatory measures are failing to ensure fair market practices and take into consideration the legitimate interests of the majority chunk of developing Member states, the WTO along with the Member states realized the need to relook these policy considerations.

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<sup>39</sup>David Orden, Exchange Rate Effects on Agricultural Trade and Trade Relations, UNIVERSITY OF GUELPH 5-24 (2000).

<sup>40</sup>World Trade Organization, *Trade Topics: Agriculture Negotiations, Domestic Support*, WORLD TRADE ORGANISATION  
[https://www.wto.org/english/tratop\\_e/agric\\_e/negs\\_bkgrnd14\\_ph2domest\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd14_ph2domest_e.htm).

<sup>41</sup>Aykut Kibritcioglu, *A Short Review of the Long History of Turkish High Inflation*, UNIVERSITY LIBRARY OF MUNICH, GERMANY (2004).

<sup>42</sup>WTO Domestic Support Disciplines, *supra* note 4, at 12.

### III. THE GLOBAL POSITION AGAINST THE DEVELOPING WORLD'S APPEALS

The abovementioned discussions about the non-compliance with the commitments by the developing countries coincide with historically high levels of market prices for major food commodities. These breaches were witnessed especially post 2008, the period when there was high volatility in the world prices.<sup>43</sup> This eventually led to uncertainties relating to attaining the due share of access to the world markets, causing apprehensions among, and criticism by, these developing nations about the unbalanced nature of the WTO Agreement of Agriculture and especially the Uruguay Round provisions.<sup>44</sup>

#### A. *Proposals of the G-33 nations*

These concerns were put forward by a group of 33 nations who came forward seeking to amend the Agreement of Agriculture to make it more accommodative to the needs and requirements of the developing countries.<sup>45</sup> To tackle the problem of stringent commitments set by the WTO, this group of Members initially suggested raising the *de-minimis* threshold level as one of the solutions<sup>46</sup> to ease the pressure faced by developing countries regarding the breaching of their commitments.

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<sup>43</sup>Alan Matthews, *Policy Space to Pursue Food Security in WTO Agreement on Agriculture*, THE STATE OF AGRICULTURAL COMMODITY MARKETS, FOOD AND AGRICULTURE ORGANIZATION (2015-16).

<sup>44</sup>K Elliott, *Food security in developing countries: is there a role for the WTO?*, WASHINGTON, DC, CENTER FOR GLOBAL DEVELOPMENT (2015); B Chatterjee & S Murphy, *Trade and food security*, GENEVA, INTERNATIONAL CENTRE FOR TRADE AND SUSTAINABLE DEVELOPMENT (2014).

<sup>45</sup>Bellmann, Christophe et al., *G-33 proposal: early agreement on elements of the draft Doha accord to address food security*, ICTSD PROGRAMME ON AGRICULTURAL TRADE AND SUSTAINABLE DEVELOPMENT (2013) [hereinafter G-33 Proposal].

<sup>46</sup>*Id.*

It was thus suggested that the *de minimis* threshold be increased from 10per cent to 15per cent for developing countries.<sup>47</sup> Further in the fall of 2012, the G-33 Members proposed an amendment to Annex 2 of the Agreement for widening the scope of the Green Box category in terms of the support provided.<sup>48</sup> They made specific suggestions that any acquisition of stocks of foodstuffs by developing country Members, if given effect mainly to fulfill the objective of supporting low-income or resource-poor producers, then that shall not be required to be accounted for in the Aggregate Measurement Support calculations.<sup>49</sup>

Also, to tackle the problem of the outdated external reference price against which all the support levels are calculated, this group recommended a change in the proposed definition of the external reference price. Rather than the stagnant levels of 1986-89, for the purposes of calculations, these levels should be set on a three-year average period,<sup>50</sup> mainly based on the preceding five-year period to account for the latest changes in their patterns. Alternatively, they proposed the base reference price to be set according to the previous year's average producer price in the largest suppliers of foodstuff in the respective countries.<sup>51</sup>

This group of developing Member states also proposed the reintroduction of a Peace Clause as a measure of Special and Differential Treatment for the developing countries. All these recommendations were put forward at various Ministerial

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<sup>47</sup>Merlinda D. Ingco & John D. Nash, *Agriculture and the WTO: Creating a Trading System for Development* 280-285 (2004).

<sup>48</sup>Committee on Agriculture, G-33 Proposal for Early Agreement to address Food Security issues, Job/AG/22 (Nov. 30, 2012).

<sup>49</sup>*Id.*

<sup>50</sup>WTO: Ag Talks Chair Seeks to Reconcile Conflicting Visions for Bali, 15(17) BRIDGES WEEKLY TRADE NEWS DIGEST (2013).

<sup>51</sup>Diaz-Bonilla E., *On Food Security Stocks, Peace Clauses, and Permanent Solutions After Bali*, IFPRI WORKING PAPER (Jun. 2014); WTO Domestic Support Disciplines, *supra* note 4.

Conferences of the WTO, and though the other recommendations still remain undecided due to inability of the Members to reach any consensus, the Peace Clause came to be adopted at the Bali Ministerial Conference in 2013.<sup>52</sup>

*B. Insufficiency of the peace clause*

The rationale behind the Public Stockholding Programme,<sup>53</sup> also known as the Peace Clause was to provide a temporary solution wherein the developed nations cannot challenge any breach in prescribed ceiling by a developing nation. The existing WTO AoA rules under the Green Box<sup>54</sup> permit the governments to incur expenses for accumulation and holding of food stocks without any monetary limitation. The specific issue that came under consideration at the Bali Meeting concerned such situations in developing countries when public stockholding programmes intersected with Market price support policies.<sup>55</sup>

However, this was only supposed to be an interim protection to be applicable only in cases where the domestic support is exceeded for food security purposes. The idea was that the developing countries that are exceeding these support levels for providing domestic food aid or to ensure the availability of resources for sustenance to tackle the adverse agrarian crisis should be provided an exemption.<sup>56</sup> However, the beneficiary developing Members under the Bali

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<sup>52</sup>Agricultural Negotiations Factsheet, *The Bali decision on stockholding for food security in developing countries*, WORLD TRADE ORGANIZATION (Nov. 2014), [https://www.wto.org/english/tratop\\_e/agric\\_e/factsheet\\_agng\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/factsheet_agng_e.htm).

<sup>53</sup>World Trade Organization, Ministerial Declaration of 11 December 2013, WT/MIN (13)/38/DEC ¶ 1 [hereinafter Bali Decision on Public Stockholding].

<sup>54</sup>*Id.* at para 3.

<sup>55</sup>Trade and Food Security, *supra* note 5, at 24.

<sup>56</sup>World Trade Organization, *Trade Topics, Agricultural Negotiations, The Bali decision on stockholding for food security in developing countries*, [https://www.wto.org/english/tratop\\_e/agric\\_e/factsheet\\_agng\\_e.htm#whatwasagree\\_dinbali](https://www.wto.org/english/tratop_e/agric_e/factsheet_agng_e.htm#whatwasagree_dinbali).

Decision were subject to certain monitoring and consultation requirements.<sup>57</sup> There is a pre-requisite for the fulfillment of certain transparency obligations and safeguard provisions in order to limit any scope of abuse and reduce the possibility of negative effects to the food security of other Members.

As per the decision,<sup>58</sup> this was laid down as a mere temporary solution with the aim of reaching an agreement on the permanent solution in four years, at the 11<sup>th</sup> Ministerial Conference that was held last year at Buenos Aires in December 2017. However, in the recently concluded Ministerial Conference, the Members failed to reach any consensus on the future of this Peace Clause<sup>59</sup> and hence in the absence of any agreement having been concluded, the ambiguity continues to threaten the interests of the developing Members.

#### IV. TACKLING THE VOLATILITY OF INFLATION

This decision sought to provide an extension of the protection mechanism for the developing and Least Developing but failed to provide a solution against the suffering from the inflationary conditions. Resultantly, developing countries like India, Brazil, and Philippines have become less willing to provide greater access to their market and have also started reconsidering their own production and support systems to fend-off externally generated volatility.<sup>60</sup>

Under the WTO regime, the rules related to the calculation of the Domestic Support provided by the government is measured against

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<sup>57</sup>Agriculture in the WTO Bali ministerial Agreement, CRS REPORT, UNIVERSITY OF NORTH TEXAS (2014).

<sup>58</sup>World Trade Organization, Trade Topics, Ministerial Conference 9: WT/L/913, [http://wto.org/english/thewto\\_e/minist\\_e/mc9\\_e/desci38\\_e.htm](http://wto.org/english/thewto_e/minist_e/mc9_e/desci38_e.htm).

<sup>59</sup>Noor Mohammad, *WTO Meet Likely to Be a Washout as India and US Clash Over Food Security*, THE WIRE (Dec. 13, 2017), <https://thewire.in/business/wto-meet-likely-washout-india-us-clash-food-security>.

<sup>60</sup>WTO Domestic Support Disciplines, *supra* note 4.

the base reference price fixed in 1986, which has remained the same since then. The mechanism for such calculation as laid in the Agreement of Agriculture,<sup>61</sup> provides certain constituent and data methodology standards for bringing in uniformity in such measurements. The Agreement requires that a country is supposed to use the same methodology in which the base standards were set in 1986.<sup>62</sup> Accordingly, it requires that the countries should use the same currency in which they provided their data about support levels.

This is where the issue of inflationary aspect creeps in. A majority of developing countries used their domestic currencies for the making of their original schedules back in 1986, however now they have prefer the usage of US Dollars for all such representations.<sup>63</sup> When calculations are made using national currencies, they appear inflated despite the annual support levels having remained constant. The domestic support is measured against the original external reference price set in USD in the year 1986-88.

Supposing the support level is set at 10USD for a country. If the exchange rate is set at 12/USD, then it would mean that 120INR worth of support could be provided. If the value were to drop to 65/USD, then the support would be of 650INR. Here, though the amount supported remains constant with no change, yet because of inflation it seems as if it has been exceeded multi-fold times. This situation arises because the reference level still remains fixed at 120INR. Hence, in countries hit by inflation, usage of USD brings in uniformity. According to the authors' analysis, when the calculations are made in USD, their support manages to remain within the bound limits, but when these representations are made in their Domestic currencies, the support provided seems to have inflated enormously.

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<sup>61</sup>AoA, *supra* note 6, at Annex 3.

<sup>62</sup>AoA, *supra* note 6, at art 1(h) (ii).

<sup>63</sup>WTO Domestic Support Disciplines, *supra* note 4, at 21.



A. *Inflation killing development: Due consideration needed*

These concerns are being faced by various developing nations including India, Pakistan, Turkey, Egypt, affecting their price support measures. India's support patterns for Rice, Pakistan's and Turkey's support in case of wheat, etc. are facing challenge before the WTO forum but these countries claim defenses because of their fluctuating and unstable economic conditions. India has on an average seen an inflation of 7-8per cent since 1986 with the currency value of India Rupee against US Dollars having depreciated enormously from Rs.12.2/USD in 1986 to around Rs.65/ USD in 2018.<sup>64</sup>

Now, every country is supposed to provide two types of notifications: a) An annual notification detailing the support structure being provided, and b) Special notification in case of any modifications in the measures. When a notification by India for it is in INR, India would be in breach of its commitments if the de minimis level is of 10per cent.<sup>65</sup> However, when its notification is made in USD with the actually procured quantity being used in the calculation of Market Price Support, then with an MPS of 1,880 million USD against a de minimis of 3,318 million USD, India still has some unused policy space.<sup>66</sup> Similar issues are also being faced by other Member States like Pakistan, Turkey, etc.

If Pakistan's disputed support measures for rice were to be considered, it also similarly stands affected because of the volatility in its currency. The Pakistani Rupee has witnessed a depreciation from 15.9/USD in 1986 to around 110/USD in 2018 witnessing high

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<sup>64</sup>*Treasury Reporting Rates Of Exchange*, DEPARTMENT OF TREASURY (March 1986) [https://www.gpo.gov/fdsys/pkg/GOVPUB-T63\\_100-dd1437db9d97161a1d6cd2945151dd6c/pdf/GOVPUB-T63\\_100-dd1437db9d97161a1d6cd2945151dd6c.pdf](https://www.gpo.gov/fdsys/pkg/GOVPUB-T63_100-dd1437db9d97161a1d6cd2945151dd6c/pdf/GOVPUB-T63_100-dd1437db9d97161a1d6cd2945151dd6c.pdf) (hereinafter Dept. of Treasury).

<sup>65</sup>AoA, *supra* note 6, at art 18.

<sup>66</sup>Sudha Narayanan, *The National Food Security Act vis-à-vis the WTO Agreement on Agriculture*, ECONOMIC AND POLITICAL WEEKLY, 40, 42 (2014) (hereinafter Narayan).

currency fluctuation throughout this 30 year period.<sup>67</sup> Such trends have also been noticed in other countries like Turkey with their economy suffering from an average of 35per cent inflation from the 1970's, reaching an all-time high of 138.71per cent in May of 1980's and currently witnessing over 12per cent of inflation in 2018.<sup>68</sup>

All these developing countries have addressed this problem by reporting both Base Aggregate Market Support and current Price Support in USD. They derive support from Art-18.4 of the AoA,<sup>69</sup> 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*”. Art. 18.4 of AoA uses the phrase “*due consideration*” highlighting that in cases of inflationary situations, the calculation methodology be amended if it does not lead to any manipulation.

In authors' opinion, this signifies that the Members should preferably take a currency which nullifies the effect of inflation while representing the domestic support, accommodating any Member's ability to abide with its commitments. This immediate interpretation of the provision is supported because other inflationary adjusting mechanisms involve time- consuming technicalities putting the interests of the developing nations at stake. For instance, the adoption of any automatic adjustment tool for inflation under the “*due consideration*” clause, would involve only a decision by the Committee of Agriculture in interpreting Art-18.4. 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>70</sup>

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<sup>67</sup>Dept. of Treasury, *supra* note 64.

<sup>68</sup>Chusnul Ch Manan, *Turkey Inflation Rate*, TRADING ECONOMICS, <https://tradingeconomics.com/turkey/inflation-cpi>.

<sup>69</sup>WTO Domestic Support Disciplines, *supra* note 4, at 22.

<sup>70</sup>Narayanan, *supra* note 67.

B. WTO's insight into the usage of Article-18.4

Usage of Art-18.4 of the Agreement of Agriculture is disregarded by the other developed and highly developing Member states who reason it out by distinguishing between the countries having reduction commitments and those only having to comply with the *de-minimis* threshold. It is stated that for developing countries with price support upper cap of 10 per cent, since the values of production and the *de minimis* limits increase *pari-passu* with inflation, they accommodate inflation-related increases in nominal expenditures and payments.<sup>71</sup> Countries with a Bound Total AMS i.e., pre-specified level of support that can be extended, on the other hand, may be tempted to use Article 18.4 as conferring the right to reduce the amount of calculated support from its nominal level to a lower level by deflating it, as has been seen in cases of Ukraine and Jordan.<sup>72</sup>

With the fall in the currency rate, the eligible amount for providing *de-minimis* support also increases.<sup>73</sup> Supposing, in 1986, India was providing support on 100 tons of rice. With currency rate at 12/USD, this was equivalent to 1200INR of support, within its eligible limits. Now, the production remaining constant, when the currency value falls, the eligibility also increases accordingly. The country with 65/USD, can provide 6500INR of support, which would still be within its limits.

Also, Art-18.4 comes into play only when there are excessive rates of inflation in a country and includes the phrase “due consideration.”<sup>74</sup> This cannot be necessarily interpreted to mean the change in the methodology of calculation by changing the currency usage.

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<sup>71</sup>Lars Brink, Support to Agriculture in India in 1995-2013 and the Rules of the WTO, IATRC WORKING PAPER1 NO.14 (2014).

<sup>72</sup>WTO Domestic Support Disciplines, *supra* note 4, at 22.

<sup>73</sup>WTO DISCIPLINES ON AGRICULTURAL SUPPORT: SEEKING A FAIR BASIS FOR TRADE (David Orden, Tim Josling & David Blandford eds., Cambridge University Press, 2011).

<sup>74</sup>AoA, *supra* note 6, at art-18.4.

Measures like usage of the Total Purchasing Power Parity Index or Inflation Adjusting Mechanism like adjustment of the reference price, etc. can be used. Since, original calculations of 1986-89 were made in the domestic currency; the authors suggest that the same methodology should be followed in all the present transactions, as that would ensure fair representation and uniformity in the calculation.<sup>75</sup>

To tackle such conflicting stands taken by various groups of Member states, the G33 has submitted a proposal on how to deal with excessive inflation rates,<sup>76</sup> 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. There has also been a proposal for an increase to 15 per cent *de minimis* threshold from the existing 10 per cent cap. However, this could not materialize into an amended provision.<sup>77</sup>

## V. CONCLUSION

The authors in this concluding remark recommend that the developing countries need to be given greater leverage to account for their prevailing agrarian and economic crises. The stringent commitment standards of the Agreement of Agriculture need to be relaxed in lieu of the inflationary circumstances, so as to cater to the food security needs of the world population. Additionally, the members should be allowed to preferably take a currency which nullifies the effect of inflation while representing the domestic support. Though this may result into jeopardizing the compliance with WTO law, yet this is needed for accommodating any Member's ability to abide with its commitments.

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<sup>75</sup>AoA, *supra* note 6, at art-1(h)(ii).

<sup>76</sup>*Supra* note 48.

<sup>77</sup>*Supra* note 52.

Also, efforts need to be made to facilitate the Members to reach a consensus regarding the non-uniform Calculation Mechanism by allowing the change of currency to USD for ensuring fair representation. Along with this, the phraseology “due consideration” as under the Agreement needs to be given wider interpretation to address the excessive volatility in the currency exchange rates. In this strive to uphold the core values of WTO, the Members should consider and aim to ensure compliance with these possible measures for ensuring free and fair trade in the world.