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The WTO's challenge to MSP is another frontier to cross



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Farmers listen to their leaders during a rally at Ghazipur, on the outskirts of New Delhi, India, Friday, Nov. 26, 2021. Tens of thousands of farmers rallied on Friday marking one year of their movement that forced Prime Minister Narendra Modi to withdraw three agriculture laws that feared would drastically reduce their incomes and leave them at the mercy of corporations. (AP Photo/Manish Swarup)

The need is to convince farmers of other effective policy interventions that are World Trade Organization compatible

The demand of farmers to provide **a legal guarantee for the minimum support price (MSP)** for their produce has triggered a nationwide debate. Some believe it would be “fiscally ruinous” to procure all the 23 crops for which MSP is announced annually. Others contend that procuring these crops would be a logistical nightmare. There is yet another dimension of this debate that has largely gone unnoticed. Can India provide a legal guarantee for MSP without violating its international law obligations enshrined in the **Agreement on Agriculture (AoA) of the World Trade Organization (WTO)** ?

As a trade-distorting subsidy

One of the central objectives of the AoA is to cut trade-distorting domestic support that WTO member countries provide to agriculture. In this regard, the domestic subsidies are divided into three categories: ‘green box’, ‘blue box’ and ‘amber box’ measures. Subsidies that fall under the ‘green box’ (like income support to farmers de-coupled from production) and ‘blue box’ (like direct payments under production limiting programmes subject to certain conditions) are considered non-trade distorting. Countries can provide

unlimited subsidies under these two categories. However, price support provided in the form of procurement of crops at MSP is classified as a trade-distorting subsidy and falls under the 'amber box' measures, which are subject to certain limits.

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To measure 'amber box' support, WTO member countries are required to compute Aggregate Measurement of Support (AMS). AMS is the total of product-specific support (price support to a particular crop) and non-product-specific support (fertilizer subsidy). Under Article 6.4(b) of the AoA, developing countries such as India are allowed to provide a *de minimis* level of product and non-product domestic subsidy. This *de minimis* limit is capped at 10% of the total value of production of the product, in case of a product-specific subsidy; and at 10% of the total value of a country's agricultural production, in case of non-product subsidy. Subsidies breaching the *de minimis* cap are trade-distorting. Consequently, they have to be accounted for in the AMS.

The procurement at MSP, after comparing it with the fixed external reference price (ERP) – an average price based on the base years 1986-88 – has to be included in AMS. Since the fixed ERP has not been revised in the last several decades at the WTO, the difference between the MSP and fixed ERP has widened enormously due to inflation.

For instance, according to the Centre for WTO Studies, India's ERP for rice, in 1986-88, was \$262.51/tonne and the MSP was less than this. However, India's applied administered price for rice in 2015-16 stood at \$323.06/tonne, much

more than the 1986-88 ERP. When this difference is accounted for in the AMS, the possibility of overshooting the *de minimis* limit becomes real. Procuring all the 23 crops at MSP, as against the current practice of procuring largely rice and wheat, will result in India breaching the *de minimis* limit making it vulnerable to a legal challenge at the WTO.

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Even if the Government does not procure directly but mandates private parties to acquire at a price determined by the Government, as it happens in the case of sugarcane, the *de minimis* limit of 10% applies. Very recently, a WTO panel in the case, *India – Measures Concerning Sugar and Sugarcane*, concluded that India breached the *de minimis* limit in the case of sugarcane by offering guaranteed prices paid by sugar mills to sugarcane farmers.

Peace clause

The AoA needs to be amended so that it provides adequate policy space to run an MSP-backed food security programme. Although a permanent solution is nowhere in sight, the countries have agreed to a peace clause. The peace clause forbids bringing legal challenges against price support-based procurement for food security purposes even if it breaches the limit on domestic support.

However, the peace clause is subject to several conditions. For example, it can be availed by developing countries for the support provided to traditional staple food crops to pursue public stockholding programmes for food security (procuring food to provide free ration through the Public Distribution System).

Furthermore, the peace clause is applicable only for programmes that were existing as of the date of the decision and are consistent with other requirements. Countries are also under an obligation to notify the WTO if their subsidies exceed the permissible level. For instance, earlier this year, India reported to the WTO that it gave subsidies worth \$6.31 billion for rice in 2019-20 while the value of rice production was \$46.07 billion. In other words, the subsidies were 13.6% of the total value of production as against the *de minimis* level of 10%.

India's procurement for rice and wheat, even if it violates the *de minimis* limit, will enjoy legal immunity. However, India will not be able to employ the peace clause to defend procuring those crops that are not part of the food security programme (such as cotton, groundnut, sunflower seed).

Even if the AoA is amended to exclude MSP-backed procurement for food security purposes from the AMS, procurement for other crops at prices higher than the fixed ERP would be considered trade-distorting and thus subject to the *de minimis* limit. Therefore, India needs to recalibrate its agricultural support programmes to make use of the flexibilities available in the AoA.

Some alternatives

Arguably, India can move away from price-based support in the form of MSP to income-based support, which will not be trade-distorting under the AoA provided the income support is not linked to production.

Alternatively, one can supplement price-based support (keeping the *de minimis* limit in mind) with an income-based support policy. However, it will be arduous especially given the climate of high misgiving prevailing between the farmers and the political establishment.

The recent fiasco with the three repealed farm laws demonstrates that reforms in agriculture, no matter how sagacious, cannot be shoved down the throats of the farmers. The Government needs to engage with the farmers and create an affable environment to convince them of other effective policy interventions, beyond MSP, that are fiscally prudent and WTO compatible.

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