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India, Food Security, and the Bali Ministerial: Interviews with Trade Policy Experts in India

James J. Nedumpara, Adhiti Gupta & Bujji Babu M*

I INTRODUCTION AND BACKGROUND

India's refusal to meet the 31 July 2014 deadline to adopt the Protocol for the implementation of the Trade Facilitation Agreement in the World Trade Organization (WTO) framework until a 'permanent solution' was reached in relation to public stockholding for food security has raised concerns in the international trading community. According to the Ministerial Decision of 7 December 2013¹ reached at the 9th Bali Ministerial Conference, the WTO Members had agreed to include a 'peace clause' which sought to shelter the public stockholding programmes maintained by developing countries from WTO dispute settlement challenge so long as the developing country Member complied with other provisions of the Ministerial decision including notification requirements.

In mid-2013, India enacted the National Food Security Act, 2013 (NFSA) with the objective of ensuring access to adequate quantity of quality food for India's people. The NFSA provides that priority households receive 5 kgs of food grains per person per month and households under the *Antyodaya Anna Yojana* receive 35 kgs of food grains per household per month, both at subsidized prices. This would cover up to 75% of the rural population and 50% of the urban population.²

From India's perspective, the Bali Ministerial Decision posed two main challenges: *first*, there appeared to be ambiguity related as to the timeline for applicability of the 'peace clause' and, *second*, there was a restriction on expanding the public stockholding programme beyond

the existing limits. On the former, from a plain reading of the said Ministerial Decision it was not entirely clear whether the 'peace clause' was to extend up to the 11th Ministerial Conference, which is to be held in 2017, or whether it would extend indefinitely until a 'permanent solution' on this issue was reached by the WTO Members. On the second issue, the Ministerial Decision would limit India's ability to expand its food security programme, which may be critical for the Indian government in light of the ambitious objective of the NFSA to provide food security to a majority of the Indian population, even though India has been running a food security programme through its public distribution system for more than four decades.

On 25 July 2014, India made a statement to the WTO General Council conveying its decision to postpone the adoption of the Protocol on Trade Facilitation until a permanent solution on the issue of food security was found. India was apprehensive about the progress made on finding a solution to the food security issue and put forward the view that the Trade Facilitation Agreement be implemented as part of a package of implementation of all the Bali decisions, which included a permanent solution on food security.³ This decision initially found support only from a handful of WTO Members such as South Africa, Zimbabwe, Venezuela, Bolivia, and Cuba. India was criticized the world over for effectively delaying the implementation of the Trade Facilitation Agreement.

On 14 November 2014, it was reported that the United States and India had reached an agreement to resolve the impasse on implementation on Trade Facilitation. The

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¹ World Trade Organization, *Public Stockholding for Food Security Purposes Ministerial Decision of 7 December 2013*, WT/MIN(13)/38 ¶1-2(11 Dec. 2013).

² Section 3, National Food Security Act, 2013.

³ Press Information Bureau, *Text of the Statement made by India at Meeting of the General Council WTO Geneva on 25 July 2014* <http://pib.nic.in/newsite/PrintRelease.aspx?relid=107533> (last accessed on 10 Nov. 2014).

details of the consensus reached by both the countries are not public yet although draft decisions on Trade Facilitation and Food Security, to be placed before a specially convened meeting of the General Council of the WTO on 26 November 2014 are available. News reports and statements from Indian government officials indicate that the United States has agreed to make the peace clause available until a permanent solution is arrived at, irrespective of the 2017 deadline.⁴ The bilateral consensus has been welcomed the world over and the WTO Director-General Roberto Azevêdo noted it as a 'significant step in efforts to get the Bali package and the multilateral trading system back on track'.⁵ The issue is scheduled to be taken up at the General Council Meeting on 26 November.

Agreeing that the peace clause continues until a permanent solution is negotiated serves as breakthrough and will allow progress to be made on the Trade Facilitation Agreement, but the substantive points of the proposal on subsidies on account for public stockholding for food security purposes are yet to be addressed. This issue is not new at the WTO and forms part of the long pending proposals on reforming the Agreement on Agriculture (AoA). The developing countries have long been arguing that when the government purchases food stocks from low income or resource poor farmers at supported prices, such support should be put in the Green Box; that it should not be counted as a trade distorting domestic support. India, even in 2001, demanded that product specific support granted to low income and resource poor farmers should not be counted while calculating the Aggregate Measurement of Support (AMS).⁶ The G-33 in July 2014 resubmitted its November 2012 proposal made on this issue that footnote 5 of Annex-2 of the AoA be amended 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'.⁷ Certain alternate views on this proposal have also risen. Presently, the AoA allows procurement of food grains from farmers for public stockholding at market prices in the Green Box but the farm subsidies given by the Members above de minimis levels are to be counted towards the Amber Box. The AMS is calculated by taking into account the difference between the present government support price and the external

reference price (ERP) which is pegged on the basis of the price prevailing in 1986–1988 and multiplying it with the 'eligible production' (marketable surplus) which is available for that support. For most developing countries, the result has to be at the de minimis level which is 10% of the value of production. It has been suggested that instead of inserting the farm subsidies in the Green Box, modifications should be made to the method of calculation of AMS. Modifications in the following variables have been proposed: (i) increasing the de minimis level; (ii) changing the basis for calculating ERP by making inflation adjustments; (iii) changing the meaning of eligible production; and (iv) changing the administered price by making inflation adjustments.⁸

In the light of the recent developments in finding a solution to this impasse, members of the Centre for International Trade and Economic Laws, Jindal Global Law School, India, interviewed some of the leading Indian experts in this field for understanding their insights and opinions on India's position on food security and its stance on the WTO negotiations. Extracts of the interviews are given below.

2 EXTRACTS FROM THE INTERVIEWS

2.1 Interview with Abhijit Das

Biographical Note: Abhijit Das is Head and Professor at the Centre for WTO Studies, Indian Institute of Foreign Trade, a government sponsored policy think tank advising the Indian Government on trade-related matters. He was part of the Indian delegation to the Bali Ministerial Conference. Abhijit Das previously worked at the UNCTAD and has served as the Director in the Trade Policy Division in the Ministry of Commerce:

- (1) What are your views on India's position at the WTO to delay the Trade Facilitation deal until a permanent solution on public stockholding for food security is arrived at?

India is not opposed to Trade Facilitation per se. In October, 2013, India clarified that it was for Trade Facilitation, when Robert Azevêdo, the Director-General of WTO visited India. I do not think that the position has changed; India

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⁴ Amiti Sen, *WTO: Advantage India as peace clause to be fully rewritten*, 14 Nov. 2014, BUSINESS LINE <http://www.thehindubusinessline.com/industry-and-economy/wto-advantage-india-as-peace-clause-to-be-fully-rewritten/article6600200.ece> (last accessed on 15 Nov. 2014).

⁵ WTO News Items, *Azevêdo applauds India-US agreement on key Bali issues*, 13 Nov. 2014, http://www.wto.org/english/news_e/news14_e/dgra_13nov14_e.htm (last accessed on 15 Nov. 2014).

⁶ World Trade Organization, *Proposals by India in the areas of: (I) Food Security, (ii) Market Access, (iii) Domestic Support, and (iv) Export Competition*, Negotiations on WTO Agreement on Agriculture, G/AG/NG/W/102, ¶10 (15 Jan. 2001).

⁷ World Trade Organization, *G-33 Proposed Permanent Solution on Public Stockholding for Food Security Purposes, Committee on Agriculture Special Session*, JOB/AG/27 ¶3 (17 Jul. 2014).

⁸ WTO News Items, *Chair updates on farm issues proposed for Bali meeting: talks continue on key differences*, 23 May 2013 http://www.wto.org/english/news_e/news13_e/agng_23may13_e.htm#proposal (last accessed on 10 Nov. 2014).

continues to be supportive of Trade Facilitation. India's opposition to trade facilitation is really rooted in India's concerns on how issues relating to public stock holding for food security purposes have been dealt with at the WTO and that India's concerns on food security have not been addressed.

- (2) At the time of the Bali Declaration in December, 2013 the agreed position was to reach a permanent solution on food security by 2017. Why did India change its position to demand a solution by end of 2014?

India was quiet cognizant that its scheme of Minimum Support Price (MSP) particularly for rice and wheat might be at the risk of breaching India's commitment under the AoA. Recognizing this imperative as early as the Doha Round, from 2006 onwards India along with the G-33 countries was at the forefront of raising this issue of public stock holding for food security purposes, including submissions during WTO negotiations. By December, 2008 a consensus had emerged at the WTO that if government procured foodstuff for meeting the food security needs of the poor then no subsidies could be attributed to it. This consensus was part of the larger negotiations, however, as we are aware, the Doha negotiations could not come to a conclusion.

In early 2013, in the context of the Bali Ministerial Conference, the WTO Members started reengaging intensively on what all could be harvested at the Bali Ministerial Conference. It was decided that countries would negotiate a permanent solution to the problem of food security. These negotiations were expected to be completed by 2017, i.e., by the 11th WTO Ministerial Conference. In the interim, until a permanent solution was agreed, it was decided that a peace clause would prevail, that is, even if India breached its 10% de minimis obligation other countries would exercise due restraint and not drag India to dispute settlement. It was also decided that process for approving the Protocol amending the Marrakesh Agreement for introducing the Trade Facilitation Agreement into the WTO framework would be completed by 31 July 2014.

Between the Bali Ministerial Conference and July, 2014, the issue of Trade Facilitation being dovetailed into the WTO gathered momentum, whereas absolutely no work started on negotiating the permanent solution to the problem of food security. It was apparent to India that, it was at the risk of its concerns not being addressed suitably. Perturbed at this development and to focus attention on the WTO membership on the need to start negotiations on issues of food security, India insisted that it would not approve the Protocol amending the Marrakesh Agreement.

- (3) Why was India isolated with support coming only from a handful of countries in its decision to block the Trade Facilitation deal?

India has never shied away from protecting its national interests even at the risk of being isolated. History teaches us that on issues that India has fought alone, India's stand has been vindicated.

Let me mention just two instances. First, was during the Uruguay Round when India rigidly opposed introduction of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) into the multilateral trading system during 1986–1989. India was severely criticized for this supposedly obstructionist stand. Even though eventually India relented, it is interesting to note that hard core supporters of multilateral trade liberalization such as Jagdish Bhagwati have started questioning the relevance and need for introducing TRIPS in the multilateral trading system.

The second occasion was when India almost stood alone was at the stage of the launch of the Doha Round of trade negotiations. India single-handedly sought to ensure that negotiations on the four Singapore issues did not commence. Again India was singularly criticized in the global media and painted black as a country resisting negotiations. What happened three years later? The WTO as a negotiating forum agreed with India and junked 3 of the 4 Singapore issues from the negotiating table.

Even now, India was not isolated and has a handful of countries with it. Of course, we could have done with a larger support group. The reason why the support for India has declined is not very far to seek. Not being privy to insider information, but according to press reports, the developed countries have in a way given an open threat to a large number of developing countries that if they side with India then some of the trade preferences and aid which they enjoy might get adversely impacted. So naturally under those situations, a large number of developing countries have decided to give primacy to their own trade interests and support for India has declined.

- (4) Did India's decision to block the Trade Facilitation deal adversely affect its image as a nation committed to trade liberalization?

No, India's blocking the trade facilitation protocol has never affected India's image as a country which stands for an open and transparent trade and investment regime. Trade liberalization has many aspects: stability of the trading regime, stability of tariffs, the rules and procedures for imports and exports. Trade facilitation is just one small element in the entire eco-system, by which it is determined whether a country is open its regime for trade and investment or not.

- (5) As you mentioned the 'peace clause' agreed at Bali was to extend till 2017? Was there an ambiguity in the effective timeline of the clause which India could have used to its advantage?

You are right that there is an ambiguity. Some argue that the peace clause would be limited in its effect till 2017; others argue that, if a permanent solution is not found by 2017 then the peace clause would continue even beyond 2017.

The WTO is about stability and predictability. If we are looking at a stable and predictable environment for our MSP

scheme, then it is crucially important to make sure that we do not remain in an uncertain situation. We have ample clarity that MSP scheme will not be unravelled after 2017. So, if we are able to get a decision from the WTO General Council that indeed the peace clause would continue to remain in force even after 2017, then that would be a very important achievement and that is what India tried to secure in July, 2014.

- (6) As we know the AoA does not prohibit India from procuring these food grains from the farmers. At the heart of the issue is the price at which procurement is done. What are your views on the proposals to reform the AoA?

Presently, the way subsidy is calculated for the MSP scheme depends on two variables and one constant factor. The constant factor is the ERP and the two variables are the administered price and the quantity procured. Just because the administered price is high, it may not result in India breaching the 10% de minimis threshold. High administered price in conjunction with high quantities procured together can lead India breaching the 10% threshold.

The issue is how to make sure that the scheme of MSP is not unravelled. There can be different approaches towards seeking the solution. One approach could be to raise the de minimis level. This may be a very temporary solution given the fact that the past trends indicate rising MSP and rising quantum of procurement. Even if the threshold is tweaked upwards by 4%–5% points, that may not help us in the long run.

Two options have been suggested by G-33. According to the first option, instead of comparing the administered price with the ERP based on the trade during 1986–1988, the ERP should be updated. It should be calculated on the basis of rolling average of the trade of the past three or five years. The ERP should be calculated on the basis of trade of recent years and not of trade which took place twenty to twenty-five years back. That would certainly help alleviate India's concerns and solve the problem to a certain extent. The second option which can be explored relates to inflation. We already have a Producers Entitlement Guarantee in the AoA which provides that if countries have difficulty complying with domestic support obligation on account of excessive inflation then the Committee on Agriculture will give due consideration to concerns of such countries. The AoA does not define what constitutes excessive inflation and does not provide the possible outcomes of due consideration by the Committee on Agriculture. One of the proposals of G-33 was to define circumstances which could constitute excessive inflation and how would the due consideration be given. This would end up deflating the administered price by a factor. Both the tracks, either making the ERP based on more recent trade or taking inflation into account and adjusting existing MSP downwards, could be of considerable interest to India in helping resolve this issue and arrive at a negotiated permanent solution.

- (7) Do you think clarity is required in determining what constitutes 'eligible production' while calculating AMS?

We do not have ample clarity on what constitutes eligible production. We do have a panel report (Korea – Beef) which seems to suggest, though not definitively suggest, that either the entire production should be treated as eligible production or if the country publicly says that it will procure up to a particular target of production then that target should be treated as eligible production. Clarification on this aspect might help as well.

- (8) India's initial notifications to calculate the support were made in Rupees. Do you think the currency denomination of the notifications would help Indian in the present context?

India's current notifications are in US dollars, but having said that even in dollar terms the support on account of MSP scheme for rice is close to 7% of the value of production of rice. So if the past trends continue, I won't be surprised if within the next four to five years for rice India exceeds the 10% de minimis. Even notifying in dollars may not be a solution that could address India's problems after a few years.

- (9) The debate on public stockholding for food security has risen to prominence after of the implementation of the NFSA recently. How has the implementation of the NFSA impacted this debate?

Even based on the past trends on procurement and the MSP, we stand at the risk of breaching the de minimis for rice. If the procurement levels are to increase substantially on account of the NFSA then we might hit the 10% ceiling for rice much earlier. But the short point is even without the NFSA we are at the risk of breaching the 10% ceiling for rice.

- (10) Do you think a solution by the end of 2014 is feasible, given that we are already in the last quarter of 2014? What should India's negotiation strategy be going forward?

Let's not forget that in 2008 the entire WTO membership had agreed in the modalities text that food stuff procured for meeting the food security needs of low income or resource poor would not be counted towards subsidies calculations. If that was agreed in 2008, I see no reason why that cannot be adopted in 2014. And if that can be adopted in 2014, then the problem which India is raising won't take long to resolve.

But having said that countries might argue that what was agreed in 2008 was a part of a larger deal involving many other issues and it may not be appropriate in the negotiating context to cherry pick one issue and take a decision on that. Views could vary on whether that's the right approach or that approach is not correct. But assuming that countries are unable to agree to accept what was decided on the modalities text of 2008 in the context of

food security, India approach really should have three elements:

- (i) A clear General Council decision under which we have a certainty that the peace clause would be available beyond 2017.
 - (ii) Assurance that the permanent solution would be negotiated in good faith and negotiated expeditiously preferably in parallel with the date by which the trade facilitation agreement gets implemented.
 - (iii) A prescribed institutional mechanism for ensuring an expeditious negotiation of the permanent solution.
- (11) Academics have suggested that instead of the current price subsidy, India could have considered an option of direct income transfers to the resource poor farmers or needy consumers. Was this a feasible solution for India?

The problem with direct income transfers is that it ignores the very important role which the MSP scheme in the country has played for ensuring that farmers have an incentive to increase production. The suggestion of direct transfer to bank account has an implicit message within itself that the government disbands the MSP scheme.

If the MSP scheme is disbanded and the government transfers the money directly to the bank account of the consumers, what will be the outcome? First, the farmers will not have certainty about the price at which they will be able to sell. They will be at total mercy of market forces, traders and forces which will try to depress market prices. Farmers' income and purchasing power will be depressed; their capacity to purchase food in turn gets weakened. Second, since the farmer will not be assured of the MSP, he is likely engaged in distress sales. Consequently, the farmer will not have an incentive to increase the production. If production of cereals like rice and wheat fall it might end up in making the country import dependent. This is problematic especially for rice as rice is a very thinly traded commodity in international market. If India were to end up importing rice the consumer would end up having to pay significantly higher prices for rice. So the option of direct transfer of money to the consumers on the face of it might look attractive but on scratching the surface it is deceptive, with many problems.

- (12) Has stalling of the trade facilitation negotiations impacted the future of multilateral negotiations at the WTO?

There are two approaches to further negotiations at the WTO. On the one hand, some developed countries hold that till India's stand is unchanged, and this issue is unresolved, negotiations on other issues cannot proceed. On the other hand, many developing countries are of the perception that this impasse should not adversely affect the negotiations on other issues of the Bali Package and Doha Round. It's heartening to note that the latter approach seems to be

getting more support. But we are yet to see clarity on which direction will the negotiations move forward.

2.2 Interview with Jayant Dasgupta

Biographical Note: Jayant Dasgupta is a former Ambassador & Permanent Representative of India to the WTO (2010–2014); he was the Indian Ambassador to the WTO at the time of the Bali Ministerial. Previously he was Secretary, Economic Advisory Council to the Prime Minister of India. He has taken part in the Doha Round negotiations between 2006 and 2009 as Joint Secretary in the Department of Commerce, Government of India.

- (13) In the Uruguay Round, why did India agree to benchmark the fixed ERP to the 1986–1988 time period?

This concept came in through a side door. At the time the AoA was being negotiated, one of the main objectives in framing domestic support disciplines was to curb the ability chiefly of the US and the EU to bring in or continue with new schemes which were highly trade distorting. One of them was the market price support scheme of the EU, which was put in the AMS category, for which disciplines were formulated. The main target of the negotiations was to address the distortions what had apparently led to 'mountains of butter and lakes of wine.' However, the scheme for public stockholding for food security was an unwitting victim of the AMS calculation framework, though it was put in the Green Box. It is the only scheme in the Green Box, which has a linkage with an Amber Box calculation methodology. This was pointed out by the then Indian Ambassador B. K. Zutshi in 1993–1994 before the Marrakesh Agreement was signed and had also been raised with Director-General, Peter Sutherland. Sutherland re-assured him that this would be taken care of. However, in the rush to finalize the agreement, it fell through the cracks.

Another point was that the AoA was to be reviewed within five years, as per the mandated negotiations process. This built-in process for review and reforms, as stipulated in Article 20 of the AoA, led inter alia, to the Doha Round. However, other issues were also loaded on to the Doha Round and the genuine concerns and it was labelled as a Development Round. Since the review was to be done in five years, whatever you notified in 1995 was to refer back to the 1986–1988 period; for the subsequent notifications, the expectation was that it would be based on a revised ERP to be framed in the mandated negotiations, but that was not to be. As Anwarul Hoda (a former Member of the Indian Government and Deputy-Director General of the WTO) put it, negotiators perceived that there might be problems due to inflation in abiding by the domestic support commitments in general, therefore Article 18.4 of the AoA was inserted.

To put in it in context, the atmosphere during the GATT negotiations was very different, there was a feeling of mutual help and support and constructive criticism to reach compromises. However, after the introduction of the binding dispute settlement mechanism under the WTO, negotiators have become wary of even accommodating the genuine problems of developing countries.

- (14) Would the problems have been sorted out if the mandated negotiations scheduled to start in 1999 had proceeded in a timely manner?

They could have been, as was actually the case between 2006 and 2008, when a negotiated settlement on the food security issue had been reached by consensus among all the Member countries, including the US, as reflected in the fourth Draft Agricultural Modalities text of December 2008, which was however, repudiated later on by the United States.

- (15) What are the flaws and inherent defects within the AoA? What should be the ideal definition of the ERP?

Subsidies have to be calculated according to the current market price, either domestic or international. Ideally, ERP should be linked to the last year's average domestic or international prices. However, in keeping with the rest of the AoA, an average of the preceding three years could also have been incorporated in the AoA. In the Green Box, paragraph 7 of Annex-2, which deals with the government financial participation in income insurance and income safety-net programmes provides a benchmark of the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry. The question, therefore, is, why is there a floating benchmark in this case while there is a fixed benchmark of 1986–1988 for calculating the fixed ERP? The floating benchmark had been inserted in paragraph 7 because it addresses the concerns of the developed country farmers and without it the provision would have been impracticable. A similar floating benchmark should have been there for ERP while determining the domestic support.

- (16) In the Uruguay Round why did India commit to zero AMS, thereby limiting itself to provide support only up to the de minimis level of 10%?

The Uruguay Round was structured on the basis that certain countries had existing trade distorting programmes as on 1 January 1995, which were to be subjected to reduction commitments in the Uruguay Round and then subjected to further phasing out in the subsequent reform process under Article 20. The countries, including India, which did not have trade distorting support programmes on 1 January 1995, did not get an entitlement to start such trade distorting programmes afresh and thus their domestic support was bound at zero AMS levels. This was the case for almost all developing countries, except perhaps sixteen or so countries. India's policy for the public distribution system

is a Green Box measure but should the subsidies calculated according to the Amber Box methodology exceed the de minimis level, they become an Amber Box subsidy, for which India does not have an entitlement. This is the result of the faulty linkage drawn between the public stockholding programme in the Green Box and the Amber Box subsidy calculation methodology. In 1995 there was no immediate apprehension of India breaching the de minimis limit although as I have mentioned Ambassador Zutshi did point it out to the then DG and the other Member countries.

- (17) Will changing the denomination of the currency mandated in the notifications to the WTO be of any assistance to India on this issue?

If you do not provide for inflation, a developing country would not be able to provide for a public stockholding programme of reasonable proportions to feed its poor and support its low income and resource poor farmers, while staying within the de minimis levels. This is the case not only with India but also with a large number of developing countries, which have public procurement and stockholding programmes similar to India. Changing the denomination may help somewhat but the best solution is to tackle the issue headlong and in an honest manner. Already countries like Iceland, Ukraine, Tunisia, and Jordan have notified to the WTO that without inflation adjustment, they cannot abide by their overall domestic support commitments in Agriculture.

- (18) In July, 2014 when India made its stand to block Trade Facilitation until a permanent solution on food security was found, why were there only a handful of countries supporting India? On such an issue one would expect wider support at least from the developing countries.

The support articulated openly in the WTO by developing countries, often does not really reflect the support enjoyed by an issue. This is because the ability of many poor countries to voice their views is circumscribed by factors of real politik.

- (19) What is going to be the way forward, after reports of a bilateral breakthrough between India and the United States on this issue?

This matter should get sorted out in the specially convened General Council meeting.

- (20) On reading the Bali decision closely, it appears that there was no major ambiguity on the duration of the peace clause. What did India get out of the diplomatic coup with the United States?

I agree, the intent was to continue with the peace clause till a permanent solution were found. The due restraint clause in the Bali Ministerial Decision could have mentioned, that the peace clause would continue till 2017, but it was not so mentioned. Instead, it mentioned that in the interim, till a permanent solution were found, it would continue.

The 2017 benchmark was introduced only to give an impetus to the negotiations. This was the Indian interpretation, however, the United States seems to have informally argued that this was not correct and the peace clause was going to expire in 2017.

- (21) The issue on food security has recent been highlighted due to the implementation of the National Food Security Act. If India is going to spend nearly USD 22 billion on food security in the coming years, will the existing peace clause help India?

One must be very clear that there are paragraphs 3 and 4 separately in the Green Box dealing with public stockholding for food security purposes and domestic food aid respectively. Paragraph 4 speaks of domestic food aid which is not subject to any restrictions except the criteria which the national government is entitled to fix. Therefore, you may charge any price for the foodgrains from people who are poor or malnourished. You may even charge zero price and that would be compatible with the AoA. From the USD 22 billion, around USD 12–13 billion comes from domestic food aid which should be excluded immediately automatically. The remaining USD 9 billion calculation is arrived at after using the 1986–1988 reference prices. Developing countries have had massive inflation since 1986–1988. Nigeria has had more than 1000% inflation since then. India has had 650% inflation from 1986–1988 to 2012. If you take the updated cumulative inflation figures between 1986–1988 and 2014, it is close to 670%. While making these calculations of subsidies, as I mentioned earlier, inflation must be accounted for and an unrealistic and impractical ERP will lead us completely astray.

- (22) What and when would be the permanent solution to this issue?

That is for the Member countries to decide. However, any permanent solution must be realistic and practical, fully addressing the concerns of developing countries like India.

2.3 Interview with A. Jayagovind

Biographical Note: A. Jayagovind is an Indian jurist in the field of international trade law, presently Visiting Professor at the National Law University, Delhi, and formerly Professor of International Trade Law at the National Law School of India University, Bangalore (NLSIU) and administering the Ministry of Commerce Chair on WTO at NLSIU.

- (23) What is your opinion on India's stand in the Trade Facilitation negotiations which has received criticism within and outside India?

India's stand is 100% justified. Within India there is no strong opposition, but, outside India, it is expected, but it is

surprising that India did not get sufficient support even from other developing countries.

- (24) What was the reason that initially only few countries like Venezuela, Bolivia etc. supported India even though this proposal was initiated in the WTO as a G-33 proposal?

International media reports that India has emerged as a major food grain producer and exporter which is building up huge stocks. The concern for developed countries is that India might start selling this huge stock of food grains in the international market and destabilize the market. The major focus of the India programme is food security, even though there are some incidental market support elements. The administration of this programme is not ideal, and subject to politics. Decisions on how much food to produce and what to produce may be to some extent distorted. There have been media reports over spoilage and improper storage of food grains. However, even though we may admit that the administration of the scheme is not ideal it does not take away from the justification of the scheme. Malnourishment is still rampant in India, and India requires this scheme.

- (25) In the Bali Round in December, 2013, the decision was to reach a permanent solution for food security by 2017; but in July 2014, why did India demand a permanent solution by end of 2014.

In my view the Bali decision does not refer to 2017. It states that till a permanent solution is found, the peace clause will continue. That means, India can continue with its existing policy as long as it does not increase its food stock to more than what was prevailing in December, 2013. Taking into account India's new policy to universalize food security system, India may have to procure more food stocks, which would automatically take away protection from the so-called peace clause in the Bali Decision. This would make India vulnerable in the WTO.

- (26) What is your opinion on the proposals to amend the AoA?

There is a strong case to amend the AoA. The villain of the piece is the 'fixed reference price' which was defined as the average of the price prevailing in 1986–1988. There is absolutely no justification for fixing the particular fixed ERP in AoA. Examining the legal basis, we see that public stockholding for food security purposes is explained in paragraph 3, Annex-2 of the AoA, which is exempt from the reduction commitments. Paragraph 3 has to be read with foot note 5 to Annex-2. Paragraph 3 entitles Members to procure food grains from the market at the market price. The idea seems to be to allow building a buffer stock, in affluent countries, for security against contingencies. This does not have a welfare angle and is a recognition that buffer stocks may be required as agriculture is subject to climatic vicissitudes. Footnote 5 of Annex 2 is specifically a footnote to paragraph 3, which provides an alternative welfare proposal. This indicates that the

framers understood that paragraph 3 by itself would not allow states to cater to weaker sections of society which may not be required in rich countries, but is needed by a poor country. Therefore it allows governments to procure goods at administered prices and distribute them at less than market prices. In such circumstances the difference between administered price and ERP should be accounted for. It should be noted that footnote 5 refers only to ERP and not fixed ERP. Fixed ERP is referred to in paragraph 9 of Annex-3. To read fixed before ERP in foot note 5 is wrong textually, contextually, and teleologically.

To read fixed ERP, in footnote 5 to paragraph 3 of Annexe 2, which specifically deals with food security programmes, the relevant food security programme must be characterized as a market support programme which is dealt with in Annexe 3. Footnote 5 to paragraph 3 of Annexe 2, provides that the difference between the administered price and the ERP must be accounted for. The reasoning being that the trade distortion cause by a welfare measure should be accounted for in AMS calculations. However, the basic rationale of the provision is about ERP, which is contemporary international market price. The theoretical justification being that if there is an open market policy for agricultural products, the domestic price would stabilize at international price. Therefore, the subsidy given by a government can be calculated by finding out the difference between the ERP and the administered price. There should not be a problem for India, if ERP is equated with contemporary international price. The issue comes from the superimposition of fixed ERP in Annexe 3. India's food security programme cannot be characterized as a market support programme. In the food security programme, the market support is only incidental, which cannot vitiate its essential character. The Food Corporation of India is supposed to procure only that amount of foodgrains required to feed the Indian population.

Footnote 5 to Annexe 2 should be completely detached from market support price and fixed ERP under Annexe 3. This leads to the question, that what is then the purpose of Annexe 3. There can be market support programmes independent of food security programme. For example, in India there is a MSP programme for commodities such as jute, cotton, and sugarcane which are important from an economic point of view but would not be included in a food security programme.

Food security proposals are already exempt from reduction commitments under Annexe 2. Therefore, from a legal standpoint, the G-33 is only re-iterating the existing scheme.

- (27) There has a recent press release that US has agreed to support India to extend the peace clause in the Bali declaration as long as the permanent solution is not found.

This is the continuation of the status quo. Please note that the decision-making process in WTO is based on consensus. Whether permanent solution will ever be found is a question

to everyone. I can only say we should exempt all payments made to food security programme, which is eminently reasonable thing. Food security is the most important thing, which is the most basic need for the poor people.

- (28) Has the stalling of the trade facilitation negotiations impacted the future of the multilateral trading system?

There have been very few significant developments since the Doha Round of negotiations started in 2001. Trade facilitation was one of the issues in the Doha Round. After twelve years of negotiation, the result has only been the conclusion on Trade Facilitation Agreement which is not substantial. It is like digging a mountain to catch a mouse. Trade facilitation has procedural aspects which may help developing countries, but the WTO system will not be strengthened because of the implementation of the Trade Facilitation Agreement; it is too small a measure.

2.4 Interview with T.S. Vishwanath

Biographical Note: T.S. Vishwanath is the Principal Advisor, APJ-SLG Law Offices, New Delhi. Vishwanath headed the WTO Trade Policy Division at the Confederation of Indian Industries, the leading industry body in India.

- (29) What is your opinion on India's stand in the Trade Facilitation negotiations?

There has not been a problem on India's stand on Trade Facilitation. The issue is about India's position on food security. India from the beginning has always been supportive of Trade Facilitation Agreement. However, the WTO is not about single agreement; it is about a bouquet of agreements. So, what India is trying to do is to bring the balance about what it gets out of the Trade Facilitation. Trade facilitation definitely helps the industry, but food security is a livelihood issue which needs to be addressed.

- (30) India said that it was looking for a solution by end of 2014. Has India been isolated because of its position?

To begin with, there was no isolation as such. There were other countries which were supportive of India's stand, but India was the only one they were talking about. The issue of food security is not India's proposal alone, it was a proposal of G-33 and India has taken a lead in taking this issue further. There are several issues which are extremely important. On food security, we had agreed on the peace clause, but when we had a relook at it we realized that once trade facilitation is done and if nothing happens on food security, then India would be left high and dry. The position that India took was absolutely legal and I don't think it did anything wrong by taking up this position. Bali was all about a negotiating balance.

- (31) Has India's position at the WTO on this issue been affected by the implementation of the NFSA?

At the WTO we are trying to get global rules in place, so that the developing countries such as India can continue to help resource poor farmers. In any way such issues will be directly related to the national objective of trying to help resource poor farmers. This is a primary aim for a developing country. Therefore I don't think that we are anyway different from where we were earlier. I think we are very much in line with the positions which we have been taking since 2001. Our whole focus has been on livelihood security when it discussed issues on food security.

- (32) What are your views on the peace clause in the Bali Declaration and the recent breakthrough which has been reported between India and the United States on this issue?

There was an ambiguity in the peace clause and we thought it was a grey area. India wanted a single interpretation on the peace clause and that is what it has sought to achieve. With the recent India-US breakthrough it seems very much possible that the other WTO Members agree on this issue and we are able to move forward very fast. Going forward India's strategy should be to continue keeping its interests at the core of the negotiation and balancing market access issues with livelihood concerns.

- (33) To address food security, instead of the present price subsidy mechanism, could India have considered an

alternative approach of direct cash transfers to the needy. What is your view on this?

What India is negotiating present at the WTO and what we should negotiate at the WTO is the policy space. The means of implementation can be derived from the policy space which will be available. What we are looking at is the amount of subsidy we can provide to a person.

3 CONCLUSION

All the interviewees emphasized the importance of the WTO system. Although India has always been in favour of the Trade Facilitation Agreement, it has sought to protect its national interests by bringing the issue of food security and public stockholding requirement to the forefront of the ongoing negotiations at the WTO. For the time being, a breakthrough in the WTO negotiations appears to be close, however, there is little clarity on the timing and the nature of the 'permanent solution.' There is an overwhelming view that that the 'peace clause' on public stockholding for food security is going to stay.

Author Guide

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