

Agriculture Subsidies under WTO Order: A case of Developing Nations with reference to India and Food Security Act

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ABSTRACT

Subsidies are the legitimate support by the government which may be financial or non-financial (policy oriented) which benefits the producers, exporters, consumers and other entities in the country. Subsidies are difficult to identify in a market setup through its effect rather to be understood through its theoretical definitions. Subsidies have the capability to provide support (benefit) to its receivers and at the same time they may affect the non-receivers of it i.e. other market players and more specifically the foreign players in case of international trade, either directly or indirectly for they may have the effect of undermining the protections like tariff concessions and quotas and distort the market access and sometimes they may also create wasteful expenditure and diversion of products and resources. Agriculture is a politically sensitive issue for almost all countries thereby also the agriculture subsidies. Hence the inevitability to deal with agriculture subsidies in the trade regime of WTO which preambles itself as trade liberalizing institution arose because agriculture subsidies invite protectionism in the international trade and may have the effect of restricting market access and trade distortion. Population in developing countries depends largely on its food security policies of governments and large chunk of them gets employment through agriculture in which agriculture subsidies also play a major role to support them. On the other hand, the developed world fears of the dumping of agriculture products from the developing countries as they have been able to produce more of late though it continues to give large farm subsidies to its producers itself. If no balance is achieved among the countries for the regulation and use of agriculture subsidies it is likely to be set back to WTO's aim of liberalised trade and market access in agriculture and it would have its repercussions and implications on the trade relations with respect to other trade products as well. Paper seeks to determine the implications of the whole scenario for developing nations especially to India and suggests upon the same.

INTRODUCTION

WTO governed the agricultural subsidies through some of the significant provisions of GATT for a period of four decades though not with specific treatment of them but within the provisions relating to subsidies (i.e. Article XVI, II, VI, XI and III etc.) and some later developments and amendments also happened in the form of Working Party Reports 1950, Review Committee (1954-55), endeavour to determine an 'illustrative list' of obligation violating subsidies under Article XVI of GATT in 1960s and later "Subsidies Code" in the Tokyo Round. These existing provisions of GATT were felt inefficient, incomprehensive and subject to manipulations to cover agricultural subsidies and issues related therein as is felt within the jurisprudence of four decades before the Uruguay Round. Uruguay Round of Negotiations (1986-1994) gave rise to Agreement on Agriculture (AoA) and Agreement on Subsidies and Countervailing Measures (SCM Agreement) which deal with agricultural subsidies more concretely through a defined framework to liberalizing the agriculture sector.

Agreement on Agriculture(AoA) endeavours to liberalise agriculture trade by regulating upon Market Access, Domestic Support and Export subsidies. On the other hand, SCM agreement provides a measure of countervailing duties to offset the effects of market distorting subsidies or restricting them. There are subsidies identified within the AoA and SCM agreement which are permitted, prohibited and compliance requirements are also provided. Agreement on Agriculture permits domestic subsidies in the form of development subsidies (Article 6.2), green box subsidies (Annex 2), blue box subsidies (Article 6.5), subsidies within de minimis (Amber Box-Article 6.4) by the countries. De minimis support for developing countries is permissible to the level of 10% of the total value of agricultural production in both product specific and non-product specific case, which is set at 5% in case of the developed countries.

There are certain exemptions provided during implementation period of the AoA (Article 13- Peace Clause) in form of due restraint by members before initiating investigation for the purpose of countervailing measures under the SCM Agreement. Even after the expiry of peace clause, countries have not complied fully with the modalities under the Agreement on Agriculture and continue to give a great amount of subsidies to its producers, consumers etc which distorts trade and market access in the agriculture sector at the international level. In the past decade there have been significant changes(increase) in the export of agricultural products from the developing countries (e.g. India) and increase in the capacity to produce, though food security to the large population is still an achievable aim for the developing countries.

There have been various rounds of Ministerial Conferences after these agreements i.e. Buenos Aires, Nairobi, Bali, Doha to reach on a consensus as to the modalities. Researcher is required to find out what are the (are there?) inherent vices that are involved in the text and implementation of these agreements to the utmost effect that even after several ministerial conferences there have been no general consensus reached among the members. There are various noteworthy reasons (to be find) from the developing countries which may reflect upon their unwillingness to come under the regulatory umbrella of WTO with respect to agricultural subsidies even after passing of two decades after these agreements came into light, they are to be seen that what content they carry as their justification to show reluctance to these agreements and threshold limits therein.

Developed countries like US, EU give direct payments support to their producers under green box whereas developing countries are not able to give such a huge direct payment support to their producers. Support given by the developing countries mostly required to be within the de minimis levels. When they try to give more support to its producers they do cross this limit of 10% and become prone to the actions under the WTO order.

India has passed the National Food Security Act (NFSA) which is also under attack by the developed countries and what are their concerns relating to the policies and legislations of the developing countries with respect to food security and public stockholding is a matter of finding. Indian government has also proposed to give MSP(Minimum Support Price) to

farmers upto 150% of the crop rate and also the policy of Crop Insurance to the farmers which is also going to be under attack. India had also denied in the beginning of Trade Facilitation Agreement to ratify it unless the concerns of developing countries are addressed to a permanent solution.

Stockholding of products, direct payments from the government etc as are laid down under Annex 2 of the Agreement on Agriculture (AoA) have a significant bearing upon the subsidies as it allows the subsidies meeting the required criteria that is provided there in (Green box measures) and de minimis requirements. Researcher is also required to unearth the concerns and reasons of the developing countries that come in conflict with interests of both or what are the interests and legitimate concerns of the developed countries and to suggest possible solutions.

AGRICULTURE SUBSIDIES AND THE WTO REGIME ON AGRICULTURAL SUBSIDIES

Definition of subsidy is provided under the SCM agreement which is constructed to check whether in a situation subsidy exists or not though it may be noted that the definition of subsidy is not provided in AoA and same was iterated by the appellate body in Canada-Measures affecting the importation of Dairy Products¹. Article 1.1² of SCM agreement defines that a 'subsidy' exists if: there is a financial contribution by a government or any public body within the territory of a Member; there is any form of income or price support in the sense of Article XVI of the GATT 1994; a benefit is thereby conferred. These three parameters shall exist satisfied for existence of a subsidy under AoA also³.

GATT 1994 does not explicitly recognise 'agriculture subsidies' but offers a regulatory treatment under the umbrella of 'subsidies'. GATT articles II, III, VI, XVI, XXIII which lay down the content for regulation of subsidies are discussed below:

Article II:2(b) of GATT provides that any contracting party may impose antidumping or countervailing duty if it is consistent with Article VI as an exception to the bound tariffs i.e. if the subsidisation causes or "threaten material injury to an established domestic industry or is such as to retard materially the establishment of a domestic industry"⁴ but the duty shall not be more than the estimated subsidy or bounty and duty shall not be imposed unless otherwise there is an investigation, but it is not clear about the investigation agency or authority and the procedure to be followed for the investigation. Article III:8(b) provides that subsidies exclusively to the domestic producers are allowed as an exception to the national treatment obligation within the conditions mentioned there in the same article. This clearly lays down that domestic subsidy is treated leniently within the GATT system. Article XVI of GATT

¹ Appellate Body Report, Canada – Measures Affecting the Importation of Dairy Products ("Canada – Dairy"), WT/DS103/AB/R and Corr.1, WT/DS113/AB/R and Corr.1, adopted 27 October 1999, para. 85.

² Article 1.1. Agreement on Subsidies and Countervailing Measures

³ United States – Tax Treatment for "Foreign Sales Corporations" ("US – FSC"), WT/DS108/R, adopted 20 March 2000, as modified by the Appellate Body Report, WT/DS108/AB/R, para. 7.150.

⁴ Agreement on Agriculture. Article VI:6(a)

contains a reporting requirement that in any case a contracting party provides or maintains any subsidy which operates as to increase export or reduce imports, it is required to “notify the CONTRACTING PARTIES in writing of the extent and nature of the subsidization”⁵ and other necessary implications incidental thereto. If serious prejudice is determined (again it is not provided who will determine the serious prejudice and what shall be the procedure) then parties may negotiate⁶. Article XVI:3 and XVI:4 restrict the use of export subsidy for products other than primary products (“any product of farm, forest or fishery, or a mineral, in its natural form or else processed to the point customarily required for it to be marketed in substantial quantities in international trade”⁷) and for primary products “shall not be applied in manner which results in that contracting party having more than an equitable share of world export trade in that product”⁸. A large chunk of GATT disputes revolved around these provisions until the commencement of Uruguay Round Agreements namely Agreement on Agriculture (AoA) and Agreement on Subsidies and Countervailing Measures (SCM).

AGREEMENT ON AGRICULTURE (AoA)

Agreement on Agriculture deals with agriculture subsidies and their regulation to maintain the flow of agricultural goods without jeopardising the interests of other members to establish a fair and market oriented agricultural trading system. Article 1(f) of AoA provides implementation period means the six-year period commencing in the year 1995, except that, for the purposes of Article 13, it means the nine-year period commencing in 1995. It mainly covers the regulation of agriculture subsidies in three heads namely Part III on market access; Part IV on domestic support (subsidies) and Part V on export subsidies.

Market Access (Part III)

Market access means the overall environment of laws, permissions and restrictions provided to the exporting country for its products’ entry in the market of importing country and its flow inside the market of the importing country. Part III Article 4 of AoA deals with the requirement that non-tariff measures which were required or agreed upon during the Uruguay Round of Negotiations to be converted to the ordinary custom duties (tariffication) shall not be resorted by the members to the agreement except as otherwise provided for in Article 5 and Annex 5. Under the Agreement on Agriculture developed countries were required to reduce the tariffs by an average of 36% in equal steps over a period of six years, whereas developing nations were required to make average tariff cuts to 24 % over a period of 10 years. Several developing countries also used the option of offering ceiling tariff rates in cases where duties were not “bound” (that is, committed under GATT or WTO regulations) before the Uruguay Round. And that is why developing countries do not have the Special Safeguards to save themselves from the import surges and price fluctuations in the market. The non-tariff border measures which were required to be converted into tariffs are set out in

⁵ Agreement on Agriculture. Article XVI:1

⁶ Agreement on Agriculture. Article XVI:1

⁷ Agreement on Agriculture. Article XVI

⁸ Agreement on Agriculture. Article XVI:3

a footnote to Article 4 of the Agreement on Agriculture. They include quantitative import restrictions, minimum import prices, variable import levies, discretionary import licensing, voluntary export restraints and non-tariff measures maintained through state trading enterprises. Market access is eased through the tariffication of the non-tariff barriers to trade so that the Country Schedules (annexed to GATT 1994 as they are agreed upon by the members and are effective to be a part and parcel of WTO/GATT) due to transparency and responsibility brought through these measures.

Domestic Support (Part IV)

Domestic support or domestic subsidies are regulated by Articles 6 and 7 under the AoA along with Annexes 2, 3 and 4. Domestic support is classified (in WTO non-legal terminology) in three boxes to understand their regulation under the agreement namely; 'green box' (Annex 2), 'blue box' (Article 6.5)⁹ and 'amber box'.

GREEN BOX:

Green box subsidies are permitted under the Agreement on Agriculture if they complete the policy-specific criteria that is provided in Annex 2 and there is no limit on these kinds of subsidies. Generally, it is considered that these kinds of subsidies don't have trade distorting effect (or minimal) as they are not directly attached with the effects on production and restricting or distorting the export and (or) import of a product. These kinds of subsidies must be government-funded (not public funded or involving a transfer from consumers) and must not violate price support¹⁰. These kinds of subsidies are permitted for research and development, direct payment to producers, food aid and food stockholding, pest and disease controls, support for training and information, infrastructure etc¹¹.

BLUE BOX:

'Blue box' subsidy refers to a subsidy provided by the government for the production-limiting programmes by imposing production quotas or requiring farmers to set aside part of their land. Blue box subsidies are not covered in the reduction commitments to domestic support by Article 6.5 if certain conditions that the amount must be based on fix area and yields or not be more than 85% of the base value of production or livestock payments are made on a fixed number of head.¹² The support in the form of criteria laid down under article 6.5 is also exempt from the calculation of (or to be included under) the Total AMS for that relevant year.

AMBER BOX:

Amber box subsidies are prohibited as market distorting subsidies which do not fall under either of the two boxes discussed above. If they fall beyond de minimis limits provided under Agreement on Agriculture, they are covered under amber box as trade distorting. Product specific domestic support threshold requirement (de minimis percentage) is set at 5% of that Member's total value of production of a basic agricultural product during the relevant year

⁹ Agreement on Agriculture. Article 6.5

¹⁰ Agreement on Agriculture. Annex 2

¹¹ *ibid.*

¹² Agreement on Agriculture. Article 6.5

and in the case of non-product specific support de minimis percentage is set at 5% of the value of that member's total agricultural production. This de minimis requirement is 10% in both the cases for a developing nation¹³. Government support involved in the subsidies falling under this category of subsidies if it fulfils criteria laid down under Annex 2 shall not be counted in the Total Aggregate Measurement of Support (AMS)¹⁴.

*“Aggregate Measurement of Support mean the annual level of support, expressed in monetary terms, provided for an agricultural product in favour of the producers of the basic agricultural product or non-product specific support provided in favour of agricultural producers in general, other than support provided under programmes that qualify as exempt from reduction under Annex 2 to this Agreement...”*¹⁵

Blue box subsidies are Amber box subsidies but as they limit production and don't increase with the increase in production, they are permitted under the AoA.

PEACE CLAUSE or due restraint clause (Article 13) provided that during the period of implementation of Agreement on Agriculture, subsidies meeting the criteria within it were saved from the actions that could be taken under the GATT 1994 and SCM Agreement and members were required to observe due restraint in initiating an investigation or using WTO dispute settlement mechanism though except green box subsidies other domestic support and export subsidies were countervailable if serious injury is proved. This clause expired in 2004 after the expiry of implementation period. Though it was again taken into effect and agreed upon in Bali Ministerial Conference in 2013 extending it to 2017. And now after the expiry of this arrangement agreed by the members the immunity of Peace Clause is not there in observance.

EXPORT SUBSIDIES (PART V):

Export subsidies are dealt with under Article 8,9,10 and 11 of the Agreement on Agriculture. Article 8 provides that each member shall be bound by its commitments made in the schedule (section II Part VI of schedule¹⁶) and shall not provide subsidies more than what is agreed (for the products or group of products) and subsidies provided must be in conformity of the Agreement on Agriculture. Article 9 provides for export subsidy commitments. “Under Article 9.2(a) of the Agreement on Agriculture, each WTO Member must specify in its Schedule of Commitments the maximum level of budgetary outlay and the maximum quantity exported by product on an annual basis”¹⁷. Article 10 contains various provisions to prevent circumvention of export subsidy commitments.

¹³ Agreement on Agriculture. Article 6.4

¹⁴ Agreement on Agriculture. Article 1(a)

¹⁵ Agreement on Agriculture, Article 19a)

¹⁶ In Section II of Part VI of the Schedules maximum annual expenditure and volume levels are established for twenty-three different product categories, such as wheat, coarse grains, sugar, beef, butter, cheese and oilseeds

¹⁷ *Dispute Settlement* (United Nations, New York and Geneva 2003)

<http://unctad.org/en/Docs/edmmisc232add32_en.pdf> accessed 19 August 2018.

AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES (SCM AGREEMENT):

SCM Agreement provides a regulatory framework on subsidies by laying down which subsidies are permitted, and which are not and provides an option of countervailing duties to be exercised by the affected parties to offset the effect of subsidy/bounty (after the countervailing investigation) which creates market distortion and thereby endeavours to maintain the free and liberalised trade. During the implementation period of Agreement on Agriculture the export subsidies which conform to AoA are not prohibited under SCM agreement though they may be countervailable. Domestic support subsidies which conform to the AoA are not actionable multilaterally though they may be subject to countervailing duties. Green box subsidies are not at all actionable during the implementation period multilaterally or through countervailing duties. After the expiry of implementation period the provisions of SCM agreement shall apply to agriculture subsidies subject to the provisions of AoA as provided under Article 21 of AoA.

SCM Agreement defines the term ‘subsidy’ under Article 1.1(already discussed in the starting of the chapter) and concept of ‘specificity’ is introduced in the form of Article 2 (only those subsidies which fall under the criteria of specificity would be subject to the SCM agreement). Within the concept of specificity, it contains targeted subsidies that confer benefit to the receivers specifically i.e. if government targets a company (or companies), producer(s) in specified parts of its territory, sector(s) of an industry, export goods or goods using domestic inputs for subsidization. SCM Agreement provides for two categories of subsidies; ‘prohibited’ and ‘actionable’. Article 3 provides for prohibited subsidies; “export subsidies” and “local content subsidies” i.e. subsidies contingent upon the export performance or use of domestic goods over imported goods respectively. Actionable subsidies are not prohibited however they may fall under the multilateral dispute settlement system or countervailing duties. A subsidy is actionable when there is **injury** to the importing country (to the market of importing country) or **serious prejudice**¹⁸ caused to it (i.e. export displacement etc.) or **non-violation nullification or impairment** of the benefit that was expected to be conferred due to the reduction in bound tariff reductions or lesser quota restrictions etc under Article II of GATT 1994¹⁹. Article 5 on actionable subsidies of SCM Agreement is subject to the Article 13 of the Agreement on Agriculture.

Article 8 of the Agreement states a new category of ‘Non-Actionable Subsidies’ which are not specific within the meaning of Article 2 and subsidies which are specific but covered under paragraph 2(a), 2(b) and 2(c) Of Article 8; assistance for research and development, assistance to disadvantaged regions within a regional development framework, “assistance to promote adaptation of existing facilities to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on firms”²⁰.

¹⁸ SCM Agreement, Article 6

¹⁹ SCM Agreement, Article 5

²⁰ SCM Agreement, Article 8

Part V of the SCM Agreement requires the substantial and procedural requirement to be fulfilled mentioned therein before imposition of any countervailing measures. It requires the establishment of three things to make a case fit for the imposition of countervailing duties; subsidized imports, injury to a domestic industry, and a causal connection between the subsidized imports and the injury. Part I of the agreement shall be referred for the existence of a subsidy and specificity, and part V of the agreement shall be referred for the determination of the existence and amount of the benefit.

MINISTERIAL CONFERENCES AND AGRICULTURE SUBSIDIES:

Commitments within the Agreement on Agriculture are part of an ongoing process of negotiations and that is why there have been various subsequent ministerial conferences. Ministerial conferences have been fruitful to provide a platform for negotiations and they have also brought about the conflicts and concerns between the developing and developing countries over the implementation of the commitments over the agreements' provisions.

Doha Ministerial Conference was held from 9-13 November 2001 which laid down an agenda known as Doha Development Agenda (DDA). Aim of the Doha Agenda was to lower trade barriers and improving the trade prospects of developing countries through seeking the compliance with consensus by the members on the implementation of agreements (i.e. AoA).

The issues of conflict between the developing and developed countries during the talks (with respect to agriculture) may be covered as; developing countries were mooting for the reductions in overall domestic support by the developed countries, self-designation of an appropriate number of special products, food security, public stockholding, special and differential treatment to developing countries by the developed countries by providing flexible market access to developing countries, greater time extensions to the developing countries to meet the compliance demands within the agreement on agriculture, Special Safeguard Measures to the developing countries to save themselves from the import surges and fall in prices, tariff simplification and cap on tariffs of developed country members.

Bali Package that was reached during the 9th Ministerial Conference in 2013 in Bali because it laid to the "peace clause". Peace clause (Article 13 of AoA) gave leeway to developing countries to comply with the threshold compliances up to a period of 4 years till 2017 and were free from WTO litigations within what is provided under Article 13. Bali Summit also concluded upon the negotiations on Trade Facilitation Agreement (TFA).

10th Ministerial Conference held in **Nairobi** in 2015. The biggest outcome of this, is the elimination of the farm export subsidies by developed countries from immediate effect and developing countries are required to eliminate export subsidies till the end of 2018. Developing countries are required to eliminate the support cover on agriculture exports through marketing and transport costs until the end of 2023. No decision on public stockholding and SSMs was reached. Most recently in 2017 11th Ministerial Conference held

in **Buenos Aires, Argentina** there were no outcomes on the issues of agriculture, public stockholding etc.

CONFLICTING INTERESTS BETWEEN THE DEVELOPING AND DEVELOPED COUNTRIES

US, EU and Japan are the biggest in terms of providing farm subsidies to its farmers. Developed countries had accepted 5% threshold limit within the amber box de minimis support which was not product specific due to which they are able to give subsidies to some specific products at a very higher level and then balancing it within the purview of overall 5% limit by decreasing it on other products²¹. US farmers has less number of farmers with large farm holdings which have the larger share and lobbying power to protect their interests on the other hand in the countries like India and China the average land holding to a farmer is approx. 1.5 hectares which makes the producer net buyer of food and they are not insulated to be get affected badly by import surges²². In developing countries most of the population is employed and dependent on agriculture sector as well as for food security. India and China presented a joint paper before the WTO prior to 11th Ministerial Conference urging developed countries for eliminating the most trade distorting subsidies i.e. domestic amber box support.

Developed countries give direct assistance to its farmers due to their large size of economy it lays a meagre burden on their GDP spending whereas developing countries do not have so much of financial resources and the direct financial assistance would amount to larger share of GDP as close as 14-16% and that is why developing countries has kept on demanding capping of domestic support of developed countries²³.

The external reference price used for the calculation of AMS is set at 1986-88 agriculture production of the country (in value) which does not imbibe within it the realities in the depreciation and strengthening of currencies with respect to US Dollars (Indian currency has depreciated to four times of its value in 1986 to now) due to which it shows that a larger amount of trade distorting subsidies beyond the limits of de minimis is provided by the developing countries (whereas in actual AMS in case of India would be negative). Developed countries like US and EU use the green box measures to provide the direct transfers to its producers decoupled from the production as in case there is no requirement of

²¹ Amiti Sen, 'Doublespeak of the rich at WTO' (*thehindubusinessline.com*)

<<https://www.thehindubusinessline.com/opinion/doublespeak-of-the-rich-at-wto/article9805927.ece/amp/>> accessed 17 September 2018

²² Eugenio Diaz-Bonilla, 'That Was Then, This Is Now: WTO And Agriculture The Rules of Global Trade Must Accept New Food System Realities' (*ifpri.org*, 2017) <<http://www.ifpri.org/blog/was-then-now-wto-and-agriculture>> accessed 19 August 2018

²³ Satya Ranjan Swain, 'Trade Externalities Of Agricultural Subsidies And World Trade Organization' (2009) 1 American Journal of Economics and Business Administration <https://www.peacepalacelibrary.nl/ebooks/files/AJEBA_Swain_Trade-Externalities.pdf> accessed 29 August 2018.

production to happen but in the case of developing countries which cannot provide these kind of transfers due to their resource chunk and size of the economies, they go for de minimis threshold to provide the subsidy on the production not more than 10%. Due to these policies of developing countries like minimum support price and food security remain to be clouded by the de minimis levels.

Developing countries are asking for the right to impose Special Support Measures to save their markets during the imports surges but still there has been no consensus on that issue as well though developed countries have a right to use special safeguard measures to protect their agriculture market because use of Special Safeguards is dependent upon the tariffication, so developing countries which exercised the option of proving ceiling instead of tariffication cannot exercise this. It was agreed during the 2013 MC to provide a Special Safeguard Mechanism (SSM) to the developing countries but nothing is progressed in that regard. Moreover, the developing countries became the parties to the AoA during Uruguay Round and accepted the compliance requirements according to their situation at that time in the prospect that it not going to pose challenges to them and even if that is so, everything would be resolved in the course of time and talks thereon.

The conditions have changed over the period of a decade that developing countries are producing more and having a larger share in the agriculture exports (WTO STATISTICAL REVIEW, 2018). And that is why they have been able to change the dynamics of the international trade in agriculture which also poses an apparent blow to the protectionist policies of the developed countries and which continues the conflict at the international level and it seen that the developing countries are hold responsible the developed countries for stalling the talks for consensus at ministerial conferences.

NATIONAL FOOD SECURITY ACT (NFSA), 2013 VIS-A-VIS AGREEMENT ON AGRICULTURE (AoA):

Developing countries have a huge dependence on agriculture for the assurance of food security to its people. National Food Security Act provides for the food security to the 75% rural and 50% of urban population came into effect on 5 July 2013. It is aimed to ensure rice, wheat and millets at rupees 3,2 and 1 respectively and 5 kg of food grains to per person per month to the priority households which is subject to be reviewed at every 3 years. It also includes the food grains equal to 35kg to Antodaya Scheme. It would require the procurement and distribution of large amounts (Public Distribution System, PDS) of food grains amounting to 63 million tonnes which is equal to the 30% of the amount of food grain production in the country, which would also attract the discipline of Agreement on Agriculture.

AoA permits the stockholding of food for the purposes of food security provided it is transparently done in the light of officially published guidelines and objective criteria and

“food purchases by the government shall be made at current market prices”.²⁴ Domestic Food Aid programmes are also permitted under the AoA.²⁵ If food grains are procured at a market price on lower than market price then this is acceptable within the AoA but where it is bought at a MSP (Minimum Support Price), it implies presence of subsidy and then AMS comes into picture to be considered which poses an issue to the NFSA. Even in the case of stockholding for food security purposes, it is required that the “difference between the acquisition price and the external reference price has to be accounted for in the AMS”.²⁶

More precisely, AMS comes into picture where the procurement is done at more than market price and when the food grains are sold at lower price than the domestic price and it becomes violative of the Agreement on Agriculture at the moment de minimis threshold limits are crossed as the NFSA and Antodaya Yojana provides 35 kg of grains to each eligible household it is unlikely that such amount is consumed every month by every household which is likely to be released in open market to distort market access and prices so the argument that the procured food grains are not released in open market but to targeted consumer does not hold its legitimacy and the ultimate aim of WTO is to liberalise trade.

India's base year notification (G/AG/AGST/IND) was denominated in Indian rupees (INR) but in the later time India has used an ERP (External Reference Price) in dollars to calculate AMS though AoA²⁷ states that in calculating current AMS the methodology that was used in the original notification shall be used. Because while using ERP in INR denomination the AMS shown is positive but using the dollar denomination in calculating AMS it shows it negative.²⁸ India may go for the seeking of the amendment of base year of 1986-88 to calculate export reference price and thereby AMS, though an amendment would not be easier or practical, rather than it would be more fruitful to go for the use of Article 18:4 of AoA which provides for review of the implementation of commitments taking in 'due consideration' the 'inflation' factor.²⁹ Moreover higher product specific de minimis level is also a good mooted point for the developing countries though it would pose another difficulty to agree upon what are the specific and essential food crops to be given more leeway whereas the solutions to the existing conflicts is still in deadlock.

²⁴ Annex 2 clause 3, Agreement on Agriculture

²⁵ Annex 2 Clause 4, Agreement on Agriculture

²⁶ Annex 2 Clause 3 Footnote 5, Agreement on Agriculture

²⁷ Article I(h)(ii), Agreement on Agriculture

²⁸ Sudha Narayanan, 'The National Food Security Act Vis-À-Vis The WTO Agreement On Agriculture'

[2014] *Economic & Political Weekly* <<https://www.researchgate.net/publication/291130173/download>> accessed 3 September 2018.

²⁹ Agreement on Agriculture, Article 18.4. In the review process Members shall give due consideration to the influence of excessive rates of inflation on the ability of any Member to abide by its domestic support commitments.

CONCLUSION AND SUGGESTIONS

Developing countries are legitimate in pressing their demand for the food security for its population and public stockholding because a large number of population depends on the agriculture and farming provides a huge employment that is why they demand for increment of de minimis threshold beyond 10% for some essential staple food grains so as they may provide greater subsidies to insulate the producers and consumers from the market changes due to intervention of foreign players by achieving self-sufficiency but, at the same time their legitimacy is marred by the fact that more than 20 years have been passed since AoA and developing countries have not been able to meet the requirements therein. Whereas developed countries also have concerns for the dumping of the food grains in their market by the developing countries who has also been accomplished with the growing of more agriculture produce though they themselves are the blatant violator and manipulator of the provisions, commitments and threshold limits to their own benefit and their capacity to give direct transfers to the producers. The WTO regime and ministerial conferences are tilted towards the end of subsidies which more likely distort free agriculture trade of late.

Due to the deadlock many bilateral and plurilateral agreements between the countries have emerged which have been helpful for them to an extent but not to an extent that they could have been if the uniform liberalised trade in agriculture products was agreed upon under the aegis of WTO as a multilateral face³⁰. Developing countries are going to be benefitted more if the liberalised trade in the field of agriculture is effective and would also increase their GDP.³¹ More to it is that, the liberalised trade would also increase the real factor returns for the poorest households since farmers and low-skilled labour makes it to the large majority of poor in developing countries it would also curb inequity and poverty.³²

In the case of 5% overall de minimis limit for developed countries either it may be amended to reduce it to product specific or the support may be capped to a specific percentage which would reduce the manipulation of support in favour of few products significantly i.e. cotton, rice etc. by developed countries.

Peace clause relaxations are extending till 2020 (MC12) after 2017(MC11) to give more leeway to developing countries for the compliance though it is not wise to keep increasing the period instead they may agree for the phase wise reductions in their AMS. When peace clause effect is terminated then developing countries may also go for the litigations and developed countries and vice versa if interests are affected. Moreover, the use of green box subsidies more to their benefit and development subsidies is also a way for the developing countries.

³⁰Kym Anderson, *Finishing Global Farm Trade Reform: Implications for Developing Countries* (1st edn, University of Adelaide Press 2017)

³¹Kym Anderson, *Finishing Global Farm Trade Reform: Implications for Developing Countries* (1st edn, University of Adelaide Press 2017)

³²ibid.

As in case of India it has started giving direct cash support to its farmers by seeding their bank accounts to Aadhar is such an example.

Raising the agriculture investment in the agriculture sector such as rural roads, telecommunications, e-banking and farm credit would bring about the difference between farm-gate and market prices of outputs be lesser in the domestic market also³³. Moreover the rural poor who is a farmer or low skilled labour are the net buyers of food would be affected with the food import restrictions, which would benefit the net sellers of food but at the expense of the net buyers of food. That is why Trade Facilitation Agreement (TFA) and lesser or liberalised import norms in agriculture trade is ultimately going to benefit the poor at last as it will also allow trade to subsume the seasonal fluctuations in domestic production and to lower the variance of international food prices. So, it is needed to be realised that the free agriculture trade is beneficial to all though the protections are also necessary and that is also covered under WTO regime. Developing countries are required to establish resilient and effective infrastructure to make good the food demands of its people which also subsumes the free trade principles of international trade.

WTO Regime is complementary of the free agriculture trade at the international level which would require give and take from both south and north but ultimately which is going to be beneficial for both. Agriculture Committee met on 16 July 2018 to develop a roadmap for further negotiations and discussed upon the new submissions from US, India & China, Paraguay and Uruguay, the G33 Group and some members of Cairns group. *“With hard work, increased flexibilities and enhanced engagement, creativity will flourish, and we should make progress towards an outcome at MC12 and/or beyond,”* said the Chair³⁴.

³³Supra Note.32

³⁴ 'Members Seek to Prepare Roadmap For Agriculture Talks' (www.wto.org, 2018)

<https://www.wto.org/english/news_e/news18_e/agcom_23jul18_e.htm> accessed 15 September 2018