WTO Upside Down
Trade Facilitation vs Agriculture

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The Indian decision to block adoption of a decision on trade facilitation at the World Trade Organisation has been portrayed as “short-sighted”. If truth be told, long-pending proposals for reforming the Agreement on Agriculture were being sidelined, while interested parties were pushing ahead with the new agenda on trade facilitation. A clearer understanding of the issues in agriculture vs the issues in trade facilitation would enable a better appreciation of what is at stake.

“A ripe pear ready to be plucked” at the World Trade Organisation (WTO) is being delayed because of India. The ripe pear is the 21st century version of the “Open Door Policy” embodying the new Trade Facilitation Agreement (TFA). The United States (US) and its partners in the industrialised world have invested considerable negotiating capital in the TFA since 1996. Their new trade narrative of global value chains (GVCs) as being vehicles for enhanced market access in industrial goods and services in developing countries will hinge on how rapidly the TFA is implemented.

But India has come in their way because it first wants reform of archaic rules in the WTO’s Agreement on Agriculture (AoA) before the adoption of the Trade Facilitation (TF) protocol to commence implementation of the new agreement by July 2015. The stand-off between India and the US over agriculture has created an impasse for the time being.

It symbolises, in some ways, the battle between the unfinished reform in the rules and disciplines on trade in agriculture, and attempts to foist a new trade agenda through the comprehensive TFA. It exposes the outright opposition from the US to reform the Uruguay Round (UR) disciplines in agriculture which accommodate decades of trade-distorting policies and practices by the rich countries. (The UR of negotiations of the General Agreement on Tariffs and Trade was conducted during 1986-93, finalised and signed in 1994 and came into force on 1 January 1995 under the new WTO.)

The UR disciplines brought agriculture into the multilateral trading system negotiations. The AoA, which incorporated the UR rules, is a special arrangement worked out neatly between the European Union (EU) and the US. The two largest farm subsidisers wrapped up the AoA in what is called the 1993 Blair House Agreement after they resolved their differences on export subsidies and what they gave as domestic support. They sheltered their billion dollar domestic subsidy programmes under income support/income insurance/income loss compensation programmes, in the supposedly non-distorting Green Box subsidies, which were exempted under WTO rules from reduction. (In the WTO, what is given as a producer subsidy is considered as distorting and is required to be reduced or eliminated while what is given as income support is considered non-distorting and is not required to be reduced.)

**Boxes of Subsidies**
The EU, the US, and other industrialised countries offered what are called outright trade-distorting (producer subsidies) through the Amber Box, and...
production-limiting payments in Blue Box. The US also provides what are called counter-cyclical payments to support their farmers when prices drop below a targeted price in so-called New Blue Box (which was agreed in the Doha negotiations but the disciplines are not finalised). In addition, the two trade majors continue to provide export subsidies and export credits (which are prohibited under the Agreement on Subsidies and Countervailing Measures) to their farmers who would dump their products. Little wonder that the cotton glut created by the US, and the dairy and butter mountains by the EU have created enormous adverse effects on other farm exporting countries. The US understood enabling them to continue to use tariff barriers such as opaque customs duties, high tariffs, and tariff peaks for farm products. The EU and the US also created a special due restraint (“Peace Clause”) in the US agreement to safeguard their trade-distorting farm programmes for 10 years from any legal disputes arising from subsidies and countervailing measure violations that apply to industrial products.

The developing and the poorest countries, including India, were, however, mere bystanders in the US negotiations on agriculture. They were silent participants in setting the new rules for bringing agriculture into the trading system. Also, the developing countries did not provide large-scale subsidy payments like the US, the EU, Japan, Canada, Switzerland and Norway. Developing countries such as India, Indonesia, Kenya and Nigeria, for example, did not list any Amber Box or Blue Box subsidy entitlements in their US commitments. These countries with massive populations that were still dependent on agriculture could only provide what is called de minimis support up to a minuscule 10% of the value of production of a particular crop.

In the 1994 AoA, the provision for “public stockholding for food security purposes” in developing countries (such as India’s stocks for release through the public distribution system (PDS)) was included in the Green Box which is exempt from reduction commitments but it was treated as a subsidy and had to be included in assessment of the aggregate measure of support (AMS), which if it crossed 10% of the total value of production had to be reduced.

The crucial Footnote 3 in the AoA which covered public stockholding programmes says the stocks for food security purposes are those “acquired and released at administrative prices, provided that the difference between the acquisition price and the external reference price (ERP) is accounted for in the AMS”. The ERP “shall be based on the years 1986 to 1988 and shall generally be the actual price used for determining payment rates” for the calculation of AMS. It remains a puzzle as to why this rule was incorporated for public stockholding programmes for food security in developing countries that are otherwise covered in the Green Box payments. Was it a surreptitious design then to force
commitments on developing countries in the future, which India and other developing countries agreed to without being aware of the implications?

**Burden of 1986-88 ERP**

The calculation of de minimis support is based on a set of parameters in which the ERP prevailing in 1986-88 plays a crucial role. This effectively determines whether a country is within its overall limit or has breached the WTO disciplines on trade-distorting subsidies. Thus, India’s current minimum support prices are only slightly higher than the current market prices, but as far as the WTO is concerned they appear much higher because of the AOA requirement that administered prices under which the government buys must be compared not to the current prices but to the average international prices in 1986-88. The ERP for rice or wheat is close to one-sixth of the current market prices. The ERP of rice notified by India to the WTO is Rs 3.52 per kg while the minimum support price was Rs 19.65 per kg, in 2012, resulting in a whopping subsidy of Rs 16.13 per kg under the strange provisions of the UR agreement.

The PDS has expanded substantially over the years with an increase in the population and on account of the sustained inflation in prices. The National Food Security Programme could expand it further. But all this is in jeopardy because of the archaic UR rules. In 2005, when the peace clause applicable to the EU and US disputes came to an end, the WTO Appellate Body ruled against the cotton subsidies provided by the US and sugar subsidies by the EU. It found that the subsidies, including some of the Green Box support measures – provided by these two champions of global free trade – lead to distortions in the global farm trade.

The UR rules framed by the leading subsidisers of the world cry out for reform but they cannot be touched because the real elephant in the room does not want to change them. Moreover, after the AOA came into force, the big subsidisers of the UR cleverly resorted in the past decade to what is calling box-shifting by moving their payments from the most-trade-distorting Amber Box and minimally-trade-distorting Blue Box to the Green Box over the last 10 years to avoid any legal challenges. “The WTO’s ‘Green Box’ which is meant to hold non-trade-distorting subsidies, is now home to about $120 billion of the $130 billion in nutrition programmes and farm supports”, says Timothry A Wise, an academic at Global Development and Environment Institute at Tufts University. “This dwarfs India’s commitments”, he argues, in his 2013 article, “Why WTO needs a Hypocrisy Clause”.

But much water has flown into the Lake Leman on the banks of the WTO since the launch of the Doha Round in 2001 to reform the UR rules. With agriculture as its driving force, the Doha Development Agenda (DDA) covers several other issues for further reform. The DDA includes the implementation issues arising from the UR agreements, reduction of tariffs in industrial goods, removal of barriers to movement of natural persons, substantial changes in anti-dumping rules, environment, and the four controversial “Singapore” issues such as investment, competition policy, government procurement, and trade facilitation.

**Framework for Agriculture**

Two chairs of Doha agriculture negotiating bodies – Tim Groser and Crawford Falconer from New Zealand – had, through painstaking efforts in 2004-08, created a solid framework as part of the negotiations. The December 2008, draft modalities for agriculture provided clear landing zones for a progressive reduction of trade-distorting domestic subsidies as well as phase-out of export subsidies and credits, differentiated commitments for reducing farm tariffs (including an architecture for tariff rate quotas and sensitive products), improvements in special and differential flexibilities for special products, special safeguard mechanisms for enabling developing countries to head off unforeseen surges in imports and so on.

Based on sustained negotiations, the author of the December 2008 modalities, Crawford Falconer corrected the historic error in the UR rules with regards to public stockholding programmes. Falconer offered a clean text implying that there are no differences among members on these programmes. The December 2008 modalities proposed:

Acquisition of stocks of foodstuffs by developing country members with the objective of supporting low-income or resource-poor producers shall not be required to be accounted for in the AMS.

Further, the acquisition of foodstuffs at subsidised prices when procured generally from low-income or resource-poor producers in developing countries with the objective of fighting hunger and rural poverty, as well as the provision of foodstuffs at subsidised prices with the objective of meeting food requirements of urban and rural poor in developing countries on a regular basis at reasonable prices shall be considered to be in conformity with the provisions of this paragraph. This is understood to mean, inter alia, that where such programmes referred to in this footnote and paragraph 4 above, including those in relation to lowering prices to more reasonable levels, involve also the arrangements referred to in footnote 5 to paragraph 4, there is no requirement for the difference between the acquisition price and the external reference price to be accounted for in the AMS (Annex B: Public Stockholding Programs for Food Security Purposes, December 2008 Revised Draft Modalities, 2008, emphasis added).

In short, in the December 2008 modalities there is a clear low-hanging fruit on public stockholding programmes for food security that could have been easily harvested to allow the developing countries to continue with their programmes without interruption. But the US opposed the modalities on the ground that they undermined market access by providing special loopholes and flexibilities for developing countries. Washington then put a padlock on the reform of agriculture based on the 2008 modalities.

**Focus on Trade Facilitation**

If this is how things have evolved in agriculture, different standards are used when it comes to the controversial issue of TF. After fierce opposition from developing countries, the subject of TF was dropped from the Doha agenda at the WTO’s Cancun ministerial meeting in 2003. But the US and the EU and their
ally in this area were able to bring TF back to the DDA in the July 2004 Framework Agreement by promising substantial technical and financial assistance for implementation of comprehensive reforms of customs provisions and administration.

The Colorado Group under the leadership of the US forced members at the WTO to address wholesale changes in three Articles of GATT regarding TF, covering freedom of transit (Article V), fees and formalities connected with importation and exportation (Article VIII), and publication and administration of trade regulations (Article X). The underlying objective of these changes was to expedite movement of goods for pharmaceutical companies and courier services, release and clear of goods without hurdles, including goods in transit, create smooth transit movement of goods through the territory of other members, harmonise border procedures (formalities and charges), prompt publication of trade laws and regulations, and put in place uniform, impartial and reasonable administration. The ultimate goal is to reduce trading costs and facilitate trade for exporters which, in turn, results in import facilitation in the destination market. Effectively, the TF deal is a comprehensive market access agreement.

Even though there were some 800 square brackets (implying no agreement among members) in the TF draft in 2011, a clean text and agreement were hammered out within two years. But during the same period (2011-13), developing countries were denied correction of an archaic rule in the AoA which if done would have addressed the issue of public stockholding programmes not enjoying exemption. India, which is an active member of the G-33 farm coalition, demanded that either the ERP be updated to reflect current global prices or the current minimum support price be deflated to bring it to the 1986-88 levels.

Herein lies the rub: the much-needed reform, including in the clauses of the public stockholding programmes for food security, based on the December 2008 draft modalities was jettisoned, while a brand new agreement on TF involving comprehensive changes was worked out on a war footing. That shows the play of power politics and plutocracy in a supposedly member-driven organisation called the WTO.

**Bali Outcome**

Indeed, there was a sea change in the negotiations between the eighth and ninth ministerial meetings of the WTO in 2011 and December 2013 (the latter held in Bali, Indonesia), respectively. Effectively, the trade majors led by the US succeeded in imposing a new dynamic between these two ministerial meetings wherein the principle of reciprocity – which is the hallmark of mercantile trade negotiations based on give and take – was effectively buried. While the developing countries were forced to accept the TF agreement, the industrialised countries chose to undertake no commitments for nine decisions in the Bali package covering issues in...
agriculture and development, including the public stockholding programmes for food security.

At Bali, the developing and poor countries secured only “best endeavour outcomes” from the industrialised countries – i.e., promises to do their best – in their areas of interest. In agriculture, the Bali best-endavour results include general services (such as land rehabilitation, soil conservation and resource management, drought management and flood control), an understanding on tariff rate quota administration, export competition, and a weak programme to address the phase-out of cotton subsidies. The developmental outcomes cover non-binding outcomes on preferential rules of origin for the export of industrial goods by the poorest countries, an operationalisation of waiver on preferential treatment to service suppliers in the least-developed countries (LDCs), duty-free and quota-free market access for LDCs, and a monitoring mechanism for special and differential treatment flexibilities.

The run-up to the Bali meeting as well as proceedings at the conference brought to the fore the use of divide-and-rule practices to ensure that the developing and poorest countries were prevented from adopting common positions on issues such as TRIPS, public stockholding programmes for food security, cotton, the duty-free and quota-free market access.

The new director general of the WTO, Roberto Carvalho de Azevedo, played his part by creating a peculiar environment of scare-mongering and fear-psychosis among members to ensure success at the Bali meeting. Azevedo brought about a common understanding between the coordinators of the African Group, the Africa, Caribbean and Pacific (ACP) and the LDCs (least-developed countries), with the US and the EU over the TRIPS text, particularly Section II which concerned special and differential treatment flexibilities. With the developing countries being nearly divided, each country was left to its own to fight the battle at Bali. So India remained without much support from developing and LDCs on the issue of public stockholding programmes for food security, one that actually concerns over a dozen countries in the South. The Manmohan Singh government and its commerce minister, Anand Sharma, were also responsible for not adopting a coherent strategy before the Bali meeting. During a visit to Washington in July 2013, Sharma readily agreed to a TRIPS without securing a measureable reciprocal concession for the public stockholding programmes. The minister assiduously followed a policy of not crossing swords with the US though India was likely to face serious constraints on the new National Food Security Programme. Sharma wanted his negotiators in Geneva not to ruffle any feathers with the US during the critical phase of negotiations.

At Bali, Sharma panicked when he found that there are only a few countries led by South Africa that were willing to support India on the food security issue. China which would have been the biggest beneficiary of India’s proposal on public stockholding programmes was not willing to support India. Unlike his predecessor Kamal Nath, who would have stood firm in the face of intense opposition from the US as was the case in 2008 informal ministerial meeting, Sharma was only negotiating with the WTO director general who was conveying the US positions. After an exchange of initial proposals, there was a face-to-face negotiation between the US, India, the Indonesian chair of the conference, and the WTO director general. During that meeting, the US Trade Representative accepted the language proposed by India that “in the interim, until a permanent solution is found” members would refrain from challenging the public stockholding programmes for traditional staple food crops. The interim period would last for four years till 2017 by when the WTO members are supposed to finalise a permanent solution.

In return, the US managed to insert strong language that stocks procured under public stockholding programmes “do not distort trade or adversely affect the food security of other Members”. Washington also ensured that there would be no explicit protection from the disciplines in the SCM agreement unlike the protection that was there in the TRIPS peace clause that the US and EU enjoyed during 1995-2004.

Without securing a cast-iron guarantee on the public stockholding programmes and by signing an agreement that was riddled with intrusive and difficult conditions, Sharma yet meekly agreed to give up India’s opposition to several contentious provisions in the TRIPS text.

**Imbalance in Bali**

That the Bali package is imbalanced and asymmetrical with no legally-binding outcomes in agriculture and development pillars which are essential for developing countries is written into the declaration. That it is also tilted in favour of the US with binding disciplines comes out as clearly as day and night. Indeed, work on the implementation of the TRIPS, particularly the TRIPS protocol, progressed at a brisk pace at the WTO after the Bali meeting while the issues in agriculture and development in the package, including on food security, took a back seat.

Against this backdrop, India’s course correction involving the demand for a permanent solution on support for public stockholding programmes before the adoption of the TRIPS protocol on 25 July has come as a rude shock to the US and other industrialised countries. New Delhi’s demand, though not in line with what it had agreed to at the Bali meeting, has put paid to a grand design of hidden plans that the trade majors, including China, were wanting to embark on after the summer break in Geneva.

India is right to press for a permanent peace clause on the extent of support for its public stockholding programmes now as it would at least provide some parity in exchange for undertaking costly commitments on trade facilitation. By not joining the consensus on the adoption of the TRIPS protocol, India retained its crucial negotiating leverage for the time being. It has also delayed the implementation of a grand strategy of the trade majors to pursue new agreements such as market access for industrial goods, investment, environmental goods, services, logistics, and ultimately GVCs.

**REFERENCE**