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1

The road to Buenos Aires, December 2017: Agriculture remains key

by Ranja Sengupta

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AS the 11th Ministerial Conference (MC11) of the World Trade Organisation (WTO) at Buenos Aires, Argentina, draws near, it is clear that agriculture remains a key issue on the table. Even though the Doha Development Round suffered a nasty jolt in the last Ministerial, which was held in Nairobi, the developing countries have steadfastly pushed on with the key Doha issues. Pivotal among these are the outstanding issues in agriculture, on which MC11 still has the potential to make momentous decisions. Moreover, the push for "new issues", including for a mandate to include multilaterally applicable rules or "facilitation" of e-commerce and investment, will have significant implications for agriculture.

Which are the issues in agriculture that are awaiting decisions at Buenos Aires? And what do they mean for developing and least developed countries and their people? What implications, if any, do these have for sustainable development and in particular for the Sustainable Development Goals (SDGs) which WTO member states have committed to? This brief takes a look at these issues below.

A) Key issues on the table

A.1 Domestic subsidies

While market access (tariff cuts) negotiations are going on at a slow pace, the key issue has been agricultural subsidies both at domestic level and on exports. These obviously give some advantage to producers receiving the subsidies over those that do not, and encourage over-production and dumping. While the 2015 Nairobi Ministerial put in place some commitments towards elimination of export subsidies, the key issue remains of domestic subsidies.

The WTO Agreement on Agriculture (AOA) set different domestic subsidy rules for developed and developing countries. While some domestic subsidies were categorised in the **Green Box** (seen as non-trade-distorting and exempted from cuts), others were in the **Blue Box** (AOA Article 6.5: seen as non-trade-distorting if they support payments for limiting production, but marked under Overall Trade-Distorting Domestic Support by the 2004 Framework Agreement). The formally marked trade-distorting subsidies were in the **Amber Box**. Out of the Amber Box, all countries are allowed a ***de minimis*** amount (Art. 6.3). For developed countries, this allowance is 5% of the value of production (VOP) as product-specific subsidies (per product) and another 5% as non-product-specific subsidies. For developing countries, this allowance is 10% of VOP for product-specific and non-product-specific subsidies respectively. Developing countries are allowed a **Development Box** (Art. 6.2) as special and differential treatment (S&D) for supporting input and investment subsidies for the agriculture sector. Conversely, Art. 6.2 implies that input and investment subsidies of the developed countries are in the Amber Box but they did not notify them, particularly their huge feed subsidies.

However, 28 members (counting the EU as 1), mostly developed countries, many of which were heavily subsidising the agriculture sector at the time of the signing of the AOA, also got **Total Aggregate Measurement of Support (AMS) entitlements** (Art. 6.4) over and above the *de minimis*, ranging from $19 billion for the US to $37.5 bn for Japan and $95 bn for the EU. This is not only much higher than the 10% product-specific *de minimis* entitlements of developing countries in many products in several countries, but also offers much more flexibility in terms of product concentration. According to a proposal submitted by China and India on the AMS (see below), in many years over the last two decades, some products, such as dairy, have received about 38-40% of total product-specific support in the EU and more than 50% of total product-specific support in the US and Canada.

The history of the AOA has seen long battles over such divergent and unfair rules on domestic subsidies, in particular the additional AMS entitlement for the rich countries, often covering very sensitive products including cotton. There is also strong criticism of the Green Box, which has been shown by analysis to be trade-distorting in many cases and ruled so by the WTO Appellate Body several times, in particular in the US cotton case. The US and the EU in particular have indulged in major "box shifting" to move trade-distorting subsidies to the Green Box. EU Green Box subsidies stood at 68.7 billion euros while those of the US amounted to $124.5 bn in 2014, including decoupled income support.

In 2013, total domestic subsidies (including the Green Box) of the US stood at $146.8 bn, and those of the EU at $130.4 bn approximately. OECD subsidies increased from $350 bn to $400 bn. On a per-farmer basis, the EU gives out $12,384, Japan $14,136, and the US $68,910. In comparison, China gives $348, India $228, Brazil $468 and Indonesia $73 per farmer.

As MC11 nears, there have been hectic negotiations in Geneva with proposals or approaches submitted by several countries. A few of the major ones are briefly outlined below. However, to date, there is no consensus on an outcome and an agreement on domestic support looks next to impossible.

- *China and India* have tabled a joint proposal asking for elimination of the AMS entitlements of developed countries that allow them higher percentage of VOP and flexibility on product concentration. This has been supported by about 100 developing countries and least developed countries (LDCs).
- A proposal by *the EU and Brazil (with Colombia, Peru and Uruguay)* suggests a cut in *de minimis* plus AMS entitlements to 10% of VOP. However, it expects both developed and developing countries to make cuts and the gap between developed and developing countries is proposed at 2 percentage points, less than the difference in current *de minimis* which is 5 percentage points. More lenient treatment is also proposed for the Blue Box, mainly used by developed countries. Both developing countries and some developed countries (e.g., Japan, Switzerland, Canada) which have higher AMS entitlements as percentage of VOP have rejected this proposal.
- *New Zealand, Australia, Canada and Paraguay* have proposed a fixed value of subsidies (including all subsidies) which should be declared in advance. *Japan* has also supported a fixed amount approach. However, these proposals also work against developing countries as they largely aim to include the Development Box subsidies as well. *The G-10 country grouping led by Switzerland*, which rejected any new product-specific limits or anti-concentration clauses (that the AMS should not be concentrated without limits in a few products), approved a fixed monetary limit on *de minimis* and AMS entitlements. All these countries rejected the idea of calculating subsidy entitlements as a percentage of VOP (as in the EU-Brazil proposal) on the ground that it discriminates against countries which have low VOP.

- *Argentina*, the MC11 host country, proposed cuts/limits on *de minimis* plus AMS (exempting the Development Box and Blue Box) for developed and developing countries. It also proposed tiered cuts to the AMS entitlements with S&D provisions. However, this has been rejected by most other WTO member states including developing and developed countries.

Instead of correcting historical inequities in the subsidy rules of the AOA, it is clear that the current discussion intends to thwart special and differential treatment, with developing countries being asked to make similar cuts and even development subsidies being challenged. The discussion runs a danger of being completely turned against the stated objective of bringing in fairness. It should also be noted that there is no concrete proposal on reduction or accountability of the Green Box even by developing countries, in spite of research showing and Appellate Body rulings about its impact on global trade. Further, developing and least developed countries are opening up their markets under free trade agreements without the extra AMS entitlements and the trade-distorting Green Box subsidies being disciplined in the WTO.

A.2 Permanent solution on public food stockholding

The AOA subsidy rules allow consumer subsidies for public food stockholding programmes, such as the Public Distribution System (PDS) in India. Dozens of countries around the world are using these programmes to reduce hunger and promote food security while also reducing poverty amongst the poorest farmers. Unfortunately the WTO counts subsidies given to producers through any administered price support as trade-distorting. The subsidy is calculated as the difference between the administered procurement price and a fixed reference price (rather than the market price) and, for developing countries, is to be subject to the *de minimis* limit of 10% of VOP for each product. Under the WTO rules, the fixed reference price is set as the price during 1986-88, when world prices were very low due to dumping by the US and the EU. Nor does this calculation account for inflation. This overestimates the actual subsidies.

Not surprisingly, several developing countries such as India, Indonesia, China, Kenya, Egypt, Turkey, Morocco, Tunisia, Jordan and others have begun to address this artificially calculated limit which is out of touch with current global prices. Faced with the impending threat of being sued, and given that the rules are constraining their ability to ensure food security for their populations, the G-33 group of 46 developing countries (excluding Pakistan) tabled a proposal before the WTO Bali Ministerial (2013) to be allowed to give such subsidies without limit (i.e., to put in the Green Box) through administered price support on procurement for public food stockholding programmes from small and resource-poor farmers. Interestingly this had already been included in the 2008 version of the agriculture negotiation chair's text (referred to commonly as Rev.4).

However, what the G-33 eventually got in Bali was a **Peace Clause**, an interim solution that prescribes that no developing countries will be sued even if they exceed the 10% limit, provided they meet certain transparency and safeguard conditions. The transparency conditions include onerous notification requirements, much higher than what developed countries need to adhere to for using the Green Box. The developing countries also have to ensure the subsidy is not "trade-distorting" or does not impact the food security of other countries, in contrast to the AMS of the developed countries which is allowed to distort trade. Moreover, the Peace Clause is limited to only those programmes existing at the time of the Bali Declaration and has to be invoked by filing of the data.

Since 2013, China has been sued by the US over this issue in spite of the Peace Clause. It is also to be noted that the developed countries had extracted the permanent Trade Facilitation Agreement (TFA) in exchange for this interim Peace Clause.

The G-33 group, chaired by Indonesia, has since been pushing for a **permanent solution** in the form of a permanent waiver of limits on such price subsidies to producers for public food programmes. The Nairobi Ministerial Declaration (2015) mandated the WTO to reach this permanent solution by the forthcoming Buenos Aires Ministerial. However, in spite of support from most WTO members, including nearly all developing countries, this has been resisted by most of the developed countries. Below are some of the positions in brief.

- *The G-33 led by Indonesia, with India, China, Egypt and others* (excluding Pakistan), has tabled a proposal asking that these subsidies should be allowed without limit and without onerous transparency or safeguard conditions which will render the solution unusable. The solution should also include programmes not existent at the time of the Bali decision. This proposal has faced stiff opposition from most developed countries and some developing countries, but is supported by a large number of developing countries and LDCs (including the CARICOM and ACP groups), which also do not want it linked to any outcomes on domestic subsidies as proposed by the EU-Brazil etc (see below).
- *The EU-Brazil (with Colombia, Peru and Uruguay)* proposal suggests a permanent solution that is essentially the Peace Clause with all its conditionalities and safeguards. New programmes can be covered with certain export restrictions on procured stock. It exempts LDCs and very small procurements for public food programmes. Developing countries have opposed it as it perpetuates the terms of the Peace Clause which are not very usable and because it links the permanent solution with the domestic subsidy issue, thus implying a trade-off whereas these are two standalone issues – in particular, the permanent solution is mandated by the Nairobi Ministerial Declaration.
- *Russia* has recently made a proposal with onerous transparency (notification) and even more stringent safeguard conditions.
- *The US*, which had refused to engage on this issue, has very recently started to put forward some suggestions, mainly on increased transparency (notification) requirements. It is to be noted that the US has been raising issues related to punishment for countries that fall behind on notification requirements in the WTO. This has important implications for developing countries and LDCs, for which notification norms are more difficult to meet due to capacity constraints.

As the Buenos Aires Ministerial approaches, there is yet no agreement in sight. In the meantime the Peace Clause offers little reprieve to developing countries with existing programmes and none to those without existing programmes at the time of the Bali Declaration. Even if there is an agreement, there is a fear that developing countries will have to 'pay' by agreeing to some other chapters such as e-commerce, domestic regulations or even compromise on domestic subsidies.

A.3 Special Safeguard Mechanism (SSM)

From the beginning of the AOA, developing countries have been asking for a **Special Safeguard Mechanism (SSM)** that allows import duties to be raised in order to deal with import surges. Import surges refer to a situation where there is a sudden rise in imports, either in terms of volume increase or price fall (generated by imports), to the extent that domestic farmers' incomes and livelihoods may be at risk. Interestingly 34 countries, mainly developed countries, enjoy a similar instrument called the Special Agricultural Safeguard (SSG) but this is not available to most developing countries.

However, while agreed in principle, working out the specifics of the SSM, in particular the extent to which import duties are allowed to increase, has been extremely difficult. Most proposals also suggest very onerous conditionalities which would make the SSM very difficult to use. In addition, the SSM has been linked to further market access, i.e., tariff (import duty) cuts, implying this mechanism should be available only when there are further tariff cuts under the AOA. However, global agricultural markets are already distorted, most of all by the subsidies given by the richer countries, and developing countries are already experiencing repeated import surges that are harming domestic production, including in products that have been subsidised in developed countries. Therefore the SSM should be available to them right now.

The SSM was agreed on in Paragraph 7 of the Hong Kong Ministerial Declaration (2005) though the terms of use are not yet decided. It is to be remembered that the 2008 Ministerial was supposed to have broken down over talks on the exact remedy (how much duties can be increased by to counter import surges) under the SSM. In spite of some push before the Nairobi Ministerial in 2015, there was no agreement on this. But the Nairobi Declaration recognises that "developing country Members will have the right to have recourse to a special safeguard mechanism (SSM) as envisaged under paragraph 7 of the Hong Kong Ministerial Declaration" and provides the mandate "to pursue negotiations on an SSM for developing country Members in dedicated sessions of the Committee on Agriculture in Special Session".

However, though several developing countries (e.g., the G-33, the Philippines, India and South Africa) have raised the SSM issue in the period leading to MC11, it is opposed by most developed countries, especially without further tariff cuts, and there is no progress in talks. Brazil and Argentina, being agricultural exporters, have generally opposed the SSM talks though Brazil has sometimes agreed to discuss it. The Philippines is keenly pursuing this issue and has proposed disciplining the SSG and limiting it to a few products for developed countries.

In addition to the issues examined in sections A.1, A.2 and A.3 above, there are proposals by Singapore on transparency in export restrictions. There are also proposals on cotton by the Cotton-4 countries, i.e., Benin, Burkina Faso, Chad and Mali (which this brief does not cover).

B) Some "new issues" and agriculture

The Nairobi Ministerial had brought in a major divide between developed and developing countries on whether to continue the Doha Development Round trade talks mandated to address development needs, or to abruptly end the Doha talks and bring in the so-called 21st-century "new issues", including investment facilitation, e-commerce, small and medium-sized enterprises (SMEs), global value chains, government procurement, climate-related trade (including environmental goods and services), transparency and other issues, mainly pushed by developed countries.

Many of these areas will have deep implications for the agriculture sector. For example, while **investment facilitation** is being discussed, "facilitation" often precedes increasing commitments on investment protection and market access in the form of a multilateral agreement on investment. From the current experience with foreign direct investments, this may even increase tendencies for land grabs. It will also affect the conservation of resources such as water, forests and biodiversity, which will all affect agriculture. Further, investors' rights can also be used to promote stronger intellectual property rights standards, which can in turn be used to push for control of seeds, patent agrochemicals etc.

E-commerce will have immense implications for agricultural policy and practices in developing countries. A range of companies are already using digital technology to control data that relate to inputs, production and sale, research and extension services in agriculture. For example, Monsanto aims to create an e-platform through which all agricultural transactions will take place. While some of these e-technologies may be beneficial for farmers and agriculture, they give immense control over agriculture to a few companies, which will take away the decision-making ability of not only governments but also farmers and consumers, with major consequences for their livelihoods, production practices and consumption patterns.

Before making decisions on new issues, therefore, their cross-cutting impacts on specific sectors such as agriculture must be taken into account as there may be long-term and deep impacts that will make import duty cuts and subsidy discussions seem nominal in comparison and severely limit the policy space of developing-country governments to develop agricultural policies in favour of their people.

C) Agriculture in MC11 and sustainable development

The 2030 Agenda for Sustainable Development that includes the 17 SDGs provides a broad framework for sustainable development spanning economic, social and environmental pillars. SDG 2 aims to "End hunger, achieve food security and improved nutrition and promote sustainable agriculture", and provides several targets that underline the importance of a people-focused agriculture and food system. In particular, target 2.3 speaks of doubling productivity and incomes of small farmers, including women, indigenous peoples and so on.

The current trade rules in the AOA counter the very concept envisioned in SDG 2. Global agricultural trade rules should benefit not those countries that can provide the largest subsidies, but the smallest producer who produces food for his/her family and for others. The longest-term objective for developing countries and LDCs is to enable their farmers to continue to produce for their people in a sustainable manner. Interestingly, proposed language on domestic subsidies had to be sacrificed in the SDG negotiations due to extreme resistance from developed countries, and only export subsidies are referred to in target 2.b (which directly refers to trade). However, governments are mandated to use other means of implementation necessary to implement the SDGs. It is also important to note that the 2030 Agenda mandates special and differential treatment in target 10.a, underscores policy coherence in targets 17.13 and 17.14 and policy space in target 17.15, and talks of "significantly increasing exports of developing countries" and "doubling the least developed countries' share of global exports by 2020".

Members of the WTO agreed to the SDGs as part of the United Nations family. It is important for trade negotiators in developed as well as developing and least developed countries to understand the SDGs so they are able to ensure negotiated trade rules and provisions help governments to implement the SDGs, not prevent them from doing so. It is to be noted that the 2030 Agenda and the SDGs and targets, including the means of implementation, are "universal, indivisible and interlinked".

Ranja Sengupta is a senior researcher with the Third World Network.