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Agriculture in the WTO Bali Ministerial Agreement

Updated November 13, 2014

Congressional Research Service
https://crsreports.congress.gov
R43592

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

At the World Trade Organization's (WTO's) Ninth Ministerial Conference in Bali, Indonesia, December 3-7, 2013, ministers adopted the so-called Bali Package—a series of decisions aimed at streamlining trade (referred to as trade facilitation), allowing developing countries more options for providing food security, boosting least-developed-country trade, and helping development more generally. The Bali Package represents the first multilateral trade deal in nearly two decades; however, it covers only a small fraction of the Doha Round mandate and leaves the more difficult trade topics for future negotiations.

The Bali Package included five agricultural issues: (1) export subsidies and other policies known collectively as export competition; (2) tariff rate quota (TRQ) administration focused on managing persistently under-filled quotas; (3) a temporary peace clause for a developing country's above-market purchases of commodities for food-security stockholding programs; (4) a proposed list of green-box-eligible general services of particular interest to developing countries; and (5) cotton, in response to a proposal from four African members.

The first major implementation step under the Bali Agreement included a July 31, 2014, deadline for the WTO's General Council to approve a protocol to incorporate the Trade Facilitation Agreement (TFA) into the text of the WTO's legal agreements. Then, WTO members would begin to address a so-called post-Bali agenda which would include drafting a work program by the end of 2014 to conclude the Doha Round.

However, efforts to put the TFA in place were dealt a setback in July, when a small group of countries, led by India, raised concerns about the status of the WTO's work on food security issues and blocked consensus on implementing the TFA. India wanted a permanent solution to exempt such programs—in which governments buy commodities from farmers at above-market prices to distribute to the poor—from counting toward WTO subsidy limits.

WTO members failed to resolve the impasse ahead of the July 31 deadline, and the entire post-Bali work came to a temporary standstill. The impasse was resolved in November 2014, when the United States and India reached an agreement to move forward with full implementation. As decision-making in the WTO is based on consensus among all members, the elements of the U.S.-India bilateral agreement will now be discussed with the full WTO membership in the interest at arriving at final and simultaneously agreed-upon decision.

The U.S. Congress will continue to seek to influence and monitor ongoing trade agreement negotiations, including multilateral negotiations within the context of the WTO, to ensure that U.S. agricultural, food industry, and consumer interests are reflected in their outcomes.

This report focuses on those aspects of the Bali Package that deal with and are specific to agriculture. It also includes a section (at the end of the report) that provides an update on the status of implementation of the various Bali Package provisions agreed to by the WTO.

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Introduction

The World Trade Organization (WTO) held its Ninth Ministerial Conference in Bali, Indonesia, from December 3 through December 7, 2013.[1] A WTO Ministerial Conference, which usually meets every two years, represents the topmost decision-making body of the WTO.[2] It brings together all members of the WTO, all of which are countries or customs unions. The Ministerial Conference can take decisions on all matters under any of the multilateral trade agreements.

The Doha Round of multilateral trade negotiations—first launched in 2001 and successor to the Uruguay Round which originally founded the WTO—floundered in 2009 when negotiators failed to narrow outstanding differences for a short list of highly contentious issues, including designating additional products as sensitive coupled with establishing new tariff quotas, designating developing country products as special and thus exempt from tariff reductions, and allowing developing countries to raise tariffs temporarily to deal with import surges or price declines.[3] In the four years that had lapsed since the Doha Round failed to reach conclusion, WTO negotiators had sought a simpler, less contentious trade agreement as a way of achieving some minimal success and perhaps rejuvenating the larger Doha Round.

At the Ninth Ministerial, WTO ministers (on December 7, 2013) adopted the so-called Bali Package—a series of decisions aimed at streamlining trade, allowing developing countries more options for providing food security, boosting least-developed countries' trade, and helping development more generally. The Bali Package covers only a small fraction of the Doha Round mandate and leaves the more difficult trade topics for future negotiations.[4] However, the Bali Package represents the first multilateral trade deal in nearly two decades.

The Bali Package has measures dealing with four principal categories: trade facilitation, agriculture, cotton, and development and least-developed country (LDC) issues. From the United States' viewpoint, the major policy initiative of the Bali Package is the Trade Facilitation Agreement (TFA), which aims to improve the efficiency of international trade by harmonizing and streamlining customs procedures such as duplicative documentation requirements, customs processing delays, and nontransparent or unequally enforced importation rules and requirements. A successful TFA would reduce red tape at the border, thus lowering costs and expediting trade. At the time, analysts predicted that a successful Bali Package—boosted primarily by substantial efficiencies in trade facilitation—could increase global gross domestic product by $1 trillion.[5] However, many hope that its ultimate benefit will be a rejuvenation of the Doha Round.[6]

This report focuses on those aspects of the Bali Package that deal with and are specific to agriculture. It also includes a section (at the end of the report) that provides an update on the status of implementation of the various Bali Package provisions agreed to by WTO.

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[1] For more information, visit https://mc9.wto.org/.

[2] For more information, visit http://www.wto.org/english/thewto_e/minist_e/minist_e.htm.

[3] <CrsProductRef includeAuthors="false" productCode="RS22927" title="WTO Doha Round: Implications for U.S. Agriculture" url="http://www.crs.gov/pages/Reports.aspx?PRODCODE=RS22927" prodVerID="434904" />CRS Report RS22927, *WTO Doha Round: Implications for U.S. Agriculture*.

[4] *Bridges Africa*, "Reflections on the Bali Deal," International Center for Trade and Sustainable Development (ICTSD), February 2014, available at http://www.ictsd.org.

[5] Ibid., "Bali and the Future of Multilateral Trade," p. 7.

[6] CRS Report RL32060, *World Trade Organization Negotiations: The Doha Development Agenda*, by Ian F. Fergusson.

Agriculture Negotiations

Prior to arriving at the Bali Ministerial Conference, WTO agricultural negotiators had selected five agricultural issues out of a much larger package of proposals that had been tabled in 2008 as part of the Doha Round agricultural negotiations.[7] These five agricultural issues were:

- export subsidies and other policies known collectively as export competition;
- tariff rate quota (TRQ) administration focused on managing persistently under-filled quotas;
- a temporary peace clause for developing countries' above-market purchases of commodities for food-security stockholding programs;
- a proposed list of green-box-eligible general services of particular interest to developing countries; and
- cotton, in response to a proposal from four African members.

The first four of these issues were chosen, in large part, because it was thought that general agreement had already been reached on them within the earlier Doha Round agricultural negotiations, thus leaving little to be resolved at the Bali Ministerial and giving the talks the best chance of making some progress.[8] In other words, these issues represented "low-hanging fruit" that would easily achieve consensus while helping to revive negotiations on the larger Doha Round package.

Cotton was a late addition to the list of agricultural topics. Four African members—Benin, Burkina Faso, Chad, and Mali, referred to as the C4—presented a new re-write of their "Cotton Initiative" proposal (first introduced in June 2003[9]) to the Trade Negotiations Committee on October 25, 2013, just in advance of the Bali Ministerial. WTO negotiating committees acknowledged that the new C4 proposal was presented very close to the Bali Ministerial and that members would have to expedite their review and consideration for it to be a part of the final Bali text.

In early November 2013 the chairman of the agriculture negotiations—New Zealand Ambassador John Adank—circulated the first set of draft texts for a meeting of ambassadors chaired by Director-General Roberto Azevêdo. References to final versions, as produced by the Bali Ministerial, are included with each section below.

Export Subsidies[10]

Policies that have the effect of subsidizing exports in international markets are grouped together as "export competition." They include direct subsidies as well as other competitive advantages

[7] <CrsProductRef includeAuthors="false" productCode="RS22927" title="WTO Doha Round: Implications for U.S. Agriculture" url="http://www.crs.gov/pages/Reports.aspx?PRODCODE=RS22927" prodVerID="434904" />CRS Report RS22927, *WTO Doha Round: Implications for U.S. Agriculture*.

[8] Bali Ministerial briefing note, "Agriculture negotiations—the bid to harvest some low hanging fruit," November 22, 2013, at http://www.wto.org/english/thewto_e/minist_e/mc9_e/brief_agneg_e.htm.

[9] See <CrsProductRef includeAuthors="false" productCode="RS21712" prodVerID="104569" title="The African Cotton Initiative and WTO Agriculture Negotiations" url="http://www.crs.gov/pages/Reports.aspx?PRODCODE=RS21712" />CRS Report RS21712, *The African Cotton Initiative and WTO Agriculture Negotiations.*

[10] WTO Draft Ministerial Declaration, Export Competition, WT/MIN(13)/W/12, December 6, 2013.

gained from government-supported export credit and insurance, food aid, and exporting state trading enterprises.

Issue

WTO members wanted to solidify commitments that had been made during Doha Round negotiations in 2008—the draft modalities on export competition would require developed countries to permanently eliminate all export subsidies by 2013 with half cut by 2010. However, these earlier commitments were contingent on the successful completion of the Doha Round negotiations which ended in an impasse in 2008 and have been moribund ever since.

Outcome

The Bali text represents a compromise between members seeking legal commitments to reduce subsidies and those who argued that this could not be done in Bali without matching steps on agricultural market access, domestic support, and the rest of the broader Doha Round package. The Bali text stops short of making legal commitments, but according to WTO observers, it contains some of the strongest statements of intent that have ever been made on the subject. In particular, WTO members would:[11]

- recognize that all forms of export subsidies are *a highly trade distorting and protectionist form of support*, and that, accordingly, export competition remains a key priority of the agriculture negotiations;
- *exercise utmost restraint* in using any form of export subsidies;
- ensure to the maximum extent possible that progress will be made in *eliminating all forms of export subsidies*, that actual subsidies will be well below the permitted levels, and that disciplines will apply to export policies that may have the same effect as subsidies; and
- commit to *enhance transparency* and to *improve monitoring* in relation to all forms of export subsidies—an Annex entitled "Elements for Enhanced Transparency on Export Competition" was included to facilitate such transparency.

TRQ Administration[12]

A tariff-rate quota (TRQ) is used to allow limited access at low tariff rates for an imported commodity to a domestic market (up to the quota amount), while protecting domestic producers of that same commodity from international competition by charging substantially higher tariffs on imported volumes above the quota amount. TRQs were established for selected commodities in selected countries during the Uruguay Round (and listed in each member's "Country Schedule") in an effort to allow exporters some minimum market access to otherwise closed markets.[13]

[11] Bali Ministerial briefing note, "Agriculture negotiations—the bid to harvest some low hanging fruit," November 22, 2013.

[12] WTO Draft Ministerial Declaration, Understanding on Tariff Rate Quota Administration Provisions of Agricultural Products, as Defined in Article 2 of the Agreement on Agriculture, WT/MIN(13)/W/11, December 6, 2013.

[13] <CrsProductRef includeAuthors="false" productCode="RL32916" prodVerID="304008" title="Agriculture in the WTO: Policy Commitments Made Under the Agreement on Agriculture" url="http://www.crs.gov/products/rl/pdf/RL32916.pdf" />CRS Report RL32916, *Agriculture in the WTO: Policy Commitments Made Under the Agreement on Agriculture*.

Issue

Some countries are concerned that the methods governments use to share the below-quota trade among exporters—referred to as TRQ administration—can become an additional trade barrier when parts or all of the quotas are not used (i.e., the quota is under-filled). They have asked for specific mechanisms to monitor and reduce under-fill of TRQs. In contrast, importing countries with under-filled TRQs have claimed that quota under-fill is simply a result of supply and demand conditions in the marketplace.

Outcome

Under the TRQ administration text, a transparent but intricate and time-consuming process must first be used to determine whether quota under-fill is due to selective administration or to market conditions. If quotas are determined to be under-filled due to inadequate administration, then unencumbered access must be granted by one of two prescribed methods described below. In addition, special and differential treatment will be available for developing countries under TRQ administration, but under certain conditions and possibly for a limited period.

Determining TRQ Fill-Rate Compliance

TRQ administrative procedures must be no more constraining than absolutely necessary, and TRQ fill rates and related administration data must be notified expeditiously to allow proper monitoring and review by the WTO Committee on Agriculture (CoA).

Year One: During the first monitoring year of a particular TRQ, if either the fill rate is below 65% or TRQ data have not been notified to the WTO, an exporter may raise a specific concern with the CoA and then the TRQ will be placed on a tracking register. The member responsible for the TRQ (referred to as the importing member) must provide additional justification for the under-fill rate to the CoA.

Year Two: If the TRQ fill rate remains below 65% for two consecutive years, or no notification has been submitted during that period, an exporter may request, via the CoA, that the importing member take specific action to modify its TRQ administration. The importing member then must take either the requested action or a different, but mutually-agreed-upon action to remedy the TRQ under-fill rate.

Year Three: If during the third year of monitoring one of the following conditions exists, then TRQ administration methods (described in the next section) may be imposed by the CoA:

1. the TRQ fill rate is still below 65% or no notification has been submitted;
2. the fill rate is below 65% and has not increased for each of the preceding three years by annual increments of:
    a. at least 8 percentage points when the fill rate is above 40%; or
    b. at least 12 percentage points when the fill rate is equal to or less than 40%;
3. consultations regarding TRQ data and under-fill rates do not lead to a mutually acceptable conclusion regarding market circumstances as a justification; and
4. an importing member states that it wishes to move to the final stage of the CoA under-fill mechanism.

Imposed TRQ Administration Mechanism

If a quota is persistently under-filled—and information-sharing and WTO consultations prove fruitless—the importing government would then have to provide unencumbered access via one of the following TRQ administration methods:[14]

- they would accept quantities within the quota on a first-come, first-served basis, at the importing ports until the quota limit is reached, or
- they would issue import licenses for every request (referred to as "automatic license on demand") up to the quota limit.

The method selected must remain in place for at least two years, after which, if the fill rate has increased by two-thirds of the annual increments listed in the previous section ("Determining TRQ Fill-Rate Compliance") under #2 of the third year of monitoring, then the quota may be considered filled.

Special and Differential Treatment Under TRQ Administration

With respect to special and differential treatment of developing countries under TRQ administration, exemption for developing countries would lapse after six years unless members agree to extend or modify the TRQ administration mechanism; however, the "provisions" of that paragraph would continue to be applied by all members except by countries which self-select for an opt-out list whereby the opt-out countries could choose not to apply the provisions. Only five countries (including the United States) have elected to be on the opt-out list.

Peace Clause for Food Purchases for Food-Security Stockholding[15]

Issue

The WTO's "green box" allows unlimited spending on food acquisition by member governments for public stockholding for food security purposes as long as the food is purchased at current market prices.[16] When governments buy commodities from producers at above-market prices a market distortion is deemed to be created—farmers are incentivized to increase production beyond the level of supply demanded by the marketplace. Because the resulting surplus production exceeds market demand, it puts downward pressure on prices. This price distortion then ripples through domestic and international markets and can lead to further resource misallocations. As a result, government programs that buy commodities at above-market prices—whether to bolster incomes of low-income farmers, to build up food security stocks, or for other purposes—are counted as "amber box" (i.e., market-distorting) domestic support.

Amber box outlays are limited by WTO member commitments spelled out in the Agreement on Agriculture (and referred to as Aggregate Measure of Support or AMS bounds) and listed in each country's member schedule. Most developing countries do not have explicit AMS bounds. Instead they are limited in amber box domestic support outlays by the *de minimis* exemption which allows for support outlays of up to 10% of the value of agricultural production (measured as an

[14] The actions and remedies taken by the importing member shall not modify or impede the rights of a member holding a country-specific allocation for that tariff quota with respect to their country-specific allocation.

[15] WTO Draft Ministerial Declaration, Public Stockholding for Food Security Purposes, WT/MIN(13)/W/10, December 6, 2013.

[16] *WTO Legal Texts*, "Public Stockholding for Food Security Purposes," Paragraph 3, Annex II, Agreement on Agriculture, at http://www.wto.org/english/docs_e/legal_e/legal_e.htm.

aggregate total and for individual commodities). Several developing countries that operate food stockholding programs as part of domestic nutrition programs claim that they are unable to stay within their WTO spending bounds when the additional outlays for food-security stockholding are included in their amber box. Further, they argue that these food stockpiling programs are crucial for domestic food security and should therefore be excluded from counting against any amber box limits.

Since early 2013, a group of developing countries organized collectively as the Group of 33 (G33) and, in this particular instance, headed by India, has been promoting the idea of excluding from the amber box those outlays used for commodity purchases at above-market prices and then stockpiled for domestic food security programs. On November 22, 2012, the G33 submitted this idea as a formal proposal to the WTO.

Although most WTO members agree that food security is a vital issue, particularly for the poor, some are concerned that making an exception for this particular way of dealing with food insecurity might both weaken the WTO disciplines that apply to all domestic support (thus undermining one of the original intents of the WTO) and produce unintended consequences in other third-party members where food insecurity is also a vital issue.

U.S. Ambassador to the WTO, Michael Punke, spelled out the concerns regarding an above-market price subsidy on April 11, 2013, when he stated:[17]

> Instead of creating new disciplines to reduce agriculture subsidies, the G33 proposal represents a step back from existing Uruguay Round disciplines—creating a new loophole for potentially unlimited trade-distorting subsidies. This new loophole, moreover, will be available only to a few emerging economies with the cash to use it. Other developing countries will accrue no benefit—and in fact will pay for the consequences. First, in the immediate term, when the governments using the program buy up stocks, world prices will go up, making it harder for poorer countries to meet their food needs. Later comes the inevitable problem of miscalculation. Over the longer term, the lure of guaranteed prices that are set before the planting season will draw more acres into production. If recent history is repeated, more stocks will be created than anticipated, and the surplus then will be dumped onto international and domestic markets—competing with the products of countries which aren't subsidizing—and lowering prices that farmers around the world get for their commodities.

Outcome

In the months leading up to the Bali Ministerial, the arguments for and against the G33 proposal became more contentious[18] and it became clear that amending the Agreement on Agriculture (AoA) to reflect the proposal was too controversial to be agreed to in time for the conference. Instead, intense last-minute negotiations produced a compromise text granting developing countries a temporary four-year peace clause (i.e., relief from challenge under the WTO Dispute Settlement process) for use of programs that purchase food at above-market prices for food security stockholding, while agreeing to work to find a permanent solution. Certain compliance conditions are required for a member to be eligible for this peace clause. Also, several critical

[17] Statement by U.S. Ambassador to the WTO Michael Punke at a Meeting of the Trade Negotiations Committee at the WTO, Geneva, Switzerland, April 11, 2013.

[18] For example, see "Indian position on food security at WTO flawed," *Naynima Basu*, Interview with Prof. Jagdish Bhagwati, Columbia University, December 2, 2013; "Food aid central in race to finish WTO talks," Doug Palmer, *POLITICO*, November 18, 2013; or the earlier footnote 17 by U.S. Trade Representative Punke.

aspects of this temporary peace clause must be resolved before it can be converted to permanent status.

Interim Solution: Temporary Peace Clause

In the interim,[19] and until a permanent solution is found (provided the conditions listed below are met), members shall refrain from challenging through the WTO Dispute Settlement process the compliance of a developing member in relation to support provided for traditional staple food crops[20] in pursuance of public stockholding programs for food security purposes.

Compliance Conditions: Notification and Transparency

A developing member, to benefit from the interim solution, must:

- have notified the WTO Committee on Agriculture (CoA) that it is exceeding or is at risk of exceeding either its AMS limits or *de minimis* level as result of such programs;
- have submitted its annual domestic support notification requirements;[21] and
- provide additional up-to-date data and information on each public stockholding program that it maintains for food security purposes or that is relevant to this issue using a common format (included as an attached Annex).

Safeguards

Any developing member seeking protection under this temporary peace clause must ensure that stocks procured under this program do not distort trade or adversely affect the food security of other members. Furthermore, this peace clause may not be used in any manner or for any other program—other than the specific food purchase for food security stockholding—that would result in an increase of the AMS support or the *de minimis* limits.

Consultations and Monitoring

A developing country benefiting from this peace clause shall, upon request, hold consultations with other members on the operation of its public stockholding programs. The CoA is responsible for routine monitoring of information notified under this decision.

Critical Issues Still Unresolved

Work on finding a permanent solution would continue after the ministerial conference. In particular, the differing sides still disagree on several outstanding issues:

- the specific nature of safeguards to ensure that public stockholding programs are not misused and that program commodities would not affect commercial trade;
- the number of eligible products; and

[19] The interim period is bounded by the WTO's 11th Ministerial Conference scheduled for 2017, i.e., in four years.

[20] Primary agricultural products that are predominant staples in the traditional diet of a developing country.

[21] Generally, domestic support notification is submitted with a delay of one to two years to allow for data collection and assembly; however, several members are significantly behind in submitting notifications—for example, India's last notification for domestic support is for 2003.

- how long the restraint on disputes (i.e., the peace clause) would last.

General Services[22]

Issue

The Agreement on Agriculture's green box lists seven categories of general services which are excluded from counting against a member's AMS total and, thus, have no limit on spending.[23] Developing countries want more programs that are relevant to them on the list, and the African Group and G33 have identified: land rehabilitation, soil conservation and resource management, drought management and flood control, rural employment programs, issuing land ownership and property titles, and farmer settlement programs.

Outcome

Members note that the current list of general services under Annex II is not meant to be exhaustive, and that the additional programs identified above could be considered as falling within the scope of Annex II general service programs.

Cotton[24]

Issue

The publicity associated with the long-running WTO Brazil dispute settlement case against U.S. cotton support programs has had consequences; cotton has been singled out for special consideration and treatment within the ongoing round of WTO multilateral trade negotiations.[25] Efforts to single out cotton have been promoted by four African countries—Benin, Burkina Faso, Chad, and Mali—referred to as the C4.

On October 25, 2013, just in advance of the Bali Ministerial, the C4 presented a new rewrite of the earlier "Cotton Initiative" proposal to the WTO Trade Negotiations Committee. In their new proposal, the C4 proposed reforming cotton trade in two stages:[26]

- *At the Bali Ministerial*, ministers would agree to (1) grant duty-free, quota-free (DFQF) access to developed-country markets beginning January 1, 2015, for all cotton from least-developed countries (LDCs) and (2) immediately eliminate any remaining export subsidies on cotton in developed countries.
- *After the Bali Ministerial* (but with agreement in Bali to do this), domestic support for cotton would be negotiated intensively in 2014 in order to reach

[22] WTO Draft Ministerial Declaration, General Services, WT/MIN(13)/W/9, December 6, 2013.

[23] *WTO Legal Texts*, "General Services," Paragraph 2, Annex II, Agreement on Agriculture. Originally, general services included research, pest and disease control, training services, extension and advisory services, inspection services, market and promotion services, and infrastructural services.

[24] WTO Draft Ministerial Declaration, Cotton, WT/MIN(13)/W/13, December 6, 2013.

[25] See <CrsProductRef includeAuthors="false" productCode="R43336" title="Status of the WTO Brazil-U.S. Cotton Case" prodVerID="434695" url="http://www.crs.gov/pages/Reports.aspx?PRODCODE=R43336" />CRS Report R43336, *Status of the WTO Brazil-U.S. Cotton Case*.

[26] WTO: 9th Ministerial Conference, Bali 2013, "Briefing note: Cotton negotiations—commitment and regret in Bali," November 22, 2013, at http://www.wto.org/english/thewto_e/minist_e/mc9_e/brief_cotton_e.htm.

agreement by the end of the year on substantial reductions—members would agree to cut distorting subsidies for cotton by more than for other agricultural products.

The C4 proposal also envisaged strengthening development assistance for cotton including linking it with the broader Aid for Trade programs.[27]

Outcome

WTO negotiating committees decided that the new C4 proposal was presented too close to the Bali Ministerial to allow for proper vetting. Instead, the cotton text that was included in the final Ministerial Decision represented a compromise. Specifically, the final Bali cotton text agreed to as part of the Ministerial agreement:[28]

- reiterated WTO members' commitment to make progress in the negotiations on cotton according to the 2005 Hong Kong Ministerial objectives which included a commitment to address cotton "ambitiously, expeditiously and specifically" within the agriculture negotiations;[29]
- officially expressed regret that no progress had been made to date;
- committed to meet twice each year to study the latest information and discuss developments regarding the cotton initiative; and
- re-affirmed the importance of cotton to lesser-developed countries (LDCs) and the need to strengthen development assistance for the cotton sector in LDCs.

Status of the Bali Agreement

The Bali Agreement was adopted by the WTO on December 7, 2013. The agreement was struck after the United States gave in to India's demand on food security and agreed to a temporary peace clause to shield the food subsidy programs of developing countries—including India's food subsidy program—from challenge under WTO rules[30] for four years (through 2017). A key condition of this "interim solution" was that developing countries must take steps to make sure that the stocks procured under these stockholding schemes do not distort trade, nor affect the food security of others. The deal also set a 2017 deadline to negotiate a permanent solution to the food security issue, with an interim report due in 2015.

A first major implementation step included a July 31, 2014, deadline for the WTO's General Council to approve a provision—referred to as a protocol—to incorporate the Trade Facilitation Agreement (TFA) into the text of the WTO's legal agreements.[31] Then, WTO members would begin to address a so-called post-Bali agenda which would include drafting a work program by the end of 2014 to conclude the Doha Round.

[27] See "WTO: Aid for Trade" at http://www.wto.org/english/tratop_e/devel_e/a4t_e/aid4trade_e.htm

[28] WTO, Ninth WTO Ministerial Conference, available at https://mc9.wto.org/.

[29] Paragraph 11 of the Hong Kong Ministerial Declaration; 5th WTO Ministerial, WT/MIN(05)/DEC, Doha Work Program, adopted on December 18, 2005.

[30] CRS Report RS20088, *Dispute Settlement in the World Trade Organization (WTO): An Overview*, by Daniel T. Shedd, Brandon J. Murrill, and Jane M. Smith.

[31] Doug Palmer, "India's Stance Throws WTO into Crisis," *Politico*, July 24, 2014.

Deadlock on Implementation

Ahead of the July 31 deadline and in apparent violation of the agreement that had been reached in December 2013, India proposed delaying the approval of the TFA protocol until a permanent solution was reached on the issue of food stockholding programs. India wants a permanent solution to exempt such programs—in which governments buy commodities from farmers at above-market prices to distribute to the poor—from counting toward WTO subsidy limits.[32] The Indian government wanted more assurances that the peace clause would continue to hold if WTO members cannot agree on a permanent solution by the target date of 2017.[33]

India's delaying proposal was supported by three other WTO countries—Bolivia, Venezuela, and Cuba.[34] South Africa also posed an additional hurdle to the July 31 deadline by insisting on its position that the TFA's entry into force should be linked to the conclusion of the Doha Round; however, South Africa does not appear to have any support on this idea.

Several WTO members, including a group of 25 members led by Australia and Norway, released public statements decrying the idea of reopening the Bali package saying it would unravel the entire package.[35] Both the United States and the European Union (EU) expressed considerable chagrin over the prospect of failing to meet the July 31 deadline, thus putting the rest of the Bali package in doubt.[36] Ultimately, the WTO members failed to resolve the impasse ahead of the July 31 deadline.

U.S.-India Agreement Resolves Impasse

On November 13, 2014, the United States and India reached an agreement on a set of measures intended to break the impasse in the work of the WTO to implement the agreements reached last December at the WTO Ministerial in Bali.[37] The bilateral agreement consists of two key elements:

- **Move the Trade Facilitation Agreement (TFA) Forward—**The TFA should be implemented without conditions, on the basis of a standard legal instrument for implementing new WTO agreements.
- **Understanding on Specific Food Security Programs—**A peace clause (i.e., a mechanism under which WTO members will not challenge food security stockholding programs under WTO dispute settlement procedures) will remain in place until a permanent solution regarding this issue has been agreed to and adopted.

The bilateral agreement also sets out elements for an intensified program of work and negotiations to arrive at such a permanent solution. As decision-making in the WTO is based on consensus among all members, the elements agreed between the United States and India will be presented for consideration by the full WTO membership.

[32] "WTO to Kick Off Meetings on Path Forward for TFA, Doha Next Week," *Inside U.S. Trade*, September 11, 2014.

[33] Ibid.

[34] "Trade Facilitation Deal Hangs in Balance as WTO Members Wait on India," *Inside U.S. Trade*, July 24, 2014.

[35] Ibid.

[36] Doug Palmer, "India's Stance Throws WTO into Crisis," *Politico*, July 24, 2014.

[37] USTR, "FACT SHEET: U.S.-India Agreement on Trade Facilitation," Press Release, November 13, 2014, at http://www.ustr.gov/about-us/press-office/fact-sheets/2014/November/US-India-Agreement-on-Trade-Facilitation.

Role for Congress

As one of the world's largest trading countries—for both agricultural and nonagricultural products—the United States has a major stake in negotiations on trade rules and disciplines. The U.S. Congress will continue to seek to influence and monitor ongoing trade agreement negotiations, including multilateral negotiations within the context of the WTO, to ensure that U.S. agricultural, food industry, and consumer interests are reflected in their outcomes.

Next Steps for Agriculture

To the extent that the Bali Agreement represented the low-hanging fruit of the agricultural negotiations, the contentious, last-minute nature of the final result, coupled with the almost minimalist nature of the "concessions"—modest movement on fill-in-rates on TRQs, agreeing to agree on export competition and general services, and possible back-sliding on distorting above-market producer price supports as part of the food-security stockholding peace clause deal—have left many trade analysts wondering if the truly ground-breaking Uruguay Round (UR) agreement of 1994 was a one-time event. The UR agreement achieved substantial concessions and commitments across all three pillars of agricultural negotiations—export competition, domestic support, and market access.

India's insistence on new concessions on food stockpiling—the green box already allows for unlimited food stockpiling for food security purposes, provided the food is purchased at market prices (not above-market prices as India proposes)—would appear to represent serious erosion on domestic support commitments that have already been achieved during previous negotiating rounds.

Many take the view that, to achieve bona fide progress for agriculture in the next phase of multilateral trade negotiations, concessions will have to be made across all three negotiating pillars simultaneously to avoid (or at least minimize) the potential for zero-sum results for any individual country. Furthermore, market observers have suggested that WTO members in the developing country category (minus the truly less-developed countries) will have to accede to substantive market access, not just for the benefit of competitive export nations like the United States, but for the benefits that will accrue to their own domestic industries when access to lower-priced goods from international markets results in lower product costs and greater choice for domestic consumers.

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