

## MSP, WTO & DEMOCRACY: AN OVERVIEW



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### **Abstract**

*There is national wide debate for providing a legal guarantee in the form of minimum support price (MSP) to the farmers, in the political as well as social domain. The question which has attracted the attentions is that whether India being the member of WTO would be in a position to provide legal security in the form of guarantee of MSP to its farmers without breaching the provisions of international law as envisaged in the Agreement on Agriculture (AoA) under the WTO regime? To understand this, one has to be familiar with some technical terms like Green Box, Blue Box and Amber Box and also brief description of calculation of aggregate measure of support (AMS), product specific support and non product specific support under Article 6 of AoA is necessary. The procurement of 23 crops at MSP against current practice of procurement of rice and wheat and other likecrops may put India in a position of breaching de minimis limit. It would create legal challenges at the WTO for India and making it vulnerable. Some alternatives to escape Amber box like indirect procurement, peace clause, income base support and price base support with practical difficulties has been seen. At the last of the Article, suggestions as to requirement of government are made by making active engagement with farmers by creating an suitable environment by convincing them of other effective policy other than MSP and which are also financially and economically viable as well as WTO compatible.*

### **Introduction**

Facilitating a bargain between wealth accumulators and welfare seekers seems to have become the key function of politics now-a-days. A new election season is around. Five States (Uttar Pradesh, Uttarakhand, Manipur, Goa and Punjab) will elect new assemblies and Chief Ministers in the coming weeks. Besides assuring of MSP to 23 crops, parties are wooing voters with dazzling new promises. The Aam Aadmi Party leader, Arvind Kejriwal, is offering ₹1,000 a month to all adult women (above age 18); the Shiromani Akali Dal's offer is ₹2,000 for poor women, which is matched by the Congress, in Punjab. The Samajwadi Party is promising 300 units of free electricity in Uttar Pradesh, and the Centre has extended its free food grain programme under Pradhan Mantri Garib Kalyan Anna Yojana, or

PMGKAY across the country, until March 2022. Apart from fiscal constraints to fulfil promises of MSP, there are several legal difficulties originating from the World Trade Organisation.

### **Legal Guarantee for MSP and International Obligations**

To understand this, we have to be familiar with some technical terms.

**Trade distorting subsidies:** With a view of open market, accessible to all, certain practices like subsidies by the government to its farmers are considered as Trade distorting subsidies. The main objective of the Agreement on Agriculture (AoA) under WTO is to remove domestic support by the government to its farmers and they distort equality of trade in the field of agriculture. AoA has its objective to eliminate trade barriers and to encourage

transparent market access. It also contends for integration of global markets. Under this provision, developed countries have to reduce the Aggregate Measurement of Support (AMS) by 20% over a period of 6 years whereas developing countries have to slash it by 13% over a period of 10 years. Agreement on Agriculture (AoA) works on three main foundations. The subsidies which are given by the government to its farmers at domestic level can be divided into three categories:

- Green Box
- Blue Box
- Amber Box

Broadly speaking, all the support provided by governments to farmers whether by direct benefit transfer (DBT), alternative employment like MGNREGA, MSP & others have to be classified in these three categories only.

**Green Box**-All the incentives provided by government to farmers which are de-coupled with production can be put under Green Box. These can be anything like Kisan Samman Nidhi Rs 6,000/- annually in bank accounts of farmers, MGNREGA or upcoming universal basic income demand. It is to be noted that World Health Organisation considers it as non-trade distorting and does not put any limitation in this category.

**Blue Box**- Blue box supports are those subsidies which are anyhow connected to agriculture programmes and limit the production. The easy illustration is input subsidies like subsidies on fertilizers, irrigations, seeds, electricity etc. can be put under this category. At present few developed countries like Slovenia, Iceland and Norway etc. use this kind of subsidies. Direct payments made under the programmes limiting the production are subject to definite conditions and are considered non-trade distorting activities/subsidies.

Unlimited subsidies can be provided by the countries under above these two categories, whereas, trade-distorting subsidy attracts the procurement of crops at MSP level and is prohibited under the AoA and is referred as

'amber box' measures. This type of subsidy is subject to certain limitations.

**Amber Box**- It is the form of subsidy which adversely affects the international trade competition with the support of domestic government and it enables people of one country to offer the crop in international market at cheaper rate in comparison to same crop of other country. Due to subsidy to the farmer, the price of the produce is reduced at a very high rate. Such subsidies include input subsidies also.

The minimum level of subsidies has been enshrined in AoA for product specific as well as non-product specific subsidies. De minimis level for developed countries is 5% whereas for developing countries it is settled as 10%.

### **Calculation of Amber Box Support and Legal Difficulties**

When calculating 'Amber Box' support, first thing to determine is the ascertainment of Aggregate Measurement of Support (AMS). AMS is total of product specific as well as non product specific support by the government to its farmers. To put it more, limits of Amber Box are further divided into two more categories, firstly product base subsidies and second is non product base subsidies. Exceeding to them is considered violations and is liable for legal actions from concerned parties. As per Article 6.4(b) of AoA, developing countries can give de minimis product and non product subsidy to its farmers. The limit is restricted to 10% of the total value of production of the product for product specific subsidy. In case of non product specific subsidy it is calculated at the 10% of a country's agricultural production. Subsidies violating the limit are considered as trade distorting subsidies and are required to be accounted in the calculation of AMS.

### **MSP and Fixed External Reference Price (ERP)**

The ascertainment AMS does not give the true picture of the prices and cost inculcating in the production of the produce, actually. The ERP has not been revised since several decades therefore the difference between the ERP and MSP is widening in leap and bound due to effect

of inflation on the economy as a factor. It is required that revised average price base has to be included in AMS. As per data of Centre for WTO Studies in 1986-88, India's ERP for rice was \$262.51/tonne and at that time the MSP of rice was less than this. In 2015-16 India's applied administered price for rice was at \$323.06/tonne which is comparatively very high from the 1986-88 ERP. When this difference would be taken into account for AMS, it shall be natural that de minimis limit of the produce would also increase and would become real to actuality. Procurement of 23 crops at MSP against the present practice will demonstrate India as a country who is breaching the de minimis limit and thereby making it vulnerable to legal challenges at the WTO by other member nations. In simple words, due to non revision of fixed ERP's government of India is facing legal difficulty in completing its promise to farmers to include 23 crops in MSP list.

### **Possibilities to Escape Calculation Flaws**

If crops are indirectly procured by the government then whether it would amount to product base subsidy is the option to examine. This option has been exercised by the government in procurement of sugarcane in Uttar Pradesh. The Government even if do not procure directly itself but obligate private parties to purchase produce at a price which is settled by the Government, the de minimis limit of 10% rule would apply. WTO panel recently concluded that measures concerning sugar and sugarcane taken by India are breach of the de minimis limit as it provides offer for guaranteed prices to sugarcane farmers to be paid by sugar mills owners. As this technique has resulted into a failure other legal option known as "peace clause" may be looked into.

### **Peace Clause**

As of date, AoA is required to be amended so that it may provide sufficient space for policy measure to run MSP backed food security programme, especially for economically developing and agriculture dominant countries. At present no permanent solution is picture therefore countries need to come to an

agreement as a peace clause to avoid any friction among members for the clash of interests. The peace clause work as a shield against possible legal difficulties arising from price support based procurement by the government at domestic level for the food security purposes even if it supersedes the limit of domestic support by the government. Although this may be a good idea but it comes with several terms for application. It can only be used by developing countries only for existing traditional staple food crops and that too in order to pursue its programmes for food security through the PDS . It for that may require accumulation of public stockholdings.

The biggest demerit of the peace clause is that it can only be applicable to those programmes only which were already existing on the date of the decision for peace clause and are in consonance with other requirements of AoA also. Under WTO regime, member countries are bound to notify the WTO regularly if their subsidies are in permissible limit or have exceeded it. For example; India informed WTO about subsidies of worth \$6.31 billion for rice given to its farmers in the 2019-20 whereas the value of rice production was \$46.07 billion. It is about 13.6% subsidy of the total value of production of rice and therefore exceeds the de minimis level of 10%. This means that even if India's de minimis limit violate in procurement for rice and wheat, it will continue to enjoy legal immunity as these crops were in the subsidy list earlier also. However, India cannot claim benefit of peace clause to defend procurement of those crops which are not part of the food security programme as of now such as sunflower seed, cotton, groundnut etc. This It means that peace clause in present format will not assist government to deliver its promise of MSP. Therefore although AoA is amended to exclude MSP backed produce for food security from the AMS, the procurement of other crops at prices higher than the fixed ERP would still be considered trade distorting practise and therefore would be subject to de minimis limit. Therefore, in order to exploit flexibilities

available in the AoA, India needs to redesign its agricultural support programmes.

### **Support on Income base**

India may shift from price based support to income-based support. This kind of support to its farmers cannot be termed as trade-distorting practise under the AoA. However such income support should not be connected to production anyhow. In this way, support will be considered under green box, allowable as unlimited support to farmers by government. Thus, instead of naming it as MSP, any new creative name may be assigned to it.

### **Mixture of price base and income base support**

In addition to this, a combination of price based support with an income-based support policy can be framed without ignoring the de minimis limit. It will be altogether a new idea with benefits of MSP. However, it will be difficult to execute especially when there is high sense of distrust existing between the political establishment and the farmers.

### **Conclusion**

It's a question of more than the question of inequality. The conflict between the political and economic orders arises out of the shrinking ability of the capitalists to fulfil the basic aspirations of the masses through market mechanisms. The interests of the consumer and the investor conflicts with those of the citizen and the labour, Robert Reich points out in Super capitalism. A politician facing the electorate has to create and protect jobs and build public amenities; incentives for job creation, if at all, are indirect and distant for the investor, who is ever looking for reducing the workforce or moving work to cheaper places and workers. Politicians are trying to restrict the mobility of capital through measures such as global minimum tax, etc. Capitalism, meanwhile, is trying to escape the planet itself, and in the interim, to free itself from state authority through technological routes such as crypto currencies. The recent failure of government while withdrawing three farm laws and repealed them depicts that reforms in agriculture, no matter how erudite that may be,

cannot be implemented against the desire of the farmers. The Government is required to have detailed discussion with the farmers and create an environment trust to persuade them to assent to other efficient policy decisions beyond MSP which may be fiscally prudent and WTO compatible.

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