

**FOOD STOCKS, FOOD SECURITY, AND INDIA'S
STAND ON WTO TRADE FACILITATION:
A SHOT IN THE ARM OR SHOOTING YOURSELF
IN THE FOOT?**

T.N.Srinivasan

Samuel C Park Jr. Professor of Economics
Emeritus, Yale University

Honorary Visiting Professor, IIT Madras

National Council of Applied Economic Research

New Delhi, September 2, 2014

INTRODUCTION

- Modi government decided that “It would be difficult to join the consensus on the Protocol of Amendment for the TFA (Trade Facilitation Agreement)” and chose not to join by the deadline of July 31, 2014.
- I will argue that this decision was neither in India’s national interest nor in that of developing countries including the Least Developed Countries [LDCs].
- Except Cuba and Venezuela few developing countries including, in particular, China and South Africa of BRICS and our South Asian Regional neighbours joined in our decision.

INTRODUCTION CONCLUDED

- By not ratifying a decision of the previous government to sign TFA, Modi government violated the normal presumption of ratification of an agreement signed by one government by a succeeding government. Modi government, thereby, undermined the confidence of negotiators from other countries that a deal they negotiate with one government in India will not normally be undone by a succeeding government.
- I will argue that the Modi Government's decision was sudden and unanticipated by tracing the chronology of the route to the decision between the BRICS summit declaration of July 15, 2014 to not joining the consensus on July 31, 2014.
- I will also argue that the reasons offered in justification of the decision are not persuasive.

BACKGROUND

- The Uruguay Round: 1986-1994
- Marrakesh Agreement – The Final Act of the Uruguay Round
- The WTO Agreement
 - [Decision Making: Consensus and Voting](#)
 - [Annex 1A](#)
- [Single Undertaking](#)
- Ministerial Conferences- Singapore in 1996 was the first. Bali in 2013 was the ninth.
- General Council of WTO

- Article IX: “The WTO shall continue the practice of decision making by consensus followed under GATT 1947. Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. At meetings of the Ministerial Conference and the General Council, each Member of the WTO shall have one vote. Where the European Communities exercise their right to vote, they shall have a number of votes equal to the number of their member States which are members of the WTO. Decisions of the Ministerial Conference and the General Council shall be taken by a majority of the votes cast, unless otherwise provided in this Agreement or in the relevant Multilateral Trade Agreement.”

- Article X: “Amendments to provisions of this Agreement, or the Multilateral Trade Agreements in Annexes 1A and 1C, other than those listed in paragraphs 2 and 6, of a nature that would alter the rights and obligations of the Members, shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter for each other Member upon acceptance by it. The Ministerial Conference may decide by a three-fourths majority of the Members that any amendment made effective under this paragraph is of such a nature that any Member which has not accepted it within a period specified by the Ministerial Conference in each case shall be free to withdraw from the WTO or to remain a Member with the consent of the Ministerial Conference.”

[back](#)

Annex 1A: Multilateral Agreement on Trade in Goods

- General Agreement on Tariffs and Trade 1994
- Agreement on Agriculture
- Agreement on the Application of Sanitary and Phytosanitary Measures
- Agreement on Textiles and Clothing
- Agreement on Technical Barriers to Trade
- Agreement on Trade-Related Investment Measures
- Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994

- Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994
- Agreement on Preshipment Inspection
- Agreement on Rules of Origin
- Agreement on Import licensing Procedures
- Agreement on Subsidies and Countervailing Measures
- Agreement on Safeguards

[Back](#)

BACKGROUND CONTD.

- Single Undertaking
- Doha Round: 2001 – still to be concluded
- Development round?
- Doha Development Agenda (DDA)
- Negotiating Process : Framework Agreements and Modalities
- Framework Agreement and Doha work programme of 2004
- In December, 2008, India and the US jointly scuttled further progress on Doha Round from framework to modalities.
- No Progress until the Bali Ministerial in December 2013.
- Singapore Issues: Trade and Investment, Trade and Competition Policy, Transparency in Government Procurement and Trade Facilitation.

BACKGROUND CONCD.

- No consensus on starting negotiations except on Trade Facilitation – the other three were dropped from the Doha Agenda.
- Bali Ministerial of December 2013: TFA signed as a Multi-lateral Agreement with July 31, 2014 as a deadline for the adoption of the Protocol of Amendment to Article 1A of the WTO Agreement.
- Once the protocol is adopted, the TFA will automatically come into force from July 31, 2015, if ratified by two-thirds of the members of the WTO.
- Hereafter, I will use “non-ratification” as a shortcut for the non-adoption of the protocol of TFA.
- Established a Preparatory Committee on Trade Facilitations.

INDIA'S DECISION ON TFA

- Modi Government violated the presumption of ratification of an international agreement.
- International Agreements signed by a legitimate government in power in India automatically become part of domestic law and thereby creating presumption of ratification.
- The contrast is that of US where a domestic facilitating legislation is required to enforce international agreements.
- The presumption of ratification gives India's negotiating partners from other nations, the confidence that agreements signed with a government in India will not be normally overturned by a future government.
- Although non-ratification is certainly an option that is not ruled out by domestic law or WTO rules, it is not normally done except under unusual circumstances.

INDIA'S DECISION CONTD.

- For example, the non-ratification by the US of the Charter of the International Trade Organisation approved by the 1948 Havana Conference led to GATT (under its provisional protocol of application) , becoming the agreement that governed international trade from 1948 until the WTO subsumed it in 1994.
- Modi government declined to ratify for no extraordinary reasons warranting it.

CHRONOLOGY OF EVENTS LEADING TO INDIA'S DECISION

Prime Minister Modi signed the Fortaleza Declaration of the 6th BRICS summit at BRAZIL which in paragraph 21 said inter alia

- [Fortaleza Document](#)

- Apparently the Modi government was not considering non-ratification as of July 15, 2014.
- On July 23, 2014, there was a special informal session of the Committee on Agriculture (CoA) of the WTO to discuss, inter alia, Public Stocking Issues.
- [June and July meetings of the CoA.](#)
- India made a presentation of its programme of stock holding for food security at the July, 2014 meeting.

[next](#)

Fortaleza Document

- ...In reaffirming our support for an open, inclusive, non-discriminatory, transparent and rule-based multilateral trading system, we will continue our efforts towards the successful conclusion of the Doha Round of the World Trade Organization (WTO), following the **positive results** of the Ninth Ministerial Conference (MC9), held in Bali, Indonesia, in December 2013. In this context, we reaffirm our commitment to establish by the **end of this year a post-Bali work program for concluding the Doha Round**, based on the progress already made and in keeping with the mandate established in the Doha Development Agenda. We affirm that this work program should prioritize the issues where legally binding outcomes could not be achieved at MC9, including Public Stock-Holding for Food Security Purposes. **We look forward to the implementation of the Agreement on Trade Facilitation...**(emphasis added)

- Concerning the Decision on public stockholding, at the June CoA the Chair included Bali implementation as a topic for discussion at the informal meeting in July, 2014. The G-33 requested the initiation of discussions on the work programme with the aim of making recommendations for a permanent solution, as specified in the Bali Decision. The G-33 called for proposals to be submitted in a time-bound manner in order to be able to meet the deadlines set out by Ministers in the Decision. Some Members considered that before the next CoA in November there should be a dedicated discussion on this issue. In the July informal CoA, the Chair encouraged any delegation who had any new elements to contribute regarding these proposals or any fresh thinking to share them with the Committee. One Member circulated a submission on the Elements for a Work Programme on Food Security. Informal consultations will be scheduled after the summer break to continue work on this issue. **The G-33 circulated a proposal (JOB/AG/27,) re-introducing their original proposal from November 2012 and presented it in the CoA Special Session on 23 July 2014.** (emphasis added)

G33 PROPOSAL IN JULY 2014

- To reiterate, the G33 of which India is a leading member also presented proposals for a permanent solution to the problem.
- But the G-33 proposal was exactly the same as the one it had made in 2012. India then, was represented by the Manmohan Singh Government.
- Thus, the Modi Government had an opportunity to modify the 2012 G33 proposal. But it chose not to do so. Thus, even as late as July 23, 2014, gave no inkling of its impending decision of non-ratification.
- Indeed, the Chair of the meeting gave a positive assessment of the meeting.

July 24th-25th meeting of the General Council of the WTO

- At the meeting of the General Council of the WTO, India did express its dissatisfaction with the discussion on public stock holding and argued that it is a simple issue that can be addressed quickly and suggested a course of action to arrive at a permanent solution by December 31st,2014. Again there was no inkling of non-ratification. (<http://pib.nic.in/newsite/PrintRelease.aspx?relid=107533>, accessed on: 11th August, 2014)
- Also India did not present its time schedule for implementation of its proposals.
- Public Stock Holding and Food Security in TFA.
 - [Articles 1,2,8,9 and 10 of Ministerial Decision of December 7th2013](#)
 - India's statement at WTO General Council Meeting,24th-25thJuly,2014 (<http://pib.nic.in/newsite/erelease.aspx>, accessed on:28thAug,2014)

[next](#)

- Article 1: Members agree to put in place an interim mechanism as set out below, and to negotiate on an agreement for a permanent solution, for the issue of public stockholding for food security purposes for adoption by the 11th Ministerial Conference.
[footnote omitted]
- Article 2: In the interim, until a permanent solution is found, and provided that the conditions set out below are met, Members shall refrain from challenging through the WTO Dispute Settlement Mechanism, compliance of a developing Member with its obligations under Articles 6.3 and 7.2 (b) of the Agreement on Agriculture (AoA) in relation to support provided for traditional staple food crops in pursuance of public stockholding programmes for food security purposes existing as of the date of this Decision, that are consistent with the criteria of paragraph 3, footnote 5, and footnote 5&6 of Annex 2 to the AoA when the developing Member complies with the terms of this Decision. [footnote omitted]

- Article 8: Members agree to establish a work programme to be undertaken in the Committee on Agriculture to pursue this issue with the aim of making recommendations for a permanent solution. This work programme shall take into account Members' existing and future submissions.
- Article 9: In the context of the broader post-Bali agenda, Members commit to the work programme mentioned in the previous paragraph with the aim of concluding it no later than the 11th Ministerial Conference.
- Article 10: The General Council shall report to the 10th Ministerial Conference for an evaluation of the operation of this Decision, particularly on the progress made on the work programme.

[Back](#)

July 24th-25th meeting of the General Council of the WTO, CONCD.

- Regular work under the General Council on other issues of interest to developing countries were to go on.
- Clearly the argued time frame for committing to a final decision on Public Stock Holding extends to the 11th Ministerial, sometime in 2017 with a progress report at the 10th Ministerial, sometime in 2015.
- India's July, 2014 view that the issue could be settled by the end of 2014 contrasts with the implied view of the previous government, which signed TFA in December, 2013.
- Moreover, the Modi government chose not to avail of the interim arrangement, in Article 2 – the so called 'Peace Clause' of the Ministerial Decision on Public Stockholding at Bali.
- The Modi government's rationale for not adopting the TFA protocol.

POST GENERAL COUNCIL MEETING REPORTS

- Since the decision not to ratify was sudden and unexpected, there is no extensive official documentation of the decision – First, is India’s official statement at the July 24-25 meeting of the General Council, which I mentioned earlier. Second is Minister Nirmala Sitaraman’s statement in the Lok Sabha on August 5th, 2014. The third, is not an official document but a report in the Hindu, of a briefing by an anonymous High Commerce Ministry Official on the issue.
- http://commerce.nic.in/pressrelease/pressrelease_detail.asp?id=3113, Accessed on: 11th August, 2014
- <http://www.thehindu.com/todays-paper/tp-national/india-confident-of-solution-to-food-security-issue-at-wto/article6332937.ece>, Accessed on: 20th August, 2014

POST GENERAL COUNCIL MEETING REPORTS, CONTD.

- As already mentioned, India's statement at the WTO General Council Meeting on October 24-25, 2014 differs sharply in its time frame for finding a permanent solution to the Public Stock Holding as compared in the TFA Agreement, signed by the UPA II government. The statement, however, does not say explicitly that India will not sign the protocol of TFA by July 31, 2014 if its request for a postponement of its consideration was not adopted by the Council.
- Minister Sitaraman's statement was made after July 31, 2014 had passed without India joining the emerging consensus on signing the TFA Protocol. She states in Paragraph 8 that, "it would be difficult to join the consensus on the Protocol of Amendment for the TFA".
- Minister Sitaraman stated in paragraph 19 that, "the TFA protocol must be postponed till a permanent solution to the Public Stockholding is found". This is without merit since the TFA is clear on finding a permanent solution and sets a time table for it, signing the protocol in no way would have precluded finding one.

POST GENERAL COUNCIL MEETING REPORTS, CONTD.

- Sitaraman referred, in Paragraph 11, to the “single undertaking” aspect of the Doha Round negotiations. This reference is not relevant. Signing TFA agreement by itself will not conclude the Doha Round with its Final Act. There are many more Doha Agenda issues to be settled on which negotiations are still going on. As such, the signing of TFA will not preclude the application of single undertaking at the stage of the Final Act.
- Minister Sitaraman also referred in Paragraph 9 to India’s reduction commitments regarding Aggregate Measure of Support (AMS) in the Uruguay Round’s Agreement on Agriculture.
- She claimed that they will come in the way of India meeting its food security obligations. She also referred to the formulae for computing AMS as per WTO rules. As already mentioned, India has not initiated the steps to invoke the peace clause in the TFA for addressing this issue.
- It would take very long time to discuss the AMS issue in detail. In my judgment, revisiting AMS formulae and/or indexing it to reflect trends in nominal price would violate the AMS as a baseline value of the support that existed as of 1986-88, for the purpose of commitments in reduction of AMS.

POST GENERAL COUNCIL MEETING REPORTS, CONTD.

- It is true that the process of estimating trade and non-trade support that constituted AMS was deeply flawed and many countries including India engaged in taking advantage of its flaws and manipulated it to their favour. But indexing the formulae without revisiting 'dirty tariffication' and other shenanigans of AMS process now is not feasible.
- Turning to the purported remarks of an "anonymous high level" Commerce Ministry sources, first, it is premature to presume as the official did that notwithstanding India's putting TFA in a limbo, the General Council will meet in September 2014 to consider India's proposals on Stock Holding and resolve the issue of a permanent solution to the food security-stock holding. The Director General of WTO has not yet announced a meeting of the General Council for such a purpose.
- Second, the reference in the remarks to "Peace Clause" did not mention that India has not initiated any step to invoke the Peace Clause.

POST GENERAL COUNCIL MEETING REPORTS, CONTD.

- Third, is the assertion that “there were no studies to show that TFA would give a \$1 trillion boost to Global GDP”. This is unadulterated nonsense! One could disagree with their methodologies and estimates but, there are many studies of the impact of TFA, including one by Gary Hufbauer and Jeffrey Schott that came up with \$1 Trillion [to be precise \$ 0.96 trillion] estimate of GDP gain and also of expansion of trade volume of 1\$ trillion. I list five studies without being comprehensive:
- Hufbauer, Gary and Schott, Gary, 2013, *Payoff from the World Trade Agenda 2013*, Peterson Institute for International Economics, Available from:
<http://www.piie.com/publications/papers/hufbauerschott20130422.pdf>, Accessed on: 26th August, 2014.
- Francois et al. 2005, *Trade liberalization in the Doha Development Round*, Economic Policy, Vol.20, No.42, Available from:
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=701685, Accessed on: 26th August, 2014.

POST GENERAL COUNCIL MEETING REPORTS, CONCD.

- Mirza, Tasneem, 2009, *Infrastructure and Trade in Sub-Saharan Africa: Costs and Benefits of Reforms*, Presented at the 12th Annual Conference on Global Economic Analysis, Santiago, Chile, Available from: https://www.gtap.agecon.purdue.edu/resources/res_display.asp?recordID=3127, Accessed on 27th August, 2014.
- Capaldo, Jeronim, 2013, *The Uncertain Gains from Trade Facilitation*, Global Development and Environment Institute, Policy Brief No 13-02, Available from: <http://ase.tufts.edu/gdae/Pubs/rp/PB13-02UncertainGains.pdf>, Accessed on 26th August, 2014.
- Trade and Agricultural Directorate, 2014, *The WTO Trade Facilitation Agreement-Potential Impact on Trade Costs*, OECD, Available from: http://www.oecd.org/trade/tradedev/OECD_TAD_WTO_trade_facilitation_agreement_potential_impact_trade_costs_february_2014.pdf, Accessed on: 26th August, 2014.

INDIA'S DECISION: CONCLUDING REMARKS

- In my view the issue of Public Stock-Holding Food Security is a red herring. There are many ways of achieving food security without excessive accumulation of stocks of grains and without violating India's commitments at WTO and elsewhere. I would argue that public stock holding of food grains is almost surely not a social cost-effective means of achieving food security.
- In sum, India gained virtually nothing by not signing the TFA protocol and putting TFA in a limbo.
- The argument that rejection of TFA is a necessary assertion of national sovereignty is without merit since by definition **any** international agreement would by definition restrict national sovereignty. The issue therefore is one of a trade off between benefits from the agreement against its costs including the cost of restrictions on sovereignty. By signing the agreement a nation implicitly values benefits as outweighing the costs.

INDIA'S DECISION: CONCLUDED

- The General Council is yet to decide on the next steps at Doha. One option, is to choose to vote on TFA. It is not likely to be adopted. But were it to be adopted India's position will not find much support in such a vote.
- Why not initiate the Peace clause and wait for the final solution to public stockholding after a thorough discussion till the 11th Ministerial, if not earlier?