
CLARIFICATIONS

Khindira – Measures Taken Pursuant to the Agricultural Livelihoods and Food Security Act

By Nicolas Lamp
Assistant Professor
Faculty of Law, Queen's University

I. Introductory Note

Please note that additional facts which I have provided in response to the questions do not necessarily have legal import. Some of the questions concerned issues of legal interpretations or legal characterization. On these questions, the participants should develop their own arguments. Other questions concerned issues of public knowledge. On these questions, the participants should conduct their own research.

II. Important Clarifications

For ease of reference, I provide a preview of the most important clarifications.

- Khindira does not have any scheduled Total AMS commitment levels, i.e., the commitment level specified in Section I of Part IV of Khindira's schedule is "nil".
- The government of Khindira submitted export subsidy notifications before the adoption of the Nairobi Decision, but it did not notify any export subsidies for rice in any of the last three notifications submitted before the adoption of the Nairobi Decision.

III. Answers to Individual Clarification Questions

1. What is the Tariff bindings in Khindira's World trade Organisation Schedule referred in Para 6?

The level of Khindira's tariff bindings is not relevant since the participants know that the rates set by the Committee for the Administration of Agricultural Tariffs will not exceed those bindings.

2. What are the preferential agreements to which Khindira is a party referred in Para 6?

The participants do not need to know anything about any preferential agreements to which Khindira may be a party in order to formulate their arguments in relation to Section 2 of the Act.

3. Does Khindira have any scheduled Total AMS commitment levels? If yes, kindly provide the Schedule IV of Khindira's Schedule.

No. Khindira does not have any scheduled Total AMS commitment levels, i.e., the commitment level specified in Section I of Part IV of Khindira's schedule is "nil".

4. What is the Constituent Data and Methodology of Khindira, considering PART IV of MEMBER'S SCHEDULE has not been provided?

Please refer to the response to question 3. The relevant excerpt from the supporting material incorporated by reference in Part IV of Khindira's schedule is included as annexure 2 in the moot problem (Page 17 of G/AG/AGST/KHI).

5. Is Khindira a "Net Food- Importing" or "Net Food- Exporting" country?

Khindira is a net food-exporting country.

6. How is Article 18.4 related to choosing of currency with respect to deciding whether to take Khindiran Lira and not US Dollars for calculating Domestic support?

The participants should develop their own arguments on this issue.

7. Whether the data for domestic support of Khindira available for the time period from July 2015? What is its relevance in the April 16 notification?

The participants should develop their own arguments on this issue based on the information provided in paragraph 10.

8. What was Khindira's budgetary outlays level for export subsidies on rice from 2001-2017 and from 2012-2017?

Please refer to the information provided in paragraph 20 and in the response to question 10.

9. What quantity did Khindira benefit from the export subsidies every year from 2001-2017 and specifically from 2012-2017?

Please refer to the information provided in paragraph 20 and in the response to question 10.

10. Did Khindira submit any notification related to export subsidies on rice before the adoption of the Nairobi Decision, if yes, was the said notification one of the last three notifications that was sent before the adoption of Nairobi Decision?

The government of Khindira submitted export subsidy notifications before the adoption of the Nairobi Decision, but it did not notify any export subsidies for rice in any of the last three notifications submitted before the adoption of the Nairobi Decision.

11. Does the WTO consider Sutan as a developing country or has it merely identified itself as one?

Participants should conduct their own research on developing country status in the WTO.

12. What are Khindira's international obligations referred to in Para 6?

The Committee's interpretation of what these obligations are is described in paragraph 6.

13. Which other WTO members is Khindira referring to in line 2 of Para 16?

Participants should conduct their own research on the notification record of the WTO membership.

14. What is Khindira's Domestic Support Commitment level as given in its Member Schedule (Section 1 Part IV)?

Please refer to the response to question 3.

15. The bound and applied tariff levels of Khindira have not been given. Has the flexible tariff been published?

Please refer to the response to question 1 regarding Khindira's tariff bindings. The applied rates are published immediately after they are set by the Committee for the Administration of Agricultural Tariffs.

16. In para 13 the government of Khindira takes the advantage of the Bali Package and subsequently in para 21 states that another package, Nairobi, is merely a political document and imposes no legal obligations. Isn't this a contradictory stance?

The participants should develop their own arguments on this issue.

17. Has information on the exogenous factors on the basis of which the tariff was calculated been given by Khindira?

The Committee for the Administration of Agricultural Tariffs does not specifically publish the data on which it relies in its decision-making, but much of this information is in the public domain (e.g., data on domestic and international prices, harvest forecasts, and the size of existing stocks).

18. Has there been any effect on the domestic prices of products post the flexible tariff administration (influenced by world price fluctuations)? Or have they relatively remained the same?

The participants do not need this information to formulate their arguments in relation to Section 2 of the Act.

19. Does section 2 of Bill 513 entitled "Flexible Tariff Administration" administer an ad valorem duty or specific duty or a combined duty?

Section 2 of the Act does not constrain the Committee for the Administration of Agricultural Tariffs in its choice of the type of duty, as long as the rate is compliant with Khindira's international obligations. So far, the Committee has exclusively imposed ad valorem duties.

20. Is the tariff levied on the importation of the products into Khindira?

The tariffs set by the Committee are levied on imported products at the point of importation.

21. Except rice, wheat and coarse grains, what are the other products for which the committee has changed the tariffs?

The participants should focus their arguments on the administration of the tariffs levied on these three products.

22. Are any of the products (wheat, rice and coarse grains) marked by the words 'SSG' in the Schedule of Tariff bindings?

No.

23. What are Khindira's commitments under Part 1 of its member schedule (Most-favoured-nation or MFN concessions, maximum tariffs to goods from other WTO member)?

Please refer to the response to question 1.

24. Is the reference to Bill 513 after being passed in the parliament synonymous to "Agriculture Livelihoods and Food Security Act"?

Yes.

25. In Annexure 1 of the Problem, it is not clear how the total price support in column 8 is being calculated. { $((3-4)*5)-6$ }

Participants should conduct their own research on the elements of this calculation.

26. Are both the parties signatories to any other international treaty, convention, rules etc.?

No other international agreements are relevant to assessing the Kingdom of Sutan's legal claims.

27. What type of Export Subsidy is provided by the Khindirian Government, whether direct or indirect?

All relevant information is contained in paragraph 21.

28. What is the nature of "exceptional cases" mentioned in paragraph Number 20?

The cases of export subsidization referred to in paragraph 20 were exceptional in the sense that they were sporadic and did not reflect a government policy. Please also refer to the response to question 10.

29. What is the nature of “steadiness of income” mentioned in paragraph number 1, whether it is direct or indirect

The participants are free to develop their own interpretation. These words are used in a speech by a politician, not in a legal document.

30. Are the products of Khindira and Sutan competing in the third world countries are like products?

The participants should develop their own arguments based on the information provided in paragraph 22.

31. Would the Interim Solution (the Bali Peace clause), which is currently in force, be applicable to the problem?

The participants should develop their own arguments on this issue.

32. Whether the requisite changes (if any), which are proposed to be made in the 11th Ministerial Conference slated to be held in Argentina in December 2017, have to be incorporated in the memo?

All written and oral submissions should reflect the state of the law at the time at which the submissions are made.

33. Whether there is a standardized form of currency (Khindiran Lira or Dollar) to determine the external reference price or any of the other prices stated in the problem?

The participants should develop their own arguments on this issue.

34. What authority does the Association of Rice Wholesalers have? What kind of a body are they? Do they represent producers?

The Association of Rice Wholesalers is an association under Khindiran domestic law. Its membership is exclusively made up of Khindiran businesses. It is primarily an interest group and does not have any statutory authority. It is powerful in the sense that it can influence politicians through campaign contributions and by exploiting personal connections. The Association also has a contract with the government pursuant to which it administers a part of the rice stock for the government (see paragraph 18). Under the contract, the Association is responsible for storing the rice and delivering it to distribution centres across the country. The Association is not involved in distributing the stock to Khindiran citizens or in making decisions on who is entitled to receive rice at subsidized prices.

35. Are the farmers of Khindira deemed as producers under Annexure 2 of the Agreement of Agriculture?

The participants should develop their own arguments on this issue.

36. Is the Agricultural Livelihood and Food Security Act a publicly funded government programme (including government revenue foregone) not involving transfers from consumers?

The participants should develop their own arguments on this issue.

37. Are both Khindira and the Kingdom of Sutan developing countries?

Read paragraph 9. Participants should conduct their own research on developing country status in the WTO.

38. Are the local laws of Khindira similar to that of India if or not then the local laws of Khindira represents which country?

Local laws of Khindira that are not referenced in the case are not relevant to assessing the Kingdom of Sutan's legal claims.

39. Are the local laws of The Kingdom of Sutan is similar to that of India if not then the local laws of which country represents The Kingdom of Sutan?

Local laws of the Kingdom of Sutan are not relevant to assessing the Kingdom of Sutan's legal claims.

40. Is Association of Rice Wholesalers an International Body or Does it represents to any Particular Country?

Please refer to the response to question 34.

41. When did Khindira and Kingdom of Sutan become the member of WTO?

Khindira and the Kingdom of Sutan are original members of the WTO.

42. Are Khindira and Kingdom of Sutan signatories of Uruguay Round, Bali Decision, and Nairobi Decision?

Khindira and the Kingdom of Sutan are Members of the WTO. Participants should conduct their own research on the implications of that status.

43. Are both the nations contracting parties to the WTO Agreement on Agriculture?

Khindira and the Kingdom of Sutan are Members of the WTO. Participants should conduct their own research on the implications of that status.

44. What are the international obligations that Khindira and Sutan government is obligated to follow?

Khindira is a Member of the WTO. Participants should conduct their own research on the implications of that status. No other international agreements are relevant to assessing the Kingdom of Sutan's legal claims.

45. What all are the international agreements to which Khindira had signed or has ratified.

Khindira is a Member of the WTO. No other international agreements are relevant to assessing the Kingdom of Sutan's legal claims.

46. What is Khindira's position in WTO, is it a member nation or not? If yes then upto what extent?

Khindira is a Member of the WTO. Participants should conduct their own research on the implications of that status.

47. What are the details of the bilateral working group referred in Para 9, page 4?

All relevant information about the bilateral working group is provided in paragraph 9.

48. What is the "slight delay" being referred to in Para 16 page 5?

The participants should be able to answer this question based on the facts provided in paragraphs 10, 12 and 14.

49. If "Agricultural Livelihood and Food Security Act" is enacted, then why is it referred to as a Bill 513 in Para 17. What is the status of this enactment?

The reference to Bill 513 in paragraph 17 should be understood as a reference to the Act.

50. What is the reason for difficulty in distributing stocks to population referred in Para 17?

As paragraph 17 states, the reasons for the difficulties in distributing stocks are the limited administrative capacity of the Khindiran state and the lack of knowledge about the entitlement outside of large urban centres.

51. When was the Uruguay Round? What was the matter of discussion in it?

The timing and subject matter of the Uruguay Round is public knowledge. The participants should conduct their own research.