



Gujarat National Law University

10TH GNLU INTERNATIONAL MOOT COURT COMPETITION, 2018

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

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MOOT PROBLEM

1. It was 7 PM in the evening of 27 September 2012, and the debate on Bill 513 had been going on for several hours. Mr. Kassan, the Member of Parliament for a rural district in the poor Eastern part of Khindira, rose from his seat and adjusted his tie. “Mr. Speaker”, he began,

“...the plight of farmers in my district has been the subject of international media attention. Their despair tears at the fabric of every village in my district. The high cost of seeds and fertilizers, unscrupulous moneylenders, the increasingly unpredictable weather, and the volatility of domestic and international prices have driven our farmers to ever greater levels of indebtedness and have led many – far too many of them – to see no other remedy but to take their own lives. Mr. Speaker, the bill that is before us today will offer some relief to those who have received no relief in many years. It provides them with some steadiness of income, and it will allow them to see a future for themselves doing what their ancestors have done for thousands of years – farming the land. This is why Bill 513 has my vote. Thank you, Mr. Speaker.”

2. There was some applause for Mr. Kassan’s speech. Ms. Sendala, the representative of a district that encompasses the outskirts of Khindira’s capital city, rose to speak next.

“Mr. Speaker, I am grateful to my colleague for reminding us of the promise of this bill for the farmers in his district. However, we must not forget the plight of the city dweller, who struggles to feed his family. Whatever is done for the farmer in Mr. Kassan’s district must not come at the expense of the poor in my district. Mr. Speaker, the urban poor face adversity just like the farmer: they do not know whether they will be hired for work the next day, whether their employers will choose to pay them, or whether they will get injured doing the perilous work that they do. Many of their children suffer from malnutrition. We must make food more affordable for them. I cannot vote for this bill if I do not receive assurances that it will not make life even harder for those who struggle to provide for their children.”

3. The Speaker then invited the Minister of Agriculture to respond to Mr. Kassan’s and Ms. Sendala’s speeches.

“Mr. Speaker, I thank the honorable Members for their interventions. I am proud to report that the bill in front of us today, Bill 513, fully addresses their concerns. What we propose is, first, to use our power to set tariffs to shield our farmers from some of the volatility of international prices mentioned by Mr. Kassan. We will further alleviate the uncertainty faced by our farmers by buying their crop at a guaranteed price. I am delighted to inform you that my ministry is currently working on a bill that will establish a system of crop insurance to help farmers with another source of uncertainty, the weather. To address Ms. Sendala’s concerns, let me point out that we will make the stocks acquired from our farmers available to the poor at subsidized

prices. This bill achieves a balance between the needs of our citizens in the city and in the countryside.”

4. After some further speeches, Bill 513, named the “Agricultural Livelihoods and Food Security Act”, passed the Parliament by a vote of 273 to 77. The Act established several mechanisms to allow the government of Khindira to manage the international and domestic flow of agricultural products in the Khindiran market. The Khindiran government had taken an active role in Khindira’s agricultural sector before, but it had traditionally been more focused on rationalizing production to increase the sector’s export competitiveness. The epidemic of farmer suicides, the increased frequency of extreme weather events due to climate change, and a continuing crisis of malnutrition in an urbanizing population have led Khindira’s politicians to put the livelihoods of farmers and the food security needs of the population at the forefront of the country’s agricultural policies. At the same time, the export interests that the Khindiran government had traditionally cultivated – foremost among them the powerful Association of Rice Wholesalers – have remained influential.
5. Among the innovations introduced by Bill 513 is Section 2, entitled “Flexible Tariff Administration”. Section 2 establishes a “Committee for the Administration of Agricultural Tariffs” within the Ministry of Agriculture. The Committee is required to meet on the 15th of every month to set the tariffs of agricultural products. The tariffs take effect on the 1st of the following month.
6. Section 2 requires the Committee to exercise its discretion “within the framework of Khindira’s international obligations”. The Committee has interpreted this obligation to require that the rates it sets must not exceed the tariff bindings in Khindira’s World Trade Organization (WTO) schedule and in any preferential agreements to which Khindira is a party. Section 2 does not provide a formula for determining tariff rates, and the Committee has not found it useful to develop such a formula. Instead, the bill requires that the Committee take into account a number of factors, including trends of domestic and international prices, information about planting decisions, harvest forecasts, demand estimates, and the size of existing stocks.
7. In practice, the Committee rarely changes the tariffs of most agricultural products; instead, it focuses its attention on the most important agricultural commodities for Khindira’s farmers, including rice, wheat, and coarse grains. On average, the Committee has changed the tariff for rice every 1.2 months, the tariff for wheat every 2.8 months and the tariff for coarse grains every 3.2 months.
8. Khindira’s trading partners have repeatedly voiced concerns about Khindira’s system of flexible tariff administration. They have inquired about the operation of the system at sessions of the WTO Committee on Agriculture and have raised the matter in bilateral

discussions. Khindira's trading partners have been particularly interested in learning more about the basis on which the Committee arrives at decisions on rates, and have expressed dismay about the unpredictability of the tariff barriers that their exporters face as a result of the system.

9. The Kingdom of Sutan, a neighboring country with a strong export interest in products that are subject to frequent rate changes, has been particularly vocal in its criticism. Like Khindira, the Kingdom of Sutan self-identifies as a developing country in the WTO, but it is smaller and more advanced than Khindira. By 2014, the system of flexible tariff administration had become such an irritant in the relations between Khindira and Sutan that the two governments decided to establish a bilateral working group composed of high-level officials with the mandate to develop a satisfactory solution to the issue. So far, the working group has been unable to resolve the dispute.
10. In addition to allowing the Committee for the Administration of Agricultural Tariffs to set tariff rates, the Agricultural Livelihoods and Food Security Act has had a profound impact on Khindira's system of price support for agricultural staple foods. Section 3 of the Act creates an entitlement for large parts of the population to receive key staples at subsidized prices. In order to stimulate the additional production necessary to meet the demand created by this entitlement, the Khindiran government decided to substantially increase the administered prices at which it buys key staples from farmers. Starting in the marketing year 2013-2014, the government increased the price support available for rice and wheat by 43 and 23 percent of the 2012-2013 support prices, respectively. On 16 April 2016, it notified the WTO Committee on Agriculture of the price support provided in the marketing years 2012-2013, 2013-2014, and 2014-2015. An excerpt of the notification is reproduced in **Annexure 1**.
11. The increase in price support was noted with alarm by Khindira's trading partners. At meetings of the WTO Committee on Agriculture, several WTO Members stated that they considered Khindira to be in violation of its obligations under the WTO Agreement on Agriculture, since the total market price support for wheat that Khindira provided in the marketing years 2013-2014 and 2014-2015 exceeded 10 percent of the total value of production of wheat in Khindira during those years – the *de minimis* level at which Khindira is entitled to provide support under Article 6.4 of the Agreement on Agriculture. The Khindiran delegates responded by pointing to the urgent need to provide food security and preserve the livelihoods of its farmers. However, the Khindiran delegates also relayed to their government that there was a real possibility that a WTO Member might decide to challenge the increased price support through WTO dispute settlement proceedings.
12. In order to forestall a possible WTO challenge, the Khindiran government decided to avail itself of the mechanism provided by the Ministerial Decision on Public

Stockholding for Food Security Purposes, which was adopted at the Ministerial Meeting in Bali on 7 December 2013 (Bali Decision). In order to fulfil the conditions outlined in the Bali Decision, the government of Khindira submitted, on 1 June 2017, a notification to the WTO Committee on Agriculture, declaring that it was at risk of exceeding its Aggregate Measurement of Support (AMS) limit with respect to wheat. The government of Khindira also provided additional information in accordance with the template attached to the Bali Decision. In Section 1 of the template, which relates to compliance with notification obligations under the Agreement on Agriculture, the government of Khindira referred to its notification of 16 April 2016.

13. Shortly after the government of Khindira submitted its notification under the Bali Decision, the government of the Kingdom of Sutan sent a set of comments to Khindira, in which it expressed the view that Khindira had not met the conditions set out in the Bali Decision, for two reasons.
14. First, the Kingdom of Sutan considers that Khindira is not in compliance with its notification obligations under the Agreement on Agriculture, since its last notification, of 16 April 2016, does not cover domestic support provided after July 2015, the end of the 2014-2015 marketing year.
15. Second, the Kingdom of Sutan considers that Khindira is providing domestic support in excess of its commitments under the Agreement on Agriculture not only with respect to wheat, but also with respect to rice. Sutan notes that, while the administered price for rice is lower than the external reference price when expressed in US Dollars during the period covered by the notification, the administered price expressed in Khindiran Lira (K£) exceeds the external reference price denominated in Khindiran Lira by a large margin. Sutan submits that, since Khindira expressed the external reference price in Khindiran Lira when it submitted its Supporting Tables Relating to Commitments on Agricultural Products in Part IV of the Schedules (see the excerpt from G/AG/AGST/KHI in **Annexure 2**) at the conclusion of the Uruguay Round, the difference between the administered price and the external reference price as expressed in Khindiran Lira must provide the basis for calculating the market price support provided by the Khindiran government for purposes of assessing its compliance with the Agreement on Agriculture.
16. In its reply to the government of the Kingdom of Sutan, the government of Khindira notes that its notification record compares favourably with that of many other WTO Members and that, in any event, the slight delay in submitting notifications should not deprive Khindira of the benefit of the Bali Decision. With respect to the question of which currency should be used to calculate Khindira's AMS, the government of Khindira points to Article 18.4 of the Agreement on Agriculture, which instructs WTO Members to "give due consideration to the influence of excessive rates of inflation on the ability of any Member to abide by its domestic support commitments".

17. The increase in the administered price for rice and wheat has led to higher levels of production and increased procurement of rice and wheat by the government of Khindira. At the same time, the government of Khindira has faced difficulties distributing these stocks to the population in need at the pace that it had originally envisaged. In some parts of the country, the Khindiran state does not have the administrative capacity for the controlled release of the accumulated stocks. Outside of large urban centres, Khindiran citizens are often not aware of the new entitlements conferred upon them by Bill 513, and are thus difficult to reach.
18. As a result of these difficulties, stocks of wheat and rice have continued to accumulate, and the government of Khindira finds itself under increasing pressure to release some of the stocks for export. The powerful Association of Rice Wholesalers, which administers part of the rice stock for the government, is attempting to use its influence among Khindiran politicians to revive a program for the subsidization of rice exports. In the 1970s and 1980s, Khindira's government had tried to use exports of agricultural products to earn foreign exchange to support Khindira's industrialization. In an effort to help its agricultural wholesalers to break into foreign markets, the government had granted exports subsidies on major staple foods, including rice, wheat, and coarse grains.
19. At the conclusion of the Uruguay Round, Khindira scheduled the export subsidy reduction commitments as detailed in **Annexure 3**.
20. Subsequent to the conclusion of the Uruguay Round, as the Khindiran government started to reorient its agricultural policies towards the livelihoods and food security of its population, it had granted export subsidies only in exceptional cases to dispose of surplus stocks, remaining well within its bindings both in terms of quantities and budgetary outlays. However, the renewed lobbying push by the Association of Rice Wholesalers has led the government to take a cautious approach to the implementation of the Ministerial Decision on Export Competition adopted at the Nairobi Ministerial on 19 December 2015 (Nairobi Decision). On 27 June 2017, the WTO Secretariat circulated the communication in **Annexure 4** at the request of Khindira.
21. The Kingdom of Sutan formally objected to the certification of the revised schedule within 5 days of its circulation. As a result, the schedule remained uncertified. Khindira argues that the Nairobi decision is merely a political document and hence imposes no legal obligation on its own, and that, in submitting the draft schedule, it has gone as far as it can to implement the decision. In its budget projection, it has included funds for export subsidies for rice for the marketing years 2017-2018 and 2018-2019.

Legal Claims

22. It is 27 September 2017, five years to the day since the "Agricultural Livelihoods and Food Security Act" was adopted. The tensions between Khindira and the Kingdom of

Sutan have reached a boiling point. The government of the Kingdom of Sutan is frustrated by the unwillingness of the government of Khindira to abandon the system of flexible tariff administration, which creates uncertainty for Sutan’s agricultural exporters. The Kingdom of Sutan’s concerns are exacerbated by Khindira’s system of price support for farmers. Sutan fears that the support will continue to stimulate production to a level beyond what Khindira’s market can absorb. Moreover, the Kingdom’s government disagrees with Khindira’s government about the interpretation of the Nairobi Decision, which it believes requires Khindira to eliminate all agricultural export subsidies, including the subsidies on rice. Khindira’s rice exporters directly compete with Sutan’s exporters in many third-country markets.

23. After unsuccessful consultations with Khindira, the Kingdom of Sutan submits a request for the establishment of a panel to the WTO Dispute Settlement Body. In its panel request, the Kingdom of Sutan asserts that several measures adopted by Khindira pursuant to the “Agricultural Livelihoods and Food Security Act” are inconsistent with Khindira’s obligations under the WTO Agreement on Agriculture and the Nairobi Decision. Specifically, the Kingdom of Sutan submits that:
- i) Khindira’s system of flexible tariff administration is inconsistent with Article 4.2 of the Agreement on Agriculture, because it results in the imposition of a “variable import levy” within the meaning of footnote 1 of the Agreement on Agriculture;
 - ii) the price support for rice and wheat provided by Khindira is inconsistent with Articles 3.2, 6.3 and 7.2(b) of the Agreement on Agriculture, because it exceeds the product-specific *de minimis* level of 10 percent for each product;
 - iii) Khindira’s continued provision of export subsidies on rice is inconsistent with Article 9.2 of the Agreement on Agriculture and the Nairobi Decision on Export Competition.

ANNEXURE 1

Supporting Table DS:5

DOMESTIC SUPPORT: KHINDIRA

REPORTING PERIOD: MARKETING YEARS 2012-2013, 2013-2014, and 2014-2015

Product-Specific Aggregate Measurements of Support: Market Price Support

Description of basic products	Marketing year	Measures type	Applied administered price US\$ ¹ /t	External reference price US\$ ² /t	Eligible production 000 t	Associated fees/levies	Total market price support 000 US\$ ¹	Data sources
1	2	3	4	5	6	7	8 ((3-4)*5)-6	8
Rice		Price Support						Ministry of Agriculture
	2012-2013		119	230	1,867	0	-207,237	
	2013-2014		170	230	1,983	0	-118,980	
	2014-2015		193	230	2,176	0	-80,512	
Wheat		Price Support						Ministry of Agriculture
	2012-2013		146	160	1,285	0	-17,990	
	2013-2014		180	160	1,376	0	27,520	
	2014-2015		187	160	1,432	0	38,664	

¹ At exchange rate for the marketing year: 2012-2013: 1 US\$ = K£ 42; 2013-2014: 1 US\$ = K£ 43; 2014-2015: 1 US\$ = K£ 47
² At 1986-1988 average exchange rate: 1 US\$ = K£ 12

ANNEXURE 2

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Aggregate Measurement of Support: Market Price Support								
Description of basic products	Measures type(s)	Applied administered price K€/t	External reference price K€/t	Eligible production t	Associated fees/levies	Total market price support K€ million	Data sources	Comments
1	2	3	4	5	6	7 ((3-4)*5)-6	8	9
Rice	Price Support							
1986-87		1,320	2,760	465,086	0	-669.724		
1987-88		1,345	2,760	573,536	0	-811.553		
1988-89		1,400	2,760	685,425	0	-932.178		
Wheat	Price Support							
1986-87		1,320	1,920	374,689	0	-224.813		
1987-88		1,350	1,920	390,783	0	-222.746		
1988-89		1,390	1,920	410,439	0	-217.533		

ANNEXURE 3

SCHEDULE CLXX – KHINDIRA							
This Schedule is authentic only in the English language							
PART IV – AGRICULTURAL PRODUCTS: COMMITMENTS LIMITING SUBSIDIZATION							
(Article 3 of the Agreement on Agriculture)							
SECTION II: Export Subsidies: Budgetary Outlay and Quantity Reduction Commitments							
Description of products and tariff item numbers at HS six digit level	Base outlay level (000 US\$)	Calendar/ other year applied	Annual and final outlay commitment levels 1995-2000 (000 US\$)	Base Quantity (tonnes)	Calendar/ other year applied	Annual and final quantity commitment levels 1995 – 2000 (tonnes)	Relevant Supporting Tables and document reference
1	2	3	4	5	6	7	8
Rice	25,356			11,488			AGST/ KHI: Supporting Table 11 refers
		1995/1996	28,852		1995/1996	12,448	
		1996/1997	26,327		1996/1997	11,773	
		1997/1998	23,802		1997/1998	11,099	
		1998/1999	21,278		1998/1999	10,424	
		1999/2000	18,753		1999/2000	9,750	
		2000/2001	16,228		2000/2001	9,076	
Wheat and wheat flour	17,227			4,431			AGST/ KHI: Supporting Table 11 refers
		1995/1996	38,874		1995/1996	9,464	
		1996/1997	33,304		1996/1997	8,271	
		1997/1998	27,735		1997/1998	7,079	
		1998/1999	22,165		1998/1999	5,886	
		1999/2000	16,595		1999/2000	4,693	
		2000/2001	11,025		2000/2001	3,500	
Coarse grains	3,101			101,394			AGST/ KHI: Supporting Table 11 refers
		1995/1996	5,477		1995/1996	224,527	
		1996/1997	4,779		1996/1997	195,642	
		1997/1998	4,080		1997/1998	166,757	
		1998/1999	3,382		1998/1999	137,871	
		1999/2000	2,683		1999/2000	108,988	
		2000/2001	1,985		2000/2001	80,101	

ANNEXURE 4



WORLD TRADE
ORGANIZATION

RESTRICTED

G/AG/ES/RS/2

27 June 2017

(17-1168)

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Committee on Agriculture

Original: English

RECTIFICATIONS AND MODIFICATIONS OF SCHEDULES

SCHEDULE CLXX – KHINDIRA

The following communication, dated 22 February 2017, is being circulated at the request of the delegation of Khindira.

Pursuant to the paragraph 3 of the Decision of 26 March 1980 (L/4962 of 28 March 1980), Khindira hereby submits draft modifications to Schedule CLXX – Khindira. These modifications represent Khindira’s best efforts to implement the Ministerial Decision on Export Competition of 19 December 2015 (WT/MIN(15)/45 – WT/L/980).

To this purpose, please find attached a copy of the modified Part IV, Section II of Khindira’s schedule

If no objection is notified to the Secretariat within three months from the date of this document, the rectifications and modifications to Schedule CLXX – Khindira will be deemed to be approved and will be formally certified.

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PP 2 – Offset (PDF file attached)

SCHEDULE CLXX – KHINDIRA							
This Schedule is authentic only in the English language							
PART IV – AGRICULTURAL PRODUCTS: COMMITMENTS LIMITING SUBSIDIZATION							
(Article 3 of the Agreement on Agriculture)							
SECTION II: Export Subsidies: Budgetary Outlay and Quantity Reduction Commitments							
Description of products and tariff item numbers at HS six digit level	Base outlay level (000 US\$)	Calendar/ other year applied	Final outlay commitment level (000 US\$)	Base Quantity (tonnes)	Calendar/ other year applied	Final quantity commitment level (tonnes)	Relevant Supporting Tables and document reference
1	2	3	4	5	6	7	8
Rice	16,228	2000		9,076	2000		
		2018	8,114		2018	4,538	
Wheat and wheat flour	11,025	2000		3,500	2000		
		2018	nil		2018	nil	
Coarse grains	1,985	2000		80,101	2000		
		2018	nil		2018	nil	

