To unlock the agricultural negotiations the US must first comply with the WTO rules

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SUMMARY

In the interview given to the Washington Trade Daily the 8 January 2007 by Crawford Falconer, the Chair and facilitator of the agriculture negotiating committee, and in recent G-20's positions, the main issues on domestic-supports are presented as those of capping the product-specific (PS) AMSs, of the base period to cap them, and of preventing box-shifting from the amber box to the blue and green boxes.

The present paper tries to clarify the debate on the PS AMSs, showing that there cannot be different base periods for capping the PS AMSs and for reducing the total AMS, *de minimis* and blue box supports, and that this period should be 2001-05.

In order to base the future negotiations on this 2001-05 period, the paper gives all the data on the trade-distorting domestic supports that the US should have notified to the WTO. All these data are based on official US figures that everybody can find on the USDA website or which have been notified to OECD and can also be downloaded.

It shows that the USDA proposals of 30 January 2007 for the 2007 Farm Bill cannot prevent the Direct payments from falling into the amber box despite a full flexibility to grow any crop. Accordingly, basing the new Counter-cyclical payments on revenues rather than on prices does not allow to put them in the new blue box created by the Framework Agreement of 31 July 2004.

The paper gives, for the 1995-00, 1999-01 and 2001-05 periods, the data on the non product-specific (NPS) and PS amber subsidies that the US has under-notified or not notified at all in the past.

The correct notification of subsidies in its NPS AMS implies that the US has exceeded largely its NPS *de minimis* exemption cap of 5% of the value of total agricultural production each year of the 2001-05 period as it did already in 5 of the 6 years of the 1995-00 period and in the 3 years of the 1999-01 period[1], so that the US proposal to cap the *de minimis* supports at 2.5% of the value of agricultural production at the end of the implementation period is even less feasible. With the result that the whole NPS AMS has been added to the PS AMSs and the applied total AMS has already exploded much beyond the allowed $19.103 billion level of the total AMS, so that there is no margin at all to reduce the applied total AMS!

In order to appraise the feasibility of the US proposal to cut by 53% its overall trade-distorting domestic supports (TDS), we begin by reminding the WTO Members that the allowed PS *de minimis* is not equal to 5% of the whole value of agricultural production, as for the NPS *de minimis*, but only to 5% of the production value of products without a PS AMS.

[1] J. Berthelot, *Canada's mystifying simulations on the US cuts in its trade-distorting domestic supports*, Solidarité, 1 July 2006.

We show that taking into account by far the most important US input subsidies, those on feed, has the effect of shrinking considerably the applied PSdm since it confers PS AMS to all animal products.

Finally the allowed overall trade distorting support (TDS) for the base period 2001-05 has been of $43.770 billion: $19.103 billion for the Final Bound Total AMS + $2.745 billion for the PSdm + $10.961 billion for the NPSdm + $10.961 billion for the BB). And cutting it by 53% will bring it to $20.572 billion.

However, as the US has proposed to reduce at the end of the implementation period by 60% its Final Bound Total AMS and to cap at 2.5% of the agricultural production value the two *de minimis* and the Blue Box, the sum of these commitments will drop the allowed TDS to $19.975 billion: $7.641 billion (Final Bound Total AMS) + 1.372 billion (PSdm) + $5.481 billion (NPSdm) + $5.481 billion (BB). And, in accordance with paragraph 8 of the Framework Agreement, it is the sum of these separate commitments which prevail on the TDS reduction when it is lower than it.

As we have shown that the applied total AMS has already reached $25.778 billion on average during the 2001-05 period and $26.143 billion in 2005, then the US proposal to cut by 53% its allowed TDS is totally empty.

And the demand by other WTO Members that the US reduce its allowed TDS to at least $15 billion (EU and India) or even $12-13 billion (Brazil) is totally displaced and proves only that they ignore the WTO rules (including the precedents of its Appellate Body) and the actual level of US agricultural domestic supports. Or, worst, that they do not care about them.

Introduction

Everybody agrees that the stalled Doha Round negotiations are mainly due to the agriculture issue, particularly to the reluctance of the US to offer a deeper cut in its trade-distorting domestic supports than that made the 10 October 2005, which would presumably lead the EU to agree to cut more its agricultural tariffs than its own offer of 28 October 2005.

If the negotiations on agriculture are at a standstill it is because the US could not reduce at all its present level of applied trade-distorting supports if it were to comply with the WTO rules, including its Appellate Body's rulings precedents.

Crawford Falconer's interview to the Washington Trade Daily does not contribute to clarify the issue since Falconer's statements are particularly recondite, even for an expert of these issues and I would bet that there are less than ten trade negotiators able to understand what he meant exactly. Indeed Falconer himself confesses: "*That is pretty obscure stuff*".

However this obscurity can be largely explained by the complexity of some of the tools – such as the product-specific AMSs and product-specific *de minimis* –, by timescales contradictory with the Agreement on Agriculture rules, by the definition of the new blue box in the Framework Agreement of 31 July 2004 itself in contradiction with the AoA, and all this in a context of massive cheatings and box-shifting by the two main players, the EU and US.

The pity is that Crawford Falconer, one of the few who know perfectly well the massive cheatings of the EU and US, claims he is not allowed to remind the WTO rules to Members, which is strange for an institution claiming to be rules-based.

It is in this ambiguous context that the present paper tries to bring some light and hard facts, which will underline the sleight of hands and actual cheatings of the main players, the focus *here being only on the US since we have already identified most of the EU cheatings*[2].

The 10 October 2005 the US has offered to cut, at the end of the implementation period of the next Agreement on agriculture (AoA), by 60% its *allowed* total AMS – Aggregate measurement of support, the so-called amber box, which is the sum of product-specific AMSs (PS AMSs) + the non product-specific AMS (NPS AMS) –, i.e. from $19.103 bn to 7.641 bn, and by 53% the *allowed* "overall trade-distorting domestic support" (TDS) comprising the total AMS + the PS and NPS *de minimis* (dm) supports + the blue box. It has also offered to cap at that time at 2.5% of the agricultural production value the 2 *de minimis* supports (PSdm and NPSdm) and the blue box (BB).

I – The issue of capping the product-specific AMSs

➢ **It has been decided by the Framework Agreement** (paragraph 9): "*To prevent circumvention of the objective of the Agreement through transfers of unchanged domestic support between different support categories, product-specific AMSs will be capped at their respective average levels according to a methodology to be agreed*".

➢ **The main reason to cap PS AMSs**: it is generally understood that capping the PS AMSs was decided to eliminate the too large flexibility given to developed Members, particularly the US, to increase much the *applied* PS AMSs of some products even if they would reduce their total AMS. Indeed such flexibility has been harmful to other Members, particularly through marketing loans and countercyclical payments which vary inversely to the market price level.

✓ For example corn subsidies have evolved from $2 bn in 2002 to $9.4 bn in 2005 (including direct payments and counter-cyclical payments) but they will fall sharply for 2006 and 2007 and be limited to about $2.1 bn of fixed direct payments given that higher market prices would not allow CCPs and LDP. According to a Congressional Research Service (CRS) report, "*From FY1996 through FY2005, corn subsidies averaged $4.5 billion per year, but ranged from $1.1 billion in FY1996 to $10.1 billion in FY2000*."[3]

➢ **Capping the PS AMSs raises several issues:**

✓ Capping the PS AMSs at their *applied* level in an agreed period will create a lower new *bound* "base total AMS", a consequence which has remained unnoticed by the negotiators: since capping the PS AMSs at their current level during an agreed base period applies to all PS AMSs, then their sum will be capped as well. And, as long as the non-product specific (NPS) AMS remains within the *de minimis* exemption level of 5% of the agricultural production value and is therefore not included in the total AMS – which has always been the case for the US and EU, actually because they have cheated massively –, then the *applied* total AMS is the same as the sum of the *applied* PS AMSs. Therefore capping the PS AMSs at their *applied* level in an agreed period will create a new *bound* "base total AMS" as long as the NPS AMS is nil and excluded from the total AMS because of the *de minimis* exemption. As it is not possible to have two different *bound* total AMS, it is the new one, created unexpectedly by the Framework Agreement, which should prevail. In other words, the new *bound* total AMS should be defined as the sum of the capped PS AMSs. The consequence is that it is from this capped total AMS (or the capped sum of the PS AMSs) that the reduction commitment of 60% should be computed, which would clearly increase much the reduction.

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[2] J .Berthelot, *Review of the EU agricultural distorting supports to rebuild fair and sustainable agricultural trade rules after the Doha Round hibernation*, Solidarité, 29 December 2006.

[3] Randy Schnepf and Jasper Womach, *Potential Challenges to U.S. Farm Subsidies in the WTO*, CRS Report for Congress, October 25, 2006, http://www.nationalaglawcenter.org/assets/crs/RL33697.pdf

✓ As Falconer says, the other problem of capping the PS AMSs is that of the base period. The US is the only WTO Member to advocate 1999-2001 as the base period whereas all the other Members advocate 1995-00, i.e. the Uruguay Round (UR) implementation period. The US position is quite obvious since its applied average total AMS – or if we prefer the applied average of the sum of its PS AMSs – has been of $16.026 bn for 1999-01 against $10.401 bn for 1995-00. Conversely the EU choice for 1995-00 is due to the fact that its average applied total AMS was of €48.242 bn in 1995-00 against €43.607 bn in 1999-01.

✓ Now if we take into account, as we have just shown, that capping the *applied* PS AMSs is the same as *bounding* them (and the same as bounding the total AMS) at a lower level than the Final Bound Total AMS (FBTA) – a level reached end December 2000, of $19.103 bn, for the US and end June 2001, of €67.159 bn, for the EU –, the US offer to cut its new total AMS (sum of PS AMSs) by 60% will drop it to $6.410 bn with the 1999-01 base period instead of $7.641 bn for the FBTA (at the end of 2000) and even to $4.160 bn with the 1995-00 base period. For the EU the 70% cut in its allowed new total AMS will drop it to €13.080 with the 1999-01 base period, instead of €20.148 bn for the FBTA, and to €14.473 bn with the 1995-00 base period.

✓ However neither 1999-01 nor 1995-00 can be chosen as the base period to cap PS AMSs – and more broadly as the base period of all reduction commitments – because it is fully contradictory with the AoA, the Framework Agreement and the WTO Hong-Kong Ministerial Declaration:

❖ The AoA states in paragraph 8 of Article 1: "*With respect to support provided during the base period (i.e., the "Base Total AMS") and the maximum support permitted to be provided during any year of the implementation period or thereafter (i.e., the "Annual and Final Bound Commitment Levels*", knowing that paragraph f has stated that "'*implementation period' means the six-year period commencing in the year 1995*", from which it results that the Final Bound Total AMS is that prevailing at the end of 2000 and thereafter.

❖ All the official documents of the EU and US have confirmed that the Final Bound Total AMS is that at the end of 2000 (for the US) or of June 2001 (for the EU). Indeed the implementation period is based on marketing years and each Member has the right to begin it at any month, the EU marketing year being from July 1 to June 30:

▪ USDA has recognized that "*60-percent reduction cuts the AMS ceiling to $7.6 billion.*"[4], that is in relation to the $19.1 bn reached at the end of 2000.

▪ The 22 May 2006, Canada has circulated a report on "Agriculture domestic support simulations" (JOB(06)/151), based on data transmitted by the EU, the US and Japan, where the Final Bound Total AMS figures are always those of end 2000 (or June 2001) and there has never been any controversy on this at the WTO.

❖ It is therefore impossible to use a different base period for capping the *applied* PS AMSs and the Final Bound Total AMS, so that it should begin in January 2001 for the US and in July 2001 for the EU. And, as the last marketing year notified is precisely 2001 for the US, it is from that marketing year that the implementation period for capping PS AMSs should begin and it should extend to 2005 (included). Eventually the EU has notified the 8 December 2006 its domestic supports for 2002-03 and 2003-04.[5]

❖ Now paragraph 7 of the Framework Agreement states: "*The overall base level of all trade-distorting domestic support, as measured by the Final Bound Total AMS plus permitted* de minimis *level and the level agreed in paragraph 8 below for Blue Box payments, will be reduced according to a tiered formula.*" Since the FBTA was only reached at the end of 2000 (for the US and end of June 2001 for the EU), we cannot use different base periods for the three components of the overall trade-distorting domestic support (TDS) and it is also from those dates that the base period should start.

[4] USDA, *Risk Management*, 2007 Farm Bill Themes Papers, May 2006.
[5] G/AG/N/EEC/53, WTO, 8 December 2006.

❖ If the last US notifications of their agricultural supports to the WTO are only for 2001 – so that they are overdue by more than 4 years since they should have been notified at most 4 months after the end of the marketing year as prescribed the 8 June 1995 by the WTO[6] –, it is because the US intends to notify its counter-cyclical payments (CCPs, created by the 2002 Farm Bill) in the new blue box decided by the WTO Framework Agreement. However this Framework Agreement will only become WTO law if the Doha Round is concluded. In the meantime the CCPs should be notified in the non-product specific (NPS) AMS, as the above quoted CRS report admits: "*Because CCP payments were not made until calendar 2003, they have yet to be notified to the WTO. However, the commodity-decoupled, but price-linked nature of CCP payments suggests that they would likely be notified as non-product specific AMS support under current WTO criteria*." The more so as they have replaced the market loss payments which were rightly notified in the NPS AMS.

❖ This deliberate overdue is acknowledged by the CRS which admits that there should not be any problem to notify domestic supports up to 2006: "*Increasing tardiness in notifying domestic crop subsidies to the WTO, particularly on the part of those countries with the largest domestic subsidies — the United States, the EU, and Japan — have diminished the ability of third countries to use notifications as a basis for challenge… However, USDA routinely publishes estimates of U.S. farm program support for historical, current, and projected crop years. As a result, actual and projected USDA subsidy outlay data is available through FY2007*."[1] Actually this CRS report gives all the figures of the main agricultural subsidies up to 2006 and estimates for 2007.

❖ The same is true for the EU since it is possible to find the actual subsidies on the EU Budget up to 2006 with expected figures for 2007. And both the EU and US have notified their domestic subsidies up to 2005 to OECD in order to publish its report "*Agricultural policies in OECD countries: Monitoring and Evaluation 2006*"[7]. Even if the EU has recently notified its domestic supports for 2002-03 and 2003-04, its overdue is still of more than 2 years.

❖ In other words there should not be any technical problem for the EU and US to fix the Doha Round base period from 2001 to 2005 but only a political unwillingness for the mentioned reasons.

II – The US amber box subsidies for the 1995-00, 1999-01 and 2001-06 periods

Beyond the overdue issue, there is the much more important one that the US and EU have cheated massively in their notifications from the start in 1995, putting in the green box actual amber subsidies or forgetting to notify, even in the green box, some input amber subsidies. We will concentrate here on the US and will see that its cheatings are implicitly recognized by the CRS report, at least for some subsidies.

1) Production Flexibility Contracts payments, Direct payments and Counter-cyclical payments are in the amber box

➢ **The "Production Flexibility Contracts" (PFC) payments up to 2001 and the Direct Payments (DP) from 2002 should be put in the NPS AMS**:

✓ Let us quote the CRS report: "*A key element of the* [cotton] *panel's determination regarding the Peace Clause was that U.S. Production Flexibility Contract (PFC) payments made under the 1996 farm bill and Direct Payments (DP) made under the 2002 farm bill failed to fully meet the Green Box conditions for decoupled income support. Disqualification arises because of planting restrictions on fruits, vegetables, and wild rice… Although the panel did not declare that*

[6] WTO, Committee on Agriculture, *Notification requirements and formats*, G/AG/2, 30 June 1995.
[7] These data, presented to the press the 21 June 2006, can be downloaded at http://www.oecd.org/document/54/0,2340,fr_2649_33773_35009718_1_1_1_1,00.html

PFC and DP payments should be notified as amber box payments, the panel implied as much. This particular finding… establishes a precedent for interpreting the notification status of U.S. direct payments. As such, the ruling represents an obvious vulnerability should another country choose to specifically challenge the notification status of PFC and DP payments. Such a DSU challenge, if successful, would have important implications for the United States' ability to meet its domestic support commitments. What would happen if PFC and DP payments are included as amber box rather than green box? Two economic analyses conclude that the United States would have violated its AMS limit of $19.1 billion during the years 1998, 1999, 2000, 2001, and 2006. New legislation would be necessary to make these direct payments green box compliant".

✓ Therefore $4.953 bn should be added to the NPS AMS on average from 2001 to 2005 (see table 2 below).

✓ USDA's 2007 Farm Bill proposals made the 31 January 2007 underline the necessity to consolidate the "green" status of Direct payments: "*To ensure that direct payments will be considered to be non-trade distorting green box assistance, the Administration proposes that the provision of the 2002 farm bill that limits planting flexibility on base acres to exclude fruits, vegetables, and wild rice, should be eliminated*." But also: "*For the purposes of World Trade Organization obligations, updating bases and yields for direct payments would connect them more closely to current production and could jeopardize their "green box" status, causing these payments to be categorized as trade distorting "amber box" assistance… To avoid jeopardizing the status of direct payments as non-trade distorting "green box" support, direct payment base acres and yields should not be updated.*"

✓ However the simple fact to eliminate the objection made by the WTO Appellate Body – that the Direct Payments were not fully decoupled since farmers were prevented to grow fruits and vegetables and wild rice – will not be enough to shelter them from litigation on dumping grounds. Indeed, in the "Dairy products of Canada" case, the Appellate Body had enacted the 3 December 2001 an even more important precedent, stating that dumping should take into account all domestic subsidies to exported products: "*We consider that the distinction between the domestic support and export subsidies disciplines in the Agreement on Agriculture would also be eroded if a WTO Member were entitled to use domestic support, without limit, to provide support for exports of agricultural products* (paragraph 91)*… The potential for WTO Members to export their agricultural production is preserved, provided that any export-destined sales by a producer at below the total cost of production are not financed by virtue of governmental action* (paragraph 92)".

✓ Besides, according to the cotton Appellate Body report, "*During the oral hearing, the United States accepted that farmers decide what to plant based on expected market prices as well as expected subsidies*" (paragraph 440), including direct payments.

✓ Another reason to put in the amber box the PFCs and DPs, on which we will turn below more extensively, is that a large part of them has been granted to grains used as feeds, that is as input subsidies. For example $1.278 bn of PFCs, i.e. 31.6% of the total in 2001, have been granted to feed grains[8].

➢ **<u>The same applies to counter-cyclical payments (CCPs)</u>**:

✓ As quoted above "*The commodity-decoupled, but price-linked nature of CCP payments suggests that they would likely be notified as non-product specific AMS support under current WTO criteria*", the more so as the preceding "market loss payments", that CCPs have replaced from 2002, had been rightly notified in the NPS AMS. This will add $1.540 bn on average in the NPS AMS from 2001 to 2005 (see table 2).

✓ The new Farm Bill proposal made by USDA to base the CCPs on revenue rather than on prices would not make them eligible to the green box:

[8] Jacques Berthelot, *The king is naked: the impossible U.S. promise to slash its agricultural supports*, Solidarité, 7 November 2005 (http://solidarite.asso.fr/home/Agriculture06.php); *Soaking Up the Bucks, Irrigation Subsidies*, http://www.greenscissors.org/agriculture/irrigation.htm

❖ It depends on "*the actual national revenue per acre for the commodity*" which is "*equal the national average yield for the commodity times the higher of: (1) the season-average market price and (2) the loan rate for the commodity*".

❖ As any revenue is the product of a yield by a price, this contradicts the conditions (ii) and (iii) for the Decoupled income support of the AoA Annex 2 paragraph 6:

- *"(ii) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period.*
- *(iii) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period*."

✓ In fact USDA wants to put the proposed revenue-based CCPs in the new blue box designed by paragraph 13 of the Framework Agreement of 31 July 2004 to accommodate the former CCPs:

❖ This paragraph states: "*Direct payments that do not require production if: such payments are based on fixed and unchanging bases and yields; or livestock payments made on a fixed and unchanging number of head; and such payments are made on 85% or less of a fixed and unchanging base level of production*".

❖ But the proposed revenue-based CCPs cannot comply with the conditions of this new blue box since it is not "*based on fixed and unchanging bases and yields*" but depends on the actual annual "*national average yield for the commodity times the higher of: (1) the season-average market price and (2) the loan rate for the commodity*".

❖ Furthermore, since "*The revenue-based payment for a commodity would be triggered when the actual national revenue per acre for the commodity is less than the national target revenue per acre*" which itself *"would equal the 2002 farm bill's target price minus the 2002 farm bill's direct payment rate multiplied by the national average yield for the commodity during the 2002-2006 crop years, excluding the high and the low years*", the reference to this 2002-06 period means an actual updating, and in fact a significant rise, of the target revenue per acre since the average "olympic" yields for 2002-06 were significantly higher for most program crops in relation to the 1998-2001 period, at least for upland cotton (+24.0%), rice (10.8%), peanuts (9.9%), corn (+7.7%) and soybean (+7.1%). It is only for sorghum (-9.0%) and wheat (-1.7%) that yields were lower in 2002-06. Therefore these CCPs are not "*based on fixed and unchanging bases and yields*".

Table 1 – Average yields of program crops for CCPs in 1981-85, 1998-01 and 2002-06

Crops (bushels)	Average 1981-85	Average 1998-01	Olympic* average 2002-06
Corn	106.1	135.9	146.4
Barley	53.3	59.6	61.6
Sorghum	59.0	64.5	59.2
Wheat	37.2	42.0	41.3
Oats	57.4	61.4	62.4
Rice (cwt)	4,898	6,061	6,716
Soybean	30.1	38.3	41.0
Upland cotton (bale)	573	634	786
Peanuts (lb)	2,691	2,711	2,980

Source: http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1046

* an "olympic" average means an average based on 3 over 5 years, deleting the lowest and the highest figures.

❖ In fact in proposing to replace the price-based current CCPs by revenue-based CCPs USDA is trying to hide the actual updating of the average yields of the 1998-2001 period used to define the present CCPs in the 2002 Farm Bill.

❖ Yet USDA had stressed that farmers expectations generated by CCPs show their coupled nature: "*The basis for the distribution of CCP benefits may affect producers' expectations of how future benefits will be disbursed. Payments that are linked to past production may lead to*

expectations that benefits in the future will be linked to then-past, but now-current, production. Such expectations can thereby affect current production decisions. For example, farmers may not fully use planting flexibility to move from historically planted and supported crops if they expect future farm programs to permit an updating of their base acreage, which forms the foundation for payments. Instead, farmers would have incentives to build a planting history for program crops, thereby constraining their response to market prices. Similarly, use of non land inputs that affect current yields may be influenced if farmers expect that future farm legislation will permit an updating of payment yields"[9].

❖ Precisely, farmers have had the choice in 2002 to "*Update base acres to reflect the 4-year average of acres planted, plus those "prevented from planting" due to weather conditions, during the 1998-2001 crop years*", but also to update the yields in relation to their base levels in the 1981-85 period. If a recent study the USDA has shown that "*Program signup results indicate that a majority of farmland owners elected not to update program base acres to 1998-2001 plantings*", nevertheless "*in general, farmland owners replaced low-payment base acres with high payment acres whenever possible. They kept or expanded base acres with high payments, such as rice, cotton, and corn, and reduced bases acres for commodities with relatively low payments, such as wheat, sorghum, and barley. Base acres for oats, the commodity with the lowest per acre payments, were reduced the most*"[10].

❖ USDA adds that the risk-reducing effect of CCPs shows their coupled nature: "*Since CCPs are based on current market prices, producers may view the payments as a risk-reducing income hedge. For either case, updating acreage bases or updating payment yields, economic efficiency in production is reduced because producers would not be fully responding to signals from the marketplace, but instead would be responding to market signals augmented by expected benefits of future programs and future program changes*".

❖ Above all the revenue-based CCPs, not more than the present price-based CCPs, do not comply with the basic requirement of the AoA Annex 1 paragraph 1 that "*All policies for which exemption is claimed shall conform to the following basic criteria:… (ii) the support in question shall not have the effect of providing price support to producers*". Indeed it is clear that a revenue-support is already a price-support since any revenue is defined by a price times a yield or production volume.

❖ In the US cotton case, the Appellate Body has judged the 3 March 2005 that CCPs were trade-distorting, hence in the amber box, and converting price-based CCPs in revenue-based CCPs would not change anything to that conclusion since it "*upholds the Panel's finding, in paragraphs 7.1416 and 8.1(g)(i) of the Panel Report, that the effect of the marketing loan program payments, Step 2 payments, market loss assistance payments, and counter-cyclical payments (the "price-contingent subsidies") is significant price suppression within the meaning of Article 6.3(c) of the SCM Agreement, by in turn upholding the Panel's findings*"[11].

❖ Furthermore, the Appellate Body has confirmed that Direct payments, CCPs and crop insurances subsidies are actually product-specific when it "*upholds the Panel's finding, in paragraphs 7.518 and 7.520 of the Panel Report, that Step 2 payments to domestic users, marketing loan program payments, production flexibility contract payments, market loss assistance payments, direct payments, counter-cyclical payments, crop insurance payments, and cottonseed payments (the "challenged domestic support measures") granted "support to a specific commodity", namely, upland cotton*".

❖ And the panel report has underlined that the coexistence of so-called specific non amber box subsidies with specific amber box subsidies allows to consider them and their effects jointly: "*The chapeau of Article 5 of the SCM Agreement states: "No Member should cause, through*

[9] http://www.ers.usda.gov/Features/FarmBill/analysis/counterCyclicalPayments2002act.htm

[10] C. Edwin Young, David W. Skully, Paul C. Westcott, and Linwood Hoffman, *Economic Analysis of Base Acre and Payment Yield Designations Under the 2002 U.S. Farm Act / ERR-12,* Economic Research Service/USDA, September 2005.

[11] United States, *Subsidies on upland cotton, Report of the Appellate Body*, WTO, WT/DS267/AB/R, 3 March 2005.

the use of any subsidy referred to in paragraphs 1 and 2 of Article 1, adverse effects to the interests of other Members, i.e. ...".(emphasis added) Article 5 refers to the adverse effects caused through the use of any specific subsidy within the meaning of the SCM Agreement. Article 6.3(c) requires an examination of "the effect of the subsidy" through a price phenomenon ("significant price suppression") and refers to a "subsidized product"… These textual references to "any subsidy" and "the effect of the subsidy" permit an integrated examination of effects of any subsidies with a sufficient nexus with the subsidized product and to the particular effects-related variable under examination. Thus, in our price suppression analysis under Article 6.3(c), we examine one effects-related variable – prices – and one subsidized product – upland cotton. To the extent a sufficient nexus with these exists among the subsidies at issue so that their effects manifest themselves collectively, we believe that we may legitimately treat them as a "subsidy" and group them and their effects together. We derive contextual support for this view from Article 6.1 and Annex IV, which referred to the concept of total ad valorem subsidization and envisaged that, "[i]n determining the overall rate of subsidization in a given year, subsidies given under different programmes and by different authorities in the territory of a Member shall be aggregated"."[12]

- ❖ Therefore the proposed revenue-based CCPs would be put in the amber box.

2) The US has largely under-notified or not notified many amber box subsidies

- **The subsidies on agricultural insurances**: the CRS report shows that the average subsidies on agricultural insurances have been of $3.080 bn from 2002 to 2006, and that the amounts notified for 1996 to 2001 are much lower than the actual amounts registered by the US Budget, as we had already shown. These higher figures are about the same as those presented by USDA in its 2007 Farm Bill theme papers on Risk management[13].

- **Other NPS AMS subsidies not notified to WTO but notified to OECD up to 2005:**
  - ✓ The grazing subsidies notified to WTO up to 2001: $57 million yearly
  - ✓ The subsidies never notified to WTO but notified to OECD as the energy subsidies (tax exemption on agricultural fuel) for $2.385 bn every year from 1995 to 2005[14];
  - ✓ The subsidies under-notified to WTO in comparison with the levels notified to OECD, those on agricultural loans: $610 million yearly against $48.8 million notified at WTO (same OECD source);
  - ✓ The subsidies clearly under-notified to WTO as to OECD, those on irrigation: $300 million notified for 2001 when the truth is rather ten times given that some evaluations go up to $10bn[15], the more so that the notifications are not taking into account the subsidies at the State level, particularly in California) for which we will adopt a highly conservative value of $1 bn per year. In a recent paper, Frederick Rossi, Andrew Schmitz and Troy G. Schmitz have estimated at $133.2 per tonne the irrigation subsidies on California cotton in 2000[16]. For a production of 457,371 tonnes of irrigated cotton in California in 2003, this would imply a subsidy of $60.9 million. As California accounted for only 18.55% of the US irrigated area on cotton in 2003[17], this would imply irrigation subsidies of $328 million for cotton alone, all things being equal. And, given that the irrigated cotton represented only 8.39% of the total irrigated and harvested area in 2003 in the whole country, this would imply total irrigation subsidies of $3.909 bn, all things being equal.

[12] Paragraph 7.1192 of United States – Subsidies on upland cotton, Report of the panel, WT/DS267/R, 2004.
[13] Table 2 of USDA, *Risk Management*, 2007 Farm Bill Themes Papers, May 2006.
[14] http://www.oecd.org/document/55/0,2340,fr_2649_33775_36956855_1_1_1_1,00.html
[15] 9 pages in *The king is naked…* (op. cit.) are devoted to the 6 ways of approaching irrigation subsidies.
[16] Frederick Rossi, Andrew Schmitz and Troy G. Schmitz, Global welfare implications of US Cotton Subsidies, Arizona State University, *The Multiplicative Effect of Water Subsidies and Price Support Payments: The Case of U.S. Cotton*, Journal of International Agricultural Trade and Development, Volume 1 Issue 1, 2005.
[17] USDA, *Farm and ranch irrigation survey (2003)*, November 2004.

Naturally all things are not equal and even if the amount and cost of irrigation water are significantly lower in other States, our estimate of $1 billion remains highly conservative.

3) The NPS AMS has largely exceeded its *de minimis* cap in the 2001-05 period

The correct notification of the above subsidies in the NPS AMS implies that it has exceeded largely the *de minimis* exemption cap of 5% of the value of total agricultural production each year of the 2001-05 period (table 2) as it did already in 5 over 6 years of the 1995-00 period and in the 3 years of the 1999-01 period (table 4), so that the US proposal to cap at the end of the implementation period the *de minimis* at 2.5% of the value of agricultural production is even less feasible. With the result that the whole NPS AMS would be added to the PS AMSs and the applied total AMS would explode much beyond the allowed $19.103 bn level of the total AMS, so that there would be no margin at all to reduce the applied total AMS! This is already confirmed by C.E. Hart and D. Sumner although they take only into account the Direct payments and the Production flexibility contracts (PFC) payments:

- C.E. Hart: "*The inclusion of the PFC and direct payments in the reported agricultural support has a double impact. The U.S. reported support actually increases by more than the amount of the PFC and direct payments, because the other payments that were in the non-product-specific support but were exempted by de minimis rules must now be counted. These other payments include the net benefits from the crop insurance program, market loss assistance payments, state credit programs, and grazing and water subsidies. For 1999, the addition of the $5.47 billion in PFC payments turns into a $12.88 billion increase in reported support"*.[18]

- D. Sumner: "*The cotton case has clarified the proper classification of U.S. farm subsidies into the "green" and "amber" boxes of the WTO Agriculture Agreement. The upshot of that clarification is that the United States has likely been exceeding the $19.1 billion cap on trade-distorting, amber-box subsidies that it agreed to abide by under the Agriculture Agreement. According to the calculations described in this paper, total U.S. amber-box subsidies to be included under the cap amounted to $29.1 billion in 2000 and $25.3 billion in 2001 and will likely total about $26.3 billion in 2006—all far in excess of the $19.1 billion limit*."[19]

- However the simulations made by these authors fall short of the true figures, among others because they do not take into account the full crop insurance subsidies as shown in table 3 of the CRS report but also in the USDA report "*Risk Management*" of May 2006. We see it in table 2.

- Table 2 below shows that, far from being able to cut its Final Bound Total AMS (FBTA) of $19.103 bn by 60%, that is to $7.641 bn, the US applied total AMS of $25.778 bn for the base period 2001-05 has already exceeded it by $6.675 bn or 34.9%. All these data, except for the irrigation subsidies, are based on official US sources (some of them through its notifications to OECD). For the dairy and sugar market price supports we have extended the notifications made for 2001 ($5.515 bn) up to 2005, as D. Sumner has done, which is highly conservative since, according to the USDA "*Dairy has accounted for about $5 billion annually and sugar another $1 billion*"[20], and the EU estimates "*market support for dairy and sugar at $5.8 billion and predicted to slightly increase*".[21] But the peanut market price support has been suppressed from 2002.
- Therefore table 2 shows the actual (those on irrigation are estimates) NPS AMS, PS AMSs and total AMS for the recommended base period 2001 to 2005 and even for 2006.

[18] Chad E. Chart, *The WTO picture after the cotton ruling*, Iowa Ag review, Spring 2005 (http://www.card.iastate.edu/iowa_ag_review/spring_05/article5.aspx).
[19] Daniel A Sumner *Boxed In. Conflicts between US Farm Policies and WTO Obligations*, Center for Trade Policy Studies, December 5, 2005 No. 32
[20] USDA, *Risk Management*, 2007 Farm Bill Themes Papers, May 2006.
[21] EU Commission, DG Agriculture, *MAP, Monitoring agri-trade policy*, March 2005.

Table 2 – US actual NPS AMS, PS AMSs and total AMS for 2001 to 2006 and average for 2001-05[22]

$ million	2001	2002	2003	2004	2005	2006	Average 2001-05
Non product-specific (NPS) AMS							
Production flexibility contract (PFCs)	4,040	3,500	-281	-4	-	-	1,451
Direct payments	-	367	6,704	5,242	5,199	5,210	3,502
Market loss assistance	5,455	-	163	-	-	-	1,124
Counter-cyclical payments (CCPs)	-	203	2,301	1,122	4,074	4,150	1,540
Insurance subsidies	2,500	3,000	3,300	3,300	2,883	3,372	3,000
Grazing subsidies	65	57	57	57	57	57	59
Farm loan subsidies	610	610	610	610	610	610	610
Energy subsidies	2,385	2,385	2,385	2,385	2,385	2,385	2,385
Irrigation subsidies	1,000	1,000	1,000	1,000	1,000	1,000	1,000
Total NPS AMS before de minimis	16,055	11,101	16,239	13,716	16,208	16,784	14,664
Value agricultural production (VAP)	201,400	191,900	213,400	249,700	239,600	242,000	219,200
NPS de minimis ceiling (5% of VAP)	10,070	9,595	10,670	12,485	11,980	12,100	10,960
Excess NPS AMS above de minimis	5,985	1,506	5,569	1,231	4,245	4,684	3,704
NPS AMS to be added to total AMS	16,055	11,101	16,239	13,716	16,208	16,784	14,664
Product-specific (PS) AMSs							
Dairy market price support	4,483	4,483	4,483	4,483	4,483	4,483	4,483
Sugar market price support	1,032	1,032	1,032	1,032	1,032	1,032	1,032
Peanut market price support	311	-	-	-	-	-	62
Total market price supports	5,826	5,515	5,515	5,515	5,515	5,515	5,577
Peanut quota buyout payment	6	983	238	25	22	20	255
Marketing loans	6,172	2,835	1,331	3,166	7,021	2,035	4,105
Milk income loss contract	-	860	913	206	10	450	398
Tobacco transition program payment	-	-	-	-	2,079	1,027	416
Cotton user marketing program	236	182	455	363	582	312	364
Total PS AMS	12,240	10,375	8,452	9,275	15,229	9,359	11,115
Applied total AMS							
Applied total AMS	28,295	21,476	24,691	22,991	31,437	26,143	25,778

Sources: CRS report (http://www.nationalaglawcenter.org/assets/crs/RL33697.pdf) for direct payments, market loss payments, CCPs, marketing loans, milk income loss contract, cotton user marketing program and crop insurances subsidies (the crop insurance subsidies for 2005 and 2006 are the actual ones given by the USDA Budgets for 2007 and 2008), OECD (http://www.oecd.org/document/54/0,2340,fr_2649_33773_35009718_1_1_1_1,00.html) for the subsidies on grazing, farm loan and energy, J. Berthelot (*The king is naked*, Solidarité, 7 November 2005) for irrigation subsidies; USDA for the agricultural production value (http://www.ers.usda.gov/publications/agoutlook/aotables/2006/12Dec/aotab29.x); US notifications to the WTO for 2001 for dairy and sugar market price supports. For most direct payments: http://usda.mannlib.cornell.edu/usda/ers/AIS//2000s/2006/AIS-11-30-2006.pdf
For market loss assistance: www.usda.gov/documents/AGRICULTURAL_DISASTER_ASSISTANCE.doc

➢ Even if we ignore the US massive under notification of irrigation subsidies and stabilize them at the ridiculous $300 million notified in 2001, this does not change significantly the previous results. The average applied total AMS is only reduced by $700 million, to $25.078 bn, since every year from 2001 to 2005 the NPS AMS still exceeds its *de minimis* ceiling so that the whole NPS AMS is still added to the total AMS. So that the average applied total AMS still exceeds the FBTA by $5.975 bn or 31.3%.

➢ A methodological comment: we could have put the Production flexibility contract payments (up to 2002), direct payments, market loss assistance payments (up to 2002), contra-cyclical payments (from 2002) and agricultural insurance subsidies in the PS AMs rather than in the NPS AMs since we can show that they are product-specific subsidies – and the WTO Appellate Body has uphold in that sense the panel finding in the cotton case –, but we have preferred to stick to the US approach in its notifications. We could have done it also for the tax exemption on agricultural fuel as OECD has done, and we can do it also for irrigation subsidies. This would not change much the end result because, if the NPS AMS would clearly remain below the *de minimis* cap and then would

[22] These figures might be different from other sources since they are given by NASS for a calendar year whereas those of the Commodity Credit Corporation are for a fiscal year and the notifications to WTO are for a marketing year (which furthermore is not the same for all products).

not be added to the total AMS, it would also be minimal and on the other hand the PS AMS would inflate the total AMS which would remain almost the same.

4) The NPS AMS had already largely exceeded the *de minimis* cap in the 1995-00 period

The following table 3 recaptures data presented in the paper "*Canada's mystifying simulations on the US cuts in its trade-distorting domestic supports*" of July 1, 2006 but groups together the under-notifications in the NPS AMS and limits the irrigation subsidies to the gap between those notified and $1 billion (instead of $3.680 bn indicated in the mentioned paper). The end result is that the NPS AMS explodes much beyond the *de minimis* cap, except in 1995, so that the NPS AMS is added to the applied total AMS from 1996 to 2000, which jumps with an average amount of $22.296 bn for the 1995-2000 period, and thus exceeds the allowed Final Bound Total AMS of $19.103 at the end of 2000. This same year it is even of $33.817 bn, exceeding the allowed FBTA cap by $14.714 bn! Clearly it is impossible to contemplate any reduction of this cap.

Tableau 3 – US allowed and applied NPP AMS, PS AMSs and total AMS from 1995 to 2000

$ billion	1995	1996	1997	1998	1999	2000	2001	Moyenne 1995-00
Value agricultural production (VAP)	190.110	205.701	203.884	190.886	184.734	189.520	198.502	194.139
NPS de minimis cap at 5% VAP	9.506	10.285	10.194	9.544	9.237	9.476	9.925	9.707
NPS de minimis cap at 2,5% "	4.753	5.143	5.097	4.772	4.619	4.738	4.963	4.854
Notified NPS AMS (de minimis)	1.385	1.113	0.568	4.584	7.406	7.278	6.828	3.556
Allowed total AMS	23.083	22.287	21.491	20.695	19.899	19.103	19.103	21.093
Notified PS AMS and total AMS	6.214	5.897	6.238	10.392	16.862	16.803	14.413	10.401
Under-notifications of the non product-specific AMS								
Production flexibility contracts	-	5.973	6.120	6.001	5.046	5.049	4.040	4.698
Agricultural insurance subsidies	0.527	0.985	0.977	0.627	0.463	1.057	1.057	0.773
Agricultural loans subsidies	0.670	0.664	0.561	0.561	0.561	0.561	0.561	0.596
Agricultural fuel subsidies	2.385	2.385	2.385	2.385	2.385	2.385	2.385	2.385
Irrigation subsidies	0.620	0.620	0.651	0.651	0.684	0.684	0.700	0.652
Total under-notifications	4.202	10.627	10.694	10.225	9.139	9.736	8.743	9.104
Putting right the applied NPS AMS and total AMS								
Total NPS AMS	5.587	11.740	11.262	14.809	16.545	17.014	15.571	12.826
Excess over the de minimis cap	-3.919	1.455	1.068	5.265	7.308	7.538	5.646	3.119
Applied total AMS	6.214	17.637	17.500	25.201	33.407	33.817	29.984	22.296

Sources: data taken and restructured from J. Berthelot, "Canada's mystifying simulations on the US cuts in its trade-distorting domestic supports" of July 1, 2006.

5) The US offer to cut by 53% its whole trade-distorting domestic support is even less feasible

We could stop here since we have already shown that the US cannot reduce at all its total AMS but we have also to show that it cannot reduce its overall trade distorting domestic support (TDS) by 53% as it has offered to do.

a) The real issue is the PS de minimis

- **The 4 components of the TDS**: besides the total AMS, the three other components of the TDS are the PS *de minimis* (PSdm), the NPS *de minimis* (NPSdm) and the blue box (BB). The real issue here is the PSdm. Unfortunately Crawford Falconer did not even allude to this fundamental issue in its interview.

- **The allowed PSdm is not equal to 5% of the whole value of agricultural production:** contrary to the deliberate misinterpretation made by the EU and the US and the unawareness of the other WTO negotiators, the allowed PSdm is not equal to 5% of the whole value of agricultural production (VAP) as for the NPSdm but only to 5% of the production value of products without a PS AMS.

  ✓ This is clearly stated by the AoA Article 6.4: "*A Member shall not be required to include in the calculation of its Current Total AMS and shall not be required to reduce: (i) product-specific*

domestic support which would otherwise be required to be included in a Member's calculation of its Current AMS where such support does not exceed 5 per cent of that Member's total value of production of a basic product during the relevant year". In other words as soon as a PS support exceeds 5% of the production value of the product, all this value has to be added to the total value of products with PS AMSs, even if part of this product does not receive any support.

✓ H. de Gorter and J.D. Cook, among others, confirm this interpretation: "*Product-specific* de minimis *ceiling is less than 5 percent of the total value of production because support for some products are over five percent of the value of production and so is included in the AMS*"[23].

➢ On a US average VAP of $194.139 bn[24] for the 1995-00 base period[25], the production value of products with a notified PS AMS was of $49.734 bn so that the production value of the products without PS AMSs was $144.405 bn and the PSdm was 5% of that, i.e. $7.220 bn instead of $9.707 bn for the NPSdm and the blue box (BB). So that the allowed TDS was of $45.737 bn (19.103 in total AMS + 9.707 in BB + 7.220 in PSdm + 9.707 in NPSdm) instead of $48.224 bn computed by Canada. And cutting it by 53% as the US has proposed leads to $21.496 bn instead of $22.665 bn. But this allowed cap would be already much higher than the applied average TDS of $22.296 bn in the 1995-00 period, and this without even taking into account the feed subsidies.

b) And the PSdm shrinks abruptly once feed subsidies are taken into account

Actually the PSdm in the 1995-00 period was much lower since the subsidies to feed grains (including the alleged green PFCs and direct payments to grains used as feed in the US) are conferring PS AMSs to all animal products made from feed grains.

➢ **The AoA states clearly** (article 6.2) that "*agricultural input subsidies generally available to low-income or resource poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures*", which implies that developed countries' farmers are not exempted[26]. Besides paragraph 13 of Annex 3 confirms: "*Other non-exempt policies, including input subsidies*". OECD considers rightly feed as the main input of livestock production[27]. Dennis Olson[28] and Tim Wise[29] have acknowledged it for the US.

➢ **The importance of US feed production**:

[23] Harry de Gorter and J. Daniel Cook, *Domestic Support in Agriculture: The Struggle for Meaningful Disciplines*, in "Trade, Doha and Development: a window into the issues", 2006.

[24] J. Berthelot, *Canada's mystifying simulations on the US cuts in its trade-distorting domestic supports*, Solidarité, 1st July 2006.

[25] We will consider only the 1995-00 base period since the US has been alone to plead for the 1999-01 period.

[26] R. Dennis Olson, *Below cost feed crops*, IATP, June 2006; Timothy Wise, *Identifying the real winners from U.S. agricultural policies*, Global Development and Environment Institute's Working Paper 05-07, Tufts University, December 2005, http://www.ase.tufts.edu/gdae/Pubs/wp/05-07RealWinnersUSAg.pdf

[27] More details on this legal basis in J. Berthelot, *Feed subsidies to EU and US exported poultry and pig meats*, 10 January 2006.

[28] R. Dennis Olson, Below-cost feed crops. An indirect subsidy for industrial animal factories, IATP, June 2006.

[29] Timothy Wise, *Identifying the Real Winners from U.S. Agricultural Policies*, Global Development and Environment Institute Working Paper No. 05-07, December 2005; Elanor Starmer, Aimee Witteman and Timothy A. Wise, Feeding the Factory Farm: Implicit Subsidies to the Broiler Chicken Industry, GDAE Working Paper n° 06-03, June 2006, Tufts University.

✓ On average, from 2001 to 2005, 56.8% of the US feed cereals (corn, sorghum, barley and oats), i.e. 158.8 million tonnes on a production of 279.6 million tonnes, have been used as feed in the US[30].

✓ Besides, 8.8% of wheat production, i.e. an average of 4.8 million tonnes on an annual total of 55.3 million tonnes, have also been used as feed in the US[31].

✓ 83.8% of the production of soybean meal (149 million tonnes on a total of 178 million tonnes) have been used domestically, without speaking of meals of cottonseeds, sunflowerseeds, canola and linseed[32].

✓ We cannot forget hay, particularly alfalfa, since, with an average production of 154.5 million tonnes (of which 76.2 million tonnes of alfalfa) between 2001 and 2005 (and 153.5 million tonnes between 1995 and 2000), its production value is at the third rank of crops, after corn and soybean and much ahead of wheat and cotton. If only 15% of the whole hay acreage was irrigated in 2003, irrigated alfalfa is the most intensive crop in irrigation water in California, before rice and cotton, where it consumes 19.5% of all the irrigated water[33], between 5 to 7 billion m^3 per year on more than 400,000 hectares, all this mainly for the benefit of dairy farmers. It is therefore one of the most highly subsidized crop, notably but not only through irrigation subsidies. According to Sumner, in California "*Total alfalfa support is about $34 million. Most of this, about $15 million is attributable to the irrigation water subsidy*"[34], which is however a very restrictive evaluation of the irrigation subsidy. Given that California accounts for 16.2% of the US alfalfa irrigated, this would imply irrigation subsidies of $92.6 million for the country, all things being equal. However, as the other irrigated hay represents 29.3% of the dry tonnage of irrigated alfalfa in 2003 (and 22.1% in California), this would add $27.1 million in irrigation subsidies, then $120 million for all irrigated hay. However if we take into account the other subsidies than on irrigation attributable to hay on the same bases as Sumner has done for California ($19 million per year from 2001 to 2003) and knowing that California hay production value has represented 6.8% of the national hay production value from 2000 to 2005, this would add $279 million of other subsidies to US hay and put the total at $399 million, rounded at $400 million. Even if we reduce this amount by 20% to be conservative, this subsidy level remains significantly above the *de minimis* exemption level at 2.5% proposed by the US at the end of the implementation period of the Doha Round, knowing that article 7 of the Framework Agreement states that a cut of 20% of the allowed TDS must be made the first year of the implementation period. Therefore hay production value has to be added to the production value of products with a PS AMS.

➢ **Therefore the production value of all feed grains and animal products has to be added to the production value of products with PS AMSs** (however the US dairy had already a PS AMS given its market price support).

✓ **For the 1995-00 period** this has added $57.075 bn to the average production value of products with PS AMSs: $25.095 bn for beef, $10.273 bn for pork, $21.310 bn for poultry and egg and $397 million for sheep.

❖ Therefore the production value of products without PS AMSs drops to $87.152 bn and the allowed PSdm drops to $4.358 bn instead of $7.220 bn for a PSdm cap at 5% of the production value of products without PS AMSs, and to $2.179 bn for a *de minimis* cap at 2.5%.

Tableau 4 – Allowed and actual total trade-distorting domestic support for the 1995-00 and 1999-01 base periods

[30] USDA, Feed Grains Database: Yearbook Tables, January 17, 2007 (http://www.ers.usda.gov/data/feedgrains/StandardReports/YBtable3.htm).
[31] http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1295
[32] http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1290
[33] Alfalfa: The Thirstiest Crop, http://www.nrdc.org/water/conservation/fcawater.asp
[34] Daniel A. Sumner and Henrich Brunke, *Commodity Policy and California Agriculture*, http://giannini.ucop.edu/CalAgBook/Chap6.pdf

$ billion	1995	1996	1997	1998	1999	2000	2001	Av. 95/00	Av. 99/01
Value agricul. production (VAP)	190.110	205.701	203.884	190.886	184.734	189.520	198.502	194.139	190.919
" with notified PS AMSs	23.339	26.131	31.055	73.574	73.327	72.048	64.981	49.734	70.125
" non notified meats PS AMSs	53.546	56.550	59.578	55.520	56.465	60.791	64.999	57.075	60,752
" products with PS AMSs	76.885	82.681	90.633	129.094	129.792	132.839	129.980	106.987	130.877
" " without PS AMSs	113.225	123.020	113.251	61.792	54.942	56.681	68.522	87.152	60.042
Allowed NPSdm (5% of VAP)	9.506	10.285	10.194	9.544	9.237	9.476	9.925	9.707	9.546
" (2.5% of VAP)	4.753	5.143	5.097	4.772	4.619	4.738	4.963	4.854	4.773
Notified NPSdm	1.385	1.113	0.568	4.584	7.406	7.278	6.828	3.556	7.171
Notified PSdm ($ million)	97	40	236	158	29	63	216	89	103
Allo.PSdm.: 5% VP without PS AMS								4.358	3.002
Allowed PSdm: 2.5% "								2.179	1.501
Allowed total AMS	23.083	22.287	21.491	20.695	19.899	19.103	19.103	21.093*	19.368
Notified total AMS	6.214	5.897	6.238	10.392	16.862	16.803	14.413	10.401	16.026
Actual total AMS (table 3)	6.214	17.637	17.500	25.201	33.407	33.817	29.984	22.296	32.403
Allowed Blue Box at 5% VAP	9.506	10.285	10.194	9.544	9.237	9.476	9.925	9.707	9.546
" 2,5% VAP	4.753	5.143	5.097	4.772	4.619	4.738	4.963	4.854	4.773
Notified Blue Box	7.030	0	0	0	0	0	0	1.172	0
Allowed TDS 5% VAP at beginning	19.103 (TDS) + 9.707 (NPSdm) + 4.358 (PSdm) + 9.707 (BB)							42.875	
" " at the end (-53%)	42.875 x 47%							20.151	
Allowed sum of 4 components, end	7.641 (FBTA - 60%) + 4.854 (NPSdm) + 2.179 (PSdm) + 4.854 (BB)							19.528	
Applied TDS 2.5% VAP at beginning	22.296 (total AMS) + 3.556 (NPSdm) + 89 (PSdm) + 1.172 (BB)							27.113	
Allowed TDS 5% VAP at beginning	19.103 (FBTA) + 9.546 (NPSdm) + 3.002 (PSdm) + 9.546 (BB)								41.197
" " at the end (-53%)	41.197 x 47%								19,.363
Allowed sum of 4 components, end	7.641 (FBTA - 60%) + 4.773 (NPSdm) + 1.501 (PSdm) + 4.773 (BB)								18,688
Applied TDS 2.5% VAP at beginning	32.403 (total AMS) + 7.171 (NPSdm) + 103 (PSdm) + 0 (BB)								39,677

❖ Which means that the allowed TDS drops to $42.884 bn (instead of $48.224 bn computed by Canada) and cutting it by 53% leads to $20.155 bn.

❖ Comparing it to the notified applied TDS of $15.218 bn on average for the 1995-00 period [10.401 bn for the AMS + 89 million for the PSdm + 3.556 bn for the NPSdm + 1.172 bn for the BB (since the US has had a BB of 7.030 bn in 1995)] shows that the maximum cut in the allowed TDS could be of 57.4% so that the US offer could be feasible if it had rest on capping the allowed 2 *de minimis* supports and the blue box at 5% of the agricultural production value and had ignored the massive US cheatings.

❖ But, as the actual total AMS has been of $22.296 bn instead of the notified $10.401 bn, because the NPSdm cap has been largely exceeded 5 years over 6 (table 3), the average applied TDS from 1995 to 2000 has jumped at $27.113 bn [$22.296 bn (total AMS) + $89 million (PSdm) + $3.556 bn (NPSdm) + $1.172 bn (BB: the US has had a $7.030 bn BB in 1995)]. Therefore the maximum possible cut in the allowed TDS would be of $15.771 bn or 36.8%. As the applied TDS in 2000 was much larger ($41.158 bn), the only possible cut would be of $1.717 bn that is of 4%!

❖ However the US has offered to cut the allowed *de minimis* supports and the BB to 2.5% of the VAP at the end of the implementation period as confirmed by Falconer so that the allowed TDS at the end of that period should be of $19.531 bn if the base period is 1995-00: $7.641 bn for the total AMS + 2.184 bn for the PSdm + $4.853 bn for the NPSdm + $4.853 for the BB. Indeed, according to paragraph 8 of the Framework Agreement, it is the sum of the 4 components that should prevail when it is lower than the allowed TDS.

✓ **<u>For the 1999-01 base period</u>**:

❖ First it is paradoxical that the US is the only one to advocate those years as the base period since, if it is logical to compute the reductions in the PS AMSs, it is muh less favourable to compute the reduction in the allowed TDS since the average VAP was lower, at $190.919 bn, during these 3 years than for the 1995-00 period, and the applied total AMS was much larger as a result of a much lower allowed PSdm.

❖ As shown in table 4, the applied average total AMS was of $32.403 bn, the allowed final TDS of $18.688 bn [7.641 (FBTA - 60%) + 4.773 (NPSdm) + 1.501 (PSdm) + 4.773 (BB)], but the applied average TDS was of $39.677 bn. This amount is only 3.7% lower than the allowed average TDS for the 1999-01 period (of $41.197 bn) but, far from being able to cut this allowed TDS by 53% at the end of the next AoA implementation period, it is to the contrary the sum of its applied 4 components which would have to be cut by more than half to comply with the US offer.

✓ **For the 2001-05 base period** – which should be used for the Doha Round to comply with the WTO rules –, as we have shown above that the applied total AMS would already be of $25.778 bn on average (or $25.078 bn if we do not challenge the hugely under-notified irrigation subsidies), it is clear that the US has no margin of manoeuvre to cut its TDS even if the three other components were nil. But we can attempt to show what would be their amounts, particularly that of the PSdm.

➢ The US has two ways of computing the value of agricultural production at the farm gate, as explained in its notification to the WTO: "*the value of production reported by National Agricultural Statistics Service (NASS), in general. Cash receipts from the Economic Research Service were used for fruits and nuts, vegetables, horses and mules, aquaculture, and "other crops", excluding cash receipts for some specific crops that are available as actual value of production in NASS reports.*" In fact cash receipts are available for most products, including animal products and grains but we will stick to this method used in the 1995-01 notifications for the 2001-05 period. In fact the cash receipts approach corresponds to products receiving little or no direct payments in a broad sense.

➢ Table 5, using also the results of the following tables 6 and 7, shows the production value of products which have a PS AMS above the *de minimis* exemption level at 5% and 2.5% of their own production value. The end results is that the allowed PS *de minimis*, which is based on the sum of the production values of products without a PS AMS, drops to $2.745 bn during the 2001-05 base period with a cap at 5% of their production value (against $10.961 bn for the NPS *de minimis*) and to $1.372 bn at the end of the implementation period with a cap at 2.5% of their production value (against $5.481 bn for the NPS *de minimis*).

➢ The reader could be surprised that the figures given for 2001 are often different for tables 4 and 5. This is due to the fact that, for the 1995-01 period, we did not make such an in-depth investigation as for the 2001-05 period on the production value and amount of subsidies received each year by each product. We have only added the production value of meats to the production value of products with a PS AMS as notified to the WTO. And this to spare time since the emphasis was put on the 2001-05 period, but we should revise the figures for the 1995-00 and 1999-01 periods later on. This implies that the allowed PS *de minimis* has been overestimated for the 1995-00 period, which reinforces even more the conclusion that the US proposals are not feasible.

➢ Table 6 shows the subsidies going to feed grains having fed US animals from 1995 to 2005, with an average of $4.486 bn from 2001 to 2005, of which 61.4% went to corn and 22.3% to soybean meal. However these amounts are underestimated as they are based on the Environmental Working Group subsidies data base to specific products, which do not include all subsidies, notably the agricultural insurance subsidies, although they may be identified product by product as acknowledged by the CRS report already mentioned. Furthermore we have not included the subsidies to meals of other US oilseeds than soybean and the grazing subsidies (put in the NPS AMS).

Table 5 – Production value (PV) of products with and without PS AMSs from 2001 to 2005

$ million	2001	2002	2003	2004	2005	Av. 2001-05	5% of PV	2.5% of PV
Bovine cattle production value	29,403	27,098	32,113	34,831	36,739	32,037	1,602	801
5%/2.5% of the "	1,47/740	1,35/680	1,61/800	1,74/870	1,84/920	16,0/800		
Hogs "	11,416	8,691	9,663	13,072	13,644	11,297	565	283
5%/2.5% of the "	230/110	430/220	480/240	650/330	680/340	560/280		
Poultry & eggs "	23,986	20,501	23,295	28,857	28,241	24,976	1,249	625
5%/2.5% of the "	1,20/600	1,03/510	1,16/580	1,44/720	1,41/710			
Sheep and goats "	303	314	392	411	456	375	19	10
5%/2.5% of the "	15/8	16/8	20/10	21/10	23/11			
All meats "	65,108	56,604	65,463	77,171	79,080	68,607	3,430	1,715
Milk "	24,894	20,688	21,381	27,568	26,904	24,287	1,214	607
5%/2.5% of the "	1,24/620	1,03/520	1,07/530	1,38/690	1,35/670			
All these animal products "	90,002	77,292	86,844	104,739	105,984	92,894	4,645	2,322
Barley "	535	606	755	698	506	620	31	16
5%/2.5% of the "	27/13	30/15	38/19	35/17	25/13			
Corn "	18,879	20,882	24,477	24,381	21,041	21,932	1,097	549
5%/2.5% of the "	944/472	1,04/520	1,22/620	1,22/610	1,05/530			
Oats "	197	212	225	178	187	200	10	5
5%/2.5% of the "	9.9/4.9	10.6/5.3	11.3/5.6	8.9/4.5	9.4/4.7			
Sorghum	979	855	965	843	715	871	44	22
5%/2.5% of the "	49/24	43/21	48/24	42/21	36/18			
All hay	12,589	12,338	12,007	12,197	12491	12324	616	308
5%/2.5% of the "	629/315	617/308	600/300	619/305	625/312			
Cotton "	2,834	3,497	5,517	4,854	5,574	4,455	223	112
5%/2.5% of the "	142/71	175/87	276/138	243/121	279/139			
Canola "	175	163	160	144	149	158	8	4
5%/2.5% of the "	88/44	82/41	80/40	72/36	75/37			
Flaxseed "	49	68	62	84	116	76	4	2 dm
Sunflower "	326	295	316	273	472	336	17	9
5%/2.5% of the "	16/8.2	15/7.4	16/7.9	14/6.8	24/12			
Peanuts "	1,001	600	799	814	846	812	41	21
5%/2.5% of the "	50/25	30/15	40/20	41/20	42/21			
Rice "	925	980	1,629	1,702	1,789	1,405	70	35
5%/2.5% of the "	46/23	49/25	815/407	85/43	89/45			
Soybean "	12,606	15,253	18,014	17,895	16,928	16,139	807	404
5%/2.5% of the "	630/315	763/381	901/450	895/447	846/423			
Sugarbeet* "	1,023	1,097	1,270	1,107	1,124	1,124	56 dm	28 dm
5%/2.5% of the "	512/256	549/274	635/318	554/277	562/281			
Sugarcane* "	1,003	1,007	998	821	957	957	48 dm	24 dm
5%/2.5% of the "	502/251	504/252	499/250	411/205	479/239			
Wheat "	5,413	5,637	7,929	7,283	7,140	6,680	334	167
5%/2.5% of the "	271/135	282/141	396/198	364/182	357/179			
Tobacco "	1,939	1,687	1,576	1,752	1,053	1,601	80	40
5%/2.5% of the "	970/485	844/422	788/394	876/438	527/263			
Apple "	1,452	1,581	1,817	1,648	1,787	1,657	83	41
5%/2.5% of the "	726/363	791/395	909/454	824/412	894/447			
Total crops with PS AMSs** "	61925	66758	78516	76674	72875	71350	3567	1784
Total crop production	95,100	98,400	108,400	125,300	112,700	107,980	5399	2700
Value of agricultural production	201,500	191,900	213,400	249,700	239,600	219,220	10,961	5,481
NPS de minimis (5% of ")	10,075	9,595	10,670	12,485	11,980	10,961		
Production value with PS AMSs	151927	144050	165360	181413	178859	164322		
Production value without "	49573	47850	48040	68287	60741	54898		
5% PS de minimis cap	2479	2393	2402	3414	3037	2745		
2.5% PS de minimis cap	1239	1196	1201	1707	1519	1372		

Sources: * lacking the data for sugarbeet and sugarcane in 2005, we have used the average for 2001 to 2004; ** the identification of crops with PS AMSs takes into account the following table 4 on the amounts of subsidies by crop.

Beef, hogs and sheep in 2001 & 2002: http://usda.mannlib.cornell.edu/usda/nass/SB995/sb995.txt

" in 2003: http://usda.mannlib.cornell.edu/usda/nass/MeatAnimPr//2000s/2005/MeatAnimPr-04-28-2005.txt

" in 2004 & 2005: http://usda.mannlib.cornell.edu/usda/nass/MeatAnimPr//2000s/2006/MeatAnimPr-04-27-2006.txt

Poultry in 2001 and 2002: http://usda.mannlib.cornell.edu/usda/nass/PoulProdVa//2000s/2004/PoulProdVa-04-29-2004.txt

" in 2003: http://usda.mannlib.cornell.edu/usda/nass/PoulProdVa//2000s/2005/PoulProdVa-04-29-2005.txt

" in 2004 & 2005: http://usda.mannlib.cornell.edu/usda/nass/PoulProdVa//2000s/2006/PoulProdVa-05-18-2006_revision.txt

Cow milk in 2001 & 2002: http://usda.mannlib.cornell.edu/usda/nass/MilkProdDi//2000s/2003/MilkProdDi-04-24-2003.txt

" in 2003, 2004 & 2005: http://usda.mannlib.cornell.edu/usda/nass/MilkProdDi//2000s/2006/MilkProdDi-04-27-2006.txt

Crops in 2001 & 2002: http://usda.mannlib.cornell.edu/usda/nass/SB999/sb999.txt

" in 2003, 2004 & 2005: http://usda.mannlib.cornell.edu/usda/nass/CropValuSu//2000s/2006/CropValuSu-02-15-2006.txt

For hay: http://www.usda.gov/nass/pubs/agr06/CHAP06.PDF. Value of agricultural production, excluding farms' revenues from services and forestry: USDA,-ERS, Agricultural income and finance outlook Nov. 2006 (http://usda.mannlib.cornell.edu/usda/ers/AIS//2000s/2006/AIS-11-30-2006.pdf) for 2002 to 2005. For 2001: http://usda.mannlib.cornell.edu/usda/ers/AIS//2000s/2003/AIS-11-05-2003.pdf

➢ We see already in table 6 that the average total feed subsidies of $4.486 bn during the 2001-05 period are globally much above the allowed cap of PS *de minimis* at 2.5% of the production value of animal products with PS AMSs proposed by the US for the end of the implementation period, which should not exceed $1.372 bn (table 3). Already these feed subsidies are close to the 5% *de minimis* cap (at $4.645 bn) and would have exceeded it if we had taken into account the other feed subsidies. They would have exceeded the cap even more if we had distributed among feed crops the green subsidies attributable to them as we have done for the EU[35] and as OECDE has done also partially for all products.

Table 6 – Subsidies going to feed grains having fed US animals from 1995 to 2005

Subsidies in million $	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	01-05
Feed corn: M bushels bu	4,693	5,277	5,482	5,468	5,665	5,842	5,864	5,563	5,798	6.158	6.141	
% feed corn/total corn	63.41	57.16	59.54	56.03	60.24	58.92	61.71	62.04	57.47	52.15	55.25	
All corn subsidies	2,724	1,861	2,695	4,826	7,238	7,722	5,484	1,981	2,813	4,504	9,414	4,839
Feed corn subsidies	1,727	1,064	1,605	2,704	4,360	4,550	3,387	1,229	1,616	2,349	5,201	2,756
Feed sorghum: M bu	295	516	365	262	285	222	230	170	180	191	140	
% feed sorghum/tot.sorg	64.27	64.91	57.57	50.39	47.90	47.13	44.75	47.09	43.80	42.18	35.52	
All sorghum subsidies	238	241	276	490	674	636	451	189	213	313	500	333
Feed sorghum subsidies	153	156	159	247	323	300	202	89	93	132	178	139
Feed barley: M bu	179	217	144	167	140	136	104	84	84	103	52	
% feed barley/tot. barley	49.86	55.36	40.00	47.44	51.47	42.77	41.94	37.00	30.22	36.75	24.51	
All barley subsidies	78	119	114	264	262	289	202	83	79	167	175	141
Feed barley subsidies	39	105	46	125	135	124	85	31	21	61	43	48
Feed wheat: M bu	154	308	251	391	283	304	182	116	203	189	200	
% feed wheat/total wheat	7.05	13.53	10.12	15.35	12.31	13.62	9.35	7.22	8.66	8.76	9.50	
Wheat subsidies	587	1,672	1,411	2,764	3,696	3,653	2484	975	1373	1216	1124	1,434
Feed wheat subsidies	41	226	143	424	455	498	243	76	132	107	107	133
Feed oats subsidies	7	8	8	29	46	58	20	6	4	6	3	8
Hay subsidies	400	400	400	400	400	400	400	400	400	400	400	400
All soybean subsidies	-	-	-	480	2,491	3,004	4,307	671	1,142	914	588	1,524
% meal in soybean value	65	71	61	43	32	72	68	62	64	61	64	64
Soybean meal subsidies	-	-	-	220	797	2,163	2,929	416	731	558	376	1,002
Total feed subsidies	2,367	1,959	2,382	4,229	7,202	8,093	7,266	2,247	2,997	3,613	6,308	4,486

Source: http://usda.mannlib.cornell.edu/reports/erssor/field/fds-bby/fds2005.pdf;
http://www.usda.gov/nass/pubs/agr04/04_ch1.pdf; http://www.ewg.org/farm/region.php?fips=00000#topprogs
http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1295
http://www.ewg.org/farm/region.php?fips=00000#topprogs

➢ Table 7 shows that the subsidies to other crops from 2001 to 2005 have most often largely exceeded the *de minimis* 5% cap and thus even more the *de minimis* 2.5% cap.

Table 5 – Subsidies to other crops from 1995 and average from 2001 to 2005 according to EWG

Subsidies in million $	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	01-05
Peanuts subsidies						94	79	1095	540	213	276	441
Cotton subsidies	30	647	595	1163	1721	1850	3033	2389	2697	1654	3331	2621
Rice subsidies	832	646	455	735	1120	1525	1391	1151	1475	637	533	1037
Sunflower subsidies				8	107	151	104	7	27	13	21	34
Sugarbeet subsidies						105	44	44	48	1	-	27
Tobacco subsidies						345	129	5	51			37
Apple subsidies							95	74	92			52

Source: http://www.ewg.org/farm/region.php?fips=00000#topprogs

➢ The only exception seems to be sugar beet for which subsidies have remained on average just below the 2.5% cap ($27 million against $28 million) and even more below the 5% cap, even though the 2.5% cap has been exceeded from 2001 to 2003 but not the 5% cap still in force during the implementation period (if 2001-05 were agreed as the base period). However as 41.1% of the sugarbeet acreage (561,837 acres on 1.365 million acres) is irrigated (in 2003) and that the irrigated water per acre is 77% of that used by alfalfa in California, we have to add the irrigation subsidies,

[35] J. Berthelot, *Feed subsidies to EU and US exported poultry and pig meats*, Solidarité, 10 January 2006; J. Berthelot, *The comprehensive dumping of the European Union's dairy produce from 1996 to 2002*, Solidarité, 31 January 2006; J. Berthelot, *The comprehensive dumping of the EU bovine meat from 1996 to2002*, Solidarité, 19 April 2006 (http:/solidarite.asso.fr).

so that on the whole the foreseen *de minimis* 2.5% cap has been exceeded. As for tobacco the EWG has forgotten to take into account the huge subsidies granted in 2005 – the $2.079 bn of Tobacco transition program payment – so that the average for 2001-05 exceeds very largely the 5% *de minimis* cap and even more the 2.5% cap.

- **Finally the allowed overall trade distorting support (TDS) for the base period 2001-05** has been $43.770 bn: $19.103 bn (Final Bound Total AMS, FBTA) + $2.745 bn (PSdm) + $10.961 bn (NPSdm) + $10.961 bn (BB). And cutting it by 53% will bring it to $20.572 bn.

- However paragraph 8 of the Framework Agreement of 31 July 2004 states: "*This commitment will apply as a minimum overall commitment. It will not be applied as a ceiling on reductions of overall trade-distorting domestic support, should the separate and complementary formulae to be developed for Total AMS, de minimis and Blue Box payments imply, when taken together, a deeper cut in overall trade-distorting domestic support for an individual Member*".

- Then as the US has proposed to reduce at the end of the implementation period by 60% its FBTA and to cap at 2.5% of the agricultural production value the two *de minimis* and the Blue Box, the sum of these commitments will drop the allowed TDS to $19.975 bn: $7.641 bn (FBTA) + 1.372 bn (PSdm) + $5.481 bn (NPSdm) + $5.481 bn (BB).

- As we have shown that the applied total AMS has already reached $25.778 bn on average during the 2001-05 period ($25.078 bn if we do not take into account the under-notified irrigation subsidies), and $26.143 bn in 2005 (oar at least $25.443 bn), then the US proposal to cut by 53% its allowed TDS is totally empty, even if the applied *de minimis* and blue box supports were nil.

- The more so as we could have shown that most US green box subsidies – with the significant exception of the largest part of its domestic food aid –, including to the general services such as agricultural research, extension, investments and rural infrastructures, have a clear impact on the level of competitiveness of US products. We will come back to it in another analysis since the US is striving hard to shift to the green box a maximum of amber subsidies in the new Farm Bill in order to escape possible litigations at the WTO.

Conclusion

The demand by other WTO Members that the US reduce its allowed TDS to at least $15 bn (EU and India) or $12-13 bn (Brazil) is totally displaced and proves that they ignore the WTO rules (including the precedents of its Appellate Body) and the actual level of US agricultural domestic supports. Or, worst, that they do not care about them.

As we cannot imagine that the EU Commission ignore both of them, its attitude can be explained by two factors: 1) it cannot denounce the US massive cheatings with the AoA rules because its own cheatings are even worse; 2) demanding the impossible to the US is a way to lock the negotiations given that it is not itself politically prepared to cut its agricultural tariffs by 55% to 90 (according to the tariffs bands) as the US has demanded or even to 54% as the G-20 has requested when it has proposed 39%, and the number of sensitive tariff lines to 1% instead of 8%.

Before changing the WTO rules on agriculture – which is absolutely needed in order to rebuild them on food sovereignty but forbiding all exports at prices below the average production cost of the country, that is excluding all direct and indirect subsidies (upstream on inputs and investments and downstream at the processing and marketing levels) benefiting to the exported products – Members would go a long way in abiding by the present ones, particularly to fight dumping. Indeed there is no reason why they would comply more with the new ones in the future.