Repeat a lie a thousand times and it becomes the truth:
the EU and US applied OTDS are huge, not paltry

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Now that the Doha Round has been put in the deep freeze, it is time to rebuild the multilateral trade rules on sounder bases. For this to happen we have to understand not only the profound weaknesses of the present rules, particularly on agricultural trade, but also the huge lies of many WTO Members or simply the lack of knowledge of many goodwill NGOs. However, before rethinking completely the rules, we have to assess first the recent negotiations, the more so as the Doha Round is not dead and as most Members seem willing to resume them in late 2009-early 2000, after the break of the elections in the US, India and the EU.

Agriculture has been the Achilles' heel of these negotiations, around the two core issues of the levels of subsidies cuts – in the OTDS (overall trade distorting domestic support) – and tariffs. All the other issues are subsets of them: export competition, sensitive products, special products, special safeguard mechanism, cotton, preferences, bananas, tropical products, etc.

The present paper will concentrate on the OTDS issue and show how far from the truth the figures circulating widely in the media have been, once written down either in Crawford Falconer's Draft, put forward by some Members, particularly of the G-20, or even by many NGOs. Happily, it is not because a lie is repeated a thousand times that it becomes the truth, as Celso Amorim has recently reminded us.

We will see that the EU and US allowed OTDS in the 1995-2000 base period could not be cut by 80% et 70% respectively in the implementation period, far from it, as proposed in Pascal Lamy's Draft of 25 July 2008. And this because the allowed OTDS in the base period were lower than claimed and because the applied OTDS in 2007 and 2008 is already much higher than the figures generally put forward of €27.1 billion for the EU[1] and $7-9 billion for the US.

I – The EU and US allowed OTDS are much lower than in Canada's simulations

Starting from the allowed figures based on Canada's simulations, we will see the two reasons why the actual allowed OTDS is much lower: 1) the allowed product-specific *de minimis* (PSdm) has not been computed according to the rules; 2) the 2008 Farm Bill has changed the rule to compute the US dairy market price support.

1) The allowed OTDS according to Canada's simulations

The overall trade distorting domestic support (OTDS) in the base period 1995-2000 is the sum of the Final Bound Total AMS (FBTA, AMS for "Aggregate Measurement of Support", also called the amber box) at the end of the base period + the allowed product-specific *de minimis* (PSdm) + the allowed non-product-specific *de minimis* (NPSdm) + the allowed blue box (BB). PSdm and NPSdm are also amber box supports but which are not included in the AMS as long as they remain below a ceiling.

[1] http://www.ifpri.org/events/conferences/2008/20080314/Josling_paper.pdf

The figures currently circulating on the allowed OTDS, respectively €110.305 billion – 67.159 (FBTA) + 11.129 (PSdm) + 11.129 (NPSdm) + 20.888 (BB) – and $48.224 billion – 19.103 (FBTA) + 9.707 (PSdm) + 9.707 (NPSdm) + 9.707 (BB) –, are those of Canada's simulations of 19 May 2006 prepared on behalf of the EU, the US and Japan and based on their own data. So that the 80% and 70% cuts would lead to maximum applied OTDS of respectively €22.061 billion and $14.467 billion at the end of the Doha Round implementation period. The allowed FBTA should be cut by 70% (€20.147 billion) and 60% ($7.641 billion).

2) But these figures are based on a wrong interpretation of the way to compute PSdm

Indeed the definition of PSdm given in paragraph 1 of the Revised Draft of 10 July 2008 contradicts Article 6.4 of the Agreement on Agriculture (AoA) with which paragraph 30 claims to comply. The Draft ignores that the allowed PSdm is only 5% of the production value of products without a PS AMS, not 5% of the whole agricultural production value (VOP) as for the NPSdm.

The production value of products without PS AMSs can be computed in two phases, relying first on the production value of products notified with PS AMSs, then adding the production value of products which should have been notified with PS AMSs. The first phase is straightforward for the US ($49.734 billion) but requires long calculations for the EU which has not notified the production value of products with PS AMSs before 2000-01. Happily it has been possible to rebuild those values which have been of €99.655 billion[2].

The main products for which the EU and US did not notify PS AMSs are animal products, mainly meats, which get PS AMS because of huge feed subsidies. Indeed AoA Article 6.2 states: "*Investment subsidies which are generally available to agriculture in developing country Members and 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 means that, conversely, input subsidies granted to rich countries' farmers have to be included in the AMS, and OECD recognizes feed subsidies as belonging to the category of input subsidies.

Actually the EU and US have notified some minor feed subsidies in their PS AMSs (subsidies to skimmed milk used to feed veal calves in the EU and subsidies to grazing on federal lands in the US) – which proves they recognize their input subsidy nature – but they have failed to notify by far the most important feed subsidies, those to feed grains (cereals, oilseeds and pulses).

Adding in the EU the production value of animal products, oilseeds and pulses getting PS AMSs to that of the products notified with PS AMSs increase the average production value of products with AMSs to €201.323 billion in the base period so that, given the €222.577 billion in average value of the whole agricultural production (VOP), the average production value of products without PS AMSs shrinks to €21.253 billion and the allowed PSdm to €1.063. Consequently the actual average blue box (BB) has fallen to €11.145 billion instead of €20.888 billion because €9.743 billion in BB payments to cereals, oilseeds and pulses have been transferred to the PS AMSs of animal products having consumed these feeds. Therefore the allowed OTDS for 1995-00 falls at €90.496 billion instead of €110.305 billion in Canada's simulations. And cutting it by 80% gives an allowed OTDS of €18.099 billion at the end of the Doha Round implementation period.

[2] Solidarité, *Review of the EU agricultural distorting supports to rebuild fair and sustainable agricultural trade rules after the Doha Round hibernation*, 29 December 2006, http://solidarite.asso.fr/home/textes2006.htm

In the US the production value of products with PS AMSs rises to $106.987 billion in the base period (once added the production value of $57.075 billion for all meats) so that, given the $194.139 billion for the average value of the whole agricultural production (VOP), the production value of products without PS AMSs falls to $87.152 billion and the allowed PSdm to $4.372 billion.

Therefore the allowed OTDS in the base period has been of $42.889 billion – 19.103 (FBTA) + 4.372 (PSdm) + 9.707 (NPSdm) + 9.707 (BB) – instead of the $48.224 billion computed by Canada and cutting it by 70% leads to an allowed OTDS of $12.867 billion at the end of the implementation period.

3) The US FBTA would have to be reduced in the future given the 2008 Farm Bill change in the market price support for dairy products

There is another unnoticed change in the allowed FBTA for the future, linked to the change in the dairy market price support (MPS) decided by the 2008 Farm Bill. Indeed, in order to lower the applied dairy MPS, Congress has decided that, instead of continuing to compute it for the whole milk production, it will be computed for the three main dairy products: butter, nonfat dry milk and cheddar cheese, as the EU and Canada have done for butter and nonfat dry milk.

a) Indeed the US dairy MPS is a fake AMS as shown in the following table: on the 11 notified years 1995 to 2005 the US dairy MPS, not implying any notified subsidy, has represented on average 94.2% of the dairy AMS.

Table 1 – Components of the US notified dairy AMS from 1995 to 2005

$ million	1995-2000	2001	2002	2003	2004	2005
Dairy AMS	4,607	4,483	6,304	4,737	4,662	5,149
of which: market price support (MPS)	4,495	4,483	4,509	4,515	4,646	4,794
" milk income loss contract	-	-	1,795	222	9	352
" disaster payment	112	-	-	-	7	4
Share of MPS on dairy AMS	97.6%	100%	71.5%	95.3%	99.7%	93.1%

Source: notifications to the WTO (G/AG/N/USA/)

b) This change in the dairy MPS decided in the 2008 Farm Bill has raised unanimous praises among agricultural trade economists as it will reduce significantly the dairy AMS to notify at the WTO and consequently will provide a significant leeway for the applied OTDS in the future. Indeed, the dairy MPS has represented 43.2% of the average notified total AMS in the 1995-2000 base period.

Thus, for Randy Schnepf and Charles Hanrahan of the Congressional Research Service (CRS): "*Revisions to the U.S. dairy program under the2008 farm bill appear likely to dramatically reduce annual dairy price support as notified to the WTO. Dairy program changes coupled with a reclassification of the CCP as blue box could provide additional flexibility in accommodating the tighter amber box limits*"[3].

FAPRI says the same: "*The change could have implications under World Trade Organization (WTO) rules. By supporting particular dairy products rather than all milk, it is argued by some that the US could reduce the value of dairy price support notified to the WTO since only these particular products are being supported and not all milk produced, as has been the case in the past. This could prove important if a future WTO agreement reduces allowed levels of trade-*

[3] Randy Schnepf and Charles Hanrahan, *WTO Doha Round: Implications for U.S. Agriculture*, Congressional Research Service, July 24, 2008.

distorting internal supports"[4].

Christopher Wolf confirms: "*When the last World Trade Organization agreement was set in 1994, the Milk Price Support Program was rated at an enormous $5 billion of support. That value turned out to be much larger than the actual support as the US milk price determined by market forces has been above support for most of the period since. This name change may actually affect trade agreements in a positive way by lowering the calculated effective support level in future agreements although the exact result is unknown at this time*"[5].

David Blandford, David Laborde and Will Martin follow suit: "*The 2008 Act redefines the support program in terms of support prices for three dairy products – butter, cheddar cheese and non-fat dry milk… The apparent aim of this change is to allow the United States to notify market price support for dairy on the basis of the volume of production of the three dairy products concerned, rather than the total volume of milk production… The application of the revised approach results in a projected notification of $1.9 billion in 2014, compared to $5.5 billion under the previous method. If it were not for this change, we project that the US would exceed its Total AMS binding in 2014 by roughly $0.2 billion, rather than being $3.4 billion below the binding*"[6].

Table 2. Estimated U.S. Dairy Product Support Program's Contribution to the WTO Aggregate Measure of Support Based on Production in 2007 and 1986-88 World Commodity Prices

	Butter	***Cheese***	***Nonfat dry milk***
CCC purchase price per pound	$1.05	$1.13	$0.80
Minus World price per pound (1986-88 avg.)	$0.53	$0.656	$0.535
	$0.507	$0.474	$0.265
Times U.S. production (billion pounds)	1.533	3.057	3.015
Equals Contribution to AMS ($Mil)	$777.2	$1,499.2	$798.9
Total contribution to AMS, all products	**$3.075 bil.**		

Source: http://future.aae.wisc.edu/publications/farm_bill/M&P_Dairy_6-1.pdf

Ed. Jesse of the University of Wisconsin has elaborated precisely the benefit of the change: "*The price support program was altered to support the price of dairy products (cheddar cheese, butter, and nonfat dry milk)… instead of supporting the price of milk… So while this change may seem subtle, it is significant in potentially reducing the calculated cost of domestic price support programs under the World Trade Organization (WTO). This will help the United States meet any required reductions in domestic supports coming out of ongoing WTO trade negotiations*". In another paper he writes: "*Another possibility is that WTO will calculate dairy's contribution to the AMS by subtracting world prices for cheese, butter and nonfat dry milk during the base years of 1986 -88 from current CCC purchases prices and multiply the difference by U.S. production of these three products. Under this approach the dairy product price support program in the 2008 Act would have contributed approximately $3.075 billion in 2007 to the U.S. AMS (Table 2).*"[7] The above table is pasted from this article.

[4] http://www.fapri.missouri.edu/outreach/publications/2008/FAPRI_MU_Report_08_08.pdf
[5] https://www.msu.edu/~mdr/vol13no3/wolf.html
[6] http://ictsd.net/downloads/2008/07/124.pdf
[7] http://future.aae.wisc.edu/publications/farm_bill/M&P_Dairy_6-1.pdf

c) However, despite the unanimity of US experts, this calculus does not comply with the AoA rules: if you change the rule to compute the present and future dairy AMS as being the sum of the MPS for butter, cheddar cheese and nonfat dry milk, you have to apply the same calculus for the base period 1986-88.

Indeed the definition of total AMS in AoA article 1 is: "*(h)"Total Aggregate Measurement of Support" and "Total AMS" mean the sum of all domestic support provided in favour of agricultural producers, calculated as the sum of all aggregate measurements of support for basic agricultural products, all non-product-specific aggregate measurements of support and all equivalent measurements of support for agricultural products, and which is: (i) 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*".

And Annex 3 paragraphs 5, 6, 8 and 9 state: "*5. The AMS calculated as outlined below for the base period shall constitute the base level for the implementation of the reduction commitment on domestic support; 6. For each basic agricultural product, a specific AMS shall be established, expressed in total monetary value terms; 8. Market price support: market price support shall be calculated using the gap between a fixed external reference price and the applied administered price multiplied by the quantity of production eligible to receive the applied administered price; 9. The fixed external reference price shall be based on the years 1986 to 1988*".

Table 3 shows the calculus of the average MPS of butter, cheddar cheese and nonfat dry milk for the base period 1986-88. We see that, given the levels of support prices and production in that period, the total dairy AMS was of $2,314.16 million instead of the notified $5,409.4 million.

Therefore the total applied AMS for 1986-88 was not of $23,879.1 million but of $20,783.9 million and the final bound total AMS (FBTA) was not of $19.103 billion (80% of 23.874) but only of $16.627 billion. And the allowed FBTA at the end of the implementation period, once cut by 60%, will bring it from $7.641 billion to $6.651 billion in the US notifications for 2008 and beyond.

Consequently, from 2008 on, the allowed OTDS will be only of $40.413 billion in the base period 1995-2000 – 16.627 (FBTA) + 4.372 (PSdm) + 9.707 (NPSdm) + 9.707 (BB) –, instead of $48.224 billion computed by Canada. And cutting it by 70% will bring it to $12.124 billion at the end of the implementation period, significantly lower than the $14.467 billion implied by Pascal Lamy's Draft of 25 July and endorsed by the USTR Susan Schwab. However up to 2007 the allowed OTDS remains at $42.889 billion.

Clearly US experts and USTR might object to this calculus and say that, as the FBTA has been incorporated in Part IV of US Schedule annexed to the AoA, it is binding so that we cannot change it retrospectively. But they should read more attentively its Article 1 which specifies that "*support provided during any year of the implementation period and thereafter*" must be "*calculated in accordance with the provisions of Annex 3 of this Agreement and taking into account the constituent data and methodology used in the tables of supporting material*

incorporated by reference in Part IV of the Member's Schedule". Therefore as the US has changed the methodology to compute its dairy AMS from 2008 on, it cannot use the FBTA incorporating a dairy MPS calculated on the basis of another methodology.

Table 3 – The average market price support AMS of dairy products in 1986-88

Thousand lbs and cts/lb	1986	1987	1988	average 1986-88
Butter, production	1,202,392	1,104,135	1,207,540	1,171,356
Support price	138.25	132.94	129.13	133.44
average world price (from table 2)				53
support price-world price				80.44
" times production ($ million)				943.04
Cheddar cheese, production	2,241,624	2,284,836	2,279,164	2,268,541
Support price	118.88	112.38	113.0	114.75
average world price (from table 2)				65.6
support price-world price				49.15
" times production ($ million)				1114.99
Nonfat dry milk	1,284,143	1,056,797	979,722	1,106,887
Support price	79.25	73.75	76.92	76.64
average world price (from table 2)				53.5
support price-world price				23.14
" times production ($ million)				256.13
Total MPS for dairy products "				2,314.16
Notified dairy AMS for 86-88 "				5,409.4
Excess of notified AMS "				3,095.2

Sources: http://future.aae.wisc.edu/publications/farm_bill/mpsp04.pdf
http://www.nass.usda.gov/QuickStats/PullData_US.jsp
United States domestic support and support reduction commitments by policy category, 1986-88 average and 1995 through most recent notification: http://www.ers.usda.gov/db/Wto/AMS_database/Default.asp?ERSTab=2.

II – The EU and US applied OTDS from 1995 to 2008

The idea, disseminated by several WTO Members, NGOs and academics, that the EU OTDS was of about €27 billion in 2007-08 and the US OTDS of $7-9 billion, is poles apart from reality. The following assessment is essentially based on official EU and US data, on the AoA rules and on the WTO Appellate Body's rulings. When we say the EU and US have hugely under-notified their trade-distorting subsidies to the WTO, we are not criticizing all EU and US official bodies: it is only the Trade General Directorate of the EU Commission and the USTR which have cheated because our assessment is based on official data provided by the General-Directorates of Agriculture and State Aids for the EU and on USDA and GAO (General Accounting Office) for the US.

We have assessed the actual figures in several stages. First we have reclassified in the amber box large subsidies that the EU and US have already classified in the blue or green boxes or that they intend to do. For the EU this refers mainly to the SPS (single payment scheme) and SAPS (single area payment scheme, a transitory regime for the new Member States of the EU-12) and for the US to the fixed direct payments and the countercyclical payments (CCPs). And, second, we have raised the actual levels of many EU and US subsidies hugely under-notified in their NPS AMS.

1) The US fixed direct payments and EU single payment scheme (SPS) are in the amber box

a) The WTO Appellate Body ruled the 10 February 2005 in the cotton case that "*production flexibility contract payments and direct payments are not green box measures*". Therefore the Congressional Research Service's report of 25 October 2006 asked "*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*"[8].

Consequently USDA's proposals of 31 January 2007 for the next Farm Bill stated that "*To ensure that direct payments will be considered to be non-trade distorting green box assistance… 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 Congress refused eventually to give in and the 2008 Farm Bill did not eliminate this provision so that $5.0 billion of fixed direct payments will continue to be granted to US farmers and could be challenged at the WTO.

Indeed when the CRS says that "*Although the panel did not declare that PFC and DP payments should be notified as amber box payments, the panel implied as much*", it is crystal-clear that they have to be somewhere: if they are not in the green box nor in the blue box – because they do not meet the blue box conditions – they can only be in the amber box!

b) If it has been enough for the WTO Appellate Body to rule that the US fixed direct payments are not in the green box because US are prevented to grow fruits and vegetables and wild rice, how much easier it would be to rule that the EU single payment scheme (SPS**)** is not in the green box. It will be the same for the SAPS (single area payment scheme), transitory scheme for the EU-12 new Member States. Indeed EU farmers are much more prevented to produce then their US colleagues, many more productions being either forbidden (fruits and vegetables; milk and sugar beet if farmers have no production quota) or capped (rice, cotton, tobacco, olive oil and wine, and not beyond the milk or sugar beet quotas). Besides there are many other reasons why the SPS cannot be notified in the green box or in the blue box (BB)[9].

Among the reasons why the SPS cannot be notified either in the BB is the "partial recoupling" allowing the coexistence on the same farms of BB payments with the SPS, which has the effect of coupling these BB payments even more as the SPS allows EU farmers to increase their production as much as they want, thus beyond the ceilings permitted by BB payments.

2) The US countercyclical payments and the new ACRE program cannot be notified in the new blue box and are in the amber box

Let us summarize the reasons explained in details in another paper[10]:

1. The new Appellate Body's ruling on cotton of 3 June 2008 has confirmed the preceding ruling of 10 February 2005 "*that the effect of…counter-cyclical payments… is significant price suppression*".
2. CCPs and the ACRE program contradict the AoA basic requirement for non trade-distorting subsidies: "*The support in question shall not have the effect of providing price support to producers*" (AoA Annex II, paragraph 1).

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[8] Randy Schnepf and Jasper Womach, *Potential Challenges to U.S. Farm Subsidies in the WTO*, CRS Report for Congress, Updated April 26, 2007, p. 22, http://www.nationalaglawcenter.org/assets/crs/RL33697.pdf

[9] Jacques Berthelot, *The EU minimal OTDS in the implementation period*, Solidarité, 18 July 2008.

[10] Jacques Berthelot, *Comments to Sophia Murphy and Steve Stuppan's analysis of the countercyclical payments in "The 2008 Farm Bill and the Doha Agenda"* (IATP, 26 June 2008), 11 July 2008.

3. Now the level of CCPs and ACRE payments is directly linked to the current price level.
4. The ACRE program is coupled twice: to the current price level and to the current production volume.
5. The ACRE payments are not "*based on fixed and unchanging bases and yields*" as required by the new BB.
6. A revenue support is necessarily a production support because any revenue results from a price times a production volume.
7. Like fixed direct payments, the ACRE program does not have a full production flexibility and cannot be in the new BB which refers to "*Direct payments that do not require production*".
8. It would be difficult to notify CCPs in the new BB as they have been notified up to 2005 in the NPS AMS.
9. A significant part of CCPs is granted to feed grains, which are input subsidies to be notified in the amber box for developed countries (AoA Article 6.2).

3) The hugely under-notified EU and US non product-specific (NPS) AMS and product-specific AMS

The main under-notified NPS AMS subsidies refer to crop insurances, tax exemptions on agricultural fuel, biofuels, agricultural loans, irrigation, grazing fees on federal lands. In fact all these subsidies should be notified as PS AMSs because they can be allocated to the various products as OECD has done. Actually, given that the EU and US NPS AMS have largely exceeded the NPSdm, they have been automatically transferred to the applied total AMS according to the AoA article 6.4. So that it does not make any difference to notify these subsidies in the PS AMSs or in the NPS AMS.

a) Crop insurances subsidies

i) On average, from 1995 to 2005, USTR has only notified 53% of the actual subsidies to crop insurances, this percentage falling to 38.5% from 2003 to 2005 and to 25% in 2005 ($754 million over $3.014 billion). The only subsidies notified were "*the net value of the indemnities paid to producers for losses less the amount of the producer-paid premium*", forgetting three other components of actual costs to tax-payers: reimbursements of private companies' delivery expenses, payments of their underwriting gains and operating expenses of the Risk Management Agency.

These under-notified figures have been attested by the Government Accountability Office (GAO)[11], the Congressional Research Service (CRS)[12], USDA[13,14] and Joe Glauber, the USTR Special Doha Agricultural Envoy himself! Precisely he has even shown that a good share of disaster assistance subsidies end up in a "*double indemnity*": "*Subsidies for crop insurance have averaged more than $3 billion a year since 2002, and annual disaster payments have averaged more than $2 billion. Moreover, much of the disaster assistance goes to producers who also are receiving crop insurance indemnity payments. The result, as the title of this paper suggests, is "double indemnity*""[15].

[11] Government Accountability Office (GAO)'s report of 7 June 2007 (http://www.gao.gov/new.items/d07944t.pdf).
[12] Randy Schnepf and Jasper Womach, *Potential Challenges to U.S. Farm Subsidies in the WTO*, CRS Report for Congress, Updated April 26, 2007, p. 22, http://www.nationalaglawcenter.org/assets/crs/RL33697.pdf
[13] USDA, Risk Management, 2007 Farm Bill Theme Papers, May 2006, p. 14.
[14] USDA, *FY 2007 Budget summary and annual performance plan*, page 34 (http://www.usda.gov/agency/obpa/Budget-Summary/2007/FY07budsum.pdf)
[15] Joseph W. Glauber, *Double Indemnity: Crop Insurance and the Failure of U.S. Agricultural Disaster Policy*, in Bruce L. Gardner and Daniel A. Sumner, The 2007 Farm Bill and Beyond, 2007 (http://aic.ucdavis.edu/research/farmbill07/aeibriefs/20070516_Summary.pdf).

ii) The distinction between subsidies to crop insurances and to agricultural disasters is even more blurred in the EU, particularly in Italy and Spain, the more so as the level of losses required to get the disaster payment is often lower than the 30% level required by the AoA to notify it in the green box. Actual crop insurance subsidies are essentially granted by Member States (but we have found only partial data for 5 States: language problem!) and very often also at lower levels of public authorities[2]. However the average €101 notified for the 1995-2000 base period were clearly under-notified by at least €500 million, which is confirmed by the sharp rise in the notifications for 2002-03 (€595 million) and 2003-04 (€631 million).

b) Tax exemptions on agricultural fuels

i) Although USTR did not notify any such subsidy to the WTO, USDA has kept notifying to OECD $2.385 billion from 1995 to 2005 in the section "payments based on use of variable inputs", with the following explanation: "*Value of Federal and State exemptions or reductions in excise and sales taxes on diesel fuel for farmers relative to the standard rate taxes on fuel*". Indeed article 1 of the WTO Agreement on subsidies and countervailing measures considers there is a subsidy when a "*government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits)*". The same level of $2.385 billion notified each year is clearly suspect, the more so as the actual levels have been increasing in the last years with the surge in oil prices.

Therefore we have made an investigation (table 4) which confirms that, at least for the partial data we have been able to collect, the US farmers have benefitted at least of $3 billion in tax exemption for their fuels in 2005 and 2006. This is a very minimum as we did not take into account the tax exemption on electricity used for farm operations (not for households). Given that electricity expenditures have been of $3.454 billion in 2005 and of $3.693 billion in 2006, or 33.5% and 33.2% of fuels expenditures[16], taking their tax exemption into account would add around $1 billion more in subsidies to agricultural fuels. Therefore keeping $2.385 billion for the whole period is highly conservative.

Table 4 – Sales tax exemption on US farm fuels

$ billion, cts	2000	2001	2002	2003	2004	2005	2006	2007	2008*
Fuel expenditures $bn	7.000	6.700	6.500	6.700	8.000	10.100	10.900	12.400	14.000
Diesel used on farms									
Expenditures $bn						5.840	6.530		
Billion gallons	3.360	3.505	3.343	3.118	3.117	3.166	3.221		
Diesel price (cts/gallon)	148.53	142.60	134.03	155.92	184.88	226.82	256.92	279.86	343.22
% tax	28.27%	30.06%	31.58%	27.00%	22.93%	19.71%	18.14%	14.82%	11.75%
Tax in cts/gallon	41.99	42.87	42.33	42.10	42.39	44.71	46.61	41.48	40.33
Tax exemption $bn	1.411	1.503	1.415	1.313	1.321	1.416	1.501		
Gasoline used on farms									
Expenditures $bn						2.300	2.335		
Diesel price (cts/gallon)			136.75	150.83	167.18	239.87	270.50	288.17	395.87
% tax			35.38%	32.03%	27.04%	21.22%	19.60%	16.65%	11.93%
Tax in cts/gallon			48.38	48.31	45.21	50.90	53.02	47.98	47.23
Tax exemption $bn						1.170	1.238		
Other fuels (including LP gas or propane)**									
Expenditures $bn						1.960	2.035		
% tax: average D+G			33.48%	29.52%	24.99%	20.47%	18.87%	15.74%	11.84%
Tax exemption $bn						0.401	0.384		
Total tax exemption "						2.987	3.123		

Source: http://www.usda.gov/nass/PUBS/TODAYRPT/fpex0806.pdf; http://tonto.eia.doe.gov/oog/info/gdu/gasdiesel.asp; http://tonto.eia.doe.gov/oog/info/gdu/dieselpump.html. * for 2008 prices for the first semester and estimates of total expenditures. ** as we have only the expenditures for all other fuels combined and not their volumes, we have supposed that the percentage of sales tax was the average of the percentages of the sales taxes of diesel and gasoline.

[16] http://www.ers.usda.gov/Data/farmincome/FinfidmuXls.htm

ii) EU tax rebates on agricultural fuels are even less transparent as they are also granted at members States level but not mentioned in the EU State Aids data. They have been of at least €2 billion annually since, for France alone, they have risen from €592 million in 1995 to €1.300 billion in 2003[2], and they have been of about the same level in Germany. Furthermore they have increased in the last years with the surge in oil prices.

c) Some biofuels subsidies to US and EU farmers

For both the EU and US, we can add for the recent years the share of biofuels subsidies transmitted to farmers through their feed by-products. In fact we will only focus on some of those subsidies which have been very broad[17]. Admittedly only ethanol is considered as an agricultural product by the WTO (in AoA Annex 1)[18], not biodiesel which is considered as a chemical product. However this cannot deny that its feed by-products are agricultural products and that feed subsidies are input subsidies to be notified in the PS AMSs of animal products having consumed the feed. But, as we have just said, there will not make any difference to notify them in the PS AMSs or the NPS AMS because in both cases, they will increase the total applied AMS and applied OTDS.

i) If a $0.51 subsidy per gallon of ethanol has been granted for a long time to US ethanol processors and not to farmers, they have benefitted nevertheless from the subsidized feed by-products, notably the 14.6 million tons of dried distillers grains plus solubles (DDGS) produced in 2007. Given that DDGS have represented 19% of the ethanol revenue in 2007 (and 23.4% in the first 5 months of 2008)[19], that ethanol production has reached 6.5 billion gallons[20], total subsidies to DDGS have been of $630 million. However the 2008 Farm Bill has lowered to $0.45 the subsidy per gallon of ethanol which, for an expected production of 8.5 billion gallons[21], would nevertheless rise the subsidies of its feed by-products to $895 million. In fact ethanol production has progressively risen in the 90s from 1.4 billion gallons in 1995 with an average of 1.337 gallons in the base period so that the DDGS subsidies have been on average of $133 million in that period.

ii) We have not the time to compute the feed by-products of the EU biofuels but we can add at least the additional subsidy of €45 per hectare of crop allocated to biofuels, within a budget cap of €90 million, which was entirely used in 2007.

d) Subsidies on agricultural loans

i) The under-notified interest subsidies on agricultural loans (not to speak of the non repaid principal) have been of at least €200 million beyond the €420 million notified on average for 1995-00 in the EU NPS AMS. The more so as the French agricultural loans subsidies have already been of €406 million on average, the EU share being of $101 million[2].
ii) For the US we take the average $610 million notified each year to OECD, against the ridiculous $48.8 million notified at WTO.

[17] http://www.iisd.org/pdf/2007/biofuels_oecd_synthesis_report.pdf; http://www.gem.sciences-po.fr/content/research_topics/trade/ebp_pdf/GSI-European_Report_on_support_to_Biofuels-oct07.pdf; http://www.earthtrack.net/earthtrack/library/BiofuelsUSupdate2007.pdf
[18] http://www.agritrade.org/Publications/DiscussionPapers/WTO_Disciplines_Biofuels.pdf
[19] http://www.agmrc.org/agmrc/renewables/trkethprofit.htm
[20] http://www.ethanolrfa.org/industry/statistics/
[21] http://thehill.com/op-eds/u.s.-ethanol-production-benefits-consumers-increases-energy-security-2008-06-02.html

e) Irrigation subsidies

i) Even though the EU did not notify any irrigation subsidy in the amber box, they have been of at least at €1.2 billion, including €731 M notified on average in the green box under "infrastructures services" but which should have been notified in the amber box[2]. They are quite huge in Spain and Italy and even in France, not to speak of Greece and Portugal. They are reflected in the hugely underpaid water by irrigating farmers.

ii) US irrigation subsidies, granted through very low water rates paid mainly to the Bureau of Reclamation of the Department of the Interior, are certainly larger than in the EU. But irrigation subsidies are also provided by the US Army Corps of engineers and at State level (such as the California's State Water Project). However it is difficult to find up-to-date data on the issue, even if there a large number of official reports which have kept complaining since the 1950s, when major dams have been built, that irrigators were unable to pay the low water rates they were charged and that water districts and the Bureau of Reclamation were uncommitted to charge them, under the pretext of their low "ability to pay". Irrigation subsidies are a political taboo which can be explained by the fact that its main beneficiaries are large agribusinesses rather than small farmers. This is particularly verified in California, particularly on the Central Valley project (CVP) – the US largest irrigation project – where in 2002 10% of farmers got 67% of the water, for an average subsidy of $349,000 at market rates for replacement water, 27 farms receiving $1 million or more compared to a median subsidy of $7,076, one farm getting $4.2 million which used more water than 70 water user districts[22]. Another reason of very low water rates is that many farmers avail of traditional water rights on large areas so that they do not pay for the large irrigation facilities financed by federal or state funds.

US irrigating farmers have only to repay a small part of the construction costs after at least 50 years and have been exempted of paying interests on the principal. The water rates do not even cover the operation and maintenance costs of water facilities since the rates were established under the assumption that operation and maintenance costs would remain stable over time.

According to a GAO report of 1996 on the Bureau of Reclamation policy, "*The federal government has spent $21.8 billion to construct 133 water projects in the western United States that provide water for various purposes, including irrigation… As of September 30, 1994, irrigators had been allocated $7.1 billion of the $16.9 billion federal investment in water projects considered reimbursable. However, as a result of adjustments made after analyzing the irrigators' ability to pay and relief granted through specific legislation, that amount was reduced to $3.4 billion – or 47 percent of the irrigators' allocated share of the construction costs… In addition, irrigators generally have 40 years or more to repay their share of these costs, often after a period of up to 10 years in which the irrigators receive water to develop their land but are not required to begin payments… For example…the irrigation component of the Tualatin project* [Oregon] *represented $31.5 million… However, because of interest-free financing and a 64-year repayment period, which began in 1976, the federal subsidy provided to the irrigators amounted to $30.6 million, or 97 percent of the construction costs allocated to irrigators*"[23].

A recent GAO report on the CVP shows that $523 million of capital construction costs of the San Luis Unit constructed in 1960 were reimbursable by its five water districts but that, as of

[22] The Environmental Working Group, *Taxpayers Guarantee Central Valley Farms Water Through a Subsidy Worth Up to $416 Million per Year*, December 2004, http://www.ewg.org/reports/watersubsidies/references.php

[23] United States General Accounting Office, *Bureau of Reclamation. Information on Allocation and Repayment of Costs of Constructing Water Projects*, July 1996.

30 September 2005, they had paid only $74 million, leaving $449 million to be repaid by 2030[24].

Yet a GAO report of 1981 stressed the necessity to compute the subsidy on the basis of compound interests: "*To calculate the subsidy, we first computed the interest foregone during construction on a compound basis, using the Treasury's borrowing rates in effect during each year of construction*"[25]. Thus we have made the following calculus for the $7.102 billion in principal repayment owed by all 133 projects to the Bureau of Reclamation, as of 30 September 1994, when only $945 million had been paid, knowing that the largest irrigation works were built in the 50s and 60s. Let us assume that the principal to reimburse in 50 years was a conservative $6 billion and let us use a conservative 4.5% interest rate[26]. The irrigators should have paid an annuity of $303.61 million during 50 years to reimburse the principal and interest, meaning they would have paid $15 billion, of which $9 billion in interests. But, as they did not pay the annuities, the unpaid interests have been added to the principal and, on a compound basis, they would have to pay the last year $54.20 billion, of which $48.20 billion in interests! As most irrigation contracts are 50 years old, this amount was already due.

For Robert Repetto, the average subsidy to beneficiaries of US federal irrigation represented 83% of full project costs - over $1 billion/year[27]. Shanz et. al underlined also in 1986 that "*in 1982 Bureau of Reclamation water subsidies totaled about $1 billion, 14 percent of the gross value of crops irrigated with Bureau water, averaging about a $30 subsidy per acre foot*"[28]. According to Bruce Sundquist – who has a lot of references on US irrigation subsidies –"*The US Bureau of Reclamation recovers 17% of the total economic costs of its irrigation projects - a $1 billion/ year subsidy. In Central Valley California, irrigators (as of the mid-1980s) have repaid only 4% of the capital cost of the Central Valley Project ($38 million of $950 million). Taxpayers paid the rest*"[29]. As he adds that "*On average, the US government subsidizes irrigation at $54/acre/year (1989)*", applying this subsidy rate to the 52.583 million of total irrigated acres in the US in 2003[30] would give $2.839 billion. However "*Interior Department economists have estimated that… the government unnecessarily spends at least $2.3 billion per year on irrigation-related subsidies*"[31].

According to Michael Lind, "*Washington should also phase out the roughly $2 billion in annual irrigation subsidies to western agribusinesses, of which almost half is used for surplus crops. Subsidized irrigation is rapidly depleting the High Plains aquifer under Texas, Oklahoma, New Mexico, Kansas, Colorado, South Dakota, Wyoming, and Nebraska, which now provides about 30 percent of the groundwater used in the United States*"[32].

An Environmental Working Group (EWG) investigation has calculated that federal water subsidies were of $416 million for the Central Valley Project (CVP) in California alone[33], a

[24] http://www.gao.gov/new.items/d08307r.pdf
[25] U.S. General Accounting Office, *Reforming accounting provisions in federal water laws could save millions*, October 22, 1981.
[26] The average rate on US treasury bonds of 10 years maturity was 4.67% in the 60s, 7.50% in the 70s, 10.59% in the 80s and the average rate for the federal funds of, respectively, 4.18%, 7.10% and 9.67%.
[27] Robert Repetto, "Skimming the Water", World Resources Institute, Washington DC, 1986
[28] http://www.doi.gov/oepc/wetlands2/v2ch12.html#foot19
[29] http://home.alltel.net/bsundquist1/ir7.html#A4
[30] USDA, *Farm and ranch irrigation survey (2003)*, November 2004.
[31] http://wingolog.org/writings/water/html/node89.html
[32] Michel Lind, *The New Continental Divide*, New America Foundation, The Atlantic Monthly, February 1, 2003 (http://www.newamerica.net/publications/articles/2003/the_new_continental_divide)
[33] http://archive.ewg.org/reports/Watersubsidies/execsumm.php

figure recouped by other sources: CVP uses about 7 million of acre-feet of irrigated water annually[34] with a subsidy of around 67 per acre-foot[2], leading also to $468 million.

Another form of irrigation subsidies is the electricity subsidy to transport water. An investigation of the EWG has shown that "*In 2002 and 2003 CVP agribusinesses paid only about 1 cent per kilowatt-hour (kWh) for electricity used to transport irrigation water. CVP power rates were 10 to 15 times lower than PG&E's industrial, agricultural, and residential power rates during this time period. In 2002 and 2003 CVP agribusinesses received power subsidies worth $115 and $105 million, respectively, when compared to PG&E's agricultural electricity rates*"[35].
Some additional subsidies are available through the Environmental Quality Incentives Program to finance irrigation equipment as part of an envelope of $66 million per year for water projects from 1997 to 2001, raised to $73-74 million for 2008-2011 by the 2008 Farm Bill.
All these quotes show that we are far indeed from the $269 million notified in 2005 or even from the average $376 million notified in the 1995-2000 base period. For conservative reasons, we will retain only $1 billion in annual irrigation subsidies, implying an average subsidy limited to 11.5 cents per acre-foot of the 86.894 million of total acre-feet of water in 2003 or of 31.61 cents per acre-foot of the 31.638 million of acre-feet of water from off-farm sources.

e) Subsidies to grazing fees on federal lands: instead of the average $50.6 million notified in the 1995-2000 base period, a GAO report of September 2005 states they have been of $123 million in 2004. This is a highly conservative figure given that other estimates go from $500 million in 1995 to one billion in 1991[2].

4) The US actual OTDS in the 1995-2000 base period and in 2007 and 2008

a) Because the applied NPS AMS has always exceeded the NPSdm, the whole NPS AMS has been transferred to the total applied AMS, conform to the AoA article 6.4 rule. This has occurred clearly because production flexibility contract payments and fixed direct payments should have been notified in the amber box, conform to the WTO Appellate Body rulings in the cotton dispute. But the under-notified NPS AMS components have also contributed to that result.

b) Consequently the applied total AMS has also always exceeded the allowed Final Bound Total AMS (FBTA), in the 1995-2000 base period and up to 2008. We are poles apart from the US commitment to cut it by 60% at the end of the implementation period since there are no reasons why these components would change, the more so that, would agricultural prices fall from their present high levels as it is likely, new marketing loans subsidies, countercyclical subsidies and above all the new ACRE subsidies would lead to a total AMS largely exceeding its level of 2007 and 2008.

c) The allowed OTDS of the base period could have been cut by at most 46.6% in 2007 and 47.4% in 2008, and by 42% on average from 2001 to 2008. With applied OTDS of $22.892 billion in 2007 and $21.247 billion in 2008, we are far indeed from the $14.467 billion or 70% cut that Susan Schwab has agreed, and even more from the allegedly $7-9 billion range of applied OTDS advocated by the G-20 and most NGOs!

[34] http://www.pacificresearch.org/pub/sab/enviro/watermkts/watermkts.html
[35] http://www.ewg.org/reports/powersubsidies

Table 5 – The US applied FBTA and OTDS from 1995 to 2008

$ million	1995-2000	2001	2002	2003	2004	2005	2006	2007	2008
Dairy income loss	-	-	-	1795	221	9	352	157	-
Marketing loan benefits	2284	5293	5345	693	461	3856	4630	174	8
Oilseed	77	921	-	-	-	-	-	-	-
Cotton user marketing loan	190	237	182	455	363	582	372	11	44
Milk income loss contract payment	-	-	-	-	-	9	352	157	-
Processing, storage and transportation	55	122	119	167	143	125	103	85	19
Interest expenditures on marketing loans	265	367	30	18	120	88	366	513	48
Feed by-products of biofuels (DDGS)	133	172	207	273	331	378	475	630	895
Sub-total CCCs subsidies	3004	7112	5883	3401	1639	5047	6650	1727	1014
Dairy market price support	4495	4483	4509	4515	4646	4794	4794	4794	3075
Sugar market price support	1083	1032	1262	1242	1220	1114	1114	1114	1114
Peanut market price support	336	311	-	-	-	-	-	-	-
Sub-total market price support	5914	5826	5771	5757	5866	5908	5908	5908	4189
Total PS AMS	8918	12938	11654	9158	7505	10955	12558	7635	5203
Production flexibility contracts	4700	4105	3968	-294	-11	1	-1	-1	-
Fixed direct payments	-	-	-	4151	5289	5235	4962	3957	5233
Market loss assistance	2343	5455	-1	167	-3	2	-	1	-
Countercyclical payments	-	-	-	1743	809	2772	4356	3159	653
Crop insurance subsidies (USDA)	1564	3163	3466	3589	3126	2699	3462	3823*	5840
Agricultural loans subsidies (OECD)	645	610	610	610	610	610	610	610	610
Agricultural fuel subsidies (OECD)	2385	2385	2385	2385	2385	2385	2385	2385	2385
Irrigation subsidies	1000	1000	1000	1000	1000	1000	1000	1000	1000
Grazing on public lands (GAO)	123	123	123	123	123	123	123	123	123
Total applied NPS AMS	12760	16841	11551	13474	13328	14827	16897	15057	15844
Value of agricultural production (VOP)	194139	201500	191900	213400	249700	239600	238100	291500	314500
Allowed NPS de minimis (NPSdm)	9707	10075	9595	10670	12485	11980	11905	14575	15725
Total applied AMS	21678	29779	23205	22632	20833	25782	29455	22692	21047
Possible cut of the allowed FBTA (16.627)	0	0	0	0	0	0	0	0	0
NPS de minimis	-	-	-	-	-	-	-	-	-
PS de minimis	104	216	666	42	29	626	200	200	200
Blue box	1172	-	-	-	-	-	-	-	
Total applied OTDS	22954	29995	23871	22674	20862	26408	29655	22892	21247
Allowed OTDS	42889	42889	42889	42889	42889	42889	42889	42889	40413
Possible cut of the allowed OTDS	46.5%	30.1%	44.3%	47.1%	51.4%	38.4%	30.9%	46.6%	47.4%
Traditional notified green box, total and without domestic food aid									
Notified green box	49790	50672	58321	64062	67425	71829			
" domestic food aid	35030	33916	38013	42376	45861	50672			
Notified green box less domestic food aid	14760	16756	20308	21686	21564	21157			

Sources: For most CCC subsidies: Table 35 – CCC Net Outlays by Commodity and Function, June 2008, http://www.ers.usda.gov/Publications/AgOutlook/AOTables/. For crop insurances subsidies, USDA FY 2009 (page 24) and FY 2008 (page 29) budget summary at http://www.obpa.usda.gov/budsum/fy09budsum.pdf for 2008; http://www.obpa.usda.gov/budsum/fy08budsum.pdf for 2006. * However for 2007 we have not taken into account the $3.457 billion by the FY 2009 Budget as it was lower than the $3,823 billion for the premium subsidies alone given by the Risk Management Agency report at http://www.rma.usda.gov/data/sob.html. For subsidies to grazing on public lands: Government Accountability Office (GAO)'s report of September 2005, http://www.gao.gov/new.items/d05869.pdf. For tax rebates on agricultural fuels and agricultural loans subsidies: http://www.oecd.org/document/55/0,2340,fr_2649_33775_36956855_1_1_1_1,00.html. For irrigation subsidies, see the text above. For dairy market price support in 2008, see the text above and http://future.aae.wisc.edu/publications/farm_bill/M&P_Dairy_6-1.pdf

d) The notified green box has increased by 44% from 1995-2000 to 2003, with or without domestic food aid. We do not think that most of domestic food aid should have been notified as agricultural subsidies because this type of income support for poor households is hardly used in most other developed countries such as the EU where they can get a guaranteed minimum income in most Member States. Only a small share of US domestic food aid should be counted as agricultural subsidies: J.-C. Debar and A. Blogowski have estimated that only $2.6 billion, or 6.9% of the $37.8 billion notified for 1996, could be really considered as agricultural subsidies[36].

e) The following table 6 shows the fake nature of the sugar MPS, not implying any notified subsidy, as it has represented 92.2% of the sugar AMS. This confirms the fake nature of the US dairy AMS notified from 1995 to 2005, already presented in table 1 above.

[36] J.-C. Debar et A. Blogowski, *Les programmes d'aide alimentaire intérieure aux Etats-Unis*, Notes et études économiques, n°9, mars 1999, Ministère de l'Agriculture et de la Pêche, pp.51-75.

Table 6 – Components of the US notified sugar AMS from 1995 to 2005

$ million	1995-2000	2001	2002	2003	2004	2005
Sugar AMS	1,075	1,061	1,328	1,250	1,282	1,199
of which: MPS	1,080	1,032	1,262	1,242	1,220	1,114
" non exempt direct payments	-5	29	66	8	62	85
Share of MPS on sugar AMS	100%	97.3%	95.0%	99.4%	95.2%	92.9%

Source: notifications to the WTO (G/AG/N/USA/)

5) The EU actual OTDS in the 1995-2000 base period and in 2007 and 2008

a) The applied PS AMS has always exceeded the allowed Final Bound Total AMS (FBTA) in the 1995-2000 base period and up to 2003-04, last year notified to the WTO. We were poles apart from the EU commitment to cut it by 70% at the end of the implementation period – to €20.147 billion –, even if the applied PS AMS has been falling much since 2003-04 with the progressive reduction or elimination of the market price support (MPS based on intervention prices or, for fruits and vegetables, on equivalent measurements of support) following the CAP reform which is still on-going since 2003. The table shows the huge weight of the MPS as compared to the non exempt direct payments which have been themselves transferred progressively to the BB and then to the single payment scheme (SPS). We could have estimated the PS AMS from 2004-05 to 2008-09 but this is not necessary to estimate the applied OTDS since the NPS AMS has itself exceeded by far the allowed FBTA and OTDS.

Table 7 – The EU applied FBTA and OTDS from 1995 to 2008

€ million	1995-2000	2001	2002	2003	2004	2005	2006	2007a	2008a
Total applied product-specific (PS) AMS for the notified years 1995-96 to 2003-04									
Dairy market price support	5850	5814	6088	6614					
Sugar market price support	5760	5720	5592	5602					
Bovine meat market price support	13155	9709	-	-					
Cereals (including rice)	7197	4056	4164	4653					
Fruits and vegetables	8392	7776	7399	8102					
Wine	1577	-	-	-					
Sub-total market price support	41931	33075	23243	24971					
Non exempt direct payments	5527	6676	5692	5910					
Total PS AMS	47458	39751	28935	30881					
PS de minimis	35	468	1003	901					
Notified PS AMS and total AMS	47825	39281	28490	30880					
Non product-specific AMS from 1995-96 to 2008-09									
Single Payment Scheme + SAPS			-	-	-	1449	16263	30368	30494
Blue box payments	20888	23726	28801	29692	29825	33701	17694	6679	6338
Agricultural and ag-industries investments	5638	5355	5265	6822					
Crop insurance	610	610	610	631	631	631	631	631	631
Agricultural loans	620	620	620	620	620	620	620	620	620
Agricultural fuel	2000	2000	2000	2000	2000	2000	2000	2000	2000
Irrigation	1200	1200	1200	1200	1200	1200	1200	1200	1200
Biofuels (energy crop aid)					14	26	51	90	90
Total applied NPS AMS	30956	33511	38496	40965	34290	39627	38459	41588	41373
Value of agricultural production (VOP)	222.6	246.4	242.5	242.4	277.2	311.6	308.9		
Allowed NPS de minimis (NPSdm)	11129	12320	12125	12120	13860	15580	15445		
Total applied AMS	78781	72792	66986	71845					
Possible cut of allowed FBTA (€16.627 bn)	0	0	0	0	0	0	0	0	0
NPS de minimis (always exceeded)	0	0	0	0					
PS de minimis	35	468	1003	901					
Blue box (in the amber box)	0	0	0	0	0	0	0	0	0
Total applied OTDS	78816	73260	67989	72746					
Allowed OTDS in the base period	90496	90496	90496	90496	90496	90496	90496	90496	90496
Allowed OTDS end implementation period	18099	18099	18099	18099	18099	18099	18099	18099	18099
Possible cut of allowed OTDS base period*	12.9%	19.0%	24.9%	19.6%	62.1%	56.2%	57.5%	54.0%	54.3%*
Notified traditional green box	20003	20661	20404	22074					

Sources: notifications to the WTO; Solidarité, *Review of the EU agricultural distorting supports to rebuild fair and sustainable agricultural trade rules after the Doha Round hibernation*, 29 December 2006; Jacques Berthelot, *The EU minimal OTDS in the implementation period*, Solidarité, 18 July 2008. See other sources in the text above.

b) The fake market price support of the EU AMS of cereals, dairy, sugar, bovine meat and fruit and vegetables notified from 1995 to 2003

i) The EU cereals MPS : table 8 shows that, on the 9 notified years 1995-96 to 2003-04, the EU cereals MPS, not implying any notified subsidy, has represented 100% of the cereals AMS. The cereals common market organization (CMO) has been enlarged since the 1992 CAP reform to an arable crops CMO which incorporates mainly oilseeds (rapeseed, sunflower seen and soybean) and pulses (peas, fève, féverole, lupin doux), non fiber linseed, fiber linseed, flax seed, potato starch, grass silage and compensatory payments for set-aside (lands withdrawn from production). But there has not been any notified AMS, hence no MPS, for oilseeds which have always been imported at world prices since the early 1960s, the EU forgetting that oilseeds meals are feedstuffs, hence an input and that input subsidies are in the amber box for developed countries. The arable crop subsidies going to cereals (rice included) have become more difficult to isolate since 2005 because the EU Commission does not publish all the details necessary so that the EU subsidies from 2005 to 2008 in table 7 are for all arable crops and not only for cereals. At least table 7 shows that the cereals AMS – entirely identified with its MPS not implying any subsidy – has always been lower than the EU subsidies to cereals, essentially composed of the blue box payments. In 2006 the blue payments to arable crops have been halved and have disappeared since 2007, being incorporated in the SPS.

Table 8 – Comparison of the EU notified cereals AMS with actual EU subsidies from 1995-96 to 2003-04

€ million	1995-2000	2001	2002	2003	2004	2005	2006	2007	2008
Cereals (rice included) notified AMS	7199	4056	4164	4653					
of which: market price support (MPS)	7197	4056	4164	4653					
" non exempt direct payments (NEDP)	2	0	0	0					
Share of MPS on cereals AMS	99.9%	100%	100%	100%					
EU budget on cereals	14406	13782	16193	14745	14809	17770	8737	-133*	-9*
of which: domestic subsidies	13796	13522	16094	14569	14737	17646	8609	-226*	-88*
" of which direct payments (blue box)	13473	13337	15875	14269	14692	17146	8174	-	-
of which: export refunds	687	260	99	176	72	124	128	42	17

ii) The storage costs are not notified in the PS AMSs: when we say that the MPS does not imply any notified subsidy, this does not mean that the EU does not incur any expense to manage that MPS but that its expenditures – those linked to the purchase and storage, including the cost of stocks depreciation – have been exempted by the AoA from notification. There is here another clear sleight of hands of the EU and US when they have devised together the AoA, notably paragraph 8 of Annex 3 on the MPS component of the AMS: "*Market price support: market price support shall be calculated using the gap between a fixed external reference price and the applied administered price multiplied by the quantity of production eligible to receive the applied administered price. Budgetary payments made to maintain this gap, such as buying-in or storage costs, shall not be included in the AMS*".

It is highly challengeable to exclude from the AMS storage subsidies since they are granted to support domestic prices, which contradicts paragraph 1, Annex 2 of the AoA: "*Domestic support policies for which exemption from the reduction commitments is claimed shall meet the fundamental requirement that… (ii) the support in question shall not have the effect of providing price support to producers*". The exclusion contradicts also paragraph 13 of Annex 3 which includes, among the "*Other non-exempt policies*", "*other policies such as marketing cost reduction measures*": clearly the subsidies to private storage and expenditures of public storage are a basic part of the marketing process which impacts on the price paid to farmers.

Yet those storage subsidies have been quite significant, having represented on average €959 million in the base period 1995-2000 and €847 million from 2001 to 2006 (see table 13), the largest share going to cereals (including rice), the rest going to dairy, wine and alcohols, bovine

and porcine meats. Storage costs for sugar are not taken into account as they have been financed by producers' contributions.

It is all the more unfair to exempt the storage subsidies of developed countries from notification in the AMS for two other reasons:
1- At least 80% and often more than 90% of stocked products have been eventually dumped on DCs markets. Even if the EU is obliged to notify the exports of its intervention stocks together with export refunds, the notification does not include the storage subsidies but only the gap between the domestic market price and the world price at the time of export, as stated in the AoA article 9.1.b: "*The sale or disposal for export by governments or their agencies of non-commercial stocks of agricultural products at a price lower than the comparable price charged for the like product to buyers in the domestic market*". This gap between the two prices corresponds more or less to the export refund but includes only a small part of the depreciation costs and deos not include the other storage costs.
2- On the contrary the AoA demands that DCs put in their AMS "*the difference between the acquisition price and the external reference pri*ce" of their "*Governmental stockholding programmes for food security purposes*" (footnote 5 to paragraph 3 of AoA Annex 3).

iii) The EU dairy MPS: table 9 shows that, on the 9 notified years 1995-96 to 2003-04, the EU dairy MPS, not implying any notified subsidy, has represented 100% of the dairy AMS and the dairy AMS has been 4.9 times larger than the actual EU total domestic subsidies on dairy. Blue box direct payments were granted in 2005 and 2006, as a result of the fall in the intervention price, hence of the dairy AMS (not yet notified), but they have been incorporated from 2007 in the allegedly green box SPS (single payment scheme). Allegedly fully decoupled SPS payments are not attributable to specific products. The same comment applies to sugar, bovine meat, fruits and vegetable and cereals.

Table 9 – Comparison of the notified EU dairy AMS with actual EU subsidies from 1995-96 to 2003-04

€ million	1995-2000	2001	2002	2003	2004	2005	2006	2007	2008
Dairy (butter + skimmed milk powder) notified AMS	5849	5814	6088	6614					
of which: market price support (MPS)	5841	5814	6088	6614					
" non exempt direct payments (NEDP)	8	-	-	-					
Share of MPS on dairy AMS	99.9%	100%	100%	100%					
EU budget on dairy	2995	1907	2360	2796	1993	2458	2463	638	167
of which: domestic subsidies	1301	800	1200	1201	498	1317	1738	125	140
" of which direct payments (blue box)						1372	1454		
of which: export refunds	1694	1107	1160	1595	1495	1141	725	513	27
Times dairy AMS exceeds EU domestic expenses	4.5	7.3	5.1	5.5					

iv) The EU sugar MPS: table 10 shows that, on the 9 notified years 1995-96 to 2003-04, the EU sugar MPS, not implying any notified subsidy, has represented 100% of the sugar AMS and the sugar AMS has been 13.1 times larger than the actual EU total domestic subsidies on sugar. As a result of the sugar reform, the sugar expenditures have fallen sharply from 2007 and the producers have received SPS payments.

Table 10 – Comparison of the notified EU sugar AMS with actual EU subsidies from 1995-96 to 2003-04

€ million	1995-2000	2001	2002	2003	2004	2005	2006	2007	2008
Sugar notified AMS	5852	5732	5604	5610					
of which: MPS	5760	5720	5592	5602					
" NEDP	92	12	12	8					
Share of MPS on sugar AMS	98.4%	97.3%	95.0%	99.4%					
EU budget on sugar	1825	1497	1396	1277	1284	1652	1521	455*	576*
of which: domestic subsidies	499	489	228	256	296	571	404	-54	-143
of which: export refunds	1326	1008	1168	1021	988	1081	1117	509	719
Times dairy AMS exceeds EU domestic expensesr	11.7	11.7	24.5	21.9					

* total expenditures on sugar are less than export refunds because of revenues linked to destocking.

v) The EU bovine meat MPS: table 11 shows that, on the 7 notified years 1995-96 to 2001-02, the EU bovine meat MPS, not implying any notified subsidy, has represented 100% of the bovine meat AMS and the bovine meat AMS has been 2.9 times larger than the actual EU total domestic subsidies on bovine meat. The bovine meat MPS has disappeared the 1st July 2002 as a result of the 1999 CAP reform which has increased the blue box direct payments. They have in turn been replaced from 2006-07 by SPS payments in most Members States.

Table 11 – Comparison of the notified EU bovine meat AMS with actual EU subsidies from 1995-96 to 2001-02

€ million	1995-2000	2001	2002	2003	2004	2005	2006	2007	2008
Bovine meat notified AMS	13155	9709	-	-					
of which: MPS	13155	9709	-	-					
" non exempt direct payments (NEDP)	0	0	-	-					
Share of MPS on bovine meat AMS	100%	100%	-	-					
EU budget on bovine meat	5291	6054	7072	8091	7776	8176	3551	98	61
of which: domestic subsidies	4150	5691	6685	7795	7525	7964	3443	66	33
" of which direct payments (blue box)	2747	3307	3637	4098	3944	4271	3298		
of which: export refunds	1142	363	387	296	251	212	118	32	28
Times bovine meat AMS exceeds domestic expenses	3.2	1.7							

vi) The EU fruits and vegetable (F&V) MPS: table 12 shows that, on the 9 notified years 1995-96 to 2003-04, the EU F&V MPS, not implying any notified subsidy, have represented 89.6% of the F&V AMS and the F&V AMS has been 6.1 times larger than the actual EU total domestic subsidies on F&V. The not yet notified F&V AMS has fallen in 2006 with the granting of some blue box subsidies which have themselves disappeared and been replaced since 2007 by increased payments merged into the SPS as a result of the on-going CAP reform for F&V.

Table 12 – Comparison of the notified EU fruits and vegetables AMS with EU subsidies:1995-96 to 2003-04

€ million	1995-2000	2001	2002	2003	2004	2005	2006	2007	2008
Fruits and vegetables (F&V) notified AMS	9,355	8,884	8,096	9,077					
of which: market price support (MPS)	8,392	7,776	7,399	8,102					
" non exempt direct payments (NEDP)	963	1,108	697	975					
Share of MPS on F&V AMS	89.7%	87.5%	91.4%	89.3%					
EU budget on F&V	1,581	1,558	1,551	1,532	1,573	1,743	1656	1250	728
of which: domestic subsidies	1,487	1,507	1,505	1,503	1,547	1,718	1630	1228	715
" of which direct payments (blue box)							285		
of which: export refunds	94	51	46	29	26	25	26	22	13
Times F&V AMS exceeds EU domestic expenses	6.3	5.9	5.4	6.0					

c) Because the applied NPS AMS has always exceeded the NPSdm, the whole NPS AMS has been transferred to the total applied AMS, according to the AoA article 6.4 so that there is no applied NPSdm. This has occurred clearly because the BB payments and the SPS and SAPS should have been notified in the amber box, in line with the WTO Appellate Body rulings in the cotton dispute. But the under-notified NPS AMS components have also contributed to that result.

d) The allowed OTDS could have been cut by at most 12.9% during the base period and by 24.9% in 2002-03. Even if the PS AMS were nil from 2004-05 to 2008-09 – clearly it was not – so that the total applied AMS were limited to the NPS AMS, the allowed OTDS could at most be cut by 54% in 2007 and 54.3% in 2008!

e) The EU notified traditional green box has not increased significantly from the base period to 2003-04 and is very close to the US one without domestic food aid (the EU domestic food aid is miniscule, at €306 million in 2003-04). Which does not mean that the traditional green box is not trade-distorting for the exported products.

f) Table 13 shows the evolution of the EU actual agricultural budget from the base period to 2007 and the appropriations for 2008 and 2009. Some explanations are necessary when comparing these actual expenditures of table 7 with the data of table 6.

g) We should remember that the CAP consists of two pillars: the first pillar of *agricultural market support and income policy* and the second pillar of *rural development policy*. The first pillar is 100% funded by the EU budget, with no matching funds from Member States, whereas the second pillar is co-financed by the Member States at rates between 25 and 75% of the total, which therefore do not show up in the CAP budget but in State aids. The EU claims that all rural development expenditures are to be notified in the green box, but this is not true because they cover many measures that the AoA puts in the amber box, such as investment aids to farms and processing industries as we have seen.

Table 13 – Evolution of the EU agricultural budget from 1995-2000 to 2009

€ million	1995/00	2001	2002	2003	2004	2005	2006	2007	2008 e	2009 e
SPS+SAPS: decoupled (green box)	-	-	-	-	-	1449	16263	30368	30494	32525
BB: not fully decoupled income support	20888	23726	28801	29692	29825	33701	17694	6679	6338	6552
Domestic amber: market intervention	10894	8196	6632	6360	5089	5349	5436	4165	2727	2689
" of which storage costs	959	1060	1163	928	322	852	757			
Export refunds*	5906	3401	3432	3730	3384	3052	2494	1443	1105	336
Rural development (EAGGF-G)	5555	4364	4349	4680	6462	6827	7719	10869	11379	10923
Total EU common agricultural budget	43243	39687	43214	44462	44760	50378	49606	53694	52458	53846
State aids/agriculture	15613	13906	14494	14082	14107	16000	16289			
Total EU agricultural subsidies	58856	53593	57708	58544	58867	66378	65895			

Sources: e: appropriations for 2008 and 2009 (http://eur-lex.europa.eu/budget/data/AP2009_VOL4/EN/nmc-titleN123A5/nmc-chapterN50452281343-265/articles/index.html#N50452385150-509); http://ec.europa.eu/agriculture/fin/finrep06/annexes.pdf; http://ec.europa.eu/comm/competition/state_aid/studies_reports/stat_tables.html. * export refunds are those of the EAGGF budget, larger than the under-notifications made at the WTO.

The comparison of tables 7 and 13 shows that the total common agricultural budget has been exceeded by the sum of the notified blue box and green box from 2001 to 2003 because the notified traditional green box contains many second pillar expenditures co-financed by the EU-15 Member States, hence in State aids, although all national agricultural expenditures for productive agriculture (without agricultural social expenditures), particularly from regional and local public entities, are not notified to the EU and by it to the WTO.

Comparing tables 7 and 13 shows also that the total applied OTDS is always much higher than the total EU agricultural subsidies, including State Aids (last line of table 13); this is because, as we have underlined, most PS AMSs are not actual subsidies but fake market price supports not implying any subsidy or only minor ones because those linked to purchases and storage of products are exempted from notification in the AMS.

Conclusion

Contrary to the worldwide disseminated assertion by many DCs Member States, by most NGOs and consequently by the media, that the US and EU have very low applied OTDS in 2007 and 2008, there's no getting away from the facts.

It is profoundly contradictory to claim at the same time that their applied subsidies are very low and that they have huge and increasing subsidies. Even if we specify that they have been shifting continuously their amber box supports to the blue box and/or the green box it remains contradictory to denounce that the WTO does not check the highly misrepresented notifications of its most powerful Members and not to take into account its Appellate Body's rulings that have underlined these misrepresentations.

Repeating that the US and EU could easily cut their allowed OTDS by 70% and 80% so that DCs Members should demand higher cuts is in fact comforting their misrepresentations and agreeing implicitly that their blue box and green box subsidies are legitimate. Indeed DCs Members and NGOs alike have largely forgotten to denounce the EU and US increased green box subsidies, an issue not even incorporated in the 6 agricultural issues discussed in the green room in Geneva the two last weeks of July 2008.

Furthermore the present strategy of DCs Members and NGOs to consider as insignificant the actual US and EU OTDS weakens greatly their capacity to challenge the US and EU massive dumping hidden under their blue and green subsidies benefiting to their exported products – although the WTO Appellate Body has ruled several times since December 2001 in the Dairy products of Canada case that they should be taken into account when calculating dumping –, but also to challenge the import substitution effect of those subsidies.

If NGOs and DCs want really to change the AoA rules why don't they pay attention to their infringement? Otherwise, what guarantees that the fairer trade rules they are pleading for would be more complied with in the future?

Clearly, having repeated again and again in the media that the US applied OTDS was of about $7-9 billion in 2007 and 2008, NGOs would need a great courage to tell the contrary, but, as told us Seneca The Younger:

Errare humanum est, perseverare diabolicum