



The US cannot reduce its agricultural supports in the Doha Round

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- 1) The PS *de minimis* cannot be 5% of the whole agricultural production value as the NPS *de minimis*
- 2) Another reason of changing the rule on PS *de minimis* is to avoid considering the existence of feed subsidies
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Conclusion

The WTO Members, particularly from developing countries (DCs), should not be mystified any longer about the claim by the US and EU that they could comply with their agreement – acknowledged in the WTO Chair's of the Special Session of the Committee on agriculture Revised Draft of 6 December 2008 – to cut, at the end of the Doha Round implementation period, by 60% and 70% respectively their allowed FBTA (Final bound total AMS, aggregate measurement of support) and by 70% and 80% their allowed OTDS (overall trade-distorting domestic support) in relation to their allowed levels at the end of the 1995-00 base period. The present paper is focusing only on the US case, another one coming after for the EU.

Unfortunately there are not only most WTO Members which are mystified but most NGOs themselves because there has been a collusion between the WTO Secretariat, the successive Chairs of the Special committee on agriculture, most experts on agricultural trade and consequently the medias to take for granted the US (and EU) notifications and their sleight of hands to change the Agreement on Agriculture (AoA) rules without considering the profound contradictions and absurdity to which all this has led, confirming the slogan "*Repeat a lie a thousand times and it becomes the truth*".

Let us first remind the readers that the successive Drafts of agricultural modalities do not represent any official commitment from WTO Members. As reminded by the WTO Secretariat, "*The revised draft modalities... are **NOT** “proposals” from the New Zealand ambassador (or from “the WTO”) in the sense that we would normally understand the word “proposal”. In other words, they are **NOT** his opinion of what would be “good” for world agricultural trade. Rather, they are assessments drawn from WTO member governments’ positions. They are the negotiations’ chairperson’s judgement of what members might be able to agree*"¹.

The same can also be said of the WTO Draft General Council Decision of 31 July 2004 (the so-called July Framework) and of the WTO Ministerial final declaration of 18 December 2005 in Hong Kong:

- The July Framework stated: "*2. The General Council agrees that this Decision and its Annexes shall not be used in any dispute settlement proceeding under the DSU and shall not be used for interpreting the existing WTO Agreements.*" And its annex A "Framework for Establishing Modalities in Agriculture" stated that "*The elements below offer the additional precision required at this stage of the negotiations and thus the basis for the negotiations of full modalities in the next phase. The level of ambition set by the Doha mandate will continue to be the basis for the negotiations on agriculture. 2. The final balance will be found only at the conclusion of these subsequent negotiations and within the Single Undertaking.*"
- The WTO Ministerial declaration of 18 December 2005 in Hong Kong confirmed: "*We take note of the report by the Chairman of the Special Session on his own responsibility (TN/AG/21, contained in Annex A)*", who added, in the introduction of Annex A: "*1. The present report has been prepared on my own responsibility. I have done so in response to the direction of Members as expressed at the informal Special Session of the Committee on Agriculture on 11 November 2005... Members made it crystal clear that they sought from me at this point an objective factual*

¹ http://www.wto.org/english/tratop_e/agric_e/chair_texts08_e.htm

summary of where the negotiations have reached at this time. It was clear from that meeting that Members did not expect or desire anything that purported to be more than that."

In other words up to now the only agricultural rules that WTO Members should comply with are those of the Uruguay Round Agreement on Agriculture (AoA) of 15 April 1994. Even though there have been 6 successive "revised draft modalities" since the Hong Kong declaration (the 22 June 2006, the 1 August 2007 and 4 in 2008: 8 February, 19 May, 10 July, 6 December), these "draft modalities" are only personal views of the Chair of the Special session of the Agriculture Committee of where the negotiations are, without implying any formal agreement from Members. Which means that all the paragraphs of these Drafts, and particularly of the last one of 6 December 2008, can be challenged by any Member. Solidarité has issued since the Doha Round a large number of papers to denounce these contradictions, absurdity and lies, unfortunately without much result, partly because the issues are highly technical. To limit the scope of the paper, we will invite the readers to consult, for more details, Solidarité's last analyses of 2008 and 2009².

The present analysis will only rely on official US data and on the WTO Dispute Settlement Body rulings, particularly of the Appellate Body, the more so as the Hong Kong final Ministerial Declaration of 18 December 2005 has stated in paragraph 11: *"Without prejudice to Members' current WTO rights and obligations, including those flowing from actions taken by the Dispute Settlement Body"*.

Table 1 below summarizes the evolution of the US applied (notified and actual) and allowed AMS and OTDS from 1995 to 2007. The first part is only a copy of the US notifications of its product-specific (PS) AMS, made of: 1) the market price supports (Supporting Table DS:5 of the notification) which do not imply any subsidy and are a fake market price support (see *"Doha talks, market price support and Enron accounting"* published in SUNS of 11 August 2008); 2) the two components of the subsidies managed by the Commodity Credit Corporation (CCC): non-exempt direct payments (Supporting Table DS:6) and other domestic trade-distorting subsidies (Supporting Table DS:7). The second part relates to the other product-specific (PS) subsidies improperly notified in the non product-specific (NPS) AMS or not notified at all: the bulk of this paper is concentrated on these improper notifications. However we denounce first the US sleight of hands to reduce its market price support for dairy. And we will comment table 1 at the end of the paper, after the analysis of its various components.

² Solidarité's website is in repair but 2008 and 2009 papers can be downloaded at <http://www.solidarite.asso.fr/home/textes2008drapeaux.htm> and the previous at <http://solidarite.asso.fr/ENG/home/Agriculture06.php>

Table 1 – The notified and actual components of the US applied and allowed AMS and OTDS from 1995 to 2007

\$ million	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Ave.95-00
Notified product-specific AMS (PS AMS)														
Non-exempt direct payments	88	7	578	4437	10403	10568	8435	4930	1142	5590	6705	1412	14	4347
Total other PS support	10	12	80	538	567	458	367	523	487	853	447	347	245	278
Sub-total CCCs expenditures	98	19	658	4975	10970	11026	8802	5453	1629	6443	7152	1759	259	4624
Dairy market price support	4693	4674	4455	4332	4437	4378	4483	4509	4515	4646	4794	4882	4794	4495
Sugar market price support	1108	937	1046	1093	1180	1133	1032	1262	1242	1220	1114	1272	1114	1083
Peanut market price support	412	308	315	350	303	330	311							336
Sub-total market price support	6213	5919	5816	5776	5921	5841	5826	5771	5757	5866	5908	6154	6238	5914
Total PS AMS (before de minimis, dm)	6311	5938	6475	10550	16891	16906	14706	11227	7386	12309	13061	7913	6497	10512
Notified total PS AMS (after dm)	6214	5898	6238	10392	16862	16843	14482	9637	6950	11629	12943	7742	6260	10408
Other product-specific subsidies improperly notified in the non product-specific AMS or not notified at all														
Production flexibility contracts	-	5973	6120	6001	5046	5057	4105	3683	-294	-11	1	-1	-1	4700
Fixed direct payments	-	-	-	-	-	-	-	1618	5267	5260	5219	5178	5175	-
Market loss assistance	-	-	-	2811	5468	5463	4640	-1	167	-3	2	-	1	2290
Countercyclical payments	-	-	-	-	-	-	-	1804	544	4288	4749	1488	893	-
Multi-year crop disaster payments				577										96
Crop insurance subsidies (CRS)	1440	1621	1096	1374	1783	2175	3163	3466	3589	3125	2698	3571	3941	1582
Grazing on public lands (GAO)	123	123	123	123	123	123	123	123	123	123	123	123	123	123
Sub-total of subsidies from the NPS AMS	1563	7717	7339	10886	12420	12818	12031	10693	9396	12782	12792	10359	10132	8791
Corn ethanol subsidies	714	510	663	714	750	831	903	1086	1112	1739	1989	5031	8274	697
Overall product-specific AMS														
Overall product-specific AMS	8491	14125	14240	21992	30032	30492	27416	21416	17458	26150	27724	23132	24666	19895
Non product-specific AMS														
Agricultural loans subsidies (OECD)	719	713	610	610	610	610	610	610	610	610	610	610	610	645
Agricultural fuel subsidies (OECD)	2385	2385	2385	2385	2385	2385	2385	2385	2385	2385	2385	2385	2385	2385
Irrigation subsidies	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
Total applied NPS AMS (< de minimis)	4104	4098	3995	3995	3995	3995	3995	3995	3995	3995	3995	3995	3995	4030
Value of agricultural production (VOP) and allowed NPS de minimis (NPSdm)														
Value of agricultural production (VOP)	190110	205701	203884	190886	184735	189520	198503	194572	216478	235688	236001	246425	307040	194139
Allowed NPS de minimis (NPSdm)	9506	10285	10194	9544	9237	9476	9925	9729	10824	11784	11800	12321	15352	9707
Total applied AMS and total applied OTDS														
Total applied AMS	8491	14125	14240	21992	30032	30492	27416	21416	17458	26150	27724	23132	24666	19895
NPS de minimis	3647	3479	3344	3344	3311	3311	3295	3295	3295	3264	3235	3235	3264	3406
PS de minimis	97	40	237	158	29	63	224	1590	436	680	118	171	237	104
Blue box	7032	-	-	-	-	-	-	-	-	-	-	-	-	1172
Total applied OTDS	19267	17644	17821	25944	33372	33866	30935	26301	21189	30094	31077	26538	28167	24578
Excess of the applied AMS over the allowed AMS														
AMS commitment ceiling (FBTA)	23083	22287	21491	20695	19899	19103	19103	19103	19103	19103	19103	19103	19103	19103
Leeway (-) or excess of applied AMS	-14592	-8162	-7251	1747	10133	11389	8313	2313	-1645	7047	8621	4029	5563	792
Excess of the applied OTDS over the allowed OTDS														
Allowed OTDS at the beginning of the implementation period														42875
Allowed OTDS at the end of the implementation period (after cut of 70% of the allowed at the beginning)														12863

Sources: US notifications to the WTO, in marketing years for the PS AMS and partly on fiscal years for NPS AMS; our calculations.

I – The 2008 Farm Bill has changed in vain the market price support for dairy products

In order to lower its applied AMS for dairy products, which is mainly a fake market price support (MPS) notified at \$4.495 billion on average in the 1995-00 base period on a total dairy AMS of \$4.607 billion, the 2008 Farm Bill has changed to way to notify it. 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. For the Congressional Research Service, *"Revisions to the U.S. dairy program under the 2008 farm bill appear likely to dramatically reduce annual dairy price support as notified to the WTO"*³. David Blandford, David Laborde and Will Martin, among several other experts, have confirmed: *"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"*⁴.

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-distorting internal supports"*⁵. 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"*⁶.

However, despite the unanimity of US experts, this calculus does not comply with the AoA rules: if you change the rule to compute the MPS component of the 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 Article 1 of the AoA states 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"*. Precisely Annex 3 of the AOA states: *"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"*. Therefore as the US has changed the methodology to compute its dairy MPS from 2008 on, it cannot use the FBTAs incorporating a dairy MPS calculated on the basis of another methodology.

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

⁴ <http://ictsd.net/downloads/2008/07/124.pdf>

⁵ http://www.fapri.missouri.edu/outreach/publications/2008/FAPRI_MU_Report_08_08.pdf

⁶ <https://www.msu.edu/~mdr/vol13no3/wolf.html>

Therefore, given the levels of support prices and production in the base period 1986-88, the total dairy AMS for the sum of butter, non fat dry milk and Cheddar cheese was of \$2.314 billion instead of the notified \$5.409 billion for 1986-88, as computed in table 2.

Table 2 – The average market price support AMS of dairy products in 1986-88

In 1000 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; US 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.

It follows that the total applied AMS for 1986-88 was not \$23.879 billion but \$20.784 billion and that the final bound total AMS (FBTA) in 2000 was not \$19.103 billion (80% of 23.879) but only \$16.627 billion (80% of 20.784). 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. 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 or \$42.875 in table 1 above. Cutting it by 70% will bring it to \$12.124 billion at the end of the implementation period.

II – The product-specific subsidies improperly notified in the green box or in the non product-specific AMS

1) The production flexibility contracts (PFCs) and fixed direct payments

The US Agricultural Negotiator Joe Glauber was wrong about the green box status of the fixed direct payments when he stated in his press conference of 4 October 2007 in Geneva: *"We notified direct payments as green box. And our feeling is, is this is not at odds with the Cotton Decision at all. The Cotton Decision, the panel themselves did not rule on direct payments insofar as our AMS notifications are concerned. This was in a subsidy that did termination, and particularly under the so-called Peace Clause. Moreover, the Cotton Panel when looking at the trade-distorting aspects of direct payments concluded that they were not. That is, they concluded that they did not contribute to price suppression in world markets. And I think that's something that's often misunderstood because again when the panel was considering direct payments insofar as how they affect production and affect world prices they concluded, sided with the U.S. position on this, that they have no effect on production."*⁷ Let us react in turn on the several points made in this US Negotiator's statement.

a) "We notified direct payments as green box. And our feeling is, is this is not at odds with the Cotton Decision at all."

1- The Appellate Body ruled the 10 February 2005 in the cotton case as follows: *"Upholds the Panel's finding, in paragraphs 7.388, 7.413, 7.414, and 8.1(b) of the Panel Report, that production flexibility contract payments and direct payments are not green box measures that fully conform to paragraph 6(b) of Annex 2 of the Agreement on Agriculture, and, therefore, are not exempt from actions under Article XVI of GATT 1994 and Part III of the SCM Agreement by virtue of Article 13(a)(ii) of the Agreement on Agriculture"*⁸.

Furthermore the Appellate Body ruled that direct payments were specific subsidies 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"*.

This ruling that *"production flexibility contract payments, market loss assistance payments, direct payments, counter-cyclical payments, crop insurance payments"* are specific subsidies implies that we should consider the NPS AMS as almost empty and the PS AMSs as much larger than those notified. The more so as most of the other significant components of the NPS AMS – subsidies on agricultural loans, irrigation, grazing on public lands, agricultural fuel – can also be allocated to specific products as the OECD has been doing up to 2006 in its annual report on *"Agricultural policy in OECD countries: monitoring and evaluation"* for the data received from USDA. Moreover the transfer of the NPS AMS to the PS AMSs would have huge implications on the issue of their capping. However, for not overloading the present paper and because this is not

⁷ <http://www.usda.gov/2007/10/0281.xml>

⁸ United States – Subsidies on upland cotton, AB-2004-5, WT/DS267/AB/R, 3 March 2005.

necessary to show that the US has largely exceeded its allowed PS AMS already in the base period, we will let in the NPS AMS the subsidies to agricultural loans, to irrigation and the tax reduction on agricultural fuel but we will rectify their amounts clearly under notified.

Yet granting "support to a specific commodity" contradicts the criterion b of the Agreement on Agriculture (AoA) Annex II, paragraph 6 for a "decoupled income support" to be in the green box: *"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."*

2- The stance taken by the USTR's Chief agricultural Negotiator that fixed direct payments are in the green box is all the more surprising and counterproductive that it contradicts the conclusions of many official US bodies:

i) According to the Congress Research Service (CRS) report of 25 October 2006: *"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 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"*⁹.

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"*, this is quite obvious as they have to be somewhere: if they are not in the green box nor in the blue box – because the US did not notify any blue box payments since 1996 and because they do not meet the blue box conditions – they can only be in the amber box! As IDEAS wrote: *"The US has used the excuse that the panel did not specifically reclassify US direct payments as 'amber box,' nor did the panel recommend that the United States should notify such future payments as amber box. The reality is that this follows naturally under a simple textual reading of the Agreement on Agriculture and it was unnecessary for the panel to have to say anything to this effect. It would simply have been to 'state the obvious' which we know the WTO dispute settlement organs avoid as a rule in deference to exercising judicial economy"*¹⁰.

ii) The USDA's 2007 Farm Bill proposals made the 31 January 2007 underline the necessity to consolidate the "green" status of direct payments by getting rid of the interdiction to grow fruits, vegetables and wild rice: *"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*

⁹ 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>

¹⁰ IDEAS, *US WTO Agricultural Subsidy Notification*, Cotton update, 15 October 2007, Newsletter n°70, www.ideascentre.ch/.../Newsletter70USNotifications.pdf

exclude fruits, vegetables, and wild rice, should be eliminated... 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.”¹¹

iii) Unfortunately the Food, Conservation, and Energy Act (FCE Farm Bill) enacted the 22 May 2008 did not follow the USDA's advice and has maintained, in its Section 1107 on planting flexibility, the planting restriction on fruits, vegetables and wild rice to get the fixed direct payments, but also the countercyclical payments and the ACRE payments.

iv) David Blandford and David Orden confirm: *"The cotton case ruling cast doubt on whether the fixed direct payments, which are currently notified as green-box decoupled income support, qualify for that category. If direct payments had been notified in the amber box, the United States would have violated its total AMS commitment in a number of years. Table 10 shows that if direct payments were notified as non product specific support (following the approach used by the United States for countercyclical payments) the total AMS binding would have been exceeded in 4 of the 11 years for which notifications have been provided to the WTO"*¹².

3- Another reason to put in the amber box the PFCs and fixed direct payments is that a large part of them has been granted to grains used as feed, that is as input subsidies that the AoA Article 6.2 puts in the amber box for developed countries' farmers. We will come back on this in link with the product-specific *de minimis* issue. This reason plays also for direct payments to corn used as feedstock, another input subsidy for ethanol which is also an agricultural product for the WTO. And the paragraph 4 of Annex IV of the AoA on the calculation of the AMS states also that *"measures directed at agricultural processors shall be included to the extent [they] benefit producers of the basic agricultural product"*¹³.

b) "The Cotton Decision, the panel themselves did not rule on direct payments insofar as our AMS notifications are concerned. This was in a subsidy that did termination, and particularly under the so-called Peace Clause."

If it is true, as the Appellate Body stated, that the direct payments *"are not exempt from actions under Article XVI of GATT 1994 and Part III of the SCM Agreement by virtue of Article 13(a)(ii) of the Agreement on Agriculture"*, that is by virtue of the Peace Clause which ended the 31 December 2003, the fact remains that direct payments are still there and are all the more *"not exempt from actions"* that the Peace Clause is over.

¹¹ http://www.usda.gov/wps/portal/tut/p/_s.7_0_A/7_0_1UH?contentidonly=true&contentid=2007/01/0019.xml

¹² David Blandford and David Orden, *United States: Shadow WTO Agricultural Domestic Support Notifications*, IFPRI, November 2008, <http://www.ifpri.org/pubs/dp/ifpridp00821.asp>

¹³ Toni Harmer, *Biofuels subsidies and the law of the WTO*, ICTSD, June 2009, <http://ictsd.net/i/publications/50724/>.

c) "Moreover, the Cotton Panel when looking at the trade-distorting aspects of direct payments concluded that they were not. That is, they concluded that they did not contribute to price suppression in world markets. And I think that's something that's often misunderstood because again when the panel was considering direct payments insofar as how they affect production and affect world prices they concluded, sided with the U.S. position on this, that they have no effect on production."

1- This is not true. The Panel was much more qualified when it stated: "We agree with the view of the USDA Economic Research Service that because DP payments do not expressly depend upon current production of upland cotton and are not directly tied to market prices, their price suppression effects are not as easily discernible as those of certain other subsidy programmes (the marketing loan programme and the user marketing (Step 2) programme and CCP payments). DP payments are tied to base acreage. They enhance producer wealth and investment potential, including lowering of risk aversion. We have confirmed a strong positive relationship between upland cotton (base acre) producers receiving annual payments and upland cotton production" (paragraph 7.1305).

2- Indeed it is because Brazil had already brought enough evidence of the price suppression effect of the US amber subsidies that it did not find necessary to add more evidence on the price suppression effect of the direct payments, as attested by the panel report: "These price-contingent subsidies were, in our view, sufficient to cause the significant price suppression that we have found to exist in the same world market" (paragraph 7.1349).

3- The Appellate Body's report underlines also that "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). Precisely the only subsidies that the US farmers are expecting for sure – because they know already their amount – are the fixed direct payments, whereas the marketing loans benefits and countercyclical payments depend on the vagaries of the market prices.

4- Furthermore the panel report stated that it is appropriate to consider all types of subsidies as a whole when appraising their impact on prices: "We do not see the Article 6.3(c) reference to "the effect of the subsidy" (in the singular, rather than the plural) as meaning that a serious prejudice analysis of price suppression must clinically isolate each individual subsidy and its effects. Rather, these textual references to "any subsidy", "the subsidy" and the "subsidized product" in Articles 5(c) and 6.3(c) suggest that while due attention must be paid to each subsidy at issue as it relates to the subsidized product, a serious prejudice analysis may be integrated to the extent appropriate in light of the facts and circumstances of a given case. In our view, 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" (paragraph 7.1192).

2) The countercyclical payments cannot be notified in the "new blue box"

This new blue box (BB) has been introduced in the Framework Agreement of 31 July 2004 to accommodate the US countercyclical payments (CCPs) but we have reminded the reader that the Framework Agreement, the Hong Kong Final Declaration and the successive revised agricultural drafts are not binding legal texts. However the CCPs do not comply with the criteria of this new BB:

a) For the Congressional Research Service (CRS) *"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"*¹⁴, the more so as the preceding "market loss payments", that CCPs have replaced from 2002, had been rightly notified in the NPS AMS.

b) Indeed the CCPs have always been notified in the NPS AMS, in October 2007 for \$2.846 billion on average from 2002 to 2005 and again the 19 January 2009 for 2006 and 2007 so that it would be illogical to notify them differently in the future, in the proposed "new blue box".

c) The US CCPs and the new ACRE program (Average Crop Revenue Election payments, an alternative to usual CCPs) cannot be notified in the new BB and are in the amber box for the following additional reasons:

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 provided to United States upland cotton producers... is significant price suppression... in the world market for upland cotton"*¹⁵.

2- CCPs are direct payments "that do not require production" but which are nevertheless paid on the basis of the current prices. The new ACRE program is itself based on the current price.

3- CCPs and the ACRE program contradict the AoA basic requirement for non trade-distorting subsidies that *"The support in question shall not have the effect of providing price support to producers"* (AoA Annex II, paragraph 1).

4- In fact the ACRE program is coupled twice: to the current price level and to the current production volume. For David Blanford and David Orden, *"Unlike countercyclical payments linked to fixed base areas and fixed yield levels, the revenue-guarantee payments under the ACRE program are linked to current acreage and yields of the crops grown. It remains to be seen how the United States will argue that these payments should be classified, particularly whether they will be argued to qualify as non product-specific: for example, because the ACRE program applies to all covered commodities and does not require that a farmer plant any particular crop. In our analysis, we assume that ACRE payments will be notified as product-specific due to the formula of the revenue guarantee tied to a moving average of prices and crop yields, rather than fixed base levels, with the ACRE payments depending on current prices and farm acreage and yields for specific crops"*.

¹⁴ 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>

¹⁵ WT/DS267/AB/RW of 2 June 2008.

- 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 the fixed direct payments, the CCPs and ACRE program do not enjoy a full production flexibility and cannot be in the new BB which refers to "*Direct payments that do not require production*".
- 8- A significant part of CCPs is granted to feed grains and more and more to feedstocks (mainly corn and soybean) for biofuels, which are input subsidies to be notified in the amber box for developed countries (AoA Article 6.2).
- 9- USDA had stressed that farmers expectations generated by CCPs and their risk-reducing effects show their coupled nature¹⁶.
- 10- For Robert L. Thompson, "*The counter-cyclical payments... reduce American farmers' responsiveness to declining prices, but not to increasing prices, amplifying their trade distorting impact*"¹⁷.
- 11- If the new BB does not require production, it does not limit its expansion, the more so as, like for the old BB, it does not limit either the unit subsidy (per acre or tonne or cattle head, etc.).

3) The crop insurance subsidies

According to the justification presented in their notification for each year, "*Producers may choose one of the various types of crop yield or revenue insurance plans made available each year. The contracted-for insurance premiums are subsidized. The value of the subsidy is reflected in the net value of the indemnities paid to producers for losses less the amount of the producer-paid premium. Indemnities are paid whenever actual yield or revenue falls below the guarantee level*".

However this way of notifying is a huge lie as attested by tens of specialists and official US bodies, notably the Congressional Research Service (CRS), the Government Accountability Office (GAO), the USDA and the USTR Chief agriculture Negotiator Joe Glauber himself. As explained by the CRS in a report of January 2009, "*Since the last major modification in 2000, the federal subsidy to the crop insurance program has averaged about \$3.25 billion per year, up from an annual average of \$1.1 billion in the 1990s and about \$500 million in the 1980s. Nearly two-thirds of the current federal spending is used to subsidize insurance policy premiums, and the balance primarily covers the government share of program losses and reimburses participating private insurance companies for their administrative and operating expenses*"¹⁸.

Indeed, apart from the gap between total indemnities paid to producers less the premiums and administration fees they pay, the cost to taxpayers include the payments to private insurance companies (reimbursements to deliver the policies and payments of underwriting gains) and the administrative expenses of the Risk Management Agency (RMA), including certain costs for research, development and other activities. David

¹⁶ <http://www.ers.usda.gov/Features/FarmBill/analysis/counterCyclicalPayments2002act.htm>

¹⁷ Robert L. Thompson, *The US Farm Bill and the Doha Negotiations: On Parallel Tracks or a Collision Course?* International Food & Agricultural Trade Council, Issue Brief, September 2005.

¹⁸ Ralph M. Chite and Randy Schnepf, *Crop Insurance and Disaster Assistance in the 2008 Farm Bill*, CRS, January 28, 2009 (<http://openers.com/document/RL34207/2008-06-20>)

Blandford and David Orden confirm: *"There are additional expenditures on crop and revenue insurance programs arising from delivery costs paid to private insurance agents. These two latter costs are not reported in the notifications, but they have been quite substantial, averaging \$895.5 million per year from 1995 through 2005, whereas net indemnities averaged \$1,170.5 million. One can argue that the cost reimbursements excluded from the notifications are made to companies on behalf of the policyholders who are farm producers of the insured crops, and thus should be notified as non product specific support. It is somewhat curious that the crop and revenue insurance delivery costs, which are directly related to delivery of benefits to farmers, are not reported"*¹⁹.

Table 3 – Notified and actual crop insurance subsidies from 1995 to 2007

\$ billion	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Ave. 95-00	Ave. 95-07
Notified insurance subsidies	913	636	119	747	1514	1396	1770	2889	1862	1123	756	1613	801	888	1241
Program losses or (gains)*	188	88	(373)	(75)	(74)	196	725	1182	822	(303)	(591)	(298)	(1344)	(50)	(8)
Federal premium subsidy	774	978	945	940	1295	1353	1707	1513	1873	2387	2368	2782	3819	1048	1749
Private companies reimbursement	373	490	450	427	495	540	648	656	743	899	782	960	1341	463	677
Other costs	105	64	74	82	66	86	83	114	150	142	139	126	125	80	104
Total government costs	1440	1621	1096	1374	1783	2175	3163	3466	3589	3125	2698	3571	3941	1582	2542
Under notification	527	985	976	627	269	779	1393	577	1727	2002	1942	1958	3140	694	1301
Under notification/notification	58%	155%	841%	84%	18%	56%	79%	20%	93%	178%	257%	121%	392%	78%	105%
Under notific./government cost	37%	61%	89%	46%	15%	36%	44%	17%	48%	64%	72%	55%	80%	44%	51%

Source: CRS, *Crop Insurance and Disaster Assistance*, June 20, 2008: <http://openocrs.com/document/RL34207/2008-06-20>

* The difference between total premiums (farmer and government paid) and total indemnity payments for crop losses, plus or minus any private company underwriting losses or gains. From 1997 to 1999 and from 2004 to 2007, the government has realized underwriting gains (premiums received in excess of indemnities), which has partially reduced total government costs.

Table 3 shows the evolution of the notified and actual crop insurance subsidies from 1995 to 2007. Over these 13 years, the US has under notified or hidden 51% of its actual subsidies, the rate of under notification having risen from 44% in the 1995-2000 base period to 54% from 2001 to 2007, but the average under notified subsidies have risen much more in absolute terms: from \$694 million to \$1.820 billion. If the table shows a fast increasing trend in total subsidies until 2007, a GAO report of April 2009 shows an even higher jump in total subsidies for 2008, at \$6.5 billion²⁰, of which premium subsidies have accounted for \$5.692 billion according to the Risk Management Agency (RMA)²¹.

For Bruce A. Babcock, one of the best experts on crop insurances, their subsidies are now equal to direct payments: *"Program crops account for more than 80 percent of the costs of the crop insurance program, and this share has increased significantly over the last three years. More than \$5 billion is now being spent on providing crop insurance to program crop producers, an amount that is about equal to the annual direct*

¹⁹ Quoted footnote 11.

²⁰ GAO, *Crop Insurance: Opportunities Exist to Reduce the Costs of Administering the Program*, April 2009 (www.gao.gov/products/GAO-09-445)

²¹ USDA, RMA, Summary of Business Reports and Data (<http://www.rma.usda.gov/data/sob.html>).

payments that the same producers receive"²². By the way, this statement underlines that the official figures on total government costs should be considered as a minimum.

The funny side of the story is that the USTR Chief Agriculture Negotiator, Joe Glauber, who was a specialist of crop insurances in his former position of USDA's Deputy Chief economist, stated in 2006: "*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". For many producers, disaster assistance allows them to collect twice on the same loss to "help fill the hole in the safety net"*"²³. And payments on disaster assistance have even reached \$2.316 billion in 2008 despite that farmers' income had never been so high.

Glauber quotes the example of the 2001 disaster program "*that pays an indemnity payment for losses in excess of 35 percent and where losses are indemnified at 65 percent of the crop insurance price election. An insured producer with 85 percent yield coverage is effectively made whole (that is, crop revenue plus crop insurance indemnity plus disaster payment are equal to the expected value of the crop at planting) at a crop loss of 59 percent. At a 100 percent loss, a producer could receive 127 percent of the expected value of the crop*".

It is therefore clear that the US has under notified many disaster payments which do not comply with the restrictive conditions of the AoA to be in the green box since paragraph 8 of Annex 2 on "*Payments (made either directly or by way of government financial participation in crop insurance schemes) for relief from natural disasters*" states that "*Where a producer receives in the same year payments under this paragraph and under paragraph 7 (income insurance and income safety-net programmes), the total of such payments shall be less than 100 per cent of the producer's total loss*". Furthermore this provision does not take into account the amber subsidies already available to farmers. Especially if the income loss comes from a drop in price and not in production volume, the marketing loan and counter-cyclical payments allow already to compensate part of the price drop.

Again Blandford and Orden are asking: "*Questions of whether all disaster programs have been included in the U.S. notifications, whether those notified in the green box satisfied the relevant criteria, and whether the annual expenditures on these programs have been correctly measured may emerge as issues in the WTO case. Potentially some disaster payments could be judged to provide product-specific support not exempt under the green box. Inconsistency of a disaster program with the specific green-box criteria for the reference period against which a loss is measured or the degree of loss triggering payments would be among the reasons for such judgements*". However, because it is not necessary to overdo our

²² Bruce A. Babcock, *How to Save Billions in Farm Spending*, Iowa Ag Review, Fall 2007, Vol. 13 No. 4, http://www.card.iastate.edu/iowa_ag_review/fall_07/article2.aspx

²³ 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/aebriefs/20070516_Summary.pdf).

case, we will not transfer the US disaster payments notified in the green box to the amber box and we leave only the \$577 million of the multi-year crop disaster payments notified in the AMS for 1998.

The subsidies to crop insurance are generally forgotten by the media and the WTO negotiators because they are not included in the two main USDA's sources on subsidies: the Economic Research Service (ERS)²⁴ and the Farm Service Agency (FSA) for the payments made through the Commodity Credit Corporation²⁵. Indeed the crop insurances subsidies are published by the Risk Management Agency (RMA), at least in details for the premium subsidies because the total cost to governments is only to be found in reports made by CRS and GAO, in the USDA budgets and in experts' analyses.

Another important issue for the Doha Round negotiations is that the US has also cheated in notifying the crop insurance subsidies in the non product specific (NPS) AMS when they are clearly product specific (PS). Indeed, the RMA gives the detailed figures of premium subsidies by crop, as shown in the following table 3, which confirms the reason why the WTO Appellate Body has ruled in the same manner. Although the subsidized insurances have covered more than 100 crops in 2007, the CRS underlines that *"80% of total policy premiums (and federal subsidies) are accounted for by just four commodities—corn, soybeans, wheat, and cotton"*, as shown in table 3. This PS status is even more unquestionable than that of the fixed direct payments since each insurance policy is crop-specific, area-specific, farmer-specific and most often even field specific. And the last CRS report adds: *"The availability of crop insurance for a particular crop in a particular region is an administrative decision made by USDA. The decision is made on a crop-by-crop and county-by-county basis, based on farmer demand for coverage and the level of risk associated with the crop in the region, among other factors."*

However one could object that, if the premium subsidies are clearly specific, the other components of the crop insurance subsidies are not, the bulk of which being the payments to private insurance companies (reimbursements to deliver the policies and payments of underwriting gains). But the GAO has responded to this objection in April 2009: *"We do not agree that gathering and reporting data on commissions paid to insurance agencies by policy would significantly increase the "administrative burden" on RMA and insurance companies. First, RMA... could require that companies report two additional data fields in the policy records they currently submit to RMA—commissions and other compensation... In conjunction with these changes, RMA could develop and provide allocation guidance to prorate compensation that is not provided on a per-policy basis so that this compensation could be apportioned to individual policies"* (note 19).

²⁴ Economic Research Service (ERS), *Direct government payments by program: United States, 1996-2007*, <http://www.ers.usda.gov/data/FarmIncome/finfidmxmls.htm#payments>

²⁵ Commodity Credit Corporation, *Table 35—CCC Net Outlays by Commodity and Function*, <http://www.fsa.usda.gov/FSA/webapp?area=about&subject=landing&topic=bap-bu-ce>

Table 4 – Premium subsidies on crop insurances for the main crops from 2002 to 2008

\$ million	2002	2003	2004	2005	2006	2007	2008
Corn	510.6	620.5	411.0	716.2	871.1	1,739.2	2,117.2
Upland cotton	194.1	214.6	254.1	208.0	278.7	193.6	250.4
Soybean	283.7	352.0	535.4	490.9	585.2	605.5	1,471.4
Wheat	247.0	311.2	325.4	336.8	364.2	525.6	937.2
Sub-total premium subsidies of the 4 crops	1,235.5	1,498.4	1,525.9	1,751.8	2,099.2	3,063.9	4,776.0
Total premium subsidies for all program crops	1,334.8	1,607.7	1,637.1	1,852.7	2,226.0	3,266.9	5,094.8
Total premium subsidies for all crops	1,741.0	2,041.7	2,477.4	2,343.6	2,681.9	3,823.4	5,691.9
% of the 4 crops/premium subsidies to all crops	71.0%	73.4%	61.6%	74.7%	78.3%	80.1%	83.6%
% of program crops/premium sub. to all crops	76.7%	78.7%	66.1%	79.1%	83.0%	85.5%	89.5%
Total subsidies to crop insurances (CRS)	3,466	3,588	3,125	2,699	3,571	3,940	6,500
Ratio total subsidies/total premium subsidies	1.99	1.76	1.26	1.15	1.33	1.03	1.14

Source: USDA, RMA, *Summary of Business Reports and Data* (<http://www.rma.usda.gov/data/sob.html>).

The fact that crop insurance should have been notified in the PS AMS is crucial for the issue of capping the PS AMSs, particularly of those 4 crops given the huge amount of their insurance subsidies and we understand why they have been notified in the NPS AMS: to minimize the risk of exceeding the caps. Paragraph 23 of the Draft modalities for agriculture of 6 December 2008 states: *"For the United States only, the product-specific AMS limits specified in their Schedule shall be the resultant of applying proportionately the average product-specific AMS in the 1995-2004 period to the average product-specific total AMS support for the Uruguay Round implementation period (1995-2000) as notified to the Committee on Agriculture. These shall be tabulated by individual product in the Annex to these modalities referred to in the paragraph above"*. As the US has succeeded in enlarging from 1995-2000 to 1995-2004 the relevant period to calculate its PS AMS caps, this favor could turn a bad idea as the crop insurance subsidies have been much higher from 2001 to 2004 than previously. We will come back on this issue once rectified the whole PS AMS for all products.

Table 5 – Premium subsidies on crop insurances for the 4 main crops from 1995 to 2004

\$ million	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	Ave. 1995-00	Ave. 95-04
Corn	205.1	217.8	206.3	233.4	199.7	194.3	492.1	510.6	620.5	411.0	209.4	329.1
Cotton	181.9	159.4	149.7	154.9	172.5	163.1	266.9	194.1	214.6	254.1	163.6	191.1
Soybean	135.5	147.2	143.5	149.8	146.6	154.6	294.9	283.7	352.0	535.4	146.2	234.3
Wheat	134.0	153.6	151.2	126.6	36.4	120.2	239.1	247.0	311.2	325.4	120.3	184.5
Premium subsidies of the 4 crops	656.5	678.0	650.7	664.7	555.2	632.2	1,293.0	1,235.5	1,498.4	1,525.9	639.6 (68%)	939.0 (69%)
Total all crops premium subsidies	889.4	982.1	902.8	946.3	954.9	951.2	1,771.3	1,741.0	2,041.7	2,477.4	937.8	1365.8

Source: USDA, RMA, *Summary of Business Reports and Data* (<http://www.rma.usda.gov/data/sob.html>).

4) Subsidies to grazing fees

Subsidies to grazing fees on public lands have been notified for an average of \$50.6 million from 1995 to 2000. However, according to the GAO report of September 2005, the net US expenditures on grazing amounted to \$123 million in 2004: *"In fiscal year 2004, federal agencies spent a total of at least \$144 million. The 10 federal agencies spent at least \$135.9 million, with the Forest Service and BLM accounting for the majority. Other federal agencies have grazing-related activities, such as pest control, and spent at least \$8.4 million in fiscal year 2004. The 10 federal agencies' grazing fees generated about \$21 million in fiscal year 2004 – less than one-sixth of the expenditures to manage grazing"*²⁶.

This is surely a minimal spending for each year: according to a Center for Biological Diversity's study reacting to this GAO's report: *"The current grazing fee is calculated using a formula established in the Public Rangelands Improvement Act of 1978 (PRIA)... The PRIA formula was set to expire in 1986, but President Reagan extended its use indefinitely... The 2005 report noted that the BLM and Forest Service grazing fee decreased by 40 percent between 1980 and 2004, while fees charged by private ranchers increased 78 percent over the same period"*²⁷. The same Center adds: *"Independent economists have estimated that the costs may be closer to \$500 million annually. In either case, the BLM and Forest Service grazing fees are far cheaper than fees charged on comparable private rangeland, on state trust lands throughout the West, and even on other federal lands such as those managed by the National Park Service and the U.S. Fish and Wildlife Service"*²⁸.

Karyn Moskowitz and Chuck Romaniello quote other estimates: *"Hess and Wald (1995) estimated \$500 million per year for the annual net cost of the federal grazing program across all federal agencies. Another more recent estimate put this figure at \$460 million (The Economist 2002). However, neither of these reports gave detailed justification for these estimates. Jacobs (1991) did a more detailed examination of agency expenditures and arrived at an estimate of \$200-\$250 million for direct and indirect costs of the combined FS and BLM grazing program using "an educated guess" that 25 percent of the BLM budget and 5-7 percent of the Forest Service budget directly or indirectly supports the range program (Jacobs 1991 p 389). Jacobs also summarized all the other indirect costs of public lands grazing borne by other federal, state and local agencies, and gave an estimate of \$1 billion for the full cost of the program to taxpayers (Jacobs 1991 p.401)"*²⁹. For Bruce Sundquist, *"The fee ranchers pay to graze livestock on federal land is lower than at any time since 1975, set at \$1.35/cow month, far below the current market average of \$11.10 on private land in the 11 westernmost states"*³⁰.

Therefore retaining the \$123 million of subsidies instead of the \$50.6 million notified on average during the 1995-00 base period is highly conservative, the more so as it has been quoted above that the fee has decreased by 40% from 1980 to 2004.

²⁶ Government Accountability Office (GAO)'s report of September 2005 (<http://www.gao.gov/new.items/d05869.pdf>).

²⁷ <http://www.biologicaldiversity.org/swcbd/programs/grazing/GrazingFeePetition.pdf>

²⁸ http://www.biologicaldiversity.org/swcbd/press/grazing_fee2-6-2006.html

²⁹ Karyn Moskowitz and Chuck Romaniello, *Assessing the full cost of the federal grazing program*, Center for biological diversity, Tucson, Arizona, October 2002.

³⁰ Bruce Sundquist, *Economics, Politics and History of Grazing*, in *The Earth's Carrying Capacity*, July 2007 (<http://home.alltel.net/bsundquist1/og5.html#A>)

Besides let us underline that subsidies to grazing fees are even more clearly product-specific because grazing is restricted to red meat cattle. Finally let us stress that, if the US notifies subsidies to grazing fees in the amber box, it is because it considers rightly feed subsidies as input subsidies. Therefore we wonder why it has forgotten to notify in the AMS the bulk of feed subsidies related to feed grains, and we will come back on this fundamental issue for the determination of the allowed PS *de minimis* and consequently of the allowed OTDS.

III – The product-specific subsidies not notified at all: those to corn ethanol

As ethanol is considered an agricultural product by the WTO, ethanol subsidies must be added to the specific AMS. Indeed paragraph 4 of Annex 4 of the AoA on "Domestic support: calculation of equivalent measurement of support" states that "*Measures directed at agricultural processors shall be included to the extent that such measures benefit the producers of the basic agricultural products*", which is all the more obvious as the ethanol boom has increased corn prices considerably. David Orden, David Blanford and Timothy Josling have underlined this, saying that "*This would correspond to the way the U.S. formerly notified Step 2 processor payments for cotton*", an alternative being to calculate the price effect of the Congress mandate: "*Since a binding blending or consumption mandate affects ethanol and corn production and prices, it would be the policy instrument to which WTO agricultural disciplines might apply*"³¹. The main subsidy is the volumetric ethanol excise tax credit (VEETC) of \$0.51 per gallon (reduced to \$0.45 from 2009). If we adapt the calculus made in 2007 by The Global Subsidies Initiative (GSI) of the International Institute for Sustainable Development (IISD)³² by eliminating the subsidies to corn producer – to avoid double counting – and the market price support linked to the tariff – which is not a subsidy –, and take into account the actual ethanol production of 2006 to 2008, we get total subsidies of \$3.609 billion in 2006, \$4.550 billion in 2007 and \$6.380 billion in 2008. We do not find necessary at this stage to compute the additional subsidies granted before 2006.

Table 6 – Ethanol subsidies from 1995 to 2008

\$ million	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	Average 1995-00
Ethanol production: M gallons	1400	1100	1300	1400	1470	1630	1770	2130	2180	3410	3900	4900	6500	9000	1383
VEETC (blending credit of 0.51 \$/gallon)	714	510	663	714	750	831	903	1086	1112	1739	1989	2499	3315	4590	697
US total corn production (M bushels)						9915	9503	8967	10087	11807	11114	10535	13038	12101	
Additional ethanol subsidies (IISD report)												1110	1230	1110	
US corn production for ethanol "							706	996	1168	1323	1603	2119	3000	4000	
Farm price Central Illinois (\$/bushel)						1.85	1.97	2.32	2.42	2.06	2.00	3.04	4.20	3.78	
Value of corn production (\$ billion)						18.343	18.878	20.882	24.476	24.381	22.228	32.026	54.760	45.742	
Corn subsidies due to higher price												1.422	3.729	2.800	
Total corn ethanol subsidies	714	510	663	714	750	831	903	1086	1112	1739	1989	5.031	8.274	8.500	697

Source: <http://www.ethanolrfa.org/industry/statistics/>; <http://www.ers.usda.gov/Data/FeedGrains/StandardReports/YBtable1.htm>; <http://www.globalsubsidies.org/en/research/biofuel-subsidies-united-states-2007-update>

³¹ David Orden, David Blanford and Timothy Josling, *Determinants of Farm Policies in the United States, 1996-2008*, Agricultural Distortions Working Paper 81, May 2009, <http://ageconsearch.umn.edu/handle/50297>

³² <http://www.globalsubsidies.org/en/research/biofuel-subsidies-united-states-2007-update>

However we have to add the additional revenue of corn producers resulting from the spike in corn prices attributable to the ethanol boom as a result of Congress' mandate. Although all international institutions have blamed the US corn ethanol boom as the main culprit of the spike in international food prices from 2005-06 to 2007-08 – more than 50% for FAO and OECD, 65% for the World Bank and 70% for IMF –, we can at least take into account the much modest 13% increase estimated by FAPRI as mentioned by Jane Earley of ICTSD³³: *"With no tax credits, tariffs or mandates supporting corn ethanol use, average ethanol production declines by 5.5 billion gallons and corn prices fall by 13.1%"*³⁴. The more so as Harry de Gorter and David Just have estimated that the VEETC implies *"an increase of 25 percent (\$0.74 per bushel) in 2006... assuming the mandate was not binding"*³⁵. Given that the farm price (in Central Illinois) has jumped from \$2.00/bushel in the marketing year 2005-06 – we could have taken instead the \$2.10 average price of 2000-01 to 2005-06 – to \$3.04 in 2006-07, \$4.20 in 2007-08 and \$3.78 in 2008-09, 13% of that increase corresponds to 0.135 \$/bushel in 2006-07, \$0,286 \$/bushel in 2007-08 and \$0.231 \$/bushel in 2008-09, multiplied by a production of 10.535 billion bushels, 13.038 billion bushels and 12.101 billion bushels respectively, amounts to \$1.422 billion, \$3.729 billion and \$2.800 billion in subsidies to corn producers.

IV – Under-notified or not notified at all subsidies of the non product-specific AMS

Once transferred in the PS AMS the market loss assistance payments and counter-cyclical payments, the crop insurance subsidies and the subsidies to grazing fees which are product-specific, there remain those to agricultural loans and irrigation. However the US has forgotten to notify to the WTO the subsidies to agricultural fuels that it has nevertheless notified to OECD. OECD has even considered the three subsidies as product-specific since it has distributed them among crops on the basis of their share in the total agricultural production value. However as this way of distributing them could be challenged as non accurate enough, we maintain them in the NPS AMS.

Table 7 – The under-notified and actual components of the US applied NPS AMS from 1995 to 2007

\$ million	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Ave.95-00
The notified components of the non product-specific AMS														
Agricultural loans subsidies	49	49	49	49	49	49	49	49	49	49	49	49	49	49
Irrigation subsidies	543	381	349	349	316	316	300	300	300	269	269	240	240	376
Actual minimal components of the NPS AMS														
Agricultural loans subsidies (OECD)	719	713	610	610	610	610	610	610	610	610	610	610	610	645
Agricultural fuel subsidies (OECD)	2385	2385	2385	2385	2385	2385	2385	2385	2385	2385	2385	2385	2385	2385
Irrigation subsidies (notifications)	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
Rectified total NPS AMS	4104	4098	3995	3995	3995	3995	3995	3995	3995	3995	3995	3995	3995	4030

Source: notifications to the WTO and OECD and our calculations.

³³ Jane Earley, *US Trade Policies on Biofuels and Sustainable Development*, ICTSD, June 2009.

³⁴ Seth Meyer, Pat Westhoff and Wyatt Thompson, *Impacts of Selected US Ethanol Policy Options*, <http://www.fapri.missouri.edu/>

³⁵ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1024525

1) Agricultural loans subsidies

The US has notified only the subsidies to State credit programs, for \$48.8 billion each year with the following explanation: *"Various credit related programs for agriculture are funded by State governments to: supplement Federal programs, promote the "family farm," assist during economic downturns, and promote new enterprises and technological innovations. The data are latest available from results of a discontinued mail survey by the U.S. Department of Agriculture, Economic Research Service, reported by G. B. Wallace and others in "State Credit Subsidy Programs for Agriculture," Agricultural Income and Finance Situation and Outlook Report, pp. 10-14 (December 1990). The last estimate was made in 1994".* However the US has also notified in the green box an average of \$102 million in the base period 1995-00 and \$105 million from 1995 to 2007, under the heading "Farm credit programs" within the section "Structural adjustment through investment aids" with the explanation: *"Program includes (i) short-term and long-term loans made at preferential interest rates and (ii) guarantees of private loans. Eligibility (clearly defined in regulations) determined by status as owner-operator of a family-sized farm in situations of structural disadvantage (cannot obtain credit elsewhere)."*

Clearly these notifications are referring to the subsidized direct and guaranteed loans managed by the Farm Service Agency which is the lender in last resort for direct loans but, once again, the notified figures do not match the actual government costs given by an USDA report to Congress of 2006³⁶ showing (table 8) that, beyond the operational costs (subsidy plus administration expenses) we should not forget the write-offs, i.e. the losses net of recoveries:

Table 8 – Farm loan program costs from 1995 to 2004

\$ million	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	Average 1995-00
Loan subsidy costs	170	172	150	146	250	251	169	179	152	160	180
Administrative costs	243	217	220	220	220	219	269	280	284	286	246
Total costs without write-offs	413	389	370	366	470	470	438	459	436	446	426
Write-offs and net losses	1,007	1,322	803	721	581	539	405	496	441	345	666
Overall cost	1,420	1,711	1,173	1,087	1,051	1,009	843	955	877	791	1,092

Source: <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecpa&topic=fla>

These government costs are not that clear as the write-offs are presented in a specific table instead of appearing as total costs of the farm loan program, as if these write-offs were transferred outside of USDA in a specific account of the federal government.

Now, pursuant to AoA Article 6.2, investment subsidies are non exempt subsidies for developed countries: *"Investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to low-income or resource*

³⁶ Charles Dodson and Steven konig, USDA, *Evaluating the Relative Cost Effectiveness of the Farm Service Agency's Farm Loan Programs*, USDA, Farm Service Agency, August 2006, <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecpa&topic=fla>

poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures". This is confirmed in Annex 3 paragraph 13 ("Other non-exempt measures, including input subsidies and other measures such as marketing-cost reduction measures") and in Annex 4 paragraph 4 ("Measures directed at agricultural processors shall be included to the extent that such measures benefit the producers of the basic agricultural products"). Clearly the U.S. is not a developing country even if a significant part of subsidies on farm loans goes to "low-income or resource poor producers"!

Even if 2/3 of the management costs of the program (loan subsidy plus administration costs) and 90% of the net losses over the whole period 1995-2004 are attributable to the direct farm ownership and operating loans to small farmers unable to obtain credit elsewhere rather than to guaranteed loans made to larger farmers able to get credit from commercial lenders such as commercial banks and the Farm Credit System, which is a private institution lending to creditworthy farmers. The rate of subsidy to guaranteed loans is much lower than to the direct loans and the rate of write-offs even lower (8.5% of the total from 1995 to 2004).

However, despite the official reports telling that most subsidized farm loans go to the small and deprived family farmers, this claim is challenged by Karen Krub of the Farmers' Legal Action Group: *"Smaller farmers continually report being told that they can only get financing if they expand their operations. Farmers wanting relatively small loans can't get them. The Agency and guaranteed lenders seem convinced that only big operations are desirable borrowers, whatever an applicant's actual financial situation. This is particularly a concern when the bigger loans quickly consume available funding... In particular, there are concerns that the "family farm" eligibility requirement is not enforced for guaranteed loans, so that the funds are used up by large-sum borrowers whose eligibility is questionable at best. FSA seems to be making little effort to promote the guaranteed loan program and Interest Assistance Program among lenders in underserved areas, particularly lenders with high numbers of borrowers who would be considered "socially disadvantaged applicants," and helping those lenders to understand and participate in the programs"*³⁷.

Indeed, if the subsidized direct loans delivered by the Farm Service Agency (FSA) are more focused on the beginning or socially disadvantaged farmers, this is much less the case for the subsidized guaranteed loans, their amount of total subsidies having been larger than on the direct loans. Thus in 2002 the direct loan subsidy was of \$71 million against \$112 million for the guaranteed loan subsidy³⁸. As explained by the Analytical perspectives for Fiscal Year 2003, *"As a condition of eligibility for direct loans, borrowers must have been denied private credit at reasonable rates and terms, or they must be beginning or socially disadvantaged farmers. Loans are provided at Treasury rates or 5 percent. As FSA is the "lender of last resort," high defaults and delinquencies are inherent in the direct loan program; over \$15 billion in direct farm loans have been written off since 1990. FSA guaranteed farm loans are made to more creditworthy borrowers who have access to private credit markets. Because the private loan originators must retain 10 percent of the risk, they exercise care in examining borrower repayment ability. As a result,*

³⁷ Farmers' legal action group, Inc, *FLAG Testimony*, Senate Committee Hearing on USDA Farmer Loan Programs, June 13, 2006 (<http://www.flaginc.org/topics/news/Testimony20060613.pdf>)

³⁸ USDA, *The budget for fiscal year 2004*, p. 94.

guaranteed farm loans have not experienced losses as high as those on direct loans"³⁹. There is also some doubt about the loans to the beginning farmers, as underlined by a new GAO report: *"USDA generally defines a beginning farmer or rancher as one who has operated a farm or ranch for 10 years or less—without regard for age—and who materially and substantially participates in its operation... Another [analysis] indicates that roughly one-third of beginning farms in 2005 had no agricultural output and were likely operated by individuals interested in a rural residential lifestyle"*⁴⁰.

On the other hand USDA has notified to OCDE an average of \$645 million in the 1995-00 base period, even if the amount has not changed from 1997 (\$610 million), under two headings: \$377 million as "payments based on use of fixed inputs", i.e. for investments, and \$233 million as "payments based on use of variable inputs", i.e. for operating loans. According to the OECD explanatory note on the US subsidies data, *"Federal and State interest concessions on farm operating loans under the Agricultural Credit Insurance Fund Program, estimated as the difference between the market interest rate and the rate actually charged to farmers, multiplied by the total volume of loans outstanding, including: two-thirds of federal short term production loans, one-half of loan guarantees and three-fourth of state credit programmes (the rest is included under E.3. Based on use of fixed inputs). Calculated on a budget year basis"*⁴¹. The fact that OECD has considered the \$645 million subsidies as payments to fixed and variable inputs means that they are coupled subsidies of the amber box. Besides the Agricultural Credit Insurance Fund Program is an institution of the Farm Loan Program. This notification to OECD shows that, even if we do not take into account the write-offs of the farm loans, in any case there is a huge under notification between the \$49 million notified to the WTO and the \$645 million notified to OECD

But there is more to tell about the farm loan subsidies. Indeed, beside the Farm loan program run by the Farm Service Agency, with a market share of 3% of farmers' indebtedness in 2007⁴², the Farm Credit System (FCS) is a government-sponsored enterprise owned by its cooperative members-borrowers and regulated by an independent federal agency, the Farm Credit Administration, to provide loans to farmers, ranchers, agro-industries and for rural houses and rural infrastructures. The FCS consists of 5 regional Farm credit banks (FCB) and 95 retail or direct-lending associations. One of the 5 FCB is Cobank, which has the exclusive right to lend to cooperatives and to finance US agricultural exports. The FCS enjoys numerous competitive advantages, mainly substantial tax exemptions and highly favorable cost of borrowed funds. Its tax advantage is far greater on its real-estate-secured lending – 1.18 % per dollar lent – than it is on its non-real-estate lending where its advantage is about 0.24%. The greater advantage of the FCS's real-estate lending stems from its exemption from all corporate income taxes whereas FCS profits on its non-real-estate lending are exempt only from state and local corporate income taxes. Indeed article 1 of the WTO Agreement on subsidies and countervailing measures (SCM) considers as a subsidy *"government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits)"* and the WTO Appellate Body ruled on 24 February 2000 in the Foreign Sales Corporation case initiated by the EU that the US exports

³⁹ Office of management and budget, *Analytical perspectives, Budget of the United States Government. Fiscal year 2003*. The White House. <http://www.whitehouse.gov/omb/budget/fy2003>.

⁴⁰ GAO, *Additional Steps Needed to Demonstrate the Effectiveness of USDA Beginning Farmer Programs*, September 2007 (<http://www.gao.gov/new.items/d071130.pdf>)

⁴¹ OECD, <http://www.oecd.org/dataoecd/11/24/37003207.htm>

⁴² USDA-ESR, *Agricultural Income and Finance Outlook*, December 2008: <http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1254>

had benefitted from \$4 billion tax advantages on exports per year. Based on the FCS's financial results for 2005 and the first half of 2006, its tax exemptions are worth about \$850 million annually: \$725 million on its real-estate lending and \$125 million on its non-real-estate lending. To this should be added \$350 million of additional profit stemming from its after-tax funding cost advantage, of about 0.3%-0.4%, with a greater funding-cost advantage for its long-term, fixed-rate real-estate lending. Therefore the FCS benefits from a \$1.2 billion of government subsidies. And it is this about \$1.2 billion annual subsidies that have raised the FCS market share in recent years, given that large part of these subsidies are transferred to its borrowers as lower lending rates. And, contrary to the situation for the farm loan program benefitting mostly to small farmers, the FCS lends primarily to large creditworthy farmers, even if the largest share of its loans are going to non farmers. Indeed, the average acreage of FCS customers in 1999 was of 935 against 600 for bank customers and the average market value of farm products sold by FCS customers was of \$311,000 against \$156,000 for that sold by banks customers and \$168,000 for that sold by all farms with debts⁴³. FCS market share of farmers' indebtedness was of 16% in 2008 against 59% to commercial banks and 10% to agricultural suppliers. However its share of farm credit at large is higher: 32% in 2002 against 40% for commercial banks⁴⁴.

To conclude this section on agricultural loans subsidies, we will retain conservatively the figures notified to OECD, i.e. \$645 million on average in the 1995-00 period, to be put in the NPS AMS.

2) Agricultural fuels subsidies

Although the US did not notify any such subsidy to the WTO, not even in the green box, the USDA has nevertheless kept notifying to OECD \$2.385 billion of them – under the heading of "energy subsidy" in the section "payments based on use of variable inputs" – each year from 1995 to 2006, even if the repetition of the same amount casts some doubt on the accuracy of the figure. OECD justifies this subsidy as follows: "*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. Calculated on a budget year basis*". David Blanford and David Orden classify also this tax exemption among "*Potentially underreported, misclassified or omitted subsidies*" and acknowledge that, for OECD, "*Energy subsidies, defined as the "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 fuels" are simply reported as a constant \$2,385 million from 1986 through 2005*"⁴⁵.

We have made a complementary investigation limited to 2005 and 2006 which confirms that, at least for the partial data we have been able to collect, the US farmers have benefitted of \$2.9987 billion in tax exemption for their fuels (diesel, gasoline and other fuels) in 2005 and \$3.123 billion in 2006⁴⁶. This is a very minimum as we did not take into account the tax exemption on electricity used for farm operations (excluding that

⁴³ American bankers' association, *Who Finances America's Family Farmers? A review of the recent USDA Agriculture Economics and Land Ownership Survey*, <http://www.aba.com/Solutions/AgriculturalBanking.htm>

⁴⁴ Bert Ely, *The Farm Credit System: Lending Anywhere But on the Farm*, November 2006, www.aba.com/NR/.../Horizons2006ELYFINAL.pdf

⁴⁵ David Blanford and David Orden, *United States: Shadow WTO Agricultural Domestic. Support Notifications*, www.ifpri.org/PUBS/dp/IFPRIDP00821.pdf

⁴⁶ <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 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 expenditures⁴⁷, taking their tax exemption into account would add around \$1 billion more in subsidies to agricultural energy. Therefore keeping \$2.385 billion for the whole period as notified to OECD is highly conservative. The more so as we are not including the tax reductions on renewable energy other than corn ethanol.

3) Irrigation subsidies

The figures notified are here much ridiculous compared to the actual cost to the Federal and States budgets, even according to official Bodies. The last notification for 2007 (\$239.545 million) was justified this way (as for the previous years since 1995): *"Based on a "debt financing method." A long term interest rate is applied to the outstanding unpaid balance of capital investment by the Government in irrigation facilities to obtain the subsidy. Irrigators repay the principal but not the interest on the project debt. New estimates are not made every year; the 2005 estimate was assumed for 2007"*, which is not true as the notification for 2005 was of \$269.200 million. Precisely for 2005 we read: *"Estimates do not exist for each year. The 2003 estimate was assumed for 2005"*, but for 2003 the figure was of \$300 million, the same as for 2001 and 2002! In short, this not very reliable! In fact water subsidies have been a permanent nightmare for the US authorities and the US General Accounting Office (GAO) has devoted about ten reports on the issue, without any change in the Congress, so large have been the pressures from the irrigators lobbies: not only the irrigators but also the water districts (the "water barons") and the numerous Federal and State administrations involved, including the US Army Corps of Engineers.

US irrigation subsidies, granted through very low water rates paid mainly to the Bureau of Reclamation of the Department of the Interior, which was at the origin of most irrigation infrastructures, beside the US Army Corps of engineers and some States (such as for California for its huge 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 if valued at market rates for new projects, 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 districts users⁴⁸. Another reason of very low average 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.

⁴⁷ <http://www.ers.usda.gov/Data/farmincome/FinfidmuXls.htm>

⁴⁸ 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>

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"*⁴⁹.

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 30 September 2005, they had paid only \$74 million, leaving \$449 million to be repaid by 2030⁵⁰.

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"*⁵¹. 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 rate⁵². 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.

⁴⁹ United States General Accounting Office, *Bureau of Reclamation. Information on Allocation and Repayment of Costs of Constructing Water Projects*, July 1996.

⁵⁰ <http://www.gao.gov/new.items/d08307r.pdf>

⁵¹ U.S. General Accounting Office, *Reforming accounting provisions in federal water laws could save millions*, October 22, 1981.

⁵² 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%.

For Robert Repetto, the average subsidy to beneficiaries of US federal irrigation represented 83% of full project costs - over \$1 billion/year⁵³. 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"*⁵⁴. 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"*⁵⁵. 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 2003⁵⁶ 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"*⁵⁷.

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"*⁵⁸.

An Environmental Working Group (EWG) investigation has calculated that federal water subsidies were of \$416 million for the Central Valley Project (CVP) in California alone⁵⁹, a figure recouped by other sources: CVP uses about 7 million of acre-feet of irrigated water annually⁶⁰ with a subsidy of around 67 per acre-foot, 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"*⁶¹.

⁵³ Robert Repetto, "Skimming the Water", World Resources Institute, Washington DC, 1986

⁵⁴ <http://www.doi.gov/oepc/wetlands2/v2ch12.html#foot19>

⁵⁵ <http://home.alltel.net/bsundquist1/ir7.html#A4>

⁵⁶ USDA, *Farm and ranch irrigation survey (2003)*, November 2004.

⁵⁷ <http://wingolog.org/writings/water/html/node89.html>

⁵⁸ 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)

⁵⁹ <http://archive.ewg.org/reports/Watersubsidies/execsumm.php>

⁶⁰ <http://www.pacificresearch.org/pub/sab/enviro/watermkt/watermkt.html>

⁶¹ <http://www.ewg.org/reports/powersubsidies>

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 quotes⁶² show that we are far indeed from the \$239 million notified for 2007 or even from the average \$376 million notified for 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.

David Blanford and David Orden agree implicitly with our analysis: *"The United States does not seem to include the subsidies to agricultural irrigators that arise from lower repayment of capital costs based on assessed "ability to pay," with the reduced capital cost charges to farmers being paid instead by hydroelectric power authorities of the projects... No notification is made for subsidies that might exist related to maintenance and operating costs (which irrigators apparently are required to pay), nor for water charges to agriculture that are below charges to other users. No entry is provided concerning preferential charges for electricity used in agriculture, either to move water from its source to farmland or for on-farm use of electricity"* (see footnote 40).

V – The fraudulent treatment of the allowed product-specific *de minimis* linked to the non notification of feed subsidies reduces significantly the level of the allowed OTDS in the base-period

1) The PS *de minimis* cannot be 5% of the whole agricultural production value as the NPS *de minimis*

Paragraph 30 on *de minimis* of the Chair's Revised draft of agriculture modalities of 6 December 2008 claims to be in line with the AoA definition on product-specific (PS) *de minimis*: *"The de minimis levels referred to in Article 6.4(a) of the Uruguay Round Agreement on Agriculture for developed country Members (i.e. 5 per cent of a Member's total value of production of a basic agricultural product in the case of product-specific de minimis"*. This is a lie as the AoA (Article 6.4) states: *"A Member shall not be required to include in the calculation of its Current Total AMS and shall not be required to reduce: (a) 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 agricultural product during the relevant year"* (not underlined in the text). In other words, as soon as a product-specific (PS) support reaches 5% of the production value of the product, it loses its allowed PS *de minimis* exemption and gets a PS AMS which is added to the applied total AMS and the production value of that product is added to the production value of all products with PS AMSs.

H. de Gorter and J.D. Cook 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"*. They show that, for the US, the

⁶² More quotes in J. Berthelot, *The king is naked: the impossible U.S. promise to slash its agricultural support*, Solidarité, 11 December 2005, <http://solidarite.asso.fr/ENG/home/textes2005.htm>

permitted PS *de minimis* is of \$5.773 billion against \$9.621 billion for the NPS *de minimis*⁶³. Ivan Roberts confirms that "*Where a commodity's support is counted toward a member's AMS, the country would not be eligible for product specific de minimis exemption for that commodity*"⁶⁴. The Congressional Research Service also confirms: "*U.S. commodity-specific support that is below 5% of a commodity's value of production is deemed sufficiently benign that it does not have to be included in the AMS calculation. Such commodity specific support can be evaluated for each individual commodity*"⁶⁵.

But this new proposed definition of PS *de minimis* exemption brings new insuperable contradictions:

- 1- If the sum of all the allowed PS *de minimis* is 5% of the value of the whole agricultural production (VOP), at least during the base period, this can only happen if each agricultural product had an allowed PS *de minimis*, even if it had already a PS AMS, i.e. a PS support above *de minimis*.
- 2- Consequently, if each agricultural product had an allowed PS *de minimis*, it had also a PS AMS at least at this *de minimis* level.
- 3- If all products had a PS AMS during the base period, the production value of products without a PS AMS was nil. With the present AoA rule – with which paragraph 30 claims to comply – the allowed PS *de minimis* would have been nil also since it is equal to 5% of the production value of products without PS AMSs.
- 4- This is totally incompatible with the opposite statement that the allowed PS *de minimis* is 5% of the VOP.

The apparent reason why the successive revised drafts on agricultural modalities have proposed to change the rule on PS *de minimis* is that several Members have not been able, or rather willing, to notify the production value of each product having a calculated AMS. This has been particularly the case of Japan up to 2004 (last year notified) and of the EU up to 1999-2000 (the production value has only appeared in the notifications from 2000-01 to 2005-06, the last year notified). That is why paragraph 12 of the Revised agricultural modalities draft of 6 December 2008 has introduced the new requirement (not in the Revised Draft of 10 July 2008) that "*The data on value of production shall, for all Members undertaking OTDS reduction commitments, be annexed to these modalities*". This lack of data on the production values of the EU and Japan products notified with PS AMSs explains why the simulations published in May 2006 by Canada on the impact of the EU, US and Japan offers on their Final Bound Total AMS reductions have used 5% of the whole value of agricultural production (VOP) for PS *de minimis*. The WTO should have asked them instead to rectify their notifications by adding the production value of each product, which would not have been difficult for them since Solidarité has done it for the EU⁶⁶.

⁶³ Harry de Gorter and J. Daniel Cook, 2006. *Domestic Support in Agriculture: The Struggle for Meaningful Disciplines*, in "Trade, Doha and Development: a window into the issues", http://siteresources.worldbank.org/INTRANETTRADE/Resources/239054-1126812419270/7.DomesticSupport_updated_on12Dec05.pdf

⁶⁴ Ivan Roberts, *WTO Agreement on agriculture. The blue box in the July framework agreement*, ABARE, March 2005, <http://abareonlineshop.com/product.asp?prodid=12989>

⁶⁵ CRS, *Potential Challenges to U.S. Farm Subsidies in the WTO*, April 26, 2007, <http://openocrs.com/document/RL33697/2007-04-26>

⁶⁶ Jacques Berthelot, *Thorough review of the EU agricultural distorting supports to rebuild fair and sustainable agricultural trade rules after the Doha Round hibernation*, Solidarité, 21 August 2006, <http://solidarite.asso.fr/ENG/home/textes2006.htm>

2) Another reason of changing the rule on PS *de minimis* is to avoid considering the existence of feed subsidies

The huge subsidies to feedstuffs (cereals, oilseeds cakes and pulses) continue to be denied as being input subsidies to be notified in the PS AMS of animal products (meats, eggs and milk) having consumed them. Yet the Congressional Research Service has acknowledged that *"program commodities such as corn are feed inputs for livestock"* (see footnote 60). For OECD also, *"Input subsidies are typically explicit or implicit payments reducing the price paid by farmers for variable inputs (for example, fertilisers, feed, seeds, energy, water, transportation, insurance), which are provided to farmers through policy instruments, including interest concessions, tax rebates and budgetary transfers to input industries to provide lower input prices paid by farmers"*⁶⁷. And, in its manual on national accounts for agriculture, OECD specifies as part of the "total intermediate consumption of farm origin": *"Animal feeding stuffs... supplied by other agricultural holdings"* or *"purchased from outside the agricultural sector"* or *"produced and consumed by the same holding"*.

Unfortunately OECD has refused to consider the existence of feed subsidies and has managed to wriggle out of the situation with the concept of "excess feed cost"⁶⁸. OECD considers that cattle producers, particularly in the EU, are suffering an excess feed cost because they must pay EU feedstuffs (the "COPs": cereals, oilseeds and pulses) at higher prices than the world prices as a result of EU tariffs. For OECD the fact to have reduced the EU prices of COPs owing to compensatory direct payments in the CAP reforms of 1992 and 1999 has only reduced the excess cost of EU feedstuffs and hence is not a subsidy but the reduction of a penalty! But this reasoning is much too short because we cannot deny that the US cattle producers have also been enjoying large subsidies on their feed grains, subsidies not linked to an excess feed cost as feed grains do not benefit from an import protection.

We have seen that the US notifies already subsidies to grazing on federal lands but it has refused (as the EU) to notify by far the most important feed subsidies, those to feed grains which have reached an annual average of \$4.372 billion in the 1995-00 period. As feed is the most important input of all animal products, feed subsidies are conferring PS AMSs to them. The only impact of incorporating the PS AMSs of meats – the milk had already a PS AMS in the form of a market price support – is to lower the allowed OTDS through the reduction of the allowed PSdm. This has no impact either on the applied OTDS or on the applied total AMS: there is a simple transfer of part of the cereals and oilseeds AMSs, which are reduced, to the animal products AMSs, which are increased by as much.

3) Consequently the allowed OTDS is only of \$42.875 billion

Once added the production value of \$57.075 billion for all meats the production value of products with PS AMSs rises from \$49.734 billion to \$106.987 billion so that, given an average agricultural production value of \$194.139 billion during the 1995-2000 base period, the production value

⁶⁷ OECD, *Methodology for the measurement of support and use in policy evaluation*, 2002

⁶⁸ Sur le "surcoût de l'alimentation animale" voir *"Le dumping total de l'Union européenne et des Etats-Unis sur les céréales et les viandes de volaille et de porc"*, 16-01-06, <http://solidarite.asso.fr/ENG/home/textes2006.htm>

of products without PS AMSs falls to \$87.152 billion and the allowed PSdm in the base period, being 5% of that value, falls to \$4.358 billion⁶⁹. Therefore the allowed OTDS in the base period falls from \$48.224 billion – in Canada's simulations of 19 May 2006 made on behalf of the EU, the US and Japan and considered as the unchallengeable truth: 19.103 (FBTA) + 9.707 (PSdm) + 9.707 (NPSdm) + 9.707 (BB) – to \$42.875 billion: 19.103 (FBTA) + 4.358 (PSdm) + 9.707 (NPSdm) + 9.707 (BB). Thus the allowed OTDS at the end of the implementation period, once cut by 70%, will fall to \$12.863 billion.

Conclusion

Let us paste here the last lines of table 1:

Table 8 – The US average applied and allowed AMS and OTDS in the base period and up to 2007

\$ million	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	Ave.95-00
Total applied AMS	8491	14125	14240	22442	30032	30492	27416	21416	17458	26150	27724	23132	24666	19895
NPS de minimis	3647	3479	3344	3344	3311	3311	3295	3295	3295	3264	3235	3235	3264	3406
PS de minimis	97	40	237	158	29	63	224	1590	436	680	118	171	237	104
Blue box	7032	-	-	-	-	-	-	-	-	-	-	-	-	1172
Total applied OTDS	19267	17644	17821	25944	33372	33866	30935	26301	21189	30094	31077	26538	28167	24578
Excess of the applied AMS over the allowed AMS														
Allowed Final bound total AMS	23083	22287	21491	20695	19899	19103	19103	19103	19103	19103	19103	19103	19103	19103
Leeway (-) or excess of applied AMS	-14592	-8162	-7251	1747	10133	11389	8313	2313	-1645	7047	8621	4029	5563	792
Excess of the applied OTDS over the allowed OTDS														
Allowed OTDS at the beginning of the implementation period														42875
Allowed OTDS at the end of the implementation period (after cut of 70% of the allowed at the beginning)														12863

Sources: US notifications to the WTO, in marketing years for the PS AMS and partly on fiscal years for NPS AMS; our calculations.

We have shown that the average total applied AMS of \$19.895 billion during the base period 1995-2000 had exceeded already the Final bound total AMS (FBTA) ceiling of \$19.103 billion allowed at the beginning of the implementation period, which was the level of the applied FBTA in 2000, by \$792 million. Furthermore, as this ceiling should already be cut by 25% the first day of the implementation period (paragraph 14 of the Revised Draft of 6 December 2008), i.e. down to \$14.327 billion, there is no chance that it could be cut at all as the total applied AMS has always exceeded that level since 1998 and has been on average of \$25.418 billion from 2004 to 2007. It goes without saying that there is no credibility whatsoever that the applied total AMS might fall to the allowed level of \$7.641 billion at the end of the fifth year of the implementation period.

⁶⁹ J. Berthelot, *Simulations of the possible cuts in the US agricultural trade-distorting domestic supports*, Solidarité, <http://solidarite.asso.fr>, 21 June 2007.

As for the OTDS, we have shown that the permitted level at the beginning of the implementation period is not \$48.224 billion as repeated since the Canada simulations of May 2006 but only of \$42.875 billion if we are to abide by the AoA rules on the PS *de minimis* and because all meats and eggs have got PS AMSs by the fact that they are produced from feed grains, their main inputs having benefitted from huge subsidies. Cutting this allowed OTDS by one third the first day of the implementation period will reduce it at \$28.583 billion which might be already difficult to achieve given that the ethanol subsidies would continue to grow. In any case, even without any ethanol subsidy, it is impossible that the applied OTDS would be cut to 30% of the allowed OTDS, i.e. to \$12.863 billion, at the end of the fifth year of the implementation period.

In fact, as the 2008 Farm Bill has decided to modify the way to notify the dairy market price support (MPS) at the WTO from 2009, we have seen that this implies to modify accordingly the dairy MPS level in 1986-88, which lowers the allowed FBTA (final bound total AMS) at \$16.627 billion instead of \$19.103 billion. And the allowed FBTA at the end of the Doha Round implementation period, once the FBTA cut by 60%, will fall from \$7.641 billion to \$6.651 billion. Consequently, from 2009 on, the allowed OTDS will be of only \$40.413 billion in the base period 1995-2000 – 16.627 (FBTA) + 4.372 (PSdm) + 9.707 (NPSdm) + 9.707 (BB) –, instead of the \$48.224 billion computed by Canada or of the \$42.875 billion in table 1 if the US eventually does not change its notification methodology on the dairy MPS. And cutting by 70% the allowed OTDS will bring it down to \$12.124 billion at the end of the Doha Round implementation period.

Given these hard facts on the accrual US agricultural subsidies, we do not find it necessary at this stage to deal with the additional requirements concerning the caps per product in the PS AMSs and the blue box. It is clear that the cap for the main program crops, particularly corn, are already largely exceeded. We would however analyze such caps later, once collected the necessary data.