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Can the CAP manage without market regulation after 2013?

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The CAP subsidies are incompatible with the WTO Agreement on agriculture

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OUTLINE

The compatibility of the EU direct payments, and more generally of all the CAP subsidies, with the WTO Agreement on agriculture (AoA), raises methodological issues of interpretation and compliance with its rules. This compatibility must be assessed more on the basis of the WTO Revised Draft modalities for agriculture of 6 December 2008 than on the basis of the AoA that this Draft wants to modify, although it claims at the same time that its new proposals are based on the present AoA rules. This Draft is only a basis for the on-going negotiations as many provisions are still highly debated, particularly on the reduction levels to adopt for the three pillars of market access, domestic subsidies and export competition. Even though all WTO Members have agreed to continue the negotiations on the basis of this Revised Draft modalities, because the developing countries (DCs) did not understand its many tricks.

For the EU negotiators at the WTO and almost all experts, the Draft modalities are perfectly compatible with the present CAP. Anyway we should remember that, at its very beginning and in all its stages, the CAP has been designed and reformed by taking into account the constraints imposed by the GATT and the WTO negotiations (Dillon Round in 1961-62, Kennedy Round in 1963-67, Uruguay Round in 1986-94, Doha Round since 2002), at least given the interpretation that the EU has done of these constraints. A European Parliament's report of June 2009[1] has confirmed the compatibility of the present CAP with the Draft modalities, taking into account the decisions of its Health Check of 20 November 2008.

In other words the EU claims that it can comply with its offer to cut by 80%, at the end of the Doha Round implementation period, its agricultural domestic supports subject to reduction, the OTDS – overall trade-distorting domestic support – authorized at the end of the Uruguay Round implementation period (1995-2000). The OTDS is the sum of: the total AMS (aggregate measurement of support or "amber box") + the product-specific *de minimis* (PSdm) + the non-product-specific *de minimis* (NPSdm) + the blue box (BB).

The total AMS groups together the domestic supports considered as trade distorting because linked ("coupled") to the current level of prices, production or inputs. It includes: 1) the product specific (PS) AMS, composed both of "market price supports" (MPS) and coupled subsidies; 2) the non product-specific (NPS) AMS: multi products subsidies to agricultural insurances, credit, fuels, irrigation, etc.

The product-specific (PS) *de minimis* support**:** if the calculated PS AMS is lower than 5% of the production value of the product, it is not included in the total of the PS AMSs of the current year.

The NPS *de minimis* support: if the calculated NPS AMS is lower than 5% of the total agricultural production value it is not included in the NPS AMS of the current year.

The Blue box includes the partially decoupled direct payments of the CAP reforms of 1992 and 1999 which were based on areas and yields of each farmer during the 1986-91 period and his cattle heads of 1991 or 1992.

Besides the reduction by 80% of the authorized OTDS, the EU has also agreed to cut by 70% its allowed total AMS, that of the 30 June 2001, called the Final Bound Total AMS (FBTA).

We will show that the EU will not be able to cut by 80% its *authorized* OTDS because it is lower that the level it has *calculated* whereas its *applied* level is much higher than the level it has *notified*. Besides, we will see that all the subsidies of the green box have trade-distorting effects when the benefiting products are exported.

[1] Gide Loyrette Nouel, *Stocktake of the WTO Agricultural Negotiations after the Failure of the 2008 Talks*, http://www.europarl.europa.eu/activities/committees/studies/download.do?language=fr&file=26848#search=%20Stocktake%20%20of%20the%20WTO%20Agricultural%20Negotiations

I – The EU authorized OTDS is lower than that it has calculated

The *authorized* OTDS that the EU would have to cut by 80% at the end of the Doha Round implementation period is that of the base period 1995-2000, which was the Uruguay Round implementation period. According to the simulations made by Canada in May 2006 and endorsed by the EU and the WTO, this authorized OTDS would be of €110.305 billion [67.159 for the Final Bound Total AMS (FBTA) + 11.129 (PSdm) + 11.129 (NPSdm) + 20.888 (BB)] and its reduction de 80% would lower it to €22.061 billion at the end of the Doha Round implementation period. However this calculation contradicts the AoA rules on two points: the allowed product specific *de minimis* (PSdm) is not of 5% of the value of the whole agricultural production and the feed subsidies are conferring PS AMSs to all animal products. Therefore the authorized OTDS is only of €90.496 billion and its reduction by 80% would lower it to €18.099 billion at the end of the Doha Round implementation period[2].

1°) The product-specific *de minimis* (PSdm) support is not of 5% of the value of the whole agricultural production as the non-product-specific *de minimis* (NPSdm) support

The paragraph 30 on the *de minimis* support of the Draft modalities claims to reproduce the definition of the PSdm in the AoA: "*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 and 5 per cent of the value of a Member's total agricultural production in the case of non-product-specific de minimis) shall be reduced by no less than 50 per cent effective on the first day of the implementation period*". This is a sin by omission as the AoA article 6.4 states: "*(a) A Member shall not be required to include in the calculation of its Current Total AMS and shall not be required to reduce: (i) product-specific domestic support which would otherwise be required to be included in a Member's calculation of its Current AMS where such support does not exceed 5 per cent of that Member's total value of production of a basic agricultural product during the relevant year*" (not underlined in the AoA). In other words, as soon as a PS coupled support reaches 5% of the production value of a product, it loses its PSdm and gets a PS AMS which is added to the total applied AMS, and the production value of that product is added to the production value of all the products with PS AMSs.

H. de Gorter and J.D. Cook confirm that 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*"[3]. For Ivan Roberts also, "*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*"[4]. 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*

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[2] J. Berthelot, *L'UE ne peut réduire ses soutiens agricoles internes dans le Doha Round*, Solidarité, 2 septembre 2009, http://www.solidarite.asso.fr/article.php3?id_article=99

[3] 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

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

have to be included in the AMS calculation. Such commodity specific support can be evaluated for each individual commodity"[5].

The unconfessed reason for which the Draft modalities have violated the AoA rule on the PSdm is that the EU did not notify for the years 1995-96 to 1999-00 the production value of products for which it had calculated the AMS, therefore it was unable to check if those AMSs were lower than 5% of the production value of those products. It is only from 2000-01 to 2006-07 (last notified year) that the notification of the production value of each product has been made. This lack of data on the production value of each product notified with a PS AMS explains why the Canada's simulations have used 5% of the whole agricultural production value for all the PSdm supports as it is the rule only for the non-product-specific *de minimis* (NPSdm).

The WTO Secretariat should have asked the EU to rectify its notifications by adding the production values of all products, which would not have been impossible since Solidarité has been able to rebuild them[6]. But the WTO Secretariat as the Chair of the Special Committee on agriculture – within which the Doha Round negotiations take place – have always refused to intervene to point out to Members their false interpretations of the WTO rules or even their outright cheatings. Having questioned in 2001 the WTO Secretariat on the huge under-notifications of the EU and US, Gabrielle Marceau, who was then in the Dispute Settlement Body and is now in Pascal Lamy's cabinet, answered: "*The WTO has neither the resources nor the skills to act like "a regulator" of these notifications. It is up to each Member to do these verifications… This is the very spirit of the whole disputes settlement system of the WTO: every Member country acts as a guard-dog of the system*"[7]. It is also the reason why the WTO Secretariat's reports on the trade policy reviews of its Members – its second function after the disputes settlement – are always laudatory for all Members because they are written from the only pieces of information that the Members are willing to pass on to the Secretariat.

The consequences of the false interpretation of the AoA rule on the PSdm support are felt mainly when we combine it with the refusal of the EU and the other developed Members to consider feedstuffs as inputs.

2°) The developed countries' refusal to take into account the subsidies to feedstuffs

The developed countries have refused to consider their subsidies to feedstuffs (cereals, oilseeds, pulses) as inputs subsidies to be notified in the PS AMS of the animal products (meats, eggs, dairy products) fed from them. Yet the Congressional Research Service has acknowledged that "*The list of commodities that normally do not receive direct support includes meats, poultry, fruits, vegetables, nuts, hay, and nursery products. Producers of these commodities, however, may be affected by the support programs because intervention in one farm sector can influence production and prices in another. For example, program commodities such as corn are feed inputs for livestock*"[5]. For OECD also "*Input subsidies are typically explicit or implicit payments reducing the price paid by farmers for variable inputs*

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[5] CRS, *Potential Challenges to U.S. Farm Subsidies in the WTO*, April 26, 2007, http://opencrs.com/document/RL33697/2007-04-26

[6] Jacques Berthelot, *Thorough review of the EU agricultural distorting supports to rebuild fair and sustainable agricultural trade rules after the Doha Round hibernation*, Solidarité, 1 July 2006*; Repeat a lie a thousand times and it becomes the truth: the EU and US applied OTDS are huge, not paltry*, Solidarité, 16 August 2008.

[7] Reply of the 27 February 2001 on an internet forum.

(for example, fertilisers, feed…"[8]. Even if OECD justifies not to take into account directly the feed subsidies since it claims to take them into account indirectly through the tricky concept of "*excess feed cost*"[9]. Besides, the EU notifies in the PS AMS some feed subsidies such as to dry fodder (€159 million for 2006-07), and to skimmed milk fed to calves (€513 million on average from 1995 to 2000), showing that it is quite aware that they are coupled subsidies. And the US notifies also the subsidies to grazing fees on public lands in their NPS AMS although they should have been notified in the PS AMS of bovine and ovine meats[10].

As these feed subsidies are conferring PS AMSs to all animal products, that increases the production value of products with PS AMS and reduces consequently the production value of products without PS AMSs. Thus the EU average production value of products with PS AMSs rises from €122.922 billion to €201.323 billion in the 1995-2000 base period so that, for the €222.577 billion of the average value of the whole agricultural production, the average value of products without PS AMS collapses to €21.253 billion and the allowed PSdm, which is 5% of that value, falls at €1.063 billion. Correlatively the average blue box (BB) had been reduced to €11.145 billion instead of €20.888 billion because €9.743 billion of direct payments to the EU cereals, oilseeds and pulses used as feed have been transferred to the PS AMSs of animal products having consumed these feedstuffs.

Therefore the allowed OTDS for 1995-2000 falls at €90.496 billion [67.159 (FBTA) + 1.063 (PSdm) + 11.129 (NPSdm) + 11.145 (BB)] instead of €110.305 billion according to Canada's simulations. And the 80% reduction gives an allowed OTDS of €18.099 billion at the end of the Doha Round implementation period instead of €22.061 billion.

II – The EU applied OTDS is considerably larger than that notified

The EU applied OTDS in the 1995-2000 period and up to now is considerably larger than the notifications already made to the WTO and to those it intends to make in the future. Indeed, on the one hand, the PS AMS has been larger as we have just acknowledged and, on the other hand, the rights to the Single Farm Payment (SFP) since 2005 are not fully decoupled, and neither are the BB payments. Finally the EU has hugely under-notified to the WTO its NPS AMS comparatively to those notified to the OECD.

Therefore the fact that the BB payments and the PS AMSs still existing continue to be transferred to the SFP does not change the applied OTDS. In any case the BB payments are part of the OTDS that the EU has agreed to reduce.

1°) The PS AMS supports have been on average of €60.973 billion in the base period 1995-2000, not of €48.425 billion as notified

The transfer of the part of the BB going to cereals, oilseeds and pulses used as feedstuffs has had the double effect to reduce the BB and to increase the PS AMSs of the animal products having consumed those feeds, and we get to an average actual PS AMS of €60.973 billion in the 1995-2000 period, instead of the notified €48.425 billion. The additional €12.548 billion

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

9 J. Berthelot, *Feed subsidies to EU and US exported poultry and pig meats*, Solidarité, January 10, 2006; Luis Portugal, *Methodology for the measurement of support and use in policy evaluation*, OECD, 2002.

10 J. Berthelot, *The US cannot reduce its agricultural supports in the Doha Round*, Solidarité, July 1st, 2009.

come from: 1) on the one hand, the PS AMSs of the animal products linked to the subsidies to the feed integrated into these products: milk (€4.078 billion), bovine meat (€2.630 billion), pig meat (€2.522 billion), poultry meat and eggs (€1.358 billion), and, 2) on the other hand, the PS AMS conferred to: oilseeds meals issued of the EU oilseeds (€800 million) and pulses (€525 million), and the subsidies to the fat content of milk (€428 million) and to the skimmed milk for casein (€207 million), that the EU did not notify[11].
All the same, in 2006-2007, the last notified year, the PS AMS has increased not only by at least the same subsidies of €12.548 billion (we had not the time to calculate their increase in the EU-27) but above all by the €30.672 billion of the SPS, minus the €9.743 billion of the BB direct payments transferred to the PS AMSs of animal products and corresponding to the feed subsidies already included in the above €12.548 billion, which leads to €20.929 billion. And we have to add the €2.290 billion of the SAPS (single area payment system) for 10 of the 12 new Member States of Eastern Europe.

2°) Why the SPS (single payment scheme) and the BB are coupled, hence subject to reduction

Any challenge at the WTO against the SPS is sure to put it in the amber box (AMS) of coupled subsidies, for the following reasons:
1) The SPS contradicts the condition b) of the AoA Annex 2 paragraph 6 which states: "*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*". Indeed, after the precedent of the WTO Appellate Body ruling on cotton of 3 March 2005 that the US fixed direct payments are not in the green box – hence are in the amber box, because not fully decoupled as farmers receiving them are prevented to grow fruits, vegetables and wild rice –, the EU SPS will be much more easily judged to be in the amber box. Because the EU maintains interdictions or caps on the production of many more products, even if the interdiction on fruits and vegetables which applies also now would disappear in 2010: permanent crops, potatoes other than for starch, milk and sugar beet (production quotas, up to 2015 for milk), wine (plantation rights up to 2016 at least), cotton and tobacco (production caps decided in 2004).

Many reports have underscored the flimsy status of the US fixed direct payments after the Appellate Body ruling of March 2005. Thus a report of the Congressional Research Service of 25 October 2006 found that "*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* [production flexibility contracts] *and DP* [direct payments] *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,*

[11] The assessment of the EU feedstuffs consumed by its different animal products has resulted from in-depth calculations in 2006: *The comprehensive dumping of the EU bovine meat from 1996 to2002*, Solidarité, 19 April 2006; *Feed subsidies to EU and US exported poultry and pig meats*, Solidarité, 16 January 2006; *The comprehensive dumping of the European Union's dairy produce from 1996 to 2002*, 31 January 2006. This dumping has been updated in 2010 for cereals in 2006 (*The dumping rate of the UE-27 exported cereals in 2006*, Solidarité, May 17, 2010) and for dairy products from 2006 to 2008 (*The EU dumping of dairy products on ex-SSSR countries*, Solidarité, 10 May 2010, http://www.solidarite.asso.fr/Papers-2010.html).

2000, 2001, and 2006. New legislation would be necessary to make these direct payments green box compliant"[12].

That is why the USDA's proposals of 31 January 2007 for the 2008 Farm Bill underscored the necessity to consolidate the "green box" status of direct payments by eliminating the interdiction to grow fruits, vegetables and wild rice[13]. However the Farm Bill adopted the 22 May 2008 has maintained, in its section 1107 on the flexibility of cultivation, the interdiction to grow fruits, vegetables and wild rice to get the fixed direct payments and also the contracyclical payments and the payments of the new programme ACRE which is an alternative to the contracyclical payments.

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*"[14].

2) The SPS contradicts condition e) stating that "*No production shall be required in order to receive such payments*". But the EU Council regulation n° 1782/2003 of 29 September 2003 states that farmers getting SPS must "*ensure that all agricultural land, especially land which is no longer used for production purposes, is maintained in good agricultural and environmental condition*". Annex 4 of the regulation specifies that this implies not only "*Avoiding the encroachment of unwanted vegetation on agricultural land*" but also "*Protection of permanent pasture*" and "*Minimum livestock stocking rates*", which is clearly a production.

3) The SPS remains coupled to agricultural area as farmers must show they have eligible hectares to get their payments, which contradicts the condition d) of the same paragraph 6: "*The amount of such payments in any given year shall not be related to, or based on, the factors of production employed in any year after the base period*".

4) The SPS is based on the amount of blue box subsidies of the 2000-02 years, a criterion not allowed by the condition a) of paragraph 6: "*Eligibility for such payments shall be determined by clearly-defined criteria such as income, status as a producer or landowner, factor use or production level in a defined and fixed base period*".

5) A large part of the SPS (and BB) payments are granted to feed (EU cereals, oilseeds meals and pulses), and more recently also to feedstocks used for agrofuels (vegetable oil, cereals and sugarbeet), which are both input subsidies placed in the amber box for developed countries (AoA article 6.2). Even if biodiesel is not an agricultural product for the WTO, contrary to bioethanol, the AoA Annex IV paragraph 4 on the AMS calculation states that "*Measures directed at agricultural processors shall be included to the extent that such measures benefit*

[12] Randy Schnepf and Jasper Womach, *Potential Challenges to U.S. Farm Subsidies in the WTO*, CRS Report for Congress, Updated April 26, 2007, p. 22, http://www.nationalaglawcenter.org/assets/crs/RL33697.pdf
[13] http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_1UH?contentidonly=true&contentid=2007/01/0019.xml
[14] David Blandford and David Orden, *United States: Shadow WTO Agricultural Domestic Support Notifications*, IFPRI, November 2008, http://www.ifpri.org/pubs/dp/ifpridp00821.asp

the producers of the basic agricultural products"[15], which is all the more obvious as the agrofuels boom has increased much the prices of vegetable oils and cereals.

6) The SPS payments are also coupled because they coexist with the BB payments for the same products. Indeed, according to the AoA article 6.5, the BB direct payments are granted "*under production-limiting programmes*" whilst the SPS allows to produce any product – otherwise it will not enjoy a full production flexibility –, including products whose production is forbidden or capped. This contradiction was already written in paragraph 28 of the preamble of the EU Council regulation n° 1782/2003 of 29 September 2003: "*(28) In order to leave farmers free to choose what to produce on their land, including products which are still under coupled support, thus increasing market orientation, the single payment should not be conditional on production of any specific product. However, in order to avoid distortions of competition some products should be excluded from production on eligible land*". And the article 51 of the same Regulation specifies that this exclusion concerns permanent crops, fruits and vegetables and potatoes other than for starch. And point 1) above has shown that several other productions are forbidden or capped. It is why Daugbjerg et A. Swinbank wonder: "*But can partially coupled SPS payments be split between the green and blue boxes; or does partial coupling imply that the whole of the partially coupled SPS payment should remain in the blue box (all the old arable payment in France for example)? And might concerns of this sort have prompted the Commission's quest for full decoupling in the Health Check* "[16].

7) Last, but not least, as the SPS payments cannot be assigned to a particular product, they are attibutable to any product of which they lower the sale price below its EU average production cost. Therefore all EU agricultural exports can be sued for dumping, even products which had never received any direct payment as fine wines and cheese, as long as their producers get SPS or SAPS payments (Single Area Payment Scheme for 10 of the EU-12 new Member States) for other productions, which applies practically to all EU-27 farms to-day.

S. Jean, T. Josling and D. Laborde underscore also the flimsiness of the SPS to be put in the green box: "*If direct payments were to be notified in the Blue Box, the total would far exceed the limit of 5.6 billion euro suggested in the Revised Draft. Up to 28 billion euro would have to be notified in the AMS and this would well exceed the limit of 20.1 billion euro suggested in the same draft. A fortiori, if all the direct payments were to be notified in the AMS, the limit of 20.1 billion euro would again be violated. Perhaps more relevant is the effect on the OTDS of any decision to place direct payments outside the Green Box. The OTDS limit of 16.5 billion euro suggested by the Draft would be less than the level of direct payments alone, leaving all other support to be cut or changed to Green Box compatible payments*"[17].

There are also other reasons why the BB payments are coupled, particularly because they did not limit production as the payments per hectare and cattle head have not been limited and

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[15] Toni Harmer, *Biofuels subsidies and the law of the WTO*, ICTSD, June 2009, http://ictsd.net/i/publications/50724/.

[16] Carsten Daugbjerg and Alan Swinbank, *Explaining the health check: the budget, WTO, and multifunctional policy paradigm revisited*, http://ageconsearch.umn.edu/bitstream/44818/2/3.2.1_Swinbank.pdf

[17] Sébastien Jean, Tim Josling and David Laborde, *Implications for the European Union of the May 2008 Draft Agricultural Modalities*, ICTSD, June 2008, http://ictsd.org/i/publications/12745/. Let us underline that the figures given by these authors correspond to the analysis of the Draft modalities of May 2008, in which the OTDS was to be reduced by 85% for the EU, not by 80% as in Draft modalities of December 2008.

have increased significantly for cereals, oilseeds and pulses and considerably for cattle after the CAP reform of March 1999.

3°) The subsidies of the non product-specific AMS have been hugely under-notified

The main under-notifications are on subsidies to farm investments, marketing and promotion, agricultural fuels and irrigation. All these under-notifications to the WTO are deducted from the EU notifications to OECD, except those to irrigation for which we have taken the notifications to the WTO irregularly put in the green box.

Indeed, according to the AoA, all these subsidies are in the amber box for the developed countries:
a) the article 6.2 states that "*investment subsidies which are generally available to agriculture in developing country Members… shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures*", which implies *a contrario* that they are not exempt for the developed countries;
b) the paragraph 4 of the Annex 4 states that "*Measures directed at agricultural processors shall be included to the extent that such measures benefit the producers of the basic agricultural products*";
c) the paragraph 13 of the Annex 3 states that "*Other non-exempt measures, including input subsidies and other measures such as marketing-cost reduction measures*";
d) as for the tax rebates on agricultural fuel, these input subsidies should be taken into account according to Article 1 of the Agreement on subsidies and countervailing measures: "*1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if: (a)(1) there is a financial contribution by a government or any public body within the territory of a Member… where… (ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits)*".

It results that the NPS AMS has been of at least €6.590 billion on average in the base period and of €11.951 billion on average in the two last notified years 2005-2006 and 2006-2007.

Table 1 – EU NPS AMS notified at the WTO, OECD and actual in 1995-00, 2005-2006 and 2006-2007

€ millions	1995-2000			2005-2006			2006-2007		
	notified		actual	notified		actual	notified		actual
	WTO	OECD	WTO	OECD	WTO	WTO	WTO	OECD	WTO
Agricultural insurance	101	167	167	635	366	635	715	377	715
Agricultural fuel	0	1933	1933	0	3620	3620	0	3134	3134
Agricultural loans	420	499	499	337	388	388	304	432	374
Farm investments	0**	1997	1997	0**	3326	3326	0**	4665	4665
Irrigation	1097*	-	1097	806*	207	806	1274*	336	1274
Marketing-promotion	902*	902	902	1620*	3040	3040	1687*	1925	1925
Total NPS AMS	521	5498	6590	1059	10947	11815	3980	10869	12087

Source: notifications to the WTO and OECD: PSE data base for EU-27, http://www.oecd.org/document/59/0,3343,en_2649_33797_39551355_1_1_1_1,00.html
* Aids wrongly notified in the blue box ** For conservative reasons, we have not taken in totality the post "Structural Adjustment Assistance provided through Investment Aids" which has reached on average €5.638 billion from 1995 to 2000 but we have limited ourselves to the farm investments subsidies notified to the OECD.

4°) The average applied OTDS in the 1995-2000 period and in 2006-07

Therefore the average applied OTDS in the base period 1995-00 has been of €78.743 billion (table 2) instead of €69.269 billion notified, even if the OTDS as such was not notified since this concept was only created by the WTO Framework Agreement of 31 July 2004, but only its four components have been notified separately. And the OTDS for 2006-2007, the last notified year, has been of €80.628 billion, which included: 1) €39.180 billion for the PS AMS, when adding to the notified €26.632 billion the gap of €12.548 billion between the notified and actual AMSs in the 1995-2000 period as explained in point II.1°); 2) €12.087 billion for the NPS AMS shown in table 1; 3) the notified PSdm; 4) €4.528 billion for the blue box because we have deducted from the notified €5.697 billion the €1.169 billion corresponding to 60% of subsidies to cereals and 100% of subsidies to pulses used as feedstuffs and therefore already included in the above €12.548 billion; 5) the SPS (single payment scheme) payments minus the €8.574 billion already transferred to the PS AMS, and the SAPS (single area payment scheme).

Table 2 – The EU average notified and actual OTDS from 1995 to 2000 and in 2006-2007

	1995-00		2006-07	
€ million	notified	actual	notified	actual
PS and total AMS	48425	60973	26632	39180
NPS *de minimis*	521	6590	1407	12087
PS *de minimis*	35	35	445	445
Blue box	20888	11145	5697	4528
SPS (for the EU-15)*	-	-	-	22098
SAPS (for the EU-10)	-	-	-	2290
Total	69869	78743	34181	80628

*SPS minus the €8.574 billion already transferred to the PS AMS
Source: notifications to the WTO and to OECD (PSE data base for the EU-27, http://www.oecd.org/document/59/0,3343,en_2649_33797_39551355_1_1_1_1,00.html)

A comparison of the €18.099 billion of the allowed OTDS at the end of the Doha Round implementation period with the actual OTDS of €80.628 billion in 2006-2007 shows that the EU should be worry if, by any chance, it were prosecuted by other WTO Members. But other points remain to be explained.

III – Comparison between the supports notified to the WTO and the CAP expenditures

The comparison between table 3 on the CAP expenditures and table 4 on the notifications to the WTO questions the huge gap between their amounts.

Table 3 – Evolution of the EU agricultural expenditures from 1992 to 2009

Millions d'€	1992	1995/00	2001	2002	2003	2004	2005	2006	2007	2008	2009
Red box: export refunds	9249	5906	3401	3432	3730	3384	3052	2489	1443	925	650
Amber box: markets interventions	22141	10894	6857	4642	6330	5089	5485	5630	4759	4971	6356
Direct payments: amber and blue boxes	-	20888	27430	29633	29692	29825	33701	17788	6677	6154	5778
" of which amber box			5748	4608	3912	5390	5617	431	997		
" " blue box			21682	24193	25780	24435	28084	13876	5697		
SPS+SAPS: alleged green box	-	-	-	-	-	-	1449	16263	30369	31414	32794
Rural development	2522	5555	4363	6098	7141	8816	9924	11328	10869	10527	8738
" in EAGGF-Guarantee			4363	4419	4706	6462	6827	7690	-	-	-
EU common agricultural budget	33912	43243	42083	44918	46977	47467	52698	53538	53694	53809	55214
" in EAGGF-Guarantee			42083	43214	44461	44761	48928	49865	42672	43465	
States aids to agriculture	17990	15613	13906	14494	14082	14107	16000	16289			
Total agricultural subsidies	51902	58856	53593	57708	58544	58867	66378	65895			

Sources: http://eur-lex.europa.eu/budget/www/index-fr.htm;
http://ec.europa.eu/comm/competition/state_aid/studies_reports/stat_tables.html. e: engagements pour 2009

Table 4 – The notified components of the EU OTDS from 1995-2000 to 2006-2007

€ million	1995/00	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07
Export refunds	**4804**	**2464**	**2854**	**2962**	**2633**	**1921**	**1462**
Non exempt direct payments	3789	4619	4396	4902	4774	1960	3004
Other PS subsidies	1787	2211	998	1018	846	1865	955
Sub-total of PS subsidies	**5576**	**6830**	**5394**	**5920**	**5620**	**3825**	**3959**
MPS of cereals (with rice)	7197	4056	4163	4653	4821	4349	4535
MPS of dairy produce	5845	5814	6088	6614	5300	5073	4490
MPS of sugar	5802	5720	5592	5602	6961	6665	6763
MPS of bovine meat	13155	9709	-	-	-	-	-
MPs of fruits and vegetables	9285	7262	7399	8102	8512	8515	8599
MPS of wine	1577	-	-	-	-	-	-
Sub-total of market price supports	**42859**	**32561**	**23242**	**24971**	**25594**	**24602**	**24386**
Notified PS de minimis	35	468	1003	901	955	192	445
Notified PS AMS (after dm)	**48425**	**39391**	**28598**	**30891**	**31214**	**28427**	**26632**
Subsidies to crop insurances	101	278	595	631	629	635	715
Subsidies on agric. loans interests	420	295	302	350	457	337	304
Other NPS subsidies	7	-	41	71	-	87	388
Notified NPS AMS	**528**	**573**	**938**	**1052**	**1087**	**1059**	**1407**
Notified blue box	**20888**	**23726**	**24727**	**24782**	**27237**	**13445**	**5697**
" of which to crops	16161	18144	16268	17074	17574	8263	2886
" to cattle and dairy	4727	5582	8459	7708	9663	5182	2811
Notified green box	**20335**	**20661**	**20404**	**22074**	**24391**	**40280**	**56530**
" subsidies to agric. investments	5638	5355	5265	6822	6691	7305	4534
" " marketing and promotion	836	1299	1162	1175	1369	1620	1687
" " agricultural infrastructures	871	1141	553	733	713	806	1274
Alleged new green box: SPA, SAPS	-	-	-	-	-	16671	30672
" " SPS	-	-	-	-	-	14734	28119
" " SAPS	-	-	-	-	1657	1937	22803
" sugar payments in EU-12	-	-	-	-	-	-	167
Red+amber+blue+green boxes	**95025**	**87283**	**78562**	**82662**	**87517**	**85324**	**93886**
Total CAP expenditures	**58856**	**53593**	**57708**	**58544**	**58867**	**66378**	**65895**
WTO notifications–CAP expenses	**36169**	**33690**	**20854**	**24118**	**28650**	**18946**	**27991**
Agricultural production value: APV	222577	246418	242955	267388	278696	271594	294022
Allowed PSdm (5% APV)	11129	12321	12148	13364	13935	13580	14701

Sources: notifications to the WTO

Three reasons explain that gap: the main one is the fact that the major part of the notified AMS does not correspond to actual subsidies and the two other secondary reasons are, first, that all State aids are not notified to the WTO and, second, that there is an interval between the calendars of the agricultural budget (EAGGF) and that of notifications to the WTO. Thus the fiscal year 2003 for example (from 16 October 2002 to 15 October 2003) corresponds more or less to the notifications made for the marketing year 2002-03 (which goes generally from 1st July to 30 June).

<u>1°) The bulk of the PS AMS is not made of subsidies but of fake market price supports</u>

Very few WTO Members and even trade economists have realized that the bulk of the PS AMS – and in fact of the total AMS since the NPS AMS has been notified as nil because under the *de minimis* level of 5% of the whole agricultural production value – does not correspond to actual subsidies, to public expenditures, but is a fake market price support (MPS) linked to administered prices ("intervention" prices in the EU) as a result of its absurd calculation modalities defined in the AoA. This MPS is indeed the gap between the administered price of the current year and the average world reference price of the 1986-88 period, a gap multiplied by the production of the current year which might benefit from this administered price. The largest part of the reduction of the applied total AMS of the EU, US and Japan AMS since 1995 is attributable to the elimination or reduction of their PS AMSs linked to administered prices.

How many WTO Members or even trade experts know that, in the 1995-00 period, the EU subsidy component of its average annual AMS have represented only €5.576 billion or 11.5% of the €48.425 billion notified? Incidentally the US proportion of the MPS in its notified AMS had been of 56.9%, or the subsidy component of 43.1%, in the same period.

The best example for the EU is the suppression the 1st July 2002 of the intervention price of bovine meat, which has allowed the EU to cut its total AMS by 24.5%, or €9.7 billion, from one day to the other, without any negative impact on the market price – which has increased by 7.4% in 2002, by 0.9% in 2003, by 5.2% in 2004 and by 8% in 2005 – nor on their income because the elimination of the intervention price has been more than compensated by the rise in the blue box direct payments – passed from €2.9 billion in 1999 to €6.0 billion in 2002 –, rise decided by the CAP reform of 1999.

Notifying these fake MPS has only blurred the negotiations and misled WTO Members. The more surprising is that these AMS supports continue to be presented by the EU as the most trade-distorting ones. What they are clearly distorting is the understanding of WTO Members. Indeed, in the Doha Round negotiations, the EU claims to have reduced largely its most trade-distorting supports whereas it has actually increased its subsidies, saying at the same time that, being fully decoupled, they have no trade-distorting effect.

Indeed the EU and US offers to cut their allowed AMS – during the Uruguay Round implementation period 1995-2000 – by respectively 70% and 60% at the end of the Doha Round implementation period rests mainly on the elimination of the remaining market price support (MPS). This was the main stake in the CAP "health check" of 2008.

Moreover several trade specialists have underscored the absurdity of this MPS component of the AMS:
1) William R. Cline stated in the USDA 2007 Agriculture Outlook Forum: "*The bound AMS contained about $6 billion of pure fiction, a remarkable concept called 'Market Price Support' (MPS). This accounting concept equals the difference between the domestic administered price and the 1986-88 world price. Yes, 1986-88, not today – already a clue that this concept is a fiction. There is no actual taxpayer money paid out for the MPS, it is pure accounting. Japan suddenly cut its reported AMS subsidies by billions of dollars in the late 1990s by eliminating its administered prices, with no change in agricultural protection whatsoever. So the first thing that should be done in Geneva is to redefine the Amber Box AMS to exclude the Market Price Support as part of the calculated bound level. Getting rid of the phony subsidy will make it easier to get rid of phony subsidy cuts*"[18].

2) For H. de Gorter and J. D. Cook: "*Another source of water in domestic support ceilings is the peculiar manner in which the AMS is calculated. In addition to trade-distorting, taxpayer-funded domestic subsidies, the AMS includes "market price support," defined as eligible production multiplied by the difference between the administered price and a fixed world*

[18] William R. Cline, *The Doha Round, Agriculture, and the Developing Countries*, USDA, 2007 Agriculture Outlook Forum, USDA 01-02/03/07

reference price. The product of that operation does not depict "domestic support" per se. Instead, it is a faulty measure of support provided at the border through tariffs, import quotas or export subsidies since and administered price cannot be sustained without supporting border measures. Reducing or even eliminating an official support price without altering border protection need not have any market impact. Japan is a case in point. There the official support price for rice was eliminated in 1997, and Japan's total AMS, as notified to the WTO, dropped by $20 billion. However, because the country made no changes in import controls, effective support remained the same. So a substantial portion of the water in Japan's total AMS of approximately $34 billion (table 2) can be attributed to an adjustment made to an administered price in order to "achieve" reduction commitments without actually reducing support. As discussed below, the redundancy of this "price-gap" component of the AMS must be recognized when assessing the impact of any given cuts"[19].

3) Tim Josling, the "father" of the OECD indicators of agricultural prices supports in the 1980's, has acknowledged the 1st December 2009, in a round table on the fringe of the WTO Ministerial conference in Geneva, that the MPS linked to an administered price was absurd and that it should be totally eliminated from the AMS calculation[20].

Thus the gap observed in table 4 between the sum of notifications to the WTO – of the red+amber+blue+green boxes – and the CAP total expenditures, State aides included, is very close to the MPS, particularly from 2002-2003 to 2006-2007 where the average MPS was of €24.559 billion and the average gap between the EU total notifications to the WTO and the CAP total expenditures were of €25.118 billion.

<u>2°) The two secondary reasons: the State aids and the differences of calendar</u>

The EU has to notify to the WTO not only the agricultural expenditures of the common budget but also the Member State aids, the major part of which represents the national part of the second pillar devoted to rural development and the rest the expenditures entirely financed by Member States for productive agriculture (excluding those of a social nature).

However a significant part of State aids are not notified to the EU Commission which, in turn, cannot notify them to the WTO. This is due first because Member States ignore or are reluctant to notify agricultural subsidies at the level of local authorities, and second, to the EU regulation on State aids *de minimis* which have not to be notified to the government. The EU has issued several regulations on State aids, including for agriculture, since 1998, the last one being the EC regulation No 1535/2007 of 20 December 2007 on *de minimis* State aids in the sector of agricultural production without requiring prior notification to the EU[21]. This *de minimis* aid may reach €7,500 per farm over 3 years within an annual limit of 0.75% of the whole agricultural production value, which has reached €381.212 billion in the EU-27 in 2008, implying a possible *de minimis* of €2.859 billion. But there is a ceiling per Member State, which, for example, is of €438 million for France. However, besides this *de minimis*

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[19] Harry de Gorter et J. Daniel Cook, *Domestic Support in Agriculture: The Struggle for Meaningful Disciplines*, 2005, http://siteresources.worldbank.org/INTRANETTRADE/Resources/239054-1126812419270/7.DomesticSupport_updated_on12Dec05.pdf

[20] *Professor Tim Josling acknowledges implicitly that the EU and US offers to cut their agricultural trade distorting subsidies in the Doha Round is impossible*, Solidarité's press release of December 2, 2009, http://www.solidarite.asso.fr/article.php3?id_article=176.

[21] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:337:0035:01:EN:HTML

State aid for agricultural production, the processing and marketing of agricultural products is treated as an industrial activity for *de minimis* State aid, with a ceiling per undertaking of €200,000 over 3 fiscal years and there is no national ceiling[22], so that the under-notification to the WTO could increase much. Admittedly this *de minimis* aid cannot be granted for aid conditional on being partly or entirely passed on to primary producers (farmers), but it is difficult to accredit that the higher competitiveness of the processing agro-industry would not benefit farmers at least indirectly, even if it is not a cooperative.

Finally some gaps between the EU agricultural expenditures and notifications to the WTO may be explained by the differences in the time-lags between the EU fiscal year – from 16 October to 15 October – and the notification year which is the marketing year going for most products from July to June. And, for example, we relate the fiscal year 2007 to the marketing year 2006-07 for the notification.

IV – The whole green box has trade-distorting effects on exports

The table 1 has only listed the subsidies generally notified in the non-product-specific (NPS) AMS but improperly notified by the EU in the traditional green box, which does not correspond to the allegedly fully decoupled direct payments (SPS and SAPS) that the EU has notified in the green box at the WTO.

In fact there is an old and lively debate[23] on the fact that all decoupled direct aids and the traditional green box have trade-distorting effects. For the first it is agreed that they increase production because they increase farmers' incomes, lower their risk aversion and foster their expectations of new subsidies. USDA as OECD have underscored many times the limited capacity of decoupled payments to avoid impacting production or prices.

On the other hand, all paragraphs of the AoA Annex 2 – which specify the basic and specific criteria to avoid the trade-distorting effects of subsidies, these criteria applying to all subsidies, beyond the green box alone, a concept which in fact is not used in the AoA, not more than those of amber and blue boxes – have been criticized. And this criticism begins by paragraph 1 which sets out the basic principle from which all the other paragraphs are derived: "*All policies for which exemption is claimed shall conform to the following basic criteria: (i) the support in question shall be provided through a publicly-funded government programme (including government revenue foregone) not involving transfers from consumers; and, (ii) the support in question shall not have the effect of providing price support to producers*".

First, it is clear that green box subsidies imply transfers from consumers because, from a macro-economic point of view, the distinction between a market price support – financed by consumers – and a subsidy – financed by taxpayers – is not convincing since most taxes end up being paid by consumers. This is obvious in the EU where more than ¾ of the Budget are eventually paid by consumers, given the weight of the value added tax (VAT) in fiscal

[22] http://www.defra.gov.uk/foodfarm/policy/farm/state-aid/types/deminimis.htm

[23] J. Berthelot, *The green box: a black box which hides the gold box*, Solidarité, December 2005; Grey, Clark, Shih and Associates, *Green box mythology: the decoupling fraud*, Dairy farmers of Canada, June 2006; R. Melendez-Ortiz et al. editors, *Agricultural subsidies in the WTO green box*, ICTSD, Cambridge University Press, December 2009, with many contributions, including of Tim Josling and Vincent Chatellier on the EU.

revenues but also of excise duties – on oil products, tobacco and alcoholic drinks – and even of incomes taxes which are generally passed along to consumers.

Second, all subsidies, including from the green box, bring a clear price support to producers: the drop in the price of the EU cereals, oilseeds and pulses used as feedstuffs, compensated by blue box subsidies first and then transferred in the alleged green box since 2005, have brought a huge price support to the producers of meats, eggs and milk. More generally the lower agricultural prices permitted by the compensatory direct payments to farmers have brought a large price support to the agri-food industries: the drop in the cost of their agricultural raw materials has increased their competitiveness on the domestic market as on the import and export levels, reducing their needs of export refunds and import duties.

The communication of 2 June 2005 of the G-20 to the WTO[24] has judged that "*The programmes of provision of general services, public stockholding for food security and domestic food aid (Annex 2: Paragraphs 2-4) have been generally found to be non- or minimally trade-distorting*" but that "*ii) In contrast, the programmes of direct payments to producers (Annex 2: Paragraphs 5-13), specially the way they are currently designed, have been found to influence trade and production and therefore could not be characterised as having "no, or at most minimal, trade-distorting effects or effects on production*"".

But such a distinction does not hold as Daryll Ray has well underlined: "*WTO has declared that such research and education related expenditures have a minimal effect on trade... In practice, these activities have a direct impact on price and trade, whether that be a set-aside program or yield enhancing research*"[25], and he has added: "*Clearly, neither the US nor the rest of the world would be facing today's low prices and failing small farms if the cumulative growth in agricultural productivity had not taken place*"[26]. And he enlarges his assessment in saying: "*Little attention has been paid to legacy investments in the infrastructure of agricultural areas. These legacy investments… all influence production decisions in one way or another and that influence continues year after year while the influence of direct payments are limited to a given year*"[27].

To conclude, the developed countries have done everything they could to avoid an in-depth debate on the green box in the Doha Round negotiations as reflected in the Draft modalities of 6 December 2008. They have succeeded in dismissing a discussion on the abuse they have made of the green box by proposing to adapt it more to the presumed needs of developing countries (DCs). Yet the DCs have all the less problems with the green box than they don't have any problem already with the amber box given the margin of manoeuvre for them in the AoA: with article 6.2 (subsidies to inputs and investments) and article 6.4 (PS *de minimis* of 10% of the production value of specific products plus NPS *de minimis* of 10% of the whole agricultural production value). This is attested by the fact that practically all DCs having AMS reduction commitments have a nil applied AMS because below the *de minimis* ceiling.

[24] G-20, *Review and Clarification of Green Box Criteria*, G20/DS/Greenbox FINAL 02/06/05

[25] Daryll Ray, *Is food too important to be left to WTO?* Agricultural Analysis Policy Center, University of Tennessee, November 29, 2002 (http://www.agpolicy.org).

[26] Daryll Ray, Daniel de la Torre Ugarte, Kelly J. Tiller, *US Agricultural Policy: Changing course to secure farmers livelihoods worldwide*, Agricultural Policy Analysis Center, University of Tennessee, September 2003.

[27] Daryll Ray, *What is an agricultural subsidy?*, Agricultural Policy Analysis Center, University of Tennessee, 26 mars 2004.

V –The necessity to enlarge and simplify the definition of export subsidies

The paragraph 6 of the Final Declaration of the Hong Kong WTO Ministerial Conference of 18 December 2005 has stated explicitly: " *We agree to ensure the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect to be completed by the end of 2013*". And the paragraph 11 added: "*Without prejudice to Members' current WTO rights and obligations, including those flowing from actions taken by the Dispute Settlement Body*".

Precisely the WTO Appellate Body has ruled several times since 2001 that dumping should be assessed by taking into account the domestic subsidies going to exported products. Notably the 3 December 2001, in the Dairy products of Canada case: "*The distinction between the domestic support and export subsidies disciplines in the Agreement on Agriculture would also be eroded if a WTO Member were entitled to use domestic support, without limit, to provide support for exports of agricultural products…. It would undermine the benefits intended to accrue through a WTO Member's export subsidy commitments*" (paragraph 91), and that "*The potential for WTO Members to export their agricultural production is preserved, provided that any export-destined sales by a producer at below the total cost of production are not financed by virtue of governmental action*" (paragraph 92).

The Apellate Body has confirmed the 20 December 2002, in the same case, that "*If governmental action in support of the domestic market could be applied to subsidize export sales, without respecting the commitments Members made to limit the level of export subsidies, the value of these commitments would be undermined. Article 9.1(c) addresses this possibility by bringing, in some circumstances, governmental action in the domestic market within the scope of the "export subsidies" disciplines of Article 3.3.*" (paragraph 148).

And the Appellate Body has confirmed the 3 March 2005, in the cotton case, that the effect of all US direct payments to its cotton producers – marketing loans, fixed direct payments, contracyclical payments – "*is significant price suppression within the meaning of Article 6.3(c) of the SCM Agreement*", in other words that these domestic subsidies have had a dumping effect. And Daniel Sumner concludes: "*As the first WTO dispute over domestic farm subsidy programs, the rulings in the upland cotton case have clarified the agreement provisions for current and future negotiations. The rulings also suggest that other subsidy policies of the United States and other WTO members may also be out of compliance, and that additional cases may be brought*"[28].

It is why Solidarité has produced in 2006 assessments of the "comprehensive dumping" of the EU exports of cereals, poultry meat, pig meat, bovine meat and dairy products in the 1995-2002 period, distributing the NPS AMS and the whole green box between the agricultural products according to their relative share in the value of the whole agricultural production[11]. These calculations have been updated recently for the dumping rate of EU cereals exports in 2006[11], and of the EU dairy exports on average from 2006 to 2008[11].

For the European Commission, as the SPS payments are fully decoupled, one cannot attribute them any longer to the specific products having received the BB direct payments in 2000-2002, even if the SPS payments are based on those subsidies. But one can retort, as we have

[28] Daniel A. Sumner, *U.S. Farm Policy and WTO Compliance*, http://aic.ucdavis.edu/research/farmbill07/aeibriefs/20070515_sumnerWTOfinal.pdf

seen, that, if the SPD payments cannot be attributed to specific products, we can attribute them to all products or to any product which is the same, and particularly to all exported products, including those which had never received BB direct payments in the past. Actually several analyses have shown that this so-called decoupling did not modify significantly the productions of farmers having received these BB payments, except in some less competitive areas but which do not represent a large percentage of the whole agricultural production.

For the present cereals producers of the EU-15, the SPS remains equal to the average €14.465 billion of BB direct payments received from 2000 to 2002, including the share of the set aside payments attributable to the average production of 211 Mt of cereals. Indeed these BB payments incorporated into the SPS remain fixed over time. As for the 12 new Member States (EU-12) they have produced 71 million tonnes (Mt) of cereals in 2006 and, as they are placed under the SAPS (single area payment scheme), they have received in 2006 a direct payment of 70 €/ha, which, multiplied by the 22.021 M ha of cereals in the EU-12, has represented €1.541 billion[29]. Therefore the direct payments to cereals have been of €16.006 billion in 2006 and those to the exported cereals of €1.642 billion (16.006 x 10.26%), given that 27.345 Mt or 10.26% of the cereals produced have been exported, of which 17.559 Mt of raw cereals and 9.786 Mt of cereals included in processed products.

In attributing also to the exported cereals the share of the NPS AMS and of the traditional green box corresponding to the share of cereals in the whole agricultural production value in 2006 (10.1%) and according to the share of the exported cereals (10.26%), the total subsidies to the exported cereals have reached €1.960 billion, within which the €206 million of export refunds have represented only 10.5% and the €1.754 billion of domestic subsidies 89.5%. As the value of the exported cereals has been of €3.583 billion – of which €2.301 billion for the 17.559 Mt of cereals exported raw, at 131 €/t on average, and €1.282 billion for the 9.786 Mt linked to the processed cereals – the average dumping rate has been of 54.7%, of which 53.8% for the raw cereals and 56.2% on average for the cereals processed in other products.

To conclude on export subsidies, it would be much more logic and simple to redefine them as all subsidies benefitting to exported products, directly and indirectly, including those to feedstuffs consumed by the exported animal products. The height of absurdity with the present WTO definition – where only the subsidies granted at the export level are taken into account – is reached with the US cotton exports as the percentage of the exported cotton has reached 73.5% in 2005-2006, 60.3% in 2006-2007, 71.1% in 2007-2008, 103.6% in 2008-2009 (owing to exports of stocks!) and 96.8% foreseen in February 2010 for 2009-2010. Indeed the export subsidies (STEP2) have accounted for only 4.7% of the $5.434 billion of total subsidies to cotton in 2005, 3.4% of the $4.788 billion in 2006 and 0.2% of the $3.186 billion in 2007[30]!

[29] In fact Malta and Slovenia had chosen to apply the SPS but, for lack of time, we have incorporated them in the SAPS, which does not make a significant difference as they are very small Member States.

[30] J. Berthelot, *13 short slips to understand the stakes in the agricultural negotiations of the Doha Round*, Solidarité, October 18-20, 2009, http://www.solidarite.asso.fr/Papers-2009.html

Conclusion

If this paper has acknowledged that the EU agricultural subsidies, of which direct payments, are incompatible with the WTO rules and the case law of its Dispute Settlement Body, this does not imply that these rules are fair and rational. They need a drastic reform given the global challenges to feed better at least 9 billion inhabitants in 2050 in the context of climate change. It is imperative that all countries may use the instruments of agricultural policy which have been so efficient in the developed countries before the WTO (1995), particularly in the EU and US, as the GATT had tolerated large exceptions for agricultural products. Indeed, there was no limit on the level and types of import protection, and if the US has largely used import quotas, the EU has taken a huge advantage from variable levies, the only instrument able to guarantee fixed entrance prices in local currency, what the *ad valorem* duties cannot ensure in the present context of a large volatility of agricultural prices in dollars, amplified by that of exchange rates. Unfortunately the GATT allowed also direct and indirect export subsidies, which should be clearly forbidden.

Rebuilding the AoA on food sovereignty would be the most beneficial for DCs farmers, the more so as rebuilding the CAP and Farm Bill on this principle would put an end to the Doha Round: the EU and US would lose their bargaining chip vis-à-vis DCs which would not be obliged to open their domestic markets to the EU and US exports of industrial products and services. Even the G-20's net exporters of agricultural products would benefit as the loss of their outlets in the EU would be more than compensated by the conquest of the EU market shares in the rest of the world, which would disappear after the elimination of its total dumping, including the domestic subsidies to its exported products.

With food sovereignty without dumping, the EU will no longer be limited in the level and types of domestic subsidies as long as it would practically no longer export. Indeed the survival of the EU agriculture is linked to its domestic market which has absorbed 75.3% of its food trade (including fish) on average from 2006 to 2009, of which 78.2% for exports (€227 billion against €63 billion extra-EU) and 72.6% for imports (€223.3 billion against €83.3 billion extra-EU). And, although the EU-27 has had an average net deficit in fish trade of €12.5 billion from 2006 to 2009, the percentage of internal food trade in total food trade less fish trade hardly changes: 76.6% for total trade, of which 77.8% for exports and 75.4% for imports.

Table 5 – Average annual intra and extra EU-27 food trade from 2006 to 2009

€ billion	Intra-EU	Extra-EU	Total	% intra-EU
Exports	227054	63174	290228	78.2%
Imports	223301	84267	307568	72.6%
Total	450355	147441	597796	75.3%

Source: Eurostat, SITC Rev.3, codes 0, 11, 22, 4

However extra-EU exports could resume in the future if the world prices become higher than its domestic prices without all subsidies, which is likely in the medium to long run.