



Why the WTO text on agriculture of 21 April 2011 could not show any progress

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There is absolutely nothing new on the substantial issues of the agricultural modalities in the report presented the 21 April 2011 by the Chairman of the Special Session of the Committee on Agriculture on the state of negotiations. Despite that all WTO Members had agreed to continue to negotiate on the basis of the Revised Draft Modalities on Agriculture (further on named Draft Modalities) presented the 6 December 2008 by the Chairman, the lack of progress during these last 28 months on the paragraphs that are bracketed or otherwise annotated is in itself full of lessons.

The first is that the agreement of all Members to continue to negotiate on the basis of these modalities was a purely token exercise, for the sake of not being finger pointed as a Member having prevented the continuation of the negotiations.

More basic reasons is that the Draft Modalities text is so complex and full of inconsistencies that there is hardly a single Member which could understand them, with the exception of the two most powerful Members, the United States (US) and the European Union (EU), and clearly of the WTO Secretariat.

In fact most concepts used in the Draft Modalities, and already in the Agreement on Agriculture (AoA) of 1994, are profoundly flawed and inconsistent: dumping, protection, support, subsidy, decoupled subsidy, green box subsidy, aggregate measurement of support (AMS), overall trade distorting domestic support (OTDS), product specific *de minimis* support, etc. Clearly these flaws and inconsistencies, hidden by the technicalities of many concepts, have permitted the EU and US to cheat systematically with the AoA rules in notifying their agricultural subsidies. And this with the *de facto* complicity of the WTO Secretariat, claiming that the WTO rules do not allow it to reveal to the other Members the irregular notifications made by some of them.

We will only mention four inconsistencies or misunderstandings here.

1) The first inconsistency is that the Draft Modalities claim to be based on the AoA rules that they want to modify, but they are not.

Thus the paragraph 1 writes: *"The base level for reductions in Overall Trade-Distorting Domestic Support (hereafter "Base OTDS") shall be the sum of: (a) the Final Bound Total AMS specified in Part IV of a Member's Schedule; plus (b) for developed country Members, 10 per cent of the average total value of agricultural production in the 1995-2000 base period (this being composed of 5 per cent of the average total value of production for product-specific and non-product-specific AMS respectively) [not underlined in the Draft], plus (c) the higher of average Blue Box payments as notified to the Committee on Agriculture, or 5 per cent of the average total value of agricultural production, in the 1995-2000 base*

period". This statement contradicts the AoA article 6.4 which 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 [not underlined in the AoA] during the relevant year*". In other words, as soon as a product-specific (PS) support reaches 5% of the production value of a given product, this product loses its PS *de minimis* (PSdm) exemption and the support is counted in the AMS – the so-called "amber box" of coupled supports subject to reductions –, 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.

The consequences of this cheating on the AoA rule for the PSdm support are felt when we combine it with the refusal of the developed Members to consider feedstuffs as inputs, because the feedstuffs subsidies of the developed countries have to be notified in the amber box, in accordance with article 6.2 of the AoA¹. But the EU has always notified all its direct payments to cereals, oilseeds and pulses in the blue box – that of fixed direct payments which were not subject to reductions, contrary to those of the amber box (AMS) –, including the share of them fed to animals. As these feed subsidies are conferring PS AMSs to all animal products having consumed the feed, this has increased the production value of products having PS AMSs and has reduced consequently the production value of products without PS AMSs. Thus the EU average production value of products with PS AMSs in the 1995-2000 base period – used for the Doha Round reductions of the AMS – rises from €122.9 billion to €201.3 billion so that, given the €222.6 billion of the average value of the whole agricultural production, the average value of products without PS AMS collapses to €21.3 billion and the allowed PSdm, which is 5% of that value, falls at €1.063 billion instead of €11.1 billion (5% of the whole agricultural production value). Correlatively the average blue box had been reduced to €11.1 billion instead of €20.9 billion because €9.7 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 this feed.

Therefore the allowed OTDS for 1995-2000 – which is the sum of the AMS at the end of the marketing year 2000 + the product-specific AMSs + the non product-specific AMS + the blue box (the average of their values in the 1995-2000 period for all three) – falls at €90.5 billion instead of €110.3 billion and the 80% reduction in OTDS foreseen by the Draft Modalities for the EU gives an allowed OTDS of €18.1 billion at the end of the Doha Round implementation period instead of €22.1 billion.

This is the first reason why the EU will not be able to cut by 80% its *authorized* OTDS – that of the base period 1995-2000 – because it is lower than the level it has *calculated*. The second reason is because the *applied* levels of its OTDS have been much higher than those notified to the WTO from 2000 to 2008 (last year notified), because of its massive under-notifications of the subsidies in the non product-specific AMS and of its box-shifting sleight of hand, notifying in the blue or green boxes of exempted subsidies many supports which should have been notified in the amber box (AMS), but we have not the space here to deal with that².

¹ "Agricultural input subsidies generally available to low-income or resource-poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures", implying that, to the contrary, input subsidies are not exempt from reductions for the developed countries, hence are in their AMS (amber box).

² Jacques Berthelot, *The CAP subsidies are incompatible with the WTO Agreement on agriculture*, Collectif Stratégies Alimentaires et Plate-Forme Souveraineté Alimentaire, Can the CAP manage without market

Similarly for the US, the average feed subsidies of \$4.4 billion during the 1995-2000 base period have conferred PS AMSs to all meats which had a production value of \$57.2 billion so that the production value of products with PS AMSs rises from \$49.7 billion to \$107 billion and, given an average agricultural production value of \$194.1 billion, the production value of products without PS AMSs falls to \$87.2 billion and the allowed PSdm, being 5% of that value, falls to \$4.4 billion. Therefore the US allowed OTDS in the base period falls from \$48.2 billion to \$42.9 billion and the allowed OTDS at the end of the implementation period, once cut by the 70% foreseen for the US by the Draft Modalities, will fall to \$12.9 billion instead of \$14.5 billion³.

2) Another fundamental misunderstanding for most WTO Members is the confusion made between the concepts of support and subsidy.

If a *subsidy* – a public expense financed by taxpayers – is a support, the reverse is not true: *support* is a broader concept encompassing not only subsidies but also '*market price supports*' through import protection which increases the gap between the domestic and world prices. For OECD, the WTO and free traders – for which "market access" is the first objective of the Doha Round –, import protection deprives consumers to buy their food (and other goods) at world prices to which they considered to be entitled so that they suffer a negative *consumer's surplus*, the gap between the domestic and world prices considered as a *distortion*. OECD considers this gap as a '*transfer from consumers to producers*', translated as a *consumers' subsidy to farmers*. This confusion between support and subsidy is disseminated worldwide by the OECD annual report on the agricultural policies of its Members which states that, for the 2007-2009 period, the total support to OECD agriculture has been of \$375 billion – the well known alleged \$1 billion a day in Western agricultural subsidies – omitting to say that 32% of that was not actual subsidies but market price supports.

Considering the gap between the world and domestic prices as a *distortion* is contradictory with the fact to denounce the massive dumping of products exported by Western countries, particularly by the EU and US, knowing that the US is price maker for all grains – cereals, oilseeds, pulses and cotton – and indirectly for meats fed from these cereals, oilseeds and pulses. Given that the agricultural prices of most staple food are highly dumped prices, i.e. are well below the prices which would prevail without subsidies, how can the OECD and free traders consider these world prices as the *true* prices and the protection against them as a distortion? Besides the OECD concept of 'market price support' implies that the farmers are selling to consumers, which happens for less than 10% of their products at least in the EU and US, the bulk being sold to agri-food industries and supermarkets which are pocketing the *surplus*, depriving the farmers of a significant share of the higher prices due to the import protection.

But, at least, the market price support (MPS) considered by OECD has an understandable economic meaning, which is not at all the case for the fake MPS considered by the AoA.

Very few WTO Members and even trade economists have realized that the bulk of the EU product-specific (PS) AMS – and in fact of the total AMS, which is the sum of the PS AMSs

regulation after 2013? 31 March and 1st April 2010, http://www.solidarite.asso.fr/Papers-2010.html?debut_documents_joints=10#pagination_documents_joints

³ Jacques Berthelot, *The US cannot reduce its agricultural supports in the Doha Round*, Solidarité, 1st August 2009, http://www.solidarite.asso.fr/Papers-2009.html?debut_documents_joints=10#pagination_documents_joints

and the non product-specific (NPS) AMS – does not correspond to actual subsidies, to public expenditures, but is a fake 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 years – the base period considered for the reductions commitments of the Uruguay Round –, a gap multiplied by the production of the current year which might benefit from this administered price. Indeed the largest part of the reduction of the applied total AMS of the EU, US and Japan 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 1995-2000 period, the EU subsidy component of its average annual AMS have represented only €5.6 billion or 11.5% of the €48.4 billion notified? Incidentally the US proportion of the MPS in its notified AMS has been of 56.9%, and 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, nor on their income because the elimination of the intervention price has been more than offset by the rise in the blue box direct payments decided by the CAP reform of 1999, from €2.9 billion in 1999 to €6.0 billion in 2002. This is a good example of the systematic box shifting which has been practiced by the EU up to now.

Notifying these fake MPS has only blurred the negotiations and misled WTO Members. The more surprising is that these AMS supports continue to be viewed 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.

3) The third largest misunderstanding is the distinction between the *coupled* subsidies and the alleged *decoupled* or *non trade-distorting* subsidies, particularly in the EU

The AoA, largely elaborated between the US and the EU, has established a hierarchy between different types of agricultural supports: those considered as *coupled* and *trade-distorting* and those qualified of *decoupled* and *non trade-distorting*. The first include the export subsidies, the market price supports linked to administered prices and the domestic subsidies linked to the present level of production or prices, or on inputs and investments: they were put in the *amber box* or AMS and subjected to reductions during the Uruguay Round implementation period (1995-2000). The subsidies considered fully decoupled or non trade-distorting, because not linked to an obligation to produce, were put in the *green box* and exempt from reduction. However a third category of subsidies were considered as partially coupled and put in the *blue box*: although not linked to the present level of production or prices and supposed to remain fixed over time, they are granted only if there is an actual production of the benefitting products.

This differentiation of agricultural subsidies according to their alleged level of trade-distortion is clearly deceiving: any subsidy, even when granted to protect the environment and put in the green box, is increasing the competitiveness of the benefitting product and hence has a dumping effect when it is exported and a protective effect vis-à-vis imported products.

Given this hierarchy of subsidies, the US and even more the EU have been changing their agricultural policies several times since the Uruguay Round to shift their supports from the amber box to the blue box and then to the green box or directly from the amber box to the green box. And it is because the article 13 of the AoA – the so-called "peace clause" – had foreseen that the blue box payments could be challenged at the WTO from January 2003 on that the EU has changed the CAP that year to transfer most blue box payments to the new Single Payment Scheme (SPS) – and the Single Area Payment Scheme (SAPS) for the new Member States of Eastern Europe – supposed to be fully decoupled. And indeed the EU has notified in the green box these allegedly fully decoupled subsidies at €1.657 billion for 2004-05, €16.671 billion for 2005-06, €32.952 billion for 2006-07 and €34.528 billion for 2007-08 (last notified year).

Yet any challenge at the WTO against the SPS is sure to win and 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... shall not be related to... the type or volume of production... 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 SPS will be more easily ruled to be in the amber box because the EU maintains interdictions or caps on the production of many more products: fruits and vegetables also, production quotas for milk and sugar beet, plantation rights for wine, production caps on cotton and tobacco.

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... land which is no longer used for production purposes, is maintained in good agricultural and environmental condition*", including "*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): "*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 2000-2002 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- As we have shown, a large part of the SPS payments are granted to feed (cereals, oilseeds meals and pulses), and more recently also to feedstocks used for agrofuels (vegetable oil, cereals and sugarbeet), all input subsidies which are in the amber box for developed countries.

6- The SPS is coupled because it coexists with blue box payments for the same products. Indeed these payments are granted "*under production-limiting programmes*" whilst the SPS should allow to produce any product, including those whose production is forbidden or capped.

7- Last, but not least, as the SPS payments cannot be assigned to a particular product, they are attributable to any product of which they lower the price below its EU average production cost. Therefore all EU agricultural exports can be sued for dumping, as long as their producers get SPS or SAPS payments, which applies practically to all EU-27 farms to-day.

4) The US has cheated in notifying its market price supports to dairy products for 2008

In order to lower its notified AMS for dairy products, which is mainly a fake market price support (MPS) notified at \$4.495 billion on average in the 1995-2000 base period and at \$4.942 billion on average for 2006 and 2007, the 2008 Farm Bill has changed to way to notify it which has led to a notification of \$2.925 billion for 2008, reducing it by more than \$2 billion over the two previous years. Instead of continuing to compute it for the whole milk production, the 2008 Farm Bill has decided to compute it for the three main dairy products: butter, nonfat dry milk and cheddar cheese.

Yet, despite the applause of the unanimity of US experts, this calculus does not comply with the AoA: if you change the rule now 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 1986-1988. 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 AMS for the base period with a dairy MPS calculated on the basis of another methodology. Therefore, given the levels of the support prices and production in the base period 1986-1988, 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 1986-1988. Therefore either the US will rectify this cheated notification for 2008 and the following years or the WTO will condemn it, if prosecuted, to lower its allowed OTDS in the base period from \$42.9 billion to \$39.8 billion and the allowed OTDS at the end of the implementation period, once cut by the 70% foreseen for the US by the Draft Modalities, will fall to \$9.3 billion – after the previous adjustment in point 1) above – instead of \$14.5 billion.

Conclusion

We have not the space here to show the massive under-notifications made by the US and EU on their non product-specific subsidies such as agricultural insurance, loans, irrigation, fuel, agrofuels and investments.

Let us just conclude that the Doha Round cannot be signed in 2011 or in any future year on the basis of the Draft modalities on agriculture of 6 December 2008 because the present EU and US domestic negotiations on their next CAP and Farm Bill have never alluded to the implicit commitments they have taken in considering the Draft modalities of 6 December 2008 as a good base to continue the Doha Round negotiations.

At best, the EU and U.S. claim that their trade-distorting farm subsidies comply with their Uruguay Round commitments – which is not true because of their under-notifications and boxes-shifting sleight of hand –, but they have never hinted in their domestic debates at their commitments to cut by 54% on average their agricultural tariffs and by 70% (U.S.) and 80% (EU) their overall trade distorting domestic support (OTDS) allowed during the 1995-2000 base period. It is also clear that the US will not sign any Doha Round before its next Farm Bill would be agreed in late 2012 and for this the cotton subsidies remain a stumbling block. If the high prices of grains should continue to reduce its trade-distorting subsidies, they have considerably increased the agricultural insurance subsidies, and the large fixed direct payments are still there.

Consequently the developing countries should be well advised to stop negotiating on the basis of the Draft Modalities of 6 December 2008. Instead, they should demand to rebuild the AoA on the food sovereignty principle: the right of any country to devise its agricultural policies as it fits the best, given its specific context, as long as it does not export any product having benefitted from any type of subsidies. This encompasses the right to implement an efficient import protection based on variable levies which would secure fixed entrance prices in national currency, shielding the domestic market from the high volatility of world prices in dollars, accentuated by that of exchange rates.