David Orden, David Blandford and Tim Josling,
WTO disciplines on agricultural support, Cambridge University Press, 2011
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OUTLINE

The US Ambassador to the WTO, Michael Punke, told to the Senate the 12 September 2011: "*The World Trade Organization (WTO) stands today as the embodiment of the work of generations of Americans in bipartisan support of a rules-based system of international trade… What we are doing today in the Doha negotiations is not working… After ten years, we're deadlocked… To meet its potential, to meet American expectations, the WTO must also be effective in its historical role as a forum for negotiations to open markets… Jobs for our farmers and ranchers, jobs for our workers and entrepreneurs*"[1]. The US Chief agriculture negotiator added: "*We are being asked to make significant concessions in the first two pillars*

[1] http://finance.senate.gov/imo/media/doc/Michael%20Punke%20Testimony.pdf

of the agricultural negotiations – domestic support and export competition. To balance these concessions, a final agreement would have to provide new market access for U.S. products under the third pillar of an agricultural agreement"[2]. The same day the EU Commissioner for trade, Karel de Gucht, has echoed their statements in an address to the European Parliament: "*In the spring it became clear that a full Doha outcome cannot be reached in 2011 due to a political impasse in the negotiations on industrial tariffs. The cause for this is fundamentally divergent expectations regarding the reciprocity of commitments that developed and emerging countries should take in opening their markets*"[3].

However their disappointment is straightforward to explain: their developing countries' colleagues have well understood that the EU and US are not playing by the rules in their agricultural policies, their main bargaining chip in the Doha negotiations. The present paper will confirm their view, contrary to the defense of the EU and US positions taken by David Orden, David Blandford and Tim Josling, the three editors of the new book "*WTO disciplines on agricultural support. Seeking a Fair Basis for Trade*" that this paper will analyze, focusing essentially on the EU and US domestic supports.

I – Overview of some agricultural trade concepts and of the reviewed book

1) Overview of the main agricultural trade concepts

The 'overall trade distorting domestic support' (OTDS) is a concept decided in the WTO Framework Agreement of 31 July 2004. It is the sum of:
- the Final Bound Total AMS (FBTAMS) – AMS for "Aggregate Measurement of Support", also called the 'amber box' of trade-distorting domestic supports –, that is the current total AMS (CTAMS) in 2000, at the end of the 1995-2000 period of implementation of the Uruguay Round commitments, but which will also be the base period for the allowed OTDS to be reduced during the Doha Round implementation period;
- and of the average of three other components in the 1995-2000 period: the allowed product-specific *de minimis* (PSdm) + the allowed non-product-specific *de minimis* (NPSdm) + the allowed blue box (BB).

The current total AMS (CTAMS) is the addition of the product-specific AMS – i.e. of coupled supports to particular products – and of the non-product-specific AMS (NPS AMS) for the subsidies other than those granted to a single product.

PSdm and NPSdm are also amber box supports but which are not included in the current total AMS (CTAMS) as long as they remain below a ceiling of 5% of the production value of a specific product for the PSdm and of the whole agricultural production value (VOP) for the NPSdm, the corresponding figures being 10% for the developing countries (DCs).

The 'blue box' (BB) contains the subsidies not linked to the present level of prices and production, which level should be limited, but they are granted only if there is an actual production of the benefitting products.

The 'green box' contains all the subsidies allegedly non trade-distorting, such as defined in the Annex 2 of the WTO Agreement on Agriculture (AoA) signed the 15 April 1994 in

[2] http://finance.senate.gov/imo/media/doc/Islam%20A%20Siddiqui%20Testimony1.pdf
[3] http://ec.europa.eu/trade/creating-opportunities/eu-and-wto/doha/

Marrakech together with the other Agreements having finalized the Uruguay Round and created the WTO. Consequently these subsidies can increase without any limit.

In the Revised Draft of agricultural modalities of 6 December 2008 (called further on the Doha Draft) prepared by the Chair of the WTO Special agricultural Committee negotiating the Doha Round – and on the basis of which all Members have agreed to continue the negotiations – it was proposed:
- that the applied OTDS should be cut by 80% of the allowed OTDS at the end of the Doha Round implementation period for the EU, and by 70% for the US;
- that the allowed FBTAMS in 2000 should be cut by 70% for the EU and by 60% for the US over the same period. The Draft has also capped the PS AMSs at their average level of the 1995-2000 period for the EU and of the 1995-2004 period for the US;
- that the PSdm and NPSdm should be cut by 50% in all developed countries at the beginning of the implementation period;
- that the BB should also be cut by 50%, that is capped at 2.5% of the whole agricultural production value (VOP) in the developed countries; and that the BB to specific products should also be capped at their average level in the 1995-2000 period for the developed countries other than for the US which would have a higher cap in a way too complex to be explained here. Besides a new type of BB has been created which would in fact accommodate the US countercyclical payments, which have been notified up to now in the NPS AMS.

To clarify our analysis, it is necessary to make a clear distinction between the concepts of *support* and *subsidy*, although OECD and free-traders prefer to blur it. If a subsidy – a public expense financed by taxpayers – is a support, the reverse is not true: support is a broader concept encompassing 'market price supports' (MPS) through import protection or export subsidies which increase the gap between domestic and world prices. We will show that the MPS definition in the AoA is a meaningless concept having permitted to the EU and US to show a reduction of their agricultural support when increasing their actual subsidies.

For OECD, free traders and the WTO for which 'market access' is the first objective of the Doha Round, import protection deprives consumers to buy their food (and other goods) at the world prices to which they consider to be entitled, so that they suffer a negative *consumer's surplus*, the gap between 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.

The AoA, largely elaborated between the US and the EU, has established a hierarchy between different types of agricultural supports: those considered *coupled* and *trade-distorting* and those allegedly *decoupled* and *non- trade-distorting*. The first include the export subsidies, the market price supports (MPS) 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 subject 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 exempted from reduction. However the partially decoupled subsidies of the *blue box*, which are not subject to reduction in the AoA, have been put in the new concept of OTDS by the Framework Agreement of 31 July 2004 so that they would be subject to reductions if the Doha Round is concluded on the lines of the Doha Draft.

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.

2) Overview of the reviewed book

The book edited in 2011 by David Orden, David Blandford and Tim Josling on "*WTO disciplines on agricultural support. Seeking a Fair Basis for Trade*" tries to justify the present rules of the AoA and the new ones proposed in the Doha Draft, intending to reach "*the long-term objective… to provide for substantial progressive reductions in agricultural support and protection sustained over an agreed period of time, resulting in correcting and preventing restrictions and distortions in world agricultural markets*", as stated in the AoA introduction.

However such a claim is not documented in the book which is permanently beating about the bush, avoiding to call a spade a spade, such as:
"*However, the Agreement contains enough ambiguity and allows sufficient flexibility to raise questions about the extent to which it could add as an effective incentive for reform or a constraint on policy choice. As we demonstrate, the Agreement has provided considerable latitude for countries to adopt diverse support policies and to worry about the impact on various notified categories and their compliance with the WTO rules and commitments only at a later stage*"…in other words…never.
"*From an economic perspective the WTO's MPS (market price support) measure suffers from four deficiencies…and the notified MPS, despite its name, has not been a good indicator of economic market price support… The calculation of the MPS component of AMS (and EMS) from world prices of more than twenty years ago illustrates the weakness of these measures as a meaningful reflection of the actual level of support given by administered prices… Ambiguity in measurement of the MPS is going to be difficult to resolve*".
"*The difficulties faced in establishing and enforcing firm rules are apparent from the complexity of the Agreement, delays in notifications, the limited review function performed by the Committee on Agriculture, and arguments raised in several dispute settlement cases… and… in finalizing new, and even more complex, Doha rules*".
"*Overall there has been only limited capacity to demonstrate noncompliance given the porous disciplines that the Agreement enshrines*".
"*But the nominal data and unilateral compliance assessments fail to bring out some of the comparative information conveyed by the notifications*".
"*Notification of those economic support measures has been slow and inconsistent*".
"*With a porous International Agreement on Agriculture, domestic support policies remain heterogeneous across the countries in our analysis*".
"*Each country exercises substantial discretion in the measures it notifies to the WTO and in the measurement of levels of support*".
"*A troubling characteristic, as we have shown, is that countries often calculate key measurements of domestic support in different ways. Countries exercise substantial discretion in the types of policies they report, their placement in categories, and methods for calculating support levels*".

In other words, the die is cast and the authors recognize implicitly that the AoA has failed because of its complexity and even of the absurdity of the rules on market price support (MPS), all things which has allowed WTO Members, particularly the EU and US, to circumvent their commitments, and they add that the proposed Doha rules are even more complex. However, as the authors are the most famous experts on agricultural trade issues, they conclude by an act of faith: "*An agreement in line with the Doha draft modalities that emerge by the end of 2008 (and remain the focus of negotiations) would significantly reduce the future scope for trade-distorting domestic support by developed countries that have provided the highest level of support*".

What is worrying about these authors – Tim Josling and Alan Swinbank for the CAP and David Blandford and David Orden for the Farm Bill – is their excessive precautionary stance, their unwillingness to take a clear position which would have resulted from a comprehensive in-depth analysis of the pros and cons of the compatibility of the EU and US notifications with the present AoA rules and the Doha Draft rules.

We will show that the identification made by the authors of the inconsistency of many AoA rules has remained cosmetic as they have taken for granted the Members' notifications, particularly of the EU and US, on which the present paper will concentrate. Rather than denouncing openly the EU and US cheated notifications, the authors have tried to explain the specific interpretation the EU and US have made of the AoA rules – their *substantial discretion* as they say –, *porous rules* as they say which are prone to contradictory or absurd interpretations.

It is true that the technicalities of the concepts – including more general ones as dumping, protection, trade-distorting subsidy, decoupled subsidy – have permitted the EU and US to cheat systematically with the AoA rules, and this with the *de facto* complicity of the WTO Secretariat, claiming that the WTO does not allow it to reveal to the other Members the irregular notifications made by some of them.

II – Tim Josling and Alan Swinbank on the EU Common agricultural policy (CAP)

For Tim Josling and Alan Swinbank, "*The EU has never had any difficulty staying within its scheduled limits, in part because of the high Base Total AMS it recorded and in part as a result of the steady progress of reform, moving away from price support toward direct payments*." Such a statement is too accommodating with the EU and does not attest a scientific behaviour.

Following the WTO Secretariat, the authors endorse the simulations of domestic supports made by Canada in May 2006 on behalf of the EU, US and Japan. Their table 3.7 (page 90) shows that the EU authorized OTDS in the base period 1995-2000 – used for the Doha Round reductions of domestic supports – was €110.305 billion: €67.159 billion for the Final Bound Total AMS (FBTAMS) + €11.129 billion for the product-specific *de minimis* (PSdm) + €11.129 billion for the non-product-specific *de minimis* (NPSdm) + €20.888 for the blue box (BB), so that the OTDS reduction by 80% at the end of the Doha Round implementation period would lower it to €22.061 billion.

However this calculation contradicts the AoA rules on four points: the allowed product specific *de minimis* (PSdm) is not 5% of the value of the whole agricultural production; the feed subsidies have conferred PS AMSs to all animal products so that the blue box was lower and the CTAMS higher; and the NPS AMS has also been larger than that notified.

1) The product-specific *de minimis* is not 5% of the whole agricultural production value

As Josling and Swinbank's book reproduces in annexes A and B the texts of the AoA and the Doha Draft, we can verify the explicit contradiction in the definition of the PSdm between the two texts. The first paragraph of the Draft (page 454 of the book) reads: "*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)*". This is a lie, acknowledged in paragraph 30 of the Draft (page 460 of the book): "*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", which can also be read in the AoA text (page 437). In other words, as soon as a PS AMS 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 (CTAMS) and the production value of that product is added to the production value of all products with PS AMSs.

The clear difference between the definitions of PSdm and NPSdm is acknowledged by many experts, including the three editors (page 6). Lars Brink, who has written extensively on the issue[4], stresses it in the second chapter of the book (page 31). The distinction is acknowledged by H. de Gorter and J.D. Cook: "*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*"[5], and by Ivan Roberts[6], among many other experts. Besides, let us keep in mind that the Doha Draft is only a set of proposals and that the only legal rules remain those of the AoA.

The apparent reason why the Doha Draft has proposed to change the rule on PSdm is that several Members have not been able or willing to notify the production value of each product having a calculated PS AMS. This has been particularly the case of Japan up to 2009 (last year notified) and of the EU up to 1999-2000 (the production value has only appeared since 2000-01). That is why paragraph 12 of the Draft has proposed the new requirement 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 OTDS reductions have used 5% of the whole agricultural production value (VOP) for PSdm as for NPSdm. The WTO should have asked them to rectify their notifications by adding the production value of

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[4] Lars Brink, *WTO Constraints on U.S. and EU Domestic Support in Agriculture: The October 2005 Proposals*, The Estey Centre Journal of International Law and Trade Policy, Volume 7 Number 1 2006/p. 96-115; *Classifying, Measuring and Analyzing WTO Domestic Support in Agriculture: Some Conceptual Distinctions*, CATPRN Working Paper 2007-2, April 2007, http://www.uoguelph.ca/catprn/PDF/Working%20Paper%202007-2.pdf; *WTO constraints on domestic support in agriculture: Past and future*, Canadian Journal of Agricultural Economics, 57(1): 1-21, 2009.

[5] 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

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

each product, which would not have been difficult since Solidarité has done it for the EU[7]. It has thus found that the production value of all products notified with a PS AMS was on average €122.922 billion in the base period so that the production value of products without PS AMSs was €99.655 billion and the allowed PSdm, being 5% of that value, €4.983 billion.

However the impact of a correct assessment of the PSdm can only be understood once we take into account the under-notification of the EU (and US) input subsidies on feedstuffs, and on feedstock used for biofuels in the recent years.

2) The feed subsidies are conferring PS AMSs to all animal products

The developed countries have refused to notify in the AMS their huge subsidies to COPs (cereals, oilseeds cakes and pulses) used as feed although they have notified some minor ones: those to dried fodder for the EU (for example for €313 million in 1999-2000 and €223 million in 2004-05) and to grazing fees on public lands for the US. These notifications attest clearly that the EU and US are aware that feed subsidies are input subsidies to be notified in the AMS, in accordance with the AoA Article 6.2: "*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*". This article implies clearly that developed countries' farmers are not exempt[8]. Besides, paragraph 13 of the AoA Annex 3 confirms: "*Other non-exempt policies, including input subsidies*". Even if the authors state in their concluding chapter that "*Input subsidies could also be reported more uniformly among countries*", they preferred to ignore that feed subsidies are by far the largest of them.

It is only in paragraph 5 of the AoA article 6 that the blue box direct-payments are exempted from reduction commitments. And paragraph 5 must be interpreted taking into account the general provisions of paragraph 1 of article 6: "*The domestic support reduction commitments of each Member contained in Part IV of its Schedule shall apply to all of its domestic support measures in favour of agricultural producers with the exception of domestic measures which are not subject to reduction in terms of the criteria set out in this Article and in Annex 2 to this Agreement*". Now, the WTO Appellate Body has stated in the *US – Gasoline* case: "*One of the corollaries of the 'general rule of interpretation' in the Vienna Convention is that interpretation must give meaning and effect to all the terms of a treaty. An interpreter is not free to adopt a reading that would result in reducing whole clauses or paragraphs of a treaty to redundancy or inutility*"[9]. Therefore the exemption of the AoA Article 6 paragraph 5 on the blue box cannot render useless the previous provision of paragraph 2 on input subsidies. So that a distinction should be made in domestic subsidies to COPs: only the share of them not used as feed should have been notified in the blue box, and then in the SPS (Single Payment Scheme of allegedly fully decoupled direct payments) from 2005-06 on, whereas the remaining part should have been notified as input subsidies in the PS AMSs of animal products having consumed the feed COPs.

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[7] J. 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://www.solidarite.asso.fr/IMG/pdf/Evaluation_des_soutiens_internes_de_l_UE_distorsifs_des_echanges.pdf

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

[9] WTO Report of the Appellate Body, *United States - Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, 29 April 1996 (96-1597).

The US Congressional Research Service has acknowledged that "*program commodities such as corn are feed inputs for livestock*"[4]. The EU Commission treats feedstuffs as inputs in its periodic analysis of the evolution of agricultural prices and inputs prices, for example: "*For the first time in this year, the price index for goods and services currently consumed in agriculture…showed a slight increase (+0.2%) in August 2005 compared to the same month of the previous year. This small rate of increase was mainly due to the evolution of Animal feedingstuffs prices (-7.1%)*"[10]. For OECD, "*Input subsidies are typically explicit or implicit payments reducing the price paid by farmers for variable inputs (for example… feed)*"[11]. And the OECD manual on Economic Accounts for Agriculture OECD puts in 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*"[12].

However OECD is incoherent in ignoring the feed subsidies to animal products in its PSE (producer support estimate) methodology – a concept devised by Tim Josling himself in the 1970s –, substituting to feed subsidies the tortuous concept of "*excess feed cost*" (EFC): "*a component accounting for the price transfers that go from livestock producers to feed producers as a result of policies which alter the domestic market price for feed crops, an important input for the former group. The Price Levies and Excess Feed Cost are accounted for in the MPS* [market price support] *in order to exclude from the value of price transfers to producers contributions that producers make to the transfers*"[13]. In other words OECD considers that the livestock producers are penalized as they have to pay their feedstuffs at the domestic prices, higher than the world prices, received by the growers of COPs: "*The EFC adjustment reduces the value of MPS for livestock commodities. Indeed this occurs because livestock producers pay higher prices for feed crops as a result of price support for these commodities*". As about half of the EU cereals used as feed are self-produced and consumed on the farms of the livestock producers, according to OECD, these farmers, as cereals growers, are exploiting themselves as livestock producers![14]

Yet the world prices of COPs are the most dumped products, particularly in the US which are price makers for them but also in the EU which has highly reduced the intervention prices of its cereals[15] for which it is usually a net exporter, compensating this drop by direct payments. Therefore it is highly questionable to speak of an *excess feed cost* (EFC) since, in recognizing these highly dumped prices as the world reference prices, OECD is eventually promoting dumping. Furthermore, for Catherine Morredu of OECD "*The excess feed cost due to the price support of cereals is deducted from the price support of animal products. Therefore it is not possible to take it into account a second time in input subsidies*". Yet, the amount of the fixed direct payments to COPs has remained almost stable over time, independent from the gap between world and domestic prices, so that the argument of double counting does not hold: in the OECD data base on the EU PSE the excess feed cost has dropped from €2.742 billion in 1994 to €578 million in 1995 and €809 million in 1996 before rising again to €2.813

[10] Eurostat, *EU agricultural price trends*, Statistics in focus, August 2005.
[11] OECD, *Methodology for the measurement of support and use in policy evaluation*, 2002.
[12] OECD, *Explanatory Notes, Economic Accounts for Agriculture*.
[13] OECD, PSE Manual, 2010, p. 57-58,
http://www.oecd.org/document/43/0,3343,fr_2649_33773_44253755_1_1_1_1,00.html
[14] FEFAC, *Feed and food, statistical yearbook 2004*.
[15] Incidentally Tim Josling and Alan Swinbank have made a slip of the pen when they write: "*The Agenda 2000 reforms consolidated payments for cereals and oilseeds into a single payment to eligible farmers. Intervention prices were reduced by 29 percent for cereals*": no the Agenda 2000 CAP reform has cut the intervention price by 15%, after a 35% cut from 1993-94 to 1995-96 in the 1992 CAP reform.

billion in 1997, according to the movements in world prices[16]. Again, the average EFC has been €479 million from 2000 to 2009 – and even 0 in 2008 – as a result of much higher prices of COPs, whereas the direct payments to COPs, incorporated since 2005-06 in the SPS (and SAPS, Single Area Payment System for 10 of the 12 new Member States), have remained almost stable (apart the low incidence of 'modulation' forcing to transfer 3% to 10% of direct payments to rural development).

Yet those subsidies to feed COPs are input subsidies conferring PS AMSs to all animal products, oilseeds and pulses, which increases the production value of the products with PS AMSs and lowers the production value of products without PS AMSs[17].

Table 1 shows that, on average from 1995-96 to 2000-01, the EU notified BB should have been €11.415 billion instead of €20.888 billion, since €9.743 billion have been transferred to the PS AMSs of the animal products having consumed the feed.

Table 1 – The EU blue box net of subsidies to COPs used as feedstuffs from 1995-96 to 2000-01

In € billion	1995	1996	1997	1998	1999	2000	Average 95/00
Total blue box	20.846	21.521	20.443	20.504	19.792	22.223	20.888
Blue box to COPs	15.648	17.193	16.191	15.978	15.128	16.825	16.161
" used as feed	8.880	9.127	10.058	10.553	10.205	9.633	9.743
Blue box net of feed COPs	6.768	8.066	6.133	5.425	4.923	7.192	6.418
Actual net blue box	11.966	12.394	10.385	9.951	9.587	12.590	11.145

Source: EU notifications to the WTO and J. Berthelot, footnote 4

Table 2 shows that the total average production value of products notified with PS AMSs has reached €122.922 billion in the 1995/96-2000/01 period so that the production value of the products without a PS AMS is €99.655 billion and the allowed PSdm was 5% of that value, i.e. €4.983.

Table 2 – Production values of EU agricultural products notified with PS AMSs from 1995-96 to 2000-01

In € millions	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01	Average 95-00
Total cereals less durum wheat	23,700	26,923	24,583	22,941	22,262	23,295	23,951
Rice	801	1005	879	757	771	700	819
White sugar	8,844	9,067	9,360	8,694	8,828	8,783	8,929
Skimmed milk powder	2,822	2,811	2,675	2,523	2,423	2,261	2,586
Butter notified	6,141	6,210	6,165	6,187	6,120	6,236	6,177
Bovine meat	25,950	23,015	23,038	23,333	23,029	22,779	23,524
Olive oil	5,669	7,388	9,164	7,468	7,859	9,059	7,768
Tobacco	528	625	696	675	574	558	609
Bananas (tropical fruits)	597	629	652	740	746	675	673
Fresh fruits	13,958	14,719	14,513	15,137	15,832	15,866	15,004
Fresh vegetables	16,948	18,281	19,202	19,768	19,901	21,313	19,236
Wine	13,181	15,060	14,595	16,300	17,183	16,430	15,458
Seed for sowing	614	625	688	759	784	744	702
Cotton	1,399	1,162	1,168	1,167	1,295	1,375	1,261
Total value of products with PS AMSs	119,411	124,110	123,060	122,821	124,028	124,099	122,922
Total agricultural production value	207,400	219,700	217,800	213,500	233,700	243,359	222,577
Total value of products without PS AMSs	87,989	95,590	94,740	90,679	109,672	119,260	99,655

Source: Eurostat data on agricultural production values and calculus to derive the values of white sugar, skimmed milk powder and butter.

[16] http://www.oecd.org/document/59/0,3746,en_2649_33797_39551355_1_1_1_1,00.html

[17] If cereals and dried fodder had been notified with PS AMSs, this was not the case for oilseeds and pulses which got also PS AMSs. However we do not take into account a PS AMS for sheep and goat because we did not find the production value of their milk and as the production value of their meat was within the *de minimis* exemption level: at around 4.5% of the production value. We do not take into account either a new PS AMS to bovine meat since the PS AMS of bovine meat had already been notified.

Solidarité's analysis shows that the feed subsidies from COPs have been attributed for €1.358 billion to poultry meat and eggs, for €2.522 billion to pig meat, for €1.913 billion to bovine meat, for €3.669 billion to milk (dairy cows) and for €202 million to sheep and goat meats and milk. However, to these direct payments to feed COPs we must add other feed subsidies for €1.119 billion on average from 1995-96 to 2000-01 – to skimmed milk used to feed for veal calves, grass premium, aid to grass silage and some others – which have benefitted to bovine meat and dairy cows, which raises the subsidies to bovine meat at €2.630 billion and to milk at €4.078 billion.

These feed subsidies have conferred PS AMSs to the benefiting animal products whose agricultural value has reached on average €78.401 billion. As a result the EU-15 average production value of products with PS AMSs in the 1995-2000 base period 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 (VOP), 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 VOP) shown in table 3.7 of the book (page 90).

Consequently the actual average BB has fallen to €11.145 billion instead of €20.888 billion because €9.743 billion in BB payments to COPs have been transferred to the PS AMSs of animal products having consumed these feeds (table 1). And the allowed OTDS for 1995-00 falls at €90.496 billion – 67.159 (FBTAMS) + 1.063 (PSdm) + 11.129 (NPSdm) + 11.145 (BB) – instead of €110.305 billion in table 3.7 of the book. And cutting it by 80% gives an allowed OTDS of €18.099 billion at the end of the Doha Round implementation period instead of €22.061 billion. To be sure we should update these data to take into account the EU-12 Member States as the authors have done in their projections.

3) The biofuels subsidies

According to the authors, "*The main schemes to encourage the up-take of biomass for energy purposes, however, are not reported by the EU as agricultural subsidies*" but "*Swinbank (2009), whilst broadly of the view that these schemes are not notifiable under the Agreement, concluded that if the EU's biofuel support had to be declared as amber box support then it could account for about 16 percent of the EU's ceiling on CTAMS. Clearly, if new Doha constraints were to apply, and the EU had to declare its support for biofuels, this could be a serious challenge*".

In the WTO Public Forum of 2010 Tim Josling has underlined that "*Deficiencies exist in WTO notifications under both the SCM Agreement and the Agreement on Agriculture. The SCM Agreement requires that WTO Members notify their subsidies in enough detail to enable other Members to calculate the trade impacts of such support (Article 25). Although the United States and EU have notified their biofuels subsidies to the WTO under this agreement, there are major discrepancies between the figures notified and GSI (Global Subsidies Initiative) estimates of US and EU annual biofuels subsidies. For instance, the EU notified 54 million euro, whereas the GSI estimate was 5.2 billion euro*"[18]. These €54 million for 2006 correspond only to the aid for energy crops, created in 2003 but discontinued in the EU FY2011 budget. Another estimate by Steenblik in 2007 was €4.2 billion.

[18] Jennifer Brant, *Clarifying WTO Rules for Biofuels*, Summary of Session 35 at the 2010 WTO Public Forum - 17 September 2010, http://www.agritrade.org/events/documents/WTO_Public_Forum_Summary.pdf

However in a recent report on this issue by Tim Josling, David Blandford and Jane Earley [19], the authors conclude that "*The SCM Committee has not been able to persuade WTO members to report all subsidies in enough detail to allow analysis. The Agriculture Committee seems to have been content to ignore subsidies to biofuels through biofuel mandates even though a case can be made that these should have been reported*".

Once more it is not enough to acknowledge the unwillingness of the richest WTO members to evade their commitments to notify all their subsidies. The authors would have legitimized their reputation of first class agricultural trade experts in taking a clear position on the issue.

The IISD has updated in July 2010 its previous report of October 2007 on the EU biofuels subsidies[20]. However we disagree with IISD's methodology on two important points:
- On the one hand, as OECD, it considers as subsidies the market price support, to agrofuels producers paid by consumers, the gap between the EU domestic prices and the world prices of agrofuels. This is the fundamental ideological stance, shared by the authors of the present book, which considers the world prices as the non-distorted *true prices*, even though they are highly dumped prices, particularly for the cereals and oilseeds feedstocks of biofuels.
- On the other hand it does not take into account the direct payments to the EU producers of cereals, oilseeds and sugar beets under the pretext that they are incorporated in the SPS, allegedly fully decoupled from production.

Therefore we present here a short assessment of the EU biofuels subsidies with the last available data as there was hardly any biofuel subsidy in the 1995-00 base period.

In 2010-11, the EU has devoted to ethanol 9.1 million tonnes (Mt) of cereals – of which 4.1 Mt of wheat, 0.5 Mt of barley, 3.2 Mt of maize, 0.9 Mt of rye and 0.4 Mt of triticale – and 2 Mt of sugar beet[21], and 9.5 Mt of vegetable oil (essentially rapeseed oil) to biodiesel. This has required 1.53 M ha of cereals (at 6 t/ha), 62 074 ha of sugarbeet and 23.17 Mt of rapeseed (yield of 41% rapeseed oil per tonne of seeds) on 7.72 M ha (3 t/ha), making a total of 9.312 million ha. As the SPS and SAPS have been in 2009 of 259 €/ha on average, the direct aids to farmers producing feedstocks for ethanol and biodiesel have reached €2.412 billion. However we must add 530 000 ha forage-maize devoted to biogas in Germany, with an average direct payment of 345 €/ha, making €183 million, plus 4,637 ha of sugar beet devoted also to biogas but we have time to assess the corresponding direct aid transferred to the SPS. Therefore the total direct aid to the EU producers of biofuels is of at least €2.757 billion. To this we can add the €3.011 billion calculated by IISD for 2008, of which €2.170 for biodiesel and €841 million for ethanol, the bulk of which being related to the reductions in the excises taxes on biofuels. Therefore we can consider that the EU-27 subsidies are presently of about €5.768 billion.

However this is a minimum as there is a good case to consider as agrofuels subsidies part of the additional revenue of cereals and oilseeds producers resulting from the spike in their prices attributable to the biofuels boom in the EU and US. But we will analyze more in-depth

[19] Tim Josling, David Blandford and Jane Earley, *Biofuel and Biomass Subsidies in the U.S., EU and Brazil: Towards a Transparent System of Notification*, IPC Position paper, September 2011, http://www.agritrade.org/BiofuelSubsidiesUSEUBrazil.html

[20] Anna Jung et al., *Biofuels – At what cost? Government support for ethanol and biodiesel in the European Union – 2010 Update*, www.globalsubsidies.org/files/assets/bf_eunion_2010update.pdf

[21] http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Industrial%20uses%20of%20sugar%20from%20sugar%20beet%20increasing%20in%20the%20EU%20%20_Brussels%20USEU_EU-27_4-21-2011.pdf

this issue in the second part devoted to the US.

Given that the EU Commission is projecting to devote 26.4 million tonnes of EU cereals to ethanol in 2020 and 12.1 million tonnes of EU vegetable oil to biodiesel in 2020, we get an idea of the additional subsidies that these prospects would require.

<u>4) The SPS and SAPS are not in the green box</u>

Tim Josling and Alan Swinbank attempt to defuse possible questions about the actual green status of the SPS: "*McMahon (2007), Swinbank (2008) and Swinbank and Tranter (2005) raise questions about the extent to which the payments under the SPS are compatible with the green box. They point out that the reforms to the fruit and vegetables regime, making land on which fruit and vegetables are grown eligible for SPS payments, has overcome the problem the United States encountered in the WTO upland cotton case. But as annual payments are still made to farmers on the basis of the land at their disposal, and cross-compliance applies, the authors raise the question of whether the SPS does fully meet the criteria of paragraph 6 for the green box*". And they add: "*If the direct payments were to be considered as neither green nor blue box compatible (an unlikely event), then the CTAMS would rise to around 58 billion euro, Given the EU's commitment under the Agreement, the impact of different notification assumptions is not great. The constraint of 72.2 billion euro for the CTAMS is not approached, and neither the blue nor green boxes are limited*". They must admit however that "*The situation would be drastically changed if the Doha Round were to be completed… The level of SPS and SAPS direct payments alone would exhaust the limit for OTDS… leaving all other support to be eliminated or changed to green box compatible payments*".

That being said, the authors hasten to forget this possible nightmare and conclude: "*The later SPS payments are not tied to the production of particular commodities, nor do they vary with commodity prices; they are therefore prima facie eligible for the green box, and therefore unrestricted. These payments amounted to about 31 billion euro in 2006/07. Shifting to payments that meet the criteria of the blue box and green box has freed up the CAP from immediate restraint on CTAMS by the domestic support provisions of the Agreement. Our shadow notifications, and subsequent EU notifications bring the story further up-to-date… The suggested limit under negotiation in the Doha Round… is 21.7 billion euro. Thus… the cut required to meet the potential Doha Final Bound Total AMS commitment has already happened. The conclusion of the Doha Round would have the effect of locking in the reforms that have occurred through international disciplines*".

Let us therefore specify more convincing arguments showing why the SPS should not have been notified in the green box but in the amber box (AMS).

The SPS contradicts the condition b) of the AoA Annex 2 paragraph 6 – "*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*" – not only because of "*the reforms to the fruit and vegetables regime making land on which fruit and vegetables are grown eligible for SPS payments*" but because there are many more products whose production is capped. First there are three production quotas – on milk (up to the Spring of 2015), on sugar beets (up to 2017-18), on wine (plantation rights) – and caps are also put on the production of 25 other products in the EU Budget for FY 2012, which could mainly be notified in the blue box but some also in the amber box[22]. Incidentally, although the direct aids coupled to the current production or acreage would be notified in the amber box, they could as well be notified in the blue box as they are also granted "*under production-limiting programmes*".

Precisely the SPS is also coupled because it coexists with the BB payments for the same products. Indeed, according to the AoA article 6.5, the BB 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. Indeed Carsten Daugbjerg and Alan Swinbank have wondered in a previous paper: "*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?*"[23]. Furthermore there is another reason why the BB payments are coupled: in fact they did not limit production because the payments per hectare and cattle head have not been limited and have actually increased significantly for COPs and considerably for cattle as decided in the Agenda 2000 CAP reform of March 1999.

As shown above, a large part of the SPS and BB payments are granted to feed (COPs), 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 the producers of the basic agricultural products*"[24], which is all the more obvious as the agrofuels boom has increased much the prices of vegetable oils and cereals.

The SPS contradicts condition e) of the Annex 2 paragraph 6 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*". And 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.

[22] The coupled direct aids in EU FY2012 Budget (http://eur-lex.europa.eu/budget/data/DB2012/EN/SEC03.pdf) are: Crops area payments, Supplementary aid for durum wheat: traditional production zones, Production aid for seeds, Suckler-cow premium, Additional suckler-cow premium, Beef special premium, Beef slaughter premium – Calves, Beef slaughter premium – Adults, Sheep and goat premium, Sheep and goat supplementary premium, Payments to starch potato producers, Area aid for rice, Aid for olive groves, Tobacco aid, Hops area aid, Specific quality premium for durum wheat, Protein crop premium, Area payments for nuts, Aid for energy crops, Aid for silkworms, Payments for specific types of farming and quality production, Additional amount for sugar beet and cane producers, Area aid for cotton, Transitional fruit and vegetables payment – Tomatoes, Transitional fruit and vegetables payment – Other products than tomatoes, Transitional soft fruit payment.

[23] 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

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

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 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 for other products, which applies practically to all EU-27 farms to-day.

5) The non-product-specific AMS has been much larger than that notified

The authors do not question at all the veracity of the EU subsidies notified in the non-product-specific (NPS) AMS. However there are here a lot of contradictions in the AoA rules as many measures could be notified either in the green box or in the NPS AMS, which has induced the EU and the US to notify all of them in the green box.

a) The issue of agricultural investments

The AoA article 6.2 states: "*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.

The main issue is the lack of specification of these agricultural investments: are we restricting them to investments of individual farmers or do we include large collective investments such as the ones which could be put in the green box under the provisions of Annex 2, paragraph 2.g, in the category of "general services" – "*infrastructural services, including: electricity reticulation, roads and other means of transport, market and port facilities, water supply facilities, dams and drainage schemes, and infrastructural works associated with environmental programmes. In all cases the expenditure shall be directed to the provision or construction of capital works only, and shall exclude the subsidized provision of on-farm facilities other than for the reticulation of generally available public utilities. It shall not include subsidies to inputs or operating costs, or preferential user charges*" – and notified by the EU in the green box and covering "*Development and maintenance of farm infrastructure; construction and reconstruction of power lines for agricultural producers; provision of electricity and water supply; farm roads; construction of reservoirs; flood protection*" for €1.238 billion in 2007-08. But they could be put also in paragraph 11 on "Structural adjustment assistance provided through investment aids", that the EU has notified in the green box and covering "*Aid for farm modernisation; purchase of machinery, equipment, animals, buildings and plantations; aid for young farmers; restructuring and conversion of vineyards; investment in restructuring of semi-subsistance farming; reallocation of land, diversification of rural activity and quality improvement schemes; preliminary investment in setting up producer groups; restructuring of the sugar industry; completion of earlier programmes under EAGGF*", for €7.594 billion in 2007-08.

We must quote here again the Vienna Convention and stress that these provisions of Annex 2 cannot render meaningless the provision of article 6.2 according to which the agricultural investments of developed countries are in the amber box. The problem is that there has not been any proceeding on the issue at the Dispute Settlement Body. We will argue that the provisions on infrastructural services, which are more of a collective nature, could be notified in the green box even for developed countries (except for their operating costs), but not the provisions of paragraph 11 which relate to individual investments.

However, even the subsidies to infrastructural investments are considered as trade-distorting by Daryll in the sense that they have a large impact of the competitiveness of farmers: "*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*"[25]. Let us add that the EU did not notify in the NPS AMS any irrigation subsidies, even for operating costs or preferential user charges, although these subsidies are quite high, particularly in its Mediterranean countries: Italy, Spain, Greece and France.

b) The issue of subsidies to marketing and promotion services

Here again there is a huge contradiction between the Annex 2 paragraph 2 which puts in the green box "*marketing and promotion services, including market information, advice and promotion relating to particular products but excluding expenditure for unspecified purposes that could be used by sellers to reduce their selling price or confer a direct economic benefit to purchasers*", the Annex 3 paragraph 13 putting in the amber box (AMS) "*Other non-exempt measures, including input subsidies and other measures such as marketing-cost reduction measures*", and the Annex 4 paragraph 4 putting also in the amber box "*Measures directed at agricultural processors shall be included to the extent that such measures benefit the producers of the basic agricultural products*". If "*marketing cost reduction measures*" and "*measures directed at agricultural processors*" are in the amber box, how could subsidies for "*marketing and promotion services*" stay in the green box?

Incidentally this is also the reason why the subsidies to ethanol and biodiesel are also subsidies to the farmers producing the feedstocks. As Tim Josling, David Blandford and Jane Earley are saying: "*The issue would be how to assess the magnitude of the subsidy for a particular basic product due to the fact that the subsidy accrues to the processor (blender) rather than directly to agricultural producers. Some part of the transfer is presumably retained by the processor, but the same issue applies to existing price support policies that are implemented through processors (e.g., U.S. dairy and sugar policies)… If measures used to promote domestic production of ethanol are judged to fall under the AoA, it would appear on the surface that they should be treated as amber box support… and included in a country's estimate of its current total AMS*".

Therefore we will place in the amber box the line "Marketing and promotion services" which has been notified in the green box for €902 million on average in the 1995-2000 base period and for €1.333 billion in 2007-08.

c) The tax rebates on agricultural fuel

The tax rebates on agricultural fuel, input subsidies, should be taken into account according to Article 1 of the Agreement on subsidies and countervailing measures (ASCM): "*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)*". Curiously Tim Josling, David Blandford and Jane Earley state: "*The AoA (and the ASCM) is clear in including loss of government revenue through a tax credit or exemption as equivalent to a subsidy. But the negotiators in the Uruguay Round considered that to include tax measures related to agriculture as a subsidy to the sector would add a level of complexity to the AMS calculation that could be counterproductive. Indeed the practice has become established in the WTO to exclude tax measures when*

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

notifying agricultural subsidy programs". Thus, for these authors, what should count are not the WTO rules but the usual practice of Members even when they infringe the rules! An assessment which will not enhance their reputation!

The more so as this generalized statement is untrue. Thus, before their adhesion to the EU most new Members of Central and Eastern Europe did notify in their NPS AMS their tax rebates on agricultural fuels together with many subsidies put in the green box by the EU: Slovenia has always notified in the NPS AMS its tax rebates on agricultural fuels, but also subsidies to feedingstuffs, farm investments and rural tourism. The Czech Republic has also notified in its NPS AMS its tax rebates on diesel subsidies along with many others that the EU puts in its green box: to young farmers, improvement of genetic performance of seed and livestock, infection fund, guarantee fund for farmer and forest, irrigation subsidies… so much so that its subsidies notified in the NPS AMS are 5 times larger than those notified in its green box[26]. This was also the case of Hungary where the NPS AMS was 27% larger than its green box in 2003, including some measures such as payments for relief from natural disasters and assistance to agricultural employment. In 2002 its NPS AMS was even 86% larger than its green box! Unfortunately, once these new Members had joined the EU in 2004, the EU Commission, which is notifying for all Members, put an end to these naïve behaviours!

However the EU Commission could not hide its substantial amount of subsidies to agricultural fuel published in the annual report on "*Agricultural Policies in OECD Countries. Monitoring and Evaluation*", for €1.933 on average in the 1995-2000 base period and for €3.134 billion in 2007-08.

<u>d) Estimate of the EU NPS AMS for 1995/96-2000/01 and 2007/08</u>

Table 4 presents a conservative estimate of the actual NPS AMS subsidies in the base period 1995/96-2000/01 and in the last notified year 2007/08. It is conservative because there were large under-notifications, particularly for the tax rebate on agricultural fuel for which we have used the OECD data.

Table 4 – EU NPS AMS notified at the WTO, OECD and actual in 1995-00 and 2007-2008

	1995-2000			2007-2008		
	notified		actual	notified		actual
	WTO	OECD		WTO	OECD	
Agricultural insurance	101	56	101	451	447	451
Agricultural fuel	0	1933	1933	0	3134	3134
Agricultural loans	420	542	542	191	532	532
Farm investments*	5638		5638	7594		7594
Marketing-promotion*	902		902	1333		1333
Other				210		210
Total NPS AMS	7061		9116	9779		13254
De minimis: 5% VOP	11129		11129			16356

Source: notifications to the WTO; * improperly notified in the green box; 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

For example the French subsidies to agricultural loans alone have been on average of €406 million (of which €305 million in State aid) in the base period 1995-2000 against a total of €420 million for the whole EU-15. According to the European Commission, "*Only in Austria and Spain, insurances subsidies are larger than those to compensate natural disasters. Between 1988 and 1997, countries spending the most in that instance are Italy with €3,850*

[26] WTO, G/AG/N/CZE/52 of 17 February 2004.

million, 71% of which to compensate natural disasters, and Spain with €1,467million of which 79% have been insurances subsidies"[27]. Which means that the average actual subsidies on agricultural insurances proper, excluding agricultural disasters, have been in that period of €112 M in Italy and €116 M in Spain. Let us add that we have not included any irrigation subsidies, even on operating costs.

And we did not put in the amber box either the general services on agricultural research, training, extension, pest and disease control, inspection… put in the green box by Annex 2 for €4.210 billion in 2007-08 but that Daryll Ray considers to be at the source of the much higher US agricultural competitiveness, hence which are highly trade-distorting: "*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*"[28], and he adds: "*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*"[29].

Besides, 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.

5) Finally the CTAMS has been much larger in the base period 1995-00 and up to now

The transfer of the part of the BB going to COPs 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 come from:
- 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, 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[30].

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[27] Sr. D. Ramiro Sáez Gómez, *Les assurances agricoles vues depuis l'Union européenne*, Commission Européenne, Conférence Internationale: "Les assurances agricoles et la garantie des revenus", Madrid,13 et 14 Mai 2002.

[28] 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).

[29] 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.

[30] 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*,

So that the applied OTDS for the 1995-2000 base period has been of €79.867 billion: €60.973 billion (CTAMS) + €35 million (PSdm) + €9.116 billion (NPSdm) + €9.743 billion (BB). This is to be compared with the allowed OTDS of €90.496 billion, which, once cut by 80%, gives an allowed OTDS of €18.099 billion at the end of the Doha Round implementation period, implying that the EU could have only offered to cut by 13.3% (€10.629 billion) its allowed OTDS if nothing were to change in the CAP and after enlargement.

In 2007-2008, the last notified year, the CTAMS was notified at €12.354 billion, as the NPSdm was notified at €852 million, much below the allowed NPSdm level of €16.356 billion (5% of the whole agricultural production value or VOP of €327.127 billion) so that it was exempted from inclusion in CTAMS.

In fact the actual CTAMS – and PS AMS as well since the NPSdm has remained below the 5% VOP level – was €54.330 billion. Indeed, to the notified €12.354 billion, we must add the €34.528 billion of allegedly decoupled aids unduly notified in the green box – for the SPS, the SAPS plus the separate Sugar Payment and the decoupled Complementary National Direct Payments –, plus the €1.680 billion of direct aids unduly notified in the BB – corresponding to aids to COPs for €1.566 billion, to protein aid for €42.6 million and to energy crops aid for €72.1 million – and the biofuels subsidies of €5.768 billion. This actual CTAMS of €54.330 billion in 2007-08 was thus 2.2 times larger than the projected €24.680 billion made by Josling and Swinbank and 4.4 times larger than the notified €12.354 billion.

However the applied BB was only of €3.486 billion, lower than the notified €5.166 billion as €1.680 billion have been transferred to the PS AMS. So that the applied OTDS in 2007-08 was €72.607 billion: €54.330 billion (CTAMS) + €1.537 billion (PSdm) + €13.254 billion (NPSdm) + €3.486 billion (BB). This applied OTDS of €72.607 billion was thus 2.9 times larger than the €24.680 billion projected by Tim Josling and Alan Swinbank for that year.

6) The tortuous discussion on the market price support linked to administered prices

Josling and Swinbank in the EU chapter, but also Lars Brink in the second chapter on "The WTO disciplines on domestic support" and David Orden, David Blanford and Tim Josling in the concluding chapter on "The difficult task of disciplining domestic support" are quite aware that the way the market price support (MPS) is calculated in the AMS is meaningless, as already quoted in the introduction. But they are at the same time anxious of not denouncing the absurdity of the negotiators of this instrument, maybe because some of them were advisers of the negotiators? In the concluding chapter they state: "*Given the severe limitations of the MPS it could be dropped from inclusion in AMS support in the future and commitments adjusted downward accordingly. We reject this alternative because of the important policy role of the administered prices in some cases and the desirability of disciplining their use*".

All the same David Baldock and David Orden write, in their chapter on the US: "*It might be tempting to dismiss administered prices as playing an insignificant role in US farm policy. Particularly for sugar, this would be a serious error… Although the government procures very little sugar, the administered price is the policy fulcrum for quantitative management*". But we do not see why it is impossible to keep this useful role of administered prices while at the same time eliminating the present calculation of the MPS linked to them.

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).

Incidentally the recent USDA paper on a comparison of the MPS measurements in OECD and WTO is not braver, refusing to condemn the WTO rule[31].

However the analysis made in 2002 by Harry de Gorter and Merlinda Ingco was much explicit: "*The AMS was designated to be a measure for trade distorting domestic support policies. It was assigned the "amber box" in the Agreement on Agriculture. Reduction commitments agreed to were supposed to measure domestic support, independent of that due to import barriers and export subsidies. In reality, however, the AMS is double counted with support derived from trade policies… The Agreement on Agriculture requires each country to identify "market price supports" in the form of "administered prices" which are required to be included in the calculation of the AMS. On the other hand, if there are import barriers in place that keep domestic prices high, but there is no administered price, then no "market price support" is estimated for the AMS. For example, Canada has not been able to identify an administered price for chicken (or turkey or eggs), so there is no "market price support" for Canada's AMS for these products. This is ridiculous, of course, because it is arbitrary if an official price is reported or not. The United States reports an administered price support for dairy products. However, the US dairy price supports are mostly inoperative as market prices for these products are well above support in the implementation period because of export subsidies and import barriers*"[32].

Their conclusion has also been more straightforward: "*Hence, a "flashing amber" box should be created that includes only domestic support that is trade distorting (with perhaps adjustments downwards for output reducing measures), and is not conflated with trade border measures*".

Indeed PS AMSs linked to administered prices (intervention prices in the EU) are meaningless, being computed as the eligible production multiplied by the gap between the present administered price and the world reference price of the 1986-88 period. They have been the main component of the EU, US and Japan total AMS in the 1995-00 period, but are a fake market price support as they won't have had any impact on prices without coexisting with other more determinant measures: import protection, export subsidies, production quotas, set aside, external and domestic food aid. Reducing this fake MPS AMSs has been the main means, particularly for the EU and Japan, to reduce their total AMS without any reduction in their actual subsidies, or even allowing to increase them, notified in the blue or green boxes.

How many WTO Members know that, in the 1995-00 period, the EU subsidy component of its average annual AMS have represented only €4.822 billion or 10% of the €48.425 billion notified and the MPS component 90%? And that the US proportion of the MPS in its notified AMS had been of 56.9%? 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)… There is no actual taxpayer money paid out for the MPS, it is pure accounting… Getting rid of the phony subsidy will make it easier to get rid of phony subsidy cuts*". As accounted also by Hoshihisa Godo and Daisuke Takahashi in the

[31] Anne Effland, *Classifying and Measuring Agricultural Support Identifying Differences Between the WTO and OECD Systems*, ERS, USDA, March 2011, www.ers.usda.gov/Publications/EIB74/EIB74.pdf

[32] Harry de Gorter and Merlinda Ingco, *The AMS and Domestic Support in the WTO Trade Negotiations on Agriculture: Issues and Suggestions for New Rules*, 25 September 2002, http://siteresources.worldbank.org/INTARD/825826-1111044795683/20424518/AMSandDomesticSupportintheWTOTradeNegotiations.pdf

chapter on Japan in the book, the support price for rice was eliminated in 1997, and Japan's AMS notified to the WTO dropped by $20 billion but, as there was no change in import protection, the actual support remained the same.

The suppression the 1st July 2002 of the intervention price of beef has allowed the EU to cut its total AMS by €11.9 billion from one day to the other, without any impact on the market price which has increased in the following years because of a high import protection. In the EU, the sugar AMS linked to its intervention price amounted to €5.9 billion in 2000-01 and comparable amounts the preceding years, although public purchases at the intervention price have only occurred once in 25 years, because high domestic prices have been maintained through a high import protection and production quotas. The AMS linked to the intervention prices of butter and skimmed milk powder amounted to €5.951 billion in 2000-01, but the EU expenses on dairy have only reached €1.907 bn.

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 as the most trade-distorting ones. What they are clearly distorting is the understanding of WTO Members. Therefore AMSs linked to administered prices should be eliminated altogether since they have allowed developed countries to look like reducing much their coupled supports when they have increased instead their so-called decoupled subsidies.
Let us make clear that we are not advocating to eliminate intervention prices and public stocks – they are essential components of any supply management policy – but to underline that they cannot be effective without an efficient import protection at the same time.

III – David Blandford and David Orden on the US Farm Bill

The US has notified the 29 August 2011[33] its agricultural domestic support for the 2009 marketing year, with a CTAMs of only $4.267 billion, not far from the $4.6 billion anticipated by Blandford and Orden, most of this CTAMS ($4.068 billion) being attributed to the MPS for dairy ($2.827 billion) and sugar ($1.241 billion), the rest being non-exempt direct payments to dairy (market loss payment) for $182 million, to wool ($8 million) and to a commodity loan interest subsidy to sugar ($8 million).

However such a notification is highly deceitful, as were the notifications made from 1995 to 2008, for the reasons already underlined for the EU plus additional ones specific to the US. The Book was written in early 2010 when the last notified year was 2008, with only shadow notifications for 2008 and some up to 2016.

1) Production flexibility contracts (PFCs) and fixed direct payments are in amber box

The authors cannot dismiss blatantly the WTO ruling on the US compliance with the green box: "*The cotton case ruling casts doubt on whether US fixed direct payments, which are currently notified as green box support, qualify for that category because production of some crops (particularity fruits and vegetables) was precluded on the program base acres for which payments are made. Table 4.6 presents two alternative summations of the notified US CTAMS with the inclusion of the fixed direct payments. The United States would have violated its Bound Total AMS in a number of years in each case*". By using the

[33] G/AG/N/USA/80

conditional instead of the present, they refuse to accept the ruling of the Appellate Body of the Dispute Settlement Body as an unquestionable precedent.

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*"[34].

Furthermore the Appellate Body ruled that most direct payments are 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*", which can be extended to the other products having received such payments.

This ruling that "*production flexibility contract payments, market loss assistance payments, direct payments, counter-cyclical payments, crop insurance payments*" are specific subsidies justifies the Environmental Working Group's practice to sum up all subsidies per product[35].

2) The lack of notifications of feed subsidies has risen the FBTAMS in the base period

We have mentioned already that the US notifies subsidies to grazing on federal lands (for an average of $50.6 million from 1995 to 2000) but has refused (as the EU) to notify by far the most important feed subsidies, those to feed grains which, as shown in the following tables 1 to 9, have reached on average $4.319 billion in the 1995-00 period, and $3.022 billion in the last notified years 2007 to 2009, for which the authors of the book have only made prospects.

Timothy Wise from Tufts University has published 16 reports on this issue, in his program "Feeding the factory farm"[36]. For example he states that "*Feed is by far the largest operating expense for industrial hog and poultry operations, and feed is made up principally of corn and soybeans. We estimated that from 1997-2005 corn was sold at 23% below the average costs of production, while soybeans sold for 15% below cost. This "implicit subsidy" to animal feed gave industrial hog farmers a 26% break on their feed costs, which represented a 15% reduction in the firms' operating costs*"[37]. Timothy Wise has also well argumented the reasons why the OECD PSE concept, actually invented by Tim Josling, is itself flawed[38].

[34] United States – Subsidies on upland cotton, AB-2004-5, WT/DS267/AB/R, 3 March 2005.
[35] http://farm.ewg.org/
[36] The Global Development And Environment Institute (GDAE), Tufts University, http://ase.tufts.edu/gdae/policy_research/BroilerGains.htm;
[37] Timothy A. Wise and Betsy Rakocy, *Hogging the Gains from Trade: The Real Winners from U.S. Trade and Agricultural Policies*, January 2010, http://www.ase.tufts.edu/gdae/Pubs/rp/PB10-01HoggingGainsJan10.pdf
[38] Timothy A. Wise, *The Paradox of Agricultural Subsidies: Measurement Issues, Agricultural Dumping, and Policy Reform*, Global Development and Environment Institute, Tufts University, Working paper N° 04-02, February 2004 (http://ase.tufts.edu/gdae).

It is also interesting to underline that China has imposed duties on imports of US chicken products of up to 105.4% because, the China's Ministry of commerce said, "*they were the result of the subsidised corn and soyabeans used in chicken feed*"[39].

The following tables present the calculus of the subsidies to the main feedstuffs, a minimal estimate as we did not take into account minor feeds – meals of other oilseeds than soybean and cotton, rye and cereals bran – nor many subsidies notified improperly in the NPS AMS other than crop insurance for which the EWG data base has only taken premium subsidies.

Table 1 shows that the subsidies to corn feed have reached on average $2.967 billion in the 1995-2000 base period and $1.980 billion from 2007 to 2009. They have accounted for 68.7% of all feed subsidies in the 1995-00 base period and 65.5% from 2007 to 2009.

Table 1 – US subsidies to feed corn in the 1995-2000 base period and from 2007 to 2009

	1995	1996	1997	1998	1999	2000	Av. 95-00	2007	2008	2009
Corn subsidies: M$	2935	2119	2906	5065	7567	8058		3806	4194	3788
Corn production: Mt	188	235	234	248	240	252		331	307	333
Feed corn: Mt	119	134	138	138	143	148		148	132	130
% feed	63,3%	57%	59%	55,6%	59,6%	58,7%		44,7%	43%	39,1%
Corn value: M$	24202	25149	22352	18922	17104	18499		54667	49313	46734
Feed corn subsidies: M$	1857,9	1207,8	1714,5	2816,1	4509,9	4730	2806	1701,3	1803,4	1481,1
Corn gluten feed: 1000t	7,6	7,8	8,2	8,3	8,7	8,4		8,8	8,4	8,7
" domestic use: 1000t	2,2	2,7	3,3	3,3	3,6	3,8		7,4	7,6	7,9
" in % of total use	28,3%	33,8%	39,9%	40,2%	41,2%	45,1%		81,9%	90,5%	90,8%
CGF: $/t	119,31	90,16	67,18	60,20	52,03	60,55		119,89	77,42	74,61
Value of CGF domestic use: M$	262,5	243,4	221,7	198,7	187,3	230,1		887,2	588,4	589,4
Corn gluten meal: Mt	1,8	1,9	2	2	2,1	2		2,1	2	2,1
" domestic use: Mt	1,1	1,1	1,2	1,4	1,4	1,2		1	1,3	1,4
" in % of total use	57,9%	58,8%	61,1%	67,8%	67,1%	61,2%		48,2%	65%	66,7%
CGM $/t	326	343,6	278,4	238,8	236,8	252		526,2	488,8	520,3
Value CGM domestic use: M$	358,6	378	334,1	334,3	331,5	302,4		526,2	635,4	728,4
DDGS production: Mt	1	1,3	1,6	1,8	1,7	2,5		21,4	26,5	32,9
DDGS domestic use: Mt	0,5	0,8	1,1	1,2	1,1	1,8		17,6	21,8	25
DDGS $/t	156,1	139,8	105,8	85,2	79,9	80,6		156,5	117	115,8
Value DDGS domestic use: M$	78,1	111,8	116,4	102,2	87,9	145,1		2754,4	2550,6	2895
Total CGF+CGM+DDGS: M$	699,2	733,2	672,2	635,2	606,7	677,6	670,7	4167,8	3774,4	4212,8
" in % of corn value	2,89%	2,92%	3,01%	3,36%	3,55%	3,66%		7,62%	7,65%	9,01%
"subs./CGF+CGM+DDGS: M$	84,8	61,8	87,4	170	268,4	295,2	161,3	290,2	321	341,5
Total feed corn subsidies: M$	1942,7	1269,6	1801,9	2986,1	4778,3	5025,2	2967,3	1991,5	2124,4	1822,6

Source: USDA: feed grain data base; Source: http://usda.mannlib.cornell.edu/usda/current/CropValuSu/CropValuSu-02-16-2011.txt; http://www.ers.usda.gov/Publications/FDS/2010/11Nov/FDS10K01/FDS10K01.pdf; Environmental Working Group (EWG) farm subsidies data base (http://farm.ewg.org/region.php?fips=00000)

Furthermore we have not yet included the subsidies to the corn starch used to make ethanol – what we will do further on – but the feed byproducts have already been included: corn gluten feed (CGF), corn gluten meal (CGM), including those issued from the production of HFCS (high fructose corn syrup) and distillers' grains with solubles (DDGS).

The other feed subsidies are, in decreasing order for 1995-2000, those to soybean meal ($482 million), feed wheat ($438 million), feed sorghum ($238 million), feed barley ($95 million), cotton meal ($46 million), feed oats ($29 million) and rice millfeeds (24 million). However for the average of the three years 2007 to 2009, if corn subsidies remain largely in front, they are followed by soybean meals ($572 million), feed wheat ($206 million), cotton meal ($130 million), feed sorghum ($112 million), feed barley ($22 million), feed oats (8,3) and rice

[39] Geoff Dyer in Beijing**,** *China to hit US chicken with new tariffs,* April 28, 2010 http://www.ft.com/cms/s/0/c585639c-5277-11df-8b09-00144feab49a.html

millfeed ($7.7 million). Besides there are also notified subsidies to grazing on public lands for an average $123, more than the notified $50.6 million attested by some reports (footnote 37).

The only impact of incorporating the PS AMSs of meats is to lower the allowed OTDS through the reduction of the allowed PSdm. This has no impact on the applied OTDS or on the CTAMS: there is simply a transfer of the cereals and oilseeds AMSs to the animal products AMSs. The first are lowered but do not disappear as they remain higher than the 5% *de minimis* level.

Table 2 – US subsidies to feed sorghum in the 1995-2000 base period and from 2007 to 2009

	1995	1996	1997	1998	1999	2000	Av. 95-00	2007	2008	2009
Sorghum subsidies: M$	260	280	299	516	704	663	453,7	283	314	253
Production value: M$	1390	1986	1409	904	937	846		1925	1631	1207
Sorghum production: Mt	11,7	20,2	16,1	13,2	15,1	12,0		12,1	9,7	8,8
Feed sorghum: Mt	7,5	13,1	9,3	6,7	7,2	5,6		5,9	3,6	2,8
Feed sorghum/total sorghum	64,1%	64,9%	57,8%	50,8%	47,7%	46,7%		49,4%	36,6%	31,9%
Sorghum feed subsidies: M$	166,7	181,7	172,8	262,1	335,8	309,6	238,1	139,7	114,9	80,7

Source: the same as in table 1.

Table 3 – US subsidies to feed barley in the 1995-2000 base period and from 2007 to 2009

	1995	1996	1997	1998	1999	2000	Av. 95-00	2007	2008	2009
Barley subsidies:M$	89	130	126	274	272	299	198,3	101	123,4	100,6
Production value:M$	1028	1081	862	686	578	648		835	1259	972
Barley production: Mt	7,8	8,5	7,8	7,7	5,9	6,9		4,6	4,9	3,9
Feed barley: Mt	4,2	4,7	3,2	3,6	3,0	3,0		0,7	1,04	0,98
% feed	53,9%	55,3%	41%	46,8%	50,8%	43,5%		15,2%	21,1%	25%
Feed barley subsidies: M$	48	71,9	51,7	128,2	138,2	130,1	94,7	15,4	26	25,2

Source: the same as in table 1.

Table 4 – US subsidies to feed oats in the 1995-2000 base period and from 2007 to 2009

	1995	1996	1997	1998	1999	2000	Av. 95-00	2007	2008	2009
Oats subsidies: M$	11	11	11	32	48	61	29	8	8,7	8,2
Production value: M$	279	314	273	199	174	175		248	270	208
Oats production: Mt	2,3	2,2	2,4	2,4	2,2	2,2		1,3	1,4	1,2
Feed oats: Mt	2,8	2,5	2,7	2,8	2,6	2,7		1,7	1,7	1,7
% feed	122%	114%	112,5%	116,7%	118,2%	122,7%		130,8%	123,7%	42%
Feed oats subsidies: M$	11	11	11	32	48	61	29	8	8,7	8,2

Source: the same as in table 1.

Table 5 – US subsidies to rice millfeed in the 1995-2000 base period and from 2007 to 2009

	1995	1996	1997	1998	1999	2000	Av. 95-00	2007	2008	2009
Rice subsidies:M$	841	654	463	747	1140	1537	897	486	440	396
Production value:M$	1587	1687	1756	1687	1231	1050		3603	3209	3075
Rice millfeeds: 1000t	600	560	545	592	650	627		511	560	608
Rice millfeed price: $/t	105,73	88,71	69,37	42,88	44,68	49,68		110,25	110,35	90,73
Value of rice millfeeds: M$	63,4	49,7	37,8	25,4	29	31,1		56,3	61,8	55,2
" % rice production value	4%	2,95%	2,15%	1,51%	2,36%	2,96%		1,56%	1,93%	1,80%
Milfeed rice subsidies: M$	33,6	19,3	10	11,2	26,9	45,5	24,4	7,6	8,5	7,1

Source: the same as in table 1.

Table 6 – US subsidies to feed wheat in the 1995-2000 base period and from 2007 to 2009

	1995	1996	1997	1998	1999	2000	Av. 95-00	2007	2008	2009
Wheat subsidies: M$	721	1827	1563	2890	3910	3826	2456,2	1618	2046	2132
Production value: M$	9788	9782	8287	6781	5587	5772		13289	16626	10654
Wheat production: Mt	59,4	61,9	67,5	69,3	62,5	60,6		55.8	60,3	60
Feed wheat: Mt	4,2	8,4	6,8	10,6	7,6	8,2		6,9	4,1	4,6
% feed	7,1%	13,6%	10,1%	15,3%	12,2%	13,5%		12,4%	6,8%	7,7%
Feed wheat subsidies: M$	51,2	248,5	157,9	442,2	477	516,5	315,6	200,6	139,1	98,6
Wheat millfeeds US use: 1000 t	142,5	176,8	4198,9	6364,8	6626,9	6647,1		6119,1	5928,3	5795
" $/t	120,35	88,25	73,27	55,89	52,82	62,89		132,93	96,61	84,38
Value of wheat millfeeds: MS	17,1	15,6	307,7	353,6	350	418		813,4	572,7	489
" in % of wheat production value	0,17%	0,16%	3,71%	5,21%	6,27%	7,24%		6,12%	3,44%	4,59%
Subs. to wheat millfeeds US use: M$	1,2	2,9	58	150,6	245,2	277	122,5	99	70,5	97,9
Total feed wheat subsidies: M$	52,4	251,4	215,9	592,8	722,2	793,5	438,1	210,5	209,6	196,5

Source: the same as in table 1.

Table 7 – US subsidies to soybean meal in the 1995-2000 base period and from 2007 to 2009

	1995	1996	1997	1998	1999	2000	Av. 95-00	2007	2008	2009
Soybean subsidies: M$	136	157	143	630	2710	3234	1168	1184	2048	1675
Soybean production value: M$	14599	17440	17373	13494	12205	12467		26974	29458	32145
Soybean meal domestic use: Mt	24.139	24.784	26.212	27.816	27.529	28.706		30.148	30.619	30.500
Soybean meal value US use: M$	6262	7374	5303	4171	5044	5428		11164	9531	10828
soybean meal/soybean value	43%	42,3%	30,5%	30,9%	41,3%	43,5%		41,4%	32,4%	33,7
soybeanmeal subsidies: M$	58,5	66,4	43,6	194,7	1119,2	1406,8	481,5	490,2	662,6	564,2

Source: the same as in table 1.

Table 8 – US subsidies to cotton meal in the 1995-2000 base period and from 2007 to 2009

	1995	1996	1997	1998	1999	2000	Av. 95-00	2007	2008	2009
Cotton subsidies:M$	212	807	745	1318	1945	2068	1183	2541	1582	2217
Production value:M$	6575	6408	5976	4120	3810	4260		3021	3788	7318
Meal dom. use: 1000 short t	1632	1649	1598	1201	1288	1165		1149	883	763
Cotonseed meal price: $/short t	190,74	191,38	144,03	109,55	127,43	142,93		253,81	255,23	220,90
Value ofcotton mealfeed: M$	311,3	315,6	230,2	131,6	164,1	166,5		291,6	225,4	168,5
" % cotton production value	4,73%	4,93%	2,36%	3,19%	4,31%	3,91		9,65%	5,95%	2,30%
Cotton meal subsidies: M$	10	39,7	17,6	42,1	83,8	80,8	45,7	245,3	94,1	51

Source: the same as in table 1.

Table 9 – US total feed subsidies in the 1995-2000 base period and from 2007 to 2009

	1995	1996	1997	1998	1999	2000	Av. 95-00	2007	2008	2009
Total feed corn subsidies: M$	1942,7	1269,6	1801,9	2986,1	4778,3	5025,2	2967,3	1991,5	2124,4	1822,6
Feed sorghum subsidies: M$	166,7	181,7	172,8	262,1	335,8	309,6	238,1	94,2	114,9	80,7
Feed barley subsidies: M$	48	71,9	51,7	128,2	138,2	130,1	94,7	15,4	26	25,2
Feed oats subsidies: M$	11	11	11	32	48	61	29	8	8,7	8,2
Total feed wheat subsidies: M$	52,4	251,4	215,9	592,8	722,2	793,5	438,1	210,5	209,6	196,5
Milfeed rice subsidies: M$	33,6	19,3	10	11,2	26,9	45,5	24,4	7,6	8,5	7,1
Total feed grain subsidies: M$	2254,4	1804,9	2263,3	4012,4	6049,4	6364,9	3791,6	2327,2	2492,1	2140,3
Soybeanmeal subsidies: M$	58,5	66,4	43,6	194,7	1119,2	1406,8	481,5	490,2	662,6	564,2
Cotton meal subsidies: M$	10	39,7	17,6	42,1	83,8	80,8	45,7	245,3	94,1	51
Grazing on public lands	123	123	123	123	123	123	123	123	123	123
Total feed subsidies: M$	2445,9	2034	2447,5	4372,2	7375,4	7975,5	4441,8	3185,7	3371,8	2878,5

Source: tables 1 to 8.

Table 10 – The additional PS AMSs to all meats resulting from their feed subsidies

Production value in M$	1995	1996	1997	1998	1999	2000	Av. 95-00	2007	2008	2009
Bovine and calves meat	24700	22035	24942	24188	26097	28499	25077	35973	34859	31990
Pig meat	9829	11902	12552	8717	7771	10784	10259	13468	14435	12590
Sheep meat	414	441	490	355	352	365	403	363	350	365
Poultry meat and eggs	18485	21863	21655	22351	22303	21241	21316	32236	35958	31606
Total PS AMSs of meats	53428	56241	59639	55611	56523	60889	57055	82040	85602	76551

Source: http://www.ers.usda.gov/Briefing/FarmIncome/datasources.htm#bulletins

As feed is the most important input of all animal products, all these feed subsidies have had the effect of conferring PS AMSs to all meats, but the AMS of dairy products has already been notified, mainly under the form of market price support (MPS).

As for the EU, the average feed subsidies of $4.319 billion during the 1995-2000 base period have conferred PS AMSs to all meats which had a production value of $57.055 billion so that the production value of products with PS AMSs rises from the notified $49.734 billion to $106.789 billion and, given an average VOP of $194.139 billion, the production value of products without PS AMSs falls to $87.350 billion and the allowed PSdm, being 5% of that value, falls to $4.368 billion.

Therefore the US 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 (FBTAMS) + 9.707 (PSdm) + 9.707 (NPSdm) + 9.707

(BB) – to $42.885 billion: 19.103 (FBTAMS) + 4.368 (PSdm) + 9.707 (NPSdm) + 9.707 (BB). Thus the allowed OTDS at the end of the implementation period, once cut by the 70% foreseen for the US by the Doha Draft Modalities of 6 December 2008, will fall to $12.866 billion[40], instead of the $14.467 billion acknowledged by David Blandford and David Orden (in table 4.7, page 132, of their book).

3) The 2008 Farm Bill has changed in vain the market price support of dairy products

In order to lower its allowed AMS for dairy products, which is mainly a fake 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 the way to notify it. Instead of continuing to compute it for the whole milk production, it is computed now for the three main dairy products: butter, nonfat dry milk and cheddar cheese. This new way to notify the MPS of dairy products has already been used in the notifications for 2008 and 2009.

This new way to notify the dairy MPS has been hailed unanimously by the US official institutions as by most researchers, including the authors of this book. Thus, for the Congressional Research Service, "*Revisions to the U.S. dairy program under the2008 farm bill appear likely to dramatically reduce annual dairy price support as notified to the WTO*"[41]. 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*"[42].

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*"[43]. 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*"[44].

However, despite the unanimity of US experts, this calculus does not comply with the AoA rules: if you change the rule to compute 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*

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[40] 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
[41] Randy Schnepf and Charles Hanrahan, *WTO Doha Round: Implications for U.S. Agriculture*, Congressional Research Service, July 24, 2008
[42] http://ictsd.net/downloads/2008/07/124.pdf
[43] http://www.fapri.missouri.edu/outreach/publications/2008/FAPRI_MU_Report_08_08.pdf
[44] https://www.msu.edu/~mdr/vol13no3/wolf.html

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 AMS from 2008 on, it cannot use the FBTAMS incorporating a dairy MPS calculated on the basis of another methodology.

This is acknowledged by Ivan Roberts and Neil Andrews: "*If the change to a processed product basis requires a change in base prices and in the coverage of commodities from milk to dairy products, what are the implications for the base levels of support for dairy and for US agriculture as a whole, and should any changes be reflected in overall US committed AMS limits for agriculture as a whole?*"[45]. Besides, they argue: "*The change from milk-based to dairy-product-based support prices could… mean that milk used for direct human consumption and for dairy products, other than cheddar cheese, butter and non-fat dry milk, might no longer be considered to be supported for the purposes of calculating the US AMS*".

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 $2.314 billion instead of the notified $5.409 billion for 1986-88, as computed in table 11.

Table 11 – 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 so that the final bound total AMS (FBTAMS) in 2000 was not $19.103 billion (80% of

45 Ivan Roberts and Neil Andrews, *Major US farm support policies and their links to WTO domestic support Commitments*, ABARE research report 09.1 January 2009, http://adl.brs.gov.au/data/warehouse/pe_abarebrs99001596/rr09.01_us_farm_policies_report.pdf

23.879) but only $16.627 billion (80% of 20.784). And the allowed FBTAMS at the end of the Doha Round implementation period, once cut by 60%, will bring it from $7.641 billion to $6.651 billion in the US notifications. Consequently, from 2008 on, the allowed OTDS was only $40.409 billion in the base period 1995-2000 – 16.627 (FBTAMS) + 4.368 (PSdm) + 9.707 (NPSdm) + 9.707 (BB) –, instead of $48.224 billion computed by Canada or $42.885 in the preceding section above. Cutting this allowed OTDS by 70% will bring it at $12.122 billion at the end of the Doha Round implementation period and cutting the FBTAMS by 60% would bring it at $6.651 billion instead of $7.641 billion.
But David Blandford and David Orden prefer not of be aware of these effects: "*The redesign of the dairy support program led to reduction of $2.1 billion for 2008 compared to notifying MPS for all milk production that year. In the projections, MPS is assumed to be notified using the new procedure and assuming no subsequent changes to dairy price support policy through 2016 that further reduce the notified MPS*".

<u>4) The biofuels subsidies</u>

Interestingly David Blandford and David Orden recognize that "*The United States has notified the federal ethanol tax credit to the WTO as an industrial subsidy under the ASCM. However, ethanol is included in the set of products defined as agricultural under the WTO agreements, so the tax revenue forgone could also be appropriately notified under the AMS, with ethanol considered the relevant product*". Besides they add: "*To the extent that an ethanol tax credit increases corn prices, it might be judged to be a measure directed at processors that affects the price of corn as a basic agricultural product. This would correspond to the way the United States formerly notified Step 2 payments to processors of domestic cotton as part of the cotton product-specific AMS before these payments were eliminated as a result of the US - Cotton case*".

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 –, FAPRI had estimated it in April 2009 to have been of only 13%: "*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%*"[46].

However, in a report of 10 June 2011, Bruce Baldock makes several scenarios in which he distinguishes the impact of the VEETC (volumetric ethanol excise tax credit) and of other factors, mainly the Congress' mandate having obliged the oil blenders to incorporate increased rates of corn ethanol in gasoline. He argues that "*ethanol subsidies have not been the major driver of higher commodity prices*"[47] even if, under "*tight market conditions*" as those prevailing in 2011, "*Maize prices in the 2011 calendar year would be about 17 percent lower than they are expected to be under current policies if ethanol subsidies had been eliminated before the beginning of the year… Under these tight conditions, the added demand incentive from the blender tax credit can have a significant impact on maize prices*". In other scenarios the corn prices would fall from 7% to 17%, 21% or 32%: "*Removal of the blender tax credit decreases the average maize price by about 7 percent.*

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

[47] Bruce Baldock, *The Impact of US Biofuel Policies on Agricultural Price Levels and Volatility*, ICTSD, 10 June 2011, *ictsd.org/downloads/2011/06/babcock-us-biofuels.pdf*

Removing both the tax credit and the mandate results in an average price decline of 17 percent"; "*If US ethanol production had somehow not been allowed to expand beyond 2004 levels, then maize prices in 2009 would have been about 21 percent lower than they actually were. Wheat and soybean prices in 2009 would have been about 9 and 5 percent lower, respectively*"; "*Elimination of the tax credit and the mandate under tight conditions dramatically lowers maize prices, from about $8.06 per bushel to $5.46 per bushel or by 32 percent*". Thus Baldock implies that the additional price of corn due to ethanol has increased with the percentage of corn going to ethanol, which is quite rational. Then let us assume roughly that the additional price due to the ethanol outlet has increased by 5% in 2000 and 2001, by 10% from 2002 to 2004, by 15% from 2005 to 2007 and by 20% from 2008 to 2010 over what it would have been without the ethanol outlet. The table 12 shows that the additional revenue of the US corn growers would have increased by $58 million in 2000 up to by $4.831 billion in 2010, with an average of $1.416 billion from 2000 to 2010.

Table 12 – Additional revenue of US corn growers due to the ethanol outlet for corn: 2000-2010

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Corn used by ethanol for fuel: million tonnes	16	18	25,3	29,7	33,6	40,7	50,9	77,4	94,2	116	127
Total corn production: "	251,8	241,4	227,8	256,2	299,9	282,2	267,5	331,2	307,1	332,5	316,2
Percentage of corn used for ethanol	6,35%	7,5%	11,1%	11,6%	11,2%	14,4%	19%	23,4%	30,7%	34,9%	40,2%
Annual farm price of corn: $/tonne	72,8	77,6	91,3	95,3	81,1	78,7	119,7	165,4	160	139,8	190,2
Additional price due to the ethanol outlet: "	3,64	3,88	9,13	9,53	8,11	11,81	17,96	24,81	32	27,96	38,04
Additional revenue of corn growers: M$	58,2	69,8	231	283	272,5	736,7	914,2	1920,3	3014,4	3243,4	4831,1

Source: USDA

Clearly if other factors have also played a role in the corn price spike –particularly the spike in oil price and the unbridled speculation –, we cannot follow Baldock when he suggests implicitly that the huge rise in corn prices has nothing to do with subsidies. It is clear that the Congress' mandate on increased use of corn for ethanol has been the driving force of its price spike and Baldock agrees with this. But this mandate, together with the VEETC, have resulted in a large rise in the demand for corn by the ethanol producers with the end result of a large spike in the corn price.

There are many strong arguments to consider these additional revenues to corn growers resulting from the additional farm price as being actual subsidies in the economic and even in the legal senses. As the mainstream free-trade economists consider that the *true price* is the one prevailing without any government intervention, clearly this is not the case for the corn price which level has been clearly induced by the Congress mandate and the VEETC which lowers its level for the oil companies, even if other factors are also influencing it.

From a legal perspective, the article 1 of the WTO Agreement on subsidies and countervailing measures defines a subsidy as follows: "*1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if: "…or (a)(2) there is any form of income or price support in the sense of Article XVI of GATT 1994; and (b) a benefit is thereby conferred*"[48]. The language used in the WTO Appellate Body report of 5 December 2002 in the Dairy products of Canada's case is also very clear as it states that a subsidy can be considered as financed through government action without implying a direct public aid but as the result of government rules implying third parties: "*Payments may be made, and funded, by private parties… The imposition by government of financial penalties on processors that divert CEM* ["commercial export milk"] *into the domestic market is another element of governmental*

[48] http://www.wto.org/english/res_e/booksp_e/analytic_index_e/subsidies_01_e.htm#article1B2aii

control over the supply of milk"[49]. Here too the US government has a direct control over the supply of corn ethanol as oil companies are forced to buy ethanol, otherwise they face deterrent penalties.

There is another strong evidence of the responsibility of the US ethanol boom in the corn prices hikes, and more broadly of all the hikes in food prices since 2006. Table 13 below shows that the global production of cereals has exceeded on average the global demand by 6.2 million tonnes from 2005-06 to 2010-11 because the deficits registered in 2005-06, 2006-07, 2010-11 and projected for 2011-12 have been compensated by the surpluses of 2007-08 to 2009-10. We take into account neither the global exports and imports nor the beginning and ending stocks which offset each other. Each year the corn production devoted to ethanol has exceeded the deficit registered in 2005-06, 2006-07, 2010-11 and projected for 2011-12. As the corn going to ethanol has been of 85 million tonnes on average from 2005-06 to 2010-11, we can make the case that, in the absence of ethanol production – that is without the Congress' mandate, the VEETC tax rebate and the tariff on imports –, the world price of corn and, because of its domino effect, the world prices of grains (including oilseeds), would have fallen significantly instead of skyrocketing since 2005-06.

Table 13 – Global production of cereals from 2005/06 to 2010/11

Million tonnes	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	Average 2005/06-2010/11	2011-12*
1- Global production	2016.7	2005.8	2121.9	2240.8	2234.6	2191.5	2135.2	2264.7
2- Global demand	2031.4	2054.1	2100.6	2159.7	2198.2	2230.1	2129.0	2280.2
3- Production-demand	-14.7	-48.3	21.3	81.1	36.4	-38.6	6.2	-15.5
4- US corn for ethanol	40.7	53.8	77.4	94.2	116.6	127.5	85.0	129.5
5-: 3 - 4	26	5.5	98.7	175.3	153.0	88.9	91.2	114.0

Source: USDA WASDE reports. * Projections for 2011-12 in WASDE report of 11 August 2011

Therefore the additional corn subsidies resulting from the ethanol outlet change the total corn subsidies as seen in table 14.

Table 14 – The total subsidies to ethanol corn from 2007 to 2009

$ million	2007	2008	2009	Average
Ethanol corn subsidies (from table 1)	891	1288	1320	1166
Corn production value "	54667	49313	46734	50238
Value of the CGF from corn ethanol	272,4	188,9	189,8	217
Value of the CGM from corn ethanol	150,5	222,4	242,6	205,2
Value of CGF+CGM from corn ethanol	422,9	411,3	432,4	422,2
" in % of corn value	0,774%	0,834%	0,925%	0,84%
Subsidies to CGF+CGM from corn ethanol	29,5	35	35	33,2
Ethanol subsidies net of those in feed corn subsidies	861,5	1253	1285	1133,2

However, before adding all the subsidies to ethanol corn we have to subtract the small ones already taken into account in table 1 for the feed corn subsidies. Indeed a minor share of corn gluten feed (CGF) and corn gluten meal (CGM) has resulted from the ethanol process whereas the major part has been issued from the production of HFCS (high fructose corn syrup) as shown by USDA[50].

49 http://docsonline.wto.org/imrd/gen_searchResult.asp?RN=0&searchtype=browse&q1=%28%40meta%5FSymbol+WT%FCDS113%FCAB%FCRW2%2A%29&language=2

50 http://www.ers.usda.gov/Publications/FDS/2010/11Nov/FDS10K01/FDS10K01.pdf

Table 15 – The total corn subsidies from 2007 to 2009

	2007	2008	2009	Average
VEETC	3315	4590	4770	4225
Additional farmers' revenues from ethanol outlet	1920,3	3014,4	3243,4	2726
Ethanol corn subsidies net of feed corn subsidies	861,5	1253	1285	1133
Total subsidies to ethanol corn	6096,8	8857,4	9298,4	8084
Other corn subsidies	2944,5	2941	2503	2796
" of which feed corn subsidies	1991,5	2124,4	1822,6	1980
" of which corn subsidies to US food and exports	953	816,6	680,4	816
Total corn subsidies	9041,3	11798,4	11801,4	10880

And table 15 shows that total corn subsidies have reached $10.880 billion on average from 2007 to 2009, of which $8.084 billion to ethanol corn, $1.980 billion to feed corn and $816 million to corn for US food and exports.

Let us underline that we have not taken into account all the other subsidies to US biofuels, particularly to foster research on second generation biofuels and the subsidies to biodiesel.

<u>**5) The cotton subsidies**</u>

The table 16 summarizes the evolution of cotton subsidies and dumping rate for the base period 1995-2000 and from 2007 to 2009.

Table 16 – US cotton subsidies in the base period 1995-2000 and from 2007 to 2009

	1995	1996	1997	1998	1999	2000	95-00	2007	2008	2009	97-99
Notified cotton AMS	dm (32)	dm (3)	466	935	2353	1050	801	dm (210)	1,130	dm (148)	377
CCC subsidies	101	685	561	1157	2112	4671	1548	3604	1605	3060	2756
" – STEP2 to exports	67	682	561	977	1999	4486	1462	3604	1605	3060	2756
Insurance premium .	162	157	148	151	170	162	158	199	254	213	222
Total cotton PS AMS	263	842	709	1308	2282	4833	1706	3803	1859	3273	2978
Production: 1000 t	3902	4129	4097	3034	3699	3747	3768	4182	2791	2654	3209
Exports: 1000 t	1673	1497	1635	937	1472	1469	1447	2972	2891	2624	2829
% production exported	42,9%	36,2%	37,3%	30,9%	39,8%	39,2%	38,4%	71%	103,5%	98,8%	88,1%
Export subsidies	29	247	209	302	796	1759	557	2559	1661	3023	2428
STEP 2 to exporters*	34	3	-	180	113	185	86		30	85	
Total export subsidies	63	250	209	482	909	1944	643	2559	1661	3023	2428
Exports value	3765	2777	2741	2601	1027	1959	2478	4723	4944	3479	4382
Dumping rate	0.2%	9%	7.6%	18.5%	88.5%	99.2%	25.9%	54.2%	33.6%	86.9%	55.4%

Source: USDA; www.nationalaglawcenter.org/assets/crs/RL32571.pdf; http://edocket.access.gpo.gov/2008/pdf/E8-26343.pdf; Comtrade.

The Doha Draft states: "*AMS support for cotton shall be reduced according to the following formula: Rc = Rg + [(100 – Rg) * 100]/(3 * Rg) with Rc = Specific reduction applicable to cotton as a percentage and Rg = General reduction in AMS as a percentage*". As the US average notified cotton AMS has been of $801 million in the base period 1995-2000 and the Doha Draft has proposed that the US would reduce its FBTAMS by 60%, the above formula implies to reduce the applied cotton AMS at the end of the Doha Round implementation period by 82.22%, i.e. by $658.6 million, down to $142.4 million.

However, if cutting the US cotton AMS to $142.4 million is the best solution for the African cotton exporting countries, as the allegedly "production flexibility contracts" and "market loss payments" have been put in the amber box by the WTO, precisely in the cotton case as we have seen, and also the direct payments and countercyclical payments from 2002 on, the actual cotton AMS has been on average of $1.462 billion in the base period 1995-2000 and of $2.756 billion from 2007 to 2009. So that cutting $1.462 billion by 82.22% would allow the US to keep a cotton AMS of $260 million instead of $142 million. This is a minimum as we have not taken into account the NPS AMS which could be allocated to cotton: particularly the irrigation subsidies but also the loan subsidies and tax rebates on agricultural fuels. We have not counted either the export guarantee subsidies that the WTO has also ruled to be trade-distorting and an export subsidy. However the actual level of this subsidy would be very small as Randy Schnepf has shown[51].

However there is a good case to take into account the $147.3 million of annual subsidies that the US has committed to grant to Brazil's cotton chain as a compromise in their bilateral dispute on cotton so as to avoid trade retaliation by Brazil against U.S. goods and services. However this grant has only began to be implemented in 2010.

6) Other non-product-specific AMS subsidies

a) Crop and revenues insurance subsidies

Besides, the average figures given from 1995 to 2008 are misleading as the subsidies have risen over years. According to the Congressional Research Service, "*Government costs for crop insurance have increased substantially in recent years. After ranging between $2.1 and $3.6 billion during FY2000-FY2006, costs rose to $7.3 billion in FY2009 as higher policy premiums from rising crop prices drove up premium subsidies to farmers and expense reimbursements (which are based on total premiums) to private insurance companies. In FY2010, total costs declined to $3.7 billion following a decline in crop prices*"[52]. However, as the prices have exploded again in 2010-11, the subsidies would surely follow suit in 2011.

Table 17 – Under-notifications of crop insurances in the base period and from 2007 to 2009

$ billion	1995	1996	1997	1998	1999	2000	Ave. 95-00	2007	2008	2009	Av. 07-09
Notified subsidies	913	636	119	747	1514	1396	888	801	4509	5593	3634
Program losses or (gains)*	188	88	(373)	(75)	(74)	196	(50)	(1068)	(1717)	108	(892)
Federal premium subsidy	774	978	945	940	1295	1353	1048	3544	5301	5198	4681
Private companies reimbursem.	373	490	450	427	495	540	463	1341	2016	1602	1653
Other costs	105	64	74	82	66	86	80	123	137	131	130
Total government costs	1440	1621	1096	1374	1783	2175	1582	3940	5737	7039	5572
Under notification	527	985	976	627	269	779	694	3139	1228	1446	1938
Under notification/notification	58%	155%	841%	84%	18%	56%	78%	203%	27%	26%	53%
Under notific./government cost	37%	61%	89%	46%	15%	36%	44%	80%	21%	21%	36%

* Government's underwriting loss (gain if negative) = the difference between total indemnity payments for crop losses and total premiums (farmer and government paid), plus or minus any private company underwriting gains or losses.

Source: Notifications to the WTO; Dennis A. Shields, *Federal Crop Insurance: Background and Issues*, CRS, December 13, 2010.

Thus, according to the Congressional Research Service, the under-notification to the WTO has represented 78% of the notification in the 1995-2000 base period and 53% from 2007 to 2009.

What is astonishing is that the US has notified for the first time in the green box in 2009 the RMA's administrative and operating expenses, the administrative & operating reimbursements to insurers and the underwriting gains to insurers, for a total of $2.485 billion. If this reveals a late sinner's remorse of its massive under-notification of crop insurance subsidies, it is clearly impossible to notify these subsidies in the green box for at least three reasons:

- It is irrational to notify the premium subsidies in the NPS AMS and the cost of delivery of policies in the green box.

[51] Randy Schnepf, *Brazil's WTO Case Against the U.S. Cotton Program,* June 21, 2011, www.nationalaglawcenter.org/assets/crs/RL32571.pdf

[52] Dennis A. Shields, *Federal Crop Insurance: Background and Issues,* Congressional Research Service, December 13, 2010, www.nationalaglawcenter.org/assets/crs/R40532.pdf

- This notification in the green box of the cost of delivery does not comply with the AoA Annex 2 paragraph 7 on "Government financial participation in income insurance and income safety-net programmes", which requires that *"(b) The amount of such payments shall compensate for less than 70 per cent of the producer's income loss in the year the producer becomes eligible to receive this assistance*". However several types of crop insurances cover much more than a 70% loss, as attested by USDA: "*For the Group Risk Plan (GRP)* ***c****overage levels are available for up to 90 percent of the expected county yield*", for the "*Group Risk Income Protection (GRIP) … Coverage levels are available for up to 90 percent of the expected county revenue*", for the "*Actual Production History (APH) policies… The producer selects the amount of average yield to insure; from 50-75 percent (in some areas to 85 percent). The producer also selects the percent of the predicted price to insure; between 55 and 100 percent of the crop price established annually by RMA*", for the "*Yield Protection policies… a projected price is used to determine insurance coverage… The producer selects the percent of the projected price he or she wants to insure, between 55 and 100 percent*"[53].

The funny side of the story is that Joe Glauber – who was a specialist of crop insurances in his former position of USDA's Deputy Chief economist, before being the USTR Chief Agriculture Negotiator, and becoming the USDA Chief economist since 2009 – 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"*"[54].

The Congressional Research Service's reports understates the same issue: "*A general policy question as Congress considers the next farm bill is whether or not there is overlap in program benefits between crop insurance and other farm programs that together form the farm safety net. Most critically, some observers have noted that ACRE and crop insurance can provide duplicate coverage in certain instances and question why taxpayers should fund both programs*".

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 Chad Hart has reminded us, in a House of Representatives' hearing of 2006, that "*The ruling in the cotton dispute indicated that crop insurance support is a "support to a specific commodity"… If crop insurance were declared product-specific support, then some crop insurance net indemnities should have been counted against the U.S. support limits. For example, in 2001, crop insurance net indemnities for corn, upland cotton, canola, flaxseed, sunflower seed, peanuts, rice, and soybeans would have been counted against the limits, adding $874 million to our reported AMS total. Thus, crop insurance faces several potential obstacles within the WTO*"[55]. And he added: "*The U.S. has proposed reducing the de minimis*

[53] Risk Management Agency, *Crop policies and pilots*, http://www.rma.usda.gov/policies/

[54] Joseph W. Glauber, *Double Indemnity: Crop Insurance and the Failure of U.S. Agricultural Disaster Policy*, in Bruce L. Gardner and Daniel A. Sumner, The 2007 Farm Bill and Beyond, 2007 (http://aic.ucdavis.edu/research/farmbill07/aeibriefs/20070516_Summary.pdf).

[55] Chad Hart, *Crop Insurance within the World Trade Organization*, U.S. House Committee on Agriculture, April 26, 2006, www.card.iastate.edu/presentations/harthousetestimony.pdf

exemption from 5 percent of the value of agricultural production to 2.5 percent. If such a reduction were to occur, crop insurance support could exceed the de minimis level on its own and be counted against support limits", which is even clearer to-day as crop insurance subsidies have exploded since 2006.

Indeed, the Risk Management Agency (RMA) gives the detailed figures of premium subsidies by crop[56], 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*". Which is confirmed also for 2008 and 2009, as shown in table 18.

Table 18 – Premium subsidies on crop insurances for the 4 main crops from 1995 to 2004

$ billion	Ave. 1995-00	Av. 1995-04	2007	2008	2009
Total premium subsidies for all crops	937.8	1365.8	3823.4	5.691.0	5424.5
Corn	209.4	329.1	1739.3	2116.4	2038.2
Cotton	163.6	191.1	198.9	250.5	212.4
Soybean	146.2	234.3	605.6	1471.3	1188.9
Wheat	120.3	184.5	525.4	936.8	1092.4
Premium subsidies of the 4 crops and % of total	639.6 (68%)	939.0 (69%)	3069.2 (80.3%)	4775 (83.9%)	4531.9 (83.5%)

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 Doha Draft 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 to have been a bad idea as the average crop insurance subsidies have been higher in the 1995-2004 period than in 1995-2000.

Blanford and Orden admit that "*It may be difficult to keep within some of the product-specific caps if prices were to fall. The cap on corn at $1.1 billion, compared with a notified AMS well in excess of this value when prices have been low (see Table 4.4), is particularly noteworthy in this respect. A comparison of the data in Table 4.4 on the notifications for 1995-2008 to the product-specific AMS limits in Table 4.10 reveals that no less than 115 of the 153 notified AMS values included in CTAMS (75 percent) would have exceeded the proposed Doha limits (even without any trade-off to the blue box, discussed below). This includes all the notified AMS values for barley, corn, oats, soybeans and wheat. It suggests again that the proposed product-specific AMS limits could be extremely important*". Indeed, the more so if we add the insurance premium subsidies, e.g. on corn. As the PS AMS limit for corn is $1.126 billion, the insurance premium subsidy alone has been already of $1.965 billion on average from 2007 to 2009, to which we add the $10.880 billion calculated in table 15. Even if we deleted the corn ethanol subsidy and add only the other corn subsidies of $2.796 billion, the other total corn subsidies have reached on average $4.761 billion from 2007 to 2009, 4.2 times more than the allowed limit proposed in the Doha Draft!

[56] RMA, *Summary of business reports and data*, http://www.rma.usda.gov/data/sob.html

Therefore it is difficult to understand how renowned agricultural trade experts as David Blandford and David Orden are not rectifying the notifications by counting at least the premium subsidies even if they do not take into account the payment of delivery costs to private insurance agents plus their underwriting gains. Even their shadow notification of crop insurance subsidy for 2008 (table 4.5 page 117) was a guess of $2.880 billion, which was about half the actual notification of $4.509 billion, itself still 27% below total government costs. Once more these authors, like Tim Josling and Alan Swinbank for the EU, have deliberately chosen not to question the official notifications, which is not precisely what we should expect from serious researchers.
Let us stress to conclude that the clear preference expressed in the last months by most US farmers and Congress' members to emphasize the importance and coverage levels of crop insurances in the next Farm Bill, partly to compensate the likely disappearance or at least sharp reduction of the fixed direct payments, will render less and less feasible the possibility to notify the corresponding subsidies in the green box. The more so as the ACRE program, which should be simplified, is clearly linked to the prices level, as confirmed by Blandford and Orden. As, furthermore, the level of crop insurances subsidies rises with the prices of crops and as these prices are projected to continue to increase in the middle and long runs, it is an additional reason why the US could never comply with its commitments to cut by 60% its FBTAMS at the end of the Doha Round implementation period.

b) Agricultural loans subsidies

In the base period 1995-2000 the US has notified only the subsidies to State credit programs, for $48.8 billion each year, in the NPS AMS plus an average of $102 million in the green box under the heading of "Structural adjustment through investment aids". This has almost not changed from 2007 to 2009 where an average of $122.3 million have also been notified in the green box the subsidies to State credit loans of $48.8 million has been discontinued from 2008 and there were only $3.4 million of loan subsidies in the NPS AMS (plus $48.8 million only in 2007).

However USDA has notified to OCDE an average of $645 million of agricultural loan subsidies in the 1995-00 base period, 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*"[57]. 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, according to the AoA article 6.2. In fact the actual level of agricultural loans subsidies has been of $1.092 on average in the 1995-200 period if we take into account the write-offs and net losses[58] but we will retain only $645 million for conservative reasons.

[57] OECD, http://www.oecd.org/dataoecd/11/24/37003207.htm
[58] 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

c) Agricultural fuel 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 up to 2010, 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*". Indeed a subsidy is defined by article 1 of the WTO Agreement on subsidies and countervailing measure as "*government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits)*". David Blanford and David Orden classify also this tax exemption among "*Potentially underreported, misclassified or omitted subsidies*", but do not deduct for that matter that their NPS AMS has been increased by as much.

We have made a complementary investigation limited to 2005 and 2006 which confirms that the US farmers have benefitted of $2.987 billion in tax exemption for their fuels (diesel, gasoline and other fuels) in 2005 and $3.123 billion in 2006[59]. This is a very minimum as we did not take into account the tax exemption on electricity used for farm operations (excluding that for households). Given that electricity expenditures have been of $3.454 billion in 2005 and of $3.693 billion in 2006, or 33.5% and 33.2% of fuels expenditures[60], 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.

d) Irrigation subsidies

Irrigation 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.

For Blandford and Orden, "*The US reports interest on the debt for irrigation project construction in its non-product-specific AMS, arguing that "irrigators repay the premium but not the interest." The subsidy has been reported as declining from $380 million in 1995 to $240 million by 2006… No notification is made for irrigation subsidies related to maintenance and operating costs (which irrigators apparently pay), nor for the benefits from water charges to farmers that are below those for other users (which is a common practice). No allowance is provided for preferential charges for electricity used by agriculture, either to move water from its source to farmland or for on-farm use of electricity*". Let us stress that Blandford and Orden have not read correctly the figures of the US notifications which were $543.3 million in 1995 (see table 18). And, in a preceding paper of November 2008, instead of "*(which irrigators apparently pay)*" they wrote more cautiously: "*(which irrigators apparently are required to pay)*"[61]. Unfortunately their conclusion does not go beyond: "*A more systematic and consistent approach measurement and notification of these subsidies would be useful in the WTO*".

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[59] 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.

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

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

Table 19 – US notifications of irrigation subsidies in 1995-2000 and in 2007-2009

$ billion	1995	1996	1997	1998	1999	2000	Ave. 95-00	2007	2008	2009	Av. 07-09
Notified subsidies	543,3	543,3	381,4	348,5	348,5	315,7	413,5	239,5	203,8	203,8	215,7

Source: notifications to the WTO

According to a UNCTAD report of 2005 "*On the basis of an average subsidy rate of US$ 54 per acre, total annual subsidies for irrigation for the 40-50 million acres of irrigated land in the United States can be estimated at US$ 2-2.5 billion (Repetto 1986. Moore and Mc Gucking 1988. De Moor 1997. Van Beers and de Moor 2001), resulting in vast rents benefiting mostly large farmers*"[62]. This assessment should be even higher to-day as the Farm and ranch irrigation survey of 2008 has shown that 56.6 million acres were irrigated in 2007. Besides, "*Interior Department economists have estimated that…the government unnecessarily spends at least $2.3 billion per year on irrigation-related subsidies*"[63]. For 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*"[64].

An Environmental Working Group (EWG) investigation has calculated that federal water subsidies were of $416 million for the Central Valley Project (CVP) in California alone[65], a figure recouped by other sources: CVP uses about 7 million of acre-feet of irrigated water annually[66], with a subsidy of around $.67 per acre-foot, leading also to $468 million.

Given that the CVP is irrigating about 3 million acres or 5.3% of the US irrigated area, all the above evidence leads to consider that a conservative estimate of the US irrigation subsidies is at least $1 billion per year.

<u>6) The actual CTAMS and OTDS</u>

The table 20 recapitulates the applied and allowed CTAMS and OTDS for the 1995-2000 base period and the 2007-2009 period.

Because the US has changed in 2008 the way to notify its dairy market price support (MPS) on the basis of three dairy products (butter, skimmed milk powder and cheddar cheese) instead of milk as previously, we have shown that this has changed necessarily the MPS in the 1986-88 base period for the reduction commitments of the Uruguay Round so that its allowed FBTAMS has been lowered to $16.626 billion instead of $19.103 billion. But its applied CTAMS of $19.461 billion for the 1995-2000 has already exceeded its FBTAMS by $2.835 billion or by 17% because, as the result of the WTO Appellate Body ruling of 3 March 2005 in the cotton case, the production flexibility contracts, the fixed direct payments, the market loss assistance payments and the counter-cyclical payments have been put in the amber box and declared product-specific. In any case if they were all put in the NPS AMS the CTAMS would be even larger as the NPS AMS would have exceeded the allowed *de miminis* level of

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[62] Alberto Gabriel, *Subsidies to services sectors: a neo-protectionist distortion or a useful development tool?*, UNCTAD, http://www.unctad.org/en/docs/ditctncdmisc20037_en.pdf
[63] http://wingolog.org/writings/water/html/node89.html
[64] 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)
[65] http://archive.ewg.org/reports/Watersubsidies/execsumm.php
[66] http://archive.ewg.org/reports/Watersubsidies/part4.php

5% of VOP to that all the NPS AMS would have been transferred to the CTAMS.

And, because we have transferred to the PS AMSs the market loss assistance payments and the counter-cyclical payments notified in the NPS AMS, the average applied NPS AMS is in fact lower than the notified one despite that we have increased the figures for irrigation and loan subsidies and added the agricultural fuel subsidies as notified to OECD.

The comparison of the $12.122 billion of the allowed OTDS at the end of the Doha Round implementation period – after cutting by 70% the allowed level in 1995-2000 – with its applied level of $30.373 billion in 2009 (last notified year) leads us to expect that the US would never be able to comply with its commitments. It is even worst for the comparison between the $6.651 billion of allowed CTAMS at the end of the Doha Round and the $26.096 billion of applied level in 2009.

Table 20 – The US average applied and allowed CTAMS and OTDS in the base period and up to 2007

$ million	1995	1996	1997	1998	1999	2000	Av.95-00	2007	2008	2009	Av.07-09
Notified CTAMS											
Total	6214	5898	6238	10392	16862	16845	10793	6260	6255	4267	5594
Market price support: total	6213	5919	5816	5776	5921	5840	5914	6154	4060	4068	4761
" dairy	4693	4674	4455	4332	4437	4378	4495	4882	2925	2827	3545
" sugar	1108	937	1045	1093	1180	1133	1083	1272	1134	1241	1216
" peanuts	412	308	315	350	303	330	336	-	-	-	
Loan deficiency payments			3	2708	6062	6192	2494	55	85	156	99
Marketing loans gains			26	1072	1830	813	624	272	34	252	186
Certificate exchange gains				6	175	619	133	818	202	686	569
Commodity loan forfeiture				6	642	20	111				
Cotton user marketing			416	280	446	237	230				
Oilseed payments					458	921	230				
Emergency payments				208	683	1473	788	5			
Other supports	-53	-22	-23	337	567	498	217	9			
Miscellaneous payments					79	231	52				
Plus PS AMS unduly not notified											
Production flexibility	-	5973	6120	6001	5046	5057	4699,5	-1			
Fixed direct payments	-	-	-	-	-	-		5060	5110	4727	4966
Market loss assistance	-	-	-	2811	5468	5463	2290,3	1			
Countercyclical payments	-	-	-		-	-		1125	712	1170	1002
Multi-year crop disaster				577			96,2				
Milk income loss contracts								73,9		880	318
Crop insurance	1440	1621	1096	1374	1783	2175	1582	3940	5737	7039	5572
Corn ethanol subsidies*								5235,3	7604,4	8013,4	6951
Tot. not notified PS AMSs	1440	7594	7216	10763	12297	12695	8668	15434,2	19163,4	21829,4	18809
Actual CTAMS	7654	13492	13454	21155	29159	29540	19461	21694,2	25418,4	26096,4	24403
NPS AMS											
Notified NPS AMS	1544	1113	568	4584	7406	7278	3749	2023	5989	6074	4695
Agricultural loans	645	645	645	645	645	645	645	645	645	645	645
Agricultural fuels	2395	2395	2395	2395	2395	2395	2395	2395	2395	2395	2395
Irrigation	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
Actual NPS AMS	4040	4040	4040	4040	4040	4040	4040	4040	4040	4040	4040
Applied OTDS and its components											
Actual CTAMS	7654	13492	13454	21155	29159	29540	19461	21694	25418	26096	24403
NPS de minimis	4040	4040	4040	4040	4040	4040	4040	4040	4040	4040	4040
PS de minimis	97	40	237	158	29	63	104		171	237	1184
Blue box	7032	-	-	-	-	-	1172		-	-	
Total applied OTDS	18823	17572	17731	25353	33228	33643	24777	25734	29629	30373	29627
Excess of the applied CTAMS over the FBTAMS and of the applied OTDS over the allowed OTDS											
Allowed OTDS	In base period 1995-00: 40409				Applied in 1995-00: 24777			Allowed end DR: 12122			2009:30373
Allowed FBTAMS	In base period 1995-00: 16627				Applied in 1995-00: 19461			Allowed end DR: 6651			2009:26096
Allowed PS de minimis	In base period 1995-00: 4368				Applied in 1995-00: 104			Allowed end DR: 2.5% VSP**			2009: 237
Allowed NPS de minimis	In base period 1995-00: 9707				Applied in 1995-00: 4040			Allowed end DR: 2.5% VOP			2009: 4040
Allowed blue box	In base period 1995-00: 9707				Applied in 1995-00: 1172			Allowed end DR: 2.5% VOP			2009: 0

Sources: all the previous tables. *: for corn ethanol subsidies we have only kept the VEETC and the additional farmers' revenues from the ethanol outlet so as to avoid double counting what has already been notified in the direct aids, which is also the reason why we do not take into account the feed subsidies; VSP: agricultural production value of specific products.

Conclusion

Tim Josling, Alan Swinbank, David Blandford and David Orden have tried in their book to convince the readers, and above all the Doha Round negotiators, that the EU and US are fully complying with the AoA rules on domestic supports and would be able to comply with their implicit commitments in the Doha Draft for the Doha Round implementation period, albeit with some difficulties.

The evidence presented here should convince them to reconsider radically their position and adopt a scientific stance instead of closing permanently their eyes on a long chain of *porous AoA rules*, full of *ambiguities*, letting *substantial discretion* and *sufficient flexibility* to the EU and US to interpret those rules. With the end result that, put together, these *substantial discretion* and *sufficient flexibility* let to the EU and US at all steps of their agricultural notifications leads to a huge violation of the truth. How could the developing countries agree to open their markets to the EU and US exports of non-agricultural products and services when they see the extent to which they are cheating with the rules they have themselves devised? And how could they accredit in the alleged scientific analysis of the *WTO disciplines on agricultural support* when their renowned authors are so indulgent with the EU and US *substantial discretion*?

However, beyond this profound refusal of the EU and US to comply with the AoA rules, we should understand that they would never, in any case, cease to support their agriculture and farmers. For the simple reason clearly expressed in an article published the 8 September 2003 in the French newspaper Le Figaro, on the eve of the Cancun WTO Ministerial conference, and jointly signed by Pascal Lamy, the then EU trade Commissioner, and Franz Fischler, the then EU Commissioner for agriculture: "*Us, Europeans, we refuse to submit fully agriculture to the law of comparative advantages, that of the pure liberalism. Agriculture is not coal, and our farmers will not be the miners of the 21st century, doomed inexorably to disappear given their supposed economic inefficiency… Maintaining border protections, for those who want it, is not only legitimate but also necessary… Together with the low income countries, we share the concern of not opening agriculture to the large winds of liberalism… Who could be convinced that a total liberalization will benefit the poorest countries?*"[67].

Indeed Pascal Lamy and Franz Fischler are right to say that agricultural products, particularly food products, are quite specific and require specific trade rules. Facing a stable demand in the short run, agricultural production fluctuates with climatic vagaries, and even more agricultural prices and incomes and consumers prices. That is why all countries since the Pharaohs have run agricultural policies to regulate the supply at the import level and through public storage. But the liberalisation of agricultural policies has been fostered since the 1980s under the pressures of large agri-food corporations, with the main objective to lower the prices of agricultural products, their raw materials, to increase their profits.

The developing countries should know that, while the EU has been debating for more than one year on its next CAP reform for the 2014-20 period and the US has done the same for its next Farm Bill, neither the EU nor the US have ever hinted in their domestic debates at their

[67] Pascal Lamy, *Cancun: agriculture and liberalism*", http://ec.europa.eu/archives/commission_1999_2004/lamy/speeches_articles/spla186_fr.htm; read also J. Berthelot, *Anthology of Pascal Lamy's statements on agricultural protectionism*, Solidarité, December 19, 2009, http://www.solidarite.asso.fr/Papers-2009.html

commitments to cut by 54% on average their agricultural tariffs and by 70% (US) and 80% (EU) their overall trade distorting domestic support (OTDS) allowed during the 1995-2000 base period. While the EU has reformed profoundly its CAP since 2003 through an alleged full decoupling of its subsidies to notify them in the green box, the US has kept ignoring the AoA rules and has to the contrary increased its anti-cyclical subsidies. And the present debates in the Congress shows that the US is prepared to get rid of its fixed direct payments and to reinforce its crop insurance subsidies, which could hardly be notified in the green box.

Let us stress that, paradoxically, the most trade-distorting subsidies are the green ones – because they can increase without limits –, followed by the blue ones – because the unit payment per ton, hectare or cattle head is not limited –, followed by the PS AMS subsidies linked to administered prices – because of their fake market price support component –, the least trade-distorting being paradoxically the export subsidies, because they are capped and must decrease over time (and disappear in 2013), at least as long as the importing countries can prevent their import by an efficient protection.

Consequently the developing countries should be well advised to stop negotiating on the basis of the Doha Draft. 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 harm other countries, particularly through exporting products having benefitted from any type of subsidy. This implies 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.