



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

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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 of the agricultural negotiations – domestic support and export competition. To balance these*

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

*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 analyzes, focusing essentially on the EU and US domestic supports.

The book, published in 2011, tries to justify the present rules of the Agreement on Agriculture (AoA) and the new ones proposed in the WTO Doha Draft of agriculture modalities of 6 December 2008, rules intended 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 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".

In other words, the die is cast and the authors recognize implicitly that the AoA has failed because of its complexity and even 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"*.

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/>

We 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 –, their *porous rules* 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.

The EU and US have committed themselves, if the Doha Round is eventually finalized, to cut their applied "overall trade-distorting domestic supports" (OTDS) by 80% for the EU and by 70% for the US in relation to their allowed levels in the 1995-2000 base period. However I have shown, first, that their allowed levels are lower than those advanced by the EU, the US and the authors of the book, and, second, that their applied levels are much larger than those claimed, because of a long series of cheatings, and this for the 1995-2000 period as in the last notified year 2007-08 for the EU and in the three last notified years 2007 to 2009 for the US.

Let us confess to the readers that this paper is highly technical because it has been intended to unmask the flaws in the argumentation of the authors of the book, anxious to defend at all costs the EU and US positions that they are fully abiding by the WTO rules and are offering even more generous commitments to cut their trade-distorting subsidies more than what they have already done up to now.

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?"*⁴.

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 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.

⁴ Pascal Lamy, *Cancun: agriculture and liberalism*", http://ec.europa.eu/archives/commission_1999_2004/lamy/speeches_articles/spla186_fr.htm; J. Berthelot, *Anthology of Pascal Lamy's statements on agricultural protectionism*, Solidarité, December 19, 2009, <http://www.solidarite.asso.fr/Papers-2009.html>