Advisory Group International Aspects of Agriculture
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Solidarité's comments on the State of play of DDA negotiations
24 January 2013

In its memo of 28 January 2011 on "WTO trade negotiations: Facts and Figures on the Doha Development Agenda"[1], the European Commission (EC) wrote:
"*What is already on the table?": On agricultural goods:*
o *The EU would open its market further to imports of agricultural goods with "formula cut" of import duties. The EU has offered to cut these duties by an average of 39% in 2005 and has increased that offer to an average 60% cut in 2008.*
o *The EU would reduce its trade-distorting agricultural subsidies by 80%, and the US by 70%.*
The EU has agreed to eliminate all its export subsidies by 2013".

On 21 April 2011, David Walker, Chairman of the Special Session of the Committee on Agriculture, stated: "*Since I assumed the role of Chair in April 2009… I have undertaken consultations on the issues that are bracketed or otherwise annotated in the documentation before the Negotiating Group – the Draft Modalities text TN/AG/W/4/Rev.4* [of 6 December 2008]… *To this point, Members have not been in a position to substantively resolve matters nor is there any discernable progress on these issues that can be captured in text*".

John Adank, the present chairperson of the agriculture negotiations, reported to the Trade Negotiations Committee on 7 December 2012 that "*Members' willingness to engage in the deliberations has been encouraging*", a diplomatic statement meaning that no concrete progress was achieved.

The stalemate in the Doha negotiations is largely due to agricultural issues, not only because it was the main breaker of the negotiations in Delhi in July 2008 but, more largely, because the DCs think that the developed countries' demands on non-agricultural products market access (NAMA) and services are disproportionate with the feasibility of their offers on agriculture.

Indeed we will show that the Draft modalities on agriculture (DMA) of 6 December 2008 are full of inconsistencies with the Agreement on Agriculture (AoA) rules and that the EU made massive under-notifications of its subsidies so that it cannot comply with its proposals to cut by 80% its *allowed* OTDS (overall trade-distorting domestic support) because it is lower that the level it has *calculated* whereas its *applied* level is much higher than the level it has *notified*. There would be much to tell about the commitments to cut by 60% the import duties and to eliminate all export subsidies at the end of the Doha Round (DR) implementation period but this paper concentrates on domestic subsidies.

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

The *allowed* OTDS that the EU agreed to cut by 80% at the end of the DR implementation period is that of the base period 1995-2000, which was the Uruguay Round (UR)

[1] http://trade.ec.europa.eu/doclib/docs/2011/january/tradoc_147460.pdf

implementation period. On 22 May 2006 Canada circulated a report on "Agriculture domestic support simulations" (JOB(06)/151) with this introduction: "*Representatives of Australia, Brazil, Canada, China, the European Communities, Egypt, India, Japan, Kenya, Malaysia, Norway and the United States have undertaken a data simulation exercise on various reduction options for the Total AMS and the Base for the Overall Commitments, using information provided by the European Communities, Japan and the United States. This effort was based on assumptions and indicators agreed by these Members for purposes of this statistical exercise alone. It was undertaken without prejudice to the positions of the Members involved. These Members would now like to share the results of this simulation exercise, including the data, assumptions and results, with the WTO Membership as a whole*". From that date on most Members, the media and NGOs have based their comments and negotiating positions on these simulations, without taking care of their huge flaws.

According to Canada's simulations, endorsed by the EU and the WTO, the EU authorized OTDS (at that time the EU15) would be of €110.305 billion [67.159 for the Final Bound Total AMS (Aggregate Measurement of Support on 30 June 2001) (FBTA) + 11.129 (product-specific *de minimis*, PSdm) + 11.129 (non-product specific *de minimis*, NPSdm) + 20.888 (blue box, BB)] and its reduction by 80% would lower it to €22.061 billion at the end of the Doha Round (DR) implementation period. However this calculation contradicts the AoA rules on two points: the allowed product specific *de minimis* (PSdm) is not 5% of the value of the whole agricultural production (VOP) and the EU feed subsidies conferred PS AMSs to all animal products. Therefore the authorized OTDS is only €90.496 billion and its reduction by 80% would lower it to €18.099 billion at the end of the DR implementation period[2].

However we must revise these OTDS data to take into account the revised FBTA notified to the WTO at €72.244 billion for the EU27 after the adhesion of the EU12 New Member States (NMS), but the EU did not revise and notify the value of its total agricultural production (VOP) of the EU27 for the years 1995 to 1997 by lack of data for some NMS so that it could not revise the *de minimis* NPS AMS. However Solidarité actualized these data relying on FAOSTAT values of all agricultural products (VOP) which, for the base period 1995-00, was of €271.947 billion in the EU27, so that, according to the Canada's simulations endorsed by the EU, the PSdm and NPSdm were each of 5% of that VOP value, i.e. €13.597 billion. Admittedly we should not speak of EU12 before 2004 for the EU10 and 2007 for the EU2 because there were only individual countries, and their notifications to the WTO were made as individual Members. However, for the sake of simplicity, we will group together the figures of these 12 NMS in the 1995-00 base period.

As very few notifications of BB payments were made by the EU12 NMS in 1995-00 – only Estonia, Slovakia and Slovenia notified BB payments, and only in 2000 for Estonia and Slovenia –, contrary to the EU15, their applied BB was much lower than 5% of their VOP[3] so that their allowed BB is only of 5% of their average VOP of €35,316 billion in the base period, i.e. of €1.766 billion. So that the EU27 allowed BB amounted to €22.654 billion and the allowed EU27 OTDS was, on the lines of Canada's simulations, of €122,292 billion [72.244

[2] J. Berthelot, *The CAP subsidies are incompatible with the WTO Agreement on agriculture*, Collectif Stratégies Alimentaires et Plate-Forme Souveraineté Alimentaire, Can the CAP manage without market regulation after 2013?, Brussels, 31 March and 1st April 2010, http://www.solidarite.asso.fr/IMG/pdf/CAP-subsidies-incompatible-with-the-WTO-AoA.pdf

[3] According to Article 8 of the WTO Framework Agreement of 31 July 2004 "*The base for measuring the Blue Box component will be the higher of existing Blue Box payments during a recent representative period to be agreed and the cap established in paragraph 15 below*", which states "*Blue Box support will not exceed 5% of a Member's average total value of agricultural production during an historical period*".

(FBTA) + 13.597 (PSdm) + 13.597 (NPSdm) + 22.654 (BB)] and the 80% reduction gives an allowed OTDS of €24.418 billion at the end of the DR implementation period. We will come back below to revise the BB and PSdm.

1.1 – The PSdm support is not 5% of the value of the whole agricultural production

Paragraph 1 of the DMA states: "*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 statement contradicts the paragraph 30 on the *de minimis* support of the DMA confirming the AoA definition of the PSdm: "*The de minimis levels referred to in Article 6.4(a) of the Uruguay Round Agreement on Agriculture for developed country Members (i.e. 5 per cent of a Member's total value of production of a basic agricultural product in the case of product-specific de minimis and 5 per cent of the value of a Member's total agricultural production in the case of non-product-specific de minimis) shall be reduced by no less than 50 per cent effective on the first day of the implementation period*". In other words, as soon as a PS coupled support reaches 5% of the production value of a product, it loses its PSdm for that product and gets a PS AMS which is added to the total applied AMS, and the production value of that product is added to the production value of all the products with PS AMSs.

H. de Gorter and J.D. Cook confirm that interpretation: "*Product-specific* de minimis *ceiling is less than 5 percent of the total value of production because support for some products are over five percent of the value of production and so is included in the AMS*"[4]. For Ivan Roberts also, "*Where a commodity's support is counted toward a member's AMS, the country would not be eligible for product specific* de minimis *exemption for that commodity*"[5]. The Congressional Research Service also confirms: "*U.S. commodity-specific support that is below 5% of a commodity's value of production is deemed sufficiently benign that it does not have to be included in the AMS calculation. Such commodity specific support can be evaluated for each individual commodity*"[6].

The hidden reason for which Canada's simulations and the DMA violated the AoA rule on the PSdm is that Japan up to 2009 (last notified year) and the EU up to 1999-00 did not notify the production value of products for which they calculated a PS AMS, therefore they were unable to check if those PS AMSs were lower than 5% of the production value of those products during the base period 1995-00. It is only from 2000-01 that the EU notified the production value of each product. That is why paragraph 12 of the DMA proposed the new requirement that "*The data on value of production shall, for all Members undertaking OTDS reduction commitments, be annexed to these modalities*". The WTO Secretariat should have asked the EU

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[4] 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

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

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

and Japan to rectify their notifications by adding the production values of all products, which would not have been impossible since Solidarité was able to assess them[7] (table 1).

But the WTO Secretariat as the Chair of the Special Committee on agriculture have always refused to intervene to point out to Members their false interpretations of the WTO rules or even their outright cheatings. Having questioned in 2001 the WTO Secretariat on the huge under-notifications of the EU and US, Gabrielle Marceau, who was then in the Dispute Settlement Body and is now in Pascal Lamy's cabinet, answered: "*The WTO has neither the resources nor the skills to act like "a regulator" of these notifications. It is up to each Member to do these verifications… This is the very spirit of the whole disputes settlement system of the WTO: every Member country acts as a guard-dog of the system*"[8]. It is also the reason why the WTO Secretariat's reports on the trade policy reviews of its Members – its second function after the disputes settlement – are always laudatory for all Members because they are written from the only pieces of information that the Members are willing to pass on to the Secretariat.

Table 1 – 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.

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

1.2 – The developed countries' refusal to take into account the subsidies to feedstuffs

The developed countries have refused to consider their subsidies to feedstuffs (COPs: cereals, oilseeds, pulses) as inputs subsidies to be notified in the PS AMS of the animal products (meats, eggs, dairy products) fed by these COPs, despite this contradicts the AoA Article 6.2: "*Investment subsidies which are generally available to agriculture in developing country Members and 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*", so that those exemptions are not available to developed countries. Yet the US Congressional Research Service has acknowledged that "*The list of commodities that normally do not receive direct support includes meats, poultry, fruits, vegetables, nuts, hay, and nursery products. Producers of these*

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

[8] Gabrielle Marceau's reply of the 27 February 2001 on an internet forum.

commodities, however, may be affected by the support programs because intervention in one farm sector can influence production and prices in another. For example, program commodities such as corn are feed inputs for livestock"[5]. For OECD also "*Input subsidies are typically explicit or implicit payments reducing the price paid by farmers for variable inputs (for example, fertilisers, feed…*"[9].

However OECD justifies not to take into account directly the feed subsidies since it claims to do it indirectly through the tricky concept of "*excess feed cost*"[10] (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*"[11]. 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 livestock producers' farms, according to OECD these farmers, as cereals growers, are exploiting themselves as livestock producers![12] Yet the world prices of COPs are the most dumped agricultural products, particularly in the US which are price makers for them as in the EU where the 1992 and 1999 CAP reforms have highly reduced the intervention prices of cereals[13] for which the EU 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*". Well, but the excess feed cost has completely disappeared since 2008 in the OECD data base given the COP prices hikes since 2007 but the SFP (single farm payment) and the coupled payments to COP producers remained at the same high levels, so that the argument of double counting is totally irrelevant.

Besides, the EU notified in the PS AMS some feed subsidies such as to dry fodder (€374 million on average from 1995 to 2000 and still 121.9 million for 2009-10, last notified year, the OECD data base showing that they were of €141 million in 2010 and €97 million in 2011), and to the skimmed milk fed to calves (€513 million on average from 1995 to 2000, subsidies only eliminated since 2008), showing that the EU is quite aware that feed subsidies are coupled subsidies.

These feed subsidies confer PS AMSs to all animal products which consumed the feed, increasing the production value of products with PS AMS and reducing consequently the

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[9] OECD, *Methodology for the measurement of support and use in policy evaluation*, 2002

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

[11] 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

[12] FEFAC, *Feed and food, statistical yearbook 2004*.

[13] 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.

production value of products without PS AMSs. Thus the EU15 average production value of products with PS AMSs was not €122.922 billion in the 1995-2000 base period but €201.323 billion so that, given the €222.577 billion of the average whole agricultural production value (VOP), the average value of products without PS AMS collapsed to €21.253 billion and the allowed PSdm, which is 5% of that value, fell at €1.063 billion. Correlatively the average blue box (BB) was reduced to €11.145 billion instead of €20.888 billion because €9.743 billion of direct payments to the EU COPs used as feed were transferred to the PS AMSs of animal products having consumed these feedstuffs.

Therefore the EU15 allowed OTDS for 1995-00 fell at €90.496 billion [67.159 (FBTA) + 1.063 (PSdm) + 11.129 (NPSdm) + 11.145 (BB)] instead of €110.305 billion according to Canada's simulations. And the 80% reduction gives an allowed OTDS of €18.099 billion at the end of the Doha Round (DR) implementation period instead of €22.061 billion.

Table 2 – The EU15 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

We must assess now the allowed EU27 OTDS in 1995-00. As we avail already of the revised FBTA of €72.244 billion, of the revised VOP of €271.947 billion, hence of the NPSdm of €13.597 billion and of the revised BB of €12.911 billion (11.145 for the EU15 + 1.766 for the EU12), it remains to assess the PSdm. For this we must find the PS AMS of the EU12 animal products having consumed the share of COPs used as feed. Here we face a problem of lack of data in Eurostat for the years 1995 to 1997 for which the value of meats, milk and eggs is not available for all NMS, and here FAOSTAT cannot help. So that, given that we avail of the EU12 VOP from 1995 to 2000, we assume that the average distribution of the €34.204 billion in the total production value of animals+milk+eggs for the years 1998 to 2000 between the three products holds also for the years 1995 to 1997. Therefore we get €16.008 billion of additional PS AMS of animal products issued from the EU12 feed subsidies, to be added to the €201.323 billion of the EU15 PS AMS, making a total of €217.331 billion. So that, given the €271.947 billion of the EU27 VOP, the average value of products without PS AMS fell at €54.616 billion and the allowed PSdm, which is 5% of that value, fell at €2.731 billion.

Table 3 – EU12 production value of animals (meats), milk and eggs from 1995 to 2000

€ million	1995	1996	1997	1998	1999	2000	Average 1998-00		Average 1995-00
EU12 VOP	36336	37068	35882	36597	31694	34321	34204		35316
Animals value	9738	9934	9616	10518	8024	8953	9165	59.12%	9464
Milk value	5426	5535	5358	5288	4612	5423	5108	32.94%	5274
Eggs value	1308	1334	1291	1311	1053	1329	1231	7.94%	1271
Sub-total value	16471	16803	16265	17117	13689	15705	15504	100%	16008
" % VOP	45.33%	45.33%	45.33%	46.77%	43.19%	45.76%	45.33%		45.33%

Finally the allowed EU27 OTDS for the 1995-00 base period fell at €101.483 billion [72.244 (FBTA) + 2.731 (PSdm) + 13.597 (NPSdm) + 12.911 (BB)] instead of €110.305 billion according to Canada's simulations for the EU15 only. And the 80% reduction gives an allowed OTDS of €20.297 billion for the EU27 at the end of DR implementation period.

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

The EU applied OTDS in the 1995-2000 period and up to now is considerably larger than the notifications already made to the WTO. Indeed, on the one hand, the applied PS AMS was much larger as we have just acknowledged and, on the other hand, the Single Payment Scheme (SPS) and the Single Area Payment Scheme (SAPS) since 2005 are not fully decoupled and are therefore in the AMS. As for the BB the WTO Framework agreement of 31 July 2004 decided that it should be considered as a coupled payment. Besides the EU has hugely under-notified to the WTO its NPS AMS comparatively to that notified to the OECD. Therefore the fact that the remaining BB payments and the PS AMSs continue to be transferred to the SPS does not change the applied OTDS.

2.1 – The EU AMS in the base period 1995-00 and in 2009-10

The EU15 applied PS AMS was on average of €60.973 billion in the base period 1995-00, not of €48.425 billion as notified. The transfer of the BB going to COPs used as feedstuffs had the double effect to reduce the BB and to increase the PS AMSs of the animal products having consumed those feeds, and we got 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 came from: 1) on the one hand, the PS AMSs of the animal products linked to the subsidies to the feed integrated into these products: milk (€4.078 billion), bovine meat (€2.630 billion), pig meat (€2.522 billion), poultry meat and eggs (€1.358 billion), and 2) on the other hand, the PS AMS conferred to oilseeds meals processed from 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[14].

The following tables 4-7 concerning the EU12 show that its average notified AMS was €793 million (table 4), of which the PS AMS was only €308.5 million (table 5) because Hungary's NPS AMS of 1998 and 2000 exceeded the *de minimis* level and was consequently transferred to the total AMS.

Table 4 –The EU12 total AMS (PS AMS+ NPS AMS exceeding dm) from 1995 to 2000

	1995	1996	1997	1998	1999	2000	Average
Hungary	dm	52,5	49,6	415,8*	256,9	393*	194,6
Czech Rep.	34,6	46,5	26,6	28,6	107,9	131,2	62,6
Poland	203	169,6	233,5	275,6	203,4	350,2	239,2
Slovakia	190,9	170,5	197,4	200	145,5	185,7	181,7
Slovenia	72,5	69,2	69,1	66	54,8	15,5	57,9
Latvia					6,1	7	2,2
Bulgaria			4,6	13,6	9,5	13,9	6,9
Cyprus	64,4	56,9	39,7	38,4	45,8	40,6	47,6
Total	565,4	565,2	620,5	1038	829,9	1137,1	792,7

Source: notifications to the WTO and the exchange rate data base http://fxtop.com/en/historical-exchange-rates.php?A=1&C1=CYP&C2=EUR&MA=1&DD1=&MM1=&YYYY1=1995&B=1&P=&I=1&DD2=18&MM2=01&YYYY2=2001&btnOK=Go!; * Hungary's total AMS is larger as it includes the NPS AMS of 1998 and 2000 exceeding the *de minimis* cap

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

Table 6 shows that the applied NPS AMS, generally below the *de minimis* level, was €510 million and table 7 shows that the PS *de minimis* was €37.2 million. Let us observe that the NPS AMS was larger than the PS AMS and it would have been even larger if Cyprus did not use its status of developing country to make specific notifications using the AoA Article 6.2 on inputs and investments subsidies so that it did not notify any NPS AMS.

Table 5 –The EU12 PS AMS from 1995 to 2000

	1995	1996	1997	1998	1999	2000	Average
Hungary	dm	52,5	49,6	188,6	256,9	160,6	118
Czech Rep.	-	-	-	-	-	0,9	0,2
Poland	16,3	5,2	42,7	107,5	113,5	235,8	86,8
Slovakia	20,9	18,1	23,2	-	-	-	10,4
Slovenia	12,5	54,9	56,3	52,6	33,7	10,8	36,8
Latvia					5,4	5,2	1,8
Bulgaria			4,6	13,6	9,5	13,9	6,9
Cyprus	64,4	56,9	39,7	38,4	45,8	40,6	47,6
Total	114,1	187,6	216,1	400,7	464,8	467,8	308,5

Source: notifications to the WTO and various exchange rates data base

Table 6 –The EU12 NPS AMS from 1995 to 2000

	1995	1996	1997	1998	1999	2000	Average
Hungary	87	149,8	164	(227,2)*	191,1	(232,4)*	98,7
Czech Rep.	34,6	46,5	26,6	28,6	90	130,3	59,4
Poland	186,7	164,5	190,8	168,1	98,5	114,4	153,8
Slovakia	170	152,4	174,2	200	145,5	185,7	171,3
Slovenia	60	14,3	12,8	13,4	21,1	4,7	21,1
Latvia					0,7	1,8	0,4
Estonia						1,8	0,2
Bulgaria			4,6	6	6	13,2	5
Total	538,3	527,5	573	416,1	552,9	451,9	510

Source: notifications to the WTO and various exchange rates data base; * exceeding *de minimis* and therefore already included in total AMS

Table 7 –The EU12 PSdm from 1995 to 2000

	1995	1996	1997	1998	1999	2000	Average
Hungary	46	24,5	15,6	38,1	31,5	0,1	26
Bulgaria			25,7	0,7	9,1	4,5	6,7
Cyprus		6,2	2,9	5,8	5,8	6,5	4,5
Total	46	36,7	44,2	44,6	46,4	11,1	37,2

Source: notifications to the WTO and various exchange rates data base

Taking into account the EU12 data, the EU27 total AMS of the 1995-00 base period was €61.766 billion, of which €61.282 billion for the PS AMS.

For 2009-10, last notified year for the EU27, to the notified PS AMS of €8.764 billion we must add first the PS AMSs of the animal products linked to the subsidies to the feed of EU27 origin integrated into these products, for 13.733 billion in 2009 – of which €11.690 billion to energy feed (€8.926 billion in the EU15 and €2.764 billion in the EU12) and €2.043 billion to protein feed (€1.955 billion in the EU15 and €88 million in the EU12) –, according to a report not yet published, which makes a total of 22.497 billion of PS AMS. On the €13.733 billion of feed subsidies, €12.084 were decoupled (of which €9.479 billion of SPS and €2.605 billion of SAPS) and €1.649 billion were coupled (of which €1.402 billion in the EU15 and €247 million of CNDP (complementary national direct payments) in the EU12.

2.2 – Why the SPS (single payment scheme) and the future BPS (Basic Payment Scheme) are coupled, hence subject to reduction

Any challenge at the WTO against the SPS and the future BPS is sure to put them in the amber box (AMS) of coupled subsidies, for the following reasons:
- After the precedent of the WTO Appellate Body ruling on cotton of 3 March 2005 that the US fixed direct payments are not in the green box – because farmers receiving them are prevented to grow fruits, vegetables and wild rice –, the EU SPS will be much more easily put in the amber box as the EU maintains interdictions or caps on many more products: milk and sugar production quotas, wines plantation rights, caps on cotton, tobacco, olive oil, permanent crops, potatoes other than for starch… All the same the BPS from 2014 on all "admissible hectares" – defined in article 25 of the proposed regulation of 19 October 2011 on direct payments as "*any agricultural area of the holding that is used for an agricultural activity or… predominantly used for agricultural activities*" – will coexist with milk and sugar quotas and wines plantation rights, and also with the cotton coupled payments whose base areas are defined in article 44 of the same regulation.

- The SPS remains coupled to agricultural area as farmers must show they have eligible hectares to "activate" payments and the Member States (MS) must "*ensure that all agricultural land is maintained in good agricultural and environmental condition*", Annex 4 of the Council Regulation No 1782/2003 of 29 September 2003 specifying that this implies "*Minimum livestock stocking rates*", which is clearly a production. The fact that the BPS in the new CAP 2014-20 would only be granted to "active farmers" defined in article 25 is an evidence of its coupling to production.

- A large part of the SPS is granted to feed (cereals, oilseeds meals, pulses) and feedstocks for agrofuels (vegetable oil, cereals and sugarbeet), which are both input subsidies to be notified 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*"[15], which is all the more obvious as the agrofuels boom has increased much the prices of vegetable oils and cereals. It is appropriate here to mention that China has imposed countervailing measures and anti-dumping duties on imports of US chicken since 2010 because of the large feed subsidies to maize and soybean, subsidies composed mainly of the allegedly decoupled fixed direct payments but the WTO ruled not to be decoupled. The conclusion of the panel launched by the US against China should be published in June 2013[16].

- The SPS is coupled because it coexists with BB payments or amber payments for the same products. 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. Besides the BB payments transferred to the SPS were coupled because they did not limit production as the payments per hectare and cattle head were not limited and increased significantly for COPs and even more for cattle after the 1999 CAP reform. Here also the proposed regulation maintains the possibility of 5% of coupled payments, and even beyond10% for the MS which exceeded that level as France, which will maintain their

[15] Toni Harmer, *Biofuels subsidies and the law of the WTO*, ICTSD, June 2009, http://ictsd.net/i/publications/50724/.
[16] http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds427_e.htm

coexistence with the BPS. It is why Daugbjerg et A. Swinbank wonder: "*But can partially coupled SPS payments be split between the green and blue boxes; or does partial coupling imply that the whole of the partially coupled SPS payment should remain in the blue box (all the old arable payment in France for example)? And might concerns of this sort have prompted the Commission's quest for full decoupling in the Health Check* "[17].

- S. Jean, T. Josling and D. Laborde underscore the flimsiness of the SPS to be put in the green box: "*If direct payments were to be notified in the Blue Box, the total would far exceed the limit of 5.6 billion euro suggested in the Revised Draft. Up to 28 billion euro would have to be notified in the AMS and this would well exceed the limit of 20.1 billion euro suggested in the same draft. A fortiori, if all the direct payments were to be notified in the AMS, the limit of 20.1 billion euro would again be violated. Perhaps more relevant is the effect on the OTDS of any decision to place direct payments outside the Green Box. The OTDS limit of 16.5 billion euro suggested by the Draft would be less than the level of direct payments alone, leaving all other support to be cut or changed to Green Box compatible payments*"[18].

- Last, but not least, as the SPS (and the BPS) cannot be assigned to a particular product, it is attributable to any product of which it lowers the sale price below the EU average production cost. Therefore all EU agricultural exports can be sued for dumping, even products which have never received any direct payment as fine wines, as long as their producers get SPS or SAPS for other productions, which applies practically to all EU27 farms to-day.

2.3 – The subsidies of the non-product-specific AMS were hugely under-notified

The main under-notifications are on subsidies to farm investments, marketing and promotion, agricultural fuels and irrigation. All these under-notifications to the WTO appear clearly when we compare them with the EU notifications to OECD, except those to irrigation for which we rely on other reports, particularly from OECD.

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

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

Table 8 shows that, based mostly on the EU notifications to OECD, the EU15 NPS AMS was of at least €7.924 billion on average in the base period 1995-00, against a notified average of €528 million, and of €11.976 billion in the last notified year 2009-10. For irrigation the OECD did not really identify specific subsidies and the EU notifications to WTO are mixed with other infrastructure subsidies in the green box so that we take a conservative figure of €1.2 billion, the details of which were documented in a 2006 paper[19] and a report of 2011 on Spain where "*The report found subsidies to irrigated agriculture are in the range of €900 to €1120 million per year*"[20]. As the subsidies on farm investments notified to the WTO cover several other types of subsidies in the green box, we rely on the lower OECD data, and the same for the marketing subsidies.

Table 8 – EU NPS AMS notified at the WTO, OECD and actual in 1995-00 and 2009-10

	1995-2000 (EU15)			2009-2010 (EU27)		
	notified		actual	notified		actual
	OECD	WTO		OECD	WTO	
Agricultural insurance	131	101	131	773	394	773
Agricultural fuel	1933	0	1933	3140	0	3140
Agricultural loans	499	420	499	514	165	514
Farm investments	1914	5638*	1914	3474	6153*	3474
Irrigation	-	1097*	1200**	-	1866*	1200**
Marketing-promotion	2150	902*	2150	2875	1021*	2875
Total NPS AMS	6627	8158*	7924	11582	9599*	11976

Source: notifications to the WTO; OECD PSE data base for EU-27, http://www.oecd.org/agriculture/agriculturalpoliciesandsupport/producerandconsumersupportestimatesdatabase.htm; * Aids wrongly notified in the green box. For conservative reasons, we have not taken in totality the farm investments included in the line "Structural Adjustment Assistance provided through Investment Aids" but we have only selected the farm investments subsidies notified to the OECD; ** estimate of irrigation subsidies.

However it is necessary to update the EU commitments to the EU27. The table 6 showed that the EU12 average annual NPS AMS was of €510 million in 1995-00, about the same level that the EU15 notified €521 million, knowing that it would have been largely higher if Hungary's NPS AMS of 1998 and 2000 were not transferred to the total AMS as having exceeded the *de minimis* level. Here we cannot underscore too much that the EU12 NMS were complying with the AoA rules that the EU15 preferred to ignore. Indeed, before joining the EU in 2004 and particularly in the 1995-00 period, most NMS notified in their NPS AMS many subsidies that the EU15 notified in the green box. For example, the Czech Republic notified its subsidies to "young starting farmers" in its NPS AMS along with many other subsidies that the EU puts in its green box: most input subsidies, including improvement of genetic performance of seed and livestock, infection fund, guarantee fund for farmer and forest, irrigation subsidies etc. Its subsidies notified in the NPS AMS were 5 times larger than those notified in the green box[21]. The Slovak republic did the same. Slovenia notified in the NPS AMS the tax rebates on agricultural fuels, subsidies to farm investments and subsidies to rural tourism. In Hungary also the NPS AMS was 2.5 times larger than the green box in 1999 and 73% in 2002.

Therefore the EU27 notified NPS AMS in 1995-00 was €1.031 billion and the actual applied NPS AMS was €8.434 billion.

[19] J. Berthelot, *Evaluation des soutiens agricoles internes de l'UE ayant des effets de distorsion des échanges en vue de reconstruire des règles des échanges agricoles soutenables*, 5 septembre 2006, http://www.solidarite.asso.fr/IMG/pdf/Evaluation_des_soutiens_internes_de_l_UE_distorsifs_des_echanges.pdf. La version anglaise est disponible sur demande.
[20] http://www.iisd.org/gsi/sites/default/files/irrig_spain.pdf
[21] WTO, G/AG/N/CZE/52 of 17 February 2004.

4) The average applied OTDS in the 1995-2000 period and in 2009-10

The table 9 shows that the EU15 average applied OTDS in the base period 1995-00 was of €80.077 billion instead of the notified €69.269 billion, even if the OTDS as such was not notified as this concept was only created by the WTO Framework Agreement of 31 July 2004, but only its four components were notified separately. It shows also that the EU27 applied OTDS was €81.442 billion against a notified €71.234 billion. The EU27 BB was not significantly different from the EU15 BB as the EU12 average BB was of only €24.6 million.

Table 9 – The EU15 and EU27 average notified and applied OTDS from 1995 to 2000

	1995-00 UE15		1995-00 UE27	
€ million	notified	applied	notified	applied
Total AMS	48425	60973	49218	61766
NPS *de minimis*	521	7924	1031	8434
PS *de minimis*	35	35	72	72
Blue box	20888	11145	20913	11170
Total	69869	80077	71234	81442

Source: notifications to the WTO and to OECD (PSE data base for the EU-27, http://www.oecd.org/document/59/0,3343,en_2649_33797_39551355_1_1_1_1,00.html)

Now table 10 shows that the EU27 applied OTDS in 2009-10, last notified year, was €70.665 billion. The EU27 production value of products with PS AMSs rises from the notified €33.272 billion to €165.076 billion, after addition of €82.36 billion for the production value of animals plus €49.768 billion for the production value of milk and eggs. As the notified production value of all agricultural products (VOP) was €302.611 billion, the value of products without PS AMS was €137.535 billion and the actual PSdm, which is 5% of that value, was €6.877 billion. The other OTDS components were:
- €46.377 billion for total AMS, after addition to the notified €8764 of €13.733 billion of feed subsidies, €22.003 billion of SPS (after deduction of €10.881 billion of feed subsidies from the notified €31.482 billion of SPS) and €1.877 billion of SAPS (after deduction of €2.605 billion of feed subsidies from the notified €4.482 billion of SAPS);
- €12.087 billion for the NPS *de minimis*;
- €5.324 billion for the blue box.

Table 10 – The EU average notified and actual OTDS in 2009-2010

	EU27commitments at the end of DR		2009-10	
€ million	Initial allowed level	Allowed at end of DR	notified	applied
Total AMS	72244	- 70%: 21673	8764	46377
NPS *de minimis*	13597	- 50%: 6799	598	12087
PS *de minimis*	2731	- 50%: 1366	805	6877
Blue box	12911	2.5% of VOP: 6799	5324	5324
Total OTDS	101483	- 80%: 20297	14533	70665

Source: notifications to the WTO and to OECD (PSE data base for the EU-27, http://www.oecd.org/document/59/0,3343,en_2649_33797_39551355_1_1_1_1,00.html)

If we compare the applied OTDS in 2009-10 with the EU commitments reflected in the DMA (Draft modalities on agriculture) we see that the EU is not prepared to face such commitments as the 2009-10 applied OTDS is 3.5 times higher than the objective at the end of the DR implementation period; it is 2.1 times higher for the total AMS; 78% higher for the NPSdm; 5 times higher for the PSdm; even if there is a small leeway of €1.475 billion for the BB.

Conclusion: "Repeat a lie a thousand times and it becomes the truth".