Comments on the US farmers groups' letter to M. Froman and T. Vilsack

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November 23, 2013

October 24, 2013

Ambassador Mike Froman
United State Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

The Honorable Thomas Vilsack
Secretary of Agriculture
United States Department of Agriculture
1400 Independence Ave SW
Washington, DC 20250

Dear Ambassador Froman and Secretary Vilsack:

The undersigned groups are writing to you today to express concern regarding the negotiations currently underway in Geneva in preparation for the Ninth World Trade Organization (WTO) Ministerial Conference. We support the WTO, and we understand the value of the rules-based global trading system. We hope to see a successful Ministerial meeting in Bali and the resumption of the Doha Round negotiations. However, we believe that a Bali agreement based on the so-called "food security" proposal from the Group of 33 (G-33) would represent a significant step backwards for the WTO and would make it much more difficult to reach a comprehensive Doha Round agreement.

We have seen a dramatic increase over the past decade in trade-distorting domestic support in advanced developing countries. Support prices in several of those countries are now significantly above U.S. target prices, and studies suggest that they are exceeding by a wide margin the limits on domestic support to which they agreed in the Uruguay Round negotiations.
[This is not true: in India the market support price (MSP) for rice in the 2012-13 marketing year (October to September) was of $334.8 per tonne[1] but the wholesale price in New Delhi was of $377[2] (Rs 21,308 at the exchange rate of Rs 56.5193) and, on 16 November, it was at $351.5 per tonne at the exchange rate of Rs 62.8685.

The FAPRI report of October 2013[3] shows that the projected US price of rice for the 2014-18 period would be of $355.5 per tonne in the House of Representatives' Farm Bill, of which $302.3 of rice price proper plus $53.2/tonne for the combined impact of AMP/ARC/RLC/PLC payments plus change in crop insurance net indemnities (the $82.11 per acre are converted in payments per tonne and using the olympic average yield of all rices from 2008 to 2009 of 3.813 t/ha).

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[1] Jacques Berthelot, *Indian food security stocks of rice and wheat do not distord trade*, Solidarité, 22 November 2013, http://www.solidarite.asso.fr/Papers-2013

[2] http://www.fao.org/giews/pricetool/

[3] http://www.fapri.missouri.edu/outreach/publications/2013/FAPRI_MU_Report_06_13.pdf

Indeed the concept of "administered price" is not defined by the AoA or any other WTO agreement but Jasper Womach of the Congressional Research Service defined it in 2005 as "*A price fixed by policy makers in order to determine, directly or indirectly, domestic market or producer prices. All of the administered price schemes set a minimum guaranteed support price or target price for a commodity, which is maintained by associated policy measures such as quantitative restrictions on production and imports; taxes and tariffs on imports; export subsidies; and public stockholding. Administered prices under the 2002 farm bill (P.L. 107-171) include loan rates and/or target prices, and price support levels for sugar, and dairy products*". So that it is fully justified to add the subsidies that the administered prices have the objective to trigger. It is clear that the US and EU agricultural policies through the Farm Bills and the EU CAP reforms have consisted since the 1990s to lower by steps their administered prices to increase their domestic and external competitiveness – importing less and exporting more – through the compensation of massive alleged non-trade-distorting subsidies of the blue and green boxes. At the same time most DCs did not avail of the financial means to do the same.

Let us stress that the US has been cheating since 2008 in its notification to the WTO on its market price support (MPS) for dairy: to lower its notified AMS for dairy products, which is mainly a fake MPS not implying actual subsidies, USDA had notified $4.942 billion on average for 2006 and 2007 but only $2.925 billion for 2008 (and about the same amount for 2009 and 2010) as a result of the new 2008 Farm Bill, reducing its dairy product-specific AMS by more than $2 billion over the two previous years. Indeed, instead of continuing to compute it for the whole milk production, the 2008 Farm Bill decided to compute it for the three main dairy products: butter, nonfat dry milk and cheddar cheese. But Article 1 of the AoA states that "*Support provided during any year of the implementation period and thereafter*" must be "*calculated in accordance with… 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 the US should have continued to notify according to its commitments.

As the US has changed the methodology to compute its dairy AMS from 2008 on, it cannot use the final bound total AMS incorporating a dairy MPS calculated on the basis of another methodology. 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 of $2.314 billion instead of the notified $5.409 billion for 1986-88. It follows that the total applied AMS for 1986-88 was not $23.879 billion but $20.784 billion and that the final bound total AMS (FBTA) in 2000 was not $19.103 billion (80% of 23.879) but only $16.627 billion (80% of 20.784). And the allowed FBTA 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 for 2008 and beyond. Consequently, from 2008 on, the allowed OTDS will be only of $40.413 billion in the base period 1995-2000 – 16.627 (FBTA) + 4.372 (PSdm) + 9.707 (NPSdm) + 9.707 (BB) –, instead of $48.224 billion computed by Canada and cutting it by 70% will bring it to $12.124 billion at the end of the DR implementation period.

However the Dairy Product Price Support Program (DPPSP) expires December 31, 2013, and would be eliminated and replaced with new policy under both the Senate- and House-passed farm bills but it is premature to assess its impact of the US dairy AMS.

The US has also been cheating in its AMS notifications for cereals. Indeed the WTO Appellate Body in the US cotton case of 3 March 2005 ruled that the US fixed direct payments were specific subsidies not in the green box, as farmers receiving them are not allowed to grow fruits, vegetables and wild rice, an interdiction not removed by the Congress in the 2008 Farm Bill despite USDA's repeated pressures. Indeed the USDA's 2007 Farm Bill proposals of 31 January 2007 stated: "*To ensure that direct payments will be considered to be non-trade distorting green box assistance, the Administration proposes that the provision of the 2002 farm bill that limits planting flexibility on base acres to exclude fruits, vegetables, and wild rice, should be eliminated... For the purposes of World Trade Organization obligations, updating bases and yields for direct payments would connect them more closely to current production and could jeopardize their "green box" status, causing these payments to be categorized as trade distorting "amber box" assistance… To avoid jeopardizing the status of direct payments as non-trade distorting "green box" support, direct payment base acres and yields should not be updated*"[4]. David Blandford and David Orden confirmed: "*The cotton case ruling cast doubt on whether the fixed direct payments, which are currently notified as green-box decoupled income support, qualify for that category. If direct payments had been notified in the amber box, the United States would have violated its total AMS commitment in a number of years*"[5]. Even if the Government Accountability Office showed that "*Cumulatively, USDA paid $10.6 billion—almost one-fourth of total direct payments made from 2003 through 2011—to producers who did not, in a given year, grow the crop associated with their qualifying acres, which they are allowed to do*"[6], it added: "*Economic distortions can result from these payments*".

The US has under-notified largely its crop insurance subsidies and Chad Hart of Iowa State University testified before the House Committee on Agriculture on 26 April 2006 that "*The WTO ruling in the cotton dispute indicated that crop insurance support is "support to a specific commodity." This ruling… opens up the possibility that other countries could challenge our past reporting of crop insurance*"[7]. Indeed each insurance policy is crop-specific, area-specific, farmer-specific and often field specific. A CRS report adds: "*The availability of crop insurance for a particular crop in a particular region is an administrative decision made by USDA. The decision is made on a crop-by-crop and county-by-county basis, based on farmer demand for coverage and the level of risk associated with the crop in the region, among other factors*"[8].

The following table shows that notifying in the product-specific AMS the fixed direct payments and insurance subsidies to wheat and rice from 2010 to 2012 would have largely exceeded their product-specific 5% *de minimis*.

US wheat and rice direct payments and insurance subsidies to notify in product-specific AMSs

$ million	2010	2011	2012	Average
Wheat direct payment	685.4	1120.9	1109.8	972
Wheat insurance subsidy	1103.5	1349.9	1354.5	1269.3
Sub-total in the PS AMS	2299.7	2374.6	2545.8	2406.7
Wheat *de minimis*	641.4	716.1	897.2	751.6
Rice direct payment	297	293	292.6	294.2

[4] http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_1UH?contentidonly=true&contentid=2007/01/0019.xml
[5] David Blandford and David Orden, *United States: Shadow WTO Agricultural Domestic Support Notifications*, IFPRI, November 2008, http://www.ifpri.org/pubs/dp/ifpridp00821.asp
[6] www.gao.gov/products/GAO-12-640
[7] http://www.card.iastate.edu/presentations/harthousetestimony.pdf
[8] CRS, *Crop Insurance and Disaster Assistance*, June 20, 2008: http://opencrs.com/document/RL34207/2008-06-20

Rice insurance subsidy	80.7	53.8	47.1	60.5
Sub-total rice in the PS AMS	377.7	346.8	339.7	354.7
Rice *de minimis*	159.2	136.9	149	148.3

Source: http://www.calt.iastate.edu/briefs/farmbillcommodity.pdf and J. Berthelot, *Analysis of the G-33's proposal to change the AoA provision on Public stockholding for food security*, Solidarité, September 25, 2013, http://www.solidarite.asso.fr/Papers-2013

Finally the US Chamber of Commerce made an in-depth legal assessment of the HR Farm bill in August 2013: "*Payments under the PLC program* [Price Loss Coverage] *would be "**coupled**" to the **actual** number of acres a farmer plants… Because the PLC program likely would be highly trade distorting, adoption of that program would more likely cause a WTO Member to initiate a dispute against the United States. If a dispute were initiated, it is **highly likely** that a WTO panel would find payments under the PLC program were actionable subsidies that cause "adverse effects" to the interests of other WTO Members*"[9]. All the same " *Payments under both the RLC and ARC programs would be coupled to actual planted acres, which may increase both the risk that a WTO Member would challenge the programs and the risk that a panel would find them to be inconsistent with US obligations under the SCM Agreement*".]

Indeed, we see the G-33 proposal as an acknowledgement by those countries of their vulnerability to challenge under current rules. As we understand it, the G-33 proposal would significantly weaken subsidy disciplines by exempting from aggregate measure of support (AMS) calculations price support regimes that are tied to domestic food aid programs.

We do not object to rules that permit developing countries to operate legitimate domestic food aid programs. Current WTO rules allow countries to make purchases into government stocks at market prices and then make those stocks available at subsidized prices to needy consumers. Expenditures for such programs need not be added to a country's AMS. However, we see no reason why WTO rules should allow such food aid to be linked to price support programs, which have much more to do with boosting farm income and increasing production than feeding the poor, and which often result in the accumulation of excess stocks that are later dumped at subsidized prices onto the world market.

[Boosting farm incomes is an imperative in most DCs, particularly in India and other South Asian countries like Thailand which is also running a large public procurement for food security stocks, given that most farmers are very poor and that the Indian population would rise by one third in 2050 (414 million more inhabitants).

The US has been using huge administered prices up to 2007, not only the market price supports not implying actual subsidies but also various types of marketing loans and counter-cyclical payments, particularly for cereals. And it is mainly the irresponsible US corn ethanol programme which has triggered the explosion of most food prices worldwide, with hunger riots in many DCs, thus permitting also to eliminate the marketing loans and countercyclial payments and thus to lower the US product-specific AMSs.

However, according to 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*", implying that they are trade-distorting and in the AMS for the developed countries. Thus the 130 million tonnes of corn processed into ethanol – an agricultural product according to the WTO –

[9] http://www.uschamber.com/sites/default/files/grc/WhitePaperFarmBillWTOConsistency.pdf

in 2010-11 have received $4.1 billion of agricultural subsidies[10], mainly as direct payments and insurance subsidies but the US did not notify them in the product-specific AMS as it should have done. Of course we should add all the feed subsidies which are the largest input subsidies but here too the developed countries have always cheated with the AoA Article 6.2.

Even the US domestic food aid programme is using some public procurement directly from farmers and agri-food industries: "*Agricultural Marketing Service Commodity Procurement Division purchases a variety of food products in support of the National School Lunch program and other food assistance programs. These purchases also help to stabilize prices in agricultural commodity markets by balancing supply and demand*"[11] despite that they were not purchased at formal administered prices.

Under the pretext that three quarters of the US food aid (food stamps or SNAP) are bought in agreed shops without passing through a public procurement channel as in India, what is the logic that the WTO demands to India (and to all DCs) and not to the US that "*the difference between the acquisition price*" and *"the external reference price of 1986-88*" be "*accounted for in the AMS*"? Even if the beneficiaries could also buy some imported food, the overwhelming part is US made. But around $25 billion of US food is also procured by USDA or by the States to provide food to the non-SNAP programmes. And in fiscal year 2009 the procured US food products directly from the US farmers reached $1.443 billion ($1.6 billion in 2012-13) – of which $594.3 million of fruits, vegetables and cereal products, $386 million of poultry meat and $463 million of other meats and fish[12], mainly for school lunches –, but USDA has under-notified these procured foods in the green box (only $948 million in 2009).

The AoA formula to assess the AMS linked to administered prices is all the more illogical when we realize that the very low world wheat prices of 1986-88 resulted from the US and EU massive dumping through several channels: explicit export subsidies, share of their domestic subsidies having benefited to wheat and flour exports, export credit guarantees and the high level of their non-emergency foreign food aid. During that period the average cumulative US+EU dumping rate of wheat and flour was 93.2%, of which 86.1% for the US ($3.375 billion of subsidies for an export value of $3.849 billion) and 129.9% for the EU ($2.388 billion of subsidies for an export value of $1.840 billion)[13]. And given that the US is the price maker for wheat (and most grains) and that the average total US+EU quantity of wheat and flour exports accounted for 53.2% of global exports we see their huge responsibility in depressing the world price of wheat in that base period.

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[10] http://farm.ewg.org/progdetail.php?fips=00000&progcode=corn

[11] http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateQ&navID=CommodityPurchasing&leftNav=CommodityPurchasing&page=CommodityPurchasing&acct=AMSPW

[12] For fruits, vegetables and cereals:
2008: http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5074554;
2009: http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5081598
2010: http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5088443
For poultry: http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=stelprdc5089497;
For other meats and fish: http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5084535

[13] Jacques Berthelot, *Analysis of the G-33's proposal to change the AoA provision on Public stockholding for food security*, Solidarité, September 25, 2013: http://www.solidarite.asso.fr/Papers-2013; *Indian food security stocks of rice and wheat do not distord trade*, Solidarité, 19 November 2013, http://www.solidarite.asso.fr/Papers-2013

Furthermore, $15.1 billion of the food bought with food stamps or received in kind by the about 80 million beneficiaries of the US nutrition programmes (without double count, of which 46.6 billion with food stamps) were devoted to cereals products in 2011-12, $23.7 billion to meat, fish & eggs and $11 billion to dairy products. All these products needed 14.6 million tonnes (Mt) of cereals, of which 4.6 Mt of wheat in cereals products, 9 Mt in feed cereals for meat, dairy & eggs and 1.1 Mt of corn in HFCS for soft drinks. The US farm value of these 14.6 Mt of cereals (rice excluded) was $3.685 bn, at an average price of $252.5 $/t. So that each of the 80 M beneficiaries of the US food aid consumed 182 kg of cereals for a farm value of $46.1. And looking specifically at the SNAP programme which concentrates 76.9% of all nutrition programmes for 46.6 M of beneficiaries, they consume 11.223 Mt of cereals at a farm value of $2.834 bn, implying a food aid of 241 kg of cereals with a farm value of $60.8 per beneficiary.

At the same time about 475 million poor Indians – of whom 325 M under the poverty line and 150 M above it – received in 2012 17.5 Mt of wheat (36.8 kg per person) for $4.347 bn paid to farmers at the minimum support price (MSP) of $248.4 per tonne, and 24 Mt of rice (50.5 kg/head) for $8.035 bn, paid to farmers at the MSP of $334.8 per tonne, making a total purchase cost of $12.382 billion each person having received on average 87.3 kg of cereals, for a farm value of $26, of which $9.1 for wheat and $16.9 for rice. But the food subsidy (total economic costs of acquisition and distribution minus the same quantity times a highly subsidized price to poor consumers) represented $26.7 per beneficiary in 2012-13 for rice and wheat, plus $53 M of food aid in sugar or $1.1 per beneficiary.

On the whole the US total domestic food aid required $100 billion of subsidies in 2012, net of administration costs, or €1,250 per capita, among which $74.9 billion for food stamps to 46.6 million beneficiaries, or with $1,608 per capita, and $17.7 billion to 45 M school children. On the other hand India's total food aid subsidy represented in 2012 12.8 percent of the US one for a number of beneficiaries 5.9 times higher. So that the $27.9 of total food aid subsidy per Indian beneficiary represented only 2.2 percent of the total US food aid of $1,250 per beneficiary or 1.7 percent of the $1,608 per beneficiary of food stamps. Restricting the comparison to the food subsidy in cereals per person, that of India represented in 2012 58 percent of that in the US and only 44 percent of that per beneficiary of food stamps. But, paradoxically, for the developed countries, particularly the US, it is India which should lower its public procurement, not the US which should reduce its food subsidies.

To conclude, opposing the green box status of the US domestic food aid to the amber box status of the Indian food aid, representing only per capita 2.2 percent of the total US food aid, under the only pretext that the US food is bought at domestic market prices whereas the Indian food is publicly procured at administered prices – higher than the Indian market prices but still lower than the US farm prices once taking into account the complementary subsidies received by US farmers –, is totally illogical and unfair. Times is up for the WTO to change its AoA rules and recognize the food sovereignty and right to food principles, as long as Members would not harm other Members through an actual dumping of their products on the world market, a dumping which should take into account all the domestic subsidies benefitting to the exported products, in line with the WTO Appellate Body rulings in the Dairy Products of Canada case of December 2000 and 2001, the US cotton case of March 2005 and the EU sugar case of April 2005. A reminder that the G20 proposal on export subsidies should not forget in Bali.

Instead of preventing the DCs to ensure their food sovereignty and denouncing the inconsistency of their public procurement with the AoA rules, the US farmers and the US Government should realize that their own agricultural policies are contradicting much more these rules and that they would have much more to lose if some DCs decided to sue them at the WTO.]

If we are ever to achieve a Doha Round agreement, advanced developing countries – especially those with large, competitive agricultural sectors – need to be willing to take on a higher level of obligation. A Bali agreement that relaxes current disciplines for those countries, even on a temporary basis, would represent a big step in the wrong direction and would set a damaging precedent for future talks. It would also increase the likelihood of further subsidy increases and further damage U.S. trade interests.

We urge you to ensure that any agreement on agricultural support that is a part of the Bali package does not undermine current WTO rules, but rather sets the stage for further productive negotiations and further liberalization.

Sincerely,
American Farm Bureau Federation
American Feed Industry Association
American Meat Institute
American Soybean Association
Animal Health Institute
Grocery Manufacturers Association
International Dairy Foods Association
National Association of Wheat Growers
National Barley Growers Association
National Chicken Council
National Corn Growers Association
National Council of Farmer Cooperatives
National Fisheries Institute
National Grain and Feed Association
National Milk Producers Federation
National Oilseed Processors Association
National Pork Producers Council
National Potato Council
National Renderers Association
National Turkey Federation
North American Blueberry Council
North American Equipment Dealers Association
North American Export Grain Association
North American Meat Association
Northwest Horticultural Council
Pet Food Institute
U.S. Dairy Export Council
U.S. Grains Council
U.S. Wheat Associates
USA Rice Federation
Western Growers Association