Comments to the "U.S. Question to India" at the WTO Committee on agriculture of 29 January 2014

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Summary

The WTO Ministerial Conference in Bali from 3 to 6 December 2013 decided to establish a Working Group within its Agricultural Committee to find a permanent solution to the request of the G-33 carried by India to delete a provision of the Agreement on agriculture (AoA) which restricts the ability of developing countries (DCs) to pay remunerative prices to farmers to build public food security stocks which are then sold at low prices to the disadvantaged population.

For the meeting of the Agricultural Committee of 29 January the United States (US) requested in writing to India to demonstrate that its wheat exports were not made at dumping prices due to the higher costs of its public stocks. The present comments to this US request broaden the debate by highlighting the multiple contradictions and ambiguities in the US request and in the AoA rules:

1) Contradictions in the US letter to India who have misinterpreted the provisions of the AoA on this subject.

2) Ambiguities of many basic concepts for this debate: farm price vs food price, market price vs administered price, public stock.
- The AoA deals with food products, not with agricultural products.
- The US and the EU have no agricultural market prices as they have been reduced and offset by direct payments so that one should consider *comprehensive agricultural prices* integrating the specific subsidies, making them larger than Indian administered prices of wheat and rice.
- A public stock is often outsourced to private companies; the AoA does not define a minimum volume and duration of a public stock and the US manage large public food stocks but exploded in various food programs in kind for $25 billion in 2012; we can also consider the $75 billion of food stamps to disadvantaged citizens as a food security stock.
- It follows that the EU must notify $2.9 billion in its AMS for the cereals alone included in its domestic food aid in 2012.

3) Ambiguities and contradictions of the AoA rules and the draft agricultural modalities of 6 December 2008 on the following concepts: export subsidies; dumping; subsidies on

investments and inputs, stressing that the US and EU refused to notify their huge subsidies to feedstocks, as well as to agricultural fuel and biofuels; marketing services and promotion; decoupled income support; product-specific *de minimis* support. On all these points the US and EU have hijacked the rules and massively under-notified their subsidies.

4) The US has violated the AoA rules on its AMS for dairy products since 2008: instead of continuing to calculate the AMS for all milk production, they calculate it only for butter, skimmed milk powder and cheddar cheese, which violates the AoA rules saying you cannot change the commitments made in 1994. Which implies an under-notification of $8.1 billion from 2008 to 2011.

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Before the WTO regular meeting of the Committee on agriculture[1] of 29 January 2014 the US sent a question to India where it calculated that the cost of the Indian wheat at the port would be $310 per tonne, considerably higher than the reported sale price of $260, and asked India to supply figures for the costs and the prices of the winning bids for three enterprises. In the meeting itself Canada asked India about reports that the floor price has been lowered to $260 per tonne (from $300), which is lower than Canadian export prices[2].

Starting from comments on the US questions to Indian exports of wheat, the present paper broaden the analysis to question the relevance of many basic concepts used in the Agreement on Agriculture (AoA), beginning by that of "market price", and shows that the US is not abiding by the AoA rules on AMS notifications for dairy products.

I – The US question to India presents contradictions

The US is saying first that "*India is exporting wheat at prices well below acquisition costs*", then that "*India's Commission on Agricultural Costs and Prices (CACP) in its discussion paper no. 2 estimated that the cost of storing, handling, and distributing wheat purchased by the government's Food Corporation of India*[3] *equals 40% of the acquisition cost*". The precise quotation of the CACP is: "*Currently, the economic cost of FCI for acquiring, storing and distributing foodgrains is about 40 percent more than the procurement price*".

The US statement and the CACP's quotation have several implications:
1.1- They identify the *acquisition cost* with the *procurement price*, the MPS (minimum support price). In fact the AoA Annex 2 paragraph 3 does not speak of *acquisition cost* but of *acquisition price*, a language which excludes additional acquisition costs.

1.2- If these 40% are *added* to the acquisition (procurement) price they cannot be included in it. So that the US cannot say that "*India is exporting wheat at prices well below acquisition costs*".
1.3- This is perfectly in line with the AoA Annex 3 Article 8 which provides: "*Market price support shall be calculated using the gap between a fixed external reference price and the applied administered price multiplied by the quantity of production eligible to receive the*

[1] Contrary to the Special Commission dealing with the multilateral negociations on agricultural trade.
[2] http://www.wto.org/english/news_e/news14_e/agcom_29jan14_e.htm
[3] Food Corporation of India (FCI) is the official body managing the purchase of public stocks of rice and wheat and their redistribution at low prices to the deprived consumers.

applied administered price. _*Budgetary payments made to maintain this gap, such as buying-in or storage costs, shall not be included in the AMS*_" (not underlined in the AoA). If they should not be included in the AMS – implying that they are not trade distorting –, why should they be included in the export price as trade-distorting ?

1.4- In any case, for Vijay Paul Sharma, distribution costs include "*handling expenses, storage charges, interest charges, freight costs, administrative overheads, transit losses and storage losses*"[4] and covers all the costs of delivery to the end consumer, but without taking into account the food subsidy itself which is the gap between the economic cost and the highly subsidized Central issue prices (CIP) at which rice and wheat are released to the food recipients. But, when wheat and rice are exported by the FCI through public tenders, a large share of distribution costs are not incurred by FCI as the grain is sold to private traders at the godown level: "*Delivery of stocks will be made duly loaded into the trucks of the successful tenderers in the godowns of FCI*"[5]. Now the distribution cost was equal to 22% of the wheat MSP in 2012-13[6]. Therefore, as the US seems to assume that private traders are more efficient than the FCI, it cannot add 40% to the MSP as the total cost at FOB level[7].

II – The fundamental ambiguities of the AoA provisions on domestic food aid

The AoA provisions on domestic food aid are ambiguous as they rest of the ambiguity of several concepts not clearly defined: agricultural price vs food price, market price vs administered price, public stock.

2.1 – Agricultural price vs food price

The WTO Annex 2 paragraphs 3 et 4 deal with "food" or "foodstuffs", not with "agricultural products", and do not specify that these products are purchased to farmers. In India the FCI purchases a significant part of rice to rice mills, the major part being paddy purchased to farmers before sending it to mills for processing into rice**.**

In the US, over the $100 billion (bn) of the net cost of domestic food aid in 2012 (excluding the administrative costs of running the programmes) $75 bn correspond to food stamps (SNAP) where the recipients choose themselves the foodstuffs in one of the 200,000 retail stores that accept SNAP stamps whereas $25 bn finance other programmes where foodstuffs are delivered in kind to the institutions providing them to beneficiaries, particularly to school children (lunch and breakfast). On this $25 bn $1.595 bn were purchased directly to farmers by USDA in 2012, of which almost half were already processed (such as meat), the rest being purchased to agro-industries and wholesalers.

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[4] http://www.iimahd.ernet.in/assets/snippets/workingpaperpdf/5337679172012-08-02.pdf

[5] http://fciweb.nic.in//upload/Sale/MTF%20for%20Disposal%20of%20Foodgrains,%20Coarsegrains%20stored%20in%20FCI%20Godowns%20w.e.f.%2001.08.2012.pdf

[6] http://fciweb.nic.in/finances/view/9

[7] FOB: free on board, for exports and CIF (cost, insurance, freight) for imports.

2.2 – Market price vs administered price

2.2.1 – The concept of agricultural administered price

The concept of administered price is not defined in the WTO agreements, although it is working in opposite ways in developed countries and developing countries (DCs). While in DCs administered prices – the MSP (minimum support price) in India for example – are set *above the domestic prices* to ensure remunerative prices to small farmers, especially just after harvest and force merchants to pay higher market prices, in developed countries these are *minimum prices below the prevailing market price* in order to reduce their level.

According to Wikipedia, "*In the U.S. administered prices are fixed by policy makers in order to determine, directly or indirectly, domestic market or producer prices… In Europe, an administered price is defined either as a price legally set by a government authority, a (heavily) subsidized price, or an oligopolistic price set by large corporations*"[8].

Indeed – here lies the fundamental difference – these lower administered prices were accepted by Western farmers only because they were offset by domestic subsidies, including by the alleged *decoupled*[9] fixed direct payments in the EU and US plus *coupled* subsidies, such as the US various types of marketing loan benefits and countercyclical payments – triggered by other administered prices set above current market prices or minimum administered prices – and insurance subsidies. In developed countries administered prices are always triggering subsidies, apart from the other means necessary to render them effective: import duties, export subsidies and restrictions, land set aside, production quotas, food aid, etc[10]. Indeed the US Farm Bills and EU CAP reforms since the 1990s have consisted in lowering by steps their administered prices, hence their current domestic market prices, to increase their domestic and external competitiveness – importing less and exporting more – through massive compensatory alleged non-trade-distorting subsidies of the *blue* and *green* boxes[11].

2.2.2 – The market price concept

The AoA annex 2 paragraphs 3 and 4 deal with "current market prices", a concept not defined in the AoA. To know what a "market price" is the best source are the US and EU provisions on "non-market economies" which are considered not to use prices in line with their "normal value". Thus, in the US antidumping manual, "*For the merchandise under investigation or*

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[8] http://en.wikipedia.org/wiki/Administered_price

[9] A subsidy is *coupled* when related to the production or price levels, and *decoupled* in the opposite case.

[10] Harry de Gorter, Merlinda Ingco and John Nash, *Domestic support: economics and policy instruments*, in Agriculture and WTO, World Bank, 2004: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/08/19/000160016_20040819110032/Rendered/PDF/297950018213154851x.pdf

[11] The *blue box* corresponds to the EU fixed direct payments per hectare (cereals and oilseeds), cattle head (bovines and ovines), or litre of milk decided by the CAP (common agricultural policy) reforms of 1992, 1999 and 2004 to offset the reduction of guaranteed ("intervention") prices but farmers received them only if they produced the corresponding products. The *green box* covers two types of alleged non-trade distorting subsidies: 1) the traditional *green box* of in-kind aid to general agricultural services benefitting to farmers collectively: agricultural infrastructures, schools, research, agri-environment, calamities, phytosanitary warnings, etc.); 2) the *green box* of decoupled income support in place in the US since 1999 and in the EU since 2005 where farmers continue to receive the average amount of blue box direct payments received in 2000-02 without being obliged to produce anything or being allowed to produce other products than those having benefitted of blue payments.

review, there must be virtually no government involvement in setting prices"[12]. Or, in the 2009 edition, according to David A. Gantz: "*Commerce requires for purposes of the affected sector a showing that there is no government involvement in determining prices or production quantities; there is private or collective (rather than full government) ownership; and that all significant inputs are subject to market-determined prices*"[13].

Of course the same can be said of the EU agricultural prices: in both cases the US and EU cannot claim that there is "*virtually no government involvement in setting prices*" of agricultural products because of the large subsidies they are still granting, not only for cereals and oilseeds but also for animal products for which "*significant inputs are subject to market-determined prices*", and here we mean feedstuffs. In other words DCs could sue to the WTO with the highest change of success the US and EU on the basis of their own laws on non-market economies since their agricultural prices are not those of market economies. Therefore also the provision in paragraph 4 of the AoA Annex 2 that "*Food purchases by the government shall be made at current market prices*" is not verified for the US.

Now several US and international reports have underlined the usefulness or even the necessity to internalize in domestic agricultural market prices the subsidies allocated to the corresponding products:

- The OECD has done it in a report of 2011 where the concept of domestic prices is defined as "*producer prices plus payments linked to the production of a specific commodity*"[14].

- In the US cotton case, the Appellate Body's report underlined that "*During the oral hearing, the United States accepted that farmers decide what to plant based on expected market prices as well as expected subsidies*" (paragraph 440)[15]. Precisely the main subsidies that the US farmers were expecting for sure were the fixed direct payments, whereas the marketing loans benefits and countercyclical payments depended on the vagaries of market prices. The EU farmers can say the same with the SPS (Single Payment Scheme).

- A FAPRI[16] Report of October 2013 assessing the two Farm Bills adopted in 2013 by the House of Representatives and the Senate presents tables of the expected "*average crop revenue in dollars per acre*"[17] for several crops for the period 2014-18. In these tables the expected subsidies – only coupled ones in the future as the two Bills and the final Farm Bill signed into law by the President the 7 February 2014 have eliminated the fixed direct payments – are added to market sales, which, divided by the yield per acre, give the *comprehensive price* or *full price* per crop, although FAPRI does not use this concept but that of "revenue per acre".

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[12] US Department of Commerce, *Normal value*, AD Manual, chapter 8.

[13] http://ia.ita.doc.gov/admanual/2009/Chapter%2010%20NME.doc;
http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=david_gantz

[14] Jean-Pierre Butault, *Evolution of Agricultural Support in Real Terms in OECD Countries and Emerging Economies*, OECD, 2011, http://www.oecd-ilibrary.org/docserver/download/5kgkdgf25x20.pdf?expires=1385386110&id=id&accname=guest&checksum=476FE82E1A92E7409C7AAE4E85F48958

[15] WT/DS267/AB/R, 3 March 2005

[16] US Research Center dependent from the US government.

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

- A World Bank paper of November 2008 written by Kim Anderson and Signe Nelgen incorporates also the decoupled subsidies in their indicator of agricultural prices distortion – the NRA [nominal rate of assistance] – when they write: "*With this dollar value of decoupled payments, the NRA can be calculated by dividing the result by the value of production at undistorted prices. Since the decoupled part of support in agriculture is steadily increasing in high-income countries, it is of particular importance to integrate this part of support, even though it is less market- and resource-distorting than other distortion measures*"[18].

- Finally USDA has used extensively the concept of "Net Budgetary Expenditures per Commodity"[19] incorporating the subsidies with the farm price.

All these facts underscore that the "current market prices" at farm level are not real market prices without "*virtually no government involvement in setting prices*". They should therefore be corrected by adding the direct payments to get the *comprehensive price* or *full price* comparable to prices of countries, mainly DCs, who do not grant such payments by lack of resources.

Even if the US domestic subsidies on rice and wheat have fallen significantly since 2007 with the spike in cereals prices, nevertheless they were still in 2012 of 86 $/t on rice – mainly on direct payments and irrigation, adding 26% to the average farm price of $329 – and of 47 $/t on wheat, mainly on direct payments and crop insurances, adding 16.5% to the average farm price of $285.7. Consequently the dumping rate of US rice exports in 2012 was of 14% (against 75% in 2000) – made essentially of the 86 $/t of domestic subsidies as there were no export subsidies proper, against a FOB price of 624 $/t – and that of wheat was of 14.7% (against 81% in 2000), based essentially also on domestic subsidies of 47 $/t plus 1.9 $/t of export subsidies (export credit guarantees)[20]. Furthermore, as shown in the two following graphs, the Indian MSP of wheat of 248.1 $/t in 2012 was lower than the US farm price of $285.7 and even more than the comprehensive US farm price of $332.7. And the Indian rice MSP of 348 $/t in 2012 was lower than the US comprehensive farm price of 415 $/t even if it exceeded slightly the farm price of 329 $/t.

According to the WASDE report of 12 February 2014, "*The season-average farm price for all wheat is narrowed 5 cents on both ends of the projected range to $6.65 to $6.95 per bushel*"[21], which is to be compared with the average production cost of $7.35 in 2012[22], implying a likely deficit of $0.55 per bushel and therefore a likely significant dumping of exports, the more so if we add the subsidies. Already the average farm price for all wheat fell from 8.12 $/bushel in January 2013 to 6.31 $/bushel in January 2014[23]. And the average farm price for

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[18] Kim Anderson and Signe Nelgen, "*Estimates of Distortions to Agricultural Incentives, 1955-2011*", updated in June 2013, http://siteresources.worldbank.org/INTRES/Resources/469232-1107449512766/Note_summarizing_core_updated_database_0613.pdf; *Distortions to agricultural incentives in Asia*, http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/0,,contentMDK:21960058~pagePK:64214825~piPK:64214943~theSitePK:469382,00.html

[19] http://www.fsa.usda.gov/Internet/FSA_File/pb12_tbl35.pdf; http://www.fsa.usda.gov/FSA/webapp?area=about&subject=landing&topic=bap-bu-cc

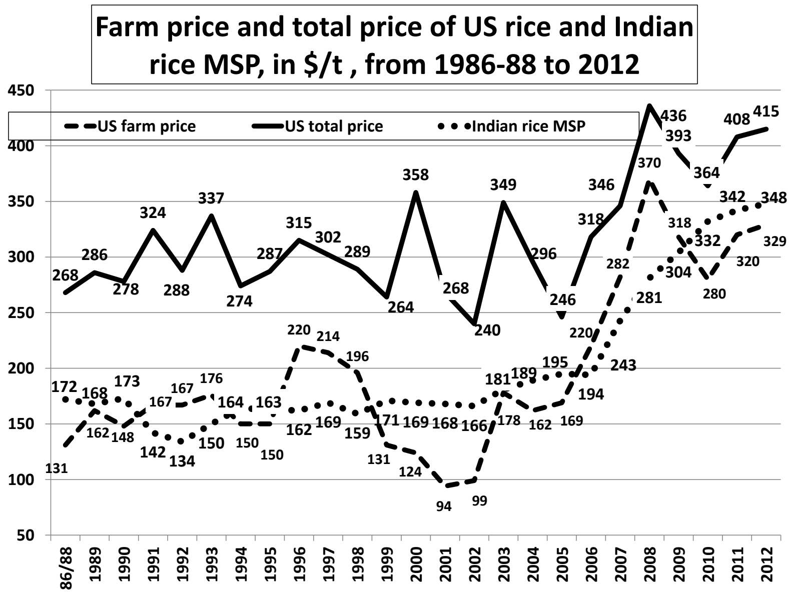
[20] J. Berthelot, *From administered prices to total prices: application to the Indian, US and EU prices of rice and wheat*, Solidarité, January 26, 2014, http://www.solidarite.asso.fr/Papers-2014

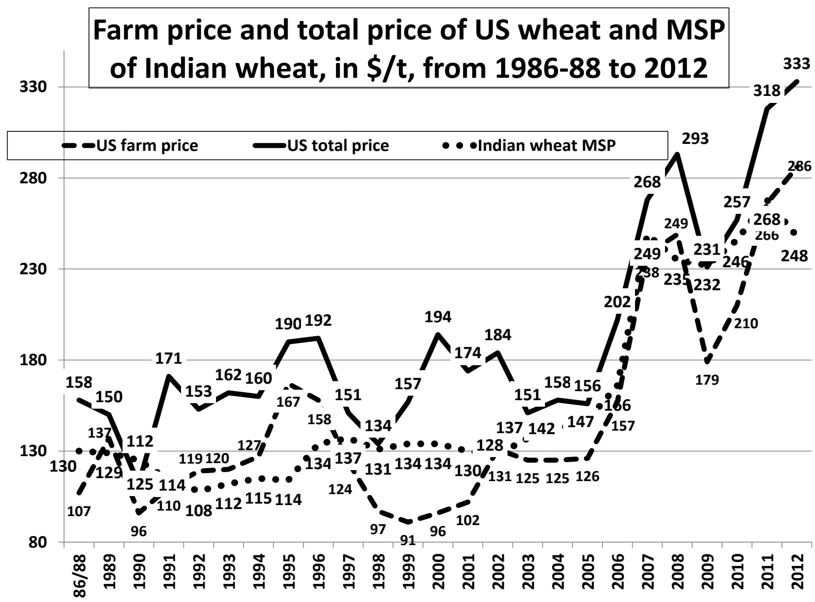
[21] http://www.usda.gov/oce/commodity/wasde/latest.pdf

[22] http://www.ers.usda.gov/publications/whs-wheat-outlook/whs-13l.aspx#.Uu__QbRiP1U

[23] http://usda01.library.cornell.edu/usda/nass/AgriPric/2010s/2014/AgriPric-01-31-2014.pdf

rice would fall from 17.30 $/cwt in December 2013 to an expected 15.70 $/cwt in december 2014.





2.3 – The ambiguous concept of public stock

Another ambiguity is that the AoA does not specify what is meant by public stock.

2.3.1 - First question: is a public stock necessarily managed directly by a public company ?

No, this is not the case in India no more than in the US where the storage of food distributed to beneficiaries is largely outsourced to private companies. In India on 30 June 2012 64% of the storage of rice and wheat controlled by the FCI was done in the private sector rented warehouses, which received also subsidies for the construction of new warehouses[24]. Insofar

[24] http://dfpd.nic.in/fcamin/annualreport/AnnualReport201213.pdf

as it is the State (actually FCI) which manages the outsourcing it seems logical to continue to talk about public stocks.

In the US the USDA's instructions to the States' agencies managing the distribution of food for the School lunch and School breakfast programmes are that "*Recipient agencies are responsible for providing and maintaining proper storage for the commodities received. Commodities may be stored within the confines of the recipient agency's facility or at an outside storage facility…* [with] *an agreement signed by both parties that includes the terms and conditions of the storage arrangement; i.e., cost, temperature requirements, liability*"[25]. As most meals for lunches and breakfasts are prepared by the schools themselves – "*Meals come from a number of different sources, they can come from on-site production, vended meal from a NSLP* [National School Lunch Program] *caterer or in most schools provided by the local school board centralized kitchen*"[26] –, and the State or District school Commission open bids to purchase the raw or processed foods which require storage. The assessment made in 2008 by USDA does not even mention outside caterers to prepare the meals: "*Meal production systems included: a) on-site kitchens only; b) base/central kitchens only; c) mostly on-site kitchens; and d) mostly satellite kitchens*"[27].

Although domestic food assistance programs of the EU are small compared to those of India and *a fortiori* of the EU, public stocks managed in the past for cereals, skimmed milk powder, butter and beef have always worked on the basis of contracts with approved storage agencies and not in silos or cold rooms belonging to the EU authorities or Member States. In addition, subsidies to private storage were used for several products (eg pork), which does not change the fact that this was a policy of public storage. Which is confirmed by the provision of the AoA Annex 2 paragraph 3: "*This may include government aid to private storage of products as part of such a programme*".

2.3.2 - Second question: is there a minimum volume and duration for a public stock ?

No, the AoA does not define a minimum volume and duration of a public stock. Particularly for the $25 bn of EU food purchased by USDA and other States' agencies before being distributed in kind to the beneficiaries of food aid programs other than food Stamps (SNAP), mainly in lunches and breakfasts of school children. The time is certainly much shorter than in India but, even in India, it is likely that a significant portion of rice and wheat is distributed by the FCI and the States after a short storage life.

And the USDA's instructions to States agencies force them to "*use all food donated by the USDA within six months of receipt*", which applies both to the raw agricultural products and to those transmitted by the States to agro-industries for further processing[28]. The importance of storage in the school lunch and breakfast programmes is attested, as an example, by the way it is working in the Montgomery county of Maryland: "*The Food and Nutrition Services Center includes a 22,500 square foot warehouse that contains the inventory of products needed to prepare school meals. Through annual, monthly, and weekly production planning and menu development, foods are purchased in bulk quantities, stock is rotated to ensure*

[25] http://web.extension.illinois.edu/smallfarm/downloads/48937.pdf
[26] http://en.wikipedia.org/wiki/National_School_Lunch_Act
[27] USDA, *School Lunch and Breakfast Cost Study – II*, April 2008, http://www.fns.usda.gov/sites/default/files/MealCostStudyExecSum.pdf
[28] http://web.extension.illinois.edu/smallfarm/downloads/48937.pdf

freshness… The food service warehouse receives, stores, and distributes food and supplies to schools, Montgomery County agencies, non-profit organizations, and school systems in other counties. The warehouse consists of 15,000 square feet of dry storage, 10,000 square feet of frozen food storage, and 1,500 square feet of refrigerated storage"[29]. Furthermore the about 200 000 shops registered to accept food stamps are obliged to store perishable goods[30].

All this confirms that the US mobilizes genuine public food stocks even if they are broken up into thousands of points and if it is more often stocks of final food products than of unprocessed agricultural products, but the AoA deals with "foodstuffs" or "food" and not restrictively with "agricultural products".

Incidentally it is scandalous and unfair that the footnote 5 to paragraph 3 of the AoA Annex 2 limits the notification in the AMS to DCs' food security stocks, as if the developed countries, and first the US, did not run such programmes and were exempted from notifying them in their AMS: "*Governmental stockholding programmes for food security purposes* *in developing countries* [not underlined in the text] *whose operation is transparent and conducted in accordance with officially published objective criteria or guidelines shall be considered to be in conformity with the provisions of this paragraph, including programmes under which stocks of foodstuffs for food security purposes are acquired and released at administered prices, provided that the difference between the acquisition price and the external reference price is accounted for in the AMS*".

2.3.3 – Third question: what is a food security stock ?

There is no restrictive definition of what is a food security stock and actions to fight food insecurity occur at all levels: household, village, country, international. In DCs small farmers are used to keep grains on farm or in village cereal banks for more than one year after a good harvest to mitigate possible bad harvests in the future. But there are clearly several means other than direct stockholding to fight food insecurity and Amartya Sen has underscored the *entitlement* principle in his famous book *Poverty and Famines: An Essay on Entitlement and Deprivation* (1981), a book in which he argued that famine occurs not only from a lack of food, but from a lack of financial access to food.

For USDA *"In 2012, 85.5 percent of U.S. households were food secure throughout the year. The remaining 14.5 percent (17.6 million households) were food insecure… Food and nutrition assistance programs of the U.S. Department of Agriculture (USDA) increase food security by providing low-income households access to food, a healthful diet, and nutrition education*"[31].

Actually the USDA follows implicitly Amartya Sen's conclusions by channeling 25% of its domestic food aid through direct delivery of food in kind and 75% through food stamps which are a direct financial aid to deprived households beneficiaries. We can argue that these two alternative ways of fighting food insecurity should lead to consider that this second way of food assistance through financial aid is a kind of food security stock for the deprived beneficiaries so that there is no logical reason to apply to these alternative ways different treatments concerning the AMS notifications. At the end of the day the deprived beneficiaries get the food they need and the US farmers get the same benefit of selling their products either

[29] http://www.montgomeryschoolsmd.org/departments/foodserv/about/facilities.shtm#Warehouse
[30] http://www.massresources.org/snap-store-owners-guide.html
[31] http://www.ers.usda.gov/publications/err-economic-research-report/err155.aspx#.UxXK94Wbv1I

directly to USDA which delivers them to the States' services managing the School lunches and other programmes or to traders and agro-industries from which the authorized stores to sell products in exchange of food stamps get foodstuffs.

Other legal arguments could be mobilized to include into the AMS foodstuffs obtained in exchange for food stamps: the jurisprudence of the WTO Appellate Body on "*payment on the export financed by virtue of governmental action*", particularly in the Dairy Products of Canada case (December 2001 and December 2002) and in the EU Sugar case(April 2005). But this requires further studies.

2.3.4 – Assessment of the US AMS on its food security stocks

If we retain the above finding that the US agricultural or food products are not purchased at market prices without subsidy but at *comprehensive prices* or *total prices* and similar to administered prices within the meaning presented above, then the EU must notify in its AMS the difference between the current total prices and the border prices of 1986-88 for all the food products included in its various food programmes. This is unchallengeable for the $25 bn of foodstuffs subject to public stocks and distribution in kind, but the above extensive interpretation of food security stocks could justify to extend the AMS notification to food stamps, which represent $75 bn or three quarters of the total food programmes.

One could argue that all the US agricultural products were not included in its Schedule of commitments of 1994, which was the case for meats other than beef, but the objection is irrelevant because 61 over 71 DCs, of which India, did not notify any AMS in their Schedules, but this did not exempt them to notify their AMS linked to the gap between the current administered prices and their 1986-88 border prices.

In 2012 the US AMS for wheat was of 226 $/t: 332.7 $/t of total farm-gate price – including 285.7 $/t of market price and 47 $/t of subsidies – less 106.7 $/t for the average FOB price of 1986-88. If we kept the US argument that the AMS should be calculated on the whole production – of 61.634 Mt in 2012 for wheat – and not just on the redistributed domestic food aid (DFA), the wheat AMS to notify reaches the astronomical amount of $13.929 bn ! Worse, if we applied the same method to the 273.8 Mt of corn produced in 2012, it would make an AMS of $53.877 bn !

If the AMS calculation is limited to the amount redistributed as domestic food aid (DFA), a previous document[32] has calculated that 14.594 Mt of cereals were incorporated in 2012 in the foodstuffs purchased for the DFA, including 4,587 Mt of wheat, 8,972 Mt of corn, 123,000 tonnes of sorghum grain, 105,000 tonnes of oats, 98,300 tonnes of rice (it was assumed that the per capita consumption of the 80 million beneficiaries were the same as the average national) and 83,000 t of barley (we did not take into account the malted barley processed into beer and spirits as these products are excluded from the DFA).

The following table shows that $2,886 bn should be notified at the WTO for the AMS of cereals alone in 2012, of which $1.765 bn for corn and $1.037 bn for wheat.

[32] J. Berthelot, *Analysis of the G-33's proposal to change the AoA provision on Public stockholding for food security*, Solidarité, January 25, 2014, http://www.solidarite.asso.fr/Papers-2014

Extending these calculations to all products delivered in kind for $25 bn in 2012 would likely reach close to $10 bn in AMS. And extending the calculations to all food programmes including food stamps would exceed by far the possible future Indian AMS.

The AMS of cereals processed into foodstuffs of the US domestic food aid programmes in 2012

	Wheat	Corn	Barley	Rice	Oats	Sorghum	Total
FOB price 1986-88: $/t	104,29	84,37	90,69	153,44	113,96*	76,89	
Farm price 1986-88 "	90,63	78,48	65,01	129,84	123,68	70,06	
Comprehensive price 2012: $/t	332,70	281,13	305,16	414,48	273,87	271,84	
" farm price: $/t	285,7	271,26	294,95	328,48	268,28	249,21	
" subsidies: $/t	47	9,87	10,21	86	5,59	22,63	
AMS: $/t	226	196,76	210,05	261,04	159,91	194,95	
DFA in 1,000 t	4587	8972	83	98,3	105	123	14594
Total AMS/DFA: M$	1037	1765	17,4	25,7	16,8	24	2886

* CIF price as there were net imports in 1986-88

2.3.5 – The First Draft modalities on agriculture of 2003 permitted to change the currency of AMS notifications for the 1986-88 base period to thwart domestic inflation

Paragraph 49 of the first draft of the "modalities" paper, circulated to WTO Members on 12 February 2003, provided: "*Inflation 49. Scheduled Total AMS commitments may be expressed in national currency, a foreign currency or a basket of currencies. In case a foreign currency or a basket of currencies is used and the final bound Total AMS in a Member's Schedule is expressed in national currency (or another foreign currency) and a participant wants to avail itself of this option, the final bound Total AMS shall be converted using the average exchange rate(s) as reported by the IMF for the year at issue*"[33].

This proposal drew on the previous negotiations of 18 December 2002[34]. Unfortunately the following Draft modalities of 12 July 2006 was more restrictive because full of brackets: *"[As provided for under Article 18.4 of the Agreement on Agriculture, those cases where [exchange rate fluctuations] [and inflation rates] have caused extraordinary situations shall be dealt with separately and on a pragmatic case-by-case basis.]*"[35]. And the Draft modalities of 6 December 2008, paragraph 20, reproducing the previous Draft modalities of 10 July 2008, limited itself to state: "*Article 18.4 of the Agreement on Agriculture shall continue to apply in order to respond to the situations referred to in that provision. Due consideration shall also be given in the event that a developing country Member faces difficulties in its AMS calculation as a result of extraordinary and sudden increases in food prices relative to the fixed external reference price*".

[33] http://www.wto.org/english/tratop_e/agric_e/negoti_mod2stdraft_e.htm#domesticsupport
[34] TN/AG/6 of 18 December 2002:
http://www.wto.org/english/tratop_e/agric_e/negoti_modoverview_e.htm#domesticsupport
[35] http://www.wto.org/english/tratop_e/agric_e/mod_ag_2006_e.htm

III – The necessity to eliminate the ambiguities and contradictions in the AoA rules and in the Draft modalities on agriculture of 6 December 2008

3.1 – "Export subsidies": the WTO Dispute Settlement Body has ruled four times that domestic subsidies benefitting to exported products should be taken into account. Excerpts of these rulings are available[36].

3.2 – "Dumping": here it is not the AoA rules which are at stake but the GATT article 6 and the Agreement on anti-dumping article 2 which reproduces the GATT article 6 in stating that "*a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country*".

It is clearly this provision which has been the main trigger of the CAP reforms of 1992, 1999 and 2003, and of the Farm Bills since the 1990s: reducing by steps domestic farm prices close to their world levels and compensating farmers by allowed direct payments of the blue and green boxes would improve the internal and external competitiveness of EU and US agricultural products, without being sued for dumping. So that the above definition of dumping in the GATT and Anti-Dumping Agreement should be changed by adding the following sentence: "*'Normal value' and 'In the ordinary course of trade' mean that the domestic price has not been reduced by compensating subsidies to producers*".

3.3 – "Investment subsidies" and "**input subsidies**": they must be included in the developed countries' AMS. The AoA article 6.2 is very clear: "*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*". Therefore this exemption does not apply to developed countries.

But here the AoA has contradictory statements, particularly on investments subsidies:
- Paragraph 11 of Annex 2 on "Structural adjustment assistance provided through investment aids" puts them in the green box, however within clear limiting conditions: "*Eligibility for such payments shall be determined by reference to clearly-defined criteria in government programmes designed to assist the financial or physical restructuring of a producer's operations in response to objectively demonstrated structural disadvantages*".
Yet the US and EU have notified all such public investment expenditures in the green box, even though most of their farmers are getting better incomes as a consequence of farms' concentration and with no cap in accessing these investment subsidies. The EU notified €7,134 bn of "Structural adjustment assistance provided through investment aids" for 2010-11 (last notified year) even though the US notified only $154 million for 2011 but also an unknown package of $2.524 bn of "State programs for agriculture".

- Paragraph 2.g of Annex 2 puts also in the green box "*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*", but within the following limitations: "*In all cases the*

[36] *The EU dumping of some agricultural exports in 2012*, Solidarité, 20 February 2014, http://www.solidarite.asso.fr/Papers-2014

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". The EU has notified €2.310 bon for 2009-10 of such "Infrastructural services", without justifications that the limitations were respected. The US did notify only a ridiculous $189 M on irrigation subsidies even though many reports of the General Accounting Office and of other experts have stressed that the average annual irrigation subsidies are of about €2 billion.

3.4 – "Input subsidies": this is the major issue as the developed countries have refused to notify to the WTO their main **feed subsidies** – those to COPs: cereals, oilseeds and pulses – although they have notified some minor ones – to dried fodder, silage for beef and skimmed milk for calves for the EU and to grazing fees on public lands for the US –, showing that they recognize that feed subsidies are input subsidies of the amber box. Yet the EU feed subsidies reached €12.2 billion in 2012[37]. The US and EU cheatings in that area have been promoted by the OECD tortuous concept of "excess feed cost": "*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*". If this concept could have been debated when the world prices of cereals was low so that this alleged "excess feed cost" represented by the difference between the domestic prices of cereals (and all COPS more boadly) used in feed and their world prices was large – for an average of €4.147 bn in the EU from 1986 to 1999 –, it appears totally illogical now that the world prices of cereals have skyrocketed since 2008 so that the "excess feed cost" has totally disappeared in the OECD PSE. Yet the feed subsidies are still there, hidden for the EU in its SPS and SAPS, which is the best refutation of this mystifying OECD concept of "excess feed cost".

Yet the US Congressional Research Service acknowledged clearly in 2006 that feed subsidies are input subsidies: "*The list of commodities that normally do not receive direct support includes meats, poultry, fruits, vegetables, nuts, hay, and nursery products. Producers of these 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*"[38].

The developed countries fail to notify, or undernotified greatly, other major input subsidies:

- **biofuels subsidies**: not only to ethanol which is an agricultural product according to the AoA list (Annex 1) but also biodiesel which, although classified as a chemical product, to which the subsidies should nevertheless be included according to paragaph 7 of Annex 3: "*Measures directed at agricultural processors shall be included to the extent that such measures benefit the producers of the basic agricultural products*". Thus the US subsidies to corn ethanol reached $8.148 bn in 2011-12 (of which $6.277 for the tax credit and $1.1871 to corn producers) and $1.339 bn for biodiesel. In the EU the producers of feedstocks received €1.671 bn in 2011-12 but we dot avail of the figure for the tax credit as they are not unified at the EU level.
- **agricultural fuel subsidies**: neither the US not the EU notify them to the WTO. Yet, according to OECD's reports on their PSE, they reached €2.385 bn in the US and €3.342 in

[37] *The EU dumping of some agricultural exports in 2012*, Solidarité, 20 February 2014, http://www.solidarite.asso.fr/Papers-2014. However this figure does not include the subsidies to the other animals: sheep, goats, horses, fish, rabits, pets…

[38] Randy Schnepf and Jasper Womach, *Potential Challenges to U.S. Farm Subsidies in the WTO*, CRS Report for Congress, October 25, 2006, http://www.nationalaglawcenter.org/assets/crs/RL33697.pdf

the EU in 2012. And we could add subsidies to agricultural electricity without forgetting those to irrigation.

- **<u>crop insurance subsidies</u>**: the US notifies only the subsidies to farmers' premium but forgets to notify the payments to private insurance companies (reimbursements to deliver the policies and payments of underwriting gains) and the administrative expenses of the Risk Management Agency.

<u>3.5 – "Marketing and promotion services</u>": on the one hand they are put in the green box (paragraph 2.f of Annex 2), but within limitations "*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*". However the EU evaluation report on these measures underlines precisely the contrary: " *The list of eligible third country markets covers almost all regions of the world. It is rather unfocused, which is not per se a problem for competent bodies and proposing organisations, since it provides flexibility for action*"[39].

On the other hand paragraph 13 of Annex 3 put them in the amber box: "*Other non-exempt measures, including input subsidies and other measures such as marketing-cost reduction measures*".

Furthermore the AoA article 9.1.d states: "*The following export subsidies are subject to reduction commitments under this Agreement:… the provision of subsidies to reduce the costs of marketing exports of agricultural products (other than widely available export promotion and advisory services) including handling, upgrading and other processing costs, and the costs of international transport and freight*".

These measures are not negl igible: the EU notified €1.054 bn for 2009-10 although the OECD heading "marketing and promotion" in its PSE report of 2013 shows a figure of €3.511 bn for 2012. Even if the US notification to the WTO for 2011 was limited to $270 M the OECD PSE report for the US shows a figure of €2 bn, once deducted the Food stamps and the PL480 programmes.

<u>3.6 – "Decoupled income support</u>": of the Annex 2 paragraph 6. Despite that the WTO Appellate Body has ruled the 3 March 2005 in the cotton case that the US fixed direct payments are not in the green box – hence are in the amber box as they have to be somewhere and as they do not comply with the definition of the blue box –, the EU Commission has persisted in transferring the bulk of its direct payments to the allegedly fully decoupled SPS (Single Farm Payment) and SAPS (Single Area Farm Payment), with an outturn of €37 bn in 2012. As a result any legal proceedings at the WTO against the SPS – and now to the Single Base Payment which will replace it in the new CAP from 2014 to 2020 – is sure to have the same result, the more so as many other arguments can be put forward:

- a large part of the direct payments hidden in the SPS are input subsidies of the amber box: to feed, and feedstocks for biofuels;
- the SPS remains coupled to agricultural area as farmers must show they have eligible hectares to "activate" payments;
- the SPS is coupled because it coexists with blue box payments or amber payments for the same products. According to the AoA article 6.5, the blue box payments are granted "under production-limiting programmes" whilst the SPS allows to produce any product,

[39] http://ec.europa.eu/agriculture/eval/reports/promotion/syn_sum_en.pdf

including products whose production is forbidden or capped;

- Last, but not least, as the SPS 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.

3.7 – Product-specific de minimis (PSdm): despite that the Revised draft modalities for agriculture text of 6 December 2008 has been accepted by all WTO Members as a point of departure for the continuation of the Doha Round negotiations, it has not really been endorsed as we see precisely by the fact that the G-33 request on food security stocks was already proposed in Annex B on the green box of these modalities. Nevertheless these modalities are full of flaws. However we will limit the analysis to the fundamental and very ambiguous proposal to change the definition of the product-specific de minimis (PSdm) although this change might appear secondary and to offer opportunities to many DCs such as India which did not notify an AMS in their Schedule of committments and thus can only rely on their allowed de minimis support.

Indeed there is a contradiction between paragraphs 1 and 30. Paragraph 1 dealing with the OTDS ("overall trade-distorting domestic support") 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)* [not underlined in the text]*; plus (c) the higher of average Blue Box payments as notified to the Committee on Agriculture, or 5 per cent of the average total value of agricultural production, in the 1995-2000 base period. 2. For developing country Members, item (b) of paragraph 1 above shall be 20 per cent of the average total value of agricultural production in the 1995-2000 or 1995-2004 period as may be selected by the Member concerned*".

However paragraph 30 reproduces correctly the AoA article 6.4 rules when it states: "*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* [not underlined in the text] *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*".

This contradiction has been reproduced from the previous Draft modalities of 17 July 2007 (paragraphs 1 and 27), 7 February 2008 (paragraphs 1 and 30) and 10 July 2008 (paragraphs 1 and 30), so that this contradiction in the Draft modalities should be clarified to know for sure what will be the rule if the Doha Round is concluded.

In fact the main reason why this revised draft modalities has tried to change the rule on PSdm for the reduction commitments during the Doha Round implementation period is that the EU has not been able or willing to notify the production value of each product with a calculated AMS up to 1999-2000, the production value having only appeared from 2000-01, although

Solidarité has been able to make these calculations[40]. This explains why the simulations published in May 2006 by Canada on the impact of the EU, US and Japan offers on their final bound total AMS reduction, on their behalf and endorsed by the EU and the WTO, had already used 5% of the value of the whole agricultural production for PSdm.

According to these Canada's simulations the EU authorized OTDS in the base period 1995-2000 would be of €110.305 billion – 67.159 for the Final Bound Total AMS + 11.129 for product-specific de minimis (PSdm) + 11.129 for non-product-specific de minimis (NPSdm) + 20.888 for the blue box (BB) – and its reduction by 80% would lower it to €22.061 bn at the end of the Doha Round implementation period. What is more is that the most renowned agricultural trade experts – David Orden, David Blanford and Tim Josling (the "father" of the OECD PSE, producer's support estimate) – have endorsed these calculations in their book "*WTO disciplines on agricultural support*" published in 2011 by Cambridge University Press[41]. And they repeat this calculation in a shorter IFPRI paper, thus reinforcing the scientific credibility and interest to adopt th is new definition[42].

However the full impact of changing the PSdm definition can only appear when coupled with the fact that feed subsidies are conferring PS AMSs to all animal products of the developed countries, the DCs being largely exempted by the AoA article 6.2 for "*input subsidies generally available to low-income or resource-poor producers in developing country Members*". Therefore the EU authorized OTDS is only €90.496 bn and its reduction by 80% would lower it to €18.099 bn at the end of the Doha Round implementation period. Naturally this correct calculation would apply to all the other developed countries, particularly to the US where the allowed OTDS in the base period falls from $48.224 bn in Canada's simulations to $42.875 bn and the allowed US OTDS at the end of the implementation period, once cut by 70%, will fall to $12.863 bn[43].

If Members would eventually adopt the definition of paragraph 1 in the draft modalities of 6 December 2008 on the allowed PSdm, this would imply that all products have a PSdm, and it would not make sense to differentiate the PSdm from the NPSdm to compute the reduction commitments in the OTDS.

There is a big danger that this proposal would be finally endorsed by all Members, particularly by DCs Members like India which do not avail of a bound AMS as they did not notify an actual AMS in their Schedule of Commitments in 1994, but this apparent benefit would be counterproductive as this change in the AoA rules would benefit much more to the developed countries as shown above.

This contradictory views on the definition of the PSdm is reflected in the WTO Secretariat which, on the one hand, repeats on several places on its website, of which in its GLOSSARY TERM that de minimis" refers to "*Minimal amounts of domestic support that are allowed even though they distort trade — up to 5% of the value of production for developed countries,*

[40] 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/Papers-2006
[41] J. Berthelot, *Comments on WTO disciplines on agricultural support*, Solidarité, 15 September 2011, http://www.solidarite.asso.fr/IMG/pdf/WTO_disciplines_on_agricultural_support_J-_Berthelot_comments-3.pdf
[42] http://www.wto.org/english/forums_e/public_forum11_e/domesticsupport_wto.pdf
[43] J. Berthelot, *The US cannot reduce at all its agricultural supports in the Doha Round*, Solidarité, 27 July 2009, http://www.solidarite.asso.fr/Papers-2009

10% for developing"[44] which, by making no distinction between the PSdm and NPSdm, endorses implicitly the definition of paragraph 1 of the Draft modalities of 6 December 2008. On the other hand, it could not change the definition of the PSdm in the present legal texts before a formal decision has been taken by all Members.

IV – The US is not complying with the AoA rules for its AMS on dairy products

Before criticizing India to not abide by the AoA rules on AMS, the US should begin to clean its own backyard.

Let us take the case of the dairy market price support. The 2008 Farm Bill has changed the way to notify it. Instead of continuing to compute it for the whole milk production, it has been computed for three main dairy products: butter, nonfat dry milk and cheddar cheese. Thus the US notification for dairy fell from $4.882 bn in 2006 and $5.011 bn in 2007 to $2.925 bn in 2008, $2.827 bn in 2009, $2.845 bn in 2010 and $2.835 bn in 2011.

Despite the unanimity of US experts who applauded this change, it does not comply with the AoA rules: you cannot change the rule to compute the dairy AMS from the administered price of the whole milk production made for 1986-88 in the US Schedule of commitments[45] to the sum of the administered prices of butter, cheddar cheese and nonfat dry milk. Indeed:
- Article 1 of the AoA states that "*Support provided during any year of the implementation period and thereafter*" must be "*calculated in accordance with the provisions of Annex 3 of this Agreement and taking into account the constituent data and methodology used in the tables of supporting material incorporated by reference in Part IV of the Member's Schedule*".
- Paragraph 1 of article 3 states: "*The domestic support and export subsidy commitments in Part IV of each Member's Schedule constitute commitments limiting subsidization and are hereby made an integral part of GATT 1994*".
- Paragraph 5 of Annex 3 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*".

Not only the US was not allowed to change its methodology to compute its dairy AMS from 2008, but, to cap it all, it continues to use its allowed total AMS (the final bound total AMS) – of $19.103 bn – for the Doha Round implementation period incorporating a dairy MPS calculated on the basis of the whole milk production. They have the cake and eat it. Given the levels of support prices and production in the base period 1986-88, the total dairy AMS for the sum of butter, nonfat dry milk and Cheddar cheese was of $2.314 bn instead of the notified $5.409 bn for the whole milk. It follows that the US should rectify its notifications of dairy AMS from 2008 to 2011 (last notified year) based on the whole milk, which implies to notify an overdue of $8.612 bn, sum of differences between the AMS notified from 2008 to 2011 and that notified for 2007. Or they should at least revise their total applied AMS for 1986-88 which was not of $23.879 bn but of $20.784 bn and the final bound total AMS at the end of the Uruguay Round implementation period in 2000, was not $19.103 bn (80% of 23.879) but only $16.627 bn (80% of 20.784). And the allowed final bound total AMS at the end of the implementation period of the Doha Round, once cut by 60%, will bring it from $7.641 bn to $6.651 bn in the US notifications from 2008 on.

[44] http://www.wto.org/english/tratop_e/agric_e/ag_issues_e.htm
[45] http://www.wto.org/english/tratop_e/agric_e/schedule_e/usa.pdf

Conclusion

Rather than repeating the initial summary, let us limit ourselves to stress that developing countries should absolutely adopt an offensive attitude vis-à-vis developed countries, particularly the US and EU, in the WTO Working group of the Committee on agriculture since it offers a unique opportunity since 1994 to fundamentally change the AoA rules by ridding their contradictions and inequities between developing countries and developed countries.