



Comments to Alan Matthews "Food Security and WTO Domestic Support Disciplines post-Bali"

ICTSD, June 2014

Jacques Berthelot (jacques.berthelot4@wanadoo.fr), July 3, 2014

Outline

Introduction

Alan Matthews' red lines

Market price vs administered price

The false assertion that green box subsidies do not provide price support to producers

The fixed reference prices of 1986-88 are even less true market prices

Alan Matthews should have shown the US and EU lower compliance with the AoA rules

The US was not allowed to change its dairy MPS in 2008

Without export subsidies the US and EU continue a massive dumping of agricultural products

The EU and US "gold box" of past and present non-agricultural subsidies

Conclusion

The paper written by Alan Matthews for ICTSD on "Food Security and WTO Domestic Support Disciplines post-Bali"¹ is an interesting testimony of the disarray in which the eminent mainstream researchers in agricultural policies are sunk. On the one hand they do their best to share the legitimate concern of developing countries (DCs) to ensure the food security of their poor farmers and consumers through public food stocks but, on the other hand, they make clear that the possible solutions to accommodate the present rules of the Agreement on Agriculture (AoA) cannot cross the red lines beyond which the interests of the developed countries which devised the AoA, mainly the US and EU, will be jeopardized.

The foreword of Ricardo Meléndez-Ortiz, the ICTSD's Chief Executive, is already enlightening: *"The rise of food stockholding schemes to the top of the trade policy agenda in the run-up to the Bali ministerial conference can be seen as symptomatic of the inability of WTO members to agree on equitable and effective solutions for updating farm trade rules in ways that would address new trends in markets and policy design."*

Alan Matthews adds that *"The work programme to be undertaken in the Committee on Agriculture will be based on members' existing and future submissions. There is thus potentially an opportunity to take up more broadly the relationship between WTO rules and food security, and to assess the extent to which revisions to these rules are desirable to permit countries to pursue their food security objectives without damaging the food security ambitions of other members"*.

Alan Matthews' paper is essentially centered on an assessment of the multiple options to find a permanent solution that was mandated in the Ministerial Decision adopted at Bali.

1

Let us remind the reader that India, on behalf of the G-33 grouping of DCs prioritizing the protection of their domestic market, asked the WTO Ministerial Conference in Bali to modify the last sentence of the footnote 5 of paragraph 3 of the AoA Annex 2 as follows: "*Acquisition of stocks of foodstuffs by developing country Members with the objective of supporting low-income or resource-poor producers shall not be required to be accounted for in the AMS*". The AMS, "Aggregate Measurement of Support", is also called the "amber box" of domestic agricultural supports regarded as trade distorting. What is considered a trade distorting subsidy here is the difference between "*the acquisition price and the external reference price*" – the average border price from 1986 to 1988, base period for the calculation of reduction commitments of the Uruguay Round –, multiplied by the quantity likely to benefit from the purchase price of food security stocks, which are then distributed at subsidized prices to poor consumers. India proposed to delete "*the difference between the acquisition price and the external reference price is accounted for in the AMS*". Finally the Bali Decision agreed to make this concession during an interim period until a permanent solution will be found in the WTO Committee on agriculture, preferably before the XIth Ministerial Conference of 2017. And Alan Matthews specifies that "*The permanent solution will apply to all developing country members, and not only to those with public stock-holding programmes for food security purposes already in place*".

Alan Matthews' red lines

Rather than making comments on Alan Matthews' assessment of each option, it is more appropriate to focus on the red lines of the AoA which, for him, are impossible to cross.

For Alan Matthews the main red lines are the following:

- "*One option would be... that purchases at administered prices for the purposes of public stock-holding for food security purposes would not be deemed to be price support and would not be required to be included in a product's AMS. This would meet with the strong objection that it would breach the criterion for green box (exempt) support that it should not have the effect of providing price support to producers. The opposition to the G-33 proposal in the run-up to Bali suggests that it would be difficult to get the agreement of WTO members to such a radical change, and hence other options should be explored*"... "*Countries critical of the G-33 plan focused on the systemic impact of changing the current rules to such an extent outside of a wider negotiation. They also highlighted the potential trade-distorting consequences of any such change*".

- "*For the proponents of variable external reference prices... changing the basis for the MPS [market price support] calculation in this way would de facto lead to a renegotiation of countries' domestic support commitments under the AoA. This makes it less likely that agreement would be reached on a stand-alone basis as part of a permanent solution to the question of public stock-holding for food security purposes, outside of an overall Doha Round agreement*".

- "*Some analysts have suggested removing the MPS component from the AMS calculation altogether on the grounds that those policies are already disciplined under the market access pillar of the AoA. While the market access pillar disciplines border tariffs, the double counting argument is based on the economic logic that a country will be unable to maintain administered prices above world market prices for any lengthy period in the absence of tariff protection... While removing the MPS component from the AMS would eliminate the possibility of such*

gaming, it would also require a complete renegotiation of countries' schedules of commitments and the formulae included in the draft agricultural modalities in the Doha Round negotiations. This does not seem a sensible approach at this point in time".

Yet, the fact to underscore that broadening the discussion beyond the only issue of a permanent solution on food security stocks ignores the report made by the Chairman of the Special Session of the WTO Committee on Agriculture, Ambassador John Adank, who said on 25 June 2014: "*On Domestic Support, points that have come up in the consultations include: (i) the relationship of an overall agreement on domestic support to the work for a permanent solution to the public stockholding for food security issue which was mandated at Bali*"².

In brief Alan Matthews thinks that it is impossible to challenge and renegotiate the present AoA rules defining trade-distorting subsidies – particularly the MPS subsidies linked to administered prices – and non-trade-distorting or green box subsidies even if these definitions are questionable. In other words, rather than adopting a scientific stance, he chooses to adopt a political one, to defend the interests of the developed countries.

To understand better Alan Matthews' positions, we must clarify the concepts of "market price" vs "administered price", the first being presented as non-trade distorting, contrary to the second.

Market price vs 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 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 the administered prices are *minimum prices set below the prevailing market price* in order to reduce their level. But lower administered prices were accepted by Western farmers only because they were offset by domestic subsidies, particularly by fixed direct payments allegedly non-trade distorting as *partially decoupled* (blue box) or *totally decoupled* (green box), plus *coupled* subsidies such as the US various types of marketing loan benefits, countercyclical payments and insurance subsidies. In developed countries administered prices have always triggered subsidies, apart from the other means necessary to render them effective: import duties, export subsidies and restrictions, land set aside, production quotas, domestic and foreign food aid, etc. 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 farm market prices, to increase their domestic and external competitiveness.

Alan Matthews writes: "*How market prices are defined is clearly relevant*". Indeed! 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 sources 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 review, there must be virtually no government involvement in setting prices*"³. Or, in the 2009 edition, according to David A. Gantz: "*Commerce requires for purposes of the affected sector*

² http://www.wto.org/english/news_e/news14_e/tnc_infstat_25jun14_e.htm

³ US Department of Commerce, *Normal value*, AD Manual, chapter 8.

*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"*⁴. The same can be said of the EU agricultural prices.

Both 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 the US and EU at the WTO with the highest chance of success on the basis of their own laws on non-market economies since their agricultural prices are not those of market economies. Therefore the US and EU so-called market prices are clearly "*providing price 'support'*" to their farmers. And 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 domestic food aid, at least for the about \$25 billion of it in 2012 other than the food stamps and corresponding to the food distributed in several programmes, mainly to school children.

Then, if the US and EU farm prices are not market prices, what are they? 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*"⁵.

- 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)⁶. 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 FAPRI⁷ 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*"⁸ 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 *total price* per crop, although FAPRI does not use this concept but that of "revenue per acre".

⁴ <http://ia.ita.doc.gov/admanual/2009/Chapter%2010%20NME.doc>;

http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=david_gantz

⁵ 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>

⁶ WT/DS267/AB/R, 3 March 2005

⁷ US Research Center dependent from the US government.

⁸ http://www.fapri.missouri.edu/outreach/publications/2013/FAPRI_MU_Report_06_13.pdf

- USDA has used extensively the concept of "Net Budgetary Expenditures per Commodity"⁹, joining the subsidies with the farm price.

- 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*"¹⁰.

All these facts underscore that the US and EU "market prices" at farm level are not true 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 *total price* comparable to the farm prices of DCs which 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)¹¹. 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 total US farm price of \$332.7. And the Indian rice MSP of 348 \$/t in 2012 was lower than the US total farm price of 415 \$/t even if it exceeded slightly the farm price of 329 \$/t.

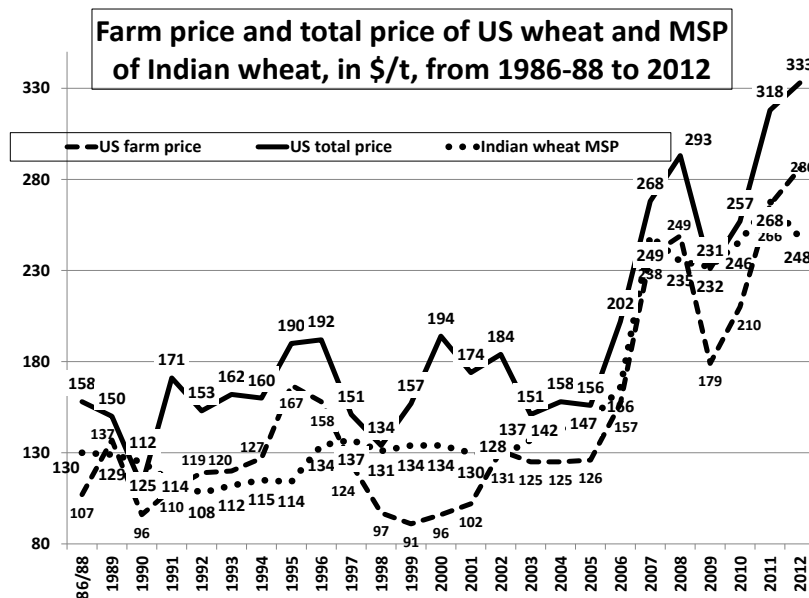
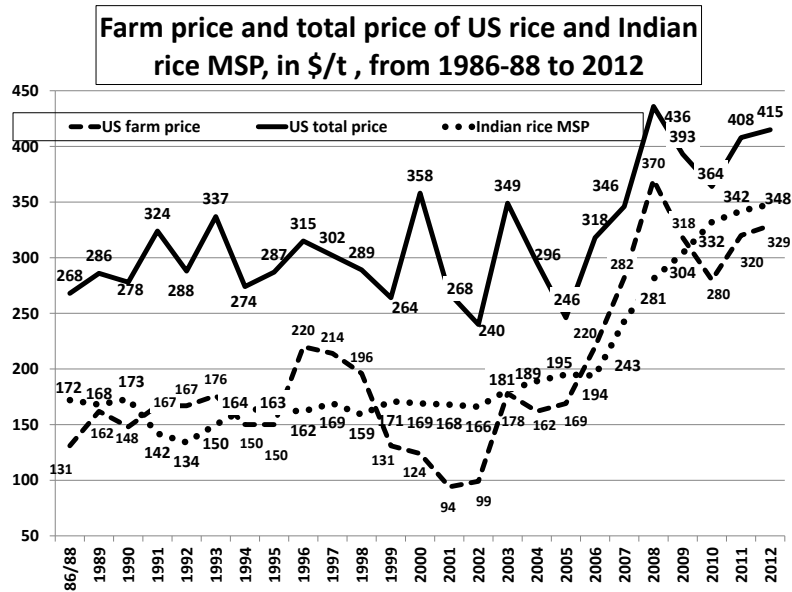
⁹ http://www.fsa.usda.gov/Internet/FSA_File/pb12_tbl35.pdf;

<http://www.fsa.usda.gov/FSA/webapp?area=about&subject=landing&topic=bap-bu-cc>

¹⁰ 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>

¹¹ 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>



The false assertion that green box subsidies do not provide price support to producers

Alan Matthews states that "*Legitimising price support, even in the context of procurement for public stockholding schemes, would thus be a major breach with one of the main principles behind the definition of exempt support*".

But, from a domestic macro-economic point of view, the distinction between market price support – financed by consumers – and subsidy – financed by taxpayers – is not convincing since most taxes end up being paid by consumers.

Green box subsidies bring a clear price support to producers. Indeed the EU and US decoupled direct payments have been granted to compensate lower agricultural prices so that they are a clear price support, allowing farmers to make do with prices lower than their average production cost. Alan Matthews writes that "*The rationale of the G-33 proposal is that these programmes should also be able to provide price support to producers, or at least low-income and resource-poor producers without this price support being required to*

count towards the product's AMS... Developed countries in particular expressed concern that the move could allow countries to provide unlimited sums of trade-distorting farm support to their farmers".

Is it not even more the case with the box-shifting – from the amber box (AMS) to the blue box and the green box – used largely by the US and even more now by the EU (since the US has eliminated the fixed direct payments in the 2014 Farm Bill) where the allegedly green box decoupled direct payments accounted in 2013 for €38.8 billion or 66.6% of the total budget outturn? The EU current total AMS collapsed from €78.672 billion in 1986-88 (its Final Bound total AMS in 1995-06) to €50.026 billion in 1995-96 and to €6.502 billion in 2010-11 (last notified year). In 1995-96 the fake MPS – fake because pure MPS without actual subsidies – accounted for €43.435 billion (86.8% of the current total AMS), of which €11.099 billion to fruits and vegetables, but, as explained by Alan Matthews, *"in 2007/08, without comment, the EU has dropped this calculation and now reports virtually zero trade-distorting support in the fruits and vegetables sector"*¹², to which Alan Swinbank adds: *"The 2008 reform of the fresh and processed fruit and vegetable regimes... allowed SPS payments to be made on land growing fruits and vegetables... But it did not change the entry price system, and hence any claim that it eliminated the AMSs on these 16 fresh fruits and vegetables is contentious"*¹³.

All the same, if the US did not notify any grain MPS for 1986-88 – except for peanuts –, it reduced its current total AMS of \$23.879 billion for 1986-88 to \$6.214 billion already for 1995-96, through the elimination of the deficiency payments linked to the cereals loan rates, which declined after 1987 in a context of rising domestic prices, and which were notified for 1995-96 at \$7.030 billion in the blue box as these marketing loans benefits were made on 85% at most of the base level of production. Then the 1996 Farm Bill eliminated the US blue box payments immediately, replacing them by \$5.187 billion notified in the green box as allegedly fully decoupled "flexibility contract payments", the ancestor of the fixed direct payments introduced by the 2002 Farm Bill.

Green subsidies bring an enormous price support to agri-food industries since the prices of their main inputs – raw agricultural products – are reduced, making them more competitive on the domestic market, at the export level, by reducing their need of export subsidies, and at the import level as well, by reducing their need of high tariffs.

Furthermore most specific green box subsidies defined in the AoA Annex 2 – of paragraphs 5 (Direct payments to producers), 6 (Decoupled income support), 7 (Government financial participation in income insurance and income safety-net programmes), 10 (Structural adjustment assistance provided through resource retirement programmes), 11 (Structural adjustment assistance provided through investment aids) and 13 (Payments under regional assistance programmes) – specify that *"The amount of such payments in any given year shall not be related to, or based on, the type or volume of production"* and *"be related to, or based on, the prices, domestic or international"*. Yet, given that any agricultural income represents the gap between agricultural revenues and costs, and that agricultural revenues come from multiplying production volumes by prices, who could explain how an agricultural income subsidy would not be related to the volume of production and the products prices?

¹² <http://capreform.eu/the-mystery-of-the-eus-disappearing-ams/>

¹³ http://www.esteyjournal.com/j_pdfs/swinbank12-2.pdf

On the macro-economic level the European Commission keeps repeating that the decoupling of the Single Farm Payments allows EU farmers to respond better to "market signals", by producing in relation to market prices. But we have shown that most EU agricultural prices are no longer market prices since they are much below average unit production costs.

Therefore Alan Matthews' statement that "*the deliberate intention of WTO rules is to encourage countries to use less trade-distorting policies in the pursuit of their agricultural and food security policies*" is fully questionable. A case can be made that, to the contrary, green box subsidies are the most trade distorting subsidies as they can increase without limits. They are even more trade-distorting than export refunds which are at least capped.

The fixed reference prices of 1986-88 are even less true market prices

Although Alan Matthews acknowledges that "*Using a variable external price arguably better captures the economic significance of a country's domestic support policy. For example, it is the benchmark used by the OECD in its calculation of a country's agricultural support*", he nevertheless uses several dubious arguments to defend the 1986-88 fixed reference prices:

- "*The drawback of using a variable external price is that a country's measured AMS is no longer completely the result of its own policy setting*" and he quotes an extract of the US – Brazil cotton panel of 2004 saying that "*a prime consideration of the drafters [of the AoA] was to ensure that Members had some means of ensuring compliance with their commitments despite factors beyond their control*". Let us quote further this panel report: "*Market prices of agricultural products are generally beyond the control of a government. The Agreement on Agriculture provides a methodology to measure domestic support which filters out the fluctuations in market prices, by using the gap between a fixed external reference price and the applied administered price multiplied by the quantity of production eligible to receive the applied administered price ("price gap methodology")*". The implicit reasoning here is: because governments cannot control market prices, especially world prices, and because they have to abide willy-nilly by their Bound total AMS commitments, then using fixed world reference prices almost identical for all WTO members – those of 1986-88 at each country border – is the best solution.

- A first comment is that the Bound total AMS commitments made by the WTO Members in 1994 on the basis of their border prices of 1986-88 should not force them once and for all to give up all their policy space to prioritize the food security of their population.

- The more so as Alan Matthews forgets to underscore that the 1986-88 reference prices were abnormally low. In particular the very low world wheat prices were the result of the US and EU combined massive dumping through several channels: explicit export subsidies, share of domestic subsidies having benefited to wheat and flour exports, export credit guarantees, not to speak of the high level of their foreign food aid. During that period the average cumulative US+EU dumping rate of wheat and flour was 78.4% (without taking into account foreign food aid), of which 71.2% for the US and 118.5% for the EU. And, given that the average total US+EU quantity of wheat and flour exports accounted for 48% of global exports – a figure largely underestimated as it does not take into account the wheat and flour incorporated in other exported processed products, from biscuits to pasta to whisky –, we can understand their huge responsibility in depressing the world prices of wheat and wheat flour, denominated in

US dollar, in that base period¹⁴. The more so as the dollar exchange rate linked to wheat trade has depreciated by 30% from 1986 to 1988. In 1987-88 1.850 million tonnes on the 2 million tonnes of US wheat exported to India received an export subsidy (of the "export enhancement program", EEP) of \$38.9 million (\$21 per tonne)¹⁵. Bruce Gardner adds: "*The average subsidy reached \$38 per ton in 1987. A price wedge this large on substantial quantities would be expected to make a noticeable difference in world trade flows and prices*". For C. C. Coughlin and K. C. Carraro, "*Not only has the level of exports expanded, but the U.S. share of the world's wheat market increased from 28.8 percent in 1985 to an estimated 41.6 percent in 1988*"¹⁶. For Kenneth W. Bailey, "*The EEP helped provide the U.S. an advantage... and therefore accounted for about 30 percent of the U.S. export expansion*"¹⁷. And it has been estimated that the EEP programme alone explained 35% to 40% of the increase in the EU wheat export refunds in that period.

- Yet Alan Matthews admits that "*any country that uses market price support is disadvantaged in the context of rising food prices by the use of the fixed 1986-88 external reference price as compared to countries that use budget payments to provide farmers with an equivalent level of economic support. This tends to disadvantage those countries, often developing countries, which have few budgetary resources*".

- Yet Alan Matthews admits that "*Countries have been able to remain in compliance with their Bound Total AMS commitment by the simple expedient of eliminating the administered price, even if the level of economic support has remained unchanged*". Indeed the author quotes rightly the cases of Japan rice and EU beef, that we can explicit more:

- According to Yoshihisa Godo and Daisuke Takahashi: "*Since Japan's rice is protected by prohibitively high tariffs, the administered price did not reduce economic protection for rice. Japan's complete elimination of MPS from its notifications to the WTO is an extreme example of the imperfect correspondence between this measurement in the notifications and an economic measurement of price support*"¹⁸. Indeed the support price for rice was eliminated in 1997, and Japan's notified AMS dropped by \$20 billion but, as there was no change in import protection, the actual support remained the same.

- Another good example is the EU suppression on 1st July 2002 of the intervention price of bovine meat, which allowed the EU to cut its total AMS by 24.5%, or €9.7 billion, from one day to the other, without any negative impact on the market price – which has increased by 7.4% in 2002, by 0.9% in 2003, by 5.2% in 2004 and by 8% in 2005 – nor on the farmers' income because the elimination of the intervention price was more than offset by the maintenance of high tariffs together with an increase in the blue box direct payments decided by the CAP reform of 1999, rising from €2.9 billion in 1999 to €6.0 billion in 2002.

Precisely, as shown by the above examples of Japan and EU, Alan Matthews acknowledges that "*Some analysts have suggested removing the MPS component from the AMS calculation altogether on the grounds that those policies are already disciplined under the market access pillar of the AoA*". But it is here that he draws a red line because "*While removing the MPS component from the AMS would eliminate the possibility of such gaming, it would also require a*

¹⁴ Solidarité, *Analysis of the G-33's proposal to change the AoA provision on Public stockholding for food security*, January 25, 2014, http://www.solidarite.asso.fr/Papers-2014?debut_documents_joints=10#pagination_documents_joints

¹⁵ <http://www.card.iastate.edu/publications/dbs/pdffiles/89wp46.pdf>

¹⁶ http://research.stlouisfed.org/publications/review/88/11/Dubious_Nov_Dec1988.pdf

¹⁷ <http://ageconsearch.umn.edu/bitstream/30095/1/21020117.pdf>

¹⁸ Yoshihisa Godo and Daisuke Takahashi, *Japan*, in David Orden, David Blandford and Tim Josling, *WTO disciplines on agricultural support*, Cambridge University Press, 2011, pp. 153-188

complete renegotiation of countries' schedules of commitments and the formulae included in the draft agricultural modalities in the Doha Round negotiations. This does not seem a sensible approach at this point in time". To the contrary the working group set up within the WTO Committee on Agriculture to find a permanent solution to the G-33 request is a unique opportunity to reexamine from every angle all the AoA rules subject to debate.

Instead of justifying the US and EU stance in the present debate on agricultural support Alan Matthews should have shown their even lower compliance with the AoA rules

Alan Matthews is prompt to defend the US and EU objections to the different options proposed to find a permanent solution to the G-33 request, but forgets to allude to at least some of the ways in which the US and EU do not comply with the AoA rules.

The US was not allowed to change its dairy MPS in 2008

Alan Matthews underscores that "*contrary to the requirement that the AMS should be calculated taking into account the constituent data and methodology used by the country for its base period*", India switched from notifying its AMS in rupees in its Schedule of commitments to notifying it in dollars from 1995 on. By the way Pakistan did the same.

However Alan Matthews did not allude to the fact that the 2008 Farm Bill has changed the way to support and notify its dairy market price support (MPS). Instead of continuing to notify its dairy MPS for the whole milk production as in its Schedule of commitments, the US has changed its dairy MPS in notifying only three main dairy products: butter, nonfat dry milk and Cheddar cheese. So that the US notified dairy AMS fell from \$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 (last notified year).

Clearly the AoA rules do not allow to change the rule to compute the dairy AMS from the administered price of the whole milk production made for 1986-88 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*". 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*". The US situation is quite different from the Indian case where the impact of MSPs on the average farm prices of rice and wheat is mixed so that notifying only the procured quantity was legitimate. Furthermore the share of milk production self-consumed by US milk producers is negligible, contrary to the shares of Indian rice and wheat. Lars Brink recognizes that, according to Hoda and Gulati (2007), "*Marketable surplus is essentially what is available for sale after the consumption and other requirements of the farmers are met. The marketable surplus ratio in 2010-11 was 81 percent for rice, 73 percent for wheat*"¹⁹.

Not only the US was not allowed to change its methodology to compute its dairy AMS from 2008, but, to cap it all, it has continued to use in its notifications from 2008 to 2011 its allowed final bound total AMS (FBTA) for the Doha Round implementation period incorporating a dairy MPS calculated on the basis of another methodology. Given the levels

¹⁹ Comments to Lars Brink "*Support to agriculture in India in 1995-2013 and the rules of the WTO*", Solidarité, May 1, 2014, <http://www.solidarite.asso.fr/Papers-2014>

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 in that period. It follows that, if the US does not rectify its notifications of dairy AMS from 2008 to 2011 based on the whole milk as it should, it must at least revised its total applied AMS for 1986-88 which was not of \$23.879 bn but of \$20.784 bn and the FBTA, 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 FBTA 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.

However the new Farm Bill of 7 February 2014 has replaced the Dairy Product Price Support Program and the Milk Income Loss Coverage by the Margin Protection Program so that, according to the National Milk Producers Federation, "*Except for infrequent extreme situations, the Margin Protection Program will stay well below the permissible level of subsidies for dairy within the overall allowable level of support available to U.S. agriculture*"²⁰. Maybe but the Margin Protection Program (MPP) will increase the product-specific insurance subsidies and the US would have still to notify the under-notified MPS up to 2014, for a total of about \$15 bn from 2008 to 2014. Above all it will reduce its FBTA at the end of the Uruguay Round implementation period from \$19.103 bn (80% of \$23.879 bn) to \$11.821 bn (80% of \$14.776 bn given the elimination of the dairy MPS of \$5.409 bn in 1986-88) and the bound total AMS at the end of the Doha Round implementation period, once cut by 60%, would fall to \$4.728 bn, very close to the \$4.654 of total AMS notified for 2011.

Despite the elimination of explicit export subsidies the US and EU continue a massive dumping of their agricultural products

Here the main issue concerns the dumping impact of domestic subsidies. The WTO Members have been swimming in a sea of pure hypocrisy on this issue since the Hong Kong Ministerial of December 2005. Once more the Chairman of the Special Session of the WTO Committee on Agriculture repeated on 25 June 2014: "*My consultations have not shown any questioning of the political commitment that Ministers have repeatedly reiterated to the "parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect"*". Yet the issue should be very simple since the WTO Appellate Body has ruled four times that domestic subsidies have the same dumping effect as explicit export subsidies: twice in the Dairy products of Canada case of December 2001 and December 2002, in the US Cotton case in March 2005 and in the EU Sugar case of April 2005²¹. Unfortunately, if the WTO panelists and members of the Appellate Body recognize a value of precedents to the previous WTO and GATT cases when they have to analyze new cases, the WTO Members themselves do not recognize this value of legal precedent.

As, in the Cotton case, the Appellate Body has ruled that the US fixed direct payments are not green box subsidies – so that they are necessarily in the amber box (AMS) as they do not comply with the rules on the blue box –, they would draw the same conclusion for the EU SPS (single payment scheme) if this EU core domestic subsidy were sued at the WTO. The more so as there are several additional reasons why it is not decoupled:

²⁰ <http://www.futurefordairy.com/faqs/margin-protection-program.html#pageTop>

²¹ *The EU dumping cereals, dairy and meats in 2012, total and to ACP countries*, Solidarité, March 5, 2014, http://www.solidarite.asso.fr/Papers-2014?debut_documents_joints=10#pagination_documents_joints

- As the main argument of the Appellate Body's ruling on cotton was 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 (and BPS, Base payment scheme from 2015) will be much more easily put in the amber box as the EU maintains interdictions or caps on many more products: milk production quotas up to April 2015, sugar production quotas up to October 2017, wines plantation rights up to 2018 at least, and caps on the production of cotton and tobacco.

- 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 or sugarcane), 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*"²², which is all the more obvious as the agrofuels boom has increased much the prices of vegetable oils and cereals.

- The SPS is coupled because it coexists with blue 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 (and the BPS from 2015 on) allows to produce any product – otherwise it will not enjoy a full production flexibility –, including products whose production is forbidden or capped! Besides the blue box 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 new CAP provisions for 2014-20 increase the rate of coupled payments to 15% (of which 2% for protein crops), which will coexist 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*"²³.

- 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, single area payment scheme in the EU13 new Member States of central and Eastern Europe) for other products, which applies practically to all EU28 farms to-day.

²² Toni Harmer, *Biofuels subsidies and the law of the WTO*, ICTSD, June 2009, <http://ictsd.net/i/publications/50724/>.

²³ Carsten Daugbjerg and Alan Swinbank, *Explaining the health check: the budget, WTO, and multifunctional policy paradigm revisited*, http://ageconsearch.umn.edu/bitstream/44818/2/3.2.1_Swinbank.pdf

Table 1 summarizes the EU dumping on cereals, dairy and meats to extra-EU in 2012. The EU subsidies to exports of these products have reached €4.849 bn for all extra-EU exports, with dumping rates of 23.9 % on cereals, 10.3% on dairy products, 17.8% on all meats, of which 40.4% on bovine meat, 7.8% on pork and 21.4% on poultry meat and eggs²¹.

Table 1 – The extra-EU dumping of cereals, dairy and meats in 2012

	Cereals	Dairy	Bovine meat	Pig meat	Poultry&egg	Meats	Total
Exports: 1000 t	33009	3322	610,5	2879	1466	4955,5	41286,5
Exports €1000	*	8758,8	1683	6125	2392	10200	*
FOB price	*	2637	2756	2127,6	1632	6515,6	*
1000 t of cwe [⌘]	34540	17457 ^{⌘⌘}	499,4	3322,7	1762	5584	57581
Subsidies €1000	2138035	899046	819357	479500	513000	1811857	4848938
Dumping rate	23.9% *	10.3%	40.4%	7.8%	21.4%	17.8%	

Source: Eurostat; [⌘] cwe: cereals weight equivalent and carcass-weight equivalent; ^{⌘⌘} milk-equivalent; * giving a total export value of processed products from cereals would not be meaningful as their share of cereals in very differentiated.

We have not assessed yet the present US dumping of its main food products but we have at least assessed its total agricultural supports and subsidies from 2007 to 2012²⁴.

The EU and US "gold box" of past and present non-agricultural subsidies

Forcing all WTO members to reduce their present actual agricultural support – even if this reduction is lower for DCs than for developed countries and if LDCs are exempted – is very unfair given the short-sighted rules of the WTO Agreement on subsidies and countervailing measures (SCM Agreement) which takes only into account present "specific" subsidies, here agricultural subsidies. That is why we have proposed to put in a "gold box" all types of past and present non-agricultural supports and past agricultural supports. Indeed the present higher competitiveness of Western agri-food products relatively to that of DCs results much less from the difference in the present agricultural supports – the only ones considered by the WTO – than from the present and past non-agricultural supports and past agricultural supports, for decades and even centuries, particularly through a huge import protection and dumping.

These present and past non-agricultural supports have reduced largely the unit production cost of agri-food products in rich countries vis-à-vis those in DCs, particularly on the following items:

- efficient transport and information infrastructures, which reduce greatly their corresponding costs. For example the US spends billions of dollars a year to maintain the navigability of its inland waterways;
- general education and research;
- health and pensions of farmers financed by society at large, at least in the EU;
- low interest rates and low inflation rates;
- wealthy consumers with an ever increasing purchasing power, able to pay fair prices to farmers, even if these prices are too low;
- democratic States able to enforce commercial contracts, to recover tariffs correctly, etc.

It is why, even if the WTO would decide stricter criteria for green box direct payments, developed countries would still be able to increase their gold box subsidies to maintain their

²⁴ *US total agricultural supports and subsidies from 2007 to 2012*, Solidarité, April 16, 2014, <http://www.solidarite.asso.fr/Papers-2014>

farmers' competitiveness. And, instead of maintaining specific agricultural institutions to sustain farmers, they would have just to integrate these institutions in broader non-agricultural institutions so that the specific agricultural nature of the subsidies would disappear. And we will have here subsidies decoupled from agriculture itself but still providing a good support to rich countries' farmers and agri-food industries.

Conclusion

Time is up for the WTO Members to rebuild the AoA rules on solid and fair bases, brushing away its ambiguous and biased rules.

If the WTO Members were sincere on the objective of making the Doha agenda a true development round in the long-term perspective to feed 9.5 billion inhabitants in 2050 in the context of global warming, then the Western Members should change their mindsets radically. Instead of repeating the mantra of the AoA preamble that "*the long-term objective is to provide for substantial progressive reductions in agricultural support and protection sustained over an agreed period of time*" and to prioritise market access as if it were a right to force other less competitive countries to open their domestic market at the expense of their own farmers and agro-industries, the agricultural policies of all countries should be rebuilt on the basic principles of food sovereignty – the right to every country or regional grouping of countries to subsidize its farmers for domestic consumption and to protect its domestic market at the import level without dumping of any kind on other countries' domestic market – and the right to food.

All the more that the short-sighted pursuit by developed countries of opening the agricultural market of DCs at any cost is totally counter-productive for themselves. Everybody knows that all industrialized countries, including the present emerging countries, have been able to reach this development level after a long period or large import protection and subsidies. Kicking away this ladder²⁵ is all the more counter-productive that in so doing the developed countries would lose the possibility of exporting much higher value-added non-agricultural goods and services, at the detriment of their own long-term development.

²⁵ Chang, H-J. 2002. *Kicking Away the Ladder – Development Strategy in Historical Perspective*, London, Anthem Press.