



Analysis and impacts of the US complaint on the dumping of Spanish ripe table olives and on the future of the Common Agricultural Policy

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The United States (US) confirmed on 25 July 2018¹ the imposition of anti-dumping duties (ADD) and countervailing duties (CD) on imports of subject Spanish so-called "ripe olives", after a lengthy investigation of the US Department of Commerce (DoC) and the US International Trade Commission (ITC) of the petition submitted on June 22, 2017 by the two California's producers.

This petition was revealed in an Euractiv article of 28 August 2017² and then in a more recent one of 10 July 2018³ but they went unnoticed by the media because the additional duties that will result – of which a little more than € 130 million (€M) of CD – appear negligible compared to the billions of euros threatening US imports of EU steel, aluminum and automobiles, even though these threats may fade after the meeting of the President of the European Commission with President Trump in Washington on 25 July⁴.

Indeed this pursuit on Spanish olives could spell the end of the Common Agricultural Policy (CAP) in force since its profound reforms of 1992, 1999, 2003, 2005, 2008, 2014 and the one being finalized after 2020, as it has moved from a CAP where farm incomes were essentially based on remunerative prices for the vast majority of producers to a CAP where they are mainly based on public subsidies. As stated in the article of Euractiv of 10 July 2018, for Joao Pacheco, former Deputy Director General of DG Agriculture at the European Commission, "*The argument that the US is using to punish Spanish olives can be used systematically as the recipe for all the other sectors where farmers receive direct payments*". Esther Herranz, MEP from the Agriculture Committee, confirms: "*It is deeply worrying that the USA is not respecting WTO rules. There is a strong fear that after Spanish olives, the next custom duties of the Trump governance may point to any European sector: French cheeses, Italian wines or German sausages could be targeted next*"⁵. The European Parliament had already stressed in March 2018 "*that there is the risk that other similar investigations might be undertaken by the US administration, thereby jeopardising bilateral agricultural trade relations and calling into question the whole European agricultural model*"⁶.

¹ https://www.usitc.gov/secretary/fed_reg_notices/701_731/701_582_notice_07252018sgl.pdf

² <https://www.euractiv.com/section/agriculture-food/news/commission-will-defend-spanish-olive-producers-against-us-tariffs/>

³ Sarantis Michalopoulos, *US questions CAP's raison d'être with Spanish olives investigation*, 10 July 2018, <https://www.euractiv.com/section/agriculture-food/news/us-questions-caps-raison-detre-with-spanish-olives-investigation/>

⁴ https://www.euractiv.com/section/economy-jobs/news/eu-offers-trade-talks-to-trump-despite-steel-and-olive-tariffs/?utm_source=EURACTIV&utm_campaign=313f534f4d-RSS_EMAIL_EN_WeeklyRoundUp&utm_medium=email&utm_term=0_c59e2fd7a9-313f534f4d-115009227

⁵ *Spanish olives under US tariff attack, like steel, need protection*, <http://www.eppgroup.eu/press-release/Spanish-olives-under-US-attack>

⁶ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B8-2018-0145+0+DOC+XML+V0//EN>

Before thoroughly analyzing this US decision, let us recall the distinction between anti-dumping (AD) and countervailing duties (CD). According to Article 6 of the GATT and the WTO Anti-Dumping Agreement, a product is dumped when its export price is lower than its "normal value", that is the price charged for a like product in the domestic market of the exporting country in the ordinary course of trade⁷. The objective of an anti-dumping duty (ADD) is to restore fair competition, the AD rate corresponding to the difference between the export price and the price paid for a like product in the domestic market of the exporting country.

On the other hand, a countervailing duty (CVD) is intended to eliminate the effects of a subsidy, where the government of the exporting country provides, directly or indirectly, a financial advantage for the production, export or transport of any exported product.

We will successively present the protagonists of the petition and Eurostat data, the anti-dumping investigation, the anti-subsidy investigation, a further debate on export subsidies and decoupled payments, and finally the consequences to draw for the future of the CAP.

I – The protagonists of the petition and Eurostat data

The petition of the Californian companies was prepared by the law firm McDermott Will & Emery (with the participation of D. Levine, R. Paretsky, C. Gleason, D. Burreson) and the defense of the Spanish companies was prepared by the law firm Curtis, Mallet-Prevost, Colt & Mosle LLP (with the participation of M.P. McCullough, J. Lutz, S. Kaddoura). The DoC's and ITC's investigation of the case resulted in the submission of lengthy questionnaires to both parties, a lengthy USITC report in August 2017 and two lengthy hearings on July 12, 2017⁸ and May 24, 2018⁹, where the European Commission and a representative of the Spanish Embassy in the US also intervened.

There is a certain fuzziness over the years to which the complaint relates. In principle it is on the last years for which data are available, so rather 2014 to 2016 at the beginning of the instruction, then until 2017 during the debates that took place on May 24, 2018. These debates also underlined the fluctuation of production of raw olives, with a base cycle of two years (low production following high production) but sometimes with longer cycles, and many data were presented from 2013 to 2017 and some even over 10 years.

The EU information available on table olives is very scarce. Thus Eurostat only provides exports of Spanish table olives of the 6-digit code 200570, without details per 8 or 10-digit sub-codes like the USITC. Likewise the TARIC (EU customs tariff) has only one customs duty (CD), of 12.8% ad valorem, for all imports of the 200570 code.

Table 1 shows Spain's leading position in EU28 table olive production and exports, and Table 2 shows Spanish exports to the US.

⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1036&rid=1>

⁸

https://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/2017/Ripe%20Olives%20from%20Spain/Preliminary/ripe_olives_from_spain-conference.pdf

⁹

https://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/2018/Ripe%20Olives%20from%20Spain/Final/ripe_olives-hearing-5-24-2018.pdf

Table 1 – EU and Spain's production and export of table olives: 2013-14 to 2016-17

| 1000 tonnes | 2013-14 | 2014-15 | 2015-16 | 2016-17 | Moyenne 2014-16 |
|------------------|---------|---------|---------|---------|-----------------|
| Production | | | | | |
| EU28 | 793.9 | 868.1 | 886.5 | 841.9 | 847.6 |
| Spain | 572.2 | 555.6 | 601 | 596.1 | 581.2 |
| Spain/EU | 72.07% | 64% | 67.79% | 70.80% | 68.57% |
| Exports | | | | | |
| Extra-E28 | 272.6 | 306.7 | 274.7 | 280.1 | 283.5 |
| Spain | 195.2 | 218.4 | 177.3 | 177.2 | 192 |
| Spain/extra-EU28 | 71.61% | 71.21% | 64.54% | 63.26% | 67.72% |

Source: International Oil Council, June 2018, <http://www.internationaloliveoil.org/estaticos/view/132-world-table-olive-figures>. The agricultural year goes from 1st October to 30 September.

Table 2 – Exports of Spanish table olives to the US from 2014 to 2017 and projections for 2018

| | 2014 | 2015 | 2016 | Moyenne | 2017 | Janv-juin 2018 | Extrapolation 2018* |
|---------|--------|--------|--------|---------|--------|----------------|---------------------|
| Tonnes | 72822 | 80336 | 110973 | 88044 | 110016 | 45740 | 85356 |
| 1000 € | 163842 | 179747 | 194860 | 179483 | 179430 | 116854 | 140224 |
| FAB €/t | 2250 | 2237 | 1756 | 2039 | 1631 | 1643 | 1643 |

Eurostat : code 200570; * extrapolation to 12 months of 2018 data from January to June.

II – The anti-dumping investigation

An AD prosecution must be done by specific national companies and target specific foreign companies. Here the petition was presented by the California Fair Trade Coalition of Table Olives, which brings together two companies: Bell-Carter Foods and the family-owned company Musco. The investigation had to prove that they suffered injury related to the import into the US of the subject ripe olives exported by the three Spanish companies Aceitunas Guadalquivir, Agro Sevilla Aceitunas and Angel Camacho, members of ASEMESA (Association of Spanish exporters and processing industries of table olives), which account for 70% of Spanish exports of ripe olives to the US, and a dumping rate was deducted for all other Spanish exporters of the subject ripe olives. The investigation concerned the Spanish exports of the subject ripe olives (actually black olives) from the sub-codes of the Harmonized Trade System 20057002, 20057004, 20057050, 20057060, 20057070, 20057075 although other olives of the code 200570, mostly green olives, are not totally excluded, but here there is some ambiguity.

The assessment of the dumping of the subject ripe olives by McDermott Will & Emery was very difficult due to lack of data, although it focused on olives of sub-code 20057060, which accounted for 96.3% of all the subject ripe olives (Table 3), exported by Agro Sevilla, the largest producer and exporter of ripe olives in the world: *"Petitioner has not been able to obtain any information relating to the prices charged for ripe olives in Spain or in any third country market. Furthermore, the HTS category which would capture Spanish exports of subject merchandise is significantly overbroad, as there is no distinction made between the ripe olives that fall under the scope of this petition and all other green and black table olives. Therefore, using export data would not yield a meaningful comparison to the imports of subject merchandise into the United States. Thus, because home market and third country prices were not reasonably available, Petitioner has relied upon a constructed value approach in calculating normal value. This is the best information reasonably available to Petitioner. Petitioner has relied upon Bell Carter's factor of production ("FOP") data from 2016 in order to estimate the quantities used in the constructed value calculation"*¹⁰. The analysis concluded

¹⁰ Petition.olive2: <https://www.law360.com/articles/937827/us-olive-producers-demand-duties-on-spanish-competitors>

that the dumping margins of the subject ripe olives exported to the US range from 84% to 232%. But the detailed exhibits on this constructed value are not available to the public.

The dumping margins – differences between the Spanish domestic price and the export price to the US – retained by the USITC were first published on 18 January 2018 and revised on 18 June 2018. The result is that the Spanish exporters to the US will have to deposit this dumping margin on the USITC bank account.

Table 3 – Dumping margins decided by the USITC on 26 January and 18 June 2018

| | 26 January 2018 | 18 June 2018 |
|-------------------------------|-----------------|--------------|
| Aceitunas Guadalquivir | 16.80% | 17.45% |
| Agro Sevilla | 14.64% | 25.39% |
| Angel Camacho S.L. | 19.73% | 16.83% |
| Toutes les autres entreprises | 17.13% | 19.98% |

Sources: <https://www.federalregister.gov/documents/2018/01/26/2018-01447/ripe-olives-from-spain-preliminary-affirmative-determination-of-sales-at-less-than-fair-value#footnote-3-p3677>;
<https://www.federalregister.gov/documents/2018/06/18/2018-12991/ripe-olives-from-spain-final-affirmative-determination-of-sales-at-less-than-fair-value>

Naturally this assessment of dumping has been strongly contested by the European Commission, the European Parliament and the Spanish authorities and companies. Their criticism focuses on two main points: there is no more agricultural dumping from the EU as there are no more export subsidies since 2015 and there is no dumping linked to domestic subsidies since they are essentially decoupled from the level of production or the market price and are notified in the WTO green box. We will return below, after analyzing the petition on subsidies, on their so-called decoupling.

The DoC had already replied that the full decoupling of direct aids to table olives since 2010 was the same as their level of coupled aids obtained from 2000 to 2002 and therefore it did not change the specific nature of these aids, especially as there is no alternative production possible in the areas with olive groves, except to make olives for oil instead of table olives, but the level of aid per hectare is identical.

But other much deeper arguments, not advanced by this strict analysis of production costs, are to be taken into account. The anti-dumping methodology of the European Commission (like that of the US) considers that, for products to be sold at their "normal value", "*decisions of the firm regarding prices, costs and inputs are made in response to market signals reflecting supply and demand, and without significant state interference, and costs of major inputs substantially reflects market values*"¹¹. But it is undeniable that the EU agricultural prices (like those of the US) have nothing to do with "market prices without significant interference from the State" as the successive reforms of the CAP from 1992 onwards have sharply reduced intervention prices by offsetting them with direct aids, first coupled and then mostly decoupled.

The paradox, not to say the lie, is that the European Commission has always sold the decoupling of aid as allowing farmers to respond better to "market signals" in that they can choose what to produce by taking only market prices into account because direct aids are no longer a function of the nature of their productions. The problem is that these prices on which their production choices are based would be very different, in fact much higher, without the decoupled subsidies! In addition, there is another major interference by the European Commission on the level of domestic agricultural prices: tariffs, which are necessary and legitimate to ensure a minimum

¹¹ [https://contenthub.herbertsmithfreehills.com/sites/contenthub_mothership/files/HSF%20EU%](https://contenthub.herbertsmithfreehills.com/sites/contenthub_mothership/files/HSF%20EU%20)

level of food sovereignty to the EU, provided it does not destroy that of other States by the dumping of its exports.

But it is necessary to go further and challenge the very definition of dumping referred to above, which is the basis for anti-dumping proceedings, namely that a product is dumped when its export price is lower than its "normal value", defined as the domestic price. In other words, as long as the products are exported at the domestic price, there is no dumping. It is a truly scandalous definition that was at the origin of the reforms of the CAP and the US Farm Bill: sharply reducing domestic agricultural prices and offsetting the reduction by direct aids would allow to export more and to import less, to the detriment of developing countries that do not have the financial means to significantly subsidize their large numbers of farmers.

Another major argument, not clearly taken into account in the anti-subsidy complaint, relates to the specific provisions of the Agreement on Agriculture (AoA). On the one hand, Article 3 of the SCM Agreement states: "*3.1 Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited: (a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I; (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods*". But the European Commission pretends to ignore that "*Import substitution subsidies remain prohibited under Article 3.1(b) of the SCM Agreement, and all subsidies causing adverse effects to the interests of WTO members are now actionable under the SCM Agreement, and all subsidies causing injury to the domestic industries of WTO members may be subject to the imposition of countervailing duties by those members*"¹². This explicitly covers all domestic subsidies to import substitutes, but also to exported products when they cause injury to other WTO Members since the AoA does not explicitly address these domestic subsidies but only export subsidies.

This is confirmed by Melaku Geboye Desta, specialist of WTO agricultural law: "*The loopholes within the subsidies provisions of the Agreement on Agriculture are fulfilled primarily by resorting to the relevant provisions of the SCM Agreement... A study on the law of export subsidies in agricultural products under the multilateral trading system which does not cover at least the major features of the discipline governing the practice of export subsidies in general can only be incomplete... Subsidies for import substitution are strictly prohibited under the SCM Agreement and fall under the 'red light' category. They are part of domestic subsidies because their supply does not depend on export performance... The Agreement on Agriculture does not explicitly "provide" anything particularly concerning the use of import substitution subsidies*"¹³.

Especially as Article 13 of the AoA, on Due Restraint (also known as "peace clause"), states that "*During the implementation period, notwithstanding the provisions of GATT 1994 and the Agreement on Subsidies and Countervailing Measures (referred to in this Article as the "Subsidies Agreement"):* (a) domestic support measures that conform fully to the provisions of Annex 2 to this Agreement shall be: (i) non-actionable subsidies for purposes of countervailing duties". Since the "implementation period" was the 9-year period from 1995 to 2003, all Annex 2 subsidies could have been prosecuted since 2004 under the SCM Agreement.

¹² Laurent Bartels, *The Relationship between the WTO Agreement on Agriculture and the Agreement on Subsidies and Countervailing Measures*, July 2015, https://www.oecd-ilibrary.org/commonwealth/trade/the-relationship-between-the-wto-agreement-on-agriculture-and-the-scm-agreement_5jm0qgkjsb41-en

¹³ Melaku Geboye Desta, *The law of international trade in agricultural products. From GATT 1947 to the WTO Agreement on Agriculture*, Kluwer Law International, 2002.

Moreover, notwithstanding the highly dubious definition of dumping in the GATT and the AD Agreement, the WTO Appellate Body departed from this definition four times: in the cases on Dairy Products of Canada of December 2001 and December 2002, US Cotton of March 2005 and EU Sugar of April 2005. As a result, any export of an agro-food enterprise at a price lower than the average total production cost of the country without subsidies can be sued for dumping. In December 2001 the Appellate Body stated: "91- *We consider that the distinction between the domestic support and export subsidies disciplines in the Agreement on Agriculture would also be eroded if a WTO Member were entitled to use domestic support, without limit, to provide support for exports of agricultural products...* 96- *The average total cost of production would be determined by dividing the fixed and variable costs of producing all milk, whether destined for domestic or export markets, by the total number of units of milk produced for both these markets*". In April 2005 it stated: "279... *The Appellate Body has also held that economic effects of WTO-consistent domestic support may "spill over" to benefit export production. Such spill-over effects may arise, in particular, in circumstances where agricultural products result from a single line of production that does not distinguish between production destined for the domestic market and production destined for the export market.* 280... *In this case, we note that C sugar is produced and exported in huge quantities, and that there is a considerable difference between the world market price and the average total cost of production of sugar in the European Communities*".

Finally, contrary to the allegations of the European Commission, the European Parliament and the Spanish authorities, there are seven reasons why the BPS (basic payment scheme) is not decoupled because it contradicts the six conditions of paragraph 6 of the AoA Annex 2 on "decoupled income support". In order not to weigh down this text, it is advisable to read this reference¹⁴.

For all these reasons, the European Parliament's allegations that "*there are serious doubts about whether the formula used by the US investigators to calculate the preliminary antidumping margin is compatible with the WTO rules*" are unfounded¹⁵.

One can also challenge the assertions made during the hearing of 28 May 2018 by Ms. Grande of the Spanish Embassy in Washington that "*there is no increase of the Spanish exports at the expense of the United States domestic industry during the analyzed period*", and that of Sibylle Zitko from the European Commission Delegation to the US that "*the decrease of Spanish import volumes combined with an increase of Spanish Import prices puts into question any causal link between Spanish imports and any difficulty the industry may be experiencing. In these circumstances Spanish Imports cannot cause material injury*".

Indeed the ITC report of August 2017 indicates that the share of imports from Spain increased in volume by 32.4% from 2013 to 2016 and by 40.5% in value when that coming from other sources decreased by 38.9% in volume and 43.8% in value. Tables 4 to 8 below from the USITC data confirm that the imports of the subject ripe olives actually increased in volume and as a percentage of total imports of table olives from Spain from 2013 to 2016, even if they have decreased a little from 2016 to 2017. In the first 5 months of 2018, however, imports have fallen sharply, probably in connection with the collection of AD duties and countervailing duties (CD)

¹⁴ <https://www.sol-asso.fr/wp-content/uploads/2017/01/The-truth-about-the-European-Union-food-deficit-and-the-dumping-impact-of-its-domestic-subsidies-June-26-2018.pdf>

¹⁵ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B8-2018-0145+0+DOC+XML+V0//EN&language=en>

since the end of 2017. As for prices, if the CIF price actually increased from 2015 to 2016 while the euro-dollar exchange rate did not move (\$ 1.11 for 1 €), the current increase from 2016 to 2017 becomes a decrease in constant dollars: due to the depreciation of the dollar, the exchange rate increased to \$ 1.13, a decrease of 1.8%, and the CIF price would be of 2,122 \$/t instead of 2,292 \$/t. Table 6 also shows that the share of ripe olives in total imports of table olives from Spain increased sharply from 2012 to 2016 even though it declined in 2017. And Tables 7 and 8 show that the share of imports of ripe olives in total imports of US table olives from all countries also increased until 2016.

Table 4 – US imports of subject ripe olives from Spain: 2007 to 2017

| | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | Estim° 2018* |
|-----------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------------|
| Tonnes | | | | | | | | | | | | |
| 20057002 | | | | | | | | | 2 | 29 | 26 | 26.4 |
| 20057004 | | | | | | | | | 15 | 7 | 54 | 26.4 |
| 20057050 | 66 | 29 | 65 | 54 | 97 | 70 | 91 | 78 | 76 | 59 | 220 | 14.4 |
| 20057060 | 20900 | 19900 | 17200 | 20000 | 21500 | 24000 | 24000 | 26900 | 31700 | 31800 | 29500 | 16968 |
| 20057070 | 31 | 8 | 33 | 103 | 222 | 283 | 240 | 45 | 50 | 208 | 54 | 91.2 |
| 20057075 | 2920 | 3380 | 5350 | 2360 | 926 | 693 | 598 | 427 | 471 | 934 | 350 | 237.6 |
| Total | 23917 | 23317 | 22648 | 22517 | 22745 | 25046 | 24929 | 27450 | 32314 | 33037 | 30204 | 17364 |
| 1,000 dollars | | | | | | | | | | | | |
| 20057002 | | | | | | | | | 7 | 83 | 73 | 127.2 |
| 20057004 | | | | | | | | | 28 | 24 | 121 | 84 |
| 20057050 | 169 | 86 | 149 | 121 | 221 | 153 | 198 | 199 | 181 | 131 | 607 | 26.4 |
| 20057060 | 52000 | 53300 | 42400 | 47700 | 50200 | 48600 | 50000 | 56800 | 62800 | 70800 | 66900 | 40728 |
| 20057070 | 78 | 66 | 133 | 707 | 1250 | 2190 | 2100 | 295 | 217 | 636 | 284 | 537.6 |
| 20057075 | 7540 | 9360 | 12800 | 5250 | 2150 | 1320 | 1330 | 1010 | 1120 | 2290 | 1220 | 900 |
| Total | 59787 | 62812 | 55482 | 53778 | 53821 | 52263 | 53628 | 58304 | 64353 | 73964 | 69205 | 42403 |
| CIF price in \$/tonne | | | | | | | | | | | | |
| 20057002 | | | | | | | | | 3500 | 2862 | 2808 | 4818 |
| 20057004 | | | | | | | | | 1867 | 1429 | 2241 | 3201 |
| 20057050 | 2561 | 2966 | 2292 | 2241 | 2278 | 2186 | 2176 | 2551 | 2382 | 2220 | 2759 | 1833 |
| 20057060 | 2488 | 2678 | 2465 | 2385 | 2335 | 2025 | 2083 | 2112 | 1981 | 2226 | 2268 | 2400 |
| 20057070 | 2516 | 8250 | 4030 | 6864 | 5631 | 7739 | 8750 | 6556 | 4340 | 3058 | 5259 | 6224 |
| 20057075 | 2582 | 2769 | 2393 | 2225 | 2322 | 1905 | 2224 | 2365 | 2378 | 2452 | 3486 | 3788 |
| Total | 2500 | 2694 | 2450 | 2388 | 2366 | 2087 | 2151 | 2124 | 1991 | 2239 | 2292 | 2442 |

Source: USITC data base (<https://dataweb.usitc.gov/scripts/prepro.asp>);

https://www.usitc.gov/secretary/fed_reg_notices/701_731/701_582_notice_07252018sgl.pdf

Table 5 – US total imports of table olives from Spain: 2007 to 2017

| | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | Estim° 2018* |
|-----------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------------|
| Tonnes | 67564 | 65589 | 67112 | 69865 | 65293 | 70067 | 67811 | 71664 | 77458 | 76508 | 74108 | 56549 |
| \$ 1,000 | 218234 | 233432 | 205042 | 208543 | 197630 | 190781 | 194146 | 221872 | 206100 | 215040 | 204744 | 168727 |
| CIF: \$/t | 3230 | 3559 | 3055 | 2985 | 3027 | 2723 | 2863 | 3096 | 2661 | 2811 | 2763 | 2984 |

Source: USITC data base (<https://dataweb.usitc.gov/scripts/prepro.a>)

* Figures based on actual imports from January to May and extrapolated to the whole year

Table 6 – Share of subject ripe olives imports in total table olives imports from Spain: 2007-2017

| | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | Estim° 2018* |
|----------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------------|
| Tonnes | 35.4% | 35.6% | 33.7% | 32.2% | 34.8% | 35.7% | 36.8% | 38.3% | 41.7% | 43.2% | 40.8% | 30.7% |
| \$ 1,000 | 27.4% | 26.9% | 27.1% | 25.8% | 27.2% | 27.4% | 27.6% | 26.3% | 31.2% | 34.4% | 33.8% | 25.1% |
| CIF price \$/t | 77.4% | 75.7% | 80.2% | 80% | 78.2% | 76.6% | 75.1% | 68.6% | 74.8% | 79.7% | 83% | 81.8% |

Table 7 – US imports of table olives (code 200570) from all countries: 2007-17

| | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|----------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|
| Tonnes | 130846 | 126155 | 125655 | 140678 | 128844 | 130598 | 131853 | 128823 | 136823 | 139360 | 137552 |
| \$ 1,000 | 396521 | 427786 | 374303 | 400749 | 394743 | 378194 | 387817 | 426644 | 393886 | 417919 | 431889 |
| CIF \$/t | 3030 | 3391 | 2979 | 2849 | 3064 | 2896 | 2941 | 3312 | 2879 | 2999 | 3140 |

Tableau 8 – Share of US imports of ripe olives from Spain in table olives imports from all countries

| | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
|----------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|------|
| Tonnes | 18.3% | 18.5% | 18% | 16% | 17.7% | 19.2% | 18.9% | 21.3% | 23.6% | 23.7% | 22% |
| \$ 1,000 | 15.1% | 14.7% | 14.8% | 13.4% | 13.6% | 13.8% | 13.8% | 13.7% | 16.3% | 17.7% | 16% |
| CIF \$/t | 82.5% | 79.4% | 82.2% | 83.8% | 77.2% | 72.1% | 73.1% | 64.1% | 69.2% | 74.7% | 73% |

In addition, the US tariff on imports of sub-code 20057060, which accounted for 97.5% of the volume and 96.8% of the value of imports of subject ripe olives from 2014 to 2017 (table 4), is of 10.1 \$/t, or 4.34% in ad valorem equivalent on average from 2014 to 2017, which is 3.4 times less than the 12.8% of the EU tariff.

For all these reasons, which go far beyond the McDermott Will & Emery firm's analysis, it is clear that the subject Spanish ripe olives are not exported at their normal value to the US but are dumped, even if that does not exclude the other difficulties affecting the profitability of California's ripe olives.

III – The anti-subsidies investigation

The investigation concerned the same Spanish companies, and a subsidy rate for the other exporting companies was also deduced.

A requirement for a CD investigation is that subsidies must be "actionable". The WTO Agreement on Subsidies and Countervailing Measures (SCM) distinguishes between prohibited subsidies – those on exports or contingent on the use of domestic over imported goods – and those actionable which can be activated if they confer a competitive advantage to the recipient companies, by reducing their cost of production. The USTR points out that the subject imports receive actionable input subsidies and quotes the European Commission's report that "*the price of table olives is very low, making unsupported production uneconomic*"¹⁶.

Finally, these subsidies to Spanish companies have caused significant material injury to the US producers of the subject ripe olives. The Fair Trade Coalition of California Table Olives presented on June 23, 2017 a lengthy analysis of the EU subsidies to its table olive growers prepared by McDermott Will & Emery¹⁷. This assessment was very laborious, due to lack of sufficient data on the DG Agriculture and the Eurostat websites as well as those available in Spain¹⁸.

Table 9 presents McDermott Will & Emery's estimates of at least € 130 M in CAP aid from the 1st and 2nd pillars to the Spanish producers of raw table olives. SOL adds € 11.1 M in irrigation aid, based on the 2010 IISD study¹⁹ and data on the irrigated area of Spain in 2016²⁰ (adding to the irrigated area of table olives alone half of the irrigated area of double-purpose olives (table or oil)).

Table 9 – Estimates of subsidies to the raw table olives of Spain in 2016

| Subventions | Spanish farmers | Olives producers | Table olives producers |
|---|---------------------------|---------------------------------|-------------------------------|
| 1 ^{er} pillar (BPS, green payment, YF) | € 4.84 to 4.89 bn | € 1.22 to 1.80 bn | Unpublished: at least €102 M |
| 2 nd pillar : RDP | € 9.45 bn (total 2014-20) | € 2.4 bn to Andalusia | Unpublished: at least €24 M |
| Producers organisations | Unpublished | Unpublished: estimate at €124 M | No data |
| Insurances to olive groves | at least € 200 M | Unpublished | Unpublished |
| Annual aids | at least € 6.44 bn | At least €1.22 to €1.80 M | At least € 130 M, surely more |
| SOL's estimates of irrigation subsidies | | | |
| Irrigated area in 2016 | 3663,990 ha | 784,859 ha | 44,916 ha |
| Subsidies to irrigation | € 906 M | 21,4%: € 194 M | 1,23%: €11.1 M |

¹⁶ <http://ec.europa.eu/environment/life/publications/lifepublications/lifefocus/documents/oliveoil.pdf>

¹⁷ <https://www.law360.com/articles/937827/us-olive-producers-demand-duties-on-spanish-competitors>

¹⁸ Petition.olive3: <https://www.law360.com/articles/937827/us-olive-producers-demand-duties-on-spanish-competitors>

¹⁹ Javier Calatrava & Alberto Garrido, *Measuring Irrigation Subsidies in Spain: An application of the GSI Method for quantifying subsidies*, July 2010, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1656825

²⁰ http://www.mapama.gob.es/es/estadistica/temas/estadisticas-agrarias/boletin2017sm_tcm30-455983.pdf

The petitioners show that the full decoupling of direct aids since 2010 has had no effect on the production of Spanish table olives because of the lack of alternatives to olive-growing groves. In total Spanish olive growers receive subsidies of 468 €/ha²¹ (excluding irrigation subsidies), around 40% of the market price, while the average subsidy per hectare for the whole Spanish agriculture is € 258. In addition, the Spanish government has refused to converge per hectare direct aids for Spain as a whole but has maintained different levels of aid among regions.

It should be noted that the Spanish defendants and the European Commission did not contest the assessment made by McDermott Will & Emery of the amount of subsidies for producers of raw table olives, but only that these subsidies were fully compatible with the WTO rules, especially because they are essentially decoupled. We will not repeat here the objections presented above to this assertion but we will come back to it in the fourth part.

The DoC released on November 28, 2017 a first assessment of countervailing duties (CD) to be paid by Spanish exporters of the subject ripe olives and made a final assessment on 18 June 2018, at a much higher level (Table 10).

Table 10 – Rates of subsidies and countervailing duties on 28 November 2017 and 18 June 2018

| | 28 November 2017 | 18 June 2018 |
|-------------------------------|------------------|--------------|
| Aceitunas Guadalquivir | 2.31% | 27.02% |
| Agro Sevilla | 2.47% | 7.52% |
| Angel Camacho S.L. | 7.24% | 13.22% |
| Toutes les autres entreprises | 4.47% | 14.75% |

Sources : <https://docs.regulations.justia.com/entries/2017-11-28/2017-25660.pdf>; <https://www.federalregister.gov/documents/2018/06/18/2018-12990/ripe-olives-from-spain-final-affirmative-countervailing-duty-determination>

We now present the other arguments put forward during the hearing of 24 May 2018 by the Spanish exporters of subject ripe olives as well as by the Californian petitioners.

The Spanish defenders initially contested that the complaint comes from California's companies processing raw olives into ripe edible olives as the EU subsidies are going to raw olive farmers and not to processing companies. Indeed the USITC report of August 2017 concluded that the complaint concerns exporters of Spanish ripe olives and not raw olive producers. But this conclusion came to a halt during the hearing of May 24, 2018, because the only outlet for raw table olives not intended for processing into oil, in Spain as in California, is their processing into edible olives, black or green, and in fact 94% of raw California table olives are turned into black olives.

For the Spanish defenders California's loss of competitiveness in the market for ripe olives consumed in the US has nothing to do with the subsidies enjoyed by Spanish producers of raw table olives, but stems from the growing structural handicaps of Californian processors, of which:

- Very high labor costs for the collection of table olives, which is only manual in the US while it is largely mechanized in Spain.
- A much lower profitability of table olives in California than that of almonds and also of olives for oil, which has led to a sharp decline in the area of table olives and the need to import raw or semi-processed olives, increasing the cost of production of ripe olives, which is also due to the low use of the equipment capacity while that of Spain turns at 80%.

²¹ <https://www.oliveoiltimes.com/olive-oil-business/europe/olive-regions-joint-strategy-eu-subsidies/25672>

- The prices of Spanish ripe olives are lower than those of Morocco, so that the sharp fall in Spanish exports to the US, linked to the AD and DC duties imposed on them, will not improve the competitiveness of Californian companies.

To these arguments of the Spanish respondents, the Californian petitioners reacted as follows:

- While the cost of labor has increased in California, this would not have been an issue without the imports of highly subsidized Spanish ripe olives as Californian ones could have been sold at profitable prices. Moreover, the yield of raw olives is almost three times higher than that of Spain. It is the low price of ripe olives imported from Spain due to the low price of their subsidized raw olives which led to the cumulative decline of competitiveness of those of California, hence their loss of market share in the US, the declining area of table olives and the need to maintain remunerative prices for olive producers to avoid they turn to other productions.
- The quality of ripe olives from Morocco is lower than that of Spain and California.
- Although table olives are much less profitable than almonds, with the successive droughts in California and the likely accentuation of climate change, olive trees are much less demanding in irrigation while almond trees must be irrigated every year.

In other words the two partners are sending the ball in the order of causality: the Spanish saying that it is the fall in table olive area in California that caused the rise in imports from Spain and Californians that it is the rise of these low-cost, subsidized imports, which resulted in declining acreage, declining profitability, and declining investments to improve their competitiveness.

Let us conclude, as with dumping, that whatever the other structural causes of the loss of competitiveness of Californian ripe olives on the US domestic market, it is not disputed that Spanish raw olives are heavily subsidized and that the subsidies do not comply with the WTO Appellate Body rulings, even though their notification in the green box had not been pursued to date.

IV – Complements on export subsidies and the decoupling of domestic subsidies

The assertions, from the European Commission and Parliament and the economists they rely on, that the end of the explicit export subsidies decided in 2015 at the WTO Ministerial Conference in Nairobi has eliminated the EU dumping is unfounded and would be easily challenged at the WTO as it does not take into account the dumping of domestic subsidies.

For Alan Matthews, "*The agreement at the Nairobi WTO Ministerial Conference in December 2015 to prohibit the payment of export subsidies on agricultural products (albeit with a transitional period) shows that multilateral trade rules continue to play a role in constraining agricultural policy decisions in the EU*"²².

For Jean-Christophe Bureau, "*After more than 25 years of profound reforms, many of the weaknesses in which the CAP had fallen have been solved... It no longer has the negative effects on producers in third countries suffering from competition of subsidized exports*"²³.

For Jonathan Peel of the EU's Economic and Social Committee, "*The EU has played a leading role in Nairobi, and the decision to effectively eliminate all agricultural export subsidies is already one of the main objectives set for SDG 2, the elimination of hunger, and this decision*

²² <http://capreform.eu/how-external-influences-have-shaped-the-cap/>

²³ <file:///D:/PAC/PourunePACrenouvelee-Bureau-mai2018.pdf>

has also shown that the WTO remains a viable and effective forum for multilateral trade negotiations"²⁴.

The worst is the conclusion of the Director-General of the WTO, Roberto Azevedo, in his closing speech of the Ministerial Conference in Nairobi on December 15, 2015: "*The decision you have taken today on export competition is truly historic. It is the WTO's most significant outcome on agriculture. The elimination of agricultural export subsidies is particularly significant. WTO members — especially developing countries — have consistently demanded action on this issue due to the enormous distorting potential of these subsidies for domestic production and trade. In fact, this task has been outstanding since export subsidies were banned for industrial goods more than 50 years ago. Today's decision tackles the issue once and for all. It removes the distortions that these subsidies cause in agriculture markets, thereby helping to level the playing field for the benefit of farmers and exporters in developing and least-developed countries*"²⁵.

To these assertions the best denial comes from Michel Jacquot, member of the French Academy of Agriculture and former director of the EAGGF – the European Agricultural Guidance and Guarantee Fund, which managed the budget of European agriculture – from 1987 to 1997: "*All these people are still living in the simplistic scheme that was sold to them in 1992 (notably by the Commission), when the WTO Agreement on Agriculture was established, according to which there were direct export subsidies (in jargon "refunds") and direct income aids, which were also to be reduced, unless they were decoupled. This scheme was not based on anything just: how can one imagine that a subsidy (SPS or BPS) does not affect exports (or imports)... Crap! Total Blindness! It took at the EEC level that the WTO Appellate Body on Sugar (April 2005)... wrote roughly that "any payment financed by virtue of a government measure in the form of resource transfers through cross-subsidization is an export subsidy" to open their eyes. But this, the Commission has never said openly, the decoupling has been presented – and continues to be – as the magic potion to say and assert, as the FOLL said, that "we"... were no longer subsidizing exports. Up to when will we continue to lie? When will it be known that European negotiators have been fooled by their American colleagues? When is the hour of truth?"²⁶. It seems that this hour has come to ring!*

V – The consequences to draw for the future of the CAP

The European Commission and Parliament, the Spanish politicians and European agricultural unions (notably COPA-COGECA federating the conservative farmers unions and cooperatives) have rightly pointed out that this anti-dumping case on Spanish ripe olives and the subsidies they received could be extended to all agricultural products exported by the EU.

But the unanimous reaction of all these European organizations wanting to sue at the WTO the US-imposed ADDs and CDs on exports of Spanish ripe olives to the US is extremely risky for the future of the CAP. As Jacques Carles and Frédéric Courleux of Agriculture Stratégies wrote on 16 July 2018, "*wanting to retort by seizing the Dispute Settlement Body of the WTO would be a strategic mistake for the European Union... Paradoxically, this episode can be a chance*

²⁴ <http://www.euractiv.com/section/development-policy/opinion/the-eu-must-take-the-lead-in-linking-agricultural-trade-to-the-sdgs/>

²⁵ https://www.wto.org/english/news_e/spra_e/spra108_e.htm

²⁶ <http://blogs.mediapart.fr/blog/j-berthelot/260514/les-subventions-de-lue-lexportation-suite>

for the CAP if the end-to-end defense of decoupling gives way to an aggiornamento likely to overhaul the CAP and reposition the European Union in agricultural multilateralism"²⁷.

Certainly the history of WTO proceedings shows that Members do not feel bound by the decisions of the Dispute Settlement Body (DSB), whether in the first instance by the panels or on appeal. On the contrary, Panel and Appellate Body judges must themselves take into account the case law of previous panels and Appellate Body decisions. At the plenary session of the WTO Public Forum on 30 October 2015, J. Berthelot questioned the Appellate Body representative, Ms. Yuejiao Chang, on this issue. She confirmed that WTO Members are not obliged to recognize the jurisprudential value of panel and Appellate Body rulings, but the judges of panels and Appellate Body are obliged to consider these decisions when they judicate on similar cases²⁸. This was clearly seen in the December 2002 Appellate Body's ruling in the Dairy Products of Canada case, which echoed the Appellate Body's arguments and conclusion of December 2001, and in turn, the Appellate Body in the EU Sugar case of April 2005 repeated the same arguments as in December 2001 and 2002, even if the product in question was different. However, in light of the precedent of the Appellate Body ruling of 3 March 2005 in the US Cotton case – where the so-called fixed direct payments were judged not to be decoupled and could not therefore be notified in the green box, as the farmers receiving them for their annual crops did not enjoy a full production flexibility, being denied to grow fruits and vegetables and wild rice – it is clear that, if the European Commission were to challenge at the WTO the AD and CV duties imposed by the US on Spanish exports of ripe olives to the US, it would have the largest change to lose its case.

That is why, even if Tomas Garcia Azcarate was right to declare on August 13, 2017 that a possible proceeding of the European Commission at the WTO against the US could be a weapon of mass destruction for the CAP, he was wrong to question the impartiality of the judgments of the Dispute Settlement Body, influenced by the fact that he has always defended the legitimacy of decoupling: *"A Court of Justice is founded on law and precedents. It analyzes whether the measure adopted is consistent with the understanding of the corresponding law. This may be unfair, but if it conforms to the legal text, it should be legal. A WTO panel is something completely different: if it acts as a "Court of Justice", which can happen, it will examine the EU subsidy system and check whether it complies with the wording of the "green box". In that instance, I can be reasonably confident that he should conclude that this is the case*"²⁹.

This is why, scalded by the condemnation of the US in the cotton case in 2005 at the WTO, the Congress decided to abolish the decoupled aids in the 2014 Farm Bill, while the USDA had already advocated doing so in the previous Farm Bill of 2008, or at least to give a full production flexibility to farmers by removing the ban on producing fruits and vegetables and wild rice to qualify for decoupled aid, but it was not followed by Congress³⁰. Randy Schnep, WTO Specialist at the USDA, wrote on April 22, 2015: *"Because the United States is a major producer, consumer, exporter, and/or importer of many agricultural commodities, the SCM is relevant for most major U.S. agricultural products. If a particular U.S. farm program is deemed to result in a market distortion that adversely affects other WTO members—even if it is within*

²⁷ <http://www.agriculture-strategies.eu/en/2018/07/will-spanish-ripe-olives-puncture-the-pac/>

²⁸ https://www.wto.org/english/forums_e/public_forum15_e/webcasting_e.htm

²⁹ *US antidumping and antisubsidy investigations on Spanish olive: a potential trade negotiation weapon of mass destruction*, 3 August 2017, <http://tomasegarciaazcarate.com/post/us-antidumping-and-antisubsidy-investigations-on-spanish-olive-a-potential-trade-153632>

³⁰ http://farmpolicy.typepad.com/farmpolicy/files/crs_report_farm_commodity_program_in_o8_fb.pdf

agreed-upon AoA spending limits—then that program may be subject to challenge under the WTO dispute settlement"³¹.

On the other hand, if the European Commission prefers refraining to sue the US AD and CV duties at the WTO this would be seen as an agreement of the legitimacy of these AD and DC duties and of the illegality of its decoupled subsidies. This would encourage the US federations of other agricultural products to initiate AD and anti-subsidy petitions against EU competing agricultural products and it would also encourage other WTO Members to do the same.

Indeed, the EU subsidies to its producers of table olives are minimal compared to those going to most EU agricultural exports. The extreme case is that of Greek and Andalusian cotton whose subsidy level per tonne is twice the FOB price³².

Subsidies to EU animal products – meat, eggs and dairy products – are also very high. For France the economists Jean-Christophe Bureau, Lionel Fontagné and Sébastien Jean acknowledge that *"In 2013, these aids represented for an average farm 84% of its farm income. Animal products are particularly dependent, the various subsidies representing 89% of income in milk and 169% in the beef sector. Extreme case: an Alpine type sheep farm receives about 59 000 euros of public transfers to generate a net income of less than 19 000 euros. Agricultural products where the value added without subsidies is negative some years are not rare: intermediate consumptions exceeds the product value, a paradoxical situation for a productive sector"*³³.

And yet, these estimates are very undervalued for animal products because they do not take into account the massive subsidies to feedstuffs of EU origin on the pretext that they are received by European producers of cereals, oilseeds and protein crops (COP), allowing the producers of animal products to purchase their feed at a price that would be much higher if COP producers ceased to receive the subsidies, which are hidden in the decoupled BPS (basic payment scheme)³⁴. SOL has estimated that the subsidies to extra-EU28 exports of 5.494 million tonnes (Mt) of dairy products in 2016 – or 30.2 Mt in milk equivalent – have reached € 2.030 bn), of which €513 M in feed subsidies (17 €/t³⁵). And the feed subsidies included in the EU28 dairy exports to the four regions of West Africa, SADC, CEMAC and EAC were 54.7 M € in 2016 for € 216.3 million in total subsidies to dairy products³⁶. EU28 feed subsidies on meat and poultry and egg exports to the six SADC countries reached € 41.443 million in 2016 (120 €/t of carcass equivalent or shell egg equivalent) for an average dumping rate of 19% (ratio of total subsidies to the FOB export value)³⁷.

³¹ <https://fas.org/sgp/crs/misc/R43817.pdf>

³² See J. Berthelot's presentation at WTO ministerial of Buenos Aires : *"The core agricultural issue for MC11 is the developed countries' green box subsidies"*, <https://www.sol-asso.fr/wp-content/uploads/2017/01/The-core-agricultural-issue-for-MC11-is-the-developed-countries-green-box-subsidies-2.pdf>

³³ <http://www.cae-eco.fr/IMG/pdf/cae-note027v2.pdf>

³⁴ <https://www.sol-asso.fr/wp-content/uploads/2017/01/La-v%C3%A9rit%C3%A9-sur-le-dumping-des-exportations-alimentaires-li%C3%A9-%C3%A0-ses-subsidies-internes-26-juin-2018.pdf>

³⁵ <https://www.sol-asso.fr/wp-content/uploads/2012/03/Calculation-of-the-EU-feed-subsidies-by-type-of-animal-products.pdf>

³⁶ <https://www.sol-asso.fr/wp-content/uploads/2017/01/The-huge-dumping-of-extra-EU-exports-of-dairy-products-and-to-the-4-African-EPAS.pdf>

³⁷ *The EU28 subsidies on its exports of poultry meat and eggs to SADC in 2016*, SOL, March 24, 2017: <https://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b-2/>

From their side, Tim Wise and his colleagues of Tufts University have published a long series of articles to show how large US animal feed subsidies have allowed the US to export animal products at less than their total production cost³⁸.

Conclusion

Since it is now very likely that the US prosecution of the EU exports of ripe olives will extend to other products and call into question the whole CAP, the first thing to do is to eliminate the dumping, either in ceasing to export or already by taxing exports by the amount of subsidies. This was proposed on 18 June 2018 by the French network "For another CAP" in its document "Our 12 priorities for the post-2020 CAAP"³⁹: *"Put an end to the imports and exports that harm farmers in the countries of the South and the North, rejecting any new free-trade agreement and putting in place a mechanism to reimburse CAP subsidies to raw materials exported outside the EU"*. This drafting is however clumsy as the issue is to tax subsidized food exports while allocating the amount of the subsidies to the importing developing country to promote its local food products and not to continue to import the now more expensive EU products: for example by promoting in West Africa regional milk production instead of continuing to import milk powder and by promoting the processing of tropical cereals and tubers instead of continuing to import wheat.

This reimbursement was already recommended in 2000 by Peter Einarsson of the Swedish NGO Forum Syd: *"All forms of direct payments function as a dumping mechanism to the extent that the production supported results in products for export. When border protection is reduced and replaced with direct payments (as required by the AoA), the result is lower prices in protected markets. The gap between the protected internal price level and world market prices is reduced, and the need for export subsidies thus reduced correspondingly (again in conformity with the AoA). But for the importing country, there is no difference. Whether the export price is artificially reduced by export subsidies or by direct payments, the dumping effect is the same... Export of a product benefiting from any combination of public support (direct payments, export credits, free public services, or other) would be allowed only if the exporting country applied an export levy equalling the value of that support"*⁴⁰.

Preventing exports from causing disastrous long-term dumping for food self-sufficiency reasons in poor DCs is one thing, but it will not be enough to ensure sufficient income for European farmers if they no longer benefit from subsidies on exported products. All the more that subsidies to EU products competing with imports should also be abolished to comply with the GATT principle of "national treatment", as reflected in the SCM Agreement. In other words, this will lead to a radical change in the CAP by rebasing agricultural incomes, as before the first reform of 1992, essentially on remunerative prices ensured by variable import levies⁴¹ for the vast majority of farmers, coupled subsidies being limited to products in regions with major handicaps which are not exported.

³⁸ *Feeding the factory farm*, http://www.ase.tufts.edu/gdae/policy_research/BroilerGains.htm

³⁹ <https://www.sol-asso.fr/wp-content/uploads/2018/06/12-priorit%C3%A9s-PACpost2020.pdf>

⁴⁰ Peter Einarsson, *Agricultural trade policy as if food security and ecological sustainability mattered*, Forum Syd, Stockholm, November 2000, https://iatp.org/files/Agricultural_Trade_Policy_As_If_Food_Security_.pdf

⁴¹ J. Berthelot, *Réguler les prix agricoles*, L'Harmattan 2013. An informal English version (*How to regulate agricultural prices*) is available at: <https://www.sol-asso.fr/wp-content/uploads/2013/05/How-to-regulate-agricultural-prices-J.-berthelot-2013.pdf>; see also ROPPA, *Let us dare to reform the WTO for an equitable development*, 2015: https://www.wto.org/english/thewto_e/minist_e/mc10_e/roppappmc10_e.pdf

But, unlike the situation before 1993 and to avoid overproduction beyond the needs of the EU domestic market and the concentration of production in the most competitive farms, the existence of higher prices than today would be accompanied by an equitable distribution of production rights between the different States and holdings with the requirement to use agroecological (including biological) and labor-intensive production systems and by selling through short circuits.

Higher agricultural prices than today for EU farmers – which would be progressively raised over at least five years in parallel with the reduction of direct subsidies, if possible over the new post-2020 CAP period – will necessarily imply higher food prices, even if the promotion of short circuits should reduce the share of added value going to agro-processing industries and supermarkets. A lower consumption of highly processed food products is also desirable for health reasons. Higher food prices will already be needed to reduce food waste and halve the consumption of animal products by 2050 (Afterres2050 scenario), given that their cost of production will increase sharply if we stop importing GM soybeans and maize from the Americas, which will also go in the right direction to reduce greenhouse gas (GHG) emissions.

Raising the food share of households' budget, on average, will only return to the situation that prevailed in France until 1960 when it was of 36% against 20% in 2014⁴². But for this average increase to be bearable for disadvantaged populations (of which the unemployed) it will be necessary to raise the minimal income benefits and subsidize the canteens, partly by the savings made on the current budget of the CAP. At the limit we could consider the distribution of food stamps on the US model but at a much lower scale. This presupposes that the EU stops aligning itself on the US position which refuses to consider that the purchase of basic staples from farmers at remunerative prices for public stocks subsequently distributed to disadvantaged consumers does not give rise to trade-distorting subsidies⁴³.

⁴² <http://www.lefigaro.fr/conso/2015/10/09/05007-20151009ARTFIG00010-l-alimentaire-pese-de-moins-en-moins-lourd-dans-votre-budget.php>

⁴³ *Reconciling the views on a permanent solution to the issue of public stockholding for food security purposes*, <https://www.sol-asso.fr/wp-content/uploads/2017/10/Reconciling-the-views-on-a-permanent-solution-to-the-issue-of-public-stockholding-for-food-security-purposes-1.pdf>; *SOL's proposal to solve the Public Stockholding's impasse*, <https://www.sol-asso.fr/wp-content/uploads/2017/01/SOLs-proposal-to-solve-the-Public-Stockholdings-impasse-December-13-2017.docx.pdf>