Analysis of the main controversies on domestic agricultural supports

Jacques Berthelot (jacques.berthelot4@wanadoo.fr), May 11, 2017

Summary

At the AoA Committee on Agriculture in Special Session (CoASS) of 8 March 2016 the Chair Vangelis Vitalis stated that "*negotiations on* domestic support *have emerged as the clear priority for the overwhelming bulk of those I have consulted with. In fact, domestic support has been identified by many of you quite explicitly as a key potential outcome for MC11. In this regard, Members have reminded me of the WTO's comparative advantage in this area as compared with Preferential Trade Agreements*"[1].

The objective of the present paper is to provide food for thought for this debate in analysing the main controversies around ten methodological issues of opposite concepts – *agricultural supports* vs *agricultural subsidies*; *administered prices* vs *market prices* ; *coupled subsidies* vs *decoupled subsidies; assessing the US AMS of its domestic food aid* ; *domestic subsidies* vs *export subsidies*; *subsidies to agricultural produ*cts vs *subsidies to agricultural inputs*; *export subsidies to raw products* vs *to processed products*; *green box subsidies* vs *gold box subsidies*; *domestic agricultural subsidies* vs *import protection*; *commercial dumping* vs *monetary, fiscal, social and environnemental dumping*; *subsidies to developed countries* vs *subsidies to emerging countries* – and the paper ends by analysing some contradictions in the REV4 Draft modalities of 6 December 2008.

The concept of agricultural *support* is broader than that of agricultural *subsidy* as it encompasses "market price support" (MPS) through import protection and export subsidies, albeit in different ways for OECD and the AoA. For OECD the MPS represents the gap between domestic farm prices and current world prices (the border price of each country) rendered at farm gate, encompassing import protection as well as export subsidies. The MPS is "financed" essentially by consumers, considering that they are entitled to buy their food and other agricultural products at world prices and that import duties prevent them to do it. However, in the OECD approach, a part of the MPS may be financed by taxpayers when there are explicit export subsidies, but this has always been the minor part of the MPS, particularly in DCs where they have hardly existed.

However the AoA definition of MPS is totally absurd for three reasons, as it is calculated as the gap between the present administered price and the border price of the 1986-88 period, multiplied by the eligible production. It does not imply any actual subsidy because it does not bring any additional support to that of other policy measures: import duties, export subsidies and restrictions, land set aside, production quotas, foreign and domestic food aid.

It is why SOL has proposed to make minor changes in the AoA rules to put an end to this absurd definition of MPS. These modifications would find a permanent solution to the crucial issue of Public stockholding for food security purposes and the developed countries would benefit even more of the changes in Annex 3 as this would almost eliminate their notifications of the MPS which is for many of them the bulk of their applied AMS.

The concept of *administered price* is not defined in the WTO agreements, although it is working in opposite ways in developed countries and developing countries (DCs). While in DCs administered prices – the MSP (minimum support price) in India for example – are set *above domestic prices* to ensure remunerative prices to small farmers, in developed countries these are *minimum prices below the prevailing market prices* in order to reduce their level. The US Farm Bills and EU CAP (common agricultural policy) reforms since the 1990s have lowered by steps their administered prices, and correlatively their current farm prices, to increase their

[1] https://www.wto.org/english/news_e/news16_e/statment_agng_09mar16_e.pdf

domestic and external competitiveness – importing less and exporting more – through massive compensatory alleged non-trade-distorting subsidies of the *blue* and *green* boxes.
But the WTO Appellate Body ruled the 3 March 2005 in the cotton case that the US alleged decoupled payments were not decoupled and therefore not in the WTO green box since farmers did not enjoy a total production flexibility. The reasons to prove that the EU allegedly decoupled "single payment scheme", now the "base payment scheme" since the CAP reform of 2014, are not actually decoupled are even stronger. Liberal economists themselves admit that decoupled subsidies have necessarily trade-distorting effects through several channels: wealth effects inducing production increases by reducing risk aversion and facilitating access to credit and investment; their capitalization into land rents reducing possibilities of setting up of young farmers; "infra-marginal" cross-subsidization and detterence effect to leave farming, etc. Furthermore the cumulation effect of different types of subsidies, coupled and decoupled, for the same product render coupled all subsidies.

The counter argument that the decoupling works because farmers are not producing all they could on their allowed base areas does not hold because most farms are growing many crops receiving decoupled payments and simply choose to grow those crops with the most attractive prices and other aids depending on the year, climate and market conditions, so that any of their products receives decoupled payments from the base area of other crops.

We show that the US domestic food aid should be submitted to the same WTO rules as those applying to the public stocks of DCs such as India for food security purposes because there are 5 misunderstandings on the interpretation of the Agreement on agriculture Annex 2 paragraphs 3 and 4: on "agricultural products" vs "food products", "current market prices" vs "administered prices", public stocks are not necessarily managed by a public company, there is no minimum storage required to speak of public stocks, and about what is a food security stock. We show that for 8 products only – three cereals (wheat flour, corn flour, rice), three meats (beef, pork, poultry), dairy in milk equivalent and eggs – the US should have notified to the WTO $14.880 billion in 2012 for its product-specific AMS linked to its domestic food aid.

Agricultural subsidies are mostly understood as granted to agricultural products but input and investment subsidies are also considered trade-distorting, except those benefitting to low-income or resource-poor producers in DCs. But the EU and US notify all their investment subsidies in the green box, ignoring the condition that they should benefit only to farmers in "structural disadvantages".

As for input subsidies proper, they have been hugely undernotified by the US and EU. If this is already verified for non agricultural inputs it is even more so for inputs coming from other agricultural products. By far their most important under-notifications concern their feed subsidies. The fact that the US and the EU notify in their amber box (AMS) some secondary feed subsidies attest they are perfectly aware that feed subsidies are coupled input subsidies but they have refused to notify their huge subsidies to feed cereals, oilseeds and pulses (COPs). Yet, on average from 1995 to 2014, the US feed subsidies have reached $5.313 bn, incorporated in dairy products ($587 million), beef ($1.479 bn), hogs ($1.242 bn), poultry and eggs ($1.957 bn). These feed subsidies have acounted on average for 14.4% of the feed costs. But the EU feed subsidies, essentially hidden in the decoupled Single Payment Scheme, are presently much higher, at €14.740 bn, of which €3.260 bn to beef, €5.360 bn to pig meat, €3.680 bn to poultry and eggs and €2.441 to cow milk.

The huge US and EU cheating in that area has been largely promoted by the OECD tortuous concept of "excess feed cost" used to assess its other ambiguous concept of PSE (producer's support estimate). OECD considers that the livestock producers are penalized as they have to pay their feedstuffs at the domestic prices, higher than the world prices, received by the growers of cereals, oilseeds and pulses (COPs). Catherine Moreddu of OECD wrote: "*The excess feed cost due to the price support of cereals is deducted from the price support of animal products. Therefore it is not possible to take it into account a second time in input subsidies*". This statement could have been at best debated when the world prices of COPs were low so that this alleged "excess feed cost" – represented by the gap between domestic prices and world prices – was large, but since the world prices of COPs have skyrocketed from 2008 to 2014 the "excess feed cost" has disappeared. Yet the feed subsidies are still there, hidden for the EU in its alleged fully decoupled SPS (single payment scheme) and SAPS (single area payment scheme). If the direct payments to COPs are fully received by the COPs' producers, the producers of animal products get the implicit but real subsidies corresponding to the lower prices they pay for the COPs of US or EU origin, prices that would be much higher in the absence of the subsidies granted to COPs' producers in compensation for the reduction in their administered prices. We can invoke here the concept of "cross-subsidization" which has been central in the panels and WTO Appellate Body's rulings in the cases of Dairy products of Canada in December 2001 and December 2002 and in the EU sugar case in April 2005. So that the part of the COPs devoted to animal feed has conferred product-specific AMSs to the animal products having consumed this subsidized feed.

The EU cheating on the decoupled status of its direct aids and the refusal to notify its feed subsidies explain that the last notification of its agricultutal domestic support for 2013-14 is far from the truth.

Despite that the EU and US are no longer using export subsidies, Roberto Azevedo's speech at the closing ceremony of the WTO Ministerial conference in Nairobi in December 2015 was deceptive: "*The elimination of agricultural export subsidies is particularly significant... due to the enormous distorting potential of these subsidies for domestic production and trade. Today's decision tackles the issue once and for all*". Unfortunately not and the WTO Appellate Body has ruled four times – in the US Cotton case, the EU Sugar case and twice in the Dairy products of Canada case – that domestic subsidies, including the alleged "decoupled" ones, should be considered as export subsidies in assessing dumping. The problem is that the WTO Members do not recognize a legal value of precedent to the panels' and Appellate Body's rulings when they adjudicate on similar cases.

The AoA article 11 takes into account the export subsidies to agricultural raw products incorporated into the exported processed products. Unfortunately the EU and US have notified to the WTO very few subsidies to raw products incorporated in exported processed products. Solidarité has calculated that, taking into account all the EU cereals incorporated in the exported cereal products in 2013, except in feedstuffs, the EU had exported and therefore subsidized 10.7 million tonnes (Mt) more than the 36.2 Mt of exported raw cereals.

The WTO rules take only into account the current "specific" subsidies, here agricultural subsidies. Solidarité has proposed to put in a "gold box" all types of past and present non agricultural supports and the past agricultural supports, which 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; general education and research; wealthy consumers with an increasing purchasing power, able to pay fair prices to farmers; democratic States able to enforce commercial contracts and to fight corruption; the plundering of DCs resources during the slave and colonial periods; neo-colonial exploitation ever since through the DCs indebtedness vis-à-vis the developed countries and the international institutions, and through unfair free-trade agreements; high import protection on agricultural products and infant industries for decades; health and pensions of farmers financed by society at large; low interest rates, particularly on agriculture, low inflation rates and manipulation of their currencies. All in all, 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.

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

One of the powerful arms used by developed countries to consolidate their agricultural competitiveness was to impose to all countries, especially to DCs, a reduction of import protection in the AoA as in bilateral trade agreements, as they were the only ones able to maintain, and if necessary increase, the level of their domestic subsidies, which have clearly an import-substitution effect. Therefore DCs should be allowed to raise their applied import duty per tonne by adding to it the subsidy per tonne of the exporting country even if the result exceeds their bound duty. WTO Members should be obliged to notify to the WTO their subsidy per tonne per tariff line.

The WTO deals only with commercial dumping and ignores monetary, fiscal, social and environmental dumping practices, which are often the basis of commercial dumping. The basic idea is to justify anti-dumping duties on imports from countries practicing these kinds of dumping.

As all other WTO agreements the AoA has several specific provisions for DCs in the three pillars of market access, domestic support and export competition, to take into account the special and differential treatment they are entitled. Although the AoA rules have been essentially negotiated between the US and EU during the Uruguay Round, and although they offered in October 2005 – offers endorsed in the Chair's Draft of agricultural modalities of 6 December 2008, called REV4 – to reduce drastically their allowed agricultural trade-distorting subsidies at the end of the Doha Round implementation period, if the DCs would open more their border to the US and EU exports of non agricultural products and services, they have changed their minds in the last years. The US since 2011 with the explosion of its crop insurance subsidies and above all since the 2014 Farm Bill having eliminated the decoupled fixed direct payments so that all domestic subsidies will have to be notified in the AMS, which is expected to rise in a context of decreasing farm prices.

In that context US agri-food associations have taken an offensive stance, through reports and hearings in Congress, to show that emerging countries are now granting higher and more trade-distorting subsidies than the US and EU. Unfortunately these reports are full of errors, particularly on the following issues: the currency to use in agricultural notifications; the eligible production; the reasons why emerging countries' support prices are higher than those of the US (huge disparity in the arable land per active agricultural worker and in average yields per ha in a context where these prices cannot keep pace with faster increasing production costs).
The report of two researchers of Iowa State University on behalf of U.S. Wheat Associates is particularly outrageous and full of illogical calculations. It is outrageous because it states that the fact for emerging countries to subsidize their wheat and to support it at the border is a trade-distortion that suppresses the world price and reduces the potential US wheat exports.

The comparison of the OECD indicators of agricultural supports of 10 high income developed countries and 12 emerging countries in 2014 is full of lessons. We see that the ratio of individual agricultural subsidies on total agricultural production value was of 7.2% in the US against 4.1% in China and the ratio of total agricultural subsidies (including those allocated collectively and in kind to farmers) per agricultural working unit (full-time worker equivalent) was 118 times larger in the US ($17,828) than in China ($151).

The report ends with a preliminary analysis of what should be changed in the REV4 modalities of 6 December 2008. If REV4 would generaly put more constraints on developed countries, it is far from being totally beneficial to DCs. Furthermore it is full of huge contradictions, and we will limit to show the large implications of the new rule proposed for the product-specific *de minimis* (PSdm) as it would change all the notifications of agricultural domestic subsidies.

Indeed paragraph I.1/1.b states: "*The base level for reductions in Overall Trade-Distorting Domestic Support (hereafter "Base OTDS") shall be the sum of:… for developed country Members, 10 per cent of the average total value of agricultural production in the 1995-2000 base period (this being composed of 5 per cent of the average total value of production for product-specific and non-product-specific AMS respectively)*", and paragraph I.A.2 adds: "*For developing country Members, item (b) of paragraph 1 above shall be 20 per cent of the average total value of agricultural production in the 1995-2000 or 1995-2004 period as may be selected by the Member concerned*".

Beyond the radical contradiction with the AoA current rule – that the PSdm is only 5% of the production value of each specific product – the issue is the extent to which this proposed new definition of PSdm would be more beneficial to DCs, particularly to the majority of them which did not notify an AMS in their Schedule of commitments of 1986-88, than to the developed countries.

But we are facing a huge logical contradiction: it would be impossible to calculate a PSdm product by product because you cannot assign to each product having a calculated AMS a *de minimis* equal to 5% of the total value of agricultural production (VOP). Another contradiction is the provision that the PSdm should be halved for developed countries "*on the first day of the implementation period*" and, for DCs, "*shall be reduced by at least two-thirds of the reduction rate*" of the developed countries. This provision would render ineffective the proposed doubling of the *de minimis* for the developed countries and DCs!

If there were a single *de minimis* of 10% of the VOP for the developed countries and of 20% for DCs (17% for China), the WTO notification requirements of domestic support would be changed radically. The disappearance of PSdm will imply the disappearance of PS AMS and its merging with the NPS AMS. Finally the notification requirements would only be composed of 3 tables: the DS:1 on the green box, maybe for a while the DS:3 on the blue box (it has already be considered as trade-distorting by its integration in the OTDS) and DS:2 which would regroup all the other trade-distorting domestic supports to which a single common *de minimis* would be applied. This simplication of the notification requirements should be very useful and would not require to double the level of *de minimis*. But the criteria of the green box should be revised drastically.

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According to an ICTSD report of 10 March 2016, "*The "overwhelming bulk" of WTO members see domestic support as the "clear priority" for talks on trade, said New Zealand ambassador Vangelis Vitalis, who chairs the WTO agriculture negotiations, at the first informal meeting this year open to all of the organisation's members. Vitalis said that many countries explicitly identify this issue as "a key potential outcome" for the trade body's eleventh ministerial conference, which is due to be held in 2017*"[2]. And Vitalis added: "*I should also record that many Members expressed their very real disappointment about the absence of an outcome in domestic support at Nairobi in general and in cotton in particular"... In sum, it is clear to me that domestic support, including for cotton, is an issue on which there is general agreement that we need to explore what may be possible. That said, based on what I have heard it is clear that this will take some time and that we need to take due care in how we proceed on this matter. I should also note that no Member had any specific ideas for how to proceed on domestic support at this early point, but I expect this to be the focus of my consultations in the coming weeks*"[3].

This paper tries to provide food for thought for this debate in analysing the main controversies around ten methodological issues of opposite concepts – *agricultural supports* vs *agricultural subsidies*; *administered prices* vs *market prices* ; *coupled subsidies* vs *decoupled subsidies*; *domestic subsidies* vs *export subsidies*; *subsidies to agricultural produc*ts vs *subsidies to agricultural inputs*; *export subsidies to raw products* vs *to processed products*; *green box subsidies* vs *gold box subsidies*; *Domestic agricultural subsidies* vs *import protection*; *Commercial dumping* vs *monetary, fiscal, social and environnemental dumping*; *subsidies to developed countries* vs *subsidies to emerging countries* – and we end by a preliminary analysis of some huge contradictions in the REV4 Draft modalities of 6 December 2008.

I – Agricultural supports vs agricultural subsidies

The concept of agricultural *support* is broader than that of agricultural *subsidy*. For the WTO the Agreement on subsidies and countervailing measures (ASCM) "*a subsidy shall be deemed to exist if: (a)(1) there is a financial contribution by a government or any public body within the territory of a Member, i.e. where: (i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees); (ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits); (iii) a government provides goods or services other than general infrastructure, or purchases goods*" (article 1).

However the ASCM article 1 continues with a statement which could be controversial: "*or (a)(2) there is any form of income or price support in the sense of Article XVI of GATT 1994*", this Article XVI stating: "*If any contracting party grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the CONTRACTING PARTIES in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary*". The wording "*any form of... price support*" could be understood as encompassing import protection but this would be incorrect because it is only to specify "any kind of subsidy" which implies necessarily "*a financial contribution by a government or any public body*".

[2] http://www.ictsd.org/bridges-news/bridges/news/wto-farm-talks-chair-subsidies-%E2%80%9Ckey%E2%80%9D-to-2017-outcome
[3] https://www.wto.org/english/news_e/news16_e/statment_agng_09mar16_e.pdf

Precisely the concept of agricultural support is broader than that of subsidy as it encompasses "market price support" (MPS) through import protection and export subsidies, albeit in different ways for OECD and the AoA.

1.1 – <u>The OECD MPS and other indicators of agricultural supports</u>

OECD uses 4 main indicators of agricultural trade supports, the most comprehensive being the TSE (total support estimate) which is the sum of the PSE (producers' support estimate), the GSSE (general services support estimate) and the CSE (Consumers' support estimate, for the part "transfers to consumers from taxpayers").

The OECD basic indicator of PSE (Producer Support Estimate) – which encompasses MPS beside actual subsidies to individual producers – is flawed because it is presented by most media and economists as the best indicator of agricultural subsidies, even if the OECD definition makes the distinction between its two sources of financing: "*the annual monetary value of gross transfers from consumers and taxpayers to agricultural producers, measured at the farm-gate level, arising from policy measures that support agriculture, regardless of their nature, objectives or impact on farm production or income*".

For OECD the MPS represents the gap between domestic farm prices and current world prices (the border price of each country: CIF price for a net importing country and FOB price for a net exporting country) rendered at farm gate, encompassing import protection as well as export subsidies. The MPS is "financed" essentially by consumers – in fact by the first buyers which are the traders and agro-industries –, OECD, WTO and the free-traders in general assuming that they pass systematically lower world prices on to consumers. They consider that consumers of all countries are entitled to buy their food and other agricultural products at world prices and that import duties prevent them to do it.

As the world prices are highly dumped prices for developed countries' exports – not only those of grains but also those of animal products through high feed subsidies –, import protection is quite justified. Otherwise if would be a denial of the right to food sovereignty as long as a country does not harm other countries through direct or indirect dumping. It confirms at the same time the dominant imperialistic approach of developed countries, embedded in most WTO rules, assuming they are entitled to access the market of other countries, so that *market access* in all domains has become the objective and the mantra of developed countries in all trade negotiations, at bilateral, plurilateral and multilateral (WTO) levels. A good example of this assumption was given by the statement made in the House of Representatives' hearing of 3 June 2015, to review agricultural subsidies in foreign countries, by Craig Thorn, a Partner in the firm DTB Associates: "*China, for years now, has had a stated policy of maintaining self-sufficiency for rice, corn and wheat… by using subsidies and by using import restrictions… And until they change that policy, I don't think we are going to have the access to that market that we are rightfully entitled to under WTO rules*"[4]. This is clearly not true, even if the WTO rules promote market access each WTO Member keeps the right to use subsidies and import protection within agreed rules. Besides this statement is all the more unfounded that China has become by far the largest net importer of agricultural products in 2014, with \$70 bn exports and \$170 bn imports and the US share of China's agricultural imports is by far the largest, with a 26% share in 2012-13[5]. Furthermore the US keeps a large agricultural trade surplus with China, of \$18.6 bn on

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[4] http://agriculture.house.gov/uploadedfiles/6.3.15_agriculture_subsidies_in_foreign_countries.pdf
[5] http://www.ers.usda.gov/media/1784488/eib136.pdf

average from 2011 to 2015, even if it has diminished from a peak of $21.3 bn in 2012 to $15.8 bn in 2015[6].

However, in the OECD approach, a part of the MPS may be financed by taxpayers when there are explicit export subsidies, but this has always been the minor part of the MPS, particularly in DCs where they have hardly existed. We see in the OCDE data base that the US MPS has been significant for wheat and barley from 1986 to 1994 – a period where there were large export subsidies of the "Export Enhancement Program" –, was very low in 1995 and disappeared totally from 1996 on for cereals and soybean because there were no import duties, the US being "price maker" for most grains. On the other hand the US has always maintained significant MPSs for sugar and milk because of high import duties.

In fact, as clearly explained in an excellent document of USDA[7], for the US "*The difference in methodology for calculating MPS results in reported support differences ranging from $3 billion to $16 billion over 1995-2007. Combined with significantly different methods for classifying direct support to producers, these MPS results contribute to the OECD's PSE ranging from $13 billion to $40 billion higher than the WTO aggregate measurement of support (AMS) over the same period*".

There is also a large difference between the OECD GSSE (general services support estimate) and the AoA green box. Whereas the PSE covers the supports to individual producers, the GSSE encompasses subsidies to farmers considered collectively, most often as services and insfrastructures delivered in kind. As explained by USDA "*WTO green box programs are similar to the OECD's GSSE and CSE categories since they include many of the same programs that provide support for "general services" and "consumers". However, these categories do not neatly track from the WTO to the OECD classification systems. For example, U.S. program spending reported as WTO green box consistently exceeds the total outlays reported as OECD's GSSE and CSE categories*". The CSE (consumers support estimate) represent mostly the negative transfer of producers to consumers due to the MPS (consumers are penalized by import duties). On the other hand consumers receive transfers from taxpayers for the domestic food aid. Many transfers from taxpayers to producers included in the PSE and not in the GSSE are notified in the WTO green box: decoupled income support, certain programmes of income insurance and disaster relief, certain types of structural adjustment expenditures for producer and resource (usually land) retirement and for investment aids (e.g., credit subsidies), environmental payments, and regional assistance programs.

USDA remarks that, for the US, the comparison of all agricultural supports of OECD and AoA shows that "*From 1995 to 2007, annual domestic support reported under the WTO system ranged from 68 percent to 90 percent of that reported under the OECD system*".

However this USDA report was written in 2011 and OECD has profoundly changed the contents of its indicators in its annual report of 2015 covering all years from 1986 to 2014. The TSE for all OECD countries in 2011 has dropped by 17% from $409 bn in the 2013 OECD report to $342 bn in the 2014 report, the GSSE component having droped by 60%, from $109 bn to $44 bn. The main changes concern the US were the GSSE is reduced by 91% (from $71.539 bn to $6.640 bn)

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[6] http://apps.fas.usda.gov/gats/ExpressQuery1.aspx?publish=1

[7] Anne Effland, *Classifying and Measuring Agricultural Support: Identifying Differences Between the WTO and OECD Systems*, USDA, March 2011, http://www.ers.usda.gov/publications/eib-economic-information-bulletin/eib74.aspx

and the TSE by 48% (from $143.778 bn to $74.739 bn) because the largest nutrition programme – the SNAP or food stamps – has been deleted except that $16 bn remain in the CSE as being attributable to farm level production. Foreign food aid has also been deleted. But in the new OECD data the other nutrition programmes, delivered in kind and mainly to school children, remained notified, for example at $40.3 bn in 2013. If these methodological changes may be justified on rational grounds, they present a clear political benefit for the image of the developed countries, showing that they are not as large subsidizers that DCs and civil society have been claiming for a long time, particularly in view of the large increase in the agricultural supports of some emerging countries in recent years.

The main conclusion is that there remains a huge misunderstanding in the distinction which should be made between agricultural supports and agricultural subsidies. Given the large offensive conducted by the US and EU against the increased agricultural supports of emerging countries (see section X below) they want to blur this distinction as the DCs agricultural supports rely mostly on import duties, secondarily on input subsidies and very little on direct payments to farmers.

Thus in a House of Representatives' hearing of 3 June 2015, Darren Hudson, professor at Texas Tech University, stated that "*Finally there are the implicit subsidies that exist through trade barriers, and… China, for example, has used a myriad of tariffs, quotas, domestic stock-piling, and other non-tariff barriers to support domestic corn, some cotton, soybean, and other agricultural prices*". Craig Thorn, of DTB Associates, spoke of the "currency manipulation" made by China and India. In a second House of Representatives' hearing of 21 October 2015, Jaime A. Castaneda of the National Milk Producers Federation stated: "*When talking about foreign subsidies and protection, India stands out too. One of the biggest problems with Indian's subsidies is the support through various methods, but more importantly, India's support through regulatory barriers that prevent the importation of dairy products*"[8]. But we will come back in more details in Section X on the specific case of emerging countries' agricultural supports.

1.2 – The AoA inconsistent approach of MPS

What is amazing is the way the AoA rules define and compute the MPS. If the OECD way is logical – which considers as a MPS the gap between the farmgate price and the current world price at the country border, so that this gap might be explained by import duties or/and export subsidies –, the AoA definition is totally absurd. The definition is given by paragraphs 8 and 11 of the AoA Annex 3 :

- Paragraph 9: "*Market price support shall be calculated using the gap between a fixed external reference price and the applied administered price multiplied by the quantity of production eligible to receive the applied administered price*".
- Paragraph 11: "*The fixed reference price shall be based on the years 1986 to 1988 and shall generally be the actual price used for determining payment rates*".

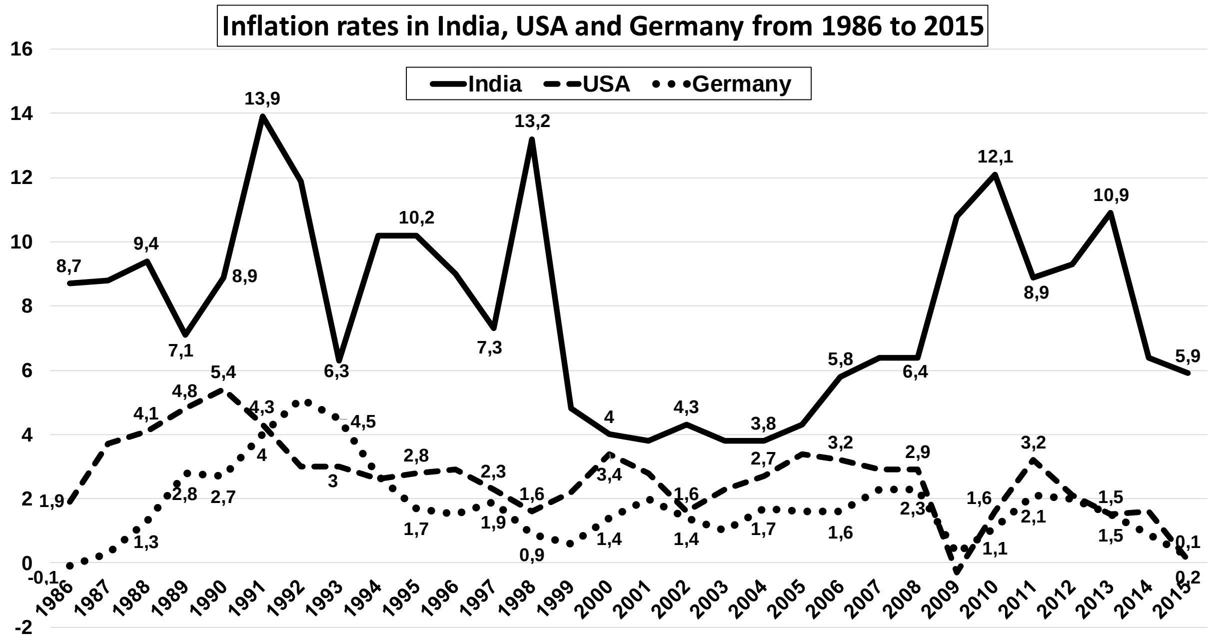
This definition is absurd for three reasons:

- The comparison with the border price of the 1986-88 period, 28 to 30 years ago, is meaningless since the national and international economic environment has changed so much. It is above all totally unfair for international comparisons between developed and developing countries given the structural inflation suffered by the latter for many well known

[8] http://agriculture.house.gov/uploadedfiles/10.21.15_hearing_transcript.pdf

reasons. Thus the average annual inflation rate over the 30 years from 1986 to 2015 has been of 7.95% in India against 2.68% in the US and 1.78% in Germany, as shown in the following graph[9]. This implied a cumulative inflation of 69.8% for Germany, 120.5% for the US[10], and 892.4% for India.

- It does not imply any actual subsidy.



- Because the "market price support" does not bring any additional support, hence additional subsidy, to that of other policy measures: import duties, export subsidies and restrictions, land set aside, production quotas, domestic and foreign food aid, etc[11].

Indeed this MPS – which does not imply actual public expenditures – has accounted for 97.5% of the EU notified AMS[12] for 2012/13 (last notified year): €5.753 million – of which €1.865 million for common wheat, €1.145 million for skimmed milk powder and €2.743 million for butter – over a total AMS of €5.899 million! Canada's MPS of 2012 represented 73.5% of its last notifications for 2012. In Switzerland it represented 97.1% of its AMS for 2013 and in Norway it represented even 110.3% of its total AMS in 2013, a strange thing! The US might be more reluctant to delete the MPS in the AoA as Solidarité has proposed[13] as the 2014 Farm Bill has already deleted the dairy market price support notified at $2.923 bn for 2012 but it has still notified $1.406 billion for sugar.

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[9] http://www.inflation.eu/inflation-rates/historic-hicp-inflation.aspx
[10] http://www.calculator.net/inflation-calculator.html?cstartingamount1=1&cinyear1=1986&coutyear1=2016&calctype=1&x=47&y=4
[11] Harry de Gorter, Merlinda Ingco and John Nash, *Domestic support: economics and policy instruments*, in Agriculture and WTO, World Bank, 2004: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/08/19/000160016_20040819110032/Rendered/PDF/297950018213154851x.pdf
[12] The AMS or Aggregate Measurement of Support is commonly called the *amber box* of coupled trade-distorting domestic supports. It encompasses the product-specific (PS) AMSs and the non-product-specific (NPS) AMS.
[13] *Proposal to modify some paragraphs of Annex 3 of the Agreement on Agriculture*, Solidarité, February 5, 2016, http://www.solidarite.asso.fr/Papers-2016

This absurd AoA rule has been criticized by most agricultural trade economists, including those sharing a free trade stance. Let us mention just three of them.

- William R. Cline stated in the USDA 2007 Agriculture Outlook Forum: "*The bound AMS contained about $6 billion of pure fiction, a remarkable concept called 'Market Price Support' (MPS). This accounting concept equals the difference between the domestic administered price and the 1986-88 world price. Yes, 1986-88, not today – already a clue that this concept is a fiction. There is no actual taxpayer money paid out for the MPS, it is pure accounting. Japan suddenly cut its reported AMS subsidies by billions of dollars in the late 1990s by eliminating its administered prices, with no change in agricultural protection whatsoever. So the first thing that should be done in Geneva is to redefine the Amber Box AMS to exclude the Market Price Support as part of the calculated bound level. Getting rid of the phony subsidy will make it easier to get rid of phony subsidy cuts*"[14].

- For H. de Gorter and J. D. Cook: "*Another source of water in domestic support ceilings is the peculiar manner in which the AMS is calculated. In addition to trade-distorting, taxpayer-funded domestic subsidies, the AMS includes "market price support," defined as eligible production multiplied by the difference between the administered price and a fixed world reference price. The product of that operation does not depict "domestic support" per se. Instead, it is a faulty measure of support provided at the border through tariffs, import quotas or export subsidies since and administered price cannot be sustained without supporting border measures. Reducing or even eliminating an official support price without altering border protection need not have any market impact. Japan is a case in point. There the official support price for rice was eliminated in 1997, and Japan's total AMS, as notified to the WTO, dropped by $20 billion. However, because the country made no changes in import controls, effective support remained the same. So a substantial portion of the water in Japan's total AMS of approximately $34 billion (table 2) can be attributed to an adjustment made to an administered price in order to "achieve" reduction commitments without actually reducing support. As discussed below, the redundancy of this "price-gap" component of the AMS must be recognized when assessing the impact of any given cuts*"[15].

- David Orden, Tim Josling and David Blanford, are highly critical of the WTO MPS in the introduction of their book "*WTO Discipline on Agricultural Support*"[16]. Tim Josling, the "father" of the OECD indicators of agricultural prices supports in the 1980's, confirmed in 2014: "*The reference prices bear little resemblance to current world market conditions (Orden et al. 2011). As a result, the AMS is now essentially meaningless as an indicator of trade distortion*"[17].

Facing this mess, SOL suggests to bring minor modifications in the AoA Annex 3 to put an end to the profound impediments that the wording of some paragraphs has brought not only to DCs but also to developed countries.

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[14] William R. Cline, *The Doha Round, Agriculture, and the Developing Countries*, USDA, 2007 Agriculture Outlook Forum, USDA 01-02/03/07

[15] Harry de Gorter et J. Daniel Cook, *Domestic Support in Agriculture: The Struggle for Meaningful Disciplines*, 2005, http://siteresources.worldbank.org/INTRANETTRADE/Resources/239054-1126812419270/7.DomesticSupport_updated_on12Dec05.pdf

[16] Cambridge University Press, 2011

[17] http://www.ictsd.org/themes/global-economic-governance/research/rethinking-the-rules-for-agricultural-subsidies

1.3 – <u>The modifications to make in the AoA Annex 3</u>

It would be enough to delete the words not in italics below: "fixed" in paragraphs 8 to 11, "for the base period" in paragraph 5, "shall be based on the years 1986 to 1988 and" in paragraphs 9 and 11, and "in the base period" in paragraph 9:
- Paragraph 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*.
- Paragraph 8 : "*Market price support: market price support shall be calculated using the gap between a* <u>fixed</u> *external reference price and the applied administered price multiplied by the quantity of production eligible to receive the applied administered price. Budgetary payments made to maintain this gap, such as buying-in or storage costs, shall not be included in the AMS*".
- Paragraph 9: "*The* <u>fixed</u> *external reference price* shall be based on the years 1986 to 1988 and *shall generally be the average f.o.b. unit value for the basic agricultural product concerned in a net exporting country and the average c.i.f. unit value for the basic agricultural product concerned in a net importing country* in the base period. *The* fixed *reference price may be adjusted for quality differences as necessary*".
- Paragraph 10: "*Non-exempt direct payments: non-exempt direct payments which are dependent on a price gap shall be calculated either using the gap between the* fixed *reference price and the applied administered price multiplied by the quantity of production eligible to receive the administered price, or using budgetary outlays*".
- Paragraph 11: "*The* fixed *reference price* shall be based on the years 1986 to 1988 and *shall generally be the actual price used for determining payment rates*".

On the other hand there would be nothing to change to the point d.2 of the definition of the "*equivalent measurement of support*" in the first part of the AoA: "*Equivalent Measurement of Support" means the annual level of support… with respect to support provided during any year of the implementation period and thereafter, calculated in accordance with the provisions of Annex 4 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*". And there would be nothing to change in Annex 4.

These modifications are for example in line with the UE notification of its cotton support before its reform of 2006. Even in the support notified to the WTO in its Schedule of commitments of 1994 (table below) the external reference price of 1986-88 does not imply that this price is that of a fixed period as it corresponds to the applied administered price of the same years.

Table 1 – EU cotton support notified to the WTO in its Schedule of commitments of 1994

Type of measure	Years	Applied administered price	Eligible production	Market price support budgetary outlays	Comments
Guide price		Ecu/t	1000 t	Ecus million	Production x price gap
	1986	1080,9	952,3	713,1	External price
	1987	1026,5	877,7	609,5	1986-88
	1988	873,7	1889,6	644,3	
	Average	993,7	1006,5	655,7	332,1 ecus/t

Source: Schedule of commitments List IV

1.4 – <u>These modifications would find a permanent solution to the issue of Public stockholding for food security purpose</u>

Deleting these words would allow a positive interpretation of the footnote 5 of paragraph 3 of the AoA annexe 2 on "*Public stockholding for food security purposes*" without having to change the footnote itself as its last line on "*provided that the difference between the acquisition price* *and the external reference price is accounted for in the AMS*" does not mention that the reference pric is a "fixed" one nor that it is the price of "the base period".

So that this would put an end to the on-going debate to find a permanent solution to this public stockholding issue. India and other DCs using such programmes would have just to notify in their AMS the gap between their administered price (minimum support price in India) and the current world price at their border, times the eligible production.

For India for instance, according to the report of the Commission for Agricultural Costs and Prices of March 2015, "*MSP of paddy converted into rice has been consistently lower than both domestic and international prices*"[18] so that the AMS on rice would be negative, that is at zero. The same plays for civil year 2016 where the MSP for common rice was of $315.2 per tonne[19] against a FOB price of $391 for Thailand 100% grade B or $371 for Thailand 15% brokens[20]. As for wheat exports the same Commission states that "*Exports of wheat during 2011-12 to 2013-14 is attributed to lower domestic wholesale prices than international prices, thus making Indian wheat export competitive (Chart-3.2)*"[21]. And the USDA GAIN report of 24 February 2017 states that "*After nearly a decade of exporting wheat, India turned into a net importer in MY 2016/17 on relatively weak international market prices. India's MY 2017/18 imports are forecast at 5 MMT, assuming weak international prices and no changes in the existing import policy (zero import duty and unchanged SPS requirements)… MY 2017/18 wheat and wheat product exports are forecast at 500,000 MT, mostly to Nepal and wheat products to African and middles east markets, as Indian wheat is likely to remain uncompetitive even in the major neighboring markets*"[22]. So that the recurrent US accusation that India is dumping its rice and wheat on the world markets in totally unfounded.

1.5 – <u>The developed countries would benefit even more of the changes in Annex 3</u>

These minor modifications to the wording of paragraphs 5 and 8 to 11 of annex 3 would be highly beneficial to the developed countries themselves, particularly the EU, as this would almost eliminate their notifications of the "*market price support*" made in their Supporting table DS:5, so that they should not be opposed to the proposed modifications.

II – <u>Administered price vs market price</u>

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

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[18] http://cacp.dacnet.nic.in/

[19] https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Grain%20and%20Feed%20Annual_New%20Delhi_India_2-23-2017.pdf

[20] https://www.ers.usda.gov/publications/pub-details/?pubid=81656

[21] http://cacp.dacnet.nic.in/ViewQuestionare.aspx?Input=2&DocId=1&PageId=40&KeyId=532

[22] https://gain.fas.usda.gov/Recent%20GAIN%20Publications/Grain%20and%20Feed%20Annual_New%20Delhi_India_2-23-2017.pdf

According to Wikipedia, "*In the U.S. administered prices are fixed by policy makers in order to determine, directly or indirectly, domestic market or producer prices… In Europe, an administered price is defined either as a price legally set by a government authority, a (heavily) subsidized price, or an oligopolistic price set by large corporations*"[23].

The US Farm Bills and EU CAP (common agricultural policy) reforms since the 1990s have lowered by steps their administered prices, and correlatively their current farm prices, to increase their domestic and external competitiveness – importing less and exporting more – through massive compensatory alleged non-trade-distorting subsidies of the *blue* and *green* boxes[24].

Indeed – here lies the fundamental difference – these lower administered prices were accepted by Western farmers only because they were offset by domestic subsidies, including by the alleged *decoupled*[25] fixed direct payments in the EU and US plus *coupled* subsidies, such as the US various types of marketing loan benefits and countercyclical payments – triggered by other administered prices set above current market prices or minimum administered prices – and crop insurance subsidies. In developed countries administered prices are always triggering subsidies, apart from the other means necessary to render them effective: import duties, export subsidies and restrictions, land set aside, production quotas, domestic and foreign food aid, etc[26].

The AoA annex 2 paragraphs 3 and 4 deal with "current market prices", a concept not defined in the AoA. To know what a "market price" is the best source are the US and EU provisions on "non-market economies" which are considered not to use prices in line with their "normal value". Thus, in the US antidumping manual, "*For the merchandise under investigation or review, there must be virtually no government involvement in setting prices*"[27]. Or, in the 2009 edition, according to David A. Gantz: "*Commerce requires for purposes of the affected sector a showing that there is no government involvement in determining prices or production quantities; there is private or collective (rather than full government) ownership; and that all significant inputs are subject to market-determined prices*"[28]. It is the reason why the US is presently refusing to grant the status of market economy to China.

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

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

[25] A subsidy is *coupled* when related to the production or price levels, and *decoupled* in the opposite case, when it is not even necessary to produce to get the subsidy.

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

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

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

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

Now several US and international reports have underlined the usefulness or 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*"[29].

- 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)[30]. 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), which has become the Single Base Payment since October 2015.

- A FAPRI[31] 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*"[32] for several crops for the period 2014-18. In these tables the expected subsidies – only coupled ones in the future as the two Bills and the final Farm Bill signed into law by the President the 7 February 2014 have eliminated the fixed direct payments – are added to market sales, which, divided by the yield per acre, give the *comprehensive price* or *full price* per crop, although FAPRI does not use this concept but that of "revenue per acre".

- 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*"[33].

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[29] 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

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

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

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

[33] 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*

- Finally USDA has used extensively the concept of "Net Budgetary Expenditures per Commodity"[34] incorporating the subsidies with the farm price.

All these facts underscore that the "*current market prices*" at farm level of the developed countries are not real market prices without "*virtually no government involvement in setting prices*". They should therefore be corrected by adding the trade-distorting subsidies to get the *comprehensive prices* or *total prices* or, better, the actual *administered prices* comparable to prices of DCs which cannot grant such payments to their so many farmers by lack of resources.

The only difference between the US and EU farm prices and the DCs *administered prices* like the Indian "minimum support prices" (MSP) of rice and wheat is that, in the US and EU cases, the subsidy is not granted at the purchasing time and incorporated in the price but is granted along the year according to various types of coupled and decoupled payments.

III – <u>Coupled subsidies vs decoupled subsidies</u>

The US and EU have shaped the AoA rules in almost face to face during the Uruguay Round while changing at the same time their agricultural policies, greatly reducing their minimum guaranteed agricultural prices in the early 1990s – and the EU continued these reductions in the CAP reforms of 2003 and 2004 – by compensating them with subsidies defined in the AoA as non-trade distorting subsidies of the blue and green boxes (see fotnotes 13 an 14) to improve the competitiveness of their agricultural products by importing less and exporting more. If the US did not notify subsidies in the blue box, with the exception of $7.030 bn in 1995, they used direct payments supposedly decoupled since 1996: production flexibility contracts payments (PFCP) up to 2001, replaced by fixed direct payments (FDP) in 2002 and until 2014 when they were eliminated, at an amount of approximately $5 bn per year. They were declared decoupled as being granted on the basis of 85% of the production volume of each product (10 crops, mainly cereals, oilseeds and cotton) in an historical reference period, and farmers were not required to cultivate the specific culture of the base period, hence the decoupling qualifier. But the WTO Appellate Body ruled March 3, 2005 in the cotton case that PFCP and FDP were not decoupled and therefore not in the WTO green box since farmers did not enjoy a total production flexibility, being denied the right to grow fruits and vegetables and wild rice.

Despite the willingness of Western countries and international institutions like the OECD to promote decoupled subsidies, supposed to be non-trade distorting, hence not to be sued at the WTO, liberal economists themselves could not easily demonstrate it, most of them admitting that they had necessarily some trade-distorting effects even if less than coupled subsidies. They put forward the following effects:

- Wealth effects inducing production increases: reducing risk aversion and pushing farmers to produce more, including on marginal lands or lands environmentally fragile – one of the findings of the report of the Office of Government accounts (GAO) in 2012[35] – and also by facilitating access to credit and hence to investment.

Asia, http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/0,,contentMDK:21960058~pagePK:64214825~piPK:64214943~theSitePK:469382,00.html

[34] 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

[35] GAO, *Farm Programs, Direct Payments Should Be Reconsidered*, July 2012, http://www.gao.gov/products/GAO-12-640

- The decoupled payments were partly capitalized into land rents, not only enriching the owners but also reducing possibilities of setting up of young farmers, hence with varying effects on production and prices.
- Direct payments were not really decoupled because the beneficiaries did not enjoy a full production flexibility, hence their condemnation by the WTO (see above).
- Besides Harry de Gorter[36] showed that decoupled payments have 4 distorting effects, unidentified so far in the literature, related to the concepts of cross-subsidization and detterence effect to leave farming:
    - farmers (or their landlords) should maintain the land in good agricultural condition to benefit from direct aid;
    - as they were not allowed to produce fruit and vegetables and wild rice it follows that the direct aid subsidized other productions that would not have been subsidized in the absence of the ban. He calls this an "infra-marginal" cross-subsidy;
    - because they were encouraged to produce to benefit from the expected increase in the base area and/or base yields, as occurred in successive Farm Bills. This is also what is called the deterrence effect to leave farming.

Seven reasons why the allegedly decoupled direct payments are not really decoupled can be displayed for the EU "single payment scheme", which has become the "base payment scheme" in the CAP reform of 2014.

1) The SPS contradicts the condition b) of the AoA Annex 2 paragraph 6 which states: "*The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period*". Indeed, after the precedent of the WTO Appellate Body ruling on cotton of 3 March 2005 that the US fixed direct payments are not in the green box, the EU SPS will be much more easily judged to be in the amber box. Because the EU maintains interdictions or caps on the production of many more products: production quotas are still there for sugar and plantations rights for wines, and there are caps for the production of cotton, tobacco and olive oil.

2) The SPS contradicts condition e) stating that "*No production shall be required in order to receive such payments*". But the EU Council regulation n° 1782/2003 of 29 September 2003 states that farmers getting SPS must "*ensure that all agricultural land, especially land which is no longer used for production purposes, is maintained in good agricultural and environmental condition*". Annex 4 of the regulation specifies that this implies not only "*Avoiding the encroachment of unwanted vegetation on agricultural land*" but also "*Protection of permanent pasture*" and "*Minimum livestock stocking rates*", which is clearly a production.

3) The SPS remains coupled to agricultural area as farmers must show they have eligible hectares (ha) to get their payments – indeed each single farm payment right corresponds to one ha –, which contradicts the condition d) of the same paragraph 6: "*The amount of such payments in any given year shall not be related to, or based on, the factors of production employed in any year after the base period*".

4) The SPS is based on the amount of blue box subsidies of the 2000-02 years, a criterion not allowed by the condition a) of paragraph 6: "*Eligibility for such payments shall be determined*

[36] Harry de Gorter, *The distribution structure of US green box subsidies*, in Rocardo Melendez-Ortiz, Christophe Bellmann, Jonathan Hepburn, Agricultural subsidies in the WTO green box, Cambridge University Press, 2009, pp.304-26.

by clearly-defined criteria such as income, status as a producer or landowner, factor use or production level in a defined and fixed base period".

5) A large part of the SPS (and blue box, BB) payments are granted to feed (EU cereals, oilseeds meals and pulses), and more recently also to feedstocks used for agrofuels (vegetable oil, cereals and sugarbeet), which are both input subsidies placed 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*"[37], which is all the more obvious as the agrofuels boom has increased much the prices of vegetable oils and cereals.

6) The SPS payments are also coupled because they coexist with the BB payments for the same products. Indeed, according to the AoA article 6.5, the blue box (BB) direct payments are granted "*under production-limiting programmes*" whilst the SPS allows to produce any product – otherwise it will not enjoy a full production flexibility –, including products whose production is forbidden or capped. This contradiction was already written in paragraph 28 of the preamble of the EU Council regulation n°1782/2003 of 29 September 2003: "*(28) In order to leave farmers free to choose what to produce on their land, including products which are still under coupled support, thus increasing market orientation, the single payment should not be conditional on production of any specific product. However, in order to avoid distortions of competition some products should be excluded from production on eligible land*". And the article 51 of the same Regulation specifies that this exclusion concerns permanent crops, fruits and vegetables and potatoes other than for starch. And point 1) above has shown that several other productions are forbidden or capped. 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* "[38].

7) Last, but not least, as the SPS payments cannot be assigned to a particular product, they are attributable to any product of which they lower the sale price below its EU average production cost. Therefore all EU agricultural exports can be sued for dumping, even products which had never received any direct payment as fine wines, as long as their producers get SPS or SAPS payments (Single Area Payment Scheme for 10 of the EU-12 new Member States) for other productions, which applies practically to all EU-27 farms to-day.

A counter argument to prove that the decoupling works is the finding of the US Government Accounts Office (GAO) that, from 2003 to 2011 on average for 17 crops with fixed direct payments (FDP), farmers did not produce on 16.5% of the base acres eligible for direct payments the very products corresponding to these base acres, with large variations from one product to another. Thus cotton farmers have produced only on 59.4% of their base areas for cotton, those of wheat on 71.2%, those of corn on 87.5% while conversely those of soybeans produced on 125.5% of their base acres. However this argument should be put into perspective because most farms are growing many crops receiving fixed direct paymentss and simply choose to grow those

[37] Toni Harmer, *Biofuels subsidies and the law of the WTO*, ICTSD, June 2009, http://ictsd.net/i/publications/50724/.
[38] 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

crops with the most attractive prices and other aids depending on the year, the climate and market conditions, so that one can say that cotton growers received FDP from the base acres of other products.

The EU claims also that the full decoupling of direct payments to cereals (as to other agricultural products) since 2005 and even more since 2010[39] does not allow to know if the payments have not been transferred to other productions because the EU farmers are not required to produce the products, of which cereals, for which they received the direct payments from 2000 to 2002. The statistics belie this assertion: the area of cereals in the total utilized agricultural area remained stable from 2000-02 to 2010-13 and the share of wheat has increased by 0.33% per year in the cereals area (excluding rice) and 2.92% per year in the cereals production[40]. This is understandable because since 2007 the high cereals prices prompted farmers to abandon other productions and even to return grassland to grow more cereals.

A very interesting article by Carlos Gasperin and Ivana Doporto Miguez underscores, with many examples, the cumulative effect of coupled and decoupled subsidies, among which the case of livestock: "*The farmer may receive payments for the livestock – the direct subsidy – and buy feed from the producers, who have been the beneficiaries of subsidies for its production (therefore the price of the feed may be lower than in a situation without this support) – the indirect subsidy. An example of the third type also may be the case of livestock and feed, but from the feed's producer perspective: the feed producer benefits from the support to the feed production – the direct subsidy – and also from increased demand for the producer's product due to the subsidies given to users of this commodity as feed – the indirect subsidies*"[41]. And they go on: "*This analysis may grow in complexity if a farmer produces different goods, where the type of subsidy for each product may differ in the category of box and the degree of the distorting effect. Here, the transference of subsidies is among products of the same farm; that is, part of payments for a product may be transferred for covering costs of another product. Another possible situation of transference is the case of the producer of two commodities – one with subsidies and another without – that shares some inputs, such as land and machinery: payments for the first commodity can be used for paying the cost of the joint inputs, thus reducing production costs of the commodity without subsidies*".

Another evidence of the cumulation effect of different types of subsidies, coupled and decoupled, is given in the US cotton case, where the panel report stated that all types of subsidies should be considered as a whole when appraising their impact on prices: "*Thus, in our price suppression analysis under Article 6.3(c), we examine one effects-related variable – prices – and one subsidized product – upland cotton. To the extent a sufficient nexus with these exists among the subsidies at issue so that their effects manifest themselves collectively, we believe that we may legitimately treat them as a "subsidy" and group them and their effects together. We derive contextual support for this view from Article 6.1 and Annex IV, which referred to the concept of total ad valorem subsidization and envisaged that, "[i]n determining the overall rate of*

[39] From 2006 to 2010 25% of direct payments to cereals of France and Spain were still "coupled", that is were granted only if farmers were actually growing cereals.
[40] *Impact of the West Africa-EU Economic Partnership Agreement on cereals*, Solidarité, May 31, 2015, http://www.solidarite.asso.fr/Papers-2015?debut_documents_joints=10#pagination_documents_joints
[41] Carlos Gasperin and Ivana Doporto Miguez, *Green box subsidies and trade-distorting support: is there a cumulative impact?* In Ricardo Melendez Ortiz, Christophe Bellmann and Jonathan Hepburn, Agricultural subsidies in the WTO green box, Cambridge University Press, 2009, pp.239-57.

subsidization in a given year, subsidies given under different programmes and by different authorities in the territory of a Member shall be aggregated" (paragraph 7.1192)[42].

In reality and in conclusion it is certain that the decoupled payments were a legal artifice to allow the developed countries to notify a maximum of subsidies in the green box so as not to be obliged to cut them had they remained in the amber box. One may also argue that, to the extent that green box subsidies can increase without limit and also benefit to exports, their trade distorting effect, including dumping, are even more important than explicit export subsidies which are capped and must be eliminated.

Let us add that, according to FAO, "*For the vast majority of developing countries the situation was different… their situation was one of inadequate production and insufficient support to raise agricultural productivity and food production in line with their food needs and agricultural potential… If the goal of agricultural policy is to raise agricultural productivity and production … then "coupled" rather than "decoupled" policies are the most effective for providing rapidly the intended results. For example, one dollar spent on coupled policies would produce more outputs than the same dollar spent on decoupled measures*"[43].

IV – Assessing the AMS of the US domestic food aid in 2012

As the debate on the agricultural support to public stocks of cereals for food security purposes is still dividing the WTO Members of developed countries and DCs because of the WTO absurd rules on this issue, time is up to apply the same rule to the US public stocks so that if might change its mind.

For this we have to clarify several misunderstandings about the WTO rules enshrined in the Agreement on Agriculture (AoA) Annex 2 paragraphs 3 and 4. For the readers not familiar with the issue, let us paste these two paragraphs.

The AoA Annex 2 paragraphs 3 and 4

3. Public stockholding for food security purposes[44]
Expenditures (or revenue foregone) in relation to the accumulation and holding of stocks of products which form an integral part of a food security programme identified in national legislation. This may include government aid to private storage of products as part of such a programme.

The volume and accumulation of such stocks shall correspond to predetermined targets related solely to food security. The process of stock accumulation and disposal shall be financially transparent. Food purchases by the government shall be made at current market prices and

42 https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(@Symbol=%20wt/ds267/ab/r*%20not%20rw*)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#

43 FAO, *Some issues relating to food security in the context of the WTO negotiations on agriculture*, Geneva Round Table, 20 July 2001, http://www.fao.org/docrep/005/Y3733E/y3733e02.htm.

44 *For the purposes of paragraph 3 of this Annex, governmental stockholding programmes for food security purposes in developing countries whose operation is transparent and conducted in accordance with officially published objective criteria or guidelines shall be considered to be in conformity with the provisions of this paragraph, including programmes under which stocks of foodstuffs for food security purposes are acquired and released at administered prices, provided that the difference between the acquisition price and the external reference price is accounted for in the AMS.*

sales from food security stocks shall be made at no less than the current domestic market price for the product and quality in question.

4. Domestic food aid[45]

Expenditures (or revenue foregone) in relation to the provision of domestic food aid to sections of the population in need.

Eligibility to receive the food aid shall be subject to clearly-defined criteria related to nutritional objectives. Such aid shall be in the form of direct provision of food to those concerned or the provision of means to allow eligible recipients to buy food either at market or at subsidized prices. Food purchases by the government shall be made at current market prices and the financing and administration of the aid shall be transparent.

In short the debate turns around the obligation to notify in the AMS (aggregate measurement of support) at the WTO "*the difference between the acquisition price and the external reference price*", the "acquisition price" being labelled "administered price" for developing countries (DCs) and the "reference price" being that of the years 1986 to 1988 according to paragraph 9 of the AoA Annex 3. The WTO Draft modalities on agriculture of 6 December 2008 had already proposed to get rid of this requirement and the G-33 of DCs, represented by India, had again asked that this provision should be officially deleted by the WTO ninth Bali Ministerial of December 2013, which agreed only to a "peace clause" allowing India and other DCs running already the same type of public stockholding for food security purposes to continue to provide trade-distorting subsidies to run their programmes, under restrictive conditions, until a permanent solution is agreed at the WTO. Unfortunately the tenth Ministerial in Nairobi of December 2015 did not reach a permanent solution so that the debate is still on-going in Geneva.

First misunderstanding: agricultural products vs food products

Paragraphs 3 et 4 deal with "food" or "foodstuffs", not with "agricultural products", and do not specify that these products are purchased to farmers. Thus the Food Corporation of India (FCI) purchases a significant part of rice to rice mills, not to farmers. In 2012 US domestic food aid was of $114.048 bn (net of administrative expenses) of which $88.858 bn or 77.9% of total under the SNAP (food stamps) programme and $25.190 bn or 22.1% for the other programmes delivered in kind to communities[46]. On this $1.595 bn were purchased directly to farmers by USDA in 2012, of which almost half were already processed (such as meat), the rest being purchased to agro-industries and wholesalers.

Second misunderstanding: "current market prices" vs "administered prices"

See above section II.

[45] *For the purposes of paragraphs 3 and 4 of this Annex, the provision of foodstuffs at subsidized prices with the objective of meeting food requirements of urban and rural poor in developing countries on a regular basis at reasonable prices shall be considered to be in conformity with the provisions of this paragraph.*

[46] http://www.obpa.usda.gov/budsum/FY14budsum.pdf

Third misunderstanding: public stocks are not necessarily managed by a public company

This is not the case even in India where the storage of food distributed to beneficiaries is largely outsourced to private companies. On 30 June 2012 64% of the storage of rice and wheat controlled by the FCI was done in rented warehouses of the private sector, which received also subsidies for the construction of new warehouses[47]. Insofar as it is the State (actually FCI) which manages the outsourcing it seems logical to continue to talk about public stocks.

In the US the USDA's instructions to the States' agencies managing the distribution of food for the School lunch and School breakfast programmes are that "*Recipient agencies are responsible for providing and maintaining proper storage for the commodities received. Commodities may be stored within the confines of the recipient agency's facility or at an outside storage facility…* [with] *an agreement signed by both parties that includes the terms and conditions of the storage arrangement; i.e., cost, temperature requirements, liability*"[48]. As most meals for lunches and breakfasts are prepared by the schools themselves – "*Meals come from a number of different sources, they can come from on-site production, vended meal from a NSLP* [National School Lunch Program] *caterer or in most schools provided by the local school board centralized kitchen*"[49] –, and the State or District school Commission open bids to purchase the raw or processed foods which require storage.

Fourth misunderstanding: no minimum storage time required to speak of public stocks

The AoA says nothing about a minimum duration required to speak of public stocks. For the $25 billion of EU food purchased by USDA and other States' agencies before being distributed in kind to the beneficiaries of food aid programs other than food Stamps (SNAP), mainly in School lunches and breakfasts, the storage time is certainly much shorter than in India but, even in India, a significant portion of rice and wheat is distributed by the FCI and the States after a short storage life.

The USDA's instructions to States agencies force them to "*use all food donated by the USDA within six months of receipt*", which applies both to the raw agricultural products and to those transmitted by the States to agro-industries for further processing[50]. The importance of storage in the school lunch and breakfast programmes is attested, as an example, in the Montgomery county of Maryland: "*The Food and Nutrition Services Center includes a 22,500 square foot warehouse that contains the inventory of products needed to prepare school meals. Through annual, monthly, and weekly production planning and menu development, foods are purchased in bulk quantities, stock is rotated to ensure freshness… The food service warehouse receives, stores, and distributes food and supplies to schools, Montgomery County agencies, non-profit organizations, and school systems in other counties. The warehouse consists of 15,000 square feet of dry storage, 10,000 square feet of frozen food storage, and 1,500 square feet of refrigerated storage*"[51]. On the other hand the 250 000 shops registered to redeem food stamps are obliged to store perishable goods[52].

[47] http://dfpd.nic.in/fcamin/annualreport/AnnualReport201213.pdf
[48] http://web.extension.illinois.edu/smallfarm/downloads/48937.pdf
[49] http://en.wikipedia.org/wiki/National_School_Lunch_Act
[50] http://web.extension.illinois.edu/smallfarm/downloads/48937.pdf
[51] http://www.montgomeryschoolsmd.org/departments/foodserv/about/facilities.shtm#Warehouse
[52] http://www.massresources.org/snap-store-owners-guide.html

Thus the US mobilizes public food stocks even if they are broken up into thousands of points and if they are more often stocks of final food products than of unprocessed agricultural products, but the AoA deals with "foodstuffs" or "food", not with "agricultural products".

<u>Fifth misunderstanding: what is a food security stock?</u>

There is no restrictive definition of what is a food security stock and actions to fight food insecurity occur in several ways. For USDA *"In 2012, 85.5 percent of U.S. households were food secure throughout the year. The remaining 14.5 percent (17.6 million households) were food insecure… Food and nutrition assistance programs of the U.S. Department of Agriculture (USDA) increase food security by providing low-income households access to food, a healthful diet, and nutrition education*"[53]. Amartya Sen has underscored the *entitlement* principle in his famous book *Poverty and Famines: An Essay on Entitlement and Deprivation* (1981), a book in which he argues that famine occurs not only from a lack of food, but from a lack of financial access to food.

The USDA follows implicitly Amartya Sen's conclusions by channeling 22.1% of its domestic food aid through direct delivery of food in kind and 77.9% through food stamps which are a direct financial aid to deprived households. These two alternative ways of fighting food insecurity should lead to consider that this second way of food assistance through financial aid is a kind of food security stock for the deprived beneficiaries so that there is no logical reason to apply to these alternative ways different treatments concerning the AMS notifications. At the end of the day the deprived beneficiaries get the food they need and the US farmers get the same benefit of selling their products either directly to USDA which delivers them to the States' services managing the School lunches and other programmes or to traders and agro-industries from which the authorized shops sell food products in exchange of food stamps.

Furthermore we can invoke the jurisprudence of the WTO Appellate Body on "*payment on the export financed by virtue of governmental action*" in the Dairy Products of Canada case (December 2001 and December 2002) and in the EU Sugar case (April 2005). In the Canada case, the US supported the view of the panel "*which requires governmental action to be "necessary" or "vital" to the transfer of economic resources in determining whether payments are "financed by virtue of governmental action"... Therefore, the Panel's conclusion that processors are receiving payments "financed by virtue of government action" should be upheld*"[54]. For the Appellate Body "*As the Panel observed, we held in the original proceedings that the word "payments" in Article 9.1(c) "encompasses 'payments' made in forms other than money"... It is not contested, in this appeal, that "payments" can include payments-in-kind in Article 9.1(c) of the Agreement on Agriculture*". Therefore the WTO Dispute Settlement Body should consider that the US domestic food aid is chanelled through two US goverment actions: either through payments-in-kind in the non SNAP programmes or through payments in food stamps to the SNAP recipients.

[53] http://www.ers.usda.gov/publications/err-economic-research-report/err155.aspx#.UxXK94Wbv1I

[54] Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products. Recourse to Article 21.5 of the DSU by New Zealand and the United States, WT/DS103/AB/RW, WT/DS113/AB/RW, WTO, Appellate Body, 3 December 2001.

Assessment of the US AMS for important food items of its domestic food aid in 2012

According to the USDA budget there were $88.858 billion of SNAP food aid in FY 2012 which, divided by the 46.609 million individual recipients, implies $1,906 per recipient. However the USDA data base on SNAP shows a total value of only $78.410 billion of which $3.790 billion of administrative costs and $74.619 billion of benefits which gives $1,601 per recipient per year or $133.41 per month[55]. Total costs of the other programmes of in kind food aid – of which school lunch, school breakfast, WIC (women, infants, children) and small others – was of $24.6 billion[56]. We assume that the number of full time equivalent beneficiaries of these other in kind programmes is proportional to the ratio of their total costs: x/46.609 = 26.6/74.6 so that x = 15.370 million. Which gives total full time equivalent beneficiaries of 61.979 million in 2012.

We have now to assess the per capita food consumption of the US food aid recipients, the number of recipients on an annual full time equivalent basis, the value of the 2012 administered prices of several important food aid products and their 1986-88 reference prices, which will allow to assess the product-specific AMSs of these food aid products.

Most of the domestic food aid recipients are poor, which is reflected in their food diets. However, if the recipients of food stamps consume less fruit and vegetables and more "empty calories" such as sugary drinks and saturated fat than higher income beneficiaries, they consume as much beef and pork as the average US consumer and more poultry and eggs, chili con carne and hot dogs[57].

On total US consumers' food purchases of $1,445 billion[58] in 2012, $1,261 billion or 87.25% were from US origin and we assume that this percentage applies also to the food items purchased through the SNAP programme and the other programmes of in kind food aid.

To what extent the average food aid benefit of $1,601 per recipient in 2012 covers his annual food expenditures? The average US cost of food at home for the "thrifty plan" – which serves as the basis for food stamp allotments[59] – was in June 2012 of $2,201 on a year basis per person for household of 2 persons[60], which corresponds to the average number of recipients per SNAP household. This implies that the SNAP benefit of $1,601 per recipient covers 72.74% of his food expenditures – knowing that food stamps can only cover food consumed at home and without alcoholic beverages and hot products –, and we could extend this percentage to the recipients of in kind programmes. Or, put differently, the number of beneficiaries covering all their food needs would be of 45.084 million (72.74% of 61.979 million).

The US annual per capita food consumption per product is available on the USDA ERS data base[61]. As it is given per pound of product we convert it in kg, and then multiply by 45.084 million full-time equivalent consumers. As it would be too much time consuming to trace all food items consumed by the food aid recipients we will concentrate on cereals, meats, eggs and

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55 http://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap
56 http://www.ers.usda.gov/media/1060737/eib-109_single-pages.pdf
57 http://www.ers.usda.gov/amber-waves/2014-november/snap-households-must-balance-multiple-priorities-to-achieve-a-healthful-diet.aspx#.VpyvzSrhDcs; http://www.fns.usda.gov/sites/default/files/ops/NHANES-SNAP07-10.pdf
58 http://www.ers.usda.gov/data-products/food-dollar-series/documentation.aspx
59 http://www.cnpp.usda.gov/sites/default/files/usda_food_plans_cost_of_food/FoodPlans2003AdminReport.pdf
60 http://www.cnpp.usda.gov/sites/default/files/usda_food_plans_cost_of_food/CostofFoodJune2012.pdf
61 http://www.ers.usda.gov/data-products/food-availability-(per-capita)-data-system.aspx

dairy products. The reference prices for 1986-88 are available on the OECD ESP data base for the US as well as farm prices for 2012[62], to which we add the subsidies per tonne[63] to get the administered prices. Even if 12.75% of the US food is of foreign origin, this is not the case for cereals, meats and dairy and eggs for which almost 100% are of domestic origin.

The following table shows that, for these 8 products only – three cereals (wheat flour, corn flour, rice), three meats (beef, pork, poultry), dairy in milk equivalent and eggs – the US should have notified to the WTO $14.880 billion in 2012 for its product-specific AMS linked to its domestic food aid. It is likely that the assessment of the AMS linked to all food products consumed by all US food aid recipients would have reached $20 billion.

US AMS of important items of the domestic food aid programmes in 2012

	2012				$ per tonne			$ million
	Pound	Kg	Million persons	1000 tonnes	Administered price 2012	Reference price 86-88	Admin-reference . prices	AMS
Wheat flour	134,4	60,96	45,084	2748,32	507,3	135,2	372,1	1358,6
Corn flour	33,9	15,38	45,084	693,39	412,6	112,1	300,5	276,8
Rice	20,4	9,25	45,084	417,03	407,6	129,8	277,8	154
Beef	81,5	36,97	45,084	1666,76	5758,2	1522,5	4235,7	9378,6
Pork	58,4	26,49	45,084	1194,28	2265,6	1464,6	801	1270,9
Poultry (chicken+turkey)	110	49,90	45,084	2249,69	1913,2	1084,5	828,7	2476,5
All dairy milk equivalent	613,2	278,15	45,084	12540,11	429,4	176,1	253,3	4219,8
Eggs (retail weight)	32,8	14,88	45,084	670,85	1488	779,1	708,9	631,7
Total				22180				14880

Source: http://www.ers.usda.gov/data-products/food-availability-(per-capita)-data-system.aspx; https://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b; OECD: http://www.oecd.org/fr/tad/politiques-agricoles/estimationsdusoutienauxproducteursetconsommateursbasededonnees.htm#country

We can compare this US AMS of some of its food aid programmes with the Indian AMS of its domestic food aid in rice and wheat for 2011-12 and 2012-13.

The conclusion is clear-cut: there is no competition between the US and Indian AMS of their domestic food aid programmes.

Indian AMS of rice and wheat in 2011-12 and 2012-13

	MSP	Exchange rate*	MSP	1986-88 reference price	MSP-reference price	Procurement	AMS
2011-12	INR/t	INR/$	$/t			1000 tonnes	$ million
Wheat	12850	52.5175	244,68	264	-19,32	28335	0
Paddy	10800	52.5175	205,65				
Rice equivalent	16615,4	52.5175	316,38	262,51	53,87	35041	1887,7
2012-13							
Wheat	13500	58.4235	231,07	264	-32,93		0
Paddy	12500	58.4235	214				
Rice equivalent	19230,7	58.4235	329,16	262,51	66,65	34044	2269

* average of annual exchange rates of 2011 and 2012 and of 2012 and 2013

Source: https://www.irs.gov/individuals/international-taxpayers/yearly-average-currency-exchange-rates; http://dfpd.nic.in/procurement-figures.htm#; https://www.rbi.org.in/scripts/PublicationsView.aspx?id=15815; Domestic support notifications to the WTO

V – Subsidies to agricultural products vs subsidies to agricultural investments and inputs

Agricultural subsidies are mostly understood as subsidies to the agricultural products themselves as defined in annex 1 of the AoA. The AoA mentions four times input subsidies, particularly in

[62] http://www.oecd.org/fr/tad/politiques-agricoles/estimationsdusoutienauxproducteursetconsommateursbasededonnees.htm#country

[63] "*Time is up for Developing countries to sue the US agricultural domestic subsidies*, Solidarité, 14 January 2016 (https://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b/)

article 6.2 and in paragraph 13 of Annex 3. The two other mentions are less important: in paragraph 2.g of Annex 2 – stating that expenditures on agricultural infrastuctures "*shall not include subsidies to inputs or operating costs*" – and paragraph 12.a stating that eligibility for payments under environmental programmes shall be dependent on specific conditions, "*including conditions related to production methods or inputs*".

Paragraph 13 of Annex 3 states clearly that "*Other non-exempt measures, including input subsidies and other measures such as marketing-cost reduction measures*". This means that input subsidies are not exempt from inclusion in the AMS or amber box, i.e. are trade-distorting domestic subsidies subject to reductions.

But it is article the AoA 6.2 which specifies the most that input subsidies are treated differently for developed countries and DCs: "*Investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to low-income or resource-poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures… Domestic support meeting the criteria of this paragraph shall not be required to be included in a Member's calculation of its Current Total AMS*". This provision has always been considered as one of the best special and differential treatment (S&D) granted to DCs and is often called the "develoment box". But an even more important corollary has remained under-noticed: investment subsidies in agriculture of developed countries and input subsidies in developed countries and in medium to high income farmers of DCs shall be notified in their AMS.

5.1 – <u>Investment subsidies</u>

At this point we can add that the concepts of investment and input are not defined in the AoA but, curiously, OECD places investment in the category of "payments based on input use", differentiating them between "variable input use" and "fixed capital formation". As for the Agreement on subsidies and countervailing measures (ASCM), it states that "*Inputs consumed in the production process are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the exported product*". In fact the dividing line between investment subsidies and input subsidies is not clear cut because subsidies to investment can either take the form of a direct payment to cover part of the investment cost or the form of lower interest rates on loans to buy the investment.

Despite this clear provision of article 6.2 on investment subsidies of developed countries, another provision of Annex 2, particularly in paragraph 11 on "*Structural adjustment assistance provided through investment aids*" has opened a large space to allow them to notify almost all their investment subsidies in the green box. Indeed, despite that this paragraph conditions the notification in the green box to "*a producer's operations in response to objectively demonstrated structural disadvantages*", the evidence of the US and EU subsidies to agricultural investments or loans shows that they did not care about this condition.

The US does not notify in the green box a significant amount of "Structural adjustment assistance provided through investment aids" (only $135 million inn 2012, last notified year) and which takes only the form of loans. And, if it notifies some irrigation subsidies in the green box, supposedly "*Based on a "debt financing method." A long term interest rate is applied to the outstanding unpaid balance of capital investment by the Government in irrigation facilities to obtain the subsidy. Irrigators repay the principal but not the interest on the project debt*", the notified amount is ridiculously low (see the paper on US agricultural susbidies from 1995 to

2014). However it is likely that some investments subsidies appear under the heading of "State programs for agriculture ($2.447 bn in 2012) as well as in the Environmental Quality Incentives Program (EQIP) whih is far from being focused only on environment. Even if "*The majority of targeted funds went to beginning farmers, who received over 80 percent of all targeted direct FO* [farm ownership] *and 65 percent of all targeted guaranteed loans over the period*", a GAO report casts some doubt on the socially-disadvantaged status of beginning farmers: "*USDA generally defines a beginning farmer or rancher as one who has operated a farm or ranch for 10 years or less—without regard for age—and who materially and substantially participates in its operation... Another [analysis] indicates that roughly one-third of beginning farms in 2005 had no agricultural output and were likely operated by individuals interested in a rural residential lifestyle*"[64].

Despite official reports that most subsidized farm loans go to small and deprived family farmers, this claim is challenged by Karen Krub of the Farmers' Legal Action Group: "*Smaller farmers continually report being told that they can only get financing if they expand their operations. Farmers wanting relatively small loans can't get them. The Agency and guaranteed lenders seem convinced that only big operations are desirable borrowers, whatever an applicant's actual financial situation. This is particularly a concern when the bigger loans quickly consume available funding… In particular, there are concerns that the "family farm" eligibility requirement is not enforced for guaranteed loans, so that the funds are used up by large-sum borrowers whose eligibility is questionable at best. FSA seems to be making little effort to promote the guaranteed loan program and Interest Assistance Program among lenders in underserved areas, particularly lenders with high numbers of borrowers who would be considered "socially disadvantaged applicants," and helping those lenders to understand and participate in the programs*"[65].

On the other hand OCDE has calculated an average of $238 million from 1995 to 2004 and of $114 million from 2005 to 2011 for "farm operating loans" in the section of "variable input use" and of "farm ownership loans" in the section of "fixed capital formation". The fact that OECD has considered these subsidies as payments to fixed and variable inputs means that they are coupled subsidies of the amber box, which is in line with the AoA article 6.2 according to which input subsidies and investment subsidies are not exempted from the AMS for farmers of developed countries.

In the EU it is even simpler because it notifies all agricultural investment subsidies in the green box as a consequence of financing most of them through the EAFRD (European Agricultural Fund for Rural Development), the second pillar of the CAP (Common agricultural policy) devoted to rural development, assuming that all the subsidies to rural development comply with the conditions of the AoA Annex 2. Thus the €7.338 bn notified to the WTO for the marketing year 2011-12 on "*Structural adjustment assistance provided through investment aids*" encompass the following items: "Aid for farm modernisation; purchase of machinery, equipment, animals, buildings and plantations; aid for young farmers; investment in restructuring of semi-subsistance farming; reallocation of land, diversification of rural activity and quality improvement schemes; preliminary investment in setting up producer groups; grubbing up of vineyards; restructuring of the sugar industry; national restructuring programmes for the cotton sector". The evaluation report of the EAFRD from 2007 to 2013 shows that €25.326 bn or 26.3%

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[64] GAO, *Additional Steps Needed to Demonstrate the Effectiveness of USDA Beginning Farmer Programs*, September 2007 (http://www.gao.gov/new.items/d071130.pdf)

[65] Farmers' legal action group, Inc, *FLAG Testimony*, Senate Committee Hearing on USDA Farmer Loan Programs, June 13, 2006 (http://www.flaginc.org/topics/news/Testimony20060613.pdf)

of all rural development funds of €96.2 bn were devoted to "productive investment support to private beneficiaries" (not counting "Improving the economic value of forests", "Diversification into non-agricultural activities" and "Encouragement of tourism activities"), "modernisation of agricultural holdings" (€7.825 bn), "setting up of young farmers" (€1.991 bn) and "Adding value to agricultural and forestry products" (€2.830 bn) having received the bulk of investment subsidies[66]. And the CAP did not put any ceiling in the subsidies available per farm, except for State aids, so that, with the on-going concentration of farms the larger farms have received much more subsidies, implying that the EU did not comply with the condition that, to be in the green box, the investment subsidies must be given to farmers in "structural disadvantages".

5.2 – <u>Input subsidies</u>

As for input subsidies proper, they have been hugely undernotified by the US and EU. If this is already verified for non agricultural inputs it is even more so for inputs coming from other agricultural products.

5.2.1 – <u>Subsidies to non agricultural inputs</u>

- The EU has never notified any irrigation subsidy although they are quite huge on its 10 million ha of irrigated agricultural area, particularly in Spain (3 million ha), Italy (2.4 million ha), France (1.6 million ha) and Greece (1 million ha). For Spain alone "*subsidies to irrigated agriculture may be between €906 million per year (as this report has evaluated under conservative assumptions), and €1.120 million per year (a 55 per cent per cent subsidy rate—costs not recovered), which is the Ministry's own evaluation*"[67].
- Neither the US nor the EU have notified their tax rebates on agricultural fuel but OECD has done it: OECD has notified the same amount of $2.385 bn for the US from 1986 to 2014 – which renders this value rather suspect – but has notified variable values for the EU, of which €3.064 bn on average from 2005 to 2014
- If the EU has notified some insurance subsidies in its NPS AMS, of which €419 million for 2011-12 (last notified year), the OECD has calculated them at €796 million for 2011 and €800 million for 2012.
- The US and EU have undernotified their subsidies to interests on short term agricultural loans.

The EU12 itself notified in its Schedule of commitments of 1986-88 subsidies to fertilizers (243.5 M ecus), to fuels (92.4 M ecus), to labour and animal feed (14.7 M ecus) even if they were much below the non-products specific de minimis.

And, before joining the EU in 2004, several countries of Eastern Europe notified correctly many input subsidies in their NPS AMS:
- The Czech Republic notified in its NPS AMS many subsidies that the EU puts in its green box: its subsidies to "young starting farmers", improvement of genetic performance of seed and livestock, infection fund, guarantee fund for farmer and forest, irrigation subsidies etc. Its subsidies notified in the NPS AMS were 5 times larger than those notified in its green box[68].
- In Hungary also the NPS AMS was 55% larger than the green box in 2001 and 91% larger in 2002.
- The Slovak republic has done the same at least for 2001.

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[66] http://ec.europa.eu/agriculture/evaluation/rural-development-reports/2014/investment-support-rdp/fulltext_en.pdf
[67] http://www.iisd.org/gsi/sites/default/files/irrig_Spain.pdf
[68] WTO, G/AG/N/CZE/52 of 17 February 2004.

- Slovenia notified in the NPS AMS its tax rebates on agricultural fuels, subsidies to farm investments and subsidies to rural tourism.

5.2.2 – <u>Subsidies to agricultural inputs: the huge US and EU undernotification of feed subsidies</u>

The EU grants blue box subsidies to seeds but, by far the most important under-notifications of the US and EU concern their feed subsidies.

The Congressional Research Service (CRS) has acknowledged that "*program commodities*[69] *such as corn are feed inputs for livestock*"[70]. For OECD also, "*Input subsidies are typically explicit or implicit payments reducing the price paid by farmers for variable inputs (for example… feed)*"[71].

5.2.2.1 – <u>The US and EU notify several feed subsidies in the amber box and the green box</u>

The fact that the US and the EU notify in their AMS some secondary feed subsidies attest clearly that they are perfectly aware that feed subsidies are coupled input subsidies but they have refused to notify their huge subsidies to feed cereals, oilseeds and pulses (COPs):

- The US has notified in the AMS (amber box) subsidies to grazing fees on public lands and to several forage insurance programmes – "forage production", "forage seeding", "pasture rangeland forage" ("rangeland" from 1995 to 2006), "alfalfa seed" since 2002, "grass seed" since 2011 and "annual forage" since 2014) – and it has notified in the green box several disaster payments to livestock, particularly through the Emergency assistance feed program and the Livestock indemnity program.

Apart from disaster programmes whose notification in the green box could be justified to some extent, the new Dairy Producer Margin Protection Program created by the 2014 Farm Bill for 5 years brings clearly large trade-distorting subsidies to milk producers that are protected from severe downturns in the milk price, rising livestock feed prices or a combination of both[72]. The programme supports producer margins, not milk prices, if the margin falls below the insured level. The margin is the gap between the national all-milk price minus the national average feed cost, made of the costs of corn, soybean meal and hay. The MPP-Dairy feed ration consists of 1.0728 bushel of corn, 0.00735 tonnes of soybean meal, and 0.0137 tonnes of alfalfa hay per 100 pounds of milk produced[73]. Clearly the distribution of the margin between lower milk prices and higher feed costs varies with market conditions. According to a simulation of the University of Wisconsin, "*There also appears to be a high probability that the MPP will increase government expenditures compared to current programs… The average increase for N=200 simulations was $2.8 billion, based on a bimodal distribution with more than half of the simulations in the range of $4 billion to $7 billion*"[74].

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[69] For USDA the "program crops" are those benefitting from a federal support: wheat, corn, barley, grain sorghum, oats, rice, cotton, oilseeds, peanut and sugar.
[70] http://wikileaks.org/wiki/CRS:_Potential_Challenges_to_U.S._Farm_Subsidies_in_the_WTO:_A_Brief_Overview,_June_1,_2007
[71] http://www.oecd.org/agriculture/agricultural-policies/1937457.pdf
[72] http://www.agriview.com/news/dairy/how-does-the-margin-protection-program-impact-dairy-producers/article_f57408ae-5f8e-5820-9895-0defc34f2eae.html
[73] http://ageconsearch.umn.edu/bitstream/204274/2/fdd150415.pdf
[74] http://dairymarkets.org/PubPod/Pubs/WP14-03.pdf

- The EU has notified in the amber box (AMS) subsidies to dried fodder and skimmed-milk fed to calves in the EU (even inside the farm which produces the milk and the calves), and several programmes on the restauration of pastures and management of grassland in the rural development pillar (green box).

5.2.2.2 – **The OECD tortuous concept of "excess feed cost"**

The huge US and EU cheating in that area has been largely promoted by the OECD tortuous concept of "excess feed cost" (EFC) used to assess its other ambiguous concept of PSE (producer's support estimate). OECD considers that the livestock producers are penalized as they have to pay their feedstuffs at the domestic prices, higher than the world prices, received by the growers of cereals, oilseeds and pulses ('COPs'): "*The EFC adjustment reduces the value of MPS for livestock commodities. Indeed this occurs because livestock producers pay higher prices for feed crops as a result of price support for these commodities*". Let us underline in passing that about half of the cereals used in the EU feedstuffs are self produced and consumed on the farms of the livestock producers so that, according to OECD, they are the same farmers who, as cereals growers, are exploiting themselves as livestock producers.

In an e-mail of 2004 Catherine Moreddu of OECD replied to me: "*The excess feed cost due to the price support of cereals is deducted from the price support of animal products. Therefore it is not possible to take it into account a second time in input subsidies*". This statement could have been at best debated when the world prices of COPs were low so that this alleged "excess feed cost" – represented by the gap between domestic prices and world prices – was large, for an average of €2.854 bn in the EU from 1986 to 2007, but after that the world prices of cereals have skyrocketed from 2008 to 2014 so that the "excess feed cost" has almost disappeared in the EU PSE. Yet the feed subsidies are still there, hidden for the EU in its alleged fully decoupled SPS (single payment scheme) and SAPS (single area payment scheme), which is the best refutation of this mystifying OECD concept of "excess feed cost". Indeed if the US "excess feed cost" has been very low, at $122 million on average since 1986 – the beginning of OECD calculations – because the US prices of grains have been considered as the "world reference prices", the US being price maker for grains (including cotton but not rice), the story is quite different for all the other countries, particularly the EU as shown in table 18.

Table 2 – The US and EU average "excess feed cost" from 1986 to 2014, in $ and € million

	1986-94	1995-98	1999-2007	1986-2007	2008-14
US: $M	294.5	7.9	0	121.9	0
EU: €M	5344.6	1735.4	879.8	2853.8	87

http://www.oecd.org/tad/agricultural-policies/producerandconsumersupportestimatesdatabase.htm#browsers

If the direct payments to COPs are fully received by the COPs' producers, the producers of animal products get the implicit but real subsidies corresponding to the lower prices they pay for the COPs of US or EU origin, prices that would be much higher in the absence of the subsidies granted to COPs' producers in compensation for the reduction in their administered prices. We have quoted Carlos Gasperin and Ivana Doporto Miguez stating the same.

We can also invoke here the concept of "cross-subsidization" which has been central in the panels and WTO Appellate Body's rulings in the cases of Dairy products of Canada in December 2001 and December 2002 and in the EU sugar case in April 2005. Here the "*cross-subsidization… financed by virtue of governmental action*" can be invoked by the fact that the US (and EU) producers of animal products have been purchasing their feed at below its full production cost in the absence of the feed subsidies received by the producers of feed crops. The OCDE Manual states also that "*Implicit support to agricultural producers may also be provided through concessions on taxes, interest rates, or input prices. Such support usually involves no flow from government funds, but nevertheless represents real transfers*" (not underlined in the text).

So that the part of the COPs devoted to animal feed has conferred product-specific AMSs to the animal products having consumed this subsidized feed. We have shown that, on average from 1995 to 2014, the US feed subsidies have reached $5.313 bn, which were incorporated eventually in dairy products ($587 million), beef ($1.479 bn), hogs ($1.242 bn), poultry and eggs ($1.957 bn). These feed subsidies have acounted on average for 14.4% of the feed costs[75].

But the EU feed subsidies, essentially hidden in the decoupled Single Payment Scheme, are presently much higher than in the US, at €14.740 bn, of which €3.260 bn to beef, €5.360 bn to pig meat, €3.680 bn to poultry and eggs and €2.441 to cow milk. Indeed the direct payment to cereal alone is of about €63 per tonne[76].

Clearly the notification of the subsidies to the part of COPs devoted to feed in the product-specific AMSs of animal products having incorporated the feed has reduced correlatively their AMS notified for other purposes.

VI – The EU actual applied AMS and OTDS in 2013-14

On 8 February 2017 the EU notified to the WTO its agricultural domestic support for the marketing year 2013-14, in which it claims to have an *applied* AMS[77] of €5,971.7 billion (bn) against an *allowed* AMS of €72.378 bn[78] at the end of the Uruguay Round implementation period (July 1995-June 2001) which is also the base period for the reduction commitments of the Doha Round (if it is eventually finalized). These claims are far from the truth if we were to comply with the AoA rules.

Indeed the EU SPS (single payment scheme) and SAPS (single area payment scheme) are coupled subsidies (see Annex 1) which should have been notified in the AMS, for a notified total of €39.267 bn in 2013-14, so that the EU should have notified a current total product-specific (PS) AMS of €45.239 bn instead of €5.972 bn. This amount includes the feed subsidies (see Annex 2) of €14.740 bn (estimate for 2012 which has not changed significantly, being decoupled). These input subsidies to the animal products – meats, eggs and dairy – having consumed the feed, which had a production value of €141.400 bn in 2013-14, have increased the production value of all products with PS AMS. This has an incidence on the allowed total PS de minimis (PSdm) which is 5% of the production value of all agricultural products without PS AMS and not 5% of the whole production value. As it was of €344.702 bn in 2013-14, the value of products without PS AMS was of €197.330 bn and the allowed PSdm was of €9.867 bn even if the current notified PSdm was of €1.055 bn. However the allowed (or bound) PSdm was that defined in the base period (July 1995-June 2001).

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[75] *Time is up for Developing countries to sue the US agricultural domestic subsidies,* Solidarité, January 14, 2016
[76] *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=30#pagination_documents_joints
[77] AMS: aggregate measurement of support or amber box of domestic trade-distorting supports.
[78] These €72.378 bn were updated from the initial €67.159 bn to take into account the enlargement from EU15 to EU28.

In this base period the EU15 average production value of products with PS AMSs was not €122.922 bn as claimed in Canada's simulations of 2006 but €201.323 bn (after taking into account the production value of animal products) so that, given the €222.577 bn of the average whole agricultural production value (VOP), the average value of products without PS AMS collapsed to €21.253 bn and the allowed PSdm, which is 5% of that value, fell at €1.063 bn[79]. Correlatively the average blue box (BB) was reduced to €11.145 bn instead of €20.888 bn because €9.743 bn of direct payments to the COPs used as feed were transferred to the PS AMSs of animal products having consumed this feed. However, once taken into account retroactively for the base period the enlargement to EU27 and the €271.947 bn of the EU27 VOP, the average value of products without PS AMS fell at €54.616 bn and the allowed PSdm, which is 5% of that value, fell at €2.731 bn. REV4 has also foreseen to halve this allowed PSdm at the beginning of the Doha Round implementation, i.e. at €1.366 bn.

As the EU had implicitly agreed in the WTO Draft agricultural modalities of 6 December 2008 (informally called REV4) to cut by 70% its allowed total AMS at the end of the Doha Round implementation period – at least if it gets compensations in the other proposals of REV4 and if the Doha Round is finalized – that is to lower it from €72.378 bn to €21.713 bn, we see that the EU27 current PS AMS of €45.239 bn in 2013-14 was twice (2.1 times) larger.

Against the notified NPS (non-product specific) subsidies of €959 M the actual NPS was in 2013-14 of €11.863 bn, of which €10.863 bn according to the OECD PSE data base – of which: €1.1 bn to agricultural insurance, €3.134 bn to agricultural fuel, €4.402 bn to agricultural investments, €1.932 bn to marketing and promotion and €295 M to agricultural loans – plus a conservative estimate of €1 bn to irrigation as Spanish subsidies alone exceed this amount[80], and there are a lot of irrigation subsidies also in Italy, France, Greece and Portugal. However this NPS de minimis remains below the level of 5% of the whole agricultural production value (VOP) of €344.702 bn (half of the sum for 2013 and 2014), which was of €17.235 bn so that the NPSdm is not included in the total current AMS which remains that of the PS AMS alone.
The EU allowed OTDS (overall trade-distorting domestic support) for the base period 1995-2000 was of €90.496 bn [67.159 (FBTA – final bound total AMS – on 30 June 2001, updated at €72.378 bn for the EU28) + 1.063 (PSdm) + 11.129 (NPSdm) + 11.145 (BB)] instead of €110.305 bn according to Canada's simulations which erred in saying that the total PSdm is 5% of the whole agricultural production value (VOP), contradicting the AoA article 6.5. And as the EU committed in REV4 to cut the OTDS by 80% at the end of the Doha Round implementation period, this would give an allowed OTDS of €19.143 bn (taking €72.378 bn instead of €67.159 bn for the FBTA).

As the EU notified blue box subsidies were of €2.664 bn in 2013-14 its current OTDS was of €60.821 bn: €45.239 bn (PS AMS) + €1.055 bn (PS dm) + €11.863 bn (NPSdm) + €2.664 bn (blue box), 3.2 times more than the allowed OTDS at the end of the Doha Round implementation period.

For how long will WTO Members tolerate such EU massive under-notifications while it claims to support the WTO as a rules-based international institution? It is understandable that the EU, even more so than the United States, remains on an inflexible stance in the WTO negotiations on domestic agricultural support, which have been under way since the beginning of 2016 and

[79] See *Solidarité's comments on the State of play of DDA negotiations* prepared for the meeting of the Advisory Group on International Aspects of Agriculture of 28 January 2013: https://www.sol-asso.fr/articles-de-2013/
[80] "*Subsidies to irrigated agriculture may be between €906 million per year and €1.120 million per year*": http://www.iisd.org/gsi/sites/default/files/irrig_Spain.pdf

which are supposed to lead to a result for the Ministerial conference of December 2017 in Buenos-Aires. At the same time, the EU refuses to treat domestic agricultural subsidies in all its bilateral free trade agreements, particularly in the EPAs (Economic Partnership Agreements) with the ACP countries, on the pretext that this issue is negotiated only at the WTO!

<u>VII – Domestic subsidies vs export subsidies</u>

Despite that the EU and US are no longer using export subsidies, Roberto Azevedo's speech at the MC10 closing ceremony was off the point and deceptive: "*The elimination of agricultural export subsidies is particularly significant... due to the enormous distorting potential of these subsidies for domestic production and trade. 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*"[81].

Yet the WTO Appellate Body has ruled four times – in the US Cotton case in March 2005, the EU Sugar case in April 2005 and twice in the Dairy products of Canada case in December 2001 and December 2002 – that domestic subsidies, including the alleged "decoupled" ones, should be considered as export subsidies in assessing dumping. Thus, on 3 December 2001 in the Dairy products of Canada case: "*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. Broadly stated, domestic support provisions of that Agreement, coupled with high levels of tariff protection, allow extensive support to producers, as compared with the limitations imposed through the export subsidies disciplines. Consequently, if domestic support could be used, without limit, to provide support for exports, It would undermine the benefits intended to accrue through a WTO Member's export subsidy commitments*" (paragraph 91), and that "*the potential for WTO Members to export their agricultural production is preserved, provided that any export-destined sales by a producer at below the total cost of production are not financed by virtue of governmental action*" (paragraph 92).

The Appellate Body confirmed the 20 December 2002, in the same case, that "*If governmental action in support of the domestic market could be applied to subsidize export sales, without respecting the commitments Members made to limit the level of export subsidies, the value of these commitments would be undermined. Article 9.1(c) addresses this possibility by bringing, in some circumstances, governmental action in the domestic market within the scope of the "export subsidies" disciplines of Article 3.3* (paragraph 148) ".

The Appellate Body confirmed the 3 March 2005, in the cotton case, that the effect of all US direct payments to its cotton producers – marketing loans, fixed direct payments, contracyclical payments – "*is significant price suppression within the meaning of Article 6.3(c) of the SCM Agreement*", in other words that these domestic subsidies have had a dumping effect.

Daniel Sumner concluded: "*As the first WTO dispute over domestic farm subsidy programs, the rulings in the upland cotton case have clarified the agreement provisions for current and future negotiations. The rulings also suggest that other subsidy policies of the United States and other WTO members may also be out of compliance, and that additional cases may be brought*"[82].

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[81] https://www.wto.org/english/news_e/spra_e/spra108_e.htm
[82] Daniel A. Sumner, *U.S. Farm Policy and WTO Compliance*, http://aic.ucdavis.edu/research/farmbill07/aeibriefs/20070515_sumnerWTOfinal.pdf

In the EU sugar case, the Appellate Body observed that "*C sugar is being exported at below its total average cost of production and that this occurs due to the subsidies provided under the EC sugar regime for C sugar, which subsidies arise from the profits made by sugar producers on sales of A and B sugar*" and "*upholds the Panel's findings… that… the production of C sugar receives a "payment on the export financed by virtue of governmental action", within the meaning of Article 9.1(c) of the Agreement on Agriculture, in the form of transfers of financial resources through cross-subsidization resulting from the operation of the EC sugar regime*"[83].
It is clear that, for the importing country, the detrimental impact on its farmers and agro-industries is exactly the same when the subsidy of the exporting country is granted at the export level or upstream at the farm level. It is particularly amazing that the WTO and its Members cannot understand this ! Either they are not intelligent or they are liars: it is up to them to choose!

The problem is that the WTO Members do not recognize a legal value of precedent to the panels' and Appellate Body's rulings when they adjudicate on similar cases. Otherwise the EU Sugar case would not have been necessary since it was almost the same, albeit for a different product, that the Dairy products of Canada case. During the plenary session of the WTO Public Forum of 30 October 2015 J. Berthelot asked to the Representative of the Appellate Body, Ms Yuejiao Chang, one of the contributors, if she could confirm these Appellate Body's rulings. She confirmed them implicitly stating that the WTO Members are not obliged to recognize a lega value of precedent to the panels' and Appellate Body's rulings but that the members of the panels and Appellate Body are obliged to consider these rulings when they adjudicate on similar cases[84].

VIII – <u>Export subsidies to raw agricultural products vs export subsidies to processed products</u>

The AoA article 11 takes into account the export subsidies to agricultural raw (or basic) products incorporated into the exported processed products: "*In no case may the per-unit subsidy paid on an incorporated agricultural primary product exceed the per-unit export subsidy that would be payable on exports of the primary product as such*". And the paragraph 4 of Annex 4 states that "*Equivalent measurements of support shall be calculated on the amount of subsidy as close as practicable to the point of first sale of the basic agricultural product concerned. Measures directed at agricultural processors shall be included to the extent that such measures benefit the producers of the basic agricultural products*".

Although the AoA considers as traded agricultural products all products of Chapters I to XXIV of the Harmonized System of products classification, developed countries, particularly the US here, have notified to the WTO very few subsidies to basic products incorporated in exported processed products. The US did so only in their Schedule of commitments for 1986 to 1988 for the subsidies to the wheat equivalent of exported wheat flour and semolina and the barley equivalent of exported malt barley but they did not notify any export subsidy for the basic products since 1995 with the exception of cotton from 2003 to 2006. As for the EU it notified only subsidies to wheat flour equivalent but not for semolina or malt barley. The EU has nevertheless notified export subsidies to so-called "Non-Annex 1"[85] products incorporated in processed products – cereals, rice, sugar, milk, butter and eggs –, knowing that the export

[83] https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(@Symbol=%20wt/ds266/ab/r*%20not%20rw*)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#
[84] https://www.wto.org/english/forums_e/public_forum15_e/webcasting_e.htm
[85] Annex 1 of the EU Treaty relates to agricultural products subject to a common market organization.

subsidies of these incorporated products were capped at €415 million. In addition, specific refunds were granted to cereals incorporated in the exported whisky.

In fact this cap was largely diverted by recourse to imports of products covered under the customs regime of inward processing (IP) allowing to import duty-free basic products which are then re-exported after processing. The use of this regime has been very large in the EU, particularly for imports of raw tobacco, then re-exported as cigarettes. Thus the EU annual average imports under the IP regime from 2006 to 2009 were €2.540 bn or 3.3% of the total agricultural imports of €76.416 bn and were re-exported for €7.539 bn of proceesd products, or 10.5% of the total agricultural exports of €71.485 bn. The actual agricultural exports have therefore been of 63.946 bn since exports of €7.539 bn have not been processed from EU agricultural products. Clearly the EU food industry processes many imported agricultural products but these are either subject to customs duties, or are imported at preferential low duties or even duty free, of which tropical products. But the IP regime is different as it concerns products subject to nonzero duties if they are not re-exported.

One wonders why the AoA is not obliged to notify all subsidies to basic agricultural products incorporated in exported processed products, not only for those used to feed the exported animal products but also for example for cereals, meat and cotton. Solidarité has calculated that, taking into account all the EU cereals incorporated in the exported cereal products in 2015, except in feedstuffs – flour, semolina, groats, pellets, malt, starch, gluten, various preparations (pasta, couscous, bread, rusks, biscuits...), beer, whisky, gin and vodka –, the EU had exported and therefore subsidized 60 Mt of cereals (after 52.4 Mt in 2014), of which 46.2 Mt of raw cereals and 13.7 Mt of processed cereals, the subsidies having risen from €3,510 bn in 2014 to €4,002 bn in 2015 and the dumping rate of raw cereals from 31.7% to 32.5% given the lower FOB prices. And total cereals exports to West Africa have risen from 3 Mt in 2014 (of which 2.1 Mt for raw cereals) to 3.6 Mt in 2015 (of which 2.7 Mt for raw cereals), the subsidies rising from €198 M to €238 M.

We will also make a partial calculation of the subsidies to US cotton incorporated in clothing exports.

IX – <u>Green box subsidies vs gold box subsidies</u>

The WTO rules, namely article 2 of the Agreement on subsidies and countervailing measures (ASCM), take only into account the current "specific" subsidies, here agricultural subsidies. That is why Solidarité has proposed to put in a "gold box" all types of past and present non agricultural supports and the past agricultural supports[86].

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 (not an exhaustive list):

- efficient transport and information infrastructures (including immaterial ones);
- general education and research;
- wealthy consumers with an ever increasing purchasing power, able to pay fair prices to farmers, even if these prices are too low; contrary to the situation of poor DCs where the consumers' purchasing power is very low and is often reducing;

[86] *The green box: a black box which hides the gold box*, Solidarité, December 2005, https://www.wto.org/english/forums_e/ngo_e/posp55_e.htm

- democratic States able to enforce commercial contracts, to fight corruption, particularly in collecting tariffs and preventing the illicit extortion of money by the police and army, etc.
- the plundering of DCs resources during the slave and colonial periods;
- neo-colonial exploitation ever since through the DCs indebtedness vis-à-vis the developed countries and the international insttiautions under their control, and through unfair free-trade agreements;
- high import protection on agricultural products and infant industries for decades;
- health and pensions of farmers financed by society at large, at least in the EU;
- low interest rates, particularly on agriculture, low inflation rates and depreciation of their currencies.

All in all, 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.

It is why, even if the WTO would decide stricter criteria for the green box, the developed countries would still be able to increase their gold box subsidies to maintain their farmers' competitiveness. For instance, instead of maintaining specific agricultural institutions to sustain farmers, they would have just to integrate these institutions in broader institutions so that the specific nature of the subsidies would disappear.
Another example is that of the public financing of transport infrastructures which are not specific to agricultural products but which are highly beneficial to them: "*The Mississippi River is a vital artery for grain shippers moving product from the Midwest to the Gulf of Mexico. For many years, the grain industry has been vocal about the need to update some of the river's nearly 100-year-old locks and dams… "We need to make more investment to maintain what we have and to upgrade it," said Mike Toohey, president of the Waterways Council, Inc. "The world is coming to the breadbasket of America for its food stocks and we need to be ready"… Another reason to invest in Mississippi River infrastructure is the expected increase in traffic from the expansion of the Panama Canal… and will lead to a 12% decrease in the cost of transporting grain from the U.S. Corn belt to Asia… The upgrades planned for U.S. waterways and railways will help preserve one of the United States' most competitive advantages to foreign buyers — affordable transportation costs… Congress' passage of the Waterways Resources Reform and Development Act* [in 2014] *recognized the importance of maintaining vital waterways like the Mississippi River*"[87].

X – Domestic agricultural subsidies vs import protection

One of the powerful arms used by developed countries, particularly the US and EU, to consolidate their agricultural competitiveness was to impose to all countries, especially to DCs, a reduction of import protection in the AoA as in bilateral trade agreements, knowing that they were the only ones able to maintain and if necessary increase the level of their domestic subsidies. Domestic subsidies have clearly an import-substitution effect.

Indeed the Framework Agreement of the WTO Council of 31 July 2004 underscored with reason that "*The reforms in all three pillars form an interconnected whole and must be approached in a balanced and equitable manner*".

[87] http://www.feedandgrain.com/magazine/u.s.-invests-in-key-rail-and-river-infrastructure

As most DCs cannot subsidize their so many farmers at a significant level this WTO Council statement implies that they – as well as all other WTO Members – should be allowed to raise their applied import duty per tonne by adding to it the subsidy per tonne of the exporting country even if the result exceeds their bound duty. And this should be automatic without requiring that WTO Members would have to engage in the complex and lengthy procedure of antidumping duties or countervailing measures. For that to happen each WTO Member should be obliged to notify to the WTO its subsidy per tonne (domestic subsidy plus export subsidy when it exists) per tariff line as it has to notify already its import duties per tariff line.

XI – Commercial dumping vs monetary, fiscal, social and environnemental dumping

The WTO deals only with commercial dumping and ignores monetary, fiscal, social or environmental dumping practices, which are often the basis of commercial dumping. The basic idea is to justify anti-dumping duties on imports from countries practicing these kinds of dumping.

11.1 – Monetary dumping has mainly been practiced by the US because of the unique privilege of the dollar allowing this country to borrow in its own currency and be little impacted by the depreciation of the dollar, which strengthens the competitiveness of its products, because it can import most agricultural commodities and many industrial products without penalty since they are denominated in dollars. The US has always used its monetary policy as an arm to maintain its competitiveness, one of the most used beggar-thy-neighbor policies. Remember the G-10 Rome meetings held in late 1971 where Connally, the Secretary Treasury of R. Reagan, proclaimed to his astonished counterparts, "*The dollar is our currency, but it's your problem*"[88].

Indirectly it also allows DCs which try to peg their currency to the dollar to practice indirectly the same dumping, including for agricultural products. However, in the House of Representatives' hearing of 3 June 2015 to review Agricultural subsidies in foreign countries, David Scott, Representative of Georgia, ask to one of the invited speakers: "*I would like to get your take on this issue and the impact of currency manipulation. China is notorious in currency manipulation*". This type of assertion is long overdue as stated is a recent article: "*There has been a consensus among economists that the Chinese currency has been undervalued by about a 15 percent – 40 percent for many years. However, the International Monetary Fund (IMF) recently stated that the Chinese currency is no longer undervalued against the US dollar, considering the renminbi's recent appreciation… According to Standard Chartered Bank, the usage of renminbi has expanded by 21-fold since 2010, and the currency has appreciated by 25 percent against the US dollar over the past 10 years*"[89]. An USDA report of August 2013 on "Growth and Evolution in China's Agricultural Support Policies" confirmed: "*From 2007 to 2012, China more than doubled price supports for rice, and the wheat support price was raised 70 percent. These increases in U.S.-dollar value reflect 42- to 86-percent increases in Chinese-currency prices plus the effects of a 20-percent appreciation in the currency against the U.S. dollar*"[90].

However monetary dumping is difficult to handle because the sharp depreciation of the dollar against the euro until recently can be attributed to an absurdly restrictive policy of the ECB (European Central Bank), refusing to cut interest rates because obsessed (due to its statutes incorporated in the EU Treaty) by the fear of inflation at the expense of economic growth. The

[88] http://www.ipe.com/the-dollar-is-our-currency-but-its-your-problem/25599.fullarticle
[89]
[90] http://agriculture.house.gov/uploadedfiles/6.3.15_agriculture_subsidies_in_foreign_countries.pdf

new policy of the ECB since 2015, and even the lowering to zero of its bank refinancing interest rate on March 10, 2016, should logically depreciate a little more the euro vis-à-vis the dollar.

11.2 – <u>Fiscal dumping</u> is practiced primarily by multinational companies of developed countries which locate their headquarters in countries – particularly offshore tax havens – where taxes, of which on corporate income, are the lowest, or which minimize their taxes through transfer pricing of their internal trade between entities or subsidiaries of the same company established in different countries.

Following an EU complaint against the US "Tax Treatment for Foreign Sales Corporations" (FSC), the WTO Appellate Body has ruled on 24 February 24 2000 that the US tax cuts on FSC-related income are export subsidies. The EU was authorized to apply a huge trade retaliation, of $4.043 bn a year, as increased import duties. For the agricultural products benefitting also of these tax cuts, the EU had to show that the cuts had allowed the US to exceed the levels of reduction of their export subsidies notified to the WTO in 1994 in their Schedule of commitments. The EU has shown that the US exported 89.3 Mt of wheat from 1995 to 1997 while their authorized ceilings were only of 57.3 Mt. Although, according to the panel's conclusions of 8 October 1999 "*The United States did not contest that the FSC subsidies were actually made available to the FSC who engaged in the export marketing of any agricultural product and they do not dispute either that one FSC that meets the relevant requirements is therefore entitled under the relevant provisions of the US tax code to benefit from FSC subsidies*"[91], the EU has put forward evidence for only wheat, among agricultural products. However the Appellate Body held on 24 February 24 2000, "*that the United States acted inconsistently with its obligations under Articles 10:1 and 8 of the Agreement on Agriculture by applying export subsidies, through the FSC measures, in a manner that causes, or threatens to lead to, circumvention of export subsidies commitments in terms of registered and non-registered agricultural products on their list*". Tobacco is the agricultural product that benefited the most from these tax cuts, with more than $100 million per year[92].

This proceeding has experienced new developments until 2006. First the US new law on the Extraterritorial Income (ETI), replacing that of the FSC, was again sued by the EU at the WTO in 2002 and the EU started to apply a surcharge of 5% on $4 bn of US exports on March 1, 2004, rates risen to 14% on $2.4 bn of US exports in December 2004, which could have provide additional duties of $330 million per year. However the EU suspended in January 2005 the additional duties, following the implementation of the new American Jobs Creation Act of October 2004. But the EU considered immediately that this new law perpetuated the export subsidies related to tax cuts, which was confirmed by a new panel of 30 September 2005, its findings being challenged by the US which have appealed on 24 November 2005, but the Appellate Body confirmed on 13 February 2006 the panel's conclusions. Finally the Congress has removed on 11 May 2006 the main controversial provision of the new law and the EU decided to bury the hatchet on this issue. It remains to be seen the extent to which the US has actually removed these tax benefits to exports from tax havens, estimated between 15% and 30% of the taxes normally due. We should be aware that these tax benefits, at least until May 2006, have penalized all other countries even if it is only the EU that had complained.

[91] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds108_e.htm
[92] http://www.oecd-ilibrary.org/docserver/download/5k3w8fb9pw8q.pdf?expires=1457958575&id=id&accname=guest&checksum=1233930D6D270D5FB7767AFD92A2D03F

11.3 – Social dumping is the employment of labor, often seasonal, underpaid in relation to social standards of the host countries that close their eyes. It is very widespread in developed and developing countries, particularly in the agricultural sector. This is the case of Mexican seasonal workers, often undocumented (except for the season), for the collection of fruits and vegetables in California (among others). This is also the case in the EU, for long mostly seasonal workers from the Maghreb, especially also for collection of fruits and vegetables in Andalusia but also in the south of France, these workers being increasingly replaced by Western EU citizens accepting lower wages, including for work in slaughterhouses, one of the sources of the improved competitiveness of German meat compared to that of France. This social dumping is obviously also widespread in DCs, which relates to the controversial issue of ILO's core labor standards, of which on child labor, whether young Indian children who break bricks, those of Mali and Burkina Faso in cocoa plantations of Ivory Coast or even of slave labour in some parts of Brazil, to name just a few examples. If we cannot expect that DCs can apply social standards comparable to those in developed countries, at least they should respect minimum human rights, and not to leave unpunished the massacres of peasant activists who oppose land grabbing projects, for example in the Amazon[93].

11.4 – Environmental dumping is not either a specificity of DCs since it is also very common in developed countries, in many forms. In DCs, one must distinguish between the poorest and the richest countries. In the former, the loss of soil fertility and biodiversity is largely due to the impoverishment of farmers getting too low agricultural prices to enable them to invest in agricultural practices respecting or improving soil fertility and they are forced to "eat" their soil capital and environment (deforestation, excessive shortening of the length of fallow, etc.) This is largely a consequence of the dumping of Northern agricultural products made possible by the pressures exerted by the developed countries, via the IMF and the World Bank, to reduce their import protection but also through bilateral free trade agreements with the US and EU, in particular tthrough the EPAs (economic partnership agreements between the EU and ACP countries). In the latter like Brazil, exploitation of the environment is due to an industrial and export-oriented type of of large scale agriculture that externalizes environmental damage (excessive deforestation of the Amazon for cattle ranching, for example), fault of political will to enforce environmental protection (Brazilian companies, including those involve in agriculture, get large tax reductions when they invest in the Amazon).

But environmental dumping in DCs is largely caused by the developed countries', primarily the EU, imports of feed (mainly soybean) and biofuels, allegedly to reduce their greenhouse gas (GHG) emissions, leading to the deforestation of the Amazon to produce soy or of Indonesia, Malaysia and Colombia to produce palm oil. In fact the North is exporting its pollution to the South. Take the case of the "clean development mechanism" (CDM) which allows developed countries to meet their GHG emission quotas, in investing in CDM projects to reduce GHG emissions in DCs. In return, the developed countries get carbon credits corresponding to a negotiated currency in CO_2-equivalent units (CERs for Units of Certified Emission Reductions) whch will allow them to fulfill their objectives or even to sell these credits in the market. But the record from 2004 to 2015 is negative: the developed countries have simply transferred their pollution quotas to a handful of DCs where China has cornered 49% of the projects, India 20.6% and Brazil 4.4% without a real control of the merits of these projects[94]. Large dams alone have

93 http://www.theguardian.com/environment/andes-to-the-amazon/2016/feb/16/never-seen-it-so-bad-violence-and-impunity-in-brazils-amazon

94 http://www.blogueaqlpa.com/2015/12/10/mecanisme-de-developpement-propre-mdp-en-quete-dun-nouveau-modele/

accounted for a third of projects despite their very negative social and environmental impacts. The same can be said of the negative impact of REDD (Reducing Emissions from Deforestation and Forest Degradation) and even of the Climate Smart Agriculture (CSA) which plans to also apply REDD programme principles to agricultural land by compensating Northern investors with carbon credits for their contributions to CSA projects in DCs[95]. If the US did not participate in the CDM mechanism because it did not sign the Kyoto protocol, which expired in 2012, it participates in the REDD programme set up in 2010 following the Copenhagen Accord they signed in December 2009.

XII – Agricultural subsidies of developed countries vs those of developing countries

As all other WTO agreements the AoA has several specific provisions for DCs in the three pilars of market access, domestic support and export competition, to take into account the special and differential treatment (S&D) DCs are entitled. Although the AoA rules have been essentially negotiated between the US and EU during the Uruguay Round, and although they offered up to December 2008 – in the Chair's Draft of agricultural modalities of 6 December 2008, called REV4 – to reduce drastically their allowed agricultural trade-distorting subsidies at the end of the Doha Round implementation period, if the DCs would open more their border to the US and EU exports of non agricultural products and services, they have changed their minds in the last five years.

12.1 – The US and EU could not comply with the REV4 proposals

In the REV4 Draft the US and EU were expected to cut their Final Bound Total AMS (FBTA) – of 31 December 2000 for the US and 30 June 2001 for the EU – by respectively 60% and 70% at the end of the Doha Round implementation period, and to cut by respectively 70% and 80% their OTDS (Overall Trade-Distorting Domestic Support), which is the sum of FBTA + product-specific *de minimis* (PSdm) + non-product specific *de minimis* (NPSdm) plus the blue box (BB). Furthermore the developed countries would have to halve, from 5% to 2.5%, the level of their two allowed *de minimis* on the first day of the implementation period. DCs would have to cut their FBTA (only for the 10 DCs[96] which notified an AMS in their Schedule of commitments, the other ones having only *de minimis* ceilings of 10%), OTDS and *de minimis* (for DCs with notified AMS only) by two thirds of what the developed countries would have to do. Let us undescore that these REV4 proposals for the US and EU were not imposed on them as they were simply endorsing the US and EU offers of 12 and 10 October 2005[97].

The US has changed its mind since 2011 with the explosion of its crop insurance subsidies and also of its non-product specific *de minimis* (NPSdm). The fact that the US decided to notify its crop insurance subsidies in the PSdm for 2012 would not change anything for the reduction of the OTDS since this will reduce both *de minimis* contemplated in REV4. Furthermore the 2014 Farm Bill having eliminated the decoupled fixed direct payments, all domestic subsidies will have to be notified in the AMS, which is expected to rise in a context of decreasing farm prices given the rise in the levels of loan rates and target prices as well as the new programmes of Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC).

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[95] http://www.ejolt.org/2015/09/refocusing-resistance-climate-justice-coping-coping-beyond-paris/
[96] Argentina, Brazil, Colombia, South Korea, Mexico, Morocco, South Africa, Thailand, Tunisia, Venezuela.
[97] *The empty promise of the European Commission to make huge cuts in agricultural supports*, Solidarité, October 30, 2005; *The impossible promise of the U.S. to make huge cuts in agricultural supports*, Solidarité, October 14, 2015.

Indeed official economists do not hide that this new Farm Bill could not comply with REV4:
- For Randy Schnepf of the Congressional Research Service (CRS) "*if market prices were to decline substantially below support levels for an extended period, then outlays could escalate rapidly and threaten to exceed the proposed spending limits for the OTDS, amber box, and de minimis exclusion*"[98].
- For Joseph W. Glauber, Chief economist of USDA, and Patrick Westhoff, former USDA officer and present Director of FAPRI: "*The new policies under the 2014 farm bill are very likely to exceed some WTO rules proposed in the Doha Round negotiations*"[99].
- For David Orden, senior research fellow at IFPRI, and Carl Zulauf of Ohio State University, "*Expenditures under the 2014 farm bill are more likely to exceed several of the proposed limits of the tighter rules and commitments on developed country domestic support under discussion in the December 2008 Doha Round negotiations… The 2014 farm bill exacerbates efforts to achieve tighter multilateral disciplines on agricultural support and protection*"[100].
- For Vincent H. Smith, of Montana State University, "*if prices for crops like wheat and corn fall to levels recently forecasted by the United States Department of Agriculture in February, 2014, then subsidies on the new programs could be more than double the average amounts paid out annually under the programs they will replace… If… the US were required to report agricultural insurance subsidies as product specific, then the de minimis criterion would not apply to those subsidies. The reason is that, for most crops, those subsidies amount to more than four percent of the value of the crop's total production, considerably more than the 2.5 percent de minimis exemption limit*"[101].
- For Colin A. Carter, of the University of California, "*On both counts (larger and more distortive subsidies), the 2014 Farm Bill fails the test of being consistent with WTO objectives… The provisions of the 2014 Farm Bill, which chart a diametrically opposite path, may well have cost the United States any credibility in future agricultural trade negotiations in the Doha round*"[102]. And he concludes: "*Various aspects of the 2014 Farm Bill send a message to trading partners that U.S. agriculture is becoming more protectionist. Furthermore, the new farm bill indicates that international trade commitments have little or no influence over U.S. farm policy choices*".

12.2 – The strong pressures of the US agri-food federations to denounce the agricultural supports of emerging countries

In that context US agri-food federations have taken an offensive stance, through reports and hearings in the Congress to show that emerging countries are now granting higher and more trade-distorting subsidies than the US and EU:
- A DTB Associates' report of 2011 on "Domestic support and WTO Obligations in Key Developing Countries"[103] (India, Brazil, Turkey and Thailand), prepared for several US grains organizations, of which U.S. Wheat Associate, focused on many crops – rice, wheat, cotton, corn, soybean, rapeseed, sugarcane – as well as on input subsidies.

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98 https://www.hsdl.org/?view&did=759014
99 http://ageconsearch.umn.edu/bitstream/197159/2/Session%203%20-%20Glauber%20Westhoff.pdf
100 https://www.aeaweb.org/aea/2015conference/program/retrieve.php?pdfid=262
101 http://www.ictsd.org/sites/default/files/research/The%202014%20Agricultural%20Act.pdf
102 http://www.choicesmagazine.org/choices-magazine/theme-articles/3rd-quarter-2014/some-trade-implications-of-the-2014-agricultural-act
103 http://www.uswheat.org/studiesAnalysis/doc/7EA62298232B834685257C1500595F70/$File/Domestic%20support%20in%20advanced%20developing%20countries.Final.pdf?OpenElement#

- A letter written by 31 US farmers' associations on 24 October 2013 to Ambassador Mike Froman, the USTR Representative, and Thomas Vilsack, the US Secretary on agriculture, against the G-33 food security proposal before the IXth WTO ministerial conferene of Bali.
- A second DTB Associates' report of November 2014[104] updated the 2011 study, and also prepared for US Wheat Associates and other US grains associations, added China but restricted the study to three products: rice, wheat and corn.
- A study of June 2015 ("Analyzing the Impact of Brazilian, Chinese, Indian and Turkish Wheat Support Policies on U.S. and Global Wheat Production, Trade and Prices"[105]) by two researchers of Iowa State University prepared for the U.S. Wheat Associates and focusing on the wheat policies of Brazil, China, India and Turkey.
- Two hearings of the House of Representatives of 3 June and 21 October 2015 (see section 1.1 above).

Unfortunately these reports are full of errors. As Solidarité has already made comments of the two DTB reports[106] and of the Iowa University report[107], we will limit ourselves to some examples of basic issues.

12.2.1 – <u>The issue of the currency to use in agricultural notifications</u>

In the HR hearing of 3 June 2015, Craig Thorn, a Partner in the firm DTB Associates and a former U.S. agricultural trade negotiator, repeated what he already wrote twice in the DTB reports of 2011 and November 2014: "*In the specific case of India, that is a very clear case of the effects of currency manipulation on a very specific aspect of WTO disciplines. India fixed its reference price that it used in the calculation of its aggregate measure of support at the end of the Uruguay Round based on the exchange rate between the Rupee and the dollar that existed back in the period 1986 to 1988. At that time, the Rupee was not convertible. It was a government-mandated exchange rate. When they later started moving toward convertibility and submitted their first notifications to WTO, they converted that reference price into dollars. They used the old exchange rate, which meant that their reference prices were more than double the reference prices that you saw from most other countries. The practical effect of that is that it reduced the level of support from their price support policies when they do their calculations*". In the DTB report of 2011 he wrote: "*When it submitted its first domestic support notification in 1998, India converted the support prices to U.S. dollars using an exchange rate of Rs. 13.4 = $1, which is identified in the notifications as the average official exchange rate during the 1986/88 base period (see G/AG/N/IND/1). The result was fixed external reference prices that were in many cases more than twice as high as prices used by other countries… The rate in 1995, the period covered by the first notification, was Rs. 32 = $1*". And the DTB report of November 2014 repeated: "*When it submitted its first domestic support notification in 1998, India converted the support prices to U.S. dollars using an exchange rate of Rs. 13.4 = $1, which is identified in the notifications as the average official exchange rate during the 1986/88 base period*".

[104] http://www.dtbassociates.com/docs/DomesticSupportStudy11-2014.pdf
[105] http://www.uswheat.org/studiesAnalysis/doc/0B9AD0B87740C1D485257EC0006B2F8F/$File/Domestic%20Support%20Econometric%20Study%20-%20FULL.pdf?OpenElement#
[106] *Solidarité's comments on DTB's report on domestic support in key emerging countries*, 7 January 2012, http://www.solidarite.asso.fr/Papers-2011; *Solidarité's comments on DTB's report Agricultural subsidies in key developing countries*, November 2014 Update, December 2014.
[107] *Jacques Berthelot' comments on Analyzing the Impact of Brazilian, Chinese, Indian and Turkish Wheat Support Policies on U.S. and Global Wheat Production, Trade and Pri*ces, Solidarité, October 26, 2015, http://www.solidarite.asso.fr/Papers-2015

How Crain Thorn can he repeat such a huge lie? At the bottom of pages 3, 4 and 6 of India's notification of 17 June 1998 for the marketing year 1995-96 it is well written three times: "Exchange rate: US$1 = Re 33.447 (1995-96)". This average exchange rate is confirmed when you check several USDA GAIN reports on India over 1995-96. For example the Gain report of 31 May 1996 writes: "*Farm prices for wheat in most producing areas are around rs. 4,200 ($124)/mt well above the government established procurement price of rs. 3,800 ($112)/mt, which has resulted in lower government wheat procurement under price support operation*"[108].

These data correspond to an exchange rate of Rs 33.929. If, instead of having notified its rice imports in Rs in 1986-88, at Rs 3528/tonne, India notified them at the then exchange rate of Rs 13.4 = $1, they would have been notified at $263.28/tonne, which is the FERP (fixed external reference price) to use in the notifications from 1995/96 on. In fact India used a FERP of $262.51 all the years up to 2010-11 (last notified year) which is quite close to $263.28, a figure surely more accurate because the exchange rate was surely with more than one digit. The same can be said for wheat: the Rs 3548/t notified in the Schedule from 1986/87 to 1988/89 corresponded to a FERP price of $264.776/t, very close to the $264.0 notified up to 2010/11.

Now what to thing about Craig Thorn's statement that Indian "*reference prices were more than double the reference prices that you saw from most other countries*"? If you check Pakistan's FERP – which, like India, notified in Pakistani Rupees in its Schedule from 1986/86 to 1988/89, before notifying also in US$ from 1995/96 on –, you see that it was of $312.6 for rice ($203 for coarse common rice, that we convert in milled rice at the milling rate of 65%) – so higher than the Indian FERP –, even if its wheat FERP was of only $175. As for Bangladesh its FERP are of $233.43 for rice and $169 for wheat. But as we do not know the likely differences in qualities of Indian, Pakistani and Bangladesh rice or wheat imports we cannot draw any precise conclusion but at least this does not confirm Craig Thorn's statement that Indian "*reference prices were more than double the reference prices that you saw from most other countries*".

By the way nothing in the AoA prevents to change the currency used for notification, provided it is "*expressed in total monetary value terms*" (AoA Annex 3 paragraph 6). That is why one wonders why the author is criticizing so much the fact for India to have notified the FERPs of rice and wheat in Rs, before notifying its rice and wheat AMSs in $ from 1995-96 on. Other countries did the same, such as Pakistan which notified in $ as soon also as 1995 although its FERP was in Pakistani rupees. Russia has had the ability to notify both in rouble and $. Lars Brink acknowledges that "*The notification requirements (WTO 1995) are not explicit about what currency to use for reporting support… For a country without a Bound Total AMS* [which is the case for India]*… it might be possible… to notify support in the currency of its choice as long as the values of production on which any de minimis claims are based are reported in the same currency as the AMSs*"[109]. Indeed paragraph 49 of the first draft of “modalities” circulated to WTO Members on 12 February 2003 provided: "*Inflation 49. Scheduled Total AMS commitments may be expressed in national currency, a foreign currency or a basket of currencies. In case a foreign currency or a basket of currencies is used and the final bound Total AMS in a Member's Schedule is expressed in national currency (or another foreign currency) and a participant wants to avail itself of this option, the final bound Total AMS shall be converted using the average exchange rate(s) as reported by the IMF for the year at issue*"[110].

108 http://apps.fas.usda.gov/scriptsw/attacherep/display_gedes_report.asp?Rep_ID=10006504
109 http://www.solidarite.asso.fr/Papers-2014?debut_documents_joints=20#pagination_documents_joints
110 http://www.wto.org/english/tratop_e/agric_e/negoti_mod2stdraft_e.htm#domesticsupport

The truth is that the 1986-88 reference prices were "abnormally low because seriously distorted" by the US and EU massive dumping on wheat and the US dumping on rice. The very low world wheat prices were the result of the US and EU combined massive dumping through several channels: explicit export subsidies (of the US export enhancement program, EEP), 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 beer to whisky, an without taking into accound the wheat processed into animal feed –, we can understand their huge responsibility in depressing the world prices of wheat and wheat flour, denominated in US dollar, in that base period[111]. 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 EEP of $38.9 million ($21 per tonne)[112]. 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*"[113]. 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*"[114]. 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.

According to Mathew Shane of USDA, "*The sharp decline in the dollar after 1985 reversed this process, and world prices for agricultural commodities fell. U.S. exports began to expand rapidly. Simultaneously, lower U.S. loan rates under the Food Security Act of 1985 went into effect and magnified the effects of the exchange rate. Lower prices caused great hardship in countries like Australia, Canada, Argentina, and the European Community*"[115]. More precisely, "*The real U.S. agricultural exchange rate declined 23 percent between the end of 1985 and 1988. A sustained change of that magnitude would lead to a greater than 23-percent increase in U.S. agricultural exports, according to the CGE model… The exchange rate depreciation between the end of 1985 and 1988 accounted for 25 to 35 percent of the increase observed in U.S. farm exports. The long run effects of a sustained increase would be even greater*". In particular the dollar exchange rate linked to wheat trade has depreciated by 30% from 1986 to 1988, and we can assume that the figure were about the same for rice. Therefore, without this large dollar depreciation in that period, the US subsidies to rice and wheat would have been much larger, likely 30% larger, which justifies even more to update the Indian CIF prices of 1986-88 based on the US comprehensive export prices of rice and wheat incorporating its domestic and export subsidies.

Looking for evidence to confirm Craig Thorn's statement we found that the Phillipines' notifications were not done accurately as it has notified in its Schedule for 1986-88 a rice

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111 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

112 http://www.card.iastate.edu/publications/dbs/pdffiles/89wp46.pdf

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

114 http://ageconsearch.umn.edu/bitstream/30095/1/21020117.pdf

115 http://www.ntis.gov/search/product.aspx?ABBR=ERSAIB585

administered price of 3,500 pesos/t and a FERP of 4,560 pesos/t, but this was derived from the Thai FOB price of rice of $217.49/t converted in pesos at the exchange rate of 20.96 pesos/$.

Having used the Thai FOB price in $ instead of its CIF price in $, it could have made the whole notification in $. But it has continued to make its notifications from 1995 to 2010 based on the same FERP of 4,560 pesos but with current administered prices still made in pesos which rose from 14,000 pesos in 1995 to 15,380 pesos from 2005 to 2007, 23,850 pesos in 2008 and 26,150 pesos in 2009 and 2010. Even if it notified only the procured quantity of rice which was a very small percentage of total production, the fact that it did not take into account the peso depreciation to the $ has had the effect to raise its AMS. In the following table 3 we have compared its notifications in 1986-88, 1995 and from 2005 to 2010 (last notified year) with that it should have made in $, beginning by converting in $ its administered price, calculating the difference between the administered price and the FERP in $ before multiplying by the procured quantity. Comparing with its notifications of total AMS in pesos, then converted in dollars, shows that it could have saved $140 million of rice AMS from 2005 to 2010.

Table 3 – The biased Phillipines' notifications of its rice's MPS from 1986-88 to 2010

	1986/88	1995	2005	2006	2007	2008	2009	2010
FERP in pesos/t	4560	4560	4560	4560	4560	4560	4560	4560
Admin. price peso/t	3500	14000	15380	15380	15380	23850	26150	26150
Admin. price-FERP	-1060	9440	10820	10820	10820	19290	21590	21590
Procured prod°: t	419587	27251	49400	48147	21174	443977	309019	326337
AMS pesos million	444,8	257,3	534,5	521	229,1	8564,3	6607	7045,6
Exchange rate peso/$	20,960	25,7144	55,0855	51,3143	46,1484	44,4746	47,6372	45,1097
AMS $ million	21,2	10,006	9,703	10,153	4,964	192,556	138,694	156,188
Rice prod°: t	5797472	6851416	9422910	9962359	10556126	10930106	10573171	10252007
Procured/prod°: %	7,2%	0,4%	0,5%	0,5%	0,2%	4,1%	2,9%	3,2%
Adminis. price in $/t	167	544,4	279,2	299,7	333,3	536,3	548,9	579,7
FERP in $/t	217,49	217,49	217,49	217,49	217,49	217,49	217,49	217,49
Adm. price-FERP $/t	-50,49	326,91	61,71	82,21	115,81	318,81	331,41	362,21
AMS $ million	-21,2	8,909	3,048	3,958	2,452	141,544	102,412	118,203
Gap in AMS	-21,2	-1,097	-6,655	-6,195	-2,512	-51,012	-36,282	-37,985

Furthermore the Phillipines made a mistake in notifying its rice AMS for 1986-88: instead of substracting the FERP from the administered prices, it made the reverse and found a positive AMS when it was in fact negative.

12.2.2 – <u>The issue of eligible production</u>

Craig Thorn's stated at the HR Hearing in June 2015: "*When they have submitted notifications… they would normally be required under the WTO methodology to use in the calculation 100 percent of production. They are using instead just quantities purchased under the government program. You don't have to know very much about price programs to know that the support really benefits all producers. It benefits every ton, it doesn't only affect the tonnage purchased… The methodology that we used in the calculations we did in our paper is the same methodology the United States has used in all of its notifications to calculate*". Two comments to this statement:

- Craig Thorn, like most Western trade economists, repeat that this issue has been fixed once and for all in the WTO Appellate Body case on Korean beef. But is is a wrong analysis of the evidence around this case. The Appellate Body stated: "*In establishing its program for future market price support, a government is able to define and to limit "eligible" production… In the present case, Korea, in effect, declared the quantity of "eligible production" when it announced in January, 1997, that it would purchase 500 head per day of Hanwoo cattle above 500 kg within the 27*

January to 31 December 1997 period, which would be 170,000 head of cattle for the 1997 calendar year. That figure, under paragraph 8 of Annex 3, accordingly constitutes the quantity of "eligible production"[116]. Now, according to Annex 9 of the Panel report the number of Hanwoo cattle heads slaughtered was of 887,400 in 1997 and 1023,200 in 1998[117] and an Australian report added that the average weight of the slaughtered cattle was 551 kg in 1997 and 559 kg in 1998[118]. Which implies that the eligible production for 1997 has represented only 19.2% of the actual production, so that the argument that eligible production should be total production does not hold.

- But the US has always under-notified hugely its dairy market price support (MPS), in two periods and under different forms: from 1986-88 to 2007 and from 2008 up to now.

First for 1986-88 and from 1995 to 2007 the US has used a world reference price of milk of 159.826 $/t in its Schedules of commitments for 1986-88 against 113.333 $/t recorded in the OECD PSE data base. The US claims that this 159.826 $/t was derived from the average CIF international prices of butter and non-fat dry milk for 1986 ($98.6069), 1987 ($156.439) and 1988 ($224.432), but this was contradictory with the international prices used by the other countries. And this 159.826 $/t price of milk was largely the result of using the CIF price of butter, 64% higher than its FOB price it should have used as it was a net exporter of butter. For an average US production of milk of 65.151 million tonnes (Mt) in 1986-88 the under-notified milk AMS was of $3.029 bn. As this under-notification has continued up to 2007 (before the US Farm Bill of 2008 limited the MPS to butter, non-fat dry milk and cheddar cheese), the total under-notified AMS has reached an amazing $46.413 bn from 1995 to 2007, and an average annual AMS of $3.570 bn.

Then the US has under-notified its dairy MPS since 2008 because the AoA rules do not permit to change the way to compute the dairy AMS from the administered price of the whole milk production made in the US Schedule of commitments for 1986-88 to the sum of the administered prices of butter, cheddar cheese and non-fat dry milk decided by the 2008 Farm Bill. Thus the US notification for the dairy MPS fell from $5.011 bn in 2007 to $2.871 bn on average from 2008 to 2012, implying a total under-notification of $10.700 bn. 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 i* Craig Thorn *ncorporated by reference in Part IV of the Member's Schedule*".
- Paragraph 1 of article 3 states: "*The domestic support and export subsidy commitments in Part IV of each Member's Schedule constitute commitments limiting subsidization and are hereby made an integral part of GATT 1994*".
- Paragraph 5 of Annex 3 states: "*5. The AMS calculated as outlined below for the base period shall constitute the base level for the implementation of the reduction commitment on domestic support*".

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[116] *Korea – Measures affecting imports of fresh, chilled and frozen beef*, Report of the Appellate Body, WT/DS169/AB/R, 11 December 2000, http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds161_e.htm.
[117]
https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=%28%40Symbol%3d+wt%2fds161%2f*%29&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true
[118] Jeong, M-K., Sheales, T., Gleeson, T. and McDonald, D., *Korean and Australian Beef: Markets and Prospects for Trade*, ABARE *e*Report 04.22.2004, http://adl.brs.gov.au/data/warehouse/pe_abarebrs99001130/PC12872.pdf

Notifying only these three dairy products implies that about 50% of US milk production was no longer notified between 2008 and 2014, contradicting Craig Thorn's statement that the WTO requires "*to use in the calculation 100 percent of production*". In fact the WTO methodology only requires to use the same methodology used in the 1986-88 Schedule of commitments. The EU and Canada notified then only butter and skimmed milk powder, and have continued to do so without contravening the AoA rules.

Notifying only the procured quantity is perfectly in line with the WTO rules. DTB should read FAO's comments on this issue: "*There is insufficient clarity in the agreement whether the quantity eligible to receive the administered price is total production, or only the marketed surplus which is actually sold in the market, or the quantity which is actually procured by the government through the price support mechanisms. Some member countries such as Pakistan have used quantity procured, whereas other countries have used total production. The logic of using total production in these computations is that the government-designated agency is bound to buy whatever is brought to the market at the pre-announced support price. However, there is a limit on this because the quantity brought to the market will not be more than the marketable surplus given that self-consumption accounts for a very large share of the output of basic foodstuffs in a country like India.*"[119]. In another report explaining the URAA rules, FAO takes a more explicit position: "*Market price support for a product = (administered price at the farm gate - fixed external reference price) x eligible production, where:fixed external reference price = c.i.f. unit value for 1986-88; eligible production = quantity of production receiving the administered price*""[120].

So that the main huge error in the DTB's calculations of the AMS of China, India, Brazil, Turkey and Thailand for rice, wheat and corn lies in its assumption that the AMS applies to the whole production instead on its procured part. An USDA report of August 2013 on "Growth and evolution in China's agricultural support policies" writes that "*According to Chinese Government statistics, 6 percent of grain produced* [cereals, soybeans, and dry weight of tubers] *was purchased at support prices during 2012*"[121], first because 43% were self-consumed by farmers and then because "*In past years, Chinese farmers traveled to centralized depots, where they waited in line to sell their grain. But now numerous traders and brokers go door to door in villages offering to purchase grain from farmers… Farmers overwhelmingly prefer to sell to these traders to avoid the cost and inconvenience of transporting grain to depots. Farmers engaged in off-farm jobs, in particular, have little time to devote to marketing their grain… Xu, Xi, and Zhang (2010) suggested that farmers failed to benefit fully from the price support because they sold corn below the minimum price to traders who subsequently sold the corn to state-owned depots. They also reported some instances of merchants who transported grain from other regions to sell to state-owned depots at the minimum price*". Another reason of the low share of public procurement is that "*Rice prices received by producers exceeded the minimum in most years, suggesting that market prices exceeded the minimum*".

According to another article of 20 March 2016, "*China's rice market is actually not as large as production statistics make it appear because most rice produced is kept on farms for farmers's own use. According to Grain Bureau statistics for the 2014/15 market year, only 86.5 mmt of rough rice was purchased by all types of enterprises (see table), less than half of the National Bureau of Statistics' 206.5-mmt estimate of rice production (the difference reflects rice used by farmers themselves and possibly an overestimate of*

[119] http://www.fao.org/DOCREP/005/Y4632E/y4632e0j.htm
[120] N. Hag Elamin, *Domestic support measures*, http://www.fao.org/docrep/003/x7353e/x7353e01.htm
[121] http://www.ers.usda.gov/media/1156829/err153.pdf

production by the Statistics Bureau). Of the 86.5 mmt rice purchased, 32.3 mmt was stockpiled in reserves under the minimum price program, so it has not entered the market. Deducting the rice stored in reserves an adding the 5 mmt of old rice auctioned during 2015 leaves 59.2 mmt of Chinese rice that actually entered the market, about a fourth of the crop"[122]. Which also implies that only 15.6% of rice production was procured at the minimum support price. The USDA GAIN report of 8 May 2015 states that "*Industry contacts report that japonica rice purchases under the program totaled 10.5 million tons in MY 2014/15, or 20.36 percent of total output*"[123].

<u>Evidence from the other emerging countries</u>:

- Indian wheat: "“*For self-consumption purposes, the farmers retain around 48% of their production and hence it is not entered into the total production figures of the country*”"[124].

- Turkish wheat and corn: on average from 2006 to 2010 the TMO (State grain board) has purchased 5.3% of wheat production per year and 5.4% of corn, the main reason being that TMO purchases are only triggered when market prices are low, which has not been the case very often. And the percentage of wheat procured at the MSP by the TMO was limited to 5.7% of production on average from 2011-12 to 2013-14[125] and the USDA GAIN report of 30 March 2015 writes: "*Due to significant decreases in harvest figures, the Turkish Grain Board (TMO) did not announce wheat intervention prices for MY2014*"[126]. Another reason is the importance of self-consumption which, according to the TMO 2010 Report, accounts for 34%: “*Approximately 30-35 million tons grain is produced in our country every year and 20-23 million tons of this production is supplied to the market while remaining part is used for the local consumption*”[127]. An OECD report underlines that “*Minimum purchase prices exist for cereals, sugar, tobacco and tea… However, as these prices are generally not announced until well after the planting date – and sometimes after the delivery date – market uncertainty is accentuated and farmers' production plans can be frustrated*”[128]. This was confirmed in another previous report: “*Cereal prices in Turkey are supported by an intervention price system, tariffs, and export subsidies. Intervention prices vary from year to year according to the political situation and the phase of the election cycle. Their impact on market prices, however, has declined in recent years, as the quantity bought by the Turkish Grain Board declined significantly. Moreover, payments were often delayed so that, due to inflation, the real value of the payments was far below that announced at the time of harvest*”[129]. How can we trust in the DTB intellectual rigour when, after writing that "*Although Turkey maintains a price support program for rice, TMO has not made*

[122] *China's rice smuggling estimated at 2 million tons*, Sunday March 20, 2016, http://dimsums.blogspot.fr/

[123] http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Grain%20and%20Feed%20Annual_Beijing_China%20-%20Peoples%20Republic%20of_5-11-2015.pdf

[124] http://www.crnindia.com/commodity/wheat.html

[125] http://www.tmo.gov.tr/Upload/Document/istatistikler/2013_ing_tables/1wheatayp.pd

[126] http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Grain%20and%20Feed%20Annual_Ankara_Turkey_3-30-2015.pdf

[127] http://www.world-grain.com/News/News%20Home/Features/2011/12/Turkish%20Grain%20Board%20restructuring.aspx?p=1

[128] OECD, *Evolution of agricultural policy reforms in Turkey*, 21 September 2011, http://www.keepeek.com/Digital-Asset-Management/oecd/agriculture-and-food/evaluation-of-agricultural-policy-reforms-in-turkey/evolution-of-agricultural-policies-in-turkey_9789264113220-4-en

[129] Enno-Burghard Weitzel, Ahmet Bayaner, *Spatial price transmission on the Turkish wheat market – An initial application*, 2006 http://www.iamo.de/forum2006/files/Contributed_papers/25-Weitzel-Final-1.pdf

purchases under the program for several years due to high domestic prices" – TMO procured 1,000 tonnes in 2008 (procurement rate of 0.0013%), 11,000 tonnes in 2009 (procurement rate of 1,5%) and 0 tonne in 2010 –, it has nevertheless extended the announced price support for 2010-11 to the whole production of 750,000 tonnes.

- Brazil wheat and rice: The percentage of wheat having benefited from the AGF minimum price has been of 32.7% in 2007-08 and of 0.4% in 2008-09, according to André Nassar[130]. And, according to CONAB statistics, this percentage has been of 3.5% in 2010-11. As for paddy rice the percentage of production having benefited from the AGF minimum price was nil in 2007-08 and of 5.3% in 2008-09 according to André Nassar and, according to CONAB last statistics, of 2.9% in 2010-11. The USDA GAIN report of 21 March 2014 wrote: "*Overall, 2013 was a year of relatively small government support for the commercialization and exportation of agricultural commodities. With the exception of corn, <u>prices remained above the minimum price needed to trigger government intervention</u>. Wheat producers requested support when they were unable to sell domestic wheat at the prices they anticipated during planting, but <u>the domestic prices never fell below the minimum</u>* [not underlined in the text]"[131].

- Thai rice: according to the Socio-economic survey of 2007, 32.6% of the rice production is self-consumed by farmers[132], which represented 37.8% of the rice production value. Besides a significant part of rice farmers are net buyers of rice.

12.2.3 – <u>Emerging countries' support prices are higher than those of the US</u>

The DTB report of November 2014 presents the following table 4 comparing the US support prices of wheat, corn and rice with those of China, India, Brazil, Turkey and Thailand, showing that the US prices in $ are clearly the lowest, except for corn and rice where Brazil prices are the lowest.

Table 4 – The support prices of wheat, corn and rice in 5 emerging countries in DTB report 2014

Country	Wheat	Corn	Long-grain Rice
China	$384*	$361	$438
India	$232	$217	$332
Brazil	$231*	$128	$224
Turkey	$351	$310	$648
Thailand	NA	NA	$450[2/]
U.S.[1/]	$201	$146	$308

1/ Reference Prices, Agricultural Act of 2014
2/ Support price under the Paddy Pledging Scheme
* 2014/15 support price levels

A first remark is that it is logical that cereals support prices, and farmgate prices more generally, are higher in emerging countries than in the US for at least 3 reasons:

[130] André Nassar, *Brazil*, pp. 223-276 in David Orden, David Blandford and Tim Josling, *WTO disciplines on agricultural support*, Cambridge University Press, 2011.

[131] http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Grain%20and%20Feed%20Annual_Brasilia_Brazil_3-21-2014.pdf

[132] Somporn Isvilanonda, *Food Security in Thailand: Status, Rural Poor Vulnerability, and Some Policy Options*, Faculty of Economics, Kasetsart University, 2011-07-14, http://www.agnet.org/library.php?func=view&id=20110726102632&type_id=4

1) Huge disparity in the arable land[133] per active agricultural worker in 2016[134]: from 0.28 ha in China to 0.52 ha in India, 0.83 ha in Thailand, 3.12 ha in Turkey, 5.58 ha in Brazil and 75.17 ha in the US, i.e. the US active farm worker has 268.5 more land than his Chinese colleague, 144.6 more than his Indian colleague, 90.6 more than his Thai colleague, 24.1 times more than his Turkish colleague and 13.5 times more than his Brazilian colleague. Indeed "*Agricultural population of India grew by a whopping 50 per cent between 1980 and 2011, the highest for any country during this period, followed by China with 33 per cent, while that of the United States dropped by 37 per cent as a result of large scale mechanisation*"[135].

2) Large disparity in average yields per ha from 2010 to 2013: the US are always the highest except for wheat as it is much less irrigated than in China.

Table 5 – Yields of rice, wheat and corn in 5 emerging countries and US: average 2010-13 and (2013)

Kg per ha	Rice paddy	Wheat	Corn
Brazil	4704 (5006)	2597 (2588)	4710 (5258)
China	6683 (6725)	4906 (5051)	5813 (6175)
India	3583 (3660)	3040 (3154)	2506 (2452)
Thailand	3043 (3135)	1053 (1250)	4313 (4418)
Turkey	8308 (8138)	2657 (2837)	7680 (8939)
USA	8108 (8624)	3086 (3172)	9136 (9970)

Source: FAOSTAT

3) Despite these higher and increasing support prices in emerging countries, they generally cannot keep pace with the faster increasing production costs.
For China, the Government press conference of 3 Febrary 2015 stated that "*First, the production cost keeps surging. There are long-existing causes behind this. China has a large rural population, but the agricultural business every rural family conducts is on a small scale. It's difficult for them to reduce costs. There are also new factors, such as rises in investment and workers' wages, and the transfer of rural land use rights, which concerns a lot of people. Although the transfer of rural land use rights can enlarge the scale of farm operation, it will increase the cost of land use*"[136]. This was confirmed by USDA in 2013: "*While subsidies increased rapidly, they were outpaced by increases in production costs. According to China's National Development and Reform Commission (NDRC) data, average cash expenses rose during 2003-11 by $190 to $220 per acre for corn, wheat, and long-grain rice, and expenses rose by nearly $400 per acre for short-grain rice. These increases in production expenses far exceeded the increase in subsidy payments during that period. Most discussion of farm support in China focuses on increases in cash expenses for inputs like fertilizer and fuel, but the increase in production costs was more broadly based. NDRC's estimates show that the implicit cost of unpaid family labor was the dominant component of farm production costs*"[137]. And the USDA GAIN report of 8 May 2015 adds:"*Policy makers fear, given rising production costs, farmers will switch to non-grain crops or let their land lie fallow if the government does not maintain high prices. Small inefficient farms and rising land and labor costs have caused the cost of production of many crops in China to rise above international price levels. The average farm*

[133] https://en.wikipedia.org/wiki/Land_use_statistics_by_country
[134] http://knoema.fr/FAOPOPS2014Feb/population-statistics-annual-time-series-march-2016?country=1000470-china-taiwan-province-of
[135] http://articles.economictimes.indiatimes.com/2014-02-27/news/47739698_1_population-china-and-india-mechanisation
[136] http://english.agri.gov.cn/hottopics/cpc/201502/t20150204_24960.htm
[137] http://ageconsearch.umn.edu/bitstream/155385/2/err153.pdf

size in China is only around 1.5 acres, compared to over 400 acres in the United States. Farm labor costs are expected to rise further as workers continue to move to cities in search of higher wages and the rural labor pool tightens. Heavy use and dependence on chemical fertilizers and pesticides has also driven up production costs"[138].

The high level of support prices does not imply a large percentage of procured grains as we quoted above that "*According to Chinese Government statistics, 6 percent of grain produced* [cereals, soybeans, and dry weight of tubers] *was purchased at support prices during 201*2". The following table shows the evolution of the support prices, the fixed external reference prices (FERP) notified in China's Schedule of commitments of 1996-98, the public procurement and corresponding AMS of wheat and rice and wheat notified to the WTO from 2005 to 2010 (last notified year). One could wonder how is it that the notified procurement volumes have been so low in comparison with the huge and exploding volumes of reserves. The answer is to be found in the WTO Secretariat report of the Trade Policy Review of China of 2014: "*Grain reserves for corn, rice, soya beans and wheat are maintained by central and local authorities to ensure food security. According to the authorities, the purchase of the reserves is carried out by appointed enterprises at "market" prices*"[139].

Table 6 –China's wheat and rice MPP, FERP, procurement and AMS from 2005 to 2014

RMB/tonne	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Wheat MPP		1410	1410	1490	1700	1760	1930	2040	2240	2360
Wheat FERP		1698	1698	1698	1698	1698	1698	1698	1698	1698
Wheat MPP-FERP		-288	-288	-208	2	62	232	342	542	662
Procured volume: 1000 t		40688	28925	41740	3986	2311				
Wheat AMS		-11718	-8330	-8,682	1	0				
Rice procurement and AMS										
Rice MPP	1420	1420	1500	1520	1847	1967				
Rice FERP	2659	2659	2659	2659	2659	2659	2659	2659	2659	2659
Rice MPP-FERP										
Procured volume: 1000 t	11930	9213	484	1854	847	0				10500
Rice AMS: RMB M	-14781	-11415	-561	-2112	-69	0				

Source: China's notifications to the WTO

12.2.4 – **<u>Comparing the percentage of subsidies in farmers' revenues in US and emerging DCs</u>**

Craig Thorn: "*I am looking at China's AMS, aggregate measure of support, for corn… It looks like our calculation for China puts support at about 80 percent of value production*".

We can add in the same Hearing the statement of Darren Hudson, of Texas Tech University:
"*Mr. LAMALFA's question to Dr. Hudson: five percent of U.S. farm income is derived through subsidies. Were you the one that said that? Okay. And so when we are looking at numbers that were mentioned earlier, like in China, when rice basically went 100 percent, 71 percent on wheat, 50 percent on corn, those are pretty big, distorting numbers. What percentage of income are you seeing is actually derived outside of those subsidies on Chinese crops… What percent of farm income is from those subsidies?*
Dr. HUDSON. I don't have a direct estimate sitting in front of me, but in terms of, for example, let's just use Chinese cotton. You know, 50 or 60 percent of the revenue that they derive in that— the people that receive that subsidy in Xinjiang which is about ⅔ of the cotton production in China is not from the market. It is from a direct check from the government.
Mr. LAMALFA. Versus the United States' round number five percent?

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139 https://www.wto.org/english/tratop_e/tpr_e/s300_e.pdf

Dr. HUDSON. Five, yes".

According to the OECD data for China in 2014 total subsidies of the PSE (at renminbi or RMB 1807.6 bn) minus market price support (MPS) of RBM 1470.7 bn, i.e. RMB 330.9 bn – because MPS does not represent subsidies but import duties paid by consumers, not by the government – was of 3.85% of the whole agricultural production value (of RMB 8584.8 bn)[140]. And in 2010, corresponding to the last notification to the WTO, the PSE-MPS represented 4.14% of the total agricultural production value. But China AMS was nil because, on the one hand product-specific (PS) subsidies for a total of RMB 239.2 bn were *de minimis* and, on the other hand, the input subsidies of RMB 95.7 bn were notified also *de minimis* in the NPS AMS. We know that input subsidies and investment subsidies to resource-poor farmers of DCs are normally exempted from reduction of the AMS when notified in the "development box" of the AoA article 6.2. Precisely in China the average farm has only 0.61 ha of arable land and permanent crop and 2.58 ha of agricultural land (including pasture), and 93% of farms have less than 1 ha so that most input subsidies could have been exempted from reduction commitments. Unfortunately, as China acceded to the WTO only in December 2001, it was obliged to renounce to the "development box" and its *de minimis* ceiling has been fixed at 8.5% instead of 10% for DCs[141]. So that it could face problems of exceeding this ceiling in the future with the rise of input subsidies. On the other hand, although China runs a large programme of public stocks for food security purpose, of RMB 77 bn in 2010, it was notified in the green box because the stocks are purchased and released at market prices. According to the WTO Trade Policy Review of China in 2014 "*During 2007-12, the minimum prices for rice and wheat were increased each year on the basis of the growing costs of agricultural production. If the "market" price goes below the established support level, the Government, through the state-owned company Sinograin, purchases grain*"[142]. In any case should they be purchased at subsidized prices in the future, the external reference prices would be those of 1996-98, not of 1986-88, so that the AMS content of the subsidies would not be so large. China grants also decoupled direct payments, for RMB 16.7 bn in 2010: decoupled as the payment is a flat rate per unit of land planted at around RMB 208 per ha or about $33.6/ha. All the PS AMS notified in 2010 were *de minimis* as being much below 8.5% of their production values: RMB 5.99 bn for corn (2.32%), RMB 5 bn for cotton (4.63%), RMB 4.5 bn for wheat (2%), RMB 1.4 for rice (0,37%) and RMB 1 bn for soybean (1.72%).

So that the testimony of Craig Thorn and Darren Hudson at the HR hearing are totally unfounded. They preferred to ignore totally the AoA rules, even if they were stricter for China than for the other DCs. The Chairman of the hearing took their testimony at face value: "*The United States Government needs to stand up to the countries that fail to abide by their commitments, and, second, we need strong U.S. farm policy as a modest response to foreign competitors that cheat… The key to getting stalled multilateral efforts like the Doha Development Agenda back on track is recognizing the disproportionate impact trade-distorting subsidies from large, emerging economies are having on world prices… The United States must defend its farmers in a world where trade manipulation and distortions by foreign governments often come at the expense of America's farmers*".

[140] If we added the GSSE collective subsidies we would arrive at 6.32% but most GSSE subsidies are notified in the green box.
[141] http://www.gao.gov/new.items/d034.pdf
[142] https://www.wto.org/english/tratop_e/tpr_e/s300_e.pdf

12.2.5 – The outrageous Iowa's study on the impact of the 5 ECs' wheat policies on the US

This report of two researchers of Iowa State University on behalf of U.S. Wheat Associates is clearly outrageous and full of illogical calculations.

It is outrageous because it states that the fact for emerging countries (ECs) to subsidize their wheat and to support it at the border is a trade-distortion that suppresses the world price and reduces the potential US wheat exports. I quote extensively the summary: "*This study examines the impact of the removal of price supports and input subsidies for wheat in the key advanced developing countries of Brazil, China, India and Turkey on production, trade and prices in both the U.S. and globally… Wheat support policies and trade barriers encourage domestic production and depress world prices. Removal of these policies, which reduces domestic wheat prices, results in a reduction in domestic production and an increase in domestic consumption. Lower supply and increased demand lead to higher global prices of wheat, which tend to benefit wheat-exporting countries… Brazilian wheat production declines by 1%, domestic use increases by 1% and net imports increase by 3%...This prompts a small increase in production and exports of wheat from the U.S… Removal of domestic support for wheat in China has significant impacts… leads to an increase in net imports by over 6 million metric tons. As a result, world wheat price increases by over 2.4%. The U.S… net exports… increase by 5%, or 1.2 million metric tons… The removal of both price support and input subsidies in India results in a decline in domestic wheat production by almost 2.5% and an increase in domestic use by 1%. India switches from being a net exporter of wheat to a net importer, with net imports totaling 2.7 million metric tons in the scenario… The removal of the domestic support in India results in an increase in U.S. exports by 0.77 million metric tons, an increase of 3.3%... Turkey's wheat production declines by almost 9%... leads to an increase in net imports of 1.8 million metric tons. In response, the world wheat price increases by 0.7% and U.S. net exports increase by 1.5%, or 347,000 metric tons*". And for the 4 ECs, "*This higher demand leads to an increase in global wheat prices by almost 5%, which benefits wheat net exporters, including the U.S. Net exports in the U.S. increase by 2.2 million metric tons (over 9%)*".

The worst irrational calculation is the way the report assesses the wheat farm prices of ECs. Let us take the case of China: "*The wheat local price was estimated using the world reference price and the exchange rate, adjusted for import tariffs, for the years between 2011/12 and 2013/14. Then an ad-valorem equivalent of the support price relative to the local price was calculated and the three-year average was used to reduce the domestic wheat price in the projection period. The average support for the three-year period that was implemented in the model was 8.9%*". It is irrational to use the US FOB prices (of HRW ordinary protein in Texas Gulf) to try to guess the Chinese local price at farm gate which would have required to add the cost between the US FOB price and the China CIF price, then the China tariffs and then the unloading costs and transport costs up to the Chinese average farm level, a calculus which does not appear anywhere in the report. They should have relied instead on the Chinese farm price provided in the OECD PSE data base for China or at least on the US farm price, not the FOB price, to compare with the Chinese local price at farm level. Besides their exchange rates were not accurate as they used calendar exchange rates instead of marketing year exchange rates. As this "farm price" elaborated from the US FOB price does not take into account the wheat subsidies of $51.8 on average from 2011-12 to 2013-14, their corrected farm price was of $364.9, higher than the support price by 6.6%. Finally, as they say that "*This price support was zero if the local price was above the support price*", this is the case as the Chinese farm price according to OECD ($362.9) in the average period 2011-12 to 2013-14 exceeded the minimal (support) price by 5,3%. Instead their fancy Chinese "farm price" was lower than the minimal price by 8.1%.

12.2.6 – Comparing the OECD indicators of agricultural supports of high income developed countries and emerging countries

Table 7 compares several OECD indicators of agricultural support, on average from 2010 to 2014, of 10 high-income developed countries (HICs), of which the US, and 12 emerging countries (ECs), of which Brazil, China and Turkey (OECD has no data for India and Thailand). The meaning of most indicators was already presented in Section I.1 above: VOP (total agricultural production value), PSE (Producer Support Estimate), MPS (market price support), TSE (total support estimate), AWU (agricultural worker unit or full time agricultural worker equivalent) and a combination of them: PSE/VOP, MPS/PSE, (PSE-MPS)/VOP, PSE-MPS/AWU and (TSE-MPS)/AWU. The main results are:

- The ratio of PSE to VOP was 20% in HICs (of which 8.8% in the US) vs 16.6% in ECs (of which 17.7% in China) but the PSE is not an indicator of subsidies as it encompasses the MPS;
- The share of MPS, that is of import duties, in the PSE was of 36.5% in HICs (of which 18.1% in the US) vs 74.7% in the ECs (of which 76.7% in China) so that their share was twice that of HICs and that of China was 4.1 times that of the US.
- The ratio of PSE-MPS (i.e. of individual subsidies) to VOP was of 12.7% in HICs (of which 7.2% in the US) vs 4.2% in ECs (of which 4.1% in China) so that their share was only one third of the HICs and that of China was 56.9% of that of the US.
- As the number of AWU was 39.8 times larger in ECs than in HICs (and that of China 209 times that of the US), the value of PSE-MPS per AWU was of $9,237 in HICs (of which of $11,356 in the US) vs of $129 in ECs (of which $95 in China) so that their level was of only 1.4% of that in HICs (and that of China was of 0.8% of that of the US).
- Taking into account all agricultural subsidies, the TSE-MSP per AWU was of $12,616 in HICs (of which $17,628 in the US, excluding domestic food aid subsidies) vs $207 in ECs (of which $151 in China) so that the total agricultural subsidies per AWU were 60.9 times larger than in ECs and that of the US was 118 times larger than that of China.

Table 7 – Main OECD agricultural indicators for 10 high income and 12 emerging countries

$ million	VOP	PSE	PSE/VOP	MPS	MPS/PSE	(PSE-MPS) /VOP	AWU 1000	(PSE-MPS) /AWU in $	(TSE-MPS) /AWU: $
10 HICs	1089359	217757	20%	79480	36.5%	12.7%	14970	9237	12616
Of which US	378704	33435	8.8%	6068	18.1%	7.2%	2410	11356	17828
12 ECs	1830960	303268	16.6%	226469	74.7%	4.2%	596400	129	207
Brazil	188197	8570	4.6%	3232	37.7%	2.8%	10497	509	683
China	1154263	204792	17.7%	157025	76.7%	4.1%	504030	95	151
Turkey	73557	16691	22.7%	12605	75.5%	5.6%	7807	523	891
ECs/HICs	168,1%	139,3%	82.9%	285%	205.5%	33%	3984%	1.4%	1.6%

Source: OECD PSE data base

XIII – Contradictory proposals in the REV4 Draft modalities of 6 December 2008

Whereas the developed countries, and first the US and EU, want to bury the DDA (Doha Development Agenda) and refuse to continue the negotiations on agricultural domestic supports based on the REV4 Draft modalities of 6 December 2008 – we have showed why in the section 10.1 above –, the DCs to the contrary stick to the REV4. In fact, if REV4 would generaly put more constraints on developed countries, it is far from being totally beneficial to DCs. As Solidarité had already commented the three pillars of REV4[143] we will limit here to the contradictions linked to the proposal to change the AoA rule on product-specific *de minimis***.**

[143] *Comments on the December 2008 Revised Draft Modalities for agriculture*, Solidarité, 11 December 2008, http://www.solidarite.asso.fr/Papers-2008

On the one hand paragraphs I.1/1.b states: "*The base level for reductions in Overall Trade-Distorting Domestic Support (hereafter "Base OTDS") shall be the sum of:… for developed country Members, 10 per cent of the average total value of agricultural production in the 1995-2000 base period (this being composed of 5 per cent of the average total value of production for product-specific and non-product-specific AMS respectively)*", and paragraph I.A.2 adds: "*For developing country Members, item (b) of paragraph 1 above shall be 20 per cent of the average total value of agricultural production in the 1995-2000 or 1995-2004 period as may be selected by the Member concerned*".

But these proposals are contradicted by paragraphs 30 and 31 which remind the AoA rules: Paragraph 30: "*The* de minimis *levels referred to in Article 6.4(a) of the Uruguay Round Agreement on Agriculture for developed country Members (i.e. 5 per cent of a Member's total value of production of a basic agricultural product in the case of product-specific* de minimis *and 5 per cent of the value of a Member's total agricultural production in the case of non-product-specific* de minimis*) shall be reduced by no less than 50 per cent effective on the first day of the implementation period*". Paragraph 31: "*For developing country Members… the* de minimis *levels referred to in Article 6.4(b) of the Uruguay Round Agreement on Agriculture (i.e. 10 per cent of a Member's total value of production of a basic agricultural product in the case of product-specific* de minimis *and 10 per cent of the value of a Member's total agricultural production in the case of non-product-specific* de minimis*) to which they have access under their existing WTO obligations shall be reduced by at least two-thirds of the reduction rate specified in paragraph 30 above*". In other words, as soon as a product-specific (PS) calculated AMS reaches 5% (10% for DCs) of the production value of the product, it loses its allowed PS *de minimis* exemption and gets a PS AMS which is added to the applied total AMS and the production value of that product is added to the production value of all products with PS AMSs.

Now, beyond this radical contradiction that the WTO Dispute Settlement Body could not overcome, the issue is the extent to which this proposed new definition of PS *de minimis* would be more beneficial to DCs, particularly to the majority of them which did not notify an AMS in their Schedule of commitments of 1986-88, than to the developed countries.

The likely reason why the REV4 has proposed to change the rule on PS *de minimis* is that Japan up to 2004 and the EU up to 1999-2000 did not notify the production value of each product having a calculated AMS. That is why paragraph 12 of REV4 has introduced the new requirement that "*The data on value of production shall, for all Members undertaking OTDS reduction commitments, be annexed to these modalities*". This lack of data on the production values of the EU and Japan products notified with PS AMSs explains why the simulations published in May 2006 by Canada on the impact of the EU, US and Japan's offers have used 5% of the whole agricultural production value (VOP) for PS *de minimis*. The WTO should have asked them to rectify their notifications by adding the production value of each product, which would not have been difficult since Solidarité has done it for the EU[144]. We have thus found that the production value of all products notified with a PS AMS has been on average of €122.922 bn in the base period 1995-00 so that, given the €222.6 bn for the average value of the whole agricultural production (VOP), the production value of products without PS AMSs has been of €99.655 bn and the allowed PSdm, being 5% of that value, of €4.983 bn. And adding the production value of animal products (see Section 4.2.2 above), oilseeds and pulses getting PS AMSs to that of the products already notified with a PS AMS increase the production value of products with AMSs to €201.323 bn on average in the 1995-00 period so that the average

[144] *Thorough review of the EU agricultural distorting supports to rebuild fair and sustainable agricultural trade rules after the Doha Round hibernation*, Solidarité, 21 August 2006.

production value of products without a PS AMS shrinks to €21.253 bn and the allowed PSdm, which is 5% of this value, shrinks to €1.063 bn. Correlatively the EU average blue box had been reduced to €11.145 bn instead of €20.888 bn because €9.7 bn of direct payments to the EU cereals, oilseeds and pulses used as feed have been transferred to the PS AMSs of animal products having consumed this feed.

Therefore the EU allowed (or bound) OTDS for 1995-2000 – which is the sum of the AMS at the end of the marketing year 2000 or Final Bound Total AMS (FBTA) + the PSdm + the NPSdm + the blue box – falls at €90.5 bn [67.159 (FBTA) + 1.063 (PSdm) + 11.129 (NPSdm) + 11.145 (BB)] instead of €110.305 bn according to Canada's simulations of May 2006 endorsed by the EU and the WTO [67.159 (FBTA) + 11.129 (PSdm) + 11.129 (NPSdm) + 20.888 (BB)], and the 80% reduction in OTDS foreseen by REV4 for the EU gives an allowed OTDS of €18.099 bn at the end of the Doha Round implementation period instead of €22.061 bn. Furthermore the allowed PSdm should be halved on the first day of the Doha Round implementation period, to €532 million for the PSdm and €2.226 bn for the NPSdm. And the allowed EU BB should also be halved to €5.573 bn.

Similarly the US average feed subsidies of $4.442 bn during the 1995-2000 base period[145] have conferred PS AMSs to all meats which had a production value of $57.055 bn so that the production value of products with PS AMSs rises from $49.734 bn to $106.789 bn and, given an average agricultural production value of $194.139 bn, the production value of products without PS AMSs falls to $87.350 bn and the allowed PSdm, being 5% of that value, falls to $4.368 bn instead of $9.707 bn for the NPSdm.

Therefore the US allowed OTDS in the base period falls from $48.224 bn in Canada's simulations [19.103 (FBTA) + 9.707 (PSdm) + 9.707 (NPSdm) + 9.707 (BB)] to $42.885 bn: 19.103 (FBTA) + 4.368 (PSdm) + 9.707 (NPSdm) + 9.707 (BB). And the US allowed OTDS at the end of the Doha Round implementation period, once cut by the 70% proposed for the US by REV4, will fall to $12.866 bn[146], instead of the $14.467 bn. And the allowed PSdm should be halved on the first day of the implementation period to $2.184 bn for the PSdm and to $4.854 bn for the NPSdm.

If the present AoA rules on PSdm would change according to REV4, i.e. if the PSdm is the same as the NPSdm, the Canada simulations would hold so that the allowed EU OTDS at the end of the Doha Round implementation period would be of €22.061 bn for the EU and of $14.467 bn for the US.

But then we are facing a huge logical contradiction: it would be impossible to calculate a PSdm product by product because you cannot assign to each product having a calculated AMS a *de minimis* equal to 5% of the VOP. In order that the sum of PSdm be 5% of the VOP implies that each agricultural product has an allowed PSdm calculated as 5% of each agricultural production value according to the present AoA rule with which paragraph 30 of REV4 claims to comply. But then there would not be any PS AMS above *de minimis* so that the allowed PSdm would be nil since it is equal to 5% of the production value of products without PS AMSs. This is totally incompatible with the opposite proposal of an allowed PSdm of 5% of the VOP. In other words

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145 *Comments to David Orden, David Blandford and Tim Josling, WTO disciplines on agricultural support*, Solidarité, September 15, 2011, http://www.solidarite.asso.fr/IMG/pdf/WTO_disciplines_on_agricultural_support_J-_Berthelot_comments-3.pdf

146 Jacques Berthelot, *The US cannot reduce its agricultural supports in the Doha Round*, Solidarité, 1st August 2009, http://www.solidarite.asso.fr/Papers-2009.html

the proposed change in PSdm implies the necessity to not distinguish any longer PSdm from NPSdm.

There is another huge contradiction in the fact that the end of paragraphs 30 and 31 state that, for developed countries, the *de minimis* ceiling "*shall be reduced by no less than 50 per cent effective on the first day of the implementation period*" and, for DCs, "*shall be reduced by at least two-thirds of the reduction rate*" of the developed countries. This provision would render ineffective the proposed doubling of the *de minimis* for the developed countries and DCs!
If there is a single *de minimis* of 10% of the VOP for the developed countries and of 20% for DCs (17% for China), the WTO notification requirements of domestic support would be changed radically. The disappearance of PSdm will imply the disappearance of PS AMS and its merging with the NPS AMS. The supporting table DS:4 which summarizes the other supporting tables of PS AMS – DS:5 on market price support, DS:6 on non-exempt direct payments, DS:7 on other specific supports and total PS AMS and DS:8 on equivalent measurements of support – would no longer require to add the value of production of each product to check if it is below or above *de minimis*, in other words if it has a PS AMS and the same would apply to the detailed tables DS:5 to DS:8. So that we could no longer calculate the total current PS AMS as the sum of many PS AMS. And the supporting table DS:9 on NPSdm would not be justified since the calculus of NPSdm would be the same as for the PSdm.

If the PS AMS disappeared there would not be either a justification to maintain the provisions of paragraphs 21-29 on PS AMS limits.

Finally the notification requirements would only be composed of 3 tables: the DS:1 on the green box, maybe for a while the DS:3 on the blue box although it has already be considered as trade-distorting by its integration in the OTDS (and the US could no longer claim to put its countercyclical payments (CCP) in the new blue box of paragraph 35 as the 2014 Farm Bill has eliminated the CCP), and DS:2 which would regroup all the other trade-distorting domestic supports to which a single common *de minimis* would be applied. As we have argued in Section I, the MPS should disappear as it does not correspond to actual subsidies and as it has no logical justification. Let us underscore that this simplication of the notification requirements should be very useful and would not require to double the level of *de minimis*. But the criteria of the green box should be revised drastically, particularly for the direct income support of paragraph 6 of Annex 2 for the EU after the WTO Appellate Body ruling in the US cotton case.

But to what extent a single *de minimis* of 10% of the VOP for the developed countries and a single *de minimis* of 20% of the VOP for the DCs (of 17% of VOP for China) would be in the interest of DCs? This would require an in-depth study that I cannot do presently.

It remains clearly the specific issue of cotton that we will not treat here as Solidarité has recently issued a specific paper[147].

Many other changes would be required in the WTO rules to allow all countries to endure the right to food based on food sovereignty without harming other countries through dumping. The ROPPA netwoork of West African farmers' associations has made interesting proposals in that respect that should also inspire the WTO members in their present negotiations[148].

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[147] *The US and EU cotton subsidies from 1995 to 2014*, Solidarité, March 12, 2016, http://www.solidarite.asso.fr/Papers-2016

[148] ROPPA, *Let us dare to reform the WTO for an equitable development*, December 2015, http://www.solidarite.asso.fr/Papers-2015

Conclusion

Free trade has never worked in agricultural markets as they cannot self-regulate. Indeed, faced with a steady food demand in the short term, agricultural production fluctuates with the vagaries of the weather – vagaries that will intensify with climate change, particularly in DCs – hence so do agricultural prices and incomes as well as food prices.

Having reached the top of the ladder of agricultural competitiveness thanks to decades of high import protection and high export subsidies, the US and the EU created a double trap for DCs to prevent them from climbing the same ladder: in 1986 they launched the Uruguay Round of trade negotiations, where they wrote together the AoA rules while changing radically their agricultural policies, the Common Agricultural Policy (CAP) and the Farm Bill.

Those radical changes included the EU and the US reduction of their minimum guaranteed agricultural prices in the early 1990s – and the EU continued their reductions in the CAP reforms of 2003 and 2004 – while compensating their farmers for the income loss with subsidies that they defined in the AoA as not trade distorting, so as to improve the competitiveness of their agricultural products by importing less and exporting more.

At the same time, the AoA required all countries, including DCs other than the LDCs (least developed countries), to reduce their import protections – the LDCs having been constrained already to do the same by the structural adjustment policies of the World Bank and IMF –, knowing that the DCs did not have the means to significantly subsidize their large number of farmers.

Given the inflexible stance taken now by the developed countries, particularly the US and EU, to bury the Doha Development Round (DDA), to refuse to rebuild the AoA on more equitable rules, particularly for domestic subsidies, and to attack instead those of the emerging developing countries, the DCs should take an offensive stance rather than to continue to get a caning without reacting. The present paper has shown that DCs have many robust arguments to sue the US and EU for their recurrent violation of the AoA rules.

It is only Brazil which dared in 2002 to sue the US subsidies in the cotton case and the EU subsidies in the sugar case (together with Thailand and Australia) but, now that Brazil's cotton has been subsidized by the US and that it has chosen to join the developed countries camp and not to prejudice their compatriot, the WTO Director-General Roberto Azevedo, no DC, not even China or India, seems prepared to adopt an offensive stance against the US and EU agricultural subsidies.

In saying that we do not intend to prejudice the right and need of the developed countries' farmers to be protected by efficient agricultural policies that ensure them fair incomes. But this should not be at the expense of impoverishing their DCs colleagues who should have the right to use the same policy tools that Western farmers have been enjoying for decades.