



## **Lars Brink and David Orden at the rescue of the US claims that India and China have undernotified their market price support of rice and wheat**

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On 9 May 2018 the US has sent a communication to the WTO Committee on agriculture stating that India has largely under-notified to the WTO its market price support (MPS) to rice and wheat for the marketing years 2010/11 through 2013/14<sup>1</sup>. After the US consultations with China on 13 September 2016, the panel on "China – Domestic Support for Agricultural Producers" (DS511) was established by the DSB (Dispute Settlement Body) on 25 January 2017 and composed on 24 June 2017, in which the US considered that China has exceeded its total AMS (aggregate measurement of support or trade-distorting domestic support) from 2012 to 2015 on rice, wheat and corn, based on the MPS methodology<sup>2</sup>. Given that the final report of the panel should only be available in December 2018, on 21 May 2018 David Orden and Lars Brink wrote an article, based on the publicly available documents, to clarify the arguments of both parties and try to help the members of the panel to reach their conclusions<sup>3</sup>. They had already presented a powerpoint in that proceeding on 3 December 2017<sup>4</sup>. On 29 August 2018 Lars Brink added another article to clarify the divergent concepts of MPS used by the OECD and WTO<sup>5</sup>.

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<sup>1</sup> *Certain measures of India providing market price support to rice and wheat*, WTO Committee on agriculture, 9 May 2018, <https://www.usda.gov/media/press-releases/2018/05/09/united-states-issues-first-ever-wto-counter-notification-against>

<sup>2</sup> [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds511\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds511_e.htm)

<sup>3</sup> China's Price Support for Wheat, Rice and Corn under Dispute at the WTO: Compliance and Economic Issues, May 21, 2018:

[http://ageconsearch.umn.edu/record/274277/files/Abstracts\\_18\\_05\\_22\\_13\\_57\\_03\\_99\\_\\_71\\_121\\_152\\_126\\_0.pdf](http://ageconsearch.umn.edu/record/274277/files/Abstracts_18_05_22_13_57_03_99__71_121_152_126_0.pdf)

<sup>4</sup> <https://ageconsearch.umn.edu/record/266825/files/Session%2012%20-%20Brink%20Orden.pdf?version=1>

<sup>5</sup> *Two indicators, little in common, same name: Market Price Support*, 29 August 2018, <http://capreform.eu/two-indicators-little-in-common-same-name-market-price-support/>

The present paper underscores the inconsistency of using the WTO MPS methodology to reflect the actual subsidies of the AMS of both India and China and the attempt of Lars Brink and David Orden to justify its use in the US proceedings against these countries.

We will see that the WTO MPS is far from representing actual agricultural subsidies as acknowledged by the prominent agricultural trade economists but it is notified as if it were subsidies by developed countries. Then we will present and discuss the comments of the two authors in the cases of India and China and will finish by a comparison of the level of OECD indicators of agricultural domestic supports between the developed and developing countries, particularly between the US, EU, China and India.

## **I – The WTO MPS is far from representing actual agricultural subsidies**

The MPS component of the AMS linked to administered prices (intervention prices in the EU) is meaningless, being computed as the eligible production multiplied by the gap between the present administered price and the world reference price of the 1986-88 period. It has been the main component of the EU, US and Japan total AMS in the 1995-00 period and has remained the same, except for the US, but it is a fake market price support as it won't have had any impact on prices without coexisting with other more determinant measures: import protection, export and domestic subsidies, production quotas, set aside, external and domestic food aid. Reducing this fake MPS component of AMS has been the main means, particularly for the EU and Japan, to reduce their total AMS without any reduction in their actual subsidies, or even allowing to increase them, mostly notified in the blue or green boxes, hence outside the AMS.

### **1.1 – This is confirmed by the prominent agricultural trade economists**

In the introduction of their common book on "*WTO disciplines on agricultural support*" (Cambridge University Press, 2011), David Orden, David Blandford and Tim Josling write: "*From an economic perspective the WTO's MPS (market price support) measure suffers from four deficiencies...and the notified MPS, despite its name, has not been a good indicator of economic market price support... The calculation of the MPS component of AMS (and EMS) from world prices of more than twenty years ago illustrates the weakness of these measures as a meaningful reflection of the actual level of support given by administered prices... Ambiguity in measurement of the MPS is going to be difficult to resolve*".

The analysis made in 2002 by Harry de Gorter and Merlinda Ingco was more explicit: "*The AMS was designated to be a measure for trade distorting domestic support policies. It was assigned the “amber box” in the Agreement on Agriculture. Reduction commitments agreed to were supposed to measure domestic support, independent of that due to import barriers and export subsidies. In reality, however, the AMS is double counted with support derived from trade policies... The Agreement on Agriculture requires each country to identify “market price supports” in the form of “administered prices” which are required to be included in the calculation of the AMS. On the other hand, if there are import barriers in place that keep domestic prices high, but there is no administered price, then no “market price support” is estimated for the AMS. For example, Canada has not been able to identify an administered price for chicken (or turkey or eggs), so there is no “market price support” for Canada’s AMS for these products. This is ridiculous, of course, because it is arbitrary if an official price is reported or not. The United States reports an administered price support for dairy products. However, the US dairy price supports are mostly inoperative as market prices for these products are well above support in the implementation period because of export subsidies and*

*import barriers*"<sup>6</sup>. Their conclusion has also been more straightforward: "Hence, a "flashing amber" box should be created that includes only domestic support that is trade distorting (with perhaps adjustments downwards for output reducing measures), and is not conflated with trade border measures".

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)... There is no actual taxpayer money paid out for the MPS, it is pure accounting... Getting rid of the phony subsidy will make it easier to get rid of phony subsidy cuts".

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"<sup>7</sup>.

## **1.2 – The applied WTO MPS in the developed countries**

How many WTO Members know that, in the 1995-00 period, the EU subsidy component of its average annual AMS has represented only €4.822 billion (bn) or 10% of the €48.425 bn notified total AMS and the MPS component 90%? For 2015/16 (last notified year on 23 August 2018) the EU notified MPS – which does not imply actual public expenditures – has accounted for €6.809 bn or 95.9% of its notified AMS of €7.101 bn, of which €2.274 bn for common wheat, €1.559 bn for skimmed milk powder and €2.977 bn for butter! When these products received actual specific subsidies they were reported under other "supporting tables" of the notification, particularly under supporting table DS:6 of "non-exempt direct payments" or DS:7 of "other product-specific AMS".

The suppression the 1<sup>st</sup> July 2002 of the intervention price of beef has allowed the EU to cut its total AMS by €11.9 billion from one day to the other, without any impact on the market price which has increased in the following years because of a high import protection. In the EU, the sugar AMS linked to its intervention price amounted to €5.9 billion in 2000-01 and comparable amounts the preceding years, although public purchases at the intervention price have only occurred once in 25 years, because high domestic prices have been maintained through a high import protection and production quotas. The AMS linked to the intervention prices of butter and skimmed milk powder amounted to €5.951 billion in 2000-01, but the EU expenses on dairy have only reached €1.907 bn.

For 2014 (last notified year on 30 May 2018) Canada's MPS represented \$576 million (M) or 97.5% of its total AMS of \$590 M.

For Japan it represented ¥420.2 bn in 2014 (last notified year on 3 July 2017) or 70% of its notified AMS of ¥600.6 bn. The support price for rice was eliminated in 1997, and Japan's

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<sup>6</sup> Harry de Gorter and Merlinda Ingco, *The AMS and Domestic Support in the WTO Trade Negotiations on Agriculture: Issues and Suggestions for New Rules*, 25 September 2002, <http://siteresources.worldbank.org/INTARD/825826-1111044795683/20424518/AMSandDomesticSupportintheWTOTradeNegotiations.pdf>

<sup>7</sup> <http://www.ictsd.org/themes/global-economic-governance/research/rethinking-the-rules-for-agricultural-subsidies>

AMS notified to the WTO dropped by \$20 billion but, as there was no change in import protection, the actual support remained the same<sup>8</sup>.

In Norway its MPS accounted for 109.3% of its total AMS for 2016 (last notified year on 29 November 2017), a strange thing!

In Korea the MPS was equal (100%) to the total AMS for 2009 and 2010.

In the US, as the 2014 Farm Bill has deleted the dairy market price support notified at \$2.925 bn for 2013, for 2015 it has only notified \$1.489 bn for sugar or 38.7% of its notified total AMS of \$3.846 bn (instead of \$4.324 bn or 62.7% of total AMS of \$6.892 bn for 2013).

Notifying these fake MPS has only blurred the negotiations and misled WTO Members. The more surprising is that these AMS supports continue to be presented as the most trade-distorting ones. What they are clearly distorting is the understanding of WTO Members. Clearly if these MPSs did not correspond to actual subsidies this was because the actual prices were higher than the administered prices. Therefore the AMSs linked to administered prices should be eliminated altogether since they have allowed developed countries to look like reducing much their coupled supports when they have actually increased their allegedly non trade-distorting subsidies, of which the so-called decoupled ones<sup>9</sup>.

## **II – The US proceeding against India MPS**

### **2.1 – The issue of eligible production**

Referring to the Appellate Body (AB) statement in the Korea-Beef case, the US stated in paragraph 4.11 of its communication of 9 May 2018 to the WTO Committee on agriculture: "*Thus, "eligible production" within the meaning of Annex 3, paragraph 8 of the AoA is production, which is fit or entitled to receive the applied administered price, whether or not the production was actually purchased*"<sup>10</sup>. In paragraph 4.14 the US wrote: "*India does not cap the quantity of wheat and rice that the government may procure under its MPS programmes. Accordingly, under the terms of the AoA, all Indian production of these commodities constitutes eligible production for purposes of ascertaining the level of India's MPS for wheat and rice*". That the government does not cap the procured quantity is refuted by Arindam Som: "*In June 2017, the government of India decided to increase the minimum selling price of common grade paddy by 5.4% to INR1,550 per quintal. The procurement target was also increased to 37.50 million tonnes in MY 2016-17 from 34.34 million tonnes in the previous year*"<sup>11</sup>. And, in paragraph 4.21, the US added: "*More importantly, India's reporting of only procured quantities is directly contrary to the MPS calculation methodology provided in AoA Annex 3,*

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<sup>8</sup> Hoshihisa Godo and Daisuke Takahashi, *Japan*, in D. Orden, D. Blanford and Tim Josling, *WTO disciplines on agricultural support*, Cambridge Univ. press, 2011, p 153-188.

<sup>9</sup> *The truth about the European Union's food deficit and the dumping of its food exports linked to its domestic subsidies*, SOL, 26 June 2018: <https://www.sol-asso.fr/wp-content/uploads/2017/01/The-truth-about-the-European-Union-food-deficit-and-the-dumping-impact-of-its-domestic-subsidies-June-26-2018.pdf>; *Time is up for Developing countries to sue the US agricultural domestic subsidies*, SOL, 14 January 2016: <https://www.sol-asso.fr/wp-content/uploads/2016/06/Time-is-up-for-Developing-countries-to-sue-the-US-domestic-subsidies-Solidarit%C3%A9-January-14-2016.pdf>

<sup>10</sup> <https://www.usda.gov/media/press-releases/2018/05/09/united-states-issues-first-ever-wto-counter-notification-against>

<sup>11</sup> <https://www.indiaratings.co.in/PressRelease?pressReleaseID=30318&title=Indian-Rice-Exporters-to-Gain-Market-Share%3B-Liquidity-Profile-of-Millers-to-Remain-Stretched>

*paragraph 8, which provides for the calculation to be based on all production eligible for the price, whether or not actually procured by a Member's government at that price. Accordingly, the United States has estimated MPS here based on all eligible production, as opposed to just that portion of production actually procured by government entities in India".*

Actually the US has based its calculations of India MPS on all production of rice and wheat and its quote of the AB in the Korea-beef case is false as the AB 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"*"<sup>12</sup>. 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<sup>13</sup> and an Australian report added that the average weight of the slaughtered cattle was 551 kg in 1997 and 559 kg in 1998<sup>14</sup>. 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.

Notifying only the procured quantity is perfectly in line with the WTO rules as stated by FAO: "*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*"<sup>15</sup>. In another report explaining the AoA 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*"<sup>16</sup>.

Munisamy Gopinath confirms: "*With regard to product-specific AMS, the 1997 methodology for market price support appears to be a direct product of the price difference (administered minus external reference price) and procured quantities taken as the eligible production... This is consistent with the WTO rules which are ambiguous about what constitutes the eligible*

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<sup>12</sup> 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](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds161_e.htm).

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[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](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)

<sup>14</sup> Jeong, M-K., Sheales, T., Gleeson, T. and McDonald, D., *Korean and Australian Beef: Markets and Prospects for Trade*, ABARE eReport 04.22.2004,

[http://adl.brs.gov.au/data/warehouse/pe\\_abarebrs99001130/PC12872.pdf](http://adl.brs.gov.au/data/warehouse/pe_abarebrs99001130/PC12872.pdf)

<sup>15</sup> <http://www.fao.org/DOCREP/005/Y4632E/y4632e0j.htm>

<sup>16</sup> N. Hag Elamin, *Domestic support measures*, <http://www.fao.org/docrep/003/x7353e/x7353e01.htm>

volume... Other developing countries, including Brazil, China and the Philippines, also report procured quantities as eligible production”<sup>17</sup>.

The USDA's attaché report of 16 March 2018 on Indian grains estimates farmers' self-consumption: "about 40-45 percent of the wheat is retained by farmers... Typically, about 55-60 percent of the wheat is marketed, and the balance is used by the farmer for personal food, feed and seed use... About half of the marketed wheat is procured by the government under the MSP [minimum support price] procurement program for distribution through PDS, supply to various other food programs, and in smaller quantities for open market sale to private millers to contain domestic prices. The balance is procured from the farmers directly by the private sector for milling, processing and other uses"<sup>18</sup>. According to the Commission for agricultural costs and prices (CACP) the procured quantity of rice (paddy) was of 32.8% of production for 2015-16<sup>19</sup>. According to Arindam SOM, "In June 2017, the government of India decided to increase the minimum selling price of common grade paddy by 5.4% to INR1,550 per quintal. The procurement target was also increased to 37.50 million tonnes in MY 2016-17 from 34.34 million tonnes in the previous year"<sup>20</sup>. The CACP notes also that "only one-third of rice and wheat farmers are aware of the minimum support price programme" and that "the share of production covered at MSP over C<sub>2</sub> cost are 68 percent in paddy (common and grade A)".

The recent OECD report on Indian agriculture<sup>21</sup> states: "Most farmers sell to other buyers than the FCI (Federal Corporation of India) at prices other than the MSP (minimum support price), especially in Eastern India, where procurement is not effective and no alternative buyers are present... For wheat the MSP was set below the international price throughout 2011, 2012 and 2013 and started to exceed the international price only in 2014. For maize, the MSP switched from below to above the international price in late 2013. For paddy on the other hand the MSP was set below the international price of paddy in all years of the 2012 to 2016 period... The procurement of wheat and rice is of the order of 30% of production".

That Indian farm prices for all products together are well below international prices is confirmed by the unusual fact that the OECD MPS of India in the 2014 to 2016 years was negative by \$54.178 bn, or by 14.2% of the total value of production of \$380.817 bn! And, despite actual agricultural product-specific subsidies – i.e. outside the General Services Support Estimate (GSSE) of collective subsidies and the non-product specific transfers to consumers from taxpayers –, they were not enough to prevent the Indian PSE (producers support estimate) to be also negative by \$26.100 bn in this 2014-16 period. So that the TSE (total support estimate) for that period was also very low, of \$8.345 bn, and was even negative of \$19.552 bn in 2014 before being positive in 2015 and 2016. We will turn to this issue in the last section of this paper.

## **2.2 – The change of currency in the FERPs and in further notifications**

The US writes: "*India's AGST [shortcut for Schedule of Commitments] document provides India's domestic support commitments in Indian rupees. However, all of India's DS:1*

<sup>17</sup> Munisamy Gopinath, *India*, pp. 277-309 in David Orden, David Blandford and Tim Josling, *WTO disciplines on agricultural support*, Cambridge University Press, 2011.

<sup>18</sup> <https://www.fas.usda.gov/data/india-grain-and-feed-annual-2>

<sup>19</sup> <http://cacp.dacnet.nic.in/ViewReports.aspx?Input=2&PageId=39&KeyId=598>

<sup>20</sup> <https://www.indiaratings.co.in/PressRelease?pressReleaseID=30318&title=Indian-Rice-Exporters-to-Gain-Market-Share%3B-Liquidity-Profile-of-Millers-to-Remain-Stretched>

<sup>21</sup> OECD, *Agricultural Policies in India*, 2018: [https://read.oecd-ilibrary.org/agriculture-and-food/agricultural-policies-in-india\\_9789264302334-en#page4](https://read.oecd-ilibrary.org/agriculture-and-food/agricultural-policies-in-india_9789264302334-en#page4)

*notifications have been denominated in U.S. dollars. India has not explained the basis for using U.S. dollars beyond stating it has remained consistent in its notifications. To be consistent with India's scheduled commitments, the United States has calculated India's MPS using information published by the GOI in Indian rupees".*

On this issue Lars Brink has taken contradictory positions. On 13 April 2014 he acknowledged 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"*<sup>22</sup>. Indeed 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 fixed reference prices (FERPs) of rice and wheat in INR in AGST, before notifying its rice and wheat AMSs in USD from 1995-96 on. Other countries did the same, such as Pakistan which notified in USD as soon also as 1995 although its AGST was in Pakistani rupees. Russia has had the ability to notify both in roubles (RUB) and USD.

Nevertheless Lars Brink adds in the same article: *"However, when the calculation of market price support is involved, as in India's case, the situation is different. That calculation relies on the FERP, which was fixed as the product's average export or import unit value in 1986 to 1988. It is thus denominated in a particular currency, in India's case the INR/tonne shown in AGST"*. Maybe but, before converting its imports in INR, the Indian imports bills were in USD as it has been and is still the case for all traded wheat and rice, as for most commodities. Even the EU wheat is mostly traded in USD and not in euros. Lars Brink adds that *"There is thus no choice - the FERP must be based on the years 1986 to 1988... it shall be the average unit value in the 1986 to 1988 period"*.

Given the close interlinks between the evolution of exchange rates and inflation rates, notifying the rice and wheat AMSs in USD instead of in INR was a means to minimize the increase in these AMSs. After having reminded the reader that the AoA article 18.4 states that *"In the review process Members shall give due consideration to the influence of excessive rates of inflation on the ability of any Member to abide by its domestic support commitments"*, Lars Brink adds: *"Article 18.4 is sometimes interpreted as giving a country the right to unilaterally adjust some element of its support calculation in order to offset the effect of any inflation on its ability to stay within its commitments. For countries with only expenditure and payment support and no Bound Total AMS, the question of inflation adjustment is moot, since the values of production and the de minimis limits increase pari passu with inflation and accommodate inflation-related increases in nominal expenditures and payments"*, a questionable shortcut.

Yet paragraph 49 of the first draft of the agricultural modalities paper, circulated to WTO Members on 12 February 2003, which treated together the issues of exchange rate and inflation, 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*

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<sup>22</sup> [http://www.solidarite.asso.fr/Papers-2014?debut\\_documents\\_joints=20#pagination\\_documents\\_joints](http://www.solidarite.asso.fr/Papers-2014?debut_documents_joints=20#pagination_documents_joints)

reported by the IMF for the year at issue"<sup>23</sup>. In other words this former agricultural modalities draft allowed to denominate in USD former AMSs notified in domestic currency in AGST.

Anwarul Hoda and Ashok Gulati "do not see any reason for making less than full adjustment for the rates of inflation, particularly keeping in view the high rates of inflation in the country. Since the MSP is well below the fixed external reference price after taking inflation into account, the gap between the two is negative and the negative gap is large enough to allow full adjustment of the product-specific investment and input subsidies. As a consequence, the contribution of product-specific support to the Current Total AMS remains zero"<sup>24</sup>, which implies to update the FERPs of 1986-88 with the average inflation rate of 8.03% over the 25 years (to 2013). On the other hand the G-33 proposed that the excessive inflation rate is that exceeding 4%, i.e. 4.03%. However, rather than using 4% that we do not know where this figure comes from, it is fair to take the inflation rate exceeding the 2.75% average rate of the OECD's Western Members, that is 5.28%. Therefore, given that the Indian average inflation rate during these 25 years exceeded by 2.0% the average annual depreciation of the exchange rate of rice of 6.01% (from 13.1500 to 56.5752 INR/1 USD) and by 2.19% the depreciation of the exchange rate of wheat of 5.84% (from 13.1500 to 54.3519 INR/1 USD for wheat, given that their marketing years do not cover the same months), updating with 4.03% or even 5.28% would still put the FERPs below the MSPs of 2012-13.

### **2.3 – The US did not comply with the WTO rules for its dairy MPS**

India should reply that the US itself did not comply with the AoA rules when it decided to change the way to notify its dairy MPS in the 2008 Farm Bill, from the administered price of the whole milk production made in the US AGST for 1986-88 to the sum of the administered prices of butter, cheddar cheese and non-fat dry milk<sup>25</sup>. Thus the US notification for the dairy MPS fell from \$5.001 bn in 2007 to \$2.880 bn on average from 2008 to 2013, implying a total under-notification of \$12.726 bn in these 6 years. Indeed Article 1 of the AoA states that "Support provided during any year of the implementation period and thereafter" must be "calculated in accordance with the provisions of Annex 3 of this Agreement and taking into account the constituent data and methodology used in the tables of supporting material incorporated by reference in Part IV of the Member's Schedule". Notifying only these three dairy products implies that about 50% of US milk production was no longer notified between 2008 and 2013.

Not only the US was not allowed to change its methodology to compute its dairy AMS from 2008, but, to cap it all, it has continued to use in its notifications from 2008 to 2015 its allowed final bound total AMS (FBTA) of \$19.103 bn for the Doha Round implementation period incorporating a dairy MPS calculated on the basis of another methodology and even for 2014 and 2015 where the MPS was deleted. Given the levels of support prices and production in the base period 1986-88, the total dairy AMS for the sum of butter, nonfat dry milk and Cheddar cheese was of \$2.314 bn instead of the notified \$5.409 bn for the whole milk in that period. It follows that, if the US does not rectify its notifications of dairy AMS from 2008 to 2013 based on the whole milk as it should, it must at least revised its total bound AMS for 1986-88 which was not of \$23.879 bn but of \$20.784 bn so that the FBTA, at the end of the Uruguay Round implementation period in 2000, was not \$19.103 bn (80% of 23.879) but only \$16.627 bn (80%

<sup>23</sup> [http://www.wto.org/english/tratop\\_e/agric\\_e/negoti\\_mod2stdraft\\_e.htm#domesticsupport](http://www.wto.org/english/tratop_e/agric_e/negoti_mod2stdraft_e.htm#domesticsupport)

<sup>24</sup> <http://ictsd.org/i/publications/175214/?view=document>

<sup>25</sup> *Time is up for Developing countries to sue the US agricultural domestic subsidies*, SOL, January 14, 2016, <https://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b/>

of 20.784). And the allowed FBTA at the end of the implementation period of the Doha Round, once cut by 60%, will bring it from \$7.641 bn to \$6.651 bn in the US notifications from 2008.

But the EU did the same when the CAP reform of 1992 transferred and notified in the blue box for 1995-96 €21.146 bn of the previous MPS notified in the AGST of 1986-88, without here also reducing by as much the total bound AMS of €78.672 bn. Which led UNCTAD to conclude: "*The base AMS is therefore higher than "it should have been"*"<sup>26</sup>, in other words it should have been reduced by as much these box shiftings afterwards.

On the other hand, as the EU and Canada notified only butter and skimmed milk powder in their AGST for 1986-88, they have continued to do so without contravening the AoA rules. However as the 2014 Farm Bill has deleted the dairy MPS, it has no longer been notified. This is one additional reason showing the absurdity of the WTO rules on the MPS which applies differently from one Member to the other. Unfortunately India cannot do immediately the same because this would need to change first the AoA rules on public stockholding for food security purposes. We will not comment more on this crucial issue but we recommend to read SOL's paper to solve it<sup>27</sup>.

### **III – The US proceeding against China MPS**

#### **3.1 – The evolution of China's agricultural domestic supports**

David Orden and Lars Brink present their analysis as follows: "*In 2016 the United States launched a WTO dispute claiming China's market price support for wheat, rice and corn in 2012-15 exceeded its Agreement on Agriculture (AA) limits. A WTO Panel is grappling with critical issues of interpretation of the AA, with a ruling expected in 2018. This paper provides an interim assessment of this dispute based on materials available in public as of May 15, 2018*".

As the authors' conclusion that "*Continued public discussion of the issues arising in the case will be needed, due to its broad implications for the interpretation of the MPS provisions of the AA and for countries' choice of policies while meeting their WTO commitments*", we hope that our present comments will respond to their wishes even if I apologize to disagree with some of their views.

The first thing to consider is why China decided to use the WTO MPS methodology to notify its AMS instead of its actual trade-distorting subsidies. The authors state: "*The analysis does not include any product-specific budgetary AMS components since they have not been raised as an issue in the dispute. MPSs and AMSs are thus seen as interchangeable in this analysis*". Which is paradoxical as we have shown that MPS is a fake measure of agricultural support and does not correspond to actual subsidies, at least for a large part of them.

One reason might be that, in its accession schedule of commitments (AGST) of December 2001 and under pressures of the WTO Members, China had to waive the right of the AoA Article 6.2 provision that "*investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to low-income or*

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<sup>26</sup> [http://unctad.org/en/Docs/ditcom20036\\_en.pdf](http://unctad.org/en/Docs/ditcom20036_en.pdf)

<sup>27</sup> *Reconciling the views on a permanent solution to the issue of public stockholding for food security purposes*, SOL, September 10, 2017: <https://www.sol-asso.fr/wp-content/uploads/2017/10/Reconciling-the-views-on-a-permanent-solution-to-the-issue-of-public-stockholding-for-food-security-purposes-1.pdf>

*resource-poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures", and to agree that its de minimis allowance be of 8.5% of its whole agricultural production value, a mid-level between the 5% for the developed countries and 10% for developing countries (DCs).*

Another reason why China used the MPS methodology for AMS notification is that, according to Fuzhi Cheng, *"When calculated using the WTO definitions and methodology, the domestic support level has been far below zero for product-specific support as a result of large, negative market price support (MPS) through 2003, zero non-exempt direct payments and limited other outlays. Since 1999, China has only notified MPS for wheat, rice and corn, and in 2004 it reported that administered prices has been eliminated for wheat and corn when protective prices were repealed. China also asserted in its notifications for 2004 that eligible production was zero for all of these grains. For rice, China argued that there was zero eligible quantity "since the market price was higher than the minimum procurement prices, no procurement was actually made""<sup>3</sup>.*

However the types of domestic supports have changed over time even if China notifications under the AoA are much overdue as the last was made on 6 May 2015 for 2009 and 2010. Nevertheless China has notified up to 2016 its agricultural domestic subsidies among all other non-agricultural subsidies under the SCM (Subsidies and Countervailing Measures) agreement, the last notification for 2015 and 2016 being made on 19 July 2018<sup>28</sup>. These subsidies are presented in paragraphs 1.49 to 1.61, plus 2.2, 2.14, 2.20, 2.36, 2.58, 2.73, 2.74, 2.78, 2.79, however without detailed explanations on the actual content of the subsidies. Several of these subsidies seem to concern the provisions of general services and agri-environment (1.49, 1.57, 1.59, 1.60, 1.61, 2.2, 2.7, 2.11, 2.14, 2.20, 2.36, 2.58, 2.73, 2.74, 2.78, 2.79), generally notified in the green box but the largest concern agricultural inputs and equipment (1.50, 1.52, 1.53 and 1.55) which could have been exempted from the AMS if China did not waive the right of the AoA Article 6.2 provision on investment and input subsidies to low income farmers in DCs. Direct subsidies to farmers seem to have been limited (1.54) although they might have also been included in other sections (1.55, 1.56, 2.2).

Let us underscore in passing that the same lack of clarity characterizes the massive under-notification of the EU and US in their subsidies to investments, taken as an example among many other under-notifications. Those to infrastructural services are defined in the WTO Annex 2, paragraph 2.g: *"The expenditure shall be directed to the provision or construction of capital works only, and shall exclude the subsidized provision of on-farm facilities other than for the reticulation of generally available public utilities. It shall not include subsidies to inputs or operating costs, or preferential user charges"*. On the other hand the AoA article 6.2 states that investment subsidies and input subsidies of developed countries are not exempted from AMS and Annex 2 paragraph 11 on "Structural adjustment assistance provided through investment aids" states in 11.a that *"Eligibility for such payments shall be determined by reference to clearly-defined criteria in government programmes designed to assist the financial or physical restructuring of a producer's operations in response to objectively demonstrated structural disadvantages"*, 11.f adding that *"The payments shall be limited to the amount required to compensate for the structural disadvantage"*. And Annex 4 paragraph 13 adds: *"Other non-exempt measures, including input subsidies and other measures such as marketing-cost reduction measures"*. Actually the EU and US have notified all their investments subsidies in

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[https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S006.aspx?Query=@Symbol=%20g/scm/n/\\*%20and%20%20@Symbol=%20chn&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=@Symbol=%20g/scm/n/*%20and%20%20@Symbol=%20chn&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#)

the green box, without limiting them to disadvantaged farmers. And they forgot to notify even in the AMS most of their input subsidies, particularly the most important ones, those to feedstuffs<sup>8</sup>.

The OECD monitoring and evaluation report for China in 2018 brings additional information: *"In 2017 and early 2018, China continued policy reforms to diminish the negative consequences of high domestic prices compared to those on international markets. The minimum support prices were lowered for both 2017/18 wheat and rice crops... The role of payments based on output has been consistently growing since 2014, particularly for cotton, soybeans and maize... The minimum prices for wheat and rice are set every year by the National Development and Reform Commission (NDRC) in consultation with the Ministry of Agriculture (MOA) and other government institutions. Their application is limited geographically to major wheat and rice producing provinces. They differ for each type of grain, are announced before sowing season, and only applies for a fixed period limited to several months after the harvest. The central government obliges the state-owned China Grain Reserves Corporation (Sinograin) and other state-owned companies to undertake intervention purchases in case market prices dip below the minimum price. The government-led temporary purchase and storage policy at pre-determined prices – mostly intended to stabilize market prices and to ensure adequate supplies – was discontinued in 2014-15 for cotton, soybeans and rapeseed, and in 2016 for maize. It was replaced in 2014-15 by compensation payments covering the differences between the predetermined target prices and actual market prices, and with direct payments based on area planted for soybeans and maize since 2016-17"*.

Given that evolution away from minimum prices to direct payments, it would be advisable for China to notify under the AoA, as it has done under the SCM agreement, its actual subsidies instead of its fake MPS. At the same time, considering that the China MPS is the only type of its agricultural supports has allowed the US to assess easily China total agricultural supports without the need to assess actual subsidies. As if the MPS reflected the actual domestic subsidies! As the authors explain, *"China – Domestic Support is a complaint about compliance with the AA, not about adverse effects under the WTO Agreement on Subsidies and Countervailing Duties, as was the case in the well-known United States – Upland Cotton dispute brought by Brazil (WTO, 2009). A domestic support complaint under the AA requires the complainant to demonstrate that the respondent has exceeded a limit on certain domestic support but does not require demonstrating adverse effects"*.

In that circumstances we do not understand why D. Orden and L. Brink's are not challenging explicitly the fact that the US considers China MPS as reflecting its actual trade distorting subsidies. Happily, further on in their analysis they suggest that China should change its way to notify its agricultural supports: *"The relatively high levels of China's economic MPS during 2012-15 coincide with the possibility that China's WTO MPSs exceeded their limits... Lowering or eliminating China's administered prices also for wheat or rice could be a policy response to reduce future vulnerability to legal challenges, and China has begun to lower its wheat and rice support prices since 2017. In short, China may itself see merit in an alternative policy direction that relies less on administered prices and MPS even for these two staple food grains"*.

### **3.2 – The major issues of the level of fixed reference prices and of the eligible quantity**

Let us now return to the authors arguments in the US complaint against China: *"One major point of contention is the quantity of each grain to be counted as eligible for price support. A*

*second major point of contention is whether the fixed external reference price [FERP] in the price gap calculation is properly based on prices in 1986 to 1988 or in 1996 to 1998".*

### **3.2.1 – The date and level of the fixed external reference prices (FERPs)**

#### **3.2.1.1 – The US stance**

The US claims, in its "*Executive summary of the U.S. first written submission*" of 12 June 2018, paragraph 47, that "*The “fixed external reference price” is a static reference value defined by the Agriculture Agreement in Annex 3, paragraph 9. This states that the price “shall be based on the years 1986 to 1988” and “may be adjusted for quality differences as necessary.” These fixed external reference prices can be determined using official Chinese customs data from these years (Relevant data available at U.S. First Written Submission, Table 7; Exhibit US-65)*".

The US opening statement at the second substantive meeting of the panel of 25 April 2018<sup>29</sup> is not robust: "*The United States demonstrates that China’s legal arguments that the Supporting Table legally supplants the Agreement on Agriculture fail. They fail because the text of the Supporting Table does not establish the factual basis to underline China’s legal arguments. Simply put, again, the actual text of the Supporting Table does not in fact identify or use any “fixed external reference price.” Thus, China’s legal arguments that rely on use of a supposed 1996-1998 “fixed external reference price,” including its arguments relating to “practice,” simply lack any basis in fact. China’s legal arguments also fail as a matter of law because China’s Supporting Tables are not made an integral part of the WTO Agreement and do not contain binding commitments*". Indeed they were the external reference prices notified in the AGST of the first WTO Members in 1994 which were afterwards labelled "FERPs".

In the US closing statement at the second substantive meeting of the panel of 25 April 2018<sup>30</sup>, the US challenged China as not abiding to the AoA common rule of notifying its MPSs on the basis of the FERPs of 1986-88 as it used the prices of 1996-98. The US stated: "*First, we’re only arguing that China should apply the Agriculture Agreement. The rule in Annex 3, paragraph 9, is clear. We would assume that China read and would have been aware of that rule when it acceded*". China argued that it was not permitted to avail of the AoA common rule of a 10% de minimis level for DCs but only of 8.5%, and China has likely answered: "*The rule in article 6.4.b is clear: “For developing country Members, the de minimis percentage under this paragraph shall be 10 per cent”*".

#### **3.2.1.2 – The counter-arguments to US stance**

The US interpretation fits badly with the definition of terms used in the AoA Article 1: "*Aggregate Measurement of Support” and “AMS” mean the annual level of support, expressed in monetary terms... which is (i) with respect to support provided during the base period, specified in the relevant tables of supporting material incorporated by reference in Part IV of a Member's Schedule; and (ii) with respect to support provided during any year of the implementation period and thereafter, calculated in accordance with the provisions of Annex 3 of this Agreement and taking into account the constituent data and methodology used in the tables of supporting material incorporated by reference in Part IV of the Member's Schedule*". It contradicts also the provisions of paragraphs 5 and 9 of Annex 3 article 9 which should be

<sup>29</sup> <https://ustr.gov/sites/default/files/enforcement/DS/US.Open.Stmt.Pnl.Mtg2.pdf>

<sup>30</sup> <https://ustr.gov/sites/default/files/enforcement/DS/US.Clos.Stmt.Pnl.Mtg2.pdf>

read together: "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" and "9. The fixed external reference price shall be based on the years 1986 to 1988".

Precisely Part IV of China's Schedule of 19 July 2001<sup>31</sup> shows clearly that the base period was 1996 to 1998, not 1986 to 1988. The more so as the traded quantities have changed a lot between these periods (table 1) as the deficit in wheat has shrunk and the surpluses in rice and corn have expanded. And it is also likely that the quality of these cereals has changed significantly, so that back-dating the FERPs from 1996-98 to 1986-88 would not make much sense. The authors acknowledged this quality issue in their December 2017 powerpoint presentation: "Admin price and ref price at same quality: important for all".

Table 1- China trade in wheat, milled rice and corn in 1986-88 and 1996-98: 1,000 tonnes

1,000 tonnes	(1) 1986/87-1988/89	(2) 1996/97-1998/99	(2)/(1)
Wheat imports	13176	1817	13.8%
Wheat exports	7.3	891	12205%
Wheat balance	-13168.7	-926	7%
Milled rice imports	631	254	40.3%
Milled rice exports	771	2460	319.1%
Milled rice balance	140	2206	1575.7%
Corn imports	589.3	208	35.3%
Corn exports	4089.3	4467.7	109.3%
Corn balance	3500	4259.7	121.7%

Source: <https://apps.fas.usda.gov/psdonline/app/index.html#/app/advQuery>

The USDA report of August 2013 stated that the 1996-98 prices were recognized in China's accession agreement: "*Product-specific support included large negative values for rice and wheat market price support because price supports were below external reference prices... China's WTO accession agreement specifies 1996-98 import or export prices as the base period for external reference prices for China. In those years, the reference prices exceeded Chinese farm prices by approximately 50 percent for rice and 22 percent for wheat (due to the higher value added of traded commodities versus farmgate prices and China's practice of pricing grains below world prices at that time). Wheat and rice price supports were still below their 1996-98 external reference values in 2008. Thus, China was able to report negative values for market price support, which offset other product-specific support and resulted in overall negative product-specific support reported for wheat and rice*"<sup>32</sup>. The first Trade Policy Review of China in 2006 did not challenge either the 1996-98 period as the base period for China's AMS notifications.

However the USDA report added: "*Wheat and rice support prices now have been raised above the external reference prices. In 2012, the wheat support price exceeded the reference price by 22 percent (fig. 10). The indica rice support price was still less than its reference price in 2012, but the japonica support price exceeded the reference price by 9 percent... Using the amount purchased at price supports, ERS estimates that market price support equaled 3 percent of the value of output for wheat... in 2012 (table 9). Data on support price purchases were not available for rice and corn, but market news reports indicated that small volumes were purchased at support prices, so the market price support calculation is likely to remain below the product-specific de minimis for those crops*".

<sup>31</sup> [https://www.wto.org/english/tratop\\_e/agric\\_e/supporting\\_tables\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/supporting_tables_e.htm)

<sup>32</sup> Fred Gale, *Growth and evolution of China's agricultural support policies*, USDA ERS, August 2013: <https://ageconsearch.umn.edu/bitstream/155385/2/err153.pdf>

In the powerpoint presented in December 2017 Lars Brink and David Orden wrote also: "*Other years than 1986-88 is standard practice in accessions » CD&M [Constituent Data and Methodology] negotiated with US and others; accepted by all*", opposing that view to that of the US: "*US says 1986-88, as per Annex 3 of Agreement on Agriculture*". They added in their May 2018 article: "*In addition to China, the accession members that use FERPs from later years include, for example, Chinese Taipei, Viet Nam, Ukraine, the Russian Federation, and Kazakhstan. It is not obvious how some of them might identify the proper trade data for the years 1986 to 1988 to generate the corresponding FERPs*".

However in their May 2018 article they add: "*A separate consideration with regard to FERPs is that if the Panel outcome were to legitimize China's and, by implication, other accession members' use of FERPs from later years than 1986 to 1988, these members would continue to enjoy their negotiated larger scope for MPS support than original WTO members, who are required to use their 1986-88 FERPs. For example, India and China, both populous nations and major agricultural producers, would face quite different constraints on their MPS policies. The United States highlights this implication in terms of fairness considerations in its closing statement to the second substantive meeting of the Panel (USTR, 2018d)*". We will come back to this fairness issue in the third part of this paper.

### **3.2.1.3 – The hidden reason of the US stance to use FERPs of 1986-88**

The insistence of the US, followed by the EU, that China's notified MPS be based on the 1986-88 period instead of 1996-68 can be explained by the fact that the 1986-88 reference prices of rice and wheat were then abnormally low because hugely distorted by the US and EU massive dumping on wheat and the US dumping on rice.

The extremely low world wheat prices of that period were the result of the US and EU combined massive dumping through several channels: explicit export subsidies – of the US export enhancement program (EEP) and EU export refunds –, 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 even 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, and without taking into account the wheat processed into animal feed –, we can underscore their huge responsibility in depressing the world prices of wheat and wheat flour, denominated in US dollar, in that base period<sup>33</sup>. 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 EEP export subsidy of \$38.9 million (\$21 per tonne)<sup>34</sup>. 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*

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<sup>33</sup> 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](http://www.solidarite.asso.fr/Papers-2014?debut_documents_joints=10#pagination_documents_joints)

<sup>34</sup> <http://www.card.iastate.edu/publications/dbs/pdffiles/89wp46.pdf>

in 1988"<sup>35</sup>. 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*"<sup>36</sup>. 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*"<sup>37</sup>. 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 was about the same for rice. 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.

Therefore this massive US and EU dumping alone is sufficient to discredit the US claim that China FERPs for wheat and rice be based on their levels in 1986-88 instead of 1996-98. The same conclusion applies clearly for all other WTO Members, of which India.

And we will not repeat the other discredit of the US attack to China MPS linked to the US violation of the AoA rules when it decided in 2008 to change the way to notify its dairy MPS.

The conclusion that we should draw from this is that the WTO MPS concept should definitively be deleted, as recommended by the prominent agricultural trade economists in the section I above. Furthermore deleting the MPS concept would put an end to the crucial issue of public stockholding for food security purposes<sup>38</sup>.

### **3.2.2 – The level of the eligible quantity to market price support**

As for the other issue of the quantity of rice, wheat and corn eligible to price support, the US argues that the price support programs provided a minimum price for all production in the major producing provinces and autonomous regions where the programs were in operation, which corresponds to nearly 80% of national production for wheat and rice and 45% for corn during 2012-15, whereas China argues that the procured quantities are the eligible production as procurement takes place only in designated regions and only for part of the year, and that significant grain production is consumed on-farm and not marketed. However China has not disclosed its procured quantities.

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<sup>35</sup> [http://research.stlouisfed.org/publications/review/88/11/Dubious\\_Nov\\_Dec1988.pdf](http://research.stlouisfed.org/publications/review/88/11/Dubious_Nov_Dec1988.pdf)

<sup>36</sup> <http://ageconsearch.umn.edu/bitstream/30095/1/21020117.pdf>

<sup>37</sup> <http://www.ntis.gov/search/product.aspx?ABBR=ERSAIB585>

<sup>38</sup> *Reconciling the views on a permanent solution to the issue of public stockholding for food security purposes*, SOL, September 10, 2017: <https://www.sol-asso.fr/wp-content/uploads/2017/10/Reconciling-the-views-on-a-permanent-solution-to-the-issue-of-public-stockholding-for-food-security-purposes-1.pdf>

For the USDA report of 2013 already mentioned, *"According to Chinese Government statistics, 6 percent of grain produced was purchased at support prices during 2012, and officials said that market interventions increased farmers' income by \$5.5 billion (see table below). However, the role of China's price-support programs is unclear, since many surveys indicate that few farmers sell grain at support prices... China's strategy of maintaining steady growth in prices is exemplified by the pattern in wheat prices during 2007-12 (fig. 8). The price support was raised each year, but it was below the average market price to varying degrees"*<sup>39</sup>. And this because the cost of production rose more (including of hiring farm workers), despite large input subsidies.

David Orden and Lars Brink write that *"A Panel outcome validating China's use of only certain small quantities for eligible production and/or its use of 1996-98 FERPs would increase its scope, and by implication the scope of some other members, to continue providing market price support to producers"*. Nevertheless they acknowledge that *"USDA (2016) indicates that Sinograin reportedly purchased 20.8 million metric tonnes of the 2015 wheat crop and 32 million metric tonnes of rice. This corresponds to 16% of the wheat production in the major provinces and 19% of rice, levels below the maximums at which the MPSs do not exceed the limits when calculated using 1996-98 FERPs, but above these levels using 1986-88 FERPs"*.

The problem is that the authors do not challenge really the USTR view that its assessment of China MPS is a correct measure of actual subsidies whereas the level of MPS comes in fact from other measures among which tariffs, import quotas, production quotas, export taxes, export and domestic subsidies. Given that they have had access to a large number of documents, including notifications made under the SCM agreement, we wonder why they did not try instead to help China to notify under the AoA the actual level of its trade-distorting domestic subsidies. Instead of that they stick to the MPS methodology by calculating the percentage reductions that would have been required from the applied administered prices for 2012-15 to bring China's MPSs for those years down to the limit of 8.5% of the crop's value of production, i.e. to the *de minimis* maximum AMS, trying to save this MPS methodology as it is useful for the US.

Here we must add that, although China out-of quotas tariffs are quite high (65% ad valorem on soft wheat as on milled rice), the within tariff rate quotas (TRQs) are miniscule: 1%. And in 2017 total imports were much lower than the TRQs: 4.4 Mt of wheat (fill rate of 45% for a TRQ of 9.63 Mt), 1.9 Mt for long-grain rice (fill rate of 75% for a TRQ of 2.6 Mt), 2 Mt for short to medium-grain rice (fill rate of 75% for a TRQ of 2.66 Mt), and 2.8 Mt of corn (fill rate of 39% for a TRQ of 7.2 Mt). That is the reason why the US is also suing China on its non-transparent administration of its TRQs on rice, wheat and corn<sup>40</sup>. As the share of State trading enterprises allowed to import grains in 2017 were of 90% for wheat, 60% for corn and 50% for rice, and as China uses several constraints to administer TRQs for private importers, this is a means for China to limit imports despite that its domestic farm prices are significantly higher than world prices. This proceeding is likely to condemn China based on the present AoA rules. But these rules should be changed: instead of imposing a right to access the market of other Members, they should promote food sovereignty to reach the SDG-2 by 2030, as long as Members do not harm other Members through dumping.

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<sup>39</sup> <https://ageconsearch.umn.edu/bitstream/155385/2/err153.pdf>

<sup>40</sup> [https://ustr.gov/sites/default/files/enforcement/DS/US.Sub1\\_0.pdf](https://ustr.gov/sites/default/files/enforcement/DS/US.Sub1_0.pdf)

### **3.3 – Comparing the OECD indicators of domestic support between developed and developing countries, particularly between the US, the EU28, China and India**

Table 2 compares several OECD indicators of agricultural support, on average from 2014 to 2016, of 10 high-income developed countries (HICs) – Australia, Canada, Switzerland, EU28, Iceland, Israel, Japan, New Zealand, Norway, USA –, and 13 emerging countries (ECs): Brazil, Chile, China, Colombia, India, Indonesia, Kazakhstan, Korea Rep., Mexico, Russia, Turkey, Ukraine, South Africa. The indicators are: VOP (value of total agricultural production), PSE (Producer Support Estimate), MPS (Market Price Support), TSE (Total Support Estimate), AWU (full-time equivalent agricultural worker unit) and a combination of them: PSE/VOP, MPS/PSE, PSE-MPS, (PSE-MPS)/AWU, TSE-MPS and (TSE-MPS)/AWU. As FAO has ceased to publish the data on AWU, not reliable for developing countries, we have combined the World Bank indicators of total labour force and the percentage working in agriculture<sup>41</sup>.

Table 2 – Main OECD agricultural indicators for 10 high income (HICs) and 13 emerging countries (ECs)

\$ million	VOP	PSE	PSE/ VOP	MPS	MPS/PSE	PSE- MPS	(PSE- MPS) /VOP	AWU 1000	PSE- MPS /AWU	TSE	TSE- MPS	(TSE- MPS) /AWU
10 HICs	1036626	194950	18.8%	71278	36.6%	123672	11.9%	14970	8261	276825	205547	13731
*less US DFA*	1036626	194950	18.8%	71278	36.6%	123672	11.9%	14970	8261	230896	159618	10663
Of which US	379342	38409	10.1%	9848	25.6%	28561	7.5%	2410	11851	93678	83830	34784
*less US DFA*	379342	38409	10.1%	9848	25.6%	28561	7.5%	2410	11851	47749	37901	15727
Of which EU28	448124	99972	22.3%	20081	20.1%	79891	17.8%	10057	7944	113514	93433	9290
13 ECs	2371954	275982	11.6%	189568	68.7%	86414	3.6%	459731	188	395466	205898	448
Brazil	159468	5593	3.5%	1118	20%	4475	2.8%	10348	432	9480	8362	808
China	1373847	227854	16.6%	167858	76.7%	59996	4.4%	153797	390	267539	99681	648
Turkey	62589	17178	27.4%	14020	81.6%	3168	5%	6032	525	20038	6018	998
India 2014-16	380817	-26100		-54818	210%	-28718	7.5%	229955	-125	8345	63163	275
ECs/HICs	228.8%	141.6%	61.7%	266%	188%	69.9%	30.3%	3071%	2.3%	142.9%	100.2%	3.3%
*-US DFA	228.8%	141.6%	61.7%	266%	188%	69.9%	30.3%	3071%	2.3%	171.3%	129%	4.2%

Source: OECD PSE data base; \* US DFA: US domestic food aid for a total of \$45.929 bn in TSE

The main results are:

- The ratio of PSE to VOP was 18.8% in HICs (of which 10.1% in the US and 22.3% in EU28) vs 11.6% in ECs (of which 16.6% in China) but the PSE is not an indicator of subsidies as it encompasses the MPS.

- The share of MPS, i.e. essentially import duties, in the PSE was of 36.6% in HICs (of which 25.6% in the US and 20.1% in EU28) against 68.7% in the ECs (of which 76.7% in China and 210% in India) so that their share was twice that of HICs and that of China was 3 times that of the US.

- The ratio of PSE-MPS (i.e. of individual subsidies) to VOP was of 11.9% in HICs (of which 7.5% in the US and 17.8% in EU28) vs 3.6% in ECs (of which 4.4% in China and 7.5% in India) so that their ratio was only 30.3% of that of HICs (of which that of China was of 37% and that of India of 60.5%.

- As the number of AWU was 30.7 times larger in ECs than in HICs (that of China was 63.8 times that of the US and that of India 95.4 times larger), the value of PSE-MPS per AWU was of \$8,261 in HICs (of which of \$11,851 in the US and \$7,944 in EU28) vs of \$188 in ECs (of

<sup>41</sup> A caveat relates to the imprecise level of AWUs in China and India, when based on the methodology devised by the WB indicators of total work force and the percentage in agriculture<sup>41</sup>. The actual levels are more likely larger for China and maybe lower for India: the WB data give 17.5% of total labour force for China in 2017 against 42.7% in India, although the OECD report of 2018 (page 24) speaks about 47% of total labour force in India. However, another source gives a 27% share of agriculture labour in China in 2017<sup>41</sup>.

which \$390 in China and of -\$125 in India) so that their level was of only 3.1% of that in HICs (and that of China was of 3.3% of that of the US and of 4.9% of that of the EU28).

- The most significant indicator of total agricultural subsidies is the TSE-MSP per AWU. However the TSE has been largely under-reported since 2013 when OECD decided to not report any longer the bulk of the SNAP (food stamps) programme, and erasing even these data for the previous years. So that the US subsidies to its domestic food aid (DFA) for 2014 to 2016 of \$45.929 bn have been lower by \$66.015 bn than the actual outturn of USDA budget of \$111.944 bn on DFA and the total TSE has itself been under-reported by the same \$66.015 bn. If we consider that the US TSE has been under-reported by \$66.015 bn, the US TSE would have been of \$159.693 bn, the TSE-MPS of \$149.845 bn and the TSE-MPS per AWU of \$62,176, i.e. 96 times that of China of \$648! If we were to use only the US total reported TSE of \$93.678 bn as in table 2 above, the TSE-MPS would be of \$83.830 bn and the TSE-MPS per AWU of \$34.784 bn, i.e. 53.7 times that of China of \$648. Now, if we delete altogether the under-reported TSE and consider that we should not take any subsidy to the DFA in the US TSE on the ground that US farmers are not benefiting significantly from them as they are essentially the US consumers who are subsidized by taxpayers, then the TSE would be itself lowered by \$45.929 bn on average from 2014 to 2016 to \$47.749 bn, the US TSE-MPS would have been of \$37.901 bn and the TSE-MPS per AWU of \$15,725 or 24.3 times that of China, which is not insignificant. In fact it has been argued that US farmers are benefitting from the DFA by at least \$6 bn. Let us add that the US DFA subsidies have been under-notified in the AoA green box compared to the actual outturn reported in USDA budget: by \$12.6 bn for 2014 and by \$5.7 bn for 2015 (2016 has not yet been notified to the WTO).

This against an average of \$448 in the 13 EC (of which \$648 in China and \$275 in India) so that all agricultural subsidies per AWU were 30.6 times larger in HICs than in ECs (when including US DFA) and 23.8 times without US DFA. It is clear that a higher level of AWUs in China and India would lower their ratios of TSE-MPS per AWU and increase the gap with that of US and EU28. If the actual ratio of agricultural workers in China were of 27% of total labour force, this would imply 244.266 million AWUs so that the TSE-MPS per AWU would be of \$408 instead of \$648 and these \$408 would have been 85.3 times lower than in the US with US subsidies to DFA and 38.5 times without.

## **Conclusion**

At the end of their analysis which failed to prove the usefulness of using the WTO MPS methodology in the US proceeding against China's support to rice and wheat, Lars Brink and David Orden invoke the OECD MPS concept, that they characterize as "economic MPS", implying that the WTO AoA MPS concept is not economic, which is true as it does not correspond to actual subsidies even if it incorporates some of them. Indeed the OECD MPS is the gap between farm prices and current world prices at farm gate, which represents essentially tariffs (plus in some cases export subsidies), multiplied by total production. This appeal for help to the OECD MPS concept is illogical once we agree that the eligible production is not total production but this comparison shows that the authors are criticizing the high level of tariffs, in line with the OECD and AoA first objective to increase market access, i.e. to reduce tariffs, for Western countries' exports, contrary to an objective of food sovereignty that they do not share.

Indeed, the clear only US objective in its proceeding against Chinese supports is to increase its exports, as stated in the USDA release of 13 September 2016: "*In 2015, China's "market price support" for these products [rice, wheat and corn] is estimated to be nearly \$100 billion in*

*excess of the levels China committed to during its accession. China's excessive market price support for rice, wheat, and corn inflates Chinese prices above market levels, creating artificial government incentives for Chinese farmers to increase production. The United States is challenging China's government support on behalf of American rice, wheat, and corn farmers to help reduce distortions for rice, wheat, and corn, and help American farmers to compete on a more level playing field. These programs distort Chinese prices, undercut American farmers, and clearly break the limits China committed to when they joined the WTO... We will aggressively pursue this challenge on behalf of American farmers and hold the Chinese government accountable to the standards of fair global trade. Through tariff cuts and the removal of other trade barriers, China has gone from a \$2-billion-a-year market for U.S. agricultural products to a \$20-billion-plus market," said Agriculture Secretary Vilsack. "But we could be doing much better, particularly if our grain exports could compete in China on a level playing field. Unfortunately, China's price supports have encouraged wheat, corn and rice production in China that has displaced imports"<sup>42</sup>. Despite the fast growing agricultural trade deficit of China and the US large growing agricultural surplus over China, this statement shows clearly the US imperialistic claim of its legal entitlement, based on the AoA market access principle, to "aggressively pursue" an even larger surplus.*

In that context the authors' endorsement of the US criticism that it won't be fair for other WTO Members, including India, that China would be allowed to notify its rice and wheat MPS based on the fixed external reference prices (FERTs) of 1996-98<sup>43</sup> prefer to ignore that the US itself violated the WTO rules when it changed the way to notify its dairy MPS in 2008 and that its insistence that China uses the FERTs of 1986-88 is due to the fact that the world prices of rice and wheat were then extremely low because of the combined US and EU massive dumping. We also wonder why the US is only discovering 7 years after China accession to the WTO that it did not notify correctly its MPS. And, as the US has shown the way to make a counter-notification of India AMS since 1995-96, based on the AoA article 18.7, we suggest that China and India follow suit in making a counter-notification of the US AMS on dairy since 2008.

If we were to speak really in terms of fairness the authors should have compared the China's and India's AMS with that of US (and EU) on a per capita basis. We have shown that the US actual total subsidies (without the fake WTO MPS) per agricultural worker (AWU) was 53.7 times larger than that of China from 2014 to 2016 when including the subsidies to the US domestic food aid (DFA) and still 24.3 times larger without any subsidy to DFA. However for the US this discrepancy is not yet a level playing field!

USDA and the authors seem to ignore the former US President Barack Obama's statement of 27 September 2015 at the adoption of SDGs in the UN: "*Through the adoption of this historic framework, the United States joins with countries around the world in pledging to leave no one behind by ending extreme poverty and prioritizing policies and investments that have long-term, transformative impact and are sustainable*".

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<sup>42</sup> <https://www.fas.usda.gov/newsroom/united-states-challenges-excessive-chinese-support-rice-wheat-and-corn>

<sup>43</sup> The US declared in its Closing statement at the second substantive meeting of the panel on 25 April 2018: "Why would WTO Members have wanted to effectively permit China to provide more trade-distorting market-price support than another Member with identical support policies?"