The EU actual agricultural supports (AMS and OTDS) in 2013-14

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Summary

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 a *current* AMS[1] of €5,971.7 billion (bn) against an *allowed* AMS of €72.378 bn[2] at the end of the Uruguay Round implementation period (July 1995-June 2001). This claim is far from the truth because the EU single payment scheme and single area payment scheme are coupled subsidies which should have been notified in the AMS for €39.267 bn, of which feed subsidies of €14.740 bn.

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

The EU allowed OTDS (overall trade-distorting domestic support) for the base period 1995-2000 was of €95.715 bn that the EU agreed to cut by 80% at the end of the Doha Round implementation period, that is at €19.143 bn, to be compared with the current OTDS of €60.821 bn in 2013-14, 3.2 times more than the allowed OTDS.

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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[3] of €5,971.7 billion (bn) against an *allowed* AMS of €72.378 bn[4] 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

[1] AMS: aggregate measurement of support or amber box of domestic trade-distorting supports.
[2] These €72.378 bn were updated from the initial €67.159 bn to take into account the enlargement from EU15 to EU28.
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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).

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[5]. 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[6], 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).

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[5] 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/

[6] "*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

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 the WTO Members would tolerate such large under-notifications by the EU while claiming that WTO is a rules-based international institution?

For broader analyses on agricultural supports, you may download an "*Analysis of the main controversies on domestic agricultural supports*"[7].

Annex 1 – The seven reasons why the "single payment scheme" (SPS) was not decoupled

There are seven reasons why the allegedly decoupled direct payments – the "single payment scheme" (SPS) and the SAPS (single area payment scheme for 10 of the EU-12 new Member States) from 2005 to 2014, now the "base payment scheme" (BPS) since the CAP reform of 2014 – are not decoupled.

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 ruled 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 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 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) payments are granted to feed (EU cereals, oilseeds meals and pulses), and more recently also to feedstocks used for agrofuels (vegetable oil, cereals

[7] https://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b/

and sugarbeet), which are both input subsidies 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*"[8], 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 blue box payments for the same products. Indeed, according to the AoA article 6.5, blue box 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*"[9].

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. And the two Appellate Body reports of December 2001 and December 2002 on the Dairy products of Canada's case have clearly underscore that dumping occurs when exports are made below the total national average cost of production without subsidies: "*The average total cost of production would be determined by dividing the fixed and variable costs of producing all milk, whether destined for domestic or export markets, by the total number of units of milk produced for both these markets… Thus, on the basis of the standard of average total cost of production, there will be an export subsidy only if the below-cost portion of an export sale is "financed by virtue of governmental action*"[10]. Therefore all EU agricultural exports can be sued for dumping, even products which had never received direct payment as fine wines, as long as their producers get SPS or SAPS payments for other productions, which applies practically to all EU28 farms to-day.

The EU claims that the full decoupling of direct payments to cereals (as to other agricultural products) since 2005 and even more since 2010[11] 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.

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

[9] 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*

[10] WT/DS113/AB/RW, 3 December 2001.

[11] 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.

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[12]. 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*"[13]. 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*".

In the US cotton case 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 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)[14].

To conclude, the decoupled payments were a legal artifice to allow the developed countries to notify a maximum of subsidies in the green box. To the extent that green box subsidies can increase without limit and benefit to exports, their trade distorting effect, of which dumping, is larger than that of explicit export subsidies which are capped and must be eliminated. In fact the most decisive reason for the radical change in the CAP and Farm Bill price policies in the 1990s was the scandalous definition of dumping in the GATT and the AoA. For economists and the man in the street dumping occurs when exports are sold at prices lower than production costs. However, for the GATT and AoA, there is no dumping as long as exports are sold at the

[12] *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

[13] 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.

[14] 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#

domestic "market prices", even if they are lower than the average national production cost. This explains why the US and the EU have taken advantage of this definition to lower their agricultural prices and offset this reduction by allegedly non-trade distorting subsidies.

Annex 2 – The EU has refused to notify its main feed subsidies

The fact that the EU has notified in its AMS some secondary feed subsidies – to dried fodder and skimmed-milk fed to calves – attest clearly that it is perfectly aware that feed subsidies are coupled input subsidies but it has refused to notify its huge subsidies to feed cereals, oilseeds and pulses (COPs). We could say the same for the US. Thus the US Congressional Research Service has acknowledged that "*program commodities such as corn are feed inputs for livestock*"[15] and OECD has stated that "*Input subsidies are typically explicit or implicit payments reducing the price paid by farmers for variable inputs (for example… feed)*"[16].

The EU cheating in that area has been largely promoted by the OECD tortuous concept of "excess feed cost" (EFC). OECD considers that the livestock producers are penalized as they have to pay their feedstuffs at domestic prices higher than world prices received by the growers of 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*". 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 (table 1), 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 (producer support estimate). Yet the feed subsidies are still there, hidden in its alleged fully decoupled SPS and SAPS, which is the best refutation of this OECD concept of "excess feed cost".

Table 1 – The EU average annual "excess feed cost" from 1986 to 2014, in € million

1986-94	1995-98	1999-2007	1986-2007	2008-14
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 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 also read the concrete examples given by Carlos Gasperin and Ivana Doporto Miguez[17].

We can also invoke the concept of "cross-subsidization", central in the WTO panels and Appellate Body's rulings in the cases of Dairy products of Canada and EU sugar. Here the

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15 http://wikileaks.org/wiki/CRS:_Potential_Challenges_to_U.S._Farm_Subsidies_in_the_WTO:_A_Brief_Overview,_June_1,_2007

16 http://www.oecd.org/agriculture/agricultural-policies/1937457.pdf

17 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.

"*cross-subsidization… financed by virtue of governmental action*" can be invoked by the fact that the 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 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 the EU feed subsidies, essentially hidden in the decoupled Single Payment Scheme, were much higher in 2012 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[18]. A more recent conservative estimate shows that, on the extra-EU28 exports of 5.449 million tonnes (Mt) of dairy products in 2016 – or 30.2 Mt of milk equivalent – total subsidies reached €2.030 billion, of which €513 million (M) of feed subsidies (17 €/t)[19]. And the feed subsidies to the EU28 dairy exports to the 4 EPA regions of West Africa, SADC, CEMAC and EAC were of €54.7 M in 2016 on €216.3 M of total dairy subsidies. The EU28 feed subsidies to its exports of poultry meat and preparations and eggs to the 6 countries of SADC reached €41.443 M in 2016 (120 €/t of carcass weight equivalent or shelled egg equivalent) for an average dumping rate of 19% (ratio of total subsidies to FOB export value)[20].

[18] *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
[19] *The huge dumping of extra-EU exports of dairy products and to the EPAs of West Africa, SADC, CEMAC and EAC in 2016*, SOL, April 17, 2017: https://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b-2/
[20] *The EU28 subsidies on its exports of poultry meat and eggs to SADC in 2*016, SOL, March 24, 2017: https://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b-2/