



## **The core agricultural issue for MC11 is the developed countries' green box subsidies**

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In all their bilateral free trade agreements (FTAs) the developed countries have refused to deal with agricultural domestic subsidies, alleging that it is an issue that can only be discussed at the WTO. But, although this crucial issue has been on the agenda of the WTO Special session of the agricultural committee since January 2016, the developed countries, the US and EU first, have refused to change the present unfair rules on agricultural domestic supports.

### **I – The notified AMS of developed countries hardly corresponds to actual subsidies**

Let us clarify first that the concept of agricultural *support* is broader than that of agricultural *subsidy* as it encompasses "market price support" (MPS) through import protection and export subsidies, albeit in different ways for OECD and the Agreement on Agriculture (AoA). For OECD the MPS represents the gap between domestic farm prices and current world prices (the border price of each country) rendered at farm gate, encompassing import protection as well as export subsidies. For OECD the MPS, which is a large component of the PSE (Producer Support Estimate), is "financed" essentially by consumers, considering that they are entitled to buy their food and other agricultural products at world prices and that import duties prevent them to do it. However a part of the MPS may be financed by taxpayers when there are explicit export subsidies, but this has always been the minor part of the MPS, particularly in developing countries (DCs) where they have hardly existed, and the US and EU have eliminated them (in 2014 for the EU), if we do not consider the other means of export competition (export credits and guarantees, insurance programmes, state-trading enterprises, excessive foreign food aid).

However the AoA definition of MPS is totally absurd for three reasons: 1) it is calculated as the gap between the present administered price and the border price of the 1986-88 period, multiplied by the eligible production; 2) it does not imply any actual subsidy as it is notified in the AoA "Supporting table DS:5" and, when the products receive actual subsidies, they are notified in the "Supporting table DS:6" ("non-exempt direct payments") or in "Supporting table DS:7" ("other product-specific supports"); 3) because it does not bring any additional support to that of other policy measures: import duties, export subsidies and restrictions, land set aside, production quotas, foreign and domestic food aid.

Thus in its last notifications for the 2013-14 marketing year the EU MPS not implying subsidies accounted for 98.1% of its whole notified AMS (Aggregated Measurement of Support or Amber box) and the US MPS accounted for 37.6% of its whole notified AMS, even if it was at 63.1% in 2012 and at 99.7% in 2007, before cheating on its methodology on dairy MPS from 2008 on. Canada's MPS represented 73.5% of its last notified AMS for 2012. In Switzerland it represented 97.1% of its AMS for 2013.

This absurd AoA rule on the MPS has been criticized by most prominent agricultural trade economists, including those sharing a free trade stance, among whom: William R. Cline<sup>1</sup>, H. de Gorter and J. D. Cook<sup>2</sup>, David Orden, Tim Josling and David Blanford<sup>3</sup>, and again Tim Josling, the "father" of the OECD PSE<sup>4</sup>. But the developed countries do not want to change this AoA rule as it allows them to appear notifying still a significant amount of agricultural domestic supports when their notified actual trade-distorting domestic subsidies are very low or even nil! However their actual trade-distorting domestic subsidies are much larger because they are hugely under-notified, particularly for animal products as they did not notify feed subsidies.<sup>5</sup>

## **II – The actual issue concerns the Green Box subsidies of developed countries**

So that today the developed countries subsidies are not those notified in their AMS but those notified in the Green Box (GB), and to a smaller extent in the Blue Box (BB). Let us focus on the EU.

In its notifications to the WTO of its agricultural domestic supports for the marketing year 2013-14, the EU claims to have an *applied* AMS of €5,972 billion (bn) against an *allowed* AMS of €72.378 bn<sup>6</sup> 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). But this notification is far from the AoA rules.

Indeed the EU SPS (single payment scheme) and SAPS (single area payment scheme) are coupled subsidies which should have been notified in the AMS, for €39.267 bn in 2013-14, so that the EU should have notified a current total product-specific AMS of €45.239 bn instead of €5.972 bn. This amount includes feed subsidies of €14.740 bn, which are input subsidies to the animal products – meats, eggs and dairy – having consumed the feed. Because the provision of the AoA article 6.2 that "*investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to low-income or resource-poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures*" has been interpreted by most WTO Members only as a "special and differential treatment (S&D)" of DCs, forgetting that, conversely, input and investment subsidies of the developed countries are in the AMS but they did not notify them, particularly their subsidies to feed and feedstocks for biofuels and they notified their investment subsidies to farmers and agro-industries in the GB.

The main reasons why the EU SPS (now the BPS, Base Payment Scheme since 2015) and the SAPS are not in the GB but in the AMS are:

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<sup>1</sup> William R. Cline, *The Doha Round, Agriculture, and the Developing Countries*, USDA, 2007 Agriculture Outlook Forum, USDA 01-02/03/07

<sup>2</sup> Harry de Gorter et J. Daniel Cook, *Domestic Support in Agriculture: The Struggle for Meaningful Disciplines*, 2005, [http://siteresources.worldbank.org/INTRANETTRADE/Resources/239054-1126812419270/7.DomesticSupport\\_updated\\_on12Dec05.pdf](http://siteresources.worldbank.org/INTRANETTRADE/Resources/239054-1126812419270/7.DomesticSupport_updated_on12Dec05.pdf)

<sup>3</sup> *WTO Discipline on Agricultural Support*, Cambridge University Press, 2011

<sup>4</sup> <https://www.ictsd.org/themes/global-economic-governance/research/rethinking-the-rules-for-agricultural-subsidies>

<sup>5</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/>; *The EU actual AMS and OTDS in 2013-14*, SOL, 29 April 2017, <https://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b-2/>

<sup>6</sup> These €72.378 bn were updated from the initial €67.159 bn to take into account the enlargement from EU15 to EU28.

- The SPS-BPS is coupled as it contradicts condition d) of the AoA Annex 2 paragraph 6 because it remains coupled to agricultural area as farmers must show they have eligible hectares (ha) to get payments, each single farm payment right corresponding to one ha.

- The SPS-BPS is also coupled because it contradicts the condition b) 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 were not in the GB, the EU SPS-BPS will be much more easily ruled to be in the amber box because the EU maintains caps on the production of many products, particularly those benefitting of BB payments granted "*under production-limiting programmes*" whilst the SPS-BPS allows to produce any product – otherwise it will not enjoy a full production flexibility –, including products whose production is forbidden or capped, among which cotton (see further below).

- A large part of the SPS-BPS (and BB) payments are granted to feed (EU cereals, oilseeds meals and pulses), and to EU feedstocks for agrofuels (vegetable oil, cereals and sugarbeet), which are both input subsidies in the amber box for developed countries.

- The SPS-BPS 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 maintain a "*Minimum livestock stocking rates*", which is clearly a production.

- Last, but not least, as the SPS-BPS payments cannot be assigned to a particular product, they are attributable to any product of which they lower the sale price below its EU average production cost. Therefore all EU agricultural exports can be sued for dumping, even products which had never received direct payments as fine wines, as long as their producers get SPS-BPS for other productions, which applies practically to all EU28 farms to-day.

### **III – The EU is not the good guy it claims on the cotton issue**

Among the EU products receiving both GB and BB subsidies, let us stress cotton for which the EU notifies only one third of its total domestic subsidies of €799 million (M) in the BB (€244 M) and the rest (€527 M) in the GB, for a production of cotton lint of 275,550 tonnes (t) and exports of 264,918 t in 2016. Which implies a subsidy per t of €2,900 and total export subsidies of €768.3 M. For a FOB price of €1,457 the dumping rate was of 199%! As our data on US subsidies to cotton are only for 2014, that year the EU produced 348,650 t with total subsidies of €786.9 M implying a subsidy per tonne of €2,259. Total exports of 273,655 t implied total export subsidies of €618.2 M and a dumping rate of 170% given a FOB price of €1,329. As the US subsidies to cotton exports were of €867.5 M, the share of EU in the joint EU+US exports subsidies was of 41.6% even if the EU share of EU+US production of cotton lint was of 10.3%.

The EU is proud of its assistance to the "Support Program for the Consolidation of the Framework for Action of the EU-Africa Partnership on Cotton" which was of €651 M from 2004 to 2016<sup>7</sup>, i.e. of €50 M per year. But it avoids to compare it to the €635 M of annual subsidies to its cotton exports on average over the same period, 12.7 times more!

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<sup>7</sup> <http://www.rtb.bf/2017/03/parteneriat-ue-afrique-sur-le-coton-fin-du-programme-dappui-a-la-consolidation-du-cadre-daction-sur-fond-dactivites-de-promotion-du-coton/>

#### **IV – The US domestic food aid must comply with the WTO rule on public stockholding for food security purposes**

It is funny that by far the largest provider of domestic food aid, the US, considers that the WTO rules on public stockholding for food security purposes cannot be applied to itself, which is false as I have shown in an in-depth analysis<sup>8</sup>.

To understand this it is first necessary to clarify several misunderstandings prevailing about the present WTO rules, showing that: they are about "food products", not "agricultural products" or "crops"; the WTO does not define the concepts of "market prices" and "administered prices"; "public stocks" are not necessarily managed by a public company; there is no minimum storage time required to speak of public stocks and the concept of food security stock is not defined either. In that context I have shown that for 8 products – wheat flour, corn flour, rice, beef, pork, poultry, dairy and eggs – the US should have notified to the WTO \$12.785 billion in 2012 for the product-specific AMS of its domestic food aid. As the Indian AMS of rice and wheat procured at administered prices in 2012 was of \$2.079 billion, there is no competition between the US and Indian AMS of their domestic food aid programmes. Yet it is India which is condemned by the WTO rules while the US notifies all its domestic food aid in the green box!

Having reminded why the present WTO rules on PSH are absurd, the paper proposes to make minor changes in the AoA rules of Annexe 2: deleting the words "in developing countries" in footnote 5 of paragraph 3 and footnote 6 of paragraph 4; in Annex 3 deleting the words "fixed" in paragraphs 8 to 11, "for the base period" in paragraph 5, "shall be based on the years 1986 to 1988 and" in paragraphs 9 and 11, and "in the base period" in paragraph 9. The DCs using such programmes would have just to notify in their AMS the gap between their administered price and the current world price at their border, times the eligible production. And this simplification of the present rules would at the same time be highly beneficial to the developed countries themselves, particularly the EU, as this would almost eliminate their notified current market price support (MPS) which is the bulk of their notified AMS so that they should not oppose such modifications. Although, as we have said above, the Developed countries prefer to maintain the way to notify their fake MPS to hide their other notified actual subsidies.

Although the G33's proposal on PSH is quite positive for DCs, it should have been extended to all WTO Members instead of focusing only on DCs as the present AoA rules are doing. Because the G33 takes at face value the concepts of "administered price" and "market price" sold by the developed countries. So that deleting the words "*developing country Members and Least Developed Country Members*" in order to extend their proposal to all WTO Members would arrive at the same conclusion that shown above.

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<sup>8</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/analyses-politiques-agricoles-jacques-b-2/>