http://capreform.eu/the-looming-eu-us-wto-spanish-ripe-olives-dispute/

APRIL 9, 2019 BY ALAN MATTHEWS

# The looming EU- US WTO Spanish ripe olives dispute

[Comments by Jacques Berthelot (jacques.berthelot4@wanadoo.fr), SOL, 13 April 2019]

An agenda item on the AGRI Committee's last meeting in this Parliamentary term yesterday dealt with a presentation by DG AGRI's Director for International Affairs John Clarke on the agricultural component of ongoing trade negotiations and other relevant issues of trade policy (starts at 16:23 on the meeting video). Amid a chorus of complaints from AGRI MEPs about poultry imports from Ukraine, tomato imports from Morocco and potential Brazilian tariffs on EU exports of garlic, Mr Clarke gave a robust and trenchant defence of the Commission's role in managing international agricultural trade relations.

Among the items he covered was the EU response to the US imposition of countervailing and anti-dumping duties in 2018 on the import of Spanish ripe olives, confirming earlier preliminary determinations to impose provisional duties. The US action was in response to a complaint by domestic producers of ripe olives that Spanish ripe olives were unfairly subsidised because olive growers received CAP subsidies in the form of direct payments as well as through several other measures.

The European Parliamentary Research Service has produced an informative brief on the facts and the history of the dispute.

The US Department of Commerce finding sets out an ad valorem countervailable subsidy average duty of 14.75% compared to the provisional 4.47% established in November 2017 and an average ad valorem anti-dumping tariff of 20%, compared to the provisional 17.13% established in the month of January 2018. In total, the ad valorem additional duties imposed on Spanish companies range between 30.1% and 41.5%, with an average value of 34.8%.

The exporters, supported by the European Commission, argued that direct payments were not a subsidy to olive production as they were not linked to the production of olives. They also argued that there was no evidence of 'pass-through' of any benefit that olive growers might have received to the processors of ripe olives and therefore no subsidy to the exporters. To the contrary, the US Department of Commerce found that the subsidies olive growers received were crop specific and were passed on to the processors and exporters. Recalling that Green Box subsidies are actionable under the Subsidies and Countervailing Measures (SCM) Agreement and give rise to a countervailing duty if there is a finding of adverse effect, in this case, it was found that there was material injury to the domestic industry.

As explained by Mr Clarke, the Commission's view is that this action represents a direct attack on the Green Box nature of the EU's decoupled direct payments and thus cannot be allowed to go unchallenged. The European Parliament (EP) in a resolution in March last year claimed that "*the decision calls into question, in an unfair and arbitrary manner, all the EU's farming support programmes and could potentially affect all recipients of payments under the CAP*".

The Spanish government, in communicating its concern over the US action to the AGRIFISH Council in June 2018, also claimed "*that this procedure has put the CAP in question as a whole, and the subsidies granted to European farmers through this policy, which generates a dangerous precedent for the European agricultural sector as a whole*".

My own reading of the US justification for its action is not so apocalyptic. The reasoning used in the case was quite specific. The US Department of Commerce accepted evidence that the Basic Payment received by olive growers in the 2014-2020 period was linked to the Single Payment Scheme (SPS) payment they received in the 2005-2013 period. In turn, the grant amount provided to olive farmers under SPS was based on the average grant amount olive farmers received in 1999 through 2002 under the Common Organization of Markets in Oil program. This grant amount provided in 1999 through 2002 was based on the type of crop grown and the production value created from the crop. Therefore, the Department of Commerce concluded that the annual grant amount received by olive growers under the Basic Payment Scheme in 2016 was based on annual grant amounts that were crop specific, as they were directly related to the grant amount only olive growers received under Common Organization of Markets in Oil program. What attracted the Department's criticism was not direct payments per se, but rather that Spain has continued to use the historical basis for determining the value of the Basic Payment to farmers. It is this link with the past, rather than the nature of decoupled payments in themselves, which was the foundation for the US finding that Spanish ripe olives were subsidised.
[Your attempt to deny that the DoC did not denounce the nature of the EU decoupled payments (BPS, greening) per se and that they are only a continuum of the coupled payments received from 1999 to 2002 is not convincing. It suffices to read the analysis of the EU subsidies to its table olive growers prepared by McDermott Will & Emery (https://www.law360.com/articles/937827/us-olive-producers-demand-duties-on-spanish-competitors): "*The lack of crop alternatives in the olive-growing sector causes the direct payments, even though they are decoupled from production, to have a greater impact on production than payments given to farmers on land suitable for multiple crops. Typically, farmers base their production decisions on the relative profitability of existing crops compared with available alternatives. But if farmers have no alternatives and are tied to a single crop, they are likely to produce it even when market conditions are difficult. In the case of EU olive farmers, many continue to harvest olives despite costs that are at or above market prices (before support payments are included in their income) because they have no flexibility to move to alternative crops*". The US Government has estimated that direct SPS olive payments comprised on average "between 22 and 40 percent" of an olive farmer's income in Spain, depending on the year and type of farm. The Spanish Government's own estimates have been at the high end of that range, putting olive subsidies at 40% of the value of the olive oil market. In total Spanish olive growers receive subsidies of 468 €/ha (excluding irrigation subsidies), around 40% of the market price, while the average subsidy for the whole Spanish agriculture is 258 €/ha (https://www.oliveoiltimes.com/olive-oil-business/europe/olive-regions-joint-strategy-eu-subsidies/25672). The Spanish Government has confirmed that the cost of production of table olives is at least 16.4% higher than the retail price and the EU Commission has recognized that "*the price of table olives is very low, making production without support uneconomic*" (http://ec.europa.eu/environment/life/publications/lifepublications/lifefocus/documents/oliveoil.pdf).]

The EU has sought consultations on this action at the WTO, which is the first step to initiating a dispute and seeking the establishment of a panel to hear the dispute. The EU complaint has several strands. It first claims that the Basic Payment is not a specific subsidy within the meaning of the SCM Agreement and thus cannot be the basis for countervailing action. It also claims that the Commerce Department did not perform a pass-through analysis to confirm that any subsidy to growers did benefit exporters (which the Commerce Department defends on the basis that this is not necessary under US law). Finally, it claims that the injury determination undertaken by the USITC was flawed in several respects.

Mr Clarke confirmed to the AGRI Committee that the Commission now intends to escalate this dispute and seek the establishment of a panel. It is possible that the findings might help to clarify some of the legal issues around the trade-distorting effects of decoupled direct payments.

In the US – subsidies on cotton case, Brazil claimed, among several other issues, that US domestic subsidies including its decoupled direct payments had an adverse effect on its interests. An adverse effect can be injury to the domestic industry producing the like product, nullification or impairment of benefits, or 'serious prejudice' within the meaning of the SCM Agreement. Serious prejudice arises where a subsidy displaces or impedes the imports of a like product into the market of the subsidising country, where it displaces the exports of another member from a third country market, or where it leads to significant price suppression or lost sales. Brazil claimed that a surge in US cotton exports had caused it serious prejudice through displaced export sales and significant price suppression.

In evaluating this claim, the panel divided US cotton programmes into two groups: those that were directly contingent on market price levels, such as loan deficiency payments, marketing loss assistance payments and counter-cyclical payments; and those payments that were not, including decoupled direct payments and federal crop insurance. The panel found (and was upheld by the Appellate Body in finding) that US domestic support measures that were directly contingent on market price levels caused serious prejudice in terms of market price suppression for the period 1999 to 2002.

U.S. domestic support measures that were not contingent on market price levels, such as the US decoupled direct payments at the time, were not included in this finding [false: read the AB conclusions below]. The panel found, in the particular facts and circumstances of that dispute, that these subsidies were more directed at income support. The panel therefore concluded that there was not enough of a connection between the direct payments program and cotton planting decisions to declare the direct payments program a serious factor in price suppression (Para. 7.1307) [false: read the panel analysis and the AB conclusions below]. In the wonderful legalese of international trade lawyers, the panel concluded that;

*"Brazil has not established that, in light of their structure, design and operation, these [non-price contingent] measures – which are more concerned with income support than directly with world price effects – had a sufficient nexus with the marketing of the subsidized product and the price suppression effects as to render their inclusion or non-inclusion in our price suppression analysis legally determinative in respect of the significant price suppression that we have found in the same world market." (Para. 7. 1350).*

[Alan Matthews is very selective in his quotations of the DSU (panel and AB) in this cotton case:

1) He did not quote other excerpts of the panel contradictory with para. 7.1350:

1.1) particularly para. 7.1192: "*We do not see the Article 6.3(c) reference to "the effect of the subsidy" (in the singular, rather than the plural) as meaning that a serious prejudice analysis of price suppression must clinically isolate each individual subsidy and its effects.*[1] *Rather, these textual references to "any subsidy", "the subsidy" and the "subsidized product" in Articles 5(c) and 6.3(c) suggest that while due attention must be paid to each subsidy at issue as it relates to the subsidized product, a serious prejudice analysis may be integrated to the extent appropriate in light of the facts and circumstances of a given case.*[2] *In our view, these textual references to "any subsidy" and "the effect of the subsidy" permit an integrated examination of effects of any subsidies with a sufficient nexus with the subsidized product and to the particular effects-related variable under examination. 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*[3]*, 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*".

1.2) He did not quote para. 7.1148 and 7.1151: "*7.1148 Other measures before us pertain to a restricted number of agricultural products, but are not widely or generally available in respect of all agricultural production, let alone the entire universe of United States production of goods… These are the four types of domestic support which permit production flexibility (PFC, MLA, DP and CCP payments) that were or are provided in respect of certain agricultural production in a base period which satisfies certain eligibility criteria. These criteria have the effect of limiting eligibility to a subset of basic agricultural products, including upland cotton or certain other programme crops. We therefore find that these subsidies are "specific" within the meaning of Article 2. The fact that some of the subsidies go to farmers who may produce different commodities, or, in theory, may not produce a given commodity does not mean, by some process of reverse reasoning, that the specificity that is apparent from the face of the grant instrument no longer exists… 7.1151 In our view, the industry represented by a portion of United States agricultural production that is growing and producing certain agricultural crops (and certain livestock in certain regions under restricted conditions) is a sufficiently discrete segment of the*

---

[1] Taken to an extreme, this could mean that separate dispute settlement proceedings, or at least separate claims, would need to be brought with respect to the serious prejudice caused by each and every individual subsidy, even where these subsidies exist contemporaneously and interact in concert in respect of a single subsidized product to produce a single result in the form of a price phenomenon.

[2] We recall the approach of the panel in Panel Report, *Indonesia-Autos,* para. 14.206. In the context of deciding to examine subsidies under an expired measure, that panel observed that it had before it "... a variety of different subsidy measures provided pursuant to a single National Car programme". Under those circumstances, the panel determined,

> "...that it makes little sense to treat each one separately when analysing the existence of serious prejudice. Rather, we must assess the 'effect of the subsidies' on the interests of another Member to determine whether serious prejudice exists, not the effect of 'subsidy programmes.' "

That panel was dealing with a different basket of measures, under a single programme. It was also dealing with a different issue than the precise issue here before us (which involves questions not only of temporal, but also substantive, interrelationships among the subsidies at issue). Furthermore, it was dealing with different legal claims and arguments under Article 6.3(c) and 5(c) (relating to price undercutting, rather than price suppression). We do not understand that panel to suggest that the effects of *all* challenged subsidies in existence more or less contemporaneously and with any connection whatsoever with a subsidized product *must* be aggregated in a serious prejudice analysis. However, to the extent that it does suggest such an approach, our approach here is not identical and is tailored to the particular facts and circumstances of this dispute and of the measures before us.

[3] As we have already stated, this provision has lapsed, but may still be relevant in indicating the original architecture of the Agreement. See *supra*, footnote **Erreur ! Signet non défini.**.

*United States economy in order to qualify as "specific" within the meaning of Article 2 of the SCM Agreement*"[4].

3) He did not quote the conclusions of the Appellate Body:
*(a) " as regards the application of Article 13 of the Agreement on Agriculture to this dispute:*
*(i) in relation to Article 13(a)(ii):*
*upholds the Panel's finding, in paragraphs 7.388, 7.413, 7.414, and 8.1(b) of the Panel Report, that production flexibility contract payments and direct payments are not green box measures that fully conform to paragraph 6(b) of Annex 2 of the Agreement on Agriculture; and, therefore, are not exempt from actions under Article XVI of GATT 1994 and Part III of the SCM Agreement by virtue of Article 13(a)(ii) of the Agreement on Agriculture*".

4) He did not quote para 440 of the AB report: "*During the oral hearing, the United States accepted that farmers decide what to plant based on expected market prices as well as expected subsidies*".

5) Excerpts from Randy Schnepf and Jasper Womach's "*Potential Challenges to U.S. Farm Subsidies in the WTO*", CRS Report for Congress, October 25, 2006: "*A key element of the panel's determination regarding the Peace Clause was that U.S. Production Flexibility Contract (PFC) payments made under the 1996 farm bill and Direct Payments (DP) made under the 2002 farm bill failed to fully meet the Green Box conditions for decoupled income support. Disqualification arises because of planting restrictions on fruits, vegetables, and wild rice. As a result, the panel ruled that they should count against the U.S. 1992 spending benchmark… Although the panel did not declare that PFC and DP payments should be notified as amber box payments, the panel implied as much. This particular finding was not a part of the "serious prejudice" finding that required remedy; however, it establishes a precedent for interpreting the notification status of U.S. direct payments. As such, the ruling represents an obvious vulnerability should another country choose to specifically challenge the notification status of PFC and DP payments. Such a DSU challenge, if successful, would have important implications for the United States' ability to meet its domestic support commitments*". Clearly this conclusion applies today to the EU alleged decoupled subsidies.

Other analyses: "A World Bank paper of November 2008 written by Kim Anderson and Signe Nelgen incorporates the decoupled subsidies in their indicator of agricultural prices distortion – the NRA [nominal rate of assistance] – when they write: "*With this dollar value of decoupled payments, the NRA can be calculated by dividing the result by the value of production at undistorted prices. Since the decoupled part of support in agriculture is steadily increasing in high-income countries, it is of particular importance to integrate this part of support, even though it is less market- and resource-distorting than other distortion measures*"[5].

- The USDA has used extensively the concept of "*Net Budgetary Expenditures per Commodity*"[6] incorporating the subsidies to the farm price.]

---

[4] https://www.wto.org/french/tratop_f/dispu_f/cases_f/ds267_f.htm
[5] Kim Anderson and Signe Nelgen, "*Estimates of Distortions to Agricultural Incentives, 1955-2011*", updated in June 2013, http://siteresources.worldbank.org/INTRES/Resources/469232-1107449512766/Note_summarizing_core_updated_database_0613.pdf; *Distortions to agricultural incentives in Asia*, http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/0,,contentMDK:21960058~pagePK:64214825~piPK:64214943~theSitePK:469382,00.html
[6] http://www.fsa.usda.gov/Internet/FSA_File/pb12_tbl35.pdf; http://www.fsa.usda.gov/FSA/webapp?area=about&subject=landing&topic=bap-bu-cc

- The best denial that most EU agricultural subsidies are decoupled comes from Michel Jacquot, member of the French Academy of Agriculture and former director of the EAGGF – the European Agricultural Guidance and Guarantee Fund, which managed the budget of European agriculture – from 1987 to 1997: "*All these people are still living in the simplistic scheme that was sold to them in 1992 (notably by the Commission), when the WTO Agreement on Agriculture was established, according to which there were direct export subsidies (in jargon "refunds") and direct income aids, which were also to be reduced, unless they were decoupled. This scheme was not based on anything just: how can one imagine that a subsidy (SPS or BPS) does not affect exports (or imports)... Crap! Total Blindness! It took at the EEC level that the WTO Appellate Body on Sugar (April 2005)... wrote roughly that "any payment financed by virtue of a government measure in the form of resource transfers through cross-subsidization is an export subsidy" to open their eyes. But this, the Commission has never said openly, the decoupling has been presented – and continues to be – as the magic potion to say and assert, as the FOLL said, that "we"... were no longer subsidizing exports. Up to when will we continue to lie? When will it be known that European negotiators have been fooled by their American colleagues? When is the hour of truth?*" (http://blogs.mediapart.fr/blog/j-berthelot/260514/les-subventions-de-lue-lexportation-suite). It seems that this hour has come to ring!

Another rebuttal on the alleged NPS of decoupled payments comes from the very interesting article of Carlos Gasperin and Ivana Doporto Miguez in a book devoted to the green box, underscoring the cumulative effect of coupled and decoupled subsidies, among which the case of livestock, so that their alleged non-product-specific nature is meaningless: "*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*" (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). 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*".]

It is important to underline that the US cotton subsidy finding was made in the context of the particular facts and circumstances of that case, and in different circumstances a panel could arrive at a different conclusion. My good friend and colleague Tomas Garcia Azcarate has called a WTO case around EU direct payments "*a potential weapon of mass destruction*" but, as he himself admits, being part of the losing EU team in two previous WTO disputes has given him a rather jaundiced view of the working of WTO panels (having been a panel member on three occasions I am less dismissive ).

However, this case is brought by the EU against the grounds used by the US to justify its imposition of countervailing duties. The panel might find in favour of the US in the particular facts and circumstances of this case that the decoupled payments to olive growers in Spain are indeed a specific subsidy and therefore open to countervailing action. However, this would have only limited significance in the context of a challenge brought by the US or some other WTO

member against the EU's system of decoupled direct payments as a whole. Here the complainant would have to show that these payments caused, *inter alia*, 'significant' price suppression on world markets or caused it to lose export market share in either the EU or third country markets [you forget ASCM article 5.a: "*injury to the domestic industry of another Member*" (here the US)]. This would be a much higher bar to reach, and helps to explain why the EU trade lawyers are not reluctant to pursue the challenge in the case of Spanish ripe olives.

[Not at all, if you read Berthelot's papers on "*The European Commission has crossed the Rubicon on Spanish table olives*", SOL, 19 February 2019 (https://www.sol-asso.fr/wp-content/uploads/2019/01/The-European-Commission-has-crossed-the-Rubicon-on-Spanish-table-olives-19-February-2019.pdf) and his comments to Jean-Christophe Debar, the discussant in Berthelot's presentation of the table olives issue made at the SFER (Société Française d'Economie Rutrale) on 27 March 2019 (https://www.sol-asso.fr/wp-content/uploads/2019/01/Analysis-of-Jean-Christophe-Debars-remarks-discussant-of-Jacques-Berthelots-presentation-on-Spanish-table-olives-6-April-2019.pdf), you will find additional arguments to those already brought by the US petitioners. In particular Berthelot has enlarged and updated the data given by the US petitioners and the EU defendants, based on the last USITC trade data:

1) The price of subject imports from Spain has always been significantly lower, by 20% to 33% from 2010 to 2017, than that of subject imports from the Rest of the World, and this price remained 19.5% lower in 2018 despite anti-dumping and anti-subsidy duties, or perhaps because of these duties in order not to lose the American market, which is by far the largest for the Spanish exports.

2) Ms Grande of the Spanish Embassy in Washington made a big mistake by stating during the public hearing in May 2018 that "*the Spanish imports only replace the non-subject imports of the United States market. Thus, they did not have an impact on the situation of the domestic industry. The ITC should therefore analyze those other imports since they accounted for 25 percent of total imports and were priced three to five percent lower than the Spanish imports in both 2016 and 2017*". Indeed, the US total imports of subject ripe olives from Spain on average from 2015 to 2017 were of 31,845 tonnes or 2.1 times larger than the 14,914 tonnes of non-subject imports from all origins. Ms. Grande also made a significant error in comparing the prices of subject imports with those of non-subject imports, since the price of subject imports was on average 52% higher than that of non-subject imports from 2015 to 2017.

3) It is also interesting to note that one of the four USITC Commissioners, Ms. Meredith M. Broadbent – which disassociated herself from the other three by concluding that the imports of subject olives from Spain had not caused material injury to California olive growers – also erred in stating that *"Imports from nonsubject sources, primarily from Morocco, increased in absolute terms by… percent during 2015-2017, and the market share of nonsubject imports increased from… percent in 2015 to… percent in 2017* [blanks are due to the fact that the USITC report was required not to disclose confidential data not publicly available]. *Thus, the record demonstrates that the domestic industry lost a small amount of market share to imports from nonsubject sources, but not to subject imports... Nonsubject imports, rather than subject imports, caused the slight changes in overall market share that occurred during the period of investigation*". But Table 3 in Berthelot's report shows that non-subject imports fell by 34.1% from 2015 to 2017 compared to 6.7% for subject imports.

4) Since total EU subsidies, coupled and decoupled, to Spanish raw table olives averaged 297.4 €/t from 2015 to 2017, they represented 26.2% of the producer price of 778.5 €/t (table 4 of Berthelot's report)! This average price fell by 4.1% from 2015 to 2017, when the price to his Californian colleague was 15.8% higher and increased by 7% to €901.6/t (table 5). Since the producer prices of raw olives are reflected in production costs and prices of ripe olives, the significantly higher level of producer prices

of California's raw olives compared to Spain has reduced the competitiveness of California's ripe olives on those imported, resulting in significant losses in market shares.

Hence also the pass-through of these producer prices of raw olives to the Spanish FOB prices to the US exports of ripe olives, which are generally lower than the prices of California ripe olives, as noted by the USITC in its May 2018 report: "*Prices for product imported from Spain were below those for U.S.-produced product in 37 of 48 instances, with margins of underselling ranging from 4.4 percent to 37.8 percent. In the remaining 11 instances *** prices for product from Spain were between 0.5 percent and 21.5 percent above prices for the domestic products*".]

Of course, the Spanish ripe olives dispute would pale into insignificance if the US administration goes ahead with its threat to impose countermeasures for the adverse effect it has suffered from the subsidies provided to Airbus which it has claimed amount to $11 billion (the exact figure will be decided by a WTO panel this summer). [But the Appellate Body has ruled the contrary on 29 March 2019 that the United States provided subsidies to its aircraft manufacturer Boeing in the form of tax breaks from Washington State which resulted in lost sales of A320neo and A320ceo single-aisle aircraft from Airbus in five sales campaigns. In a press release, the EU stated: "*Today's ruling by the WTO's Appellate Body confirms the European Union's position that the United States has failed to remove the massive and trade-distorting subsidies it is granting to Boeing. The WTO sided with the EU in its argument that several US measures, notably the Washington State tax programme and business incentives from South Carolina are in fact subsidies. The Appellate Body dismissed all of the US appeal points,"the EU maintained*", even though the US claimed also victory on several minor issues. For an analysis of the AB ruling, read the SUNS daily email edition of the Third World Network of Monday 29 March 2019.] In addition to helicopters, aircraft and aircraft parts, the list includes agri-food products such as dairy products, citrus fruit, olive oil, olives, fish, wine, fruit juices and essential oils.

The WTO dispute settlement system is at breaking point because of the high case load resulting from several US Administration's trade policy decisions in the past two years, while the Appellate Body will soon be unable to function because of the US veto on the appointment of judges. However, if the EU initiates a formal dispute in the coming weeks, it is likely that a panel would be appointed by the summer and at least a panel report would be produced. Let the fireworks begin!

*This post was written by Alan Matthews*

Picture credit: MaxPixels, available under a CC0 Public Domain license.

**TAGS DISPUTE SETTLEMENT, OLIVES, US, WTO**

1 Reply to "The looming EU- US WTO Spanish ripe olives dispute"

1. **Simon Ward**

   APRIL 10, 2019 AT 10:27

   From a practitioner's view point decoupled subsidies are rarely separated from production in practice – although whether they can be distinguished from other financial devices such as variation in tax rates or different systems of tax allowances is much harder to determine. There is a whole generation of economists that take a simplistic view of profit maximisation failing to realise that this may be a small component compared to value maximisation (e.g. an additional employee or over investment in machinery from taxed income has a material impact on value for the operator but a negative impact on profit). The provision of subsidy as part of the trading income allows this over investment to happen.

Many farmers lack experience outside the industry and consequently there is a heightened reluctance to exit when others would consider that the profit was unacceptable for the effort. The subsidy allows businesses to remain in production – an enterprise does not have to be profitable if there is subsidy and will certainly be retained if there is even a contribution to the costs the producer considers to be fixed (whether or not they actually are under more radical management).

Inertia whether as a result of tradition or available skill set is high and in some cases (such as olives?) change may require a change in generation. A producer may swap from wheat to barley but probably not from wheat to olives or olives to wheat since it requires investment, or the discard of investment, and is therefore a long term decision. Political or social change may easily strand the additional investment making the change from perhaps a 100 years of experience high risk. Cotton growers may change but probably not cotton processors. It may also be worth noting that sometimes lower prices results in increased production. If milk price falls a few extra cows is sometimes and easy solution even if there is a marginal fall in the quality of life. It is interesting to note that based on the UK Farm Business Survey figures for grazing livestock published earlier this week even the average farm was nowhere close to the scale that most practitioners would argue was necessary to define a commercial unit.

The point is that whether a historic basis specific to the crop, or a more general basis of a common industry wide subsidy, the subsidy does distort production. Can there be any dispute that the beneficiary is better off and under less pressure to do something else? The subsidy is not green box in any material sense. This does not make it wrong or undesirable but it is important to be honest.

Society perhaps needs to determine what it wants. A European or US model of farming may both be justified but should not be allowed to impinge on each other. Ultimately more food is probably good for the world even if Europe and the USA increasing waddle with too much themselves.

**Reply**