



The biased ruling of the WTO panel in the US-China case on Domestic Support for Agricultural Producers

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Introduction

The Panel's ruling in the *China - Agricultural Producer Support* case of February 2019, where the United States (US) was the complainant, highlights fundamental inconsistencies in WTO agricultural rules, beyond the specificity of this case whose central issue is the level of production eligible for market price support (MPS) to Chinese wheat and rice producers. The Panel ruled along the same lines as in the *Korea - Various Measures on Beef* case of December 2000, which has since become a precedent in all cases of the same type, without realizing that this Panel had overlooked fundamental data and therefore erred, even inducing an error by omitting of the WTO Analytical Index.

But most importantly, this case shows the inconsistency of the WTO Agreement on Agriculture (AoA) concept of Market Price Support (MPS), a concept that is the hoax of Western countries, allowing them to hide their actual trade-distorting agricultural subsidies, known as AMS (Aggregate Measurement of Support or Amber Box). The extreme case is that of the EU, which took the liberty of declaring, in its latest notification of 20 April 2020 on its domestic agricultural support for 2017-18, that its trade-distorting subsidies were only €188 million (€M), or 0.026% of its total subsidies of €73.054 billion (bn) notified in the green box (€65.8 bn), blue box (€4.8 bn) and amber box (€2.4 bn). And this total is still far exceeded if we take into account certain non-notified State aids, *de minimis* direct aids, the omission of certain aids "other than by product", and the "gold box" of past and present agricultural and non-agricultural subsidies

that give Western countries a huge competitive advantage over developing countries. These include in particular social security subsidies to farmers (sickness, retirement, work accidents, family benefits) which, in France, in 2018, benefited from €9 bn paid by taxpayers.

What is most distressing is that China, India and the African Group at the WTO have taken at face value the rhetoric of Western countries on the non-trade distorting nature of the subsidies of the Green and Blue boxes, shooting themselves in the foot with a huge bullet and preventing any possibility of reforming the AoA in a fairer direction.

This is why the study drives home the point by recalculating the various components of the Overall trade-distorting domestic support (OTDS) transferring to the AMS not only the Green Box and the Blue Box but also the value of animal products that benefited from feed subsidies.

I – The US-China panel ruling did not comply with the WTO rules

On 17 July 2020 the United States (US) informed the WTO Dispute Settlement Body (DSB) on its decision to levy \$1.3 billion of trade retaliation to China which failed to implement the panel ruling of 28 February 2019, endorsed on 26 April 2019 by the DSB, that China provided domestic support to its producers of wheat and rice in excess of its Aggregate Measurement of Support¹ (AMS)². On 28 July China replied that it "*disagrees with the United States' allegation that China has failed to bring its measures into compliance with its WTO obligations. As detailed in its communication on 18 June 2020 (WT/DS511/15/Add.2), China has brought its relevant domestic measures into full compliance with the DSB's rulings and recommendations*"³.

According to this statement, China would endorse the ruling of 28 February 2019 in paragraph 8.1.: "*The Panel concludes that in the years 2012, 2013, 2014 and 2015, China provided domestic support, expressed in terms of its Current Total AMS, in the form of market price support to producers of wheat, Indica rice and Japonica rice in excess of its commitment level of "nil", set forth in Section I of Part IV of China's Schedule of Concessions on Goods CLII. As such, China acted inconsistently with its obligations under Articles 3.2 and 6.3 of the Agreement on Agriculture*"⁴.

To understand these conclusions, it should be added that China's AMS is limited to its "market price support" (MPS), whose *de minimis* level is capped at 8.5% of the value of production per product (here wheat and rice) because it had to renounce, during its negotiations for accession to the WTO in 2000 (where it became a Member on 11 December 2001), to use the *de minimis* level of 10% recognized to developing countries (Article 6.4 of the Agreement on Agriculture, AoA) and it also had to renounce the use of Article 6.2 authorizing the deduction from the AMS of input and investment subsidies benefiting poor farmers in developing countries (DCs). The calculation of the MPS, defined in Annex 3 of the AoA and detailed in paragraphs 7366, 7388, 7393, 7411 for wheat and rice (distinguishing between indica and japonica varieties), is based on multiplying the difference between the administered price (here the Minimum

¹ The Aggregate Measurement of Support or AMS is commonly referred to as the amber box of trade-distorting coupled domestic support. It includes both product-specific AMS and non-product-specific AMS.

² <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/511-17.pdf&Open=True>

³ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/511-18.pdf&Open=True>

⁴ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/511R.pdf&Op>

Procurement Price, MPP) and the reference price for the years 1996-98 by the total production (of wheat and rice) for each year from 2012 to 2015 and, of course, for the following years.

However, China's declaration of 18 June 2020 is perplexing: "*On 16 May 2019, China informed the DSB and later reconfirmed at the DSB meeting of its intention to implement the recommendations and rulings of the DSB in connection with this matter*"⁵, before adding: "*The Minimum Procurement Price ("MPP") policies maintained under the Notice on Improving the Wheat Minimum Procurement Price Policy and the Notice on Improving the Rice Minimum Procurement Price Policy are consistent with the recommendations and rulings of the DSB in DS511 and the WTO covered agreement. As set forth in these two measures regarding the MPP policy for wheat and rice, starting from 2020, maximum procurement amounts under the MPP shall be fixed each year, and the amount of production that is eligible to receive the minimum procurement price shall be limited to the maximum procurement amount. The procurement progress is required to be monitored and published regularly, and in no event shall the actual procurement amount exceed the maximum procurement amount fixed each year. Through the above mentioned measures, China had fully implemented the recommendations and rulings of the DSB in this matter*". This means that China states here that it disagrees with the panel's decision on the level of production to be taken into account: total production for the panel and scheduled production of government purchases for China!

Therefore, China should have appealed instead of declaring that it would implement the Panel's decision. Indeed, this biased decision is based on paragraph 7.314: "*As indicated, the discussion in this section is about the quantity of production eligible to receive the AAP [Applied Administered Price, equivalent to the MPP above]. Whether the grain is consumed on-farm or sold at the market, the pertinent question is whether the grain that was produced would be able to benefit from the AAP if the seller so desired. The Panel considers that, as China had not specified a limitation on how much of each product could be purchased if the market price is below the AAP, the entirety of the crop produced on the farm would be eligible, in the ordinary meaning of the word, to receive the AAP*".

In fact this US-China panel based its stance on the wrong interpretation of the ruling in the *Korea – Various Measures on Beef* panel report of 31 July 2000⁶ to which the US-China panel refers in paragraph 7.295: "*We find further support for our interpretation of the QEP [quantity of eligible production] in the Korea – Various Measures on Beef report, where the Appellate Body held that "[p]roduction actually purchased may often be less than eligible production"*⁷, and reiterated that "*production eligible*" refers to production that is "*fit or entitled*" to be purchased rather than production that was actually purchased".⁸ Contrary to China's argument, we consider the Appellate Body's reading of the phrase "*quantity of production eligible*" to apply outside of the specific context of the dispute in *Korea – Various Measures on Beef*; when making that statement, the Appellate Body was determining the ordinary meaning of the term used in Paragraph 8 of Annex 3, rather than limiting it to the facts of that

⁵ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/DS/511-15A2.pdf&Open=True>

⁶ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/161R.pdf&Open=True>

⁷ Appellate Body Report, *Korea – Various Measures on Beef*, para. 120.

⁸ Appellate Body Report, *Korea – Various Measures on Beef*, para. 120. The Panel understands that this statement, along with other references to that dispute, should be read in the context of the existence of a clearly defined limitation on purchases of beef by Korea. To the Panel, the referenced statement simply highlights that (i) the amount that is eligible can be greater than the amount finally purchased, (ii) the eligible amount may be lower than the amount of total production, and (iii) it is the *eligible* amount which is to be included in the AMS calculation, and not any other amount.

case". What is important here is the footnote 8(ii) below stating that "*the eligible amount may be lower than the amount of total production*". It is unfortunate that the WTO analytical index on the AoA Annex 3 point 1.4.4 did not mention this fundamental statement, which leaves some doubt that the eligible production could be the total production⁹.

The problem is that the US-China panel made a selective reading of the Korea panel which stated also: "*Under the most conservative approach, therefore, eligible production should be no less than the quantities announced by MAF as eligible for daily procurement, which in this case would be 170,000 head of Hanwoo steers (500 head per day x 340 days). This quantity, [170,000 head of 500 kg. steers,] would yield 52.615 thousand tonnes of beef, carcass basis [given a 61.55% carcass/live-weight ratio], and not the 35,127 tonnes announced by Korea in its notification to the Committee on Agriculture for 1997*", and added in table 3 of paragraph 483 that in 1998 the carcass weight equivalent fell to 35,328 tonnes because the slaughters occurred in only 241 days (against 340 in 1997) and, from 16.6.98 to 31-12-98, 37,830 slaughtered heads weighted much less than 500 kg.

The climax of the story is that this Korean panel itself made contradictory calculations of the eligible production between paragraph 483 and Annex 9 which shows that 887,000 heads of Hanwoo cattle were slaughtered in 1997 and 1023,000 in 1998 for respectively 443,500 and 511,500 live weight tonnes, which corresponded to 272,974 and 314,828 tonnes of carcass weight respectively at the conversion rate of carcass weight/live weight of 61.55%. So that the eligible production amounted to only 19.3 % of total production in 1997 and 11.2% in 1998! Furthermore an Australian ABARE report of December 2004¹⁰ gives more precise figures as the average weight of the 887,400 Hanwoo slaughtered cattle was of 551 kg in 1997 against 559 kg for the 1023,200 heads of 1998 so that the actual production was of respectively 488,957 and 688,688 live weight tonnes or of 300,953 and 423,887 carcass weight tonnes, implying that the eligible production represented only 17.5% of total production in 1997, and much less in 1998 even if the 35,328 tonnes appear non feasible.

The AB report of 11 December 2004 confirmed, in paragraph 121, that "*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.*⁵⁸ *That figure, under paragraph 8 of Annex 3, accordingly constitutes the quantity of "eligible production". While there may be nothing under the Agreement on Agriculture to prevent Korea from changing the quantity of "eligible production", Korea did not do so, so far as the record of this case shows. Korea instead simply purchased a lesser number of cattle by ceasing its purchases*"¹¹. Therefore, the Appellate Body did not read Annex 9 of the Panel Report either, leaving also doubt that the eligible production could be close to the total production!

Therefore the conclusion is straightforward: Korea panel and AB erred by omission and with them the US-China panel: in both cases the eligible production was much lower than the whole production.

⁹ https://www.wto.org/english/res_e/publications_e/ai17_e/agriculture_ann3_jur.pdf

¹⁰ <https://www.agriculture.gov.au/sites/default/files/sitecollectiondocuments/abares/publications/korean-australian-beef-markets-prospects-trade.pdf>

¹¹ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/169ABR.pdf&Open=True>

II – The other evidence that the US-China panel erred in its ruling

We hope that our analysis will put an end to the large reference made since 2000, not only by the US but also by other developed countries, to this so-called in-depth definition of the eligible production in the *Korea – Various Measures on Beef* case. Indeed I have written hundreds of pages in many papers to denounce this analysis, and I only remind some of them below.

2.1 – Advocates assimilating eligible production to total production

- The DTB Associates reports: 1) "*Domestic Support and WTO Obligations in Key Developing Countries*" of September 2011¹² which looked at subsidies in four countries: India, Brazil, Turkey and Thailand, with SOL's comments of 11 December; 2) "*Agricultural Subsidies in Key Developing Countries: November 2014 Update*"¹³, which added China to the previous four countries, with updated SOL comments of 26 March 2016. DTB Associates has also testified in the hearing of the Agriculture Committee of the House of Representatives on 3 June 2015¹⁴.

- The U.S. Wheat associates report of June 2015 on "*Analyzing the Impact of Brazilian, Chinese, Indian and Turkish Wheat Support Policies on U.S. and Global Wheat Production, Trade and Prices*"¹⁵, with SOL comments.

- "*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*", SOL paper of 7 September 2018¹⁶. At least 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 they failed to underline that the level of MPS, particularly of developed countries, is not an ex nihilo creation but derives from other policy measures among which tariffs, import quotas, production quotas, export taxes, export and domestic subsidies. Even the panel report, in paragraph 7.78, acknowledges that "*Many factors other than a government setting specific prices can influence a product price in a specific market, including customs tariffs, quantitative restrictions, as well as other non-tariff measures and other factors. Therefore, showing a difference between domestic and international prices is, in light of the claims raised by the United States in this case, not enough to conclude that China continued to purchase corn at an AAP*", but this statement, paradoxically, did not change its stance that MPS should be equal to the whole production.

¹² <http://www.dtbassociates.com/sitebuildercontent/sitebuilderfiles/domesticssupportstudy.pdf>

¹³ <http://www.dtbassociates.com/docs/DomesticSupportStudy11-2014.pdf>

¹⁴ https://dtbassociates.com/docs/HouseAgCommitteeTestimony_June2015.pdf

¹⁵

[http://www.uswheat.org/studiesAnalysis/doc/0B9AD0B87740C1D485257EC0006B2F8F/\\$File/Domestic%20Support%20Econometric%20Study%20-%20FULL.pdf?OpenElement#](http://www.uswheat.org/studiesAnalysis/doc/0B9AD0B87740C1D485257EC0006B2F8F/$File/Domestic%20Support%20Econometric%20Study%20-%20FULL.pdf?OpenElement#)

¹⁶ <https://www.sol-asso.fr/wp-content/uploads/2017/01/L.-Brink-and-D.-Orden-at-the-rescue-of-the-US-proceeding-against-India-and-China-MPS-on-wheat-and-rice.pdf>

2.2 – Other evidence that China's MPS was much lower than total production

Yet there is a large evidence that China MPS of rice and wheat was much lower than total production. An USDA report of August 2013 writes that "*According to Chinese Government statistics, 6 percent of grain produced [cereals, soybeans, and dry weight of tubers] was purchased at support prices during 2012*"¹⁷, first because 43% were self-consumed by farmers and then because "*In past years, Chinese farmers traveled to centralized depots, where they waited in line to sell their grain. But now numerous traders and brokers go door to door in villages offering to purchase grain from farmers... Farmers overwhelmingly prefer to sell to these traders to avoid the cost and inconvenience of transporting grain to depots. Farmers engaged in off-farm jobs, in particular, have little time to devote to marketing their grain... Xu, Xi, and Zhang (2010) suggested that farmers failed to benefit fully from the price support because they sold corn below the minimum price to traders who subsequently sold the corn to state-owned depots. They also reported some instances of merchants who transported grain from other regions to sell to state-owned depots at the minimum price*". Another reason of the low share of public procurement is that "*Rice prices received by producers exceeded the minimum in most years, suggesting that market prices exceeded the minimum*".

According to another article of 20 March 2016, "*China's rice market is actually not as large as production statistics make it appear because most rice produced is kept on farms for farmers's own use. According to Grain Bureau statistics for the 2014/15 market year, only 86.5 mmt of rough rice was purchased by all types of enterprises (see table), less than half of the National Bureau of Statistics' 206.5-mmt estimate of rice production (the difference reflects rice used by farmers themselves and possibly an overestimate of production by the Statistics Bureau). Of the 86.5 mmt rice purchased, 32.3 mmt was stockpiled in reserves under the minimum price program, so it has not entered the market. Deducting the rice stored in reserves and adding the 5 mmt of old rice auctioned during 2015 leaves 59.2 mmt of Chinese rice that actually entered the market, about a fourth of the crop*"¹⁸. Which also implies that only 15.6% of rice production was procured at the MSP. The USDA GAIN report of 8 May 2015 states that "*Industry contacts report that japonica rice purchases under the program totaled 10.5 million tons in MY 2014/15, or 20.36 percent of total output*"¹⁹.

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.*"²⁰. In another report explaining the AoA rules, FAO takes a more explicit position:

¹⁷ <http://www.ers.usda.gov/media/1156829/err153.pdf>

¹⁸ *China's rice smuggling estimated at 2 million tons*, Sunday March 20, 2016, <http://dimsums.blogspot.fr/>

¹⁹

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

²⁰ <http://www.fao.org/DOCREP/005/Y4632E/y4632e0j.htm>

“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”²¹.

III – The MPS is not a subsidy but a hoax of developed countries

3.1 - The absurd definition of MPS in the WTO Agreement on Agriculture (AoA)

3.1.1 – The contradictory definition of MPS by OECD and WTO

The concept of agricultural *support* is broader than that of agricultural *subsidy* as it encompasses "market price support" (MPS) through import protection and export subsidies, albeit in different ways for OECD and the AoA. For OECD the MPS represents the gap between the domestic farm price and the current world price – the border price of each country: FOB (free on board) price for an exporting country and CIF (cost, insurance, freight) price for an importing country – rendered at farm gate, encompassing import protection as well as export subsidies. The MPS is "financed" essentially by consumers – in fact by the first buyers which are the traders and agro-industries, OECD, WTO and the free-traders in general assuming that they pass systematically lower world prices on to consumers –, consumers who consider to be entitled to buy their food and other agricultural products at world prices and that import duties prevent them to do it. However, in the OECD approach, a part of the MPS may be financed by taxpayers when there are explicit export subsidies, but this has always been the minor part of the MPS, particularly in developing countries where they have hardly existed but they have much more used export taxes.

If the OECD MPS definition is logical – the gap between the farmgate price and the current world price at the country border –, the AoA definition is totally absurd. The definition is given by paragraphs 8 and 11 of the AoA Annex 3:

- Paragraph 9: *"Market price support shall be calculated using the gap between a fixed external reference price and the applied administered price multiplied by the quantity of production eligible to receive the applied administered price".*

- Paragraph 11: *"The fixed reference price shall be based on the years 1986 to 1988 and shall generally be the actual price used for determining payment rates".*

3.1.2 – This definition is absurd for three reasons

This definition is absurd for three reasons:

- The comparison with the border price of the 1986-88 period, 30 to 32 years ago, is meaningless since the national and international economic environment has changed so much.

- It is totally unfair for international comparisons between developed and developing countries (DCs) given the structural inflation suffered by the latter for many well known reasons. Thus the average annual inflation rate over the 30 years from 1986 to 2015 has been of 7.95% in India against 2.68% in the US and 1.78% in Germany, implying a cumulative inflation of 69.8% for Germany, 120.5% for the US, and 892.4% for India.

²¹ N. Hag Elamin, *Domestic support measures*, <http://www.fao.org/docrep/003/x7353e/x7353e01.htm>

- The MPS does not imply any actual subsidy as it depends on other policy measures: import duties, export subsidies and restrictions, land set aside, production quotas, domestic and foreign food aid, etc. And, when the corresponding products receive actual subsidies, they are notified to the WTO under "non-exempt direct payments" or "other product-specific support".

3.1.2 – A definition criticized by neo-classical economists themselves

It is why this absurd MPS rule has been criticized by most agricultural trade economists, including those sharing a free trade stance. Let us mention just four of them.

1) William R. Cline stated in the USDA 2007 Agriculture Outlook Forum: *"The bound AMS contained about \$6 billion of pure fiction, a remarkable concept called 'Market Price Support' (MPS). This accounting concept equals the difference between the domestic administered price and the 1986-88 world price. Yes, 1986-88, not today – already a clue that this concept is a fiction. There is no actual taxpayer money paid out for the MPS, it is pure accounting. Japan suddenly cut its reported AMS subsidies by billions of dollars in the late 1990s by eliminating its administered prices, with no change in agricultural protection whatsoever. So the first thing that should be done in Geneva is to redefine the Amber Box AMS to exclude the Market Price Support as part of the calculated bound level. Getting rid of the phony subsidy will make it easier to get rid of phony subsidy cuts"*²².

2) For H. de Gorter and J. D. Cook: *"Another source of water in domestic support ceilings is the peculiar manner in which the AMS is calculated. In addition to trade-distorting, taxpayer-funded domestic subsidies, the AMS includes "market price support," defined as eligible production multiplied by the difference between the administered price and a fixed world reference price. The product of that operation does not depict "domestic support" per se. Instead, it is a faulty measure of support provided at the border through tariffs, import quotas or export subsidies since and administered price cannot be sustained without supporting border measures. Reducing or even eliminating an official support price without altering border protection need not have any market impact. Japan is a case in point. There the official support price for rice was eliminated in 1997, and Japan's total AMS, as notified to the WTO, dropped by \$20 billion. However, because the country made no changes in import controls, effective support remained the same. So a substantial portion of the water in Japan's total AMS of approximately \$34 billion (table 2) can be attributed to an adjustment made to an administered price in order to "achieve" reduction commitments without actually reducing support. As discussed below, the redundancy of this "price-gap" component of the AMS must be recognized when assessing the impact of any given cuts"*²³.

3) Tim Josling, the "father" of the OECD indicators of agricultural prices supports in the 1980's, has acknowledged the 1st December 2009, in a round table on the fringe of the WTO Ministerial conference in Geneva, that the MPS linked to an administered price was absurd

²² William R. Cline, *The Doha Round, Agriculture, and the Developing Countries*, USDA, 2007 Agriculture Outlook Forum, USDA 01-02/03/07

²³ 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

and that it should be totally eliminated from the AMS calculation²⁴. He confirmed in January 2015: "*Countries have manipulated both the administered prices and the eligible production levels to reduce the notified market price support, and 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*"²⁵.

4) For Jean-Pierre Butault and Jean-Christophe Bureau "*The AMS calculation no longer corresponds to any meaningful measure of support. The changes in EU policies, and the reliance on a world price observed some 20 years ago as a reference have led to a complete disconnection of what is measured and the actual support provided to EU farmers. Clearly, the objective of reducing the AMS should be seen as a useful political target, but the AMS per se has no longer any meaning*"²⁶.

3.2 - The AoA's MPS permits to camouflage the actual subsidies of Western countries

3.2.1 – The caricatural case of the EU

3.2.1.1 – The effective subsidy for 2017-18 was only 0.026% of the notified total of €72bn

The scandal is that this MPS represented 97.3% of the AMS notified by the EU for 2017/18 (last notification on April 30, 2020): €6.745 billion (bn) – of which €3.076 bn for butter, €1.549 bn for skimmed milk powder and €2.120 bn for common wheat – out of a total AMS of €6.933 bn! Thus the EU implicitly states that its effective AMS agricultural subsidies were of only €188 million (M) in 2017/18, i.e. of 0.026% of its total notified subsidies of €73.054 bn, of which €65.846 bn in the green box²⁷, €4.795 bn in the blue box²⁸ and €2.413 bn in the amber box (AMS), of which €109.5 M in "other product-specific support" (of which €102.6 M *de minimis*), €1.050 bn "non-exempt direct payments" all of them product-specific *de minimis* subsidies and €1.065 bn non-product-specific *de minimis* subsidies.

This is not new: in the 1995-00 period the EU subsidy component of its average annual AMS has represented only €4.822 bn or 10% of the €48.425 bn notified total AMS and the MPS component 90%. The best example is the elimination on 1 July 2002 of the EU administered (so-called "intervention") price of beef, which reduced its total AMS by 24.5% or €9.7 bn from one day to the next, without any negative impact on the price to producers – it increased by 7.4% in 2002, 0.9% in 2003, 5.2% in 2004 and 8% in 2005 – nor on their income since the elimination of the intervention price was more than offset by the increase in direct Blue Box aid, from 2.9 bn in 1999 to €6.0 bn in 2002, an increase decided by the 1999 CAP reform.

²⁴ Professor Tim Josling acknowledges implicitly that the EU and US offers to cut their agricultural trade distorting subsidies in the Doha Round is impossible, Solidarité's press release of December 2, 2009, http://www.solidarite.asso.fr/article.php3?id_article=176.

²⁵ *Rethinking the Rules for Agricultural Subsidies*: <https://e15initiative.org/publications/rethinking-the-rules-for-agricultural-subsidies/>

²⁶ Jean-Pierre Butault and Jean-Christophe Bureau, *WTO Constraints and the CAP: Domestic Support in EU 25 Agriculture*, Institute for International Integration Studies, July 2006, https://www.researchgate.net/publication/23516152_WTO_Constraints_and_the_CAP_Domestic_Support_in_EU-25_Agriculture

²⁷ The green box contains subsidies allegedly non-trade distorting and defined in Annex 2 of the AoA.

²⁸ The blue box contains direct payments not included in the AMS if under production-limiting programmes and based on fixed area and yields or animal heads or made on 85 per cent at most of the base level of production.

Notifying this fake MPS only obscured the negotiations and misled most of the WTO Members.

What is most surprising is that this type of amber box support continues to be presented by the developed countries as the most trade distorting, which allows the EU to claim to have reduced its most trade-distorting supports while it has increased its actual most trade-distorting subsidies: those of the green box as they can rise without limits.

What is profoundly distressing is that this view is shared by the emerging countries and the African countries²⁹, showing their total misunderstanding of the actual biased WTO rules which would not change as long as they would not realize their blindness, that a new report of the Centre for WTO Studies in New Delhi confirms³⁰.

3.2.1.2 – The EU subsidies also greatly exceed this notified total

Actually the EU agricultural subsidies are much higher than the notified €73.054 bn in 2017-18 given several under-notified ones:

1) Several State aids are not notified, among which fiscal rebates on agricultural fuel that OECD takes however into account for €3.630 bn in 2018. This figure is likely underestimated as, for France alone, it was of €1.3 bn in 2018³¹, plus €0.9 bn of other tax rebates. This is without taking into account the subsidies to biofuels even if they don't benefit to farmers only.

2) The EU legislation on *de minimis* direct payments allows Member States to grant €20,000 per farm over three years without being counted as State aid, within a national ceiling of 1.25% of the country's annual agricultural output over the same three-year period and he payment should not apply to export aid or be contingent upon the use of domestic over imported products³². As the average agricultural production value of the EU28 was of 394 bn from 2017 to 2019, if all the Member States were to use this possibility the *de minimis* direct payments would be of €4.926 bn. And this without taking into account the *de minimis* opened to each agro-industry of €200,000 per three-years period. Besides, because of the COVID-19 pandemic, "*Under the newly adopted Temporary Framework for state aid, farmers can now benefit from a maximum aid of €100,000 per farm and food processing and marketing companies can benefit from a maximum of €800,000. This amount can be topped up by de minimis aid, a type of national support specific to the agricultural sector that can be granted without prior approval from the Commission. Recently the ceiling of this aid was increased to €20,000 (and up to €25,000 in specific cases). This means that the total national support that can be granted per farm adds up to €120,000 (or €125,000) under the temporary framework*"³³. However for the aid of up to €800,000 to agro-industries "*the aid granted to undertakings active in the processing and marketing of agricultural products is conditional on not being partly or entirely passed on to*

²⁹ *Unifying the developing countries' stances on the Green and Blue Boxes*, SOL, December 13, 2019: <https://www.sol-asso.fr/wp-content/uploads/2019/12/Unifying-the-developing-countries-stances-on-the-Green-and-Blue-Boxes-SOL-12-13-2019.pdf>

³⁰ Sharma, S.K., Lahiri, T., Neogi, S., Akhter, R., *Revisiting domestic support to agriculture at the WTO: Ensuring a level playing field*, Center for WTO Studies, June 2020, <http://wtocentre.iift.ac.in/workingpaper/WorkingPaper56.pdf>

³¹ <https://www.fipeco.fr/pdf/PolitiqueAgricole.pdf>

³² https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1332

³³ https://ec.europa.eu/commission/presscorner/detail/en/IP_20_531

primary producers and is not fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned"³⁴.

3) The EU has always largely under-notified its subsidies of the non-product specific (NPS) AMS, if we compare with the OECD data or because it has notified some of them in the green box instead of in the NPS AMS. Thus the €1.065 bn notified in its NPS AMS for 2017-18 was composed of €930 M of insurance subsidies – instead of €1.803 bn in OECD –, €120.8 M of interest subsidies – instead of €155 M in OECD –, €10.1 M of harvest insurances of fruits and vegetables, €3 M of green harvesting of fruits and vegetables and €1.1 M of subsidies to fertilizers. The most astonishing is that the EU does not notify any irrigation subsidies in its AMS even if, in Spain alone – which accounted to 30.1% of the EU28 irrigated area in 2016³⁵ –, irrigation subsidies were estimated at around €1 bn in 2010³⁶.

4) Most EU subsidies notified to the WTO in the green box should have been notified in the AMS as they are not actually decoupled²⁸. Hence, let us repeat, the suicidal mistake of China, India and the African Group of the WTO who do not question them and thus shoot themselves in the foot, closing any possibility of reforming the AoA in a more equitable direction.

5) Agricultural social security in the EU is heavily subsidized

Since EU social security policies – covering sickness, pensions, accidents at work and family benefits – remain national and since retired farmers (farmers and employees) outnumber active farmers, the latter are largely subsidised by other national taxpayers. In 2018, France had half a million farmers contributing to agricultural pensions against 1.4 million retired beneficiaries and 0.7 million agricultural employees contributing against 2.5 million beneficiaries (employees of cooperatives, mutual insurance companies and agricultural work providers are among them). There were 3.2 M beneficiaries of sickness benefits, including 1.341 M non-salaried workers and 1.852 M salaried workers. The cost of agricultural social protection for all taxpayers is estimated at €9.5 bn in 2018, of which €4 bn for the health branch³⁷ and €5.5 bn for the other branches³⁸.

6) Green box subsidies hide those in the "gold box": the WTO rules, notably Articles 1, 2 and 8 of the Agreement on Subsidies and Countervailing Measures (ASCM), only take into account subsidies specific to an activity, in this case agriculture, and only for the current year or, at best, for the most recent years. This is why SOL (then Solidarité) proposed at the WTO Ministerial Conference in Hong Kong in December 2005 to put all types of past and present non-agricultural support and past agricultural support in a "gold box"³⁹.

Indeed, the current higher competitiveness of agri-food products of Western countries, particularly the EU, compared to that of developing countries (DCs), particularly the ACP countries, is much less the result of the difference in the level of their current customs duties and/or agricultural subsidies – a fortiori when they are calculated per capita or per agricultural worker in full-time equivalent (AWU) – than of current and past non-agricultural support and

³⁴ https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_temporary-framework.pdf

³⁵ <https://ec.europa.eu/eurostat/statistics-explained/pdfscache/14965.pdf>

³⁶ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1656825

³⁷ <https://www.msa.fr/lfy/documents/11566/48463/Chiffres+utiles+MSA+2019+%28national%29>

³⁸ <https://www.fipeco.fr/pdf/PolitiqueAgricole.pdf>

³⁹ *The green box: a black box which hides the gold box*, Solidarité, December 2005, https://www.wto.org/english/forums_e/ngo_e/posp55_e.htm

past agricultural support, including high import protection and domestic and export subsidies and export taxes, for decades or even centuries.

This current and past non-agricultural support has considerably reduced the unit cost of production of agri-food products in Western countries, in particular the EU, compared to that of DCs, in particular through the following (non-exhaustive) list:

- efficient transport and information infrastructures (including intangible infrastructures, of which research);
- generalised and free access to education, at least for primary and secondary education, including specific agricultural education;
- farmers' health and pensions largely financed by taxpayers, at least in the EU;
- affluent consumers (compared to those in DCs), with increasing purchasing power, able to pay minimum prices to farmers, even if they are too low; in contrast to the situation in poor DCs where the purchasing power of consumers is very low and often declining;
- low inflation rates: the December 2016 rate was 1.1% in the euro zone and 2.1% in the US, compared to 18.5% in Nigeria and 15.4% in Ghana;
- low interest rates, especially for subsidised agricultural loans;
- high protection of agricultural imports and infant industries for decades;
- relatively democratic states capable of enforcing commercial contracts, fighting corruption (but not tax evasion in tax havens), including collecting customs duties and preventing illegal extortion by law enforcement officials;
- plundering the resources of DCs countries during centuries of slavery and colonisation;
- neo-colonial exploitation since then, through the indebtedness of DCs to developed countries and the international institutions under their control, and through unfair free trade agreements.

This is why, even if the WTO decided on stricter criteria for the green box, developed countries could still increase their gold box subsidies to maintain the competitiveness of their farmers and agri-food industries. They will always find ways to ensure their food sovereignty. In particular, instead of maintaining specific agricultural institutions, it will suffice to integrate them into broader institutions so that, as the specific nature of the subsidies disappears, they cannot be sued at the WTO.

7) The best example of the largest EU cheating in its notifications to the WTO concerns cotton⁴⁰. The EU claims to be a model in the cotton world because its imports from all countries are duty-free and it has never used explicit export subsidies. But the EU has exported more cotton than Burkina Faso or Mali since 2000, except since 2017, and has been a net exporter since 2009, even exceeding production in 2009 and 2012.

The EU did not notify any cotton AMS since 2006 because two thirds of the cotton subsidies have been allegedly decoupled and the last third has been notified in the blue box as it has not to be notified in the AMS if the payments are "*based on fixed areas and yields*" according to the AoA Article 6.5. However the EU has interpreted these conditions as a simple limit to the coupled subsidies: Greece and Spain have national base areas with fixed yields and fixed aid per ha in the reference period (2000-02)⁴¹. Nevertheless if the acreage have actually declined

⁴⁰ <https://www.sol-asso.fr/wp-content/uploads/2019/01/Would-the-WTO-World-Cotton-Day-solve-the-SSA-farmers-plight-J.-Berthelot-October-17-2019.pdf>

⁴¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008R0637&from=FR>

in both countries the yields have increased by 13% in Greece over those of 2005, according to the EU evaluation report of 2014⁴².

From 2000 to 2018 the US exported 53 million tonnes (Mt) of cotton that received \$35.3 bn subsidies, an average subsidy of \$657/t and an average dumping rate of 41%. During the same period, the EU – only Greece and Spain – exported 4.5 Mt with an average subsidy of \$2,789/t, 1.83 times the FOB export price. Although the EU produced ten times less cotton than the US and exported 12 times less, its export subsidies were only 2.8 times lower (\$12.5 bn against \$34.8 bn) due to an average subsidy per tonne 4.2 times higher.

Incidentally the \$2.8 bn direct payments received by the 25 million Chinese cotton growers, according to an ICAC (International Cotton Advisory Committee) report of November 2018⁴³, correspond to \$112 per cotton grower. This compares with an average \$59,844 for the US 18,600 cotton farmers in 2018, or 534 times more than in China, and an average of \$10,162 for the 90,000 cotton farmers in the EU, or 91 times more.

3.2.2 – MPS in other Western countries is a similar camouflage

The biased MPS is not specific to the EU but is found in most Western countries. Canada MPS represented 98.0% of its AMS notifications for 2016 (last notified year). In Switzerland it represented 97.1% of its AMS for 2013 and in Norway it represented even 106.8% of its total AMS in 2018, a strange thing! In Israël it represented 73.8% of its AMS in 2018. And, if the US MPS accounted for only 36.2% of its AMS in 2017/18 (\$1.406 bn for sugar) it is because the US has ended to use MPS for dairy since the 2014 Farm Bill, after having cheated from 2008 to 2013 when it ceased to notify MPS for whole milk (see below section 2.4).

3.3 – The US insistence that the MPS notifications be based on the 1986-88 period

Another challengeable statement of the AB in the Korea beef case appears in paragraph 124: *"We note that in calculating Korea's Current AMS for beef, New Zealand uses – like Korea – a fixed external reference price based on 1989-1991 data. As we have found above, the use of such an external reference price is incompatible with paragraph 9 of Annex 3, which requires an external reference price based on the years 1986-1988"*. It goes without saying that the US has relied on the same argument to deny the right of China to use the fixed external reference price (FERP) based on 1996-98 but at least the panel, in paragraph 7214, contradicted this US stance because *"none of the 36 Members that have acceded to the WTO since 1995 used a base period of 1986-1988 with the exception of Bulgaria for which "the most recent three year period" was not regarded as representative by WTO Members due to the United Nations embargo applied to the former Republic of Yugoslavia"*.

The insistence of the US, followed by the EU, that China's notified MPS be based on the 1986-88 period instead of 1996-98 can be explained by the fact that the 1986-88 reference prices of rice and wheat were then abnormally low as hugely distorted by the US and EU massive dumping on wheat and the US dumping on rice. The very low world wheat prices of that period were the result of the US and EU combined massive dumping through several channels:

⁴² https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/plants_and_plant_products/documents/cotton-executive-summary-report.pdf

⁴³ https://www.eiseverywhere.com/file_uploads/0d29a4b2281774f8113dc8ea4cbd4642_e_cotton-subsidies_2018.pdf

explicit export subsidies – of 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 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 period⁴⁴. 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)⁴⁵. Bruce Gardner adds: "*The average subsidy reached \$38 per ton in 1987. A price wedge this large on substantial quantities would be expected to make a noticeable difference in world trade flows and prices*". For C. C. Coughlin and K. C. Carraro, "*Not only has the level of exports expanded, but the U.S. share of the world's wheat market increased from 28.8 percent in 1985 to an estimated 41.6 percent in 1988*"⁴⁶. 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*"⁴⁷. 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*"⁴⁸. 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 (reference prices) for wheat and rice be based on their levels in 1986-88 instead of 1996-98. The same conclusion applies clearly to all other WTO Members, of which India.

⁴⁴ 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

⁴⁵ <http://www.card.iastate.edu/publications/dbs/pdffiles/89wp46.pdf>

⁴⁶ http://research.stlouisfed.org/publications/review/88/11/Dubious_Nov_Dec1988.pdf

⁴⁷ <http://ageconsearch.umn.edu/bitstream/30095/1/21020117.pdf>

⁴⁸ <http://www.ntis.gov/search/product.aspx?ABBR=ERSAIB585>

3.4 – The US has always under-notified hugely its dairy MPS at the WTO

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

Then the US has under-notified its dairy MPS since 2008 because the AoA rules do not permit to change the way to compute the dairy AMS from the administered price of the whole milk production made in the US Schedule of commitments for 1986-88 to the sum of the administered prices of butter, cheddar cheese and non-fat dry milk decided by the 2008 Farm Bill. Thus the US notification for the dairy MPS fell from \$5.011 bn in 2007 to \$2.871 bn on average from 2008 to 2012, implying a total under-notification of \$10.700 bn. Indeed:

- Article 1 of the AoA states that "*Support provided during any year of the implementation period and thereafter*" must be "*calculated in accordance with the provisions of Annex 3 of this Agreement and taking into account the constituent data and methodology used in the tables of supporting material incorporated by reference in Part IV of the Member's Schedule*".
- Paragraph 1 of article 3 states: "*The domestic support and export subsidy commitments in Part IV of each Member's Schedule constitute commitments limiting subsidization and are hereby made an integral part of GATT 1994*".
- Paragraph 5 of Annex 3 states: "*5. The AMS calculated as outlined below for the base period shall constitute the base level for the implementation of the reduction commitment on domestic support*".

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

IV – The EU Overall trade distorting domestic support is much under-notified

On 31 July 2004 the WTO General Council created a new type of agricultural indicator, the OTDS (Overall Trade Distorting Domestic Support) encompassing 4 components: Final Bound Total AMS (FBTA) – corresponding to the allowed level of total AMS at the end of the Uruguay Round implementation period which is also the base period for the reduction commitments of the Doha Round (if it is eventually finalized): 31 December 2000 for the US and 30 June 2001 for the EU) – + allowed product specific *de minimis* (PSdm) + allowed Non-Product-Specific *de minimis* (NPSdm) + allowed Blue box. As the AoA major objective is "*to provide for substantial progressive reductions in agricultural support and protection*" the coordinator of

the Committee on agriculture proposed on 8 December 2008 the Revised Modalities for Agriculture (so-called REV4) where the applied OTDS would be reduced by 80% for the EU and by 70% for the US over the 5 years of the implementation period of the Doha Round although these proposals have never been endorsed formally by the developed countries which want now to bury definitively the so-called Doha Development Round. This would have implied to reduce the applied AMS by 70% for the EU and by 60% for the US and to halve immediately the applied level of the two *de minimis* AMS (PSdm and NPSdm), from 5% to 2.5%. But these proposals had three major flaws contradicting the AoA rules and a fourth one denouncing the non-trade-distorting status of the green box and blue box.

1) According to article 6.4, for developed countries, the allowed PSdm AMS must "*not exceed 5 per cent of that Member's total value of production of a basic agricultural product during the relevant year*" whereas the allowed NPSdm AMS must "*not exceed 5 per cent of the value of that Member's total agricultural production*" (10% respectively for developing countries). As many products have no PS AMS their value of production is not taken into account to assess the PSdm which is therefore lower than the NPSdm.

2) The second flaw is related to the huge oversight of feed subsidies which confer AMS to all animal products (meat, milk, eggs) having consumed the subsidized feed (cereals, oilseed meals, pulses or COPs). Indeed animal feed is the largest agricultural input in developed countries and the AoA article 6.2 which exempts the developing countries (except China which was forced to renounce to this benefit during its accession negotiations) to notify in their AMS their "*agricultural input subsidies generally available to low-income or resource-poor producers*" obliges *a contrario* the developed countries to notify them in their AMS. Adding the production value of animal products to that of the products already notified with a PS AMS increases the production value of products with PS AMSs so that the average production value of products without a PS AMS shrinks much and with it the allowed PSdm which is 5% of that value.

3) The third flaw is the systematic under-notification of the NPS AMS by the EU (and US), that at least some OECD data can correct (on agricultural insurance and agricultural fuel rebate) to which we add €1.500 bn of irrigation subsidies given that it is already of €1 bn in Spain which accounts for one third of total irrigated area. We could also have transferred some items unduly notified in the Green box to the NPSdm but, as we will transfer the whole Green box in the AMS we cannot count twice some of its items.

4) The fourth flaw relates to the EU sleight of hands of box shifting, transferring its AMS subsidies to the blue box and then to the green box without any economic logic and impact. Thus the enlargement from 15 Member States in 1995 to 24 in July 2004, 26 in 2007, 27 in 2007 and 28 in 2013 has been accompanied by a progressive reduction of the amber box (AMS) with a transfer first to the blue box, then of both boxes to the green box and since 2016 a transfer of the green box to the blue box. But the allowed FBTA has risen only from €67.159 bn in June 2001 to €72.244 bn in 2008 and €72.378 bn since 2013.

The following table is divided into three parts. We first show the alleged OTDS components for 2001 (in fact 2000/01) – representing the data of the Uruguay Round implementation period 1995/96-2000/01 –, 2004 (with the EU at 24 Members), 2008 (with 27 Members) and from 2013 to 2018 with 28 Members. The second part presents the notified data of the components of the OTDS which itself is not formally notified. We add the data and share of the MPS in the notified AMS. The third part rectifies the notified

components of the OTDS by adding to the notified AMS not only the Green Box and the Blue Box but also the AMS of animal products, i.e. their agricultural production value. We then deduct this new total PS AMS from the value of total agricultural production (VOP) to get the value of products without a PS AMS and it is 5% of this value which gives the allowed PSdm. As for the allowed NPSdm it corresponds to 5% of the VOP. If we don't have to change the applied PSdm calculated in the second part, we must add to the applied NPSdm of the second part the subsidies not notified in the Green box (tax rebates on agricultural fuel), or undernotified (on agricultural insurances where we add the additional data of OECD) or not notify at all (on irrigation).

The addition of the applied PSdm and NPSdm to the adjusted total AMS results in the new adjusted applied OTDS compared to the authorized OTDS of part I, which has been consistently lower than the adjusted OTDS, of which by 127% in 2018.

	2001	2004	2008	2013	2014	2015	2016	2017	2018
Alleged OTDS in the base period 1995/96-2000/01 and up to 2018									
FBTA	67159	67159	72244	72378	72378	72378	72378	72378	72378
PSdm	11129	11129	11129	11129	11129	11129	11129	11129	11129
NPSdm	11129	11129	11129	11129	11129	11129	11129	11129	11129
Blue Box	20888	20888	20888	20888	20888	20888	20888	20888	20888
Alleged OTDS	110305	110305	115390	115524	115524	115524	115524	115524	115524
Implicit OTDS given the notified components from the base period to 2018									
Notified AMS	43654	30891	12354	5899	5972	6642	7102	6945	6933
MPS	32336	19518	11612	5753	5860	6541	6809	6712	6745
MPS/AMS	74.1%	63.2%	94.0%	97.5%	98.1%	98.5%	95.9%	96.6%	97.3%
PSdm	49	1004	2389	982	1055	854	1668	1419	1153
NPSdm	777	1052	852	795	946	965	742	1054	1065
Blue Box	21146	24782	5166	2754	2664	2879	4331	4641	4795
Applied OTDS	65626	57729	20761	10430	10637	11340	13843	14059	13946
Rectified data after incorporating green and blue boxes, animal products AMS and rectifying NPSdm									
Green Box	18779	22074	62610	71140	68698	65257	60829	61696	65846
Blue Box	21146	24782	5166	2754	2664	2879	4331	4641	4795
Notified PS AMS	43654	30891	12354	5899	5972	6642	7102	6945	6933
+animal prod.AMS	116816	152383	160847	176689	177206	169269	164013	179991	175808
Total PS AMS	200395	230130	240977	256482	254540	244047	236275	253273	253382
Total VOP	251991	280498	346139	388837	383256	376565	366516	390229	392000
VOP - PS AMS	51596	50368	105162	132355	128716	132518	130241	136956	138618
Allowed PSdm (5%)	2580	2518	5258	6618	6436	6626	6512	6848	6931
Allowed NPSdm 5%	12600	14025	17307	19442	19163	18828	18326	19511	19600
Forgot NPS AMS	3941	4658	4924	5015	5814	6144	5768	5667	6003
" agricultural fuel	2344	3158	3101	3026	3205	3317	3337	3619	3630
" addit insur subsidies	97	-	323	489	1109	1327	931	548	873
" irrigation subsidies	1500	1500	1500	1500	1500	1500	1500	1500	1500
Total appli NPSdm	5495	6762	6628	6605	7706	8074	7252	7775	8133
Total applied OTDS	205939	237896	249994	264069	263301	252975	245195	262467	262668
Appli-allowed OTDS	95634	127591	134604	148545	147777	137451	129671	146943	147144

Conclusion

The analysis developed here justifies the proposal made in March 2019 at the Academy of Agriculture of France by Jacques Berthelot of SOL, jointly with Geneviève Parent, Professor of Law on Diversity and Food Security at Laval University in Quebec City, to completely overhaul the WTO's AoA into an Agreement on Agriculture and Food, the essential objective of which is to enable all countries or communities of countries to achieve their food sovereignty without harming that of others⁴⁹. It stresses that the

⁴⁹ <https://www.sol-asso.fr/wp-content/uploads/2019/01/Agreement-on-Agriculture-and-Food-AoAF-SOLs-proposal-of-22-January-2019.pdf>

distinction made in the AoA between the domestic subsidies of the amber, blue and green boxes has no scientific basis and must be abolished, as they all have the effect of reducing the export price below the average national production cost and increasing the competitiveness of the products that benefit from them. They have both a dumping effect when exported and an import substitution effect identical to that of tariffs.

While the international community committed itself in 2015 to achieving the Sustainable Development Goals by 2030 and to combating the greenhouse effect in the Paris Climate Agreement of 2016, the impact of the COVID-19 pandemic on health, food security and social inequalities makes it even more difficult to achieve these goals in the poorest developing countries and calls for a radical change in the economic and primarily agricultural policies of developed countries, where the European Union has an overwhelming responsibility.

Acronyms

AAP: applied administered price, equivalent to MPP

AMS: aggregate measurement of support or amber box of domestic trade-distorting subsidies

AoA: Agreement on agriculture

CIF: cost, insurance, freight

DCs: developing countries

dm: de minimis

DSB: dispute settlement body

EEP: export enhancement programme

FAO: food and agriculture organisation of United Nations

FOB: free on board

MPP: minimum procurement price

MPS: market price support

NPSdm: non-product-specific de minimis

OECD: Organisation for economic cooperation and development

OTDS: Overall trade-distorting domestic support

PSdm: product-specific de minimis

PS: product specific

USDA: United States Department of Agriculture

WTO: World Trade Organisation