Why the US rejects the agricultural modalities of December 2008

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The present paper analyses and comments the US agricultural domestic supports from 1995 to 2012 and their prospects after the 2014 Farm Bill on the basis of the Draft modalities of December 2008, which will help to understand why the US is so reluctant to pursue the Doha Round negotiations on agriculture on that basis. The paper does not deal with the other two pillars of reduction commitments, on market access and export competition subsidies.

Short summary

This work assesses the compliance of the US notifications of its agricultural domestic supports with the WTO rules from 1995 to 2012 and its possible compliance with the Draft of Agricultural Modalities of December 6, 2008 in the context of the new 2014 Farm Bill.

Although most US experts close to official institutions agree that all Farm Bills from 1995 to 2013 have complied with the WTO rules, this analysis shows that this is very far from being the case. In fact the US has continued to cheat on both its level of support allowed for the Doha Round and on the level of its actual support. It has cheated on the authorized ceilings (the EU too) in particular by refusing to take into account feed subsidies and by considering that the total of its trade distorting domestic support specific by product (SP) which is exempted from being included in total support – the so-called product specific *de minimis* support – is not 5% of the value of total agricultural production but only 5% of the production value of products without PS AMS (or with PS *de minimis*). All this implies that the allowed "overall trade distorting domestic support" (OTDS) in the 1995-2000 base period falls from $48.224 billion (bn) notified by the US to $42.885 bn and, as this indicator should be reduced by 70% at the end of the Doha Round implementation period if it is finalized according to the terms of the Agricultural Modalities, it would fall from $14.467 bn to $12.886 bn, thus reducing the US possibility to grant subsidies.

The main under-notified trade distorting product-specific supports were, on an annual average, of: $4.447 bn for domestic food aid from 2005 to 2012; $2.9 bn for agricultural insurance from 2005 to 2012; $2.385 bn for agricultural fuel from 2005 to 2012; $2.140 bn for dairy products from 2008 to 2012; $1.325 bn for corn ethanol from 2005 to 2012; $785 million for irrigation from 2005 to 2012; and smaller sub-notifications concerning subsidies for agricultural loans and to grazing fees on public lands.

Most US experts believe that the Farm Bill 2014 will increase domestic agricultural subsidies so that it would be virtually impossible to comply with the terms of the reduction commitments proposed in the Agricultural Modalities of December 2008. Let us limit ourselves to quote Colin A. Carter of the University of California: "*In both cases (larger and more trade distorting subsidies), the 2014 Farm Bill fails the test of compatibility with the WTO objectives... The provisions of the 2014 farm Bill... could well have made that the US has lost all credibility in the future agricultural trade negotiations of the Doha Round*". And he concludes: "*Different aspects of the Farm Bill 2014 send the message to trading partners that the US agriculture is becoming more protectionnist. In addition the new Farm Bill indicates that the US international trade commitments have little or no influence on the US agricultural policy choices*". A word to the wise!

Summary

The paper begins by a background section presenting the main agricultural trade concepts, useful to understand the technicalities of the paper, after what the US agricultural supports and subsidies from 2007 to 2013 are compared according to the three official sources available: notifications to OECD and WTO and USDA budgets.

But the main issue of the paper is to assess the compliance of the US notifications from the 1995-2000 period up to 2012 and its likely compliance with the Agricultural modalities draft of 6 December 2008 (called here Doha Draft), taking into account the new 2014 Farm Bill.

Table 2 summarizes the US under-notified agricultural supports from 1995 to 2012, that the paper will analyse in turn. We consider first that all direct payments in a broad sense managed by the Commodity Credit Corporation (CCC) – except those to conservation and to the tobacco buyout which were rightly notified in the green box (GB) – should be put in the product-specific supports AMS (PS AMS, the aggregate measurement of support, so-called amber box of domestic trade-distorting supports) given the WTO Appellate Body ruling of 3 March 2005, but also the many analyses of authorized economists, particularly that made recently by Rashmi Banga of UNCTAD.

We present then the two US irregularities – ignoring that feed subsidies are input subsidies to notify in the PS AMS of developed countries and that the PS de minimis (PSdm) is much lower than 5% of the whole agricultural production value – which have reduced the allowed total AMS (FBTA) and Overall trade-distorting domestic supports (OTDS) at the end of the Uruguay Round implementation period 1995-00, which is also the base period for the Doha Round reduction commitments.

The US has hugely under-notified its dairy market price support (MPS) since 2008 because the AoA rules do not permit to change the rule to compute the dairy AMS from the administered price of the whole milk production made for 1986-88 in the US Schedule of commitments to the GATT to the sum of the administered prices of butter, cheddar cheese and non-fat dry milk. The more so as the US has continued to notify up to 2012 the same allowed total AMS of $19.103 bn calculated on the basis of the whole milk production.

The subsidies to crop insurances, which have become the major type of agricultural subsidies in recent years, have been at the same time under-notified and mis-notified up to 2011 in the sense that they are crop-specific and should not have been notified in the non-product specific (NPS) AMS. However the US has eventually recognized this fact in its 2012 notifications, and it did it because it realized that most of its crop insurance subsidies could be notified in the product-specific de minimis (PSdm) AMS. This overdue recognition of the product-specificity of the crop-insurance subsidies allows us to rectify the previous notifications made in the NPS AMS from 1995 to 2011.

We continue with the undernotified subsidies to grazing fees on public lands whereas those to corn ethanol have been forgotten altogether, both subsidies being clearly crop specific to be notified in the PS AMS. If the main subsidy for corn ethanol was the volumetric ethanol excise tax credit (VEETC), deleted since 2012, it has benefitted to blenders and not so much to farmers. But the ethanol mandate has been the main driver of the spike in corn prices and producers revenues since 2007 so that we assume a highly conservative estimate of average annual subsidies to corn ethanol of $1.6 bn from 2007 to 2013, to be notified in the PS AMS.

This leads us to turn to the issue of capping the product-specific (PS) subsidies established in the Doha Draft. This issue is particularly sensitive for four crops – corn, wheat, soybean and cotton – which got 79% of all insurance subsidies from 1995 to 2012 and also 76.3% of the other PS supports than to crop insurance. It follows that on average corn, cotton and soybean

have exceeded their caps, particularly in 2011 and 2012 (except cotton in 2012), but cotton and wheat did not exceed their caps in 2013.

If the US did not notify any blue box (BB) payment after the $7.030 bn notified in 1995, it has succeeded to introduce in the Doha Draft a new type of BB to accommodate its counter-cyclical payments (CCPs) which have been notified in the NPS AMS but that we have transferred to the PS AMS since the WTO Appellate Body ruled on 3 March 2005 that they were PS subsidies. In fact the CCPs, together with the fixed direct payments, have been repealed by the 2014 Farm Bill to that the US BB would remain useless as well as the BB caps for specific products.

We turn then to the undernotified subsidies of the non-product specific (NPS) AMS. Although the US did not notify any subsidy on agricultural fuel, the OECD has reported €2.385 bn for all years since 1986 under the label of "energy subsidy". The US notification of irrigation subsidies has been ridiculously low – $215 million on average from 2005 to 2012 –, in contradiction with many official and experts' reports according to whom they have been of at least two $bn for most of them so that we propose to retain at least one $bn.

The US has notified subsidies to agricultural loans in the NPS AMS and above all in the green box for an average of $155 M from 2005 to 2011, a notification in the green box which is not in line with the fact that most loans have been granted to non-disadvantaged farmers. And the US did not notify the large tax exemptions granted to the farm loan program run by the Farm Service Agency for more than one bn in 2005 but, for conservative reasons, we keep the average $152 M notified from 2005 to 2012 but to be notified entirely in the NPS AMS.

The US has notified all its nutrition subsidies in the green box, of which $106.781 bn in 2012 but several approaches can be used to assess the level of their trade-distorting impact in the sense of having fostered the US food production. A first approach was proposed by Debart and Blogowski in 1999 and updated by Rahmi Banga in 2011 who found an "*equivalent aid to agricultural production*" of $6.6 billion in 2010. A second approach was used by Solidarité in 2014 showing that the 5 million tonnes of US wheat incorporated in wheat products consumed by the recipients of food aid in 2012 implied $235.5 million of trade-distorting subsidies and that the 9 million tonnes of corn incorporated in animal products and soft drinks consumed by these recipients received $280 million of trade-distorting subsidies. A third macro approach assesses the amount of total PS subsidies having benefited to the US food production of domestic origin and hence to the domestic food aid consumption. It shows that the average food aid to be notified in the NPS AMS was on average of $4.447 bn from 2005 to 2012, of which $6.6 bn in 2012 ($4.1 bn in 2010).

Finally it results that the total NPS AMS was of about $8 bn on average from 2005 to 2012, of which of $10.1 bn in 2012, unfortunately above the allowed NPS de minimis (NPSdm) of $9.7 bn so that these $10.1 bn must be added to the PS AMS of that year which jumps from $24.5 bn to $39.6 bn, exceeding by 3.2 times the allowed PS AMS of $9.1 bn at the end of the Doha Round implementation period. As a consequence of the US notification of its crop insurance subsidies in the PS AMS in 2012 its PSdm of 2012 has jumped that year to $4.963 bn which was larger than the allowed PSdm of $2.184 bn at the end of the Doha Round implementation period. And despite the leeway of $3.681 bn for the allowed BB the applied

OTDS of 2012 was twice as large as its allowed level of $12.866 bn at the end of the Doha Round implementation period.

Despite that most US experts agree that, up to 2013, all the previous Farm Bills since 1995 did comply with the WTO rules, all are convinced that the 2014 Farm Bill would increase agricultural domestic subsidies so that it would be very problematic to comply with the Doha Draft reduction commitments. Let us just quote Colin A. Carter of the University of California: "*On both counts (larger and more distortive subsidies), the 2014 Farm Bill fails the test of being consistent with WTO objectives… The provisions of the 2014 Farm Bill, which chart a diametrically opposite path, may well have cost the United States any credibility in future agricultural trade negotiations in the Doha round*"[1]. And he concludes: "*Various aspects of the 2014 Farm Bill send a message to trading partners that U.S. agriculture is becoming more protectionist. Furthermore, the new farm bill indicates that international trade commitments have little or no influence over U.S. farm policy choices*". A word to the wise!

I – Overview of the main agricultural trade concepts

The "overall trade distorting domestic support" (OTDS) is a concept decided by the WTO Framework Agreement of 31 July 2004. It is the sum of:
- the Final Bound Total AMS (FBTA) – AMS for "Aggregate Measurement of Support", also called the 'amber box' of trade-distorting domestic supports – is the total AMS at the end of the 1995-2000 period of implementation of the Uruguay Round commitments – from January 1995 to end December 2000 for the EU and from July 1995 to end June 2001 for the US –, but which will also be the base period for the allowed FBTA to be reduced during the Doha Round implementation period;

- and of the average of three other components in the 1995-2000 period: the allowed product-specific *de minimis* (PSdm) + the allowed non-product-specific *de minimis* (NPSdm) + the allowed blue box (BB).

The total AMS is the addition of the product-specific AMS (PS AMS) – i.e. of coupled supports to particular products – and of the non-product-specific AMS (NPS AMS) for the subsidies other than those granted to a single product in the very few cases when this NPS AMS is larger than the NPSdm.

PSdm and NPSdm are amber box supports not included in the total AMS as long as they remain below a ceiling of 5% of the production value of a specific product for the PSdm and of the whole agricultural production value (VOP) for the NPSdm, the corresponding figures being 10% for the developing countries (DCs). So that generally the NPS AMS corresponds to the NPSdm.

The "blue box" (BB) contains the subsidies not linked to the present level of prices and production, which level should be limited, but they are granted only if there is an actual

[1] http://www.choicesmagazine.org/choices-magazine/theme-articles/3rd-quarter-2014/some-trade-implications-of-the-2014-agricultural-act

production of the benefitting products. Besides a new type of BB has been created in the Doha Draft, intended to accommodate the US countercyclical payments (CCPs), which have been notified up to now in the NPS AMS.

The "green box" (GB) contains all the subsidies allegedly non trade-distorting, such as defined in the Annex 2 of the WTO Agreement on Agriculture (AoA) signed the 15 April 1994 in Marrakech together with the other Agreements having finalized the Uruguay Round and created the WTO. Consequently these subsidies can increase without any limit.

In the Revised Draft of agricultural modalities of 6 December 2008 (called further on the Doha Draft) prepared by the Chair of the WTO Special agricultural Committee negotiating the Doha Round – and on the basis of which all Members have agreed to continue the negotiations – it was proposed that:
- the applied OTDS should be cut by 80% of the allowed OTDS at the end of the Doha Round implementation period for the EU, and by 70% for the US;
- the allowed FBTA in 2000 should be cut by 70% for the EU and by 60% for the US over the same period. The Doha Draft has also capped the PS AMSs at their average level of the 1995-2000 period for the EU and of the 1995-2004 period for the US;
- the allowed PSdm and NPSdm should be cut by 50% in all developed countries the first day of the implementation period of the Doha Round, i.e. from 5% to 2.5% of the agricultural production value of each specific product for the PSdm and of the whole agricultural production value for the NPSdm;
- the allowed BB should also be cut by 50%, that is capped at 2.5% of the whole agricultural production value (VOP) in the developed countries; and that the BB to specific products should also be capped at their average level in the 1995-2000 period for the developed countries other than for the US which would have a higher cap in a way too complex to be explained now.

To clarify our analysis, it is necessary to make a clear distinction between the concepts of *support* and *subsidy*, although OECD and free-traders prefer to blur it. If a subsidy – a public expense financed by taxpayers – is a support, the reverse is not true: support is a broader concept encompassing "market price supports" (MPS) through import protection or export subsidies which increase the gap between domestic and world prices. We will show that the MPS definition in the AoA is different and is a meaningless concept having permitted to the EU and US to show a reduction of their agricultural support while increasing at the same time their actual subsidies. This meaningless concept is also critical for the post-Bali issue of stockholding for food security purpose.

For OECD, free traders and the WTO for which "market access" is the first objective of the Doha Round, import protection deprives consumers to buy their food (and other goods) at the world prices to which they consider to be entitled, so that they suffer a negative *consumer's surplus*, the gap between domestic and world prices considered as a *distortion*. OECD considers this gap as a 'transfer from consumers to producers', translated as a consumers' *subsidy* to farmers.
The AoA, largely elaborated between the US and the EU, has established a hierarchy between different types of agricultural supports: those considered *coupled* and *trade-distorting* and those allegedly *decoupled* and *non-trade-distorting*. The first includes the export subsidies (not considered here because they are not domestic subsidies), the market price supports

(MPS) linked to administered prices and the domestic subsidies linked to the present level of production or prices, or on inputs and investments: they were put in the *amber box* or AMS and subject to reductions during the Uruguay Round implementation period (1995-2000). The subsidies considered fully decoupled or non-trade-distorting, because not linked to an obligation to produce, were put in the *green box* and exempted from reduction. However the partially decoupled subsidies of the *blue box*, which are not subject to reduction in the AoA, have been put in the new concept of OTDS by the Framework Agreement of 31 July 2004 so that they would be subject to reductions if the Doha Round is concluded on the lines of the Doha Draft.

This differentiation of agricultural subsidies according to their alleged level of trade-distortion is clearly deceiving: any subsidy, even when granted to protect the environment and put in the green box, is increasing the competitiveness of the benefitting product and hence has a dumping effect when it is exported and a protective effect vis-à-vis imported products.

II – The official US agricultural supports and subsidies from 2007 to 2013

Table 1 presents three sources of US agricultural supports and subsidies, from 2007 to 2013: OECD – which changed its indicators in 2014 –, WTO and USDA budgets.

Table 1 – US total agricultural supports and subsidies from 2007 to 2013

$ million	2007	2008	2009	2010	2011	2012	2013
According to the OECD indicators since 2014							
TSE	65985	70800	76165	76904	74963	82049	83084
GSSE	6605	11138	9124	10797	6640	9873	10702
PSE	33194	30782	33074	28040	31038	33548	31022
" MPS	13072	999	4568	3434	2000	6162	3837
" crop insurance	805	5683	5418	4704	7316	6967	7262
CSE (transfers to consumers)	11977	26636	28586	32813	33927	31837	37379
" nutrition programmes	25331	27956	32853	36997	36105	37608	40340
According to the OECD indicators before 2014							
TSE	97172	104733	123663	135869	143778	156356	
GSSE	37809	45088	56651	69846	71539	81446	
" of which part of food stamps	28047	31593	44626	56544	62259	68298	
PSE	33178	30765	33045	27973	31596	30170	
" MPS	13072	999	4568	3435	3645	3066	
" other subsidies	30531	43955	41247	38605	37969	40974	
" of which crop insurance	995	10316	7903	8592	7111	10385	
Total other subsidies	30531	43955	41247	38605	37969	40974	
" of which crop insurance	995	10316	7903	8592	7111	10385	
CSE (transfers to consumers)	26186	28880	33967	38050	40643	44739	
" rest of nutrition programmes	25522	28186	33222	37285	39905	44018	
Total nutrition programmes	53569	59779	77848	93829	102164	112316	
According to the US notifications to the WTO							
Total supports	84682	94537	114739	128739	139485	134304	
Total actual subsidies	78207	89769	109487	124558	134763	129976	
OTDS (AMS + PS&NPS de minimis)	8520	12952	11525	9781	14368	12135	
Total AMS (amber box)	6260	6255	4267	4119	4654	6863	
" MPS	6238	4060	4068	4103	4241	4328	
" " dairy	5011	2925	2827	2845	2835	2923	
Green box (GB)	76162	81585	103214	118958	125117	127441	
" nutrition	54408	60519	78796	94915	103151	106781	

" general services	15624	15290	18242	18191	16268	10252	
" decoupled income support	6130	5776	6176	5852	5698	4790	
" fixed direct payments	5175	4821	5222	4898	4745	3837	
NPS AMS (NPS *de minimis*)	2023	5989	6074	5584	9233	309	
" crop insurance	801	4509	5426	4712	7461	9	
" crop insurance notified in PS AMS						7034	
PS *de minimis*	237	708	1184	78	481	4963	
" of which crop insurance PSdm						4886	
Total non-nutrition subsidies	23799	29250	30691	29643	31612		
According to the US Federal Budget							
USDA actual outlays	84435	90796	114440	129460	139396	139717	155872
" Nutrition (GB)	53569	60097	82949	93929	102164	105944	108844
" food stamps	34826	39622	53620	68284	75687	78445	79862
" in kind programmes	21770	22455	29329	25645	31828	35742	31331
" Total CCC	11040	9076	11443	10015	8912	7 928	10137
" direct payments	10420	8184	9821	9180	8271	7 355	8 648
" fixed DP (GB)	3957	4821	5222	4898	4745	3 837	4 955
" conservation (GB)	1 865	1927	1855	1841	1795	1814	2034
" export programs (GB)	160	105	337	405	551	454	466
Crop insurance	3941	5737	7271	3671	11295	14071	5951
Other agricultural subsidies	15885	15886	12777	21845	17025	11774	30940
Total non-nutrition subsidies	30866	30699	31491	35531	37232	33773	47028

Sources: http://www.fsa.usda.gov/FSA/webapp?area=about&subject=landing&topic=bap-bu-ce;
http://www.rma.usda.gov/aboutrma/budget/2013fygovcost.pdf ; http://www.fns.usda.gov/pd/SNAPsummary.htm

The distinction between "supports" and "subsidies" is present in the OECD and WTO data which take into account, besides actual subsidies, i.e. public expenditures, "market price supports" (MPS) which are not actual subsidies but the amount represented by the multiplication of the quantity of products by either the gap between the current domestic price and the current CIF import price (for OECD) or the gap between the current administered price (minimum guaranteed price) and the CIF import price of the 1986-88 period (WTO). The data notified to the WTO are only available up to 2012, the OECD data and the data of USDA budgets are available up to 2013.

2.1.1 – The OECD agricultural indicators from 2007 to 2013

OECD uses essentially 5 indicators, the most comprehensive being the TSE (total support estimate) which is the sum of the PSE (producers' support estimate), the GSSE (general services support estimate) and the CSE (Consumers' support estimate, for the part "transfers to consumers from taxpayers").

The OECD methodology on agricultural supports has changed profoundly in 2014 because some expenditures were no longer recorded in order to cover only policies where primary agriculture is the main beneficiary. These changes concern the value of the TSE and GSSE indicators so that the value of all the indicators have been revised from 1986 to 2013 in the OECD report of 2014, where the TSE for all OECD countries in 2011 has dropped by 17% from $409 bn in the 2013 OECD report to $342 bn in the 2014 report, the GSSE component having dropped by 60%, from $109 bn to $44 bn. The main changes concern the US were the GSSE is reduced by 91% (from $71.539 bn to $6.640 bn) and the TSE by 48% (from $143.778 bn to $74.739 bn) because the largest nutrition programme – the SNAP or food stamps – has been deleted except that $16 bn remain in the CSE as being attributable to farm

level production. But in the new OECD data all food stamps have been deleted but the other nutrition programmes, delivered in kind and mainly to school children, remained notified, for example at $40.3 bn in 2013.

If these methodological changes may be justified on rational grounds, they present also a clear political benefit for the image of the developed countries, showing that they are not as large subsidizers that DCs and civil society have been claiming for a long time, particularly in view of the sharp increase in the agricultural subsidies of some emerging countries in recent years.

However the PSE contains also the MPS, which has shrunk from the peak of $31.650 bn in 1999 to 3.837 bn in 2013, so that the difference between the TSE and the MPS represents actual subsidies[2]. Let us stress here that the OECD concept of MPS is much more rational than the WTO AoA concept as it is defined as the gap between the domestic price at farm level and the current world price, not the price of the 1986-88 period as for the WTO.

The huge nutrition programmes were broken down, before the change in methodology in 2014, between the GSSE (under "marketing and promotion", for $66.5 bn in 2012) and the CSE ("transfers to consumers from taxpayers") for $17 bn (out of total CSE of $44 bn) in 2013. The GSSE contained 64% of the Food stamps programme (or SNAP) presented as their "delivery cost" while the CSE contained the remaining 36% supposedly representing the "*farm value per dollar of retail food expenditure of food stamps households*" for $17 bn plus all the other nutrition programmes (Child nutrition, Women and infants, etc.). This way of presenting the distribution of the Food stamps programme costs is highly questionable because most food purchased by food stamps consists of final processed products so that the $66.5 bn represent much more than the only "delivery cost", while the $17 bn of food stamps cost included in the CSE imply that no food stamps can buy imported food, which is not true.

2.1.2 – Notifications of domestic supports to the WTO from 2007 to 2012

The US domestic supports notified to the WTO are divided between the green box (GB) and the amber box as it has no blue box (BB) nor exports refunds (which in any case would not be notified among domestic supports).

Total *supports* have been on average of $116.1 bn from 2007 to 2012 – rising from $84.7 bn in 2007 to $134.3 bn in 2012 –, of which total *subsidies* accounted on average for $111.1 bn, from $78.2 bn in 2007 to $130 bn in 2012, the differences between supports and subsidies being represented by the MPS component of the AMS (difference between current administered prices and 1986-88 CIF prices times the eligible production volume).

The green box (GB) accounted for $105.4 bn on average or 94.9% of all subsidies – from $76.2 bn in 2007 to $127.4 bn in 2012 –, in which nutrition programmes represented 78.4 bn on average (78.8% of GB), from $54.4 bn in 2007 to $106.8 bn in 2012 (83.8% of GB). The non nutrition GB was divided between the traditional general services for $15.6 bn on average (and 16.6% of GB) and decoupled income support for $5.5 bn (5.4% of GB), in which the fixed direct payments accounted for $4.8 bn on average (the rest being the tobacco buyout).

[2] http://www.oecd.org/tad/agricultural-policies/producerandconsumersupportestimatesdatabase.htm

The average total AMS (amber box) was of $5.4 bn – from $6.3 bn in 2007 to $6.9 bn in 2012 –, in which the MPS accounted on average for $4.5 bn (83.4% of total AMS) – from $6.2 bn in 2007 to $4.3 bn in 2011, the difference representing actual coupled subsidies.

Although not notified we can show the level of the applied OTDS (overall trade distorting domestic support) which is the sum of total AMS plus product-specific *de minimis* support (PSdm) plus non-product-specific *de minimis* support (NPSdm) plus blue box (non existent for the US). PSdm and NPSdm are normally amber supports but are not counted in the amber box as long as they remain below 5% of the production value of each specific product for PSdm, or of the whole agricultural production value for NPSdm. The average applied OTDS was of $11,5 bn from 2007 to 2011 ($12.1 bn in 2012), of which $4.9 bn for the NPSdm ($309 million only in 2012) and $1.3 bn for the average PSdm (but $5 bn in 2012 because the crop insurance subsidies were notified in the PS subsidies instead of in the NPS AMS previously). The bulk of the NPSdm was represented by the crop insurance subsidies before 2012: $4.6 bn on average (79.3% of NPSdm), of which $7.5 bn in 2011 (80.8% of NPSdm) whereas 98.4% of the PSdm in 2012 was due to the crop insurance subsidies.

2.1.3 – USDA executed Budget from 2007 to 2013

Total USDA net outlays per fiscal year (October to September) were of $122 bn on average from 2007 to 2013 – from $84.4 bn in 2007 to $155.9 bn in 2013 –, with nutrition programmes accounting for $86.8 bn on average (71.1% of total), of which $108.8 bn in 2013 (69.8% of total). Food stamps represented $61.5 bn on average (70.8% of nutrition programmes), of which $79.9 bn in 2013 and in kind delivery of food $28.3 bn ($31.3 bn in 2011).

Apart from nutrition programmes the main other US agricultural subsidies are managed by the Commodity Credit Corporation (CCC, the main task of the Farm Service Agency) – which groups together coupled and decoupled direct payments for an average of $9.8 bn from 2007 to 2013 ($10.1 bn in 2013) – and by the Risk Management Agency (RMA) for crop insurances, for an average of $7.4 bn ($6 bn in 2013 after $14.1 bn in 2012 due to the drought). All the other subsidies were of $18 bn on average (30.9 bn in 2013) and cover the following issues: other activities of the Farm Service Agency (farm loans, conservation), Foreign Agricultural Service (of which export credit guarantees), rural development, natural resources and environment (other conservation subsidies, forest), food safety, marketing and regulatory programmes (animal and plant health inspection), research, education and economics.

III – The US compliance of its notified agricultural supports with the WTO rules

The main issue is now not so much to compare the gaps between the three ways of accounting the US agricultural supports from 2007 to 2013 than to assess the compliance of the US notifications from the 1995-2000 period up to 2012 and its likely compliance with the Agricultural modalities draft of 6 December 2008, taking into account the new 2014 Farm Bill. Table 2 summarizes the US under-notified agricultural supports from 1995 to 2012.

We will assess in turn the supports notified in the PS AMS and in the NPS AMS, considering at the same the prospects under the new 2014 Farm Bill.

Table 2 – The under-notified total AMS and OTDS from 1995 to 2012

$ million	1995/00	1995/04	2005	2006	2007	2008	2009	2010	2011	2012	05/12
Ag prod. value	194139	201008	236001	246425	307041	316513	284652	334918	380781	396606	312867
5% of "	9707	10050	11800	12321	15352	15826	14223	16746	19039	19830	15642
Allowed PS AMS	19103	19103	19103	19103	19103	19103	19103	19103	19103	19103	19103
Notified PS AMS	10401	10504	12938	7742	6260	6255	4267	4119	4654	6863	6637
Notif NPS AMS	3749	4300	5862	3430	2023	9262	6074	5387	9233	309	5198
Notified PSdm	104	355	118	171	237	708	1184	278	481	4963	1018
Applied notiOTDS	14254	15159	18918	11343	8520	16225	11525	9784	14368	12135	12853
Actual components of PS AMS (including under-notified subsidies and NPS and green subsidies transferred to PS AMS)											
CCC-cons.-tobacc	10614	11473	14768	17601	8887	6435	8923	7683	6154	5465	9490
Dairy MPS	0	0	0	0	0	2086	2184	2166	2176	2088	1338
Grazing fees	123	123	123	123	123	123	123	123	123	123	123
Crop insurance	1582	2283	2699	3570	3940	5737	7039	3671	11295	14071	6503
Corn ethanol					289	879	991	935	2091	2766	994
Total PS AMS*	12319	13879	17590	21294	13239	15260	19260	14578	21839	24513	18447
Under-notified subsidies to add to the NPS AMS											
Irrigation subsid	624	658	731	760	760	796	796	796	811	833	785
Farm loan subsid	54	52	80	23	35	36	35		5		27
Food aid AMS	2223	2557	3777	4682	2346	2918	5331	4131	5916	6600	4447
Sub-total	2901	3267	4588	5465	3141	3750	6162	4927	6732	7433	5259
Less NPS notified subsidies transferred to PS subsidies: crop insurances, counter-cyclical payments (CCP), market loss payments (MLP)											
Crop insurance	886	1296	757	1613	801	5691	5426	4711	7461	9	3309
CCP	0	664	4749	1488	893	1220	221	17	0	0	1074
MLP	1822	1838	0	0	0	0	0	0	0	0	0
Sub-total	2708	3798	5506	3101	1694	6911	5647	4728	7461	9	4382
Actual NPS AMS (and NPSdm)											
Actual NPS AMS	5753	6087	7307	8212	5876	6448	8861	7661	9446	10130	7977
Under-notified PS AMS, allowed, actual and under-notified OTDS											
Under-notif AMS	1918	3375	4652	13552	6979	9005	14993	10459	17185	17650	11810
Allow-actu AMS*	6784	5224	1513	-2191	5864	3843	-157	4525	-2736	-5410	656
Allowed OTDS	42885	42885	42885	42885	42885	42885	42885	42885	42885	42885	42885
Applied OTDS**	18176	20321	25015	29677	19352	22416	29305	22517	31766	39606	27457
Under-not OTDS	-112	287	-43	11234	6080	2926	10177	6527	10540	18474	8239

* Actual PS AMS before the addition of the NPS AMS of 2012 which exceeded the NPSdm;** after addition of the NPS AMS of 2012

3.1 – The main under-notifications

The data on US agricultural subsidies (shortcut for public agricultural expenditures) are collected by two institutions: the Commodity Credit Corporation (CCC) for most subsidies and the Risk Management Agency (RMA) for those to agricultural insurances.

3.1.1 – The subsidies collected and managed by the CCC

We can consider that all the CCC subsidies – except those to conservation and to the tobacco buyout which were rightly notified in the GB – should be put in the AMS given the WTO Appellate Body ruling of 3 March 2005 in the cotton case that the alleged decoupled payments are in fact coupled crop-specific subsidies: "*upholds the Panel's finding, in paragraphs 7.518 and 7.520 of the Panel Report, that… production flexibility contract payments, market loss assistance payments, direct payments, counter-cyclical payments, crop insurance payments, and cottonseed payments (the "challenged domestic support measures") granted "support to a specific commodity", namely, upland cotton*"[3].

[3] https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=%28@Symbol=%20wt/ds267/ab/r*%20not%20rw*%29&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#

Another reason to put in the amber box (AMS) the *production flexibility contract payments, market loss assistance payments and fixed direct payments* is that a large part of them has been granted to grains used as feed, which are input subsidies that the AoA Article 6.2 puts in the amber box for developed countries' farmers (see below in 2.2.2).

This raises the whole issue of the necessity in the current WTO negotiations on the post-Bali agenda to challenge the content of the green box (GB).

Ten years ago FAO concluded: "*As analyses are refined and "decoupled" payments are found to have a positive production effect over a certain threshold, there needs to be a mechanism in place for the reclassification of such payments as Amber Box*"[4].

Happily UNCTAD has produced recently a powerful comprenhensive assessment of GB subsidies, particularly of the EU and US[5]. After reviewing the theoretical literature and empirical evidence on "*the channels through which the decoupled payments under green box can affect production. These are through (a) risk effects; (b) land price effects; (c) credit effects; (d) labour participation effects; and (e) expectations effect*", Rashmi Banga has built two models:

1) First a Data Envelopment Analysis (DEA) which is a linear programming methodology to estimate the impact of green box subsidies on total factor productivity and cost efficiency : "*Results of Data Envelopment Analysis (DEA) show that in EU, total factor productivity growth in agriculture would have been 3.7% per annum in this period without GB* [green box] *subsidies but it increased to 8.3% per annum due to GB subsidies. For USA, total factor productivity growth increased from 2.6% per annum to 6.8% per annum, an increase of an average 3.9 percentage points per annum due to GB subsidies. This implies that over 13 years, agricultural productivity has increased around 60% in EU and 51% in USA on account of green box subsidies*".

2) Then "*The impact of green box subsidies on production, export and import volumes, export revenues and import costs is estimated using the Agricultural Trade Policy Simulation Model (ATPSM version 3.1, January 2006). The data for aggregate production and trade has been updated using average of 2005-2007, from FAO stats*". This model is used for two simulations:
- "*The results of first simulation, i.e., cutting green box subsidies by 40% in USA (excluding food stamps) and 50% in EU (excluding non decoupled payments)*" leads to the following results: "*Following the cuts, imports rise in developed countries by 22% while production falls by 5%, contrary to this, exports of developing countries rise by 12% and export revenue increases by 17%... Export volume and export revenue increase in LDCs by 9% and 8% respectively, while imports fall by 4%*".

- The second simulation, based on the capping of GB subsidies of USA and EU to 2001 level, "*shows that such a capping will result in substantial gains to developing countries as well as*

[4] FAO, *Domestic support: trade related issues and the empirical evidence*, Trade policy technical note, 2005, ftp://ftp.fao.org/docrep/fao/007/j5012e/j5012e00.pdf
[5] Rashmi Banga, *Impact of Green Box Subsidies on Agricultural Productivity, Production and International Trade*, UNCTAD, June 2014, http://unctad.org/en/PublicationsLibrary/ecidc2014misc1_bp10.pdf

LDCs and Net Food Importing Countries (NFIC) in terms of agriculture production and trade. Agriculture production increases by 3%-5% in developing regions while export revenues increase by 55% in developing countries and 32% in LDCs. NFIC increase production of agricultural products (not necessary food) by 4% while import costs decline by 4%. Global agriculture production increases by 3% while export volume and revenues increase by 17% and 25% respectively. These results indicate the extent of artificial competitiveness created because of subsidies in the developed countries. Agricultural production in USA falls by 15% while that of EU falls by 19% while their agricultural imports rise by 200% and 85% respectively".

So that the UNCTAD report can conclude: "*There is a strong case for giving priority to disciplining Green Box subsidies in the post Bali work program. Some of the broad principles suggested by the paper for disciplining GB subsides include- capping total green box expenditures of developed countries; limiting or completely eliminating subsidies provided under decoupled payments*".

Solidarité has been assessing for a long time the trade-distorting nature of the EU and US green box subsidies, already in a short paper prepared during the WTO Hong Kong ministerial[6], and enlarged and updated many times since then, including on the alleged fully decoupled EU "single payment scheme" (SPS) or "Single Area Payment Scheme (SAPS) for the new Member Countries of Eastern Europe which join the EU since 2004.

3.1.2 – Feed subsidies are input subsidies to notify in the PS AMS of developed countries

The WTO Agreement on agriculture (AoA) article 6.2 is extremely important by its implications on the developed countries' subsidies when it states: "*Investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to low-income or resource poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures* [not underlined in the AoA]". Which means clearly that, to the contrary, inputs subsidies (let us concentrate first on them and not yet on investment subsidies) granted to rich countries' farmers (and to large farmers in middle-income DCs) have to be included in the AMS.

The developed countries continue to deny that their huge subsidies to feedstuffs (cereals, oilseeds cakes and pulses) are input subsidies to be notified in the PS AMS of their animal products (meats, eggs and milk) having consumed them. Yet the Congressional Research Service (CRS) has acknowledged that "*program commodities*[7] *such as corn are feed inputs for livestock*"[8]. For OECD also, "*Input subsidies are typically explicit or implicit payments*

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[6] *The green box a black box which hides the gold box*, Solidarité, December 9, 2005, http://solidarite.asso.fr/Papers-2005. The paper is also available on the WTO website: http://www.wto.org/english/forums_e/ngo_e/posp55_e.htm. Several other Solidarités papers are available on the WTO website, the last one being "*Comments on David Orden, David Blandford and Tim Josling, WTO disciplines on agricultural support*", 15 September 2011: http://www.wto.org/english/forums_e/ngo_e/177_e.pdf

[7] For USDA the "program crops" atre those benefitting from a federal support: wheat, corn, barley, grain sorghum, oats, rice, cotton, oilseeds, peanut and sugar.

[8] http://wikileaks.org/wiki/CRS:_Potential_Challenges_to_U.S._Farm_Subsidies_in_the_WTO:_A_Brief_Overview,_June_1,_2007

reducing the price paid by farmers for variable inputs (for example… feed)"[9]. Besides the fact that the US and the EU notify in their AMS some secondary feed subsidies – those to grazing fees on public lands in the US and those to dried fodder and skimmed-milk powder fed to calves in the EU – attest clearly that they are aware that feed subsidies are coupled input subsidies but they avoid to notify their huge feed subsidies to feed cereals, oilseeds meals and pulses.

Their huge cheating in that area has been largely promoted by the OECD tortuous concept of "excess feed cost" used to assess its other ambiguous concept of PSE (producer's support estimate). In an e-mail of 2004 Catherine Moreddu of OECD replied to me: "*The excess feed cost due to the price support of cereals is deducted from the price support of animal products. Therefore it is not possible to take it into account a second time in input subsidies*". This statement could have been at best debated when the world prices of cereals, oilseeds and pulses were low so that this alleged "excess feed cost" – represented by the gap between domestic prices and world prices – was large, for an average of $2.862 billion in the EU from 1986 to 2007, but now that the world prices of cereals have skyrocketed since 2008 the "excess feed cost" has totally disappeared (is zero) in the EU PSE. Yet the feed subsidies are still there, hidden for the EU in its alleged fully decoupled SPS (single payment scheme) and SAPS (single area payment scheme), which is the best refutation of this mystifying OECD concept of "excess feed cost". Indeed if the US "excess feed cost" has been very low, at $122 million on average since 1986 – the beginning of OECD calculations – because the US prices of grains have been considered as the "world reference prices", the US being price maker for grains (including cotton but not for rice), the story is quite diferent for all the other countries, as shown for the EU in table 3.

Table 3 – The US and EU average "excess feed cost" from 1986 to 2013, in $ million

	1986-94	1995-98	1999-2007	1986-2007	2008-13
US	294.5	7.9	0	121.9	0
EU	5344.6	1735.4	879.8	2861.9	0

http://www.oecd.org/tad/agricultural-policies/producerandconsumersupportestimatesdatabase.htm#browsers

However to be able to go further we need now to incorporate another huge cheating in the US and EU PS de minimis (PSdm) AMS to be notified.

3.1.3 – The PSdm AMS is not 5% of the whole agricultural production value

The origin on this cheating comes from contradictions in the Doha Draft of 6 December 2008: the authorized (or bound) PSdm is not 5% of the whole value of agricultural production (VOP) as this is the case for the NPSdm but only 5% of the production value of each specific product having a PS AMS.

The paragraph 1 of the Doha Draft writes: "*The base level for reductions in Overall Trade-Distorting Domestic Support (hereafter "Base OTDS") shall be the sum of: (a) the Final Bound Total AMS… plus (b) for developed country Members, 10 per cent of the average total value of agricultural production in the 1995-2000 base period (this being composed of 5 per cent of the average total value of production for product-specific and non-product-specific AMS respectively)* [not underlined in the Draft], *plus (c) the higher of average Blue Box*

[9] http://www.oecd.org/agriculture/agricultural-policies/1937457.pdf

payments as notified to the Committee on Agriculture, or 5 per cent of the average total value of agricultural production, in the 1995-2000 base period". This statement contradicts the paragraph 30 definition which repeats correctly the AoA article 6.4 which states: "*(a) A Member shall not be required to include in the calculation of its Current Total AMS and shall not be required to reduce: (i) product-specific domestic support which would otherwise be required to be included in a Member's calculation of its Current AMS where such support does not exceed 5 per cent of that Member's total value of production of a basic agricultural product* [not underlined in the AoA] *during the relevant year*". In other words, as soon as a product-specific (PS) AMS reaches 5% of the production value of a given product, this product loses its PS *de minimis* (PSdm) exemption and the support is counted in the AMS – the so-called "amber box" of coupled supports subject to reductions –, which is added to the total applied AMS, and the production value of that product is added to the production value of all the products with PS AMSs.

The last CRS report of 10 October 2014 on "*WTO Doha Round: Implications for U.S. Agriculture*" shares the same lie when writing about "*the two de minimis exclusions (product- and non-product) of $4.9 billion each*"[10]. This lie is also shared by Joseph W. Glauber and Patrick Westhof: "*Both product specific and non-product specific amber support are subject to de minimis tests. Under the URAA, if support is less than 5 percent of the value of current production, support is considered de minimis*"[11].

3.1.4 – The large implications of these two lies on the level of allowed FBTA and OTDS

As the feed subsidies are conferring PS AMSs to all animal products having consumed the feed, this has increased the production value of products having PS AMSs and has reduced consequently the production value of products without PS AMSs.

Thus the US average feed subsidies of $4.442 bn during the 1995-2000 base period[12] have conferred PS AMSs to all meats which had a production value of $57.055 bn so that the production value of products with PS AMSs rises from $49.734 bn to $106.789 bn and, given an average agricultural production value of $194.139 bn, the production value of products without PS AMSs falls to $87.350 bn and the allowed PSdm, being 5% of that value, falls to $4.368 bn instead of $9.707 bn for the NPSdm.

Therefore the US allowed OTDS in the base period falls from $48.224 bn – in Canada's simulations of 19 May 2006 made on behalf of the EU, the US and Japan and considered as the unchallengeable truth: 19.103 (FBTA) + 9.707 (PSdm) + 9.707 (NPSdm) + 9.707 (BB) – to $42.885 bn: 19.103 (FBTA) + 4.368 (PSdm) + 9.707 (NPSdm) + 9.707 (BB).

Thus the US allowed OTDS at the end of the Doha Round implementation period, once cut by the 70% foreseen for the US by the Doha Draft, will fall to $12.866 bn[13], instead of the

[10] https://www.hsdl.org/?view&did=759014
[11] http://ageconsearch.umn.edu/bitstream/197159/2/Session%203%20-%20Glauber%20Westhoff.pdf
[12] *Comments to David Orden, David Blandford and Tim Josling, WTO disciplines on agricultural support*, Solidarité, September 15, 2011, http://www.solidarite.asso.fr/IMG/pdf/WTO_disciplines_on_agricultural_support_J-_Berthelot_comments-3.pdf
[13] Jacques Berthelot, *The US cannot reduce its agricultural supports in the Doha Round*, Solidarité, 1st August 2009, http://www.solidarite.asso.fr/Papers-2009.html

$14.467 bn[14]. And the allowed PSdm should be halved on the first day of the implementation period to $2.184 bn for the PSdm and to $4.854 bn for the NPSdm.

Similarly the EU average production value of products with PS AMSs in the 1995-2000 implementation period of the Uruguay Round – which is also the base period for the Doha Round reduction commitments – rises from €122.9 billion (bn) to €201.3 bn so that, given the €222.6 bn for the average value of the whole agricultural production, the average value of products without PS AMS collapses to €21.3 bn and the allowed PSdm, which is 5% of that value, falls at €1.063 bn instead of €11.1 bn (5% of the whole agricultural production value).

Correlatively the EU average blue box had been reduced to €11.145 bn instead of €20.888 bn because €9.7 bn of direct payments to the EU cereals, oilseeds and pulses used as feed have been transferred to the PS AMSs of animal products having consumed this feed.

Therefore the EU allowed (or bound) OTDS for 1995-2000 – which is the sum of the AMS at the end of the marketing year 2000 or Final Bound Total AMS (FBTA) + the PSdm + the NPSdm + the blue box – falls at €90.5 bn [67.159 (FBTA) + 1.063 (PSdm) + 11.129 (NPSdm) + 11.145 (BB)] instead of €110.305 bn according to Canada's simulations of May 2006 endorsed by the EU and the WTO [67.159 (FBTA) + 11.129 (PSdm) + 11.129 (NPSdm) + 20.888 (BB)], and the 80% reduction in OTDS foreseen by the Draft Modalities for the EU gives an allowed OTDS of €18.099 bn at the end of the Doha Round implementation period instead of €22.061 bn. Furthermore the allowed PSdm should be halved on the first day of the Doha Round implementation period, to €532 million for the PSdm and €2.226 bn for the NPSdm. And the allowed EU BB should also be halved to €5.573 bn.

3.1.5 – The huge under-notification of the dairy market price support (MPS) since 2008

The 2008 Farm Bill has changed the way to notify the dairy MPS: instead of continuing to compute it for the whole milk production as fixed in it Schedules of commitments to the GATT of 1994, it has been computed for three main dairy products: butter, nonfat dry milk (NFDM) and cheddar cheese. 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 undernotification of $10.700 bn.

Table 4 – Under-notification of the US dairy market price support (MPS) from 2008 to 2012

$ million	1995-00	1995-04	2005	2006	2007	2008	2009	2010	2011	2012	2008-12
Notified MPS	4495	4512	4794	4882	5011	2925	2827	2845	2835	2923	2871
Actual MPS	4495	4512	4794	4882	5011	5011	5011	5011	5011	5011	5011
Additional MPS	0	0	0	0	0	2086	2184	2166	2176	2088	2140

Despite the unanimity of US experts who applauded this change, it does not comply with the AoA rules: you cannot change the rule to compute the dairy AMS from the administered price of the whole milk production made for 1986-88 in the US Schedule of commitments[15] to the sum of the administered prices of butter, cheddar cheese and NFDM. 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*

[14] Jacques Berthelot, *The US cannot reduce its agricultural supports in the Doha Round*, Solidarité, 1st August 2009, http://www.solidarite.asso.fr/Papers-2009.html?debut_documents_joints=10#pagination_documents_joints
[15] http://www.wto.org/english/tratop_e/agric_e/schedule_e/usa.pdf

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*".

Not only the US was not allowed to change its methodology to compute its dairy AMS from 2008, but, to cap it all, it continues to use its allowed total AMS – the final bound total AMS (FBTA) of $19.103 bn – for the Doha Round implementation period incorporating a dairy MPS calculated on the basis of the whole milk production. They have the cake and eat it. Given the levels of support prices and production in the base period 1986-88, the total dairy AMS for the sum of butter, NFDM and Cheddar cheese was of $2.314 bn instead of the notified $5.409 bn for the whole milk. It follows that the US should rectify its notifications of dairy AMS from 2008 to 2012 (last notified year on 4 December 2014) based on the whole milk, which implies to notify an overdue of $10.700 bn, sum of differences between the AMS notified from 2008 to 2012 and that notified for 2007.

Or they should at least revise their total applied AMS for 1986-88 which was not of $23.879 bn but of $20.784 bn and the final bound total AMS, at the end of the Uruguay Round implementation period in 2000, was not $19.103 bn (80% of 23.879) but only $16.627 bn (80% of 20.784). And the allowed final bound total AMS at the end of the implementation period of the Doha Round, once cut by the 60% foreseen in the Draft modalities of 6 December 2008, will bring it from $7.641 bn to $6.651 bn.

However the new Farm Bill of 7 February 2014 has replaced the Dairy Product Price Support Program and the Milk Income Loss Coverage by the Dairy Margin Protection Program (DMPP). According to the National Milk Producers Federation "*The Margin Protection Program will fit well within our WTO subsidy limits for dairy. By replacing the price support and Milk Income Loss Contract programs, the U.S. dairy industry will retain a significant level of allowable subsidies to be used for programs like the Margin Protection Program. Except for infrequent extreme situations, the Margin Protection Program will stay well below the permissible level of subsidies for dairy within the overall allowable level of support available to U.S. agriculture*"[16]. This is not the view of Vincent H. Smith for whom "*Payments under this program are clearly amber box because they are driven by current market prices, but have been estimated by the Congressional Budget Office (CBO) to be relatively small, again because the CBO assumes that relatively high milk prices will be paid to dairy farmers over the entire 2014-2018 period covered by the new farm bill. Were milk prices to decline to levels that were observed in 2011 and 2012 (in the range of fifteen dollars per hundredweight for what is called Class I milk in Boston) and corn prices to remain close to recent record levels then the DMPP would be likely to result in multiple billions of dollars in federal subsidies to US dairy producers*". The recent fall of the US price of all milk from $22.00 per cwt (short hundredweight or 100 lb, equal to $4.85 per kg) in December 2013 to

[16] http://www.futurefordairy.com/faqs/margin-protection-program.html#pageTop

$20.40 per cwt ($4.50 per kg) in December 2014[17] is confirmed by the expected average price of $17.75 per cwt ($3.91 per kg) in 2015[18], which is lower than the average prices for 2011 ($20.25 per cwt or $4.46 per kg) and 2012 ($18.56 per cwt or $4.09 per kg)[19].

In any case the US would have still to notify the under-notified MPS up to 2014, for a total of about $15 bn from 2008 to 2014.

3.1.6 – The insurance subsidies collected and managed by the RMA

The Risk Management Agency (RMA) publishes regularly the annual details of insurance policies (number of policies, acres covered, liabilities, indemnities, premium subsidies…) for more than 120 crop products[20]. Furthermore since 2008 several livestock policies specific for cattle (feeder and fed), dairy, swine and lamb have been introduced. But the specificity does not stop here because all the policies are area specific per county and sometimes per township section and even per field when a farmer's fields are not located in the same county or section. They are also specific per farmer who must "*present actual annual crop yields (usually stated on a bushel-per-acre basis) for the last 4 to 10 years*". The CRS (Congressional Research Service) report confirms: *"The availability of crop insurance for a particular crop in a particular region is an administrative decision made by USDA. The decision is made on a crop-by-crop and county-by-county basis, based on farmer demand for coverage and the level of risk associated with the crop in the region, among other factors*". In another report of April 2007 the CRS adds: "*Most crop insurance subsidies (with the exception of adjusted gross revenue insurance) can be linked directly to a specific insured crop*"[21].

In fact crop insurance policies are even more 'coupled' to prices, which are by nature specific, than the various marketing loan benefits as explained by the CRS: "*For both yield- and revenue-based policies, the price used to set the guarantee is based only on the expected price for the upcoming season, and is reset every year. This is in contrast to farm programs which either have price guarantees set in statute or use historical average prices and are designed to protect against longer-term price declines… For many farmers, crop insurance is the most important component of the farm safety net, given the large number of crops available for coverage and the fact that commodity support programs currently offer less protection from price declines than they did previously*".

However one could object that, if premium subsidies are clearly specific, the other components of the subsidies are not, the bulk of which being the payments to private insurance companies (reimbursements to deliver the policies and payments of underwriting gains). But the GAO (Government Accounting Office) has responded to this objection in April 2009: "*We do not agree that gathering and reporting data on commissions paid to insurance agencies by policy would significantly increase the "administrative burden" on RMA and insurance companies. First, RMA… could require that companies report two*

[17] http://usda.mannlib.cornell.edu/usda/nass/AgriPric/2010s/2015/AgriPric-01-30-2015.pdf
[18] http://www.ers.usda.gov/publications/ldpm-livestock,-dairy,-and-poultry-outlook/ldpm-247.aspx
[19] http://www.ers.usda.gov/data-products/dairy-data.aspx
[20] Dennis A. Shields, *Federal Crop Insurance: Background*, Congressional Research Service, December 12, 2013, https://www.fas.org/sgp/crs/misc/R40532.pdf
[21] Randy Schnepf and Jasper Womach, Potential Challenges to U.S. Farm Subsidies in the WTO – CRS Report for Congress, Updated April 26, 2007.

additional data fields in the policy records they currently submit to RMA—commissions and other compensation… In conjunction with these changes, RMA could develop and provide allocation guidance to prorate compensation that is not provided on a per-policy basis so that this compensation could be apportioned to individual policies"[22].

For the agricultural policy specialists David Blandford and David Orden also: "*The cost reimbursements excluded from the notifications are made to companies on behalf of the policyholders who are farm producers of the insured crops, and thus should be notified… It is somewhat curious that the crop and revenue insurance delivery costs, which are directly related to delivery of benefits to farmers, are not reported*"[23]. Furthermore their notification in the green box since 2009 is all the more irrelevant that these subsidies to insurance companies are directly linked to the prices levels, in total contradiction with article 1 of the WTO AoA Annex 2.

So that the fact that OECD presents only the US premium subsidies to insurance as crop specific (lines PS6 to PC20 in the file on US PSE published in 2013), and as non crop-specific the administrative costs, reimbursements to private companies to deliver the policies and payments of underwriting gains (lines GSSEK1 to GSSEK3), is also irrelevant.

The crop insurance subsidies have been notified entirely in the NPS AMS up to 2008 but from 2009 the premium subsidies only were notified in the NPS AMS and the other government costs – administrative costs, reimbursements to private companies to deliver the policies and payments of underwriting gains – were notified in the green box.

Crash! In 2012 the premium subsidies were no longer notified in the NPS AMS but in the PS AMS. Why and with which consequences? They did it to benefit of the PS *de minimis* for many crops: indeed on a total of $7.074 bn of premium subsidies $4.886 bn were notifed in PSdm so that the net PS AMS of crop insurances subsidies was limited to $2.188 bn, despite that there remained much space in the NPS AMS which plumetted to $309 million. But the boomerang effect of this change implies that the US recognized that the premium subsidies were improperly notified in the past in the NPS AMS, justifying to rectify its past notifications in the NPS AMS.

Table 5 – Premium and total crop insurance subsidies from 1995 to 2013

$ million	1995-00	1995-04	2005	2006	2007	2008	2009	2010	2011	2012	2013	05-12
Total govern. costs	1582	2283	2699	3570	3940	5737	7039	3671	11295	14071	5951	6502
Notified NPS AMS	886	1296	757	1613	801	5691	5426	4711	7461	9		4187
Notified PS AMS	0	0	0	0	0	0	0	0	0	2188		
Notified PSdm	0	0	0	0	0	0	0	0	0	4886		
Notified green box	0	0	0	0	0	0	2485	3888	2052	1488		1239
Actual PS AMS	696	987	1942	1957	3139	46	1613	-217	3834	9176		838
Premium subsidies	938	1366	2337	2682	3823	5691	5425	4712	7463	6977	7284	4889
premium/total cost	59,29	59,83	86,59	75,13	97,03	99,20	77,07	128,36	66,07	49,53	122,40	84,88

Source: USDA, RMA, *Summary of Business Reports and Data* (http://www.rma.usda.gov/data/sob.html) http://www.rma.usda.gov/aboutrma/budget/14costtable1.pdf; https://www.fas.org/sgp/crs/misc/R40532.pdf

[22] *www.gao.gov/products/GAO-09-445*

[23] David Blandford and David Orden, *United States: Shadow WTO Agricultural Domestic Support Notifications*, IFPRI, November 2008, http://www.ifpri.org/pubs/dp/ifpridp00821.asp

Besides, as argued above, the other components of the crop insurance subsidies – administrative costs, reimbursements to private companies to deliver the policies and payments of underwriting gains – which had be notified in the GB from 2009 to 2012 should also be transferred to the PS AMS which covers consequently all government costs to crop insurances. So that the undernotified PS AMS is the difference between total governments costs and the notified NPS AMS (which is also the NPSdm) plus the PSdm.

The fact that crop insurance should have been notified in the PS AMS is crucial for the US for two reasons: the risk to exceed the allowed total AMS of $19.103 bn at the end of the Uruguay Round implementation period (July 1995-June 2001), which is also the base period for the reduction of supports in the Doha Round implementation period, and to exceed the caps of PS AMSs.

3.1.7 – The subsidies to grazing fees

The subsidies to grazing fees on public lands have been notified for an average of $42 M from 2005 to 2011 after $50 M from 1995 to 2000 and $50 M from 1995 to 2004. However, according to a GAO report of September 2005, the net US expenditures on grazing amounted to $123 million in 2004[24]. However the Center for Biological Diversity reacted to the GAO's report and concluded that "*Taking into account the many direct and indirect federal expenditures that benefit or compensate for impacts of livestock grazing on federal lands, the full cost of the federal grazing program to the U.S. Treasury is likely to approximate $500 million annually. Considering the many other indirect costs borne by state and local government agencies, individuals and private institutions due to resource damage and impaired opportunities for recreation and other non-commercial land uses, the full cost to the U.S. public could approach $1 billion annually*"[25]. For conservative reasons we will stick to the GAO's assessment of $123 M and, as these subsidies are granted only to cattle (essentially bovine and ovine cattle) they are clearly PS subsidies.

3.1.8 – The subsidies to corn ethanol

As ethanol is an agricultural product for the WTO, ethanol subsidies must be added to the specific AMS. The main subsidy is the volumetric ethanol excise tax credit (VEETC) of $0.51 per gallon (reduced to $0.45 from 2009). However some have objected that VEETC has mainly benefitted to blenders and not so much to farmers. Maybe but there is a large consensus that the ethanol mandate, together with VEETC and tariffs on imports, have led to the spike in corn prices (not to speak of other grains and food). Without adopting the figures of international institutions that US corn ethanol boom was responsible for the spike in international food prices from 2005-06 to 2007-08 – by more than 50% for FAO and OECD, 65% for the World Bank and 70% for IMF –, we can at least take the much modest 13% increase estimated by FAPRI and quoted by ICTSD: "*With no tax credits, tariffs or mandates supporting corn ethanol use, average ethanol production declines by 5.5 billion gallons and corn prices fall by 13.1%*"[26]. The more so as corn prices have risen even more since 2008 despite the termination of VEETC and the tariff on imports in end 2011 because the Congress

[24] Government Accountability Office (GAO)'s report of September 2005 (http://www.gao.gov/new.items/d05869.pdf).
[25] http://www.biologicaldiversity.org/publications/papers/assessing_the_full_cost.pdf
[26] Jane Earley, *US Trade Policies on Biofuels and Sustainable Development*, ICTSD, June 2009.

mandate was much more restrictive. Table 6 shows also the huge rise in the revenues of crop producers which have more than doubled from 2007 to 2012. Therefore extending up to 2013 the FAPRI estimate that 13.1% of the rise in corn prices at the farm level was due to corn ethanol leads us to the highly conservative estimate of average annual subsidies to corn ethanol of $1.562 bn from 2007 to 2013, from $289 M in 2007 to $2.980 bn in 2013, to be clearly notified in the PS AMS.

The more so as we do not take into account the hundreds of other subsidies at federal and State levels not only to ethanol but also to biodiesel, which, although not an agricultural product for the WTO, could nevertheless be taken into account according to the AoA Annex 4 paragraph 4 that "*Measures directed at agricultural processors shall be included to the extent that such measures benefit the producers of the basic agricultural products*".

Table 6 – Subsidies to corn ethanol from 1995 to 2013

$ million	1995-00	1995-04	2005	2006	2007	2008	2009	2010	2011	2012	05-12	2013
Ethanol Mgal	1383	1779	3904	4884	6521	9309	10938	13298	13929	13218	9500	13312
VEETC $M	697	902	1500	2570	3320	4410	5160	5680	5670		3539	
Corn/ethanolMt	12,4	16,3	33,6	40,7	53,8	77,4	94,2	116,6	127,5	127	83,9	118,1
Farm price/ton	94,5	90,6	81,1	78,7	119,7	165,4	159,	139,9	203,9	244,9	149,1	271,3
"gap from2006					41	86,7	80,3	61,2	125,2	166,2	70,1	192,6
13,1% of gap					5,37	11,36	10,52	8,02	16,40	21,77	9,2	25,23
Ethanol sub $M					289	879	991	935	2091	2766	993,9	2980
Corn reven $bn			18,5	22,9	34,1	48,4	42,5	47,2	62,9	69,2	43,2	60,4

http://www.taxpayer.net/library/article/big-oil-big-corn-an-in-depth-look-at-the-volumetric-ethanol-excise-tax-cred; http://www.ers.usda.gov/data-products/feed-grains-database/feed-grains-yearbook-tables.aspx#26766; http://www.ers.usda.gov/data-products/farm-income-and-wealth-statistics/annual-cash-receipts-by-commodity.aspx#.U06rGldFU5w; * from 2007 to 2011 for VEETC

3.1.7 – The risk to exceed the caps of PS AMSs

Capping the PS AMSs was decided in the Doha Draft but adapted for the US in paragraph 23: "*For the United States only, the product-specific AMS limits specified in their Schedule shall be the resultant of applying proportionately the average product-specific AMS in the 1995-2004 period to the average product-specific total AMS support for the Uruguay Round implementation period (1995-2000) as notified to the Committee on Agriculture. These shall be tabulated by individual product in the Annex to these modalities referred to in the paragraph above*". Which implies that the cap of each single product is its average level of 1995-00 muliplied by 1.127, according to table 2, where the average total PS AMS of 1995-04 ($13.389 bn) was 1.127 times higher than the average of 1995-00 ($12.319 bn).

Table 7 – Premium and total crop insurance subsidies for the 4 main crops from 1995 to 2013

$ million	1995-00	1995-04	2005	2006	2007	2008	2009	2010	2011	2012	05-12	2013
Actual premium subsidies to the main 4 crops												
Corn	209	329	713	871	1739	2116	2038	1749	2916	2689	1854	2827
Cotton	164	191	212	284	199	253	220	320	819	561	359	451
Soybean	146	234	269	585	606	973	350	1069	1608	1473	867	1535
Wheat	120	185	337	364	525	937	1092	686	1121	1115	772	1249
4 crops	640	939	1531	2104	3069	4279	3700	3824	6464	5838	3851	6062
% 4 crops/all crops	68,1	68,7	65,5	78,4	80,3	75,2	68,2	81,2	86,6	83,7	78,8	83,2
Total product-specific insurance subsidies including the share of administrative costs and payments to insurance companies												
Total/premium sub.	1,687	1,671	1,155	1,331	1,031	1,008	1,298	0,779	1,513	2,017	1,330	0,817
Corn	353	550	824	1159	1793	2133	2645	1362	4412	5424	2469	2310
Cotton	277	319	245	378	205	255	286	249	1239	1132	499	368
Soybean	246	391	311	779	625	981	454	833	2433	2971	1173	1254
Wheat	202	309	389	484	541	944	1417	534	1696	2249	1032	1020
Total 4 crops	1078	1569	1768	2800	3164	4313	4803	2979	9780	11775	5173	4953

Source: USDA, RMA, *Summary of Business Reports and Data* (http://www.rma.usda.gov/data/sob.html)
http://www.rma.usda.gov/aboutrma/budget/14costtable1.pdf; https://www.fas.org/sgp/crs/misc/R40532.pdf

This issue is particularly crucial for 4 crops – corn, wheat, soybean and cotton – which have received both the largest share of all coupled subsidies and and decoupled direct payments, and particularly of insurance subsidies more recently.

These four crops got 79% of all insurance subsidies from 2005 to 2012, and we understand why the US has notified them in the NPS AMS up to 2011 and why it does not consider the Doha Draft as an appropriate base to resume the talks on the Doha Round, fearing to exceed not only total AMS but also the PS AMS caps. The fact for the US to have succeeded in enlarging for itself alone the relevant period to calculate its PS AMS caps, from 1995-2000 to 1995-2004, did not help much (table 7).

Capping the PS AMSs to their level in 1995-04 would imply, for the crop insurance subsidies alone, a very dramatic limitation to the US subsidies to corn, wheat, soybeans and cotton as their average level from 2011 to 2013 has been multiplied by respectively 7.4, 2.9, 5.7, 5.4 and 5.6 for the average of the four crops, in relation to their level from 1995 to 2004.

However PS supports are not restricted to crop insurances as shown in table 6 from CCC figures of table 2 which include coupled supports (including the under-notified MPS on dairy and the subsidies to grazing on public lands and to corn ethanol) and decoupled direct payments (production flexibility contracts, market loss assistance payments and fixed direct payments, in line with the Appellate Body ruling of 3 March 2005 in the cotton case).

Table 8– Other CCC subsidies: total and to the 4 main crops

$ million	1995-00	1995-04	2005	2006	2007	2008	2009	2010	2011	2012	05-12	2013
PS AMS	10737	11596	14891	17724	9299	9523	12221	10907	10544	10442	11944	
Corn	4185	3828	6243	8804	3484	2735	3166	2900	3954	4337	4453	5025
Cotton	1395	1780	4245	3982	2592	1604	2176	1668	678	523	2184	671
Soybean	714	1252	1140	591	337	446	596	550	521	431	577	565
Wheat	2064	1879	1232	1080	729	869	1224	1280	1378	905	1087	1254
4 crops	8358	8739	12860	14457	7142	5654	7162	6398	6531	6196	8301	7515
% 4 crops	77,8	75,4	86,4	81,6	76,8	59,4	58,6	58,7	61,9	59,3	69,5	

Source: https://www.fsa.usda.gov/FSA/webapp?area=about&subject=landing&topic=bap-bu-cc
https://www.fsa.usda.gov/Internet/FSA_File/pb08_book3.pdf
* Total minus the decoupled payments to tobacco buyout and conservation

Therefore table 9 adds up tables 7 and 8 plus the corn ethanol subsidies to get the sum of PS supports for the 4 crops, taken as examples as they are receiving the largest supports, in fact 73% of all PS supports on average from 2005 to 2012, and their average level from 2005 to 2012 has been multiplied by respectively 1.58, 1,34, 1.07, 0,97 for corn, cotton, soybean and wheat and 1.31 for their average level in relation to that from 1995 to 2004.

Table 9 – Total product-specific supports to the 4 main crops and all crops from 1995 to 2013

$ million	1995-00	1995-04	2005	2006	2007	2008	2009	2010	2011	2012	2005-12	2013
PS AMS	12319	13879	17590	21294	13239	15260	19260	14578	21839	24513	18447	
Corn	4538	4378	7067	9963	5277	4868	5811	4262	8366	9761	6922	7335
Cotton	1672	2099	4490	4360	2797	1859	2462	1917	1917	1655	2683	1039
Soybean	960	1643	1451	1370	962	1427	1050	1383	2954	3402	1750	1819
Wheat	2266	2188	1621	1564	1270	1813	2641	1814	3074	3154	2119	2274
4 crops	9436	10308	14628	17257	10306	9967	11965	9377	16311	17971	13474	12468
% 4 crops	76,6	74,3	83,2	81	77,8	65,3	62,1	64,3	74,7	73,3	73	

These ratios are much lower than for the crop insurances subsidies alone because the non-insurance supports have been lower from 2005 to 2013 than in 1995-04 as the coupled subsidies (mainly marketing loans benefits) were much lower in the context of higher farm prices since 2007.

Table 10 shows the extent to which the supports of the 4 crops have exceeded their PS AMS caps of the 1995-04 period from 2005 to 2013. On average corn, cotton and soybean have exceeded their caps, particularly in 2011 and 2012 (except cotton in 2012) but corn and soybean were the only crops to exceed their caps in 2013.

Table 10 – The extent to which the PS AMSs of the 4 crops have exceeded their PS caps

$ million	Caps	2005	2006	2007	2008	2009	2010	2011	2012	2005-12	2013
Corn	5113	1954	4850	164	-245	698	-851	3253	4648	1809	2222
Cotton	1884	2606	2476	913	-25	578	33	33	-229	799	-845
Soybean	1082	369	288	-120	345	-32	301	1872	2320	668	737
Wheat	2553	-932	-989	-1283	-740	88	-739	521	601	-434	-279
4 crops	10632	3997	6625	-326	-665	1332	-1256	5679	7340	2842	1835

3.2 – The blue box and its cap

The US did not notify any blue box (BB) payment after the $7.030 bn notified in 1995 which were deficiency payments linked to a reduction programme. However, as the allowed OTDS created by the Framework Agreement of 31 July 2004 includes an allowed BB equal to 5% of the whole agricultural production value at the end of the base period 1995-00, the US has succeeded to introduce in the Doha Draft a new type of BB (paragraph 35.b) to accommodate its counter-cyclical payments (CCPs) which have been notified in the NPS AMS. However we have already included them in the PS AMS together with the direct payments, since the WTO Appellate Body ruled on 3 March 2005 that they were PS subsidies.

Table 10 – The US countercyclical payments notified in the NPS AMS from 2003 to 2012

$ million	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2005-12	2013
CCPs	1743	809	2772	4356	3159	359	731	903	124	10	1497	0

This new BB proposed in the Doha Draft should comply with the following conditions:
"*Paragraph 35.b: "Direct payments that do not require production if: such payments are based on fixed and unchanging bases and yields; or livestock payments are made on a fixed and unchanging number of head; and such payments are made on 85 per cent or less of a fixed and unchanging base level of production*".

It is clear that the CCPs cannot comply with these BB conditions for the following reasons:
1- For the Congressional Research Service (CRS) "*The commodity-decoupled, but price-linked nature of CCP payments suggests that they would likely be notified as non-product specific AMS support under current WTO criteria*"[27], the more so as the preceding "market loss payments", that CCPs have replaced from 2003, had been rightly notified in the NPS AMS. And indeed the CCPs themselves have been notified in the NPS AMS so that it would be illogical to notify them differently in the future.

[27] Randy Schnepf and Jasper Womach, *Potential Challenges to U.S. Farm Subsidies in the WTO*, CRS Report for Congress, October 25, 2006, http://www.nationalaglawcenter.org/assets/crs/RL33697.pdf

2. The new Appellate Body's ruling on cotton of 3 June 2008 has confirmed the preceding ruling of 3 March 2005 "*that the effect of…counter-cyclical payments… is significant price suppression*"[28].
3. CCPs are direct payments "*that do not require production*" but which are nevertheless paid on the basis of the current prices. But where are the current prices if there is no production?
4. Precisely CCPs and the new ACRE programme (Average Crop Revenue Election payments, an alternative to usual CCPs) contradict the AoA basic requirement for non trade-distorting subsidies that "*The support in question shall not have the effect of providing price support to producers*" (AoA Annex II, paragraph 1). Now the level of CCPs and ACRE payments is directly linked to the current price level.
5. The ACRE program is coupled twice: to the current price level and to the current production volume. The ACRE payments are not "*based on fixed and unchanging bases and yields*" as required by the new BB.
6. A revenue support is necessarily a production support because any revenue results from a price times a production volume.
7. Like fixed direct payments, the ACRE program does not have a full production flexibility and cannot be in the new BB which refers to "*Direct payments that do not require production*".
8. A significant part of CCPs is granted to feed grains, which are input subsidies to be notified in the amber box for developed countries (AoA Article 6.2).
9. USDA had stressed that farmers expectations generated by CCPs and their risk-reducing effects show their coupled nature[29].
10. For Robert L. Thompson, "*The counter-cyclical payments… reduce American farmers' responsiveness to declining prices, but not to increasing prices, amplifying their trade distorting impact*"[30].
11. If the new BB does not require production, it does not limit its expansion, the more so as, like for the old BB, it does not limit either the unit subsidy (per acre, per tonne, per cattle head, etc.

However the CCPs have been repealed by the 2014 Farm Bill but the report made by Vincent H. Smith in June 2014 for ICTSD underlines clearly that the new Price Loss Coverage Program (PLC), the Agricultural Risk Coverage program (ARC) and the Supplementary Coverage Option insurance program (SCO) are covering "*the same commodities for which farmers received subsidies under the discontinued Direct Payment, CCP, and ACRE programs*"[31] and that "*the structure of the PLC is essentially identical to the CCP, for which it is a replacement*" and "*PLC payments should probably count as product specific AMS outlays because they are tied to specific crop prices even though CCP payments were reported by the US as non-product specific AMS outlays*". For the same reasons the ARC and SCO subsidies would have to be notified in the PS AMS.

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28 https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=%28@Symbol=%20wt/ds267/ab/rw*%20not%20rw2*%29&Language=FRENCH&Context=FomerScriptedSearch&languageUIChanged=true#

29 http://www.ers.usda.gov/Features/FarmBill/analysis/counterCyclicalPayments2002act.htm

30 Robert L. Thompson, *The US Farm Bill and the Doha Negotiations: On Parallel Tracks or a Collision Course?* International Food & Agricultural Trade Council, Issue Brief, September 2005, www.agritrade.org/Publications/IBs/329701.pdf

31 *The 2014 Agricultural Act. The US Farm Policy in the context of the 1994 Marrakesh Agreement and the Doha Round*, http://www.ictsd.org/sites/default/files/research/The%202014%20Agricultural%20Act.pdf

However other authors try to justify the unjustifiable. This is the case of Randy Schnepf in the CRS report of 10 October 2014 who states: "*Payments under both PLC and ARC-CO are generally decoupled from planted acreage and actual yield but not price. However, it remains to be seen how such program payments will be notified by the United States*"[32].

Joseph W. Glauber, Chief economist of USDA, and Patrick Westhoff (former USDA and Director of FAPRI) are even less scientifically courageous in their report of January 2015 when they write: "*PLC and ARC payments are treated as non-product specific amber under the reporting system established under the URAA, and as blue box support under Doha Round modalities accounting. PLC and the county version of ARC make payments tied to base acreage that are generally not tied to current production. One exception to this general rule is generic base (former cotton base acreage) where payments are tied to the mix of crops grown in a particular year. The individual version of ARC also makes payments that are linked to current production choices. The exceptions are ignored in the present analysis*". First they are assuming that PLC and ARC comply by the conditions of the BB of the Doha Draft, which they are not. The more so as they underline that in several cases the PLC and ARC are linked to production. And finally they prefer to ignore these alleged exceptions in assessing their compliance with the Doha Draft.

Lars Brink is not more scientifically courageous when he states that "*The United States may under certain readings of Rev.4 be able to account for some crop payments as blue box support*"[33].

Furthermore they forget to say that, according to Vincent Smith, "*Farmers will also have the option of updating their production bases using recent much more recent data on areas planted to crops (the annual averages of the areas planted to each eligible crop over the four year period 2009-2012) and yields… However, farmers will also have the option of updating their production bases using recent much more recent data on areas planted to crops (the annual averages of the areas planted to each eligible crop over the four year period 2009-2012) and yields*". Which leads him to conclude: "*PLC payments should probably count as product specific AMS outlays because they are tied to specific crop prices even though CCP payments were reported by the US as non-product specific AMS outlays*". How then can we state that PLC payments are not linked to production when they have just updated the areas and yields?

The Blue Box cap

According to paragraph 40 of the Doha Draft, "*For the United States, the limits to the value of support that may be provided to specific products under paragraph 35(b) above shall be [(110) (120)] per cent of the average product-specific amounts that would result from applying proportionately the legislated maximum permissible expenditure under the 2002 Farm Bill for specific products at an individual product level to the overall Blue Box limit of 2.5 per cent of the average total value of agricultural production during the 1995-2000 period. These product-specific limits shall be expressed in monetary terms at an individual*

[32] https://www.hsdl.org/?view&did=759014
[33] http://www.oecd.org/tad/events/AL-Brink.pdf

product level, annexed in that format to these modalities and shall be bound in Part IV of that Member's Schedule".

The Doha Draft has established these US BB caps as follows in table 11.

Table 11 – US Product-Specific Blue Box Caps

Crop	110 per cent	120 per cent
Corn	2359.8	2574.3
Grain sorghum	106.8	116.5
Barley	32.0	34.9
Oats	5.3	5.8
Wheat	1041.1	1135.7
Soybeans	400.4	436.8
Upland cotton	1009.0	1100.8
Rice	234.9	256.3
Peanuts	149.5	163.1

Dr. Sachin Kumar Sharma and Abhijit Das make a judicious point when they observe the contradictory US positions: "*USA treated counter-cyclical payment as non-product specific support in WTO notifications, but in Doha round USA seeks to treat counter-cyclical payment as product-specific blue box support. Earlier USA argue that CCPs is not a trade distorting subsidy, but later due to upland cotton case, these payments were treated as non-product specific support under amber box. Now, USA wants to shift these payments as product specific blue box support in Doha negotiations*"[34].

However it is clear that these BB caps are not very useful and binding as long as the 2014 Farm Bill does not comply with the conditions of the BB in the first place.

In any case the prospects of the US BB with the 2014 Farm Bill are bleak as Joseph Glauber and Patrick Westhoff acknowledge: "*Assuming ARC and PLC payments on non-generic base acres would be classified as blue box, mean outlays exceed blue box caps for many of the commodities. The proportion of histories where ARC/PLC payments exceed blue box caps at least once over 2014-23 is over 94 percent for all commodities which suggests that blue box caps would be more binding than amber product specific caps for most commodities. The overall blue box cap is more binding than the overall AMS cap as well. Almost 99 percent of the simulations showed total blue box support exceeding the aggregate blue box cap of $4.8 billion at least once over the 10-year period. Is there a way to minimize exposure? One obvious answer would be to reclassify support in the non-product specific category as product-specific. However, this is no panacea as the levels of support are high enough to tip either the product-specific support or non-product specific support or both above URAA limits. For example, many have criticized the United States and others for notifying crop insurance as non-product specific support (Smith and Glauber 2012; Zulauf and Orden 2012; Smith 2014)*".

[34] http://www.apeaweb.org/confer/bangkok14/papers/Sharma_SachinKumar.pdf

3.3 – The US under-notified NPS AMS

Given that we have already reclassified in the PS AMS the subsidies to ethanol and grazing fees on public lands the other under-notifications concern agricultural fuel, irrigation and interest on agricultural loans.

3.3.1- Agricultural fuel: although the US did not notify any subsidy, the OECD has reported the same €2.385 bn for all years since 1986 under the label of "energy subsidy" (line PIV3) described as "*Value of Federal and State exemptions or reductions in excise and sales taxes on diesel fuel for farmers relative to the standard rate taxes on fuel… Data used are problematic and need revision*". Indeed article 1 of the WTO Agreement on subsidies and countervailing measures (SCM) considers there is a subsidy when "*government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits)*".

3.3.2 - Irrigation: curiously the US notified subsidies on irrigation have been declining continuously from 1995 to 2012 (table 12).

Table 12 – Notified irrigation subsidies from 1995 to 2012 (in $ million)

1995-00	1995-04	2005	2006	2007	2008	2009	2010	2011	2012	2005-12
376	313	269	240	240	204	204	204	189	167	215

The notification is presented as "*Based on a "debt financing method." A long term interest rate is applied to the outstanding unpaid balance of capital investment by the Government in irrigation facilities to obtain the subsidy. Irrigators repay the principal but not the interest on the project debt. New estimates are not made every year; the 2005 estimate was assumed for 2007*".

These notified subsidies at the WTO are clearly ridiculous because many reports of the General Accounting Office (GAO) have underlined the large level of irrigation subsidies that most experts have evaluated to be of at least €2 bn[35] annually. In her chapter in the Oxford University Press book Fresh Water and International Economic Law, Bernasconi-Osterwalder explains: "*The federal government is subsidizing irrigation systems in various ways. It incorporated a two-stage subsidy in the way its sets water prices for irrigation water. First, the contractual water prices were based on an irrigator's ability to pay, rather than on the actual costs of supplying the water. Secondly, no interest was charged on the loans to fund construction costs… The annual irrigation subsidies for the United States from such underpricing have been estimated at between $2 billion and $2.5 billion*"[36].
According to the GAO report of 1996 on the Bureau of Reclamation (BR, in charge of managing public water projects), "*The federal government has spent $21.8 billion to construct 133 water projects in the western United States that provide water for various purposes, including irrigation… As of September 30, 1994, irrigators had been allocated $7.1 billion of the $16.9 billion federal investment in water projects considered reimbursable. However, as a result of adjustments made after analyzing the irrigators' ability to pay and relief granted*

[35] http://home.alltel.net/bsundquist1/ir7.html#A4; http://wingolog.org/writings/water/html/node89.html; http://www.newamerica.net/publications/articles/2003/the_new_continental_divide; http://www.perc.org/articles/article756.php
[36] http://www.gbv.de/dms/spk/sbb/toc/487559800.pdf

through specific legislation, that amount was reduced to $3.4 billion – or 47 percent of the irrigators' allocated share of the construction costs… In addition, irrigators generally have 40 years or more to repay their share of these costs, often after a period of up to 10 years in which the irrigators receive water to develop their land but are not required to begin payments… For example…the irrigation component of the Tualatin project [Oregon] *represented $31.5 million… However, because of interest-free financing and a 64-year repayment period, which began in 1976, the federal subsidy provided to the irrigators amounted to $30.6 million, or 97 percent of the construction costs allocated to irrigators*"[37].

The Central Valley Project (CVP) is the US largest irrigation project covering 3/4 of the irrigated land in California and 1/6 of US irrigated land on more than 3 million acres of farmland but it also supplies water to nearly 1 million (M) households. On $1.124 bn in construction costs allocated to irrigators, as of 30 September 1998, they had repaid only $63 M (5.6%) since the beginning of the construction in 1937 and total repayment, after the renewing of water contracts in 2005, is due for 2030! In 1985 already "*Irrigation water users pay an average of $6.15 per acre foot*[38]*; the cost to the Federal Government is $72.99, resulting in a 91 percent subsidy*"[39]. The water rates do not even cover the operation and maintenance (O&M) costs of water facilities since "*the rates were established under the assumption that operation and maintenance costs would remain stable over time*".

An Environmental Working Group (EWG) investigation has calculated that annual federal water subsidies in 2002-04 were of $416 M[40] in the CVP alone[41], a figure recouped by other sources: CVP uses about 7 M acre-feet of irrigated water annually[42] with a subsidy of around 67 per acre-foot, leading also to $468 M. Besides Chris Edwards and Peter J. Hill, quoting the EWG report, add: "*CVP farmers also receive electricity subsidies. In the CVP, farmers receive discounted prices for the electricity that is used to pump water in irrigation operations. The CVP uses massive pumps to push water through 1,400 miles of canals. The EWG found that low-cost power creates a subsidy of about $100 million a year to CVP farmers*"[43].

A GAO report of December 2007 on the CVP shows that $523 M of capital construction costs of the San Luis Unit constructed in 1960 were reimbursable by its five water districts but that, as of 30 September 2005, they had paid only $74 M – i.e. $1.6 M per year –, leaving $449 M to be repaid by 2030, i.e. $18 M per year[44]. Another evaluation of the CVP made in 2013 by the Department of Interior shows that the BR has passed water service contracts which include a provision requiring that BR refunds any excess revenues to contractors rather than applying these revenues to reduce the unpaid capital costs and O&M deficits. The report underlines that "*If recent CVP water delivery trends continue, repayment of the capital investment in the CVP irrigation facilities could be short by between $330 and $390 million*

[37] United States General Accounting Office, *Bureau of Reclamation. Information on Allocation and Repayment of Costs of Constructing Water Projects*, July 1996.
[38] An acre-foot is the volume of water of one food height over one acre.
[39] http://www.nemw.org/nrsub.htm
[40] http://archive.ewg.org/reports/Watersubsidies/execsumm.php
[41] http://archive.ewg.org/reports/Watersubsidies/execsumm.php
[42] http://www.pacificresearch.org/pub/sab/enviro/watermkts/watermkts.html
[43] http://www.downsizinggovernment.org/interior/cutting-bureau-reclamation
[44] http://www.gao.gov/new.items/d08307r.pdf

by 2030… Provisions of Reclamation Law permit irrigation contractors to apply for relief from their capital repayment obligation based upon an economic analysis showing that they cannot meet that obligation… The difference between the cost-of-service rate and the irrigation contractor's ability to pay is shifted to the CVP power users for repayment through the U.S. Department of Energy. Thus, power users will pay any costs above the irrigation contractor's ability to pay"[45].

The large under-evaluation of irrigation subsidies can be explained by the fact that its main beneficiaries are large agribusinesses rather than small farmers. The EWG report shows that in 2002 10% of CVP irrigators got 67% of the water, for an average subsidy of $349,000 at market rates for replacement water, 27 farms receiving $1 million or more compared to a median subsidy of $7,076, one farm getting $4.2 million which used more water than 70 water user districts.

Incidentally the water rates are as much subsidized in the California State Water Project[46], the US largest State water project which delivers 3 million acre-feet, and large agribusinesses are the main beneficiaries. This was already the case in 1984 as attested by two researchers of the University of California: "*Big landowners are the norm in Kern County. This part of the valley has never been characterized by small holdings. Eight corporations own more than 50 percent of the land in the KCWA service area, and most of the rest is held in parcels of over 2,000 acres… For more than 50 years California agribusiness, operating with probably the most concentrated agricultural land ownership pattern in the nation, has been remarkably resourceful in securing highly favorable irrigation policies from both the federal and state governments*".

Yet, according to the Public Law 97-293 of October 12, 1982 as amended on December 21, 1995, "*irrigation water may not be delivered to a qualified recipient for use in the irrigation of lands owned by such qualified recipient in excess of nine hundred and sixty acres of class I lands or the equivalent thereof*"[47]. Yet the US Internal revenue code, 2011 edition (Title 26, subtitle A, Chapter 1, sub-chapter B, part II, Sec. 90), continues to state: "*The term "illegal Federal irrigation subsidy" means the excess (if any) of— (A) the amount required to be paid for any Federal irrigation water delivered to the taxpayer during the taxpayer year, over (B) the amount paid for such water*"*… The term "Federal irrigation water" means any water made available for agricultural purposes from the operation of any reclamation or irrigation project referred to in paragraph (8) of section 202 of the Reclamation Reform Act of 1982*"[48].

Given that the 10 M acre-feet of irrigation water in the CVP and SWP represent only 11% of the 91.2 bn acre-feet of irrigation water used nationally in 2008, and even if a good share of total acre-feet are less subsidized, we can conclude very conservatively that the US subsidies on irrigation were of at least $1 bn annually. The more so as we could have added the subsidized electricity to transport water and the EQUIP subsidies on irrigation equipment. David Blanford and David Orden would certainly agree with our conservative estimate when they wrote: "*The United States does not seem to include the subsidies to agricultural*

[45] http://www.doi.gov/oig/reports/upload/WR-EV-BOR-0003-2012Public.pdf
[46] http://oldweb.geog.berkeley.edu/PeopleHistory/faculty/R_Walker/Walker_35_Storper.pdf
[47] http://www.usbr.gov/rra/Law_Rules/public%20law%2097-293.pdf
[48] http://www.gpo.gov/fdsys/pkg/USCODE-2011-title26/html/USCODE-2011-title26-subtitleA-chap1-subchapB-partII-sec90.htm

irrigators that arise from lower repayment of capital costs based on assessed "ability to pay," with the reduced capital cost charges to farmers being paid instead by hydroelectric power authorities of the projects… No notification is made for subsidies that might exist related to maintenance and operating costs (which irrigators apparently are required to pay), nor for water charges to agriculture that are below charges to other users. No entry is provided concerning preferential charges for electricity used in agriculture, either to move water from its source to farmland or for on-farm use of electricity"[49].

We should not recommend too much the very interesting article of Professor Paul Stanton Kibel who develops a powerful legal argument to sue the US on the subsidy represented by the large undervalued pricing of irrigation water, particularly in the case of the CVP: "*As a result of the investigation and findings of the 2004 Environmental Working Group report and the 2008 Delta Vision Task Force report, there is substantial uncontroverted evidence to support the claim that CVP irrigation pricing is not set at levels that enable Reclamation to recoup its construction or operational costs, and that such "foregone revenue" in CVP pricing provides a "good or service" that is of benefit to California farms that receive irrigation at these undermarket prices.[83] Consistent with the approach suggested in Article 14(d) of the WTO Subsidies Agreement, this claim could be grounded in the great disparity between Reclamation's CVP irrigation prices and the prevailing California marketplace for non-CVP water*"[50].

He supports its argument on several WTO cases – Appellate Body FSC Report, Appellate Body Aircraft Report, Appellate Body Softwood Lumber Report, Cotton Subsidies Report –, adds that the "specificity" requirement is satisfied both geographically (the CVP perimeter) and by sector (irrigated agriculture) and that the Annex 2(g) of the AoA "*goes on to clarify that for a government expenditure to properly fall within the "general services" exemption, it must be limited to "construction" costs and cannot include subsidies for "input," "operating costs" or "preferential user charges"*".

He adds that "*The WTO compliance analysis presented in this article can therefore be replicated for other non-CVP Reclamation irrigation projects around the country*" and concludes that "*There may be a credible legal basis for a WTO member country to allege that Reclamation's irrigation pricing for particular water projects qualifies as an actionable subsidy for which countervailing measures may properly be imposed against the United States*". As for the necessity that the WTO Member plaintiff proves the injury suffered from the US subsidy to irrigated water used to grow specific agricultural products Paul Kibel states: "*The injury of a WTO member, such as Brazil, would presumably be established by demonstrating lost market-share to crops (e.g., cotton) produced in the United States that are less expensive as a result of Reclamation's undermarket CVP irrigation pricing*". He concludes by saying that "*Although this article has focused on Reclamation irrigation pricing in the United States, much of the reasoning and analysis contained herein may also be applicable to other WTO member countries that provide undermarket water to domestic farms*".

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[49] *www.ifpri.org/PUBS/dp/IFPRIDP00821.pdf*

[50] Professor Paul Stanton Kibel, *WTO Recourse for Reclamation Irrigation Subsidies: Undermarket Water Prices as Foregone Revenue*, Golden Gate University School of Law, San Francisco, 2014, http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1648&context=pubs

It is clear that the large US irrigation subsidies could be sued particularly for three products: rice, cotton, alfalfa (70% of which is fed to dairy cows in California which is the first State for milk production in the US). Alfalfa could be one of the best candidate for California irrigated subsidies given that it consumes 20% of all irrigated water. Besides the US has exported in 2013 2 million tonnes of alfalfa for $586 million, the 3 leading importers being the Emirates, China and Japan.

3.3.3 - Interest on agricultural loans: the US has notified subsidies to farm credit in the NPS AMS and in the green box. In the NPS AMS they remained at $48.8 million annually (rounded at $49 M) from 1995 to 2007 but disappeared from 2008 to 2011, so that the average from 2005 to 2011 was of $21 M, with the following explanation, unchanged since 1995: "*Various credit related programs for agriculture are funded by State governments to: supplement Federal programs, promote the "family farm," assist during economic downturns, and promote new enterprises and technological innovations. The data are latest available from results of a discontinued mail survey by the U.S. Department of Agriculture, Economic Research Service, reported by G. B. Wallace and others in "State Credit Subsidy Programs for Agriculture," Agricultural Income and Finance Situation and Outlook Report, pp. 10-14 (December 1990). The last estimate was made in 1994*".

Table 13 – Notified subsidies to interest on farm loans from 1995 to 2011

$ billion	1995-00	1995-04	2005	2006	2007	2008	2009	2010	2011	2005-11
Not. NPS AMS	49	49	49	49	49	0	0	0	0	21
Not. Green box	101	103	75	132	120	119	120	221	150	134
Total notified	150	152	124	181	169	119	120	221	150	155

Source: notifications to the WTO

And an average of $134 million was notified in the green box with the following explanation, also unchanged since 1995: "*Program includes (i) short-term and long-term loans made at preferential interest rates and (ii) guarantees of private loans. Eligibility (clearly defined in regulations) determined by status as owner-operator of a family-sized farm in situations of structural disadvantage (cannot obtain credit elsewhere)*".

Clearly these notifications do not match the actual government costs given by an USDA report to Congress of 2006[51] showing that, beyond the operational costs (subsidy plus administration expenses) we should not forget the write-offs, i.e. the losses net of recoveries. The more so as we did not take into account the emergency loans, whose subsidy cost have been of $30 million on average from 1995 to 2000 and $19 million from 1995 to 2004 but with average write-offs of $599 million and $440 million from 1995 to 2004, as they could be notified in the green box. Even if the report underscores that "*A large share of direct loans was made to groups deemed to be marginally creditworthy by private sector lending standards. Direct loans are much smaller in size and reflect the smaller family farming clientele that they serve… Primary beneficiaries of direct loan programs include socially-disadvantaged and beginning farmer groups. Socially-disadvantaged groups include racial and ethnic minorities and women*", contrary to guaranteed loans which went to more creditworthy farmers. In fact "*Direct programs accounted for only about one-fourth of all dollars obligated, but because of their lower average loan size accounted for half of all*

[51] Charles Dodson and Steven konig, USDA, *Evaluating the Relative Cost Effectiveness of the Farm Service Agency's Farm Loan Programs*, USDA, Farm Service Agency, August 2006, http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecpa&topic=fla

borrowers served" and, eventually, the average subsidies to guaranteed loans were a little higher than those to direct loans: $82 million against $79 million from 1995 to 2004 and $81million against $78 million from 1995 to 2000.

Table 14 – Farm loan program costs from 1995 to 2004

$ million	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	Av. 1995-00	Av 1995-04
Loan subsidy costs	155	140	120	130	186	227	161	174	161	158	160	161
Write-offs	446	399	344	310	308	254	229	245	238	222	344	300
Total subsidies	601	539	464	440	494	481	390	419	399	380	503	461
Administrative costs	243	217	220	220	220	219	269	280	284	286	223	246
Overall cost	844	756	684	660	714	700	659	699	683	666	726	707

Source: http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecpa&topic=fla

Even if "*The majority of targeted funds went to beginning farmers, who received over 80 percent of all targeted direct FO* [farm ownership] *and 65 percent of all targeted guaranteed loans over the period*", a GAO report casts some doubt on the socially-disadvantaged status of beginning farmers: "*USDA generally defines a beginning farmer or rancher as one who has operated a farm or ranch for 10 years or less—without regard for age—and who materially and substantially participates in its operation... Another [analysis] indicates that roughly one-third of beginning farms in 2005 had no agricultural output and were likely operated by individuals interested in a rural residential lifestyle*"[52].

Despite official reports that most subsidized farm loans go to small and deprived family farmers, this claim is challenged by Karen Krub of the Farmers' Legal Action Group: "*Smaller farmers continually report being told that they can only get financing if they expand their operations. Farmers wanting relatively small loans can't get them. The Agency and guaranteed lenders seem convinced that only big operations are desirable borrowers, whatever an applicant's actual financial situation. This is particularly a concern when the bigger loans quickly consume available funding… In particular, there are concerns that the "family farm" eligibility requirement is not enforced for guaranteed loans, so that the funds are used up by large-sum borrowers whose eligibility is questionable at best. FSA seems to be making little effort to promote the guaranteed loan program and Interest Assistance Program among lenders in underserved areas, particularly lenders with high numbers of borrowers who would be considered "socially disadvantaged applicants," and helping those lenders to understand and participate in the programs*"[53].

On the other hand OCDE has calculated an average of $312 million in the 1995-00 base period, of which $156 million of "farm operating loans" in the section of "variable input use" and $56 million also of "farm ownership loans" in the section of "fixed capital formation". Then OECD estimated an average of $238 million from 1995 to 2004 but of only 114 million from 2005 to 2011. The fact that OECD has considered these subsidies as payments to fixed and variable inputs means that they are coupled subsidies of the amber box, which is in line with the AoA article 6.2 according to which input subsidies and investment subsidies are not exempted from being notified in the AMS for farmers of developed countries, the more so as

[52] GAO, *Additional Steps Needed to Demonstrate the Effectiveness of USDA Beginning Farmer Programs*, September 2007 (http://www.gao.gov/new.items/d071130.pdf)

[53] Farmers' legal action group, Inc, *FLAG Testimony*, Senate Committee Hearing on USDA Farmer Loan Programs, June 13, 2006 (http://www.flaginc.org/topics/news/Testimony20060613.pdf)

they were not for the largest part granted "*in response to objectively demonstrated structural disadvantages*" (AoA Annex 2 paragraph 11.a).

But there is more to tell about farm loan subsidies. Indeed, beside the Farm loan program run by the Farm Service Agency, with a market share of only 3% of farmers' indebtedness in 2007, the Farm Credit System (FCS) is a government-sponsored enterprise owned by its cooperative members-borrowers and regulated by the Farm Credit Administration to provide loans to farmers, ranchers, agro-industries and for rural houses and rural infrastructures. The FCS enjoys substantial tax exemptions and highly favorable cost of borrowed funds which amounted in 2005 to about $1.2 bn. And, contrary to the farm loan program, the FCS lends primarily to large creditworthy farmers, as their average acreage in 1999 was of 935 acres against 600 for bank customers and the average market value of farm products sold by FCS customers was of $311,000 against $168,000 for that sold by all farms with debts[54]. No wonder that its share of farm credit was of 32% in 2002 against 40% for commercial banks[55].

For all these reasons we will consider that the average $155 million notified from 2005 to 2011 is a highly conservative estimate and should be notified in the NPS amber box.

3.3.4 – The NPS AMS included in the US domestic nutrition programmes

This issue can be tackled through four approaches.

3.3.4.1 – The notification of subsidies to the US nutrition programmes

The US has notified its nutrition subsidies in the green box for an average of $35.030 bn in the base period 1995-00, of $37.035 bn in 1995-04 and of $75.427 bn in 2005-12, of which $106.781 bn in 2012.

The Congressional Research Service (CRS) and USDA have made several reports on the "farm share" of the US consumers' total food bill and of several specific foods. According to Randy Schnepf of the CRS, "*The farm share of a retail price… represents the value of, or costs of producing, the farm commodities that go into a typical dollar's worth of food. In other words, it is the retail price represented by the amount of raw agricultural commodity needed to produce that retail product*"[56]. Therefore we can deduct the average farm share in $ million of the US nutrition subsidies, which went from $6.020 bn in 1995-00 to $6.161 bn in 1995-04 and $12.624 bn in 2005-12, of which $18.580 bn in 2012. The methodology allows for the exclusion of imported food used as inputs for farm products: "*Imported primary (farm fresh) and processed foods purchased by people living in the United States are not included in the proposed definition of food dollar expenditures… Imported food ingredients sold directly in final markets do not enter into the measures*"[57].

To what extent are these farm shares of the nutrition programmes trade-distorting domestic subsidies? According to Jean-Christophe Debar, who already wrote an article with Alan

[54] American bankers' association, *Who Finances America's Family Farmers? A review of the recent USDA Agriculture Economics and Land Ownership Survey, http://www.aba.com/Solutions/AgriculturalBanking.htm*
[55] Bert Ely, *The Farm Credit System: Lending Anywhere But on the Farm*, November 2006, *www.aba.com/NR/.../Horizons2006ELYFINAL.pdf*
[56] https://www.fas.org/sgp/crs/misc/R40621.pdf
[57] http://www.ers.usda.gov/media/131100/err114.pdf

Blogowski on the same issue in 1999[58], in 2009 "*All US domestic food aid programmes (in money and in kind) would have had the same effect that a subsidy increasing US agricultural production by an amount between $4.7 bn and $7.8 bn (farm value), according to the estimate method. This is equivalent to between 1.6% and 2.8% of the agricultural production value in 2009*"[59]. Assuming we can rely on this average estimate of 2.2% of the whole agricultural production value for all years, the subsidy component would have been on average of $4.271 bn in 1995-00, $4.442 bn in 1995-04 and $6.883 bn in 2005-12, of which $8.725 bn in 2012. To the extent that this subsidy has the effect of increasing production, it is coupled and should be notified in the NPS AMS. Rashmi Banga of UNCTAD has also estimated, based on the Debar-Blogowski's article of 1999, that "*In 2010, this equivalent aid to agricultural production was $ 6.6 billion which is more than their amber box subsidies in 2010*"[60].

Table 15 – The subsidy component of the US domestic nutrition programmes

$ million	1995-00	1995-04	2005	2006	2007	2008	2009	2010	2011	2012	2005-12
Notificat°to WTO	35030	37035	50672	54177	54408	60519	78796	94915	103151	106781	75427
Farm share coeffic	17,2	16,6	15,8	15,3	16,5	17,6	16,2	16,4	17,6	17,4	16,7
Farm share: $ M	6020	6161	8006	8289	8977	10651	12765	15566	18155	18580	12624
Agri prod°value	194139	201008	236001	246425	307041	316513	284652	334918	380781	396606	312867
Subsid equivalent	4271	4422	5192	5421	6755	6963	6262	7368	8377	8725	6883

http://www.ers.usda.gov/topics/farm-economy/farm-commodity-policy/government-payments-the-farm-sector/us-wto-domestic-support-reduction-commitments-and-notifications.aspx
http://knoema.com/USDAFDS2014/food-dollar-series-1993-2012-november-2014?table=1000070-food-at-home-bakery-products&action=download#_=_

3.3.4.2 – The subsidies to the products incorporated in the final food consumed by the recipients of food aid

We can also tackle the trade-distorting subsidies received by the basic food products included in the final food consumed by the recipients of the nutrition programmes. Of course we cannot double-count these subsidies but simply underscore that the US nutrition programmes are indirectly trade-distorting. Without repeating the detailed calculations made in another paper[61], let us just give some data:

- In 2012 $15.08 bn of the food consumed by the food aid recipients were devoted to cereals and bakery products, $23.70 bn to meat, fish and eggs and $11.03 bn to dairy products. Let us concentrate on cereals which are at the core of the debate since Bali on the subsidies to cereals stocks for food security purposes.
- The beneficiaries of US nutrition programmes consumed 14.594 Mt of US cereals in 2011-12, of which 4.587 Mt of wheat included in the cereals and bakery products and 8.950 Mt of US feed cereals incorporated in the meats, eggs and dairy products, of which 7.915 Mt of corn, 0.723 Mt of wheat, 0.123 Mt of sorghum, 0.105 Mt of oats and 0.083 Mt of barley. Adding the 1.057 Mt of corn in HFCS incorporated in the soft drinks consumed by the food aid recipients make 8.972 Mt of corn and adding the 0.723 Mt of feed wheat make 5.010 Mt

[58] J.-C. Debar et A. Blogowski, *Les programmes d'aide alimentaire intérieure aux Etats-Unis*, Notes et études économiques, n°9, mars 1999, Ministère de l'Agriculture et de la Pêche, pp. 51-75, http://agriculture.gouv.fr/IMG/pdf/nee039909A2.pdf

[59] http://www.cna-alimentation.fr/wp-content/uploads/2013/05/diaporama_debar_19_01_2011.pdf

[60] http://unctad.org/en/PublicationsLibrary/ecidc2014misc1_bp10.pdf

[61] *Analysis of the G-33's proposal to change the AoA provision on Public stockholding for food security*, Solidarité, January 25, 2014, http://www.solidarite.asso.fr/Papers-2014?debut_documents_joints=30#pagination_documents_joints

of wheat. The total value of these cereals amounted to $2.205 bn. In the following approach we show that these purchases were not made at market prices.

3.3.4.3 – The food purchases of the US governement are not made at market prices

The condition repeated twice in the AoA Annex 2 paragraphs 3 et 4 that "*Food purchases by the government shall be made at current market prices*" is not verified in the US. The same can be said of the food purchased directly by the recipients of food stamps.

Indeed, over the $100 bn of the net cost of domestic food aid in 2012 (excluding the administrative costs of running the programmes) $75 bn correspond to food stamps (SNAP) – where the recipients choose themselves the foodstuffs in one of the 200,000 retail stores that accept food stamps – whereas $25 bn finance other programmes where foodstuffs are delivered in kind to the institutions providing them to beneficiaries, particularly to school children (lunch and breakfast). On this $25 bn $1.595 bn were purchased directly to farmers by USDA in 2012, of which almost half were already processed by farmers (such as meat), the rest being purchased to agro-industries and wholesalers.

Market price vs administered price

The concept of administered price is not defined in the WTO agreements, although it is working in opposite ways in developed countries and DCs. While in DCs administered prices – the MSP (minimum support price) in India for example – are set *above the domestic prices* to ensure remunerative prices to small farmers, especially just after harvest and force merchants to pay higher market prices, in developed countries these are *minimum prices below the prevailing market price* in order to reduce their level. According to Wikipedia, "*In the U.S. administered prices are fixed by policy makers in order to determine, directly or indirectly, domestic market or producer prices… In Europe, an administered price is defined either as a price legally set by a government authority, a (heavily) subsidized price, or an oligopolistic price set by large corporations*"[62].

Indeed – here lies the fundamental difference – these lower administered prices were accepted by Western farmers only because they were offset by domestic subsidies, including by the alleged *decoupled*[63] fixed direct payments in the EU and US plus *coupled* subsidies, such as the US various types of marketing loan benefits and countercyclical payments – triggered by other administered prices set above current market prices or minimum administered prices – and insurance subsidies. In developed countries administered prices are always triggering subsidies, apart from the other means necessary to render them effective: import duties, export subsidies and restrictions, land set aside, production quotas, food aid, etc[64]. Indeed the US Farm Bills and EU CAP reforms since the 1990s have consisted in lowering by steps their administered prices, hence their

[62] http://en.wikipedia.org/wiki/Administered_price

[63] A subsidy (or support) is *coupled* when it is linked to the level of production or price, and *decoupled* in the other cases.

[64] Harry de Gorter, Merlinda Ingco and John Nash, *Domestic support: economics and policy instruments*, in Agriculture and WTO, World Bank, 2004: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/08/19/000160016_20040819110032/Rendered/PDF/297950018213154851x.pdf

current domestic market prices, to increase their domestic and external competitiveness – importing less and exporting more – through massive compensatory alleged non-trade-distorting subsidies of the *blue* and *green* boxes.

The market price concept

The AoA annex 2 paragraphs 3 and 4 deal with "current market prices", a concept not defined in the AoA. To know what a "market price" is the best source are the US and EU provisions on "non-market economies" which are considered not to use prices in line with their "normal value". Thus, in the US antidumping manual, "*For the merchandise under investigation or review, there must be virtually no government involvement in setting prices*"[65]. Or, in the 2009 edition, according to David A. Gantz: "*Commerce requires for purposes of the affected sector a showing that there is no government involvement in determining prices or production quantities; there is private or collective (rather than full government) ownership; and that all significant inputs are subject to market-determined prices*"[66].

Of course the same can be said of the EU agricultural prices: in both cases the US and EU cannot claim that there is "*virtually no government involvement in setting prices*" of agricultural products because of the large subsidies they are still granting, not only for cereals and oilseeds but also for animal products for which "*significant inputs are subject to market-determined prices*", and here we mean feedstuffs. In other words DCs could sue to the WTO with the highest change of success the US and EU on the basis of their own laws on non-market economies since their agricultural prices are not those of market economies. Therefore also the provision in paragraphs 3 and 4 of the AoA Annex 2 that "*Food purchases by the government shall be made at current market prices*" is not verified for the US.

Now several US and international reports have underlined the usefulness or necessity to internalize in domestic agricultural market prices the subsidies allocated to the corresponding products:

- The OECD has done it in a report of 2011 where the concept of domestic prices is defined as "*producer prices plus payments linked to the production of a specific commodity*"[67].
- In the US cotton case, the Appellate Body's report underlined that "*During the oral hearing, the United States accepted that farmers decide what to plant based on expected market prices as well as expected subsidies*" (paragraph 440)[68]. Precisely the main subsidies that the US farmers were expecting for sure were the fixed direct payments, whereas the marketing loans benefits and countercyclical payments depended on the vagaries of market prices. The EU farmers can say the same with the SPS (Single Payment Scheme).

[65] US Department of Commerce, *Normal value*, AD Manual, chapter 8.
[66] http://ia.ita.doc.gov/admanual/2009/Chapter%2010%20NME.doc; http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=david_gantz
[67] Jean-Pierre Butault, *Evolution of Agricultural Support in Real Terms in OECD Countries and Emerging Economies*, OECD, 2011, http://www.oecd-ilibrary.org/docserver/download/5kgkdgf25x20.pdf?expires=1385386110&id=id&accname=guest&checksum=476FE82E1A92E7409C7AAE4E85F48958
[68] WT/DS267/AB/R, 3 March 2005

- A FAPRI Report of October 2013[69] assessing the two Farm Bills adopted in 2013 by the House of Representatives and the Senate presents tables of the expected "*average crop revenue in dollars per acre*"[70] for several crops for the period 2014-18. In these tables the expected subsidies – only coupled ones in the future as the two Bills and the final Farm Bill signed into law by the President the 7 February 2014 have eliminated the fixed direct payments – are added to market sales, which, divided by the yield per acre, give the *comprehensive price* or *full price* per crop, although FAPRI does not use this concept but that of "revenue per acre".

- A World Bank paper of November 2008 written by Kim Anderson and Signe Nelgen incorporates also 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*"[71].

- Finally USDA has used extensively the concept of "Net Budgetary Expenditures per Commodity"[72] incorporating the subsidies with the farm price.

All these facts underscore that the "current market prices" at farm level are not real market prices without "*virtually no government involvement in setting prices*". They should therefore be corrected by adding the direct payments to get the *comprehensive price* or *full price* comparable to prices of countries, mainly DCs like India, who do not grant such payments by lack of resources.

Even if the US domestic subsidies on rice and wheat have fallen significantly since 2007 with the spike in cereals prices, nevertheless they were still in 2012 of 86 $/t on rice – mainly on direct payments and irrigation, adding 26% to the average farm price of $329 – and of 47 $/t on wheat, mainly on direct payments and crop insurances, adding 16.5% to the average farm price of $285.7. Consequently the dumping rate of US rice exports in 2012 was of 14% (against 75% in 2000) – made essentially of the 86 $/t of domestic subsidies as there were no export subsidies proper, against a FOB price of 624 $/t – and that of wheat was of 14.7% (against 81% in 2000), based essentially also on domestic subsidies of 47 $/t plus 1.9 $/t of export subsidies (export credit guarantees)[73].

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[69] US Research Center dependent from the US government.

[70] http://www.fapri.missouri.edu/outreach/publications/2013/FAPRI_MU_Report_06_13.pdf

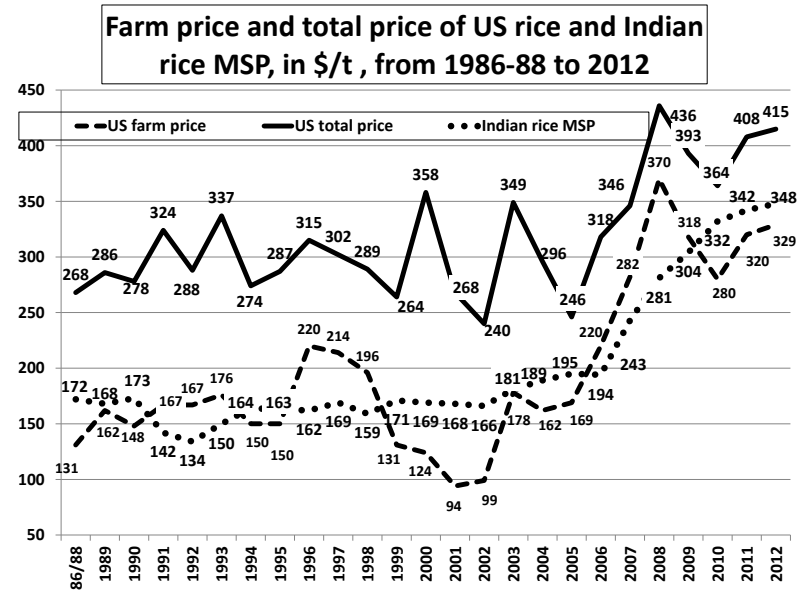
[71] Kim Anderson and Signe Nelgen, "*Estimates of Distortions to Agricultural Incentives, 1955-2011*", updated in June 2013, http://siteresources.worldbank.org/INTRES/Resources/469232-1107449512766/Note_summarizing_core_updated_database_0613.pdf; *Distortions to agricultural incentives in Asia*, http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/0,,contentMDK:21960058~pagePK:64214825~piPK:64214943~theSitePK:469382,00.html

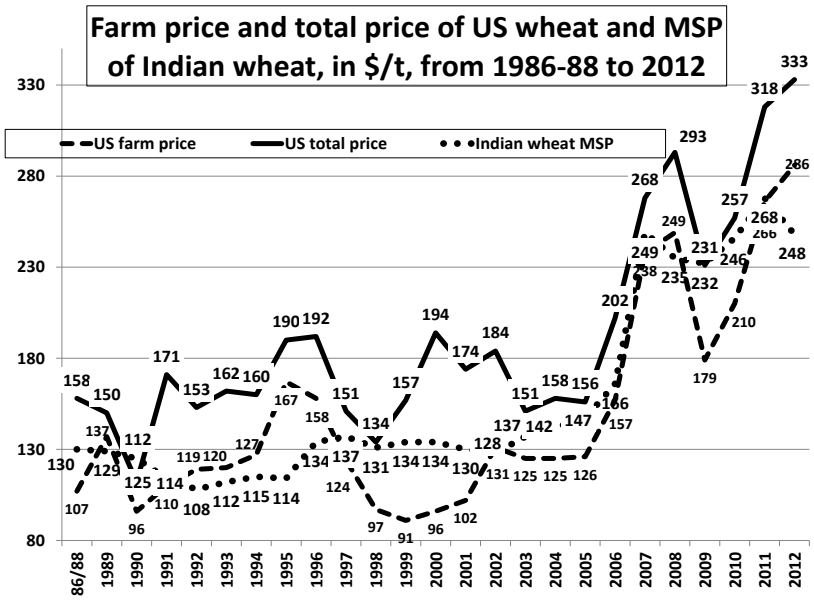
[72] http://www.fsa.usda.gov/Internet/FSA_File/pb12_tbl35.pdf; http://www.fsa.usda.gov/FSA/webapp?area=about&subject=landing&topic=bap-bu-cc

[73] J. Berthelot, *From administered prices to total prices: application to the Indian, US and EU prices of rice and wheat*, Solidarité, January 26, 2014, http://www.solidarite.asso.fr/Papers-2014

Furthermore, as shown in the two following graphs, the Indian MSP (market support price) of wheat of 248.1 $/t in 2012 was lower than the US farm price of $285.7 and even more than the comprehensive US farm price of $332.7. And the Indian rice MSP of 348 $/t in 2012 was lower than the US comprehensive farm price of 415 $/t even if it exceeded slightly the farm price of 329 $/t.

Therefore the 5.010 Mt of US wheat incorporated in wheat products consumed by the recipients of food aid in 2012 implied $235.5 million of trade-distorting subsidies. In 2011-2012 312.8 Mt of corn received $9.761 bn of subsidies (table 8 above) implying a subsidy per tonne of $31.2 which, multiplied by the 8.972 Mt of corn incorporated in animal products and soft drinks correspond to $280 million of trade-distorting subsidies. They could be notified in the PS AMS.





3.3.4.4 – Total trade-distorting subsidies (NPS AMS) to the nutrition programmes

Table 16 shows the value of US production from USDA notifications to the WTO and the US food production from FAOSTAT, to which we add the US fish production from the US national accounts[74] before adding the food imports and deducting the food exports using the SITC nomenclature (codes 0, 11, 22 and 4) from the USITC (US International Trade Commission) data base[75] to get finally the US domestic food consumption. We work out the ratios of total PS AMS to the whole agricultural production value and we multiply these ratios by the value of domestic food consumption to get the PS AMS subsidies attributable to the food consumption. We have just to multiply these PS AMS subsidies by the ratio of domestic food aid to domestic food consumption to get the PS AMS attributable to the US domestic food aid, which was of $2.223 bn on average in the 1995-00 base period, of $2.557 bn in 1995-04, and of $4.447 bn in 2005-12, of which $6.600 bn in 2012. These amounts are significantly lower than those derived from the first approach in table 15, so that we will keep them. However it is more appropriate to notify them in the NPS AMS.

Table 16 – The subsidy component of the US domestic nutrition programmes

$ million	1995-00	1995-04	2005	2006	2007	2008	2009	2010	2011	2012	2005-12
Agricult product °	194139	201008	236001	246425	307041	316513	284652	334918	380781	396606	312867
Food production	143749	148266	173879	182468	243852	252438	229297	279371	308332	319943	248698
Food imports	32466	40718	66466	73332	80189	87704	80192	90161	106287	108837	86646
Food exports	51756	52323	59380	66700	85340	110672	95847	110685	129664	136607	87933
US food consump	124459	136661	180965	189100	238701	229470	213642	258847	284955	292173	235982
Actual PS AMS		13879	17590	21294	13239	15260	19260	14578	21839	24513	18447
PS AMS/VOP	6,35	6,91	7,45	8,64	4,31	4,82	6,77	4,35	5,74	6,18	5,90
" *food consum	7897	9436	13488	16340	10292	11063	14455	11267	16343	18058	13914
Total food aid	35030	37035	50672	54177	54408	60519	78796	94915	103151	106781	75427
Food aid AMS	2223	2557	3777	4682	2346	2918	5331	4131	5916	6600	4447

3.3.4 – Total NPS AMS

Given the conservative stance chosen for the subsidies to agricultural fuel, irrigation and agricultutal loans, the average NPS AMS was of $3.530 bn from 1995 to 2012 against a very unconvincing notified average of $370 million, once transferred to the PS AMS the subsidies to to crop insurance and to grazing fees on public lands. However the trade distorting subsidies to the nutrition pogrammes raise the average value to $7.977 bn from 2005 to 2012, of which $10.130 bn in 2012.

Table 17 – Total notified and actual NPS AMS

$ million	1995/00	1995/04	2005	2006	2007	2008	2009	2010	2011	2012	05/12
Notified NPS AMS after transfer of some NPS AMS to PS AMS											
Agricultural fuel	0	0	0	0	0	0	0	0	0	0	0
Irrigation	376	313	269	240	240	204	204	204	189	167	215
Agricultural loans	150	152	124	181	169	119	120	221	150	155	155
Total	526	465	393	421	409	323	324	425	339	322	370
Actual NPS AMS											
Agricultural fuel	2375	2375	2375	2375	2375	2375	2375	2375	2375	2375	2375
Irrigation	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000	1000
Agricultural loans	155	155	155	155	155	155	155	155	155	155	155
Food aid	2223	2557	3777	4682	2346	2918	5331	4131	5916	6600	4447
Total	5753	6087	7307	8212	5876	6448	8861	7661	9446	10130	7977

[74] http://www.bea.gov/iTable/iTable.cfm?ReqID=51&step=1#reqid=51&step=2&isuri=1
[75] http://dataweb.usitc.gov/

If the average NPS AMS has remained below the NPSdm of $9.707 bn on average, this is no longer the case in 2012 when the NPS AMS reached $10.130 bn so that the NPS AMS of 2012 must be added to the actual PS AMS, raising it to $34.643 bn so that the average NPS AMS from 2005 to 2012 has also risen to $19.713 bn.

6) The allowed, notified and actual US AMS and OTDS from 1995 to 2012

Table 18 summarizes the allowed, notified and actual PS AMS, NPS AMS, PSdm, NPSdm (which is the same as the NPS AMS except in 2012 when it was added to the PS AMS so that the NPSdm was 0) and OTDS.

Table 18 – The allowed, notified and actual AMS and OTDS from 1995 to 2012

$ million	1995/00	1995/04	2005	2006	2007	2008	2009	2010	2011	2012	05/12
Ag prod. value	194139	201008	236001	246425	307041	316513	284652	334918	380781	396606	312867
5% of "	9707	10050	11800	12321	15352	15826	14223	16746	19039	19830	15642
Allowed PS AMS	19103	19103	19103	19103	19103	19103	19103	19103	19103	19103	19103
Notified PS AMS	10401	10504	12938	7742	6260	6255	4267	4119	4654	6863	6637
Actual PS AMS*	12319	13879	17590	21294	13239	15260	19260	14578	21839	24513	18447
Allowed-actualPS	6784	5224	1513	-2191	5864	3843	-157	4525	-2736	-5410	656
Allowed PSdm	4368	4368	4368	4368	4368	4368	4368	4368	4368	4368	4368
Notified PSdm	104	355	118	171	237	708	1184	278	481	4963	1018
Allowe NPS AMS	9707	9707	9707	9707	9707	9707	9707	9707	9707	9707	9707
Notif NPS AMS	3749	4300	5862	3430	2023	9262	6074	5387	9233	309	5198
Actual NPS AMS	5753	6087	7307	8212	5876	6448	8861	7661	9446	10130	7977
Allow-actualNPS	3954	3620	2400	1495	3831	3259	846	2046	261	-423	1730
Rectified PS AMS*	12319	13879	17590	21294	13239	15260	19260	14578	21839	34643	19713
Allowed BB	9707	9707	9707	9707	9707	9707	9707	9707	9707	9707	9707
Actual BB	1172	0	0	0	0	0	0	0	0	0	0
Allow-actual BB	8535	9707	9707	9707	9707	9707	9707	9707	9707	9707	9707
Allowed OTDS	42885	42885	42885	42885	42885	42885	42885	42885	42885	42885	42885
Applied OTDS	18176	20321	25015	29677	19352	22416	29305	22517	31766	39606	27457
Allow-actu OTDS	24709	22564	17870	13208	23533	20469	13580	20368	11119	3279	15428
Allowed total AMS at end of Doha Round: $7.391 bn					Allowed OTDS at end of Doha Round: $12.866 bn					All BB:4.854 bn	
Allowed PSdm at end of Doha Round: $2.184 bn					Allowed NPSdm at end of Doha Round:$4.854 bn						

* This actual PS AMS is before the transfer to the PS AMS of the NPS AMS of 2012 which exceeded the NPSdm and the rectified PS AMS takes his into account.

Be aware that the allowed PS AMS, NPS AMS, PSdm and NPSdm are fixed at their level of the base period 1995-00 (of 2000 for the PS AMS, called the FBTA) Doha Round so that the gap between these allowed levels and the applied levels has tended to diminish along the years, with the exception of the blue box (BB) for which there was actual payments in 1995. Despite that the actual OTDS has remained below the allowed OTDS all the time the margin has shrunk to $3.279 bn in 2012 because the AMS NPS was added to the PS AMS. But it is clear that the US has largely exceeded in 2012 its allowed levels at the end of the Doha Round implementation period: by 3.2 times for the PS AMS, by 1.3 times for the PSdm and by twice for the OTDS despite the leeway of $3.681 bn for the BB. Furthermore we have shown in table 9 that the PS subsidies to corn, soybean and wheat had exceeded in 2012 their caps for the 1995-04 base period.

In this context it would be even more impossible for the US to comply with the Doha Draft's proposals with the 2014 Farm Bill that will increase the US agricultural subsidies according to all experts as we will consider briefly now. At least FAO should have refrained to write recently that "*The main claim of the US was that major developing countries were providing*

support to their farmers in violation of their AoA commitments" as it appears to endorse this claim instead of asking the US to clean first its own backyard[76].

IV – The 2014 Farm Bill is totally incompatible with the Doha Draft proposals of 2008

It is interesting to underscore that, despite that most US experts agree that, up to 2013, all the previous Farm Bills since 1995 did comply with the WTO rules, they are all convinced that the 2014 Farm Bill would increase agricultural domestic subsidies so that it would be very problematic to comply with the Doha Draft reduction commitments. We will limit ourselves here to make extensive excerpts of their recent reports, most of them having present or past positions in official US bodies.

- For Randy Schnepf of the Congressional Research Service (CRS) "*It appears that recent U.S. program outlays would have complied with the proposed limits for both OTDS ($11.6 billion average annual OTDS during 2009-2011 versus a proposed $14.5 billion limit) and the overall amber box limit ($4.3 billion versus $7.6 billion)… However, if market prices were to decline substantially below support levels for an extended period, then outlays could escalate rapidly and threaten to exceed the proposed spending limits for the OTDS, amber box, and de minimis exclusions… For example, based on market conditions as of May 2014, USDA estimates combined PLC and ARC outlays at $10.1 billion in crop year 2015 and $10.9 billion in 2016, compared with the proposed lower U.S. amber box ceiling of $7.6 billion*"[77].

- For Joseph W. Glauber, Chief economist of USDA, and Patrick Westhoff, former USDA officer and present Director of FAPRI: "*The new policies under the 2014 farm bill are very likely to exceed some WTO rules proposed in the Doha Round negotiations… Clearly new disciplines would require changes in current policies… Average non-product specific outlays are estimated to average $12.011 billion over 2014-18 and $12.498 billion over 2019-23.Combined levels of ARC and PLC payments account for the bulk of that increase*".

Their hardly scientific stance leads them to contemplate alternative ways of notification through box shifting, instead of complying with the WTO rules whatever they are or would be. Is that the "sound science" approach that the US trade negotiators keep advocating with their European counterparts in the TTIP negotiations? : "*The simulated outcomes suggest that non-product specific support may exceed de minimis levels in almost 15 percent of the annual outcomes over most of the projection period… Is there a way to minimize exposure? One obvious answer would be to reclassify support in the non-product specific category as product-specific. However, this is no panacea as the levels of support are high enough to tip either the product-specific support or non-product specific support or both above URAA limits. For example, many have criticized the United States and others for notifying crop insurance as non-product specific support… Assuming ARC and PLC payments on non-generic base acres would be classified as blue box, mean outlays exceed blue box caps for many of the commodities… Blue box caps would be more binding than amber product specific caps for most commodities. The overall blue box cap is more binding than the overall AMS cap as well. Almost 99 percent of the simulations showed total blue box support exceeding the*

[76] www.fao.org/3/a-i3819e.pdf
[77] https://www.hsdl.org/?view&did=759014

aggregate blue box cap of $4.8 billion at least once over the 10-year period… Mean outlays for the OTDS measure are estimated at $15.1 billion which exceed the proposed cap of $14.5 billion. The proportion of outcomes where the OTDS exceeds the cap in any given year is over 40 percent".

- Lars Brink, former president of the Canadian Agricultural Economics Society, begins to tell that there is no WTO inconsistency with the past and new Farm Bills: "*The 2011 Current Total AMS of the United States was well below its Bound Total AMS (USD 19.1 billion) and also below its reduced Bound Total AMS under Rev.4* [The Doha Draft] *(USD 7.6 billion)… The United States would seem able to fit support under its past programs within the Rev.4 levels of Bound Total AMS and de minimis but faces the possibility that support under the new payment programs from 2014 would be more difficult to fit under the AMS limits*".

Then he shares the same non scientific stance as J. Glauber and P. Westhoff: "*The United States may under certain readings of Rev.4 be able to account for some crop payments as blue box support. The United States could thus to some extent manage its classification of different payments such that the instances of exceeding Rev. 4 limits would be avoided or minimized*".

- David Orden, senior research fellow at IFPRI, and Carl Zulauf of Ohio State University, conclude that, if "*The U.S. is unlikely to exceed its WTO domestic support commitment*", nevertheless "*Expenditures under the 2014 farm bill are more likely to exceed several of the proposed limits of the tighter rules and commitments on developed country domestic support under discussion in the December 2008 Doha Round negotiations… The 2014 farm bill exacerbates efforts to achieve tighter multilateral disciplines on agricultural support and protection*"[78].

- Vincent H. Smith, of Montana State University, concurs with his colleagues that "*While these new programs are unlikely to cause problems for the US in meeting its current WTO Aggregate Measure of Support (AMS) commitments, they may make it more difficult for the US to agree to future reductions in allowable caps on AMS expenditures and related de minimis AMS exclusion provisions in a new WTO agreement*"[79]. In fact he is much more explicit to stress the very likely inconsistency of the 2014 Farm Bill with the Doha Draft reduction commitments. "*Given that major grain and some other commodity prices are retreating from recent record and near record levels, the new US farm bill programs may well involve larger subsidies for farmers than those they received from the discontinued programs. For example, if prices for crops like wheat and corn fall to levels recently forecasted by the United States Department of Agriculture in February, 2014, then subsidies on the new programs could be more than double the average amounts paid out annually under the programs they will replace*". A statement all the more likely that the prices of these crops and of many others have retreated much more in the past 12 months.

V. Smith makes another relevant statement about the possible box-shifting to notify the crop insurance subsidies, an actual shifting that the USDA made in its notification of December 2014 that he did not know at his time of writing: "*If, also perhaps as a result of challenges from other countries, the US were required to report agricultural insurance subsidies as*

[78] https://www.aeaweb.org/aea/2015conference/program/retrieve.php?pdfid=262
[79] http://www.ictsd.org/sites/default/files/research/The%202014%20Agricultural%20Act.pdf

product specific, then the de minimis criterion would not apply to those subsidies. The reason is that, for most crops, those subsidies amount to more than four percent of the value of the crop's total production, considerably more than the 2.5 percent de minimis exemption limit". We have shown that the December notification had the result of putting in the PSdm $4.886 bn over a total of $7.074 bn of premium subsidies so that the net PS AMS of crop insurances subsidies was limited to $2.188 bn but that large amount of PSdm was due to the fact that the cap of PSdm is still of 5% of the production value of the products.

V. Smith concludes: "*Finally, another important WTO issue concerns the potential for WTO trade disputes to be filed because of price suppression under the Subsidies and Countervailing Measures (SCM) agreement. The PLC, ARC, and DMPP programs, as well as the SCO and STAX programs, are designed to give US farmers larger subsidies when prices for the commodities they produce fall*".

- Colin A. Carter, of the University of California, is the most explicit about the inconsistency between the 2014 Farm Bill and the Doha Draft proposals: "*The trend towards larger subsidies in the United States was reinforced through the provisions of the 2014 Farm Bill. The new legislation not only expands subsidies paid to U.S. farmers but also ties those subsidies more directly to recent and current production and market conditions and, therefore, makes them more production- and trade-distorting. On both counts (larger and more distortive subsidies), the 2014 Farm Bill fails the test of being consistent with WTO objectives… The provisions of the 2014 Farm Bill, which chart a diametrically opposite path, may well have cost the United States any credibility in future agricultural trade negotiations in the Doha round*"[80]. And he concludes: "*Various aspects of the 2014 Farm Bill send a message to trading partners that U.S. agriculture is becoming more protectionist. Furthermore, the new farm bill indicates that international trade commitments have little or no influence over U.S. farm policy choices*". A word to the wise!

[80] http://www.choicesmagazine.org/choices-magazine/theme-articles/3rd-quarter-2014/some-trade-implications-of-the-2014-agricultural-act