



The truth about the European Union's food deficit and the dumping of its food exports linked to its domestic subsidies

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Outlook

- I - The EU has a structural food deficit, due to developing countries
- II - The EU agricultural trade surplus is much lower than that of the United States
- III - The EU stubbornly claims the absence of dumping effect of its domestic agricultural subsidies
 - 2.1 - All domestic subsidies on exported products have a dumping effect
 - 2.1.1 - Agricultural dumping according to the rules of the Agreement on Agriculture
 - 2.1.2 - Agricultural dumping according to the rules of the Agreement on Subsidies and Countervailing Measures
 - 2.1.3 – The EU alleged decoupled agricultural subsidies are illegally notified in the green box
 - 2.1.3.1 - Paragraph 6 of Annex 2 of the ASA on "Decoupled Income Support"
 - 2.1.3.2 - The 7 reasons why the DPU (DPUS and DPB) is not decoupled
 - 2.1.3.2 - The EU refused to notify most of its food subsidies

I - The EU is facing a structural food deficit, due to developing countries

We must demystify the European Commission's claim that the EU has a duty to help feed the world, a claim based on the assimilation of its *agricultural* trade – which it calls *agri-food* trade – to its *food trade*. While its agricultural surplus reached a peak of 20.5 billion euros (€ bn) in 2017, its food deficit (according to the SITC codes 0, 11, 22, 4) was €5.5 bn¹. And, if we do not take into account the huge surplus in drinks (code 11) – which are not staple foods – the food deficit was €29.4 bn. Because the European Commission does not count the huge and growing deficit in fish and preparations, which reached €20.2 bn in 2017, as they are not agricultural products within the meaning of the WTO Agreement on Agriculture (AoA). But they are obviously food products and fisheries policy depends on the ministries of agriculture in the largest countries for EU fisheries, namely France, Germany, Spain, Italy, Belgium, Ireland, Poland, Sweden, Finland, Lithuania, Latvia, Croatia. Their agriculture ministries manage the Common Fisheries Policy funds under the EMFF (European Maritime and Fisheries Fund) and the EAFRD (European Agricultural Fund for Rural Development) and the funds allocated to fisheries in the EU's ultra-marine regions belong to the POSEI (Programme of Options Specifically Relating to Remoteness and Insularity), one of the chapters of the EAGF (European Agricultural Guarantee Fund).

This hoax spread by DG Agriculture led the President of the European Commission, Jean-Claude Juncker, to declare on 6 December 2016, in his opening speech at the conference on the EU's agricultural prospects: "*We must remember – but who remembers? – that until 1964*

¹ *Les consommateurs de l'UE reçoivent une aide alimentaire structurelle des pays en développement*, SOL, 19 mars 2018, <https://www.sol-asso.fr/wp-content/uploads/2017/01/Les-consommateurs-de-lUE-re%C3%A7oivent-une-aide-alimentaire-structurelle-des-pays-en-d%C3%A9veloppement.pdf>

Europe was not yet self-sufficient in terms of food... A country, a continent which cannot feed itself, from a geostrategic point of view, is a country, even a continent, in perdition because it depends on the will of others. I do not want a Europe that depends on the will of others... With the entry into force of the common agricultural policy in 1962, Europe has given itself the means to acquire its autonomy in terms of food production. And we can actually be proud of the journey made since"².

He echoed the EU Commissioner on agriculture Phil Hogan's speech on 4 June 2015 at the Milan World Expo: *"I know you are all very familiar with the key data on present and future challenges, with some 795 million people worldwide still suffering from chronic hunger. And with global population growth continuing rapidly, the world will have to produce 60% more food by 2050... Today I wish to deliver the clear and decisive message that the European Union recognises its global responsibilities and is ready to act"³.*

The European Court of Auditors itself has shared this assertion by stating in March 2018 that *"The EU produces more food than it consumes, and has become a net food exporter"⁴.*

Moreover, since the EU has a structural food surplus with developed countries⁵ of €15.9 bn in 2017, its structural food deficit vis-à-vis developing countries (DCs) was €21.4 bn. And, if we do not count the EU huge surplus in drinks, its food deficit vis-à-vis the DCs was €31.9 bn. It is true that the European Commission is proud to be the world's leading importer of agri-food products, especially from the DCs, as if their massive exports to the EU did not have any negative effects, on the degradation of their environment for exports of soy products to the EU from Latin America and palm oil from Southeast Asia, or on the deficit of sub-Saharan Africa (SSA) in basic foodstuffs.

Let us add that the EU food deficit – of €8.376 bn on average from 2010 to 2017, of which € 5.477 bn in 2017 – contrasts with the US food surplus of €11.937 bn on average from 2010 to 2017, even though they recorded a deficit of €1.260 bn in 2017 (Table 1).

Table 1 – US and EU28 food trade from 2010 to 2017

Euros million	2010	2011	2012	2013	2014	2015	2016	2017	Average 2010-17
US food trade									
Exports	83433	93069	106211	105270	111031	117984	120135	119892	107128
Imports	68422	76772	85087	85960	94023	113747	116363	121151	95191
Balance	15011	16297	21124	19310	17008	4237	3772	-1260	11937
Extra-EU28 food trade									
Exports	76008	89369	100001	105976	108670	114508	117710	123700	104493
Imports	91527	105172	108413	108844	112421	123082	124312	129177	112869
Balance	-15519	-15804	-8411	-2868	-3751	-8574	-6603	-5477	-8376
Gap US-EU28									
Exports	7425	3700	6210	-706	2361	3476	2425	-3808	21083
Imports	-23105	-28400	-23326	-22884	-18398	-9335	-7949	-8026	-17678
Balance	30530	32101	29535	22178	20759	12811	10375	4217	20313

Source: Eurostat and USITC (<https://dataweb.usitc.gov/scripts/prepro.asp>) with conversion from US \$ to €

Excluding beverages France itself recorded a negative balance of €6.6 bn in agricultural trade in 2017⁶, with a negative food trade slightly above €4 bn. Philippe Pointereau, from the

² http://europa.eu/rapid/press-release_SPEECH-16-4285_fr.htm

³ http://ec.europa.eu/agriculture/commissioner-speeches/pdf/hogan-expo-milan-04-06-2015_en.pdf

⁴ https://www.eca.europa.eu/Lists/ECADocuments/Briefing_paper_CAP/Briefing_paper_CAP_EN.pdf

⁵ Developed countries are assimilated here to the 9 Western OECD countries (Australia, Canada, Iceland, Israel, Japan, Norway, New Zealand, Switzerland) plus Russia.

⁶ <http://agreste.agriculture.gouv.fr/IMG/pdf/conjsynt321201804cmxt.pdf>

Solagro research consultancy, confirms: "*France is still perceived by public opinion as self-sufficient in food and even able to feed a part of the planet, but that is not the case, and it is the reverse that occurs with a world that feeds us ... The establishment of a balance in surfaces of products from photosynthesis, including wood, shows that France had a deficit of 1.42 million hectares in 2006*"⁷, and it has gotten worse since then.

II - The EU agricultural trade surplus is much lower than that of the United States

The European Commission is proud to be the world's largest exporter and importer of agricultural products (which it calls agri-food products), so ahead of the US, which is true, but since the US imports much less than the EU, the EU forgets to infer and say that the US agricultural surplus was 2.6 times higher than that of the EU28 from 2010 to 2017, even though it was only 12% higher in 2017.

Note that the comparison of agricultural trade between the EU and the EU28 is not immediate because the USDA does not take into account trade in spirits and manufactured tobacco, but adds trade in rubber, and these data must be rectified according to the AsA nomenclature of agricultural products of Annex 1 of the AsA used by the EU. In addition, one of the researchers closest to the European Commission, Alan Matthews, although claiming to distinguish food trade from agricultural trade, includes tobacco in the former⁸.

Table 2 – US agricultural trade from 2010 to 2017, compared to those of the EU28

Euros million	2010	2011	2012	2013	2014	2015	2016	2017	Average 2010-17
US agricultural trade according to USDA nomenclature									
Exports	87444	98103	110126	108700	113092	120029	121795	122758	110256
Imports	61807	71150	80071	78489	84324	102497	103487	107339	86145
Balance	25638	26952	30055	30211	28769	17533	18308	15419	24111
Trade in spirits (code 2208)									
Exports	1031	1201	1427	1402	1489	1774	1672	1841	1480
Imports	4235	4499	5064	5209	5335	6521	6908	6950	5590
Balance	-3204	-3297	-3637	-3807	-3846	-4747	-5236	-5108	-4110
Trade in manufactured tobacco (codes 2402 + 2403)									
Exports	374	386	410	524	504	833	1045	922	625
Imports	544	561	678	895	925	1201	1278	1316	925
Balance	-170	-175	-268	-370	-421	-368	-233	-395	-300
Trade in rubber (code 40)									
Exports	9151	10705	12234	11187	11277	12284	11375	11888	11263
Imports	16421	20131	22251	20633	20857	23846	22474	23545	21270
Balance	-7270	-9425	-10017	-9446	-9580	-11562	-11099	-11657	10007
US agricultural trade according to AsA nomenclature									
Exports	79698	88986	99729	99440	103808	110352	113137	113634	101098
Imports	50164	56079	63562	63960	69727	86373	89199	92061	71391
Balance	29533	32906	36167	35480	34082	23980	23938	21573	29707
EU28 agricultural trade according to AsA nomenclature									
Exports	87007	101291	113423	120096	121821	129271	131459	138119	117811
Imports	86222	100177	103953	103670	106116	116142	114438	118855	106197
Balance	785	1114	9470	16426	15705	13129	17022	19264	11614
Gap between US and EU28 agricultural trade									
Exports	-7309	-12305	-13694	-20656	-18013	-18919	-18322	-24485	-16713
Imports	-36058	-44098	-40391	-39710	-36389	-29769	-25239	-26794	-34806
Balance	28748	31792	26697	19054	18377	10851	6916	2309	18093

⁷ <http://agreste.agriculture.gouv.fr/IMG/pdf/conjsynt321201804cmxt.pdf>

⁸ Alan Matthews, *Impact of EU's agricultural and fisheries policies on the migration of third country nationals to the EU*, Trinity College, Dublin, October 2015, <file:///D:/PAC/Impact%20of%20EU's%20agricultural%20and%20fisheries%20policies%20on%20the%20migration%20of%20third%20country%20nationals%20to%20the%20EU%20.pdf>

III - The EU insists that its domestic agricultural subsidies have no dumping effect

Under the pretext that the EU has not been using explicit export subsidies ('refunds') since 2015, it claims that its domestic subsidies have no dumping effect, let alone as most of these subsidies are now 'decoupled' from the level of production or price and reported in the WTO green box. Yet any WTO case against the dumping impact of its domestic subsidies would be sure to condemn the EU, for the following reasons already concerning domestic subsidies in general and, more specifically, the so-called decoupled ones.

2.1 - All domestic subsidies on exported products have a dumping effect

For economists and the man in the street there is dumping when exports are sold at a price lower than the cost of production. But for the GATT and the WTO Agreement on Agriculture (AoA) there is no dumping as long as exports are at the domestic market price, even if it is lower than the domestic cost of production. This explains why the United States (EU) and the EU took advantage of this definition to sharply lower their agricultural prices in the early 1990s by offsetting this reduction with so-called non-trade-distorting subsidies as they established face-to-face the rules of the AsA at the end of the GATT Uruguay Round (1986-93), before imposing it to all other WTO Members in April 1994 in Marrakech. Knowing that developing countries (DCs) had not, and still do not have, the means to significantly subsidize their farmers, especially as they represent a very large percentage of their active population.

This stems first from the WTO Appellate Body rulings of December 2001 and December 2002 in the Dairy Products of Canada case, of March 2005 in the US Cotton case and of April 2005 in the EU Sugar case, all judgments based only on the rules of the AsA while dumping can also be pursued under the Agreement on Subsidies and Countervailing Measures (ASCM).

2.1.1 - Agricultural dumping according to the Agreement on Agriculture (AsA)'s rules

The WTO Appellate Body first defined very precisely when we can talk about dumping, in its rulings on the Dairy Products of Canada case of December 2001 and December 2002. In December 2001 it stated: "91 - *We consider that the distinction between the domestic support and export subsidies disciplines in the Agreement on Agriculture would also be eroded if a WTO Member were entitled to use domestic support, without limit, to provide support for exports of agricultural products... Consequently, if domestic support could be used, without limit, to provide support for exports, it would undermine the benefits intended to accrue through a WTO Member's export subsidy commitments...* 92- *The potential for WTO Members to export their agricultural production is preserved, provided that any export-destined sales by a producer at below the total cost of production are not financed by virtue of governmental action...* 96- *The average total cost of production would be determined by dividing the fixed and variable costs of producing all milk, whether destined for domestic or export markets, by the total number of units of milk produced for both these markets.*". In other words, any export of an agribusiness enterprise at a price lower than the average total cost of production of the country without subsidy for the corresponding year may be sued for dumping.

The Appellate Body stated in December 2002: "148- *If governmental action in support of the domestic market could be applied to subsidize export sales, without respecting the commitments Members made to limit the level of export subsidies, the value of these commitments would be undermined. Article 9.1(c) addresses this possibility by bringing, in*

some circumstances, governmental action in the domestic market within the scope of the "export subsidies" disciplines of Article 3.3".

The Appellate Body was more general in the EU sugar case of April 2005: "279. *WTO Members are entitled to provide "domestic support" to agricultural producers within the limits of their domestic subsidy commitments*⁹. We observe, however, that the Appellate Body has also held that economic effects of WTO-consistent domestic support may "spill over" to benefit export production. Such spill-over effects may arise, in particular, in circumstances where agricultural products result from a single line of production that does not distinguish between production destined for the domestic market and production destined for the export market. 280. In this respect, the Appellate Body has cautioned that, "if domestic support could be used, without limit, to provide support for exports, it would undermine the benefits intended to accrue through a WTO Member's export subsidy commitments"¹⁰. We believe that these statements are relevant to the present case. In this case, we note that C sugar is produced and exported in huge quantities, and that there is a considerable difference between the world market price and the average total cost of production of sugar in the European Communities".

2.1.2 – Agricultural dumping under the rules of the Agreement on Subsidies and Countervailing Measures (SCM)

European agricultural economists as well as the European Commission narrowly interpret the provisions of the Agreement on Subsidies and Countervailing Measures (SCM). Admittedly, Article 3 of the SCM Agreement on Prohibited Subsidies excludes those for export under the AsA: "*Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited: (a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I; (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods*".

But these economists and the European Commission pretend to ignore that "*Import substitution subsidies remain prohibited under Article 3.1(b) of the SCM Agreement, and all subsidies causing adverse effects to the interests of WTO members are now actionable under the SCM Agreement, and all subsidies causing injury to the domestic industries of WTO members may be subject to the imposition of countervailing duties by those members*"¹¹. This therefore explicitly targets all domestic subsidies on products substituting for imports as well as on exported products when they cause injury to other WTO Members since the AsA does not explicitly deal with these domestic subsidies but only with export subsidies.

According to Melaku Geboye Desta, eminent expert of the WTO agricultural law, "*As envisaged by Article 21 of the Agreement on Agriculture, the provisions of Multilateral Trade Agreements in Annex 1A to the WTO Agreement, of which the SCM Agreement is an important element, apply to agricultural matters, subject to the provisions of the Agriculture Agreement. It is only when there is an inconsistency between the provisions of those Agreements and the Agreement on Agriculture, and when a choice needs to be made between them, that the latter is given priority – and even then only to the extent of the inconsistency...*

⁹Appellate Body Report, *Canada – Dairy (Article 21.5 – New Zealand and US)*, para. 88. (original emphasis)

¹⁰Appellate Body Report, *Canada – Dairy (Article 21.5 – New Zealand and US)*, para. 91.

¹¹ Laurent Bartels, *The Relationship between the WTO Agreement on Agriculture and the Agreement on Subsidies and Countervailing Measures*, July 2015, https://www.oecd-ilibrary.org/commonwealth/trade/the-relationship-between-the-wto-agreement-on-agriculture-and-the-scm-agreement_5jm0qgkjsb41-en

This, in the present context, means that loopholes within the subsidies provisions of the Agriculture Agreement are filled primarily by resorting to relevant provisions of the SCM Agreement... Consequently, a study on the law of exports subsidies in agricultural products under the multilateral trading system which does not cover at least the major features of the discipline governing the practice of export subsidies in general can only be incomplete... Import-substitution subsidies are flatly prohibited by the SCM Agreement and fall under the 'red light' category. They are part of domestic subsidies because their provision does not depend on export performance... The Agreement on Agriculture does not explicitly 'provide' anything particularly concerning the use of import-substitution subsidies"¹².

It should be noted that, in contrast to EU economists and the European Commission, US agricultural economists are fully aware of the applicability of the SCM Agreement to domestic agricultural subsidies. This is particularly the case of Daryll Ray and Harwood Schaffer of the Agricultural Policy Analysis Center of the University of Tennessee that we quote extensively:

"One might think that if a domestic agricultural support program is within the subsidy limits of the amber box, it would be home free. But as the US learned in the Brazil Cotton Case, things are not that simple because a program can be challenged under SCM rules if "the program's effect spills over into international markets—that is, if it can be established that a subsidy causes adverse market effects" (Schnepf¹³).

The determination that a program is actionable under SCM is a two-step process. For the first step, the domestic support program must meet three criteria: a) "the subsidy constitutes a substantial share of farmer returns or of production costs for a commodity;" b) "the subsidized commodity is important to world markets (i.e., it represents a significant global share in terms of either production or trade);" and c) "a causal relationship exists between the subsidy and adverse effects in the relevant commodity market."

Once it was determined that portions of the US cotton program met all three of these criteria, the discussion moved to the second step. Under the second step only one of the potential negative effects of the challenged support program needed to be proved. One criterion is if the "subsidy displaces or impedes the import of a like product into the domestic market." So, if a country provides a subsidy to an agricultural product that makes that product cheaper for its domestic consumers, thereby discouraging imports, the subsidy can be found to be in violation of the SCM.

The second criterion is that "the subsidy displaces or impedes the export of a like product by another WTO member country."

Taken together these two criteria prohibit subsidies that reduce the level of exports by another WTO member country apart from any negative impact on world prices. That takes us to the third criterion: "significant price suppression, price undercutting or lost sales."

The last criterion is that the subsidy allows a country to increase its share of the world market.

¹² Melaku Geboye Desta, *The law of international trade in agricultural products. From GATT 1947 to the WTO Agreement on Agriculture*, Kluwer Law International, 2022.

¹³ <https://fas.org/sgp/crs/misc/R43817.pdf>

*Again, this is apart from any price impact of the subsidy though it is hard to envision a scenario in which price suppression, export levels, and market share are not interrelated. What the four criteria do is allow the challenging country to choose the impact that is easiest to prove or allow the challenger to make all four arguments and hope that just one of them will satisfy the dispute settlement panel"*¹⁴.

As a result, the assertions of the European Commission, the European Parliament and the economists they rely upon, that the end of the explicit export subsidies decided in December 2015 at the WTO Ministerial Conference of Nairobi has put an end to the EU dumping are unfounded and would be easily challenged in case of prosecution at the WTO since they do not take into account the dumping of domestic subsidies.

For example, according to Alan Matthews, *"The agreement at the Nairobi WTO Ministerial Conference in December 2015 to prohibit the payment of export subsidies on agricultural products (albeit with a transitional period) shows that multilateral trade rules continue to play a role in constraining agricultural policy decisions in the EU"*¹⁵.

For Jean-Christophe Bureau, *"After more than 25 years of profound reforms, many of the shortcomings in which the CAP had fallen have been solved ... It no longer has the negative effects on producers in third countries suffering from subsidized export competition"*¹⁶.

For Jonathan Peel of the European Economic and Social Council: *"The EU played a leading role at Nairobi. The decision there to effectively eliminate all agricultural export subsidies already meets one of the key targets set for SDG 2, namely to end hunger. That decision also showed that the WTO remains a viable, effective forum for multilateral trade negotiations"*¹⁷.

With so much support from the "experts" it was easy for the EU agricultural Commissioner Phil Hogan to state at the European Parliament's Hearing on the CAP and Developing Countries of 28 February 2018 that the CAP is a pro-poor development policy that does not discriminate against farmers in developing countries, and that it no longer leads to agricultural dumping since it no longer uses export subsidies since January 2014¹⁸. And he was very proud to say that the EU was the driving force behind the WTO Members' decision to permanently eliminate export subsidies at the December 2015 ministerial conference in Nairobi.

However, despite the EU statement made on 17 October 2017 in a meeting of the WTO Agricultural Committee that it will abolish once and for all its export subsidies¹⁹, we did not find amendments to Regulation 1308/2013 of the Parliament and the Council to change Article 196 stipulating that *"To the extent necessary to enable exports on the basis of world market quotations or prices when conditions on the internal market are such as those*

¹⁴ Harwood D. Schaffer and Daryll E. Ray, *WTO prohibits the spilling of domestic programs effects into international markets*, Agricultural Policy Analysis Center, Knoxville, TN, *Policy Pennings Column 918*, April 6, 2018, <http://www.agpolicy.org/weekcol/2018/918.html>

¹⁵ <http://capreform.eu/how-external-influences-have-shaped-the-cap/>

¹⁶ <file:///D:/PAC/PourunePACrenouvelee-Bureau-mai2018.pdf>

¹⁷ <http://www.euractiv.com/section/development-policy/opinion/the-eu-must-take-the-lead-in-linking-agricultural-trade-to-the-sdgs/>

¹⁸ SOL, *European Parliament's hearing on the CAP and developing countries*, SOL, March 4, 2018, <https://www.sol-asso.fr/wp-content/uploads/2017/01/SOLs-comments-on-the-European-Parliaments-hearing-on-the-CAP-impact-on-developing-countries-March-4-2018.pdf>

¹⁹ https://www.wto.org/english/news_e/news17_e/agcom_17oct17_e.htm#documents

described in Article 219(1) or Article 221 and within the limits resulting from international agreements concluded in accordance with the TFEU, the difference between those quotations or prices and prices in the Union may be covered by export refunds for: the products of the following sectors to be exported without further processing: cereals, rice, sugar, beef and veal, milk and milk products, pigmeat, eggs, poultry meat"²⁰. However article 219 specifies that this can only occur when "imperative grounds of urgency may include the need to take immediate action to address or prevent market disturbance, where threats of market disturbance occur so swiftly or unexpectedly that immediate action is necessary to efficiently and effectively address the situation". However it is possible that the EU Commission took an implementing regulation that we did not find.

2.1.3 – A fortiori the EU so-called decoupled agricultural subsidies are not decoupled and are illegally notified in the WTO green box

For Alan Matthews, "Truly decoupled payments do not affect the marginal incentive to produce, which means they reduce the distortionary effects on production and trade compared to the same amount of agricultural policy support provided in non-decoupled forms"²¹.

For Jean-Christophe Bureau, "At the international level, the pressure on European aid through the World Trade Organization (WTO) has somewhat disappeared. This aid meets the conditions of the Uruguay Round agricultural agreement: in fact, with the decoupling of aid in 2003, the EU largely meets the ceilings of this agreement, even though all agricultural aid is potentially of another more general agreement on subsidies"²².

The irony and contradiction is that the European Commission has promoted the decoupling of direct payments since the 2003 CAP reform – that is, granting them to farmers regardless of what they produce or do not produce – so that their production choices are "market-oriented", depending at every moment on the relative prices of agricultural products on the market. Even though these prices are obviously no longer market prices given the importance of subsidies, since they would be much higher in their absence, but also given the high tariffs on EU imports of its basic food products. 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"²³. 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"²⁴. It is the reason why the US is presently refusing to grant the status of market economy to China. Clearly 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

²⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:347:0671:0854:EN:PDF>

²¹ <http://www.tcd.ie/Economics/TEP/2017/tep1617.pdf>

²² <file:///D:/PAC/PourunePACrenouvelee-Bureau-mai2018.pdf>

²³ US Department of Commerce, *Normal value*, AD Manual, chapter 8.

²⁴ <http://ia.ita.doc.gov/admanual/2009/Chapter%2010%20NME.doc>;

http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=david_gantz

for crops but also for animal products for which "*significant inputs are subject to market-determined prices*", because of the large subsidies to feed crops²⁵.

It is clear that decoupling is strongly supported by EU agri-food industries. Thus, for Food DrinkEurope, "*Market orientation is the most efficient approach to improve the competitiveness of EU farmers and to deliver agricultural raw materials that are in line with the quality and quantity needs of the consumers. Therefore the CAP must promote market orientation in agriculture*"²⁶. CELCAA (the European Liaison Committee for Agricultural and Agri-Food Trade) too "*believes that the future Common Agriculture Policy (CAP) should... maintain its market-orientation whilst providing mechanisms to prevent or manage crises (safety net, risk management tools or exceptional measures)*"²⁷.

This is in line with Pascal Lamy's speech of 19 June 2003, then European Commissioner for Trade, to the EU Confederation of Agri-Food Industries: "*With regard to market access, I have said that the agri-food sector is one of our export flagship sector*". After discussing three ways to promote it – lower EU tariffs on imports of agricultural raw materials, lower tariffs in the importing countries, investment abroad – he added: "*But of course there is a fourth solution, which is simply to obtain supplies on the internal market at competitive prices. This raises the issue of internal prices and the reforms needed to bring them down. Which brings us to internal support, which is also an issue for the WTO. Thanks to a series of CAP reforms, internal prices have become highly competitive, especially for primary products such as wheat. And the performance of the processing industry bears witness to this. We must therefore persevere and also not lose sight of the need to overhaul our system of support so that it has a minimal impact on trade. That is why we have proposed the new CAP reforms and why they are so important in the WTO negotiations on internal support*"²⁸.

The fact that the European Commission is notifying its decoupled aid in the green box is in no way an indication that it is "non-trade-distorting" but only that no prosecution has yet taken place to oblige it to notify them in the amber box of coupled supports.

There are indeed seven reasons why the "single payment scheme" (SPS), the "single area payment scheme" (SAPS, for 10 of the new EU-12 Member States) from 2005 to 2015 and the "basic payment scheme" (BPS) since 2016, are not decoupled. Let's first copy the rules of paragraph 6 of Annex 2 of the WTO AoA to understand it. It should be noted that the BPS only took up most of the decoupled subsidies previously lodged in the SPS.

2.1.3.1 – Paragraph 6 of the AoA Annex 2 on "Decoupled income support"

a) Eligibility for such payments shall be determined by clearly-defined criteria such as income, status as a producer or landowner, factor use or production level in a defined and fixed base period.

b) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period.

²⁵ Jacques Berthelot, *The EU actual AMS and OTDS in 2013-14*, SOL, 29 April 2017, particularly Annex 2.

²⁶ <http://www.fooddrinkurope.eu/publication/position-paper-on-the-cap/>

²⁷ <https://celcaa.eu/wp-content/uploads/2017/12/27042017CELCAAFUTURECAP.pdf>

²⁸ *From Doha to Cancun – Challenges and opportunities of the WTO negotiations for the food sector*, General assembly of the Confederation of the EU Food and Drink Industries (CIAA) - Brussels, 19 June 2003, http://trade.ec.europa.eu/doclib/docs/2004/july/tradoc_113875.pdf

c) The amount of such payments in any given year shall not be related to, or based on, the prices, domestic or international, applying to any production undertaken in any year after the base period.

d) The amount of such payments in any given year shall not be related to, or based on, the factors of production employed in any year after the base period.

e) No production shall be required in order to receive such payments.

2.1.3.2 – The 7 reasons why the SPS, SAPS and BPS are not decoupled

1) The SPS contradicts the condition b) of the AoA Annex 2 paragraph 6 which states: *"The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period"*. Indeed, after the precedent of the WTO Appellate Body ruling on cotton of 3 March 2005 that the US fixed direct payments are not in the green box, the EU SPS will be much more easily ruled to be in the amber box. Because, even if the production quotas of milk and sugar have been deleted, the EU maintains plantations rights for wines, and caps on products notified in the blue box: cotton, bananas, suckler cows, ewes and goats, and payments in virtue of Art 68 of Regulation 73/2009.

2) The SPS payments are also coupled because they coexist with blue box payments for the same products. Indeed, according to the AoA article 6.5, blue box direct payments are granted *"under production-limiting programmes"* whilst the SPS allows to produce any product – otherwise it will not enjoy a full production flexibility –, including products whose production is forbidden or capped. This contradiction was already written in paragraph 28 of the preamble of the EU Council regulation n°1782/2003 of 29 September 2003: *"(28) In order to leave farmers free to choose what to produce on their land, including products which are still under coupled support, thus increasing market orientation, the single payment should not be conditional on production of any specific product. However, in order to avoid distortions of competition some products should be excluded from production on eligible land"*. And the article 51 of the same Regulation specifies that this exclusion concerns permanent crops, fruits and vegetables and potatoes other than for starch. And point 1) above has shown that several other productions are forbidden or capped.

3) The SPS contradicts condition e) stating that *"No production shall be required in order to receive such payments"*. But the EU Council regulation n° 1782/2003 of 29 September 2003 states that farmers getting SPS must *"ensure that all agricultural land, especially land which is no longer used for production purposes, is maintained in good agricultural and environmental condition"*. Annex 4 of the regulation specifies that this implies not only *"Avoiding the encroachment of unwanted vegetation on agricultural land"* but also *"Protection of permanent pasture"* and *"Minimum livestock stocking rates"*, which is clearly a production.

4) The SPS contradicts the condition d) as it remains coupled to agricultural area as farmers must show they have eligible hectares (ha) to get their payments – indeed each single farm payment right corresponds to one ha.

5) The SPS contradicts conditions a) as it is based on the amount of blue box subsidies of the 2000-02 years, a criterion not allowed by paragraph 6 of Annex 2.

6) A large part of the SPS (and blue box) payments are granted to feed (EU cereals, oilseeds meals and pulses), and also to feedstocks used for agrofuels (vegetable oil, cereals and sugarbeet), which are both input subsidies in the amber box for developed countries (AoA article 6.2). Even if biodiesel is not an agricultural product for the WTO, contrary to bioethanol, the AoA Annex IV paragraph 4 on the AMS calculation states that "*Measures directed at agricultural processors shall be included to the extent that such measures benefit the producers of the basic agricultural products*"²⁹, which is all the more obvious as the agrofuels boom has increased much the prices of vegetable oils and cereals from 2007 to 2014.

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

The EU claims that the full decoupling of direct payments to cereals (as to other agricultural products) since 2005 and even more since 2010³⁰ does not allow to know if the payments have not been transferred to other productions because the EU farmers are not required to produce the products, of which cereals, for which they received the direct payments from 2000 to 2002. The statistics belie this assertion: the area of cereals in the total utilized agricultural area remained stable from 2000-02 to 2010-13 and the share of wheat has increased by 0.33% per year in the cereals area (excluding rice) and 2.92% per year in the cereals production³¹. This is understandable because since 2007 the high cereals prices prompted farmers to abandon other productions and even to return grassland to grow more cereals.

A very interesting article by Carlos Gasperin and Ivana Doporto Miguez underscores, with many examples, the cumulative effect of coupled and decoupled subsidies, among which the case of livestock: "*The farmer may receive payments for the livestock – the direct subsidy – and buy feed from the producers, who have been the beneficiaries of subsidies for its production (therefore the price of the feed may be lower than in a situation without this support) – the indirect subsidy. An example of the third type also may be the case of livestock and feed, but from the feed's producer perspective: the feed producer benefits from the support to the feed production – the direct subsidy – and also from increased demand for the producer's product due to the subsidies given to users of this commodity as feed – the indirect subsidies*"³². And they go on: "*This analysis may grow in complexity if a farmer produces different goods, where the type of subsidy for each product may differ in the category of box*

²⁹ Toni Harmer, *Biofuels subsidies and the law of the WTO*, ICTSD, June 2009, <http://ictsd.net/i/publications/50724/>.

³⁰ From 2006 to 2010 25% of direct payments to cereals of France and Spain were still "coupled", that is were granted only if farmers were actually growing cereals.

³¹ *Impact of the West Africa-EU Economic Partnership Agreement on cereals*, Solidarité, May 31, 2015, http://www.solidarite.asso.fr/Papers-2015?debut_documents_joints=10#pagination_documents_joints

³² Carlos Gasperin and Ivana Doporto Miguez, *Green box subsidies and trade-distorting support: is there a cumulative impact?* In Ricardo Melendez Ortiz, Christophe Bellmann and Jonathan Hepburn, *Agricultural subsidies in the WTO green box*, Cambridge University Press, 2009, pp.239-57.

and the degree of the distorting effect. Here, the transference of subsidies is among products of the same farm; that is, part of payments for a product may be transferred for covering costs of another product. Another possible situation of transference is the case of the producer of two commodities – one with subsidies and another without – that shares some inputs, such as land and machinery: payments for the first commodity can be used for paying the cost of the joint inputs, thus reducing production costs of the commodity without subsidies".

In the US cotton case the panel report stated that all types of subsidies should be considered as a whole when appraising their impact on prices: *"Thus, in our price suppression analysis under Article 6.3(c), we examine one effects-related variable – prices – and one subsidized product – upland cotton. To the extent a sufficient nexus with these exists among the subsidies at issue so that their effects manifest themselves collectively, we believe that we may legitimately treat them as a "subsidy" and group them and their effects together. We derive contextual support for this view from Article 6.1 and Annex IV, which referred to the concept of total ad valorem subsidization and envisaged that, "[i]n determining the overall rate of subsidization in a given year, subsidies given under different programmes and by different authorities in the territory of a Member shall be aggregated"* (paragraph 7.1192)³³.

Let us quote also Peter Einarsson who wrote already in 2000 that *"All forms of direct payments function as a dumping mechanism to the extent that the production supported results in products for export. When border protection is reduced and replaced with direct payments (as required by the AoA), the result is lower prices in protected markets. The gap between the protected internal price level and world market prices is reduced, and the need for export subsidies thus reduced correspondingly (again in conformity with the AoA). But for the importing country, there is no difference. Whether the export price is artificially reduced by export subsidies or by direct payments, the dumping effect is the same... Within the EU, the price level for virtually all agricultural products is now considerably below actual cost of production. This is not accidental, but a deliberate consequence of the AoA requirements (reduced border protection). Direct payments are a necessary complement to fill the gap between the price level allowed by the AoA and the real cost of food production. The situation in the USA is very similar, although production costs are lower and the gap to prices therefore smaller... Export of a product benefiting from any combination of public support (direct payments, export credits, free public services, or other) would be allowed only if the exporting country applied an export levy equalling the value of that support"*³⁴.

We will also read with interest the article published by J. Berthelot on his Médiapart blog in 2014, which quotes the opposite positions of Michel Jacquot, Alan Matthews and Tomas Azcarate, article that remains relevant today³⁵.

To conclude, the decoupled payments were a legal artifice to allow the developed countries to notify a maximum of subsidies in the green box. To the extent that green box subsidies can increase without limit and benefit to exports, their trade distorting effect, of which dumping, is larger than that of explicit export subsidies which were capped and had to be eliminated. In

33

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

³⁴ Peter Einarsson, *Agricultural trade policy as if food security and ecological sustainability mattered*, Forum Syd, Stockholm, November 2000,

https://iatp.org/files/Agricultural_Trade_Policy_As_If_Food_Security_.pdf

³⁵ *Les subventions de l'UE à l'exportation, suite*, J. Berthelot, Médiapart, 26 mai 2014, <https://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b-2018/>

fact, as underscored above, the most decisive reason for the radical change in the CAP and Farm Bill price policies in the 1990s was the scandalous definition of dumping in the GATT and the AoA.

2.1.3.2 – The EU has refused to notify its main feed subsidies

The fact that the EU has notified in its AMS some secondary feed subsidies – to dried fodder and skimmed-milk fed to calves – attest clearly that it is perfectly aware that feed subsidies are coupled input subsidies but it has refused to notify its huge subsidies to feed cereals, oilseeds and pulses (COPs). We can say the same for the US where the Congressional Research Service has acknowledged that "*program commodities such as corn are feed inputs for livestock*"³⁶ and OECD has also stated that "*Input subsidies are typically explicit or implicit payments reducing the price paid by farmers for variable inputs (for example... feed)*"³⁷.

Tim Wise and his colleagues of Tufts University have made a long series of articles to show how the US large feed subsidies have allowed the US to export its animal products at below full production cost³⁸.

The EU cheating in that area has been largely promoted by the OECD tortuous concept of "excess feed cost" (EFC). OECD considers that the livestock producers are penalized as they have to pay their feedstuffs at domestic prices higher than world prices received by the growers of COPs: "*The EFC adjustment reduces the value of MPS for livestock commodities. Indeed this occurs because livestock producers pay higher prices for feed crops as a result of price support for these commodities*". In an e-mail of 2004 Catherine Moreddu of OECD replied to me: "*The excess feed cost due to the price support of cereals is deducted from the price support of animal products. Therefore it is not possible to take it into account a second time in input subsidies*". This statement could have been at best debated when the world prices of COPs were low so that this alleged "excess feed cost" – represented by the gap between domestic prices and world prices – was large, for an average of €2.854 bn in the EU from 1986 to 2007 (table 1), but after that the world prices of cereals have skyrocketed from 2008 to 2014 so that the "excess feed cost" has almost disappeared in the EU PSE (producer support estimate). Yet the feed subsidies are still there, hidden in its alleged fully decoupled SPS and SAPS, which is the best refutation of this OECD concept of "excess feed cost".

Table – Annual average of the excess feed cost from 1986 to 2014, in €million

1986-94	1995-98	1999-2007	1986-2007	2008-14
5344.6	1735.4	879.8	2853.8	87

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

If the direct payments to COPs are fully received by the COPs' producers, the producers of animal products get the implicit but actual subsidies corresponding to the lower prices they pay for the COPs of EU origin, prices that would be much higher in the absence of the subsidies granted to COPs' producers in compensation for the reduction in their administered prices.

³⁶

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

³⁷ <http://www.oecd.org/agriculture/agricultural-policies/1937457.pdf>

³⁸ *Feeding the factory farm*, http://www.ase.tufts.edu/gdae/policy_research/BroilerGains.htm

We can also invoke the concept of "cross-subsidization", central in the WTO panels and Appellate Body's rulings in the cases of Dairy products of Canada and EU sugar. Here the "*cross-subsidization... financed by virtue of governmental action*" can be invoked by the fact that the EU producers of animal products have been purchasing their feed at below its full production cost in the absence of the feed subsidies received by the producers of feed crops. The OCDE Manual states that "*Implicit support to agricultural producers may also be provided through concessions on taxes, interest rates, or input prices. Such support usually involves no flow from government funds, but nevertheless represents real transfers*" (not underlined in the text).

As a result, the animal feed part of COPs conferred product-specific AMSs on animal products that consumed these subsidized feeds. It was estimated that, on extra-EU28 exports of 5.494 million tonnes (Mt) of dairy products in 2016 – or 30.2 Mt of milk equivalent – total subsidies reached €2.030 bn, of which €513 M in feed subsidies (€17/t)³⁹. And the feed subsidies included in the EU28 dairy exports to the four regions of West Africa, SADC, CEMAC and EAC were €54.7 M in 2016 for €216.3 M in total subsidies to dairy products. EU28 feed subsidies on meat and poultry and egg exports to the six SADC countries reached €41.443 M in 2016 (€120 per ton of carcass equivalent or egg equivalent) for an average dumping rate of 19% (ratio of total subsidies to FOB export value)⁴⁰.

³⁹ *The huge dumping of extra-EU exports of dairy products and to the EPAs of West Africa, SADC, CEMAC and EAC in 2016*, SOL, <https://www.sol-asso.fr/wp-content/uploads/2017/01/The-huge-dumping-of-extra-EU-exports-of-dairy-products-and-to-the-4-African-EPAS.pdf>

⁴⁰ *The EU28 subsidies on its exports of poultry meat and eggs to SADC in 2016*, SOL, March 24, 2017: <https://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b-2/>