

Talk on IATP's Analysis of Agricultural Dumping

Workshop on "Mutually Supportive Agricultural and Trade Policies"

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Export dumping – the practice of selling products at prices below their cost of production – is one of the most damaging of all current distortions in world trade practices. Developing country agriculture, vital for food security, rural livelihoods, poverty reduction and trade, is crippled by the practice of major commodities sold at well below cost of production prices in world markets. . . Dumping is a gross distortion of commodity markets that undermines the livelihoods of the 70% of the world's poorest people. We have the means to address agriculture dumping. It is now up to governments to act. "United States Dumping on World Agricultural Markets", Institute for Agriculture and Trade Policy (February 2003)

First, I would like to thank the organizers of this workshop for inviting IATP to discuss with you our approach to developing a trade discipline on agricultural export dumping. As farm organization leaders from all over the world, you will have more knowledge than I of the damage caused in your countries by dumping. I hope that our discussions will help you to convince your governments of the need for negotiation of a multilateral discipline against dumping that will allow agriculture and rural communities to flourish, not merely to survive. If, as we saw yesterday, a Senegalese farm can still produce luscious mangos despite three years of drought, surely we can pressure our governments to begin negotiations on dumping within three years.

This talk is comprised of two parts. The first part is a summary of IATP's latest report on U.S. agricultural export dumping. I have brought with me English language copies of the report, which is being translated into Spanish, but not yet, *helás*, into French. The report can also be downloaded as a PDF file at <http://www.tradeobservatory.org>

The main reason that IATP has focused on agricultural dumping, rather than on subsidies reform within the framework of the World Trade Organization Agreement on Agriculture (AoA), is that the AoA subsidies regime is a symptom of a dysfunctional agribusiness system, not a cause. To paraphrase the work of Professor Daryl Ray of the Agriculture Policy Analysis Center, the low prices -- and IATP would add far below cost of production prices -- for agricultural raw materials are the cause of the need for subsidies: subsidies are not the cause of low prices. Yet in the upside down world of the AoA, subsidies, not dumping are subject to trade discipline. This talk is dedicated to turning that world right side up.

After spending about eight minutes or so explaining IATP's methodology for calculating subsidies, and the results of its research, I want to spend the last few minutes of this talk to discuss with you the viability of establishing agriculturally specific multilateral anti-dumping disciplines. Whether or not the WTO continues to be involved with agriculture, absent effective anti-dumping disciplines, dumping will continue. An anti-dumping discipline in and of itself will not increase developing country agricultural exports nor protect developing countries from all the causes of food insecurity and lack of food sovereignty. But I would like to establish as a discussion topic for this workshop the idea that there is some political opportunity for negotiating multilateral anti-dumping disciplines. By protecting farmers against the unfair competition of dumped products, anti-dumping disciplines allow you to meet the challenge of feeding your people and developing your communities.

Thus far the public response to the IATP dumping report has focused on the results of the study and the assumption that those results could be used as evidence in a bilateral or WTO complaint against U.S. agricultural dumping. So first, I want to present the results and the response to them, and then discuss the dumping calculation methodology.

Here, in brief, as you see in these transparencies, are the results: Employing IATP's calculation methodology, the authors report that during the period studied "[l]evels of dumping hover around 40% for wheat, between 25% and 30% for corn (maize) and levels have risen steadily over the past four years for soybeans. These percentages mean that wheat, for example, is selling for 40% less than it costs to produce. For cotton, the level of dumping for 2001 rose to a remarkable 57% and for rice it has stabilized at around 20 %."¹ U.S. headquartered firms are major traders in all of these crops and all are dumped in developed and developing countries to greater or lesser extent.

IATP released its latest dumping report at a press conference on February 10 in Mexico City. The press conference was organized by the newspaper *La Jornada*, with whom IATP is working to analyze and publicize trade policy and fair trading practices in preparation for the WTO ministerial in September in Cancún, Mexico. The assumption of the U.S. Department of Agriculture's office in Mexico City was that the purpose of the report was to provide the Mexican government with evidence to accuse the U.S. agribusiness firms of dumping corn into Mexico. Trade negotiators have told IATP's officer in Geneva that the Brazilian negotiator at the Special Session of WTO agricultural negotiations waved the IATP report in the face of U.S. negotiators in a kind of *J'accuse* gesture.

However, dumping is not unique to any one country. An analysis of dumping practices is not merely a denunciation, but is instead the first step to developing a discipline to prevent dumping. For example, Oxfam has also developed an "Export

¹ Mark Ritchie, Sophia Murphy and Mary Beth Lake, "United States Dumping on World Agricultural Markets," 3, WTO Cancún Series Paper No. 1, INSTITUTE FOR AGRICULTURE AND TRADE POLICY (February 2003) at <http://www.tradeobservatory.org>.

Dumping Estimate” indicator which assesses the gap between export prices and the cost of production and calculates the extent of dumping by the US and the EU of major agricultural commodities. The dumping trends in the Oxfam study are consistent with the figures calculated by IATP. For the EU, Oxfam calculates that wheat is exported at prices 34% below the cost of production, skimmed-milk powder at prices 50% of the cost of production, and sugar at prices 25% of the cost of production.² Any comparison of dumping practices, however, is useful not as an end in itself, but for establishing the existence of an unfair trade practice in need of trade policy discipline.

You know better than I the devastation to rural development, rural employment and food security caused by dumping, so there is no need to review them here. For the remainder of the talk, I want to focus on the methodology of IATP’s dumping report, the shortcomings of that methodology, and the political opportunity for negotiating anti-dumping disciplines, if not in the WTO, than in a multilateral organization that is competent to negotiate and enforce such disciplines.

The first step towards developing disciplines on agricultural dumping is to demonstrate the extent of dumping. The IATP’s latest report on agricultural export dumping calculates the percentage of the export price that is dumped below the cost of production by analyzing U.S. Department of Agriculture (USDA) and Organization for Economic Cooperation and Development (OECD) cost of production data from 1990-2001 for five major U.S. export crops. To calculate this percent “the government support cost [Producer Subsidy Equivalents] and the cost of transportation and handling are added to the farmer production costs to calculate the full cost of production. The percent of export dumping is the difference between the full cost of production and the export price divided by the full cost of production.”³

This calculation methodology does not attempt to factor in U.S. transportation and insurance subsidies for agribusiness, and transportation costs are notoriously difficult to estimate. Neither does this methodology attempt to do a full cost accounting of the environmental, public health and social welfare costs associated with industrialized agricultural production. Despite these shortcomings, the virtue of the calculation methodology is that it employs a widely agreed upon statistical models employed not only in the United States but in OECD countries that for the most part have reliable data gathering infrastructure. The major agricultural dumping companies have their headquarters in OECD countries and we believe that those countries should be the first subjects of systemic dumping calculations.

IATP contends that “the minimum acceptable outcome for the reform of the Agreement on Agriculture [AoA] is to provide and enforce rules that outlaw dumping in world agricultural markets.”⁴ In the vernacular of trade negotiators, this is an

² E.g. *Rigged Rules and Double Standards: Trade, Globalization and the Fight Against Poverty*, OXFAM INTERNATIONAL, 2002.

³ “United States Dumping on World Agricultural Markets,” (Annex 2), 20.

⁴ Ibid. 3.

ambitious goal. But unlike the current bitter and now nearly twenty year old fight in the WTO about whose respective forms of export subsidies and domestic supports are most “trade distorting,” disciplines to phase out agricultural dumping would be based on common and comparable data, initially gathered from OECD member states. Phasing out agricultural dumping on common terms is an ambition that can be achieved technically, if a political decision is taken to do it. Negotiations to target for elimination the often non-comparable forms of domestic support and export subsidies are much less likely to succeed.

I believe -- this is not an IATP position yet -- that a recent WTO Appellate Body report concerning Canadian dairy subsidies indicates that WTO members will need to come to agreement in the very near future on cost of production calculation methodology, and I hope, use such an agreement on calculation methodology to phase out export dumping. The Appellate Body noted that “the *average total cost of production* represents the appropriate standard” for determining whether or not Canadian dairy subsidies were consistent with their WTO commitments.⁵ Furthermore, “the United States agrees with the Panel that all economic costs should be included in the cost of production benchmark.”⁶ In support of Canada, “the European Communities considers that the average total cost of production is not the appropriate benchmark”⁷ for the purposes of determining whether Canadian dairy subsidies violate its WTO AoA commitments.

Despite the U.S. and EC disagreement in this particular dispute, we think that the Appellate Body decisions suggests that WTO members should discuss cost of production definitions. Once WTO members, beginning with the OECD countries, agree upon such definitions, they can move to take a political decision on phasing out agricultural dumping. Therefore, we believe that the United States and the European Union should lead the WTO to phase out agricultural dumping with disciplines against the percentage of an agricultural export price that is dumped below the cost of production. Existing cost of production and export price averaging models in OECD countries can be adapted to determine that “dumping margin” and such models can be adapted as appropriate to apply to other WTO members.

My analysis of this nascent political opportunity for negotiating disciplines on agricultural dumping may seem recklessly optimistic. Why would the United States or the European Union negotiate disciplines on dumping when dumping provides a major competitive edge, however unfair, for their transnational agribusiness firms? There are several arguments that I could present, if time permitted, as to why it is in the self-interest of OECD countries to discipline the dumping practices of transnational agribusiness. Let me sketch a couple of these arguments.

⁵ “Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products: Second Recourse to Article 21.5 of the DSU by New Zealand and The United States,” Report of the Appellate Body (AB-2002-6), WORLD TRADE ORGANIZATION (WT/DS103/AB/RW2 and WT/DS113/AB/RW2 (20 December 2002), para. 80.

⁶ Ibid., para. 37.

⁷ Ibid., para. 49.

One reason, the one most proximate to the issue of the calculation of dumping margin methodology, is that the current methodology used above all by the United States is incoherent, and its application is increasingly a matter of public ridicule. Consider, for example, the current attempt by the United States to destroy the Canadian Wheat Board through a dumping challenge, among other means.

The current U.S. investigation into alleged unfair practices of the Canadian Wheat Board (CWB),⁸ is determined on the basis of data models that are highly inferential and non-transparent. The May 1 preliminary determination by the U.S. Department of Commerce that the CWB was dumping wheat into the U.S. is based on a “model match criteria and hierarchy” that compares export sales with a constructed “normal value” of domestic wheat sales.⁹ This dumping calculation methodology, “which is on file in the [U.S. Department of Commerce] Central Records Unit,”¹⁰ was used after the plaintiffs failed to prove to Commerce officials that the CWB was dumping at below cost of production. Part of the reason for the failure is that U.S. bilateral dumping investigations seek to interrogate individual producers on their cost of production (COP), all of 27 producers in this case, rather than rely on uniform, transparent and average COP data sets. Agreement on a common dumping methodology would provide the basis for a more transparent dumping discipline than what is calculated inferentially in the Central Records Unit of the Commerce Department.

Canada may be willing to push for the negotiation of a common, comprehensive and transparent dumping calculation methodology. It may be particularly willing if the U.S. Department of Commerce preliminary dumping decision becomes final in September and the U.S. levies duties again Canadian wheat that in effect will close the U.S. market to Canadian wheat.¹¹

I think, and this is not an IATP position, that there are at least three sources of enlightened self-interest that should induce developed countries to negotiate and enforce disciplines on dumping more effective than the weak dumping disciplines for other economic sectors that are already outlined in Article 6 of the General Agreement on Trade and Tariffs.

First, the anti-competitive business practices that dumping enables are undermining developed country agricultural policy and trading viability. Therefore, it is not surprising that the Canadian Wheat Board is advocating that the Canadian

⁸ Adrian Ewins, “U.S. tries new tack in CWB dumping case,” THE WESTERN PRODUCER, 13 March 2003 and “Canadian Wheat Board Being Challenged From All Angles,” NORTH DAKOTA WHEAT COMMISSION at <http://www.ndwheat.com>

⁹ “Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat From Canada,” Department of Commerce, International Trade Administration, U.S. FEDERAL REGISTER (Vol. 68, Number 89: 8 May 2003) p. 24708.

¹⁰ Ibid., p. 24709.

¹¹ Adrian Ewins, “U.S. duties drying up market,” THE WESTERN PRODUCER, 8 May 2003.

government consider the negotiation of WTO disciplines on agricultural dumping.¹² The aforementioned Appellate Body decision against Canadian dairy subsidies establishes in WTO dispute settlement that cost of production is now a legitimate issue in Agreement on Agriculture trade complaints.¹³

Second, the surfeit so-called “cheap” food, i.e. dumped food whose total costs have been “externalized” or hidden, is causing a rising incidence of chronic diseases. Super-sized helpings of “cheap” high sugar and high fat content food made possible by dumping are not so cheap once the cost of dealing with chronic illness is factored in. Despite the furious food industry assault on the World Health Organization report on obesity, its causes and costs¹⁴, there is reason to believe that the rising curative health care budget outlay, now about 14 percent of the U.S. Gross Domestic Product, will become politically and economically unsustainable for developed countries facing aging populations and ravaged federal budgets.¹⁵ Perhaps a more preventative health policy and a more health-oriented food policy will find budgetary arguments to discipline agricultural dumping as a way of making high fat and sugar content foods more expensive.

A final reason for OECD countries to support the negotiation of agricultural anti-dumping disciplines is that their absence has contributed to an environment for anti-competitive business practices that is summed up in a quote from an Archer Daniels Midland (ADM) executive in James Lieber’s *Rats In the Grain*¹⁶: “The competitor is our friend and the customer is our enemy.” Given the U.S. opposition to negotiating multilateral anti-trust disciplines,¹⁷ effective prosecution of transnational anti-competitive practices in agribusiness remains largely a national endeavor. For WTO members with strong court systems, there is an opportunity to prosecute anti-competitive behavior, such as the current U.S. civil case against Cargill and ADM for \$4 billion of damages resulting from price fixing in high fructose corn syrup. It seems unlikely that the lawsuit against ADM and Cargill will go to trial and hence render a public record of years of an anti-competitive business practice. But if ADM and Cargill are true to their word, and refuse to settle out of court, the resulting court record could provide insights into how effective anti-dumping measures might be developed.¹⁸

¹² Ian Elliot, “CWB says Canada must push for a new dumping code,” FEEDSTUFFS, 24 March 2003.

¹³ “Canada, EU Hit At WTO Ruling on Agriculture Export Subsidies,” INSIDE U.S. TRADE, 24 January 2003.

¹⁴ Stephen Clapp, “WHO report draws fire from industry, consumer advocates,” FOOD CHEMICAL NEWS, 10 March 2003.

¹⁵ E.g. “Why Health is the Key to the Future of Food and Farming:” ed. Tim Lang and Geof Rayner, Policy Commission on the Future of Farming, UNITED KINGDOM HEALTH DEVELOPMENT AGENCY (2002) at http://www.ukpha.uk/health_key.pfd

¹⁶ James Lieber, *Rats in the Grain: The Dirty Trick and Trials of Archer Daniels Midland, The Supermarket to the World* (New York: Four Walls, Eight Windows, 2000), iii.

¹⁷ “Justice Dept.’s Klein, FTC’s Pitofsky Elaborate On Antitrust Proposal,” UNITED STATES INFORMATION AGENCY, 18 September 2000.

¹⁸ Alan Guebert, “Price fixers beware: Supreme Court lowers legal bar,” Farm and Food File for week beginning Sunday, March 2, 2003

For WTO members, including developed countries, without the ability to effectively prosecute such egregious distortions of trade, effective agriculture dumping measures offer a cost efficient tool to reduce this and other anti-competitive business practices. In any event, whether the WTO is in or out of agriculture, the current incentives to seek a competitive edge through dumping and predatory pricing are very likely to continue. In the absence of tough prosecution of anti-competitive business practices, transnational agribusiness has every incentive to seek a competitive edge through dumping and pay what Wall Street bankers call “nuisance fees” for violating federal laws. Anti-dumping disciplines would increase the cost of seeking unfair competitive advantage. Therefore, IATP sees the development of enforceable anti-dumping disciplines as necessary to reduce dumping in the interest of OECD country members, as well as in the interest of developing countries.

Thanks for your attention and for this opportunity to speak about IATP’s work. I look forward to your questions and to developing a common strategy towards anti-dumping negotiations.