

Comments to Sophia Murphy and Steve Stuppan's analysis of the countercyclical payments in "The 2008 Farm Bill and the Doha Agenda" (IATP, 26 June 2008)

by jacques.berthelot4@wanadoo.fr, Solidarité, 11 July 2008

Sophia Murphy and Steve Stuppan have just made an excellent analysis of the way the 2008 Farm Bill has loftily ignored the WTO's Members expectations from the US, whatever their relevance, to make the Doha Round a true Development Round.

However their endorsement of the possibility to put the countercyclical payments in the new blue box created by the Framework Agreement of 31 July 2004 is questionable: "*U.S. price-derived countercyclical payments (support to counter price drops) were ruled WTO illegal in the U.S. Upland Cotton Subsidies trade dispute... However, the U.S. will not have to adjust its spending to conform with this much tighter spending limit on AMS because the 2004 July Agreement, now incorporated in the Doha Agreement on Agriculture proposals, allows countercyclical payments (that are part of the AMS under Uruguay AoA rules) to be moved to the Blue Box. Spending in the Blue Box is less constrained than the AMS. In other words, the U.S. will not have to reduce spending under the proposed Doha AoA rules... The high commodities prices projected during the life of the Farm Bill (2008-2012) are likely to help the U.S. conform to the WTO's model of domestic support disciplines in the short-term.*"¹

Sophia Murphy and Steve Stuppan stick to their previous analysis of 2005² that the countercyclical payments (CCPs) can be put in the new blue box (BB) which would be WTO compatible with the present proposals on agriculture, thus endorsing, in spite of themselves, the USTR position. But this is impossible for the reasons developed now.

1) First they acknowledge that the present CCPs were ruled illegal by the Appellate Body on the cotton case the 3 March 2005 – actually they were not ruled "illegal" but as being "price-contingent subsidies" which have had a "significant price suppression within the meaning of Article 6.3(c) of the *SCM Agreement*" – but they add that, nevertheless, the Doha Round proposals have incorporated the 2004 July Agreement allowing to move CCPs in a new Blue box (NBB) not subject to reduction commitments.

Let us add that the new Appellate Body ruling on cotton of 3 June 2008 "*upholds the Panel's findings... that: the United States acts inconsistently with its obligations under Articles 5(c) and 6.3(c) of the SCM Agreement in that the effect of marketing loan and counter-cyclical payments provided to United States upland cotton producers pursuant to the FSRI Act of 2002 is significant price suppression, within the meaning of Article 6.3(c) of the SCM Agreement, in the world market for upland cotton, constituting "present" serious prejudice to the interests of Brazil within the meaning of Article 5(c) of the SCM Agreement.*"

2) The present proposals (Annex B, page 35, of the Revised Draft of 10 July 2008) do not change Article 1 of AoA Annex 2 which lays down the basic criteria of all trade-distorting supports, including of the blue box: "*Domestic support measures for which exemption from the reduction commitments is claimed shall meet the fundamental requirement that they have no, or at most minimal, trade-distorting effects or effects on production. Accordingly, all measures for which exemption is claimed shall conform to the following basic criteria: (a) the support in question shall be provided through a publicly-funded government programme (including government*

¹ <http://www.tradeobservatory.org/library.cfm>

² Sophia Murphy and Steve Stuppan, *The New Blue Box: A Step Back for Fair Trade*, IATP, November 17, 2005.

revenue foregone) not involving transfers from consumers; and, (b) the support in question shall not have the effect of providing price support to producers". Trade-distortion is clearly related to payments having more than minimal effects on current production or price.

3) Nobody could deny that CCPs, hence the new BB, "have the effect of providing price support to producers" as their amount is directly linked to the current market prices level.

4) The new BB is defined as "Direct payments that do not require production if: (i) such payments are based on fixed and unchanging bases and yields; or (ii) livestock payments are made on a fixed and unchanging number of head; and (iii) such payments are made on 85 per cent or less of a fixed and unchanging base level of production."

5) The ACRE (Average Crop Revenue Election) payments – an alternative to usual CCPs – are not "based on fixed and unchanging bases and yields". Indeed per-acre ACRE payments equal the difference, if positive, between the state revenue guarantee and the actual state revenue. Only the ACRE guarantee is "based on fixed and unchanging bases and yields", but not the actual state revenue. The ACRE guarantee equals 90% of the product of the ACRE yield (olympic average of the state yields of the previous 5 years) and the ACRE price (average of the 2 previous years' season average prices). But the ACRE actual state revenue equals the product of the state current average yield and the season average price. Furthermore payments are made on each farmer's planted acres and not on his base acres.

6) The ACRE yield implies an actual updating since the average "olympic" yields for 2002-06 – at least the average national yield, not that of a specific state – were significantly higher for most program crops in relation to the 1998-2001 period, at least for upland cotton (+24.0%), rice (10.8%), peanuts (9.9%), corn (+7.7%) and soybean (+7.1%). It is only for sorghum (-9.0%) and wheat (-1.7%) that yields were lower in 2002-06.

7) A revenue support is necessarily a production support because any revenue results from a price times a production volume. Which led Daryll Ray to say: "Rather than being triggered by one coupled variable, it is triggered by two. Can't imagine the WTO being happy about that"³.

8) The Appellate Body's ruling in the cotton case that direct payments cannot be put in the green box applies also to the new BB condition of being "Direct payments that do not require production". This condition can be interpreted as allowing to produce any type of agricultural product – a full production flexibility – or not to produce any. Indeed if CCPs were not granted a full production flexibility, then they would have a more than minimal effect on production, a contradiction with the basic criterion of Annex 2 paragraph 1. This lack of full flexibility (the interdiction to grow fruits and vegetables and wild rice) was also the reason why the production flexibility contracts payments and the fixed direct payments were ruled not being in the green box, thus being in the amber box (because they are necessarily somewhere), and also the reason why USDA has tried, in vain, to convince Congress to grant a full flexibility to the fixed direct payments.

9) It would be difficult for USTR to notify CCPs in the new BB as it has already notified

³ Daryll Ray, *USDA's farm bill announcement dashes expectations of WTO compliance*, February 2007, APAC, University of Tennessee.

them up to 2005 in the non product-specific AMS.

10) Another reason why the CCPs cannot be put in the new BB is that a significant part of them is granted to feed grains, thus are input subsidies which are in the amber box for the developed countries⁴.

11) Additional comments may be found in "*Solidarité's comments on ag modalities revised draft of 8 February 2008*" of 21 February 2008 (ask for a copy because Solidarité has not replaced its webmaster since January 2008).

12) For all these reasons it is clear that any proceeding at the WTO against the new BB or the ACRE program is sure to put them in the amber box. Furthermore, as the Appellate Body has ruled in the cotton case that CCPs are product-specific, they should be notified in the product-specific AMS and not in the non-product-specific AMS.

⁴ J. Berthelot, *The huge lies in the US notification of its agricultural trade-distorting domestic supports from 2002 to 2005*, Solidarité, 3 January 2008.