TACD

TRANS ATLANTIC CONSUMER DIALOGUE — DIALOGUE TRANSATLANTIQUE DES CONSOMMATEURS

Multilateral Disciplines to Phase Out Agriculture Dumping

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.

> "United States Dumping on World Agricultural Markets", Institute for Agriculture and Trade Policy (February 2003)

Price support, when combined with export subsidies, and other supports, lead effectively to the dumping of EU food on the world market. This damages a great number of less developed countries and other countries outside the EU. EU consumers and taxpayers are forced to finances policies that damage developing countries.

> "Reform of the Common Agricultural Policy" BEUC, the European Consumers' Organization" (26 November 2002)

Only arguments linked to the budget or potential trade conflicts are able to prompt reform of support systems. The consumer issue as such is not sufficient, nor really relevant, to policy makers . . . We are therefore finding ourselves fighting on a field chosen by others and with concepts defined by them. Perhaps a transatlantic consumer initiative could change this situation.

> "Agricultural policy reform process – a role for consumer concerns?"
> Rasmus Kjeldahl, Danish Consumer Council
> TACD discussion on agriculture policy, Washington, DC (28 October 2002)

Overview

As the quotes above suggest, member organizations of the TransAtlantic Consumer Dialogue believe that agricultural export dumping is a scourge that must be eliminated if developing countries are to have the opportunity and means to strengthen their food security and increase rural employment. TACD believes 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. In the vernacular of trade negotiators, this is an ambitious goal. But unlike the current bitter 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 members of the Organization for Economic Cooperation and Development (OECD). 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.

The case for a change of approach

This paper proposes to shift the framework and objective of the present debate over domestic support rules and all forms of export subsidies in the AoA negotiations. There are several reasons why such a shift is needed.

First, as noted above, "consumer issues as such" have not been policy drivers powerful enough to bring about fundamental change in the domestic support and export subsidy policies of the European Union and the United States. For example, though under the EU Common Agricultural Policy (CAP) reform, it is proposed that domestic support payments decoupled from production be disbursed subject to farmer compliance with consumer-oriented conditionalities, it is not clear that the plan can be implemented with transparent and objective criteria. The theory that decoupling direct payments from commodity specific production would reduce overproduction, support prices and orient production to consumer demand failed in the implementation of the 1996 U.S. Farm Bill.[1]

The main reason for this failure is that U.S. farmers responded to the commodities price collapse since the Farm Bill's implementation by planting nearly all legally available acreage.[2] In 2002, a new Farm Bill sought to compensate for the failure of decoupling in the 1996 Farm Bill with counter-cyclical payments that rise and fall as market prices change, to ensure a steady income to qualified agricultural producers . The European Commission highlighted this policy in their critique of the 2002 legislation: "(A)s the main thrust of the [U.S.] subsidy regime is "counter-cyclical", it has the effect of canceling out market signals. This means that farmers will continue to over-produce in times of surplus."[3] The U.S. will thus continue to supply agribusiness in EU member states with feed ingredients at dumped prices, enabling EU meat and dairy exports at below the cost of production.[4]

The CAP reform proposes to gradually reduce and decouple payments, imitating the 1996 US Farm Bill. The U.S. has welcomed this proposal as a "step in the right

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[1] Daryll Ray, "Farm Policy Objectives and 1996 Farm Bill Premises," in *Food and Agriculture Policies of the United States*, ed. L.C. Polopolus and C. Fountain, Proceedings of the American Agriculture Economics Association (August 2001), 55-77.

[2] Daryll Ray, "Total acreages' response to price is the "REAL" supply response issue," AGRICULTURAL POLICY ANALYSIS CENTER, 15 November 2002 at http://agpolicy.org/weekcol/119.html

[3] "Questions & Answers – US Farm Bill," European Commission memo, 15 May 2002 at http://europa.eu.int/comm/trade/pdf/farmbill_qa.pdf

[4] For a brief history of the European Union policy of dependence on the United States for animal feedstuffs ingredients, see "Alimentacion animale: un problème central de la Politique Agricole Commune," Conféderation Paysanne Européenne (March 2003), also available in English.

direction."[5] It is not at all clear that the reformed CAP will prevent over-production and resultant dumping. The policy driver for adopting "decoupled" payments is that according to the theory of the AoA, decoupled payments are not "trade distorting" and therefore are regarded as WTO legal, even if their practical result is to contribute to dumping. As is documented below, U.S. agricultural dumping began before the 1996 Farm Bill, but AoA legitimated "decoupling" is among the policy instruments that have enabled more widespread dumping.

A second reason to shift from debate over whose subsidies are more "trade distorting" to a discipline on dumping is that part of the impasse over the AoA negotiations is due to disagreement about how to reform a symptom, taxpayer subsidies of producers, rather than how to address the cause of the subsidies or to consider whom the subsidies actually benefit. The cause is an agribusiness-driven system in which structurally depressed prices for agricultural commodities benefit neither farmers nor consumers. Consumer coffee prices, for example, have hardly fallen in the wake of the collapse of the wholesale price of cafe that has devastated farmers. However, the companies that dominate the processing and sales of coffee to consumers, companies such as Starbucks, General Foods and Nestlé, have profited handsomely.[6] While an AoA anti-dumping discipline would not suffice to prevent all anti-competitive agribusiness practices, it would end one of the main advantages the current oligopolies have in keeping competition out of the market through access to under-priced commodities.

Third, the current deadlock in the AoA negotiations, particularly regarding the endless and futile debate over whose subsidies are most "trade-distorting," is unlikely to be resolved in a way that would reduce dumping without action by consumers and others.[7] It is all too likely that the "mood of despondency" among deadlocked negotiators in Geneva,[8] who see no political will for change, will be lifted by a U.S.-EU deal on "reform" that reconfigures some AoA provisions but allows their respective forms of dumping to continue. This was the outcome of the Uruguay Round negotiations. The IATP authors of the dumping report note, "the structure of the AoA successfully deflects criticism onto the European Union for its heavy reliance on export subsidies, while managing to mask the extent of [U.S.] domestic support through dividing those expenditures into multiple categories."[9] The EU may be tempted to emulate U.S. Aggregate Measure of Support accounting practices as it implements the "cross-compliance" criteria that farmers must satisfy to receive decoupled payments.

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[5] "EU Agriculture Ministers Make First Criticisms of Proposed CAP Reform," INSIDE U.S. TRADE, 19 July 2002 and "Commission tables farm reform to give farmers a long-term perspective for sustainable agriculture," European Commission (IP/03/99), 22 January 2003.

[6] E.g. Rob Jenkins, "Wake Up And Smell The Coffee," THE GUARDIAN, 7 October 2002 and Charis Gresser and Sophia Tickell, "Pobreza en tu taza: la verdad sobre el negocio del café,"OXFAM INTERNATIONAL (2002) at http://www.comercioconjusticia.com

[7] E.g. "Zoellick Links Cancún Success, Ag Agreement to EU CAP Reform," INSIDE U.S. TRADE, 28 March 2003 and Fischler Sees Key WTO Agriculture Decision Slipping to Cancún," INSIDE U.S. TRADE, 24 January 2003..

[8] Ian Elliott, "WTO says missing deadline is likely, will put entire Doha Round in crisis," FEEDSTUFFS, 24 March 2003.

[9] "United States Dumping on World Agricultural Markets" WTO Cancun Series Paper No.1, INSTITUTE FOR AGRICULTURE AND TRADE POLICY (February 2003)

Fourth, the idea of shifting the framework from subsidies and supports to disciplines for phasing out agricultural dumping is starting to be of interest to some developed country agricultural policy officials. For example, Canadian Wheat Board officials are pressing the Canadian government to consider developing dumping disciplines for the AoA.[10]

Fifth, 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 we hope, use such an agreement 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.[11] Furthermore, "the United States agrees with the Panel that all economic costs should be included in the cost of production benchmark."[12], although the European Union and Canada disagreed.[13] The Appellate Body decision suggests that WTO members should discuss cost of production definitions and, once agreed, can move to take a political decision on agricultural dumping. In addition to bringing to an end the most invidious violation of trade principles, this approach would have the advantage that the WTO would not need to require notification about the minutiae of domestic agricultural policies, which is the competence and prerogative of national governments. Instead the WTO could concentrate its policy focus on trade measures, such as import tariffs and export dumping.

Developing a methodology for phasing out dumping

Although the definition of dumping as sales below the cost of production exists in the GATT[14], it is not the primary definition used in dumping cases. However, "considering that systematic underselling is one of the most obvious violations of free trade principles, it is puzzling that the GATT/WTO has never seriously tried to deal with dumping in agricultural trade. The general anti-dumping clause of the GATT [Article VI] is however, a weak one, primarily because the operative definition of export sales at a price below the "normal price" of the domestic market. Whether or not this domestic price correctly reflects actual cost of production is not considered."[15] Until recently, there was little prospect for phasing out dumping through WTO disciplines. However, in addition to the recent WTO Appellate Body decision against Canadian dairy subsidies mentioned above[16], another reason to hope

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[10] Ian Elliot, "CWB says Canada must push for a new dumping code," FEEDSTUFFS, 24 March 2003.
[11] "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.
[12] Ibid., para. 37.
[13] Ibid., para. 49.
[14] Article VI 1.(b)(ii) General Agreement on Tariffs and Trade (GATT 1947)
[15] Peter Einarsson, "Agricultural trade policy as if food security and ecological sustainability mattered: Review and analysis of alternative proposals for the renegotiations of the WTO Agreement on Agriculture," CHURCH OF SWEDEN AID, et al (November 2000), 15.
[16] "WTO Dairy Ruling Could Allow Cases Against Domestic Farm Subsidies," INSIDE U.S. TRADE, 3 January 2003.

for a dumping phase-out is the questionable credibility, transparency and methodological coherency of bilateral anti-dumping measures – see appendix 1.

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."[17]

This methodology does not attempt to factor in U.S. transportation and insurance subsidies for agribusiness nor the environmental, public health and social welfare costs associated with industrialized agricultural production. Despite these shortcomings, the virtue of the methodology is that it employs a widely agreed upon statistical model employed in OECD countries.

Using this 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 %."[18] 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.

Oxfam has also developed an "Export Dumping Estimate" indicator which assesses the gap between export prices and the cost of production and calculated the extent of dumping by the US and the EU of major agricultural commodities. The Oxfam calculations of EU dumping margins, though for different agricultural exports, are consistent with the dumping trends analyzed in the IATP calculations. 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.[19]

There are many challenges to converting this relatively simple dumping calculation methodology into an enforceable trade discipline. The debates over dumping methodology calculation in other economic sectors now taking place over the WTO anti-dumping and subsidies agreements[20] will no doubt reappear to some extent in negotiations on agricultural dumping. The methodology does not capture all of the

[17] "United States Dumping on World Agricultural Markets," (Annex 2), 20.
[18] Ibid., 3.
[19] E.g. *Rigged Rules and Double Standards: Trade, Globalization and the Fight Against Poverty*, OXFAM INTERNATIONAL (2002) 114-115..
[20] E.g. "Lamy says U.S. AD Changes Important For Doha, Hints At Delay," INSIDE U.S. TRADE, 7 march 2003 and "Proposals of Tighter Trade Remedy Rules Move Closer to Proposals," INSIDE U.S. TRADE, 7 February 2003.

costs of agricultural production. Furthermore, calculations of dairy, meat and fish exports that rely on feedstuffs made with dumped export crops will pose difficulties. The impact of crop yield on cost of production figures and the problem of assigning overhead costs, such as land values distorted by subsidies, will further complicate the methodology. Nonetheless, TACD believes that the methodology provides a good starting point for phasing out agricultural dumping in the context of the current WTO negotiations over the Agreement on Agriculture, the reform of the EU's Common Agricultural Policy and the implementation of the 2002 U.S. Farm Bill.

Conclusions

TACD believes that:

- agricultural exporting dumping is a scourge that must be eliminated if developing countries are to have the opportunity and means to strengthen their food security and increase rural employment;

- the decoupling of direct payments to farmers from production decisions has not and will not prevent dumping;the current deadlock in the AoA negotiations, particularly regarding the endless and futile debate over whose subsidies are most "trade-distorting," is unlikely to be resolved in a way that would reduce dumping.

Recommendations

TACD calls on the United States and the European Union governments to:

- lead a shift in orientation in the WTO negotiations on the Agreement on Agriculture towards developing enforceable rules to stop agricultural dumping

- support the development of the OECD's ongoing work on the costs of agricultural policies to develop a uniform methodology for calculating agricultural dumping margins based on the cost of production, and the annual publication of a report on agricultural dumping by OECD countries.

- ensure that both the OECD and WTO agricultural export dumping discussions and negotiations provide a scheduled and formalized opportunity for comment by all interested parties on discussion and negotiating texts.

Appendix 1

For example, the current U.S. investigation into alleged unfair practices of the Canadian Wheat Board,[21] 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.[22] This dumping calculation methodology, "which is on file in the Central Records Unit,"[23] was used after the plaintiffs failed to prove to Commerce that the CWB was dumping at below cost of production. Part of the reason for the failure is that U.S. bilateral dumping investigations interrogate individual producers on their COP, all of 27 producers in this case, rather than rely on uniform and transparent 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.

[21] 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

[22] "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.

[23] Ibid., p. 24709.