

GERMANWATCH

STOP DUMPING

PROMOTE FOOD
SECURITY!



GERMANWATCH



Imprint



Germanwatch e.V.
Dr. Werner Schuster-Haus
Kaiserstraße 201
D-53113 Bonn
Phone: 0049 228 60492-0
Fax: 0049 228 60492-19

Germanwatch e.V.
Voßstraße 1
10117 Berlin
Phone: 0049 30 2888 356-0
Fax: 0049 30 2888 356-1

<http://www.germanwatch.org>
info@germanwatch.org

Content

1	Preface Marita Wiggerthale	4
2	Dumping in the Agricultural Sector: An Introduction Marita Wiggerthale	6
3	The Historic Development of Antidumping Provisions within the Framework of the GATT Rudolf Buntzel-Cano	13
4	Food Dumping and the Human Right to Food Martin Wopold-Bosien	22
5	Agricultural Dumping in the Chicken Sector: The Case of Western and Central Africa Bénédicte Hermelin	26
6	Can't Do without It! The EU Is Dumping Dairy Exports on a Grand Scale Alexandra Burmann	30
7	Wheat Dumping by the European Union Uli Kleinwechter	37
8	The Dumping of Agricultural Products: Quantification and Interpretation Harald Grethe	45
9	Safeguard Instruments within the WTO – A Development Policy Analysis Marita Wiggerthale	53
10	Agricultural Dumping in the Political Discussion Uli Kleinwechter	66

Preface

For some time, dumping has been recognised as an unfair trade practice. In 1979, during the Tokyo Round of the GATT (General Agreement on Tariffs and Trade), an antidumping code was adopted. Since the beginning of the 1990s, antidumping measures have become the most-used safeguard instruments within the world trade system. Agriculture has long been an exception. Only with the establishment of the WTO and the concluded Agreement on Agriculture (AoA) were multilateral rules provided to regulate the trade in agricultural products. Nevertheless, dumping has continued to occur in agriculture until this day, and the rules of the AoA have been unable to prevent it. Moreover, the existing safeguard instruments do not provide sufficient opportunity for developing countries to protect themselves against dumping and cheap imports.

Due to agriculture support by a market price support system, increasing overproduction has occurred within the EU since the beginning of the 1970s. Between 1975 and 1988, the EU grew from a mostly food-importing actor to an increasingly important food-exporting actor. This was possible due to export subsidies, which amounted to annual US\$ 8-12 billion between 1988 and 1994. Export subsidies had and have no other aim than to artificially force down export prices of EU products to a level that is sometimes even below world market level. Thus, EU products are exported at prices below domestic production costs. Using this method, the EU gets rid of its surplus, shifting the burden to the agricultural sectors of developing countries. Consequently, hunger and poverty in rural areas are intensified.

Despite the proven negative effects on development policy, the problem of dumping has not yet been solved. Though the shift away from market price support systems launched by the McSharry reform of 1992, the establishment of the second pillar with the Agenda 2000, and the consequent continuation of the reform with the decisions of Luxembourg in 2003 are important steps towards more sustainability in agriculture, they will not be able to solve the dumping problem. Decoupled direct payment will surely result in an increased reduction of export subsidies, but the fact of dumping itself will remain.

This book tries to define the positions and to advance the search for possible solutions. One central question is the extent to which a quantifi-

cation of dumping is possible and how great the extent of dumping is. This question is vital in order to move on to the second step of progressively reducing dumping after it has been evaluated.

That dumping has been practiced even without subsidies and has had harmful effects is shown by the example of the poultry sector. But support for the demand to stop dumping comes from the human rights standpoint as well.

A historic analysis of the dumping debate in the GATT/WTO and the safeguard instruments included in these agreements shows that reforms and/or possible options for actions are needed. But in the end one question remains still unanswered: Why is dumping not addressed in the debate by political decision-makers despite numerous campaigns organised by NGOs? A survey conducted in Brussels attempts to answer these and other questions.

Marita Wiggerthale
April 2004

Dumping in the Agricultural Sector: An Introduction

by Marita Wiggerthale

I. Preface

If you meet representatives of farmers' organisations in the South and ask them about their problems, dumping and its negative consequences on domestic agriculture will be named regularly and emphatically. Trade companies export agricultural products from developed countries to developing countries' markets at prices below production costs in the country of origin, undercutting the prices of local agricultural products and consequently destroying small farmers' domestic markets. The fact that on average 56% of the population in developing countries earn their living in the agricultural sector¹ emphasises the social and economic significance of dumping. Furthermore, it must be taken into account that 80% of local crops in Africa, 50% in Asia and 40% in Latin America are grown by women.² Therefore, they are particularly affected by the destruction of local markets. It is paradoxical that 70% of the poor live in the countryside where food is produced. Thus, dumping is a factor that contributes to the exacerbation of poverty in rural areas. Consequently the slogan "Stop dumping!" is not only a dictate of economic reason but also a dictate of humanity.

II. What is Dumping?

Until 1995, the GATT (General Agreement on Tariffs and Trade) regulated the international trade in goods. With the establishment of the WTO, agriculture became part of international trade agreements. Accordingly, the definition of GATT Art. VI also applies to agricultural products. In Art. VI two definitions of "price dumping" are stated:

- Dumping exists if products are sold in an importing country at prices below the *normal selling prices* in the exporting country. (AD³, Art. 2.1)

¹ FAO (2001): *Mobilising resources to fight hunger*. CFS:2001/Inf 7. Rome, p.8.

² Zimmermann, Judith (2002): *The impact of women on food security*. In: MIJARC News. 21/2001. Bad Honnef-Rhöndorf, p. 12.

³ AD = Agreement on Implementation of GATT Art. VI, 1994.

- If normal selling prices cannot be determined, the second definition of dumping will be applied, i.e. if the selling price in the importing country is *below the production costs in the exporting country plus a reasonable amount for administration, marketing and overhead costs as well as profits.* (AD, Art. 2.2)

The latter definition applies to agriculture, as this sector is distorted due to market interventions by the government, and „normal“ selling prices, i.e. the prices that could be achieved under free market conditions, are difficult or impossible to determine.

III. What Causes Dumping?

The “Stop Dumping!” discussions usually centre on direct and indirect export subsidies, well-known as causes of dumping particularly due to NGO campaigns. But the modification of the subsidy regime alone, even the complete elimination of agricultural subsidies, would not be a sufficient prerequisite for the elimination of dumping.

Causes of Dumping	
-	Direct export subsidies
-	Indirect export subsidies
-	Food aid
-	Export credits
-	Private sector causes
-	Rejects/ “substandard products”

Along with the above-mentioned export subsidies, food aid and export credits also belong to the category of “export competition”. But international business enterprises also use unfair dumping practices. Until now, harmful market distortions in the agricultural sectors of the South, which can be attributed to the export of “waste products” of high-priced foods as chicken and rice, have been hardly taken into account.

a) Direct Export Subsidies

Direct export subsidies are “classic” export subsidies, paid to exporters in order to sell European agricultural products at prices below domestic prices on the world markets. They can be regarded as “obvious causes” of dumping. Their trade-distorting effect is undisputed among scientists and politicians of every persuasion, and the logical conclusion is the call for total elimination.

Export subsidies are an inherent element of the market price support system. Especially since the 1980s, this has resulted in surpluses for

which no domestic buyers could be found. Only export subsidies enabled a reduction of the growing stocks and an elimination of the surplus via the world market. Moreover, market price support could not ensure that the income development of farmers could keep pace with that of employees. So the market price support system was seen as being too expensive, too inefficient, too trade-distorting, and too destructive from the development and environment perspective: market price support became a recognized problem! Together with the widely supported or accepted abandonment of the market price support system, export subsidies, as its “coupled product”, belongs on the rubbish heap of agricultural support history.

With the reduction of intervention prices and the use of direct payments, both introduced in 1992, a downtrend in the use of export subsidies has been observed. In 2001, the EU spent only Euro 2.76 billion (compared to Euro 10 billion in 1991).⁴

	1995	1996	1997	1998	1999	1995-99
All WTO Members						
Liabilities in Mio. US \$	21,036	19,800	17,432	15,757	13,223	87,248
Utilisation in Mio. US \$	7112	7472	5606	6513	6360	33,063
Utilisation in %	34	38	32	41	48	38
European Union						
Liabilities in Mio. US \$	15,361	13,820	11,372	10,254	8857	59,664
Utilisation in Mio. US \$	6385	7062	4945	5968	5985	30,345
Utilisation in %	42	51	43	58	68	51
Norway						
Liabilities in Mio. US \$	147	134	109	90	75	555
Utilisation in Mio. US \$	83	78	102	77	128	468
Utilisation in %	56	58	94	86	171	84
Switzerland						
Liabilities in Mio. US \$	547	490	399	362	...	1798
Utilisation in Mio. US \$	447	369	296	292	...	1404
Utilisation in %	82	75	74	81	...	78
USA						
Liabilities in Mio. US \$	1168	1053	939	824	709	4693
Utilisation in Mio. US \$	26	121	112	147	80	486
Utilisation in %	2	11	12	18	11	10

Source: OECD calculations of export subsidies according to notifications in the WTO (2002)⁵

⁴ European Commission (2002): Facts and figures on EU trade in agricultural products: open to trade, open to developing countries. Memo/02/296, p.5.

⁵ OECD (2002): Agricultural Policies in OECD countries. Monitoring and Evaluation, p.49.

With reference to the reduction of the export subsidies granted farmer associations and the Commission tend to assume a less harmful development policy effect. But export subsidies amounting to Euro 2,760,000,000 cannot be regarded as “peanuts”. This is particularly the case when they are focused on products earmarked for export – namely milk, sugar, beef – and/or individual countries. But often small import quantities are sufficient to distort the market and drive domestic suppliers out of the market.

According to the WTO Agreement on Agriculture (AoA), member countries have hitherto committed themselves to restricting and reducing export subsidies. The establishment of new export subsidies is prohibited. 90% of export subsidies in OECD countries result from the EU.⁶ Thus, the EU is by far the biggest user of export subsidies! With the permission set out in the Agreement on Agriculture to continue their use “temporarily”, the WTO has legitimised dumping instead of prohibiting it. Consequently, a reform of the AoA is urgently needed. The Doha mandate that provides for a phase-out of export subsidies must be implemented. A deadline must be set.

b) Indirect Export Subsidies

In OECD countries, support to the agricultural sector increased rather than decreasing. While the total support amounted to US\$298 billion in 1986-88, it amounted to US\$311 billion in 2001 (calculated in TSE)⁷, with three quarters of this support going to farmers.⁸ The provisions of the AoA of the WTO do not provide for support restrictions. The AoA seeks to eliminate export subsidies, to reduce the aggregate support level (AMS – production-bound support) and to increase the restructuring of support into the so-called Green Box. It contains decoupled direct payments that are believed not to distort trade, or only to a minor degree, and those payments can be provided in unlimited amounts.⁹

According to Senti, all domestic support measures included in the Green Box are based on the principle that they “*do not distort the market; they change the profit (income) by changing the fixed costs, but have no in-*

⁶ WTO (2002): *Overview of developments in the international trading environment. Annual report by the Director-General. WT/TPR/OV/8, p.20.*

⁷ TSE = Total support estimate, unit of the OECD. TSE measures the total support to agriculture (from tax payers and consumers).

⁸ OECD (2002): *Agricultural policies in OECD countries: a positive reform agenda. Paris. S.5. “Three-quarters of these transfers are provided as support to farmers, accounting for one-third of their gross receipts, with general expenditures on items such as research, marketing and infrastructure accounting for the rest.”*

⁹ See also Wiggerthale, Marita (1999): *The EU Agricultural Policy in the Framework of the WTO. Oldenburg.*

fluence on marginal costs or the supply curve and consequently on market price and the volume produced and traded."¹⁰ Viewed in the short term, this consideration might be justified, but in the long run all costs will be variable costs. He supported his statement by asserting that in the long run these domestic support measures will have the effect of external cost savings, shifting the supply curve to the right and increasing the supply volume given predetermined prices.

In related literature the opinion is held that it is impossible to support agriculture without distorting effects and that any support would influence relative prices, even if the subsidies are not linked to product prices.¹¹ Characteristically, deficit-financed support expenses and the subsequent increase in national budget deficit influenced relative prices by changing the structure of aggregate demand, independent of whether support was provided as a product-related price-distorting subsidy or as direct payments. As a result, the question is not whether direct payments cause price distortions but whether the extent of distortion is substantial.¹²

In this context the question arises as to which kinds of governmental support can be identified as "subsidies" and which not. The EU Commission defined subsidies as payments that aim at improving a market participant's market position and not at paying for a service.¹³ Therefore, payments in the framework of agri-environmental programmes do not constitute subsidies in an economic sense. However, this position of the Commission is disputed: "There are questions as to whether or not this approach constitutes a subsidy to producers or whether the payments do indeed reward farmers for the private provision of public goods."¹⁴ The following definition, however, is undisputed: The government (as subsidy provider) grants payments or a non-cash benefit to private sector subjects (subsidy recipient). In return, the subsidy provider demands, or at least expects, that the subsidy recipients will demonstrate a certain behaviour, realised (requirements for receipt) or yet to be realised (requirements for use).¹⁵

In the context of the debate on dumping centred around the Green Box it will be necessary to reach an understanding on the issue of which

¹⁰ Senti, Richard (1995): *GATT-WTO. Die neue Welthandelsordnung nach der Uruguay-Runde*. Zürich, p.7.

¹¹ Sayan, Serdar und Tin, Ela (1998): „Green Box“ Measures for Agricultural support: How decoupled can they really be? *An investigation within SAM and CGE Framework*, p.1.

¹² Ibid.

¹³ KOM (1998): *Evaluation von Agrar-Umweltprogrammen. Anwendungsstand der VO 2078/92. Arbeitsdokument VI/7655/98*. Luxemburg, p.115.

¹⁴ ECOTEC Research and Consulting Limited (1998): *Agri-environmental Policy and Economic Instruments. A Final Report to DGII of the European Commission*, p.32.

¹⁵ Wieberneit (1997), p.83.

government payments can be classified as “subsidies” and which payments should be maintained as “regulation instruments” for sustainable rural development, even if the trade-distorting effect cannot be completely eliminated. Concerning the latter, the determination of relevant criteria could help to minimise this effect as much as possible. Partly decoupled direct payments of the Blue Box are direct export subsidies, as well as decoupled direct payments. An analysis of direct payments in the cereal sector found that they contribute to the dumping of 32% substantially (See article page 37). Furthermore, there is still no proof that Blue Box subsidies will really result in a reduction of production.

c) Private Sector Causes for Dumping

The concentration of market power is, according to the ETC group, one of the main characteristics of global economic power. During the last ten years a significant concentration process of “corporate power” has taken place in all sectors. The world-wide value of mergers and takeovers rose from US\$462 billion in 1990 to US\$3500 billion in 2000.¹⁶ The 32 biggest traders in the food business hold a 34% share of the total global food business, which comes to an estimated US\$2800 billion. These figures point to a serious development in agri-business whose effects should be further examined.

From the viewpoint of competition policy, the increasing process of concentration among enterprises constitutes a problem, as concentration is followed by the accumulation of market power by players in the hands of a few companies. The results are oligopolies and the associated market structures. This market power also plays a role in dumping, because the private sector causes of dumping can mainly be identified as (1) exerting market power on the domestic and/or foreign market and (2) attempting to drive competitors out of the market by means of aggressive price war. After having achieved a dominant market position, the company increases the prices again, which allows the company to increase its profits significantly (predatory pricing).

d) Rejects or “Substandard Products”

With quality management systems on the rise in the food marketing sector – accelerated, among other things, by the rapid spread of supermarkets in Latin America and Asia – agricultural markets are more and more fractured on the national and international level. Formal marketing is interested only in standardised and certified high-price segment products. Rejects or portions of the product not sellable domestically (“sub-

¹⁶ ETC group (2001): *Globalisation, Inc. Concentration in Corporate Power: The Unmentioned Agenda. Winnipeg/Kanada.*

standard product) on these segmented markets are sold on developing countries' informal markets at dumping prices. This development harms farmers who cannot qualify for certification – i.e. the majority of traditional farmers – in two ways: They are driven out of formal marketing channels on the domestic as well as the export market, and remaining residual markets, for example the export market for substandard products, are destroyed. This trend, set chiefly by the private sector economy, is difficult to control, and WTO rules are not effective in this case. The damage to local markets in the South occurs especially in those product segments that are supported by governmental quality and safeguard programmes and enjoy first-rate legal treatment in developed countries. However it might be difficult to furnish the necessary proofs for dumping.

IV. Conclusions

To achieve the goal of “stopping dumping!” a debate on the complexity of the dumping problem is indispensable. The threat to small farmers, the intensification of hunger and poverty in rural areas and the violation of the fundamental human right to food are reasons enough to address the problem of dumping in a firm manner! These negative effects of dumping have been elucidated repeatedly in several papers and case studies.¹⁷ There is an ongoing shortage of investigations and analysis, especially in regard to private sector causes of dumping. In view of the growing market concentration, this area must receive more attention in the future.

In political discussions in the context of agricultural negotiations in the WTO, the problem of dumping cannot be considered separately from the question of market access requirements for developing countries. At the start of the negotiations, many developing countries demanded that they be obliged to further open their markets only once the dumping problem, or the relevant trade-distorting subsidies, is “eliminated”. The Derbez text contains only a weak version of this position in §7 under the category “Miscellaneous” as “interpillar linkages”. Because of its great importance for development policy, it is crucial to return it to the agenda of the WTO agricultural negotiations. In this book the question of safeguard instruments is also discussed.

¹⁷ Siehe u.a. IATP: *Managing the invisible hand. Markets, Farmers and international trade. April 2002.* IATP: *United States Dumping on world agricultural markets. Cancun series Paper no.1. Oxfam: Stop the dumping! How EU agricultural subsidies are damaging livelihoods in the developing world. Oxfam Briefing Paper 31. October 2002.* Action Aid: *Farmgate. The development impact of agricultural subsidies. CAFOD: Importation of Milk Solids into Jamaica from the EU. Oxfam: Milking the CAP. How Europe's dairy regime is devastating livelihoods in the developing world. December 2002.* Germanwatch (2003): *Baumwollanbau im Norden verschärft die Armut im Süden.*

The Historic Development of Antidumping Provisions within the Framework of the GATT

By Rudolf Buntzel-Cano

While dumping is generally prohibited in international trade, the dumping of agricultural products is actually permitted by an absurd provision, GATT Art. XVI.3. The history of this article is the history of an unparalleled seizure of power over world markets, and illustrates how the EU and the USA set themselves up as controllers of the bread baskets of the world.

GATT allows Dumping on Commodities

*What is stated in GATT Art. XVI.3 ? If, however, a contracting party grants directly or indirectly any form of subsidy which operates to increase the export of any primary product from its territory, such subsidy shall not be applied in a manner which results in that contracting party having **more than an equitable share of world export trade in that product**. The definition of this “primary product” fully covers all commodities.¹*

This means that a country – if it has the political, economic and financial wherewithal – may seize its “equitable share of the world market” by means of subsidies. But of course this is only possible for large, rich exporters of commodities, first and foremost for the USA and the EU. GATT articles represent the fundamental law of the WTO; they overrule all other provisions of all other treaties. Consequently, any attempt to fight commodity dumping within the WTO must aim at removing this article.

There is a second exception to the GATT articles on agriculture that is also important for subsidised exports – Article VI.7. This exception

¹ A “primary product” is understood to be any product of farm, forest or fishery, or any mineral, in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade (Notes and Additional Provisions to GATT Article XVI).

states that a **system for the stabilization of the domestic price or of the return to domestic producers of a primary commodity** may result **at times** in the sale of the commodity for export at a price lower than the comparable price charged for the like commodity to buyers in the domestic market. But in order to not result in material injury, consultation among the contracting parties substantially interested in the commodity concerned, i.e. competing exporting and importing countries, should be held and exports must not be stimulated unduly. This exception is far less problematic, though it is also very much subject to interpretation: What does “at times” mean? And what is “unduly”? What is a system for the stabilization of the domestic price or of the return to domestic producers of a primary commodity? And what is meant by consultations? This paragraph is the basis used prior to the establishment of the “Blue Box” in the framework of the Agreement on Agriculture of the WTO.

However, all relevant appeal procedures and political negotiations have referred to the provisions provided in Article XVI.3, though Article VI.7 also played a certain role, especially in regard to the voluntary restriction of support programs regarded as necessary.

The Origin and History of Article XVI.3

Article XVI.3 is totally inconsistent with WTO logic and is unreasonable, at least from today’s perspective – particularly from the angle of development policy. How was it possible for such an obvious violation of the rules of fairness to be introduced in an intergovernmental treaty of such scope and last until today?

The provision was initiated by the USA; agricultural subsidy programmes in the framework of the New Deal of 1932 were based on a similar formulation. Its purpose was to help the US agricultural industry overcome the economic crisis by means of an export offensive.² And the target was: “to regain the equitable share in world trade in cotton and wheat of the USA.” The USA suggested this principle in 1945 for the Havana Charter, where it was adopted by all other countries without any objections. The Havana Charter was defeated by the opposition of the US congress. The first GATT version, as a reduced version of the Havana Charter finally signed by 19 countries, provided only a notification obligation for export subsidies. This was demanded by the USA. The US was given what it wanted in order to make sure that they would come on board at all. But in return for that it had to abandon “its” Article XVI.3. As

² Cf. Bettina Hartwig, *Die GATT-Regeln für die Landwirtschaft, Agrarwirtschaft, Sonderheft 134, Frankfurt 1992*

net importers of food, the European governments wanted stronger discipline for export subsidies in general, but they did not want Article XVI.3. The result was a compromise between the two great powers.

In the beginning of the '60s, the exception in Article XVI.3 found its way back into the GATT as a result of the so-called Dillon Round. In the context of a broader-based negotiation packet, the USA was able to put its interests forward again. At that time, the EEC did not mount much opposition, as the structure of a Common Agricultural Policy had been created, and the European market regimes needed the commodity export as an outlet valve.

The US trade law, which fell under the "grandfather clause" under the GATT, provided for the possibility of imposing countervailing and anti-dumping duties on imports without furnishing proof of injury. This was a provocation for all international trade actors. To eliminate it, the EEC and many other GATT contracting parties insisted on the stricter regulation of subsidies and export support in the '60s. In 1967, the GATT appointed a working group on this matter. But only in 1979 was a draft treaty worked out and subsequently signed by 26 countries, including 6 developing countries, in 1984. This treaty became part of the Tokyo Round.

On the basis of three decisions of the GATT dispute settlement body, this so-called "Subsidy Codex"³ attempted to make Article XVI.3 more operational. By that time, the competition between the emerging commodity export power EU and established exporters was already in full swing.

In Article 10.2, the Subsidy Codex provides a definition of the rule "more than an equitable share of world trade." To determine this, the following criteria must be taken into account: a) predatory competition with a competing supplier; b) the development on global markets; c) if new markets without established market shares are concerned, world market shares shall be the basis of comparison; and d) the last three years are taken as the basis of comparison. Article 10.3 stipulates that subsidies must not result in the prices of exported subsidised goods falling significantly below the prices of other suppliers in the same market, because it stipulates that subsidies aimed at promoting social and economic political goals are legitimate, important and indisputable. With this paragraph, the basis for the subsequent establishment of the Green Box was laid down in the WTO Agreement on Agriculture.

It was an irony of history that the USA, initially a proponent of Article XVI.3, now sought to clarify this article in order to put the European

³ *Agreement on Interpretation and Application of Article VI, XVI and XXII; Cf. GATT, The Texts of the Tokyo Round Agreements, Geneva August 1986.*

Community in its place. By contrast, the EC did not want to make any concessions on the existing rule set in Article XVI.3, though the European countries had categorically rejected the article 20 years ago. The dispute settlement case US versus EC on wheat flour exports played an important role in this turnaround.

Appeal Procedures Concerning Article XVI.3

There were many conflicts within the GATT regarding Article XVI.3, but there were only three cases in which actual appeal procedures with subsequent dispute settlement decisions were filed. The reasons and decisions relating to these dispute settlements speak volumes about the problematic nature of the rule.

In 1958, Australia filed an appeal against France on the grounds that France subsidised wheat and wheat flour exports. Australia felt driven out of its established markets in Ceylon, Indonesia and Malaysia. France defended itself by explaining that it had already been a major wheat exporting country prior to the Second World War; France was just recovering from the slump caused by that war and wanted to re-consolidate its position as fifth-largest cereal exporter. The dispute settlement body came to the decision that there was a causal connection between the French export subsidy regime and the increase in French wheat and wheat flour exports; thus, the fact of “gaining a more than equitable share of global trade” applied. It found evidence that Australia had been driven out of those markets by France. Due to this decision, France and Australia agreed to share the South- and Southeast-Asian market between them by supply quotas.

In 1978, Australia and Brazil took action against the EC’s export subsidy regime for sugar on the grounds of Article XVI.3.⁴ The panel decided that it was impossible for the panel to determine beyond all doubt whether the EU had exceeded its equitable share in global trade or not, because many new factors had to be taken into account during that time period, such as new preferential treaties, the ratification of the International Agreement on Sugar, and the novelty of the EU sugar regime (introduced in 1968). Additionally, the panel made a very critical statement: the EU sugar regime did not contain effective restrictions in regard to production, support price and export volume. Thus, it could be understood as a “threat of serious injury”. One year later, on November 10, 1980, the contracting parties of the GATT adopted the panel report. The

⁴ In 2003, the same countries filed a very similar action at the WTO against subsidised export of sugar from the EU.

EC was asked to consider possibilities to restrict its subsidies on sugar exports. Shortly thereafter, the EC enacted the rule on the budget neutrality of its sugar regime and regarded the matter as settled. The other exporting countries, however, did not. The proceedings came to nothing.

The third case was filed against the EU by the USA. In 1981, the USA appealed at the GATT Subsidy Committee regarding EC export subsidies on wheat.⁵

Furthermore, the USA claimed that the EC was intentionally undercutting prices of other suppliers of wheat flour on third country markets. The USA listed five cases where they could furnish proof that the EC's supply prices were far below the prices of other suppliers on the same market. It said in the cases in question the EC had set the export subsidies on wheat in an absolutely arbitrary fashion. Furthermore, the EC cereal regime had no restrictions regarding price support and production and export volume. In that respect, its regime would be a permanent source of uncertainty for other countries.

The panel found that – given a certain revision of the US figures – an enlargement of the EU global wheat market share from 24% (1963/64) to 62% (1980/81) had in fact taken place, while the US share had fallen from 40% to 18%. “Therefore it is evident that the EEC’s share of world exports of wheat flour has become larger over a time period when payment by the EEC of export subsidies was the general practice.”⁶ Despite a proven severe seizure of power over world markets, one that could not be more evident, the panel said in defence of the EC that many exports from the EC had been delivered to small and new importing countries – i.e. African countries and the Middle East – that acted only sporadically as buyers. The EC maintained regular shipping routes to these countries, and thus the EC had a natural advantage when supplying these countries with goods. Additionally, commercial supplies were mixed with licensed supplies and partly even with humanitarian supplies.⁷

The panel stated further: Although the EC's share increased at the same time as the US share decreased in 12 out of 17 selected country markets, the panel did not find that the fact of being driven out of the market

⁵ *As the Subsidy Codex had been already adopted at that time, disputes concerning the Codex were transferred from the General Committee to the Subsidy Committee of the GATT.*

⁶ *GATT, Document SCM/42, 21.3.1983, p. 33, quoted from: B. Hartwig, p. 172*

⁷ *The panel accepted these arguments as an excuse, though they are alarming from the development policy perspective, as Africans had obviously been systematically persuaded by the EC to switch from their own cereal basis to imported wheat flour.*

was “evident” according to Article 10.2(a) of the Subsidy Codex, because on the whole entirely new markets with high growth rates had been affected. Therefore, the panel was not capable of deciding whether the EC had gained a “more than equitable share of world markets” by means of export subsidies.

War on Cereals between USA and EU

After attempting to put the EC in its place as a cereal exporter, the USA shifted to applying an aggressive export strategy. The USA increased its aggressive instruments of export support and used them in a targeted manner: the Export Enhancement Program (EEP), the Food Aid Program (PL480) and the Export Credit Program. Thus, it managed to drive the EC out of one of its selling markets, which the EC had assumed to be secure, by providing heavily subsidised supplies of 1 million tons of wheat flour to Egypt in 1983. As a result, the EC reacted rather angrily by making its cereal export policy more aggressive as well.

As late as 1983 Stefan Tangermann, a leading agronomist now employed by the OECD, asserted: “Policy makers in the Commission have never really taken any interest in agricultural trade. In CAP thinking, trade is a variable that is dependent on domestic policies, but not an instrument variable or an objective in itself.”⁸ For a certain time, the export of agricultural products had been in fact an expensive appendage to regimes that were primarily “inward oriented.” During this phase, the only purpose of export was the most cost-effective exploitation of unplanned surpluses. Astonishingly, the EC has been able to maintain this image to this day though it has long since become a fiction.

Phillips holds the view that from 1973-1979 EU policy made a complete about-turn in regard to the world commodities trade and the GATT. Until then, EC foreign trade policy regarding to trade in agricultural products had been regulated by its net import position. In 1979, however, export interests began to dominate, at least concerning cereals.⁹

While in 1979-81 the EC still imported an annual average of 8 million tons of cereal, it was already exporting 22 million tons in 1989-91. The policy change was clearly expressed in the EC’s negotiating position during the Tokyo Round, where the EU suddenly supported the full continuation of Article XVI.3, as it also did during the negotiations for a new International Agreement on Cereals in 1978.

⁸ Quoted from: Petr W.B. Phillips, *Wheat, Europe and the GATT – A Political Economy analysis*, London 1990, p. 135

⁹ P.Phillip, p. 145



Foto: www.vixpix.de/veith

In the late '70s and early '80s, the EC faced serious surplus problems due to enormous increases in cereal yields. A European agricultural policy dispute broke out regarding future cereal policy. The options were to either keep prices high but introduce production controls, as applied in the case of milk in 1984, or to lower cereal prices and pursue an aggressive export policy. In 1980, for the first time, the Commission made the proposal to harmonise EC cereal prices with world market prices. The Commission tried to facilitate the price and intervention system for targeted cereal export by modifying administrative provisions in multiple ways in order to bring France and Germany closer together, as the positions of the opposing parties had become entrenched.

Only in 1986 – when the Uruguay Round started – was a clear decision made, once prospects of a new strategy seemed to open up: The 3% share of responsibility charge on cereal was introduced. It was meant to eliminate incentives to farmers to produce more; at the same time, the charges were used to open new sales opportunities. In 1989, the EC spent ECU 2.7 billion for cereal export subsidies, but at the same time it took in ECU 1.1 billion through the share of responsibility charge. Simultaneously, intervention was capped at 160 million tons for cereal, and a so-called budget stabilising charge was introduced. In the parallel negotiations of the Uruguay Round, which ended in failure with the mid-term review in Montreal in 1988, the EC moved toward significantly safeguarding its position in regard to agricultural exports.

In 1983 the EC enlarged its tool box of aggressive instruments by establishing so-called "special reimbursements." With these instruments it sought to counter the USA, which was overrunning the Egyptian market by means of its aggressive instrument – the Export Enhancement Program (EEP). Though originally planned for one case alone, it came to be applied more and more often: in 1986 against the USSR, in 1988 against the People's Republic of China, always as a reaction to US offers under the EEP. 1981 saw the establishment of export reimbursements that were based on the raw material share of processed agricultural products. Beginning in 1980, the Commission urged the Council of Ministers to allow long-term supply contracts with certain importing countries by providing export reimbursements, clearly in order to occupy markets. North Africa was the targeted area. The plan failed due to the opposition of some EC member states, as did the proposal to start an export credit program within the EC. But the French cereal lobby managed to persuade the French government to start on a national level those programs which had not been introduced Europe-wide. The EC Commission did not intervene.

The EC had always regarded the African market, right on its doorstep, as a traditional market for their export interests. Thus, there were even attempts to divide the world into three spheres of interests among the major cereal exporters: Africa should fall to the Europeans, South East Asia to the Australians, and Latin America to the Americans.¹⁰ In fact, between 1976 and 1989 Africa showed enormous growth rates regarding agricultural imports from the EU.¹¹ But the market was heavily contested, and USA and EU entered a subsidy race in this case as well. In 1993/94 alone, the EU paid US\$110 million in export reimbursement for cereal exports to African countries south of the Sahara, amounting to 1.1 million tons of wheat, which was more than the official EU development aid to the rural development of Africa.¹² The studies by Walter and Braun/Koester¹³ come to the same conclusion, that severe predatory competition took place between the cheapened wheat imports from the EU and the local cereal growers, that African markets were systematically conquered, and that the local urban population changed their traditional eat-

¹⁰ *The Federal Minister of Agriculture Ertl wanted to pursue that during the negotiations on the International Agreement on Cereals; cf. P.Phillips, p. 162*

¹¹ *Cf. Bernhard Walter, Die Auswirkungen der EU-Agrarexportsubventionen auf die Landwirtschaft der Entwicklungsländer am Beispiel der Getreideexporte nach Afrika, in: epd-entwicklungspolitik, Materialien I/94, p. 9.*

¹² *Cf. Walter, S. 20*

¹³ *J.von Braun/U. Koester, Assessing Coherence between the common Agricultural Policy and the EU's Development Policy: A Case of Cereals in African ACP Countries, Final Report to the EU-commission, unpublished manuscript, 1995, p. 2-5*

ing habits from coarse domestic cereals to food based on wheat flour imported from Europe. But without complaint, there is no redress. The cheap food supply met with the approval of African governments.

What about the Exception Article Today?

The WTO Agreement on Subsidies and Countervailing Measures, adopted in Marrakech in 1995, has maintained the exceptional status of agriculture to this day. Its Article 3 prohibits export subsidies, but excludes agriculture, as long as the WTO Agreement on Agriculture (AoA) makes no other provisions. Though the AoA provides for reduction obligations in regard to agricultural export subsidies in Article 9, it legitimises all agricultural export subsidies below this expense and quantity regulation for individual countries in Article 8, even if export subsidies are otherwise not subject to the contract. 25 WTO member states have the permission to continue to grant export subsidies to agricultural products for which they also made reduction commitments concerning agricultural export subsidies; the other countries are not permitted to grant any export subsidies at all. These 25 countries include only 8 developing countries, but all of them are OECD countries. The “sinners” of yesterday are given a blank check to commit further, though more lessened, “sins” by dumping. From the view of trade law, both new WTO agreements constitute a circular argument: one agreement refers to the other’s exception rules concerning export subsidies in agriculture and vice versa. Thus, nothing has changed: the regulations provided in the GATT articles still apply.

Conclusions

The WTO adopted the rules for the legitimate dumping of agricultural products - rules that are extremely contradictory to the free-market rules - part and parcel from the GATT. They were hatched by the USA and the EC at a time when only 9 developing countries were members of the GATT. All other developing countries that later joined the GATT or WTO had to swallow this unfair exception unconditionally. The exception is neither fair to developing countries, nor is it practicable for settling disputes among nations exporting agricultural products. This exception grants developed countries the license to seize their “equitable” share in global agricultural markets at the expense of developing countries, but not the other way round. The great powers in agriculture, USA and EU, have enjoyed their license to the full. Any campaign fighting export subsidies and the dumping of agricultural products must start with the demand to remove Article XVI.3 from the GATT treaty.

Food Dumping and the Human Right to Food

By Martin Wolpold-Bosien

Food dumping can result in violations of the human right to food. This article will analyse the conditions under which agricultural export subsidies conflict with the human rights obligations of exporting and importing countries. The example of food dumping is an especially clear illustration of the contradiction between international trade policy and UN human rights treaties. Ultimately, the question is whether the primacy of human rights in international law applies to institutions and measures taken in the context of international agricultural trade policy and whether this primacy is implemented.

For more than ten years, there have been detailed documentations on the conditions under which agricultural export subsidies provided by the EU and the USA can cause an intensification of food insecurity in African, Asian and Latin American countries.¹ To what extent does this situation represent a human rights problem?

The Human Right to Food and Obligations of Countries under International Law

The human right to adequate nourishment is established under international law in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).² The normative content of the right to food is that all people must have sufficient access to food that is adequate in regard to quality, quantity and cultural habits.³ As with all human rights, the implementation of this right centres on humans as its subjects: the heart of the matter is to enable humans to feed themselves.

¹ See also: Martin Wolpold-Bosien: *Die andere Eroberung. US-amerikanische und europäische Agrarexportpolitik und ihre Folgen für den Hunger im Süden der Welt*, Herne/Rheda-Wiedenbrück 1999, p. 131-190.

² By 2003, 148 countries had joined the ICESCR. More information on this subject is available on the homepage of the UN High Commission on Human Rights under International Covenant on Economic, Social and Cultural Rights (ICESCR): www.unhchr.ch.

³ See details in: General Comment 12: *The Human Right to Adequate Food*, commentary of the UN Committee on Economic, Social and Cultural Rights concerning Article 11 of the ICESCR.

Foto: WorldVision/Mikel Flamm



Baker Family in Bangladesh

With accession to the ICESCR, countries commit themselves to respecting, protecting and guaranteeing people's existing access to food. The national obligation to respect this right means first that they must refrain from taking any governmental measure that deprives people of their existing basis of nourishment. The national obligation to protect this right means that every country must protect these individuals and groups that are deprived of their basis of nourishment by third parties' infringements. The obligation to guarantee this right requires every country to use all its available resources to facilitate the necessary access to resources and income for groups threatened by food insecurity, or to fight imminent hunger in cases of emergency by providing food aid.⁴

Until now, these government obligations have mostly been applied to governments' actions and failures to act within their own territory. Due to the increase in economic policy interventions by intergovernmental organisations (such as World Bank or International Monetary Fund) and transnational private sector actors in nation states, over the past few years a new debate on extraterritorial obligations of governments has arisen. The issue debated is whether a Member State of the ICESCR is also accountable for specific measures in foreign countries if these measures result in human rights violations in these countries.

Firstly, a government's extraterritorial obligations regarding the right to food include direct government measures that result in undermining the food security of at-risk groups in third countries. Another application of these extraterritorial obligations is the participation of nation states in decisions by intergovernmental organisations that cause human rights vio-

⁴ *Ibid.*

lations in third countries.⁵ Furthermore, these extraterritorial obligations of governments also apply to transnational corporations based in their own territories, if their behaviour flouts human rights standards in third countries.

Food Dumping as a Human Rights Problem

With regard to the practice of food dumping, the obligations of governments to respect and to protect the right to food are of foremost importance. Firstly, in the context of their obligation to respect the right to food, the executing governments must refrain from any measure that decreases the prices of their agricultural exports in a manner that deprives vulnerable groups in the importing country of their already precarious basis of nourishment.

The highly subsidised export of beef from the EU to West Africa is now regarded as a “classical” violation of the extraterritorial obligation of governments to respect the right to food.⁶ Thousands of nomads in the Sahel were driven to starvation by European beef dumping. But the EU countries were not the only ones to come into conflict with their human rights obligations. The importing countries in West Africa also disregarded their obligation to protect vulnerable groups threatened by hunger against cheapened beef imports.

The human right to food means that importing countries have not only the right but also the obligation to protect threatened groups within their own territory against dumped imports, especially if these groups’ basis of nourishment is directly threatened by artificially cheapened imports. In principle, protective measures could be taken in form of duties, as well as in the form of direct payments to compensate the affected groups. However, hardly any low-income country in the Southern Hemisphere can afford to mobilise the financial resources necessary to counter dumped imports from the North and adequately compensate affected farming families.

⁶ See also: Frank Braßel/Michael Windfuhr: *Welthandel und Menschenrechte*, Bonn 1995, p. 68-74.

⁵ Thus, in September 2001 the UN Committee on Economic, Social and Cultural Rights encouraged the Federal Republic of Germany: “The Committee encourages the State party, as a member of international financial institutions, in particular the International Monetary Fund and the World Bank, to do all it can to ensure that the policies and decisions of those organizations are in conformity with the obligations of States parties to the Covenant, in particular the obligations contained in articles 2 (1), 11, 15, 22 and 23 concerning international assistance and cooperation” (quoted from: Concluding Observations of the Committee on Economic, Social and Cultural Rights : Germany, 24/09/2001. E/C.12/1/Add.68, no. 31.

The human rights criterion for agricultural trade policy discussed in this article by no means aims at supporting unbridled protectionism, as some critics might say. In the first place, the aim is to eliminate a dumping practice, as has repeatedly been demanded by liberalisation opponents. Moreover, the human rights argument by no means implies that every country should start to arbitrarily establish import barriers. The issue is rather that within the framework of the WTO and in close cooperation with the relevant bodies of the UN human rights system, transparent criteria must be developed and agreed upon to determine clearly when a trade measure starts to violate the human right to food and which tariff-related countervailing measures can be taken legitimately and in a verifiable manner.

Agricultural Trade Policy and Human Rights Treaties

Prior to negotiations on implementing the human right to food in the form of concrete agreements between Member States within the WTO, several fundamental questions must be clarified. The first is: to what extent are WTO Member States, which are also Member States of the ICSCR, aware that international trade in agricultural products is not off-limits to human rights? So far no explicit agreement on the acknowledgement and application of international law obligations regarding the right to food has been made within the WTO, though most WTO Member States committed themselves to the ICSCR by joining the WTO.

A second and equally important question is the evaluation of international trade law and UN human rights treaties. Though UN member states affirmed the primacy of human rights over other fields of law at the Vienna Human Rights Conference in 1993, it seems that the inter-governmental organisations that regard themselves as administrators of international monetary and trade policy have failed to get the message. Indeed, it seems that a long and difficult road must be travelled before the WTO – which means the majority of its members – will finally come to the decision to be accountable for UN human rights treaties, something that should be a matter of course from the perspective of international law.

The debate on the food dumping still practised and its disastrous consequences on vulnerable groups in the Southern Hemisphere can doubtless contribute to a growing awareness among policy makers and civil society of the fact that the human right to food must be embodied in international agricultural trade policies in a stable, explicit and precise manner.

The author, Martin Wolpold-Bosien, born in 1969, works as a political scientist with the international office of FIAN (FoodFirst Information and Action Network) in Heidelberg.

Agricultural Dumping in the **Chicken sector: The Case of** **Western and Central Africa**

by *Bénédicte Hermelin*

Since the beginning of the 90s, chicken exports from the EU to coastal countries of Western and Central Africa have increased significantly. Those exports are usually made of frozen cut pieces, such as neck, back, legs, and wings. EU consumers tend to eat breast rather than whole chicken, and there is no market in the EU for others cut pieces, except for pet food. European poultry processing industry has the choice between pet food and export to poor countries at low costs, to sell those residues. The increasing flows of low-cost meat in African countries generate unfair competition with domestic products, loss of income for local producers, and sanitary problems. Is it possible to speak about dumping in that case? Is it really unfair competition, or only a lack of competitiveness of African poultry producers in front of modern and rational EU poultry production?

The EU is the 3rd largest world producer of poultry. In 2003, 4 countries covered two thirds of the world production: the USA (23 % of total world production), China (19 %), the EU (12 %), and Brazil (11 %). Four countries represented 90 % of total world export (USA – 36 %, Brazil – 31%, EU – 15 % and Thailand – 8 %). The poultry world market is highly competitive, even if the global consumption trends to increase. The shares of Brazil and Thailand increase due to the lower cost of input for poultry production (animal feed mainly), and of work. The main import countries are Russia (20 % of total world imports), countries in the Middle East (15 %), the EU (12 %), Japan (9%), and China (8 %). Exporters led a trade war on domestic markets of those countries to increase their market share. The EU exports decrease on all markets, except in Sub-Saharan Africa, which represents now around 25 % of EU exports¹.

In contrast to other EU agricultural products, the EU support to poultry production is very low. There is no direct aid, no price support. One may argue that EU poultry producers indirectly benefit from the low cost of cereals and the CAP support to arable crops. Before the 1992 CAP reform, EU cereals were more expensive. The animal feed industry used

¹ All data from OFIVAL, 2004 – *Le marché des produits avicoles en 2003*

import products such as cassava pellets or starch, instead of EU cereals. Since 1992, the share of cereals in the animal feed industry has increased steadily, with no effects on the cost of poultry production. The only direct EU support is export subsidy. But since the im-

plementation of the WTO Agreement on Agriculture in 1995, the use of export subsidies to support poultry export has decreased very much. They are now only paid for exports of whole frozen chicken to countries in the Middle East, and cut pieces do not benefit from it.



Foto: BLE, Bonn/ Thomas Stefan

Exported poultry are usually produced in a very intensive way, with high negative impact on the environment. Frequently, antibiotics are distributed to chickens daily, and, in this case, are not used as medicines, but as growth hormones. Quality of meat is low in view of taste and sanitary standards. Due to systematic resort to antibiotics resisting germs have appeared. The costs of all these damages are carried by society in general, and not by producers. From this point of view, this may be considered as an indirect but important public support to poultry production. From the social side, the impact of industrial poultry production has to be balanced. Of course, poultry farming and processing industry is a source of employment. But jobs in the processing chain are often low qualified, with difficult working conditions and low wages. Regarding to others categories of farmers, poultry farmers are often badly off. Poultry farming is integrated that means that farmers highly rely on integrator companies. Such a company provides one-day chickens, feed, methods of production, and buy ready to slaughter chickens to farmers at a price decided by the company. In fact, by this kind of contract, farmers are closer to salaried workers than to independent managers.

In 2003, EU producers sold their chicken class A (lower grade) at an average of 1.48 Euro/kg. In France (the largest chicken producer in the EU), during the same year, consumers bought their chicken at 4.86 Euro/kg (average for this year, for all chicken qualities). At the same time, EU frozen cut pieces of chicken was sold at 0.50 Euro/kg FOB in African harbours (Dakar, Cotonou, Douala, and Abidjan), under the EU

² Source : *Le marché européen des produits avicoles – OFIVAL, 2004*

market price for whole chicken. This is allowed by the fact that there is no demand for those chicken pieces in the EU.²

In Africa, most of the poultry production is made at the household level with no cost of production (chicken feed themselves). Usually, women are in charge of poultry production, which is considered as a cash providing activity. Since the middle of the '80s, in some countries (Ivory Coast, Cameroon, Senegal), "modern" poultry production units emerged, mainly around cities, to feed urban consumers. Within ten years, poultry production had grown by 30 % in all Sub-Saharan Africa. But the competition from chicken imports stopped this trend. Thus, the imports rose from 6,000 tonnes in 1981 to 27,600 tonnes in 1990 and 112,500 t in 1999, mainly from the EU. Local producers sell their chickens at around 2.4 Euro/kg³. For household production, the consequence is a loss of income, mainly for women, who cope with this competition by cutting their price. As chicken production doesn't cost them money for feed, they do not lose money; but by cutting their prices, they cut their cash income, which increases their vulnerability.

The situation is different for modern poultry production, which needs to buy inputs such as one-day old chickens, feed, medicines, and needs investment for building. Here, the cost of production is around 1.98 Euro/kg (Ivory Coast and Senegal), and import frozen chicken pieces are sold on local markets at 0.82 Euro/kg. On these conditions, it is impossible for local production units to compete, and during the first half-year of 2002, 40 % of Senegalese production units gave up operation. In Ivory Coast, the national chicken production decreased by 25 % between 2002 and 2003. The decrease of local poultry production affects local production of maize or one-day old chicken, which lost outlets. The impacts are not only on poultry, but also affect beef production due to a phenomenon: substitution of cheap poultry imports for beef consumption.

The growth of imports induces sanitary problems, too. Imports are mainly frozen pieces sold to wholesalers then to retailers, such as fisheries, in urban markets. The frequent breaks in the cold chain due to the defeciveness of cold stores or energy cuts result in successive phases of frost and thaw; thus a favourable environment for germs is created. Inquiries made during the last months of 2003 by SAILD, a Cameroon NGO, had shown that most of frozen chicken wings or legs in retailers' fridges in Douala or Yaoundé were inappropriate for human consumption.

Several reasons can explain the huge growth of imports of pieces of chicken in Western and Central African countries. Firstly, the increasing

³ Source : *Les mesures de soutien aux cultures vivrières – Solagral, 2003*

urban demand: the spending power of urban consumers is low, pieces are adapted for street restaurants and local demand. It is now nearly impossible to eat chicken in Dakar or Cotonou but legs or backs. Secondly, the low levels of tariffs are insufficient to protect local production. In the WAEMU (Western Africa Economic and Monetary Union), since the 1st of January 2000, the rate applied on poultry imports is 20 %, the maximum level of the Common external tariff⁴. An efficient protection of local chicken producers shall require a level of 400 %! Due to the WTO Agreement on Agriculture, it is impossible for those countries to use the Special Safeguard Clause in order to protect their production threatened by EU exports.

Finally, the third explanation, which is not very optimistic for the future, is the modification of the structure of consumption in developed countries. The increasing demand for chicken breast instead of whole chicken obliged poultry firms to find a market for their residues. Russia was an outlet for EU export, until April 2003. At this moment, to protect its domestic producers, the Russian Government decided to implement import quotas, in order to limit the quantity of imports. Russia is able to take this decision, because it is not a WTO Member. After the restriction of access to Russian markets, Sub Saharan Africa became the main destination of EU cut chicken, and for Brazilian and US exporters too. In the future, the competitiveness of EU poultry production will probably drop because of competitive poultry production in Brazil and Thailand. The implementation of environmental protection and animal welfare requirements, and the increasing cost of feeding after the prohibition of ground offal will probably reduce the share of EU exports on world markets. Some EU poultry firms anticipated this trend and transferred part of their production to Brazil or South East Asia.

In summary: Frozen cut pieces of chicken have no value in the EU, because there is no demand and consequently no markets for these products. The only alternative market is pet food. If traders sell their products in Africa, it is because the price offers by African countries are higher than the price offers by pet food industry. So, it is economic dumping regarding the price of whole chicken, even if neither export nor production subsidies are paid. But the poultry industry does not carry the entire cost, the society as a whole does it, especially the costs incurring due to negative environmental impacts. And these pieces are residues, sold off on African markets. To face this dumping, two responses are possible, which have to be jointly used: to allow recipient countries to protect their markets by increasing their tariffs; implement in an efficient way corporate social responsibility to poultry companies.

⁴ *La politique agricole de l'UEMOA – Aspects institutionnels et politiques, Hermelin 2003.*

Can't Do without It!

The EU Is Dumping Dairy Exports on a Grand Scale

By Alexandra Burmann

The EU is the biggest supplier of dairy products on the world markets. Despite the success of a newcomer in the dairy business – New Zealand managed to more than double its exports – the EU, with nearly 40% of global trade volume, still dominates the market.¹ The EU has repeatedly been criticised for dumping on the world markets.

Especially with preserved dried products such as whole milk powder and skimmed milk powder (SMP), as well as with condensed milk, the EU has penetrated the markets of developing countries, where it competes directly with domestic producers. Every year, the EU exports approximately 40,000 tons of milk powder and sweetened condensed milk to the Francophone countries of West Africa. In 1999, one litre milk from subsidised milk powder from the EU cost 160 African Francs in Senegal, while one litre from domestic production cost about 350-400 African Francs.²

In Jamaica, the market share of domestic milk has decreased from 24% to 4.2% over the past ten years due to dried milk imports from the EU. Small farmers were especially hard-hit, with their production decreasing from 2.5 million litres to 300,000 litres within five years. Due to its dependence on trade with the EU in other products (bananas and sugar) and to existing WTO agreements, Jamaica cannot apply trade measures to prevent dumping.³

Quantification of Dumping

Dumping, which means selling products below their production costs, is caused by a combination of several factors, such as tax benefits, financial and investment assistance, price support and export subsidies. As a global player in the international milk business, the EU has great influence on the

¹ See Hemme et al. (2003: 123), *IFCN Dairy Report 2003. Braunschweig. Calculated in milk equivalents.*

² See Höhmann-Hempler (2000: 15), *Milch - BUKO Agrar Dossier 23. Hamburg*

³ See Wiggerthale (2003) *EU-Rabatt setzt Bauern matt. Kein Dumping von Lebensmitteln!* www.germanwatch.org

global milk price. Due to the annual overproduction of 20% of domestic consumption caused by milk quotas, the EU has contributed to a permanently low world market price, which has also raised EU export prices for milk.

The following calculation, prepared on the basis of Kleinwechter's framework (2003⁴) to quantify the dumping of EU wheat exports (see page 37), shows the scope of dumping regarding these exports.

Methodology⁵

To calculate dumping, all costs incurred up to the point when the products have reached the export port must be determined and compared to the export price. This includes the aggregate production costs of milk production, consisting of the individual economic production costs of the farms, input subsidies, tax benefits and financial assistance. Furthermore, the costs of processing milk into export products and transportation costs must be included in the calculation. The distortion of land leasing prices due to agricultural policy increases farmers' production costs and decreases dumping, and must consequently be subtracted from the individual economic production costs. SMP and butter are regarded as export products as they are characteristic world market products and because they are also products of the same processing process (fat and protein components of milk). Firstly, the dumping effect will be calculated for these two products and will later be extrapolated to all dairy exports where dumping is suspected.⁶

Due to lack of data and quantifications, such as external ecological effects and in-company transfers, some factors contributing to dumping must be ignored in the calculation of aggregate production costs. For other factors such as land leasing price distortions due to agricultural policy, a rough calculation was made. Besides the quantification of the dumping effect, the corresponding policy contribution to dumping was calculated. Thus, additional data on direct payments and market support were used. The data for individual economic production costs and land leasing costs are based on information from the International Farm Comparison Network (IFCN)⁷. The calculation of input subsidies, as well as

⁴ Kleinwechter (2003) *Dumping im internationalen Agrarhandel – Ursachen und Quantifizierung*. B.Sc.-Thesis. Göttingen

⁵ For detailed information see Burmann (2004) *Dumping bei EU-Agrarexporten – ein Quantifizierungsansatz am Beispiel Milch*. www.germanwatch.org

⁶ Exports of SMP and butter amount to 2.27 million tons milk equivalents. The total export volume (without cheese, for which no dumped export is assumed) amounts to 11 million tons milk equivalents.

tax benefits and financial assistance, uses data from the OECD, the European Commission, and the Federal Ministry of Finances. Costs of transportation and processing are calculated using data from the ZMP and information provided by dairies. In his study on wheat, Kleinwechter has outlined scenarios for different world market prices. This will be omitted here. Concerning world market prices (FOB West European ports) and foreign exchange rates (US dollar to Euro), averages of several years were used, as both cannot be regarded as representative for the period in question (2002.) In contrast to Kleinwechter, here the focus is on production costs of farms. All test farms of the IFCN are located in Germany, but differ widely in regard to farm size.

The Farms

The smallest farm (Bay 35) is located in Bavaria and is a pure dairy farm. The farm with 80 dairy cows in Schleswig-Holstein (S-H 89) has mostly dairy cows, and the largest farm (S-A 650) is situated in Saxony-Anhalt and has other operations besides its 650 head of dairy cows. Some data, such as details on other operations and feeding rations which would be important for an exact calculation of dumping, cannot be determined from the farm description of the IFCN. Thus, they will not be included in the calculation. The selection of farms was made on the basis of available production costs data. Whether milk produced in these farms has been in fact exported remains unknown. Rather, the farms are representative for a certain farm size.

Results

Table 1 shows that dumping on exports of SMP and butter from the EU has occurred on a grand scale. Because it has the highest production costs,⁸ the farm with 35 head of dairy cattle shows the highest dumping effect (57.8%), while the farm with 650 head of dairy cattle shows the lowest dumping effect (39.4%).

⁷ See Hemme et al. (2003), *IFCN Dairy Report 2003*. Braunschweig.

⁸ Based on information provided by Alois Burgstaller, dairy cattle counsellor in Austria, smaller farms often tend to overestimate the actual costs. Quantification of dumping is based, among other things, on production costs, which also include imputed costs besides variable and fixed costs (capital allowance, leasing costs etc.) The imputed costs do not represent real money flows but are estimates usually overestimated in smaller farms. Thus, the share of actual costs in full cost is mostly smaller, and consequently the dumping effect is less.

When examining dumping effects, it becomes obvious that the differences do not directly correspond with the head of cattle. The difference in the dumping effect between BAY 35 and the farm nearly twice its size, with 80 cows, (dumping effect 40.4%) is rather great. By contrast, the difference between S-H 80 and the farm with the 650 cows, which is eight times larger, is only marginal. This was confirmed by other studies showing that there are no considerable scale effects in dairy farming once the number of about 100 head of cattle is exceeded. Usually, the argument is that it is necessary to work with permanent employees when the production volume exceeds 100 head of cattle.

The share of the estimated actual costs in total production costs (full cost) is the greatest element of uncertainty in the estimate of the IFCN.

Table 1: EU Milk Export Dumping

Dumping Calculation	Unit	BAY 35	S-H 80	S-A 650	Constructed Average Farm
Individual Production Costs	Euro/100kg	49.91	33.64	32.55	38.70
Leasing Price Distortions (subtracted)	Euro/100kg	2.06	1.52	1.14	1.57
Input Subsidies	Euro/100kg	0.96	0.96	0.96	0.96
Tax Benefits and Financial Assistance	Euro/100kg	0.18	0.18	0.18	0.18
Aggregate Production Costs	Euro/100kg	48.99	33.26	32.55	38.27
Processing Costs	Euro/100kg	4.98	4.98	4.98	4.98
Transportation Costs	Euro/100kg	0.73	0.39	0.56	0.56
Costs at the Port	Euro/100kg	54.70	38.63	38.09	43.81
Export Price FOB	Euro/100kg	23.08	23.08	23.08	23.08
Dumping	Euro/100kg	31.62	15.55	15.01	20.73
Dumping in %	%	57.80	40.30	39.40	47.30
Total Dumping (butter, dried skimmed milk)	Mio. Euro	718.31	353.25	340.98	470.85
Total Dumping for All EU Dairy Products	Mio. Euro	3478.20	1710.50	1651.10	2279.93

Source: author's own calculation



The data shows that, due to the present production costs and the world market prices, the export of butter and SMP from the EU is not possible without dumping. The OECD projections for world market prices for the products in question do not show an increase in prices before 2008/9⁹ compared to the prices used in this study (average prices in 2000-2002). Therefore, the gap between production costs in the EU and world market prices cannot be expected to close on a medium-term basis. Thus, even in the future the EU will not be able to increase its competitiveness in regard to these products. As structural improvement tending towards farms with more than approximately 100 head of cattle cannot contribute to the reduction of dumping, agricultural policy measures encouraging farms with more than 100 head of cattle make little sense in this context.

The total amount of dumping on all EU dairy exports has reached a level between Euro 1.65 billion and Euro 3.48 billion. As neither the smallest nor the largest farm introduced in this study can be regarded as representative for Germany and the European Union, the total dumping value of Euro 2.28 billion calculated on the basis of the constructed average farm provides a more reliable measure for the dumping.

⁹ See <http://www.oecd.org/> OECD Agricultural Outlook 2003 - 2008

Given the enormous extent of dumping, the dairy exports of the EU, except cheese, are not only a scandal in regard to development policy but also make no budgetary sense. Nonetheless, the Agenda 2000 decisions have provided for an increase in milk quotas by 1.5%, beginning in 2006. In the view of dairy dumping amounting to a value of 2.28 billion Euro every year, a reduction of production, for example by reducing the milk quota or introducing a more flexible quota regime as demanded by the Association of German Dairy Cattle Farmers¹⁰, seems reasonable. From the viewpoint of development policy, reduction of the production quantity would result in fewer exports and thus reduce dumping. As world market prices are largely determined by the supply volume of the EU, this would result in an increase in world market prices.

When calculating the political contribution to dumping, it can be seen that this contribution is less than the dumping itself in all calculated case studies. Despite agricultural policy support, export of such mass products is consequently inefficient for at least one domestic market participant in the context of West European cost structures. In the case of the

Table 2: Calculation of the Political Contribution to Dumping of EU Dairy Exports

Political Dumping Factor	Unit	BAY 35	S-H 80	S-A 650	Average Farm
Input Subsidies	Euro/100kg	0.96	0.96	0.96	0.96
Tax Benefits and Financial Assistance	Euro/100kg	0.18	0.18	0.18	0.18
Non-Product-Related Direct Payments	Euro/100kg	0.08	0.08	0.08	0.08
Export Support	Euro/100kg	14.24	14.24	14.24	14.24
Total	Euro/100kg	15.46	15.46	15.46	15.46
Leasing Price Distortions (subtracted)	Euro/100kg	2.06	1.52	1.14	1.57
Political Contribution	Euro/100kg	13.40	13.94	14.32	13.89

Source: author's own calculation

¹⁰ See *Bauernstimme* (2004: 2) „Jeder Bauer sollte sich an seine Quote halten“ Interview with Romuald Schaber, Association of German Dairy Cattle Keepers.

constructed average farm, the difference between dumping and the political contribution to dumping is 6.84 Euro/100kg. milk. Presumably this difference is balanced internally.

All in all one can say: The EU has justifiably been accused of dairy export dumping on a grand scale. Milk production in the EU is too expensive, indeed much too expensive for exports of mass products as butter and dried milk. The actual competitive advantage of the EU is processing milk into upscale products such as high-quality cheese. In view of these facts, it is difficult to understand why the milk quota should be increased in the wake of the Mid-Term-Review of the Agenda 2000. In spring 2004, the milk price in Germany fell to only 27 cents and was thus even lower than in 1977. In February 2004, farmers in Westphalia obtained only 23 cents from the dairy Campina. Farmers in Bavaria, France and Austria have taken to the streets and are raising the alarm.

The complete study is available at www.germanwatch.org.

Wheat Dumping by the European Union

Uli Kleinwechter

The EU is one of the biggest players on the international agriculture market, especially with regard to wheat: It is the third biggest exporter of wheat and wheat flour after the US and Canada.¹ In 2000/2001, the EU exported 14.5 million tons of wheat and wheat flour², and export subsidies were granted for 9 million tons of the total volume.³ But even exports for which no direct export subsidies were paid are offered at dumping prices and undermine markets and production in developing countries.

In Kenya, cheap wheat flour imports from Egypt caused a decline in the local mill business and ruined many wheat farmers in 2000. The Egyptian wheat flour was made out of cheap import wheat from the EU.⁴ In Indonesia, imports of subsidised wheat from the EU increased from 40,000 to 220,000 tons between 1998 and 2000. Subsequently consumption habits have changed – wheat instead of rice – and domestic cereal prices have fallen, causing an increasing marginalisation of rice farmers in the country.⁵

To find ways to stop dumping, however, it is indispensable to know how wheat dumping comes about, to what extent the EU has exported dumped products and, last but not least, how policy measures of the Common Agricultural Policy (CAP) contribute to dumping. Only then can EU agricultural policy with regard to dumping be subjected to sound criticism, and only then can ways to an appropriate reform can be found.

How Does the EU Conduct Wheat Dumping?

In general, dumping is not caused solely by granting export subsidies, but rather by the complex combination of different factors on different levels. Dumping means that products are sold at prices below their pro-

¹ See *Agrarwirtschaft 51 (2002), Issue 1, p. 17.*

² See *Agrarwirtschaft 51 (2002), Issue 1, p. 17.*

³ See *BMVEL (2002) Table 70/71, p.56.*

⁴ See *Rice (2002), p.16.*

⁵ See *Rice (2002), p.18.*

duction costs. Governments facilitate dumping by shouldering a share of the production costs, i.e. by providing input subsidies, tax benefits and financial assistance, such as exemptions from trade tax and motor-vehicle-tax. Consequently, the costs carried by farmers are lower than the actual economic production costs. This alone makes it possible to sell products more cheaply than would otherwise be necessary.

In a second step, the farmer is assisted in bridging the gap between his production costs and the production price, which itself is often below production costs. In the case of wheat this is implemented primarily through direct area payments. But non-product-related direct payments, such as payments under agri-environment programmes, also contribute to dumping by causing net income effects that can be quite significant.⁶

Finally, in a third step, the export of the product at world market prices that are below domestic production prices must be enabled. This is achieved by granting export subsidies. It becomes obvious that the dumping of wheat is not the result of granting export subsidies alone, but the result of complex factors; furthermore, there are numerous EU agricultural policy measures that also contribute to dumping.

What Is the Extent of EU Wheat Dumping?

EU wheat dumping can be quantified by comparing export prices with the total aggregate costs that incur up to the point when the products are loaded at the export port. The difference between the aggregate costs at the export port and the export price equals the amount of aggregate dumping.

The aggregate costs of wheat production comprise the individual economic production costs and the costs carried by the government, i.e. input subsidies as well as tax benefits and financial assistance. Distortions in land leasing prices⁷ caused by direct area payments and other policy measures must be subtracted from this amount, as the distortion

⁶ See Badoux (2001), p.249, Zeddies and Dolutschitz (1996) cited from Ahrens et al. (2000), p. 105f. Here net income effects amounting to 15-92% of the direct payment level are indicated for payments in the context of agri-environment programmes.

⁷ Leasing prices of agricultural areas are influenced by different factors, such as soil profitability, climatic factors, market closeness, structures of the local and regional leasing market, and governmental transfer payments. Governmental transfer payments, primarily including land assistance, increase the contribution margin and consequently the ground rent which subsequently results in an increase in leasing prices

of leasing prices means an increase in individual economic costs and thus results in a reduction of dumping. The costs at the port result from aggregate production costs plus transportation costs to the export port.

The following data were used to calculate wheat dumping: The data concerning individual economic production costs were drawn from data on the full costs of three German farms provided by the test operation network of the International Farm Comparison Network (IFCN). All three farms are top farms typical for their factor equipment, costs and profits. The calculation includes an average value of production costs for the three farms amounting to 15.42 Euro/quintal of wheat.⁸

Foto: Texas A&M University



For input subsidies, OECD data on input subsidies for wheat were used. According to this data, input subsidies amounting to 0.42 Euro/quintal wheat were paid in 2000.⁹ Within the EU, tax benefits and financial assistance are regulated on the national level. As there is no Europe-wide collection of tax benefits and financial assistance, data collected in Germany were taken as representative for the entire EU, then projected to the entire EU in relation to gross national income and calculated in relation to the share of wheat production in the total value of agricultural production. According to this method, tax benefits and financial assistance amount to 0.14 Euro/quintal wheat.¹⁰

⁸ Cf. Isermeyer et al. (1999), p.8

⁹ OECD (2002), OECD Databases 2002, AGR Producer Support Estimate by Commodity, European Community, Wheat, payments based on input use.

¹⁰ For primary data see BMF/Federal Ministry of Finances (2001), p.81.

At present there are no sufficiently substantiated data on the level of land leasing price distortions. According to estimates, however, this distortion amounts to about 66% of direct payments¹¹. In order not to neglect the problem of these missing empirical data on land leasing price distortions, three models were assumed, one with a distortion of land leasing prices, and consequently of land leasing costs, amounting to 0%, one with 50% and one with 90%. According to information on land leasing costs provided by the IFCN, the distortion amounts to 0 Euro/quintal, 1.67 Euro/quintal and 3.02 Euro/quintal, depending on the model.¹²

Data on transportation costs provided by the Federal Institute of Agriculture and Food were included in the calculation. Subsequent transport freights equal the lowest transportation costs from intervention stock to the nearest export port. For calculating the average of subsequent transport freights, the intervention stocks situated next to the IFCN test farms were selected. This comes to transportation costs of Euro 0.71 per quintal of wheat.

Table 1: EU Export Dumping of Wheat

		<i>Minimum</i>	<i>Medium</i>	<i>Maximum</i>
Individual Economic Production Costs	Euro/quintal	15.42	15.42	15.42
Land Leasing Price Distortion	<i>Euro/quintal</i>	3.02	1.67	0.00
Input Subsidies	<i>Euro/quintal</i>	0.42	0.42	0.42
Tax Benefits and Financial Assistance	<i>Euro/quintal</i>	0.14	0.14	0.14
Aggregate Production Costs	Euro/quintal	12.96	14.31	15.98
Transportation Costs	<i>Euro/quintal</i>	0.71	0.71	0.71
Costs at the Port	Euro/quintal	13.67	15.02	16.69
Export Price FOB	<i>Euro/quintal</i>	13.20	11.38	9.55
Dumping	Euro/quintal	0.47	3.65	7.14
% Dumping	%	3.56	32,04	74,76

¹¹ Cf. Chatzis (1997), S.246ff.

¹² Own calculations based on Isermeyer et al. (1999), p.8, p.13

For export prices, data from the International Grain Council (IGC) on FOB prices from Rouen were used, plus a supplement for the higher quality of German wheat.¹³

To include price fluctuations during the year, which have a significant influence on the dumping level, the lowest and the highest price level in 2002 were chosen. The FOB export prices included in the calculation amount to 9.55 Euro/quintal or 13.30 Euro/quintal, respectively. Additionally, an average of 11.38 Euro/quintal was calculated for an average model.

The level of dumping varies according to the fluctuation of world market prices. When world market prices rise, the level of dumping falls, and vice versa. To take these fluctuations into account in the calculation, three models were constructed: a minimum model with high export prices and high land leasing price distortion, an average model with average export prices and an average land leasing price distortion, and a maximum model with low export prices and no leasing price distortion.

Table 1 shows the EU export dumping of wheat. The distortion of leasing prices is subtracted from the individual costs of the farmers, and input subsidies, tax benefits and financial assistance are added. Transportation costs are added to the resulting aggregate costs. This produces the entire aggregate costs at the export port. The difference between costs at the port and the FOB export price equals the dumping. The share of dumping in per cent indicates by how many per cent the costs at the export port exceed the export prices.

Another important measure to calculate dumping is the political contribution. The political contribution includes all political measures that can contribute to causing dumping. Thus, it shows the maximum possible dumping level on the basis of the present policies and simultaneously makes it possible to identify the potential contribution of individual political measures toward dumping.

To calculate the political contribution in the case of wheat, input subsidies, tax benefits and financial assistance, product-related direct payments, a share of non-product-related direct payments¹⁴ adequate to the net income effect, for example deriving from agri-environment programmes, and export support are taken into account. At the same time,

¹³ Cf. CG

¹⁴ *The net income effects of direct payments in the framework of agri-environment programmes are indicated with 15-92% of the direct payment level (see above). Thus, 50% of the non-product-related direct payments were used as (share) related to dumping in the calculation.*

data on land leasing price distortions are included. Similar to the calculation of dumping, the calculation includes a minimum, average and maximum model. As far as possible, the above-mentioned data were used; additionally, EU data on direct payments¹⁵, OECD data on non-product-related direct payments¹⁶ and export subsidies¹⁷ were included.

The following political contribution results for the three models:

Table 2: Political Contribution to Wheat Dumping

		<i>Min.</i>	<i>Avg.</i>	<i>Max.</i>
Input Subsidies	Euro/quintal	0.42	0.42	0.42
Tax Benefits and Financial Assistance	Euro/quintal	0.14	0.14	0.14
Product-Related Direct Payments	Euro/quintal	5.87	5.87	5.87
Non-Product-Related Direct Payments	Euro/quintal	0.42	0.42	0.42
Export Support	Euro/quintal	0.98	0.98	0.98
Total	Euro/quintal	7.83	7.83	7.83
Land Leasing Price Distortions	Euro/quintal	3.02	1.67	0.00
Political Contribution	Euro/quintal	4.81	6.16	7.83

Table 2 shows the political contribution to wheat dumping within the EU. Input subsidies, tax benefits and financial assistance, direct payments and export support are summed up and the land leasing price distortion is subtracted from that sum.

What are the Conclusions?

The results show: The EU agricultural policy causes wheat to be offered at dumping prices, i.e. prices below production costs, on the world mar-

¹⁵ Cf. Council of the European Union (1999), p. L160/6.

¹⁶ Cf. OECD (2002), OECD Databases 2002, AGR Producer Support Estimate by commodity, European Community, Wheat, III.C. payments based on input constraints.

¹⁷ Cf. OECD (2002), OECD Databases 2002, AGR Producer Support Estimate by commodity, European Community, Wheat, III.A. Market price support.

kets. Even with the minimum model, which usually underestimates the dumping, the dumping share amounts to 0.47 Euro/quintal and consequently to more than 3% of domestic production costs. As the average and maximum models show, this share can rise to 3.65 Euro/quintal or 32% and even to 7.14 Euro/quintal or 75%. At 4.81 Euro/quintal, 6.16 Euro/quintal and 7.83 Euro/quintal, respectively, the political contribution exceeds the level of dumping in all three models. This shows that the present political regime is not only responsible for the present dumping level but allows dumping to an even greater extent.

At the same time, an examination of the single factors included in the calculation shows clearly that actual export subsidies have only a relatively small share in dumping. Direct payments have the biggest potential share in dumping. Furthermore, it can be seen that payment shares not regarded as “non-trade-distorting” can contribute to dumping. It becomes evident that a significantly more comprehensive examination, going beyond the narrow focus on export subsidies, is required to solve the problem of dumping and to create fairer global trade in agricultural products. It also becomes clear that the present EU strategy to eliminate measures that obviously distort trade and to compensate for these measures with measures considered to be “non- or minimally distorting of trade” is not sufficient to effectively stop the dumping of agricultural products.

The solution of the dumping problem requires the extensive reform of EU agricultural policy and the establishment of relevant safeguard instruments to ensure the appropriate protection of developing countries' markets.

Literature

AHRENS, H., C. LIPPERT, M. RITTERSHOFER (2002), Überlegungen zu Umwelt- und Einkommenswirkungen von Agrarumweltprogrammen nach VO (EWG) Nr. 2078/92 in der Landwirtschaft. In: *Agrarwirtschaft*, Jg. 49, Heft 2, S.99-115. Frankfurt/Main.

BADOUX, P. (2001), Beurteilung von Agrarumweltprogrammen – eine einzelbetriebliche Analyse in Baden-Württemberg und Nordbrandenburg. In: *Agrarwirtschaft*, Jg.50, Heft 4, S.249-261. Frankfurt/Main.

BUNDESMINISTERIUM DER FINANZEN (BMF) (2001), Achtzehnter Subventionsbericht. Berlin.

BUNDESMINISTERIUM FÜR VERBRAUCHERSCHUTZ; ERNÄHRUNG UND LANDWIRTSCHAFT (BMVEL) (2002), Ernährungs- und agrarpolitischer Bericht der Bundesregierung. Bonn.

CHATZIS, A. (1997), Flächenbezogene Ausgleichszahlungen der EU-Agrarreform – Pachtmarktwirkungen und Quantifizierung der Überwälzungseffekte. Frankfurt.

INTERNATIONAL GRAINS COUNCIL (IGC), Grain Market Report, several issues, London.

ISERMEYER, F., C. MÖLLER, J. RIEDEL (1999), Wettbewerbsfähigkeit des Pflanzenbaues im internationalen Vergleich. Beitrag für die Gesellschaft für Wirtschafts- und Sozialwissenschaften des Landbaus (GeWiSoLa), Braunschweig.

OECD (2002), OECD Databases 2002. CD ROM Version, Paris.

COUNCIL OF THE EUROPEAN UNION (1999), Council Regulation (EC) 1251/1999 of May 17, 1999 on establishing common rules for direct support to producers of certain crops. Brussels.

RICE, T. (2002), Farmgate: The Developmental Impact of Agricultural Subsidies. London.

UHLMANN, F. (2002), Die Märkte für Getreide, Ölsaaten und Kartoffeln. In: Agrarwirtschaft, Jg.51, Heft 1, S.16-35, Frankfurt/Main.

The Dumping of Agricultural Products: Quantification and Interpretation

By Harald Grethe¹

Most developed countries have isolated large parts of their agricultural sectors to a great extent from international markets by providing a high level of support for domestic prices as well as numerous subsidies. Different standards are used to quantify the level of support and the extent to which it affects third countries. Well-known examples are the Producer Support Estimate (PSE) of the OECD and the classification and quantification of domestic agricultural policies within the WTO into different “boxes” according to the extent of trade-distortion. Recently, development policy NGOs have brought another issue into the discussion: the dumping of agricultural products. After a brief definition of dumping and a subject-related differentiation concerning the agricultural sector, some methodical aspects of quantification relating to dumping will be discussed. Subsequently, this study will examine the conclusions permitted by the establishment of dumping and whether dumping is an appropriate indicator for the extent of damage caused in third countries by policies encouraging dumping. Finally, the study proposes indicators that are less ambiguous than the term “dumping” to use for measuring the damage done to developing countries by developed countries’ agricultural policies.

The literature on economics and trade law uses several more or less narrow definitions of dumping. The most common definition of dumping is the existence of price discrimination on domestic and foreign markets. Due to its trade policy relevance, this definition is usually restricted to exclude inverse dumping, i.e. covering only cases of price discrimination in which the export price is below the domestic selling price. An alternative definition is the international sale of products below production costs. This definition is especially relevant when domestic prices are seriously distorted by political interventions or are lacking or not meaningful in non-market economies.

¹ *The author thanks Christine Chemnitz, Ulrich Kleinwechter, Harald von Witzke and Marita Wiggerthale for their helpful advice and rewarding discussions on a previous draft of this paper.*

Dumping has numerous causes, each of which can be effective by itself or in combination with others. They can be roughly divided into private sector profit-oriented price policy and government interventions. The primary causes of private sector dumping are i) exercising market power on domestic and/or foreign markets and ii) attempting to achieve a monopoly position on foreign markets through selling prices that are below the economic optimum, which subsequently results in the realisation of monopoly profits (*predatory pricing*). This study does not discuss private sector causes of dumping in detail, because the strong homogeneity of agricultural raw products and most products of the first processing level indicates that these causes will not be important in the agricultural sector.²

In agriculture, however, government interventions in the agricultural market, along with other agricultural policies, are widespread, causing enterprises to perform dumping in accordance with the above-mentioned definitions. This includes established export subsidies with the explicit goal of enabling enterprises to export at prices below domestic market prices. Additionally, there are a number of domestic subsidies that allow farmers to sell products below their production costs even on their own domestic markets.

Agricultural policies causing dumping usually result in an increase in domestic supply and sometimes also in a decrease in domestic demand. This leads to higher net exports and lower world market prices for the products affected. From the development policy perspective, this is regarded as destructive for two reasons: Firstly, developing countries that would be competitive without dumping are driven out of their export markets. Secondly, low world market prices result in increased imports by developing countries and consequently inhibit development in their agricultural sectors.³

1. The Quantification of Dumping

The discussion of the quantification of dumping centres on the difference between production costs and export price, as policies often cause domestic commodity prices to be so seriously distorted that they actually

² *In regard to highly processed products such as many cold drinks, convenience food etc., private sector dumping cannot a priori be excluded on the basis of product characteristics.*

³ *Lower world market prices can also result in positive net welfare effects in some developing countries. The net effect on the entire group of developing countries is not clear. (GRETHE 2001, S. 15 ff.).*

provide little economic information. When calculating production costs, a number of methodological questions arise that shall be addressed briefly in the following paragraph.

- It must be clarified which costs should be used to perform a meaningful assessment of dumping: variable cost, full cost or marginal cost. In the long run, all cost components will be variable; thus, it is reasonable to base the question raised in this book - whether and to what extent developed countries perform dumping - on full cost instead of variable cost. However, in this case the assignment of overheads to individual production branches is not always clear and needs to be taken into account in particular cases. The same applies to the assignment of production costs for coupled products, such as beef and milk. The assessment of marginal costs is mostly relevant in the case of private sector dumping, which will not be discussed in this study, because the relation between marginal costs and selling price allows conclusions to be drawn about the extent of market power.
- Another question that must be clarified in regard to the quantification of dumping for an entire sector is which producers' costs to base the quantification on. Production costs vary significantly among different farms. A possible solution has been presented by Kleinwechter, who has averaged the costs of three typical farms in his contribution to this book. Furthermore, if related data are available, a projection of particular farm types according to their distribution in an entire country could be made. Alternatively, it seems appropriate to select costs of those farms that are assumed to show only relatively minor distortions, meaning that their farm structure and factor prices correspond to those that one would expect in a situation without policies causing dumping (see below).
- A third important aspect is the clear distinction between individual production costs and the costs of production for the economy as a whole. If the aggregate dumping is to be calculated, certain components of the individual economic costs must be corrected. On the one hand, a share of the production costs is carried by the government in the framework of particular policies and thus must be added to the individual production costs. This approach has been worked out in studies by Burmann (2004), Kleinwechter (2004) and Murphy (2004) in this book. On the other hand, individual costs of production factor use exceed the costs to the economy, sometimes significantly. This applies especially to land whose supply is very inflexible and where, given a leasing situation, a significant share of the agricultural

subsidies is transferred to the land price. As the effect of the transfer is acknowledged empirically but the extent is not clear, a sensitivity analysis as prepared by Kleinwechter is appropriate in this case.

2. Meaningfulness

In this book, Burmann, Kleinwechter and Murphy calculate dumping margins of 3-48 percent of domestic production costs. The fundamental question discussed in this section is whether these values can be interpreted as a measure of the extent of the resulting distortions in world market prices and consequently as a measure of the damage caused in third countries.

Dumping will affect trade partners only if it results in increased net exports by the dumping countries that subsequently cause world market prices to fall. Only in this case are i) competitive suppliers driven out of third country markets and ii) competitive suppliers harmed in their domestic markets, in the event that no compensating tariff protection is in place. However, the extent to which agricultural policies supporting dumping affect production and trade is very heterogeneous and requires product- and policy-specific examination. This has different causes, three of which will be explained below:

1. Agricultural policies cause strong production incentives of varying levels, depending on design. Thus, price support and production subsidies are incentives to enlarge the areas of the given crop as well as incentives to increase yields by higher production intensity. If a subsidy is bound to areas with particular crops, it will be less production-distorting, as the incentive to increase yields is lacking. Providing farmer payments that are not bound to current production would have even less effect on production.
2. Agricultural policies distort production costs to varying extents. A significant percentage of dumping-friendly policies which affect the agricultural sector in developed countries increases the costs of agricultural production. Besides the effect of higher soil prices, as mentioned above, this is caused mostly by slowing down the growth of farm size. Consequently, a large share of the price support and subsidies provided to farmers is not effective in regard to production, but is "absorbed" by higher production costs. This shall be demonstrated in Kleinwechter's contribution to this study. In the study on which his contribution in this book is based, Kleinwechter calculates the production costs of wheat in several farms, which vary between •132 and •188 per

ton of wheat (Kleinwechter 2003, p. 329.) To a great extent, the difference is caused by labour costs that decrease with increasing farm size (Isermeyer et al., 1999, p. 8). Kleinwechter's calculations show that in contrast to the average assessments introduced in this book, the production costs of the most cost-effective farm are not below world market prices in all world market price and land leasing cost distortion scenarios. The data on which Burmann's contribution is based also show that milk production costs at the largest farms are 35% below the production costs of smaller farms. If we follow the hypothesis that structural change would be accelerated without agricultural subsidies, production costs would decrease in such a scenario.

3. Another reason for the fact that policy can cause more or less distortion in production and trade is the varying extent to which producers of different commodities react to production incentives under different production conditions. Illustration 1 shows the influence of price support, such as a tariff and an export subsidy, for two different products.

Illustration 1: Effect of Production Support on Production

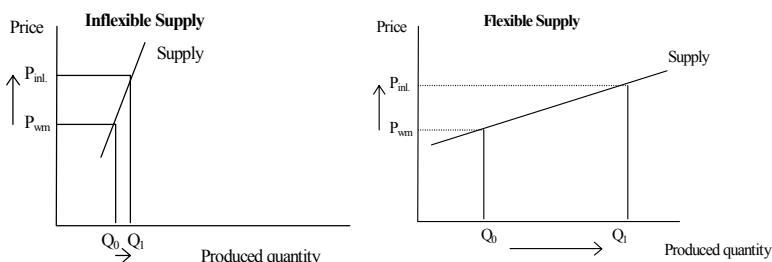


Illustration 1 shows that price support for a product with a supply that reacts extremely inflexibly leads to a smaller increase in production than the same level of price support for a product that reacts flexibly. In both cases the calculated dumping would be similar (the marginal costs of production increase to the same extent for both products), but in the case of the more flexibly reacting product, third countries would be affected to a far greater extent.

This shows that the quantification of dumping without additional information can hardly serve as an appropriate indicator for assessing the dam-

age suffered by the trade partner due to policies that cause dumping. What alternatives do we have to better quantify the impact of these policies on third countries?

As political causes are central when it comes to agricultural dumping, it seems appropriate to begin with policies when analysing the damage suffered by trade partners. To this end, all agricultural policies could first be aggregated and calculated by product unit, as done by Kleinwechter, who calculates an amount on the order of Euro 60 per ton of wheat. However, in such a calculation policies are included without regard to their effect on production. If the level of policy contributions is to be the measure for the extent to which trade partners are harmed by lower world market prices, policies must be weighted according to their effects on trade. This approach is also consistent with the WTO logic that connects anti-dumping and countervailing duties to the demand that affected countries furnish proof of injury; conversely, this means that dumping and the granting of subsidies do not justify trading partners in taking any kind of countervailing measures consistent with WTO rules in the event of an unproven trade distorting effect.

The question of the extent to which particular agricultural policies are trade-distorting is widely disputed, however. One reason is that the question can not be answered satisfactorily on the basis of the usual comparative static equilibrium models, which usually assume that farmers act as rational, risk-neutral and profit-maximising individuals. Thus a further empirical foundation is necessary, and in many areas it is still in its infancy due to the policy instruments that are in part quite new and are more or less decoupled from production. In the debate about the issue of the trade-distorting effects of a number of agricultural policies, the OECD study "Market Effects of Crop Support Measures" (OECD 2001a) is often referred to; it analyses the comparative static effects of different policies on the basis of product and factor markets in the context of an equilibrium model.

However, the study emphasises explicitly that it does not take into account other mechanisms that could result in agricultural policies affecting production, such as risk reduction and higher credit standing of farmers due to subsidy payments.⁴ To quantify these mechanisms and to answer the question of the extent to which farmers use decoupled direct payments in order to maintain their business, though they are not behaving as the rational profit-maximising individuals originally as-

⁴ *Ibid.* p.30 ff. For a structure concept concerning the effects of different policies on production see also OECD (2001b).

sumed, additional empirical analyses are necessary. Only on this basis can sound statements on the actual extent of the trade-distorting effects of particular policies be made. The initial OECD studies on this question have produced interesting results: i) farmers demonstrate risk-averse behaviour, i.e. they will be prepared to produce more if their expected revenues are subject to decreased fluctuations (OECD 2003a, 2003b); ii) if the risk-reducing effect of direct payments on farmers' risk aversion is taken into account in the analysis, direct payments coupled to historic crop data could have a considerably higher effect on production than would be the case without taking into account the risk reduction (OECD 2004); iii) the EU direct payments provided for cereals are a considerable incentive to increase supply (OECD 2003a, p. 25-7), and as a consequence the payments cannot be regarded as decoupled; iv) subsidising of yield insurance premiums can have a significantly positive effect on production volume (OECD 2003b).

To summarize this and other information concerning the production and trade effects of policies, different policies could be weighted with their related "trade-distortion factors" expressed in relation to price support, and subsequently a "trade-distortion indicator" per product and country could be calculated. Thus, the total distortion potential of agricultural policies could be quantified. If the extent to which this political distortion potential harms third countries is to be calculated as well, this could be performed in the context of equilibrium models. Those models make it easier to empirically quantify the extent of the effects of the "distortion potential" on net exports and world market prices, foreign trade in commodities by third countries and domestic prices, as well as beneficial effects in third countries.

Finally, it can be concluded that the calculation and examination of the causes of dumping in agriculture have shown that a great number of agricultural policy measures significantly distort the production and consumption of agricultural products in developed countries. The fact that the EU dumping margins for milk, as calculated by Burmann, are considerably higher than the wheat margins calculated by Kleinwechter reflects the significantly stronger protection level applied to milk within the EU. However, dumping is hardly appropriate as an indicator for estimating the extent of damage caused in third countries by the policies on which the dumping phenomenon is based. For this purpose, a summary of agricultural policies classified by their trade-distorting effects, for example, would be far more helpful.

3. Literature

Burmann, A. (2004), Dumping bei EU-Agrarexporten: Ein Quantifizierungsversuch am Beispiel Milch.

Grethe, H. (2001), Potentielle Auswirkungen der ökologischen Agrarwende in der EU auf die Entwicklungsländer. Kurzstudie für das BMZ. Deutsches Institut für Entwicklungspolitik, Bonn.

Kleinwechter, U. (2003), Dumping im Internationalen Agrarhandel – Ursachen und Quantifizierung. Bachelorarbeit im wissenschaftlichen Studiengang Agrarwissenschaften an der Georg-August Universität Göttingen, Fakultät für Agrarwissenschaften.

Kleinwechter, U. (2004), Wheat Dumping by the European Union

Murphy, S. (2004), United States Dumping on World Agricultural Markets.

OECD (2001a), Market Effects of Crop Support Measures.

OECD (2001b), Decoupling: A Conceptual Overview.

OECD (2003a), Risk Related Non-Price Effects of the CAP Arable Crop Regime: Results from an FADN Sample.

OECD (2003b), The Impact of Crop Insurance Subsidies on Land Allocation and Production in Spain.

OECD (2004), Risk Effects of PSE Crop Measures.

Safeguard Instruments within the WTO – A Development Policy Analysis

Marita Wiggerthale, Germanwatch

1. Introduction

A natural result of trade liberalisation is an increase in imports. But many trade agreements recognise generally that there are certain situations in which import liberalisation can be maintained only with difficulty due to resulting market distortions. Thus, trade agreements often contain “safeguard clauses” which allow for a suspension of tariff reduction commitments. This is to prevent situations in which governments caught in the dilemma of either accepting substantial trade distortions or withdrawing from the trade agreement in question choose the latter option and thus reduce the overall liberalisation level. Therefore, safeguard instruments are meant to enable a higher level of liberalisation. Furthermore, they are an exception from the general rules of trade liberalisation.¹

In the face of massive liberalisation and deregulation trends on the national, regional and multilateral level, civil society organisations stress the need for safeguards and demand the maintenance of political flexibility for a socially fair and sustainable development that preserves natural resources. The protection of values determined by society, such as the protection of consumer interests, labour rights, human rights, environment, food security, small farming production, cultivated areas and landscape, must not be subordinated to free trade.² Or, positively formulated: A trade system oriented to support human development should give governments the flexibility to develop a policy commensurate to their national development needs and their special social, ecological and

¹ See Gal Hochman: *The Pros and Cons of the Use of Safeguard Regimes in Trade Agreements*. Columbia University, 2004.

² In this regard it is also important to stress that governments violate existing obligations in international human rights agreements by promoting broad-based liberalisation in markets of the South, with their rejection of effective safeguard instruments and with the continuation of export dumping. See also Germanwatch, FIAN, Weltladen-Dachverband: *Gerechtigkeit jetzt in den WTO-Agrarverhandlungen: damit das Recht auf Nahrung gesichert wird*.

economic situation.³ The demand for effective safeguards results from the necessity of protection.

Though there is a basic alliance of supporters for the introduction of safeguard instruments, these supporters pursue conflicting interests: one group wants to promote further liberalisation and the other group wants to limit, restrict or even prevent further liberalisation. Despite the support for safeguard instruments in principle, there are great differences concerning the scope and design of such safeguard instruments. Agreement on the given criteria is crucial for the effectiveness and quality of the safeguards in question.

2. From the GATT to the WTO: The History of Safeguard Instruments

The GATT (General Agreement on Tariffs and Trade) had passed through seven negotiation rounds before the Uruguay Round took place: Geneva (1947), Ancey (1948), Torquay (1950), Geneva (1956), Dillon (1960-61), Kennedy (1964-67) und Tokyo (1973-79). The first six rounds focussed mainly on tariff reductions.

However, GATT Article XXVIII gives all members the opportunity to modify or take back commitments given to other members after three years. During the first 15 years of the GATT, “new negotiations” were the crucial safeguard instrument.⁴ Before 1963, each of the 29 members committed to tariff reductions under the GATT had initiated new negotiations at least once (110 new negotiations in total, 4 per member Country on average).⁵ And this is the main difference between the GATT and the WTO of today: WTO commitments are practically irreversible.

Additionally, during the same period members used GATT Article XIX, the so-called escape clause or safeguard clause, for that purpose. It allows faster adaptation, provided that the conditions for application are met (!) (see table 1.) In the event of a rapid increase in imports, the country can impose an import restriction, but must conclude a compensation agreement with its trade partners afterwards.

³ See also UNDP: *Making global trade work for people*. New York 2003.

⁴ *Re-negotiations did not take place with all GATT members, but only with the country that was party to the original reduction negotiations, plus some other countries listed in the GATT as “significant suppliers”.* See Finger, J. Michael et al.: *Antidumping as Safeguard Policy*. 2000.

⁵ Finger, J. Michael: *GATT Experience with Safeguards: Making Economic and Political Sense of the Possibilities that the GATT Allows to Restrict Imports*. World Bank.

In the early 1960s, the formal use of the safeguard clause and new negotiations decreased in favour of so-called “voluntary” export restraint agreements (VER). During the 1970s VERs became a common instrument to control distorting imports. They did not comply with GATT rules, but they were compatible with the principle of reciprocity. Thus, they were more compliant with GATT rules than a unilateral measure would have been. In practice, however, VERs were used mostly by countries with great economic power to control imports from countries with less power.

In the late 1980s, antidumping measures replaced VERs as safeguard instruments. From the early 1990s to this day, they have been the main instrument for controlling distorting imports.

Before the Uruguay Round, these measures for restraining exports were of limited relevance for developing countries. The reason was that only a few developing countries had bound tariff lines under the GATT. Therefore, they could increase their tariffs without violating GATT commitments!

3. Overview of Current WTO Safeguard Instruments

In a strict sense, the rules in the Antidumping Agreement and the Agreement on Subsidies and Countervailing Measures do not fall under “safeguard measures”. “The application of a safeguard measure does not depend upon “unfair” trade actions, as is the case with anti-dumping or countervailing measures. Thus, the import restrictions that are imposed on products of exporting Members when a safeguard action is taken must be seen, as we have said, as extraordinary.”⁶ Several safeguard measures are embodied in the WTO:

- GATT Art. XIX amended by the Agreement on Safeguard Measures from 1994: It applies to all products.
- Art. 5 of the Agreement on Agriculture (AoA): The safeguard measure can be applied only as a “protective tariff”, not as a quantitative restriction. The special safeguard regime is regarded as a temporary measure during the reform process according to AoA Art. 20.

⁶ *Finding of the Appellate Body in the Argentina-Footwear case (EC), WT/DS121/AB/R, Para. 94. UNCTAD, Dispute Settlement. World Trade Organisation. 3.8. Safeguard Measures, p. 4.*

- Art. 6 of the Agreement on Textiles and Clothing: The safety clause allows other member countries to limit imports from China. It will be applicable for 12 years after China's accession to the WTO.
- GATS: Services are covered neither by the WTO nor the Agreement on Safeguard Measures, which are both part of the WTO regime for goods. The current GATS includes no safeguard clause. However, according to GATS Art. X the negotiation of such a clause has been planned.

The table below gives an overview of the existing safeguard instruments in the WTO that are relevant for goods, and especially for agricultural products. In the next chapter these instruments will be further explained and evaluated in regard to their development policy relevance.

Table 1: Overview of existing safeguard instruments in the WTO

Provision	Art. VI Anti-dumping	ASCM/Art. XVI Subsidies	Art. XIX and Safeguard Measures	Special Safeguard Clause AoA
Evidence	<ul style="list-style-type: none"> ■ Evidence of dumping. Selling price abroad below normal level or below production costs plus administration, marketing, and overall costs and domestic profits. ■ (impending) serious injury to a domestic industry sector ■ causal connection between dumped imports and injury 	<ul style="list-style-type: none"> ■ injury to a domestic industry sector or ■ Ruin or reduction of benefits from concessions or ■ serious injury to a Member's interests ■ causal connection between subsidy and injury 	<ul style="list-style-type: none"> ■ Import of a good in such excessive quantities or under such conditions ... ■ (impending) serious injury to a domestic industry sector ■ unexpected development 	<ul style="list-style-type: none"> ■ if quantity of imports exceed a trigger volume ■ if the price falls under a trigger price matching the reference price of the product in question in the years 1986-88
Origin	<ul style="list-style-type: none"> ■ application related to origin 	<ul style="list-style-type: none"> ■ application related to origin 	<ul style="list-style-type: none"> ■ application not related to origin 	<ul style="list-style-type: none"> ■ application not related to origin

Application of the Measure	<ul style="list-style-type: none"> ■ Antidumping duty for the product in question at the level of the antidumping margin or less 	<ul style="list-style-type: none"> ■ if possible remedy measures ■ Countervailing duties at the level of the subsidy or less 	<ul style="list-style-type: none"> ■ to the extent required ■ quantitative restriction possible 	<ul style="list-style-type: none"> ■ Imposition of an additional duty
Period of Validity	<ul style="list-style-type: none"> ■ as long as necessary to make dumping ineffective ■ Termination after 5 years at the latest 	<ul style="list-style-type: none"> ■ as long as necessary to make harmful subsidies ineffective ■ Termination after 5 years at the latest 	<ul style="list-style-type: none"> ■ 4 years, 8 years at maximum 	<ul style="list-style-type: none"> ■ Until the end of the year
Peace Clause (expired end of 2003, end of March 2004 at the latest)	<ul style="list-style-type: none"> ■ Exception in case of Annex II AoA; otherwise not, if evidence of serious injury and the exceeding of obligation exists 	<ul style="list-style-type: none"> ■ Exception in case of Annex II AoA; otherwise not, if evidence of serious injury and the exceeding of obligation exists 	<ul style="list-style-type: none"> ■ No application 	<ul style="list-style-type: none"> ■ No application
Special and Differential Treatment for Developing Countries	<ul style="list-style-type: none"> ■ Developed countries should take into account the special situation of developing countries ■ Examination of helpful remedies prior to application of antidumping measures 	<ul style="list-style-type: none"> ■ Subsidies dependent on export volume ■ Reduction within 8 years for all countries not classified as LDC and with a per capita GNP > US\$1000 ■ increase of export subsidies is prohibited 	<ul style="list-style-type: none"> ■ No safeguard measure targeting developing countries, if import share of the product in question is < 3% or developing countries < 3% and all developing countries < 9% ■ Maximum period of validity = + 2 years 	<ul style="list-style-type: none"> None, in fact only few developing countries can apply the SSC
Remarks	<ul style="list-style-type: none"> ■ Antidumping measures in favour of a third party possible 	<ul style="list-style-type: none"> ■ According to Art. 3 ASCM there is an exception to the provisions in the AoA in regard to illegal subsidies 		<ul style="list-style-type: none"> ■ Additional duty must not exceed the level of the duty imposed in the related year by more than one third * VS = member country could have notified SSC

Source: Author's own compilation based on WTO provisions.

4. Analysis of Current Agriculture-Related Safeguard Instruments from the Perspective of Development Policy

Since the establishment of the WTO, agriculture has been included in GATT rules. Therefore, the safeguard instruments for goods also apply to agricultural products (only the peace clause has been exempted until the end of 2003.) Concerning safeguards in agriculture, only the so-called special safeguard clause (SSG) under AoA Article 5 was added. From the viewpoint of development policy, the protection of food security and small farm production are the central reasons for establishing effective WTO safeguard instruments in agriculture. Though the protection of food security is embodied in the preamble and Annex II of the AoA and as such is formally acknowledged as a concern worth protecting, it remained empty talk as no related rules have been established.

The following analysis illustrates deficits in development policy relating to the design of existing safeguard instruments. In view of the import surges that can be observed in developing countries and the continuation of dumping by developed countries, from the perspective of food security the establishment of additional safeguards in the framework of the AoA is urgently needed.

a. Antidumping Measures

The basis of the antidumping agreement and GATT Art. VI is the following definition of dumping:

- Dumping exists if products are sold in an importing country at prices below the *normal selling prices* in the exporting country.
- If normal selling prices cannot be determined, the second definition of dumping will be applied, i.e. if the selling price in the importing country is *below the production costs in the exporting country plus a reasonable amount for administration, marketing and overhead costs as well as profits*. (AD⁷ Art. 2.2.)

It can be assumed that the latter definition applies to agriculture, as this sector is distorted due to market interventions by the government, and „normal“ selling prices, i.e. the prices that could be achieved under free market conditions, can hardly be determined.

⁷ AD = Agreement on Implementation of GATT Art. VI 1994.

If the government causes dumping by supporting agricultural production or exports of agricultural products with subsidies, the importing country can take recourse to the Agreement on Subsidies and Countervailing Measures (ASCM; see also b.) But if companies cause dumping, the Antidumping Agreement will be applied. The logic behind the imposition of antidumping duties is that producers that are in fact able to compete should not be driven out of the market. Another reason is to prevent companies from gaining a dominant market position by dumping.

The utilisation of antidumping rules correlates closely with the openness of the economy. Establishing antidumping legislation is an effective approach for developing countries to protect themselves from increased import competition and to comply with WTO disciplines at the same time. The World Bank supported some developing countries in doing so. The precondition for the application of antidumping measures is a national antidumping legislation consistent with WTO rules. Since 1995, more than 50 developing countries have established such legislation, which means that approximately half of all developing countries do not have access to this instrument. But despite their application of antidumping measures, developing countries continue to be the main victims of those measures. 66% of all 1229 antidumping cases initiated within the first five years (1995-99) targeted developing countries.⁸

An OECD study on antidumping cases in Australia, Canada, the EU, and the US found that 90% of all imports classified as unfair in regard to antidumping rules would have been classified as fair in the national framework of their competition rules.⁹ Related literature recommends a revision of the antidumping agreement and the provision of other instruments such as stricter national competition regulations. Developing countries have supported stricter disciplines and improved special and different treatment provisions during the present WTO negotiations.

The WTO provisions provide for the conditions and manner or scope of the countervailing measure for each safeguard instrument. The benefits and disadvantages of each instrument will be explained in detail below.

Benefits of Applying Antidumping Measures from the Development Perspective

- Antidumping measures are applied according to the principle that the party who causes damage must bear the cost; this

⁸ UNDP (2003): *Making Global Trade working for the people*. London, p.185.

⁹ See Finger (World Bank): *GATT Experience with safeguards: Making economic and political sense of the possibilities that the GATT allows to restrict imports*, p.13.

means that they are only applied to those imports of products by companies that have already been classified as dumping causing material injury.¹⁰

- Using the instrument of antidumping measures, developing countries can treat imports from OECD countries in a different manner than imports from developing countries. Thus, trade within the South would not be harmed.
- Antidumping measures are unilateral measures. GATT or WTO rules do not require compensation or new negotiations.
- Of all remedies in the trade sector, antidumping measures are the easiest to apply politically.

Shortcomings of Applying Antidumping Measures Application from the Development Perspective

- The importing country carries the burden of proof that there is a causal connection between dumped imports and the material injury occurred. Due to limited administrative capacities and related expertise, this causal connection is difficult to prove.
- Initiating and proving a case of antidumping is very expensive, and developing countries lack sufficient financial resources. In most cases, the threat of antidumping action is enough to achieve a diversion of imports.
- The application of antidumping measures requires member countries to have related national legislation in place, and many developing countries still do not have such legislation.

b. Countervailing Measures According to ASCM

GATT Art. XVI and the Agreement on Subsidies and Countervailing Measures provide for countervailing measures against dumping caused by government subsidies. Many of the benefits and shortcomings are similar to those of antidumping measures.

¹⁰ *In theory and practice, the text on injury concerning antidumping actions seems to be "softer" ("material injury") than for safeguard and countervailing measures ("serious injury").*

Benefits of Applying Countervailing Measures from the Development Perspective

- Countervailing measures are applied according to the principle that the party who causes damage must bear the cost; this means they are applied only to those imports of products that have already been classified as subsidised and causing serious injury.
- Using the instrument of countervailing measures, developing countries can treat imports from OECD countries in a different manner than imports from developing countries. Thus trade within the South would not be harmed.
- The targeted measure imposed on the party that caused the damage puts pressure on that party to stop the subsidy in order to limit the economic disadvantages resulting from the countervailing measure.

Shortcomings of Applying Countervailing Measures from the Development Perspective

- The importing country carries the burden of proof that there is a causal connection between the subsidy and the serious injury. Due to limited administrative capacities and related expertise, this causal connection is difficult to prove.
- The initiation and defence of a dispute settlement procedure incurs high expenses, and developing countries, especially the poorest amongst them, lack sufficient financial resources.

In view of the still-high subsidy levels in OECD countries, in agriculture negotiations some developing countries are calling for special and different treatment in regard to the application of countervailing measures. As long as developed countries continue to use trade-distorting subsidies to support their agricultural sectors, importing developing countries should only be required to prove that the product in question has been subsidised before imposing countervailing duties.¹¹ So far developed countries have not made any concessions concerning this issue.

¹¹ *Submission of the proposal "Preliminary Modalities of the Special and Differential Countervailing measure" published on November 18, 2002 18 at the WTO Committee on Agriculture. This proposal has been supported by Argentina, Bolivia, Costa Rica, Paraguay, Philippines and Thailand. See www.tradeobservatory.org.*

c. Understanding on Safeguard Measures

- Safeguard measures have been laid down in the Understanding on Safeguard Measures and in GATT Art. XIX. They are not covered by the peace clause (AoA Art. 13) and therefore they have already been applicable since 1995. However, so far all safeguard measures have been found inconsistent with the WTO by WTO dispute settlement bodies and the Appellate Body! Using applicable rules, the threshold has been set quite high (confirmed by dispute settlement bodies and the Appellate Body) to ensure that they are really only used as emergency measures. The following requirements must be met to apply a safeguard measure:
 - It must result from an “unexpected development”.
 - The product is imported in “such excessive quantities” and under such conditions.¹²
 - The imported products cause or threaten to cause serious injury.

Year	Number of Cases
1995	2
1996	5
1997	3
1998	10
1999	15
2000	26
2001	53
2002	132

In 2002, 132 investigations concerning safeguard measures had been initiated, 7 cases, i.e. 5.3%, concerning the sector food/agriculture. The dramatic increase in 2002 apparently resulted from the situation in the steel sector (104 investigations).¹³

¹² *The Appellate Body in Argentina Footwear*: “the increase in imports must have been recent enough, sudden enough, sharp enough, and significant enough, both quantitatively and qualitatively, to cause, or threaten to cause ‘serious injury’”.

¹³ *Stevenson Clive, Mayer Brown Rowe: Are WTO Members correctly Applying WTO Rules in Safeguard Determinations? Paper presented at Dartmouth-Tuck-Forum in Washington in 2003.*

Shortcomings of Applying Safeguard Measures from the Development Perspective

- Developing countries have hardly ever used these safeguard measures. They do not have sufficient resources and institutional and legal capacities to prove serious injury.
- The agreement requires the importing country to pay compensations for using safeguard measures; otherwise the exporting country can take countermeasures.
- Using safeguard measures requires that member countries have a related legislation in place, which is not the case in many developing countries.¹⁴

d. The Special Safeguard Clause (SSG) According to AoA Art. 5

AoA Art. 5 is an exception to the normal rule in Art. 4 that prohibits the application of border measures other than bound tariffs. It reflects concerns that the elimination of non-tariff trade barriers such as quota restrictions will cause import surges that would harm domestic production and force down prices. The use of bound tariffs was not considered sufficient. Thus, the establishment of the special safeguard clause is an acknowledgement of the inadequacy of the safeguard measures under the GATT. The special safeguard clause is not available to all WTO members. Only those countries that altered their quantitative restrictions into duties for their agricultural products could notify the SSG and consequently apply it. This applies to all OECD member countries, but only to very few developing countries. Additional duties can be imposed to prevent market distortions if imports of a certain product exceed a certain volume trigger¹⁵ or if imports are below a certain price trigger.¹⁶

Benefits of Applying the SSG from a Development Perspective

- No proof of a serious injury or a causal connection between dumped imports and injury is required. Developing countries can

¹⁴ *Oxford Policy Management (2002): An Agricultural safeguard mechanism for developing countries. Oxford.*

¹⁵ *Between 1995 and 1999, the volume trigger was applied 238 times by the EU, Japan, Korea, Poland, Slovakia and Czech Republic in total.*

¹⁶ *Between 1995 and 1999, the price trigger was applied 487 times by the EU, Japan, Korea, US, Poland, Costa Rica, Hungary and Switzerland in total. The EU applied the price trigger to several sugar products on a virtually permanent basis.*

more easily determine whether a certain quantity of imports has been exceeded or whether the prices for imports have fallen below a certain minimum.

- The SSG is an instrument that facilitates quick and temporary protection against harmful import surges.

Shortcomings of Applying the SSG from a Development Perspective

- The trigger mechanisms for applying the SSG are complex. The trigger volume is based on the imports of the past three years, the imported share of domestic demand, and the changes of the demand volume in absolute values for the year in question, for which data is available. The price trigger is defined as the average unit value (CIF price) valid during 1986-88 in domestic currency. In this case, the additional tariff does not balance the entire price drop.
- Only few developing countries can use the SSG (14% of all developing countries in contrast to 100% of the OECD countries.) During 1995-99, only Costa Rica used the SSG.
- The SSG “punishes” all imports in the same way, whether or not they are based on unfair conditions such as dumping.
- As the SSG can be applied only temporarily, it provides no long-term protection against dumped imports. Furthermore, it does not take into account the structural nature of the problem and the causes of dumping.

5. Conclusions and Final Remarks

What all listed safeguard instruments have in common is that they are not available to all developing countries, no matter whether they are or would be practical or effective in protecting food security and small farming production. In any case, the understanding on safeguard measures with its extremely high barriers when it comes to application is not practical and effective. The same might apply to the ASCM, though developing countries have only really been able to apply the rules of the ASCM and the Antidumping Agreement since the expiration of the peace clause. The fact is: To date, no instrument now provides all developing countries with a rule that is easy to implement on the administrative level to protect food security and small farming production.

So far, the WTO has not provided a procedure to eliminate dumping in agriculture. The reasons of dumping must be thoroughly investigated, and dumping must be progressively eliminated. As long as developed countries continue to use trade-distorting subsidies and do not agree to limits and compensations, the call of developing countries for special countervailing measures must be regarded as legitimate.

Developing countries have repeatedly demanded the inclusion of a safeguard clause in special and different treatment provisions. It must be applicable to all developing countries and to all agricultural products. Additional tariffs and quota restrictions should be allowed as protective measures. Their application will be limited to one year after coming into force, but an extension is possible. Compensations will be excluded.¹⁷ Furthermore, basic foodstuffs should be totally exempted from reduction commitments. And developing countries that initially set their bound tariffs too low should receive permission to raise those tariffs later.¹⁸

The establishment of these new safeguard instruments must not be achieved by eliminating the basic and key safeguard instrument, the common tariff protection. The Derbez text and the non-paper of the EU Commission published on September 2, 2003 revealed broad-based and dramatic requirements in regard to market access for developing countries. But the new safeguard instruments can only be applied effectively if they are combined with a real special and different treatment for developing countries in regard to the common tariff reduction formula approach. This can only be ensured by providing for as much flexibility as possible in the framework of the Uruguay formula.

To enable real protection of food security and small farming production in the South, the Commission of the European Union must take back its present market access requirements for developing countries and actively support effective safeguard instruments.

¹⁷ *Submission of the proposal „a proposal for special safeguard mechanism (SSM) for developing countries“; submitted on November 18, 2002. The proposal was supported by Cuba, the Dominican Republic, Honduras, Nicaragua, Nigeria, Pakistan, Sri Lanka and Venezuela.*

¹⁸ *See “Development Box”, proposal from November 2002, submitted by the Dominican Republic, Honduras, Nicaragua, Nigeria, Pakistan, Sri Lanka and Venezuela.*

Agricultural Dumping in the Political Discussion

Uli Kleinwechter

From the perspective of agricultural and development policy, dumping on global agricultural markets is a serious issue. The following analysis provides an overview of the extent to which important actors of European agricultural policy regard dumping as problem for fair international trade in agricultural products and as a threat to small farmers in developing countries. It will be shown what status agricultural dumping has in the debate on agricultural policy at the European level, and who supports and opposes a discussion on dumping. Finally, an analysis of the results with subsequent recommendations for the successful inclusion of dumping in the agricultural policy debate will be presented.

The following organisations and institutions have been interviewed:

- The environmental protection organisations Friends of the Earth Europe (FOEE) and World Wide Fund for Nature (WWF), the animal welfare organisation Eurogroup, and Oxfam International as a development organisation;
- Coordination Paysanne Européenne, CPE, and COPA as representatives of the agricultural sector;
- The “Association of the Chocolate, Biscuit & Confectionery Industries of the EU” (CAOBISCO) and the “Confédération des industries agro-alimentaires de l’UE” (CIAA) as representatives of the food sector
- “Eurocommerce” as representatives of the European retail, wholesale and foreign trade sector;
- the trade and agriculture departments of the European Commission.

Acknowledgement of Dumping as a Cause of Unfair Competition and Threat to Small Farmers in the South

The acknowledgement of dumping as a factor causing unfair competition conditions on global agricultural markets and having negative effects on small farmers in the South varies widely amongst different political actors.

However, the problem receives serious attention from environmental protection and development organisations as well as from associations of traditional farmers. The fact that producers are driven out of domestic and third country markets is considered to result from dumping and to damage agriculture in the South. It is also widely agreed that it must be made clear that dumping is not only about granting export subsidies but must be defined as the export of products below production costs in the exporting country.

“Eurocommerce” also holds the opinion that agricultural subsidies lead to unfair competition conditions and that dumping constitutes a problem in agriculture. And it has also acknowledged that dumping has negative effects on agriculture in developing countries.

COPA denies the existence of dumping, asserting that there are no known cases in which a phenomenon such as dumping has had negative effects on agriculture in the South. COPA supports trade- and production-distorting subsidies in accordance with the WTO “Boxes” model and admits that this concept does give rise to trade-distortions, but not dumping. It argues that trade-distorting policy measures will be eliminated in the course of agricultural reform within the EU, which will consequently eliminate any future negative effects on global agricultural trade. Furthermore, it holds the opinion that the EU handles export subsidies in a responsible manner.

The food industry, however, does not flatly deny the existence of agricultural dumping with its negative consequences. It emphasises that dumping occurs at most in regard to unprocessed commodities, but it categorically denies the dumping of processed products. It questions any possible connection between dumping of processed products and subsidies provided to farmers. The granting of export subsidies to processed products as well is defended on the grounds that this represents compensation to the food industry for higher resource prices. And the food industry is not dumping by means of export subsidies since investments in market opening precede exports, and processed products are not regarded as surplus products.

The trade and agricultural departments of the European Commission second the reproach that the CAP has negative effects on global agricultural markets on the one hand, and that food security in developing countries could be jeopardised on the other hand. Nevertheless, there is a refusal to identify that problem as dumping. In their opinion, the question in agriculture is not whether exporting occurs at prices below production costs but whether subsidies have trade-distorting effects and offer production incentives. Their opinion is that trade-distortion has already been recognised as a problem, and that the present reform of the CAP is the tool to solve this problem.

Dumping in the Political Debate – Supporter and Opponents of a Debate

Within European agricultural policy there are efforts to introduce the issue of dumping into the debate, to analyse it and to find solutions, on the one hand, and trends to reject the issue and to keep it off the agenda on the other hand.

The supporters are environment protection and development organisations, traditional farmers organised in the framework of the CPE, and the trade sector. But they all have different reasons for engaging in this issue. Though all parties agree that negative effects of dumping on developing countries are a sufficient reason to stop dumping, the individual emphasis and focus differ widely. The main interest of “Eurogroup for Animal Welfare” is animal welfare, which they see threatened by dumping practices. WWF and FOEE regard dumping as part of an agricultural policy that supports agriculture with a negative impact on the environment. The WWF’s political demand to stop dumping is based on the issue of taking external effects of production into account, as this issue is aggravated under dumping conditions. Oxfam International places great value on securing dumping an appropriate place within the debate. Oxfam regards dumping as the most serious problem of global trade in agricultural goods. For this reason, dumping has been a central element of Oxfam’s trade campaigns for several years. The CPE regards dumping as part of a misguided agricultural policy oriented toward the world market. It supports the elimination of dumping to guarantee food sovereignty to every country. For years the CPE has also made efforts to put this issue on the political agenda. According to Eurocommerce, dumping causes extremely serious distortions in regard to competition and thus represents an impediment to free trade. It is the goal of Eurocommerce to eliminate all agricultural subsidies as soon as possible, to liberalise the agricultural sector completely, and as a result

to stop dumping. Thus, Eurocommerce is the only supporter of a dumping debate that wants to stop dumping, but denies the justification of further support to the European agricultural sectors.

Neither the COPA nor the food industry welcomes a debate on dumping. COPA categorically denies the existence of dumping. With this standpoint, a discussion on dumping is rejected. Within the food industry, dumping is also only reluctantly addressed. The reason for that may lie in the sector's aggressive export interests. Though a debate is not explicitly rejected, it is emphasised that the dumping of processed products does not exist. Consequently, they are not a subject for this debate.

Within the European Union, a debate on dumping has been clearly rejected on the grounds that dumping does not exist in agriculture. It is claimed that the reduction of measures that distort trade and production will solve all problems of global trade in agricultural products (see above). What could be the reasons behind Commission's position? One possible reason could be that in a serious debate on dumping the Commission's argumentation regarding trade and non-trade related measures could prove an insufficient tool for establishing fair conditions within global trade in agricultural products. On the one hand, this would result in the need to revise the present structure of the WTO Agreement on Agriculture, and on the other hand further restrictions would be imposed on the design and present course of the CAP. Another possible reason could be that EU agricultural policy interest groups (COPA, CIAA, CAOBISCO) have no interest in a debate on dumping or are even attempting to prevent a debate. Consequently, a debate on dumping is hardly a popular political issue.

Conclusion and Recommendations for Successfully Raising a Debate on Dumping

The examination of dumping and the political debate on dumping shows that there are several associations that clearly regard dumping as a problem affecting global trade in agricultural products and as a danger for small farmers in developing countries. These associations show great interest in discussing dumping adequately and finding ways to solve this problem. Eurogroup of Animal Welfare, FOEE, WWF, Oxfam International, CPE and Eurocommerce support a debate on dumping.

In contrast, both the COPA as an agricultural association and the food industry are making great efforts to avoid a debate on dumping. To avoid a debate, both deny that dumping exists or that they are involved in

dumping. Additionally, they adhere to the concept of the distorting effects of agricultural measures on trade and production.

In official circles, i.e. within the European Commission, a debate on dumping is also rejected. Dumping is regarded as a concept that cannot be applied to agriculture. Instead, reduction of trade-distorting subsidies is proposed.

The following conclusions for a successful debate on dumping can be drawn from this analysis:

1. It must be made clear that dumping means selling products on foreign markets at prices below their production costs.
2. It must be made clear that dumping means more than merely providing export subsidies and more than the mere distorting effects of agricultural measures on production and trade.
3. The concept of distortions in trade and production and the relevant classification of agricultural measures must be questioned in this context. Agricultural measures must be reviewed in regard to their dumping effects.
4. Cooperation between supporters of a debate on dumping must be achieved. And this cooperation must be based on an analysis that investigates the specific causes of dumping and outlines a potential design for an alternative agricultural policy model.

The English translation and edition of this booklet was supported by the European Community. The positions held in these articles represent opinions of the editors and not the official position of the European Community.

INITIATIVE

ERNÄHRUNG SICHERN! FÜR EINE GLOBALE AGRARWENDE



Gefördert durch die Europäische Gemeinschaft.

Hier vertretene Standpunkte geben die Ansicht der Herausgeber wieder und stellen in keiner Weise die offizielle Meinung der Europäischen Gemeinschaft dar.