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US WTO Complaint on China’s Agricultural Domestic Support: Preliminary Observations

On 13 September 2016 the United States initiated proceedings against China under the rules for dispute settlement of the World Trade Organization (WTO). The United States alleged that certain domestic support provided by China to agricultural producers, including producers of wheat, corn and rice in each of the years 2012, 2013, 2014, and 2015 exceeded China’s commitments under the Agreement on Agriculture (WTO 2016a). Subsequently, the United States has requested the establishment of a Panel (WTO 2016c). China has not submitted WTO notifications of its domestic support for these years.¹

This note provides some preliminary observations on the nature of the United States complaint on China’s domestic support, the dispute process, the issues at stake, and the implications of possible outcomes. The note is organized into six main sections. First it provides a brief general background on the WTO dispute settlement process and the domestic support rules and limits to which countries have committed. Second, it summarizes some statistics about China’s grain trade and production, with a focus particularly on the eight years 2008-2015 after the run-up of world grain prices that started in 2007. Third, it reviews the concerns raised about increasing levels of support to agriculture by China during this period. Fourth, it focuses on some specific definitions and issues that arise in assessing China’s annual levels of certain support and whether it has exceeded China’s commitments. Fifth, it makes rough estimates of China’s support to assess under what assumptions the US argument that China has exceeded its limits might be sustained. Finally, it summarizes and draws some preliminary conclusions about this case. Data sources are detailed in Annex A.

General background on WTO disputes and domestic support rules

As in all WTO disputes many factors must coalesce to make it worthwhile for a government to initiate proceedings. They include the severity of the harm the responding country’s measures are perceived to inflict on interest groups in the complaining country, and the forcefulness with which these groups articulate their concerns to their government. They

¹ As of 6 December 2016, China’s most recent notification of domestic support (G/AG/N/CHN/28) was circulated on 6 May 2015 and covered calendar years 2009 and 2010 (WTO 2015a).
also include the government’s assessment of the likelihood and value of a successful outcome of the dispute and the cost to be incurred in pursuing it, such as the remuneration of legal expertise and the allocation of government resources over a period of several years. In some cases the complaining country considers its own potential vulnerability to the arguments it wants to make against the responding country. Long-term strategy with regard to how a country sees the role of WTO rules in governing international trade policy and how those rules may be changed under the not yet completed Doha Round of trade negotiations may be a factor. In the case of China – Domestic Support for Agricultural Producers (hereafter China – Domestic Support), the timing of initiating the proceedings may also have been influenced by political considerations in the context of the Obama administration’s effort to secure congressional approval of the Trans-Pacific Partnership (TPP), or by the international trade positions articulated by candidates in the lead-up to the November 2016 US presidential election. While the establishment of a Panel has been requested by the outgoing administration, it is not yet known exactly how the incoming US administration will pursue the complaint on China’s domestic support.

The China – Domestic Support case concerns the WTO Agreement on Agriculture (AA; WTO 1999). It is noteworthy that it does not concern the WTO Agreement on Subsidies and Countervailing Duties (ASCM). Under the ASCM the United States would have to show that those subsidy measures in China that it complains about had adverse effects on the interests of the United States. Such adverse effects include injury to the US industry (production of wheat, corn and rice), nullification or impairment of the benefits accruing to the United States from China’s tariffs bound in its WTO Schedule, or serious prejudice to US interests. The ASCM gives examples of what constitutes serious prejudice, such as subsidization exceeding 5 percent of the value of the product. The ASCM also spells out situations where serious prejudice may arise, such as displacement of imports or exports, price undercutting, price suppression, price depression, lost sales, or an increase in the subsidizing country’s world market share. The ASCM defines some of these terms.

In other words, a complaint under the ASCM requires the complainant to demonstrate that certain market effects result from the subsidies. The US exported increasing quantities of
corn and wheat to China from 2008 to 2013 or 2014, as well as increasing quantities of DDGS through 2015 (DDGS is distillers’ dried grain with solubles, a by-product of producing ethanol from grain). Overall, China’s total grain imports increased during 2008-2014. It may therefore prove difficult to show adverse effects strong enough to support an ASCM claim.²

Rules for domestic support and the US claim

A domestic support complaint under the AA does not hinge on demonstrating adverse effects. It requires the complainant to demonstrate that the respondent has exceeded a limit on certain domestic support in favour of agricultural producers. The relevant support is support that is not exempted under the rules of the AA. It is measured through a number of Aggregate Measurements of Support (AMSs), one for each product whose producers are being supported. There is also a non-product-specific AMS. The country’s legally binding Schedule of Concessions and Commitments (Part IV, Section I) shows the country’s limit. The Schedule of most countries, including China, shows a blank, nil or zero as the country’s Bound Total AMS (32 countries have a larger-than-zero commitment level in their Schedules). This means that the country’s Current Total AMS, i.e., the sum of AMSs when summed in a particular way, must not exceed zero. The summing into Current Total AMS leaves out any AMS that is no larger than its de minimis level, i.e., a given percentage multiplied by the product’s value of production. The percentage is 10 and 5 for developing and developed countries, respectively. However, China is a special case with a de minimis percentage of 8.5 percent, as specified in its WTO accession documents (the same holds for Kazakhstan). The zero limit on Current Total AMS effectively means that no single AMS is allowed to exceed its de minimis level, which is thus a de minimis limit on each product’s AMS and on the non-product-specific AMS in the year concerned. This is also spelled out in Article 7.2(b) of the AA.³

² Carriquiry et al. (2016) estimate effects on US production, trade and farm price of wheat if China’s support for wheat was removed, but such estimates do not play a role in determining whether the support exceeded WTO limits or not.
³ All references to articles in this note are to Articles in the AA.
The US complaint concerns all support China provides in favour of agricultural producers, i.e., not just domestic support (WTO 2016a). The United States claims, more narrowly, that China provides domestic support in excess of its nil commitment level because China provides domestic support, in particular market price support at administered prices, in excess of the de minimis levels for each of wheat, corn, Indica rice and Japonica rice (USDA 2016a). The United States refers to these product-specific excesses as examples, leaving open the possibility of claiming excesses also for other products.

As is required for dispute settlement, the United States’ request identifies the measures (“legal instruments”) through which it claims China provides domestic support. They number 33. They include several of the yearly so-called Number 1 documents, issued by the Communist Party of China and the State Council to outline the evolving policy priorities in agriculture, and a large number of notices by government agencies concerning minimum support prices for wheat, corn and rice.

The US request for consultations is one of only very few WTO disputes on domestic support in agriculture. Korea – Beef, brought by the United States and Australia and concluded in 2000 (WTO 2000a; 2000b) clarified some issues in interpreting the AA (see below). Two domestic support cases initiated by Canada and Brazil against the United States in 2007 proceeded to a certain stage in the process but have essentially been inactive ever since (WTO 2007a; 2007b). The US request for consultations on China’s domestic support is one of 19 trade

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4 For example, China’s agricultural policy uses a variety of instruments affecting its wheat sector more or less directly, such as minimum purchase prices, procurement, stock accumulation and drawdowns, import tariffs and tariff rate quotas, direct payments and input subsidies (OECD 2016b).

5 Indica rice has long grains; Japonica rice has round grains (Calpe 2006). It is also reported that Indica rice has longer grains and Japonica rice has medium or short grains (Major differences 2016). The US Department of Agriculture reports on US production, trade and policy parameters in terms of long-grain, medium-grain and short-grain rice, sometimes combining medium-grain and short-grain (USDA 2016e). This note assumes that Indica rice is equivalent to long-grain rice and Japonica rice equivalent to medium-grain and short-grain rice.

6 The United States – Upland Cotton case (WTO 2009) initiated by Brazil in 2002 focussed on ASCM violations and did not concern domestic support excesses although it did touch on some domestic support classification issues.
enforcement challenges filed by the United States against China since its accession to the WTO on 11 December 2001, of which only one other case has concerned agriculture.\footnote{The other challenge concerning agriculture is “Anti-dumping and countervailing duty measures on broiler products from the United States” filed 20 September 2011 (WTO 2011). These measures remain under dispute (WTO 2016b).}

Process for WTO settlement of disputes

The establishment of the WTO included an understanding on the settlement of disputes (DSU). The DSU lays down precise rules for the stages countries can go through in settling disputes. While often thought of as litigation only, the procedures of the DSU allow countries to take steps in settling disputes that fall short of litigation, such as good offices, conciliation and mediation. If they fail, more formal steps can be initiated. The first of those steps is to request consultations. The United States submitted its request for consultations with China on 13 September 2016, and the WTO Secretariat circulated it to members on 20 September 2016.

While the DSU lays down specific time frames for each stage in the process, it also allows for flexibility on the length of any stage, especially if the parties mutually agree on flexibility. Consultations take place within 60 days of the defending party (in this case, China) receiving the request. Consultations on \textit{China — Domestic Support} took place on 20 October 2016. Countries that have a substantial trade interest in the consultations can request to participate. Australia, Canada, the European Union (EU) and Thailand requested to participate, which China accepted. (The Philippines also made a request but it may have been made too late). Canada and the Philippines particularly referred to the measurement of support in their requests, while they and others also referred to their substantial trade in wheat, corn or rice. It is surprising that India did not request to participate, given its large rice exports and the possible implications of any outcomes from this dispute for India’s own market price support programs.

The consultations did not settle the dispute and on 5 December 2016 the United States asked the WTO’s Dispute Settlement Body (DSB) to establish a Panel. Once a Panel has been established, a second step is to appoint the members of the Panel, following the rules of the
DSU, including its timelines. Once the Panel starts meeting with the parties they can submit their arguments in writing. Any country that has a substantial interest in the matter before the Panel as a third party can provide written submissions. This allows countries other than the United States and China to express their points of view to the Panel regarding the legal arguments raised.

The Panel issues its report, where it can recommend that measures that violate a WTO agreement be made to conform to WTO rules. The report becomes the ruling or recommendation of the DSB. Either side can appeal a Panel’s ruling and sometimes both sides do so. Appeals must be based on points of law such as legal interpretation — they cannot re-examine existing evidence or examine new issues. An appeal ruling by the Appellate Body (AB) can uphold, modify or reverse the Panel’s legal findings and conclusions. The WTO Secretariat shows a target timeline for settling disputes that totals one year without appeal and one year and three months with an appeal, but often dispute cases extend longer.

While economic analysis as such has not usually played a major role in the settlement of disputes, there are examples where it has done so (such as United States – Upland Cotton) and some observers have the impression that the role of economic analysis is growing. The Panel process allows for expert input: if one side raises scientific or other technical matters, the Panel may consult experts or appoint an expert review group to prepare an advisory report.

China’s grain crops: Trade, production, support levels, and stocks

For most years prior to 2009 China was a net exporter of grains, primarily corn (Figure 1). From 2009 through 2014 China’s imports of grains increased steadily and rapidly. The United States was a major supplier of these imports, including large quantities of DDGS.

The swiftly growing role of China as a destination for US exports of grains and DDGS from 2009 is clear from Figure 2. While the United States exports only small quantities of rice to China, exports of wheat, corn and DDGS increased from 2008 to 2012. However, 2013 and 2014 saw sharp declines in US exports to China of corn and wheat, respectively. US exports of DDGS also experienced a drop in 2014 but increased again in 2015. This increase in China’s DDGS imports, combined with large Chinese domestic stocks of corn and several other agricultural
Conference paper. Comments are invited.

commodities, likely motivated China’s imposition of anti-dumping and countervailing duties on imports of DDGS from the United States in late September 2016. The anticipated imposition of these DDGS duties in turn may have helped to prompt the US domestic support complaint filed ten days earlier, as tensions over competing support policies and their implications for trade ratcheted up. It has also been reported that two Chinese companies now have permission to export up to 2 million tonnes of corn, for the first time in ten years (Reuters 2016).

Figure 1. Synopsis of China’s Grain Trade

Figure 6. China’s net trade in grains, 2000-2015


It is thus clear that the trading pattern in grains between the United States and China continues to undergo major changes and even reversals. Policy-induced increases in China’s domestic production are part of the causes for the changes in trade. While China has moved toward net grain imports in the 2008-2015 period, this growing level of imports has accompanied increasing domestic production, not substituted for it. For wheat, corn and rice, quantities of production increased by 16 percent, 35 percent and 8 percent, respectively, from

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8 China’s Ministry of Commerce announced anti-dumping duties of 33.8 percent on 26 September 2016 and countervailing duties of about 10.2 percent on 29 September 2016 (Ministry of Commerce 2016a; 2016b).
2008 to 2015, while the values of production increased by 67 percent, 105 percent and 63 percent, respectively (OECD 2016a). This increased output fits China’s high-level policy framework for food security through 95 percent self-reliance or self-sufficiency in wheat and rice and complementing domestic production with imports from international sources (Gale et al. 2015; OECD 2016b).

**Figure 2. US Grain Exports to China, 2008-2015 (000 dollars)**

![Graph showing US Grain Exports to China, 2008-2015](source: USDA (2016d)).

In adjusting to and managing the changes in trade and production, both the United States and China have seen fit to resort to various trade and domestic support policy actions. In China, rising market price support as well as increased input subsidies and other support measures have been policy components since farm commodity prices and input costs increased after 2007. Procurement prices, the administered prices at the center of the domestic support dispute, were raised for wheat by 58 percent between 2008 and 2015 (from 1,490 to 2,360 RMB/tonne), for corn by 50 percent (from 1,500 to 2,250 RMB/tonne), and for rice by 80 percent (weighted average for Indica and Japonica: from 1,573 to 2,834 RMB/tonne) (USDA 2015a, see Annex A). Government grain procurement at the support prices operates in a
context of tariff-rate quotas (TRQs) for wheat, corn and rice, ranging between 4 and 9 percent of domestic consumption, largely administered by state-owned enterprises. The United States reports that fill rates were low in earlier years and considers the over-quota tariff rates of 65 percent as prohibitive (USITC 2011). Tariffs are low for other grains such as sorghum and DDGS as well as soybeans.

The rising administered prices in China have contributed to expanded imports of other grains where tariffs are low, as well as concerns over SPS requirements, TRQ administration and other issues (Gale 2015; Gale et al. 2015), and concerns in China leading to the introduction of anti-dumping and countervailing duties on DDGS. They also resulted in increased procurement and growing Chinese stocks of the supported grains. As assessed by USDA (2016c), China’s stocks of wheat which had averaged 53.8 million tonnes during 2008/9-2010/11 rose to an average of 73.1 million tonnes during 2012/13-2015/16, reaching 97.0 million tonnes at the end of 2015/16. Similarly, corn stocks averaged 52.8 million tonnes during 2008/9-2010/11, then averaged 90.0 million tonnes during 2012/13-2015/16, reaching 110.7 million tonnes at the end of 2015/16. For rice (milled), stocks averaged 41.7 million tonnes during 2008/9-2010/11, rose to an average of 56.0 million tonnes during 2012/13-2015/16, reaching 63.7 million tonnes at the end of 2015/16.  

Concerns about level of China’s domestic support

The rising levels of support for agricultural production in China have been a concern to US interests for several years. For example, in 2009 the US government noted the significant

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9 The authors did not find consistent data series for procurement associated with these stock accumulations. USDA (2016b) reports Sino Grain as having been reported to have purchased 20.8 million tonnes of the 2015 wheat crop (p. 5) and 32 million tonnes of rice (p. 9). Gale (2015) cites Chinese authorities reporting purchases of 124 million tonnes in 2014 (p. 3). Gale et al. (2015) report that authorities in China purchased 70 million tonnes of corn in 2013/14, then during 2014 sought to release up to 63 million tonnes from stocks (p. 18), while during 2013 grain procurements were over 82 million tonnes (p. 22). DTB Associates (2014) reports that at least 61 million tonnes of corn were procured in 2013/14, about 28 percent of production, compared to 30 million tonnes (14 percent of production) in 2012/13 (p. 15). Gale (2013) reports that “authorities purchase large volumes of wheat at minimum prices in most years” but none in 2011 (p. 17) and shows grain purchased for government reserves with loans from the Agricultural Development Bank of China exceeding 20 percent in all years from 2001 through 2012 (p. 20). However, Gale (2013) also reports that wheat market price support in 2012 through procurement of 23.3 million tonnes was estimated by ERS to be about 3 percent of the value of wheat production, and that data on support purchases for 2012 were not available for rice and corn but news reports indicated small volumes (p. 26-27). For 2008/09, he reports procurement of about one-third of wheat, 18 percent of corn, and 8 percent of rice (p. 28).
transition from taxing the rural sector to providing subsidies (USDA 2009). The report identified direct payments, price supports, subsidized credit, and preferential tax policies as instruments supporting agriculture, including livestock, grains, oilseeds and other commodities. Various other reports from the US government have examined support to agriculture in China, such as USDA (2010). Other studies have analyzed, for example, China’s value-added tax system for agricultural products, with particular focus on the implications for trade (DTB et al. 2009).

The particular concern about agricultural support in China having grown large enough to threaten violations of China’s commitments in the WTO has been explored by, for example, Gale (2013). He noted the potential for support to exceed the relevant ceilings. The DTB Associates (2014) calculations demonstrated large excesses for wheat, corn and rice under certain assumptions. Organizations such as the US Grains Council, US Wheat Associates, and the National Association of Wheat Growers have voiced their concerns about support levels in China, based in some cases on the analysis of Carriquiry et al. (2016 and earlier versions). Cheng (2011) assessed the potential of China violating its AMS limits under different assumptions about the level of minimum purchase prices and procured quantities. He saw little risk of violations for wheat, corn and rice through 2016 if increases in minimum purchase prices were only moderate, but support would exceed the \textit{de minimis} limits for wheat and corn during 2013-2016 if increases in administered prices were large. These latter excesses would occur even if the eligible production was only the projected procured quantity, based on earlier procurement levels.

As background for its WTO case, the US government explains that its challenge aims to help reduce distortions for wheat, corn and rice (USDA 2016a). The US government claims that China’s domestic support in every year in the 2012-2015 period exceeded the respective WTO commitments for wheat, corn, Indica rice and Japonica rice. Without demonstrating its calculations, the United States claims that the amount of market price support China provided in 2015 for wheat, corn and rice, above its WTO limits, amounted to nearly USD 100 billion. The sum of the limits for these three grains in 2015 may have been of the order of USD 19 billion (authors’ estimate based on values of production reported by OECD (2016a)).
Concerns raised in the WTO Committee on Agriculture

The United States has been particularly active in the WTO Committee on Agriculture posing questions to China on its market price support calculations, but other countries, such as the EU, Canada, and Japan, have also questioned China’s notified information on market price support for grains and the absence of notifications for any year after 2010. The questions have focused on three major issues.

One is China’s use of only a small share of total production as the production eligible to receive the applied administered price. China uses only the quantity purchased by the State Administration of Grains (implemented by Sino Grain) under the Minimum Procurement Price Scheme for various grains including wheat and rice and the Temporary Reserve Program for corn. In 2009 and 2010 China reported such purchases of wheat of about 40 and 23 million tonnes, respectively. Total annual production of wheat was around 115 million tonnes. China notified procurement of rice of 8 million tonnes in 2009 and none in 2010, with production of the order of 195 million tonnes. China notified nil procurement of corn in 2009 and 2010 (WTO 2015). In some previous notifications, China had reported as eligible quantities amounts less than its procurement (Cheng, 2011).

A second major issue for discussion in the Committee on Agriculture is China’s use of a reference price for milled rice (i.e., a value-added product), compared to a minimum procurement price for unmilled rice (an unprocessed product).

A third issue is the absence of domestic support notifications by China to the Committee on Agriculture for years after 2010. China is not alone in being so many years behind in its notification record, but the absence gains prominence in a situation where economic support has been raised over a number of recent years, as in the case of China. Many countries have expressed great frustration about the lack of up to date WTO domestic support information from the world’s major agricultural producers and traders.

China’s WTO commitments and the US claim

China’s domestic support commitments are to maintain, for each year and each basic agricultural product, its AMSs at levels not exceeding 8.5 percent of the product’s value of
production (a corresponding limit applies to the non-product-specific AMS). This follows from Article 7.2(b) and the absence of a non-zero Bound Total AMS in China’s Schedule. If any AMS was larger than its limit, it would be counted in the Current Total AMS, which according to Article 6.3 must not exceed the bound commitment level in the Schedule, i.e., nil. Article 3.2 also applies, saying that, subject to Article 6 (which authorizes a number of exemptions), domestic support must not exceed the commitment level specified in the Schedule.

The 8.5 percentage is not specified in the AA but is taken as a commitment in the Report of the Working Party on China’s accession to the WTO (WTO 2001b). That report also precludes China from exempting support under Article 6.2, i.e., certain investment and input subsidies in developing countries. China (and every other country) has the right to provide unlimited amounts of domestic support provided through measures that meet the requirements and criteria of Annex 2, i.e., the green box.

The US complaint does not seem to concern issues of support being or not being exemptible under the rules of the AA. In other words, it does not seem to involve classification of policies as meeting or not meeting the criteria of the green box. The concern thus involves questions of the correct measurement of support under policies that China does not claim as exempt. The list of 33 measures comprises mainly policies concerning purchases at minimum procurement prices. While it is clear that these prices are set by the National Development and Reform Commission, it is not at this point clear whether or how any limits are set on the quantities purchased at these prices. While China has explained in the Committee on Agriculture that the fact that purchases are limited to certain months and certain regions effectively imposes limits, it is not clear from the US complaint whether this is taken into consideration when claiming that support exceeds China’s limits. The calculations presented below suggest that the US is asserting that total production should be considered eligible for procurement at administered prices.

**Key definitional issues in the dispute China — Domestic Support for Agricultural Producers**

The case between the United States and China led to the United States requesting the DSB to establish a Panel at its meeting on 16 December 2016. If the first such request is
rejected by a country, as China is expected to do, a Panel must nevertheless be established in response to a second request. If a Panel is established, the parties will need to submit their arguments. As a complainant the United States needs to show that China has exceeded its commitments. China’s own notifications are not likely to show an excess – China’s interpretation of the AA would justify its notified classification of policies and measurement of support. There are in any case no notifications for the years 2012-2015 (as of 6 December 2016), the years in which the United States alleges that China exceeded its commitments. To support its claim of excessive support the United States therefore needs to prepare its own calculations, in line with its own interpretation of the AA. Since those calculations may use the format of the yearly notifications, the US submission on this point might be seen as the model for a counter-notification under Article 18.7 of the AA. However, any US submission in the dispute under the rules of the DSU is not a notification to the Committee on Agriculture.

The United States’ and China’s arguments in the case will be detailed in submissions to the Panel. Supporting material will be submitted as exhibits in the submissions. Unless any of the parties makes its submissions public during the process, their contents may become known in public only when the Panel issues its findings. Without access to the submissions lodged by the United States and China, it is only possible to conjecture what arguments they might raise. The following discussion is therefore an outside observer’s assessment of the situation, and it does not draw on legal expertise. Once and if the submissions are public, it will be possible to gauge to what extent this discussion covers the relevant points and what is shown to be missing.

Taking into account or in accordance with

An important element in the interpretation of the AA is “the constituent data and methodology incorporated by reference in Part IV of the Member’s Schedule”, mentioned in Article 1(a)(ii). The constituent data and methodology in China’s case are in the document of 1996-98 base data for its WTO accession (WTO 2001; hereinafter called CHN/38/R3). China’s WTO Schedule refers to it in Part IV, Section I, i.e., the Schedule incorporates it.
One argument that may come to the fore in this case is the meaning of the words “taking into account”. Article 1(a)(ii) of the AA stipulates that a Current AMS be calculated “taking into account the constituent data and methodology”. In other words, the calculation of a Current AMS must take into account how it was done in the supporting tables for 1996-98 in CHN/38/R3. Article 1(a)(ii) also requires a Current AMS to be “calculated in accordance with the provisions of Annex 3” of the AA.

In Korea – Beef the Appellate Body explained, using a dictionary, that taking into account is defined as “taking into consideration, noticing” (WTO 2000b). The constituent data and methodology in the Schedule must be considered. The AB contrasted this meaning against the phrase “in accordance with the provisions of Annex 3”, i.e., in conformity with those provisions. The AB stated that “in accordance with” reflects a more rigorous standard than “taking into account”. While in Korea – Beef the AB did not need to apply these two standards in a hierarchical fashion (there was no constituent data and methodology to take into account), it seems the AB’s hierarchy is still valid.

**Eligible production**

Annex 3 of the AA requires that a certain price gap – specifically the gap between the current year administered price and a fixed external reference price (FERP) – be “multiplied by the quantity of production eligible to receive the applied administered price” when calculating market price support. This quantity is often called “eligible production”, in line with the vocabulary of the notification formats of the Committee on Agriculture. CHN/38/R3 states that “Eligible Production for State Procurement Price refers to the amount purchased by state-owned enterprises from farmers at state procurement price for the food security purpose”. The relatively small size of this purchased quantity compared to total production enables China to calculate only a modest amount of market price support for a given price difference. China’s notifications from 2005 onwards show no eligible production of corn, and no market price support is therefore reported for corn. China has also stressed in the Committee that a significant share of total grain production is used in farm households and not marketed. Moreover, China argues in the Committee that the procurement takes place only in designated regions and only for part of the year, which limits the quantity eligible for the minimum
procurement price. There is some evidence that many producers receive less than the minimum procurement price (Gale 2013).

The United States, on the other hand, might invoke the AB’s hierarchy and argue that conforming with Annex 3 (“in conformity with”) overrides what was done in the constituent data and methodology (“taking into account”). The United States may argue that, in the absence of a pre-announced limit on the quantity to be bought, all production is eligible to receive the applied administered price. In other words, total production, whether bought or not, whether consumed in farm households or not, would be the appropriate quantity in the market price support calculation.

In Korea – Beef the Panel examined the views of Korea and the complainants, Australia and the United States, regarding "production eligible to receive the applied administered price" (WTO 2000a). Korea had announced a specific quantity that it would purchase. Korea argued that the eligible production should be the smaller quantity actually procured by the government. The United States and Australia argued that all production or at least the announced procurement quantity was the appropriate measurement. The Panel seemed to side with the complainants when it considered that “… eligible production … should comprise the total marketable production of all producers which is eligible to benefit from the market price support, even though the proportion of production which is actually purchased by a governmental agency may be relatively small or even nil” (WTO 2000a, paragraph 827). However, the Panel qualified this by saying that eligible production could be less than total marketable production if the price support was only available in certain disadvantaged regions or if there was “a legislatively predetermined, non-discretionary, limitation on the quantity of marketable production that a governmental agency could take off the market”. The latter seems to have applied in Korea’s case.

The AB agreed with the Panel’s view that the phrase eligible production has a different meaning than "production actually purchased" (emphasis in original) (WTO 2000b, paragraph 120). The AB held that "production eligible" refers to production that is "fit or entitled" to be purchased rather than production that was actually purchased. The AB also stated that “a government is able to define and to limit ‘eligible’ production. Production actually purchased
may often be less than eligible production.” The AB explained that, since Korea had declared
the quantity it would purchase, this was the quantity of “eligible production”, even though
Korea actually purchased a lesser quantity. The AB did not conclude, however, that eligible
production should equal total production.

The implication of Korea – Beef for the China – Domestic Support case seems to be this:
if China has declared the quantity it would purchase, this would be the quantity of “eligible
production” even if a lesser quantity is actually purchased. This does not, however, clarify
a situation where the quantity to be purchased has not been declared, and the government finds
itself at the end of the year having purchased altogether this or that much. China might argue
something along the lines that each one of its actual purchasing activities reveals how much it is
willing to purchase at the minimum purchase price and altogether these actual purchases add
up to the "production eligible to receive the applied administered price". China might also
argue that some of the grain offered for sale to the government does not meet the quality
standards and is therefore not eligible (“fit”) to be purchased. This would reduce the eligible
production. China might also put forward the argument that farmers wish or need to retain
some grain for food and will not even consider selling it at the minimum purchase price, which
would make eligible production less than total production. The Korea – Beef Panel introduced
the concept of “total marketable production”, which might be an opening for this argument.

Adjusting the external reference price

In the case of the external reference price of rice, China might argue that the milled
price used in its constituent data and methodology for 1996-98 in CHN/38/R3 is the correct
external reference price. Converting it to a price for unmilled price with a factor of, say, 0.70
would lower the reference price by 30 percent and make the price gap used to calculate market
price support much larger.

The United States might argue that a reference price “in accordance with” Annex 3
overrides “taking into account” a reference price in the constituent data and methodology.
Annex 3 (paragraph 9) requires the reference price to be the average FOB unit value or CIF unit
value, depending on exporting or importing status. In this sense China is following the Annex 3
stipulation. However, paragraph 9 also says that the “reference price may be adjusted for quality differences as necessary”. This might lend support to a US contention that the FOB price for milled rice should be adjusted to the corresponding lower price for unmilled rice. This may be a somewhat tenuous argument in that such an adjustment is not an Annex 3 requirement, only a possibility. On the other hand, the “as necessary” words may hint at an adjustment being needed if, for example, the price observations relate to different qualities, such as milled and unmilled.

If a literal reading of Annex 3 were to carry the day, China’s use of 1996-98 reference prices for its constituent data and methodology might be questioned. The rules for choosing the base period for the constituent data and methodology in accessions to the WTO, such as China’s, have not been formalized but are only the result of convention in the accession processes. The WTO Secretariat advises acceding countries that the required price information is “normally for each of the last three years” (WTO 1996). In accession negotiations that extend over many years, a rolling series of three-year periods has often been used, with data for the latest one being referred to in the Schedule. However, Annex 3 of the AA mentions only 1986-88 as the years on which to base the FERP. This literal, but possibly farfetched, reading would thus require using 1986-88 export or import unit values. Such a finding would have major consequences not just for China but for many of the 35 other countries that have acceded.

Possible relevance of WTO decisions since 2013 about market price support and stock acquisition

In its notifications to the Committee on Agriculture, China has from 1996-98 to 2010 followed countries’ standard practice of exempting expenditures under the green box paragraph called “Public stockholding for food security purposes” (paragraph 3, Annex 2), while also reporting market price support as part of its AMSs in line with its reading of Annex 3. In the Doha negotiations some countries proposed that developing countries in certain circumstances be allowed to avoid reporting market price support as part of AMSs in spite of using administered prices for the acquisition of foodstuffs.\(^\text{10}\) As a result, Ministers and the WTO

\(^{10}\) A 2012 proposal by a group that includes China suggested adding the following sentence to footnote 5 of the AA: “However, acquisition of stocks of foodstuffs by developing country Members with the objective of supporting
General Council took a series of decisions in 2013, 2014 and 2015 under the heading “public stockholding for food security purposes”, relating not to stockholding but to stock acquisition (WTO 2013; 2014; 2015b).

The 2013 decision in Bali put in place an interim mechanism under which, provided that given conditions are met, WTO members shall not challenge a developing country member’s compliance with its AMS commitments in relation to the support it provides for certain food crops using administered prices under programs existing as of the date of the Bali decision. Since such immunity against challenge under the WTO dispute settlement rules essentially allows a country to provide unlimited market price support for important crops without fear of legal challenge, it is surrounded by conditions regarding notification and transparency, anti-circumvention safeguards (such as not distorting trade), consultations, and monitoring. The 2014 decision confirmed that this interim mechanism would remain in place until a permanent solution is agreed and adopted and the 2015 decision laid down rules for reaching a permanent solution. The series of decisions do not, however, promise conditional immunity against challenges under the ASCM. It is also possible that Ministerial decisions carry lower legal authority than WTO agreements and schedules.

The United States challenges excessive support in China in 2012-2015, i.e., a period that includes years following the 2013 Ministerial decision. The US request for consultations does not mention the 2013 and subsequent decisions. China has not submitted notifications for the years in question, so it is unknown whether China would attempt to invoke the 2013 and subsequent decisions to fend off the US legal challenge. China has not, as far as is known, taken steps to meet the conditions attached to the decisions, such as notifying the Committee on Agriculture that it is exceeding or at risk of exceeding its AMS limits, providing annual notifications to the Committee, or providing additional and statistical information as specified in the 2013 decision. It is not clear to what extent China has ensured that the stocks it has procured do not distort trade or whether other members have requested consultations on the

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low-income or resource-poor producers shall not be required to be accounted for in the AMS” (WTO 2012). It was also proposed that there would be no requirement to account in the AMS for the difference between the acquisition price and the external reference price. Diaz-Bonilla (2014) discusses the subsequent decisions.
operation of the programs as outlined in the 2013 decision. It thus appears that the US challenge is launched independently of the contents of the 2013 and subsequent decisions.

A key issue that may arise in looking at the US challenge in the context of these decisions is that they provide the immunity against challenge only to developing countries. The WTO does not identify members as developing countries or not. China often aligns itself with countries that take advantage of the flexibility many WTO provisions extend to developing countries, both in the AA and in other agreements. At the same time, China’s commitments in domestic support in agriculture differ from the standard developing country commitments: its de minimis percentage is 8.5 percent, not 10 percent, and it is precluded from exempting certain investment and input subsidies under Article 6.2. If China were to seek immunity against the US challenge under the 2013 and subsequent decisions, the United States might argue that China is not a developing country for the purpose of those decisions.

Summary of definitional issues

Establishing what is the “production eligible to receive the applied administered price” may be a critical task of a Panel in the China – Domestic Support case. This eligible production can be as large as total production, likely to be contended by the United States, or a much smaller or nil quantity as used by China in its constituent data and methodology from 1996-98 and its notifications through 2010. The outcome of this decision will make a large difference in the calculation of market price support for all three grains – wheat, corn and rice. Another critical task may be to determine what is the proper period – the years 1996-98 in China’s constituent data and methodology or 1986-88 in Annex 3 of the AA – on which to base the FERPs for countries that have acceded to the WTO after 1995.

These decisions would be of great importance to the measurement of market price support not only in China but also in many other countries – the measured market price support could be much larger than currently measured by many countries. This would have implications for the kinds of policies countries choose to use while staying within the limits of the AA, subject to the decisions eventually made about market price support and food stock acquisition in developing countries.
Conferen…Comments are invited.

Adjusting the reference price of rice from milled to unmilled, as the United States may argue is the correct thing to do, would have implications only for rice, not wheat and corn. The outcome would matter greatly for the interpretation of the AA in terms of applying the hierarchy between “taking into account” and “in accordance with” and for the meaning of “may be adjusted for quality differences as necessary”.

A calculation of China’s market price support levels

This section calculates market price support (hereinafter in this section MPS) for wheat, corn and rice in China in the contested years 2012-2015 and compares it to the corresponding limits on AMSs, along lines similar to what the United States might do to motivate and argue its case against China in the WTO. For perspective, it also provides MPS calculations for the preceding period 2008-2011. The calculations are based on readily-available public data drawn primarily from the OECD PSE database and USDA (Annex A provides data sources and methods). The calculations for illustrative purposes are rough and simplified – more thorough calculations require familiarity with the official data sources of China’s government.

The MPS calculations use total production, since this would be most supportive to the US view that China’s support exceeds its limits. For rice, two cases are considered: one where the FERP is adjusted to an unmilled basis by multiplying China’s FERP for milled rice by 0.70, and a second where the FERP for milled rice is retained. In either case the calculations are based on the FERPs being the import and export unit values for 1996-98 shown in China’s constituent data and methodology document (WTO 2001a).

For illustration simplicity, the analysis is limited to calculating MPS. Thus it does not include any product-specific budgetary AMS components: MPS is treated as being the AMS that

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11 DTB Associates (2014), which may have provided some background for the US complaint, makes a similar adjustment to the reference price for rice but does not explain it as a conversion from milled to unmilled. The DTB report makes MPS calculations for a single year (2014/15 for wheat and rice and 2013/14 for corn) based on total production and also on production only in the provinces in which the support programs were designated to operate by the central government. DTB calculates that the designated provinces account for 77 percent of wheat and rice production (six provinces) and 37 percent of corn production (four provinces). DTB also calculates the farm subsidy expenditures it argues could be assessed as product-specific support that should be included in China’s AMSs.
is compared to its limit. To the extent that budgetary payments are made, they would reduce the value of the MPS that would cause an AMS to exceed its limit.

The calculated levels of MPS as a percentage of value of production are shown in Table 1. MPS and other support are measured in the WTO in nominal value terms (RMB for China) and are compared with values resulting from multiplying the value of production by the de minimis percentage (8.5 percent for China) to ascertain compliance. Nevertheless, for exposition in Table 1, the calculated levels of MPS are reported as a percentage of value of production. Reporting in percentage terms makes it easier to see when the limits, which vary from year to year, are exceeded and relatively by how much.

For the period 2012-15, the MPSs for wheat exceed 15 percent of value of production in all years and for corn they exceed 40 percent in all years. Thus, it appears that a key factor in arriving at the excessive AMS levels claimed by the United States is the use of total production instead of the relatively small or nil procured quantities. The possible use of FERPs from 1986-88 (not taken into account in Table 1) would also be important. An additional critical factor for rice is the adjustment of the milled reference price to an unmilled reference price, which increases the price gap significantly. The MPS for rice exceeds 24 percent of value of production in all years 2012-15 using the unmilled rice FERP, but it is less than the limit of 8.5 percent in all of these years using the milled rice FERP. By way of comparison, for the preceding period 2008-11, MPSs for corn are well above the limit in all years. The MPSs for wheat and rice (unmilled FERP) turn from negative to positive, but exceed the limit only in 2011, while the MPS for rice with milled FERP is negative in all of these years.
Table 1: China’s Market Price Support for Wheat, Corn and Rice, Percent of Value of Production, 2008-2015

<table>
<thead>
<tr>
<th>Year</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
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<tr>
<td>WTO MPS</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wheat</td>
<td>-12.6</td>
<td>0.1</td>
<td>3.1</td>
<td>12.6</td>
<td>15.8</td>
<td>23.0</td>
<td>27.4</td>
<td>27.7</td>
</tr>
<tr>
<td>Corn</td>
<td>21.5</td>
<td>19.9</td>
<td>33.9</td>
<td>37.1</td>
<td>40.6</td>
<td>48.1</td>
<td>47.9</td>
<td>49.6</td>
</tr>
<tr>
<td>Rice (unmilled FERP)</td>
<td>-15.1</td>
<td>1.4</td>
<td>3.3</td>
<td>13.1</td>
<td>24.3</td>
<td>32.9</td>
<td>35.6</td>
<td>34.1</td>
</tr>
<tr>
<td>Rice (milled FERP)</td>
<td>-57.1</td>
<td>-41.7</td>
<td>-30.4</td>
<td>-16.6</td>
<td>4.6</td>
<td>3.7</td>
<td>6.2</td>
<td>6.1</td>
</tr>
<tr>
<td>OECD MPS</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wheat</td>
<td>34.7</td>
<td>30.6</td>
<td>28.2</td>
<td>12.3</td>
<td>28.0</td>
<td>26.7</td>
<td>31.9</td>
<td>35.6</td>
</tr>
<tr>
<td>Corn</td>
<td>-15.5</td>
<td>16.3</td>
<td>15.9</td>
<td>1.6</td>
<td>13.8</td>
<td>23.3</td>
<td>26.5</td>
<td>36.2</td>
</tr>
<tr>
<td>Rice (unmilled)</td>
<td>-65.8</td>
<td>-43.6</td>
<td>-0.5</td>
<td>-9.4</td>
<td>29.7</td>
<td>32.6</td>
<td>32.8</td>
<td>39.1</td>
</tr>
</tbody>
</table>

Sources: Authors’ calculations for WTO MPS and OECD; see text and Annex A for data sources.

Turning to the nominal values of MPS (not shown in Table 1), and expressing these values in US dollars, the AMS limits for wheat, corn and rice in 2015 sum to USD 19 billion (converted at 6.2 RMB/USD). The calculated MPSs for wheat, corn and rice in 2015 were USD 14 billion, 38 billion and 33 billion, respectively. They summed to USD 85 billion. Subtracting the USD 19 billion from that sum gives USD 66 billion. The United States claims that the excess for 2015 amounted to nearly USD 100 billion (USDA 2016a). The two amounts are thus of the same order of magnitude, even if unequal.

Some of the difference between USD 66 billion and nearly USD 100 billion may be because the United States likely uses data sourced more directly from China’s government statistics, and the United States may also be adopting particular interpretations of the AA. Depending on the assumptions used, it is possible to generate a sum of excess market price support that matches or exceeds the nearly USD 100 billion mentioned in USDA (2016a).^12

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^12 For example, calculating China’s MPS amounts with hypothetical FERPs for wheat, corn and rice in 1986-88 at levels similar to those that might be derived from China’s customs statistics raises the amounts by which 2015 estimated MPSs exceed the limits. Between 1986-88 and 1996-98 the world prices of crops in USD rose significantly, and the RMB/USD exchange rate more than doubled. Hypothetical FERPs for 1986-88 were calculated as follows. The FERPs in CHN/38/R3 are 1996-98 trade unit values converted from USD/tonne in China’s customs statistics. They are close to the unit values calculated with quantities and values from FAOSTAT trade data for 1996-98 (USD/tonne), which allows FERPS to be calculated from FAOSTAT trade data for 1986-88, converted at...
While the MPSs in Table 1 are based on total production, several issues described above arise in how a Panel or the AB might adjudicate what level of eligible production should be used to assess China’s compliance with its commitments. Given these issues, one can compute, using the gap between the procurement prices and FERPs and also the MPSs in percentages reported in Table 1, the share of total production that would generate MPSs large enough to equal or exceed the AMS limits, again using 1996-98 FERPs.

The higher the MPS as a percentage of value of production, the lower would be the critical share of total production. For example, for wheat and corn, the highest MPS percentage (49.6 percent of value of production) is reported for corn in 2015. For that year, an eligible production of 17.1 percent or higher of total production would result in MPS equal to or exceeding the limit corresponding to 8.5 percent of value of production. The lowest MPS percentage for wheat or corn is 15.8 percent for wheat in 2012. For that year, the eligible production would have to equal or exceed 53.8 percent of total production to result in an MPS equal to or exceeding the limit. For rice (with FERP adjusted to unmilled), eligible production would have to equal or exceed 35.0 percent of total production in 2012 but only 23.9 percent in 2014 for the rice MPS to equal or exceed the limit corresponding to 8.5 percent of value of production. In short, if eligible production is judged not to equal total production, based on these calculations eligible production will need to account for at least a range of 17-54 percent of total production (depending on the year and crop) for the United States to prevail in arguing that China has exceeded its AMS limits.

Comparison of WTO MPS and OECD MPS

While the determination of whether China’s AMSs have exceeded their limits will be made on technical and legal grounds within the framework of the AA, one objective of the AA is to reduce agricultural support so as to prevent distortions in world markets. Some of the support underlying those distortions is measured by economic MPS as calculated by the OECD.

1986-88 exchange rates. Using these hypothetical 1986-88 FERPs generates a sum of excess MPS of USD in 2015 of USD 167 billion, i.e., much more than the nearly USD 100 billion of USDA (2016a). Using 1986-88 reference prices from USDA (1994) yields a similar amount, USD 160 billion for 2015. The difference in this hypothetical calculation between the USD 160 or 167 billion and the nearly USD 100 billion might be explained by using not total production but production only in the provinces where procurement prices apply, i.e., a share of total production of the three grains in the 37 to 77 percent range of total production as reported by DTB Associates (2014).
Conference paper. Comments are invited.

among others. These economic calculations utilize the differences in annual observed domestic market prices compared to contemporaneous border prices to determine the discrepancy (support if positive, disprotection if negative) that arises from a myriad of underlying policies, not only domestic policy instruments but also border instruments such as tariffs, TRQs, and non-tariff measures, e.g., export subsidies or restrictions. This observed difference, whatever its causes, applies to total output. The economic measurement contrasts against using the administered price vs. FERP price gap and the eligible production in the WTO calculations. While fraught with its own measurement issues, such as adjusting the contemporaneous price comparison accurately for equivalent quality and location, the annual economic MPSs have a direct interpretation as measuring the time series of support received. The difficulties in comparing the two measurements of MPS and in mis-interpreting the WTO MPS as an economic MPS are well known (Orden et al. 2011).

In this context, it is opportune to assess whether the stars have aligned with respect to China’s WTO MPSs and economic MPSs for wheat, corn and rice such that each one of the two indicators shows that market price support, as measured, has exceeded 8.5 percent of value of production during 2012-15. The OECD MPS is reported in the lower section of Table 1 (for rice this is for unmilled). While the specific annual values differ from the WTO MPS, an alignment has occurred in the sense that for wheat, corn and rice both the WTO MPS (except rice with milled FERP) and the OECD MPS exceed the level corresponding to 8.5 percent of value of production in all four of these years. The OECD MPS percentages are larger than the WTO MPS percentages for wheat, while they are smaller for corn. The WTO (unmilled FERP) and OECD MPS percentages for rice are the closest ones in 2012-15.

If the relatively high levels of China’s economic MPSs since 2012 is the underlying US concern, the coincidence of this situation with the possibility of China’s WTO MPSs having exceeded their limits in these years raises the prospect that, in this and possibly some other cases, the WTO rules on domestic support may have some effect in reining in certain economic support. To meet its WTO commitments a country would in some circumstances need to limit the amount of economic support, or at least resort to different policy instruments than applied administered prices. In the current dispute, China’s alleged excessive MPS support was
provided in the past. If the United States were to prevail, one implication would nevertheless be that, if similar circumstances arise in the future in a case like this, a country’s need to comply with the WTO rules could result in its economic MPS being smaller than otherwise. In other words, meeting the legal requirements could also have real economic effects in line with the AA’s broad objective of reducing agricultural support and market distortions.

The coincidence of both WTO MPS and OECD MPS exceeding a level corresponding to 8.5 percent of value of production for the three crops in the four recent years is a specific occurrence. This is demonstrated by comparing the two MPS measurements in 2008-11. In these four preceding years, wheat appears to be supported in economic terms at levels similar to the subsequent four years, but the WTO MPS only exceeds its limit in 2011. If the US interpretation of the WTO rules were to prevail, they could still not have served in 2008-10 to constrain the economic support for wheat. For corn, just the opposite occurs: economic support is variable and relatively low. The WTO MPS, although not as high as in subsequent years, nonetheless exceeds the limit in all years in 2008-11 – a case overall in which adherence to the US interpretation of the WTO rules would not have reduced economic support with much consequence in two of the four years. For rice, similarly to wheat, the WTO MPS exceeds its limit only in 2011 (with unmilled FERP). But just the opposite of wheat, this is a case where other countries need not seek any reduction of (positive) support, since the economic MPS shows rice being disprotected for the four years. Table 2 summarizes these comparisons.13

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13 There are also estimates of economic price support other than OECD. For example, Carriquiry et al. (2016) calculate price support for wheat in the four years 2008/09 to 2011/12 to average 6.8 percent of the world reference price with zero support in two of the four years, and in 2012/13 to 2014/15 to average 23.7 percent but rising from 1 percent to 51 percent in those three years. These are, except for 2014/15, lower levels than reported by OECD (wheat MPS as percentage of value of receipts from wheat production). They also show, in contrast to the OECD levels, a rising trend.
Conference paper. Comments are invited.

Table 2. Economic MPS for China’s Wheat, Corn and Rice, 2008-2015, in Relation to Possible Legal Challenge under WTO Domestic Support Rules

<table>
<thead>
<tr>
<th>Economic MPS</th>
<th>WTO MPS</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Exceeds WTO Limit</td>
</tr>
<tr>
<td>Exceeds WTO Limit</td>
<td>A. Challenge more merited</td>
</tr>
<tr>
<td></td>
<td>2012-15: Wheat, corn, rice (unmilled FERP)</td>
</tr>
<tr>
<td></td>
<td>2009-10: Corn</td>
</tr>
<tr>
<td></td>
<td>2011: Wheat</td>
</tr>
<tr>
<td>Below WTO Limit</td>
<td>C. Challenge less merited</td>
</tr>
<tr>
<td></td>
<td>2008; 2011: Corn</td>
</tr>
<tr>
<td></td>
<td>2011: Rice (unmilled FERP)</td>
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<td></td>
<td></td>
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</tbody>
</table>

Notes: Placement of years and crops in particular cells based on authors’ calculations and interpretation of the WTO domestic support rules. The reference to economic MPS exceeding or being below a WTO limit is expository only – economic MPS is not subject to WTO limits. See text and Annex A for data sources.

Summary and conclusions

This note provides some preliminary observations on the nature of the United States’ complaint on China’s domestic support, the dispute process, the issues at stake, and the implications of possible outcomes. First it provides a brief general background on the WTO dispute settlement process and the domestic support rules and limits to which countries have committed. A critical point is that the US complaint is about China’s compliance with the AA, not a case of adverse effects under the ASCM. Second, it summarizes China’s grain trade and production circumstances with a focus on the eight years following the start in 2007 of a run-up of world grain prices. A key observation is that while China’s domestic production has been rising in the presence of increasing administered prices for wheat, corn and rice, simultaneously its imports of other grains (particularly barley, sorghum and DDGS) have also increased. A consequence has been rising Chinese stocks of wheat, corn, and rice. The situation has also resulted in a series of administrative trade interventions, including the imposition by China in 2016 of anti-dumping and countervailing duties on imports of DDGS from the United States.
Parallel to these developments, concerns have been raised about the increasing levels of support to agriculture in China during the post-2007 period.

With this background, the note turns to some specific definitions and issues that arise in assessing China’s annual levels of certain support and whether it has exceeded China’s commitments. The first of these issues relates to the interpretation of “taking into account the constituent data and methodology” of the country’s original support calculations (for China, its 2001 accession document showing 1996-98 calculations) vs. calculations of support being “in accordance with” the provisions of Annex 3 of the AA. This hierarchy may arise with respect to the determination of eligible production, with China asserting that its support calculations utilize only procured quantities as eligible production, while the United States may assert that total production of a grain should be included as eligible production in the absence of a clearly stated quantity to be procured. In the earlier Korea – Beef case, the Panel argued for the possible full production interpretation, while the AB concluded that the announced quantity to be procured, not the smaller actual procurement, would be the eligible production. Thus, establishing what is the “production eligible to receive the applied administered price” may be the most critical task of a Panel in the China – Domestic Support case. The eligible production can be as large as total production, likely to be contended by the United States, or a much smaller quantity as used by China in its constituent data and methodology from 1996-98 and its notifications through 2010.

A second issue may relate to the interpretation of the Annex 3 wording about the 1986-88 base years for the reference prices when a country has acceded to the WTO after 1995 using later base years for its domestic support calculations. Resolution of this issue also hinges on the hierarchy between the phrases taking into account and in accordance with.

A third issue, which also arises in terms of the hierarchy of taking into account the original support calculations vs. support being calculated in accordance with Annex 3, concerns the determination of the appropriate reference price for rice. China uses an administered price (procurement price) for unmilled rice but a reference price for milled rice, a value-added product. This has been discussed in the Committee on Agriculture. The United States may argue
that accordance with Annex 3 requires adjusting for this “quality” difference, which would increase the level of market price support for rice.

The calculations on the basis of which the United States claims that China has exceeded its limits are not made public. The note therefore constructs rough estimates of China’s market price support for wheat, corn and rice during the four years, 2012 to 2015, included in the US complaint and also, for comparative purposes, for the previous four years, 2008-11. The estimates are based on public data on China’s reference prices for 1996-98, annual administered prices, and levels and values of total production for wheat, corn and rice. Thus, the calculations presume that the United States will argue that eligible production equals total production, not a smaller quantity. This presumption is made because of the US claim that China’s market price support is so much larger than shown in notifications to the WTO for years up through 2010 using procured quantities.

Under the maintained assumptions, the calculated levels of market price support have exceeded China’s yearly AMS limits in all years 2012-15 for wheat and corn. Market price support for rice also exceeds the rice AMS limits in all four years if the reference price is adjusted down from milled to unmilled rice. Such an adjustment is assumed to mirror the US calculations of China’s market price support for rice, based on what the United States has asserted in the Committee on Agriculture regarding the correct reference price. The limit is not exceeded if the milled rice reference price is retained. The estimates (using an unmilled FERP for rice) imply that the excess of China’s market price support over the limits for these three crops amounted to about USD 66 billion in 2015. This is a substantial amount of excess support but is less than the nearly USD 100 billion asserted by the United States in relation to its complaint. Using 1986-88 reference prices would result in estimates exceeding the US claim.

In the adjudication of the China – Domestic Support case a number of substantial issues may arise. A new administration is taking charge in Washington. Although a dispute case against China may appear compatible with its election campaign rhetoric about taking a tough stand for US interests against China and other trade partners, it is a new administration that has signaled it will reject many trade policy decisions taken by the previous one. The argument that
the domestic support case is an appropriate dispute to pursue further at the WTO will have to be made to new leadership at the US Trade Representative and the White House. There are some substantial stakes. At a minimum, a dispute ruling by a Panel and perhaps the AB will clarify the interpretation of several key aspects of the language of the AA, as summarized above.

If the US prevails that total production be included as eligible production in this case, then constraining market price support as measured under the US interpretation of the AA might also constrain economic market price support. This arises from the situation that for the four years 2012-2015 two different measurements of market price support exceed China’s WTO limit of 8.5 percent of the value of production for each of wheat, corn and rice: support measured according to this note’s conjecture of the US interpretation of the AA and economic support measured by the OECD. If the US were to prevail in Panel and AB rulings, China will need to pay more attention in its policy instruments and settings in order not to exceed its WTO limits on AMSs were similar circumstances to occur in the future. China has already in 2016 announced the elimination of its administered price for corn. If the United States prevails in the China – Domestic Support case, it would be clearer to China what the consequences could be of later restoring a corn administered price at similar or higher levels than during 2012-2015. A lowering or elimination of China’s administered prices for wheat or rice could also be a policy response to reduce future vulnerability to challenges such the present US one, if it were successful.

No or lower administered prices would not preclude domestic prices being kept above world levels through TRQs and tariffs and other policies, although tariffs are bound at low levels for grains other than wheat, corn and rice. China has experienced that raising domestic prices of these grains too high above world levels causes stock accumulation and stimulates imports of substitute grains. China may see merit in an alternative policy direction relying less on administered prices and market price support.

A WTO dispute settlement outcome finding fault with China’s 2012-15 market price support policy settings, or more generally with these price support policies and other forms of
support, would not affect the policies of those past years but would clarify the rules governing future policies. This clarity would be valuable not only in the case of China but possibly also for many other countries operating or contemplating the operation of market price support schemes. The scope of implications from the present case will also depend on the interim WTO decisions taken in recent years and those eventually given permanent legal effect for market price support and food stock acquisition in developing countries.

While any government’s initiation of a WTO dispute is likely driven by the perceived interests of particular groups, the motivation may also contain an element of seeking greater clarity on issues of larger, systemic interest. For example, in the China – Domestic Support case the United States may hope to strengthen the legal basis for using the AA to constrain market-distorting price support for agricultural producers also in other countries than China. One way to do so (setting aside the issue of decisions on market price support and food stock acquisition) would be if a Panel and/or the AB were to rule that, if a procurement quantity is not pre-announced, the production eligible to receive the applied administered price equals total production even if the calculations in the country’s base period use a smaller quantity. In other words, such a ruling would pick up the logic of the Panel in Korea – Beef while also applying the hierarchy of the AB with regard to the phrases “in accordance with” (stronger) and “taking into account” (weaker). Such an outcome would strengthen a complaining party’s case when it argues that another country’s market price support, when measured using total production, makes an AMS exceed its limit.

This could also, however, become an incentive for countries to announce a certain quantity as eligible for procurement at the administered price, with this announced quantity being larger than expected procurement, but well below total production, while also large enough to help support the domestic price for total production. In this event, the end result could thus be a policy landscape where more countries design price support policies specifically to measure only modest support under the rules of the AA without this limit on the announced quantity having much effect on the economic price support being provided.
It is often advocated that the legally effective stipulations of the AA need to move closer to economic reality (see, e.g., Matthews 2015 and Orden et al. 2011 for discussions). A dispute settlement outcome that closes the distance between the two could have consequences such as strengthening countries’ motivation to engage in further WTO negotiations on the desired rules for domestic support that distorts trade. On the other hand, the United States may not prevail on any of the issues discussed here. This would further raise many observers’ scepticism about the effectiveness of the WTO rules in reining in such support.
Conference paper. Comments are invited.

Annex A: Data sources for simplified calculations of AMSs for wheat, corn and rice in China

The calculations of AMSs for wheat, corn and rice for 2008-2015 make several shortcuts. For example, a complainant’s arguments may be stronger if it relies on public data from the responding government rather than secondary sources, even if in both cases the ultimate source is the responding government itself. This note uses secondary data available to the public from, e.g., the Organization for Economic Cooperation and Development (Producer Support Estimates) and the Foreign Agricultural Service of the US Department of Agriculture (such as GAIN reports). The currency units are RMB (renminbi), corresponding to the ISO code of CNY.

Government procurement prices 2008-2015. USDA (2015a). The data are given in RMB/ton but it is obvious from other sources, such as China’s 2009 and 2010 notifications (WTO 2015a), that the prices are in RMB/tonne (i.e., RMB per metric ton). Separate prices exist for Japonica and Indica rice, both unmilled. Procurement prices for 2009 and 2010 match (nearly but not exactly) the administered prices in China’s notification (WTO 2015a).

Fixed external reference price (FERP). 1996-98 average of FOB and CIF prices given as export and import unit values (WTO 2001a). Separate prices for are given for Japonica and Indica rice, although both are for HS 10063000, which is defined in China’s tariff schedules as “Semi-milled or wholly milled rice, whether or not polished or glazed”.

The calculations a procurement price and a reference price for rice formed by weighting Japonica and Indica prices together (Indica weight 2 and Japonica weight 1). This weighting is used in WTO (2001a; 2015a) and matches the relative quantities of Indica and Japonica shown as “eligible production”, i.e., procured, in 1996-98 (Appendix DS 5-1, WTO 2001a).

An alternative FERP for unmilled rice was derived by multiplying the reference price of milled rice by 0.70. This common conversion factor is used by, e.g., the USDA. It adjusts for milled vs. unmilled weight but does not necessarily account precisely for the cost of milling.

Price gap. This is the difference between the procurement price and the FERP. Two alternative price gaps were calculated for rice: not adjusted to unmilled rice (as in China’s notifications) and so adjusted.
Procurement. The authors did not find consistent data on procured quantities in 2012-2015. No calculation could therefore be made for the case of using only China’s procured quantities. As seen in China’s notifications and in analysis (see text), the procured quantities can correspond to only a minor portion of total production.

Production. The calculations use production data for rice (rough, i.e., unmilled) from the USDA (http://apps.fas.usda.gov/psdonline/psdQuery.aspx), not broken down by Indica and Japonica. Separate production data for Indica rice and Japonica rice is likely available in China’s statistics. The United States seems to have access to such production data, since it claims that China exceeded its separate limits on Indica and Japonica (USDA 2016a; WTO 2016a).

Market price support. WTO MPS: Multiplying production by the price gap generates the market price support component of AMS. It was generated for rice for the two cases of not adjusting to unmilled rice and so adjusting. Economic MPS: OECD (2016a).

Value of production. Data for 2008-2015 was sourced in OECD (2016a). For 2009 and 2010, the value of production data is close but does not exactly match the values in China’s notification WTO (2015a). The values differ by less than 5 percent, often less.

AMS limits. Generated for 2008-2015 by taking 8.5 percent of the value of production.

Product-specific payments. The US description of its case does not mention product-specific payments as components of the products' AMSs (USDA 2016a). It only refers to market price support having been in excess of the limits. DTB Associates (2014) calculate payments and Gale (2013) and others also identify several programs that may have provided support that might be included in the product-specific AMSs. China’s notification for 2009 and 2010 include product-specific budgetary outlays in the AMSs for wheat and rice. For wheat they are subsidies for improved crop strains and seeds, and for rice they are subsidies for improved crops strains and seeds and cost subsidy for transporting Japonica rice out of China’s Northeast. These subsidies were of the order USD 1 billion per crop, which was large in relation to the small market price support arising out of using small procured quantities, but it is small in relation to the market price support amounts estimated here and by the United States. No attempt is made here to estimate product-specific subsidies in 2008-15 and add them to the market price support to generate complete AMSs.
Conference paper. Comments are invited.

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