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Confidential

**COMPLAINT UNDER COUNCIL REGULATION (EC) No
3286/94 22 December 1994 ON TRADE BARRIERS**

**THE SUBSIDIES AFFORDED IN THE USA TO OILSEED
PRODUCTION CONSTITUTE AN OBSTACLE TO TRADE IN
VIOLATION OF THE EUROPEAN COMMUNITY'S
INTERNATIONAL TRADE RIGHTS**

**COMPLAINT FILED BY THE EUROPEAN OILSEED
ALLIANCE**

October .., 2002

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I- Information concerning the Complainants and the products covered by the subsidies which are targeted by this Complaint

A/ Complainants: The European Oilseed Alliance

1.1 The European Oilseed Alliance (hereinafter referred to as the "EOA" or the "Alliance") lodges this complaint (the "Complaint") under Article 3 of Council Regulation (EC) No 3286/94 of 22 December 1994¹ (hereinafter referred to as the "Trade Barrier Regulation" or "TBR") on behalf of the Community oilseed industry representing oilseed producers and their national associations. The complaint concerns the trade barriers caused by subsidies granted to U.S. oilseed producers by the United States of America.

1.2 These subsidies cause and threaten to cause injury to the oilseed producers' and processors' industry within the Community through a major drop in prices and the reduction of oilseeds in crop-rotations reflected by a significant decrease in return and profitability.

1.3 The European Oilseed Alliance was established on April 19, 2001 and includes organisations representing the various components of the EU oilseed sector: producers, manufacturers, and users. Its current membership is the following:

- (i) The German association "Union zur Forderung von Oel und Proteinpflanzen" or "UFOP"
- (ii) The English association "National Farmers Union" or "NFU";
- (iii) The Spanish association "Confederación de Cooperativas Agrícolas de España" or "CCAÉ";
- (iv) The French association "Fédération Française des Producteurs d'Oléagineux et Protéagineux" or "FOP";
- (v) The Swedish association "Svensk Raps AB".

These national associations' members are all producers, some also represent other professions in the sector (grain stockers, processors and sometimes users such as livestock feed producers).

The following table shows that EOA member organisations represent 86% of European oilseed production and meet the conditions required under Article 2(5) of the TBR.

¹ OJ No L 41, February 23, 1995, p. 3.

**REPRESENTATIVENESS OF EOA COUNTRIES IN
EUROPEAN OILSEED PRODUCTION**

Production (M. T)	France	Germany	England	Spain	Sweden	EU Total
Average 1999-2002	5,537	4,123	1,370	822	141	13,990
<u>In % of EU Total</u>	40%	29%	10%	6%	1%	100%

Source: COPA-COGECA

The person having authority to represent the EOA is its president, Mr. Xavier Beulin.

In accordance with the power of attorney granted by the EOA, the Alliance will be represented during the TBR proceedings by Mrs. Paulette Vander Schueren and Mr. Fabrizio Sacchetti, of the law firm Coudert Brothers, whose offices are located at 81 avenue Louise 1050 Brussels.

B/ Oilseeds definition

Oilseeds are a group of plants grown both for their oil and their proteins.

They usually are not consumed without processing which allows for oil extraction leaving a protein-rich residue, the meal.

Oils are essentially for human consumption, but can also be used in industry (lipo-chemistry, bio-fuels).

Meals are used in livestock feed, generally mixed in compound feed. They are valued for their protein contribution.

Major oilseed production worldwide are in order of importance:

- Soybeans: 160 MMTs
- Rapeseed: 35 to 40 MMTs
- Sunflower: 23 MMTs

Lesser productions may also be classified as minor oilseeds (linseed, safflower, sesame etc.).

Soybean is a protein-rich plant (80% meal and 18% oil), rapeseed and sunflower are oil-rich plants (between 40 and 45%).

Moreover, one should also mention tropical oils (coconut, palm and palm-kernel oils), which do not specifically originate from oilseeds but compete with them on the world vegetable oil market.

In Europe, the main oilseeds are rapeseed and sunflower.

Rapeseed is mostly grown in the northern countries: Germany, France, United Kingdom, Denmark and Sweden. Sunflower is mostly grown in the south: France, Spain and Italy. Soybeans are also grown in the south, essentially in Italy and in France.

Soybean is the major oilseed grown in the U.S.

EUROPEAN OILSEED PRODUCTION

(M. T)	Rapeseed	Sunflower	Soybean	TOTAL
1999/2000	11,556	3,137	1,109	15,802
2000/2001	9,277	3,325	1,036	13,638
2001/2002	8,771	2,989	1,204	12,965

Source: COPA-COGECA

WORLD OILSEED PRODUCTION

	1999-2000	2000-2001	2001-2002
USA	82,081	84,802	89,803
<i>incl. soybeans</i>	72,225	75,055	78,669
Europe	15,802	13,638	12,965
World production	302,700	311,400	320,500

Source: Oil World

C/ Regulatory regime in the European Union

In the European Union oilseed regulations concern exclusively 3 crops: rapeseed, sunflower and soybean.

Oilseeds have been subjected to specific regulations since the beginning of the European Community.

From 1992 to the Agenda 2000 reform, within the framework of Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops², oilseed acreage received hectare specific assistance, for which the basic amount, determined at the Community level, was applied in reference to regional yield charts to compute the payments received by the producers. Moreover, the oilseed payments was variable depending on the observed market price and its spread in comparison to a reference price: upper or lower adjustment was intended to stabilise the income of oilseed producers.

International Agreements (Blair House Agreement, with the USA, multilateralized and consolidated with the WTO in the Marrakech Agricultural Agreements) limited oilseed acreage for which oilseed specific payments could be granted. Under these Agreements, compliance with a maximum guaranteed acreage was ensured by a

² OJ No L 181, July 1, 1992, p.12.

system of penalties on payments paid to producers in the case these limits were exceeded.

With the Agenda 2000 reform³, basic oilseed payments diminished over 2 years to the level of grain payments. Since the 2001 harvest, oilseeds receive “the single payment for arable crops” at the basic amount of 63 euros to which regional yield is applied. This is a flat-rate payment, the price-related variability of oilseed payments was abolished by the 2000 harvest. The end of specific oilseed payment does away with the basis for the application of the “Blair House” penalty system.

D/ USA regulations

Oilseed regulations in the USA make a distinction among several categories of products:

- Soybeans
- Minor oilseeds including canola, sunflower, linseed, safflower, mustard...

Subsidies that are granted to soybeans and minor oilseeds are similar, only amounts vary.

E/ Subject of the Complaint: soybeans and minor oilseeds

Oilseeds produced by the members of the Alliance are either identical, similar, or in direct competition with oilseeds imported from the United States (soybeans and minor oilseeds) subject to the trade barrier referred to in this complaint (the “Complaint”) pursuant to Article 2.5 of the TBR.

* * *

³ Council Regulation (CE) No 1251/1999 of May 17, 1999 establishing a support system for the producers of some arable crops (OJ No L 160, May 17, 1999, p.1).

II– Identifying the trade barrier: Subsidies granted by the USA to oilseeds

A/ Subsidies granted by the 1996 FAIR ACT

This complaint targets price support subsidies implemented under the Federal Agricultural Improvement and Reform Act of 1996 (hereinafter the “1996 FAIR ACT”) benefiting oilseed producers⁴. Support for oilseeds include:

- support directly benefiting oilseeds:
 - loan rates
 - subsidies within the framework of marketing loan
 - emergency oilseed subsidies
- support paid to producers based on historical references that also benefit oilseed acreage:
 - flexibility payments paid to arable crops based on historical references (so called AMTA payments)
 - emergency assistance paid on the same basis as AMTA payments in compensation for market prices drops.

1. Loan rates

The 1996 FAIR ACT provides price support for oilseeds through **loan rates**⁵. Under the loan rate mechanism, oilseeds producers can receive loans (“nonrecourse loans”) granted by the US government using their crop as collateral. The pledged crop is assessed on the basis of the loan rate by the US government within the scope of the legislation. These loan rates are set for and benefit each specific commodity separately. The loans mature within a period of 9 to 12 months.

If a farmer can sell a crop at a market price higher than the loan rate, he will repay the loan rate with interest. The interest rate is usually 1 or 2 points under the commercial loan rate.

If the farmer cannot earn enough on the market to profitably repay the loan before it matures, he forfeits his crop to the government without being required to pay the government the difference between the loan rate and the market rate, even partially. The loan rate operates for these reasons as a minimum price guarantee by the US government.

⁴ Public Law 1004 – 127, 104th Congress, April 4, 1996.

⁵ Sections 131 to 134 of the 1996 FAIR ACT.

The 1996 FAIR ACT fixes the loan rates and hence provides minimum price guarantees, for grains, cotton, rice and oilseeds. The FAIR ACT requires the Secretary of Agriculture to set the level of the loan rates for oilseeds so that they are not below 85% of the average market price received in the previous five years (excluding years with the highest and lowest prices) but not less than US\$4.92 and not more than US\$5.26 per bushel of soybeans and US\$0.087 and US\$0.093 per pound for minor oilseeds. The **level of oilseed loan rates has increased** under the FAIR ACT compared with pre-1996 levels. Indeed, the loan rate has always been fixed at the maximum authorized level of US\$5.26 per bushel of soybeans and US\$0.093 per pound for minor oilseeds.

In 2000 and 2001 the Secretary of Agriculture **decided to maintain the loan rates at their previous level** notwithstanding to the provisions of the FAIR Act that provided for a decrease equivalent to the drop in the market prices (loan rate fixed at the average 5 year level of observed prices).⁶

Indeed, as indicated below, since the 1998/1999 marketing year until August 2002, the loan rate level has always been higher than the market price thereby causing the US government to lose revenue since the loan is not fully reimbursed to the government.

LOAN RATE LEVELS

		FACTA		1996 FAIR ACT	
		1991 - 1993	1994 - 1995	1996	1997-2001
SOYBEANS (\$/bu.)	Effective	5.02	4.92	4.97	5.26
	Mini			4.92	4.92
	Maxi			5.26	5.26
MINOR OILSEEDS (\$/cwt)	Effective	8.90	8.70	8.91	9.30
	Mini			8.70	8.70
	Maxi			9.30	9.30

⁶ For comparison, the following is noteworthy:

- (i) the increase in the loan rates only occurred for oilseeds; regarding other products receiving the loan rates, the amount of the loan rates imposed by the FAIR ACT is subject to maximum amounts ;

	1994 – 96 FACTA	1996/2001 FAIR ACT
Corn (\$ per bushel)	1.89	1.89
Wheat (\$ per bushel)	2.58	2.58

- (ii) the loan rates, marketing loan gains and loan deficiency payments are available for all oilseed producers whether they entered into a flexibility contract or not. For other products, these advantages are only available for producers who have signed flexibility contracts. Thus, oilseed producers that have not signed flexibility contracts are encouraged to maintain their oilseed production.

2. Marketing loan subsidies

The 1996 FAIR ACT has, moreover, preserved the marketing loan mechanism in the form of **marketing loan gains** and **loan deficiency payments**.⁷

The marketing loan mechanism was introduced for oilseeds and cotton in the 1990 Farm Act (the "FACTA"), and extended to grains in 1996 by the 1996 FAIR ACT. This is to avoid that a guaranteed price to the producers offered by the loan rate would lead to the formation of government-held surplus stocks in the event of price drops through the mechanism of forfeiting the loan collateral crops.

The marketing loans mechanism permits the farmer to reimburse his loan at the observed market price level (published weekly by the USDA) if it is below the loan rate he borrowed at. The difference between the loan rate and the market price is assumed by the government and is kept by the farmer as a marketing loan gain. Moreover, the farmer may still sell his crop on the market, as he sees fit, at the best time and price.

In order to simplify procedures, farmers may, without obtaining a loan, request directly and at their convenience payment of the observed difference between the marketing loan and the observed market price: this is the loan deficiency payment. The minimum price guarantee of which they thus benefit is the same as that of the marketing loan gains and the freedom to sell their produce on the market is increased.

It should also be noted that subsidies received by a farmer under a marketing loan are capped at US\$75,000⁸. However, in order to avoid that farmers facing this cap lose the benefit of the price guarantee or decide to leave their crops in government surplus storage, Congress has authorized the government to sell to farmers generic certificates representing a quantity of merchandise evaluated at market price and used later by farmers to reimburse the loan at the loan rate. The difference for the farmer is the same as a marketing loan gain, but this "payment in kind" or PIK is legally different, and thus not subject to the ceiling caps.

Since the 1998/99 marketing year, the drop in market prices below the loan rates has triggered the payment of subsidies compensating the difference between the loan rates and the market price.

Subsidies granted within this framework reached, for all oilseeds, 1.2 billion dollars in 1998; 2.5 billion dollars in 1999; 2.8 billion dollars in 2000 and 3.5 billion dollars in 2001.

Compared with the total value of oilseed production, these amounts represent **support of 9% in 1998, 20% in 1999 and in 2000 and 27% in 2001.**

⁷ Loan deficiency payments are covered under Section 135 of the 1996 FAIR ACT.

⁸ This cap was preserved in the Food Security and Rural Investment Act mentioned in Section B below.

TOTAL OILSEED SUPPORT

(M. \$)	1997	1998	1999	2000	2001 est.
TOTAL OUTLAYS	16	1,222	2,963	3,253	3,930
Emergency oilseed payments ⁹			475	500	424
Marketing loans (total) incl.	16	1,222	2,488	2,753	3,506
<i>Soybeans</i>	16	1,222	2,327	2,550	3,429
<i>Rapeseed</i>			35	71	23
<i>Sunflower</i>			126	132	54

Source: USDA – Foreign agricultural service FSA

AD VALOREM SUPPORT

	1997	1998	1999	2000	2001 est.
TOTAL OUTLAYS	16	1,222	2,963	3,253	3,930
Total production value	17,931	14,223	12,712	12,913	12,923
Outlays (% Produc. value)	0.1%	9%	23%	25%	31%
Soybeans					
Production (1000T)	73,177	74,599	72,225	75,057	78,670
Farmer price (\$/T)	238	181	170	167	158
Production value (M. \$)	17,416	13,502	12,278	12,535	12,430
Rapeseed					
Production (1000T)	354	707	619	906	907
Farmer price (\$/T)	249	227	172	148	194
Production value (M. \$)	88	160	106	134	176
Sunflower					
Production (1000T)	1,668	2,392	1,969	1,608	1,579
Farmer price (\$/T)	256	234	166	152	201
Production value (M. \$)	427	560	327	244	317

Source: USDA – Foreign agricultural service FSA

⁹ See Section 3 below.

3. Emergency oilseed aid

To compensate price drops, emergency aid programs for oilseed producers were established in 1999 and renewed in 2000 and 2001. These aids were granted taking into account individual references to acreage and yields for previous years (1997, 1998 or 1999).¹⁰

Emergency oilseed aid for the 3 relevant marketing years totalled an **annual average of 460 million dollars**.

These payments equal a subsidy of **4% of the value of oilseed production**.

4. Aid to grain farmers also benefits oilseeds

Under the 1996 FAIR ACT,¹¹ flexibility contracts were instituted and made available to farmers having planted grains, coarse grains, cotton and/or rice during at least one year of the five preceding years. The FAIR ACT fixes the global amount of **flexibility payments** (also referred to as "AMTA payments") to be granted each year whereas payments to farmers are fixed taking into account prior national payments and the farmer's participation in the production of the relevant crops. The FAIR ACT provided that the payments previously reserved to grains could be extended to any crops planted between 1996 and 2002 except for most fruits and vegetables. Therefore, following the FAIR ACT, oilseed crops received these flexibility payments.

Since 1998, these direct aids have been complemented by emergency aids (also known as "market loss assistance payments" or "MLAs") aimed at compensating market price drops. They were granted to farmers benefiting from the flexibility contracts and, therefore, also benefit oilseed producers. The amount of such MLAs has increased significantly becoming just as large as the actual flexibility payments.

The amounts paid from 1999 to 2001 were on a yearly average of around 5 billion dollars for AMTA payments and 5 billion dollars for MLA payments. Thus this support to arable acreage represents **on average 100 dollars per hectare, which benefits oilseeds among others**.

¹⁰ See: USDA ERS Economical Research Service: The 2002 Farm Bill Title I commodity programs 1996-2002 farm legislation conter-cyclical payments (See **Annex 1**).

¹¹ Section 111 of the 1996 FAIR ACT.

US PUBLIC SUPPORT TO SOYBEAN

OILSEED SPECIFIC PROGRAMS

	1997	1998	1999	2000	2001
					<i>Forecast.</i>
TOTAL OUTLAYS					
(Mn \$)	16	1 222	2 787	3 046	3 852
Marketing Loan	16	1 222	2 327	2 550	3 429
Oilseed Emergency Programs			460	496	423
(\$/bu.)	0,01	0,45	1,05	1,10	1,33
Marketing Loan	0,01	0,45	0,88	0,92	1,19
Oilseed Emergency Programs			0,17	0,18	0,15
(\$/Ha.)	0,6	42,9	95,1	104,0	130,4
Marketing Loan	0,6	42,9	79,4	87,0	116,1
Oilseed Emergency Programs			15,7	16,9	14,3
(% value of production)	0,1%	9%	23%	24%	31%
Marketing Loan	0,1%	9%	19%	20%	28%
Oilseed Emergency Programs			4%	4%	3%

Flexible Support to Arable Crops

(Assumption : corn base = 70% of the total crop area), 85% of the corn acreage is eligible to payments

PAYMENT RATES (\$/bu.)					
Flexibility Contract Payments	0,49	0,38	0,36	0,33	0,27
Market Loss Assistance payments		0,19	0,36	0,36	0,36
CORN REFERENCE YIELDS (bu./Ha.)	254,0	253,5	253,5	253,5	253,8
PAYMENT BY HECTARE OF CORN BASE (\$/Ha.)					
Flexible support by hectare of corn base	104,9	81,2	78,2	72,0	58,0
MLA support by hectare of corn base		40,6	78,2	78,2	78,3
TOTAL AREA PAYMENTS by hectare of cultivated area					
(\$/Ha.)	73,5	85,3	109,5	105,1	95,4
Flexibility Contract Payments (<i>Direct Payments</i>)	73,5	56,9	54,8	50,4	40,6
MLA Payments (<i>Counter-cyclical payments</i>)		28,4	54,8	54,8	54,8
(% value of soybean production)	12%	18%	26%	25%	23%

TOTAL SUPPORT	(\$/Ha.)	74,0	128,2	204,6	209,1	225,8
	% value of prod.	12%	27%	49%	49%	54%
of which Oilseed						
Specific Programs	% value of prod.	0,1%	9%	23%	24%	31%

source : USDA

B/ Subsidies granted by the Food Security and Rural Investment Act (FSRIA)

The new farm bill which took effect in 2002 and covers the 2002-2007¹² period modifies the support for oilseeds by establishing three types of subsidies¹³:

- support directly tied to oilseed production
 - loan rates
 - subsidies paid within the scope of marketing loans.
- support for oilseeds paid on an historical basis
 - direct payments to oilseeds paid to farmers on individual historical references
 - counter-cyclical payments to oilseeds related to oilseed market prices and paid to farmers on individual historical references.
- support for grain farmers paid on an historical basis and also benefiting oilseed acreage.
 - direct payments to grains
 - counter-cyclical aid to grains.

1. Loan rates

The loan rate mechanism is the same as in the 1996 FAIR ACT. The loan rate level is fixed at **\$5 per bushel for soybeans and \$9.30 /cwt** for other oilseeds (\$9.60 /cwt for 2002/2003), i.e., a drop of 5% of the loan rate for soybeans compared with the 1996 FAIR ACT. Oilseed loan rates are the same as before.

2. Marketing loans subsidies

The Marketing loans mechanism is maintained. As such, subsidies paid will depend on market price levels.

[They are not dependent on any specific amount limitations.](#)

When the Act was signed, projections were that prices would continue to be depressed and that therefore the level of subsidies would be high: for the 2002 crop, projected marketing loan spending would equal that of 2001.

¹² Farm Security and Rural Investment Act of 2002, 107th Congress, May 1, 2002.

¹³ An example explaining the operation of the FSRIA was given by Iowa State University indicating specific differences between the 1996 FAIR ACT and the FSRIA and stressing the importance of subsidies also granted to oilseeds under the FSRIA. See "Commodity programs for crops, Farm Security and Rural Investment Act of 2002", File A1-32, August 2002, wedwards@iastate.edu included in the **Annex 2**.

3. Oilseed specific counter-cyclical payments and direct payments

The new Act aligns oilseed support with grain support returning to a system of subsidies that is more tied to production and prices than under the 1996 FAIR ACT.

The new Act re-implements target prices for grains, repealed by the 1996 FAIR ACT, and reorganizes the direct payment system establishing, on the one hand, direct fixed payments replacing flexibility payments and on the other, counter-cyclical payments that vary with prices and are aimed at reaching target prices that extend the life of the FAIR ACT's emergency aid.

Oilseeds are afforded the same treatment as grains with, for the first time in history, target prices and direct hectare-based payments. For this purpose, "oilseed bases" are established for individual references in acreage and yield calculated over the average crops produced from 1998 to 2001. The adoption of these new individual references implies that payment of these subsidies is "recoupled" with a recent production base and that there may be a large increase in cost of these payments by the government, especially taking into account the increase in planted oilseed acreage. These new oilseed bases are added for each farm to the current grain base.

Direct oilseed payments (\$0.44/bushel for soybeans and \$0.80/cwt for other oilseeds), more than cover the drop in loan rates (-\$0,26 /bushel for soybeans).¹⁴

Counter-cyclical payments are totally new and are triggered in the event that market prices are below the target price and enable guaranteeing total support at least at the level of the latter: \$5.80 /bus for soybeans and \$9.80 /cwt for other oilseeds.

These payments are paid independently of acreage planted during the year,¹⁵ on 85% of the individual reference base.¹⁶

¹⁴ Moreover, besides the fact that these payments are fixed per type of produce which is new in the case of oilseeds, the FSRIA as opposed to the 1996 FAIR ACT also provides that these payments will be established at the same level for the entire duration of the FSRIA whereas they should normally diminish under AMTA payments (see "Questions & Answers – US Farm Bill, Commission européenne", Brussels, May 15, 2002)

¹⁵ However, the EC considers such flexibility unjustified for the major portion of arable acreage since farmers will obviously plant the same commodities as they did in the reference period (see "Questions & Answers – US Farm Bill, Commission européenne", Brussels, May 15, 2002)

¹⁶ The Economic Research Service (« ERS » hereinafter) of the U.S. Department of Agriculture (« USDA ») defines these counter-cyclical payments as follows:

- "The amount of the payment is equal to the product of the payment rate of the applicable base crop, the payment acres (85 percent of base acres), and the payment yield for the farm. ... To receive payments on crops covered by the program (wheat, corn, grain sorghum, barley, oats, rice, upland cotton, soybeans, other oilseeds, and peanuts), a producer enters into annual agreements for crop years 2002 – 07." ...
- "Farmers have two options for designating base acres:

4. Grain subsidies also benefit oilseeds

For grains, flexibility payments are changed to fixed “direct payments” paid on the basis of prior individual references. A new feature as compared to payments granted under the 1996 FAIR ACT is that their level is constant over the entire period covered by the legislation.

Counter-cyclical payments based on grain market prices are also paid if prices are lower than target prices.

All these payments are paid irrespective of planted acreage, on the basis of 85% of individual references (grain basis of the farm).

SOYBEANS: SUPPORT PROGRAMS (\$/bushel)

FACTA	Loan rate				Farmer price	
1991/92	5.02				5.58	
1992/93	5.02				5.56	
1993/94	5.02				6.40	
1994/95	4.92				5.48	
1995/96	4.92				6.72	
FAIR ACT	Loan rate	Oilseed emergency programs			Marketing loan outlays	Farmer Price
1996/1997	4.97					7.35
1997/1998	5.26					6.47
1998/1999	5.26				0.45	4.93
1999/2000	5.26	0.1409			0.88	4.63
2000/2001	5.26	0.1425			0.92	4.54
2001/2002	5.26	0.1425			1.17	4.30
FSRIA	Loan rate	Counter-cyclical payments	Direct Payments	Target price		
2002/2003	5.00	[0 – 0.36]	0.44	5.80		
2004/2007	5.00	[0 – 0.36]	0.44	5.80		

- Choose base acres equal to contract acreage for the commodity that would otherwise have been used for 2002 PFS payments plus average oilseed plantings in crop years (CY) 1998 – 2001, so long as base acres do not exceed available cropland, or
 - Update base acres to reflect the E-year average of acres planted, plus those “prevented from planting” due to weather conditions, during MY 1998 – 2001. »
- “Program payment yields are unchanged for those crops previously covered under the PFS program. For soybeans and other oilseeds, which were added to the program, payment yields are the farm’s average yields for 1998-2001, multiplied by the national average yield for 1981 – 1985, divided by national average yield for 1998 – 2001.”

See 2002 Farm Bill, Analysis, Direct payments, www.ers.usda.gov (See **Annex 1**).

MINOR OILSEEDS: SUPPORT PROGRAMS (\$/cwt)

FACTA	Loan rate				Farmer price
1991/92	8.90				8.69
1992/93	8.90				9.74
1993/94	8.90				12.90
1994/95	8.70				10.70
1995/96	8.70				11.50
FAIR ACT	Loan rate	Oilseed emergency programs		Marketing loan outlays	Farmer price
1996/1997	8.91				12.90
1997/1998	9.30				11.30
1998/1999	9.30				10.30
1999/2000	9.30	0.2531		2.55	7.82
2000/2001	9.30	0.2572		3.54	6.71
2001/2002	9.30	0.2572		1.12	8.80
FSRIA	Loan rate	Directs payments	Target price		
2002/2003	9.60	0.80	9.80		
2004/2007	9.30	0.80	10.10		

* * *

**III– Violation of the rights of the European Community –
Actionability of subsidies resulting from oilseed price support**

**A/ The relevant subsidies are in violation of the Agreement on
Subsidies and Countervailing Measures (the “Subsidies
Agreement”)**

Article 2(1) of the TBR defines the “*obstacles to trade*” against which complaints may be lodged under that Regulation as “*any trade practice adopted or maintained by a third country in respect of which international trade rules establish a right of action.*” A right of action includes the right “to seek elimination of the effect of the practice in question”. The following paragraphs demonstrate that the Community has a right to seek the elimination of the effects of the subsidies at issue under the Subsidies Agreement and the Agreement on Agriculture.

A subsidy is defined in Article 1 of the Subsidies Agreement as follows:

“a)(1) *there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as “government”), i.e. where:*

- i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);*
- ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits); ...*

or

(a)2) there is any form of income or price support in the sense of Article XVI of GATT 1994;

and

b) a benefit is thereby conferred.”

A subsidy is actionable only if it is specific. In conformity with Article 2(1)(a) of the Subsidies Agreement, specificity exists “*where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy*”.

1. Subsidies under the 1996 FAIR ACT

a/ Loan rates constitute specific subsidies

To the extent that the interest rate charged on the credits were below the rate a private financial institution would charge, the government would forego revenue and thereby confer a benefit on oilseed producers within the meaning of the Article mentioned above. Initially it was planned that the US Commodity Credit Corporation ("CCC") would charge an interest rate of 1 percentage point higher than the interest rate charged by the US Treasury. However, this is no longer relevant because the amount of a subsidy is calculated in conformity with Article 14(b) of the Subsidies Agreement on the basis of the difference between the interest rate charged by the government and the market rate. Even if the interest rate of the loan rate is 1 or 2 points lower than the commercial interest rate, in fact, this issue is not crucial since most of the subsidies targeted correspond to situations where the market price for oilseeds was lower than the loan rates and the subsidy took the form of marketing loan gains or loan deficiency payments. Therefore, the question whether they are specific or not is no longer relevant.

b/ Specific subsidies constituted by marketing loans

Marketing loan gains give oilseed producers the right not to reimburse the loan at the loan rate level but to forfeit the crop put up as collateral when the market price is lower than the loan rate. The government foregoes the reimbursement of the loan and the crop collateral has a value that is lower than the loan.

Oilseed producers enjoy an advantage since they receive higher than market income and thereby obtain a price guarantee.

In the case of **loan deficiency payments**, the government makes a direct payment to oilseed producers equal to the difference between the loan rate and the lower market price. Therefore, a direct transfer of funds by the government occurs. An advantage is thereby afforded to oilseed producers who benefit from a minimum price guarantee.

Moreover, these marketing loan gains and loan deficiency payments also represent income support in the meaning of Article XVI of the 1994 GATT.

Marketing loan gains as well as loan deficiency payments are available for sixteen commodities and the conditions under which they are granted vary from commodity to commodity (loan rates are different). Hence, these marketing loans and loan deficiency payments are not generally available for every commodity and are therefore specific.

c/ Oilseed emergency payments are specific subsidies

These payments entail a direct transfer of funds by the Government to the oilseed producers within the meaning of the above-mentioned Article. They yield a benefit to the oilseed producers who can increase gross revenue from oilseed production when market prices are depressed.

These emergency payments are limited to oilseed producers only and, therefore, available to a limited number of enterprises; hence, they are specific.

d/ Subsidies to grain producers that also benefit oilseeds are specific subsidies

Both flexibility payments and emergency aid require a government transfer of funds to oilseed producers. They therefore yield a benefit for producers because the producers increase their gross income from oilseed production.

The signing of a flexibility contract conditioning the grant of these payments is not generally provided for all commodities. Most fruits and vegetables are excluded as well as other commodities such as poultry, beef and others. Therefore, these payments are not generally available and are thus specific.

2. Subsidies under the FSRIA

a/ Loan rates constitute specific support

These loan rates are specific subsidies in the meaning referred to above. However, experts consider that loan rates will continue to be higher than the market prices of oilseeds and will entail subsidies under the marketing loan system.

b/ Marketing loan specific subsidies

Marketing loan gains as well as **loan deficiency payments** constitute specific subsidies for the reasons mentioned above under sub-section 1.

c/ Direct payments and counter-cyclical payments are specific subsidies

These payments entail a direct transfer of funds by the Government to the oilseed producers within the meaning of the above-mentioned Article. They yield a benefit to the oilseed producers who can increase gross revenue from oilseed production when market prices are depressed.

These emergency payments are limited to oilseed producers only and, therefore, available to a limited number of enterprises, hence, they are specific.

d/ Subsidies to grain producers that also benefit oilseeds are specific subsidies

Both **flexibility payments** and **emergency aid** require a government transfer of funds to oilseed producers. They therefore yield a benefit for producers because the producers increase their gross income from oilseed production.

The signing of a flexibility contract conditioning the grant of these payments is not generally provided for all commodities. Most fruits and vegetables are excluded as well as other commodities such as poultry, beef and others. Therefore, these payments are not generally available and are thus specific.

B/ The subsidies in question are not exempted from a right of action under the Agreement on Agriculture

The subsidies in question, both under the 1996 FAIR ACT and the FSRIA, fall outside the Green Box as provided under Article 6(1) and Annex 2 of the Agreement on Agriculture. They do not comply with the basic conditions to fall under the Green Box as stated in sub-section 1 of Annex 2:

“Domestic support measures for which exemption from the reduction commitments is claimed shall meet the fundamental requirement that they have no, or at most minimal, trade-distorting effects or effects on production. Accordingly, all measures for which exemption is claimed shall conform to the following basic criteria:

a) ... and

b) *the support in question shall not have the effect of providing price support to producers;*

plus policy-specific criteria and conditions as set out below.”

The relevant measures have more than a minimum effect on trade and on production and constitute price support.¹⁷

The effect of all the subsidies on trade and production has been stressed both by the European Community and the U.S. We refer to the statements of J.B. Penn, U.S. Under Secretary of Agriculture at a press conference concerning the FSRIA:¹⁸

¹⁷ The European Community has also stressed that classifying a subsidy in the Green Box requires an infinitesimal impact on trade in the Conclusion of the Agricultural Council of November 20 and 21, 2000 establishing the EU proposal for agricultural negotiations, europa.eu.int, see sub-section iii), section 13.

¹⁸ Briefing with J.B. Penn, Under Secretary of Agriculture for Farm and Foreign Agricultural Services on the 2002 Farm Bill and the Implications for World Trade, 22 May 2002, www.uspolicy.be. At the same time, the Secretary of Agriculture, Ann M. Veneman has already confirmed that there will be no major changes in the planted acreage following the FSRIA: “So I can't really sit here today and tell you we're going to have big shifts like that under this new Farm Bill. But I think it's important to emphasize with this Farm Bill, that we do have production flexibility. It's maintained, just as it was available under the 1996 Farm Bill.” » in the press conference transcript of May 21, 2002, Transcript of Agriculture Secretary Ann M. Veneman, Undersecretary for Farm and Foreign Agricultural Services, J.B. Penn, Chief Economist Keith

“Finally, many observers have said that this bill will significantly stimulate production and further depress global community prices.

I would offer a couple of observations in that regard.

First, our total cropland acreage space is about 325 to 330 million acres. We have committed that much to the crops that are covered by the farm bill, and it hasn't changed very much for the past several years. Now in 1996, when we adopted the last farm bill, it enabled producers to have complete planting flexibility, and we saw very significant shifts among crops. We had over time, a very substantial decrease in wheat acreage, from 11 to 12 million acres. We had a very substantial increase in oilseed acreage – especial soybeans, again, on the order of 12 or 13 million acres;”

This only confirms an analysis already made by the Economic Research Service of the USDA in 2000, the text of which is included in **Annex 3**¹⁹

The European Community, in describing the effects of, in particular, all the loan deficiency payments and the counter-cyclical payments of the FSRIA, put forth the following objections as to the major effect on production of price support for producers.²⁰

“ - *These payments guarantee the US farmer a given level of income. This means he or she has no interest to follow market signals, particularly in times of low prices.*

- *Because of the way the mechanism works, lower prices can mean in fact farmers gain a higher income than they would if market prices were higher. This can operate as a disincentive to cutting back overproduction.*

- *Since guaranteed income means guaranteed return on everything grown, farmers will expand product as much as possible on marginal land, with no concern whether or not the crop will find a buyer at a good price.*

- *The increased production will flood the market and further drive down prices (while incomes are protected by yet higher LDP and counter-cyclical payments). This is why leading US commentators describe the policy as « ultimately self-defeating»²¹*

Collins, Farm Service Agency Administrator James Little, Tuesday, May 21, 2002, Washington D.C., Release No 0200.02, www.usda.gov. Hence, the decrease in oilseed loan rates will not have a significant effect on decreasing the oilseed acreage, since the drop will be more than compensated by the other subsidies available to oilseed producers.

¹⁹ See “U.S. Farm Program Benefits: Links to planning decisions & agricultural market”, Economic Research Services /USDA, in Agricultural Outlook, October 2000, page 10 to 14.

²⁰ « Questions & Answers – US Farm Bill, “Commission européenne,” Brussels, May 15, 2002.

²¹ This only confirms the concern already expressed by the European Community before the WTO when it mentioned in a working paper:

“Having said that, the EC would like first to stress the requirement that green box measures have no, or at most minimal, trade-distorting effects. This reinforces the need to retain the provision that measures which are counter-cyclical (i.e. decided in response to price fluctuations) or which are determined by

This is all the more true since subsidies for grain producers also benefit oilseeds. Moreover, they are not a form of price support decoupled from production because production is required for a payment to be made. The goal of these subsidies is to help oilseed producers and other producers survive depressed market prices. They have an influence on production.²²

Effects on production of the subsidies granted under FSRIA are, moreover, confirmed by the USDA Economic Research Service, it considers the economic implications of direct payments, counter-cyclical payments and marketing assistance loans as well as loan deficiency payments.²³

Moreover, loan rate subsidies, marketing loans, oilseed-specific emergency or counter-cyclical payments and oilseed-specific direct payments are not decoupled from production and for some are directly established on prices for production over a period of one year following the base period in violation of the exemption terms provided for under sub-section 6 of Annex 2.

C/ The subsidies in question are ~~outside~~ within the Amber box and are actionable pursuant to Article 13(b) of the Agreement on Agriculture by causing subsidies in excess of those for the 1992 marketing year.

Article 13(b) on the Agreement on Agriculture provides that:

“During the implementation period, notwithstanding the provisions of GATT 1994 and the Agreement on Subsidies and Countervailing Measures (referred to in this Article as the “Subsidies Agreement”):

...

(b) domestic support measures that conform fully to the provisions of Article 6 of this Agreement including direct payments that conform to the requirements of paragraph 5 thereof, as reflected in each Member's Schedule, as well as domestic support within de minimis levels and in conformity with paragraph 2 of Article 6, shall be:

(i) ...

production, prices or input levels, should not be considered as green. » (Soumission par la Communauté européenne sur la Boîte verte à la session spéciale du Comité Agricole, Réunion informelle du 26 au 26 septembre 2001, Bruxelles, le 25 septembre 2001, europa.eu.int).

²² This analysis was made in the preliminary conclusion of the Canadian Commissioner for Customs and Revenue regarding subsidies granted to corn by the United States under the 1996 FAIR ACT. It applies just as much to oilseeds because the same provisions are in play. (November 7, 2000 4237 – 88, AD/1242, 4218-10 CV/91).

²³ See ERS of USDA in “2002 Farm Bill”, Analysis, www.ers.usda.gov. A copy is included in the **Annex 4**.

(ii) exempt from actions based on paragraph 1 of Article XVI of GATT 1994 or Articles 5 and 6 of the Subsidies Agreement, provided that such measures do not grant support to a specific commodity in excess of that decided during the 1992 marketing year;”

Therefore, subsidies within the Amber box (including subsidies below the *de minimis* thresholds provided for in Article 6(4) of the Agreement on Agriculture) or the Blue Box (Article 6(5)) can be the subject of an action alleging for serious prejudice pursuant to Articles 5 and 6 of the Subsidies Agreement as long as the support measures in question are commodity-specific and afford support exceeding that decided during the 1992 marketing year.

1. The subsidies in question are specific as regard oilseeds

Unquestionably loan rates, marketing loan gains, loan deficiency payments, oilseed-specific emergency or counter-cyclical payments and oilseed-specific direct payments are oilseed-specific. As for direct payments and counter-cyclical payments afforded to oilseed producers on grain bases, the EC has already openly stated its position on their exclusion from the Green Box and their inclusion in calculating the AMS in the following terms:²⁴

“In fact, the indications are that the US administration will attempt to stay within the WTO limits by classifying key expenditure as being exempt. In particular, supporters of the Farm Act believe that the counter-cyclical payments should be classified as «non-product specific», which would enable them to escape WTO constraints by using the «de minimis» provision. The EC, on the other hand, considers that, since the counter-cyclical payments are paid as a function of fluctuations in the price of different commodities with respect to target prices also specified by commodity, they can only be « product specific».

In addition, supporters of the Farm Act have urged the US to classify the fixed decoupled payments as being exempt from the AMS calculation, on the basis that they are decoupled from production. However, since the Farm Act allows farmers to update their base areas, payments will be made on the basis of current, rather than historic production patterns (as required for exempt payments). For this reasons, the EC considers that the fixed decoupled subsidy must be declared within the AMS.”

The same reasoning applies to previous 1996 FAIR ACT subsidies, either AMTA payments or emergency payments. It should also be noted that Article 1 subparagraph (a) of the Agreement on Agriculture distinguishes specific domestic support and non-specific support by indicating that the latter category covers support measures “*provided in favour of agricultural producers in general*”. Subsidies on grain bases are not provided in favour of agricultural producers in general and are,

²⁴ See the EC Memorandum, “Further clarifications on US Farm Act”, MEMO/02/166, Brussels, July 11, 2002;

therefore, specific. These subsidies are not generally granted insofar as fruits and vegetables and other commodities cannot benefit from them.

2. The subsidies in question exceed those provided for the 1992 marketing year

Commitment on Domestic Support afforded within the framework of the Amber box entail compliance with a maximum limit for all products expressed in the form of an AMS (Aggregate Measurement of Support). In 1992, support provided to soybeans was represented only by the loan rate that at that time was established at \$5.02 per bushel, a level reduced to \$4.92 per bushel in 1994. This level was low enough for the market price to have nearly always been higher and viewed as remaining structurally higher. Under these conditions, subsidies provided to soybeans during the entire period preceding the Marrakech Agreement are practically nil.

The references submitted by the United States in their negotiations schedules (United States country schedules March 1 - 1992 - Page 100: supporting table 8 - soybeans) indicate for soybeans a 1986-88 base AMS of 96 million dollars for production estimated at 10.7 billion \$ (i.e., an *ad valorem* support of 0.89%).

Compared to the situation in 1992, the 1996 FAIR ACT caused an increase in support provided to oilseeds. Such increase is further heightened by the FSRIA.

- **The FAIR ACT**

- Caused an increase in loan rates to \$5.26 per bushel for soybeans
- Provided, starting with the 1999 crop, emergency payments to oilseeds amounting to \$0.14 per bushel for soybeans raising the global measurement of support to \$5.40 per bushel
- Provided, as from 1998, for marketing loan subsidy payments which reached on average more than 2.5 billion dollars yearly and represented from 20 to 25% of production value.
- Authorized growing oilseeds on acreage receiving subsidies historically reserved for grain.

- **The FSRIA**

- Increases even more the direct support by establishing target prices \$5.80 per bushel for soybeans and \$9.80 /cwt for other oilseeds (\$10.10 /cwt starting in 2004). [Support provided through these new target prices is higher than all supports previously provided.](#)
- Establishes fixed direct payments: \$0.44 per bushel for soybeans, as well as counter-cyclical payments that can reach \$0.36 per bushel for soybeans and \$0.80 for oilseeds.

- Creates for the first time individual oilseed bases on recent references. The level of production recently reached is thereby comforted through a guarantee for producers to receive subsidies in the future and the principle of updating the references. These subsidies are therefore not decoupled from recent production²⁵.
- Preserves the marketing loan system that authorizes payment of subsidies for practically unlimited amounts, following market prices.

The drop in the loan rate to \$5 /bushel (versus \$5.26 before) indeed reduces potential subsidies paid by \$0.26 per bushel compared with what they were under the 1996 FAIR ACT, but these subsidies will still not be capped, and their amount varies in accordance with market prices.

- Oilseed production is still authorized on acreage receiving grain subsidies based on historical references.

With respect to each type of subsidy:

(i) Loan rate levels

During the 1996 FAIR ACT, they were at a higher level than in 1992. Nevertheless, by returning them to their prior levels the FSRIA is not a return to compliance with WTO commitments. The decrease in loan rate support afforded in the FSRIA starting in 2002 cannot be analyzed independently from the simultaneous creation of target prices and the payment of direct and counter-cyclical oilseed payments which overall has led to an additional increase in total oilseed support. Pursuant to the purpose of the Peace Clause of Article 13(b)(ii), any support for a specific commodity of whatever kind must be contained within the limits of the 1992 marketing year in its overall aspect. Any other interpretation would help evade the Peace Clause which must, as an exception, be interpreted restrictively.

²⁵ The EC reinforces this position by declaring:

“At present, producers receive direct payments on the basis of areas planted in the mid-1990s and yields obtained in the early-to-mid-1980s. The Farm Bill allows an updating of areas eligible for direct payments (to 1998-2001 areas actually planted) and allows an updating of eligible yields (to 93.5% of 1998/2002 yields) for the counter-cyclical payments. The implication of this is that there could be a substantial increase in the budget cost of fixed and counter-cyclical payments.”

In respect of the current fixed payments (AMTA), although the rates are set per crop, they are only paid on crops grown in the base years. As they are not paid on crops grown in the payment year, they qualify as « decoupled » payments, which the US classifies as being exempt from WTO subsidy limitations. However, in allowing the base areas to be updated, the payments, for the first year at last become « re-coupled » to the recent crops grown and farmers will receive the payments for the different crops according to their recent actual plantings. For the subsequent years, US farmers may also conclude that the US government has created an expectation that future updating of base crops will be allowed, thus further breaking the decoupled status of the fixed payments.”

See “Questions & Answers – US Farm Bill”, European Commission, Brussels, May 15, 2002.

(ii) Marketing loan subsidies

The level of marketing loan subsidies depends both on the loan rate levels and market price.

Neither the 1996 FAIR ACT nor the FSRIA provide a maximum limit to outlays allocated to these subsidies.

The drop in market prices to levels below the 1998 to 2002 loan rates has led to a substantial increase in subsidies:

- 1997	16 million dollars		
- 1998	1222 million dollars	farm price	: \$4.93 /bushel
- 1999	2327 million dollars		: 4.63
- 2000	2550 million dollars		: 4.54
- 2001	3429 million dollars.		: 4.30

In contrast, marketing loan outlays for oilseeds for the marketing years following the implementation of the marketing loans from 1991 to 1996 were nil.²⁶

(iii) Oilseed payments

Oilseed direct payments and counter-cyclical payments established by the FSRIA, as well as the emergency oilseed payments within the framework of the 1996 FAIR ACT, clearly represent an increase in specific support for these commodities since they were introduced after the 1992 marketing year, especially since they are based on recent references. Their lump-sum payment sustains current production levels and gives producers an expectation of future reference readjustments.

(iv) Grain payments paid on oilseed planted acreage

Subsidies provided on grain bases were not granted to oilseed producers during and prior to the 1992 marketing year. Evidence proves that they have been increasing since 1999 reaching 100 dollars per hectare. Compared with average sales of 500 to 600 dollars per hectare for oilseeds. This is a significant amount that constitutes a significant increase of subsidies to oilseed producers.

D/ These subsidies have caused serious prejudice to Community interests which has a right of action under Article 5 and 6 of the Subsidies Agreement.

²⁶ Reference is made to Section 10 of Annex 3 of the Agreement on Agriculture that provides that the calculation of the Aggregate Measurement of Support can be made based on budgetary outlays with respect to non-exempt direct payments. Logically, this calculation method should also apply to determine if the domestic support measures exceed those of the 1992 marketing year for the application of the Peace Clause of Article 13.

According to Article 5 of the Subsidies Agreement no WTO Member “*should cause, through the use of any subsidy referred to in paragraphs 1 and 2 of Article 1, adverse effects to the interests of other Members, i.e.serious prejudice to the interests of another Member*”. Moreover, Article 6(3)(c) provides that:

“*Serious prejudice in the sense of paragraph (c) of Article 5 may arise in any case where one or several of the following apply:*

...

- c) *the effect of the subsidy is a significant price undercutting by the subsidized product as compared with the price of a like product of another Member in the same market or significant price suppression, price depression or lost sales in the same market;”*

These subsidies have caused, as the United States as well as the European Community have acknowledged (see above), a significant increase in oilseed production in the United States leading to a price depression of US oilseeds²⁷. Since the United States is the largest oilseed producer in the world and since world prices for oilseeds are set at the Chicago Board of Trade, a downward market price trend in the United States has set world market prices for all oilseeds. Hence, these subsidies have depressed prices for European oilseed producers causing them serious prejudice in the meaning of the provisions of Article 6 of the Subsidies Agreement quoted above. The price depression cannot be attributed to other causes than the US subsidies because other causes cannot explain the coincidence of time between the increase in planted oilseed acreage and the world price depression²⁸. Factual elements confirming this conclusion are given in Section IV below.

Thus, these subsidies give the European Community a right of action pursuant to Article 7 of the Subsidies Agreement. If a panel or the DSB ruled that the subsidies in question were specific and caused serious prejudice to the European Community, the United States would be compelled to:

²⁷ We also refer to the European Community memorandum in which it confirms the price depression inherent to the FSRIA in the following terms in connection with support measures: “*Secondly, as expenditure is linked to market prices, the US cannot determine whether or not they will exceed the ceiling. Clearly, under a scenario of continued low commodity prices (as seen in recent years), US spending on distortive payments under the Farm Act will likely exceed the \$19.1 billion ceiling. Given that the new mechanisms introduced into the Farm Act are largely price depressing, the system itself inherently makes this the greater likelihood.*”, Further clarifications on US Farm Act, MEMO/02/166, July 11, 2002.

²⁸ We note the interest the European Community has shown in support of the establishment of a special discipline on subsidies tied to the Amber box that stimulate exports by providing compensations in the event of price fluctuations such as the relevant subsidies. See the Conclusions of the Agricultural Council of November 20 and 21, 2000 establishing the EC proposal for agricultural negotiations, europa.eu.int, see sub-section iii), section 14. We also stress that the European Community designated the loan rate and counter-cyclical programs as export subsidies indicating that for some commodities, 40% of the production is exported which is virtually the case for oilseeds (See “*Questions & Answers – US Farm Bill*”, MEMO/02/94, Brussels, May 15, 2002, europa.eu.int.)

- withdraw the relevant subsidies,
- take appropriate measures to eliminate the adverse effects of the subsidy,
- offer compensation to the European Community, or
- suffer the consequences of countervailing measures that the European Community would be authorized to take proportionately to the extent and the nature of the serious prejudice inflicted by the relevant subsidies.

* * *

IV– Effect of the 1996 FAIR ACT: Serious prejudice caused by an increase in oilseed production in the USA and a world price depression paving the way for an application under the TBR

A/ Oilseed subsidies have caused serious prejudice

1. Factual observation: Production increased while prices dropped

a/ Oilseed acreage is increasing while grain acreage is stable or decreasing

(i) General observation

Since the adoption of the 1996 FAIR ACT, soybean planted acreage in the USA has increased by 22% from 27.2 million hectares to 29.8 Million hectares and production has risen 31% from 69 to 75.1 million tons (comparing 1990-1995 averages with 1998-2001 averages).

Regarding rapeseed (or canola) over the same years, acreage has risen from 0.21 to 0.53 million tons and production from 0.29 to 0.79 million tons, i.e., a 490% increase.

EFFECTS OF 1996 FAIR ACT ON U.S. OILSEED PRODUCTION

<i>(Planted acreage)</i>		FSA	FACTA	FAIR ACT		Variation caused by FAIR ACT (98-01 / 90/95)
		1985-89	1990-95	1996-97	1998-01	
Acreage ⁽¹⁾ (M. Ha)	Soybeans	24,4	24,3	27,2	29,8	+ 22 %
	Minor Oilseeds⁽³⁾ <i>Including rapeseed</i>	-	1,5 0.10	1,5 0.21	2,1 0.53	+ 40 % + 430 %
Production (M. T)	Soybeans	51,4	57,4	69,0	75,1	+ 31 %
	Minor Oilseeds⁽³⁾ <i>Including rapeseed</i>	-	2,0 0.13	2,2 0.29	3,1 0.79	+ 52 % + 490 %

(1) average planted acreage for the period

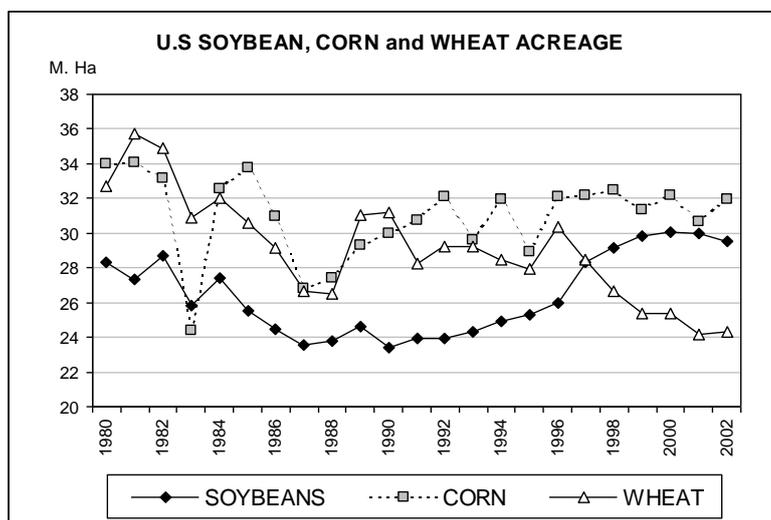
Source: FOP, based on USDA

(3) canola, rapeseed, rapeseed, sunflower, linseed, mustard, safflower.

What is remarkable is that this increase in oilseed acreage occurring after implementation of the 1996 FAIR ACT corresponds to a break after a long period of decrease, then stagnation in planted acreage since the middle 80s.

Soybean acreage has slightly increased since 1991. This can be explained by the 1990 Farm Bill having partially introduced the “flexibility” principle on 15% of the

acreage (triple base²⁹) extended in 1996 by the FAIR ACT to all the acreage in each farm.



Source: FOP based on USDA

Comparisons with other trends for US crops show that these do not follow the same patterns as soybeans did after implementation of the 1996 FAIR ACT. Though grain and oilseed acreage increased by 2 million hectares because set-asides were not longer mandatory, soybeans increased substantially, gaining an additional 5 million hectares increasing its share by 30 to 35% out of the total grain and oilseed acreage. Corn, soybean’s main competitor, increased by 1 million hectares but saw its acreage share languish at 36%. Wheat acreage decreased considerably (–4 million hectares) and its share dropped from 34% to 29%. It therefore appears that the 1996 FAIR ACT specifically encourages oilseeds.³⁰

²⁹ The 1990 Farm Act introduced the term “triple base” (15% of grain “bases”), the concept of “flexibility”, i.e., a re-balancing of aid among crops which was expanded by the 1996 FAIR ACT. Such partial flexibility permitted the planting of oilseeds while still receiving grain payments on 15% of grain reference acreage.

The program triggered the initial rise in soybean acreage: in 1994, soybeans were planted on 2.4 million hectares within the “triple base” framework; the same year, soybean acreage increased by 2 million hectares. This was the first significant increase in soybean acreage in 10 years.

³⁰ See the comparison between support programs in [Annex 5](#).

EFFECT OF THE 1996 FAIR ACT ON ARABLE CROP ACREAGE IN THE UNITED STATES

		FSA	FACTA	FAIR ACT		Variation FACTA- FAIR ACT
		1985-89	1990-95	1996-97	1998-01	
SOYBEANS	M. HA	24.4	24.3	27.2	29.8	22%
	% Total	29%	29%	31%	34%	5 points
CORN	M. HA	29.6	30.6	32.1	31.7	4%
	% Total	36%	36%	36%	36%	-
WHEAT	M. HA	28.8	29.0	29.4	25.4	-13%
	% Total	35%	35%	33%	29%	-5 points
TOTAL⁽¹⁾	M. HA	82.8	83.9	88.7	86.8	+3%

(1) soybeans + corn + wheat

Source : USDA

(ii) Most of the additional acreage is in the Corn Belt

A regional study (See **Annex 6**) shows an increase of 2.9 million hectares, i.e., 2/3 of additional soybean acreage, in the traditional Corn Belt areas whose share of the national total rose to 66% versus 65% during the 91-95 period and 63% in 86-90.

Notably a major 18% increase occurred in non-traditional soybean areas: there is an increase of 1.2 million hectares in the Plains, traditionally a wheat region. Soybeans decreased considerably in the SouthEast as well as in the Mississippi Delta.

SOYBEAN ACREAGE BY REGION (HARVESTED ACREAGE)

			Western Corn Belt	Eastern Corn Belt	Plains	Delta	South- east	Total US
Average (M. Ha.)	AFA	81/85	8.3	6.9	1.2	4.0	2.8	26.4
	FAS	86/90	8.0	6.8	1.7	2.9	1.5	23.4
	FACTA	91/95	8.5	7.2	1.9	2.6	1.1	24.0
	FAIR ACT	96/01	10.5	8.2	3.1	2.4	0.9	28.4
Variations (M. Ha.)	81/85 – 86/90		- 0.3	- 0.1	0.5	- 1.1	- 1.3	- 3.0
	86/90 – 91/95		0.5	0.4	0.3	- 0.4	- 0.4	0.6
	91/95 – 96/01		2.0	0.9	1.2	- 0.1	- 0.1	4.4
Progression (%)	81/85 – 86/90		- 3%	- 1%	34%	- 27%	- 47%	- 11%
	86/90 – 91/95		6%	6%	16%	- 13%	- 27%	2%
	91/95 – 96/01		24%	13%	59%	- 5%	- 13%	18%

Source: NASS, USDA

SHARE OF EACH REGION IN % OF TOTAL US SOYBEAN ACREAGE

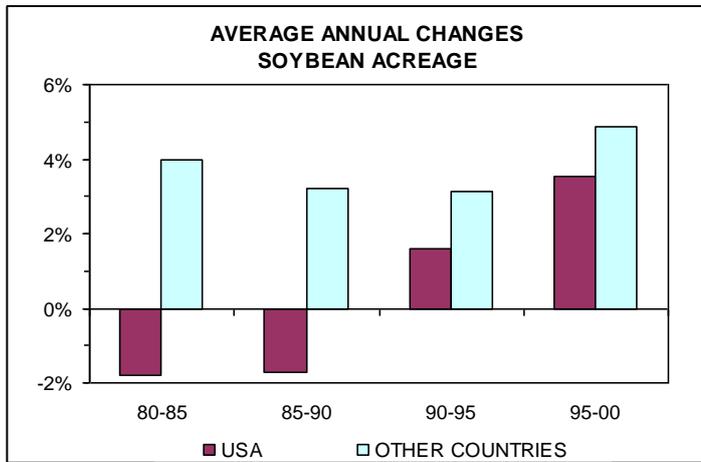
		Western Corn Belt	Eastern Corn Belt	Plains	Delta	Southeast
AFA	81/85	32%	26%	5%	15%	11%
FSA	86/90	34%	29%	7%	13%	6%
FACTA	91/95	35%	30%	8%	11%	4%
FAIR ACT	96/01	37%	29%	11%	9%	3%

Source: NASS, USDA

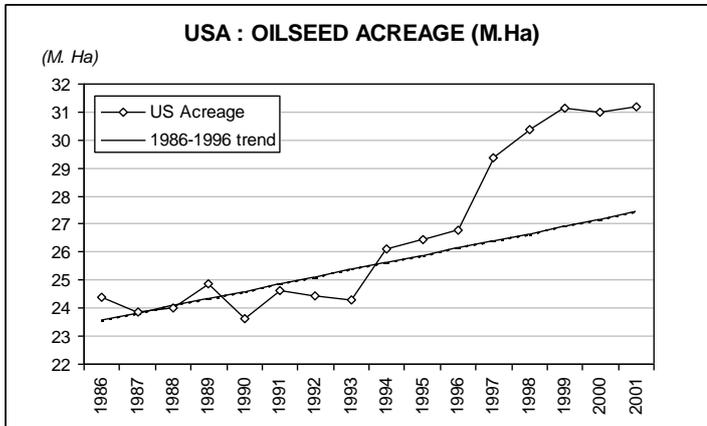
(iii) Other producing countries: a steady growth in acreage

Moreover, a comparative review of acreage trends in other producing countries subject to the same international price environment, confirms this analysis: worldwide, only the US increased its acreage considerably after 1996, showing a break from the previous trends.

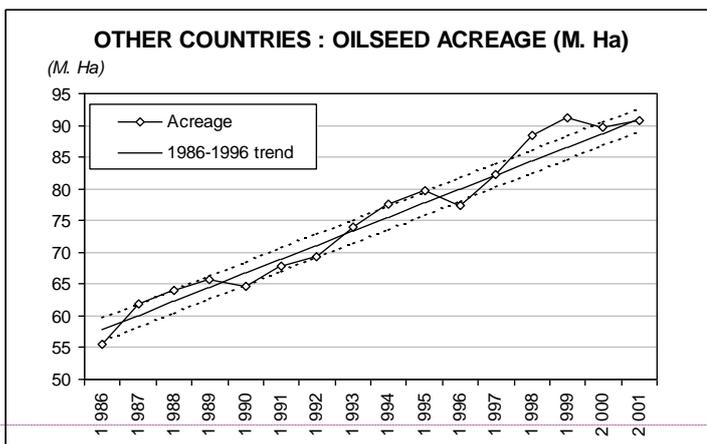
Increases in acreage observed in other producing countries are within the trend of an annual growth of 3 to 4% established for decades, in contrast with the decrease observed in the US since 1980.



Source: FOP, based on USDA



Source: FOP based on USDA



Source: FOP based on USDA

Commentaire [FM1]:
OTHER COUNTRIES: OILSEED
ACREAGE
(M. Ha)
US acreage
1986-1996 trend

b/ Price suppression

The price suppression caused by the 1996 FAIR ACT on commodities is universally accepted by the experts. Hence an agricultural economist wrote that:

“Under the 1996 Farm Bill, Congress set out to eliminate farm payments entirely, Novak says. In fact, under the 1996 bill, farmers were to be weaned off farm subsidies associated with earlier farm bills. Instead, they received so-called de-coupled payments, direct payments not tied to farm production levels.

‘The conventional wisdom at the time was that export markets would save us and that just opening up to free trade would fix all of the problems associated with U.S. farming’, he says.

The approach, Novak says, was fraught with problems.

'The export market failed us,' he says. 'If you know anything about supply and demand, you know that producing more of something than the market will support forces prices down.'

'Ordinarily, that would send a signal to farmers to switch to more profitable crops or to quit producing. However, de-coupled program payments and disaster assistance payments made since 1996, helped confound price signals.'

Under the 1996 Farm Bill, Novak says, 'farmers ended up producing surpluses in the midst of a worldwide glut of farm products' – a problem made even worse by the Asian economic crisis, which also affected U.S. farm exports.

As a result, commodity prices plummeted and, with it, farm incomes.

While retaining the old de-coupled payments associated with the 1996 bill, the new Farm Bill attempts to boost farm incomes through counter-cyclical payments, which are triggered whenever farm prices fall below predetermined levels. What these counter-cyclical payments provide, Novak says, is a safety net that enables farmers to avoid steep drops in farm income associated with the 1996 Farm Bill

'Under the new farm bill, counter-cyclical payments will continue to be made as long as the commodity prices are low', Novak says. 'But when these prices begin rising again, the counter-cyclical payments are phased out and the market takes over.'

Nevertheless, counter-cyclical payments remain one of the most controversial aspects of the new bill. But while conceding the new bill is far from perfect, Novak believes any alternative bill likely would have contained some form of price supports. »³¹

Therefore the 1996 FAIR ACT as well as the FSRIA are recognized as having an effect on production which cannot be qualified as a minimal one (Section 1 of Annex 2 of the Agreement on Agriculture) since they have a substantial effect on the volume of production as well as on prices.

Hence, from 1998 until July 2002, market prices remained depressed at an historical 25 year record.

Since then, prices have nearly constantly remained under the loan rate, at a 25% lower level compared with the average level.

³¹ See Dr Jim Novak, an economist with the Alabama Cooperative Extension system, "The 2002 Farm Bill: A Method behind the Madness", Auburn, 21 may 2002, www.aces.edu.

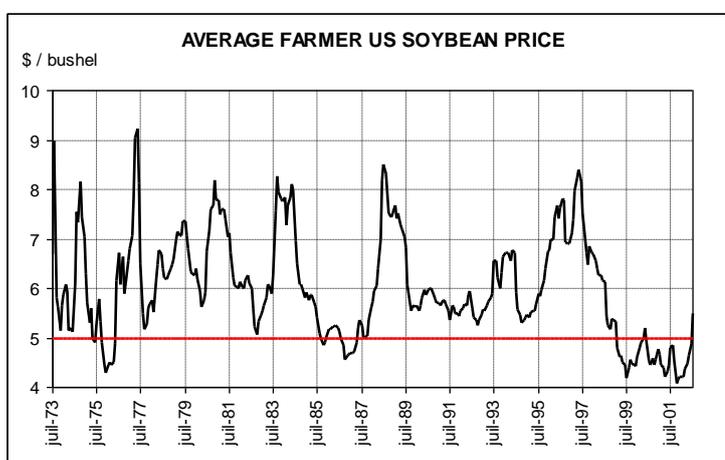
A study of the price trends since 1973 shows the exceptional nature of this crisis in terms of level reached and duration.

FARMER PRICE TRENDS OF U.S. SOYBEANS

	<i>AFA</i>	<i>FSA</i>	<i>FACTA</i>	<i>FAIR ACT</i>	
	1981-84	1985-89	1990-95	1996-97	1998-01
Farmer price soybeans ⁽¹⁾ (\$/Bushel)	6.33	5.89	6.00	6.97	4.63

(1) average per period

Source: USDA



Source: FOP based on USDA

The price depression after 1998 is a complex phenomenon, in which the new US farm policy and general market deregulation obviously play a role.

This Complaint limits its scope to demonstrating how subsidies paid within the framework of marketing loans in compensation for low prices prevented US production from adjusting to the price depression, thereby contributing to the price drop, and prevented prices from rising again, which explains the exceptional duration of the depression.

c/ Subsidies prevented acreage adjustment to the price drop

This situation led to the payment of marketing loan subsidies (loan deficiency payments and marketing loan gains) that prevented US production from adjusting to the price drop (see also confirmation of this conclusion by the European Community and even by the US as quoted above).

On the contrary, the additional increase in acreage which rose from 29 to 30 million hectares between 1998 and 2001 shows the particularly enticing character of the subsidies received by oilseed producers.

2. Assessment of the effect on US production and calculation of the worldwide price suppression

In the absence of these subsidies, US oilseed production would have responded to the market signals and settled at much lower levels than were observed. The world market would have found its supply and demand equilibrium for a higher price level than the one it finally settled on.

The market distorting effect corresponds to the gap between these two equilibrium prices: with subsidies on the one hand and without them on the other.

This price depressive effect exists independently of many other factors also influencing the oilseed markets; it cannot be directly evaluated from prices observed on the market. It must be calculated using econometric models that simulate market equilibrium within the scope of various hypotheses that include or exclude subsidies for which an impact is assessed.

To assess the distorting effect of the subsidies concerned, we must proceed in several stages:

- 1) Assessment of the effect of subsidies on US production: improvement of the profitability of US farms, effect on acreage and crops.
- 2) Assessment of the effect of the increase in US production on world prices as a consequence of the subsidies and on the crops of competing countries—including the European Union.

Since the complainants do not have access to a global econometric model, this demonstration was handled in two phases described below.

a/ Improvement of oilseed profitability by US farms - effects on production

Subsidies provided to oilseeds by the 1996 FAIR ACT improved profitability and allows them to expand their acreage at the expense of other competing crops³².

Competing crops consist of grains in general, but particularly corn, since soybeans are traditionally and still mainly grown in the “Corn Belt”.

³² Testimony presented at the “Agricultural outlook forum” organized by USDA in 1997 describes very well the innovating effect of the 1996 FAIR ACT in favor of soybeans. See: “A producer perspective on changing farm programs” included in the **Annex 7** and available at the following internet address: <http://usda.mannlib.cornell.edu/reports/waobr/aof/aof97/akarkosh.asc>

(i) *Subsidies help improve oilseed profitability*

The following are factors that help improve oilseed profitability:

- The prime factor is the extension of grain flexibility payments to oilseeds:

These payments are made in lump sums to farms on the basis of 85% of historical acreage references and grain yield. The rate of these payments has decreased during the 1996 FAIR ACT. For corn, it went from \$105 to \$58 as a national average per base hectare (corrected by the non-subsidized 15%).

If one considers the case of a typical Corn Belt farm (see the regional study in the **Annex 6**) having a “corn base” covering 70% of its acreage, the remaining acreage being traditionally planted with soybeans, the “flexibility subsidy” granted by the 1996 FAIR ACT to any planted hectare ranged depending on the year between **\$73 and \$40 per ha**.

This support is a new advantage for oilseeds which strengthens their profitability.

- Maintenance of profitability through emergency subsidies compensating price drops.

Emergency payment to grains after 1998 compensating the drop in market prices are added to the flexibility payments and paid under the same terms and conditions. They ranged between \$78 and \$41 per base corn hectare (taking account of 15% not paid).

For a standard farm with a grain base acreage of 70%, these payments ranged from \$30 to \$54 per planted hectare. Oilseeds also received these payments.

- Emergency payments specifically afforded to oilseeds represented on average \$14 per hectare for soybeans.
- Marketing loan payments preserve profitability at the level set by the loan rate.

A review of the provisions of the new farm act (FSRIA) shows that it will maintain profitability at the levels reached under the 1996 FAIR ACT.

(ii) *Size of oilseed profitability improvement and its effect on US acreage*

The effect on acreage results from farmers’ decisions to optimize profitability taking into consideration certain technical constraints requiring the succession of several crops on the same field (rotation). Relative profitability among crops leads to

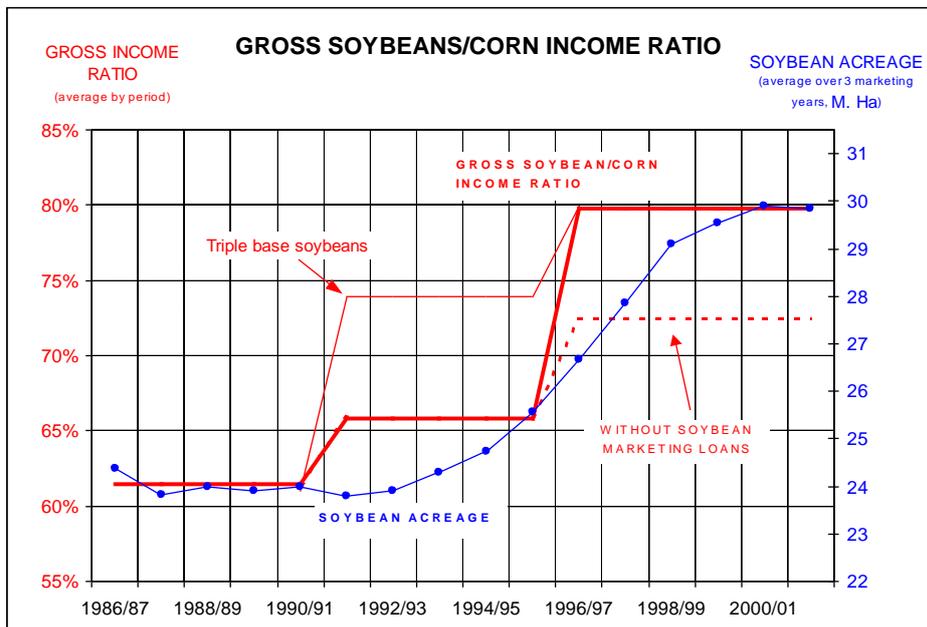
increasing or decreasing their share in the cropping plan (allocation between crops) and their succession on the same field (rotation).

The farmer seeks to optimize the total returns taking into account technical constraints.

Econometric models reproduce at the global level the same optimization calculation. They correlate the relative profitability level between crops and their share of acreage.

A gross indication of the relationship between acreage and relative profitability is given by comparing on a chart (see below) the trend in soybean acreage and its relative profitability versus corn, its main competitor. The chart shows that soybean acreage increases simultaneously with the improvement in soybean profitability relative to corn.

If one takes as an indicator soybean gross income expressed as a percentage of the gross income for corn, one sees that it reaches around 60 to 65% during the period previous to the FAIR ACT and increases to 80% under the entire duration of the 1996 FAIR ACT because of the new subsidies' allocation. This substantial improvement in the economic competitiveness of soybeans explains the 20% increase in acreage over the period.



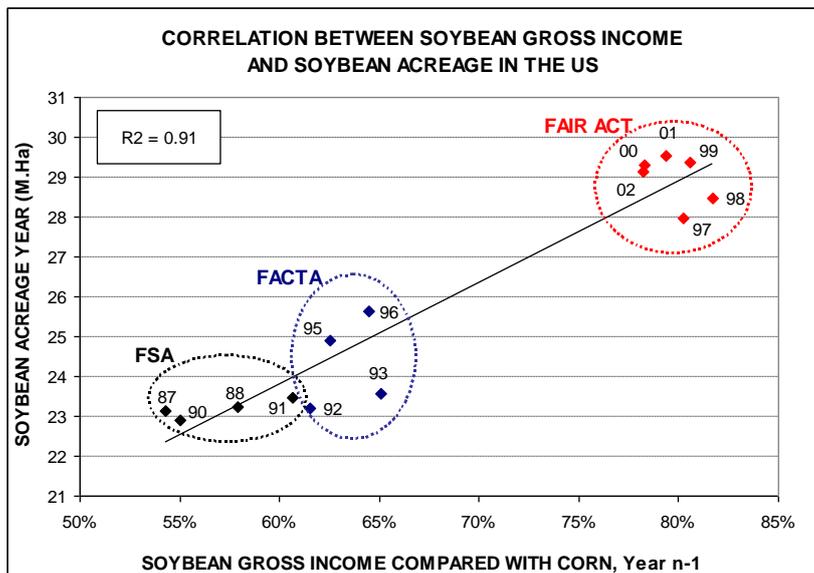
Source: FOP, based on USDA

The diagram below illustrates the correlation between gross income and soybean acreage. It allows visualizing the proportional relationship between the relative profitability of soybeans compared to corn and soybean acreage. Each year is

Commentaire [FM2]:
 GROSS SOYBEANS/CORN INCOME RATIO
 GROSS INCOME RATIO
 SOYBEAN ACREAGE
 (average by period) (average over 3 mark. y.
 M. Ha)
 GROSS SOYBEANS/CORN INCOME RATIO
 triple base soybeans
 WITHOUT SOYBEAN MARKETING LOANS
 SOYBEAN ACREAGE

represented by a dot having as its abscissa the gross income soybeans/corn ratio and as its ordinate soybean acreage. This diagram clearly shows that for each period covered by the FSA, FACTA and 1996 FAIR ACT the points are clustered, showing that for each period there is a homogeneity of economic contexts and resulting soybean acreage.

A regressive line shows the positive ratio between profitability and soybean acreage: for a gross income of around 80% of that of corn, soybean's acreage reaches around 24 million hectares.



Source: FOP based on USDA

The FSRIA should globally preserve soybeans' gross income at a level ranging from 73% to 80% of corn and thus roughly stabilize soybean acreage at the current levels or lead to a slight decrease.

The tables below show the trend in market receipts and gross revenue for soybeans and corn over the period from FACTA (1990 Farm Act) to FSRIA (2002-2007)

GROSS INCOME FROM ONE HECTARE OF SOYBEANS IN THE U.S.:

Standard CORN-SOYBEAN farm with a corn base representing 70% of total acreage, the remaining planted with soybeans.

(\$/Ha)	FACTA	FAIR ACT		FSRIA
	1990-95	1996-97	1998-01	2002-07
MARKET RECEIPTS	530	652	437	477⁽¹⁾
Soybean support	0	0	74	16⁽²⁾
Marketing loan			60	-
Emergency oilseed payments			14	-
Direct / counter-cyclical payments (FSRIA)				16
Grain payments benefiting soybeans	0⁽³⁾	56	94	111
TOTAL SUPPORT	0	56	168	127⁽²⁾
TOTAL GROSS INCOME	530	708	605	604

(1) crop value-enhanced by the loan rate

(2) MINIMUM support (lacking marketing loans)

(3) ignoring the triple base

GROSS INCOME FROM ONE HECTARE OF CORN:

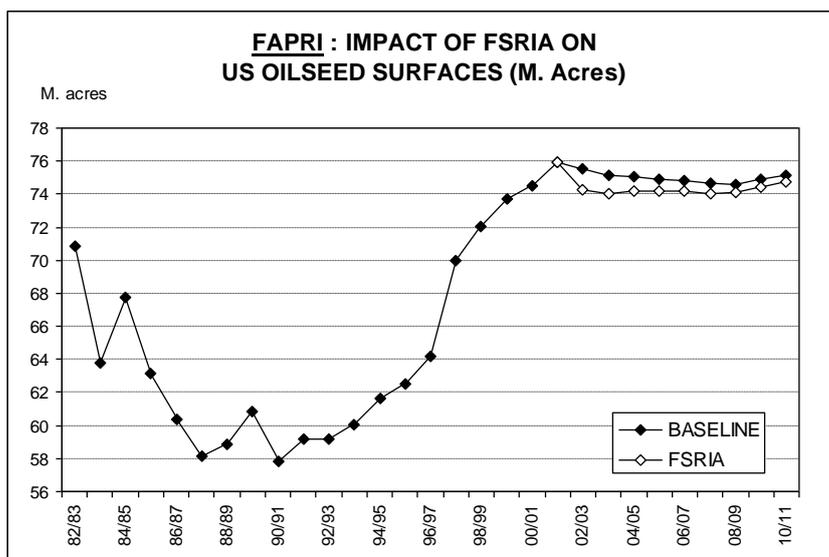
Standard CORN-SOYBEAN farm with a corn base representing 70% of total acreage, the remaining planted with soybeans.

(\$/Ha)	FACTA	FAIR ACT		FSRIA
	1990-95	1996-97	1998-01	2002-07
MARKET RECEIPTS	725	806	632	656⁽¹⁾
Corn support	86	56	103	111⁽²⁾
Marketing loan		0	9	-
FACTA Deficiency payments	86			-
Flexibility P./ Emergency Fair A.		56	94	
Direct / counter-cyclical payments (FSRIA)				111
Soybean payments benefiting corn (FSRIA)				16
TOTAL SOUTIEN	86	56	103	127⁽²⁾
TOTAL GROSS INCOME	811	862	735	783

(1) crop value-enhanced by the loan rate

(2) MINIMUM support (lacking marketing loans)

A FAPRI study of May 2002 carried out for the US government which simulates the impact of the FSRIA on crops foresees a 1 to 1.5% marginal drop in soybean acreage in the first two years followed by an increase up to the level expected if the FAIR ACT were pursued³³.



Source: based on FAPRI (May 2002)

(iii) Quantifying the acreage effect of marketing loans over the 1998 – 2001 period

The repeal of direct subsidies paid to soybeans (marketing loans and emergency oilseed program) during the 1999-2001 period would have caused a drop of the gross income of soybeans to 67% of that for corn, i.e., practically to a pre-1996 FAIR ACT level. ~~The share of this crop's acreage, which since the 1996 FAIR ACT has grown strongly to reach, since 1999, 35% of the total "wheat-corn-soybean" would have caused a drop to the acreage levels traditionally observed in preceding periods of 29%. The share of soybeans acreage - which since the 1996 FAIR ACT has grown strongly to reach, since 1999, 35% of the total "wheat-corn-soybean" - would have dropped to the acreage levels traditionally observed in preceding periods of 29%.~~

³³ See: "Farm security and Rural Investment Act of 2002: preliminary FAPRI analysis – May 6, 2002" included in the **Annex 8**.

	AFA	FSA	FACTA	FAIR ACT		99-01 Hypothesis without subsidies soybeans
	1982-85	1985-89	1990-95	1996-97	1999-01	
Gross income soybeans/corn (%)	60%	61%	65%	81%	81%	<u>65%</u>
Gross income soybeans corn excelled. <u>soya subsidy (%)</u>	-	-	-	-	67%	<u>i.e., return</u>
Direct subsidies soya (marketing loans) (% ad valorem)	-	-	-	-	25%	<u>pre 1996 situation</u> ↓
Soybean acreage / arables¹ crops acreage (%)	30%	29%	29%	30%	35%	<u>29%</u>
Soybean acreage (M. Ha.)	27	24	24,4	27	30	<u>25 M. Ha</u> <u>i.e., -17%</u>
Arable crop acreage (M. Ha.)	90	82	84	89	86	

¹: Relevant arable crops = wheat, corn, soybeans

This rough assessment shows that the effect of the 1999 to 2001 marketing loan subsidies has maintained soybean acreage between 15 and 20% above their normal levels.

Nevertheless, a precise calculation of the incentive created by the subsidies and its effect on acreage and crop production would require a simulation with an econometric model like the OECD's or the USDA's.

b/ Consequences of the increase in US production on the world market

(i) Worldwide price depression

Several models have studied at various times the effects of marketing loan subsidies

➤ USDA – ERS study

“Impacts of the US marketing loan program for soybeans“, published in *Oil Crops Situation and Outlook Yearbook* – October 1999, article included in the **Annex 9**.

The simulation was carried out before the fall of 1999 based on the FAPSIM model.

The simulation studied the impact of loan deficiency payment from **\$0.4 to \$0.5 per bushel** (levels observed during the 1998 marketing year).

According to this study, there would be:

- a 1.5 to 1.7% increase in production
- a 4 to 5% drop in prices.

It is important to observe that in 1999 loan deficiency payments in effect were at twice the level of the simulated level.

➤ 2000-2005 OECD agricultural prospects

*Chapter on oilseeds — side-box 5 “Oilseeds: Do the policies implemented by the U.S. influence world prices?”, document included in the **Annex 10**.*

Based on soybeans' and corn's respective production costs levels in the USA, the OECD noted that the loan rate ratio levels was much more favourable to soybeans since the soybean loan rate covers 250% of the production costs versus only 150% for corn.

A simulation was carried out on OECD's AG Link model by taking out all the outlays for loan deficiency payments for all productions. Their level for soybeans in the simulation was at **\$0.49 per bushel**.

The simulation underscores that the marketing loan caused:

- **a 5% increase in US soybean production**
- **a 6 to 7% drop in world soybean prices**

These results underestimate the real situation in 1999 and 2000 since in the simulation, for the 2000 crop, loan deficiency payment and marketing loan gains were estimated at \$0.40 per bushel whereas they turned out to be at around \$0.85 per bushel on average.

Moreover, the simulation considered that a portion of the crops did not receive these payments because of the \$75,000 cap per farm, whereas for the 1999 and 2000 crops, these caps were doubled and circumvented through the PIK system (see Chapter II.A.2).

➤ INRA of Rennes model (Y. Dronne, A. Gohin, 2002)
Document included in the **Annex 11**

The effect of an increase in soybean production in the US was assessed with an econometric model developed by INRA - Rennes (See Annex). This is a partial equilibrium model focused on farm crops (oilseeds and grain).

The results of this model are presented below.

(ii) *Drop in seeds production in the European Union*

The scenario tested with the INRA model is that of an exogenous increase in US soybean production, all other factors remaining identical. The table below focuses on the impact on prices and acreage for European oilseeds, by testing three production increases of US soybeans: +5 %, +10 % and +20 %.

For a 20% increase in US soybean production, rapeseed and sunflower prices drop 24% in Europe and oilseed planted acreage by 16%.

As a first approach we estimate that a 10% variation in US soybean production has a –12% effect on prices and a –8% on European oilseed production.

RESULTS FROM THE INRA DRONE-GOHIN (06/2002): OILSEED ECONOMETRIC MODEL

	Exogenous soybean crop variation in the U.S.		
	+ 5 %	+ 10 %	+ 20 %
Effects on EU oilseed prices (rapeseed and sunflower).	- 6 %	- 12 %	- 24 %
Effects on EU oilseed production (rapeseed and sunflower).	- 4 %	- 8 %	-16 %

(iii) *Increase of soybean imports into the European Union*

➤ Results from the (INRA –Rennes) econometric model

The INRA econometric model (see Annex 11) indicates that **an increase in meal imports by the European Union caused by subsidies over the 1999 – 2001 period will likely be around 7%**

➤ Trends in the Community oilseed market

The European Union has a strong deficit in meal and oil for which it respectively imports 80% and 52% of its needs. In 2001, nearly 50 million tons of oilseeds were consumed in Europe, 38.6 million tons of which as meal and 10.2 million tons as oil (see **Annex 12**).

In terms of total soybean imports, 32.7 million tons of meal and 3.2 million tons of oil were imported as such or as beans i.e., a total of close to 36 million tons.

Globally, European oilseed production only represents 26% of its domestic consumption (see **Annex 13**).

UE – 15: PRODUCTION AND CONSUMPTION OF OILS AND MEAL (2001/2002 MARKETING YEAR)

Millions of tons	Production (1)	Consumption	Balance	Self-sufficiency
MEAL	7.6	38.6	-31.0	20%
Rapeseed	5.0	5.4	-0.4	92%
Sunflower	1.6	3.3	-1.7	49%
Soybeans	1.0	29.9	-28.9	3%
OIL	5.0	10.2	-5.3	48%
Rapeseed	3.5	3.4	0.1	103%
Sunflower	1.3	1.9	-0.7	66%
Soybeans	0.2	2.0	-1.8	11%
Palm	0.0	3.0	-3.0	0%
TOTAL Oil + Meal	12.5	48.8	-36.3	26%

(1) in meal equivalent and oil from produced from oilseeds

Source: Oil World

Soybeans represent 65% of consumption and 80% of European oilseed imports.

Net soybean imports (seeds and meal) in 2001 reached 34.3 million tons including 18.2 for seeds and 16.1 for meal. The beans came mostly from the USA and Brazil and for meal mostly from Brazil and Argentina.

For all imports of soybean beans and meal since 1996, figures show a decrease of the US share on the European Union market.

TOTAL EU SOYBEANS IMPORTS 3 YEAR AVERAGE (MARKET SHARE)

	1996 - 1998	1999 - 2001
BRAZIL	42%	51%
USA	33%	21%
ARGENTINA	21%	28%
TOTAL TONNAGE (M. T)	29.5	33.7

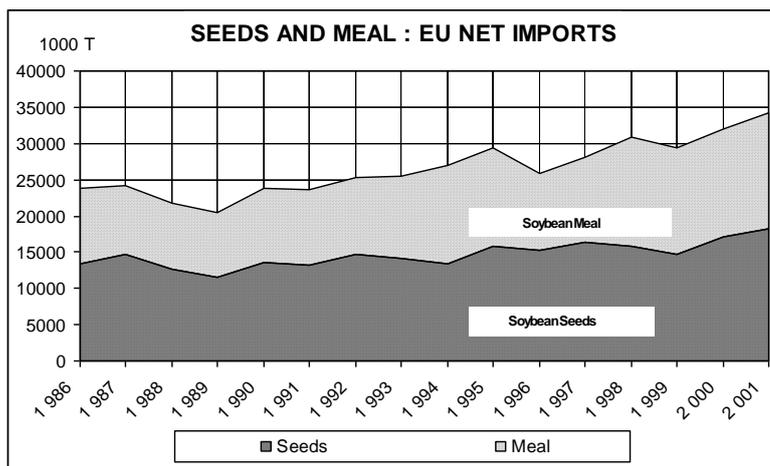
Source: Oil World

The drop in market share of the USA in the EU does not reveal a commercial failure by the USA on the European market. The USA, whose exports have reached record highs since 1998 preferred to focus their marketing efforts on China, a strong growth market.

The record level of total soybean imports in meal and oil equivalents since 1998 should be noted. In 2001 they reached 34.3 million tons. This record level should be

compared with the very low level of world market prices which makes imports very competitive and increases the demand for soybeans.

Thus the increase in EU imports over the past few years is a consequence of the depressive effect of public support provided to US soybeans.



Source: FAS (USDA)

(iv) Increase in US soybean exports

The world oilseed market is characterized by strong and sustained growth, with an average yearly growth rate of 3 to 4% for both production³⁴ and trade³⁵. This growth has been steady for 20 years.

³⁴ **Soybeans**, with a production of 185 million tons, make up more than half of world production of oilseeds (320 million tons in 2001).

The USA's share represents close to half of world oilseed production with 79 million tons, Brazil 23% and Argentina 16%.

The European Union for its part produces nearly 13 million tons of oilseeds, but consumes close to 50 million i.e., 39 million tons of meal and 10 million tons of oil.

³⁵ World trade in oilseeds (154 million tons) represents 48% of world production. Trade is 44% seeds (67 million tons), 33% meal (51 million tons) and 23% oil (36 million tons).

Soybeans (seeds, meal, oil) **make up close to 70% of world oilseed trade** with 106 million tons of soybeans traded in 2001.

Converted to end products, soybean trade represents:

- 82% of meal trade
- 50% of oil trade, excluding palm oil
- 25% of oil, including palm oil

In 2001 the USA's share represented 35% of the world soybean trade. The shares of Brazil and Argentina were growing and respectively represented 27 and 25%.

Commentaire [FM3]:
NET SEED AND MEAL EU IMPORTS

Soybean meal

Soybean seeds

Seeds Meal

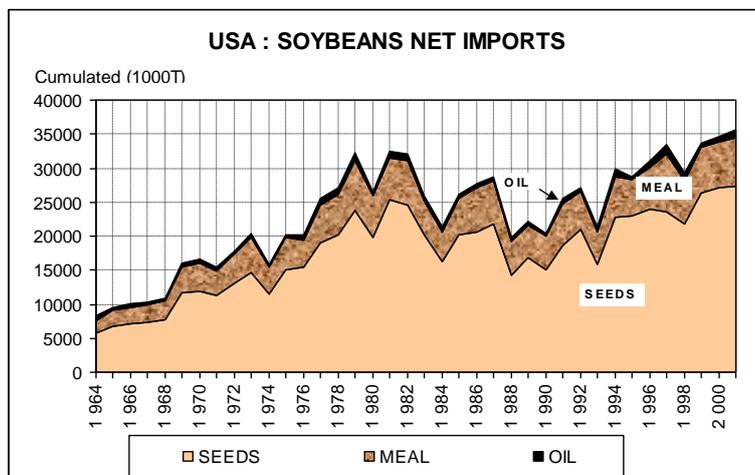
The U.S. exports on average 47% of its production, i.e., more than 35 million tons per year. These exports are essentially oilseeds (78%). The rest is meal (20%) and oil (2%).

On a constantly growing world market, the US has succeeded in preserving its market share at around 35%. Its two competitors are Brazil with 27% market share and Argentina with 25% (average during the 99/00, 00/01 and 01/02 marketing years).

The trend in US soybean exports reveals a profound change in the US position on the world market following the embargo they imposed in 1973. In response to the threat on world supplies imposed at that time by the US hegemonic position, importers (the EEC in particular) tried to diversify their supplies. South America took advantage of the opportunities offered by this strategic market.

Hence, **US soybean exports, after spiking at 32 million tons in the early 80s (capturing at the time close to 70% of the world market), dropped until 1990** when they only reached 20 million tons with a US world market share of 40%.

They have caught up since, at the same time as production, to exceed in 1997 and since 1999 the 1981 record. Today, they have reached around 36 million tons and represent 35% of the world soybean trade



Source: FAS (USDA)

It can legitimately be stated that soybeans are crucial to the oilseed market. They are the uncontested leaders on the meal market, whereas on the oil market, they share their influence equally with palm oil. The USA is the largest and leading exporter of soybeans and has a major role to play on in the oilseed system. For a more detailed demonstration, see [Annexes 12, 17 and 18](#).



Source : FAS (USDA)

C/ The serious prejudice establishes the existence of injury justifying launching a TBR procedure.

1. The serious prejudice under Articles 6 and 5 of the Subsidies Agreement establishes also the existence of injury under the TBR

Article 1 of the TBR establishes the procedures in order to ensure the exercise by the European Community's international rights and in particular:

"a) responding to obstacles to trade that have an effect on the market of the Community, with a view to removing the injury resulting therefrom;

b) responding to obstacles to trade that have an effect on the market of a third country, with a view to removing the adverse trade effects resulting therefrom."

Article 2 of the TBR defines "injury" as follows:

"any material injury which an obstacle to trade causes or threatens to cause, in respect of a product or service, to a Community industry on the market of the Community."

Article 10(1) of the TBR provides that an examination of injury shall involve "*where applicable*" the volume of imports, the price of the Community industry's competitors and the consequent impact on the Community industry. Hence, these items of evidence or indicators of injury only apply if they can be applied to the relevant sector. This is confirmed by Article 10(6) of the TBR which provides that the European Commission "*shall further examine any other relevant evidence contained in the complaint or in the referral.*" The TBR therefore does not exclude that these indicators do not apply and that others must be taken into account.

Moreover Article 10(5) of the TBR provides with regard to adverse trade effects (i.e., effects occurring on markets in third countries outside the EC) that the Commission shall have regard to the provisions, principles and practice which govern the right of action under relevant international rules, i.e., in this case the WTO provisions. Both the TBR drafting history and the TBR procedure targeting the US legislation of 1916 mention that the purpose of Article 10(5) was to prevent the TBR from requiring proof of adverse trade effects taking into account that WTO provisions afford a cause of action without having to furnish such proof. Therefore, if serious prejudice is established under Articles 5 and 6 of the Subsidies Agreement, the existence of adverse trade effects pursuant to the TBR is established.

The provision of Article 10(5) is not explicitly applicable to the demonstration of the existence of injury inside the European Community. However that does not mean that the same principle does not apply as regards injury. Indeed, there is no justification for considering that the existence of serious prejudice under WTO provisions is equivalent to a demonstration of the existence of adverse trade effects in order to respect the right of action of the European Community under WTO

provisions and not applying the same reasoning to the demonstration of the existence of an injury within the European Community. This would be equivalent to denying to Community industry access to a *“legal mechanism [the TBR] under Community law which would be fully transparent, and would ensure that the decision to invoke the Community’s rights under international trade rules is taken on the basis of accurate factual information and legal analysis”* provided in the preamble to the TBR as a basic principle.

Oilseeds enter the Community duty-free and are also not subject to any other restrictive import measures by the Community. As mentioned above, within the framework of Agenda 2000, the Community decided to abandon its oilseeds-specific subsidies altogether. As from the marketing year 200/2001 Community oilseeds producers and producers of wheat and certain other arable crops will receive a single, hectare-specific subsidy irrespective of the crop actually planted. The Community thus no longer has any policy instrument at its disposal that shields Community producers from the evolution of world market prices for oilseeds. The planting choices that the Community producers eligible for the single aid have to make in the very near future will be affected by the expected relative market prices of the eligible crops. The massive rise in the export capacity of the United States and the resulting decline in prices are therefore bound to seriously affect the profitability from oilseeds production in the Community. Because the FSRIA increases US oilseed subsidies and continues to guarantee US producers a high minimum, and as the European Community has stated time and again, US oilseed production will stay substantially at the same level in the next few years³⁶ and maintain its depressive pressure on oilseed prices. Oilseed profitability would be affected even more so. Failing a TBR procedure, the stated objective of the European authorities would not be reached: the TBR’s purpose is to ensure that Community enterprises have fair access to the market and to strengthen their rights vis-à-vis Community institutions as well to facilitate European enterprises’ access to the TBR when they have a legitimate³⁷ interest which is evidently the case with respect to the US subsidies.

2. Evidence of the injury is already established anyway

Article 10(1) of the TBR considers the volume of imports, the price of the relevant imports and the impact on the Community industry. With respect to these factors and indicators, the US oilseed situation and its impact are the following:

a/ Trend in US oilseed prices imported into the European Community

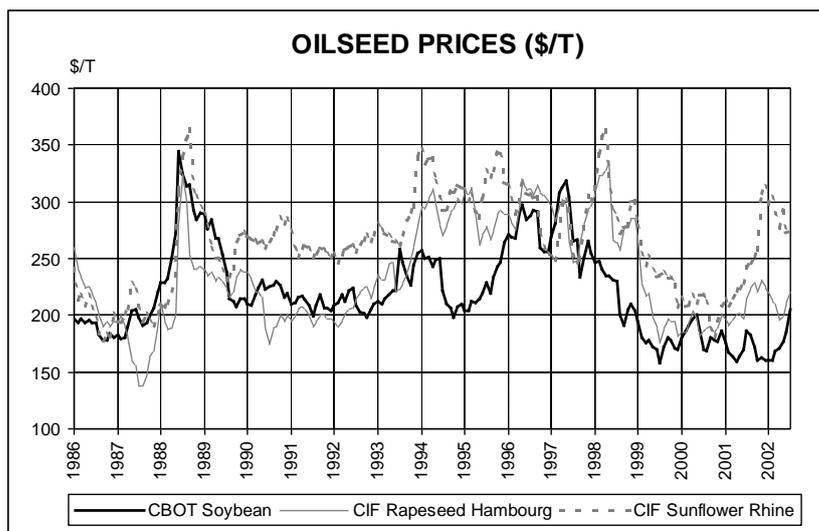
Since 1996, the price of US oilseed imports in the European Community has dropped in parallel with the price of US soybeans.

³⁶ The drop in production for the current marketing year is only temporary because it is caused by a short-term drought.

³⁷ See: *What is the Community’s Trade Barrier Regulation?*, europa.eu.int.

Indeed, since the European Union imports seeds and meal duty-free and levies a very low duty on imported oils (around 6%), the price of European oilseeds are directly aligned with world market prices. The prices of rapeseed and sunflower are furthermore closely correlated to soybeans.

These trends and correlations are highlighted in the chart below.



Source: Oil World

The simulation carried out by the INRA econometric model already mentioned, indicates the following (see Annex 11):

- a 10% increase in soybean production in the US causes:
 - a drop in the soybean price of around 14% on the world market as well as on the Community market.
 - a drop in the price of rapeseed and sunflower in the European Union of around 12%

b/ Import volumes versus community production

Thus, the data mentioned above demonstrates:

- the volume of oilseed imports has increased by 26 million tons in 1996 (i.e. the year in which the 1996 FAIR ACT was passed) to 34.3 million tons in 2001; more precisely, since the implementation of the Marketing loans, in 1998, European Union imports have increased by 30.8 million tons to 34.3 million tons (see Annex 17).

Commentaire [FM4]: OILSEED PRICES (\$/T)

CBOT soybeans
CAF rapeseed
Hamburg
CAF Sunflower
Rhine

Nom des mois à traduire = Jan. July
etc...

- during the same periods, Community oilseed production increased from 12.3 to 15.8 million tons from 1996 to 1998 and then dropped to 13 million tons in 2001 (see **Annex 18**).

Even though it is true that the volume of these imports was not exclusively composed of US imports, it is nevertheless a fact that since the oilseed market is a world market the repercussions of the US subsidies are materialized in the European Union as undifferentiated imports as to the source of the imported products.

The INRA econometric model also assesses the effect of an increase in the production of oilseeds in the US on the production of oilseeds and oil and meal imports in the European Union:

- for a 10% increase in soybeans in the USA:
 - European production would drop by 8% for rapeseed and sunflower, by 5% for soybeans; i.e. a total of -7%
 - European Union oilseed imports would increase by around 3 to 4%

c/ Impact on European oilseed producers

The agricultural production sector is a specific sector that is not easily covered by the usual injury indicators mentioned in Article 10(1)(c) of the TBR. Moreover, these indicators are only given as examples and are non-exhaustive in the TBR. Nevertheless, among these, the following indicators apply to Community production of oilseeds showing a concurrent negative trend with the effects of the 1996 FAIR ACT through the world price depression demonstrated above:

- price: see section a. above and **Annex 19**;
- production: see section b. above.
- producers' revenue: The oilseed price drop due to the increase of the US production, leads to a significant drop of European oilseed production profitability. A 10% price decrease results in a 30% decrease of the net revenue from one hectare of oilseed in Europe which represents for the EU a total loss of 265 million euros. For a 20% price decrease, the net revenue per hectare decreases by 60% and the EU total loss is about 530 million euros (see **Annex 20**).

V– Community interest requires that a TBR procedure be initiated

According to Article 8(1) of the TBR, the Commission shall initiate an examination procedure when is necessary in the interest of the Community. Moreover, according to Article 12(1), commercial policy measures will be adopted following a TBR procedure if these measures are in the Community's interest.

The EOA is of the view that the Community interest requires initiating a TBR procedure and subsequently, the adoption of commercial policy measures, if necessary after a dispute brought before the DSB. The US subsidies in question frustrate the objective of negotiations between the European Community and the United States that led to the Blair House Agreements and Agenda 2000 with the dismantling of oilseed specific subsidies in the European Community. This is even more significant when these developments are viewed over the long term.

Since 1962, the Community bound its tariff at zero for various types of oilseeds in its GATT Schedule after the conclusion of negotiations with the United States during the Dillon Round. At that time, the United States had not imposed export embargoes on oilseeds which would have curtailed the Community's access to the United States' supplies. Neither had the United States accorded acreage-based subsidies to oilseeds that created an artificial dependency of the Community on US supplies, nor had the United States accorded any price support payments to oilseeds. This situation has completely changed since then.

In June and July 1973, the United States introduced, without consulting any of its trading partners, first an export embargo and then quantitative export restrictions on oilseeds in response to a short supply situation. The restrictions lasted until October 1973. As was recognized by the US government itself, this measure seriously undermined importing countries' confidence in the United States as a reliable supplier of oilseeds. In 1977, the United States adopted but subsequently abolished export control regulations on soybeans. In 1980, the United States introduced an embargo on exports of soybeans and other agricultural products to the Soviet Union.

The United States thus demonstrated that it is both willing and able to favour its own oilseeds processors and consumers in short supply situations and to use discriminatory restrictions on access to its oilseeds supplies as a foreign policy tool. As Hugo Paemen—one of the Community's principal negotiators during the Uruguay Round—noted, it is the United States' unreliability as a supplier of oilseeds which:

« led the Europeans to conclude that they should encourage oilseeds production on their own territory, to give themselves a safety margin. They therefore declared that the Community soya and rapeseed producers would henceforth be entitled to production aid. »³⁸

³⁸ Hugo Paemen and Alexandra Bensch *From the GATT to the WTO: The European Community in the Uruguay Round*, Leuven University Press, 1995, page 208.

In 1988, the United States brought a complaint against the Community under the GATT dispute settlement procedures, claiming that the subsidies impaired the benefits accruing to it under the 1962 oilseeds concessions. After the dispute settlement panel that examined the case found in favour of the United States, the Community introduced a new subsidy scheme for oilseeds but the modified regime was also found to impair the tariff concessions previously granted.

Subsequently, the Community and the United States agreed to a "Memorandum of Understanding on Oilseeds" in December 1992³⁹, commonly referred to as the "Blair House Agreement". This Agreement recognizes the right of the Community to grant production subsidies for oilseeds but caps the area planted to oilseeds that can benefit from crop-specific subsidies. This Agreement was incorporated into the Community's GATT schedule of concessions during the Uruguay Round. At the time when the Community assumed this significant constraint on its policy options, it was expected that other Uruguay Round participants would also accept domestic support commitments on a product-specific basis. The so-called "Dunkel draft" of the Final Act of the Uruguay Round specifically provided for that possibility⁴⁰. Paemen recalls:

« ... reducing production support in agriculture was one of the fundamental elements in the entire Uruguay Round negotiations. It was understandable therefore that the specific commitments to be entered into by the European Community with regard to oilseeds should vary in scope – and perhaps nature – depending on the general level of reduction of agricultural support conceded under the future agreements on agriculture. Clearly the link between the Uruguay Round agreement and the oilseeds affair was one of considerable substance. »⁴¹

However, the Community eventually remained the only WTO member which accepted a product-specific domestic support limitation and the Community did so only with respect to oilseeds. In contrast, the United States accorded subsidies at any level to its oilseeds producers without violating any WTO obligations other than the "peace clause" which exempts commodity-specific support from serious prejudice and impairment complaints if it is not in excess of the support decided for 1992 marketing year.

There was thus in the Uruguay Round a clear link between the acceptance of the Community's unique commitment on domestic support for oilseeds and the right to take action against commodity-specific support by other WTO Members that exceeds 1992 levels. The United States' new price support for oilseeds referred to in this Complaint exceeds the support granted to oilseeds in 1992 and therefore upsets the balance of interest reached in the Uruguay Round negotiations on agriculture. A

³⁹ See Annex to Council Decision (EEC) No 93/355 of 8 June 1993, OJ No L 147, 18 June 1993, p. 26.

⁴⁰ see MTN.TC/W/FA, page L.31.

⁴¹ Hugo Paemen and Alexandra Bensch *From the GATT to the WTO: The European Community in the Uruguay Round*, Leuven University Press, 1995, page 209.

TBR complaint based on serious prejudice inflicted on Community producers is the only legal avenue available to re-establish that balance.

This balance of interests is all the more necessary because demand for oilseed has increased but Community producers are incapable of taking advantage of it since prices are too low to produce the oilseeds on a sufficiently profitable basis without the subsidies which the United States accords to its producers.

* * *

VI- Conclusion

United States support for oilseeds distorts world markets and causes injury to European Union oilseeds

- Subsidies granted to US oilseeds starting in 1996 upset **the balance of concessions negotiated** in the various oilseed agreements (1962 Dillon Round, "Blair House" Memorandum on Oilseeds, Marrakech Agricultural Agreement).
- The distorting effects of subsidies on the markets, the consequent decrease in production and increase in imports in the European Union, **frustrate the objectives of the common agricultural policy**, worsen the **deficit in vegetable protein** for livestock feed and **destabilize the balance of production** for arable crops.
- **The lack of a safety net** for oilseeds in the European Union makes it impossible to protect against market distortions. **Consultations with the United States remain the only recourse** to find a solution to eliminate these effects.

The 1996 FAIR ACT has already caused serious prejudice to European Community oilseed producers. The FSRIA is equally threatening for the same reasons. In the very words of Commissioner Fischler, US agricultural policy has significant effects on production and market prices:

"The key point of contention in the proposed legislation is not only the cost (a 70% increase over the status quo) but the potential for the policy to distort production and markets across the world:

- *Reinforced price-linked payments (the loan deficiency payments and a new counter-cyclical policy) which shield farmers from low prices will result in over-production. Farmers will bring marginal land into production to «farm the subsidies' regardless of market messages. «This self-defeating policy can only further depress prices» commented Franz Fischler, adding "counter-cyclical programs are especially pernicious since they act as hidden export subsidies and depress domestic prices to block out imports.»*
- *This proposed legislation marks a blow for the credibility of US policy in the WTO, where the US has presented a trade-oriented agenda wholly inconsistent with the new Bill' said Franz Fischler, adding 'We cannot negotiate on the basis of 'do as I say, not as I do.'⁴²*

⁴² See "Fischler slams US for «flunking farm policy reform»", Commission Press Release No IP/02/647, May 1, 2002, europa.eu.int.

The remarks apply to US oilseed subsidies that indeed have not decreased but risen with the introduction of direct payments and oilseed specific counter-cyclical payments. Considering the current impact on production and world oilseed prices and the increased threat of serious prejudice with the entry into force of the FSRIA, the EOA claims that all the conditions are met for initiating a TBR examination procedure and requests that the European Commission proceed with the examination as soon as possible.

Brussels, October XX, 2002

By: _____

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