POINT OF VIEW

Trade

The U.S. Farm Bill[1]

and its impact on the WTO agricultural negotiations

Antonio Donizeti Beraldo[2]

Abstract

The U.S. Farm Bill enacted in mid-2008 for a five-year period could have a negative impact on the Doha Round of the WTO trade negotiations that got under way in 2001 and has yet to be concluded, mainly due to the difficulties involved in reaching a consensus on agricultural issues. The most recent U.S. Farm Bill retains most of the market-distorting programs contained in the previous act, some of which were condemned by the WTO dispute settlement bodies. It also introduces others, such as the ACRE program, regarded as even more distorting. The protectionist nature of the most recent law is incompatible with the ongoing negotiations of the Doha Round. It has made the conclusion of those negotiations more difficult and could exacerbate the trade disputes with countries that compete with the United States in international agricultural markets.

1 The Food, Conservation, and Energy Act of 2008.

2 Regional Specialist in Policies and Trade, antonio.donizeti@iica.int

Key words: *Agricultural legislation, trade agreements, international agreements, subsidies, environment, agricultural policy, WTO, ACRE.*

Introduction

In June 2008, the United States Congress passed the Food, Conservation and Energy Act of 2008,[3] popularly known as the Farm Bill. This new agricultural legislation replaced the Farm Security and Rural Investment Act of 2002, which was in force from 2002-2007 and was extended through 2008 due to the inability of the United States Department of Agriculture (USDA) and the two houses of Congress (House of Representatives and Senate) to reach a consensus on the new bill.

The original bill that the USDA sent to Congress reduced the agricultural subsidies contained in the main income-guarantee programs of the previous act. The lawmakers made major changes to the legislation, however, not only maintaining most of the existing support programs but even creating new ones.

The United States is one of the world's largest agricultural producers and exporters, so its agricultural support legislation, or Farm Bill, is always a source of concern. It has a direct impact not only on U.S. farmers but also on the agricultural producers and exporters of other actors in global agricultural markets. The new law will also have an impact on the multilateral trade negotiations, because the policies and programs it contains will influence the USA's positions in the WTO negotiations.

3 The new Farm Bill will be in effect for five years (2008-2012), allowing U.S. producers to plan their activities farther ahead.

In general, the new act maintains and expands the principal commodity programs contained in the previous bill.

The new bill comprises 15 chapters or titles, five more than the previous one, and calls for a budget allocation of US$307 billion spread over the five years it will be in effect. The main lines of action include the programs related to nutrition, conservation, commodities, rural development, research, energy and rural insurance. Priorities will be set for the programs for food distribution, conservation and incentives for the use of renewable energy sources such as biofuels. In general, the new act maintains and expands the principal commodity programs contained in the previous bill.

Furthermore, the 2002-2007 Farm Bill was enacted at a time of low international agricultural prices and regarded as protectionist, due to the introduction of programs such as counter-cyclical payments that practically insulate farmers from price swings in international markets.

The 2002 bill marked a departure from previous legislation (the Federal Agriculture Improvement and Reform Act of 1996), with lawmakers endeavoring to establish an agricultural policy geared more to the market and reduce farmers' dependence on government subsidies. Consequently, the more recent bill marks a return to the spirit of earlier legislation. This is rather surprising, since it was enacted at a time when prices were high and the design of less market-distorting policies might have been expected.

Consequently, the more recent bill marks a return to the spirit of earlier legislation. This is rather surprising, since it was enacted at a time when prices were high and the design of less market-distorting policies might have been expected.

The main programs contained in the 2008 Farm Bill

Before entering in to the details of the principal programs contained in the most recent U.S. Farm Bill, it is worth considering why it is important for a country to have a policy in place (enshrined in law) to orient and develop the agricultural sector. In this regard, three aspects of the U.S. agricultural policy stand out:

a. All the programs have been enshrined in law and are multi-year initiatives (covering a five-year period). The fact that they enjoy the status of law makes it possible to forecast agricultural production with greater certainty; farming is, after all, beset by many risks. Rural producers are also able to plan farther ahead (the medium term).

b. With regard to the agricultural institutional framework in the United States, all the programs approved in the act are administered by a single government agency, the USDA. This means they are implemented more consistently. The institutional frameworks of many Latin American countries are quite different and programs that affect rural life are usually carried out by an assortment of agencies or ministries, often resulting in inconsistencies in the execution process.

c. During the drafting of the legislation and its passage through Congress, wide-ranging democratic consultations took place with the various actors of rural life (commodity groups and rural, environmental and civil society organizations). These consultations were undertaken at the initiative of the Executive Branch (USDA), which drafted the original bill sent to Congress and monitored its passage through both houses (House of Representatives and Senate). In other words, the Farm Bill that passed into law was the fruit of a broad process of consensus-building involving different rural actors.

The process of discussing and enacting the Farm Bill was dominated by domestic issues, with the formal and informal commitments assumed with the WTO taking a back seat. This is a serious problem, since the United States is an important player in international agricultural markets and the impact of the country's farming legislation extends beyond its national borders. Therefore, the country should also consider the external context when drafting its agricultural legislation.

Many Latin American countries are quite different and programs that affect rural life are usually carried out by an assortment of agencies or ministries, often resulting in inconsistencies in the execution process.

The nutrition programs account for most of the budgetary resources allocated under the new bill (nearly 60%, or US$209 billion).

There follows an analysis of the contents of the new legislation and the implications for the WTO negotiations. Table 1 compares the budget for three of the main programs included in the current act with the budget under the previous bill. The three programs concerned are nutrition, commodities and environmental conservation.

The nutrition programs account for most of the budgetary resources allocated under the new bill (nearly 60%, or US$209 billion). These programs, the most important of which is the Food Stamp Program, make provision for the purchase and distribution of food for needy Americans. The amount approved was 17.3% more than the resources sanctioned in the 2002 bill (US$178.2 billion). The most recent act was passed in election year, when Congress is more prone to endorse programs with greater social and political content.

Table 1. Spending under the 2002 bill and projections for the 2008 bill (in billions of US$).

Bill	Food Stamps	Commodity programs	Environmental conservation
2008	209.0	34.7	25.4
2002	179.2	72.9	18.3
Difference	30.8	-38.3	7.1

Source: CBO (US Congressional Budget Office).

In terms of the impact on production and trade, the commodity programs are important because they have a direct effect on income and influence farmers' decisions as to what and how much they should plant.

The three subprograms included in the previous act were retained: direct payments, counter-cyclical payments and marketing loan assistance. In addition to these three, the new bill created a new, controversial program called Average Crop Revenue Election (ACRE). This is definitely the most contentious part of the new law and has implications for the WTO trade negotiations, as will be explained below.

The direct payments introduced under the previous bill are fixed payments granted to farmers and are not linked to price or current production levels. The direct payments programs cost a total of US$27.2 billion during the period 2002-2007, or 48% of all spending under the commodity program. The new law left direct payments at the same levels established in the previous bill. As these payments are not linked to price or production levels, they are regarded as less distorting and the WTO classifies them as "green box" programs.

Table 2. Direct payments and a comparison between the 2002 and 2008 Farm Bills.

Crop	2002 Farm Bill (US$-bushel)	2008 Farm Bill (US$-bushel)
Corn	0.28	Unchanged
Cotton	0.0667	Unchanged
Sorghum	0.35	Unchanged
Soybeans	0.44	Unchanged
Wheat	0.52	Unchanged
Oilseeds	0.008/pound	Unchanged
Peanuts	36.0/ton	Unchanged

Source: USDA 2008.

The new bill raises the target prices for counter-cyclical payments for wheat, sorghum, barley, oats, soybeans and oilseeds for the period 2010-2012, while the target price for corn will apply throughout the period that the law is in effect.

The counter-cyclical payments are triggered when market prices fall below the target price established in the law. Unlike direct payments, these payments are linked to price levels and so have a major distorting effect that has even been questioned at the WTO. A case in point is the document on cotton presented by Brazil to the WTO's dispute settlement bodies (DSBs).

The new bill raises the target prices for counter-cyclical payments for wheat, sorghum, barley, oats, soybeans and oilseeds for the period 2010-2012, while the target price for corn will apply throughout the period that the law is in effect. It is very difficult to estimate how much will be spent on counter-cyclical payments, since it depends on future fluctuations in prices, about which there is a great deal of uncertainty.

Table 3. Counter-cyclical payments and target prices.

Crop	2002 Farm Bill (US$-bushel)	2008 Farm Bill (US$-bushel)
Wheat	3.92	4.17 from 2010-12
Corn	2.36	2.63
Sorghum	2.57	2.63 from 2010-12
Barley	2.24	2.63 from 2010-12
Oats	1.44	1.79 from 2010-12
Upland cotton	0.7240/lb.	0.7125
Rice	0.1050/lb.	Unchanged
Soybeans	5.8	6.0 from 2010-12
Oilseeds	0.1010/lb.	0.1268 from 2010-12
Peanuts	495/ton	Unchanged

Source: USDA 2008.

However, if current prices and future projections are anything to go by, the new target prices are unlikely to trigger counter-cyclical payments. Although prices have fallen from the record levels seen in the second half of 2008, they are still above the target prices. Future projections also suggest higher price levels (Table 4).

Table 4. Target prices and projected prices for the most important products (in United States dollars / bushel).

Crop	Target price	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014
Corn	2.63	3.80	3.60	3.50	3.50	3.55
Wheat	3.92 until 2009 4.17 from 2010-2012	5.00	4.65	4.50	4.50	4.50
Soybeans	5.80 until 2009 6.00 from 2010-2012	8.90	8.75	8.80	8.80	8.80

Source: USDA 2008.

With respect to loan rates, there are increases for wheat, barley, oats, oilseeds and quality wools. This program works as follows: the marketing loan program offers farmers the option of taking out a loan at harvest time based on the loan rate (US$5.00/bushel for soybeans, for example), to enable them to market their produce when prices are higher during the commercial year.

For example, if a farmer sells his production for less than the loan rate (i.e., in the case of soybeans for less than US$5.00/bushel), the amount he pays back is based on current prices and he pockets the difference as a marketing loan gain. If he does not take the loan, he may request payment of the difference between the current prices for his production and the loan rate. Known as a loan deficiency payment, the benefits are the same.

Although the benefits are the same regardless of the farmer's decision, the difference lies in his level of capitalization. If he has sufficient capital, he may not bother taking out a marketing loan. On the other hand, if he has less capital, or has slid into debt, it may be in his interest to opt for a marketing loan, to cover his harvesting costs and then wait for the best period of the commercial year to sell his production. However, as current prices are well above the loan rates, farmers are unlikely to make much use of the program in the years ahead.

Table 5. Marketing loans - Loan rate.

Crops	2002 Bill (US$-bushel)	2008 Bill (US$-bushel)
Wheat	2.75	2.94 for 2010-12
Corn	1.95	Unchanged
Sorghum	1.95	Unchanged
Barley	1.85	1.95
Oats	1.33	1.39 for 2010-12
Upland cotton	0.52/lb.	Unchanged
Rice	0.065/lb.	Unchanged
Soybeans	5.00	Unchanged
Oilseeds	0.0930/lb.	0.1009/lb.
Peanuts	355.0/ton	Unchanged
Quality wool	1.00/lb.	Unchanged
Mohair wool	4.20/lb.	Unchanged
Sugarcane	18.00 cent/lb.	18 cent/lb. in 2009, 18.25 in 2009 18.50 in 2010 and 18.75 from 2011-12
Sugar beet	2.29 cent/lb.	Equal to 128.5% of the cane rate for 2009-12

Source: USDA 2008.

Another controversial aspect of the new bill is the gross income ceiling below which farmers qualify for payments under the programs. The 2002 bill was strongly criticized for establishing a very high gross income ceiling (equivalent to US$2.5 million per farmer). Critics affirmed that large-scale producers benefited most from the payment of subsidies. Therefore, the original bill sent by the Executive proposed reducing the ceiling to US$200,000. The so-called commodity groups were even more opposed to this proposal.

Congress made changes to the Executive's bill, establishing eligibility ceilings of US$750,000 in adjusted gross income (AGI)

The abovementioned commodity programs have the effect of insulating farmers from price swings below the guarantee levels established in the law.

for crops, US$500,000 in AGI for non-agricultural products for counter-cyclical payments and loan deficiency payments, and US$1 million in AGI for non-agricultural products under the conservation programs (USDA and FSA 2009). Though these ceilings are lower than the ones established in the previous bill, they are higher than the Executive had wanted.

Together, the abovementioned commodity programs have the effect of insulating farmers from price swings below the guarantee levels established in the law.

It should be noted that in the cotton dispute at the WTO, the arbitrators considered that the marketing loan program and counter-cyclical payments would lead to significantly lower prices in international markets, with serious negative consequences for countries that compete with the United States. Despite the WTO panel's recommendation, the 2008 Farm Bill ensures the programs will remain in place. Canada's preliminary consultations with the WTO's dispute settlement bodies suggest that the situation is likely to give rise to new disputes at the WTO.

As has already been noted, total projected spending under the 2008 Farm Bill is put at US$307 billion, 68% of which is earmarked for domestic food support programs. That would be an increase of almost US$31 billion over the 2002 bill.

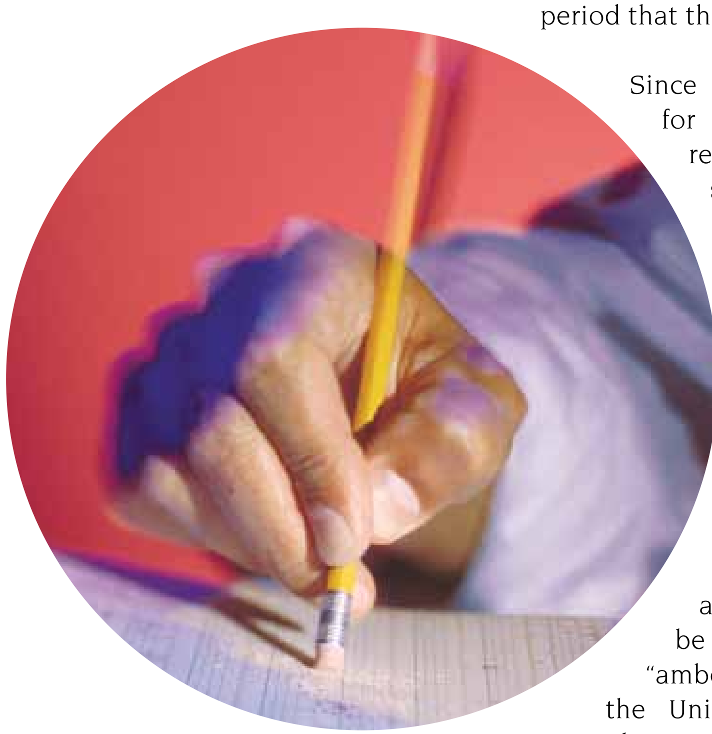
A total of US$34.7 billion has been earmarked for the commodity programs for the period 2008-2012. It should be pointed out that these projections were made in June 2008, when international prices were very high, and probably need updating. Spending on conservation programs is expected to rise by US$7.1 billion, an almost 40% increase over the 2002 bill.

Despite the WTO panel's recommendation, the 2008 Farm Bill ensures the programs will remain in place. That the situation is likely to give rise to new disputes at the WTO.

The new Average Crop Revenue Election (ACRE) Program and its possible impact on the WTO trade negotiations

The biggest new development as far as the commodity programs are concerned is, without a doubt, the introduction of the ACRE Program. Created as an alternative to traditional counter-cyclical payments, this program entered into effect in 2009. The original bill sent to Congress by the Executive proposed only a change in the methodology used to calculate counter-cyclical payments (they were to be calculated based not only on commodity prices but also on income (prices/yields).

The lawmakers decided to leave the methodology for calculating counter-cyclical payments unchanged and introduced a new program based on the method originally proposed by the Executive.



However, the lawmakers decided to leave the methodology for calculating counter-cyclical payments unchanged and introduced a new program based on the method originally proposed by the Executive. The objective of the new methodology was to gradually link the subsidies to specific commodities, while guaranteeing farmers' income. This, it was felt, would have less of a distorting effect on market prices.

Under the bill approved by Congress, the ACRE program will, for the commodities concerned, guarantee income based on the average state yield for the last five years and the average national price for the last two years. Farmers who choose to take part in this program will receive 20% less in direct payments and a 30% lower rate for marketing loans during the period that the law is in effect.

Since the average calculated for 2009 will be based on recent record price levels, a sharp fall in prices could lead to a significant increase in payments. Consequently, large numbers of farmers are expected to sign up for the new program, which will certainly increase the subsidies paid. If that happens, the United States could face problems at the WTO, as the ACRE program could be construed as providing "amber box" subsidies, which the United States had pledged to reduce.

The fall in prices since the second half of 2008 is likely to trigger payments under the ACRE program. The USDA itself has said that if large numbers of farmers sign up for the program (it estimates that nearly 90% will do so), support payments could top US$18 billion in 2009.

The largest amount ever paid out in "amber box" cash subsidies was US$16.8 billion (in 1999 and 2000), when international prices were very low. Although the annual consolidated amount of United States "amber box"

The new law also weakens the United States' negotiating position, since it covers the period 2008-2012, when, in theory, the negotiations of the Doha Round should be concluded.

cash payments at the WTO is US$19.1 billion, during the negotiations of the Doha Round the country had pledged to reduce that figure to US$8-9 billion. Clearly, the provisions of the new law, especially the spending levels envisaged for the ACRE program, are quite incompatible with what was being negotiated at the WTO.

Some analysts believe the United States' position of leadership in the ongoing Doha Round was seriously undermined by the inclusion of this new program in the 2008 bill, which could delay the negotiations even further. The new law also weakens the United States' negotiating position, since it covers the period 2008-2012, when, in theory, the negotiations of the Doha Round should be concluded.

The fact that this legislation ensures U.S. farmers will receive prices for their produce that are not linked to world prices means that any adjustments due to imbalances in supply and demand will directly affect the producers of countries that do not have a network to protect them from global price swings.

Thus, the new U.S. Farm Bill has created another obstacle to the conclusion of the Doha Round, since it contains programs that are not consistent with the most recent drafts of the new agricultural agreement of the Doha Round.

The developing countries are undoubtedly the ones most affected by the new act, especially countries that compete with the United States in international markets. The fact that this legislation ensures U.S. farmers will receive prices for their produce that are not linked to world prices means that any adjustments due to imbalances in supply and demand will directly affect the producers of countries that do not have a network to protect them from global price swings.

Other chapters of the 2008 Farm Bill

With regard to access to the U.S. market for foreign products, the new law maintains the same quotas for imports of sugar and ethanol, ruling out any possibility of major Latin American producers increasing their exports to the U.S. Since these restrictions also figured in the previous law, the status quo is maintained in terms of access to the U.S. market for products of interest to the region.

One of the priorities of the chapter on energy concerns the funds allocated to encourage diversification of the raw materials used to produce agroenergy. The amount of US$1.1 billion was allocated for biofuels produced from sources other than feed grains, especially to spur the production of second-generation biofuels from biomass. This issue is important, since the use of staple crops such as corn for biofuel production could decline in the long run and their impact on prices would be reduced, as occurred in recent years.

Literature consulted

CBO (US Congressional Budget Office). Economic database. USA. Available at www.cbo.org

Dabson, B. 2007. Proposed Publication on National Policies on Agriculture in the Americas, Section II:5 United States - The 2007 Farm Bill. Rural Policy Research Institute.

Gifford, M; Montemayor, R. 2008. An Overview Assessment of the Revised Draft WTO Modalities for Agriculture. ICTSD.

ICTSD (International Centre for Trade and Sustainable Development). 2008. WTO News US Farm Bill Could Complicate Negotiations. News and Analysis, May.

Llana Pérez, C. 2008. *La nueva Ley Agrícola de los Estados Unidos y su consistencia con las disciplinas de la OMC*. Revista del CEI.

USDA (United States Department of Agriculture). 2008. Farm Bill Side-By-Side, Title I: Commodity Programs. Washington, D.C.

_______; FSA (Farm Service Agency). USDA enacts changes to payment limitations, income qualifications, and implements direct attribution programs. Available at http://www.fsa.usda.gov/FS

Résumé / Resumo / Resumen

La Loi agricole des États-Unis et ses répercussions sur les négociations agricoles au sein de l'OMC

La Loi agricole des États Unis (*Farm Bill*), adoptée au milieu de l'année 2008 et en vigueur pendant les cinq prochaines années, pourrait avoir des conséquences négatives sur les négociations commerciales du cycle de Doha de l'OMC qui ont été lancées en 2001 et qui n'ont pas encore abouti, en raison principalement des difficultés rencontrées pour arriver à une position commune sur le chapitre agricole. La nouvelle loi maintient la majeure partie des programmes considérés comme faussant le marché qui existaient dans la législation précédente, dont certains ont été condamnés par l'organe de règlement des différends de l'OMC. Cette loi introduit également d'autres programmes, comme le programme ACRE dont l'effet de distorsion serait encore plus important. Le caractère protectionniste de la nouvelle loi peut être qualifié d'incompatible avec les négociations en cours dans le cadre du cycle de Doha de l'OMC, ce qui a empêché la conclusion de ce cycle, et il pourrait en outre accroître les différends commerciaux avec les pays en concurrence avec les États-Unis sur les marchés agricoles internationaux.

A Lei Agrícola dos Estados Unidos e seu impacto nas negociações agrícolas da OMC

A Lei Agrícola dos Estados Unidos (*Farm Bill*), aprovada em meados de 2008 e com cinco anos de vigência, poderia ter impacto negativo nas negociações comerciais da Rodada de Doha, da OMC, lançada em 2001 e que até o momento não foi concluída em face, principalmente, das dificuldades de se chegar a um consenso no capítulo Agricultura. A nova lei mantém a maior parte dos programas considerados "distorcedores" do mercado, existentes na legislação anterior, alguns deles, inclusive, condenados no órgão responsável pela solução de controvérsias da OMC. Também introduz outros, como o programa ACRE, considerado ainda mais "distorcedor". A natureza protecionista da nova lei pode ser considerada incompatível em relação às negociações que vinham sendo realizadas na Rodada de Doha, o que prejudicou sua conclusão e poderia, além disso, acirrar as disputas comerciais com países competidores dos Estados Unidos nos mercados agrícolas internacionais.

La Ley Agrícola de los Estados Unidos y sus impactos en las negociaciones agrícolas de la OMC

La Ley Agrícola de los Estados Unidos (*Farm Bill*), aprobada a mediados del 2008 y con validez para los próximos cinco años, podría impactar fuertemente las negociaciones comerciales de la Ronda Doha de la OMC lanzada en el 2001 y que hasta hoy no ha sido concluida, debido principalmente a las dificultades de lograr un consenso en su capítulo agrícola. La nueva ley mantiene la mayor parte de los programas de mercado considerados incompatibles en la legislación anterior, algunos de ellos condenados en el órgano de soluciones de controversias de la OMC. También introduce otros, como el programa ACRE. El carácter proteccionista de la nueva ley puede ser calificado incompatible en relación con las negociaciones que se venían gestionando en la Ronda Doha de la OMC, lo que ha perjudicado su conclusión y podría, además, incrementar las disputas comerciales con países competidores de Estados Unidos en los mercados internacionales agrícolas.