

THE ACRE PROGRAM – A VOLATILE NEW SOURCE OF U.S. AMBER BOX SPENDING

SYNOPSIS

WTO member countries viewed the 2007-08 farm policy debate as a measure of U.S. seriousness in getting a Doha Round deal. Despite extensive domestic reform proposals tabled by small-farm, religious, environment, and anti-poverty groups – and despite a veto of the legislation by President Bush in part because of its incompatibility with U.S. trade commitments – Congress brushed aside these objections and passed a Farm Bill that maintains high levels of subsidies for larger-scale farm operations. However, the packaging of key programs changed. This paper looks at the new ‘Amber Box’ program in the 2008 U.S. Farm Bill, called ACRE. It does not replace the traditional suite of U.S. marketing loan assistance and countercyclical payment programs. Instead, it provides U.S. growers with a choice between the traditional programs and ACRE. The sign-up for ACRE for this year is happening right now (Aug 2009), and so this program bears a close look. We provide a brief look at several analyses suggesting that payouts under ACRE could exacerbate U.S. non-compliance with its Uruguay Round commitments in some years. ACRE’s payouts under most scenarios also exceed the ‘landing zone’ for proposed U.S. agricultural Aggregate Measure of Support (AMS) under any Doha Round deal.

August 2009
Geneva, Switzerland

This Analytical Note is produced by the Trade for Development Programme (TDP) of the South Centre to contribute to empower the countries of the South with knowledge and tools that would allow them to engage as equals with the North on trade relations and negotiations.

The TDP is grateful to Peter Riggs for his contribution to this paper.

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EXECUTIVE SUMMARY

WTO member countries viewed the 2007-08 farm policy debate as a measure of U.S. seriousness in getting a Doha Round deal. Despite extensive domestic reform proposals tabled by small-farm, religious, environment, and anti-poverty groups – and despite a veto of the legislation by President Bush in part because of its incompatibility with U.S. trade commitments – Congress brushed aside these objections and passed a Farm Bill that maintains high levels of subsidies for larger-scale farm operations. However, the packaging of key programs changed. This paper looks at the new ‘Amber Box’ program in the 2008 U.S. Farm Bill, called ACRE. It does not replace the traditional suite of U.S. marketing loan assistance and countercyclical payment programs. Instead, it provides U.S. growers with a choice between the traditional programs and ACRE. The sign-up for ACRE for this year is happening right now (Aug 2009), and so this program bears a close look. We provide a brief look at several analyses suggesting that payouts under ACRE could exacerbate U.S. non-compliance with its Uruguay Round commitments in some years. ACRE’s payouts under most scenarios also exceed the ‘landing zone’ for proposed U.S. agricultural Aggregate Measure of Support (AMS) under any Doha Round deal.

“A very positive feature of the bill is that we continue the countercyclical income protection system we reinstated in the 2002 bill. We allow farmers at their option to choose a new program, called ‘average crop revenue’... This new choice for farmers will make farm income protection stronger and more flexible. It will allow farmers better to manage their farm’s risk in today’s uncertain and evolving farm environment.”
Senator Tom Harkin (D – Iowa), Chair, Senate Agriculture Committee¹

*“Even after Congress passed a subsidy-riddled 673-page farm bill last week, with a price tag conservatively set at \$289 billion, it was not entirely clear just how big a burden lawmakers had imposed on taxpayers. Now, however, the fine print is coming into focus, [and] the bill could authorize up to \$16 billion more in crop subsidies than previously projected. The culprit is a new program called **Average Crop Revenue Election....** ACRE pegs the subsidies to current, record-high prices for grain, meaning farmers would get paid if prices fall back to their historical...norms. A program that started out as streamlined insurance policy against extraordinary hardship has mutated into a possible guarantee of extraordinary prosperity.”*
Senator Judd Gregg, (R-New Hampshire)²

¹ See <http://harkin.senate.gov/blog/?i=01fbf5e4-1dea-4964-931b-042f9531b0d8>.

² “Senator Gregg’s Senator Floor Remarks on Override of the President’s Veto of the Farm Bill May 22, 2008 (unofficial transcript); at budget.senate.gov/.../2008/2008-05-22OverrideVetoStatement.pdf.

THE ACRE PROGRAM – A VOLATILE NEW SOURCE OF U.S. AMBER BOX SPENDING

I. BACKGROUND

1. The United States Farm Bill, passed at roughly five-year intervals, is the major legislative vehicle for the farm spending programs that the U.S. must report to the World Trade Organization. The Farm Bill passed in 1996 by Congress in the wake of the Uruguay Round agreements moved the U.S. toward compliance with these commitments. The U.S. and the E.U. had agreed to dramatic reductions in domestic supports and export subsidies—shielded by a seven-year “Peace Clause” that forestalled use of the WTO dispute resolution system. But when low prices hit international markets in the late 1990s and early part of this decade, Congress heeded the clamor from American farmers for price supports, and with help from the Bush administration, the 2002 Farm Bill reinstated some countercyclical pricing mechanisms and forms of export support. Congress later had to amend key portions of this farm legislation following Brazil’s successful use of the WTO dispute resolution system in 2004. The decision of the WTO’s Appellate Body in the *Upland Cotton* dispute established that U.S. cotton supports and export subsidies were inconsistent with its Uruguay Round commitments, and had caused ‘serious prejudice’ to Brazil’s cotton producers.

2. In past Farm Bill reauthorization cycles, the powerful Senate and House agriculture committees—whose seats are occupied primarily by Members of Congress from those regions of the country that are the biggest recipients of commodity payments—generally had *carte blanche* to write the bill in a way that best suited their states. But by 2007, things had changed. First, there was an unprecedented level of public discussion in the United States on the need for reform of the U.S. Farm Bill, with various small-farm, religious, environmental, energy, and anti-hunger organizations weighing in on the importance of overhauling U.S. food and farm policy. Second, the Bush administration, which had taken a lead in launching the Doha Development Round, was mindful of the need to write a Farm Bill that would allow for progress in these new trade talks. A full-on national ‘listening tour’ by the Secretary of Agriculture, combined with the submission of more than a dozen ‘marker bills’, set the table for a new approach.

3. In the end, the reform efforts failed. Chairs of the two committees were able to hammer through bills that largely upheld the status quo. There was, however, one important change to U.S. commodity programs. Participants in U.S. ‘program crop’ payment programs now have a choice between the traditional Farm Bill programs and a new revenue guarantee program called ACRE--Average Crop Revenue Election.

4. ACRE is clearly an ‘Amber Box’ program. As Zulauf and Orden note, ACRE is ‘*prima facie* coupled to current planting decisions and prices of specific crops.’³ U.S. commodity producers will make a specific calculation about whether to adopt for ACRE or the suite of supports from previous Farm Bills and consequently, ACRE’s degree of adoption (e.g., 20% of farmers versus 80% of farmers) will have a profound impact on overall the U.S. ‘amber box’ spending—the Aggregate Measure of Support.

5. Early on in this Farm Bill renewal cycle, several marker bills included trade-compliant revenue insurance programs. Interestingly, the ACRE program was found in none of these pieces of legislation that were discussed in the run-up to Congressional debates. Various researchers, including from the land grant institution (Iowa State University) in Senator Harkin’s home state, have been working on revenue insurance ideas for some time.³ Nevertheless, ACRE’s parameters were not well understood when the legislative package was passed.

6. Since ACRE is an “Amber Box” program, spending under this provision of the Farm Bill counts toward the U.S. cap on trade-distorting support under the WTO’s Agreement on Agriculture. ACRE payments could also be aggregated with other subsidy payments for serious prejudice claims under the Agreement on Subsidies and Countervailing Measures (SCM Agreement). In addition, ACRE’s potential for large payouts increases the threat that this program will trigger a WTO complaint.

II. ACRE – ANOTHER REVENUE INSURANCE OPTION FOR U.S. FARMERS

Description of the program

7. As noted, ACRE is an optional program. Farmers participating in ACRE cannot also participate in the traditional counter-cyclical programs found under previous Farm Bills. Those traditional programs, however, are retained in the current Farm Bill, and also count toward U.S. Amber Box limits.

8. If ACRE is elected, all of a farm’s crop acreage must be enrolled. An ACRE payment is based on 83.3% of the farm’s actual planted acres and “considered planted” acres. Other traditional supports use a farm’s total ‘base acres.’ A farm’s “considered planted” acres can include acreage idle due to weather or natural disaster, acres devoted to conservation, and acres planted to other allowable crops. “Considered planted” acres allow up to 25% of the farm’s

³ “ACRE in the U.S. Farm Bill and the WTO”, Carl Zulauf and David Orden, International Agriculture Trade Research Consortium (IATRC) Working Paper 09-02, May 2009.

³ The Center for Agricultural and Rural Development at Iowa State University has a detailed ‘FAQ’ page that deals with questions about the ACRE program. See http://www.card.iastate.edu/iowa_ag_review/summer_08/article2.aspx

acres to be planted to a different crop without affecting their ACRE payment. For example, if a farmer wanted a corn ACRE payment, they could still plant 25% of their acres with cotton and receive their entire corn payment even though cotton would theoretically payout much less under ACRE. Additionally, farmers can count conservation land as “considered planted” acres, so they could plant less than their base acres and still receive a full payment. Without getting into the details of this calculation,³ various analysts argue that because ACRE is based on planted acres, it provides a better match to the farmer’s current production mix.⁴

Program payments

9. The tradeoff for choosing ACRE is a 20% reduction in direct payments and a 30% reduction in marketing assistance loan rates. The cap used in other counter-cyclical payment programs is \$65,000, but the cap on ACRE payments is \$65,000 *plus* the 20% of direct payments. So in bad years, an ACRE participant will essentially only give up the marketing assistance loan payment, which often does not pay out anyway.

10. To receive an ACRE payment, the farm must experience a revenue loss, and the state in which the farm is located must have revenue below the ACRE guarantee. The ACRE guarantee is 90% of historical state yield times the average national price for the past two years. Therefore, ACRE payments can be triggered in two ways: a drop in state yields, or a drop in the average national price. After the state’s revenue guarantee is set, it cannot increase or decrease by more than 10% per year. *Monitoring Agri-Trade* noted that “payments could remain high as legislation includes maximum 10% annual adjustment of the revenue guarantee,” because ACRE would thus provide double protection for farmers, protecting against decreases in yields and decreases in crop prices.⁵ This protection would be built-in not just with respect to weather and natural disasters, but also due to price drops as a result of policy changes - for example, if the ethanol tax credit was eliminated and there was a corresponding drop in corn plantings.

11. The ACRE guarantee is based on the average national price for the two most recent crop years. Congress wanted the 2007 and 2008 crop years to be used for averaging purposes. USDA originally wanted 2006 and 2007, because they were more representative of traditional crop prices than the higher 07/08 prices. Eventually, the USDA set the 2009 ACRE price guarantee based on average season prices combining 2007/08 and 2008/09 marketing years.

³ Base acre calculation is complicated. The 2002 Farm Bill had five different ways to calculate base acres--and the 2008 Farm Bill took the 2002 base acres and allowed additional acres to be counted, if planted to certain crops.

<http://www.ers.usda.gov/publications/err12/err12app.pdf>

<http://www.ers.usda.gov/FarmBill/2008/Titles/TitleIcommodities.htm#directabapafcdaccp>

⁴ ‘Monitoring Agri-Trade Policy MAP No. 01 –09, February 2009.

⁵ *op cit*.

Variation by crop

12. The Food and Agricultural Policy Research Institute at the University of Missouri-Columbia predicts that states with higher yield variability will have higher participation rates, because a decrease in state yields triggers ACRE payments. Therefore, ACRE appears to be more attractive for Northern crops such as corn, wheat, and soybean producers, because their yearly yields are more volatile. Southern crops such as peanut, cotton, and rice will probably have lower participation rates, because they are predicted to receive higher payments from traditional programs.⁶ (The chairs of the Congressional agriculture committees are from Minnesota and Iowa—states with high plantings of corn and soybean.)

Summary

13. ACRE is countercyclical in intent and was designed with a number of built-in 'switches' that trigger payments. It provides the kind of 'hedge' against market signals and price movements that developing countries cannot provide to their farmers, and is contrary to the objectives of the WTO's Agreement on Agriculture.

III. ACRE – PROJECTIONS OF TOTAL PAYOUT

14. ACRE's potential payment is contingent on several factors, but is more likely to be adopted and paid out if:

- ✓ The average national price decreases after the ACRE guarantee is set
- ✓ The farm grows corn, soybeans, or wheat
- ✓ The farm is located in a state with high yield variability
- ✓ The farm is located in a state that is not a main producer of the crop (if a major producing state suffers from yield loss, it could drive up the price and reduce the ACRE payment), and/or
- ✓ The farm has land that qualifies as "considered planted".

15. About 66,000 farms had signed up at the time of the August 14 deadline, but the number is likely to grow, as USDA will still be tallying the numbers until Sept. 30.⁷ The volatility of crop yields and prices will also have a major effect on the total ACRE payout—mitigated somewhat by the 10% cap on changes to the ACRE guarantee.

⁶ http://www.fapri.missouri.edu/outreach/publications/2008/FAPRI_MU_Report_08_08.pdf

⁷ "Total U.S. Numbers Still Being Tallied," by Jerry Hagstrom, Capital Press Ag Website; <http://www.capitalpress.info/content/JHagstrom-ACRE-082109>, viewed 20 August 09.

16. In promoting the new program, key members of Congress claimed that ACRE would save taxpayers \$250 - \$400 million over the traditional suite of programs. By contrast, because ACRE is based on the highest crop prices in recent history, the USDA estimated that ACRE could pay out up to \$16 billion in 2009.⁸ More conservative early estimates of the program suggest that ACRE will payout about \$1 billion more than traditional programs per year.⁹ The Center for Agricultural and Rural Development at Iowa State University ("CARD") predicts that ACRE will pay out more than the traditional farm subsidy programs unless the 2009-2012 market prices remain consistently above the base year prices.¹⁰ Again, the final adoption rate of this optional program will matter for calculating overall U.S. 'Amber Box' support.

IV. A CLOSER LOOK AT ACRE AND U.S. TRADE COMMITMENT

17. The Bush administration signaled that ACRE is not WTO-compliant. Then U.S. Secretary of Agriculture Edward Schafer singled out both the ACRE program and the new 'Permanent Disaster Fund' in remarks last year, suggesting that the price- and production-contingent ACRE program represented potentially \$16 billion in higher costs. The agriculture magazine *Pro Farmer* described ACRE as "lucrative beyond expectations."¹¹

18. The WTO Agreement on Agriculture and the SCM Agreement govern domestic subsidies provided by WTO member nations. The AoA divides subsidies into categories—generally known as 'boxes'—based on their market distorting effects. The Green Box is for subsidies that are minimally or non-trade distorting. The current Blue Box requires that a subsidy limit production; the New Blue Box, the final outlines of which are still under discussion as part of the Doha negotiations, would also allow subsidies that do not require production.¹² The Amber Box is made up of those programs that are considered the most trade distorting.

19. The SCM Agreement aggregates subsidies by crop, and looks at the trade distorting effects. If the effects amount to "serious prejudice" by either suppressing the price of the relevant crop or by enabling the country providing the subsidy to increase its market share, then the subsidy is impermissible under the SCM Agreement.

⁸ E.g. Wiesemeyer, Jim, "ACRE for Your Acres: A 'No Brainer'", May 20, 2008, <http://www.agweb.com/blogs/BlogPost.aspx?PID=3887f5d7-5430-4f1c-8447-5df32e08e633>

⁹ FAPRI - http://www.fapri.missouri.edu/outreach/publications/2008/FAPRI_MU_Report_08_08.pdf

¹⁰ http://www.card.iastate.edu/ag_risk_tools/acre/faq.aspx

¹¹ Wiesemeyer, Jim, "ACRE for Your Acres: A 'No Brainer'", May 20, 2008,

<http://www.agweb.com/blogs/BlogPost.aspx?PID=3887f5d7-5430-4f1c-8447-5df32e08e633>

¹² http://www.wto.org/english/tratop_e/dda_e/draft_text_gc_dg_31july04_e.htm

ACRE is an amber-box program

20. USDA officials,¹³ FAPRI,¹⁴ several of ACRE's designers,¹⁵ and even the American Cotton Shippers Association¹⁶ all agree that ACRE should be classified and notified as an Amber Box subsidy.

Green Box arguments

21. Early on in the Farm Bill debate, USDA put forward a revenue-insurance proposal that was designed to be Green Box compliant. Clearly, supporters of ACRE would like ACRE to be seen as a Green Box payment because there are no spending limits for Green Box payments. Congress, however, made many changes to the proposed program. Now, ACRE contains the same planting restrictions as direct payments, which the WTO's Appellate Body held in the *Upland Cotton* decision disqualified them from the Green Box. ACRE is also tied to current production, instead of only historical production as required to qualify for the Green Box. Accordingly, ACRE cannot be classified as a Green Box program.

Blue Box arguments

22. The original USDA program was designed to be compliant with "new" Blue Box definitions, which would allow subsidies that are based on "fixed and unchanging areas and yields" and which do not require production. The program did not require production and was based on historical yields and acres. ACRE payments, however, are calculated with current acres and yields, which disqualify ACRE from the Blue Box.

ACRE as an 'Amber Box' program

23. Depending on the variables discussed above, ACRE could dramatically increase Amber Box spending. The US Amber Box spending limit is \$19.1 billion a year, and the US has been negotiating to decrease its limit to \$7.6 billion. If the more extreme scenarios discussed above happened, the ACRE program alone would come close to exceeding allowable Amber Box payments.

¹³ Conner quoted

<http://www.agweb.com/Blogs/BlogPost.aspx?src=WashingtonInsight.&PID=3887f5d7-5430-4f1c-8447-5df32e08e633>

¹⁴ http://www.fapri.missouri.edu/outreach/publications/2008/FAPRI_MU_Report_08_08.pdf

¹⁵ Bruce Babcock, Iowa State University, ACRE designer, [Inside US Trade](#), "New Farm Bill Program Complicates Compliance With U.S. Doha Offer" May 23, 2008

¹⁶ "ACRE falls squarely within the WTO Amber Box (trade distorting subsidies) category."

<http://www.acsa-cotton.org/acsa/acsalive.nsf/8d592efc503aac75802570cf005d1fdf/110f0fbaae43d6a862574be005011e2/FILE/08%20Washington%20Report%20%2338.pdf>

24. In their paper “ACRE in the U.S. Farm Bill and the WTO”, Carl Zulauf and David Orden argue from ‘counterfactual’ scenarios (had ACRE been in place from 1996-2006) that ACRE payments would have caused the United States to exceed its Uruguay Round Amber Box Aggregate Measure of Support (AMS) commitments in 2000. They also note that the levels projected under ACRE are much higher than caps proposed under the Doha Round.¹⁷ European researchers, working under the assumption that ACRE had an 80% penetration (adoption) rate, concluded that spending under this program would be \$10.2 billion for 2009-10¹⁸—a figure also significant higher than the proposed Doha numbers.

V. WILL ACRE CAUSE ‘SERIOUS PREJUDICE’ UNDER THE SCM AGREEMENT?

25. For the purposes of this analysis, we consider the three main variables in a serious prejudice claim¹⁹:

- ✓ is the subsidy price contingent?
- ✓ what is the country’s world market share for the crop?
- ✓ how large is the subsidy?

26. For a serious prejudice action, it does not matter which box the subsidy is classified in. Since the expiration of the AoA’s peace clause, even green box subsidies can be aggregated toward a possible finding of ‘serious prejudice.’

27. The ACRE guarantee is based on the national average market price for the two most recent crop years. ACRE supporters admit that ACRE is price contingent. Supporters wanted a program that was responsive to the market, unlike direct payments.

28. The United States has a large share of the world market for each of the five main crops which receive subsidies (corn, wheat, soybeans, cotton, and rice). Of the crops, for which ACRE is expected to pay out the most, the United States accounts for roughly 63% of world exports for corn, 40% of soybeans, and 30% of wheat. The United States also accounts for 35% of the world exports for cotton and 12% for rice.

¹⁷ “ACRE in the U.S. Farm Bill and the WTO”, Zulauf and Orden, op cit., pp. 15-16.

¹⁸ Discussed in the Monitoring Agri-Trade Policy MAP No. 01 – 09, supra 3.

¹⁹ For one approach to analyzing SCM claims, see **Congressional Research Service Report for Congress**, ‘Potential Challenges to U.S. Farm Subsidies in the WTO: A Brief Overview,’ Randy Schnepf and Jasper Womach; June 1 2007. The CRS report measures vulnerability to a SCM Article 5 and 6.3 claim if (a) subsidies constitute a substantial share of farmer returns or cover a substantial share of production costs; (2) the subsidized commodity is important in world markets; and (3) there is a causal link between the subsidy and adverse effects in the relevant market. This report was released prior to the finalization of the 2008 Farm Bill. With respect to traditional programs, CRS concluded that “all major U.S. subsidized crops appear potentially vulnerable to WTO legal challenges” (pg. 6).

29. Although there is no precise level at which subsidies will be held to cause serious prejudice, subsidies exceeding 5% of the value of the crop are generally considered to be vulnerable to challenge. The level of ACRE payments is hard to determine, but economists expect the payout to be the largest for Northern crops: corn, wheat and soybeans. Even if ACRE payments are not large enough to cause serious prejudice on their own, they will contribute to the aggregate level of subsidies that will be subject to scrutiny for trade distorting effects.²⁰

VII. CONCLUSION

30. A number of revenue insurance programs were discussed during the 2007-08 renegotiation of the U.S. Farm Bill, including proposals brought forward through family-farm and conservation groups, as well as proposals from the US Department of Agriculture that were mindful of the United States' trade commitments. But what emerged at the end of this renegotiation process was a program that probably makes US subsidies less compliant with trade obligations. ACRE is both price and production contingent, and the guarantee is based on some of the highest market prices in history. The aggregate of these price, production, and 'considered planted' advantages --plus the ability of farmers to choose whether to participate in ACRE or the traditional programs -- means that U.S. farm programs could pay out more than allowed under existing Uruguay Round rules over the next five years. Even under 'normal-case' assumptions, it is clear that ACRE, coupled with payouts from traditional U.S. subsidy programs, will lead to payments well in excess of the targets sought for a successful conclusion of the Doha Round.

²⁰ A recent International Agriculture Trade Research Consortium (IATRC) paper, "ACRE in the U.S. Farm Bill and the WTO", Carl Zulauf and David Orden, May 2009, cites analysis from Blandford and Josling and Blandford and Orden stating that ACRE revenue payments for corn, soybeans, and wheat at price levels forecast for coming years are unlikely to exceed the U.S. Uruguay Round AMS cap." Most relevant is the addition of ACRE payments to those from other price- and production-contingent U.S. farm programs. The study goes on to note that "estimated ACRE revenue payments would have exceeded the Doha draft product-specific caps for corn and soybeans" in 1998-1999 as well as for wheat between 1996 - 2000. "Thus, US notifications for ACRE payments would substantially have exceeded the draft U.S. total AMS cap set at \$7.6 billion for the end of the transition period. The Doha draft OTDS cap also would be exceeded in these years if *de minimis* support for other groups were added to the AMS."

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