

**Do not abolish the WTO but its control by the US-EU duopoly,
particularly on agricultural and food products
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PLAN

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Abstract

Dozens of global civil society groups issued an open letter to the Heads of State on 2 February 2021¹ calling for fundamental reform of the WTO². This step is obviously welcome at a time when the new Director General, Ms. Ngozi Okonjo Iweala, has taken office on 1st March and has presented her Inaugural Statement to the General Council on 15 February³. This Open Letter is close to other proposals, such as the one initiated by the Quebec Network on Continental Integration in April 2020⁴, the one launched by UNCTAD and other experts in April 2019⁵, and those, centred on the agricultural and food aspects, of Laurence Roudart⁶ and the Platform for

¹ <https://form.jotform.com/203105681260041/>

² <https://rqic.quebec/2020/04/30/lettre-ouverte-aux-ministeres-du-commerce-et-a-lorganisation-mondiale-du-commerce-omc/> <https://rqic.quebec/2020/04/30/lettre-ouverte-aux-ministeres-du-commerce-et-a-lorganisation-mondiale-du-commerce-omc/>

³ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=r:/Jobs/GC/250.pdf&Open=True>

⁴ 400 organismes à travers le monde demandent à l'OMC de suspendre toutes les négociations commerciales, 30 avril 2020, <https://rqic.quebec/2020/04/30/lettre-ouverte-aux-ministeres-du-commerce-et-a-lorganisation-mondiale-du-commerce-omc/>

⁵ UNCTAD officials and experts detail a five-point plan to rebalance development and guide a new form of multilateralism, 12 April 2019, <https://unctad.org/news/top-economists-outline-plan-global-green-new-deal>

⁶ Protectionnisme Agricole, un entretien avec Laurence Roudart, Défis Sud, 22 février 2021, <https://www.sosfaim.be/le-protectionnisme-agricole/>

another CAP⁷. This document also complements two in-depth analyses of SOL of 9 January 2019⁸ and 22 January 2019⁹ that we recommend to read first.

However, although well-intentioned, this Letter to the Heads of State suffers from serious shortcomings, the first being that it attributes to the WTO as a legal entity the causes of its dysfunctions attributable to its most powerful Members, essentially the EU and the United States (US). To condemn the WTO as an organisation is to condemn the struggle of the developing countries (DCs), the overwhelming majority in the WTO, to radically change its rules. Moreover, the Open Letter does not call for the abolition of the WTO but for "the transformation of the WTO into an entirely new international trade framework adapted to the 21st century - which means putting people and the planet first". At least, despite everything, bilateral Free Trade Agreements (FTAs) are worse than the WTO, which has a Dispute Settlement Body but whose rulings the EU and the US do not want to recognise when they conflict with their interests, in particular its rulings of December 2001 and December 2002 in the Canadian Dairy case on the definition of dumping, which must take into account all domestic subsidies, and its March 2005 ruling in the US Cotton case, which also included decoupled subsidies.

This paper identifies the root causes of the WTO's dysfunctions, focusing on those relating to the Agreement on Agriculture (AoA) and the EU's heavy responsibility in its opposition to reforming the rules on domestic subsidies in view of the weight of the so-called decoupled subsidies in the Common Agricultural Policy (CAP) and their dumping impact on its exports. Unfortunately, this attitude is shared by the French farmers' unions, including the Confédération Paysanne which claims to share the struggle of farmers in the South for food sovereignty, given the weight of decoupled subsidies in the income of EU farmers, so that it hesitates to propose a more radical reform of the CAP where farm incomes would be essentially based on remunerative prices, as they were before 1993, which would also imply a rise in food prices to be compensated in many ways for the EU disadvantaged populations.

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This well-intentioned text suffers from a fundamental bias, because it fails to define what the WTO is: it is not a "system", an "hydra", sui generis, that would be responsible for all the dysfunctions observed. It had to be stressed that the WTO is an organisation "managed by the Members", not by its Secretariat, including its Director, who cannot denounce the violation of rules by Members, especially the more developed ones, nor challenge the veracity of the data provided to the Secretariat to prepare its report on the Member's "Trade Policy Review".

For, despite the 125 signatory States in 1994, risen to 164 in 2020, the WTO has in fact been managed by its most powerful Members, essentially the United States (US) and the EU, which together during the Uruguay Round elaborated the rules of most of the sectoral agreements, particularly the Agreement on Agriculture (AoA), and this de facto duopoly was very quickly extended to 4 Members, the "Quad" – the EU, Japan, Canada and the US –, where Japan and Canada were replaced after Cancun by India and Brazil, although in fact Japan and Canada continued to be consulted, as do Western OECD countries more generally, but the EU-EU

⁷ <https://pouruneautrepac.eu/notre-vision/nos-12-priorites-pour-la-paac-post-2020/>

⁸ <https://www.sol-asso.fr/wp-content/uploads/2020/01/Rebuilding-the-WTO-for-a-sustainable-global-development-J.-Berthelot-July-12-2020.pdf>

⁹ *AGREEMENT ON AGRICULTURE AND FOOD*, SOL, January 22, <https://www.sol-asso.fr/wp-content/uploads/2019/01/Agreement-on-Agriculture-and-Food-AoAF-SOLs-proposal-of-22-January-2019.pdf>

duopoly has remained dominant and sets the agenda for trade negotiations and chooses Members from a wider circle of up to 20 to participate in "green rooms" endorsing that agenda. It is therefore important not to talk about the "interests of the WTO" when the interests of the majority of Members, those of the developing countries (DCs), are being violated or marginalised, particularly those of the Doha Round, which was supposed to be the "development round". It also leaves room for hope that with the new Nigerian Director-General, Ngozi Okonjo-Iweala, endorsed on 15 February 2021, the WTO can make radical changes to bring its trade rules under a hierarchy of norms in line with the objectives of the SDGs and the Paris Climate Agreement.

While it is true that the "rules" put in place within the WTO have indeed been responsible for all the abuses mentioned in this Open Letter, it would have been much more appropriate to talk about the rules imposed on the WTO by its most powerful members, and first the EU and US, who have refused certain beneficial rules when they went against their trade interests. For example, despite the scandalous definition of dumping in the GATT - "no dumping as long as products are not exported at a price below the domestic market price" – which was the basis for the radical reforms of the EU's Common Agricultural Policy (CAP) and the US Farm Bill in the early 1990s, the Appellate Body has nevertheless departed four times from this definition and has to the contrary defined dumping as exports by an agribusiness company at a price below the country's average total cost of production without subsidy, a definition that the EU and the US refuse to take into account¹⁰.

Another mistake in this Open Letter – as in UNCTAD's 2018 Annual Report – is to present the 1948 "Havana Charter" as a good basis for reforming the WTO, forgetting that the Charter was supporting freer trade than the GATT, which constituted its Chapter 4, especially since it was amended in 1965 with Part IV on "Trade and Development" (Articles XXXVI to XXXVIII) and in 1979 with the Enabling Clause¹¹. In particular, the Havana Charter does not denounce Articles XVI and VI of the GATT.

Since this Open Letter from civil society does not call for the abolition of the WTO but only for a radical overhaul of its rules, it was contradictory to attribute to the WTO institution all the dysfunctions observed which are attributable to its most powerful Members, first and foremost the EU and the US.

As around half of the world's working population continues to work in agriculture in the broad sense (including livestock, fisheries and forestry), particularly in the two major regions that suffer the most from hunger – sub-Saharan Africa (SSA) and India, where this percentage is 2/3 of the working population – the WTO reform that the new DG should prioritise must focus on a radical reform of the Agreement on Agriculture (AoA) and, further upstream, on the reform of two key GATT articles: Articles XVI and VI.

¹⁰ *Comments to Claude Girod's article "For other trade rules"*, SOL, December 22, 2020, <https://www.sol-asso.fr/wp-content/uploads/2020/01/Comments-to-Claude-Girods-article-For-other-trade-rules.pdf>

¹¹ *La Charte de la Havane n'a pas les mérites qu'on lui prête* », SOL, 4 janvier 2019 (<https://www.sol-asso.fr/wp-content/uploads/2019/01/La-Charte-de-la-Havane-nest-pas-un-mod%C3%A8le-pour-r%C3%A9former-l'OMC-SOL-4-Janvier-2019.pdf>)

II - The original sins of the GATT and the CAP reforms from 1992 onwards

2.1 - Article XVI of the GATT

Section B (paragraphs 2 to 5) of GATT Article XVI has allowed export subsidies on condition that this does not allow the exporting country to hold "more than a fair share of the world export trade in the product"! It therefore allowed the EU and US to use massive explicit export subsidies (known as "refunds" in the CAP) to the point that, in the years 1986-88 – the reference period for the reduction commitments of WTO Members' domestic agricultural support until today – the average cumulative dumping rate for wheat and flour from the US + EU was 78.4 %, of which 71.2 % for the US and 118.5 % for the EU¹². And, as they exported 48 % of the world total during this period, we can measure their enormous responsibility for the fall in world wheat and flour prices.

Now, although export subsidies were abolished by the Nairobi Ministerial Conference in December 2013, particularly in the EU where the last ones were for poultry in 2013, the notification of each country's domestic agricultural support to the WTO continues to be based on the absurd AMS (Aggregate Measurement of Support, the so-called trade-distorting Amber Box) calculation where, according to paragraph 8 of Annex 3, *"Market price support shall be calculated using the gap between a fixed external reference price and the applied administered price multiplied by the quantity of production eligible to receive the applied administered price"* and, according to paragraph 9 of Annex 3, *"The fixed external reference price shall be based on the years 1986 to 1988 and shall generally be the average f.o.b. unit value for the basic agricultural product concerned in a net exporting country and the average c.i.f. unit value for the basic agricultural product concerned in a net importing country in the base period"*. In other words, the AoA has continued to burden all countries, especially the poorest, every year for the past 35 years with the levels of agricultural support linked to the massive EU and US dumping of the years 1986-88, while their actual support has been much lower without this absurd comparison with the years 1986-88!

Yet analysts of Article XVI have forgotten to take into account its paragraph 1 on "subsidies in general" which extends their impact to domestic subsidies: *"If any contracting party grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the CONTRACTING PARTIES in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary. In any case in which it is determined that serious prejudice to the interests of any other contracting party is caused or threatened by any such subsidization, the contracting party granting the subsidy shall, upon request, discuss with the other contracting party or parties concerned, or with the CONTRACTING PARTIES, the possibility of limiting the subsidization"*.

¹² See the details of the calculus on pages 21-30 of "Analysis of the G-33's proposal to change the AoA provision on Public stockholding for food security" of 25 January 2014: <https://www.sol-asso.fr/wp-content/uploads/2014/07/Analysis-of-the-G-33-proposal-on-Public-stockholding-for-food-security-25-01-2014.pdf>

2.2 - Article VI of the GATT

The second holdup of the EU and US was the use of the GATT Article VI definition of dumping to develop the AoA rules face-to-face from 1991 to 1993 at the same time as they were radically changing their agricultural policies, following protests from exporting countries about dumping linked to explicit export subsidies: all that was needed was to replace export subsidies with domestic subsidies! Hence the radical reform of the CAP and the Farm Bill, which drastically reduced the minimum guaranteed agricultural prices – *intervention prices* in the EU and *loan rates* in the US – and compensated for these price cuts with heavy domestic subsidies to farmers, while managing to differentiate in the AoA, whose rules they established, the types of subsidies according to their supposed degree of "trade distortion"! These reforms were carried out in 5 main stages for the CAP: 1992 (a 35 % reduction in the minimum price of cereals and a 15 % reduction in the price of red meat), 1999 (a further 15 % reduction in the price of cereals and a 20 % reduction in the price of red meat), 2003 ("decoupling" of subsidies paid to farmers from 2000 to 2002 without them being obliged now to produce to continue to receive them), 2005 (a reduction in the guaranteed prices of milk powder and butter), 2008 ("health check" which generalised decoupling to almost all products).

The European Commission is therefore obstructing any WTO negotiations on domestic agricultural support, which has been on the priority agenda of the WTO's Agriculture Commission since the 2015 Nairobi Ministerial Conference agreed to abolish agricultural export subsidies ("refunds"). The European Commission is aware that the objective of the other WTO members is to put an end to the alleged non-trade-distorting nature of decoupled subsidies notified in the "green box" and secondarily of subsidies notified in the "blue box" because they are capped. For without these WTO green box aids – which accounted for 86% of the €56.9 billion CAP budget for 2019, including €35.5 billion for decoupled direct aids and €13.5 billion for rural development aids – to which will be added €4.7 billion to be notified in the blue box, not counting State aids, practically no EU farmer could survive. As agricultural exports have accounted for an increasing percentage of production, from 19.4% in 2000 to 32.1% in 2018 – not so much in volume as in value because of products increasingly processed off the farm – agricultural export subsidies have risen from €7.8 billion in 2000 to €18.4 billion in 2018.

It is perverse that the EU has refused to deal with domestic agricultural subsidies in all its bilateral free trade agreements (FTAs), including the Economic Partnership Agreements (EPAs) with the ACP countries, claiming that this is the exclusive competence of the WTO while it blocks any discussion on the dumping effects of domestic subsidies, particularly decoupled ones. And the CAP reform being finalised for the period 2022-2027 prolongs these perverse effects both for the EU – direct aids will continue to be based on hectares, destroying jobs and the environment – and for the developing countries (DCs), particularly the ACP countries, whose Heads of State paradoxically approved the orientations of the future post-Cotonou agreement, so much so that the development of SSA has been dependent on an extroverted orientation that has served in the short term the interests of these Heads of State who are complicit in the interests of the North, and of the EU above all, and its multinationals.

III - The consequences on the absurdity of the rules on the notification of domestic agricultural support

3.1 - The absurd rule on the notification of domestic agricultural supports

Domestic agricultural domestic support is defined in Annex 3 of the AoA by the concept of "Aggregate Measurement of Support" (AMS): "(1) Subject to the provisions of Article 6, an Aggregate Measurement of Support (AMS) shall be calculated on a product-specific basis for each basic agricultural product receiving market price support, non-exempt direct payments, or any other subsidy not exempted from the reduction commitment ("other non-exempt policies"). Support which is non-product specific shall be totalled into one non-product-specific AMS in total monetary terms".

In accordance with the preamble of the AoA whose *"long-term objective... is to provide for substantial progressive reductions in agricultural support and protection sustained over an agreed period of time, resulting in correcting and preventing restrictions and distortions in world agricultural markets"*, in the area of domestic support *"The AMS calculated as outlined below for the base period shall constitute the base level for the implementation of the domestic support reduction commitment"*. Given that this AMS reduction has been set at 20% over 6 years, from 1995 to 2000, for developed countries and 13.3% over 10 years, from 1995 to 2004, for developing countries.

A distinction must first be made between "support" and "subsidy": "support" is a broader concept than "subsidy" – financed by taxpayers – because it includes "market price support" (MPS) through various measures such as import duties, export subsidies, production quotas, set-aside, domestic and external food aid, etc.

Very few people, including North-South solidarity NGOs, are aware that this "market price support" (MPS) does not correspond to any effective agricultural subsidy paid by taxpayers. Thus, in the EU AMS notified at €6.932 billion for 2018 (the last notified year), €6.745 billion (or 97%) was MPS (for dairy products and common wheat) involving no actual subsidies. If MPS is notified in the explanatory table DS:5, when products also received specific effective subsidies, they are reported in the explanatory table DS:6 of "Non-exempt direct payments" or in the explanatory table DS:7 of "Other AMS by product". Indeed, the MPS is thus calculated by paragraphs 8, 9 and 11 of Annex 3 of the AoA:

8. Market price support: Market price support shall be calculated using the gap between a fixed external reference price and the applied administered price multiplied by the quantity of production eligible to receive the applied administered price. Budgetary payments made to maintain this gap, such as buying-in or storage costs, shall not be included in the AMS.

9. The fixed external reference price shall be established on the basis of the years 1986 to 1988 and shall generally be the average f.o.b. unit value of the basic agricultural product concerned in a net exporting country and the average c.i.f. unit value of the basic agricultural product concerned in a net importing country during the base period. The fixed reference price may be adjusted as necessary to take account of quality differences.

11. The fixed reference price shall be based on the years 1986 to 1988 and shall generally be the actual price used for determining payment rates.

Administered price means the minimum guaranteed price such as the *intervention price* in the EU, the *loan rate* in the US and the *minimum support price* in India. The MPS is therefore calculated as the difference between the current administered price and the border price for the period 1986-1988 (known as the FERP, fixed external reference price), multiplied by eligible production. This absurd definition has given rise to debates among specialists on three aspects: the comparison with the border price of the years 1986-88; the currency in which the calculation is made; and the level of eligible output. In addition, there are the exemptions from notification of domestic support in the AMS provided for in Article 6 of the AoA.

3.1.1 - The first debate on market price support

The comparison with the border price of the period 1986-88, 33 to 35 years ago, is meaningless as the national and international economic environment has changed so much. Above all, it is totally unfair for comparisons between developed and developing countries, given the structural inflation that the latter have suffered for many well-known reasons. For example, the average annual inflation rate over the 30 years from 1986 to 2015 was 7.95 % in India compared with 2.68 % in the US and 1.78 % in Germany, i.e. cumulative inflation of 69.8 % in Germany, 120.5% in the US and 892.4 % in India. A second reason already mentioned above is that world prices, especially, but not only, for cereals, were extremely low in this period due to massive dumping from the US and the EU.

The share of fake MPS in the AMS of developed countries was even higher in the past. Thus, during the period 1995-2000, the share of EU subsidies in its average annual AMS was only €4.822 billion, i.e. 10% of the €48.425 billion total AMS notified and 90 % for the MPS component. The abolition of the beef intervention price on 1st July 2002 allowed the EU to reduce its total AMS by €11.9 billion on a day-to-day basis, without any impact on the market price which increased in subsequent years due to high import protection. In the EU, the AMS for sugar linked to its intervention price amounted to €5.9 billion in 2000-2001 and to comparable amounts in previous years, although public purchases at the intervention price have only taken place once in 25 years, as high domestic prices have been preserved by high import protection and production quotas. The AMS linked to the intervention prices for butter and skimmed milk powder was €5.951 billion in 2000-2001, but EU expenditure on dairy products was only €1.907 billion.

In Japan, the MPS for rice was eliminated in 1997 and Japan's AMS notified to the WTO fell by \$20bn, but as there has been no change in import protection, actual support has remained the same¹³.

William R. Cline told the USDA's 2007 Agricultural Outlook Forum: "*The bound AMS contained about \$6 billion of pure fiction, a remarkable concept called 'market price support' (MPS). There is no real taxpayer money being paid for MPS, it is pure calculation.... Eliminating the false subsidy will make it easier to eliminate false subsidy cuts*"¹⁴.

Tim Josling, the "father" of the OECD agricultural price support indicators in the 1980s, confirmed in 2014: "*Reference prices [implying those of 1986-88] bear little resemblance to*

¹³ Hoshihisa Godo and Daisuke Takahashi, *Japan*, in D. Orden, D. Blanford and Tim Josling, *WTO disciples on agricultural support*, Cambridge Univ. press, 2011, p 153-188.

¹⁴ William Cline, *The Doha Round, Agriculture, and the Developing Countries*, March 1, 2007, file:///C:/Users/berth/Documents/OneDrive/Downloads/fo07cl01.pdf

current world market conditions" (Orden et al. 2011). As a result, the AMS no longer makes much sense as an indicator of trade distortion"¹⁵.

The notification of these fake MPS has obscured the negotiations and misled WTO members. Most surprisingly, China, India and the African Group continue to present these AMS supports as the most trade-distorting¹⁶. What they clearly distort is these Members' understanding of the WTO rules. Therefore, the AMS linked to administered prices should be totally eliminated, as they have allowed developed countries to appear to be significantly reducing their coupled support when they have actually increased their supposedly non-trade-distorting Green Box (BV) and Blue Box (BB) subsidies¹⁷.

Another extreme example of the absurdity of this notification system is the fact that the EU does not notify any subsidy for cotton, and in particular for exported cotton, since two thirds are notified as decoupled in the green box and one third in the blue box of capped coupled aid¹⁸. However, EU cotton subsidies averaged US\$896 million per year between 2010 and 2018, or US \$2,801 per annum or \$2,801 per tonne, the highest in the world, and 6.6 times higher than the US \$426 per tonne subsidy in the same period. Although the EU produced ten times less cotton than the US and exported 11.8 times less in quantity, its export subsidies were only 2.8 times lower due to an average export subsidy per tonne 4.2 times higher (\$2,789/t compared to \$657/t). And, contrary to what has been observed for the US, the average dumping rate of 198 % – the ratio of total export subsidies to the value of exports – did not decline in the EU, from 157 % over the three years 2000-2002 to 169 % over the three years 2016-18. Moreover, the EU has exported more cotton than Burkina Faso or Mali since 2000, except since 2017, and has been a net exporter since 2009, even exceeding production in 2009 and 2012.

For 2017-18, the US AMS has been notified at \$4.249 billion, of which \$1.539 billion is product specific *de minimis* (for sugar), because US has cheated twice on its dairy notification since 2008. Indeed, the AoA rules do not allow for a change in the way the AMS for dairy products is calculated, as was the case in Part IV of the US schedule of GATT commitments in 1993 for the period 1986-1988, from the administered price of whole milk to the sum of the administered prices of butter, cheddar and skimmed milk powder. Thus, US notification for MPS of dairy products decreased from \$5.011 billion in 2007 to \$2.925 billion in 2008, implying a total under-notification of \$13.625 billion from 2008 to 2013, after which the Farm Bill of 2014 completely eliminated notifications of dairy products.

In conclusion, the AMS notified by the US and the EU is essentially a fake market price support based on the absurd methodology of Annex 3 of the AoA, which is used by the US and the EU

¹⁵ <http://www.ictsd.org/themes/global-economic-governance/research/rethinking-the-rules-for-agricultural-subsidies>

¹⁶<https://www.sol-asso.fr/wp-content/uploads/2019/12/Unifier-les-positions-des-pays-en-d%C3%A9veloppement-sur-la-bo%C3%A9te-verte-et-la-bo%C3%A9te-bleue-SOL-13-d%C3%A9cembre-2019.pdf>

¹⁷ *La vérité sur le déficit alimentaire de l'Union européenne et sur le dumping de ses exportations alimentaires lié à ses subventions internes*, SOL, 26 juin 2018: <https://www.sol-asso.fr/wp-content/uploads/2017/01/La-v%C3%A9rit%C3%A9-sur-le-dumping-des-exportations-alimentaires-li%C3%A9-%C3%A0-ses-subventions-internes-26-juin-2018.pdf>; *Time is up for Developing countries to sue the US agricultural domestic subsidies*, SOL, 14 January 2016: <https://www.sol-asso.fr/wp-content/uploads/2016/06/Time-is-up-for-Developing-countries-to-sue-the-US-domestic-subsidies-Solidarit%C3%A9-January-14-2016.pdf>

¹⁸ <https://www.sol-asso.fr/wp-content/uploads/2019/01/Would-the-WTO-World-Cotton-Day-solve-the-SSA-farmers-plight-J.-Berthelot-October-17-2019.pdf>

to challenge developing country subsidies. Of course, this would not directly harm developed countries because the AMS does not imply actual subsidies, but it would be very damaging because they want to maintain this false AMS for two reasons: firstly to hide the fact that their subsidies are essentially in the green box (GB) and the blue box (BB) and above all it would prevent them from using this absurd methodology to continue to subsidise developing countries and in particular those on public stocks for domestic food aid. But another possible defence for DCs would be to agree to get rid of their own AMS by replacing it with a much greater margin of manoeuvre to use all types of domestic subsidies as long as they do not harm other countries through export dumping.

3.1.2 - The debate on the currency to be used for AMS notification

A second debate focused on the currency to be used for the notification of the AMS, and thus of the MPS. Developed countries, particularly the US, criticised the fact that India had expressed its AMS in dollars when it had notified it in rupees in Part IV of its 1986-88 domestic support reduction commitment schedule. But this is a false debate because there is nothing in the AoA that prevents the currency used for the notification from being changed, provided that it is "*expressed in total monetary value*" (Annex 3, paragraph 6). Especially since other countries have done the same, such as Pakistan, which notified in dollars as early as 1995 when its FERP was in Pakistani rupees. Russia has had the option of notifying in both rubles and dollars.

3.1.3 - The debate on the level of production eligible to receive the MPS

The third debate focused on the level of production eligible to receive the MPS. The US insisted that this should be the total production, whereas developing countries, particularly India, claim that it is the production actually bought from producers at this MPS price, for obvious reasons: farmers save part of their harvest for self-consumption (human, animal and seed), the State is not able to buy the whole harvest at this minimum price, does not have the necessary storage capacity or simply does not need it to sell these stocks at low prices to the poor population.

3.1.4 - The exceptions in Article 6 of the AoA on "Domestic Support Commitments"

The definition of AMS also refers to the exceptions in the AoA Article 6 on "domestic support commitments" which cover four points:

- Domestic support meeting the criteria of Annex 2, known as the Green Box;
- Blue box support where payments are based on a fixed area and yield; or on a fixed number of head of livestock; or on 85% or less of the basic level of production;
- De minimis support, either product-specific (PS), not exceeding 5% of the value of production of the product, or non-product-specific (NPS), not exceeding 5% of the value of total agricultural production. For developing countries these two de minimis levels are 10% (but 8.5% for China);
- Support generally considered as the development box of DCs for which it is necessary to give the full definition because its interpretation is controversial: "*In accordance with the Mid-Term Review Agreement that government measures of assistance, whether direct or indirect, to encourage agricultural and rural development are an integral part of the development programmes of developing countries, investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to low-income or resource-poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to*

such measures, as shall domestic support to producers in developing country Members to encourage diversification from growing illicit narcotic crops. Domestic support meeting the criteria of this paragraph shall not be required to be included in a Member's calculation of its Current Total AMS".

Despite that the reduction of subsidies on investments and agricultural inputs is not applicable to farmers in developing countries without low incomes, and a fortiori not applicable to farmers in developed countries, in fact these countries, of which the EU, have notified virtually all their investment supports in the green box and marginally in non-product-specific AMS, when they have not notified them at all. Most notable is the ridiculous notification of irrigation subsidies of only \$130 million for 2016 in the US, a huge under-notification that has been highlighted for decades by the General Accounting Office (GAO) and the Congressional Budget Office (CBO). And, in his chapter of "Fresh Water and International Economic Law", Bernasconi-Osterwalder, drawing on numerous previous studies, writes that *"annual irrigation subsidies for the US from this undervaluation have been estimated at between \$2 billion and \$2.5 billion"*¹⁹.

Similarly, the EU has never notified any non-commodity AMS irrigation subsidies, although it is significant in its 10 million hectares (M ha) of irrigated agricultural area, notably in Spain (3 M ha), Italy (2.4 M ha), France (1.6 M ha) and Greece (1 M ha). For Spain alone, *"subsidies to irrigated agriculture can range from €906 million per year (as estimated by this report using conservative assumptions) to €1,120 million per year (subsidy rate of 55 percent - costs not recovered), which is the Ministry's own estimate"*²⁰.

And, although investment subsidies should only be granted *"in response to objectively demonstrated structural disadvantages"* and *"to the amount necessary to compensate for the structural disadvantage"*, the evaluation report of the EAFRD (European Fund for Rural Development) for the period 2007-2013 shows that €28.2 billion, or 29.3 per cent of the €96.2 billion of all rural development funds, was spent on *"support for productive investments in favour of private beneficiaries"*²¹. A large part of the money goes to help modernise farms and help young farmers set up in farming. However, the CAP has not capped the subsidies available per farm, with the exception of State aid, so that with the continued concentration of farms, the larger farms have received much more subsidies, implying that the EU has not complied with the condition that, to be in the GB, investment subsidies must go to farmers at a *"structural disadvantage"*. This is also the case for the majority of farm input subsidies, and in particular the most important ones, those to animal feed, which will be discussed in section 3.3.

3.2 - The absurd Annex 2 on so-called decoupled aid notified in green boxes

Before addressing the allegedly decoupled income support in paragraph 6 of Annex 2 of the AoA, let us consider the extent to which paragraphs 1-5 and 7-13 are trade-distorting or not. Like the G20, the China-India joint paper and the African Group consider paragraphs 1-4 and 7-13 to be non-trade distorting²².

¹⁹ <http://www.gbv.de/dms/spk/sbb/toc/487559800.pdf>

²⁰ http://www.iisd.org/gsi/sites/default/files/irrig_Spain.pdf

²¹ http://ec.europa.eu/agriculture/evaluation/rural-development-reports/2014/investment-support-rdp/fulltext_en.pdf

²² <https://www.sol-asso.fr/wp-content/uploads/2019/12/Unifier-les-positions-des-pays-en-d%C3%A9veloppement-sur-la-bo%C3%A9te-verte-et-la-bo%C3%A9te-bleue-SOL-13-d%C3%A9cembre-2019.pdf>

3.2.1 - Paragraph 1 on the two basic conditions

Already the two general conditions of paragraph 1 of Annex 2 for the notification of subsidies in the WTO green box are to be criticised:

"1. Domestic support measures that are requested to be exempted from reduction commitments shall meet a fundamental requirement that their trade-distorting effects or their effects on production must be zero or at most minimal. Accordingly, all measures that are requested to be exempted must meet the following basic criteria: (a) the support in question shall be provided under a publicly funded public programme (including government revenue foregone) not involving transfers from consumers; and (b) the support in question shall not have the effect of providing price support to producers".

From a macro-economic point of view, the distinction between market price support – financed by consumers – and subsidies – financed by taxpayers – is not convincing because the vast majority of taxes are passed on to consumers, especially in the EU, given the weight of value added taxes (VAT). Decoupled subsidies from the Single Payment Scheme (SPS), the Single Area Payment Scheme (SAPS) and the Basic Payment Scheme (from 2014) provide clear price support to producers, as prices would necessarily be higher in the absence of decoupled support, as the European Commission acknowledges, stating that *"the price of table olives is very low, making production without support unprofitable"*²³. Since these two conditions of paragraph 1 apply GB.

3.2.2 - Paragraph 2 on general services

For the G-20 (the one set up at the WTO between developing countries on agricultural issues, not that of the finance ministers of developed and emerging countries), these measures "have generally been considered as having little or no trade-distorting effect" and *"can be assimilated to the provision of public goods"*. Such an assessment is too hasty. These "general services", although provided in kind and collectively to farmers, have the effect of increasing agricultural production and reducing its costs. Their coupled nature is indisputable. These subsidies, granted for decades, even centuries, explain to a very large extent the difference in yield and production costs between developed and developing countries. Under the pretext that these subsidies are granted collectively to farmers, there is a tendency to depreciate their effectiveness, which reflects the individualistic behaviour of our time.

Thus, for Daryll Ray, former director of the Center for Agricultural Policy Analysis at the University of Tennessee, *"the WTO has stated that such spending on research and education has a minimal effect on trade. Such a statement is inconsistent with the idea that any public policy that leads to changes in production alters the supply curve. In practice, these activities have a direct impact on prices and trade, whether it is a set-aside programme or research aimed at improving returns"*²⁴.

Daryll Ray confirms that *"little attention has been paid to existing investments in infrastructure in agricultural areas. These heritage investments ... influence all production decisions in one way or another and this influence continues year after year, whereas the influence of direct*

²³ <http://ec.europa.eu/environment/life/publications/lifepublications/lifefocus/documents/oliveoil.pdf>

²⁴ Daryll Ray, *Is food too important to be left to WTO?* Agricultural analysis policy center, University of Tennessee, November 29, 2002 (<http://www.agpolicy.org>).

*aids is limited to a given year"*²⁵. A statement endorsed by IFPRI in the same article: *"Investment in rural roads has the most powerful effect on poverty reduction per million rupees invested, followed by investment in R&D"*.

3.2.3 - Decoupled income support

There are six reasons why the "decoupled income support" in paragraph 6 of the AoA Annex 2 (which should be called "decoupled income subsidy" because there is no market price support) is not really decoupled. It refers for the EU to the "Single Payment Scheme" (SPS) and SAPS (Single Area Payment Scheme for 10 of the 12 new Member States) between 2005 and 2014, and since the 2014 CAP reform, to the "Basic Payment Scheme" (BPS) and complementary aids: redistributive payments, payments to young farmers, payments for environmentally friendly farming practices (green aids for simplification).

1) The SPS-BPS contradicts condition (b) which states: *"The amount of such payments in any given year shall not be related to, or based on, the type or volume of production (including livestock units) undertaken by the producer in any year after the base period"*. Given the high volatility of world prices, this is an economically absurd and socially unjustified condition when world prices are high, while the SPS-SBS is insufficient to guarantee a minimum income when prices are low.

Furthermore, there is a huge contradiction between the fact that Blue Box (BB) direct aids are granted for "production-limiting" programmes, while the SPS-SBS allows for the production of any product – without which production would not be fully flexible – including products whose production is limited.

2) The SPS-BPS contradicts condition (e) that *"No production shall be required in order to receive such payments"*. But EU Council Regulation 1782/2003 of 29 September 2003 states that farmers benefiting from the SPS must *"ensure that all agricultural land, in particular land no longer used for production, is maintained in good agricultural and environmental condition"*. Annex 4 of the Regulation specifies that this requires *"minimum stocking rates"*, which implies production.

(3) The SPS-BPS contradicts condition (d): *"The amount of such payments in any given year shall not be related to, or based on, the factors of production employed in any year after the base period"*. But the SPS-BPS remains coupled to agricultural area, as farmers have to prove that they have eligible hectares to obtain their payments, with each SPS-BPS entitlement corresponding to one hectare.

4) The SPS-BPS contradicts condition a) because it is based on the amount of BB subsidies for the years 2000-2002, a criterion that is not foreseen: *"Eligibility for such payments shall be determined by clearly-defined criteria such as income, status as a producer or landowner, factor use or production level in a defined and fixed base period"*.

5) A large part of SPS-BPS payments is granted for animal feed (EU cereals, oilseed and protein cakes) and products used for agrofuels (oil, cereals and sugar beet), both of which are input subsidies to be notified in the Amber Box of developed countries (Article 6.2 of the AoA). Even though biodiesel is not an agricultural product for the WTO, unlike bioethanol, Annex IV,

²⁵ Daryll Ray, *What is an agricultural subsidy?*, Agricultural Policy Analysis Center, University of Tennessee, 26 mars 2004.

paragraph 4 of the AoA on the calculation of AMS states that "*Measures targeting agricultural processors shall be included to the extent that they provide benefits to producers of the primary agricultural products*", which is all the more obvious given that the agrofuels boom has sharply increased the prices of oils and grains.

6) Finally, since SPS-SBS subsidies cannot be attributed to a particular product, they are attributable to any product whose selling price is below its average total cost of production, according to the standard definition of dumping by the Appellate Body since the Dairy Products from Canada case of December 2001 and December 2002. As a result, all EU agricultural exports can be sued for dumping, even products that have never received direct aid, as long as their producers obtain SPS-SBS for other products, which today applies to virtually all EU farms²⁸.

3.3 - Why and how livestock owners receive feed subsidies

3.3.1 - EU and EU know that feed subsidies distort trade

The fact that the EU has notified in its AMS certain secondary feed subsidies – dried fodder and skimmed milk for calves – shows that it is fully aware that feed subsidies are input-coupled subsidies, but it has refused to notify its huge cereals, oilseeds and protein crops (COP) subsidies of EU origin used to feed. The same can be said for the US: the US Congressional Research Service has recognised that "*commodities such as maize are feed inputs for livestock*"²⁶ and the OECD has stated that "*input subsidies are generally explicit or implicit payments that reduce the price farmers pay for variable inputs (e.g... feed)*"²⁷.

3.3.2 - The OECD's convoluted concept of "excess feed cost".

EU and US cheating in this area has been largely encouraged by the OECD's convoluted concept of "excess feed cost" (EFC). It considers that livestock farmers are penalised because they have to pay feed to EU COP producers at domestic prices higher than world prices: "*The SAB adjustment reduces the value of MPS [market price support] for livestock products. This happens because livestock farmers pay higher prices for fodder crops because of the price support for these products*" as a result of tariffs. In an 2004 email, Catherine Moreddu of the OECD replied to my question: "*The extra cost of feed due to grain price support is deducted from the price support for animal products. It is therefore not possible to take it into account a second time in input subsidies*". This claim could at best have been debated when world COP prices were low, so that this alleged 'additional feed cost' – represented by the gap between domestic and world farm gate prices – was significant, averaging €5.345bn in the EU from 1986 to 1994 (Table 2), but after that, world cereal prices soared from 2008 to 2014, so that "additional feed costs" virtually disappeared in the PSE (producer support estimate) and the average between 2008 and 2018 was only €322.9m, of which €71.4m in 2018. For the US, the gap between the producer price and the world price has always been zero for maize, sorghum and soya, as the US was considered as the price maker of world reference prices for cereals and soya, although the gap was not zero for wheat and barley between 1986 and 1994 because of its export subsidies. Yet feed subsidies still exist in the US and the EU, hidden in the so-called decoupled SPS-SBS, which is the best rebuttal to the OECD's concept of "excess feed cost".

²⁶

http://wikileaks.org/wiki/CRS:_Potential_Challenges_to_U.S._Farm_Subsidies_in_the_WTO:_A_Brief_Overview,_June_1,_2007

²⁷ <http://www.oecd.org/agriculture/agricultural-policies/1937457.pdf>

Table 2 - US and EU "excess feed cost" from 1986 to 2018

	1986-94	1995-2007	2008-2018
USA, in \$ million	294,5	2,4	0
EU, in € million	5344,6	1298	322,9

<http://www.oecd.org/tad/agricultural-policies/producerandconsumersupportestimatesdatabase.htm#browsers>

3.3.3 - Feed cross-subsidies received by COP producers

While there is no debate about the fact that COP producers receive the full amount of direct aid to COPs, producers of livestock products nevertheless receive the implicit but actual subsidies corresponding to the lower prices they pay for COPs of EU origin, prices that would be much higher in the absence of the subsidies granted to COP producers to compensate for the fall in their intervention prices.

This is where the concept of "cross-subsidisation" comes into play, central to the WTO *panels and Appellate Body rulings in the cases of Dairy Products of Canada and EU Sugar*. "Cross-subsidisation ... financed through government action" can be argued on the basis that livestock farmers bought their feed at a price below their average total cost of production in the absence of the subsidies received by COP producers (and often livestock farmers produce part of their feed themselves). The OECD Manual on Producer Support Estimation (PSE) states that "Implicit support to agricultural producers can also be provided through concessions on taxes, interest rates or input prices. Such support does not usually involve flows from public funds, but nevertheless represents real transfers"²⁸.

A very interesting article of Carlos Gasperin and Ivana Doporto Miguez highlights the cumulative effect of coupled and decoupled subsidies and their cross-subsidisation, including in the case of livestock feed: "The farmer may receive payments for livestock – the direct subsidy – and buy feed from producers who have received subsidies for their production (the price of feed may therefore be lower than in a situation without this support), the indirect subsidy. An example of the third type can also be the case of livestock and feed, but from the perspective of the feed producer: he benefits from the support for feed production – the direct subsidy – and also from the increased demand for the producer's product due to the subsidies given to users of that product as feed, the indirect subsidy"²⁹. They continue: "This analysis can become more complex if a farmer produces different goods, where the type of subsidy for each product may vary depending on the category of the box and the degree of distortion. In this case, the transfer of subsidies is between products on the same farm, i.e. part of the payments for one product may be transferred to cover the costs of another product. Another possible transfer situation is the case of a producer of two commodities – one subsidized and one unsubsidized – who share certain inputs, such as land and machinery: payments for the first commodity can be used to pay for the cost of common inputs, thereby reducing the costs of producing unsubsidized output".

²⁸ <https://www.oecd.org/agriculture/topics/agricultural-policy-monitoring-and-evaluation/documents/producer-support-estimates-manual.pdf>

²⁹ Carlos Gasperin and Ivana Doporto Miguez, *Green box subsidies and trade-distorting support: is there a cumulative impact?* In Ricardo Melendez Ortiz, Christophe Bellmann and Jonathan Hepburn, *Agricultural subsidies in the WTO green box*, Cambridge University Press, 2009, pp.239-57.

3.3.4 – Reducing feed costs was a major objective of the 1992 and 1999 CAP reforms

This objective is explicitly claimed by the European Commission: *"The 1992 CAP reform aimed to make cereals produced on the Community and world markets more competitive both internally and externally. During the 1980s and early 1990s, the market share of local cereals on the internal feed market has been steadily declining in favour of imported cereal substitutes"*³⁰. This strategy has been successful since *"EU cereal consumption in the feed sector and processing industry in EUR-12 increased by about 20 million tonnes between 1992-93 and 1996-97. This increase has to be compared with the previous trend of an annual decrease of 2 million tonnes during the period 1985-1992. In the compound feedingstuffs sector, the incorporation rate of cereals increased from 35% before the reform to 44% in 1996/97, an increase of 11 million tonnes. On-farm use also increased sharply from 45 million tonnes in 1992/93 to 50 million tonnes in 1996/97"*³¹. The increase in EU cereal production, almost entirely attributable to feed grains, reached 33.6 million tonnes between 1992 and 2002. Since direct aid to COPs, particularly decoupled direct aid, has had the triple effect of increasing production, lowering prices and reducing the volume of imported feed, it is difficult to deny that it has been an aid coupled to production and to the price of livestock products.

The contribution of the University of Bonn on the ex-ante evaluation of Agenda 2000 for the European Commission confirms the value of further reducing intervention prices: *"A further reduction in intervention prices for cereals increases the chances of exporting without subsidies. Therefore, the EU can waive mandatory set-aside requirements without conflicting with the limits of WTO obligations on export subsidies. The EU will be able to export certain cereals without subsidies for most of the time and will be able to participate in the growing demand on the world market. In addition, reducing prices of cereals and other feed close to world market prices will be an important step to increase the competitiveness of EU pig and poultry production"*³².

In 2002, the Commission again formally recognised that *"the shift to direct aids in the cereals sector has also created new cross-sectoral distortions. The average 45 % drop in the EU intervention price for cereals over the 1990s has led to a fall in the price of feed produced in the EU. In industries where feed is an important cost element, this fall in EU cereal prices has significantly improved the competitiveness of EU producers. For example, in the poultry sector, where feed costs account for up to 70 % of production costs, lower cereal prices have led to significant savings. This in turn has contributed to the expansion of EU poultry meat production and exports. Indeed, the savings achieved have been such that, despite the increase in EU poultry meat exports, the level of export refunds in the poultry meat sector has fallen considerably during the 1990s"*³³. This quote is wonderful because the EC explicitly recognises three things: (1) first, that direct aids have created distortions; (2) that the increased competitiveness they have conferred on poultry has favoured exports; (3) that domestic direct aids have replaced export refunds.

³⁰ EU Official Journal C 192, 08/07/1999 p. 0001 – 0034.

³¹ European Commission, *Situation and outlook: cereals, oilseeds and protein crops*, Agenda 2000, July 1997.

³² Wilhelm Henrichsmeyer and Heinz Peter Witzke, *Overall evaluation of the Agenda 2000 CAP reform*, Institute for Agricultural Policy (IAP), University of Bonn, in European Commission, *Evaluation report of the Agenda 2000*, February 2000 (see Commission's website).

³³ European Commission, *The CAP dimension*, 30-04-2002. I can transmit this wonderful document on request as it is no longer available on the European Commission website.

Indeed, the CAP has always linked the CMOs (common market organisations) for poultry and pigmeat to the CMO for cereals. Prior to the May 1992 CAP reform, for the CMOs on poultry and pigmeat, *"the legislation currently governing them - Council Regulations 2759/75 on poultry meat, 2771/75 on eggs and 2777/75 on pigmeat - has always been adopted in parallel with the legislation governing the common organisation of the market in cereals"*³⁴, poultry and pigmeat being considered as processed cereals, which implies that the variable import levies and export refunds for poultry and pigmeat were calculated on the basis of their theoretical cereal content. This close link was also used to calculate *"monetary compensatory payments for pig, poultry and eggs... from the compensatory amounts for the appropriate quantity of feed grain"*.

This close link between the CMOs for cereals and for poultry and pigmeat clearly proves that the reduction in cereal prices, compensated by direct aid to the COPs, was intended to make them a direct substitute for customs duties and export refunds on these meats. Consequently, direct aid to the COPs is as much a coupled subsidy as the customs duties and export refunds it replaced. This is why the widespread assertion by the Commission, the EU Member States and even most agricultural unions and NGOs – that the poultry and pork CMOs were not affected by the 1992 and 1999 CAP reforms – is clearly a lie.

It should be added that, according to the Agreement on Subsidies and Countervailing Measures (ASCM), feed subsidies are to be considered as input subsidies for livestock products in the same production chain, with a pass-through analysis.

3.3.5 - Feed subsidies have conferred a PS AMS to livestock products

The livestock feed section of the COPs conferred product-specific (PS) AMSs to the animal products that consumed these subsidised feeds. It should be remembered that as soon as a PS AMS reaches 5 % of the production value of the product, it loses its PS de minimis (PSdm) and is referred to as a PS AMS which is added to the total current AMS and the production value of that product is added to the production value of all products with PS AMS, as confirmed by H. de Gorter and J. Daniel Cook³⁵. SOL (formerly Solidarité) showed that the value of Community production of all products notified with a PS AMS averaged €122.922 billion over the base period 1995-2000, so that, for a total production value (VOP) of €222.577 billion, the production value of products without a PS AMS amounted to €99.655 billion and the authorised PSdm support, i.e. 5 % of this value, to €4.983 billion. Adding the value of production of animal products, oilseeds and protein crops to the already notified PS AMSs brings the value of production of products with a PS AMS to an average of €201.323 billion over the period 1995-2000, so that the average value of products without PS AMSs is reduced to €21.253 billion and the authorised PSdm support, at 5% of this value, is of €1.063 billion³⁶.

Furthermore, as €9.743bn of BB subsidies at COPs were transferred to the PS AMSs of animal products that consumed the COPs, the actual EU BB was only €11.145 billion on average over the base period instead of €20.888 billion.

³⁴ J.A. Usher, *Legal aspects of agriculture in the European Community*, Clarendon Press Oxford, 1988.

³⁵ http://siteresources.worldbank.org/INTRANETTRADE/Resources/239054-1126812419270/7.DomesticSupport_updated_on12Dec05.pdf

³⁶ Solidarité, *The EU minimal OTDS in the implementation period*, 18 July 2008: <https://www.sol-asso.fr/wp-content/uploads/2008/12/The-EU-minimal-OTDS-in-the-implementation-period-Solidarit%C3%A9-18-07-08.pdf>

As a result, the bound OTDS (Overall Trade-Distorting Domestic Support) for 1995-2000 becomes €90.496 billion [67.159 for FBTA (Final Bound Total AMS) + 11.129 (NPSdm) + 1.063 (PSdm) + 11.145 (BB)] instead of €110.305 billion according to Canada's simulations³⁷. Similarly, the value of US production of products with PS AMS in the base period 1995-2000 increases from \$49.734 billion (value of production of products reported with PS AMS) to \$106.987 billion (after adding the value of production of \$57.075 billion for all meats) so that the value of production of products without PS AMS falls to \$87.152 billion and the allowable PSdm support for the base period falls to \$4.372 billion. As a result, the authorized OTDS over the base period decreases from \$48.224 billion to \$42.875 billion³⁸.

SOL showed that EU feed subsidies, mostly hidden in decoupled SPS, were much higher in 2012 than in the US, at €14.740 billion, of which €3.260 billion was for beef, €5.360 billion for pigmeat, €3.680 billion for poultry and eggs and €2.441 billion for cow's milk.

SOL showed that EU feed subsidies, mainly hidden in decoupled SPS, were much higher in 2012 than in the EU, at €14.740bn, of which €3.260bn for beef, €5.360bn for pigmeat, €3.680bn for poultry and eggs and €2.441bn for cow's milk. A more recent conservative estimate shows that of the extra-EU28 exports of 5.449 Mt of dairy products in 2016 - or 30.2 Mt of milk equivalent - total subsidies reached €2.030bn, of which €513m was for animal feed (€17/t)³⁹. And feed subsidies included in EU28 dairy exports to the 4 regions of West Africa, SADC, CEMAC and EAC amounted to €54.7m in 2016 out of a total of €216.3m in dairy subsidies.

In conclusion, the so-called decoupled subsidies have been a legal artifice allowing developed countries to notify a maximum of subsidies in the BV. To the extent that BV subsidies can increase without limit and benefit exports, their trade-distorting effect, including dumping, is greater than that of explicit export subsidies that have been eliminated.

The best critics of the EU's alleged decoupled subsidies come from Peter Einarsson and Michel Jacquot. According to Peter Einarsson (2000), *"All forms of direct payments function as a dumping mechanism to the extent that the production supported results in products for export. When border protection is reduced and replaced with direct payments (as required by the AoA), the result is lower prices across the board. The gap between the protected internal price level and world market prices is reduced, and the need for export subsidies thus reduced correspondingly (also in conformity with the AoA). But for the importing country, there is no difference. Whether the export price is artificially lowered by export subsidies or by direct payments, the dumping effect is the same... Within the EU, the price level for virtually all agricultural products is now well below the real cost of production. This is not an accidental, but a deliberate consequence of the requirements of the Agreement on Agriculture (reduction*

³⁷ On 22 May 2006 Canada conducted simulations, endorsed by the US, the EU and most WTO Members, on the possibilities of the US, the EU and Japan to meet their offers to reduce their Final Bound Total AMS (FBTA) and OTDS (Overall Trade-Distorting Domestic Support), simulations which Solidarity has denounced as highly erroneous, in particular by considering that de minimis PS support (PSdm) corresponds to 5% of the value of total production, which only applies to non product-specific (NPS) de minimis according to the AoA Article 6. Read To unlock the agricultural negotiations the United States must first respect WTO rules, Solidarity, 8th February 2007: https://www.wto.org/english/forums_e/ngo_e/posp65_solidarite_e.pdf

³⁸ Solidarité, *The US allowed OTDS of the base period cannot be cut by more than 52.7%*, 13 July 2008: <https://www.sol-asso.fr/wp-content/uploads/2008/12/The-US-allowed-OTDS-in-the-base-period-cannot-be-cut-by-more-than-51.6-1.pdf>

³⁹ *L'énorme dumping des produits laitiers extra-UE et vers les APE d'AO, SADC, CEMAC et EAC en 2016*, SOL, 10 avril 2017 : <https://www.sol-asso.fr/wp-content/uploads/2017/01/L%C3%A9norme-dumping-des-produits-laitiers-extra-UE-et-vers-les-APE-en-2016-10-avril-2017.pdf>

of border protection). Direct aids are a necessary complement to bridge the gap between the price level allowed by the AoA and the real cost of food production. The situation in the US is very similar, although production costs are lower and the gap with prices is therefore smaller. As virtually all agricultural production both in the USA and the EU now profits from some measure of direct payments, practically everything exported from those countries involves some level of dumping. In many of the major commodities, this translates to half the world market or more. Thus, a prohibition of dumping which included also the effects of direct payments would have enormous repercussions. Both in the EU and the USA it would aggravate surplus production problems, although in partly different ways... Export of a product benefiting from any combination of public support (direct payments, free public services, or other) would be allowed only if the exporting country applied an export levy equalling the value of that support⁴⁰.

For Michel Jacquot, former director of the EAGGF (European Agricultural Guidance and Guarantee Fund) who managed the European agriculture budget from 1987 to 1997, and member of the French Academy of Agriculture : "All these people are still living under the simplistic regime that was sold to them in 1992 (notably by the Commission) when the WTO agreement on agriculture was concluded, according to which there were direct export subsidies (in "refund" jargon) and direct income support, which also had to be reduced unless decoupled. This scheme was not based on anything fair: how can one imagine that a subsidy (SPS or BPS) does not affect exports (or imports)? Shit! Total blindness! It took the WTO Appellate Body on Sugar (April 2005) at the EEC level... basically writing that "any payment financed under a government measure in the form of resource transfers through cross-subsidies is an export subsidy" to open their eyes. But this, the Commission has never openly said, decoupling has been presented - and continues to be presented - as the magic potion to say and affirm, as Le Foll [former French agriculture minister and former member of the European Parliament's agriculture committee] used to say, that "we"... no longer subsidise exports. Until when are we going to continue to lie? When will we know that European negotiators have been misled by their American colleagues? When will the moment of truth come?"⁴¹.

IV - The necessary radical reform of the AoA based on food sovereignty

It is clear that a radical reform of the agricultural policies of the North, including the EU, and the South, including SSA, based on the common objective of food sovereignty without dumping, is needed to achieve the Sustainable Development Goals (SDGs) and the Paris Climate Agreement. By implementing a strategy based on 5 common pillars in the EU and SSA: 1) a major reform of access to agricultural land, which is part of the "commons"; 2) guaranteeing stable and remunerative prices based on variable levies (as in the CAP from 1962 to 1992) taking into account the high variability of world prices in dollars accentuated by those of exchange rates, but with a capped distribution of production rights by asset to avoid the concentration of farms and create a maximum of agricultural jobs; 3) promoting agroecological farming systems; 4) compensating for the inevitable rise in food prices for disadvantaged households through massive domestic food aid; and 5) changing their eating habits.

But the last, most important and delicate obstacle to recognise in order to refound the CAP on food sovereignty without dumping is the uncomfortable position of agricultural unions, including the Confédération Paysanne, which cannot denounce the dumping of EU food

⁴⁰ https://iatp.org/files/Agricultural_Trade_Policy_As_If_Food_Security_.pdf

⁴¹ <http://blogs.mediapart.fr/blog/j-berthelot/260514/les-subventions-de-lue-lexportation-suite>

exports, as this would imply a sharp drop in agricultural production and prices, a position that would greatly reduce the votes obtained in the elections to the Chambers of Agriculture, and thus also the public subsidies for their activities.

Although the Confédération Paysanne is a member of the Platform "For another CAP" which advocated the "Reimbursement of CAP export subsidies outside the EU"⁴² – an objective shared by the MEPs of the GREENS and GUE and by the European Committee of the Regions –, nothing concrete has been proposed to put it into practice due to the discreet resistance of the Confédération Paysanne. This is why the report of the webinar organised on 7 July 2020 by Geneviève Savigny under the auspices of the European Coordination Via Campesina (CEVC) on the theme "*Food sovereignty and the Farm to Fork strategy: building a fairer and more equitable agricultural model in the EU*" had to limit itself to noting that "*it is also true that European exports have a very negative impact on local farmers in third countries*"⁴³, without any further comment on the need and the way to put an end to it. For it is politically almost impossible for an agricultural union to "sell" this proposal to farmers in order to have a minimum number of votes in the elections to the Chambers of Agriculture, on which public subsidies for their operation are also based, unless it presents them with a radical reform of the CAP where the bulk of farm income would be based, as before 1993, on remunerative prices, a huge step that the Confédération Paysanne has not yet decided to take. However, it would be all the more urgent for it to make up its mind because since January 2021 it has housed the headquarters of Via Campesina International for 10 years.

Yet, this is entirely possible and necessary, independently of the need to stop the dumping that is killing small farmers in the South, particularly in Africa. Indeed:

1) The CAP hoped for by the Confédération Paysanne will increase the costs of agricultural production and reduce agricultural income per worker:

- a) if we stop importing soya from the Americas, which destroys the environment and the health of producers by replacing it with European oil-protein crops with lower yields and higher production costs;
- b) if we stop using chemical pesticides and fertilisers by generalising agroecological production systems, particularly organic ones, which have lower yields;
- (c) if animal welfare is respected by eliminating factory farming, which will increase production costs;
- (d) if direct aid is based on farm employment and no longer on hectares, which will reduce the concentration of farms and economies of scale, reducing unit production costs;
- e) while a strong increase in agricultural assets is also desired to revitalise the countryside and favour short circuits, which implies ensuring them an attractive income;
- f) while the production of animal products will fall sharply in order to protect both the environment and consumer health, as recommended by Afterres2050 ;
- g) as the CAP Budget 2021-27 will not increase but will decrease in purchasing power in line with inflation, agricultural income per worker will fall sharply;
- h) a fortiori if we stop exporting subsidised products, in fact all products since decoupled aids are attributable to all;
- i) all this requires a radical overhaul of the CAP by basing agricultural income on remunerative and stable prices as before 1993 through variable levies, but of course without export refunds and with a fair sharing of production rights per full-time farmer equivalent.

⁴² <https://pouruneautrepaac.eu/notre-vision/nos-12-priorites-pour-la-paac-post-2020/>

⁴³ <https://www.eurovia.org/fr/rapport-et-video-du-webinaire-la-souverainete-alimentaire-et-la-strategie-de-la-ferme-a-la-fourchette-construire-un-modele-agricole-plus-juste-et-plus-equitable-dans-lue/>

2) **The desired CAP will require the increase in consumer food prices**, which, in addition to the fact that the increase in agricultural prices will have to be passed on to consumers to a large extent independently of short circuits, will also be necessary:

- a) to reduce the consumption of animal products for health reasons, because without price increases there will be no incentive to do so;
- b) to combat obesity and overweight;
- c) to reduce food wastage.

3) **Hence SOL's proposal to programme a gradual increase in agricultural prices** of 1.78% per year over 8 years to stabilise agricultural income at the 2018 level without subsidies, with the increase in the share of the household food budget in GDP rising from 11.1% in 2018 to 12.76% in 2026, after which this share would no longer increase: for details of the calculations see *Limitations of the Agriculture Strategies' Proposals on Reform of the CQAP 2021-27*⁴⁴. Of course these calculations can be discussed and reviewed, this is only a first approach.

4) **But this rise in food prices would not weigh on the EU's disadvantaged population**, thanks to the recycling of a large share of the CAP budget to consumers:

- a) the reduction in CAP budget will benefit consumer-taxpayers, who will pay less tax;
- b) the social minima allowances will be increased;
- c) school and community canteens, or even company canteens, will be subsidised using local food products of agroecological quality (organic for school canteens).
- d) A comprehensive food aid programme will be established, based on the US food aid programme, but at a much lower level, since the US does not have a generalised social security system that exists at various levels in most EU countries. It will be possible to use vouchers to buy food products from short circuits of EU origin in approved shops.

V - The limits of the BASTA campaign of the French Platform's for another CAP

The communication campaign from 14 January to 14 April 2021 of the French Platform for another CAP (PFAP)⁴⁵, called "*BASTA, the CAP profiteers*", aims to "*denounce five agro-food giants which benefit from the CAP: Bigard, Avril, Savéol, Tereos and Agral symbolise the actors of the agrobusiness acting against the general interest, but that our taxes, via the CAP, nevertheless help them to prosper*".

5.1 - The limits of the arguments on the misappropriation of direct agricultural subsidies by agri-food companies to the detriment of farmers' income

This is a very informative argument that rightly denounces the giants of the French agri-food complex for the below-cost prices paid to farmers and the high prices at which they sell inputs to them⁴⁶. Nevertheless, this argument gives rise to shortcuts that can lead to untruths. Although direct aid, both decoupled and coupled, is paid into farmers' bank accounts, the BASTA campaign suggests that most if not all of it (€9 bn in France and €61.6bn in the EU28 in 2019 excluding state aid, see point 2.2 above) is recovered by the under-prices paid to farmers downstream of production and the over-prices received on inputs delivered upstream.

⁴⁴ <https://www.sol-asso.fr/wp-content/uploads/2020/01/Limitations-of-the-Agriculture-Strategies-Proposals-on-Reform-of-the-CAP-2021-27-and-counter-proposals-22-April-2020.pdf>

⁴⁵ <https://pouruneautreapac.eu/>

⁴⁶ https://basta.pouruneautreapac.fr/wp-content/uploads/2021/01/Argumentaire_BASTA.pdf

For example, when it is written that APRIL *"Giant of cereals and oil-protein crops, the Avril group indirectly benefits from the most massive CAP subsidies: decoupled payments. Among the approximately 2 million hectares of rapeseed and sunflower cultivation in France, 48% is transformed by Avril⁶⁶, which corresponds to approximately 130.4 million euros of annual aid for the productions collected and transformed by the group⁶⁷. Owner of the Lesieur oil brand, the group thus produces a market leading oil with a large amount of public aid"*. APRIL surely means the decoupled aid received by its oil-protein crop farmers and not the subsidies it had received itself. At least it is mentioned on page 32 of its 2019 annual report that APRIL received €6 million in subsidies⁴⁷. This observation that APRIL indirectly benefits from the massive decoupled subsidies paid to farmers also applies to all BASTA and other French agri-food companies. The PFAP's argument is therefore ambiguous, since it recognises that it is the importance of the aid, particularly the decoupled aid, received by farmers, which enables the BASTAs and others to be competitive on the domestic and external markets.

After all, this is what has been sought by the various CAP reforms since 1992: to increase the competitiveness of EU raw and processed agricultural products by reducing the prices paid to farmers and compensating them with direct payments. But it seems that all the farm unions, and even more so the FNSEA and Coordination Rurale, are comparing the prices received with their production costs, forgetting the non-price-related decoupled aids. Of course these decoupled payments are independent of the nature of current production, but it is not too difficult for each farmer to know for which products he initially received his decoupled aid, even though its level has been subject to certain reductions in recent years, partially compensated over the last five years by new coupled aid for many products.

For dairy products, the argument on AGRIAL contains several untruths, first of all on the importance of exports during the period of milk quotas: *"In 2015, the EU ended milk quotas, a production regulation system, created thirty years earlier, which until then had made it possible to limit surpluses and concentrate on domestic needs. The abandonment of this mechanism for controlling production volumes allowed the EU to aim for milk production in excess of domestic needs, with the aim of turning to the markets of emerging countries such as China"*. No, milk quotas were set as early as 1984 at a level about 10% higher than the needs of the EU's domestic market, so that milk surpluses have always had to be exported with huge export refunds, which rose from €3.3 billion in 1988 to €1.3 billion in 2003, then plummeted to €0.2 billion in 2010 and disappeared.

Then there is an untruth that applies to all basic food products, even if it is presented here about AGRIAL: *"even European farmers are not winners in this situation, forced on the one hand to align their prices with world prices since the almost complete abandonment of protection tools at European borders"*. It is not true, particularly for dairy products, that there is no border protection when the EU has some of the highest tariffs in the world, so that its only imports are linked to bilateral free trade agreements (FTAs) that open up tariff rate quotas (TRQs) to a few countries or even fully liberalise trade in certain products so that, without these exceptions, the EU would import virtually no dairy products. The main exception is the FTA with Switzerland, which has fully liberalised trade in cheese since 2008 so that 86.5 % of EU cheese imports in 2019 came from Switzerland. While exports accounted for 8.3 % of EU27 production in 2019 (production for EU28 is not available) for cheese, 6.9 % for butter and 38.3 % for powders (excluding fat-refatted powder), EU27 imports accounted for only 0.21 % of cheese production in 2019, 3.18 % of butter production and 3.27 % of milk powder production (excluding re-

⁴⁷ https://www.groupeavril.com/sites/default/files/rapport_annuel_groupe_avril_2019.pdf

fattened powder), as non-TRQ tariffs are a disincentive. In 2019, they were on average for the EU28 of 22.5 % on cheese, 47.3 % on butter and 33.4 % on total milk powder (of which 28.7 % on skimmed milk powder and 40.7 % on fat powder), 71 % on poultry meat and preparations, 20.64 % on pig meat and preparations and 15.79 % on beef and preparations. For France, Jean-Christophe Bureau, Lionel Fontagné and Sébastien Jean admit that *"In 2013, this aid represents 84% of agricultural income for an average farm. Livestock farming is particularly dependent on it, with the various aids representing 89% of income in the dairy sector and 169% of income in the beef sector. In extreme cases, a typical sheep farm in the Alps receives around €59,000 in public transfers to generate a net income of less than €19,000"*⁴⁸. And the French Ministry of Agriculture recognises *"a high rate of income dependency on farm subsidies for certain sectors: over the period 2007-2017, this rate averages 93% for the dairy cattle sector, 152% for the sheep/goat sector, and 195% for the suckler cattle sector"*⁴⁹.

The latest report of the WTO Secretariat on the review of the EU's trade policy in December 2019 confirms that *"The incidence of high tariffs is much higher in the agricultural sector than in the non-agricultural sector. Almost all tariffs above 20 per cent are applied in the agricultural sector (Figure 3.1). The highest tariff rates in agriculture are concentrated in the sectors of animals and animal products (average rate of 19%), dairy products (32.3%), sugar and confectionery (27%), cereals and preparations (17.2%)".* The dairy sector continues to be one of the sectors with the highest levels of protection, with high tariffs, all of which are non-ad valorem and no duty-free lines (Table 3.4)"⁵⁰. The maximum rate for some tariff lines is 160.3% for dairy products, 116.6% for meat and preparations, 148.2% for sugar and preparations and 99.6% for cereals and preparations.

The high tariffs on basic food products are far from being specific to the EU. For example, those on poultry meat in ad valorem equivalent in 2019 were 145 % in Iceland, 95.9 % in Cyprus (Turkish part), 85.5 % in Morocco, 74.4 % in Canada⁵¹, 75 % in Mexico, 170 % in Israel, 89.2 % in Norway (96.4 % in 2020)⁵².

In addition, the total protection must add to the ad valorem (AV) customs duty (CD) the ad valorem equivalent (AVE) of the subsidies⁵³. The WTO report on *"World Trade in 2012"*⁵⁴ quotes the 2008 work of Kee et al. that *"For 36 percent of the tariff lines subject to domestic agricultural support, the AVE of that support is higher than the tariff.... The countries with the highest AVEs of domestic support for agriculture are EU members"*. Imports of low and medium quality wheat from the EU28, excluding the QT of 3.112 million tonnes (Mt), amounted in 2016 to 277,576 tonnes subject to a specific DD of 95 euros per tonne (€/t) which, for a CIF (costs, insurance, freight) price of 195 €/t, corresponded to an AVE of 48.7 %. The EU28 exported 2,399 Mt of wheat in WA in 2016 (excluding wheat included in processed cereal products) at a FOB (free on board) price of 173.1 €/t with a subsidy of 60.4 €/t, corresponding

⁴⁸ <http://www.cae-eco.fr/IMG/pdf/cae-note027v2.pdf>

⁴⁹ PAC post 2020 : projet de diagnostic en vue du futur Plan Stratégique National | Ministère de l'Agriculture et de l'Alimentation

⁵⁰ https://www.wto.org/english/tratop_e/tpr_e/s395_e.pdf

⁵¹ <https://oec.world/en/profile/hs92/poultry-meat?redirect=true> <https://oec.world/en/profile/hs92/poultry-meat?redirect=true>

⁵² Pour ces 3 pays OMC : <http://tao.wto.org/report/TariffLines.aspx>

⁵³ <https://www.sol-asso.fr/wp-content/uploads/2019/01/Des-droits-de-douane-au-taux-de-protection-agricole-total-cas-des-relations-UE-AO-SOL-14-02-18.pdf>

⁵⁴ https://www.wto.org/french/res_f/booksp_f/anrep_f/world_trade_report12_f.pdf

to a subsidy (or dumping) rate of 34.9 %⁵⁵. The total protection rate in AVE was therefore 73.6%. This compares with the 5 % of the ECOWAS Common External Tariff (CET), which will be reduced to 0 in the IEPAs (IEPAi) of Côte d'Ivoire (CI) and Ghana.

Exports of milk powder (lean + fat) in milk equivalent from the EU28 to the WA in 2019 benefited from an average subsidy of 67.2 €/t corresponding to a dumping rate of 24.6% (based on the FOB value). As the AVE of the MFN specific DD (excluding TQ) on EU28 imports was 74.6%, the total protection rate was therefore 99.2%. This compares, as for wheat, to the 5% CET and EPAi of CI and Ghana on milk powder, which will also be reduced to 0 upon the start of liberalisation. Similarly, the subsidy per tonne of liquid condensed milk (codes 04021019 and 04022118) was identical in milk equivalent but the specific SD AVE was 98.7%, giving a total protection rate of 127.4%.

In other words, the low milk prices received by EU farmers, including French farmers, have nothing to do with a lack of protection but are due to the expansion of production which, for lack of sufficient outlets outside the EU, remained on the internal market where they depressed prices.

5.2 - The misappropriation by agro-industries of part of the direct agricultural aid does not change the reality of export dumping ruining the poor farmers in the South.

Although the very high levels of direct payments to EU farmers are indirectly largely misappropriated by the EU multinationals upstream and downstream of the agro-industrial complex, for farmers and agribusinesses in the South, this is ultimately only a problem of internal EU power relations but does not change the massive dumping they suffer from all EU agricultural actors since EU agricultural exports are made at prices far below the average total cost of production without subsidies, which is the definition of dumping by the WTO Appellate Body in December 2001 and December 2002 in the Canadian Dairy case.

The BASTA argument is thus not free from several contradictions. Admittedly, the first chapter (on Bigard) emphasises that the current CAP is *"an unsustainable model, financed by European taxpayers and which undermines the economy of the countries of the South"* and that, on Tereos, *"In 2018, the first year without quotas, Tereos transformed 30% more than the previous year, a record increase, and marketed internationally 40% more than the previous year"*. The most explicit argument is written on Agrial, but it remains insufficient: *"Putting an end to exports subsidised by CAP subsidies would make it possible to put an end to the nuisance exerted on the peasantry of the Southern countries... Today, if there is no longer any "export refund" in the CAP, the current subsidies, and notably the decoupled payments, still contribute to artificially lowering the price of European agricultural products on the international markets. It is therefore necessary to reestablish the true price of European production and thus to put an end to the unfair competition that it exerts on local production in the South. The EU must therefore abandon the export vocation of European agriculture by ceasing to support the export of European agricultural products to the countries of the South through the CMO's promotion programmes. In Europe, it must also strengthen the management of overproduction through mechanisms for anticipating overproduction, regulating production and markets and preventing crises, so that it no longer has recourse to private storage aid"*.

⁵⁵ *The subsidies to the EU exports of cereal products to West Africa in 2015 and 2016*, SOL, March 17, 2017, <https://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b-2/>

While this objective is excellent, the argument does not explain how to achieve it, given that the drop in exports will reduce the income of French (and European) farmers, especially since a better distribution of aid in proportion to farm employments rather than hectares and its positive effects on the environment and animal welfare will significantly increase production costs. Moreover, it is not because this aid would better respect these criteria of environmental and social sustainability for the EU that the beneficiary products would stop being exported without dumping, i.e. at prices below the average total production cost without subsidies, even if these subsidies would be beneficial within France and the EU.

Conclusion

The denunciation of the dysfunction of the WTO since its creation in 1995 is justified, but this Open Letter misses its target, which should not be the WTO as an institution, but the stranglehold on it by its most powerful Members, led by the EU and the US, who have shaped its rules and agenda while violating those that are against their interests, including the rulings of the Appellate Body including domestic subsidies in the assessment of dumping, to the detriment of the majority of Members, those of developing countries.

Although innovative, Laurence Roudart's proposals⁶ to refashion the regulation of world agricultural trade on "*large common agricultural markets comprising countries where the labour productivity levels of the majority of farmers are close*" do not seem realistic, especially since she stresses "*the collusion between States and transnational agri-food corporations, the latter having profit and not security of food supply as their objective*". But then how would conflicts of interest between rich and poor countries be regulated in the absence of a multilateral organisation that can only be a radically renewed WTO? While her plea for agricultural protectionism is quite right, she seems to forget that while developed countries with few agricultural farmers and rich countries in the South could continue to protect themselves from cheap imports, poor countries with a still very large active agricultural population could not if a radically renewed WTO did not prohibit export dumping based on domestic agricultural subsidies?

A radical overhaul of the WTO is both necessary and possible⁵⁶ if its roots are identified and denounced, including in Articles VI and XVI of the GATT, and priority should be given to the overhaul of the Agreement on Agriculture (AoA).

But the EU has a huge responsibility for this, as it is the main obstacle to the inclusion of domestic subsidies in the dumping of agricultural exports. Since the European farmers' unions, and in particular the French, the leading agricultural country in the EU, are trapped by the fact that it is almost impossible for them to denounce these domestic subsidies that constitute the bulk of their income, it is clearly up to the other components of civil society and national and European parliamentarians to assume their responsibilities by proposing a radical overhaul of the CAP in harmony with a no less radical overhaul of the WTO and of bilateral and plurilateral free trade agreements.

⁵⁶ <https://www.sol-asso.fr/wp-content/uploads/2020/01/Rebuilding-the-WTO-for-a-sustainable-global-development-J.-Berthelot-July-12-2020.pdf>; *AGREEMENT ON AGRICULTURE AND FOOD*, SOL, January 22, <https://www.sol-asso.fr/wp-content/uploads/2019/01/Agreement-on-Agriculture-and-Food-AoAF-SOLs-proposal-of-22-January-2019.pdf>