

WTO Public Forum 2018

APAC-ROPPA-SOL

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Taking seriously the WTO rules on agricultural domestic subsidies to allow Sub-Saharan Africa to reach the SDG-2 in 2030

The WTO rules and Appellate Body's rulings on the dumping impact of agricultural domestic subsidies

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Reaching SDG-2 on ending hunger by 2030 is a formidable challenge for SSA

Sub-Saharan Africa (SSA) counts in 2017 28.8% of the world undernourished, and their number in West Africa (WA) has risen by 15.2% from 2014 to 2017

SSA faces treble challenge of population explosion, climate change, food deficit

WA population has multiplied by 2.2 from 2017 (372 M) to 2050 (810 M) when that of EU27 (without UK) would be at 428 M. WA will exceed EU27 in 2023

Without a radical and rapid conversion to agroecological farming, a 2° rise in temperature would decrease African agricultural production by 30% (AfricaInteract)

Excluding trade in coffee-cocoa-tea-spices – not staple foods and mainly exported – SSA food deficit was multiplied by 10 from 2000 (\$1.5 bn) to 2016 (\$15 bn) and that of WA by 5.5 (from \$1.5 bn to \$7.9 bn)

But WA food deficit is largely due to the highly subsidized imported food, especially from the EU, combined with low agricultural tariffs

Subsidies to EU28 2017 exports to WA: €200 M for 3.3 Mt of cereals, €191 M for 2,7 Mt milk equivalent of dairy, €173M to meats & preparations in 2016, of which €1.8 M on bovine meat, €75.5M on poultry-eggs, €15.2 M on pig meat

In 2016 WA tariffs on basic staples are at 5% on cereals (10% on rice) vs 95 €/t for EU above TRQ of medium-low quality wheat (48.7% ad valorem equiv. AVE), at 5% also on milk powder in WA vs 74.6% in EU AVE above TRQ. These tariffs will fall at zero in Côte d'Ivoire (CI) & Ghana interim EPAs (iEPAs)

EU tariff was of 54.2% AVE in 2016 on poultry offal and 116% on beef offal vs 35% in ECOWAS and 20% in CI and Ghana iEPAs

As SSA RECs (Regional Economic Communities) are not WTO Members, their CET (common external tariff) have no bound duties so that they cannot raise their applied duties

The strong bias against DCs in the GATT definition of dumping

GATT Art. 6: no dumping if a product is exported at its "normal value", i.e. at its domestic price, when "*decisions of the firm regarding prices, costs and inputs are made in response to market signals reflecting supply and demand, and without significant state interference, and costs of major inputs... reflect market values*"

EU & US agricultural prices have nothing to do with "*market prices without significant interference from the State*" as the reforms of the CAP and Farm Bills from the 1990s have sharply reduced guaranteed prices by offsetting them with direct aids, first coupled (including export subsidies), then mostly decoupled

DG Roberto Azevedo on 15/12/2015: "*The elimination of agricultural export subsidies is particularly significant... Today's decision tackles the issue once for all*". This statement shows that he ignores the WTO rules and Appellate Body rulings

WTO rules show that agricultural domestic subsidies can be sued for dumping

The EU has refused to deal with domestic subsidies in all FTAs, of which EPAs, claiming that this issue can only be debated at the WTO where it refuses to change the rules, claiming that, besides, its subsidies being decoupled from production and notified in the WTO green box, they have no dumping impact

If the Agreement on Agriculture (AoA) restricts export subsidies it has no provision on domestic subsidies. Only Article 13 (Due Restraint or "Peace Clause") provides that Annex 2 subsidies, allegedly non trade distorting (of which "decoupled income support"), were non actionable up to 2003, but they could have been sued since 2004 under the Agreement on Subsidies and Countervailing Measures (ASCM)

WTO rules show that agricultural domestic subsidies can be sued for dumping

A fortiori all agricultural domestic subsidies causing adverse effects to another WTO Member are actionable under ASCM

AoA article 6.2 exempts from reduction investment and input subsidies to poor farmers of developing countries (DCs), not farmers of developed countries. Yet they don't notify them in amber box, particularly the largest ones, to feedstuffs

On decoupling, Michel Jacquot, former Director of EAGGF (European Agricultural Guidance and Guarantee Fund) wrote: "*This scheme was not based on anything just: how can one imagine that a subsidy (SPS, BPS) does not affect exports... Total Blindness!...Up to when will we continue to lie?...When is the hour of truth?*"

The US imposition of antidumping and antisubsidies duties on 25 July 2018 on imports of table olives from Spain shows that the hour of truth has come

For Appellate Body agricultural domestic subsidies have a dumping impact

The Appellate Body (AB) departed 4 times from the GATT definition of dumping:

For the AB, dumping occurs when products are exported at a price lower than the average total national production cost without subsidies (Dairy products of Canada case of December 2001 & 2002)

In the EU Sugar case of April 2005 the AB held that economic effects of WTO-consistent domestic support may "spill over" to benefit export production: "Such effects may arise... in circumstances where agricultural products result from a single line of production that does not distinguish between production destined for the domestic market and production destined for the export market"

As in the US cotton case of March 2005 the AB ruled that cotton payments could not be in the green box for lack of full production flexibility (interdiction to grow fruits & vegetables) the US has deleted its decoupled payments in 2014 Farm Bill. The same ruling would occur if the EU BPS is sued at the WTO

But the AB rulings have no legal precedent value for WTO Members

A real issue is that WTO Members do not feel bound by the rulings of the Dispute Settlement Body (DSB), even on appeal. Otherwise the panel on EU Sugar could have been avoided as the issue was the same as in Dairy Products of Canada, albeit for a different product

To the contrary the judges of panels and AB must take into account the case law of previous panels and AB rulings when they judicate on similar cases (Ms. Yuejiao Chang, AB Member, at the Public Forum on 30 October 2015).

The US disagrees with this, quoting Article IX-2 of the WTO Agreement that "The Ministerial Conference and the General Council shall have the exclusive authority to adopt interpretations of this Agreement and of multilateral trade agreements"

Yet the creation of the AB in WTO was a response to inconsistent panel interpretations in the GATT era. As panel interpretations are subject to appeal, ultimately the Appellate Body can keep the jurisprudence consistent

Recommendations

Complement the WTO definition of dumping (no dumping when products are exported at domestic prices) by 'providing the reduction of domestic prices is not offset by domestic subsidies'

WTO Members should recognize a value of legal precedent to AB rulings

In the actual context of worsening climate change and hunger, particularly in SSA, WTO rules should be subordinated to UN rules on the environment and human rights. At least WTO should recognize an agricultural exception as de facto under GATT era to prioritize food sovereignty provided that all types of dumping, including through domestic subsidies, are excluded

Thanks for your attention

**To go deeper into the issue, download the following papers on SOL's website:
<https://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b-2018/>**

Lars Brink and David Orden at the rescue of the US claims that India and China have undernotified their market price support of rice and wheat, SOL, 7 September 2018

Analysis and impacts of the US complaint on the dumping of Spanish ripe table olives and on the future of the Common Agricultural Policy, SOL, 4 August 2018

Analyse et impacts de la plainte des Etats-Unis sur le dumping des olives de table espagnoles et sur l'avenir de la Politique Agricole Commune, SOL, 4 août 2018

The truth about the European Union's food deficit and the dumping of its food exports linked to its domestic subsidies, SOL, June 26, 2018

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

Reconciling the views on a permanent solution to the issue of public stockholding for food security purposes, SOL, 10 September 2017

European Parliament's hearing on the CAP and developing countries, Comments, SOL, 4 March 2018

Audition du Parlement européen sur la PAC et les pays en développement, Commentaires, SOL, 4 mars 2018

From customs duties to total agricultural protection: the case of the European Union-West Africa trade, SOL, 19 April 2018

Des droits de douane au taux de protection agricole total : le cas des échanges Union européenne-Afrique de l'Ouest, SOL, 14 février 2018

DID YOU SAY **FREE TRADE ?**

The headlong rush of the European Union (EU) in Free Trade Agreements reaches the paroxysm of absurdity when it imposes them on West Africa, whose per capita GDP is 21 times lower than its own. This Economic Partnership Agreement (EPA) would make West Africa lose 76% of its customs revenue on its imports from the EU and lead to a sharp rise in unemployment due to the loss of competitiveness of its companies including the informal sectors. Since Nigeria has confirmed that it will not sign the West Africa EPA, the interim EPAs of Côte d'Ivoire and Ghana therefore become definitive, which will deconstruct the regional integration process. The latter will be worsened by the premature signing, with support from the EU, of the Continental Free Trade Area by 13 of 16 West African States, all this based on a number of untruths from the European Commission, as identified in this book.



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Cover photo: 2 April 2014, Brussels, demonstration in front of the European Parliament on the occasion of the EU Summit of Heads of State and the African Union. These activists from the EU and Africa participated in a seminar on the «EPAs imposed by the EU instead of the trade policy that Africa needs». © Photo by Bourghard flge, Both ENDS.

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The Economic 'Partnership' Agreement
European Union - West Africa

Prefaces of Mamadou Cissokho and Ken Ukaoha



L'Harmattan

CONTENTS

Prefaces of Mamadou Cissokho and Ken Ukaoha

Introduction

I - The EPAs would have been imposed by the WTO rules

II – The interim EPAs of Côte d'Ivoire and Ghana torpedo the primary goal of regional integration in West Africa

III – The EU has refused to release 3 commissioned assessments on impact of WA EPA

IV – The untruths about the EU development aid to the West Africa EPA

V – The EU seems to ignore WA huge development challenges

VI – The pseudo-scientific evaluation of DG Trade on the impact of West Africa EPA

VII - A Realistic Methodology on the Impacts of the WA EPA and CI and Ghana interim EPAs

VIII – The EU is shooting itself in the foot by imposing EPAs

Conclusion

Acronyms