Comments to Claude Girod's article "For other trade rules"[1]

Jacques Berthelot (jacques.berthelot4@wanadoo.fr), SOL, December 22, 2020

I am reacting to the article by my friend Claude Girod, whose spirit and criticisms of the functioning of international agricultural markets I approve of, but I am obliged to say that she was caught in the trap of the European Union (EU, essentially the Commission), together with the United States (US), blaming all the dysfunctions of these markets on the WTO, even though they are the main source of them. Claude should not be angry with me, but she knows that we share the same fight and my criticisms are not aimed at her because it is the vast majority of public opinion, the media and political leaders who are duped by the European Commission and its Common Agricultural Policy (CAP). We forget to say that the WTO institution is an organization "managed by the Members", not by its Secretariat, including its Director, who cannot denounce the violation of the rules by the Members, especially the most developed ones, nor challenge the veracity of the data provided to the Secretariat to prepare its report on the "Trade Policy Review" of each Member. For, despite the 125 signatory states of the WTO in Marrakech in April 1994 – rising to 164 in 2020 and representing 98% of world agricultural trade in 2019 – the rules of the WTO were drawn up by the Western countries of the OECD, with the United States (US) and the EU in the lead, which continue to steer its orientations and timetables, by having them endorsed by a core group of Members participating in "green rooms" of up to 20 Members, the majority of which belong to the G20, including the major emerging countries and one or two representatives of the LDCs (Least Developed Countries) to give the illusion that they are taken int account.

Prior to this, the original sin of the CAP, the source of 90% of its productivist, budgetary and dumping dysfunctions, was to agree to duty free imports of animal feed during the Dillon Round (1961-62: soybean) and the Kennedy Round (1963-67: cassava, corn gluten feed), in exchange for the protection of its cereals, a concession that was then compulsorily extended to other exporters, particularly from Latin America. And his second mortal sin – especially for developing countries – was to co-write the rules of the Agreement on Agriculture (AoA) with the US at the end of the Uruguay Round, while at the same time radically reforming the CAP and the Farm Bill based on the criminal definition of dumping in the GATT (Agreement on Trade and Tariffs adopted in 1947), according to which there is no dumping as long as exports are made at the domestic market price. This definition led the EU and the US to sharply reduce their minimum guaranteed prices – *intervention prices* in the CAP, *loan rates* in the Farm Bill – by 35% in 1993 for EU cereals, with 15% more in 1999 – to bring them closer to world prices, compensating farmers with heavy subsidies, which the developing countries were unable to grant given the infinitely greater number of their agricultural farmers and their very limited budgetary means. The EU and the US thus ensured a strong competitiveness differential over the developing countries for many years, which is still valid today.

All the more so since they differentiated, without any scientific basis, between subsidies with more or less "trade-distorting" effects. This, for example, allows the EU to notify zero subsidy on its cotton exports, since one third is notified in the "blue box" of capped production and two thirds in the "green box" of decoupled subsidies alleged to have no impact on the level of production because they are independent of the choice of production. As a result, European (Greek and Spanish) cotton subsidies averaged $896 million per year between 2010 and 2018,

[1] Claude Girod, *Pour d'autres échanges commerciaux*, Campagnes Solidaires, n° 367, décembre 2020.

or $2,801 per tonne, a level 83% higher than the export price, the highest subsidy per tonne in the world and 6.6 times higher than the $426 per tonne in the US during the same period. In fact, the EU exported an average of 275,513 tonnes of cotton from 2010 to 2019, of which 433,233 tonnes in 2019, a third more than the main African exporters (Benin, Mali and Burkina Faso)[1].

It is wrong to say that it is the WTO that has imposed "free and undistorted competition" because this expression appears in a text of the European Commission of July 18, 1990 stating that "*The maintenance of a system of free and undistorted competition, in compliance with GATT rules, is one of the fundamental principles on which the Community was built*"[2] and reappears in the draft constitutional treaty submitted to the referendum of May 29, 2005, which was not adopted because of the no votes of France and the Netherlands. On the other hand, this concept is absent from both the GATT agreement and the one creating the WTO, even though they promoted free trade but did not oblige developing countries to reciprocate in Part IV of the GATT, added in 1964-65, an obligation for which the EU was condemned in 1980 by a GATT panel for its sugar refunds: "*The Communities have therefore not collaborated with other contracting parties to advance the principles and objectives set out in Article XXXVI, in accordance with the guidelines given in Article XXXVIII*"[3].

Similarly, Claude Girod is mistaken when he writes that "*The WTO prohibits favouring a country or group of countries in trade negotiations and the European Union must comply with its rules (to which it did not want or know how to oppose). It has thus had to renounce the Cotonou Agreements (which adopted the absence of customs duties on entering the European market) in order to adopt total reciprocity in the so-called Economic Partnership Agreements (EPAs) with African, Caribbean and Pacific countries*". On the contrary, it was the Cotonou Agreement of June 2000 that abolished the preferential agreements of the Lomé Conventions, and prescribed the signature of the EPAs before January 1, 2008, which was therefore not a constraint of the WTO. Under the pretext that the EU was condemned in the GATT to transform its preferential agreements with the ACP countries into free trade agreements – the Economic Partnership Agreements (EPAs) – on the complaint of Latin American banana-producing countries that they had to pay customs duties on their exports to the EU while those of the ACP countries were not taxed[4]. In fact, the EU did not want to contest this condemnation but chose on the contrary to impose the opening of ACP markets to its exports, since the GATT principle of non-discrimination only applies according to the geographical origin of its members but not according to their level of development, which is attested by the EU's Generalized System of Preferences (GSP) – authorized by the GATT in 1971 and immediately put in place by the EU – granting a reduction in customs duties to developing countries (DCs). However, the GDP per capita of Latin American banana exporting countries (especially Ecuador, Colombia, Peru) was 2.3 times higher than that of the 3 African banana exporting countries – Cameroon, Côte d'Ivoire, Ghana – in 1995 and 3.9 times higher in 2016. Moreover, in May 2000, the US also implemented AGOA (African Growth Opportunity Act), a preferential agreement without tariffs on exports to the US from sub-Saharan African countries, renewed in 2015 for 10 years with the consensus of WTO Members, including the EU.

To then say that the EPAs have resulted in 'full reciprocity' between the EU and ACP countries is the opposite of reality, since the EU has continued to import ACP exports duty-free since independence in the 1960s – with rare exceptions since 2008 for countries other than Least Developed Countries (LDCs) that refused to sign EPAs or interim EPAs such as Gabon in

Central Africa and Nigeria in West Africa – while the EPAs oblige them to remove tariffs on 80% of their imports from the EU. Then to say that "*The WTO granted a waiver to the 'least developed countries', the poorest countries, authorized to maintain tariffs, which are essential to their treasury. Today... this is no longer the case. South Africa in the "South" region and Nigeria in the "West" region, the continent's driving forces, cancel these safeguards*" is an untruth. While the WTO Agreement on Agriculture (AoA) has exempted LDCs from the obligation to reduce their import tariffs and domestic subsidies, it has not obliged developed countries to reduce tariffs on imports from LDCs, nor from DCs, even though the AoA states in its introduction that "*special and differential treatment for developing countries is an integral part of the negotiations*". It is therefore not the WTO that has been able to impose on developed countries not to tax their imports from LDCs, but it is the result of the EU's unilateral "*Everything But Arms*" Decision of 2001, a variant of the GSP supposedly more favorable for LDCs, even though it is true that the EPAs render this Decision null and void, supposedly to foster regional integration in Regional Economic Communities (such as ECOWAS in West Africa or SADC in Southern Africa), which would be undermined by several customs regimes in their trade relations with the EU. Far from accusing Nigeria of being complicit in the abolition of the EBA, it is fortunate that it still refuses to sign the West African regional EPA (in which Mauritania also participates) and thus saves EBA access for LDCs. Moreover, the European Commission refused the legal solution proposed on April 6, 2005 by the House of Commons to deduct from this 80% the share of imports from LDCs, which would have lowered to 32.7% the percentage to be liberalized in the West African EPA, showing clearly that the EU only objective is to open up the West African markets as much as possible[5].

In reality, this EBA Decision was not a gift to the LDCs, as The European Peasant Organization Via Campesina and ROPPA (Network of Peasant Organizations and Agricultural Producers of West Africa) felt in a joint press release of May 17, 2001: "*The EU's decision to open its agricultural market to LDC products without tariffs is the opposite of a solution for these countries. It is made more to justify the penetration of LDC markets by EU exporters than to give a real chance to LDC farmers to sell their products in Europe. The priorities of farmers and their families in LDCs is first to be able to produce for their families and then to have access to the domestic market, well before exporting. On the contrary, the European decision will only reinforce the profits of the big firms using the resources and labor of the LDCs for export crops to the EU. This will reduce the resources and labor devoted to food production for peasant and urban families in each country, thus increasing food insecurity*"[6].

This is indeed what has happened over the last 25 years: the LDCs' food trade deficit with the evolving EU (taking into account successive enlargements) has multiplied by 8.8 from 1995 ($3.1 billion) to 2019 ($27.4 billion), of which 9.8 for Asian LDCs and 7.7 for African LDCs. This represents a per capita food deficit multiplied by 4.9, since the population of the LDCs has increased by a factor of 1.78 over the past 25 years (from 580 million to 1.033 billion). It should be recalled that food trade, calculated according to the SITC (Standard International Trade Classification) nomenclature, takes into account fish and preparations but should not take into account tobacco (as UNCTAD, FAO and WTO wrongly do), nor of course all other non-food agricultural products. It should also be recalled that most of the LDCs' tropical food exports, which are very little processed, are already imported duty free by all European countries because they do not compete with their food products, such as mangoes, even if processed, or cashew nuts (bananas and sugar benefit from specific tariff regimes). In any case, despite the absence or low level of customs duties to be paid to the EU, exports are subject to strict sanitary or phytosanitary standards that are difficult to meet. In reality, it is only for exports of products in the textile-clothing sector that EBA has been able to benefit LDCs, which mainly concerns Bangladesh.

It is ambiguous to write that "*the free trade agreements being negotiated by the European Union are caught in an inflexible regulatory straitjacket*" as if this straitjacket were imposed by the WTO. In particular, it is wrong to write that the EU "*must grant equivalent import quotas to all countries*". The WTO only imposed on Member countries to maintain *current access* to their markets for their preferential imports existing in 1986-88 by setting up tariff quotas, with the customs duty within the quota being at most 32% of the customs duty above the quota. When this current access was less than 5% of the national consumption of the product during this period, a *minimum access* had to be opened to reach the 5% of the 1986-88 period in 2000 for the developed countries and in 2004 for the DCs and it is only this minimum access that had to be opened at the same rate to all Members, knowing that this offer did not imply the obligation to import if the exporting countries did not see an interest in it. In practice, the EU has opened more and more tariff quotas in all its bilateral free trade agreements (FTAs), far beyond the current and minimum access quotas, and with rates that are sometimes zero and very different from one country to another.

We must not talk about the "*interests of the WTO*" when the interests of the majority of members, those of developing countries (DCs), are violated or marginalized, especially those of the Doha Round, which is supposed to be the “development round”. If it is true that the "rules" put in place within the WTO have indeed been responsible for all the abuses mentioned, it is the rules imposed on the WTO by its most powerful Members. They have refused to accept certain beneficial WTO rules when they go against their interests. Thus, in spite of all the grievances rightly made at the WTO:

a) the WTO is less worse than the bilateral Free Trade Agreements, especially the EPAs with the ACP countries;

b) it is because agriculture did not come out of the WTO or the WTO came out of agriculture that developing countries were able to resist the liberalization of industrial products and services by first demanding deep reforms of WTO agricultural rules, especially on domestic subsidies and public food security stocks, which India did not have to "*give up using*" as Claude Girod writes, despite strong pressure from the US to limit them;

c) It is essential that the Ambassadors of the developing countries at the WTO continue to be supported by the analyses of North-South solidarity NGOs in order to fight day to day on all the issues that the developed countries want to impose on them, in particular for their food sovereignty;

d) if agriculture were taken out of the WTO or the WTO out of agriculture, another institution would be needed to set the new rules on agricultural trade and to provide it with a Dispute Settlement Body. The FAO or UNCTAD, or even the Committee on World Food Security (CFS) has often been mentioned, but these institutions have the same member states as the WTO and there is no reason for them to accept different agricultural rules from those they reject at the WTO;

e) many decisions of the Dispute Settlement Body (DSB) are very positive but developed countries, first and foremost the EU and the US, refuse to apply them when it is against their interests. For example, despite the GATT's outrageous definition of dumping – no dumping as long as you do not export at a price below the domestic market price – the Appellate Body has departed from it four times – in December 2001 and December 2002 in the "Dairy Products of Canada" case, in March 2005 in the "US Cotton" case and in April 2005 in the "EU Sugar" case – and has given a clear definition of dumping: any export by an agri-food company made at a price below the country's average total cost of production without subsidies (including decoupling) can be sued for dumping.

Claude Girod writes that "*Paradoxically, there is no mention of agriculture in the battery of questions from the Commission in its consultation on trade policy. The WTO claims to reduce and include agricultural issues under the register of small and medium-sized enterprises*". There is nothing paradoxical about this, but it does reflect the inflexible position of the European Commission over the past five years to obstruct any serious negotiation at the WTO on domestic agricultural support, even though it has been on the priority agenda of the WTO's Agriculture Commitee since the 2015 Nairobi Ministerial Conference agreed to eliminate agricultural export subsidies (known as "refunds" in the CAP). This is because the European Commission is well aware that the objective sought by the other WTO Members is to put an end to the supposedly non-trade-distorting character of decoupled aid notified in the green box and secondarily of aid notified in the blue box because it is capped. Indeed, without these decoupled aids notified in the WTO green box – which represented 86% of the CAP budget's actual expenditure of €56.9 billion in 2019 (excluding State aids), i.e. €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 mainly in the blue box, practically no EU farmer could survive. As agricultural exports have represented an increasing percentage of production, from 19.4% in 2000 to 32.1% in 2018 – not so much in volume as in value due to products increasingly processed off the farm – agricultural export subsidies have increased from €7.8 billion in 2000 to €18.4 billion in 2018. Let us underline the perversity of the EU, which has refused to deal with domestic agricultural subsidies in all its bilateral free trade agreements, saying that this issue falls within the exclusive competence of the WTO – referring only to the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures – while blocking any discussion on the dumping effects of domestic agricultural subsidies, especially decoupled ones.

Although the Confédération Paysanne is a member of the Platform "For another CAP" which advocated the "Reimbursement of CAP subsidies on EU exports" – an objective shared by the European parliamentarians 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 organized on July 7, 2020 by Geneviève Savigny for the European Coordination Via Campesina (CEVC) on the theme "*Food sovereignty and strategy from farm to fork: 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*", without any further comment on the need and the way to put an end to it[7]. 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 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.

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 desired by the Confédération Paysanne will increase agricultural production costs and reduce agricultural income per worker:

a) if we stop importing soybeans from the Americas, which destroys the environment and the health of producers there by replacing them with European protein crops with lower yields and higher production costs;

b) if we stop using chemical pesticides and fertilizers by generalizing agro-ecological production systems, especially organic ones, whose yields are lower;

c) if animal welfare is respected by eliminating factory farming, which will increase the cost of production;

d) if direct aid is based on farmers numbers, in full-time equivalents, 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 revitalize the countryside and promote short circuits, which implies ensuring them an attractive income;

f) while the production of animal products will fall sharply to protect both the environment and consumer health, as recommended by Afterres2050;

g) as the CAP 2021-27 budget 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 subsidized products, in fact all products since decoupled subsidies are attributable to all;

i) all of this requires a radical overhaul of the CAP by basing agricultural income on remunerative and stable prices as before 1993 thanks to variable levies, but of course without export refunds and with an equitable distribution of production rights among farmers.

2) The desired CAP will require increases 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, they will have no incentive to do so;

b) to fight against obesity and overweight;

c) to reduce food wastage.

3) Hence SOL's proposal to program a gradual increase in agricultural prices of 1.78% per year over 8 years to stabilize agricultural income at the 2018 level without subsidies, with the increase in the share of household food budgets 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 Limits of the Agriculture Proposals Strategies on CAP Reform 2021-27[8].

4) But this increase in food prices would not weigh on the disadvantaged population of the EU thanks to a recycling of a significant part of CAP subsidies to consumers:

a) the decrease in CAP subsidies will benefit consumer-taxpayers who will pay less taxes;

b) the social minima will be increased;

c) school and community canteens, or even company canteens, will be subsidized using local food products of agroecological quality (organic for school canteens).

d) An extensive food aid program will be established, inspired by that of the United States, but at a much lower level since the US does not have a generalized social security system that exists at various levels in most EU States. It will be possible to use stamps to purchase food products from short circuits of EU origin in approved stores.

For an in-depth analysis of the WTO reforms to be carried out read: *Rebuilding the WTO for Sustainable Global Development*, SOL, 9 January 2019[9]; and *Agreement on Agriculture and Food*, SOL, 22 January 2019[10].

Since Claude Girod pleads for "*A New Paradigm for Europe*", and concludes with "*Isn't it time for the European Union to lay the foundations for a completely different kind of trade?*" we should not expect this from the European Commission, at the service of COPA-COGECA, but from all civil society organizations such as those of the "Platform for another CAP", but which will not be able to do so without the Confédération Paysanne.

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