Protecting West African local milk from EU dumping of milk powders

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Introduction

Much has already been well written in defence of local milk in West Africa (WA) by WA Producers' Associations, solidarity NGOs and some European Union (EU) Producers' unions, and CIRAD. This note supplements these analyses, in particular the analysis of Hélène Botreau of Oxfam-France of 18 May 2020 on "*The dairy crisis, a common test for European and African farmers*"[1], the GRET report of January 2018 on "*What trade policies for the promotion of the "local milk" sector in West Africa*"[2] and the CIRAD report of 2018 on "*Trade in fat-filled milk powder. Situation and challenges for trade relations between Europe and West Africa*"[3] (all these papers were written in French).

After underlining the opacity of the data on powders mixture of skimmed milk and vegetable fat (PMSMVF)[4], we analyse the evolution over 10 years of both extra-EU28 and EU28 exports to WA of the milk powders – total milk powder (TMP), fat milk powder (FMP), skimmed milk powder (LMP) – and PMSMVF in tonnage, value and price as well as the top 8 EU28 exporting countries and the top 8 WA importing countries.

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[1] https://wikiagri.fr/articles/crise-laitiere-une-epreuve-commune-pour-les-eleveurs-europeens-et-africains/20794
[2] https://www.gret.org/publication/politiques-commerciales-promotion-lait-local-afrique-de-louest-rapport-de-synthese/
[3] http://agritrop.cirad.fr/590607/
[4] New name proposed by WA and EU NGOs because the common name "fat filled milk powder" (FFMP) does not comply with the WHO definition of milk powder and sends a false message to consumers that it is a natural milk powder.

We then look in more detail at the various possibilities for WA to better protect its local milk from the dumping of EU28 powders and PMSMVF and conclude by showing that the WTO rules that the EU has imposed should not be taken to the letter in order to better divert them and because the low level of bound tariffs in the French-speaking countries of WA is a legacy of French colonization.

I - Opacity of data on powders mixture of skimmed milk and vegetable fat (PMSMVF)

Before analysing the data on the export of the various milk powders, let us underline the uncertainty that weighs on those concerning the powders mixture of skimmed milk and vegetable fat (PMSMVF), generally palm oil, much cheaper than milk fat, for several reasons: 1) the subcodes of code 190190 and their definition are not the same for the EU (in Easy Comext, Market access data base and TARIC, the tariff by tariff line) and for the ECOWAS Common external tariff (CET); 2) if the Market Access data base displays in a single table the imports and exports in volume and value, it does not dissociate code 190190 into subcodes as Easy Comext does:
19019011: "*Malt extract with a dry extract content of 90% or more by weight*", but in 2019 it accounted for only 0.36% of EU28 imports of the 190190 code and 0.31% of its exports (in volume, the percentages being close in value).
19019019: "*Malt extract with a dry extract content of less than 90% by weight*", but in 2019 it accounted for only 5.5% of EU28 imports and 2.8% of exports.
19019091 : only subcode displayed without milk fat : "*Containing no milk fats, sucrose, isoglucose, glucose or starch or containing, by weight, less than 1,5 % milk fat, 5 % sucrose (including invert sugar) or isoglucose, 5 % glucose or starch, excluding food preparations in powder form of goods of heading Nos 0401 to 0404*". But in 2019 it accounted for only 5% of EU28 imports and 16.8% of exports.
19019095: sub-code non-existent until the end of December 2019 and supposed to regroup in the future the trade of PMSMVF, being defined as "*food preparations in powder form, consisting of a mixture of skimmed milk and/or whey, and vegetable fats/oils, with a fat content <= 30% by weight*". Easy Comext publishes data for the first time in January 2020, when the sub-code accounted for 25.4% of extra-EU28 exports under code 190190 in volume (25,855 t out of a total of 1.016 Mt) and 27.9% in value (58.9 M€ out of 211 M€), of which for exports to WA 40.8% in volume (13,302 t out of 32,616 t) and 43.8% in value (29.7 M€ out of 67.9 M€). It will have to be seen whether these percentages will increase from February 2020, as it is likely that exporters have not yet understood the need to use this subcode for all their PMSMVF. Otherwise, this would seriously undermine the importance of the PMSMVF in exports of code 190190.
19019099: "*malt extract with a sucrose (including invert sugar expressed as sucrose) or isoglucose content, expressed as sucrose, of 60% or more by weight*", which accounted for 80.1% of the volume and 85.1% of the value of exports of code 190190 extra-EU28 in 2019, of which 89.5% and 93.5% respectively to WA. But TARIC divides it into 4 subcodes with 10 digits (1901909933/36/39/90) while Easy Comext is limited to 8 digits), and it is only subcode 1901909939 which contains vegetable oil which is only sunflower oil: "*Preparation in powder form containing by weight : 15 % or more but not more than 35 % wheat maltodextrin; 15 % or more but not more than 35 % whey; 10 % or more but not more than 30 % refined, bleached, deodorized and non-hydrogenated sunflower oil; 10 % or more but not more than 30 % spray-dried matured processed cheese; 5 % or more but not more than 15 % buttermilk; and 0,1 % or more but not more than 10 % of sodium caseinate, disodium phosphate and lactic acid*".

Preliminary conclusion: As extra-EU28 exports of sub-code 19019095 in January 2020 were accompanied by an approximately equal decrease in exports of sub-code 19019099, the sum of both making 79.5% of sub-code 190190 in volume in January 2020 and 80% for the year 2019, and 84.2% and 85.1% respectively in value, one would be entitled to conclude that there has indeed been a substitution of export volumes between the two sub-codes. If we now add subcode 19019091 which contains no milk fat, the sum of the 3 subcodes 19019091, 19019095 and 19019099 represented 97.8% of exports of code 190190 in January 2020 and 96.9% for the year 2019 in volume and 98.1% and 97.2% in value respectively. This observation on extra-EU28 exports is reinforced for EU28 exports to WA since the sum of the 3 subcodes represented 99.4% of 190190 exports in volume in January 2020 and 99.6% for the year 2019 and, in value, 99.3% and 99.7%. Considering that the code 190190 represents the totality of PMSMVF exports does not therefore significantly change the reality.

Although it is the data on WA imports according to the sub-codes of code 190190 in the ECOWAS CET that should be used, the import statistics of the ECOWAS States, whether from the EU28 or from the whole world, are not reliable and are published with a long delay. The ECOWAS CET sub-codes for 2017[5] are:
1901.90.10.00: "*Milk-based preparations containing vegetable fats, in powder or granules, in packings of 25 kg or more, with a tariff of 5%*".
1901.90.20.00: "*Milk-based preparations containing vegetable fats, in powder or granules, in packings of 12.5 kg to 25 kg, at a tariff of 5%*".
1901.90.30.00: "*Malt extract with a tariff of 5%*" (without more precise definition)
1901.90.40.00: "*Powdered preparations containing malt extract, for the manufacture of beverages, in packings of 25 kg or more, with a tariff of 10%*". It should be noted that Nigeria's tariff for this sub-code is 5%[6].
1901.90.91.00: "*Food preparations based on the cassava products of heading 11.06 (including "Gari" and excluding the products of heading 19.03), with a tariff of 20%*".
1901.90.99.00: "*Other, with a tariff of 20%*" (without more precise definition).

While Comtrade only publishes 6-digit data, ITC TradeMap publishes 8-digit data but only in value and not in quantity. Thus Nigeria would have imported from the EU 101.085 M€ in 2019 in the sub-code 1901909900, i.e. 98.9% of the 190190 code, which is curious since this sub-code supports a 20% tariff; Côte d'Ivoire 25.371 M€ in 2018 in the sub-code 1901901000, i.e. 78.3% of the 190190 code; Senegal 59.393 M€ in 2018 in the same sub-code 1901901000, i.e. 60% of the 190190 code. But ITC TradeMap does not have recent data for all WA States, for example for Mali it goes back to 2008.

For all these reasons only the export data from the EU28 to WA are reliable.

II - Analysis of the EU28 exports of milk powders extra-EU28 and to West Africa

Tables 1 and 2 compare the evolution from 2009 to 2019 of EU28 exports to extra-EU28 and to WA in total milk powders – TMP, obtained by deducting from code 0402 the liquid condensed milk of codes 040291 and 040299 –, fat milk powder – FMP, of more than 1.5% milk fat, corresponding to codes 040221 and 040229 –, skimmed milk powder – SMP, of code 040210 containing less than 1.5% milk fat –, and powders mixture of skimmed milk and vegetable fat (PMSMVF), generally palm oil, the percentage of vegetable fat (VF) being generally 28% of the weight of the PMSMVF. TMP is the sum of FMP and SMP. We compare

[5] http://douanes-benin.net/index.php/2017/09/26/tec-cedeao-sh-2017/
[6] https://customs.gov.ng/?page_id=3127

tonnages, values in 1000 euros and FOB (free on board) prices in euros per tonne (€/t) and by how much the price of PMSMVF has been lower than the price of FMP and the growth of the tonnage exported of PMSMVF compared to FMP. Since there are significant differences between the data for 2009 and 2010 and 2018 and 2019, and since the trend will be tracked over 10 years, comparisons will be made either for 2009-18 or 2010-19.

Table 1 - Exports of extra-EU28 milk powders in tonnes and 1,000 euros from 2009 to 2019

	Exports in tonnes				Exports in euros 1,000				FOB price in €/t			PMSMVF/PLG	
	TMP	FMP	SMP	PMSMVF	PLT	PLG	PLM	PMSMVF	PLG	PLM	PMSMVF	tonnes	price
2009	687262	458386	228876	388306	629837	986754	381310	629837	2153	1666	1622	85%	75,3%
2010	821856	445374	376482	466368	837205	1323626	885737	837205	2972	2353	1795	105%	60,4%
2011	903649	388162	515487	558394	1110382	1314863	1307299	1110382	3387	2536	1989	144%	58,7%
2012	906469	386043	520427	609068	1227399	1257556	1270555	1227399	3258	2441	2015	158%	61,9%
2013	781008	374278	406730	618892	1414447	1447084	1259560	1414447	3866	3097	2285	165%	59,1%
2014	1037799	389742	648057	780868	1782895	1511827	1970997	1782895	3879	3041	2283	200%	58,9%
2015	1095290	400726	694564	852409	1692011	1219429	1501761	1692011	3043	2162	1985	213%	65,2%
2016	960705	381587	579118	893662	1618488	1127197	1146191	1618488	2954	1979	1811	234%	61,3%
2017	1172424	392915	779509	999631	1906580	1364288	1618267	1906580	3472	2076	1907	254%	54,9%
2018	1150173	334163	816010	1009848	1859810	1135991	1436085	1859810	3400	1760	1842	302%	54,2%
2019	1259561	297508	962053	1136434	2194320	1080975	1989024	2194320	3633	2067	1931	382%	53,1%

Source: Easy Comext

Table 2 – EU28 exports to West Africa of milk powders in tonnes and 1,000 euros from 2009 to 2019

	Exports in tonnes				Exports in euros 1,000				FOB price in €/t			PMSMVF/PLG	
	TMP	FMP	SMP	PMSMVF	PLT	PLG	PLM	PMSMVF	PLG	PLM	PMSMVF	tonnes	price
2009	114044	96541	17503	90274	224689	194994	29695	121496	2020	1697	1346	94%	66,6%
2010	124396	94750	29646	124537	348143	278215	69928	210780	2936	2359	1693	131%	57,6%
2011	121391	84563	36828	145883	390644	295571	95072	307499	3495	2582	2108	173%	60,3%
2012	108693	73786	34906	165286	325652	239826	85826	328450	3250	2459	1987	224%	61,1%
2013	105010	68075	36935	180936	368367	256356	112011	423445	3766	3033	2340	266%	62,1%
2014	109687	65174	44513	211152	383227	246202	137025	504651	3778	3078	2390	324%	63,3%
2015	103822	63524	40298	234418	274543	189773	84769	434742	2987	2104	1855	369%	62,1%
2016	93360	56214	37146	232567	221213	151455	69758	388473	2694	1878	1670	414%	62,0%
2017	98258	55278	42980	302428	263472	175713	87758	569831	3179	2042	1884	547%	59,3%
2018	88570	44238	44333	308423	228775	140753	88022	491555	3182	1985	1594	697%	50,1%
2019	109493	47662	61831	362756	282243	156697	125545	646244	3288	2030	1781	761%	54,2%

Source: Easy Comext

It can be seen that TMP exports to WA fell by 22.3% in volume from 2009 to 2018 (12% from 2010 to 2019), while extra-EU28 exports increased by 67.4% from 2009 to 2018 (53.3% from 2010 to 2019). In value TMP exports to WA increased slightly by 1.8% from 2009 to 2018 but fell by 19% from 2010 to 2019, while extra-EU28 exports almost tripled (+ 195%) from 2009 to 2018 and increased by 162% from 2010 to 2019. As a result, the share of TMP exports to WA in extra-EU28 exports has almost halved in volume in 10 years, both from 2009 to 2018 (by 46.4%) and from 2010 to 2019 (by 57.4%), and has fallen by two-thirds in value (by 65.5% from 2009 to 2018 and by 70.4% from 2010 to 2018). While FOB prices of exports to extra-EU28 and WA were very similar for SMP over the entire period (2009 to 2018 and 2010 to 2019), they were much lower for FMP, by 17.3% in 2018 and 7.8% in 2019.

As for exports of PMSMVF, those to WA were multiplied by 3.4 in volume from 2009 to 2018 and by 2.9 from 2010 to 2019, i.e. more than extra-EU28 exports, which were multiplied by 2.6 from 2009 to 2018 and by 2.4 from 2010 to 2019. In value those to WA were multiplied by 4 from 2009 to 2018 and by 3.1% from 2010 to 2019, and those to extra-EU28 were multiplied by 3 from 2009 to 2018 and by 2.6 from 2010 to 2019. As a result, the sum of exports of TMP plus PMSMVF in volume to WA were multiplied by 1.9 from 2009 to 2018 as from 2010 to 2019 and by 2 for extra-EU28 exports from 2009 to 2018 and by 1.9 from 2010 to 2019. In value they have been multiplied by 2.1 to WA from 2009 to 2018 and by 1.7 from 2010 to 2019 and those to extra-EU28 by 2.2 and 1.7 respectively. As for the FOB price, it was in most cases lower to WA than to extra-EU28, in particular by 13.5% in 2018 and 7.8% in 2019.

Tables 3 and 4 show the distribution of the EU28 exports of milk powders among WA recipient States, in volume and value in 2019. Nigeria is by far the largest importer of all powders, followed by Senegal, Côte d'Ivoire, Ghana, Mali, Mauritania, Guinea and Togo. These 8 countries accounted for more than 90% of EU28 exports to WA in both volume and value terms. To this is added infant powder (code 190110, which also contains other ingredients: cereals, sugar, chocolate, etc.) which accounted for 2.4% of total exports (PLT+PMSMVF+190110) from the EU28 to WA in volume and 5.7% in value, and Nigeria plus Côte d'Ivoire accounted for 72.3% of this total in volume and 63.3% in value.

Table 3 - Main WA recipient countries of EU28 milk powders exports in 2019

	Nigeria	Senegal	Côte d'Ivoire	Ghana	Mali	Mauritania	Guinea	Togo	The 8
EU28 exports in tonnes									
TMP	62761	7582	8894	12705	2785	4280	1854	600	101461
FMP	18544	1648	2318	756	1922	34	481	458	26161
SMP	44218	5934	6576	11949	862	4246	1373	142	75300
PMSMVF	96706	86722	25796	18037	33967	38947	15729	13047	328951
TMP+PMSMVF	159467	94304	34690	30742	36752	43227	17583	13647	430412
190110	4686	967	2872	131	983	178	455	175	10447
EU28 exports in euros 1,000									
TMP	147118	23034	27467	27900	10017	11553	6448	2185	255722
FMP	56582	5268	8289	2671	7185	108	1941	1809	83853
SMP	90536	17766	19179	25229	2832	11445	4507	377	171871
PMSMVF	180339	165198	50546	32339	59132	51266	23739	20912	583471
TMP+PMSMVF	327457	188232	78013	60239	69149	62819	30187	23097	839193
190110	18814	5163	13374	632	7141	1341	3258	1164	50887

Source: Easy Comext

Table 4 – Percentage of the main WA recipient countries of EU28 milk powders exports in 2019

	Nigeria	Senegal	Côte d'Ivoire	Ghana	Mali	Mauritania	Guinea	Togo	The 8
Percentage of EU28 exports in tonnes									
TMP	57,3%	6,9%	8,1%	11,6%	2,5%	3,9%	1,7%	0,5%	92,5%
FMP	59,8%	5,3%	2,4%	2,4%	6,2%	0,1%	0,6%	1,5%	78,3%
SMP	56,3%	7,6%	8,4%	15,2%	1,1%	5,4%	1,7%	0,2%	95,9%
PMSMVF	26,7%	23,9%	7,1%	5,0%	9,4%	10,7%	4,3%	3,6%	90,7%
TMP+PMSMVF	33,8%	20,0%	7,3%	6,5%	7,8%	9,2%	3,7%	2,9%	91,2%
190110	40,1%	8,3%	24,6%	1,1%	8,4%	1,5%	3,9%	1,5%	87,9%
Percentage of EU28 exports in euros 1,000									
TMP	52,1%	8,2%	9,7%	9,9%	3,5%	4,1%	2,3%	0,8%	90,6%
FMP	55,3%	5,1%	8,1%	2,6%	7,0%	0,1%	1,9%	1,8%	81,9%
SMP	50,3%	9,9%	10,7%	14,0%	1,6%	6,3%	2,5%	0,2%	95,5%
PMSMVF	27,9%	25,6%	7,8%	5,0%	9,2%	7,9%	3,7%	3,2%	90,3%
TMP+PMSMVF	35,3%	20,3%	8,4%	6,5%	7,4%	6,8%	3,3%	2,5%	90,5%
190110	33,1%	9,1%	23,5%	1,1%	12,5%	2,4%	5,7%	3,9%	91,3%

Source: Easy Comext

Tables 5 and 6 present the 8 main EU28 States having exported milk powders to WA in 2019, in tonnage and value, ranked in descending order of the sum of TMP+PMSMVF: Ireland, the Netherlands, Poland, Belgium, Germany, France, Denmark and the United Kingdom (UK).

Table 5 – Main EU28 exporters of milk powders to West Africa in 2019

	Ireland	Netherlands	Poland	Belgium	Germany	France	Denmark	UK	The 8
EU28 exports in tonnes									
TMP	19109	23382	6233	19739	12442	13617	4251	7888	106661
FMP	14001	3882	5965	15419	12237	5758	694	1957	59913
SMP	5108	19600	268	4320	205	7860	3557	5931	46849
PMSMVF	137258	74719	66269	20347	24104	17675	4922	848	346142
TMP+PMSMVF	156367	98200	72502	40085	36546	31293	9174	8736	452903
190110	133	3326	107	349	2	5939	139	659	10654
EU28 exports in euros 1,000									
TMP	45420	76009	11953	45580	24607	37700	10793	24074	276136
FMP	16258	68224	529	13591	673	25594	9076	20458	154403
SMP	29162	7785	11425	31990	23934	12106	1717	3617	121736
PMSMVF	253314	117831	125148	32545	45418	33369	9281	2341	619247
TMP+PMSMVF	298734	193840	137101	78125	70025	71069	20074	26415	895383
190110	583	14523	410	1066	18	34190	420	1480	52690

Source: Easy Comext

These 8 countries exported 94.8% of the EU28 total in tonnage and 96.5% in value. We add infant powder, not included in this total, which accounted for 2.4% of the total TMP+PMSMVF+190110 exported to the AO in volume and 5.8% in value, of which France and the Netherlands exported 79.3% of the volume and 85.6% of the value.

Table 6 – Percentage of the main EU28 exporters of milk powders to West Africa in 2019

	Ireland	Netherlands	Poland	Belgium	Germany	France	Denmark	UK	The 8
Percentage of EU28 exports in tonnes									
TMP	17,5%	21,4%	5,7%	18,0%	11,4%	12,4%	3,9%	7,2%	97,5%
FMP	22,6%	6,3%	9,6%	24,9%	19,8%	9,3%	1,1%	3,2%	96,8%
SMP	10,7%	41,1%	0,6%	9,1%	0,4%	16,5%	7,5%	12,4%	98,3%
PMSMVF	37,8%	20,6%	18,3%	5,6%	6,6%	4,9%	1,4%	0,2%	95,4%
TMP+PMSMVF	32,1%	20,8%	15,4%	8,5%	7,7%	6,6%	1,9%	1,8%	94,8%
190110	1,1%	28,5%	0,9%	3,0%	0,01%	50,8%	1,2%	0,6%	86,1%
Percentage of EU28 exports in euros 1,000									
TMP	16,1%	26,9%	4,2%	16,1%	8,7%	13,4%	3,8%	8,5%	97,7%
FMP	10,4%	43,5%	0,3%	8,7%	0,4%	16,3%	5,8%	13,1%	98,5%
SMP	23,2%	6,2%	9,1%	25,5%	19,1%	9,6%	1,4%	2,9%	97,0%
PMSMVF	39,2%	18,2%	19,4%	5,0%	7,0%	5,2%	1,4%	0,4%	95,8%
TMP+PMSMVF	32,2%	20,9%	14,8%	8,4%	7,5%	7,7%	2,2%	2,8%	96,5%
190110	1,0%	25,5%	0,7%	1,9%	0,03%	60,1%	0,7%	2,6%	92,5%

Source: Easy Comext

II - Trade policy measures to better protect local milk of West Africa

Several legal instruments are available: raise the Common External Tariff (CET); use the Complementary Protection Tax; impose countervailing (anti-subsidy) duties; use GATT Article XVIII on the protection of infant industries; more States could add taxes on imported milk powders and PMSMVF; what to think of the proposal to reduce VAT; use the fact that the EU has higher tariffs than ECOWAS on its imports of milk powders (FMP, SMP, PMSMVF).

2.1 - Raising the Common External Tariff (CET)

Hélène Botreau is right to point out that the dairy multinationals established in WA import PMSMVF at the tariff of 5% of the ECOWAS CET, the same rate as for FMP and SMP. GRET's report proposes to raise the tariff on the PMSMVF: "*The most obvious measure is the increase in the CET, i.e. a shift of milk powder from category 1 (5 %) to category 2 (10 %), 3 (20 %) or 4 (35 %). In view of the very high price differential between fat milk powder and powders mixture of skimmed milk and vegetable fat, a differentiated treatment could be applied (e.g. category 2 for whole milk powder and category 4 for powders mixture of skimmed milk and vegetable fat)*". But he is probably wrong when he writes: "*The application of the same tariff to skimmed powder as that applied to powders mixture of skimmed milk and vegetable fat would be necessary to avoid any circumvention of the measure by means of on-the-spot fattening in West Africa*" since on-the-spot fattening does not seem to be technically possible. Indeed, as both the company FIT, specialising in dairy ingredients writes ("*The fat-filled milk powders are a range of skimmed milk powders that are re-fatted with vegetable fat before dehydration*"[7]) as well as Lactalis: "*Fatty milk powder is obtained by mixing vegetable fat with high quality skimmed milk and then spray drying it*"[8], and other sources. Fattening is therefore done by mixing liquid skimmed milk with palm oil before dehydrating them together in a drying tower.

One can therefore question the report's assertion that "*Re-fattening is carried out mainly with palm oil, most often in countries producing milk powder or in palm oil producing countries,*

[7] https://www.fitsa-group.com/produit/fat-filled/

[8] https://www.lactalisingredients.com/products-dairy-ingredients/dairy-powders/fat-filled-dairy-powder/

such as Malaysia, before the product is exported to consumer countries". Admittedly, according to ITC TradeMap, Malaysia exported 447,796 t of code 190190 in 2019 for 456.708 M€ (FOB price of 1,020 €/t), of which 128,010 t to WA for 112.467 M€ (FOB price of 879 €/t, i.e. half the EU price of 1,781 €/t!) but, as it produces practically no cow's milk (43,737 t in 2018) and therefore no SMP (code 040210), it imported 126,350 t for 266.560 M€ (CIF price of 1,936 €/t), of which 54,964 t from the EU for 106.397 M€ (CIF price of 2,110 €/t). So part of its PMSMVF exported to WA is a re-export of the EU SMP! Most importantly, as Malaysia has 31 different subcodes for code 190190, including several on infant food, the share of PMSMVF is unknown. In any case, this does not mean that one can easily process in WA local or imported palm oil into powder and then mix the two powders on the spot.

In any case, it is not in the interest of EU dairy multinationals to mix the two powders on the spot because WA has a deficit of 1.134 Mt of palm oil in 2018 (imports of 1.668 Mt and exports of 0.534 Mt according to ITC TradeMap), all the more so as the tariff on refined edible palm oil is 35% in the ECOWAS CET – a rate on which the European Commission (EC) has aligned, illegally, that of the IEPAs (iEPAs) of Côte d'Ivoire and Ghana which was otherwise 20%[9] – whereas it is only of 10.9% in the EU, even though Côte d'Ivoire has a surplus of palm oil (exports of 226,610 t and imports of 121,578 t in 2018).

As palm oil is taxed at 35% in the CET and represents 28% of the volume of the PMSMVF, it is at least justified to raise the tariff on the PMSMVF at 13.4%: 72% at 5% = 3.6% + 28% at 35% = 9.8%. One could theoretically also take into account that Côte d'Ivoire adds to the 35% tariff a conjunctural import tax (TCI) of 438 CFA/kg or 668 €/t[10] but, as its refined palm oil imports in 2019 represented only 3.3% of those of WA, this is not worth the effort, especially as ITC TradeMap data are contradictory.

In fact, the CET tariff must be raised more, independently of palm oil, since, on the one hand Nigeria, whose imports of PMSMVF in value accounted for 27.9% of WA imports in 2019, adds a 25% tax to the CET on the import of PMSMVF[11] and, on the other hand, Côte d'Ivoire adds a tax of 1,208 F CFA/kg (1.842 €/kg or 1,842 €/t) on PMSMVF[12] as part of the TCI (short-term import tax) . It goes like this:
- For Nigeria: 13.4% x 125% = 16.8% multiplied by 27.9% or 4.7% in addition to the 13.4%, which raises the tariff on the PMSMVF at 18.1%.

- For Côte d'Ivoire its imports of 50.546 M€ of PMSMVF in 2019 for 25,796 t (EU FOB price of 1,959 €/t) represented 7.82% of the 646.244 M€ imported by the WA for 362,756 t (EU FOB price of 1,781 €/t) and its tax of 1,842 €/t additional to the CET represented 94% of its EU FOB price. There are two possibilities, depending on whether the CET identified by Nigeria is taken into account or not:
1) If its additional tax applies to the 5% CET: the 5% DD paid on its €50.546M of imports would have been €2.527M. As it imported 25,796 t taxed in addition at 1,842 €/t this corresponded to 47.516 M€, an amount 18 times higher than that based on 5%, thus an additional customs duty of 94%. As the import value of PMSMVF of Côte d'Ivoire accounted

[9] *The European Commission's manipulations of the interim Economic Partnership Agreements of Côte d'Ivoire and Ghana*, SOL, March 29, 2020 (https://www.sol-asso.fr/wp-content/uploads/2020/01/The-European-Commissions-manipulations-of-the-interim-EPAs-of-C%C3%B4te-dIvoire-and-Ghana-29-March-2020.pdf).
[10] https://www.wto.org/french/tratop_f/tpr_f/s362-03_f.pdf
[11] https://customs.gov.ng/?page_id=3127
[12] http://www.wto.org/french/tratop_f/tpr_f/tp366_f.htm

for 7.82% of those of WA, we have : 94% x 7.82% = 7.35%, to be added to the 5% normal duty of 5%, thus revised at 12.35%.
2) If its additional tax is applied to the CET of 18.1% after adjustment for Nigeria's additional tax, then 7.35% is added to 18.1% and the adjusted tariff becomes 25.4%.

2.2 – Implementing the Supplementary Protection Tax (SPT)

The Supplementary protection tax (SPT) is designed to protect a local product in the event of an increase of at least 25% in the average (over the last three years for which data are available) value of imports of the product into the territory of an ECOWAS member State. The SPT can also be applied if, in any given month, the average c.i.f. import price (in national currency) of a product falls below 80% of the average c.i.f. import price of the good over the last three years for which data are available. The tax may be imposed for a maximum period of one or two years depending on the case. Based on import prices, the SPT resembles a safeguard measure[13].

Indeed, the SPT could have been used in 2019 as the 362,756 t imported were 29% larger than the 281,139 t imported on average from 2016 to 2018 (Table 2). And it would have been possible to use the SPT in the event of an 80% drop in the CIF price in one month compared to the average price of the previous 3 years, for many months in 2016 since the average annual CIF price in 2016 was 76% lower than the average CIF price from 2013 to 2015 (Table 2).

2.3 - Imposing countervailing duties

The countervailing duties are intended to neutralise the effect of EU subsidies that cause material injury to the WA milk sector, measures governed by GATT Articles VI and XVI and the WTO Agreement on Subsidies and Countervailing Measures (ASCM). The lawsuits are first brought bilaterally and are only brought to the WTO if they cannot be resolved bilaterally, as is the case with the ongoing panel between the EU and the US which has imposed countervailing and anti-dumping duties on imports of Spanish table olives, which led the EU to sue the US at the WTO[14]. As ECOWAS is not (yet) a full WTO Member, although all its States are Members, and as the settlement of its disputes with the EU is only organised in the draft regional EPA, which has not yet been signed since Nigeria is opposed to it, the proceedings against EU agricultural subsidies would be conducted bilaterally between the ECOWAS Commission and the European Commission (EC) and could then only be appealed at the WTO by individual ECOWAS member States (assuming that the Appellate Body will have resurrected following the US blockade!). Even if none of the ECOWAS Member States has anti-subsidy (countervailing duties) and anti-dumping legislation, ECOWAS can intervene bilaterally against the EC since it has adopted regulations on these issues under the measures accompanying the new CET: Regulation C/REG.05/06/13 of 21 June 2013 on countervailing duties[15] and Regulation C/REG.6/06/13 of 21 June 2013 on anti-dumping duties[16].

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[13] https://www.wto.org/english/tratop_e/tpr_e/tpr_e.htm
[14] *The European Commission has crossed the Rubicon on Spanish table olives*, SOL, February 19, 2020 (https://www.sol-asso.fr/wp-content/uploads/2019/01/The-European-Commission-has-crossed-the-Rubicon-on-Spanish-table-olives-19-February-2019.pdf); *Alea iacta es: how Spanish olives will force a radical change of the CAP*, SOL, November 7, 2018 (https://www.sol-asso.fr/wp-content/uploads/2017/01/Alea-iacta-es-how-Spanish-olives-will-force-a-radical-change-of-the-CAP-7-November-2018.pdf)
[15] http://ecotipa.ecowas.int/wp-content/uploads/2017/07/C.REG_.-05.06.13-RELATING-TO-THE-IMPOSITION-OF-COUNTERVAILING-DUTIES.pdf
[16] https://www.ecowas.int/wp-content/uploads/2015/01/6-Defense-Measures.pdf

In the case of milk powder (and more broadly dairy products) exported by the EU to WA, the proceeding should be limited to countervailing duties, even though the US has imposed to the EU both countervailing and anti-dumping duties on table olives and as the ongoing WTO panel at the initiative of the EC also deals with both countervailing and anti-dumping duties. Even if, for the regional EPA, "*No product originating in one Party and imported into the territory of the other Party shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with the same situation arising from dumping or export subsidies*", these restrictions are not included in the Côte d'Ivoire and Ghana interim EPAs (iEPAs). But, as the anti-subsidy procedure is very complex suing the EC with countervailing duties alone would already be a serious political warning to the EC. The details of the procedure are well set out in Regulation C/REG.05/06/13 and interested readers may find all the arguments to oppose those of the EC in the quoted two articles of SOL on Spanish table olives. The EC will argue that its milk powder subsidies are not specific, in particular because they are essentially decoupled. SOL's arguments are based in particular on the four rulings of the WTO Appellate Body – of December 2001, December 2002, March 2005 and April 2005 – which ruled that domestic subsidies, decoupled as coupled, to exported products contribute to dumping, but the EC and other developed countries (led by the US) refuse to recognise the Appellate Body rulings as a legal precedent, a fortiori those of the panels in the first instance.

In the case of Côte d'Ivoire and Ghana, without the need to initiate formal anti-subsidy proceedings against the EC, consultations with it are first provided for in order to settle a dispute amicably (Article 23 of the Côte d'Ivoire and Ghana iEPAs). If this is not successful, three measures may be taken: *"(a) suspension of any further reduction in the rate of the customs duty applicable to the product concerned; (b) an increase in the customs duty for the product concerned to a level not exceeding the customs duty applied to other WTO members; and (c) the introduction of tariff quotas on the product concerned*" (Article 25). These three measures are interesting and should be applied by all the WA member States, especially as they are also provided for in the regional EPA even if it is not finalized and is unlikely to be finalized. With the limitation that these bilateral safeguard measures only come into play in the event of an increase in the volume of imports, while the EC benefits from the special safeguard clause in Article 5 of the WTO Agreement on Agriculture (AoA) which applies both in the event of a fall in prices and of an increase in import volumes.

It should be added that the Cotonou Agreement cannot be used to sue the EU, firstly because it expired on 28 February 2020 and has not yet been replaced, and secondly because its provisions for settling trade disputes outside EPAs are flawed and very cumbersome to implement. Thus, according to section 38A.3 of the Cotonou Agreement as revised in 2010: "*Where existing Community rules adopted with a view to facilitating trade affect the interests of one or more ACP States or where those interests are affected by the interpretation, application or implementation of those rules, consultations shall be held at the request of the ACP States concerned, in accordance with the provisions of Article 12, with a view to reaching a satisfactory solution*", Article 12 itself being without scope: "*Where the Community intends, within the framework of its powers, to take a measure which may affect the interests of the ACP States, insofar as the objectives of this Agreement are concerned, it shall inform the ACP Group in good time*".

2.4 – Protecting infant industries

As GATT is part of the WTO Agreements all ECOWAS States, which are developing countries, can invoke this article to raise customs duties (CDs) or take quantitative restrictions on imports, the term "industries" being taken in its broad English meaning of "activities". As long as the ECOWAS Commission is not a member of the WTO, the complaint could be brought by individual member States with funding from ECOWAS, or even from "partners" other than the EU, since it would indirectly benefit all member States. The GRET report links the possibility of protecting infant industries to the regional EPA as if it was finalized or would surely be finalized (a postulate repeated several times) and specifies that this would allow it to be used for 8 years renewable, but Peter Lunenborg from the South Centre showed that it would be very difficult to implement[17]. The Ivory Coast and Ghana iEPAs do not have a specific clause on infant industries, whose protection is implicitly included in Article 25 on bilateral safeguards, with a great vagueness on their duration (1 year, 4 years or even 10 years).

2.5 - Adding taxes to the CET on imported milk powders

Beyond the Supplementary import tax (SPT, point 2.2 above), two other taxes could be used: the Import Adjustment Tax (IAT) and the Special import tax (SIT). The IAT may be imposed where the MFN duty originally applied by a member State is higher than the duty specified under the ECOWAS CET. The maximum IAT applicable is the difference between the two but, as it could have been applied for a maximum of 5 years from January 2015, theoretically it is no longer applicable even if most ECOWAS member States did not begin implementing the new CET in January 2015.

The Special import tax (SIT) was created by WAEMU States and, even if it does not appear in the ECOWAS safeguards measures additional to the CET, several WAEMU States continue to use it[18] but few do so on milk powders. Côte d'Ivoire has a tax of 1,340 FCFA (€2) per kg of condensed milk, sweetened or unsweetened (codes 040291 and 040299) and, as noted, 428 FCFA/kg on palm oil and 1,208 CFA F/kg on PMSMVF, but not on natural milk powders. It also has additional taxes to the CET on sugar, wheat flour and poultry meat (1,000 F CFA/kg). Similarly, Senegal continues to apply the SIT to certain food products when their import prices are lower than or equal to the trigger prices, and levies the SIT at a rate of 10% of the difference between the customs value and the trigger prices: 701 CFA F/kg of raw milk (code 0401.20.00), on many fruit juices and wheat flour. It has banned imports of poultry meat since 2005 and maintained seasonal bans on potatoes and onions. Mali bans imports of fresh beef and poultry meat. Nigeria, as we have seen, adds a 25% tax on PMSMVF but not on normal milk powders.

2.6 – Lower the Value Added Tax (VAT) on dairy products?

GRET's analysis of VAT on dairy products remains incomplete but it is a difficult and contradictory issue. On the one hand it proposes a decrease in VAT on dairy products in parallel with the increase of the CET: "*A combination of the increase of the CET and the decrease of VAT on dairy products would also allow the effect to be compensated for consumers while improving the competitiveness of local milk compared to milk powder*" since the VAT paid by importers of dairy products, including milk powders and PMSMVF, is passed on to consumers. It added "*The measure would have no impact on processors who use local milk as a raw material. Indeed, there is no VAT on agricultural and livestock products*". This assertion is questionable. Indeed, according to Article 8.1 of ECOWAS Directive C.DIR.1/05/09 on VAT, raw plant and animal products (including milk) are exempt from VAT "*under the conditions determined by each Member State*"[19]. and Article 8.5 also exempts "*agricultural, livestock and*

[17] Peter Lunenborg, *Analysis of the West Africa EPA*, South Centre, Geneva, February 2017.
[18] https://www.wto.org/english/tratop_e/tpr_e/s362-00_e.pdf
[19] http://ecotipa.ecowas.int/wp-content/uploads/2018/05/5-Directive_TVA_2009_FR.pdf

fisheries inputs used by producers to be determined by the Council" and Article 8.25 "*agricultural machinery and equipment*". This Directive was amended on 14 December 2017 by Directive C/DIR.2. /12/17 of which article 8. 2 exempts from VAT "unprocessed and basic foodstuffs", whereas "*unprocessed products means products which are subject only to processes involving preparation, refrigeration, freezing, salting, smoking, breaking or polishing*"[20], which is therefore the case only for raw local milk. As for basic foodstuffs, they are listed in Annex 1 which includes all meat and vegetables, raw cereals, oilseeds, the only dairy product being liquid milk and cream (code 0401), implying that the processed local milk is not exempt from VAT, including that sold in short circuits after pasteurisation and processing into curdled milk and yoghurt. But it is clearly almost impossible for small milk farmers selling these products directly in short circuit to local consumers without going through a mini-dairy to keep VAT accounts. In France, farmers who are not compulsorily subject to VAT or who have not opted to be subject to the simplified agricultural scheme can obtain a flat-rate refund of the VAT paid on their purchases of inputs or equipment, a refund rate which differs according to the nature of the products and is 5.59% for milk, but they obviously have to keep the purchase invoices and apply for the flat-rate refund whereas they themselves do not charge VAT to their purchasers, who are therefore not penalised[21].

Even if locally processed dairy products are not exempt from VAT, the normal rates are not the same in all WA States, including, for those within WAEMU, 18% in 6 of the 8 WAEMU States and Guinea, 19% in Niger and 15% in Guinea-Bissau, and, for those outside WAEMU, 16% in Mauritania, 15% in Gambia, Ghana and Sierra Leone, 10% in Liberia and only 7.5% in Nigeria[22]. States are free to apply a reduced VAT rate, from 5% to 10%, on processed milk (as well as on vegetable oil, animal feed, cereal flours and agricultural equipment) and Côte d'Ivoire applies a rate of 5.5% not only on "*natural food products, as obtained at the agricultural stage*" but also on "*industrial food products that do not constitute medicines*"[23]. Worse: "*In Burkina Faso the exemption from payment of VAT applies to products such as milk powder or cream*"[24]. This is not such as to promote local milk, even though its imports of TMP are only 1.9% of the total for the AO in volume and 2.4% in value and for the MPLEGV 1.9% and 2% respectively.

If even the very limited processing of local milk is not exempt from VAT, why would we want to abolish it in the interest of consumers? On the other hand, GRET proposes on the contrary to increase it: "*Increasing VAT on all dairy products by means of a specific tax... and reusing this tax to subsidize the local milk sector... would not directly modify the price competitiveness of products from the local milk sector compared to imports... The measure would have negative short-term impacts on consumers' purchasing power, but it could have more positive effects in the medium term if the measure is effective*". On the other hand, GRET's proposal for a higher CET on MPLEGV than on FMP and SMP is an issue resolved by the increase, described in

[20] http://ecotipa.ecowas.int/wp-content/uploads/2018/05/5-DIRECTIVE-HAR-LEGIS-VAT-CM-2-ENG.pdf
[21] https://www.impots.gouv.fr/portail/professionnel/questions/comment-obtenir-un-remboursement-forfaitaire-agricole
[22] https://www.crowe.com/sc/-/media/Crowe/Firms/Middle-East-and-Africa/sc/CroweHorwathSC/PDF-and-Brochures/Africa-VAT-guide-2018-19.pdf?la=en-US&modified=20181018171111&hash=E177B90934BEA258C1CEA99353552173AE197F47
[23] https://www.impots.gouv.fr/portail/www2/precis/millesime/2017-2/precis-2017-chapter-9.3.2.html?version=20170701
[24] https://www.google.com/search?q=Why+Manufacturers+Don%27t+Want+Morocco+in+ECOWAS%E2%80%99%2C+Punch%2C+19.09.2017&rlz=1C1CHBD_frFR834FR834&oq=Why+Manufacturers+Don%27t+Want+Morocco+in+ECOWAS%E2%80%99%2C+Punch%2C+19.09.2017&aqs=chrome..69i57.1329j0j8&sourceid=chrome&ie=UTF-8

section 2.1 above, related to the tariff on palm oil and the tax in Nigeria and Côte d'Ivoire on the MPLEGV.

Once the milk powder and MPLEGV is imported into an ECOWAS State and packed in small packages accessible to consumers, particularly in Côte d'Ivoire or Togo where the VAT rates on processed powders are the lowest, it can then circulate within ECOWAS according to ECOWAS rules of origin. However, these are quite flexible since, according to the Additional Protocol No. I/2009/CCEG/UEMOA amending the Additional Protocol No. III/2001[25] establishing the rules of origin of WAEMU products, it is sufficient that the value added to the imported inputs represent 30% of the ex-factory cost price of the finished product before tax to benefit from the status of originating product not subject to obtaining a certificate of origin[26]. But here several points need to be clarified concerning the repackaging of powders imported in 25 kg bags into small packages accessible to consumers: it is likely that these packages are made in WA since there are many manufacturers of food packaging, particularly in Côte d'Ivoire : Etipack, Multipack, Bulteau, Kallan, Rufsac, Siko, Sivem, By Myself, Afripac, Cortonova, CFD, CODA, Cotiplast... The question is whether or not these locally sourced inputs are subject to VAT since imported agricultural inputs and equipment are not. It is also likely that the raw materials imported from the EU to make these small food packages are included in the tariff lines already liberalised in Côte d'Ivoire's EPAi since January 2019 and at least since January 2020 and are therefore imported at zero customs duty (CD). On the other hand, the 2009 protocol on rules of origin states that "*a change of packaging... the placing in containers such as bottles, bags, boxes, etc., affixing of labels or similar distinguishing signs*" cannot confer originating status[27]. It remains to be seen whether the labour costs for this repackaging are excluded from the local value added and at least the large advertising costs for products processed from milk powder and MPLEGV into finished products should be included in the value added.

<u>2.7 – Follow the EU example protecting much more its milk powders and MPLEGV</u>

Let us now compare the EU and ECOWAS customs duties (CD) on imports of milk powders in 2019. Indeed the EU itself imported a large amount of MPLEGV: 92,415 t at a CIF price of 4,664 €/t with a CD of 2,027 €/t, which, in relation to the CIF import price, corresponded to an ad valorem equivalent (AVE) of 43.5%. It imported also 5,130 t of FMP at a CIF price of 3,364 €/t with a CD of 1,672 €/t, which corresponds to an EAV of 46.8%. And it imported 4,753 t of SMP, outside the tariff quota of 940 t to Ukraine, at a CIF price of 2,078 €/t implying an EAV of 59.4%. These CDs, compared to the 5% of the ECOWAS CET, are 3.9 times higher for MPLEGV before adjustments – and 3.2 times after adjustment of the CD at 13,4%, 2.4 times after adjustment at 18.1% and 1.7 times after adjustment at 25.4% as explained in section 2.1 – , 9.4 times higher for FMP and 11.9 times higher for SMP.

But this is not enough because, as explained in a SOL document, one has to calculate the total CD adding to the ordinary CD the AVE of subsidies per tonne of milk equivalent (TEL) of the 3 types of imported powder, i.e. 7.81 TEL per tonne of FMP, 10.72 per tonne of SMP and 7.72 per tonne of MPLEGV (since the percentage of palm oil, which is not subsidized by the EU, added to PLM in MPLEGV is around 28%). On the basis of an average subsidy of €67/TEL, this corresponds for 2019 to an AVE of 54.6% for MPLEGV, 15.7% or FMP and 34.6% for SMP. Adding these EAV equivalent of the subsidies leads to total CDs of 98.1% for MPLEGV

[25] http://www.uemoa.int/sites/default/files/bibliotheque/pages_-_protocole_additionnel_03.pdf
[26] http://www.uemoa.int/sites/default/files/bibliotheque/protocole_add_01_2009_cceg_uemoa.pdf
[27] http://ecotipa.ecowas.int/wp-content/uploads/2018/05/5-DIRECTIVE-HAR-LEGIS-VAT-CM-2-ENG.pdf

– before adjustments – 62.5% for PLG and 94% for SMP, i.e. CDs higher than those of ECOWAS by respectively 19.6 times, 12.5 times and 18.8.

These are political arguments that should be used to denounce the ridiculously low CD of 5% of the ECOWAS CET on milk powders, including the MPLEGV. Incidentally, I can testify to the genesis of this low CD: while I was giving economics courses at CIRES (Ivorian Centre for Economic and Social Research) in Abidjan, I met on 29 April 1998 with the Adviser to the Minister of Agriculture of Côte d'Ivoire (Henri Ducroquet, a French agricultural engineer under a French cooperation contract) who had been asked by the Minister to make proposals for the WAEMU CET, since Côte d'Ivoire was the economic, particularly agricultural, heavyweight of WAEMU. I tried to convince him that it was very dangerous to propose 5% CD on milk powder and cereals (except rice, which the EU does not export), to which he replied that it was on the contrary necessary for the majority of WAEMU consumers, with very low purchasing power. That two thirds of the WAEMU population was composed of farmers and breeders did not concern him. In the end, it was these CDs that were adopted in the WAEMU CET before being adopted in the ECOWAS CET.

IV - Stop thinking that WTO rules are unassailable

4.1 - Preferences for WA bananas were not WTO incompatible

According to GRET "*The Lomé Agreements were in breach of the GATT and WTO Most Favoured Nation principle, in that the trade concessions granted by the European Union to the ACP countries were discriminatory towards other developing countries*". This assertion is false, even though the EU was condemned at the WTO on a complaint from Latin American banana producers because the principle of discrimination is understood according to a geographical criterion, but does not apply according to the level of development, which justified the Decisions of the EU's GSP (Generalised System of Preferences) for developing countries in 1971 and the GSP+ for LDCs (least developed countries) in 2001, and the US AGOA of 2000, renewed until 2015, for Sub-Saharan Africa (SSA). However, the GDP per capita of the 9 Latin American banana exporting countries was in 1995 2.3 times higher than that of the 3 WA exporting countries (Cameroon, Côte d'Ivoire and Ghana) and became 3.9 times higher in 2016 ($5,557 against $1,433). The European Commission (EC) could have defended itself with this argument but did not want to because its first objective was the opening of the markets of WA and Central Africa (Cameroon) through EPAs.

As for the EC's assertion that all regional EPA countries, including LDCs, should open their markets to EU exports on an equal footing with non-LDCs so as not to have separate tariff regimes that would hinder regional integration, former Trade Commissioner Peter Mandelson had stated in a House of Commons' debate that LDCs would be no more penalised for joining an EPA than they would be for using the Everything But Arms (EBA) agreement: "*LDCs countries will be no worse off than by signing EPAs. This is very important. We are asking for EBA plus, not EBA less*"[28]. And the House of Commons editor concludes: "*We understand that EBA plus means that LDCs that choose to sign an EPA will not have to offer reciprocal access to the EU market*". SOL showed that the legal solution compatible with EBA and WTO rules would have been to deduct from the percentage to be liberalised in each regional EPA the percentage of EU exports to LDCs. For the WA EPA 43.5% of EU exports to the 13 LDCs in

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[28] *House of Commons International Development Committee*, "Fair trade? The European Union's trade agreements with African, Caribbean and Pacific countries", 6 April 2005, https://publications.parliament.uk/pa/cm200405/cmselect/cmintdev/68/68.pdf.

2015 would have been deducted from the 76.2% to be liberalised, which would therefore fall to 32.7%, and for the East African EPA 45.4% of exports to the 4 LDCs in 2015 would have been deducted from the 82.6% to be liberalised, which would therefore fall to 37.2%. But the EU has rejected this legal interpretation, which is too much at odds with its trade objectives[29].

GRET's assertion that the LDCs would have agreed to sign the EPA for fear of losing EC development aid linked to the EPA is doubtful, since DG Trade itself[30], after DG Cooperation and Development[31], recognised that the EPADP (EPA support programme) was only a re-labelling, without one additional euro, of traditional aid from the EDF (European Development Fund), the EIB (European Investment Bank) and the EU budget.

GRET's justified fear that "*the implementation of the interim EPAs in Côte d'Ivoire and Ghana will also have an effect... at regional level, if measures are not taken to tax re-exports to other countries in the region of products imported by these two countries from the EU*" does not go far enough. Since about 85% of Côte d'Ivoire and Ghana's imports from the EU are inputs (of which 40% in Ghana are refined petroleum products) or capital goods and not finished products, all finished or unfinished products, whether agricultural or not, whether excluded or liberalized, from Côte d'Ivoire and Ghana will enjoy a competitive edge over the other WA States. The risk therefore goes far beyond the mere re-export of products (finished or not) from the EU.

4.2 - The low bound duties of the West African francophone countries are a colonial legacy

GRET points out that many WA States have applied CDs exceeding their bound levels at the WTO, especially since 130 tariff lines at 35% have been introduced in the revised CET in 2015, would oblige them to grant equivalent trade concessions to other WTO members on their losses of competitiveness – but adds that "*This is, however, a more global problem that goes beyond the problem of the milk sector and which could be resolved if Ecowas decided to seek its recognition as a customs union in substitution for the Member States and, as such, to notify the WTO higher bound duties than those of the current CET*". This is an excellent proposal but one that requires a thorough critique of the concessions to be granted to other WTO members and of the political weakness of ECOWAS negotiators at the WTO on the revision of the CET.

The study of April 2018 commissioned by ECOWAS to the consultancy firms CRES and GREAT on "*Study on the state of play of the implementation of the ECOWAS CET effects on agricultural and agri-food sectors*"[32] studied 5 options that could be considered by ECOWAS and its Member States:
1. the transfer of compensation that could be paid for other products without modifying the CET;
2. modification of the schedule of concessions through the procedure of Article 28 of GATT 1994 e.g. by invoking the status of LDCs, which may allow the requesting States to raise their bound duties;

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[29] Jacques Berthelot, *Did you say FREE trade? The Economic Partnership Agreement European Union-West Africa*, Paris, L'Harmattan, September 2018. The original is the French version of June 2018.
[30] http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152694.pdf
[31] https://ec.europa.eu/europeaid/sites/devco/files/epa-brochure_en.pdf
[32] http://araa.org/pasanao/files/classified/rapport_provisoire_-_etat_des_lieux_de_la_mise_en_oeuvre_du_tec-cedeao_effets_sur_les_filieres_agricoles_et_agroalimentaires_-_avril_2018.pdf

3. the assessment of the overall impact of the duties on the basis of the duties actually applied and not on the basis of the duties indicated in the official CET but not actually applied in reality;
4. regional consolidation at ECOWAS level, at a sufficiently high rate (minimum 35%), for strategic products, which would provide a sufficient consolidation margin in relation to the CET effectively applied and not theoretical;
5. the renegotiation of tariff concessions in the context of the establishment of a customs union.

ECOWAS had already commissioned another report published in June 2016 on the renegotiation of bound tariffs at the WTO: "*CET Monitoring Note: Issues at stake in the renegotiation of bound tariff rates at the WTO by member states following the entry into force of the ECOWAS CET*", written by Borgui Yerima[33]. The report stresses that "*nine (9) countries (Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Guinea, Mali, Niger, Senegal, Sierra Leone) are in violation of their bound rates and will not be able to automatically apply the new CET without prior review procedure. The application of the higher CET poses a legal problem of compatibility with WTO rules for these countries*". It states that "*the setting of ECOWAS CET rates, in particular the ceiling rate at 35% on 130 tariff lines taxed at 35%, 102 of which are agricultural products, creates significant additional tariff obligations for certain third countries... The violations range from 115 Tariff Lines (TL) for Senegal to 883 TL for Côte d'Ivoire. These two countries and Cape Verde also record the highest number of violations on agricultural products: TL 442 for Côte d'Ivoire (i.e. 50.05% of its violations), TL 94 for Senegal (i.e. 81.7%) and TL 67 for Cape Verde (i.e. 13.9% of its violations)*".

Even the proposal that ECOWAS become a full member of the WTO, excellent in itself and indispensable, and consolidate the CET agricultural products at the 35% level would be very insufficient, as it would leave no room for manoeuvre to increase the applied CDs on the 102 agricultural products taxed at 35%, a level that is in fact very low, not only in comparison with the 60% applied by East Africa on milk powder but also by the EU itself (see above in point 2.6).

Surprisingly, it has not been noticed that the violations are solely due to the French-speaking countries, since none of the applied TLs of Nigeria, Ghana, Gambia and Liberia exceed their bound level, and the same can be said for Sierra Leone, which has only 3 TLs in excess. This can be explained by the difference in the tariff policies of France and the UK in their colonies prior to independence: while the UK gave its colonies a wide margin of manoeuvre to determine their level of bound CDs, France imposed low CDs on them, and independence did not fundamentally change their level. Thus the bound CD for all products, weighted by the imports in value of each WA country in 2018, was on average at 79.9% for the 16 countries, of which at 118.8% for the 5 English-speaking countries against 29% for the 9 French-speaking countries and 24.8% for the 2 Portuguese-speaking countries. For agricultural products alone, the average bound CD for the 16 countries was at 88.5% in 2017 (according to FAOSTAT because the WTO does not have agricultural imports per country and FAO has no data yet for 2018), of which at 127.2% for the 5 English-speaking countries, 46.9% for the 9 French-speaking countries and 27.6% for the 2 Portuguese-speaking countries.

33 http://araa.org/sites/default/files/project-documents/Annexe%20C2a_Enjeux%20de%20la%20renegociation%20des%20DD%20consolides_OMC_20160715_Final_0.pdf

The WAEMU francophone States should therefore plead, in the common interest of ECOWAS (and the WA), that they were victims of French colonization and claim the right of ECOWAS to bind its tariff on all products at 79.9%, rounded up to 80%, and 127% for its agricultural products. These levels are not exorbitant when compared to the simple averages of the bound tariffs of many countries, including developed countries (table 7).

Table 7 – Average bound tariff of all products and agricultural ones of some countries in 2018

Simple average of bound tariffs for all products in 2018									
Bangladesh	Kenya	Mauritius	Mozambique	Congo dem.	Rwanda	Tanzania	Zambia	Koweit	Zimbabwe
154%	94,5%	86,6%	97,7%	96,1%	89,2%	120%	107,3%	97,9%	86,3%
Simple average of bound tariffs for agricultural products in 2018									
Bangladesh	Kenya	Mauritius	Iceland	Lesotho	Malawi	India	Norway	Tunisia	Zimbabwe
186%	100%	119,4%	113,7%	199,1%	120,9%	113,1%	133,6%	116%	140,9%

Source: OMC, World tariff profiles 2019

Conclusion

While EU28 exports of fat milk powder (FMP) to WA fell by 50% from 2010 to 2019 in volume and by 44% in value, exports of "powders mixture of skimmed milk and vegetable fat" (PMSMVF) rose 2.9 times in volume and 3.1 times in value, the export price of PMSMVF being 41% lower on average than that of FMP. While imports of natural FMP and SMP (skimmed milk powder) are already making an unstoppable competition to local milk, a fortiori the strong growth of imported PMSMVF, 7.6 times greater than that of FMP in 2019 against 1.3 times in 2010, seems to ruin any hope of survival for local milk.

If dairy farming in WA suffers from serious handicaps, the first of which being the lack of fodder resources that would make it possible to promote crossbreeding of local breeds with more efficient ones, nevertheless the profitability of local milk can be significantly improved by strengthening import protection in several ways. The objection that such protection would strongly penalise consumers has not been verified in East Africa where the increase in the customs duty on milk powder – from 25% in 1999 to 35% in 2002 and 60% since 2004 – has not prevented the growing consumption of locally sourced milk products in milk equivalent by 8% per head (from 38 kg to 46.5 kg) from 1999 to 2018 as production increased by 87% compared to 73% for the population. However consumption increased slightly more as net imports of milk equivalent increased by 1.5% from 1999 to 2018, and while Kenya went from being a net exporter of milk equivalent from 2005 to 2010 to a net importer since then, Uganda has been a net exporter since 2009.

There is a strong case for significantly increasing customs duties (CDs) on the PMSMVF, for several reasons: since palm oil is taxed at 35% in the CET and represents 28% of the volume of the PMSMVF, CDs should be raised from 5% to 13.4%; since Nigeria, whose imports of PMSMVF in value terms represented 27.9% of WA imports in 2019, adds a 25% levy to the CET on PMSMVF, the CET should rise at 18.1%. Since Côte d'Ivoire adds a levy of 1,842 € per tonne to the PMSMVF, the CET should rise at 25.4%.

WA could also have implemented the Complementary Protection Tax (CPT) since it met the CET safeguards conditions, particularly in 2019 for the increase in imported quantities and in 2016 for the decrease in prices.

Among other possible measures, ECOWAS should pursue the European Commission by imposing countervailing duties on its subsidies to agricultural exports. As the complaint will be pursued bilaterally, the fact that ECOWAS is not (yet) a full member of the WTO does not pose a problem as long as the dispute is not appealed at the WTO. ECOWAS has many other reasons to sue the large EU dumping imposed on it by the interim EPAs of Côte d'Ivoire and Ghana, which are destroying regional integration, at the same time as the EU is protecting itself with very high CDs on its own imports of milk powders and PMSMVF, a protection reinforced by its domestic subsidies which have an import substitution effect.

Finally, ECOWAS should stop negotiating trade compensation at the WTO for WTO Members that would have been harmed by the fact that many agricultural tariff lines, particularly in Côte d'Ivoire and Senegal, were bound at levels well below the 35% rate of the applied duties of the CET adopted in 2015 on 130 tariff lines. Indeed, this is the poisoned gift of French colonization since only the francophone ECOWAS countries exceed their bound tariffs, with no anglophone country in this case. ECOWAS should therefore impose that its tariffs be bound at the average of the sum of bound tariffs of its 15 member States, weighted by their share in total ECOWAS imports, which would make an average rate of 80% for all products and 127% for agricultural products, levels close to those of many countries, including developed countries.