

Rebuilding the WTO for a sustainable global development
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Introduction

The World Trade Organization (WTO) is under attack from all sides:

- Developed countries, led by the European Union (EU) and the United States (US), want to bury the Doha Round and move on to new issues, in particular an international agreement on electronic commerce. Because the EU refuses to change the rules on domestic agricultural subsidies and the US President, Donald Trump, wants to paralyse the Dispute Settlement Body (DSB).

- Developing countries are demanding to finalize first the Doha Round, known as the Development Round, and in particular to implement the Special Safeguard Mechanism (SSM) for agriculture and to modify the absurd rules on subsidies to public food security stocks of the Agreement on Agriculture (AoA), as provided for in the WTO's draft agricultural modalities of 6 December 2008.

- North-South Non-Governmental Organizations (NGOs) of solidarity are divided on the very existence of the WTO, in particular between the peasant organizations grouped in Via Campesina that want to take agriculture out of the WTO or the WTO out of agriculture, while the NGOs grouped in the OWINFS (Our World Is Not for Sale) network, while strongly criticising the unfair WTO rules in all areas, consider it necessary to do everything possible to recast their rules in order to achieve sustainable and inclusive global development.

We will successively analyse the main grievances made to the WTO, the reasons why its existence cannot nevertheless be called into question, the inadequacy of the proposals made to reform it and those likely to achieve it. Although the aim is to reform the WTO in all areas, more attention will be paid to the rules on agriculture and food security.

I - The main grievances made to the WTO

1.1 - Formal criticism of the WTO's functioning

1.1.1 - The WTO presents itself as a "rules-based" institution

But the Secretariat does not investigate and cannot denounce the violation of the rules by Members, usually the most developed, nor contest the veracity of the data provided to the Secretariat for its report on the Member's "Trade Policy Review". This is because the WTO is an organization "managed by Members", not by its Secretariat.

1.1.2 - Criticisms of WTO decision-making

1.1.2.1 - Undemocratic steps: during the GATT period and until 2003 the agenda and content proposals of the negotiations were essentially decided by the QUAD (EU, EU, Canada, Japan), and in fact first by the G2 of the EU-EU couple. Then, after the Cancun Ministerial Conference (September 2003), Brazil and India – which had created the G20 of developing countries to oppose the joint EU-EU proposal on agriculture – replaced Canada and Japan in the QUAD, before China joined in July 2008.

"In advance of Cancun, the US and EU reached an agreement among themselves and put forward a joint proposal on agriculture. This proposal prompted a strong reaction from developing countries, who saw it as an effort to force them to lower their trade barriers, while allowing the US and EU to maintain their trade distorting subsidies. For many, this presaged a repeat of the Uruguay Round when a private compromise between the US and EU (the Blair House Accord) served as the basis for the ultimate agreement and obliterated the hopes of developing countries for making gains in the round. Once again, it looked like developing countries were going to get a highly unbalanced agreement. Prompted by the US-EU proposal, Brazil approached India with a plan for forming an alliance to oppose that initiative. The two countries joined forces and together succeeded in assembling a coalition of developing countries that represented over half the world's population and two-thirds of its farmers. The G20-T united not only to block the US-EU proposal but, driven primarily by Brazil, also arrived at Cancun with its own technically sophisticated counter-proposal that specifically targeted US and EU agriculture subsidies"¹.

After the QUAD's proposals for the agenda and content of the solutions, they are submitted to a wider circle of Members invited to participate in the "green room": *"These limited consultations, of invited representatives of about 15-25 countries (the number depending on the issues), was a very prevalent practice under the old GATT, and was used during the Uruguay Round, when a few developing countries, who were opposed to the particular demands of the majors, were generally brought in, isolated and pressured to yield"².*

It was at the request of the US that China was invited to participate in the Green Room at the meeting of the Trade Negotiations Committee on the Doha Round from 21 to 30 July 2008 in Geneva in order to reach a consensus on the two major issues of agricultural trade and non-agricultural market access (NAMA). The US hoped that China would side with developed countries in its interest to open up non-agricultural markets, but this has not been the case. Generally speaking, China has always maintained a low profile in all ministerial conferences

¹ Kristen Hopewell, *Different paths to power: The rise of Brazil, India and China at the World Trade*, Review of International Political Economy · September 2014,

<https://www.tandfonline.com/doi/abs/10.1080/09692290.2014.927387>

² <https://www.twn.my/title/green2-cn.htm>

so far, but has always sided with the positions taken by the majority of developing countries, particularly India. Because if China participates in the G20 of the WTO's developing countries calling for the opening of developed countries' markets, it also participates in the G33 of the developing countries prioritizing the protection of their agriculture and calling for the creation of the Special Safeguard Mechanism (SSM) and the change of the AoA rules on public stockholding for domestic food aid.

1.1.2.2 - Then the so-called democratic step: with submission to all Members by "consensus", but which has become more and more paralysing with the growth in the number of Members.

1.1.2.3 - To avoid this consensus, plurilateral agreements have been concluded between some WTO Members, of which the 1994 Agreement on Government Procurement revised in 2014, mainly between developed countries (but 32 States are observers, including China, India, Russia, Brazil), and the 1996 Agreement on Information Technology, revised several times, the last time in 2014, between developed countries, but the number of members is now 80 (including 28 from the EU) since many developing countries have joined. The preparation of four other plurilateral agreements was launched during the Buenos Aires Ministerial Conference in December 2017, on electronic commerce, trade barriers for small and medium-sized enterprises, investment facilitation and internal regulation of services. However, it is widely recognized that plurilateral agreements within the WTO, to which other Members may subsequently accede, are much preferable to bilateral, plurilateral or regional free trade agreements established outside the WTO.

1.1.3 - Criticism of the delay in WTO Members' notifications, particularly on the level of agricultural domestic support.

1.1.4 - More specific criticisms of the Dispute Settlement Body (DSB)

1.1.4.1 - Members, particularly developed countries, refuse to recognize the Appellate Body's rulings as legal precedents, which leads to more prosecutions and slows down decision-making.

1.1.4.2 - Considering that the US has been unfairly condemned by several DSB decisions, President Donald Trump wants to paralyse the DSB by refusing to appoint judges to the Appellate Body, without making proposals for reform or responding to proposals made by other Members. Some point out that the US will be the first victim if the Appellate Body can no longer function at the end of 2019 since 2 of the 3 judges still in office (out of 7) will have ceased their mandate³. Indeed, in view of the trade war triggered by the increase in US customs duties on its imports of steel and aluminum from China, a panel was established on 21 November 2018 with many Members as third parties (EU, Canada, Japan, India, Indonesia, Russia, Turkey, Taiwan, Thailand, Hong Kong, Ukraine, Mexico, Colombia, Kazakhstan, Norway, Switzerland, Saudi Arabia, Qatar, Guatemala, Venezuela)⁴. If the US loses the panel, it will not be able to appeal due to a lack of judges! WTO statistics also show that the US was the first user of the DSB, as it was the plaintiff in 123 cases (compared to 99 for the EU and 20 for China) and the defendant in 151 cases (compared to 85 for the EU and 43 for China). And the US won most of the cases in which it was plaintiff, although it lost most of those in which it was defendant when it came to anti-dumping or countervailing duties⁵.

³ Bernard Hoekman, *Report of the High-Level Board of Experts on the Future of Global Trade Governance*, Bertelsmann Stiftung, 2018, https://www.wto.org/english/news_e/news18_e/bertelsmann_rpt_e.pdf

⁴ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds544_e.htm

⁵ *DDG Wolff: Efforts to maintain and improve the multilateral trading system will succeed*, 18 December 2018, https://www.wto.org/english/news_e/news18_e/ddgra_18dec18_e.htm

The recent case in which the US imposed anti-dumping and countervailing duties to the EU on 25 July 2018 on its imports of table olives from Spain was only a bilateral non-WTO case, but even if the US continues to block the nomination of the Appellate Body's judges after 11 December 2019, the DSB has appointed on 21 October the 3 panelists who have started to analyse the EC request against the anti-dumping and countervailing duties imposed by the US since July 2018 on the import of Spanish ripe olives⁶. Australia, Brazil, Canada, China, India, Japan, Mexico, the Russian Federation, Saudi Arabia, Switzerland and Turkey have reserved their rights to participate in the Panel proceedings as third parties. It is premature to guess the outcome of the panel level as, if on the one hand, the EU has likely more chance to lose it given the precedent of the US Cotton panel⁷, on the other hand the main Californian plaintiff, Bell-Carter, would prefer that the US loses as part of its capital has been bought by a Spanish Company while the US Association of food importers prefers to increase its imports from Spain.

While the Appellate Body's essential function is to pass judgment on the correct interpretation of WTO rules by panels, it has also been called upon to express opinions of a broader scope than those strictly concerned by each specific panel and it is this *obiter dicta* activity that is accused by the US.

1.1.4.3 - Finally, there is a very broad agreement that the creation of the DSB at the WTO with its Appellate Body has significantly improved the resolution of trade disputes compared to the GATT period since, of the 136 panel reports, only 95 had been adopted since it required the unanimity of the Contracting Parties to do so, and the condemned country could oppose it.

1.2 - Substantive criticisms of the content of WTO rules

1.2.1 – WTO rules and human, social and environmental rights

Although the WTO was created as a follow-up to the GATT – which remains its main multilateral agreement on the principles of which all other WTO agreements are based – to coordinate trade in goods and services, its rules are most often in contradiction with international rules on human rights, social rights and the environment. And this despite its preamble begins with this statement: "*The Parties to this Agreement, Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development*".

In reality, WTO rules are inadequate in the three areas of the environment, social standards and food safety.

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[https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=\(@Symbol=%20wt/ds577/*\)%20and%20\(@Title=%20\(constitution%20of%20the%20panel\)%20not%20\(recourse%20to%20article%2021.5\)\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(@Symbol=%20wt/ds577/*)%20and%20(@Title=%20(constitution%20of%20the%20panel)%20not%20(recourse%20to%20article%2021.5))&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#)

⁷ *Alea iacta es: how Spanish olives will force a radical change of the CAP*, SOL, 7 November 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>; *The European Commission has crossed the Rubicon on Spanish table olives*, SOL, 19 February 2019, <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>

1.2.1.1 - On the environment, although there is a Committee on Trade and Environment which produced a 202-pages report in October 2017 on trade-related measures in all Multilateral Environment Agreements⁸, Article XX.b of the GATT provides for an exemption from its rules only for measures "*necessary to protect human, animal or plant life and health*", and Article XX.g adds measures "*relating to the conservation of exhaustible natural resources, if such measures are applied in conjunction with restrictions on domestic production or consumption*". But this article, already in the pre-WTO GATT, has always been applied very restrictively, since environmental risks can only limit international trade when there is an international scientific consensus on the reality of these risks from a "sound science" perspective and if it is not possible to limit them otherwise than by restricting trade. And Article 5 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) allows each country to restrict imports that degrade its own national environment in the same areas: the protection of human, animal or plant health or life and the conservation of non-renewable resources, provided that restrictions limit domestic production and consumption in parallel. In addition, the authorisation is only valid if it does not discriminate according to the country of origin and if the trade restriction is the only way to protect the environment.

On the other hand, the WTO prohibits penalizing imports of goods whose production would damage the environment in the exporting country or worldwide, in violation of multilateral environmental conventions! In 1998 Congress had to weaken the Marine Mammal Protection Act to comply with the US condemnation in 1992 because US law required a certificate stating that nets used for tuna fishing could not catch dolphins. In 1999 the WTO again condemned the US for banning shrimp imports from countries whose fishing vessels did not use means to prevent the simultaneous capture of turtles, forcing amendments to the law on protected species. In the absence of scientific evidence, the EU was condemned at the WTO in September 1997 and on appeal in January 1998 for banning the import of beef from the US and Canada doped with 6 growth hormones, as it was not based on the Codex Alimentarius standard. And the US filed a complaint with the WTO on 13 May 2003 against the EU moratorium on the import of genetically modified products, and although the DSB adopted the panel report on 21 November 2006 and arbitration was scheduled for February 2018, no action has been taken since a majority of EU Member States oppose the extension of imports of GM products.

1.2.1.2 - In social matters, Article XX.e of the GATT allows restrictions on imports only for measures "*relating to the products of prison labour*".

1.2.1.3 - The issue of social or ecological clauses in international trade: given the very restrictive interpretation of the WTO that contradicts international labour and environmental conventions, Western countries have sought to introduce social and ecological clauses in international trade. But the developing countries reject these clauses, particularly social clauses, believing that they hide a veiled protectionism of a North concerned about easing one's conscience.

- Progressive Northern associations and trade unions say that there is no question of aligning Southern countries' wages and social protection levels with the West's high levels, since this is one of their only competitive advantages, and indeed a single minimum wage is still not on the agenda in the EU, as long as significant labour productivity gaps remain. In addition, taxes would only be collected under the dual control of the international organizations – WTO, ILO (International Labour Organization), UNCTAD (United Nations Conference on Trade and Development) and UNEP (United Nations Environment Programme) – and the associations and trade unions of the countries concerned to which they would be refunded. A.

⁸ TN/TE/S/5/Rev.6 ; WT/CTE/W/160/Rev.8

Lipietz points out that the social clauses "*would not only protect the "North" against the "South", but above all the most democratic countries of the South against competition from the least democratic*"⁹.

- But developing countries have good arguments that need to be heard:

1) If the North is so concerned about the social and environmental conditions in the South, why is it only interested when they have an impact on its imports? Wouldn't productions for the domestic market be sanctioned? Yet there are far fewer children making carpets or other exported manufactured products than those working in food agriculture, brick making or small urban "jobs" such as shoe shining, or even beggars, without it being possible to prove that the former are more abused than the latter.

2) With the WTO, the North has imposed increased trade liberalization in line with its higher competitiveness, which has widened the trade deficit of Southern poor countries, eliminated more jobs than it has created and increased hunger in the South.

3) The North continues to corrupt Southern leaders, prohibiting the emergence of democratic governments and thus social progress, in order to export all kinds of white elephants, weapons and pesticides banned in the North or hazardous waste. Moralising its exports to the South is more important than claiming to moralise its imports from the South. And, before moralizing North-South trade, let us start by moralizing the cooperation policy, particularly that of the EU in Sub-Saharan Africa, which will perpetuate poverty and hunger there, in particular with the EPAs (Economic Partnership Agreements) EU-ACP (African-Caribbean-Pacific) countries¹⁰. It is true that the almost exclusive exports of raw materials from this continent do not pose a serious threat to European employment!

4) Globalisation leads to a much greater loss of control for the States of the South and the North must first act to moralise the financial markets and the action of multinational companies.

5) Let the North first clean up its own backyard by reducing its majority contribution to global pollution and growing social inequalities.

1.2.1.4 - In reality, it is up to each WTO Member to define its sustainable development strategy at the three levels of economic, social (including human rights) and environmental sustainability and to deduce its trade negotiation positions from it. In view of the priority that most developing countries should give to the objective of feeding their population properly in the long term, we can cite the recommendations to WTO Members by Olivier De Schutter, then Special Rapporteur on the Right to Food, in his mission report to the WTO of 25 June 2008:

"- Ensure, including through transparent, independent and participatory human rights impact assessments, that their WTO commitments are fully consistent with their obligation to respect, protect and fulfil the right to food.

- Define their positions in trade negotiations in accordance with national strategies for the implementation of the right to food.

- Encourage national parliaments to hold regular hearings on government positions in trade negotiations, with the participation of all relevant groups, in particular farmers' organizations.

- Limit overdependence on international trade in the pursuit of food security and strengthen the food production capacities needed to meet consumption needs, with a focus on small farmers.

- Maintain the necessary flexibilities and instruments, such as supply management systems, to insulate domestic markets from price volatility on international markets.

⁹ Alain Lipietz, *Vert espérance. L'avenir de l'écologie politique*, 1993.

¹⁰ J. Berthelot, *Did you say FREE trade? The Economic Partnership Agreement European Union-West Africa*, L'Harmattan, September 2018, French version in June 2018.

- Fully implement the Marrakesh Decision ... to ensure that every individual has access at all times to adequate food or the means for its supply, in other words, that the price increases that may result from the reform do not result in a violation of the right to food.
- Adequately regulate private actors over which the State can exert influence, in the exercise of their obligation to protect the right to food.
- Explore ways to redirect trade towards products and production methods that better respect the environment and do not lead to violations of the right to food"¹¹.

Also worth mentioning is Olivier De Schutter's report of 19 December 2011 on the "*Guiding Principles for Human Rights Impact Assessment of Trade and Investment Agreements*"¹², Elisabeth Bürgi Bonanomi's critical analysis of "*The Sustainability Assessment Methodology for EU Trade Agreements compared to De Schutter's Human Rights Impact Assessment Methodology*"¹³, and, more broadly, Elisabeth Bürgi Bonanomi's 2017 book on "*Measuring the Human Rights Impacts of Trade Agreements*"¹⁴, including Chapter 7 on "*The Legal Principle of Sustainable Development as Applied to the Agreement on Agriculture*".

Finally, there is the adoption by the UN General Assembly on 17 December 2018 of the Declaration on the Rights of Peasants and Other People Working in Rural Areas:

- Article 2.4. States shall elaborate, interpret and apply the relevant international standards and agreements to which they have subscribed in a manner consistent with their human rights obligations applicable to peasants and other persons working in rural areas.
- Article 2.5 States shall take all necessary measures to ensure that non-State actors that they are in a position to regulate, such as individuals and private organizations, as well as transnational corporations and other business enterprises, respect and strengthen the rights of peasants and other persons working in rural areas.
- Article 2.6.e Improve market management at the global level and facilitate timely access to market information, including on food reserves, in order to limit the extreme volatility of food prices and make speculation less attractive.
- Article 15.4 Peasants and other people working in rural areas have the right to define their food and agricultural systems, a right recognized by many States and regions as the right to food sovereignty. This includes the right to participate in decision-making processes concerning food and agricultural policy and the right to safe and sufficient food produced by ecologically sound and sustainable methods respectful of their culture.
- Article 15.5 States shall develop, in partnership with peasants and others working in rural areas, public policies at the local, national, regional and international levels to promote and protect This right is recognized by many States and regions as the right to food sovereignty. This includes the right to participate in decision-making processes concerning food and agricultural policy and the right to safe and sufficient food produced by ecologically sound and sustainable methods respectful of their culture.
- Article 15.5 States shall develop, in partnership with peasants and others working in rural areas, public policies at local, national, regional and international levels aimed at promoting and protecting the right to adequate food, food security and food sovereignty, as well as

¹¹ <https://www.refworld.org/docid/49abb71d2.html>

¹² https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add5_en.pdf

¹³

https://www.oefse.at/fileadmin/content/Downloads/tradeconference/Bu%CC%88rgi_EU_trade_agreements_impacts_on_human_rights_methodology.pdf

¹⁴ *Measuring human rights impacts of trade agreements: Ideas for improving the methodology, comparing the EU's sustainability impact assessment practice and methodology with human rights impact assessment methodology.* Journal of human rights practice, 9(3), S. 481-503. Oxford University Press.

sustainable and equitable food systems that contribute to the promotion and protection of the rights set out in this Declaration. States shall establish mechanisms to ensure the coherence of their agricultural, economic, social, cultural and development policies with the realization of the rights set out in this Declaration.

- Article 16.4 States shall take all appropriate measures to ensure that their policies and programmes relating to rural development, agriculture, environment, trade and investment effectively support the preservation and expansion of the range of local livelihood options and the transition to sustainable agricultural production. States will promote, wherever possible, sustainable production, including agro-ecological and organic production, and facilitate direct sales from farmers to consumers"¹⁵.

1.2.2 - On the other hand, in 1996 the WTO established an agreement on a policy of coherence with the International Monetary Fund (IMF) and the World Bank¹⁶ and the DSB must consult them on cases involving balance of payments issues (IMF)¹⁷ or on international loans (World Bank). A consultation that condemned India on appeal on 22 September 1999 in a complaint of 1997 by the US for maintaining quantitative restrictions on 2,714 tariff lines, in contradiction with Article XI.1 of the GATT and Article 4.2 of the AoA, in particular for many agri-food products, when it could not invoke a difficult balance of payments situation, in accordance with Article XVIII-B of the GATT. Basing India's condemnation on the advice of IMF experts is a supreme achievement when we know that the IMF's traditional magic potion of structural adjustment accentuated the Asian crisis, as seen by leading economists such as Paul Krugman, who recommended in August 1998 that Asian countries reimpose controls on capital movements¹⁸, noting that China had been less affected because it had precisely maintained them and applauded Malaysia for introducing them. UNCTAD itself has strongly criticized the classic deflationary management of this crisis¹⁹.

1.2.3 - Criticism of the pressures on the WTO to extend trade liberalisation by other institutions dominated by developed and developing countries with export priorities: G7 (United States, Japan, France, United Kingdom, Germany, Italy, Canada plus the European Commission), G20 (G7 Members, plus BRICS – Brazil, Russia, India, China, South Africa –, plus 7 other emerging countries), OECD, World Economic Forum, other international financial institutions and especially multinational companies that are putting pressure on all previous organizations.

1.2.4 - Criticism of self-determination of the status of developed or developing countries – a status supposed to confer on them "*special and differential treatment*" (SDT) – without taking into account the evolution of their level of development. But developing countries point out that, despite this, WTO rules generally confer reverse SDT to developed countries. For example, while developed countries benefit from the Special Safeguard Clause (SSC) of the AoA, they refuse to allow developing countries to create the Special Safeguard Mechanism (SSM) more suited to their needs.

¹⁵ http://www.hlrn.org/img/documents/A_C.3_73_L.30_FR.pdf

¹⁶ https://www.wto.org/english/thewto_e/coher_e/wto_wb_e.htm

¹⁷ *Declaration on the Relationship of the World Trade Organization with the International Monetary Fund*, https://www.wto.org/english/docs_e/legal_e/34-dimf_e.htm

¹⁸ Paul Krugman, *Saving Asia: it's time to get RADICAL*", Fortune, August 1998.

¹⁹ For a detailed analysis of this condemnation of India, see J. Berthelot, *L'agriculture, talon d'Achille de la mondialisation*, L'Harmattan, 2001, pages 343-47.

1.2.5 - Deeper criticisms of unfair definitions and misinterpretations of key trade-related concepts included in the WTO Agreements, of which:

1.2.5.1 - The scandalous definition of dumping (Article VI of the GATT and the Anti-Dumping Agreement) according to which there is no dumping as long as the export price is not lower than the domestic market price, which was at the origin of the radical reforms of the EU's Common Agricultural Policy (CAP) and the US Farm Bill in the early 1990s: a significant reduction in guaranteed minimum agricultural prices and compensation for farmers through subsidies, which these two countries having distinguished between trade-distorting and non-trade-distorting subsidies in the AoA rules, which they largely negotiated face-to-face during the Uruguay Round before submitting to all WTO Members.

1.2.5.2 - The definition of subsidies, which is very unfair for developing countries, in the Agreement on Subsidies and Countervailing Measures (ASMC), according to which only product-specific subsidies for the current year (or a few most recent years) are taken into account, although the countries, particularly developing countries, subjected to dumping over a long period have suffered cumulative losses in competitiveness²⁰, as a result of heavily subsidised EU agricultural exports. The WTO Appellate Body pointed this out in the March 2005 US Cotton Case: "482. *We are not persuaded by the United States' contention that the effect of annually paid subsidies must be "allocated" or "expensed" solely to the year in which they are paid and that, therefore, the effect of such subsidies cannot be significant price suppression in any subsequent year. We do not agree with the proposition that, if subsidies are paid annually, their effects are also necessarily extinguished annually... 484... The effects of a "recurring" subsidy may continue after the year in which it is paid*"²¹. Furthermore the current highest competitiveness of developed countries is explained more by all subsidies, specific or not, and by the high customs duties they have enjoyed for decades²² to reach the top of the competitiveness ladder²³.

1.2.5.3 - The absurd WTO definition of "market price support" (MPS) to be notified in the AMS – Aggregate Measurement of Support or amber box of coupled domestic supports subject to reduction – with other agricultural subsidies while the MPS does not involve actual public expenditure but corresponds to the difference between the current administered price and the border price of the years 1986-88. However, this fake SPM constitutes the bulk of developed countries' notifications to the WTO²⁴.

1.2.5.4 - The massive under-notification of agricultural subsidies by developed countries and the shift of the box in which they were notified in order to minimize trade-distorting subsidies.

1.2.5.5 - The AoA rules on subsidies to public food security stocks as part of domestic food aid are based not only on this absurd definition of the MPS, but also on misunderstandings about the concepts used: "agricultural products" vs. "food products"; "current market prices" vs. "administered prices"; "public stocks" do not involve being managed by public enterprises; the concept of "stock" has no precise definition of duration; no precise definition of what is a "food

²⁰ J. Berthelot, *La boîte verte : une boîte noire qui cache la boîte en or*, OMC, Hong Kong, 9 décembre 2005, https://www.wto.org/english/forums_e/ngo_e/posp56_e.htm

²¹ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds267_e.htm

²² J. Berthelot, *The green box a black box which hides the gold box*, WTO, Hong Kong, 9 December 2005, https://www.wto.org/english/forums_e/ngo_e/posp56_e.htm

²³ Ha-Joon Chang, *Kicking away the ladder*, 2002,

https://www.jstor.org/stable/40722165?seq=1#page_scan_tab_contents

²⁴ *The EU actual agricultural supports (AMS and OTDS) in 2013-14*, SOL, 29 April 2017, <https://www.sol-asso.fr/wp-content/uploads/2017/01/The-EU-actual-agricultural-supports-AMS-and-OTDS-in-2013-14.pdf>

security stock"²⁵. A thorough interpretation makes it possible to apply the same absurd rules to the US massive domestic food aid, notified in the green box, as to those imposed by developed countries on developing countries, in particular India²⁶.

1.2.5.6 - Article 6.2 of the AoA concerned also the developed countries

They have considered that allowing developing countries not to notify their AMS corresponds only to what has been called their "development box" while a careful reading of the article shows that, on the contrary, investment and input subsidies of developed countries should be notified in their AMS: "*investment subsidies which are generally available to agriculture in developing country Members and agricultural input subsidies generally available to low-income or resource-poor producers in developing country Members shall be exempt from domestic support reduction commitments that would otherwise be applicable to such measures*". As a result, developed countries, led by the EU and the US, do not report any AMS investment subsidies and virtually no input subsidy, particularly those to feed, which are by far their main inputs.

1.2.5.7 - The criticism of protectionism, particularly in agriculture, in developing countries showing that their average customs duty is much higher than that of developed countries is biased for two reasons:

1) The average agricultural customs duty means nothing because, alongside very low or zero duties for a large number of non-food agricultural products, those on basic food products in developed countries are often much higher than those in developing countries.

2) The concept of protection cannot be limited to import protection without adding subsidies and non-tariff barriers (NTBs), but here we will limit ourselves to customs duties (CDs). Paragraph 3 of Annex A of the WTO General Council's Doha Work Programme (the so-called Framework Agreement) of 31 July 2004 on the "Framework for Establishing Modalities in Agriculture" stipulates that "*Reforms in the three pillars form an interdependent whole and must be addressed in a balanced and equitable manner*". These three pillars are market access (import protection), export competition (export subsidies) and domestic support. This implies that import protection must include domestic subsidies since they have an import substitution effect and a dumping effect by allowing exports below the average total cost of production without subsidy (definition of dumping by the WTO Appellate Body in the Canadian Dairy Products case of December 2001 and December 2002). The concept of total protection must be used by adding to the ad valorem CD the tariff equivalent of subsidies. The WTO report on "World Trade in 2012" cites the work of Kee et al. of 2008 according to which "*For 36 percent of tariff lines receiving domestic support for agriculture, the AVE of this support is higher than the tariff... The countries with the highest AVE of domestic support for agriculture are EU members*"²⁷. Thus, imports of low and medium quality wheat from the EU28 (code 100199) are subject to several tariff rate quotas (TRQs) but those available are far from being filled: in 2018 the total TRQs used were of 2.575 million tonnes (Mt) but, as imports were of 4.782 Mt, 2.207 Mt had to pay €209.6 million of CDs (95 €/t). For a CIF price of 197 €/t, the CD of 95 €/t corresponded to an ad valorem tariff equivalent (AVE) of 48.2%. As the subsidies to the 1.345

²⁵ SOL's comments on Alan Matthews' evaluation of the EU-Brazil proposal on public stockholding, 29 July 2017, <https://www.sol-asso.fr/wp-content/uploads/2017/01/SOLs-comments-on-Alan-Matthews-evaluation-of-the-EU-and-Brazil-proposal-on-Public-Stockholding-July-29-2017-1.pdf>

²⁶ *Reconciling the views on a permanent solution to the issue of public stockholding for food security purposes*, SOL, October 2017, <https://www.sol-asso.fr/wp-content/uploads/2017/10/Reconciling-the-views-on-a-permanent-solution-to-the-issue-of-public-stockholding-for-food-security-purposes-1.pdf>

²⁷ <http://siteresources.worldbank.org/INTRES/Resources/OTRIpaper.pdf>

Mt of wheat exported to West Africa in 2018 at a FOB price of 188.1 €/t were of 61.20 €/t, this corresponds to a dumping rate of 32.5%, to be added to the AVE of 48.2% on imports, i.e. a total protection rate of 80.7% AVE, to be compared with the 5% of the ECOWAS Common External Tariff which will decrease to 0 in the interim EPAs (Economic Partnership Agreements) of Côte d'Ivoire and Ghana²⁸.

II - Why, despite all these shortcomings, the WTO remains inescapable

2.1 – The WTO brings together almost all States and world trade

Of the 164 WTO Members in 2018, 36 of which have entered since 1995, none has left and they accounted for 98% of world trade in 2016 and 93.8% of the world population in 2018. The 21 States with observer status wanting to join the WTO represented 5.8% of the world population in 2018, and the 3 non-observer States (North Korea, Eritrea, Turkmenistan) only 0.5% of the world population.

2.2 - The WTO is less worse than bilateral Free Trade Agreements (FTAs) – including, of course, EPAs with ACP countries – for many reasons, including the fact that decisions are taken by consensus at the WTO, even if the rule should be recast for greater efficiency and democracy. In addition, FTAs, including EPAs, are much more dangerous for developing countries than WTO agreements, even plurilateral ones, since they do not deal with subsidies (particularly in agriculture and fisheries) and developing countries do not have direct access to the DSB in the event of a dispute.

2.3 - It is essential that the ambassadors of developing countries to the WTO continue to be supported by analyses of North-South solidarity NGOs – particularly those grouped in the OWINFS (Our World Is Not For Sale) network created in 1999, at the time of the Seattle Ministerial Conference – to fight day by day on all the issues that developed countries want to impose on them, particularly for their food sovereignty. Similarly, North-South solidarity NGOs play an important role in supporting the positions of developing countries in the sessions they organise in the annual WTO public forums.

2.4 - It is because agriculture has not left the WTO or the WTO has not left agriculture that developing countries have been able to resist the liberalisation of industrial products and services by demanding first far-reaching reforms of WTO agricultural rules, particularly on subsidies (including more recently on public food security stocks). It is all the more important that developing countries remain at the WTO to continue to exert pressure on the need to change agricultural rules in exchange for their possible consent to the rules on other activities.

2.5 - If agriculture were to be 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. FAO or UNCTAD, or even the Committee on World Food Security (CFS), have 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 at FAO, UNCTAD or even the CFS than those they refuse at the WTO. And FAO or UNCTAD, or even the CFS, will need to have lawyers experts in the agricultural trade rules they would establish, and it is unclear how they could fail to refer to the case law of the WTO DSB, panels and the Appellate Body.

²⁸ *From customs duties to total agricultural protection: the case of the European Union-West Africa trade*, SOL, Aril 19, 2018, <https://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b-2018/>

One may wonder whether UNCTAD has not become more free trade than the WTO when one considers that it supports the AfCFTA (African Continental Free Trade Area)²⁹.

The FAO itself sees salvation in the fight against hunger only in more North-South transfers and does not mention the need to raise tariffs in developing countries. Nor has it condemned the EPAs.

Finally, it is not credible to think that WTO Member States, starting with the US, would agree to finance an additional international institution.

2.6 - Moreover, many of the DSB's rules and decisions are positive, but Members – especially developed countries, and first and foremost the EU and the US – refuse to apply them and the WTO Secretariat is not empowered to put pressure on them if they do not comply with the rules or judgments of the DSB, in particular its Appellate Body. If members had recognized a precedent legal value of its rulings, this would have resulted in significant time and cost savings, for example in the EU sugar case where it was sentenced on appeal on 9 April 2005 on complaint by Australia, Brazil and Thailand, while the panel and Appellate Body had already invoked the same arguments in the December 2001 "Dairy Products of Canada" case, reiterated in December 2002, only the product being different.

Similarly, WTO reports on Members' Trade Policy Reviews require the Secretariat to take at face value the statements and documents provided by Members without being able to contradict them.

2.7 - Fortunately, despite the scandalous definition of dumping in the GATT, the Appellate Body has departed from it on four occasions and has pointed out that any export by an agri-food company at a price below the country's average total cost of production without subsidies can be pursued for dumping.

III - The main proposals for reforming the WTO

3.1 - Drawing inspiration from the Havana Charter?

In the aftermath of the Second World War, high hopes were pinned on an international trade organisation (ITO) that would not make it an end in itself but a means to achieve global human objectives: raising living standards and reducing inequalities between countries (including through commodity agreements ensuring decent prices) and within countries through the priority given to employment, social standards and economic development³⁰.

The focus on employment and economic development was linked to the conclusions drawn from the protectionist management of the great crisis of the 1930s, which was accused of having led to war, a conclusion that was too rapid because the main cause was the poor management of exchange rates of countries that remained on the gold standard, of which France and Germany, which, because they could not devalue to import less, had to resort to an excessive

²⁹ *The folly of the Africa's Continental Free Trade Area (CFTA)*, SOL, 4 September 2017, <https://www.sol-asso.fr/wp-content/uploads/2017/10/The-folly-of-the-Africas-Continental-Free-Trade-Area-September-4-2017.pdf>

³⁰ *The Havana Charter is not the model to reform the WTO*, SOL, 4 January 2019, <https://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b-2018/>

escalation of customs duties³¹. Hence the idea that the Charter should focus on further trade liberalization as a means of promoting employment and development.

F. Collart Dutilleul, author of the book *"The Havana Charter, for a different globalization"* published in January 2018 (in French), abundantly underlines the complexity and even inconsistencies of the Charter: *"The Charter is very complex... The substantive provisions overlap, accumulate, juxtapose, complement each other and are accompanied by procedures, which are also complex... The Charter... oscillates between complexity and coherence"*³². But his enthusiasm to build a more social and solidarity-based world between developed and developing countries made him take his desires for reality. The same can be said for UNCTAD's praise of the Charter in its 2018 annual report.

The refusal of the US Congress to ratify the Charter is due to two partly contradictory reasons: - on the one hand, it considered that the Charter was too liberal in seeking to impose both *"the regulation of commodity markets, restrictive business practices and the regulation of international investments"*³³. For the International Chamber of Commerce (ICC), *"The growth of multilateral trade and the recovery and expansion of foreign investment are essential prerequisites for successful economic development and a high and effective level of employment and rising living standards"*³⁴.

- on the other hand, Congress considered that the Charter was not liberal enough by providing too many *"safeguards, exemptions, exceptions, and restrictions, all designed to protect the balance of payments and a variety of domestic social policies"*.

In fact, the US Congress found that the exceptions were too broad for the rest of the world, especially for developing countries, and not broad enough for the United States. Finally, the GATT was largely sufficient for them since it was less liberal than the Charter and provided sufficient safeguards, in particular the possibility of protecting agriculture through quantitative restrictions and of subsidizing exports.

3.2 - The 2004 Sutherland report on "The Future of the WTO. Addressing the institutional challenges of the new millennium"³⁵, some of whose proposals deserve debate:

- *"The principle of allowing the Appellate Body to remand a case to the first level panel should be pursued and clarified, especially if remands can be achieved without adding delays to the process"*.

- *"To alleviate some anxieties about transparency, as a matter of course, first level panel and Appellate Body hearings should generally be open to the public. This new practice would be susceptible to a motion by a panel (or Appellate division) or by a disputing party arguing there is a "good and sufficient cause" to exclude the public from all or part of a hearing"*.

- *"There should be a re-examination of the principle of pluri-lateral approaches to WTO negotiations... The approach should not permit small groups of Members to bring into the WTO issues which are strongly and consistently opposed by substantial sections of the rest of the membership"*.

- *"Ministerial conferences of the WTO should normally take place on an annual basis"*.

³¹ <https://www.nber.org/digest/oct09/w15142.html>

³² François Collart Dutilleul, *La Charte de la Havane, pour une autre mondialisation*, Dalloz, janvier 2018.

³³ John Gerard Ruggie, *International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order*, International Organization, Volume 36, Issue 2, International Regimes, Spring 1982, 379-415, www.wto.org/english/forums_e/public_forum_e/ruggie_embedded_liberalism.pdf.

³⁴ United Nations Conference on Trade and Employment, *Statement by Arthur Guinness, President of the International Chamber of Commerce*, 28 November 1947.

³⁵ https://www.wto.org/english/thewto_e/10anniv_e/future_wto_e.pdf

- "*Monetary compensation to poorer complainants, as a temporary measure pending full compliance, might be an approach worthy of experimentation*". Indeed, the poorest developing countries do not have the political capacity to take trade retaliation measures as developed countries do.

3.3 - Bernard Hoekman's report "Revitalizing Multilateral Governance in the World Trade Organization" for Bertelsmann Stiftung³⁶ provides useful comments:

- "*The failure to conclude the first multilateral round of trade negotiations held under WTO auspices, the Doha Development Agenda, has had serious consequences. These go beyond the significant opportunity cost of global welfare gains foregone from not disciplining the use of trade-distorting policies that have long been on the agenda of the WTO – such as agricultural support and tariff escalation. The Doha round failure has impeded WTO members from addressing new sources of policy tension and engaging in a collaborative effort to update WTO rules to reflect the changes that have occurred in the global economy in the 25 years since the WTO treaty was negotiated*".

- "*The role of trade and trade liberalization as a driver of greater inequality and stagnation in average household incomes of the middle class in many countries is hotly debated*".

- "*PTAs [plurilateral trade agreements] are discriminatory... They cannot attenuate the negative economic spill-overs created by national policies of countries that do not participate in them*".

- "*Some policies that matter significantly for many developing countries – e.g., agricultural support policies and tariff escalation – would have become subject to more stringent disciplines if the Doha round had been concluded*".

- "*The WTO is a member-driven organization in which the Secretariat is given very little voice. WTO practice has been to interpret the 'member-driven' motto as depriving the Secretariat from being able to take initiatives to support the work of WTO bodies. This needs to be reconsidered. Member-driven means members are responsible for conducting the WTO (i.e. taking decisions) but it need not translate into a monopoly on the right to express voice and supply relevant information to WTO members. Policy dialogue should not be limited to trade issues that fall under current WTO agreements; the Secretariat may need to assist such dialogue by providing information and analysis on the potential spillover effects or domestic policies, regardless of whether they fall under current WTO obligations... Empowering the Secretariat to do more to demonstrate that the WTO is an asset for WTO members can help counteract claims that the system of rules has adverse welfare effects or benefits only a few. A key area of concern for many citizens is the distributional effect of trade integration. While improving equity of domestic outcomes and assisting workers and firms manage adjustment costs are matters for national policy, much more can and should be done to monitor and assess the economic effects of WTO membership*".

- "*The objectives of the WTO range far beyond trade policy disciplines. The preamble of the WTO Agreement mentions improvement of living standards, preservation of natural resources, and attainment of sustainable development, among other goals. Communication strategies should be based on what the WTO does (has done) to attain these common objectives – and where it has failed to do so*".

³⁶ https://www.wto.org/english/news_e/news18_e/bertelsmann_rpt_e.pdf

3.4 - The European Commission's positions

3.4.1 - On questions of form

- *"The system remains blocked by an antiquated approach to flexibilities which allows over 2/3 of the membership including the world's largest and most dynamic economies to claim special treatment. The WTO's monitoring function is crippled by ineffective and repetitive committee procedures which are based on insufficient transparency. And, the core of the dispute settlement system is being challenged, with the distinct possibility of its paralysis in the near term"*³⁷.

- *"In areas where multilateral consensus is unattainable, actively support and pursue plurilateral negotiations which should remain open to all Members to join and whose results will be applied on an MFN basis. Explore the feasibility of amending the WTO agreement so as to create a new Annex IV.b. which would contain a set of plurilateral agreements that are applied on an MFN-basis and which could be amended through a simplified process"*.

- *"The EU should put forward a proposal for a Ministerial Decision which strengthens the role of the WTO Secretariat in support of various negotiating processes as well as in the implementation and monitoring functions"*.

- *"The EU proposes to i) cooperate more with like-minded Members in preparing joint counternotifications, ii) explore how the WTO Secretariat could be involved more, whilst guarding its neutrality towards Members, and iii) strengthen the consequences of a Member being subject to a counter-notification". Several NGOs, including SOL, have regularly counter-notified EU and US agricultural subsidies and these documents should be made available to all WTO members"*.

- *"Even though the TPRM (Trade Policy Review Mechanism) has no mandate to assess Members' compliance with WTO rules, it is a useful tool for peer pressure... The Secretariat can do its own research when preparing its reports and use information from other Members to highlight measures even if they have not been notified – provided that the Member under review does not object to this information being included in the report". But it is clear that he will oppose if it is a powerful country.*

In May 2018, French President Emmanuel Macron confirmed the need to overhaul the undemocratic decision-making procedure at the WTO: *"I propose a negotiation initially involving the United States, the European Union, China and Japan, which would quickly be extended to the G20 and OECD countries, on WTO reform... We must quickly reach a joint diagnosis on the dysfunctions of the current system and I hope that we will aim for this year's G20 in Buenos Aires for a first roadmap"*³⁸. And his Minister of Economy and Finance, Bruno Lemaire, stated on 16 November 2018: *"Let us also leave the hypocrisy of the question of special and differential treatment in development, where some States continue to claim to be developing while they are now global economic powers... while they are major powers that are much more important from a technological, commercial and industrial point of view than our own European nations, we will not progress"*³⁹.

On the blocking of the functioning of the Appellate Body, a joint communication of 23 November 2018 issued on 12-13 December 2018 to the WTO General Council and initiated by the EC with 10 other WTO Member States (including 7 Western OECD countries, two Southern

³⁷ http://trade.ec.europa.eu/doclib/docs/2018/september/tradoc_157331.pdf

³⁸ <https://www.ladepeche.fr/article/2018/05/30/2807844-macron-propose-des-negociations-pour-une-reforme-de-l-omc.html>

³⁹ <https://www.tresor.economie.gouv.fr/Articles/2018/11/23/une-omc-adapteeau-xxie-siecle>

OECD countries plus China and India) made proposals for reform of the DSB in order to partially address US criticism⁴⁰:

- The Appellate Body's rulings should deal only with the specific issues of the case and should not provide interpretations broader than those concerning it, which is the nature of an obiter dicta [opinion of the judges broader than in the case in question].
- The US disputes that the Appellate Body attributes a value of legal precedent to its own previous rulings and that panels must a fortiori follow the Appellate Body's previous reports in the absence of "convincing reasons", as this would have no basis in WTO rules.
- On these key issues, the Joint Communication proposes an annual meeting of WTO Members to discuss the substance of these issues with the members of the Appellate Body.
- On the same day, the EC issued another joint communication with China and India on the following proposals: increase the number of judges of the Appellate Body from 7 to 9, and their term of office from 6 to 8 years but without possibility of renewal, and that this appointment constitutes their full-time activity, which was not the case until now, in order to strengthen their independence.

3.4.2 - On substantive issues, in particular on industrial and agricultural subsidies

For the European Commission (EC), the WTO's aim is to "*address issues that are key to global trade as it evolves*". And for her, as for the US and other developed countries, it is a matter of recognizing that the Doha Round is dead and that the WTO must focus on other issues that are much more important for the future growth of the world economy and the catching-up of developing countries, namely electronic commerce (e-commerce).

3.4.1 - On industrial subsidies, for the EC, "*While the provision of industrial subsidies can in certain cases constitute a legitimate policy tool, their use may also carry significant risks for global trade as they can disrupt production processes, affect business performance and skew the competitive field. The Agreement on Subsidies and Countervailing Measures (SCM Agreement) is the main tool for disciplining industrial subsidies*". For the EC also, "*State-owned enterprises (SOEs) are, in a number of countries, an instrument through which the state decisively governs and influences the economy, often with market distortive effects. However, the growth and influence of SOEs in recent years is not yet matched with equivalent disciplines to capture any market-distorting behaviour under the current rules*".

On July 6, 2020, the committee of international trade (INTA) of the European Parliament debated the EU post-COVID-19 trade policy, the three panelists being the EU trade Commissioner Phil Hogan with two invited experts: Pascal Lamy and the Chief economist of the EBRD (European Bank for Reconstruction and Development). These two experts concentrated their reproach on China's industrial subsidies given as state aids to the 30% of companies under state control, which will oblige the EU to impose countervailing measures (anti-subsidies) but not larger customs duty as the US does because these are protectionist measures that the EU, which claims to defend the WTO rules, refuses to apply. In fact, subsidies to state-owned enterprises are not the only cause of China improved industrial competitiveness, for the following reasons:

1) It is logical that China's subsidies exceed those of the developed countries to facilitate the catching up of its per capita GDP, which was \$10,262 in 2019 compared to \$34,843 in the EU (3.4 times more), \$40,297 in Japan (3.9 times more) and \$65,281 in the US (6.4 times more).

⁴⁰ http://trade.ec.europa.eu/doclib/docs/2018/november/tradoc_157514.pdf

- 2) Among other factors of China's higher industrial competitiveness are those of high-tech manufactured exports which, according to World Bank indicators, were \$732 billion in 2018 against \$695 billion in the EU and \$156 billion in the US, and these exports accounted for 31.4% of China's manufactured exports against 15.6% in the EU and 18.9% in the US.
- 3) The patent applications filed at the World Intellectual Property Organization (WIPO) in Geneva were 1,393,815 in 2018, 15.6 times more than those of the EU and 4.9 times more than those of the US.
- 4) The articles published in scientific and technical journals were 0.7% higher in China than in the EU and 24.9% higher than in the US. And their number of researchers in 2018 (1.756 million), was halfway between those in the US (1.397 million) and the EU (1.917 million).

Clearly these other reasons of China's industrial competitiveness are more difficult to swallow by Western countries although themselves do not refrain from subsidizing their large industrial companies even if they are mostly privately owned as Airbus and Boeing.

3.4.2 – On agricultural subsidies, the EC is careful not to refer to them since it bears the main responsibility for blocking the Doha Round, having refused to modify the rules on domestic agricultural subsidies since January 2016 in the WTO Special Committee on Agriculture where this issue was at the top of the agenda, after the Nairobi Ministerial Conference in December 2015 led to a commitment by Member States to no longer use explicit agricultural export subsidies. As it is the dumping effect of domestic agricultural subsidies that is the first objective of most developing countries, we understand why the EC wants to bury the Doha Round.

The first argument is that the agricultural sectors of the EU and the US are not those of market economies in which agricultural products are supposed to be sold at their "*normal value*", 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 substantially reflects market values*"⁴¹. It is undeniable that EU and US agricultural prices have nothing to do with "*market prices without significant State interference*", because the successive reforms of the CAP (and the Farm Bill) in the early 1990s significantly reduced intervention prices by compensating them with direct aids, most of which were first coupled and then decoupled since 2015. For France, economists Jean-Christophe Bureau, Lionel Fontagné and Sébastien Jean admit that "*In 2013, this aid represents 84% of agricultural income for an average farm. Livestock is particularly dependent on it, with the various aids accounting for 89% of income in milk and 169% of income in the beef and veal sector. In extreme cases, a typical Alpine sheep farm receives around 59,000 euros in public transfers to generate a net income of less than 19,000 euros*"⁴². In fact they underestimate much the weight of aids to livestock producers as they do not take into account the feed subsidies which, even though they are granted to the producers of EU COPs – cereals, oilseeds cakes and pulses –, allow the EU producers of animal products – meats, eggs and milk – to buy their feed at a much lower price than that prevailing without the subsidies received by the producers of COPs.

IV - Towards a profoundly renewed WTO

We will not return to the various issues raised in the previous three sections and will limit ourselves to proposing recommendations on four points: the need to finalize the Doha Round before extending the agenda to other issues; the re-foundation of WTO rules on a hierarchy of rules that takes into account human, social and environmental rights; the need to compare

⁴² <http://www.cae-eco.fr/IMG/pdf/cae-note027v2.pdf>

agricultural subsidies per agricultural working unit; and the re-foundation of WTO votes by a double majority.

4.1 - Finalizing the Doha Round before extending the agenda to other issues

Developed countries must recognize that their willingness to bury the Doha Round in order to promote other issues, including electronic commerce, will never be accepted by the majority of Members, which are developing countries, without first meeting their major objectives relating to agricultural trade: recognizing the dumping effect of domestic agricultural subsidies, establishing a Special Safeguard Mechanism, notifying in the green box agricultural subsidies related to public food security stocks for domestic food aid.

4.2 – Re-founding WTO rules on a hierarchy of rules

Although the WTO's preamble states that its trade objectives are to be pursued *"in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development"*, its rules are most often in contradiction with those on human rights, social rights and the environment. This is why, in accordance with Article 1 of the United Nations Charter *"To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples"*, it is proposed to radically reform the WTO by subjecting its trade rules to a hierarchy of rules, where they must respect international agreements on fundamental human, social and environmental rights. And to contribute to this, the composition of the panels and Appellate Body will be reformed: one of the three judges should be an expert in human, social and environmental rights, chosen by mutual agreement between the DSB and the United Nations Human Rights Council, the International Labour Organization (ILO) and the United Nations Environment Programme (UNEP). And, since the EU's proposal to increase the Appellate Body judges from 7 to 9 was widely supported (the US did not express an opinion), of the 9 judges of the new Appellate Body, 3 would be experts in human, social and environmental rights.

4.3 - Comparing agricultural subsidies per agricultural working unit

While it is clear that over time the major emerging countries (of which China, India, Brazil and others) have seen their share of foreign trade grow sharply to the point of surpassing that of some developed countries (China became the world's largest exporter and importer of goods in 2017, far ahead of the US), the question of developed countries no longer recognizing their status as developing countries – so that they no longer benefit from the same "special and differential treatment" (SDT) of developing countries with much more limited trade performance – is not addressed correctly. Indeed, the democratic principle of "one man, one vote" must prevail over that of the WTO – which takes into account the trade weight of Members in the selection of participants in the Green rooms (despite the principle of consensus for the adoption of rules), or on that of the IMF and World Bank, where the votes of States are based on their "quotas", which are a weighted average of GDP (for 50%), the degree of openness of the economy (for 30%), economic variations (for 15%) and official foreign exchange reserves (for 5%).

Therefore, if there is a need to reconsider the status of Members beyond their current self-determination as developed or developing countries, this should be done on the basis of the value of their trade per capita. And, since the criticisms of the US and the EU focus mainly on

the comparison of agricultural subsidies in emerging and developed countries, they must be compared on the basis of subsidies per agricultural worker in full-time equivalent (or AWU, agricultural working unit). As FAO has stopped publishing data per AWU, as not reliable for developing countries, World Bank indicators on total labour force and percentage of people working in agriculture have been combined. If Eurostat gives this data for the EU, the USDA does not give it for the US.

The OECD most significant indicator is the TSE (total agricultural subsidies) per AWU, but MPS (market price support) is excluded because it does not concern subsidies but essentially import protection, particularly since 2014 when all explicit export subsidies were eliminated. In 2017 the US TSE-MPS was at \$78.316 billion (bn) which, divided by 2.344 million (M) AWU, implied an average subsidy of \$33,838 per AWU. At the same time the EU28 TSE-MPS was of \$83.637 bn which, divided by 8.938 M AWU, implied an average subsidy of \$9,357/AWU. And China TSE-MPS was of \$634.773 bn which, divided by 211.780 M AWU, implied an average subsidy of \$2,997/AWU. In other words the US subsidy per AWU was 11.3 times that of China and that of the EU28 2.7 times. Even if we delete the \$45.109 bn of US domestic food aid (DFA) remaining in the OECD data base (the only one remaining included in the TSE), the TSE-MPS-DFA drops to \$40.180 bn and the subsidy per AWU falls to \$17,142 so that the US agricultural subsidy was still 5.7 times larger than that of China. Unfortunately data are missing to compare the agricultural subsidy per AWU for India which was much lower than that of China.

As a result, emerging countries, of which China and India, are entitled to claim the status of developing countries availing of a special and differential treatment (SDT) under WTO agricultural rules. Especially since the SDT they receive is minimal compared to the gaps in agricultural subsidies with those of developed countries.

4.4 - Eliminating agricultural dumping

The claim by all States, including the US and the EU, to the right to food sovereignty implies the obligation to exclude all food dumping. Already because many developing countries, of which the LDCs, do not have the political and legal possibility of raising their customs duties (CDs), among which the Regional Economic Communities (RECs) of sub-Saharan Africa which are not WTO Members and whose Common External Tariffs therefore have no bound CDs. And also because the developed countries have refused to recognize the Special Safeguard Mechanism (SSM) for developing countries provided for in the WTO Modalities for Agriculture of 6 December 2008.

Exports must therefore reimburse the amount of domestic subsidies included, as proposed by the French "Platform for another CAP", which brings together 33 farmers', consumers', environmental and North-South solidarity associations: *"The CAP has many undesirable consequences on third countries, such as the destabilization of agricultural markets outside the EU and the deprivation of food sovereignty for the countries of the South. The post-2020 CAP seeks to eliminate these undesirable consequences and not to ban all European food exports. To this end, a system of aid reimbursement is being introduced for exports outside European borders, corresponding to a tax equivalent to the price of the subsidy received in the EU. Thus, European taxpayers' money will no longer foster EU agricultural dumping in Southern countries and French wheat will be sold on the world market at its true cost of production. So that if exported at this true production cost, it is unlikely that French wheat will remain competitive... Even if many other agricultural powers other than the EU export to the countries*

*of the South, this is a first step towards regaining food sovereignty by these countries, which consists in leaving them the choice of what they can produce and sell at home on the one hand and what they have to import on the other hand. At the same time, European diplomacy must promote the adoption of similar measures by the other agricultural powers, limiting agricultural and food dependency in the world*⁴³.

On the other hand, since the WTO Appellate Body has four times defined dumping as exporting at a price below the average total cost of production without subsidies, a minimum of subsidised exports remains possible as long as they are not made at a price below the average total cost of the WTO member without subsidies.

However, with much higher international wheat prices in the long run, the EU should be able to compete without subsidies and increase its exports without dumping. But this would not solve the problem of sub-Saharan Africa, especially West and Central Africa which do not grow wheat and which will have even better reasons to develop their production and consumption of rice, tropical cereals, tubers and plantains⁴⁴.

4.5 - Re-founding WTO votes on a double majority: of Members and population

A final recommendation concerns the need to review the issue of consensus, which has significantly hampered the adoption of WTO rules. The double majority rule used for votes in the EU Council since 2014 under the ordinary legislative procedure, known as "co-decision", which concerns 80% of all EU legislative acts, can be used here: a favourable vote must be obtained by 55% of the Member States representing at least 65% of the total EU population. The adoption of this rule for WTO votes would clearly tip the balance in favour of developing countries, which would be clearly more democratic.

⁴³ *Osons une vraie réforme de la Politique Agricole Commune ! Vers une Politique Agricole et Alimentaire Commune*, 21 septembre 2018, <https://pouruneautrepaq.eu/article/41>

⁴⁴ <https://france.attac.org/nos-publications/les-possibles/numero-24-ete-2020/dossier-la-transformation-du-systeme-productif/article/l-affrontement-de-deux-strategies-de-developpement-notamment-agricole-en>