



## **The European Commission's manipulations of the interim Economic Partnership Agreements of Côte d'Ivoire and Ghana**

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### Abstract

This analysis aims to uncover the many tricks used by the European Commission to impose the Interim Economic Partnership Agreements (iEPAs) of Côte d'Ivoire (CI) and Ghana, within the broader framework of the imposition of the West African (WA) regional EPA.

We begin by recalling that, even before the 1992 reform of the Common Agricultural Policy (CAP), where the EU sharply reduced its minimum domestic agricultural prices by compensating them with domestic direct aids, the European Commission had made an habit of granting very high export subsidies ("refunds") on its exports to Sub-Saharan Africa (SSA). The evolution of import protection for wheat and flour in CI is then presented, which allows to understand the preparation of the Common External Tariff (CET) of the WAEMU (Economic and Monetary Union of West Africa, comprising the 7 French-speaking countries and Guinea Bissau) in the 1990s.

This is followed by an analysis of the contradictions of the WTO, the FAO and the EU which, on the one hand, recognise the legal reality of the bound "other duties and charges" (ODC) of the West African (WA) countries in the WTO but, on the other hand, try to deny their legitimacy.

We then show the hold up by DG Trade, which modified the 2008 iEPAs tariff offers to bring them in line with the WA CET of 2015, without formal approval by the Council and the European Parliament. And this was done in simple meetings of the EU-CI and EU-Ghana Joint iEPA Committees.

We conclude by highlighting the contradictions in the attempt of the DG Trade report of May 2019 to show the absence of negative impact of the two iEPAs on the other States of WA.

## **I – The EU large agricultural refunds on its exports to SSA before the 1990s**

According to an article in *Le Monde Diplomatique* of 1978, "*The privileged customs regime enjoyed in Côte d'Ivoire by goods imported from the former Europe of Six ended on 1 July 1975, with the application by the government of the new provisions of the Lomé Convention which authorised the ACP countries to no longer have to grant reciprocal advantages to the member countries of the Common Market in exchange for the suspension of customs duties granted on entry into Europe for products from the ACP countries. The only obligation entered into by the ACP countries was not to grant a third country more favourable customs treatment than that applied to the member countries of the EEC. Côte d'Ivoire decided to reintroduce customs duties on goods and products imported from Europe as from 1 July 1975. This abolition of the customs advantages hitherto granted to imports from the Community has enabled Côte d'Ivoire to have twice as much customs revenue in 1975 as originally planned - 4 900 million instead of 2 300 million and, in 1976, 12 000 million francs C.F.A. for the 1976 financial year. In addition, the European Economic Community has continued to show its interest in a regular supply of agricultural products to its ACP partners under conditions of greater stability. With this in mind, the Commission in Brussels has decided to respond to the concerns expressed, in particular by Côte d'Ivoire, a traditional purchaser of Community wheat, by taking measures designed to bring about a substantial reduction in the cost of importing this cereal for the 1976-77 marketing year. Accordingly, the European College increased the Community refund from 35 ECU (1) per tonne of wheat exported (i.e. 9 450 CFA francs) to 45 ECU (12 150 CFA francs) on 1 October 1976 and to 65 ECU (17 550 CFA francs) from 1 January 1977 until the end of the marketing year on 31 July 1977*"<sup>1</sup>.

This practice of granting ACP countries refunds higher than those granted to all other recipients was confirmed by a European Commission document circulated in Seattle at the WTO Ministerial Conference in December 1999: "*Obviously export subsidies are necessary to bridge the gap between EU prices and those prevailing in developing countries. However, whenever it has been suggested that our exports affect domestic production in developing countries, refunds have been adjusted. Indeed criticism has rarely come from the importing developing countries, since their consumers benefit from EU exports and of course if the EU did not provide these refunds then their consumers would have to pay more for their food as there would be less competition between exporters in this market*"<sup>2</sup>. The Commission thus agrees with the arguments of the World Bank and the IMF justifying dumping as long as consumers in the importing countries benefit from it! It is not a problem that their farmers should die from it.

Far from thinking badly, the Commission is showing exceptional generosity of spirit since, according to another source, "*As part of its privileged relations with the ACP countries, the European Union grants the benefit of higher export refunds than for other third countries, to practically all the countries of sub-Saharan Africa*"<sup>3</sup>! For example, refunds on wheat exports to ACP countries were 53% higher than to other countries in 1997-98, as shown in Table 1 below, taken from the analysis of the minutes of the EU Cereals Management Committee meetings<sup>4</sup>, which shows a systematic gap in refunds on common wheat exports to ACP countries: the gap differs according to the average market situation but tends to vary between 3 and 9 €/t whatever the level of the refund (or world price). In 1995-96, a period when the world

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<sup>1</sup> *Les relations avec la CEE, Une chance supplémentaire*, *Le Monde Diplomatique*, <https://www.monde-diplomatique.fr/1978/02/A/34638>

<sup>2</sup> Commission européenne, *Argumentaire*. Agricultural policy and trade, 23-11-1999, 14 p.

<sup>3</sup> Bernard Valluis, *Céréales : l'Afrique, un acheteur régulier*, *Marchés Tropicaux*, juin 1999, p. 50-51.

<sup>4</sup> Extract from page 118 of J. Berthelot: *L'agriculture talon d'Achille de la mondialisation*, L'Harmattan, 2001.

price of wheat was generally higher than the Community price, there was no invitation to tender to the ACP countries and exports took place without refund from July to the end of November 1995 but were instead taxed from December to the end of June 1996 (taxation which continued at the beginning of the 1996-97 marketing year until the beginning of September 1996). For example, the weighted average refund was 19.54 €/t for the ACP destination during the 1997-98 marketing year compared with 12.11 €/t for unspecified destinations. The simple averages were as follows:

Table 1 - Average common wheat export refund: ACP countries and non-ACP countries

Single weekly average in €/t	1995-96	1996-97	1997-98	1998-99	1999-00
Non-ACP countries	-7,14*	6,35	11,27	32,55	32,15
ACP countries	-	7,30	17,29	39,95	34,95
Excess refund on ACP countries, in %	-	14,9%	53,4%	22,7%	8,7%

Source: weekly data from the Cereals Management Committees, ONIC.

The French Maize Producers Association (AGPM) states that, for common wheat, "*whereas in 1995-96 only 13% of Community exports were made with refunds, in 1998-99 this percentage rose to 83% and was 100% in 1999-2000*"<sup>5</sup>.

The European Commission's double standards are noteworthy. It states in Article 4.2 of Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards EU import duties in the cereals sector: "*In cases where third countries grant subsidies on exports of standard medium or low quality common wheat to European or Mediterranean basin countries so that world market prices can be undercut the Commission may take account of these subsidies in establishing the representative cif price for importation into the Community*"<sup>6</sup>! This is a clear lesson the ACP countries must remember for their imports from the EU!

In another article in *Le Monde diplomatique* of February 1978, it is written that "*France continues to satisfy the entire Ivorian demand for wheat and about half of the demand for dairy products and sugar*"<sup>7</sup>. However, "*The privileged customs regime from which goods imported from the former Europe of Six benefited in Ivory Coast ended on 1 July 1975, with the application by the government of the new provisions of the Lomé Convention which authorised the ACP countries to no longer have to grant reciprocal advantages to the member countries of the Common Market in exchange for the suspension of customs duties granted on entry into Europe for products from the ACP countries. The only obligation entered into by the ACP countries was not to grant a third country more favourable customs treatment than that applied to the member countries of the EEC. The Ivory Coast decided to reintroduce customs duties on goods and products imported from Europe as from 1 July 1975*". Incidentally, let us add that from 1988 (beginning of Easy Comext data) to 2019 100% of CI wheat imports (raw, excluding that included in processed cereal products) from the EU came from France – from 230,435 tonnes (t) to 494,091 t and from €27.5 million to €110.3 million – although ITC TradeMap shows that the EU's share of CI imports has gradually declined from 96% in 2012 to 58% in 2018, with the other three main exporters being Russia, Ukraine and Argentina.

<sup>5</sup> AGPM, *L'année céréalière et le maïs*, septembre 2000.

<sup>6</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996R1249&qid=1585384926338&from=EN>

<sup>7</sup> <https://www.monde-diplomatique.fr/1978/02/A/34638>

## **II - Preparation of the WAEMU Common External Tariff (CET) in the 1990s**

Two FAO documents, from 1997 and 2000, present the situation of wheat protection in CI. According to the December 1997 document, *"In Côte d'Ivoire, the government liberalized domestic wheat flour prices and removed the subsidy of 26,000 CFA francs (US\$49) per tonne on imported wheat as of 1 January 1996. However, import duties on wheat and wheat flour have been doubled and are now set at 10 percent and 30 percent respectively, the latter to protect the domestic flour industry. In addition, a 2.5 percent tax for data collection is also applicable to wheat and flour imports... The main features of this new policy are presented in Box 3 below"*<sup>8</sup>.

### **BOX 3: Liberalization of the cereals sector in Côte d'Ivoire: wheat and wheat flour**

*The Government of Côte d'Ivoire began the first phase of its liberalization policy in April 1995 by abolishing the state monopoly franchise on wheat and flour imports, which would be entrusted to two local mills. In order to protect consumers against a sharp rise in flour prices, the Government introduced a subsidy of 26 000 CFA francs (US\$52) per tonne on locally produced flour and lowered duties on wheat imports from 10 to 2.5 percent. However, on 1 January 1996, the flour subsidy was abolished. In addition, new import duties and taxes were imposed, as shown in the table below. All imports continue to be subject to a statistical tax of 2.5 percent ad valorem, a port tax of 0.6 percent and a duty of 0.75 percent on the FOB value for pre-clearance inspection".*

Table 2 – Increase in customs duty and tax on wheat and flour in Côte d'Ivoire

	New rate		Old rate	
	Customs duty	Tax levy	Customs duty	Tax levy
Wheat	5%	5%	2.5%	0
Flour	15%	15%	15%	5%

The following FAO analysis shows that the IC tariff on wheat imports fluctuated sharply from 1992 to 2001: *"Côte d'Ivoire's main obligations under the Agreement on Agriculture include the elimination of non-tariff barriers; rationalization of tariffs; consolidation and appropriate customs valuation of transactions. As mentioned above, reforms were carried out autonomously by Côte d'Ivoire prior to the Agreement on Agriculture, resulting in a liberalization of the agricultural regime and greater openness of the economy.*

Table 3 – Tariffs actually applied to agricultural imports (percentage)

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Cereals	5.4	6.2	5.4	5.5	12.5	12.9	9.3	8.3	6.8	6.1

Source: FAO author's calculations from CI Customs Service database

*Specific market access commitments under the Agreement on Agriculture include: tariffs on all agricultural products bound at a ceiling rate of 15 per cent, except for 29 tariff lines whose tariffs were bound at rates ranging from 5 to 75 per cent in 1995 and 4 to 64 per cent in 2004. Table 1 shows that Côte d'Ivoire is within its WTO commitments, although it does not appear to be in compliance with the maximum 5 percent CET obligations"*<sup>9</sup>.

However, these FAO assertions do not take into account the fact that, in addition to the ordinary customs duties (CDs), CI has also added a tax levy doubling the CDs on wheat and flour (Table 3 above) and has notified "other duties and charges" (ODC) to the WTO.

<sup>8</sup> FAO, *Evolution des politiques céréalières nationales*, décembre 1997,

<http://www.fao.org/3/w8488f/w8488f02.htm>

<sup>9</sup> <http://www.fao.org/3/y4632f/y4632f0o.htm>

While J. Berthelot was giving some lectures in economics at CIRES (Ivorian Centre for Economic and Social Research) in Abidjan, he met on 29 April 1998 with the Adviser to the Minister of Agriculture of CI (Henri Ducroquet, a French agricultural engineer under a cooperation contract) in charge of preparing proposals for the WAEMU CET. J. Berthelot tried to convince him that it was very dangerous to propose CDs at the rate of 5% on wheat and other cereals (except rice, which the EU does not export) and on milk powder, to which he replied that this was, on the contrary, necessary for the majority of WAEMU consumers with very low purchasing power. That the majority of the population is composed of farmers and herders did not concern him, although the above FAO study shows that CDs were higher in 1998. Above all, it did not take into account the 4 instruments that guaranteed good profitability for EU cereal producers, including those in France, after the 1992 CAP reform:

- 1) an intervention price of 100 euros per tonne since the 1995/96 marketing year (Council Regulation 1766/92 of 30 June 1992), which constitutes a minimum guaranteed price when the domestic market price collapses;
- 2) refunds for exports to ACP countries of 17.29 €/t in 1997/98 and 39.95 € in 1988/89 (see table 10 above);
- (3) direct aids of 73 €/t (not including the notified green box cross aids);
- 4) strong import protection on low and medium quality wheat, especially as the tariff quota on this wheat was still only 300,000 tonnes (t) in 1996 before increasing to 3 Mt from 2003 onwards. Following the Marrakech Agreement, signed within the framework of the WTO, the protection of the internal market is no longer based on a system of variable levies, which were abolished as of the 1995-1996 campaign and replaced by fixed customs duties. Until 2002, the import duty on cereals was equal to the intervention price plus 55% and minus the cif import price. The duty therefore varied according to the evolution of the world market price.

### **III - WTO, FAO and the European Commission refuse to recognise the bound "other duties and charges" (ODC) of ACP countries**

The WTO Secretariat's report on the 1995 Trade Policy Review of CI highlights in section 31 of Chapter 4: "*In its new schedule of concessions annexed to the Marrakesh Protocol, Côte d'Ivoire has made specific commitments with regard to agricultural products:*

- *The customs duty has been bound at the ceiling rate of 15 per cent, applicable at the beginning of the 10-year process of tariff reduction. The customs duties on a total of 29 six-figure tariff lines (dairy products, foodstuffs, beverages and tobacco) have, however, been bound at ceiling rates ranging between 5 and 75 per cent.*
- *Fiscal duty on agricultural products has been bound at rates ranging from 5 to 30 per cent.*
- *The other ad valorem levies have been bound at 3.1 per cent; and*
- *The specific duties have generally been bound at the rates in force, in common with the new reference prices (Chapter IV(2)(ii))*<sup>10</sup>.

At least this WTO report acknowledges that, in addition to ordinary CDs, CI has also bound levies on agricultural products<sup>11</sup>.

<sup>10</sup>

[https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S006.aspx?Query=\(+%40Symbol%3d+wt%2ftpr\\*+or+press%2ftprb%2f\\*+\)+and+\(%40Title%3d+\(ivoire\)+or+\(waemu\)\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(+%40Symbol%3d+wt%2ftpr*+or+press%2ftprb%2f*+)+and+(%40Title%3d+(ivoire)+or+(waemu))&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true)

<sup>11</sup> For an in-depth analysis of ODCs, read chapter 5 of J. Berthelot's book, *Réguler les prix agricoles*, L'Harmattan, 2013. An informal English version (How to regulate agricultural prices) can be downloaded at <https://www.sol-asso.fr/wp-content/uploads/2013/05/How-to-regulate-agricultural-prices-J.-berthelot-2013.pdf>

But this WTO report denies the binding of CI's ODCs. Indeed, although the actual customs duty on CI agricultural products covered by Annex 1 of the AoA (Agreement on Agriculture) was bound in 1995 at a ceiling rate of 15% (with the exception of the 29 tariff lines mentioned above), CI also bound "other duties and charges" (ODCs) for all agricultural products at 200% ad valorem as attested by the WTO<sup>12</sup>. However, the "*Understanding on the Interpretation of Article II:1(b) of the General Agreement on Tariffs and Trade (GATT) 1994*" stipulates, inter alia, that "2. The date from which 'other duties or charges' shall be bound for the purposes of Article II shall be 15 April 1994. Other duties or charges" shall therefore be inscribed in the Schedules at the levels applicable on that date" and that "4 ... Any Member shall have the right to dispute the existence of "other duties or charges" on the grounds that such "other duties or charges" did not exist at the time of the original binding of the heading in question, as well as the concordance of the inscribed level of "other duties or charges" with the previously bound level for a period of three years after the date of entry into force of the WTO Agreement or three years after the date of deposit with the Director-General of the WTO of the instrument incorporating the relevant Schedule into GATT 1994, whichever is the later"<sup>13</sup>.

As no WTO Member has challenged the level of bound ODCs of CI (and other WTO Members of WA) during the 3 years following April 1994 implies that these ODCs are definitively bound and therefore unassailable, which the FAO stressed for Senegal: "*WTO Members may challenge the rates of 'other duties or charges' for three years after the date of entry into force of the WTO Agreement. This does not currently seem to be a problem for Senegal since more than three years have passed since its accession to the WTO*"<sup>14</sup>. Moreover, according to the GRET-IRAM report of October 2008: "*However, if we take into account other duties and charges, the bound level is often much higher. Senegal, for example, has bounded its other duties and charges at 150%, which gives it an overall bound level of 180%. For ECOWAS countries it is important, on the one hand, to harmonise the bound duties and, on the other hand, to defend that the ceiling duty includes other duties and charges*"<sup>15</sup>.

For the 2012 WTO report on the review of Côte d'Ivoire's trade policy: "90- *With regard to other duties and charges, Côte d'Ivoire has made detailed commitments, specifying certain levies (including tax law) in force at the time. On more than 1600 tariff lines, these have been bound at ad valorem rates ranging from zero to 70%; some 130 additional lines have been bound at specific or compound rates*"<sup>16</sup>. But he added: "*The imposition by Côte d'Ivoire of other import duties and charges appears to be in contradiction with its commitments in this area, especially on products for which these duties and charges are bound at low rates*". This sentence confirms the contradiction between the fact that the WTO has published that CI ODCs are bound at 200% for all agricultural products and the fact that it would like these ODCs not to exist since they have the effect of allowing to raise the applied CDs.

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<sup>12</sup> Côte d'Ivoire's Uruguay Round goods schedules (zip format, 16KB):

[https://www.wto.org/english/thewto\\_e/countries\\_e/cote\\_ivoire\\_e.htm](https://www.wto.org/english/thewto_e/countries_e/cote_ivoire_e.htm)

<sup>13</sup> [https://www.wto.org/french/docs\\_f/legal\\_f/07-2-1-b.pdf](https://www.wto.org/french/docs_f/legal_f/07-2-1-b.pdf)

<sup>14</sup> <http://www.fao.org/docrep/008/Y4632f/y4632f2i.htm>

<sup>15</sup> *Etude prospective sur les mesures de protection nécessaires pour le développement du secteur agricole en Afrique de l'Ouest (illustration sur quelques filières stratégiques* [http://www.inter-reseaux.org/IMG/pdf/Resume\\_Etude\\_prospective\\_sur\\_les\\_mesures\\_de\\_protection\\_Afrique\\_de\\_l\\_Ouest.pdf](http://www.inter-reseaux.org/IMG/pdf/Resume_Etude_prospective_sur_les_mesures_de_protection_Afrique_de_l_Ouest.pdf)

<sup>16</sup> [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=243429%2c243443%2c241963%2c241895%2c240659%2c239203%2c238840%2c238700%2c85663%2c85380&CurrentCatalogueIdIndex=8&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=243429%2c243443%2c241963%2c241895%2c240659%2c239203%2c238840%2c238700%2c85663%2c85380&CurrentCatalogueIdIndex=8&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True)

The WTO reports on Ghana's Trade Policy Review of 29 January 2001 and 7 May 2008 deal mainly with bound agricultural CDs while bound ODCs are included in the WTO notification of Uruguay Round commitments. For CDs: *"Ghana bound 14.7 percent of its tariff lines in the Uruguay Round. For agriculture, all tariffs were bound, mainly at a final ceiling rate of 99 percent; lower bound rates of 40 percent and 50 percent were set for some agricultural products. The products subject to the 40 percent bound rate are live poultry, milk and cream, wheat and oilcake"*<sup>17</sup>. The same language was already contained in Ghana's Trade Policy Review of 29 January 2001<sup>18</sup>. On the other hand, the bound ODCs are limited to 15 percent and concern mainly dairy products and cereals<sup>19</sup>.

Another contradiction is revealed by the WAEMU and ECOWAS mission to the WTO: *"The two Commissions, ECOWAS and WAEMU, went to Geneva in July 2012 in order to collect the observations of the World Trade Organization (WTO) on the draft ECOWAS CET and to evaluate the obligations and commitments of the region or those of the Member States within the multilateral framework... The mission reached the following main conclusions:*

*i) Although the ECOWAS Treaty was notified to the WTO under the Enabling Clause, the establishment of the CET must comply with the general impact requirements of GATT Article XXIV. In other words, the establishment of the CET must not result in tariff rearmament vis-à-vis other WTO members.*

*(ii) If the draft CET 2012 version were adopted as it stands, the following situation would arise:*

- five States (Ghana, Guinea Bissau, Nigeria, Gambia and Togo) would not record any violations of their WTO commitments (bound duties);*
- eight States (Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Guinea, Mali, Niger and Senegal) would be in a position of serious violations in relation to their commitments;*
- one (1) State, Sierra Leone, would be in a position of minor violation".*

Once again we note the position of submission of WAEMU and ECOWAS to the WTO Secretariat, which favours the interpretation of developed countries. However, another internal contradiction within the WTO is that its Committee on Trade and Development produced a legal note in 2003 on the interpretation of the Enabling Clause: *"Some observations can be made, in terms of law, about RTAs (Regional Trade Agreements) falling under the Enabling Clause. (a) Such RTAs could provide for a simple "reduction" of customs duties between the parties and need not lead to the "elimination" of trade restrictions, as provided for in Article XXIV: 8 of GATT 1994; (b) WTO Members have not, to date, adopted or prescribed any criteria or conditions for the reduction or elimination of non-tariff measures provided for in the Enabling Clause; (c) The Enabling Clause does not impose a specific requirement with respect to trade covered by RTAs between developing countries, contrary to Article XXIV:8 of GATT 1994, which requires that RTAs cover "substantially all trade"*". Nevertheless, the Enabling Clause itself is insufficient since it does not explicitly recognize the right of DCs, and in particular of LDCs (Least Developed Countries), to raise their tariffs in order to ensure their food sovereignty, at the same time as developed countries maintain very high CDs on their basic food products, a fortiori if one takes into account the tariff equivalent of their agricultural

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<sup>17</sup> [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?Language=F&CatalogueIdList=125818,124067,124091,81179,70490,65371,48701,20713&CurrentCatalogueIdIndex=2&FullTextHash=371857150](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?Language=F&CatalogueIdList=125818,124067,124091,81179,70490,65371,48701,20713&CurrentCatalogueIdIndex=2&FullTextHash=371857150)

<sup>18</sup>

[https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S006.aspx?Query=\(\(+%40Title%3d+ghana\)+or+\(%40CountryConcerned%3d+ghana\)\)+and+\(+%40Symbol%3d+wt%2ftpr%2fs%2f\\*+\)+or+\(+%40Symbol%3d+wt%2ftpr%2fg%2f\\*+\)+or+\(+%40Symbol%3d+wt%2ftpr%2fm%2f\\*+not+add\\*\)\)+or+\(+%40Symbol%3d+wt%2ftpr%2fm%2f\\*+and+add\\*\)\)&Language=FRENCH&Context=FomerScriptedSearch&languageUIChanged=true](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=((+%40Title%3d+ghana)+or+(%40CountryConcerned%3d+ghana))+and+(+%40Symbol%3d+wt%2ftpr%2fs%2f*+)+or+(+%40Symbol%3d+wt%2ftpr%2fg%2f*+)+or+(+%40Symbol%3d+wt%2ftpr%2fm%2f*+not+add*))+or+(+%40Symbol%3d+wt%2ftpr%2fm%2f*+and+add*))&Language=FRENCH&Context=FomerScriptedSearch&languageUIChanged=true)

<sup>19</sup> [https://www.wto.org/english/tratop\\_e/schedules\\_e/goods\\_schedules\\_table\\_e.htm#fnt-a](https://www.wto.org/english/tratop_e/schedules_e/goods_schedules_table_e.htm#fnt-a)

subsidies (see below). Moreover, the consultation of the WTO by WAEMU and ECOWAS was fundamentally biased since neither WAEMU nor ECOWAS have bound C Ds because they are not members of the WTO, although their member States individually have bound CDs as well as consolidated ODCs.

The inclusion of ODCs is all the more justified since the WTO Analytical Index on Article II(1)(b) case law emphasizes that there is no precise definition of "Other duties and charges": "34 - *In Dominican Republic – Import and Sale of Cigarettes, the Panel analysed the definition of an 'other duty or charge': 'Although there is no definition of what constitutes an 'other duty or charge' in the GATT 1994 and in the 'Understanding on the Interpretation of Article II:1(b) of the General Agreement on Tariffs and Trade 1994', the ordinary meanings of Article II:1(b) and Article II:2 make it clear that any fee or charge that is in connection with importation and that is not an ordinary customs duty, nor a tax or duty as listed under Article II:2 (internal tax, anti-dumping duty, countervailing duty, fees or charges commensurate with the cost of services rendered) would qualify for a measure as an 'other duties or charges' under Article II:1(b). The travaux préparatoires concerning the Understanding confirm such interpretation. The Secretariat note on 'Article II:1(b) :OF THE GENERAL AGREEMENT' stated: '4 The definition of ODCs falling under the purview of Article II:1(b) can only be done by exclusion –i.e. by reference to those categories of ODC not covered by it. It would be impossible, and logically fallacious, to draw up an exhaustive list of ODCs which do fall under the purview of Article II:1(b), since it is always possible for governments to invent new charges. Indeed, an attempt to provide an exhaustive list would create the false impression that charges omitted from it, or newly invented, were exempt from the II:1(b) obligation'*"<sup>20</sup>.

Similarly, the EU has denied the possibility for ACP countries to avail themselves of their ODCs, as shown in Article 8 of the WA EPA: "*Fees and other charges. The fees and other charges referred to in Article 7 of this Agreement are subject to specific tariffs corresponding to the real value of the services provided and must not constitute indirect protection of national products or the taxation of imports or exports for fiscal purposes*". To which, if necessary, is added Article 9 on the Status quo: "*No new customs duties on imports shall be introduced on products covered by the liberalisation between the Parties, nor shall those currently applied be increased from the date of entry into force of this Agreement*".

For the CI iEPA the provisions are more ambiguous. On the one hand, Article 10 on "*Customs Duties*" provides that "*Customs duties shall mean duties or charges of any kind levied on or in connection with the importation or exportation of goods as provided for under WTO rules*" but, on the other hand, Article 11 on "*Fees and other charges*" provides that "*The Parties reaffirm their commitment to respect the provisions of Article VIII of GATT 1994*", which would lock in the increase in protection: "*1. (a) All fees and charges of whatever character (other than import and export duties and other taxes within the purview of Article III), imposed by contracting parties on or in connection with importation or exportation shall be limited to the approximate cost of services rendered and shall not constitute indirect protection of domestic products or taxes of a fiscal nature on importation or exportation*". However, one is entitled, and even obliged, to follow the interpretation of WTO jurisprudence which validates the binding of ODCs.

The scandal, another double standards, is that the European Commission has defended the ODCs at the WTO in the case *Argentina v. Chile* on its system of price bands, where the

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<sup>20</sup> [https://www.wto.org/english/res\\_e/publications\\_e/ai17\\_e/gatt1994\\_art2\\_jur.pdf](https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art2_jur.pdf)



Commission intervened as a third party because, in defending Chile's price bands, it was also defending the variable levies that it continued to use for cereals and certain fresh fruit and vegetables: "5.29 As regards the difference between "ordinary customs duties" and "other duties and charges", the European Communities explain that Article II:1(b) also provides with respect to "other duties and charges" that they cannot exceed a given amount, but gives no indication as to whether certain "types" of duties would or would not be considered as "other duties and charges". The European Communities submit that the similarity of language compared to that used for the "ordinary customs duties" suggest that the second sentence of Article II:1(b) has to be read similarly to the first sentence, that is, as only embodying an obligation not to exceed the amounts of "other duties and charges" provided for in their domestic legislation... As for the Understanding on Article II:1(b) of GATT 1994, while obliging Members to record their "other duties and charges" in their Schedule, on penalty of losing their right to apply such "other duties and charges", the European Communities explain, it does not limit the types of duties that can be scheduled as "other duties and charges". The European Communities conclude that the difference between "ordinary customs duties" and "other duties and charges" is mainly based on a formal criterion (that is, where in a Member's Schedule a "duty or charge" is recorded), but is not based on a difference in the types of duties that fall under one or the other category.

5.30 The European Communities consider that, as the principal obligation in the second sentence of Article II:1(b) is to refrain from imposing "other duties and charges" in excess of those provided for in domestic legislation... these measures are also characterized by a ceiling. It concludes that, as such, they cannot be assimilated to the measures referred to in footnote 1 to Article 4.2 of the Agreement on Agriculture, including the measures "similar" to those expressly listed in the first part of the footnote. The European Communities further explain that, given that a separate obligation not to exceed the level of "other duties and charges" is laid down in Article II:1(b) compared to that laid down for "ordinary customs duties", there is a separate ceiling for such "other duties and charges"<sup>21</sup>.

Moreover, stronger arguments can be made against the European Commission since, on the one hand, the GATT does not impose a reduction in CDs for developing countries and, on the other hand, subsidies must be taken into account when assessing total protection.

In fact, Article XXXVI of GATT does not impose a reduction in customs duties on developing countries: "The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties".

SOL has shown why it is necessary, according to the WTO, to include subsidies in the assessment of total import protection<sup>22</sup>. The following are two excerpts on EU cereals and milk powder exports to West Africa:

"Imports of EU28 low and medium quality wheat (code 100199), above the tariff quota of 3.112 million tonnes (Mt), reached 277,576 tonnes in 2016 at a tariff of 95 €/t which, for a CIF price of 195 €/t, corresponded to an AVE of 48.7%. The EU28 exported 2.399 Mt of wheat in WA in

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[https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S006.aspx?Query=\(%40Symbol%3d+wt%2fds207%2fr\\*+not+rw\\*\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(%40Symbol%3d+wt%2fds207%2fr*+not+rw*)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true)

<sup>22</sup> From customs duties to total agricultural protection: the case of the European Union-West Africa trade, SOL, April 19, 2018, <https://www.sol-asso.fr/wp-content/uploads/2019/01/From-customs-duties-to-total-agricultural-protection.-April-19-2018.pdf>

2016 (excluding that included in processed cereal products) at a FOB price of 173.1 €/t with a subsidy of 60.4 €/t, corresponding to a subsidy (or dumping) rate of 34.9%<sup>23</sup>. The total protection rate in AVE was therefore 73.6%. A rate to be compared to that of 5% of the ECOWAS Common External Tariff (CET), which will fall to 0 in the interim EPAs (iEPAs) of Côte d'Ivoire and Ghana which have been implemented since 3 September 2016 and 15 December 2016 respectively".

"The EU exports of milk powder (codes 04021019 and 04022118) to WA in 2016 received an average subsidy of 67.2 €/t corresponding to a dumping rate of 27.8%<sup>24</sup>. As the AVE of the EU28 MFN tariff (above tariff quotas) on imports was of 74.6%, the EU28 total protection rate was 102.4%. A rate to be compared, as for wheat, to that of 5% of Côte d'Ivoire and Ghana tariffs of their iEPAs on milk powder which will also fall to 0 at the beginning of their liberalization schedule. Similarly, the subsidy per tonne of liquid condensed milk (codes 04021019 and 04022118) was identical in milk equivalent but the AVE was 98.7%, i.e. a total protection rate of 127.4%".

#### **IV – DG Trade has fiddled the CI's and Ghana's iEPAs tariff offers without formal approval of the EU Council and European Parliament**

The text and tariff offer of the CI iEPA, as signed on 21 November 2008 by the EU Council and published in the EU Official Journal of 3 March 2019<sup>25</sup>, includes only CDs of up to 20% divided into 4 groups and liberalised over 15 years:

- "- For group A products, liberalisation extends from 1 January 2008 to 31 December 2012, i.e. over a period of five years;
- For group B products, liberalisation extends from 1 January 2013 to 31 December 2017, i.e. over a period of five years;
- For Group C products, liberalization extends from January 1, 2018 to December 31, 2022, i.e., over a period of five years.
- Group D products are not liberalised"

The same timetable and the same maximum CD of 20% were provided for in Annex 2 of the Ghana EPA 2008<sup>26</sup>.

Although these iEPAs were signed as 'interim' (Article 75) pending the signing of the regional EPA, its Article 109 states that "*This Agreement is of unlimited duration*". As Nigeria is still resolved not to sign the WA EPA, the CI and Ghana iEPAs have become permanent, and therefore have an "*unlimited duration*".

In its latest edition of the state of play of the iEPAs of 26 March 2020 DG Trade writes: "*The EPA with Côte d'Ivoire was signed on 26 November 2008, approved by the European Parliament on 25 March 2009, and ratified by the Ivoirian National Assembly on 12 August*

<sup>23</sup> *The subsidies to the EU exports of cereal products to West Africa in 2015 and 2016*, SOL, March 17, 2017, <https://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b-2/>

<sup>24</sup> *The huge dumping of extra-EU exports of dairy products and to the EPAs of West Africa, SADC, CEMAC and EAC in 2016*, April 11, 2017, <https://www.sol-asso.fr/analyses-politiques-agricoles-jacques-b-2/>

<sup>25</sup> <https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=OJ:L:2009:059:FULL&from=FR>

<sup>26</sup>

[https://www.consilium.europa.eu/register/en/content/out?typ=SET&i=ADV&RESULTSET=1&DOC\\_TITLE=Ghana&CONTENTS=&DOC\\_ID=&DOC\\_INTERINST=&DOC\\_SUBJECT=&DOC\\_SUBTYPE=&DOC\\_DATE=01%2F10%2F2007%3A31%2F12%2F2009&document\\_date\\_from\\_date=01%2F10%2F2007&document\\_date\\_from\\_date\\_submit=01%2F10%2F2007&document\\_date\\_to\\_date=31%2F12%2F2009&document\\_date\\_to\\_date\\_submit=31%2F12%2F2009&MEET\\_DATE=&meeting\\_date\\_from\\_date=&meeting\\_date\\_from\\_date\\_submit=&meeting\\_date\\_to\\_date=&meeting\\_date\\_to\\_date\\_submit=&DOC\\_LANCD=EN&ROWSPP=25&NRROWS=500&ORDERBY=DOC\\_DATE+DESC](https://www.consilium.europa.eu/register/en/content/out?typ=SET&i=ADV&RESULTSET=1&DOC_TITLE=Ghana&CONTENTS=&DOC_ID=&DOC_INTERINST=&DOC_SUBJECT=&DOC_SUBTYPE=&DOC_DATE=01%2F10%2F2007%3A31%2F12%2F2009&document_date_from_date=01%2F10%2F2007&document_date_from_date_submit=01%2F10%2F2007&document_date_to_date=31%2F12%2F2009&document_date_to_date_submit=31%2F12%2F2009&MEET_DATE=&meeting_date_from_date=&meeting_date_from_date_submit=&meeting_date_to_date=&meeting_date_to_date_submit=&DOC_LANCD=EN&ROWSPP=25&NRROWS=500&ORDERBY=DOC_DATE+DESC)

2016. It entered into provisional application on 3 September 2016. The fourth meeting of the joint EPA committee took place in Abidjan on 27-28 November 2019 to oversee the implementation of the agreement and related issues. Side meetings took also place with the private sector and Ivorian authorities. Effective liberalisation started officially on 6 December 2019. The EPA with Ghana was signed on 28 July 2016, ratified on 3 August 2016 by the Ghanaian Parliament and approved by the European Parliament on 1 December 2016. It entered into provisional application on 15 December 2016. The second Meeting of the joint EPA committee with Ghana took place on 29 November 2019 in Brussels. Ghana started tariff liberalisation in 2020"<sup>27</sup>.

But the Commission has violated the tariff provisions of both iEPAs signed and ratified by the EU Council and the European Parliament by publishing on its own initiative on its website, without any new formal decision of the Council and Parliament, an "updated version" of their tariff offers in July 2018, which presents only the new amounts and timetables per tariff line (TL), without any written introduction<sup>28</sup>. And these new customs duties (CDs) per TL are strictly identical to those of the ECOWAS CET officially in force since January 2015, the only formal difference being that the CDs of the two iEPAs specify for each TL the tariff category (from A to D, D corresponding to the TLs excluded from liberalisation) and the year of dismantling, which will take a total of 10 years, from 2019 to 2029, whereas it would have taken 15 years in the 2008 iEPAs<sup>29</sup>. A fundamental difference, however, is that, although with the same initial CD, many agricultural LTs excluded from liberalization in Ghana are not excluded in CI. It would be very useful to question the EU Court of Justice on the legal validity of this hold-up by the European Commission on the tariff provisions included in the iEPAs ratified by the EU Council and the European Parliament.

This has resulted in a significant increase in the CDs in the two iEPAs which were capped at 20% while those in the ECOWAS CET contain 130 LTs at 35%, which violates their Article 15 on the "Status Quo": "*1. Notwithstanding Articles 23 and 24, no new customs duty on imports shall be introduced on trade between the Parties and those currently applied on trade between the Parties shall not be increased as from the date of entry into force of this Agreement. 2. Notwithstanding paragraph 1, in the context of the finalisation of the implementation of ECOWAS common external tariff, Ghana may revise until 31st December 2011 its basic custom duties applying to goods originating in the European Community as long as the general incidence of those duties is not higher than the one of duties specified in Annex 2*".

Other differences exist between, on the one hand, the CDs of the CI and Ghana iEPAs and the 2008 WA EPA and, on the other hand, the now uniform CDs of the different TLs. On the one hand, the CDs of the Ghana iEPA were only at 6 digits while those of both the CI iEPA and the ECOWAS CET were at 8 digits and their classification in groups A to D (D for excluded TLs) with the corresponding liberalisation schedules were also very different. Now the rates for all TLs in the Ghana iEPA are at 8 digits like those in the CI iEPA and the ECOWAS CET, although the last two digits are zeroes for a very large number of TLs.

However, although the CDs per TL of the two iEPAs are now identical to those of the ECOWAS CET, their classification in groups (or categories) A, B, C and D as well as their liberalisation schedules remain very different. For example for dairy products codes 040110, 040120, 040140 and 040150 taxed at 20% are excluded from liberalisation in the CI iEPA while they are

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<sup>27</sup> [https://trade.ec.europa.eu/doclib/docs/2009/september/tradoc\\_144912.pdf](https://trade.ec.europa.eu/doclib/docs/2009/september/tradoc_144912.pdf)

<sup>28</sup> For CI iEPA: [https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc\\_158598.pdf](https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158598.pdf) and, for Ghana iEPA: [https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc\\_158599.pdf](https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158599.pdf)

<sup>29</sup> [https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc\\_158598.pdf](https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158598.pdf)

classified in category C in the Ghana iEPA, with the rate falling to 10% in 2026 and 2027, 5% in 2028 and 0 in 2029. If code 04022910 is at 5% in both iEPAs it is in category A and liberalised in 2021 in the CI iEPA while it is in category C and liberalised only in 2024 in Ghana iEPA. Similarly if the code 04029110 is at 10% in the 2 iEPAs, it is excluded from liberalisation in CI and is in category C in Ghana where the DD falls at 5% from 2026 to 2028 and to 0 in 2029. Code 19019010 taxed at 5% in both iEPAs is in category B in Ghana and liberalised in 2024 while it is in category C in CI and liberalised only in 2029. For wheat codes 100191 (seed) and 100199 (other) taxed at 5% are excluded from liberalisation in Ghana, whereas they are in category A and liberalised in 2021 (seed) and 2024 (other) in CI. The difference between the 2 iEPAs is even more marked for meat (from code 020110 to code 021099) where all TLs are excluded from liberalisation in Ghana while many CI TLs, in categories A, B or C, are liberalised in 2024, 2026 or 2029 respectively. As these two countries are adjacent to each other, a high level of smuggling is to be expected<sup>30</sup>.

Since Nigeria's refusal to sign the WA EPA prevented its finalization, the alignment of the CDs rates per TL of the 2 iEPAs with those of the ECOWAS CET was also a means of exerting indirect pressure on Nigeria to sign the WA EPA, but it is doubtful that this was enough to make Nigeria bend. All the more so as, taking into account Brexit, its population would exceed that of the EU27 in October 2052 (425 million inhabitants).

#### **V - The twists and turns of the change of CDs in the CI and Ghana iEPAs**

It is interesting to follow in the press the vicissitudes of this DG Trade hold up through the meetings of the Joint EU-CI and EU-Ghana EPAi Committees.

Thus the Abidjan daily *FratMat* published an article full of contradictions on 28 November 2019: *"In a few days, Côte d'Ivoire will sign the interim economic partnership agreement (iEPA) between it and the European Union. The information was delivered this Thursday, November 28, 2019, by the Director of Cabinet of the Ministry of African Integration and Ivoirians Abroad, Diamouténé Alassane Zié, during a press conference... This decision follows a working session of 48 hours between the Ivorian side and a delegation of the European Union. On the occasion, the Director of Cabinet of Minister Ally Coulibaly also made the history of this agreement. He recalled that on 26 November 2008, Côte d'Ivoire signed a first interim economic partnership agreement with the European Union. This agreement guarantees Côte d'Ivoire free access to the European market for Ivorian products. And a gradual opening of Côte d'Ivoire to certain European exports. "Since 2008, therefore, Côte d'Ivoire has enjoyed duty-free access to the EU market for more than a hundred Ivorian products... Notably, cocoa, bananas and tuna," he continued. He added that this second agreement is part of the reciprocity framework. To this end, he said, the President of the Republic issued a decree on 23 January 2019 to proceed with the effective start of the first phase of tariff dismantling... In the same vein, the ambassador of the European Union in Côte d'Ivoire, HE Mr. Jobst von Kirchmann, welcomed this agreement which, he said, will further strengthen cooperation between the European Union and Côte d'Ivoire. "Côte d'Ivoire has kept its word. I would like to congratulate you on this. It is the basis of a relationship that we must develop in the form of partnership," he assured"*.

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<sup>30</sup> For an in-depth analysis of the two iEPAs and of the WA EPA, with notably the assessment of the expected Losses of CDs on the basis of 2008 Agreements and in the post-Brexit context, read J. Berthelot, *Did you say FREE trade? The Economic Partnership Agreement European Union-West Africa*, L'Harmattan, September 2018. Or *Vous avez dit LIBRE échange ? L'Accord de Partenariat Economique Union européenne-Afrique de l'Ouest*, L'Harmattan, juin 2018.

It is indeed funny to note that "*Côte d'Ivoire and the EU will sign the interim EPA next week*" when the article acknowledges that it had already been signed on 26 November 2008. It is also a lie to say that "*Since 2008, therefore, Côte d'Ivoire has enjoyed duty-free access to the EU market on more than a hundred Ivorian products*", as this has been true for practically all products (except arms) since independence<sup>31</sup>, as it has been for all WA States except Nigeria, which has refused to sign an interim EPA since 2008. It is the same lie from the Commission for Ghana's iEPA: "*Thanks to the iEPA, all exports from Ghana to the EU have entered the EU market duty and quota free since January 2008*"<sup>32</sup>. Then to say that "*the President of the Republic issued a decree on 23 January 2019 to proceed with the effective start of the first phase of tariff dismantling*" is inconsistent with the fact that this dismantling would take place before the signing of the iEPA "in a few days" in December 2019.

Precisely, another article from the French Treasury confirms that "*The implementation of the first phase of tariff dismantling of the Economic Partnership Agreement between Côte d'Ivoire and the European Union is effective since 9 December 2019*"<sup>33</sup>. But it repeats the lie that "This reciprocal free trade agreement, concluded in 2008 and entered into force in 2018" when it entered into provisional application on 3 September 2016<sup>34</sup>, provisional application involving the CDs provided for in the iEPA, even before dismantling begins, and not the higher CDs of the ECOWAS CET. According to the minutes of the 2nd meeting of the IC-EU EPA Committee of 21 and 22 March 2018, "*The EU side took note of the tariff dismantling schedule presented by the Ivorian side, which provides for the start of tariff dismantling in January 2019*"<sup>35</sup>. This was confirmed by the minutes of the 3rd meeting of the EPA Committee<sup>36</sup>.

As for the fact that "*the ambassador of the European Union... welcomed this agreement which, he said, will further strengthen cooperation between the European Union and Côte d'Ivoire*", there is no need to congratulate the EU which, for its part, has not kept its word since it stated on 19 September that "*the support of the European Union to the banana sector in Africa, to face Latin American competition, will not be renewed after 2019, announced its representative in Abidjan on Thursday, during a meeting with the producers*"<sup>37</sup>, especially since, in addition to the "stabilization mechanism" negotiated with the three Andean countries (Colombia, Peru, Ecuador) and the six non-ACP countries of Central America, the draft EU-Mercosur Agreement provides for lowering the CDs on banana imports from Brazil to the same level of 75 euros per tonne (€/t) as the one negotiated with the Andean countries (Colombia, Peru, Ecuador) and the 6 non-ACP countries of Central America, while the MFN (Most Favoured Nation, applicable to countries without tariff preferences) CD is 114 €/t.

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<sup>31</sup> According to the European Union Delegation in Abidjan "*Since 1961, the European Union (EU) has had preferential political and economic relations with Côte d'Ivoire*" :

[https://eeas.europa.eu/delegations/c%20C3%B4te-divoire/13577/ivory-coast-and-eu\\_en](https://eeas.europa.eu/delegations/c%20C3%B4te-divoire/13577/ivory-coast-and-eu_en)

<sup>32</sup> [https://trade.ec.europa.eu/doclib/docs/2017/february/tradoc\\_155314.pdf](https://trade.ec.europa.eu/doclib/docs/2017/february/tradoc_155314.pdf)

<sup>33</sup> <https://www.tresor.economie.gouv.fr/Articles/2019/12/11/accord-de-partenariat-economique-entre-la-cote-d-ivoire-et-l-union-europeenne>

<sup>34</sup> [https://eeas.europa.eu/delegations/c%20C3%B4te-divoire/13577/ivory-coast-and-eu\\_en](https://eeas.europa.eu/delegations/c%20C3%B4te-divoire/13577/ivory-coast-and-eu_en)

<sup>35</sup> [https://trade.ec.europa.eu/doclib/docs/2018/march/tradoc\\_156659.pdf](https://trade.ec.europa.eu/doclib/docs/2018/march/tradoc_156659.pdf)

<sup>36</sup> [https://trade.ec.europa.eu/doclib/docs/2019/april/tradoc\\_157870.pdf](https://trade.ec.europa.eu/doclib/docs/2019/april/tradoc_157870.pdf)

<sup>37</sup> <https://la1ere.francetvinfo.fr/afriquebanane-appui-ue-ne-sera-pas-reconduit-apres-2019-751079.html>

## **VI – The attempts of the European Commission to demonstrate the absence of negative impact of the two iEPAs on the rest of ECOWAS**

In order to defuse criticism of the iEPAs the European Commission published in May 2019 an impact assessment on the "*Implementation of the Interim EPA in Ivory Coast and in Ghana: impact study on regional integration in West Africa Implementation of the iEPAs in Côte d'Ivoire and Ghana: Impact Assessment on West African Regional Integration*"<sup>38</sup>, by Jacques Gallezot of the AETS research consultancy. This study had only a limited objective: to demonstrate that the use by CI and Ghana of inputs imported from the EU, once liberalised, does not have a negative impact on imports of other ECOWAS countries from CI and Ghana, as indicated in the introduction : "*The priority for Ivory Coast and Ghana was to assess the impact – on their export flows to the rest of the region – of making their national markets tariff-free for European products while being members of the ECOWAS Customs Union. In this case The above does not directly apply to EU-origin products transiting through Ivory Coast or Ghana, because duty must be paid on the European products when they cross the neighbouring country's customs border. Also unaffected by the IEPA are wholly obtained products (local produce, such as agricultural output), as these can be circulated freely. On the other hand, Ivorian transformed products (industrial and farmed for food), containing European inputs subject to tariff removal, might pose a problem if they also benefit from community preference under the Trade Liberalisation Scheme (TLS), since under the IEPA they would represent a competitive advantage over other countries in the region. It is this category of product that the study focuses on*".

A first criticism is that J. Gallezot analyses the competitiveness losses of other ECOWAS States on their imports from CI and Ghana on the basis of the CDs of the ECOWAS CET DDs on which the CDs of the CI and Ghana iEPAs established in 2008 were aligned in 2018, although they remain legally binding as the alignment of the CDs of the two iEPAs on those of the ECOWAS CET was done without the formal approval of the Council and the European Parliament.

It must then be challenged that are not concerned "*EU-origin products transiting through Ivory Coast or Ghana, because duty must be paid on the European products when they cross the neighbouring country's customs border*", as underlined by the WTO report on the WAEMU trade policy review of 14 September 2017 as the transit system does not function normally: "*13. Numerous problems apply to the free movement of community goods (either of origin or after release for consumption in a member State) or those in transit, related, inter alia, to each member State's need for revenue or to the existence of fraud. Furthermore, because the security amounting to 0.5% of the c.i.f. value of goods in transit is not high enough – Guinea-Bissau imposes a 2% tax instead – and the goods are unloaded illegally in markets of member States along the route, some member States, including Côte d'Ivoire, require a second guarantee equivalent to at least the total amount of the import duties and taxes suspended, which is refunded after receiving proof that the goods have left national customs territory... 2. 11 One persistent cause of the small volume of intra-community trade resides in the numerous obstacles to trade within the Zone. Indeed, the absence of a single market system (free movement) gives rise to a myriad of taxes and deprives the Union of the single entry point system for goods, which is one of the strongpoints of a community customs territory ... 2.12. Since 2005 the Commission and member States have continued their efforts, with the help of the West Africa Trade Hub, to identify obstacles to intra-WAEMU trade with a view to eliminating them: these*

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<sup>38</sup> [https://trade.ec.europa.eu/doclib/docs/2019/september/tradoc\\_158337.pdf](https://trade.ec.europa.eu/doclib/docs/2019/september/tradoc_158337.pdf)

*include abusive or illicit taxation; attempts at tariff rearmament on certain products originating in the Union; technical or administrative obstacles imposed on community products; abusive inspection formalities; minimum import quantities in order to benefit from duty-free status; importation of originating products contingent on the purchase of national products; certificate of origin requirement for local products; withholding of prior import declarations; and measures aimed at extorting bribes on the Union's main road corridors*<sup>39</sup><sup>40</sup>.

Similarly, the assertion that "*Also unaffected by the IEPA are wholly obtained products (local produce, such as agricultural output), as these can be circulated freely*" does not hold water. A first clarification to be made concerns the concept of "produits du cru", which is very extensive. Indeed, according to the "Additional Protocol No. III instituting the rules of origin of WAEMU products" of 19 December 2001, "Article 4: 1. *The following shall be considered as wholly obtained in the WAEMU States:*

*(a) live animals born and raised in the Member States .*

*(b) products derived from live animals reared there and animal by-products .*

*(c) the products of hunting and fishing practised in the Member States .*

*(d) products of sea fishing and other products taken from the sea by their vessels .*

*(f) products of the plant kingdom harvested in the Member States .*

*(k) products manufactured from substances referred to in paragraphs (b) to (i), used alone or mixed with other materials, provided that their proportion by quantity is greater than or equal to 60 % of all the raw materials used.*

*Article 11: ... agricultural and livestock products and articles made by hand shall be exempt from the requirement to produce a certificate of origin*<sup>41</sup>.

Indeed these agricultural products, raw or processed, are produced from inputs largely imported from the EU: refined fuels, seeds, fertilisers, pesticides, agricultural equipment and tractors. It is therefore the free movement of these so-called agricultural "produits du cru", raw or processed, that must be questioned, especially since these food exports from CI and Ghana to ECOWAS are much larger than J. Gallezot suggests. Although it is not possible to impute the share of imports of these agricultural inputs and equipments from the EU28 that concerns the agricultural products exported by CI and Ghana to the rest of ECOWAS, these agricultural exports are highly significant as shown in Table 4 below, which is based on ITC TradeMap data. The Harmonized System (HS) chapters 01, 02, 05, 06, 13, 14 and 16, whose exports were very low, were not retained. In fact, it can be seen that agricultural exports of the same chapters from the two countries to ECOWAS in 2018 were at 1.1 million tonnes (Mt) for \$787 million. This compares with EU28 exports to ECOWAS in 2018 for the same chapters of 4.654 Mt for €3.428 billion, or \$4.048 billion (exchange rate of \$1.181 per euro). There are the volumes that should be compared the most because the much higher values of EU28 exports reflect higher levels of product quality and processing. However CI and Ghana export larger tonnages to ECOWAS than the EU28 for some chapters: fruit (Chapter 8, 135,728 t against 25,133 t for the EU); coffee (Chapter 9, 6,767 t against 2,828 t); fats (Chapter 15, 326,081 t against 74,051 t); cocoa (Chapter 18, 7,064 t against 5,047 t).

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<sup>39</sup> Voir notamment les rapports de l'Observatoire des pratiques anormales, créé par la Commission de l'UEMOA avec l'aide du West-Africa Trade Hub. Adresse consultée: <https://www.watradehub.com/en/>.

<sup>40</sup> [https://www.wto.org/english/tratop\\_e/tpr\\_e/s362-00\\_e.pdf](https://www.wto.org/english/tratop_e/tpr_e/s362-00_e.pdf)

<sup>41</sup> [http://www.uemoa.int/sites/default/files/bibliotheque/pages\\_-\\_protocole\\_additionnel\\_03.pdf](http://www.uemoa.int/sites/default/files/bibliotheque/pages_-_protocole_additionnel_03.pdf)

Table 4 – Agricultural exports from CI and Ghana to ECOWAS in 2018

	Ghana		Côte d'Ivoire		Ghana + Côte d'Ivoire		% CI	% Ghana	% CI	% Ghana
	tonnes	\$ 1000	tonnes	\$ 1000	tonnes	\$ 1000	tonnes		\$ 1000	
03	2186	2830	1438	805	3624	3635	39,7%	60,3%	22,1%	77,9%
04	3306	8518	3113	4690	6419	13208	48,5%	51,5%	35,5%	64,5%
07	2142	95	16071	1457	18213	1552	88,2%	11,8%	93,9%	6,1%
08	19169	5258	116559	41117	135728	46375	85,9%	14,1%	88,7%	11,3%
09	1564	2765	5203	6035	6767	8800	76,9%	23,1%	68,6%	31,4%
10	269	236	35767	6762	36036	6998	99,3%	0,7%	96,6%	3,4%
11	93789	40102	75873	23337	169662	63439	44,7%	55,3%	36,8%	63,2%
12	229	124	120128	21484	120357	21608	98,8%	0,2%	99,4%	0,6%
15	85547	76326	240534	193859	326081	270185	75,8%	26,2%	71,8%	28,2%
17	335	193	14314	18398	14649	18591	97,7%	2,3%	99,0%	1,0%
18	5133	13626	1931	3896	7064	17522	27,3%	72,7%	22,2%	77,8%
19	8228	16885	54546	31204	62774	48089	86,9%	13,1%	64,9%	35,1%
20	21846	16695	5388	3771	27234	20466	19,8%	80,2%	18,4%	81,6%
21	5062	11166	31312	111321	36374	122487	86,1%	13,9%	90,9%	9,1%
22	20265	35592	9869	11801	30134	47393	32,8%	67,2%	24,9%	75,1%
23	29579	1574	64425	10660	94004	12234	68,5%	31,5%	87,1%	12,9%
24	57	119	4404	64438	4461	64557	98,7%	1,3%	99,8%	0,2%
Sub-total	298706	232104	800875	555035	1099581	787139	72,8%	27,2%	70,5%	29,5%
All products		771428		2236067		3007495				

Source: ITC TradeMap

Here are some data on ECOWAS countries that received CI's agricultural exports in 2018: of the 75,873 t of milling products (including 42,379 t of wheat flour) exported, Burkina received 56,000 t (including 39,670 t of flour) and Niger 2,370 t. Of the 116,559 t of fruit, bananas accounted for 72,631 t, of which 34,031 t went to Mali, 27,360 t to Senegal, 7,760 t to Burkina and 3,391 t to Niger. Of the 31,312 t of miscellaneous food preparations (Chapter 21) for \$111.3 million, the main recipients were Burkina (\$23.1 million), Ghana (\$21.8 million), Senegal (\$17.1 million), Mali (\$14.1 million), Nigeria (\$11 million), Niger (\$10.5 million) and Guinea (\$5.1 million). Senegal was the main importer of coffee (3,020 tonnes). Of the 16,071 tonnes of vegetables (Chapter 7), cassava accounted for 13,049 tonnes, of which 12,882 tonnes went to Mali. Of the 120,128 t of oilseeds 117,873 t were cottonseeds, mainly to Mali (108,617 t). Of the 240,534 t of oils, 212,791 t were palm oil, of which 57,207 t went to Mali, 43,813 t to Nigeria, 43,258 t to Burkina, 33,337 t to Niger and 26,288 t to Guinea. In the 54,546 t of cereal preparations (Chapter 19) 49,349 t were pasta (of which 28,987 t went to Burkina).

Although J. Gallezot uses part of the ITC TradeMap data, he states that "*The sources of this information come from the ECOWAS statistical services*". A glance at the ECOWAS website shows that the only data available on trade with third countries or intra-community countries, both in value and volume, have two major weaknesses: 1) they only cover the years 2002 to 2012; 2) they are not disaggregated between countries, so we do not know the imports and exports of IC and Ghana both intra-ECOWAS and with third countries, especially the EU. However, J. Gallezot (on behalf of the European Commission) was able to obtain access to the detailed ECOWAS files which are not online, in which case the least that DG Trade should have done, when it claims to involve civil society in its assessments, was to place these data in an annex.

It should be noted, however, that the ITC TradeMap data, also partly used by J. Gallezot, show large discrepancies between the value of CI and Ghana's exports to ECOWAS and the value of ECOWAS imports from CI and Ghana (table 5 below). Thus, FOB exports from CI to ECOWAS were 23.9% higher on average from 2016 to 2018 than ECOWAS CIF imports from CI, whereas normally the import value is higher due to transport and insurance costs. The difference is even more marked for Ghana as the value of its FOB exports to ECOWAS was 62.4% higher than ECOWAS CIF imports from Ghana. It can also be seen that the IC exports



twice as much to ECOWAS as Ghana but its total exports (to the world) are 17% lower than Ghana's total exports.

Table 5 - Exports from CI and Ghana to ECOWAS and ECOWAS imports from CI and Ghana

\$ 1000	2016	2017	2018	Moyenne
CI exports to ECOWAS and the world				
Exports to ECOWAS	2063719	2234107	2236067	2177964
Exports to the world	10605032	12560521	11823035	11662863
Share of ECOWAS	19.5%	17.8%	18.9%	18.7%
ECOWAS imports from CI and the world				
ECOWAS imports from CI	1393959	1905975	1975184	1758373
ECOWAS imports from the world	79444365	80599429	110289881	90111225
Share of ECOWAS	1.8%	2.4%	1.8%	2%
Ghana exports to ECOWAS and the world				
Exports to ECOWAS	1347520	1082199	771428	1067049
Exports to the world	10655796	14358510	17099588	14037965
Share of ECOWAS	12.6%	7.5%	4.5%	7.6%
ECOWAS imports from Ghana and the world				
ECOWAS imports from Ghana	675022	598026	695348	656132
ECOWAS imports from the world	79444365	80599429	110289881	90111225
Share of ECOWAS	0.8%	0.7%	0.6%	0.7%

Source : ITC TradeMap

Although the CDs of the CEDEAO CET is limited to 10% on refined fuels (code 2710) and 5% on other inputs (seeds, chemical fertilizers, pesticides, agricultural equipment and agricultural tractors), the amount of CDs paid by CI and Ghana on these inputs imported from the EU was on average from 2016 to 2018, based on the ECOWAS CET, of €64 million (M), of which €54.2 M on refined fuels and €9.8 M on other agricultural inputs. The CDs on Ghana's imports represented on average 72% of the total, of which 75% on refined fuels and 58% on other agricultural inputs, although it is CI that exports the most to the rest of ECOWAS, notably raw and processed food products. However, the share of these inputs in the production of products (agricultural or not) exported by the IC and Ghana to ECOWAS is not known.

J. Gallezot's assertion excluding *"products using EU inputs that are excluded from the liberalisation of the EPAi (mainly tobacco, cigarettes and pasta) and which therefore will have no impact on regional integration"* is illogical: it is not because some products are excluded from liberalisation that they are not exported from CI and Ghana to the rest of ECOWAS where they reduce the competitiveness of national products.

Finally, the assertion that *"As Ghana's activities are less focused than Ivory Coast's on the region's interior market, volumes of goods imported by its main partners on the intra-regional market – Burkina Faso, Niger and Togo – are smaller"*, is contrary to the observation of the Third World Network (TWN) Africa based in Ghana as of the World Bank. According to the TWN, *"Today, more than 90% of Ghana's most dynamic manufacturing exports go to the West African sub-region... EPAs directly undermine this market opportunity"*<sup>42</sup>. This was confirmed by the World Bank's 2015 report on Ghana: *"The export market for employment is ECOWAS: exporters to ECOWAS employ 38.7 percent of the workers in the sample. The second most important market was the European Union: exporters to the EU employed 4.9 percent of the workers in the sample"*<sup>43</sup>.

Above all, the main recommendation of this study is scandalous: *"In order to preserve the gains of regional integration and free movement given the limited effects on intra-regional markets*

<sup>42</sup> <http://www.socialwatch.org/node/13598>

<sup>43</sup> <http://documents.worldbank.org/curated/en/845041467999971258/Assessing-the-economic-impact-of-the-ECOWAS-CET-and-economic-partnership-agreement-on-Ghana>

*of the iEPAs, as this study shows, it would be preferable to leave the full maintenance of open intra-regional borders for an interim period".* On the one hand to say that the implementation of the iEPAs would have little effect on regional integration is not proven, as the study took only into account a very small part of CI and Ghana's exports to ECOWAS, at least for the agricultural products on which our analysis is concentrated. And above all, because maintaining the full opening of the borders between these two countries and the rest of ECOWAS is tantamount to denying the right of other ECOWAS countries to protect themselves from the competitive advantage of CI and Ghana on inputs and even on finished products whose imports from the EU would have been liberalised, since the proposal to open regional borders is not limited to imported inputs but also covers finished products. Not to forget that, although CI and Ghana have the same CD per TL aligned with the ECOWAS CET, there are many more TLs excluded from liberalisation in Ghana than in the IC. Finally, far from "*preserving the gains of regional integration*", this proposal would confirm the regional disintegration objective of the iEPAs and the regional EPA.

Finally, this proposal of the European Commission would allow CI, Ghana and the European Commission to have the butter, the butter money and the smile of the creamer. The butter: the CET CDs, higher than those provided for in the 2008 iEPAs, would minimize their losses of CDs on as yet unliberalised imports from the EU; the butter money: the absence of CDs to be paid on their exports to other ECOWAS States, including for liberalised products from the EU; the creamer's smile: that of the European Commission and of the EU multinationals which will be able to export more products once liberalised, not only to CI and Ghana but also to other ECOWAS countries which would not be able to tax them.

The fact that DG Trade, which is publishing this study on its website, warns that "*The content of this publication is under the sole responsibility of AETS and can in no way be taken to reflect the position of the European Union*" is a farce: if DG Trade does not endorse this report why is it highlighting it on its website?

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Naturally the conclusion that "*From an economic standpoint, trade creation (TC) improves well-being, since consumers get a good deal on imported items rather than buying local products, thanks to the preference associated with the iEPA*". That this destroys the jobs and incomes of regional producers is not a problem for the European Commission, even if this improvement in consumer "well-being" would only be in the very short term!

## **Conclusion**

It is high time that not only civil society in both the EU and SSA denounce the EPAs, of which the IC and Ghana's iEPAs are but avatars, but that EU and SSA policy makers understand that they have everything to lose by pursuing these Economic Poverty Reduction Agreements. Especially as they run counter to the Sustainable Development Goals (SDGs) and the Paris Climate Accord signed in 2015. Persisting in this blindness can only reinforce the conviction of African youth, whose numbers are exploding, that these policies deprive them of any future prospects and that their only way out is violence, directed either against themselves by risking

their lives to try to reach the EU which would send them back to their country, or against others by enlisting in jihadist movements to get a minimum pay.

However, the European Commission's trifling tinkering with the iEPAs texts adopted by the EU Council and the European Parliament is likely to provoke reactions from the EU Court of Justice and the EU Court of Auditors as well as of stakeholders in the other ACP EPAs, particularly in the East African Community.