The General Agreement on Tariffs and Trade (GATT), the European Economic Community (EC) and Agriculture

Eva Rook Basile

Follow this and additional works at: https://digitalcommons.law.utulsa.edu/tlr

Part of the Law Commons

Recommended Citation
Eva R. Basile, The General Agreement on Tariffs and Trade (GATT), the European Economic Community (EC) and Agriculture, 28 Tulsa L. J. 741 (2013).

Available at: https://digitalcommons.law.utulsa.edu/tlr/vol28/iss4/7

This Legal Scholarship Symposia Articles is brought to you for free and open access by TU Law Digital Commons. It has been accepted for inclusion in Tulsa Law Review by an authorized editor of TU Law Digital Commons. For more information, please contact megan-donald@utulsa.edu.
THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT), THE EUROPEAN ECONOMIC COMMUNITY (EC), AND AGRICULTURE

Eva Rook Basile*

I. INTRODUCTION: PROTECTIONIST PRACTICES AND THEIR EFFECTS ON INTERNATIONAL MARKETS

Through the use of publicly funded subsidies to protect loss-making or non-competitive productive sectors on the international market, civil society is prepared to constrain certain private sectors of wealth to achieve national economic growth and expansion. Subsidizing such industries is a well accepted practice in the so-called industrialized countries, and must be credited with contributing to the development of various economic sectors, including agriculture. This area of trade is marked by certain structural weaknesses.

The modernization of agricultural structures and the forming of price policies are the two chief methods used by the United States and the European Community (EC) to develop their agricultural industries, By the same token, they are also the means by which the the U.S. and the members of the EC have come to dominate most of the world market for agricultural products. The increase in agricultural productivity and the resulting increase in the amount of recordable agricultural production have, moreover, contributed to the integration of the agricultural sector with the urban and industrial sectors, thus contributing to accelerated development of the internal economies of the United States and the EC.

However, the costs of these policies, which fall principally on the shoulders of the consumers in the EC and the taxpayers in the United

---

* Professor of Law, University of Siena, Italy; General Secretary, Institute of International and Comparative Agricultural Law, Florence, Italy.
States,\textsuperscript{1} no longer appear to be tolerable. This is so because of the non-direct proportionality between the reduction of the subsidies and surpluses and the resulting flux of subsidies which is thereby created. This flux works to the advantage of the export market in order to reduce surpluses. It is also important to note that surpluses cannot always be placed on the international market, in part because many of the developing countries to which they were previously sent are now self-sufficient, with regard to agricultural production, and in part on account of the austerity measures adopted by numerous countries that now face financial troubles.

In substance, then, while the policy of aid has allowed the U.S. and the EC to compete effectively in the global market for agricultural products, the saturation of demand in their respective markets has forced them into competition by means of subsidies for surplus products on the world market. Today the EC is the largest exporter of agricultural products on the world market. The emergence of the EC in this role has lead to disputes with the United States over the equal division of the world agriculture market. These disputes, which originally manifested themselves as heightened of tension on account of business negotiations and the respective intervention policies, have led to an increasing awareness of the seriousness of the situation.

This tension is present not only in relations between the EC and the United States, but also between the U.S. and the EC and various free trade zones (ASEAN, for example), which have also seen large sections of the market disappear as a result of export subsidies paid out by the U.S. and the EC. The subsidies have the effect of reducing the ability of products from other countries to compete.

Against this backdrop, the idea of prohibiting or reducing both export subsidies and domestic subsidies has found popular support. PropONENTS of this idea point out that export subsidies are primarily responsible for the progressive destabilization of the world market, and add that domestic subsidies are equally likely to the promote surpluses in industrialized countries. The result is therefore a movement institute a program that would generally liberalize the international commerce of agricultural products.

This issue, amply discussed at the Uruguay Round of the General

\textsuperscript{1} The system adopted by the EC to maintain prices at high levels leads to the subsidies becoming a burden on the consumer. Vice versa, when the aids are made up of sunk funds, fiscal relief, and integrations for the producer where the market price is lower than the target price (the so-called deficiency payments) — the system adopted by the USA, the subsidies become a burden on the taxpayer.
Agreement on Tariffs and Trade (GATT), has reopened old wounds and caused disputes that had rocked international markets (but had apparently been resolved) to flare up once again. Nations find it difficult not only to abandon their protectionist policies, but also do away with measures that run counter to the aims of the GATT.

II. THE GATT AND PRINCIPLES OF EQUIVALENCE BETWEEN MATERIAL INJURY AND COUNTERVAILING DUTY

The institutional framework within which signatory nations (State Parties or States) of the GATT have agreed to reduce customs duties, refrain from discriminating against foreign-produced goods (including, for example, by agreeing not to impose quantitative restrictions), and generally to afford equal treatment to imports, consists of a series of measures to which the State Parties must adapt and of counter-measures to which Contracting Parties can resort in the case of any distortive effects on the freedom of competition.

The cardinal principles on which free exchange is based are, in sum, non-discrimination and reciprocity. It therefore follows that equivalence is the instrument by which the legitimacy of a contemplated counter-measure should be measured. The latter can be adopted by a State when an industry in its territory has suffered a material injury as a result of actions taken by another State Party. The purpose of such a measure is to neutralize to some extent the injury suffered by the domestic industry. Countermeasures are thus grounded in the pragmatic principle of neutralizing a prejudice or acting in opposition to injury. The injury expresses in se the breaking of a balance, which only a similar and adverse counter-action can restore. Therefore, the rationale of the counter-measure does not lie in the sanction taken in relation to an illicit action, but rather in the re-establishment of a fair relationship. Thus, in the consideration of counter-measures, whether the subsidy that threatened the balance is legal or illegal or advisable or poorly advised is immaterial.

The result is that while counter-measures may be adopted in the case of subsidies that are simply ill-advised, the seriousness of the injury suffered determines the nature and procedure of the counter-measure. The difference between the imposition of the countervailing duty (a unilateral solution) and the “material injury” on the one hand, and between the activation of the control mechanisms foreseen by Articles XVI and XXIII of the GATT and by Track 2 of the Code on Subsidies and Countervailing Duties (a multilateral solution) and the “serious prejudice” or “adverse effects,” on the other, is evident in the rapid neutralization of
the injury inflicted on the import market by the aid mechanism of the exporting country. In the latter case, with the objective of abolishing the perverse effects caused by the subsidy comes about via the discontinuation of subsidies by means of negotiation, conciliation, mediation, and recommendations.

As mentioned above, the seriousness of the injury inflicted determines the scale of the reaction permitted. Conversely, the prohibited or non-prohibited nature of the subsidy is relevant only as long as it relates to of the presumption of "adverse or unfavorable effects, thus allowing the injured country to activate the mechanism of plurilateral guarantee or, alternatively, to ascertain the existence of circumstances "serious enough" to authorize the adoption of the measures specified in Article XXIII (2) of the GATT.

The important role played by both the reintegration of the injury and the re-establishment of the balance in economic advantages in the imposition of counter-measures explains the disjunction of this discipline from that of subsidies and relative prohibitions. This fact is amply demonstrated by the possibility that coercive measures may also be taken in the absence of the violation of specific rules if the injury complained of is sufficiently serious. Instead, it is more reasonable to consider the two disciplines—counter-measures and prohibitions of subsidies—as converging forces in the establishment of a competitive balance.

III. SUBSIDY REGULATIONS AND THE GATT

Regulations on subsidies differ from regulations that affect counter-measures (which are generalized for the commerce of all industrial, base, or primary products) in that they differentiate between the production and commerce of both industrial and primary products. The difference, more obviously evident, lies in the liberalization of prohibitions against export subsidies to export: For primary products, such subsidies are prohibited only when subsidies give the exporting country "more than equitable share of the world export trade in that product" or when they create a visible decline in prices "in a manner which results in prices materially

2. The first formulation also allowed for 'any mineral'; cf. Note to art. XVI, § B, 2 of the GATT. The exclusion of minerals was established during the Tokyo Round, in note 29 of the Code on Subsidies.

It should also be added that the note to Art. XVI specifies that by primary products is meant "any product of farm, forest or fishery in its natural form", as well as any product 'which has undergone only such processing as is customarily required to prepare it for marketing in substantial volume in international trade'.

3. GATT, art. XVI(B)(3).
below those of other suppliers in the same market", forcing, given the seriousness of the injury, either a unilateral imposition of countervailing duties or recourse to the multilateral dispute settlement procedure. Otherwise, when subsidies produce or threaten to produce a serious prejudice, they are merely ill-advisable and lead only to the examination of the possibility of their containment for the subsidizing State.

These provisions constitute an exception to the general rule that export subsidies for industrial products is absolutely prohibited when it results in prejudice. When prejudice occurs, resulting in material injury, the State harmed by the subsidy is entitled unilaterally to adopt universal countervailing duties. If the harm takes the form of nullification of a benefit achieved under the GATT, the State may resort to the multilateral procedure. Finally, if the injury manifests itself as serious prejudice, the State can limit the offending subsidy voluntarily.

These regulations, later integrated with the anti-dumping measures contained in the norms adopted in the Kennedy Round (1967), and further defined in the Tokyo Round (1979), sanction the selling by a producer of its product on foreign markets at a price lower than that at which the producer sells it in its own national market, or, at any rate, at a price less than the cost of production. The anti-dumping Code, together with subsidy regulations, represents, through their reciprocal integration, the complete set of regulations for the market. In fact, while dumping can be practiced even with the use in the production chain of products benefiting from subsidies, the anti-dumping measures—which consist substantially in the same counter-measures foreseen for export subsidies—can be taken in those cases where it is not possible to repress the subsidies, given that these are not immediately visible.

Nevertheless, it should be noted that aid does not always lead to dumping; thus, this last is condemned only when it causes a prejudice, while the discipline of export aids demonstrates, with regard to these latter, a stricter attitude based on not only the counter-measure system, but also on the obligation of States to given notification of every subsidy.

With regard to production subsidies, these are in theory permitted, provided that they are not actually turned into export subsidies. As a result, they are ill-advisable — given that they allow for the adoption of

---

4. Code on Subsidies, art 10(3).
5. Art.11 of the Code on Subsidies lists the possible reasons for the adoption of production subsidies, attempting to mark the boundaries between domestic subsidies and export subsidies, attributing to the first, socio-economic objectives and an absence of discriminatory aims. The Code on Subsidies also includes an Annex with an "Illustrative List" of those aids which can be considered export subsidies.
the multilateral procedure — when they nullify or impair any benefit accruing directly or indirectly under the Agreement, or impede the attainment of any objective of the Agreement.

Despite precise modifications introduced in 1979 by the Code on subsidies, the specific set of norms foreseen for primary products (farm, forest, or fishery products) still shows a large number of ambiguities. These, together with the fact that States have recourse to numerous forms of aid for subsidising the export of agricultural products and the fact that it is not always easy to establish whether alimentary products are agricultural or industrial since they are the result of processing, are substantially responsible for the economic-commercial conflict between the EC and the USA.

The multilateral approach, which is increasingly necessary for the interdependence of the economies, therefore has difficulty in reconciling the different support policies of the agricultural sector.

From the viewpoint of the competitor country, the variety of instruments adopted produces an artificial barrier to the free application of the rules of the market, fully justifying thereby the application of countermeasures which are in their turn liable to determine others on the part of the adversaries.

The conflict between the USA and the EC concerning pasta and wheat meal highlights the most acute point of disagreement in the mechanism of “export refunds” practised by the EC, by which profitable prices are guaranteed to the community exporter; however, from the American point of view, in allowing for price quotations which do not correspond to production costs, these appear as an attempt to assure European exporters of an unfair advantage. This conflict does, however, mark an important turning-point in Community agricultural policy.6

IV. THE EEC COMMUNITY AGRICULTURAL POLICY

The organisation of the EC market is based on a twofold system of internal and external prices, in which the two levels are strictly linked. To be more precise, Community price policy constitutes the main instrument by which to uphold farmers’ incomes, and to assure the availability of supplies, and it is directed, together with structural policy, towards guaranteeing farmers a standard of living which is comparable to that of other economic categories.

Market policy, implemented by means of price policy, constitutes

6. Cf. further, Id. sub 5.
the Common Market Organisation and is compartmentalised into single productive divisions; the model on which it is developed is however basically that outlined for cereals in Regulation No. 120 of 1967, subsequently modified many times. It establishes, as far as the internal market is concerned, the annual fixing of a target price, that is to say, the price which a given product should actually reach, in the area of greatest shortfall in the Community; this takes into account not only the demand and offer of the wholesale product, but also the production costs, the farmers' profits, and the financial consequences on the EC balance. The target price marks the limit above which it becomes more advantageous to import the product from third countries.

The guarantee for farmers' profits is, instead, agreed on by means of the intervention price, which is less than that of the target price, and to which the Community intervention boards are tied in buying the product.

This profit is further guaranteed by production aid which takes the form of a subsidy normally fixed for every hectare of surface area cultivated for the harvest of those products for which the so-called integration has been granted. This form of aid integrates the incomes of the producer, given that it is calculated, as stated above, according to the surface area cultivated (as in the case of durum wheat, for example), or, occasionally, to the quantitative product (as in the case of olive oil).

As to the international market, the Community regulates the exchanges through the system of levies on importation, which are applied to those products coming from third countries at a lower price than that of the Community. In this manner, the threshold price (that is the target price less the cost of transportation to the centre of greatest shortfall in the Community) fixed by the Community reaches that of the non-Community product, thereby re-establishing the desired competitive relationship between the Community and imported products.

---

7. It should also be noted that the market organisations of agricultural products can take different forms; the most complex is that of cereals, with its target, intervention, and threshold prices, the production aids to durum wheat, the levies on importation, and export refunds. This is also true for rice, sugar, fatty goods, and dairy products.

The least complex form is represented by several products listed in Annex II of the Treaty (several types of animals, meat, and giblets; several types of fodder; live plants; floricultural products). It does not provide for any intervention measures or price support, but only for the application of customs duties for foreign products.

Other forms of market organisation exist which are provided with incomplete intervention mechanisms (as in the case of horticultural products, tobacco, sheep and goat meat, pork, beef, eggs, poultry, wines, flax, and hemp). As a rule, interventions by means of direct purchase are not foreseen. In other cases processing aids are granted (wine and fruit in alcohol), and consumer aid (butter).
On the world market the balance between the price of the product formed on the latter and the target price fixed by the Community is guaranteed by means of export refunds, a premium offered at the moment of export to integrate the European exporter with the difference in price when this is lower on the world market than on the Community market.6

It should at this point be observed that the principal aim of this type of policy is to guarantee the Community market from eventual diseconomies which can come about as the result of internal imbalances and external factors. The protectionist policy of the common organisation of the market, based on the stabilisation of the internal market and the defence of Community products on the world market, can sometimes give rise to situations which are perverse, as a result of the close ties which exist between the two policies of internal and external prices. And, in fact, internal support, by producing a surplus, is a determining factor in the choice of exporting, for which, however, aid in the form of refund is indispensable, given the rise of Community price with respect to world price, which this same operation has produced.

These disfunctions might well contribute to a feeling of ‘unfairness’ in the mechanism of the Common Market Organisation policy. This instrument is, however, very well suited to the aims of the Community, as the targets reached by the latter regarding the levels of production and market of its members and its position on the world market go to show. It should rather be pointed out that this type of organisation, the fundamental rules of which are described above, was expected, from the moment of the Community’s founding, to exhaust its role within a relatively short period of time, i.e., to function up to the moment in which the agricultural producers of the Community would manage to achieve an adequate standard of living and an equally adequate competitiveness on the international market. In other words, the price policies set up by the Community have never represented a set of aims as such, but, rather, an instrument to be used together with that of structural policy, the efficacy of which is, for intrinsic reasons, less incisive and more diluted over time.

V. Structural Policy

The interdependence between agricultural structure and market, and the consequent necessity for a strict connection between the policies in these fields is clearly expressed in Article 39 (1) and (2),9 as well as in

---

8. Cf. what has been said above about dumping. The export refunds can be turned into a sort of “official” dumping.
9. The aims of the Common Agricultural Policy (CAP), as stated in Article 39 (1), are a) the
Articles 42 and 43 of the EEC Treaty.\textsuperscript{10} The combined reading of these rules clearly shows the necessity of considering the agricultural market from two different points of view, that of the regulations on competition, and that of the intervention in the productive system by the means of aid.

The basis of the Community system is constituted by Articles 85 and 86 of the Treaty; these prohibit agreements and abuse of a dominant position wherever it is likely that these will distort competition between the Member States, while Article 92 also expresses the general rule of the prohibition of aid to undertakings.\textsuperscript{11} However, it is well-known that agriculture is based above all on the necessity for an ample action of transformation in the most economic directions, so as to guarantee supplies and the attainment of a reasonable standard of living for the farmers. This requires a policy of structural modernisation, together with a policy of harmonisation of the laws of Member States.

The necessity for combined action in the fields of structural intervention and price adaptation finds its effective fulfilment in the Guidance Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) — through which structural aids are granted for the adaptation and improvement of the conditions of production in agriculture, the adaptation and guidance of agricultural production, the adaptation and

increasing agricultural productivity b) the ensuring of a fair standard of living for the agricultural community c) the stabilising of markets d) the ensuring of the availability of supplies and of e) reasonable prices for consumers.

Art. 39 continues as follows: “In working out the common agricultural policy and the special methods for its application, account shall be taken of: a) the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions; b) the need to effect the appropriate adjustments by degrees; c) the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole.”

10. The Treaty rules on competition (Artt. 85-90), dumping (Art.91) and State aids (Artt. 92-93) shall, according to Art.42 par.1 “apply to the production of and trade in agricultural products only to the extent determined by the Council within the framework of Article 43 (2) and (3) and in accordance with the procedure laid down therein, account being taken of the objectives set out in Article 39.”

11. According to Art.92 (1) “Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market”. Article 93 governs the procedure to be followed by the Commission in cases involving alleged breaches of Art.92.

Art.2 of the Regulation 26/62 exempts from the operation of Treaty Article 85 (1) all such agreements, decisions, and practices “as form an integral part of national market organisations or are necessary for the attainment of the objectives set out in Article 39 of the Treaty. In particular, it shall not apply to agreements, decisions and practices of farmers, farmers’ associations, or associations of such associations belonging to a single Member State which concern the production or sale of agricultural products or the use of joint facilities for the storage, treatment or processing of agricultural products, and under which there is no obligation to charge identical prices, unless the Commission finds that competition is thereby excluded or that the objectives of Article 39 of the Treaty are jeopardised.”
improvement of the marketing of agricultural products and the development of outlets for agricultural products — as well as in the Guarantee Section — which covers the costs relative to the interventions made on the internal and external markets, that is, to the interventions on the prices which have already been described.

In this description of production guidance and adaptation, Community action with regard to producers' organisations should be mentioned, directed as it is towards recognising the role which trend making, market adaptation and regulations play in the operating fields of the agricultural producers' organisations. In organisations of this type — which are financed by the Guarantee Section — the meeting point between structural and market policies is more clearly perceptible than in many other areas, recognisable in the members' adoption of common regulations for production and intervention actions on the market.

VI. THE EC AND THE GATT: DIFFERING VIEWS ON DISCIPLINE AND AGRICULTURE COMMERCE.

The features described above of the twofold Community intervention on structures and prices show the special character of EC agricultural policy. This special character is also discernible in the regulations of the GATT, above all in those regulations which derogate prohibitions on subsidies for export or production either totally or partially. Therefore, it would not be appropriate to reach any over-simplistic or hurried conclusions affirming that Community regulations (and any consequent interventions) are in conflict with those of the GATT. Rather, it would seem more correct to note that the challenges which the world market poses today have changed with respect to the past, in the same way as has the agricultural competitiveness of the EC countries.

If, then, the time is ripe for reflecting on new agreements for the trade of agricultural products within the GATT — as the Uruguay Round meetings and the very recent EC-USA Washington agreement of the 20th November, 1992 would suggest, then it is also possible to claim that it is difficult to discern in the Community regulations any preclusions of a technical-legal order to the above-mentioned new adaptations. Neither can the illegality of Community interventions on the

12. However, now cf. the recent (February 1993) worried statements of the Secretary General of the GATT, Mr Arthur Dunkel, now faced with some measures endorsed by the Clinton administration (the raising of taxes on steel imports from 19 countries accused of dumping, the threat of exclusion from EC undertakings from government contracts, the reopening of negotiations in fields where agreements have been reached at the Uruguay Round).
prices of agricultural products on the grounds of the not-unreasonable American counter-measures be presumed, according to the rules of the GATT. Indeed, the existence of a legal cause and effect relation between counter-measure and aid is not envisaged in the GATT, while, on the contrary, that of an economic cause and effect relation between a counter-measure and a breach in the balance of exchanges, caused by the injury which the former is directed towards repairing, is envisaged.

These observations are certainly not such as to warrant abstention from the search for alternative solutions with regard to the international trade of agricultural products, amongst which can be noted that of extending to these latter the prohibition of both export aid and privileges granted to national products as opposed to those which are imported, and going so far, if necessary, as to limit production subsidies. The problem is, however, still that of arriving at a mutual understanding, from both the economic and, above all, the legal point of view. This can only be reached through the comparison of the various national "legal tools"11, the aim of which would be to understand the rationale which underlies these, together with all the differences between them; this process would aim at establishing a new multilateral and parallel organisation, as well as the institutionalisation of this12.

VII. AGRICULTURE AS A PRIMARY PRODUCT AND THE PROBLEM OF UPSTREAM SUBSIDIES

Together with the commitment which transpires from the numerous

13. Cf. e.g., for the EC regulation 2176/84 of Sept. 17, 1984, now substituted by Regulation 2423/88 of July 11th, 1988, with regard to dumping and subsidies by non-EC countries, and Regulation 2641/84 of September 17th, 1984, regarding defence against unfair and unreasonable practices. For the USA, cf. the Omnibus Trade and Competitiveness Act of 1988. It must be remembered that, according to Art. 113 (1) of the Rome Treaty, the common commercial policy is of exclusive competence of the Community which has therefore succeeded to the Member States with regard to the obligations arising from the GATT.

14. From this point of view, it is interesting to examine the question of the directly binding character of the rules of the GATT. As far as regards the European Community, the Court of Justice, in its judgement of 12th December, 1972, in the case of International Fruit, negated the possibility of direct application of the provisions of the General Agreement, maintaining the "programmatic", and therefore non-"self-executing" nature of the Agreement as a whole. It follows that the single citizens of the Community do not have the right to judicially demand the observance of the rules of the GATT, given that the Court of Justice examines commercial agreements from the only point of view which it is competent to hold, that is, from the point of view of a possible violation of the EC Treaty. This jurisprudence has been confirmed in the cases of Schluter (24th October, 1973) and Spi-Sami (16th March, 1983). Instead the Italian Court of Cassation, in its judgements of 6th July, 1968, N[degree sym]2293 and 20th October, 1976, N[degree sym]3616, has confirmed the direct applicability of the GATT rules. The Constitutional Court also concurred in this position, with reference to Article III of the General Agreement, in its decisions of 20th May, 1982, N[degree sym]96, and 25th July, 1985, N[degree sym]219.
meetings of the Uruguay Round to resolve the problem of the trade of agricultural products (not through an unnatural levelling out of the latter's regulation in line with the rules of the international commerce of industrial products, but via the renewal of agreements according to the agricultural sector's own rules), the previously-stated observations highlight the overriding need to single out and clarify the boundaries of the question.

As already stated, the 1979 Code circumscribes the notion of primary products to those of farm, forestry, and fishery. The comparison of this specification with that of the agricultural question according to Art.38 of the EEC Treaty shows analogies from only certain points of view. Indeed, the intention of singling out one area of products with common marketable characteristics and destined for human consumption unites, in both sets of regulations, agricultural and fishery products. Other points of contact can be discerned in the common classification of primary products as those which are the result of the economic activity known as primary — agricultural and extractive (fishery) —, and of primary commodities as those which do not derive from the processing of a primary product. Thus both regulations trace a demarcation line between agricultural and alimentary activities, and, therefore, between the commerce of agricultural and alimentary products.

With regard to this, it should however be underlined that the text of Article XVI of the GATT would lead, according to the construction of this rule as provided by Note 29, to the classification under base and primary agricultural products of also those products processed only to the extent held necessary for the trade of the base product. In this way, the area of commerce of agricultural products is circumscribed in a more rigorous and restricted manner than can be deduced from the EC Treaty, whose Annex II* to Article 38 carries a series of second and third-stage processing products which are also considered to be agricultural insofar as the trade of agricultural products is concerned. On the other hand, in its definition of agricultural products, the EC Treaty, unlike the GATT, does not include wood, which is thus excluded from the application of rules on the trade of agricultural products. This despite, as the more recent Community measures have clearly highlighted, the interest

15. Article 38 (1) provides that "agricultural products means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products". However, Annex II[degree sym] includes such products as margarine and ethyl alcohol of agricultural origin.
in forestry shown by the inclusion of such activity in the agricultural category as regards reforms and structural interventions.

Such differences are not of small account if reference is made to the EC-USA disputes regarding pasta and wheat meal, in which the principal point to emerge has been that of the argument over the "primary" nature of the products in question. The problem is strictly connected to the position of unjustified competitiveness in which the processed product can sometimes find itself when it is derived from a primary product, the cost of which is inferior to that practised by the suppliers of competing firms. It can happen that processing firms buy primary products in their own or other countries at artificially low prices thanks to the subsidies granted to these; they then export the finished product to countries whose competing firms, disadvantaged with respect to the low cost of the primary material, end up by being non-competitive. The question — which presents, as is well-known, the problem of the classification of the unlawful act coming from the so-called upstream subsidies and therefore from the reinsertion of these cases under the categories of dumping or export subsidy — can take on enormous dimensions, given that the primary product, when it is agricultural, is usually the recipient of a subsidy not only at the production stage, but also at the export stage.

VIII. THE URUGUAY ROUND AND THE REFORM OF THE COMMON AGRICULTURAL POLICY

The need for a greater transparency in the regulations for agricultural subsidies is, without doubt, the departure point for the development of new agreements in the GATT, if a desire to carry this out actually exists\(^{16}\); it also, however, provides the general premise for avoiding an improper use of countervailing duties. It would be unacceptable, in fact, not to take into due consideration, in positive terms also, the efficacy of the counter-measure in maintaining the balance of international commercial exchanges. However, sight should also not be lost of the other side of the coin — this time negative, given the possibility that the countervailing duty could be transformed into an instrument functional to protectionist policies.

16. There is much discussion with regard to the timeliness of dividing the domestic subsidies into trade-distorting support measures ("amber policies") and policies which have at most a minimal impact on ("trade policies" or policies in the "Green Box"). The Green Box covers a wide range of support measures, including general government services in the areas of research, disease control, infrastructures, environment protection, and food security; it also includes direct payment to producers, for example, certain forms of income support, structural adjustment assistance, direct payments under environmental programmes and regional assistance programmes.
The protraction of the Uruguay Round negotiations gives a clear indication of the difficulties involved in coming to a common understanding capable of balancing opposing demands, these last also determined by the objective structural differences in the agricultural economic realities of the various countries participating in the negotiations.

The reform of the common agricultural policy, which has, however, been evolving over the last five years, indicates not only the solution of the internal problems of the Community, but also the choice of a solution which would be capable of mediating Community interests with those of competing countries\textsuperscript{17}\textsuperscript{15}, and a full awareness of the fact that the correct regulation of a free exchange is, today, the essential premise for the development of national economies.

It should also be taken into account that the passing of time has for the European Community marked programmes and operations which are very different and far removed from those for which the protectionist policy towards the external markets constituted the indispensable instrument for the consacration of free exchange on its internal market, and, therefore, for the realisation of a single market. Moreover, it should be remembered that the Community has over time developed a series of objectives which are far more ambitious than those outlined in the 1958 Rome Treaty, that is to say, the objectives expressed in the Single European Act of 1987 and the Treaty on European Union signed in Maastricht on 7th February, 1992, in the process of being ratified: inevitably, these have interacted and are still interacting with the Common Agricultural Policy (CAP).

As for this last point, the most significant aspects regard the direct interventions on the containment of surpluses. The tools used sometimes take the form of incentives, forcing the producer to behave in a certain way (in this case by reducing production) if he intends to benefit from aid (as in the case of incentivations for the reduction of productions, e.g., premiums, following the slaughtering of dairy cows, or the eradication of vineyards, apple orchards, and mandarin crops). In other cases the constraint takes the form of an obligation placed on the producer, as in the case of the prohibition of new implantations of specific plants, i.e., vineyards, in the fixing of production quotas (for example, in reference to sugar and milk), and in the instituting of producer co-responsibility levies in the cereals sector. The third area is that of the limitation on aids for

\textsuperscript{17} Article 100 of the EC treaty foresees, amongst its objectives, that of "contribut(ing), \textit{in the common interest, to the harmonious development of world trade."
production to the producers of oil-seeds and several types of horticultural products, when these have already been granted.

Together with these interventions are several measures directed towards an increase in the forests (Regulation N°2080/92) and in the level of environmental protection (Regulation N°2078/92). The characteristic which is common to measures of this type is their principal aim of reducing any surpluses by having recourse to regulations which aid the ecological balance, and which can therefore be seen more as instruments than as ends. With regard to the premise that to the ends of surplus containment it may be helpful to adopt a policy favouring quality rather than quantity, the EC supports the cultivation of areas naturally fit for a specific production with the consequent conversion of marginal lands, or at any rate of those on which no production would be remunerative without a disproportionately large amount of public aid; another instrument is that of the support of cultivation and processing without the use of chemical substances (e.g., by the assignment of aids to the producers who adopt such an approach).

Returning to the topic of production stabilizers, the most important is that of production quota systems, already provided for in the sugar and milk sectors, and which today can be said to have been extended, from several points of view, to the production of cereals, oil-seeds, and proteinic plants.

The system, as is already well-known, functions through a forced adjustment in production — and, therefore, through the control of the potential development of the offer — so as to contain this under a quantitative-limit. The system, introduced into the sugar sector since the institution of its common market organisation (1968), leads to a differentiation of the guarantee in the price and distribution on the basis of production quotas, so that for production which goes beyond the quota there can be no price guarantee, and this will therefore be exported at the world market price. Moreover, what is enforced is the principle of the producers' financial responsibility, and it is these last who shoulder the cost of disposing of Community production surpluses; this then is the principle expressed through the imposition of a co-responsibility levy which is undertaken by the producers.

On this same principle of co-responsibility functions the quota system for the dairy products sector (introduced in 1984), although the quota can rest on either the producer or the dairy which collects the milk. The milk-quota system, however, has not been able to completely
fulfil the economic and financial objectives established by the Community; as a result, this has adopted a specific system of incentivation to leave the sector.

The same principle of co-responsibility resting on the producer, as an instrument for the containing of production, has also been used in the cereals sector. However, as is already well-known, this production has increased steadily until reaching surplus levels which are financially unsustainable by the Community, as well as being intolerable for the USA, given the effects they have had from the point of view of export refunds. The solution adopted by the Community in 1992, and which has been well-received by the GATT, can be summed up in the programme for production containment by means of the setting-aside of land to be sown, and in the shifting of the subsidy from the market to the farmers' income.

The system of set-aside had already been foreseen by Regulation N°1094/88, together with other measures directed towards the containment of productions through incentives to conversion and extensification of production (Regulation N°1094/88) and the early retirement of farmers from agricultural activity (Regulation N°1096/88, now substituted by Regulation N°2079/92).

However, the new system of intervention (Regulation N°1765/92) abolishes the old system of set-aside and introduces the obligation of “freezing” 15% of the farm’s surface area. This “freezing” constitutes the condition for the granting of the production aid which is granted at the rate of cultivated hectares for a total determined by the average yields, for geographical areas, communicated in advance by the Member States.

If Regulation N°1765/92 is analysed together with the intervention prices which are established along the same lines for all cereals for the year 1993/94 by Regulation N°1766/92, it is possible to see that the shift from market support to farmers’ incomes should have the effect of reducing production. This reduction, then, should be further assured by the fact that the aid, apart from being granted per hectare rather than per quintal, is granted following the fulfilment of the obligation not to exceed the surface of seeded areas which have benefited from the aid system during the years 1989 or 1990 or 1991. In substance, then, in the cereals sector just as in the oil-seed and proteinic plants sector — expressly foreseen in Regulation N°1765/92 — the production quota system is the strategic instrument for a correct functioning of aid; it weighs neither too heavily on the consumer nor on the collectivity.

Although the “decoupling” of price aids and income aids activated by the CAP of 1992 does not entirely satisfy the USA, above all with
regard to the intervention on oil-seeds, it has however stimulated the recognition necessary for the resolution of the ongoing negotiations. The particulars of the Washington agreement of 20th November 1992 foresee: a) as regards the import system, a consistent reduction in the relative tariffs, whilst still recognising a 'special safeguard mechanism' for the Community to protect the Community market from the excessive fluctuations of world prices; b) the pledge to reduce production subsidies by 20% in relation to the period 1986-88, without, however, this reduction hitting the aids to farmers' incomes; c) the pledge to reduce, over a period of six years, the volume of exports and relative aids, respectively by 21% and 36%.

IX. Concluding Observations

The preceding observations show that it is a short step to the prediction of a positive conclusion to the drawn-out negotiations of the Uruguay Round. In reality, it would seem that the almost total lack of understanding between the EC and the USA, underlined at some moments by serious commercial disputes, has been replaced by an attitude showing a greater flexibility towards the adoption of common solutions, even if these are destined, at first sight, to restrict national interests. However, although today there certainly seem to be all the premises necessary for the friendly solution of past conflicts, it is impossible not to be aware of the dangers which private and national interests still present, now taking the form of protectionist policies which are less apparent and more sophisticated, but which are for all this no less dangerous.

If it is true that at this point all the parties see free exchange as being the most preferable solution for all the advantages which it confers in terms of a collective benefit, it should however be said that the attainment of such a situation is not easy. This is not because it is necessary to overcome the instinctive attraction for mercantilism which still continues to exist, but because the existence of certain protected productive sectors or the choice of the kind of protection to be accorded to certain productive sectors are strictly connected to a country's political choices, in fact sometimes the latter are dependent on those. Thus the balance between mercantilism and free exchange finishes by representing, in the actions of governments, the necessary condition for their own survival.

Therefore the search for possible solutions would appear to be anything other than easy, and this independently of the conflicts of interest between different countries. At the bottom of this is the problem that the
reduction of aid to agriculture may enter into conflict with other important objectives of political economy; moreover, the extremely heterogeneous nature of world agriculture, on which different levels of average earnings *pro capite* depend, should not be underestimated.

These observations demand, in the determining of the policy concerning agriculture, the recognition of a much wider field of investigation. To these should be added the ulterior consideration which technological developments, the faculty of transport, and the instability and complexity of the international monetary system tend to upset the traditional relationship between national politics and international economics, making the international economic reality of agriculture lose its traditional appearance of a simple intersection between the national economies. The impression which ensues is that the world agricultural situation presents the characteristics of a global system, in which national realities cannot however be integrated to the point of having to destroy their individual characteristics.

X. BIBLIOGRAPHY

Apart from the basic instruments (the General Agreement on Tariffs and Trade, and the Codes approved during the Tokyo Round; the Rome Treaty and successive actions taken by the Community), the following works should be indicated:


PAOLO MENGONZI, IL DIRITTO DELLA COMUNITA' EUROPEA in FRANCESCO GALGANO (editor), TRATTATO DI DIRITTO COMMERCIALE E DI DIRITTO COMMERCIALE E DI DIRITTO PUBBLICO DELLA ECONOMIA (1990)

FRANCIS G. SNYDER, LAW OF COMMON AGRICULTURAL
POLICY (1985). (Italian transl.: DIRITTO AGRARIO DELLA COMUNITA’ EUROPEA. PRINCIPI E TENDENZE a cura e con un saggio (Il diritto agrario comunitario alla fine degli anni ottanta) di Antonio Jannarelli (1990)).

Sergio Ventura, La politica agricola in ERMINIO PENNACCHINI, RICCARDO MONACO, LUIGI FERRARI BRAVO & SALVATORE PUGLISI (editors), MANUALE DI DIRITTO COMUNITARIO 235-299 (1984).

Ernst-Ulrich Petersmann, Application of Gatt by the Court of Justice of the European Communities, 20 COMMON MARKET LAW REVIEW 397-437 (1983).


