

# BACK TO THE FIELDS AFTER THE STORM: AGRICULTURE IN THE EUROPEAN UNION AFTER THE URUGUAY ROUND AGREEMENTS

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## I. INTRODUCTION

Writing a paper about the implementation of the Uruguay Round Agreements in the area of European agriculture is quite difficult for a French law professor. The American law journals mandate four unbelievable requirements. First, start with a joke. How can a French citizen maintain any sense of humor while looking at the sacrifice of a successful Common Agricultural Policy at the shrine of the Free Trade of goods? Second, immediately tell your readers your main assumptions—impossible again! The future is made of a stack of unmovable uncertainties. Third, cut your article in as many slices (chapters) as you can.<sup>1</sup> How could I agree with this tactical threat to the unity of the Common Agricultural Policy? Fourth, deluge your paper with footnotes. Because little scholarly legal writing has been done on the European implementation of the Uruguay Round agreements in the agricultural sector, this Article will contain few references to published articles.

Nevertheless, the time has come for agricultural lawyers to take a second look at the implementation of the Uruguay Round Agreement (hereinafter UR or the General Agreement on Tariffs and Trade/World Trade Organization (GATT/WTO)).<sup>2</sup> In April 1994, the Ministerial Conference involved the signing of the new GATT/WTO package.<sup>3</sup> The most important change in the current tradition of the GATT agreements comes from what French scholars call the “single roof” policy.<sup>4</sup> The creation of the new World Trade Organization,<sup>5</sup> under the basic agreement concluding the Uruguay Round, leads to a newly designed international law. Instead of a menu made up of almost two hundred different GATT and side agreements, there is now only the basic WTO Agreement with the Multilateral Trade Agreements attached to it.<sup>6</sup> Every member of the WTO must abide by all these agreements and may not pick one, leave another for a certain time, or totally reject a

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<sup>1</sup>. A French law professor must make every presentation in two parts with each part being divided into sub-parts. Without doing this he could never win the national contest and become a tenured full-professor. I will not try it in this Article because I am writing in Iowa—*locus regit actum*.

<sup>2</sup>. “First Look” papers give an analysis of the clauses of the Agreement on Agriculture. See generally Jeffrey J. Fanger & Terri H. Foltz, *International Agricultural Trade*, 7 INT’L Q. 503 (1995) (discussing how to conduct international agricultural trade); Liane L. Heggy, *Free Trade Meets U.S. Farm Policy: Life After the Uruguay Round*, 25 L. & POL’Y INT’L BUS. 1367 (1994) (examining the dilemmas in U.S. agricultural policy); Joseph A. McMahon, *The Uruguay Round and Agriculture: Charting a New Direction?*, 29 INT’L LAW 411 (1995) (examining the Agreement on Agriculture).

<sup>3</sup>. See John H. Jackson, *Remarks*, 88 AM. SOC’Y INT’L L. 136 (1994).

<sup>4</sup>. The single roof policy is used to describe the fact that the members of the WTO are now bound to all the multilateral agreements that fall under the umbrella of the WTO Agreement. Members can no longer pick and choose which agreements they want to bind them when they sign on to the WTO Agreement. The single roof policy is a shift away from the “GATT a la carte” procedures in force prior to the WTO Agreement. See generally JOHN H. JACKSON ET AL., *LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS* 302 (3d ed. 1995).

<sup>5</sup>. Agreement Establishing the World Trade Organization, Apr. 15, 1994, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 1 (1994), 33 I.L.M. 1144 (1994) [hereinafter WTO Agreement].

<sup>6</sup>. WTO Agreement Annexes 1A, 1B, 1C, 2, 3.

third agreement.<sup>7</sup> Under this single roof the architecture is very clear: Annex 1A contains fourteen goods agreements, including the General Agreement on the Application of Tariffs and Trade of 1994,<sup>8</sup> the Agreement on Agriculture,<sup>9</sup> and the Agreement on the Application of Sanitary and Phytosanitary Measures.<sup>10</sup> Annex 1B relates to trade in services.<sup>11</sup> Annex 1C relates to trade-related intellectual property aspects (TRIPS).<sup>12</sup> Annex 2 is titled “Understanding on Rules and Procedures Governing the Settlement of Disputes,”<sup>13</sup> and Annex 3 is titled “Trade Policy Review Mechanism.”<sup>14</sup>

The idea of “internationalization” of agriculture has been expressed frequently during the last decade.<sup>15</sup> This concept refers to the legalization of international trade in agricultural commodities and to globalization in the area of agriculture.<sup>16</sup> Globalization means the jurisdiction of national states over their agricultural policies laws is diminishing and international negotiations are setting new rules on domestic farming operations.<sup>17</sup> For example, the GATT/WTO Agreement puts impressive limits on the amount of internal subsidies that a state can pay to its farmers.<sup>18</sup> Defining allowable levels of domestic support in a binding international agreement is the first step, but it is the most significant one toward a global agricultural policy. Harmonization of quality rules and standards under the Sanitary and Phytosanitary Agreement,<sup>19</sup> and rules in the TRIPs Agreement, such as those on the patenting

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<sup>7</sup>. See WTO Agreement art. II(2), (3). Plurilateral Trade Agreements bind any arrangement negotiated during the UR on Member-States who separately sign them. See *id.* For example, the arrangement on meat and the arrangement on dairy products, negotiated during the UR, are binding on Member-States who separately sign them. See WTO Agreement Annexes 4C, 4D.

<sup>8</sup>. General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, WTO Agreement, Annex 1A, 33 I.L.M. 1154 (1994) [hereinafter GATT 1994].

<sup>9</sup>. Agreement on Agriculture, Apr. 15, 1994, WTO Agreement, Annex 1A, (visited Sept. 11, 1997) <<http://www.wto.org/wto/legal/14-ag.wp5>> [hereinafter Agreement on Agriculture].

<sup>10</sup>. Agreement on the Application of Sanitary and Phytosanitary Measures, Apr. 15, 1994, WTO Agreement, Annex 1A, (visited Sept. 11, 1997) <<http://www.wto.org/wto/legal/15-sps.wp5>> [hereinafter Sanitary and Phytosanitary Agreement].

<sup>11</sup>. See General Agreement on Trade in Services, Apr. 15, 1994, WTO Agreement, Annex 1B, 33 I.L.M. 1168 (1994) [hereinafter GATS Agreement].

<sup>12</sup>. See Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, WTO Agreement, Annex 1C, 33 I.L.M. 1197 (1994) [hereinafter TRIPS Agreement].

<sup>13</sup>. Understanding on Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1994, WTO Agreement, Annex 2, 33 I.L.M. 1226 (1994) [hereinafter Dispute Settlement Understanding].

<sup>14</sup>. Trade Policy Review Mechanism, Apr. 15, 1994, WTO Agreement, Annex 3, (visited Sept. 11, 1997) <<http://www.wto.org/wto/legal/29-tprm.wp5>>.

<sup>15</sup>. For a discussion of the concept of internationalization of agriculture, see Neil D. Hamilton, *Issues Shaping the Future*, 19 WM. MITCHELL L. REV. 271 (1994); Terence J. Centner, *The Internationalization of Agriculture: Preparing for the Twenty-First Century*, 73 NEB. L. REV. 5 (1994).

<sup>16</sup>. See generally Hamilton, *supra* note 15; Centner, *supra* note 15.

<sup>17</sup>. See generally Hamilton, *supra* note 15; Centner, *supra* note 15.

<sup>18</sup>. See Agreement on Agriculture, *supra* note 9, arts. 6, 7, 9.

<sup>19</sup>. See Sanitary and Phytosanitary Agreement, *supra* note 10, art. 3.

process and indicating geographical origin,<sup>20</sup> are also building blocks in this new condominium named "Agriculture in a Global World."

Laws pertaining to farming operations are more and more international. This is even true for farmers producing for internal consumption, not just for farmers producing for exports or raw commodities for exported processed food. The framework of this Article will deal with these laws and focus on the European experience of the new international legal body created by the GATT/WTO Agreement.

Just after the conclusion of the UR, European agriculture was widely considered as the expiatory victim sacrificed on the altar of Free Trade.<sup>21</sup> This pessimistic forecast is not totally justified. A full economic determination is very difficult at this time. New trends obviously drive the different markets, making it very difficult to judge the influence of the GATT/WTO when there are many different causes for variations in world and local prices and in the volume of exports and imports. On the other hand, the legal framework of international agricultural commodity markets and of internal agricultural policies has been deeply altered by the conclusion of the UR. More than two hundred European regulations, in the strict sense of Article 189 of the Treaty of Rome<sup>22</sup> which established the European Economic Community (EEC),<sup>23</sup> have been issued and have shaped a post-GATT/WTO European agriculture. Analysis of these regulations is within the scope of this Article. Nevertheless, enforcement of GATT/WTO is not the first step toward a new era of more internationalized European agricultural law.<sup>24</sup> Believing this would be as naive as believing that professional wrestling is a real fight.

The GATT/WTO has been mainly a leverage for internal reforms of the Common Agricultural Policy (CAP), which policy has become politically unbearable and financially unaffordable. The GATT/WTO Agreement on Agriculture corresponds to a marriage settlement between the European Union (EU) and the United States. However, like many people in this decade, the bride and groom had a child before the ceremony, at least according to the 1992 reform of the CAP.<sup>25</sup> The goals of the reform were clearly expressed in the official introductory text of Regulation 1765/92: "Whereas, in order to ensure better market balances, a new support system has to be established; whereas the best way to achieve this objective

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<sup>20</sup>. See TRIPS Agreement, *supra* note 12, arts. 1-24, 33 I.L.M. at 1198-1207.

<sup>21</sup>. See Oliver Walston, *Anti-GATT Aftershocks*, TOP PRODUCER, Mar. 1994, at 14.

<sup>22</sup>. See Treaty Establishing the European Economic Community (Treaty of Rome), Mar. 25, 1957, art. 189, 298 U.N.T.S. 11, 78-79.

<sup>23</sup>. See *id.* art. 1, 298 U.N.T.S. at 15. "Regulations shall have a general application. They shall be binding in every respect and directly applicable in each Member-State." See *id.* art 189, 298 U.N.T.S. at 79.

<sup>24</sup>. See generally Hamilton, *supra* note 15; Centner, *supra* note 15.

<sup>25</sup>. See Council Regulation 1765/92 Establishing a Support System for Producers of Certain Arable Crops, art. 1, 1992 O.J. (L 181) 12. For a summary of this reform, see Margaret Rosso Grossman, *Agro-Environmental Measures in the Common Agricultural Policy*, 25 U. MEM. L. REV. 927, 979 (1995).

is to approximate the Community prices of certain arable crops to the prices of the world market . . . .”<sup>26</sup> A child was born and he looks Yankee because the CAP reform was actually the “Americanization” of CAP, a sort of extension of the American Farm Bill over the Atlantic Ocean. The implementation of the GATT/WTO Agreement on Agriculture<sup>27</sup> increased this trend in the external aspects of the CAP.

Freedom of trade has been portrayed in Europe as a trade of our farmers’ freedoms. This may actually be a short view. The GATT/WTO is not only an international agreement on “disarmament” of agricultural policies of the CAP, but also changes the legal framework of the international agricultural commodity trade.<sup>28</sup> The question is not the Americanization of the CAP, but the involvement of the European countries in an organized international agricultural trade.

This picture can be treated optimistically. The significant similarity in the agricultural policies developed by the biggest traders as well as a more organized international trade regime are building blocks for a sustainable harmony among nations, and consequently, the best and cheapest life insurance for the CAP. But this snapshot might not be very realistic. The political agenda, when coupled with the current lack of solutions for another generation of problems emerging in the international arena of agricultural rivalries, leads to a forecast of deep changes in the CAP.

This Article will focus on four main questions: Part II analyzes the relation between the GATT/WTO and the reform of the CAP; Part III discusses the change in the external policy of the EU in the area of agriculture; Part IV describes the evolution of regional organizations with a particular analysis of the future accession of the former communist countries of Central and Eastern Europe; and Part V focuses on the lifting of the technical barriers.

## II. URUGUAY ROUND AS LEVERAGE TO LIFT THE UNBEARABLE CHARGE OF THE CAP

There are numerous examples of discrepancies between what some laws really are and how they are explained by the media. The Reform of the CAP is one of the most interesting. This reform was presented and portrayed in Europe as a weapon against the GATT, whereas the only target was drafting a more “Gatable” and more “Eurobudgetable” agricultural policy. The strategy was similar to defense policy during the Cold War: If we have the same weapons as our enemies, we will have peace. The CAP reforms of 1992<sup>29</sup> are nothing more than comparative law in motion. The Europeans have borrowed the most important schemes from the

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<sup>26</sup> Council Regulation 1765/92 Establishing a Support System for Producers of Certain Arable Crops, 1992 O.J. (L 181) 12.

<sup>27</sup> See Agreement on Agriculture, *supra* note 9.

<sup>28</sup> See Agreement on Agriculture, *supra* note 9, art. 9.

<sup>29</sup> See generally GEORGE A. BERMAN ET AL., CASES AND MATERIALS ON EUROPEAN COMMUNITY LAW 1063-80 (1993) (discussing Common Agricultural Policy reforms).

American farm bills,<sup>30</sup> because after almost 30 years the ends and means of Europe's agricultural policy had to be changed.

The inception of the European Economic Community in the 1950s<sup>31</sup> came as an implementation of different projects aimed at internally rebuilding the Old Continent devastated by World War II.<sup>32</sup> This effort was supported by the United States of America for obvious political reasons. A strong union between the former enemies prevented Germany from succumbing to further temptation by the devil of nationalism and deterred strong communist parties from dominating French and Italian governments. At that time the concept of internationalization of the economy or the notion of a global economy was not a basic tool for the new policies. The common objective of the six founding members was not to establish a pack or a gang to fight together against external markets, but rather to integrate their economies in order to prevent wars among themselves.<sup>33</sup> In this spirit, the CAP was both an end and a means. As an end, it highlighted the integration of the peasant class—the most deeply-rooted people<sup>34</sup>—into a successful process of the historic search for peace involving some of the most aggressive nations in the world. As a means, the CAP was used to make the European Community self-sufficient in staple crops. It was also used to balance the economic benefits flowing from the EEC to Germany and France. The Common Market was a new market for German industrial products and for French agricultural commodities.<sup>35</sup> The EEC was not created as a protection against other countries or regional organizations, though it later became a very good shield for Member-States on the battlefield of world markets. Specifically, the CAP was primarily aimed at increasing the volume of production and not at bringing cheap

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<sup>30</sup>. See Jim Chen, *Get Green or Get Out: Decoupling Environmental from Economic Objectives in Agricultural Regulation*, 48 OKLA. L. REV. 333, 338-39 (1995).

<sup>31</sup>. The European Steel and Coal Community was created by the Treaty of Paris of April 18, 1951. The European Economic Community and Euratom were established by the Treaty of Rome of March 25, 1957. The Treaty of Maastricht, signed on February 7, 1992, did not repeal the words European Community. In Article A, the Treaty of Maastricht states, "By this Treaty, the High Contracting Parties establish among themselves a European Union. . . . The Union shall be founded on the European Communities." Treaty of Maastricht, Title I, art. A, (visited Sept. 30, 1997) <<http://europa.eu.int/en/record/mt/title1.html>>.

<sup>32</sup>. See BERMANN ET AL., *supra* note 29, at 3-4.

<sup>33</sup>. See *id.* at 3 (discussing post-World War II movement toward European unification). The six founding members of the EEC included France, Germany, Italy, Belgium, The Netherlands, and Luxembourg. See DESMOND DINAN, *HISTORICAL DICTIONARY OF THE EUROPEAN COMMUNITY* 86-87 (1993).

<sup>34</sup>. By professional origin, this class suffered the most casualties during "their" war [World War I]. In the 1950s, hatred toward the German people still existed in France among the soldiers of World War I. After World War II, people hated the Nazis, but not the German people (author's personal experience from having grown up in a village in Brittany, France).

<sup>35</sup>. See BERMANN ET AL., *supra* note 29, at 1063-80 (discussing the background of and reasons for the Common Agricultural Policy).

food on the internal markets.<sup>36</sup> The objectives of the CAP, defined in Article 39 of the Treaty of Rome,<sup>37</sup> make this obvious.

Why is this reality of the CAP so different from the image presented by the media in Europe and abroad? The lack of accurate public relations is probably the biggest mistake made by those in charge of the CAP prior to the mid-1980s. In North America there is a strong belief that European farmers are a group of incompetent people, swift to demonstrate and slow to increase their productivity, driving new Mercedes-Benz cars to pick up their payroll check from a public bureau jammed with lazy public officers.<sup>38</sup>

The three pillars of the CAP—single market, community preference, and financial solidarity—are constructed of this above-described cement.<sup>39</sup> In that sense, Fortress Europe, as far as agricultural commodities are concerned, was a necessity.<sup>40</sup> The system of refunds and variable levies kept the Fortress from becoming isolated. In short, this system worked as a river lock. A barge brings a shipment of wheat into the European market; a variable levy is charged, equal to the European price (here the threshold price) less the Cost, Insurance, and Freight (CIF) price “calculated for Rotterdam on the basis of the most favorable purchasing opportunities on the world market;”<sup>41</sup> the barge is then at the upper level of the lock, the level of the European market. In reverse a barge comes from Europe, shipping wheat to an external market, and gets an export refund.<sup>42</sup> “The difference between. . . quotations or prices [on the world market] and prices in the Community may be covered by an export refund.”<sup>43</sup> With this refund, the barge goes through the lower level of the lock to the world market. Sheltered under this Fortress, European agriculture could be rebuilt. Any country struggling to reach self-sufficiency in food should adopt the same mechanism.

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<sup>36</sup>. See Treaty Establishing the European Economic Community (Treaty of Rome), Mar. 25, 1957, art. 39, 298 U.N.T.S. 11, 30 (CAP Agreement).

<sup>37</sup>. See Henricus A. Strating, *The GATT Agriculture Disputes: A European Perspective*, 18 N.C. J. INT'L L. & COM. REG. 305, 318 (1993); Treaty Establishing the European Economic Community (Treaty of Rome), Mar. 25, 1957, art. 39, 298 U.N.T.S. 11, 30-31.

<sup>38</sup>. This belief was harmful to the European interests before and during the GATT negotiations. Should it continue it could be harmful to US interests in the era of free trade of agricultural commodities. Never underestimate your competitor!

<sup>39</sup>. See Strating, *supra* note 37, at 318.

<sup>40</sup>. See Joseph A. McMahon, *Fortress Europe: The External Dimension of the Internal Market?*, 44 N. IRELAND LEGAL Q. 130, 147 (1993) (noting “the fear of Fortress Europe has persisted” and “that fear should be grounded not on the internal market programme but rather on the existing policies of the EC”).

<sup>41</sup>. Council Regulation 1766/92 On the Common Organization of the Market in Cereals, art. 10(2), 1992 O.J. (L 181) 21, 25. This article, as a part of Title II of Regulation 1766/92, was to have been repealed after the GATT/WTO. See Council Regulation 3290/94 On the Adjustments and Transitional Arrangements Required in the Agriculture Sector in Order to Implement the Agreements Concluded During the Uruguay Round of Multilateral Trade Negotiations, 1994 O.J. (L 349) 105.

<sup>42</sup>. See Council Regulation 1766/92, art. 13, 1992 O.J. (L 181) 21, 26.

<sup>43</sup>. *Id.* This text was not repealed after the GATT/WTO.

The problems surfaced as soon as the original CAP had reached its first objective. The agreement was budget-consuming, over-producing, and environmentally unsound.<sup>44</sup> The Member-States, among which the United Kingdom had been playing its original part since 1973, decided to curb the expenses, surpluses, and wastes.<sup>45</sup> This was the source of “endless proposals for reforms.”<sup>46</sup> Incidentally, and accidentally, the European Community became a net exporter of many agricultural commodities. Filling the bucket was the goal, but when the bucket became full, water poured outside. For France, the second largest agriculture exporter,<sup>47</sup> exports became crucial for farmers’ incomes and the external trade balance.<sup>48</sup> Agricultural exports are crucial to France's economy because France needs its *pétrole vert*.<sup>49</sup> For example, in the second Agricultural Guidance Act of July 4, 1980,<sup>50</sup> Article 1 states that the law is aimed at “[i]ncreasing the competitiveness of agriculture and its contribution to the economic development of the country by enhancing its capacity for exports.”<sup>51</sup>

It is assumed in Europe that the problems faced by CAP in the 1980s originated from the big hole in the Fortress created by the EC’s zero-duty binding on oilseed, a substantial concession made by the European Community during the Dillon Round of the GATT of 1962.<sup>52</sup> This binding was the origin of many agricultural trade disputes that have been thoroughly commented on by legal scholars.<sup>53</sup> For years, the binding has been the source of internal problems for CAP.<sup>54</sup> Because soybeans and corn-gluten from the United States could enter the European market without any custom duty or levy, cattle, chicken, and hog breeders bought these commodities instead of the high-priced European cereals, thus increasing the surpluses.<sup>55</sup>

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<sup>44</sup>. See Strating, *supra* note 37, at 317-23.

<sup>45</sup>. See *id.* at 323-25.

<sup>46</sup>. *Id.* at 329.

<sup>47</sup>. See *id.* at 318.

<sup>48</sup>. See *id.* at 349.

<sup>49</sup>. “Green oil” refers to agricultural exports that are used to compensate the lack of oil and gas in the French soil.

<sup>50</sup>. Loi d’orientation agricole No. 80-502 du 4 juillet 1980, J. O., July 5, 1980, p. 1670. The previous Guidance Act was passed in 1960 and there is no prospect of a third at this time.

<sup>51</sup>. *Id.*

<sup>52</sup>. See Strating, *supra* note 37, at 329; Thomas J. Schoenbaum, *Agricultural Trade Wars: A Threat to the GATT and Global Free Trade*, 24 ST. MARY’S L.J. 1165, 1172 (1993); James R. Arnold, Note, *The Oilseeds Dispute and the Validity of Unilateralism in a Multilateral Context*, 30 STAN. J. INT’L. L. 187, 189 (1994); Jon G. Filipek, *Agriculture in a World of Comparative Advantage: The Prospects for Farm Trade Liberalization in the Uruguay Round of GATT Negotiations*, 30 HARV. INT’L L.J. 123, 140, 152 (1989).

<sup>53</sup>. See sources cited *supra* note 52.

<sup>54</sup>. See sources cited *supra* note 52.

<sup>55</sup>. The development of hog-confinements or “industrialized” chicken houses in the coastal zones of the Netherlands and Brittany, France, is one major consequence of the increased importation of cheap U.S. crops. These regions face a serious water pollution problem.



Historical surveys should probably tell us that this binding was part of a major defeat for European agriculture in this half-century and part of a major victory for United States agriculture.<sup>56</sup> Compared to this, the UR Agreement on Agriculture is a piece of cake.

### III. URUGUAY ROUND AND THE REFORM OF THE EXTERNAL AGRICULTURAL POLICY OF THE EUROPEAN UNION

The GATT/WTO Agreement on Agriculture was signed by members “committed to achieving specific binding commitments in each of the following areas: market access; domestic support; export competition; and to reaching an agreement on sanitary and phytosanitary issues.”<sup>57</sup> Every commitment is being fulfilled by the European Union. The major change affects market access. The Fortress is crumbling.

#### A. Market Access

Under the Agreement on Agriculture, “[m]arket access concessions contained in Schedules relate to bindings and reduction of tariffs and to other market access commitments as specified therein.”<sup>58</sup> As far as the European Union is concerned, the first commitment relates to tariffication, whereas the second relates to minimum access to markets.<sup>59</sup>

The commitment to convert all non-tariff import barriers to bound tariffs includes the repeal of the famous import levies.<sup>60</sup> Article 4, section 2, of the GATT/WTO Agreement on Agriculture states “[m]embers shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties . . . .”<sup>61</sup> There is a footnote in the official text of the agreement which eliminates any ambiguity — “[t]hese measures include quantitative import restrictions, variable import levies, [and] minimum import prices . . . .”<sup>62</sup>

The adaptations and transitional measures in the agricultural sector required to implement the GATT/WTO agreements are laid out for the most part by Regulation

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<sup>56</sup>. From a European perspective, the Dillon Round of GATT mostly supported the interests of Midwest farmers. U.S. chicken producers are more favored after the Uruguay Round.

<sup>57</sup>. Agreement on Agriculture, *supra* note 9, preamble. See generally McMahon, *supra* note 2 (examining the Agreement on Agriculture); Daniel Gadbin, *L’agriculture et le GATT*, in LA COMMUNAUTÉ EUROPÉENNE ET LE GATT: ÉVALUATION DES ACCORDS DU CYCLE D’URUGUAY 95 (Thiébaud Flory ed., 1995) (examining the Agreement on Agriculture).

<sup>58</sup>. Agreement on Agriculture, *supra* note 9, art. 4.

<sup>59</sup>. See *id.*

<sup>60</sup>. See *id.*

<sup>61</sup>. *Id.*

<sup>62</sup>. *Id.* art. 4 n.1.

number 3290/94 of December 22, 1994<sup>63</sup> and by a set of more detailed regulations for special products, or products imported from certain countries or under certain tariffs quotas.<sup>64</sup> Regulation number 3290/94 repeals or modifies about three hundred previous European texts.<sup>65</sup> In the 22 Annexes, Regulation number 3290/94 sets detailed rules for every product.<sup>66</sup> The most symbolic, Annex 1, refers to cereals.<sup>67</sup> It repeals Title II of Regulation number 1766/92 of June 30, 1992.<sup>68</sup>

Article 10 of Regulation number 1766/92 may be considered the death certificate of the European variable levies in cereals because, unless this regulation provides otherwise, the rates of duty on products in the Common Customs Tariff shall apply to the products listed in Article 1.<sup>69</sup> The reference to a Common Customs Tariff, along with the rule of free circulation in the Member States are the bases of the external side of the Custom Union laid down by Article 9 of the Treaty of Rome.<sup>70</sup>

Since 1968, any product shipped to the European Community is under the same tariff, regardless of the country.<sup>71</sup> Under Article 10 of the Treaty of Rome, “products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties . . . which are payable have been levied in that Member State . . . .”<sup>72</sup> Tariffication, as opposed to variable levies, gives the exporters the benefit of their gain in costs and productivity—the better the price, the higher the levy but the lower the tariff!<sup>73</sup>

Will tariffication open a gate to the European Market (the biggest single market in the Western world by number of consumers and by purchasing power)? The

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<sup>63</sup>. Council Regulation 3290/94 On the Adjustments and Transitional Arrangements Required in the Agriculture Sector in Order to Implement the Agreements Concluded During the Uruguay Round of Multilateral Trade Negotiations, 1994 O.J. (L 349) 105, 105-07.

<sup>64</sup>. See, e.g., Commission Regulation 2594/95 Opening and Administering a Community Tariff Quota for Certain Poultrymeat Products Originating in Bulgaria for the Period from 1 July to 31 December 1995 in Accordance with Council Regulation (EC) No 2179/95, 1995 O.J. (L 265) 1.

<sup>65</sup>. See Council Regulation 3290/94, 1994 O.J. (L 349) 105.

<sup>66</sup>. See *id.*

<sup>67</sup>. See *id.*

<sup>68</sup>. See *id.*; Council Regulation 1766/92, title II, 1992 O.J. (L 181) 21, 25.

<sup>69</sup>. See Council regulation 1766/92, art. 1, 10, 1992 O.J. (L 181) 21, 22-23 (listing under a CN code all the cereals covered by the common organization of the market).

<sup>70</sup>. Treaty Establishing the European Economic Community (Treaty of Rome), Mar. 25, 1957, art. 9, 298 U.N.T.S. 18-19.

<sup>71</sup>. See *id.* art. 18, 298 U.N.T.S. at 22-23; Council Regulation 950/68 On The Common Customs Tariff, art. 1, 1968 O.J. SPEC. ED. 275 (L 172/1).

<sup>72</sup>. Treaty Establishing the European Economic Community (Treaty of Rome), Mar. 25, 1957, art. 10, 298 U.N.T.S. 19.

<sup>73</sup>. See Agreement on Agriculture, *supra* note 9, art. 9.

answer is yes in the long run, but not immediately.<sup>74</sup> Tariffication, due to its complexity, might be a tricky process.<sup>75</sup> As Jeffrey J. Steinle points out, “[t]he overstatement of tariffs has been labeled ‘dirty tariffication.’”<sup>76</sup> This “dirty” process takes place when a country, or the European Union, states its original tariffs after negotiations with its main trade partners. This may result in very high tariffs. But from this date, these high tariffs are to be reduced as part of the general continuing process of the GATT.<sup>77</sup>

As far as the current process in Europe is concerned, the major conflict comes from a special rule on grain imports.<sup>78</sup> The European Union decided to calculate tariffs on cereals based on the Chicago Exchange market price, rather than the CIF price for each transaction.<sup>79</sup> This rule was based on the assumption that “the use of quotations for the various wheat types and for other cereals on the commodity exchanges of the United States of America will provide a basis both transparent and objective for establishing representative CIF import prices . . . .”<sup>80</sup> This rule was also the source of conflict between the EU, Canada and the United States regarding wheat and cereal imports<sup>81</sup> and Thailand regarding rice imports.<sup>82</sup> This conflict was settled during the first period of negotiations under the new dispute settlement system in the World Trade Organization.<sup>83</sup>

The tariffication also establishes minimum access tariff quotas where current access is less than three percent of domestic consumption.<sup>84</sup> Each year the European Union has undertaken to open, subject to certain conditions, tariff quotas at reduced

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<sup>74</sup>. For a general comment on this aspect of tariffication, see *Le cycle d'Uruguay: Evaluation des conséquences de l'accord pour l'agriculture des pays de l'OCDE*, European Information Service; Agromonde Service, Oct. 12, 1995, available in LEXIS, World Library, Allnews File, at \*1.

<sup>75</sup>. See Jeffrey J. Steinle, Note, *The Problem Child of World Trade: Reform School for Agriculture*, 4 MINN. J. GLOBAL TRADE 333, 348 (1995).

<sup>76</sup>. *Id.*

<sup>77</sup>. See, e.g., Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, 33 I.L.M. 1125 (1994) [hereinafter Final Act]; Uruguay Round Multilateral Negotiations (1986-1994) - Final Act - Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations - Marrakesh, 15 April 1994 (WTO), 1994 O.J. (L 336) 253.

<sup>78</sup>. See Commission Regulation 1502/95 of 29 June 1995 on Rules of Application (Cereal Sector Import Duties 1995/96 Marketing Year) for Council Regulation (EEC) No 1766/92, 1995 O.J. (L 147) 13.

<sup>79</sup>. See *id.*

<sup>80</sup>. *Id.*

<sup>81</sup>. See *Canada-International Trade Issues*, AGRI-FOOD TRADE UPDATE (Ministry of Agriculture, Food and Rural Affairs, Ontario, Canada), Oct. 14, 1995; *Multilateral Trade Issues*, Agri-Food Trade Update, Ministry of Agriculture, Food and Rural Affairs, Ontario, Canada, Dec. 14, 1995.

<sup>82</sup>. See *Discussions UE/ Thaïlande sur les Tarifs Douaniers pour le Riz*, European Information Service; Agromonde Service, Nov. 10, 1995, available in LEXIS, World Library, Allnews File, at \*1.

<sup>83</sup>. See Council Decision 95/591 of 22 December 1995 concerning the conclusion of the Results of Negotiations with Certain Third World Countries Under GATT Article XXIV:6 and Other Related Matters (United States and Canada), art. 1, annex II, 1995 O.J. (L 334) 25.

<sup>84</sup>. Agreement on Agriculture, *supra* note 9, art. 9.

or zero duty for a certain number of agricultural, industrial, and fisheries products.<sup>85</sup> For example, this minimum access allows opportunities to sell U.S. pork<sup>86</sup> or lamb from New Zealand<sup>87</sup> in Europe. In the short term, this will be one of the major sources for changes in the volume and nature of imports of agricultural commodities in Europe. Fortress Europe is opening its gates, sometimes for the benefit of European food-processors who can buy cheaper raw commodities!<sup>88</sup>

#### B. *Export Subsidies*

In the WTO/GATT Agreement on Agriculture, members are required to reduce the value of import subsidies by thirty-six percent and the volume of subsidized exports by twenty-one percent over the six-year implementation period.<sup>89</sup> Neither this reduction nor the prohibition of variable levies was really a shock for the European Union. The system of exports refunds is still in place, but with less valuable considerations for European exporters.<sup>90</sup> Compliance with the limits in terms of value is ensured by the compulsory advance fixing of refunds and through the monitoring of payments under the rules relating to the European Agricultural Guidance and Guarantee Fund.<sup>91</sup> As far as quantity constraints are concerned, the system of monitoring is based on exports licenses.<sup>92</sup> Refunds are granted up to the limits available, depending on the situation of each product involved.<sup>93</sup> The general

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<sup>85</sup>. See, e.g., Council Regulation 3280/94 Opening and Providing for the Administration of Community Tariff Quotas Bound in GATT for Certain Agricultural, Industrial and Fisheries Products, 1994 O.J. (L 347) 1; Commission Regulation 1600/95 of 30 June 1995 Laying Down Detailed Rules for the Application of the Import Arrangements and Opening Tariff Quotas for Milk and Milk Products, 1995 O.J. (L 151) 1; Council Regulation 1808/95 Opening and Providing for the Administration of Community Tariff Quotas Bound in GATT for Certain Agricultural, Industrial and Fisheries Products and Establishing the Detailed Provisions for Adapting These Quotas, 1995 O.J. (L 176) 1.

<sup>86</sup>. See Jerry Perkins, *Firm Gets OK to Sell U.S. Pork in Europe*, DES MOINES REG., July 12, 1995, at 10S.

<sup>87</sup>. See *Mouton Zelandais: Augmentation des Importations Préférentielles*, European Information Service; Agromonde Service, July 7, 1995 (discussing the increase in New Zealand's sheep exports to the EU), available in LEXIS, Europe Library, Eurasf File; *EU/GATT/WTO: Enlargement Compensation for Smaller Partners*, European Information Service; European Report, Jan. 10, 1996, available in LEXIS, World Library, Allwld File.

<sup>88</sup>. See *Cereal Substitutes: Court Annuls Corn Gluten Feed Customs Classification Regulation*, European Information Service; Agri Service International, Dec. 21, 1995, available in LEXIS, World Library, Allnws File.

<sup>89</sup>. See Agreement on Agriculture, *supra* note 9, art. 9(2)(b)(iv).

<sup>90</sup>. See *EU Wheat Gluten Policies Displacing U.S. Wheat, Wheat Gluten, WGIC Says*, 12 INT'L TRADE REP. 33 (1995).

<sup>91</sup>. The European Agricultural Guidance and Guarantee Fund was created in 1962. It forms part of the Community budget and finances export refunds, intervention purchases and structural policies expenses and premiums. See J.A. USHER, LEGAL ASPECTS OF AGRICULTURE IN THE EUROPEAN COMMUNITY 104 (1988).

<sup>92</sup>. See Council Regulation 3290/94 On the Adjustments and Transitional Arrangements Required in the Agriculture Sector in Order to Implement the Agreements Concluded During the Uruguay Round of Multilateral Trade Negotiations, 1994 O.J. (L 349) 105, 106.

<sup>93</sup>. See *id.*

system is set under the general regulation “on the adjustments and transitional arrangements required in the agriculture sector in order to implement the agreements concluded during the Uruguay Round of multilateral trade negotiations.”<sup>94</sup>

This important move toward a market-oriented economy was threatened by the cereal market of 1995.<sup>95</sup> After the CAP reform of 1992,<sup>96</sup> the price of cereal on the European market was supposed to decrease by twenty-nine percent for the period 1993-1996 and to meet the world price at the end of that period.<sup>97</sup> Actually, the decrease was twenty-two percent for wheat, eighteen percent for barley, and sixteen percent for corn.<sup>98</sup> The reason is that the world prices were higher than expected.<sup>99</sup> As a result, cereal producers struggled to change the variable rate of mandatory acreage set-aside from fifteen percent to twelve percent and even down to ten percent.<sup>100</sup>

The EU also suspended its export licensing procedures for subsidized wheat because of tight stocks. Furthermore, in order to avoid a shortage in cereals, the EU Commission decided to tax cereal exports.<sup>101</sup> This is exactly the type of news that you have to explain twice when you meet U.S. farmers! So, the European export policy is very flexible and is not at variance with the fundamental objectives of the Common Agricultural Policy expressed in the Treaty of Rome.<sup>102</sup>

At this point, the idea of the UR/GATT Agreement as a lever to reform the CAP should be questioned. To some extent, the current situation on the grain market facilitates the evolution toward a market oriented economy for grain.<sup>103</sup> Cereal producers have never been leaders of the farmers' groups and lobbies in Europe, either officially or unofficially.<sup>104</sup> The compensatory payments were based on a supposed decrease of twenty-nine percent in the market price, without any possible

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<sup>94</sup>. *Id.* For individual products, special rules are established by different regulations. *See, e.g.*, Commission Regulation 1466/95 of 27 June 1995 Laying Down Special Detailed Rules of Application for Export Refunds on Milk and Milk Products, 1995 O.J. (L 144) 22.

<sup>95</sup>. *See U.S., World Grain Supplies to be Tight in 1995/1996*, AGRIC. OUTLOOK, Aug. 1995, at 12.

<sup>96</sup>. *See* Margaret Rosso Grossman, *Agro-Environmental Measures in the Common Agricultural Policy*, 25 U. MEM. L. REV. 927, 979 (1995).

<sup>97</sup>. *See id.* at 981.

<sup>98</sup>. *See Le prix du blé inquiète les aviculteurs*, OUEST-FRANCE 11 dec. 1995.

<sup>99</sup>. *See id.*

<sup>100</sup>. *See id.*

<sup>101</sup>. The decision was based on Commission Regulation 1501/95 of 29 June 1995 Laying Down Certain Detailed Rules for the Application of Council Regulation (EEC) No 1766/92 On the Granting of Export Refunds on Cereals and the Measures to be Taken in the Event of Disturbance on the Market for Cereals, art. 15, 1995 O.J. (L 147) 7, 10. For example, a tax of 15 Ecus (European currency) per ton has been fixed on exports of barley by Commission Regulation 291/96 of 15 Feb. 1996 Fixing an Export Tax in Relation to the Product Falling Within CN Code 1003 00 90, 1996 O.J. (L 038) 1.

<sup>102</sup>. *See* Strating, *supra* note 37, at 318.

<sup>103</sup>. For a very cynical analysis of the future, see Philippe Lemaitre, *Un rééquilibrage du marché international des céréales s'esquisse*, LE MONDE, 16 Jan., 1996, available in LEXIS, Presse Library, Monde File.

<sup>104</sup>. *See id.*

adjustment.<sup>105</sup> As noted above, the decrease was roughly half of this, but the farmers have been subsidized on the original base of compensatory payments!<sup>106</sup> This is a good deal, making the reform very popular. The prices on the world market may stabilize at a very high level, depending on the political and economic situation in Russia.<sup>107</sup> In that case, the EU may cancel all export subsidies.<sup>108</sup> That could be a very important change on the international playing field, raising the question of how good the EU will be when it takes the offensive instead of playing defense.<sup>109</sup> A new decrease in the internal intervention prices on the European market would be possible during hypocritical protests<sup>110</sup> and that, through long non-use and without any political decision and legal cancellation, could be the end of the system of intervention itself.

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105. *See id.*

106. *See id.*

107. *See id.*

108. *See id.*

109. *See id.*

110. *See id.*

#### IV. THE URUGUAY ROUND AS A FRAMEWORK FOR INTERNATIONAL RELATIONS IN THE AREA OF AGRICULTURE

Food and agriculture have been the source of international conflicts for centuries. The weapons used in these conflicts were not built in military arsenals, but rather in national parliaments, law firms, or schools of economics and law. The names of these weapons are those frequently used by soldiers—retaliation, barriers, and section. However, here the retaliations are set under law; the barriers are technical; and the section is the famous 301.<sup>111</sup> Casualties are not spectacular, even though they give the inspiration to bombastic and “Churchillian” political speeches. The GATT/WTO Agreement sets new rules for this game or war. Three areas are important for the European Union: (1) the rule for alliances, called regional organizations in the GATT vocabulary;<sup>112</sup> (2) the scientific weapons, called technical barriers (infra Part V);<sup>113</sup> and (3) the dispute settlement system.<sup>114</sup> The third question is theoretical, even though the dispute over hormones between the EU and the United States led the latter to bring a case to the WTO on the January 26, 1996.<sup>115</sup> We have to reserve judgment until we see the new procedure in action.

Article XXIV of the GATT Agreement applies to every regional trade organization<sup>116</sup> and particularly to every enlargement of the European Union. This is not a recent discovery for Europeans. The check for the creation of the European Economic Community itself was signed as part of the Dillon Round<sup>117</sup> and, high as that price may have been, it has been paid. Recently, the accession to the EU of Austria, Finland, and Sweden has been paid after difficult negotiations with several countries, all of whom had an important share of the external trade of these new Member-States. On one hand, under a general regulation, lower tariffs have been fixed for many products, but for only a few agricultural commodities.<sup>118</sup> On the other hand, special negotiations have been opened with the United States and Canada.<sup>119</sup> The parties have reached an agreement, approved by the Council of the

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<sup>111</sup>. See 19 U.S.C. § 2515 (1994).

<sup>112</sup>. See General Agreement on Tariffs and Trade 1947, as amended, Apr. 15, 1994, art. XXIV, WTO Agreement, Annex 1A, (visited Sept. 11, 1997) <<http://www.wto.org/wto/legal/gatt47.wp5>> [hereinafter GATT 1947].

<sup>113</sup>. See Sanitary and Phytosanitary Agreement, *supra* note 10, art. 1(4).

<sup>114</sup>. See Dispute Settlement Understanding, *supra* note 13, 33 I.L.M. at 1226.

<sup>115</sup>. See Ian Elliot, *U.S. Takes EU Hormone Ban to WTO for Review*, FEEDSTUFFS, Feb. 5, 1996, at 1.

<sup>116</sup>. See Charles Roh, *Regional Trade Organizations: Strengthening or Weakening Global Trade?*, 88 AM. SOC'Y INT'L L. 309 (1994) (regarding the requirements of article XXIV); Amelia Porges, *Remarks*, 88 AM. SOC'Y INT'L L. 312, 312-16 (1994).

<sup>117</sup>. See sources cited *supra* note 52.

<sup>118</sup>. See Council Regulation 3093/95 Laying Down the Rates of Duty to be Applied by the Community Resulting from Negotiations Under GATT Article XXIV:6 Consequent Upon the Accession of Austria, Finland and Sweden to the European Union, 1995 O.J. (L 334) 1.

<sup>119</sup>. See *id.*

European Union, with some tariff quotas on agricultural products. This is routine for the European Union.<sup>120</sup>

What is not routine is the possible enlargement of the EU to the Czech Republic, Poland, Hungary, or to other former communist countries. Will this enlargement be treated as the opening of a new zone of free trade for Europe? Will our budget have to pay for the new markets opened to our products? This threat is serious because the EU has a very short term, or blind, export policy toward these countries. Because of the lack of eligible refunds, the volume of exports to Eastern and Central Europe from the EU are not very important, whereas U.S. corporations are expanding their shares of these markets.<sup>121</sup> When compensation under Article XXIV of the GATT Agreement is negotiated after the accession of former communist countries to the EU, a strong presumption exists that American demands will be very high and based on unquestionable arguments.<sup>122</sup>

There is a dream in Europe that the PECO accession might be outside the scope of the Article XXIV rule.<sup>123</sup> The philosophy of Article XXIV is broadly based on the theory of external competitors receiving compensation for the loss resulting from the building of trading blocs.<sup>124</sup> The compensation is the price paid for renunciation of the basic most-favored-nation clause, set out by Article I of the 1947 GATT Agreement.<sup>125</sup> The question is whether the same compensation system will be used when the European Union anchors the former communist countries to the democratic bloc. The interest of all big trading countries will be served by having these countries peacefully allied with democratic countries. To avoid social tensions, we will have to extend all the benefits of our social and agricultural policies; even farmers consider this effort unavoidable. Accession to Europe is just a mechanism for these countries to solidly cling to a world of freedom and peace. Article XXIV sets out a good and fair rule as far as trade is concerned.<sup>126</sup> Here trade is just one fact among other more important aspects. Higher values, in the absence of which no

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<sup>120</sup>. See Council Decision 95/591 of 22 December 1995 Concerning the Conclusion of the Results of Negotiations with Certain Third Countries Under GATT Article XXIV:6 and Other Related Matters (United States and Canada), 1995 O.J. (L 334) 25.

<sup>121</sup>. See Denis Badré, *Union Européenne: les conséquences économiques et budgétaires de l'élargissement à l'Est*, Rapports au Sénat, 1995-1996, N° 228, p. 31. According to this official report to the French Senate, in 1993 the percentage of exports to the six PECO for agricultural products was 1.8% of French exports and 8.6% of German exports. PECO is the French acronym for Central and Eastern European countries. The six countries are Poland, the Czech Republic, the Slovakian Republic, Hungary, Romania, and Bulgaria. There has been a swing in the trade balance between the six PECO and the EU in the 1990s. The traditional excess of exports to the EU stopped in 1993. In 1994 agricultural products and food exports to the EU (2 626 Mos Ecus) were lower than the imports from the EU (3 021 Mos Ecus). The monetary aspects naturally have a strong influence in that change. See *id.* at 60.

<sup>122</sup>. See GATT 1947, *supra* note 112, art. XXIV.

<sup>123</sup>. See *id.*

<sup>124</sup>. See *id.*

<sup>125</sup>. See Amelia Porges, *Remarks*, 88 AM. SOC'Y INT'L L. 312, 312-16 (1994).

<sup>126</sup>. See GATT 1947, *supra* note 112, art. XXIV.



trade could be possible, are at stake. May the dream of the U.S. government, a very comprehensive negotiator, come true? The answer depends on whether or not the negotiations take place on a date near November 1996, 2000, or 2004.<sup>127</sup>

## V. URUGUAY ROUND AND THE REMOVAL OF TECHNICAL BARRIERS

Technical Barriers refer to the regulatory obstacles to trade raised as mandatory requirements designed to protect the public health, consumer safety or information, the environment, and public morality. There is congruence between Article XX of the GATT of 1947,<sup>128</sup> Article 2 and 5 of the Agreement on Sanitary and Phytosanitary Measures (ASPM)<sup>129</sup> and the Agreement on Technical Barriers to Trade.<sup>130</sup> These agreements share the idea that WTO Member-States have the right to take sanitary and phytosanitary measures, but only to the extent necessary to protect human, animal, or plant life or health and that the measures should not arbitrarily discriminate between Members when identical or similar conditions prevail.<sup>131</sup> Members are encouraged to base their measures on international standards.<sup>132</sup> They may maintain or create higher standards if there is scientific justification. The Codex Alimentarius is the main source of international standards and scientific justification.<sup>133</sup>

The traditional role of Codex Alimentarius was an advisory institution, and the role of the scientific community was that of an advisor to law makers during the implementation of the numerous directives and standards. These roles have grown dramatically in recent years.<sup>134</sup> For example, the basic Hazard Analysis Critical Control Points (HACCP) method<sup>135</sup> is the basis of many of the directives issued on food quality in the 1990s.<sup>136</sup> The past inadequacy of scientific assessment

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<sup>127</sup>. French farmers joke that the threat on European agricultural interests has historically been at its peak before every Iowa Caucus.

<sup>128</sup>. See *id.* art. 20.

<sup>129</sup>. See Sanitary and Phytosanitary Agreement, *supra* note 10, arts. 2, 5.

<sup>130</sup>. See Agreement on Technical Barriers to Trade, Apr. 15, 1994, WTO Agreement, Annex 1A, (visited Sept. 11, 1997) <<http://www.wto.org/wto/legal/17-tbt.wp5>>.

<sup>131</sup>. See Sanitary and Phytosanitary Agreement, *supra* note 10, art. 2.

<sup>132</sup>. See *id.* art. 3.

<sup>133</sup>. Codex was jointly established in 1962 by the Food and Agriculture Organization (FAO) and the World Health Organization (WHO), which are both United Nations agencies.

<sup>134</sup>. "Recent years" refers to the period of the Uruguay Round talks. From this perspective, the necessity of scientific risk assessments under the GATT/WTO Agreement was a good argument to reform the European Community Law.

<sup>135</sup>. See Microbiology and Food Safety Committee of the National Food Processors Association, *Implementation of HACCP in a Food Processing Plant*, 56 J. FOOD PROTECTION 548 (1993).

<sup>136</sup>. See, e.g., Council Directive 93/43/EEC of 14 June 1993 On the Hygiene of Foodstuffs, 1993 O.J. (L 175) 1 (offering the most comprehensive EC directive).

procedures is not part of the current situation.<sup>137</sup> In future years, the following three topics, among others, will probably generate controversy: the role of scientific assessment versus social assessment, genetically engineered food, and food authenticity. All three topics raise difficult issues concerning the legal role of science in agriculture.

In the EU, the monopoly conferred on scientific assessment has been accepted, though not without criticism. The idea that social sciences have a role in any scientific assessment or in the harmonization of standards is strongly supported. The question originally arose in an internal European debate about the definition of quality in the area of food.<sup>138</sup> Then the debate of the “fourth hurdle” or “fourth criterion” came under the spotlight.<sup>139</sup> The first three “scientific” criteria (efficiency, safety, and reproducibility) are based on an evaluation of scientific data to assess the nature of the risk (in the sense of the risk for the first consumer’s health).<sup>140</sup> The fourth criterion is based on additional “risks assessments” to avoid any preemption of the world “risk” by biologists.<sup>141</sup> The meaning of risk under the fourth criteria takes into account social risks, such as farmers’ bankruptcies or rural desertification, together with environmental risks. In many areas, such as limits on property ownership rights, European law is closer than U.S. law to this social consideration.<sup>142</sup>

The EU negotiators in the UR talks were unsuccessful in their efforts to allow the fourth hurdle or criterion.<sup>143</sup> Two main questions are still at issue—the use of BST by milk producers and the use of hormones in cattle feeding.<sup>144</sup> United States efforts to end the EU ban on imports of hormone treated beef currently dominates

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<sup>137</sup>. See Karen McColl, *EC Food Regulation: Principles for Reform*, CONSUMER POL’Y REV., Oct. 1992, at 208.

<sup>138</sup>. Considering that all international definitions are too vague, Nordic (Protestant?) Member-states of the EU consider that quality refers only to safety and health, whereas Southern (Catholic?) Member-states include satisfaction and suitability. This definition (in French) is known as the “4S” (Sécurité, Santé, Satisfaction, Service).

<sup>139</sup>. See *EC’s Fourth Criterion Passes Legal Hurdle*, NUTRITION WK., Apr. 5, 1990, at 7; Rodney E. Leonard, *Global Trends Indicate 4th Criterion Inevitable*, NUTRITION WK., July 19, 1991, at 4.

<sup>140</sup>. See Leonard, *supra* note 139, at 4.

<sup>141</sup>. See *id.*

<sup>142</sup>. For a significant ruling by the Court of Justice of the European Communities, see *Case 4/73, J. Nold, Kohlen-und Baustoffgrosshandlung v. Commission*, 1974 E.C.R. 491, [1974] 2 C.M.L.R. 338 (1974) which states:

If rights of ownership are protected by the constitutional laws of all the Members States and if similar guarantees are given in respect of their right freely to choose and practice their trade or profession, the rights thereby guaranteed, far from constituting unfettered prerogatives, must be viewed in the light of the *social function* of the property and activities protected thereunder.

See *id.* (emphasis added).

<sup>143</sup>. See sources cited *supra* note 139.

<sup>144</sup>. See Leonard, *supra* note 139, at 4.

international farm trade issues.<sup>145</sup> Both questions are beyond the scope of this Article. Representatives from the United States brought the case of the meat import ban to the WTO in Geneva on January 26, 1996. The question of globalization of agriculture might have been a good example of another risk assessment for the EU farmers.

The question remains interesting as long as the ban on meat imports from animals fattened with synthetic hormones is not just a classic protectionist measure.<sup>146</sup> The EU will obviously have to lift the ban after the settlement of the conflict under the WTO rules, but EU citizens' image of the GATT, WTO and the United States will be definitively altered for a long time. Officials say the "WTO panel must not damage overall relations."<sup>147</sup> This result is not exactly what the French Farmer's Unions intend at this time, mainly because of the threat of a decrease generally in European consumption of red meat.

The opinion may be based on misinformation but every survey clearly shows that French consumers consider this meat more disgusting than dangerous. The antipathy is more because of the taboo related to the word hormones—a belief about food of the same quality as that attached to religious prohibitions. Because a dish in the French culture must be more than quick, cheap, and safe, it is easy to make every question related to food very emotional. As food is the most important piece of our national pride, pro-WTOs have a difficult time arguing with some "grass roots" campaigns when they try to defend the one-worlders who want to destroy our culture and our traditions to benefit big international companies.<sup>148</sup>

The questions of BST and hormones are quite symbolic in that they illustrate the kind of topics that the EU will face in the coming years. One of the most important issues relates to imports of genetically modified food.<sup>149</sup> Resolution of this issue will be a good opportunity for American<sup>150</sup> and European consumers to

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<sup>145</sup>. See Elliot, *supra* note 115, at 1.

<sup>146</sup>. To some extent, eliminating the ban might be harmful to U.S. interests. First, this question reflects an internal U.S. struggle between corn and soybean growers on the one hand, and red meat producers or packers on the other hand. Cattle in the EU are fed with by-products of the U.S. cereal industry (derived mainly from production of oil and starch). Second, eliminating the ban will move the polluting feedlots from the EU to the US and will result in cheaper meat being imported to the EU. As a result, the EU consumers will save money with which to buy our fashion clothes, high quality wines, and other European products. Third, it will save EU cereals to export on very buoyant markets.

<sup>147</sup>. *EU/US: WTO Hormones Panel "Must Not Damage Overall Relations,"* European Information Service, European Report, Jan. 13, 1996, available in LEXIS, World Library, Allnws File. United States Agriculture Secretary, Dan Glickman, told EU Farm Commissioner Franz Fischler during a telephone conference on January 10, 1996 that the legal process "must not be allowed to undermine the positive atmosphere" generated between the two trading partners in recent months. *Id.*

<sup>148</sup>. See Oliver Walston, *Anti-GATT Aftershocks*, TOP PRODUCER, Mar. 1994, at 4.

<sup>149</sup>. The official opinion of the Commission of the European Communities is perfectly reflected in the answer to a question by Sir Lord Brittan on behalf of the Commission. See Commission Opinion on Importation of Genetically Modified Products Into EU Member States, 1995 O.J. (C 270) 65.

<sup>150</sup>. See Deborah Erickson, *Hot Potato: Will Safety Questions Curb Public Appetite for Gene-Spliced Food?*, SCIENTIFIC AMERICAN, Sept. 1992, at 160.

share emotions and, more importantly, for the WTO panels to take into account scientific environmental assessments.

The question of food authenticity will also be very controversial. Usually, food authenticity does not raise questions of safety or health.<sup>151</sup> It does, however, deal with the question of contamination by chemicals or pesticides. The object here is to avoid misrepresentation in food labeling. The criteria vary from one commodity to another. The main question in Europe is whether or not new requirements for high quality products, such as wine or cheese, with an appellation of origin,<sup>152</sup> might be subject to scientific testing in order to check their authenticity (origin and vintage for example).<sup>153</sup> There is no contradiction between the use of scientific methods such as HACCP<sup>154</sup> and the “authentic and unvarying local methods.”<sup>155</sup> Irrefutable analytical methods will probably be required in the near future in order to comply with international requirements. The traditional search of organoleptic characters by wine-testers will likely be insufficient and the European producers will have to comply with more scientific methods of analysis. That will change dramatically both the way our farmers operate and the role of the WTO or similar agencies facing the necessity of data collection and handling.<sup>156</sup>

## VI. CONCLUSION

The implementation of the GATT/WTO gives the European Union an opportunity to solve many internal problems. The cost of the CAP is now bearable. The internal prices are closer to the prices found on the world market, and the net income of the farmers has not decreased in the last two years. From this standpoint, the GATT/WTO has provided support for the idea that the European Union is a necessity for farmers. The majority of the French farmers agree that the final agreement of the GATT/WTO is not a defeat and that it evidences the bargaining power of a strong unified Europe on the international stage.

However, the future that the European agriculture faces will not be as easy as it appears at first glance. The most difficult agricultural issues arise out of the most important loopholes in the GATT/WTO. The following questions might be a good

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<sup>151</sup>. Some well known exceptions are the Spanish toxic syndrome or some bootleggers' whiskeys during the Prohibition.

<sup>152</sup>. See Council Regulation 2081/92 On the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, 1992 O.J. (L 208) 1.

<sup>153</sup>. See *id.*

<sup>154</sup>. See source cited *supra* note 135. Some French wineries use the HACCP method. For a French approach to the HACCP method, see Jean-Pierre Doussin, *Services officiels de contrôle et assurance qualité*, *OPTION QUALITÉ*, N° 130 & 131, July & Sept. 1995, at 12-18.

<sup>155</sup>. Council Regulation 2081/92 On the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs, art. 4e, 1992 O.J. (L 208) 1, 3.

<sup>156</sup>. The analyst must rely on a reference base regardless of the analytical technique chosen. The commission of the European Communities has funded a concerted action N° AIA3-CT94-2452 on Food Authenticity Issues and Methodologies.

topic for another paper discussing the weaknesses of the GATT/WTO from a European perspective.

The first question concerns the environment. What will be the relationship between international trade, protection of the environment, and agriculture? How will our agriculture be protected against both green dumping (unfair practices from competitors having low requirements) and green protectionism (environment being used as the base for new technical barriers)?

Second, the question of the accession to the EU by Central and Eastern European countries must be answered. Will it be considered by the WTO as a regular extension of a trading bloc or will the EU alone support the price of the accession of these countries to the group of Western countries?

Third, consideration must be given to the question of relations with developing and less-developed countries. For instance, the GATT/WTO has paid no attention to a world "food security system" with permanent stocks of commodities.<sup>157</sup> The GATT/WTO only sets particular deadlines for developing and less-developed countries to match the requirements for internal subsidies, market access, and other specific economic goals.<sup>158</sup> From that perspective, these countries are just backward countries on their way to adopting the Western model of development. For historical and geographical reasons, Europe will pay a higher price than anywhere else for consequences of errors in this area.

Fourth, the question of the relations of the big trading blocks (North American Free Trade Association, European Union, Asia) remains an issue. The perspective of the "Atlantic Agenda" is very controversial among European farmers who don't really like fundamentalists treating free trade as a religion.<sup>159</sup>

The implementation of the GATT/WTO was launched in Europe with the understanding that it could probably create another Common Agricultural Policy with reduced public expenses and a market-oriented economy. Obviously, two more important questions are at stake. First, what is the role of agriculture? Is it only another branch of the industrial sector, deregulated for the needs of an open world-market and regulated for the necessity of protecting the environment? Is it a global contribution to the idea of sustainable development,<sup>160</sup> involving the protection of landscapes, culture, or biodiversity. Second, what is the role of the states and the role of the law in the modern World? Are the states only advocates of the economic interests of the companies, the headquarters of which are temporarily located on their

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<sup>157</sup>. Alan Matthews, *Necessity Neglected*, CERES, May-June 1993, at 24-31.

<sup>158</sup>. See Agreement on Agriculture, *supra* note 9, arts. 1, 4, 6, 7, 9, 10, 15.

<sup>159</sup>. This term refers to the initiative, led in Europe by the Commissioner Sir Leon Brittan, to open discussions about a possible free-trade zone between the USA and the EU. See *UE/Etats-Unis: Sir Leon preconise un renforcement des liens*, Agromonde Service, May 5, 1995, available in LEXIS, World Library, Allnws File.

<sup>160</sup>. The United Nations Council on Economic Development defines this concept as "meeting the needs of the present generation without compromising the needs of future generations." See Ralph Osterwoldt, *Remarks*, 87 AM. SOC'Y INT'L L. 506 (1993) (quoting the United Nations Council on Economic Development).

territory? Must law only reflect what looks like a scientific certainty at a certain period during the development of scientific knowledge? More than ever, agricultural law is one of the most “transparent” tributaries of the big river of law. Thanks to this transparency, the good questions are easily perceived, but good questions rarely receive good answers.