

**C.E.D.R.**



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Comité Européen de Droit Rural (C.E.D.R.)  
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### **Commission III – Kommission III**

Scientific and practical development of agricultural law in the EU,  
in countries and in the WTO – Développement scientifique et  
pratique du droit rural dans l'UE, dans les pays et dans l'OMC –  
Wissenschaftliche und praktische Entwicklung des Rechts des  
ländlichen Raums in der EU, in den Ländern und in der WTO

National Reports – Rapports nationaux – Landesberichte  
**Summaries – Résumés – Zusammenfassungen**

## **Argentina**

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Argentine rural law focuses on productive process and its results: fruits and farm agrofoodstuff produce, mainly regarding food for human beings.

Regarding Rural economic law and rural structure law, our country has settled rural development plans with incentives to diversification of “rural activity”. There are also national programmes supporting small farmers, which purpose is to overcome rural poverty conditions, through the sustainable growth of incomes and self management capacity of rural population giving them: technical and financial assistance, support for management projects, diversification of farm activities, introduction of technical changes in order to achieve new markets, technical and financial resources according to millennium goals, incentives for cultivate forest and laws about agrotourism and ecological tourism.

On the legal framework of argentine rural environmental law, we can find national legislation referred to: environmental politics and management, free access to public environmental information and also about soil, forest, national parks, water resources management, biodiversity, renewable energies, activities related to environment such as: solid waste, toxic and dangerous waste, radioactive waste, industrial waste, mining activity, focusing negative impact in rural activity and environment. But not all the legislation have an environmental approach, only the most recent ones regarding: water, biodiversity, native forest, solid waste, radioactive waste and environmental impact of mining activity.

Our national constitution protects the right to environment and sustainable development (art 41 N.C.) and also establishes a special action to protect it.

The provinces have passed “systemic environmental laws”, most of them before the national congress passed a national one. They also have laws, which rule each resource: soil, water, forest, protected areas, reserved areas for multiple uses.

At national level there are laws referred to pesticides. Besides Argentina has confirmed international agreements referred to environment.

As instruments and techniques should be pointed: good farming practice codes, the eco-audit, the certification according to ISO 9000 and 14000 quality system adopted voluntarily by some companies, environmental certification and corporate social responsibility certification, environmental assessment for native forest as well as for activities, projects, environmental plans and programmes, organic agriculture, eco- tourism and agrotourism.

Regarding Rural food law, it is important the evolution through the Argentine Food Code and hygienic rules, completed with the national law referred to national System on Food Control, commercial loyalty and consumer protection competitiveness defence.

In the search of quality it have been passed rules related to HACCP method, protected denomination of origin, the good agrarian and agro-technical practice codes, certification of processes or products (those from organic agriculture, denominations of origin, quality seals) making achievable harmless food.

Rural law and rural land law use planning law is more recent, and appeared with the systemic environmental law in which framework have been passed the national native forest law to order the forest's use along the national territory.

Rural tax law establishes national taxes for rural activity as: income tax, VAT, minimum alleged income tax, liquid fuel tax, export retention's, debit and credit tax, social security contribution. The provinces have established as well: gross income tax, rural land tax, seal tax and town taxes as security and hygiene tax, inspection tax and road tax.

It can be assess that there is an excessive tax charge, control and volume of information over tax payers.

Rural social law is included in the national regime for rural work, not only for permanent workers but also non permanent; and those workers depending on rural businessmen. It has been created the rural notebook for rural workers and established a special license for family illness for permanent workers.

Regarding child work, rules "the Agreement on health and security in agriculture" signed in 89° Conference of the International Work Organisation held in Geneva.

Jurisprudence has little development and there are only few sentences regarding pesticides and environmental impact assessment.

Legislation on transgenics is important, and it is significant the resolution of the WTO about the issue submitted between EU against Argentina and EE.UU, solved in favour of our country and EE.UU.

Making a comparison with EU legislation, ours is relevant on issues like: traceability, organic or ecological farming, Eurogap seal and the quality seals, which allow the identification and harmless on fruits and produce with differentiated quality, beneficial for consumers, environment and rural producers.

As a success: the regulation about quality for fruits and agrofoodstuff, included in national legislation. As a failure, the absence of execution of agro- environmental rules because the lack of efficacy.

Besides independent producers have no protection in social aspects, because the law only rules for dependent workers, which sometimes is not enforced by the authorities

The Argentine rural legislation is profuse, dispersed and in some cases incoherent, lapping national and local competency.

On the other hand, we can affirm that the law is far from rural reality, which should rule. There is a dichotomy between doctrine, rural legislation and social- political reality.

Legislation is evolving slower than rural doctrine.

Rural jurisprudence is not significant. There are some cases concerning water, seeds, pesticides, land renting, agricultural partnership, and environmental impact assessment and measures for environmental protection.

Regarding the debate about competition between food and biofuel production, the Argentina government is in favour of biofuel.

The incentives for farming produce are limited, so the producers claimed for a solution to the government.

Today the country is suffering a severe crisis, only in march 2009, some agreements were signed for milk produce and meat, which are considered insufficient for producers organisations such as “FAA, Sociedad Rural, Confederaciones Agropecuarias Argentinas”.

The situation in Argentina demands a “new way of produce” and a “new way of consumption” to value human rights to: environment and consumers protected by the laws. Only a social responsibility can embrace this way of living.

Legislation and jurisprudence are waiting, and the path to the evolution of rural law in Argentina has begun.

## **Australia**

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The statutory duty of care as a basis of legal accountability for farmers’ sustainable land management is a legal development in Australia that is the focus of this report. Using a duty of care in this way raises issues about the tensions between farmers and society and the absence of clear definition of boundaries of responsibility. The intention of the statutory form is difficult to achieve given that administrative enforcement processes are favoured over a civil process. Administrative actions to enforce the legislation are however likely to be challenged in court due to the potential effects on farmers’ property interests, requirements for expenditure or possible criminal sanctions for non compliance. When this occurs the courts will draw on the common law duty of care from civil negligence, in the absence of other clear direction, for guidance about how this new statutory form may function. This expectation of judicial review mirrors the experience with implementation of the statutory precautionary principle, from initial confusion over the practicality of political aspiration in the statement, to a detailed judicial interpretation of its use in decision-making. Legislation for native vegetation conservation provides another example where political aspirations for sustainability have proven impossible to enforce. Implementation of sustainable development through law is a field where political aspirations are likely to be frequently dashed. Testing the potential effect of judicial review through an experimental moot court, where legal practitioners and a judge applied their expertise to a hypothetical problem involving enforcement of a farmers’ statutory duty of care confirmed the anticipated challenges for implementation of a statutory duty of care.

## France

### **Jean-Baptiste MILLARD**

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Au regard des évolutions qui ont le plus marqué le droit agricole et agro-alimentaire français ces dernières années, il a été décidé de couvrir la période 2005-2009. L'étude de cette période permet en effet d'évoquer les textes majeurs en droit interne, dont l'initiative revient tant aux pouvoirs publics français, qu'au législateur communautaire.

Si la mise en œuvre nationale de la PAC trouve évidemment son origine dans le droit communautaire, qui lui-même a entendu prendre en compte le contexte international et plus particulièrement les engagements internationaux pris par l'UE dans le cadre de l'Organisation Mondiale du Commerce (OMC), la loi d'orientation agricole du 5 janvier 2006, si elle n'est pas totalement étrangère aux bouleversements engendrés par la nouvelle PAC aux accents libéraux, manifeste néanmoins une volonté nationale d'accompagner ce mouvement de fond en promouvant une démarche d'entreprise chez les exploitants agricoles.

C'est cette distinction entre la volonté politique française et les évolutions juridiques qui sont imposées à la France qui a justifié la partition de cette étude entre les apports législatifs et réglementaire d'initiative nationale (Partie 1) et l'adoption des textes ou les avancées jurisprudentielles rendues nécessaires par le droit européen (Partie 2).

La première partie s'attache donc à présenter rapidement les principales dispositions de la loi relative au développement des territoires ruraux du 23 février 2005 (Chapitre 1), avant de s'attarder sur les traits saillants de la loi d'orientation agricole du 5 janvier 2006 et de sa réglementation d'application, que sont le fonds agricole et le bail cessible, le toilettage du statut des baux ruraux et de la coopération agricole, l'assouplissement du contrôle des structures et la réorganisation des signes de qualité et d'origine (Chapitre 2), sans oublier les premières applications jurisprudentielles des ces nouvelles dispositions.

D'autres réformes au spectre plus large ont également impacté le droit rural. Il s'agit de la réforme des successions et des libéralités du 23 juin 2006 (Chapitre 3) ou celle relative à la sauvegarde des entreprises du 26 juillet 2005 (Chapitre 4).

Le droit fiscal agricole n'est pas en reste, et de nouveaux outils ont été mis à la disposition des exploitants agricoles pour leur permettre de lisser leur revenu agricole dans un contexte de baisse des aides agricoles et de volatilité des prix (Chapitre 5).

La seconde partie fait la lumière sur les textes nationaux qui trouvent leur justification dans une application, plus ou moins servile, de la réglementation européenne. C'est le cas avec la réglementation d'application de la grande réforme de la PAC de 2003, qui a rénové et simplifié le système d'aides aux agriculteurs en instituant le régime de paiement unique (Chapitre 1).

C'est encore le cas de la mise en œuvre du bilan de santé de la PAC (health check), adopté par le Conseil en novembre 2008, qui a redonné des marges de manœuvre aux Etats membres pour préparer l'échéance de la nouvelle réforme prévue pour 2013, marges de manœuvres que

la France a entendues pleinement utiliser pour engager un rééquilibrage des aides du premier pilier entre les grands secteurs de production, au détriment du secteur céréalière.

Le droit de l'environnement est également un domaine dans lequel la Communauté européenne dicte ses vues aux Etats membres, en contraignant notamment la France à légiférer en matière de responsabilité environnementale ou d'OGM. L'Etat français entend cependant reprendre la main en ce domaine en se dotant d'une politique ambitieuse. C'est l'objet du Grenelle de l'environnement qui aura de notables incidences sur le secteur agricole (Chapitre 2).

Le droit communautaire de la concurrence et son application dans le secteur des produits agricoles ne va pas sans heurts. De récentes décisions communautaires ou nationales, durement ressenties par les milieux agricoles, en font la démonstration (Chapitre 3).

Enfin, le droit rural n'est pas hermétique à la Convention européenne des droits de l'homme, dont les dispositions sont de plus en plus souvent invoquées par les justiciables. Ainsi, tant la Cour européenne des droits de l'homme que les juridictions nationales ont été amenées, ces dernières années, à apprécier la conventionalité de certaines dispositions du droit rural français, dans des domaines aussi variés que les cotisations obligatoires, le statut du fermage ou le droit de la chasse (Chapitre 4).

## Poland

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In the course of the recent months (i.e. in 2008 calendar year and in the first quarter of 2009) the legal foundations of the World Trade Organisation shaped by the agreements resulting from the Uruguay Round multilateral negotiations have not been changed or made subject to any binding review. As regards the sphere of agricultural activity and agricultural trade, the commitments of WTO Members (including the European Communities) persist to be driven by *Agreement on agriculture* (URAA). However, this shall not mean that the WTO activity in the latest months has decreased and that the legal development of WTO has been weakened. The proof for that lies in the intense multilateral negotiations led in the framework of the Doha Development Agenda (DDA) which aim at drafting the legal path for the next stage of world trade liberalization, including – in particular – trade in agricultural goods.

Any assessment of both the consequences and impact of particular negotiating stages at DDA level upon the structure of Community agricultural law should take into account that while shaping its agricultural policy and legal mechanisms the Community is used to anticipating the introduction of changes to the WTO regime, so that the new provisions would not require the EC to launch fundamental sectoral reforms and bring major changes to the legal system of EC's agricultural acquis. In principle, the legal solutions the Commission usually negotiates at WTO level have either already been introduced to the Common Agricultural Policy or they have already been addressed by pending legal initiatives in the EU. By doing this, the Commission strengthens its position at the international scene and create itself as a progress initiator in

liberalization process of agricultural trade. Finally, one of the emanations of WTO functioning in practice is the frequency of legal disputes launched by Members on grounds of trade issues.

The most important achievement of Community agricultural law in the period discussed is the health check legislative package. As shortcomings, however, one should point to lack of generality and widespread application of new, cross-border, supranational and Community-wide challenges resulting from the model of financing in the first and the second pillar of the CAP. Both solutions agreed in health check petrify the disadvantageous access to Community funds for the new Member States.

As far as the steps of Community legislator are concerned in the field of food prices crisis, competition between various sources of demand for agricultural produce, in the period of the recent months there have been numerous examples of the Council's legislative activeness. One of such steps in meeting the challenge of an increased demand for agricultural produce intended for renewable energy purposes was the repeal of the energy crops scheme with the effect from 2010 calendar year. This was a heavily discussed topic in the new Member States where the scheme has been operating since 2007 only. National instruments guaranteeing that certain areas of agricultural land be devoted to food production purposes might not be in line with Community direct support regime, the philosophy of decoupling which leaves the production decisions to the discretion of a particular farmer. The international factor played particularly significant role in the development of rural law. Already the negotiations carried out in the course of Uruguay Round constituted a strong incentive for a deep reform of the CAP. The Marrakech Agreement signed in 1994, which served as a legal emanation of the agricultural trade globalization, changed the attitude of the Community towards the agricultural policy, because it made clear that such policy should be shaped in conformity with the international commitments. The consequence of globalization processes was the reference to the local elements of development, namely the territory.

It brought the exposure of the role of rural policy within the agricultural policy. The Community, while protecting the European model of agriculture, resorted to these elements which are linked with territory, locality. The new Community legislation reaffirms until 2013 the picture of rural law with – undoubtedly – development character.

The development of law for rural areas seen from the perspective of the recent years is strictly linked with Poland's membership in the European Union. Thanks to the influence of the Community law the agricultural regime has been extended to new areas and the rather poor agricultural law gained a new part. The growth of agricultural legislation towards the inclusion of food, territorial, environmental and social aspects took place against the background of a visible desagrization of the countryside. One cannot omit to notice however, that these provisions are extremely detailed, nearly casuistic and too frequently novelised.

This last feature shows how important a role the jurisprudence of administrative courts plays in applying and creating the law, while pointing out to evident failures of legislation.

## **Roumanie**

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Une brève présentation historique est nécessaire pour comprendre les transformations qui ont eu lieu dans l'agriculture roumaine après la chute du communisme en 1989. La législation qui a assuré le passage de l'agriculture à l'économie de marché a connu une évolution complexe, longue et vacillante. Elle a comporté l'éradication des formes socialiste d'organisation et la restitution des terres, objet de la propriété socialiste, aux paysans, anciens membres des coopératives agricoles.

Cette mutation radicale dans le domaine de l'agriculture a permis la constitution d'un droit agraire qui englobe, à présent, des règles régissant les relations sociales des différents secteurs agricoles : la production végétale et animale, la circulation civile des terrains et d'autres biens agricoles, la tenue d'une évidence foncière, l'associations des producteurs agricoles, les assurances sociales de ceux-ci, le louage des terres et d'autres biens agricoles, le régime des semences et des plants, des engrais et des pesticides, l'aménagement du territoire la conservation et l'amélioration des sols, la protection de l'environnement etc.

Le droit agraire a été marqué, à un certain moment de son développement, par le processus d'harmonisation de la législation interne avec les règles communautaires, exigence de l'intégration de la Roumanie dans l'UE, laquelle a abouti au début de 2007.

Cependant, les réformes consacrées par ces mesures législatives n'ont pas toutes donné les résultats escomptés, de sorte que la Roumanie continue de devoir affronter des difficultés sérieuses dans ce domaine important de l'économie nationale. Etant donné que celles-ci sont dues souvent à l'insuffisance des moyens financiers, une partie importante de la législation du secteur vise à assurer leur utilisation rationnelle. Les fonds provenant de l'UE occupent à cet égard une place de choix.

## **Spain**

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Within the first decade of the XXI century (2000-2009), Spanish legislature has been characterised by notable activity within the scope of the regulation of agriculture and rural areas. In fact, over a dozen laws have been passed on a state level, which directly or indirectly affect the development of the agriculture sector and rural areas. The approved legislation is of a civil and administrative nature. The permanent reference mark of Spanish legislation is the CAP and Community law, either directly applied or transposed. It was intended to boost the economic development of the rural areas, where agriculture has an essential function. It has sought to lay



down laws leading to the modernisation and viability of Spanish farms. It has favoured the rejuvenation of agricultural professionals, owners of agricultural holdings and inhabitants of rural areas, placing special emphasis on the function of women farmers. It has added several environmental parameters affecting agricultural activity, and has attempted to make farmers aware of the need to protect the landscape, natural resources and the environment in general. From an institutional standpoint, the territorial distribution of the legislative power in Spain and its influence on the development of agricultural law has to be taken into account. Autonomic legislation has significantly driven Spanish agricultural law. Moreover, the Autonomous Communities are responsible for carrying out and putting European and State legislation into practice in their regional areas.

About national legislation of greatest practical relevance, firstly, mention must be made of the law implementing the direct support scheme of the CAP provided in Regulation 1782/2003 (now replaced by Regulation 73/2009). A Royal Decree is approved each year providing the basic legislation within this scope (Royal Decree 1612/2008 is the latest). Its main practical relevance consists in providing farmers with the knowledge of the administrative proceedings to be followed to receive direct support. Specifically, it allows for the implementation of the requirements of the single payment scheme and of the allocation and use of entitlements, as well as the conditions for the granting of such rights. It also provides an in-depth description of other support schemes coupled to production and other specific support systems. In terms of ancillary legislation, of significance is Royal Decree 2352/2004 on the implementation of cross compliance and Royal Decree 520/2006 relating to the provision of advisory services to agricultural holdings. The laws implementing new direct support from the CAP since 1 January 2006 and the single payment scheme can be considered successful. From the standpoint of legal technique and institutional organisation, the direct support scheme functions reasonably well. On the other hand, within the scope of the second pillar of the CAP, i.e. rural development, noteworthy of the recent Spanish legislation is Law 45/2007 on the sustainable development of rural areas. Its main practical efficiency lies in the programming and planning of sustainable rural development on a State and Autonomous Community level. This planning includes different measures and specific actions to be taken in certain rural areas, and above all those classified as "priority areas" (which need revitalization, included in the Natura 2000 networking programme, small sized and scarcely populated rural municipalities, etc.). Within the scope of the improvement of agricultural structures and holdings, notable is Law 49/2003 on land leases. The main practical consequence of this new lease legislation is the mobility and boosting of the land market. Facilitating access to the lease of land and agricultural holdings brings Spain closer to its objective of achieving holdings of a sufficient size, which are economically viable and are profitable. The original version of the Land Lease Law of 2003 could be considered positive since it facilitated the formation of agricultural holdings at a lower start-up cost and favoured the expansion of the farmers' territorial base. However, the 2003 Law was reformed in November 2005 and certain criticism can be voiced against this reform. Next, in the area of technology applied to the obtainment of new crop varieties, notable is Law 9/2003 relating to genetically modified organisms (transgenics). This law regulates all production phases, paying specific attention to personal safety and the protection of the environment, as well as the procedures for the authorisation of crops and marketing of genetically modified organisms. Spain is currently the EU country with the highest amount of genetically modified crops (over 70,000 hectares of maize) and this crop has increased in recent years. However, a negative aspect is the lack of specific regulations on the coexistence of genetically modified crops and conventional or ecological crops. Finally, reference should be made to the sector Law 24/2003 on vineyards and wine. One of the practical effects proposed by this law is the control of the productive potential of Spanish vineyards within the framework of European regulations.

Already existing trends based on the evolution of agricultural law are the following: a) Support for professional agriculture and the professional farmer. It is a concept linked to a certain volume

of work dedicated to agricultural holdings (an annual work unit) and a volume of income (25 %) arising from agricultural activities. The quality of the professional farmer is required for priority or preferential access to aid for rural development, the modernisation of holdings, production rights or rights arising from a national reserve, etc. b) Rejuvenation of the agriculture sector: establishment of new and young farmers. Support for the establishment of young farmers is a constant in Spanish Agricultural law and is maintained in the latest regulations. c) Promotion and recognition of agricultural associations. The special laws foster their creation through tax benefits, agricultural insurance finance support, grants, aid for the operation of production organisations, etc. d) Protection of the environment and of natural resources through agricultural activity. Environmental sustainability parameters and requirements are continually being introduced in agriculture. New "territorial agriculture" is being promoted, where farmers receive aid to direct and provide incentives to their activity in benefit of the sustainable development of rural areas, and particularly mountain areas. Incentives are provided for "ecological agriculture" or the use of production systems which are compatible with environmental protection. e) Use of contract administration techniques. The distribution of public support or specific benefits is organized by means of contracts entered into by the government and the owners of agricultural holdings, which are potential beneficiaries of this support.

With respect to new trends on Spanish agricultural law, noteworthy are the following: a) Diversification of the economy of rural areas and agricultural activity, to promote the consolidation of the agricultural and food, forestry, game and fish sector in rural areas. Food safety is also to be increased. Economic activity linked to industry, trade, tourism and other services will also be supported. b) Model of a "territorial" agriculture holding. c) Support for women in rural areas and recognition of their work in relation to agricultural activity. d) Creation of advisory services for farmers and agricultural holdings. e) Promotion of agricultural energy crops. Promotion of renewable energies.

A future assessment of the legislation trends mentioned can be made. With respect to the existing trends, they will continue to be in force and will be consolidated in the medium term, since the problems they are meant to resolve are currently of main concern. Issues such as the professionalization of agriculture, the aging of the sector, the promotion of agricultural associations or the protection of the environment still require legislative and economic support and impetus from the Government and legislature. For new trends, they will be developed considerably in upcoming years, both on a national level and on a regional level. One reason being the foreseeable entrance of increased financing from the EU for the support of rural development and the most underprivileged sectors of the population (rural women, young people) and the promotion of environmental measures.

Finally, In Spain case-law is not a source for the creation of law. Its function is typically to interpret and apply law, the customs or the general principles of law, which are the only sources accepted. This case-law establishes criteria for interpreting the Civil Code or special agricultural legislation when resolving conflicts between individual subjects. It aids in gaining knowledge as to the specific scope of laws, and facilitates the understanding and extension of certain agricultural-related legal concepts. In general, it has collaborated in the understanding and application of agricultural legislation. On occasion, it provides legislative power with technical criteria and practical solutions to be applied in new legislation yet to be approved or in the reform of current laws.

## **Turkey**

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Legislations about rural sector in Turkish agricultural law follow a specific development path and is divided into two in general. In the first of them, the legal matters related to agriculture sector are regulated by the adopted special acts while in the second one, the matters related to agriculture sector are covered under the adopted regulation of general nature. No special legal regulations have been made regarding rural economy, rural structure, rural environment, food and nutrition, tax and social areas but such areas have been considered within the scope of the legislations of general nature.

The legal studies regarding agricultural sector in Turkey have been limited to regulations contained in common law for several years except just a few special codes. Upon commence of EU membership activities, several codes of special nature have been adopted during recent 15 years in line with realization of legislation alignments in order to ensure compliance with common agriculture policy. Although essential developments have been achieved with the legislations adopted during the process of adaptation to the EU, such developments have rather occurred for the realization of adaptation commitments made to the EU and international commitments. The EU legislation has had effects on legislation related to agriculture sector, and the effect of World Trade Organization has remained at limited levels.

Concrete needs of agriculture sector have not been taken into account in legislations but only adaptation to the EU and fulfillment of international commitments in terms of form have been paid priority. As compliance in form has been paid priority, institutional structures aiming at putting such legislations into practice have not be established. And this case has prevented establishment of doctrine and case law in connection with the matter.

In conclusion, since the legal regulations in Turkish Agricultural Law have remained at the level of theory and forms, it is failed to put them into practice, which creates adverse impacts in development of agricultural structure and international competition, and most importantly, endangers plans for adaptation to the EU Common Agriculture Policy. Therefore, it is necessary to establish institutional structures which will assure putting into practice the legal regulations with political stability so as to take concrete steps by means of making regulations in order to provide compliance with the EU and fulfillment of international commitments.

## Rapport individuel

### LES INDUSTRIES AGROALIMENTAIRES, LE TROISIEME PILIER DE LA PAC et l'OMC

par Philippe VELILLA

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Le terme de troisième pilier ne doit pas induire en erreur. L'expression n'est pour l'instant employée que par les Allemands, et l'a été en France par un seul ministre de l'Agriculture (Monsieur Jean Glavany). Qu'entend-on par là ? Bien entendu tout ce qui, relève de la PAC, mais n'appartient ni au premier pilier (le soutien de la production), ni au second (l'aide au développement rural). Il s'agit donc de tout ce qui concerne la protection du consommateur, la qualité, l'environnement. Mais il ne faut pas s'y tromper : ces politiques relèvent de la PAC, mais pour partie seulement. Car leur champ matériel excède celui de la PAC. Ces domaines relèvent également d'autres dispositions du Traité, et lorsque le législateur intervient, il ne manque pas d'y faire référence. En fait le troisième pilier ne concerne la PAC que pour partie. On pourrait ainsi parler de deuxième pilier et demi. Cela ne signifie pas que ces matières n'aient pas d'importance pour la PAC. Bien au contraire, les questions de qualité et de sécurité alimentaire prennent une place de plus en plus importante. C'est ce qui explique les contentieux avec l'OMC. Car sur ces questions, l'Union européenne et l'Organisation mondiale du commerce sont fondées sur des principes différents.

Le droit de la PAC repose sur trois grands principes qui sont l'unicité des marchés, la solidarité financière et la préférence communautaire. Sur ce dernier point, précisément, on mesure la différence avec les principes de l'OMC qui a pour but, je cite, de *contribuer à favoriser la liberté des échanges tout en évitant les effets secondaires indésirables*.

Le droit de l'OMC met en œuvre pour cela deux dispositions essentielles : la clause de la nation la plus favorisée (tout avantage consenti à un membre de l'OMC doit être étendu à tous les autres), et la règle du traitement national (les produits importés et les produits nationaux doivent être traité de façon identique). Concrètement l'OMC met en œuvre trois grandes orientations :

- une libéralisation progressive du commerce par la voie de la négociation (les négociations commerciales multilatérales ou NCM) ;
- la promotion d'une concurrence ouverte et loyale décourageant les pratiques déloyales (subventions et soutien aux productions) ;
- des dispositions spéciales en faveur des pays les moins avancés (traitement spécial et différencié, non réciprocité).

Seul ce dernier point est en phase avec la politique de l'Union européenne de coopération au développement, même si les choses ont bien évolué. Pour les deux premiers objectifs - la libéralisation du commerce international et la fin des subventions - l'UE a du adapter son volet interne, mais seulement son premier pilier, car le second pilier est à l'abri des critiques de l'OMC, les aides au développement rural ayant été classées dans le *paradis de la boîte verte*. Mais l'OMC ne limite pas son activité aux NCM. Avec son organisme de règlement des différends (ORD), elle dispose d'un outil très efficace pour lutter contre toutes les restrictions au commerce

international. Pour les matières qui nous occupent, ce dispositif a déjà donné lieu à des contentieux importants, mais dont la portée diffère selon la matière. En ce qui concerne le principe de précaution l'approche de l'Union européenne et celle de l'OMC diffèrent sensiblement (I), alors qu'en ce qui concerne les caractéristiques des produits, un rapprochement pourrait s'opérer (II).

#### Conclusion

Les sources de contentieux entre l'Union européenne et l'OMC ne sont donc pas limitées au premier pilier. Le troisième pilier recèle également de difficultés de compatibilité avec les règles du libre échange international. La multiplication des mentions sur les étiquettes n'y est pas pour rien. Après la traçabilité et les signes de qualité, l'apposition d'allégation nutritionnelles ou de santé, et de plus en plus de mentions relatives au commerce équitable et au développement durable (bilan carbone) conduira, n'en doutons pas à d'autres difficultés d'interprétation et peut être à de nouveaux contentieux devant l'ORD.