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**Commission I**

**General report**

English version

**Common Agricultural Policy, new rules of WTO and regional  
equilibrium – Politique Agricole Commune, nouvelles règles de  
l'OMC et équilibre régional – Gemeinsame Agrarpolitik, neue  
Regeln der WTO und regionales Gleichgewicht**

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## Commission I – Kommission I

### General Report

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Common Agricultural Policy, new rules of WTO and regional equilibrium – **Politique Agricole commune, nouvelles règles de l'omc et équilibre régional – Gemeinsame Agrarpolitik, neue Regeln der WTO und regionales Gleichgewicht**

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### **Introduction: agricultural policies, regional blocs, equilibria**

The subject of the Commission I deals with one of the most delicate and lively issues of EC law and international trade law; a subject which shows a really great vitality, maybe as no other agricultural law issue has done in recent years, certainly because of its wide-ranging implications: in richest countries it usually involves important interests of some of the most relevant economic sectors (agriculture and food industry), while, in poorest lands – where agriculture is often the only sector at all, if ever – it concerns the most feeble issues, connected with the entire nations' survival (both as source of income or as source of food). And such a vitality can be deduced also from the negotiating restlessness, from the continuous controversy and from the economic implications, displaying in the multilateral context of WTO.

In this framework, the so called “globalization of economies” puts every day different agricultural systems and different agricultural policies in touch with each other, and forces them to live together, side by side, and to communicate with each other (those of the major agri-food products' exporters and importers, such as USA and EU, with those of the poorest), causing significant effects also from a juridical point of view: national policies are somewhat affected, or even strongly conditioned, or guided, by the multilateral decisions; negotiations on international trade agreements reform are in turn affected by national policies, by the demands arising from them, by the ideas they're inspired by and, finally, by the choices (not always mutually consistent) they imply.

Inside this very complicated system, made by continuous reciprocal influences, there's a clear tendency of the world's countries to gather on the basis of a geographical nearness, or of homogeneities of economical interests (homogeneities sometimes linking States which are not geographically very near, or even located in

different continents), setting up some complex and diversified phenomena. Here we try to find out some examples:

- the creation of regional blocs – by means of the so called “regional agreements”, more often “regional trade agreements” (RTAs) or “free trade agreements” (FTAs) – governed by rules which could more or less liberalize trade, in parallel with the WTO trade opening rules;
- the rising and growing of groups and blocs which are internal or transversal or, sometimes, even external to other (and more institutionalized) supra-national entities, as EC for example: with regard to these entities, the groups above sometimes are simply internal, or are located “cross the border” (meaning that they involve both member states and non-member states), or finally remain outside the geo-political boundaries of the supra-national organization (as it happens when commercial partnership agreements are signed).

The first kind of regional blocs – we can consider “parallel” with the WTO system<sup>1</sup> – are well known, and frequent (think about EC, and other free-trade areas such as NAFTA, MERCOSUR, or other smaller regional agreements, or agreements concerning only a limited number of products, etc.). Their relationship with the WTO rules could be read with a wide range of moods: as Prof. Grossman (from US) reported, some argue that RTAs and FTAs are “an exception to the basic legal principle of nondiscrimination in international trade”, so that “they advance trade liberalization by providing competition that can encourage multilateral negotiators under the WTO to reach agreement and perhaps set an example of effective measures for WTO negotiation”<sup>2</sup>; while others think, from an institutional perspective, that they “tend to undermine the development of a multilateral trade system ... [and] pose an institutional threat to the WTO”<sup>3</sup>.

Apart from any other observation, these agreements are allowed, in principle, by the Marrakech treaty (see, e.g., art. XXIV GATT), although they have to comply with some fundamental principle set by the treaty itself<sup>4</sup>.

As to the second kind of regional blocs (the ones we called “internal”, or “transversal”, or “cross-the border”, etc.), the internal ones usually only *de facto* are regional groups, supporting the same interests in the official contexts, since inside the “perfect” customs unions (as EU) RTAs are not allowed. Though, their existence is not always

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<sup>1</sup> There are so many opinions about the relationship between this kind of agreements (and the regional blocs arising from them) and the WTO's efforts to open markets: see the doctrine cited by the US national report (prof. Grossman), and particularly Picker and Griswold.

<sup>2</sup> Daniel T. Griswold, *Free Trade Agreements: Steppingstones to a More Open World*, at 3 and at 4-6 (Center for Trade Policy Studies, TBP No. 18, 2003).

<sup>3</sup> Colin B. Picker, *Regional Trade Agreements v. The WTO: A Proposal for Reform of Article XXIV to Counter This Institutional Threat*, 26 U. PA. J. INT'L ECON. L. 267 (2005), who “considers how RTAs drain states' enthusiasm for multilateral trade negotiations, create conflicts between RTAs and the WTO, and divert resources from the WTO to the RTA process”.

<sup>4</sup> See also Roberto V. Fiorentino, Luis Verdeja and Christelle Toqueboeuf, *The Changing Landscape of Regional Trade Agreements: 2006 Update*, WTO Discussion Paper No 12, Geneva, at 26; Jo-Ann Crawford and Sam Laird, *Regional Trade Agreements and the WTO*, Centre for Research in Economic Development and International Trade, University of Nottingham, 2000. On 14 December 2006, the WTO General Council adopted a decision on *Transparency Mechanism for Regional Trade Agreements* (WT/L/671), establishing rules to be applied by the members when signing new RTAs.

spontaneous, and the effects of that existence are not always *de facto*: for example, the EC Treaty often refers to “regions”, and in many ways, imposing the European institutions to take into account “the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions” while working out the CAP, often expressing concerns about the risk that the political choices at the European level can damage the regional equilibrium (meaning an equilibrium *inside* Europe as a whole region, but also as equilibrium among the different EU regions). Eventually, the EC Treaty establishes a body like the Committee of Regions, whose members are representatives of the regional and local communities, appointed with consultative powers by a very large number of EC Treaty provisions (mainly as a step of law-making procedures), and to be asked for an opinion also every time the Council or the Commission considers its consultation necessary, or suitable, particularly when dealing with the trans-boundary cooperation (see art. 263 ss. of the EC Treaty).

Another example of regional bloc – located “cross the EC borders” – is the EFTA, including EC member states, together with others which still aren’t party to the EC.

With regard to the economic partnership agreements (EPAs), we must admit they often stand out for the presence of a large number of provisions on market access – provisions usually establishing preferential treatments of the partners – sometimes forming real FTAs, and creating free trade areas among regional blocs, sometimes just aiming to give the parties economic and commercial benefits (as an example, we’re thinking about the so called “euro-mediterranean agreements”, finding their *rationale* in similar production attitudes, and in similar trade interests); sometimes preparing the future establishment of common institutions <sup>5</sup>, or the accession of the contracting states into larger and more structured organizations (frequently, into one of the parties). The recent European history has seen a very interesting example of that in the CEFTA (as prof. Jurcewicz, from Poland, has reported), which played an extremely important role in the transitional phase from COMECON to EU of some countries of the former “soviet bloc” (Poland, Czechoslovak Republic – then replaced by the two states deriving from it – and Hungary, joined later by Slovenia, Romania and Bulgaria). CEFTA is founded on a principle of “simmetry and equivalence of the mutual benefits” (a concept very near to the “reciprocity” and “non-discrimination principle” typically implied in all trade agreements), and allowed those states – in view of an

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<sup>5</sup> See what happened in the EC case: "Given its own experience (the European Union has itself developed as the product of an ambitious process of deep and wide-ranging regional integration), its involvement in regional agreements with other countries and its strong support for multilateral liberalisation in the GATT/WTO, including most recently in the run-up to the launch of the DDA negotiations, the European Communities have always been persuaded that regional trade agreements must be “stepping stones” towards multilateral liberalisation, rather than “stumbling blocks” and that regionalism and multilateralism must be mutually supportive rather than contradictory. The experience of the European Communities shows how regional agreements serve to open markets by pushing forward a pattern of tariff reduction and elimination in participating countries, thereby helping them prepare for further multilateral liberalisation" (quoted from "Submission on Regional Trade Agreements by the European Communities and their Member States" to the "Negotiating group on rules" of 05.07.2002). Some 380 RTAs have been notified to the GATT/WTO up to July 2007 (of these, 300 notified under Article XXIV of the GATT 1947 or GATT 1994; 22 under the Enabling Clause; and 58 under Article V of the GATS). At that same date, 205 agreements were in force (data source: WTO web site, [www.wto.org](http://www.wto.org)).

accession to EU which looked still far – to share tariff benefits and trade advantages deriving from the association agreements separately subscribed by the PECO states with EU <sup>6</sup>.

EPAs, anyway, sometimes cause huge difficulties and problems of non-compliance with the multilateral trade system, just because of the direct implication of issues such as the non-discrimination principle (namely, in this case, the Most-Favoured-Nation – MFN clause) <sup>7</sup>, and of their remarkable preferential features: very significant for Europe is the Cotonou Agreement, concerning the trade of a series of agricultural products between EU and ACP countries, which never completely passed the “WTO-test” under the GATT provisions, and in particular under art. XXIV GATT (even though it had replaced the previous Lomé Convention right with the intention to bring the former provisions into a full compliance with the WTO rules), and currently applied – notwithstanding the continuous attacks in front of the DSB – under a GATT waiver expected to expire on 31<sup>st</sup> December 2007 <sup>8</sup>.

It seems therefore clear that the regional equilibrium inside EC is seriously influenced both by the internal choices of economic policy, made by the European Institutions (and among them, by those concerning CAP), and by the decisions adopted in the WTO framework, able to affect on the market outlets of domestic production, and strongly conditioning the above-mentioned European choices. World’s regional *equilibria*, in turn, are influenced by RTAs, and by the rules created by the WTO, as well.

### **One CAP, many CAPs: more than European regions**

Considering how agriculture is depending on natural factors (including climate), we must realize agriculture is a matter suitable for “regionalization”, more than other sectors; and more than any other it requires any consequence of the related political choices to be previously evaluated with attention. Actually, the agricultural economy is deeply conditioned by non-human factors, falling completely out of human control:

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<sup>6</sup> In February 1991, in Visegrad, a cooperation agreement was signed by the original CEFTA members, intended to operate during the European integration process, based on the creation of a free trade area for all the products by means of a scheduled gradual elimination of any tariff and non-tariff barriers. CEFTA is still in force, though its original member states have entered into the EU. Parties to the CEFTA are now Albania, Bosnia-Herzegovina, Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Moldova, Montenegro, Romania and Serbia (including Kosovo, as defined in United Nations Security Council resolution 1244), and among its fundamental aims there still are the generalization – by a mechanism which is somewhat similar to the MFN clause of the GATT – the benefits resulting from the bilateral agreements i benefici derivanti dagli svirati accordi bilaterali (currently around 32) signed by its members. The agreement creates a regional free trade area, based on the existing bilateral agreements which liberalise more than 90% of trade and almost all trade in industrial goods. It will encourage co-operation and to a possible extent, try to gradually liberalise trade in services in the region. The last CEFTA negotiating round started on June 2005, and finished by signing the new agreement on 19th December 2006.

<sup>7</sup> See James H. Matis, *Regional Trade Agreements in the GATT/WTO. Article XXIV and the Internal Trade Requirement*, Cambridge, UK, 2002.

<sup>8</sup> See ACP-EU JOINT PARLIAMENTARY ASSEMBLY (COMMITTEE ON ECONOMIC DEVELOPMENT, FINANCE AND TRADE), *Economic Partnership Agreements (EPA): problems and prospects*, Working Document, 10 July 2003; see also *European Parliament resolution on the development impact of Economic Partnership Agreements (EPAs) (2005/2162(INI))*, FINAL, of 23.03.2006.

varieties (animal and vegetables), weather and climate, relationship among them (with more or less productivity as a consequence of those elements, and of the different production attitudes of each different area, of the territory, etc.), all the risks thereof (including every kind of environmental risks), etc.; joining, of course, the traditions and the “know how”.

This is the fundamental reason why such huge differences are so evident between one region and another, so that one can identify real “regional blocs” getting over the political boundaries of the member states.

National reports do really outline all those differences. The Italian report (prof. Viti), for example, underlines how Italian quality products have had some more fortune in recent years than they had in the past, while there’s been somewhat a kind of crisis of the agricultural economy of the “commodities”. This must be read in connection with some structural features of the Italian agricultural system: starting from the fact that the average size of the Italian farms is still too small, and that the most productive are the big farms (so, the minority), mostly located in northern Italy <sup>9</sup>.

Similarly, also the Dutch report has clearly listed the production trends of that country, where horticulture is the biggest sector (the Netherlands is the biggest exporter of flowers and bulbs), but also intensive cattle and fowl-breeding (pigs and hens, but also cows), milk and dairy (hence, some environmental problems, due to the great difficulty in meeting the EU standards for ammonia emission).

The Spanish report stresses the specialization of Spanish agriculture in “mediterranean crops”, claiming the olive has been negatively affected by the 2003 CAP reform.

An overall outlook on the reports highlights also the national situations affected by major difficulties, or at least – using the EC Treaty’s words – those “structural and natural disparities between the various agricultural regions” cited above. That’s the Finnish case, since Finland’s agriculture must compete in odd circumstances for geographic reasons, limiting the possibilities of agricultural production and development (with an annual growing period of only 120-180 days, and average yield levels representing only half of those in Central Europe). Dr. Nordberg points out the “dramatical decline” of the agriculture’s role in Finland, during the past 30 - 40 years, and the very low share, so that the main importance of this sector is currently linked to environmental and health issues (in order to ensure the viability of rural areas, the food safety and the protection of the environment).

A difficult situation is evident also in the Polish case, but the reasons are some different, leaning mostly on political and historical grounds. In a quite “young” and fragile economic framework, the quality of Polish agricultural land is low (only 25% of it is classified as soil of good quality), while the share of agriculture in the global product (as well as the share of agricultural investments in total investments) has greatly decreased – he says – in the last decade. On the other hand, important structural changes can be detected, since 2002 having increased the number of farms above 20 hectares.

This is only a brief essay on the main reasons why CAP is what we’re used to

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<sup>9</sup> Unequal the production, unequal the resources’ distribution, at least in the past system of subsidies, when 20% of the farms were able to catch 80% of the aids delivered to Italy.

knowing: EC lawmakers laid out a basic structure made by some key points (such as the decoupling of certain kinds of crops, or the “cross-compliance”), then leaving to single governments some more options about the national CAP implementation (e.g., whether to choose “fully decoupled” payments, or a partial decoupling for some sub-sectors; whether to put it into force immediately or not, with a certain range of possible mix up). It’s quite clear that deeply different situations require different political instruments, and *ad hoc* modalities of CAP implementation country-by-country, sometimes because the agricultural development of a member state is vitally dependent on the modalities of aids allocation (increasing the 2<sup>nd</sup> pillar quota, if necessary), sometimes because a developed and well-working system needs specific measures, and finally sometimes because of the economical (in a more general sense) and social consequences that could result (let’s think about the influence of the CAP choices on the people’s average income, especially where the agricultural sector is employing a large number of citizens; on the ageing of farmers; on the kind of average farms’ structures – big or small, family-based or industrial, more or less mechanized, scattered or not; on the human presence in more disadvantaged areas or, on the contrary, on the urbanization trend, with some environmental long-term or mid-term effects such as people abandoning agricultural land; etc.).

In Italy, for example – where (as well as in other EC members) agricultural sector lost some weight, while the food industry has become the second biggest in Italy – the grain sector has been particularly affected by the recent CAP reform. Italian reporter hopes that for the durum wheat the impact of the CAP becomes an “epochal chance to repositioning at high level of quality”. Well, let me be some skeptical about it: most farmers seem to have opted for the fully decoupled system, showing a very little interest for the crop quality incentives, and as a result the Italian production of durum wheat has dramatically crashed <sup>10</sup>, while the world market has seen an increasing demand for grains, mainly as a result of China development (bringing significant rise of Chinese people’s incomes, and changes in their diet) <sup>11</sup>. Actually, the overall grains’ production cut in EU will probably result as one of the main “fallout” of the last CAP reform, as it’s highlighted also by the Belgian reporter <sup>12</sup>. Another delicate sector for Italy is the milk and dairy one, mostly because of the quota system, whose implementation is seen as damaging by breeders. In less protected sectors, like vegetables, a cyclical trend shows an alternation of good and bad results in world market competition.

Subsidies are vital for Finland, in order to maintain the level of production under the unfavourable climate conditions. That’s why, in joining the EU (in 1995), Finland asked for identifying the new category of the so called Less Favoured Areas (LFAs) into the

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<sup>10</sup> The durum wheat production in Italy, from 2005 to 2006, has decreased by 12.1%, whereas in the previous crop year (2004-2005) the decrease in production had been by 20.2% (data source: INEA – Istituto nazionale economia agraria).

<sup>11</sup> Other countries have chosen to enact partly coupled aids for those sectors they consider somewhat more strategic: see, e.g., Austria, where the possibility of partial decoupling is used in the sectors of beef and hops, since it’s been considered as necessary for the profitability of cattle breeding in mountain areas, as there are no alternatives for income in areas of grassland.

<sup>12</sup> According to the Belgian report, also in that country a reduction in cereals and maize is expected, whereas the production of some non-food crops is expected to increase.

EC territory: today the LFAs support covers the whole country, and agri-environmental aids are a significant quota of farms' incomes, integrated by a number of special national aids, under the provisions of the Finnish treaty of accession.

Some kind of problems could arise since the Commission raised the doubt whether all of these national aids (referring particularly to the transitional aid to southern Finland, as mentioned in article 141 of that accession treaty)<sup>13</sup> still fit into the current CAP framework. Beyond all these considerations, Finland's EU membership and subsequent reforms of the CAP have clearly influenced Finnish agricultural sector, and not only in a negative way: e.g., production concentrates nowadays to larger, more efficient units than in 1995, new technology has improved the efficiency and further reduced the need for labour, agriculture has become more market-oriented, whereas farmers' incomes has though decreased, the share of support in incomes has grown, and more and more people started working outside the farm.

The wide range of different situations, that makes European regions the same different from each other, is confirmed by a kind of "fantasy" of national governments in implementing CAP. As a result, the Spanish experience shows how to use the CAP measures in order to pursue some structural objectives, such as facing the reduction of the farmers' number, or their ageing, or the increasing role of other economic sectors (tending to reduce the role of agriculture), recognizing that the agricultural expansion of the late '80s is, by now, just a memory of the past, after the decline which started around 1997.

As to the decoupling, Spain applied the basis model of single payment, combining decoupled and coupled support, trying to maintain as many coupled subsidies as possible, in order to convince farmers not to abandon agricultural activity. According to Spanish legislation on CAP<sup>14</sup>, since 2006 four payment models coexist: the decoupled payment, applicable to single payment entitlement holders; the coupled ones, granted to arable farmers and bovine, ovine and goat raisers, on the production that continues to be coupled; finally, specific payments to producers of some eligible crops (durum wheat, protein crops, rice, nuts, energy crops, potatoes for starch, seeds, cotton, olive grove and tobacco). Add some additional payments, to the extent allowed by article 69 of the Regulation (EC) 1782/2003 (to cotton, tobacco and bovine cattle for meat and milk).

So, in implementing the 2003 CAP reform – the Spanish reporter says – Spain has tried to protect its own productivity, and to avoid the risk of a decrease in production, by maintaining the maximum possible coupling level allowed by European regulations, for instance in sectors such as arable crops, in the cattle and the ovine sector. In Spain, the changes of the 2003 reform have started to bear fruit and the Spanish administrations believe that it is necessary to wait, in order to see the results of the latest changes implemented, and only then rethink the common agricultural policy.

Particular attention is currently dedicated by Spain to the "multifunctionality", the heart of CAP's 2<sup>nd</sup> pillar: notwithstanding the low budget granted by the 2003 reform to this

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<sup>13</sup> While the so-called "northern aid" to farmers in Finland's northern regions, concerning areas north of the 62nd parallel and near areas – Finnish reporter stresses – is described as a long-term aid in article 142 of the accession treaty, so that there can be no question of abolishing it.

<sup>14</sup> Article 1 of the Royal Decree 1618/2005, of the 30th December 2005, concerning the Implementation of a single payment and other direct support regimes to agriculture and cattle raising.

pillar and the consequent “low-profile” implementation carried out in Spain as to that (only compulsory modulation has been enacted), a “Law on Sustainable Development of the Rural World” is currently under discussion by the Spanish Parliament, aiming to boost this area of CAP which, up to now, has received much political attention, but very little funds: that’s because in certain regions and on certain sectors, which are not economically profitable in terms of production of goods, Spain feels that an important social and economical role can be played by agriculture nonetheless. This should be an example also for other countries, particularly for those who have a lot of mountains and hills, and such disadvantaged areas. Italy, for instance.

Italian priorities in CAP implementation have centered around the full use of the financial plafond available; the competitive positioning of agri-food companies in the market; the preserving of farmers’ income and labour occupation, especially in environmentally sensitive areas (first and second pillar); the strengthening of the national dimension of the different food chains and the development of rural areas; the administrative simplification for the beneficiaries of the single farm payment; the choice of automatism for supplementary aids; the reduction of the administrative costs. In this perspective, totally decoupled option for grains should protect the farmers also in peculiar situations not linked to the market.

In 2006 in the Netherlands non-decoupled payments, still applying in 2005 for sheep and goats, arable crops and dried feed, and beef and veal as defined in the regulation were abolished, while the milk premium was integrated in the single payment scheme<sup>15</sup>. The task of running the administrative issues of CAP implementation is commended to corporate bodies, named “productschappen” and “bedrijfschappen” (product boards), implying obligatory membership, administered and financed by the affiliated members themselves, having the power to decide on specific rules for the sector (even with regard to important parts of the common market organizations, such as export refunds, milk quota and restructuration measures).

The peculiarities of some countries (national reporters told us about Finland and Poland, though for deeply different reasons) reflects directly on peculiarities in 2003 CAP implementation: in Finland, a hybrid model has been chosen, where former CAP-support has been converted into payment entitlements which consist of regional flat-rate payment and possible farm-specific top-ups, and the CAP support for arable crops is almost completely decoupled from the production. Still, certain payments continue to be coupled to the production, so that coupled support is applied as farm-specific headage-related payments for bovines (namely, suckler cows and male bovines), as well as for ewes, and for starch potato and seed of timothy.

Polish reporter, in turn, complains that Poland, as a new member state, is going to receive direct payments in a smaller amount than the old member states, during the scheduled “ten years transition period”, calling that different treatment “a step back from equal treatment of competitors within the single market”, and remarking that only

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<sup>15</sup> The author conceives this question as referring to “the administrative way” of implementing the CAP, and not referring to the contents of the measures adopted, “since in principle the CAP is to a very large extent mandatory as its contents are concerned, whereas at the same time the principle of the unity of the markets, with as the underlying principle that all rules are to be applied throughout the EC equally”. This seems almost true, just because the “administrative way” lets governments a wide *spectrum* of solutions.

following Poland's protest it was agreed that the originally proposed amounts would be topped up with money from the 2<sup>nd</sup> pillar and from the state budget.

Though, it must be noted that this may have been a long-term choice, aiming to address the low level of productivity which affects Polish agriculture, perhaps not only linked to low quality of agricultural land. Looking from this point of view, in a country like Poland, a CAP implementation favouring the 2<sup>nd</sup> pillar aids – even if detrimental to some 1<sup>st</sup> pillar aids – perhaps shouldn't be blamed. As well as any kind of partial coupling of aids should be appreciated, as an indirect incentive to investments. Lacking any historical data (such as historical acreage and/or historical yield) to take as a basis for the single payment entitlement and calculation, for the EC "newcomers" like Poland, not subjected to 2003 CAP reform in a proper sense, somewhat different solutions are allowed by EC regulations: "Simplified Area Payment System", for example, supplemented with additional payments, providing two categories of payments, related to the acreage of agricultural land, and related to the volume of production, supporting also some crops which are excluded from direct payments in the old Member States.

### **CAP, national agricultural policies, and current WTO rules**

Decoupling can be considered, for sure, the 2003 CAP reform cornerstone. According to the WTO "Agreement on Agriculture" (AoA) categories, the kind of support conceived by EC Reg. No 1782/2003 should have the essential requirements to fall within the so called "green box", including those aids not having the effect of providing price support to producers<sup>16</sup>.

Actually, looking at the overall support system outlined by the recent CAP reform – allowing national options of partial decoupling, coupled "quality aids" to specific crops, etc. – there are some significant exceptions to the decoupling principle: it seems quite clear that often the CAP support are rather belonging to the so called "blue box", to the extent they are somewhat proportional to the quantity of production factors used (though combining the factors employed in a past reference period with those used in the current years of single payment application). Economists will tell us whether, and to which extent, those measures will be able to fall within the *de minimis* provision or not.

WTO panels seem to adopt a quite strict and rigorous concept of decoupling, rejecting as "non-decoupled" measures even those provisions requiring not to enact some specific kind of production<sup>17</sup>. This means that the core concept of coupled aids – expressed in the words "related to" – "denotes a mere connection between the amount of such payments and the type of production after the base period. This word is not limited to a connection that is positive or negative, or absolute or partial. It

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<sup>16</sup> See AoA, Annex 2, at para. No 1 (b).

<sup>17</sup> See, e.g., *United States – Subsidies on upland cotton* (WT/DS267/R, of 8th September 2004), at para 7.367, assuming that the AoA, at art. 6, paras. (a), (c) and (d), "... do not distinguish between positive and negative programme requirements, in the sense of requirements concerning what the payment recipient must, or must not, do. In particular, they do not distinguish between requirements that channel income support toward, or away from, certain production in the years after the base period".

appears to include all types of relationship between the amount of such payments and the type of production after the base period, whether the amount increases or decreases and whether the difference in the amount is proportional to the volume of production or not”<sup>18</sup>. Such a strict perspective in reading AoA could lead us to consider the CAP single payment as non-decoupled, simply because some crops (permanent crops, fruits and vegetables) are excluded from the farmers’ options, if the farmers want to be eligible for support, so that the enacting of such crops implies the payment’s loss.

On the contrary, another CAP feature bringing the single payment system nearer to the green box is the cross compliance. The method of pursuing objectives by providing economic disadvantages for farmers not fulfilling legal requirements is typical of EC policies, and particularly of the agricultural one. Some recent examples could be found in EC Reg. No 1257/1999, regarding investments support (conditioned to respect of specific requirements on environment, hygiene and animal welfare: art. 4), and providing “agri-environmental measures” (artt. 22 ss.), an aid paid out as a reward for taking on, and fulfilling, some environment-related commitments<sup>19</sup>.

The mid-term CAP reform of 2003 has turned this conditionality into a general policy instrument. The whole support regime is now conditioned to the fulfilment of the legal requirements, so that cross compliance now appears as a key element of the entire single payment system, not aiming at supporting production anymore (production could even lack, according to art. 51 of the Reg. No 1782/2003), but rather at rewarding farmers – no matter if they’re also producers – who positively pursue the environmental<sup>20</sup> scopes under the “statutory management requirements”.

Among the latters, there are some deserving a special mention: the brand new ones on food safety by recalling EC Reg. No 178/2002, the ones generally concerning public health, plants health, animal health and welfare, and finally environment: let’s remind traceability of bovine products under EC Reg. No 1760/2000, hormones ban under Dir. No 96/22/EC, and some other food law principles stated by the cited EC Reg. No 178/2002, and the obligations which are imposed to the food producer, including the adoption of a general traceability system, based on the “one-step-back-one step-forward” principle; then, some other of the management requirements in Annex III of Reg. No 1782/2003 need to be mentioned, namely the most environmentally-oriented, which could seem the nearer to the AoA green box.

As to the requirements above, any misunderstanding must be avoided, though: the food safety requirements could even have no utility with the object of marking the aids as green-box-support, since no reference is made to food safety by the AoA, nor to public health, nor to animal welfare, etc. (AoA mentions food *security* programs, which is definitely different). But even those requirements we called the most “environmentally-oriented” don’t seem to perfectly fit the green box, since it doesn’t contain a generic reference to the environment (such as to include any kind of support, whatever is the link to any environmental issue or scope): the AoA text is quite clear in

<sup>18</sup> Id., at para. 7.366.

<sup>19</sup> In parallel, EC Reg. No 1259/1999 – at art. 3 – provided for sanctions, applying them to farmers not complying to other environmental requirements established by the same regulation.

<sup>20</sup> Not only environmental, indeed, some of them being related rather to food safety and food quality issues.

requiring the aids to be a part of “environmental programs”, that sounds more specific, something like a mid- or a long-term strategy (made by a series of planned actions) to protect the environment. A mere cross-compliance of the farmer’s activity to legal provisions having a generic regard to the environment – although positive for the quality of life – could even result too weak to make the support “green”, in the meaning adopted by the AoA.

Hence, one can agree with the point of view expressed in the Netherland’s report, saying “it can be questioned whether the conditionality-requirement is really essential to classify aids as always to be in conformity with WTO-agreements”. It can be seriously questioned, unfortunately.

Following the parallel paths of decoupling and of environmental orientation of aids, we can see a variety of national choices, susceptible of different evaluations with regard to WTO rules.

In France, for example, government has tried to use the national options of partial decoupling, allowed by the 2003 CAP reform, the freedom of choice about the implementing schedule, combined with a peculiar discipline on circulation of the payment entitlement, in such a manner to be a financial incentive to restructure French farming sector, to favour the turnover of the farmers, to contrast their ageing, to boost the creation of more functional farms; and this has been made for some sectors more than for others, having recourse to a different level of decoupling depending on the need of each agricultural sub-sector. That doesn’t appear as a very WTO-compliant choice, but it’s not prohibited by the current CAP discipline (and this raises some more doubts about the overall compliance of the 2003 CAP to the WTO rules).

Germany has implemented the required CAP reform since 2003 by using a “dynamic hybrid” model. By doing so, the payment claims of the farmers were calculated in two different ways; i.e. the amount-per-unit area and the amount from individual farmers. With minor exceptions, Germany implemented the decoupling in 2005, but various uncertainties concerning tenancies remain: who should receive – the German reporter is asking – the payments at the end of the tenancy, the landlord or the tenant?

Some look at the CAP reform as an opportunity, some as a problem. In Finland, the liberalisation of agricultural trade and the following evolution of the EU’s common agricultural policy – according to Dr. Nordberg’s report – seem to have caused, and to cause further on, difficulties for the Finnish agriculture and food production. This has led to fewer jobs and lesser production in those sectors, as well as to continuing decline of share of agriculture on total production.

Export subsidies traditionally have been one of the instruments of the CAP. In the context of the current WTO rules, it seems to remain enough room to save some of the most important aids to European agricultural exporters. Something different can be probably said in the perspective of the new rules, currently under discussion in the Doha framework (see below), where most export subsidies are expected to be probably sacrificed.

Having a look over the Atlantic, according to the US national report in the USA export subsidies are rare. The “Export Enhancement Program”<sup>21</sup> has applied only to “small

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<sup>21</sup> A long-lasting instrument of the US agricultural policy, formally authorised first by the Food Security Act of 1985 and extended under the subsequent “Farm Bills”, under which exporters are awarded

amounts of poultry exports”, and only in the 1996-1999 period, whereas the “Dairy Export Incentive Program” was applied at a WTO-negotiated ceiling, and ceased in 2004. In this regard, the need stressed in Doha for a reduction of any kind of export support, finally aiming at a total abolition, in the prof. Revel’s opinion does not concern anything but the EEP aids (but we could join perhaps the export credit guarantees, as the *US - Cotton* panel report has pointed out <sup>22</sup>): the consequence would be that no more reduction of export support is due by the US. But prof. Revel’s report underlines how, on the contrary, the Marketing loan deficiency payments provided by US legislation can play a role very similar to EU export restitutions; still, even more effective in lowering prices of the US agricultural products, both on domestic and on external markets. EU as well has expressed its concerns about the effect of direct and indirect support to farmers under the 2002 Farm Bill and other laws, alleging that it “increases significantly the trade-distorting effect of U.S. farm subsidies” <sup>23</sup>.

On one hand, US have repeatedly argued for the decoupling of almost all kind of their 2002 Farm Bill support <sup>24</sup>. But we know that the *Cotton* panel report don’t subscribe to this point of view (concluding – with a finding which may have implications beyond the cotton sector, and even beyond the US borders – that direct payments under the 2002 Farm Bill, as well as production flexibility contract payments under the 1996 Farm Bill, did not fit into the Green Box, since they were not fully decoupled because of planting restrictions on fruits, vegetables, and wild rice). And actually, they sometimes seem to be more profitable the more has been the production (that’s for the Marketing assistance loans), or could result in an incentive to stock whenever the prices are lowering; or they start working (it seems the case of the Counter-cyclical payments) when the average “effective” price (the sum of the direct payment rate plus the higher of the national average market price or loan rate) for a commodity is less than the statutory target price <sup>25</sup>.

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generic commodity certificates, redeemable for commodities held in Commodity Credit Corporation stores, and enabling them to sell commodities to designated countries at prices below those on the US market (see OECD, *OECD Agricultural Outlook 2001-2006*, 2001).

<sup>22</sup> The Belgian report, as well, wishes that ending up the European export subsidies by the end of 2013 will be accompanied by a similar reduction of the US’ export credits, and of the “public enterprises” in Australia and New Zealand.

<sup>23</sup> EUROPEAN COMMISSION, *United States Barriers to Trade and Investment: Report for 2007*, at 13 (Feb. 2007).

<sup>24</sup> “Counter-cyclical payments under the 2002 Farm Act are essentially decoupled from an individual farmer’s planting decisions since they are paid on a constant, pre-determined quantity for the farm (equal to 85 percent of a fixed acreage base times a fixed CCP payment yield) and they are not affected by a farmer’s current production”. And, further, “Direct payments are largely decoupled since program benefits do not depend on the farmer’s production or market conditions, and the payments do not affect per unit returns. However, direct payments are tied to acreage, so these benefits will be capitalized into farmland values, thereby increasing aggregate producer wealth. Mechanisms for direct payments to potentially affect production decisions are through wealth and investment effects”: see Paul C. Westcott, C. Edwin Young, and J. Michael Price, *The 2002 Farm Act. Provisions and Implications for Commodity Markets*, Electronic Report from the Economic Research Service – USDA, November 2002.

<sup>25</sup> Westcott et al., *supra*: Counter-cyclical payments institutionalize the former market loss assistance payments.

### **... and the expected WTO rules, currently under discussion**

But the entire support system – both domestic and export-related, both in US and in EU, and finally in the whole world – needs to be evaluated also in the light of the multilateral negotiations' evolution, and therefore of the expected WTO rules, while the Doha round has slowly turned into the so called “Development round”, and is marking time. In this perspective, differences between regions – inside and outside Europe – are more and more emerging.

In the light of the framework agreement of 2003 (projecting a uniform further reduction of tariffs, a new blue box – conceived as to include also the partly decoupled aids of 2003 CAP, and the US Counter-Cyclical payments – and a revision of the green box), some EC countries are expected to weigh more than others upon the quota of EU new-blue-box support (see France, for instance, whose choices in implementing CAP have been largely inspired to a partial decoupling, and whose coupled aids, according to the 2003 Doha Round program, should decrease significantly).

The Dutch reporter gives no relevance to the abolition, or the renewal, of the blue box, which in his opinion would not substantially affect Dutch agricultural income, simply because the Dutch government hasn't opted for the non-decoupled aids: in the Netherlands, there's a Landbouweconomisch Instituut (LEI) which is charged to establish the effect of the WTO proposals for the Dutch economy and agriculture. It remarked, in particular, the expectation for a substantial decrease of the export to third countries, especially in the sectors of cereals, sugar and beef (primary products and processed products); at the same time, as a consequence of liberalisation allowing for larger economies of scale, the appearance of export opportunities, while the agricultural revenues are however to decrease.

Provided that Finnish agriculture is deeply dependent on protection and subsidies, and that it wants to preserve in the best way current rural demography, since it consists mainly of cereals, dairy products and sugar, the main worries of Finland are concerning these sectors, as the most vulnerable to be affected in case there will be a new WTO agricultural agreement: elimination of export subsidies and reduction of import tariffs, connected with Finland's high production cost, could represent a dangerous mix for Finnish agricultural economy, especially if prices and agricultural income decrease further <sup>26</sup>.

Somehow different seem the issues at heart of the southern Europe's countries (outlining a regional bloc inside EU). The main interest of Italy in the new round, for example, is strongly related to the extension of protection of Geographical Indications (GIs), referring to the wine sector as well as to the others <sup>27</sup>, looking at the elimination of export subsidy by the EU as an “exchange coin” to get advantages on the TRIPs table (although Italy is not among the biggest beneficiary of the export subsidy). It's therefore quite surprising the absence of any reference to GIs in the Spanish report.

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<sup>26</sup> The negative scenario supposed by the Finnish reporter underlines that severe cut in tariffs and phasing out of export subsidies would raise considerable problems especially for the Finnish dairy sector: market prices for milk in Finland would drop and the income of dairy farmers would decline. The dairy sector is the largest and most important agricultural sector in Finland, accounting for about half of the return on agricultural production.

<sup>27</sup> Not only EU cares for this issue, anyway: see the individual report of Dr. Trentini, from Brazil, dealing with the international rules of protection of geographical indications.

Spain is however looking at EU proposals, in the framework of the Doha Round negotiations, with some concern, particularly at those proposals possibly affecting the most sensible products of the Spanish international trade (the examples made by Dr. Barrero are sugar, rice and bananas). This protectionist attitude, aiming at defending the most productive sub-sectors of Spanish agriculture, explains the somewhat conservative position always maintained by Spain in the European context, facing the multilateral negotiations.

Outside Europe, a glance at the US situation reveals that five years have passed since the last Farm Bill (the Farm Security and Rural Investment Act of 2002, also known as the “2002 Farm Act”), and a new one is expected to come in a quite short time, so that it’s time for new agricultural choices for US lawmakers. Actually, the House of Representatives just approved a text first on 19 July 2007 (Agriculture Committee), then on 27 July 2007 (the House: H.R. 2419). Notwithstanding some amendments in current programs – for example, changes in target prices and loan rates, as well as payment caps and income limitations – the new Bill seems to continue most domestic support with no substantial change (indeed, an amendment designed to reform farm subsidies has been defeated at the moment of the House approval); most conservation programs would be continued or expanded, with annual limits for payments to individual farmers. Maybe the most significant reform would be (better, could be) the one concerning export credit guarantee programs, perhaps currently not compliant (as highlighted supra) with WTO agreements. Prof. Grossman’s report lets us suppose there will be some more heated debate about this version (inspired by some opposite opinions inside the US Administration), before its final approval.

Even if affected by some intrinsic limitations, contradictions and gaps, we can’t avoid thinking – together with prof. Revel – that the reformed CAP and the current US agricultural policy are the only agricultural policies addressed to preserving the rural environment: a model capable of further development, provided that measures in favour of young farmers are privileged.

### **CAP, WTO and EC regional equilibrium**

As the French national report has stressed, CAP has been responsible of giving the old 15-members EC a very peculiar regional physiomy; and their long-lasting participation into the EC has increased the regional specialization, thanks to the subsequent CAP reforms, particularly after the introduction of milk-quotas in 1984.

This reflects onto the different worries about the future multilateral framework, onto the diversity in CAP implementation national choices, and finally onto the different attitudes in looking at the forthcoming “CAP health check”, which by agricultural Commissioner has been planned to take place in 2008.

Some possible danger could raise for the regional EC equilibrium – according to the German report – from the cross compliance rules, especially in those countries whose lawmakers have made the requirements stricter than provided by EC Reg. No 1782/2003: EU regulations on environment, animal conservation, food safety, sharpened by the German lawmakers, could affect both the competitiveness and the regional equilibrium (should the German farmers have to uphold stricter standards than other EC farmers, being the aids cut in case of violation, they would then be at a greater disadvantage than farmers of other EU member states who only implement

the EU regulations directly).

A report from the Dutch Landbouweconomisch Instituut is assuming that the new CAP and the new WTO rules together are going to increase the trade with third countries, and that it will lead to a reduction of intra EC trade (LEI describes it as a natural pattern: a more natural intra-EC equilibrium). As to the Netherlands, more specifically, a stronger regional specialization is expected by the national reporter (Dr. Bronkhorst), because of a likely disappearance of the cereals sector in that country.

As usual – and as we saw dealing with the national CAP implementation choices – one of the most delicate points of the EC the regional equilibrium is the conciliation of the difficulties and the needs of the northern regions with the (different, but not less worthy of attention) of the southern Europe.

For example, it's well known how Finnish agriculture has always had great difficulties, while the European institutions, in working out CAP, have been often distracted by the influence of Uruguay Round Agreement's implementation, first, and now by the ongoing Doha Round, with a substantial inability of the EU (that's the Finland's claim) to consider sufficiently their special "nordic situation", that way affecting the intra-EC regional equilibrium, in failing to create equity among EU members.

Quite positive, on the contrary, is the Polish opinion about the impact of the recent CAP, though because of the influence of the WTO rules, on regional equilibrium within the EU. Considering disproportions in development of agriculture among different Member States, and among different regions of the European Union, WTO negotiations pressed the EU to systematically shift funds in the direction of supporting more sustainable development of rural areas, so that growing funds are being allocated under the second pillar to protection of natural environment, food quality and safety, animal welfare, etc.

The Poland's position, anyway, reminds us what new issues of EC regional equilibrium are emerging from the EU enlargement <sup>28</sup>. Not only because of the changes in Europe's territory, social structure and agricultural framework directly caused by the accessions (so that new territories, new people, new agricultures and – in a word – new economic systems are now a part of the European one), but also because of international changes brought about by the accessions as somewhat "collateral effects": what changes have been caused in economic relationship between each new member state and their neighbours? Polish reporter emphasizes how, after joining the EU, Poland has lost any competence in negotiating, and any autonomy in being part to, trade agreements (bilateral, regional, etc.) with third countries <sup>29</sup>. But how this is influencing, and is going to influence in the future, the equilibrium inside the borderline regions?

And even more problems are to arise from the perspectives of possible further European integration with new accessions of neighboring countries. Maybe would be desirable, and even preferable, to this aim, to let down any ambition of unfinished

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<sup>28</sup> "While there is real convergence between regions within the EU-15, the disparities within the EU are still considerable and with enlargement the difference between the richest and poorest regions have increased significantly. For example the poorest region in Romania has a GDP per capita which is just 17.2% of the EU-15 average": see *The Impact of European Integration and Enlargement on Regional Structural Change and Cohesion*, EURECO Final Report, Dec. 2005.

<sup>29</sup> As a consequence of art. 300 and 133 of EC Treaty.

broadening of the EU's territory, and rather searching for a food and energetic partnership with eastern (Ukraine, Belarus, Russia, Georgia and Armenia) and south-eastern countries <sup>30</sup>.

### **Regional equilibrium, regional agreements and organizations**

From a global point of view, the geographical aspect of the regional blocs tends to loose part of its meaning: international agreements (first, the RTAs and the FTAs), though often joining countries of the same geographic area, find their deepest sense mainly in the homogeneity of economic interests, so that regional blocs are mostly blocs of countries bearing the same interests, despite of the topographic location.

The effects of this approach are evident also in the Doha Round framework, where different countries of different parts of the world have sometimes gathered under the same flags, namely the same initiatives and positions, guided by the most active of them (see, e.g., what happened with the so called G-20 – or “Group of 20” – whose actions have been crucial in the negotiation's failures, some of them currently realizing that the Brazil's interests are no more fitting their own interests; see also the situation of the Group of 90 – G90 – whose needs seem constantly neglected <sup>31</sup>; and see, finally, the ACP countries, tied down in administering their preferences, among the WTO waivers and the neverending struggle under the GATT/WTO rules on preferential treatment.

Some think that the agricultural specialization of those countries, sometimes underlying the spontaneous birth of those groups, and often created or simply strengthened by the preferential regimes, is going to be destroyed by a multilateral liberalization, erasing those preferences <sup>32</sup>. Maybe. For sure, the way WTO will consider RTAs and FTAs in the next years – since this is an era of epoch-making

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<sup>30</sup> Problems concerning possible future enlargement of the EU are discussed – with some skepticism about the opportunity of further accessions – in EUROPEAN PARLIAMENT, COMMITTEE ON REGIONAL DEVELOPMENT, *Working Document on the impact of future enlargements on the effectiveness of cohesion policy* (report by M. Pieper), of 06.12.2006.

<sup>31</sup> Looking at LDCs – many of them part of the G90 – and particularly at African LDCs, a recent UN study has divided them into three categories, to illustrate the different importance of the agricultural sector. The first category is represented by countries that have succeeded in diversifying their economies, and where agriculture contributes less than 20% of GDP; the second includes countries highly dependent on the export of natural resources, without being able to give the necessary importance to the diversification of their economies (agricultural contribution to GDP less than 10%). The third category includes countries that have not been able to diversify their economies and where agriculture continues to play a dominant role, contributing more than 20 percent of GDP. “For the first category of African countries, despite the continuous decrease of the agricultural sector's contribution to GDP, due to the development of the service and industry sectors, the agricultural sector continues to play an important role. Its importance can be seen in the level of the active population that it employs, the reduction of the trade balance deficit, and especially the regional equilibrium in these countries”. See UN ECONOMIC COMMISSION FOR AFRICA, AFRICAN TRADE POLICY CENTRE, *Multilateral Agricultural liberalization: What's in it for Africa?*, July 2006.

<sup>32</sup> See, e.g., prof. Revel's analysis in the French report: “Ce qui explique que, si les pays sud-américains et est-asiatiques apparaissent en position de tirer bénéfice d'un accord dans l'agriculture, tel n'est pas le cas de la plupart des pays africains et caribéens, ni de Maurice par exemple pour l'accord sucre. Mais l'apparition du bioéthanol de canne à sucre pourrait modifier profondément la donne sucrière eurafricaine et eurolatinoaméricaine”.

changes, where new economic powers are appearing on the world scene, and trade flows are twisting – is going to deeply influence the regional specializations, and consequently it's expected to significantly alter the world's regional equilibria, provided we can say there are some in such a global context of "disequilibrium".

The "regionalization trend", remarked by almost all economic and legal studies on the new issues of the multilateral negotiations, has its main instruments in some important RTAs.

See the table below, to have a synoptic view of only the most important ones:

<b>AFTA ASEAN Free Trade Area</b>	Brunei Darussalam Cambodia Indonesia Laos Malaysia Myanmar Philippines Singapore Thailand Vietnam
<b>ASEAN Association of South East Asian Nations</b>	Brunei Darussalam Cambodia Indonesia Laos Malaysia Myanmar Philippines Singapore Thailand Vietnam
<b>BAFTA Baltic Free-Trade Area</b>	Estonia Latvia Lithuania
<b>BANGKOK Bangkok Agreement</b>	Bangladesh China India Republic of Korea Laos Sri Lanka
<b>CAN Andean Community</b>	Bolivia Colombia Ecuador Peru Venezuela
<b>CARICOM Caribbean Community and Common Market</b>	Antigua & Barbuda Bahamas Barbados Belize Dominica Grenada Guyana Haiti Jamaica Monserrat Trinidad & Tobago St. Kitts & Nevis St. Lucia St. Vincent & the Grenadines Surinam
<b>CACM Central American Common Market</b>	Costa Rica El Salvador Guatemala Honduras Nicaragua
<b>CEFTA Central European Free Trade Agreement</b>	Albania, Bosnia and Herzegovina, Croatia, Former Yugoslav Republic of Macedonia (FYROM), Moldova, Montenegro, Serbia and United Nations Interim Administration Mission in Kosovo
<b>CEMAC Economic and Monetary Community of Central Africa</b>	Cameroon Central African Republic Chad Congo Equatorial Guinea Gabon
<b>CER Closer Trade Relations Trade Agreement</b>	Australia New Zealand
<b>CIS Commonwealth of Independent States</b>	Azerbaijan Armenia Belarus Georgia Moldova Kazakhstan Russian Federation Ukraine Uzbekistan Tajikistan Kyrgyz Republic
<b>COMESA Common Market for Eastern and Southern Africa</b>	Angola Burundi Comoros Democratic Republic of Congo Djibouti Egypt Eritrea Ethiopia Kenya Madagascar Malawi Mauritius Namibia Rwanda Seychelles Sudan Swaziland Uganda Zambia Zimbabwe
<b>EAC East African Cooperation</b>	Kenya Tanzania Uganda
<b>EAEC Eurasian Economic Community</b>	Belarus Kazakhstan Kyrgyz Republic Russian Federation Tajikistan
<b>EC European Communities</b>	Austria Belgium Bulgaria Cyprus Czech Republic Denmark Estonia Finland France Germany Greece Hungary Ireland Italy Latvia Lithuania Luxembourg Malta Poland Portugal Romania Slovak Republic Slovenia Spain Sweden The Netherlands United Kingdom
<b>ECO Economic Cooperation Organization</b>	Afghanistan Azerbaijan Iran Kazakhstan Kyrgyz Republic Pakistan Tajikistan Turkey Turkmenistan

	Uzbekistan
<b>EEA European Economic Area</b>	EC Iceland Liechtenstein Norway
<b>EFTA European Free Trade Association</b> <sup>33</sup>	Iceland Liechtenstein Norway Switzerland
<b>GCC Gulf Cooperation Council</b>	Bahrain Kuwait Oman Qatar Saudi Arabia United Arab Emirates
<b>GSTP General System of Trade Preferences among Developing Countries</b>	Algeria Argentina Bangladesh Benin Bolivia Brazil Cameroon Chile Colombia Cuba Democratic People's Republic of Korea Ecuador Egypt Ghana Guinea Guyana India Indonesia Islamic Republic of Iran Iraq Libya Malaysia Mexico Morocco Mozambique Myanmar Nicaragua Nigeria Pakistan Peru Philippines Republic of Korea Romania Singapore Sri Lanka Sudan Thailand Trinidad and Tobago Tunisia United Republic of Tanzania Venezuela Vietnam Yugoslavia Zimbabwe
<b>LAIA Latin American Integration Association</b>	Argentina Bolivia Brazil Chile Colombia Cuba Ecuador Mexico Paraguay Peru Uruguay Venezuela
<b>MERCOSUR Southern Common Market</b> <sup>34</sup>	Argentina Brazil Paraguay Uruguay
<b>MSG Melanesian Spearhead Group</b>	Fiji Papua New Guinea Solomon Islands Vanuatu
<b>NAFTA North American Free Trade Agreement</b> <sup>35</sup>	Canada Mexico United States

<sup>33</sup> The EFTA Secretariat administers the organisation, in particular the EFTA Free Trade Area: EFTA's participation in the European Economic Area (EEA), which includes the European Union (EU), and EFTA's worldwide network of free trade agreements. EFTA's headquarters is in Geneva. The Secretariat also has an office in Brussels and a Statistical office in Luxembourg (source : [www.efta.int](http://www.efta.int)).

<sup>34</sup> Original parties to the Mercosur are Brazil, Argentina, Uruguay and Paraguay, which established it in 1991 by the Treaty of Asunción, subsequently amended and updated (the most important amendment has been approved by the 1994 Treaty of Ouro Preto). Its objectives are to promote free trade and the free movement of goods, people and capitals in South America. Currently, Bolivia, Chile, Colombia, Ecuador and Peru are associate members. Recently Venezuela has become a new member, with great expectations for a new equilibrium, due especially to the oil.

<sup>35</sup> The North American Free Trade Agreement (NAFTA) is a regional agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America to implement a free trade area. Article 102 of the NAFTA states that: "the objectives of this Agreement, as elaborated more specifically through its principles and rules, including national treatment, most-favoured-nation treatment and transparency, are to:

1. eliminate barriers to trade in, and facilitate the cross-border movement of goods and services between the territories of the Parties;
2. promote conditions of fair competition in the free trade area;
3. increase substantially investment opportunities in the territories of the Parties;
4. provide adequate and effective protection and enforcement of intellectual property rights in each Party's territory;
5. create effective procedures for the implementation and application of this Agreement, for its joint administration and for the resolution of disputes; and
6. establish a framework for further trilateral, regional and multilateral cooperation to expand and enhance the benefits of this Agreement."

The Parties endeavour to fully implement these objectives by 2008. (Source: [www.nafta-sec-alena.org](http://www.nafta-sec-alena.org))

<b>OCT Overseas Countries and Territories</b>	Greenland New Caledonia French Polynesia French Southern and Antarctic Territories Wallis and Futuna Islands Mayotte Saint Pierre and Miquelon Aruba Netherlands Antilles Anguilla Cayman Islands Falkland Islands South Georgia and South Sandwich Islands Montserrat Pitcairn Saint Helena Ascension Island Tristan da Cunha Turks and Caicos Islands British Antarctic Territory British Indian Ocean Territory British Virgin Islands
<b>PAN-ARAB Pan-Arab Free Trade Area</b>	Bahrain Egypt Iraq Jordan Kuwait Lebanon Libya Morocco Oman Qatar Saudi Arabia Sudan Syria Tunisia United Arab Emirates Yemen
<b>PATCRA Agreement on Trade and Commercial Relations between the Government of Australia and the Government of Papua New Guinea</b>	Australia, Papua New Guinea
<b>PTN Protocol relating to Trade Negotiations among Developing Countries</b>	Bangladesh Brazil Chile Egypt Israel Mexico Pakistan Paraguay Peru Philippines Republic of Korea Romania Tunisia Turkey Uruguay Yugoslavia
<b>SACU Southern African Customs Union</b>	Botswana, Lesotho, Namibia, South Africa, Swaziland
<b>SADC Southern African Development Community</b>	Angola Botswana Lesotho Malawi Mauritius Mozambique Namibia South Africa Swaziland Tanzania Zambia Zimbabwe
<b>SAPTA South Asian Preferential Trade Arrangement</b>	Bangladesh Bhutan India Maldives Nepal Pakistan Sri Lanka
<b>SPARTECA South Pacific Regional Trade and Economic Cooperation Agreement</b>	Australia New Zealand Cook Islands Fiji Kiribati Marshall Islands Micronesia Nauru Niue Papua New Guinea Solomon Islands Tonga Tuvalu Vanuatu Western Samoa
<b>Trans-Pacific SEP Trans-Pacific Strategic Economic Partnership</b>	Brunei Darussalam Chile New Zealand Singapore
<b>TRIPARTITE Tripartite Agreement</b>	Egypt India Yugoslavia
<b>UEMOA – WAEMU - West African Economic and Monetary Union</b>	Benin Burkina Faso Côte d'Ivoire Guinea Bissau Mali Niger Senegal Togo

Source: [www.wto.org](http://www.wto.org)

Currently, EC is party to a very important number of RTAs.

Not all the national reporters share the same point of view on regionalism. The Dutch reporter says the Netherlands, for example, favour liberalisation of trade notably within the WTO because developing countries can generate more growth by participating in the world trade and by further integrating in the world economy.

It's true what German reporter noted, that the EU has the sole responsibility for all foreign trade policies, and that the member states of the EU only have such responsibilities in exceptional situations and in accordance with EU law. That's the strictly legal perspective; but it doesn't seem completely acceptable the conclusion: "that is the reason why bilateral trade agreements don't play an important role between EU member states and non member states".

With the essential specification that now we must talk about "bilateral agreements" signed by the EU as contracting party, their role seems to be important. Important for Europe as a whole, and important for single EU member states: let's think about the

importance of the banana sub-sector emerging from Spanish report; and we should expect – perhaps – a particular interest of Spain (and of Portugal as well) for any RTAs concerning bananas' trade, mostly for the Cotonou Agreement<sup>36</sup>, which is raising problems, though, also about the sugar EU's regime<sup>37</sup>.

Whereas other agreements, with no specific agricultural target, have produced some relevant results on economic development of some agriculture-oriented areas (such as the one related to the Franc – the former French currency), sometimes giving those governments the possibility, thanks to those resources, to support some strategic sectors (like cotton, for instance).

On the contrary, the importance of such agreements seem quite clear in the US, where scholars are conscious that trade agreements have increased agricultural exports significantly<sup>38</sup>; and that RTAs can both help US exporters gain market share, and help developing countries implement economic development<sup>39</sup>. According to some studies by the Economic Research Service of the US Department of Agriculture ([ers.usda.gov](http://ers.usda.gov)) RTAs may interact with domestic farm policy; prices will tend to be more unified in an RTA, "making members' efforts to use farm support programs to maintain different price levels either ineffective or costly." RTAs often push members to "reduce, decouple, or harmonize" agricultural support; payments that influence production are often inconsistent with RTAs. Further, decreased farm support and greater market orientation have "reduced the inherent conflicts between farm support and free trade"<sup>40</sup>.

Talking about the relationship between domestic policies and trade policies – as the US reporter pointed out – any reform of farm policy can increase the gains from RTAs, but other policy reforms often make it difficult to determine the trade effects of RTAs. Nonetheless, it has been noted that "no FTA has directly obligated the U.S. Government to make changes in domestic farm programs"<sup>41</sup>, and that US negotiators prefer to resolve these issues in the WTO.

As the most important FTA to which US is party, NAFTA is worthy of a special mention, especially because, when fully implemented, NAFTA will eliminate most barriers to agricultural trade among its members (with some exceptions just for Canada).

NAFTA – citing prof. Grossman's report – has had a significant impact on the

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<sup>36</sup> Beyond the sure interest of the third countries involved in the agreements themselves; although – with regard to the Cotonou Agreement and the former Lomé Convention – prof. Revel's report highlights the quite slow development it has brought about, with the only exception of Mauritius.

<sup>37</sup> See, for example, what the Belgian report has noted: the "ACP sugar protocol" is forcing Europe at purchasing annually 1,259 millions tons of red- or white-sugar, importing them at a fixed-price-and-no-tariff regime, causing problems to some EU countries, obliged to reduce their sugar quotas in order to allow the respect by the EU of such Cotonou commitments.

<sup>38</sup> The Office of the United States Trade Representative is used to publishing datasheets, synthesizing the gains deriving to US exports from RTAs: see, for example, <http://www.fas.usda.gov/itp/Policy/2006-07factsheetftabenefits2.pdf>.

<sup>39</sup> Griswold, *supra*, at 4-6. Griswold discusses the US FTAs with Chile and Singapore.

<sup>40</sup> Quoted words come from Mary E. Burfisher & Elizabeth A. Jones (ed. by), *Regional Trade Agreements and U.S. Agriculture*, at 2, ERS-USDA, AER 771 (1998), and from the US national report.

<sup>41</sup> Stephanie Mercier & Vince Smith, *Domestic Farm Policy for 2007: Forces for Change*, 21(4) CHOICES 209, 209 (2006), at 213.

agricultural economies of the US, Canada, and Mexico, particularly with regard to the market integration. Grain markets have become more integrated since it's been signed, and US exports to Mexico and Canada have doubled since 1994. Trade in meat (pork, poultry) has increased; livestock production is also becoming more integrated, though the discovery of cows infected with BSE in Canada and the US has slowed integration. Sales of fruits and vegetables and processed foods have also benefited from NAFTA. Only a few trade barriers still continue to exist (e.g., tariffs and quotas that affect dairy and poultry trade between the US and Canada, and US-Mexico issues about sugar and sweeteners).

An ongoing negotiation is the one leading to the establishment of the FTAA (Free Trade Area of the Americas)<sup>42</sup>. In the 2003 Draft Agreement, Chapter IX on Agriculture uses the WTO definition of agricultural products and includes provisions on export subsidies and domestic support, with some references to definitions in WTO agreements, and to the WTO-compliance<sup>43</sup>. In FTAA negotiations, however, the US has argued that the WTO, rather than the FTAA, is the proper forum for agreements on agricultural subsidies<sup>44</sup>.

The US has several bilateral FTAs in effect as well, and others are under negotiation<sup>45</sup>. As an example, in the US-Australia FTA (entered into force on 1<sup>st</sup> January 2005), the US and Australia pledged to work together to reach an agreement on agriculture in the WTO and to consult on WTO agricultural issues. Although the US has long advocated

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<sup>42</sup> From the FTAA's official website ([www.ftaa-alca.org](http://www.ftaa-alca.org)): "The effort to unite the economies of the Americas into a single free trade area began at the Summit of the Americas, which was held in December 1994 in Miami, U.S.A. The Heads of State and Government of the 34 democracies in the region agreed to construct a Free Trade Area of the Americas, or FTAA, in which barriers to trade and investment will be progressively eliminated. They agreed to complete negotiations towards this agreement by the year 2005 and to achieve substantial progress toward building the FTAA by 2000. (...) During the preparatory phase (1994-1998), the 34 Ministers responsible for trade established twelve working groups to identify and examine existing trade-related measures in each area, with a view to identifying possible approaches to negotiations. (...) The FTAA negotiations were formally launched in April 1998 at the Second Summit of the Americas in Santiago, Chile. (...) The FTAA negotiations are carried out under an agreed structure that is member-driven and ensures broad geographical participation. The Chairmanship of the entire process, the site of the negotiations themselves, as well as the Chairs and Vice Chairs of the various negotiating groups and other committees and groups, all rotate among participating countries".

<sup>43</sup> For example, in art. 1 of the Chapter IX, "agricultural export subsidy means any subsidy contingent, *de jure* or *de facto*, on export performance of an agricultural product, including those measures cited by way of example in Article 9.1 of the WTO Agreement on Agriculture and Annex 1 of the Agreement on Subsidies and Countervailing Measures. For purposes of this definition, export credits, export credit guarantees or export insurance programs, and international food aid programmes, [which are granted consistent with WTO rights and obligations, shall not be deemed to be export subsidies for purposes of this Agreement.][which are not granted in accordance with the provisions of Annexes 1, 2, 3 and 4 of Subsection B.3. of this Chapter, shall be deemed to be export subsidies]".

<sup>44</sup> Please note that in the definition above (of agricultural export subsidy) the WTO-compliance of such measures as the export credits, the export credit guarantees, the export insurance programs and the international food aid programmes is left undefined as an unsolved problem, still waiting to be solved in the WTO framework.

<sup>45</sup> Including both in-force agreements and negotiations, we can list : U.S.-Australia, U.S.-Bahrain, U.S.-Chile, U.S.-Colombia, U.S.-Israel, U.S.-Jordan, U.S.-Korea, U.S.-Malaysia, U.S.-Morocco, U.S.-Oman, U.S.-Panama, U.S.-Peru, U.S.-Singapore.

the multilateral liberalization of global trade through the WTO, “for the US, however, RTAs are an important alternative, especially when multilateral trade negotiations falter”<sup>46</sup>.

Beyond scholar’s discussions, the US view seems to be, in facts, that regionalism and multilateralism are “mutually reinforcing”<sup>47</sup>.

Outside the US-influence area – but still in the American continent – the most important RTA surely is the MERCOSUR. And that’s relevant also for agriculture, because agricultural and agri-industrial sectors are particularly important for the countries which are parties to the MERCOSUR (according to Argentina’s report, those countries are net exporters of agricultural and agri-food products, together amounting to a very significant quota of the world trade<sup>48</sup>). Argentina’s reporters note that MERCOSUR countries are fundamental buyers for Argentinian export (a reasoning not concerning only the Agricultural trade: especially Brazil is the main importer of industrial manufactures). But they also note that other countries and regions as well (Chile, China, CAN, NAFTA) have increased their role as commercial partners of Argentina, during last years, though not benefiting of such a preferential treatment as the one granted by the MERCOSUR agreement.

### **The global framework and the diversity of ideas about the further multilateral liberalization**

Given this global framework, hesitating between multilateral attempts of liberalization and regional realities, different positions emerge in the world and even inside Europe. The German reporter stresses how in the current WTO negotiations he would like the green box not to be limited in relation to the European Agricultural Policy; and notices that, if the agricultural model meets the concept of a multifunctional agriculture which, besides foodstuffs, also provides public benefits, one of the goals of the German government in the Doha Round will be to strengthen the the model of multifunctional agriculture in the WTO as well.

France’s report, instead, is mainly addressing the US agricultural policy, with the aim of bringing the US marketing loans back to the amber box, whereas they’re currently subjected to a less rapid reduction; and wishing the same treatment for the US food aid programs. Beyond this particular EU-US issue, the French intent seems to be centered – with regard both to the European and the international agricultural policies – on boosting the “green” nature of the farm support, the cross-compliance and the international aids<sup>49</sup>.

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<sup>46</sup> Prof. Grossman’s report, agreeing with Burfisher & Jones, supra, at 1-2.

<sup>47</sup> Prof. Grossman’s report. That seems substantially in line with prof. Revel’s report: “les EU semblent se faire à l’idée de remplacer les accords agricoles de l’OMC, qui deviennent de plus en plus dangereux pour eux depuis qu’ils ont augmenté massivement leurs subventions, par des accords bilatéraux avec leurs principaux clients : Israël, Jordanie, Chili, Singapour, Canada, Mexique, Amérique centrale et du Sud, Afrique australe, Maroc, Bahrein et la République dominicaine, ce qui représenterait 40% de leurs exportations agricoles”.

<sup>48</sup>

<sup>49</sup> See prof. Revel’s report: “problèmes d’écoconditionnalité dans les exportations de fleurs du Kenya ou du Rwanda dont le contenu en pesticides dépasse les normes de l’UE: une aide de l’UE de 5 millions de dollars permettra de financer les tests phytosanitaires au départ de ces pays PMA et

Spain's opinion is that the agricultural model based on the last CAP reform has to be preserved, and not to sacrifice European agriculture by making concessions to have advantages in other sectors. Free-trader with regard to getting rid of the export support, and willing to a further reduction of domestic aids, Spain seems quite protectionist as to the market access: in this field, the Spanish proposal is oriented at restricting as much as possible the tariff reductions, at maintaining the so called special safeguard clause, at bargaining exceptions for the most sensible products, and finally at defending the price mechanism for the import of fruit and vegetables

It's worth to be noticed that only the Italian report has pointed out the importance of the geographical indications issue, although it can be considered crucial for almost all the southern part of Europe; and maybe also for the southern part of the world.