# C.E.D.R.

**European Council for Agricultural Law**
**Comité Européen de Droit Rural (C.E.D.R.)**
**Europäisches Agrarrechtskomitee**

## XXII European Congress and Colloquium of Agricultural Law – Almerimar-El Ejido (Spain) – 21-25 October 2003

## XXII Congrès et Colloque Européens de Droit Rural – Almerimar-El Ejido (Espagne) – 21-25 octobre 2003

## XXII Europäischer Agrarrechtskongress mit Kolloquium – Almerimar-El Ejido (Spanien) – 21-25 Oktober 2003

Round Table – Table ronde – Runder Tisch

**EFFECTS OF THE WTO ON THE CAP AND ON NATIONAL RURAL LAW, PARTICULARLY IN THE CONTEXT OF ORGANIC AGRICULTURE**

**REPERCUSSIONS DE L'OMC SUR LA PAC ET SUR LE DROIT RURAL NATIONAL, NOTAMMENT EN CE QUI CONCERNE L'AGRICULTURE BIOLOGIQUE**

**AUSWIRKUNGEN DER WTO AUF DIE GAP UND DAS NATIONALE AGRARRECHT, INSBESONDERE MIT BEZUG AUF DIE ÖKOLOGISCHE LANDWIRTSCHAFT**

General Report – Rapport général – Allgemeiner Bericht

**Prof. Paolo BORGHI**

# General Report

**Prof. Paolo BORGHI, Italy**

## 1. Impact of WTO rules on the CAP

### 1.1) The effect of WTO rules on EC and national law

The WTO trading system is a comprehensive and solid order concerning the world trade, much more solid and comprehensive than the order resulting from the GATT 1947. The innovation brought by the Marrakech Treaty was not only the establishment of the institutional framework of the WTO : new negotiating areas (such as agriculture, services and intellectual property rights), new analytical rules which widen, deepen and facilitate the application of GATT principles (e.g., subventions, dumping, safeguards, sanitary and phytosanitary measures, and technical barriers), the abolition of the "grandfather clause"[1] and, finally, a complete re-shaping of the dispute settlement mechanism, based on a two-stages system[2].

Nevertheless, no innovation seems to have been determined by such a "revolution" as to the relationship between WTO rules and its member States' legal orders : everybody knows how ECJ has reaffirmed its (quite old) jurisprudence in its *Portugal vs. Council* judgement, which stated : "Having regard to their nature and structure, World Trade Organisation (WTO) agreements are not in principle among the rules in the light of which the Court is to review the legality of measures adopted by the Community institutions. It is for the Court to review the legality of a Community measure in the light of the WTO rules only where the Community intended by means of that measure to implement a particular obligation assumed in the context of the WTO, or where the measure refers expressly to the precise provisions of the WTO agreements"[3].

So, it sounds quite normal if Netherlands' national report says that the role of the WTO rules is highly marginal in Dutch legal proceedings, as they do not create any rights or duties for private individuals that are capable of being directly invoked in.

Someone has argued that the continued denial of direct effect not only proves that the ECJ has protectionist motives, but also that it is unconcerned with individual rights[4]. Others think that "when one thoroughly examines the legal, political, and economic realities of the GATT it is no longer obvious (...) that : 1) the ECJ's jurisprudence requires direct effect, 2) denying direct effect is detrimental to the Community's interests, and 3) direct effect is necessary to protect individual rights"[5].

It's been said that "The way WTO obligations are enforced is exclusively bilateral. WTO dispute settlement does not, in the first place, tackle breach, but rather nullification of benefits that

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1 The "Protocol of provisional application" of the GATT 1947 said the Contracting Parties undertook to apply the Part II of the Agreement only "to the fullest extent not inconsistent with existing legislation", which was one of the main limits to the effectiveness of those rules.

2 Schmid, *A Theoretical Reconstruction of WTO Constitutionalism and its Implications for the Relationship with the EU*, European Institution University Working Paper, LAW 2001/5, Florence.

3 ECJ Judgement of 23 Novembre 1999, Portuguese Republic vs. Council of the European Union, Case C-149/96, in European Court reports 1999 Page I-08395. This jurisprudence is substantially confirmed by the more recent *Biret* cases (C-93 and 94/02, judgements of 30th September, 2003), despite of the contrary opinion of the General Attorney, Alber.

4 Kuilwijk, *The European Court of Justice and the GATT Dilemma*, The Netherlands : Nexed Editions, 1996.

5 Osterhoudt Berkey, *The European Court of Justice and Direct Effect for the GATT : A Question Worth Revisiting*, Cambridge, MA, without date.

accrue to a particular member"[6]. We may agree with either of the opinions expressed above. We may also get over those opinions, distinguishing :

- a primary – in a sense, constitutional – level of rules, made by fundamental principles contained in the WTO treaties, which are multilaterally agreed ; and
- a secondary level of rules – bargained in the state-to-state negotiations, on the basis of the principles above, and put into the schedules of commitments of each state – reciprocally binding only the Members which specifically accepted them.

And finally – in this perspective – we may find out a difference between the kind of impact of the first ones, whose breach means violation of general rules (having an *erga omnes* effect among the WTO Members and protecting general interests of them, and of the whole Organization)[7], and the impact of the latter, whose violation means something like the breach of a *synallagma*. At the end, this could lead us to say whether the WTO rules bind, or not, individuals and economic operators inside the Member states, and such a finding would have a great importance in understanding the effects on European agriculture, which is the main subject of this Round Table.

But the most relevant issue – in spite of the contrary opinion of some experts[8] – remains the idea that WTO rules can raise legal obligations : "International law (...) does not enjoy the kind of monopoly of force that many (but not all) of the "sovereign" states of the world enjoy. International law, however, has very important real effects"[9].

An analysis of the WTO system, specially of the dispute settlement mechanism and of the effectiveness of sanctions, must lead to a conclusion : "It is true that once the 'binding' international law obligation to follow the recommendation of a panel report has been established, international law has a variety of ways of dealing with a breach of that obligation, and that, understandably, those methods are not always very effective. However, that is a different issue from the question of whether the 'WTO rules are ... 'binding' in the traditional sense'. Certainly they are binding in the traditional international law sense. In fact, for many national legal systems, they are also binding in the 'traditional sense' domestically, although not always in a 'statutelike' sense. In the United States, it can be argued (...) the WTO rules, and certainly therefore the results of a dispute settlement panel, do not 'ipso facto' become part of the domestic jurisprudence that courts are bound to follow as a matter of judicial notice, etc. However, the international law 'bindingness' of a report certainly can and should have an important effect in domestic U.S. jurisprudence, as in the jurisprudence of many other nation-states"[10].

The influence of WTO discipline on EC law can be detected only taking into account these aspects, and the correlative duties provided by the EC Treaty :

- for the European Institutions and the EC Member States the duty to act as provided by the international agreements (art. 228.7 CE) ;

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6 Pauwelyn, *The Nature of WTO Obligations*, New York, 2002.

7 This could be an implicit meaning of the opinion of the Appellate Body in the *Banana* case : "with the increased interdependence of the global economy (…) members have a greater stake in enforcing WTO rules than in the past since any deviation from the negotiated balance of rights and obligations is more likely than ever to affect them, directly or indirectly" (*European Communities - Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/AB/R, adopted on 25 September 1997, para. 136). *Contra* Pauwelyn, *The Nature of WTO Obligations*, cited above.

8 Hippler Bello, *The WTO Dispute Settlement Understanding : Less is More*, A.J. of Int'l Law, 1996, 416.

9 J.H. Jackson, *The Wto Dispute Settlement Understanding – Misunderstandings On The Nature Of Legal Obligation*, A.J. of Int'l Law, 1997, 60.

10 J.H. Jackson, *ibidem*.

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- for the individuals and the EC Member states, their duty to comply with the Community law.

Add that some states – as Italy, e.g. – have rules in their constitutions which impose to national institutions (namely, those who have the legislative and executive powers) to conform their action with the international law, and to adjust their own legal order to the international obligations.

## 1.2) The impact of WTO rules on CAP...

The continuous evolution of the negotiations in the WTO framework needs a continuous comparison of the international obligations (and of the consequently modified CAP rules) with the EC Treaty principles regarding CAP. This comparison could get to realize that the CAP principles, written in the EC Treaty in 1957, are not always completely consistent with the new international rules : for instance, the strong reduction in domestic support for the main agricultural sectors (lowering the incomes of farmers), not balanced by sustaining exports (which is subject to reduction commitments, too), as well as the "green box" decoupled measures (also supporting those who produce less, making seriously difficult the creation and management of stocks of commodities in Europe) could impose the European Istitutions, at every reform stage, to give a lesser and lesser relevance to the CAP objectives listed in letters a), b) and d) of article 33.

We must be grateful to the French Reporter for the deep analysis, mainly from an economic perspective, of the status and future of the "pillars" of the Agricultural Agreement : an analysis made of a systematic comparison between current and future measures of US and European policy, in the three main fields of export subventions, domestic support and market access. But we must be grateful to him especially for "destroying" a myth : the myth of the neutrality of decoupled measures : "Il faut donc noter que si les aides couplées encouragent le maintien des productions aidées, les aides découplées freinent tout autant la disparition des exploitations en rendent quasi permanent les droits à aide si des productions continuent à être réalisées : toute aide couplée ou non n'est jamais neutre en matière de production".

As a consequence, we must consider how strong is the influence of the negotiators – though acting within the limits of the mandates committed by their governments – on agricultural policies and on rule-making decision processes ; whereas the national "sovereign" states, first, and the EC (as it was a state) then, substantially gave up the exercise of a great portion of their sovereignty, about matters weighing upon the standards of living of their citizens (producers and consumers), upon the food security and food safety concerns, and finally upon the environment.

Speaking of environment and Uruguay Round Agreements, one can not avoid highlighting (together with almost all national reports) the importance of the s.c. "green box measures" specifying – as the UK National report has done – that they permit "payments under environmental and regional assistance programmes", but that they can't be based on current behaviour of the farmers (they simply must be decoupled, in the sense of the Agricultural Agreement, i.e. not "related to, or based on, the type or volume of production", with the "size of the payment related to the income loss incurred"). There are two main consequence :

a) the latest aspect will limit – says Mrs. O'Neill – the effectiveness of developing green box payments as steering mechanisms in the development of more sustainable agricultural practices ;

b) the benefits of taxing the "negative environmental externalities" – which is possible under the Agreement on Agriculture – will be (negatively) balanced by the parameters of the "green box" provisions, which in fact will limit the possibility of "subsidies to encourage the generation of positive environmental externalities".

Since EC regulation No 3290/94, going along the CAP reform of 1999 and Agenda 2000 program, until the recent 2003 CAP reform, there have been two main European concerns : the

WTO commitments (which in official documents and legal texts are named in some different ways : the “international trade agreements”, the “new international framework of trade”, etc.) and the EU enlargement ; source, the latter, of great (and perhaps unjustified) budgetary worries of the European Institutions, sometimes corresponding – as it happens when Europe needs to decouple and reduce its domestic support – to the aims of the WTO implementation program.

Actually, the purposes of the latest CAP reform, as regards the role of Europe inside WTO, seem to have a twin nature : direct and indirect.

A direct purpose (and – at this moment – probably overtaken by recent history) was the will to go to the Cancun Ministerial Conference (September 2003) with a stronger CAP, in the sense that EU wanted to be free from critics about its compliance with the commitments undertaken in 1994, in Marrakech.

Indirect (as a consequence of the direct one) and partly untold was another purpose : to be able – when discussing with partners in the new round of negotiations – to stand up for some “sensible” issues, revisiting and rewriting, if possible, some multilateral rules which currently leave Europe quite unsatisfied : let’s think about intellectual property (e.g. the “*made in ...*” signs, an issue which has its greatest problems in the agro-food sector), not sufficiently protected by the TRIPs Agreement, particularly as to the international dimension of PDOs and PGIs[11].

Another “hot” matter may be the protection of values in which European consumers (and, consequently, also the European statesmen) are particularly interested, such as food quality, or the guarantee of absence in foods (not only of any risk, but also) of any not-enough tested substance as an ingredient, food additive or residue ; the different points of view of EU and USA, about these problems, raised up well-known controversies (just think about the *Hormones* case, or the *Biotech* case, the latter not yet concluded with a Panel report).

If the 2003 CAP reform had also the “strategic” aim of a greater strenght of Europe in the Cancun Conference (as it’s remarked by the Spanish national Reporter), someone could doubt the timeliness of the European choice of “full compliance”. At least, someone could say that putting off some sacrifices maybe would not have been the wrong choice ; a look to other countries’ options could confirm this fear.

In the USA, for example, the total AMS diminished from USD 23.1 billion of 1995 to USD 19,1 billion in 2001 : so, the reduction of their total average of support, in the s.c. “implementation period”, was about 17,39 %, which is somehow less than it was due by “normal” member states[12]. In the meantime, the 2002 *Farm Bill*[13] expressly states that the USD 19.1 billions support level will be maintained until the conclusion of a new WTO agreement.

Add that US law provided :

- some (substantially) decoupled aids (the so called direct payments, based on a historical acreage and on their historical yelds) ; and
- other kinds of aid (that the Economic Research Service of the US Department of Agriculture qualify as “decoupled”, but not without any uncertainty from our point of view) ;

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[11] A recent complaint before the WTO Panel, brought by USA and Australia, charges Europe with breaching the TRIPs Agreement, because of the “reciprocity condition” requested by EC regulation on PDOs as a condition for protecting geographical indications of third countries : this should be considered – those states say – as a direct violation of the basic GATT and TRIPs “non-discrimination” principle, which doesn’t allow applying to the foreign product a worse treatment than the one applied to the domestic product.

[12] “Normal” member states had to reduce their AMS by 20%, while developing countries were expected to reduce it by the 13,5%, and the less developed states were exempted from any duty.

[13] Proper and complete title : *Farm security and rural investment act of 2002*.

- the Counter-Cyclical Loans (or Counter-Cyclical payments), in force since 1998, whose application has been extended by the latest Farm Bill, aiming to offset the market imbalances, when they are adverse to farmers, by means of a price-related mechanism.
- the Marketing Assistance Loans (o Marketing Loan Deficiency Payments), even more bounded to price fluctuations ;
- the federal aids (already provided by the 1995 Farm Bill)[14] for farmers who have to pay the Crop Insurances, protecting farm incomes from yield losses, no matter what is the cause of the loss, increased (by granting USD 8.2 billions) by the Agricultural Risk Protection Act of 2000 (ARPA), until the crop year 2005-2006, and confirmed by the recent Farm Bill.

Are they decoupled aids? I should not be so sure : they have a great and direct influence on the product price (so that the more farmers produce, the more they will get) and, besides, they boost the stocking everytime the market prices run below certain limits. The doubts raised by these measures are not bleached by the "conditionality" provisions, which can be found in the 2002 *Farm Bill* too : both the "conservation plans" and the "wetland provisions" are too marginal to make the entire US agricultural support system an "environmental program", justified as a "green" system in the light of the Agricultural Agreement.

In conclusion, European choices cannot be exempt from critics, from a political point of view, well synthesized in the final considerations of the Spanish report : in so restrictive financial framework, it's highly probable that we'll miss the necessary room of manœuvre, in case of crisis, of strong price fluctuations or market instability. The main risk is to consolidate the imbalancement among regions, among sectors and among producers, notwithstanding some basic EC Treaty principles ; and that shifting the most of the domestic support into the "green box" can cause important changes in production trends (towards lower-cost products) or land desertion.

In a system that requires effectiveness, as the main quality of an agricultural policy, together with the ability to face the social aspects of agriculture, providing aids which are based on non-productive standards doesn't seem the best possible choice.

## 1.3) ...and on national legislation

For the European countries, the problems involved by the subject of this Round Table are mainly European problems.

In general, every country's report has tried to outline its advantages and disadvantages, deriving from the WTO rules, from an *a posteriori* point of view, considering that the sectors subject to extensive EU market regulation, such as the dairy, cereals and sugar industries, are subject to greater influence than sectors in which there is already a comparatively liberal regime, such as ornamental plant cultivation. But every European country has, probably, to admit that the WTO and its rules are relatively unknown among policy-makers and legislation lawyers ; or, at least, they're much less well-known than the European regulations in which the WTO rules have been incorporated (as the Netherlands' report correctly pointed out).

This is the reason why some countries remarked the main effects on some commodities (the Netherlands reporter, for instance, particularly analyses the seeds and planting material regulations), or sought how its traditional agricultural products, and its national foodstuffs have been affected (Italian report deals with the influence of WTO agreement on some "mediterranean crops"), while others prefer laying down their overall point of view.

As to the competence about implementation of WTO rules, not many national reports have explained their national experience, maybe because there's substantially no national experience in this field.

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[14] Proper and complete title : *Federal Agriculture Improvement and Reform Act of 1996*.

In the Netherlands, e.g., the implementation of EU regulations concerning the market for agricultural and agro-food products falls into the competence of the Ministry of Agriculture, Nature and Food Quality and partly of the Ministry of Health, Welfare and Sport. Sometimes, the EC regulations are implemented by public-law industry associations regulations, when the State government assigns the implementation task to the marketing boards. But "there is no relationship in the Netherlands between the WTO rules and the regulations concerning agricultural land property and usage rights".

In the UK, while the Department for Environment, Food and Rural Affairs (DEFRA) is concerned with the quality control of agricultural products and agro-foodstuffs – with a joint responsibility, for agriculture, fisheries, food, forestry and rural policy, in Northern Ireland with the Department of Agriculture and Rural Development (DARDNI) ; in Scotland with the Scottish Executive Environment and Rural Affairs Department (SEERAD) ; and in Wales with the Welsh Assembly Government Agriculture and Rural Affairs Department (ARAD) – the Food Standards Agency (set up by the *Food Standards Act of 1999*) may be accountable if there is a serious failure of duties, basing on the general duty, which is in charge of the Agency, to implement any obligations of the United Kingdom under the Community Treaties or any international agreement to which the United Kingdom is a party.

These are two short examples of implementation experiences, concerning the EU-State relationship about matters regulated by WTO rules. No direct link seems to be – as to the agricultural sector, at least – between WTO and single EC member states.

## 1.4) Perspectives

After the launch of the Doha Round, in November 2001 at Doha Ministerial Conference of WTO, the s.c. "Doha development agenda" has established the main objectives of the new negotiations :

- substantial improvements of market access, with two parallel actions a) further reducing the customs protection and b) further cutting out also non tariff barriers ;
- reduction of any export subsidy, aimed to their final complete elimination (an objective referring particularly to the various kinds of aids of the USA export policy, whose characteristics and effects were so well explained by the French report) ;
- substantial reduction of the most trade distorting domestic support, to which (in the implied meaning given by the writers of the Doha Declaration) especially European Union has recourse, referring both to the "blue" and to the "amber" box measures ;
- the need to integrate the Developing Countries and the Less Developed Countries demands in all these negotiation subjects, following some developing countries' complaints against the export prices quoted by developed nations (after applying a domestic support) by means of export subsidies, with regard to products typically essential for their economies.

We all know how the Cancun Ministerial Conference ended : its substantial failure lets us foresee a dramatic end of the "peace clause" time, and the beginning of a new "judicial era".

A little taste of it already exists, if we consider two main questions which have just been brought in front of the Panel :

- the biotech case ; and
- the geographical indications case.

Both questions fall outside the Agriculture Agreement, and thus out of the "peace clause" : it may not be insignificant that – after having been so long discussed during the implementation period – they face the Panel just now, immediately before the expiry date of article 20, when it becomes quite clear that no concrete result will come out from the current negotiations (at least not in a short and reasonable time).

- We must, then, add to the problems above two other reasons of uncertainty :
- the enlargement of Europe, which will include new countries with a low agricultural productivity, due to structural lacks ;
- the need to adjust European economic choices basing also on other countries' choices, mostly on the US rules, which have recently increased their domestic aids (as told above). This new trend seems to be based on the strengthening of some particular kinds of aids, like the "Marketing Loan Deficiency Payments" (defined as "diabolic" by the French report of Professor Revel, after a deep explanation of their mechanism and their economic effects) : by affirming they are not decoupled, but rather coupled with soybean production, the French reporter said something fundamental to understand the reasons of the negative impact of WTO rules on soybean sector (Italy report) and of the recent developments of the biotech "querelle" (as biotech means, most of all, soybean).

Everything lets suppose that Europe will try to put all the eligible measures into the "green box" : this seems to be, at the moment, the only "safety valve" of a continent, which is forced to maintain the quotas system in order to sustain the price of some strategic commodities by limiting financial aids (too heavy for the budget, now, and even more after the future enlargement), and by using market means ; but a continent paying this policy with high prices of primary products (e.g. feedingstuffs derived from the commodities above) and with a subsequent difficulty in placing some of the most important industrial products, whose export subvention is strictly limited, on international market.

Finally, when having a look to the "green" measures, it's necessary to bear in mind that "green" – in the Uruguay Round Agreement on Agriculture doesn't mean only "environmental", but also "social" and "cultural".

# 2. Organic agriculture

## 2.1) General overview on the international framework...

The relationship between trade (specially agricultural trade) and the environmental protection was not in the Uruguay Round agenda, but this fact didn't prevent the signatories from including several environmental provisions in the final results of the Round. References to the environment preservation and protection and to the "sustainable development" are expressly made by the Preamble to the WTO Agreement, while a similar meaning has the presence – into the Marrakech Treaty – of the new Agreements on Technical Barriers to Trade and on Sanitary and Phytosanitary Measures, specifically regarding the use by governments of measures aimed to protect human, animal and plant life and health, and the environment.

As to the Agriculture Agreement, it exempts (subject to certain conditions) from WTO commitments of reduction of domestic support for agricultural production, members' direct payments made under environmental programmes.

Eventually, environmental provisions are contained in other WTO Agreements (such as the one on Subsidies and Countervailing Measures, the TRIPs and the GATS), inspired by the results of the UN Conference on Environment and Development of 1992, considering :

- that an open, equitable and non-discriminatory multilateral trading system has a key contribution to better protect and conserve environmental resources, and to promote sustainable development ; but also
- that "trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade".

The connections between agriculture, trade and environment are well-known, almost obvious at the present, and sometimes their needs are conflicting.

Recent studies, conducted by OECD experts, examined the effect of agricultural trade liberalization on domestic pollution, finding that, in general, OECD countries with high levels of pesticide use experience a reduction, if Uruguay Round commitments are extended beyond the last year of the implementation period. The converse is true for countries with low levels of pesticide use, which increase agricultural production as a response to changing relative prices[15].

On the other hand, *de iure condito*, it's worth saying – citing the UK Reporter – that "while the issue of labelling generally, and eco-labelling in particular, is currently being discussed at the WTO, the WTO legal texts do not currently address the issue of 'organic products'. Organic products are therefore not affected in a manner separate from other food products by the WTO Agreement on Agriculture, either for imports or exports into and out of the EU, from or to third countries".

In other words, from the WTO rules standpoint, products deriving from organic farming cannot currently be considered "unlike" the products of conventional farming ; and no special and differential treatment of organic products – if merely based on their "organic" quality – would be allowed by those rules, without giving rise to a discrimination against "like" or "similar" products "chemically" grown up.

This is a problem involving the production aspect, as well as the marketing phase, where the "organic" quality of an agricultural product – as the UK Reporter notes – can become relevant in the light of the TBT Agreement provisions (dealing with labeling problems). These ones encourage the adoption of internationally agreed standards, where possible, with the objective of avoiding unnecessary obstacles to trade, and ensuring non-discrimination and national treatment.

This topic, and the issues it's raising, is in line with the general indifference of the WTO rules for the production methods, so that a difference between products can't be based on the production process. The restrictive approach of the WTO Panels and Appellate Body about the meaning of "likeness", strongly criticized by doctrine[16], is caused by the WTO refusal to consider as "different" a product only on the base of its peculiar production process.

Some recent opinions from the WTO dispute settlement bodies[17] have tried to tackle the question in terms of market competition, and this could help solving some problems about products from organic farming, since these may not be directly competitive with other agricultural stuffs : it depends on the consumers' sensibility and awareness. This solution, nevertheless, strongly requires looking at organic products from a food safety or food quality point of view : this would be the only perspective permitting to forget the exterior similarity of an "organic" and a "common" apple, and their destination to the same usage.

Otherwise, without considering organic products as something different with respect to food quality, they would be considered as common products, not very different from those made by conventional "chemical" farmers, but simply processed in another way, that's not sufficient to allow a differential treatment on the international market. And even doing so, we must expect some clean complaint by WTO members, because of the absence of specific and express rules on production process in the WTO agreements.

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[15] Vasavada - Nimon, *Environmental Effects of Further Trade Liberalization in Agriculture*, USDA, http ://www.ers.usda.gov/Briefing/WTO/PDF/environmentandtradeliberalization.pdf.

[16] See, e.g., SCHOENBAUM, *International Trade and Protection of the Environment : the Continuing Search for Reconciliation*, in *American Journal of International Trade*, 1997, p. 268 ss.

[17] See *Japan – Taxes on alcoholic beverages* (noto anche come *Japanese liquor taxes II*), Appellate Body Report, 4th October, 1996, WT/DS8/AB/R, WT/DS10/AB/R e WT/DS11/AB/R; *Korea – Taxes on alcoholic beverages*, Appellate Body Report, 19th January, 1999, WT/DS75/AB/R e WT/DS84/AB/R; and the well-known Appellate Body Report *EC – Asbestos*.

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A little sign could be seen perhaps in an Appellate Body Report[18] which – interpreting the "likeness" concept as "competitiveness" and "substitutability" – says that the essence of the relationship between products in competition "is clear both from the word 'competitive' which means 'characterized by competition', and from the word 'substitutable' which means 'able to be substituted'. The context of the competitive relationship is necessarily the marketplace *since this is the forum where consumers choose between different products*". Besides, provided that "competition in the market place is a dynamic, evolving process", the possibility to consider products as different "implies that the competitive relationship between products is not to be analyzed exclusively by reference to *current* consumer preferences".

Such an approach, giving a key-role to the consumers' choices and to their evolution, may help European Community upholding the special treatment, assigned by European legislation to organic farming products.

Another positive sign is the fact that the Codex Alimentarius Commission adopted, on the 4th July 1999 (and issued in 2001) "International guidelines for the production, processing, labelling and marketing of organically produced food", applying to products which carry, or are intended to carry, descriptive labelling referring to organic production methods ; namely to unprocessed plants and plant products, livestock and livestock products (when respecting the principles of production and specific inspection rules introduced in Annexes 1 and 3 of the "Guidelines")[19]; and to processed agricultural crop and livestock products intended for human consumption, derived from the unprocessed products above.

According to the "Guidelines", a product will be regarded as bearing indications referring to organic production methods where, in the labelling or claims (or advertising material or commercial documents), the product itself or its ingredients are described by the terms "organic", "biodynamic", "biological", "ecological", or other words of similar meaning (or even diminutives) which can *suggests to the purchaser*, in the country where the product is placed on the market, *that the product or its ingredients were obtained according to organic production methods*. Use of such claims or labelling is strongly forbidden when they clearly have no connection with the method of production, nor when the products derive from genetically engineered or modified organisms.

The role of the internationally agreed standards in the SPS Agreement is fundamental : they're acknowledged as they were a part of the content of the rules, so that the Agreement legitimates the behaviour of those states which conform their commercial measures to the standards above (s.c. "harmonization" principle). We could note then, with Mrs. Butault, that "on peut déjà se féliciter de l'inscription de l'agriculture biologique dans le Codex en considérant qu'elle illustre peut-être le franchissement d'une étape vers la reconnaissance de la pertinence du mode de production dans la définition du produit".

## 2.2) ... and on the European framework

This report is not the suitable place to summarize the EC discipline, which is well-known. Here, it's only worth reminding that even before Regulation No 2092/91 the Community had decided to support the organic farming, implicitly in EEC Regulation No 787/85, and expressly in EEC Regulation No 1760/87 : but those Regulations just dealt with single and reciprocally unlinked aspects – some of the environmental issues – of the structural provisions contained in the mid-1980s CAP reform, and they didn't have to face the WTO rules, not yet existing at that time.

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[18] *Korean liquor taxes*, cited above, at para. 114.

[19] In Annex 1 of the Codex "Guidelines" are laid down the "Principles of organic production", concerning plants and plant products, livestock and livestock products, and handling, storage, transportation, processing and packaging; in Annex 3 are listed the "Minimum inspection requirements and precautionary measures under the inspection or certification system", concerning production units, preparation and packaging units, and imports.

The only “international challenge” of those disciplines were the GATT rules, quite wide and generic as to the environment, as explained above, and moreover insufficiently applied to the agricultural sector.

Subsequently, by adopting Council Regulation (EEC) No 2092/91, the European Union was one of the first countries, all over the world, to set up a policy on organic farming. The act was amended, mainly, by Council Regulation (EC) No 1935/95, of 22 June 1995, on indications referring to organic production on agricultural products and foodstuffs, and by the Council Regulation (EC) No 1804/99 of 19 July 1999, supplementing Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs to include livestock production.

Regulation (EEC) No 2078/92 provided for support to the development of organic agriculture, in the framework of the s.c. “agri-environmental schemes”, which compensated farmers for costs incurred in adopting production methods with a lower environmental impact and for the consequent loss of income, in addition to providing for other measures about training, processing and marketing of organic products.

Again, Regulation (EC) No 1257/1999 (concerning the support for rural development) had a quite wider meaning, recognising that organic agriculture improves the sustainability of farming activities and thus contributes to the general aims of the structural policy. Article 24 of this Regulation, in providing for support for information and promotion activities under certain Community or national food quality schemes, includes the organic farming regime.

More recently, Regulations (EC) Nos 2702/99 and 2826/2000, established a framework for an information and promotion policy for agricultural products in third countries and on the internal market. Among the supported promotion and information measures – managed by national or regional authorities and by private groups or companies – some may be based on a certain agricultural production regime, such as organic production[20].

Keeping the point on information and communication measures relating to the common agricultural policy, a significant spin-off could come from Council Regulation (EC) No 814/2000, which includes a support for Commission’s information activities in favour of organic farming, in order to inform farmers, stakeholder organisations and the public, of the Commission’s policies in this area, and to develop an understanding of what organic farming entails.

After that, EC Commission, in a Commission Staff Working Document, named “Analysis of the Possibility of a European Action Plan for Organic Food and Farming”[21], summarises the impact of the organic farming a) on the environment ; b) on rural development ; and c) on animal welfare. No words are dedicated to the international trade profile, and this is very interesting, if we consider the “environmental” grounds of the recent CAP reform, and how it’s basic principles have been generally justified by recalling the “green box” exemptions of the Uruguay Round Agricultural Agreement.

Finally, two recent legal innovations, rising from the latest CAP reform, are worthy of evidence :

- Regulation (EC) No 1782/2003[22] exempts from the set aside obligation (provided for in article 54) farmers whose “entire holding is managed for the totality of its production in compliance with the obligations laid down in Council Regulation (EEC) No 2092/91 (...)”.

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[20] The actions, proposed by professional or inter-professional organisations representing the concerned sector, are co-financed by the Community, by the concerned Member State and by the proposing organisation.

[21] SEC(2002)1368 - 12.12.2002.

[22] Council Regulation (EC) N° 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) n° 2019/93, (EC) n° 1452/2001, (EC) n° 1453/2001, (EC) n° 1454/2001, (EC)

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- the respect of the organic farming regime is listed by Regulation (EC) No 1783/2003[23] among the Community quality schemes which are eligible for the support (covering only products intended for human consumption) being granted to farmers who participate on a voluntary basis in Community or national food quality schemes (i.e., specific production requirements on agricultural products, except fishery products), provided that the specificity of the final product derives from detailed obligations on farming methods that guarantee or specific characteristics (including the production process), or even a quality of the final product that goes significantly beyond the commercial commodity standards, as regards public, animal or plant health, animal welfare or environmental protection.

## 2.3) Different countries, different experiences

A synoptic view of the national regulations, which is made possible thanks to Netherlands', France's (Butault), UK and Argentina's reports, shows common tendencies, beyond the obvious differences which can be found in each national system :

- the attribution of administrative or regulatory jurisdiction (the latter very reduced, into single EU states, by the EC powers) to public institutions (usually of governmental level, except for some regulations commended in the Netherlands to the marketing board), having technical expertise, and specially dealing with (human, animal and/or vegetal) health protection ;
- the huge costs of organic farming, particularly for the smallest business ;
- the difficulties of imports, deriving from the above-mentioned problem of costs, which is a big problem also outside Europe, so that it's been proposed[24] a revision of the notion of "production unit" (Reg. No 2092/91, art. 11) in such a manner to cover small producers' clusters in some countries (less advanced in developing organic farming);
- the difficulties of imports, deriving from the objective difficulty of establishing effective systems for the recognition of equivalence in the relationship with many third countries.

A comparative look shows a continuous evolution of the matter, too, if we think that in the UK it's been proposed to replace the Register of Organic Food Standards (UKROFS, currently regulating the implementation of EC regulations within the UK) with a new Advisory Committee on Organic Standards (ACOS) – whose duties would be, "*inter alia* advise Ministers on EU organic standards and their application in the UK" – and to publish a "UK Compendium of UK organic standards", "with certification to be both base line certification and additional certification should a particular organisation so choose" (UK National Report).

This confirms the need to face this problem starting not only from the environmental aspect, but also from the safety and quality concerns, which are some of the most urging themes for European consumers.

A very interesting look outside the European borders is allowed by Argentina – the first American country recognized by Europe (since 1992) as a foreign supplier of organic products – where the organic farming, and the processing and marketing of its products is now regulated by the law No 25.127 of 1999, which gives a very broad definition of organic farming, maybe broader than the European definition, as it extends to collecting activities (such as hunting) and to the health protection concerns (the farming is required to avoid all chemicals and other products of actual or potential toxic effect for human health ; to bring healthy products ; etc.),

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1868/94, (EC) n° 1251/1999, (EC) n° 1254/1999, (EC) n° 1673/2000, (EEC) n° 2358/71 and (EC) n° 2529/2001.

[23] Council Regulation (EC) n° 1783/2003 of 29 September 2003, amending Regulation (EC) n° 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF).

[24] See France's national report (Butault) *in* http://www.cedr.org/.

though sharing with Europe the environmental worries like biodiversity, pollution, sustainability, etc.

In Argentina, the authority entrusted with the application of that law is the Secretariat for Agriculture, Farming, Fishing and Nutrition, by means of the SENASA (Servicio Nacional de Sanidad y Calidad Agroalimentaria). Overall supervision is commended to the latter, which has the task of controlling the organic products quality, as well as enabling the certification organisms, and finally auditing these organisms (to verify they can maintain their legal requirements) and also directly inspecting some organic farms.

Argentinian legislation on organic farming appears to be founded on principles quite similar to European, making the use of an "organic" label conditional on the strict respect of the law's prescriptions, and imposing a transitional three-years period to farmers who want to take on organic farming ; but Argentinian farmers can not rely on support like the one granted by European Community to EU agricultural businesses, that's why Argentina's national report looks at organic farming as an area where public support could intervene, also in order to invert an excessive tendency to agriculture industrialization.

And it's also very interesting, to end this brief overlook, to know the "state-of-the-art" in the newcomers of the European Union, where the EC Regulations on organic farming are going to enter into force at the time of their admission :

- Bulgaria still hasn't got a national legislation on organic farming, nor it has programmes for its support, while the production of organic products is very small ;
- Cyprus is developing a legislation, but it's very probable that EC Regulations will enter into force before it can give rise to a national law ;
- Czech Republic has a national legislation for organic farming, and programmes of support for that sector, based on inspection systems which, in 1999, were found already equivalent to European requirements. The acceptance of the Czech production standards for vegetable production and of the Czech inspection system is testified by a substantial export trade toward Europe ;
- for Estonia, Hungary, Latvia and Lithuania we could say the same things as for the Czech Republic, unless for the volume of exports to the European Union from Estonia, Latvia and Lithuania, which is quite low ;
- Malta has not a national legislation about organic farming, nor programmes aimed at supporting farmers who dedicate their activity to this sector ;
- in Poland there's a national legislation on organic farming, programmes aimed at supporting it, and a project intended to develop national legislation, administration, inspection and advices for farmers (with some exports of organic products to Europe) ;
- Romania has got a national legislation on organic farming, but the production in this sector is very small ;
- Slovakia has developed its own legislation and programmes of support for organic farmers, whose production is mostly destined for the exports toward the EU (domestic market of organic products is still very small) ;
- in Slovenia there's a legislation about organic farmers, and programmes aimed at supporting them. Their products enjoy a domestic market, with a few exports to the EU[25].

[25] Source : EC Commission, *Analysis of the Possibility of a European Action Plan for Organic Food and Farming*, cited above, which notes also that Turkey – not an imminent European member – has developed national legislation for organic farming, but has no programmes aimed at supporting organic farmers, with significant exports to the EU.

## 2.4) Getting over the environmental issues, with a look to food safety and food quality

A synthetic comparison among various countries experiences shows how the organic agriculture issue is only one of the non-tariff aspects of WTO concerns ; and how most countries, starting from an agricultural perspective (namely, from the worry to regulate an economic sector, protecting the value of the "organic" labels, and finding new sources of income for farmers)[26], finally got to a more comprehensive vision, partly still made of the same economic concerns, and partly (the most important part, nowadays) on a real intent to give the food safety and the consumer's interests and health protection much more space, according to the recent European Community guidelines[27].

Netherlands' experience mainly doesn't concern food quality (better : it mainly doesn't concern food, since the most strategic products of that country – as known – are other ones). But when that report says that "Third [importing] countries also demand information from exporting countries in order to complete a (pest) risk analysis. In this way third countries evade the burden of proof for the measures to be taken", nobody should forget that the "equivalence" principle (art. 4 of the SPS Agreement) is one of the most concerned in the recent agro-food controversies before the WTO Panel and Appellate Body, and that it expects the importing Member to accept the SPS measures of other Members, as equivalent, if only the exporting Member objectively demonstrates that its own measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection.

It's in the concrete implementation of this rule that the burden of proof is almost turned upside down : the "objective demonstration" that a measure (the one adopted by exporting Member on the exported product) already achieves the "appropriate" level of protection, preventing the importer from imposing new restricting measures, is quite utopian, even if the problem of proving what is "appropriate" for the importing country was solved.

The SPS Committee "Decision on the implementation of article 4 of the Agreement on the application of Sanitary and Phytosanitary Measures" (October 24, 2001 - G/SPS/19) con-firms this conjecture, imposing the importer (*instead of the exporter*) to demonstrate his point of view : the importer has to provide all the relevant documents relating to risk assessment, which explain the aim and the reasons of the adopted SPS measure. It could appear obvious, but one must take note that the burden of proof – which the SPS Agreement would seem to put on the exporting member – is indeed inverted.

This is what happened in the best known case – the *Hormones* case – when the WTO Panel, and the Appellate Body, both considered that the European Community hadn't demonstrated the scientific grounds of its concerns, and of the ban imposed on hormone-treated beef.

In this way, WTO system tends to work in a manner not too different from the "mutual recognition" principle operating in the EC law, known also as the "Cassis de Dijon" principle. On the other hand, this shouldn't be surprising, knowing that "interesting comparisons can be drawn between the similar EC and GATT rules on matters such as internal taxation, discriminatory and non-discriminatory trade restrictions. It might be expected that given the EC's experience in dealing internally with many of these same issues, such as the removal of discriminatory barriers to trade, and of disproportionate regulatory restrictions between states, it would be well equipped to respond to such issues arising in the context of a multilateral trade organisation of which it is a member"[28].

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[26] See, e.g., how EEC, at that time, adopted Reg. n° 2092/91 on the basis of art. 43 of the EEC Treaty, putting into a secondary level any other rationale of the discipline, like the legislations harmonization (art. 100A EEC).

[27] We think about *The General Principles of Food Law in the European Union - Commission Green Paper*, COM(97) 176, April 1997; and about the *White paper on Food Safety*, COM(1999) 719, January 2000.

[28] De Burca - Scott, *The Impact of the WTO on EU Decision-making*, Cambridge, MA, 2000.

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Going back to "organic" theme, we saw above how the rules of EEC Regulation No 2092/91, its application field and its annexes, have undergone a continuous process of broadening and updating during the last decade. Following the adoption of Regulation (EC) No 1804/1999, the Commission launched a work program aimed at clarifying certain issues relating to organic livestock production, which were raised by the Council at the time of the adoption of Regulation No 1804. The main issues currently covered by the program are as follows :

the development of a regulation establishing labelling and inspection requirements for animal feed ;

additions to sections A and B of Annex VI of the Regulation No 1804/99 as regards the non-agricultural ingredients and processing aids used in processed livestock products ;

the issue of supplementing feed with synthetic products such as vitamins and amino acids.

More, a discussion arose on the conversion period, on revising deadlines for the use of certain inputs, and on derogations for the use of non-organic seed, etc.[29].

Even supposing – but that's not completely sure – that WTO has a quite favourably look to organic farming support, as a "green" measure, nevertheless every extension of the European discipline can raise different – but not lesser – problems for the relationship between WTO members.

The assessment of equivalency according to Article 11.1 of Regulation No 2092/91 is ongoing for several third countries. Official Journal often publishes regulations extending the equivalency recognition to imported products to one third state or another. But this gives rise to an important international question, which is very relevant with respect to WTO rules : the need for harmonization of standards. That's because the more complex and restrictive become the legal conditions for marketing as "organic" inside the European borders (because EC law is the term of comparison in assessing the equivalence), the more difficult will be a positive conclusion of the equivalence assessment.

Neither the SPS nor the TBT Agreement could ignore a discipline which gives to a Party (Europe) the faculty to unilaterally evaluate the foreign products, and to decide whether they can be marketed within its borders at the same conditions they are marketed on their domestic territory (i.e. : labelled as "organic") or not. This requires to comply with international standards (such as the Codex Alimentarius Commission Guidelines cited above), to be in conformity with the "harmonisation" principle of the SPS Agreement ; but also requires the European Community to comply with the explained SPS principle of "equivalence".

And more, the probles involves mainly the labelling and packaging standards, which "include 'ecolabelling' (reflecting environmental effects associated with production, consumption, and disposal of the products) and equivalency of standards for defining organic foods. Harmonization of such standards and rules has been raised at international forums as a means of addressing perceived impediments to competition"[30].

This is not a secondary problem, and has a serious economic dimension, as confirmed by the fact :

- that 85 % of Argentina's organic production – granted by an equivalence bilateral agreement (see Argentina's report) – goes out of its borders : of the total export, 84 % is sold to European Union ; 13 % to U.S.A. ; and 3 % to other countries (among those, to Japan) ;
- that somehow different may be the definition of "organic production" in other legislations than EU : in Argentina, for example – although in its Law No 25.127, of 8 april 1999, there's

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[29] Commission of the EC, *The agricultural situation in the European Union - 2001 Report*, COM(2003) 64 final, 12.2.2003.

[30] Agricultural Outlook, Dec. 1996, p. 26.

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a quite large and flexible definition of "organic production", as outlined above – the implementation regulation on organic farming (Decree No 97/2001, as modified by Decree No 206/2001) gives a notion which is stricter (fortunately, more similar to the European definition), and leaves to the "certification enterprises" the task of detecting the compliance to these rules of each organic producer : well, actually only two of the eleven total enterprises have been recognized as suitable to certificate the export to Europe : maybe those who try to do their certification activity on the basis of conditions the most complying to the European law's standards.

Perhaps, we're not dealing with a *direct* obstacle to the product worldwide circulation (since the goods and commodities could go about, anyway, though without that special label) ; but it's certainly a discrimination against some products, which may be justified, and thus allowed by article XX GATT only if "necessary to protect human, animal or plant life or health", or "relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption" ; but may also be found unjustified and forbidden by article III GATT.

Both SPS and TBT Agreement are considered as a concrete application of articles III and XX GATT : a compromise between the opposite aims of those rules. And both give a central role to harmonization, as the only mean to prevent international controversies about technical and non-tariff barriers. The relevance of the (previously described) Codex Alimentarius "Guidelines", making the definition of the "organic quality" without any reference to "safety", may certainly be a first step – as remarked by Mrs. Butault's report (see above) – toward the relevance of the production methods. But – she also noted – the practical significance of the issued guidelines, unfortunately, is quite limited, requiring only that the product be accompanied by a certificate (attesting its "organic" origin), and not restricting in any way the right of the importing state to evaluate the exporters.

This means to resolve the final problem, and not the preliminary : bilateral consultations, conducted without any horizontal guideline, will still occur. But still, they're however and always preferable to unilateral evaluations and decisions, which we may expect from a state, even if it is a WTO member, when facing a non-WTO country : only when both the states are WTO members, the "jurisdiction" of the Panels will guarantee, at least, the respect of some basic principles of equity and reciprocity.

For some time, the Codex Commission has been a free space-of-action for EC states, as the Community as such was not still party to the Commission itself (and one of the French reports dislikes the idea of an European adhesion), so that it was up to the single states promoting the adoption of useful definitions of "organic quality" of agricultural products[31].

Because of the remarked absence, in the legal texts, of express references to a faculty of the WTO members, allowing them to distinguish among products on the basis of production methods (and not only on the basis of visible product characteristics), only the largest interpretation of the exceptions contained in article XX GATT – recalling the "conservation of exhaustible natural resources"[32] and the protection of human, animal or plant life or health – would justify the (otherwise arbitrary) "discrimination" ; but such a large interpretation is not

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[31] While issuing this general report, EU Official Journal L 309 (26th November, 2003) published the Council Decision n° 2003/822/EC of 17 November 2003 on the accession of the European Community to the Codex Alimentarius Commission, saying that "The European Community shall submit a request for accession to the Codex Alimentarius Commission, accompanied by a formal instrument according to which it accepts the obligations of the statutes of the Codex Alimentarius Commission as in force at the time of accession (...) and a single Declaration on exercise of competence (...)"; and giving the President of the Council the responsibility for completing the necessary procedures.

[32] Which, in this case, are "made effective in conjunction with restrictions on domestic production or consumption", just as requested by art. XX(g) GATT, being the outer effect of the internal European discipline of organic production and marketing.

widely shared. In this respect – it's quite evident – only emphasizing the new food safety issue of the organic agriculture, together with the (traditional) environmental issues, could increase the chances of success in defending such a discipline in the multilateral context.

Incidentally, it's worth underlining, on the contrary, that within Europe the principles governing the intra-Community market could even lead to reverse discriminations. The French case is emblematic : "En effet, si la réglementation communautaire de 1992 pour la production végétale issue de l'agriculture biologique s'est uniformément substituée aux réglementations publiques nationales, le cas de la production animale est plus complexe. Le règlement de 1999 a dans une certaine mesure échoué pour n'aboutir qu'à une réglementation de base, assortie de nombreuses dérogations dont l'encadrement est laissé au soin des États, ces derniers pouvant également prendre toute mesure allant au-delà du «seuil» communautaire. Lors de négociations passionnées, chacun a en effet fait état de préoccupations fort diverses, parfois antagonistes (par ex. : interdiction drastique des traitements allopathiques préconisée par la France / bien-être animal mis en avant par le Danemark). Finalement, la France a choisi d'imposer pour la marque AB du Ministère de l'agriculture un cahier des charges plus sévère que le règlement européen dans bien des aspects, ce qui la met aujourd'hui dans une position difficile, puisqu'en vertu du principe de libre-circulation, les aliments fabriqués dans un autre État-membre et conformes à une réglementation moins sévère sont librement commercialisables sur son territoire, sous la dénomination biologique, à des prix facilement moins élevés que ceux que pratiquent les opérateurs nationaux"[33].

Finally, add that the international trade of organic products could become – in a near future – one of the battlefields for the ever-growing commercial conflict concerning biotech products[34]. This aspect seems to be suggested when Argentina's report says : "... tenemos en cuenta que la única forma de asegurarse que un producto no sea transgénico, es que sea orgánico". Indeed, this view – although very interesting – seems to omit some important problems : the "cross pollination" risks, for example, and such other cases, which are not expected to spare organic plantations (particularly in some European countries, where crops do not enjoy much "living space", because of the territory structure).

Actually only an *a posteriori* control on all the product, made by sophisticated lab techniques, would be able to assure the complete absence of transgenic DNA even in organically-grown products. But what costs for businesses?

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33 France's national report (Butault) *in* http://www.cedr.org/.

34 To understand this conflict, we must consider some basic background facts, not directly related to organic production issue :

- on 8th August 2003 world's major GMOs producers (USA, Canada and Argentina) called Europe before a WTO Panel (*European Communities - Measures Affecting the Approval and Marketing of Biotech Products* - Request for the Establishment of a Panel by the United States, WT/DS291/23; by Canada, WT/DS292/17; by Argentina, WT/DS293/17);

- they complain about the EC discipline, which is described as a violation i.a. of the non-discrimination principle;

- those countries also criticize a "de facto moratorium" of European Community (accused of refusing any approval since 1998), and of some its member states (accused of blocking the entrance of GMOs, even if already approved by the Community, with an illegitimate recourse to the s.c. "safeguard clause" of the GMOs Directive);

- without mandatory labelling rules in the abovementioned world's major producer (and exporter) states, transgenic product goes around the world mixed with the non-GMO product (or, as someone prefers, with the product "generally regarded as safe"), and without any means of distinction from it : just a few days ago (on 18th October 2003) Europe issued a new discipline of GMOs labelling, which also provides specific rules about "adventitious or technically unavoidable presence" of transgenic DNA; the rationale of this rules appears to be the fact that, in a free and open world market, there's no way to be absolutely sure about the non-GM nature of imported product.

## 2.5) Conclusions

Some economists, looking to the CAP from outside, a few years ago asked : "Will it evolve in the direction of a rural development policy, assisting the adjustment of families to the changing environment of rural Europe? Or will it be transformed into a fortress to resist the ravages of globalization and liberalization on the weaker elements of European agriculture? Will it swing toward a strict code of health, safety, environmental and animal welfare standards, defining a European Food System more regulated than those of the Americas or Asia? Or will it crumble beneath the weight of successive WTO agreements and become not much more than a schedule of bound tariffs and some residual green box programs?"[35].

I would not share so extreme views : even after these questions have been asked, many things have changed.

US farming, e.g., has been given new rules with the 2002 *Farm Bill*, favouring not only the "greenest" and most decoupled measures. While Europe - which recently has reformed its agricultural policy as well - seems to better pursue the Marrakech liberalization purposes, though being more worried about food safety and food quality than it was in 1999.

May we suppose – at this point – that also other countries are raising a "fortress to resist the ravages of globalization and liberalization"? Or, are we just witnessing the consequences of an early and still evolving international trading system, whose effects on WTO members legal orders are still too weak, but anyway preferable in respect of a dangerous trading "anarchy"?

Let's try to answer these questions by using the words of a great Master :

> "Food and agriculture have been the source of international conflicts for centuries. The weapons used in these conflicts were not built in military arsenals, but rather in national parliaments, law firms, or schools of economics and law. The names of these weapons are those frequently used by soldiers – retaliation, barriers and section. However, here the retaliations are set under law ; the barriers are technical ; and the section is the famous 301[36]. Casualties are not spectacular, even though they give the inspiration to bombastic and 'Churchillian' political speeches. The GATT / WTO Agreement set new rules for this game or war"[37].

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[35] Josling - Babinard, *The Future of the CAP and Prospects for Change – The Policy Environment for Agri-food Competitiveness*, 1999.

[36] The Author refers to a rule of the US law (19 U.S. Code, para. 2515), which has been the subject of an important controversy before the WTO Panel.

[37] Lorvellec, Back to the Fields After the Storm : Agriculture in the European Union After the Uruguay Round Agreements, in Drake Journal of Agricultural Law, 1997, pp. 422-423.