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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

National Report – Rapport national – Landesbericht

Italy – l'Italy – Italien

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Italian report – Rapport italien – Italienischer Bericht

Prof. Paolo Borghi

The subject of this Round Table, if we look at it from a juridical perspective, is better dealt in European terms than in national terms.

It's well known how the main influence of the WTO rules concerns the European discipline of agricultural markets, more than domestic regulations. At least, we know that changes in national regulations have been the immediate reflection of changes in EC law.

Otherwise, if we face the problem without tearing its juridical issues apart from the economic ones, we're able to find that WTO rules, during their first 9 years, had a great influence also on the national agricultural economies and markets, depending on what, in Italy, we call "vocazioni colturali" (literally: "agricultural vocations"), which is the natural inclination of every country toward certain products, determined by its territory and climate peculiarities, by its traditions and its "know-how".

So, every country at this Round Table can speak about its advantages and disadvantages of having been part of the WTO since its origins, from an *a posteriori* point of view, analyzing how its traditional agricultural products, and its national foodstuffs have been affected.

Besides, among those we called "traditional", or "national", an European country cannot forget to give the main attention to its own "typical" products, which are the real wealth of agricultural Europe, and most of Mediterranean Europe (where Italy is).

Italy feels these aspects as the most relevant, for the lawyers and for the economists.

The cereals sector, for instance, is a strategic sector for Italian agriculture: it hadn't a negative affection by the WTO rules, because of the substantial maintaining of the protection level (if compared with the level existing before 1995), and because the new protection means, conceived by the Uruguay Round Agreements, don't work in a so different way if compared to the levies applied before WTO rules imposed the "tariffication".

The concept of "maximum tariff binding" accepted by EC – which prohibits import price of cereals to be higher than 155% of the intervention price – lets apply an actual tariff which is equal to the difference between the maximum price (155% of the intervention price) and the world market price: that's not so different from the "levies" mechanism; just a bit more rigid.

Thus, nobody could expect a great influence of the WTO market rules on cereals in Italy. The same thing can be said considering the domestic subsidies discipline in the WTO Agreement on agriculture, since the substantial decoupling of the EC payments to producers permitted to put them into the "blue box", which is still subject to the s.c. "peace clause"; and since a decoupled system had been decided before the Marrakech signature, being a stronger and stronger need for enlarging Europe.

Moreover, the agricultural WTO Agreement did not prevent EC from introducing, last year, quotas on imports of wheat ..[TENERO]..., which were clearly estabilshed to restrain the competition of Eastern Europe countries (particularly Russia and Ukraine), which don't apply to the cereals Italy is more interested to, such as durum wheat and maize.

Not very different would be the conclusions about fruit and vegetables (as everybody knows, another fundamental agricultural sector for Italy): the main effect of WTO has been a stronger competition of some other traditional producer countries, with some cyclical crises.

In addition, it must be remembered that Italy has signed a certain number of bilateral agreements with Mediterranean countries (especially with Maghreb nations), providing a "zero-tariff" quota on imports of fruits and vegetables, whose price is strongly influenced by the costs of the harvest – traditionally higher in Italy – as it's necessarily made by hand.

More incisive were the WTO rules effects about soybean, because of the strong reduction of the sustain level, negotiated after the GATT Panels on *Payments and subsidies paid to processors and producers of oilseeds and related animal-feed proteins*: as we know, the final judgement found that benefits accruing to the United States under the GATT in respect of the zero tariff bindings for oilseeds continued to be impaired as a result of the production subsidy scheme provided for in Regulation 3766/91. The "zero tariff" bindings (going back to the agreements of the 1960s), joint with the subsidies reduction imposed by USA to EC during the Uruguay Round, have diminished the soybean acreage in Italy, as it happened in the major part of Europe.

The Italian perspective cannot omit talking about typical products, and their "typical" protection means: the protected geographical indications (PGIs) and the protected designations of origin (PDOs).

The European Institutions have recently made some important choices, to the aim of widening and deepening (someone may think: "too much!") the effectiveness of their protection.

The Council Regulation (EC) no. 692/2003, of 8 April 2003, has amended Regulation (EEC) no. 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs. It introduced into Art. 4 of the latter the possibility of providing, among the information which any product specification should include, the prescription that "packaging must take place in the defined geographical area". This is aimed, according to EC law-makers' objectives, to preserve the typical characteristics of products or to ensure their traceability or control, considering that – when such circumstances are present and justifiable – such a possibility should be explicitly provided for.

This innovation in the EC rules concerning the "geographical quality" of foodstuffs follows some very important judgements of the European Court of Justice, relating to Italian typical products, such as "Prosciutto di Parma" (Parma Ham) and "Grana Padano" cheese.

In its judgement of 20 May 2003, in Case C-108/2001, *Consorzio Prosciutto di Parma vs. Asda Stores Ltd.*, the Court faced the problem of selling a famous Italian ham (named with a designation of origin) already sliced and packaged. Well, since the real problem was that slicing and packaging operations did not take place in the region of production, the ECJ concluded that reg. 2081 "must be interpreted as not precluding the use of a protected designation of origin from being subject to the condition that operations such as the slicing and packaging of the product take place in the region of production, where such a condition is laid down in the specification".

Quite similarly, as to *Grana Padano* case, judgement 20 May 2003, in Case C-469/00, *Ravil SARL*, dealt with a product which is sometimes sold on EC market in a grated form, and packed after being grated by the seller outside the defined geographical zone. ECJ stated that EEC Regulation No 2081/92 "must be interpreted as not precluding the use of a protected designation of origin from being subject to the condition that operations such as the grating and packaging of the product take place in the region of production, where such a condition is laid down in the specification"; so that "... where the use of the protected designation of origin 'Grana Padano' for cheese marketed in grated form is made subject to the condition that grating and packaging operations be carried out in the region of production, this constitutes a measure having equivalent effect to a quantitative restriction on exports within the meaning of Article 29 EC, but may be regarded as justified, and hence compatible with that provision".

In both cases, the ECJ decided that the application of special technical rules to operations leading to different presentations on the market is a relevant quality issue, protected by Regulation no. 2081; and that such application "can satisfy the criterion of quality to which (...) consumers have in recent years tended to attach greater importance, and guarantee an identifiable geographical origin, for which (...) there is a growing demand".

This principle means – essentially – an extremely enhanced level of protection of all those peculiarities which may derive (but perhaps not always) to the product from its traditional

production territory, and from the technical "heritage" owned by that region's producers. Nobody could exclude that also in other countries, different from the one of origin, can exist good techniques for grating or slicing, but that would not grant the consumer; it wouldn't make him absolutely sure about the correspondence between the promised quality (promised by the PDO) and the actual qualities and characteristics of the food he (or she) is buying.

This principle may be lead back to the *Rioja* principle: we're in Spain, now, taking part in this important Congress, and I think no place would be more suitable to remind us the change in the ECJ jurisprudence, flowing from the restrictive opinion expressed in the first *Rioja* judgement (9 June 1992, in Case C-47/90, *Delhaize et Le Lion*), unto the last *Rioja* judgement (16 May 2000, in Case C-388/95 – *Kingdom of Belgium vs. Kingdom of Spain*), inversely oriented, and applying to *Rioja* wine bottling operations a quite similar principle.

What has this issue to do with WTO rules? It's not a question of impact; on the contrary, it's a question of divergence.

Whilst European Community gives more and more attention to such a deep protection of geographical food quality, a different treatment is given to this problem by the international rules governing the world agricultural markets.

Italy is interested, and very concerned – in the same way, and perhaps even more, than other European countries, because of the economic importance of this strategic sector – about the low standard of protection of its typical agricultural products, granted in the international field.

Is unfortunately known as the Trips Agreement – expressly devoted to take care of the main types of intellectual property rights, and *inter alia* geographical indications – provides a stronger mechanism for wines and spirits, and a smoother protection to other designations of foodstuffs, which is not sufficient to assure the consumer about the true geographical origin of the food he is buying or eating; not sufficient to level out the differences between different countries: some have specific regulations for this matter; others apply to geographical indications rules conceived for trademarks; some have official lists of designations, while others have only a case-law based system; finally, some of them have rules which impose a strict connection between the name and the place of origin, punishing who uses a geographical name without any real link to the region reminded by that name, while others don't mind about the consumer's deception which occurs every time the name is used for a product non connected to the recalled region.

The Trips agreement is important for Italy, as for other European countries, since it applies to intellectual property (and specifically to the geographical indications) the basic principles of the Gatt (especially the non-discrimination clause, and the duty of every country to co-operate with each other, to prevent the use of such names in such manner as to misrepresent the true origin of a product, to the detriment of such distinctive regional or geographical names, as they are protected by each WTO Member's legislation).

The kind of protection accorded by Trips agreement to foodstuffs, other than wines and spirits – a weaker protection than the one accorded to these beverages – is a great problem for Italy, as the main owner of registered P.D.O.s and P.G.I.s.

Despite of the complex rules governing wines and spirits trade, no foodstuff producer could ever make a claim against a distorted and false use of a geographical indication. No reaction would be allowed against every use that "misleads the public as to the geographical origin of the good", or "which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention (1967)"; while for the above mentioned beverages no burden of proof is set on the damaged country, when the true origin does not agree with the name.

I mean that – given the necessity of searching the most affected products by an economic premise – the country which registered the higher number of geographical indications is the most damaged country, in a system which sets out an incomplete protection.

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Well, the Trips Agreement wants the Member States of WTO to prevent every misleading use of those indications, but it does not extend that prohibition to cases “where the true origin of the goods is indicated” nor to cases in which the geographical indication “is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like”. That’s the reason why some “Parmesan” cheese or some strange “Parma Ham” are currently sold on the world markets.

While Italy would consider necessary to strengthen and extend the “light” protection now provided for foodstuffs by the Trips, recently – on 2nd October, 2003 – the Dispute Settlement Body of WTO, requested by the United States and Australia, agreed to establishe a panel (DS174 and DS290) to examine European Community rules on the protection of trademarks and geographical indications for agricultural products and foodstuffs.

In the claimer’s view, EC Regulation 2081/92 “does not provide the same treatment to other nationals and products originating outside the EC that it provides to the EC's own nationals and products, does not accord immediately and unconditionally to the nationals and products of each WTO Member any advantage, favour, privilege or immunity granted to the nationals and products of other WTO Members, diminishes the legal protection for trademarks (including to prevent the use of an identical or similar sign that is likely to confuse and adequate protection against invalidation), does not provide legal means for interested parties to prevent the misleading use of a geographical indication, does not define a geographical indication in a manner that is consistent with the definition provided in the TRIPS Agreement, is not sufficiently transparent, and does not provide adequate enforcement procedures” (DS 174).

Consequently, the EC rules are found inconsistent with a certain number of TRIPS Agreement Articles (some of them as incorporating by reference Article 2 of the Paris Convention for the Protection of Industrial Property - Paris Convention (1967)) and with Articles I and III:4 of the GATT 1994”.

It’s mainly a question of non-discrimination principle, according to US point of view. It’s the consequence of the different (and weak) level of protection for foodstuffs, if we deepen the analysis from the Italian, and the European perspective.

The Australian complaint in based on similar arguments, and adds the violation of the WTO Agreement on Technical Barriers to Trade (TBT Agreement).

The complainants should remember the “grandfather clause” contained in article 24.9 of the Trips Agreement, which states: “In implementing this Section [i.e. the Section 3, dedicated to “geographical indications”], a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement”: EC Regulation on PDOs and PGIs is elder than the rules of Marrakech Treaty, and I wouldn’t be so sure Europe is under juridical obligation to diminish its protection.

Anyway, the beginning of the final stage of such a controversy in front of the Panel (after the phase of preliminary consultations, prescribed by the Dispute Settelement Understanding, has failed) lets grow no illusion about the future hope of negotiations, aiming to deepen this protection.

As to the matter of organic production, one has to say that no separate effect had the WTO rules on the Italian discipline, essentially because this latter ... is the European discipline.

WTO rules on domestic support can deal with organic agricultural production, e.g. where they exempt from reduction obligation the payment given “as part of a clearly-defined government environmental or conservation programme etc.”. We’re inside the green box.

This could be a valid reason for justifying an increasing public expenditure by European governments in order to sustain this sector. And that’s what’s happening in Italy, in a certain measure.

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Our government has issued many notifications of competition for scientific and technologic research projects about organic agriculture, and that's an indirect way of funding this sector with public money.

Art. 3 of the Italian law 7 March 2003, n.38, has modified and renewed the structure and the aims of two funds, established between 1999 and 2000.

The first one is the "Organic and Quality Agriculture Research Fund", financed with contributions paid by phytopharmaceutical producers, aimed to fund national and regional annual research programs, about organic agriculture, and about food safety and healthiness. Italian law expressly provides that the Fund must comply with EC Commission Communication 2000/C 28/02 on "Community guidelines for state aid in the agriculture sector" (OJ C 28, of 1 February 2000), leaving to agricultural Minister the task of deciding the effective conditions, methods, beneficiaries and eligible types of projects.

The second one is the "Organic and quality agriculture development Fund", established:

- in order to sustain the development of organic agriculture, by means of incentives to farmers which convert their production methods to organic, and also through technical assistance and "codes of good agricultural practice";

- in order to inform the consumers about foodstuffs obtained with organic methods (and also about typical and traditional foodstuffs, particularly those named by a PDO or a PGI.

Well, it's quite evident how the compliance – expressly provided – with the "Community guidelines for state aid in the agriculture sector" means, first of all, that EC is worried about the potential effects of every form of State aid on trade inside the Community itself. But we can't forget that the EC Commission, in the introduction of its above cited Communication, sets the respect of the international commitments as one of the strongest concerns raised by the State aids; and that – more specifically – "State aids must have regard to the Community's international obligations, which in the case of agriculture are specified in particular in the WTO Agreement on Agriculture. In accordance with that agreement, such aids are subject to notification and to classification according to the status of the aid in terms of its potential to distort trade".

It seems to me we're in the core of the problem, in the middle of the Uruguay Round discipline of agricultural sustain: it's a question of "choosing the colour of the box", being sure that the measure can be qualified as a "green box measure". This appears one of the main worries of Italian law-makers, when they prescribe a strict accordance with EC rules on State aid to agricultural sector.

Moreover, the same Italian law delegated national government to bring the existing discipline of organic agricultural method (which is the implementation of EC rules) into line with the new powers of Italian regions, broadly increased after a constitutional reform entered into force at the end of 2001. Such a reform seems to leave to the Italian regions a full power to regulate agricultural sector, but reserves to the State the competence of making law every time it concerns the environment. So, who's got the power in this case? When a new rule on organic method is at stake, is it a problem of agriculture or an environmental question?

Finally, let me say that international obligations deriving from Marrakech Treaty, and specially from the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), could have a negative "fall-down" on organic production.

European Community is now under judgement by WTO Panel. The controversy bears from a series of complaints from United States, Canada and Argentina (DS291, DS292 and DS293: three complaints dealt in a single Panel), while The representatives of Australia, China, Chile, Colombia, El Salvador, Honduras, New Zealand, Norway, Peru, Thailand, Uruguay and Chinese Taipei reserved their third-party rights to participate in the Panel's proceedings. The Panel has to decide about the compliance (or not) with the SPS Agreement commitments:

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- a) of the EC rules on the authorization and marketing of GMOs, *per se*;
- b) of the European strict application of these rules (so that there have been no more approvals since 1998);
- c) of the several recourses had by many Member States to the "safety clause" of the GMOs directives, with a consequent ban of imports of GMOs already approved by the Community: complainant States argue that it is a "de facto moratorium" against a product that they consider similar to the traditional product (they prefer to say: the product "generally regarded as safe"), which would be contrary to the SPS Agreement, and contrary to the non-discrimination principle brought by art. III GATT.

Given the absence of international standards related to this matter, agreed by the Codex Alimentarius Commission or by other internationally recognized organizations, the EC will have the burden to demonstrate to the Panel the scientific basis of its restrictive rules. It's not a new story: it reminds us the "Hormones" case.

If this doesn't happen, we probably have to expect to be condemned by the Dispute Settlement Body of the WTO, and the sanctions applied could then urge Europe, in the future years (maybe in a long-term perspective), to be more permissive about GMOs. In that case – or, in other words, if GMOs should begin moving about Europe more than they do now – this could cause difficulty to the organic agriculture, because the greater is the diffusion of GMOs on the fields, the greater is the risk of cross-pollination and similar phenomena, well described by one of the reporters to this Congress (I mean Prof. Margaret Rosso Grossman, representing United States in the I Commission, who recently published an interesting article on Federal regulation of GM crops in the United States: see Environmental Law Review (5) 2003, pages 86-108.

But the larger will be the diffusion of GMO-deriving foodstuffs on the European market, as an effect of a ruling by WTO Dispute Settlement Body, the stronger may be the increase in demand of organic products by the more sensible part of the consumers.

We can't do other than closing this little report with a great question mark.