University of Chicago Law School

Chicago Unbound

Journal Articles

Faculty Scholarship

1967

The European Common Market in Agriculture

Kenneth W. Dam

Follow this and additional works at: https://chicagounbound.uchicago.edu/journal_articles

Part of the [Law Commons](#)

Recommended Citation

Kenneth W. Dam, "The European Common Market in Agriculture," 67 Columbia Law Review 209 (1967).

This Article is brought to you for free and open access by the Faculty Scholarship at Chicago Unbound. It has been accepted for inclusion in Journal Articles by an authorized administrator of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.

COLUMBIA LAW REVIEW

Vol. 67

FEBRUARY 1967

No. 2

THE EUROPEAN COMMON MARKET IN AGRICULTURE†

KENNETH W. DAM*

The European Common Market is to be completed by July 1, 1968. On that date, all industrial and almost all agricultural products are to flow freely—without customs duties or similar barriers—among the six member states of the European Economic Community (EEC). Most agricultural commodities will reach this “free circulation” stage during 1967. The major decisions have already been taken, and these deadlines will almost certainly be met, despite General de Gaulle’s hostility to “integration” and to the “technocrats” of Brussels.

Although attention in the United States has been focused primarily on the common market in industrial goods, the creation of such a market in agricultural products presents more formidable problems and will be the more extraordinary accomplishment. Integrating industry is largely a negative task of eliminating national barriers. But agriculture in the six member states, as elsewhere in the world, has been a highly regulated, much protected sector of the economy. Thus, integrating agriculture requires the positive steps of coordinating and then fusing six disparate regulatory systems. The consequence will be regulation of a major portion of the member states’ economy by an international agency (or, to follow the mode, by a “supranational institution”) which can bypass the legislatures and administrations of the member states at nearly every critical point. This achievement alone—which is without precedent in the history of international law and organization—makes the regulatory mechanism and the process of bringing it to fruition worthy of study. But quite aside from questions of international organization, the Common Agricultural Policy, as it is called in Community circles, raises some major questions of regulatory policy and technique. Finally, the agricultural common market must be understood since it lies at the heart of several current issues of international trade, including the fate of the Kennedy Round.

To keep the discussion within manageable limits, it has been limited

† The author wishes to express his appreciation for the assistance, in connection with the preparation of this article, of the Rockefeller Foundation and of the Center for International Studies of the University of Chicago under a grant from the Ford Foundation.

* Professor of Law, University of Chicago. B.S., University of Kansas, 1954; J.D., University of Chicago, 1957.

in the main to a single agricultural sector: cereals (or, in United States terminology, "grains"). Included under this rubric are wheat, corn and other grains, plus flour, starch and similar processed products. The selection of the cereals sector for study is justified on several grounds: most of the techniques used elsewhere in *l'Europe verte* are to be found in the cereals sector; it was one of the first agricultural sectors to be placed under the control of the Community and was therefore decisive in testing the political will of the member states and the technical know-how of the EEC Commission; and, because cereals were subjected to a measure of common regulation as early as 1962, some four years of experience are now available for examination.

In a broader perspective, the cereals sector is crucial in determining both the relationship of the Community to its major trading partners, particularly the United States, and the future structure of international commodity trade. Cereals alone account for nearly 30% of the United States' agricultural exports to the Community and nearly 10% of total United States exports to those six countries.¹ The United States has taken the position that success in the Kennedy Round is dependent upon EEC concessions in agriculture; thus, discussions within the Cereals Group of the General Agreement on Tariffs and Trade (GATT) may hold the key to this major round of international trade negotiations. Finally, it is precisely the cereals sector which the French, the world's leading exponents of managed international arrangements in temperate agricultural commodities, have chosen as an illustration of what they consider to be the injustice of the present international trading system and as the testing ground for their ideas. Following French leadership, the EEC is pushing hard within the Kennedy Round for a comprehensive international cereals arrangement.

I. THE STATE OF EUROPEAN AGRICULTURE

An understanding of the problems faced in creating a common cereals market in the EEC requires a certain knowledge of the condition of agriculture in the six member states. The main facts can be quickly sketched.

European farms are vastly different from those which exist in the other major cereals-exporting countries of the world: the United States, Canada, Australia and Argentina. The farms themselves are small; one survey shows that the average size ranges from about 15 acres in Belgium to about 38 acres in France.² Small-scale farming prevails even in cereals, where a high degree of mechanization is feasible. In Germany, for example, only 21% of sales of

1. Y. MALGRAIN, *L'INTÉGRATION AGRICOLE DE L'EUROPE DES SIX* 191 (Tableau 18) (1965) [hereinafter cited as MALGRAIN]; F. CLERC, *LE MARCHÉ COMMUN AGRICOLE* 106 (2d ed. 1965) [hereinafter cited as CLERC].

2. MALGRAIN 49. See also CLERC 17; N.V. UNILEVER, *EUROFIGURES* 24, chart VI-3 (Dec. 1965) [hereinafter cited as UNILEVER]; 1965 EEC BASIC STATISTICS OF THE COMMUNITY 52-53 (Table 28).

cereals is accounted for by farms larger than 125 acres, and almost half can be attributed to farms of less than 50 acres. In the United States, on the other hand, 21% of the field-crop sales is accounted for by farms of over 1,000 acres, and those over 50 acres account for 93% of such sales.³ Even more serious is the tendency, much more pronounced in Europe than in North America,⁴ toward farms made up of a number of small, often widely separated, plots. Considering only farms of more than 2.5 acres, the number of plots per EEC farm ranges from a low of 3.9 in the Netherlands to a high of 14.4 in Luxembourg; in Germany and Luxembourg the average plot size is only 1.8 acres.⁵ This pattern, caused by the division of family farms among children over many generations and the European farmer's reluctance to treat land as an asset to be bought and sold, has a drastic effect on mechanization.

It would be a mistake, however, to think of European agriculture as stagnant. The situation is changing rapidly. In Germany, for example, the number of farms decreased by 19% and the average size increased by the same figure between 1949 and 1962.⁶ The dynamism of European agriculture is also shown by a dramatic increase of investments in machinery. Between 1950 and 1962 the number of tractors increased by nearly seven times in Germany, well over six times in France and over five times in Italy.⁷

Despite these gains, North American agriculture remains more efficient than that of Europe, at least in terms of the cost per unit of output in cereals, as revealed in export prices. Manitoba No. 2 and U.S. Red Winter wheat were recently quoted c.i.f. North Sea ports at \$80.50 and \$71.50 per ton respectively, compared to the EEC common target price of \$106.25 per ton.⁸

3. MALGRAIN 49. See also CLERC 17; UNILEVER 24; 1965 EEC BASIC STATISTICS OF THE COMMUNITY 52-53 (Table 28).

4. "North America" is used as a term of convenience in this paper to refer to the major cereals exporters of that continent, Canada and the United States. Mexico is also an exporter, but on a much smaller scale, and the problems of agriculture in that country are different from those in the other countries under discussion.

5. J. BOURINET, *LE PROBLÈME AGRICOLE DANS L'INTÉGRATION EUROPÉENNE* 83 (1963). The statistics do not include France. In 1929, however, the average plot size for all farms (not just farms over 2.5 acres as in the text) was about one acre. *Id.*

6. ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT [hereinafter cited as OECD], *AGRICULTURE AND ECONOMIC GROWTH* 108 (Table 8) (1965). In the United States, of course, the change has been even more striking; for a somewhat shorter period, 1950-1959, the number of farms decreased by 31% and the average size of holdings increased by 41%. *Id.*

7. *Id.* at 108 (Table 7). See also *Parc de tracteurs*, EEC AGRICULTURAL STATISTICS, No. 5, 1966, at 43, 46. The United States tractor supply, nevertheless, continues to exceed that of the EEC by a substantial margin; in 1962 it was still twice as large. Contrary to popular belief, productivity per person is increasing more rapidly in agriculture than in industry in both Europe and the United States. Between 1950-1951 and 1960-1961 the gross (domestic) product per employed person in agriculture in the United States increased 50% and in other sectors only 17%. The Canadian situation was strikingly similar: 51% for agriculture against 17% for other sectors. In Europe the corresponding figures are: Germany 76%-54%; France 83%-40%; Netherlands 61%-39%. In Italy the figures are reversed, but the growth of agricultural productivity was nevertheless impressive: 47%-57%. *Id.* at 38 (Table 5). Average productivity remains nevertheless lower in agriculture than in non-agricultural pursuits, both in the United States and Europe, and hence the movement of the labor force from farm to city.

8. These prices were quoted by Alfred C. Toepfer, Hamburg, on August 24, 1966,

It is also true, however, that cereal yields per acre are at least twice as high in Europe as in North America. The European farmer tends to cultivate a given plot more intensively than his North American counterpart. As EEC Commissioner Sicco Mansholt, architect of the Common Agricultural Policy, has pointed out, it takes, on average, 23 agricultural workers in Europe to take care of the land that two can handle in the United States.⁹ A helpful way of viewing the difference is to consider the percentage of the labor force that is involved in agriculture. In all countries the trend is downward, but the process is much further advanced in the United States. In 1920 some 27% of the U.S. labor force could be found in agriculture; in 1962 the figure was only 8%. In 1920 agriculture accounted for 28% of French employment, but in 1962 it still made up 21%. Italy, with a substantially lower standard of living than France, reflects the same trend but with a further time lag; in 1920 56% of the labor force was on the farm and in 1962 28% was still there.¹⁰ This movement from farm to city is associated, of course, with the rise in agricultural productivity, and the differential between the two continents is a reflection, if not a cause, of a higher standard of living in the United States. The movement is inseparable from economic growth, even though not necessarily the engine of that growth. The OECD has estimated that if, between 1950 and 1960, the percentage of the labor force occupied in agriculture had remained constant, the 1960 gross national product would have been from 2.4% to 4.4% lower in the United States, from 3.2% to 5.0% lower in France and from 6.8% to 11.2% lower in Germany than was in fact the case.¹¹

Despite this progress, deficiencies still exist in European agricultural "structures" (to use the EEC term), with two important consequences. First, individual incomes are much lower in agriculture than elsewhere in the economy,¹² and the political pressure for direct governmental intervention in agricultural markets has consequently proved irresistible. Such intervention, however successful in the short term in raising farm incomes, often tends to arrest the structural changes which are essential to a long-run cure.¹³ Second, the cost of production for cereals, although differing greatly

on North American wheat for September delivery. Figures include about \$4 per ton freight. Furthermore, North American wheat is, as will appear later, of substantially higher quality than European wheat.

9. Address by Sicco L. Mansholt to the National Farm Institute, *Trans-Atlantic Farm Policy*, Feb. 11, 1965, at 2 (mimeo).

10. OECD, *AGRICULTURE AND ECONOMIC GROWTH* 17, 101 (Table 2) (1965).

11. *Id.* at 43 (Table 8). The higher percentage figure assumes that the additional hypothetical labor force would not have increased agricultural production above actual 1960 production. The lower figure assumes proportionately increased production resulting from the increased agricultural labor supply.

12. In Germany, for example, agricultural incomes have averaged around 70% of non-agricultural wages for some years. *Id.* at 50 (Table 12).

13. Merely to prevent a widening of the existing differential between product per worker in agriculture and product per worker in the economy as a whole would require an annual reduction of the agricultural labor force of 2.7% in France, 3.5% in Italy and 4.2% in Germany. To reduce the disparity by 50% over a 10-year period would require

among EEC member states, is much higher in all of them than in North America. Support prices for wheat (other than durum) in the member states—before they were seriously affected by the EEC regulations—ranged from lows of \$2.29 per bushel in the Netherlands and \$2.38 in France to a high of \$3.01 in Germany.¹⁴ The U.S. support price has remained at or below \$2.00 per bushel in recent years.

Another economic factor of importance in cereals is that the EEC has been, on balance, a net importer of all cereals—although much more so for some cereals than for others—while the United States, Canada, Argentina and Australia have been major exporters.¹⁵ A circumstance of transcendent importance, which is obscured by thinking of the EEC as a bloc, is that France, a net exporter of all major cereals, has the most efficient production for cereals in general and hence has, on average, the lowest prices in the EEC.¹⁶ In part, this relative plethora stems from somewhat less extreme structural problems than are to be found in the other EEC member states. The average farm size is about 60% greater, and the amount of land per agricultural worker about 100% greater, in France than in Germany.¹⁷ But one must also add that France, with by far the largest land mass, has almost one-half of the active agricultural land of the EEC.¹⁸

Given these basic facts, it is no surprise that France has displayed the greatest interest among the member states in bringing the agricultural common market to fruition. France pictures itself as the breadbasket of the Community. Whatever the Gaullian mistrust of European integration, it has always been in France's interest to hasten the construction of the agricultural common market, in cereals at least, in order to be able to sell more of her surpluses in the other five countries, particularly in the large and relatively wealthy German urban centers. General de Gaulle once put the point suc-

an annual reduction of the agricultural labor force of 7.5% in France, 6.7% in Italy and 8.9% in Germany. The actual annual reduction in recent years has been only 3.6% in France, 3.2% in Italy and 4.2% in Germany. The same sluggishness exists in the United States. There a 1.2% annual reduction would be required to maintain the differential and a 5.4% annual reduction to accomplish the 50% trimming of the differential, but the recent change has been only 2.8% per annum. *Id.* at 61 (Table 18), 109 (Table 9).

14. See L. SCHERTZ, BASIC PROVISIONS OF EUROPEAN ECONOMIC COMMUNITY GRAIN REGULATIONS 4 (U.S. Foreign Agricultural Relations Office, FAS-M-147, 1963) (Table 4). The figures in the text are for "intervention prices in the largest producing areas of EEC member countries, 1962-63."

15. Occasionally (*i.e.*, 1963/64 for barley and 1962/63 for wheat) the EEC countries have shown a collective surplus, but when a few consecutive years are averaged together the production/consumption ratio falls below 100%. EEC NEWSLETTER ON THE COMMON AGRICULTURAL POLICY, No. 37, June 1965, at 8 (Table 3) [hereinafter cited as EEC NEWSLETTER]; see *Bilans d'approvisionnement des céréales*, EEC AGRICULTURAL STATISTICS, No. 1, 1966, at 7. Corn is in particularly short supply. The EEC imports almost one-half of its needs.

16. In 1963-1964 France's self-sufficiency ratios (production/consumption) were: wheat 110; rye 108; barley 160; oats 103; and corn 123. EEC NEWSLETTER, No. 37, June 1965, at 9 (Table 3).

17. MALGRAIN 48-49.

18. The precise percentages are France 46.5%, Italy 28.4%, Germany 19.4% and the Benelux countries 5.7%. *Id.* at 47-48.

cinctly, in the form of a rhetorical question: "What would the EEC mean if Europe did not ensure its own food requirements with its own products?"¹⁹ The threats to France's ambition have been twofold: first, the other five countries might choose to feed their urban millions at low world-market prices rather than at the higher French prices;²⁰ and second, the other Five might place too high a price, particularly in terms of political integration, on a French-oriented Common Agricultural Policy.

II. THE TECHNICAL MACHINERY

The foregoing background, sketchy as it must be,²¹ is sufficient for a study of the technical machinery used to break down the barriers among the highly protected agricultural economies of the member states while keeping out the flood of lower-priced cereals available on the world market. Unfortunately, the EEC agricultural regulations are extraordinarily complicated. To facilitate comprehension of the intricacies of the system, the general outlines of the Common Agricultural Policy will be presented first. This analysis will introduce the later discussion of technical aspects. As shall be seen, it is the latter aspects which are essential to an understanding and appraisal of the practical operation of the machinery. To the extent that the EEC system is thought of as a model either for further regional integration schemes or, as is frequently suggested in Europe, for a world-wide arrangement in certain agricultural products, a close examination of the technical aspects is essential.

A. *The General Outlines*

Among the six national support programs in existence before the move toward integration, an observer could have identified almost every protective device known to the cereals trade: tariffs, quantitative restrictions, internal taxes, import monopolies, mixing regulations (requiring millers to use a

19. Press conference of July 29, 1963, quoted in J. RICHTER, AGRICULTURAL PROTECTION AND TRADE 21 & n. (1964). France has already realized in part these ambitions. In the words of the Directorate General for Agriculture of the EEC Commission, "The expansion of French exports is nothing short of spectacular. . . ." EEC NEWSLETTER, No. 41, Sept. 1965, at 4-5. On cereals alone, France has from 1958 to 1965 increased cereals exports to its EEC partners by 558% and exports outside the EEC by 244% (thanks partly to EEC-reimbursed export subsidies). The other Five have also profited but not so handsomely: the respective figures are 234% and 141%. *Id.* These figures give a somewhat misleading impression of the influence of the Common Market itself since some of the progress was made before Regulation 19 went into effect in 1962.

20. From a consumer point of view low-cost cereals are important. In Italy bread still provides 50-60% of calorie needs and in the other five countries the figure ranges from 28 to 50%. Even the German (who tends to substitute potatoes) eats on the average over 150 lbs. of bread per year. M. Soenen & P. Pelshenke, *Problèmes relatifs à la qualité du blé, de la farine et du pain dans les pays de la C.E.E.*, EEC ETUDES, Série Ag. No. 7, 1962, at 5 (Tableau 1).

21. For more thorough treatments of the underlying problems of agriculture in Western Europe, see M. TRACY, AGRICULTURE IN WESTERN EUROPE: CRISIS AND ADAPTATION SINCE 1880 (1964) (and references cited therein), and the publications of the OECD on agriculture.

specified minimum proportion of local wheat) and so forth.²² The EEC decided to replace these with a single protective device which would gradually disappear from intra-Community trade while providing permanent protection for the EEC as a whole against imports from third countries.

1. *The Price Support System.* It is important to note that the fundamental decision to aid agricultural incomes by supporting cereals prices rather than granting direct subsidies was not a break with the past.²³ It was the technique used to support prices which introduced the element of novelty. In a price support system, whatever the technique used, the consumer pays a large portion of the income supplement through higher food prices. Such a system is to be contrasted with a "deficiency payment" system in which food prices are allowed to find their level in competition with imports from the world market and the "deficiency" in agricultural incomes is made up by direct cash payments to farmers. Under this latter system the burden of the aid falls entirely on the taxpayer. Moreover, unlike the price support system, it is possible to know with some precision what this form of aid costs.²⁴

Whether it is a good thing to know how much a subsidy costs depends on one's perspective. European farmers, just as any subsidy recipients, prefer to keep the subsidy free from budgetary control and review. The EEC position was simply that legislatures would never appropriate sufficiently large sums for agriculture to meet what was taken to be the income needs of farmers; therefore the income aid had to be taken from the pockets of unsuspecting, or at least helpless, consumers. Taxation hidden in food prices is, of course, considerably more regressive than income taxation. What is perhaps more serious is that the price support system, by raising food prices, lowers consumption—an unfortunate consequence for consumers and producers alike. However, the consumption-reducing effect may not be so important for cereals, the demand for which is relatively inelastic, as for some other kinds of agricultural products.²⁵

22. For descriptions of the pre-EEC national systems, see the reports of GATT country consultations collected in GATT, *Trade in Agricultural Products: Reports of Committee II on Country Consultations* (June 1962) (mimeo), and the annual Food and Agricultural Organization reviews of National Grain Policies.

23. As an exception to this general decision, direct subsidies will be used to aid Italian producers of durum wheat. They will also be used for a few other products, notably olive oil.

24. Since world market prices fluctuate, one can calculate the deficiency with precision, of course, only at the end of the year.

25. Most economists would probably join the GATT Panel of Experts (Habeler, Meade, Tinbergen and Campos) in preferring the deficiency payments system. See GATT, *TRENDS IN INTERNATIONAL TRADE* 97-100 (1958). Yet, despite its attractive economic qualities, the deficiency payment system is in full effect only in the United Kingdom. No doubt that nation's economic structure (it produces only about one-half of the agricultural products it consumes and has only 5% of its active population in agriculture) alleviates the budgetary burden somewhat.

Even in the United Kingdom, this system has been qualified by some recent measures taken to limit unexpected increases in imports of protected products which created unforeseen demands on the Exchequer. See the discussion of the U.K. Cereals Arrangement at text accompanying notes 152-55 *infra*. For a general discussion of the motives

Once a price support rather than a deficiency payments system is chosen, the question of technique becomes crucial. In spite of the multitude of protective devices available, there are essentially only two ways to support domestic agricultural prices. One is to keep out imports; the other is to remove from the market that portion of the supply which cannot be sold at the price sought. The two methods can be used singly or in combination, and the extent to which one or the other is used depends essentially on the country's degree of self-sufficiency. In the case of a deficit country—that is, a country not fully self-sufficient—it will normally suffice to restrict imports, thereby limiting supply, to bring the price up to the desired level.

In the case of a surplus country, the operation can be viewed, for the sake of simplicity, as the purchase by the government of the surplus; what is then done with the surplus is a secondary question.²⁶ A surplus country which wants to maintain its domestic price above the world market level must supplement its purchasing operations with import controls, but these restrictions have a somewhat different function from the import controls of a deficit country. For the surplus country, the import restrictions spare the government the cost of supporting the entire world market through its buying operations above the world market price. The controls are used to exclude supplies which would otherwise flow into the country once the government commenced its purchasing operations.²⁷

A deficit country could also use government purchasing to support prices, but most governments prefer not to do so, since purchases require budgetary expenditures while import restrictions throw the burden of support on the consumer.²⁸ Since most forms of import controls are clumsy and cannot be depended upon to let in no more and no less than the proper quantity of

underlying these changes, see G. H. Peters, *The "New" Agricultural Policy*, WESTMINSTER BANK REV., Nov. 1964, at 35. At the same time, the United States has been moving toward a deficiency payments system in the sense that direct payments have been made for wheat for several years; however, imports at the world market price are not permitted. See D. Hathaway, *Modifications récentes agricoles des Etats-Unis*, L'AGRICULTURE DANS LE MONDE, Jan. 1966, at 6.

An insight into the factors that lead to the rejection of the deficiency payments system may be gleaned from an EEC technical study, *Quelques considérations au sujet de "deficiency payments" en agriculture et le coût de son application dans la C.E.E.*, EEC BILANS ET ETUDES, Série A, No. 4 (1960). Aside from the budgetary question, this study emphasizes certain administrative difficulties encountered in operating a deficiency payments system where farms are small—difficulties which are compounded for secondary cereals (barley, corn, etc.) used by the producer himself to feed livestock.

26. The government may export, store or destroy the surplus or, if the domestic price is maintained above the world price, facilitate export through subsidies. Thus in the U.S. program, the Government sometimes pays the exporter for each sale abroad, but that does not make the operation essentially different from one in which the Government buys domestically at one price and sells at a lower price abroad.

27. The import restrictions also exclude re-entry of local supplies sold abroad by means of subsidies at prices below the support price.

28. It should be noted that even in a price support program based on government purchases, the consumer bears part of the cost of the aid to farmers in the form of higher prices. Where import controls alone are used, the consumer bears the entire cost (except, of course, for administrative expenses).

foreign supplies at precisely the time needed, however, even deficit countries need some form of government purchasing as a secondary measure.

2. *The Variable Levy.* The EEC, in its attempt to support prices in a deficit area, uncovered a technique of controlling imports, called the variable levy (*prélèvement*),²⁹ which avoids certain limitations of traditional forms of protection.³⁰ It would perhaps be too much to say that the variable levy is to protection what the wheel was to transportation, but the ease with which it arrives at precisely the level of protection desired is striking.³¹ The essential idea is to set in advance the desired internal price which, in the EEC, is called the target price (*prix indicatif*). The import levy is then varied as often and as much as necessary to make up the difference between the lowest price on the world market and the target price.³² Any change in the world price is thus reflected immediately in the amount of the levy. So long as the local market price is below the target price, the levy excludes all imports because purchasers will not find it advantageous to buy imported products (excluding quality and other special factors). The moment the local market price rises above the target price, the levy becomes insufficient to keep out imports. Imports then flow in until domestic demand is no longer sufficient to keep the local market price above the target price, at which time imports once again cease. The variable levy has some dramatic economic effects for a deficit area. It places the entire burden of adjustment to variations in local supply and demand on third-country suppliers. No matter what quantity is produced (short of a surplus) or demanded locally, domestic suppliers receive the promised prices. Furthermore, third-country suppliers have no incentive to

29. Where technical terms which have a special meaning in the EEC regulations are used, the question of translation into English presents certain difficulties. We have used in each case the English-language term adopted by the Commission in its unofficial translations (only French, German, Italian and Dutch are official languages), even though some of the terms used have little inherent meaning in English, and we have placed in parentheses thereafter the French terms in order to indicate that a translated term is involved and in order to provide the reader with the term which, French having become the *lingua franca* in the EEC Commission, is the most current in technical discussions. Where quotations are involved, the translation is by the author unless otherwise stated.

30. The tariff is by nature inflexible, particularly where set, as is the practice, by the legislature rather than the national administration. Quantitative restrictions are much more flexible, but they not only are complicated to administer but also require great economic sophistication on the part of the national administration if such restrictions alone are to be used to support prices. Since most crops are harvested only once a year and yields cannot always be estimated precisely in advance, quantitative restrictions must be frequently adjusted to provide the precise quantities needed to keep prices stabilized throughout the year. All of this helps to explain why quantitative restrictions are usually supplemented by some other form of protection.

31. The variable levy is not an invention of the EEC. As Professor Gale Johnson reminds us, it was first introduced in the English Corn Laws in 1670. See D. G. Johnson, *Agriculture and Foreign Economic Policy*, 46 J. FARM ECONOMICS 915 (1964).

32. Well-informed readers will note that at this point and at a number of further points in this section I have oversimplified somewhat (here, by ignoring the intermediary institution of the threshold price). I have done this in order to permit a quicker grasp of the outlines of the system. The technical details will be added to this overview in a later section. Readers who object to this spoon-feeding procedure are invited to address themselves directly to the EEC regulations.

reduce prices so long as the domestic market price is below the target price; any price reduction would always be absorbed by the levy. Under the variable levy, in contrast to the tariff, third-country suppliers thus become only residual suppliers; the levy tends to isolate domestic markets in compartments of unprecedented impermeability. The variable levy is also attractive to deficit areas because it discourages export subsidies by governments of surplus countries. It is pointless for exporting countries to engage in competitive subsidization because as long as the importing country's domestic price is below the target price, the variable levy soaks up the effect of the subsidy.

Even the variable levy cannot, however, always support prices in the Community at the desired level. The reasons are manifold and sometimes hidden in the intricacies of grain marketing. Without an exhaustive treatment of the topic, it is possible to call attention to three principal factors. First, although the Community as a whole is a deficit area, certain producing areas—most notably, France—are in surplus regularly. It may therefore be necessary, where the structure of target prices and transport costs does not induce transport to and sale in the deficit areas of the Community, to remove these surpluses from the market by purchasing operations. Second, because crops are harvested once a year but grain is consumed throughout the year, the Community as a whole is in one sense in surplus during the harvesting period; depending upon storage costs and interest rates, it may be necessary to use purchasing operations to support prices during that period. Third, since imported wheat is of higher quality than domestic EEC wheat, and the latter is not thought to be of adequate quality for certain uses, there may be a net surplus of certain lower qualities of domestic wheat. For these and other reasons the variable levy scheme is supplemented by an intervention price (*prix d'intervention*), some five to ten percent below the target price, at which designated purchasing authorities move in to support the domestic wheat market.³³ These purchasing operations are coupled with a system of export subsidies to encourage exportation of surpluses to third-country markets.

3. *Transition to a Single Price System.* The foregoing is a quick sketch of the system that will go into effect on July 1, 1967. The problems involved in the transition to this single internal market—a process which is presently taking place—are formidable. The six national markets were separated by a multitude of differing and sometimes inconsistent protective devices. Since, as has been seen, prices varied widely among member states, these internal barriers could not simply be eliminated one fair morning without creating

33. Under the transitional system, described in the following few pages, France has purchased grain not only at the intervention price but also at prices somewhat above the intervention price. It is not clear whether this so-called intervention "B" will be continued after July 1, 1967.

exceptional hardship in the high-price countries. Moreover, the national interest of France as a net exporter and relatively efficient producer of cereals conflicted sharply with the interests of the other states, particularly Germany, a major importer and the highest-priced producer of the Six. The Treaty of Rome—the charter for the EEC—gave little indication of the techniques to be used in creating a single market; on the contrary, the treaty articles on agriculture constituted little more than an agreement to agree. The details, and to some extent even the general outlines, of the Common Agricultural Policy were left to be worked out by the Commission and the Council,³⁴ aided and guided by a conference of member states which was held at Stresa in July 1958.³⁵ It was not until January 14, 1962, that agreement was reached on the content of the transitional Common Agricultural Policy in cereals, only one of a number of agricultural sectors. That agreement is enshrined in regulation 19, published in April 1962, which, together with supplementing regulations, will govern the cereals sector until the free circulation stage is reached on July 1, 1967. On that date the Community will have to put into effect a number of amendments to regulation 19 in order to adapt it to the require-

34. No summary can do justice to the originality and complexity of the institutional structure of the Community. But it may help those unfamiliar with this structure to observe that the Council is the body in which the bulk of the political power of the Community resides. It is composed of representatives of each of the member states. Government officials, normally cabinet ministers, represent each member state; which minister attends a particular meeting depends normally upon the agenda. When technical agricultural questions are to be decided, the six Ministers of Agriculture meet; but since agricultural policy merges into financial and foreign policy, the Ministers of Finance and of Foreign Affairs have represented their respective member states in determining the agricultural policy of the EEC.

The Commission is an independent body of nine members, appointed by the Governments of the Member States acting in common agreement. The Commission supposedly represents the Community viewpoint while the Council is the official arena in which the member states confront one another. The major institutional restraint on Council action is the Commission's right of initiative; in most situations the Council can act only upon the proposal of the Community.

The Assembly is composed of 142 representatives who are members of and chosen by the member state legislatures. It has little power, and an attempt in 1965 to give it real power in the realm of agriculture produced a major crisis. See pp. 251-56 *infra*. Other organs of the Community are the Court of Justice and the Economic and Social Committee.

For more detailed information on the institutional structure of the Community, see TREATY OF ROME arts. 137-188; E. Stein, *The New Institutions*, in AMERICAN ENTERPRISE IN THE EUROPEAN COMMON MARKET: A LEGAL PROFILE 33 (E. Stein & T. Nicholson ed. 1960).

35. The Treaty provisions on agriculture are primarily of interest from a constitutional perspective insofar as they limit the potential content of the Common Agricultural Policy and prescribe the way in which the organs of the Community are to go about constructing that Policy. See *Traité instituant la Communauté économique européenne*, March 25, 1957, arts. 38-47, 294 U.N.T.S. 45-51 (1958) [hereinafter cited as TREATY OF ROME]. The Common Agricultural Policy itself is to be found in the regulations, directives and decisions published in the Official Journal (*Journal Officiel*) of the Community. We shall be concerned in this article almost exclusively with these latter sources. On the process of drafting the regulations, and on the Common Agricultural Policy generally, see S. Riesenfeld, *Common Market for Agricultural Products and Common Agricultural Policy in the European Economic Community*, 1965 U. ILL. L.F. 658.

ments of a fully integrated market. These amendments have not yet been revealed and indeed are not yet fully agreed upon, but the general outlines have been specified by the Council or are implicit in the present form of regulation 19.³⁶

The key to the transitional system has been the variable levy applied on a national scale. Pending agreement on a common target price, each member state has continued to support its cereals prices within certain limits set by the Community. These limits were used at first merely to arrest the growing dispersion of national prices and later were set in such a manner as gradually to align the national target prices on the common Community target price. For the multitude of protective devices previously in effect, each member state has substituted a single device, the variable levy. This levy bridges the difference—in the case of intra-Community transactions—between the national target price of the importing state and the export price of the supplying state. In the case of imports from third countries, the levy closes the gap between the national target price and the world market price, just as it will close the gap after July 1, 1967, between the Community target price and the world market price. Since the target price is the same for both extra- and intra-Community imports and since the policy is to favor Community producers over third-country producers, the variable levy has been made slightly higher on external than on Community imports into a given member state. The technique which has been adopted to achieve this preference is imposition of a standard amount (*montant forfaitaire*), currently equal to \$1.10 per ton, on imports from outside the Community but not on intra-Community imports.³⁷

Under the transitional system, the member states are permitted to continue government purchases to support local prices. Indeed, each member state is required to purchase all local production offered at the local intervention price. Furthermore, each member state is required to set its intervention price not less than 5% and not more than 10% lower than the local target price; this assures that local market prices will not fall too far below the local target price. This requirement became particularly important for a low-price

36. See notably the Council resolutions in EEC Press Release No. 1701e (AG 512), Dec. 15, 1964.

37. Reg. 19, arts. 9, 11, [1962] E.E.C. J.O. 933; Reg. 48, [1962] E.E.C. J.O. 1570. References to tons within this article are to metric tons, the unit used in the Community regulations. As of July 1, 1966, the standard amount was increased from 1.0 to 1.1 units of account, Reg. 50/66, [1966] E.E.C. J.O. 1282. The unit of account, used as a common unit for Community regulatory purposes, is defined to have a certain gold content which is the same as the U.S. dollar. Reg. 67, [1962] E.E.C. J.O. 1860. For this reason units of account are simply expressed as dollars in this article. It should be noted that the effect of the common unit of account is to inhibit the freedom of the member states to devalue their currency, except in concert with the rest of the Community, since an individual devaluation would have the effect within the devaluing state of automatically raising cereals prices expressed in terms of local currency to the extent of the devaluation.

surplus country after the commencement of the process of aligning national target prices on the Community target price.³⁸

Member states are also permitted, but not required, to continue their existing policies of subsidizing cereals exports to either member or non-member countries. But to prevent a subsidization race among the member states, the regulations require that the national subsidy not exceed (with certain exceptions) the variable levy that would be assessed on imports from third countries.³⁹ To offset the effect of subsidies on intra-Community imports, the importing member state is permitted to impose a compensatory levy equal to its external levy less the standard amount. Thus, intra-Community subsidization is possible but in most cases involves in substance a fiscal transfer from exporting state to importing state.⁴⁰

In November of 1963, the Commission proposed that the Council take the final major step toward creation of a single market in cereals for the 1964-1965 marketing year: adoption of a single, Community-wide, target price. But the great range of target prices, especially the differential between French and German target prices, created serious economic and political impediments to the pursuit of this course. To reduce prices too much in Germany would have cut agricultural incomes so drastically as to endanger the existing government and unleash serious anti-EEC sentiments among farmers. To increase prices too greatly in France would have stimulated overproduction in that country—already a surplus producer—and, by increasing food prices, would have compromised the newly instituted French anti-inflationary “stabilization” program.⁴¹ Agreement on the level of the Community-wide target price was finally reached on December 15, 1964, but it was to take effect only as of July 1, 1967. The compromise price was near the middle of the then existing range of national target prices. To cushion the impact, the member states were permitted to commence the alignment in the three interim years. In addition, subsidies will be paid out of Community funds to the farmers of the three high-price states in declining annual installments from 1967 through 1969.⁴²

38. Reg. 19, art. 7, [1962] E.E.C. J.O. 937. See the discussion of the intervention price at p. 218 *supra*.

39. Reg. 19, art. 20(2), [1962] E.E.C. J.O. 941; Reg. 90, [1964] E.E.C. J.O. 1902. See Reg. 98/64, [1964] E.E.C. J.O. 2113 *re* refund procedures. Export refund amounts can be set in advance, Reg. 49/66, [1966] E.E.C. J.O. 1280.

40. Reg. 19, art. 19(2)(a), [1962] E.E.C. J.O. 941. Article 19(2)(b) provides an alternative method for intra-Community subsidization which appears to have rarely, if ever, been employed.

41. See discussion of price differentials in text, pp. 212-13 *supra*. The problem was the greatest in Germany where prices for every major cereal were to be cut from 11 to 15%. See *Measures to Establish a Common Price Level for Cereals; Explanatory Memorandum to the Commission's Proposals to the Council*, ¶ 11 (Nov. 4, 1963), EEC BULL., Dec. 1963, at 5 (Supp.). For a somewhat tendentious, but highly interesting, account of the internal political struggle in Germany, see E. FREISBERG, *DIE GRÜNE HÜRDE EUROPAS* (1965).

42. In addition, a series of last-minute special concessions were made to certain countries, especially Italy. EEC Press Release No. 1701e/64 (AG 512), Dec. 15, 1964; E. O'Toole, *Europe Applauds Accord on Grains*, N.Y. Times, Dec. 16, 1964, at 63, col. 1.

B. *Some Complicating Dimensions*

However useful a *tour d'horizon*, such as that undertaken above, may be for ease of exposition and comprehension, it masks many of the conceptual problems and gives a deceptive view of the practical operation of the system. Construction of the Common Agricultural Policy was not simply a matter of choosing among a few basic options. Four and one-half years were required before the agricultural provisions of the 1957 Treaty of Rome could be given shape and put into partial effect for cereals alone, by publication of regulation 19 in 1962.⁴³ Even then, vast lacunae still had to be filled by additional regulations and decisions and, more importantly, corrections and adjustments had to be made, both to keep irrepressible market forces from bypassing the elaborate administrative machinery and to adjust that machinery to international commercial custom and usage. The regulations for cereals alone now fill hundreds of the outsize, double-column pages of the *Journal Officiel*.

The preceding over-all examination of the basic choices was feasible only because two important dimensions—space and time—were ignored and because cereals were treated as a single product. These three factors shall now have to be taken into account in order to analyze the complications that arise in trying to harness complex economic forces.

The most important simplification was the elimination of the space dimension. Transport costs for agricultural commodities are of such importance that no regulatory system could fail to consider them. The time dimension is particularly important in constructing a regulatory system for a product that is produced only once each year but that is consumed throughout the year and that is usually sold for future delivery. Finally, a unitary treatment of cereals ignores not only the number and diversity of the cereals under regulation (wheat, rye, barley, oats, corn, sorghum and so forth) but also significant differences of quality within each category. Not only is the regulatory system somewhat different for each kind of cereal but the competition among the types is so vigorous for certain end uses that one cannot consider any single cereal in isolation. The system is doubly complicated because, if only to keep the basic regulations from being undercut by competition in transformed products, one must also regulate trade in flour, meals, bran, malt, starches and the like.⁴⁴ Since these three hitherto ignored aspects are themselves closely intertwined, it is hard to find a logical order for discussion. But since the

43. Only in July 1966 were common market organizations arrived at for a considerable group of products. Even today nearly 10% of agricultural production has not been subjected to a common organization. See EEC NEWSLETTER, No. 5, April 1966, at 7.

44. Nor can one ignore the interrelationship between competition in feed grains and competition in livestock, meats, dairy products and the like. In most temperate areas a farmer has a choice between bread and feed grains and a further choice between selling feed grains and feeding them to his own livestock. Because one must stop somewhere, we have arbitrarily limited this study to the products covered by regulation 19, which includes transformed products mentioned in the text, but does not include farm products based on a grain economy, such as pork, eggs and poultry.

space dimension creates the most difficulties, the close-range inspection may as well begin with transport problems.

1. *Space.* The mechanism used to reflect price changes due to transport costs,⁴⁵ the so-called regionalization of prices, is one of the most complicated aspects of the Common Agricultural Policy. Since the applicable regulations have not yet been completed, it is impossible to know exactly how the system finally decided upon will work. The projected system has grown more complicated during the years of debate, and there are pessimists who say that it will be impossible to arrive at any final solution before the July 1, 1967, deadline. The discussion of the main problems and principles of price regionalization contained in the following paragraphs is therefore based largely on the original 1963 Commission proposal,⁴⁶ the Council resolution of December 1964 which sets forth the mandate under which the Commission is to prepare the definitive regulations⁴⁷ and a commentary on that resolution published in 1965 by the EEC Directorate General for Agriculture.⁴⁸ Further changes in the system of regionalization of prices may be anticipated before the system goes into effect.

The center of the major surplus area for wheat in the Community is at Chartres, to the southwest of Paris. The center of the major deficit area is at Duisburg in the German Ruhr. Although the distance between Chartres and Duisburg is only a small fraction of the distance between the extreme corners of the Community, a 1963 estimate placed the cost of transport between the two points at about \$6.25 per ton, or nearly 6% of the basic target price of \$106.25.⁴⁹

Because of these transport costs, unitary prices (that is, target and intervention prices identical at all points in the Community) are not possible. Perhaps an illustration of the consequences of a unitary system will help demonstrate the reasons for staggering the price according to transportation

45. The integration of the six national transport systems is itself a major objective of the Treaty of Rome, and the Treaty places the Common Transport Policy on a par with the Common Agricultural Policy. (Agriculture occupies Title II and transport Title IV of the second Part.) When fully operative, the Common Transport Policy will not only affect competition in agricultural products but may also require certain changes in the regionalization of prices. But since the Community had to push ahead on all fronts at once, the agricultural regulations were designed to be applicable to the rate structure in effect at any given time.

46. The Commission's original proposal is to be found in *Measures for the Establishment of a Common Cereals Price Level, Explanatory Memorandum on the Commission's Proposals to the Council*, EEC BULL., Dec. 1963, at 5 (Supp.).

47. The Council Resolution of Dec. 15, 1964, is set forth in EEC Press Release No. 1701e/64 (AG 512), Dec. 15, 1964.

48. The commentary is contained in EEC NEWSLETTER, No. 27, Jan. 1965. See also E. Koenig, *The EEC Considers its Regional Grain-Price Pattern*, FOREIGN AGRICULTURE, April 19, 1965, at 6; *Regional Prices and the German Grain Market*, AGRA EUROPE (London ed.), July 6, 1966, at EN/1.

49. One of the problems in the establishment of regionalized prices is that it is more difficult to calculate actual transport costs than might be supposed. For example, much of the wheat flowing from France to Germany passes by barge, and barge rates are essentially unregulated and hence variable.

costs. With a target price set at \$106.25 for Duisburg, the intervention price at Duisburg is expected to be \$98.75. If the intervention price were unitary, it would also be \$98.75 at Chartres. The moment the Duisburg market price fell below \$105, suppliers at Chartres would find it more advantageous, given the \$6.25 transport cost, to sell to the Chartres intervention agency at the intervention price of \$98.75 than to ship to consumers at Duisburg. In view of the extremely narrow price range in which sales by Chartres suppliers in the Duisburg market would be possible, the intervention authorities at Chartres would probably find the bulk of the local surplus on their hands. This French wheat would then have to be stored indefinitely, sold abroad under subsidy or given away in a food aid program—all costly alternatives. At the same time the deficit area around Duisburg would probably be supplied largely by imports from outside the Community. The system would thus have an effect precisely contrary to the goal—at least from the French viewpoint—of the Common Agricultural Policy: displacement in the German market of extra-Community supplies by French surpluses. An alternative solution would be for the Community to subsidize the transport costs of shipments to Duisburg, a measure which not only would be expensive but would offset the economic advantages of location and thereby constitute a massive subsidy to the economically worst located producers.⁵⁰

The regionalization of prices, designed to overcome these problems, involves setting a “derived” intervention price for each intervention center. For example, in order to assure that the French surpluses flow to the German deficit centers, the intervention prices are to be lower in Chartres than in Duisburg by approximately the transport cost between the two cities. Unless the price in Duisburg falls to the Duisburg intervention price (which would indicate that there was no great deficit in Duisburg at the moment), holders of the Chartres surpluses will be better off shipping them to Duisburg than selling to intervention authorities in Chartres.

The system of derived prices is to be generalized throughout the Community. The details of the system have been changed considerably, however, since the original proposal was presented to the Council in 1963. Originally, the Commission proposed derivation of both target and intervention soft wheat prices throughout the Community exclusively on the basis of transport costs to Duisburg (except in Italy, where a special arrangement made possible higher derived prices in the southern area). This proposal has been greatly modified for a number of reasons. First, only derived intervention prices, and not derived target prices, will be calculated, since it is the former figure

50. The spread between unitary target prices and intervention prices could, of course, be widened by lowering the Community-wide intervention price below \$98.25 but the effect would be to reduce the implicit income guarantee to those farmers located closest to Duisburg, *i.e.*, the German farmers who, in the course of establishing the common cereals price, suffered the greatest price reductions.

which alone will determine the price at which cereals will be purchased by each of the local intervention agencies. The basic target price is important primarily in determining the Community threshold price and, thereby, the external levy and the export subsidy. But inside the Community itself, the target price has no role. It must simply be set sufficiently above the intervention price to permit an adequate trading range.

The abandonment of derived target prices was therefore merely a formal change. The other changes were of greater substantive significance. One of the reasons for these substantive changes was that the original plan did not provide sufficient incentive for private export of grain to third countries but would, rather, have tended to cause exported wheat to move through the intervention centers. The original proposal had addressed itself rather single-mindedly to the movement of grain from the largest surplus center in France to the largest deficit center in Germany and did not take into account other necessary or desired movements of grain.

A third reason for change was of quite a different order. Neither the low- nor the high-price countries had enthusiastically received the alignment of national prices on a common Community price. France, in the midst of an anti-inflationary stabilization plan, was concerned that the derived prices for local sales in the Chartres area were too high and might lead to higher bread prices in France. At the same time, the French were unhappy about the very low prices that the original system offered to farmers in the poorer regions of Southern France as a result of their being the most distant from Duisburg. The Germans had agreed to lower their prices substantially in arriving at a common price, and they had hoped to manipulate the regionalization of prices in order to offset some of that decrease. The Italians had also wished to offset some of the reduction in their soft wheat prices through adjustments in the regionalization system. Certain changes in the regionalization system can therefore be interpreted as disguised movements away from the principle of a single Community-wide price, particularly those changes which tend to result in increased prices for certain Community farmers.

The result of the adjustments to the original Commission plan is a crazy quilt of anomalies. Some of the complexity is merely the reflection of various market forces. But the attempt to achieve income guarantee goals through regionalization imposes additional complexities of another order. Since only the general principles and the main derived intervention prices have been published, without any explanation relating the principles to the prices, one must piece together the motives behind the changes in the derived prices in certain areas from the changes themselves. Set out in the discussion below are the latest published prices and the probable reasons for them.

As was the case under the original proposal, the new intervention price at Chartres was derived from the intervention price at Duisburg. The price

at Chartres, however, is to be \$92.11 rather than \$93.69. Whatever the reason for the decrease (increased transport costs in the interim, a desire to keep bread prices down in France or a desire to increase the incentive to export toward third countries), the Chartres price was then used to calculate the derived price at Rouen (\$95.27)—the principal export port for the Chartres area—by adding the transport costs from Chartres to Rouen. Other French Atlantic ports to the south of Rouen were then set roughly equal to the Rouen price, thereby increasing their prices over the original proposal (and perhaps stimulating their use as ports). The price for the inland centers of Tours and Poitiers was then derived from the French port prices by subtracting the cost of transportation from these inland points to the closest port. The effect was to lower the price at these surplus centers (from \$93.29 to \$91.86 at Tours, for example)—thereby contributing to the French stabilization program while inducing private export of surpluses. Châteauroux, located somewhat more than 100 miles south of Chartres, was accorded (for reasons which are none too clear) a price equal to Chartres—\$92.11. The Marseille price was then derived from the Châteauroux price, on the theory that Marseille was an export port to Eastern Europe and beyond, by adding the transport costs from Châteauroux to Marseille. But since the Marseille price calculated on that basis would have exceeded the Duisburg price of \$98.75 (which was considered, in attempting to preserve something of the logic of the original proposal, as the “ceiling price” for the Community), the Marseille price was cut back to \$98.75. Since the French government has been permitted to subsidize ocean freight charges on shipments from Marseille to points east, however, it is not clear that the \$98.75 ceiling will be effective in economic terms. In any event, the price at Toulouse was derived from Marseille by subtracting transport costs between the two, apparently on the theory that Toulouse producers export through Marseille (although it appears that Toulouse may in fact be a deficit area).⁵¹ The effect of calculating the Toulouse price from Marseille rather than from Duisburg was to increase it from \$90.56 to \$94.82, a result which will tend to stimulate the production of grain in Toulouse (and thereby tend to offset any deficit that may in fact exist there).

In Germany, the primary political objection to the Commission's original proposal had been that the derived intervention prices were too low in the producing areas of Bavaria (which were quite far from Duisburg). Not only were those areas to suffer from the across-the-board reduction of German prices as a consequence of the alignment of national prices on the common

51. According to a study by the French National Federation of Cereals Cooperatives, Toulouse is a deficit area. See P. EHCKIRCH, *ANALYSE ET CONSÉQUENCE DU PLAN MANS-HOLT 38* (Fédération Nationale des Coopératives de Céréales, Paris 1964). But one of the many problems faced in the regionalization of prices is that it is difficult to identify deficit and surplus areas with precision. On statistical techniques, see G. Thiede, *Regional untergliederte Agrarstatistiken in der Gemeinschaft*, EEC STATISTICAL INFORMATION, No. 2, 1965, at 167.

Community price, but they were no longer to benefit from a system under which the state-owned railroad had absorbed up to three-quarters of the cost of transport from producing areas to consuming areas in Germany. This political objection was met by calling Passau an export point for exports to Southeastern Europe. Under the principles adopted by the Council, that determination raised the Passau derived intervention price from the former level of \$92.25 to the Rouen level of \$95.27. In order to give further aid to Bavarian farmers, the Passau price was made into an area price for all of Southeastern Germany. Regensburg, a surplus center, was thereby given the area price of \$95.27, even though area pricing is inconsistent with the general principle that surplus hinterland prices should be lower than export point prices by the amount of transport costs to the export points. As a result, it appears not unlikely that Bavarian wheat will be sold to the local intervention centers for subsidized export to Southeastern Europe rather than shipped to German consuming centers as originally contemplated. If that should be the consequence, French exports to Germany would tend to replace *pro tanto* the Bavarian supplies in the large Rhineland and Ruhr cities.

North Atlantic ports were treated as import points. The basic calculation for Rotterdam (\$98.13) was made by deducting transport costs from Duisburg. The prices for Bremen and Hamburg (\$98.31 each) were then derived from the Rotterdam price by adding the amount of the additional ocean freight from North America, apparently in order to place all of the ports on an equal competitive basis for imports. Interestingly enough, however, the prices for the hinterland areas of Bremen and Hamburg were calculated by *subtracting* transport costs from these port prices, as if Bremen and Hamburg were export points. But even with the subtraction, the prices in Northern Germany at Hannover, Kassel and Kiel (probably net consuming areas) were still higher than under the original Commission proposal.

As for the prices in the inland areas of Southern Germany other than Bavaria, the calculations were made in an even more extraordinary fashion. The Mannheim price (\$98.75) was derived from the Rotterdam price by *adding* transport costs from Rotterdam to Mannheim, subject to the \$98.75 "ceiling." The Stuttgart and Aulendorf prices were then calculated by *subtracting* transport costs to Mannheim from what the Mannheim price would have been if the \$98.75 "ceiling" had not been imposed. Whatever the justification for that particular form of administrative legerdemain, the consequence is clear: higher prices for German farmers than under the Commission's original proposal. The Stuttgart derived price, for example, became \$98.30 instead of \$96.73.

Italian farmers, like Bavarian farmers, sought higher derived intervention prices than the Commission's original proposal would have granted them. The technique used to achieve that result was to treat the Italian ports

as import points and thereby (as in the case of Bremen and Hamburg) to derive their prices from the principal importing port, Rotterdam, by adding the additional ocean freight from North America (and any additional handling costs). But since the prices so calculated would have exceeded substantially the Duisburg price, the following Italian ports were accorded the \$98.75 ceiling: Napoli, Bari, Foggia, Reggio Calabria and Cagliari (Sardinia).⁵² In deriving the price at internal points such as Bologna (\$95.07), transport costs between the inland points and the ports were then subtracted (rather than added), which would be the correct procedure on the theory that the ports were in fact exporting ports. The picture was made even murkier by adding transport costs from the Adriatic port of Ancona to arrive at the price for certain other inland points, such as Rome (\$98.75). Setting aside the justifications for this complicated procedure, the results were dramatic. Derived intervention prices were substantially higher throughout Italy than under the original Commission proposal. At Rome, for example, the price under the original proposal had been only \$92.08. At Florence the price became \$96.52 instead of \$89.93 and at Grosseto \$97.44 instead of \$90.91.

In the course of this intricate exercise, derived intervention prices were set at 38 different centers. But there will be many more intervention centers. Thus far no one is sure how many; that is one of the great unsettled questions about regionalization. While the French are the principal enthusiasts for a large number of intervention centers, agricultural interests are generally in agreement on this issue. Where prices are maintained artificially high, as under the area prices in Bavaria, any transportation paid by the farmer tends to reduce the income guarantee; therefore the farmers seek as many intervention centers as possible. Even where prices are derived from a given point of destination, such as an export port in France, it is not a matter of indifference to a farmer whether he has an intervention center at his doorstep or has to ship the wheat some distance to an intervention center. Although the price will be higher at the more distant center than it would have been at his doorstep intervention center by the difference between the freight rates from the two intervention centers to the export port, the farmer's costs of shipping to the next intervention center will be higher than that difference. This anomaly arises from the way in which freight rates are calculated; since the per-mile rate declines as the distance increases, the cost to the shipper for a short haul is much greater proportionally than for a long haul. Therefore, the number of intervention centers finally agreed upon will have a significant, albeit marginal, influence on the total protectionist effect of the common cereals policy.

52. The prices for Ancona and Genoa, also ports, were calculated on other principles. The price for Ancona will be \$96.37 instead of \$90.59 under the Commission's original proposal. The corresponding figures for Genoa are \$96.15 and \$89.48. See EEC NEWSLETTER, No. 27, Jan. 1955; *Measures for the Establishment of a Common Cereals Price Level, Explanatory Memorandum on the Commission's Proposals to the Council*, EEC BULL., Dec. 1963, at 5 (Supp.).

The existence of the spatial dimension also has an important influence on imports into the Community. The port of Rotterdam, through which a large proportion of cereals imports from North America pass, has been designated for calculation purposes as the frontier passage point for the Community as a whole. A threshold price (*prix de seuil*) will be established which will equal the basic target price at Duisburg diminished by roughly the cost of moving the grain from the ship's railing in Rotterdam to the wholesaler in Duisburg (including transport, importer's margin and turnover tax adjustment). It is expected that the threshold price will be about \$103.95.⁵³ The variable levy will be equal to the difference between the lowest offers on the world market and the threshold price. The levy will always be the same, regardless of where the importation is to occur, because there will be only one threshold price. Of all the major European ports, the cost of transportation from Rotterdam to Duisburg is the lowest. Since the levy is calculated to keep imported wheat out of the Duisburg deficit area unless the market price there rises above the target price, the consequence of the system is that imports are effectively discouraged at other ports unless the local market price is above \$103.95. Although a threshold price of \$103.95 would be only \$5.82 above the derived intervention price in Rotterdam, it would be \$8.68 above the price in Rouen. Market prices in the heartland of France would thus have to rise comparatively far above the local derived intervention price before imports could begin.

The common threshold price has a second function. It will be used to measure the amount of subsidies on exports to non-member countries.⁵⁴ The uniformity of the threshold price will make the subsidy, measured as a percentage of the local intervention price, the highest for wheat from the French surplus areas.

The system of regionalized prices is being used in the transitional system, but in a somewhat different manner. The experience during this period will not become of merely historical interest when the common-price system goes into effect, however, because many of the problems that have occurred are of the kind that must be faced in any decentralized regulatory system.

Under the transitional system, each member state is free to set the national target price within certain limits set by the Community.⁵⁵ Each state is also permitted, under certain circumstances, to adopt derived target prices based on the national target price, which thereafter is applicable only in the national center of greatest deficit.⁵⁶ Each member state also fixes a threshold

53. EEC NEWSLETTER, No. 27, Jan. 1965, at 12.

54. See pp. 246, 248, 249-50 *infra*.

55. Reg. 19, arts. 5, 6, [1962] E.E.C. J.O. 935, 936.

56. Derived national target prices are permitted where, under "natural conditions of price formation on the market [that is, taking into account transport costs], the gap between the respective market prices in the marketing center of the area showing the largest deficit and in the marketing center having the largest surplus exceeds 5%" Reg. 19, art. 5, [1962] E.E.C. J.O. 935. [Translation by the Commission in EEC REGULA-

price each year, derived from the national target price much as the Community threshold price will be derived from the Community target price. Just as Rotterdam is to be the port of entry for the entire Community under the permanent system, each country has a port of entry under the transitional system for the calculation of the national threshold price. This price is applicable whatever the actual port of entry and, furthermore, whether the imports are from a member state or from outside the Community.⁵⁷ However, the "standard amount" (*montant forfaitaire*), considered briefly above, is used to give intra-Community imports a preference. In practice, the standard amount (currently \$1.10 per ton) is first added in arriving at the threshold price⁵⁸ and then subtracted for intra-Community imports. So long as the standard amount mechanism is in effect, it overprotects the target price *pro tanto* from third-country imports; the justification for this overprotection is the stimulation of intra-Community trade. The standard amount will, of course, disappear when the common target price is reached and there are no barriers to intra-Community trade.⁵⁹

Under either the transitional system or the common-price system, calculation of the external levy gives rise to certain problems in determining the world market price on which both the external variable levy and the export subsidy are based. Although not strictly problems of "space," they may profitably be discussed here. One set of problems involves the selection of one official price from a multitude of divergent actual prices; another concerns the manipulation by private parties of the prices from which this selection is made.

In order to be able to compare world market prices and threshold prices for the calculation of the external levy, the Commission looks at c.i.f. prices (that is to say, the price of the goods with insurance and freight to the port of entry already paid), regardless of the form of price quotation used in the actual transaction. Moreover, regardless of the port of actual entry into the Community, the levy is calculated on the c.i.f. price adjusted to the port of entry for which the threshold price has been calculated. Consequently, many

TIONS AND DECISIONS IN THE FIELD OF AGRICULTURE ADOPTED BY THE COUNCIL ON 14 JANUARY 1962 (1962).] These conditions obtain only in the larger states.

57. See Reg. 37/65, [1965] E.E.C. J.O. 725, 727, *as amended*, Reg. 105/66, [1966] E.E.C. J.O. 2569, for the national choices of port of entry for imports from outside the Community. Since the threshold price for both extra- and intra-Community imports was to be the same, the same ports of entry were used for the calculation of the threshold price for intra-Community imports, even though article 4 of regulation 19 did not require use of the same port of entry for intra-Community imports. [1962] E.E.C. J.O. 935.

58. Threshold price equals target price less transport costs from ship's railing to marketing center of largest deficit (as well as an importer's margin and, where appropriate, a turnover tax adjustment) plus standard amount.

59. The internal levy against member states has required the establishment during the transition period of yet another concept, the "franco frontier price" (*prix franco frontière*). This is the price at which suppliers in exporting states can deliver the goods at the border of the importing state, including the expense of clearance through customs. The internal levy is then the difference (less the standard amount) between the national threshold price and the franco frontier price.

if not most prices must be recalculated in order to make them comparable. Moreover, the Commission must take into account all offers on the world market and not just the prices of actual sales.

From all of these recalculated offers the Commission must choose one (which may be called the "official" c.i.f. price) as the basis for the levy. Since the purpose of the levy is to foreclose imports so long as the target price has not been reached, the levy must be based on the lowest offer on the world market.⁶⁰ In order to avoid too great a disparity between the official c.i.f. price and prices of actual transactions in a rapidly moving market, the official price is set once each day. Because offers in the world market on one day are used to determine the official c.i.f. price and hence the levy on the following day, and because the national customs authorities require time to calculate the levy and to advise their frontier customs officials, the calculation of the c.i.f. price must be made very quickly. At present, the member states advise the Commission of the market situation each working day between 1:00 and 3:00 p.m.; the calculation is made in the Directorate General for Agriculture between 3:00 and 4:00 p.m.; this office's proposal is sent to the Commission—with a for-information-only advice to the member states—at 4:30 p.m.; and the official decision of the Commission is communicated to the permanent representatives of the member states in Brussels between 6:00 and 7:00 p.m.⁶¹

In determining the most favorable offers on the world market, the Commission has a good deal of discretion. It may take account not only of information provided by the member states but also of quotations on important commodity exchanges and of information secured through its own independent channels. Using any such information, it may exclude from consideration offers concerning cereals not of "fair average quality," offers for small non-representative quantities and, most important of all, offers for which "the development of prices in general or information available permits the Commission to believe that the offering price in question is not representative of the real trend of the market."⁶² This latter rather open-ended "on information

60. For certain imports, such as those from state-trading countries, supply and demand forces on the world market are to some extent irrelevant. Where necessary the Commission is permitted to replace, for purposes of calculating the levy on such imports only, the official c.i.f. price by an arbitrary price. Reg. 19, art. 10(4), [1962] E.E.C. J.O. 938. This provision has little practical application.

61. See C. D. Ehlermann, *Les décisions de la commission portant fixation de prix dans le cadre de la politique agricole commune*, REVUE DU MARCHÉ COMMUN, June 1966, at 574. The franco frontier price for intra-Community transactions, used only under the transitional system, is calculated once a week. Since the fixing of the price is a "decision" and decisions must be reasoned decisions (that is, they must be "*motivées*"), it was argued in one case that went to the European Court of Justice that the Commission had to reveal as part of the decision the basis of its calculation—a virtually impossible requirement in view of the promptness of price-setting required to make the system work. Subordinating formalism to pragmatism, the Court of Justice rejected the attack on the Commission's procedures. *Schwarze v. Einfuhr-und Vorratsstelle für Getreide und Futtermittel*, 11 Recueil de la Jurisprudence de la Cour 1081 (Cour de Justice de la Communauté européenne 1965).

62. Reg. 37/65, art. 2, [1965] E.E.C. J.O. 725.

and belief" authority was added in 1965 to deal with certain kinds of manipulation. Traders within the EEC had reportedly arranged for especially low offers to be made outside the EEC so that—the official c.i.f. price thereby being lowered—the amount of subsidy refund on export sales of EEC-origin cereals would be increased. Whatever might be lost on the small quantity of low-price imports would be more than recouped by the increased subsidy on export sales.⁶³

Other possibilities for manipulation exist. Traders within the Community, threatened by import competition, might arrange for a low offer on the world market in order to increase levies on all imports. Or an importer of one kind of wheat might, by making a low offer, increase the levy on the imports of other kinds of wheat. To be sure, the levy on his own wheat would also be increased but—under certain circumstances—he might profit from the differential competitive effects of an across-the-board increase in the levy.⁶⁴ It is not clear that the Community has sufficient information, given the time pressures under which it must act, to sort out offers made for these and other manipulative purposes. Moreover, where the manipulation protects Community grain, there may be political pressure on the Commission not to ignore a particular offer. The point is not, however, that the Commission lacks the requisite authority or integrity, but rather that any regulatory machinery which is keyed to the economic activities of private individuals may find on occasion that these individuals tailor their activities to affect the operation of the regulatory machinery, and that the granting of discretion to the regulatory authorities to ignore certain activities is not a foolproof safeguard.

2. *Time.* Nearly as important as the suppression of the space dimension in the earlier simplified overview of the EEC system was the suppression of the time dimension. Cereal grains are consumed and hence purchased throughout the year. They are normally produced only once a year. This pattern results in price changes (usually increases) in the course of the year after the harvest.

63. On January 14, 1965, the French intervention authority delivered export certificates for 940,000 tons of wheat (some 4% of total EEC annual production). Thibault, who reports this incident, suggests that it was related to a manipulation of the kind outlined in the text. See M. Thibault, *Trois années d'expérience en matière de politique céréale communautaire* 71-74 (U. of Amiens & EEC, 1965) (mimeo). In any event, the governing regulation was altered two and one-half months later to give the Commission the added authority referred to in the text.

64. Assume that for a particular baking purpose no domestic EEC wheat is considered to be of adequate quality, that "A" imported wheat is considered adequate and that "B" imported wheat is considered more than adequate. If, with the levy, "A" wheat sells at the threshold price of \$100 and "B" wheat sells for \$110, bakers may prefer "B" wheat. But if the levy can be raised \$10 by the device of "planting" an offer, bakers may prefer "A" wheat at its new price of \$110 to "B" wheat at its new price of \$120 (psychologically influenced perhaps by the fact that Community wheat is still available near the threshold price of \$100). This example is not intended to describe an actual situation but rather to suggest that manipulation by importers for competitive purposes cannot be excluded.

It should also be observed that wheat trading firms are limited in number and international in scale, with interests both inside and outside the Community. It is therefore rather easy to "plant" offers and rather difficult to establish in the limited time available to the Commission the absence of a bona fide intention.

These price changes reflect, among other influences, the cost of storage and the rate of interest. Another important consequence is the brisk trade in contracts for future delivery ("futures contracts").

Target and intervention prices, and hence threshold prices, are increased during the course of the marketing year to reflect storage and interests costs, as well as the state of cereals stocks, in such a way as to induce suppliers to hold harvested stocks until needed instead of selling them to the intervention authorities. The price scale under the permanent system is expected to include at least five monthly increases each year and may include additional increases when necessary to assure that the intervention authorities will not be required to purchase cereals early in the year that will be needed later for intra-Community consumption. To accomplish this goal and to prevent speculation, the scale increases will be determined before the commencement of the marketing year at the same time that the target and intervention prices are set.⁶⁵

The prevalence of futures contracts creates problems in measuring both the variable levy on imports and the refund on exports. Both of these are based on the threshold price and the world market price. Although adjustments in the threshold price throughout the marketing year can be calculated with accuracy in advance, the world market is subject to constant and unpredictable variations.⁶⁶ Given the needs of millers and the trade as a whole, the regulatory system has to accord private parties who enter into futures contracts a firm knowledge of what the levy on imports or refund on exports will be when the delivery takes place. Therefore, a system of advance levy determination under term certificates has been instituted. The exporter or importer named in the certificate is permitted to carry out the licensed transactions at any time before the end of the third month following the date of issuance.⁶⁷ In order to avoid manipulation and to assure that the certificates afford accurate market information concerning future exports and imports, the certificate is delivered only against a deposit or a bank guarantee which is forfeited if the transaction is not carried out within the prescribed period.⁶⁸

Although term certificates permit the amount of the levy on third-country

65. Under the transitional system the member states are required to establish in advance of the marketing year a monthly scale of target prices, including not less than five nor more than ten monthly adjustments. Reg. 19, art. 5(3), [1962] E.E.C. J.O. 936.

66. Among the factors of an essentially non-economic character which influence world market prices are political decisions in the United States concerning the "farm program" and the climate of negotiations between exporting countries and Eastern European countries on long-term contracts for grain deliveries.

67. Reg. 19, art. 16(2), [1962] E.E.C. J.O. 940; Reg. 102/64, art. 3, [1964] E.E.C. J.O. 2126. Or, in the case of state-trading countries, the sixth month following issuance. Reg. 17/66, [1966] E.E.C. J.O. 537.

68. As a further concession to commercial usage, delivery of up to 5% more or less than the specified amount (or up to 7% less in the case of importations) is considered to be in conformity with the certificate. Reg. 102/64, art. 1, [1964] E.E.C. J.O. 2125. As in the case of commercial contracts, certain cases of *force majeure* are envisaged in Reg. 102/64, art. 8, [1964] E.E.C. J.O. 2127.

imports to be set on the day of issuance of the certificate, rather than the date of actual importation, increases in the threshold price as a consequence of the scaled monthly increases just described are taken into account in calculating the levy. The levy becomes the difference between the world market price (for future delivery) on the date of issuance and the threshold price on the date of import.

Although the certificate system makes contracts for future delivery feasible, it discourages their use to the extent that the purchaser seeks to take advantage of a lower price for future than for present delivery.⁶⁹ Where the c.i.f. market price for current delivery is higher than the c.i.f. market price for delivery in the proposed delivery month, a premium equal to the difference between the two prices must be paid. Given this deterrent to the use of futures contracts for certain purposes, it is striking that there is no offsetting provision for the situation in which the price for future delivery is higher than the current delivery price. In that situation the EEC does not attempt—as for example by a reduction in levy (a “negative premium”)—to adjust the difference in prices. Additional premiums may be imposed, up to a specified maximum, where necessary to avoid serious market difficulties in one or more member states or to offset external factors which create unexpected variations in world prices.⁷⁰ The premium mechanism thus gives the Commission a substantial degree of discretion in dealing with abnormal market situations.⁷¹

3. *Diversity of Products and Qualities.* Up to this point, the analysis of the Common Agricultural Policy, even including the complications added by taking into account space and time dimensions, remains substantially oversimplified. It treats cereals as a single, unitary product. Nothing could be further from reality. The foregoing sections described the system for wheat, but there are a number of other important grains: rye, barley, oats, corn and

69. It should be noted that this motive need not be speculative in the ordinary sense. The system adopted would appear to inhibit ordinary international hedging contracts in which large volume purchasers such as millers who deal on narrow margins attempt to hedge against market fluctuations by offsetting contracts for future delivery. If, for example, the c.i.f. price for future delivery is \$2 higher than the c.i.f. price for current delivery, the import levy will be calculated on the lower c.i.f. current delivery price but the export subsidy will be calculated on the higher c.i.f. future delivery price. The levy will thereby exceed the subsidy by \$2 and international hedging contracts will therefore be impracticable. See Reg. 90, art. 3, [1962] E.E.C. J.O. 1902, *as amended*, Reg. 152, [1962] E.E.C. J.O. 2911, for the method of advance determination of the export subsidy.

70. Reg. 54, [1962] E.E.C. J.O. 1581, *as amended*, Reg. 119/63, [1963] E.E.C. J.O. 2714. The Commission has indicated that only political crises such as Suez or Korea are contemplated as external factors under the latter authorization of additional premiums. See RUSCHE & GRUPE, KOMMENTAR ZU DEN VERORDNUNGEN, RICHTLINIEN UND ENTSCHEIDUNGEN, EMPFEHLUNGEN UND STELLUNGNAHMEN DES RATS UND DER KOMMISSION DER EUROPÄISCHEN WIRTSCHAFTSGEMEINSCHAFT, AGRARMARKTGESETZE UND VERORDNUNGEN (Teil I: Getreide) 65 (Ninth Supplemental Delivery, Feb. 2, 1964).

71. The system of advance levy determination described in the text applies during the transitional period to imports from third countries and will presumably be continued. A somewhat similar system was introduced later for intra-Community trade and will disappear after the common price has been reached. See, for the current provisions, Reg. 63/65, [1965] E.E.C. J.O. 1454.

so forth. Moreover, even the wheat system described does not take into account special provisions for durum wheat which, given production patterns in the EEC, must be considered a separate cereal. In addition, trade in transformed products has been left out of account. In view of the close supply-demand relationship between a particular kind of grain and the intermediary products resulting from the first round of processing, it would be difficult to imagine effective regulation of trade in grains without some regulation of trade in flour, and vice-versa. Finally, this account has not yet considered a factor that is particularly important in trade with third countries: the enormous range of qualities of each kind of cereal, particularly wheat.

The existence of this complexity in the product structure of cereals has three noteworthy consequences for the regulatory system. First, in setting target and intervention prices, the relationship among the various cereals is of capital importance. Second, while the regulatory scheme for other cereals, and to a certain extent for transformed products, is based on the scheme for wheat (other than durum), there are important departures from this basic pattern. Third, within each cereal category, it is necessary to adopt a mechanism for dealing with the wide variety of qualities. Each of these three consequences merits attention.

Target and intervention prices for one cereal cannot be set without taking account of prices for other cereals. Each major cereal is a substitute, to a greater or lesser extent, for every other cereal, both from the consumption and production perspectives.⁷² In some cases the substitutability is rather theoretical within any practical range of relative prices; in other cases, however, where end uses are alike or where identical soils and climates are involved, rather small relative changes in price may sharply affect consumption or production, particularly if these changes are regarded as permanent. On the consumption side, even the basic distinction between bread grains (wheat, rye) and feed grains (barley, corn, oats) is becoming less rigid as cattle farmers overcome the traditional prejudice, emphasized during the years of war and post-war shortage, against using bread grains to feed cattle.⁷³ The problem of maintaining a balance in the overall network of cereals prices is further complicated by the high substitutability of three possible courses of action at the producing level: grain production for sale (either to millers or to cattle raisers); grain production for the producer's own livestock; and the raising of livestock with purchased cereals.

72. To be sure, certain cereals are not grown in certain areas because of climatic or soil factors, but given another structure of prices, many of these supposed disabilities would disappear over time. It is difficult to raise bananas in Alaska but it can be done at a price.

73. The scientific view that wheat is the *best* feed grain is slowly gaining ground in agricultural circles. See *Analyse des facteurs qui influent sur l'orientation de l'offre régionale de céréales et de produits transformés dérivés des céréales*, EEC ETUDES, Série Ag. No. 17, 1965, at 13-15.

The importance of these substitutability factors is to be observed primarily at the price-setting, policy-making level rather than at the technical level.⁷⁴ Nevertheless, for reasons relating more to the particular economic factors governing trade in each grain than to competition among grains, a number of rather important departures from the basic wheat system described above have been made in the case of particular grains.

As previously indicated, durum wheat has a rather separate regulatory regime. Although durum is greatly superior, for most uses, to other kinds of European wheat (but not to many kinds of North American wheat), it is considered by the EEC authorities to require special protection and, indeed, affirmative assistance. Because of natural factors, such as climate and soil, durum wheat is grown within the Community only in Italy and in Southern France.⁷⁵ Since yields are relatively low, little durum will be produced so long as the price is not substantially higher than for other kinds of wheat. The regime for durum wheat during the transitional period has included both a threshold price at least 5% higher than for other wheat and an explicit authorization of aids by producing states in the case of market price declines. Only producing states set target and intervention prices. Deficiency payments will be used under the permanent system to supplement the basic support system.⁷⁶

Other grains have also received special treatment under the transitional system. Since corn and rye are not produced in substantial quantities in certain member states, only the producing states have been required to set target and intervention prices.⁷⁷ In the interest of simplification, no target or intervention prices at all have been set on the remaining grains, such as oats. Member states have merely been required to set a threshold price for these grains (and for corn and rye in non-producing states) which will permit the market prices for wheat (other than durum) to reach the target prices established.⁷⁸ Under the permanent common-price system, community-wide target and intervention prices will be set for corn and rye, and the existing system employing only threshold prices will no doubt be retained for the remaining grains.

74. The interrelationship of the common target prices set in December 1964 is frequently criticized as unduly favorable to soft wheat in relationship to feed grains. See, e.g., MALGRAIN 151.

75. In North America, on the contrary, one finds durum wheat primarily in the northern climes (Canada, North Dakota, etc.). On durum wheat, see *Economie de la production, transformation et consommation du blé dur dans la C.E.E.*, EEC ETUDES, Série Ag. No. 18, 1965.

76. See Reg. 19, art. 11(5), [1962] E.E.C. J.O. 938. For the definition of durum wheat, see Reg. 30, [1962] E.E.C. J.O. 1365. See also Decision of the Council 66/386, [1966] E.E.C. J.O. 2167, for a recent example of the special powers given to Italy in respect to durum wheat (here the right to impose supplemental levies on durum wheat and on other wheat that might compete with durum wheat). On the deficiency payments under the permanent system, see *Council Resolution Relating to the Fixing of the Common Price for Durum Wheat*, EEC Press Release No. 1701e/64 (AG 512) (Dec. 15, 1964).

77. See Reg. 19, arts. 4, 5, [1962] E.E.C. J.O. 935.

78. See Reg. 19, art. 8, [1962] E.E.C. J.O. 937.

Transformed products are divided into two categories: the so-called article 1(c) category, principally bread flours (hereafter "bread flours")⁷⁹ and the so-called article 1(d) category, covering the principal remaining intermediate products of cereals, such as starches, meals and malt (hereafter "processed products").⁸⁰ Both categories of transformed products have in common the basic fact that the raw grain constitutes only part of the value of the product and that an industry (flour milling, for example) adds substantial value to the product. The consequences are two-fold: first, the price of the grain is an element of the price of the transformed products; second, the industry concerned has a political claim to protection against imports above and beyond that accorded to agriculture. Nevertheless, there are substantial differences in the regulatory scheme for the two types of transformed products. While the regulation of bread flours is based on the regulation of wheat, a different system is used for processed products. Furthermore, only for bread flours are threshold prices set.⁸¹

The bread flours threshold prices have the function, in part, of assuring that imports of bread flours do not prevent the market price for wheat and rye from reaching the target price; cheap flour imports would lead bakers to turn from domestic flour. But the bread flours threshold prices also have the function of protecting the flour milling industry. The threshold prices are therefore calculated by adding three factors (taking wheat flour as an example): (1) the threshold price for wheat (less the standard amount under the transitional system) multiplied by 1.4 to reflect the fact that it takes 1.4 tons of wheat to yield one ton of flour; (2) a fixed sum to represent the normal milling margin; (3) another fixed sum to represent the protection to be accorded the milling industry. From this sum is subtracted a variable figure representing the value of the by-products of the milling process.⁸²

For processed products, in contrast to bread flours, a two-part levy has been introduced which is calculated directly, without reference to any threshold or target price. One part of the levy, which is of course different for each processed product, is fixed, and the other part is variable. The fixed portion represents the protection for the processing industry.⁸³ The variable portion is calculated (on imports from third countries) from the difference between the official c.i.f. price and the threshold price for the constituent grain; the

79. Art. 1(c) of Reg. 19, [1962] E.E.C. J.O. 935, lists the following products: wheat and spelt flour, meslin flour, rye flour, wheat groats and semolina.

80. The list of art. 1(d) products is many times as long as the list of art. 1(c) products and is set out in the Annex to Reg. 19, [1962] E.E.C. J.O. 944.

81. In neither category is there a target or intervention price.

82. Reg. 37, art. 2, [1962] E.E.C. J.O. 1553-54. It is the third item which has been reduced regularly, under art. 9(1) of Reg. 19, on intra-Community trade in order to achieve the single Community price. [1962] E.E.C. J.O. 937. For the provisions governing refunds on exports of bread flours, see Reg. 91, [1962] E.E.C. J.O. 1904, *as amended*, Reg. 19/63, [1963] E.E.C. J.O. 530; Reg. 131/63, [1963] E.E.C. J.O. 3005.

83. The fixed portion is, for intra-Community trade, a transitional measure and has been reduced each year.

variable portion is thus a function of the variable levy on the constituent grain.⁸⁴ The Commission also has the power to add a supplementary levy where world prices for the processed product no longer correspond to world prices in the constituent grain plus the cost of processing.⁸⁵

A problem of a different order arises from variations in quality within each cereal category. These variations assume great importance in international wheat trade, where quality differences are reflected in substantial differences in market price. The Community regulations list eleven principal types of wheat (other than durum) imported from the United States alone. In general, the wheat imported from the United States and Canada is superior to European wheat in nutritive value and in certain other qualities; thus, on the average, North American wheat commands a premium in the European market.⁸⁶

If the difference in quality between imported and domestic wheat were not taken into account in determining the levy, the levy would be inadequate to achieve its protective function. Assuming that the threshold price and the domestic EEC price were \$100 and that the world market price for higher quality wheat were \$70, a \$30 levy would not keep out the higher quality foreign wheat. With both domestic and foreign wheat selling for \$100, consumers would prefer the foreign wheat. The levy must therefore exceed \$30 by the value of the quality difference. The technical mechanism to determine this incremental levy is a "quality coefficient" which adjusts foreign offer prices downward by the requisite amount in the determination of the official c.i.f. price. These quality coefficients have the simultaneous function of permitting the Commission to adjust differentially various offers on the world market in order to determine which is, taking account of quality differences, in reality the lowest.⁸⁷

The table of coefficients has a necessarily arbitrary character. Wheat is classified by country of origin and then by the term used in the country of origin to designate the quality (in the United States, "Dark Northern Spring,"

84. An analogous system has been used on intra-Community trade under the transitional system. See the rather elaborate provisions governing both internal and external trade in Reg. 141/64, [1964] E.E.C. J.O. 2666-73. See also Commission Decision 65/443, [1965] E.E.C. J.O. 2657. Refunds on shipments outside the Community are also possible for processed products. See Reg. 141/64, [1964] E.E.C. J.O. 2666; Reg. 164/64, [1964] E.E.C. J.O. 2743; Reg. 11/66, [1966] E.E.C. J.O. 393; Reg. 60/66, [1966] E.E.C. J.O. 1854.

85. See Reg. 19, art. 14(2), [1962] E.E.C. J.O. 939. The Management Committee procedure qualifies the Commission's discretion somewhat. See pp. 240-42 *infra*.

86. See Annex to Reg. 70, [1962] E.E.C. J.O. 1865; M. Soenen & P. Peishenke, *Problèmes relatifs à la qualité du blé tendre, de la farine et du pain dans les pays de la C.E.E. (Deuxième partie)*, EEC ETUDES, Série Ag. No. 16, 1965. As an illustration of the complications, Reg. 70 indicates that, among the U.S. grades of wheat, Dark Hard Winter tends to sell for \$9.50 per ton more than Soft Red Winter Garlicky when the former is guaranteed to contain 14% protein and \$7.50 per ton without such a guaranty. [1962] E.E.C. J.O. 1865.

87. Annex, Reg. 70, [1962] E.E.C. J.O. 1865. This regulation is amended from time to time to include additional qualities. See, e.g., Reg. 68/65, [1965] E.E.C. J.O. 1527.

"Red Spring," etc.). Although the differential amounts assigned to each kind may represent usual, or average, price differentials in world trade, an element of rigidity is built into the system, and the possibility of discrimination against certain exporters cannot be ignored. That is, to the extent that the Commission's coefficients for particular kinds of wheat are out of line with the judgment of the market place at a given time, certain exporting countries may be aided or hindered.⁸⁸

The possibility of abuse aside, the quality adjustment is frequently criticized by exporters to the Community as an arbitrary element distorting competition in the world market by altering the relative competitiveness in the Community of various qualities of imported grains and by injecting an element of rigidity in their relative values. Considering only wheat (other than durum), where the quality adjustment has the effect of raising the levy on all qualities of imported wheat, the incremental levy has a higher incidence on lower quality than on higher quality imported wheat. The incremental levy resembles a tariff with a lower ad valorem rate on higher quality items than on lower quality items. To be sure, even without the quality adjustments, the levy (being, like a specific duty, expressed in a certain amount of currency per unit of weight) corresponds to a lower ad valorem tariff on high quality than on low quality wheat. But the quality adjustments, in raising the levy, accentuate this disparity in corresponding ad valorem rates.⁸⁹

Additional problems have arisen during the transitional period because, although the threshold price of each state must be set for a Community-determined standard of quality, the member states retain the right to set their target prices for a quality of their own choice. Consequently, in calculating the threshold price, the member state must, in addition to subtracting transportation costs from the target price, make an adjustment for the differences in

88. To be sure, the Commission retains discretion to adjust the table temporarily (*see* Reg. 70, art. 2, [1962] E.E.C. J.O. 1864), but the possibility of abuse of the system for particular economic or political ends remains. Indeed, the possibility of making a temporary adjustment may be viewed as a further arbitrary element.

89. To illustrate, assume that there are two standards of wheat on the world market, "A" wheat and "B" wheat. Assume that on the world market "A" wheat sells for \$65 per ton and "B" wheat, claiming a higher price because of its higher quality, sells for \$70 per ton. Assume further that the EEC quality coefficients require a \$5 per ton reduction in the quoted price for "A" wheat and a \$10 per ton reduction in the quoted price for "B" wheat. If the threshold price is \$100, the levy without quality adjustments would be \$35 per ton and with the adjustments \$40 per ton. Without the quality adjustments the \$35 levy would correspond to a 53.8% ad valorem tariff on "A" wheat (35/65) and to a 50.0% ad valorem tariff on "B" wheat (35/70). Thus, without quality adjustments the levy on "A" wheat is higher than the levy on "B" wheat by 3.8% in absolute terms and by 7.6% in relative terms (3.8/50.0). With quality adjustments the \$40 levy would correspond to a 61.5% ad valorem tariff on "A" wheat (40/65) and to a 57.1% ad valorem tariff on "B" wheat (40/70). Thus, with quality adjustments the levy on "A" wheat is higher than the levy on "B" wheat by 4.4% in absolute terms and by 7.7% in relative terms (4.4/57.1). The quality adjustments therefore can be said to increase the "discrimination" against low-quality imported wheat in favor of high-quality imported wheat in addition to its obvious effect of increasing the discrimination against all imported wheat in favor of domestic wheat.

quality. This adjustment, unlike the adjustment for the official c.i.f. price, is based on certain physical factors, such as moisture, weight and the like.⁹⁰ Quality adjustments are also necessary in calculating the franco frontier price which determines the intra-Community levy.⁹¹ This function of the adjustments is analogous to the function of the adjustments made in calculating the official c.i.f. price. The adjustments are made, however, under a combination of the table of coefficients approach used for third-country imports and the physical formula approach used for the calculation of the threshold price.⁹²

The concurrent application of three different systems of quality adjustment necessarily throws some doubt on the reliability of any one. The differences are to be explained to some extent by purely practical considerations. The official c.i.f. price is calculated daily and therefore a table must be on hand for ready reference. The threshold price, to take the other extreme, is calculated once a year and it is thus possible to give more consideration to moisture, weight and similar factors. But it might be revealing to have more information with which to evaluate the effects of the different systems.

C. *The Management Committees*

No analysis of the common market in agriculture would be complete without a description of the Management Committees (*Comités de gestion*), one of which is appointed for each agricultural sector. These Committees, which form an integral part of the regulatory system, represent a major stride along the road to supranationality. Although they have no supranational power as such, the fact of their existence has resulted in the transfer of effective supranational authority to the Commission. Interestingly enough, the French have yet to challenge the Committees—perhaps because their hopes for gains through the Common Agricultural Policy outweigh their fears of supranationality in agriculture, or perhaps simply because the Committees have been shielded from the glare of publicity.⁹³

Under regulation 19, the Cereals Committee is to examine a long list of items set forth therein, including the criteria to be followed by the Commission in setting the official c.i.f. price, the amount of refunds on exports to third countries and the denaturing premiums.⁹⁴ When the Commission takes measures subjected by regulation 19 to so-called article 26 procedure, it is required to seek the advice of the Committee before acting. The Committee in turn is required to give its opinion, affirmative or negative, within the period specified by its President, who is a representative of the Commission. If the

90. Reg. 61, art. 11, [1962] E.E.C. J.O. 1673.

91. See note 59 *supra*.

92. Reg. 89, art. 6, [1962] E.E.C. J.O. 1899.

93. At the end of the transition period (December 31, 1969), the future of the Committees will be determined pursuant to article 28 of regulation 19, [1962] E.E.C. J.O. 943. An attempt might be made at that time to scale down the competence of the Committees.

94. See Reg. 19, arts. 7, 10, 19, [1962] E.E.C. J.O. 937-38, 940-41.

opinion is favorable, the Commission may put its proposal into effect immediately without seeking the approval of the Council of Ministers; where criteria for future action are involved, the Commission may thereafter act pursuant to those criteria without seeking the approval of either the Committee or the Council.⁹⁵ If the opinion is negative, the Commission may nevertheless put its proposal into effect immediately. However, the Council then has an opportunity, provided that its acts within one month, to abrogate the Commission's decision; but such abrogation requires a qualified majority vote and, therefore, at least four of the member states must vote against the Commission.⁹⁶

By giving the Committee jurisdiction over a question, the normal burden is reversed. The Council must vote against the Commission to prevent it from taking action; in other situations the Council's affirmative support is necessary for such action. The difference is decisive where, as is often the case, there is a division of opinion among the member states. Under the conventional procedure such a division of opinion hamstrings Commission action.

It should further be noted that the use of qualified majority voting in the Committee prevents a single state from throwing a question to the Council of Ministers. This may be particularly important since, in the 1966 Luxembourg settlement, the member states agreed that "when, in the case of decisions to be taken by a qualified majority upon the proposal of the Commission very important interests of one or more states are at stake," a certain restraint is to be used in overriding dissenting votes. The language used would not appear to apply to the Management Committees, no doubt because their work is considered too technical to involve major interests. Thus, despite the inhibitions placed on qualified majority voting, a substantial derogation from the principle of unanimity has been preserved in agriculture.⁹⁷

The major significance of the Committees does not, however, lie in rules of procedure. It is to be found in their records of experience. The member states, acting through the Council, were induced to delegate considerably greater authority to the Commission in agriculture than in most other areas, on the assurance that the Committees would always be present to restrain the Commission. The Commission has been able, however, to win the support of the Committees in the overwhelming majority of cases. Committees have issued negative opinions in only four out of more than 400 cases, and in only

95. Under the Treaty of Rome, twelve votes, cast by at least four members, are required where the vote is not taken pursuant to a proposal from the Commission. TREATY OF ROME, art. 148(2), 294 U.N.T.S. 101 (1958). In addition, the weighting of votes has the effect of requiring, under certain circumstances, five affirmative votes.

96. The Commission has interpreted the inability of the Committee to arrive at an opinion, either affirmative or negative, by a qualified vote as permitting the same action as an affirmative opinion.

97. See the discussions of the Luxembourg settlement and of qualified majority voting at note 138 *infra* and accompanying text.

one case have the member states (in the Council), who thereby gained the opportunity to block Commission action, succeeded in gaining the necessary votes.⁹⁸ To be sure, the Commission may frequently have altered its original proposals in the course of discussions with the Committees, in deference either to the wisdom or to the will of members of the Committees. But the record would indicate that where the Commission has won authority from the Council to use the Management Committee procedure, it has thereby gained a relatively free hand. Perhaps the civil servants who sit on the Committees are more Community-minded than the ministers who sit on the Council. Or perhaps it is easier to accommodate differences of view among experts dealing with questions deemed technical, however far-reaching the political consequences, than among ministers dealing with questions deemed political (often simply because they are discussed at the ministerial level), however technical they may in fact be. Whatever the reasons, the combination of the Commission's procedural upper hand and the Committees' confidential internal processes gives the Commission and the responsible civil servants the possibility of working out solutions to Community problems that might have been more difficult to achieve at a higher political level.

D. Some Unfinished Business: State Aids to Agriculture

In its ambitious program to create a single internal market in agriculture, the Community has left one major stone unturned. Although the member states will soon have eliminated all major barriers at the border, sufficient steps have not been taken to prevent distortion of trade by internal measures, such as member state subsidies to farm production and marketing. This is not a mere detail. Until 1964, the United Kingdom protected its agriculture exclusively through the use of subsidies. One cannot, therefore, ignore the opportunities for a member state to offset the new Community-created competition of other member states by subsidizing its own agriculture (while profiting from the new outlets in those other member states). Similarly, subsidies might be an element of competition among the member states in third-country markets and, on the import side, an element of protection not subject to the Community's power over external trade relations.

In establishing the common market organizations in the various sectors, the Community did, it is true, take certain steps to prevent some of the grosser abuses. Thus, in cereals two types of state aids, as they are called, were subjected to Commission supervision: (1) aids having the direct or indirect effect of reducing the price of cereals or bread flours below the price used to calculate the variable levy; and (2) aids having a direct influence on the

98. See G. Olmi, *Rôle respectif des institutions communautaires et nationales dans la mise en oeuvre de la politique agricole commune*, Exposé fait à l'Institut d'études européennes de l'Université libre de Bruxelles, Jan. 25 & 28, 1966, at 26-27 (mimeo).

relationship between the price of processed products and the price of their constituent cereals.⁹⁹ The first category will lose its relevance to internal trade after July 1, 1967, and the second involves only processed products. The question of state aids remains, therefore, a major item on the Community's agenda.

The relationship of state aids to the free circulation of goods and commodities is, of course, a problem that transcends agriculture. The Treaty of Rome contains a number of relevant provisions in its chapter on competition, notably in article 92:

Except where otherwise provided for in this Treaty, any aid, granted by a member state or granted by means of state resources, in any manner whatsoever, which distorts or threatens to distort competition by favoring certain enterprises or certain sectors of production shall, to the extent to which it adversely affects trade between member states, be deemed to be incompatible with the common market.¹⁰⁰

This basic provision is hedged about with various procedures and clarifications. No member state has to abolish a state aid until the Commission finds the aid to be "incompatible with the common market" under article 92, and even then the Council may give the member state special dispensation to continue the aid. The Treaty makes clear that certain kinds of aids *may* be deemed compatible, notably "aids to promote the economic development of regions where the standard of living is abnormally low or where there exists serious under-employment" and "aids intended to facilitate the development of certain activities or of certain economic regions when they do not alter the conditions of exchange to a degree contrary to the common interest."¹⁰¹ Both categories could be interpreted to include many kinds of agricultural aids. Thus, even if article 92 applied directly to agriculture, it would be a slow and difficult job to root out even the important aids to agriculture.

The agricultural provisions of the Treaty make clear, however, that the general state aids provisions are to apply to agriculture only to the extent determined by the Council. The Council is specifically permitted to authorize agricultural aids "for the protection of enterprises handicapped by structural or natural conditions" as well as those granted "within the framework of economic development programs."¹⁰² Beyond the limited prohibitions in the basic cereals regulation discussed above, and a system of reporting procedures and of Commission comments on new aids,¹⁰³ no Council action has been forthcoming. The Commission, aware of the member states' sensitivity to

99. See Reg. 19, art. 19, [1962] E.E.C. J.O. 940-41.

100. TREATY OF ROME, art. 92(1).

101. TREATY OF ROME, arts. 92(3)(a), (c). The Commission also has power to require abolition of a state aid when it is "applied in an improper manner."

102. TREATY OF ROME, art. 42.

103. Reg. 26, art. 4, [1962] E.E.C. J.O. 993-94.

tampering with their domestic subsidy programs, has been cautious in making proposals to the Council, whether in agricultural or elsewhere. Until recently, the Commission limited itself in agriculture to making a census which eventually listed some 500 different aids to agriculture.¹⁰⁴

In March 1966 the Commission made its first major proposal to the Council for the future regulation of aids to agriculture. In July 1966 the Council discussed this proposal, but could agree only to commit itself to examining the question in depth before December 1, 1966. In October 1966 the Commission stiffened its proposal considerably.¹⁰⁵ Under the amended proposal, agricultural aids would be divided into four categories: (1) aids, such as those for research and education, which do not distort competition and would therefore be considered as falling outside the scope of the treaty; (2) structural aids, unrelated to individual agricultural products, for such purposes as assembling isolated plots and constructing farm buildings, which would be declared compatible with the common market provided they were consistent with certain Community Structural Programs to be decided upon in the future; (3) aids, related in amount to land surface, price, quantities or physical units of production and therefore having a direct effect on competition, which would be prohibited as of, in the case of cereals, July 1, 1967; and (4) other aids, chiefly those having objectives consistent with certain Community Programs (not to be confused with the Community Structural Programs under category two, above), which the Commission could declare compatible with the common market.

The fourth category is the most interesting because it underlines a certain ambivalence toward state aids. The Community itself is granting very sizable aids to agriculture through the Guidance Section of the European Agricultural Guidance and Guarantee Fund—aids which in some cases may differ very little from those presently granted by the member states.¹⁰⁶ The Community intends to formulate certain Community Programs setting forth in general terms the kinds of aids which the Fund may finance. Since the Guidance Section's expenditures will be limited to \$285 million per year, however, the Section will not be able to finance all of the projects falling within the Community Programs. The Commission proposal would allow it to pass individually upon national projects falling within the Community Programs to determine which are compatible with the common market. While the Com-

104. The authorization is to be found in Reg. 26, art. 4, [1962] E.E.C. J.O. 993-94. The Commission did, however, comment on proposals for new aids submitted to it by member states pursuant to art. 93(3) of the Treaty of Rome. See, e.g., EEC HUITIÈME RAPPORT GÉNÉRAL SUR L'ACTIVITÉ DE LA COMMUNAUTÉ, point 194 (1965) [hereinafter cited as HUITIÈME RAPPORT GÉNÉRAL].

105. See CEE Commission, Modifications à la proposition de règlement du conseil portant modification du règlement No. 26, COM (66) 397 Final (Oct. 11, 1966) (mimeo). See also *Wettbewerb im Getreidesektor verzerrt?*, *Ernährungsdienst*, Deutsche Getreidezeitung, April 7, 1966, at 5, cols. 1-2; ECC NEWSLETTER, No. 5, April 1966.

106. For discussion of the Guidance Section, see pp. 247-48 *infra*.

mission will most likely entertain a presumption in favor of such aids, the fact that the proposal, if adopted, would give the Commission discretion to prohibit certain aids which the Guidance Section could have financed is, on its face at least, more than slightly curious. On a purely formal legal level, it suggests the anomaly that the Guidance Section will be empowered to finance certain projects that the Commission considers incompatible with the common market. More to the substance, it will be interesting to see whether the member states will permit the Commission to retain this residual power to disapprove projects falling within the Fund's Community Programs.

Since state aids are of great potential significance to both internal and external trade of the Community, it will not be possible to evaluate the extent to which the Community has created a single market in agriculture until the Community Structural Programs and the Fund's Community Programs are published and until the Commission begins to act upon particular state aids. In the meantime, one can detect a certain reluctance on the part of member states, acting through the Council, to take an irrevocable step toward the prohibition of measures which they individually might want to use in the future to shelter themselves from the rigors of a Community-wide market.

III. FINANCING THE COMMON AGRICULTURAL POLICY

Thus far this study has considered the technical machinery of the Common Agricultural Policy. But that is only half the story. Equally important are the financial aspects. The EEC regulatory machinery entails enormous expenditures, primarily for subsidies on exports and for purchasing operations under the intervention price mechanism. After July 1, 1967, the Community will reimburse fully all such expenditures for cereals and all other agricultural products for which a common market organization is in effect. In addition to price support expenditures of this character, the Community will by 1967 contribute up to \$285 million for the "orientation" of European agriculture in order to ameliorate the structural inadequacies discussed above. And it is likely that after 1970 the Community will be financing both types of expenditures out of monies which it acquires in its own right from levies and customs duties, rather than out of funds paid over to it by the member states, as is the case now.

The method of financing the Common Agricultural Policy warrants attention quite apart from any desire for completeness. First of all, it has provided the most crucial political issue in the construction of the European Economic Community. What France hopes to get out of the EEC, it hopes to obtain as much through the financing of the Common Agricultural Policy as through the content of that Policy. At the same time that the technical mechanisms discussed above create a large protected market for French

farmers, the financial regulations give rise to what is, in effect, a massive transfer payment to France from its partners—a payment on the order of \$250 million per year.¹⁰⁷ In return for this grant, the Commission, supported by the other Five, demanded a great leap forward toward supranationality. However much General de Gaulle might have wanted the transfer payment, he refused to pay the asking price and thereby plunged the Community into its most serious crisis to date. In the end he received the payment. To what extent he will have to pay the price in supranationality is a complicated question which may not be fully answered until the end of 1969.

If agricultural financing is of major political importance, it is of no less economic importance. The huge sums to be spent, about \$1.5 billion per year on price support measures, export subsidies and "orientation," are bound to have a drastic effect on commercial arrangements in agriculture. Moreover, the technique used to raise these sums is expressly designed to have a further impact on international trading patterns.

This section shall first examine the financing system for cereals as it will appear when it reaches maturity on July 1, 1967, in order to be able to judge its overall effect. Thereafter the study shall return to some of the principal issues which troubled the construction of this elaborate enterprise and take a quick look forward to 1970 when substantial changes may occur in the form, if not the substance, of the financing arrangements.

A. *The Completed System and Some of Its Underlying Problems*

The financing instrument of the Common Agricultural Policy is the European Agricultural Guidance and Guarantee Fund (the "Fund"). The Fund is organized, as its name suggests, into two "sections": the Guidance Section (*Section orientation*) and the Guarantee Section (*Section garantie*).¹⁰⁸ These euphemistic appellations, derived from French internal legislation, refer respectively to expenditures designed to improve agricultural structures and to those designed to "guarantee" farm incomes. In the latter category are export subsidies, purchases at the intervention price, denaturing premiums and other approved devices designed to support prices by withdrawing products from the market.¹⁰⁹

Payments for denaturing may require special explanation. Denaturing premiums are a financial device for accommodating surpluses in bread grains and shortages in feed grains. With respect to the former the Fund will pay

107. According to German Foreign Minister Schroeder. See *Le Monde*, May 12, 1966, at 1, col. 3 (dernière éd.).

108. A special section will pick up transitional subsidies to be paid during the period 1967-1969 to German, Italian and Luxembourg farmers in partial compensation for the price reductions necessary to arrive at a common cereals price.

109. On export refunds, see Reg. 17/64, arts. 2-4, [1964] E.E.C. J.O. 586; Reg. 25, art. 3(1) (a), [1962] E.E.C. J.O. 991. On intervention price purchases, see Reg. 17/64, arts. 5-6, [1964] E.E.C. J.O. 589; Reg. 25, art. 3(1) (b), [1962] E.E.C. J.O. 991; Reg. 18/64, [1964] E.E.C. J.O. 595.

certain sums to encourage denaturing, rendering bread grains unfit for human but not for animal consumption. Of course, denaturing is not required to make the bread grains edible by livestock but rather is used to restrict the supply of bread grains and thereby to force up their price. Denaturing is, therefore, essentially a price support device for wheat and rye. The Community will pay the actual costs of denaturing plus 90% of the difference between the target price for the grain which is denatured and the target price for barley, the principal forage grain.¹¹⁰

The Guidance Section has a quite different role. It deals with structural problems both at the production and at the marketing level. Thus far, the funds have been spent largely to finance consolidation of small plots (*remembrement*), irrigation projects and improvement of dairy, fruit and vegetable marketing structures.¹¹¹ These expenditures are designed to improve productivity and therefore, unlike the activities of the Guarantee Section, are not supposed to have a distorting influence on international trade patterns. To be sure, capital and input subsidies are subsidies nonetheless and can be just as effective in "protecting" agriculture from international competition as any other kind of subsidy. But if they improve long-run productivity, such subsidies have a justification that one cannot attribute to the operations of the Guarantee Section.

Nevertheless, the authority granted to the Guidance Section is widely defined, and the danger exists that the funds may be used in ways which fail to improve productivity or which influence quantities and prices more directly. The powers granted in the area of production are two-fold: on the one hand, "the adaptation and improvement of the *conditions of production*" and, on the other hand, "the adaptation and guidance of agricultural *production*" itself.¹¹² In view of the clear contrast between these two powers, the second would appear to permit direct intervention in determining the quantities to be produced or marketed. This interpretation is confirmed by article 12 of the same regulation which defines the latter power to include "the quantitative adaptation of production to outlets."¹¹³ The Guidance Section would therefore appear authorized to spend money to control and direct supply and thereby ineluctably to influence price. As with so many forms of government spending, one cannot determine the influence of a measure from parsing the phrasing of the authority but rather only from an examination of the precise nature of

110. On denaturing premiums, see Reg. 18/64, [1964] E.E.C. J.O. 595; Reg. 178/64, [1964] E.E.C. J.O. 2955, *as amended*, Reg. 17/65, [1965] E.E.C. J.O. 527.

111. EEC NEUVIÈME RAPPORT GÉNÉRAL SUR L'ACTIVITÉ DE LA COMMUNAUTÉ, point 185 (1966) [hereinafter cited as NEUVIÈME RAPPORT GÉNÉRAL].

112. Reg. 17/64, [1964] E.E.C. J.O. 586 (emphasis added). [Translation by the Commission in EEC REGULATIONS AND RESOLUTION IN THE FIELD OF AGRICULTURE ADOPTED BY THE COUNCIL ON 5 FEBRUARY 1964 (1964).]

113. Also included within the latter power by the article 12 definition is "the promotion of higher quality production." Here we seem to be dealing with structural matters again. Reg. 17/64, art. 12, [1964] E.E.C. J.O. 590.

the expenditures actually made. All that can be said at present is that the Guidance Section, and not just the Guarantee Section, could prove to be a source of protection for European agriculture from the rigors of international competition.¹¹⁴

The sizeable amounts of money flowing through the two Sections has caused the Fund to be the matrix of some very hard six-way bargaining. France stands to gain the most from the Guarantee Section, particularly in cereals, since refunds on exportation (which in the first year totaled more than three-fourths of the Section's budget) assist primarily the net surplus countries. In the first year, about 85% of payments from the Guarantee Section were made to France.¹¹⁵ Italy expects to obtain the largest portion of the distributions from the Guidance Section in view of the relatively underdeveloped state of its agriculture. In the first year Italy accounted for about one-third of that Section's expenditures.¹¹⁶ The expenditures of the Guarantee Section will probably be about three times that of the Guidance Section and France will therefore be the over-all winner by a substantial margin.¹¹⁷ By 1967 France will receive about 45% of all payments from the Fund, while contributing only about 24% of the Fund's requirements. Germany will be the largest loser, at least in absolute terms; it will contribute 31% while receiving only 18%.¹¹⁸

Because of the composition and distribution of expenditures, most of the bargaining has concerned the allocation of contributions to the Fund. Under the completed system, contributions will take two forms: direct budgetary appropriations by the member states similar to those which support the other activities of the Community; and, the novel aspect of the arrangement, 90% of the receipts from the variable levies on importation of agricultural commodities from third countries. As for the first category, there will be a considerable departure from the allocative formula used for general Community expenditures under which Germany, France and Italy contribute equally. Italy argued, convincingly it turned out, that if it were to pay an equal share of the Fund's expenditures, far from securing aid from the Community for its agri-

114. See the discussion of the importance of the element of "protection" in the Kennedy Round p. 256 *infra*. Two requirements which might substantially limit the protectionist potential of the Guidance Section are that all projects in this category "must provide adequate assurances as to the lasting economic effects of the improvements made in the structure of agriculture" and "must be intended to make or keep agricultural undertakings economically viable and to enhance their competitive capacity." Reg. 17/64, arts. 14(1) (c), (2) (a), [1964] E.E.C. J.O. 591.

115. NEUVIÈME RAPPORT GÉNÉRAL, point 186.

116. *Id.* at point 185.

117. Under Reg. 25, art. 5(2), [1962] E.E.C. J.O. 991, Guidance Section expenditures are to be "as far as possible" one-third of total Fund expenditures. But since the former have been made subject to a special ceiling of \$285 million, the participation of the Guidance Section will be closer to one-fourth of total Fund expenditures. EEC Press Release No. 521/66 (AG 116), para. 2(d), May 11, 1966.

118. See *Le Monde*, May 12, 1966, at 2, col. 1 (dernière éd.).

culture, it would be a net loser.¹¹⁹ After a good deal of last-minute haggling it was decided that France would contribute 32%, Germany 31.2%, Italy 20.3%, the Netherlands 8.2%, Belgium 8.1% and Luxembourg 0.2% of the budgetary payments.

The analytically interesting aspect of the financial accord concerns the variable levy component of the contributions to the Fund. Obviously the member states importing the largest volume of agricultural commodities from outside the Community pay the most. These sums come, in an important sense, not from third-country suppliers but from the importing country's residents who bear the burden of the levy in higher food prices. France made this burden into a kind of guiding moral principle. According to the French point of view, countries importing from outside the Community do so only in order to profit by low prices, and they should pay for this infidelity to the Community by subsidizing the sale abroad of any Community surpluses thus created. The other member states failed to challenge directly this French principle, for two main reasons. Community support of French agriculture was one of the chief, albeit implicit, concessions made to secure French entry into the Community in 1957. Second, approval of the agricultural financing regulations was, under the "synchronization" principle which has governed the timing of progress within the Community since the veto of English admission, the *quid pro quo* for French consent to authorization of major tariff cuts on industrial products in the Kennedy Round of GATT trade negotiations. Tariff reductions by the United States and other third countries, the counterpart of EEC tariff reductions under the GATT reciprocal concessions system, were as important to Germany as support for agriculture was to France.¹²⁰

As with many principles, particularly those of a moral character, this one has some serious ambiguities in application. One of the most important was whether Fund reimbursements of export subsidies were to be forthcoming for gross exports or only for net exports (that is, exports of agricultural

119. For the conventional formula, see TREATY OF ROME, art. 200, 294 U.N.T.S. 118 (1958). Italy would have been a net loser because, as had not been foreseen, rising living standards have made Italy a major importer of foodstuffs, and it will therefore have to turn over to the Fund variable levy receipts of an unexpectedly large amount. Italy had based its claim to a reduction of budgetary contributions on an analogy between the social motives for aiding agriculture and the purposes of the European Social Fund, for which Italy's contribution had been only 20%. The Social Fund apportionment, with a few minor adjustments, provided the formula arrived at for the budgetary contributions to the agricultural Fund. Bargaining between Italy and the Benelux countries over several tenths of a percentage point (which amounted nevertheless to millions of dollars) and French hesitancy to accept any financial accord in which Germany paid less than France caused the decisive Council meeting on financing to last until 5:00 a.m. See *Le Monde*, May 12, 1966, at 1, col. 1 (dernière éd.).

120. Recognition that Germany and France were seeking advantages considered of equal value should not obscure the fundamental difference in the character of these advantages. Germany was seeking freer trade. France was seeking financial assistance to support intervention in the market. The French position is, as we shall see at p. 257 *infra*, that the world market in agricultural products is already so distorted by governmental intervention that free trade in such products is unthinkable and that only a "managed" international arrangement can palliate the consequences of the present anarchy.

products exceeding imports of such products). The original regulations had adopted the net approach but in the end the gross approach was decided upon.¹²¹ Several offsetting factors had to be considered in choosing between these two approaches. First, to preserve the net basis of calculation after the free circulation stage has been reached would require the continuance of intra-Community border checks, whereas it is one of the principal goals of the EEC to eliminate customs frontiers of all kinds. Without some such system, including perhaps certificates of origin, it would have been impossible to identify with certainty the origin of exports from the Community and the destination of imports into the Community and, therefore, impossible to identify the "true" net position of the six member states. Since a substantial proportion of French exports and German imports of agricultural commodities pass through Benelux ports, the adjustments to be made to the raw export and import figures would have been substantial and the need for an adequate system of verification consequently great.

A second factor was that the gross system would increase the burden on the Fund since total payments would be higher. Whether this is to be considered a disadvantage or an advantage depends upon one's perspective.

The third factor, of some importance on the "who gets what" level, was that the gross system would involve payments to all member states, rather than just to the net exporters, and therefore might seem more advantageous to the net importers, such as Germany. It is not so clear, however, that this would necessarily be the case. The balance of advantage depends upon the amount and the source of the additional resources which the Fund would require to make the additional payments as compared with the volume of exports by the net importers. With Germany committed to contribute nearly a third of the resources above and beyond the variable levy proceeds, it might well have to pay, under the gross system, a greater increment than it could receive for its exports.¹²² Of course, under the gross system, Germany would receive a payment for each product and the "visibility" of these receipts may have made the system seem more attractive for domestic political purposes, even if in the end it cost more. All sides had an interest in avoiding the appearance that France was getting everything, and Germany nothing, from the Guarantee Section. Furthermore, uncertainty about the balance of national advantage under future trading conditions may have facilitated unanimity in the Council in favor of the gross exports formula.

121. Compare Reg. 17/64, art. 2, [1964] E.E.C. J.O. 587, with EEC Press Release No. 521/66 (AG 116), May 11, 1966.

122. Assume that for export refunds alone, the net system would require \$400 million and the gross system \$500 million per year. Germany, with a 31.2% budgetary contribution quota, would have to pay about \$32 million more to the Fund each year if the gross system were adopted. For the gross system to be to the advantage of Germany, refunds on exports for products on which it was a net importer would have to exceed \$32 million which would be more than 6% of total Community refunds on all products.

A more fundamental issue raised in financing the Guarantee Section was whether the division of levy receipts should be recalculated each year or whether it should be set once, on the basis of a fixed reference year, 1963. France argued that allocation under a base year formula would sap the system's ability to discourage the other member states from purchasing foodstuffs outside the Community.¹²³ In retrospect, the French emphasis on principle seems curious. So long as trade is in private hands, traders will buy abroad whenever it is cheaper to do so, after paying the levy, than it is to buy within the Community. Whether the levying government keeps the monies raised or turns them over to the Fund is irrelevant to the trader. Therefore, the principle of payment-over of levies, however great they may be in any given year, may help France, but it does not in fact influence international trading patterns. On the other hand, the principle does assure that France "wins," whatever the trend of future trade. If the other member states, notably Germany, increase their purchases outside the Community, French agriculture secures increased financing for exports. If instead these member states increase their purchases from France, French agriculture profits directly from the increased demand.

B. *The Great Crisis*

Settlement of the financial arrangements was accompanied by the greatest crisis in the history of the Community. This fact reflects in large part the central role that agriculture plays in the Community and the great amounts of money involved. But more importantly, it reflects certain fundamental "constitutional" problems that arise whenever a sector of the economy and large sums of money are turned over to an international institution which by its nature is not democratically responsible. The history of this crisis foreshadows a major transformation in the EEC agricultural system, if not another EEC crisis, which may be expected at the end of this decade.

Regulation 25 creating the Fund was adopted by the Council on the same date, January 14, 1962, as regulation 19, which created the common market organization in cereals. Regulation 25 governed only the first three years of Fund operations and provided that the Fund would reimburse one-sixth of eligible expenses in 1962-1963 (July to June), two-sixths in 1963-1964 and three-sixths in 1964-1965. After that, the regulation provided only that the Fund would increase its participation so that at the end of the "transition period" (that is, at the beginning of the "single market stage") it would finance all eligible expenses.¹²⁴ The end of the transition period for the Fund was not designated in the regulation, but under article 8 of the Treaty the

123. See P. Drouin, *L'Europe des "Réalisations Pratiques,"* Le Monde, Feb. 26, 1966, at 1, col. 3 (dernière éd.).

124. Reg. 25, art. 5, [1962] E.E.C. J.O. 992.

transition period for the Community as a whole terminates at the end of 1969. Regulation 25 also provided that before the end of the third year the Council would conduct a "general review" of the Fund's activities and that, in a provision which was to lead to a "broken promise" in French eyes:

Before the end of the third year [*i.e.*, before midnight, June 30, 1965] and in the light of the results of the general review, . . . the Council shall, voting [unanimously] . . . , and with a view to ensuring that progress is maintained towards the single market system, draw up the rules as to the Fund's revenue which shall be valid from 1 July 1965 until the end of the transition period.¹²⁵

Regulations 19 and 25 were greeted with great relief on all sides because the agricultural bargain they represented had been the French price for agreeing to go forward to the second of the three transitional stages of the Community. Since only this first passage between stages required consent of the member states, it was felt that the success of the Community was guaranteed. It is important to note that these agreements had not been reached by December 31, 1961, as foreseen by the Treaty, but that when that date passed without agreement the Council elected to "stop the clock" and continue the "marathon" negotiations until agreement was finally reached on, as it turned out, January 14. The combination of clock-stopping and marathons became accepted features of the Brussels scene.

Following the accord on these two regulations, attention in agriculture turned to the next major political confrontation: agreement on a common cereals price. This agreement was finally achieved—again under a French threat that the Common Market would otherwise "disappear"—in the early morning of December 15, 1964, after another marathon session. In the ensuing euphoria, French Minister of Agriculture Pisani observed that free circulation of commodities under a common price was essentially synonymous with the "single market stage" at which, under regulation 25, the Community would take full financial responsibility for the Common Agricultural Policy. He concluded that it was "logical" that the Fund should come into possession of all receipts from levies and should reimburse 100% of eligible expenses as of the date, July 1, 1967, when the common price would be achieved, rather than wait until the end of the Treaty transition period on December 31, 1969. To Pisani, the time was ripe to secure as soon as possible a firm commitment by the other Five to the principle of collective responsibility for French surpluses.¹²⁶ To certain "Europeans," Pisani's declaration opened another sort of opportunity. They saw in the French impatience to push ahead to the pot

125. Reg. 25, art. 7(2), [1962] E.E.C. J.O. 992. [Translation by the Commission in EEC REGULATIONS AND DECISIONS IN THE FIELD OF AGRICULTURE ADOPTED BY THE COUNCIL ON 14 JANUARY 1962 (1962).]

126. See the summary of the 1964 Pisani position in *Le Monde*, June 17, 1965, at 3, col. 1 (dernière éd.).

of gold at the end of the transition period a chance to demand a decisive step forward toward political union: granting real power for the first time to the Assembly of the Community. Knowing that General de Gaulle considered supranationalism a dream, if not a vice, the Commission (encouraged no doubt by some of the member states)¹²⁷ decided to bait a trap which it set in public view on March 31, 1965.

On that date the Commission proposed that as of July 1, 1967, the Community would pass from the "transition period" to the "single market stage" under regulation 25 and that, pursuant to article 2 of that regulation, revenues from levies would become the "property" of the Community (*les ressources propres*) and, finally, that the Fund would on that date take over the full financing of the Common Agricultural Policy.¹²⁸ However, reasoned the Commission, the expenditure of such large sums of money must be subjected to parliamentary control. Formerly the member state contributions had been controlled by the member state legislatures; under the new system it would be necessary to elevate the Assembly from a debating and advice-dispensing institution to a full parliamentary body in order to exercise that function.¹²⁹ Under the Commission's proposals, the European Parliament, as the Assembly had chosen to call itself, would come to merit the title.

The French reaction was at first hesitant. It was obvious that the General was on the spot. His distaste for granting the Assembly real powers was second only to his scorn for the system of qualified majority voting in the Council which was to become effective for most issues on the passage to the third stage on January 1, 1966.¹³⁰ The first overt sign of rebellion in Paris came on June 15, 1965, when Foreign Minister Couve de Murville came to Brussels to announce that France did not want full reimbursement by the Fund until 1970 after all, that there was consequently no need for the Community to have its own funds until 1970 and that, therefore, the problem of parliamentary control would not arise until 1970 at the earliest.¹³¹

Although this major issue in addition to an otherwise heavily charged

127. On February 2, 1965, the Netherlands legislature had unanimously adopted a motion inviting the Netherlands government to defend energetically the extension and enforcement of the power of the Assembly and declaring that in its view the contributions of member states could not be replaced by Community resources without a preponderate role being accorded to the Assembly in the budgetary process. See *Le Monde*, July 2, 1965, at 2, col. 5 (dernière éd.). As we shall see, the Commission's proposals were directly in line with this resolution.

128. EEC BULL., May 1965, at 10; Reg. 25, art. 2, [1962] E.E.C. J.O. 992. [Translation by the Commission in EEC REGULATIONS AND DECISIONS IN THE FIELD OF AGRICULTURE ADOPTED BY THE COUNCIL ON 14 JANUARY 1962 (1962).]

129. See HUITIÈME RAPPORT GÉNÉRAL, point 214; NEUVIÈME RAPPORT GÉNÉRAL, points 2-3.

130. An apocryphal tale that made the rounds at Brussels had it that it was at this time that General de Gaulle read the Treaty of Rome for the first time and, in so doing, discovered the provisions on qualified majority voting which, after January 1966, would permit France to be overridden in Council meetings. Theretofore, virtually all issues had been decided by unanimous vote.

131. See *Le Monde*, June 29, 1965, at 1, col. 5 (dernière éd.).

schedule portended another marathon session, the Council did not meet until June 28, 1965—some two days before the “deadline” of June 30. It seems fair to say that at that moment the forward-looking reference in regulation 25 hardly looked like a weighty deadline, given that many similar dates had been missed, that a proposal was before the Council for action and that the stop-the-clock trick was always in the Community hat. The Council meeting began in earnest only on the afternoon of June 30, the deadline date itself, when the foreign ministers of the Six returned from a conflicting meeting of the Western European Union in Luxembourg. But not many hours later, at 12:45 a.m., before the issue of parliamentary control had been thoroughly discussed,¹³² Couve de Murville (simultaneously French delegate and President of the Council) announced that since agreement had not been reached, it would be best to halt discussions. Speaking moments later to journalists, he said, “the French Government will take note that engagements undertaken have not been respected.”¹³³ Later in the morning of July 1, the French Information Minister Alain Peyrefitte read a statement to the effect that the French government had decided to “draw the obvious political, economic and legal conclusions from the situation thus created.” The resulting crisis was particularly serious, the statement said, “since it was on the basis of the financial regulation that the French Government had agreed, in January 1962, to embark on the second stage of the Rome Treaty, and since the decisions on common cereal prices reached in December 1964 had been taken on the basis of definite and repeated assurances that the financial regulation would be completed by 30 June 1965, as agreed.”¹³⁴ Looking up, Peyrefitte added that “no further meetings are currently contemplated.”¹³⁵

The French did not appear at meetings of the Council for more than seven months. It quickly became clear that the qualified majority voting principle, as well as a number of Commission protocol and publicity practices smacking of supranationality, had also been called into question by the French boycott. Reacting perhaps to the unexpected dimensions of the disagreement within the Community, the Commission backed off rather quickly on the financing question. On July 22 it sent the Council a memorandum suggesting that the end of the transition period for the Fund under regulation 25 be postponed until 1970 to correspond with the end of the transition period for the Community as a whole under article 8 of the Treaty. In the intervening period the Fund would reimburse a steadily increasing proportion of eligible expenses, reaching 100% by July 1, 1967 (provided that free circulation in

132. NEUVIÈME RAPPORT GÉNÉRAL, point 5.

133. *Le Monde*, July 2, 1965, at 1, col. 2 (dernière éd.). Couve de Murville is also quoted in this press report as having said in the Council meeting: “A community which does not respect its engagements is no longer a community.”

134. *Id.* [Translation by the Commission in EEC BULL., Aug. 1965, at 46.]

135. *Le Monde*, July 2, 1965, at 2, col. 2 (dernière éd.).

agricultural products had been achieved by that date), and the contributions to the Fund would also increase proportionately, but—and this was the crucial concession to the French position—neither agricultural levy nor tariff revenue would become the “property” of the Commission until 1970.¹³⁶ On the question of budgetary powers for the Assembly, the Commission, sidestepping as adroitly as possible, noted only that the discussions at Council meetings “had been interrupted before the discussion of the reinforcement of the powers of the European Parliament had been exhausted and the various delegations had made known their final positions.” “In the absence of this essential element” the Commission was not, it said, “in the position to judge whether, in modifying its original proposal, it could facilitate a decision.” But since the question would not be presented until 1970, the Commission could content itself with this ambiguous reference to the crucial constitutional question.¹³⁷

The Commission’s memorandum was viewed as adopting essentially the French theses on agriculture, and the focus of the controversy was displaced toward the qualified majority voting issue. When the crisis was finally surmounted in two extraordinary sessions of the Council held in Luxembourg in January 1966, the text of the communiqué issued at the conclusion concentrated on that issue and on the protocol questions and included only a few short and ambiguous references to the financing question.¹³⁸

After the Luxembourg settlement, agreement on the content of the finan-

136. The Commission proposed that before the elimination of intra-Community customs duties, a system of allocation of customs revenues should be instituted so that tariff revenues collected by transit states (such as the Netherlands with its large efficient ports) would be paid over to the states of destination of the goods (such as Germany which imports heavily from North American through Dutch ports). After 1970 such a system would presumably no longer be necessary because such revenues would become the “property” (*les ressources propres*) of the Community. The Council agreed on May 11, 1966, to put the proposed reallocation system into effect. See EEC Press Release No. 521/66 (AG 116), May 11, 1966, Annexe I.

137. EEC, Financement de la politique agricole commune, COM (65) 320 final (July 22, 1965) (unimeo). The memorandum is summarized in NEUVIÈME RAPPORT GÉNÉRAL, points 7, 183. See also *Le Remboursement des dépenses de soutien des marchés des céréales en 1967 serait subordonné à un accord sur le sucre et les fruits et légumes*, *Le Monde*, July 27, 1965, at 14, col. 1 (dernière éd.).

138. See text in NEUVIÈME RAPPORT GÉNÉRAL, points 13-15. On parliamentary control, it reads: “Under the financial regulations relating to the drawing up and execution of the Communities’ budgets, the Council and the Commission will decide on means for more effective control over the commitment and expenditure of Community funds.” It went on to say that the agricultural financing regulation was to be adopted by common accord (rather than being subjected to the qualified voting procedure which would allow the other Five to override France) and that it would be given priority treatment in order to settle all outstanding issues as soon as possible.

On the question of qualified majority voting in general, the text stated the Council had agreed that “Where . . . very important interests of one or more partners are at stake, the Members of the Council will endeavor, within a reasonable time, to reach solutions which can be adopted by all the Members of the Council. . . .” “The French delegation,” the communiqué continued, “considers that where very important interests are at stake the discussion must be continued until unanimous agreement is reached.” The six delegations, noting that divergence existed as to what should be done in the case where no common agreement was reached, concluded that they would “nevertheless consider that this divergence does not prevent the Community’s work being resumed in accordance with the normal procedure.” This resolution, or more properly non-resolution, of the issue had the virtue that each of the delegations went home thinking that it had won the battle.

cial accord was, given the tenor of the Commission memorandum of the preceding July, relatively easy to achieve. Only minor issues, such as the previously discussed issues of the choice between a gross and a net formula for exports and the propriety of using a base year for allocation of levy contributions,¹³⁹ remained to be settled. The main outlines of the May 11 decision are, as has been seen, that the Fund will not pass from the "transitional stage" to the "single market stage" until the end of 1969. But then, under regulation 25, the Community is to have its own resources, and the issue of parliamentary control must surely arise, unless there is a failure of will in Brussels or a change of regime in Paris. Whether this deadline will produce a major political explosion or another recondite compromise is a crucial question for the future of European integration.

IV. THE AGRICULTURAL COMMON MARKET AND THE WORLD ECONOMY

However much the architects of the Common Agricultural Policy may have wished to isolate it from the world economy, they have not been successful. In the first place, there are many products in which the EEC is not self-sufficient and cannot expect to be in the near future. The feed grains sphere is one important example. Even within the wheat sector, where France is a surplus producer and the Community can soon expect production regularly to equal consumption, imports will continue because of quality differences between internal and external supplies. Bakers in northern areas of the Community, particularly in Germany, are convinced that North American spring and hard winter wheat is so superior to any wheat available from Community sources that all bread should contain a certain percentage of North American wheat.¹⁴⁰ This preference reflects ingrained consumer tastes which are unlikely to change rapidly, given any foreseeable ratio between internal and import prices.¹⁴¹

Economic forces aside, events on the world scene have forced the EEC to consider how European agriculture is to fit into world trading patterns. In the Kennedy Round of trade negotiations, now in progress within the framework of the General Agreement on Tariffs and Trade, the United States has made progress on agriculture the *sine qua non* of reductions on industrial products. Those reductions are of vital importance to Germany, a major industrial exporter, and to the Netherlands, which (because of its geographic position and its excellent port facilities) is one of the world's principal trading nations. Although the United States has a reputation as an exporter primarily

139. See discussion in text, pp. 249-51 *supra*.

140. One reason for this is that bread made from North American wheat remains fresh for a much longer time.

141. See *Analyse des facteurs qui influent sur l'orientation de l'offre régionale de céréales et de produits transformés dérivés des céréales*, EEC ETUDES, Série Ag. No. 17, 1965, at 9-12.

of sophisticated industrial goods, its interest in agricultural exports is considerable. Some 32% of its exports to the EEC are of agricultural commodities and for some such commodities a striking proportion of all domestic production is exported. In 1964, for example, the United States exported to the world generally (including the EEC) some 75% of its wheat, 34% of its rye, 17% of its sorghum, 17% of its barley and 11% of its corn production.¹⁴²

The form that agricultural negotiations might take in the Kennedy Round was not clear at the outset. The GATT had never had the success in agricultural products that it had in industrial products. In important agricultural sectors, such as cereals, tariffs were of much less significance in world trade than other protective devices, such as quotas, subsidies, minimum import prices, import monopolies and, as of 1962, variable levies. There were no solid precedents to be found in the former rounds of GATT negotiations which might have provided a technique for dealing with such non-tariff barriers. In these circumstances, conceptions on the two sides of the Atlantic as to the appropriate mode of negotiation diverged greatly.

Perhaps one reason for this disagreement on technique was to be found in the contrasting opinions as to the very nature and function of world trade in agriculture. To the French—and, to a certain extent, to the Community as a whole—such trade was fundamentally different from trade in manufactured products. Under this view it was pointless to talk about free trade in agriculture. International trade did not perform the same functions in temperate agricultural commodities as in other trade sectors. The so-called world market in cereals was, to the French, merely a dumping ground for surpluses created by national efforts toward self-sufficiency and parity of incomes for farmers. Starting with this premise, the French considered it essential that domestic price support programs in countries that were not yet producing enough for their own needs be protected from the vicissitudes of the world market. When “dumping prices” in the world market fall, agriculture in importing countries should not have to pay the price through a decline in domestic prices or through increased costs of the local support program. Whereas the traditional tariff mechanisms place responsibility on importers by permitting increased imports when world market prices fall (since the tariff remains the same whatever the world price), the French argument was that exporters should carry at least some of the burden of the adjustment to their own increased surpluses.¹⁴³

Quite aside from its dangerous instability, the world market in cereals

142. U.S. Office of the Special Representative for Trade Negotiations, Fact Sheet on Agricultural Negotiations in the Kennedy Round, Tables I and II (1965) (mimeo). The statistics include sales through non-commercial channels to developing countries, a very important item in the case of wheat.

143. It should be noted that the variable levy is perfectly suited to achieve this objective because it automatically soaks up any increased gap between world and domestic prices.

resulted, according to the French view, in an unreasonable subsidization of importing countries that could supply themselves at artificially low world market prices. The subsidies used by exporting countries to unload their surpluses were in effect paid to importing countries. This system led to a form of unfair competition in industrial goods since agricultural importers, and here the French had in mind principally the United Kingdom, were able to feed their urban labor force at much lower prices than agriculturally self-sufficient or surplus countries and could thus undersell the latter in industrial products. France feared that tariffs on industrial goods in the agricultural surplus countries might not be sufficient, after the major tariff reductions envisaged in the Kennedy Round, to offset this unfair competition. Under this view, the U.K. deficiency payments system,¹⁴⁴ far from being a contribution to a more efficient world trading system, was unfair and unstabilizing.

Existing international trading arrangements in cereals were unjust for the further reason, the French maintained, that while unsaleable surpluses were overhanging and depressing the world market, men starved and food deficits hampered economic development in many countries.¹⁴⁵

The French analysis had its institutional expression in the French Plan, a bold but sketchy design for organized world markets in temperate agricultural products.¹⁴⁶ The basic premise was that only a "managed" world arrangement could remedy the defects in the existing anarchy. Such an arrangement would contribute to agricultural incomes by protecting domestic price support programs from the vicissitudes of world market prices. It would assure that importing countries paid their fair share of the cost of agricultural production. And, finally, it would create the financial resources necessary to supply underdeveloped countries with foodstuffs.

The crux of the Plan was an internationally agreed reference price, a price which would be set relatively high, perhaps at the level of the EEC common price. Setting the price near the level of the highest-cost producer was justified by some poorly contrived appeals to economic theory. Price was determined, it was said, by the marginal producer; since the EEC was the world's highest-cost major producer, it was obviously the marginal producer, and, therefore, a "just" international price should be no lower than the EEC price. This "analysis" passed over, of course, the crucial question whether, under free and undistorted competition, areas with costs as high as the average EEC cost would continue to produce.¹⁴⁷ No imports were to be

144. See note 25 *supra*.

145. This criticism has lost some of its force in the last year as surpluses in wheat have dwindled, but only a few years ago (when the crucial debate about the form of GATT trade negotiations was in progress) unsaleable wheat surpluses seemed an immutable feature of international commerce.

146. The Plan, launched early in the 1960's, bore successively (without major substantive changes) the names of the incumbent French Ministers of Agriculture: Baumgartner, Pisani and Faure.

147. See the recapitulation of this appeal to the "laws of economic liberalism" in MALGRAIN 216.

permitted below the world reference price. Where necessary to bring imports up to this level, a levy would be imposed. The receipts from the levy would be used to finance distribution of surpluses to the developing nations. This in a nutshell is the French Plan. It is also just about as much of its detail as the authors of the plan ever disclosed.¹⁴⁸

The United States viewed the world in quite a different way. Whatever the influence of subsidies, relative prices in various countries still fulfilled, it was believed, the traditional price function of indicating relative efficiency. Higher standards of living, in agriculture as elsewhere, depended upon a division of labor among nations. Those countries which produce cheaply should be able to sell in high-cost countries, and the latter should indeed be happy to have the low-priced foodstuffs. Once barriers to trade disappeared, subsidies would likewise disappear, it was thought, and the world market would function smoothly. As for bearing the burden of adjustment, the General Agreement, which favored tariffs over quantitative restrictions and was designed to facilitate tariff reductions, assumed that importers were to bear the burden of adjustment to improvements in productivity in exporting countries. Insofar as adjustment to surpluses rather than to improved productivity was concerned, the United States viewed itself as already shouldering the primary burden of surpluses since it was the only nation to have imposed serious restrictions on output. It was also the only country with a large food aid program for the developing countries, and it therefore viewed with suspicion any plan to levy duties on its exports to finance food aid. Given this view of the nature and function of trade in agriculture, the United States program was simple to predict. It preferred to push ahead toward reduced trade barriers in agriculture—to do for agriculture what GATT was doing for industry.

A cynic would insist that these different *Weltanschauungen* masked calculated self-interest, the United States being an exporter and France, with a relatively less efficient agricultural base, struggling to replace the United States within a protected EEC market. He would maintain that the proposals reflected a good deal of hypocrisy to boot, since, to take two examples, the United States has maintained both import quotas and export subsidies on cereals, and France has been more interested in creating a sheltered market in Germany for its soft wheat surpluses than in giving those surpluses to the developing nations. More important than these moral judgments, however, is recognition that the opposing views were held so firmly on each side of the Atlantic that each of the parties had some difficulty in taking the other's proposals seriously.

The French were never able to sell their Plan in its entirety to their EEC partners. Nevertheless, the technique of the reference price and the accompanying notion of shifting the burden of adjustment to exporters pre-

148. The principal statements setting forth the French Plan are collected in 3 PROCEEDINGS OF THE U.N. CONFERENCE ON TRADE AND DEVELOPMENT 486-94 (1965).

vailed. The Council arrived at an initial negotiating mandate for the agricultural side of the Kennedy Round in December 1963. The EEC proposal was based upon the easily verifiable proposition that tariffs, the traditional stake in GATT negotiations, were only one element, and in many cases an insignificant one, of agricultural protection. The thrust of the proposal was to "bind" (that is, to freeze by agreement) the existing "margin of support" (*montant de soutien*) for each agricultural product in relation to a negotiated world reference price. The margin of support would be a certain absolute figure per unit of volume (for example, so many dollars per ton), calculated to include all elements of protection to be found both in external barriers and in internal support and subsidy programs. All GATT members would presumably replace existing forms of protection by a levy equal to this margin of support. If the world market offer price fell below the world reference price (and this was the core of the EEC proposal), each country would be entitled to impose a supplemental levy which would vary with the difference between prices on the world market and the world reference price. The two-part levy would thus throw the burden of adjustment, as does the present EEC variable levy, on exporters and would make exporters into residual suppliers. The crucial question under the EEC proposal would become, of course, the level of the world reference price; if, following French notions, it were sufficiently high, the world market price would always be lower than the reference price and the burden would remain permanently shifted. And if it were high enough, heavy importing countries, such as the United Kingdom, would be forced to pick up a formidable portion of the burden of supporting the world's farmers.

The United States rejected the EEC proposal as a basis for negotiation.¹⁴⁹ Although prepared to concede that the traditional tariff played a smaller role in agriculture than elsewhere,¹⁵⁰ the United States argued that all items of protection should be subject to negotiation. This contention was coupled with a charge that the EEC measure of protection was not comprehensive since the EEC was apparently not prepared to include either any of the existing member state aids to agriculture or any of the expenditures of the Guidance Section of the Fund—expenditures which, as was indicated above, could come to include an element of protection and distortion of markets.

The United States backed away, however, from traditional notions of

149. The United States' position is summarized in Address by Irwin R. Hedges, National Farm Institute, Feb. 11, 1965 (mimeo); Address by Irwin R. Hedges, *The World Wheat Situation*, National Association of Wheat Growers, Dec. 15, 1965. For a summary of the EEC position, see M. Meyer-Burckhardt, *De la politique commune de la CEE à une politique agricole internationale*, EEC STATISTICAL INFORMATION, No. 2, 1965, at 7.

150. The role of the tariff is not insignificant for all agricultural products. Over one-half of U.S. imports into the EEC in fiscal year 1963/64 were subject to GATT tariff bindings. See U.S. Office of the Special Representative for Trade Negotiations, Fact Sheet on Agricultural Negotiations in the Kennedy Round, Table III (1965) (mimeo). The effect of the EEC proposal, particularly the supplemental levy, might be to raise protection substantially on these bound tariff items.

tariff negotiations and competitive international trade by suggesting that guarantees of access might be negotiated under which traditional exporters would be guaranteed a position in their traditional markets, presumably either as a fixed quantity or as a percentage share. The United States had in mind, of course, that the EEC should guarantee its traditional position in the markets of the six member states. In part this U.S. proposal, with its rigidifying effects on world trade patterns, constituted an implicit acknowledgment of the EEC position that agricultural trade could not be assimilated to trade in industrial products and was thus a contradiction of the U.S. free trade ideology. To the U.S. negotiators, however, any solution which tended to augment the volume of international trade and to temper the drive for self-sufficiency was more consistent with the underlying GATT notion of an international division of labor than was a solution which made exporters residual suppliers.¹⁵¹

The United States originally suggested that, if international arrangements for individual products were to be attempted, the United Kingdom Cereals Arrangement of 1964 (based on the principle of guaranteed access) might provide the appropriate precedent. Although this arrangement establishes a minimum import price enforced by a variable levy (which bore a strong resemblance to the EEC variable levy) in order to "promote greater stability in the United Kingdom cereals market," it has as its concurrent declared purpose the maintenance of "a fair and reasonable balance between home production and imports."¹⁵² In other words, the responsibility for adjustment is to be shared by exporters and importers. The minimum import prices (which are in many ways the equivalent of the EEC threshold prices) are not to be changed without consulting—and not to be changed significantly without the agreement of—the U.K.'s principal suppliers: Argentina, Australia, Canada and the United States. In addition, an annual joint review is to be undertaken by the "co-operating governments." If it should develop that the minimum import price arrangements have "resulted in an appreciable distortion of trade . . . and in consequence have damaged or threatened to

151. If international trade becomes more and more subject to international regulation, as appears not unlikely, this underlying ambiguity about the purpose of trade will become more important. Trade increases world efficiency and thereby raises living standards on average. If the volume and direction of trade become subject to administrative decision, whether by international negotiation or by prescription from above, it becomes essential to know what kind of trade contributes to that efficiency. Trade occurring in other than a free market context could detract from world efficiency. See generally K. Dam, *Regional Economic Arrangements and the GATT: The Legacy of a Misconception*, 30 U. CHI. L. REV. 615 (1963). In addition, with changes in cost conditions and the like, trade patterns established under free market conditions and therefore serving world efficiency may, if administratively frozen as by access guarantees, come to detract from world efficiency.

152. EXCHANGE OF LETTERS AND NOTES, CMND. No. 2339, at 2, para. 4 (April 15, 1964); see GATT, TRADE IN AGRICULTURAL PRODUCTS: REPORTS OF COMMITTEE II ON CONSULTATIONS WITH THE EEC, THE U.S.A. AND THE U.K. 133-65 (1965); C. Brunthaver, *U.K. Grain Agreement: Format for an International Grain Agreement?*, 47 J. FARM ECON. 51 (1965).

damage the trade interests" of one of the cooperating exporters, or that total imports of cereals "have shown or threaten to show an appreciable decline below the average volume of such imports during the three years preceding 1 July 1964 [on the order of nine million tons]" due to insufficient self-restraint on the part of the United Kingdom in subsidizing its agriculture or due to overly high minimum import prices, the United Kingdom is to "take effective corrective action at the earliest practicable time to remedy the situation."¹⁵³ Although the institutional mechanism has left much to the good will of the parties,¹⁵⁴ it is the explicit sharing of responsibility which constitutes the distinctiveness of the U.K. Cereals Arrangement.¹⁵⁵

Progress toward an accommodation of the divergent EEC and U.S. views on the framework for agricultural negotiations was delayed pending agreement on the common cereals price in 1964. The United States had sought to negotiate on the common price, fearing that in the setting of the price the degree of effective protection would be increased, but the EEC successfully maintained that until the level of that price was known, it was impossible to determine the level of support which, under its negotiating plan, would be "bound." Following the decision on the common cereals price in late December 1964, the Trade Negotiations Committee of GATT decided that those GATT members which had been participating in the GATT Cereals Group should try to work out a world arrangement in cereals.¹⁵⁶ But before substantial progress could be made, the EEC crisis of June 30, 1965, erupted. It was not in fact until June 1966, just over one year before the U.S. negotiating authority under the Trade Expansion Act was scheduled to expire, that the EEC arrived at a definite position on its proposal for a world arrangement in cereals.

The EEC proposals depart from the French Plan in two vital respects.

153. See EXCHANGE OF LETTERS AND NOTES, CMND. No. 2339, para. 11, at 4 (April 15, 1964).

154. The United States has reason to be disappointed with the results of the U.K. Cereals Arrangement. Imports of cereals in 1964/65 and 1965/66 (forecast) averaged some 10% below the nine-million-ton target, but the U.K. Government has nonetheless increased the "standard quantities," on which domestic deficiency payments are calculated, for the 1966/67 year. See ANNUAL REVIEW AND DETERMINATION OF GUARANTEES 1966, CMND. No. 2933, at 26 (Table F), 45 (March, 1966).

155. Because of its disappointing experience with the U.K. system, the United States subsequently began to argue that the U.S. Meat Import Law, Pub. L. No. 88-482, contained a more appropriate precedent. 19 U.S.C. § 1202, at 3848 (1964). This statute grants power to impose quantitative restrictions on certain meat imports whenever imports exceed a certain level by 10%. The import level is calculated to increase at the same percentage rate as domestic production. Through this growth factor, the burden of adjustment is to be shared. See GATT, TRADE IN AGRICULTURAL PRODUCTS: REPORTS OF COMMITTEE II ON CONSULTATIONS WITH THE EEC, THE U.S.A. AND THE U.K. 119-31 (1965).

156. Similar efforts for certain other individual products, such as meats and dairy products, were to be pursued in other working groups. The world arrangement in cereals would presumably replace the International Wheat Agreement, an existing world arrangement which is more important on paper than in practice. A discussion of the International Wheat Agreement has been excluded from this already overly long paper on the pragmatic ground that it has not been revised to reflect the existence of the EEC Common Agricultural Policy and has had no verifiable influence on that Policy. See W. HAVILAND, INTERNATIONAL COMMODITY AGREEMENTS 9-13 (1963).

These changes represent, it should be noted, major French concessions to the liberal trade views of its EEC partners. First, under the proposals the world reference price would be set far below both the EEC common price level and the earlier, somewhat lower, French domestic price. It would be only two or three dollars a ton above the price of the lowest-cost producer, Canada.¹⁵⁷ Thus, importers like the United Kingdom would be able to continue obtaining supplies at near the world market price and would not be primarily responsible, as under the French Plan, for creating the funds to finance food aid. Second, a self-sufficiency ratio would be adopted by international agreement for each producing country, whether, on balance, importer or exporter.¹⁵⁸ To the extent that any country's production exceeded the percentage of its consumption specified by the self-sufficiency ratio, and a world surplus resulted therefrom, that country would become responsible for disposing of the surpluses thus created. These surpluses would be used in part for food aid, and the responsibility of the overproducer might be discharged by distribution in kind to developing countries or by contribution to a fund which would purchase grain for distribution on commercial terms in such countries. A single self-sufficiency ratio would be adopted for the entire EEC, thereby further cementing the principle of Community responsibility for French surpluses. The Council adopted, after lively discussion, a 90% ratio for cereals as a whole in its negotiating offer. Given the average 85% to 87% actual ratio over recent years, adoption of a 90% ratio might imply an absolute decrease of imports, according to one estimate, from the former level of 9 to 10 million tons to 7 million tons per year.¹⁵⁹ In any event, it is clear that, even if growth of consumption permits an absolute increase of imports, a relative decrease is sought by the EEC.

At the same time, however, the EEC plan resembles an access arrangement, although perhaps not of the kind the United States had sought. If imports should fall below 10% of consumption in the EEC and a world "surplus"

157. Although the EEC plan has not been published, a figure of \$2 per ton above Manitoba No. 2 is sometimes mentioned. To this figure, the EEC would apply quality coefficients such as those discussed p. 238 *supra*. It is not clear whether the world reference price would be c.i.f. or f.o.b. If the latter, it is not clear whether the world would be placed in price zones depending upon the transport costs from Canadian ports, which would mean that the EEC export prices would be some \$4 to \$5 (the cost of transport from Canada to Europe) higher than the Canadian export price or whether, on the other hand, all countries would have the same export price, in which case EEC wheat could systematically underbid North American wheat in Eastern European markets (and markets east of Europe) by \$4 to \$5 per ton. It is in details such as these that the competitive impact of a world arrangement would be felt. It is therefore unfortunate that the little public discussion to date has been carried out at a lofty level of abstraction.

158. For net importers the ratio would thus be less than 100% and for net exporters it would be more than 100%.

159. Overall averages over time for self-sufficiency are somewhat misleading because they reflect substantial variations from year to year and from product to product. The grains ratio (wheat, rye, barley, oats and corn only) was 78% in 1961/62, 89% for 1962/63 and 84% for 1963/64. For wheat alone the dispersion was much greater: 86% for 1961/62, 108% for 1962/63, and 91% for 1963/64. EEC NEWSLETTER, No. 37, June 1965, at 8 (Table 3).

should thereby be created, an indirect penalty would be imposed on the EEC in the form of a duty to provide food aid. Whether the proposed arrangement would be more or less rigidifying in its effect on world trade than the kind of access agreement sought by the United States is difficult to say. Although the 10% "guarantee" would be open to all exporters as a group, and hence would encourage competition among exporters, each exporter would be subject to its own self-sufficiency ratio and could not, therefore, expand total production in a competitive attempt to wrest a portion of the EEC market from another exporter, without incurring a food aid obligation for the "surplus" thus created. Price competition among exporters would also be pointless because, whenever the world market price fell below the world reference price, the supplemental levy would soak up the differential. The consequence of the proposed system might be implicit collusion among exporters to maintain existing positions in commercial markets, a collusion enforced through the self-sufficiency ratio and the supplemental levy. Although the proposed system is thus a compromise between the French Plan and the U.S. positions on the question of guaranteed access and on the locus of responsibility between exporters and importers, it cannot be termed a step in the direction of free competition in international trade.¹⁶⁰

AFTERWORD

That the Common Agricultural Policy may tend toward autarchy in international trade should not, even in the eyes of a free trader, diminish admiration for the exceptional combination of political imagination and technical skill which led to its formulation and implementation. It would be difficult for any regional organization to follow a less restrictive international economic policy than its member states. Customs unions need not lead toward freer trade in the world; indeed, the political pressures and incentives underlying their formation are likely to be stronger where they move away from freer trade.¹⁶¹ The

160. Pursuant to GATT procedures, the EEC offers have not been formally published. The general thrust of these offers is nevertheless an open secret, even though the details are somewhat murky. The account in the text has been pieced together from press reports which in many cases are no doubt based on information received from national delegations to the GATT or to the EEC. See, e.g., *Boost for the Kennedy Round*, 219 THE ECONOMIST 1337 (1966); *EWG will höheren Selbstversorgungssatz, Ernährungsdienst*, Deutsche Getreidezeitung, June 16, 1966, at 1, col. 1; *Schenkungen von Getreide, Ernährungsdienst*, Deutsche Getreidezeitung, July 26, 1966, at 2, col. 2; P. Fabra, *A Bruxelles, les Six pourraient définir une attitude commune*, Le Monde, June 14, 1966, at 19, col. 1 (dernière éd.). See also the draft report by the Agricultural Committee of the European Parliament, drafted by H. A. Lücher of Germany, entitled: *Projet de rapport sur les problèmes relatifs à une organisation des marchés mondiaux des produits agricoles*, [1966] EUR. PARL. DOCS., No. PE 15.910/rév. (Sept. 2, 1966); *GATT-Agrarverhandlungen gehen weiter*, AGRA EUROPE (Bonn ed.), Oct. 4, 1966, at 20. The account in the text treats only a portion of the criticisms that have been directed at the EEC's approach to agricultural trade in the Kennedy Round. Another objection is, for example, that the EEC has refused to negotiate on the great bulk of remaining agricultural tariffs. See *Kennedy Crunch*, 221 THE ECONOMIST 374 (1966). These aspects of the Kennedy Round are beyond the scope of this article.

161. This theme is developed at length in K. Dam, *supra* note 151.

original French enthusiasm for the EEC, based on ambitions in agriculture, is only an illustration of that principle. The economic burden on domestic consumers and external producers is a price to be paid for economic and political integration in Europe. Whether the price is worth paying is a question not only of values but also of historical perspective.¹⁶²

162. Near the end of December 1966, too late for inclusion in the body of this article, the Commission submitted to the Council proposed regulations governing the cereals sector after July 1, 1967. Although these regulations have not yet been adopted and substantial changes may yet be made, the summary issued by the Porte-Parole of the Commission does not indicate any drastic revisions. See EEC Note d'Information No. P/69, Dec. 1966; text accompanying notes 46-48 *supra*.