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A Primer on E.E.C. Agricultural Policies

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A PRIMER ON E.E.C. AGRICULTURAL POLICIES

Agricultural policy and performance are of central importance to the functioning of the entire mechanism of the European Economic Community. Almost by definition this policy is exceedingly intricate. More regulations have been issued concerning agriculture than for any other single topic covered by the Treaty of Rome. Because of its length this comment can indicate the complexity of the subject only by reference. The discussion is divided roughly into two parts. The first deals with the position of agriculture in the Community countries and with the problems of applying the theory of the Common Market to it. The second part traces the development of actual E.E.C. agricultural policy.

PART I

Prior to the Treaty of Rome, the agricultural segment of the economy had been removed by government intervention from the free market system in all of the member states of the E.E.C. Intervention resulted primarily from the chronic malfunctioning of the market system. In the case of many agricultural products the market had proved to be "a very uncertain and inadequate means of either short or long run adjustments of supply and demand, or of the achievement of the most desired patterns of resource allocation and income distribution within any country."[1]

These desired patterns of resource allocation were not strictly economic in origin. For some counties agricultural self-sufficiency was a national strategic goal; maintainance of a strong diversified agricultural sector was considered part of the national defense.[2] The national governments worked to create some degree of income parity between industrial and agricultural workers for reasons of social and political stability. As part of overall fiscal policy the purchasing power of the farmers had to be maintained. At the same time, the population as a whole had to be protected from overly high food prices. To encourage needed investment in agricultural capital, market stability was needed. The European governments responded to

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1. L. V. Castle, <u>International Policy on Agricultural Trade</u>, 4 J. COMM. MKT. STUDIES 47, 49, (1966).

2. J. O. COPPOCK, ATLANTIC AGRICULTURAL UNITY 40, 41, (1966).

these needs and pressures with a panoply of supports, subsidies, quotas, and other restrictions.[3] This response was only natural considering the political weight of the farm sector. In the E.E.C. states, as a group, nearly 20% of the population lives on farms, as compared to only about 8% in the United States.[4]

The physical conditions in Europe are less favorable to agriculture than they are in many parts of the world. This disadvantage results from often rugged terrain, overused, tired soil, and uneconomically small land tenure patterns. There has long been a need for "rationalization" of the entire sector in order to attain an efficiency comparable to that of outside producers. Such rationalization had proven to be almost impossible to achieve within the context of the national agricultural programs.

During the first wave of Pan-European sentiment after the Second World War it was widely recognized that the manifest ills of European agriculture could not be adequately treated by uncoordinated national policies. A series of conferences and studies were undertaken, largely under the aegis of the Organization of European Economic Cooperation, to examine the possibility of an international system of agricultural improvement. These efforts defined the problems and proposed some of the possible solutions. The fruits of this work will be discussed in Part II, dealing with the development of the E.E.C. policy.

The underlying problem facing any attempt to establish a common market in agricultural products was the existence of widely differing price levels in the six states. The differences in the price level reflected both physical limitations in the agricultural sector and the effect of government intervention. The price of soft wheat, for example, differed by more than 50% between the highest and lowest cost producers in 1958-1959.[5] Luxembourg and Germany have the highest costs and France, the lowest, although the French figures are still well above those from North America.

Paradoxically, although the European countries are typically high cost producers of agricultural goods, one of the primary problems has been overproduction. Demand for such goods as potatoes,

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3. See, Heller, Agricultural Policy of the European Economic Community, 5 HARV. INT'L. L. C. J. 45, 56 et seq., for a country survey of prior practice.

4. OECD, AGRICULTURE AND ECONOMIC GROWTH, 106-107, Table 6, (1966).

5. COMMENT, The Formation of the Agricultural Law of the European Common Market, 1 TEXAS INT'L. L. FORUM 89, 95, (1965).

soft wheat, vegetables, and pork did not rise as fast as the supply. National policies aimed at self sufficiency largely caused this imbalance. These policies allowed marginal producers to "hang on" despite their inefficiency. Any permanent action which would equalize prices at a market determined level would eliminate these producers.[6]

Accompanying the overproduction problem was a continuing lag in farm income vis a vis that in the industrial sectors. The artificially high prices were matched by high production costs, thereby narrowing any margin of profit. The farm sector was thus afflicted with high costs, overproduction, and falling incomes. The situation can only be cited as an example of the failure of the farm policies of the states involved.

High agricultural prices in Germany were maintained by government Import and Stock Offices. These agencies exercised market control by means of price supports, commodity stockpiling, and "equalization fees" on imports.[7] This program effectively insulated the German market from intra-European trade. Goods from outside of Europe made up the bulk of the German food deficit, but at prices which would not injure the German producers. While these producers were protected from effective foreign competition, the consumers paid the price for inefficiency and lack of specialization.

The French faced different problems. Although significantly higher than world costs, the French production costs are the lowest in Europe for many commodities.[8] It has been a consistent French goal to use their relative efficiency to become the "bread basket" of Europe. During the 1950's France encouraged exports by means of subsidies, and restricted imports of lower cost commodities. The existence of effective import restrictions in other western European nations, however, deprived the French in large measure of what they felt to be their natural market. Exclusion from this market placed great strain on the export subsidy program and created a major surplus problem.[9]

In light of the problems faced by the Six individually, it was

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6. Heller, supra., at 51.

7. E.E.C. COMMISSION, Report on the Economic Situation in the Countries of the Community 212, (1958).

8. OECD, AGRICULTURAL POLICIES IN 1966, 611 et seq., (1966).

9. Dam, The European Common Market in Agriculture, 67 COLUM, L. R. 209, 213, note 16, (1967); see also, Heller, supra., 57-59.

clear that the creation of a common market in agriculture would have a profound effect on each of the countries involved. The Germans, and the other high cost producers, would have to face a flood of lower cost French goods, which, in the absence of controls, would drive a substantial number inefficient farmers off the market. Moreover, farm income might be expected to drop radically from a combination of lower prices and decreased volume. The French, on the other hand, would benefit handsomely from the removal of internal restrictions since their surpluses could then easily be sold in the urban centers of the surrounding nations. At the same time these French goods would be protected from lower cost, non-European sources. While the French had a vital interest in creating an agricultural common market, it is quite apparent that immediate economic problems for the farm sectors of the high cost nations would also result.

The French aim of including agriculture in the Common Market framework, on French terms, has been regarded by other members of the Community as the price to be paid for French participation in European industrial integration. This "price" is a high one only in the relative short run, since it is in the long run interest of each nation to consume the lowest cost product, and to re-align production in the most efficient pattern.

The problems presented by the application of the common market idea to agriculture in Europe can be classified under two broad headings. The first is the question of how short run price effects could be minimized in order to prevent major dislocations in those high cost areas which hitherto had been protected by national policies. The second is, given the need to prevent hardship resulting from price harmonization, how to bring about structural changes which will erase the wage differential between agricultural and industrial workers and which will allow modernization within the sector.

These problems are moving ever closer to solution within the Community. Final transition to the "single market stage" for free movement of agricultural products with common prices throughout the Community will have taken place by July 1, 1968. The E.E.C. Commission calls the successful implementation of the agricultural common market "the guarrantee of future progress in other sectors of Community activity."[10] Part II discusses the techniques through which this significant success has been achieved.

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10. E.E.C. COMMISSION, Tenth General Report on the Activities of the Communities 45, (1967).

PART II

A. Treaty Provisions Relating to Agriculture

The E.E.C. Treaty devotes Articles 38 through 47 to the topic of agriculture, but despite the statement in Article 38.4 that a common agricultural policy be established, and the list of objectives of the common agricultural policy in Article 39, there is very little in the Treaty suggesting what this policy should be.[11] This section of the Treaty is merely bare bones without the type of deatiled substantive provisions to be found in other parts of the Treaty. The decision of the six Member States to include agriculture in the planned Common Market was, in itself, a momentous step. From the disappointing history of international attempts to solve agricultural problems this decision was not at all a foregone conclusion.

A program of trade liberalization, involving raw materials, manufactured goods, and agricultural commodities had been undertaken in 1949 by the members of the Organization of European Economic Cooperation. This program dealt only with the progressive elimination of quantitative restrictions on imports. The program was much less successful in removing quotas from agricultural goods than from other types of goods, merely demonstrating the intransigence of the agricultural problem.[12] The program covered, moreover, only a single example of many trade barriers. It was felt by many people in Europe, almost before this plan was initiated, that a far more comprehensive approach was necessary to deal specifically with the problems of agriculture. The Schuman Plan, basis of the European Coal and Steel Community, seemed to be a model for this comprehensive approach.

Specific proposals along this line were made by both the French and the Dutch governments. These proposals, the Pflimlin and the Mansholt Plans were similar insofar as each called for the establishment of supranational organs which would create and run programs reducing trade barriers and aiming toward expanded and specialized production of agricultural products. The Mansholt Plan is of particular significance, first because it was the more comprehensive of the two, and second because its author became the chief agricultural planner for the E.E.C. Commission. The Mansholt Plan contained the nucleus of the common agricultural policy of the E.E.C.

The Mansholt Plan was premised on the special (*i.e.*, non-market) nature of the agricultural sector, and on the desirability of main-

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11. 289 U.N.T.S. 3 (1958).

12. Heller, *supra*, at 90-91.

taining the family farm.[13] A gradual approach to integration of agricultural markets was advocated. Coupled with this proposal were coordinated programs of trade restriction removal and equalization of production costs. The Plan sought to attack both the price and the structural problems of integration. Mansholt wrote in 1952:

> . . .[I]t will be necessary to maintain a price level which will yield farmers a profit, and this means that subsidies and levies will be unavoidable in intra-European trade, at least for the transitional period. The expenditure and income involved should be charged to and used by a European Agricultural Fund; help for technical development for areas with high costs could come from this Fund.[14]

It will be seen that several aspects of the Treaty and the common agricultural policy (CAP) were already present in this proposal. Despite these energetic programs, discussion of the topic of agricultural integration lapsed briefly after the defeat of the proposed European Defense Community in 1954.

The actual basis of the Treaty provisions concerning agriculture was provided by neither of these plans, but rather by the Spaak Report of 1956, which was written in response to the tentative approval of the creation of a Common Market by the Foreign Ministers of the Six in 1966. This report urged inclusion of agriculture, emphasizing that the national agricultural programs were inadequate to meet the problems, and that the flexibility and scope of an international program were needed.[15] The conclusions of the Report, insofar as it concerned agriculture, were incorporated almost verbatim into Articles 38 to 47 of the Treaty.

Detailed proposals for implementing a common market in agriculture were not formulated at the time the Treaty was adopted, and as a result the agriculture section is a mere outline. The actual character of the Common Agricultural Policy (hereinafter CAP) was left unresolved. To fill in the details of the CAP the Commission was required to convene a conference of Member States to prepare a state-

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13. Mansholt, Towards European Integration, 31 FOR. AFFAIRS 106, at 110, (1952).

14. Id., at 111.

15. D. CAMPS, THE EUROPEAN COMMON MARKET AND AMERICAN POLICY App. at ix (Princeton Center of Int'l. Studies Policy Memorandum No. 11, 1956).

ment of needs and resources (Article 43.1). This conference was held in Stresa, Italy in 1958, and resulted in a resolution on basic principles of the CAP which is probably still binding today.[16]

The E.E.C. Commission was given primary authority to prepare the content of the CAP, taking account of the work of the Conference, and was required to submit its proposals to the Council for adoption and issuance as regulations (Article 43.2). These procedures make possible the separate treatment of the agricultural sector and insulate it from the full effect of the other Treaty provisions, in accord with the intent of Article 39.2. The freedom which Council control of the programs gave to the Member States to "hedge their bets" during the transitional stages was perhaps an essential condition for ratification of the entire Treaty.

The Treaty Articles of main operative effect are Articles 40 and 43. The former provides that the CAP shall be established during the transitional period by setting up a "common organization of markets." The organization's methods of operation are suggested, and there is a reference to financing which provides that "funds" may be set up to achieve the objectives of the CAP. Article 43 lays out the timetable for the establishment of the CAP. It makes clear that the Council holds the basic power in the area, but that in accordance with the typical E.E.C. pattern, the Commission was to make the detailed proposals for creating the CAP. A key constitutional provision is found in Article 43.3, which allows initiation of the supranational market organization on the basis of a qualified majority vote of the Council. This provision prevented the possibility of a single country veto of the establishment of the agricultural common market, and gave a strong supranational power to the Comminity.

Council voting on other matters was by unanimity during the first two stages of the establishment of the Community, with qualified majority voting thereafter. Other Articles (44, 45, 46) contain permission for Member States to continue or initiate protective practices not inconsistent with the eventual establishment of the CAP, until the end of the transitional stage.

B. Establishment of the Common Agricultural Policy

The adoption of the first agricultural regulations under the Treaty was one of the most significant events in the history of the E.E.C. Agreement on Regulations 19 through 23 was reached in the Council on January 14, 1962, and they were issued on April 4,

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16. [1958] E.E.C. J.O. 281.

1962.[17] Agreement on these Regulations was the resolution of a long series of debates in the Council. These debates dealt with the critical issue of which nation was to bear the primary burden of the changes to be brought about by the lowering of tariff and quota walls The regulations finally agreed upon were substantially unchanged from the proposals of the Commission, although the proportions of the financing agreement were somewhat altered. The Regulations instituted the price-levy system and established Common Market organizations for a number of products, including grains, fruits, and vegetables.

The Commission's proposals were divided into four main elements. These were: policy on market structures, market policy, commerical policy, and common social policy in the field of agriculture.[18]

1. Structural Policy

The Commission's proposals for structural policy are directed first at improvement of the infrastructure of rural areas, e.g., transport, schools and services; second, at re-arrangement of land holdings and land usage to more efficient patterns; third, at specialization in the form of "improved adaptation of farming systems to the existing conditions of soil and climate and to the market situation."[19] A major principle of the program is that the Community act only as a coordinating and supervisory agent with regard to structural policies. The major responsibility for actual implementation lies with the governments of the Member States. The Commission also proposed that financial aid, in addition to that made available by the Member States, could be granted by the Community to projects when necessary.[20]

These proposals are embodied in a Council decision which created a Standing Committee on Agricultural Structures.[21] This Committee, attached to the Commission, reports to the Council and to the European Parliament concerning national policies on structural change and the need for program financing, if any.

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17. [1962] E.E.C. J.O. 933, et seq.

18. E.E.C. Commission, 2nd Report 126 (1961).

19. E.E.C. Commission, 3rd Report 166-167 (1962).

20. Id., at 168.

21. 1962 E.E.C. J.O. 2892 et seq.

An analogous supervisory type program has been established in the area of social policy.

2. Market and Commercial Policy

"The aim of the market policy must be to establish among the agricultural markets of the Member States a common market which will have the characteristics of an internal market."[22] With these words, the Commission describes the heart of the agricultural program, the market policy. This policy, however, cannot really be considered separately from what the Commission calls the commercial policy. This latter policy is basically the attitude of the Community as a whole toward external producers and purchasers.

Underlying both of these parts of the CAP are the price and levy systems. The mechanism of these systems can be most clearly seen with regard to the market in cereals under Regulation 19. This Regulation provided for a gradual approximation of grain prices from country to country, leading to the single market stage for cereals. The Regulation was primarily a transitional measure, and it has been superseded by Regulation 120/67, which establishes the mechanism for pricing in the single market stage of the agricultural community.[23]

3. The Price and Levy Systems

The basic decision of the Commission and the Council with regard to prices was to create market stability and to aid agricultural income by means of assured prices for agricultural commodities. In other words a price support system was decided upon rather than an income-deficiency payment system in which prices are allowed to seek their own level.[24] A support system entails purchase of any excess production at a set price. This, of course, assures farmers of some stable minimum income from their crops if the market price falls. Where there is effective competition from lower cost producing areas, simple governmental purchase of goods becomes prohibitively expensive unless imports are restricted in some way. To be effective, the price system must be protected from imports. In the E.E.C. this protection is by means of the variable levy.

The variable levy has replaced all other forms of import re-

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22. E.E.C. Commission, Report 169 (1960).

23. 1 CCH COMM. MKT. REP. Para. 428 (1967).

24. Dam, supra note 9, at 215.

striction on cereals in the E.E.C. The levy system is based on a price for each commodity which is chosen in advance by the administering agency. The price chosen is the one at which it is intended that the goods sell internally. The charge or levy upon import of that particular type of good is varied periodically so that the charge, plus the lowest world market price in that commodity, will total the desired internal "target price." The levy will exclude imports of the commodity only so long as the local market price is less than or equal to the target price. On the other hand, fluctuations in outside, or foreign, costs cannot affect the prices paid to the domestic producers.

This brief outline of the price-levy system does not really describe the actual single-market stage of the E.E.C., much less the more complicated transitional stage. To do this, several additional terms and concepts have to be employed.

The target price, the intended internal selling price of a particular commodity, was originally set by the individual Member States, and now in the single-market stage it is set by the Council.[25] This term is defined as the price " . . . sought to be obtained at the purchasing phase of the wholesale level for soft wheat, barley, rye, and corn in the commercial center of that area which has the greatest deficit in that particular commodity."[26]

The price at which support is maintained, the "intervention price," is the target price less an amount between five and ten percent. It is at this price that designated agencies of the Member States are obligated to purchase any excess production.

Imports are controlled by the threshold price. This price is set equal to the target price of the commodity, less the cost of transportation from the place of importation to the market center with the greatest deficit in that grain commodity. The variable levy is calculated on the basis of this price. This calculation is done by taking the C.I.F. price of the import before any import charges are levied on them, and adding an amount sufficient to raise the C.I.F. price to the level of the threshold price. The amount added is the variable levy.

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25. Pursuant to Regulation 128/67, single prices for gains were established throughout the Community on July 1, 1967. 1 CCH COMM. MKT. REP. Para. 428 (1967).

26. S. Riesenfeld, Common Market for Agricultural Products and Common Agricultural Policy in the E.E.C., 1965 U. ILL. L.F. 658, 667 (1965).

The C.I.F. price is calculated " . . . for Rotterdam on the basis of the most favorable purchase possibilities on the world market. . . . The differences in quality shall be expressed by equalization coefficients."[27] The Commission is empowered to determine the official C.I.F. price, and it does this daily, between 3:00 and 4:00 p.m. The Commission's determination of the C.I.F. price is apparently final unless a gross deviation from its published standards is proved. The specific facts upon which the Commission relies are not able to be discovered upon a challenge by a dissatisfied party.[28] However, even after it is clear how the levy is established, only the surface of the situation has been touched.

While it has been the aim, and since 1967 the actuality, to have a single, Community price for cereals, this price is not a real one. The basic target price of wheat, for example, has been set at $106.25 per ton.[29] But this figure is really irrelevant once the threshold price has been determined from it. The significant prices internally are only the intervention prices in any given market. These prices are "regionalized" for each intervention center. This regionalization takes account of transportation costs so that goods will flow from the surplus areas in the Community to deficit areas. Without this regionalization farmers would tend to sell to the local intervention centers rather than to wholesalers in deficit areas whenever the market price dips. The EEC has set the intervention prices lower in surplus areas by an amount approximately equal to the transportation costs to the desired deficit area.

The 1967 derived intervention prices reflect not only transportation factors but also allowances designed to minimize the effect of imposition of the "single market" stage. These allowances seem to be merely a disguised way of avoiding, for a time, a single, market-wide price, with its attendant hardships for high cost producers.[30]

An additional factor affecting internal price levels is the export program. It is Community policy to encourage exports of agricultural commodities. In order to allow such exports to take place, the Council has acted to grant export refunds to cover the differ-

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27. Regulation 120/67, Art. 13.2, 1 CCH COMM. MKT. L. REP. Para. 428N.

28. See, Schwarze v. Einfuhr-und Vorratsstelle für Getreide und Futtermittil, Ct. of Justice of the European Communities Case No. 16/65; 5 Com. Mar. L. Rep. 173, 189.

29. Dam, <u>supra</u>, 223.

30. <u>Id</u>., 225.

ence between price quotations on world markets and the generally higher prices in the Community.[31] The amount of such export subsidies will exert a direct influence on the level of producer prices within the Community, for on the average the higher the subsidy, the higher the internal prices.

Although the common market in cereals, outlined above, is an important area, there are very many products and product groups which have market organizations significantly different from that in cereals. Somewhat related to the cereals in concept are the so-called grain conversion products, such as pork, eggs, and poultry, whose prices are largely influenced by the price of feed grains. For these products no target or intervention prices have been established, probably because the control exercised through the cereals program is deemed sufficient. To prevent or mitigate severe price drops, the intervention agencies are empowered to purchase these products (principally pork to date) or to aid private stocks in purchasing.[32]

Protection from imports is by means of a "sluice gate price." This price is the minimum below which no grain conversion product can be imported. The exporter either guarantees to sell at or above the sluicegate price, or else a levy will be imposed to bring the offered price up to the sluice gate price.[33] From time to time additional items have been added to this type of arrangements.

A third major class of goods is typified by fresh fruits, wines, and vegetables. For these goods also, no target or intervention prices have been set or planned. The means of import control is by means of quality standards and control. These standards are determined by the Management Committee for the sector, with the approval of the Council.[34]

The institution of Management Committees has proved to be a key part of the success of the CAP.[35] These Committees have been a

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31. Regulation 120/67 Article 16, 1 CCH COMM. MKT. L. REP. Para. 428R, (1967).

32. Regulation 121/67, Article 3, 1 CCH COMM. MKT. L. REP. Para. 451(c).

33. Id., Article 12, 1 CCH COMM. MKT. L. REP. Para. 451c.

34. Regulation 23, 1 CCH COMM. MKT. L. REP. Para. 567.

35. See, Olmi, The Agricultural Policy of the Community, 1 COMM. MKT. L. REV. 118, 143 et seq. (1962).

strong supranational force within the Community eliminating much of the need for Council approval of specific measures. A Management Committee has been established for each of the product groups covered by common organization of markets. They are composed of representatives of the Member States with a Commission representative as chairman. They render opinions on measures proposed for their product group. Measures which the Commission proposes go into immediate effect, subject only to the opinion of the Management Committee. If the Committee disapproves--and only if it disapproves--is the measure referred to the Council. The council may then, within one month, adopt a different measure. Upon failure of the Council to act, the original measure of the Commission is put into force.

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