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An Agricultural Law Research Article

**Common Market for Agricultural Products
and Common Agricultural Policy in the
European Economic Community**

by

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Originally published in UNIVERSITY OF ILLINOIS LAW FORUM
1965 U. ILL. L.F. 658 (1965)

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COMMON MARKET FOR AGRICULTURAL PRODUCTS AND COMMON AGRICULTURAL POLICY IN THE EUROPEAN ECONOMIC COMMUNITY

BY STEFAN A. RIESENFELD*

I. THE FRAMEWORK OF THE TREATY

THE ARCHITECTS OF THE EUROPEAN ECONOMIC COMMUNITY had no doubts about the necessity of including agriculture in the projected common market. The famous governmental committee, established under the chairmanship of Mr. Spaak at the Messina conference of the foreign ministers of the six prospective EEC countries in 1955, opened the chapter on agriculture in its report with the lapidary sentence: "The creation of a general Common Market in Europe without the inclusion of agriculture is inconceivable."¹ Such inclusion, it was felt, was a prerequisite for a balance of the commerce between the economies of the member states. The authors of the report also recognized clearly that the functioning and growth of a common agricultural market necessitated an agreement on and pursuit of a common agricultural policy. They noted, however, that such policy could not be settled rigidly and definitely at the outset, but that provision ought to be made for a gradual evolution of such policy and a possibility of differentiation for different agricultural products.

The treaty, as finally negotiated and ratified, reflects these views of the Spaak report. Article 38 of the Treaty of Rome specifies:

"1. The Common Market shall extend to agriculture and trade in agricultural products. . . .

"4. The functioning and development of the Common Market in respect to agricultural products shall be accompanied by the establishment of a common agricultural policy among the Member States."

Article 39 of the Treaty then identifies the goals and the basic approved to the concretization of this policy. After enumerating the major objectives

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The author gratefully acknowledges financial assistance from the Institute of International Studies of the University of California (Berkeley) for the preparation of the manuscript.

¹REGIERUNGS-AUSSCHUSS EINGESETZT VON DER KONFERENZ VON MESSINA, BERICHT DER DELEGATIONSLEITER AN DIE AUSSENMINISTER 48 (1956).

of the common agricultural policy (increase of productivity, assurance of a fair standard of living for the agricultural population, stabilization of the markets, assurance of adequate supply and proper prices for the consumers) it declares that in working out the policy and the special methods which it may involve, due account should be given to three significant factors, *i.e.* the particular character of agricultural activities flowing from the structural and natural disparities between the various agricultural regions, the need for gradual adjustment, and the close linkage between agriculture and the other sectors of the economies of the member state.

Agricultural policy, as understood by the treaty, accordingly, possesses four different, though interrelated aspects, that have been identified as (a) structural policy, (b) market policy, (c) commercial policy to the extent that it affects the pursuit of the market policy, (d) social policy.²

In order to achieve the aims of the common agricultural policy, and especially the market policy, article 40 of the Treaty prescribes the establishment of a common organization of agricultural markets in one of three possible forms which may be selected according to the products concerned. The three optional forms are: (a) common rules regulating competition; (b) compulsory coordination of the different national market organizations; and (c) a European market order. Article 43 of the Treaty finally established a procedure and time table for the various steps to be taken.

The initial step was the convocation by the Commission of a conference of member states for the purpose of gathering the necessary information, especially on resources and needs. On the basis of the work of the conference and after consultation with the Economic and Social Committee,³ the Commission, within a period of two years, was to submit proposals concerning the formulation and execution of the common agricultural policy, including the replacement of the existing individual national market organizations in one of the three forms specified in article 40. Finally the Council, acting during the first two stages by unanimous vote and thereafter by qualified majority, was to issue the appropriate regulations, directives or decisions, upon proposals by the Commission and after consultation of the European Parliament.

At the end of the transitional period of 12 years, as envisaged by article 8 of the Treaty, the common agricultural market governed by a common agricultural policy was to be in full operation.

²EUROPÄISCHE WIRTSCHAFTSGEMEINSCHAFT KOMMISSION, VORSHCLÄGE ZUR GESTALTUNG UND DURCHFÜHRUNG DER GEMEINSAMEN AGRARPOLITIK GEMÄSS ARTIKEL 43 DES VERTRAGES ZUR GRÜNDUNG DER EUROPÄISCHEN WIRTSCHAFTSGEMEINSCHAFT (PROPOSALS OF THE COMMISSION OF THE E.E.C., PURSUANT TO ART. 43, FOR THE FORMULATION AND EXECUTION OF A COMMON AGRICULTURAL POLICY) p. II/6 (Brussels, June 30, 1960). The Treaty Establishing the Common Market, known as the Treaty of Rome, is printed in English in 298 U.N.T.S. 14(1958).

³The Economic and Social Committee is a consultative body established under articles 193-98 of the Rome Treaty.

The preparatory stage of the establishment of a common agricultural market took the whole first four years of the life of the European Economic Community. It was only on January 14, 1962, that the Council agreed upon and issued a number of basic regulations establishing common market organizations for certain agricultural products and creating a scheme for the financing of the common agriculture policy. The next years were devoted to the implementation and application of these regulations and their supplementation by regulations setting up common market organizations for other agricultural products. Many of the products involved, such as eggs, milk, poultry, pork and beef, were treated as "processed grain," since grain is a staple component of animal fodder. The basic regulation governing grains and grain products maintained different price levels for the individual member states, and this difference in price levels of feed grains was reflected in the schemes creating common market organizations for the derivative animal products. As a result the Commission urged the speedy adoption of uniform Community-wide prices for the various grain types. No agreement was reached, however, until December 15, 1964, when the Council of Ministers reached a consensus on the uniform price levels for various grains. It was resolved at that time that the inauguration of uniform grain prices should be accompanied by the introduction of a revised scheme for the financing of the common agricultural policy. During the session of the Council of Ministers on June 28, 29, and 30, no agreement could be reached and as a result France pursued a policy of the empty chair until January 17, 1966,⁴ when her Minister for Foreign Affairs returned to a meeting of the Council of Ministers. A modus vivendi was reached at the next meeting on January 30, 1966.⁵

Accordingly the following discussion will be divided into three parts: (1) the preparatory stage, 1958-1962; (2) the regulations of 1962; and (3) the uniform grain price and its costs.

II. THE PREPARATORY STAGE, 1958-1962

The conference of member states whose convocation was prescribed by the Treaty as the initial step toward the establishment of a common market for agriculture and a common agricultural policy was held at Stresa from July 3 to July 11, 1958. The final resolution of the Conference⁶ contained, *inter alia*, a general agreement upon nine fundamental propositions to serve as guidelines for the establishment of a common agricultural policy for the member states. These propositions envisaged a planned agricultural

⁴ New York Times, Jan. 18, 1966, p. 1, col. 5.

⁵ *Id.*, Jan. 30, 1966, p. 1, col. 6.

⁶ For the complete text of the final resolution of the Stresa Conference, see EEC COMM'N, FIRST GENERAL REPORT ON THE ACTIVITIES OF THE COMMUNITY (Jan. 1, 1958-Sept. 17, 1958) 74 (1958).

economy aimed at increase of productivity, specialization, avoidance of over-production, improvement of earnings from agricultural occupation, preservation of the family structure of European agriculture and pursuit of a price policy enabling goods to remain or become competitive. While it would serve no useful purpose to quote all nine guidelines in full, it may be worthwhile to reproduce two of them:

- "2. The implementation of the Treaty must lead naturally to a progressive expansion of trade within the Community; at the same time account must be taken of the need to maintain both trade and contractual, political and economic links with non-member countries and also of providing safeguards against unfair external competition.
- "3. Close correlation must be established between policy on structural adaption and market policy; structural adaption should help to even out production costs and to direct production into effective channels; market policy should be conducted so as to encourage increased productivity."

Proposition 2 shows that the Community was to pursue a policy of community preferences but not one of complete anarchy.⁷

Pursuant to the mandates of the Treaty and in accordance with the resolution of the Stresa Conference, the Commission submitted on June 30, 1960, a voluminous document entitled *Proposals for the Formulation and Execution of the Common Agricultural Policy Pursuant to Art. 43 of the E.E.C. Treaty*,⁸ commonly known as the first Mansholt Plan, since it was produced under the direction of Commissioner Mansholt (Netherlands). The report consisted of three main parts: I. The Agricultural Situation and the Agricultural Policy of the Member States of the EEC; II. The Principles of the Common Agricultural Policy; III. The Development of the Common Agricultural Policy. Part III, the heart of the report, was divided into a general chapter, followed by a chapter of proposals for a common policy relating to the structure of agriculture, a chapter containing proposals for the creation of a European Agricultural Guidance and Guarantee Fund and a chapter containing proposals for a common policy governing the grain market, the sugar market, the milk market, the beef market, the pork market, the poultry market, the egg market, the fruit and vegetable

⁷ When in April 1962 President Hallstein expressed to Secretary of Agriculture Freeman the view that the improvement of the living standards in the EEC would result in increased agricultural imports from the United States, his statement prompted a parliamentary question from Representative Armengand. In the written reply of the Commission, the quoted proposition 2 of the final resolution of the Stresa Conference was invoked as justification for President Hallstein's assurance. 5 AMTSBLATT DER EUROPÄISCHEN GEMEINSCHAFTEN 1349 (1962) (hereafter cited as AMTSBLATT. The *Amtsblatt* is the German edition of the Common Market's Official Journal.

⁸ See note 2 *supra* (Doc. VI/Kom (60)) 105.

market, and the vine market. The report differentiated between two stages, the final phase of a common market and a transitional period, the final phase to be reached for the 1967 harvest.

In the final phase three types of market control systems were to be employed.⁹ The market for grains and grain products was to be governed by a system of target and intervention prices designed to achieve the appropriate intercommunity price level coupled with a system of variable levies imposed to protect the community price level against disturbances from imports from non-community countries. The market for products, envisaged as processed grains, such as beef, pork, poultry and eggs, was to be protected by suitable measures against extra-community imports. In the case of beef this protection was to consist of tariff duties. In the other products of this category protection was to be achieved by a combination of tariff duties and variable levies, reinforced by the establishment of gate prices in order to guard against unduly low offers. The market for fruit, vegetables, and vine was to be primarily subject to quality controls.

Since the community countries at the time of the entry into force of the Rome treaty had vastly different price levels for agricultural products, and since Germany, in particular, had a supported price level for grains and grain products which exceeded substantially those prevailing in other community countries, the detailed Commission proposals for the various market organizations¹⁰ provided for a preparatory phase during which the individual member states would retain differences in price levels but during which a gradual approximation of these individual price levels towards an ultimate uniform price level would be accomplished. Hence the market organizations for grains, grain products, pork, poultry, eggs, milk and milk products were to make provisions, primarily by means of variable intra-community levies, for the maintenance of different price levels in the individual member states, but in such a fashion that these levies would decrease annually until a uniform price level would be achieved. In the case of grains and grain products and sugar the reduction of the variable intra-community levies was to correspond to an approximation of the applicable target prices for the individual member states, resulting in a gradual increase in the target prices in some and in a lowering thereof in others. In addition, the proposals for the organization for the various product markets contained a number of institutional provisions.

The proposals of June 30, 1960, actually were the final version of preliminary proposals that had been submitted to the Economic and Social

⁹ The plan of the final phase of the Common Market for agricultural products, upon termination of the transitional stage, is given in part III, General Chapter, section 17 of the report.

¹⁰ Part III, chapter 4 of the report contained detailed proposals for the organization of the markets for grain and grain products, sugar, milk, beef, pork, poultry, eggs, fruit and vegetables, and wine.

Committee on November 7, 1959, and to the Council of Ministers on December 11, 1960.¹¹ The earlier proposals likewise had been studied by the Committee on Agricultural of the European Parliament and were the subject of a debate in that body in March 1960.¹² As a result of its decision of May 12, 1960, to accelerate the tempo of the creation of the common market, the Council of Ministers fixed a time table for the adoption of the common agricultural policy.¹³ Gradually the scheme envisaged in the proposals of June 30, 1960, was perfected and approved. The Economic and Social Committee endorsed them in principle on May 6, 1960.¹⁴ The Council of Ministers approved the basic ideas and the system of variable levies on November 14, 1960.¹⁵ The European Parliament voted in favor of the system of variable levies on January 18, 1961.¹⁶ As a result of this backing the Commission submitted to the Council on May 31, 1961, the draft of two regulations, one providing for a system of variable levies and the gradual establishment of a common market organization for pork and one providing for a system of variable levies and the gradual establishment of a common market organization for grains and grain products.¹⁷ Drafts of regulations of common market organizations for poultry, eggs, fruit and vegetables and wine were submitted at the end of July of the same year.¹⁸ The regulations were promptly submitted for advice to the European Parliament. Reports by members of the Committee on Agriculture were prepared in due course,¹⁹ and thereupon the regulations were subjected to debates in Parliament held on October 17 and 18, 1961,²⁰ and on November 24, 1961.²¹ The Council of Ministers discussed the regulations and advisable changes at various meetings during the second half of the year.²² Finally, in the course of a mara-

¹¹ For a discussion of the earlier proposals see Bulletin der Europäischen Wirtschaftsgemeinschaft, May 1959, p. 5.

¹² Bull. E.E.C., March-April 1960, p. 43.

¹³ Bull. E.E.C., May 1960, pp. 19, 44.

¹⁴ *Id.* at 44.

¹⁵ Bull. E.E.C., Dec. 1960, at 45. The text is reprinted in Bulletin de la Communauté Économique Européenne [hereinafter cited Bull. C.E.E.], Jan. 1961, p. 83 (French edition).

¹⁶ For the text of the parliamentary resolution, see Bull. E.E.C., Feb. 1961, p. 50.

¹⁷ Bull. E.E.C., June 1961, p. 47; for the text, see Bull. E.E.C., July-Aug. 1961, pp. 105 and 116, 105-32.

¹⁸ Bull. E.E.C., July-Aug. 1961, p. 71. The text is reproduced in Bull. C.E.E., July-Aug. 1961, pp. 141, 151, 126, 11. (French edition).

¹⁹ ASSEMBLÉE PARLEMENTAIRE EUROPÉENNE, DOCUMENTS DE SÉANCE 1961-1962, Doc. 72 (grain, pork, poultry and eggs); Doc. No. 91 (wine); Doc. No. 96 (fruit and vegetables).

²⁰ ASSEMBLÉE PARLEMENTAIRE EUROPÉENNE, DEBATS, No. 46, pp. 48, 63 (1961).

²¹ ASSEMBLÉE PARLEMENTAIRE EUROPÉENNE, DEBATS, No. 48, pp. 237, 270 (1961).

²² Bull. E.E.C., July-Aug. 1961, p. 71; Bull. E.E.C. Sept.-Oct. 1961, p. 72-74; Bull. C.E.E., Nov. 1961, p. 73 (French edition); Bull. E.E.C., Dec. 1961, p. 47; Bull. E.E.C. Jan. 1962, pp. 82, 84.

thon meeting, which lasted with some interruptions from December 12, 1961, to January 14, 1962, the Council succeeded in ironing out the differences and difficulties and in agreeing upon the text of regulations for common market organizations in sectors of grains and grain products, pork, poultry, eggs, fruit and vegetables, and wine, as well as upon the text of a regulation governing the financing of the common agricultural policy. In addition the Council adopted resolutions with respect to the principles governing Common Market organizations for milk products, beef, and sugar.²⁸ The action thus taken was imperative since without it the community would have failed to reach the second stage in the establishment of the common market.²⁴ The agreement on the agricultural policy in the sectors mentioned thus constituted a veritable milestone in the economic integration of the Six.

Because of the difficulties involved in the composition of the texts of the regulations in the four Community languages the authoritative issuance of these regulations was only possible on April 4, 1962. On that date the following six basic regulations for the gradual establishment of common market organizations were issued: ²⁵ Regulation No. 19: grain and grain products; Regulation No. 20: pork; Regulation No. 21: eggs; Regulation No. 22: poultry; Regulation No. 23: fruit and vegetables; and Regulation No. 24: wine. In addition, Regulation No. 25 ²⁶ governing the financing of the common agricultural policy was issued.

In their essential features these regulations conformed to the Commission proposals of June 30, 1960, but in details, especially in the institutional arrangements, important modifications had been made. The Council and the Commission were the principal agencies in charge of the execution of these regulations. In certain cases the Commission had to consult with multinational management committees, established by each of the six basic regulations for the respective market sector.

The entry into force of these regulations required certain ultimate adjustments which were made by Council Regulation No. 49.²⁷

In the course of time further Common Market organizations were established, *viz.*, on February 5, 1964 ²⁸ for milk and milk products (Regulation 13/64); beef (Regulation 14/64); and rice (Regulation 16/64).

The establishment of common market organizations for these three sectors brought the scope of the common agricultural market to about 85 per

²⁸ Bull. C.E.E., May 1962, p. 11 (French edition). In addition to the action listed in the text, the Council adopted a regulation pertaining to the application of the rules of competition to agricultural products and certain decisions of a general nature.

²⁴ Pursuant to article 8 of the Treaty of Rome.

²⁵ 5 AMTSBLATT 933, 945, 953, 959, 965, 989 (1962).

²⁶ 5 AMTSBLATT 991 (1962).

²⁷ 5 AMTSBLATT 1571 (1962).

²⁸ 7 AMTSBLATT 549, 562, 574 (1964).

cent of the total agricultural productions of the Six.²⁹ Drafts of two further regulations establishing common market organizations for sugar³⁰ and vegetable fats and oils³¹ have been prepared by the Commission and are now under discussion by the Council and the consultative bodies.

The schemes thus worked out for the effectuation of a common agricultural policy of the EEC, of course, have prompted a great deal of discussion in various types of technical journals, including European and American legal periodicals.³²

III. THE AGRICULTURAL COMMON MARKET IN ACTION

A. The Common Market Organization for Grain and Grain Products

The central Common Market organization to which the life of the most of the other Common Market organizations is geared is that for grain and grain products. Since the price of feed grains is reflected in the production costs of pork, beef, poultry, eggs, and milk, the markets of these products must inevitably be influenced by the grain market. Consequently, Regulation No. 19,³³ forms the cornerstone of the whole system of market controls in the agricultural sector. Actually it sets up a most intricate and diversified regulatory scheme for a variety of products and only the basic features can be presented here. The regulation applies not only to the principal grain types grown in the Community countries, i.e., soft wheat, barley, rye, corn, oats, and to other domestic grains of commercial significance (such as buckwheat and millet), but for protective reasons also to hard wheat (*durum*) which is used extensively for human consumption but is not grown in substantial quantities in these countries. In addition the regulation extends to

²⁹ See the statement to that effect in Bull. E.E.C., Jan. 1965, p. 34.

³⁰ For the text, see Bull. E.E.C., May 1964 Supp., p. 2.

³¹ For the text, see Bull. E.E.C., Jan. 1965 Supp., p. 7.

³² See especially Götz, *EUROPÄISCHES GETREIDEPREISRECHT*, 18 *JURISTENZEITUNG* 157 (1963); Götz, *Europäisches Gemeinschaftsrecht und deutsches Recht*, *id.* at 265, Heller, *Agricultural Policy of the European Economic Community*, 5 *HARV. INT'L L. CLUB J.* 45 (1963); Hjorth, *The Common Agricultural Policy Crisis in the Common Market*, 40 *WASH. L. REV.* 685 (1965); Jaenicke, *Das Verhältnis zwischen Gemeinschaftsrecht und nationalem Recht in der Agrarmarktorganisation der Europäischen Wirtschaftsgemeinschaft*, 23 *ZEITSCHRIFT FÜR AUSLÄNDISCHES OFFENTLICHES RECHT UND VÖLKERRECHT* 485 (1963); Megret, *Principes du régime applicable à l'agriculture dans le Marché Commun*, 7 *REVUE DU MARCHÉ COMMUN* 267 (1964); Olmi, *La mise en oeuvre par la C.E.E. de l'organisation commune des marchés agricoles*, 6 *id.* at 420 (1963); Olmi, *The Agricultural Policy of the Community*, 1 *COMMON MKT L. REV.* 118 (1963); Olmi, *La politica agricola nella Comunità Economica Europea*, 4 *RIVISTA DI DIRITTO EUROPEO* 149 (1964); Teitgen, *Principes et règles générales de la 'politique agricole commune' de la Communauté Economique Européenne*, 27 *DROIT SOCIAL* 507 (1964).

³³ 5 *AMTSBLATT* 933 (1962), *CCH COMMON MKT. REP.* § 428 (1965) hereafter the *CCH Common Market Reporter* will be cited *CCH*. The regulation was amended by Council regulation 46/64 EEC, inserting an article 28a relating to the aims of the Treaty of Rome specified in articles 39 and 110 thereof. 7 *AMTSBLATT* 1141 (1964).

grain products in the first processing stage, *viz*, flour and semolina and a list of other processed products.³⁴

As indicated before, the establishment of the Common Market organization for grains and grain products, like those for most of the other agriculture products, proceeds on the premise that European agricultural policy must be protectionistic in order to enable that sector of the economy to survive. In the grain sector, prior to 1962, the six Community states pursued different techniques in accomplishing this protection³⁵ but in all of them the mechanism of protection involved a control or support of the price level high enough to permit domestic grain growers to get a sufficient return for their activities.

Regulation No. 19 preserves this system of protectionism through control and immunization of the domestic price level. Its central interventionistic device is the *principal target price*.³⁶ This price is not an actual but a planned or intended price which is sought to be obtained at the purchasing phase of the wholesale level for soft wheat, barley, rye and corn³⁷ in the commercial center of that area which has the greatest deficit in the particular agricultural commodity.³⁸ This target price must be fixed annually in advance of the yearly planting period by each Member State pursuant to its own law,³⁹ in accordance with resolutions, of the Council of Ministers concerning the governing price policy.⁴⁰ In countries with substantial variations

³⁴ Regulation No. 19, art. 1(a),(b),(c) and (d), CCH ¶ 429.

³⁵ See the summary of the various protectionistic methods employed in the Common Market nations, in PROPOSALS FOR THE FORMULATION AND EXECUTION OF A COMMON AGRICULTURAL POLICY, *op. cit. supra* note 2, at pt. III, ch. 4, proposals for a common policy in the grain sector, division 1 (wheat), nos. 4 and 5. A good survey of the situation in France is given by Giscard d'Estaing, *L'Expansion agricole de la France à l'ouverture du Marché Commun*, 1 REVUE DU MARCHÉ COMMUN 329 (1958).

³⁶ Regulation No. 19, art 5(1), CCH ¶ 433, at 544.

³⁷ Countries which do not produce a substantial quantity of rye or corn need not set a target price for these grain types, Regulation No. 19, art. 5(1), in conjunction with art. 4, para. 1, CCH ¶ 433 and ¶ 432.

³⁸ The commercial center of the area with the greatest deficiency in a particular type of grain may be different for the various grains covered. In Germany it is Duisburg for soft wheat, rye and barley, the three grains grown in substantial quantities in that country; in France it is Marseilles.

³⁹ In order to implement the scheme established by Regulation No. 19, Germany enacted the Law of July 26, 1962, for the Execution of Regulation No. 19 (Grains) of the Council of the E.E.C., B.G.Bl. pt. I, at 455 (1962), and France enacted Decree No. 62-858 for the Organization of the Grain Market of July 27, 1962, 45 BULLETIN LEGISLATIF DALLOZ 484 (1962).

⁴⁰ Regulation No. 19, art. 5(1), CCH ¶ 433. The determination of the target price may provide for a maximum of 10 monthly increases in order to compensate for the costs of storage and credit. Regulation No. 19, art. 5(3). Accordingly in Germany the first principal target price for wheat increased from 475.50 D.M. per ton to 520.50 D.M. per ton between July, 1962 and June 1963. Law of July 26, 1962, B.G.Bl. pt. I, at 455 (1962).

in price levels for different areas the respective governments may also fix derivative target prices for these zones.⁴¹

Regulation No. 19 contemplated an initial disparity between the principal target prices fixed by the individual governments for the different grain types and a gradual reduction of this disparity, until ultimately in 1967 a uniform principal target price for all six nations is achieved.⁴² In determining the initial target prices for the different grains the individual governments were to observe upper and lower limits fixed by decision of the Council of Ministers,⁴³ in accord with principles set forth in the regulation.⁴⁴ The subsequent approximations were to be governed by criteria established in a separate regulation issued by the Council upon proposal of the Commission, prior to September 1, 1962.⁴⁵

In order to assure realization of the target price the national governments are empowered to fix *intervention prices* at which they must buy up surplus grain. The intervention prices are lower than the respective target prices, but this difference may be not more than 10 per cent and not less than 5 per cent of the applicable target price.⁴⁶

Since imports from other Community countries with low grain prices (France and Netherlands) or from non-Community countries at world market levels would render it impossible to maintain a domestic price level in the neighborhood of the target price in the countries with high prices, especially in Germany, Regulation No. 19, provides for a system of *variable levies* which increases the free-to-frontier or the c.i.f.—price of foreign grains to a level which obviates depression of the domestic price structure.⁴⁷ The computation of the variable levies, which are collected by the national customs authorities, varies according to whether the imports hail from another Community member or from a non-Community country. The other Community countries enjoy a Community preference which is expressed in a *fixed amount*⁴⁸ which is subtracted from a protective price level, called

⁴¹ Regulation No. 19, art. 5(2), CCH at 544. Germany has established 202 derivative target prices for various commercial centers in addition to the principal target price applicable at Duisburg. Law of July 26, 1962, B.G.Bl. pt. I, at 455 (1962).

⁴² Regulation No. 19, art. 6(4) and art. 13, CCH ¶¶ 434 and 441.

⁴³ Decision of the Council of May 10, 1962, determining the upper and lower limits of the target prices for grains for the year 1962-1963. 5 AMTSBLATT 1280 (1962).

⁴⁴ Regulation No. 19, art. 6(1)-(3), CCH ¶ 434.

⁴⁵ Regulation No. 19, art. 6(4), CCH ¶ 434. The regulation envisaged was never enacted. Proposals by the Commission were submitted in November 1962. For the text, see Bull. EEC., Dec. 1962 Supp., p. 6.

⁴⁶ Regulation No. 19, art. 7, CCH ¶ 435. In Germany the initial intervention prices for the 203 areas were fixed in conjunction with the target prices. They are about 7% below the respective target prices, Law of July 26, 1962, B.G.Bl. pt. I, at 455 (1962).

⁴⁷ Regulation No. 19, arts. 2, 3, 4 and 10, CCH ¶¶ 430, 431, 432, and 438.

⁴⁸ The fixed amount is determined annually by the Commission pursuant to criteria set forth in Council Regulation No. 48 of June 29, 1962, 5 AMTSBLATT 1570 (1962) pursuant to the mandate of Regulation No. 19, art. 9, CCH ¶ 437.

the *threshold price*,⁴⁹ to which non-Community countries must be raised with respect to a designated place of entry, determined by each country.⁵⁰

The threshold price is fixed by each country pursuant to a method set forth in Council Regulation No. 19.⁵¹ It is computed by deducting from the principal target price the marketing costs incurred in the loading and transport of the imported products from the place of entry to the commercial center in the area with the greatest deficiency (in Germany from Emmerich to Duisburg) and adding the fixed amount.⁵² The threshold price therefore lies above or below the principal target price, according to whether the fixed amount (plus equalization coefficient for quality variations where appropriate) exceeds or is lower than the marketing costs between the port of entry and the commercial center in the area of greatest deficiency. In Germany it lies usually above the principal target price.⁵³ Intra-Community imports from member states with lower grain prices thus are subject to variable levies which increase the regular free-to-frontier-price to an amount which equals the threshold price minus the fixed amount, while imports from non-Community countries are subject to variable levies which increase their price from the standard cif-price to the threshold price.

The determination of the applicable free-to-frontier prices (for imports

⁴⁹ Regulation No. 19, art. 4, CCH ¶ 432.

⁵⁰ Each community country may have only one place of entry for each type of grain or grain product. They are for Belgium: Antwerp; for the Netherlands: Rotterdam; for Luxembourg: Sterpenich for wheat and rye, Antwerp for the other grains; for Germany: Emmerich; for France: Marseilles for all cereals, except corn and sorghum; Dunkirk for corn and sorghum; for Italy: Palermo for soft wheat and soft wheat products; Geneva for durum and durum products, Ravenna for the other grains and grain products. Regulation No. 68 of the Commission, 5 AMTSBLATT 1861 (1962), as amended by Regulation No. 120, 5 AMTSBLATT 2021 (1962).

⁵¹ Regulation No. 19, art. 4:

"For soft wheat and barely as well as for corn and rye in the member states that have a substantial production of these commodities, the member states shall annually determine the threshold price for a standard quality in such fashion that the sale price of the import at the commercial center of the area of the greatest deficiency corresponds to the target price established pursuant to Article 5, after allowance for the fixed amount provided in article 2 (1) and the equalization coefficients provided for in Article 12."

The determination of the applicable standard qualities and the equalization coefficients are governed by (Commission) Regulation No. 61, of July 13, 1962, 5 AMTSBLATT 1671 (1962).

⁵² About the relation between the principal target price and the threshold price and the computation of the elements which determine the difference between these prices, *i.e.*, (a) marketing costs between place of entry and commercial center in area with greatest deficiency, (b) equalization coefficient correcting for existing differences in quality standards forming the bases of target and threshold prices, and (c) fixed amount, see especially Götz, *Europäisches Getreiderecht*, 18 JURISTENZEITUNG 157, 160 (1963). The proper method is recognized by (Commission) Regulation No. 89 of July 25, 1962, art. 5, 5 AMTSBLATT 1899 (1962).

⁵³ See tables *infra*.

from Community countries) and the cif-prices for imports from non-Community countries) is in turn subject to detailed regulation, the basic principles of which are prescribed by Council Regulation No. 19.⁵⁴ The free-to-frontier prices are fixed weekly by the Commission on the basis of the market prices which prevail in those markets of the exporting country which are most representative for exports to the particular importing country.⁵⁵ The cif-prices are determined on the basis of the most favorable prices prevailing on the world market.⁵⁶ In order to permit trading in grain futures, Regulations No. 19 and subsequent regulations provide for a method of advance determination of the variable levy. In that case the variable levy may be augmented by a *premium* in order to compensate for speculative gains.⁵⁷

Special provisions govern the trade in durum.⁵⁸ All states must fix a threshold price for a community determined standard quality which must exceed the threshold price for soft wheat by at least five percent. The Community countries which grow durum must, in addition, fix target prices and intervention prices for the commercial centers in the areas of production.⁵⁹

The diagram on page 670 may serve to illustrate the interrelation between target price, intervention price, threshold price, and variable levy.

The exposition given here applies to the variable levies on soft wheat and barley in all community countries and on rye and corn in countries which produce substantial quantities thereof. For rye and corn in coun-

⁵⁴ Regulation No. 19, art 3 (determination of free-to-frontier prices), and art. 10(2) and (3), CCH ¶ 431 and ¶ 438.

⁵⁵ (Commission) Regulation No. 89 of July 25 1962, 5 AMTSBLATT 1899 (1962). The individual determinations, by Commission decision, are published in the *Agricultural Supplement to the Official Journal*.

⁵⁶ (Commission) Regulation No. 68 of July 11, 1962, 5 AMTSBLATT 1861 (1962). Since the world market qualities vary from the standard qualities governing the determination of the threshold prices the world market prices must be corrected for this disparity. The applicable amounts are specified in Regulation No. 70, 5 AMTSBLATT 1864 (1962). The cif-prices are fixed daily and published in the *Agricultural Supplement to the Official Journal*.

⁵⁷ (Council) Regulation No. 19, art. 17, provided for advance determination of the variable levy, coupled with the exaction of a premium, only in case of trading in futures with non-Community countries. (Council) Regulation No. 130 of Oct. 23, 1962, 5 AMTSBLATT 2555 (1962), extended the procedure to other community countries. The principles governing the computation of the premium were fixed by (Council) Regulation No. 54 of June 30, 1962, 5 AMTSBLATT 1581 (1962). Regulation No. 130 is now replaced by Council Regulation No. 31/63/EEC, 6 AMTSBLATT 1225 (1963), as amended by Council Regulation Nr. 56/64/EEC, 7 AMTSBLATT 1288 (1964).

⁵⁸ For the definition of durum, see (Commission) Regulation No. 30, 5 AMTSBLATT 1365 (1962).

⁵⁹ Regulation No. 19, art. 11(4) and (5), CCH ¶ 439.

DIAGRAM ILLUSTRATING VARIABLE LEVIES

For Germany

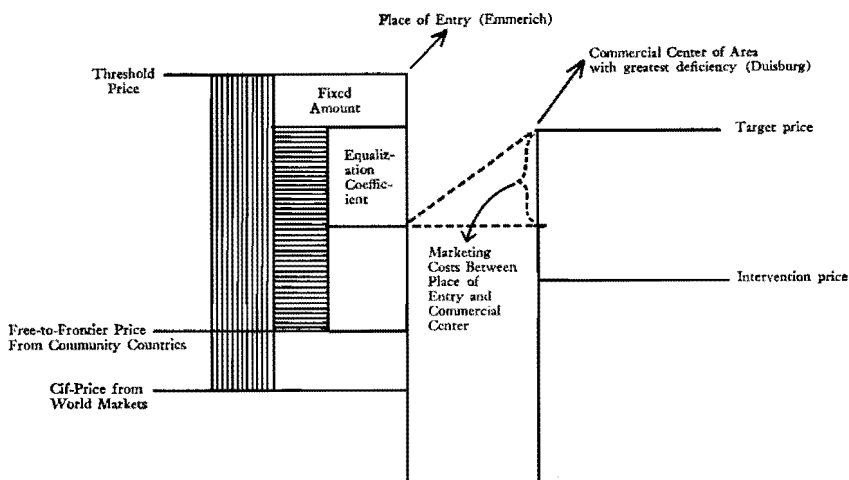
Explanation of markings:



variable levy on products from other Community countries



variable levy on products from non-Community countries



tries which do not grow substantial quantities thereof, for the other domestic grains governed by the Common Market order, and for processed grain products listed in Regulation No. 19, article 1(c) and (d) special rules apply which cannot be discussed here in detail.⁶⁰

The application of the system initiated in 1962 proved to be disappointing. The intended gradual approximation of the target and threshold prices was thwarted by the resistance of the countries involved. Germany, in particular, objected to a reduction of its price level. The following table shows the limits set for the principal target prices set by the Council Decisions or Regulations for the particular harvest years (1962-1963; 1963-1964; 1964-1965 and 1965-1966) and the target and threshold prices set by Germany for the initial period of these years:

⁶⁰ These rules are based on (Council) Regulation No. 19, arts. 8 and 14; Council Regulation No. 93/64/EEC, 7 AMTSBLATT 1947 (1964); Council Regulation No. 141/64/EEC, 7 AMTSBLATT 2666 (1964); Council Regulation No. 166/64/EEC, 7 AMTSBLATT 2747 (1964), and Commission Regulation No. 98, 5 AMTSBLATT 1914 (1962).

TABLE 1

TARGET PRICE LIMITS, INITIAL PRINCIPAL TARGET PRICES, THRESHOLD PRICES,
INITIAL PRINCIPAL INTERVENTION PRICES FOR GERMANY: 1962-1965

| Period | Price Type (D. M.) | Soft Wheat | Barley | Rye | Durum |
|-----------|---|---------------|--------|--------|--------|
| 1962-1963 | Permissible Target Price: Upper limit ¹ | 475.69 | 412.26 | 432.69 | ... |
| | Permissible Target Price: Lower limit | 357.70 | 285.68 | 262.84 | ... |
| | Initial Principal Target Price ² | 475.50 | 412.00 | 432.50 | ... |
| | Threshold Price ³ | 484.00 | 427.00 | 440.50 | 508.00 |
| | Initial Principal Intervention Price ² | 442.50 | 383.50 | 402.50 | ... |
| 1963-1964 | Permissible Target Price: Upper limit ⁴ | 475.69 | 412.26 | 432.69 | ... |
| | Permissible Target Price: Lower limit | 357.70 | 288.68 | 270.84 | ... |
| | Initial Principal Target Price ⁵ | 475.50 | 412.00 | 432.50 | ... |
| | Threshold Price ⁶ | 478.00 | 418.00 | 436.00 | 526.00 |
| | Initial Principal Intervention Price ⁵ | 442.50 | 383.50 | 402.50 | ... |
| 1964-1965 | Permissible Target Price: Upper limit ⁷ | 475.69 | 412.26 | 432.69 | ... |
| | Permissible Target Price: Lower limit | 357.70 | 288.68 | 270.84 | ... |
| | Initial Principal Target Price ⁸ | 475.50 | 412.00 | 432.50 | ... |
| | Threshold Price ⁹ | 478.00 | 418.00 | 436.00 | 526.00 |
| | Initial Principal Intervention Price ⁸ | 442.50 | 383.50 | 402.50 | ... |
| 1965-1966 | Permissible Target Price: Upper limit ¹⁰ | 475.69 | 412.26 | 432.69 | ... |
| | Permissible Target Price: Lower limit | 357.70 | 288.68 | 270.84 | ... |
| | Initial Principal Target Price ¹¹ | 475.50 | 412.00 | 432.50 | ... |
| | Threshold Price ¹² | 474.50 | 415.50 | 433.50 | 521.50 |
| | Initial Principal Intervention Price ¹¹ | 442.50 | 383.50 | 402.50 | ... |

The table shows that the upper limits for the permissible target prices remained constant throughout the whole period and that Germany consistently set the principal target price and the intervention price at the upper

¹ Council Decision, May 10, 1962, 5 AMTSBLATT 1280 (1962).

² Law for the Execution of Regulation No. 19 of July 26, 1962, BÜRGERLICHES, GESETZBUCK B.G.Bl. I at 455 (1962) [hereinafter cited B.G.Bl.].

³ Second Decree for the Execution of the Law for the Execution of Regulation No. 19 B.G.Bl. I at 473 (1962). This decree was revised by (Commission) Regulation No. 122, 5 AMTSBLATT 2024 (1962), and amended by Germany with respect to the threshold prices for January 1963 to June 1963 by Decree of December 27, 1962, B.G.Bl. I at 774 (1962).

⁴ Council Regulation No. 48/63/EEC, June 21, 1963, 6 AMTSBLATT 1777 (1963).

⁵ Amendment of Law for the Execution of Regulation No. 19, July 19, 1963, B.G.Bl. I at 493 (1963).

⁶ Decree of June 25, 1963, B.G.Bl. I at 434 (1963), as modified by Decree of July 19, 1963, B.G.Bl. I at 481 (1963).

⁷ Council Regulation No. 64/64/EEC, June 10, 1964, 7 AMTSBLATT 1534 (1964).

⁸ Amendment of Law for the Execution of Regulation No. 19, July 29, 1964, B.G.Bl. I at 553 (1964).

⁹ Decree of June 26, 1964, B.G.Bl. I at 413 (1964).

¹⁰ Council Regulation No. 84/65/EEC, April 13, 1965, 8 AMTSBLATT 1904 (1965).

¹¹ Amendment of Law for the Execution of Regulation No. 19, June 30, 1965, B.G.Bl. I at 569 (1965).

¹² Decree of June 24, 1965, B.G.Bl. I at 564 (1965).

limit, rounded up to nearest lower 50 Pfennig. The only variations that were made related to the threshold prices in order to account for changes in marketing costs, equalization coefficients, and the fixed amount. The fixed amount which is designed to permit community preference varied slightly during the period. It was originally fixed⁶¹ at one accounting unit (= 4 DM) for each of the grains covered by Regulation No. 19 and increased to one and one-tenth of an accounting unit in 1963,⁶² remaining at that level since that time.⁶³

The table also indicates that the Council increased the lower limits of the applicable target prices for barley and rye in order to increase production of these grains. This increase was the result of the adoption of an important community policy regarding the interrelation of grain prices. In its Action Program for the Second Stage of the Common Market,⁶⁴ the Commission had noted that "there are disparities between the prices of agricultural products in the Member States, and the realization of a common agricultural market is obstructed by the absence of a common policy in this matter." The Commission therefore pledged to submit proposals concerning the criteria to be applied in fixing target prices for agricultural products, stating that one type of these criteria should relate to "the guidance of production to meet demands."⁶⁵ In implementation of these ideas the Commission prepared, and on March 8, 1963, submitted to the Council, the draft of a regulation relating to measures to be applied in the price policy applicable to the grain trade for the harvest year 1963-1964 and subsequent period.⁶⁶ This draft regulation proposed to elevate the target price of barley to the cornerstone of the whole price policy for grain and grain products and to establish the target prices for the other grains in a fixed relation thereto: barley = 100, soft wheat from 113 to 117; rye and corn from 98 to 102. Although the proposals failed to be executed in their entirety they did result in increases of lower target price limits for barley, rye, and corn.⁶⁷ Moreover the Government representatives, convened in the Council of Ministers, adopted a resolution which geared the threshold prices for grains

⁶¹ (Commission) Regulation No. 69, July 17, 1962, 5 AMTSBLATT 1863 (1962).

⁶² Commission Regulation No. 58/63/EEC, June 26, 1963, 6 AMTSBLATT 1801 (1963).

⁶³ Commission Regulation No. 72/64/EEC, June 18, 1964, 7 AMTSBLATT 1593 (1964); Commission Regulation No. 60/65/EEC, April 22, 1965, 8 AMTSBLATT 1109 (1965).

⁶⁴ This program was submitted to Parliament and Council on October 26, 1962. EEC COMM'N, SIXTH GENERAL REPORT 21 (1963). An English translation of the Action Program was published, as a separate pamphlet, in CCH Common Market Reports (1963).

⁶⁵ Action Program (CCH edition) ¶ 303.

⁶⁶ The draft regulation is published in Bull. E.E.C., April 1963 Supp., p. 21. For a discussion, see Bull. E.E.C., May 1963, at 30-32.

⁶⁷ Bull. E.E.C., Aug. 1963, pp. 34-36. For Germany the quality standards for barley were modified so as to amount in practice to a reduction of the price by 6 DM per ton.

without target prices likewise to the threshold price for barley;⁶⁸ the resolution was repeated in 1964⁶⁹ and 1965.⁷⁰

Toward the end of 1963 the Commission took the view that successful participation in the Kennedy round under the auspices of GATT would necessitate the establishment of a uniform Community grain price with the beginning of the harvest year 1964-1965 by means of a single target price for each of the four principal grains. The new target prices were to lie between the previous upper and lower target price limits. The Commission realized that the new price level would have severe repercussions on the other prices for the other products such as eggs, poultry, and pork and would therefore require a number of compensatory measures entailing a profound modification of the existing arrangements for the financing of the agricultural policy.⁷¹ It submitted detailed proposals to that effect to the Council of November 4 and 5, 1963. This new Mansholt Plan precipitated a great deal of dissension between the Community countries both as to the proposed price level and as to the financial arrangements required for the execution of the plan. Prolonged discussions and negotiations ensued. On December 15, 1964—yielding to the insistence of the French Government upon an immediate solution—the Council finally settled upon a compromise proposal and agreed upon uniform target prices for grains to enter into force on July 1, 1967.⁷² These prices per ton are: for soft wheat: 106.25 European accounting units; for barley: 91.25 European accounting units; for rye: 93.75 European accounting units; for corn: 90.63 European accounting units; and for durum: 125 European accounting units.⁷³ The compromise solution of the single target price, however, required prompt agreement on the necessary arrangements for the financing of the expenditures entailed by the new system. Since no settlement of the outstanding issues was reached on June 30, 1965—the agreed deadline for a final resolution—France initiated the policy of the empty chair,⁷⁴ which she abandoned only recently.

B. The Common Market Organization for Poultry

The structure of the common market organization for poultry attracted a great deal of international attention because it was the cause of

⁶⁸ Resolution of June 21, 1963, 6 AMTSBLATT 1791 (1963).

⁶⁹ 7 AMTSBLATT 1536 (1964).

⁷⁰ 8 AMTSBLATT 1906 (1965).

⁷¹ For a discussion of the principal features of the new Mansholt Plan, see Bull. E.E.C., Dec. 1963, pp. 12-20. For the text of the proposed regulations, see Bull. E.E.C., Dec. 1963 Supp., pp. 2-29.

⁷² See the detailed account in Bull. E.E.C., Feb. 1965, p. 8.

⁷³ A European accounting unit is equivalent to one United States dollar or 4 D.M., (Council) Regulation No. 129, 5 AMTSBLATT 2553 (1962).

⁷⁴ See the account in Bull. E.E.C., Aug. 1965, pp. 44-47.

the "chicken war"⁷⁵ between the United States and the E.E.C. Its principal legal base is Council Regulation No. 22.⁷⁶ It covers the principal types of poultry, *viz.*, chicken, ducks, geese, and turkeys, both live and slaughtered, and specified poultry commodities.⁷⁷ It is based on the idea that poultry meat is "processed grain" and that the price structure for poultry must be geared to the grain prices. Like the Common Market organization for grain and grain products, the Common Market organization for poultry is maintained by a system of variable levies on imports from other Community countries and from non-Community countries, with a Community preference in form of a reduction by a fixed amount.⁷⁸ In contrast to the system applicable for grains and grain products, Regulation No. 22 does not provide for target prices, but establishes directly the various components of the variable levies.

Article 3 specifies the computation of variable levies on poultry imports from other community countries. Its provisions differentiate according to whether the importing Member State prior to the enactment of Regulation No. 22 protected its poultry industry by tariffs or by quantitative restrictions. In either case the variable levy consists of two components: One component, applicable in all cases, consists of a variable amount which corresponds to the difference in feed grain prices between the importing and exporting country.⁷⁹ The other component is a fixed amount whose computation follows different methods according to whether the previously existing protection was by tariff or by quantitative restrictions. In the former case, which existed in Germany and the other community countries except France,⁸⁰ the fixed component corresponds to the effect of the tariff, applicable in 1962 *vis-à-vis* the other member states upon the average free-to-frontier price for slaughtered poultry in 1961.⁸¹ In the second case a varying but comparable method applies.⁸² This fixed component is subject to an annual reduction of two fifteenths during the transitional period.⁸³ The variable component, which reflects the difference in feed grain price, must be computed by taking account (a) of the quantity of feed grains required to produce one kilogram slaughtered poultry meat; this quantity may vary according to the type of fowl, but must be uniform for all Community

⁷⁵ See Clubb, 1965 U. ILL. L.F. 366, 368-76.

⁷⁶ 5 AMTSBLATT 959 (1962).

⁷⁷ Regulation No. 22, art. 1, CCH ¶ 542.

⁷⁸ Regulation No. 22, arts. 2, 3, 4, and 9, CCH ¶¶ 543, 544, 545, and 550.

⁷⁹ Regulation No. 22, art. 3(1)(a), CCH ¶ 544.

⁸⁰ See the statement to that effect in EEC COMM'N PROPOSALS FOR THE FORMULATION AND EXECUTION OF A COMMON AGRICULTURAL POLICY OF JUNE 30, 1960, (VI/Comm. (60) 105), pt. III, ch. 4, section 6, no. 6 (1960).

⁸¹ Regulation No. 22, art. 3(1)(b), CCH ¶ 544.

⁸² Regulation No. 22, art. 3(2)(b) and (6), CCH ¶ 544.

⁸³ Regulation No. 22, art. 9, CCH ¶ 550.

countries; (b) of the feed composition representative for the individual member countries, and (c) of the wholesale feed grain prices in the different Community countries.⁸⁴ For products other than slaughtered poultry appropriate adjustments are prescribed.⁸⁵

Variable levies on imports from non-Community countries are the sum of at least three and, under some conditions, four components.⁸⁶ One component corresponds to the difference in grain prices for feed compositions applicable for the Community.⁸⁷ A second component corresponds to the second component included in the intra-community levies.⁸⁸ The third component is an amount which during the first year of operation, is fixed at 2 per cent of the average price at which slaughtered poultry was offered for import from non-Community countries. During the remaining portion of the transitional period the component in question is subject to successive annual increases and computed as 3, 4, 5, 5½, 6, 6½ and 7 per cent of the average *sluice-gate price* for the preceding year.⁸⁹

This *sluice-gate price* is a special protective measure of the Community against imports from non-Community countries against abnormally low prices. The *sluice-gate price* is uniform for the Community and is fixed by the Council with respect to slaughtered poultry, separately for each species covered by Regulation No. 22, in advance for a period of three months.⁹⁰ In determining the *sluice-gate price* the Council must take account of the feed grain prices on the world market and a conversion coefficient which is representative for the exporting non-Community countries.⁹¹

If the free-to-frontier price of imports falls below the governing *sluice-gate price*, a fourth component is added to the variable levy thereon which corresponds to the difference between that sales price and the *sluice-gate price*.⁹²

Variable levies on live poultry and special poultry products from non-Community countries and *sluice-gate prices* for such products are computed by the appropriate adjustments of the levies and *sluice-gate prices* applicable to slaughtered poultry.⁹³

In order to implement and execute the system established by the basic Regulation No. 22, Council and Commission had to issue a great number

⁸⁴ Regulation No. 22, art 3(4)(a)-(c), CCH ¶ 544.

⁸⁵ Regulation No. 22, art 3(5), CCH ¶ 544.

⁸⁶ Regulation No. 22, art. 4 CCH ¶ 545.

⁸⁷ Regulation No. 22, art. 4(1)(a), CCH ¶ 545.

⁸⁸ Regulation No. 22, art. 4(1)(b), CCH ¶ 545.

⁸⁹ Regulation No. 22, art. 4(1)(c), CCH ¶ 545.

⁹⁰ Regulation No. 22, art. 6(1) and (2), CCH ¶ 547.

⁹¹ Regulation No. 22, art. 6(1), second sentence, CCH ¶ 547.

⁹² Regulation No. 22, art. 6(3), CCH ¶ 547.

⁹³ Regulation No. 22, art. 4(2), and art. 6(1), para. 2, CCH ¶ 545, and ¶ 547.

of regulations and decisions. In fact, in actual practice it turned out that some of the methods prescribed for periodic adjustments and some of the dates specified therefore were unworkable and Regulation No. 22 subsequently was changed in these respects.⁹⁴

Since one of the components of the variable levies has the purpose of compensating for the difference in feed grain prices between the importing and exporting countries, the determination of the conversion coefficient representing the amount of feed grain needed to produce one kg. of slaughtered poultry meat is a pivotal element in the whole structure of the market protection. Council Regulation No. 33⁹⁵ fixed this ratio at 2.36 kg. for chicken, plucked and gutted with heads and feet; at 2.80 kg. for slaughtered chicken, plucked, drawn without head and feet, but with heart, liver and gizzard; and at 3.02 kg. for slaughtered chicken, plucked, drawn, without head and feet and without gizzard. Council Regulation No. 35 originally fixed the equivalent conversion ratios for non-Community exporting countries at 2.11 kg., 2.50 kg., and 2.70 kg. respectively.⁹⁶ Subsequently, as a conciliatory gesture toward the United States,⁹⁷ these conversion ratios were adjusted downward in order to decrease the sluice-gate prices predicated thereon, and fixed at 2.05 kg, 2.41 kg, and 2.60 kg. respectively.⁹⁸

The following tables show the amounts of intra-Community variable levies on slaughtered chicken in the three standard states of preparation with respect to Germany, the variable levies for equivalent imports from non-Community countries, the applicable sluice-gate prices, and the additional amounts for the period from July 1, 1962, to January 1, 1966. They demonstrate the disparities between the burdens on Community and extra-Community levies. Thus in December 1965, the levy in Germany on 1 kg. slaughtered chicken (without head and feet and without heart, liver, or gizzard) imported from France, amounted to 10 cents, while imports from the United States were subject to a levy of 32.65 cents.

⁹⁴ Council Regulations No. 56/63 EEC, 6 AMTSBLATT 1787 (1963); No. 79/64 EEC, 7 AMTSBLATT 1609 (1964); No. 118/64 EEC, 7 AMTSBLATT 2373 (1964).

⁹⁵ 5 AMTSBLATT 1513 (1962).

⁹⁶ 5 AMTSBLATT 1515 (1962).

⁹⁷ See Bull. E.E.C., Aug. 1963, p. 39.

⁹⁸ Regulation No. 55/63 EEC, 6 AMTSBLATT 1786 (1963).

TABLE 2

VARIABLE LEVIES ON GERMAN IMPORTS OF AND SLUICE-GATE PRICES FOR SLAUGHTERED CHICKEN FROM NON-COMMUNITY COUNTRIES 1962-1966. (E.A.U. OR DM PER KG)

| Effective Date | VARIABLE LEVIES ON | | | SLUICE-GATE PRICES OF | | |
|-------------------------------|------------------------|--------------|--------------|-----------------------|--------------|--------------|
| | Chicken A ¹ | Chicken B | Chicken C | Chicken A | Chicken B | Chicken C |
| July 30, 1962 ² | .1798 e.a.u. | .2133 e.a.u. | .2300 e.a.u. | .6200 e.a.u. | .7350 e.a.u. | .7925 e.a.u. |
| October 1, 1962 ³ | .1806 e.a.u. | .2142 e.a.u. | .2310 e.a.u. | .6194 e.a.u. | .7344 e.a.u. | .7909 e.a.u. |
| January 1, 1963 ⁴ | .76 DM | .90 DM | .97 DM | .6152 e.a.u. | .7294 e.a.u. | .7855 e.a.u. |
| April 1, 1963 ⁵ | .80 DM | .95 DM | 1.02 DM | .6105 e.a.u. | .7239 e.a.u. | .7795 e.a.u. |
| June 27, 1963 ⁶ | ... | ... | ... | .5988 e.a.u. | .7100 e.a.u. | .7646 e.a.u. |
| August 1, 1963 ⁷ | .80 DM | .94 DM | 1.02 DM | .6028 e.a.u. | .7147 e.a.u. | .7697 e.a.u. |
| October 1, 1963 ⁸ | .79 DM | .93 DM | 1.01 DM | .6059 e.a.u. | .7184 e.a.u. | .7737 e.a.u. |
| January 1, 1964 ⁹ | .75 DM | .89 DM | .96 DM | .6059 e.a.u. | .7184 e.a.u. | .7739 e.a.u. |
| April 1, 1964 ¹⁰ | .73 DM | .87 DM | .93 DM | .6095 e.a.u. | .7227 e.a.u. | .7783 e.a.u. |
| July 1, 1964 ¹¹ | .73 DM | .87 DM | .93 DM | .6095 e.a.u. | .7227 e.a.u. | .7783 e.a.u. |
| August 1, 1964 ¹² | .74 DM | .88 DM | .94 DM | .6104 e.a.u. | .7237 e.a.u. | .7794 e.a.u. |
| October 1, 1964 ¹³ | .748 DM | .887 DM | .957 DM | .6082 e.a.u. | .7211 e.a.u. | .7766 e.a.u. |
| January 1, 1965 ¹⁴ | .748 DM | .887 DM | .957 DM | .6082 e.a.u. | .7211 e.a.u. | .7766 e.a.u. |
| April 1, 1965 ¹⁵ | .748 DM | .887 DM | .957 DM | .6082 e.a.u. | .7211 e.a.u. | .7766 e.a.u. |
| July 1, 1965 ¹⁶ | .709 DM | .840 DM | .906 DM | .6134 e.a.u. | .7273 e.a.u. | .7832 e.a.u. |
| October 1, 1965 ¹⁷ | .709 DM | .840 DM | .906 DM | .6134 e.a.u. | .7273 e.a.u. | .7832 e.a.u. |
| January 1, 1966 ¹⁸ | .709 DM | .840 DM | .906 DM | .6134 e.a.u. | .7273 e.a.u. | .7832 e.a.u. |

¹ Slaughtered Chicken are offered in three standard forms of presentation

Chicken A: Slaughtered chicken, plucked and gutted, with head and feet;

Chicken B: Slaughtered chicken, plucked and drawn, without head and feet but with heart, liver and gizzard;

Chicken C: Slaughtered chicken, plucked and drawn, without head and feet and without heart, liver and gizzard.

See Regulation No. 149, 5 AMTSBLATT 2831 (1962).

² Comm'n Regulation No. 35, 5 AMTSBLATT 1515 (1962) (sluice-gate prices);

Comm'n Regulation No. 76, 5 AMTSBLATT 1879 (1962) (variable levies);

Council Regulation No. 49, 5 AMTSBLATT 1571 (change of effective dates).

³ Comm'n Regulations Nos. 125 and 126, 5 AMTSBLATT 2327, 2329 (1962).

⁴ Comm'n Regulation No. 159, 5 AMTSBLATT 2934 (1962).

⁵ Comm'n Regulation No. 29/63/EEC, 6 AMTSBLATT 1061 (1963).

⁶ Council Regulation No. 55/63/EEC, 6 AMTSBLATT 1786 (1963).

⁷ Comm'n Regulation No. 79/63/EEC, 6 AMTSBLATT 2119 (1963).

⁸ Comm'n Regulation No. 108/63/EEC, 6 AMTSBLATT 2419 (1963).

⁹ Comm'n Regulation No. 136/63/EEC, 6 AMTSBLATT 3104 (1963).

¹⁰ Comm'n Regulation No. 31/64/EEC, 7 AMTSBLATT 785 (1964).

¹¹ Comm'n Regulation No. 81/64/EEC, 7 AMTSBLATT 1621 (1964).

¹² Comm'n Regulation No. 96/64/EEC, 7 AMTSBLATT 2040 (1964).

¹³ Comm'n Regulation No. 131/64/EEC, 7 AMTSBLATT 2403 (1964).

¹⁴ Comm'n Regulation No. 193/64/EEC, 7 AMTSBLATT 3657 (1964).

¹⁵ Comm'n Regulation No. 50/65/EEC, 8 AMTSBLATT 777 (1965).

¹⁶ Comm'n Regulation No. 91/65/EEC, 8 AMTSBLATT 1927 (1965).

¹⁷ Comm'n Regulation No. 133/65/EEC, 8 AMTSBLATT 2601 (1965).

¹⁸ Comm'n Regulation No. 157/65/EEC, 8 AMTSBLATT 2949 (1965).

TABLE 3

ADDITIONAL AMOUNTS INCREASING VARIABLE LEVIES ON CHICKEN IMPORTS
FROM NON-COMMUNITY COUNTRIES 1962-1966

| <i>Effective Date</i> | <i>Chicken A</i> | <i>Chicken B</i> | <i>Chicken C</i> |
|----------------------------------|------------------|------------------|------------------|
| November 7, 1962 ¹ | .0625 e.a.u. | .0625 e.a.u. | .0625 e.a.u. |
| January 31, 1963 ² | .0500 e.a.u. | .0500 e.a.u. | .0500 e.a.u. |
| June 5, 1963 ³ | .0750 e.a.u. | .0750 e.a.u. | .0750 e.a.u. |
| July 1, 1963 ⁴ | .0600 e.a.u. | .0600 e.a.u. | .0600 e.a.u. |
| October 21, 1963 ⁵ | .0375 e.a.u. | .0375 e.a.u. | .0375 e.a.u. |
| December 16, 1963 ⁶ | .0500 e.a.u. | .0500 e.a.u. | .0500 e.a.u. |
| February 10, 1964 ⁷ | .0625 e.a.u. | .0625 e.a.u. | .0625 e.a.u. |
| October 29, 1964 ⁸ | .0875 e.a.u. | .0875 e.a.u. | .0875 e.a.u. |
| November 16, 1964 ⁹ | .1250 e.a.u. | .1250 e.a.u. | .1250 e.a.u. |
| March 6, 1965 ¹⁰ | .1500 e.a.u. | .1500 e.a.u. | .1500 e.a.u. |
| March 15, 1965 ¹¹ | .1750 e.a.u. | .1750 e.a.u. | .1000 e.a.u. |
| May 2, 1965 ¹² | .1750 e.a.u. | .1750 e.a.u. | .1200 e.a.u. |
| June 28, 1965 ¹³ | .1625 e.a.u. | .1625 e.a.u. | .1200 e.a.u. |
| September 26, 1965 ¹⁴ | .1375 e.a.u. | .1375 e.a.u. | .1000 e.a.u. |
| October 14, 1965 ¹⁵ | .1200 e.a.u. | .1200 e.a.u. | .1000 e.a.u. |
| November 8, 1965 ¹⁶ | .1000 e.a.u. | .1000 e.a.u. | .1000 e.a.u. |
| January 17, 1966 ¹⁷ | .0800 e.a.u. | .0800 e.a.u. | .0800 e.a.u. |
| February 7, 1966 ¹⁸ | .1000 e.a.u. | .1000 e.a.u. | .1000 e.a.u. |

¹ Comm'n Regulation No. 135, 5 AMTSBLATT Nr. 112 at 2621 (1962).² Comm'n Regulation No. 4/63/EEC, 6 AMTSBLATT 174 (1963).³ Comm'n Regulation No. 46/63/EEC, 6 AMTSBLATT 1567 (1963).⁴ Comm'n Regulation No. 60/63/EEC, 6 AMTSBLATT 1804 (1963).⁵ Comm'n Regulation No. 112/63/EEC, 6 AMTSBLATT 2507 (1963).⁶ Comm'n Regulation No. 128/63/EEC, 6 AMTSBLATT 2913 (1963).⁷ Comm'n Regulation No. 9/64/EEC, 7 AMTSBLATT 401 (1964).⁸ Comm'n Regulation No. 147/64/EEC, 7 AMTSBLATT 2679 (1964).⁹ Comm'n Regulation No. 177/64/EEC, 7 AMTSBLATT 2914 (1964).¹⁰ Comm'n Regulation No. 16/65/EEC, 8 AMTSBLATT 520 (1965).¹¹ Comm'n Regulation No. 24/65/EEC, 8 AMTSBLATT 629 (1965).¹² Comm'n Regulation No. 58/65/EEC, 8 AMTSBLATT 1074 (1965).¹³ Comm'n Regulation No. 82/65/EEC, 8 AMTSBLATT 1898 (1965).¹⁴ Comm'n Regulation No. 124/65/EEC, 8 AMTSBLATT 2587 (1965).¹⁵ Comm'n Regulation No. 140/65/EEC, 8 AMTSBLATT 2686 (1965).¹⁶ Comm'n Regulation No. 153/65/EEC, 8 AMTSBLATT 2853 (1965).¹⁷ Comm'n Regulation No. 1/66/EEC, 9 AMTSBLATT 87 (1966).¹⁸ Comm'n Regulation No. 10/66/EEC, 9 AMTSBLATT 329 (1966).

TABLE 4
INTER-COMMUNITY LEVIES ON IMPORTS OF SLAUGHTERED CHICKEN
TO GERMANY 1962-1966 (PER KG.)

| <i>Effective Date</i> | <i>Exporting Country</i> | <i>Chicken A</i> | <i>Chicken B</i> | <i>Chicken C</i> |
|-----------------------------|--------------------------|------------------|------------------|------------------|
| July 30, 1962 ¹ | Belgium | .1083 e.a.u. | .1285 e.a.u. | .1385 e.a.u. |
| | France | .1219 e.a.u. | .1446 e.a.u. | .1559 e.a.u. |
| | Italy | .1490 e.a.u. | .1767 e.a.u. | .1906 e.a.u. |
| | Luxembourg | .0801 e.a.u. | .0950 e.a.u. | .1024 e.a.u. |
| August 1, 1963 ² | Belgium | .39 DM | .47 DM | .50 DM |
| | France | .38 DM | .46 DM | .49 DM |
| | Italy | .53 DM | .63 DM | .68 DM |
| | Luxembourg | .39 DM | .47 DM | .50 DM |
| | Netherlands | .48 DM | .57 DM | .61 DM |
| August 1, 1964 ³ | Belgium | .34 DM | .41 DM | .44 DM |
| | France | .36 DM | .43 DM | .46 DM |
| | Italy | .48 DM | .57 DM | .61 DM |
| | Luxembourg | .34 DM | .41 DM | .44 DM |
| | Netherlands | .37 DM | .44 DM | .47 DM |
| August 1, 1965 ⁴ | Belgium | .302 DM | .358 DM | .386 DM |
| | France | .313 DM | .371 DM | .400 DM |
| | Italy | .428 DM | .507 DM | .547 DM |
| | Luxembourg | .302 DM | .358 DM | .386 DM |
| | Netherlands | .289 DM | .342 DM | .369 DM |

IV. FINANCING THE COMMON AGRICULTURAL POLICY

The establishment in the Six of a common agricultural market for various commodities at uniform artificially maintained price levels would not have been feasible without the institution of an extensive subsidy and support system. The need for such a mechanism stems from three major categories of required expenditures. In the first place the architects of the Common Market organizations felt the necessity of providing a financial apparatus that would enable Common Market producers to compete in non-Community markets with producers from third countries. Hence a system of export subsidies, called restitutions, had to be created. Secondly, the protection of the price system called for government purchases at fixed support levels in order to take care of surpluses and the payment of premiums for the conversion of surplus agricultural commodities into industrial products. Finally it was clear that the creation of a Community-wide agricultural market would entail major structural changes with the attendant need for alleviation of the consequences by means of compensatory payments. The Treaty of Rome itself therefore authorized, in article 40(4),

¹ Comm'n Regulation No. 75, 5 AMTSBLATT 1873 (1962).

² Comm'n Regulation No. 78/63/EEC, 6 AMTSBLATT 2115 (1963).

³ Comm'n Regulation No. 95/64/EEC, 7 AMTSBLATT 2036 (1964), corrected for France by Comm'n Regulation No. 117/64/EEC, 7 AMTSBLATT 2309 (1964).

⁴ Comm'n Regulation No. 92/65/EEC, 8 AMTSBLATT 1932 (1965).

the creation of one or more guidance and guarantee funds for the attainment of the policy objectives.

In its initial Proposals of June 30, 1960, for the Formulation and Execution of the Common Agricultural Policy⁹⁹ the Commission envisaged the establishment of two separate funds. One designated as European Fund for the Improvement of the Structure of Agriculture, was to be in charge of the administration of grants-in-aid designed to finance major changes in the agricultural structure of the individual member countries.¹⁰⁰ The other, called European Agricultural Guidance and Guarantee Fund was to disburse the sums needed for restitutions, governmental support purchases and processing premiums to be provided in a number of the proposed market organizations.¹⁰¹

Regulation No. 25¹⁰² which formed a part of the original set of regulations for the creation of the common agricultural market, translated most of these notions into reality by establishing a European Agricultural Guidance and Guarantee Fund (EAGGF). It assigned financial responsibility to the Fund in three major areas of expenditures: (1) restitutions in case of exports to non-community countries; (2) interventions needed for the elimination of surpluses; (3) grants needed for the attainment of the aims of the common agricultural policy, including the financing of structural changes.¹⁰³

Actually Regulation No. 25 established only a skeleton framework and left much to implementation by further regulation. Initially the Commission revised its idea of setting up a separate fund for the improvement of agricultural structure;¹⁰⁴ but the Council insisted on retaining a single fund.¹⁰⁵ Accordingly, the Commission revised its proposals so as to provide for two divisions of the fund, the Guidance Section and the Guarantee Section. Council Regulation No. 17/64/EEC,¹⁰⁶ which was enacted to specify the details of the participation of EAGGF, accordingly sanctioned the division of the Fund into these two sections and assigned to the Guarantee Section¹⁰⁷ the administration of the reimbursement of the member governments for restitution payments and intervention expenditures, governed by Regulation

⁹⁹ *Supra* note 80.

¹⁰⁰ PROPOSALS, pt. III, ch. 2, No. 19.

¹⁰¹ PROPOSALS, pt. III, ch. 3.

¹⁰² 5 AMTSBLATT 991 (1962), CCH ¶ 901.

¹⁰³ Regulation No. 25, art. 2 (final stage), and art. 3 (transitional period).

¹⁰⁴ Bull. E.E.C., May 1963, p. 32.

¹⁰⁵ Bull. E.E.C., Nov. 1963, pp. 29, 30.

¹⁰⁶ 7 AMTSBLATT 586 (1964).

¹⁰⁷ Regulation No. 17/64/EEC, art. 1(2).

No. 25 as implemented by Regulations No. 17/64/EEC and No. 18/64/EEC.¹⁰⁸

Regulation No. 25 differentiated between the final stage and the transitional period and actually contained details only with respect to the contributions to the Fund and the expenses to be borne by it during the first three harvest years.

For the years 1962-1963, 1963-1964, and 1964-1965 the Fund was to reimburse the government for $\frac{1}{6}$, $\frac{2}{6}$ and $\frac{3}{6}$ of their expenses for restitution and intervention payments under the common market organizations for grains and grain products, pork, eggs, and poultry.¹⁰⁹ The necessary amounts were to be contributed to the Fund by the member governments.¹¹⁰ During the budget year 1962-1963 these contributions were to follow the key established by the treaty for the financing of Community expenditures in general.¹¹¹ For the 1963-1964 and 1964-1965 budget years 90 per cent and 80 per cent respectively of the fund's allocations were to be provided in the same fashion. The remaining 10 per cent and 20 per cent respectively, were to be contributed by the member states in proportions determined by the net amounts of imports of each state.

The following table contains the amounts borne by the Fund as its share of the expenditures of the six member governments for restitutions and market interventions during 1962-1963.¹¹²

TABLE 5
SHARE OF EAGGF OF THE RESTITUTION AND INTERVENTION PAYMENTS BY THE SIX MEMBER GOVERNMENTS DURING 1962-1963 (IN E.A.U.)

| Country | Restitution | Intervention | Total |
|-------------|---------------|--------------|---------------|
| France | 21,263,695.46 | 3,215,500.76 | 24,479,196.22 |
| Germany | | 1,790,190.60 | 1,790,190.60 |
| Italy | 312,613.89 | 967,942.13 | 1,280,606.02 |
| Netherlands | 527,454.00 | 336,804.92 | 864,258.92 |
| Belgium | 157,470.12 | 147,918.29 | 305,388.41 |
| Luxembourg | 6.52 | 3,439.44 | 3,445.96 |

These data show that 77.5 per cent of all expenditures were used for the payment of export restitutions and that France, as the chief exporter,

¹⁰⁸ Regulation No. 17/64/EEC, arts. 2-10; Regulation No. 18/64/EEC, 7 AMTSBLATT 595 (1964).

¹⁰⁹ Regulation No. 25, art. 5(1). The participation of the Fund in the financing of structural expenditures was to be one-third of the amount disbursed for restitutions and intervention expenditures. Art. 5(2).

¹¹⁰ Regulation No. 25, art. 7.

¹¹¹ Treaty of Rome, art. 200. (The respective ratios are: Germany: 28, France: 28; Italy: 28; Belgium: 7.9; Netherlands: 7.9; Luxembourg: 0.2).

¹¹² See Commission Decisions of Dec. 15, 1965, 8 AMTSBLATT 3280-3289 (1965).

was the primary beneficiary of the system, receiving 82.5 per cent of the total.¹¹³

Regulation No. 25 contained detailed provisions for the resources of and the charges on the Fund only for the time between July 1, 1962, and July 1, 1965. It was therefore imperative to enact further regulations to cover the subsequent period and place the system upon a permanent basis. This step was necessitated also in view of the fact that the introduction of the uniform grain price required substantial compensatory payments to the countries whose agricultures suffered losses of revenues as a result thereof.¹¹⁴ In drafting its proposals for the definite system governing the financing of EAGGF¹¹⁵ the Commission proceeded on the premise that ultimately the Fund would have to bear the total expenditures for the export restitutions, intervention payments, and other disbursements needed for market controls as well as the amounts needed for structural improvements. As a result, the Commission realized that the Fund would require substantial financing. On the other hand the Commission felt that it was a logical consequence of the idea of a true customs union that the revenues from variable levies and tariff duties should no longer flow into the treasuries of the particular states of entry but should become Community income. Such a step was to be accompanied with an increase of parliamentary control over expenditures.¹¹⁶

As was stated before, this project of an extension of the community attributes met with the adamant resistance of France. As a result, the Commission submitted new proposals which left the ultimate nature of the Community resources undecided and readjusted the key for the distribution of the contributions to the Fund by the Member States during the period from July 1, 1965 to July 1, 1970.¹¹⁷ The fate of this compromise is at the moment still undecided but the resumption of France's participation in the work of the Council presages a speedy settlement.

¹¹³ For the first programs approved by the Guidance Section of the Fund, see Bull. C.E.E., Nov. 1965, p. 20 (French edition); *id.*, Dec. 1965, p. 34.

¹¹⁴ According to the resolutions of Dec. 15, 1964, the losing countries were to receive the following compensatory payment: Germany: 280.25 millions e.a.u.; Italy: 131 millions e.a.u.; and Luxembourg: 2.5 millions e.a.u. BULL. C.E.E., Feb. 1965, p. 17 (French edition).

¹¹⁵ The text of Commission proposals for a regulation governing the financing of the common agricultural policy, for provisions to be enacted by the Council pursuant to article 201 of the Treaty of Rome for the replacement of the member state contributions by community revenues and for amendments of articles 201 and 203 of the Treaty, see Bull. EEC, May 1965 Supp., p. 3.

¹¹⁶ For a discussion of the Commission proposals and the reasons therefore see Bull. E.E.C., May 1965, p. 10; for an account of the parliamentary debates of these proposals see Bull. E.E.C., June 1965, p. 5.

¹¹⁷ For an exposition of the modified proposals see Bull. E.E.C., May 1965, at 10.

V. CONCLUSION

The foregoing exposition shows the complex protective mechanism which has been established in order to carry out the design of the framers of the EEC to transform the agriculture of the Six into a decompartmentalized, self-sufficient, competition-proof, export-oriented sector of its economy. The repercussions of this scheme on the market for agricultural products of other countries will be profound. Not only will the commitments under international agreements such as GATT have to be aligned to this development but American agriculture will have to adjust its export production in type and quality to the needs which still must be filled by products from abroad.