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The Heart of the Matter: U.K. and the EEC, the Problem of Agriculture

JOSEPH JUDE NORTON*

I. INTRODUCTION

Much has happened both within the European Community and the United Kingdom since the failure of the first negotiations for British entry into the Community in 1963.¹ It is realistic to expect that negotiations for British membership in the Community will prove productive in the near future. The nascent, ill defined, supranational European structure, which existed at the time of the first attempted British entry in 1961-1963, has become a most workable and viable reality.² In Britain, despite considerable public dissatisfaction, all major parties are now firmly committed to joining the European Community.³

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1. For a brief history of the United Kingdom's post-war relationship with Western Europe prior to July, 1961, when Britain under Prime Minister MacMillan first applied for entry into the European Community (the European Economic Community, European Coal and Steel Community and Euratom, which shared as common institutions the Court of Justice at Luxembourg and the European Parliament, and which by the Treaty of Fusion of 1965 now also share a common Commission and Council of Ministers), see U. KITZINGER, *THE CHALLENGE OF THE COMMON MARKET* (1961). As noted by Kitzinger, prior to 1961 the "traditions of British foreign policy—to hold the balance but never to become entirely involved in Europe—as well as the empirical approach which was thought incompatible with rigid constitution making, were all invoked against British participation in a European federation, whatever the limits of its competence." *Id.* at 9. See also M. CAMPS, *BRITAIN AND THE EUROPEAN COMMUNITY, 1955-1963* (1964).

2. For a general consideration of the evolvement of the European Community see F. JENSEN, *THE COMMON MARKET* (1965). For those with a more insatiable sense of enquiry the standard source and reference book on the Community in English is A CAMPBELL, *COMMON MARKET LAW* (2 vols. 1969).

3. For an indication of the present British attitude see *MEMBERSHIP OF THE EUROPEAN COMMUNITIES*, CMND. NO. 3269 (1967) which announced the Labour Government's 1967 attempt to reapply for Community membership. Although membership at that time was put off at the insistence of President DeGaulle, productive negotiations for British entry are now underway. Though the June General Election in Britain brought in a change of Government, the official British attitude toward entry into the Community can only be seen as even more committed toward Europe than was the Wilson Government. Having been chief negotiator in the 1961-63 days, Prime Minister Heath has an enormous familiarity with the problems of British entry and as seen in the Conservative Political Centre's publication *EUROPE AND THE LAW* (1968) and in the recent British efforts in Brussels, it is clear that the new Conservative Government is pressing hard for immediate British entry into the Common Market. As summed up by the *ECONOMIST* of June 20, 1970, at page 10: "[Mr. Heath] has assets which Mr. Wilson did not have. He is trusted in Europe: this will not bring down the financial price of Britain's entry by a single penny, but it will help to remove political barriers. Mr. Heath has always recognized that Britain's tax system and farm support system, in particular, would have to conform more closely to European ways, and this has been

Furthermore there are now sound indications that the British economy is taking on definite shades of renewed health and vitality.⁴ Additionally the change in French leadership and the strong support for British membership from most Community members seems to make British success imminent.⁵

With negotiations now finally underway it is the British Government's intent that they "ought not to be unnecessarily complicated with lesser issues, many of which can be best dealt with after entry."⁶ However, before entry the problem of agriculture looms as one of the greatest obstacles to be hurdled, as it was during the 1961-1963 negotiations.⁷ Though the United Kingdom will now have the advantage of dealing with a crystallized Community policy toward agriculture and accordingly will have a clearer picture of what must finally be reconciled, this whole area of agriculture is still fraught with volatile complications and side issues. Negotiators will not be able to deal with these problems separately.

Within the Community itself, the framing of a common agricultural policy has been the one most difficult issue to resolve, and more than once it has brought grave crisis to the existence of the Community as a whole.⁸ When applied to the issue of British entry the common agricultural policy immediately opens to question not only the general structure and well-being of British agriculture which has its own problems apart from the entry question, but also such related problems as Commonwealth ties, the cost of living in the United Kingdom, and the British balance of payments.⁹

fundamental in the Conservative plans for taking office. And he has always accepted that France may insist on a price of its own: a deal on strategic weapons. All this means that when the negotiations get going properly in the autumn they will not start in mutual incomprehension."

4. Copies of the *ECONOMIST* for the first quarter of 1970 reflect the growing optimism about the British economy with regard to the present balance of payments situation, increased productivity, and a stabilization of government spending and the labour situation. However, plagued by the subsequent dock strike, the British Trade Board has reported a staggering trade deficit of some £ 231 million for August. This figure has gone a long way in tarnishing the jubilation over the £ 600 million surplus accrued over the financial year ending April of 1970. The present trade balance up to September of 1970 is about at the breaking point, though there is still some genuine hope that a new real growth in export figures is on the rise. Harris, *Export Boost Forecast*, *Guardian*, Sept. 15, 1970, at 12.

5. As noted by M. Marjolin, past president of the European Commission, at a lecture at the University of Edinburgh in the Spring of 1969, the election of M. Pompidou will not necessarily signify any sharp change in the hardlined French position, though the increasing pressures from the other five members (Germany, Italy and the Benelux countries) will have to be reckoned with by the French.

6. This was the position of the former Labour Government prior to its departure from office. *MEMBERSHIP OF THE EUROPEAN COMMUNITIES*, CMND. NO. 3269, at 4 (1967). From all present indications the Conservative Government will take substantially the same approach, although it appears that Mr. Heath may have a tendency for getting bogged down in somewhat greater detail than Mr. Wilson. *Guardian*, Sept. 17, 1970, at 3.

7. See generally *THE COMMON AGRICULTURAL POLICY OF THE EUROPEAN ECONOMIC COMMUNITY*, CMND. NO. 3274 (1967).

8. Hjorth, *The Common Agricultural Policy: Crisis in the Common Market*, 40 WASH. L. REV. 685 (1965).

9. See, *THE COMMON AGRICULTURAL POLICY OF THE EUROPEAN ECONOMIC COMMUNITY*,

Yet while agriculture will be an inescapable obstacle for British entry, it must not be forgotten that with much struggle and debate the Community itself has now worked out the problem, though on a very precarious balance.¹⁰ The question that remains is whether or not a suitable agreement can be reached with the United Kingdom that will not upset this delicate balance already existing with the Community while still providing a workable basis for the British. It is to this consideration which this article will be addressed.

II. EEC: COMMON AGRICULTURAL POLICY

A. Basic Principles

By Article 38 of the Treaty of Rome, "the common market shall extend to agriculture and trade in agricultural products," the latter term including all "products of the soil, of stockfarming, and of fisheries and products of first stage processing."¹¹ As such, the embrace of the Treaty is most extensive, with the general rules of the common market as set out in the Treaty being equally applicable to the agricultural sector, save for any exception provided for in Articles 39-46 of the Treaty. The Treaty envisioned and has achieved the establishment of true Community control over agriculture both in regard to a common external tariff and as to a common internal control over agricultural products within the Community.¹²

1. Market Organization

In the case of *Re Import of Milk Products*,¹³ the Commission charged that a national tax levied on import licenses for various milk products was a new

CMND. No. 3274 (1967); T. WARLEY, AGRICULTURE: THE COST OF JOINING THE COMMON MARKET (1967); BRITAIN AND THE EUROPEAN COMMUNITIES: AN ECONOMIC ASSESSMENT, CMND. No. 4289 (1970).

10. For a general consideration of the Common Agricultural Policy see COMMISSION OF THE EUROPEAN COMMUNITIES, MEMORANDUM ON THE REFORM OF AGRICULTURE IN THE EUROPEAN ECONOMIC COMMUNITY, C.O.M. (68) 1000 (Dec. 18, 1968); Olmi, *Common Organization of Agricultural Markets*, 5 C.M.L. REV. 359 (1967-68); and Dam, *The European Common Market in Agriculture*, 67 COLUM. L. REV. 209 (1967).

11. TREATY OF ROME, Article 38, March 25, 1957; 298 U.N.T.S. 3. The official texts for the Treaty of Rome exist only in the French, German, Italian and Dutch languages; however, a revised translation in English was prepared by the British Foreign Office in 1967 and is now available from Her Majesty's Secretariat Office. It is this text which is referred to in this article when speaking of the Treaty of Rome.

12. The relevant section of the Treaty of Rome dealing with agriculture is Title II. With introduction of a final agreement on wines the transitional stage of the common market in agriculture can be seen as complete, though certain of the final regulations, e.g., those for sugar, will not be complete until a future date, and though final agreement on the financing of the common agricultural policy is still to be reached. See Council Regulations Nos. 816/70 and 817/70, 13 E.E.C.J.O. (1970) and Daily Bulletins Nos. 479 (n.s.) and 632 (n.s.) of *Europe* (Agence International, D'Information Pour La Presse).

13. 10 Recueil de la Jurisprudence de la Cour 1219 (1965), 4 Comm. Mkt. L.R. 58 (Cour de Justice des Communautés européennes 1965) [hereinafter cited to Comm. Mkt. L.R.].

customs duty between Member States and contrary to Article 12 of the Treaty. The Court of Justice was quite firm in its treatment of the relationship of the general treaty rules to the agricultural sector and also of the role of the national states in the Community structure. In dealing with the specific tax in question, the Court found:

Without itself constituting a measure of economic disarmament the said prohibition of any new customs weapon constitutes an indispensable condition for the substitution both of a common market for the different national markets and of a common agricultural organization of the national organizations. Thus Article 12 constitutes an essential rule and any possible exception, besides being of strict interpretation, should be clearly provided.¹⁴

The Court, as in the earlier case of *Re Import Duties on Gingerbread*,¹⁵ was steadfast in holding that any deviation from the general rules of the Treaty of Rome must be strictly construed. As to the role of the national states, it was further held that:

[A]lthough Articles 43 and 45 of the Treaty envisage the continuation in being of national marketing boards until such time as there is a common agricultural policy and a common marketing organization, Member States are not thereby permitted to impose import duties or charges on agricultural products imported from other Member States. Any such duties or levies, although they might broadly fall within the framework of a national marketing scheme, clearly contravene Article 12, and are therefore unlawful.¹⁶

Essential to the attainment and maintenance of a common market for agriculture has been the establishment of a common agricultural policy among the Member States. By Article 39 of the Treaty of Rome the objectives of this common policy are to be the increase of agricultural productivity, the assurance of a fair standard of living for the agricultural community, the stabilization of markets, provision for certainty of supplies, and assurance to consumers of these supplies at a reasonable price.¹⁷ When viewed with a practical eye, in certain ways these objectives militate against each other. On the one hand restructuring of the agricultural setup within each of the Member States to provide for "the optimum utilization of all factors of production" and to ensure reasonable prices to the consumer is desirable. While on the other hand, the

14. 4 Comm. Mkt. L.R. at 74; Article 12 requires Member States to refrain from introducing, as between themselves, any new customs duties on imports or exports, or any taxes having equivalent effect, and from increasing those which they already levy in their trade with each other.

15. *Re Import Duties on Gingerbread*, 8 Recueil de la Jurisprudence de la Cour 813, 2 Comm. Mkt. L.R. 199 (Cour de Justice des Communautés européennes 1963).

16. *Re Import of Milk Products*, 4 Comm. Mkt. L.R. 58 (Cour de Justice des Communautés européennes 1965).

17. TREATY OF ROME, Art. 39.

Community is faced with an attempt to deal realistically with small farmers, who in Western Europe generally work holdings of less than twenty-five acres with a bare minimum of modern techniques and equipment, yet who wield a very considerable and critical base of political power within the Member States.¹⁸ Though the restructuring of the various agricultural systems and the establishment of a common marketing organization are not in themselves counter productive, the realities of European law have forced the Community to relegate in large part the goal of structural adaptation to the Member States.¹⁹

The primary and present task of the Community is the maintenance of a common marketing organization, which in economic terms means the establishment of a common price policy within the Community. To this end the Treaty of Rome provides for the utilization of such devices as:

price controls, subsidies for the production and distribution of various products, stockpiling and carryover systems, and common arrangements for stabilization of imports or of exports.²⁰

As seen by the Court of Justice:

[T]he organization of a market consists in a collection of legal mechanisms on the basis of which the competent authorities attempt to control and regulate the market. A marketing organization thus could neither be isolated from the means which constitute it nor could it have an existence independent of these means.²¹

2. *Controlling Institutions*

It must be kept in mind that the Treaty of Rome, in dealing with the question of agriculture serves merely as a broad framework within which further definitions are to be worked out. In theory the main decisional role rests with the Council of Ministers, who on:

acting on a proposal of the Commission and after consulting the

18. See generally F. CLERC, *LE MARCHE COMMUN AGRICOLE* (2 ed. 1965). However, it must be cautioned that the state of European agriculture cannot be seen in any static terms as recent years have shown a distinct trend of dynamism in this area moving toward larger, more efficient and mechanized farms. See Report of the OECD, *Agriculture and Economic Growth*, 108 (1965).

19. But as noted by Olmi, note 10 *supra*, "... the powers in question have already been transferred to the Community by the basic regulations of 1962 and 1964 which had substituted a full machinery of common organization for the national organizations only the exercise of these powers had been assigned, provisionally, to the Member States." 67 COLUM. L. REV. at 401.

20. TREATY OF ROME, Art. 40(3).

21. *Re Import of Milk Products*, 4 Comm. Mkt. L.R. 58, 75 (1965).

Assembly . . . by a qualified majority²² [shall] adopt regulations or directives or take decisions²³

But because of the complex workings of the agricultural sector and because of the highly specialized expertise required, in practice the true decision making role has been shifting more and more to the Commission, which "shall submit proposals for the working out and putting into effect of the common agricultural policy."²⁴ In this way the great bulk of detail and minutiae which goes into the shaping of such a policy has been delegated to the Commission. Consequently the Commission must be seen as the prime formulator of agricultural policy in the Community, with the Council serving as an overseer or reactor to the moves of the Commission.

Assisting the Commission in its liason with the Council is a Permanent Committee which is comprised of representatives from each Member State appointed by the Council with the presiding officer being a member of the Commission. Decisions are made by a weighted (qualified) majority voting. In effect, the Permanent Committee, which is a creation not of the Treaty but of convention, serves as a coordinator between the Commission and the Council of Ministers.

In addition, a number of advisory management committees for the various agricultural sectors have evolved. The task of these committees, composed of

22. "Where the Council's decisions require a qualified majority, the votes of its members shall be weighted as follows: Belgium . . . 2; France . . . 4; Germany . . . 4; Italy . . . 4; Luxembourg . . . 1; Netherlands . . . 2. Decisions shall be duly taken if they are cast at least:—12 votes in favor where the Treaty requires them to be taken on a proposal from the Commission,—12 votes cast in favor by at least four members in all other cases." TREATY OF ROME, Art. 148(2).

23. TREATY OF ROME, Art. 43(2).

Quite generally the Treaty of Rome, Part Five, makes provisions for the following controlling institutions:

(1) The *Assembly*, which at present has no actual political power at all. It is composed of just over 140 MP's picked by the parliaments of the six Member States. Meeting once a month at Strasbourg, the present function of the Assembly appears to be the questioning of members of the Commission visiting from Brussels and in the issuance of standing committee's reports. Though Article 138(3) of the Treaty of Rome envisions the election of the Assembly members by direct universal suffrage, this vision is still far from becoming a reality.

(2) The *Council of Ministers* is any council of cabinet members from the Member States, meeting in Brussels to discuss papers proposed by the Commission. On average the six foreign ministers will meet once a month to discuss the more important items of Community planning and affairs. Though from the Treaty of Rome the Council has the ultimate say on Community matters, it actually serves more like a Senate, rather than as an effective initiator of Community policy.

(3) The *European Commission*, which now consists of some 5,000 "European" civil servants centered in the Batiment Berlaymont. Today the Commission must be seen as the initiator and formulator of Community policies.

(4) The *Court of Justice*, consisting of seven judges sitting in Luxembourg, attempts to ensure that "the law is observed in the interpretation and implementation" of Treaty of Rome and of the Coal and Steel Treaty along with that of Euratom. Since the Treaty of Fusion, the controlling institutions of the Treaty of Rome are now common to the ECSC and Euratom.

24. TREATY OF ROME, Art. 43(2).

experts from Member States and presided over by a non-voting representative of the Commission, is to render advice and recommendations to the Commission. In turn these committees are often assisted by consultative committees set up by the Commission for each commodity area which furnish detailed analyses of the problem at hand. The consultative committees are composed of sundry interested parties as farmers, consumers and merchants.²⁵

The decision making process generally begins with various proposals by the Commission based on its own expertise or access to it through the various consultative committees. The Commission's proposals are forwarded to the appropriate management committee, which serves as the de facto representative of the Council. After considering the proposals the management committee is required to give an opinion within a period of time set by the presiding Commission member. If this opinion is favorable to the Commission's original proposal, then the Commission can implement this proposal in the form of a regulation or directive without seeking any formal approval from the Council. In the event the opinion is unfavorable, the Commission still can generally implement the proposal immediately, though the Council of Ministers can thereafter abrogate the Commission's action by a qualified majority.²⁶ It is apparent that the Commission has great freedom of action under this scheme.

An example showing that the Commission must be seen as a very real organ of supranational control in the Community is *Re Import Duties on Sweet Oranges*.²⁷ As a result of the EEC common external tariff, it became obvious that the price of oranges would sharply rise in the Community, as over nine-tenths of the then available supply came from non-Member States. To offset this within its own borders, Germany went before the Commission to ask permission to suspend the imposed import duties on oranges. The Commission refused permission on the ground that the main thrust of their duty was to stimulate home markets in oranges in the southern Italian regions. Countering, the Government of Germany claimed that the Commission's action constituted a "détournement de pouvoir" [abuse of discretion] under Article 173 of the Treaty, as it violated Article 39(e) which set as one of the objectives of the common agricultural policy the assurance of supplies to consumers at "reasonable prices." Responding to all this, the Commission contended that while in fact its decision would lead to an increase in the price of oranges within the Community that the price would nevertheless still be reasonable within the meaning of Article 39, as the price of any commodity must be viewed in its

25. See Bertram, *Decision-making in the EEC, The Management Committee Procedure*, 5 C.M.L. REV. 216 (1967-68).

26. The existence of the management committees find their basis in the various regulations which set up the market organization for the different commodities. An example can be seen in Regulation No. 120/67, 10 E.E.C.J.O. 2269 (1967), on the common organization of the market in cereals, especially Articles 25-28.

27. 9 Recueil de la Jurisprudence de la Cour 269, 2 Comm. Mkt. L.R. 369 (Cour de Justice des Communautés européennes 1963) [hereinafter cited to Comm. Mkt. L.R.].

relationship to the effect on other competitive commodities. In weighing the matter, the Court of Justice found for the Commission:

It follows, once the Commission admits the existence of direct competition between oranges, apples, pears and peaches, that a stabilization of the market in these latter products would be thwarted by the import of oranges at a low price. If then, the refusal to make a grant leads to an increase in the price of oranges, this fact alone does not imply that, from that time, these prices were no longer "reasonable" in the sense of Article 39(1)(e).²⁸

This role of the Commission in the formulation of the agricultural policy of the Community must be seen in the broader perspective of the evolution of the truly supranational character of the Community. Power has been diverted gradually from the politics of individual Member States to the forum of the Council of Ministers. From there the actual implementation passes through the various coordinating committees of the Council to the Commission itself, whose regulations and directives have taken on a definite supranational flavor. The regulations are self executing within the Member States and take precedence over any conflicting national policies or laws within these Member States. The development of the common agricultural policy through the controlling institutions of the Community is but further testimony that something far more than a mere customs union is on the scene in Western Europe.²⁹

3. *The Mechanics of Regulation*

The main purpose of each controlling regulation or directive issued by the Council or Commission is the attainment and continuance of a common Community market organization through the initiation of certain common economic methods. The actual techniques proposed by each regulation or implementing regulation, which are now voluminous, vary considerably according to each commodity covered, though a common trait among all is the provision for some kind of income support to producers or distributors through a high market regime. How this internal price support is achieved again varies considerably, whether by protective measures at common frontiers, which usually take the form of some sort of import levies or variable specific tariffs which keep the landed price of imported commodities to minimum levels so as

28. 2 Comm. Mkt. L.R. at 392.

29. For specific effect of certain agricultural regulations within Member States see *Re Import Duty on Processed Beef*, 5 Comm. Mkt. L.R. (1966) (Nederland Tariefcommissie 1965) and *Re Import of Pork*, 5 Comm. Mkt. L.R. 491 (1966) (Finanzgericht Münster 1965). For the classic statement on the supranational character of the community law see *Costa v. E.N.E.L.*, 10 Recueil de la Jurisprudence de la Cour 1141, 1158-59, 3 Comm. Mkt. L.R. 425, 455 (Cour de Justice des Communautés européennes 1964). For the problem this may or may not pose for Britain see LEGAL AND CONSTITUTIONAL IMPLICATIONS OF UNITED KINGDOM MEMBERSHIP OF THE EUROPEAN COMMUNITIES, CMND. NO. 3301 (1967) and Mitchell, *What Do You Want to be so Inscrutable for Marcia?* 5 C.M.L. REV. 112 (1967-68).

to permit the domestic output to earn the price support; or by planned support buying within the Community structure itself to ease any internal pressures on supplies which would drive market prices below that guaranteed to the farmers; or by different schemes for the diversion of excess supplies through the export markets beyond the Community.³⁰

The first series of "structural" regulations were instituted in the Spring of 1962. The principal regulations were Regulations 19 through 24. Regulations 19 through 22 covered the gradual establishment of a common organization of cereals (grains), and for those of pigmeat, eggs and poultry meat. Regulation 23 put forth a somewhat simpler organization for fruits and vegetables, while Regulation 24 covered an incipient approach to wines. Regulations 25 and 26 covered such matters as the financial arrangements of the common agricultural policy and the delineation of certain rules of competition applicable to the agricultural sector.

A second series of regulations were instituted late in 1963 covering the development of a common approach to such sectors as milk and other dairy products, beef and rice. Also these new regulations set standards for granting of aids by the European Agricultural Guidance Fund as provided for in Articles 40(4) and 42 of the Rome Treaty and for the financing of this fund. It is the aim of all these regulations to attain gradually a common producer price level throughout the Community through continual adjustments of price levels on a national basis. To this effect the price levels can be seen to be stabilized either through a full price guarantee, through the mechanism of a three tier system of target, intervention, and threshold prices as in the case of such products as cereals and sugar, or through a partial guarantee as in the case of beef and veal, or simply through the sole enforcement of a common external tariff as in the case of fats.³¹

B. Certain Illustrative Commodity Regulations

1. Cereals and Sugar

The prototype for the various commodity regulations has been the body of regulations concerning cereals.³² The objective of the common organization of

30. See Olmi, *Common Organization of Agricultural Markets*, 5 C.M.L. REV. 359 (1967-68), and Olmi, *The Agricultural Policy of the Community*, 1 C.M.L. REV. 118 (1963-64). Concerning the organization of the cereal market see Dam, *The European Common Market in Agriculture*, 67 COLUM. L. REV. 209 (1967). See also Melchior, *Les organisations communes des marchés agricoles de la CEE*, CAHIERS DE DROIT EUROPEEN 247 (1967).

31. For commentary see Olmi, *Common Organization of Agricultural Markets*, 5 C.M.L. REV. 359 (1967-68).

32. The transitional Regulation No. 19/62, 5 E.E.C.J.O. 933 (1962) issued by the Council in 1962 concerning the organization of the cereal market has now been superseded by final Regulation No. 120/67, 10 E.E.C.J.O. 2269 (1967) of June 1967, as amended by Regulation No. 969/68, 11 E.E.C.J.O. 166/6 (1968). Procedural provisions for this market are set out in Regulation No. 160/67, 10 E.E.C.J.O. 2545 (1967) with special intervention procedures being set out in Regulation

this market is seen in terms of a target price and the shielding of the market from foreign imports by means of variable levies which are geared to raise the import price to at least the target price level. Further protection is provided by a regime of support buying at set intervention prices somewhat below that of the target price and by a system of subsidization of Community exports to non-member countries.

Since June of 1967, a single market for cereals has existed within the Community.³³ Basic target prices are set for durum wheat, other various species of wheat, barley, maize and rye, the price for these being the wholesale purchase price of the respective products as maintained at Duisburg, the center of the area in the Community where supplies of cereals are shortest. The standard terms are "ex taxes, delivered storehouse not unloaded."³⁴ The intervention price is generally set 5% to 7% below this target price, thus establishing a floor for a guaranteed minimum price to the producers. The official intervention agencies in a given Community area are obliged to buy at the intervention price any Community-grown cereals offered to it.³⁵ Further, in protecting the home market from generally lower priced imports, the Community approach operates through a system of variable levies, which are adjusted from day to day to counter any fluctuation in supply prices. Essentially these levies are calculated for each individual type of grain as the difference between the lowest price at which imports of any source arrive c.i.f. Rotterdam and the threshold price fixed for the commodity by the Community.³⁶ This threshold price is set for the

No. 174/67 10 E.E.C.J.O. 2609 (1967). The following definitions may prove helpful in understanding this section of the article:

(1) *Common External Tariff*. This is the protective tariff, made up of part special protective tariff and part levy, which a non-Community exporter must pay to get his goods into the Community.

(2) *Target Price* (Prix indicatif). This is the price level projected for a commodity at the wholesale stage in the "area of greatest deficit." This price is generally fixed at the beginning of the sowing season and comes into force at the beginning of the marketing season; it is intended that this set price will aid the farmers in planning production and in serving as a market guide to all market users. This price is determined in the marketing centre of the Community with the least domestic supplies.

(3) *Threshold Price* (Prix de seuil). This is the price used as a basis in determining the levy (that is, the target price less the import price) to be imposed on an imported commodity. It is set in such a way as to bring the selling price of the commodity up to the target price. As this price is determined at the "border crossing point," account must be given to freight costs from this point to the area of greatest deficit in the Community, which, as noted, is the reference point for the target price.

(4) *Export Refunds* (Restitution). This is the option open to Member States to grant a subsidy to domestic exporters so as to keep them competitive in the world market. At maximum it will equal the difference between the world price level and that existing in the exporting Member State.

(5) *Support or Intervention Price* (Prix d'intervention). This is the price at which the national intervention agencies (backed up by the Guarantee Fund) are obliged to buy up commodities offered to them. As such, this price serves as a kind of minimum guarantee price to producers. These prices are set somewhere between 5 and 7% lower than the target price.

33. Regulation No. 120/67, 10 E.E.C.J.O. 2269 (1967).

34. *Id.*

35. *Id.*, Art. 4.

36. *Id.*, Art. 13.

whole Community on the basis of the imports into Rotterdam and is to be equivalent to the target price at Duisburg, less the various transport and handling charges between Rotterdam and Duisburg.³⁷ The only way an importer can partially circumvent this system of variable levies is by paying a fixed amount for imports determined in advance when he first requests an import license. The basic force behind this whole system is that through the manipulation of levies any difference between the imports of a lower price will be pumped up to the target price so as to support the internal market.³⁸

However, this use of variable levies is not always sufficient by itself to protect the Community market. There are instances, especially in the area of wheat, when exaggerated surpluses show on the market and threaten to disrupt its equilibrium. To prevent this disruption it is necessary for the Community's intervention agencies to purchase this surplus. It is intended that these cereal purchases will be held in storage until they can be recirculated at such time as "to avoid a market deterioration." By adjusting the monthly prices accordingly the intervention agencies can, in theory, make up for any loss incurred through storage or interest costs.³⁹ If such redistribution is not possible before the end of the current market year,⁴⁰ surpluses must be carried forward to the next marketing year as a net loss for the intervention agency during the prior year. Thus, in the case of a prompt redistribution it is the consumer who bears any loss through higher prices, while in the case of the carry-over it is the Community's finances which suffer. As a result it has become desirable to withdraw any surplus from the market on a permanent basis. For example, in the case of common wheat it can be denatured and turned into animal feeder, and then returned to the market for that commodity, which is usually stable. The loss incurred here would be the difference between the intervention price for the wheat and the price obtained for the product as feeder.⁴¹

Perhaps the most feasible way to withdraw a surplus from the home market permanently is to export it to non-Member States. This creates some problems since the world price is normally lower than that of the Community. To meet this difference to the distributor, the Community has found it necessary to grant "refunds on exports." This refund is now the same throughout the entire Community and is determined on a weekly basis by the Commission after consultation with the Management Committee, though in certain extraordinary circumstances the Commission can make such alterations during the week without a conference with the committee.⁴²

37. *Id.*, Art. 5.

38. See Dam, *The European Common Market in Agriculture*, 67 COLUM. L. REV. 209 (1967).

39. See Regulation No. 120/67, 10 E.E.C.J.O. 2269 (1967), Articles 6 and 7.

40. *Id.*; as defined in Article 3, "The marketing season for all the products referred to in Article 1 shall begin on 1 August and end on 31 July of the following year."

41. Dam, *The European Common Market in Agriculture*, 67 COLUM. L. REV. 209, 217-21 (1967).

42. Regulation No. 120/67, 10 E.E.C.J.O. 2296 (1967), Art. 16.

Somewhat similar market arrangements have also been made in the case of sugar, with a final common market in this commodity coming into effect in July of 1968.⁴³ Like the system for cereals, provision is made for the three price system of target, intervention and threshold prices. These prices generally cover beet and cane sugar in its solid form, along with both raw and white sugar, various types of molasses and certain related products such as sugar syrups, flavored sugars, artificial honey and sugared non-alcoholic beverages.⁴⁴ However, because of the highly perishable nature of the sugar beet, the basic Community sugar product, and because little widespread trading is done in sugar beets, the target price is only determined for white sugar, the processed product.⁴⁵ Unlike the target price for wheat, which is set for the area with the largest deficit, the target price for sugar is fixed by the area with the largest surplus, which in this case is eight departments in the north of France.⁴⁶ This target price, which is to be fixed by the first of August each year, becoming effective the following year for white sugar of standard quality, is applicable to France, the Benelux Countries and Germany.⁴⁷ Because of "natural and structural difficulties" prevalent in Italy's sugar producing market, that nation has been allowed to give various grants-in-aid to the sugar producers and manufacturers.⁴⁸

The intervention price for white sugar is also determined in relation to this surplus area and generally falls about 5% below the target price, with this intervention price also representing the minimum price for the basic sugar beet. A special derived price is to be fixed for Italy and the French overseas departments of Martinique, Reunion, and Guadalupe, corresponding to the price of sugar under normal price formulation conditions, that is, with normal harvesting and trading of the product.⁴⁹

When compelled to purchase white or raw sugar, the intervention agencies can only put these products back on the internal market at prices above that of the intervention price, though they can put it back at a lower price if it is denatured.⁵⁰ As with cereals, the agencies can put the surplus products on the external world market either as sugar or related products with the aid of "refunds on exports."⁵¹

43. Council Regulation No. 1009/67, 10 E.E.C.J.O. 308/1 (1967), is the final regulation with regard to the sugar market, as it supplants the transitional Regulation No. 44/67, 10 E.E.C.J.O. 597 (1967).

44. Regulation No. 1009/67, 10 E.E.C.J.O. 308/1 (1967), Art. 1 . . . Fruits and Vegetable juices are excluded.

45. *Id.*, Art. 2.

46. *Id.*, Art. 2(1).

47. *Id.*, Art. 2(2).

48. *Id.*, Art. 39; because of the brevity of their beet harvesting season, unfavorable climatic conditions, and poor industrial and processing techniques, the Italian Government has been permitted to grant "adaptation" subsidies to its beet processors until 1975.

49. *Id.*, Art. 3.

50. *Id.*, Arts. 8 and 9.

51. *Id.*

With regard to protection of the internal market from exports, a yearly threshold price is fixed for white sugar, raw sugar and molasses.

The threshold price for white sugar shall be equal to the target price valid for the area of the Community with the greatest surplus, plus transport costs calculated on a flat rate basis from that area to the most distant deficit area of the Community. This threshold price shall apply to the same standard quality as the target price.⁵²

In the case of raw sugar a special price is set, derived from the threshold price for this product;⁵³ because the Community suffers from a molasses deficit, it is permissible that its threshold price can be set lower than the ex-factory price.⁵⁴ All these threshold prices can be made variable if deemed necessary.

Because of the somewhat peculiar sugar situation in the Community, the Council saw fit not to impose a complete common policy at the end of 1969, the agreed transitional period for agriculture, but preferred to extend the transitional period for sugar until 1975.⁵⁵ In accordance with this scheme, the Member States are assigned a basic quota for every sugar producing factory or enterprise within their territory. These quotas are determined by the average production over the arbitrary period of 1961-1965, which is varied proportionately by the Council and the Commission to meet market needs. In addition, a maximum production quota is set for each enterprise equal to 135% of the basic quota. In order for the enterprise to take advantage of either the guaranteed market price or refunds for exports it must stay within this maximum production allowable. It is the intent of the Community to make it more desirable for a producer to stay within the maximum quota with the hope that by 1975 the chronic problem of surpluses in sugar will have withered away.⁵⁶

2. *Beef and Dairy Products*

Except for Italy, stockbreeding accounts for the largest single source of farm income in the various Member States of the Community. When the production of milk and milk products is included, the industry accounts for about one-third of the total agricultural output of the Community. By a set of regulations instituted in the Spring of 1968 common price arrangements have been introduced for these livestock commodities.⁵⁷

52. *Id.*, Art. 12(2).

53. *Id.*, Art. 12(3).

54. *Id.*, Art. 18.

55. *Id.*, Art. 22.

56. *Id.*, Art. 24.

57. Basic regulation for beef and veal is No. 14/64, 7 E.E.C.J.O. 562 (1964), supplemented by final Regulation No. 805/68, 11 E.E.C.J.O. 148/24 (1968). For milk and milk products, basic regulation is No. 13/64, 7 E.E.C.J.O. 549 (1964), with the final regulation being No. 804/68, 11 E.E.C.J.O. 148/13 (1968).

For beef and veal there is now a complete elimination of any intra-Community levies and there now exists a common external tariff of 16% on livestock and calves and 20% on beef.⁵⁸ Further, a common "guide price" is set as a reference point for adjustment of import prices to support the internal market and to sustain that market through support buying.⁵⁹ For example, if the price of mature cattle and beef in the variously designated representative regions of the Community were to fall below 98% of the guide price, then certain intervention measures, such as the institution of import levies, would come into play. In the event that the weighted average of market prices within the Community is below the guide price, which is fixed annually by the Commission at what is considered to be an average and desirable level to support the farmers during a normal year, then a full levy, the difference between the price at importation, including tariff, and the guide price, is imposed. However, if the market price is over 106% of the guide price, no levy is imposed on imports; if it is between 100-102% of the guide price, then only three-fourths of the full levy is charged; if it is between 102-104%, half the full levy; and if between 104-106%, one-quarter of the levy.⁶⁰

In the event the market price should fall below 93% of the guide price, then intervention is compulsory throughout the Community by purchases through the intervention agencies and by certain grants to private stocks. This intervention price is to be fixed somewhere between 93% and 96% of the guide price by the Member States affected.⁶¹ Related levies are charged on imports of the meat of calves and adult bovine cattle, with these being:

equal to the levy collected for calves or adult bovine cattle as the case may be, adjusted by a coefficient taking into account the value ratio between the meat in question on the one hand, calves and adult bovine on the other.⁶²

Special provision is made for frozen beef with the levy on imports being equal to the difference between the guide price of the livestock involved, adjusted by a coefficient representing:

the ratio existing in the Community between the price of fresh meat of a quality comparable to the frozen meat in question, presented in the same form, and the average price for adult bovine and the world market price plus the tariff and the various specific costs incurred for the importation of the frozen meat.⁶³

These levies are fixed by the Commission with these being either reduced or suspended from time to time by the Council.⁶⁴

58. Regulation No. 805/68, 11 E.E.C.J.O. 148/24 (1968), Art. 9.

59. *Id.*, Art. 2.

60. *Id.*, Art. 10.

61. *Id.*, Art. 6.

62. *Id.*, Art. 12(2).

63. *Id.*, Art. 13.

64. *Id.*, Arts. 13 and 14.

As to the food sector of milk and milk products, it must be noted that milk consumption in the Community is generally low, especially when compared to the United Kingdom, with about three-fourths of the milk output in the Community being sold for the manufacture of related dairy products. Accordingly, the EEC regulations in this area are geared primarily to facilitate the common organization of a market for such dairy products.⁶⁵

The final EEC regulation for milk and dairy products came into effect in June of 1968.⁶⁶ As with cereals, the system is based on a target price fixed annually for the following year representing:

the price of milk it is aimed at maintaining for the whole of the milk sold by the producers during the dairy season, in accordance with the opportunities available on the Community market and external markets.⁶⁷

To bolster this target price, threshold prices are established taking in consideration the degree of protection required for the Community's processing industry to keep the prices on imports of dairy products at a corresponding level to the target price of milk.⁶⁸

In addition, annual intervention prices are to be determined for butter, powdered skim milk, and certain cheeses, with the intervention agencies being required to purchase such products which cannot be disposed of at a better market price.⁶⁹ In an attempt to create a competitive position for butter on the world market special support measures are permitted if they can be justified by the Member States, and export subsidies on the external market for dairy products internally produced or processed are permitted.⁷⁰ However, special subsidies on the internal market for milk as such have been held incompatible with the application of common prices.⁷¹

3. *Fats in General*

By Regulation No. 136/66 a common organization of the market in oil seed and oleaginous fruits, and fats of vegetable origin or extracts of fish or marine mammals has been established.⁷² Unlike the system of complete price guarantees for cereals, or of a partial guarantee for beef and veal, the market system for fats does not rest on any such price guarantee. Reliance is made on a single market providing for free movement of fats within the Community,

65. THE COMMON AGRICULTURAL POLICY OF THE EUROPEAN ECONOMIC COMMUNITY, CMND. No. 3274 (1967).

66. Regulation No. 804/68, 11 E.E.C.J.O. 148/13 (1968).

67. *Id.*, Art. 3(2).

68. *Id.*, Art. 4.

69. *Id.*, Arts. 5 and 6.

70. *Id.*, Art. 6.

71. *Re Import of Milk Products*, 4 Comm. Mkt. L.R. 58 (1965).

72. Regulation No. 136/66, 9 E.E.C.J.O. 3025 (1966).

protected from foreign imports solely by the institution of a common external tariff.⁷³ Any market intervention on the internal market by Member States is precluded; available safeguards fall under the general competition and anti-dumping provisions of the Treaty of Rome.⁷⁴

By Title II of Regulation No. 136/66 special provision is made for olive oil. Imports of olive oil are subject to a variable levy based on a threshold price which would ensure that internally produced supplies could meet a set target price. This target price is fixed:

at a level to permit the normal marketing of olive oil production, taking account of the prices of competitive products, and in particular of their probable evolution during the season.⁷⁵

This target price is further backed up by an intervention price and a derived intervention price at which support buying comes into use.⁷⁶ In addition, export subsidies are paid for exports to offset any discrepancy in the lower world market price.⁷⁷

In their transitional period, fruits and vegetables fell under a common organization similar to that of fats. However, in their final common market stages, they are subject to a system of partial price guarantee, based on the use of seasonal ad valorem tariffs, internal support buying, firm standards of quality control for imported products, and in certain cases, export subsidies.⁷⁸

C. *Financing of Common Agricultural Policy*

One of the striking curiosities of the Treaty of Rome with regard to agriculture is that nowhere is there any specific provision for the financing of the common agricultural policy. All that is mentioned is that "one or more agricultural orientation and guarantee funds may be set up."⁷⁹ Here again a distinction is made as to the dual approach of the Community's agricultural policy, with the orientation fund being viewed in the light of structural developments within the Member States, while the guarantee fund is primarily to be concerned with a common marketing and price policy.

The basic regulation concerning the financing of the agricultural policy is Regulation No. 25 adopted by the Council in January of 1962 which provides for the establishment of a "European Agricultural Guidance and Guarantee

73. *Id.*, Art. 2.

74. *Id.*, Art. 3; see also Regulation No. 26/62, 5 E.E.C.J.O. 993 (1962) concerning certain rules of competition in the production and trade in agriculture.

75. Regulation No. 136/66, 9 E.E.C.J.O. 3025 (1966), Art. 6.

76. *Id.*, Art. 7.

77. *Id.*, Art. 10.

78. Regulation No. 23/62, 5 E.E.C.J.O. 965 (1962), supplanted by Regulation No. 159/66, 9 E.E.C.J.O. 3286 (1966).

79. TREATY OF ROME Article 40(4); Generally on financing of CAP see Weber, *The Financing of the Common Agricultural Policy*, 4 C.M.L. REV. 263 (1966-67).

Fund, hereinafter called 'the Fund.'⁸⁰ It forms part of the Community's budget⁸¹ and it is subdivided into a Guarantee Section and Guidance Section.⁸² By far the largest demand on the Fund is the Guarantee Section, which from 1967 has been responsible for the total cost of price support for products which have already passed into final market stage. Export subsidies account for about four-fifths of the drain on the Guarantee Section's expenditures, with one-fifth going toward the costs of internal price support and storage fees. Most of these expenditures have been prompted by the operations in the cereals and dairy markets.⁸³ The Guidance Section provides subsidies to Member States for such structural projects as soil improvement and land reform and various marketing improvements as silo and storage construction.⁸⁴ However, because of its small funds and voluminous requests for assistance, a very careful and selective distribution of funds has to be exercised.⁸⁵

Regulations No. 25/64 and No. 17/64 are intended to cover both the transitional and final market periods. In the final market stage it is projected that the Community will have evolved to such a state of financial competence that the financial burdens of refunds on exports, all market stabilization operation, and joint measures concerning the structural alteration of the Member States' markets in accord with Article 39 of the Treaty of Rome will devolve entirely to the Community through the Fund.⁸⁶ Finances here are anticipated to come from the full revenue received on levies charged on imports from third countries. Prior to the end of the transitional period which expired at the end of 1969, the Fund was financed through retrospective assessments on Member States, with part of these monies coming from the import levies and part from outright contributions to sustain the Fund.⁸⁷ The projected budget for the entire Fund for 1970 is some 1,150 million units of accounts, which constitutes nearly 60% of the entire Community budget.⁸⁸

• Whether or not the final financial arrangements as anticipated by Regulation

80. Regulation No. 25/62, 5 E.E.C.J.O. 991 (1962), Art. 1, as supplemented by Regulation No. 17/64, 7 E.E.C.J.O. 586 (1964) and No. 130/66, 9 E.E.C.J.O. 2965 (1966).

81. For general provisions concerning the Community's budget see TREATY OF ROME, Articles 199-201.

82. Regulation No. 17/64, 7 E.E.C.J.O. 586 (1964).

83. 12 E.E.C.J.O. 36/128 (1969).

84. Regulation No. 17/64, 7 E.E.C.J.O. 586 (1964), Title II.

85. *E.g.*, in 1966-67 the total expenditure of the European Agricultural Guidance and Guarantee Fund totalled some 500 million Units of Accounts; however of this only 25% was diverted to the Guidance Fund. In 1967-68 there was a total expenditure of some 1,600 million Units of Accounts, of which the Guidance Fund received about 17% of the total; in 1968-69 the total expenditure was nearly 2,300 million Units of Accounts, of which the Guidance Fund received approximately 12% of the total. Source: 11 E.E.C.J.O. 109/98 (1968) and 12 E.E.C.J.O. 36/3 (1969).

86. Regulation No. 25/62, 5 E.E.C.J.O. 991 (1962), Art. 5; *see also* Regulation No. 130/66, 9 E.E.C.J.O. 2965 (1966), Art. 9.

87. Regulation No. 25/62, 5 E.E.C.J.O. 991 (1962), Art. 7, and Regulation No. 130/66, 9 E.E.C.J.O. 2965 (1966).

88. THE COMMON AGRICULTURAL POLICY OF THE EUROPEAN ECONOMIC COMMUNITY, CMND. No. 3274 at 3-4 (1967).

No. 25/62 will come into effect throughout the Community during this current year remains to be seen. This problem represents a highly crucial question of political will which can well determine the future of the entire Community. At the root of the problem is the financial independence of the Community, which if achieved in agriculture would be a most significant step forward in the continuing evolution of the supranational character of the Community.

To get a better insight into the vast importance of this issue, a brief consideration of the Community's crisis of 1965 would be relevant. Contained in Regulation 25 was a provision that before 1 July 1965, the date when the qualified majority voting procedure was to begin in the Council of Ministers, a "general review" of the Fund and its operation would be taken.⁸⁹ The French saw this as their last opportunity to have a final say in the development of the agricultural policy and to solidify its already highly advantageous position under the Fund.⁹⁰ However, on 31 March 1965 the Commission let it be known that as Regulation 25 had made no definite provision for what constituted the end of the transitional period it would press for a proposal which would make 1 July 1967 as the commencement date for the single market stage, from which time all revenues from levies would become the property of the Community, and from which the Fund would take over the complete financing of the Common Agricultural Policy. Also, because of a feeling that such Community expenditures would have to be subject to parliamentary control, the Commission thought that it would also be necessary to subsequently delegate substantial powers to the European Parliament, which until then would have served primarily as a forum for debate and discussion.⁹¹

Final consideration of this problem came before the Council on 28 June 1965 with a constructive examination not getting under way until just before the institution of the qualified majority voting procedure. Earlier that June France unsuccessfully attempted to sidetrack any confrontation by suggesting that as France really saw no immediate need to be fully reimbursed by the Fund until 1970, there was no pressing urgency until then to consider the final financial arrangements for the Fund.⁹² With its back against the wall over such sensitive constitutional questions as the voting procedure of the Council, the role of the European Parliament, and the question of the financial competence of the

89. Regulation No. 25/62, 5 E.E.C.J.O. 991 (1962), Arts. 4 and 7(2).

90. An example of this advantageous position at this time was that for the year 1963-64 while the French contribution to the Fund was 17,337, 000ua for financing of the Guarantee Section, it received back 45,418,000ua, as compared with Germany which while contributing 18,843,000ua received back only 2,637,000ua. As noted by Dam, *supra* note 10, "What France hopes to get out of the EEC, it hopes to obtain as much through the financing of the Common Agricultural Policy as through the content of that Policy." 67 COLUM. L. REV. at 245. Even in 1968-69 though France accounted for 32% of the Guarantee Section Funds she reaped by over 40% of the Funds; while Germany, contributing virtually the same amount, cleared back only 18.5% of the Funds.

91. See EEC Bulletin (Aug. 1965).

92. Le Monde, June 29, 1965, at 1.

Community, France announced on 1 July 1965 that "no further meetings are currently contemplated."⁹³

In effect the French were to boycott the Community for the next seven months, at which time the Commission saw fit to mellow its position. In a final compromise the Commission agreed generally upon the previous French proposal, leaving the end of 1969, with neither agricultural levies or tariffs becoming the "property" of the Community until 1970. On the issue of the financial powers of the Parliament, all the Commission announced was:

Under the financial regulations relating to the drawing up and execution of the Communities' budgets, the Council and the Commission will decide on the means for more effective control over the commitment and expenditure of Communities' funds.⁹⁴

The Commission and Council also shied away from any firm decision on matters subject to the qualified majority voting procedure, noting that this question should not deter the normal function of the Community.⁹⁵

Thus, in the end the French were able to postpone a final determination of this constitutional dilemma until 1970, while the Community gained time to develop and consolidate a workable agricultural policy. However, the ultimate questions concerning the nature and role of the Community in the future still loom as the most critical and decisive problems to be dealt with during this current year. The course the Community will pursue remains undetermined.

D. Certain Other Features of the CAP

While it is the intention of this study to highlight those substantive and structural characteristics of the Community's Common Agricultural Policy which will have an overriding significance to the British negotiating position, perhaps brief consideration should be given to other selective features of the Community's policy which, even if only by way of technique, are of interest to the non-Community observer.

1. Grants-in-aid

In a broad sense the agricultural section of the Community is subject to the

93. *Le Monde*, July 2, 1965, at 2.

94. See *Neuvieme Rapport General*, points 13-15.

95. As the present situation stands in the Community, for 1970 the whole cost of the CAP will be met by contributions from the Exchequers of the Member States according to the following percentages: Belgium 8.25; France 28.0; Germany 31.7; Italy 21.5; Luxembourg 0.2; Netherlands 10.35. Quite tentatively it has been "promised" by the Council of Ministers that after January 1, 1978, the Commission will get its own resources, with the Commission getting all the agricultural custom duties now levied by the Member States. For general reading on this subject see *Cows Go Home*, *ECONOMIST*, May 16, 1970, at 16.

general rules of competition as set out in the Treaty of Rome.⁹⁶ Article 92 of the Treaty states that:

any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market.

Exceptions are the various aids that are:

- 1) intended to make good then damage caused by natural disasters or other extraordinary events;
- 2) intended to promote economic development of regions where the standard of living is abnormally low or where there is serious underemployment;
- 3) intended to facilitate the development of certain economic activities or of certain economic regions [and yet not detract from the objectives of the Treaty];
- 4) intended to have a social character, granted to individual consumers, provided such aid is granted without discrimination related to the origin of the products concerned.

Article 93 further provides for a procedure whereby the Commission may examine all systems of State aids, and Article 94 provides that the Council may make appropriate regulations applicable to Article 92.

It is against this background that Article 42 of the Treaty of Rome must be read. The Article states as follows:

The provisions of this chapter dealing with the rules of competition shall only apply to the production of, and trade in, agricultural products, to the extent determined by the Council within the framework of Articles 43(2) and (3) and in accordance with the procedure laid down therein, account being taken of the objectives defined in Article 39.

The Council may, in particular, authorize the grant of aid:

- a) for the protection of undertakings handicapped by structural or natural conditions;
- b) within the framework of economic programmes.

Though the Community has not yet finalized any policy here and prefers to deal with the State grants on an ad hoc basis,⁹⁷ it has become clear that the Commission takes a strict interpretation of Article 42 by requiring that both

96. See TREATY OF ROME, Part III; *see generally* "Practical Guide" to Articles 85 and 86 of the Treaty—reprinted from Commission publication by the Board of Trade Journal, 1962.

97. TREATY OF ROME, Art. 93.

conditions "a" and "b" be fulfilled before approval is given.⁹⁸ Further, it is apparent that any contrived "indirect" aids to agriculture are not permitted,⁹⁹ and that in the final analysis any local arrangements must give way to any supranational requirements.¹⁰⁰ Essentially, while the Community's approach to evolvement can be seen as a development and definition of a Community technique.

2. Tax on Value Added (TVA)

Another of the Community's techniques is the tax on value added system. The system is an integral part in the eventual coordination of a Community economic structure.¹⁰¹ In general terms the TVA is a tax on consumption levied on the utilization of goods or services by the final consumer and paid to the proper revenue authorities piecemeal by the various intermediaries along the chain of production and distribution. At each stage the seller simply pays the difference between the tax levied on the sale and the tax he paid his suppliers when he bought the goods. While in the final analysis the burden of the TVA falls on the consumer, the main advantage of the TVA is that in final operation through a proportional disbursement of the tax rate throughout the chain of production and distribution an eventual elimination of national tax frontiers and systems can be achieved.¹⁰²

This tax system is to be implemented in various stages with the first stage commencing the first of 1970, at which time the general structure and procedure of this system is to be incorporated into the national tax structures, though rates of taxes are not yet to be harmonized and the Member States will still have considerable freedom in assessing the tax.¹⁰³ It is to be noted here that the TVA system is envisioned to cover the agricultural sector.¹⁰⁴ However, because of the distinct economic and structural aspects of the agricultural sector as typified by the prevalence of small farms it will be evolved somewhat more cautiously than in the industrial sector. Flat-rate deductions and various other options will be available for the small farmers, though eventually a true TVA system is projected so as to have the same impact throughout the whole Community.¹⁰⁵

98. As to rule of competition applied to agriculture, see Ries & Guide, *Cahiers de Droit Europeen*, 166-92 (1968).

99. *Re Subsidies to Ford Tractor Ltd.*, 4 Comm. Mkt. L.R. 32, 35 (1965) (EEC Commission 1964).

100. *State Commission for Sicily v. Sicilian Government*, 2 Comm. Mkt. L.R. 315, 320 (Constitutional Court of Italy 1963).

101. Council Directive No. 67/227, 10 E.E.C.J.O. 1301 (1967).

102. *Newsletter of the Common Agricultural Policy*, April 1968.

103. See Council Directive No. 67/228, 10 E.E.C.J.O. 1303 (1967).

104. See Council Directive No. 68/221, 11 E.E.C.J.O. 115/14 (Legislation 1968).

105. *Id.*

3. *Units of Account.*

Another matter of technical concern is the system of units of accounts (ua) employed by the Community. Since the unit would express Community-wide price levels for all commodities and form the basis of the Community budget, it had to be based on a standard which would remain unaffected by revaluations of national currencies. After much discussion, the standard settled upon was given a weight of gold roughly corresponding to the gold parity of the U.S. dollar in 1934. Though this unit of account does not serve the function of a currency, it does serve as a stable guideline by which the Community can assess its own liabilities and assets and implement its common pricing policies in terms which can be discerned by all Member States.¹⁰⁶

It is these various techniques, including product standards and quality controls, the role of the various intervention agencies, and the requirements for various licenses and exemptions from the Commission that the United Kingdom will have to face. However, the best time for consideration of these would be after entry, as the initial concern for the British will be the essential reconciliation of their agricultural system with that of the Community.¹⁰⁷

III. SOME COMPARISONS WITH THE BRITISH APPROACH

The essential differences of approach and methods employed by the EEC and the United Kingdom in the sphere of agriculture are very substantial.¹⁰⁸ However, these differences have of themselves the tendency to become exaggerated and therefore to distort any balanced perspective in this area. An objective analysis will show that the two systems are not entirely antithetical, and indeed share certain common trends which would allow for some accommodation in this area.

A. *Policy on Imports*

As can be seen from the above discussion, the Community's Common Agricultural Policy in large part constitutes a highly protectionist regime which attempts to protect the domestic market from being undermined by cheaper foreign imports, while at the same time trying to encourage the internal markets toward a goal of self-sufficiency. Whether this policy is either desirable or intended in the light of the Treaty of Rome is highly debatable. The Community appears to have fallen heir to the protectionism which existed in all the Member States prior to the creation of the Common Market.¹⁰⁹ Even before the Treaty of

106. See Regulation No. 129/62, 5 E.E.C.J.O. 2553 (1962).

107. See generally MEMBERSHIP OF THE EUROPEAN COMMUNITIES, CMND. No. 3269 (1967) and BRITAIN AND THE EUROPEAN COMMUNITIES, CMND. No. 4289 (1970).

108. *Id.*, and T. WARLEY, AGRICULTURE: THE COST OF JOINING THE COMMON MARKET (1967) CONSERVATIVE POLITICAL CENTRE, EUROPE AND THE LAW, ch. 3 (1968).

109. *E.g.*, Belgium employed variable quotas and charge restrictions on imports of meat, wheat,

Rome all the Member States employed various governmental systems to maintain price levels higher than those in the world market to secure the internal markets, while implementing high national tariffs to curtail various competitive imports. The Common Market, in this light, can be seen as the logical coordinator of the various national systems.

However, by Article 110 of the Treaty of Rome, one of the aims of the Community is "to contribute, in the common interest, to the harmonious development of world trade and the lowering of customs barriers." Yet by Article 39 the objective of the Common Agricultural Policy is "to ensure a fair standard of living for the agricultural community [and] to provide certainty of supplies." The Community as such has found itself on the horns of a dilemma, with the immediate outcome being a favoring of protectionist measures.

An example of this dilemma can be seen in the 1964 agreement on a common cereal price policy. Based on the argument that the EEC would mean little if Europe was not agriculturally self-sufficient¹¹⁰ and upon the political need to secure the interests of the national farmers, a high level for wheat prices was agreed upon. This policy has created self-sufficiency in the cereals market¹¹¹ at a high cost to the consumer, not only in cereals, but also on other inter-product related commodities, and at an extremely high cost to the Community's Agricultural Fund.¹¹² Further as seen in the Kennedy Round trade agreements, though in theory the Community is committed toward a liberalization of world trade, in the agricultural sector it was compelled to maintain its protectionist policy, with the only concessions being to developing countries.¹¹³ At the moment, the Community appears to be hemmed into a stance of protectionism by the sheer force of the historical, political and economic realities of Western Europe.

However, in Britain the situation is quite different. At first glance, Britain is a highly industrialized and densely populated island, which has been able to obtain its food requirements by generally permitting free entry to world exports. As such, the British market has been able to avail itself of produce at world glut

and dairy products; Luxembourg used a system of direct subsidies to bolster home markets; Italy gave selective price support for rice, beets, hemp, olive oil, wine and cheese and also used special transport tariffs for fruits and vegetables; Germany had a strict regime for price fixing of exports; France offered selective price guarantees, while the Netherlands operated with a system of subsidies and levies.

110. Dam, *The European Common Market in Agriculture*, 67 COLUM. L. REV. 209, 214 (1967).

111. ECONOMIC UNION AND ENLARGEMENT: the European Commission's revised opinion on the applications for membership from the United Kingdom, Ireland, Denmark and Norway (October 1969).

112. T. WARLEY, AGRICULTURE: THE COST OF JOINING THE COMMON MARKET, 19-23 (1967). In 1968-69 about one-third of the total funds of the Guarantee Section were allocated to the control of the grain market. 12 E.E.C.J.O. 36/98 (1969).

113. C. FULDA & W. SCHWARTZ, REGULATION OF INTERNATIONAL TRADE AND INVESTMENT, 178-305 (1970).

prices, ensuring the consumer of foodstuffs at a price cheaper than that in the Community.¹¹⁴

Yet though the United Kingdom still imports about one-third of her temperate foodstuffs, she has never entirely fostered free importation into the island.¹¹⁵ For instance, the United Kingdom has protected its home horticultural-industry through a system of tariffs and restrictive quotas, and similar methods have been used with regard to various other products from non-Commonwealth sources. Further, the internal market price guarantee for milk is largely maintained through the creation of an artificially high price for liquid milk; and for the past several years quota restrictions for butter and bacon have been in force, along with restrictions on output and marketed supplies from sugar beet, potatoes and eggs. It appears to be the intent of these measures and of the long-term intent of both major political parties that a gradual shift to a system of import levies, the cost of which would fall to the consumer, would be desirable. Such a system would protect regular import supplies from a periodic depression of export receipts due to dumping of world surpluses on the British market, and it would relieve the Exchequer of a somewhat unmanageable and unpredictable liability for support of local markets through deficiency payments.¹¹⁶ Thus with the British apparently moving more toward an adaptation of Community methods and with the long-term stress in the Community being toward an eventual liberalization of world trade in agriculture, some common ground between the United Kingdom and the Community should be attainable.

B. Methods of Internal Market Support

Under the Community's approach the main burden of market support is borne by the consumer in the high regime market prices he must pay. In Britain, however, the consumer is benefited by the world market prices, with any difference in price to the home producer being met by direct deficiency payments from the government. In this way it is the taxpayer in the United Kingdom who pays, which with its distinctively progressive tax structure lets the burden fall in proportion to one's ability to pay. While the British position may be socially just, economically it is somewhat unmanageable as budgetary and parliamentary controls over deficiency payments vary considerably with any fluctuation in the food market. "For these reasons there has been some disenchantment with traditional policies and with the way the deficiency-payments system was working."¹¹⁷

However, it should be noted that deficiency payments are not foreign to the

114. THE COMMON AGRICULTURAL POLICY OF THE EUROPEAN ECONOMIC COMMUNITY, CMND. No. 3274, 4-5 (1967).

115. See NFU Info. Service, *British Agriculture and the Common Market* (Nov. 1966).

116. T. WARLEY, *AGRICULTURE: THE COST OF JOINING THE COMMON MARKET*, 27-29 (1967).

117. *Id.*

European Community, and accordingly it may be unnecessary for the United Kingdom to divest itself of such a system upon entry into the Community. In the area of durum wheat¹¹⁸ and olive oil,¹¹⁹ price support is not only achieved through intervention measures and import levies, but is also subject to direct deficiency payments. The peculiarity of these commodities is that their production is limited to a specific area, and while they may represent only a small proportion of the total Community farm output, they are nevertheless of significant importance to the various local economies. Such situations could perhaps serve well as a precedent for British request to retain some sort of deficiency payment in sheep and sheep by-product areas which are quite crucial factors in the local economies.¹²⁰

A further precedent is that the Treaty of Rome and the Community have permitted various direct subsidies to the internal markets by the Member States during the transitional period in those instances where it can be shown that to do otherwise would result in seriously jeopardizing the particular market through unreasonable increases in consumer costs or through a severe depletion in consumption.¹²¹ Transitional consumer subsidies have been permitted in the Community in the case of butter and certain cheeses.¹²² Because the high common price of milk established by the Community would have subsequently meant a very substantial increase in the price of butter and cheeses in the Netherlands and of cheeses in Germany, it was decided that transitional consumer subsidies might be used in those countries until the beginning of 1970. This was done to reduce the burden of price increases in these countries and to avoid any accumulation of milk surpluses in the Community due to forced reduction in consumer purchases of the products.¹²³

Also the Community has shown itself not adverse to direct subsidy payments to producers of regulated industries who can show that they have been placed at a serious disadvantage by the harmonization of prices. Such examples can be seen in the payment of subsidies to cereal producers in Germany, Luxembourg and Italy to buffer them from excessive losses of income in the transition to the common cereal price policy, with this period extending from 1967 to 1970.¹²⁴ In addition, to compensate for the lack of competitiveness of Italian sugar-growing and refining, industries subsidies until 1975 have been granted;¹²⁵ and in the area of export encouragement, direct subsidies have also been employed as in the case of oils and fats.¹²⁶ These examples show that some flexibility does

118. Regulation No. 120/67, 10 E.E.C.J.O. 2269 (1967).

119. Regulation No. 136/66, 9 E.E.C.J.O. 3025 (1966).

120. THE COMMON AGRICULTURAL POLICY OF THE EUROPEAN ECONOMIC COMMUNITY, CMND. No. 3274, 17-18 (1967).

121. TREATY OF ROME, Art. 44.

122. Regulation No. 804/68, 11 E.E.C.J.O. 148/13 (1968), Arts. 6 and 8.

123. *Id.*, Arts. 9 and 10.

124. See generally Dam, *The European Common Market in Agriculture*, 67 COLUM. L. REV. 209 (1967).

125. Regulation No. 1009/67, 10 E.E.C.J.O. 308/1 (1967), Art. 39.

126. Regulation No. 136/66, 9 E.E.C.J.O. 3025 (1966), Art. 10.

exist in the Community's approach to internal market support, and accordingly the British will have some leeway in their own negotiating position.

C. *Structural Developments*

The United Kingdom, however, has not been content to leave the desire to secure home markets through deficiency-payments, but has also made a determined effort to make the market-structure more productive, efficient and viable. In this respect both the United Kingdom and the Community have a common objective.¹²⁷ The British Government has adopted a continuing policy to secure a consolidation of farm holdings through a system of grants for private amalgamation schemes, through voluntary sale of land to the state for amalgamation purposes and through payments to occupiers who wish to give up "uncommercial" holdings. The Government will pay half the cost for the amalgamation schemes and will pay cash settlements or grant pension benefits to those who voluntarily surrender their land to the government.¹²⁸

In addition to all this, the Government seeks to increase the viability of those farms which are already large enough to subsist in competitive markets. It is the objective of the British Government that "[f]arms will be formed capable to supporting businesses which can provide a fully adequate living to the occupiers."¹²⁹ To this end the United Kingdom has employed a series of governmental grants and subsidies covering such items as hill cattle and sheep rearing, ditching and draining projects, silo construction, and rent subsidies for cottage farmers.¹³⁰ As already noted in this paper provision is made in the Treaty of Rome for various state grants and these are considered on an ad hoc basis by the Commission.

It would appear that the subsidies to hill cattle and sheep may well be justifiable under the Treaty of Rome as such farming is in fact "handicapped by structural or natural conditions."¹³¹ Further, the United Kingdom should be able to consolidate some of its structural projects under the Community's Guidance and Guarantee Fund, as British contribution to the Fund through levies on imported food goods would far exceed any demand Britain could make on it for assistance.¹³² Thus, with the emphasis in the United Kingdom being largely on structural improvement of the market rather than on a continuance of protecting uncompetitive markets through strictly artificial price supports, the United Kingdom has gained itself a certain degree of flexibility in negotiating her position for entry into the Community.

127. See THE DEVELOPMENT OF AGRICULTURE, CMND. NO. 2738 (1965).

128. *Id.* at 2-4.

129. *Id.* at 2. See also BRITAIN AND THE EUROPEAN COMMUNITIES, CMND. NO. 4289, 7-8 (1970).

130. THE DEVELOPMENT OF AGRICULTURE, CMND. NO. 2738, 4-12 (1965); see CONSERVATIVE POLITICAL CENTRE, EUROPE AND THE LAW, 36-39 (1968).

131. TREATY OF ROME, Art. 42.

132. MEMBERSHIP OF THE EUROPEAN COMMUNITIES, CMND. NO. 3269, 4 (1967).

IV. SOME SPECIFIC PROBLEMS FOR THE UNITED KINGDOM

Despite whatever flexibility the United Kingdom may be able to achieve in her negotiating position for entry, the costs will still weigh pointedly in the area of agriculture.¹³³ In fact, if there was one single issue which could be held out to be a *prima facie* reason for not entering the Community, agriculture would be that issue.

A. *Supranational Implications of CAP*

Permeating virtually all the points for negotiation between the United Kingdom and the Community will be the issue of the supranational character of the Community and its constitutional implications for the British, especially as regards to the notions of parliamentary supremacy and that of the absolute sovereignty of the Queen in Parliament.¹³⁴ As can be seen from the words of the Court of Justice:

[T]he Community constitutes a new legal order for whose benefit the States have limited their sovereign rights, albeit within limited fields.¹³⁵

Perhaps the classic statement on the nature of Community law can also be found in *Costa v. ENEL*:

As opposed to other international treaties, the Treaty instituting the EEC has created its own order which was integrated with the national order of the Member States the moment the Treaty came into force; as such, it is binding upon them. In fact, by creating a Community of unlimited duration, having its own institutions, its own personality and its own capacity in law, apart from having international standing and more particularly real powers resulting from a limitation of competence or a transfer of powers from the State to the Community, the Member States albeit within limited spheres, have restricted their sovereign rights and created a body of law applicable both to their nationals and to themselves. The reception, within the laws of each Member State, of provisions having a Community source, and more particularly of the terms and spirit of the Treaty, has a corollary the impossibility, for the Member States, to give preference to a unilateral and subsequent measure against a legal order accepted by them on a basis of reciprocity. . . . In truth, the executive strength of Community laws cannot vary from one state to the other in favour of later internal laws without endangering the realization of the aims envisaged by the Treaty in Article 5 (2) and giving rise to a discrimination prohibited by Article 7.¹³⁶

133. See CMND. NOS. 3269, 3274 and 4289 (1967).

134. See generally LEGAL AND CONSTITUTIONAL IMPLICATIONS OF UK MEMBERSHIP OF THE EUROPEAN COMMUNITIES, CMND. NO. 3301 (1967).

135. *Van Gend en Loos v. Nederlands Tariefcommissie*, 9 Recueil de la Jurisprudence de la Cour 1, 2 Comm. Mkt. L.R. 105 (Cour de Justice des Communautés européennes 1963).

136. See note 29 *supra*.

When this notion of the supranational character of the Community structure and laws is applied to the sphere of agriculture, it becomes wholly clear in law and in practice that the Community will be superior. Not only does the Community's policy call for a common organization of the various agricultural markets of the Member States, but in the final market stage it also provides for Community control over this market through the Commission and the Council, whose directives and regulations take precedence over any conflicting national law or regulation.¹³⁷ This whole Common Agricultural Policy of the Community makes clear that in joining the Community the United Kingdom will not only be divesting itself of some limited sovereignty in theory, but will be doing so in concrete terms. How this will settle with the British, who have strongly held in the past that no Parliament could restrict its own actions in the future, remains to be seen.

While it has been suggested that "there is in theory no constitutional means available to us to make it certain that no Parliament could enact legislation in conflict with Community law,"¹³⁸ the more historically and constitutionally accurate approach can be seen in the views of Professor J.D.B. Mitchell.¹³⁹ Professor Mitchell believes that in a certain sense the constitutional concepts of absolute sovereignty of the Crown and of parliamentary supremacy more as overstated innovations rather than as existing realities, as in practice Parliament and the Crown have not had nor have exercised the absolute competence so imputed to them. In this light Professor Mitchell has suggested that the sovereignty of Parliament could be effectively limited by statute to bring it into accord with Community law without much ado. The government seems to share this view that British law could be aligned with Community standards without any constitutional crisis. As stated by the government in the White Paper *Legal and Constitutional Implications of United Kingdom Membership of the European Communities*:

The Community law having direct internal effect is designed to take precedence over the domestic law of the Member States. From this it follows that the legislation of the Parliament of the United Kingdom giving effect to that law would have to do so in such a way as to override existing national law so far as inconsistent with it. This result need not be left to implication, and it would be open to Parliament to enact from time to time any necessary consequential amendments or repeals. It would also follow that within the fields occupied by the Community law Parliament would have to refrain from passing fresh legislation inconsistent with the law as for the time being in force. This would not, however, involve any constitutional innovation. Many of

137. *Id.*

138. Lord Chancellor speaking in the House of Lords, 282 PARL. DEB., H.L. (5th ser.) 1203 (1967).

139. See J.D.B. MITCHELL, CONSTITUTIONAL LAW (1968) and Mitchell, *What Do You Want to Be So Inscrutable for Marcia?*, 5 C.M.L. REV. 112 (1967-68).

our treaty obligations already impose such restraints—for example, the Charter of the United Nations, the European Convention on Human Rights and GATT.¹⁴⁰

B. Cost of Living

Aside from what the constitutional implications of an acceptance of the Community's Common Agricultural Policy may or may not entail, the basic costs of such a policy have to be seen in cold economic terms as these affect not only the Government, but also the consumer, the farming sector, and traditional Commonwealth ties. Implementation of the CAP in the United Kingdom will mean a sharp rise in the cost of food to the consumer. Britain would have to accept the common pricing of the Community, which is generally higher than many of the world prices now enjoyed by the British consumer, the common external tariff and the Community's systems of levies. It follows that food prices to the consumer will rise substantially. Though wholesale milk, fruits and vegetables may be cheaper under the Community system, major increases in the price of beef, mutton and lamb, bread, butter, sugar, grains, eggs and pork will occur. It has been estimated by the Government that the initial rise in the cost of food to the consumer will be between 18 to 26% overall.¹⁴¹

What all this will mean to the cost of living index is quite difficult to assess. However, it has been suggested that it would be lifted somewhere in the range of 4 to 5, taking into account the assumption that there will be some change in the pattern of consumption from the more expensive foods to cheaper substitutes (e.g. from beef to mutton). It is assumed that the British industrial sector will be able to actively compete within the Common Market, and that sectors of the economy such as the labor unions, when members are faced with such a sharp rise in the cost of food and living in general, will not accelerate the dangers of a spiralling inflation by insisting on substantial wage increases to offset the cost to the food consumer.¹⁴² By some device the British Government will have to cut off any such threats to its already delicately balanced prices and income policy.¹⁴³ If this cannot be done in the negotiations with the Community so as to

140. CMND. NO. 3301, para. 23 (1967).

141. *BRITAIN AND THE ECONOMIC COMMUNITIES*, CMND. NO. 4289 at 15 (1970). As this White Paper concedes: "The precise effect on food prices at the retail level is difficult to predict as it would depend on the extent to which distributive and retail margins changed as a result of the higher first-hand prices. . . . The rise would of course be spread over a period of years with the full effect only being felt at the end of the transitional period and it would be associated with all the other various factors which normally influence the cost of living."

142. T. WARLEY, *AGRICULTURE: THE COST OF JOINING THE COMMON MARKET*, 46-49 (1967). See also EEC Bulletin, Supplement to No. 4, at 11 (1966) for a comparative picture of the effect on cost of living in Member States of the Community by the implementation of a common pricing policy and market organization.

143. However, as noted in the *ECONOMIST*, Feb. 14, 1970, at 10-12, the rise in the retail food price index from 18% to 26% suggested by CMND. NO. 4289 would not be above and beyond the normal inflationary rises expected even if Britain did not join the Common Market. The cost to

spread the effects of the rising costs over some transitional period, then some restructuring of the tax system or some increases in social benefits will have to be granted to relieve the poor. Yet overextended Government spending could ignite the spiralling itself.

C. *Balance of Payments*

Further, adherence to the CAP arrangements will place a severe drain on the British balance of payments situation. This will come about because under the Common Market setup Britain will be paying full Community prices for imports of foods from other Member States of the Community by the end of any agreed transitional period. These products will gradually replace the cheaper exports Britain now utilizes.

In the event that the higher off-farm prices of the Community only induce the British farmer to increase overall production by 3%, then it has been officially suggested that the adverse effect to the balance of payments from this factor would be in the range of some £255 million annually. However, it has been suggested that if British agricultural production is increased by some 10%, then this would lead to a net surplus of some £85 million to the balance of payments in this area.¹⁴⁴ Given the present state of British farming, it appears quite feasible that the more optimistic projection of a 10% increase will find itself closer to the mark, and will therefore provide a surplus of around 85 million to £100 million per year. During the past several years, farm production has always increased more quickly in response to higher prices than British officials have predicted, and with the stimulus given upon entry into the Community, it is highly likely that this proportionate increase will continue.¹⁴⁵

the British housewife will be only the excess over average world off-farm prices less the inevitable levelling-up process of the British system. Further, as noted by the *ECONOMIST*, the "corollary" between a rise in food prices and the wage demands of British labour is perhaps not a corollary at all.

144. See *Britain and the European Communities*, CMND. No. 4289, 17-19 (1970).

Estimated Change in United Kingdom Food Imports and Estimated Levy Receipts
(£ million)

	<u>Larger Change in Consumption</u>		<u>Smaller Change in Consumption</u>	
	Food Imports	Levies	Food Imports	Levies
Present difference in prices				
1. Upper production response	-85	187	+105	210
2. Lower production response	+60	195	+250	220
Middle production response				
3. Present difference in prices	-15	190	+175	220
4. Smaller difference in prices	+80	165	+255	185
5. Larger difference in prices	-75	195	+120	230

145. See "None the Wiser," *ECONOMIST*, Feb. 14, 1970, 10-12.

However, on a pessimistic note, it seems generally agreed that substantial damage to the balance of payments situation would arise by British acceptance of the Community's present arrangements for financing the CAP. The estimated damage from this factor ranges from a deficit of £150 million a year on the low side to up to £670 million on the high side.¹⁴⁶ However, as it has been noted:

The calculation of the adverse effect on the balance of payments at the end of any transitional period depends on a number of assumptions and estimates, which are speculative in varying degrees. First, assumptions have to be made about the level of world and Community prices at the time Assumptions then have to be made about the membership of an enlarged Community; the total level of expenditure from the Fund; and the revised scale of fixed percentages for national contributions to the Fund in addition to those made from levy proceeds.¹⁴⁷

In 1969 the method of financing the CAP Fund was that each Member State paid into the Guarantee Section 90% of the proceeds from their levies on imports of agricultural products from non-Community countries. The remainder of the Guarantee Section and the entire part of the revenues of the Guidance Section were paid from Exchequer contributions from the Member States on a fixed percentage scale. However in December of 1969, the Council of Ministers agreed in principle on a new system of financial contributions for the future. For the year of 1970 there would be a "fixed key" for national financing of the whole Agricultural Fund: Belgium, 8.25%; France, 28%; Germany, 31.7%; Italy, 21.5%; Luxembourg, 0.2%; and the Netherlands, 10.25%.

From 1971-1974 new arrangements would again come into force with the levies on agricultural imports along with an increasing proportion of custom duties on all goods being handed over by the Member States. These revenues would again be supplemented, if needed, by national Exchequer contributions (Belgium, 6.8%; France, 32.6%; Germany, 32.9%; Italy, 20.2%; Luxembourg, 0.2%; Netherlands, 7.3%). From 1975 onwards, all levies and custom duties (less 10% to cover collection costs) would be handed over to the Community, and in place of the budgetary contributions, any balance would be met by the Member States corresponding at most to a 1% value added tax. All the arrangements from the years 1971-1974 are subject to the condition that no country's total contribution to the total expenditure will rise by more than 1% above or fall by more than 1½% below its previous year's proportion. For the years 1975 to 1977, this range would be 2% in either direction. By the beginning of 1978, it is projected that the Fund will find itself a fully autonomous entity with its own finances.

146. See BRITAIN AND THE EUROPEAN COMMUNITIES, CMND. No. 4289, 19-21 (1970).

147. THE COMMON AGRICULTURAL POLICY OF THE EUROPEAN ECONOMIC COMMUNITY, CMND. No. 3274, 20 (1967).

What this means to the British is quite difficult to determine as they were not parties to the 1969 agreement of the Council of Ministers and presently it is wholly uncertain what terms the Community will impose upon the British. However, with the Fund spending the equivalent of some £1,250 million for 1970, it can be projected that if the United Kingdom's fixed percentage of payment would be from 15 to 20% of the total, then the British contribution would be between £190 million to £250 million for 1970, while the United Kingdom would only receive about £75 million back from the fund.¹⁴⁸

But, with it now seeming fairly unlikely that the United Kingdom will enter the Community during 1970, it would then appear that it could well be subject to the provisions of the 1969 agreement for turning over 90% of its agricultural levies and up to 90% of its custom duties by 1975. In this light the British Government has concluded that the total deficit cost to Britain could range from a low of £150 million to upwards of some £670 million. These financial charges, taken together with the trade effect on agricultural products, yield a net cost to the British balance of payments somewhere between an overly optimistic surplus of some £35 million to an overly pessimistic deficit of some £875 million.¹⁴⁹ Perhaps an estimate in the area of a £175 million to £200 million deficit would be the most realistic.¹⁵⁰

D. Farm Income and Structure

While it is true that at present British farms are generally more efficient and productive than their Community counterparts, the process of adjustment to the Community system may mean some disruption of British farming patterns through redeployment of certain resources. Because of the benefit coming from the higher Community prices, the aggregate gross income for the farming Community should increase by some £70 to £75 million in terms of 1970 standards. This, however, will be wholly offset by a substantial rise in cost of feedstuffs, which count for about one-third of total costs. The end result would range from a holding of the same level of pre-entry gross aggregate income to a reduction of between £25 to £30 million, a figure which in itself may not have any great significance on the farming economy as a whole.¹⁵¹

148. BRITAIN AND THE EUROPEAN COMMUNITIES, CMND. NO. 4289, 20 (1970).

149. *Id.* The range would be as follows (in £million):

	"Optimistic"	"Pessimistic"
Contribution to CAP	- 150	- 670
CAP funds for UK agriculture	+ 100	+ 50
Growth of home food production		
less more expensive food imports	+ 85	- 255
Total Agriculture	+ 35	- 875

150. "None the Wiser," *ECONOMIST*, Feb. 14, 1970, at 10-12.

151. T. WARLEY, *AGRICULTURE: THE COST OF JOINING THE COMMON MARKET*, 46-49 (1967).

However, the distribution of this gross total will not fall in the same ways as it has prior to any entry into the Community. The greatest increase in revenue would fall to cereal growers, and to a lesser extent to beef and sheep farmers, though this latter sector would have to bear higher costs for feedings and therefore their total net income will probably decrease. The greatest increase in costs will fall on dairy, swine, and poultry farmers who account for about 50% of current total agricultural output. Those regions of the United Kingdom which can avail themselves of arable land will suffer less as compared to the fate of hill farmers; while those areas producing cattle and sheep should do better than those producing milk, which represents the main source of income for the small farmers.¹⁵²

Thus, with a shift in price incentives and cost deterrents, there might well be a further move toward consolidation and specialization of farms. The high price for grains may encourage some increase of production in this area, though with this increase a reevaluation of the quality and use of feedstuffs will have to be made by the stockbreeders. Certainly, some structural changes in the British farming community will be precipitated.

Further, the certainty of returns to British farmers will not be as great under the Community's system. Under the CAP, returns are dependent upon the success levies, tariffs and intervention measures can have in achieving a target market price. This cannot be seen as firm a guarantee to British farmers as they have had under the use of supplemental deficiency payments which yield an average return at guaranteed levels. With control of the CAP being centralized in the Community's institutions, it is evident that the present influence British farmers and farm groups have on the determination of the shape of British agricultural policy will greatly diminish.¹⁵³

E. Commonwealth Ties

In addition to all these problems, there are highly important Commonwealth agricultural interests which will be severely affected by British acceptance of the CAP.¹⁵⁴ Since the 1961-1963 negotiations for British entry, Commonwealth trade with the United Kingdom has been on the decline due primarily to a planned diversification of markets by the Commonwealth nations. However, British entry into the European Community will nevertheless have substantial impact on the economies of the Commonwealth nations. If, however,

152. THE COMMON AGRICULTURAL POLICY OF THE EUROPEAN ECONOMIC COMMUNITY, CMND. No. 3274, 17-19 (1967).

153. Though British farm representation would be on the various advisory committees of the EEC Council and Commission—such representation is generally based on a commodity and interest basis, bringing together often such varied elements as farmers, merchants and consumers. As such, the British farmers will not have a direct or singular influence in the determination of the CAP activities. *See id.* at 6-7.

154. Speech by Sec. of State for Foreign Affairs, THE UNITED KINGDOM AND THE EUROPEAN COMMUNITIES, CMND. No. 3345 (1967).

Commonwealth trade with non-British markets continues to increase as seen in the rise in trade by New Zealand and Australia with North America and if the Commonwealth nations can secure some rapport with the world economic scene through GATT, this impact could be minimized.

In the case of Canada, whose main dealing with the United Kingdom in the agricultural market is with wheat, her trading position with Britain does not seem to be in jeopardy. Since 1962 the quality factor of its wheat has enabled Canada to maintain its markets in the EEC at competitive levels; the same should hold true with Britain.¹⁵⁵ Shortages on the world market in preferred beef and rising consumption rates in the Community should not harm New Zealand's and Australia's exports of beef and veal. A possible shift in consumer purchases of cheaper meat products will enable New Zealand's exports of mutton and lamb to hold their own.¹⁵⁶

However, there are two serious problems in Commonwealth trade, namely the state of sugar, and the protection of the highly vulnerable New Zealand economy. For sugar, the United Kingdom is bound by an agreement with Commonwealth sugar producers which does not expire until 1974, giving preference to the cheap Caribbean sugar. Immediately this should pose no great obstacle to British entry because the final sugar market stage in the Community does not come into being until 1975.¹⁵⁷ Some transitional arrangements for Britain can be made here. Thereafter, Britain will have to try to plead the case for special arrangements for the Caribbean sugar under the argument of helping developing nations in their economic growth, a plea to which the Community has not been entirely deaf.¹⁵⁸

As to the special case of New Zealand, it must be noted that 35% of all New Zealand's export earnings come from sale of butter to the United Kingdom.¹⁵⁹ Any abrupt change in this area will have significant effect upon the entire New Zealand economy. The one advantage Britain will have in negotiating this point is that in the 1961-1963 negotiations it was conceded by the Community Members that New Zealand was in fact a special case to be considered. It would

155. See Sinclair, *A North American View of the Community Wheat Price*, 3 C.M.L. REV. 215 (1965-66).

156. In the case of Australia, it appears quite certain that from the way present Common Market negotiations are setting up that the best Australia can hope for is a long transitional period for Britain so as to permit Australia to resolve initial impact difficulties. As reported in the *Guardian* of Sept. 17, 1970, at 3, Mr. Rippon, one of Britain's Common Market negotiators, gave Australia little hope of further concessions if Britain enters the Market. He quite clearly quashed any hope of pushing for any substantial changes in the CAP. Along these lines, Australia has been contending that United Kingdom admission would violate GATT (*Washington Post*, June 18, 1970, E 6, col. 7-8); however, this statement has not been treated seriously by Messrs. Rippon and Whitehall.

157. Regulation No. 1009/67, 10 E.E.C.J.O. 308/1 (1967), Art. 22.

158. See C. FULDA & W. SCHWARTZ, *REGULATION OF INTERNATIONAL TRADE AND INVESTMENT*, 178-305 (1970).

159. CONSERVATIVE POLITICAL CENTRE, *EUROPE AND THE LAW*, 24 (1968).

seem feasible that a transitional period could be arranged to distribute more evenly any adverse effect upon the New Zealand economy. Thereafter, it has been suggested that New Zealand could pursue associate membership in the Community to protect her economy. Such an approach is highly questionable and must be seen as a separate and internal matter for New Zealand to pursue.¹⁶⁰

V. CONCLUSION

What price the Common Agricultural Policy? For the United Kingdom the inescapable answer must be that the price will be very dear indeed. There is little doubt that British acceptance of the CAP will be one of the less palatable lumps that must be swallowed as a cost for joining Europe. Not only will the costs weigh heavily on the British consumer and government, but it will have a generally adverse effect upon the entire British economy. The question is not what the United Kingdom can get out of the CAP, but in what way can it best minimize the undesirable impact of this Policy.

Although there is a certain inherent flexibility in British farming policy and an optimistic belief that other advantages of joining Europe will offset the balance sheet, and while it is clear that the Community's farm policy is not a stagnant structure itself, the first impression that must strike British negotiators is that the CAP has only been achieved by the Community through many painful, protracted negotiations. It is highly improbable that the United Kingdom could effectuate any significant changes in Community policy through negotiation for entry. As noted by the former British Prime Minister Harold Wilson:

We must be realistic and recognize that the Community's agricultural policy is an intergral part of the Community; we must come to terms with it.¹⁶¹

The United Kingdom will have to accept the fact that the CAP is based on a single price support system through a high market price regime, the cost of which will be borne by the consumer; on a highly protectionist approach to sheltering home markets from foreign exports; on an institutional structure which must be viewed in definite centralized and supranational terms; and on a

160. See THE UNITED KINGDOM AND THE EUROPEAN COMMUNITIES, CMND. NO. 3345, 8-9 (1967). As reported in the *Guardian* of Sept. 23, 1970, at 3, Mr. Rippon and the New Zealand Ministers have reached full agreement on how Britain will present the case for a special arrangement to sustain New Zealand's dairy industry after Britain joins the Common Market. Though full details were not divulged, it appears clear that the British negotiators will now press for a protocol to the British instrument of accession to cover New Zealand's position. Hopefully this protocol will provide for a trade agreement between the EEC and New Zealand which would ensure continuity in trade in butter, cheese and lamb, with a levy free quota for dairy products. Any demands beyond this, Mr. Rippon feels may jeopardize the entire negotiations with the Community.

161. MEMBERSHIP OF THE EUROPEAN COMMUNITIES, CMND. NO. 3269, 4 (1967).

financial system drawing largely upon income from import levies, which would "put an inequitable burden on the United Kingdom."

Assuming that the British do want to reduce the area of negotiations to the minimum in as short a time as possible,¹⁶² the fundamental questions which must be resolved are: the extent and nature of British implementation of the CAP over a transitional period, the scope of British payments to the Guarantee and Guidance Fund, and the fate of some of the more critical Commonwealth needs. To the first question, it would be hard to conceive that the Community Members can remain insensitive and unresponsive to the difficulties which the United Kingdom will incur by accepting the CAP. Since CAP is based on the concept of transitional stages it would only seem logical that Britain would also be granted the grace of such a stage. It has been suggested both inside the Community and in the United Kingdom that a five-year transitional period would be a realistic one.¹⁶³ Although the actual terms of this period is another matter, it is clear that the arrangements will have to be made which will shift the economic costs of the CAP more evenly on the British economy than would one flat initial impact. Whether this would be done by prolonging the deficiency payments system, by employing declining consumer subsidies, or through a progressive acceptance of the Community's tariff and levies system rests in the hands of the negotiators.

Further, as noted by the British Government, the financial arrangements for the CAP would "impose on our balance of payments an additional burden which we should not in fairness be asked to carry."¹⁶⁴ It is but a fortuitous situation that under present Community agricultural financing Britain would bear a wholly disproportionate cost. Certainly, there is no sound economic or legal reason for expecting Britain to bear such a load; and as the Community has in the past been favorable to certain adjustments as with Italy and Germany, it would appear that some ceiling could be set in the case of the British.

On the question of Commonwealth interests, it must be accepted again that New Zealand is a special case and some sort of transitional safeguards must be secured here. However, any permanent arrangement between New Zealand and the Community would have to be left to negotiation between them. With regard to Commonwealth sugar, the United Kingdom must remain bound to its agreements until they expire in 1974. During the interim, some form of association with the entire Community could be negotiated to provide some long-term assurances to these developing nations.

162. THE UNITED KINGDOM AND THE EUROPEAN COMMUNITIES, CMND. No. 3345, 5 (1967).

163. See Lord Gladwyn, *How Would Entry into the Common Market Affect British Life in General?*, 111 SOL. J. 265 (1967). In his lecture at Edinburgh, note 5 *supra*, M. Marjolin stated that a five-year period would appear to be reasonable. As reported in the *Guardian*, Sept. 17, 1970, at 3, one of the British negotiators at Brussels has asked for separate transitional periods for industry and agriculture. He proposed a three-year period for industry, but insisted upon a longer period for agriculture.

164. MEMBERSHIP OF THE EUROPEAN COMMUNITIES, CMND. No. 3269, 4 (1967).

With the difficulties and costs for British acceptance of the CAP so great, the ultimate question must be: Why join Europe? The *economic* answer could be that overall:

all of us are aware of the long-term potential for Europe, and therefore for Britain, of the creation of a single market of approaching 300 million people, with all the scope and incentives which this will provide for British industry, and of the enormous possibilities which an integrated strategy for technology, on a truly Continental scale, can create.¹⁶⁵

But as it has been poignantly stated:

whatever the economic arguments . . . the Government's purpose derives above all from a recognition that Europe is now faced with the opportunity of a great move forward in political unity and that we can—and indeed we must play our part in it. . . . We do not see European unity as something narrow or inward looking. Britain has her own vital links through the Commonwealth, and in other ways, with other continents. So have other European countries. Together we can assure that Europe plays in world affairs the part which the Europe of today is not at present playing. For a Europe that fails to put forward its full economic strength will never have the political influence which I believe it could and should exert within the United Nations, within the Western Alliance, and as a means for effecting a lasting detente between East and West; and equally contributing in ever fuller measure to the solution of the world's North-South problem, to the needs of the developing world. . . . For all of us realize that this is a historic decision which could well determine the future of Britain, of Europe and indeed of the world for decades to come.¹⁶⁶

This then is the “raison d’etre” for bearing the high cost of the CAP.

165. *Id.*

166. *Id.* at 4-5.

