Agriculture, the EC and the WTO; a legal critical analysis of the concepts of sustainability and multifunctionality.

Maria O’Neill
Dundee Business School
University of Abertay Dundee
Bell Street
Dundee DD1 1HG

Summary

The agricultural policies of the member states of the EC has for many years now been controlled from Brussels under the Common Agricultural Policy. In recent years the CAP has, together with other policies of the EC, been refocused from crop production support to a European Rural policy, with the term "sustainability" being written into many policy documents. This term has achieved international recognition, and the definition used by the Brundt Land commission has been widely accepted, as evidenced by its use in OECD documentation. While the term "sustainability" has been written into WTO texts, the robustness of the term is questionable. The question then arises as to the
legal interaction of WTO texts and Multi-lateral Environmental Agreements, which do have "sustainability" as their core philosophy. A new term has entered the regional and global debate in the policy area of agriculture, that of "multifunctionality". The EC is increasingly defining agriculture as being multifunctional. This term has yet to be clearly defined at and EC level, however the OECD has done some work in this area. How the Millenium round of WTO negotiations reacts to the term "multifunctionality" will have an important impact on the EC's Common Agricultural Policy.

Introduction

National agricultural policy is no longer the preserve on national governments. In most Western European countries national agricultural policies have been largely controlled by the regional governance structure of the EC. In addition, Agriculture is increasingly becoming a bone of contention in international trade disputes, as evidenced in the fact that the whole of the General Agreement on Tariffs and Trade under the Uruguay round of negotiations was held up pending the resolution of the Agricultural trading issues between the three main negotiating parties at the international level, the EC, the USA and the Cairns group, which resolution was eventually reached at Blair House in November 1992. Conflicting issues of feeding an increasing global population, at a reasonable price, while maintaining our respective bio-diversities, local ecosystems and rural populations, are continuing issues of debate. Differences in social priorities in different areas around the world will increasingly have an impact on the international debates on Agriculture in this increasingly globalised world. The Agricultural policy of
the EC will be strongly influenced by WTO Agricultural agreement commitments. In-depth examination of the interaction of the Agricultural policy of the EC and the WTO is merited. For the purposes of this paper, I propose, however, to focus on the interaction between these two levels of governance, and then to limit my examination to the approaches of these two levels of governance to the issues of sustainability and multifunctionality, together with the views of the OECD in this area, and to analyse the possible impact of this divergence on Agricultural policy.

**EC - legal articulation with the WTO**

The EC is unusual in that it is the only RIA currently recognised as a member of the WTO,\(^1\) however a full elaboration of the relationship remains outstanding.\(^2\) In Opinion 1/94\(^3\) the ECJ held that the Common Commercial Policy of the EC currently enshrined in Article 133 EC\(^4\) entitled the Commission to develop an external Common Commercial Policy,\(^5\) with the Common Agricultural Policy being allied with the Common Commercial Policy. Matters such as the GATS\(^6\) and TRIPs\(^7\) were held to be outwith the delegated powers of the EC, and remained in the exclusive competence of the EC member states. EC Regulation 1600/95,\(^8\) as amended by Regulation 1170/96\(^9\) went on to implement the WTO Agreement on Agriculture into EC law.\(^10\)

ECJ jurisprudence recognises that the EC was substituted for the Member States with regard to commitments under the GATT as far back as on the 1st July 1968, when
the EC introduced its Common Customs Tariff.\textsuperscript{11} The ECJ has taken upon itself the role of interpreter of the GATT by way of preliminary ruling under Article 234 EC,\textsuperscript{12} with regard to issues arising as and from that date, (1968).\textsuperscript{13}

In 1972 the ECJ recognised that the provisions of GATT 1947 was binding on the Community,\textsuperscript{14} however the same case went on to say that the issue of whether or not an EC provision is illegal because it is in breach of a public international law obligation, it is necessary to establish; 1. the public international obligation is binding on the Community, and 2, where the proceedings are before a national court, that the rule is self-executing.\textsuperscript{15} Regard must also be had to the "spirit, the structure and the terms of the convention".\textsuperscript{16} In 1972 it was found that, because there was great flexibility in the earlier GATT, it was considered that the particular part of GATT in question at the time, was not self-executing. Such an argument would not be as persuasive with regard to the GATT 1994. The ECJ has yet to overturn a provision of EC law on the basis that it is incompatible with GATT rules,\textsuperscript{17} however Council Decision 94/800\textsuperscript{18} "stated that by its nature, the Agreement establishing the World Trade Organisation, including the annexes thereto is not susceptible to being directly invoked in Community or Member States Courts". The ECJ in \textit{Commission v. Germany}\textsuperscript{19} stated that "the primacy of international agreements concluded by the Community over provisions of secondary legislation means that such provisions must, so far as is possible, be interpreted in a manner that is consistent with those agreements".\textsuperscript{20}
As neither the World Trade Organisation nor GATT is expressly referred to in the EC treaty, the relationship between the two organisations, in the context of EC jurisprudence, has been developed by way of case law of the ECJ. Article 302 EC does empower the European Commission, to "maintain such relations as are appropriate with all international organisations". European Law requires the EC to adhere to all of its international law commitments, with "the provisions of such an agreement" being deemed to form an integral part of the community system, with an obligation being placed on the ECJ to ensure the "uniform application" of the terms of such agreements throughout the Community in order to ensure that they are not used to create barriers to trade.

The EC view of Sustainability and Multifunctionality

EC Sustainability

The European Community's environmental policy, which recognises the precautionary principle, operates through a framework of action programmes. The fifth action programme adopted the concept of sustainable development used in the Brundt Land report, and developed the policy framework for its implementation within the EC. It goes on to say that "the implementation of such a strategy of sustainable development will require a considerable change in almost all major policy areas in which the Community is involved. It requires that environmental protection requirements be integrated into the definition and implementation of other Community policies, not just
for the sake of the environment, but also for the sake of the continued efficiency of the other policy areas themselves,”,28 with the Agricultural sector being one of the sectors targeted under Chapter 4.4 of the programme.29 The sixth action programme30 develops the fifth action programme from a cross sectoral point of view.31 In addition to the action programmes,32 sustainability has been written into the EC treaty at Article 2 EC,33 and Article 6 EC.34

Given that free trade between member States is one of the more important policies within the EC, and the ultimate target of the WTO, it is interesting to compare the two organisations' approaches to the issue of environmental protection measures hindering or possibly hindering such free movement. The EC position is set out in the Danish Bottles case,35 where, in the summary of the judgement the ECJ states, at paragraph 1, that "obstacles to free movement within the Community resulting from disparities between the national laws must be accepted in so far as such rules, applicable to domestic and imported products without distinction, may be recognized as being necessary in order to satisfy mandatory requirements recognized by Community law and are proportionate to the aim in view, in so far as they constitute a measure which least restricts the free movement of goods." The court went on to say that as the protection of the environment was one of the "Community's essential objectives", and as long as the measures taken were necessary and the "resulting restrictions" were not "disproportionate" then the environmental protection measures would be permissible. This is to be contrasted with the WTO Appellate Body's approach in the two Tuna cases,36 and in the Shrimp case,37 referred to later in this paper.
EC Multifunctionality

The European Community's views of multifunctionality are still at a policy stage, and have yet to be written into legal texts, however its concept, along with that of sustainability, is being strongly supported by the EC in light of the current round of WTO Agricultural talks.\(^{38}\) It is the Agricultural directorate's view that the issue of multifunctionality in agriculture encompasses the issues of "safe and high quality goods", the protection of the environment, the saving of "finite resources", the preservation of rural landscapes,\(^{39}\) and the contribution that agriculture makes to the "socio-economic development of rural areas including the generation of employment opportunities".\(^{40}\) The European Commission is of the view that the "multifunctional character of agriculture" is a "key issue to be addressed in the WTO context".\(^{41}\) The EC recognised that agriculture provides "services" which are "mainly of a public good character".\(^{42}\) The importance of landscape includes "stonewalls, terraces, trees and farm woodlands and archaeological features" which contribute to the "cultural landscape".\(^{43}\) The specific character of land as a commodity is recognised when the Commission states that unused land does "not automatically revert to its original wild state", and "continued usage" in a well adjusted way is a perquisite for maintaining its environmental value.\(^{44}\)

Within the European Community, it is perceived that there is a tendency to "under provide" the public service element of agricultural production, as the producers of these
services are "often not or not sufficiently rewarded by the market".\textsuperscript{45} The requiring of farmers to produce the "environmental benefits from land use" by virtue of the mere ownership of land could be considered an "infringement of private property rights", thus necessitating the carrot approach, of encouraging the provision of these services through an reward mechanism.\textsuperscript{46} As stated by the Committee of the Regions, "farmers must be ready to observe basic environmental standards without compensation", however, if a "higher level of environmental service" is being provided, then farmers should be "remunerated by appropriate agri-environmental measures".\textsuperscript{47}

The philosophy of the EC with regard to the future of agriculture within the EC is reflected in Agenda 2000. Emphasis continues to be put on production, however the Commission has recognised that this is leading to continuing pressure on landscape and its related bio-diversity,\textsuperscript{48} of great important in the more fragile eco-system areas. The Commission has recognised that “a landscape can be regarded as a system comprising a specific geology, land use, natural and built features, flora and fauna, watercourses and climate,” to which “should be added habitation patterns and socio-economic factors.”\textsuperscript{49} There is a fear in European agricultural circles that the production model of agriculture will result in the abandonment of the land by large numbers of marginal farmers to the extent that “scrub and forest encroach and the open landscape will disappear,”\textsuperscript{50} which will not be easily recoverable. European Environmental policy, for its part, deals with some of the issues of sustainability in agriculture, with its directives on Habitats and Wild Birds,\textsuperscript{51} with the Habitats directive setting up "special areas of conservation" (SPAs) which have been vigorously defended by the ECJ in the case \textit{Commission v. Germany}
(Leybucht Dykes),\textsuperscript{52} when it "made it clear that general economic and recreational interests do not allow for removal or destruction of SPA land".\textsuperscript{53} The social issues of underlying agricultural reform are beginning to receive a specific focus within the agricultural directorate with the development of a European rural policy.\textsuperscript{54}

**OECD - Sustainability**

The definition of sustainability commonly used, and adopted by the OECD is that of the Brundt Land Commission, who defined sustainable development as development that "meets the needs of the present without compromising the ability of future generations to meet their own needs".\textsuperscript{55} Sustainability is seen as being "resource-oriented, long-term and global" in concept.\textsuperscript{56} The OECD in examining the concept of Sustainability in their policy document "Policies to Enhance Sustainable Development", have noted the propensity for using economic growth as a measure for welfare.\textsuperscript{57} The concept of sustainability is being promoted at a UN level through the Rio Conference,\textsuperscript{58} which approved Agenda 21, the Johannesburg Summit,\textsuperscript{59} and the UN Commission of Sustainable Development. One of the main tools in examining the concept of sustainability is the way, and the extent to which, "different types of capital can be substituted for each other", with such substitution not always being possible.\textsuperscript{60} It is recognised that certain resources have critical thresholds, and in those circumstances "more stringent criteria for sustainability will apply".\textsuperscript{61}
In designing policies which will be environmentally effective, the OECD has stated that the policies should secure "regeneration", "substitutability", "assimilation" and "avoid irreversibility".\textsuperscript{62} In cases where there is a "lack of scientific certainty" then the precautionary principle should be applied.\textsuperscript{63} The use of the precautionary principle however, may cause problems, as different countries appear to take "different approaches to valuing potential risks involved in the implementation of precaution in practice". The OECD advocates that its member states should examine the possibilities for ensuring that the application of the principle of "precaution in environmental policy is more consistent with trade disputes".\textsuperscript{64} In addition member state sustainability reviews of policies suffer from an under developed methodology for the measurement of sustainability, which still needs "to be further strengthened."\textsuperscript{65}

Analytical tools in this area still need to be worked on in order to adequately develop policies in this area.\textsuperscript{66} Tools for the measuring of the "environmental services provided by natural resources" and different ecosystems, together with the measurement of their threshold points for irreversible damage, still requires further research,\textsuperscript{67} as do "formal methods for estimating non-market values" of rural amenities, which still lack universal acceptance.\textsuperscript{68} The dichotomy between private goods and public goods is recognised, however, the payment to landowners for the production of non-commodity, or public goods, such as "habitat for wildlife, and sinks for atmospheric carbon" is also problematic. The OECD advocates that payment should only be provided where "under-supply is a problem", and then only in such a way that does not weaken "the intrinsic
motivation of people to behave in an environmentally responsible manner". In addition, issues such as habitat for symbiotic plants and animals, landscape, recreational opportunities and flood control are recognised as issues. The OECD advocates the development of research in order to "identify low-cost practices that can increase biodiversity without reducing crop and livestock production", with payments being made to farmers for compensation for "income losses resulting from application of these practices".  

The structuring of current payments to farmers however needs to be revisited, as it is recognised by the OECD that "much of this support leaks to unintended recipients", with current support systems in most OECD countries benefitting "those producers who are best able to expand their operations". The use of the Generalised System of Preferences (GSP) by both the US and the EC for the purpose of "linking market access to compliance with labour and environmental standards" was commented on, with this system being used effectively in many cases to promote sustainable development, and it is seen by the OECD as offering "some promise for the future".

**OECD - multifunctionality**

Multifunctionality as a concept has been examined by the OECD in their paper "Multifunctionality: towards an analytical framework". The OECD is of the opinion that the term Multifunctionality "is not well defined" and is "prone to different
interpretations".\textsuperscript{76} They identify two concepts of multifunctionality, the normative concept of multifunctionality, and the positive concept of multifunctionality. The normative concept is to view "multifunctionality in terms of multiple roles assigned to agriculture", with multifunctionality being "not merely a characteristic of the production process", but being a "value in itself", with the maintenance of the "multifunctional activity" being a policy objective in itself.\textsuperscript{77} This approach to multifunctionality is rejected by the OECD as being unacceptable. The approach to multifunctionality adopted and examined by the OECD is what they term at the "positive" concept of multifunctionality.\textsuperscript{78}

The positive concept views multifunctionality as being a "characteristic of" any economic activity, but it is particularly prevalent in the agricultural and forestry industries. This concept examined the "multiple, interconnected outputs or effects". These effects can be either positive or negative, intended or otherwise.\textsuperscript{78} These outputs are classified as commodity and non-commodity outputs. Under this model both land and labour are regarded as inputs, with the "role of biological processes in production, the close relationship with the environment, and the impact on the rural economy" all being relevant issues.\textsuperscript{79} The non-commodity outputs are deemed to "exhibit the characteristics of externalities or public goods", a market for which either does not exist, or "functions poorly".\textsuperscript{80} An issue arises as to whether the approach should be to develop a market in public goods, or to protect public goods from market exploitation. The OECD asks whether alternative strategies for farming, or the adoption of other technologies could "decouple", or alter the degree of "jointness between commodity and non-commodity
outputs", and if a market could be created for the provision of the "non-commodity outputs", which could operate separately from the existing commodity outputs of farming. The inclusion of issues of "rural employment and food security" in the OECD discussion on multifunctionality was highly controversial, and the taking into considerations of these issues may again become a problem in WTO discussions on the issue of multifunctionality.

It is recognised by the OECD report that multifunctionality may have "different effects" in countries with different levels of development, however the OECD is of the opinion that their analytical framework should be operable in all countries. The OECD warn that the use of the concept of "multifunctionality could have domestic or international equity, or income distribution implications", and these "direct and indirect costs of international spillover effects" need to be taken into account when utilising the concept of multifunctionality in designing Agricultural policies.

WTO and the environment.

While the WTO publicly states on its website that "commercial interests do NOT take priority over environmental protection", the WTO, in the same document, equally states that it is "not the WTO's job to set the international rules for environmental protection". That is regarded as the task of the environmental agencies and conventions. The WTO does recognise that it is "concerned with trade measures applied pursuant to
MEAs\textsuperscript{86} which can affect WTO Member's rights and obligations\textsuperscript{87}. Two problems arise from these statements. One is the relationship between the WTO and existing MEA's, and secondly, the strength of the current provisions on "sustainable" development within the WTO texts,\textsuperscript{88} and any future provisions on multifunctionality. The WTO's Committee on Trade and Environment (CTE) differs from other WTO committees in that it does not "administer a formal WTO agreement".\textsuperscript{89} The CTE is of the opinion that the WTO is "not the forum to decide upon the appropriateness of environmental criteria" and that its most controversial policy issue is that of eco-labelling,\textsuperscript{90} within the parameters of the Technical Barriers to Trade (TBT) Agreement,\textsuperscript{91} and the examination of the extent to which eco-labelling is "trade distorting".\textsuperscript{92} The possibility of the development of a legal concept of sustainability, and the newer, and less developed concept of multifunctionality, at a WTO level, in line with the Doha agenda that "sustainable development should be the overarching goal" of the current negotiations,\textsuperscript{93} within the current parameters of the WTO documentation and case law, would appear therefore to be somewhat stifled.

The WTO's prevailing fear is that "protectionary measures" are enacted in "the guise of environmental measures", leading to "green protectionism".\textsuperscript{94} While the treaty provisions appear to give environmental protection, this protection, when relied upon at dispute settlement stage, currently appears to lacks rigour. Both the Agreement on Agriculture and the Subsidies and Countervailing measures currently provide exemptions for environmental subsidies, however these may prove to be too limited to encompass the holistic approach needed to properly adopt the sustainability and multifunctionality
criteria, particularly if the precautionary principle is to be adopted, as advocated by the OECD.

The Agreement on Agriculture provides that "environmental subsidies may be exempt from commitments to reduce domestic support when certain conditions are met". The Subsidies and Countervailing measures provides similar provisions. These subsidies, if applied within the parameters of the relevant agreement, are exempt from the WTO's dispute settlement procedure. Article XX of the GATT permits "countries to take actions to protect human, animal or plant life or health, and to conserve exhaustible natural resources". This provision proved to be less robust than would first appear in the Tuna/Dolphin Case. While the report of the dispute settlement panel was not adopted into "GATT law" by the GATT Council, its report can be held "persuasive before subsequent dispute settlement panels". The panel in this case held, unsurprisingly, that the import restrictions contravened Article XI. The issue arose as to whether exemptions could be claimed under either Article XX(b) or (g) exceptions. Controversially the panel held that neither the protection of life or health (Article XX(b)) or exhaustible natural resources (Article XX(g)) could be relied on. In addition, an "extrajurisdictional interpretation of Article XX(g) was not permitted.

The Appellate Body in the second Tuna case found that "parties are entitled to protect an environmental resource situated beyond its territorial jurisdiction". The second tuna case found that, in order to rely on the provisions of Article XX exemptions it was necessary for there to be a "direct causal connection between the measure and the
environmental objective pursued."\textsuperscript{105} This is a very limited view of environmental protection, and not compatible with a holistic approach which would be required in order to further the promotion of sustainable practices. Scott is of the view that \textit{Tuna II} findings would only lead to environmental protection in the event of "drifting pollution" emanating from one member State "spilling over physically to the territory of the regulating state."\textsuperscript{106} The two Tuna cases both point to very limited circumstances when the Article XX exemptions could be relied on in order to pursue environmental objectives.

The more recent \textit{Shrimps} case\textsuperscript{107} US environmental protection measures again failed to meet the Article XX environmental protection exemption test. This time the US legislation was held to fail WTO tests, in the view of the panel, on the basis that there was "unjustifiable discrimination between countries where the same conditions prevail".\textsuperscript{108} The Appellate Body also attached "considerable importance to the failure of the United States" to follow the correct procedures to include "across-the board negotiations" with all the relevant parties before "enforcing the import prohibition".\textsuperscript{109} It would appear that international meaningful negotiation between all relevant countries is required before environmental protection measures will be permitted under the Article XX provisions. The legal relationship between the WTO and Multilateral Environmental Agreements therefore becomes relevant.

The legal status of WTO - MEA relationships has also been causing concern amongst WTO member states,\textsuperscript{110} who are concerned not to "undermine environmental
negotiations". The WTO sees MEAs, as being "the best way of co-ordinating policy action to tackle global and transboundary environmental problems co-operatively".\textsuperscript{111} While only approximately 20 out of the 200 MEAs currently in force contain trade provisions,\textsuperscript{112} it is recognised that "MEAs and the WTO both represent different bodies of international law,\textsuperscript{113} and conflicts could arise in the future, given that MEAs as currently drafted "violated the principles of non-discrimination", breaching the "most-favoured-nation clause" permitting trade with some countries but not with others, and by violating the national treatment provisions by "allowing discrimination between domestic and imported products".\textsuperscript{114} In addition, a principle of international law, "lex specialis" throws a spanner in the works for the WTO. "Lex specialis" provides that "if all parties to a treaty conclude a more specialised treaty, the provisions of the latter prevail over those of the former",\textsuperscript{115} therefore it is highly conceivable that an MEA, under this principle, would prevail over the WTO agreements. This, according to the WTO web site is a "widely held view in the CTE".\textsuperscript{116} A concern to the CTE is the trade discrimination effects against WTO members who have not signed up to a particular MEA.\textsuperscript{117}

Waiver provisions are provided for in Article IX of the WTO which could possibly be used for the purpose of MEA obligation recognition. These waivers are provided for however, only in exceptional circumstances, and are "subject to approval at a minimum by three-quarters of the WTO membership".\textsuperscript{118} The waivers are also time-limited. One proposal is to provide for "multi-year" waivers for the purpose of providing for "trade measures applied pursuant to MEAs, with such waivers being permitted only if they "meet specified criteria",\textsuperscript{119} presumably being minimally trade distorting. This whole
area of the "compatibility between good trade and environmental policies" has yet to be fully explored at a WTO level, and presumably will become an issue at the Doha ministerial.

The Green and Blue Boxes

The Agreement on Agriculture provides for exemptions under the Green Box provisions, and exclusions under the Blue Box provisions. The Green box provisions permit "payments under environmental and regional assistance programmes". Payments under Green Box provisions, must be generally available to producers within the region and can not be "related to, or based on, the type or volume of production", with the "size of the payment related to the income loss incurred" and not on current behaviour thereby limiting the effectiveness of developing green box payments as steering mechanisms in the development of more sustainable agricultural practices. In addition Rude has pointed out that "the taxing of "negative environmental externalities" is possible under the Agreement on Agriculture, but the provision of "subsidies to encourage the generation of positive environmental externalities would be a problem" within the parameters of the Green box provisions.

Blue Box payments do permit payments aimed at certain at "limited agricultural production", but again they do not permit for steering mechanisms aimed at encouraging sustainable farming practices. Safety net provisions again "shall relate
solely to income; it shall not relate to the type or volume of production”.\textsuperscript{133} Payments under environmental programmes are allowed, provided they are part of “a clearly defined government environmental or conservation programme and be dependent on the fulfilment of specific conditions”,\textsuperscript{134} however, the payments “cannot exceed the extra costs of complying with the government programme” thereby limiting the attractiveness of such programmes to producers.\textsuperscript{135} Equally the Special Safeguards provision in the Agreement on Agriculture equally does not provide the necessary mechanism for developing either the principles of sustainability or multifunctionality, as it can only be invoked if “the volume of imports of the concerned product in any year exceeds a certain trigger level or, but not concurrently, the import price falls below a certain trigger price”.\textsuperscript{136}

Doha and Beyond

The WTO agricultural negotiations reopened in early 2000, under Article 20 of the WTO Agricultural agreement. The Doha ministerial is ongoing. The WTO Agricultural Committee agreed on the 26\textsuperscript{th} March 2002 to ”a work programme which would set out by 31 March 2003 the key negotiating principles for a final comprehensive farm deal”,\textsuperscript{137} with the date of the 1st of January 2005 being set as the deadline for "reaching a final agreement on agriculture an all other areas of negotiations that comprise the Doha Development Agenda". While the current focus are the "substantial improvements in market access; reductions of, with ah view to phasing out, al forms of export subsidies; and substantial reductions in trade-distorting domestic support", it will
also include "some rule making". In the discussions, "non-trade concerns will be taken into account". How the issues of the non-trade concerns of sustainability and multifunctionality "will be taken into account" remains to be established, and will be dependent on the dynamics of the negotiating table. Hopefully this paper sheds some light on legal and policy thinking on these issues. The internationally recognised definition of sustainability of the Brundtland Commission has been adopted by both the OECD and the EC, and has been written into various policy documents. There is a fear of a lack of robustness of existing environmental measures at the WTO level, in light of the Appellate Body's jurisprudence in the two Tuna cases and the Shrimps cases. The issue arises that given the possibly weak adoption of the principle of "sustainability" as a general environmental principle how will the WTO be able to address the issue of "multifunctionality" in the policy area of agriculture. Should the WTO, during the current round of negotiations, fail to grasp the nettle of "multifunctionality" in a tangible way, how will this failure affect the EC Common Agricultural Policy and the evolving European Rural Policy, given the legal articulation between the EC and the WTO earlier discussed. If this scenario arises, what is the likelihood of the EC engaging in future WTO trading disputes with its global trading partners over agricultural products. We will have to wait and see. Interesting times may lie ahead, not only for European and Global Agricultural lawyers, but also for the farmers of Western Europe.

1 Whether it is the EC, or its constituent member states which vote at WTO meetings is an internal matter for the EC.

3 *Opinion 1/94* of 15.11.1994 Opinion pursuant to Article 228(6) of the EC Treaty. ECJ [1994] 5267

4 Article 113 EC, pre Amsterdam.


6 While the cross-border direct supply of services was analogous to the trade in goods and therefore part of the Common Commercial Policy, the rest of the modes of the supply of services regulated by GATS i.e. consumption abroad, commercial presence and the presence of natural persons, exceeded the limits of Article 113 EC and the Common Commercial Policy: "The International Practice of the European Communities Current Survey, A Survey of the Principal Decisions of the European Court of Justice pertaining to International Law in 1994", Christopher Vedder and Hans-Peter Folz, page 131.

7 Article 113 only covered the provisions of TRIPs dealing with the fight against the release of counterfeit goods into free circulation, since these related to measures taken by customs authorities at the external frontiers of the Community. Intellectual Property rights did not relate specifically to international trade: "The International Practice of the European Communities Current Survey, A Survey of the Principal Decisions of the European Court of Justice pertaining to International Law in 1994", Christopher Vedder and Hans-Peter Folz, page 131.


12 Article 177 EC, pre Amsterdam.


15 Ibid.

16 Ibid.

17 Op. Cit. Footnote no. 2, at page 56

18 O.J. L 336, 23/12/1994, p.1


20 Op. Cit. Footnote no. 10

21 Although reference is made to international reciprocal agreements under Article 310 EC, (Article 238 EC, pre Amsterdam).

22 Article 229 EC, pre Amsterdam.


24 Ibid.

25 The first and second action programmes were started in 1972 and 1977 respectively. They concentrated on pollution control. The third and fourth action programmes, started in 1982 and 1987 respectively developed an emphasis on prevention, as well as continuing the development of policy on pollution control.


27 Introduction to the Fifth action programme, paragraph no. 5.

28 Chapter 2, third paragraph.

29 The other sectors are industry, energy, transport and tourism.


31 With a prioritisation on issues such as climate change, nature and biodiversity, environmental and health issues, and natural resources and waste issues.
Entered into by the Community in pursuant to its remit under the Environmental Policy provisions of the EC treaty at Articles 174 to 176 EC.

The Community shall have as its task….. to promote throughout the Community a harmonious, balanced and sustainable development of economic activities.…

Environmental protection requirements must be integrated into the definition and implementation of Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development.

Case C-302/86 Commission v. Denmark [1989] 1 CMLR 619


Reference has been made to the European Landscape Convention, adopted by the Council of Europe's Committee of Ministers on 19 July 2000, was signed on 20 October 2000 by 18 countries during a Ministerial Conference in Florence, by the European Commission in the EU: COM(2001) 31, Celex No.


41 Ibid.
42 Ibid.
43 Ibid.
44 Ibid.
45 Ibid.
46 Ibid.

47 Opinion of the Committee of the Regions on the "Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on Directions towards sustainable agriculture" OJ C 156, 6/6/2000, page 40.


49 Ibid.
50 Ibid.


53 Ibid.

54 under Directorate E of the Agricultural Directorate general.

50 Multifunctionality: Towards an Analytical Framework, OECD, OECD 2001

51 Policies to Enhance Sustainable Development; OECD 2001

52 The Rio Conference on the Environment and Development (UNCED) in 1992


54 Op. Cit. Footnote no. 57

55 Ibid.

56 Ibid.

57 Ibid.

58 Ibid.

59 Ibid.

60 The UK Government have been developing Sustainability indicators. See http://www.sustainable-development.gov.uk/indicators/index.htm

61 Op. Cit. Footnote no. 57

62 Ibid.

63 Ibid.

64 Ibid.

65 Ibid.

66 Ibid.


69 Ibid. at page 93, referring to OECD (1999), Handbook on Incentive Measures for Biodiversity: Design and Implementation, Paris.

70 Op. Cit. Footnote no. 56.

71 Op. Cit. Footnote no. 56.

72 Ibid.

73 Ibid.

74 Ibid.

75 Op. Cit. Footnote no. 56.

76 Op. Cit. Footnote no. 56.

77 Ibid.

78 Ibid.

79 Ibid.

80 Ibid.
10 common misunderstandings about the WTO [http://www.wto.org]

Multilateral Environmental Agreements.


Such as the Report of the WTO Committee on Trade and the Environment, Press/ TE 014, 14 November 1996, [http://www.wto.org], quoting from the Decision of 14 April 1994, Ministers meeting on the occasion of signing the Final Act embodying the results of the Uruguay Round of multilateral Trade negotiations at Marrakech on 5 April 1994, which provides "allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development". In addition the preamble of the WTO Agreement refers to the objective of sustainable development, and to the "need to protect and preserve the environment, in a manner consistent with countries' needs and levels of economic development". The Doha agenda states that sustainable development should be an overarching goal of the negotiations.


Environment: CTE Agenda Part 3, CTE on: how environmental taxes and other requirements fit in, [http://www.wto.org]


Environment: CTE Agenda part 2, CTE on: environmental protection and the trading system, [http://www.wto.org]
100 Article XX(b) provides the measures which are "not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination where the same conditions prevail, or a disguised restriction on international trade" and which are "necessary to protect human, animal or plant life or health" are exempt.

102 Op. Cit. Footnote no. 90


105 Op. Cit. Footnote no. 104

106 Ibid.


108 Op. Cit. Footnote no. 104

109 Ibid.


113 Ibid.

114 Ibid.

115 Ibid.

116 Ibid.

117 Ibid.

118 Ibid.

119 Ibid.


121 Article 6.1 of the Agreement on Agriculture and Annex 2.

122 Article 6 Agreement on Agriculture.

123 Agreement on Agriculture, Articles 2.2-2.13.


125 James Rude, Under the Green Box; the WTO and Farm Subsidies, (2001) Journal of World Trade 35(5); 1015-1033.

126 WTO Agreement on Agriculture, Annex 2, paragraph 6.

127 Op. Cit. Footnote no. 125

128 Ibid.

129 Ibid.

130 under Annex 2, Article 6.

131 Op. Cit. Footnote no. 124

132 WTO Agreement on Agriculture, Annex 2, paragraph 7.

133 Op. Cit. Footnote no. 125

134 Ibid.

135 Ibid.