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Citation: 5 Minn. J. Global Trade 65 1996

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You've Got to Fight for Your Right to Party: A Response to Professor Jim Chen*

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As I began writing this article, I was hesitant to sign my name in the customary fashion, by indicating that I am a professor of law at the University of Nantes. As is normally the case with American law journals, I was going to identify the University where I received my legal training. Like Professor Chen, I was going to write "Harvard Law School," except that I would have modified it with the adjective "Française." Did Harvard decide to create a second campus in Brittany? Certainly not, but to the French consumer, Harvard is a logo on a T-shirt, often accompanied below by the word "Veritas." French lawyers, who constitute another "relevant market," are generally incapable of placing Harvard on a map of the United States. In fact, they are likely to place any famous institution in the glamorous state of California. Since the average French citizen is ignorant in this regard, I saw no problem in "borrowing" this title. But I also have an American audience, which knows that the allure of a place (its "nature") blends with the accomplishments of its great scholars (its "culture,") to give the word "Harvard" its distinct meaning, both geographically and qualitatively. Growing up Catholic in France, "Harvard" was one step below Heaven. Therefore I respectfully renounce all claims to be a graduate of the "Harvard Law School Français."

Next, I wondered whether I should identify the institution where I teach. Not that doing so would lend any more credence to my analysis (although my colleagues are all extremely talented), but simply to give my address. Now, it turns out that I teach in Nantes, whose sole claim to fame is that it was the birthplace of novelist Jules Verne. But do I have a right to claim that I am from Nantes when many Americans do not even know that Nantes exists? My daughter encountered an example of

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this ignorance (an ignorance which is much more shocking than that which affronts the small town of Chablis) when she accompanied us for a year in a lovely American university town. At her first class of Junior High School, her teacher asked her:

"Gaëlle, where are you from?"

"From France Madame." (All of the students, likely the children of geographers or historians, knew where France was.)

"From Paris I assume!"

"No Madame, I come from Nantes, the birthplace of Jules Verne!"

There was a burst of laughter: "We don't know who this Jules Verne of yours is. Ours is American." One of the students, a bit more knowledgeable, located the birthplace of our disoriented writer in Orlando, Florida, probably somewhere near Disney World. *Vox Populi* . . . Am I next going to assert that the birthplace of Jules Verne ("nature") influenced the quality of his work ("culture")? Certainly not, since my article was written in Nantes without much imagination. Despite, however, this ignorance by the market that I am targeting for this article, I insist that I am presently in Nantes, the French city where Jules Verne was born. I fearfully await the legal consequences of such audacity.

I hope that this will put an end to all of the hostilities, and thus avoid a reconstruction of the INAO lawyer's case in the "Chablis with a twist" decision. Consequently, I will not dwell on the fact that the United States recognized the need to obtain protection for their only two threatened controlled appellations of origin (AOCs): Bourbon — the family name of our "Crazy Horse" for several centuries — and Bourbon Whiskey. The difference between "Chablis with a twist" and "Bourbon on the Rocks" is so obvious that I do not even dare accuse the United States of constructing sophisticated legal arguments for such venal interests. There are two principle arguments which support my position.

Professor Chen's reasoning, true to his vision of law developed in excellent articles which are well known in France,[1] derives from an inclination to administer justice through market forces, when instead the law should intervene. In Part I, I contend that even if one accepts this logic, the arguments are not totally convincing. In Part II, I assert that allowing the market

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1. *See* Jim Chen, *The American Ideology*, 48 VAND. L. REV. 809 (1995); Jim Chen, *Of Agriculture's First Disobedience and Its Fruit*, 48 VAND. L. REV. 1261 (1995).

forces to have a monopoly in administering justice, as Professor Chen describes it, is *a priori* both debatable and dangerous when it comes to high quality culinary products.

I. THE LOGIC OF THE MARKET DOES NOT NECESSARILY REQUIRE THE CONDEMNATION OF AOCs

There are two arguments to consider in this vein. In the first place, the premise behind Professor Chen's reasoning is wrong, and is not in line with French and European law regarding appellations of origin. The very idea of an appellation of origin having property value is completely foreign to Europeans, even in the field of intellectual property law. For us, an Appellation d'Origine Contrôlée (AOC) is only a device to inform the consumer. I agree with Professor Chen that an appellation of origin also serves to segment the market, but I disagree on one essential point, which constitutes the second element of his argument. That element is that it is dangerous to let the most ignorant consumers dictate this segmentation of the market. In other words, I concur with Professor Chen with regard to the economic function of an appellation of origin, but disagree as to the consequences that it should have in a market economy.

A. THE LAW OF APPELLATIONS OF ORIGIN IS DESIGNED TO INFORM THE CONSUMER, NOT TO DEFEND PROPERTY RIGHTS

1. Legal Principles Applicable to Appellations of Origin

Professor Chen's discussion of the French and European texts regarding AOCs and protected appellations of origin (AOPs)[2] is quite accurate, so I see no need to go into it again. An AOC guarantees a product's geographic origin, compliance with a list of production requirements, and a certain character which is verified upon the product's approval. The AOC does not attempt to guarantee a high product quality; instead it guarantees that the product belongs to a certain category and conforms to tradition. The AOC is not an alternative to a brand name, but a supplement to it. For example, a producer can use the AOC Médoc and sell his wine under the brand name "Château le Chêne." The two devices, the brand name and the AOC, appear on the label with different but complementary purposes.

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2. AOP is the European Acronym for *Appellation d'Origin Protégé*. Reg. CEE No. 2081/92, July 14, 1994, O.J. No. L208, July 24, 1994, 1.

The AOC protection seeks to guarantee the accuracy of information that is conveyed to the consumer: counterfeiters certainly exist, but they are severely sanctioned. According to the Code de la Consommation "the geographic name that constitutes the appellation of origin or any other similar name may not be used for any similar product . . . or for any other product or service as long as such a use is capable of altering or weakening the distinctiveness of the appellation of origin."[3] The first part of the sentence indicates that it is forbidden, for example, to sell fruit juice with the brand name "Champagne" (because it is a drink — a "similar product"). The Paris Court of Appeals, in a decision that Professor Chen cites, held that the second part of the sentence prohibits the use of the name "Champagne" for a perfume.[4] The French judges determined that, under article L. 115-5 of the Code de la Consommation, such a use was a misappropriation of the notoriety of the wine that enjoys the AOC "Champagne." It is a classic example of parasitic competition, penalized when the markets for the two products partially overlap. Perfume and champagne share the market for luxury products. The same people who drink Champagne are likely to give perfume as gifts; the same events prompt the purchase of each, and they both convey more or less the same thought. On the other hand, because Champagne is a region, there are dozens of firms in France that have names such as "Computer Company of Champagne" or "Champagne Transport Firm." Those who remember the battles of World War I know that the name is not always associated with a festive occasion. No legitimate lawsuit can be brought against these companies because they do not seek to exploit the glory of the wines of Champagne.

2. Appellations of Origin Are Alien to the Concept of Property

Professor Chen somewhat distorts the debate by framing it in terms of property law, specifically in the sense of "property rights." Even though the Code de la Consommation specifies that "the AOC can never be considered to reflect a generic char-

3. CODE DE LA CONSOMMATION, art. L. 115-5 para. 4 (*le nom géographique qui constitue l'appellation d'origine ou toute autre mention l'évoquant ne peuvent être employés pour aucun produit similaire . . . , ni pour aucun autre produit ou service lorsque cette utilisation est susceptible de détourner ou d'affablir la notoriété de l'appellation d'origine.*).

4. C.A. Paris 1st ch.A., Dec. 15, 1993 Yves Saint Laurent Parfums v. INAO and CIVC.

acter and thus can never fall into the public domain,"[5] it is legally inaccurate to characterize this as a perpetual property right. Even though our legal systems are substantially different, it is not possible in either France or in the United States to recognize a property right when there is no property owner or defined object of property. There is no property owner since an AOC belongs to no one. If I make wine in a region that has an AOC, I am obviously not forced to comply with the list of AOC production requirements. I will thus sell my wine under the name "Chen-Lorvellec Wine," with just my address. If I sell my vineyard to a neighbor, who decides to respect the AOC production requirements, she can use the AOC. I cannot of course transfer to her a right which I do not possess. If this neighbor then buys land outside of the AOC region, she will be unable to transfer any right to label the wines that she produces in that region with the AOC. The AOC would thus be a type of "property" that is non-transferable, non-transportable, and without designated title-holders. The AOC is not a brand name that a group of wine-makers own jointly. The AOC can never be privately owned, and this is where AOC law differs from intellectual property law.

3. Appellations of Origin Belong in the Category of Signs

The AOC belong exclusively in the category of signs: they produce information and segment the market. It is part of the consumers' right to information, not a corporate asset. The AOC does not create any sort of monopoly, but simply defines one of the rules of the game for the market. Two arguments support this view.

First, signs are subject to ownership in many cases; this is the case with brand names, or with individual or collective factories' emblems. Both national and international law carefully regulate the property rights of trademarks, including their duration, registration, transfer and license. Likewise, by regulating usable signs (descriptive signs, deceptive signs, commonplace signs, etc.), the law is also protecting information in a given market and therefore protecting the consumer. Trademark law thus provides two forms of protection: the bearer of the trademark has exclusive ownership rights over the sign that he diligently created; the trademark also responds to the consumer's

5. CODE DE LA CONSOMMATION, art. L. 115-5 (*l'AOC ne peut jamais être considérée comme présentant un caractère générique et tomber dans le domaine public.*).

right to information. The AOC, however, is a more limited type of sign, lacking any property attribute. It is only intended to inform the consumer that this is the traditional product that he expects.

The second argument responds to a powerful contention that is commonly heard. Legal protection of a sign is justifiable only where the information that it conveys is accurate. Again, the problem posed by counterfeiters is a trivial objection. Such an argument is similar to contending that the United States and France are lawless societies because offenders are convicted there every day. For the information to be accurate on an AOC label of wine or cheese, no place outside of the AOC region can produce the exact same product that the consumer expects. In some regions, one could find the same geographic conditions (the nature) but not the human factors (the culture). In others, the human factors may be the same, but the geology or climate does not produce those characteristics expected by the consumer. It is not a question of granting an unwarranted monopoly, but of ensuring through the AOC product conformity to a list of production requirements, all of which aim to achieve a quality that the consumer expects. Otherwise, the AOC gives an unwarranted monopoly and an illegitimate property right. Therefore, judicial review is necessary in AOC recognition. This review exists, and is best demonstrated by a neutral court such as the Court of Justice of the European Communities. This court is primarily composed of judges from countries where the economy and national pride do not rely upon the universal recognition of the quality of their wines or cheeses.

In the "Sekt" and "Weinbrand" case,[6] Germany claimed the appellations "Sekt" and "Weinbrand" for sparkling wines and spirits produced anywhere on its national territory, without any other restrictions. In response, the Court stated that "these appellations do not fulfill their specific function unless the products that they designate actually possess the qualities and characteristics which are due to the geographic localization of its origin that should, especially when it is a question of indication of origin, impart to the product a quality and specific character of a nature which distinguishes them."[7] Consequently, the

6. Case 12-74, Commission/Germany, the affair of "Sekt" and "Weinbrand," CJCE Feb. 20, 1975.

7. *Id.* (*Ces dénominations ne remplissent leur fonction spécifique que si le produit qu'elles désignent possède effectivement des qualités et des caractères dus à la localisation géographique de sa provenance qui doit, plus spécialement*

Court determined that a Member-State's adoption of an indication of origin for products whose character is not linked to its geographic origin is an unjustified and arbitrary measure "with effects equivalent to quantitative restrictions."[8]

A second example is the Etablissements Delhaize fréres case.[9] A Belgian importer complained because producers of wine from Rioja were required to export their wine in bottles only (that is, they could not export it in bulk). Article 34 of the Treaty of Rome prohibits export restrictions between Member-States, unless the restrictions are justified by the protection of industrial property rights or of appellations of origin, in accordance with Article 36 of the Treaty. The Court clarified, however, that this protection is justified only when it "guarantee[s] that the appellation of origin fulfills its specific function."[10] Consequently "the obligation to bottle the wine in the region of production, as a condition for using the name of the region as an appellation of origin, would be justified if seeking to ensure that the appellation of origin fulfills its specific function if bottling in the region of production imparts to the wine originating from this region particular characteristics which distinguish it, or if the bottling in a region of production was indispensable for the conservation of specific characteristics that the wine has acquired."[11] This decision highlights the connection between free trade and protection, not for holders of appellations of origin, but for consumers of goods that carry these appellations of origin. Why can importers now bottle Rioja wines in Belgium? Because the process does not change any of the product qualities

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lorsqu'il s'agit d'indication de provenance, imprimer au produit une qualité et des caractéres spécifiques de nature à individualiser.).

8. *Id.* at § 18 (*comportant des effets équvalents á des restrictions quantitatives*). This term designates the limitations on importation and other measures which run counter to the principle of free circulation of goods provided for in Article 30 of the Treaty of Rome which founded the European Economic Community in 1957.

9. Case C-47/90, Etablissements Delhaize Fréres v. Promalvin SA & AGE Bodegas Unidas SA., CJCE June 9, 1992

10. *Id.* at § 26 (*garantir que l'appellation d'origine remplisse sa fonction spécifique*).

11. *Id.* (*l'obligation de mettre le vin en bouteilles dans la région de production, en ce qu'elle constitue une condition á l'utilisation du nom de cette région en tant qu'appellation d'origine, serait jusitfiée par des raisons visant á maintenir que l'appellation d'origine remplisse sa fonction spécifique si l'embouteillage dans la région de production imprimait au vin originaire de cette région des caractéres particuliers, de nature á individualiser, ou si la mise en bouteilles dans une région de production était indispensable á la conservation des caractéres spécifiques que ce vin a acquis.*).

which are expected by consumers who recognize the appellation of origin "Rioja." These consumers know that this appellation indicates that this wine is endowed with a distinctive personality which both nature and culture have imparted to the magnificent wines of Rioja.

To summarize, Professor Chen asserts that appellations of origin are based on a system of property that American law simply cannot accept. I argue that he is off the mark, since the appellation of origin is not an object of property at all. It is nothing but a device, intended to provide information to the consumer and segment the market of culinary products in an honest way. The principle of free circulation of goods, and therefore of the market economy, invalidates any other device which is not justified by the need for this information. I fear that from now on, our viewpoints will further diverge. Specifically, Professor Chen's definition for generic products seems to me to be highly debatable.

B. A Pessimistic American View Cannot Guide the Law That Applies to AOCs

The law regulates and protects signs — information tools in a market — according to the signs' audience, in this case the consumer. Should the law, however, search for the least educated consumer from the bottom of the deepest well of ignorance to determine whether a sign deserves protection? This is what Professor Chen suggests we do when he evokes the "typical American consumer." Should we let the application of the law be determined by such a questionable approach? Similarly, his definition of generic products tends to favor the most dishonest of businesses. Professor, as you are well aware, American consumers are not stupid enough to be fooled by dishonest producers!

1. The Reign of the Most Ignorant Consumers

Following Professor Chen's logic, signs would lose their meaning in the United States just because they are not understood by an audience for whom the signs were never intended. The key is to know which information should be used to segment the wine market. This is but another way of determining what is "the link in the consumer's mind between a geographically descriptive name and the full panoply of natural and human fac-

tors associated with that name."[12] Professor Chen writes about "the consumer's mind;" all the sources of error arise from this seemingly concrete notion, when in fact the absence of reality justifies the most erroneous decisions.

Two small problems trouble me: what question should we ask the typical consumer? And who is this "typical consumer?" If we ask one hundred American consumers what is "Champagne," none will be able to list all the procedures required for the wine's appellation. Nor will any be able to define, hectare by hectare, the AOC region. Not one consumer in the world could do this, even in Reims, the capital of Champagne. Therefore, if we do not limit the question to those basic elements which are obvious from the product itself, we bias the inquiry and predetermine the results. For example, it seems fair to ask American consumers whether they know that Champagne comes from France, and is prepared in a particular manner. If the majority answers that "Champagne" comes from France, but that it also comes from California, Australia, Bulgaria and Georgia because that term indicates any kind of sparkling wines, I would be forced to admit defeat — our objection would arrive too late. Nevertheless, an essential question remains: who is this mythical American consumer whose opinion determines our rights?

What is important when discussing the market is to discover what constitutes the relevant market. We should avoid the following methodological errors which are both subjectively biased. The first error would be to take the list of subscribers of "The Wine Spectator" and to conduct a random survey not forgetting that Americans are among the most discriminating wine connoisseurs in the world. Not only are they familiar with Chablis,[13] but they can also recognize the vintage and even the manufacturer. The second error would be to place oneself at the exit of a Wal-Mart or a K-Mart in Arkansas, and survey their clientele. Here, according to Professor Chen's definition, one finds the "typical consumer." This would be a flagrant methodological error, because these type of stores do not even sell wine. In the United States, one usually has to go to a liquor store to buy wine. By law, this is the "geographic" limitation of the relevant

12. Jim Chen, *A Sober Second Look at Appellations of Origin: How the United States Will Crash France's Wine and Cheese Party*, 5 MINN. J. GLOBAL TRADE 29, 53 (1996).

13. Needless to say, they should not boast of a drink composed of wine and citrus juice, but that is a different story.

market. It is rare when it is so easy to establish who are the consumers of the relevant market.

Once the relevant market is so defined, the rest is easy: by first hand experience in Arkansas, I am confident that consumers there are very well informed about the products they buy. When they order a German or Mexican beer, it is done conscientiously, and when they purchase Champagne or true Chablis the same is true. That their expertise and knowledge is not shared by all the friends to whom they offer a glass of wine is irrelevant, because the information for a market is calculated by the buyer-consumer and not the consumer-drinker. The former constitutes the relevant market; the latter is outside the market. This is precisely why it is necessary to protect the consumer-buyer from a law which permits manufacturer dishonesty.

2. The Triumph of Dishonest Manufacturers

The key concept here is "generic product," which denotes a vastly undefined category containing appellations of origin. A product is generic when its name, especially one of a geographic nature, "falls in the public domain" and therefore designates a method — a savoir-faire. Such examples are Brie, Edam or Cheddar for cheeses, the sausages of Frankfurt, a Hamburger or even a sauce Bolognaise. There is no sense in denying this verbal degeneration, even if it leads to misnomers such as "French Fries" and "Belgian Waffles." No legal system can attribute a different meaning to a sign than that given to it by the consumer. Again the important question is one of judicial control. Professor Chen's method of searching for the generic character of an appellation, however, seems dangerous.

The law need not become an accomplice to a few unscrupulous manufacturers. The first person to manufacture Australian Brie was dishonest, as was the first to manufacture French Edam, since it is a Dutch cheese. The sin of dishonesty does not become excusable just because multiple competitors committed the same fraud, nor does the act ever cease to be wrong. A vice is paid the tribute of absolution by becoming entrenched through the passage of time. This principle, enshrined in ancient Roman law as *usucapio*,[14] was transplanted into the French Civil Code. In the Code, holding oneself out as the

14. Usucaption, the English derivation of *usucapio*, is defined in Roman law as "the acquisition of the title or right to property by the uninterrupted and undisputed possession of it for a certain term prescribed by law." WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY 2013 (2d. ed. 1983).

owner, being considered the owner, and acting as the owner, renders the possessor the legal owner, even if this is accomplished in bad faith. Straightforward as this may seem, legal ownership is only granted after thirty years. The famous *contra legem* debate could also be evoked here. The notion of a generic appellation is therefore the law's recognition of this failure. This, however, should be considered in the context of our prior discussion, where it was noted that appellations of origin are completely foreign to the idea of property. Rather, they are primarily a sign, intended to convey useful information to the consumer. If there were property rights for appellations of origin, then the law could easily recognize that such appellations become generic if they are subjected to multiple misappropriations. The law would be punishing the owner's negligence, in a fashion similar to the lapsing of rights in intellectual property law. If, however, as I have shown, appellations of origin are indeed foreign to the idea of property, then an AOC is nothing more than a sign which becomes generic only when it loses its geographic significance to the intended recipient — the consumer.

This loss of the sign's informative power should not be taken lightly. After all, this loss is often caused by the sign's missappropriation, and in every case by consumer deception. If using the sign brought no benefit, then why would a manufacturer choose precisely a specific geographic reference? If he is mistaken and believes that the geographic reference indicates a production method and not a geographic origin, should we let this error triumph over reason by compensating those who have deceived the consumers in their failure to verify the signs that they use? Therefore, in cases of doubt about an appellation's generic character, the judge should rule on the side of upholding the law and not on the side of its violation. In the Chablis case, the American court's attitude does not seem guided by such principles of good sense.

This case also illustrates the need to put a limit on the recognition of the generic character. Doubtless, my argument appears excessively French. This is simply not the case. In fact, I have bought very good California Chablis in Arkansas liquor stores, and there I also discovered the savoir-faire of American wine-makers — their culture. I would therefore like to tell my American friends that one need not drink much wine to appreciate and respect it: the right temperature and a suitable meal are all that is necessary to appreciate this remarkable product of

their fellow citizens. I was shocked to discover that, besides the misappropriation of this French appellation, American law authorizes a mix of wine and citrus juice called "Chablis." I must beg forgiveness from the creators of this fine product for the question I am about to ask. Is it necessary to give such a destructive effect to the generic character of an appellation of origin? Remember that the AOC is a sign which conveys information about geographic origin (nature) and about savoir-faire (culture). Once the generic character is recognized, the information about the geographic origin is lost, but it should still convey information about the human factors — the culture and the savoir-faire. Even though Chablis might no longer be an indication of a certain type of French white wine, the consumer should not be deprived of information about the character of the product that they buy.

In holding that Chablis is a generic name, the Court in the Chablis case confirmed that if consumers believe that the wine is produced outside of Chablis, it is nonetheless produced according to the Chablis method. The same court authorized, however, the sale of a product which had no relation to this belief, which was not even wine, and which had nothing to do with the savoir-faire of those outside of France who habitually copied the Chablis wine. The court hid behind a contrived consumer opinion to allow itself to be misled.

As a result, French wine-makers are significantly prejudiced, because their product enters the American market with a double handicap. The geographic indication of course gives no assurance about the wine's origin. Nor does it give the slightest guarantee of the product's nature and composition.

Faced with the uncertainty of the concepts used, and the ill-defined judicial methods, we fear the logic of the American market. The fear is based on the growing gap between the American and European visions about the economics of the market. I will now explain how our policies with respect to the appellations of origin serve other purposes, different from the motivations that inspire American law, as described by Professor Chen.

II. APPELLATIONS OF ORIGIN: A COMMERCIAL TOOL OF RURAL POLICY

When the European Community decided to adopt a system for the protection of Appellations of Origin and Indications of

Origine,[15] the rules were clearly presented as measures of the Common Agricultural Policy and not as laws aimed at consumer protection. While the institutional and legal implications of this are important, they are not relevant to this discussion. Its political consequences, however, will be outlined. Importantly, the protection of appellations of origin is an instrument put in place not to freeze the past but to guarantee the future by preserving the countryside and respecting the market.

A. THE PRESERVATION OF THE COUNTRYSIDE

This expression has a double meaning. In one sense, the population will be more evenly distributed over the European territory because the farming population will be more numerous and better sustained due to AOCs. In another sense, the environment will be preserved because agriculture is subject to rules imposed by a list of production requirements. Thus, the appellations of origin save jobs and help to preserve the environment.

First of all, employment is preserved because the appellations of origin exist in areas where there is not a high level of development or population density. In France, the largest agricultural region is Brittany, both in quantity and in value. Brittany, however, does not posses any appellations of origin. The same is true of the North and of the Parisian Basin, the largest cereal-producing area in France. Of course, both France and Europe would like to ensure that the countryside does not turn into a desert, and would like to avoid, for obvious reasons, continuing urbanization. Therefore, "to live and produce" on well-preserved farms is essential. This preservation of the countryperson's savoir-faire is part of this effort and is achieved through compliance with a list of production requirements. The pride of bringing to the market a quality product, as evidenced by a wine-maker or a manufacturer of farm cheese, is comparable to that of an American professor who writes a perfectly polished article for a prestigious law review or journal. The same pleasure that attracts brilliant minds toward universities has the same power over farmers and ensures that the countryside remains populated. This is not a way to block the passage of time. The scientific evaluation of the sanitary risks is just as well adapted to the AOC list of production requirements as to the framework of industrialized production. The HACCP

15. Chen, *supra* note 12, at 39 (citing 2081/92 14 July 1992).

method,[16] for example, is perfectly adaptable to our farmers' cheese and conforms to world sanitary standards.

The environment also benefits from our policies. The quality of food considers quantity its first enemy. The yield of vineyards controlled by appellations of origin is limited, yet our courts have not held this fact to be an unjustifiable attack on the property right of production. Without this essential rule, the cultural methods would be changed to permanently increase production volume, which would then bring about a corresponding reduction in the taste quality of the product. For this reason, the use of chemical products is either expressly or implicitly limited. In the same way, the nutrition of cows whose milk is used for production of AOC cheese is strictly regulated. Better yet, polluting industrial or agricultural facilities are subject to a regulatory regime within AOC areas. Agriculture regulated by appellations of origin is not, however, the same as organic farming, even if the regulations could be merged. Nevertheless, it is already an ancient and rich form of a durable and sustainable agriculture. The AOC model does not attempt to be a general model of agricultural development, but it should at least exist alongside other forms of agriculture. Already proven successful, this policy merits evaluation in all cases, rather than combat with the countries who find themselves facing similar problems of rural depopulation and environmental degradation.

B. THE DISCIPLINE OF THE MARKET

Compared to other policies of rural land use and sustainable agriculture, the AOC system has the advantage of not requiring any public monetary assistance, because the manufacturers directly profit from the sale of their products, as well as from the extra value that the consumer pays for the appreciation of product quality. As a result, the market determines the value of the appellations, and of the value of the information about the specific geographic and human factors which the AOC conveys to the consumer. Therefore, the common cliché that portrays appellations as a form of agriculture trapped within bureaucratic rules, and controlled by political forces which are influenced by independent agricultural-corporate special interests, does not reflect reality. For example, a consumer-protection group led a marketing campaign in October of 1995 to expose the bad qual-

16. Hazard Analysis Critical Control Points is a set of international standards, adopted from the American Experience of "quality management."

ity of certain wines that benefitted from an AOC label.[17] This is exactly what should happen in a market economy when there are balancing forces such as consumer-protection groups. Similarly, we have seen decisions of the European Community Court of Justice which limited the validity of AOC production requirements to those regulations that were strictly necessary to preserve quality. Those rules imposed intolerable restrictions on the free circulation of goods, one of the basic principles of our "Common Market" and then of our "Single Market."

This succesful connection of policies to maintain rural employment and sustain the environment within strict principles of a market economy is a model that Europeans value greatly and that could inspire international trade negotiations in the future. Everyone knows that after the signing of the Marrakesh accord, the next Round will finally deal seriously with environmental issues, and will explore the links between free trade and the preservation of the air, water, fauna and flora. From this perspective, agricultural policies should be reevaluated. In the Uruguay Round, environmental protection is a permissible exception to maintain certain forms of public assistance mentioned in the "green box."[18] A two-pronged analysis therefore leads one to separate agricultural production and reduction of public aid on the one hand, and environmental protection and the maintenance of public aid on the other; whereas GATT's logic really should have reconciled the market and agricultural methods which are respectful of the environment. Although perhaps not a complete solution, the answer lies in the segmentation of the markets, and the international recognition of signs that characterize the products of this "other" form of agriculture. This is not a fantastic notion, but is a reality which is anchored in the tradition of several European countries. Thanks to appellations of origin, we know how to increase the market value of products of our modern agriculture. When, according to questionable reasoning, the legal systems of our powerful competitors hinder the distribution of these products, we ask the questions: "what do they offer as an alternative system of development? What type of future do they envision if they separate the reasoning and the mechanisms that, according to their own philosophy, both derive from the global economy, but which have

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17. *Le Monde*, 19 Oct. 1995.

18. "Green box" refers to the GATT agreement on agriculture: no reduction requirement or restrictions are placed on green (permitted) policies.

the fault of contradicting the short term interests of certain of their nationals?"

There is a tremendous amount of wisdom and history in a glass of Chablis, whereas there is nothing but vitamins and sugar in a glass of grape juice. History . . . that is what surely divides us on the subject of appellations, even though it has united us on so many other occasions. One should expect a country of immigrants to assert that human factors can be detatched from geographic places, especially since the success of that nation was built by millions of poor people whose challenge was to reproduce and then exceed in America the output of the continent that they were forced to leave. What pre-pioneer traditions of the "New World" have they respected? As each year passes, the memory of the pioneers fades. When will the people of America decide that their roots in their new land are sufficiently deep, that enough people have passed, and that enough time has gone by, that they can now recognize that there can still be progress without destroying tradition?

When that occurs, I will drink a glass of Chablis with my friends from Arkansas and Iowa, and we will joyfully compare Californian and French wines. As usual, Professor Chen will drink citrus juice, but not in a glass intended for Chablis. After all, he is not only a man of taste, but he also knows which excesses the law should never allow.