# CALIFORNIA RAISINS: COMPLIANCE WITH THE FEDERAL MARKETING ORDER AND URUGUAY ROUND AGREEMENT ON AGRICULTURE

## I. INTRODUCTION

The United States is one of the largest raisin producers in the world.[1] Buyers and sellers of raisins within the United States market are subject to federal marketing orders.[2] The federal marketing order for raisins grown in California was adopted in 1949.[3] Marketing orders are designed to create and maintain "orderly marketing conditions for agricultural commodities in interstate commerce ..." and to "establish minimum standards of quality, maturity, grading, and inspection requirements."[4]

Raisins that enter the international market are generally subject to the provisions of the World Trade Organization ("WTO"), under the Uruguay Round Agreement on Agriculture ("URAA"). The long-term objective of the URAA is to create a fair agricultural trading system and to provide for the correction and prevention of restrictions in world agricultural markets.[5]

This Comment will examine potential conflicts that arise from inconsistencies in the policies of the federal marketing order and the URAA. The differences in standards and regulations applied to wealthier countries, such as the United States, will be compared to the more lenient treatment poorer countries, such as India, face. The experiences of raisin

[1] United States Department of Agriculture, *Dried Fruit (Raisin) Situation and Outlook In Selected Countries*, *at* http://www.fas.usda.gov/htp/Hort_Circular/2002/02-07/Stats/raisin.prn.pdf (last visited Feb. 4, 2005) (on file with the San Joaquin Agricultural Law Review).

[2] 7 C.F.R. § 989 (2004).

[3] 7 C.F.R. § 989 (2004).

[4] 7 U.S.C.S. § 602 (2004).

[5] Agreement on Agriculture, World Trade Organization, Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (1994), *available at*: http://www.wto.org/english/docs_e/legal_e/final_e.htm (on file with the San Joaquin Agricultural Law Review).

producers in poorer countries will also be considered. The advantages and disadvantages of being a member of the WTO for raisin producers in the United States will be explored. Finally, the consequences of withdrawing from WTO membership will be compared with the benefits of remaining a member of the WTO.

## II. FEDERAL AGRICULTURAL MARKETING AGREEMENT ACT

### A. *History*

Marketing orders originated in the 1920s.[6] Farmers tried to impose guidelines regulating crops voluntarily. In 1937, the Federal Agricultural Marketing Agreement Act was passed.[7] Marketing orders, made pursuant to 7 U.S.C. § 601 *et seq.*, enforced direction through government power. Producers of particular specialty crops, such as raisin growers in California, "organized themselves into marketing associations on a crop-by-crop basis," during the First World War.[8] The majority of specialty crops are produced in limited areas.[9] California's raisin industry operates under a federal marketing order, applicable to "Raisins Produced from Grapes Grown in California."[10]

Marketing orders join the regulatory authority of the United States government with the self-administration by producers in an attempt to enhance the economic condition of producers.[11] Producers subject to marketing orders relinquish some of their power in making marketing decisions.[12] While handlers and consumers receive some benefit from marketing orders, producers seem to experience a greater advantage.[13]

### B. *Policy*

The purpose of marketing orders is to "establish and maintain ... orderly marketing conditions for agricultural commodities in interstate

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[6] Michael McMenamin, *Policy Analysis: Tedious Fraud: Reagan Farm Policy and the Politics of Agricultural Marketing Orders*, Cato Policy Analysis No. 30, 2 (1983) (on file with the San Joaquin Agricultural Law Review).

[7] 7 U.S.C.S. § 601 (2004).

[8] McMenamin, *supra* note 6.

[9] *Id.*

[10] 7 C.F.R. § 989 (2004); Catherine Merlo, *Season of Turmoil*, RURAL COOPERATIVES MAGAZINE, U.S. Department of Agriculture, Volume 68 No.5, 4 (2001), *available at* http://www.rurdev.usda.gov/rbs/pub/sep01/contents.htm (last visited Mar. 4, 2005).

[11] McMenamin, *supra* note 6.

[12] *Id.*

[13] *Id.*

commerce..." and "to protect the interest[s] of the consumer."[14] Marketing orders are created to promote production, further research and development projects, and set "minimum standards of quality, maturity, grading and inspection requirements."[15] Marketing orders are "designed to help stabilize market conditions" for agricultural commodities, thereby preventing "unreasonable fluctuations in supplies and prices."[16] These programs are freely joined by industries, which decide to have federal supervision over particular phases of their operations.[17] The United States Department of Agriculture ("USDA") administers the marketing orders "to ensure that they operate in the public interest and within legal bounds."[18]

The Secretary of Agriculture is authorized to enter into agreements with "processors, producers, associations of producers, and others engaged in handling of any agricultural commodity or product thereof."[19] Producer approval is required before an order may go into effect.[20] Two-thirds of the producers must approve to meet the general requirement under the Act.[21] This requirement is based upon either the number of producers or the volume of production.[22]

Once two-thirds of the representatives of a commodity have voted to approve the marketing order, it becomes effective. Every five years, a vote by referendum[23] is conducted to determine whether to remain subject to the provisions of the federal marketing order.[24] All producers of that commodity will then be subject to the marketing orders and regulations that the Secretary of Agriculture has established.[25] However, no

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14 7 U.S.C.S. § 602 (2004).

15 7 U.S.C.S. § 602 (2004).

16 Press Release, Agricultural Marketing Service, *USDA Files Complaint Against California Raisin Handler*, Release No. 066-04 (April 2, 2004), *available at* http://www.ams.usda.gov/news/066-04.htm (last visited Feb. 15, 2005) (on file with the San Joaquin Agricultural Law Review); 7 U.S.C.S. § 602 (2004).

17 *USDA Files Complaint*, *supra* note 16.

18 *Id.*

19 7 U.S.C.S. § 608(b) (2004).

20 7 U.S.C.S. § 608(c)(8),(9) (2004).

21 7 U.S.C.S. § 608(c)(8),(9) (2004).

22 7 U.S.C.S. § 608(c)(8),(9) (2004). Producer approval is required, however, where "handlers have failed or refused to enter into an agreement." The Secretary, in order to effectuate an order, must make a finding that the "failure of the requisite number of handlers to enter into the agreement ... will tend to prevent the effectuation of the declared policy of the Act."

23 WEBSTER'S NEW WORLD COLLEGE DICTIONARY 1204 (4th ed. 1999). (referendum is the "submission of a law, proposed or already in effect, to a direct vote of the people").

24 Telephone Interview with David Peters, RAC Member (Feb. 7, 2005).

25 7 U.S.C.S. § 608(c)(11) (2004).

order issued will apply to a retailer selling agricultural products or commodities in his capacity, as a retailer.[26] "[A]gricultural cooperatives are authorized to express the approval or disapproval of marketing orders on behalf of all their members or patrons," which has been found to be reasonable, "since the cooperatives are the marketing agencies of those for whom they vote."[27] Under the federal marketing order, imported commodities also must comply with the federal standards before they may be sold on the United States market.[28]

### *C. How the Federal Marketing Order is Applied to Domestic Raisins*

The federal marketing order for raisins grown in California was adopted in 1949, and receives its authority from 7 U.S.C. §§ 601-674.[29] "[T]he raisin industry implements quality control standards, volume regulation, export programs, and other programs, all designed to stabilize markets and improve grower returns."[30] In contrast to milk orders, raisin order provisions do not focus on price. Instead, their regulations are authorized to limit quantity, provide for control of surplus and reserve pools, enable size and dimension requirements, require inspection, and establish research and development projects.[31]

Producers of certain commodities, who are located in the geographic region where the order is to take effect, must vote to establish marketing orders. Committees of producers create "details of enforcement" upon the establishment of the marketing order.[32] These thorough regulations are then sent to the Secretary of Agriculture.[33] At the USDA, the producers' decisions are "published in the Federal Register, whereupon they have the force of law."[34]

A board consisting of raisin packers and growers, known as the Raisin Administrative Committee ("RAC"), watches over the marketing order.[35] The establishment of standards for incoming and processed raisins and

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[26] 7 U.S.C.S. § 608(c)(13) (2004).

[27] United States v. Rock Royal Cooperative, Inc., 307 U.S. 533, 59 S.Ct. 993 (1939).

[28] 7 U.S.C.S. § 608e-1(a) (2004).

[29] 7 C.F.R. § 989 (2004).

[30] Press Release, Agricultural Marketing Service, *USDA Urges Participation in Upcoming Raisin Administrative Committee Election*, Release No. AMS-031-99 (Feb. 11, 1999), *available at* http://www.ams.usda.gov/news/031c.htm (last visited Feb. 1, 2005) (on file with the San Joaquin Agriculture Law Review).

[31] 7 C.F.R. § 989.54 (2004); 7 U.S.C.S. § 602 (2004).

[32] McMenamin, *supra* note 6, at 4.

[33] 7 C.F.R. § 989.55 (2004).

[34] McMenamin, *supra* note 6, at 4.

[35] 7 C.F.R. § 989.35 (2004); Merlo, *supra* note 10, at 5.

the disposition of reserve tonnage are managed by the RAC.[36] The RAC decides whether "volume control measures" need to be implemented for a crop year, pursuant to the marketing order. The RAC establishes the amount of the crop which should be sold by handlers in the open market when volume regulation is in force.[37] This is called "free tonnage."[38] Those raisins "not acquired by the processor are placed into a pool as reserve tonnage" and are reserved for later use.[39] Reserve tonnage might be used during short crop years, or sold to "noncompetitive outlets such as government purchases for the school lunch program or for international food aid programs."[40] A formula is used by the industry to "determine its free and reserve tonnage."[41]

The crop is delivered by growers to a packer, who pays them for the free tonnage, as governed by the formula. "[A] weighted average of the free tonnage price and the reserve price" is the price that raisin growers receive.[42] Growers have an "undivided interest in the reserve pool."[43]

The Raisin Diversion Program ("RDP") may be put into operation to handle the current flood of raisins in the United States, and it is authorized by the Federal Agricultural Marketing Agreement Act.[44] When overproduction occurs, the RAC may choose to apply the RDP and set the total tonnage amount that is eligible for diversion for the following year. Growers who participate in the program must limit production by removing vines or through spur pruning. The RAC determines which method will be utilized.[45]

Raisin handlers must have the USDA inspect their products when the raisins are received from producers, and inspected again prior to being sold to the consumer, in order to comply with the marketing order.[46] During the mandatory inspections, USDA inspectors occasionally obtain "samples from handlers' processing lines and assess the quality of the

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[36] 7 C.F.R. § 989.54(d) (2004); Merlo, *supra* note 10, at 5.

[37] 7 C.F.R. § 989.54(g) (2004).

[38] 7 C.F.R. §989.65 (2004).

[39] 7 C.F.R. §989.65-.66 (2004); Merlo, *supra* note 10, at 5.

[40] USDA Economic Research Service, *Commodity Highlight: California's Central Valley: Center of U.S. Raisin Industry*, Fruit and Tree Nuts Outlook/FTS-303, Mar.25, 2003, *available at* http://www.ers.usda.gov/Briefing/FruitandTreeNuts/fruitnutpdf/Raisins.pdf (last visited Feb. 4, 2005) (on file with the San Joaquin Agricultural Law Review).

[41] 7 C.F.R. § 989.54(g) (2004); Merlo, *supra* note 10, at 5.

[42] Commodity Highlight, *supra* note 40, at 3.

[43] Merlo, *supra* note 10, at 5.

[44] Commodity Highlight, *supra* note 40, at 5.

[45] *Id.*

[46] 7 C.F.R. § 989.58-.59 (2004).

raisins in various categories, including weight, color, size, sugar content, and moisture."[47] Grades are assigned to the raisins based on observations of the inspectors.[48]

### *D. Hypothetical California Raisin Farmer Trading Domestically*

Imagine the process of a California raisin farmer, trying to sell his or her crop in the United States. The process this farmer must endure to produce a raisin crop is very involved. Once a grape vine is planted, the farmer must wait at least three years before a crop is produced.[49] Grapevines need to be cared for by hand and require continuous attention throughout the year.[50] Quality control is an important aspect of the raisin inspection once the farmer's crop reaches the processing plant.[51] Prior to the raisins being removed from the bins, government inspectors from the USDA take samples.[52] The raisins must pass rigorous standards to safeguard against imperfections, such as mold and pests.[53] The raisins then undergo a stage of being "processed."[54] "Hand inspections are done throughout the packaging process by quality control technicians to make California raisins the cleanest, highest quality raisins in the world."[55]

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[47] 7 C.F.R. § 989.159 (2004); Lion Raisins, Inc. v. United States Dep't of Agriculture, 354 F.3d 1072, 1076 (9th Cir. 2004).

[48] Lion Raisins, *supra* note 47.

[49] Raisin Administrative Committee, *California Raisins* 4 (1997) (on file with the San Joaquin Agricultural Law Review).

[50] *Id.* (The farmer must prune and tie the vines in the winter, irrigate heavily throughout the growing season, and by late August, experienced farm workers hand-pick the grape clusters and place the grapes on paper trays, between the rows, in order for them to turn into "dark sun-dried raisins." Following several days of drying, the trays are rolled to protect them from the weather, then "after drying for several more days...opened and emptied into field bins" and transported to the farmer's yard. There, the raisins are placed on a conveyor belt that divides the larger stems from the raisins. The raisins are then loaded into large wooden bins. At that time, the bins of raisins are taken to packing plants located in the San Joaquin Valley).

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Id.* (Raisins are processed by being "poured into a hopper which feeds onto a series of conveyor belts" that remove any remaining stems or lightweight fruit, and then sent to a "vacuum air stream to catch any undesirable material" that still remains. The raisins are "size-graded and then thoroughly washed." A laser sorter, using a computer, establishes if "anything other than raisins are passing through the stream." If so, the computer sends a burst of air, to remove the material out of the stream).

[55] *Id.* ("After final quality inspections, the raisins are automatically weighed and packed in a variety of sizes, [ranging] from snack packs for school lunches, to huge cartons for commercial bakers and cereal companies").

When the federal marketing order is in effect,[56] this hypothetical farmer is subject to, and must comply with the federal marketing order. The RAC administers the federal marketing order and the USDA is the enforcement branch which ensures compliance with the marketing order.[57]

Currently, there are cases pending regarding farmers in violation of the federal marketing order provisions.[58] The USDA has filed an administrative complaint against Marvin and Laura Horne, California raisin farmers,[59] charging them with violating the federal marketing order.[60] The alleged violations include "failure to obtain incoming inspection, failure to hold the required quantities of raisins in reserve, failure to pay their pro rata share of [RAC] expense, and failure to allow access to their records, even after being subpoenaed for such access."[61]

Fifty-three percent of the California raisin crop was sold in 2002, with the remainder being placed in reserve.[62] A portion of raisins that are designated as reserve are used to promote sales of raisins abroad.[63] The Hornes' attorney "questioned how any business can survive when it is paid for only fifty-three percent of what it produces."[64] However, the court may order the Hornes to pay "up to $1,100 per day for each day of violation" in civil penalties if the USDA is able to prove the allegations.[65] Under the marketing order, "a handler who fails to deliver reserve tonnage raisins to the committee shall compensate the RAC for the value of that tonnage."[66] If the Hornes prevail, however, many other raisin handlers are predicted to also disregard compliance standards, thus jeopard-

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[56] 7 U.S.C.S. § 608(c)(8),(9) (2004). (the Federal Marketing Order for Raisins Grown in California is in effect when there has been a two-thirds approval vote by representatives within the raisin industry, voted every five years).

[57] Telephone Interview with David Peters, *supra* note 24; 7 U.S.C. § 601 (2004) provides:

> The disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets, which support the national credit structure. These conditions of disruption affect transactions in agricultural commodities with a national public interest, causing burden and obstruction to the normal channels of interstate commerce.

[58] Lion Raisins, *supra* note 47; *USDA Files Complaint*, *supra* note 16.

[59] *USDA Files Complaint, supra* note 16.

[60] Dennis Pollock, *Raisin Case Awaits a Ruling*, THE FRESNO BEE, February 12, 2005, at D1.

[61] *USDA Files Complaint, supra* note 16.

[62] Pollock, *supra* note 60, at D6.

[63] *Id.*

[64] *Id.*

[65] *USDA Files Complaint, supra* note 16.

[66] *Id.*

izing the effectiveness of the federal marketing order and destabilizing the raisin market.[67]

Just as raisins produced domestically must comply with the federal marketing order,[68] requirements under section 8(e) of the Code of Federal Regulations specify that *imported* raisins must meet the "same or comparable minimum grade, size, quality, and maturity requirements."[69]

The United States is one of the largest raisin producers in the world.[70] More than eighty percent of all raisins on the world export market come from the United States and Turkey.[71] The top four raisin producers in the world are the United States, Turkey, Chile, and South Africa.[72] Greece, Australia, and Mexico are other major raisin-producing countries.[73] Countries that participate in world trade are, generally, members of the WTO, an "international organization which oversees agreements covering 'rules of [world] trade' between its member [countries]."[74] Member countries, involved in trade within the raisin industry, must comply with the regulations of the URAA.[75]

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67 Telephone Interview with David Peters, *supra* note 24.

68 7 U.S.C. § 608e-1(a) (2004) provides:

> [W]henever a marketing order issued by the Secretary of Agriculture contains any terms or conditions regulating the size, quality, or maturity of...raisins...produced in the United States, the importation into the United States of any such commodity...during the period of time such order is in effect shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of such order or comparable restrictions....This [does]...not apply to...Puerto Rico or any Territory or Possession of the United States.

69 Raisins Produced From Grapes Grown in California, 7. C.F.R. §§ 989.1-801 (2004).

70 *Outlook In Selected Countries*, *supra* note 1.

71 *Id.*

72 *Id.*

73 *Id.*

74 World Trade Organization, *at* http://www.nationmaster.com/encyclopedia/World-Trade-Organization (last visited Feb. 12, 2005) (on file with the San Joaquin Agricultural Law Review).

75 Telephone Interview with Rayne Thompson, Director of National Affairs and International Trade, California Farm Bureau Federation (Feb. 3, 2005).

## III. URUGUAY ROUND AGREEMENT ON AGRICULTURE

### *A. History*

The General Agreement on Tariffs and Trade ("GATT") is "an agreement between [countries] ... on the rules for trade"[76] and was signed by twenty-three countries in Geneva, Switzerland in 1947.[77] GATT was created on a temporary basis following the Second World War.[78] The original intention of GATT was "to create an International Trade Organization (ITO), as a specialized agency of the United Nations ("UN")," for promoting international economic cooperation.[79]

The ITO was intended to "extend beyond world trade disciplines, to include rules on employment, commodity agreements, restrictive business practices, international investment, and services."[80] However, prior to the charter being approved in 1946, twenty-three of the fifty participants agreed to "negotiate to reduce and bind customs tariffs," intending to "give [a] ... boost to trade liberalization, and ... begin to correct the large legacy of protectionist measures which remained in place from the early 1930s."[81] Ratification of the ITO Charter, which had been agreed to in 1948, in Havana, at the UN Conference on Trade and Employment, proved unattainable in some national legislatures.[82] Although the United States originally was one of the lead supporters for the ITO Charter, the United States Congress later became the most serious opponent to the Charter.[83] The United States government, in 1950, declared "that it would not seek congressional ratification of the Havana Charter, and the ITO Charter was effectively dead."[84] While GATT was intended merely to be temporary, it was "the only multilateral instrument governing inter-

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[76] General Agreement on Tariffs and Trade, *at* http://www.nationmaster.com/encyclopedia/General-Agreement-on-Tariffs-and-Trade (last visited Feb. 12, 2005) (on file with the San Joaquin Agricultural Law Review).

[77] *Id.*

[78] E. Kwan Choi, *The Roots of the WTO*, Iowa State University, Dep't of Economics (2003), *available at* http://www.econ.iastate.edu/classes/econ355/choi/wtoroots.htm (last visited Jan. 15, 2005) (on file with the San Joaquin Agricultural Law Review).

[79] Trade Resources: *Roots: from Havana to Marrakesh*, *available at* http://www.wto.org/trade_resources/history/wto/roots.htm (last visited Mar. 4, 2005) (on file with the San Joaquin Agriculture Law Review).

[80] *Id.*

[81] *Id.*

[82] Choi, *supra* note 78, at 1; Trade Resources: Roots, *supra* note 79, at 2.

[83] Trade Resources: Roots, *supra* note 79, at 2.

[84] *Id.*

national trade" for the period of time from 1948 until the establishment of the WTO in 1995.[85]

The fundamental legal text of GATT remained comparable to the 1948 version, even though additions were made by way of agreements, through voluntary membership, known as "plurilateral agreements," intended to reduce tariffs.[86] GATT supplied the rules for a great deal of world trade and applied during "periods that saw some of the highest growth rates in international commerce."[87]

The Uruguay Round, a trade negotiation taking place from September 1986 to April 1994, was initiated in Puenta del Este, Uruguay, converting GATT into the WTO.[88] GATT has now become the WTO's standard rule-book for trade in goods.[89] The WTO is an international organization which administers a substantial number of agreements involving "the rules of trade" among its member countries.[90] In 1995, the WTO was established as a secretariat[91] to oversee GATT.[92] The WTO rules are the product of negotiations between members of 146 countries, including the United States.[93] WTO members conduct a non-discriminatory trading system that indicates the rights and responsibilities of participating nations.[94] Each member country receives guarantees that its exports will be handled fairly and consistently in other countries' markets, in exchange for its own conformity with the standards expressed through the rules of the WTO. Through benefits established by agreements in the WTO, developing countries are offered some flexibility, affording them an opportunity to participate in world trade.[95]

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[85] *Id.*

[86] Choi, *supra* note 78.

[87] Trade Resources: Roots, *supra* note 79, at 2.

[88] Uruguay Round, *at* http://www.nationmaster.com/encyclopedia/Uruguay-Round (last visited Feb. 12, 2005) (on file with the San Joaquin Agricultural Law Review).

[89] Telephone Interview with Rayne Thompson, *supra* note 75.

[90] World Trade Organization, *supra* note 74.

[91] WEBSTER'S NEW WORLD COLLEGE DICTIONARY 1296 (4th ed. 1999) (a secretariat is the "office, position, or quarters ... of an administrative secretary in an organization").

[92] World Trade Organization, *supra* note 74.

[93] World Trade Organization, *10 Benefits of the WTO Trading System*, *at* http://www.wto.org (last visited Mar. 5, 2005) (As of April 2003, there were 146 members, including the United States. The number of member countries has grown over time).

[94] Legal texts: the WTO Agreements, *available at* http://www.wto.org/english/docs_e/legal_e/ursum_e.htm (last visited Feb. 21, 2005) (on file with the San Joaquin Agricultural Law Review).

[95] Understanding the WTO, *Agriculture: Fairer Markets for Farmers*, *available at* http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm3_e.htm (last visited Mar. 4, 2005) (on file with the San Joaquin Agricultural Law Review).

Since 1995,[96] GATT has been updated and has developed into the WTO's "umbrella agreement for trade in goods."[97] GATT has annexes, additions that have been made to the original agreements of GATT, dealing with particular sectors, such as agriculture, and detailed issues, including "state trading, product standards, subsidies and actions taken against dumping."[98]

### *B. Policy*

Although GATT originally included "numerous trade liberalizing initiatives," several "loopholes" developed through "successive negotiations that essentially exempted the agricultural sector from the general trade policies under the agreement."[99] Consequently, under the GATT agreement, few limits on agricultural subsidies existed.[100]

Agricultural trade became extremely "distorted," by the utilization of export subsidies, which would not generally have been permitted for industrial products.[101] When "prices are higher or lower than normal, and if quantities produced, bought, and sold are also higher or lower ... than the levels that would [normally] exist in a competitive market," trade becomes distorted.[102] Governments often provide three reasons for protecting their farmers, even if agricultural trade is distorted: "to make sure enough food is produced to meet the country's needs, to shield farmers from the effects of the weather and swings in world prices, and to preserve rural society."[103]

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[96] Choi, *supra* note 78 at 5. ("GATT 1947" continued to exist until 1995, permitting all GATT member countries to enter upon the WTO. GATT survives as the "amended and updated version of GATT 1947", now known as "GATT 1994," which is an essential component of the WTO's Agreement and which continually offers important regulations involving international trade in goods).

[97] Trade Enhancement for the Services Sector, *Multilateral Trade Agreements*, *available at* http://www.tessproject.com/guide/agree/intl_agree.htm (last visited Mar. 5, 2005) (on file with the San Joaquin Agricultural Law Review).

[98] *Id.* (dumping occurs when a product is sold below the cost of its production); Telephone Interview with David Peters, *supra* note 24.

[99] Kelvin Goertzen, *Subsidies: Leveling the Playing Field*, 3 Asper Rev. Int'l Bus. & Trade L.81 (2003) (on file with the San Joaquin Agricultural Law Review).

[100] *Id.*

[101] Colin A. Carter, *The Next WTO Round: What Does it Mean for California Agriculture?*, *available at* http://www.agecon.ucdavis.edu/outreach/areupdatepdfs/spring2000.pdf (last visited Jan. 15, 2005) (on file with the San Joaquin Agricultural Law Review); *Fairer Markets for Farmers*, *supra* note 95.

[102] *Fairer Markets for Farmers*, *supra* note 95, at 1-2.

[103] *Id.* at 2.

The Uruguay Round created the first multilateral agreement committed to the agricultural sector.[104] This was an important initial step towards creating reasonable competition, stability, and less distortion. It was applied over a six-year period for developed countries and is still being employed by developing countries for a ten-year period, which began in 1995.[105] The URAA "included a commitment to continue the reform through new negotiations."[106] These new negotiations began in 2000, pursuant to the Agriculture Agreement.[107]

The rationale behind the URAA is similar to the rationale of the federal marketing order in that the federal marketing order "implements quality control standards, volume regulation, export programs," and is "designed to stabilize markets and improve grower returns."[108] Furthermore, the URAA and federal marketing order both have the objective to ensure that enough food is produced for the country, while protecting farmers from natural disasters and unfair foreign competition, as well as to maintain the rural way of life.

Under the URAA, developing countries do not need to lower their tariffs or reduce their subsidies to the same extent as developed countries, and they receive additional time to complete their obligations to compete in international trade.[109] Underdeveloped countries do not need to comply with lowering their tariffs or reducing their subsidies at all.[110] The WTO allows underdeveloped countries to gain more opportunity to participate in world trade, by exempting poorer countries from reducing their tariffs on imported crops.[111] The URAA contains special provisions to handle the interests of countries with the least-developed economies, which depend on imports for their source of food.[112]

"Tariffication," a process designed "to provide for a consistent measurement of tariff levels between nations," was developed under the URAA.[113] Through tarrification, "tariff levels were capped, often referred to as being bound," compelling developed countries to lower these bound levels by thirty-six percent for a period of six years, from 1995 to 2000.[114] Starting in 1995, and designed to last for a ten-year period, de-

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[104] *Id.* at 1.
[105] *Id.*
[106] *Id.*
[107] *Id.*
[108] *USDA Urges Participation*, *supra* note 30.
[109] *Fairer Markets for Farmers*, *supra* note 95.
[110] *Id.*
[111] Telephone Interview with Rayne Thompson, *supra* note 75.
[112] *Fairer Markets for Farmers*, *supra* note 95.
[113] Goertzen, *supra* note 99, at 88.
[114] *Id.*

veloping countries were obligated to lower tariffs by twenty-four percent.[115] These figures, however, are not expressly found in the URAA.[116] Participants utilize the figures to arrange their schedules, establishing lists of commitments.[117] The commitments set forth in the schedules are legally binding.[118]

These policies, however, have "often been expensive, and they have created gluts leading to export subsidy wars."[119] Many countries with limited resources available for subsidies have endured hardship.[120] Determining whether these goals can be accomplished without distorting trade is one of the purposes of the negotiations.[121] Farmers in poorer countries, for instance, India and China, are negatively affected by subsidies in richer countries, such as those in the United States, the European Union (EU), and Japan.[122] These subsidies lead to "over-production and depressed world commodity prices."[123] Consequently, poorer countries that do not receive the benefit of governmental subsidies have more difficulty competing in the world market.

WTO members must lower their subsidized exports in order to comply with the URAA.[124] However, some importing countries rely on "supplies of cheap, subsidized food from the major industrialized nations."[125] Countries with the poorest economies may require "temporary assistance to make the necessary adjustments to deal with higher priced imports, and eventually to export ... although their farming sectors might receive a boost from higher prices caused by reduced export subsidies."[126] Objectives are established by special ministerial decisions[127] to promote agricultural development.[128] "[T]he possibility of assistance from the International Monetary Fund and the World Bank to finance commercial

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[115] *Id.*

[116] *Fairer Markets for Farmers*, *supra* note 95, at 3.

[117] *Id.*

[118] *Id.*

[119] *Id.* at 2.

[120] *Id.*

[121] *Id.*

[122] Carter, *supra* note 101, at 2.

[123] *Id.*

[124] *Fairer Markets for Farmers*, *supra* note 95, at 5.

[125] *Id.*

[126] *Id.*

[127] WEBSTER'S NEW WORLD COLLEGE DICTIONARY 918 (4th ed. 1999). (a ministerial decision is made by a person "acting as a diplomatic officer sent to a foreign nation to represent his or her government").

[128] *Fairer Markets for Farmers*, *supra* note 95, at 5.

food imports" is suggested by the WTO to aid poorer countries that rely on food imports.[129]

The WTO's goal is "to establish rules of trade that give importers and exporters confidence in the system when trading with other WTO members."[130] The WTO seeks to advance global prosperity and elevate living conditions in poorer countries.[131] World trade aids disadvantaged countries by providing more job opportunity and financial gain through the benefits of participating in the world agricultural market.[132] Underprivileged countries are also assisted by receiving more market advantage in the world economy, thus producing increased income and wealth for their citizens.

The long-term objective of the URAA "is to establish a fair and market-oriented agricultural trading system . . ." and to initiate a reform process "through the negotiation of commitments [regarding] support and protection, and through the establishment of strengthened and more operationally effective GATT rules and disciplines."[133] The goals of the URAA are to further "provide for substantial progressive reductions in agricultural support and protection sustained over an agreed period of time, resulting in correcting and preventing restrictions and distortions in world agricultural markets."[134] The URAA is dedicated to attaining specific binding commitments in the areas of "market access, domestic support, and export competition."[135]

### *C. How the URAA is Applied to the International Sale of Raisins*

Most of the RAC's difficulties arise with export issues.[136] This is because many countries, within similar climatic zones as California, impose high tariffs on imported California raisins.[137] Countries in different climatic zones that do not grow raisins, such as the United Kingdom and Japan, which are among the largest importers of California raisins, do not impose high tariffs on United States raisins.[138] Since they do not generally produce raisins in their countries, they do not have a need to protect

[129] *Id.*
[130] Carter, *supra* note 101, at 1.
[131] *Id.*
[132] Telephone Interview with Rayne Thompson, *supra* note 75.
[133] Agreement on Agriculture, *supra* note 5.
[134] *Id.*
[135] *Id.*
[136] Telephone Interview with David Peters, *supra* note 24.
[137] *Id.*
[138] RAC Dried Grape Export/Import Study, 57-59 (on file with the San Joaquin Agricultural Law Review); Telephone Interview with David Peters, *supra* note 24.

their domestic market from California raisins. However, some of the countries, in similar temperate areas as California, such as India, Iran, Afghanistan, and China, are able to produce their own raisins; therefore they impose higher tariffs on California raisins in order to protect their own raisin markets.[139]

India imposes a 105 percent tariff on processed products, which includes California raisins.[140] Much lower tariffs, of approximately fifteen percent, are imposed on unprocessed products imported into India.[141] Other commodities, such as almonds, are imported into other countries unprocessed, with the importing country processing the product upon receipt.[142] Under this method, unprocessed commodities enjoy much lower tariffs than those products which are imported as a processed product.[143]

The RAC has considered exporting raisins into countries, like India, in an unprocessed condition.[144] However, California raisins fall under a provision of the federal marketing order which states that unprocessed raisins may not be exported to other countries.[145] There are two major reasons for this provision. The first reason is to maintain standards of quality.[146] The RAC does not want raisins being processed in other countries without the same high-quality processing that California raisins undergo in the United States. The second reason the federal marketing order strictly prohibits the United States from exporting unprocessed raisins is that other countries receiving unprocessed raisins, are able to process the raisins, and then sell the finished raisin product back to the

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139 Telephone Interview with David Peters, *supra* note 24.

140 Bill Pauli, Statement of the California Farm Bureau Federation on Problems Facing the Specialty Crop Industry, House Government Reform Subcommittee Hearing (December 12, 2003), *available at* www.reform.house (last visited Feb. 18, 2005) (on file with the San Joaquin Agricultural Law Review).

141 Telephone Interview with David Peters, *supra* note 24.

142 *Id.*

143 *Id.*

144 *Id.*

145 7 C.F.R. § 989.58 (2004). "No handler shall acquire or receive natural condition raisins which fail to meet such minimum grade and condition standards as the committee may establish…." 7 C.F.R. § 989.8 (2004). Natural condition raisins are "raisins, the production of which includes sun-drying or artificial dehydration but which have not been further processed to a point where they meet any of the conditions for packed raisins" as defined in §989.9 7 C.F.R. § 989.9 (2004). Packed raisins are "raisins which have been stemmed, graded, sorted, cleaned, or seeded, and placed in any container customarily used in the marketing of raisins…."

146 7 C.F.R. § 989.59 (2004).

United States for a profit, thereby undermining the United States market.[147]

The dilemma of the RAC is the following: if California raisins were to be exported unprocessed, the tariff rate would be lower than those rates established for processed raisins. However, they will not export unprocessed raisins because those raisins may be processed in foreign countries and then sold back to the United States. On the other hand, if California raisins are exported in a processed condition, then they face a high tariff rate, such as the tariff in India of 105 percent.

Other countries, such as Turkey, who export raisins to India, are not subject to the same high tariff rates as California raisins.[148] India's imposition of higher tariff rates on California-grown raisins, as opposed to lower tariff rates on raisins from other countries, violates India's agreement to comply with the URAA, while also harming the California raisin industry.[149]

There are two price systems relating to the raisin industry.[150] The first system covers domestic raisins, including those grown in the United States and Canada.[151] The second system covers the raisins grown throughout the rest of the world.[152] Each system is subject to a different price.[153] These prices, which apply to the raw product and not the finished product, include after-processing costs.[154] Processing costs include the amount it costs to wash, handle, and package raisins in order to be in a ready to eat condition.[155]

There is no quota on the amount of imported raisins allowed into the United States market.[156] The United States imposes a low tariff of between ten to fifteen percent on imported goods.[157] Mainly, the market

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[147] Telephone Interview with David Peters, *supra* note 24.

[148] *Id.*

[149] WTO Panel Report on European Communities Complaint Concerning India- Patent Protection for Pharmaceutical and Agricultural Chemical Products, WT/DS79/R (98-3091) (Aug. 24, 1998) (on file with the San Joaquin Agricultural Law Review).

[150] Telephone Interview with David Peters, *supra* note 24.

[151] *Id.*

[152] *Id.*

[153] *Id.*

[154] *Id.*

[155] *California Raisin*, *supra* note 49, at 6.

[156] 7 C.F.R. § 989.801 (2004). RAC members are not authorized to "participate ... with any competing foreign producer ... to limit the quantity or quality of raisins ... imported into the United States."

[157] Clinton Foundation: Fact Sheet on U.S. Agricultural Opportunities *available at* www.clintonfoundation.org/legacy (last visited Mar. 4, 2005) (on file with the San Joaquin Agricultural Law Review).

price limits the amount of raisins imported from other countries.[158] If the difference between the price of domestic raisins and the price of imported raisins is too small, foreign countries will limit the amount of raisins they export to the United States because their costs will be too high to allow a profit.[159]

### *D. Hypothetical Raisin Farmer Internationally*

With the approval of the Secretary of Agriculture, the RAC occasionally establishes export programs to expand sales of California raisins in the international market.[160] The export programs are funded by the raisin industry, primarily by the sale of reserve raisins.[161] The programs "make reserve raisins available for sale to handlers."[162] The export programs are governed by 7 C.F.R. §§ 989.53(a) and 989.67(b) of the federal marketing order.[163]

To participate in the export programs, the hypothetical raisin farmer must submit the proper documentation and "[a]pply only for shipments exported to countries which are eligible for reserve pool sales and exports."[164] The raisin farmer can only apply "for shipments exported that consist of raisins produced from grapes grown, processed, and packaged solely in the State of California ...."[165] The farmer also must allow the RAC and USDA Inspection Service "access to any container for export shipments for the purpose of verifying its contents."[166] Exported raisins subject to this program need a "Quality and Condition Certification or Report of Inspection from USDA Inspection Services."[167] The RAC must provide adjustments and inform handlers of any foreign buyers or disqualified importers for which cash or adjustments will be denied.[168]

If the raisin farmer is found to be in non-compliance with export program requirements, such as when applying for "export shipments containing non-California raisins," or by submitting altered or false docu-

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158 Telephone Interview with David Peters, *supra* note 24.

159 *Id.*

160 RAC Circular No. 4, 2001/2002-Crop Year, (Nov. 26, 2001) p.3 (on file with the San Joaquin Agricultural Law Review).

161 *Id.* at 4.

162 *Id.*

163 7 C.F.R. §§ 989.53(a) and 989.67(b) (2004).

164 RAC Circular, *supra* note 160, at 4. (countries eligible for reserve pool sales and exports are determined pursuant to 7 C.F.R. §§ 989.67(c) and 989.211).

165 *Id.*

166 *Id.*

167 *Id.* at 5.

168 *Id.*

mentation, the farmer "will not only be denied 'raisin back' reimbursement for the specific shipment, but will also be denied participation in the program."[169] The RAC decides the length of suspension, and reports the violation to the USDA, which determines "further action or remedy."[170]

## IV. Conflicts Between the Federal Marketing Order and Uruguay Round Agreement on Agriculture

### A. *Do They Exist?*

1. Tariff Rates

The United States must cope with challenges in competing with foreign producers, particularly producers of specialty crops, such as raisins.[171] This is due to past trade agreements which offered more advantages to United States specialty crop importers than to exporters.[172] Raisin importers receive more benefits mainly because United States exporters are subject to substantial foreign subsidies and high tariffs.[173]

India, which has developing country status in the WTO,[174] imposes a 105 percent tariff on raisins.[175] In contrast, the United States imposes low tariffs which benefit its foreign competitors.[176] Scholars of India explain that India has restricted imports from countries for a variety of reasons, including environmental and ethical grounds.[177] In 1997, however, a panel[178] was created "to examine the United States' allegations that the continued maintenance of [quantitative restrictions][179] on imports by India was inconsistent with India's obligations under the WTO agreement."[180] India was ruled against by the panel.[181] An appeal was

[169] *Id.*
[170] *Id.*
[171] Pauli, *supra* note 140, at 4.
[172] *Id.*
[173] *Id.*
[174] List of Developing/Least-developed countries in WTO (on file with San Joaquin Agricultural Law Review); Telephone Interview with Rayne Thompson, *supra* note 75.
[175] Pauli, *supra* note 140, at 5.
[176] *Id.* at 4.
[177] Dr. Vandana Shiva, *Corporate Hijack of Agriculture*, Systems Vision ed., 4 Navdanya 2002, *available at* http://www.diversewomen.org/pdf_files/agriculture.pdf (last visited Feb. 17, 2005) (on file with the San Joaquin Agricultural Law Review).
[178] *Id.* (the dispute Settlement Panel under the WTO was joined by the European Communities, Canada, Australia, Switzerland, and New Zealand).
[179] *Id.* at 2-4. (quantitative restrictions are restrictions that may be imposed on imported subsidized food).
[180] *Id.*

filed by India, before the appellate body of the WTO, but the appellate body upheld the decisions of the panel.[182]

The panel's report, however, emphasized that their recommendations did not entail that the measures at issue needed to be instantly removed.[183] The panel felt that it would be unfeasible to require a member to instantly conform, and decided the member would be given a reasonable amount of time to do so.[184] The panel explained that the time offered to India to eliminate the import restrictions should not go beyond fifteen months. However, it was also stressed that this was only a guideline, to be determined by an arbitrator, and that it was "not a rule," thus suggesting that "in light of the [circumstances], the 'reasonable period' in this case could be longer than fifteen months."[185]

Poorer countries, like India, emphasize that trade liberalization was a myth; it was purportedly meant to allow "the poor to come out of poverty by providing them market access to rich northern markets."[186] However, according to scholars in India, "the market access rules of the WTO are not wiping out poverty [in India]; they are wiping out the poor."[187] The scholars in India claim this is because the market access rules of the WTO "have not opened ... the markets to the poor ... but hijacked domestic markets ... [which] served the rural poor, for the super profits of agribusiness and commercial trade."[188] Most of the poor in these areas consist of rural producers.[189] Advocates for farmers in poorer countries claim that they are forced further into poverty as their income falls, because of inequitable market access rules of trade.[190]

One of the objectives of the URAA is to promote "special and differential treatment for developing countries," which is an essential component of the negotiations, while "taking into account the possible negative effects of the implementation of the reform [program] on least-developed and net food-importing developing countries."[191] By having different standards depending on the wealth of a particular country, the URAA is inconsistent with the federal marketing order. The federal marketing order intends all the imported raisins from countries worldwide to be

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181 *Id.*

182 WTO Panel Report, *supra* note 149, at 22.

183 *Id.*

184 *Id.* at 43-44.

185 Shiva, *supra* note 177, at 4.

186 *Id.* at 27.

187 *Id.*

188 *Id.*

189 *Id.*

190 *Id.*

191 Agreement on Agriculture, *supra* note 5.

held to the same rules, regulations, quality, and standards as that of the exports of the United States. The URAA intends to aid poorer countries by providing opportunities to participate in international trade in the world market, while the federal marketing order imposes the same standards on all producers of raisins, whether domestic or imported. The goals of the URAA and the federal marketing order regarding the treatment of raisin producers from developed countries and from developing and underdeveloped countries are inconsistent because the URAA sets different standards, such as imposed tariff reduction requirements for developed and developing countries, and no tariff boundaries for underdeveloped countries.

2. Quota and Volume Control

The WTO's attempt to limit quotas conflicts with the federal marketing order because the marketing order focuses on regulating quantity limits, providing for control of surplus and reserve pools. The WTO claims to provide benefits to the trade industry by attempting to "tackle the problem of quotas."[192] The WTO explains that quotas reduce supply, which "artificially raise[s] prices, creating abnormally large profits."[193] The WTO stresses that quotas are an inadequate method for regulating trade, and by way of the WTO's rules, governments have decided that the use of quotas should be limited.[194] The WTO disapproves of the use of quotas, because quotas can hamper poorer countries' ability to participate in a world trade market.[195]

The federal marketing order requires that the RAC must "hold a meeting to review shipment data, inventory data, and other matters relating to the quantity of raisins" of all varieties.[196] Thus, the federal marketing order pertaining to the raisin industry has set requirements as to the quantity of California grown raisins to be produced and sold in the United States raisin market. The federal marketing order uses quotas as a means of controlling the volume of raisins.[197] This is done to regulate surplus and reduce the potential problem of a creation of overproduction, which leads to lower demand and thus lower prices for raisin producers. This volume control is implemented to avoid "flooding" the raisin market.[198]

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192 *10 Benefits of the WTO Trading System*, *supra* note 93, at 14.
193 *Id.*
194 *Id.*
195 Telephone Interview with Rayne Thompson, *supra* note 75.
196 7 C.F.R. § 989.54(a) (2004).
197 Telephone Interview with David Peters, *supra* note 24.
198 *Id.*

By maintaining a reserve pool, and thus not permitting California raisin growers to sell their entire crop, the federal marketing order stabilizes the raisin market by allowing for a reserve pool to be used in years of a smaller crop production due to situations such as poor weather conditions.

Imported raisins are not subject to the same quota requirements as California raisins under the federal marketing order. The United States, however, does discourage imported raisins through pricing.[199] When the prices offered for imported raisins sold in the United States do not cover the costs of production and processing, then many foreign sources are discouraged from sending raisins to the United States because there is not enough potential profit to justify the expense of shipping their raisins into the United States.

RAC members and employees are not authorized to participate with any competing foreign producer or seller or with any foreign government to "raise, fix, stabilize, or set a floor for raisin ... prices, or [to] limit the quantity or quality of raisins ... imported into or exported from the United States."[200] Thus, RAC members must act in good faith in importing the requisite amounts of raisins into the United States, as well as exporting the proper amounts to foreign countries, pursuant to both the federal marketing order and the URAA.

Volume control affects California raisin growers because the amount that is determined by free tonnage may be displaced by the amount of imported raisins.[201] The free tonnage percentage, already having been set for the crop year, does not change.[202] The California raisins are displaced, because as the amount of imported raisins increases, which become part of free tonnage, rather than reserve, the proportional amount of free tonnage of California raisins decreases.[203] Prices may be lowered, discouraging foreign countries' participation in the United States raisin market. California growers are burdened by being subject to quota and by being unable to sell their entire crop during a given year; due to the requirement to place the year's designated percentage in the reserve

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[199] *Id.*

[200] 7 C.F.R. § 989.801 (2004). ("Participation in ... such unauthorized agreement ... could result in prosecution under the antitrust laws by the United States Department of Justice or suit by injured private persons").

[201] Free Tonnage and Reserve Allocation Index, Table 11 (on file with the San Joaquin Agricultural Law Review).

[202] *Id.*

[203] Telephone Interview with David Peters, *supra* note 24.

pool.[204] There is a conflict between the WTO's oppositions to quotas and the California raisin industry's volume control regulations which could result in significant hardship for the California raisin grower.

A compromise must be considered to alleviate the tension between the WTO and the federal marketing order. If the quota and volume control provisions to which California raisins are subject are eliminated, there is risk of flooding the raisin market in heavy production years, while having a shortage of raisins in lighter years, due to conditions such as poor weather and pests. If the quota requirements for raisins grown in California are maintained, California raisin farmers will not be able to sell their entire crop in most years because a percentage will be set aside for reserve. Foreign countries will also continue to be discouraged from participating in the United States raisin market if there is not enough of a profit to be made.

3. Economic Protectionism

The WTO claims that protectionism is the alternative to trade and the "attempt to tackle a problem in the short term, by restricting trade, turn[s] into a bigger problem in the longer term."[205] Economic protectionism among raisin producers occurs when a country implements policies and rules that give its local raisin producers preferential treatment against foreign producers.[206] This is done in order to protect the local economy by providing an advantage to the domestic market at the expense of foreign participants in the trading market.

The federal marketing order promotes protectionism by ensuring that imports meet the requisite level of standards and quality that raisins in the United States must meet. It is more difficult for foreign producers to comply with United States standards because they often lack the technology and governmental subsidies[207] which benefit many commodities within the United States. By implementing quota requirements, limiting the amount of raisins that the United States produces and placing price restraints on raisins produced in foreign markets, enforcement of the

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[204] Free Tonnage and Reserve Allocation Index, Table 11, *supra* note 201; Telephone Interview with David Peters, *supra* note 24. (Reserve Tonnage Percentage varies per year).

[205] *10 Benefits of the WTO Trading System*, *supra* note 93, at 10.

[206] Choper, *Constitutional Law: Cases, Comments, Questions*, 9th ed., (2001) 207, 217-18.

[207] Telephone Interview with David Peters, *supra* note 24. (The raisin industry, however, does not receive direct governmental subsidies. Rather, raisin growers receive some subsidization through programs such as Federal Crop Insurance).

federal marketing order supports economic protectionism, favoring the United States.

4. Production Cost Disparities

The world trade agreements are inconsistent with the federal marketing order. "International trade rules are increasingly causing harm to California's existing agriculture system and threatening its future ...."[208] Factors which contribute to differences in the cost of production among world raisin growers include higher labor costs and standards.[209] California raisin farmers are forced to compete with countries where the costs of critical components involved in producing raisins, such as "land, labor, energy, and water, are much cheaper than in California, as well as the rest of the United States."[210]

China is perceived as a continuing threat to the California raisin market, and "China's recent entry into the WTO will most certainly affect California agriculture in a major way."[211] China is identified as a threat to the United States market because China is able to produce crops less expensively than the United States due, in part, to regulations to which the United States is subject, which China is not, such as environmental standards. A leading reason for our decreasing competitiveness results from elevated costs deriving from "regulatory burdens" such as "air quality compliance standards and emerging water quality requirements."[212]

Through the globalization of food production, international companies are not only looking increasingly to foreign sources for food products, but they are also "investing substantially in developing the productive capacity of growers" in countries where costs are lower.[213] This hurts the United States raisin market because it is unable to produce raisins at as low a cost as other countries. When foreign countries produce raisins at a lesser cost than the United States, they have a greater profit margin and an advantage in the market.

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[208] International Forum on Globalization, *International Trade Rules Harm California's Agriculture Sector*, media packet from USDA Conference on Science, Technology, & Ecology, (June 23-25, 2001), *available at* http://www.ifg.org/sac/medpack.htm (last visited Feb. 26, 2005) (on file with the San Joaquin Agricultural Law Review).

[209] Pauli, *supra* note 140, at 3.

[210] International Trade Rules, *supra* note 208, at 2.

[211] *Id.*

[212] Pauli, *supra* note 140, at 4.

[213] International Trade Rules, *supra* note 208.

### *B. Resolution of Conflict Between the Federal Marketing Order and the URAA*

If American farmers cannot compete, then the question is: Should the United States protect and subsidize American farmers and withdraw from the WTO, losing the potential benefits of membership? Benefits of membership in the WTO include belonging to an organization in which all the member bodies meet in one location and rules are negotiated, by which all members must abide.[214] It does not seem proper that the United States should have all the benefits of free trade and none of the burdens. One must wonder if some of the URAA standards adopted are there to protect the giant producers from smaller farmers.

If American raisin farmers cannot compete in the world trade market, then it must be determined whether the United States government should subsidize its raisin farmers. There are claims that direct payments distort trade by supplying "guaranteed income, stimulat[ing] production apart from market forces," while causing a decrease in commodity prices.[215] "[I]ncreased domestic subsidies" together with "[g]reater trade liberalization" appear to violate the WTO Agreement.[216] For example, in 1998, the United States, along with many other WTO member countries, did not implement export subsidies for specialty crop products, whereas the European Union ("EU") subsidized forty percent of its raisin exports.[217] Although these subsidies are contained by the EU's WTO commitments, they distort the market for United States specialty crop exports, and increase competition in underdeveloped markets where the United States must closely compete with products from Europe.[218]

Since subsidies are within the EU's binding WTO commitments, it would be inappropriate for the United States to demand that the EU lower or eliminate the subsidies it receives. The United States instead could increase its own level of subsidies, in order to compete more effectively with the EU in the world market. The United States would need to take into account budgetary limits and allocation of money before enacting governmental subsidies for raisin producers.

The California Farm Bureau Federation supports funding which would compel the United States government to buy food grown in the United States.[219] This funding would help support the United States economy by

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214 Telephone Interview with Rayne Thompson, *supra* note 75.
215 Goertzen, *supra* note 99, at 92.
216 *Id.*
217 Pauli, *supra* note 140, at 5.
218 *Id.*
219 *Id.* at 3.

promoting the purchase of raisins grown domestically. The California Farm Bureau Federation further stresses, that "anti-trust legislation should be strictly enforced to ensure fair prices for agricultural products in state, national and international markets."[220] It suggests that an agreement must be negotiated which, upon implementation, lasting for a period of five years, would reduce tariffs beyond what is agreed upon in the WTO framework by a formula that would eventually eliminate tariffs.[221]

Current trade agreements have affected California's agricultural economy.[222] In recent times, the "WTO and other instruments of the globalized 'free trade' system[s] have broken down borders" and reduced a country's ability to safeguard its economy, while authorizing international corporations "uncontrolled and unrestricted access to a country's markets and resources."[223] International "agribusiness giants" are according to scholars in India, the "only beneficiaries [of] the liberalization of imports and removal of import restrictions in agricultural products."[224] These huge companies profit by exercising their financial power "to depress world prices during procurement and hike it during sales," and by collecting numerous subsidies provided by both the importing and exporting countries.[225]

Raisin growers face many challenges, including "global competition, retail consolidation, unfunded government mandates, trade barriers, rising input costs and low commodity prices."[226] Corrective actions and suggestions are recommended by the California Farm Bureau Federation, such as implementing the Horticultural Organizations for Responsible Trade ("HORT") Alliance.[227] The HORT Alliance is committed to significant reform in the WTO agricultural rules.[228] The long term goal of the HORT Alliance is to remedy disparities that place United States growers at a disadvantage.[229]

United States specialty crop producers possess insufficient protection, while at the same time "products enter the United States duty free or with

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[220] *Id.*

[221] Press Release, California Farm Bureau Federation, *CFBF Comments on Review of Multilateral & Bilateral Agriculture Trade Negotiations* (June 18, 2003), p.3, *available at* http://www.cfbf.com/issues/trade/agtradeneg.cfm (last visited Mar. 27, 2005) (on file with the San Joaquin Agricultural Law Review).

[222] International Trade Rules, *supra* note 208, at 1.

[223] *Id.*

[224] Shiva, *supra* note 177, at 17.

[225] *Id.*

[226] Pauli, *supra* note 140, at 1.

[227] *Id.* at 4.

[228] *Id.*

[229] *Id.*

only a minimal tariff levied."[230] Other WTO members, with the intent to protect domestic markets and to maintain the prices of imported products at specific levels, have more complex systems of entry and prices.[231] The HORT Alliance "supports a WTO agreement that addresses market access barriers and harmonizes tariffs," comparable to the levels of the United States.[232] The HORT Alliance supports "significant reform" of such market-access rules.[233] It also seeks new WTO rules to limit "how much a government may provide a trade-distorting subsidy" to any specific specialty crop.[234] If the WTO agrees to agricultural trade rules that do not address horticultural or specialty-crop concerns aggressively enough, the HORT Alliance will request a special initiative to focus on horticultural-specific interests in a "sectoral agreement."[235]

## V. CONCLUSION

Provisions of the federal marketing order and the URAA conflict with one another, resulting in hardship for the California raisin farmer. If domestic raisin farmers cannot participate effectively in an international market, then the possibility of the United States withdrawing completely from the WTO and the subsequent consequences of such a decision must be examined.

The benefits of the United States not being a WTO member must be balanced against the burden of not having the advantages of world trade. The United States is among the top producers and exporters of raisins produced each year in the world market.[236] When the United States exports raisins, it reduces its surplus, along with making more profit from foreign markets than it would have, if the raisins were not exported at all.

If the United States chose, instead, to withdraw from the WTO, the United States would lose the benefits of importing many commodities that are not generally produced domestically, such as tropical fruits.[237] The United States would also be disadvantaged by removing itself from the WTO because there are products that the United States can import

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[230] HORT Alliance (Aug. 2003), *at* http://www.hortalliance.com/news.aspx (last visited Jan. 29, 2005) (on file with the San Joaquin Agricultural Law Review).

[231] *Id.*

[232] *Id.*

[233] *Id.*

[234] *Id.*

[235] *Id.* (a *Sectoral Agreement* is a negotiating concept originally introduced by the United States that disciplines trade beyond the framework of the agreement).

[236] Outlook In Selected Countries, *supra* note 1.

[237] Telephone Interview with Rayne Thompson, *supra* note 75.

much more cheaply than it can produce domestically, such as crude oil.[238] The United States also benefits from world trade by having the ability to export surplus raisins to foreign markets. The likelihood of the United States withdrawing from the WTO is minimal.[239] If the United States did withdraw from the WTO, however, it would not be giving up all trade in the world economy, because the United States is currently committed to free trade agreements and bilateral agreements.[240]

Although the URAA's imposition of different standards on countries, depending on factors such as each individual country's wealth and economic status, causes disadvantages to the United States raisin industry, the United States would lose much more if it gave up all trade in the world economy.

The provisions of the HORT Alliance should be adopted in order to reform market access rules and harmonize tariffs to the level resembling that of the United States.[241] If adopted, the provisions which the HORT Alliance proposes would ameliorate current tension between the United States and other raisin-producing countries by creating important reform in the WTO agricultural rules. The adoption of the HORT Alliance would effectively remedy discrepancies that burden California raisin farmers.

STACIE L. MELIKIAN

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[238] *Id.*

[239] *Id.*

[240] World Trade Organization, *10 Common Misunderstandings about the WTO, at* http://www.wto.org (last visited Mar. 5, 2005) (on file with the San Joaquin Agricultural Law Review).

[241] HORT Alliance, *supra* note 230.