Contractual Frameworks and Inter-firm Co-operation in the Agricultural Sector

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I. – INTRODUCTION

In recent years, the most meaningful expression of the industrialisation process of the agricultural sector has been represented by the growing development of "*contract farming*": contracts and vertical integration now govern the production and marketing of most agricultural products.

Indeed, a well-managed out-grower system through contract farming is an effective way to coordinate and promote production and marketing in agriculture.

In particular, the circulation of basic agricultural products (food or non-food) from farmers to other operators interested in buying them (wholesalers or retailers) does not refer to produce placed on the spot market, but is based on contracts established in advance of the growing season.

According to a vast body of literature, *contract farming* (or production contracts, or out-grower schemes) can be defined as a system for the production and supply of agricultural and horticultural produce by farmers or primary producers under advance contracts. The practice of contract farming entails the contractor providing farmers with improved seed, technical advice, in-kind credit, and market services. Farmers produce a specified quantity and quality of crop that is sold exclusively to the contractor, usually at a pre-determined price.

The relationships between farmers and the buyers of their output may take three main forms. Spot markets are governed by immediate market transactions with no prior or post-purchase commitments on the part of buyers or suppliers. Buyers have no prior involvement in terms of what is produced, when it will be available for sale and the means of production. At the other

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extreme, there is vertical integration where at least two stages of the same supply chain are owned by the same actor, for example, a milk processor that also owns a dairy farm. In between these two extremes, there are various forms of vertical co-ordination, of which contracting is the most common. Buyers and suppliers remain as distinct, separate actors but agricultural production is supervised by pre-arranged terms. Contracting is therefore a *quasi vertical integration*, an intermediate institutional arrangement which gives buyers the ability to influence and partially control the production process without owning or managing the farms directly.

Under these contracts, potential buyers secure a network of suppliers of raw materials and, at the same time, promote the modernisation of agricultural structures through the supply of particular inputs (technologies and knowledge), while orienting the farmers' productive choices.

There are many factors that have contributed to the development of these contractual relationships that are typical of the modern agro-industrial and food system and which structure the chain relationships between agricultural and industrial operators.

These factors have also been clarified and analysed by contemporary institutional economics and by the so-called "hybrid" governance structures theory.

According to this theory, transaction costs and imperfect information determine the structure of agrarian institutions. In particular, the traditional spot markets – providing signals that can lead to efficient production – are still advantageous for the marketing of many farm products. Public and private investments have supported spot markets in the past by designing market institutions, providing market pricing and supply information, identifying marketable attributes, developing attribute measurements, and linking prices with those attributes. In many cases, spot markets operate efficiently.

The development of contract farming for its part has been promoted by those industries interested in the mass purchase of basic agricultural commodities, both to reduce transaction costs linked to the search for suppliers of raw materials and, above all, to orient the agricultural supply itself to the more and more specific productive needs of industries that process basic agricultural products into food.

At the same time – given the lack both of an adequate system to raise farmers' awareness of scientific and technological developments and of food consumers' requirements, and of a satisfactory credit market – contractual farming has favoured the transfer of technologies and of technical–economic information to farmers and boosted the development of specialised monocultures. In particular, they have allowed farmers:

(a) to access credit to modernise their productive structures in order to adapt them, through suitable investments, to the specific needs of the industrial processes;

(b) to tap into information and knowledge about contemporary manufacturing processes;

(c) to adapt their productive choices to the real needs of final consumers.

In the stock and poultry farming sector, the promotion of contracts has been favoured by the feed enterprises, which operate upstream of the agricultural activity and which are interested in creating, first of all, a network of operators to whom they can sell their intermediate products, essential to farming.

Recourse to these contracts has proved useful, also to the agricultural operators, for other specific reasons: they are linked, first of all, to certain structural characteristics of the agricultural markets. In fact, agricultural markets are particularly prone to fluctuations both in product prices and in how the supply itself is absorbed.

Due to the biological and natural character of the agricultural productive processes, agricultural supply is inherently inelastic and unresponsive to variations in demand. On the other hand, the demand for food itself is likewise inelastic as it always depends on the satisfaction of consumers' nutritional needs, which are relatively stable.

This means that, in principle, since agricultural production is subject to fluctuations caused by natural events and climatic trends, farmers run the risk, in the event of abundant and plentiful production, of very low prices or even of not being able to sell their entire output, which is often highly perishable.

By stipulating contracts before the final product has come into existence, farmers can guarantee both the sale of their entire future production and, in many cases, obtain a price not influenced by the market's fluctuations.

If the primary effect of contracting is to reduce the growers' risks, farmers frequently obtain prices in excess of the average market price for some commodities. This happens because farmers supply buyers with commodities with uniform or special attributes, often entailing higher production costs, or because they guarantee a specified quantity of a product at a specified time.

Moreover, in the absence of a system that facilitates the spread among farmers, even small ones, of much of the most advanced technical knowledge and information about qualitative changes in consumer demand, such contracts give farmers the benefit of services that they could not otherwise have accessed and thus help them to grow.

The markets for some of the inputs required to produce such crops often fail, but grower-processor contracts have the potential to resolve such market failures. Therefore, the institution of contract farming allows producers to diversify their productive activities. In addition, small rural producers who lack the technical knowledge required to produce cash crops can often obtain such knowledge when the processor they contract with provides agricultural extension services as part of its supervision activities.

All in all, the main function of contract farming is to facilitate the transformation from subsistence to commercial farming; contract farming is essential for the growth and development of the agro-processing industry; contract farming functions as an institution to address market failures associated with product attributes in the globalised market.

The so-called *contract farming* area embraces a variety of contractual institutions, starting from the simplest which, in legal terms, corresponds to the simple sale of future goods with certain specific technical and qualitative characteristics.

In general terms, it can be stated that the basis of such an arrangement is the farmer's commitment to provide a specific commodity in quantities and at quality standards determined by the purchaser. Agro-industrial firms commit to purchase the commodity at agreed prices and to support the farmer's production by providing inputs (seed, fertilisers and pesticides) on credit and technical advice (extension services).

In this matter, the legal literature has accepted the distinction between *Market Specification Contracts*, *Resource Providing Contracts and Management and Income Guaranteeing Contracts*. The distinction refers to the object of the economic operation and, in particular, to the different areas of risk bearing upon the farmer and to the extent of interference suffered by agricultural operators in making business decisions.

In particular, the *market specification contract* is simply an agreement by a buyer to purchase a farmer's output, so long as the latter presents the qualitative characteristics requested by the buyer. In this contract, the grower and the buyer agree on terms and conditions for the future sale and purchase of the crop or livestock.

In the *resource providing contract*, the buyer, in addition to agreeing to purchase a seller's output, also agrees to supply selected inputs, including, at times, land preparation and technical advice. In this case, the buyer provides goods and/or services to the farmer, such as credit, physical inputs and technical advice. These goods and services are known as *contract support measures* and in return for their provision buyers typically specify the minimum output quantities required and set quality thresholds.

Lastly, under a *management and income guaranteeing contract*, the grower agrees to follow recommended production methods, input regimes, and cultivation and harvesting specifications. In its turn, the buyer participates in the production decisions, such as specifying input use and provision of resources and, in some cases, guarantees a minimum income to the farmer. In fact, especially in the contractual system recently established in the breeding sector, processors and integrators contract with growers for services, not for animals. In this case, the contractors provide growers with animals and many inputs, and growers provide labour, energy, and capital.

On the other hand, the contractual operation may appear complex and elaborate because, in some circumstances, the integrator does not provide inputs, services and credit to the farmer directly, but forces the latter to obtain these from other economic operators with whom it is linked: where this happens, a variant of the contract farming model arises.

II. – SPECIFIC RISKS OF CONTRACT FARMING

The out-grower system through contract farming reduces risk and uncertainty for both parties as compared to buying and selling crops on the open market. Of course, if the market functions well, the importance of contract farming is relatively limited.

The out-grower system is based on the substantial inequality of the relationship between the parties and on the stronger position of the agro-industrial enterprises as compared to that of the growers. The out-grower system is viewed as essentially benefiting firms by enabling them to obtain cheap labour and to transfer the risks to the growers.

First of all, this is an agreement between unequal parties: on the one hand, we have companies, government bodies or individual entrepreneurs and, on the other hand, economically weaker farmers.

Secondly, the advantage to farmers in terms of risk reduction linked to the fact that they can place their full agricultural output on the market and shield themselves from price fluctuations at the time of the sale may be offset by:

(a) the costs that the operation imposes on them through the supply of production factors, services, credit, etc.
(b) new risks linked to the quality of the received inputs compared to the final outcome of the productive process and to disease and death of the livestock even where the animals under contract are not the farmer's property.
(c) the varying length of the investments required to adapt productive structures to the duration of the contract.

The aforementioned distinction as to the content of contracts highlights the fact that farmers contractually bind themselves to perform certain actions during the manufacturing process in accordance with cultivation and farming practice (in general, obligations "to do"), defined on the basis of indications and directives coming from the contractual counterparty, to which a right to inspect the farm with its own technicians and representatives is often granted.

It is often necessary for agro-industrial enterprises to monitor the agricultural structures both to verify that the inputs provided to the farmers are only used as stipulated in the contract and to prevent farmers from selling part of the production contractually intended for the industrial enterprise to third parties.

All in all, the farmers have a duty not only to deliver the production under contract, such as in a sale. Obligations "to do" in respect of the manufacturing process also add to this obligation "to give".

As a result, the physiological level of the risks normally bearing on the seller, and on the agricultural producer in particular, is altered with reference both to the selling price of its products and to the purchase price of the production factors. Hence the widespread opinion that these contracts induce farmers to exchange price risks in the market for unexpected contract risks.

It is true that the buyer of the agricultural products must not only pay for the product, but also has to provide the agricultural producer with the services, input and credit necessary for the manufacturing process. However, on the one hand, the buyer dictates the operational methods that the farmer must follow and, on the other hand, the buyer bears none of the economic risks attending the manufacturing process, which fall on the farmer alone.

However, it should be borne in mind that these contracts are offered on an adhesion basis, often containing unfair provisions that reflect the unequal bargaining power of the large processors and the much smaller producers. For instance, production contracts often use unfair systems to determine how producers are paid.

Other uncertainties derive from the termination clauses: short-term contracts or a withdrawal clause in favour of the industrial enterprise conflict with the long-term investment that the farmer must make, on the strength of expectations of a lasting contractual relationship.

Yet further uncertainties concern the way in which the weight and quality of the farmer's products are checked.

Lastly, the prevalence of mandatory arbitration clauses keeps disputes between producers and processors out of court, forcing the former to litigate before private arbitration panels that can be expensive and biased, and offer little chance of meaningful appeal. Furthermore, particularly in the North American experience, one of the most unfair terms imposed on producers in production contracts is the non-disclosure clause. Such clauses debar producers from disclosing their production contracts to others, effectively preventing producers from seeking outside advice on their contracts, or from comparing their contracts with those of other producers to ascertain that they are getting a fair deal.

III. – DISCIPLINARY MODELS: THE FRENCH AND NORTH-AMERICAN EXPERIENCES

Contract farming has for a long time now been the focus of attention of many legislators. Their task is to find a regulation that will remove the distortions created by the disparity in bargaining power between the contractual parties and correct the imbalances that may place the farmer at a disadvantage, without jeopardising the bargaining process itself.

In general and synthetic terms, the establishment of precise rules to regulate such contracts rests, first of all, on the preliminary identification of the criteria that must be fulfilled in such transactions. In this context, there exist two fundamental models, which distinguish between land cultivation contracts and animal husbandry contracts, in which it is definitely easier to integrate the primary sector and other economic sectors.

The first model can be traced back to the French legal experience. Since 1964, France has introduced a specific regulation for the *contrat d'intégration*, in the framework of a broader legislative effort intended to regulate the *économie contractuelle,* that is, the relationships existing in the food-farming system between farmers and their counterparties.

As for the *contrat d'intégration,* Article 326-1 of the *Code rural* requires:

(1) mutual performance between the parties so that, against the sale of the agricultural product by the farmer, the industrial operator is bound to meet

obligations in respect of products and services other than the mere payment of the price of the agricultural product;

(2) obligations "to do" on the part of the agricultural operator beyond the mere payment of the price of the produce.

Article 326-2 of the *Code rural,* introduced in 1980, specifies, following intervening case-law, that where animal husbandry is concerned, the transfer of ownership of the agricultural product from the farmer to the integrator is not essential. The breeder's fundamental performance may also be solely to provide a service in terms of breeding, fattening and producing foodstuffs of animal origin; at the same time, the rule expressly recalls the farmer's duty to comply with the rules set by the other party about breeding, supplying production factors and circulating the finished product.

French legislation also requires the contract, which must be in writing, to establish the nature and quality of the mutual deliveries of products and services, as well as the relationship between, on the one hand, the fluctuation of prices of the supplies made or received by the farmer and, on the other hand, the term, renewal, revision and termination of the contract. In the event of infringement of this provision, the contract may, at the request of the farmer alone, be declared void.

The solution adopted in France is essentially aimed at ensuring preventive transparency to the most important profiles of the operation. This helps to reduce the information deficit that may afflict the farmer, who is often subject to general conditions of contract, if not to forms unilaterally prepared by the other party. More specifically, the French regulation does not aim at modifying the economic balance of the exchange, which is left to the free will of the parties. Rather, it seeks to ensure in advance that the most important profiles of the contract are clearly set out in the text so that the farmer may correctly estimate the margin of risk of the economic transaction he is about to conclude.

Ultimately, it is a matter of indifference to French law whether the contract, provided it is concluded in accordance with the law, is profitable to the farmer or not. Conversely, the need to protect the farmer emerges when, once the contract has been declared void at his request, it is necessary to regulate the effects of restitution between the parties.

All in all, the French model does not set out to discourage the conclusion of such contracts. It does not impose binding clauses on the parties, being aimed merely at defending the farmer by ensuring that the contract is concluded in a correct and transparent manner.

However, the regulation does not always live up to its aim of protecting farmers.

Firstly, the criteria adopted to fix the price of performance often leave margins of uncertainty and suffer from a lack of clarity; moreover, it is to some extent impossible for the farmer, when stipulating the contract, fully to assess the cost of the undertaking in terms of his obligations "to do".

In fact, while the farmer can know in advance both what the price of the fertilisers or pesticides he must buy from the counterparty and the price of the final product he will obtain will be, he cannot know in advance how much of these he will need. Yet the integrator is entitled to decide, in the course of the relationship, *i.e.*, during the lifetime of the manufacturing process, the processing cycles which the farmer will be required to carry out on his land.

Moreover, in the animal husbandry sector, the payment due to the farmer is often linked to the weight gain of the animals that remain in the property of the integrator, whereas the risk of the animals dying or becoming unusable due to illness lie squarely with the farmer: the fee may not be calculated in advance or be calculated approximately (and imprecisely), – especially when the results depend not only on the farmer's efficiency but also on the quality of the feedstuffs provided by the industrial enterprise, the cost of which is generally charged to the breeder.

In recent North American experience, a different model emerges.

In particular, in 2001, sixteen state Attorneys General (Colorado, Indiana, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Vermont, West Virginia, Wisconsin and Wyoming) proposed the adoption of the *Model Producer Protection Act*. In turn, some states (Arkansas, Georgia, Illinois, Iowa, Kansas, Minnesota, and Wisconsin) have passed some legislation regulating production contracts.

As concerns the identification of production contracts, the North American legislation focuses not so much on the structure (reciprocity of performance between the parties) as on the functional element, represented by the co-operation of the parties in the agricultural manufacturing process, albeit always characterised by the fact that the "contractor has, or exercises, some control or direction over the production process" (Illinois law).

It should also be mentioned that in North America (and in Spain), recourse to production contracts is prevalent in the animal husbandry sector; moreover, in this sector, the regulation adopted in some states coexists with the federal regulation, dating back to the *Packers and Stockyards Act* (recently updated by the *Farm Bill*), which contains some provisions aimed at protecting breeders from the abuses of their contractual counterparties.

On the other hand, the economic relevance of the conflicts opposing the industrial giants and the breeders is highlighted by the circumstance that a proposal to review the federal regulation, recently advanced by the *Grain Inspection, Packers and Stockyards Administration,* was abandoned by the Obama administration under strong pressure from agribusiness.

This second model in some ways echoes the French model. In particular, the North American regulation (like the regulation introduced in some Spanish regions for specific contracts) confirms the need for the contract to be in writing and to contain express provisions on some of the most important profiles of the transaction. This means that the number of binding clauses has been increased: *e.g.*, the rules relating to the way in which the animals' growth is monitored, the terms of deliveries, disputes about stipulated product quality, the inclusion of arbitration clauses.

Where the American regulation innovates is in the fact that it aims not only at removing the information imbalance which may favour the strongest contracting party, but is also intended to intervene more efficiently in favour of the farmer by fixing rules that cannot be derogated from: for instance, the withdrawal guarantee for farmers, and the inclusion of general clauses such as good faith that already exist in the Uniform Commercial Code, so that, in case of a lawsuit, the parties' conduct in performing the contract can be evaluated.

Moreover, in some cases, specific rules have been included relating to the duration and renewal of the relationship, especially when the farmer has made specific investments to adapt his productive structure to the needs of the industrial firm.

IV. – COLLECTIVE BARGAINING IN THE AGRI-FOOD CHAIN AND CONTRACT FARMING: THE FRENCH MODEL

Ultimately, the most recent contract farming legislation affords more effective legal protection to farmers with regard to single contracts than does the French model. Nevertheless, there is no denying that the normative approach of the French legislation is more satisfactory overall.

To begin with, it is the only legislation which places the need to regulate, at the microeconomic level, the bargaining process between farmers and the industries interested in the purchase of basic agricultural products in a broader and more systematic context. It is intended also to enhance and regulate the collective phenomena that characterise transactions in the agri-food system.

In this regard, one need only recall that the "mass" nature of vertical integration contracts in agriculture has favoured the creation of associative structures between farmers aimed at strengthening their bargaining powers: as a rule, farmers are the weaker contractual party in this area.

On the other hand – and this is highlighted by the experience of the labour unions in the rise of the modern agro-industrial system –, such farmers' associations are not regarded with disapproval even by the industrial world.

First of all, the presence of many small farms may represent a disincentive both to the modernisation of manufacturing activities, in general, and to the stipulation of integration contracts, in particular: this is due to the high costs to the industries of stipulating such contracts and of monitoring individual transactions.

It is not by chance that, for this reason, in many developing countries, many industrial enterprises prefer to avail themselves of an intermediary operating as an interface between themselves and the individual farmers dispersed across the territory.

From this point of view, the establishment of farmers' associations may, on the one hand, promote the homogenisation of the agricultural supply, the diffusion of information and of productive methods and, on the other hand, favour the conclusion of integration contracts by the enterprises. In other words, farmers' associations are a fundamental instrument to build a modern agro-industrial system besides playing a special role also in the field of contractual integration.

Before taking a closer look at the co-operative method, which lies at the heart of agricultural association, this analysis of contract farming must first be completed. In particular, it is necessary to refer to the case in which the stipulation of individual contracts is preceded by a collective bargaining process involving agricultural producer organisations.

Only the French legislation features a specific regulation that favours producer associations and collective bargaining between farmers and potential industrial buyers.

First of all, the existence of a regulation for individual integration contracts mentioned earlier represents a tenet in the protection of farmers: collective bargaining can only improve the regulation already introduced by the legislator for individual contracts.

Secondly – in order to encourage farmers to form alliances, since they share the same interests as opposed to the interests of industrial enterprises – the French regulation establishes that collective bargaining is mandatory when an industrial enterprise stipulates with individual producers a number of contracts higher than the number established by the Minister for Agriculture or when a request for such bargaining is made by two thirds of the contractually bound agricultural producers.

In that case, the collective bargaining must comply with the contractual models, if any, approved by the Minister for Agriculture.

Ultimately, the French model appears to offer a circular link between the collective bargaining experience – which comes into play at the level of individual industrial enterprises – and the introduction, by the Minister for Agriculture Minister, of contractual schemes for individual sectors destined to have general relevance.

With respect to these schemes, Article 326-5 of the *Code rural* specifies that they must give "*les garanties minimales à accorder aux exploitants agricoles*" and, in so doing, they must contain, among others: price-setting criteria between the parties; the term of the contract; the volume of production and its cycles; the compensation due if the clauses are not respected.

The same article also provides that any clauses that conflict with the legal model are void and are replaced by those stipulated in the legal scheme.

Without going into detail, it may be noted that the French legislation not only removes the information imbalance that might hinder farmers in their bargaining, but it also better offsets the farmers' loss of economic independence in concluding vertical integration contracts.

V. – AGRICULTURAL PRODUCER ASSOCIATIONS

Economic associations between agricultural producers represent one of the most significant expressions of the contractual relationship that structures our modern agri-food system: it extends beyond the operative area of contract farming.

As previously noted, agricultural producer associations are considered an essential tool in correcting the operative failure of agricultural markets.

In all the countries with a market economy, agricultural producer associations receive favourable treatment under the antitrust regulations (see the North American *Capper Volstead Act* and European Regulations 1234/2007 and 1184/2006). In principle, this exempts agricultural producer associations from the ban on anti-competitive agreements provided they are composed only of farmers in the strict sense.

In the United States, agricultural producers may "act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged." In particular, "such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes" and may, therefore, also set the sale price of the agricultural products.

Moreover, still in the United States, the favourable treatment of agricultural producer associations is completed by the *Agricultural Fair Practices Act* of 1967 aimed, on the one hand, at protecting these associations and individual producers from discriminatory behaviour on the part of the industrial enterprises and, on the other hand, at preventing the associations themselves from discriminating against individual farmers who do not wish to join.

Agricultural producer associations are established by means of a range of legal instruments depending on their respective goals and in accordance with the farmers' real investment possibilities.

Some distinctions may be made in this regard that reflect the European experience as well as the North American reality.

As to the functions that such associations intend to pursue, basically a distinction must be made between organisations that only exercise a normative role and those that also play an operative role in the market.

Producer organisations of the first type essentially deal with establishing rules of conduct for the manufacturing process, techniques to be applied, etc., which the members undertake to observe. As such, they favour the homogenisation of both the manufacturing process and the products, and provide their members with information and assistance by standardising the terms of preparation and sale of the agricultural products. They may also stipulate collective agreements with the enterprise or enterprises interested in buying their members' products. In the interest of their members, the associations not only set some of the clauses which will be contained in the contracts stipulated by individual members but, above all, set the sale price of the product.

The *bargaining association,* which limits its activity to negotiating prices and other terms of sale for its members, has minimal capital needs: in many cases, these associations are constituted as co-operatives, usually with an "open" membership. Producers can increase their incomes through the bargaining process without a substantial equity investment.

The need to invest and therefore to involve its members becomes more marked if the association intends also to provide its members with the services and goods needed for their productive activities. In other words, the more an association is involved in the manufacture and distribution of farm supplies (or food products), the larger the equity base it is likely to need.

Organisations of the second type, *i.e.*, agricultural marketing co-operatives, are established by farmers to undertake the transformation, packaging, distribution, and marketing of farm products (both crop and livestock).

Both the North American and European legislation maintain the favourable antitrust treatment for these organisations, even if they market agricultural products from non-member producers. However, as the Capper Volstead Act expressly states, such associations may not deal in the products of non-members to an amount greater in value than that derived from their handling of members' products.

In many cases, these organisations operate as agents for the farmers, where the farmer retains ownership in the product until the sale. In others, the organisation takes title to the products and the sale is actually made between the marketing co-operative and the buyer.

It is clear that, whether or not the association takes title to the goods, it can use the goods as collateral to obtain financing. In many statutes, agricultural co-operatives that market or process members' agricultural commodities benefit from special, statutory marketing contract provisions that are unique to agricultural co-operatives. These statutes authorise the co-operative to enter into agricultural marketing contracts that specifically authorise sums for, or methods to establish, liquidated damages for a breach of contract by a member selling and delivering or consigning commodities to the co-operative. Moreover, in the event of a breach of contract by a member, the co-operative can also benefit from specific performance.

There is no doubt that *agricultural marketing co-operatives* are better placed to protect farmers in the bargaining stakes than are the *bargaining associations*, but they need a stronger financial structure.

In this respect, both the American and the European legislation favour organisations constituted by farmers only, even if they have capital and even though the principle of "one man one vote" may not necessarily be in force.

However, the actual success of economic associations between agricultural producers depends on whether the collective structures can function as real enterprises. To do so, the co-operatives must shift their strategies away from the traditional model – geared to maximising the volume handled – to the goal of ensuring only the volume of production that can be processed and sold consistently at a profit. This entails, among other things: (1) the need to move from an "open" membership to membership restricted to what is necessary to guarantee the desired production level; (2) the need for each member to be entitled and obligated to deliver a fixed quantity of product each year; (3) the need to operate on the basis of an yearly production plan and to improve product quality.

While in some cases, organisations have admitted members other than farmers with a view to strengthening their capital base, such organisations do not benefit from the general waiver of antitrust regulations.

In the end, the specific characteristics of each agricultural market notwithstanding, the transition from *bargaining associations* to *agricultural marketing co-operatives* is manifestly linked to the process of re-structuring the agri-food system.

It is not surprising, then, that the next step is the emergence of *inter-branch organisations,* in which both farmers and industrial enterprises are represented. Here, the regulation of agricultural product transactions no longer relies on collective bargaining between autonomous and distinct associations, but on negotiation in manners proper to these new associative structures.

However, it must be borne in mind that the law as yet only admits such structures sparingly, and very cautiously (*e.g.*, in European legislation), as questions remain in terms of competition and the ban on anti-competitive practices.

VI. –CONCLUDING REMARKS

This brief presentation of the principal contractual relationships emerging in the agri-food chain has sought to highlight the complexity of an issue where the needs of the industrial world in search of agricultural products clash with the realities of a socially and economically weak agricultural sector as found in many developing countries.

Indeed, the development of economic relationships between farmers and agro-industrial enterprises pre-supposes not only an adequate normative background but, above all, the presence of an effective overall legal system and the means of ensuring observance of the law.

On the other hand, the contractual regulations framed in some international models – such as the UNIDROIT Principles – require clarification in order to provide adequate answers to the information gap and unequal bargaining power, which still place farmers in a position of undoubted weakness compared to their industrial partners.

The same applies to the contractual instruments that promote co-operation between farmers, starting from the models outlined above.

Without public financial support, it is extremely unlikely that a modern, economic form of "associationism" can take off in countries where farmers are socially and economically weak and where bargaining power is neatly tipped in favour of their contractual counterparties.