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BREXIT AND AGRICULTURE: IMPLEMENTING A NEW LEGAL FRAMEWORK FOR
AGRICULTURAL SUPPORT

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Abstract

Brexit has the capacity to impact heavily on the agricultural sector across the United Kingdom in that it is a sector which has been both in receipt of substantial expenditure under the Common Agricultural Policy and subject to a pattern of close regulation at European Union level. This article will explore the legal implications for post-Brexit agricultural support, proceeding in three stages. First, there will be an outline of the current structure of the sector, with particular reference to its diversity in terms of physical landscape, operational scale and legal foundations. Secondly, there will be discussion of emerging policy within both central United Kingdom government and the devolved administrations. In this context, specific attention will be directed to the likely extent of funding and the proposed drive towards higher standards in environmental protection and animal welfare. And, in each case, account will also be taken of specific implications which flow from overarching World Trade Organization rules. Thirdly, there will be consideration of the potentially difficult issues which arise as a result of agriculture being a devolved matter, different policy imperatives already becoming evident across the constituent parts of the United Kingdom. For the present, the prospect is that a bespoke support regime will survive Brexit and, in this sense, agricultural 'exceptionalism' will continue. However, the more precise form of such a regime remains as yet work in progress and its realisation will present considerable challenges not only in political terms, but also by reason of the complex legal geometry in which World Trade Organization rules and the constitutional rights of the devolved administrations are weighty factors.

Key Words: agriculture, Brexit, support policies, World Trade Organization, devolution

1. INTRODUCTION

Brexit has the capacity to generate profound change for the agricultural sector across the United Kingdom (UK). Farmers will no longer be able to look to Common Agricultural Policy (CAP) support, with the extent and architecture of any future funding becoming a matter for domestic arrangements. Admittedly, CAP expenditure now accounts for a significantly lower proportion of the total European Union (EU) budget (39 per cent in 2015, as opposed to 73 per cent in 1985),¹ but there is evidence that it still makes a major contribution to the financial stability of many UK farms. For example, in 2015 total support provided over 30 per cent of agricultural factor income,² with the value of direct payments subsequently increased in 2016 by reason of post-referendum changes in the euro/sterling exchange rate.³ At the same time, farmers will prima facie cease to be subject to a wider EU regulatory regime which impacts not only on primary production, but also across the whole agri-food chain. And the importance of this regulatory regime may be judged by the fact that many of those who have advocated leaving the EU have wanted ‘lighter touch’ governance for agriculture as an early dividend. Indeed, notwithstanding that the National

* For their very helpful assistance in the writing of this article, grateful thanks are extended to: Professor Michael Dougan; Dr Ludivine Petetin; Professor Fiona Smith; and the Editor, who was also most generous in accommodating recent developments.

¹ See, eg, European Commission, CAP post-2013: Key Graphs & Figures - Graph 1: CAP Expenditure in the Total EU Expenditure (March 2017)

https://ec.europa.eu/agriculture/sites/agriculture/files/cap-post-2013/graphs/graph1_en.pdf.

² See, eg, *ibid*, Graph 5: Share of Direct Payments and Total Subsidies in Agricultural Factor Income (2011-15 Average) (March 2017)

https://ec.europa.eu/agriculture/sites/agriculture/files/cap-post-2013/graphs/graph5_en.pdf.

³ Department for Environment, Food and Rural Affairs (DEFRA), Total Income from Farming in the United Kingdom: First Estimate for 2016 (25 May 2017)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/615850/agriacounts-tiffstatsnotice-25may17.pdf.

Farmers' Union (NFU) purposefully adopted an equivocal approach in the referendum debate, it regarded such EU legislation as a hindrance to competitiveness.⁴

This article will explore the legal implications for post-Brexit agricultural support, although attention will also be directed to the wider regulatory regime, since a defining feature of the CAP has been the increasing number of EU obligations relating to the environment, animal welfare and food quality which farmers must observe as a prerequisite to receipt of direct payments, with every indication that such a system of 'cross-compliance' is likely to continue post-Brexit. The exploration of these legal implications will proceed in three stages. First, there will be an outline of the current structure of the sector, with particular reference to its diversity in terms of physical landscape, operational scale and legal foundations. Secondly, there will be discussion of emerging policy within both central UK government and the devolved administrations. In this context, specific attention will be directed to the likely extent of funding and the proposed drive towards higher standards in environmental protection and animal welfare. And, in each case, this discussion will extend to the international trade dimension, since it would now seem to be accepted that post-Brexit the UK will be an individual member of the World Trade Organization (WTO) and individually subject to its rules, which are likely to have profound implications in terms of not only tariffs on imports and exports, but also the degree to which the UK can support its farmers. Thirdly, there will be consideration of the potentially difficult issues which arise as a result of agriculture being a devolved matter. The administrations in Northern Ireland, Scotland and Wales have set out visions which differ materially from those emanating from

⁴ NFU, *EU Referendum: UK Farming's Relationship with the EU* (NFU, 2016), p 20 <https://www.nfuonline.com/assets/61993>. It may also be noted that the NFU Council in the event resolved 'that on the balance of existing evidence available to us at present, the interests of farmers are best served by our continuing membership of the European Union': NFU, 'NFU Council Agrees Resolution on the EU Referendum' (18 May 2016) <https://www.nfuonline.com/news/eu-referendum/eu-referendum-news/nfu-council-agrees-resolution-on-the-eu-referendum/>.

Whitehall, a state of affairs which is consistent with not only the level of diversity already indicated, but also earlier policies (such as on the cultivation of genetically modified crops). Yet, questions may be raised as to the extent to which a truly devolved agricultural policy can be implemented when, under the constitutional settlements, key powers in relation to, inter alia, finance and international trade currently remain vested in central UK government.

II. THE STRUCTURE OF UK AGRICULTURE

On a narrow interpretation, the agricultural sector in the UK may be regarded as a relatively small component within the national economy. Its share of Gross Value Added (GVA) in 2016 was less than 1 per cent, while the total labour force on commercial holdings was only 466,000.⁵ On a broader interpretation, however, the agri-food sector in 2015 accounted for a total estimated Gross Value Added of £109 billion, some 6.6 per cent of national GVA.⁶ Further, it is an area of vigorous international trade: in 2016 exports of food and drink for the first time exceeded £20 billion,⁷ with particular momentum in quality produce, although it may also be noted that it is an area of systemic deficit and that the trade gap in food, feed and drink during the same year widened to £22.5 billion.⁸ Significantly from the viewpoint of post-Brexit trading relations, the bulk of both current imports and exports are to other EU Member States, with those countries being the destination of 96 per cent of exports of sheepmeat and 93 per cent of exports of beef.⁹

⁵ DEFRA et al, *Agriculture in the United Kingdom 2016* (DEFRA et al, 2017), pp 13 and 19.

⁶ *Ibid*, p 11.

⁷ Food and Drink Federation, *UK Food and Drink Exports Break £20bn Barrier in 2016* (20 February 2017) <https://www.fdf.org.uk/news.aspx?article=7745&newsindexpage=1>.

⁸ See note 5 above, p 11.

⁹ House of Lords European Union Committee, *Brexit: agriculture* (20th Report of Session 2016-17) HL Paper 169, paras 22-24; and T Hind, *Brexit: Implications for Agriculture &*

As indicated, beneath these overall figures there exist significant disparities in the structure of agriculture across the UK;¹⁰ and three examples may be provided. First, the variations in physical landscape prompt not only different forms of land use, but also different policy responses in terms of support for farmers. By way of illustration, in Scotland livestock production predominates, reflecting the fact that (as of 2015) there were some 5.3 million hectares of land located on less-favoured area holdings, accounting for 86 per cent of all agricultural land (including common grazing).¹¹ Consistent with this, the livestock sector in Scotland has enjoyed a proportionately high level of subvention: less-favoured area support schemes have received the greatest sums under the Scottish Rural Development Programme 2014-2020; and in Scotland alone there has been specific support for beef and sheep production (until 2015 the Scottish Beef Calf Scheme and now the Scottish Suckler Beef Support Scheme (Mainland and Islands) and the Scottish Upland Sheep Support Scheme).¹² By contrast, agri-environment-climate schemes have formed the major plank of the Rural Development Programme for England 2014-2020, these having especial relevance in the uplands, but also enjoying currency in the lowlands.¹³

Secondly, while the scale of holdings in the UK is large by EU standards, the overall figures again mask regional variations. As of June 2016, the average area of all holdings was 80 hectares, but the average for Scotland was 109 hectares as compared to only 41 hectares

Trade (Agriculture and Horticulture Development Board, 2017)

<http://www.ahdb.org.uk/brexit/documents/SAOSBrexit26Jan17.pdf>.

¹⁰ For a useful survey of these disparities, see, eg, V Gravey et al, Post-Brexit Policy in the UK: a New Dawn? Agri-environment

<https://www.york.ac.uk/media/yesi/researchoutputs/Brexit%20Agri-Environment%20Brief.pdf>.

¹¹ Scottish Government, Agricultural Land Use in Scotland (2016)

<http://www.gov.scot/Topics/Statistics/Browse/Agriculture-Fisheries/agritopics/LandUseAll>.

¹² See note 5 above, pp 72-73.

¹³ European Commission, Factsheet on 2014-2020 Rural Development Programme of England (United Kingdom) (2017), Annex 1

https://ec.europa.eu/agriculture/sites/agriculture/files/rural-development-2014-2020/country-files/uk/factsheet-england_en.pdf.

for Northern Ireland.¹⁴ On the other hand, this average for Scotland would seem to reflect the amount of extensive grazing, as opposed to the presence of numerous large-scale enterprises; and a further comparison which could therefore usefully be drawn would be that between the relative net worth of farms. Taking figures for England alone, these reveal that in 2015-16 the average net worth across all farms had reached £1.75 million, although again there was considerable variation depending on farm type and location, with mixed, mainly owner occupied farms being the most valuable.¹⁵

Thirdly, a fundamental consideration remains that agriculture is a sector where the legal foundations differ substantially by reason of powers having been devolved to the Northern Ireland Assembly, the Scottish Parliament and the National Assembly for Wales;¹⁶ and, in this context, the broad extent of the devolved powers has received express affirmation from both the UK Supreme Court and the Court of Justice of the European Union (CJEU). Thus, the Supreme Court has held that the National Assembly of Wales was competent to introduce a regime for the regulation of agricultural wages in Wales, notwithstanding argument by the Attorney General that in reality the legislation did not relate to agriculture, but to employment and industrial relations (matters which had not been devolved).¹⁷ And the CJEU has confirmed that, in circumstances where the constitutional system of a Member

¹⁴ See note 5 above, p 17.

¹⁵ DEFRA, Balance Sheet Analysis and Farming Performance, England 2015/2016 (12 January 2017)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/582691/fbs-balancesheetanalysis-12jan17.pdf.

¹⁶ Under the Northern Ireland Act 1998, the Scotland Act 1998 and the Government of Wales Acts 1998 and 2006; and see also the Devolution Memorandum of Understanding and Supplementary Agreements (2012). See more generally, eg, J Hunt, 'Devolution' in M Dougan (ed), *The UK After Brexit: Legal and Policy Challenges* (Insentia, 2017) 35; and, for discussion more closely directed to agricultural considerations, eg, A Ross et al, 'The Implementation of EU Environmental Law in Scotland' (2009) 13 *Edinburgh Law Review* 224; and A Ross and H Nash, 'European Union Environmental Law – Who Legislates for Whom in a Devolved Great Britain?' [2009] *Public Law* 564.

¹⁷ *Agricultural Sector (Wales) Bill – Reference by the Attorney General for England and Wales* [2014] UKSC 43, [2014] 1 WLR 2622.

State provides devolved administrations with legislative competence, this would not of itself amount to discrimination contrary to Community law if those administrations were to impose different criteria on the receipt of direct payments by farmers.¹⁸ Accordingly, as the law is presently constituted, there is much scope for legislative differentiation across the UK; and, where EU law has granted discretion for regional implementation, the devolved administrations have shown themselves capable of putting in place regimes which depart materially from that in England.¹⁹ Perhaps the clearest illustration would be provided by their rural development programmes, each separately approved by the European Commission. But a sense of the direction of travel may also be gleaned from the recent decisions by Northern Ireland, Scotland and Wales (but not England) to seek restrictions on the cultivation of GMOs within their territories;²⁰ and a matter of some significance for post-Brexit agricultural policy is that the decisions would seem to have been underpinned by a resolve to celebrate a more environmentally-attuned approach to farming and food: as stated at the time by the Northern Ireland Environment Minister, '[w]e are perceived internationally to have a

¹⁸ *The Queen (on the application of Horvath) v Secretary of State for Environment, Food and Rural Affairs*, Case C-428/07, ECLI:EU:C:2009:458. More precisely, farmers in England (but not Northern Ireland, Scotland or Wales) were obliged to observe obligations relating to visible public rights of way as a condition for receipt of direct payments under the 'cross-compliance' regime imposed by Article 5 of and Annex IV to Council Regulation (EC) No 1782/2003 [2003] OJ L270/1.

¹⁹ See, eg, C Burns et al, *The EU Referendum and the UK Environment.: an Expert Review. How has EU Membership Affected the UK and What Might Change in the Event of a Vote to Remain or Leave?* (2016), p 39.

²⁰ For the implementing legislation, see Directive 2001/18/EC of the European Parliament and of the Council [2001] OJ L106/1, Article 26b (as amended by Directive (EU) 2015/412 of the European Parliament and of the Council [2015] OJ 68/1); and, for the demands of Member States (and regions), see European Commission, *Restrictions of Geographical Scope of GMO Applications/Authorisations: Member States Demands and Outcomes* https://ec.europa.eu/food/plant/gmo/authorisation/cultivation/geographical_scope_en. See also generally, eg, M Geelhoed, 'Divided in Diversity: Reforming The EU's GMO Regime' (2016) 18 *Cambridge Yearbook of European Legal Studies* 20; and M Dobbs, 'Attaining Subsidiarity-Based Multilevel Governance of Genetically Modified Cultivation?' (2016) 28(2) *Journal of Environmental Law* 245.

clean and green image. I am concerned that the growing of GM crops, which I acknowledge is controversial, could potentially damage that image'.²¹

III EMERGING AGRICULTURAL POLICIES

A. General

Following the 2016 membership referendum, the details of post-Brexit agricultural policy have not been swift to emerge. Indeed, at the NFU Conference in February 2017, the then Secretary of State for Environment, Andrea Leadsom, acknowledged that farmers were 'still looking for clarity on specific issues – such as the future of direct payments, the prospects for seasonal agricultural workers, and access to the single market to name just a few'.²² At a broad level, nonetheless, there were soon indications of a preference for free trade and for a 'bonfire of regulations'. For example, she confirmed an intention to continue to maximise trade with the EU, while at the same time making reference to the 'enormous opportunities around the world',²³ and she also saw the opportunity to reduce 'red tape' as a prime post-Brexit objective.²⁴

²¹ BBC, 'GM Crop-growing Banned in Northern Ireland' (21 September 2015) <http://www.bbc.co.uk/news/world-europe-34316778>. See also, eg, Welsh Government, *Genetically Modified Organisms* (2016) <http://gov.wales/topics/environmentcountryside/farmingandcountryside/plantsseedsbio technology/geneticallymodifiedorganisms/?lang=en>; and see further, eg, J Hunt, 'Ploughing Their Own Furrow: Subnational Regions and the Regulation of GM Crop Cultivation' (2012) 13 *Cambridge Yearbook of European Legal Studies* 135.

²² Rt Hon Andrea Leadsom MP, 'Environment Secretary Speaks at NFU Conference' (21 February 2017) <https://www.gov.uk/government/speeches/environment-secretary-speaks-at-nfu-conference>.

²³ Rt Hon Angela Leadsom MP, *Farmers' Weekly* (17 October 2016)

²⁴ Rt Hon Angela Leadsom MP, 'Environment Secretary Sets out Ambition for Food and Farming Industry' (4 January 2017) <https://www.gov.uk/government/speeches/environment-secretary-sets-out-ambition-for-food-and-farming-industry>; and see also The Guardian, 'Andrea Leadsom Promises Brexit Bonfire of Regulation for Farmers' (4 January 2017).

In addition, the outlines of future agricultural support regimes could be detected. Consistent with earlier policy documents,²⁵ however, there was less than enthusiasm for the continuation of direct payments to farmers on an area basis, with instead a growing expectation that farmers would be required to earn receipt of their support, looking to alternative models such as the provision of ‘public goods’ or ‘ecosystem services’.²⁶ Even before the referendum the Minister for Agriculture, George Eustice, stated that:

[t]he UK has always made clear that we would like to move away from subsidies in the long run. However, we recognise that there is scope for using taxpayers’ money to pay farmers for public goods that the market otherwise would not reward, such as protecting the natural environment, supporting biodiversity and improving animal welfare.²⁷

And such sentiments have been echoed thereafter. At the Oxford Farming Conference on 4 January 2017, the same Minister for Agriculture affirmed that funding would remain in place, but in exchange for the provision of ecosystem services (together with support for insurance and productivity);²⁸ and it was his view before the House of Lords European Union Energy and Environment Sub-Committee that ‘rewarding farmers for what they do for the

²⁵ See, eg, United Kingdom Treasury and DEFRA, *A Vision for the Common Agricultural Policy* (London, 2005).

²⁶ On the provision of ‘public goods’ in the agricultural context, see, eg, T Cooper et al, *The Provision of Public Goods Through Agriculture in the European Union* (Institute for European Environmental Policy, 2009); and, on the provision of ‘ecosystem services’ generally, see the *Millennium Ecosystem Assessment* (2005)

<http://www.millenniumassessment.org/en/Index-2.html>. See also generally, eg, C Potter, ‘Agricultural Multifunctionality, Working Lands and Public Goods: Contested Models of Agri-environmental Governance under the CAP’ in JA McMahon and MN Cardwell (eds), *Research Handbook on EU Agriculture Law* (Edward Elgar, 2015) 113.

²⁷ House of Commons Written Answer 221523 (27 January 2015). See also, eg, House of Commons Briefing Paper Number 07213, *Exiting the EU: Impact in Key UK Policy Areas* (12 February 2016) pp 53-55.

²⁸ ‘Farm Subsidy System to be Overhauled Post-Brexit, Says Eustice’

<https://www.ofc.org.uk/insights/farm-subsidy-system-to-be-overhauled-post-brexit-says-eustice>.

environment’ was ‘a legitimate aim of public policy’.²⁹ Similarly, the Government response to the Report of that Committee reiterated that ‘[a] new agri-environment system which encompasses a broad range of the public goods delivered by our farmers, such as our treasured countryside and landscape is a priority’.³⁰

More recently, policy objectives would seem to be coalescing around the receipt by farmers of support for the promotion of high levels of environmental protection and at least one further ‘public good’, namely animal welfare.³¹ In particular, the new Secretary of State for Environment, Michael Gove, announced that, ‘alongside encouraging greater biodiversity and the way in which farmers manage their land, I also want to see higher standards across the board of animal welfare’, with both these being seen as integral to the generation of a ‘Green Brexit’.³² Indeed, this ‘race to the top’ is arguably developing as a defining feature of future UK agricultural policy, although there would also appear to be certain headwinds which such an approach will face. In particular, concerns have been forcefully expressed that it would be difficult to maintain high environmental and animal welfare standards in the event of an influx of cheaper imports produced to lower specifications.³³ And these concerns were heightened following a less than equivocal rejection of the prospect of imports of chlorine-washed chicken by the Secretary of State for International Trade, Liam

²⁹ See House of Lords European Union Committee note 9 above, para 223.

³⁰ <http://www.parliament.uk/documents/lords-committees/eu-energy-environment-subcommittee/Brexit-agriculture/Gov-response-Brexit-Ag.pdf>.

³¹ Although the scope of ‘public goods’ delivered by agriculture may remain contested, there is evident consensus that both high environmental and animal welfare standards so qualify: for a comprehensive discussion of this aspect, see Organisation for Economic Co-operation and Development (OECD), Multifunctionality: Towards an Analytical Framework (OECD, 2001).

³² Rt Hon Michael Gove MP, The Unfrozen Moment – Delivering a Green Brexit (21 July 2017) <https://www.gov.uk/government/speeches/the-unfrozen-moment-delivering-a-green-brexit>.

³³ See, eg, House of Lords European Union Committee note 9 above, paras 125-153.

Fox.³⁴ That having been said, central UK government would, for the present, seem to be stopping short of a more purely ‘public goods’ model as championed by their adviser, Professor Dieter Helm. More precisely, he has advocated that the use of public funds on the purchase of ‘public goods’, directly contracted through public bodies, is to be preferred to the maintenance of existing levels of subvention (even if focus is shifted from the decoupled income support to the environment); and, while he has been clear that farmers may be well placed to secure these direct contracts, he has also countenanced that others may participate in this ‘market’.³⁵ Such a regime would, however, give rise to novel challenges not only in terms of the identification of the ‘public good’, but also in terms of policy implementation and evaluation.³⁶

At the same time, as a perhaps inevitable consequence of the constitutional settlement, early indications of policy have revealed potential tensions between central UK government and the devolved administrations, with the architecture of support regimes again to the fore. By way of illustration, at the Oxford Farming Conference on 4 January 2017, the Minister for Agriculture made reference to a ‘UK framework’, while also emphasising that ‘[w]e need to work in cooperation with the devolved administrations’ - although this was not sufficient to prevent rejoinder by the Welsh Assembly Agriculture Minister that ‘[t]he frameworks have to

³⁴ The Guardian, ‘Media is “Obsessed” with Chlorine-washed Chicken, Says Liam Fox’ (24 July 2017).

³⁵ D Helm, British Agricultural Policy after BREXIT: Natural Capital Network – Paper 5 (1 September 2016) <http://www.dieterhelm.co.uk/assets/secure/documents/British-Agricultural-Policy-after-BREXIT.pdf>. For further criticism of the agricultural support system by Professor Helm, see BBC, ‘Government Adviser Urges Review of Farmers’ Tax Breaks’ (29 July 2017) <http://www.bbc.co.uk/news/uk-politics-40760114>; and, for further advocacy of a ‘public goods’ model, see Tim Breitmeyer, Deputy President, Country Land and Business Association, Oral Evidence to the House of Lords European Union Energy and Environment Sub-Committee (1 February 2017) <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-energy-and-environment-subcommittee/brexit-agriculture/oral/46976.html>.

³⁶ See, eg, A Burrell, ‘Evaluating Policies for Delivering Agri-environmental Public Goods’ in OECD, Evaluation of Agri-environmental Policies: Selected Methodological Issues and Case Studies (OECD, 2012) 49.

be based on agreement between the UK government and devolved regions’ and that ‘[t]his isn't a rewinding back from devolution’.³⁷ In addition, it is of note that the devolved administrations have in general been swifter than central UK government to provide a vision for agriculture post-Brexit: again by way of illustration, in January 2017 the Welsh Government issued its White Paper, *Securing Wales’ Future*, in which farming was accorded high priority, with appeal not only to the need to support the industry, but also to the preservation of languages, culture and traditions, which on several interpretations are regarded as ‘public goods’.³⁸

B. Extent of Funding

As indicated, the CAP accounts for just less than 40 per cent of the EU budget; and, in terms of expenditure specifically in the UK, the total figure for the EU 2016 financial year was €3,927 million. Of those €3,927 million, the substantial majority (€3,121 million) was devoted to ‘Pillar I’ measures (direct payments and market support), ‘Pillar II’ measures (rural development) receiving only €806 million, including national co-financing. Significantly, the Basic Payment Scheme, paid on an area basis and understood to be decoupled from production, accounted for as much as £2,568 million in 2016.³⁹ And it may be re-iterated that, with particular relevance to rural development measures, there were material differences between the constituent parts of the UK, with the focus of expenditure in

³⁷ ‘Farm Subsidy System to be Overhauled Post-Brexit, Says Eustice’ <https://www.ofc.org.uk/insights/farm-subsidy-system-to-be-overhauled-post-brexit-says-eustice>.

³⁸ Welsh Government, *Securing Wales’ Future* (Welsh Government, 2017), p 21. See also, eg, J Hunt and R Minto, ‘So, What About This “All UK Brexit”?’ (30 March 2017) <http://ukandeu.ac.uk/so-what-about-this-all-uk-brexit/>.

³⁹ For these figures, see note 5 above, pp 73 and 77.

England being on agri-environment schemes, as opposed to, for example, support for less-favoured areas in Scotland.

The continuation of this level of support post-Brexit would instinctively have appeared vulnerable. As noted, an antipathy to direct payments under Pillar I was evident in earlier policy documents: thus, in *A Vision for the Common Agricultural Policy* issued in 2005, it was stated that ‘EU spending on agriculture would be based on the current Pillar II and would support these objectives as appropriate, allowing a considerable reduction in total spending by the EU on agriculture and bringing this into line with other sectors’.⁴⁰ Further, the UK has not historically shown a great appetite for Pillar II measures which have required co-financing by the Member State.⁴¹ Nevertheless, early comfort as to future funding was given in a letter from the Chief Secretary to the Treasury to the Secretary of State for Exiting the European Union. This comfort extended to overall levels of expenditure, while also intimating that the legislative framework would, in principle, remain relatively unchanged, the exact wording being as follows:

The Treasury will therefore reassure the agricultural sector that it will receive the same level of funding that it would have received under Pillar 1 of CAP until end of the Multiannual Financial Framework in 2020, alongside considering the options for long-term reform beyond that point. The government will work closely with stakeholders to ensure that funding in the period immediately after exit is used to help the agricultural sector transition effectively to a new domestic policy framework.

These funds will be allocated using the principles of CAP Pillar 1, and we will of

⁴⁰ See note 25 above, p 16.

⁴¹ For the 2015 statistics, see European Parliament, *The Common Agricultural Policy in Figures*, Table V
http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.2.10.html.

course consider the opportunities post exit for making any short-term improvements to the way the system operates once we cease to be bound by EU rules.⁴²

Subsequently, reassurances have become even more expansive, at least as to future horizon for the maintenance of a support regime and its scale. Most notably, there was a commitment in the Conservative Party Election Manifesto that ‘we will continue to commit the same cash total in funds for farm support until the end of the parliament’;⁴³ and this was re-affirmed in the Agreement between the Conservative and Unionist Party and the Democratic Unionist Party (DUP) following the June 2017 General Election, with express recognition of ‘the importance of the agriculture sector to Northern Ireland and the opportunities for growth that exist’: indeed, the Agreement went so far as to identify agriculture as ‘a critical policy area during the EU exit negotiations’.⁴⁴ Accordingly, it could perhaps be argued that a side-wind of the 2017 General Election, and the consequent reliance of the Government on the DUP, has been significantly to prioritise agriculture within the post-Brexit landscape. On the other hand, a structural change in terms of agricultural expenditure will be that, subject to the reassurances mentioned above, budgetary decisions will as a rule be made on an annual basis, farmers no longer being able to rely on the extended EU programming period (with the present period running from 2014 to 2020). And it may further be observed that neither the Conservative Party Election Manifesto nor the Agreement between the Conservatives and the DUP made mention of continued allocation ‘using the principles of CAP Pillar 1’.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/545767/CST_1_etter_to_SoS_for_DExEU_August_2016.PDF.

⁴³ Forward Together: Our Plan for a Stronger Britain and a Prosperous Future – The Conservative and Unionist Party Manifesto 2017, p 26

<https://www.conservatives.com/manifesto>.

⁴⁴ <https://www.gov.uk/government/publications/conservative-and-dup-agreement-and-uk-government-financial-support-for-northern-ireland/agreement-between-the-conservative-and-unionist-party-and-the-democratic-unionist-party-on-support-for-the-government-in-parliament>.

Over and above any such political decisions within the UK, consideration must also be given to the WTO legislative framework which has the capacity to restrain overall levels of funding to farmers. More specifically, the Uruguay Round Agreement on Agriculture (URAA) continues to impose ceilings on the provision of ‘domestic support’, with each WTO member obliged to maintain trade-distorting (Amber Box) domestic support within the Total Aggregate Measurement of Support as determined by reference to their respective schedules;⁴⁵ and, in this context, three aspects may be highlighted. First, the relevant schedule is currently in the name of the EU, without any distinct share in the name of the UK. Secondly, there would not seem to be clear rules as to how the UK, as an individual member of the WTO post-Brexit, might establish its own schedule.⁴⁶ Since UK domestic support at the time of the URAA contributed to the permitted overall ‘Base Total Aggregate Measurement of Support’ for the EU, there is an argument that the UK should be entitled to the ‘return’ of that contribution.⁴⁷ On the other hand, practical difficulties have been identified as to how the precise calculation should be made, including problems in obtaining historic data.⁴⁸ Such historic hurdles would be circumvented if the UK entitlement were instead determined, as suggested by Bartels, by reference to UK receipts from the CAP, ‘calculated as a ratio of UK:EU CAP payments (over a representative period of three years)

⁴⁵ For an explanation of schedules and on the URAA, generally, see, eg, JA McMahon, *The WTO Agreement on Agriculture: a Commentary* (Oxford University Press, 2006).

⁴⁶ For cogent discussion of this issue, see, eg, L Bartels, ‘The UK’s status in the WTO after Brexit’ (23 September 2016) https://papers.ssrn.com/so3/Papers.cfm?abstract_id=2841747; L Brink, ‘UK Brexit and WTO farm support limits’ (13 July 2016) <http://capreform.eu/uk-brexit-and-wto-farm-support-limits/>; A Matthews, ‘Establishing the UK’s non-exempt limit on agricultural support after Brexit’ (29 January 2017) <http://capreform.eu/establishing-the-uks-non-exempt-limit-on-agricultural-support-after-brexit/>; and House of Lords European Union Committee note 9 above, paras 58-69.

⁴⁷ The position would seem less complex if the UK had become a Member State of the EU after the conclusion of the URAA: in which regard, see, eg, the specific increase in Total Aggregate Measurement of Support notified by the EU consequent upon the accession of Bulgaria: WTO, G/AG/N/EU/26 (2 November 2015) Notification of Domestic Support by the European Union for the 2012/2013 Marketing Year).

⁴⁸ See Brink note 46 above.

applied to the EU's total subsidy commitments'.⁴⁹ A consequence, however, would seem to be an entitlement adversely affected by low levels of expenditure on rural development measures over the representative period, but calculation on the basis of current figures has also been foreseen by the Minister for Agriculture, who regarded the logical approach to be a UK entitlement 'based on our allocation of the CAP budget'.⁵⁰ Besides, he also foresaw this to be no more than the exercise of 'a process of technical rectification' for WTO purposes,⁵¹ notwithstanding the possibility that certification of the new schedules of the UK (and the EU) might yet be required from other WTO members, and that such certification might not be forthcoming.⁵²

Thirdly, if the UK were to fail to secure a schedule or were to become entitled to a schedule which permitted only low levels of domestic support, the effects would be mitigated to the extent that subsidies to farmers were delivered through measures which were exempt under the URAA. In this regard, specific attention may be paid to: de minimis support; Blue Box support; and Green Box support. It is provided that the first-mentioned falls outside the calculation by a WTO member of its current levels of domestic support, but the de minimis thresholds are not set high for developed country members, such as the UK: in their case, any product-specific domestic support must not exceed 5 per cent of the total value of production of a basic agricultural product during the relevant year; and any non-product-specific

⁴⁹ See Bartels note 46 above, pp 11-12.

⁵⁰ Rt Hon George Eustice MP, Oral Evidence to the House of Lords European Union Energy and Environment Sub-Committee (8 March 2017), Q 84 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-energy-and-environment-subcommittee/brexit-agriculture/oral/48840.html>.

⁵¹ Ibid.

⁵² Such concerns were expressed by the House of Lords European Union Energy and Environment Committee: see note 9 above, para 69; and the inherent complexities of modifications of WTO commitments have again been illustrated by the recent decision of the Panel in EU – Poultry Meat (China) (WT/DS492/R) (28 March 2017) (relating to EU modifications of tariff concessions in respect of certain poultry meat products).

domestic support must not exceed 5 per cent of total agricultural production.⁵³ Nevertheless, this exemption would seem to offer some scope for potentially trade-distorting measures, including measures which have the capacity to boost production.⁵⁴ By contrast, support would only be exempt within the Blue Box where direct payments were made ‘under a production-limiting programme’,⁵⁵ as under earlier set-aside schemes and livestock quota schemes. For that reason, the Blue Box exemption would not sit easily with a key purpose identified for the Agriculture Bill to implement Brexit, namely to ‘[s]upport our farmers to compete domestically and on the global market, allowing us to grow more, sell more and export more great British food:⁵⁶ indeed, in the Conservative Party Election Manifesto there was express advocacy of a new framework ‘for supporting food production’.⁵⁷

In consequence, the greatest opportunity to secure WTO compatibility for UK domestic support post-Brexit is likely to be Green Box exemption under Annex 2 to the URAA. All Green Box measures must meet the ‘fundamental requirement’ of having ‘no, or at most minimal, trade-distorting effects or effects on production’; and, accordingly, all such measures must meet two ‘basic criteria’, together with policy-specific criteria and conditions, the ‘basic criteria’ being as follows:

⁵³ URAA, Article 6.4(a). In the case of developing country members, the threshold is 10 per cent; and, in the case of least-developed country members, there is no requirement to undertake domestic support reduction commitments.

⁵⁴ See A Matthews, ‘Establishing the UK’s Non-exempt Limit on Agricultural Support After Brexit’ (29 January 2017) <http://capreform.eu/establishing-the-uks-non-exempt-limit-on-agricultural-support-after-brexit/>, last accessed on.

⁵⁵ URAA, Article 6.5.

⁵⁶ The Queen’s Speech and Associated Background Briefing, on the Occasion of the Opening of Parliament on Wednesday 21 June 2017, p 23
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/620838/Queens_speech_2017_background_notes.pdf.

⁵⁷ Forward Together: Our Plan for a Stronger Britain and a Prosperous Future – The Conservative and Unionist Party Manifesto 2017, p 26
<https://www.conservatives.com/manifesto>.

(a) the support in question shall be provided through a publicly-funded government programme (including government revenue foregone) not involving transfers from consumers; and

(b) the support in question shall not have the effect of providing price support to producers.⁵⁸

For the present, the vast majority of support under the CAP is understood to be Green Box exempt by reason of its conforming to both the ‘basic criteria’ and the policy-specific criteria and conditions governing ‘decoupled income support’.⁵⁹ As early as 2011 the European Commission affirmed that ‘[t]oday more than 90% of direct payments are decoupled and qualify for WTO green box (with no or limited trade distorting effects)’;⁶⁰ and, in its latest notification to the WTO (relating to the 2013/2014 marketing year), the EU declared total Green Box support of €68,697.8 million, in respect of which some €31,845.4 million were attributable to decoupled income support, as opposed to total trade-distorting support, counting towards the Current Aggregate Measurement of Support, of only €5,971.7 million.⁶¹ In consequence, if the UK does refocus agricultural support on the delivery of ecosystem services and higher standards of environmental protection and animal welfare, then there would be a demonstrable shift away from current reliance on decoupled income support payable to farmers on the basis of the number of hectares which they farm, with recourse

⁵⁸ URAA, Annex 2, para 1.

⁵⁹ Ibid, Annex 2, para 6.

⁶⁰ European Commission, Commission Staff Working Document – Impact Assessment: Common Agricultural Policy Towards 2020, SWD (2011) 1153, p 32.

⁶¹ WTO, G/AG/N/EU/34, 8 February 2017. That having been said, an element of doubt remains as to whether the Single Farm Payment (and now the Basic Payment and the Greening Payment) do indeed qualify as ‘decoupled income support’: see, eg, A Swinbank and R Tranter, ‘Decoupling EU farm Support: Does the New Single Payment Scheme Fit within the Green Box?’ (2005) 6 *The Estey Centre Journal of International Law and Trade Policy* 47; and F Smith, ‘Mind the Gap: “Greening” Direct Payments and the World Trade Organization’ in McMahon and Cardwell note 26 above, 412.

instead had to different Green Box policy-specific criteria and conditions; and compatibility with these different policy-specific criteria and conditions will be addressed below.⁶²

C. Environmental Protection and Animal Welfare

As has been seen, current central UK government preference in terms of agricultural support post-Brexit would appear increasingly directed towards the promotion of high levels of environmental protection and high standards of animal welfare. In this respect, it may be considered to continue longstanding traditions: as highlighted in the House of Commons Research Paper, *Leaving the EU*, the UK enjoys ‘a heritage’ in habitats protection,⁶³ while a leading role in policy development is perhaps even more pronounced in the area of animal welfare. For example, the UK banned the use of closely-confined sow stalls in the pig sector as from 1 January 1999, whereas it was not until 1 January 2013 that such a ban was imposed by EU legislation, and then only partially.⁶⁴ Further, the UK has been the source of (in the event, unsuccessful) attempts before the CJEU to bolster standards of animal welfare on export;⁶⁵ and a notable feature of the Conservative Party Election Manifesto was that it

⁶² See Section III, C below.

⁶³ House of Commons Library, *Leaving the EU*, Research Paper 13/42 (2013) p 60. For full discussion of this aspect, see, eg, CP Rodgers, *The Law of Nature Conservation* (Oxford University Press, 2013).

⁶⁴ For the relevant legislation, see respectively: the Welfare of Pig Regulations 1991 SI 1991 No 1477; and Council Directive 2008/120/EC [2008] OJ L47/5. It may, however, also be noted that UK was not the first of the current Member States to ban sow stalls (Sweden having largely done so since 1988): see generally, eg, Compassion in World Farming, *The Welfare of Europe’s Sows in Close Confinement Stalls* (2000) <https://www.ciwf.org.uk/media/3818886/welfare-of-europes-sows-in-close-confinement-stalls.pdf>.

⁶⁵ See *The Queen v Ministry of Agriculture, Fisheries and Food, ex parte Hedley Lomas (Ireland)*, Case C-5/94, ECLI:EU:C:1996:205 (export of live sheep to Spain); and *The Queen v Minister of Agriculture, Fisheries and Food, ex parte Compassion in World Farming*, Case C-1/96, ECLI:EU:C:1998:113 (veal crates). See also generally, eg, M Dougan, ‘Minimum Harmonization and the Internal Market’ (2000) 37 *Common Market Law Review* 853.

regarded as a post-Brexit dividend the ability to ‘take early steps to control the export of live farm animals for slaughter’.⁶⁶

That having been said, it must also be recognised that the use of agricultural support mechanisms to promote both environmental and animal welfare standards has already become embedded in the EU regulatory framework for the CAP. In the case of Pillar I, as indicated, the cross-compliance regime now extends to cover a range of statutory management requirements under, inter alia, the Nitrates Directive, the Wild Birds Directive, the Habitats Directive and the EU legislation providing minimum standards for the protection of calves and of pigs, while farmers must also observe a range of standards for good agricultural and environmental condition established at national level relating to, inter alia, environment, climate change and animal welfare.⁶⁷ Moreover, since the 2013 CAP reforms, farmers are now subject to obligations which go beyond cross-compliance in order to secure receipt of the ‘Greening Payment’ for agricultural practices beneficial for the climate and the environment’, this payment accounting for 30 per cent of the national envelope for Pillar I direct payments of each Member State.⁶⁸ More precisely, they must observe rules relating to crop diversification, permanent grassland and ‘ecological focus areas’;⁶⁹ and a matter of note

⁶⁶ Forward Together: Our Plan for a Stronger Britain and a Prosperous Future – The Conservative and Unionist Party Manifesto 2017, p 26

<https://www.conservatives.com/manifesto>.

⁶⁷ Regulation (EU) No 1306/2013 of the European Parliament and of the Council [2013] OJ L347/549, Article 93 and Annex II. On cross-compliance generally, see, eg, D Bianchi, ‘Cross Compliance: the New Frontier in Granting Subsidies to the Agricultural Sector in the European Union’ (2007) 19 Georgetown International Environmental Law Review 817; and European Court of Auditors, Special Report No 8/2008: Is Cross Compliance an Effective Policy? (European Court of Auditors, Luxembourg, 2008).

⁶⁸ Regulation (EU) No 1307/2013 of the European Parliament and of the Council [2013] OJ L347/608, Articles 43-47.

⁶⁹ For recent reviews by the European Commission of the efficacy of these measures, see European Commission, Commission Staff Working Document – Review of Greening After One Year, SWD (2016) 218; and European Commission, Report from the Commission to the European Parliament and to the Council on the Implementation of the Ecological Focus Area Obligation under the Green Direct Payment Scheme, COM (2017) 152.

is that the detailed provisions in respect of crop diversification rules were singled out as an early target for repeal post-Brexit.⁷⁰

Further, specific support for the environment has long been available under the Pillar II. Thus, the current regime includes within its six priorities for rural development the promotion of animal welfare and ‘restoring, preserving and enhancing ecosystems related to agriculture and forestry’,⁷¹ with three specific measures which fall within the latter category being: agri-environment-climate schemes; organic farming schemes; and Natura 2000 and Water Framework Directive payments.⁷² Importantly, all these three measures are understood to go above and beyond the baseline of good agricultural practice which is inherent in cross-compliance obligations, with express provision also to prevent farmers receiving funding for the same actions under both the Greening Payment and rural development regime.⁷³ On the other hand, it may be noted that the 2013 CAP reforms did not see any substantial advances in terms of elevating animal welfare standards.⁷⁴

Accordingly, the current CAP legislative framework delivering support to farmers does contain a considerable range of measures addressing concerns in relation to both environmental protection and animal welfare. Yet there remains a real sense that scheme design could be materially improved post-Brexit and that, in particular, the detailed rules of agri-environmental regimes could be tailored more effectively to conditions pertaining within

⁷⁰ Rt Hon Angela Leadsom MP, ‘Environment Secretary Sets Out Ambition for Food and Farming Industry’ (4 January 2017) <https://www.gov.uk/government/speeches/environment-secretary-sets-out-ambition-for-food-and-farming-industry>.

⁷¹ Regulation (EU) No 1305/2013 of the European Parliament and of the Council [2013] OJ L347/487, Article 5.

⁷² Ibid, Articles 28-30. For general discussion of rural development within the context of the 2013 CAP reforms, see, eg, J Dwyer, ‘Transformation for Sustainable Agriculture: What Role for the Second Pillar of CAP?’ (2013) 2(1) *Bio-based and Applied Economics* 29.

⁷³ Regulation (EU) No 1305/2013 of the European Parliament and of the Council [2013] OJ L347/487, Article 28(3) and (6); Article 29(2) and (4); and Article 30(1), (3) and (4).

⁷⁴ D Ryland, ‘Animal Welfare in the Reformed Common Agricultural Policy: Wherefore Art Thou?’ (2015) 17(1) *Environmental Law Review* 22.

the UK, while there is also a strong perception that the UK enjoys ‘thought leadership’ in this area.⁷⁵ Indeed, before the House of Lords European Union Energy and Environment Sub-Committee, Professor Ian Hodge declared that ‘we do not really need an agricultural policy; we need an ecosystem services policy’, adding that ‘[w]e need to set out thinking that our aim should be to deliver the maximum social value from rural land rather than to recreate an agricultural policy’.⁷⁶ In addition, studies into the current CAP regime have revealed scope for more responsive measures. For example, Hart et al have identified as one possibility the re-design of the CAP ‘as a single integrated set of measures structured in a tiered hierarchy’, since this ‘would provide considerable opportunities to look at agricultural land in a more integrated way than has been the case to date and pursue more sustainable management in a synergistic and streamlined way, whilst giving due weight to targeted approaches’.⁷⁷ Moreover, such an initiative would offer the opportunity to build upon experience with ‘hierarchy’ regimes already gained in England under the earlier Environmental Stewardship Scheme (with its entry level and higher level) and the current Countryside Stewardship Scheme (with its mid-tier and higher tier). On the other hand, the more targeted the approach, the greater is likely to be the administrative burden, which may not sit easily with perceptions that Brexit will generate a lighter-touch regulatory environment.

⁷⁵ See, eg, United Kingdom Government, *Review of the Balance of Competences between the United Kingdom and the European Union: Agriculture* (United Kingdom Government, 2014) para 2.58.

⁷⁶ See House of Lords European Union Committee note 9 above, para 225. Bailey et al have gone further, advocating that ideally the CAP should be replaced by a ‘Common Sustainable Food Policy’ or ‘Common Food Policy’: *Does the CAP Still Fit?*, Food Research Collaboration Policy Brief (Food Research Collaboration, London, 2016) <http://foodresearch.org.uk/does-the-cap-still-fit/>.

⁷⁷ Hart et al, *Learning the Lessons of the Greening of the CAP* (Institute for European Environmental Policy, London, 2016), pp 35 and 58. See also A Matthews, ‘The Future of Direct Payments’ in A Matthews et al, *Research for Agri-Committee – CAP Reform Post-2020 – Challenges in Agriculture: Workshop Documentation* (European Parliament, Directorate-General for Internal Policies - Policy Department B: Structural and Cohesion Policies, Brussels, 2016), 3, pp 65-80.

What would seem clear, in any event, is that post-Brexit the UK will not be obliged to observe EU rules which dictate the proportion of expenditure on, respectively, direct payments under Pillar I and rural development under Pillar II. This will allow funding to flow towards more specific environmental protection and animal welfare measures, effectively privileging what are currently ‘Pillar II-type’ measures, but at the expense of pre-existing entitlement to the area-based Basic Farm Payment and Greening Payment. An important question, therefore, will be whether the more targeted measures will be available to all farmers, who might otherwise face the loss of Pillar I direct payments without compensatory access to alternative support. And, in this context, it is also interesting to note that such redirection of funding could in fact be regarded as an extension of developing EU policy, in that for some time Member States and their regions have been able to transfer a proportion of funds from Pillar I to Pillar II.⁷⁸

Further, when implementing the 2013 CAP reforms, the constituent parts of the UK took divergent approaches. Although all opted for transfers from Pillar I to Pillar II, they have done so in different proportions (the maximum proportion permitted being 15 per cent). In England, the initial decision was to make a 12 per cent transfer, with this percentage being in large part determined by the demand for funds for agri-environmental schemes.⁷⁹ In Wales, the preferred option was an immediate transfer of the maximum 15 per cent, on the basis that the rural development regime in Wales provides ‘essential business support for farming through advice, training and through agri-environment schemes’ and that ‘[i]t supports rural businesses and communities and it is to be developed as a tool for farming and the wider rural

⁷⁸ For the current EU legislation, see Regulation (EU) No 1307/2013 of the European Parliament and of the Council [2013] OJ L347/608, Article 14 (which also, however, for the first time permits ‘reverse transfer’ from Pillar II to Pillar I).

⁷⁹ DEFRA, Consultation on the Implementation of CAP Reform in England: Summary of Responses and Government Response - December 2013 (DEFRA, 2013), paras 6.1–6.18 and 6.50–6.54.

economy'.⁸⁰ By contrast, in Scotland, the transfer was limited to 9.5 per cent, a rate considered to strike 'the right balance of support for our farmers and rural development',⁸¹ while in Northern Ireland there was no transfer at all, albeit by reason of a procedural error.⁸² Accordingly, there is again evidence that funding levels are liable to be driven by a range of regional priorities, with the emphasis on agri-environmental schemes being the greatest in England; and this would also suggest that a 'one size fits all' approach to the implementation of an ecosystems services model may not prove particularly attractive to the devolved administrations, as will be explored further below.

In addition to overall levels of domestic support, WTO rules may also constrain the ability to use subventions specifically to promote higher standards of environmental protection and animal welfare. Under paragraph 12 of Annex 2 to the URAA, exemption is conferred on 'payments under environmental programmes', but the detailed rules would seem to limit these to more targeted measures (as opposed to those which are 'broad but shallow'), since eligibility is dependent upon participation in 'a clearly-defined government environmental or conservation programme'. Besides, the extent to which such payments can operate to transfer resources to farmers may be affected by the requirement that '[t]he amount of payment shall be limited to the extra costs or loss of income involved in complying with the government programme'.⁸³ In consequence, there is arguably little scope to provide an incentive element; and it is of note that the EU legislation no longer provides such an element in the case of agri-environment-climate payments, notwithstanding that this had once been

⁸⁰ Welsh Government The Common Agricultural Policy Reform - Direct Payments to Farmers: Decisions – January 2014 (Welsh Government, 2014), p 12.

⁸¹ Scottish Government Press Release, 'CAP Transfer Set at 9.5 Per Cent' (18 December 2013) <https://news.gov.scot/news/cap-transfer-set-at-95-per-cent>.

⁸² An initial transfer of 7 per cent was proposed, but this was successfully challenged in *Minister of Finance and Personnel's Application* [2013] NIQB 137.

⁸³ See, eg, National Assembly for Wales Climate Change, Environment and Rural Affairs Committee, *The Future of Land Management in Wales* (Cardiff, 2017), paras 104-105.

available in the case of agri-environment payments.⁸⁴ Further, Annex 2 does not as yet contain a bespoke exemption for animal welfare payments, notwithstanding efforts on the part of the EU for its inclusion.⁸⁵ And these potential difficulties have been expressly recognised by the Minister for Agriculture, in the following terms:

Ironically, the single farm payment [now Basic Payment], which is ultimately an area-based, distorting subsidy, technically at the moment qualifies as Green Box, whereas the types of policies that would be more modern, more progressive - payments to get animal welfare outcomes, risk management measures, those types of things - we understand, at the moment, would probably be deemed under the WTO rules as amber box'.⁸⁶

More generally, the provision of support to promote high standards of environmental protection and animal welfare would be all the more vital if the UK were to permit the importation of agri-food products which had been produced to lower standards than those applicable domestically. And definitely there has been a body of opinion to the effect that Brexit offers the opportunity to reduce costs to consumers by lowering or even removing not only tariffs, but also non-tariff barriers of this kind.⁸⁷ However, such an approach has met with opposition from both non-governmental organisations and the industry: for example, in its 2017 Manifesto, the NFU affirmed to the contrary that 'UK farmers want new markets that

⁸⁴ Council Regulation (EC) No 1257/1999 [1999] OJ L160/80, Article 24; and Regulation (EU) No 1305/2013 of the European Parliament and of the Council [2013] OJ L347/487, Article 28.

⁸⁵ See, eg, WTO, European Communities Proposal: Animal Welfare and Trade in Agriculture, G/AG/NG/W/19 (28 June 2000).

⁸⁶ Rt Hon George Eustice MP, Oral Evidence to the House of Lords European Union Energy and Environment Sub-Committee (8 March 2017), Q 84 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-energy-and-environment-subcommittee/brexit-agriculture/oral/48840.html>.

⁸⁷ See, eg, P Minford, 'Brexit and Trade: What are the Options?' in Economists for Brexit, *The Economy After Brexit* (2016) 13 (although also suggesting that farmers should receive deficiency payments).

exploit their proud record of welfare and environmental production standards’, but with an expectation that the central UK Government would recognise ‘these same standards when negotiating new agreements with countries outside the EU’.⁸⁸ More recently, such arguments have revolved around concerns that a free trade agreement with the United States could see the importation of chlorine-washed chicken and hormone-injected beef;⁸⁹ and there is every indication that agri-food production standards will prove to be a contested area both during the Brexit negotiations and long thereafter: indeed, the House of Lords European Union Committee concluded in its Report on Brexit: farm animal welfare:

Our evidence strongly suggests that the greatest threat to farm animal welfare standards post-Brexit would come from UK farmers competing against cheap, imported food from countries that produce to lower standards than the UK. Unless consumers are willing to pay for higher welfare products, UK farmers could become uncompetitive and welfare standards in the UK could come under pressure.⁹⁰

In this context too, world trade considerations enjoy salience in that there has long been debate whether members are entitled under WTO rules to shelter their own farmers by insisting that imports meet domestic environmental and animal welfare standards.⁹¹ Further, the debate has been the more intense where the importing member seeks to introduce measures which distinguish between products based upon process and production methods which leave no trace in the end-product itself (‘non-product-related process and production

⁸⁸ NFU, ‘Back British Farming Brexit and Beyond: The NFU 2017 Manifesto’ (2017) <https://www.nfonline.com/news/general-election-2017/general-election-2017-must-read/back-british-farming-brexit-and-beyond-the-nfu-2017-manifesto/>.

⁸⁹ See, eg, note 34 above.

⁹⁰ House of Lords European Union Committee, Brexit: farm animal welfare (5th Report of Session 2017-19) HL Paper 15, para 57.

⁹¹ See, eg, House of Lords European Union Committee note 9 above, para 151; note 90 above, para 59; and R Howse and D Regan, ‘The Product/Process Distinction: an Illusory Basis for Disciplining “Unilateralism” in Trade Policy’ (2000) 11(2) European Journal of International Law 249.

methods' or 'NPR-PPMs').⁹² To provide a pertinent illustration of a measure within this category, a member might seek to distinguish between meat from livestock raised extensively on grass in the uplands and meat from livestock raised in feed lots, in which case it would be no easy matter to find physical differences in the end product, notwithstanding that the manner of rearing would have the capacity materially to influence consumer preferences.⁹³

Such issues resonate strongly across the WTO legal order. To consider just the General Agreement on Tariffs and Trade,⁹⁴ Article III provides that a member shall not discriminate between its own products and 'like' imported products;⁹⁵ and the WTO Secretariat has itself acknowledged that a determination of likeness for this purpose may be 'particularly challenging' in the case of NPR-PPMs, offering as an example circumstances where governments seek to discriminate between wood products derived from sustainably grown forest and wood whose production method is unknown.⁹⁶ At the same time, higher

⁹² See, eg, S. Charnovitz., 'The Law of Environmental "PPMs" in the WTO: Debunking the Myth of Illegality' (2002) 27 *Yale Journal of International Law* 59 (with reference to the environment); and G Davies, "'Process and Production Method"-based Trade Restrictions in the EU' (2008) 10 *Cambridge Yearbook of European Legal Studies* 69.

⁹³ On the other hand, it is not impossible to envisage circumstances where the manner of rearing of livestock in feed lots could generate traces in the end-product (for example, there is likely to be greater use of antibiotics when animals are reared intensively and thereby greater likelihood of antibiotic residues in the meat sold to consumers).

⁹⁴ See also, in particular: Article 3.3 of the Agreement on the Application of Sanitary and Phytosanitary Measures, which provides that, subject to detailed rules, 'Members may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations'; and Article 2.2 of the Agreement on Technical Barriers to Trade, which provides that, again subject to detailed rules, the protection of animal life and health and the environment are 'legitimate objectives' in the case of technical regulations.

⁹⁵ 'The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use': Article III.4. For full discussion of 'likeness' by the Appellate Body, see, eg, *Japan – Alcoholic Beverages II* (WT/DS8/AB/R; WT/DS10/AB/R; WT/DS11/AB/R) (4 October 1996).

⁹⁶ WTO, *WTO Rules and Environmental Policies: Key GATT Disciplines* https://www.wto.org/english/tratop_e/envir_e/envt_rules_gatt_e.htm.

environmental and animal welfare standards are expressly engaged by Article XX, which grants general exemption from GATT rules in the case of, inter alia, measures:

- ‘(a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;...
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption’.

And the jurisprudence of the Dispute Settlement Body in respect of this Article illuminates not only the extent to which it offers members latitude in principle to condition imports, but also the extent to which this latitude is closely circumscribed. Thus, in *US – Shrimp/Turtle*, the Appellate Body found that measures to restrict the import of shrimp and shrimp products with a view to reducing the incidental take of sea turtles could, *prima facie*, be justified under Article XX(g);⁹⁷ and, in *EC – Seal Products*, it found that an EU prohibition of the importation and sale of processed and unprocessed seal products could, *prima facie*, be justified under Article XX(a).⁹⁸ However, in both cases, it also found that the measures concerned failed to satisfy the chapeau to Article XX which requires that they should not be ‘applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade’.⁹⁹

⁹⁷ (WT/DS58/AB/R) (12 October 1998). See also Howse and Regan note 90 above; and Charnowitz note 91 above.

⁹⁸ (WT/DS400/AB/R; WT/DS401/AB/R) (22 May 2014). See also A Herwig, ‘Too Much Zeal on Seals? Animal Welfare, Public Morals, and Consumer Ethics at the Bar of the WTO’ (2016) 15 *World Trade Review* 109.

⁹⁹ In *US – Shrimp/Turtle*, following revisions effected by the United States, the Appellate Body subsequently found in compliance proceedings that the revised regime did satisfy the chapeau: (WT/DS58/AB/RW) (22 October 2001).

In consequence, there would seem to be good grounds for believing that the UK could, in principle, impose general conditions on imports in respect of environmental and animal welfare standards without breaching WTO rules. But domestic standards would need to be at least as high and there would also need to be a very carefully crafted regime so as to avoid any form of arbitrary or unjustifiable discrimination. At the same time, there would seem to be scope to include such high standards as part of a negotiated free trade agreement;¹⁰⁰ yet, as already observed, there are indications to the effect that political pressures, at least for the present, may tend otherwise.

D. Devolution

There is without doubt general consensus that devolution will impact significantly on the development of post-Brexit agricultural policies.¹⁰¹ To provide just one illustration, it will be necessary to consider the operation of the Sewel Convention (as now enshrined in statute under the Scotland Act 2016 and the Wales Act 2017),¹⁰² in which regard it is significant that, as soon as the European Union (Withdrawal) Bill was presented to the UK Parliament, the Scottish and Welsh Governments indicated that it required legislative consent from Scotland and Wales.¹⁰³ Moreover, with agriculture being not only a devolved matter, but also

¹⁰⁰ See House of Lords European Union Committee note 9 above, para 145.

¹⁰¹ For recent discussions of this aspect, see Hunt note 16 above; and House of Lords European Union Committee, *Brexit: devolution* (4th Report of Session 2017-19) HL Paper 9.

¹⁰² In the words of Lord Sewel during the passage of the Scotland Bill 1997-98, 'we would expect a convention to be established that Westminster would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament': HL Deb 21 Jul 1998 Vol 592 c 791. However, notwithstanding that the Convention has now been enshrined in statute, it remains a convention and 'the policing of its scope and the manner of its operation does not lie within the constitutional remit of the judiciary': *R (on the application of Miller and another) v Secretary of State for Exiting the European Union* [2017] UKSC 5, [2017] 2 WLR 583, at [151].

¹⁰³ Scottish Government, EU (Withdrawal) Bill (13 July 2017) <https://news.gov.scot/news/eu-withdrawal-bill>. On this aspect, see generally, eg, S Douglas-Scott, 'Removing References to

economically, socially and culturally important across the devolved territories, any steps to determine centrally the course of its future direction are likely to prove controversial¹⁰⁴ Accordingly, with specific reference to agricultural support policies, two aspects may be examined: first, the financial implications for the devolved territories which may flow from Brexit; and, secondly, the extent to which the devolved administrations have already sought to differentiate their post-Brexit regimes from those being articulated by central UK government.

Consistent with the profile of the sector in Northern Ireland, Scotland and Wales, CAP receipts in these territories have been proportionately higher than in England: thus, in 2016, total direct payments amounted to £323 million in Northern Ireland, £532 million in Scotland and £269 million in Wales, as opposed to £2,024 million in England.¹⁰⁵ In consequence, the devolved territories are inherently more vulnerable not only to any overall decrease in agricultural expenditure, but also to any redistribution of that expenditure. Indeed, before the House of Lords European Union Energy and Environment Sub-Committee, Fergus Ewing MSP of the Scottish Government was of the belief that ‘moving to a population share of this essential support could result in Scotland losing around half the current CAP allocation’; and, on the calculation of NFU Cymru, ‘[i]f EU funds lost to Wales upon Brexit

EU Law from the Devolution Legislation Would Require the Consent of the Devolved Assemblies’ <https://constitution-unit.com/2016/06/13/removing-references-to-eu-law-from-the-devolution-legislation-would-invoke-the-sewel-convention/> (13 June 2016); and S Douglas-Scott, ‘The “Great Repeal Bill”: Constitutional Chaos and Constitutional Crisis?’ (10 October 2016) <https://ukconstitutionallaw.org/2016/10/10/sionaidh-douglas-scott-the-great-repeal-bill-constitutional-chaos-and-constitutional-crisis/>.

¹⁰⁴ See, eg, Farmers Guardian, ‘Farmers Embroiled in Devolution Power Struggle’ (11 November 2016) <https://www.fginsight.com/news/news/farming-embroiled-in-devolution-power-struggle-16633>.

¹⁰⁵ See note 5 above, p 73. For estimates of the respective populations in 2016, see Office of National Statistics, Population Estimates <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates> (1,862,100 for Northern Ireland; 5,404,700 for Scotland; 3,113,200 for Wales; and 55,268,100 for England); and for overall UK CAP allocations 2014-2020, see note 27 above, p 54.

were replaced by the UK Treasury according to a population based Barnett calculation, then compared to the current mechanism for dividing up EU funds among the home nations, it is likely that Wales would be looking at an allocation reduction of 40%'.¹⁰⁶ Further, as highlighted by Dr Alan Greer, the mechanisms by which funding will be dispensed have the capacity to affect the degree of policy latitude enjoyed by the devolved administrations:

What will also be crucial is the relationship between funding and flexibility, which is likely to be uneasy. In the past (for example in relation to devolution in Northern Ireland between 1921-1972), a limiting factor on differentiation was that if 'national' funding was provided through the UK Treasury, then it wanted relatively uniform policy and regulatory measures in return, limiting the scope for differentiation.¹⁰⁷

For the present, emerging agricultural support policies already reveal a substantial degree of differentiation, even if details remain to be finalised. Thus, as noted, DEFRA has shown a preference for promoting higher standards of environmental protection and animal welfare and it would be a reasonable assumption that this would be the direction of travel for England, not least because agri-environment-climate schemes are already the focus of the Rural Development Programme for England 2014-2020. Nevertheless, as also noted, there has been demonstrable reaction against a 'one size fits all' approach, with differing priorities becoming evident across the devolved administrations. In Wales, the social and cultural dimensions of agriculture have received express recognition, with emphasis also placed on

¹⁰⁶ See House of Lords European Union Committee note 9 above, para 244; and, in respect of Wales, see also, eg, J Woolford and J Hunt, *The UK in a Changing Europe: Wales and the EU – Agriculture and Food* (Cardiff University, 2016).

¹⁰⁷ See House of Lords European Union Committee note 9 above, Written Evidence from Dr Alan Greer:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-energy-and-environment-subcommittee/brexit-agriculture/written/47078.html>.

the competitive advantage of Welsh agriculture in terms of exports.¹⁰⁸ For example, 30 per cent of Welsh lamb is estimated to be consumed in the EU;¹⁰⁹ and Wales has the benefit of a number of distinctive agricultural products, such as Welsh Black Beef. Accordingly, although in Wales too there has historically been considerable enthusiasm for agri-environmental measures, including the Glastir Scheme designed to deliver specific environmental goods and services,¹¹⁰ a broader support regime would seem to be preferred: as recommended by the National Assembly for Wales Climate Change, Environment and Rural Affairs Committee, any future framework should be ‘more aligned to sustainable outcomes whilst producing high quality food’.¹¹¹ Such a preference would seem at least as strong in Scotland, where likewise the importance of Scottish brands has received emphasis;¹¹² and where the contribution of agriculture to the social fabric of the country has consistently been lauded.¹¹³ In this light, the First Minister has been particularly firm in her advocacy that any powers repatriated from the EU on Brexit should be destined for the Scottish Parliament rather than Westminster, this being ‘the best way of ensuring that future decisions on farming reflect Scotland’s distinct priorities’.¹¹⁴ And similarly in Northern

¹⁰⁸ See Welsh Government note 38 above, p 21; and House of Lords European Union Committee note 101 above, paras 118-119.

¹⁰⁹ National Assembly for Wales Research Service, Understanding Welsh Exports: a Look at the Latest Regional Trade Statistics (27 March 2017) <https://assemblyinbrief.wordpress.com/2017/03/27/understanding-welsh-exports-a-look-at-the-latest-regional-trade-statistics/>

¹¹⁰ For the Glastir Scheme, see <http://gov.wales/topics/environmentcountryside/farmingandcountryside/farming/schemes/glastir/?lang=en>.

¹¹¹ See note 83 above, Recommendation 16. For more general emphasis in Wales on a circular economy and sustainable development, see the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016.

¹¹² See, eg, Scottish Government, ‘First Minister Updates Farmers on Approach to Europe’ (3 February 2017) <https://beta.gov.scot/news/future-of-farming/>

¹¹³ See, eg, Scottish Government, The Future of Scottish Agriculture: a Discussion Document (Scottish Government, 2015), p 18.

¹¹⁴ See note 112 above.

Ireland concerns have been expressed as to the extent that a regime tailored to local conditions may be possible in light of financial constraints imposed at UK level.¹¹⁵

Some comfort that regional differentiation can be accommodated post-Brexit may be found in the substantial variation in focus which is evident in the current Rural Development Programmes applicable across the UK. For example, during 2016, agri-environment-climate measures attracted the lion's share of funding in England, whereas support for less-favoured areas was the main destination of expenditure in Scotland, a state of affairs replicated also in Northern Ireland.¹¹⁶ And, significantly, less-favoured area support has by tradition been regarded as enjoying a social as well as an environmental dimension, being directed, inter alia, to maintaining the viability of holdings which face natural challenges and, thereby, the prevention of land abandonment.¹¹⁷

On the other hand, even if the devolved administrations continue to be entitled to a considerable degree of flexibility in terms of the design and implementation of agricultural support policies, there is not yet full clarity as to the location post-Brexit of decision-making on matters of finance and international trade. As has been seen, this may resonate strongly in any future determination of the allocation of funding for agriculture (including determination whether or not such an allocation should be conducted in accordance with the Barnett formula). At the same time, there would seem to be a broad level of agreement that, as in other sectors, the implementation of any new legislative framework for agriculture should at least be co-ordinated across the UK so as to ensure policy coherence, together with the effective working of a single market: as stated by the House of Lords European Union

¹¹⁵ Northern Ireland Assembly Research and Information Service, 'What Now for Direct Support to Farmers in Northern Ireland post-Brexit?' (22 March 2017) <http://www.assemblyresearchmatters.org/2017/03/22/now-direct-support-farmers-northern-ireland-post-brexit/>.

¹¹⁶ See note 5 above, p 73.

¹¹⁷ For explicit recognition of the social dimension when less-favoured area support was first introduced, see Council Directive 75/268/EEC [1975] OJ L128/1, Preamble.

Committee, ‘maintenance of the integrity and efficient operation of the UK single market must be an over-arching objective for the whole United Kingdom’.¹¹⁸ Moreover, the Scottish and Welsh Governments have also acknowledged that ‘common frameworks’ may be necessary across the UK in some areas.¹¹⁹

Significantly, tensions of this kind between ‘one size fits all’ governance at UK level and separate regimes within the devolved administrations have already surfaced in the context of agricultural support. Thus, it may be recalled that in *Horvath* an English farmer challenged before the CJEU (in the event, unsuccessfully) the imposition of a more onerous direct payments regime than that applicable in Northern Ireland, Scotland and Wales,¹²⁰ while it may also be recalled that farmers in Scotland currently enjoy specific payments targeted to the livestock sector, unlike those operating immediately South of the border. Brexit may see such issues acquire still greater prominence and their resolution will need to be achieved without the ability to have recourse to an overarching EU legal framework.

IV CONCLUSIONS

¹¹⁸ See House of Lords European Union Committee note 101 above, Summary of Conclusions and Recommendations, para 26. For similar emphasis on the priority of ‘safeguarding the harmonious functioning of the UK’s own single market’, see Department for Exiting the European Union, *Legislating for the United Kingdom’s Withdrawal from the European Union* (Cm 9446) (March 2017), p 27.

¹¹⁹ Scottish Government, EU (Withdrawal) Bill (13 July 2017) <https://news.gov.scot/news/eu-withdrawal-bill>.

¹²⁰ *The Queen (on the application of Horvath) v Secretary of State for Environment, Food and Rural Affairs*, Case C-428/07, ECLI:EU:C:2009:458; and see also M Cardwell and J Hunt, ‘Public Rights of Way and Level Playing Fields’ (2010) 12 *Environmental Law Review* 291.

For the present, only the outlines of agricultural support policies across the UK have become evident and this ongoing uncertainty has given rise to concerns in the farming community.¹²¹ Nevertheless, what would seem clear is that there is general acceptance at the level of both central UK government and the devolved administrations that a bespoke support regime will survive Brexit and, in this sense, agricultural ‘exceptionalism’ will continue. Further, there has now been reassurance both in the Conservative Party Election Manifesto and the Agreement between the Conservatives and the DUP that the current level of subsidy will be maintained until the end of the current Parliament in 2022 (as opposed to the earlier reassurance that it would be maintained until 2020). In this respect, there are good grounds for believing that farmers have been beneficiaries of the June 2017 General Election.

On the other hand, the precise contours of post-Brexit agricultural support remain to be defined. What would seem tolerably clear is that there is no strong commitment to a regime based upon Pillar I principles; and, in particular, the Basic Payment Scheme may be facing a relatively short shelf-life. At the same time, there would appear to be a degree of consensus around promoting high standards of environmental and animal welfare, but different priorities continue to pertain across the constituent parts of the United Kingdom and even central UK government has shown a more varied appetite, with interest also in measures to promote risk management and technical innovation.¹²² Further, in light of more radical options currently circulating, such as the use of public funds on the purchase of ‘public goods’, farmers may yet be encountering a quite different regulatory landscape within a

¹²¹ See, eg, BBC, ‘Royal Welsh Show: Michael Gove’s Pragmatic Brexit Approach’ (24 July 2017) <http://www.bbc.co.uk/news/uk-wales-40698984>.

¹²² See, eg, Rt Hon George Eustice MP, Oral Evidence to the House of Lords European Union Energy and Environment Sub-Committee (8 March 2017), Q 83 <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-energy-and-environment-subcommittee/brexit-agriculture/oral/48840.html>.

relatively short horizon, at least by the standards of an industry accustomed to a pace of change largely dictated by the elapse of EU programming periods.

In any event, over and above political considerations, decision-making as to future agricultural support regimes will need to take into account a complex range of factors which enjoy legal basis. In this context, WTO rules and the constitutional rights of the devolved administrations are very much to the fore. Thus, as has been seen, WTO rules have the capacity not only to impose overall limits on the amount of domestic support to farmers, but also to shape the design of individual measures. And, if preference is for support to promote higher standards of environmental protection and animal welfare, then specific difficulties may be encountered. For example, it is uncertain whether under current WTO rules there is scope to secure exemption for an incentive element to environmental payments, while there is as yet no express category of exempt support for animal welfare measures. Any such limitations on domestic support would prove the more profound if future free trade agreements were to permit imports produced to lower environmental and animal welfare standards. Further, if the UK were to seek to condition imports on the observance of high standards as applied domestically, the position is not free from doubt as to the legitimacy of measures of this kind in WTO law; and, even if they are legitimate, they would need to be closely crafted so as to exclude, *inter alia*, any discriminatory treatment.

As has also been seen, the devolved administrations are already entitled to a degree of policy latitude in agricultural matters, which has found expression in, for example, demonstrably different Rural Development Programmes to reflect individual priorities within their territories. And, significantly from the legal viewpoint, such policy latitude has been expressly endorsed by the Supreme Court and CJEU in the agricultural context.¹²³ A

¹²³ Respectively, *Agricultural Sector (Wales) Bill – Reference by the Attorney General for England and Wales* [2014] UKSC 43, [2014] 1 WLR 2622; and *The Queen (on the*

challenge will be to provide a post-Brexit legislative framework for agricultural support which accommodates all parts of the UK, while simultaneously meeting the ‘over-arching objective’ of maintaining the integrity and efficiency of a single UK market, with this challenge being all the greater in that the precise location of powers post-Brexit is not only unresolved, but already subject to dispute.

In light of their complex legal geometry and the strong emotions which they generate, there is every reason to believe that agriculture generally and agricultural support more specifically will continue to attract a high profile during the Brexit negotiations and long thereafter. Just as the sector has commanded the greatest proportion of the EU budget and proved a stumbling block in numerous WTO negotiations, its ‘exceptional’ status is likely to continue.¹²⁴ Definitely, in the case of vast majority of the institutional actors, the present debate is not so much whether support should be provided for farmers, but how it should be provided. Yet the combination of the competing interests of those institutional actors, WTO rules and the constitutional settlement within the UK make the second question a rather difficult one to answer.

application of *Horvath v Secretary of State for Environment, Food and Rural Affairs*, Case C-428/07, ECLI:EU:C:2009:458.

¹²⁴ On agricultural ‘exceptionalism’, see, eg, W Grant, ‘Is Agricultural Policy Still Exceptional’ [1995] *Political Quarterly* 156; and G Skogstad, ‘Ideas, Paradigms and Institutions: Agricultural Exceptionalism in the European Union and the United States’ (1998) 11 *Governance* 463.