

Roundtable on Agriculture after Brexit: Trade, Environment and Food Security Implications

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The Delivery of Support to Farmers Post-Brexit

- 1. Levels of Funding**
- 2. A 'Public Goods' Model?**
- 3. WTO Implications**
- 4. Devolution**

1. Levels of Funding

Expenditure for the 2016 EU financial year: Pillar I
Direct aids under Pillar I accounted for € 3,035 million out of total CAP expenditure in the UK of € 3,927 million

In large part, Pillar I funding is delivered as 'decoupled income support' on an area basis through the Basic Payment Scheme, together with the Greening Payment for agricultural practices beneficial for the climate and the environment

Source: Agriculture in the United Kingdom 2016
Table 10.7

1. Levels of Funding

Expenditure for the 2016 EU financial year: Pillar II Rural development support accounted for € 806 million (including co-financing by the UK)

In 2016, the flagship Environmental Stewardship Scheme enjoyed the largest budget in England (£324 million, provisional), but the Less Favoured Areas Support Scheme the largest budget in Scotland (£66 million, provisional)

Source: Agriculture in the United Kingdom 2016
Tables 10.4 and 10.7

1. Levels of Funding

Early indications of the UK Government approach:
“[w]e continue to believe that expenditure on market price support and direct payments to farmers under Pillar 1 of the CAP represents very poor value for money. The UK has always made clear that we would like to move away from subsidies in the long run”: House of Commons Written Answer 221523 (27 January 2015)

1. Levels of Funding

- Conservative Party Manifesto 2017: ‘we will continue to commit the same cash total in funds for farm support until the end of the parliament’
- Agreement between the Conservatives and the DUP (26 June 2017): ‘[t]he parties agree to continue to commit the same cash total in funds for farm support until the end of the Parliament’

1. Levels of Funding

- Acceptance of agricultural ‘exceptionalism’?
- Funding after the end of the Parliament?
- The implications of moving away from EU Programming Periods?

2. A 'Public Goods' Model?

At the Oxford Farming Conference on 4 January 2017, George Eustice, Minister of State (DEFRA) provided reassurance that funding for agriculture would continue, but in exchange for providing ecosystem services (as well as insurance and supporting productivity): *Farm Subsidy System to be Overhauled Post-Brexit, Says Eustice* <https://www.ofc.org.uk/blog/farm-subsidy-system-to-be-overhauled-post-brexit-says-eustice>

2. A 'Public Goods' Model?

'We are looking at options of anything from grant support to support the development of units that might be more welfare-friendly, right through to possible incentive payments as well to encourage farmers to adopt approaches to farm husbandry which might be better for welfare and, indeed, better for animal health': George Eustice, Oral Evidence, House of Lords European Union Committee *Brexit: Agriculture Report* (HL Paper 169)

2. A 'Public Goods' Model?

Conservative Party Manifesto 2017: '[w]e will work with farmers, food producers and environmental experts across Britain and with the devolved administrations to devise a new agri-environment system, to be introduced in the following parliament'

2. A 'Public Goods' Model?

In his keynote speech on 21 July 2017, *The Unfrozen Moment – Delivering a Green Brexit*, Michael Gove, Secretary of State for Environment, saw leaving the CAP as an opportunity 'to use public money to reward environmentally-responsible land use', while also wanting 'to see higher standards across the board of animal welfare'

<https://www.gov.uk/government/speeches/the-unfrozen-moment-delivering-a-green-brex-it>

2. A 'Public Goods' Model?

- House of Commons Votes (15 November 2017) in relation to Art 13 TFEU (animal sentience) and 191 TFEU (environmental principles)
- '...we will be ensuring that we maintain and enhance our animal welfare standards when we leave the EU': Prime Minister, HC Deb Vol 631, Col 1038 (22 November 2017)
- 'This government will continue to promote and enhance animal welfare, both now and after we have left the EU': Michael Gove, HCWS267 (23 November 2017)

2. A 'Public Goods' Model?

- 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>

- Country Landowners' Association, *How to Establish a New Land Management Contract Between Farmers and Society* (July 2017)

http://www.cla.org.uk/sites/default/files/HowTo_LMC_Doc2.pdf

2. A 'Public Goods' Model?

- Definitions of 'public goods'? See, eg, T Cooper *et al*, *The Provision of Public Goods through Agriculture in the European Union* (IEEP, London, 2009)
- 'Broad and shallow'/'narrow and deep'?
- Monitoring and evaluation? 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

3. WTO Implications

Will the UK be entitled to a share of the permitted level of support to farmers currently scheduled in the name of the EU under the WTO Agreement on Agriculture (without differentiation between Member States)?

3. WTO Implications

Suggested methods of division include:

- division on an historic basis (eg, the proportion contributed by the UK to the EU's Base Total Aggregate Measurement of Support when the Agreement on Agriculture was concluded); and
- division according to more current patterns of grant

See now letter of 11 October 2017 from the UK and EU Permanent Representatives:
apportionment 'on the basis of an objective methodology'

3. WTO Implications

L. Bartels, 'The UK's status in the WTO after Brexit'

https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2841747;

L. Brink, 'UK Brexit and WTO farm support limits' <http://capreform.eu/uk-brexit-and-wto-farm-support-limits/>; and

A. Matthews, 'Establishing the UK's non-exempt limit on agricultural support after Brexit' <http://capreform.eu/establishing-the-uks-non-exempt-limit-on-agricultural-support-after-brexit/>

3. WTO Implications

- At present, it is understood that there is substantial 'headroom' below the EU's permitted level of support: see, eg, WTO, G/AG/N/EU/34 (8 February 2017) (notification in respect of the 2013/2014 marketing year)
- This understanding is based upon the premise that a large proportion of EU support to farmers is exempt from domestic support reduction commitments: see, eg, WTO, G/AG/N/EU/34

3. WTO Implications

Can payments in respect of environmental protection and animal welfare secure exemption from domestic support reduction commitments?

See, in particular:

- *De minimis* support under Article 6.4 (see Matthews above); and
- ‘Green Box’ support under Annex 2

3. WTO Implications

All 'Green Box' measures must meet:

- 'the fundamental requirement that they have no, or at most minimal, trade-distorting effects or effects on production'; and
- two 'basic criteria: (a) the support shall be provided through a publicly-funded government programme not involving transfers from consumers; and (b) the support shall not have the effect of providing price support to producers *plus* policy-specific criteria and conditions

3. WTO Implications

For policy-specific criteria and conditions, see, in particular, paragraph 12 in respect of ‘payments under environmental programmes’, stipulating:

- ‘(a) Eligibility for such payments shall be determined as part of a clearly-defined government environmental or conservation programme...’; and
- ‘(b) The amount of payment shall be limited to the extra costs or loss of income’ which are involved in compliance

3. WTO Implications

- How targeted must a measure be to form part of a clearly-defined government environmental or conservation programme?
- Is it possible to grant an incentive?
- Is it possible to link the level of remuneration to environmental outcomes?

3. WTO Implications

In addition, 'Green Box' exemption may be available for:

- 'research in connection with environmental programmes', 'pest and disease control', 'training services' etc (paragraph 2: 'general services'); and
- new types of direct payments to producers other than those which are specifically mentioned in Annex 2, provided that, *inter alia*, no production is required for their receipt (paragraph 5) (which may potentially extend to animal welfare)

4. Devolution

Agriculture: a devolved matter

- *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
- *Agricultural Sector (Wales) Bill – Reference by the Attorney General for England and Wales* [2014] UKSC 43
- Separate rural development programmes

4. Devolution

- Levels of funding are currently higher within the devolved administrations: eg, in the 2016 EU financial year, total England CAP payments were € 2,626 million, whereas total Scotland CAP payments were € 584 million; and,
- in line with varied land use, different forms of support schemes have been accorded priority across the UK: eg, less-favoured area support schemes in Scotland

Source: Agriculture in the United Kingdom 2016
Tables 10.4 and 10.7

4. Devolution

Concerns as to future levels of funding if the Barnett formula is adopted

‘...moving to a population share of this essential support could result in Scotland losing around half the current CAP allocation’: Fergus Ewing, Oral Evidence, House of Lords European Union Committee *Brexit: Agriculture* Report (HL Paper 169)

4. Devolution

Evidence of differing funding priorities among the devolved administrations post-Brexit

‘We celebrate and strengthen agriculture’s contribution to the social fabric of rural Scotland’:
The Scottish Government, *The Future of Scottish Agriculture: a Discussion Document* (2015) p.18

See also, eg, Welsh Government, *Securing Wales’ Future* (2017) p.21

4. Devolution

Repatriation of powers in relation to agriculture from the EU

‘In addition, it is also vital that any powers which are transferred from the European Union, at the time of Brexit, must go to the Scottish Parliament rather than to Westminster. It is the best way of ensuring that future decisions on farming reflect Scotland’s distinct priorities’: Scottish Government, ‘First Minister Updates Farmers on Approach to Europe’ (3 February 2017)

<https://beta.gov.scot/news/future-of-farming/>

4. Devolution

- Powers in relation to trade?

- Powers in relation to finance?

‘In the past...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’: Dr Alan Greer, Oral Evidence, House of Lords European Union Committee *Brexit: Agriculture* Report (HL Paper 169)

4. Devolution

Concerns over the effects of policy differentiation across the UK

‘...maintenance of the integrity and efficient operation of the UK single market must be an over-arching objective for the whole United Kingdom’: House of Lords European Union Committee *Brexit: Devolution* Report (HL Paper 9)

Some Concluding Thoughts

- Agricultural ‘exceptionalism’ would seem to be preserved, with every prospect of a bespoke support regime
- Longer-term budgetary questions remain
- Policy design is operating within a range of broad constraints, including the effects of WTO rules and the UK constitutional settlement
- Policy design may also need to find a balance between, on the one hand, the benefits of targeted measures and, on the other, their associated transaction costs