



**XXVIe Congrès et Colloque Européens de Droit Rural
Bucarest – 21-24 septembre 2011**

**XXVI European Congress and Colloquium of Agricultural Law
Bucharest – 21-24 September 2011**

**XXVI. Europäischer Agrarrechtskongress mit Kolloquium
Bukarest – 21.-24. September 2011**

Organisé par le Comité Européen de Droit Rural en collaboration avec
l'Université Ecologique de Bucarest

Organized by the European Council for Agricultural Law in collaboration
with University of Ecology Bucharest

Organisiert durch das Europäisches Agrarrechtskomitee in
Zusammenarbeit mit der Universität für Ökologie Bukarest

Commission III – Kommission III

Individual Report – Rapport individuel – Individueller Bericht

Allemagne – Germany - Deutschland

DÉVELOPPEMENT SCIENTIFIQUE ET PRATIQUE DU DROIT
RURAL DANS L'UE, DANS LES ÉTATS ET LES RÉGIONS ET
DANS L'OMC – SCIENTIFIC AND PRACTICAL DEVELOPMENT
OF RURAL LAW IN THE EU, IN STATES AND REGIONS AND IN
THE WTO – WISSENSCHAFTLICHE UND PRAKTISCHE
ENTWICKLUNG DES RECHTS DES LÄNDLICHEN RAUMS IN
DER EU, IN DEN STAATEN UND REGIONEN SOWIE IN DER WTO

Michael Cardwell, Professor of Agricultural Law, University of Leeds
and **Ludvine Petetin**, Lecturer in Law, University of Newcastle

1. Introduction

When the United Kingdom Coalition Government came to power in May 2010, there were expectations that agriculture would move higher up the list of policy objectives. The Conservatives and Liberal Democrats between them hold the majority of rural constituencies; and, as stated by the new Secretary of State for Environment, Food and Rural Affairs, Caroline Spelman, ‘[m]any of us have backgrounds within farming or the countryside or working in an area that works with the food industry, and so we have quite a lot of strength in depth when it comes to rural issues’.¹ That said, the promotion of United Kingdom agriculture would need to be conducted against the background of an historic reluctance to contribute financial support; and this reluctance would seem to have had particular impact in the context of rural development, where funding is in part allocated on the basis of past performance.² Thus, for the period 2007-2013, the original allocation was a mere 1,909,574,420 Euros, as opposed to 2,339,914,590 for Ireland and 6,441,965,109 for France;³ and, while this figure may since have been substantially increased by modulation (including voluntary modulation),⁴ there remains a distinct sense that financial pressures are unlikely to disappear. In particular, not long after the Coalition Government took office, its Comprehensive Spending Review of October 2010 declared that ‘[t]he Rural Development Programme for England will deliver savings of £66 million – the equivalent of about one third of spend in 2010-11’.⁵

Besides, there would appear to be little change in the overall policy objective of reducing support under Pillar I of the Common Agricultural Policy. Thus, speaking at the Oxford Farming Conference in January 2011, Caroline Spelman announced that ‘[n]ow is the time to make very significant progress towards reducing our reliance on direct payments’.⁶ A matter of note is that the House of Commons Environment, Food and Rural Affairs Committee took a similar view, but, significantly, its position was somewhat more nuanced. In particular, its members affirmed that ‘[w]hile we share [DEFRA’s] ambition to reduce

¹ J. Hall, ‘Is British Farming Waking up to a New Dawn?’, *Daily Telegraph*, 19 June 2010.

² Council Council Regulation (EC) 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) [2005] OJ L277/1, Art. 69(4)(b).

³ Commission Decision 2006/636/EC of 12 September 2006 [2006] OJ L261/32

⁴ See now Commission Decision 2009/519/EC of 2 July 2009 [2009] OJ L173/13 (under which some 347.3 million Euros will be transferred by voluntary modulation in 2011 alone).

⁵ HM Treasury, *Spending Review 2010*, Cm 7942, October 2010 (available at http://cdn.hm-treasury.gov.uk/sr2010_completereport.pdf, last accessed on 6 September 2011) para. 2.113.

⁶ *Environment Secretary Caroline Spelman’s Speech at the Oxford Farming Conference 2011* (available at <http://www.defra.gov.uk/news/2011/01/05/spelman-speech/>, last accessed on 6 September 2011). For earlier expression of this viewpoint, see, eg, HM Treasury and Department for Environment, Food and Rural Affairs (DEFRA), *Vision for the Common Agricultural Policy* (HM Treasury and DEFRA, London, 2005).

reliance on subsidies, we are not convinced that simply reducing direct payments is the way to achieve this. If [DEFRA] is to retain credibility, it must set out exactly how UK farmers will become self-supporting, against a backdrop of rising input prices and greater competition from third countries'.⁷

In any event, however, there is clear evidence that climate change has emerged as a policy priority, but one which will be difficult to balance with the competing demands of food security. This issue will be examined in greater detail in this paper; and, in addition, two further issues would seem to deserve closer attention: first, developing United Kingdom policy on the regulation of genetically modified organisms (GMOs) and cloned foods; and, secondly, the effect of the expiration of the milk quota regime, together with broader consideration of the operation of the dairy sector within the United Kingdom.

2. Climate Change

In the same speech to the Oxford Farming Conference, Caroline Spelman clearly articulated the increasingly central role which agriculture is to play in mitigating the effects of climate change, to the extent that it would now seem to rank alongside the imperative of food security at the top of the political agenda. Indeed, she unequivocally affirmed that '[w]e now need to make the new CAP fundamentally different. Its strategic approach must change; as well as its detail. It must be re-positioned so that we can tackle the new challenges of achieving global food security and tackling and adapting to a changing climate'.⁸ Importantly, commitment to reduction of greenhouse gas emissions from agriculture had already found concrete expression in the *UK Low Carbon Transition Plan: National Strategy for Climate and Energy*, issued in July 2009.⁹ This document set out the strategic aim by 2020 to cut farming and waste emissions by 6 per cent on 2008 levels, while at the same time helping to protect the equivalent of over 37 billion tonnes of carbon dioxide which is at present locked into the natural sinks constituted by soils and forests.¹⁰ More specifically, farmers in England were encouraged by the same end date 'to take action themselves to reduce yearly emissions from livestock and fertiliser by the

⁷ House of Commons Environment, Food and Rural Affairs Committee, *Fifth Report of Session 2010-2011: the Common Agricultural Policy after 2010*, HC 671-I, 3 (and see also 39-40). In its response, the Government accepted that 'there is more for us to do in this area': *The Common Agricultural Policy after 2013: Government Response to the Committee's Fifth Report of Session 2010-11*, HC 1356, 7.

⁸ *Environment Secretary Caroline Spelman's Speech at the Oxford Farming Conference 2011* (above n. 6).

⁹ Department for Energy and Climate Change, *The UK Low Carbon Transition Plan: National Strategy for Climate and Energy* (The Stationery Office, London, 2009).

¹⁰ *Ibid.*, 152.

equivalent of more than three million tonnes of carbon dioxide, compared with their current projected levels'.¹¹

On the other hand, two major hurdles may already be identified. First, as indicated, under the *UK Low Carbon Transition Plan* emphasis was placed upon voluntary efforts by farmers; and, subsequently, in February 2010 the Climate Change Task Force published the *Agriculture Industry GHG Action Plan: Framework for Action*, which directed its focus to, for example, the benefits of improving the application of nitrogen fertilisers and manipulating the diet of ruminants so as to reduce methane emissions.¹² While such measures should prove effective (and the European Commission has highlighted the major contribution of improved nitrogen application and feed use in greenhouse gas savings achieved to date),¹³ the Committee on Climate Change has nonetheless suggested that an overall annual reduction of three million tonnes of carbon dioxide equivalent is not sufficiently ambitious and that the voluntary approach may need to be bolstered by further incentives.¹⁴ Notably, Common Agricultural Policy reform is considered to offer scope to reinforce not only negative or zero-cost abatement measures (such as those set out in the *Agriculture Industry GHG Action Plan: Framework for Action*), but also measures which, although giving rise to costs, are nevertheless efficient in terms of their greenhouse gas emissions savings. The conclusion is therefore reached that there is 'an opportunity for linking support under CAP to the introduction of more expensive measures whilst minimising impacts on competitiveness'.¹⁵

Second, in line with concerns expressed elsewhere, not least by the Food and Agriculture Organization (FAO),¹⁶ the United Kingdom Government is acutely aware of the close linkages between the new challenges of climate change and food security; and, in particular, there is evidence of intent to provide reconciliation (in so far as is possible) where the two may conflict. As again stated by Caroline Spelman at the Oxford Farming Conference, the aim is 'to

¹¹ *Ibid.*, 155.

¹² Climate Change Task Force, *Agriculture Industry GHG Action Plan: Framework for Action* (Climate Change Task Force: London, 2010).

¹³ See, eg, European Commission, *Commission Staff Working Document: the Role of European Agriculture in Climate Change Mitigation*, SEC(2009)1093, 7.

¹⁴ Committee on Climate Change, *Meeting Carbon Budgets: 3rd Progress Report to Parliament* (Committee on Climate Change: London, 2011) (and see, in particular, 172-201). The Committee on Climate Change is an independent body which advises the Government on setting and meeting carbon budgets.

¹⁵ *Ibid.*, 192.

¹⁶ See, eg, FAO, *Climate Change and Food Security: a Framework Document* (FAO, Rome, 2008) (which explores the potential impact of climate change on all four components of food security: food availability; food utilisation; and food system stability); and FAO, *Profile for Climate Change* (FAO, Rome, 2009).

get the balance right between the public's demands for affordable and plentiful food while meeting their demands for a healthy natural environment'.¹⁷ In this context, a distinctive and major contribution has been made by the *Foresight Report*, published in January 2011.¹⁸ One of the obstacles to be addressed by agricultural policy is identified as '[m]eeting the challenges of a low emissions world'; and it is concluded that there are real difficulties in designing incentives and regulations to reduce greenhouse gas emissions without disrupting the food supply.¹⁹ A classic illustration of this dilemma is provided by fertiliser use. Increasing such use will lead to increased food production, but at the expense of more greenhouse gas emissions. Yet, if less fertiliser is used, and thereby less food is produced, there may be pressure to convert pasture land to arable, with highly adverse consequences in terms of climate change.²⁰ Nonetheless, the report displays optimism that the promotion of existing best practice may achieve considerable emissions reductions without loss of production (best practice extending beyond agricultural as narrowly construed to include also, for example, a switch by consumers away from meat consumption); and, where production is compromised, the interventions should be directed to securing the greatest greenhouse gas savings at the least cost.²¹

3. GMOs and Cloned Foods

In her first interview as the new Secretary of State for Environment, Food and Rural Affairs, Caroline Spelman declared that she favoured GM foods 'in the right circumstances' as 'GM can bring benefits in food to the marketplace'.²² She thus made her pro-biotech stance clear. Moreover, soon after the Coalition

¹⁷ *Environment Secretary Caroline Spelman's Speech at the Oxford Farming Conference 2011* (above n. 6).

¹⁸ Foresight, *The Future of Food and Farming: Challenges and Choices for Global Sustainability - Final Project Report* (The Government Office for Science, London, 2011). Foresight is part of the Government Office for Science and located within the Department for Business, Innovation and Skills.

¹⁹ *Ibid.*, 169.

²⁰ *Ibid.*, 137. The consequences of such land conversion may be judged by the fact that, in England alone, emissions from croplands in 2009 amounted to approximately 6 million tonnes of carbon dioxide equivalent, while removals by grasslands amounted to approximately 4 million tonnes of carbon dioxide equivalent: A.M. Thomson *et al.*, *Emissions and Removals of Greenhouse Gases from Land Use, Land Use Change and Forestry (LULUCF) for England, Scotland, Wales and Northern Ireland: 1990-2009* (Centre for Ecology and Hydrology, Edinburgh, 2011) Fig. 1.

²¹ Foresight (above n. 18) 136-137.

²² J. Jowit and J. Vidal, 'Environment Secretary Caroline Spelman Backs GM Crops', *The Guardian*, 4 June 2010.

Government took power, DEFRA authorised a field trial of a GM potato in Norfolk.²³ These developments have reinvigorated the controversy over GMOs and GM foods; and, indeed, the the Coalition Government has demonstrated willingness to reopen the dialogue over GM foods and crops.²⁴ Such a trend is also reflected in the *Foresight Report*, which calls for the appraisal of new technologies, such as genetic modification and animal cloning.²⁵ The report also states that modern biotechnology is capable of delivering resilient high levels of productivity, together with value which can promote sustainable intensification and food security.²⁶

With regard to animal cloning for food consumption, in August 2010 the United Kingdom public were alarmed to find that there was the possibility of meat and milk from cloned animals having entered the food chain; and this food scare made the headlines for a week.²⁷ Since then the debate over cloned foods has not diminished. In effect, by the end of March 2011, six of the United Kingdom's largest supermarkets had pledged to keep meat and milk from cloned animals and their offspring off their shelves.²⁸ Such a position reflected not only popular demand, but also would seem to reflect two related events: first, the failure of the review of the Novel Foods Regulation at the EU level;²⁹ and, second, the change in the view of the Government on cloned food.

First, even though the European Parliament, the Council and the Commission were all in favour of the removal of cloned foods and their offspring from the scope of the Novel Foods Proposal and the banning of cloning for farming purposes,³⁰ the review process failed because of a clash between the different

²³ It may also be noted that consent had also been granted shortly before the election for a similar trial of GM blight-resistant potatoes at the University of Leeds. See DEFRA, *Part B Consents Granted to Release Genetically Modified Organisms*, (available at <http://archive.defra.gov.uk/environment/quality/gm/regulation/registers/consents/index.htm>, last accessed on 6 September 2011).

²⁴ E. Gibney, *Government Lays Plans to Reopen GM Debate*, Research Fortnight, Issue 361, 2 February 2011, 1.

²⁵ Foresight (above n. 18) 167.

²⁶ *Ibid.*, 88.

²⁷ BBC, *Cloned Cow Milk Claim Investigated*, 2 August 2010 (available at <http://www.bbc.co.uk/news/uk-10834350>, last accessed on 6 September 2011); and F. Harvey, 'Hunt for Descendants of Cloned Cattle', *Financial Times*, 4 August 2010.

²⁸ The supermarkets involved are Tesco, the Co-operative, Marks & Spencer, Sainsbury's, Morrisons and Waitrose. See S. Poulter, 'We Won't Sell Clone Meat Say Supermarkets After Minister Sabotages "Frankenfoods" Label Plans', *The Daily Mail*, 31 March 2011.

²⁹ Proposal for a Regulation of the European Parliament and of the Council on Novel Foods, COM(2007)872 (Novel Foods Proposal).

³⁰ See, eg, Preamble (6a) to Council Political Agreement on the First Reading of the Proposal for a Regulation of the European Parliament and of the Council on Novel Foods, COM(2007)872, adopted on the 22 June 2009; European Parliament Legislative Report adopted on 25 March 2009, P6_TA-PROV(2009)03-25, Provisional Edition PE 422.707; European Parliament Legislative

European institutions on the labelling of the offspring of clones. The European Parliament wanted mandatory labelling of any products from the offspring of clones, while the Council only wanted to label fresh meat – which would have excluded cloned milk.³¹ And the Commission did not consider the products from the offspring of clones as novel foods, with the result that they would require no mandatory labelling.³²

Second, in December 2010 the Food Standards Agency (FSA) and DEFRA modified their positions in relation to cloned foods and declared that food obtained from the descendants of clones of cattle and pigs did not require authorisation or mandatory labelling under the Novel Foods Regulation – a similar position to that adopted by the Commission.³³ Importantly, this change followed a request by Caroline Spelman to her officials to reconsider their assertion that products from the offspring of cloned animals were ‘novel’.³⁴

To summarise, the current view of the FSA and DEFRA is that there is no evidence of any difference in food safety between food products from conventionally bred animals and from cloned animals and their descendants; and both the Minister of State for Agriculture and Food, Mr James Paice, and DEFRA have asserted that a ban on cloning and food from clones would be disproportionate in terms of food safety and animal welfare.³⁵ Further, mandatory labelling of meat and milk obtained from the descendants of cloned cattle and pigs was considered by the Minister to ‘be unenforceable and impractical because there is no traceability system that can be applied to

Resolution of 25 March 2009 on Proposal for a Regulation of the European Parliament and of the Council on Novel Foods, COM(2007)872, P6_TA-PROV(2009)0171; and European Commission, Report from the Commission to the European Parliament and the Council on Animal Cloning for Food Production COM(2010)585.

³¹ For a useful summary, see Euractiv, ‘Novel Foods Review Stumbles over Cloning’ (available at http://www.euractiv.com/en/cap/novel-foods-review-stumbles-cloning-news-503610?utm_source=EurActiv+Newsletter&utm_campaign=978ddd2130-my_google_analytics_key&utm_medium=email, last accessed on 6 September 2011).

³² European Commission (above n. 30).

³³ FSA, ‘Meat and Milk from Cloned Animals’, 7 December 2010, (available at <http://www.food.gov.uk/news/newsarchive/2010/dec/boardcloning>, last accessed on 6 September 2011). See also DEFRA, *Cloning of Farmed Animals* (available at <http://www.defra.gov.uk/food-farm/animals/cloning/>, last accessed on 6 September 2011). On the regulation of cloned foods at European Union level, see further, eg, L. Petetin, ‘Clone Wars? The Challenges of Cloned Food in EU, US and WTO Law’ (2009) 11 *Environmental Law Review* 246.

³⁴ W. Surman, *Clone Rules Could Be Relaxed under DEFRA Review*, 8 October 2010 (available at <http://www.farmersguardian.com/home/livestock/clone-rules-could-be-relaxed-under-defra-review/34862.article>, last accessed on 6 September 2011). The original position of the FSA and DEFRA had been that the products from the offspring of cloned animals should be considered novel foods, in consequence of which they would be regulated under the Novel Foods Regulation, so requiring authorisation and labelling.

³⁵ Hansard (House of Commons) Vol.527, Part 147, Col.2W; and DEFRA (above n. 33).

imported or home produced products from descendants of clones'.³⁶ The general position of the United Kingdom Government would, however, seem to be very different from, for example, the European Parliament; and this confirms the more pro-biotech stance which became evident almost 18 months ago.

4. The Expiration of the Milk Quota Regime and the Operation of the Dairy Sector

Although historically there was a vigorous market in milk quotas throughout the United Kingdom,³⁷ over recent years the dairy industry has contracted to such an extent that national production has not come close to the national quota,³⁸ and, in consequence, milk quotas have largely lost their value. This may be illustrated by data to the effect that, over the 1996-1997 quota year, their average price was over 61 pence per litre, yet by the 2010-2011 milk year that average had fallen to only 0.25 pence per litre (a fall far greater than may be explained by the depreciation which is to be expected as the expiration of milk quota system approaches on 1 April 2015).³⁹

Against this background, the demise of milk quotas would not seem to be generating great concern in the United Kingdom.⁴⁰ Rather, as elsewhere in the European Union, attention has been directed to the wider operation of the dairy sector and, in particular, the inability of farmers to secure sufficient return within the extended food chain. Until their revocation in 1994 and 1995, statutory milk marketing schemes protected United Kingdom dairy farmers from the full forces of the market.⁴¹ However, even though for a while

³⁶ Hansard (House of Commons) Vol.527, Part 147, Col.2W.

³⁷ On milk quotas in the United Kingdom generally, see, eg, M. Cardwell, *Milk Quotas: European Community and United Kingdom Law* (Clarendon Press, Oxford, 1996).

³⁸ See, in respect of the 2010-2011 quota year, Rural Payments Agency (RPA) Press Notice, *RPA Calculates the Milk Supplementary Levy for 2010/11*, 1 August 2011 (available at <http://rpa.defra.gov.uk/rpa/index.nsf/0/F91FDFFECEAF1F3D802578DF004A47DC>, last accessed on 6 September 2011).

³⁹ Ian Potter Associates, *Historic Milk Quota and Livestock Quota Trading Patterns* (2011) (available at http://www.ipaquotas.com/TRADING_PATTERNS.htm, last accessed on 6 September 2011).

⁴⁰ See European Commission, Report for the Commission to the European Parliament and the Council: Evolution of the Market Situation and the Consequent Conditions for Smoothly Phasing Out the Milk Quota System, COM(2010)727, 5. It may be noted, however, that some anxiety has been expressed that the expiration of milk quotas may expose the United Kingdom dairy sector to greater competition (in particular, from Ireland): see, eg, House of Commons Environment, Food and Rural Affairs Committee, *EU Proposals for the Dairy Sector and the Future of the Dairy Industry: Eighth Report of Session 2010-12*, HC 952, 26.

⁴¹ The statutory schemes governing the Milk Marketing Board for England and Wales, the Scottish Milk Marketing Board, the North of Scotland Milk Marketing Board and the Aberdeen

thereafter prices remained relatively buoyant, they then fell away sharply, before rising more recently to earlier levels.⁴² The evident financial pressures which this imposed upon dairy farmers (and consequent popular outcry) attracted the attention of the regulatory authorities. For example, during the course of its investigation into the groceries market, the Competition Commission noted in 2008 that the proportion of the United Kingdom retail price for milk captured by the primary producer had fallen between 1997 and 2006.⁴³ However, it was felt that the buyer power of grocery retailers and intermediary purchasers was but one factor to influence the profitability of dairy farms (others being, for example, exchange rate variations, Common Agricultural Policy reform and food safety and animal health and welfare issues).⁴⁴ Importantly, however, the Competition Commission did recommend the establishment of an Ombudsman to monitor and enforce a Groceries Supply Code of Practice (which would extend the existing Supermarkets Code of Practice).⁴⁵

A perhaps more robust approach has been adopted by the Office of Fair Trading. Thus, in December 2007 it exerted fines totalling over £116 million from a number of companies (including the supermarkets Asda and Sainsbury's) in respect of dairy price-fixing.⁴⁶ That said, in April 2010 these fines were subsequently reduced to approximately £70 million, with other allegations (including certain allegations against Tesco) being dropped.⁴⁷

and District Milk Marketing Board were all revoked as from 1 November 1994 under the Agriculture Act 1993; and the statutory scheme governing the Milk Marketing Board for Northern Ireland was revoked as from 1 March 1995 under the Agriculture (Northern Ireland) Order 1993, S.I.1993 No.2665 (N.I.10).

⁴² Data reveals that the average farmgate price for milk was 25.02 pence per litre in the 1997-1997 milk year, falling to 17.27 pence per litre in the 2000-2001 milk year, and then rising again to 24.66 pence per litre in the 2010-2011 milk year (albeit at a time of far higher input costs): Ian Potter Associates, *Historic Milk Quota and Livestock Quota Trading Patterns* (2011) (available at http://www.ipaquotas.com/TRADING_PATTERNS.htm, last accessed on 6 September 2011).

⁴³ Competition Commission, *The Supply of Groceries in the UK: Market Investigation* (Competition Commission, London, 2008) 160. See also generally, eg, L. Bukeviciute *et al.*, *The Functioning of the Food Supply Chain and Its Effect on Food Prices in the European Union* (European Commission, Brussels, 2009).

⁴⁴ Competition Commission (above n. 43) 162.

⁴⁵ In order to establish the Ombudsman, the Competition Commission was to seek legally binding commitments from large grocery retailers and, if these were not forthcoming, then the Competition Commission recommended that Government take the necessary steps: see, eg, *ibid.*, 6.

⁴⁶ Office of Fair Trading Press Release 170/07, *OFT Welcomes Early Resolution Agreements and Agrees Over £116 Million Penalties*, 7 December 2007.

⁴⁷ Office of Fair Trading Press Release 45/10, *OFT Update on Dairy Investigation*, 30 April 2010; and Office of Fair Trading Press Release 46/10, *OFT Drops a Number of Allegations Against Tesco in Dairy Investigation and Agrees Discount For Tesco Not Contesting Remaining*

Nonetheless, more recently, in August 2011 the Office of Fair Trading did successfully conclude its investigation by imposing penalties of almost £50 million for co-ordination of price increases in respect of certain dairy products during 2002 and/or 2003.⁴⁸

Further, and importantly, the new, reinforced Groceries Code came into force on 4 February 2009, but the Competition Commission was unable to obtain the requisite undertakings from grocery retailers in relation to the establishment of an Ombudsman, with the result that it formally requested Government intervention.⁴⁹ At the time of the 2010 election, each of the three major parties (Conservative, Labour and Liberal Democrat) included in their manifesto a commitment to introduce a Groceries Code Adjudicator and, following its taking office, the Coalition Government published a Draft Groceries Code Adjudicator Bill on 24 May 2011.⁵⁰ Under this Bill, the Groceries Code Adjudicator would, *inter alia*: arbitrate disputes between large retailers and their direct suppliers, or appoint another person to do so; and would investigate possible breaches of the Groceries Code by large retailers. However, as highlighted by the House of Commons Business, Innovation and Skills Committee in its pre-legislative scrutiny of the Bill, a potential weakness of the legislative framework is that the Adjudicator would only be levy financial penalties if so empowered under an order by the Secretary of State for Business, Innovation and Skills.⁵¹

Against this background, it is perhaps not surprising that there has been broad support for the recommendation by the High-Level Expert Group on Milk that the bargaining power of producers should be increased;⁵² and, indeed, there has

Aspects, 30 April 2010. It may also be observed that the Office of Fair Trading was obliged to pay damages to another supermarket, Morrisons, for suggesting in a press release that it too had been subject to a provisional finding of infringement and had been previously been warned against anti-competitive behaviour: Office of Fair Trading Press Release 54/08, *Wm Morrison Supermarkets plc: an Apology*, 23 April 2008.

⁴⁸ Office of Fair Trading Press Release 89/11, *OFT Fines Certain Supermarkets and Processors Almost £50 Million in Dairy Decision*, 10 August 2011.

⁴⁹ For a helpful summary of this process, see, eg, House of Commons Business, Innovation and Skills Committee, *Ninth Report of Session 2010-12: Time to Bring on the Referee? The Government's Proposed Adjudicator for the Groceries Code*, HC 1224-I, 5-6.

⁵⁰ Cm 8080. There is concern that this may not come into force until mid-2013: see, eg, J. Thompson, 'New Supermarkets Ombudsman May Not Start Work Until 2013', *The Independent*, 9 May 2011.

⁵¹ House of Commons Business, Innovation and Skills Committee (above n. 49) HC 1224-I, 60-61. The Committee also believed that the ability of suppliers to make anonymous complaints would be fundamental to the success of the Groceries Code Adjudicator.

⁵² High Level Expert Group on Milk, *Report of the High Level Group on Milk*, 15 June 2010 (available at http://ec.europa.eu/agriculture/markets/milk/hlg/report_150610_en.pdf, last accessed on 7 September 2011).

also been broad support for the Milk Package more generally.⁵³ Thus, before the House of Commons Environment, Food and Rural Affairs Committee, the National Farmers Union took the view that ‘the measures proposed by the Commission are certainly promising, and have the potential to be beneficial for UK dairy farmers, provided [DEFRA] gives them its full backing’.⁵⁴ However, it may be noted that the Minister of State for Agriculture and Food, Mr James Paice, has already highlighted the limited ambit of the provisions governing contractual relations as set out in the proposed European Community legislation (which do not allow, for example, a Member State to fix a minimum price so as to protect primary producers).⁵⁵ Further, to return one final time to the speech by Caroline Spelman at the Oxford Farming Conference, there was evident a determination to move away from the ‘paternal approach of Government telling industry what to do and industry complying’:⁵⁶ this may not necessarily bode well for primary milk producers as the first link within a food chain where powerful market forces are at work.

⁵³ For the legislative proposal, see European Commission, Proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) 1234/2007 as regards contractual relations in the milk and milk products sector, COM(2010)728.

⁵⁴ House of Commons Environment, Food and Rural Affairs Committee (above n. 40) HC 952, 39. See also, eg, the views expressed by several Members of Parliament in the debate on dairy farming on 7 June 2011: Hansard (House of Commons) Vol.529, Part 164, Cols.1-16WH.

⁵⁵ Hansard (House of Commons) Vol.529, Part 164, Cols.11-12WH.

⁵⁶ *Environment Secretary Caroline Spelman’s Speech at the Oxford Farming Conference 2011* (above n. 6).