

**C.E.D.R.**



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**Commission I**

National Report – Rapport national – Landesbericht

**United Kingdom**

**Andrea Nicholls, Solicitor**

## XXIV European Congress of Agricultural Law – Napoli 2007

### Commission 1 – Common Agricultural Policy, New Rules of WTO and regional equilibrium.

**Rapporteur for the UK: Andrea Nicholls, Solicitor.**

#### Introduction

The reforms to the Common Agricultural policy have been introduced in England and Wales as the Single Farm Payment. The structure of the payment is such that it is a Green Box support measure as defined by the WTO.

For the purposes of this paper I shall be restricting my answers to the CAP provisions as applied in England. Different rules pertain in both Scotland and Wales and the details of those schemes are beyond the remit of this paper.

Describe briefly the economic importance of agriculture in the economic context of your country (e.g. historical reasons, social structure, territory and morphology) Explain which are the strategic agricultural sectors and why.

The contribution of agriculture to the GDP of the UK is a tiny 0.8% the smallest contribution to GDP of any country in the EU. The largest economic sector in the UK is services, (in particular banking, insurance and business services), followed by manufacturing industry at 19.1% of GDP. A mere 541,000 people are employed in agriculture out of a work force of 30.4 million the number of workers in agriculture has decreased by 100,000 people in the last ten years.

There are approximately 300,000 active farms in the UK with an average farm size of around 57 hectares. This compares with the European average farm size of only 20 hectares. Some 14% of farms are over 100 hectares and account for over 65% the agricultural area.

The climate and topography of the UK is particularly suited to two distinct types of agriculture, pastoral farming is found in the areas of higher rainfall and in the hills, predominantly in the north and west of the UK. Arable farming is concentrated in the south and east of the UK where the climate is drier and the soils deeper. The agricultural products of importance are cereals, oilseeds, potatoes, vegetables, cattle (both beef and dairy), sheep and poultry.

Outline a brief history of how the CAP has been given implementation in your country during the last decades, highlighting the peculiarities of the political choices and the main problems which occurred.

The single farm payment in England replaced a number of direct subsidy payments; the Arable Area Payments Scheme, Beef Special Premium, Extensification Payment Scheme, Sheep Annual Premium Scheme, Sucker Cow Premium Scheme, Slaughter Premium Scheme, Veal Calf Slaughter Premium Scheme, Dairy Premium, Dairy additional payments, Hops Income Aid and Seed Production Aid. There is now no requirement for farmers to grow crops or to keep livestock in order to receive aid. The requirement is simply to hold payment entitlements, hold land and comply with the cross compliance requirements.

In England single farm payments to farmers in the initial years of the scheme are divided into two elements; a historic element and a per acre payment. The historic element is based on the applicant's claim for subsidy under the previous Integrated Administration and Control System in the reference period 2002 and 2003. Over the next 6 years to 2006 this element of the payment

will reduce proportionally year on year to be entirely replaced by a standard payment per acre in 2012.

In his CAP blog Professor Wyn Grant of Warwick University observes that;

“In the long run it is going to be difficult to justify a Single Farm Payment (SFP) model that is based on historical receipts. This model originated in the generous compensation given to cereal farmers for cuts in intervention payments in the 1992 MacSharry reforms. There will be a shift to a regional model with a flat rate payment per hectare in each region. This is already under way in England, Finland and Germany and all the new member states have a flat rate payment system.”

The Rural Payments Agency is responsible for administering the scheme in England and for making payments to farmers under the scheme. The RPA is an executive agency of the Department for the Environment Food and Rural Affairs (DEFRA).

In Wales the Single Farm Payment scheme is administered by the Welsh Assembly and is substantially different in its detail. The Welsh system is based entirely upon than individual's historic subsidy claims during the reference period. These have then been divided by the number of hectares which that individual declared that he held and were eligible under the scheme in 2005. So the payment per hectare made to a Welsh farmer is entirely personal to him.

The new payments are calculated upon the basis of the number of entitlements to payment which a farmer holds. Confusingly, even though the payments are made per hectare they are not linked to a specific hectare of land. In 2005 Farmers had to establish their claim to receive entitlements by completing a claim to DEFRA (the Department of the Environment, Food and Rural Affairs). DEFRA itself explains the system in the following way;

“To receive the single payment the farmer must first hold payment entitlements (PEs) and then match each against an eligible hectare of land that is at the farmer's disposal for a minimum consecutive period of 10 months. To secure full payment the farmer must also comply with a series of cross compliance conditions. With the exception of PE that was allocated from the national reserve as a result of special circumstances (in which case tighter restrictions apply) if PE is not used within 3 years it is taken to the national reserve.”

PE can be traded between farmers, either when farmland is bought and sold or completely independently of any land transaction.

Give a broader description of the modalities of the CAP implementation in your country after the 2003 reform explaining the reasons why non-decoupled aids haven't been adopted though sometimes possible.

Which of the non-decoupled payments allowed by the EC Reg NO 1782/2003 (in its title IV) and subsequent regulations have been preferred by your country?

Why did your government prefer these non-decoupled measures?

The only decoupled measures which the UK adopted were the new schemes area aid for nuts, protein crop premium and aid for energy crops. The relationship between the direct schemes and the Single Payment Scheme is as follows:

Nuts are permanent crops and are not usually eligible for the Single Payment, with certain exceptions when the area is in dual use.

Protein Crops Premium whether or not payment is claimed under the Single Payment Scheme. From 2005

From 2005, application for payment can be is on the single payment application form and payment will is made during the SPS payment window (December 1st - June 31st). These direct payments are subject to modulation.

Which is in your opinion the relationship between the new CAP rules and the WTO agreement on agriculture in general.

The criticism of agricultural support payments paid by the EU had been that it employed the farm support policy that had the greatest distorting effect on world prices for agricultural produce, direct price support. The less distortive EU policies became, in WTO terms by shifting Blue Box payments into Green Box payments the more the incentives to produce in the EU were weakened and the more world markets and trade were liberalised. The effect of the CAP rules was precisely that by decoupling payments from production they moved from the Green into the Blue Box, therefore the new CAP rules were, in my view, a clear concession by the EU in an attempt to become "WTO compliant"

To quote Professor Wyn Grant "The main driver of CAP reform from the MacSharry reforms of 1992 onwards has been the need to adjust to adapt to a liberalising international trade regime that has embraced agriculture."

What about, more particularly the so-called conditionality in Reg. No 1782/03 and the so-called "green box"

The Green Box is defined in Annex 2 of the WTO Agriculture agreement. To qualify as a green box subsidy a measure must not distort trade or cause minimal distortion. The subsidies must be government funded and not funded by charging consumers higher prices and must not involve price support.

Green box programmes are not targeted at particular products and include direct income support for farmers which are decoupled from current production levels or prices. They also include environmental protection and regional development programmes. The Single Farm payment has been described, perhaps uncharitably, as "income support for farmers" as it is applied in England it is wholly de-coupled from production and falls squarely within the terms of the Green Box.

Did the WTO rules have an influence on your government's choices about the national implementation of the new CAP rules?

And did the expected future rules (those currently negotiated in the Doha framework) have some kind of influence on it?

In positive case, in which sense has there been influence? Otherwise (if you answered the last two questions in the negative) do you think there should have been?

The UK government enthusiastically embraced the concept of decoupling as the foundation of its implementation of the new CAP rules. It also seized the opportunity to link the payment of decoupled support to farmers to their farms compliance with environmental and animal welfare standards, which are referred to as the "cross-compliance rules."

The rules are the current legislative expression of the UK government's belief that 'public funds are only used for public goods, in particular environmental benefits.' This would mean the effective end of Pillar 1 and of restraints on trade. David Milliband who was then the Secretary of State for the Environment Food and Rural Affairs told the Oxford farming conference this year. He went on to say that he saw "an inevitable process of trade liberalisation, with huge pressure on subsidies and restraints on trade.' And that he believed, contrary to the views of commissioner Fischler-Boel, that the 2008 CAP health check should be used to pursue a 'further fundamental reform'.

There are two distinct sets of rules which make up the cross compliance requirements; the Statutory Management Requirements (SMRs) and Good agricultural and environmental condition (GAEC) standards. Farmers will be inspected to check that they are meeting these standards

Farmers who fail to comply with the rules have a percentage deduction made from the Single Farm Payment which they receive.

**The Statutory Management Requirements (SMR) are a straightforward restatement of a number of articles previously contained in EC Directives and Regulations and which relate to environmental matters, public health, animal health, plant health and animal welfare.**

**They include, for example, the requirement to only use approved pesticides, the rules for control of spongiform encephalopathy's (mad cow disease) and the regulations for the control of foot and mouth disease.**

The **Good agricultural and environmental conditions (GAEC)** are as follows

- The Protection and maintenance of soil
- Overgrazing
- *Stone walls*
- *Hedgerows*
- Permanent Pasture
- Set – Aside
- Land not wholly in Agricultural Production
- Protection of Landscape Features
- Hedge and Watercourse Protection
- Rights of Way
- Moorland Measures

Although the requirements themselves aren't new often being a straightforward restatement of liabilities and offences that already existed under other legislation, the potential loss of income which arises from breaches of them is.

Do you think that the participation of the EU in the WTO has (or had) some positive or negative effect on the regional equilibrium inside the EC area? (EC reporters should answer with regard to the agricultural and food trade issues which particularly interest their country)

Is your nation party to a regional organization, or to a regional integration agreement or to a regional co-operation agreement or similar?

Does this organisation or agreement provide any special rule for agricultural trade?

It is exceptionally difficult to prove a negative, but having contacted DEFRA, DG Agri and the Foreign and Commonwealth office the best information which I am able to obtain is that the UK is not a party to any regional organisation or agreement which imposes any rules or restrictions upon the trade in agricultural produce.

Is your country party to bilateral commercial agreements involving agricultural trade?

Does the participation into these organizations or agreements and its juridical implications (such as preferential treatments, elimination of tariffs need for harmonisation etc) affect in some way the national implementation of CAP by your country or its national agricultural policy choices? Please explain how.

Do the new CAP rules and/or the current or incoming WTO rules affect in some way the participation of your country into those organizations or agreements?

Does the participation into these organizations or agreements affect in some way the agricultural trade between your nation and third countries? Indicate which kind of influence you mean. Do you think that this kind of influence complies with the WTO rules?

The UK is not a party to any bilateral commercial agreements which provide rules or have any implications for trade in agricultural commodities. The UK is a strong advocate of trade liberalisation indeed the UK objective on agriculture in Cancun was to achieve a strongly liberalising outcome which would bring benefits to producers and consumers both at home and abroad, with particular concern for developing countries.

Do you think the above issues can positively affect the trade of your state with developing or less developed countries?

As the UK is not a party to bilateral agreements or regional organisations it's trade with developing countries is only affected by its adoption and implementation of CAP.

In their report for the Department for International Development, entitled, The Reform Options for EU domestic support policies within the Blue and Green box and their likely impact on developing countries, in January 2000 CAES Consultants (the Centre for European Agricultural Studies at Wye College, the University of London) considered how much influence variation of CAP and trade liberalisation more generally would have on agriculture in developing countries.

They concluded that, while it is generally perceived that EU agricultural support has been the major contributor to increased international prices and increased volatility in international price levels for agricultural commodities. The effect of various types of EU agricultural support on developing countries are not direct or linear and are diluted by the policies and market characteristics of the developing countries themselves.

The consultants recommendation to the UK government was that the most favourable EU reform option from a developing countries perspective was the removal of Blue Box the permitted direct payments to farmers where the farmers are required to limit production, certain government assistance programmes to encourage agricultural and rural development in developing countries, and other support on a small scale ("de minimis") when compared with the total value of the product or products supported

And the tightening of Green Box measures. They recommended that an immediate abolition of the Blue Box was preferably to its gradual phasing out.

The UK adopted this view and has continued to press for ever more stringent reform and the possible complete abolition of the CAP. It does not subscribe to the view that bilateral trade agreements can deliver positive trade outcomes for developing countries and believes that a multilateral approach is the best route to real trade liberalisation.

Did your country work out some proposals for the new Round of multilateral negotiations in order to reform some parts of the Agreement on Agriculture? Did these proposals somehow take into account their rights and obligations – concerning agricultural trade – deriving from the regional agreements or organisations to which your country is a party?

The UK's stated aims for the new Round of negotiations were to achieve the following outcomes in agriculture; reductions in trade-distorting domestic support (including subsidies and other

programmes that fix prices artificially in the European Union and elsewhere) ,improvements in market access (reductions in agricultural import tariffs in the EU and in developed countries – with special and differential treatment for developing countries) ,the end of export subsidies (that make EU agricultural exports in particular artificially competitive) .( joint Treasury/Defra paper, A Vision for the Common Agricultural Policy, December 2005)

In September 2006 the Trade and Investment minister Ian McCartney reconfirmed this position in a written statement to the house of commons, when commenting on the alleged collapse of the Doha round of talks “the UK remains committed to achieving an ambitious, pro-development outcome to these (the Doha Round) negotiations. Our priority now is to encourage all WTO members to reengage in eh negotiations as soon as possible. The UK will continue to support a multilateral, rules based, international trading system. We believe multi laterlaism is the best way of tackling unfair trade practices.”

### Summary

The implementation of the Common Agricultural Policy through the Single Farm Payment Scheme in England reflects two strong policy threads;

1. The internal politics of a country with an overwhelmingly urban population. Where the government has sought to obtain “best value” for the it’s spending on farm support payments through the imposition of environmental and animal welfare standards.
2. The current governments conviction that the free trade is the best means to assist developing countries are that a multilateral agreement rather than bi-lateral trade groupings and agreements is the best means to achieve that end.