C.E.D.R.

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Round Table – Table ronde – Runder Tisch

EFFECTS OF THE WTO ON THE CAP AND ON NATIONAL RURAL LAW, PARTICULARLY IN THE CONTEXT OF ORGANIC AGRICULTURE

REPERCUSSIONS DE L'OMC SUR LA PAC ET SUR LE DROIT RURAL NATIONAL, NOTAMMENT EN CE QUI CONCERNE L'AGRICULTURE BIOLOGIQUE

AUSWIRKUNGEN DER WTO AUF DIE GAP UND DAS NATIONALE AGRARRECHT, INSBESONDERE MIT BEZUG AUF DIE ÖKOLOGISCHE LANDWIRTSCHAFT

National Report – Rapport national – Landesbericht

United Kingdom – le Royaume-Uni – Vereinigtes Königreich

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United Kingdom report – Rapport du Royaume-Uni – Bericht des Vereinigten Königreichs

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1. Which agricultural products and foodstuffs are affected by WTO rules (Agreement Establishing the World Trade Organization: WTO Agreement)?

The WTO Agreement on Agriculture, which is an Annex 1A document of the Agreement Establishing the World Trade Organisation,[1] sets out the to commodities covered by the Agreement on Agriculture in its own Annex 1. These are, following the World Customs Organisation's (WCO)[2] Harmonised System of tariff nomenclature,[3] as HS Chapters 1 to 24 less fish and fish products,[4] plus other specified products.[5] Products falling outwith this range of classification, would not be covered by the WTO Agreement on Agriculture, but rather by the provisions of GATT 1994. The EC also "follows closely the structure of the Harmonised system",[6] which is set out in the WCO's International Convention on the Harmonized Commodity Description and Coding System,[7] which was signed by the EC in 1983, and its

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1 Along with, *inter alia*, GATT 1994, GATT 1947, the Agreement on the Application on sanitary and Phytosanitary Measures, and the Agreement on Technical Barriers to Trade, all documents relevant to this paper

2 *http://www.wcoomd.org*

3 Building on the previous Brussels Tariff Nomenclature, (BTN), established in the Nomenclature Convention of Brussels of the 15 December 1950, adopted into EC law by way of Council Regulation 950/68 of 28 June 1968 [1968] OJ Spec Ed (I) 275, together with the Annex attached thereto

4 The HS classifications are as follows: 1. Live animals, Meat and edible meat offal, 3 Fish and crustaceans, molluscs and other aquatic invertebrates, 4 Diary produce; birds' eggs; natural honey; edible products of animal origin, not elsewhere specified or included. 5. Products of animal origin, not elsewhere specified or included. 6. Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage, 7 edible vegetables and certain roods and tubers. 8. Edible fruit and nuts; peel of citrus fruit or melons, 9. Coffee, tea, maté and spices. 10 Cereals, 11 Products of the milling industry; malt; starches; inulin; wheat gluten, 12 Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder, 13. Lac; gums, resins and other vegetable saps and extracts, 14. Vegetable plaiting materials; vegetable products not elsewhere specified or included. 15. Animal or vegetable fats and oils and their cleave products; prepared edible fats; animal or vegetable waxes. 16. Preparations of meat, or fish or of crustaceans, molluscs or other aquatic invertebrates. 17. Sugars and sugar confectionery, 18 Cocoa and cocoa preparations, 19 Preparations of cereals, flour, starch or milk; pastry cooks' products. 20 Preparations of vegetables, fruit, nuts or other parts of plants, 21. Miscellaneous edible preparations, 22 Beverages, spirits and vinegar, 23 Residues and waste from the food industries; prepared animal fodder, 24. Tobacco and manufactures tobacco substitutes.

5 HS Code 2905.43 (mannitol), HS Code 2905.44 (sorbitol), HS Heading 3301 (essential oils), HS Headings 35.01 to 35.05 (albuminoidal substances, modified starches, gules), HS Code 3809.10 (finishing agents), HS Code 3823.60 (sorbitol n.e.p.), HS Headings 41.01 to 41.03 (hides and skins), HS Headings 43.01 (raw furskins), HS Headings 50.01 to 50.03 (raw silk and silk waste), HS Headings 51.01 to 51.03 (wool and animal hair), HS Headings 52.01 to 52.03 (raw cotton, waste and cotton carded or combed), HS Heading 53.1 (raw flax), HS Heading 53.02 (raw hemp), with the "product descriptions in round brackets" not necessarily being exhaustive. The Agreement on Sanitary and Phytosanitary Measures is not to be limited to this product classification.

6 Francis Snyder ed.; Regional and Global Regulation of International Trade, Hart Publishing, Oxford - Portland Oregon 2002-11-27 Ch. 1 Francis Snyder: Governing Economic Globalisation: Global Legal Pluralism and EU law

7 International Convention on the Harmonized Commodity Description and coding System, done at Brussels on 14 June 1983, and the Protocol thereto, done at Brussels on 24 June 1986 (OJ 1987 L198 L198/3), 1035 UNTS 3, KAV 2260

amending protocol signed by the EC in 1986,[8]on the basis of Articles 26 and 133 EC (formerly Articles 28 and 113 EC), and as reflected in the case of *Commission of the European Communities* v. *Council of the European Communities.*[9]

2. What impact have WTO rules on government intervention in relation to the regulation of agricultural land (revision of property in land)?

The WTO Agreement on Agriculture does not concern itself with ownership of land. It is however concerned with payments to farmers to assist in the production of agricultural products. It does however impose obligations on the Member States of the WTO, and the EC, which is also a signatory of the Uruguay Round Final Acts in a number of areas; Market Access, Article 4 Agreement on Agriculture, export subsidy commitments, Articles 1, 3, 8 and 9 of the Agreement on Agriculture, and Domestic Support Measures, Articles 3, 6 and 7 of the Agreement on Agriculture. It is in the area of domestic support measures that the concepts of green and blue boxes arise. Member states of the WTO, and the EC, through its Common Agricultural Policy, are required to ensure that its payments to farmer are decoupled from the price of the agricultural commodity being produced, and fall, ideally within the green box,[10] or in default, the blue box provisions.[11] While it is anticipated that the green box will continue long term, there are no such guarantees with regard to the blue box, which could be restricted or closed off during the current round of multilateral negotiations.

The Green box provisions permit[12] "payments under environmental and regional assistance programmes".[13] Payments under Green Box provisions, must be generally available to producers within the region[14] and can not be "related to, or based on, the type or volume of production",[15] with the "size of the payment related to the income loss incurred" and not on current behaviour[16] thereby limiting the effectiveness of developing green box payments as steering mechanisms in the development of more sustainable agricultural practices.[17] In addition, as Rude has pointed out, the taxing of "negative environmental externalities" is possible under the Agreement on Agriculture, but the provision of "subsidies to encourage the generation of positive environmental externalities would be a problem" within the parameters of the Green box provisions.[18]

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8 (OJ 1987 L198/3), 1035 UNTS 3, KAV 2260.

9 Case 165/87 Commission of the European Communities v. Council of the European Communities [1988] ECR 5545

10 Article 6.1 of the Agreement on Agriculture and Annex 2.

11 Article 6 Agreement on Agriculture.

12 Agreement on Agriculture, Articles 2.2-2.13.

13 Kevin C. Kennedy, Reforming Farm Trade in the Next Round of WTO Multilateral Trade Negotiations, (2001) Journal of World Trade 35(6): 1061-1079,

14 James Rude, Under the Green Box; the WTO and Farm Subsidies, (2001) Journal of World Trade 35(5); 1015-1033,

15 WTO Agreement on Agriculture, Annex 2, paragraph 6

16 Op. Cit. Footnote no. 14.

17 Ibid.

18 Ibid.

Blue Box payments[19] do permit payments aimed at certain "limited agricultural production",[20] but again they do not permit for steering mechanisms aimed at encouraging sustainable farming practices. Safety net provisions[21] again "shall relate solely to income; it shall not relate to the type or volume of production".[22] Payments under environmental programmes are allowed, provided they are part of "a clearly defined government environmental or conservation programme and be dependent on the fulfilment of specific conditions",[23] however, the payments "cannot exceed the extra costs of complying with the government programme" thereby limiting the attractiveness of such programmes to producers.[24] Equally the Special Safeguards provision in the Agreement on Agriculture does not provide the necessary mechanism for developing either the principles of sustainability or multifunctionality, as it can only be invoked if "the volume of imports of the concerned product in any year exceeds a certain trigger level or, but not concurrently, the import price falls below a certain trigger price.[25]

3. Which are the means and measures taken by the government concerning official quality control of products with regard to the Agreement on the Application of Sanitary and Phytosanitary Measures (Annex 1A WTO Agreement)?

Opinion 1/94,[26] otherwise known as *Re the Uruguay Round Treaty Texts,* found that despite the fact that the compliance with the provisions of the Agreement on Agriculture necessitated internal regulation pursuant to Article 43 EC, now renumbered Article 37 EC,[27] that the appropriate measure for the signing of the WTO Agreement on Agriculture was the then Article 113 EC (now Article 133) EC,[28] on the basis of what is known as the EC's "external economic policy".[29] The ECJ in Opinion 1/94 also referred to "the exclusive competence conferred on the

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19 under Annex 2, Article 6.

20 Op. Cit. Footnote no. 13.

21 WTO Agreement on Agriculture, Annex 2, paragraph 7

22 Op. Cit. Footnote no. 14.

23 Ibid.

24 Ibid.

25 Jai. S. Mah, Reflections on the Special Safeguard Provision on the Agreement on Agriculture of the WTO, (1999) *Journal of World Trade*, 33 (5), 197-204.

26 *Opinion 1/94 (re WTO Agreement*) [1994] ECR I-5267

27 At point 29 of the report of the ECJ's opinion.

28 Amended by the Nice treaty, to now read as follows: Article 133 (ex Article 113) EC 1. The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. 2. The Commission shall submit proposals to the Council for implementing the common commercial policy. 3. Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The relevant provisions of Article 300 shall apply. 4. In exercising the powers conferred upon it by this Article, the council shall act by a qualified majority. 5. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraphs 1 to 4 to international negotiations and agreements on services and intellectual property insofar as they are not covered by these paragraphs.

29 Marise Cremona: EC External Commercial Policy after Amsterdam: Authority and Interpretation with Interconnected Legal Orders, The EC, the WTO and the NAFTA; Towards a Common Law of International Trade, Edited by J.H.H. Weiler, Oxford University Press, 2000

community" regarding the EC's Common Commercial Policy by what is now Article 133 EC.[30] This approach is reflected in the WTO Appellate Body report of *European Communities – Customs Classification of Certain Computer Equipment*,[31] also known as the LAN case. In this case the United States tried to bring a complaint against Ireland and the United Kingdom (while agreeing to bring a complaint against the EC as well).[32] As can be seen above, the report, the conclusions and recommendations referred only to the EC. The case concerned the customs classifications utilised by the Irish and British authorities. The Appellate Body noted that the "EC constitutes a customs union and that the 'export market' is the European Communities, not an individual Member State".[33] With respect to the specific provisions of the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), and the Agreement on the Technical Barriers to Trade (TBT), the ECJ held that the SPS agreement could be concluded "on the basis of Article 133 alone",[34] and that the TBT agreement also fell "within the ambit of the Common Commercial Policy".[35] It is therefore in this context that the UK operates the EC sanitary and phytosanitary measures, and through them, the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. The WTO agreements were adopted by the EC by way of Council Decision 94/800/EC.[36] The UK therefore follows the recommendations of the EC Standing Committees,[37] in particular the Standing Committee on the Food Chain and Animal Health, and the Standing Committee on Plant Health.[38]

4. How (and in which way) are goods from outside the Community introduced in the domestic market of Agricultural products?

The importation of animals and animal products are dealt with under three headings, live animals, animal products, and germplasm products. All live animals and animal products, together with their accompanying shipping and health certification documentation, arriving in the UK, from either EU or non-EU member states, are inspected. Non-EU imports are only permitted to enter the UK via approved Border Inspection Posts, where the animals and animal products are "subjected to post-import veterinary inspection".[39] DEFRA will charge the importer a fee for this service. Commercial exporters of live animals into the EU must be approved by the European Commission, and importers of animal products are normally approved by the

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30 Ibid.

31 Report of the Appellate Body of 5 June 1998 (AB -1998-2, WT/DS62/AB/R, WT/DS67/AB/R, WT/DS68/Ab/R, p. 39.)

32 Friedl Weiss (ed.) Improving WTO Dispute Settlement Procedures: Issues & Lessons from the practice of Other International Courts & Tribunals (Cameron May, London, 2000.) Ch. 6 Joinder of Parties and Third Party Intervention in WTO Dispute Settlement Allan Rosas

33 Ibid.

34 *Opinion 1/94 (re WTO Agreement*) [1994] ECR I-5267, at paragraph 31.

35 Ibid, at paragraph 33.

36 94/800/EC: Council Decision (of 22 December 1994) concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986- 1994) OJ 1994 L336/1

37 These are the Standing Committee on the Food Chain and Animal Health, Standing Committee on Propagating Material and Ornamental Plants, Standing Committee on Propagating Material and Plants of Fruit General and Species, Standing Committee on Agricultural, Horticultural and Forestry Seeds and Plants, Standing Committee on Community Plant Variety Rights, Standing Committee on Zootechnics, and the Standing Committee on Plant Health. Further information on these committees are available at http://europa.eu.int/comm/food/fs/rc/index_en.html.

38 Telephone interview with DEFRA staff, 6th June 03.

39 http://www.defra.gov.uk

European Commission. The import of "live horses and equidae" from third countries must follow the procedures and conditions set down by the European Commission, and be accompanied by prescribed veterinary certificates.[40] In addition to the relevant EC legislation, UK legislation also applies to the import of live animals[41] and animal products.[42]

Protection of plants is covered by the Plant Health (Great Britain) Order 1993,[43] as amended, enacted pursuant to the Plan Health Act 1967 and read in conjunction with the Agriculture (Miscellaneous Provisions) Act 1972, which provides for phytosanitary certificates and plant passports. Imports of plant and plant products for the purpose of propagation are covered by the Plant Health (England)(Amendment) Order 2003,[44] which introduced a plant passporting system in accordance with the provisions of EC Directive 2002/36.[45]

5. Which of the government institutions, authorities and agencies which are in charge of quality control of agricultural products and agro-foodstuffs? Which Competencies do they have?

The principal agency concerned with the quality control of agricultural products and agro-foodstuffs is the UK Department for Environment, Food and Rural Affairs (DEFRA).[46] Joint responsibility for agriculture, fisheries, food, forestry and rural policy lies however, within Northern Ireland, with the Department of Agriculture & Rural Development (DARDNI),[47] in Scotland with the Scottish Executive Environment & Rural Affairs Department (SEERAD),[48] and in Wales with the Welsh Assembly Government Agriculture & Rural Affairs Department (ARAD).[49] Regulation of agricultural products and agro-foodstuffs are divided into food (to

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40 Council Directive 90/426/EEC of 26 June 1990 on animal health conditions governing the movement and import from third countries of equidae, Official Journal L 224, 18/08/1990 p. 42, as amended by Commission Decision of 5 March 1992 establishing the regionalization of certain third countries for imports of equidae, Official Journal L 71, 18/03/1992 p. 27

41 The Animal and Animal Products (Import and Export) (England and Wales) Regulations 2000, as amended, the Welfare of Animals (Transport) Order 1997, The Animals (Post-Import Control) Order 1995, and the Importation of Animals Order 1977.

42 The Products of Animal Origin (Third Country Imports) (England) Regulations 2002, the Specified Risk Material (Amendment) (England) Order 2001, SI 2001 No. 2650, the Processed Animal Protein (England) Regulations 2001, SI 2001 No. 2376, the Products of Animal Origin (Import and Export) (Amendment) (England) Regulations 2001, SI 2001 No. 1640, The Specified Risk Material (Amendment) (England) (No. 3) Order 2000, SI 2000 No. 3377, the Specified Risk Material (Amendment) (England) Order 2000, SI 2000 No. 2726, Miscellaneous Products of Animal Origin (Import Conditions) Regulations 1999, SI 1999 No. 157, the Specified Risk Material Order 1977, SI 1997 No. 2964, the Products of Animal Origin (Import and Export) (Amendment) Regulations 1997, SI 1997 No. 3023, the Products of Animal Origin (Import & Export) Regulations 1996, SI 1996 No. 3124, the Fresh Meat (Import Conditions) Regulations 1996, SI 1996 No. 3125, the Imported Food Regulations 1984, SI 1984 No. 1918, Importation of Processed Animal Protein Order 1981 (as amended), SI 1981 No. 677, Importation of Animal Products and Poultry Products Order 1980 (as amended). SI 1980 No. 14.

43 SI 1993 No. 1320

44 SI 2003/1157

45 Commission Directive 2002/36/EC of 29 April 2002 amending certain Annexes to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community, Official Journal L 116, 03/05/2002 p. 16

46 http://www.defra.gov.uk

47 http://www.dardni.gov.uk/

48 http://www.scotland.gov.uk/who/dept_rural.asp

49 http://www.assembly.wales.gov.uk/subiagriculture/index.htm

include animal foods) and non-food products. Food standards[50] are addressed by the Food Standards Act of 1999, which set up the UK wide Food Standards Agency.[51] This agency, which was set up as a Crown Body, a non-Ministerial government department. The FSA is obliged to report annually to the UK parliament, the National Assembly for Wales, the Scottish Parliament and the Northern Ireland Assembly every year,[52] with advisory committees being for set up for each of the devolved regions.[53] As separate legal jurisdictions,[54] and as the devolved parliaments with the greater powers, it is possible for both the Scottish Executive and the Northern Ireland Assembly to withdraw their jurisdiction from the supervision of the Food Standards Agency under s.33 of the Act. This option has not as yet been exercised by either devolved parliament.

Section 35.1 of the Food Standards Act provides that, in Scotland, the Agency is to "be treated as a cross-border public authority", and with power given to the Scottish Executive to "remove, alter or confer relevant functions of the Agency which are exercisable in or as regards Scotland". The relationship between the Food Standards Agency and the Northern Irish Executive are set out in s.35.4, which provides that the "relevant functions of the Agency in relation to Northern Ireland shall be regarded as functions of a Minister of the Crown for the purposes of paragraph 1(a) of Schedule 2 to the Northern Ireland Act 1998, which deals with excepted matters, with relevant functions of the Agency being defined in subsection 5, being "functions relating to, or to matters connected with – (a) food safety or other interests of consumers in relation to food; or (b) the safety of animal feedingstuffs or other interests of users of animal feedingstuffs".

The Food Standards Agency has the role of developing policies on "matters concerned with food safety" or matters of "interest to consumers" dealing with food, and providing advice, information and assistance in relation to these matter to public authorities[55] or to the public.[56] In addition a UK or devolved parliament Minister may request the agency to undertake further responsibilities.[57] Powers of the Authority include the power to enter premises, (other than private dwellings) and conduct inspections.[58] Monitoring and enforcement powers are also granted to the agency.[59] Power to make orders may also be delegated from the Minister of State to the agency in an emergency. While no reference to the World Trade Organisation is made in the act, the Secretary of State may hold the Agency accountable[60] if there is a serious failure of duties. The Secretary of State may direct the Agency to implement "any obligations of the United Kingdom under the Community Treaties" or (b) any international agreement to which the United Kingdom is a party".

DEFRA retains authority for all powers not assigned to the Food Standards Agency by the Food Standards Act 1999. DEFRA operate their powers exclusively for England, and can operate exclusively or in conjunction with the regional agricultural ministries for Scotland,

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50 Food includes animal foodstuffs under section 9 of the Food Standards Act 1999.

51 *http://www.foodstandards.gov.uk*

52 Section 4 Food Standards Act 1999

53 Section 5 Food Standards Act 1999.

54 It should be noted that Scotland and Northern Ireland are different legal jurisdictions, from England and from each other, while Wales shares a legal jurisdiction with England.

55 Section 6.1 Food Standards Act 1999

56 Section 7 Food Standards Act 1999

57 Section 6.2 Food Standards Act 1999

58 Section 11 Food Standards Act 1999

59 Section 12 Food Standards Act 1999

60 Section 24 Food Standards Act 1999

(SEERAD),[61] Wales, (ARAD),[62] and Northern Ireland, (DARDNI),[63] for those relevant geographical areas, as exemplified by the relevant provisions of the Scotland Act 1998 with regard to Scotland.[64] DEFRA currently operates separate systems for *inter alia*, animal exports, animal imports, germplasm exports, germplasm imports, product exports, and product imports. Legislation operated in the UK with regard to the import and export of products of animal origin are essentially UK implementations of EC directives.[65] The UK operates veterinary checks and safeguard measures in accordance with the EC directives in this area. DEFRA's Plant Health Division (PHD) is responsibility for plant health issues for import and export transactions, for England, and in conjunction with the Welsh Assembly Authorities for Wales. Checks are conducted at UK Border Inspection Posts (BIP), in conjunction with the Association of Port Health Authorities.[66]

6. Is there a control system in your country with regard to the compatibility of domestic quality standards with quality standards set by the Community and the WTO?

The UK applies EC quality standards, and through them WTO standards. There are no separate domestic standards. Inspections are conduced at the point of sale and in production facilities to ensure compliance with EC quality standards.[67]

7. What is the distribution of competencies in your country with regard to the implementation of Community law and WTO rules in the market of Agricultural products and agro-foodstuffs?

DEFRA operate their powers exclusively for England, and can operate exclusively or in conjunction with the regional Agricultural ministries for Scotland, (SEERAD),[68] Wales,

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61 http://www.scotland.gov.uk/who/dept_rural.asp

62 http://www.assembly.wales.gov.uk/subiagriculture/index.htm

63 http://www.dardni.gov.uk/

64 Under s.28.7 of the Scotland Act 1998 the UK parliament retains full capacity to legislate for Scotland. S.28.7 Scotland Act 1998 "This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland". Under Schedule 4 of the Scotland Act 1998 responsibility for compliance with EC law are reserved to Westminster. Schedule 5 of the Scotland Act 1998 provides at section 7(1); International relations, including relations with territories outside the United Kingdom, the European Communities (and their institutions) and other international organisations, regulation of international trade, and international development assistance and co-operation are reserved matters. (2) Sub-paragraph (1) does not reserve – (a) observing and implementing international obligations, obligations under the Human Rights convention and obligations under Community law, (b) assisting Ministers of the Crown in relation to any matter to which that sub-paragraph applied.

65 1996 No. 3124 The Products of Animal Origin (Import and Export) Regulations 1996 implements Council Directives 89/662/EEC of 30th December 1989 (OJ No. L395), 90/675/EEC of 31 December 1990 (OJ No. L373), 92/118/EEC of 15 March 1993 (OJ No. L62), and 97/78/EC of 18 December 1997 (OJ No. L24). 1997 No. 3023 the Products of Animal Origin (Import and Export) (Amendment) Regulations 1997 implement in part Council directive 96/43 of 26 June 1996 (OJ No. L162), which amended and consolidated Council Directive 85/73/EEC, and the Agreement between the EC and New Zealand on Sanitary measures applicable to trade in live animals and animal products, annexed to Council Decision 97/132/EC of 17 December 1996 (OJ No. L57). SI 2002 No. 1227 the Product of animal Origin (Third Country Imports) (England) Regulations 2002 applied for England council directive 97/78/EC (OJ No. L24, 30.1.98, p. 9), while SSI 2002 No. 445 The Products of Animal Origin (Third Country Imports) (Scotland) Regulations 2002 did likewise for the Scottish jurisdiction.

66 *http://www.apha.org.uk/*

67 Telephone interview with DEFRA staff, 6th June 2003.

68 http://www.scotland.gov.uk/who/dept_rural.asp

(ARAD),[69] and Northern Ireland, (DARDNI),[70] for those relevant geographical areas, as exemplified by the relevant provisions of the Scotland Act 1998 with regard to Scotland,[71] the Government of Wales Act 1998[72] for Wales, and the Northern Ireland Act 1998[73]for Northern Ireland.

8. Is there any jurisprudence in your country with regard to the introduction and consumption of agricultural products and foodstuffs imported into the Community which is line with WTO rules?

A number of cases have been heard both in the ECJ and in the English courts arising from the issuing by Turkish authorities of phytosanitary certificates under Commission Directive 92/103 EC, amending Council Directive 77/93 EC,[74] for citrus fruits[75] originating from Northern Cyprus, *inter alia* the ECJ's judgement on the case in 1994,[76] and again in 1998, in *R*. v *Ministry of Agriculture, Fisheries and Food Ex p. SP Anastasiou (Pissouri)Ltd* (C219/98),[77] which provided that exceptionally, that "certificates could be issued in non-member states other than the country of origin" if three tests had been met.[78] The latest in this series of cases is *Regina*

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69 http://www.assembly.wales.gov.uk/subiagriculture/index.htm

70 http://www.dardni.gov.uk/

71 Under s.28.7 of the Scotland Act 1998 the UK parliament retains full capacity to legislate for Scotland. Under Schedule 4 of the Scotland Act 1998 responsibility for compliance with EC law is reserved to Westminster. The observation of international legal obligations, to include those under EC law and Human Rights law are however the responsibility (though not exclusively) of the Scottish Parliament.

72 Section 29 of the Government of Wales Act 1998 deals with the Welsh Assembly's (non-exclusive) obligations to comply with EC legal provisions and to implement the necessary measures in Wales to implement EC law in that country.

73 Schedule 2 of the Northern Ireland Act 1998 provides for Excepted Matters, or matters for which the Westminster Parliament retains exclusive control over. Section 3 of Schedule 2 deals with EC and international obligations. It provides; 3. International relations, including relations with territories outside the United Kingdom, the European Communities (and their institutions) and other international organisations, and international development assistance and co-operation, but not- (a) the surrender of fugitive offenders between Northern Ireland and the Republic of Ireland; (b) the exercise of legislative powers so far as required for giving effect to any agreement or arrangement entered into- (i) by a Minister or junior Minister participating, by reason of a nomination under section 52, in a meeting of the North-South Ministerial Council or the British-Irish Council; or (ii) by, or in relation to the activities of, any body established for implementing, on the basis mentioned in paragraph 11 of Strand Two of the Belfast Agreement, policies agreed in the North-South Ministerial Council; (c) observing and implementing international obligations, obligations under the Human Rights Convention and obligations under Community law. In this paragraph "the Human Rights Convention" means the following as they have effect for the time being in relation to the United Kingdom- (a) the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950; and (b) any Protocols to that Convention which have been ratified by the United Kingdom

74 Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of harmful organisms of plants or plant products, Official Journal L 26, 31/01/1977 p. 20

75 Or, to be more precise, fruits of *Citrus*L, *fortunella* Swingle, *poncirus* Raf, and their hybrids.

76 *R* v *Minister of Agriculture, Fisheries and Food, Ex p SP Anastasiou (Pissouri) Ltd* (Case C-432/92) [1994] ECR 1-3087

77 *R*. v *Ministry of Agriculture, Fisheries and Food Ex p. SP Anastasiou (Pissouri)Ltd* (C219/98), (ECJ) European Court of Justice, 4 July 2000, [2000] ECR I-5241, [2000] 3 CMLR 339, Times, July 18, 2000.

78 These three tests, according to the ECJ, were that the goods; "1) had been imported into the territory of the country where checks had taken place before being exported into the Community; (2) had been in that country for sufficient time to allow proper checks to be carried out, and (3) was not subject to any specific requirements that could only be satisfied in the country of production".

v. *Minister of Agriculture, Fisheries and Food ex parte. S P Anastasiou (Pissouri) Limited and Others,*[79] heard by a three judge House of Lords on the 4th July 2000, who once again referred the case to the ECJ for a preliminary ruling, yet to be ruled upon in Luxembourg. The issue in this dispute this time were the provisions of items 16.1 and 16.2 to 16.4 of Annex IV, Part A of Directive 77/93/EEC as amended, now Directive 2000/29/EC. Item 16.1 requires that the packaging of the fruit should bear an appropriate mark of origin, while items 16.2 to 16.4 requires an official statement as to the country of origin be made by an official of the country of origin. While it was accepted that under the 1998 ECJ case that it was possible for the certificate of origin on the packaging be impressed on the goods in countries other than the country of origin, the issue of the official statement of an official as to the country of origin being given, again in this case, by a Turkish official on behalf of goods originating from Northern Cyprus, was acceptable. It was felt by the Law Lords, in particular by Lord Hope of Craighead, that this was not an *acte clair*, and that a reference had to be made to the ECJ, as the consequences of the ruling on this issue would have "far – reaching implications for the phytosanitary regime as currently operated both under EC rules and the International Plant Protection Convention".[80] In particular, the UK's current practice, as per Lord Hope of Craighead, is to admit into the EC "wood shipped from Canada accompanied by phytosanitary certificates issues by the Canadian authorities in the wood is stated to be of United States origin".[81]

The issue of national produce marketing boards arose in the case of *Apple and Pear Development Council* v *KJ Lewis Ltd*, which was ruled on by the ECJ.[82] Here the ECJ held that while a national marketing board could be established, and it could levy a charge on national producers of a particular produce, and not on competitors importing into the national market, that the national marketing board would be operating contrary to the provisions of Art. 30 EC if it provided "publicity intended to discourage the purchase of products from other EC States or to disparage those products or to advise consumers to buy domestic products solely by reason of their national origin". In addition it would be unlawful for a national marketing board "to try to impose (as oppose to advise) quality standards of a different type to those established by the EC rules" in the relevant common organisation, and that any levy imposed for purposes "incompatible with the common agricultural policy" would be unlawful.

The issue of national marketing boards arose again in the case of *Meat and Livestock Commission* v *Manchester Wholesale Meat & Poultry Market Ltd,*[8384] with the argument being that the advertising campaign to promote British Meat operated in effect as a quantitative restrictions on imports of meat from other member states, in contravention of the provisions of the then Article 30 EC.[85] The advertising campaign cost £19M,[86] raised by way of a statutory

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79 *Regina* v. *Minister of Agriculture, Fisheries and Food ex parte. S P Anastasiou (Pissouri) Limited and Others*, No. [2001] UKHL 71, House of Lords, HL, Before: Lord Slynn of Hadley Lord Steyn Lord Hope of Craighead, Monday 17th December, 2001

80 Lord Hope of Craighead, at point 61 of the judgement in *Regina v. Minister of Agriculture, Fisheries and Food ex parte. S P Anastasiou (Pissouri) Limited and Others*

81 Lord Hope of Craighead, at point 61 of the judgement in *Regina v. Minister of Agriculture, Fisheries and Food ex parte. S P Anastasiou (Pissouri) Limited and Others*

82 *Apple and Pear Development Council v KJ Lewis Ltd* (C222/82) (ECJ) European Court of Justice 13 December 1983, [1983] ECR 4083, [1984] 3 CMLR 733, Times, December 21, 1983

83 *Meat and Livestock Commission v Manchester Wholesale Meat & Poultry Market Ltd*, (QBD) Queens Bench Division 31 October 1996, [1997] 2 CMLR 361, [1997] Eu. L.R. 136, Independent, December 2, 1996 (C.S.)

84 *Meat and Livestock Commission v. Manchester Wholesale Meat & Poultry Market Limited*, Before the English High Court (Queen's Bench Division) QBD, (Presiding, Moses J.), 1 November 1996

85 Article 28 EC post Amsterdam

86 "Recipe for Love" marketing campaign

levy on producers, which constituted as state aid pursuant to the then Article 93(3) EC. Approval for this state aid was obtained from the European Commission, on the basis that the campaign would not infringe Article 30 EC. It was held by the Queens Bench Division of the English High Court, after considering the relevant EC and UK case law, and the Commission's Guidelines[87] drawn up to address this particular issue, in light of the *Apple and Pear* case, that "a public body.. did not enjoy the same freedom as regards methods of advertising as did the actual producers or their voluntary organisations",[88] and that it was up to the national courts to decide to what extent the publicity campaign was incompatible with the EC treaty. The findings in this case were that this particular marketing campaign, by virtue of the way that is was conducted, "did not constitute a measure having equivalent effects to quantitative restrictions on imports from other Member States into the United Kingdom contrary to Article 30".

9. Which impact on the domestic market has the application of the rules of the Agreement on the Application of Sanitary and Phyotosanitary Measures (Annex 1 WTO Agreement) or, in relation to non-members of the WTO, which impact have the Community rules on health for the movement of agricultural products and foodstuffs?

… and …

10. Which particular problems in relation to the movement of agricultural products and foodstuffs have resulted from the application of the WTO rules in your country?

As the EC sps standards, which are science based standards, are fairly high, and certainly higher than the WTO sps standards, the impact of the WTO Sanitary and Phytosanitary Measures had little impact on either the domestic market or the export of UK agricultural goods from the EC to third countries. Imports from non-EC member states, either from WTO or non-WTO member states could be affected by the Community rules on health for the movement of agricultural products and foodstuffs. The UK approach is to maintain the high EC sps standards, but to "try to build capacity in developing countries, through development assistance", in order to assist developing countries to product agricultural and food produce which meet the EC sps standards. [89]

11. Does the WTO Agreement have an impact on the export of "organic products" to third countries?

… and …

12. Does the WTO Agreement have an impact on the import of "organic products" from third countries?

While the issue of labelling generally, and eco-labelling in particular, is currently being discussed at the WTO, the WTO legal texts do not currently address the issue of "organic products". Organic products are therefore not affected in a manner separate from other food products by

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87 [1986] O.J. C272/4

88 Following the finding in Apple and Pear Development Council v. Lewis (C222/82): [1983] E.C.R. 4083

89 Telephone interview with DEFRA staff, 6th June 2003.

the WTO Agreement on Agriculture, either for imports or exports into and out of the EU, from or to third countries. The WTO Technical Barriers to Trade (TBT) Agreement would however be relevant in this area. The TBT agreement applies to Agricultural products,[90] with the exception of technical issues relative to sanitary and phytosanitary measures, which are covered by the WTO SPS Agreement.[91] The TBT agreement encourages the adoption of internationally agreed standards where possible. The main objectives of the TBT agreement are to avoid unnecessary obstacles to trade, and to ensure non-discrimination by one WTO member state between other member states of the WTO, and national treatment of WTO member states products within another WTO member states. The SPS agreement for its part, adopts, *inter alia,* the Codes Alimentarius Commission's[92] guidelines as acceptable standards for Sanitary and Phytosanitary measures.[93] The Codex Alimentarius Commission adopted, on the 4th July 1999 "international guidelines for the production, processing, labelling and marketing of organically produced food".[94] They were subsequently amended in 2001 with the addition of provisions for livestock and livestock products.[95] Should this code,[96] which currently operates as a set of recommendations, and is not mandatory, on organic produce be widely adopted, it is to be supposed that it will have an impact on national and EC regulation and definition of what are "organic products". EC law, for its part, sets out the EC's rules on organic products in Council Regulation 2092/91,[97] as subsequently amended. The UK Register of Organic Food Standards (UKROFS) currently regulates the implementation of said EC regulations within the UK. The WTO Agreements do "not specifically" have an impact on the import from or export to third countries of "organic products", however "changes to organic standards have to be notified under the TBT procedures" to the EC Commission, and by the Commission to the WTO.[98] It is proposed to replace UKROFS with a new Advisory Committee on Organic Standards (ACOS). Its duties will "*inter alia* advise Ministers on EU organic standards and their application in the UK".[99] In addition it is proposed to publish a UK Compendium of UK organic standards, which will be based on Council Regulation 2092/91, with certification to be both base line certification and additional certification should a particular organisation so choose.

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90 Article 1.3 of the TBT Agreement; All products, including industrial and agricultural products, shall be subject to the provisions of this Agreement.

91 Article 1.5 of the TBT Agreement; "The provisions of this Agreement do not apply to sanitary and phytosanitary measures as defined in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures.

92 *http://www.codexalimentarius.net/*

93 Recitals no 5 of the Preamble to the SPS Agreement states; "Desiring to further the use of harmonized sanitary and phytosanitary measures between Members, on the basis of international standards, guidelines and recommendations developed by the relevant organisations, including the Codex Alimentarius Commission, the International Office of Epizootics, and the relevant international and regional organizations operating within the framework of the International Plant Protection Convention, without requiring Members to change their appropriate level of protection of human, animal or plant life or health"

94 *http://www.fao.org/WAICENT/OIS/PRESS_NE/PRESSENG/1999/pren9940.htm*, accessed 21/5/03.

95 From text of email from the Codex Alimentarius Commission, dated 25.5.03.

96 Available at *http://www.codexalimentarius.net*, - official standards – special publications - organic

97 Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs, Official Journal L 198, 22/07/1991 p. 1.

98 Text of e-mail correspondence with DEFRA, 23rd May 03.

99 Open letter from DEFRA, 8th May 2002, re Consultation Exercise on developing a compendium of UK Organic Standards. *http://www.defra.gov.uk/farm/organic/actionplan/index.htm*, accessed 23/5/03

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13. What are the control systems for the import of "organic products" from third countries?

The UK, through the UK Register of Organic Food Standards (UKROFS), regulates organic food production pursuant to the current EC regulations.[100] The UKROFS can only "issue authorisation for goods entering into free circulation in the UK".[101] Goods entering into another EC member state, even if "subsequently marketed in the UK" must be authorised by the appropriate body in that other EC member state.[102] Within the UK the UKROFS currently has the aim of being the UK body "responsible for ensuring that EC organic standards are properly applied in the UK" by various approved certifying bodies.[103] These minimum standards are set out in Council Regulation 2092/91, as amended, Article 11 of which covers the importation of goods from third countries.

Either the producer or processor has to be registered with an approved organic certification body, of either the UK, or of a fellow EC member states. Producers or exporters from third countries listed in the Annex to EC Commission Regulation 94/92 EC,[104] as amended, can also rely on their country of origin's national certification procedures, if those certificates of inspection comply with the requirements set out in EC Commission Regulation 3457/92 EC. Alternatively the importer can be registered with one of the "UK organic certifying authorities approved by UKROFS" and "each consignment of the imported product is accompanied by a certificate issued by one of the approved inspection bodies from the third country listed in the Annex to Regulation (EEC) 94/92 as amended".[105] Products from non-recognised third countries can only be brought in and marketed as organic if prior authorisation has been obtained from UKROFS. Importers wishing to bring in, to the UK, or through the UK, to the EC, organic produce from non-recognised third countries, are required to complete an OB6 Application. In addition importers of organic produce, for sale as organic produce within the UK or the EC, must be able to prove that the goods were "produced to rules equivalent to those laid down in Articles 6 and 7 of Council Regulation (EEC) 2092/91 (as amended)", and were also "subject to inspection measures equivalent to those subject to inspection measures equivalent to those laid down in Articles 8 and 9 of Council Regulation (EEC) 2092/91 (as amended) and that such inspection measures will be permanently and effectively applied".[106] In addition all third country imports for sale as organic products must be certified by bodies

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100 Commission Regulation (EEC) No 94/92 of 14 January 1992 laying down detailed rules for implementing the arrangements for imports from third countries provided for in Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs, Official Journal L 11, 17/01/1992 p. 14, Commission Regulation (EC) No 1162/2002 of 28 June 2002 amending Regulation (EEC) No 94/92 laying down detailed rules for implementing the arrangements for imports from third countries provided for in Council Regulation (EEC) No 2092/91, Official Journal L 170, 29/06/2002 p. 44, and Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs, Official Journal L 198, 22/07/1991 p. 1

101 UKROFS Standards February 2001 Chapter VIIII, provision no.11.

102 Ibid.

103 The Approved Bodies are UKROFS (only for operators directly registered with UKROFS), Organic Farmers and Growers & Growers, Scottish Organic Producers Association, Organic Food Federation, Soil Association Certification Ltd., BioDynamic Agricultural Association, Irish Organic Farmers and Growers Association Ltd, Organic Trust Ltd and CMi certification

104 Commission Regulation (EEC) No 94/92 of 14 January 1992 laying down detailed rules for implementing the arrangements for imports from third countries provided for in Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs, Official Journal L 11, 17/01/1992 p. 14

105 DEFRA website *http://www.defra.gov.uk/farm/organic/imports/imports*.htm. Accessed 12.5.03.

106 Ibid.

"complying with EN45011, or its international equivalent, ISO 65".[107] In the absence of such compliance, the UKROFS "is not able to authorise any imports involving third country inspection bodies".

14. What is the stance of the jurisprudence in your country in relation to the application and interpretation of the precautionary principle?

The UK operates a number of different legal jurisdictions, England and Wales, Scotland, Northern Ireland, and the jurisdictions of the UK off shore islands. The two main jurisdictions, England and Wales, and Scotland, operate two different legal systems, the former being common law, and the latter, a mixed system, mixed common law and civil law. While the "precautionary principle" is acknowledged as being an EC law concept, it is not indigenous to either the English and Welsh, or to the Scottish legal system. The precautionary principle has appeared only sparingly in reported English judgments, with no appearance having been recorded of the precautionary principle within Scottish case law. The few reported cases which have addressed the issue of the precautionary principle, in England, have done so in the context of Environmental law, and usually against the backdrop of EC law in the disputed area. The Administrative Court of the Queens Bench Division has heard two cases in recent years, with two cases involving the precautionary principle being heard in the Court of Appeal. There have been no reported judgements from the House of Lords on the issue of the "precautionary principle". An earlier planning case of *Soutwark LBC* v. *Sea Containers Services*[108] held that the "precautionary principle applied to .. inconclusive evidence on safety".

The earliest of the cases is the Court of Appeal case of *R.* v *Secretary of State for Trade and Industry Ex p. Duddridge*.[109] In this case the court, while recognising that the then Article 130r EC[110] provided for a precautionary principle, that the said article "merely set out the policy objectives which might be pursued" by the EC in the area of environment, but did not of itself "impose any obligation on the Secretary of State", and by implication, upon any other person. The 2000 cases of *R* v. *Leicestershire CC ex p. Blackfordby and Boothorpe Action Group Ltd*[111] before the Queens Bench Division, and *R*. v. *Derbyshire County Council, ex parte. Murray*[112] before the Court of Appeal, Administrative Court, confirmed the view that the now numbered Article 174 EC did not have direct effect. This approach was followed, and the findings of these two 2000 cases confirmed, in the 2001 Court of Appeal case of *R. (on the application of Amvac Chemical UK Ltd)* v *Secretary of State for the Environment, Food and Rural Affairs*,[113] which spent the most time of all the cases discussing the precautionary principle. Here the Court of Appeal attempted to provide a working definition of the precautionary principle. Referring to the 1998 UK Official Group on Organophosphates, where

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107 Ibid.

108 *Southwark LBC v Sea Containers Services*, Planning Inspector, c.1993, (1993) 8 P.A.D. 704

109 *R*. v *Secretary of State for Trade and Industry Ex p. Duddridge*, (CA) Court of Appeal, 6 October 1995, [1996] 2 C.M.L.R. 361, [1996] Env.L.R. 325, (1996) 8 Admin. L.R. 269, Times, October 26, 1995, Independent, October 20, 1995.

110 Now Article 174 EC, post Amsterdam.

111 *R*. v *Leicestershire CC Ex p. Blackfordby and Boothorpe Action Group Ltd*, (QBD) Queens Bench Division, 15 March 2000, [2001] Env. L.R. 2, [2000] E.H.L.R. 215, [2000] J.P.L. 1266, 2000 WL 191261.

112 *R*. v. *Derbyshire County Council, ex parte. Murray*, Queen's Bench Division (Administrative Court), QBD (Admin Ct), (Maurice Kay J.), October 6, 2000.

113 *R. (on the application of Amvac Chemical UK Ltd)* v *Secretary of State for the Environment, Food and Rural Affairs* (QBD (Admin Ct)) Administrative Court 3 December 2001, [2001] EWHC Admin 1011, [2002] A.C.D. 34, [2001] N.P.C. 176, 2001 WL 1479891.

two possible definitions were provided. These were "A the principle that where a hazard is identified, risks of harm from the hazard should be assumed for the purposes of control measures to be significant pending proof of the contrary" and "B the principle that reasonable grounds are needed for concluding that a hazard gives rise to a significant risk of harm, but that where the likelihood of harm arising cannot be accurately calculated:-- (a) the uncertainty should not be regarded as a valid reason for inaction; (b) the likelihood should be assessed to be on the higher side of the range of possible predictions; and (c.) control measures should be put in place accordingly". The Organophosphates group had concluded that definition A was not compatible with either UK or EC legislation, and therefore was no longer applied. The Court reported that, at the time of the case, there was no evidence of any Government report into this document. The Court then went on to discuss the February 2000 Communication from the EU Commission on the precautionary principle and the 2000 Cartagena Protocol on Biosafety to the Convention on Biological Diversity. In addition the August 2000 UK Government's "Response of the Sixth Annual Report of the Government Panel on Sustainable Development". The Court, having reviewed the earlier case law, and the aforementioned policy documents, was prepared to concede that "it may in some fields of regulation be relevant to take into account the precautionary principle and, more important, its limitations", and in particular that the precautionary principle might be highly relevant in the area of pesticide approval, the subject matter of the case. However, the Court pointed out that there was no "settled, specific or identifiable mechanism of risk assessment in the field of pesticide approval that the Claimant is entitled to rely on the "precautionary principle", which could have aided in resolving the case.

15. Are there any import restrictions as a precaution (as precautionary measures) in your country for agricultural products and foodstuffs originating from third countries which are not members of the WTO?

No distinction is made by the UK authorities between WTO and non-WTO third countries. The only difference between WTO and non-WTO third countries would be in the process adopted in a dispute situation, with WTO members availing of the WTO dispute settlement process, and non-WTO members having recourse only to bi-lateral dispute procedures.[114]

[114] Telephone interview with DEFRA staff, 6th June 2003.