



**THE IMPLICATIONS OF
'BREXIT'
FOR UK AGRICULTURE**

A report for the Yorkshire Agricultural Society



**Farmer Scientist
Network**

CONTENTS

3	Preface
4	Introduction: the process of exit
5	A New EU-UK Relationship: The range of scenarios after exit
6	Farm Support
6	<i>Pillar 1</i>
7	<i>Pillar 2</i>
9	BREXIT and the devolved administrations
10	Budgetary issues
12	<i>Impact on farm revenues and incomes</i>
14	Agriculture and the environment
17	Implications for animal health and welfare
20	Plant protection
21	Genetically modified organisms
23	Geographical indications
24	Migrant labour
24	<i>The demand for migrant labour</i>
26	<i>The SAWS scheme</i>
26	<i>Implications of BREXIT</i>
27	The importance of the WTO's rules on British withdrawal from the EU
28	<i>The uncertain impact on domestic support, export subsidies and tariffs</i>
28	<i>Options for the UK after BREXIT</i>
30	<i>The issues that arise from the WTO rules</i>
31	Conclusions
32	Appendices
38	References
40	The Yorkshire Agricultural Society and Farmer-Scientist Network
41	Biographies

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PREFACE

The purpose of this report is not to recommend how anyone should vote in the referendum on continued British membership of the EU. Such a decision would involve considerations that go beyond agriculture and the food chain. However, those involved in agriculture need to be better informed about the consequences for them of a British exit. This report seeks to identify issues that need to be clarified in the referendum debate. It seeks to explore the policy options that would be available in the event of a British exit.

This report focuses on farming, but it is hoped that a subsequent study will examine the food and drink industry. It provides the evidence and argument base for our summary report, but those interested in further information may wish to read parts of this report.

We are very grateful for the support of the Yorkshire Agricultural Society (YAS) through its Farmer-Scientist Network which has made this study possible. While considering the special circumstances of Yorkshire, we have had to look at England and the UK as a whole.

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INTRODUCTION: THE PROCESS OF EXIT

The British Government is in the process of negotiating a new settlement for the United Kingdom (UK) in a reformed European Union (EU). The plan then is to hold an in-out referendum, before the end of 2017, on the UK's continued membership of the EU. This report examines the options that would be available if it is decided that the UK should leave the EU (BREXIT).

The process of exit is set out in Article 50 of the Treaty on European Union. After a referendum, the UK Government would inform the European Council of its intention to withdraw. Negotiations would then begin on a withdrawal agreement. The Council adopts a decision authorising the opening of the negotiations and nominates the Union negotiator or the head of the EU's negotiation team. The Council of Ministers, having obtained the consent of the European Parliament (i.e. the EP has a right of veto over the withdrawal agreement), concludes the agreement, acting by a Qualified Majority Vote (QMV – roughly two-thirds).

During the negotiation, the withdrawing member state would continue to participate in other EU business. The UK would remain a member of the EU while these negotiations took place. If they were not completed within two years, the withdrawal would come into force in any case (unless the European Council voted unanimously to extend them with the agreement of the UK). Given the complexity of the issues, and likely disagreements between the continuing states (acting by qualified majority), all of this two year period would probably be necessary. The 2013 House of Commons research paper notes, 'It would not be possible to withdraw from, say, the Common Agricultural Policy overnight without causing enormous disruption for farmers. Transitional arrangements for an alternative regime to be put in place would have to form part of the withdrawal agreement' (Thompson and Haraj, 2013: 11).

Repeal of the 1972 European Communities Act (ECA) would have legal consequences for subordinate legislation under the Act, as is explained in Appendix 1.

A NEW UK-EU RELATIONSHIP: THE RANGE OF SCENARIOS AFTER EXIT

There are five broad scenarios after exit and each of these has different implications for farmers. The technical detail relating to each of these scenarios is dealt with more fully in Appendix 2. These scenarios can be placed on a continuum ranging from the most integrated to the least integrated:

1. Customs union. The UK withdraws from the EU, but remains within the customs union. Goods from within the customs union can move freely, including British farm exports, as can those from outside once a Common External Tariff (CET) has been paid. However, it does not differ much from EU membership and might be unacceptable to opponents of membership.
2. The 'Norwegian' solution in which the UK rejoined the European Free Trade Area (EFTA) and remained in the European Economic Area (EEA). The CAP regime as such is not included in the EEA, so there would be scope for a domestic policy. However, more generally, it involves accepting EU regulations while having a limited influence in them.
3. Switzerland is in EFTA but not the EEA. It has a series of bilateral treaties with the EU negotiated on a case-by-case basis. The difficulty as with the Norwegian solution is that a considerable body of EU law has to be accepted without the ability to shape it.
4. A simple free trade agreement (FTA) with the EU is probably the UK's preferred option, but may be difficult to achieve.
5. If an agreement cannot be reached on a FTA, then the default option is for the UK and EU to trade with each other within the WTO system. This would be damaging to UK farmers in terms of tariff barriers in Europe and free access of imports.

FARM SUPPORT

The current Common Agricultural Policy (CAP) is that agreed at the time of the 2013 reforms, which will continue until 2020. In line with policy developments commencing at the time of the 1992 MacSharry reforms, the focus of support is now on direct payments to the producer (as opposed to product-based support), with market intervention in large part limited to the provision of a safety net in times of crisis. Direct payments are delivered separately under the two 'Pillars' of the CAP (Pillar 1 covering direct payments to farmers, together with such market management measures as remain, and Pillar 2 covering rural development). Expenditure under Pillar 1 is fully financed from the EU budget, whereas expenditure under Pillar 2 is, in almost all cases, dependent upon co-financing by Member States. Each Pillar will be considered in turn.

Pillar 1

The principal EU legislation which governs direct payments under Pillar 1 is Regulation (EU) 1307/2013 of the European Parliament and of the Council. It provides for three mandatory forms of support. The first is the 'Basic Payment', which is activated by farmers having 'eligible hectares' at their disposal on 15 May of any given year. In essence, therefore, the Basic Payment is area-based, but with a different rate of payment in England according to whether the eligible hectares fall within or outside the 'moorland' region.

The second is the 'greening component', a new initiative under the 2013 reforms, which accounts for 30 per cent of national allocations for direct payments under Pillar 1. It is designed to promote agricultural practices beneficial for the climate and the environment through an obligation that farmers entitled to the Basic Payment observe specified requirements in relation to crop diversification, the maintenance of existing permanent grassland and ecological focus areas. The third is a payment for young farmers, which is not to exceed 2 per cent of such national allocations. The decision taken in England has been to allocate 2 per cent of national allocations for direct payments under Pillar 1 for this purpose. In addition, Regulation (EU) 1307/2013 provides for a range of optional measures (such as a redistributive payment, a payment for areas with natural constraints and voluntary support coupled to certain forms of production), but these have not been implemented in England.

At the same time, direct payments under Pillar 1 are subject to a range of measures of general application and three such measures may be highlighted. First, Regulation (EU) 1307/2013 restricts eligibility to 'active farmers', with the general rule being that no direct payments are to be granted to natural or legal persons (or to groups of natural or legal persons) who operate: airports; railway services; waterworks; real estate services; or permanent sport and recreational grounds. Secondly, Regulation (EU) 1307/2013 also obliges member states to reduce by at least 5 per cent any amount of Basic Payment which a farmer may receive in excess of 150,000 Euros, with the decision having been taken in England to limit such 'degressivity' to the permitted minimum of 5 per cent.

Under this regime, their receipt is rendered conditional upon compliance with a range of statutory management requirements, together with standards for good agricultural and environmental condition of land (such standards to be established at national level on the basis of an EU framework). The cross-compliance obligations so imposed relate to: environment, climate change and good agricultural condition of land; public, animal and plant health; and animal welfare.

Pillar 2

The principal EU legislation which governs the rural development regime is Regulation (EU) 1305/2013 of the European Parliament and of the Council. It identifies six EU 'priorities' for rural development, these being as follows:

- (1) fostering knowledge transfer and innovation in agriculture, forestry, and rural areas;
- (2) enhancing farm viability and competitiveness of all types of agriculture in all regions and promoting innovative farm technologies and the sustainable management of forests;
- (3) promoting food chain organisation, including processing and marketing of agricultural products, animal welfare and risk management in agriculture;
- (4) restoring, preserving and enhancing ecosystems related to agriculture and forestry;
- (5) promoting resource efficiency and supporting the shift towards a low carbon and climate resilient economy in agriculture, food and forestry sectors; and
- (6) promoting social inclusion, poverty reduction and economic development in rural areas.

Central to the rural development regime is the level of discretion accorded to member states, in that it is their responsibility to draw up rural development programmes for implementation of a strategy to meet the EU 'priorities'. Such programmes may be submitted at national or regional level at the option of the member state and in the UK the preferred option has been submission at regional level. Accordingly, a separate rural development programme has been submitted for England, which was approved by the European Commission on 13 February 2015. It is specifically provided that at least 30 per cent of the total EU contribution to rural development programmes should be reserved for measures with an environmental focus (including, for example, agri-environment-climate measures and organic farming). In England, the flagship environmental programme is 'Countryside Stewardship' (see further discussion below).

(a) Legacy Schemes

Of the first generation of agri-environmental schemes (AES) in England the most important for the farming industry was the Environmentally Sensitive Areas (ESA) scheme – like other 'legacy schemes' ESA has been closed to new entrants since 2005 and most management agreements are now spent. Nevertheless, ESA spend on agreements was £19 million in 2013, and £7 million in 2014.

ESA was replaced by the Environmental Stewardship scheme in 2005, and the number of extant Stewardship agreements is substantial. There were 47,400 management agreements with farmers in Entry Level Stewardship in 2014, and a further 14,100 in Higher Level Stewardship. In Wales the principal scheme until 2014 was GlasTir, and in 2014 there were 5,400 agreements in total in GlasTir (all options).

The Environmental Stewardship scheme closed to new entrants from 2015, but the number of management agreements with farmers will remain considerable due to renewals before this date. Agreements are for 5 or 10 years in most cases. The cost of funding these arrangements is considerable: the combined total spend on Environmental Stewardship and ESA agreements in 2014 was £384 million in England, £44 million in Wales (GlasTir etc.).

(b) Countryside Stewardship

The Department for Environment, Food and Rural Affairs's (Defra's) new flagship agri-environment scheme in England - Countryside Stewardship – replaced Environmental Stewardship from the beginning of 2016. Agreements for Countryside Stewardship will be available from 1st January 2016 and will be for 5 years in most cases. Countryside Stewardship has replaced Environmental Stewardship (both Entry Level, Higher Level and Uplands ES), the England Woodland Grant Scheme, and capital grants in the Catchment Sensitive Farming Programme. The scheme is administered by Natural England, the Forestry Commission and Rural Payments Agency on behalf of Defra. It has been the subject of some criticism by farmers, some of whom regard it as unworkable.

Unlike earlier rural development programmes, it is competitive, with entry to different levels of agreement based on a scoring system. There are three elements to the scheme:

- (i) Mid-Tier agreements, aimed at securing agreements for environmental improvements to the countryside in its widest sense;
- (ii) Higher Tier agreements, aimed at securing agreements to manage environmentally significant sites, and those where complex management is required. The latter includes for example common land, where complex agreements may be needed between different graziers and landowners, or woodlands where complex management issues require support from the Forestry Commission; and
- (iii) a capital grant element, offering 1 or 2-year grants for capital improvements, such as providing new hedgerows, boundaries, improving water quality, creating new woodland etc.

Before the establishment of the Scottish Parliament and the assemblies for Wales and Northern Ireland in

BREXIT AND THE DEVOLVED ADMINISTRATIONS

A central feature of agriculture in the UK is territorial decentralisation and differentiation. There are important differences between the four territories - England, Scotland, Wales and Northern Ireland – although this should not obscure important variations within the individual territories. These differences relate to (a) the nature of farm structures and production, (b) the distribution and relative importance of subsidies distributed under the CAP, (c) the institutional and policy framework and (d) the politics (including linkages with the Republic of Ireland).

the 1990s, administrative machinery for agriculture sat within the broader remit of the functional territorial departments (the Scottish Office, Welsh Office and Northern Ireland Office). Following devolution (much of policy for agriculture and rural development is a transferred matter) essentially four formally separate and complex sets of politico-administrative arrangements have emerged. The most 'traditional' structures are (for now) in England and Northern Ireland, where there are functional departments overseen by elected Ministers: Defra, and the Northern Ireland Department of Agriculture and Rural Development (DARD).

In Scotland and Wales, there are rather more complex arrangements that reflect an effort to take a more holistic approach to policy and administration. Even before devolution, legislative differentiation and administrative decentralisation allowed the territories flexibility in agricultural policy, reflecting their different farm structures and production, the importance of agriculture to the regional economies, and also the broader 'political' influence of farmers. Within the overall framework of the UK's participation in the CAP, it has been possible to continue a level of policy differentiation across the territories. On the Single Farm Payment for example, the implementation mechanisms differed between 'historic' payments distributed on the basis of subsidies received between 2000-2002 (Scotland and Wales), a 'static hybrid' system in Northern Ireland (a mix of historic and area-based payments), and a 'dynamic hybrid' model in England to facilitate transition to a fully 'regional' system of uniform acreage payments.

After the most recent CAP reform, differentiation in this respect is lessened because the introduction of the Basic Payment Scheme in 2015 (along with

payments for 'greening' and 'young farmers') represents a decisive move towards regional area-based payments; Scotland for example has introduced regionalisation and area payments.

Variation is especially characteristic of policy in Pillar 2. There are separate Rural Development Programmes for each of the four territories that reflect different priorities, for example in Less Favoured Area (LFA) and agri-environment schemes. Important differences also can be found in animal health and welfare, including for example variation in the approaches to biosecurity and bovine Tb. There is a single animal health strategy for the whole of the island of Ireland.

To a degree the variation that exists between the four territories in agricultural structures, policies and administration is linked to political differences. It can be argued that 'agriculture' has a higher political profile in Northern Ireland and Wales than in England. The Welsh farming minister notes that 'unlike some other parts of the UK, cultural connections with farming across Wales remain comparatively strong, and agriculture continues to play a major role in attracting tourism and sustaining the Welsh language' (Welsh Government 2015: 3).

Important also is the variation in the complexion of party political responsibility for agriculture: in Northern Ireland and Scotland, the ministers in recent years have been drawn from nationalist parties (Sinn Féin and the SNP), contrasting with the Conservative (and Coalition) government in England and the Labour administration in Wales. Unsurprisingly this has led to criticism of the performance of the 'UK government' in CAP reform negotiations.

In Scotland (and also in Wales and Northern Ireland) there is relatively little traction for Euroscepticism at the elite level and it is likely that the implications for farming and rural areas would be an important consideration in debates about UK withdrawal from the EU; during the independence referendum in Scotland for example both sides pointed to the importance of funding from the CAP, but differed on how best to protect and expand this (BBC News 2014).

There are important political and trade implications of EU withdrawal for the relationship between the UK and Ireland. Some senior (pro-European) Conservatives such as Ken Clarke have openly voiced the opinion that the UK's relationship with Ireland should be a crucial factor in the debate about EU exit. In trade, total exports of food, drink and animal feed from the UK in 2014 were worth £18.9 billion, and imports worth £39.6 billion. The Republic of Ireland remains by far the largest destination for exports, representing nearly one fifth of the total (18 per cent), followed by France (11 per cent). As well as these adverse consequences on markets for British agriculture, the Irish sector would be 'affected much more than the agri-food sectors of other member states if BREXIT were to become a reality' (Matthews, 2015: 4). Reflecting broad political concern, in March 2015 the Irish government set up a new unit to examine the implications of the possible exit of the UK from the EU.

If BREXIT becomes a reality, differentiation in agricultural policy and administration across the four territories can be expected to continue, if not increase. This is also likely to produce debates about 'level playing fields' within the UK, with particular reference to agri-environment and rural development. For the main elite political actors in Scotland, Wales and Northern Ireland, the economic implication of BREXIT for the agri-food sectors is generally considered to be substantially adverse, notably in relation to funding, and a key element in the broader economic effects.

The territorial aspect will act as a sort of limiting brake on the extent to which agricultural policy in the UK post-BREXIT can be radically reconfigured. As Matthews notes, the Treasury 'is unlikely to cut all spending in terms of direct payments, if only because these are hugely important to farmers in Northern Ireland, Scotland and Wales, but a lower level can be expected' (Matthews, 2015: 13). Much will depend on the nature of the funding arrangements, for example whether agriculture continues to be supported (by the Treasury) through a UK-wide direct payments scheme, or whether support is channelled through block grants linked to the Barnett formula (our view is that this is unlikely).

BUDGETARY ISSUES

The CAP share of the EU budget has declined over time, having exceeded 70 per cent in the 1970s. Its exact share depends on measurement issues. However, in broad terms, it was just over 40 per cent in 2014. Matthews (2013) calculates it as 40.6 per cent in terms of commitment appropriations or 41 per cent in terms of payment appropriations in 2014, both figures representing an increase on the budget share in 2013.

In the 2014 CAP financial year, total expenditure on CAP schemes in the UK came to €4.3 billion (about £3.5 billion at an exchange rate of €1 = £0.80), not dissimilar to earlier years (see Table 1). The bulk of this was on direct aids under Pillar 1 of the CAP, and was funded entirely from the EU budget. Expenditure on Pillar 2 (Rural Development) was shared between the EU budget (€798k) and the UK Treasury (€267k) under the co-financing rules.

TABLE 1 | ALL CAP PAYMENTS, BY FUNDING STREAM, 2014, € MILLION

	UK	England	Wales	Scotland	Northern Ireland
Pillar 1	3,234	2,048	301	566	319
<i>of which: Direct Aids</i>	<i>3,195</i>	<i>2,009</i>	<i>301</i>	<i>566</i>	<i>319</i>
<i>Market price support</i>	<i>39</i>	<i>39</i>			
Pillar 2	1,065	666	112	191	96
<i>of which: EU funded</i>	<i>798</i>	<i>563</i>	<i>54</i>	<i>119</i>	<i>62</i>
<i>UK funded</i>	<i>267</i>	<i>103</i>	<i>58</i>	<i>72</i>	<i>34</i>
TOTAL	4,299	2,714	413	757	415

Source: Table 10.7, Agriculture in the United Kingdom 2014 (Defra, 2015)

Notes: i) the CAP financial year begins on the preceding 16 October and ends on 15 October;
ii) includes payments to individuals engaged in non-agricultural activities.

Following BREXIT, at some point the UK would become responsible for funding all agricultural policy measures in the UK. The EU would probably continue to bear the responsibility of financing for some time, although precisely how long is unclear. It might be thought that, given that the UK is a net contributor to the EU budget (and to the CAP), it would be possible for Pillar 1 and Pillar 2 support to farm businesses to be continued at their existing level after exit from the EU. Farmers would certainly wish to see a level playing field with their European competitors in terms of subsidies. There is also a case for continuing direct payments post-BREXIT as a means of offsetting market volatility.

However, the Treasury could in all likelihood see BREXIT as an opportunity to reduce the overall cost of payments to farmers, and/or to ask the devolved administrations to assume part of the burden. Its view is that Pillar 1 payments in particular are marketing distorting and an unnecessary charge on the public purse. In its 2005 policy statement with Defra, the Treasury stated: 'Our vision for agriculture within the next 10 to 15 years' is for it to be 'internationally competitive without reliance on subsidy or protection' (HM Treasury and Defra, 2005: 9). The policy instruments in Pillar 1 would probably not change given that path dependence theory predicts inertia in the form of policy. We do not think it likely that there would be any reversion to alternative policy instruments for direct payments such as the deficiency payments that were used before Britain joined the EU. The most likely scenario would be the continuation of Basic Payments (formerly Single Farm Payments) at a reducing percentage of the historic figure. The possibility of payments moving 'up the hill', as happened in England following the 2013 CAP reform, is one that needs to be kept in mind.

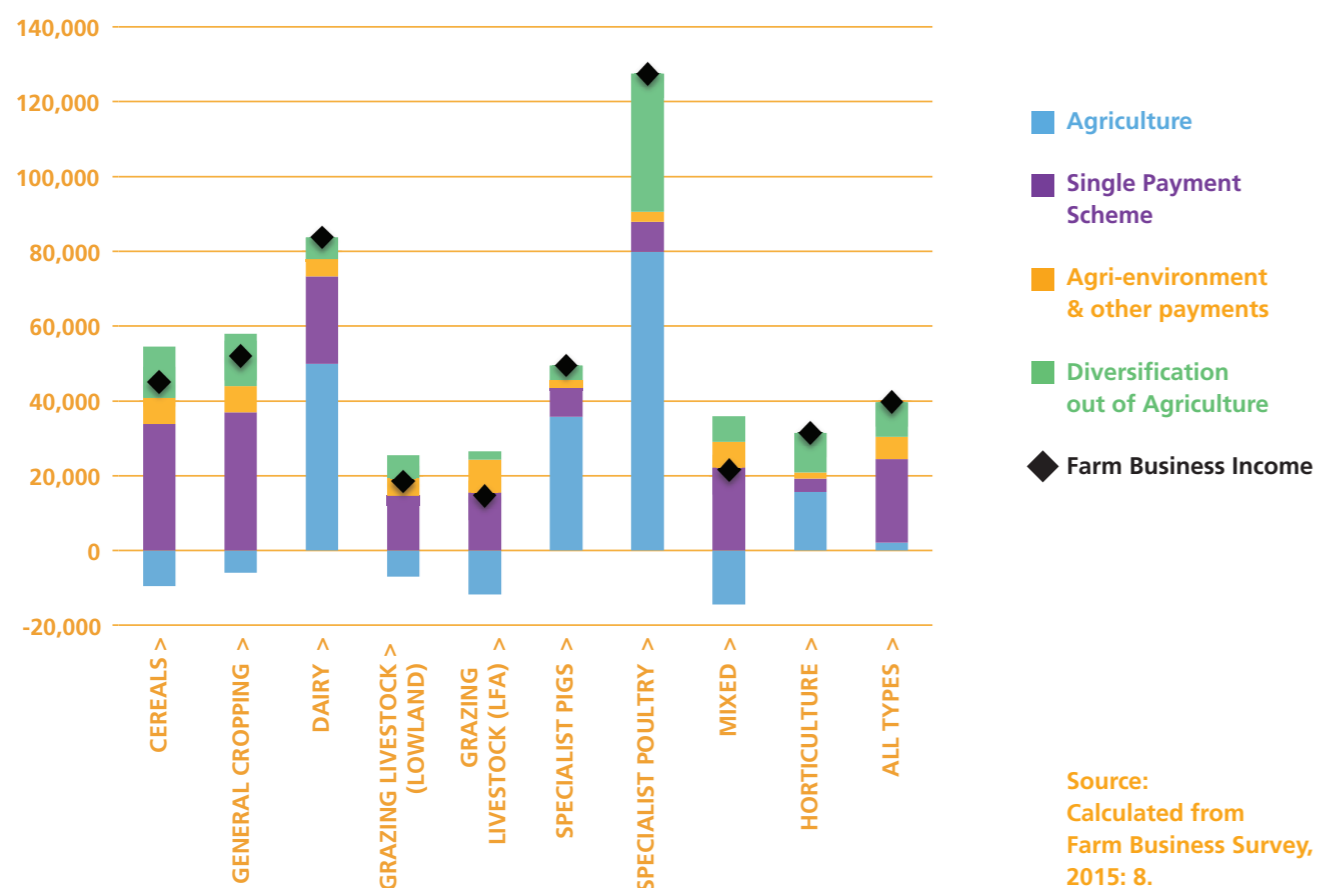
It is though our view that Pillar 1 is more vulnerable to attack than Pillar 2. In part this is because Pillar 2 involves contractual arrangements which have a number of years to run. The environmental and conservation lobbies are also likely to press hard for the retention of Pillar 2 schemes. At the same time this is consistent with government policy which favours transfer of resources to Pillar 2.

In the case of AES agreements entered into prior to BREXIT, funding from the European budget would probably be withdrawn unless transitional arrangements are put in place, but legal responsibility for funding payments under individual management agreements with farmers will continue to be the contractual responsibility of Natural England, which administers the schemes on behalf of Defra. In addition to the legacy schemes (in particular Environmental Stewardship) where agreements may run until (in some cases) 2020-2024, new agreements entered into under Countryside Stewardship from 2016 will need to be funded until expiry. It should also be noted that the legal basis of agreements concluded by Natural England under the AES – for example Countryside Stewardship – is secured by primary legislation that is likely to be unaffected by a BREXIT scenario. Natural England has, for example, wide powers to enter into management agreements with farmers and others under the Natural Environment and Rural Communities Act 2006, section 7, and a number of other statutes.

Impact on Farm Revenues and Incomes

Data from the Farm Business Survey for 2014/15 for England show a very considerable dependence on the Single Farm Payment Scheme and other payments, albeit in a year which was not a good one for many farms commercially. Across all farm types, the Single Farm Payment Scheme accounted for 56 per cent of total income and agri-environment and other payments for a further 15 per cent (see Figure 1). Three sectors were less reliant on these payments: specialist pigs (20 per cent in total; horticulture, 17 per cent in total; and specialist poultry, 8 per cent in total). These are, of course, average figures across all farm types, for the farms included in the Farm Business Survey, and the situation of individual farms may vary considerably.

Figure 1:
Farm Business Income by Farm Type and Cost Centre, England, 2014/15 (£/farm)



Note: 'For non-corporate businesses, Farm Business Income represents the financial return to all unpaid labour (farmers and spouses, non-principal partners and their spouses and family workers) and on all their capital invested in the farm business, including land and buildings' (p. 10). It is made up of 4 components: agricultural activities (which in some instances in the graph above produce a negative return), the Single Farm Payment Scheme, Agri-environment Scheme (AES) and other payments, and Diversification out of Agriculture.

In particular, the data reveals the importance of AES payments and the Single Farm Payment Scheme to hill livestock producers. In 2014/15, AES payments alone equalled 60 per cent of Farm Business Income. Together with the Single Farm Payment, itself more than offsetting losses on agricultural activities, the net outcome was a relatively small overall operating profit.

Thus the average income of these upland farms in 2014/15 was £14,600, a substantial drop on earlier years (Farm Business Survey, 2015: 4). This did not take account of the cost of unpaid farm labour (provided by for example the farmer, his family and partners) estimated at £26,059 for each of these upland farms in 2014/15. Farm corporate income that year showed a loss of £11,576 per farm, and overall losses against investment were £9,570 per farm. Against this financial backdrop, withdrawal of AES payments would render many upland livestock enterprises unviable.

By contrast the contribution of AES payments to the profitability of arable enterprises, while significant, is currently more modest. On cereals farms participating in the Farm Business Survey in 2014/15 (a year of poor profitability), they contributed 15.6 per cent of total farm income, considerably higher than in earlier years. Research on the impact of Entry Level Stewardship payments on farm level costs for cereals producers has disclosed little evidence that entry into ELS has significantly increased levels of farm income for arable producers. Rather, it appears that arable farmers choose to enter the scheme as part of a diversification strategy to establish non-agricultural income streams, where participation in AES is seen as an easier route to establishing non-agricultural income than establishing an entirely new diversified farm business (Udagawa, Hodge and Reader, 2014). In the case of LFA livestock enterprises, by contrast, participation in AES is currently critical to farm profitability.

While data from sources such as the Farm Business Survey can give us a static survey of current and past income, and comparative data on how farm businesses utilise revenue streams such as AES and the Single Farm Payment, it cannot predict how farm enterprises would adapt to changes in the funding landscape post- BREXIT. It does, however, emphasize the need for contingency planning for possible BREXIT and the implications this will have both for the financing of current management agreements under the AES under the Rural Development Programme to 2020, for the financing of new agreements concluded under Countryside Stewardship from 2016/17, and for the future shape of AES beyond any possible BREXIT.

AGRICULTURE AND THE ENVIRONMENT

The potential issues for environmental regulation and land use fall under two heads:

- 1. Impact on AES funded under Pillar 2 of CAP. These are governed by the rules in the EU Rural Development Regulation, as outlined above.**
- 2. Impact on environmental regulation introduced under EU Environmental Law as applied to agriculture. This is contained in numerous EU Directives for example the Nitrates Directive, Water Framework Directive, Habitats Directive, Environmental Impact Assessment Directive etc. These have been transposed into English Law by the introduction of changes to primary legislation (statutes) or by the introduction of statutory instruments (secondary legislation) under the European Communities Act (ECA) 1972. Some are also embedded in planning law and planning policy guidance. EU Directives may be directly effective under the doctrine of “direct effect” developed by the Court of Justice of the European Union – in which event they override English Law if it is at variance with the Directive in question. Withdrawing from environmental regulation introduced in this manner will therefore require the revocation of a number of regulatory instruments introduced since 1972. And planning policy would require substantial revision.**

Currently the principal measures are:

- The Conservation of Habitats and Species Regulations 2010, introducing land use controls in European Sites protected under the Birds and Habitats Directives;
- The Nitrate Pollution Prevention Regulations 2015, which consolidate and set out the regulations applicable to nitrate vulnerable zones, and action plans in the zones;
- The Environmental Impact Assessment (Agriculture) (England) (no.2) Regulations 2006 (EIA).

Issues raised by a BREXIT scenario include the following:

(a) Possible Repeal of Delegated Legislation Transposing EU Law

The relevant delegated legislation has been introduced under provisions in their 'parent' Statute – ECA 1972, section 2. The legal position concerning their possible continued status and application post- BREXIT is complex, as is discussed in Appendix 1. If BREXIT was followed by the repeal of the ECA 1972, then the delegated legislation made under the 1972 Act would in principle also fall. In practice, it is likely that following a decision to exit the EU, any Bill to repeal the ECA 1972 would have to be drafted with a 'saving' clause providing for the continued application of delegated legislation made under the 1972 Act until a decision on those that are to be repealed can be made. It cannot therefore be assumed that all delegated environmental legislation that applies to agriculture will automatically cease to apply in the event of BREXIT and repeal of the 1972 Act.

Three sets of regulations have to be considered in relation to the post-BREXIT position: the Conservation of Habitats and Species Regulations 2010; the Nitrate Pollution Prevention Regulations 2015; and the Environmental Impact Assessment Regulations 2006.

The Conservation of Habitats and Species Regulations 2010 were made under section 2(2) ECA 1972. Repeal of the 1972 Act would therefore lead to automatic repeal of the 2010 Regulations. This would, however, make little difference to land use controls, as all European Sites under the 2010 Regulations are also sites of special scientific interest (SSSIs) notified under the Wildlife and Countryside Act 1981. The latter will continue to apply, as will land use controls imposed by SSSI site notifications. Planning controls in SSSIs would also continue to apply under the National Planning Policy Framework. BREXIT would therefore have limited impact on protected areas policy.

The Nitrate Pollution Prevention Regulations 2015 were also introduced under powers in section 2(2) ECA 1972. The controls in nitrate vulnerable zones (NVZs) are very unpopular with the agriculture industry and preventative and precautionary measures to reduce nitrate leaching and provide storage for waste are costly. The Catchment Sensitive Farming programme (CSF) provides funding under management agreements for management targeted to reducing diffuse nitrate pollution in NVZs. If the ECA 1972 were repealed following BREXIT the future of the 2015 regulations would need to be decided. Repeal would result in savings for the Treasury in funding nitrate improvements on farms and on management agreements in former NVZs which might be used instead to fund land management targeted at diffuse pollution issues. But how would issues of water quality be addressed following BREXIT? This is closely linked with the future of AES post-Brexit, as the CSF programme has been discontinued from 2015; funding for land management to address diffuse pollution and reduce nitrate concentrations in drinking water, with a view to combating eutrophication of inland and coastal waters, is in the future to be available instead within the new Countryside Stewardship scheme (above).

The Environmental Impact Assessment Agriculture Regulations 2006 were also introduced under powers in section 2(2) ECA 1972. Repeal of the ECA 1972 would also lead to a consideration of their repeal. The case for their retention may be seen as weaker – the 2006 Regulations act in practice as a 'back stop' regulatory tool to prevent large-scale rural land projects, principally restructuring holdings or turning semi natural land over to intensive use. Very few projects assessed by Natural England result in an environmental statement being submitted by the farmer/developer.

The regulations were introduced as a result of the threat of infraction proceedings against the UK in the CJEU, and are unpopular with the industry. They are not covered by cross-compliance under the 2013 Horizontal Regulation.

(b) Enforcement Issues for Environmental Regulation

BREXIT will raise enforcement issues, even if the substantive environmental regulations outlined above were to be retained. Withdrawal from the Basic Payment Scheme (Pillar 1 of CAP) will mean a withdrawal of the 'cross-compliance' conditions that farmers currently have to observe in order to receive payment. These provide an additional enforcement tool to secure compliance by land managers with a number of EU Directives including: SMR 1 (Nitrates Directive); GAEC 3 (Groundwater Directive); SMR2 (Wild Birds Directive); and SMR3 (Habitats Directive). In practice compliance costs are not high for most farm enterprises. For example, in 2009 ADAS estimated that the cost of meeting cross-compliance conditions in England was between 1.2 and 2.2 per cent of the total value of the Single Farm Payments received by each farm (Hodge 2013). The cross-compliance conditions attached to the new Basic Payment Scheme are less onerous than those under the former Single Farm Payment, and current compliance costs are therefore unlikely to be higher than that observed in the ADAS research. On the other hand, while the cross-compliance regime has become less onerous, farmers are now also subject to the 'greening' obligations in respect of agricultural practices beneficial for the climate and the environment.

The policy options available post-BREXIT would depend upon whether an element of cross-compliance was to be sought on a continuing basis. If, for example, the substantive regulation of nitrates and protected areas policy (above) were to be retained following BREXIT, the question will arise whether some form of cross-compliance enforcement tool should be made available in order to secure basic management standards. If cross-compliance were to be retained, this would require the adoption of some form of decoupled income support to which cross-compliance conditions could be attached as a prerequisite for payment. Alternatively, if no direct income support were envisaged, it would need to be replaced by converting the existing management standards into free standing and enforceable legal obligations. This would also afford an opportunity to adjust the baseline of required management. But it would probably require primary legislation and be controversial. Consideration would also have to be given to the form of legal obligation to be created and by whom it is to be overseen and enforced. If no income support scheme is envisaged post-BREXIT it may be inappropriate for this to be the responsibility of the Rural Payments Agency. And it would involve a substantial extension of Natural England's regulatory role if the conservation body were to assume this function.

IMPLICATIONS FOR ANIMAL HEALTH AND WELFARE

The EU, through its Directorate-General for Health and Food Safety (Sanco), maintains that it takes an integrated approach to food safety that encompasses animal health, animal welfare and plant health. The aim is to have effective farm-to-table measures, while ensuring the effective functioning of the internal market. There is now an explicit statement that animal welfare and animal health are 'two sides of the same coin', noting that 'maintaining an adequate level of animal welfare reduces the incidence of disease and improves animal health' (DG Sanco, 2007).

Article 13 of the Treaty on the Functioning of the European Union stipulates that animals are sentient beings, and requires that the development of EU policies should 'pay full regard to the welfare requirements of animals' (formalising a protocol attached to the Amsterdam Treaty, in force since 1999). However this is qualified by the rider that programmes should respect 'the legislative or administrative provisions and customs of the Member States' in relation to 'religious rites, cultural traditions and regional heritage'.

Achieving this treaty change was seen as a significant step forward by animal welfare organizations. It should be noted, however, that British vets are seen as particularly influential within the relevant technical committees of the EU. These are vets who usually have direct experience of farm animal work and understand the concerns of farmers.

The EU's approach to animal health is based on the maxim that 'prevention is better than cure'. It focuses on preventive measures, disease surveillance, controls and research in order to minimise incidence and impact (not least in relation to human health and economic costs) of potentially devastating outbreaks of animal diseases such as bovine Tb, avian flu, and foot-and-mouth.

In May 2013, the Commission adopted a proposal for a single, comprehensive animal health law (on transmissible animal diseases) to replace the myriad complexity of existing rules (around 400 separate acts) and improve efficiency and enforcement through a more streamlined and simplified approach; the European Parliament and

the Council reached a political agreement on this in June 2015, pending formal adoption (see European Commission, nd.). The new animal health law (the regulation will have direct application in the member states) provides a general framework for the prevention, notification, control and eradication of animal diseases.

Much of the work on animal health in the UK is governed by the EU framework and implemented through national rules. A key law is the Animal Health Act 1981. UK government action has included the 2010-15 (coalition government) policy paper on animal and plant health (updates May 2015). Implementation of animal health interventions in England and Wales, for example the revised strategy on notifiable avian disease control (2015), is now overseen by the Animal and Plant Health Agency (APHA), established in 2014.

The arrangements that currently exist in the UK for animal welfare (including keeping, slaughtering and transportation) are underpinned by the overarching *European Convention for the Protection of Animals Kept for Farming Purposes* (1976) which outlines five freedoms: from hunger and thirst; from discomfort; from pain, injury and disease; from fear and distress; and to express normal behaviour. It also sets out specific recommendations for each animal.

Important initiatives have included phasing out individual cages for pigs and the requirement for group housing of sows (2013), the ban on keeping laying hens in conventional battery (barren) cages (2012), and rules relating to transportation of live animals (first implemented in 1977).

In England and Wales, the 2004 Animal Health and Welfare Strategy highlighted the inadequacies of the current approach and the Animal Welfare Act 2006 lays down the general provisions and the 'duty of care' to animals. Under this act the Welfare of Farmed Animals (England) Regulations 2007 sets out the minimum standards and provides for the implementation of the specific EU directives, for example on the welfare of calves, pigs and laying hens. However, day-to-day enforcement is patchy and varies greatly across countries; as the EU animal welfare strategy notes, 'individual countries do not always enforce EU rules strongly enough, train inspectors adequately, or effectively punish those who do not follow the rules' (European Commission, 2012: 2). This is an issue that is of considerable concern to British farmers, as they consider that there is not a level playing field, for example on the treatment of laying hens.

In terms of the divisions of responsibility, the EU emphasises the importance of a harmonised common approach on animal health and welfare because they are regarded as an 'EU-wide problem' and a 'cross-border trade issue' that cannot be addressed solely at the national level; in addition a coordinated EU approach is believed to be more effective, for example reducing administrative costs and allowing the pooling of scientific research and knowledge. Crucial here is the importance of a common approach to the effective operation of the single market and avoiding the distortion of competition, facilitating intra-EU trade in animals and animal products. So in this respect after BREXIT it is very unlikely that the UK will either wish, or be able, to substantially weaken its existing provisions in animal health, welfare and plant protection. Animal welfare organizations would continue to be influential in the UK lobbying environment.

For example, the fact that the badger is a protected species in the UK and not in other member states is a product of domestic legislation.

Post BREXIT, robust action on animal health issues such as the prevention of diseases including foot-and-mouth and bovine Tb will remain very important, irrespective of the UK's relationship with the EU. Neither is it likely that the current dispensation on animal welfare will change substantially in the event of British withdrawal, not least because the supranational framework reflects the European Convention and it is not anticipated that exit from the EU will be accompanied by exit from the Council of Europe.

A possibility, of course, is that the UK might wish to 'gold-plate' the EU rules. This, however, is already possible because the EU rules establish a minimum level of protection that member states can go beyond; they already have the flexibility to adapt the rules to national, regional or local circumstances, and can regulate or set more detailed legislation. On occasion, the UK has anticipated EU animal welfare legislation (such as effectively banning sow stalls as from 1 January 1999, as opposed to 1 January 2013 under the EU legislation) and in the early 1990s the UK also refused to issue licences for the export of live animals for slaughter in Spain on animal welfare grounds (although this was found invalid by the European Court of Justice: Case C-5/94, *The Queen v. Ministry of Agriculture, Fisheries and Food, ex parte Hedley Lomas (Ireland) Ltd* [1996] ECR I-2553). On the other hand, the UK's freedom to introduce gold-plate style labelling requirements for animal welfare standards would be constrained by the WTO Technical Barriers to Trade Agreement. Any labels or standards that fall outside the scope of the SPS Agreement must meet the non-discrimination requirements in the TBT Agreement.

The new animal health regulation explicitly states that there would be more flexibility to adjust rules to local circumstances, and for example allows member states to adopt vaccination as a policy response in several areas. In animal welfare, as noted above, flexibility is provided through the caveat in the Treaty on the Functioning of the European Union on religious rites, cultural traditions and regional heritage, and the EU action constitutes a basic minimum that member states can go beyond in domestic policy. A barrier to weakening regulation, and possibly an impetus for strengthening it, is likely to be popular attitudes to animal welfare and the perception of its importance by key actors in the food chain such as retailers and multiple supermarkets. While the status of animal welfare as a policy issue remains 'fragile' and relatively peripheral to UK electoral politics, it has increased in salience as a policy agenda issue over the years (Chaney, 2014). Opinion surveys show a relatively high degree of citizen concern for the welfare of farm animals, and that substantial numbers of people would be prepared to change their shopping habits in order to buy more animal welfare friendly products (see Eurobarometer 2007).

Private standards imposed by supermarkets can also have a significant impact on farmers, as noted in the section on plant protection. Even with BREXIT, supermarkets will continue to insist on higher standards than the regulatory minimum. They do this because they see it as part of building trust with their customers, although recent experiments with misshapen vegetables suggest that customers may be more tolerant than supermarkets assume. However, BREXIT would do nothing to diminish the power of supermarkets in the food chain which is one of the key challenges that farmers face.

As Bock and Buller have noted, retailers have adopted distinct strategies to market animal welfare 'as a high-priced quality niche product and as a brand marker, identifying individual retailers and manufacturers with higher than baseline standards' (2013: 403). Nonetheless, they go on to add that 'when treated as a stand-alone public good with economic consequences', the far-reaching increase in animal welfare standards over the last 40 years are 'highly susceptible to de-regulation and legislative easing, particularly in periods of economic downturn' (2013: 406).

PLANT PROTECTION

Plant protection has been an area of particular concern for farmers in recent years. The number of available synthetic products has reduced, in part for commercial reasons, in part because of regulatory interventions.

Recent restrictions on three neonicotinoids by the EU, without what is regarded as sufficient field trial evidence to back the decision, has posed difficulties for farmers growing oil seed rape. As the NFU 2015 report notes (p. 21), 'The EU Plant Protection legislation, which lays down rules for the placing of plant protection products on the market introduced hazard cut-off criteria that lowers the threshold of tolerance for active toxicity, rather than adopting a risk-based approach. The implications for agriculture are that this leads to further restrictions on vital crop protection products, important for securing crop yields and quality.' Criteria for endocrine disruptors are currently being developed and this is likely to lead to the withdrawal of more existing products.

A further difficulty is that the internal market in relation to plant protection products is incomplete because of continuing regulatory barriers. This reduces incentives to develop and register new products, particularly biologicals, which may serve as substitutes for withdrawn chemical products or complement existing synthetics. Registration is based on a two-tier system, with active ingredients being approved at the EU level and products by government agencies at the member state level. These agencies have varying levels of resourcing and the quality of some of them has been questioned. Delays occur in the registration process, which can take as long as eight years, making it more difficult for innovative products to recoup their development costs.

The EU sought to overcome this by introducing a 'zonal' system of registration with three climate-based geographical zones and one across the EU for glasshouse products. The idea was that once a product had been approved by one authority in the zone, it could then be quickly adopted by the other member state authorities. As is so often the case in the EU, implementation has been far from straightforward.

A report on the implementation of the Sustainable Use Directive that was due in November 2014 will be submitted to the EU institutions in the first half of 2016. National Action Plans had been delayed. This does reflect a more general problem in the European institutions in terms of the glacial pace of decision-making, punctuated by sudden spurts of activity. This is accompanied by the inadequacy of implementation and enforcement. Although this is often the result of shortcomings in member states, such shortcomings, or more specifically the subsidiarity principle, can be used as an excuse by the EU institutions.

One might hope for more progress under the Dutch presidency from January 2016. They intend to propose a 'road map' to the Council which would include the acceleration of approval and authorization procedures and the finalising of low risk substances criteria available from (<http://www.ibma-global.org/upload/documents/2aconyjnustainableplantprotectionpresentation01.pdf>).

The UK had its own system of plant protection regulation before it joined the EU. The current agency, the Chemicals Regulation Directorate (CRD), could become a purely domestic agency, but it would have to be guided by approvals of active ingredients by the EU. Firms would be reluctant to develop distinctive products purely for the UK market. Products that have been restricted by the EU could, in principle, be used by the UK, but there would be substantial political pressure to oppose this by a strong domestic environmental lobby. It should also be noted that there is an international movement to harmonise plant protection regulations globally, coordinated by the Organisation for Economic Co-operation and Development (OECD) of which the UK would remain a member.

A further set of issues arises from the private plant protection standards imposed by retailers on growers which go beyond what is required by the public regulation system and vary from one retailer to another. It is unlikely that BREXIT would have any influence one way or another on the power of retailers in the food chain.

GENETICALLY MODIFIED ORGANISMS (GMOS)

Within the overall pre-BREXIT legislative framework, this is remarkable as an area of regulation where there has been considerable 'repatriation' of competence to the member states. Post-BREXIT, the differing approaches already apparent within the UK are likely to be enhanced (for example, each of the devolved administrations might also acquire the ability to authorise GM crops within their territory).

The regulation of GMOs within the EU has historically been regarded as an initiative to approximate the laws of the various member states. In particular, a standard authorisation procedure at EU level was introduced and, where a GMO was authorised in accordance with that procedure, its free circulation was in principle guaranteed, member states not being permitted to prohibit, restrict or impede its placing on the market: see now Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms (Deliberate Release Directive), Article 22. That said, a much contested exception was provided by the 'Safeguard Clause', under which provisional restrictions or prohibitions could be applied by a member state in case of risk to human health or the environment: see now the Deliberate Release Directive, Article 23.

Over recent years, however, there has been a considerable retreat from such closer harmonization at EU level. Thus, following the enactment of Directive (EU) 2015/412, member states have been granted the possibility to restrict or even prohibit the cultivation of GMOs in their territory. Significantly, the Directive recites that '[e]xperience has shown that cultivation of GMOs is an issue which is more thoroughly addressed at Member State level'. On the other hand, this 'opt out' operates subject to a number of qualifications. For example, a general ban on GM cultivation is not permitted, since the restrictions or prohibitions must be directed to a specific GMO during its authorisation procedure or, where authorisation has already occurred, to a specific GMO or of a group of GMOs defined by crop or trait. Further, where a GMO has already been authorised, any restrictions or prohibitions must conform with EU law and be reasoned, proportional and non-discriminatory, while at the same time being based on 'compelling grounds' (including those related to environmental policy objectives, town and country planning, land use and socioeconomic impacts) (Dobbs, 2015).

In addition to such 'opt outs' from GM cultivation, the European Commission has proposed that member states be allowed to restrict or prohibit the use of GMOs for food or feed purposes in their territory, so further increasing the degree of independence of member states (European Commission, COM(2015) 177). Although the proposal was recently rejected by the European Parliament (*European Parliament News*, 2015), the fact that it was made at all indicates that the direction of travel is unlikely to revert to tight regulation at EU level.

In the UK, the implementation of the Deliberate Release Directive in principle takes place on a devolved basis, subject to a specific 'Concordat' (available from <http://www.gov.scot/Publications/2007/04/GMConcordat>) which sets out the agreed framework for cooperation between the devolved administrations and Defra. Under this Concordat, responsibility for implementing the EU regulatory framework falls to the respective 'Territorial Competent Authorities' (TCAs) for England, Scotland, Wales and Northern Ireland, subject to the proviso that, where the Deliberate Release Directive requires a member state to negotiate and act as a single entity, it is the Secretary of State for the Environment, Food and Rural Affairs who acts on behalf of the UK. Nevertheless, every effort is to be made by the TCAs to reach an agreed UK line (and, if this is not possible, the national negotiating position is to be determined by the UK Government on the basis of expert scientific advice, taking into account also the views of the devolved administrations).

This scope under the constitutional settlement for differentiated treatment is evident in the UK response to the greater autonomy now granted with respect to GM cultivation. An 'opt out' has been demanded by Scotland, Wales and Northern Ireland for all GMOs either currently authorised or going through the authorisation procedure (European Commission, 2015).

Accordingly, these demands include Monsanto's GM MON 810 – and they have all been accepted by the respective authorisation holder/applicant for authorisation.

By contrast, no such demand has been made by England, so confirming the differing approaches previously detected across the UK (Hunt, 2012). Interestingly, the Republic of Ireland has also made no demand (which would seem consistent with the reversal of earlier initiatives to declare the island of Ireland a GMO-free zone).

Post-BREXIT, there would arguably be scope further to accommodate regional preferences. For example, options for each of the administrations might include: acquiring the competence to authorise GMOs; removing all qualifications on 'opt outs' from GM cultivation; and even restricting or prohibiting the use of GMOs for food or feed purposes in their territory (a possibility which, as seen, recently proved unacceptable to the European Parliament). Besides, allowing for only the current level of differentiation, a major issue post-BREXIT is likely to be finding a harmonious way of operating differing GM regimes within the UK, with this being especially acute on the borders between the various administrations. And similar considerations arise also on the border between Northern Ireland and the Republic of Ireland, where the position might be exacerbated post-BREXIT by the potential absence of a bespoke EU regime to address cross-border contamination as required under Directive (EU) 2015/412 by 3 April 2017.

GEOGRAPHICAL INDICATIONS

The basic idea behind geographical indications (GIs) is to prevent a domestic producer giving a name to their own product that gives the impression to consumers that it comes from the protected region covered by the GI, for example, Parma ham. It is seen as a means of preventing the public from being misled by producers jumping on the bandwagon of a successful GI and also to prevent unfair competition.

The EU has been favourably disposed to GIs because it sees them as a means of encouraging high quality, value added food production in the EU which will increase returns to farmers. This has led to some conflicts with producers elsewhere in the world, for example, with the United States over parmesan cheese. Given the EU's support for GIs, it is likely that they would insist on the UK recognising EU GIs in any future trade agreement. This could well become a contentious issue in any trade negotiations between the EU and UK after BREXIT.

What value GIs offer to British farmers is an interesting question. Niche products, for example, Orkney Island cheddar, are often involved, although these may be important to local economies. In Yorkshire in particular, the following products are covered by GIs: Swaledale cheese; Swaledale ewes cheese; Yorkshire Wensleydale.

GIs are established by EU regulations and there is no UK legislation needed. GI protection in the UK would likely lapse on BREXIT and EU protection of UK GIs could be expected to lapse as well. It should be noted that the 'vested rights' debate is relevant here. The right to get protection of the GI comes from the EU treaty and the right to that protection is 'vested' and so could continue after the treaty stops. The UK would probably have to offer some minimum standard of protection to European GIs.

Indeed, under WTO rules, the UK would be under an obligation to implement some form of legal protection. In an earlier TRIPS case *India-Patent Protection for Pharmaceutical and Chemical Products (WT/SDS79/R)* (albeit one on patents and not on GIs as such), the Appellate Body went out of its way to say that the need to offer protection was a positive obligation on the part of the WTO member.

If BREXIT does occur, our view is that it is likely that the WTO rules in TRIPS will require the UK to offer a minimum standard of protection for products protected by EU GIs, although the form and level of that protection remains unclear. These are complex matters as is evident from the case discussed below.

It is possible that the WTO rules may have made the position clearer – and also better for UK farmers. On our understanding, the Dispute Settlement Panel in *EC — Trademarks and Geographical Indications (WT/DS174/R)* upheld the principle that foreign nationals should have proper access to the EC's GI system (https://www.wto.org/english/tratop_e/dispu_e/cases_e/ids174_e.htm), with the EC subsequently amending the system so as to comply with the WTO decision: see Council Regulation (EC) 509/2006 on agricultural products and foodstuffs as traditional specialities guaranteed and Council Regulation (EC) 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

Significantly, the latter expressly recited that '[t]he protection afforded by this Regulation, subject to registration, should be open to the geographical indications of third countries where these are protected in their country of origin'. (For the current legislation, see Regulation (EU) 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs, where Recital 24 reads '[t]he protection afforded by this Regulation upon registration, should be equally available to destinations of origin and geographical indications of third countries that meet the corresponding criteria and are protected in their country of origin'.)

Accordingly, it would seem that UK farmers post-BREXIT might legitimately expect to be able to continue to take advantage of this form of 'quality marketing' within the EU.

MIGRANT LABOUR

The Demand for Migrant Labour

This varies considerably by agricultural sector and area of the country. As Table 2 shows the use of migrant labour is concentrated in labour intensive sectors of agriculture (the figures in Tables 2-4 relate to the former Seasonal Agricultural Workers scheme (SAWS) in 2012).

TABLE 2 | NUMBER OF FARMS BY TYPE USING SAWS

Type of farm	Number
Salads and vegetables	214
Soft fruit	191
Top fruit	92
Flowers and plants	61
Potatoes	20
Livestock and dairy	8

Source: Calculated from data from Migration Advisory Committee (2013)

However, SAWS statistics may not capture all uses of migrant labour. A survey by the Royal Association of British Dairy Farmers has revealed that one-third of dairy farmers in the UK rely on migrant workers. In September 2015 they announced that they were relaunching their survey following comments from the Immigration Minister that British business was 'overly reliant' on foreign employees.

These workers are not seen as transient or seasonal workers but rather permanent members of the team. Many of the farmers questioned cited a poor work ethic by British workers whereas migrant workers were seen as hard working. About 57 per cent of migrant workers in dairy farming are from Poland, with a significant number from the Baltic states, especially Latvia. However, migrant workers are also employed from non-EU countries, especially the Philippines and New Zealand.

There is considerable variation in labour intensity (in terms of labour hours per head per hectare per year) across different form of farming as Table 3 shows (figures are for 2004-8).

TABLE 3 | ACTIVITY LABOUR HOURS

Flowers and plants under glass	13,000
Mushrooms	7,220
Vegetables under glass	7,000
Hardy nursery stock	1,900
Top and soft fruit	425
Dairy Cows	42
Cereals	18

Source: Calculated from data from Migration Advisory Committee (2013)

Because of the geographical concentration of various types of farming, seasonal migrant workers are concentrated in particular areas of the country as Table 4 shows with five counties accounting for over 50 per cent of all workers. The East Riding of Yorkshire accounts for only 1.2 per cent of all SAWS work cards issued. Yorkshire is less affected by the migrant labour issue than some other areas of the UK.

TABLE 4 | COUNTY PERCENTAGE SHARE OF SAWS WORK CARDS

Herefordshire	20%
Kent	9%
Cambridgeshire	8%
Angus	8%
Kent	7%

Migrant workers are seen to have a number of advantages by employers compared to dipping into the local unemployed pool. '[M]igrants were said to be more likely to: demonstrate lower turnover and absenteeism; be prepared to work longer and flexible hours; be satisfied with their duties and hours of work; and work harder in terms of productivity and speed. In the view of some employers, the more favourable work ethic of migrant workers encouraged domestic workers to work harder' (Dench et al., 2006: vi).

Recruiting and retaining British workers is not easy. 'The farms are not normally in high unemployment areas; British workers are reluctant to live on the farm; and growers state that British workers either cannot or will not work at the intensity required to earn the agricultural minimum wage. At present British workers have little incentive to come off social security benefits for seasonal work' (Migration Advisory Committee, 2013: 2). In addition, 'Farms are often located in relatively isolated locations with poor public transport. It was also reported, especially in rural areas near large cities, that villages have become wealthier and dormitories for commuters; hence, there are fewer people looking for work locally or prepared to take the types of jobs on offer' (Dench et al., 2006: 37).

The work demands considerable stamina, can often start early in the morning and may require night shifts. 'The work is generally manual, repetitive and physically demanding, often in uncomfortable conditions. Picking salads or cabbages in the fields can be cold, wet and muddy. The picking rigs are noisy and move at a constant and relentless rate. Picking strawberries and raspberries in glasshouses can be hot and requires dexterity. The packing rooms are noisy and cold' (Migration Advisory Committee, 2013: 53).

The SAWS Scheme

This was in existence in one form or another for over sixty years. In 2003/4 there were 25,000 places on the scheme. In 2005 this was reduced to 16,250 following the accession of eight East European states to the EU. From 2008 the scheme was only open to workers from Bulgaria and Romania (A2). The number of places had to be increased by 5,000 after labour shortages in 2007 and 2008 which saw crops left in the ground and produce having to be imported to fill supermarket shelves. The scheme came to an end in 2013 when A2 workers no longer had any restrictions on where they could work in the EU.

The ending of the SAWS scheme has already had some effects, although so far there seems to be little in the way of systematic evidence about those effects. There do not seem to have been many complaints about labour shortages in 2014 or 2015. It should be noted that the recession has created a pool of some 26 million unemployed in Europe that can be drawn on. Many workers may return to former SAWS employers, so some of the effects may not be felt in the short run. The government seems to hope that labour shortages will be offset by training schemes for 'local' labour and improvements in the use of technology (the Agricultural Technologies Strategy).

The NFU did propose a new scheme to take workers from outside the EU, possibly from the Ukraine and Moldova. However, the political climate has not been favourable to anything which appears to increase immigration, even if only on a temporary basis.

Implications of BREXIT

1. Depending on any subsequent agreement with the EU, British exit would place limits on the availability and use of labour from the EU. Not all of this labour is unskilled and seasonal, although it might be possible to restore a version of the SAWS scheme.
2. With the closure of SAWS at the end of 2013, the government indicated no intention to open a scheme to allow recruitment of seasonal workers from outside the EU because it believes that there should be sufficient workers from within the EU/EEA labour markets to meet the needs of the horticultural industry (with unrestricted access for Romania and Bulgaria). The implication is that at present migrant labour for agriculture from other countries such as the Philippines and New Zealand can come only via the 'normal' points based system, so it is unlikely to lead to entry for unskilled or semi-skilled workers. This could change outside the EU.
3. It is almost certain that, outside of the EU, policy for migrant labour will be at least as restrictive as it is at present, where agriculture is now not treated differently from other economic sectors. As the ministerial statement on the closure of SAWS made clear, 'we do not think that the characteristics of the horticultural sector, such as its seasonality and dependence on readily available workers to be deployed at short notice, are so different from those in other employment sectors as to merit special treatment from a migration policy perspective' (Harper, 2013).

THE IMPORTANCE OF THE WORLD TRADE ORGANIZATION (WTO)'S RULES ON BRITISH WITHDRAWAL FROM THE EU

The World Trade Organization (WTO) is an international organisation that governs the trade relations between its member countries. The majority of countries in the world are members, including all important overseas markets for UK agricultural and food products – and all major suppliers have WTO-enshrined rights against import discriminations.

At the heart of the WTO is a complex set of agreements that are negotiated and signed by the members. These agreements require members to keep their trade policies within defined limits that are set out in detail in the agreements. The WTO agreements also set rules and commitments for its members' domestic policies to the extent that those policies have an impact on trade with other WTO members.

Exceptions to the rules are allowed, but the WTO agreements lay down what those exceptions are and how they should work. If one member believes another has not complied with the WTO agreements, then that member can bring a dispute under the WTO's dispute settlement mechanism and, if successful, they may be entitled to compensation, which usually takes the form of suspension of trade concessions that had been previously granted by the complaining member to the other.

The UK was a founding contracting party of the WTO's predecessor, the General Agreement on Tariffs and Trade (the GATT) and became a member of the WTO on its formation in 1995. How the WTO agreements would apply to the UK following BREXIT is made more complicated by the UK's current membership of the EU. This is because the EU has a single, common commercial policy (including trade) that applies to all its member states, and is a member of the WTO in its own right. It is the European Council - a body made up of representatives of all EU member governments – which authorizes the opening of negotiations in respect of international agreements and which signs such agreements. However, in the case of international trade agreements, the consent of the European Parliament is also required. Accordingly, the UK does not have the right to renegotiate any of the WTO rules, although it is able to help shape the direction of EU trade policy through its membership of the European Council and by the work of UK MEPs in the European Parliament.

Although the focus of the GATT was on barriers to trade in the form of tariffs, the WTO Agreements now address also a number of 'non-tariff' measures which may impact upon both imports and exports, with particular reference to the Agreement on Application of Sanitary and Phytosanitary Measures (the SPS Agreement) and the Agreement on Technical Barriers to Trade (the TBT Agreement). The former is concerned with such matters as food safety and the latter with such matters as labelling and standards; and their general purpose is to seek to ensure that any non-tariff measures restricting imports are applied in a non-discriminatory manner. For example, the SPS Agreement requires that any border controls introduced in response to specific concerns that an agricultural and/or food product risks harming human, animal or plant life or health must be based on a risk assessment grounded in 'sound science'.

Pre-BREXIT, many of the rules imposing agricultural and/or food product import safety restrictions, labelling requirements and standards are set by the EU and implemented by its member states, including the UK. Whilst a WTO member can bring a complaint against these EU measures in general, it is possible for the complaining state to challenge an EU member state's implementation of the policy specifically. Pre-BREXIT the EU is responsible for the conduct of the legal dispute at the WTO on behalf of the EU member state. Post-BREXIT, assuming the UK remains a WTO member with initially the same rights and obligations as the EU, there is a likelihood that the UK will adopt similar, if not identical, agricultural and food product safety, labelling and standards regimes to those of the EU (although it is also possible that the UK may dilute some of those regimes with a view to securing competitive advantage).

In any event, there is no reason to believe that the SPS and TBT Agreements will not apply to the UK after BREXIT in much the same way as they do prior to UK withdrawal. The only material difference would seem to be that, if a complaint is brought against the UK at the WTO (or if the UK brings a complaint against another WTO member – including the EU), then the UK itself must argue the complaint and bear the not inconsiderable expense of such litigation.

The Uncertain Impact on Domestic Support, Export Subsidies and Tariffs

What is less clear is how BREXIT would affect UK domestic support for farmers, export subsidies and tariffs on the import of agricultural products. The WTO rules governing domestic support and export subsidies are set out in the WTO Agreement on Agriculture, which lays down an agreed maximum limit on their use by each WTO member (see Appendix 3). Further reductions in these agreed amounts are being negotiated for all WTO members in the current round of multilateral trade talks, the Doha Round, but it is still to be resolved how deep these reductions will be as consensus among WTO members is still some way off.

The WTO managed to agree at its Ministerial Meeting in Nairobi in December 2015 to take further steps on export subsidies. They are to be eliminated with immediate effect, but there is a carve out for export subsidies used by developed countries (so including the all EU countries) on dairy products, swine meat and processed products if these have been pre-notified to the WTO prior to the Nairobi decision. These latter export subsidies must be eliminated by 2020 instead.

The current agreed limits on domestic support and export subsidies, and import tariff bindings (specifying the maximum tariff that can apply), are listed in each WTO member's Schedule of trade commitments, which are legally binding commitments upon each member (see Appendix 3). The EU has a single Schedule, rather than many individual schedules for each of its member states. The important issue for the WTO is whether the EU's domestic support and export subsidy commitments, and import tariffs on agricultural products, when taken as a whole across all EU member states, exceed the maximum agreed limits as set out in the EU's Schedule.

Post-BREXIT, as the UK would remain a member of the WTO, it would still need to comply with the WTO rules limiting domestic support, export subsidies and imports tariffs on agricultural products as set out in the Agreement on Agriculture. What is less certain is what would be contained within the UK's Schedule of trade commitments. This is because it would be necessary to construct a new Schedule for the UK and quite how this would be done is difficult to predict. There are several possible options.

Options for the UK after BREXIT

First, the UK might have an empty Schedule after BREXIT with the consequence that the UK must renegotiate all its trade concessions. In effect, this option treats the UK in an equivalent way to those states joining the WTO through the WTO's formal accession process. The equivalent accession process would require the UK to enter into lengthy discussions with every interested WTO member. Such a process would be problematic as the UK, like many other newly acceding WTO members, might be required to make deeper cuts to its farm subsidies and import tariffs than are required under the current Agreement on Agriculture as the 'price' of joining the WTO. For example, China agreed to the complete removal of all its export subsidies on its agricultural products when it joined the WTO in 2001 in return for more favourable

trade concessions for its state owned industries in heavy manufacturing, like steel. Although China had participated in the WTO's predecessor, the GATT, its participation had lapsed, so by mutual agreement, China went through a formal accession process designed for wholly new members of the WTO. The UK's position will be slightly different to that of China, as the UK's membership of the GATT and WTO has continued despite its membership of the EU. The UK benefits too from a long collective experience in WTO law and practice that it can draw on in any renegotiation with other WTO members.

However, it would be difficult to reconcile such a solution with the fact that both the UK and the EU are founder members of the WTO; and, as such, it is strongly arguable that the UK should be subject to existing WTO rules as currently applied to the EU rather than the enhanced so-called 'WTO+' commitments to which members (like China) joining the WTO after 1995 have become subject.

With regard to import tariffs for example, it might be argued that the UK's tariff bindings, post-BREXIT, would continue to be those that it applied as a member of the EU. This is not without precedent: on the breakup of Czechoslovakia, both the Czech and Slovak Republics simply took over the earlier Czechoslovakia Schedule (GATT, 1993). It might also be argued that the EU's domestic support and export subsidy commitments might somehow be shared between the UK and the remaining EU. But how that might be done is unclear.

One possibility might be that the Schedule which contains EU entitlements/commitments is simply retained by the remaining EU member states, with the UK's share being zero. A zero entitlement would operate harshly against the UK: for example, domestic support could only be provided in compliance with WTO rules where it fell within the exemptions mentioned in Appendix 3 (in other words, it fell within the de minimis rule, the Blue Box or the Green Box). Most EU domestic support is now considered Green Box. It should be noted that, although export subsidies are now less used and have also been materially restricted since the Nairobi Ministerial, they still form part of the CAP legislative framework post 2013 for use under exceptional circumstances, so that their allocation between the EU and the UK would remain a live issue.

Another possibility might be that the EU and the UK divide the maximum limits in the EU Schedule in such a way that the UK retains a share above zero, perhaps even on a pro rata basis (see Appendix 4). In these circumstances, the EU farm lobby would likely wish to retain as large a share as possible of the existing agreed maximum levels for domestic support and export subsidies. Again quite how the UK and the remaining EU member states would resolve the issue is unclear.

An even more taxing question is how the WTO rules might affect such a division, because although there are specific rules in the GATT setting out what happens when a WTO member joins a CU or FTA there are no parallel provisions governing the breakup of a customs union (CU) (see Appendix 4). In particular, it is unclear whether the UK will be required to compensate other members of the WTO should those members be adversely affected in some way by any change in the UK's tariff duties, levels of domestic support or export subsidies.

It should also be noted that under existing WTO rules the EU (and other countries) has been required to establish a minimum level of market access, referred to in the WTO agreements as a tariff rate quota (TRQ). The legal obligation in this case was simply to introduce a mechanism that allowed agricultural products to be imported at this lower tariff rate; it did not extend to obliging the EU to actually import any products at that rate. It is difficult to see how these TRQs would be distributed after BREXIT. Some of them are country-specific (a controversial example is New Zealand butter), whereas others are open to all WTO members. Complex sets of interests would be involved, including consumer and producer interests in the UK and the remaining EU, and exporter interests in countries that make use of the TRQs.

The situation is further likely to differ from product to product; and one illustration of the complexity can be provided. Country A might be using a TRQ to supply the UK through the port of Rotterdam. Trade statistics would record the import into the EU through the Netherlands, not the UK. This might suggest that the TRQ should remain with the EU, but country A's traders would probably prefer to see it attached to the UK (unless they have other expectations of a more liberal UK trade policy). Article XXIV:6 and XXVIII:1 GATT have been used by third countries in the past as a basis from which to contest decisions on the sharing out of TRQs, but, as noted in Appendix 4, compensation may be payable by the EU/UK.

The Issues that arise from the WTO Rules

Accordingly, the effect of the WTO's rules on British withdrawal from the EU raises, inter alia, the following issues.

1. After any withdrawal from the EU, UK farm policy would not be able to return to the unfettered use of high levels of domestic support, export subsidies and import tariffs that insulate agricultural production from changes in world prices (see Appendix 3). Some limits will be imposed by the WTO rules on use of: (i) tariffs and other import management practices; (ii) non-tariff measures; and (iii) domestic support and export subsidies.
2. It is difficult to determine what the ceiling on such tariffs, domestic support and export subsidies will be. The WTO rules do not directly deal with a situation where one country withdraws from a CU like the EU, but remains in the WTO, although some rules covering changes in customs duties (Articles XXIV:6 and XXVIII:1 GATT) may apply by analogy.
3. If the UK simply takes over its proportion of the EU's existing Schedule of Commitments, questions remain whether the UK's commitments offer the same 'quality' of access from world markets as they did when exporters to the UK could also obtain access to EU markets after their products entered the UK. This may require the UK to offer more favourable trade terms to affected countries as a 'compensatory adjustment' in accordance with the WTO rules. The exact levels of compensation would be difficult to determine, as the rules do not state how such compensation is to be calculated.
4. If the UK is required to come to an agreement/negotiate with other WTO members on appropriate tariff and subsidy levels for agricultural products, then the agricultural sector may be somewhat exposed. The UK is not a big player in terms of international agricultural trade, so it may be that, as part of the UK's attempts to obtain more favourable trade terms in other sectors, the revised ceilings for domestic support and export subsidy commitments under the Agreement on Agriculture are set much lower than currently, together with lower import tariffs and more generous market access commitments (TRQs), with potential adverse knock-on effects for the industry.
5. If the UK wants to enter into a FTA agreement with the EU or with other WTO members (for example, to mirror the Transatlantic Trade and Investment Partnership between the EU and the USA), this must be done in conformity with WTO rules (see Appendix 4).

CONCLUSIONS

The impact of BREXIT on the agricultural sector is very dependent on the negotiations between the UK and the EU after a referendum vote to leave. The outcome of these negotiations is unpredictable. The continuing member states would not be disposed to reward the UK for weakening the EU by leaving, although there is a view that the EU would be stronger without an 'awkward' member state which is not in the Eurozone. On the other hand, the UK or even RUK, should Scotland hold another referendum that led to independence, would remain an important economic and political actor geographically within Europe and it would be in the interests of the EU to have a harmonious and effective relationship with it.

We think it likely that there would be some reduction in subsidies to farmers in the medium term and that Pillar 1 in particular is more vulnerable. In its 2005 vision document, the Treasury foresaw that 'EU spending on agriculture would be based on the current Pillar II and would support these objectives as appropriate, allowing a considerable reduction in total spending by the EU on agriculture and bringing this into line with other sectors' (HM Treasury and Defra, 2005: 4).

The regulatory burden might not be reduced as much as farmers might hope and in any event would take some years to achieve. It should be borne in mind that British farmers do benefit to some extent from the fact that other member states derive a greater proportion of their GDP from agriculture or have a strong cultural attachment to farming and food. Militant French farmers can help to protect the position of UK farmers. In a UK outside the EU, environmental, conservationist, consumer, public health and animal welfare lobbies (stronger in the UK than in other member states) would continue to be influential and to exert pressure for more stringent regulation of agriculture. Some of the constraints that affect agricultural policy within the EU would continue outside the EU.

It is difficult to see exit as beneficial to the UK farming sector, or to the UK food and drink industry more generally, but we would emphasise that any voting decision has to take account of a much wider range of considerations.

APPENDIX 1: THE PROCESS OF EXIT

The UK must follow the procedures set down in the Treaty on European Union as well as dismantle its domestic rules brought in as a result of the UK joining the then European Communities in 1972.

EU side:

The process for UK withdrawal from the EU is set out in Article 50 of the Treaty on European Union. After a referendum, the UK Government would inform the European Council of its intention to withdraw. Negotiations would then begin on a withdrawal agreement.

During the negotiation, the withdrawing member state would continue to participate in other EU business. The UK would remain a member of the EU while these negotiations took place. If they were not completed within two years, the withdrawal would come into force in any case (unless the European Council voted unanimously to extend them with the agreement of the UK). Given the complexity of the issues, and likely disagreements between the continuing states, all of this two year period would probably be necessary. Negotiations as to the precise terms of the UK's continued relationship with the EU may even carry on beyond the two year period (Oxford University, BREXIT Implications and its Consequences: 2013: <https://www.law.ox.ac.uk/research-and-subject-groups/BREXIT>).

UK side:

BREXIT will occur when, under Article 50, the EU Treaties cease to apply to the UK and when the UK dismantles legal rules that allow EU legislation to become part of UK law. Dismantling laws occurs through their repeal. The key piece of legislation is the 1972 European Communities Act (ECA). Repeal of the ECA will have legal consequences for legislation brought in under the Act. What these legal consequences are remain highly contested (Oxford University, BREXIT Implications and its Consequences, 2015).

One possibility is that on the date of BREXIT, farmers may still have the right to receive their Pillar 1 and 2 payments at least during the year BREXIT happens because this is a right that has accrued under EU Law (i.e. it is a 'vested' right). Whether this would happen, and, even if it does happen, it is unclear whether the EU or the UK would bear the responsibility for financing it (Oxford University, BREXIT Implications and its Consequences, 2015).

A second possibility is that most of the environmental legislation affecting agriculture may also stop applying to farmers on the date BREXIT happens. This is because much of it is in the form of secondary legislation that was brought into UK law under s.2(2) ECA 1972. On the date of repeal of the ECA that secondary legislation too will in principle fall away. There is some uncertainty in the case of agri-environmental initiatives brought in by Natural England. This is because Natural England has its own statutory power to enter into management agreements under various items of domestic legislation completely unrelated to the ECA 1972 e.g. section 7 of the Natural Environment and Rural Communities Act (NERCA) 2006. In the event of the repeal of ECA 1972, we see no reason why the legal status of these agri-environment agreements entered into under the rural development programmes would be affected.

These two possibilities involve difficult and technical legal issues surrounded by much uncertainty. We believe it is likely that in practice immediately after BREXIT, the existing regulatory framework would very likely be retained through a separate Act of the UK Parliament (or other legal instrument) while its content and purposes were reviewed.

APPENDIX 2 NEW EU-UK RELATIONSHIP: THE RANGE OF SCENARIOS AFTER EXIT

There has been some discussion recently of the UK seeking to negotiate a 'two tier' European Union, with the Eurozone acting as a central core and other member states subscribing to the single market.

Although this proposal has a logic to it, given that the UK is not a Eurozone member and there is some treaty recognition of some member states integrating faster than others, it would be difficult to achieve in the available time frame of four years at most as it would almost certainly require treaty change which is a long drawn out process. It is unclear where the CAP would fit in such an arrangement.

A central assumption of this report is that the UK would need to have a continuing relationship with the EU after leaving. A number of possible relationships are available, although not all of them may be acceptable to the EU. In any event a protracted negotiation would be necessary following a referendum decision to leave the EU. All sectors of the economy will be impacted by the post-withdrawal trade regime, and consequently it is very unlikely that agri-food interests would be a decisive factor in determining its form. However, because of the rather high tariffs that the EU currently imposes on many agricultural and food products—as compared to the lower tariffs that more usually apply to both manufactured products and raw materials—the post-withdrawal tariff regime is of particular interest to UK agriculture.

For example, the EU's most-favoured-nation (MFN) tariff—i.e. the import tax it imposes in the absence of WTO-sanctioned preferential trade agreements—on a car is 10 per cent of the value of the car, whereas that on fresh lamb carcasses is 12.8 per cent plus €1,713 per tonne. The latter would be a hefty charge on UK lamb exports to France if a preferential trade regime did not apply. Similarly, the UK would charge an import tax on products coming from its former EU partners: €1,896 per tonne on Irish and Danish butter for example, if the UK continued with the MFN tariffs it currently applies.

Whilst high tariffs on agri-food imports from the EU might appear to offer welcome protection to UK farmers they would be highly disruptive for the food industries, and would act to push up consumer prices. Listed MFN tariffs are very high in comparison to the current support prices under the CAP. Indeed for sugar the MFN tariff exceeds the nominal support price! As the UK obtains a large share of its sugar from outside the EU, but currently imported at zero or low tariffs because of preferential trade agreements, it would be highly disruptive if these import arrangements could not be continued after the UK's withdrawal from the EU. Consequently the determination of the eventual trade regime is of considerable importance.

From a UK perspective the key objective would be to seek to have continued access to the single market, which is the principal economic benefit of membership, while eliminating or reducing the impact of those EU regulations that are seen as harmful to UK interests. As a House of Commons research paper notes, 'Whatever the arrangement there is likely to be a trade-off between the level of access to the single market, and freedom from EU product regulations, social and employment legislation, and budgetary contributions' (Thompson and Harai, 2013: 10).

At the risk of some simplification, it is possible to place five options on a continuum, ranging from the most integrated to the least integrated:

1. Customs union. The members of a customs union (CU) fix a Common External Tariff (CET), and once this tariff has been paid imports from third countries are in free circulation and – as with products originating within the union – can move freely from one member state to another. From a trade perspective possibly the least disruptive option would be for the UK to withdraw from the EU, but retain the CU. Existing tariff arrangements, both with EU member states and with third countries, would be maintained and there would be no need to renegotiate tariffs and concessions within the WTO. (This would not stop the members of a CU from restricting the import of agricultural products on legitimate health/environmental grounds.) If agriculture was included as part of this deal it would be relatively easy to negotiate and a good outcome for British farm exports. Such a deal would also be more acceptable to other members of the WTO. On the other hand, it does not differ that much from EU membership and might therefore be unacceptable to those opposed to membership. However, if agriculture was excluded from the EU-UK CU, then this would be problematic. If agricultural trade was not included in the CU, or in any of the trade scenarios envisaged in options 2-4 below, existing MFN barriers would apply on trade between the UK and the EU (including the Irish border), as would be the case in scenario 5. UK lamb would face high tariffs entering France (38 per cent of all lamb produced in the UK is exported to Europe: NFU, 2015: 4), as would Irish beef entering the UK.
2. The ‘Norwegian solution’, in which the UK rejoined the European Free Trade Area (EFTA) and remained in the European Economic Area (EEA). This would mean a continuation of the free movement of persons, capital, goods and services. The free movement of persons would be of particular concern to Eurosceptics as lack of control over migration has been one of their principal objections to British membership of the EU. The 1994 EEA agreement means that EU laws in areas such as employment, environmental policy and competition policy continue to apply, including those regarded as most burdensome by business. Iceland and Liechtenstein are also in the EEA. The CAP regime as such is not included in the EEA. Norway has its own domestic farm policy instruments and provides a higher level of support for producers than within the CAP. The Norwegian model is the solution that the EU would be likely to try to achieve, but it is unlikely to be acceptable to those concerned about regulation from Brussels. It involves accepting EU regulations whilst having limited influence on them.
3. Switzerland is in EFTA but not the EEA. EFTA is a free trade area rather than a CU like the EU. The UK was one of the original members. Switzerland has a series of bilateral treaties or contracts with the EU negotiated on a case-by-case basis. There are 20 important agreements and 100 that are less so. Bilaterals I signed in 1999 included an agreement on agriculture and Bilaterals II signed in 2004 included an agreement on processed agricultural products. It should be noted that Switzerland provides a higher level of domestic agricultural support than the EU. As in the case of Norway, this reflects the particular challenges that agriculture faces in terms of terrain and climate. Norway and Switzerland have the highest levels of producer support as a percentage of gross farm income in the OECD at well over twice the EU levels. These are static agreements, so protocols have to be added from time to time to update them. It is essentially a model of considerable integration without membership. It does not mean, however, that Switzerland is not bound by horizontal policies that cover more than one sector or policy area such as environment and competition. For example, its Agreement on the Free Movement of Persons means that it must introduce equivalent employment legislation to that in operation in the EU, including the Working Time Directive.

‘Switzerland is more integrated than Norway into the EU because of geography, but lags behind Norway in terms of legal arrangements and the scope of its access to the single market’ (Buchan, 2012: 5). However, ‘Some say that the Swiss government is adopting more EU standards than many of the EU members’ (Linder, 2010: 89). Moreover, the relationship between the EU and Switzerland has been under some strain and ‘is not a template the EU wants to offer others ... if the UK tried to withdraw on a Swiss-style arrangement, the EU would insist on wholesale UK adoption of future single market legislation and on UK acceptance of surveillance and enforcement mechanisms’ (Buchan, 2012: 9).

It is worth noting that in its 2012 report the House of Commons Foreign Affairs Committee stated (cited in House of Commons Library, 2013: 17), ‘We agree with the Government that the current arrangements for relations with the EU which are maintained by Norway, as a member of the European Economic Area, or Switzerland, would not be appropriate for the UK if it were to leave the EU. In both cases the non-EU country is obliged to adopt some or all of the body of EU Single Market law with no effective power to shape it’.

4. A simple free trade area (FTA) agreement with the EU is probably the UK’s preferred option, but unlikely to appeal to aggrieved EU member states or to those member states worried about their own Eurosceptic parties. A member state such as France would be concerned about exports to its territory from the UK which was not constrained by the same set of rules. Such an arrangement would likely relate to tariff barriers, quotas and the like, on products originating within the UK and EU, without attempting to harmonise UK law on EU provisions (although some convergence on food safety, animal health and phytosanitary arrangements might be acceptable). Recent FTAs negotiated by the EU have not been as simple as this, e.g., that concluded with Columbia and Peru in 2012. Moreover, an agreement could take years to negotiate, and ratify as required in national parliaments. Proponents of a FTA argue that the EU has such arrangements with other parts of the world, but these are generally with developing and emerging countries and there is no precedent for such an agreement with a developed country that is a former member.

The experience of the EU-Canada free trade agreement may, nonetheless, be relevant. Negotiations for the EU-Canada Comprehensive Economic and Trade Agreement were completed in August 2014 (following a political break-through in October 2013) and the ‘CETA’ is understood, in particular, to remove 99 per cent of customs duties: see http://ec.europa.eu/trade/policy/in-focus/ceta/index_en.htm. Its objectives, however, are broader, including such matters as the promotion and protection of investment. For our purposes, what is probably most significant is that CETA does cover many agricultural duties (something which has so often proved difficult elsewhere). Thus, according to the above EU website, ‘[a] far reaching elimination of customs duties will apply also to the farming and food sector’ (with great benefit envisaged for EU high-value, processed agricultural products); and ‘[n]early 92% of EU agriculture and food products will be exported to Canada duty-free’ - although the same website at the same time envisages that all industrial duties are to be eliminated within 7 years.

5. If the CU option is rejected, and agreement cannot be reached on a FTA, then the default option is that the EU and the UK trade with each other as MFN trade partners within the WTO system. The EU then would have little alternative than to impose its CET tariffs against UK products (on lamb to France for example). Equally the UK would have to impose its MFN tariffs on imports from the EU (Danish butter for example). A unilateral MFN tariff reduction scenario by the UK could be even more damaging for UK farmers. UK farm exports would still face tariff barriers entering the EU, but there would now be freer access for all suppliers to the UK market, which would inevitably drive down prices.

APPENDIX 3

The Agreement on Agriculture contains complex rules how limits on domestic support and export subsidies are calculated and, importantly, some domestic support can be exempt from reduction commitments.

Thus, measures may be exempt because they are de minimis (minimal amount of support): (Article 6.4); they fall in Article 6.5 as a 'direct payment under a production-limiting programme' (the so-called 'Blue Box'); or they fall within Annex 2 (the so-called 'Green Box'). For a measure to be exempt from reduction commitments under the Green Box, it must meet the 'fundamental requirement' that the measure has 'no or at most minimal, trade-distorting effects or effects on production' and the two basic criteria that the support is 'provided through a publicly-funded government programme (including revenue foregone) not involving transfers from consumers' and that the support does 'not have the effect of providing price support'. In addition, the measure must also comply with one or more of the policy-specific conditions and criteria set out in Annex 2. These policy-specific conditions and criteria cover a wide range of programmes: general services (such as research, training services and extension and advisory services); public stock-holding for food security purposes; domestic food aid; and direct payments to producers. And the forms of direct payment which may attract exemption are diverse, varying from decoupled income support to support under structural and environmental schemes.

Most Pillar 1 direct payments made to farmers under the CAP are said to fall within the Green Box exemption on the grounds that they are decoupled income support, whereas Pillar 2 payments may be exempt on other grounds, notably that they are direct payments made to farmers under an environmental programme or that they are made as part of a regional assistance programme.

That said, the status of the new 'greening' payment made to farmers under Pillar 1 of the CAP remains controversial, as it is as yet unclear whether it is decoupled income support for the purposes of exemption from the WTO rules. If the payment is not exempt, then it will fall to be counted against the EU's agreed WTO limits on domestic support. As the EU still retains some 'headroom' in the case of such domestic support, the possibility that the 'greening' payment is not exempt decoupled income support may not prevent its continued payment by the EU. On the other hand, it is worth noting here that post-BREXIT there is less than full clarity as to whether the UK will be able to take advantage of the EU's existing agreed limits on the payment of domestic support. This lack of clarity may affect the future viability of 'greening' payments for UK farmers.

APPENDIX 4

Article XXIV GATT is concerned with CUs and FTAs. If, on joining the CU or FTA, a modification to the WTO member's Schedule is required to realign its trade policy to fit in with the CU or FTA, this modification must be undertaken by agreement or negotiation either with the WTO member with whom the original commitment was negotiated, or with any other WTO member determined by the other members to have a 'principal supplying interest,' together with any other WTO member that has a 'substantial interest' in the commitment (Article XXVIII:1 GATT).

In the context of the formation of a CU, if this realignment requires an increase in the rate of tariff duty in its Schedule vis-à-vis other WTO members that are not members of the CU, then the member joining the CU may be required to pay compensation to those WTO members adversely affected as a result of that change. Under Article XXIV.6 GATT, the required compensatory adjustment must take into account the overall positive gains that the affected state may obtain from any general reduction in the rates of tariff duties of the other members of the CU. These rules do not apply to withdrawal from a CU, and more worryingly, they do not apply to a division of any permitted domestic support or export subsidies. However, if Article XXIV:6 and XXVIII:1 GATT were applied by analogy, it may be difficult for other WTO Members to have any cause for complaint, or indeed any remedy, regarding any allocation that the EU and the UK notified so long as the aggregate sum did not exceed the existing EU entitlement/commitment.

Nevertheless, it should be reiterated, that as the UK realigns its relationship with the EU (perhaps through the creation of a FTA), this realignment must meet the detailed rules set out in the WTO rules, specifically Article XXIV GATT; the UK would not have unimpeded freedom to establish a new free trade area on any terms it wished (should it in any event be able to negotiate such favourable terms with the EU).

The EU has many FTAs with a variety of countries around the world, and others are in the process of negotiation (for example the Transatlantic Trade and Investment Partnership with the USA). If the UK withdraws from the EU, will it not also cease to be a member of these FTAs? If so, and if it wishes to re-establish these trade relations (for example the Economic Partnership Agreements with a number of developing countries that, inter alia, regulate the import of raw cane sugars into the UK), new FTAs will also have to be negotiated in conformity with WTO rules.

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THE YORKSHIRE AGRICULTURAL SOCIETY

Founded in 1837, the Yorkshire Agricultural Society promotes excellence and innovation in British agriculture. The Society is a registered charity with a membership in excess of 10,000. The main office of the Society is based at the award winning Regional Agricultural Centre, in the Town of Harrogate, North Yorkshire.

The Yorkshire Agricultural Society hosts nationally recognised agricultural events. These include the Great Yorkshire Show, Countryside Live and Springtime Live, all of which take place on the Great Yorkshire Showground, adjacent to the Regional Agricultural Centre. These shows are one aspect of the exceptionally wide portfolio of events organised and funded by the Society.

KEY AREAS INCLUDE:

- **Charitable Activities** – support for agricultural, rural and countryside charities, as well as not for profit organisations. For more information, [please click here](#)
- **Educational Activities** – free courses for teachers, schools and pupils, specialised educational events about agriculture and careers. For more information, [please click here](#)
- **Farming Support** – support for the wider farming community and in collaboration with support groups. For more information, [please click here](#)

THE FARMER-SCIENTIST NETWORK

The Yorkshire Agricultural Society has an exceptional track record of success in bringing science and farming together, and developing research and educational programmes to inform the wider society of the importance of agriculture to every aspect of our lives.

Chaired by Professor Rob Edwards, Head of Agriculture at the University of Newcastle, the Farmer-Scientist Network consists of professorial scientists with a track record of academic excellence and commitment to strategic research in subject areas related to agriculture and land-use; senior representatives from relevant governmental organisations; and farmers, spanning small and large successful businesses in the region, with entrepreneurial skills recognised by national awards and strong personal commitments to the future success of British agriculture.

The remit of the network is to bring successful scientists and farmers together to work effectively with crop and livestock sectors and interact with the supply chains linking producers to food and the many other benefits provided by agriculture. Our goal is sustainable productivity, encouraging and supporting the changes that are urgently needed to bring innovation into farming. For more information, [please click here](#)

BIOGRAPHIES



Wyn Grant (Chair)

Professor of Politics at the University of Warwick and member of the Farmer-Scientist Network

Wyn Grant is Professor of Politics at the University of Warwick, although his teaching has been mainly in Economics, the Warwick Business School and, from 2006-7, Life Sciences at undergraduate and postgraduate level. Main area of research work has been comparative public policy with special reference to agricultural and environmental policy (including trade policy), government-business relations and regulation and also the political economy of football. He is an acknowledged expert on the Common Agricultural Policy and author of *The Common Agricultural Policy* (1997) and co-author of *Agriculture in the New Global Economy* (2004) as well as many refereed journal articles and book chapters on agricultural, food and environmental policy.



Michael Cardwell

Professor of Agricultural Law at the University of Leeds

Michael Cardwell is Professor of Agricultural Law at the University of Leeds, having previously been a solicitor in practice with Burges Salmon, Bristol. His research interests focus on the Common Agricultural Policy and on agriculture in world trade, with early work on milk quotas leading to publication of *Milk Quotas: European Community and United Kingdom Law* (Clarendon Press, 1996). Subsequent publications include *The European Model of Agriculture* (OUP, 2004), *The Regulation of Genetically Modified Organisms: Comparative Approaches* (OUP, 2010) (co-edited with Luc Bodiguel) and *Research Handbook on EU Agriculture Law* (Edward Elgar, 2015) (co-edited with Joe McMahon). In 2013 he was elected Assistant Delegate General of the European Council for Rural Law.



Alan Greer

Associate Professor of Politics and Public Policy at the University of the West of England

Alan Greer is an Associate Professor in Politics and Public Policy at the University of the West of England. His main interests lie in the field of public policy analysis and governance, especially relating to agriculture, food and climate change. He has written two major books and numerous journal articles in these areas, including *Agricultural Policy in Europe* (Manchester University Press, 2005).



Chris Rodgers

Professor of Law and Head of Newcastle Law School

Christopher Rodgers is Professor of Law at Newcastle University. He is an established author in the areas of property law and environmental law. He was Consulting Editor to Volume 1 (Agriculture) of the 4th and 5th editions of Halsbury's Laws of England, and is Editor in Chief of the *Environmental Law Review*. He is a regular contributor to the legal journals on property law and agricultural law topics. He also has extensive experience as a consultant solicitor specialising in agricultural property work.



Fiona Smith

Professor of Law at the University of Warwick

Fiona Smith is Professor of International Economic Law at the University of Warwick. She joined Warwick Law School in September 2014 from University College London (UCL). Professor Smith's research focuses on the regulation of international agricultural trade in the World Trade Organization (WTO) and in international investment law. Her most recent work explores whether the 'Greening' Direct Payment under the EU's reformed Common Agricultural Policy is compatible with the WTO rules and how effective regulation of food security can be achieved. She has spoken about her research to public and private sector audiences throughout the world. She has acted as expert to the European Commission, [DG DSANCO], Working Group on EU Food Safety in Nutrition in 2050 and to the joint DEFRA/UK Treasury, Balance of Competence Review: Agriculture. She is a member of the Editorial Board of the *Journal of International Economic Law* and is their European Book Review Editor.



Alan Swinbank

Emeritus Professor of Agricultural Economics at the University of Reading

Alan Swinbank is an Emeritus Professor of Agricultural Economics at the University of Reading. His research has focussed on the on-going reform of the EU's Common Agricultural Policy (CAP), and World Trade Organization (WTO) disciplines on farm support. He has published extensively; and advised parliamentary committees, government departments and international research organizations.



Charlotte Bromet

Chair of Charitable Activities at the YAS and member of the Farmer-Scientist Network

Brought up in a farming family and with the showing of Pedigree Dairy Shorthorns at the Great Yorkshire Show, Charlotte has been involved in a considerable number of charitable activities in Yorkshire and nationally. She has been Regional Chairman of Yorkshire Riding for the Disabled Association and National Deputy Chairman. She is Chairman of Middleton Park Equestrian Centre, an RDA Centre in South Leeds which caters for 300 riders and 70 pony and trap drivers each week. She has been a District Councillor, JP for 12 years, Chairman of Governors of Tadcaster Grammar School (23 years) and Chairman of Governors of Cundall Manor School. She has also been a member of Archbishops Council, a Trustee of Selby Abbey and President of Yorkshire Young Farmers Clubs. Currently she is Chairman of Age UK REACT for North Yorkshire. She is a member of YAS Council, a Trustee of YAS and Chairman of the Charitable Activities Committee to which this Advisory Group responds.



Bill Cowling

Deputy Lieutenant for North Yorkshire and member of the Farmer-Scientist Network

Based at Burn Bridge, Harrogate, the family business specialises in beef, sheep and arable. It has increased to three farms in family partnership with his two sons, totalling 600 acres. Bill and his wife Caroline also have a daughter, and two granddaughters. Throughout his farming career, Bill has always been involved in and committed to Countryside Environmental Schemes and High Level Stewardship. Within the Yorkshire Agricultural Society, Bill has been Honorary Show Director for the Great Yorkshire Show and Countryside Live since 2005 - 2015, an Assistant Cattle Steward since 1978, the Chief Cattle Steward 1995-2004, a member of the Cattle Committee since 1982, as well as a Council member (North Yorkshire) since 1989, a member of the Executive Committee since 1990, Chairman of Grants and Education Committee from 1991 to 2006, member of the Showground Committee since 2000, and member of the Yorkshire Event Centre since 2000. Recently appointed as Deputy Lieutenant of North Yorkshire by the Lord-Lieutenant, Lord Crathorne during the Great Yorkshire Show in July 2014.



Richard Findlay

Uplands Yorkshire farmer and member of the Farmer-Scientist Network

Richard and his family run a successful livestock business at Quarry Farm, near Whitby in the heart of the North York Moors National Park. The farm comprises of over 145 acres and tenants on 165 acres with 636 moor rights on Westerdale Common (1200 acres). The family rear a herd of 100 continental cross suckler cows, a hill flock of Swaledale sheep, a pedigree flock of Beltex sheep, and some crossbred ewes. In 2006, Richard and his family inherited 5 hives, this led to diversification of the farming business and beeswax and honey products are now also produced, under the brand name Westerdale Apiaries. Committed to working for the farming industry and its success in the Uplands. He is a Committee Member for the National Farmers Union (NFU) Livestock Board. Richard believes three things are fundamental for success – diversification, good business – business partnerships and a fundamental commitment to ensuring food production is environmentally sustainable.



Holly Jones

Secretariat to the Farmer-Scientist Network

Holly joined the Yorkshire Agricultural Society in November 2013 providing the Secretariat to the the Farmer-Scientist Network. She is also the Project Manager for the Yorkshire Food, Farming and Rural Network. Prior to this, Holly worked on events and projects within business and innovation sectors at Yorkshire Forward, the Regional Development Agency for Yorkshire and the Humber (the government agency responsible for economic development in the region).



**Farmer Scientist
Network**

Yorkshire Agricultural Society

Regional Agricultural Centre | Great Yorkshire Showground | Harrogate | HG2 8NZ

www.yas.co.uk