

Defra/AES one-day conference

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Public Money for Public Goods

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ELM payments and WTO compliance

Alan Swinbank

A.Swinbank@reading.ac.uk

<http://swinbank.co.uk>

The *Agriculture Bill*

- Clause 1: *The Secretary of State may give financial assistance for or in connection with any of the following purposes—*
 - (a) *managing land or water in a way that protects or improves the environment; ...*
- Clause 26: *The Secretary of State may make regulations for the purpose of securing compliance by the United Kingdom with the Agreement on Agriculture*

Outline

- WTO membership, regulation of subsidies, and the Agreement on Agriculture
- What do we think Annex 2 would allow?
- The UK's share of the EU28's AMS allowance
- An extended transition & the (temporary) Irish backstop
- What can we learn from past litigation over 'domestic support commitments'?
- Conclusions?

The UK and the WTO

- The UK is, and will remain, a member of the WTO
 - Subject to all its disciplines, including the *Agreement on Subsidies and Countervailing Measures*, and the *Agreement on Agriculture*, for example
- The UK is the reporting unit, responsible for the actions of the devolved administrations

The WTO and 'subsidies'

- GATT Article XVI
- Agreement on Subsidies and Countervailing Measures (SCM)
- **Agreement on Agriculture (AoA)**
 - The relationship between SCM and AoA is complex: *both agreements can apply*

AoA: 'domestic support commitments'

Article 6: 'The domestic support reduction commitments of each Member ... shall apply to all of its domestic support measures in favour of agricultural producers with the exception of domestic measures which are not subject to reduction in terms of the criteria set out in this Article and in Annex 2 to this Agreement'

in favour of agricultural producers

- Can ELM schemes be devised outside the provisions of the AoA?
 - SCM Agreement and Article XVI would still apply
- What/who is an ‘agricultural producer’?
 - Wood, for example, is not an agricultural product covered by the AoA

But the farm lobby has other ideas 1/2

- **George Dunn, Tenant Farmers Association:**
This is an Agriculture Bill and it has to support the agricultural industry at the end of the day
- **Minette Batters, National Farmers' Union:** *we feel it is an Agriculture Bill and should be for agricultural purposes*

House of Commons, Environment , Food & Rural Affairs Committee, 24 October 2018:
Scrutiny of the Agriculture Bill

But the farm lobby has other ideas 1/2

- Tim Breitmeyer, Country Land and Business Association: *The money that had been farmers' in the basic payment scheme will disappear into the Treasury never to be seen again, because the schemes will not be ready and farmers will not be sufficiently confident that they want to engage in them with what little evidence they have seen*

House of Commons, Environment , Food & Rural Affairs Committee, 24 October 2018:
Scrutiny of the Agriculture Bill

The AoA's categorisation of domestic support (for developed countries)

- Exempt payments as defined by Annex 2 (the so-called Green Box)
- ~~Blue Box payments~~
- Amber Box support
 - Limited to a *de minimis* amount and a country-specific Aggregate Measurement of Support (AMS) as specified in the country's WTO Schedule of commitments

Annex 2: The Green Box

- ‘fundamental requirement that they have no, or at most minimal, trade-distorting effects or effects on production’
 - but never tested
- ‘publicly-funded government programme’;
‘not have the effect of providing price support to producers’
- ‘plus policy-specific criteria and conditions’

12 sets of 'policy-specific criteria and conditions', *including:*

- General services
- Decoupled income support
- Structural adjustment assistance through resource retirement programmes
- Payments under environmental programmes
- Payments under regional assistance programmes

Payments under environmental programmes

- (a) Eligibility for such payments shall be determined as part of a clearly-defined government environmental or conservation programme and be dependent on the fulfilment of specific conditions under the government programme, including conditions related to production methods or inputs
- (b) The amount of payment shall be limited to the extra costs or loss of income involved in complying with the government programme

Can the UK meet these requirements?

- sub para a) should not be a problem
- sub para b) has caused concern: *limited to the extra costs or loss of income involved*
 - J-C Bureau: *simply unenforceable in practice*
 - Wildlife & Countryside Link: *should not be a significant constraint to building an effective and attractive policy*
 - RSPB: *there is sufficient flexibility ... to create a future environmental land management payment that is both environmentally effective, and financially attractive for farmers and land managers*

extra costs or loss of income

- Legal interpretation, not a micro-economist's theory of the firm
- “loss of income” = “revenue foregone”?
 - “or” = “and/or”?
- Difficult to believe the intent was to apply this on an individual farm basis
 - *But the wording appears to exclude value-based payment schemes*
 - *And flat-rate, broad-based, schemes would be difficult to justify*

If not Green Box compliant

- Could be a valid Blue Box payment
- Non-exempt 'domestic support measures in favour of agricultural producers' form part of the Amber Box, governed by:
 - The *de minimis* provision
 - Any AMS entitlement the UK inherits from the EU

de minimis

- Currently 5% of the value of agricultural production for non-product-specific support
 - About £1.2 billion in 2015
- *plus*, for product-specific support for each basic agricultural product, 5% of the value of production
 - Role here for animal welfare payments?
- But could reduce to 2.5% *plus* 2.5% with a Doha settlement (but not before Kazakhstan, in June 2020)



The UK's AMS entitlement?

- The UK has asked for €5,914.1 million
 - about £5 billion at €1 = £0.85
- Could be reduced by [45%] [70%] if there is a Doha settlement
 - [£2.75 billion] [£1.5 billion]

NB: can be combined with de minimis

But once the de minimis threshold is reached, the entire level of support counts against AMS

An extended transition & the (temporary) Irish backstop

The Withdrawal Agreement provides for an extension of the transition period beyond 31 December 2020, and an Irish backstop once the transition has been completed

- Agricultural support in the UK would be capped
- Most of this support would have to be Annex 2 compliant

Harbinger of a future UK-EU27 trade deal?

Domestic Support and Dispute Settlement

Listed in the WTO database	572
That cite the Agreement on Agriculture	81
Citing Domestic Support Provisions	7 <i>but none concern environmental payments</i>

https://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm

As of 29 November 2018

The 7 cases: 1 substantive result

DS 161 & DS 169 Korea — Measures Affecting Imports of Fresh, Chilled and Frozen Beef (complainants United States & Australia)

DS 267 United States — Subsidies on Upland Cotton (complainant Brazil): *ruling in 2005*

DS 357 United States — Subsidies and Other Domestic Support for Corn and Other Agricultural Products (Canada) & DS 365 United States — Domestic Support and Export Credit Guarantees for Agricultural Products (Brazil). *No developments since December 2007*

DS 507 Thailand — Subsidies concerning Sugar (Brazil). *Consultations, April 2016.*

DS 511 China — Domestic Support for Agricultural Producers (USA). *Panel Report expected by the end of the year.*

Record on Dispute Settlement:

- To-date, environmental payments have not led to a dispute
 - Members, not the Secretariat, initiate disputes
 - Moreover, disputes can take a very long time to be settled
- And anyway the whole Dispute Settlement process is in danger of grinding to a halt because of the failure to appoint members to the Appellate Body

The UK should not be too afraid of challenge



Conclusions?

- WTO rules are unclear
 - But haven't hindered WTO Members adopting a variety of environmental schemes
- UK should respect the intent of Article 2 (i.e. minimally trade distorting) without worrying too much about the letter of the Agreement
- Schemes need clear objectives and criteria
 - Tailored to specific locations or circumstances

References

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