Key challenges for Agrifood Supply Chains Post-Brexit

PRIVATE ACTORS, LONGEVITY, FOOD WASTE

POLICY INSIGHT - KEY FINDINGS

Theme 1: The Broadening Role of Private Actors
1. Any Government plans to give financial assistance to ‘non-farmers’, such as land managers and NGOs, may not be compatible with the WTO Agreement on Agriculture, which states direct payments (including payments under environmental programmes) must be made to ‘producers’.
2. WTO rules may yet capture private standards, especially where such standards become de facto compulsory.

Theme 2: Longevity
1. The promotion of longer farm tenancies and conservation covenants to ‘lock in’ environmental dividends should form part of policy so as to achieve longevity.
2. The UK’s Comprehensive Spending Review cycles are shorter than the EU’s 7-year programming periods. The agricultural sector will face more variables in future planning and will need to argue its corner more frequently in spending rounds.

Theme 3: Waste
1. Food and its subsequent waste should be considered in agrifood supply chains as a resource management challenge rather than a generic waste problem.
2. The Agriculture Bill (as amended) offers opportunities to embed waste prevention strategies into the agrifood supply chain. Under Clause 27, the Secretary of State may require first purchasers to adhere to regulated terms.
Introduction

On 15th November 2018, an Expert Workshop on Agrifood Supply Chains Post-Brexit was held in York, to identify issues for policy. Participants were drawn from academia, civil society, government and industry, with expertise from politics, ecology, consumer protection, economics, finance, law and policy. In the course of discussions, which were held under the Chatham House rule, three themes emerged:

- **THE BROADENING ROLE OF PRIVATE ACTORS**;
- **THE IMPORTANCE OF BUILDING LONGEVITY INTO POLICY DESIGN**;
- **AND THE NEED TO EMBED FOOD WASTE STRATEGIES ALONG THE SUPPLY CHAIN FROM FARM TO FORK**.

Initial findings were presented at DEFRA in London on 11th December 2018 at a seminar, **Post-Brexit Agricultural Policy from Supply Chain Perspectives**, hosted by the Global Food Security Programme.

Theme 1 - The Broadening Role of Private Actors

1.1 Payments other than to ‘Agricultural Producers’

Under the EU Common Agricultural Policy, direct payments have traditionally been paid to farmers. In particular, entitlement under the Basic Payment Scheme is, as a general rule, dependent upon the recipient being an ‘active farmer’. Visions for post-Brexit financial assistance, however, look to a broader range of beneficiaries. For example, frequent reference is made to ‘land managers’ in the Health and Harmony consultation document; and the Explanatory Notes accompanying the Agriculture Bill state in paragraph 50 that: “financial assistance may be given to beneficiaries including, but not limited to, farmers, foresters, or those responsible for the management of the land”. Accordingly, an enhanced role for NGOs in the delivery of ‘public goods’ would seem to be on the policy agenda.

This development raises potential challenges in terms of international trade regulation under WTO rules.

- **Financial assistance provided other than to agricultural producers for ‘general services’** is probably compliant with WTO rules on the basis that it falls within the Green Box exemption under the Agreement on Agriculture, Annex 2, paragraph 2(a)-(g) (such as pest and disease control, training, advisory services and infrastructural services).

- **But, where financial assistance is delivered in the form of ‘direct payments’, it is expressly required that such payments must be paid to ‘producers’ in order to secure Green Box exemption (Annex 2, paragraphs 5 and paragraphs 6-13). And, importantly, among the forms of direct payment specifically listed in this context are ‘payments under environmental programmes’ (Annex 2, paragraph 12). ‘Agricultural producer’ is not defined further in the Agreement on Agriculture, although it should be noted that the products covered by the Agreement, as set out in Annex 1, do not extend to ‘public goods’**.
• More generally, numerous other provisions of the Agreement on Agriculture, such as those governing the requirements of the Amber Box and the Blue Box, require financial support be made to ‘agricultural producers’. And where financial assistance is not covered by the Agreement on Agriculture, it is instead regulated by the more general rules on trade in goods, such as those regulating subsidies, which are more stringent (Article 21.1 Agreement on Agriculture, interpreted by the WTO Appellate Body in \textit{US-Cotton}).

1.2 Private Standards in the WTO

Private standards proliferate in international trade and are designed to maintain food safety and quality from farm to fork. For example, Tesco’s Nature’s Choice, Red Tractor and Global. A.P. all focus on these aspects, as well as farmed animal health and welfare. Whether private standards fall to be regulated by WTO rules remains a matter of debate.

Many countries (including the UK) believe that WTO rules only regulate standards formulated by countries, with the consequence that private standards set by private corporations could not fall within WTO rules. From 2008, some developing countries in the WTO Sanitary and Phytosanitary Committee have contested this view, arguing that private standards act as barriers to international trade where they become a de facto norm for doing business.

Recent reflections confirm the view that the relationship between private standards and government regulation is complex and mutually enforcing, notably in: (i) the proceedings of the WTO Sanitary and Phytosanitary Committee, although it should be noted that despite nearly 15 years of discussion within that Committee, no definition of a private standard could be agreed; (ii) reports by WTO panels and the Appellate Body which recognise that government ‘voluntary standards’ may become compulsory requirements for conducting trade (see, e.g., \textit{US-Tuna II}); and (iii) academic commentary (such as the work of Du, 2018).

**Theme 2 – Longevity**

2.1 Farm Tenancies

An extended timescale is regarded as integral to the successful delivery of ‘public goods’ (as now enshrined as a key imperative for post-Brexit agricultural policy). In this context, core concerns have been expressed as to the extent to which short term tenancies may affect participation in, and the effectiveness of, agri-environmental schemes (see, e.g., Tenant Farmers Association (TFA), \textit{Response to Health and Harmony: the Future for Food, Farming and the Environment in a Green Brexit}, paragraph 11.10). Significantly, the Central Association of Agricultural Valuers (CAAV) survey from 2017 indicated that the average agreed length for farm business tenancies in England and Wales was just under four years, in comparison to the five- to seven-year commitments required under EU agri-environment-climate schemes. And in Northern Ireland there is still a focus on seasonal arrangements for grazing. Encouragingly, the same 2017 survey revealed that in England and Wales new entrants are typically offered longer terms than the average agreed length.

If levers are sought to encourage longer terms, consideration could be given to Income Tax reform, alongside existing focus on changes to Inheritance Tax Relief (as advocated, for example, by the TFA: see, e.g., TFA, \textit{Response to Health and Harmony}, paragraph 11.11). More precisely, there is evidence from the Republic of Ireland that an incentive to let land for longer may be generated by gearing Income Tax Relief on rents to the length of tenancy (see, e.g., CAAV Submission to the Public Bill Committee of the House of Commons (23 October 2018)).

2.2 Financial Horizon

Agriculture has become accustomed to a relatively distant financial horizon by virtue of the EU’s seven-year programming periods (the current period to expire in 2020). Post-Brexit, these will no longer apply, with focus instead on UK Comprehensive Spending Reviews and Spending Rounds. Although Comprehensive Spending Reviews are multi-annual in character, their cycle has been shorter than the EU programming regime. The agricultural sector may therefore face more variables in planning for the future, while it may also need to argue its corner more frequently in Spending Rounds.
2.3 ‘Locking in’ Environmental Gain
In line with a shift to paying ‘public money for public goods’, greater importance should be attached to ensuring gains which have been achieved are safeguarded for the future. Such dividends realised in respect of the farmed environment are vulnerable to policy change, as was well illustrated on the lifting of compulsory set-aside obligations, at which point the Institute for European Environmental Policy (IEEP) foresaw that:

“...the abolition of set-aside – without any replacement mechanisms – seems likely to result in significant loss of environmental benefits, particularly within the most intensively farmed regions of the EU, as a result of a large area of land being taken out of fallow and brought into cereal production”


2.4 Conservation Covenants
An initiative receiving renewed attention as a means of securing environmental gains is the use of conservation covenants. The Law Commission issued its Report, Conservation Covenants (LAW COM No 349) in 2014; and an assessment of their operation is to be taken forward under the Government’s 25-Year Environment Plan, with a consultation document having already been issued in February 2019 (DEFRA, 2019). A matter of note is that the 25-Year Environment Plan envisages that:

“Covenants would be overseen by a responsible body to maintain standards, and could allow landowners to protect treasured features on their land such as trees or woodland for purely altruistic reasons. In some cases, they might also be used in a business context to secure the long-term maintenance of existing or newly created wildlife or heritage assets” (HM Government, A Green Future: Our 25 Year Plan to Improve the Environment (2018), p 62).

In this context, inquiry could usefully be conducted into the motivations for landowners to enter into conservation covenants, together with the nature of any incentives required. As indicated above, altruistic reasons may prove sufficient in some instances, but experience elsewhere would suggest that this will not always be so. For example, in the USA, fiscal advantages have been conferred and use has been made of ‘exacted conservation easements’ as a tool of government within the framework of environmental land-use regulation. With respect to fiscal advantages, there may be scope to provide for bespoke Inheritance Tax Relief, along the lines of the current conditional exemption for national heritage property. Indeed, there is an arguable case that the current exemption already has the capacity to cover some land suitable for inclusion within a conservation covenant, such as parkland around a stately home. In any event, as Reid and Nsoh (2016) highlight, care would need to be taken to avoid perverse incentives.

Theme 3 – Food Waste

How can food be produced and managed in ways which keep it within the supply chain and prevent waste?

Food has particularities as a resource, acknowledged as a basic human need (even a ‘right’), while its perishability makes it harder to preserve from farm to fork. Accordingly, agrifood supply chains have sector-specific challenges, with food to be treated as a special resource problem, not a generic waste problem.

The Agriculture Bill offers opportunities to embed preventative terms within contractual relations in the agrifood supply chain in order to address bargaining power imbalances and unfair trading practices that generate food waste. Such generation might occur, for example, in the following ways:

- when there is deliberate overproduction due to a contract that stipulates a high level of product availability without guarantee of purchase;
- when an order is cancelled or changed at the last minute; and
- when intermediary actors in the supply chain shift the risks and losses from these business practices further down the supply chain to their own suppliers.

Clause 27 of the Agriculture Bill (as amended) gives the Secretary of State power to impose obligations on first purchasers of agricultural products for the purposes of promoting fair contractual dealing. In particular, the Secretary of State may require first purchasers to use written contracts that include terms which deal with specified matters. The list of specified matters as set out in the Bill is non-exhaustive, but examples include terms which address: the quality and quantity of products; how products are to be provided (including timing of deliveries); pricing mechanisms; and notice periods for variations.