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Scientific and practical development of agricultural law in  
the EU, in countries and in the WTO – Développement  
scientifique et pratique du droit rural dans l'UE, dans les  
pays et dans l'OMC – Wissenschaftliche und praktische  
Entwicklung des Rechts des ländlichen Raums in der EU,  
in den Ländern und in der WTO

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**EUROPEAN COUNCIL FOR AGRICULTURAL LAW****XXV EUROPEAN CONGRESS AND COLLOQUIUM OF AGRICULTURAL  
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EU, IN NATIONS AND IN THE WTO****UNITED KINGDOM****Michael Cardwell\*****University of Leeds****1. INTRODUCTION**

Agricultural law in the United Kingdom increasingly reflects the fact that it is governed on a devolved basis, with differing regimes being implemented in England and in each of the devolved administrations in Northern Ireland, Scotland and Wales.<sup>1</sup> Such differences may, in large part, be attributed to the relative importance of agriculture and rural affairs to the regional economy. For example, 2008 figures for Scotland reveal that some 18 per cent of the population lives in rural areas, while 95 per cent of the land mass could be classified as rural;<sup>2</sup> and the second figure is

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<sup>1</sup> The relevant government departments are: in the case of England, the Department for Environment, Food and Rural Affairs (DEFRA); in the case of Northern Ireland, the Department of Agriculture and Rural Development for Northern Ireland (DARDNI); in the case of Scotland, the Scottish Executive Environment and Rural Affairs Department (SEERAD); and, in the case of Wales, the Welsh Assembly Government Department for Rural Affairs (WAGDRA). The division of responsibilities, is not, however, simple. For example, foreign policy issues (which include relations with the European Union) remain the province of the United Kingdom Parliament and Government, DEFRA taking the lead role for agriculture.

<sup>2</sup> The Scottish Government, *Rural Scotland Key Facts 2008 People and Communities, Services and Lifestyle, Economy and Enterprise* (The Scottish Government, Edinburgh, 2008) 6. See also generally, eg, M Keating and L Stevenson, 'Rural policy in Scotland after Devolution', (2006) 40 *Regional Studies* 397-408.

substantially higher than the United Kingdom average.<sup>3</sup> In addition, there would seem to be greater sympathy for a more traditional vision of agriculture in the ‘Celtic fringe’, as forcefully articulated, for example, in the context of genetically modified organisms. Thus, in April 2009 the Scottish Environment Minister re-affirmed that the Scottish Government’s anti-GM stance and declared that ‘[w]e are ready to stand shoulder to shoulder with other nations who are opposed to GM and fight for what our people want’,<sup>4</sup> while in Wales the approach has been ‘to adopt the most restrictive policy on GM crops that is compatible with European Union and UK legislation’.<sup>5</sup>

Accordingly, this dynamic will be explored in the context of European Community direct payments to farmers, with particular reference to the case of *R (on the application of Horvath) v Secretary of State for Environment, Food and Rural Affairs*.<sup>6</sup> Attention will then be directed to the issue of food security, which has become a clear focus of Government policy over the course of 2009.

## 2. DIRECT PAYMENTS TO FARMERS

The United Kingdom regime for delivering European Community direct payments to farmers is a complex one, designed to accommodate regional preferences; and this complexity may be explored in three areas of legislative activity: first, the implementation of the Single Payment Scheme; secondly, the introduction of voluntary modulation; and, thirdly, the imposition of cross-compliance conditions.<sup>7</sup>

As indicated, the United Kingdom opted to implement the Single Payment Scheme on a regional basis, as authorized by Article 58 of Council Regulation ((EC) 1782/2003).<sup>8</sup> Northern Ireland, Scotland and Wales each comprised a separate region;<sup>9</sup> and England was divided into three regions, namely moorland, severely disadvantaged areas and all other land.<sup>10</sup> However, while Scotland and Wales retained the historic model of allocation, with farmers receiving payment entitlements on the basis of the 2000-2002 reference period, the decision was taken in respect of the three English regions and Northern Ireland to exercise the further option, as

<sup>3</sup> See, eg, Directorate-General for Agriculture and Rural Development, *Rural Development in the European Union: Statistics and Economic Information – Report 2008* (European Commission, Brussels, 2008) Graph 3.1.2.1.

<sup>4</sup> The Scottish Government News Release, *Genetic Modification (GM)*, 24 April 2009.

<sup>5</sup> Welsh Assembly Government Press Release, *Tight Regulation of GM crops in Wales Proposed*, 24 February 2004.

<sup>6</sup> Case C-428/07 (16 July 2009).

<sup>7</sup> See, eg, M Cardwell, ‘Regulation of the Common Agricultural Policy in the United Kingdom: simplicity or complexity?’, (2008) 87 *Rivista di Diritto Agrario* 163-183.

<sup>8</sup> [2003] OJ L270/1.

<sup>9</sup> For Northern Ireland, see the Common Agricultural Policy Single Payment and Support Schemes Regulations (Northern Ireland) 2005, SR 2005/256, reg 3; for Scotland, see the Common Agricultural Policy Single Payment and Support Schemes (Scotland) Regulations 2005, SSI 2005/143, reg 3; and, for Wales, see the Common Agricultural Policy Single Payment and Support Schemes (Wales) Regulations 2005, SI 2005/360 (W.29), reg 3.

<sup>10</sup> The Common Agricultural Policy Single Payment and Support Schemes Regulations 2005, SI 2005/219, reg 3. For a helpful survey of national implementation of the Single Payment Scheme, see, eg, D Bianchi *La Politique Agricole Commune (PAC): Toute la Pac, Rien d’Autre que la PAC* (Bruylant, Brussels, 2006) 355-358.

authorized by Article 59, of dividing the total amount of payment entitlements of a region, or a part of that total, between the all farmers whose holdings were located within the region. This ‘flat-rate’ basis was then implemented differently in the case of the English regions and in the case of Northern Ireland. In the case of the English regions, the policy choice was to phase in the ‘flat-rate’ basis over an eight-year period (the ‘hybrid dynamic’ model), with a view to cushioning the effect where farmers had accumulated high historic levels of support.<sup>11</sup> In consequence, the ‘flat-rate’ proportion of each payment entitlement commenced at only 10 per cent in 2005 (as compared to an historic proportion of 90 per cent), rising incrementally by 15 per cent each year until by 2012 the historic proportion will have been eliminated.<sup>12</sup> By contrast, the policy choice in Northern Ireland was to adopt the ‘hybrid static’ model, where the proportion of flat-rate and historic entitlements remain constant.<sup>13</sup>

From the start, there was concern that this divergence in approach had the capacity to impact unevenly on farmers, giving rise to potential distortions of competition. Thus, as stated by Theresa May at the time when the Secretary of State for Environment, Food and Rural Affairs announced these measures, ‘[u]nder the proposed systems, Britain’s farmers will receive different levels of support but compete in the same marketplace. With four different systems, someone will be better off and someone will be the loser’.<sup>14</sup> Further, again within the context of the Single Payment Scheme, Scotland opted to implement targeted support for the beef sector as authorized by Article 69 of Council Regulation (EC) 1782/2003 (under which Member States may retain up to 10 per cent of national ceilings for individual sectors to grant additional support for specific types of farming which are important for the protection or enhancement of the environment or for improving the quality and marketing of agricultural products). The Scottish Beef Calf Scheme was introduced by the Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2005;<sup>15</sup> and it has proved a major plank in seeking to meet the policy objective of retaining beef production in the hills.<sup>16</sup>

Secondly, different percentages of voluntary modulation have been imposed in different regions. The United Kingdom has long shown enthusiasm for modulation as a means of generating funds for rural development; and, indeed, it was first introduced under the Agenda 2000 reforms when at the discretion of Member States.<sup>17</sup>

<sup>11</sup> Announcement by the Secretary of State for Environment, Food and Rural Affairs, Hansard (HC) 12 February 2004, Vol 417, Col 1586.

<sup>12</sup> The Common Agricultural Policy Single Payment and Support Schemes Regulations 2005, SI 2005/219, reg 8 and Sch 1.

<sup>13</sup> The Common Agricultural Policy Single Payment and Support Schemes Regulations (Northern Ireland) 2005, SR 2005/256, reg 8 and Sch 1.

<sup>14</sup> Hansard (HC) 12 February 2004, Vol 417, Col 1588. It may be noted that the ‘Health Check’ has provided considerable scope to iron out differences in implementation. In particular, Member States which have applied the historic model of allocation may move to the regional model; and there are also opportunities for them to revise payment entitlements so as to move in or after 2010 towards approximating their value: Council Regulation (EC) 73/2009 [2009] OJ L30/16, Arts 45-48.

<sup>15</sup> SSI 2005/143, regs 16-25.

<sup>16</sup> For discussion of the Scottish Beef Calf Scheme and its effectiveness, see, eg, The Scottish Government, *Implementation of the Common Agricultural Policy Health Check in Scotland: a Consultation Paper* (The Scottish Government, Edinburgh, 2009) 4-8.

<sup>17</sup> Council Regulation (EC) 1259/1999 [1999] OJ L160/113, Art 4. For the implementing measures, see, for England, the Common Agricultural Policy Support Schemes (Modulation) Regulations 2000,

This enthusiasm has continued notwithstanding the advent of compulsory modulation under the Mid-term Review; and, most notably, in 2007 advantage was taken of the authority conferred by Council Regulation (EC) 387/2007 to impose voluntary modulation at significant rates.<sup>18</sup> However, these rates varied in intensity, with the highest deductions being those in England. In all three English regions voluntary modulation was fixed at 12 per cent in 2007, rising to 13 per cent in 2008 and then remaining at 14 per cent from 2009 to 2012.<sup>19</sup> Accordingly, taking into account also the compulsory rate of 5 per cent, the total deduction is now 19 per cent. By contrast, in Scotland, the maximum voluntary rate is to be 9 per cent as from 2010; in Northern Ireland, the maximum voluntary rate is again to be 9 per cent, but not until 2011; and in Wales, the burden is even less severe, with the maximum voluntary rate to be 6.5 per cent as from 2011.<sup>20</sup> Some sensitivity as to the impact of these variations may be detected in the *Communication to the European Commission by the United Kingdom Government Concerning Voluntary Modulation*.<sup>21</sup> The decision to operate voluntary modulation on a regional basis was justified as ‘a further extension of the flexibility that is enjoyed within the UK for operating both pillars of the CAP’; and it ‘allowed the authorities to set the rate of voluntary modulation at a level required to meet rural development needs, but also in such a way as to reflect the structure of agriculture and other circumstances in the regions’.<sup>22</sup> That said, an English beef farmer close to the border of Scotland might feel that he is not exactly operating on a level playing-field when a nearby Scottish farmer could enjoy high historic support, the benefit of the Scottish Beef Calf Scheme and lower rates of voluntary modulation. Significantly, concern on the part of the European Commission may be detected in the requirement laid down in Council Regulation (EC) 378/2007 that ‘Member States applying voluntary modulation and the Commission shall monitor closely the impact of voluntary modulation, in particular as regards the economic situation of the farms, taking into account the need to avoid unjustified unequal treatment between farmers’.<sup>23</sup> Further, at the time of the ‘Health Check’, it was seen fit to provide that

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SI 2000/3127; for Northern Ireland, the Common Agricultural Policy Support Schemes (Modulation) (Northern Ireland) Regulations 2000, SR 2000/346; for Scotland, the Common Agricultural Policy Support Schemes (Modulation) (Scotland) Regulations 2000, SSI 2000/429; and, for Wales, the Common Agricultural Policy Support Schemes (Modulation) (Wales) Regulations 2000, SI 2000/3294 (W.216).

<sup>18</sup> [2007] OJ L 95/1.

<sup>19</sup> The Common Agricultural Policy Single Payment and Support Schemes Regulations 2005, SI 2005/219, reg 11, as amended by the Common Agricultural Policy Single Payment and Support Schemes (Amendment) Regulations 2007, SI 2007/3182.

<sup>20</sup> For a helpful survey of all United Kingdom voluntary modulation rates, see paragraph 13 of the *Communication to the European Commission by the United Kingdom Government Concerning Voluntary Modulation*, at Annex B to the Explanatory Memorandum accompanying the Common Agricultural Policy Single Payment and Support Schemes (Amendment) Regulations 2007, SI 2007/3182.

<sup>21</sup> *Ibid*, para 23.

<sup>22</sup> It may be noted that an inherent problem for the funding of rural development in the United Kingdom is that, under Article 69(4)(b) of Council Regulation (EC) 1698/2005 [2005] OJ L277/1, Community allocations among the Member States is in part based upon past performance: and the United Kingdom has a history of granting limited resources to such initiatives.

<sup>23</sup> [2007] OJ L95/1, Art 5.

voluntary modulation should be subject to overall national ceilings, so as to prevent individual farmers being subject to excessively onerous deductions.<sup>24</sup>

Many of these issues crystallized in relation to cross-compliance conditions, where again different rules were imposed in different regions. More specifically, English farmers were placed subject to an obligation to maintain visible public rights of way as one of the standards for the maintenance of all agricultural land in good agricultural and environmental condition (GAEC) under Article 5 of and Annex IV to Council Regulation (EC) 1782/2003;<sup>25</sup> and farmers in Northern Ireland, Scotland and Wales remained free of such an obligation.<sup>26</sup> This additional burden was challenged in the case of *R (on the application of Horvath) v Secretary of State for Environment, Food and Rural Affairs*, with the European Court of Justice being asked to consider two questions.<sup>27</sup> The first was whether a Member State could include requirements relating to the maintenance of visible public rights of way as a GAEC standard. The second was, more generally, whether impermissible discrimination would arise where devolved administrations imposed different GAEC standards.

In answer to the first question, the European Court of Justice was clear that Annex IV provided no more than a framework at Community level, with Member States being accorded a certain discretion in the actual determination of GAEC requirements: as stated in Article 5(1), it was for Member States to ‘define, at national or regional level, minimum requirements for good agricultural and environmental condition on the basis of the framework set up in Annex IV, taking into account the specific characteristics of the areas concerned, including soil and climatic condition, existing farming systems, land use, crop rotation, farming practices, and farm structures’. The European Court of Justice was also clear that GAEC requirements could be directed to environmental purposes (notwithstanding that the legal basis for Council Regulation (EC) 1782/2003 was the Agriculture Title of the EC Treaty (Title II), as opposed to the Environment Title (Title XIX)). This was clear on the face of Council Regulation (EC) 1782/2003 itself, which expressly obliged Member States to ensure that all agricultural land was ‘maintained in good agricultural and environmental condition’;<sup>28</sup> and, more broadly, Article 6 of the EC Treaty stipulated that ‘[e]nvironmental protection requirements must be integrated into the definition and implementation of’, *inter alia*, the common policy in the sphere of agriculture and fisheries. Besides, as emphasized in the Opinion of Advocate General Trstenjak, environmental protection now enjoys a central role within the multifunctional

<sup>24</sup> Council Regulation (EC) 73/2009 [2009] OJ L30/16, Art 8.

<sup>25</sup> [2003] OJ L270/1. For the English legislation in question see the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004, SI 2004/3196, Sch, paras 26-29. This legislation has now been replaced by the Common Agricultural Policy Single Payment and Support Schemes (Cross-compliance) (England) Regulations 2005, SI 2005/3459, Sch, paras 27-30; but there are no material changes in the new provisions.

<sup>26</sup> It may be observed, on the other hand, that in Scotland single farm payments have been already been subject to significant penalties for breach of cross-compliance conditions relating to wildlife: see R Scott-Dempster, ‘Cross compliance – no longer just a bark’, (2008) 52 Bulletin of the Agricultural Law Association 12-13.

<sup>27</sup> Case C-428/07 (16 July 2009).

<sup>28</sup> [2003] OJ L270/1, Art 5(1) (emphasis added). Interestingly, the draft Community regulations to implement the Mid-term Review had referred only to ‘good agricultural conditions’: European Commission, COM(2003)23, 2003/0006 (CNS).

European Model of Agriculture,<sup>29</sup> with the result that the European Court of Justice is unlikely to entertain arguments which seek to exploit fine distinctions as to the Treaty basis of legislation.<sup>30</sup> Turning then to the cross-compliance condition at issue, it was held that visible public rights of way did amount to ‘landscape features’ for the purposes of Annex IV to Council Regulation (EC) 1782/2003, since it was only *visible* rights of way which were to be maintained. Further, the maintenance of these rights of way constituted a measure which applied the relevant standard in Annex IV (requiring the ‘retention of landscape features’), since the maintenance obligations could contribute to their retention as physical elements of the environment or, as the case may be, to the avoidance of the deterioration of habitats.<sup>31</sup>

As has been seen, the second question was whether impermissible discrimination would arise where devolved administrations imposed different GAEC standards; and this raised matters of general importance: indeed, the potential impact upon devolution in the United Kingdom would seem to have prompted the Government to take the unusual step of appealing (in the event unsuccessfully) against reference of the case to the European Court of Justice.<sup>32</sup> In giving judgment, the European Court of Justice affirmed it to be settled law that ‘each Member State is free to allocate powers internally and to implement Community acts which are not directly applicable by means of measures adopted by regional or local authorities, provided that the allocation of powers enables the Community legal measures in question to be implemented correctly’.<sup>33</sup> Further, considerable weight was attached to the wording of Article 5(1) of Council Regulation (EC) 1782/2003, which, as already noted, expressly obliged Member States to define the minimum GAEC requirements ‘at national or regional level’. Advocate General Trstenjak had likewise directed focus to this wording, while more broadly stating that devolution and differentiation had become central to the present Common Agricultural Policy.<sup>34</sup> In consequence, the only issue which remained was whether, in such circumstances, the mere fact that different regions of a Member State had laid down different GAEC rules constituted discrimination contrary to Community law. Both the Advocate General and the European Court of Justice were clear that no such discrimination would arise.<sup>35</sup> In particular, the European Court of Justice declared that, ‘according to settled case-law, the prohibition on discrimination is not concerned with disparities in treatment which may result, between the Member States, from divergences existing between the

<sup>29</sup> Opinion (3 February 2009) paras 43-46.

<sup>30</sup> For earlier disputes as to the correct Treaty basis of ‘multifunctional’ legislation, see, eg, Joined Cases C-164/97 and C-165/97 *European Parliament v Council* [1999] ECR I-1139 (relating to measures to protect forests).

<sup>31</sup> In Annex IV the issues to be addressed by the retention of landscape features included avoidance of the deterioration of habitats.

<sup>32</sup> *R (on the application of Horvath) v Secretary of State for Environment, Food and Rural Affairs* [2007] EWCA Civ 620.

<sup>33</sup> Case C-428/07 *R (on the application of Horvath) v Secretary of State for Environment, Food and Rural Affairs* (16 July 2009) para 50.

<sup>34</sup> Opinion (3 February 2009) para 90.

<sup>35</sup> The Advocate General referred to the State aid case of *Portugal v Commission* (C-88/03, [2006] ECR I-7115) to support the view that ‘the relevant reference framework for assessing the discriminatory character of the provision in question would have to be restricted to the constituent part of a Member State whose administrative organs enjoy their own rule-making powers by virtue of the applicable constitutional provisions’: *ibid*, para 107.

legislation of the various Member States so long as that legislation affects equally all persons subject to it'.<sup>36</sup> *Klensch (Kipgen) v Secrétaire d'État à l'Agriculture et à la Viticulture*,<sup>37</sup> the main decision relied upon by the applicant, would seem to have been distinguished on the basis that it related to circumstances where a Member State had a choice between a number of ways of implementing Community legislation, in which case the Member State could not choose an option liable to create direct or indirect discrimination between producers; whereas in the instant case it fell to the devolved administrations to define the minimum GAEC requirements and in such circumstances 'divergences between the measures provided for by the various administrations cannot, alone, constitute discrimination'.<sup>38</sup> That said, the European Court of Justice was in no doubt that the measures must in all cases be compatible with the obligations placed on the Member State under the regulation.

### 3. FOOD SECURITY

As recently as 2005, when the Government issued its key policy document, *A Vision for the Common Agricultural Policy*, a sanguine approach was taken towards food security: in particular, boosting domestic production was not to be accorded priority.<sup>39</sup> Thus, it was asserted that, 'although food security is often considered to be synonymous with self-sufficiency, domestic production is neither a necessary nor a sufficient condition for food security'.<sup>40</sup> Rather, confidence was placed in the expansion of free trade for delivery of stable supplies. A slight retreat from such a stance may now have occurred, following the reduction in commodity stocks during 2008, together with consequent price increases;<sup>41</sup> and, at international level, the new challenges of food security were brought into clear focus at the FAO Food Summit held in Rome in June 2008.<sup>42</sup> In this light, the Cabinet Office report, *Food Matters: Towards a Strategy for the 21<sup>st</sup> Century*, issued in July 2008, acknowledged that 'the recent global food price increases have reignited debates about priorities in land use and about national food security'.<sup>43</sup> Yet, the same report also reaffirmed that '[t]he current concern with food price fluctuations must not result in a reconstruction of the

<sup>36</sup> Case C-428/07 R (*on the application of Horvath*) v Secretary of State for Environment, Food and Rural Affairs (16 July 2009) para 55.

<sup>37</sup> Joined Cases 201/85 and 202/85, [1986] ECR 3477.

<sup>38</sup> Case C-428/07 R (*on the application of Horvath*) v Secretary of State for Environment, Food and Rural Affairs (16 July 2009) para 57. The wording would, however, seem to lay down a general principle, rather than preclude the possibility of discrimination on particular facts.

<sup>39</sup> HM Treasury and DEFRA, *A Vision for the Common Agricultural Policy* (HM Treasury and DEFRA, London, 2005). On food security in the United Kingdom generally, see, eg, 'More from Less' 156 Farm Law (September 2009) 1-3.

<sup>40</sup> HM Treasury and DEFRA, *A Vision for the Common Agricultural Policy* (HM Treasury and DEFRA, London, 2005) 47.

<sup>41</sup> For analysis of food stocks and food prices in early 2008, see, eg, Food and Agriculture Organization (FAO) *Crop Prospects and Food Situation: No. 2, April 2008* (FAO, Rome, 2008).

<sup>42</sup> For details of the Food Summit, including the Final Declaration, see <http://www.fao.org/newsroom/en/focus/2008/1000829/index.html>, last accessed on 21 September 2009.

<sup>43</sup> Cabinet Office, *Food Matters: Towards a Strategy for the 21<sup>st</sup> Century* (Cabinet Office, London, 2008) 32.

kind of policies and programmes that have distorted agricultural markets and damaged the environment in the past'.<sup>44</sup>

More recently, in July 2009 the House of Commons Environment, Food and Rural Affairs Committee published its report on *Securing Food Supplies up to 2050: the Challenges Faced by the UK*;<sup>45</sup> and the following month DEFRA issued *UK Food Security Assessment: Our Approach*.<sup>46</sup> This would confirm that food security is now established towards the top of the political agenda; and undoubtedly there is widespread awareness that United Kingdom self-sufficiency has experienced a material decline. For example, in 2008 self-sufficiency reached only 60 per cent in all foods and 73 per cent in indigenous food (as compared with, respectively, over 70 per cent and over 80 per cent at the start of the 1990s).<sup>47</sup> On the other hand, Government policy would still seem to stop short of providing incentives to increase domestic production; and three aspects may be highlighted.

First, it remains the case that the Government eschews a food security policy based on self-sufficiency;<sup>48</sup> and this approach is supported by the House of Commons Environment, Food and Rural Affairs Committee. Indeed, reliance entirely on domestic production was considered by the Committee to render 'food supplies less secure rather than more secure', since extensive crop failure (or repeat of the Foot-and-Mouth crisis) could cause a catastrophic shock to the food chain.<sup>49</sup> Similarly, it was unrealistic to expect United Kingdom agriculture to meet all consumer demands, such as that for tropical fruits.<sup>50</sup>

Secondly, and consistent with a policy not based on self-sufficiency, food security is regarded very much in global terms, with great importance attached to free trade and diversity of supply. For example, in *UK Food Security Assessment: Our Approach*, DEFRA stated that '[g]lobal supply ultimately underpins the availability and affordability of the diverse range of foods we enjoy';<sup>51</sup> and the House of Commons Environment, Food and Rural Affairs Committee again had much sympathy with this viewpoint, noting that 34 countries each provided at least 0.5 per cent of food imports.<sup>52</sup> All the same, the Committee did emphasize that it was not the number of trading partners which was critical, the imperative rather being to ensure that each commodity could be sourced from a number of different countries; and there was also reaffirmation that trading relationships were themselves a source of risk, so further promoting the need for diversity of supply.

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<sup>44</sup> Ibid, 35.

<sup>45</sup> House of Commons Environment, Food and Rural Affairs Committee, *Securing Food Supplies up to 2050: the Challenges Faced by the UK*, Fourth Report of Session 2008-09, HC 213.

<sup>46</sup> DEFRA, *UK Food Security Assessment: Our Approach* (DEFRA, London, 2009). See also DEFRA, *UK Food Security Assessment: Detailed Analysis* (DEFRA, London, 2009).

<sup>47</sup> See, eg, DEFRA *et al.*, *Agriculture in the United Kingdom 2008* (DEFRA, London, 2009) Chart 7.4.

<sup>48</sup> See, eg, DEFRA, *UK Food Security Assessment: Our Approach* (DEFRA, London, 2009) 8.

<sup>49</sup> House of Commons Environment, Food and Rural Affairs Committee, *Securing Food Supplies up to 2050: the Challenges Faced by the UK*, Fourth Report of Session 2008-09, HC 213-I, 21-22.

<sup>50</sup> Ibid, 20.

<sup>51</sup> DEFRA, *UK Food Security Assessment: Our Approach* (DEFRA, London, 2009) 8.

<sup>52</sup> House of Commons Environment, Food and Rural Affairs Committee, *Securing Food Supplies up to 2050: the Challenges Faced by the UK*, Fourth Report of Session 2008-09, HC 213-I, 22.

Thirdly, again consistent with the importance attached to free trade, much Government assessment of food security has been conducted into ‘non-agricultural’ links in the food chain. This may be illustrated by the detailed research undertaken by DEFRA in relation to ports of entry for food supplies and in relation to the strategic road network.<sup>53</sup> Definitely the robustness of the transport infrastructure is perceived as a material consideration; and, as a result, in *UK Food Security Assessment: Our Approach*, a critical factor is declared to be the availability of energy in its various forms.<sup>54</sup> Nonetheless, as strongly advocated by the House of Commons Environment, Food and Rural Affairs Committee, there is still considerable scope to promote the buying of local produce, which would lessen the burden on the transport infrastructure; and its report concluded that ‘[t]he role of local and home production, and of educating children about food, should be incorporated in Defra’s vision and strategy for food’.<sup>55</sup>

More generally, while the House of Commons Environment, Food and Rural Affairs Committee shared the view of the Government that the interests of food security would not be best served by a return to direct production subsidies under the Common Agricultural Policy, there was greater enthusiasm for increasing domestic supplies.<sup>56</sup> For example, it proposed that the United Kingdom should aim to increase production of fruit and vegetables suited to local conditions and that investigation should also be undertaken as to whether cereal production could be increased.<sup>57</sup> Not least, there was concern that the industry was failing to respond to consumer demand for home-grown apples. Further, there was no hesitation in affirming that ‘[a] healthy domestic agriculture is an essential component of a secure food system in the UK’.<sup>58</sup> This statement has considerable force: a goal of self-sufficiency may be unrealistic and, for the reasons identified, liable to render the United Kingdom vulnerable; but, with global and national food security now so high up the policy agenda, it is hard to deny the wisdom in seeking to reach levels of self-sufficiency regularly achieved in earlier decades, especially when consumers have shown an appetite for local produce.

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<sup>53</sup> DEFRA, *UK Food Security Assessment: Detailed Analysis* (DEFRA, London, 2009) 62-64 and 92-95.

<sup>54</sup> DEFRA, *UK Food Security Assessment: Our Approach* (DEFRA, London, 2009) 10.

<sup>55</sup> House of Commons Environment, Food and Rural Affairs Committee, *Securing Food Supplies up to 2050: the Challenges Faced by the UK*, Fourth Report of Session 2008-09, HC 213-I, 30. See also C Hilson, ‘Going local? EU law, localism and climate change’, (2008) 33 *European Law Review* 194-210.

<sup>56</sup> House of Commons Environment, Food and Rural Affairs Committee, *Securing Food Supplies up to 2050: the Challenges Faced by the UK*, Fourth Report of Session 2008-09, HC 213-I, 42. It may also be noted that the Committee did not rule out direct production subsidies if global food supplies worsened significantly: *ibid.*

<sup>57</sup> *Ibid.*, 26.

<sup>58</sup> *Ibid.*, 20.