



Department
for Environment
Food & Rural Affairs

From George Eustice MP
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Pete Wishart MP
Scottish Affairs Committee
House of Commons
London
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Dear Pete

Following my appearance before the Committee on 31 October, I committed to write to you to clarify the position on the Angus Growers case (Committee Questions 155 – 159).

I would like to make clear to the Committee that the WTO Agreement on Agriculture (AoA) and the EU's Common Market Organisation system of recognising producer organisations are totally separate regimes. I have set out below the position on the Angus Growers case and how this differs from the clauses related to producer organisations in the Agriculture Bill. The Committee may also find it helpful to have additional information on Defra's approach for working with the devolved administrations on the implementation of the reserved WTO clause.

Angus Growers case

As the Committee is aware, the Government's view is that the subject matter of the producer organisation recognition clauses in the Agriculture Bill is reserved to the UK Parliament. The Committee asked why, if that is the case, it was the Scottish Government who was liable in the Angus Growers litigation for damages flowing from an unlawful decision by the RPA to withdraw recognition from a producer organisation.

Until 1 January 2018, the main consequence under EU law of recognition as a producer organisation was that the recognised producer organisation became eligible to apply for certain aid schemes, the main scheme being the Fruit and Vegetable Aid Scheme. The payment and administration of aid was – and, we consider, still is – a devolved matter. Because eligibility for aid was, at the time, the main consequence of recognition, we also considered at the time, that recognising producer organisations for the purposes of eligibility under that aid scheme to be a devolved matter. In practice, however, the RPA administered both the producer organisation recognition regime and the Fruit and Vegetable Aid Scheme on behalf of the Scottish Government under an agency agreement. Therefore the RPA's decisions on these devolved matters were ultimately attributable to

the Scottish Government, which was properly liable for the unlawful decision in the Angus Growers case.

As of 1 January 2018, however, an amendment to EU law introduced a wide-ranging exclusion from competition regulation that became available to producer organisations as soon as they obtained recognition. This shifted the focus of the producer organisation regime – recognition is no longer mainly about qualifying for aid; it is now a gateway to enable producers to exploit exemptions from competition rules. Competition is a matter clearly reserved to the UK Parliament, under all the devolution settlements, including the Scotland Act. Decisions to recognise producer organisations, which now have such direct and serious implications for the competition regime, must therefore be reserved.

The approach of attaching competition exemptions to producer organisation recognition is an effective way of promoting producer collaboration, so we have followed a similar model in the Bill. This means that the primary consequence of recognition under the Bill's producer organisation regime will be access to competition exemptions, so the subject matter of all these provisions is reserved.

In practice, the Rural Payments Agency will remain the recognising authority throughout the UK, so there will be no change in terms of how the regime operates from the perspective of existing organisations or those seeking recognition. In addition, the devolved administrations will have a much more direct role than under the EU regime in the setting of conditions that must be met in order to gain recognition.

WTO Agreement on Agriculture – clause 26 of the Agriculture Bill

As I explained to the Committee, it is the opinion of the UK Government that clause 26 of the Agriculture Bill is reserved to the UK Parliament. I do not intend to rehearse the UK Government's arguments here – rather I urge the Committee to read the Secretary of State's 2 November 2018 letter to Fergus Ewing on these matters – however I do wish to reassure Committee members that Defra's approach is to continue to work collaboratively with the devolved administrations with a view to reaching consensus on how the powers should be used.

In addition, officials from all four administrations are shortly to start discussions on the secondary legislation and administrative processes that will underpin this clause. Officials will consider: an approach for splitting the UK's amber box allocation; the decision making process for scheme classification and how disputes may be resolved on scheme classification; and, information that will be required for the UK's notifications to the WTO. These discussions will inform draft regulations and in turn, draft regulations will be presented to the four UK agriculture Ministers with the aim of securing agreement, by an exchange of letters. As you can see, it is our intention that the devolved administrations will be fully involved in the consultation on draft regulations.

The regulations may only be made with the express purpose of securing compliance by the UK with the AoA. The UK Government will not and cannot seek to impose arbitrary rules on the devolved administrations without risk of legal challenge. I am aware that

Scottish stakeholders are concerned that the UK Government may try to limit Scottish Government policy choices. An example cited relates to the Scottish Government's use of Voluntary Coupled Support (VCS). Scotland is the only part of the UK where this type of support is currently used. If the Scottish Government chooses to continue these schemes, the UK can notify them as Blue Box (as the European Commission currently does), and they will continue to be exempt from the reduction commitment, as long as the schemes continue to meet the criteria set out in Part IV Article 6 of the AoA. Clause 26 cannot be used to restrict such support while the schemes continue to meet the exemption criteria under the AoA. There has also been some concern expressed about the ability under this clause for the UK Government to set limits on different classes of support. These would be needed in the event that the WTO rules change to limit other categories of support, such as the Blue Box referenced above. But I can assure the Committee that schemes permissible now will not be curtailed whilst WTO rules remain the same, and it would not be within scope of the power in clause 26 for future Ministers to do so.

As this shows, there will be some areas of future agriculture policy that will be UK-wide because they are reserved to the UK Parliament under the devolution settlements and will operate accordingly. Other areas of agriculture policy in devolved areas will be coordinated under 'common UK frameworks', where they are necessary, which will seek to agree with the devolved administrations. Officials from all administrations continue to collaborate on these administrative frameworks, as we set out in the Agricultural framework progress update (<https://www.gov.uk/government/publications/agricultural-framework-progress-update-joint-statement>) published jointly with the Welsh Government on 12th September 2018.



GEORGE EUSTICE MP