

considered.<sup>52</sup> The future evolution of the pattern of legislative harmonization for the internal market depends heavily on political choices, including the Commission's current (renewed) quest to simplify the regulatory burden in the EU.

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## II. AGRICULTURE

### A. Introduction

Agriculture continues to maintain a very high profile in the Community, notwithstanding calls that the sector should occupy a place commensurate with its overall contribution to the economy. Such calls grew yet stronger during the United Kingdom Presidency from July to December 2005. Indeed, shortly before the United Kingdom assumed the Presidency, Tony Blair stated that '[i]t simply does not make sense, in this new world, for Europe to spend over 40 per cent of its budget on the common agricultural policy, representing 5 per cent. of the EU population producing less than 2 per cent. of Europe's output.'<sup>1</sup> In a similar vein, there has been trenchant criticism of the extent to which agriculture has dominated the Doha Development Round negotiations under the auspices of the World Trade Organization ('WTO'). For example, Commissioner Mandelson has expressed 'a real fear that a continuing overnegotiation and overbidding in agriculture will stymie the progress we urgently need to demonstrate across the range of the talks'.<sup>2</sup>

Nonetheless, there are factors which suggest that the special status enjoyed by agriculture may be hard to displace; and four such factors may be noted. First, it is no longer possible to regard Community agricultural law as substantially confined to the regulation of farm subsidies. Recent legislation is just as likely to focus on food safety 'from farm to fork', the environment, or animal welfare; and these matters are considered by the general public to be important.<sup>3</sup> Secondly, while agriculture may account for only two per cent of the output of the Community, it may reasonably be regarded as a first, and key, link in a far larger food chain. As indicated, in Community law it is increasingly difficult to segregate the initial act of production from subsequent processing and retailing; and these activities, when combined, still represent a substantial area of economic activity. This may be illustrated by data from the United Kingdom, even though agriculture as an industry has enjoyed less prominence than in many Member States. Thus, whereas in 2002 its contribution was a mere 0.8 per cent of Gross Value Added, some eight per cent was contributed by the agri-food sector as a whole. Further, in 2001 consumers spent £133 billion on food, drink, and catering; and total employment in the food chain as at June 2002 was just short of 3.8 million.<sup>4</sup>

<sup>52</sup> See generally on the 'competence debate' at the Convention S Weatherill 'Competence creep and competence control' (2004) 23 YEL 1.

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<sup>1</sup> Hansard (HC) (20 June 2005) Col 523.

<sup>2</sup> *Wall Street Journal* (3 Nov 2005).

<sup>3</sup> See eg European Commission *European Union Citizens and Agriculture from 1995 to 2003* (European Commission Brussels 2004).

<sup>4</sup> Department for Environment, Food and Rural Affairs, Scottish Executive Environment and Rural Affairs Department, Department of Agriculture and Rural Development (Northern Ireland)

Thirdly, the continuing importance of the agricultural lobby may easily be underestimated. As recognized at the commencement of the Agenda 2000 reform process, the political reality was that Eastward Enlargement would expand the agricultural area by half and at least double the agricultural work force;<sup>5</sup> and, while the influence of the Comité des Organisations Professionnelles Agricoles may have declined, this decline was from a high base.<sup>6</sup> At the same time, the French Government has not slackened in its resolve to defend the reformed Common Agricultural Policy (CAP), as evidenced by its close monitoring of any concessions made by those negotiating on behalf of the Community in the Doha Development Round.<sup>7</sup> This throws into sharp relief a fourth factor, the central role of agriculture in the legal order established by the WTO. Commissioner Mandelson could urge that other issues be fully taken on board; but he also expressly acknowledged that ‘in the negotiating dynamic established in this Round, agriculture should lead the talks’.<sup>8</sup>

Against this background two main areas of legal development may be examined: first, the radical reform of direct payments to farmers under the Mid-term Review of the CAP, agreed in Luxembourg on 26 June 2003; and, secondly, the recasting of the legislation governing rural development by virtue of Council Regulation 1698/2005.<sup>9</sup> Further, reflecting the enhanced influence of the WTO on rural policy within the Community, consideration may be given to both the ongoing Doha Development Round negotiations and recent decisions of the Dispute Settlement Body.

#### *B. Direct payments and the mid-term review*

The Mid-term Review implemented the single farm payment (‘SFP’), bringing under one umbrella a plethora of earlier schemes.<sup>10</sup> Two aspects of the SFP may at once be highlighted. First, it was expressly described as ‘income support’ in the 2003 Horizontal Regulation.<sup>11</sup> Indeed, as more fully recited in Council Regulation 864/2004, ‘[t]he de-coupling of direct producer support and the introduction of the single payment scheme are essential elements in the process of reforming the common agricultural policy aimed at moving away from a policy of price and production support to a policy of farmer income support.’<sup>12</sup> Secondly, the SFP is apprehended to be ‘decoupled’ from production, in the sense that, as a general rule, no particular form of production is

and National Assembly for Wales Agriculture and Rural Affairs Department *Agriculture in the United Kingdom 2002* (The Stationery Office London 2003) 7–8.

<sup>5</sup> European Commission *Agenda 2000: for a Stronger and Wider Union, Bulletin of the European Union, Supplement 5/97 COM(97)2000, III.2.*

<sup>6</sup> See eg W Grant *Pressure Groups and British Politics* (Macmillan Basingstoke 2000) 96–9.

<sup>7</sup> See eg *Agra Europe Weekly* No 2179 (21 Oct 2005) EP/2.

<sup>8</sup> *Wall Street Journal* (3 Nov 2005).

<sup>9</sup> OJ (2005) L 277/1.

<sup>10</sup> For the list of direct payments now comprised within the SFP, see Council Regulation 1782/2003 (‘2003 Horizontal Regulation’), OJ (2003) L 270/1, Annex VI, as amended by Council Regulation 864/2004, OJ (2004) L 161/48 and Council Regulation 319/2006, OJ (2006) L 58/32. Under the agreement reached in Luxembourg on 26 June 2003, the list included, in particular, area aid payments in the arable sector and headage premiums in the beef and veal sector. This original list has been materially extended to cover, as from 1 January 2006, at least a proportion of direct payments in respect of cotton, olive oil, raw tobacco, and hops; and, following reform of the sugar sector, direct payments in that sector have also been incorporated as from the same date.

<sup>11</sup> *ibid* Art 1.

<sup>12</sup> OJ (2004) L 161/48, Preamble(1).

required in order to receive payment.<sup>13</sup> In economic terms, a perceived advantage is that farmers will be prompted to respond more fully to market signals. At the same time, in WTO terms, the Community has consistently argued that the reformulated subsidies should be exempt from domestic support reduction commitments, on the basis that they qualify as 'de-coupled income support', so falling within the 'Green Box'.<sup>14</sup>

While the original proposals for the SFP largely survived the reform process, there were amendments of substance which arguably affected its rigour and without doubt affected its simplicity.<sup>15</sup> Three such amendments may be considered. First, Member States were granted the option to delay implementation. In principle, the SFP has been implemented since 1 January 2005; but, subject to detailed requirements, Member States may fix the commencement date at either 1 January 2006 or 1 January 2007.<sup>16</sup> Secondly, Member States were also granted the option of 'partial decoupling' in certain sectors. Most notably, under the agreement reached in Luxembourg on 26 June 2003, it was possible in the arable sector to link with production up to 25 per cent of area payments or, alternatively, up to 40 per cent of durum wheat supplement payments.<sup>17</sup> This pattern was followed in Spring 2004 when the legislation governing the SFP was amended to accommodate direct payments in respect of cotton, olive oil, raw tobacco, and hops. In no case was a Member State obliged fully to decouple such payments from production; and, for example, in the case of hops, it was provided that up to 25 per cent of direct payments could be linked to hop production and/or paid to recognized producer groups.<sup>18</sup> Thirdly, Member States were further granted the option to retain up to 10 per cent of national ceilings embraced by the SFP to make additional payments '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.'<sup>19</sup> This third measure would seem directed to promoting the more 'multifunctional' facets of agriculture, recognizing the ability of the sector to produce non-food as well as food outputs.<sup>20</sup>

<sup>13</sup> For analyses of decoupling, see eg SA Cahill 'Calculating the Rate of Decoupling for Crops under CAP/Oilseeds Reform' (1997) 48 *Journal of Agricultural Economics* 349; and Organization for Economic Co-operation and Development ('OECD') *Decoupling: a Conceptual Overview* (OECD Paris 2001) *passim*.

<sup>14</sup> Securing this advantage was an avowed objective of the Mid-term Review from inception: see eg European Commission *Mid-term Review of the Common Agricultural Policy* COM(2002)394, 20. For the criteria governing 'Green Box' exemption as 'de-coupled income support', see the Uruguay Round Agreement on Agriculture, Annex 2, para 6 (a key criterion being that '[n]o production shall be required in order to receive such payments').

<sup>15</sup> For discussion of the original proposals (European Commission *Mid-term Review of the Common Agricultural Policy* COM(2002) 394) and the draft regulations (European Commission *A Long-term Policy Perspective for Sustainable Agriculture* COM(2003) 23), see eg (2003) 52 *International and Comparative Law Quarterly* 1030.

<sup>16</sup> 2003 Horizontal Regulation (n 10) Art 71.

<sup>17</sup> *ibid* Art 66.

<sup>18</sup> *ibid* Art 68a, as amended by Council Regulation 864/2004, OJ (2004) L 161/48.

<sup>19</sup> *ibid* Art 69.

<sup>20</sup> On multifunctionality generally, see eg OECD *Multifunctionality: Towards an Analytical Framework* (OECD Paris 2001) *passim*; G Van Huylenbroeck and G Durand (eds) *Multifunctional Agriculture: a New Paradigm for European Agriculture and Rural Development* (Ashgate Aldershot 2003) *passim*; and MR Grossman 'Multifunctionality and Non-trade Concerns' in M Cardwell, MR Grossman, and CP Rodgers (eds) *Agriculture and International Trade: Law, Policy and the WTO* (CAB International Wallingford 2003) 85.

The first two of these derogations had the capacity to retain the link with production in relation to a substantial proportion of direct payments, at least until 2007. However, most Member States have decided to operate the SFP on the basis of the general scheme.<sup>21</sup> Only five have opted to delay implementation (Finland, France, Greece, The Netherlands, and Spain); and none beyond 1 January 2006. Moreover, in the case of partial decoupling, France and Spain have been the only Member States within the EU-15 to take the decision to link arable area payments with production (both at 25 per cent).<sup>22</sup> For this reason, it has been confidently asserted by Commissioner Fischer Boel that by 2006 nearly 90 per cent of direct payments within the EU-25 should be production neutral.<sup>23</sup>

That said, there is little uniformity in the detailed manner that the SFP has been carried into effect at national level; and, in part at least, this may be attributed to greater use of regional implementation than had been envisaged. Regional implementation had been an option since the original proposals;<sup>24</sup> and survived through to the 2003 Horizontal Regulation.<sup>25</sup> If it is chosen by a Member State, farmers receive payment entitlements based upon a regional average per hectare, as opposed to their individual history of support over a 2000–2 reference period. This has the merit of simplicity, but works somewhat harshly against farmers who had an established pattern of high receipts. On the other hand, the consequences may be considered legitimate if the Community is indeed serious in its shift from supporting production to supporting income. In this context, recognizing the potential harshness, Member States have adopted a wide variety of mitigating provisions. The result has been an immediate return to legislative complexity, as may be illustrated by implementation in the United Kingdom. In Scotland and Wales the historic basis applies, while in England the regional basis applies, but introduced incrementally over the period 2005–12. Different again is the position in Northern Ireland, where the preferred option is a ‘static hybrid’ version of both the historic and regional basis.<sup>26</sup> Such differing implementation would seem capable of generating distortions in competition. Thus, there will be farmers in the Scottish borders who benefit from not only a substantial SFP, derived from an established pattern of high receipts, but also, by virtue of the provisions governing partial decoupling, targeted aid for beef calf production.<sup>27</sup> An English farmer, just South of the border, loses by 2012 any advantage delivered from historic receipts, once the regional basis is fully implemented; and will have no entitlement at all to the targeted aid for beef production.

<sup>21</sup> For a useful survey of national implementation, see eg *Agra Europe Weekly* No 2171 (26 Aug 2005) EP/5, as amended by *Agra Europe Weekly* No 2173 (9 Sept 2005) EP/8.

<sup>22</sup> Other Member States have implemented other forms of partial decoupling. For example, Austria, Belgium, France, Portugal, and Spain have retained the link with production in the case of all headage payments for suckler cows.

<sup>23</sup> Speech/05/511 *The Common Agricultural Policy: History and Future* (Washington DC 15 Sept 2005).

<sup>24</sup> (n 14) 20.

<sup>25</sup> (n 10) Arts 58–63.

<sup>26</sup> For the national implementing legislation, see the Common Agricultural Policy Single Payment and Support Schemes Regulations 2005, SI 2005 No 219; the Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2005, SSI 2005 No 143; the Common Agricultural Policy Single Payment and Support Schemes (Wales) Regulations 2005, SI 2005 No 360 (W 29); and the Common Agricultural Policy Single Payment and Support Schemes Regulations (Northern Ireland) 2005, SR 2005 No 256.

<sup>27</sup> The Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2005, SSI 2005 No 143, Regs 19–25.

In this light, it may be regarded as significant that the Community institutions have been firm in their denial of any renationalization of the CAP.<sup>28</sup> Nevertheless, the European Commission has expressly recognized the extent to which Member States have exploited the menu of derogations. After emphasizing that the original proposals were for 'a single decoupling model, two types of payment entitlements decoupled from production, no re-coupling and no transitional periods or derogations', there was regret that '[t]he heterogeneous implementation of the reform has contributed to complication and increasing burdens on farmers and administrators.'<sup>29</sup> What would seem clear, however, is that the introduction of the various options and special arrangements was regarded as necessary ingredients for successful conclusion of the Mid-term Review. In the words of Commissioner Fischler, '[e]veryone knows that, with this reform, the Commission and all the Member States have made a compromise.'<sup>30</sup>

Such issues are also considered more broadly in the *Communication from the Commission on Simplification and Better Regulation for the Common Agricultural Policy*.<sup>31</sup> A key initiative which the document advocates is major simplification of the regulatory framework for the 21 common organizations of the market. With most direct payments to farmers now comprised in the SFP, like harmonization is urged for 'the classic areas of market policy', including intervention, private storage and export refunds.<sup>32</sup> It may also further be noted that, in the case of the financing of the CAP substantial simplification is already being achieved through Council Regulation 1290/2005.<sup>33</sup> In particular, the financing of both the First Pillar of the CAP (market management) and the Second Pillar (rural development) are now to be governed by one Regulation. Under this Regulation, by 1 January 2007 the Guidance and Guarantee Sections of the European Agricultural Guidance and Guarantee Fund will be replaced by the European Agricultural Guarantee Fund ('EAGF') and the European Agricultural Fund for Rural Development ('EAFRD'). Similar procedures for their operation will be employed where appropriate, but it is accepted that different treatment may also be required. For example, in the case of access to information for monitoring purposes, the provisions are shared, but, in the case of irregularities, there are specific provisions for the EAGF and for the EAFRD.

### C. Rural development

In the context of rural development, again the Mid-term Review, as agreed, substantially carried into effect the original proposals. Two new chapters were added to Council Regulation 1257/1999, addressing respectively 'meeting standards' and food quality.<sup>34</sup> The former provided support for farmers in adapting to demanding standards based on Community legislation in the fields of: the environment; public, animal, and

<sup>28</sup> See eg Commissioner Fischler Speech/03/356 *CAP Reform* (Brussels 9 July 2003).

<sup>29</sup> European Commission *Communication from the Commission on Simplification and Better Regulation for the Common Agricultural Policy* COM(2005)509, 6.

<sup>30</sup> Speech/03/326 *'The New, Reformed Agricultural Policy'* (Luxembourg 26 June 2003).

<sup>31</sup> (n 29) 8–9.

<sup>32</sup> *ibid* 8.

<sup>33</sup> OJ (2005) L 209/1.

<sup>34</sup> OJ (1999) L 160/80, Arts 21a–d and 24a–d, as amended by Council Regulation 1783/2003, OJ (2003) L 270/70.

plant health; animal welfare; and occupational safety. The latter provided support for agricultural production methods designed to improve the quality of agricultural products and for promotion of such products. That said, while under the original proposals this chapter would have been compulsory, in the event it too was voluntary. At the same time, farmers became entitled to remuneration in respect of animal welfare, as well as agri-environmental, commitments beyond the application of usual good farming practice, including good animal husbandry practice.<sup>35</sup>

As indicated, far more sweeping reform to the legislation governing rural development is to be implemented by Council Regulation 1698/2005, applicable to support for the programming period commencing on 1 January 2007.<sup>36</sup> It identifies three objectives: '(a) improving the competitiveness of agriculture and forestry by supporting restructuring, development and innovation; (b) improving the environment and the countryside by supporting land management; and (c) improving the quality of life in rural areas and encouraging diversification of economic activity.'<sup>37</sup> These objectives are to be achieved through four 'axes', namely: improving the competitiveness of the agricultural and forestry sector (such as adding value to agricultural and forestry products); improving the environment and the countryside (such as Natura 2000 payments, agri-environmental payments, and animal welfare payments); the quality of life in rural areas and diversification of the rural economy (such as encouragement of tourism activities); and the Leader initiative.<sup>38</sup>

In terms of policy development, a key feature is increased Community focus. As enunciated in Article 5(2), '[t]he Commission and the Member States shall ensure that the assistance from the EAFRD and the Member States is consistent with the activities, policies and priorities of the Community.' For this purpose, an important role is ascribed to 'strategic guidelines', as subsequently adopted by a Council Decision of 20 February 2006.<sup>39</sup> These will assist in: identifying the areas where the use of Community funding for rural development will create the most value added at Community level; linking with the main Community priorities as established at Lisbon in relation to competitiveness and at Göteborg in relation to sustainability; ensuring consistency with other Community policies, with particular reference to cohesion and the environment; and accompanying the implementation of the reformed CAP. A second key feature, however, is emphasis on local input into the delivery of support for rural development, with 'partnership' being one of the 'principles of assistance'.<sup>40</sup> Accordingly, there should be close consultations between not only the European Commission and the Member State, but also with authorities and bodies designated by the Member State, such as regional authorities, the economic and social partners and 'any other appropriate body representing civil society, non-governmental organizations, including environmental organizations, and bodies responsible for

<sup>35</sup> OJ (1999) L 160/80, Arts 22–4, as amended by Council Regulation 1783/2003, OJ (2003) L 270/70.

<sup>36</sup> OJ (2005) L 277/1.

<sup>37</sup> *ibid* Art 4.

<sup>38</sup> 'Leader' is the acronym for 'Liaison entre Actions de Développement de l'Économie Rurale'; and, since inception, the initiative has been directed towards the promotion of local rural development action groups: OJ (1991) C 73/33.

<sup>39</sup> OJ (2006) L 55/20.

<sup>40</sup> Council Regulation 1698/2005, OJ (2005) L 277/1, Art 6.

promoting equality between men and women'.<sup>41</sup> In this context, it would seem that the emphasis on stakeholder consultation flowed, to a considerable degree, from earlier, positive experience with the Leader initiative and its bottom-up approach. More broadly, such 'structured dialogue' was understood to conform to underlying requirements of good governance.<sup>42</sup>

#### D. The influence of the WTO

From the commencement of the Agenda 2000 reforms in 1997, the Community has acknowledged the imperative of complying with WTO obligations to be a potent force for change. Thus, it was stated that '[c]utting border protection, reducing export subsidies and reshaping internal support towards more "decoupled" instruments will enhance the Union's negotiating stance in the new [Doha Development] Round.'<sup>43</sup> This linkage was even more fully articulated at the time of the Mid-term Review. As seen, a major purpose of the SFP was to ensure that a large proportion of direct payments to farmers would be 'Green Box' compatible—exempt from domestic support reduction commitments. In consequence, a robust line was taken at the Cancún Ministerial of September 2003, Commissioner Fischler declaring at its commencement that '[w]e have fundamentally reformed our farm policy to make it much less trade distorting, more competitive and more in tune with the environment. This is what many of our partners had asked for. We have delivered.'<sup>44</sup> The view of the Community was that the CAP had been radically reformed and that it was for other WTO members to follow suit.<sup>45</sup>

Disappointment at the failure of the Cancún Ministerial has been exacerbated for the Community by the fact that the contours of the debate are being substantially redrawn. In the Uruguay Round it was the bilateral Blair House Accords between the Community and the United States that opened the road to conclusion of the Agreement on Agriculture ('AoA'). By contrast, at the Cancún Ministerial it became clear that wider interests would need to be satisfied and, in particular, those of the G-20 grouping of developing countries.<sup>46</sup> In addition, the sheer scale of domestic support in the Community and the United States is being attacked, on the basis that, however instrumentalized or 'boxed', it inevitably proves trade-distorting.<sup>47</sup>

<sup>41</sup> *ibid* Art 6(1).

<sup>42</sup> European Commission *Proposal for a Council Regulation on Support for Rural Development by the European Agricultural Fund for Rural Development (EAFRD)* COM(2004)490, Explanatory Memorandum, para 14. See also eg *European Governance: a White Paper* OJ (2001) C 287/1; and O de Schutter 'Europe in Search of its Civil Society' [2002] *European Law Journal* 198.

<sup>43</sup> European Commission *Agenda 2000: for a Stronger and Wider Union, Bulletin of the European Union, Supplement 5/97* COM(97)2000, III.2.

<sup>44</sup> Speech/03/395 *EU Position on Agriculture Before Kick-off of Cancún Ministerial* (Cancún 9 Sept 2003).

<sup>45</sup> See eg Commissioner Fischler *CAP Reform: What Relevance for Cancún?* (Washington, DC 28 July 2003).

<sup>46</sup> Significantly, the Cancún Ministerial failed, notwithstanding that a joint framework had earlier been proposed by the Community and the United States: IP/03/1160 *EC and US Propose a Framework for a Joint Approach on Agricultural Questions in WTO* (Brussels 13 Aug 2003).

<sup>47</sup> On these aspects, see generally eg R Aggarwal 'Dynamics of Agriculture Negotiations in the World Trade Organization' (2005) 39 *Journal of World Trade* 741.

Apart from the Doha Development Round negotiations themselves, recent decisions of the Dispute Settlement Body of the WTO have also impacted directly upon the legislative framework regulating Community agriculture. These decisions may be examined in two contexts. First, in *European Communities—Export Subsidies on Sugar* the Appellate Body found various measures in the Community sugar regime to be inconsistent with the AoA.<sup>48</sup> A focus of the dispute was ‘C sugar’, namely that produced in excess of the quotas for ‘A sugar’ and ‘B sugar’. Export refunds were available in respect of both ‘A sugar’ and ‘B Sugar’, but not ‘C sugar’. Nonetheless, it was held that, by virtue of cross-subsidization, the production of ‘C sugar’ did receive an export subsidy in the form of payment on the export financed by virtue of governmental action, within the meaning of Article 9(1)(c) of the AoA.

This decision triggered major reform of the Community sugar regime, with agreement being reached on 24 November 2005.<sup>49</sup> The guaranteed minimum price for white sugar is to be cut by 36 per cent over a four-year period, commencing in 2006/2007.<sup>50</sup> In return, farmers will receive compensation at the rate of, on average, 64.2 per cent of the price cut, such compensation to be comprised in the SFP. Further, where through restructuring a Member State gives up at least 50 per cent of its quota, an additional coupled payment of 30 per cent of the income loss will be available for up to five years. To address the general upheaval, as indicated a voluntary restructuring scheme will operate for four years. Vocal criticism throughout the reform process has been directed to the generous level of compensation for Community farmers and processors as compared to the level of assistance for ACP countries, finally agreed at only 40 million Euros for 2006.<sup>51</sup>

Secondly, there have been challenges by the United States and Australia to the Community legislation governing the protection of geographical indications and designations of origin.<sup>52</sup> These challenges may be regarded as striking at the heart of Community policy, in that such indications and designations are regarded as key to the realisation of added value by farmers. Their importance may be judged, for example, by the reinstatement of ‘Feta’ as a protected designation of origin;<sup>53</sup> and by the subsequent dismissal by the European Court of Justice of a claim to annul that reinstatement.<sup>54</sup> It may also be judged by the determination of the Community that the Doha

<sup>48</sup> WT/DS265/AB/R, WT/DS266/AB/R, and WT/DS283/AB/R (28 Apr 2005). For the Community legislation subject to challenge, see Council Regulation 1260/2001, OJ (2001) L178/1.

<sup>49</sup> For the implementing Community legislation, see Council Regulation 318/2006, OJ (2006) L 58/1; Council Regulation 319/2006, OJ (2006) L 58/32; and Council Regulation 320/2006, OJ (2006) L58/42.

<sup>50</sup> It was originally proposed that the cut be 39 per cent: European Commission COM (2005) 263, Explanatory Memorandum, 5.

<sup>51</sup> On one estimate Community farmers and processors will receive €5 billion in 2006: *Agra Europe Weekly* No 2183 (18 Nov 2005 EP/2). For the impact on the ACP countries more generally, see eg H Yenkong Ngangjoh ‘Disputing Trade Preferences at the WTO Dispute Settlement Body: Revisiting the EC/ACP Sugar Preferences’ (2005) 6 *Estey Centre Journal of International Law and Trade Policy* 148.

<sup>52</sup> *European Communities—Protection of Trademark and Geographical Indications for Agricultural Products and Foodstuffs: Complaint by the United States* WT/DS174/R (15 Mar 2005); and *European Communities—Protection of Trademark and Geographical Indications for Agricultural Products and Foodstuffs: Complaint by Australia* WT/DS290/R (15 Mar 2005).

<sup>53</sup> Commission Regulation 1107/96, OJ (1996) L 148/1, Annex, as amended by Commission Regulation 1829/2002, OJ 2002 L277/10. The earlier registration had been annulled in Joined Cases C-289/96, C-293/96, and C-299/96 *Denmark v Commission* [1999] ECR I-1541.

<sup>54</sup> Joined Cases C-465/02 and C-466/02 *Germany v Commission (judgment)* (25 Oct 2005) nyr.



Development Round should see their protection enhanced.<sup>55</sup> Indeed, there has been consistent advocacy that geographical indications should be addressed in the context of the AoA as well as the TRIPS Agreement; and that the AoA should be amended to include a list of those to be protected.<sup>56</sup>

Before the Panel it was argued by both the United States and Australia that Article 12 of Council Regulation 2081/92 is inconsistent with WTO obligations.<sup>57</sup> Under this Article, protection of geographical indications and designations of origin as conferred by the Regulation is also applied to agricultural products or foodstuffs from a third country, provided that certain equivalence and reciprocity conditions are satisfied. Although the complainants by no means succeeded on all grounds, the equivalence and reciprocity conditions were found to be not fully consistent with either the TRIPS Agreement or GATT 1994. Further, the Panel specifically suggested that the Council Regulation be amended so that the conditions do not apply to the procedures for registration of geographical indications located in other WTO members.<sup>58</sup>

Accordingly, there is a strong sense that the development of Community agricultural policy is becoming ever more driven by WTO considerations. A recent example, as indicated, is provided by the sugar regime. Reform may have been already on the agenda,<sup>59</sup> but a clear catalyst was provided by the decisions of the Dispute Settlement Body in *European Communities—Export Subsidies on Sugar*. It would also seem to be the case that, notwithstanding its radical effect upon the CAP, the Mid-term Review is failing to provide the anticipated benefits in the Doha Development Round negotiations. Indeed, for the time being it seems to be generating among other WTO members an appetite for further reform, with the focus on reducing the amount of domestic support, however it might be packaged. A consequence would seem to be a degree of exasperation in Brussels. Thus, as the Hong Kong Ministerial approached, Commissioner Fischer Boel could rue that '[t]he EU is still cast as the villain', even though the Mid-term Review had allowed the Community to accept or propose 'things which would have been unthinkable a few years ago.'<sup>60</sup>

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### III. SOCIAL POLICY

#### A. New Policy

Social policy is undergoing review, the aim being to consolidate the fragmented nature of social policy law, and to provide for the integration of *all* Community policies. This

<sup>55</sup> See eg IP/03/1178 *WTO Talks: EU Steps Up Bid for Better Protection of Regional Quality Products* (Brussels 28 Aug 2003).

<sup>56</sup> See eg European Commission *The EC's Proposal for Modalities in the WTO Agriculture Negotiations* Ref 625/02 (European Commission Brussels 2002) 4.

<sup>57</sup> OJ (1992) L208/1.

<sup>58</sup> See generally M Handler 'The WTO Geographical Indications Dispute' (2006) 69 *Modern Law Review* 70. For the proposed legislation to address the decisions of the Panel, see European Commission Com (2005) 694 and COM (2005) 698/2.

<sup>59</sup> See eg European Commission *Mid-term Review of the Common Agricultural Policy* COM(2002)394, 19–20.

<sup>60</sup> Speech/05/516 *Agricultural Talks in the Doha Round* (Washington, DC 16 Sept 2005).

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