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The Rt Hon George Eustice MP
Secretary of State for Environment,
Food and Rural Affairs
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29 November 2021

Dear George

I am writing to you in relation to the Subsidy Control Bill which is currently passing through the UK Parliament. I am aware that this Bill is being led by BEIS Ministers, and my colleague, the Minister for Business, Trade, Tourism and Enterprise, Ivan McKee, is in contact with the Minister for London and Parliamentary Under Secretary of State (Minister for Small Business, Consumers and Labour Markets), Paul Scully, about the overall position of Scottish Ministers. However, I wanted to write to you directly about my specific concerns in relation to agriculture. I previously wrote to Mr Scully about these concerns but I have not had any satisfactory answer.

As you will be aware, agriculture subsidies do not fit neatly into standard subsidy control regimes. This is why agriculture has its own separate subsidy control arrangements under the EU through the Common Agricultural Policy (CAP), and under the WTO through the Agreement on Agriculture. The EU-UK Trade and Cooperation Agreement (TCA) has provided interim rules on subsidy control in the UK since we left the EU, however, the TCA does not apply to subsidies that are subject to the provisions of Part IV or Annex 2 of the Agreement on Agriculture – that is most agricultural subsidies.

Despite our repeated representations on this matter, the UK Government has not given a clear reason as to why agriculture should be included in the new UK subsidy control regime when it is so often carved out of standard subsidy control regimes. Mr Scully has noted that a majority of respondents to the BEIS consultation on the proposals supported the inclusion of agriculture. However, none of the serious issues raised by the Scottish Government have been directly addressed, either in the response to the consultation or subsequently. Nor have even anonymised responses been shared with my officials, so that we may helpfully understand the reasoning. It is also unclear whether or how responses have been weighted. As the Bill progresses through Parliament, our concerns, and the need for clarity from the UK Government, have become more urgent.

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One major concern about the inclusion of agriculture within the scope of this Bill is that the principles set out in Schedule 1 risk constraining our ability to develop future policies that are tailored to the needs of Scottish agriculture. We have very serious concerns about how the regime will work for legacy CAP schemes delivering income payments and coupled support, as they are not mainly intended – even with conditionality – to bring about a change in practice and therefore would seem to be incompatible with the principles. Rather, their purpose is to ensure that farming businesses are economically viable. They provide essential support to remote and constrained rural communities, and as there is a significantly higher proportion of agricultural land in Scotland that is subject to such constraints compared to elsewhere in the UK, it is important that we retain the ability to provide this type of support for our agricultural businesses for the foreseeable future. We are not clear that clauses 48 and 81 dealing with legacy schemes provide the assurance we need that we can make any necessary changes to develop and progress our agricultural policies in future.

We have further concerns that the application of the new regime to subsidies that are already subject to the WTO AoA would effectively lead to avoidable ‘double-banking’ of subsidy control schemes, which would add further complexity and enhanced risk of legal challenge. We are particularly concerned that a subsidy that does not unlawfully distort international trade is challenged, successfully or otherwise, on the basis that it does not minimise negative effects on competition or investment in the UK (as set out in Schedule 1 under principle F). This particular principle goes beyond the minimum required under the TCA.

We also have wider concerns that including agriculture within the scope of the Bill diminishes the role of the agreed common frameworks process in this area, which was put in place specifically to manage policy divergence within the UK and any impacts this might have on the UK internal market.

I and my officials have raised these concerns repeatedly, yet we have not received any reassurance that they are being properly considered. In May Mr Scully indicated that he would like to work on bespoke solutions within the regime to account for the unique needs of the agriculture sector. My officials still stand ready to do so, but BEIS have been unable to provide any explanation of how they expect the principles of the regime to apply to agriculture subsidies.

I have put the Bill on the agenda for our next IMG-EFRA meeting, when I hope you will be able to update us with some detail on what it means for agriculture. However, given the speed at which this Bill is progressing and the lack of meaningful engagement we have had regarding how it will work for agriculture, I am enclosing with this letter the text of an amendment to the Bill, along with a short explanatory note, which would exempt the subsidies already subject to the WTO Agreement on Agriculture from the subsidy control requirements provided for by the Bill. The text of the amendment will be published on the Scottish Government website.

I would of course welcome your agreement that agricultural subsidies should be exempted as proposed, in which case you may wish to adopt the amendment as your own. In any case, I would ask for an urgent response from you, with your views on these concerns, and any reassurance you can give on how the Bill will impact on agriculture subsidies, including income support payments in particular.

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I am copying this letter to my colleague Ivan McKee MSP, Minister for Business, Trade, Tourism and Enterprise, and also to Paul Scully MP, Minister for London and Parliamentary Under Secretary of State (Minister for Small Business, Consumers and Labour Markets), Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd, and Edwin Poots MLA, Minister for Agriculture, Environment and Rural Affairs.

Yours sincerely



MARI GOUGEON

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UK Subsidy Control Bill

Scottish Government Amendment and Explanatory Note

Amendment

After section 51

1 After section 51, insert—

<Agriculture

- (1) The subsidy control requirements do not apply to—
 - (a) the giving of an agricultural subsidy, or
 - (b) the making of a subsidy scheme, so far as it relates to the giving of agricultural subsidies.
- (2) For the purpose of subsection (1), a subsidy is “agricultural” if it is subject to the provisions of Part IV or Annex 2 of the Agreement on Agriculture, contained in Annex 1A to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994 (read with any adjustments necessary for context).>

Explanatory Note

The UK has agreed to put in place the subsidy control requirements provided for in the EU-UK Trade and Cooperation Agreement (TCA).

Article 366(5) of the TCA provides a specific exemption to those requirements for subsidies that are subject to the provisions of Part IV or Annex 2 of the World Trade Organisation (WTO) Agreement on Agriculture.

This covers most agricultural subsidies. The exempted subsidies will however remain subject to the applicable WTO subsidy control rules.

The Bill, as introduced, would include the exempted subsidies within the scope of the new domestic subsidy control requirements. In the Scottish Government’s view, this adds unnecessary complexity. It would also place unreasonable constraints on the devolved administrations’ ability to develop policies tailored to their specific needs in what is a fully devolved area of policy.

Therefore, the Scottish Government’s proposed amendment seeks to exempt from the scope of the Bill those subsidies that are already subject to the provisions of Part IV or Annex 2 of the WTO Agreement on Agriculture, similar to the existing exemption in the TCA.

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