WOMBLE BOND DICKINSON

Agriculture News

May – August 2021

May 2021
Bring back the CAP!

Farmers in the UK may wonder whether they should have been more careful about what they wished for when they made their choice in the Referendum. Whether they farm in England, Scotland, Wales or Northern Ireland, they are unlikely to have confidence in their governments and though for many stock farmers prices at auction have been surprisingly good, that is a consequence of Covid and not of the four administrations' policies.

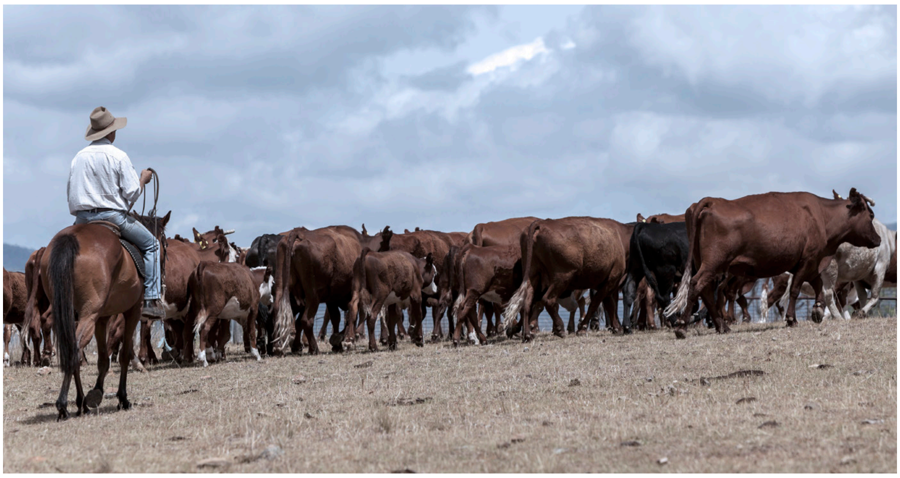
In the EU CAP funds continue to be disbursed as before (though at a slightly lower level thanks to the disappearance of the UK's 11% contribution), except in Hungary where the Commission has taken the unprecedented step of withholding payments to companies controlled by the Head of State, Victor Orban. He is said to have rigged the system and claimed 40% of the EU money for Hungary for his own businesses.

The UK Government has duly concluded an agreement in principle for a trade treaty with Australia and is moving towards another with New Zealand. It claims that limits on the amounts of beef and lamb that those two can sell in the UK for 10 years will give UK farmers time to adapt their businesses. It is however one way traffic. There is no prospect of significant new markets for them on the other side of the world, just increased competition from lower cost imports in their home market.

It has taken the UK a year to reach the agreement with the Australians. The EU has been talking to them for five years and still not concluded anything. Commission officials reacted defensively to suggestions that the UK had stolen another march, and said it had given too much away. They may be right. There was the same reaction to treaty negotiations in Oslo, though there because of a perceived threat posed by UK farmers.

Negotiations between the UK and Norway were due to be completed at the same time as those with Australia, but at the last moment the Norwegians pulled out because of concerns that UK beef and cheese could flood their market and put farmers out of business. Their government seeks to reach agreement every year with farmers' representatives on prices, quotas and direct support, and decided that the impact of the proposed deal on their agriculture industry would be too big. Is there a message here for Whitehall? Or will the UK press on regardless with new treaties?

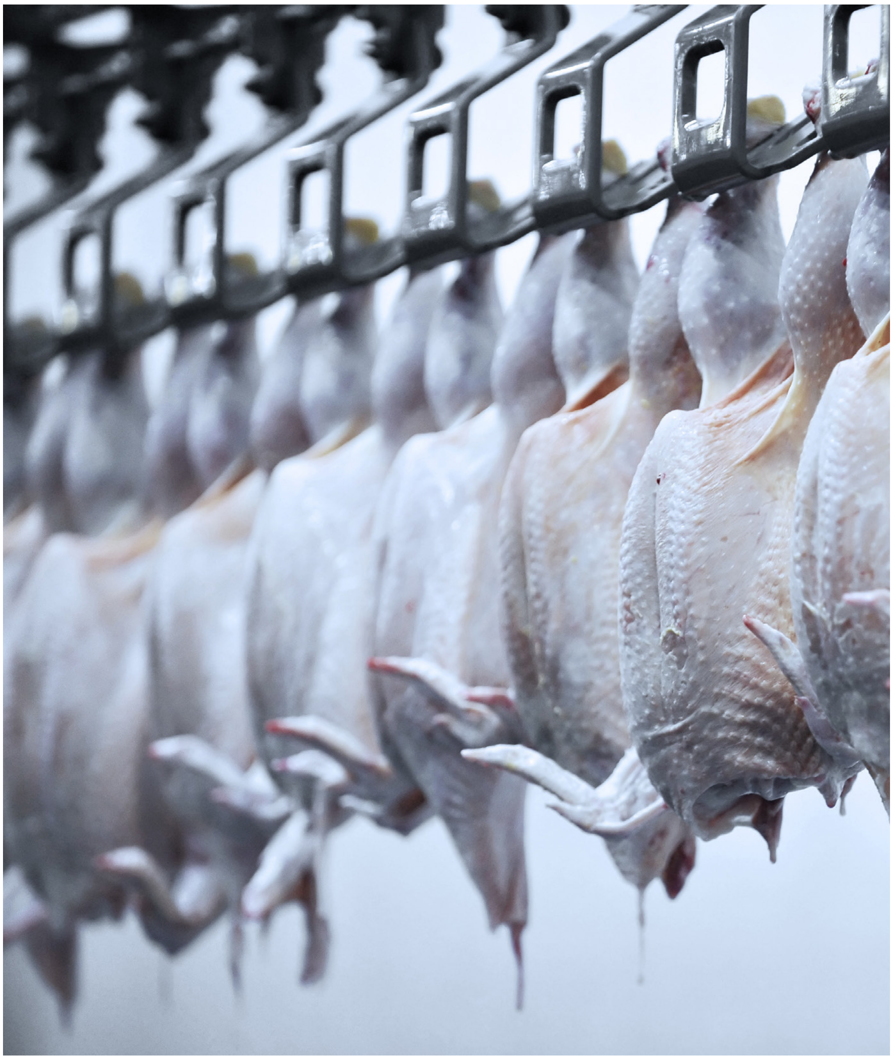
The EFRA Select Committee of the House of Commons continues to hear of so called 'teething problems'. It suggests the Government agrees swiftly with the Commission on digitising Export Health Certificates and provides funds to establish distribution hubs to allow smaller consignments to be grouped into a single lorry load. It has also heard that when a calf is moved to Northern Ireland, EU rules require that the tag number inserted when it is born is replaced, thus losing traceability and weakening UK food security.



June 2021

Trade Treaties & Protocols – Whose interests matter?

Trade treaty negotiations with the USA may have stopped following the demise of the Trump presidency, but they remain on the 'To Do' list in London and Washington. When they resume, familiar objections that the import of chlorinated chicken is a risk to health will resurface in the UK, as will complaints from the US that the UK is seeking to shelter behind bogus restrictions.



There is little difference in the way chickens sold in US and UK supermarkets are produced. The overwhelming majority of both are produced in battery farms. Campaigners for a continuing ban on imports from the USA admit that eating chlorinated chicken would not give you food poisoning. An antibacterial solution, not chlorine, is usually used, as is the case in the UK battery farms from which 95% of chickens sold in UK supermarkets come.

Consumers who do not want battery farmed chickens and can afford to buy others will continue to do that. The UK businesses that a treaty would put at risk are those with which the US imports would compete, not those selling better quality products at higher prices in lower volumes.

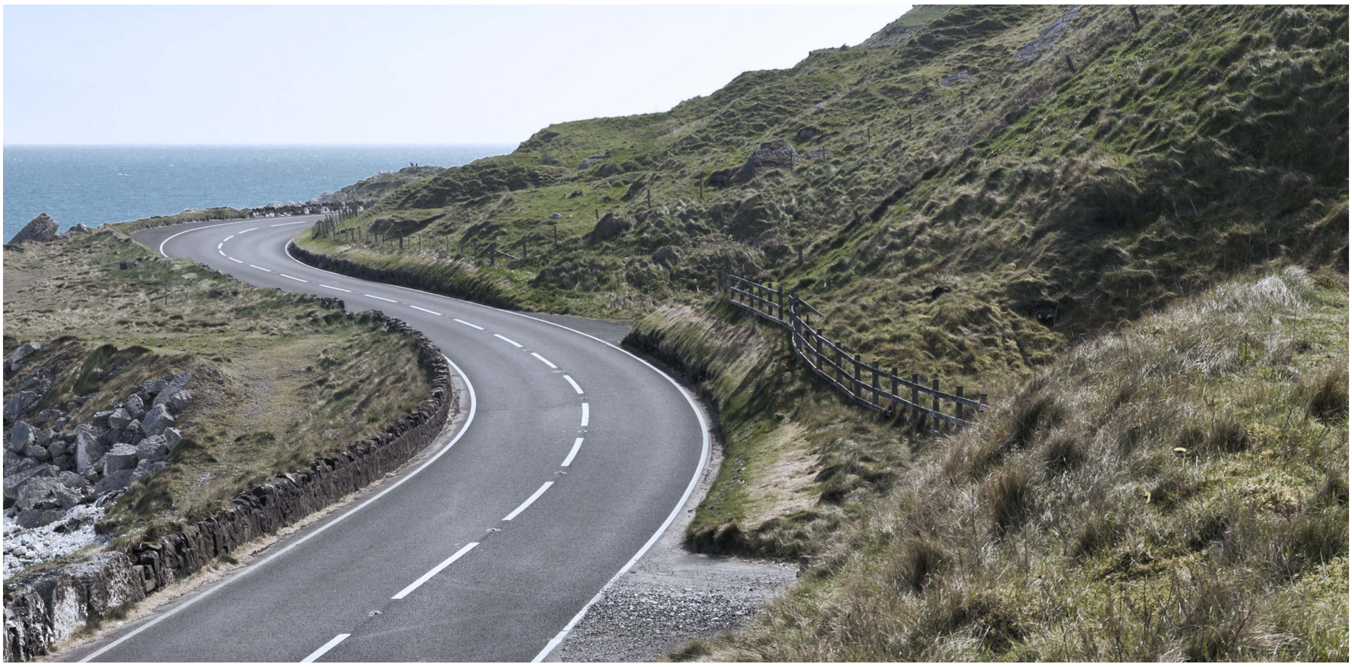
Since the discussions with the USA were paused, there have been efforts to dissuade UK supermarkets from buying chicken from suppliers who rear strains that do not cope well with intensive rearing, but not to reduce their sales of the battery farmed product. Is that a tacit acknowledgement that low price is a major driver of UK shopping habits, and a reason for a political party to be wary of being labelled as 'the farmers' rather than 'the consumers' party? How that stance fits with the Government's newly announced concerns for animal sentience is not clear, and may account for its two steps forward, one step back policy making behaviour that the Secretary of State for the Environment has to defend.

Having gained greater access to the UK market for their farmers, the Australians will want to follow suit with the EU. There will be scope for a deal over wine, but they will find the Commission protective of French and Irish farmers in particular, and insistent that parmesan and feta cheese made by Italian and Greek communities in Australia is not marketed as the genuine article in the EU. The Protected Designation of Origin regime is not to be compromised.

The EU's concerns for sustainability, climate change and environmental standards will be sources of difficulty, but the size of the EU market will keep the Australians at the table. They will not find the EU motivated, or indeed able, to reach consensus quickly. It has to obtain approval from all 27 member states; they have conflicting views and interests, and find agreement on anything that threatens a principle elusive. The difficulties with the Northern Ireland Protocol are the latest example. The present Irish Government is supportive of changes; that cuts little ice with the dominant member states.

July 2021

Northern Ireland – Brexit casualty



The extended summer hiatus in Brussels used to be a staple topic of pre-Brexit reports. It is still not a thing of the past. The breathing space gained last month with the EU's announcement of a pause in its plan to enforce UK compliance with the Northern Ireland Protocol in the European Court, and the UK's extension until October of the postponement of full controls on imports from NI, is not being used for constructive negotiations. The Commission and the Heads of Government in the Member States are either en vacances or preoccupied with other problems.

September may see some engagement, but unless the EU recognises that, whatever the legalities, events since Brexit make some 'modification' (if 'renegotiation' is an unacceptable concept) essential, the Prime Minister and Lord Frost may find themselves forced to invoke Article 16 of the Protocol, which allows for unilateral suspension in the event of 'economic, societal or environmental difficulties' that lead to serious problems. Partial suspension may alleviate some of the NI farmers' commercial frustrations, temporarily.

Agriculture is a 'devolved competence' in Northern Ireland as in Scotland and Wales, but the provision of funds to replace EU CAP funding is the responsibility of the UK Government. The Scottish Government has in the past objected to the amount provided by Whitehall for farmers in Northern Ireland, because they were not allocated in accordance with the Barnett Formula, and is likely to do so again. Until the NI Government knows what funds it will have, and decides how it will use them, NI farmers cannot know where they stand. It has said that it would like to increase direct (ie coupled) support for production, but that will involve 'borrowing' unused coupled support from England, Scotland and Wales. World Trade Organisation rules restrict the amount of coupled support a member may provide to 13% of its total support for farming, and this limit applies to the UK as a whole. Only Scotland has provided any so far. It will not take kindly to sharing the UK allocation with Northern Ireland.

There is also a chance of friction with the Irish Republic. Its farmers may feel that, unless on a small scale, direct support for production in Northern Ireland puts them at a disadvantage despite their Basic Payments, not tied to any production, from the EU, and contravenes WTO regulations which apply on an 'all island' basis.

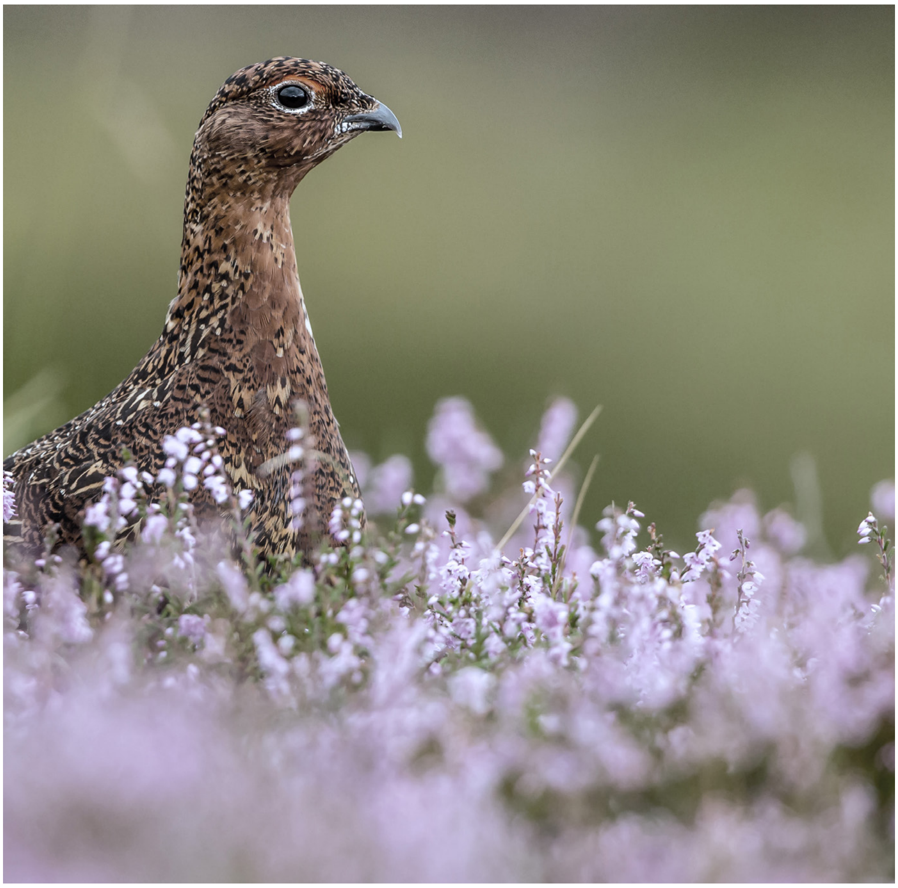
The consequences for farmers in Northern Ireland may have been regarded as unavoidable collateral damage if the UK and the EU were to agree a deal. The consequences of the Protocol are far more fundamental, causing tension between the UK and the EU Commission, the Irish Republic and other EU member states and the UK and the Northern Ireland governments, creating friction between the devolved governments in the UK and among the parties in Northern Ireland, and ending the political career of the First Minister, Arlene Foster – what an achievement.

August 2021
Where do we go from here?

DEFRA has begun to reveal the Sustainable Farming Incentive 2022 amid clamour from farmers' representatives that it will provide minimal support for upland farmers, particularly tenants. The Secretary of State, George Eustice, says the payments offered in England will be 30% higher than previously, but the principles announced as the basis for payments are vague. There are hints that DEFRA may want to see higher rates to ensure farmers opt in in sufficient numbers, but it will be under pressure from the Treasury to ensure value for money and will have to hope for the best when bids for funds from 2024 are submitted by Ministers. The Treasury will be inundated with urgent demands. At present the Government is committed to funding agriculture in England only 'for the duration of the present Parliament'.

The Welsh Government is introducing an Agriculture Bill to set up a "Sustainable Farming Scheme", along the lines of the English SFI, but has not committed itself to the anticipated 2024 start date. The Scottish Government is committed to a new support scheme starting in 2026, but, despite prodding from the NFU, has not provided even an outline of what it has in mind. Scottish farmers may well wonder how it will be funded if the 'collaboration' between the SNP and the Green Party lasts that long and the development of the new Cambo Oilfield in the North Sea does not go ahead. Perhaps the SNP hopes they will be in receipt of CAP Basic Payments again by then?

DEFRA also intends to address carbon calculation. At present there are several different calculators. The Agriculture & Horticulture Development Board is collaborating with DEFRA to produce an industry standard calculator. The Environment Agency's Investment Readiness Fund has made a grant to a group of farmers, academics, technology businesses and NGOs to develop a Farm Soil Carbon Code to quantify reduced greenhouse gas emissions and soil carbon capture from regenerative farming practices. The adoption of carbon reduction practices and monetisation of carbon saving are big prizes with the potential to transform farm finance and to counteract the negative views of UK agriculture in parts of the Treasury and other Government Departments.



The grasp of the regulators continues to grow. In addition to the new 'Farming in Protected Landscapes Scheme' recently announced to provide grants in National Parks and Areas of Outstanding Natural Beauty, DEFRA and Natural England propose to create two new AONBs, the Yorkshire Wolds and the Cheshire Sandstone Ridge, and to extend the Surrey Hills and the Chilterns designations – more employment opportunities for ecology graduates with clipboards. The areas have yet to be defined; consultation is promised.

In the meantime the second part of the National Food Strategy report has been published and its suggested tax on sugar and salt instantly dismissed by the Prime Minister. There are however ideas for converting less productive land into carbon sequestering landscapes that may receive proper consideration.

For more information, please contact:

Simon Kirkup
Partner

T: +44 (0)191 279 9374
M: +44 (0)7980 769632
E: simon.kirkup@wbd-uk.com