NI Affairs Committee – Agriculture Inquiry

Written evidence from Professor Joseph A McMahon

This evidence is written by Professor McMahon, Full Professor of Commercial Law, UCD Sutherland School of Law, University College Dublin. Professor McMahon has written extensively on the law of the Common Agricultural Policy and the World Trade Organization’s Agreement on Agriculture.

Summary:
- The focus of the DEFRA consultation paper is on England and there is a possibility that it may be the basis for the UK-wide agricultural policy post-Brexit. In this event, there is a need to extend the institutions of devolution to include a Joint Ministerial Committee (JMC) on Agriculture.
- Given the adoption of commitments under the WTO Agreement on Agriculture, a JMC on Trade should be established to allow each of the devolved administrations to be consulted on trade commitments under this Agreement, other WTO Agreements and trade agreement concluded post-Brexit.
- The structure of agriculture in Northern Ireland demands a policy that takes account of its specific characteristics. This policy should promote sustainability broadly defined to take account of the interests of producers and consumers and the contribution agriculture can make to the wider economy and to meeting environmental challenges.
- The post-Brexit trade arrangements are important for Northern Ireland, especially in the area of regulation of sanitary and phytosanitary measures. This may be facilitated by the continued work of the North/South bodies in this area and, if accepted, the UK proposal for a common rule book post-Brexit. If this proposal is not accepted a means will have to be found to maintain existing regulatory convergence between Northern Ireland and Ireland.
- The absence of an Executive in Northern Ireland has reduced the input of Northern Ireland stakeholders in post-Brexit arrangements. The British-Irish Intergovernmental Conference provides one avenue for such input. Given its importance to Northern Ireland it is important to devise an appropriately funded post-Brexit agricultural policy to ensure the continuing viability of this sector of the economy.

Are potential challenges and opportunities for Northern Ireland’s agricultural sector post-Brexit properly reflected in DEFRA's consultation on The future for food, farming and the environment?

1. This document clearly indicates that it is about the future agricultural policy in England reflecting the fact that agriculture is a devolved matter. Given the differing agricultural situations across the four parts of the United Kingdom, it is a matter of some concern that a policy document addressing the situation in England, may become the basis of UK policy for agriculture by default. As a power “devolved” to Brussels, under the terms of the Withdrawal Bill it will return to Westminster to be re-devolved at a later date. There may be some value in establishing an institutional arrangement to oversee this “re-
devolution” given the requirements of the World Trade Organization’s Agreement on Agriculture. (See paragraphs 5-9 below)

2. It is somewhat ironic that the template for agricultural policy in England offered in the DEFRA consultation paper is broadly similar to the European Commission’s approach to the future of the Common Agricultural Policy. Its communication, *The Future of Food and Farming*, sets three broad objectives for the policy for the period 2020-27 i.e. fostering a smart and resilient agricultural sector; contributing to the EU’s environmental and climate objectives; and, strengthening the socio-economic fabric of rural areas. However, the means to achieve this is through direct payments which the DEFRA consultation paper indicates will be phased out over a transition period as they are “poor value for money, untargeted and can undermine farmers’ ability to improve the profitability of their businesses.” No indication is given of the length of the transition period and the proposed replacement model – a system of public money for public goods – is being examined through pilot programmes available only in England.

3. It is clear, however, that the approach being taken by the DEFRA consultation paper will result in a different type of agricultural policy as the objectives being set for it are fundamentally different from those of the Common Agricultural Policy set in Article 39 of the Treaty on the Functioning of the European Union. That provision has remained unchanged since 1957 and farmer’s income remains a key objective for the CAP, although the means to realise this objective have changed significantly over time. The DEFRA consultation paper sets the protection of the environment as the key objective of the emerging agricultural policy in England – agriculture appears to be treated as just another sector of the economy.

4. The European Commission in their 2017 communication noted that direct payments “make up around 46% of the income of the EU farming community” and “currently shore up the resilience of 7 million farms, covering 90% of farmed land” but also that “20% of farmers receive 80% of the payments.” (COM (2017) 713, p 4). The final statistic prompted the Commission to suggest four possible means to explore a fairer and better targeted support of farmers’ income, namely: compulsory capping of direct payments; degressive payments; enhanced focus on a redistributive payment; and, ensuring support is targeted to genuine farmers. The DEFRA consultation proposes to use the Omnibus Agricultural Provisions Regulation to effect progressive reductions in and/or a cap on direct payments to transition to the new public goods this system but does not explore the possibility that other changes to the Direct Payments scheme could realise the objectives set for agricultural policy in the England. No reference is made to the experience of a cap on Direct Payments in Northern Ireland – this is not surprising given that the focus of the consultation paper is on England but the Direct Payments could continue to have a role within agricultural policy in the rest of the UK given their importance to farmers’ income.

5. The DEFRA consultation paper makes it clear that post-Brexit the UK will have its own trade policy which means that it will have obligations under various WTO agreements. In relation to the Agreement on Agriculture, the new environmental land management system must be consistent with Annex II of the Agreement on Agriculture – the Green Box. If it is characterised as an environmental programme it will have to be consistent with paragraph 12 under which farmers will receive a payment, limited to the extra costs or loss of income involved in complying with a clearly-define government programme which is dependent on the fulfilment of specific conditions, including those relating to production methods or inputs. The alternative is to characterise the programme as decoupled income support which would mean that it would fall under Paragraph 6 of the Green Box. In this paragraph the support is not limited extra costs or loss of income.
6. In terms of support offered to farmers, there are also rules in Article 6 of the Agreement that need to be satisfied. The overall commitment entered into under the Agreement is to reduce the level of domestic support – usually referred to as Amber Box commitments. At present, it is the EU, and not the UK, that has such commitments and negotiations will be needed with the EU on the amount of these commitments that will be “apportioned” to the UK once it leaves. In October 2017, the EU and the UK notified the other Members of the WTO that there would be negotiations on this apportionment using objective methodology. The outcome of these negotiations has not yet been notified to the WTO. Article 6 also contains the Blue Box which provides for restrictions on coupled support (i.e. support tied to production). Under the existing CAP, only one part of the UK benefits from coupled support – Scotland. There is also a de minimis provision in Article 6 allowing a Member to provide product-specific support and non-product specific support for a set value of production. The DEFRA consultation paper does not mention this provision which Matthews estimated would allow the UK, if it wished, provide up to £1,155 million in product-specific support, and a further £1,155 million in non-product specific support, even in the absence of a specific Amber Box commitment concluding that “the UK would not find living with only de minimis subsidy limits too constraining.”

Figures from DEFRA indicate that direct payments in 2016 amounted to £3,148 million with payments in Northern Ireland being £279 million.

7. In addition to domestic subsidy commitments, there will also have to be commitments on market access – tariffs, tariff-rate quotas and safeguard measures. It should be noted here that the EU Agricultural Tariff Schedule is extraordinarily complicated, so the UK might take the opportunity to introduce a simpler schedule when it leaves the EU. In October 2017 the UK and the EU notified the other members of the WTO that the future EU’s (excluding the UK) and the UK’s (outside the EU) quantitative commitments in the form of tariff-rate quotas would be the result of an apportionment of the EU’s existing commitments, based on trade flows under each tariff-rate quota. Seven WTO Members were not happy with the proposed approach to the division of tariff quotas arguing that the proposed division of tariff-rate quotas based on historical averages was unacceptable as it would not fully honour existing tariff quota commitments. Recent reports suggest that whilst the UK would like to maintain this position, the EU is prepared to enter into GATT Article XXVIII negotiations on tariff modification so, further discussions will be necessary before a definitive answer emerges to the question of what will happen to existing EU tariff quotas. Article 5 of the Agreement on Agriculture allows Members to impose safeguard measure for specific products but requires Members to notify the WTO at the time of setting its Schedule of the products that will be covered by Article 5. It is not clear whether the UK wishes to make any notification under Article 5 and whether other WTO Members would accept such a notification.

8. The UK will also be assuming obligations under other WTO Agreements, in particular, the Agreement on the Applications of Sanitary and Phytosanitary Measures (which applies to standards adopted by Members which are necessary to protect human, animal or plant life or health) and the Agreement on Technical Barriers to Trade (which applies to all other standards). Complaints have been made about standards adopted by the EU, including, for example, the precautionary principle, the use of hormones in beef and the non-approval of various GM products. UK withdrawal from the EU could lead to significant changes to the regulatory framework in relation to food safety, animal and

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1 See A Matthews Establishing the UK’s non-exempt limit on agricultural support after Brexit available at http://capreform.eu/establishing-the-uk-s-non-exempt-limit-on-agricultural-support-after-brexit/.

plant health, especially as the UK establishes new trade relationships with third countries through Free Trade Agreements and future arrangements in some of the areas covered by these two agreements is complicated by the provisions of the Belfast/Good Friday Agreement’s allocation of areas of cooperation for the North/South Ministerial Council.

9. The emergence of a UK trade policy will require arrangements to be put in place to ensure that devolved administrations can have an input into that policy in areas covered by devolution, such as agriculture. One approach here would be to build on the existing Joint Ministerial Committees – a JMC (Agriculture) and a JMC (Trade).

Do smaller farms in Northern Ireland have different requirements post-Brexit to large farms?

10. Agricultural structures differ between Member States and this is particularly true in the UK where the structure of farming in each of the four nations is different. These issues were addressed in the 2013 reform of the CAP with the introduction of the Small Farmer Scheme offering specific support to enhance the competitiveness of small farms accompanied by a reduced administrative burden. The scheme was implemented in 15 Member States but not in the UK but there is a Small Farm Grants scheme in Scotland and a Small Dairy Farmers Scheme in Northern Ireland. The EU recognises the importance of financial assistance to small farms given their limited capacity and the need to maintain rural areas.

11. A move away from Direct Payments, as envisaged in the DEFRA consultation paper, could threaten the continuing viability of small farms and impact negatively on the development of rural areas. As rural development is, and is likely to continue to be, a devolved matter, it is important that measures are put in place to prevent farm abandonment. Such abandonment is the result of the interaction of a number of variables such as farm income, investment, age, education, low farm size and all these variables need to be addressed in a rural development policy.³

How important is the EU as an export market for Northern Ireland agricultural produce?

12. The Additional Data Paper associated with the Government’s Position Paper Northern Ireland and Ireland using data form the Northern Ireland Statistics and Research Agency indicates the following:⁴

- The estimated total value of Northern Ireland sales and exports to Ireland in 2015 was £2.9 billion with goods to the value of £1.8 billion being imported from Ireland. Exports to the rest of the EU amounted to £1.7 billion and those to the rest of the world, £3 billion.
- The largest export sector was food and live animals which account for one-third of Northern Ireland exports.

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c. There is significant cross-border integration of the agri-food industry with exports accounting for 27% of Northern Ireland’s food and drink processing sales with Ireland being the destination for 53% of export sales from the sector.
d. “Over 5,000 businesses in Northern Ireland exported goods to Ireland in 2015, one and a half times as many as sold goods to Great Britain, with just over half the businesses exporting goods and services to Ireland employing fewer than 10 people.”
e. The most significant market for businesses in Northern Ireland is the rest of the UK – in 2015, sales to the rest of the UK “were worth one and a half times the value of all Northern Ireland exports and nearly four times the value of exports to Ireland.”

13. In assessing the value of these statistics, the words of the Scottish writer, Andrew Lang, should be borne in mind as he wrote that a man “uses statistics as a drunken man uses a lamppost – for support rather than illumination.”

How can future UK trade policy best support Northern Ireland’s agricultural sector? What funding will Northern Ireland’s agricultural sector require post-Brexit? What should future agricultural support in Northern Ireland look like, and what goals should it seek to achieve?

14. A future UK trade policy will require the UK to assume commitments under various WTO agreements and, as noted above (paragraph 9), it is important that each of the devolved administrations have an input into that policy; hence the proposal to establish a JMC (Trade). One positive development in the EU in relation to trade agreements has been the publication of impact assessments and if this practice continues under UK trade policy, it is important that Northern Ireland participate in such assessments. This will allow informed discussions to take place in JMC (Trade). With respect to agriculture, it is important to remember that the UK is a net food-importing country but the self-sufficiency ratio of each nation within the country varies, so international agreements will impact differentially across the UK, so there should be a relationship between the proposed JMC (Trade) and JMC (Agriculture).

15. One aspect of the UK’s trade policy will be the relationship established between the EU and the UK. At present it is not clear what type of agreement will be concluded after the UK’s withdrawal from the EU. On this point, it is important to recall one of the principles on which the CAP is based – Community Preference – which privileges agricultural production in the EU over that of third countries and is enforced by means of import duties and tariff quotas. A 2016 study, the Cumulative economic impact of future trade agreements on EU agriculture demonstrated that significant differences exist at sectorial level. The picture was positive for dairy products (especially cheese and skimmed milk powder) and pig-meat but sectors such as beef and poultry were sensitive and should be subject to greater protection. Whilst complete free trade in agricultural products would obviously be a desired outcome for the UK, it is important to note that no EU agreement offers such treatment.

16. The trade statistics noted above highlight the importance of Ireland as a destination for NI exports (and sales) and the UK Government has recognised as one of its negotiating objectives, as has the EU, that there should be no return of a hard border. The challenge

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here is not only in relation to tariffs but also regulatory barriers, especially in the area of sanitary and phytosanitary regulations. It is possible to consider the island of Ireland as a single epidemiological unit for the purposes of animal health and welfare. In 2001 the North/South Ministerial Council commissioned an All-Island Animal Health and Welfare Strategy to provide a framework for the development of closer cooperation on the improvement of animal health in both Northern Ireland and Ireland and which would include joint strategies in areas such as animal disease control and trade certification issues. An agreement on regulatory cooperation/equivalence in any future trade agreement would ensure the continuation of existing trade – if the UK proposal to adopt a common rule book is accepted by the EU, such an agreement will be part of the future trade relationship (see paragraph 22 below).

17. The funding of Northern Ireland post-Brexit will depend on the nature of the policy adopted. Figures from DEFRA showed that in 2016 Northern Ireland received Basic Payments of £279 million. As for total funding received in Northern Ireland, under Pillar 1 and Pillar 2, in 2016, it amounted to €379 million to Northern Ireland. The DEFRA consultation paper indicates that the existing policy will change and a question arises as to whether a future policy will provide an equivalent level of funding. This funding must now come from the Northern Ireland budget and it is not clear, given the current impasse, that it will offer similar funding given other spending imperatives. Current funding under the CAP is from the 2013-2020 Multiannual Financial Framework and the next Framework, 2020-2027, will not include the UK. It is important that future funding should provide an equivalent, if not greater, level of certainty to farmers so that planning can be effected on a multiannual basis.

18. Absent political guidance, the Department of Agriculture, Environment and Rural Affairs has suggested, in the consultations undertaken to formulate policy proposals for NI agriculture after Brexit, that it should pursue the following objectives: increased productivity in international terms; improved resilience to external shocks; an agriculture industry that is environmentally sustainable, and; an industry which operates within an efficient, competitive and responsive supply chain. How these objectives will be implemented is a function of the resources allocated but as the Foreword to the DEFRA consultation paper points out, leaving the EU “provides a once-in-a-generation opportunity to reform agriculture.” The objectives of the policy should also consider the contribution that agriculture can make across other areas, in particular the contribution that it can make to promoting health, in particular, the challenge posed by increased obesity and the need to promote sustainable diets. The Food and Agricultural Organisation has defined sustainable diets as: “those diets with low environmental impacts which contribute to food and nutrition security and to healthy life for present and future generations. Sustainable diets are protective and respectful of biodiversity and ecosystems, culturally acceptable, accessible, economically fair and affordable; nutritionally adequate, safe and healthy; while optimizing natural and human resources.” Leaving the EU presents an opportunity to consider a different approach – whether it be

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9 Ibid, Table 10.7.
labelled holistic/sustainable/life-cycle – to setting the objectives of agricultural policy. Such an approach attracting broad support across all sectors of the economy (and society) is much more likely to yield a stable financial framework for the future support of food production and consumption.

**What particular challenges does the border between Ireland and Northern Ireland create in terms of future agricultural policy, regulation and trade? How can these challenges best be resolved?**

19. Since the first enlargement of what was then the European Economic Community to include the United Kingdom and Ireland (and Denmark) both Ireland and Northern Ireland have been subject to the same agricultural policy (the CAP – the only variation between the two being with respect to rural development), the same regulatory regime and the same trade policy (the Common Commercial Policy and the Common Customs Tariff). The decision of the UK people to leave the EU means that there will be a new agricultural policy, a new regulatory landscape and a new trade policy. It is possible, though unlikely, that the UK could decide to mirror the framework for agricultural support set out in the CAP; this is also a possibility for one or more of devolved administrations but given the financing requirements of such an approach, it is an unlikely option. It is also possible that the UK could decide to continue the EU regulatory framework with legislation being adopted in Westminster rather than Brussels. The position of the devolved administrations here is complicated. For example, the devolved administrations cannot legislate on Import and Export Control but there are exceptions allowing regulations for the purposes of protecting human, animal or plant health or the environment. An additional complication in Northern Ireland arises from Annex 2 of the Belfast/Good Friday Agreement with its encouragement for the North/South Ministerial Conference “to develop consultation, co-operation and action within the island of Ireland – including through implementation on an all-island and cross-border basis – on matters of mutual interest within the competence of the Administrations, North and South” in areas such as agriculture, education, environment, health, tourism and transport. Finally, it is possible that the UK may decide to adopt a trade policy similar to that of the EU although this would run counter to one of arguments in favour of the UK leaving the EU. However, it is possible that in their agreements with other countries, the UK could seek to maintain customs alignment with the EU but this is unlikely as it reduces the scope for an independent trade policy.

20. The challenge for Northern Ireland post-Brexit i.e. when it becomes an external border of the EU, is how that border will impact on the existing level of cooperation in agricultural production and trade that has emerged since both countries joined the EU in 1973. As noted both the UK and the EU have set as a negotiating objective, avoiding the return of a hard border between Ireland and Northern Ireland so as to protect the achievements of the Belfast/Good Friday Agreement. This was confirmed in Joint Report on the first phase of the Brexit negotiations issued in December 2017, which noted that Brexit will pose substantial challenges to North-South cooperation as most of the work to date of the North/South Ministerial Council has relied “to a significant extent on a common European Union legal and policy framework.” So, in leaving the EU, the UK and the EU will seek to protect the achievements of the Good Friday Agreement, in particular the constitutional status of Northern Ireland (and its citizens), the absence of a hard border and the effective operation of the institutions and bodies it established. As for the future,

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the best possible outcome would be an agreement on the principles governing a trade agreement between the EU and the UK ensuring that there would be no return to a hard border between Ireland and Northern Ireland. In the absence of such an agreement, the UK will have to propose specific solutions for the island of Ireland – this will require the agreement of the Irish Government. In the absence of specific agreement, paragraph 49 requires that the UK maintain “full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement.” This final option, the backstop solution, has been rejected by the Prime Minister in her April 2018 Mansion House speech meaning a solution must be found in either the first or second options.

21. Negotiations on the trade agreement between the UK and the EU have not yet begun although was recently reached within the Government on an approach suggesting maximum customs facilitation – the UK would apply its tariffs for goods intended for the domestic market, but charge EU tariffs for goods destined for the EU – creating a combined customs territory obviating the need for a hard border between Ireland and Northern Ireland. As the UK would control its own tariffs it would be able to pursue an independent trade policy but the UK would maintain a common rulebook with the EU for all goods, essentially there will be continuing harmonisation between the UK and the EU. So, the regulatory framework would not change but the UK Parliament would have to adopt the new legislation creating a degree of uncertainty in the rulebook. This arrangement would not apply to the free movement of services and the UK would not apply the free movement of workers. A White Paper on the proposals is due to published shortly.

22. On the common rule book, if accepted by the EU, the model provided by the European Economic Area Agreement could be used as a template for regulatory cooperation. Under Article 99(1) of that Agreement, the European Commission when drafting new legislation in a field covered by the Agreement shall seek advice from experts from the non-EU parties to the agreement (i.e. Norway, Iceland and Lichtenstein) in the same way that it does from experts from the EU Member States. The Agreement also provides for the participation of representatives from these States in various committees under Articles 81, 100 and 101 and Protocol 37 of the Agreement. Finally, under Article 99 of the Agreement when the Commission transmits a proposal to the Council, copies are to be transmitted to the EFTA States possibly leading to an exchange of views in the EEA Joint Committee as part of what Article 99(3) refers to as “a continuous information and consultation process.”

The legislative process was designed to ensure the homogeneity of the single market with the adoption of EU legislation by the Member States being followed closely the adoption of the measure within the EEA so that they could be applied simultaneously. However, a 2010 European Commission Review of the EEA pointed to a growing delay in the incorporation of legal acts ascribing these to a number of factors, including prolonged internal negotiations among EEA States, the late submission of EEA Joint Committee decisions, protracted negotiations on adaptations of legislation, delays in internal procedures at national level at the final stages of the incorporation process, and delays in application of EU legislation incorporated into the

12 Ibid, paras 42 to 44.
13 Consultation among the EFTA states is conducted through Standing Committees and there are five sub-committees covering the scope of the EEA Agreement and various Working Groups within each sub-committee. The sub-committee can make comments on EU proposals which are submitted to the Joint Committee, see for example, the May 2001 comment of the sub-committee 1 on the Free Movement of Goods on The Proposal for a Regulation establishing a European Food Authority, which is available at http://www.efta.int/media/documents/eea/eea-efta-comments/2001/07-05-01-european-food-authority.pdf.
EEA Agreement. The Review noted that by the end of 2011 these delays “had led to a backlog of more than 500 legal acts, whose date of application in the EU had already expired.”

23. It is uncertain how the EU will respond to the UK White Paper but in welcoming the Withdrawal Agreement that had emerged from the Brexit negotiations after the Joint Report the European Council in April 2018 noted that: “Divergence in external tariffs and internal rules as well as absence of common institutions and a shared legal system, necessitates checks and controls to uphold the integrity of the EU Single Market as well as of the UK market” and so, the free trade agreement, concluded after the UK has left the EU, “cannot however offer the same benefits as Membership and cannot amount to participation in the Single Market or parts thereof.” A failure to come to an agreement may result in the UK leaving without an agreement – a hard Brexit.

24. A hard Brexit – the imposition of tariffs and regulatory controls – would present a significant challenge for Northern Ireland. It would disrupt supply chains that have developed over time and make access to the Irish market more difficult. It would also cause a degree of trade creation as producers and retailers currently reliant on Ireland would seek alternatives within the UK. Regulatory challenges could arise as over time the regulatory framework in the UK differs from that of the EU, for example, as a result of agreements concluded between the UK and third countries. It must be noted here that DEFRA consultation paper suggests the current high regulatory standards will be maintained post-Brexit. One issue not covered in this paper, given its focus on England, is transboundary challenges in the environmental area, for example, in the area of river basin management, plans under the Water Framework Directive.

25. If a hard Brexit occurs, the question arises as to how the EU would respond as it seeks to realise its negotiating objectives of avoiding a return to a hard border. One precedent here which should be explored is the creation of a Special Protocol based on the 1957 Protocol on German Internal Trade under which originating in East Germany directly entered West Germany were not subject to customs duties under the Common Customs Tariff or to import quotas adopted under the Common Commercial Policy. The Protocol did not extend the territorial scope of the then EEC Treaty rather it released West Germany from the obligation to apply Community law to German internal trade. So, the specific agreed solution could be like Protocol 3 allowing goods from Northern Ireland to enter Ireland under existing conditions whilst also allowing for similar treatment of goods from Ireland entering Northern Ireland – a Protocol on Trade on the island of Ireland. Such a Protocol would require Rules of Origin i.e. rules on the “economic” nationality of goods which are usually based on tariff classification. It would not mean that Northern Ireland will remain part of the EU, it would allow trade between Northern Ireland and Ireland to continue so obviating the need for a hard border but it would only apply to that trade. The other Member States would trade with Northern Ireland as part of the UK. The Protocol would be part of the EU Law, reflecting the unique position of Northern Ireland arising as a result of the Belfast/Good Friday Agreement with its provisions on citizenship and the creation of special EU programmes to support that Agreement – the PEACE Programme – which is set to continue in the next Multiannual Financial Framework, 2020-2017. The Protocol would also cover the regulatory cooperation identified in Strand 2 of the Belfast/Good Friday Agreement. A starting point here could be Annex 2 of the Protocol on Ireland and Northern Ireland to the Withdrawal Agreement lists the EU law on goods, customs, value added tax, excise duties, sanitary and phytosanitary measures and on the

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production and marketing of agricultural and fisheries products that will continue to apply in Northern Ireland. This would be managed within the Specialised Committee, composed of EU and UK representatives, established under Article 10(2) of the Protocol whose remit would be the maintenance of “the necessary conditions for continued North-South cooperation, including in the areas of environment, health, agriculture, transport, education and tourism, as well as energy, telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport.” These are areas covered in Strand 2 of the Belfast/Good Friday Agreement.

What future cooperation with Ireland will be necessary in relation to agricultural regulation and management of the environment across the island of Ireland?

26. As noted above, agriculture is one of the areas of North-South cooperation under the Belfast/Good Friday Agreement as is the environment. The latter is also an area for East-West cooperation. Transboundary environmental challenges will still need to be addressed post-Brexit (e.g. water pollution, climate change), as will, for example, sanitary and phytosanitary issues, and there are existing fora for this to happen. How effective they are (or will be) is uncertain as is the issue of how to deal with regulatory divergence post-Brexit on issues of transboundary harm.

In the absence of an Executive how can the UK Government best engage with local communities and farmers to develop a post-Brexit agricultural policy? To what extent does current intergovernmental machinery provide for this, and how might this machinery need to be improved?

27. The sole contribution of the devolved administration to the Brexit debate has been the letter from the First Minister and Deputy First Minister to the Prime Minister in August 2016 which indicate that the border should “not create an incentive for those who wish to undermine the peace process and/or the political settlement”, highlighting the significance of the border for the agri-food sector and animal health and advocating that, as far as possible, “the ease with which currently trade with EU Member States” should be retained. Its plea for the maintenance of the free movement of labour may be partially met through the maintenance of the Common Travel Area; the grant of planning permission for the Northern Ireland section of the cross-border energy project is an important step in developing energy supply arrangements; and, EU funding for the PEACE programme is to continue but funding under the CAP will come to an end.

28. North/South cooperation under Strand 2 of the Belfast/Good Friday Agreement and East/West cooperation in the British Irish Council under Strand 3 of that Agreement cannot function in the absence of an Executive in Northern Ireland. This leaves only the British-Irish Intergovernmental Conference under Strand 3 which has the mandate of promoting “bilateral co-operation at all levels on all matters of mutual interest within the competence of both Governments.” Brexit falls within this area and it could be discussed at the forthcoming meeting of the Conference. Ahead of this meeting, the Secretary of State could engage with relevant stakeholders.
