

UK and Welsh Government Bilateral Agreement on WTO provisions within the Agriculture Bill

The initial making of Part 7 regulations

- Defra will make clear on the floor of the House of Commons at Report, that the UK Government will consult the devolved administrations before bringing forward regulations under this power.
- Defra officials will share with DA counterparts proposals for regulations to be made under the WTO powers in the Agriculture Act including:
 - objective methodology and rationale for determining or changing Amber Box limits, and the resulting limits themselves;
 - the type of information, and its frequency, that should be provided for the purpose of classifying schemes and notifying WTO AoA box usage; and
 - the process to be set out for the classification of schemes and the role of a memorandum of understanding (see below).
- Draft regulations will be presented to the four UK agriculture Ministers with the aim of securing agreement, followed by an exchange of letters. This would provide the opportunity for a devolved administration to set out its position, and for the Defra Secretary of State to explain the reasons for the final form of the regulations and how UKG has sought to reach agreement.
- The process for sharing regulations and consulting the devolved administrations should be guided by the principles set out in the Inter-governmental Agreement. Consistent with those, the administrations are committed to seek to proceed by agreement. But if this is not possible, the matter would be escalated in line with the existing MoU governing Intergovernmental relations and any future agreements in place between Defra and the DAs on dispute resolution. In the event of a dispute, once all these attempts at resolution have been exhausted, the exchange of letters should be made available to both Houses in advance of the affirmative vote on the regulations made under part 7.

The ongoing operation of the Part 7 regulations

The following process has been designed to deal with decisions related to WTO classifications. It also offers a model for administrations to consider using if needed for dealing with other decisions taken under the Part 7 regulations.

- The administration intending to introduce or change the way funding supports agricultural producers proposes a WTO classification, consistent with the regulations and the detailed process set out in a Memorandum of Understanding on their operation. Proposed classifications should be discussed by officials, and submitted to the four UK agriculture Ministers, initially by correspondence and if necessary for discussion, with the aim of securing agreement. Proposed classifications will be reviewed, as necessary, before schemes are implemented. Assuming agreement is achieved, the Secretary of State notifies the classifications to the WTO.
- In the event consensus cannot be reached through existing dispute resolution mechanisms, issues will normally be referred to an “expert panel” for independent

advice. The purpose of the panel is to prepare an independent, expert view on the issue being considered. This need not be a standing committee – it may be composed if and when a dispute arises. Membership of the panel should be agreed by the Inter-Ministerial Group (EFRA). If it is not possible to agree on membership of the panel, each of the parties to the dispute (the Secretary of State and the relevant devolved administration) should each appoint one expert and the two nominees between them shall agree a third member before considering the issue. Once the panel has provided its independent advice, the Secretary of State should make a decision.

- The Secretary of State should have regard to the advice and will share with the Devolved Administrations the advice, the decision and the reason for the decision. Agreement of these arrangements reflect the particular, technical nature of WTO rules and is without prejudice to the wider work on dispute resolution which is being taken forward as part of the Intergovernmental Relations Review commissioned by the Joint Ministerial Committee.
- Consideration must be given to avoiding the provocation of a challenge by other WTO members to the UK's notification decision, so the UKG and the devolved administrations will seek to agree the right balance between transparency around, and accountability for, the Secretary of State's final decision.