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## **Common Agricultural Policy Quotas and the Environment**

by

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# COMMON AGRICULTURAL POLICY QUOTAS AND THE ENVIRONMENT

*Michael Cardwell\**

## I. INTRODUCTION

It is hard to deny that quotas now form an integral part of the farming landscape. While generally associated with the Common Agricultural Policy, quotas existed in the United Kingdom prior to entry into the European Community, for example, under the Potato Marketing Scheme. The full force of such systems, however, was reserved until the introduction of Community initiatives to curb surplus production. In this context, particular attention may be focused on milk quotas, sheep quotas, and suckler cow quotas. Each of these schemes was directed to restoring balance between supply and demand. In each case, the drastic step of imposing ceilings for individual producers was undertaken after other more limited measures had failed.<sup>1</sup> It may also be noted that the success of milk quotas in reducing the size of the Community dairy herd may in part have been responsible for the need to control other forms of livestock production, for example, farmers taking advantage of the free capacity to switch into alternative markets.<sup>2</sup>

The scale and importance of these schemes is easy to underestimate. By way of example, in March of 1994, there were some 36,709 registered producers in the United Kingdom, with the national milk quota as of March 23, 1995, amounting to 14,590,047 tonnes.<sup>3</sup> On the introduction of sheep quotas, it was estimated that allocations would total approximately 19.5 million head.<sup>4</sup> Furthermore, entitlement to a quota has become a *sine qua non* for profitable operation in the respective agricultural sectors—as may be judged by the considerable sums paid for their acquisition. Thus, in the 1994-95 milk year, prices in the region of 80 pence per litre were reported for the permanent

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1. There is a marked similarity between the recitals to the implementing legislation: see, e.g., Council Regulation (EEC) 856/84, 1984 O.J. (L 90/10) (in respect of milk quotas); Council Regulation (EEC) 2069/92, 1992 O.J. (L 215/59) (in respect of sheep quotas); and Council Regulation (EEC) 2066/92, 1992 O.J. (L 215/49) (in respect of suckler cow quotas).

2. See, e.g., 1 MARC DILLEN & ERIC TOLLENS, *MILK QUOTAS: THEIR EFFECTS ON AGRICULTURE IN THE EUROPEAN COMMUNITY*, Vol. 1, 247-48 (1990); Court of Auditors, Special Report No. 4/93, 1994 O.J. (C 12/1), at 4.64. *But cf.* D.G.V. Smith, *Milk Quotas: The Impact on Other Sectors of UK Agriculture and Land Use*, in *MILK QUOTAS IN THE EUROPEAN COMMUNITY* 61-74 (Alison Margaret Burrell ed., 1989).

3. THE ENGLAND AND WALES RESIDUARY MILK MARKETING BOARD, *UNITED KINGDOM DAIRY FACTS AND FIGURES: 1994 EDITION*, at tbls. 1 and 33A (illustrating that the national quota is divided into "wholesale quota" in respect of milk delivered to dairies and "direct sales quota" in respect of milk sold directly for consumption).

4. Ministry of Agriculture, Fisheries and Food, News Release No. 322/92.

transfer of milk quota,<sup>5</sup> while from the inception of the sheep quota regime farmers were prepared to pay up to £45 per unit.<sup>6</sup>

Before addressing environmental aspects, two matters must be highlighted. First, there is a key distinction between the operation of milk quotas on the one hand and suckler cow and sheep quotas on the other. While in all cases producers receive a "quota" based upon historic levels of production, the effect of such entitlement is considerably different. In the case of milk quotas, farmers may produce up to this individual quota without fear of penalty. If the quota is exceeded, however, there is potential liability to a punitive levy on the excess production.<sup>7</sup> By contrast, farmers enjoying sheep or suckler cow quotas are not limited in the amount of production free from levy, but rather in the amount of subsidy which they receive in the form of annual premium payments. Accordingly, while milk quotas are directed at curbing production by the imposition of sanctions on excess deliveries or sales, sheep and suckler cow quotas may be seen as achieving the same end by limiting the payments which make production economically viable. Secondly, milk quotas were introduced as long ago as April 2, 1984, whereas sheep and suckler cow quotas came into effect several years later as a part of the 1992 Common Agricultural Policy reforms. Because the protection of the environment received increased weight by the time of those reforms (with the enactment of, for example, the Agri-Environment Regulation),<sup>8</sup> it may be legitimate to expect such concerns would play a more prominent role under the later regimes.

## II. MILK QUOTAS

The protection of the environment forms the background behind a number of measures contained in the milk quota legislation. In addition, it may be argued that such an effect has flowed from changes in farming practices adopted as a response to the production controls.

That having been noted, the initial implementing legislation of 1984 contained few provisions which could be considered specifically environmental.<sup>9</sup> For example, while it recognized the key importance of the dairy industry to Ireland, leading to more favorable treatment in the allocation of the national quota, this exception was largely justified on economic grounds. At the same time the United Kingdom did take advantage of the flexibility offered by the Community legislation to lessen the impact of quotas in remote areas. For example, from the inception of the quota system certain parts of

5. *See, e.g.*, FARMERS WEEKLY, Dec. 16, 1994, at 18.

6. *See, e.g.*, FARMERS WEEKLY, Mar. 19, 1993, at 14.

7. Even if a producer has exceeded his individual quota, under the system as operated in the United Kingdom, he will escape liability when there is no excess at the national level and/or (in the case of wholesale quota) at the level of the dairy which he supplies.

8. Council Regulation (EEC) 2078/92, 1992 O.J. (L 215/85).

9. For the primary initial Community legislation, see Council Regulation (EEC) 856/84, 1984 O.J. (L 90/10); Council Regulation (EEC) 857/84, 1984 O.J. (L 90/13); and Commission Regulation (EEC) 1371/84, 1984 O.J. (L 132/11). For the primary initial United Kingdom legislation, see the Dairy Produce Quotas Regulations 1984, S.I. 1984, No. 1047.

Scotland received enhanced allocations of wholesale quota.<sup>10</sup> Moreover, the following year's amendment authorized the creation of a "remote areas wholesale provision" and a "remote areas direct sales provision."<sup>11</sup> These provisions could only have environmental consequences, but again the larger motive may have been the retention of dairy industries in vulnerable areas.

Over the years it may be possible to detect a change of emphasis. Thus, as part of the "Nallet Package" in 1989, over one million tonnes of quota were made available throughout the Community to, among other categories, small producers and producers in hill areas and less-favored areas.<sup>12</sup> Following the reforms to the milk quota system effected in 1992, specific environmental measures may be identified.<sup>13</sup> Two examples may be given. First, while it remains the general principle that a milk quota may only be transferred through the medium of a land transaction, one of the derogations sanctioned by the Community legislation is for the purposes, *inter alia*, of land transfers to improve the environment or for the purposes of extensification.<sup>14</sup> Secondly, under the United Kingdom legislation, it is provided that no transfer of quota may occur which has the result of increasing or reducing the total wholesale or direct sales quota available for use by dairy enterprises within a Scottish Islands area. Accordingly, such quota is effectively "ring-fenced."<sup>15</sup>

It may also be argued that milk quotas prompted changes in farming practices with environmental impact. Prior to their introduction, evidence indicated that farmers were achieving a steady increase in yield per dairy cow, and that production was being concentrated within larger and more special-

10. The Dairy Produce Quotas Regulations 1984, S.I. 1984, No. 1047, sched. 2, para. 4.

11. The Dairy Produce Quotas (Amendment) Regulations 1985, S.I. 1985, No. 509. The same statutory instrument made available a "small producer provision."

12. See Council Regulation (EEC) 3880/89, 1989 O.J. (L 378/3); and Council Regulation (EEC) 3881/89, 1989 O.J. (L 378/5) (Nallet being the French Agriculture Minister). In the United Kingdom, this further allocation was employed to benefit, *inter alia*, family-type holdings.

13. For the main Community legislation now in force, see Council Regulation (EEC) 3950/92, 1992 O.J. (L 405/1); and Commission Regulation (EEC) 536/93, 1993 O.J. (L 57/12). For the United Kingdom legislation now in force, see the Dairy Produce Quotas Regulations 1994, S.I. 1994, No. 672, as amended by the Dairy Produce Quotas (Amendment) Regulations 1994, S.I. 1994, No. 2448, the Dairy Produce Quotas (Amendment) (No.2) Regulations 1994, S.I. 1994, No. 2919 and the Dairy Produce Quotas (Amendment) Regulations 1995, S.I. 1995, No. 254.

14. Council Regulation (EEC) 3950/92, art. 8., 1992 O.J. (L 405/1). Although the transfer of quota without land has been authorized in the United Kingdom, the ground upon which it is permitted is to improve the structure of milk production rather than improve the environment: the Dairy Produce Quotas Regulations 1994, S.I. 1994, No. 672, reg. 13, as amended by the Dairy Produce Quotas (Amendment) (No.2) Regulations 1994, S.I. 1994, No. 2919.

15. The Dairy Produce Quotas Regulations 1994, S.I. 1994, No. 672. For the definition of a Scottish Islands area, see reg. 2(1).

ized herds.<sup>16</sup> The trend was apparently not unacceptable to the Community institutions. The initial legislation contained a clear statement that the drive to curb milk production should not be permitted to ossify structural change.<sup>17</sup> To a considerable extent, these twin objectives seem to have been met.<sup>18</sup> While there is considerable variation throughout the Community, the overall picture appears to be that of growing dependence on ever fewer producers milking ever larger herds. There can be little doubt that this has resulted in a migration of production towards the developed dairy regions of Member States—in the absence of government policy to the contrary.<sup>19</sup> In the United Kingdom such movement was accelerated by the vigorous trade in quotas, with the concomitant advantage enjoyed by farmers with the resources to fund the purchases necessary to meet their demands. The North Western Region of England provides a useful illustration. Although it too has suffered a very substantial fall in the number of registered producers, it has not only remained the region with the greatest number in total, but also increased that lead in percentage terms.<sup>20</sup>

The shift towards larger herds, however, would not seem always to have led to more intensive forms of production. In particular, faced with quotas which hindered expansion, many dairy farmers appear to have directed their energies towards production of their individual reference quantity in the most cost-efficient manner. There is evidence that among the solutions adopted by United Kingdom farmers were reduced nitrogen applications to grassland and reduced purchases of concentrates.<sup>21</sup> Moreover, throughout the Community there is more general evidence of extensification.<sup>22</sup>

### III. SHEEP AND SUCKLER COW QUOTAS

By contrast, sheep and suckler cow quotas, from inception, contained a strong environmental element—as illustrated by the implementing Community legislation itself. Emphasis was laid, *inter alia*, on support for producers in less-favored areas and the maintenance of production in

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16. See, e.g., MILK MARKETING BOARD, FIVE YEARS OF MILK QUOTAS: A PROGRESS REPORT 2 (1989).

17. Council Regulation (EEC) 856/84, preamble and art. 1, 1984 O.J. (L 90/13).

18. See, e.g., E. Tollens, *The Effects of Milk Quotas on Community Agriculture, 1984-1987*, in MILK QUOTAS IN THE EUROPEAN COMMUNITY 183-92 (Alison Margaret Burrell ed., 1989).

19. See, e.g., F. Langer, *Dairy Cessation Schemes, Quota Transfers, and Regional Rigidities*, in MILK QUOTAS IN THE EUROPEAN COMMUNITY 149-57 (Alison Margaret Burrell ed., 1989).

20. MILK MARKETING BOARD, *supra* note 16, tbl. 23.

21. See, e.g., JOHN P. MCINERNEY & MICHAEL A. HOLLINGHAM, READJUSTMENTS IN DAIRYING: AN ANALYSIS OF CHANGES IN DAIRY FARMING IN ENGLAND AND WALES FOLLOWING THE INTRODUCTION OF MILK QUOTAS 28 (1989).

22. See DILLEN & TOLLENS, *supra* note 2, at 247-48. In the United Kingdom, the evidence for a decline in the stocking rate is less clear: MCINERNEY & HOLLINGHAM, *supra* note 21, at 27.

"sensitive areas" where farmers would be left without any viable alternative.<sup>23</sup> This could be regarded as a continuation of existing policy, because farmers in less-favored areas already enjoyed certain advantages. For example, even before individual quotas were applied to sheep annual premiums as from the 1993 marketing year, they could claim the full rate of premium on up to one-thousand ewes, as opposed to five hundred ewes in the case of other producers.<sup>24</sup> It is also notable that such considerations have a particular relevance to the United Kingdom, with its very considerable beef industry, and by far and away the largest number of sheep of any Member State. Indeed, under the 1989 provisions reviewing the common organization of the market in sheepmeat and goatmeat, Great Britain could receive premiums on up to 18,100,000 head, the maximum level for the rest of the Community being 45,300,000 head.<sup>25</sup> Furthermore, the scale of payments is not easy to overestimate: for the 1994 marketing year sheep annual premiums were worth some £400 million to the United Kingdom industry, all funded by the Community.<sup>26</sup>

The environmental element to sheep and suckler cow quotas finds expression in numerous specific legislative provisions. First, in the case of suckler cow quotas, the premium can only be claimed by producers whose holdings are not overstocked.<sup>27</sup> For these purposes, a prescribed maximum stocking rate has been fixed by the Community regulations. The figure for the 1993 calendar year was 3.5 livestock units per hectare of forage area, this figure decreasing on an annual basis to 2 livestock units per hectare of forage area by 1996. Without doubt, the imposition of a maximum stocking rate has great environmental potential and this has been increased by the availability of an additional "extensification premium" where the stocking rate falls below 1.4 livestock units per hectare of forage area. For the 1994 marketing

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23. Sheep quotas were introduced by Council Regulation (EEC) 2069/92, 1992 O.J. (L 215/59), amending Council Regulation (EEC) 3013/89, 1989 O.J. (L 289/1); and Commission Regulation (EEC) 3567/92, 1992 O.J. (L 362/41). Suckler cow quotas were introduced by Council Regulation (EEC) 2066/92, 1992 O.J. (L 215/49), amending Council Regulation (EEC) 805/68, 1968 O.J. (L 148/24); and Commission Regulation (EEC) 3886/92, 1992 O.J. (L 391/20). For a most helpful analysis of the common organization of the market in sheepmeat and goatmeat and of the market in beef and veal, see WILLIAM NEVILLE & FRANCIS MORDAUNT, *A GUIDE TO THE REFORMED COMMON AGRICULTURAL POLICY* (1993).

24. Council Regulation (EEC) 3013/89, art. 5(7), 1989 O.J. (L 289/1). Above those limits, the premium was paid at half rate. With the application of quotas, the role of such headage limits was overtaken, and they were discontinued as from the 1995 marketing year. Council Regulation (EC) 233/94, 1994 O.J. (L 30/9); and Commission Regulation (EC) 826/94, 1994 O.J. (L 95/8). Moreover, certain farmers in less-favored areas might also enjoy the benefit of Hill Livestock Compensatory Allowances. These remain free from individual producer quotas.

25. Council Regulation (EEC) 3013/89, art. 25(1), 1989 O.J. (L 289/1).

26. Ministry of Agriculture, Fisheries and Food, News Release No. 105/95.

27. For the Community legislation, see Council Regulation (EEC) 805/68, art. 4g & 4h, 1968 O.J. (L 148/24), as amended by Council Regulation (EEC) 2066/92, 1992 O.J. (L 215/49). The stocking density provisions also apply in the case of the Beef Special Premium Scheme (which is not subject to individual producer quotas as such, but rather a regional ceiling).

year, this additional premium amounted to £27.63 per suckler cow.<sup>28</sup> However, the effectiveness of the measures may be questioned.<sup>29</sup> The initial stocking rate could arguably be achieved without difficulty, and even 2 livestock units per forage hectare would not seem too heavy a burden. Further, for the purposes of calculating the stocking rate, only certain forms of livestock are to be brought into account: these being male cattle, suckler cows, sheep and/or goats upon which in each case premium claims have been submitted; and, where the farmer enjoys a milk quota, a notional number of dairy cows sufficient to produce that quota.<sup>30</sup> Accordingly, there is scope to develop other forms of animal husbandry, and, besides, producers with no more than fifteen livestock units are exempt from the provisions altogether.

Secondly, in the case of both sheep and suckler cow quotas, restrictions are placed on transfers between "sensitive zones." As indicated, the Community legislation emphasized the need to retain livestock production in those areas where it assumes particular economic importance. The United Kingdom carried such requirements into effect by imposing "ring-fences" of far greater stringency than those which are in place under the milk quota regime.<sup>31</sup> In all, seven "sensitive zones" have been designated, there being a clear distinction between less-favored and other farming areas. Permanent transfers and leases of quota can be effected, as a rule, only between producers whose holdings are situated in the same sensitive zone.<sup>32</sup> The exception to this general rule re-emphasizes its environmental tenor: permanent transfers and leases may be made from producers whose holdings are situated in the less-favored areas of Great Britain to producers whose holdings are situated in the rest of Great Britain where, among the other conditions, the transferor or lessor is participating in certain qualifying environmental schemes that involve extensification of livestock production.<sup>33</sup>

Thirdly, in principle a producer may not lease his quota continuously, so as to maintain a link between entitlement to premium and production. However, the United Kingdom exercised the derogation offered by the initial Community legislation to relax this restriction in the case of leases connected

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28. Ministry of Agriculture, Fisheries and Food, News Release No. 255/94.

29. See NEVILLE & MORDAUNT, *supra* note 23, at 72-77.

30. Small producers (farmers supplying milk or milk products with a quota of no more than 120,000 kilograms) remain eligible for Suckler Cow Premium: Council Regulation (EEC) 125/93, 1993 O.J. (L 18/1) (raising the limit from 60,000 kilograms). Direct sales are, however, permitted.

31. For this concern to protect vulnerable rearing areas, see 549 PARL. DEB., H.L. (5th ser.) 486-87.

32. The Sheep Annual Premium and Suckler Cow Premium Quotas Regulations 1993, S.I. 1993, No. 1626, regs. 8-9 & sched. 1. More precisely, the seven sensitive zones are: less-favored farming areas in England; less-favored farming areas in Wales; less-favored farming areas in the Scottish Highlands and Islands; other less-favored farming areas in Scotland; the rest of Great Britain; less-favored farming areas in Northern Ireland; and the rest of Northern Ireland. Where a holding comprises "agricultural area utilised for farming" in more than one sensitive zone, see reg. 3.

33. *Id.* at reg. 9. The same derogation applies as between producers whose holdings are situated in the less-favored and other farming areas of Northern Ireland.

with certain environmental programs.<sup>34</sup> That having been noted, the derogation has in turn been restricted—although the objective of the amendment is again to comply with the growing imperative of environmental protection. Thus, producers who enter into an extensification program in accordance with the Agri-Environment Regulation after July 21, 1994, may lease quotas only under certain prescribed conditions, one of which is that the lease must be in favor of a producer, participating in certain other extensification measures, who requires the acquisition of premium rights.<sup>35</sup>

Fourthly, environmental considerations played a significant role in the constitution of the national reserve. The Community provisions required that, over and above the main national reserve, each Member State should create an “additional reserve” to be allocated exclusively to producers in less-favored areas. The latter reserve was to be equal to one percent of total individual quotas within such areas.<sup>36</sup> In the United Kingdom, the Community provisions were carried into effect by creating a national reserve with seven divisions corresponding to the seven sensitive zones (the “additional reserve” being established separately for those zones which covered the less-favored areas and added to the respective divisions).<sup>37</sup> Accordingly, there was significant environmental bias in the amount of quotas available for allocation from the various divisions of the national reserve. By way of illustration, for the 1993 marketing year there were initially some 86,000 units of sheep quota available for the division covering the English less-favored areas, as opposed to some 78,000 units for the division covering “the rest of Great Britain” (i.e. all those parts of Great Britain outside the less-favored areas).<sup>38</sup>

In making allocations from the national reserve, significant weight is attached to environmental considerations. In particular, for the 1993 and sub-

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34. Commission Regulation (EEC) 3567/92, art. 7(4), 1992 O.J. (L 362/41) (in respect of sheep quotas); Commission Regulation (EEC) 3886/92, art. 34(3), 1992 O.J. (L 391/20) (in respect of suckler cow quotas); and the Sheep Annual Premium and Suckler Cow Premium Quotas Regulations 1993, S.I. 1993, No. 1626, reg. 10.

35. For the amending Community legislation, see Commission Regulation (EC) 1720/94, 1994 O.J. (L 181/6) (in respect of sheep quotas); and Commission Regulation (EC) 1719/94, 1994 O.J. (L 181/4) (in respect of suckler cow quotas). See also Commission Regulation (EC) 1847/95, 1995 O.J. (L 177/32) (in respect of sheep quotas); and Commission Regulation (EC) 1846/95, 1995 O.J. (L 177/28) (in respect of suckler cow quotas). For the amending United Kingdom legislation, see the Sheep Annual Premium and Suckler Cow Premium Quotas (Amendment) Regulations 1994, S.I. 1994, No. 2894. The Agri-Environment Regulation thus receives express recognition in this context. For an example of an extensification programme under the Agri-Environment Regulation, see (in the case of England) the Moorland (Livestock Extensification) Regulations 1995, S.I. 1995, No. 904.

36. Council Regulation (EEC) 3013/89, art. 5b, 1989 O.J. (L 289/1), as inserted by Council Regulation (EEC) 2069/92, 1992 O.J. (L 215/59) (in respect of sheep quotas); and Council Regulation (EEC) 805/68, art. 4f, 1968 O.J. (L 148/24), as amended by Council Regulation (EEC) 2066/92, 1992 O.J. (L 215/49) (in respect of suckler cow quotas).

37. The Sheep Annual Premium and Suckler Cow Premium Quotas Regulations 1993, S.I. 1993, No. 1626, regs. 12-13.

38. Ministry of Agriculture, Fisheries and Food, News Release No. 429/93. The number of units was subsequently increased to over 130,000 and about 160,000 respectively: Ministry of Agriculture, Fisheries and Food, News Release No. 71/94.

sequent marketing years, the producers accorded the highest priority were those who were participating in specified environmental schemes or party to specified environmental agreements during the reference year for the determination of individual quotas—and who consequently received a lower allocation than producers following more conventional farming practices.<sup>39</sup> This priority is an undoubted privilege in view of the limited amount of quota available. Indeed, of the seven categories of eligible sheep producer, only the first two received their full entitlement from the national reserve in 1993.<sup>40</sup>

A final example is provided by the subsequent introduction of measures authorizing Member States to control the right to premiums on environmental grounds. In the context of the sheepmeat and goatmeat regime, it was expressly recited that “environmental protection has become an important element which must be taken into consideration.”<sup>41</sup> Member States received the right to limit or abolish premium payments if producers did not comply fully with national rules established to meet this objective (subject to the principle of proportionality). Similar provisions apply under the beef and veal regime.<sup>42</sup> In the United Kingdom, these derogations have been the source of national rules to prevent “overgrazing” or the use of “unsuitable supplementary feeding methods.”<sup>43</sup> For such purposes, “overgrazing” is defined as grazing land with livestock “in such numbers as adversely to affect the growth, quality or species composition of vegetation (other than vegetation normally grazed to destruction) on that land to a significant degree.” The sanctions for the breach of these rules are severe. For example, in England

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39. The Sheep Annual Premium and Suckler Cow Premium Quotas (Amendment) Regulations 1993, S.I. 1993, No. 3036. The reference years were respectively 1991 for sheep quotas and 1992 for suckler cow quotas. These provisions would seem directed to precluding any repeat of the difficulties experienced by the “SLOM producers” under the milk quota system (i.e. those producers who had unlawfully been excluded from entitlement to quota by reason of their participation in a non-marketing or conversion scheme during their Member State’s reference year).

40. Ministry of Agriculture, Fisheries and Food, News Release No. 420/94. The protection of the environment may be regarded as instrumental in the claims of other categories of producer, for example, Category 4 for the 1993 marketing year (those reverting from arable to livestock farming under, *inter alia*, Environmentally Sensitive Area Schemes) and Category 5 for the 1993 marketing year (those following a plan under the Community scheme for organic agriculture). For a challenge to the implementation of the national reserve provisions in the United Kingdom (and, more specifically, the extent of the discretion enjoyed by Member States with regard to the “developers” category, see *R. v. Ministry of Agriculture, Fisheries and Food, ex parte National Farmers Union*, [1995] 3 C.M.L.R. 116.

41. Council Regulation (EC) 233/94, preamble, 1994 O.J. (L 30/9).

42. Council Regulation (EEC) 125/93, 1993 O.J. (L 18/1); and, subsequently, Council Regulation (EC) 3611/93, 1993 O.J. (L 328/7). Further, overgrazing sanctions are imposed in the case of Hill Livestock Compensatory Allowances.

43. The Sheep Annual Premium Regulations 1992, S.I. 1992, No. 2677, as amended by the Sheep Annual Premium (Amendment) Regulations 1994, S.I. 1994, No. 2741; the Suckler Cow Premium Regulations 1993, S.I. 1993, No. 1441, as amended by the Suckler Cow Premium (Amendment) Regulations 1994, S.I. 1994, No. 1528 and the Suckler Cow Premium (Amendment) (No. 2) Regulations 1995, S.I. 1995, No. 1446; and the Beef Special Premium Regulations 1993, S.I. 1993, No. 1734, as amended by the Beef Special Premium (Amendment) Regulations 1994, S.I. 1994, No. 3131.

and Wales, if the Minister forms the opinion that any parcel of land is being overgrazed, he may notify the occupier as to the maximum number of animals which may be grazed or maintained on that land for a given marketing year of the relevant scheme. No Community premium may be paid over and above the stipulated maximum. If it is exceeded, the Minister has the power to withhold or recover all or part of the premium otherwise payable or paid for that year. Of some importance in this context is the fact that, in assessing whether land is being overgrazed, the Minister may take into account the number of other animals likely to be grazed and maintained, which would seem to include not only those under the relevant scheme, but also those under other schemes—indeed, those outside Community schemes altogether.<sup>44</sup> Accordingly, environmental concerns find full expression—to the extent that the aims embrace the maintenance of species diversity.

In addition to these specific legislative provisions, strong arguments have been put forward that environmental consequences may flow from the fact that sheep and suckler cow quotas are “producer-based.” In particular, when the producer is a tenant there seems to be no requirement that the landlord consent to any lease or, more importantly, permanent transfer.<sup>45</sup> As a result, there is great concern that landlords are unable to prevent their tenants from selling quotas away from upland holdings where sheep production may be the only viable form of husbandry.<sup>46</sup> Further, this latitude extended to tenants proved a cogent factor when the House of Lords passed a Motion that the Sheep Annual Premium and Suckler Cow Premium Quotas Regulations 1993 did not contain adequate measures either to tackle the adverse economic effects which arise from the transferability of quotas from particular holdings, or to protect vulnerable livestock areas and the communities that depend on them.<sup>47</sup> While the Motion was phrased in economic and social terms, damage to the environment was perceived as an inextricable and inevitable consequence.<sup>48</sup>

It is possible to identify certain provisions which tend to mitigate against such transfers—although they do not specifically address the position of landlords vis-à-vis their tenants. For example, under the general rule already indicated, quotas cannot be permanently transferred or leased from a producer in one sensitive zone to a producer in another sensitive zone.

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44. Compare the stocking density provisions under the Suckler Cow Premium Scheme and the Beef Special Premium Scheme.

45. Compare the requirement for landlord's consent to permanent transfers of milk quota: the Dairy Produce Quotas Regulations 1994, S.I. 1994, No. 672, regs. 7(2)(b) and 13(2)(b).

46. See, e.g., P. Robinson, *Sheep Annual Premium Quotas—The Landowner's Perspective*, 12 BULL. AGRIC. L. ASS'N 2-5 (1994).

47. 549 PARL. DEB., H.L. (5th ser.) 445-94. As stated by Lord Hamilton of Dalzell (at Col. 446): “This problem becomes an issue between landlord and tenant only because an owner-occupier has less incentive to sell his quota than his tenant because . . . the sale of the quota has the effect of creating a reduction in the value of the land.”

48. *Id.* at 452-53.

Further, where the quota is permanently transferred without land, fifteen percent is to be surrendered without payment to the national reserve.<sup>49</sup>

In this context attention has focused on express provisions contained in Article 13 of Commission Regulation (EEC) 3567/92 and Article 39 of Commission Regulation (EEC) 3886/92.<sup>50</sup> Article 13 states that when implementing the sheep quota regime, "Member States may, if necessary, take appropriate transitional measures with a view to finding equitable solutions to problems which might arise in contractual relationships existing at the time this Regulation enters into force between producers who do not own all the land they farm, in the event of a transfer of premium rights or of other actions having equivalent effect." It is also stated, however, that such measures must respect the producer-linked nature of sheep quotas. Almost identical wording is employed in Article 39 with regard to suckler cow quotas. These provisions are central to the as yet undecided European Court case of *R. v. Ministry of Agriculture, Fisheries and Food, ex parte Country Landowners Association* and, in particular, it is argued that they form the basis for introducing a compensation scheme for landowners.<sup>51</sup>

#### IV. CONCLUSION

From this evidence two conclusions may be suggested. First, the protection of the environment would seem to be developing as a key feature of the various quota regimes. Thus, the Agri-Environment Regulation can provide the framework for amendment to the Sheep Annual Premium and Suckler Cow Premium Schemes, and Community legislation governing those schemes can recite that such protection has become an "important element" which deserves to be taken into consideration.<sup>52</sup> Moreover, this shift in policy is something readily articulated by politicians, with emphasis on the need to

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49. For the Community legislation, see Council Regulation (EEC) 3013/89, art. 5a(4)(b), 1989 O.J. (L 289/1), as inserted by Council Regulation (EEC) 2069/92, 1992 O.J. (L 215/59) (in respect of sheep quotas); and Council Regulation (EEC) 805/68, art. 4e(1), 1968 O.J. (L 148/24), as amended by Council Regulation (EEC) 2066/92, 1992 O.J. (L 215/49) (in respect of suckler cow quotas). For the United Kingdom legislation, see the Sheep Annual Premium and Suckler Cow Premium Quotas Regulations 1993 S.I. 1993, No. 1626, reg. 6(1). It may also be noted that, where a producer takes over any land from which a departing tenant (or sharefarmer) has removed any quota acquired under the Community legislation (other than by lease or transfer), then he may be able to apply for an allocation from the national reserve (Category II as from the 1994 marketing year): the Sheep Annual Premium and Suckler Cow Premium Quotas (Amendment) Regulations 1993, S.I. 1993, No. 3036.

50. 1992 O.J. (L 362/41); and 1992 O.J. (L 391/20).

51. Case C38/94. In its judgement delivered on November 9, 1995, the European Court held that neither the detailed rules nor any general principle of Community law required Member States to introduce a compensation scheme: *R. v. Ministry of Agriculture, Fisheries and Food, ex parte Country Landowners Association*, [1995] E.C.R. I-3875.

52. Council Regulation (EC) 233/94, 1994 O.J. (L 30/9); and Council Regulation (EC) 3611/93, 1993 O.J. (L 328/7).

build on achievements to date.<sup>53</sup> In the context of quotas, the 1992 legislation may be regarded as marking a watershed. Prior to that date, measures were in place which had environmental significance, for example the favorable treatment accorded to dairy enterprises located within a Scottish Islands area. It may be argued, however, that these measures were attributable at least as much to social as environmental concerns—although in effect they necessarily addressed the latter. By contrast, the 1992 implementing legislation conferred upon sheep and suckler cow quotas a strong environmental element, as illustrated chiefly by the stocking density provisions, ring-fencing, and the constitution of, and allocations from, the national reserve. Further, the same emphasis was unequivocally extended to the milk quota regime with such amendments as the authorization of transfers without land, or vice versa, for the purposes of, *inter alia*, extensification of production.

Secondly, it may be suggested that the sheep and suckler cow quotas provide greater scope than milk quotas for restraining intensive farming practices. While, as indicated, there is evidence that milk quotas have had such an effect, the motivation for the change would seem to have been largely economic, farmers calculating the optimum method of producing the milk necessary to fill their existing quota. Further, farmers received reference quantities for the most part free from environmental restrictions. To attach such restrictions at a later date could be regarded as different in kind to imposing conditions upon the payment of sheep annual premiums and suckler cow premiums. The position may be exacerbated by the fact that milk producers received their reference quantities (subject to cuts) for the duration of the milk quota system, while farmers with sheep or suckler cow quotas are dependent upon annual payments, improving the opportunity for the Community institutions to amend the qualifying criteria.<sup>54</sup> Accordingly, there are grounds for believing that both the history and the framework of sheep and suckler cow quotas render them a more appropriate vehicle for meeting the Community objective of environmental protection. Indeed, it may be expected that the similar considerations will apply in the case of any further quota schemes to be implemented in the future.

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53. See the speech of the Minister of Agriculture to the General Council of the Council for the Preservation of Rural England: Ministry of Agriculture, Fisheries and Food, News Release No. 237/95.

54. Under the current legislation, the milk quota system is to last until the year 2000: Council Regulation (EEC) 3950/92, art. 1, 1992 O.J. (L 405/1). That having been said, milk producers should not expect their rights to be so entrenched as to be beyond restriction. See Case C177/90, *Kühn v. Landwirtschaftskammer Weser-Ems*, [1992] E.C.R. I-35, [1992] 2 C.M.L.R. 242; see also Case C280/93, *Germany v. Council*, [1994] E.C.R. I-4973, I-5065-5066 (discussing the common organization of the market in bananas) ("Nor can an economic operator claim an acquired right or even a legitimate expectation that an existing situation which is capable of being altered by decisions taken by the Community institutions within the limits of their discretionary power will be maintained.").