Agriculture and Fisheries

Brexit Seminar Series, 6 November 2015, All Souls College

Conveners: Sir Jeremy Lever and Dr. Jeremias Prassl

Speakers:

- Martin Haworth, Deputy Director General, National Farmers' Union
- Professor Michael Cardwell, Professor of Agricultural Law, University of Leeds
- John Farnell, former Director, Conservation Policy, DG Fisheries, European Commission

Rapporteur, Marius Ostrowski

The meeting was opened by Jeremy Lever, who began the discussion by reminding those present of Patrick Minford's comments at a previous seminar about the moral and economic advantages for the UK of 'life outside the EU'. There are divergent views of the contribution that the EU makes to UK GDP, which makes it pressing to examine the effect of Brexit on every sector of the UK economy. In particular, it is important to consider what system of agricultural support payments would be operated by the UK outside the EU. Similar questions obtain for the fishing industry, but it proved surprisingly hard to find a speaker ready, willing, and able to address them—with even enquiries to DEFRA proving less than helpful.

Martin Haworth began by arguing that the question of what the impact of Brexit would be on UK agriculture is currently difficult, even impossible, to accurately answer. The UK knows the benefits and disadvantages of being in the EU, not the counterfactual situation of being outside it, especially on crucial questions such as access to markets, import protection, future UK agriculture and environmental policy, access to labour, and regulation.

This latter scenario is more difficult to know, in part because the parties supporting the 'leave' campaign have very different images of the UK outside the EU, especially regarding the UK's openness towards the rest of the world, and the size and function of the state and of supra-state government. One example of these diametric opposites are Nigel Farage and Douglas Carswell, who support Brexit for vastly different reasons—respectively, for anti-globalisation, anti-immigration, and national sovereignty reasons, as opposed to liberalisation, support for small government, and opposition to subsidies.

The UK maintains an extremely close dependent relationship with the single market, as the EU taken together represents the biggest economic bloc in the world—with a combined GDP of $18.5 trillion, higher than the USA ($17.4 trillion), China ($10.4 trillion), and Japan ($4.6 trillion). 73% of the UK's agricultural (food and non-alcoholic drink) exports go to the EU, with only a slight recent increase in exports outside the EU within the last 10 years (see fig.1).

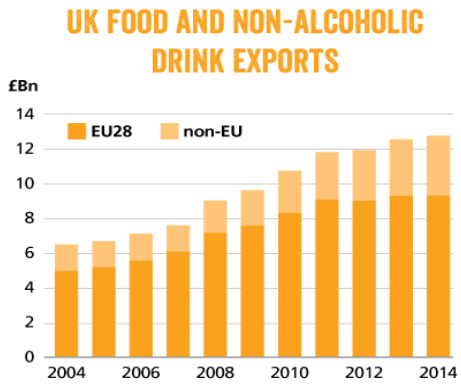

Fig.1: UK food and non-alcoholic drink exports (source: National Farmers' Union)

There would be three options for export/import market access if the UK leaves the EU. (1) *European Economic Area* (similar to Norway, Iceland). This would be poor option, as the UK would still be obliged to abide by the free movement of labour, and make substantial contributions to the EU budget. The financial benefits of Brexit would not accrue, and the UK would retain no influence over the regulations by which it would have to abide. (2) *European Free Trade Area* (similar to Switzerland). This would also be an undesirable option, as it would involve a lengthy negotiation process to set up between the UK and its EU partners. This arrangement is also already unpopular with the EU due to the history of Switzerland overturning its agreements via referenda, and in any case the agreement does not cover all the products that the UK would be aiming to export to the EU. (3) *WTO default arrangement*. In the absence of any other agreement, the UK would be obliged by WTO 'most favoured nation' rules to abide by a common (universal) customs tariff, which would allow the EU to enjoy lower UK tariffs without necessarily giving the UK any concessions in return. Also, to continue trading on current terms, the UK would need to renegotiate 65 free trade agreements, which would be difficult to achieve within the 2-year limit imposed by Brexit negotiations, and for which the civil service is poorly prepared (it currently has no trade negotiators).

With regard to farming specifically, the single farm payment scheme is the only source of income keeping many UK farmers in profit, meaning that the loss of payments would inflict serious damage on UK agriculture (see fig.2).

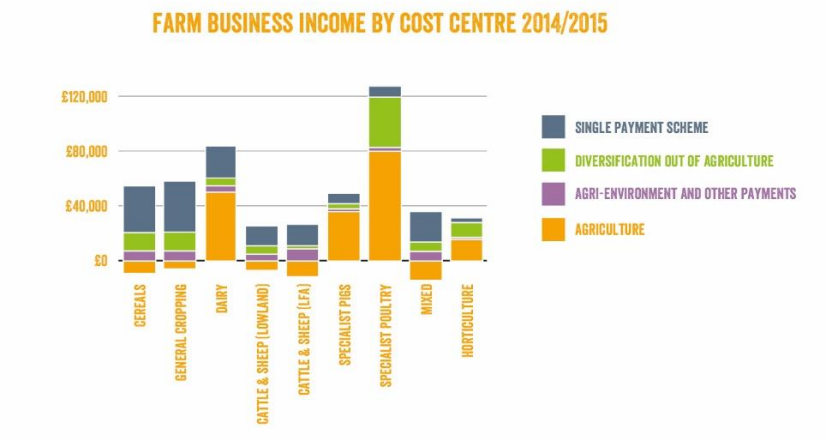

Fig.2: Farm business income by cost centre (source: National Farmers' Union)

Of course, farmers would prefer lower subsidies and higher prices, but the existence of the Common Agricultural Policy (CAP) is in part a recognition that food markets are (and are likely to stay) highly volatile.

This implies that some form of 'British Agricultural Policy' would be needed to replace the CAP. HM Treasury and DEFRA committed themselves in 2005 to the full elimination of direct payments by 2020, a position which was reaffirmed in 2011. Meanwhile, UKIP have floated the idea of using the money saved from EU budget contributions to pay UK farmers an equivalent fee to the CAP. What certainly needs to be rejected is the misguided idea of simply returning to the pre-1973 system of deficiency payments. Even then they were deeply unpopular with HM Treasure, as the required sums were almost impossible to plan for, while in the current context this sort of scheme would not be allowed under WTO rules as constituting a trade-distorting subsidy.

The UK agricultural sector is in constant demand of EU labour: of 34,513 non-UK full-time employees, approximately 22,000 (65%) are from the EU. Moreover, while there is limited data on temporary labour available, labour-intensive seasonal workers schemes are also highly dependent on EU labour, with 21,250 workers from Bulgaria and Romania alone participating. UK labour remains averse to taking on agricultural jobs, as there is no way of compensating UK workers adequately unless (and until) farming becomes a valuable job.

It is important to note that EEA membership would not exempt the UK agricultural sector from many items of EU legislation, including nearly all of the most onerous farming regulations (see fig.3). Simply put, the sometimes inappropriate or disproportionate EU regulation is the price of access to the single market.

EXAMPLES OF EU LEGISLATION APPLYING TO FARMERS

EU legislation	UK	Norway
Sustainable use of Plant Protection Products (No 128/2009)	✓	✓
Placing on the market of Plant Protection Products (No 1107/2009)	✓	✓
Nitrates Directive (No 91/676)	✓	✓
Water Framework Directive (No 2000/60)	✓	✓
Habitat Directive (No 92/43)	✓	✗
Sheep Electronic Identification (No 21/2004)	✓	✓
Welfare of Laying Hens (No 1999/74)	✓	✓
Protection of pigs – tether and saw stall ban (No 2008/120)	✓	✓

Fig.3: EU legislation applying to farmers (source: National Farmers' Union)

Moreover, since the way of applying EU legislation in UK law works according to the principle of 'gold plating', many of the excessive legal conditions in farming legislation are in fact applied by the UK government above and beyond those imposed by the EU. Some of the worst legislation is actually UK-only (such as, notoriously, pig farming restrictions), which makes it fanciful for Brexit supporters to expect freedom for UK farmers from all legislation and regulation.

Michael Cardwell, who began by acknowledging the contribution of the Yorkshire Agricultural Society Working Group in clarifying the legal and financial implications for Brexit on UK agriculture,

broadly echoed many of Martin Haworth's points. In general, there do seem to be grounds to see UK agriculture as vulnerable under Brexit:

> Departure from the EU would mean departure from the Common Agricultural Policy (CAP) and its subsidy and regulatory regimes. This would have a drastic impact. The CAP represents almost 40% of the EU budget and the largest element of the UK's EU costs.[1]

Meanwhile, there are clear attempts already underway within the current EU system to increase subsidiarity and accommodate EU membership to the repatriation of certain powers—the opposite of the alleged threat of 'ever closer union'. At the same time, since the direct payments scheme is shaped to comply with WTO rules, the UK would be subject to the same WTO constraints even if it were outside the EU.

Under the CAP, the vast majority of payments to farmers are made under 2 'Pillars': (1) Pillar I covers direct payments and is governed by Regulation (EU) 1307/2013; and (2) Pillar II covers rural development payments and is governed by Regulation (EU) 1305/2013. The importance of market management measures, governed by Regulation (EU) 1308/2013, is becoming increasingly reduced; while the horizontal regulation of financing, management, and monitoring, governed by Regulation (EU) 1306/2013, runs across the others.

Direct payments under Pillar I are fully financed by the EU. However, they have been subjected to a rising regulatory burden to ensure compliance with the substantial 'greening' of the CAP. In other words, the receipt of direct payments has become dependent upon farmers observing obligations in respect of the environment; public, animal and plant health; and animal welfare (cross-compliance). Further, as of 2015, 30 per cent of direct payments are specifically allocated to agricultural practices beneficial for the climate and the environment.

Rural Development Payments under Pillar II are, in principle, co-financed by member states, who draw up their own Rural Development Programmes for approval by the European Commission. As with Pillar I direct payments, rural development payments are subject to cross-compliance. For instance, in England, it is envisaged that 87% of the Pillar II budget will be spent on the environment over the period 2014-2020. Even within this direct payment regime, however, there has also been a substantial increase in member states' discretion in terms of the implementation of these regulations.

Overall, the vast proportion of CAP spending is now direct payments, with much less being spent on market intervention than before:

> In 1992 market management represented over 90% of total CAP expenditure, driven by export refunds and intervention purchases. By the end of 2013 it dropped to just 5% as market intervention has become a safety net tool for times of crisis and direct payments are the major source of support.[2]

The provisional figure for total UK direct payments in 2014 amounted to £2.9bn (of which the Single Payments Scheme under Pillar I accounted for £2.3bn and agri-environmental schemes under Pillar II accounted for £503m).

The level of direct payments to farmers post-Brexit is likely to be greatly reduced, as calculated by HM Treasury and DEFRA:

> EU spending on agriculture would be based on the current Pillar II and would support these objectives as appropriate, allowing a considerable reduction in total spending by the EU on agriculture and bringing this into line with other sectors.[3]

At this point, it is worth reiterating that it can be difficult for farmers to operate a profit without support from direct payments, this being particularly the case for hill farmers, which means that either direct

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[1] House of Commons Library, *Leaving the EU*, Research Paper 13/42 (2013), p.54.

[2] European Commission, *Overview of CAP Reform 2014-2020* (Agricultural Policy Perspectives Brief No 5, December 2013), p.4.

[3] HM Treasury and DEFRA, *A Vision for the Common Agricultural Policy* (2005), p.4.

payments will have to be continued or a viable replacement found. Indications are that post-Brexit the UK government would favour support moving 'up the hill' to farmers participating in Pillar II agri-environmental schemes:

> The Minister described income for farmers as being at the top of his list of objectives for the reformed CAP, but emphasised that he did not mean this to be achieved through subsidies [with the exception of support under Pillar II for] 'farmers in the uplands and in the hills'.[4]

Moreover, these agri-environmental schemes would need to be financed entirely by UK resources and, since they are multiannual (e.g., 5 years), the financial calls on UK resources would be ongoing, with legacy schemes incurring longer-term obligations.

Brexit might offer the opportunity to reduce environmental regulation. However, there would remain the UK's own 'national designations' (such as Sites of Special Scientific Interest), which predate EU membership, as well as international agreements (such as the Convention on Biological Diversity). Further, the cross-compliance obligations that the UK incurs through EU membership are in any event regarded as mandating no more than international guidelines for 'good agricultural practice' (for example, in relation to nitrate pollution). For instance:

> [i]t is not clear how far the UK might withdraw from the [Habitats] Directive's requirements if it withdrew from the EU because the UK has a heritage in this policy area.[5]

On top of this, regional differentiation prompts different environmental priorities in the devolved UK administrations: thus, in Scotland, 86% of all agricultural land is located on less-favoured-area holdings.

Massive material improvements in animal welfare standards within the UK are reinforced by EU membership, but Brexit may offer the potential for achieving even higher standards. This is because much EU farm animal welfare legislation is directed to achieving 'minimum standards' (e.g., Council Directive 2008/120/EC, which lays down minimum standards for the protection of pigs), whereas the UK has a tradition of anticipating or exceeding these standards (e.g., sow stalls in the pig sector, banned in the UK from 1 January 1999, but only made applicable to all holdings under EU legislation on 1 January 2013, and then subject to exceptions). Accordingly, Brexit may see the UK continue further in this direction of travel and such a 'race to the top' (as opposed to a 'race to the bottom') could well be reinforced via private/industry standards, linked with certification bodies, which set benchmarks way above the EU-mandated level in order to gain market status.

With respect to GMO cultivation, EU member states now enjoy increased autonomy, following the enactment of Directive (EU) 2015/412 of the European Parliament and of the Council, under which it is possible for them to restrict or prohibit the cultivation of GMOs in their territory. On the same basis, it has also been proposed that member states be allowed to restrict or prohibit the use of GMOs for food or feed purposes in their territory under COM(2015) 177, although the European Commission's proposal was recently rejected by the European Parliament. Accordingly, in the case of GMOs, there has already been a degree of 'repatriation' at the EU level, with a corresponding extension of national competence. Specifically, this extension of competence has seen different approaches adopted to the cultivation of GMOs within the UK, with 'opt-outs' in respect of, for example, Monsanto's GM maize MON 810 having already been demanded for Scotland, Wales, and Northern Ireland, but not England.

Likewise, regarding the UK's relationship with the WTO, Brexit would not change the fact that the UK remains subject to the rules and parameters imposed by the WTO. After all, the UK has been a founding contracting party of the GATT as well as a member of the WTO since its inception. However, post-Brexit, the position would be complicated by the fact that trade negotiations have taken place under

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[4] House of Commons Environment, Food and Rural Affairs Committee, *The Common Agricultural Policy after 2013*, HC 671-I, paras 48 and 50.

[5] House of Commons Library, *Leaving the EU*, Research Paper 13/42 (2013), p.60.

the umbrella of the EU and binding commitments have been undertaken at EU level (e.g., as to the permitted level of domestic support that can be given to farmers under the Agreement on Agriculture). This raises some clear issues, such as how the permitted levels of domestic support should be allocated between the UK and the remaining EU member states. As well as this, existing WTO agreements would continue to apply post-Brexit unchanged from their pre-Brexit effect, including the Agreement on Application of Sanitary and Phytosanitary Measures, and the Agreement on Technical Barriers to Trade.

The conclusions of Martin Haworth and Michael Cardwell on agriculture were thus broadly aligned. Brexit would introduce significant uncertainty to the agricultural sector, and while it is possible to construct a benign scenario that would limit the adverse effects, it is also possible to imagine that the UK could be excluded from the single market. The benign situation is largely implausible, the malign more likely, and likelier still some form of mid-point between them. Agriculture is a sector that is heavily regulated at EU level, but also one which enjoys substantial EU budgetary support. The question thus becomes how loud the 'voice' of agriculture in the negotiations following the UK's notification of intention to withdraw from the EU would be. In any case, whatever may be agreed in those negotiations, UK agriculture would still remain subject to a tapestry of ongoing obligations (such as those imposed by the WTO), with the continuation of extensive environmental and farm animal welfare regulation allowing the UK to enhance its 'heritage' of maintaining high regulatory standards.

Turning to the question of fishing, John Farnell argued that the Common Fisheries Policy (CFP) has been one of the *bêtes noires* of those who want the United Kingdom to leave the EU. It is a classic example, they allege, of the EU's tendency to overregulate and to centralise; it has led to substantial waste of natural resources through an inflexible quota system (e.g., up to a quarter of the EU's total catch is discarded); and it has forced the UK to share its fish stocks with other countries and lose the opportunity to develop its own fishing industry.

The policy was, indeed, a first, and (some would say) a disastrous attempt by the EU to manage common resources, and its record has not been a good one. It combined a deregulatory approach on the one hand—fishing vessels were allowed free access to most waters of other Member States—with a restrictive approach on competition—national fishing rights were frozen under the rule of 'relative stability'. EU Ministers were reluctant for many years to follow scientific advice in setting catch levels and they perversely offered subsidies to renew fishing fleets until only two years ago. The hope of Brexit advocates is that this country will in future be able to take control of its own marine resources, manage them more effectively, and (like Norway or Iceland) realise the full economic potential of its sea fisheries.

There are two responses to the pro-Brexit argument: (1) *It will not be as simple as that*. The idea that the UK will have a totally independent form of fisheries management very different from what exists under the CFP is implausible, for three reasons: (a) constraints on the UK's margin of manoeuvre, arising from a mixture of geography, international law and marine biology; (b) the fact that the underlying problems and trade-offs of fisheries management will remain the same; (c) because recent CFP reforms have made the policy much more to the UK's liking. (2) *Changes to UK fisheries policy post-Brexit will be modest*. They will be concentrated on a few regions, and could involve some losses (particularly in terms of access to the EU market).

The first reason why Brexit will not bring about a revolution in fisheries management is that there are natural and legal constraints on fisheries management in the UK that have nothing to do with the EU. For one thing, this is due to the UK's geography: the fish stocks that matter most to UK fisheries are and will remain shared with other coastal states in the region. In this respect, the UK is in a very different

position from Norway or Iceland (see fig.4). UK waters only reach 200 miles off NW Scotland, and fish stocks (e.g., mackerel, cod) move from one side of the dividing line to another at different stages in their life-cycle.

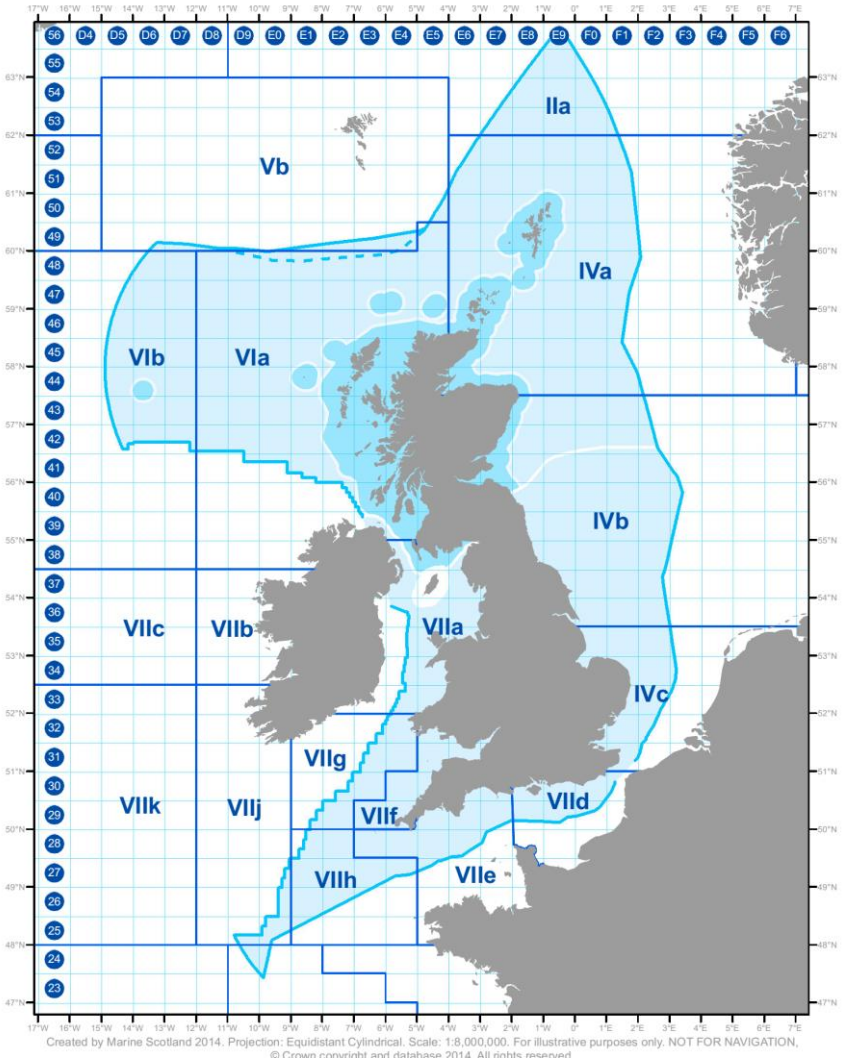

Fig.4: UK's Exclusive Economic Zone (source: Scottish Government)

Another factor is international law: on the basis of the UN Law of the Sea Convention (UNLOSC), the UK is obliged to negotiate about the management of joint fish stocks and the sharing out of fishing activity with neighbouring coastal states (with the EU for the southern North Sea, Channel and Irish Sea, with Norway for the northern North Sea, with Norway and the Faroe Islands for some wide-ranging pelagic stocks around Scotland) and would run serious risks in the event of disagreement. The largest and higher-value fish stocks (cod, haddock, flatfish, *nephrops* (scampi) in the Channel, North Sea, or the Irish Sea) would be shared, and both the EU and Norway would put pressure on the UK to keep things much as before, in terms of total catch levels and quota share-out. They would be in a position to increase catches on their side of the dividing line in the absence of agreement, which could lead to deterioration of the entire fishery. For joint stocks shared with Norway (in the northern part of the North Sea) it might be possible to agree a more conservationist policy than prevails under the CFP. Norway's interest in long-term sustainable fishing is fundamental. But Norway has interests in the waters of other EU Member States than the UK (Denmark and Sweden) that will lead it to look for deals with the EU,

which might involve allowing more EU fishing of joint UK-Norway stocks than the UK alone might wish.

A third factor is marine biology: the inherent difficulties of 'mixed fisheries', in which it is impossible to catch one fish species without taking others as 'by-catches', which is one of the main causes of 'discards', will not disappear. The shallow waters of the North Sea and Channel contain some of the most mixed fisheries in the world.

The second reason why there will not be a revolution is that the classic trade-offs of fisheries management that have caused headaches for the CFP will continue after Brexit: (1) conflict between long-term conservation of fish stocks and short-term economic activity for communities dependent on fishing; (2) conflict between protecting small-scale coastal fishing and promoting greater efficiency through industrial concentration and integration; (3) conflicts between fishing vessels using different fishing gears in the same area (e.g., beam-trawlers for flatfish affecting juvenile whitefish, *nephrops* fine-mesh fisheries affecting whitefish); (4) the fishing industry's reluctance to address 'technological creep' (fishing technology steadily becoming more efficient) by accepting effort limitation and continual reduction of fishing fleets.

No matter who is in charge of UK fisheries, these tensions inevitably lead to trade-offs and sub-optimal outcomes: slower recovery of stocks, less economic efficiency in the fleet, or higher part-time employment. The UK Government would undoubtedly be more conservationist than the sum of EU governments with sea fishing interests, but it, too, would be forced to make compromises. (It is worth noting here that the UK's 10,000 UK fishermen are concentrated in only a few Westminster constituencies.)

The third reason is that the worst features of the CFP have already been reformed (twice in the past fifteen years). Although some would say that the EU has taken far too long, many of the management policies needed to deliver effective conservation (strongly advocated by the UK) have been in place since 2014: (1) a legal obligation on the EU to manage its fish stocks through multi-annual management plans based on a measurable long-term conservation goal (MSY), which is the target for most stocks by 2020; (2) no more subsidies to remove or increase fishing capacity (vessels and equipment); (3) greater involvement of the fishing industry in policy-making through Regional Fisheries Councils; (4) closer cooperation on enforcement of the regulations (an agency of inspectorates to audit each other's performance).

As regards what might change after Brexit, the annual round of negotiations with other coastal states (with the EU acting as a single coastal state) would continue. The UK Parliament would continue be asked to endorse the outcome of international negotiations, not to approve an independent policy. But there could still be some significant changes.

Firstly, Brexit might see some improvement in the fortunes of some UK fisheries. The UK currently provides more fishing rights to the other EU member states than it obtains from them, so if fishing rights for other member states were to be cut back (presumably over a transitional period), the UK fleet would be able to increase its own fishing, especially for unshared stocks. The main areas where this could happen are off NW Scotland (for stocks such as herring, mackerel, horse mackerel, deep-sea species) and perhaps some local coastal stocks in the Channel and off SW England. This could be significant in some cases, with important employment effects for local, coastal fisheries.

Secondly, Brexit might reinforce Scottish dominance in the fishing sector, as Scottish vessels make over 60% of UK fish landings. Scotland would benefit most from the elimination of EU vessels after Brexit, as its joint stocks are shared essentially with Norway and the Faroes (possibly Denmark at the margin). As a result, the Scottish Government would want to be even more in the driving seat of UK

fisheries policy than it is today. But Scotland is also a high-quality fish producer partly dependent on high-value continental markets. It would probably not want the process of removing EU fishing from UK waters to put at risk access of Scottish fish to the EU market. So changes in fishing shares would be slow in coming, and, as already mentioned, they might not affect some the most important shared stocks.

Thirdly, access to the EU market might become more difficult. For instance, there is no free trade in fisheries products within the EEA—otherwise Iceland and Norway would have severely reduced EU northern fishing activity even further. Exports from EEA members are subject to preferential tariffs, within quantitative limits, which if applied to the UK would be a significant change from today's open access to the EU market. Similarly, UK vessels which make direct landings of fish into other member states' markets would no longer be able to do so (e.g., UK vessels landing flatfish into the high-value Netherlands market). In theory, better arrangements could be negotiated, but that would depend on how the UK chose to deal with other member states on fishing access.

John Farnell's conclusion was that, put simply, Brexit will not mean a revolution in the UK's fisheries management. The UK will remain obliged to agree its policy with its neighbours—even if one of them (e.g., Norway) is a more conservationist fisheries partner than the EU. Further, important change to the CFP has already been brought about by the UK (and others) from the inside. Finally, the changes that would come about after Brexit would largely benefit Scotland, which has both economic and political reasons for not wanting a conflict with the EU over fisheries policy.

Jeremy Lever asked how big a bargaining chip fishing would be for Scotland in the case of Brexit, with regard to Scotland seceding from the UK and rejoining the EU.

John Farnell expressed doubts that it would be a significant factor, since fishing is only a small fraction of total Scottish and UK economic activity, although it may strengthen the Scottish position as a major supplier for the overall EU fish deficit.

The question was asked to what extent the EU bias in UK agricultural exports could simply be explained by the close UK-EU geographical proximity.

Martin Howarth agreed with this assessment, but also emphasised the role of the single market in removing the tariffs on UK products.

Jeremy Lever suggested that, in light of the need to ensure fair competition and comply with state aid rules, seeing as feeding UK workers more cheaply would give advantage to UK industry, there may be need to compensate UK producers.

The question was asked whether Brexit would allow the UK to address the fundamental ineffectiveness of CAP.

Martin Howarth answered that while it will always be possible to do better, UK government policy has already been to move payments away from farming, dealing with the UK's rebate by making the lowest contribution to Pillar II of the CAP.

Michael Cardwell agreed, pointing out that payments under Pillar II are in part based on historic allocations, with the consequence that low allocations by the UK in the past have fed through to the current low levels of support. Further, the UK's pledge to move financial support 'up the hills' has to a considerable degree been financed by taking advantage of EU provisions permitting member states to shift CAP funding from Pillar I to Pillar II, from direct payments in favour of farmers to agri-environmental policies.

Finally, John Redwood added an alternative perspective from the 'Leave' campaign, arguing that discussions with EU (specifically, German) officials made it clear that there would be little wish to impose tariffs and non-tariff barriers on UK trade. It was suggested that the reason that the CFP was

such a ‘gift’ to the Eurosceptic side is the asymmetry it creates between fishing rights in the North Sea and Mediterranean. It was reiterated that the link with Norway is the most important from the UK’s perspective, and that this could arguably be better dealt with outside the EU, on the basis that the reason for Norway and Iceland remaining outside EU is the adverse effect that membership would have on their use of fish stocks.