

Agenda – External Affairs and Additional Legislation Committee

Meeting Venue:	For further information contact:
Committee Room 3 – Senedd	Alun Davidson
Meeting date: Monday, 10 October 2016	Committee Clerk
Meeting time: 13.30	0300 200 6565
	SeneddEAAL@assembly.wales

Agriculture and Fisheries

- 1 Introductions, Apologies, Substitutions and Declarations of Interest**
(13.30)
- 2 Leaving the European Union: implications for Wales – agriculture and fisheries**
(13.30 – 14.45) (Pages 1 – 20)

Dr Hazel Ann Nash, AgriAdvisor Solicitors
Professor Janet Dwyer, University of Gloucester
Professor Wyn Grant, Warwick University
Professor Peter Midmore, Aberystwyth University

Break (14.45 – 14.50)

- 3 Leaving the European Union: implications for Wales – agriculture and fisheries**
(14.50 – 16.00) (Pages 21 – 34)

Professor Richard Barnes, University of Hull
Griffin Carpenter, New Economics Foundation



4 Paper(s) to note

(16.00)

Leaving the European Union: implications for Wales – paper from Fiona Smith

(Pages 35 – 36)

5 Motion under Standing Order 17.42(vi) to resolve to exclude the public for the remainder of the meeting

(16.00)

6 Leaving the European Union: implications for Wales – consideration of evidence

(16.00 – 16.15)

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THE UNITED KINGDOM'S EXIT FROM THE EU AND THE IMPLICATIONS FOR AGRICULTURE.

To: External Affairs and Additional Legislation Committee ('Brexit' Committee) of the National Assembly for Wales.

From: Dr Nerys Llewelyn Jones on behalf of Agri Advisor Solicitors, Henllan, Pumsaint, Llanwrda, Carmarthenshire, SA19 8AX.

Agri Advisor Solicitors welcomes the opportunity to provide comment to the External Affairs and Additional Legislation Committee in relation to the UK's exit from the European Union and the implications for agriculture. This submission is provided in advance of the public meeting to be held on 10th October, 2016. Our comments are divided into (1) aspects of agricultural business which is it likely to be affected by Brexit and (2) Transition period and (3) Post Brexit.

1. ASPECTS OF AGRICULTURAL BUSINESS AFFECTED

The Common Agricultural Policy (CAP)

The CAP is the mechanism by which farmers in the UK obtain direct support for protecting and enhancing the countryside and supporting the development of rural areas. Although the UK is the Member State, implementation of the CAP takes place at a regional level, with each of the devolved administrations adopting their own interpretation and application of the EU CAP rules. The two pillar model provided by the CAP allows direct support under Pillar 1 and rural development focused measures under Pillar 2. This second pillar includes support for diversification, competitiveness as well as environmental schemes on farms. Demonstrating that subsidies received by farms are proportionate and justifiable will form an influential backdrop to the development of new agricultural policy going forward.

Promoting High Quality Agricultural Products

The EU runs a number of schemes which promote and support high quality agricultural product, for example the Protected Geographical Indicators Scheme. This scheme has been crucial in denoting the significance of certain agricultural products in the UK e.g. Welsh Lamb, Welsh Beef. Standards of animal welfare and food traceability will be required to trade with EU countries so these requirements will be needed in the new legislative framework.

EU Regulations and agriculture

There are EU Regulations relating to animal health, hygiene and welfare, the control of diseases, welfare of animals at slaughter and during transportation, and export and import of live animals and animal products. The impact of these, and those relating to the regulation of trade across the single market, have enabled UK agricultural products to have the benefit of trade agreements in place with countries such as South Africa. International trade deals are currently negotiated by the EU and include tariff reductions and import quotas providing preferential trade agreements.

2. TRANSITIONAL PERIOD

This transitional period allows for a completely new book to be written and that is an exciting challenge which policy makers must fulfil if the agricultural industry is to thrive going forward.

The majority of EU agricultural law and policy is implemented by Regulations, which have direct effect. This means that the majority of CAP legislation at MS level will need to be replaced and reviewed ostensibly. Matters which are implemented at EU level by Directives, will have been

implemented fully in to MS legislation and thus may not require as much amendment/replacement.

Withdrawal from the EU will require the European Communities Act 1972 to be repealed and given that a significant proportion of the UK's legislation (including that made by devolved legislatures) is made under section 2(2) of that Act, its repeal will lead to the automatic loss of all secondary legislation made under that power, leaving a lacuna in agricultural and environmental law across the UK. The reality is that we may end up with transitional provisions enacted which keep most existing EU law in place until such time as a full review and consideration of what to keep and what to delete is made. Achieving a consistent approach in this review is crucial as any policy or rules without statutory support are bound to be questioned through the Courts.

Agriculture, fisheries and rural affairs, animal health and welfare, food and environment are devolved competences and this has resulted in significant differences in approach within the various administrations. **Will there be a UK wide agricultural policy with regional differences or will there be separate agricultural policies for each region. The latter will inevitably lead to further divergence?**

It is envisaged that the process of withdrawal from the EU, will conclude in 2018/2019. This means that the last Basic Payment Scheme payment for UK farmers will be 2018, possibly 2019, depending on the exact timing of the use of Article 50. Agreement will have to be reached as well in relation to the funding of that claim, as payments normally made from the 1st December following through to the June thereafter. Provisions to deal with appeals and disputes relating to payments or applications made before Brexit will also be required. **Who will fund the resolution of those disputes if they fall in favour of the farmer?**

Will new entitlements will be allocated via the National Reserve, a category which was supposed to be available for young farmers and new-entrants to gain access to the industry and this payment in each year of the Basic Payment Scheme?

Agri-Environmental Schemes

Farmers will have to continue to adhere to cross compliance and greening to avoid penalties being incurred. This is likely to cause dissatisfaction among farmers and it is envisaged may lead to increased issues being identified at inspection. Most of the law relating to environmental requirements, although embedded within EU law, are UK regulations and thus will not disappear under Brexit e.g. the Birds and Habitats Directives which have been implemented fully in to UK law.

Under Pillar 2, there are a number of existing agri-environment schemes (which it is understood will be honoured by the Government) and will continue until their contracted terms are completed. The grant of new schemes seems to be on hold and decisions are awaited on this.

3. POST EU EXIT

The form of exit from the EU and the characteristics of the new relationship between the UK, devolved administrations and the EU is uncertain. Jobs, growth, investment and competitiveness and the role of agriculture in the rural economy should be a focus. The UK must adhere to the International Agreement on Agriculture. There are a number of options available:

- (i) The UK leaves the EU but remains a part of the EEA (retaining access to the single market);

The UK would follow most of the rules of the Single Market, without having a vote on how those rules are made. This could cause issues for farmers and the profitability of farming enterprises. Under this model the UK would make no contributions to or receive CAP funding and only allows

access to the EEA internal market, providing free movement of persons, goods, services and capital is guaranteed in return.

(ii) The UK leaves the EU but joins European Free Trade Association (with EU relations governed by bilateral agreements and some limited access to the single market);

The UK would negotiate a direct bilateral agreement with the EU in return for partial access to the Single Market. This is likely to involve the acceptance of free movement of persons, contribution to EU spending and compliance with most rules of the Single Market. Impact on agricultural business would be similar to under Model 1 above.

(iii) The UK leaves the EU and trades with the EU pursuant to a bilateral trade agreement. This would see the negotiation of a bespoke bilateral trade agreement between the UK and the EU. It is possible that a Free Trade Agreement created in this way could allow market access, tariff levels and quotas being agreed between the EU and UK. Again, there would be no say in how the Single Market rules were made or amended, but the crucial difference for UK taxpayers is that there would not necessarily need to be a contribution to the EU budget, except under certain circumstances to be agreed.

(iv) UK relies on membership of the World Trade Organisation (WTO). UK would use the access to the Single Market on the same basis and same tariffs as 161 members of the WTO which have not negotiated their own arrangements. This would require minimal obligations to the EU and limited access to the Single Market. There would be no contribution to the EU budget without consent. A farmer that is trading with the EU would normally be expected to comply with its rules but that would be a decision for those individual businesses and dependent on UK law and policy on that matter.

Whichever model is chosen above, there will be a new British Agricultural Policy (or several devolved policies or regional variations) to be developed.

Y Pwyllgor Materion Allanol a Deddwriaeth Ychwanegol

Goblygiadau Brexit i amaethyddiaeth Cymru

Wyn Grant, University of Warwick

Scenarios for the future relationship

Considerable uncertainty attaches to the nature of the relationship between the UK and the European Union after Brexit, and the form of that relationship will have considerable implications for agriculture. A worst case scenario would see tariffs imposed on exports of Welsh sheep meat to France, depressing the domestic price. It is quite possible that there will be a transitional period in which our relationship with the EU would be governed by WTO rules. However, the most likely outcome is a deal in which the UK has access to the single market but has made concessions in terms of a contribution to the budget and relatively few limits on the access of EU labour, e.g., confining access to those with employment offers or providing for some kind of 'emergency brake'.

Structural characteristics of Welsh agriculture

Clearly the sheep sector is of crucial importance to Wales which accounts for over a quarter of the total UK population. Cattle are also important with a greater share of the UK total than the share of the land mass. Milk is particularly important in Carmarthenshire. However, the horticulture sector is small so that migrant labour issues are of less significance in Wales.

It is important to bear in mind the importance of farming to the rural economy, particularly in the remoter parts of Wales where a traditional Welsh culture remains strong. The physical geography and climate in these areas is often challenging. Many people who are not farmers depend on the continued success of the farm sector for employment, e.g., agricultural contractors, tree surgeons, mechanics, veterinary practitioners etc.

Farm support

The Basic Payment in its present form and at its current level is to continue until 2020. For many farms, businesses, this represents the difference between making a profit and running at a loss. What will happen after 2020 is uncertain, but there is a growing consensus among policy analysts that any future general support should be focused on marginal farms in upland areas where the need is greatest. Large-scale arable farms in East Anglia should be able to be competitive without the large subsidies that they receive at the present.

There is a case for some continuation of general support given that farmers remaining in the EU will continue to receive CAP payments and there will not be a competitive level playing field. Some attention also needs to be paid to price volatility in terms of its impact on levels of production and hence on food security. Vulnerabilities to climate change could increase global price volatility.

Conservation and agri-environmental schemes will continue to be significant. There is a broader basis of political support for them. However, they are relatively short term, for example over periods of five years. All farms only have a limited area that can be taken out of production, or subject to special treatment; and still allow the farm to be a viable producer of food. Conservation and environmental protection will only be successful if the industry feels secure financially.

One sheep farmer I talked with noted, 'if the family farms are not maintained then they will not be there in the future and then who is going to look after the environment?' This farming family has been active in creating habitat areas with some grant help and noted 'This was all possible because over the years we have had a fairly reliable income source which has allowed us to improve the farm.'

One issue with such schemes is that of 'additionality', whether payments lead farmers to behave differently from what they would have done in the absence of the scheme. Whether this is the case is very difficult to assess conclusively.

Mechanisms of support

Payments that are based on head of stock produce quantity rather than quality which is not the best outcome either for the industry or the environment and they may not be compatible with WTO rules. Whether it would be possible to devise a policy instrument that rewarded quality without placing too great an administrative burden on administrators and farmers is an interesting question.

Farmers in Wales have sought to move up market and add value by producing more speciality products that can command a higher return from the market. Anything that can be done to encourage and support these efforts would represent a good strategy. However, the buying power of the supermarket chains remains a challenge.

Regulations

The EU has devised a wide range of regulations that apply to agriculture. These are embodied in numerous EU directives such as the Nitrates Directive and the Water Framework Directive. These have been transposed into law by the introduction of primary legislation or by the introduction of statutory instruments under the European Communities Act 1972.

As well as environmental legislation, there are extensive measures relating to animal health and welfare reinforced by the recognition of animals as sentient beings in the Lisbon Treaty. There are 18 EU laws setting standards on the way farm animals are produced and reared, transported and slaughtered. There are 12 laws covering wildlife.

Existing regulations should remain in place after Brexit while they are reviewed in terms of their objectives and whether they are efficient means of achieving those objectives, in particular whether they place disproportionate compliance burdens on farmers.

Conclusions

How far Wales can pursue a differentiated policy after Brexit that is sensitive to Welsh needs and priorities depends in large part on funding arrangements.

Reference to report

The report of the working party I chaired for the Yorkshire Agricultural Society on 'The Implications of Brexit for UK Agriculture' can be downloaded here:

http://yas.co.uk/uploads/files/YAS_FSN_Brexit_-_Full_Report.pdf

WELSH RURAL POLICY OUTSIDE OF THE EU

Peter Midmore*

Context

Agricultural and rural policies have been devolved to Wales since the initial Government of Wales Act (1998). Leaving the EU provides a number of opportunities. For example, there is scope to respond to farmers' concerns about complicated and time-consuming regulations, or to improve integration between rural and regional development policies. However, there will also be considerable new challenges and responsibilities to legislators and officials in the Welsh Government. In theory, complete latitude for change exists. In practice, there are a number of constraints that need to be addressed by careful consideration and creative thinking. This short introduction outlines the scope for a return to 'first principles' of agricultural and rural policies. It then uses the framework to identify important questions and explore options for development.

The farm sector in Wales

Welsh agriculture is predominantly based on pastoral livestock enterprises, due to climate, soils and topography. On average over the years 2013-15, milk and milk products accounted for 32% of gross agricultural output, cattle 24% and sheep 16%. With structural problems of weak scale economies and small farm business sizes, the result is low farm incomes in comparison with the overall UK average. However, agriculture (together with other types of rural land use) jointly produces rare ecosystems, and a cultural landscape that provides valuable recreation opportunities. These major characteristics should influence agricultural and rural policy design.

Principles of agricultural policy

In most industrial countries, agricultural policies have been designed to address the sector's multiple external cost and benefit and public good problems. Equity, in terms of spatial and industrial differentials, is also an issue. Farmers face a price-cost squeeze because their industry is composed of a large number of small businesses, but suppliers of their inputs and purchasers of their outputs are highly concentrated and powerful. Limited incomes are compounded by low mobility of factors of production, especially labour.

Thus in classical terms, objectives of policy have included (i) achieving acceptable levels and stability of farm income, (ii) providing secure supplies of safe, high quality food for consumers at fair prices (iii) contributing to the viability of rural areas, and (iv) protecting the natural environment, landscapes and biodiversity for society as a whole. Historically, both farm income support and reduction of price volatility were addressed through market interventions. In the EEC, as it then was, agricultural prices were supported through high tariffs and intervention purchasing. In the UK before accession, (and some other countries) deficiency payments were used to encourage domestic production. Both approaches were ruinously expensive in budgetary terms. Moreover, in the EU, the policy-driven incentives to intensify produced the surplus stocks of major commodities, and also caused significant and substantial environmental damage. In Wales in the 1980s, additional incentives to 'improve' grassland accentuated high sheep stocking densities and produced mainly ryegrass monocultures, localised soil erosion and some visual landscape changes, particularly in the hills. In the dairy sector, a 'technology treadmill' has had similar effects.

A contemporary approach for agricultural policy design

A return to large-scale market intervention would not only be undesirable, but also unlikely for two main reasons. On one hand, the Welsh budget, limited by the Barnett formula and its consequentials, could not

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afford it. It is unlikely that the current £260 million of CAP expenditure could be much augmented in a situation of overall revenue grant decline; more likely, it will be eroded. On the other, the UK remains a member of the WTO and is bound by its Uruguay Round Agreement on Agriculture. Very substantial changes from inherited policy would attract scrutiny, the possibility of challenge, and in the extreme, damaging retaliatory tariffs.

Trade policy is not a devolved matter, and even in the UK there is concern about a lack of expertise. A devolved administration such as Wales will find it hard to get good advice on the effect of different negotiating positions on their local interests. This also raises a more general issue; Welsh Government policy development expertise is in relation to limited. Until now, its main task has been to interpret, and locally implement, EU Agriculture Council decisions. In the new current circumstances, strengthening of in-house agricultural policymaking know-how would provide considerable benefits.

Since the late 1990s, many countries have embarked on agricultural reform processes that improve WTO-compliance. The OECD's 2002 report *A Positive Reform Agenda*¹ contributed to this process by identifying two typical reform routes. The first is decoupling of policies from production levels. This removes some incentives stimulating intensification. It also provides a much more efficient form of income support and some insulation from price volatility. The second is more focused targeting to correct external cost and benefit effects. This addresses environmental and other concerns. The result is greater market-driven incentives for agricultural production. Although debateable, these should in principle make agriculture more competitive, and contribute to both consumer welfare and the viability of rural areas.

An important additional policy stream seeks to improve the quality and consumer appeal of farm and other rural products. This provides scope for a longer term resolution of the farm income problem, but has had less emphasis, historically. For example, the current EU Rural Development Programme (Pillar Two) devotes only 20% of its total resources to farm viability, competitiveness, and sustainable forest management; Pillar Two itself is less than 40% of the overall CAP budget.²

Choices and questions

Cross-compliance requirements make direct payments more cost-effective by dealing with some wider society concerns. Even so, many countries, including in Wales, are gradually shifting emphasis from cross-compliant decoupled direct payments to targeted agri-environment schemes. Decoupled payments are not entirely incentive-compatible, because they get capitalised into land values. This makes farming a mainly hereditary occupation, and leads to concerns about limited opportunities for new entrants into farming. Agri-environment schemes can more easily be focused on specific local problems, although these are not perfect either. For instance, they mostly act indirectly by constraining inputs, outputs or modes of production, and monitoring and evaluation are consequently problematic.

Two relevant countries' policy frameworks are often discussed as examples in this context: Canada, and Norway. Canada has very few direct payments and deals with the effects of price volatility through revenue insurance schemes, half of the costs of which are borne by the federal and provincial governments. Norway has more generous direct payments than in the EU, and also maintains some market price interventions such as target prices and production quotas. It also has wide-ranging rural payments to maintain populations in areas outside the Oslo capital city region. These two extremes illustrate the boundaries of a future policy choice set. Political preference plays a major role in determining the balance between each strand of the

¹ OECD (2002). *Agricultural Policies in OECD Countries: A Positive Reform Agenda*. Paris: OECD.

² See European Commission (2013). *Multiannual Financial Framework 2014-2020 and the financing of the CAP*. Available at: http://ec.europa.eu/agriculture/cap-funding/budget/mff-2014-2020/mff-figures-and-cap_en.pdf

reform process, with direct payments favoured by an emphasis on equity, and policy targeting favoured by an emphasis on efficiency.

In conclusion, the discussion raises a number of weighty and urgent questions about Welsh agricultural and rural policy after leaving the EU.

- **Future financial support arrangements** cannot depart rapidly, or far, from a mix of income support, targeted payments to ensure the spill-over effects are managed, and measures to improve the quality and marketing of rural products. The last-mentioned is the most effective long-term solution to the farm income problem. A safe option would be to adopt inherited current EU policy wholesale, as it is unquestionably WTO-compliant. This, though, would negate the argument for bespoke measures that better address the special characteristics of the Welsh countryside. More effort on enhancing farm competitiveness could accelerate structural change, but could also result in high short-term disruption costs.
- The most important **unresolved question** at present is the shape of the post-Brexit trade agreement with the EU-27. Single market access would be the best immediate outcome for Welsh agriculture, because physical market logistics are integrated with continental supply chains. However, the current stance of the negotiating partners does not suggest a speedy or completely liberal outcome. In the short to medium term, most-favoured nation access to European markets (that is, in the absence of any immediate UK-EU trade agreement) would, for example, imply a 12.8% tariff plus €1,713 per tonne for sheep meat exports.³ While each polar outcome is possible, scenario planning for the potential consequences should be undertaken.
- Experience shows that **changes in agricultural policy**, whether major or slight, can be more efficiently introduced with careful preparation. This requires thorough study of likely impacts, including modelling, so that the intention of policy restructuring is clear, and appropriate mitigating (but emphatically transitional) measures are designed to accompany the changes. An important fulfilment of the Committee's scrutiny function should be to ascertain whether and what preparation is already under way.
- **Excellent mutual understanding** between Defra and the Welsh Government is essential, since England is Wales' largest agricultural export market. The degree to which policy frameworks can diverge from those in England should not be tested to destruction, even if Wales has a reputation for policy innovation (for example, in the widely admired *Tir Cymen* experiment and its successor schemes). Too radical a departure could be considered an unfair advantage (or disadvantage, depending) for the Welsh farm sector, and provoke a localised interregional trade dispute.

³ Swinbank, A. (2016), Brexit or Bremain? Future Options for UK Agricultural Policy and the CAP. EuroChoices, 15: 5–10. doi:10.1111/1746-692X.12126

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National Assembly of Wales – External Affairs and Additional Legislation Committee
Submission from the New Economics Foundation on the impact of Brexit on Welsh fisheries

The basics: Fish stocks as a shared and mobile resource

That fish swim around with no respect for international borders is a simple observation with profound implications for how UK fisheries should be managed. Unlike Norway, Iceland, and other countries that are often mentioned as role models for UK fisheries post-Brexit, nearly every UK fish stock is shared between the UK and another EU Member State – more often with four or five. If any one of these countries decides to increase its fishing pressure on a shared stock, then all the other countries suffer a hit to their own fisheries later on in the migratory cycle. While Britain may feel like an island nation, at sea it is very much connected with the rest of the EU. The inevitable conclusion is that shared resources require shared management.

Individual actors and overexploitation: A lesson from natural resource economics

While Norway and Iceland do not have as many shared fish stocks as the UK, their management of fish stocks that are shared with other countries provides a hint at how the UK might govern its fisheries outside of the EU – and the indication is serious cause for concern. Quota negotiations within the EU are certainly problematic (quotas set an average of 19% above scientific advice)¹, but quota negotiations for stocks shared with these non-EU countries are actually set even further above scientific advice (24%).² In fact, there are many instances (termed the mackerel war,³ herring war,⁴ and the cod wars I and II⁵) where these countries simply walked away from the negotiating table and no common limit was reached.

It is clear why the ability to walk away from quota negotiations is a tempting for the UK, but it should be acknowledged that the greater the number of independent actors, the greater the chance of breakdown and overfishing. Indeed, a key lesson from natural resource economics is that individual actors have an incentive to overexploit a common resource.

Member State division: Who gets what? Is it fair? Can it change?

After the total quota is set (formally the Total Allowable Catch, or TAC) it is divided up between Member States through a mechanism called relative stability. As the name implies, relative stability sets a fixed percentage of each quota to be allocated to the different EU Member States and is largely based on the level of historic fishing from 1973-1978. Setting a common base period was a difficult political negotiation that took six years to complete, but the principle that historic fishing patterns should be a guide to future fishing opportunities was largely accepted. These difficult beginnings for relative stability has meant a great deal of resistance to opening up what is seen as a Pandora's box. Yet changes over time, such as the specialisation of Member States in particular species and climate change moving stocks further north and into new waters, has meant increasing calls to revisit these shares.

One potentially radical change to UK quota shares allocated is if 200 nautical miles (or the median line) was claimed as UK waters and relative shares were then calculated by how long fish spend in these waters (called zonal attachment). However, it is not clear that this proposal is possible or desirable. Just as UN law specifies that 200nm is exclusively available to every country, it also specifies that there is a reasonable expectation of fishing access granted to other countries with a long history of fishing in that area. Talk of potential lawsuits has already begun.

It is also not clear that a sharp border would be desirable for UK fishers, not only because 17% of UK catches occur in what would be EU waters,⁶ but also because the industry has specialised by species more than by geography. Relaxing a 200nm border by swapping herring quota for cod quota would be mutually beneficial for the UK and other fishing nations like the Netherlands. A mutually beneficial arrangement is also important given the importance for the UK to avoid EU tariffs on fisheries products as 80% of UK caught fish is exported with 66% routed to EU consumers.⁷ In the end, claiming a 200nm border will likely soften into a renegotiation of relative shares – for the benefit of both UK and EU fisheries.

Confusion over quota allocation: Clearing the waters

Over the course of the referendum campaign, a great deal of confusion spread about fisheries and EU membership. This was most starkly the case on the issue of how fishing vessels receive their quota. Many people are aware of the decline in vessels occurring in their local port and that foreign-owned vessels own vast amounts of UK quota, but these and all other issues related to quota allocation are entirely the responsibility of Member States governments themselves. Brexit does not present any new possibilities with regard to quota allocation, but it does not take them away either, so there is room for post-Brexit reform.

Our research has shown that the UK quota allocation system is ripe for reform.⁸ As the most important driver in fisheries, quota can be allocated to reward and incentivise good environmental and socio-economic performance. In particular, the small-scale sector (under 10m in length) is important to deliver successful fisheries and thriving coastal communities but is suffering from low amounts of quota. Other organisations have proposed that post-Brexit a new market-based system of quota ownership and trading should be introduced that would inevitably concentrate fishing quotas in the hands of the largest and most profitable vessels. This should be of particular concern to Wales as over 90% of the vessels are small-scale⁹, many of which are highly dependent on quota for skates and rays.¹⁰

Post-Brexit fishing bodies: Retain where possible, replicate where necessary

While EU management of fisheries has been rightly criticised over the decades, a series of important reforms are now showing the success of the EU framework. Overfishing (fishing mortality above that which would deliver maximum sustainable yield) has declined,¹¹ stocks are growing in size,¹² many quotas are now on the rise,¹³ industry investment is increasing,¹⁴ and industry profits are increasing to high levels (a gross profit margin of 25%).¹⁵ (Note that an important fish stock for Wales, seabass, is moving in the opposite direction with biomass decreasing, although interestingly it is suffering from too little EU management, most notably by the resistance to introduce an EU quota limit for the species.)

Major reforms to the EU framework in the wake of Brexit risks reversing these positive trends. As such, the UK should seek to retain its role in institutions wherever possible and replicate where necessary. This includes NEAFC (North East Atlantic Fisheries Commission), ICES (International Council for the Exploration of the Sea), the ACs (Advisory Councils), and a whole host of scientific and research bodies.

The Great Repeal Act: How should Wales respond?

From what is known about the UK government's Great Repeal Act, it appears to be an attempt to concentrate power over Brexit negotiations and post-Brexit law-making in the hands of the UK government. This is very concerning given the need for Wales to ensure that EU fishing policy is replicated in UK law post-Brexit and that there is a strong role for the devolved administrations and the UK parliament if any EU law is going to be repealed. Given the details in this briefing, the success of Welsh fisheries depends on a strong resistance.

Endnotes

- ¹ Carpenter, G. & Kleinjans, R. (2015). *Landing the blame: Overfishing in EU waters 2001-2015*. London: New Economics Foundation. Retrieved from: <http://www.neweconomics.org/publications/entry/landing-the-blame>
- ² *Op cit.* Carpenter & Kleinjans (2015).
- ³ Davies, C. (2010). Britain prepares for mackerel war with Iceland and Faroe Islands. *The Guardian*, 22 August 2010. Retrieved from: <https://www.theguardian.com/environment/2010/aug/22/britain-iceland-faroe-islands-mackerel-war>
- ⁴ Cressey, D. (2013). EU escalates 'herring war' with Faroe Islands. *Nature.com*, 21 August 2013. Retrieved from: <http://blogs.nature.com/news/2013/08/eu-escalates-herring-war-with-faroe-islands.html>
- ⁵ Smith, L. (2010). Iceland walks out of fishing talks. *The Independent*, 13 December 2010. Retrieved from: <http://www.independent.co.uk/news/uk/politics/iceland-walks-out-of-fishing-talks-2158681.html>
- ⁶ Walmsley, S. (2016). *Brexit: Where next for UK fisheries?* Southampton: ABP Mer. Retrieved from: <http://www.abpmer.co.uk/media/1487/white-paper-brexit-where-next-for-uk-fisheries.pdf>
- ⁷ Marine Management Organisation. (2015). UK Sea Fisheries Annual Statistics Report 2014. Marine Management Organisation. Retrieved from: <https://www.gov.uk/government/statistical-data-sets/uk-sea-fisheries-annual-statistics-report-2014>
- ⁸ Carpenter, G. & Esteban, A. (2015). *Managing EU fisheries in the public interest*. London: New Economics Foundation. Retrieved from: <http://www.neweconomics.org/publications/entry/managing-eu-fisheries-in-the-public-interest>
- ⁹ Marine Management Organisation (2015). UK Sea Fisheries Annual Statistics Report 2014. Marine Management Organisation. Retrieved from: <https://www.gov.uk/government/statistical-data-sets/uk-sea-fisheries-annual-statistics-report-2014>
- ¹⁰ *Op cit.* MMO (2015).
- ¹¹ Scientific, Technical and Economic Committee for Fisheries (2016a). Monitoring the performance of the Common Fisheries Policy (STECF-16-03). Publications Office of the European Union. Retrieved from: <http://publications.jrc.ec.europa.eu/repository/bitstream/JRC100814/lb-ax-16-003-en-n.pdf>
- ¹² *Op cit.* STECF (2016a).
- ¹³ Scientific, Technical and Economic Committee for Fisheries (2016b). The 2016 annual economic report on the EU fishing fleet (STECF-16-11). Publications Office of the European Union. Retrieved from: https://stecf.jrc.ec.europa.eu/c/document_library/get_file?uuid=f519adc4-c5cf-4b0a-9fd5-0dd7b3108974&groupId=43805
- ¹⁴ *Op cit.* STECF (2016b).
- ¹⁵ *Op cit.* STECF (2016b).

Agenda Item 4.1

Y Pwyllgor Materion Allanol a Deddwriaeth Ychwanegol

Goblygiadau Brexit i amaethyddiaeth Cymru

Fiona Smith, University of Warwick

BREXIT's implications for trade in Welsh agriculture and food are still unfolding. Prior to exit, UK agri-food trade policy will be subject to EU rules. The British government is working on a post-BREXIT agri-food trade policy that covers the UK's relationship with the EU and its relationship with other non-EU countries. The UK's membership of the World Trade Organisation (WTO) means any policy must comply with the WTO's rules. Whether the UK can take advantage of some of the flexibility provided in those rules, especially on the provision of targeted domestic subsidies, is unclear as the UK may need access to some of the trade concessions negotiated by the EU on the UK's behalf. Whether it can gain access to these concessions is as yet unclear as a matter of WTO law.

Implications for UK agri-trade policy during EU exit talks

Key Welsh agri-exports to the EU, like Welsh lamb, will continue to be covered by the same EU import tariff regime and subject to the same EU animal welfare and food safety measures as currently for at least two years once the British government triggers Article 50 of the Treaty on European Union. This period may be longer if formal exit negotiations cannot be concluded in that time and the EU Council—a body made up of all the EU member heads of state—votes unanimously for the exit talks to continue. Subsidies to Welsh farmers under Pillar 1 (direct payments) and Pillar 2 (rural development payments) of the EU's Common Agricultural Policy should also continue on the same terms up to the date of UK exit. Seeking new favourable market access deals for Welsh agricultural products with non-EU countries will not be possible for the UK until it has left the EU. This is because the EU has a single, common commercial policy (including trade) covering all its member states so only the EU Council can authorise the opening of new trade talks and it is the EU Commission that negotiates the terms of those deals. Countries like Australia and the United States have indicated that they want to negotiate trade deals with the UK government post-BREXIT, but favourable agri-trade deals with these countries is unrealistic for at least the next three to five years.

Constraints on UK agri-trade policy post-BREXIT

UK-EU trade relations could take various forms post-BREXIT. A customs union between the UK and the EU would allow the UK to exit the EU but export agri-food products tariff free into the EU. This outcome, although most desirable for the UK, is unlikely to come without a reciprocal promise to allow free movement of workers into the UK. The 'Norwegian' solution

requires the UK to rejoin the European Free Trade Area (EFTA) and also the European Economic Area (EEA). The CAP is not covered by EEA. The 'Swiss' solution comprises a series of bilateral agreements negotiated separately between Switzerland and the EU; Switzerland is also a member of EFTA. Any attempt to expand the coverage of an existing free trade area, like the EFTA, to include agriculture can only be undertaken with the agreement of the other existing member countries as those countries' agricultural sectors must be covered too by any new arrangement for the revised EFTA to be compliant with the WTO rules. There may be political reluctance on the part of those countries to agree to the change. Any independent free trade area negotiated between the UK and the EU must comply with the WTO and cover 'substantially all' agri-food trade between the two. Failure to agree on any of these solutions means the EU-UK trade relationship will be governed by the WTO rules, with the possibility of high tariffs on agri-food exports from the UK to the EU. Preliminary suggestions from the UK Treasury that UK farm subsidies would be means- tested and targeted towards agri-environmental schemes could be problematic under the WTO rules if a farmer has to undertake a specific type of farming (like sheep farming) in order to be eligible for the subsidy and if the agri-environmental scheme has more than a minimal effect on the farmers' production decisions.

Non-Tariff Barriers: health & safety, labelling, animal welfare

Pre-BREXIT, many of the rules imposing agricultural and/or food product import safety restrictions, labeling requirements and standards are set by the EU and implemented by its member states, including the UK. Post-BREXIT, assuming the UK is a WTO member with initially the same rights and obligations as the EU, there is a likelihood that the UK will adopt similar, if not identical, agricultural and food product safety, labelling and standards regimes to those of the EU (although it is also possible that the UK may dilute some of those regimes with a view to securing competitive advantage). A more trade restrictive regime is unlikely to comply with the WTO rules.

Reference:

I contributed my trade law expertise to the Yorkshire Agricultural Society Report into BREXIT and UK Agriculture: http://yas.co.uk/uploads/files/YAS_FSN_Brexit_-_Full_Report.pdf