

MEP Briefing Notes on EU

Agriculture and Fishing

The Common Agricultural Policy (CAP) Introduction

The CAP is a core policy of the founding terms of the EEC. Germany obtained a low tariff zone for its exports, effectively increasing its domestic market and allowing the economic miracle propagated by Adenauer and Erhard to continue and to expand. France required in turn a protectionist regime for what it traditionally considered its key industry, agriculture. The CAP protected French farmers from increasingly competitive foreign imports, with a view to reducing the decline in its massive post-War rural populations, long seen as the backbone of French economic, social, and numerical strength, and conversely in the 1950s a pool of recruits for the Communist Party. Since then, it has become an integral part of a powerful and loud vested interest.

As it is so fundamental and existentially part of the European project, realistically scrapping the CAP is not a viable way forward. That leaves two possible options.

The first is to repatriate CAP powers and rights so they can be continued at a national level if a country so wishes, in which case it is protected under Single Market law despite being essential contradictory to it; and thence to allow national capitals to choose to individually reduce state support. One might predict that taxpayers, when they themselves are paying the subsidies, will more closely question the value of the subventions they are paying out of their own pocket. This particularly applies to net recipients.

The second possibility is that an individual country might, as part of their terms of EU association, find themselves singularly excluded from the CAP, including the obligation to financially contribute to it. There is precedent. In a microcosm, Gibraltar for example does not have the CAP apply to it. It is, after all, a rock.

In both instances, it is crucial to note that the UK is a net contributor to the CAP and as such currently gets a bad deal from the agricultural terms of its association with the EU. Either option, since they would repatriate funding to the UK, would prove to be an advantage. Depending on how rural reforms were engaged in the UK, they could also to varying degrees be of direct benefit to ordinary households into the bargain.

The principle of subsidising British farmers was not invented by the EU. It was a key part of the 1947 Agriculture Act. Ministers recalled that the UK had come close to starving thanks to interruptions in the nation's external food supply, and sought to bolster domestic farming. It did this by providing a top up subsidy for home producers, bringing up earnings to cover the gap between the world price and the home farm gate price so farmers weren't operating at a loss. The difference with the CAP, however, is that the market

price was allowed to follow the world price rather than be kept unnaturally high by tariffs. Even if the UK as a nation were to return to this approach, it would be a considerable improvement on the Common Agricultural Policy as far as consumers and Third World farmers were concerned, still protecting the short term financial interests of British farmers while democratic debate settles what long term reforms are required to secure the enduring success of the economy of the British countryside.

Costing the CAP on the UK Economy

Government has been reticent about costing the impact of the CAP on Britain. It has in the past supplied figures on the estimated impact on a given year's food prices at market rates. In 2008, the then-Chancellor referred to **CAP measures that were keeping food prices above world market rates** that at 2006 levels meant a cost to consumers of £34 billion.¹ But that figure did not include direct payments or other costs. Divided up simply on a per capita basis, that equates to a price cost of £5.3 billion to UK consumers purely from the basic policy of artificially increasing prices. Excluding material covered by the CFP regulations, total national expenditure annually comes to around £110 billion on food and drink. That suggests that the CAP accounts for around five per cent of household food prices, to which the CFP adds an element more. The official calculations are supported by (or, incidentally, perhaps originally sourced from) OECD statistics looking at "transfers from consumers" across the EU reaching €43 billion across the EU, thus supporting a ballpark cost to the UK's consumers at between £4 billion and £5 billion.

This noted, a figure larger than £5.3 billion could in fact be possible. Comparing price divergence between UK farm production and specifically the UK's New Zealand counterparts, in many products the price differentials have accelerated well beyond global averages since 1972. By not adopting Auckland-style reforms it is possible that there is also a loss of local UK market potential that should also be factored in.

The EU has moved away from its past approach to massive export subsidies, which were the most blatant breaches of fair and competitive trade. But export refunds continue to be applied to pigmeat, poultrymeat, eggs, beef and some processed foods, to the tune of around €140 million annually. But this is not the full story. Happily, a more comprehensive attempt has also been made by the TaxPayers' Alliance, and this is both relatively recent (2008) and remains unchallenged.²

This covers a number of additional components otherwise generally overlooked. The first of these is the **increased cost to taxpayers arising from social welfare**. This factor will arise again in this document with respect to the CFP, but welfare payments are based on a basket of necessities. With higher food prices, the cost of the state paying for these necessities is increased. At the time of the report, the estimated cost was running at £317 million. This figure will obviously vary depending on the comparative cost of the CAP subsidies compared with varying world food prices, plus the number

of unemployed seeking benefit in a given month, but this continues to provide a general ball park figure.

Next, there is the cost of **regulatory burdens**. Some examples of the applied costs of CAP legislation will follow later in this document, and it remains uncertain what the sum real term damage has been. One possible approach is to use the British Chambers of Commerce estimate for the increased red tape costs accruing over a recent ten-year period, which it set at £66 billion.

Simply on the basis that agriculture makes up a 0.4% share of the UK economy, this suggested that rolling back recent regulatory burdens could produce economic gains in the order of £260 million. Realistically this figure remains highly speculative. However, the examples of EU legislative burdens placed on the industry do support the thesis that a shift in policy would be a major gain, in particular for the many threshold farmers.

It is perhaps a fitting metaphor that the longest word in the German language, the impossible *Rindfleischetikettierungsüberwachungsaufgabenübertragungsgesetz*, relates to beef labelling under EU law.

That's not just a matter though of savings on management, like the £60 million cost of running a duplicate Food Safety Authority at EU level on top of the UK's Food Standards Agency. Or the £72 million spent on the staff costs of the civil servants running the CAP. Or the £5.4 million budget for their office furniture and equipment. Or for that matter the Commission's profligacy in pointlessly advertising commodities that are necessities or the CAP as a success story: €7 million goes on the budget on "Enhancing Public Awareness of the Common Agricultural Policy", and €105 million on support to "producer organisations", meaning the democratically-unhealthy practice of taxpayer funding for the agricultural lobby.

The real savings, however, come in the form of the **CAP subsidies**, lifted from the EU budget to which the UK is a net contributor. The UK share of the CAP budget has been running at around £4.7 billion a year. In net terms, the UK pays around £1 billion more than the country gets out. That means that the UK is subsidising the CAP payments to foreign farmers to that level. Even if the UK left the CAP and set up a British CAP on exactly the same lines, the UK could generate savings of a billion pounds a year to soften the blow to taxpayers in other ways.

It is not even as if the system works particularly in the favour of the UK's farmers. The UK, given the farmland it has, proportionately gets only around six-tenths of Germany's share, and five-eighths of what it should compared with Italy. France alone receives around a fifth of the entire EU budget.

In practical terms, one example of how this works is the system of milk quotas. From a capacity that was on accession roughly equivalent to market need, the introduction of subsidies to boost capacity drove thousands of smaller farmers out of dairy and led to overcapacity. This was remedied by

introducing a quota system in 1984, which obviously under the principles of the Common Market was locked to ensure that continental imports would be guaranteed. Milk above quota has been poured down the drain ever since, leading to farmers trying to sell quota rather than stay in a depressed market, the decline of the UK breeding stock, and a slump in a national industry notwithstanding the rise of huge new dairy markets in the Far East. In many ways, the 'Common Milk Policy' mirrors the generic failings of the CFP.

Combining these figures, and removing double counting of levies affecting both subsidies and till prices, **this works out for 2008 as an estimated end cost to the taxpayer of £10.3 billion a year.**

CAP Burdens

It is not just the taxpayer who is being forced to pick up the bill from this common policy. While partial, the following brief list supports the claim that the CAP has been a major contributory element to the decline of the agricultural sector.

—*The BSE crisis.* The British Government felt sufficiently obstructed by policy reached at the Agricultural Council to conduct the first significant 'empty chairing' campaign since de Gaulle's time. This was essentially down to the ban being imposed despite the British Government's scientific advice saying that the link with **variant Creutzfeldt-Jakob disease** had already been broken thanks to an offal ban eight years before. In particular ministers got the impression that policy was being pushed by self-interest by some farming ministers eager to step into market gaps, and by a focus on public fears rather than actual science. The cull and ban involved the slaughter of 3.3 million cattle at one estimated economic cost of £3.7 billion to the taxpayer and £11 billion to the industry.³ While it is questionable whether UK beef could unilaterally sold on world markets at this time, it may be posited that the EU ban contributed to the world scare, and prevented domestic sales and consumption on the basis of educated personal risk. The BSE issue in turn in large part triggered the establishment of the EU's Food Safety Authority, but more importantly a commitment to the Precautionary Principle. This entails a shift in the balance of probability in favour of the presumption of banning something where scientific data is lacking. The problems that arise have accounted for a number of cases that added costs with questionable safety benefits.

—*Foot and Mouth.* This resulted in the mass slaughter of another nine million animals, and costs to the taxpayer estimated perhaps at £4.3 billion and to the rural economy at £5 billion.⁴ Thanks in particular to journalist Christopher Booker, the public knows something of where the blame for mishandling this lay. Under EC directive 85/511, overall direction of the handling of foot and mouth became an EC competence. Under 90/423, Britain was meant to have contingency plan in place, setting out the mechanisms for an emergency vaccination programme

on outbreak. But these did not plan for a situation on the scale of Britain's; MAFF's plan fell short even of these; and while the Commission had formally approved all the member states' contingency plans in 1993, the Commission did not actually plan to check the UK scheme until 2001, by which time the epidemic had arrived. As Christopher Booker observed, "Because Maff had not complied with Commission guidance, it was forced to rely on the mass-slaughter policy which the Commission had already advised was inadequate even in an epidemic much smaller than Britain's."⁵ Without the CAP, ministry officials would have needed to take a more proactive responsibility for emergency planning, and possibly been in a position on the day to unilaterally impose a swiftly bolted-together vaccination plan rather than force a cull on an industry already wrecked by the BSE crisis.

— *Horse lasagne*. The discovery of horse meat in the food chain in several EU countries, mislabelled as beef, was a major scandal in early 2013. Yet the countries affected were unable under EU law to unilaterally ban imports of suspect foods, as there was no identified health threat. Demonstrating the legal complexities, the chairman of the Commons Select Committee, who caused major media confusion by calling for a ban which turned out to be illegal, was herself a former MEP; the Labour Spokesman who made the same mistakes had also worked in Brussels for four years. Yet despite the DG responsible for Health having previously voiced concerns about horse meat processing in abattoirs, the Single Market in its current form itself numbs national investigatory bodies, with increased reliance on paperwork filled in 'upstream' in other countries more open to fraud and organised crime.

— *Horse passports*. These were introduced to ensure that dead horses did not end up in the French food chain, as non-livestock horses may have been treated with phenylbutazone. As a result, horse movement within the EU requires transit with the documentation. DEFRA and local authority officials can enter premises or vehicles and demand to see it, with recourse to a fine of up to £5,000 or two months' imprisonment. Thus, EU regulations have added to rural burdens but without producing the end effects required. The regulations include zebras.

— *Fallen stock*.⁶ As a result of Animal Waste Directive (90/667/EEC), farmers have to bring in waste disposal of fallen livestock rather than following the old practice of just burying it locally. DEFRA estimated the cost impact on English farmers to run annually at around £14 million, and the Scottish Government their bill £11.6 million.

— *Wastewater*. The Water Framework Directive (2000/60/EC) placed obligations on farmers for the quality of the water that left their land, particularly with respect to phosphates. Along with the Habitats Directive, this can be counted as part of the EU's environmental costs, but it is one paid for by farmers. Much the same could be said of the earlier Nitrates Directive (91/676/EEC) on which the WFD was built,

and Directive 86/278/EEC which sets the rules on sludge. Worth flagging up here however are the additional burdens placed on sheep dipping by this and parallel legislation.

Tagging. EC Regulations such as (EC) No. 21/2004, establishing a system for the identification of sheep and goats through double tagging, were set up to administer the CAP financial support system, in this case to shift the paperwork away from transport logs. The 42-page Regulatory Impact Assessment by MAFF suggested end running costs in the order of £1.8 million for a scheme intended to simplify and save money.⁷ Tagging burdens are such that DEFRA in 2011 won a three year delay in introducing new rules for individually tagging sheep, saving the industry potentially as much as £11.5 million over that period.⁸

Record keeping of cattle. After BSE, Community Regulation (EC) 999/2001 imposed new paperwork demands on cows. The total costs of these regulations across Britain were officially estimated at £125.2 million per year.

— *Integrated Pollution Prevention and Control (IPPC).* EC Directive 96/61/ EC affected 40% of the UK pig herd and 70% of UK poultry. The changes required analyses of existing holding space, estimated to cost anywhere between a couple of hundred pounds and several tens of thousands of pounds, with a total estimated bill of £45.9m. At the higher end of the scale, top level permit costs per unit were estimated at £16,564, and admin costs for record keeping at £12,401. Separately, an estimated £2 billion was suggested as an associated bill for new energy efficiency requirements, though it was pointed out that costs were expected subsequently to be recouped from these forced outlays.

— *TB in cattle.* Directive 64/432/EEC set out national obligations in combating certain communicable diseases in cows and pigs. Under Council Directive 77/391/EEC the UK has to have an action plan to combat TB, following the criteria set out in Council Directive 78/52/EEC. Meanwhile, vaccination of cattle against TB is banned under EU law. These details may help explain longstanding ambivalence over how to tackle the problem, civil servants long preferring instead to fund endless cycles of seemingly identical research.

— *Welfare of animals in transport.* Council Regulation EC 1/2005 requires anyone transporting livestock for 65km, or eight hours in a round journey, to obtain a Certificate of Competence. Stockmen, hauliers and owners are required to sit a written test to gain a Certificate.

Slaughterhouses. Regulations intended to reduce animal suffering, thanks in large part to zealotry and incompetence at MAFF, ended up costing so much and being so officiously enforced that many smaller

local slaughterhouses had to close. Animals were then forced to travel further to be killed, increasing stress. To complete the travesty, there were too few British vets authorised by MAFF to conduct the inspections, meaning that foreign inspectors - who wouldn't have professionally qualified under MAFF rules, but did under mutual recognition of qualifications under EU law - were brought in. It seems that nobody took responsibility and no one was fired.

Pesticides. Directives regulating the use of pesticides were estimated to be costing the industry in the order of £60 million a year in the mid first decade of 2000. Measures were set in place to reduce this, but additional costs have started to be re-imposed. For instance, Regulation (EC) No 1107/2009 established a fees system to the producers costing £½ million to set up and £1 million annually. Questions have also been raised over the long term viability of banning a number of the chemicals given GM policy.

Food for the Most Deprived. This was originally a temporary measure intended to reduce food mountains during a bad winter in the 1980s. The budget ceiling now runs at €500 million, and most of the spending now involves buying additional food off the market. A 64-page assessment by the Court of Auditors in 2009 found the target definition vague and variable; the per capita impact negligible; the system complicated and difficult to audit.⁹ The net contributors to the EU budget (excepting France) object: Germany “finds there is no longer any consistency between the Council Regulation and the Implementing Regulation”; Sweden and the UK didn't want it paid for by the CAP; and in the Dutch case, considered it to be a social measure, not something that should be run by the EU at all. It is estimated that it reaches 18 million people, making it if nothing else a useful PR tool for the Commission.¹⁰

School subsidies. The EU similarly has provided funding for school fruit and vegetable schemes in primary schools (€90 million), and school milk programmes (€50 million), which the UK similar refuses to authorise - in part as it has historically run its own school milk programmes and the Treasury considers this duplication that under its Rebate maths it will mostly itself end up funding.

Tobacco. Tobacco subsidies have long been recognised as illogical. The plant is a pollutant, the budget at its height was immense (€1 billion), quality of the produce was such it had to be dumped overseas and only Russia and the Third World would take it, and it ran contrary to the EU's health policies including funding schemes to get people off smoking. They were intended to run out in 2009, but the deadline was extended to 2012. The EU continues, however to fund tobacco manufacturers (€1.5 million in 2010), and specific tobacco subsidies have been shifted across into general subsidies (the Single Payment). Hence for instance the Commission has allowed subsidies for 90% of tobacco farmers in Bulgaria by allowing Sofia to pay them under

general small holding rules. The UK is not (despite Sir Walter Raleigh) a tobacco producing country and has been a net contributor to this.

The above examples demonstrate the type of impact European legislation can have on British farmers, on taxpayers, and on consumers. Some of the areas that these regulations cover are areas of general interest. It is quite possible and in many cases likely that UK legislation would otherwise have been drafted to address an individual concern. In the case of animal welfare for instance, the legislation has often been instigated by the UK Government. Even so, the system is that of being drafted by committee and arranged by the Commission, then modified by mostly foreign legislators and argued out by civil servants, at best tweaked by ministers (and at worst rubber stamped), before being gold plated by civil servants. As such, nobody knows who is responsible for bad laws. It is perfectly plausible that the bad laws on slaughterhouses would never have been made, would swiftly have been repealed, and or would have cost the job of a minister, had they been instigated in Parliament rather than floated through the anonymous processes of the European Union.

The GMO Controversy

Genetically Modified crops are a subject of serious ongoing debate. It is an area where the Precautionary Principle has trumped the prospect of generating higher yields, resilient crops, and the development of foodstuffs that have better survival chances in harsher subsistence farming climates. Yet while the United States has chosen to pursue the new technology, thanks to EU committees such work has been banned on this side of the Atlantic. The result has been that research has shifted from European and in particular British laboratories over to US companies, while GM produce circulates freely on the US market and can still quietly enter the EU one.

At the time of writing, only two GM products are authorised to be grown in the EU; a variant of maize and potato used industrially for starch. But globally, in 2011 16.7 million farmers were growing GM crops.¹¹ 90% of these were in developing countries, overwhelmingly cotton growers in China and India, though by scale of farmland over 80 per cent were in the New World and approaching half of this in the US.

Meanwhile, 47 GM crops were approved for import into the EU from these countries. A significant proportion of this is animal feed, meaning British consumers already eat GM-impacted food in their burgers. This is at best somewhat ironic, at worst deeply hypocritical in the context of EU-level protestations about the Precautionary Principle in the context of various British cattle feed problems.

One academic report has estimated the impact of not introducing such GM crops into EU fields is losing farmers approaching €1 billion annually.¹² Some of these crops such as cotton are not grown in the UK, but a number, including for instance sugar beet, is. This figure is disputed but lies in the middle range of other studies, such as one by the University of Reading

(which estimated a value between €443 million and €929 million) and another by the Swedish Finance Ministry which placed the top end potential loss at €2.25 billion.¹³

To this, it is necessary to add the cost to British companies of not being able to compete in this market, thanks to extremely slow and expensive licensing arrangements that render them uncompetitive. In 2012, the global value of biotech seed was estimated to run at \$14 billion. This is not the profit margin but as it covers the sales price of the seed it does provide some indication of the potential vendor's profit, as well as the technology fees that are also included in that figure.¹⁴

It is not possible to add even a ballpark estimate of what the UK share of lost opportunity cost from the current EU arrangements. However, it is possible to observe that in addition to CAP costs highlighted elsewhere, these costs should also be borne in mind, as well as the strategic implications for Britain as a net food importer which may be partly redressed by a pragmatic and reasoned rather than emotive review of GM crops.

A Key Source of Fraud

The CAP is the largest single item in the EU budget, even if it has slowly dropped from receiving the absolute majority of funds. Nevertheless, from both the enduring scale of these finances, and the scale of the problem in their mismanagement, the CAP creates some of the most egregious cases of misspending and fraud.

Many over time have become notorious. Examples include;

- 'Tweaked' farmers' union computers
- Organised crime involvement in subsidy fraud
- Country case studies with immense populations of non-existent suckler cows and notional olive groves
- Carousel fraud, claiming grants for exports which do not qualify for aid, or multiple claims on the same produce repeatedly being shipped in a circle
- A European Commissioner forced to resign in 2012 over contacts with the tobacco lobby

These issues are not historic. Specific examples from the report from the Court of Auditors from late 2012 include the following laconic statement;

A farmer was granted a special premium for 150 sheep. The Court found that the beneficiary did not have any sheep. The corresponding payment was therefore irregular.

And again this one;

One of the Court's re-performance checks in Italy (Lombardia) was of a project to construct a two-storey building on a farm including a laboratory for

the processing of fruit and other farm products, a storage area and a terrace for drying fruits. The paying agency approved the full amount of the final payment claim of 221,205 euro following both administrative and on-the-spot checks. However, the Court found that the building had predominantly the characteristics of a private residence and not of an agricultural building and that thus the related costs were not eligible.

Supporters of the CAP suggest that tighter mechanisms are in place. This is true, but the net result has been to drive levels of misspending and fraud from ridiculous levels down to the equivalent of the worst levels of national government programmes. Supporters also state that national governments are materially to blame for allowing many of these anomalies to take place. This is also true, which is just as reasonable a reason why UK taxpayers should not be required to fund them. Only with a sense of ownership of this money will the psychology be broken that excuses fraud and waste, on the thinking that these funds are 'someone else's money'. **Restoring funding directly to national budgets, and requiring taxpayers locally to pay for farm grants, is the only meaningful tool for restoring good government in agricultural subsidy.**

Food Mountains and Wine Lakes

It is generally supposed that the days of intervention stocks are long gone. In fact, the principle of intervening to play the food market is maintained in Brussels even if the scale is smaller, and the approach one of getting rid of these stocks at an earlier stage rather than accumulating near-permanent warehouses full.

For example, EU butter stocks are currently nil after standing in 2011 at 53,573 tonnes.¹⁵ Reviewing the 2012 year as at December there were 9,003 tonnes of barley (83,442 tonnes had been sold at discount to "deprived EU citizens", almost entirely in Finland).¹⁶ There was no skimmed milk (down from 258,000 tonnes in 2009) or butter (down from 77,000 tonnes).¹⁷

It is important however to note that these reductions in stocks largely took place because of a climate of increasing world food prices which meant that stock intervention was no longer largely necessary. There is still scope for massive EU buying up of stocks in order to manage market prices, which the Commission itself readily recognises remains a strategic option. In 2013, the policy was actively endorsed. The era of wine lakes is not over.

Moreover, the reforms needed to achieve this change did not pass without incident. As the Court of Auditors explained in its review:

In 2005, when the Commission initiated its preparatory work for the latest reform of the COM, accumulated wine stocks represented the equivalent of one year of production and the structural surplus was estimated at approximately 14.5 million hl, equivalent to 8.5 % of the total production. The Commission estimated that the subsidised potable alcohol distillation scheme increased this surplus by a further 4 million hl to 18.5 million hl. The effect of

this excess of supply over demand was to put a downward pressure on wine prices at producer level.¹⁸

Over this very period of shift in the direction of suprastate management of the 'wine economy', overall levels of EU consumption of wine has actually dropped, while those countries that have seen an increase have seen this taken up by non-EU imports. This perhaps is one of the clearer examples of how attempting to macromanage the economy fails in agriculture does as it does in fully nationalised industries, even if applying a €1.4 billion wine management budget.

Costing the CAP to the Average Family

The CAP is in large part an attempt by central government to buck the market and to maintain high prices to benefit the farmers. But the result of this, as with any state subsidy, is to skew prices for the consumer who is forced to pay more for products and reduce his available cash.

It's particularly important to remember that both the CAP and the CFP both cover a staple, food. This means that food spending is disproportionately larger for poorer families as a share of overall budget than it is for wealthier ones. Higher food prices at the checkout therefore have a disproportionately larger adverse effect on the less well-off in society.

The TPA study referenced earlier looked at comparative pricings of products before the UK joined the Common Market, and was able to compare increases up to 2004 with the equivalent costs that arose to consumers in New Zealand over the same period. If UK prices had increased at the same rates as their Antipodean counterparts, items such as sausages would be a third cheaper, and you could buy sirloin for less than the current price of rump steak. Butter that is currently imported under the existing tariff barriers would come in a third cheaper.

As noted earlier, the Treasury itself in 2006 gave an estimate that meant UK consumers were paying £5.3 billion more in higher food prices in the CAP than they would outside – and this at a time of relatively high world food prices where the EU's protectionism is less noticeable.

In real terms, what that means is higher food bills alone mean an increase, to each individual, in the order of **£83.86 to average family -annual food bill**. Given the comparatively high levels of food imports the UK requires compared with other EU countries, in fact the estimate is a conservative one and over the long term tempered further by current high world food prices masking higher farm gate costs of imports.

Taken with the other costs of the CAP, in the TPA study this combined to make an estimate end cost of £10.3 billion annually. In turn this then means that the CAP imposes a burden equivalent to around **£7.65 per family per week, or £398 per year**.

Impact on the Third World

The CAP is a protectionist tool. It targets more competitive imports, including those from the Third World. In a handful of instances these have hit the UK media. Banana imports have long divided EU countries, with former colonial powers supporting preferential treatment for Caribbean production while consumers in others prefer the larger, cheaper bananas grown in Latin America in the US-dominated market. Chocolate is another example, but with a division based this time on national tastes and domestic production, the issue of whether to use animal or vegetable fats. The cocoa politics here is internal to the EU, with politicians seeking to discriminate against rivals to give their home factories an advantage by banning the word 'chocolate' for manufacturers such as Cadbury's.

The aggressive marketing of exported milk powder into the Third World caused a major scandal in the 1990s when reports explored the impact it was having on undernourished pregnant women. In fact the EU for its part has long subsidised this trade. An Actionaid report in 2011 looked at the case study of Bangladesh.¹⁹ It found that despite being a cheap milk producer, EU powdered milk imports undercut the local market and hamstrung the local dairy industry, by introducing competition that was subsidised at source and in its marketing, and which in turn drove down prices for fresh milk below production prices. EU farmers are supported by the Single Payment scheme, a protected home market due to high import tariffs, direct intervention and emergency ad hoc support programmes. Critically they also qualify for an export subsidy to offset high prices against lower world market rates, which in turn skews world prices outside of Europe lower as more produce remains on the market – a form of dumping.

CAFOD has previously estimated that without the CAP, the EU would be able to retarget around £400 million of its development aid away from compensating subsistence farmers. A UN Special Rapporteur more recently in 2011 called the CAP "a 50 billion euro contradiction of the EU's commitment to help put developing world agriculture back on its feet."²⁰

The Beneficiaries of the CAP

The Third World is not a beneficiary of the CAP. Controversially, three categories of recipients are.

The first category which is controversial from a UK perspective is that, in terms of net contributions, **non-UK farmers** proportionally benefit more. This means the UK is subsidising the CAP annually in the order of £1 billion above and beyond payments under the CAP to UK farmers: it is an additional membership cost.

The second controversial recipient is the **large scale recipient**. Thanks to considerable work by the campaigners at farmsubsidy.org, there is some

small measure of transparency now on who gets CAP funding, though it estimates that 92% of recipients are still kept secret.²¹ Notwithstanding a continuing lack of openness in many countries (not including the UK), it was able to identify 1,540 “CAP millionaires” – recipients who in 2011 received farm subsidy payments of €1 million or more. In the UK, over 1999-2009, the top five recipients from the available data were revealed to be Tate and Lyle Europe (€828 million), Nestlé UK Ltd (€197 million), Meadow Foods Ltd (€129 million), Czarnikow Group Ltd (€129 million) and Philpot Dairy Products Ltd (€88 million). By contrast, the average *income* of a hill farmer in England in 2007 (before family labour was included) was £10,786.²²

Thirdly, there is the **peculiar claimant**. The CAP continues to variously fund organisations with a tenuous link to agriculture, such as chemical companies, prisons, laboratories, hotels, mines and quarries, industrial museums, telecoms businesses, schools, golf courses, inner city councils, water companies, horse breeders, caravan sites, sports clubs, and airports.²³

In all three cases, a national approach to handling agricultural policy could save taxpayer money while directing aid – if it is decided subsidies should be retained – to farmers and countryside guardians who are deemed to need it.

What an Independent Approach Could Mean

Is there a net gain for producers from this subsidy – beyond simply pocketing taxpayer money? Supporters in the Commission think so, but the mathematics underpinning subsidy is more problematic. A Commission working paper from October 2011 looking at the impact assessment of the CAP highlights the role agriculture has in the more disjointed rural economy rather than in the general economy.²⁴ The “added value” of the CAP is identified as assisting in the development of broader transborder agendas such as the Single Market and climate change; establishing a common set of ground rules for state intervention which might generate; and subsidising a rural society. None of these objectives are quantifiable and indeed all are variously deficit costs. Yet reviewing the Commission’s three less-than-revolutionary proposals for amending the system towards 2020, the following table is all that amounts to a cost-benefit analysis²⁵:

Comparison of options by objective, EU value added and cost effectiveness

	Adjustment	Integration	Re-focus
Viable food production	++	+++	+
Sustainable management of natural resources and climate action	+	+++	++
Balanced territorial development	++	+++	+
EU value added	++	+++	+

Cost effectiveness	+	++	+
--------------------	---	----	---

The reason for the low ratings in cost effectiveness may in part be ascribed to the red tape needed to claim, and then check up on, CAP grants. Implementation costs are high. For example, the Land Management Contracts (Menu Scheme) (Scotland) Regulations 2005 provides for total grants worth around £20 million a year. The total administration costs for these scheme run annually at around £1 million, and this is considered good for rural payments programmes.

At a fundamental level though, the effectiveness of the CAP in supporting British farmers and rural communities is irrelevant. The UK taxpayer is subsidising non-UK farmers and non-UK rural communities. UK farmers lose out because the UK's agricultural sector has long been comparatively efficient, with a longer tradition of effective use of machinery in a smaller number of farms that are also on average larger. Outside of the CAP, the UK could operate exactly the same system, paying exactly the same grants directly to UK recipients only, at considerably less cost. Whatever reforms happen to the CAP, from a UK perspective the first problem is the UK is contributing to the budget at all. Changes to the system will modify by a small amount the proportion that is returned to UK nationals, and to the category of recipient, and capping the funding provide a ceiling to the amount being handed over in a given year, but the system is fundamentally skewed against the UK taxpayer.²⁶

But restoring national control over farming subsidies wouldn't simply save a large amount of money. It would also potentially allow for a major reform of how state support for the rural economy works, meaning the potential to cut the increased food bills referenced earlier as well as the tariff barriers that were harmful to the Third World. This is politically difficult, and not all of the gains that are identifiable may be politically achievable, but the possibility becomes a genuine democratic option.

Such proposals are certainly not new. The first ever publication by the celebrated campaign group Conservatives Against a Federal Europe (CAFE) in the late 1990s, written by a farmer, looked at what New Zealand had achieved in 1985 with the mass removal of subsidies.²⁷ It contrasted the bleak prognosis made by opponents of change with the actual end results, an agricultural sector that had grown quicker than the national economic average. Farm profits had indeed dropped, but productivity fifteen years on was increasing by nearly six per cent a year rather than one per cent. Suppliers had also been forced to become more competitive, growing produce to suit the market rather than to qualify for the best subsidy. The old practice under subsidies of producing so many lambs that surplus ones were rendered into fertiliser was no longer thinkable. Diversification had followed and the larger farms were globally competitive. The rural economy more broadly had remained steady. It had not been easy but it hadn't ended in calamity – around 80 rather than the predicted 8,000 farms had foreclosed. As a report by the Federated Farmers of New Zealand concluded in retrospect, "The New Zealand experience shows that in a modern economy, farmers do not need to

rely on state charity.” Even the environment was better off, with less intensive farming the norm.²⁸

A survey of New Zealand’s red tape burden in agriculture, part of the broader Quality Regulation Review, took place in 2007. It confirmed observations by farmers that new regulatory costs were being re-imposed after red tape gets cut, thanks to campaigns to improve animal welfare and environmental conditions using legislative measures. But even here the national government was able to identify tools to keep regulatory burdens to an appropriate level, ensuring proposals were compliance-costed and carried an appropriate rather than excessive burden on farmers. The same principle will never hold true for as long as the UK remains part of a federated European policy on agriculture.

29

The Common Fisheries Policy (CFP)

Reform of the CFP has been, to very varying degrees, on and - more frequently – off the political agenda for the past four decades. It is today widely recognised as flawed, damaging to UK economic interests, ecologically unsound, and long deserving of at the very least radical alteration. But even relatively minor changes, such as altering minimum mesh sizes or net designs, or changing the rules on discards, drag on. Can the system be mended, or is this an inherently irredeemable policy area? Can the restoration of fisheries management to regional control meaningfully take place in a federalised structure of this sort, or does the power need to be repatriated first to national level to remove the beggar-my-neighbour approach that CFP negotiations seem so regularly to display?

Contextually, three documents in particular stand out as key to understanding the problem. The first is a hefty report by the Royal Commission on Environmental Pollution, *Turning the Tide: Addressing the Impact of Fisheries on the Marine Environment*. Although this dates from 2004, and badly failed to include anyone actually from the industry on its working party, it provides a detailed snapshot of a number of the systemic failings inherent in federal communal management in their very practical form. It is very easy to criticise broad brush policies in the abstract without always remembering that the end result of their failings means poor management of fisheries resources, and serious damage to the communities that rely on them.

The second key text is more recent (it dates from 2009 but the statistics hold) and was published by the TaxPayers’ Alliance. Entitled *The Price of Fish*, it attempted for the first time to seriously cost the impact of the CFP on consumers and on the UK economy.

The third document looks at the issue from a different perspective. From Patrick Nicholls onwards, several frontbench Conservative spokesmen on Fisheries pursued a policy line of the need to take back control of fisheries from Brussels, for UK national waters to be managed much more closely to the fishing communities themselves. The policy was subsequently and very unfortunately quietly dropped; but enduringly, Owen Paterson during his

period as Shadow Minister for Agriculture conducted a major review into alternative fisheries policy including studies of how the sector was run by countries that were not subject to EU rules and administration. The 'Green Paper', which drew heavily from Norway's lessons having stayed outside the CFP when the UK joined, was further enriched by contributions by EU expert Dr Richard North and by long-standing campaigners Save Britain's Fish. Of its twelve proposals, first mooted in 2005, only three have even in part been taken up as part of any CFP reform programme. It demonstrates simultaneously what needs to be done still, and what can reasonably be expected within the tight limits of the current system.

Ebb and Flow of Reform?

In this instance, it's as important to understand the history of the CFP as it is to grapple with the measures that have been undertaken for its reform, and the cost of the system as it now stands. It also serves as a useful example of how negotiating actually works in the Brussels world.

This is because of one detail that is utterly fundamental in the context of a renegotiation of Britain's terms of access to the Common Market: the Common Fisheries Policy was not part of the original Common Market at all. It was bolted on by the Six, with Dutch reservations, in anticipation of the 1973 joiners (which would have included Norway) having to surrender to EEC fishermen equal access to their rich fishing grounds. It was, in sum, an additional accession cost that was added to the bill and which the French in particular calculated the acceding countries would be prepared to concede. In the event, while judging Edward Heath's character play correctly, they were otherwise proved partially wrong.

There was, from the original Treaty of Rome, reference to a common market "in the products of [...] fisheries", but this was distinct from the fisheries themselves. This was entirely logical. In international law, national waters ran to three miles, and ninety per cent of EEC catch was taken in international waters. But in the wake of the Cod War, 200 nautical mile (n.m.) limits were already looking set to become the international norm. Consequently, a regulation was drafted with uncharacteristic speed on the morning of 30 June 1970, and was passed into the *acquis communautaire* just hours before the applications from the UK, Ireland, Denmark and Norway arrived. One hesitates to use the term, but it was clearly a 'stitch up'. The legal basis used was Article 235, one of what would later become known as the so-called 'rubber articles' in that it allowed the Community *carte blanche* to do something despite there being a lack of any treaty basis otherwise.

Norway and the United Kingdom both, understandably, took exception to this. The UK backed down as it became clear that refusal to accept it would delay accession, though a concession was obtained in that a ten-year derogation was authorised for waters running up to the twelve mile limit. National waters would run out to 6 n.m, to be run through Sea Fisheries Committees; 6-12 n.m. would see rules of traditional access and grandfather rights apply by

foreign boats already visiting those waters. But the rest would fall under the CFP, meaning equal access beyond that limit. As a result of the 1972 United Nations Convention on the Law of the Sea (UNCLOS), this meant the surrender of UK national waters to other fishing fleets that would otherwise have run out to 200 nautical miles, or the middle of the relevant straits in the case of there being a nearby foreign coast. That would have left the richest fishing grounds in British hands if the country had never joined the EEC.

A measure of the impact of this surrender can best be judged by the result in Norway. That country's Fisheries Minister was Trygve Bratelli. On 19 January 1972, he wrote to his Prime Minister in the following terms:

Apart from the section in the agreement dealing with the fisheries question, I find the result of the negotiations acceptable.

The fisheries section also contains acceptable solutions with regard to the market arrangements. Also the solution found for the fisheries limits until 1982 is acceptable. During the final negotiations it turned out, however, that it was not possible to arrive at a clear, legally binding form of guarantee for what is going to happen to this point after the expiration of the 10 year period.

The political assurances contained in the special protocol and in the declaration from our side, I do not find sufficiently safeguarding. This implies in my opinion such an important weakness that I for this reason cannot vote for signing the result of the negotiations.

Mr Bratelli commendably resigned from the Government. The issue of fisheries consequently featured prominently in the debate and referendum on Norwegian accession to the EEC, and contributed largely to the success of the No campaign.

The response of the UK Government was very different. Documents have since emerged showing a deliberate strategy of playing down the significance of the fisheries deal, which the most charitable say was deceitful by ministers and civil servants. Unfortunately, this has led to ongoing confusion and obfuscation on the continuing status of the country's 6 and 12 mile waters, which remain under threat and default to EU control in the absence of repeated ongoing deferrals of existing EU rights.

Properly speaking, the CFP only came into existence in 1982. At this point, measures intended at conserving fish stocks began to be added to the basic principle of equal access. This introduced the national quota system, and with it the policy of dumping excess Total Allowable Catch (TAC) per species in huge numbers dead back into the sea. TAC and dumping would never have existed under national controls. Contrary to ministerial statements made in 1972, these in fact did end up being introduced under an early form of QMV and thus without any UK veto safeguard applying, a prospect which had not escaped the Norwegian negotiators.

CFP problems were exacerbated with the accession of Spain and Portugal to the Community. Because of their huge fleets, in particularly the Spanish, it was decided to cut the whole Community fleet.³⁰ But this was done more through a national headcount than by a share of fleet sizes. This meant that the UK had to cut its fleet by 19% by the end of 1996, while Spain had to cut its by 4%. This was doubly disproportionate as Spanish vessels, travelling further, tended to be larger with more powerful engines, and often newer; yet while funds were made available to cut up boats, many more Iberian vessels were also being produced thanks to EU boat building grants, and funds were also going to upgrade fishing harbours through separate structural funds to Spain's regions. Further cuts in 2002 continued in exactly the same vein – countries such as Denmark and Sweden to lose around a quarter of their fleet, and Spain a tenth. Meanwhile, Danish vessels were long permitted to continue 'industrial fishing' of upwards of a million tonnes of sand eels for use as animal feed, with considerable damage to the marine food chain. It was even being used to fuel a power station. Industrial fishing was still being permitted in areas that had otherwise been closed to protect endangered species, resulting in the bycatch of the fry that were supposed to be being preserved.

The net result has been that British fishing communities have lost out on access to local natural resources. With TACs long calculated on debatable scientific data, and quotas organised on the basis of annual midnight horse-trading, plus special compensatory deals for traditional access and third party waters, the CFP quickly became a poker game rather than a policy.

Some estimates suggest 85% of stocks and perhaps 60% of value come from UK waters, owing to the particularities of the comparatively shallow waters of the shelf and their rich and varied sea beds. Yet under this new arrangement British fishermen were now getting 37% of catch amounting to 12% by value. Meanwhile, the new principle of *relative stability*, locking percentage share by country, actually broke the original rules on equal market access while encouraging countries to push for larger overall TACs, so ecologically it was a disaster.

In sum, reform of the CFP from within the system has persistently been driven by the political lobbies of other countries concerned with fishing jobs, rather than the UK national interests. It is highly unlikely that this will ever change within the EU, particularly as other governments consistently assign a higher national importance to negotiating for the rights of their fishermen, while Whitehall sees them as one of the first bartering chips to be surrendered in return for blocking something else.

Perhaps the most absurd proof of the failure of the system to work in UK interests has been in how the UK civil servants have declined even to use the tools legitimately at their disposal. In particular, this means that the Hague Preference mechanism - that allows in certain conditions some quota to be taken over by local British and Irish fishermen – is rarely evoked. As ministers point out when challenged, to do so comes at the expense of other countries'

permitted catch, which is likely to annoy them in the Council meeting and thus Whitehall is peculiarly nervous using it.

The 'Business Case' Against the CFP

What does this mean in real terms, and how important would Britain's escape from the CFP actually be? Here the research undertaken by the TaxPayers' Alliance is critically important. The cost breaks down as follows:

Unemployment in the fleet and in support industries - £138 million. In 1970, there were 21,443 fishermen employed full or part time in the fishing fleet. Despite changes to international law extending national waters (which instead fell under CFP management and joint access rights), by 2006 there were 12,934 UK nationals so employed, with a quarter of the workforce aged over 55. That is not the full story, as there are officially estimated to be ten jobs on land supporting everyone at sea.

Decline in communities - £27 million. Unemployment, and reduced wage packets, has had an impact on a number of traditional fishing communities as visitors can readily observe. This is difficult to ascribe a monetary value to but one method is to compare insurance costs to neighbouring and essentially similar post code areas.

Risk to recreational fishing industry - £11 million. Changes to the management of sea angling rules are now a persistent threat. This figure represents the low end of the cost range cited.

UK share of support to foreign fishing fleets under EU grants - £64 million. The UK as a net contributor has long been paying fishermen from other EU countries to upgrade their vessels, and improve their landing facilities. The scale of support has diminished but the principle continues.

UK share of support to foreign fisheries industry under EU grants - £1 million. The EU continues to supply funds to southern member states to improve their fisheries monitoring capability, at UK taxpayer expense rather than their own.

Redeemable UK share of EU third water fishing permits (allowing for half to be re-invested in development aid) - £12 million. Third World countries have also been paid in order to allow EU boats - overwhelmingly non-UK fishing vessels - access to their waters. These agreements have long been controversial, in part owing to claims that terms have often been breached. An example is Somalia where extensive and illegal Spanish fishing has even been directly linked to pushing traditional fishing communities towards smuggling, illegal migrant transshipment, and piracy. With Spanish trawlers such as the *Arpon* even being seized by Argentina in the late 1990s, such financial agreements help buy off tensions. In just one year for which figures are

readily available, 2000, of the €137 million value of the agreements in operation, 59% went to Spanish vessels, 24% to French, and 0.1% to UK boats.³¹

Loss of comparative competitiveness - £10 million. Translating the impact of these funds, and the effect they have had on the size, capacity and horsepower of the relative fleets, suggests an additional impact cost in relative capability advantage.

Ongoing decommissioning schemes - £4 million. Decommissioning budgets vary massively over the years but this is the latest assessment, running at a low rate. Note again that as a net contributor, the UK is paying a greater share of decommissioning costs than net recipients from the EU budget such as Spain.

Foreign-flagged UK vessels - £15 million. Under EU rules, foreign skippers can buy up permits from their hard-pressed British competitors and count against British permitted stock. This is the infamous issue of the “quota hoppers”. Attempts to redress this within the UK legal system led to the Government being fined after losing the “Factortame Case” under European Law. A fig leaf of a deal was arranged in 1998 between the Blair Government and the Commission to require some measure of economic link to the UK, though in practice this remains both limited and open to legal challenge. The ruling of the 1992 *Jaderow Judgment* for instance explicitly contradicts that deal.

Administrative burden - £22 million. This is a ball park estimate of the impact of highly precise regulations and red tape that fishermen must adhere to, rather than the cost of having Fisheries staff in the Commission in addition to at national level, who would become superfluous along with their office costs on the restoration of fisheries to national and bilateral control.

Higher food prices factored into social security payments - £269 million. A largely overlooked detail is that social security payments take into account the cost of living. Higher food bills mean higher welfare payments. This sum will vary depending on those on welfare at any point in time, but the estimated increased cost of food products on the average household bill thanks to the impact of the CFP is calculated at **£186 per household per year – or £3.58 a week.**

Economic value of dumped fish - £130 million. The CFP requires surplus fish to be dumped back into the sea, rather than landed. This is despite the fact that the creatures rarely survive the process of being dragged up from a different pressure level. Other countries require the fish to be landed, to be sold and used, which also provides greater data on the real state of stocks and which can be used potentially to offset losses from fishing bans triggered earlier. Despite many years of lobbying, and the support in principle of Fisheries Commissioners since the 1990s, this policy is still to be implemented under EU management.

Combined, the total cost of the CFP from these estimates means an end loss to the UK of over £700 million annually. This, however, is far from the full picture. To this, it is necessary to add the cost **of loss of access to the waters that, without the CFP, would otherwise fall under national control and become the preserve of UK fishermen. This is estimated to be worth £2.11 billion.** With grandfather rights and bilateral deals, and with a fleet so badly mauled over the last thirty years its capacity is greatly reduced, UK fishermen would not step in to recuperate that entire figure and certainly not overnight. However, the examples of both Iceland and Norway demonstrate that unilateral sovereign rights do provide the basis for an enduring industry, and where access from third parties is permitted it can be on terms that are set beneficially for the host nation, which is what the UK would become. The fisheries agreement with Greenland, for instance, allows limited access to EU vessels within certain quotas in return for €15.1 million annually, plus €2.7 million to develop fisheries policy locally. The Faeroes, Iceland and Norway all have their own bilateral EU agreements.

The total end cost of British continued membership of the EU's fishing arrangements are correspondingly estimated, on the best available figures, to run at around £2.8 billion a year.

Environmental Damage

"I wonder how many people realize that hundreds of dead dolphins and porpoises are being washed onto the beaches of the South West of England each year? They are found with broken beaks and appalling wounds to their bodies caused as they struggled to break free of the nets intended for the sea bass.

"In one six week period, alone, 123 dolphins were found on our shores. This destruction runs parallel with the development of an offshore fishery in the English Channel for sea bass with trawlers operating in pairs dragging huge mid-water nets between them from which dolphins and porpoises cannot escape.

"The Government has done everything possible by deciding to ban the fishery within the national 12-mile limit and asking the European Union to close the offshore fishery, but that request has been rejected on the grounds of 'insufficient proof of damage', although one can hardly imagine what further proof of damage is necessary, or indeed that any of the citizens of the EU would want to consume bass caught in this appalling way."

Prince Charles, *Daily Telegraph*, 6 December 2004

By 1990, there were an estimated one million tons of herring in the North Sea. Five years later there was an estimated 24,000 tons. That same year, in 1995, it was estimated that EU boats had discarded 27 million tons of fish – China's

entire consumption over a year and a half.³² In 2000, cod catch had been set at 80,000 tons, but actual landings were only 50,000 and total surviving adult cod estimated to actually be running at 70,000 tons – less than half what was estimated as the minimum stock levels to secure the species. The most recent assessment on discarding remains the one carried out by the Food and Agricultural Organization (FAO) in 2005. This identified areas with particularly high discard rates (up to 70%) as including mixed demersal trawl fisheries widespread in the North Atlantic and in Mediterranean as well as flatfish beam trawl fisheries in the North Sea and dredge fisheries in the Mediterranean.

By contrast, countries that are able to unilaterally reform their fisheries management have begun to introduce new systems that share responsibility between responsive governments (counted in the singular, rather than acting as a committee) and the concerned parties, the fishermen themselves. As ecologist Dr David Bellamy explains:

There is currently a magnitude of difference between fisheries management in the UK and EU generally and that of countries such as Australia. There fisheries managers and the industry are working hand in hand with the environment movement in lobbying their politicians to designate more no take zones. The NGOs recognise these areas are essential for the maintenance of marine biodiversity and the industry know they are required for a continuing supply of fish for their industry. A rare win, win situation. Were but that the situation here, where the fishing industry is on the verge of collapse!³³

The Royal Commission on Environmental Pollution's report identified a number of very specific failings of management of the seas:

For every kilogramme of North Sea sole caught by beam trawl, 14kg of other species were killed and mostly discarded.

In the North Sea, 22% of cod by weight and 49% by number, and 36% of haddock by weight and 49% by number, were being discarded – essentially the dumping of juvenile fish.

Cetaceans, including porpoises and dolphins but also rare whales, were being caught in sufficient numbers to impact on overall species figures, perhaps up to 5% of total numbers in some cases.

Distant water EU vessels are badly monitored.

There have been major impacts on bird species. Fisheries discards support scavengers, and lost boat gillnets catch divers. The huge skua population, which had grown thanks to discards, has recently now had to shift to attacking other sea birds.

Fish communities have been badly affected, and fewer large fish means fish maturing younger and lower fish biomass, and a huge impact on genetic diversity within any species.

Food pyramids have changed drastically. For instance, fewer adult cod results in more of the smaller fish which they normally eat, that in turn eat cod fry before they can become adults. Starfish and urchin have benefited as well, and in any case survive dredging better.

It summarised the situation in the following terms:

Within the EU, a complex system of fisheries management has developed over many decades, but it has failed to meet many of the social, economic and environmental objectives that the Common Fisheries Policy was intended to provide. Improvements in the system are now essential.³⁴

Top of that list has to be discards, the dumping of bycatch. It is difficult to know which is the most troubling aspect of this process; its massive scale, the length it has been permitted to continue, or the unwillingness of MAFF and its successor DEFRA to publish statistics on the problem unless pressed. Thanks to rare parliamentary questions in the past, official estimates of catch discarded ran at the following levels. Note that these figures are by weight, and importantly not by individual fish count which would recognise a larger number of smaller fish and therefore increased juvenile mortality.

Percentage of catch discarded (by weight)³⁵

Species	2001	2002	2003
England			
Cod	13	22	12
Haddock	39	9	19
Whiting	63	40	64
Scotland			
Cod	23	9	12
Haddock	75	46	37
Whiting	46	52	51

It is also possible to gauge –statistically how this works out in terms of overall weight, counted in tonnes in a given year;³⁶

Estimated discards of North sea stocks by vessels registered in Scotland (Sco) and England, Wales and Northern Ireland (EWN), 1998 to 2007

Tonnes								
	Species							
	Cod	Haddock	Whiting	Plaice	Sole			
	Vessels							
	Sco	EWN	Sco	EWN	Sco	EWN	EWN	EWN
1998	10,287	—	35,134	—	8,861	—	—	—
1999	2,991	—	35,270	—	15,563	—	—	—
2000	4,141	—	39,745	—	16,211	—	—	—
2001	4,440	—	86,297	—	8,869	—	—	—
2002	1,519	—	32,196	—	8,315	—	—	—
2003	1,086	—	18,555	—	5,931	—	—	—
2004	1,266	430	12,834	371	5,765	2,023	547	33
2005	1,169	604	7,412	168	5,547	683	122	1

2006	1,671	581	14,671	310	4,457	1,385	351	37
2007	11,892	221	24,671	322	3,383	541	136	37

Note that this includes quota hoppers operating under the UK flag, but does not include discards by non-UK vessels operating in the North Sea.

It might help at this stage to note that the discards of just the three named species, just by UK-flagged vessels, just in these zones and just counting the types of fishery with highest quantities of discards, just in the one year of 2007, amounted to 41,203 tonnes. That's about the same displacement weight as the World War Two battleship Bismarck when it was launched.

For the most recent statistics, data must be used that has been collected by the government in a different format:³⁷

Discard estimates (kilotonnes per year)

	English and Welsh ⁽¹⁾ (demersal)	Scottish (cod, haddock, whiting, saithe only)	UK pelagic species	Total
2008	9.4	35.1	4.9	49.9
2009 ⁽²⁾	24.406	24.401	8.27	59.085
2010	26.626	25.071	Unavailable	51.697

⁽¹⁾ Northern Irish estimates are unavailable across all years.

⁽²⁾ Since 2009 English and Welsh estimates include discards of all species, not just quota species. Furthermore, the under 10m sector estimates have also been included.

This demonstrates the continuing scale of the problem today. In 2010, AA Gill penned a review of a trip to the North Sea on board a fishing vessel.³⁸ He put these figures in more understandable terms:

At my rough estimate, two-thirds of the catch goes back to the deep as corpses. Very little lives in the net. The fish are crushed and suffocated. They madly eat each other in the confusion and are drowned. Worst are the monkfish. Their wide, saw-toothed mouths gape and scoop up mud until their gills are choked solid. Morbidly, they are buried alive with earth underwater. [...] In front of each of the men is a wooden ruler with incised lines. This is the minimum length required for each species. Too small and they go over the side. The EU quota system means all fishing boats are catching far more than they are allowed to sell, and are then dumping much of it.

In the case of the haddock, large fish get a better price than small ones. They know they're going to catch their quota, so they only keep the premium ones. It's the same with whiting. It's immoral, it's insane, and that's not the half of it. The quota system, which is constantly being fiddled with and fine-tuned by men who have never been to sea and probably never eat fish with a face on, ascribe quotas to boats. You can scrap your boat, turn it into a bar or brothel, but keep the quota, which you can then sell.

Reporting such as this triggered the campaign known as “Hugh’s fish fight”, after the chef **Hugh Fearnley-Whittingstall**. **This was, however, only the latest in a series of campaigns to amend just this one aspect of the CFP, and its most glaring.**

The mismanagement of discards demonstrates how reform of what’s considered a common resource is shackled when vested interests encourage entropy, in this case owners of longer distance (Spanish) trawlers that would have to fill part of their holds on long journeys home for less of a profit. Lower profile concerns, such as shifting from single year TACs into multi-year limits, or changing mesh configurations, have been suggested since the 1990s and their fate suggests it takes on average around a decade and a half to change even the most critical CFP failures. Major reforms become impossible, since to change the basic system means ditching ‘relative stability’ and established national shares, and opening up from scratch negotiations on what each country can take – all the more complex with the accession of several Baltic and Black Sea states. Any and all environmental protection measures in these waters, undertaken unilaterally, that affect a single fishermen from another EU state are liable to be swiftly overturned by the Commission, and failing that, the Council, or the European Court of Justice.

Meanwhile, countries outside the CFP have for many years now been able to adopt policies to reduce or end discards. In Canada, Ottawa has long banned discards except for species with no nutritional value, or with a known high survival rate on release. This was accompanied by observers on large vessels and legislation that permitted speedy temporary closure of fisheries with high rates of by-catch. Fishermen landed their discards which counted against quota. In Iceland too, there has long been a ban on discards at sea for marketable fish. To discourage deliberate capture there are limits on how much of the smaller fish can be caught as an overall percentage. Fishermen were permitted to sell such landed catch, though the money was later recouped by the state. Reykjavik also introduced a ‘bycatch bank’ in 1989 to promote the sale of these species. Less successfully, New Zealand experimented with modifying their quota rules to allow skippers to buy quota off each other and to retain a percentage of the market price for surplus beyond that. But when it identified faults in its system, Auckland was then able to quickly amend it.

Perhaps the greatest tragedy in this system is the irony underpinning it. The EEC was founded in part on the principle that conflict in Europe needed to be averted. But mismanagement of these resources has exacerbated tensions between fishing communities. On numerous occasions, fishing vessels have clashed violently in the Bay of Biscay, off the mouth of the Seine, off the Channel Islands, and off Bantry Bay, in the last case with tragic and fatal consequences.

Compliance Costs

The Commons Agriculture Committee recommended an audit of the EU’s regulatory burdens on fishing vessels as long ago as 1999. They did so noting

that Government at that stage had no coherent idea what existing burdens were, but that a new one just on safety legislation was set to add up to £16,000 per vessel in costs.

Even at that stage, the Marine Safety Agency was identifying nineteen directives with health and safety implications to the fishing industry. The latest batch that year was set to increase costs between £400 and £1,000 per vessel and add perhaps £300 to £800 to its running costs. Meanwhile concurrent changes to expand provisions of other regulations to smaller vessels looked set to add costs of £15,400 to a new vessel and £11,700 for upgrades, plus annual costs of £2,500 per vessel.³⁹

The National Federation of Fishermen's Organisations identified at the time six areas where it felt fishermen in the UK were unfairly disadvantaged, while where EU financial support was available, the Treasury tended to veto it. Under the terms of the Fontainebleau deal, instead of just coming up with matched funding, the UK Government would end up financing not 50% but 89% of the end figure as much of the grant would end up being clawed back from the Rebate. Thus UK fishermen proved to be the only ones not claiming EU grants for, for instance, having to install new satellite monitoring systems at between £3,000 and £8,000 each.

The Prospects of Internal Reform

The inability of Her Majesty's Government to block quota hoppers from plying their trade demonstrates at the most fundamental level how unilateral reform of the CFP is impossible. The Factortame Case proves the point. This was a legal challenge to the Merchant Shipping Act 1988.

The Act had imposed certain requirements on the owners, charterers and operators of 97 quota-hopping UK fishing vessels. The Whitehall view was that quota was assigned by nationality, and that it was unfair that foreign trawlers, whose owners were heavily subsidised by EU (meaning British) taxpayers, should make use of their competitive advantage financially to buy into paltry UK permits as well. Indeed, half of the vessels had already fished under the Spanish flag.

The Spanish owners and operators in question, and their lawyers, disagreed. They challenged the Act and demanded (and won) tens of millions in damages.

The Commission was an additional party, questioning the position in London. In the event, the UK courts followed the opinions set out in Brussels. It essentially turns out that they realised for the first time that they were bound to.

As the Commission subsequently summarised it:

The High Court held that the violation of Community law was serious enough to render the Secretary of State for Transport liable. On appeal by the

Secretary of State, the Court of Appeal upheld the High Court's decision. It stated the principle that, to prove the liability of the legislature, it must be shown that the legislature had manifestly and seriously exceeded its powers. It held that violation of the fundamental principle of non-discrimination based on nationality would as a general rule found the State's liability for the resultant loss.

The Court of Appeal approved the reasoning of the High Court, which, in the circumstances, had held that the purpose of the residence and domicile requirements was indeed a form of nationality discrimination, that the Secretary of State was aware that these requirements necessarily caused the claimants to sustain a loss since they prevented them from fishing in the context of the United Kingdom quota, and that the Government of the United Kingdom had used statutory means of achieving its purpose to avert the risk that it would be frustrated by court actions, as the claimants could not obtain interim relief without going to the Court of Justice. And the Court of Appeal had particular regard to the position taken by the European Commission, which had expressly opposed the Bill.⁴⁰

Notably, the British Courts did not say that Parliament couldn't change the law; but they couldn't change the law without intentionally stating they intended to break EU law.

The lawyers representing the Spanish owners highlight the importance of this test case, describing it as: unquestionably the most important constitutional case of the 20th century and Her Majesty's government argued that it was not just a "constitutional enormity" but the most significant legal development since the Bill of Rights in 1689. It will be studied by English Law students for generations to come.⁴¹

From the vantage point of fisheries reform and the rescue of resources and stock, it confirms that any reforms that risk touching upon basic principles of equal access are impossible unilaterally, rendering the CFP fundamentally unsalvageable.

How about reform from within the system? There is another historical aspect that has received far less attention. In May 2002, Eurosceptic MEPs led by Dane Jens-Peter Bonde called for an enquiry as reports started to emerge of untoward dealings within the Commission itself. Questions were raised of the Spanish Prime Minister successfully lobbying the Commission President to sack the reformist Director-General for Fisheries, Steffen Smidt (a Dane), in order to stymie fisheries reform. He was replaced after a record minimum 2 ½ years in post, and offered a transfer to a sinecure post on full salary.

Contrary to the EU treaties, the Spanish Commissioner was also instructed to lobby expressly in the national interest, and reports at the time indicated that the Portuguese, Greek, Italian, French and Irish Commissioners were also implicated in a joint campaign to push for subsidies and increased quotas. In Italy's case, the implication was that it came in return for Madrid backing an Italian city to host the new food standards agency. In the Spanish case, the

documents pointed to the Commissioner simply quoting documents prepared in Madrid which lay completely outside her portfolio. Despite a majority of Commissioners reportedly endorsing reform, the proposals were shelved for further discussion and negotiation.

The full story has yet to properly emerge, but it provides a rare case study of how, for as long as the CFP exists, internal lobbying by countries that prioritise their fishing industries will outbid the UK fishing industry, whose government considers their interests negotiable.

Alternatives

MPs from across Parliament have long recognised that serious change was needed. The Agriculture Committee of the House of Commons in 1999 had similarly been able to identify five objectives for a new management system. These were to:

- promote sustainability of resources, to safeguard the long term success of both the stocks and the industry;
- ensure that the stocks are exploited in the most efficient way, so that fishermen are not drawn into a race for fish;
- encourage the profitability and competitiveness of the fishing industry from vessel to retailer;
- minimise both the cost to the public purse and the level of Government intervention; and
- minimise the complexity of regulation while maximising the responsibility for that process given to the industry consistent with securing compliance.

This could include keeping quota sales to within local communities; modifying quotas to encourage new start ups by young fishermen taking over the trade; and requiring quota holders to spend at least some of the time themselves actually fishing as per the Iceland example. The committee also acknowledged that scope to run fisheries in this way given the very existence of the CFP rather limited the ability to carry out the necessary reforms.

As long ago as 1996, the National Federation of Fishermen's Organisations published *An Alternative to the Common Fisheries Policy*.⁴² It accused the CFP, and in particular the inherent principle of equal access, and carrying "an inherent imperative towards a highly centralised, bureaucratic and inflexible system incapable of adapting to the dynamic and varied fisheries under its control." It also concluded that only by restoring waters to national control, and then setting up a system of interlocking Coastal State Management schemes, could the Norway success be repeated. "Such an approach does not preclude sensible bilateral arrangements to permit joint access," it noted, "and does presume joint management arrangements where fish stocks are shared between neighbouring countries and the maintenance of UK distant water fishing opportunities. It does, however, suggest that the over-centralised and bureaucratic approach inherent in the Common Fisheries Policy is neither desirable nor necessary." In the process, it would also fix the key material imbalance, by which the UK contributes such an overwhelming share of a

resource that is then shared out with other countries. In other words, the UK like Norway would finally receive its fair share.

Such circumstances would also allow for the NFFO's Stock Recovery Programme to take place.⁴³ Some of those proposals were taken up during the radical review of Fisheries Policy undertaken by Owen Paterson, whose Green Paper (written in Opposition) demonstrates what can be done when unburdened by the EU treaties. It is also perhaps worth noting that this built on Conservative Policy that had already long been established since the tenure of the present Foreign Secretary as Leader of the Opposition.⁴⁴

In sum, the paper sets out a series of proposals that could be implemented under a sovereign fisheries policy.⁴⁵

- Effort control based on "days at sea" instead of fixed quotas, cutting bureaucracy, but with local authorities playing a lead role.

- A ban on discarding commercial species, though starfish for instance could still be thrown back.

- Permanent closed areas for conservation, selected locally.

- Provision for temporary closures of fisheries, responding quickly to real-time needs.

- Promotion of selective gear and technical controls, breaking with traditional EU reticence.

- Rigorous definition of minimum commercial sizes, to discourage discards but also to discourage fishing for juveniles.

- A ban on industrial fishing, with use of bycatch and offal to support the shortfall.

- A prohibition of production subsidies, ie paying for increased horse power of boats.

- Zoning of fisheries, dropping the current 'US MidWest State lines' boxes, for zones that reflect geography and conditions.

- Registration of fishing vessels, skippers and senior crew members, to address the broader problems beyond quota hopping.

- Measures to promote profitability rather than volume, quality over quantity.

- Effective and fair enforcement, using civil contracts with the state.

The principle underpinning this equates to what is these days styled 'localism'; Fisheries cannot be managed successfully on a continental scale; they need local control. [...] This accords completely with the British instinct for small government. Issues should be tackled on an international basis only when justified, at a national level when appropriate and otherwise locally.

National government would set the strategic framework in which the priorities would be the restoration of the marine environment and rebuilding the fishing industry; new local bodies would take day-to-day responsibility for managing their fisheries. Pointing to how fisheries had succeeded in those parts of the North Sea that lay beyond the CFP, and even further beyond where controls had been sensibly put in place such as the Falklands waters, the report

rejected traditional excuses for the decline in CFP stocks altogether, blaming catastrophic mismanagement rather than simply overfishing.

With an eerie foresight, it also pointed to a particular Icelandic bank, the largest investor in fisheries in the world, which refused to invest in EU or Russian fisheries owing to the arbitrary and political nature of their decision-making.

An Internationalist Future

Marine research in the North Atlantic has been going on in an international context since 1902, with the foundation of the International Council for the Exploration of the Seas (ICES). Before many of them ever joined the EEC, it's now generally forgotten that a number of European states had already signed up in 1966 to the London Fisheries Convention, establishing the six and twelve mile limits and a system of arbitration to settle disputes. Cooperation on fisheries between countries is not new, and will continue even without a Common EU Policy.

But it is striking that the best placed body to act as the forum for international cooperation in this field – the United Nations – was also the body that was responsible for the United Nations Convention on the Law of the Sea (UNCLOS) of 1982 that set out the nation's Exclusive Economic Zone and confirmed national control over the majority of the world's continental shelf and ninety per cent of the world's fisheries. It also sets the ground rules for cooperation to preserve fish stocks that migrate from one national jurisdiction to another, including establishing an international tribunal to arbitrate disputes. Once the Convention entered into force in 1994, the last possible objection for scrapping the CFP no longer existed. Ironically, thanks to the CFP, Brussels maintained a number of stock policies that breached international commitments and settled on lower commitments under EU treaty law than it did further afield under UNCLOS.

It is also worth remembering when looking at what is considered both politically expedient as well as possible the case of the Azores. This Portuguese territory was allowed a derogation from the CFP when Portugal joined the Community. It then negotiated a further special derogation so that its waters out to 100 nautical miles would be managed as per the 12 n.m. limits for other states, on the basis that its resources were finite and could swiftly be fished out by mainland continental capacity. The principle of what applies for the Azores holds just as true of a depleted North Sea.

Reform of fisheries policy outside the CFP does not mean an immediate restoration of these depleted waters, or an instant return to the busy fishing ports of a few decades ago. But it is the necessary precursor that allows for the management changes to be put in so that, over time, stocks can be replenished along with a viable long-term management plan. As the then Conservative Fisheries spokesman, John Hayes MP, said in 2003 when advocating an amendment in Parliament through which the UK would quit the CFP:

I do not pretend that everything will be rosy under national and local control. There will still be great difficulties, problems and challenges. It is nonsense to suggest that I would say to fishermen, "If you had national control all your troubles would be over." I do not say that for a moment. I say that we would have control over their problems and they would have a greater say and involvement in their solution. Their problems would be dealt with by their Parliament, which is accountable to them and to the rest of the British people. Secondly, it is important to point out that this can be done. Whether we choose to do it is another matter.⁴⁶

REFERENCES

- ¹ Letter to ECOFIN ministers from Alistair Darling MP, 13 May 2008
- ² *Food for Thought*, TPA research paper
- ³ See for example *BSE Crisis and Food Safety Regulation: A Comparison of the UK and Germany*, Beck/Kewell/Asenova.
- ⁴ Official estimates here are linked to through the website of the Centre for Business Relationships
- ⁵ Daily Telegraph, 6 May 2002
- ⁶ See <http://www.scotland.gov.uk/Publications/2009/01/08100107/13> for links to the various Government costings of these directives
- ⁷ <http://archive.defra.gov.uk/foodfarm/farmanimal/movements/sheep/documents/ia-sheep100226.pdf>
- ⁸ <http://www.defra.gov.uk/food-farm/animals/movements/sheep/>
- ⁹ <http://eca.europa.eu/portal/pls/portal/docs/1/8038724.PDF>
- ¹⁰ http://ec.europa.eu/agriculture/most-deprived-persons/index_en.htm
- ¹¹ Statistics from EuropaBio, the EU GM lobby
- ¹² http://www.academia.edu/424870/The_impact_of_EU_regulatory_constraint_of_transgenic_crops_on_farm_income
- ¹³ http://www.academia.edu/424870/The_impact_of_EU_regulatory_constraint_of_transgenic_crops_on_farm_income
- ¹⁴ <http://www.isaaa.org/resources/publications/pocketk/16/default.asp>
- ¹⁵ <http://www.dairyco.org.uk/market-information/processing-trade/eu-market-support/eu-intervention-stocks/>
- ¹⁶ The average intervention price for grain is in the area of €100 a tonne, with an advertised storage rate per tonne of £2.87 per day for the first year, less location test fees upwards of £392.
- ¹⁷ http://ec.europa.eu/agriculture/analysis/markets/sto-crop-meat-dairy/2012-06_en.pdf
- ¹⁸ <http://eca.europa.eu/portal/pls/portal/docs/1/14988759.PDF>
- ¹⁹ http://www.actionaid.org/sites/files/actionaid/milking_the_poor.pdf
- ²⁰ <http://www.srfood.org/index.php/en/component/content/article/1674-cap-reform-must-put-an-end-to-dumping-un-expert>
- ²¹ <http://farmsubsidy.org>, which has a far better claim to an award from the Nobel Committee in the context of this chapter's conclusions
- ²² <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmenvfru/556/556vw14.htm>
- ²³ Many a rainy afternoon could be spent dipping into the recipients on <http://farmsubsidy.org>
- ²⁴ SEC(2011) 1154 final/2
- ²⁵ http://ec.europa.eu/agriculture/analysis/perspec/cap-2020/impact-assessment/summary_en.pdf. More usefully an assessment of the impact for each country is valued in another accompanying working paper, which at least points to which countries are likely to gain or lose financially from the changes. The UK, obviously, only gains if the CAP is capped. The gain is not however re-rendered relative. [http://www.kormany.hu/download/4/37/80000/7%20Reszletes%20hatastanulmany%20\(angol\).pdf](http://www.kormany.hu/download/4/37/80000/7%20Reszletes%20hatastanulmany%20(angol).pdf)
- ²⁶ Notwithstanding the various proposed changes set out for instance here: <http://register.consilium.europa.eu/pdf/en/12/st17/st17592.en12.pdf>
- ²⁷ Crisis in the Countryside, by James Gladstone
- ²⁸ See also the report by Paul Flynn MP for the Council Of Europe, *The Costs of the Common Agricultural Policy, 2005*
- ²⁹ A useful summary of the New Zealand experience can be found here: <http://www.scotland.gov.uk/Publications/2009/01/08100107/21>
- ³⁰ It is important to note that the Spanish are not exclusively at fault. One Spanish MEP in 1999 (EPW H-0618/99) was pertinently asking why two Dutch supervessels with keels of 126m. and 142m. were being laid down contrary to MAGP agreements. If the Commission response was guarded ("the arguments that they [i.e. the Hague] presented are not at all convincing"), the fact that they turn out were being built in Spanish boatyards passes almost as an aside.
- ³¹ IEEP Report for Greenpeace, 2000
- ³² Reference: EU source cited by TEAM Working Paper on fisheries, 2002, authored by Dr Richard North
- ³³ Foreword to the TPA research paper on fisheries
- ³⁴ RECEP Twenty Fifth Report, page 230
- ³⁵ Hansard, 10 January 2005, col 171
- ³⁶ Hansard, 20 January 2009, col 1283. One of the authors was incidentally involved in pursuing both sets of data in this historic void
- ³⁷ Hansard, 11 January 2012, col 369
- ³⁸ Sunday Times, 19th September 2010
- ³⁹ Hansard, 12 March 1998, col 265
- ⁴⁰ Official Journal, 7 December 1999, C354 page 192.
- ⁴¹ http://www.thomascooperlaw.com/pdfs/Thomas_Cooper_Factortame_Report.pdf
- ⁴² NFFO, December 1996

⁴³ Coastal State Management: A Stock Recovery Programme, NFFO, July 1997

⁴⁴ For an explicit endorsement of the repatriation policy, see for instance the *Western Morning News*, 27 February 1999. The Telegraph's editorial of 23 February called the CFP "the most overtly anti-British of the EU's policies" in applauding the policy announcement.

⁴⁵ *Consultation on a National Policy on Fisheries Management in UK Waters*, Owen Paterson MP, 2005. As a matter of record, this was to be achieved "by negotiation if possible and if necessary by national legislation."

⁴⁶ Official Report, European Standing Committee A, 11 September 2003, col 31