

Executive brief

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Fisheries and fishery products are not part of the agricultural negotiations in the WTO but are dealt with as industrial products. As such they are included in the non-agricultural market access (NAMA) negotiations.

They are currently dealt with by the WTO at four different levels:

- market access for non-agricultural products (reduction and elimination of tariffs and non-tariff barriers, particularly on products of interest to developing countries) referred to as ‘non-agricultural market access’ (NAMA);
- the agreement on subsidies and countervailing measures (ASCM);
- trade and the environment, particularly in relation to multilateral environmental agreements (MEAs);
- dispute settlement procedures.

The international trade in fishery products has also been affected by three other areas of WTO jurisdiction:

- the anti-dumping agreement (the

agreement on the implementation of Article IV of the GATT);

- the agreement on safeguards;
- dispute settlement procedures.

Lastly, under the General Agreement on Trade in Services (GATS), services relating to fisheries may be liberalised.

The NAMA negotiations have so far adopted two distinct approaches:

- the ‘critical mass’ approach, which requires a critical mass of major fish-producing, importing and exporting countries to establish a sector-specific agreement on the liberalisation of international trade in fisheries products;
- the ‘formula approach’, which requires agreement on a formula to be applied to current tariff regimes, so as to reduce them eventually to zero.

Until now, the EU has favoured a formula-based approach. The EU’s backing is necessary if the critical mass is to be reached as it is involved in 30% of global fish trade. Given the slow rate of progress in the NAMA negotiations, it is likely that

current tariff regimes will remain in place for some years.

The vulnerable position of ACP canned tuna on the EU market has been highlighted. This has been affected by the results of dispute settlement cases launched by Asian exporters. There is also concern about the impact of any WTO-agreed tariff reductions in the canned tuna sector.

Issues related to the application of non-tariff barriers (NTBs), including sanitary and phytosanitary (SPS) measures are gaining increasing prominence in the WTO. A related aspect is the increasing attention affording the use of eco-labelling. Cases have been taken to the WTO, challenging the specific US labelling regulation for 'dolphin safe' tuna.

Negotiations on subsidies have highlighted the need to differentiate between harmful and beneficial subsidies to the fisheries sector, and the need to allow exceptions for developing countries through special and differential treatment (S&DT), particularly for artisanal fisheries.

Fisheries agreements between the EU and ACP countries were a particular source of concern for vulnerable coastal states, where many payments, nominally for access rights or to aid the development of local fisheries, have been construed as subsidies to the EU fleet. The EU has sought to adapt its fishery agreements to be WTO-compatible. So far it has adopted a middle position regarding subsidies, between the hard-line anti-subsidy 'Friends of fish' group and the pro-subsidy 'Friends of fishing' group. However, it is tending towards a more tolerant approach to certain measures which can be considered as subsidies.

ACP participation in the subsidy negotiations has been fairly low key, with some notable exceptions linked to the small vulnerable coastal states. A main

ACP concern is exempting fees for fisheries access from any new disciplines on fisheries subsidies.

Given the slow progress of the Doha negotiations, attention is shifting to the fisheries provisions of bilateral trade agreements, which often seek to go beyond WTO commitments.

2. Latest developments

There has been a general lack of progress in the WTO trade negotiations, which has also affected fisheries-related discussions, with countries reiterating well known positions. Fisheries are not the deal breaker, and until progress has been registered in the broader trade negotiations, there will be little progress in the fisheries arena.

Some observers feel that an agreement on some fisheries issues, such as subsidies, might be relatively easy to achieve. Others point out that, if governments move towards an end-game in the broader negotiations, talks on fisheries subsidies will become tougher, as commercial interests that benefit from existing support schemes will attempt to dissuade their national governments from making concessions.

Market access concerns: the NAMA negotiations

Following the completion of the Uruguay Round of negotiations in 1994, average import tariffs on fish products in developed countries have been significantly reduced. In the case of the ACP countries, fish exports to the EU markets enjoy duty-free, quota-free (DFQF) access, although this is constrained by strict rules of origin. This, however, is not a WTO issue, so in the WTO the main issue facing ACP states

is the erosion of their margins of tariff preferences in the fisheries sector.

A number of submissions have been made in the NAMA negotiations, including proposals on the 'Swiss formula' for tariff reductions, adopted by the Hong Kong ministerial meeting in December 2005. Different groups have tabled proposals on:

- the coefficient to be used under the Swiss formula;
- the continuation of sectoral negotiations;
- preference erosion.

For the EU, the implementation of tariff reductions under the 'Swiss formula' will have strong impacts on the fisheries sector, especially on the most commercially valuable products, such as shrimp and tuna, which currently are subject to the highest tariff rates. A 2010 European Parliament study on the impacts of WTO negotiations on fisheries underlined the economic impact of EU tariff policy on the world fish market due to the size of EU imports (see [Agritrade article 'The European Parliament studies impacts of the WTO negotiations on fisheries'](#), May 2010).

The study noted that despite the preferences granted to ACP countries in terms of total fisheries trade 'imports from these countries amount only to about 10% in terms of value'. Despite the global reduction of barriers to trade in fish products, the study argued that, because of the large import surplus, the first concern of the EU is a reduction of imports into the EU market. To some extent the existing tariff structure reflects this tendency. Compared to other major fish-importing economies, the EU applies relatively high tariffs and a relatively large number of tariff peaks have been observed. For some products tariff escalation is quite important, e.g. for shrimp (8% for unprocessed shrimp, 20% for processed shrimp).

Preferential treatment also has considerable effects. The most relevant arrangements are tariff-rate quotas for basic materials for the EU processing sector: GSP, EPA/EBA, etc. The study concludes that reductions in general tariffs (in a WTO context) or further bilateral/multilateral trade agreements would in general result only in moderate reductions of internal EU prices at all levels (for EU producers, processors and consumers). However, tariff reductions could severely damage specific EU sectors when high tariff peaks or tariff escalation are present. It is considered that the current NAMA proposal may lead to further penetration by Asian suppliers of EU fish-product markets at the expense of ACP countries. This is criticised by the European tuna industry, which has strong ties with some ACP countries, particularly in the tuna canning sector.

The growing importance of non-trade barriers

As a consequence of the general trend in tariff reduction, the importance of non-trade barriers to trade is growing, with SPS measures playing a major role. The EU is a front runner on setting standards for food safety in fisheries, and has a profound influence on the development of the seafood export industry in developing countries. EU health and hygiene requirements carry important cost implications for ACP fisheries export industries.

An ICTSD study in 2010 on SPS issues and the fisheries dimension of EPA negotiations (see *Agritrade* article, 'EPA fisheries talks: an opportunity to tackle SPS measures' May 2010) argued that, since the EU's right to protect its citizens from potentially harmful food cannot be challenged, attention should focus on the implementation

of the measure rather than on the basic principle. This involves looking at EU practice and identifying whether it complies with the WTO agreement on SPS measures. The agreement contains areas of ambiguity that allow the EU to introduce measures that can be viewed as being contrary to the underlying intention, i.e. not to interfere unnecessarily with international trade.

The WTO implications of another potential NTB, the new EU IUU fishing regulation, were explored in a 2010 Chatham House publication (see *Agritrade* article 'Combating illegal fishing in the EU: interaction with WTO rules', March 2010). Questions were raised about the compatibility of some aspects of the regulation with WTO rules, for example the scope for trade sanctions against foreign vessels and countries, and the application of different rules to EU and foreign operators. Under WTO law, the EU is allowed to apply different rules to foreigners and nationals as long as the rules applied to foreigners do not result in 'less favourable' treatment. However, what constitutes 'less favourable treatment' is not defined. Based on a number of WTO cases, it may be concluded that the application of different rules should not distort competition in ways that result in protection for domestic production.

While it seems unlikely that countries would challenge the IUU fishing regulation itself, disagreements may arise over a specific trade measure taken under the regulation. Alleged discrimination between countries and questions over how the decision to impose a trade ban was reached could become contentious issues in this context. Transparent and fair implementation of the regulations will be important not only to prevent a WTO challenge, but also to ensure that the regulations do indeed meet their objective of curbing illegal fishing.

The debate on subsidies and countervailing measures

In December 2008, the Chair of the WTO negotiating group on rules circulated a conceptual 'road map' on fisheries subsidies which to date remains the reference document. This text proposes a blanket exemption for LDCs from the proposed prohibited list of subsidies. During 2010 the issue of establishing appropriate levels of S&DT for developing country fisheries subsidies largely monopolised the agenda. Major discussions followed a proposal tabled by Brazil, China, India and Mexico on S&DT at the end of 2009 (see *Agritrade* article 'Rules group discusses fisheries-subsidy issues in Chair's 'road map'', January 2010). This text argued that the Chair's text failed to fully capture the needs of developing countries. It maintained that if conditionalities are necessary so as to address overfishing and overcapacity, they should not be so strict as to render S&DT provisions useless.

Generally, ACP countries intervening in the debate highlighted the potential threat that blanket disciplining of fisheries subsidies poses to their legitimate interests. These include the use of subsidies in support of domestic and foreign investment for the strategic development of the sector, and in times of need.

On specific issues, such as small-scale (subsistence) and artisanal fisheries, all felt that an appropriate definition was required, which excluded loopholes for circumvention. Pacific island members urged the group to recognise the subsistence and small-scale nature of their fisheries. All considered that the proposed definition of 'subsistence-oriented fisheries' to be fully exempted from disciplines was too narrow and restrictive, and they called for a broadening of this category to cover all artisanal fisheries

and small-scale commercial fisheries. It was stressed that developing countries are neither the major subsidisers, nor the main contributors to overfishing and overcapacity.

On the issue of fishing agreements access fees, the African group favours the explicit exclusion of government-to-government transfer of funds from the Chair's draft text (see *Agritrade* article '[WTO and fisheries subsidies on the African group's agenda](#)', November 2009). However, the Africa group was concerned about the debate on second-level transactions in relation to government-to-government fisheries access arrangements, where the government of a distant-water fishing nation (DWFN) may transfer access rights to its private fishing fleet for less than the full amount of the access fees that it paid to the coastal or island government for access to its EEZ. The Chair's current text prohibits subsidies arising from the transfer of access rights by a distant-water fishing nation to its private fishing fleet for less than the full amount of the access fees paid to the coastal government. The ACP group has welcomed conditional exemptions, provided under the S&DT provisions, for subsidised access only in situations where the fishery in question is in the EEZ of a developing country member.

Another issue of importance for ACP countries which was discussed in a 2010 WTO research paper entitled 'Natural resource subsidies' is the key question of how states should price their fisheries resources, given the need to ensure that they both avoid anti-subsidy disciplines and promote conservation and sustain-

able yields. Under Article 14 of the WTO Agreement on Subsidies and Countervailing Measures, the provision of goods by a government confers a benefit if the government provides the goods 'for less than adequate remuneration'. Applying the concept of 'for less than adequate remuneration' to fishing rights leads to the question as to what portion of the resource rents does a government need to collect in order to obtain 'adequate remuneration' for the rights that it has provided.

Considerations that might be relevant in evaluating whether governments, including ACP governments, receive adequate remuneration for the fishing rights they sell, including to distant-water fishing fleets, include:

- the use of market-based mechanisms such as auctions or sealed bids to allocate natural resource rights; and
- the recovery of the government's costs of providing and maintaining the resource.

ACP ministers also reiterated their position on WTO subsidies negotiations during their ACP fisheries ministers' meeting in November 2010. They stated that 'the share of global marine wild-capture of ACP states is minimal and the magnitude of subsidies provided by its member states is very small. ACP states therefore have a negligible impact on overcapacity and overfishing. In this regard, the ACP group calls for appropriate and effective S&DT in the WTO fisheries subsidies negotiations so as to enable them to pursue and implement their development strategies while at the same time preventing subsidies from leading to the overexploitation of fisheries resources'.

It has to be noted that environmental organisations, such as Oceana and WWF, have been very active in the debate. WWF was particularly concerned by proposals to expand S&DT by allowing subsidies to vessel capacity and operating costs for fishing activities beyond the EEZs (see *Agritrade* article, '[Fisheries subsidies beyond EEZs: No S&DT blank cheque for developing countries, says WWF](#)', July 2010). Oceana opened up the debate about fuel subsidies by releasing a report on the economic and environmental costs of fuel subsidies (see *Agritrade* article '[Economic and environmental costs of subsidising fuel for fishing](#)', January 2010). This report argued that fuel subsidies have a direct impact on the level of fishing effort, since they permit boats to continue to fish when it is not economic to do so. Most significantly, fuel subsidies distort the competition between fuel-intensive fishing fleets and fleets using passive gear or other low-energy fishing techniques that may have less unintended catch and cause less harm to ocean habitats.

However, although there may be some movement, there would still seem to be a high degree of polarity on these issues between those who have already benefited from subsidies and those who would like to benefit from subsidies (see *Agritrade* article, '[WTO negotiators are pushing for a compromise on fisheries subsidies](#)', May 2011). Many countries are now focusing on an arrangement that would deal with the most dangerous subsidies rather than covering every problem. These would be subsidies that increase the capacity of vessels or fleets, such as support for construction and renovation, or which facilitate changes in ownership or country.

EU fisheries sector subsidies

In the EU, subsidies pervade almost every aspect of the fisheries: grants for vessel construction; grants for training; tax breaks (e.g. on fuel); infrastructure development; subsidised loans; market support; third-country fishing-access fees, etc. EU members provide around \$3 billion of subsidies a year, with the bulk of this as capacity enhancing subsidies. The 2010 map by the www.fishsubsidy.org project shows how much in the way of subsidies has been allocated between 1994 and 2006 under the EU's financial instrument for fisheries guidance (FIFG), including through fishing vessel transfer to third countries and the setting up of joint ventures. It shows that European fishing vessels were paid €3.4 billion in subsidies, €2.3 billion of which came from the EU budget, and a further €1.1 billion from national budgets under the FIFG's co-financing rules. The map shows payments grouped by port, clearly revealing that major EU long-distance fishing nations (Spain, France and Greece) are the biggest users of subsidies. The map does not show other EU/state support to the long-distance fisheries sector, such as tax breaks on fuel or fuel aid, or payments for access to non-EU fisheries through FPAs. Nor does it include FIFG payments that are made to recipients other than vessels (e.g. port authorities, producer groups and processing plants). It has been estimated that FPA financial compensation covers up to 80% of access costs. In the WTO arena, the EU emphasised the importance of encouraging effective fisheries management systems, adding that this would be equivalent to eliminating fisheries subsidies.

WTO dispute settlement and fisheries

Fishery-related WTO cases involving the EU have been mostly concerned with the use of alleged NTBs, especially the use of trade descriptions ('sardines' for example) which were considered to unfairly restrict trade. These cases demonstrated that the WTO dispute settlement procedure may have an important role in combating EU protectionist trade practices.

The latest case of interest to ACP countries was the long-standing USA–Mexico 'dolphin safe' eco-label dispute (see *Agritrade* article, '[Label Babel: the WTO is to settle the tuna-dolphin case](#)', August 2009). Mexico claims that the criterion for the 'dolphin safe' logo, which is administered by the US Department of Commerce, discriminates against its tuna exports. Mexico argues that its exports should be entitled to the label since its fishing practices comply with the guidelines accepted by the Inter-American Tropical Tuna Commission (IATTC) which sets annual dolphin mortality caps and requires vessels to carry on-board observers. This case marked the first time that a WTO dispute settlement panel examined the WTO compatibility of voluntary product

labelling, albeit one administered by a government. The future results stand to have important influence on the so far inconclusive and heated debate on whether private standards (including eco-labels for fish products) are barriers to market access.

3. Implications for ACP countries

The NAMA negotiations

The WTO NAMA negotiations can potentially erode the margins of tariff preferences that ACP countries enjoy in the fisheries sector. However, the EU's bilateral and regional fisheries trade negotiations are playing an increasingly important role in this regard. This trend is likely to continue, given the impasse in the broader WTO negotiations.

Should a WTO deal emerge, however, the application of the standard 'Swiss formula' would lead to a substantial reduction in peak duties in the fisheries sector. For many ACP countries these initiatives would lead to a serious erosion of the preferences they currently

enjoy in both the EU and US markets. The proposal for a sector agreement on fisheries, if agreed, would, in turn, lead to more rapid elimination of duties on fisheries products, exacerbating the problem of preference erosion.

At the meeting of ACP fisheries ministers in November 2010, ACP ministers, in the face of the impossibility of avoiding the erosion of preferences, and the application of the 'Swiss formula' in the framework of the NAMA negotiations, agreed that 'the ACP should request the WTO for the longest possible period to enable them to prepare themselves better to adjust to the changes and avoid the disappearance of their budding industries; it is necessary to appeal to the EU to support the ACP countries by providing them with technical and financial assistance'.

Clauses addressing preference erosion (including for fish and fish products) have already been included in the CARIFORUM EPA and the EAC/ESA IEPAs, including a clause on financial and other support in order to build resilience in the face of a post-preference future and a clause committing the EC to endeavour to support the maintenance of preferences at the WTO and other relevant international forums.

An essential part of ACP countries' answer for a future without preferences is to develop an enabling environment for innovation, and for adding value beyond canning tuna. This will need to be done in collaboration with the private sector (fishing and processing, as the quality of the final product is often conditioned by the fishing/handling/landing practices), and with the support of the EU.

Another part of the response to the process of preference erosion which is under way is to further relax the rules of origin for ACP fisheries products in key areas to allow global sourcing, so that ACP countries can better compete with other tuna producing countries with lower production costs, particularly ASEAN countries. It is therefore important that ACP countries monitor the EU negotiations for free-trade agreements with ASEAN countries, and analyse the potential impacts on their sector of trade liberalisation with ASEAN tuna producing countries, in order to strengthen their case for further relaxation of the rules of origin.

Issues arising from NTBs

SPS regulations and new IUU regulations, including catch certification schemes, are of growing importance in relation to access to the EU market. ACP countries should look at how these increasingly complex requirements can be addressed, through appropriate investments in sustainable fisheries management, innovation, quality, traceability, and marketing tools that can ensure the adequate promotion of ACP fish products.

Currently the WTO SPS Agreement sets a regulatory 'floor', but does not establish a regulatory 'ceiling'. Clarification must be obtained by ACP countries

as to what the WTO SPS agreement allows the EU to do, and the limitations and obligations that may be cited by ACP countries where specific measures are considered to exceed what is necessary for the adequate protection of health. According to the WTO SPS Agreement, WTO members may adopt temporary precautionary bans to prevent the introduction of risks when sufficient scientific evidence is absent. The agreement is silent, however, on the steps that need to be taken by a country that has lost international market access because trading partners have invoked this provision. ACP countries should clarify how long is 'temporary' and the quantity and type of scientific evidence that is deemed sufficient to invoke and revoke trade restrictions.

In addition such issues could also be addressed at the operational level via the establishment of a formal structure for consultations on fisheries SPS questions under EPA arrangements, in those regions where fisheries exports are a major area of interest for the ACP countries concerned.

Given ACP dependence on EU markets, the new IUU regulation may be seen as both a boon and a burden: a boon for legal operators, but with potential administrative burdens and costs.

So far, no country has (officially) expressed concerns over the WTO-compatibility of the EU IUU regulation. Indeed, most flag states have already submitted the required information to the EC in order for their catch certificates to be accepted and are implementing the necessary measures to comply with the regulation. ACP governments will need assistance in making the transition to the implementation of IUU requirements, with this needing to be an area for increased ACP–EU cooperation.

S&DT in the context of fisheries subsidies debate

Given the polarity in the debate on fisheries subsidies in the WTO there is a need to ensure that S&DT and exemptions for LDCs remain at the centre of these discussions. This is essential to providing the policy space for the development of sustainable fisheries sectors. There are four dimensions to the subsidy discussions of interest to the ACP:

- the definition of artisanal and small-scale fisheries;
- the implications of the debate on fuel subsidies;
- the issue of access fees;
- the issue of the 'adequate remuneration' for fishing rights.

In terms of the definition of artisanal and small-scale fishing, in many ACP countries, notably small island developing states, artisanal fisheries play a major role in food and livelihood security, poverty alleviation and economic development. The artisanal sector can also provide the basis of economic activity (with important forward and backward linkages) in communities that have access to few alternative resources. Furthermore artisanal fishing can make a significant contribution to regional and international trade, generating important foreign exchange earnings. The lack of capital and the size of small-scale fishery enterprises make them highly vulnerable to economic, social and environmental shocks. It also makes them highly dependent on subsidised infrastructure and services from the state. But the sector is far from homogenous, both within and across countries, and arriving at a common definition that satisfies all has so far proved elusive. There is strong pressure to ensure that small-scale fisheries are exempted from any blanket ban on subsidies that might be applied to the fisheries sector. In this debate, it is im-

portant for the ACP to emphasise the social and economic characteristics (labour intensity, local markets, food security), as much as the environmental (low impact) and technical (relatively small size, fixed/passive gears) aspects.

In terms of fuel subsidies, it should be recognised that these can make an important contribution to the modernisation of small-scale fisheries in ACP and other developing countries. In large-scale or industrially oriented fisheries, the benefits of such subsidies accrue mainly to the vessel owners. In small-scale motorised fisheries, where the repartition of catches and cost may be more widely shared, fuel subsidies play a major role, enabling the small-scale fishing sector to meet the

needs of export markets. Using motors instead of sail and oar enables the catch to arrive quickly on the market in prime condition. Fuel is often also needed to power the generators required for the operation of ice plants. Scaling back on fuel subsidies would impact negatively on such activities.

In terms of access fees, concerns arise over the second-level transactions in relation to government-to-government fisheries access arrangements, where DWFN governments may subsidise their private fishing fleets by transferring access rights for less than the full amount it paid to the coastal or island government for such access rights to its EEZ. This is an issue that ACP governments need to monitor closely, particularly in

the context of the reform of the EU's international fishing policy as part of the CFP reform, where a key question is whether EU operators should cover all the costs of their fishing activities in third-country waters. This may require fisheries ministries in ACP countries to gradually restructure their sources of finance and integrate their programmes into routine aid deployment processes rather than relying on financial compensation payments under EU fisheries agreements.

In terms of adequate remuneration for fishing rights, debates in the WTO could help ACP governments in securing higher access fees from foreign fishing fleets seeking access to their waters.

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