

WTO aspects of ACP-EU fisheries relations

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For 2008 and earlier years developments please see the 2008 version of the Executive brief:
[http:// agritrade.cta.int/ en/ Fisberies/ WTO-and-international-developments/ Executive-brief/ WTO-aspects-of-ACP-EU-fisberies-relations-Executive-brief/ WTO-aspects-in-ACP-EU-fisberies-relations-20082](http://agritrade.cta.int/en/Fisberies/WTO-and-international-developments/Executive-brief/WTO-aspects-of-ACP-EU-fisberies-relations-Executive-brief/WTO-aspects-in-ACP-EU-fisberies-relations-20082)



Key aspects of WTO interaction with ACP-EU fisheries relations

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) (NAMA);
- the agreement on subsidies and countervailing measures (ASCM);
- trade and the environment, particularly as regards multilateral environmental agreements (MEAs);
- dispute-settlement procedures.
- the international trade in fishery products has also been affected by two other areas of WTO jurisdiction, under:
 - the anti-dumping agreement (the agreement on the implementation of Article IV of the GATT);
 - the agreement on safeguards.

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

Fisheries are also dealt with under trade and environment negotiations, and dispute-settlement procedures have been invoked in several cases. Also important are anti-dumping measures and the agreement on safeguards. Issues arising from non-tariff barriers (NTBs), including sanitary and phytosanitary (SPS) questions and technical barriers to trade, are highly relevant. A related aspect includes the increasing attention afforded to the use of 'eco-labelling'.

Subsidies negotiations 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 artisanal fisheries.

Fisheries agreements between the EU and ACP countries were a particular source of concern as 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 adapted 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 'Friends of fishing' group, but tending towards the latter.

ACP participation in the subsidy negotiations has been fairly low key, with some notable exceptions (linked to the small vulnerable coastal states, and in their own right), one of their main concern being that fisheries-access fees should be exempted from any new disciplines on fisheries subsidies. The draft text, released by the Chair of the negotiating group on rules on 30 November 2007, explicitly states that access fees shall not be deemed to be subsidies within the meaning of this agreement, subject to certain conditions.

The vulnerable situation of ACP canned tuna on the EU market has also been highlighted, given the boost that the anticipated tariff reductions could give to non-ACP imports.

The dispute-settlement procedures of the WTO have been invoked, notably by Asian competitors of ACP canned tuna, focusing on the preferences given to ACP tuna-canners in the EU market.

Since the breakdown of the Doha Round negotiations in July 2006, it has been questioned whether there is the necessary political will to see the Doha Mandate through. In parallel the

EU and other major players are signing up to bilateral trade agreements that go beyond WTO commitments, indicating that they favour a bilateral approach to trade liberalisation over a multilateral approach through the WTO.

Latest Developments

1. NAMA Negotiations on Market Access for Non-Agricultural Products

Exports of fish and fishery products from developing countries are making an increasingly important contribution to their export earnings. FAO figures in 2009 highlight the observation that developing countries (including China) are accounting for 50% of all fish exports.

Under the trade provisions of the Cotonou Agreement and subsequent EPA and interim EPA agreements, ACP fish exporters still enjoy significant margins of preference in the EU, their most important market. However, this competitive advantage continues being eroded, in particular by the WTO NAMA negotiations.

The NAMA negotiations have so far adopted two distinct approaches:

- the ‘critical mass approach’, which would require that a critical mass of major fish-producing, importing and exporting countries establish a sector-specific agreement (i.e. to make fisheries a special case) to liberalise fish trade, i.e. to take fisheries out of the NAMA negotiations;
- the ‘formula approach’, which would require agreement on a formula to be applied to current tariff regimes, so as to reduce them to zero over time.

The EU is advocating a formula approach, which is the approach most likely to be adopted. Being responsible for 30% of global fish trade, the EU’s backing is necessary if the critical mass is to be reached. Given the slow rate of progress in the NAMA negotiations since Doha, it is likely that current tariff regimes will remain in place until after the EPAs currently under negotiation enter into force.

Non-tariff trade measures may restrict trade inadvertently or incidentally to their primary purpose. Two WTO agreements deal with NTBs:

- the agreement on the application of sanitary and phytosanitary measures (the SPS agreement);
- the agreement on technical barriers to trade (the TBT agreement).

In 2009, the importance of the TBT agreement was illustrated by the follow up of Mexico’s complaint against US rules on tuna labelled as ‘dolphin-safe’. Mexico claims that the criteria for the ‘dolphin safe’ logo, which is administered by the US department of commerce, discriminates against its tuna exports. In 1991 the GATT condemned the US import embargo of tuna caught in association with dolphins, but ruled that requiring tuna products to be labelled dolphin-safe did not violate GATT rules. The USA argues that the case should be arbitrated under NAFTA, rather than at the WTO. In April 2009, the WTO established a dispute-settlement panel. The case marks the first time that such a panel will examine the WTO compatibility of voluntary product labelling, albeit one administered by a government.

2. The WTO agreement on subsidies and countervailing measures (ASCM)

The Doha Round of WTO negotiations on subsidies and countervailing measures broke down in 2006. Negotiations on fisheries subsidies were further set back in the middle of 2008 by the collapse of the Doha Round. But in December 2008, the Chair of the WTO negotiating group on rules circulated a conceptual ‘road map’ on fisheries subsidies. The ‘road map’ identifies the key questions that the negotiating group will need to address to reconcile participants’ different approaches to disciplining subsidies that contribute to over-capacity and over-fishing while formulating appropriate and effective special and differential treatment that addresses the interests and concerns of developing-country members. It is intended to provide a platform for further discussions.

During the meetings held in 2009, members remained divided into two broad camps on how to structure rules aimed at curbing fisheries subsidies. Japan, Korea, Taiwan and the EU want a 'bottom-up approach' that would ban specific types of subsidy payments, such as those that directly contribute to increased fishing capacity. They contend that this would make for clear, workable, and effective fisheries regulations.

In contrast, several countries, the so-called 'Friends of fish' - Australia, Chile, Ecuador, Iceland, New Zealand, Peru, Philippines and the USA, advocate a 'top-down' approach. This would ban all fishing subsidies save for some negotiated exceptions. Supporters of this approach argue that a comprehensive prohibition represents the best option for halting over-fishing.

In the EU, until recently subsidies pervaded almost every aspect of its 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.

Such subsidies gave EU enterprises unfair competitive advantages over other fishing sectors.

On the issue of fisheries agreements access fees, the Africa Group proposed in September 2009 that any new rules should not explicitly include fishing-access agreements within the definition of subsidies, since most African as well as ACP states negotiate access fees at the state level. Such payments are state-to-state transfers and therefore do not constitute a subsidy within the meaning of the ASCM. The African Group therefore favours the explicit exclusion of government-to-government transfer of funds from the Chair's first draft text, which provides the necessary clarity and legal security and predictability in the treatment of access fees.

Meanwhile, the debate on S&DT for developing countries has progressed to the level where the following issues are receiving serious attention:

- the possible exemption of the access fees paid to developing countries;
- the possible exemption of small-scale and artisanal fisheries, where this would require arriving at acceptable definitions of these sectors;
- the possible exemption of development-cooperation programmes.

In the current Chair's text (December 2008), S&DT provisions are linked to fisheries-management conditionalities. The Chair's 'road map' posed a question regarding suggestions for other conditions that S&DT could be based on instead of fisheries management. So far no members have responded to the question, which suggests that there is unanimous support for some form of fisheries-management conditionality for S&DT exemptions. Small-scale fisheries and S&DT are potentially a major stumbling block on reaching agreement in the fishery-subsidy negotiations. In particular, defining the size and scope of small-scale fishing operations is a highly contentious issue, especially if physical size is taken as the main criterion.

Sources

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Fisheries subsidies at the WTO, ICTSD

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The WTO and fisheries

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Fisheries conservation and trade rules (MEAs and WTO)

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WWF web site

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L *unched by CTA (Technical Centre for Agricultural and Rural Cooperation EC-ACP) in 2001, the Agritrade website (<http://agritrade.cta.int>) is devoted to agricultural trade issues in the context of ACP (Africa, Caribbean and Pacific) – EU (European Union) relations. Its main objective is to better equip ACP stakeholders to deal with multilateral (World Trade Organization - WTO) and bilateral (Economic Partnership Agreement – EPA) negotiations. Thus it provides regular and updated information and analysis on technical aspects of the trade negotiations, developments in the CAP and their implications on ACP-EU trade, as well as on major commodities (bananas, cereals, sugar, fisheries, etc).*

CTA was created in 1983 in the framework of the Lomé Convention between ACP (Africa, Caribbean, Pacific) and EU (European Union) countries. Since 2000, the Centre has been operating under the ACP-EU Cotonou Agreement. CTA's tasks are to develop and provide services that improve access to ever-changing information for agricultural and rural development, and to strengthen the capacity of ACP countries to produce, acquire, exchange and use information in this area.

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