

Fishy Business
A case of many incoherencies

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A number of manifest incoherencies can be found in the practice of processing and exporting fish and fisheries products from the ACP to the European market. These incoherencies result in impediments to trade in fisheries products for ACP countries. This case study will elaborate on incoherencies related specifically to the application of the current Rules of Origin and the EUs sanitary and phytosanitary (SPS) standards.

Fisheries Trade

Fish is a highly-traded commodity. Approximately 37 per cent of all worldwide catches are traded internationally.¹ Also, nearly half originates in developing countries and 85% of the total is destined for developed countries.² Fish is also a highly political commodity. Because European consumers' demands for fish exceed the stocks available in European Union (EU) waters, the EU needs to negotiate access to third countries' stocks. As these third countries are often ACP³ countries for whom the fisheries sector is of major importance, stakes in fishing trade are high.

Fisheries products are traded under the Cotonou Agreement, a special trade arrangement between the EU and the ACP countries, providing the latter with preferential access to the EU market. Fisheries trade is subject to international and WTO regulations. This is why, generally speaking, trade in fisheries products is not part of the bilateral access agreements (Fisheries Partnership Agreements FPAs) negotiated between the EU and individual ACP countries. Trade in fisheries products between the EU and the ACP is included in the second pillar of the EU's Common Fisheries Policy (CFP), the same pillar that regulates access of ACP fisheries products to the European market.

Development Policy

The key objective of the current Development Policy of the European Union is to reduce poverty worldwide.⁴ The EU recognizes that, in order to attain this goal, the regional integration of local ACP communities into the world economy is of great importance. This is why the EU underlines that it will assist developing countries on trade and regional integration through fostering equitable and environmentally sustainable growth, smooth and gradual integration into the world economy, and linking trade and poverty reduction [...].⁵

The fisheries sector has the potential to play a significant positive role in reducing poverty.⁶ For a great number of ACP countries, trade in fish and fisheries products

¹ Marc Allain, Trading away our oceans - report, Greenpeace, January 2007.

² DFID

³ African, Caribbean and Pacific countries, mostly former colonies of European member states.

⁴ Art. 177 EC Treaty.

⁵ European Consensus on Development, December 2005, p.21.

⁶ European Consensus on Development, December 2005.

constitutes a vital source of income, and provides employment in local fisheries communities.

Common Fisheries Policy

In principle, a third country can only offer access to others when its own fleet does not have the capacity to fish the total allowable catch of its fish stock. Others, such as the European Union, are then allowed to catch the available surplus of fish. These vessels have licences under the access agreements (FPAs) signed with the European Union.

Obviously, because of a lack of fishing capacity, for instance, the presence of European vessels in third countries waters can be in itself desirable, not least because the financial compensation included in the access agreements are a valuable source of income for some ACP countries. Nevertheless, there have been many instances where EU-ACP fisheries relations have resulted in situations that harm the economies of developing countries.

Incoherencies

Two types of incoherencies originate specifically from the following trade-related issues:

1. Trade liberalization

Since 1971 the EU has granted non-reciprocal trade preferences to developing countries.⁷ The current scheme of tariff preferences (under the Cotonou agreement, applicable up to 31 December 2008) includes a special incentive arrangement for sustainable development and good governance.

Under this and earlier arrangements, ACP exports to the EU have benefited from special, non-reciprocal, tariff-free access to the European market.⁸ As a result, the ACP status of Kenya and Madagascar, for example, and the resultant preferential duty status enables these countries to compete as a tuna processor against low-cost operators from non-ACP countries such as Thailand.⁹ The trade arrangements under the Cotonou Agreement as a whole have given the ACP a considerable competitive advantage. However, mainly owing to the trade liberalization policies of the WTO, these advantageous tariff arrangements are subject to erosion. Consequently, soon the ACP countries will no longer be able to benefit from preferential access. The ACP countries must be compensated for this loss of competitive advantage.

⁷ This was under the EUs GSP (which started in 1971 prior to this, reciprocal preferences were provided (mainly to Francophone Africa) under the Yaoundé Conventions -- Yaoundé I 1963-1969 and Yaoundé II 1969-1975.

⁸ Górez, Béatrice, Fisheries Executive brief 'Market access; tariff and non-tariff aspects, source: CFA.

⁹ Philippe Michaud, Experience from the bilateral fisheries access agreement, impact on the economy and implications for the Seychelles of the outcome of the WTO mediation on the case of tuna between the EU and Thailand and the Philippines, 2003.

2. Rules of Origin

Pressure on their exports to the EU is increased even more because they have to comply with the Rules of Origin (RoO) and stringent sanitary and phytosanitary (SPS) standards. The ACP have to comply with the rules of origin applied to fisheries products. In practice, this means that the fisheries products have to be wholly obtained in the ACP country, as defined in article 3 of the Cotonou Agreement (Protocol I, Annexe V). The main criteria for originating products are: registration and flag of origin, ownership and crewing arrangements on board fishing vessels.¹⁰ The rules of origin have led to friction in ACP-EU fisheries relations, because of the way these rules are defined and applied. ACP countries often simply do not have the means to acquire and support their own industrial tuna fleets, for example. One industrial purse seiner costs at least USD20 million. ACP however, cannot afford to subsidise their fishing industry, like the EU and other distant-water fishing nations. As a consequence, the strict application of the Rules of Origin effectively forces the ACP tuna-processors to purchase tuna from high-priced EU suppliers¹¹ and prevents them from purchasing fish from other countries vessels that may be licensed to fish in their waters.

This creates an incentive for ACP countries to grant EU vessels preferential access to their Exclusive Economic Zone so as to ensure that their tuna canneries are supplied with originating tuna. The tuna is caught by European vessels and sold to local, ACP processors and factories. Subsequently, the processed and canned tuna is exported to the EU. This leads to a remarkable situation: the preferential access offered to the ACP countries for the processed and canned tuna they export to the EU can be considered a form of upstream subsidy to EU vessels rather than a trade concession to ACP countries.¹² This is clearly an incoherent situation that harms developing countries and contradicts development-policy objectives.

3. Non-tariff barriers to trade

A third example of stringent EU standards that results in a situation which impacts negatively on developing countries is the sanitary and phytosanitary (SPS) agreement established by the WTO. The EU scientific committee on food has derived strict food-safety standards from this agreement. Of course, first and foremost, these stringent measures are applied with the aim of protecting European consumers from the potential health risks associated with fisheries products. In those measures, however, lies the risk

¹⁰ Paper on sanitary measures, trade barriers and market access to the EU for fishery products, Netherlands Ministry for Foreign Affairs, April 2005, and Górez, Béatrice, Fisheries Executive brief 'Market access; tariff and non-tariff aspects, source: CFA.

¹¹ Block, Lindsey and Roman Grynberg, EU Rules of Origin for ACP Tuna Products (HS Chapter 16.04), mimeo prepared for the Commonwealth Secretariat (London, 2004).

¹² Ibidem.

of raising unintentional trade barriers to trading partners from developing countries, providing considerable constraints to market access for ACP exporters.

It is clear that the EU needs to apply stringent SPS measures to protect its citizens, but compliance with this complex set of regulations presents a huge challenge to fish-exporting ACP countries. Above all, there are cost implications, in terms of investment in new technology, infrastructure and institutions. As most producers in the ACP are small- and medium-scale producers and artisan fishermen, the costs of compliance with these sets of standards are too high.

4. EU Market Access

A fourth aspect of EU ACP fisheries trade is the actual entering of the EU market of ACP catches. Third-country imports are checked at the EU's external borders. The EU regulates the certification and identification measures. Member States are responsible for the execution of these regulations through actual border inspections. The analytical checks, meaning the checking of the actual quality of the fish in terms of contaminants or pesticides, remain a matter entirely for the Member States. What is especially striking about this is that frozen or processed fish are subject to certification and identification procedures, whereas fresh fish can be landed immediately.

Now, if one takes into consideration that catches by European fishermen are not even considered to be imports (meaning that the fish caught by a European vessel are presumed to comply with European standards), one can only conclude that there is not only a gap in the certification system. More importantly still, this practice provides direct proof of discrimination against third-country imports.

In addition, according to several tuna-industry representatives in ACP countries, the EU enforces SPS requirements regarding EU-approved vessels (e.g. compliance with SPS and related traceability regulations) far more rigorously in relation to the ACP than it does in relation to, for example, Thailand.¹³ After a safeguard or extra regulation is put in place, countries that are signatories of the SPS agreement (and a lot of ACP countries are) can report the SPS notification to the EU Food and Veterinary Office if they believe the measure is unfair and will harm their country. In reality, however, no ACP country has ever filed a complaint, as they simply do not have the money or the technical know-how to do sufficient research in order to back up any claim.¹⁴ In addition, a WTO SPS dispute would lead to diplomatic problems in other areas.

¹³ L. Campling and M. Doherty (2007), A comparative analysis of cost structure and sanitary and phyto-sanitary (SPS) issues in canned tuna production in Mauritius/the Seychelles and Thailand: Is there a level playing field? Presented at the East and Southern Africa (ESA) Dedicated Session on Fisheries, 23-24 July 2007, Le Morne, Mauritius.

¹⁴ Even in situations where technical know-how in the ACP is present, relative to the army of EU lawyers and trade economists, the dispute would never be a fair fight.

Conclusion

Considering the interdependence of the EU and the ACP countries, many European Union policies have a profound impact on developing countries. EU-ACP fisheries relations are no exception. The EU is increasingly aware that development cooperation alone cannot meet the needs of developing countries.

However, the examples provided above show that there are severe restrictions on market access for developing countries fisheries products, which are harmful to local fisheries communities and their economies in the ACP. A revision of the current system of Rules of Origin is much needed the system should be made less complex and strict in order to function better and not to overstep the mark. Non-tariff barriers that result from the strict application of SPS standards, as the example of the Seychelles in 2004 (see box 1) illustrates very clearly, are not only unfair and harmful for local economies, but are also detrimental to vulnerable habitats and the environment.

Since DG Fisheries claims to strive for sustainable fisheries, it should live up to these commitments by providing additional funds for capacity building of local food safety authorities under the SFP programme. DG Fisheries and DG SANCO should not point at DG Development or DG EuropeAid when it comes to developing countries' interests and claim it is not their responsibility. It is time for the European Union to live up to its own commitments regarding policy coherence for development and to keep at least their end of the deal.

Policy Recommendations

- The EU should compensate ACP countries for any loss of competitive advantage and loss of income from fisheries exports to the EU because of unfair application of SPS standards.
- The current practice of virtually forcing ACP tuna processors to buy from high-priced EU suppliers as a result of the current Rules of Origin system, resulting in a complete loss of comparative advantage, should end.
- Low-cost loans should be made available to small-scale fish producers in order to ensure that high EU food safety standards and other measures are not implemented in ways that undermine poverty-eradication efforts by systematically placing a disproportionate burden on small-scale producers.
- Extra effort should be put into capacity-building of local food safety authorities and training the personnel of control bodies and industry, in order to meet the sanitary standards the EU requires for the import of fishery products.

- The way certification and identification procedures and regulations are carried out at Member States' national borders should be examined carefully in order to rule out any possibility of discrimination against third countries' imports.

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