



1. Background and key issues

2. Latest developments

Ongoing discussions on whether payments for fishing agreements are subsidies

Influence of WTO subsidies discussion on EU fisheries policy reform

Other international developments

Strengthening the international regulatory framework for fisheries sector investments

3. Implications for ACP countries

Monitoring EU policies affecting WTO negotiations Making use of trade policy tools and nuanced approach to investment

The ACP, the EU and transparency in international fisheries relations

The need to develop a framework for foreign investments

Monitoring international progress to combat IUU fishing through trade-related measures

WTO and other international aspects of ACP–EU fisheries relations

1. Background and key issues

WTO rules applying to international fish trade and treaties, as well as conventions governing fisheries management and conservation, are of importance for ACP fish-producing countries.

Trade in fisheries and fishery products are dealt with in the WTO non-agricultural market access negotiations. Many observers consider that until there is an improvement in the broader WTO trade negotiations, there will be little progress in the fisheries negotiations. Consequently, in 2011/12, development has been slow in the various aspects of the WTO negotiations that impact on the fisheries sector.

Erosion of tariff preferences enjoyed by ACP fish products on the EU market is likely to take place with any further WTO-led trade liberalisation.

“In 2011/12, development has been slow in the various aspects of the WTO negotiations that impact on the fisheries sector”

Currently, however, the main source of preference erosion is the increasing number of bilateral trade agreements that the EU is concluding with non-ACP fish-producing countries, particularly in Asia and Latin America. Further trade liberalisation will also affect some seg-

ments of the EU industry, especially tuna producers, importers and processors. These operators would like WTO rules to take into account various international standards – such as labour standards that are currently applied to EU producers but not all third country producers – to create a more level playing field.

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Given the lack of progress in the WTO negotiations, such issues have not been taken up in a WTO context, but they are increasingly being addressed within EU fisheries trade policy discussions (see *Agritrade* ‘ACP–EU fisheries market access and trade’ Executive Brief, forthcoming 2013).

“The ‘Rio +20’ document reaffirmed commitment to eliminate subsidies that contribute to IUU fishing, and to conclude multilateral disciplines on fisheries subsidies”

International treaties and conventions also influence the ACP–EU fish trade. The outcome document of the 2012 United Nations Conference on Sustainable Development (Rio+20) devoted a whole chapter to oceans and seas. The document reaffirmed commitment to eliminate subsidies that contribute to illegal, unreported and unregulated (IUU) fishing, and to conclude multilateral disciplines on fisheries subsidies.

Governments also commit themselves to ensure access to both fish resources and markets for the small-scale sector and their communities, particularly in developing countries and especially in small-island developing states. A

similar emphasis on the small-scale sector’s contribution to fish trade and food security was included in the UN report on Fisheries and the Right to Food, presented at the 2012 UN General Assembly.

The international fish trade is increasingly being shaped by the emergence of China as a global partner in ACP fish negotiations. The demise of the EU-based seafood multinational Pescanova, which has various subsidiaries in ACP countries, is also likely to carry implications for ACP–EU fisheries relations.

2. Latest developments

Ongoing discussions on whether payments for fishing agreements are subsidies

A 2012 International Centre for Trade and Sustainable Development (ICTSD) review on negotiations of fisheries subsidies in the WTO highlighted the exclusion of access fees paid by distant-fishing nations to host countries (so-called government-to-government payments) from the disciplines on fisheries subsidies. It noted that, in the event of access fees being considered as subsidies, ACP nations may find themselves negatively affected.

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This could include reduced sourcing from foreign vessels of fish destined for processing and export, which would in turn lead to reductions in employment and revenues arising from the operations of these foreign fleets. However,

the review also highlighted that a reduced foreign presence may provide an opportunity for reducing the fishing effort and contribute to less competition for capture and export between foreign vessels and the local fishing industry (see *Agritrade* article ‘[Negotiations on fisheries subsidies: Issue still at stake within the WTO and the EU’s CFP reform](#)’, 23 September 2012)

This issue of fishing agreement payments was raised by Russia following its WTO accession, when it announced plans to file a complaint at the WTO over the “subsidies” that are provided by the EU under the Fisheries Partnership Agreement (FPA) with Mauritania. The Russian government’s planned complaint is in the context of the Russian effort to negotiate a 10-year fisheries access arrangement with Mauritania, involving a payment of US\$100 million, which is to be invested in storage and processing infrastructure.

In response, the EC Fisheries Commissioner pointed out that EU FPAs are based on transparency, sustainability and good governance, and that any WTO cases filed against EU FPAs would serve as a catalyst for launching a broader initiative to promote more transparency over all fisheries access agreements – involving all countries (see *Agritrade* article ‘[Russia threatens to call on WTO after Mauritania says it should respect same conditions as ‘subsidised EU fleets’](#)’, 1 July 2013).

Influence of WTO subsidies discussion on EU fisheries policy reform

The future of EU fisheries subsidies has also been hotly debated in the context of the reform of the EU Common Fisheries Policy (CFP), in view of a general policy commitment to reduce the level of subsidies (see *Agritrade* ‘EU Common Fisheries Policy and fisheries

partnership agreements: Challenges for ACP countries’, Executive Brief, forthcoming 2013).

Addressing European parliamentarians and EU member state representatives, a leading negotiator on international fisheries subsidies from New Zealand claimed that the future EU fisheries subsidies policy – under the European Maritime and Fisheries Fund – will affect the approach on fisheries fleet subsidies in the WTO negotiations, given the critical role of EU policy in this area (see *Agritrade* article ‘[EU decision on fish subsidies may pose risk to global negotiations](#)’, 18 May 2013).

In October 2012, the Council of EU Fisheries Ministers decided on the reintroduction of modernisation subsidies, while in the European Parliament, subsidies for vessel construction and for upgrading engines were being proposed. These types of subsidies, however, have often been criticised for enhancing the fishing efforts deployed (see *Agritrade* article ‘[EU ministers support controversial subsidies](#)’, 2 December 2012).

Meanwhile, the European fishing sector is also developing a new approach to fisheries subsidies. During 2012, the recently created European Fisheries Technology Platform (EFTP), comprising representatives from the industry and researchers, held a series of workshops to review various aspects of innovation in fishing activities that are designed to improve the efficiency of operations. This provided inputs for the EFTP Strategic Research and Innovation Agenda for 2020. It is maintained that research and innovation are necessary to reduce the costs and increase the profitability of the European fisheries sector, and also to promote more sustainable and responsible fishing activities.

“The EFTP maintains that research and innovation are necessary to reduce costs, increase profitability and promote more sustainable and responsible fishing activities”

The EFTP particularly discussed energy efficiency, in a context where fuel accounts for 55% of a vessel’s running costs. Considerable savings can be made from optimising vessel design, navigation and strategically reducing speed (for instance, reducing speed by 7% leads to a 16% reduction of fuel consumption). New fishing gear technologies (adaptations of doors and trawl nets) can also reduce fuel consumption by up to 40%. However, research showed that changing the engine – something the European Parliament is proposing to subsidise in the future European Fisheries Fund – is an expensive possibility, and leads to only a 10% saving in energy costs. The EFTP hopes that the priorities for research and innovation it identified will be considered for EU funding (see *Agritrade* article ‘[European Fisheries Technology Platform focuses on fishing vessels’ energy efficiency](#)’, 11 February 2013).

Other international developments

Taking IUU fishing regulations to the international stage

In 2012, after 5 years of negotiations, international voluntary guidelines for flag state performance were finalised and aimed at tackling IUU fishing. These voluntary guidelines will be presented to the FAO Committee on Fisheries in June 2014 for endorsement. The guidelines make recommendations for encouraging and helping flag states comply with their international duties and obligations regarding the flagging and control of fishing vessels.

They also present possible actions in response to non-compliance. The proposed guidelines are also looking at ways to cooperate with and assist developing states in their capacity as flag states (see *Agritrade* article ‘[New international guidelines will help combat IUU fishing](#)’, 25 March 2013).

IUU has also been the focus of a new Interpol initiative to detect, combat and suppress fisheries crime. Its main objective is the exchange of fisheries control information and intelligence between countries. A permanent Interpol Fisheries Crime Working Group will provide recommendations to ensure international cooperation between Interpol and national fisheries control authorities, and to put in place assistance to countries where fisheries law enforcement is lacking. Fisheries ministers of Liberia, Sierra Leone, Spain and Togo participated in the conference that launched this initiative. Some environmental groups, such as Pew and Greenpeace, welcomed the involvement of Interpol in the fight against IUU fishing (see *Agritrade* article ‘[Interpol to get involved in fighting IUU fishing](#)’, 24 February 2013).

Some global fisheries players, such as the EU and US, are also developing their own initiatives to combat IUU fishing. In 2012, the EU published a list of pre-notified countries that were seen as not cooperating against IUU (see *Agritrade* ‘ACP–EU fisheries market access and trade’ Executive Brief, forthcoming 2013); while for its part, the US administration submitted a report that identified 10 countries engaged in IUU fishing in 2011 or 2012. The US report included ACP countries, such as Ghana and Tanzania, and EU countries, such as Italy and Spain. The identified countries had vessels that did not comply with conservation and management measures adopted by a regional fishery management organisation to which the US is party. If an identified country fails

to take appropriate action, its fishing vessels may be denied entry into US ports, and US imports of fish products may be prohibited – such measures are similar to those existing in the EU's IUU regulation. The US administration readily admitted that the main aim of this report was to level the playing field for fishers around the world (see *Agritrade* article '[NOAA identifies 10 countries, including in EU and ACP, that conducted IUU fishing](#)', 11 February 2013).

The growing importance of China

China has now become a major distant-water fishing nation, including in ACP nations' waters.

In recent years, China has developed a fleet of specialised distant-water fishing vessels (e.g. bottom trawlers, purse seiners and longliners) which are linked to mother ships that deliver their catch to freezing and processing facilities. These ships supply China's domestic and local as well as international markets, including some markets in ACP countries. Globally, China's distant-water fleet now comprises 3,400 vessels fishing in 37 countries. Chinese investments (refrigeration plants, processing units, etc.) have been made in ACP countries to facilitate the activities of these Chinese fleets.

A study by D. Pauly and others, published in the journal *Fish and Fisheries* in 2012, highlighted the "tendency towards secrecy in fisheries data and the disregard for public accountability of the use of public resources". Although access agreements between China or Chinese companies and third countries are not publicly available and catches of the Chinese distant-water fleets go largely unreported, the activities of these fleets are increasingly being documented. The authors of the 2012 study reconstructed the catch data and found that the Chinese distant-water

fleets extract their largest catches from African waters (approximately 3.1 million tonnes per year, caught by about 400 trawlers). This suggests that Chinese fleets catch roughly 10 times what is reported by China to the FAO (see *Agritrade* article '[China reporting only 10% of its distant-water catches](#)', says new study', 18 May 2013).

"According to a study, China's distant-water fleets extract their largest catches from African waters – they catch roughly 10 times what is reported to the FAO"

Fisheries are now a key area for developing business links between China and Africa, with growing Chinese investments in African fisheries. Currently, these investments are worth around US\$6 billion per year, and generate approximately 500,000 tonnes of fish products, half of which is processed and sold on the EU market, and one-third of which is sold in China. China is now the biggest foreign presence in the African fishing industry, followed by the United States, the EU and Japan. According to the Secretary-General of the China Center for International Economic Exchanges, Africa will probably replace the EU as China's biggest trade partner in the next few years, with fisheries playing an important role in this partnership. However, the China Overseas Fisheries Association, composed of Chinese distant-water fishing companies, takes a different view as it is considered unlikely that China–Africa fishery cooperation will take off unless African countries change their policies restricting foreign businesses. These include current limitations on the purchase of fishing rights and licences, and on the remittance of foreign earnings to China (see *Agritrade* article '[Chinese investors call for African governments to remove 'restrictions on fisheries](#)', 29 January 2013).

The demise of Pescanova

One of the world's biggest seafood companies, Pescanova, announced in 2012 that it had filed for insolvency, having failed to sell part of its Chile salmon farming business to Norwegian companies.

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The Spanish-based company entered a preliminary phase, seeking protection from creditors. In recent months, Pescanova has reported debts of €1.5 billion and several of its boats and factories are mortgaged to an overall value of €100 million. However, the actual state of the debt remains unclear, as auditors have found several discrepancies in information provided.

Pescanova's market valuation fell by 60% in 2012. Furthermore, Pescanova has about 10,500 employees with a presence in more than 20 countries – including Namibia, South Africa, Mozambique and Angola. While Spanish banks and the government may come to Pescanova's rescue, the sale of fishing quotas received from countries such as Chile and Namibia under systems of individual transferable quotas (ITQs) is likely to be seen as a revenue earner by the company's creditors (see *Agritrade* article '[Pescanova, one of biggest world fishing companies, files for insolvency](#)', 7 April 2013).

Strengthening the international regulatory framework for fisheries sector investments

There are numerous international instruments that could provide the basis for strengthening the international regulatory framework for foreign

investment in ACP fisheries sectors. The underlying principles contained in these various FAO, ILO and OECD conventions and guidelines fall into five areas.

Conformity of investments with the policy objectives of the third country

“The regulatory framework for investments should ensure that investments contribute to economic, social and environmental progress with a view to achieving sustainable fishing”

Investments should take into account the policies introduced in the countries in which they operate. In this respect, the regulatory framework should ensure that investments:

- contribute to economic, social and environmental progress with a view to achieving sustainable fishing;
- respect the human rights of those affected by these investments, in accordance with the international obligations and commitments of the government of the third country;
- boost local capacity by working closely with local communities while expanding in the domestic and foreign markets in a way that is compatible with sound business practices;
- encourage training, particularly by creating job opportunities and facilitating the training of women and young people in the sector;
- are given no exemptions from environment, health, safety, labour, taxation, standards and requirements.

Transparency

- Investors must ensure that reliable and pertinent information about their activities, structure, financial situation and results is communicated to the public regularly and on time.
- Investors must apply high standards of quality in their disclosures, accounts and audits, and with regard to any information of a non-financial, environmental and social nature.
- Investors must improve the transparency of their efforts to clamp down on corruption and extortion.

Environmental protection

Investments should take into account the need to protect the environment and maintain public health and safety. In particular, investors must:

- set up and implement an environmental management system suited to the enterprise, involving:
 - the timely collection and evaluation of sufficient information on the potential impact of their activities on the environment and on health and safety;
 - setting measurable and, if necessary, specific targets to improve their environmental performance, with a periodic audit of these targets;
 - monitoring and reviewing on a regular basis the progress achieved in the pursuit of general and specific targets in terms of environmental and health and safety requirements;
- refrain from using the absence of absolute scientific proof as a reason for delaying the adoption of effective

measures destined to prevent or reduce environmental damage, or that jeopardises health and safety requirements.

Optimisation of taxation

Enterprises should comply with the tax laws and regulations in every country in which they operate and make every effort to act in accordance within the spirit and letter of such laws and regulations. Enterprises should send the relevant authorities all the information necessary for calculating their tax liability and should observe the ‘arm’s length’ principle in their transfer pricing practices.

Participation of local communities in the host country

According to the FAO Investment Centre, any investment project in the fisheries sector must be based on a complete evaluation of local conditions, not only at a technical or environmental level, but also at economic, political and social levels. Beneficiary communities should be involved in the early stages of planning any investment so that their existing rights can be fully respected.

3. Implications for ACP countries

Monitoring EU policies affecting WTO negotiations

EU policies – such as the reform of its fisheries subsidies through the European Maritime and Fisheries Fund, the reform of bilateral sustainable fisheries partnerships agreements and the fisheries elements of trade agreements with non-ACP countries – affect EU–ACP fisheries relations, and will also

have an impact on EU positions in international negotiations (WTO, FAO, etc.).

In the case of European fisheries subsidies, some of the envisaged subsidies have been criticised in international forums for being too focused on enhancing capacity. European Parliament proposals to reintroduce vessel modernisation subsidies, would focus on “small-scale and coastal fishing”, which is defined in the European context as “vessels of an overall length of less than 12 metres which do not use towed gear or which spend less than 24 hours at sea”.

“Moves by the EU to reintroduce vessel modernisation subsidies for small-scale fisheries may be indicative of the eventual EU position in WTO discussions on special and differentiated treatment”

Moves in this direction may be seen as indicative of what the EU position could be in WTO discussions on special and differentiated treatment, and hence could have implications for WTO rules affecting ACP countries. It is therefore important that ACP countries monitor internal EU debates and decisions taken in these areas.

The ACP, the EU and transparency in international fisheries relations

Under the EU’s approach to sustainable FPAs, there is a growing insistence to make all access agreements between distant-water fishing countries – or companies – and coastal countries publicly available, and on better documenting the activities and catches of distant-water fleets. This is something that would benefit ACP countries where these fleets operate, as it would help them analyse the costs and benefits of these operations, and provide the

necessary information to move towards the harmonisation of access conditions for the distant-water fleets.

“Transparency in fisheries agreements would benefit ACP countries by helping to analyse costs and benefits, and providing information to move towards harmonisation of access conditions for distant-water fleets”

At the last FAO Committee on Fisheries, a proposal was made to the FAO by the EU to undertake a global study on fisheries agreements. ACP governments may wish to extend their support to this proposal given the potential fisheries management benefits it could stimulate.

The need to develop a framework for foreign investments

Private and public investments in African fisheries are needed to develop fishing activities and add value locally to fisheries resources, particularly in communities that depend on fisheries for their livelihoods.

That there are new partners interested in investing in ACP countries’ fisheries sectors and some traditional investors are in financial difficulties suggests that an in-depth analysis is required to ascertain:

- how these affect ACP fisheries sector development;
- which strategies are most likely to contribute to the structural development of ACP economies in the global fisheries trade on a sustainable basis.

One critical current issue from a sustainability perspective is the trend

towards linking investment to the granting of fishing rights. ACP countries must analyse who bears the costs and who gets the benefits of such conditional investments. As demonstrated by the Pescanova case, the value of the fishing rights allocated to ACP countries under ITQs can be capitalised to secure bank loans or cover bad debt. This raises questions of what happens to these ITQ rights, and what are the implications for ACP fisheries management regimes. The policy challenge is to guarantee the transfers of fishing rights, and to ensure that the overall level of fishing access granted does not undermine the fisheries resource. It also raises the matter of how transfers of ITQ rights could have an impact on market access, given increasing pressures to link market access for fisheries products to sustainability and social criteria.

This highlights the need to introduce clear regulatory frameworks for foreign fisheries investment in ACP countries, and to ensure that investments are economically, environmentally and socially sustainable. It also highlights the importance of investors themselves taking on board their corporate responsibilities.

Because of the importance of these issues to ACP fisheries sector development aspirations, and the challenges ACP governments face in dealing with the less-than-transparent world of international fisheries investment, ACP governments may wish to consider the development of an international regulatory framework for investment that promotes:

- transparency;
- environmental protection;
- optimisation of taxation;

- participation of local communities
- conformity of investments with national policy objectives.

Monitoring international progress to combat IUU fishing through trade-related measures

Given that there is an FAO International Plan of Action on combating IUU, and yet there is little overlap between EU and US lists of third countries engaged in IUU fishing, the question arises of how any individual country finds itself placed on any particular list of countries engaged in IUU fishing, and why some countries are on one list and not on another. This suggests that there is a need to strengthen efforts

to harmonise international approaches to combat IUU fishing. ACP countries should support such harmonisation in a way that takes into account their specificities. This is particularly relevant in the case of the EU-sponsored proposal to promote an international catch certification scheme for proving that a fish product has been caught legally – especially when considering the serious capacity constraints faced by some island ACP states to provide such catch certification. Potentially, FAO guidelines on flag states' responsibilities are of considerable value to ACP countries, where many national authorities lack the capacity to monitor and control fishing vessels flying under their flags. As such, ACP governments should welcome these guidelines since they provide both recommendations

and possible support to all ACP countries in addressing this issue.

Similarly, the fact that Interpol is developing an IUU initiative may be of interest to ACP countries to help them fight criminal organisations active in their fisheries. However, there needs to be a multifaceted approach to fighting IUU difficulties, which includes promoting more transparency and accountability for the allocation of access to fish resources, increasing human and technical capacities to police their waters, and promoting international tools to combat IUU fish trade, in line with the FAO International Plan of Action to deter and eliminate IUU fishing.

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About this update

This brief was updated in October 2013 to reflect developments since September 2012. Other publications in this series and additional resources on ACP–EU agriculture and fisheries trade issues can be found online at <http://agritrade.cta.int/>.



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