

# Executive brief

## WTO and other international aspects of ACP–EU fisheries relations

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### 1. Background and key issues

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WTO rules applying to both the international trade in fish and fishery products and international treaties, and also the conventions that govern fisheries management and conservation, are of key importance for ACP fish-producing countries.

Within WTO negotiations, trade in fisheries and fishery products is dealt with in the non-agricultural market access (NAMA) negotiations. Negotiations on subsidies and countervailing measures (ASCM), trade and the environment and dispute settlement procedures all have a bearing on ACP fisheries sector relations. Issues related to SPS standards and eco-labelling

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also have a bearing on developments in ACP fisheries sectors. Negotiations on fisheries subsidies to date have highlighted the need to differentiate between harmful and beneficial subsidies, and the need to allow exceptions for developing countries through special and differential treatment

(S&DT), particularly for artisanal fisheries. Past WTO dispute settlement cases have seen ACP margins of preferences reduced vis-à-vis Asian exporters.

In the past year, however, there has been no substantive progress in the various aspects of the WTO negotiations impacting on the fisheries sector.

EU–ACP fish trade relations are also influenced by international treaties and conventions. The EU is increasingly using international fora to promote a common global

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approach to fisheries management, which often includes important trade aspects (e.g. the promotion of a global certification scheme for fish catches that is compatible with the EU’s Illegal, unregulated and unreported/IUU regulation).

In particular, the 1992 United Nations Conference on Environment and Development (UNCED) triggered a number of

international processes, including the World Summit on Sustainable Development (WSSD) and the 2012 ‘Rio + 20 Summit’, which, in its ‘Oceans’ chapter, urges the UN members to adopt strategies in order to improve market access for fish products from developing countries, including by small-scale fisheries producers. UNCED and the United Nations Convention on the Law of the Sea (UNCLOS) have also provided the basis for the 1995 FAO Code of Conduct for Responsible Fisheries. The Code guides the work of the FAO Committee on Fisheries, including through its Sub Committee on Fish Trade.

## 2. Latest developments

### The general state of WTO discussions

It is a common view that until progress is made in the broader WTO trade negotiations there will be little progress in the fisheries arena. One of the main trade issue facing ACP states in the

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fisheries sector is the erosion of their margins of tariff preferences. While preference erosion has a WTO dimension, the main reason for preference erosion is the fact that EU is increasingly negotiating tariff concessions for fish products with non-ACP third countries, through bilateral trade agreements.

This process of tariff elimination has led certain sectors of the EU fishing industry (most notably the European tuna industry at the 8th WTO ministerial

meeting) to raise the issue of production standards in EU trade agreements, including in the Pacific IEPA concluded with Papua New Guinea (see *Agritrade* article ‘[The European tuna sector asks the WTO to guarantee fair play rules](#)’, 30 January 2012). The European tuna industry would like to see common WTO-agreed rules (including on monitoring and control issues) applied across the whole of the global tuna sector. The European tuna industry takes the view that such non-discriminatory treatment ‘is in danger because of the bilateral agreements, like the EPA with the Pacific, as this agreement excuses these countries from meeting EU norms’. The industry organisation would also like to see a connection between WTO rules and the International Labour Convention, so that minimum labour standards are given due attention in world tuna trade.

Given the lack of progress in the WTO negotiations to date, none of these issues have been taken up in a WTO context, although they are indicative of the issues likely to be increasingly addressed within EU fisheries trade policy discussions.

In 2011–12 fisheries subsidies negotiations in the WTO reached an impasse, with well-known polarised views being expressed. This includes issues of interest to ACP fishing nations, such as treatment of high-seas fishing, for which some developing countries advocate flexibilities for subsidies, based on the premise that not all developing countries have had the opportunity to exploit their rights in international fisheries (see *Agritrade* article ‘[WTO fisheries negotiations reach an impasse](#)’, 30 January 2012).

A report by the chair of the negotiating group on rules highlighted the remaining challenges for the fisheries-subsidies negotiations, notably resolving whether some forms of subsidies ben-

efitting the ‘artisanal’ or ‘small-scale’ sector should be exempted from any prohibition. Some are advocating a *de minimis* general exception, with a higher

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threshold for developing members, since this would be easier to administer, and it would avoid the difficult debate on the definition of small-scale fisheries (see *Agritrade* article ‘[Negotiations on fisheries subsidies: chairman’s report](#)’, 5 July 2011).

Concerning subsidies for the transfer of vessels, the chair reiterated the non-controversial nature of the discussions on the prohibition of subsidies on the transfer of fishing or service vessels to third countries (including through the creation of joint ventures), with a number of delegations pointing out that such transferred vessels often become engaged in IUU fishing activities.

On the prohibition of the public provision of fees under access agreements, the chairman recalled that it has been proposed that the payer government’s subsidised transfer of the fishing rights to its distant-water fleet should be exempt from the prohibition if the access were to fisheries in the waters of a developing member, provided that a range of sustainability and transparency conditions were met.

NGOs such as the WWF applauded the chair’s report, believing it left the door open to strong WTO rules on fisheries subsidies. The WWF also noted how far negotiations have progressed since the beginning, with most countries now supporting strong WTO rules to end subsidies that drive overfishing, and having reached agreement on a

basic framework for doing so (see *Agritrade* article ‘[WTO report emphasises the need to rein in fisheries subsidies, says WWF](#)’, 5 July 2011).

The concerns of developing countries were also highlighted in the chair’s report, with the representative of Barbados arguing that small and vulnerable coastal states that are not responsible for overfishing should be allowed to support their nascent fishing industries. Brazil, a very active member in the

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subsidies discussion, argued that policy space for developing countries to use subsidies should not be a blank cheque, but at the same time should ensure that developing countries could support the construction of fishing fleets (see *Agritrade* article ‘[The concerns of developing countries on fisheries subsidies are highlighted](#)’, 5 July 2011).

During 2011-12 a focus of discussion has been on potential disciplines for subsidised fuel. A particular aspect that was documented by the OECD is fuel-tax concessions, although to what extent such concessions can be equated to a ‘fuel subsidy’ is still debated. The OECD report highlighted that, rather than focusing on determining the impacts of these concessions on the exploitation of resources, it may be more useful to consider the policy objectives and whether fuel-tax concessions are the best tool to serve these objectives. This is an approach worth exploring for the more general discussion on subsidies, particularly given the difficulties faced in obtaining comparable data which allow a clear

identification of impacts (see *Agritrade* article ‘[OECD paper examines fuel-tax concessions in the fishing sector](#)’, 10 June 2012).

Generally, the OECD felt that better options existed for achieving most common policy objectives, since support that is not linked to the use of inputs (like fuel), can be much more effective in transferring income to recipients, as they impose fewer market distortions and do not require fishers to take costly decisions in order to receive them. It was felt that regional development objectives are likely to be best met through targeted programmes that are not sector-specific, such as infrastructure development or retraining.

EU fisheries subsidies have also been the focus of much attention, given the EU’s policy commitment to reducing them. One issue which has been highlighted is the lack of transparency in EU fisheries subsidies (see *Agritrade* article ‘[EU transparency rules are not applied for fisheries subsidies](#)’, 19 December 2011). It has been reported that many EU member states publish no data at all, while others publish incomplete data in poorly accessible formats. A transparency index which evaluates the data published by EU member states concludes that some of the worst performers in terms of transparency are countries whose fleets operate in distant waters. It is maintained that ‘Greece and Portugal appear to have published no data at all’, while ‘Spain, which accounts for some 40% of fisheries subsidies spending, scored just 48% in the transparency ranking’.

Further analysis has suggested that a total of at least €3.3 billion in subsidies to EU fleets was made available in 2009, three times as much as the publicly available figures normally referred to. By this measure ‘total subsidies to the fishing sector are equivalent to 50% of

the value of the total fish catch by the EU’ in 2009 (€6.6 billion), while 13 EU countries ‘had more fishing subsidies than the value of the landings of fish in their ports’ (see *Agritrade* article ‘[New report on EU fishing subsidies](#)’, 28 October 2011).

### Other international developments

#### UN processes: Rio +20

The United Nations Conference on Sustainable Development, known as Rio +20, was held in Brazil in June 2012. It focused on two themes: a green economy in the context of sustainable development and poverty eradication; and the institutional framework for sustainable development (see *Agritrade* article ‘[Rio +20 conference will look at fisheries](#)’, 10 June 2012).

A UNEP report for the conference contained a chapter devoted to fisheries in which it was suggested that, in order to achieve sustainable levels of fishing from an economic, ecological and social point of view, a serious reduction in the present excessive capacity was required. Given the wide differences

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in: catching power; job creation potential; and the livelihood implications; of large-scale compared to small-scale fishing vessels, it was suggested that a focus on large-scale vessels would bring about a reduction in this overcapacity at a relatively low cost to society and the economy.

It further noted that most of the cost of ‘greening’ fisheries involves helping the fisheries sector adjust to lower fishing capacity, including by the use of subsidies, such as vessel buy-back programmes (‘scrapping funds’), compensation, and retraining programmes for fishers.

In the outcome document from the Rio +20 Conference, a whole chapter is devoted to Oceans and Seas, which includes:

- a commitment (Para 158) to protect, and restore, the health, productivity and resilience of oceans and marine ecosystems, and to maintain their biodiversity, enabling their conservation and sustainable use for present and future generations, and to effectively apply an ecosystem approach and precautionary approach in their management;
- a commitment (Para 168) to intensify efforts to meet the 2015 target to maintain or restore stocks to levels that can produce maximum sustainable yield and enhanced action to manage by-catches, discards and other adverse ecosystem impacts from fisheries, including by eliminating destructive fishing practices.

This chapter also reaffirms (Para 173) the commitment to eliminate subsidies that contribute to IUU fishing, and a commitment to conclude multilateral disciplines on fisheries subsidies.

Governments also commit themselves (Para 175) to observing the need to ensure access, to both fisheries and markets, for subsistence, small-scale and artisanal fisherfolk and women fish workers, as well as indigenous peoples and their communities, particularly in developing countries, and especially in small-island developing states (see ‘The future we want’ for oceans and seas in

*Agritrade* article ‘Rio +20 conference will look at fisheries’, 10 June 2012).

### UN processes: FAO Committee on Fisheries

The 30th session of the Committee on Fisheries (COFI) of the UN Food and Agricultural Organisation (FAO) was held in July 2012 (see *Agritrade* article ‘Highlights from the 30th Session of the FAO Committee on Fisheries’, 23 September 2012). At this meeting ACP countries highlighted the need to develop FAO work on IUU fishing and the need to build capacity in developing countries for developing an aquaculture sector. The chair proposed the establishment of a UN international year of aquaculture to raise the profile of this sector.

The FAO was also asked to study further the impact of industrial exploitation of forage fish (for farming and aquaculture feed), following a claim that forage fish were important for food security and ecosystem sustainability.

Eco-labelling schemes and traceability were a particular focus of discussions on fish trade, with many ACP countries highlighting the importance of ensuring

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*“At the FAO Committee on Fisheries, many ACP countries highlighted the importance of ensuring that eco-labelling requirements do not limit market access for developing countries”*

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that eco-labelling requirements do not limit market access for developing countries. The contribution of small-scale fisheries to regional and international trade was also highlighted by several African and Indian Ocean countries.

An update on the development of international guidelines to secure sustainable small-scale fisheries was also pre-

sented, and the modalities for the organisation of the negotiations of the guidelines were discussed. Developing-country governments, including ACP governments, generally supported the process, underlining the importance of small-scale fisheries in their economies.

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## 3. Implications for ACP countries

### The implications of the current impasse in the WTO negotiations

One worrying aspect of the impasse reached in the WTO negotiations is that, in the subsidies debate, industrialised countries, in the name of conservation, seem bent on maintaining the *status quo* of their fleets’ domination, in particular of high-seas fisheries. This is despite the legitimate claim of developing countries for access to and profit from high-seas fisheries, like tuna

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fisheries. Moreover in many cases, coastal fisheries have reached maximum levels of exploitation, and the only way for ACP countries to derive greater benefits from fisheries is from tuna and other off-shore fisheries. In this context, ACP claims must be accommodated within the RFMOs through mechanisms that allow access to new entrants, whilst scaling back the operations of industrialised country fleets.

This calls not only for a reduction of fisheries subsidies, a policy the EU is

likely to pursue in its new common fisheries policy, but also calls for policies for allocation of access that would enable ACP countries to develop their high-seas fisheries in a sustainable manner. Some argue that allocation systems that are based either on historic catch data (the current system) or tradable access rights (as promoted by the EC) are unlikely to achieve substantive changes and may simply perpetuate the domination of industrialised countries of high seas fisheries.

Meanwhile, although the WTO negotiations are stalled, the EU continues to grant new tariff preferences to non-ACP fish producers in Latin American and Asia, further eroding ACP margins of tariff preferences in the fisheries sector.

The impact of any potential WTO agreement on ACP countries will therefore be influenced by other EU policies affecting EU–ACP fisheries relations and EU–ACP fish trade, such as the reform of the Common Fisheries Policy (CFP) – particularly in relation to subsidies and access allocation systems – and the fisheries policy aspects of EU bilateral trade agreements (for more information, see *Agritrade* Executive brief: Update ‘EU Common Fisheries Policy and Fisheries Partnership Agreements: Challenges for ACP countries’, forthcoming, 2012).

### Special and differential treatment in the context of the debate on fisheries subsidies

Given the debate on fisheries subsidies in the WTO, there is a need for ACP countries to ensure that S&DT and exemptions for LDCs remain at the centre of these discussions. It is also important that, in the negotiations for S&DT, ACP governments ensure that the whole fisheries production system

is adequately covered (to date most discussions have focused on the catching operations) and that positive discrimination in favour of developing countries are introduced (on access rights, access to markets, support to infrastructure, etc).

Of particular importance for ACP countries is the treatment of small-scale fisheries, the issue of subsidised access of foreign fleets to ACP resources, and the debate on fuel subsidies.

Small-scale fisheries employ more than 90% of the world’s capture fishers and are vital to food and nutrition security, poverty alleviation and poverty prevention in ACP countries. Setting up a general exemption to disciplines on fisheries subsidies under the form of a *de minimis* aid (permitting exemption from notification for state aid to farmers, fishermen, and processing and marketing companies, below a certain threshold – currently €3,000 over a 3-year period), with a higher threshold for developing-country members such as ACP countries, could be an interesting way of dealing with the issue of small-scale fisheries without having to define it.

However, a nuanced approach is required, since in the case of the EU, *de minimis* aid provisions have been used mainly to provide fuel subsidies to the fishing sector at a time of rising fuel prices, often exacerbating overexploitation problems. If new *de minimis* rules were to be developed accommodating the needs of the small-scale sector, this would need to avoid the pitfall of being used for activities that are harmful to the environment – both in terms of ecological footprint and contribution to overfishing – as has been the case for fuel subsidies.

In this context, the current negotiations, at FAO level, of international voluntary guidelines to secure sustainable small-

scale fisheries are an important process for ACP countries to engage in. The current draft of the FAO guidelines emphasises the social and economic characteristics (labour intensity, local markets, food security) of small-scale fisheries, as much as the environmental (low impact)

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*“FAO guidelines for sustainable small-scale fisheries will be useful to ensure that any S&DT will contribute to creating benefits for ACP countries and their fishing communities”*

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and technical (relatively small size, fixed/passive gears) aspects. These guidelines will be useful to ensure that any S&DT will indeed contribute to creating benefits for ACP countries and their fishing communities, while keeping the small-scale activities environmentally sustainable.

### Strengthening WTO rules on fuel subsidies

Fuel subsidies have been one of the most divisive issues in WTO fisheries-subsidies negotiations. Central to enhancing WTO disciplines is improving the reporting by WTO members on the allocation of these fisheries subsidies. Current inaccuracy of data has a distorting effect on the debate on fisheries subsidies, their impact on fisheries, and the solutions put forward to mitigate negative effects. It is therefore questionable whether it is possible to have a meaningful debate on the impact of fuel subsidies on world fisheries resources without better data.

This is particularly important given the centrality of fuel subsidies to the fish economy in many countries (including ACP countries). This accounts for the considerable resistance to their removal. Indeed, the profitability of motorised fishing in many parts of the world, particularly

in small-island developing economies, seems to be critically dependent on such subsidies. The analysis provided by the OECD is worth considering by ACP countries, as they also widely use fuel-tax concessions for their local fleets. In both the EU and ACP countries, phasing out such fuel-tax concessions, and replacing them with

‘support based on income’ (i.e. social security schemes) and (regional) non-sector-specific programmes, for infrastructure development or retraining of fishermen, may indeed generate economic and environmental benefits, while contributing to the well-being of fishing communities.

*“Phasing out fuel-tax concessions, and replacing them with ‘support based on income’ and non-sector-specific programmes may generate more economic and environmental benefits”*

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### About this update

This brief was updated in September 2012 to reflect developments since the publication of the first *Agritrade* brief in July 2011. The 2011 publication was based on a fuller briefing published in August 2008, and is available on request.

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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