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Swimming upstream: Market access for African fish exports in the context of WTO and EU negotiations and regulation

*Stefano Ponte, Jesper Raakjær and Liam Campling**

Exports of marine capture and inland fish and fishery products are of integral importance to government revenues and income and employment generation in Sub-Saharan Africa. The changing nature of the international trade regime presents a series of new challenges to fish industries on the continent. This article explores how trade negotiations and regulation at the WTO- and EU-levels impact market access possibilities for African fish exports. Tariff preference erosion and non-tariff barriers pose serious problems to African countries. Reforms and negotiations around fisheries subsidies are likely to have a more ambiguous impact. It is therefore unsurprising that many African countries support the status quo in the areas of tariffs and subsidies. The authors conclude that while fisheries access negotiations with the EU on a bilateral basis have been beneficial for some African countries, collective bargaining power in the context of Economic Partnership Agreements might produce more strategic outcomes in the medium term – not least in view of the EU’s need to import fish and fishery products and the limited availability of the resource in the global market.

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1. Introduction

Exports of inland and marine capture fish and fishery products (thereafter ‘fish’) are of integral importance to government revenues and income and employment generation in Sub-Saharan Africa (thereafter ‘Africa’).¹ African countries face complex negotiations at the WTO-level on tariffs and fishery subsidies, and bilateral and regional negotiations with the EU in the formulation of Economic Partnership Agreements (EPAs) and Fisheries Partnership Agreements (FPAs). In addition, they need to comply with increased food safety standards. The outcomes of WTO negotiations under the Doha ‘Development Round’ and changing EU regulations are likely to place new hurdles on African fish exporting countries. In this paper, we analyze how these countries can respond to these challenges.

The main argument we pose in this article is that, in *specific* relation to fisheries, the position of African countries in multilateral negotiations is (and should indeed be) mainly a defensive one. Because of the preferential access that most African countries enjoy in the EU, WTO negotiations resulting in reductions of tariffs would be problematic for Africa, as it would lead to erosion of their margin of tariff preference for fish. WTO-level negotiations on subsidies and the EU internal reform of its fisheries subsidy system offer potential outcomes that are more ambiguous. For some African countries, fees paid by the EU to gain access to their exclusive economic zones (EEZs) are important for revenue and foreign exchange generation. On the other hand, the presence of foreign fleet tends to preclude the development or expansion of a domestic fishery fleet and pose threats to the long-term sustainability of stocks.

¹ The constraint of space has not allowed us to provide sufficient historical, social and geographical differentiation between the fish exporting countries of sub-Saharan Africa. The implications of categorisation according to LDC and non-LDC countries is one aspect that is discussed below. A geographical element of significant importance is the difference between land-locked, coastal, and island countries. In addition, with the (re-)emergence of economies of scale as a decisive factor in contemporary global capitalism (see [Gibbon and Ponte 2005](#)), larger African countries may well be in a better position to develop fish processing sectors than the smaller ones.

Overall, African countries are likely to lose from WTO negotiations as far as fisheries are concerned. Their allies are other equally weak LDCs and non-LDC island developing states. More advanced developing economies with strong fish processing sectors, such as Thailand, stand to gain from tariff reductions in developed economies. It is therefore unsurprising that many African countries support the status quo in the area of tariffs and subsidies. The area where they could gain (identification of non-tariff barriers and their negotiation) is the one that has progressed the least within fisheries-related WTO negotiations.

While, in general, African countries are weaker in bilateral settings than in multilateral ones, in the case of fisheries it is actually the other way around. This is explained partly by the increasing need of the EU to import fish and the limited availability of the resource in the global market. Some African countries' fisheries relations with the EU serve to prove this argument through their refusal to enter into disadvantageous deals and/or through their conclusion of improved deals on a bilateral basis (i.e. Namibia, Seychelles, South Africa). However, while prior fisheries access negotiations with the EU on a bilateral basis have been beneficial for *some* African countries, collective bargaining power in the context of the formation of EPAs might produce improved outcomes in the medium- to long-term (e.g. through the ability to exhibit cartel-like tendencies). An important limiting factor here is the effective division by the EU of the ACP countries into six EPA sub-regions, four of which in Africa alone. This has served to unravel formal relations both between African countries and between them and the wider ACP group, which would otherwise have converging interests in their fisheries relations with the EU.

In Section 2, we provide a broad overview of the contemporary economic importance of Africa's trade in fish and the institutional and regulatory frameworks in which this operates. In Section 3, we then situate this trade in the wider context of agreements and negotiations relating to the World Trade Organization (WTO), including discussion of tariff and fishery subsidies negotiations. The EU is by far the principal market for African fish exports; in light of this, in Section 4, we place some focus on the EU fisheries regime – mainly the Common Fisheries Policy (CFP) – and its impact on African fisheries. In Section 5, we sketch those non-tariff barriers (NTBs)

that affect market access and competitiveness for fish export industries based in Africa. We provide an overview of the main hurdles faced by these industries, focusing on rules related to sanitary and phyto-sanitary (SPS) measures at the level of the WTO, and food safety and traceability rules pertaining to the EU. In the final section, we identify several overlapping points and offer a set of reflections on policy.

2. Fish trade and Africa: Trends and regulatory frameworks

Trade in fish has grown strongly during the past 25 years. Annual export values for these products have increased from less than US\$ 15 billion in the first half of the 1980s to US\$58.2 billion in 2002 (FAO, 2004). For many developing countries, fish exports have become an important source of foreign exchange earnings, representing around 50% of global fish exports. At present, they represent the most important item in terms of net export value in developing countries – exceeding the combined export revenues derived from key agricultural products such as coffee, tea, rubber, rice, meat and bananas (Ahmed, 2005).

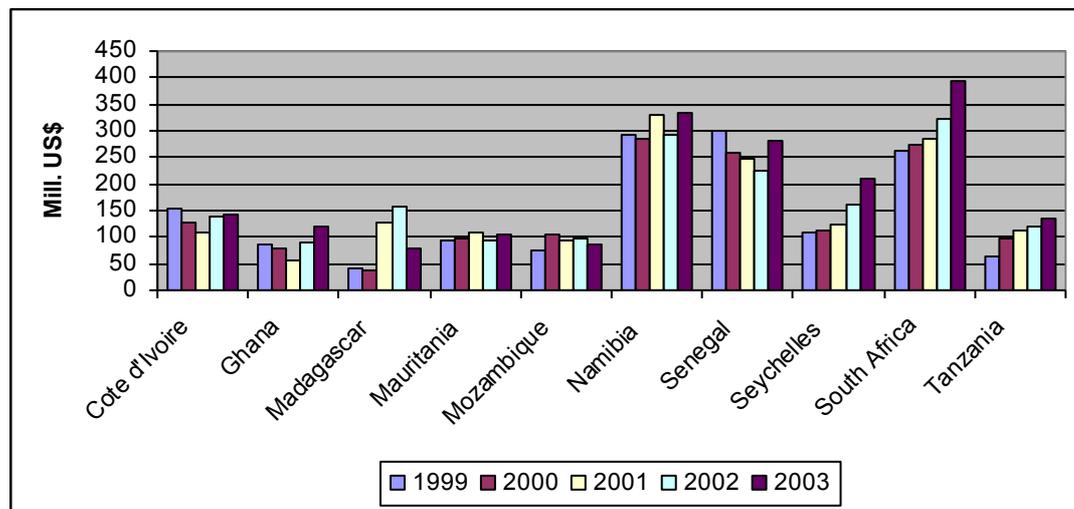
The export value of fish from Africa has doubled during the last decade to US\$3.2 billion in 2002 (FAO, 2004).² The top African exporters are all countries with major marine catches, although some of them (e.g. Tanzania) have large inland fisheries. Since 2002, South Africa has become the top exporter by value, overtaking Namibia where fish stocks appear to be in decline (see Figure 1). The overall trend in export values has been a slight increase between 1999 and 2003 for the top ten countries, with South Africa and Seychelles accounting for most of this growth.

Other ways of assessing the importance of fish industries in individual African economies is to calculate the proportion of fish export values over total exports and over GNP. The results of this exercise are provided in Figures 2 and 3 for the top ten fish exporters. Fish exports provide substantial proportions of total export values in several African countries. In 2003, the highest proportions were 38% in Seychelles, 28% in Mauritania and 20% in Namibia. These proportions are decreasing in Senegal

² This figure includes North African countries. In addition to the export value of fish, African countries also gain foreign currency in the form of payment for access to their waters by distant water fishing nation fleets as well as through port and other services to these fleets.

(around 20% in 1999 and 2000, 15% in 2003) and in Mozambique (around 20% in 1999 and 2000, less than 10% in 2003). The importance of fish exports is much lower in the other top exporter countries. This picture is broadly reflected in Figure 3. For the Seychelles, fish exports contributed close to 30% of the GNP in 2003, almost doubling over the previous five years. In Mauritania, Namibia and Senegal fish exports contributed on average 10%, 9% and 5% respectively to the GNP in 1999-2003.

Figure 1: Value of fish and fish products export from the top 10 African countries (Based on value in 2003)



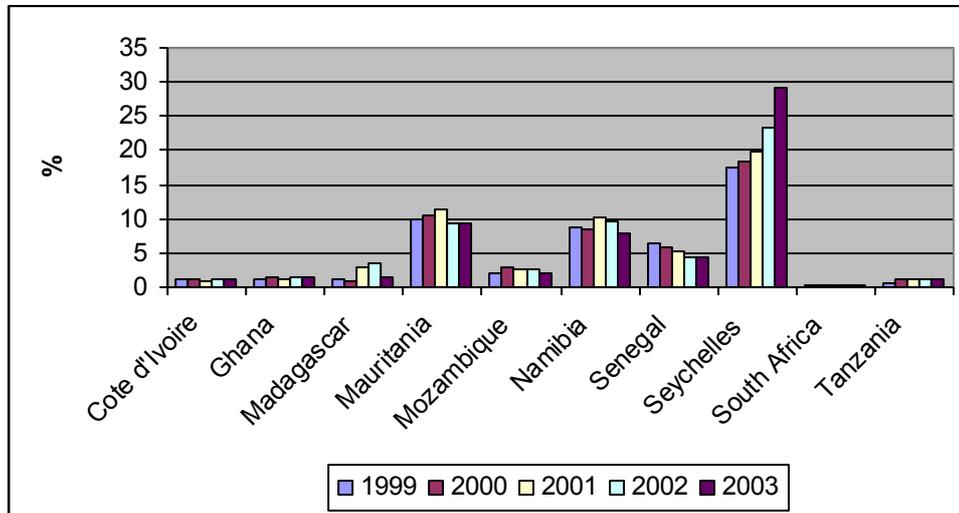
Source: FAO Fisheries Department, Fishery Information, Data and Statistics Unit. FISHSTAT Plus - Universal software for fishery statistical time series: Fisheries commodities production and trade 1976-2003.

Figure 2: Contribution of fish and fishery products exports to total export values



Source: Own calculations based on <http://devdata.worldbank.org/data-query/> and FAO Fisheries Department, Fishery Information, Data and Statistics Unit. FISHSTAT Plus - Universal software for fishery statistical time series: Fisheries commodities production and trade 1976-2003.

Figure 3: Export of fish and fishery products as percentage of GNP



Source: Own calculations based on <http://devdata.worldbank.org/data-query/> and FAO Fisheries Department, Fishery Information, Data and Statistics Unit. FISHSTAT Plus - Universal software for fishery statistical time series: Fisheries commodities production and trade 1976-2003.

Fish trade between Africa and the rest of the world is regulated via a complex overlap of multilateral and bilateral trade and environmental agreements.³ We focus here on aspects that affect market access and competitiveness of African fisheries exports to the EU, with some basic pointers towards similar aspects in relation to the US (the limitations of space do not allow assessment of exports to other regions and intra-regional fish trade). Table 1 provides a simplified picture of the regulatory frameworks in place in the WTO and the EU. The second column indicates the various agreements affecting fisheries sectors in Africa that are already in force. The third column indicates fora where ongoing negotiations are taking place. The last column indicates other elements that affect trade and competitiveness that are not part of current negotiation processes, or that have not been prominent in them.

³ While it is recognised that multilateral environmental agreements (MEAs) and ecolabels are of integral importance to the global trade in fish (including questions around the sustainability of present levels of exploitation), the focus of this paper is on the specifics of the new international trade regime. For some examples of the debate on MEAs, eco-labels and the trade-environment nexus in fisheries, see Barston (1999), Cole (2003), Gardiner and Viswanathan (2004), Juda (2002), Joyner and Tyler (2000), Ponte (2006).

The information provided in the WTO line in Table 1 applies to all African countries that are members of this organization.⁴ During the Uruguay Round, fisheries were left out of the Agreement on Agriculture at the insistence of some EU countries that benefited from the EU fisheries subsidy regime (France, Spain, Italy). As a result, fisheries-related issues are covered by various other agreements. Most notably, fisheries subsidies fall under the discipline of the Agreement on Subsidies and Countervailing Measures (ASCM). The main areas up for negotiation in the Doha Round are tariff and non-tariff barrier reductions under the negotiating group on ‘Non-Agricultural Market Access’ (NAMA) (although very little movement has taken place on non-tariff barriers) and specific mention of a reduction of fisheries subsidies under the WTO negotiating ‘Group on Rules’.⁵ However, as we can see in Table 1, many other WTO-related issues have real or potential impact on market access opportunities for fisheries products from African countries.

As for the EU, the Cotonou Agreement applies to all African members that are part of the ACP group of countries (see Table 2). This agreement provides tariff-free access to the EU provided that fish exports comply with very rigid Rules of Origin (ROO) (for details, see Naumann, 2004). If ROO fail, then a country has to export to the EU under the higher Most-Favoured-Nation (MFN) tariff rates.⁶ ACP countries claim that these rules are promoting rather than decreasing dependence on the EU; this is because for fish to qualify as ‘wholly originating’ it has to be caught by EU or ACP vessels – but ACP countries rarely have a sufficiently large locally-owned fleet (if at all) with which to supply domestically-based processors. Consequently, EU vessels can charge a premium on factory-gate prices in ACP countries compared to the international market price of ‘non-originating’ fish supplied by, for example, East Asian vessels. Therefore, in reference to the value chain in canned tuna: ‘while the

⁴ All African countries, except for Algeria, Cape Verde, Comoros, Equatorial Guinea, Eritrea, Ethiopia, Liberia, Libya, St. Helena, Sao Tomé and Príncipe, Seychelles and Sudan.

⁵ The text of the declaration of the Fourth session of the WTO Ministerial Conference states a commitment to ‘clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of the sector to developing countries’. Previously, in 1999, a WTO working group on fisheries subsidies presented a demand for negotiations within the ill-fated ministerial declaration in Seattle (Rammanohar, 2002).

⁶ MFN rates are 8-9% for freshwater fish, 15% on some species of marine fish, 18% for fish fillets, and 12% on shrimp. Higher rates are applied to processed/prepared fisheries products, especially canned tuna and tuna loins, which have a tariff of 24% on imports from non-ACP producers and 0% tariff for ACP countries. Since 1 July 2003, the margin of preference declined to 12% for a set quota of 25,000 tons from Thailand, the Philippines and Indonesia, a margin that was quickly absorbed by these countries, indicating their ability to benefit from any future tariff erosion.

EU's margin of preference has in effect created the ACP canning industry ... the rule of origin has limited the ability of ACP states to develop their own EEZ in an economically efficient manner' (Block and Grynberg 2004: 1).

The EU modified its ROO in 2005. The new ROO for fisheries products, however, are not substantially different than the older ones and they do not address ACP countries' demands for more liberal rules; for example, the ACP has proposed that *any* fish caught in a ACP country's EEZ should be considered 'wholly originating' by the EU, regardless of vessel ownership and flag (ACP 2005).

Table 1: Regulatory framework for trade in fish and fishery products from Africa to the EU

| Forum | Main agreements/provisions | Main areas of negotiation | Other elements affecting fisheries market access and competitiveness |
|-------|--|--|--|
| WTO | <ul style="list-style-type: none"> • GATT (General Agreement on Tariffs and Trade) • ASCM (Agreement on Subsidies and Countervailing Measures) • SPS (Agreement on the Application of Sanitary and Phyto-Sanitary measures) • TBT (Agreement on Technical Barriers to Trade) • Anti-dumping Agreement | <ul style="list-style-type: none"> • Negotiating Group on NAMA (Non-Agricultural Market Access): tariff and non-tariff barrier reduction/elimination • Negotiating Group on Rules: fishery subsidies | <ul style="list-style-type: none"> • Dispute Settlement Mechanisms (main cases: tuna-dolphin, shrimp-turtle, canned sardines) • Clarification on the impact of eco-labels on trade • Relations between trade rules and MEAs • Technical Assistance and Capacity Building • Provisions for Special and Differential Treatment (S&DT) |
| EU | <ul style="list-style-type: none"> • Cotonou Agreement • Everything-but-Arms (EBA) provisions of the GSP (Generalized System of Preferences) • Bilateral Fisheries Partnership Agreements • TDCA (EU-South Africa Trade and Development | <ul style="list-style-type: none"> • Economic Partnership Agreements (EPAs) • Fisheries Partnership Agreements (FPAs) | <ul style="list-style-type: none"> • New EU regulations on food safety • Traceability requirements • Rules of Origin • Custom clearance procedures |

| | | | |
|--|--|--|--|
| | Cooperation Agreement) • Standard GSP and ‘GSP Plus’ ⁷ | | |
|--|--|--|--|

For the time being, African ACP exports to the EU that qualify under Cotonou still have some degree of tariff preference over exports taking place under MFN rates. They also have (less marked) tariff preference over exports that qualify under the Generalised System of Preferences.

The Cotonou Agreement specifies that a series of WTO-compatible EPAs will replace prior ACP-wide trade arrangements. However, the negotiation process in this realm has been very slow and the EU ‘vision’ of how EPAs might function remains opaque except for a fairly narrow emphasis on ‘the progressive removal of barriers to trade between the Parties’ (EC, 2000: Article 37.7). The ACP position on the Cotonou Agreement is more concerned with its development components. In short, while Cotonou offers elements of the continuation of the preferential trade agreements embodied in the Lomé Conventions (although within a more limited and/or tenuous timeframe), in practice, by sub-dividing the ACP grouping into six new EPA sub-regional groupings, Cotonou substantially reduces the collective bargaining power of these 79 countries (for a critical review see [Nunn and Price, 2004](#)). It is unlikely that EU-ACP bilateral fisheries access agreements will be superseded by multilateral Fisheries Partnership Agreements (FPAs). Instead, FPAs are likely to act as umbrella agreements (i.e. outlining basic principles, terms and conditions) within which future bilateral access agreements are (re-)negotiated. However, there is still significant confusion in ACP negotiating fora over the distinction between EPAs and FPAs, even in those countries that have a significant interest in fish exports. For example, the linkages (and potential tensions) between the trade and development components of an EPA and the commercial and resource ‘sustainability’ components of an FPA are as yet unclear. Also, we are yet to see how relations of power *within* the EU will play out. On the one hand, the Directorate General (DG) Trade and DG Development, are often perceived by ACP countries as working on EPAs as ‘developmental’

⁷ For an outline of the new GSP Plus, see CEC (2005).

arrangements. DG Fisheries, on the other hand, is seen to be working on FPAs as ‘commercial’ arrangements – even though the new Common Fisheries Policy is ostensibly built around sustainable resource utilization in both EU waters and external waters.

Table 2: Participation in key trade agreements and arrangements (top 10 African fish exporting countries)

| Country | Cotonou (ACP) | EBA (LDCs) | AGOA III | Bilateral fisheries agreement with the EU |
|---------------|---------------|------------|----------|---|
| Cote d’Ivoire | X | | | X |
| Ghana | X | | X | |
| Madagascar | X | X | X | X |
| Mauritania | X | X | X | X |
| Mozambique | X | X | X | X |
| Namibia | X | | X | |
| Senegal | X | X | X | X |
| Seychelles* | X | | X | X |
| South Africa | ** | | X | |
| Tanzania | X | X | X | |

NOTES: * Seychelles is not a WTO member; ** South Africa is part of the ACP group of countries, but for the purpose of the Cotonou Agreement it was not regarded as such by the EU. Trade with the EU is regulated through a bilateral trade agreement, the TDCA (Trade, Development and Cooperation Agreement).

The outcome of EPA and FPA negotiations is particularly important for non-LDC ACP countries because if they fail to successfully negotiate an EPA framework by 2008 their preferences may fall under the GSP or ‘GSP Plus’ of the EU.⁸ The

⁸ It might be that the final negotiation of some EPAs is extended beyond the 1 January 2008 deadline. 2006 was intended for the finalisation of negotiations and 2007 for legal drafting, yet most regional

Everything-but-Arms (EBA) scheme (which formally came into effect in March 2001) is a unilateral and non-reciprocal offer on tariff free access by the EU to *all* LDCs that is valid for an unspecified period of time.⁹ However, this also means that it can be reviewed and withdrawn at any time. It allows tariff-free access to the EU, provided that they fulfil the appropriate ROO. Finally, the Trade, Development and Cooperation Agreement (TDCA) is a bilateral agreement between the EU and South Africa, which was signed in 1999. A bilateral fisheries agreement was supposed to follow the TDCA, but negotiations have stalled, given South Africa's refusal to allow EU vessels to fish in its territorial waters.

Box 1: The Impact of the Cotonou Agreement on Non-LDC ACP Fish Exporters: the Case of the Tuna Industry in the Seychelles

As a non-LDC ACP country, the Seychelles stands to lose from the full implementation of the WTO-compatible Cotonou Agreement if the trade in goods component of an EPA cannot be negotiated in time. Under the Most-favoured Nation (MFN) principle of the WTO the EU will not be in the position to discriminate between non-LDC ACP countries and other non-LDCs such as Thailand, although the EU's new GSP Plus offers an alternative for Seychelles as it fulfils the 'dependent and vulnerable' requirement whereas Thailand, for example, does not (see CEC, 2005). At present, the Seychelles benefits from a 24% margin of trade preference for its canned tuna exports to the EU. By 2003, Indian Ocean Tuna Ltd. (IOT; a majority H.J. Heinz-owned cannery) was processing over 330 tons of tuna a day, employing up to 2,500 workers and contributing an estimated US\$ 20 million per annum to government revenue. However, the country's role in the tuna value chain, both as a key regional transshipment point for tuna and as a site of production of canned tuna, is under relative threat. As a non-LDC ACP country, Seychelles does not benefit from the Everything But Arms initiative. Consequently, if Southeast Asian countries continue to use the WTO to elicit erosive pressure on the EU margin of preference to ACP non-LDCs, IOT might face the full pressure of international competition. A relative decline in competitiveness does not only threaten the existence of IOT, it also

EPAs are off this timeline. But even if an extension of the 2001 'Cotonou Waiver' can be successfully negotiated at the WTO, this will probably only entail a maximum of an additional two years.

⁹ It is worth reiterating that "Least Developed" is an official classification, not a neutral measure of poverty' (Page and Hewitt 2002: 91).

means that the associated knock-on benefits of industrial tuna vessels docking in the country's port might decline by as much as 30%. By July 2005, Heinz was auctioning IOT as part of its global strategy to concentrate its dominance in a handful of market leading products, leaving the Seychelles' tuna processing industry in a heightened position of volatility.

Source: Campling's own fieldwork interviews (see IDDRA, 2004: Campling and Rosalie, 2006)

3. Fisheries-relevant negotiations at the WTO

WTO membership covers all the major fish exporters globally, with the exception of Russia and Vietnam. Both are negotiating accession and Vietnam may be able to join the WTO as early as 2006. WTO negotiations impacting fisheries sectors in Africa have taken place under various headings. The two main ones are: (1) tariff negotiations under NAMA (as noted above, fisheries are not covered by the Agreement on Agriculture), and; (2) subsidy negotiations under the 'Negotiating Group on Rules'. We focus on these two issues in this section, and particularly on the latter. Other fisheries-related issues under negotiation in the Doha Round, but only touched upon here are: the clarification of the impact of eco-labels on trade; the relation between trade rules and multilateral environmental agreements; and issues of technical assistance and capacity building, specifically in relation to food safety standards and technical barriers to trade. Outside the realm of negotiations, cases brought to the Dispute Settlement Body are also influencing market access and competitiveness (see Table 1).

3.1 Negotiations on NAMA

The goal of the Doha Round in relation to tariffs is their negotiated reduction on a number of categories of goods, including fish and fishery products. The Uruguay Round brought down tariffs on fish and fishery products in developed countries to around 4.5%. It also decreased tariffs in some Asian developing countries. Yet, tariff

peaks and escalation are still present, and NTBs have become more important (Delgado et al., 2003: 130; Lem, 2003). In general terms, obtaining lower tariffs in their principal export markets is not one of the central issues for African fish exporting countries – avoiding tariff preference erosion is. A successful round of WTO negotiations on reducing or abolishing fishery tariffs under NAMA would therefore be highly problematic. An exception is South Africa, which currently faces MFN tariff rates in the EU and would thus benefit from fishery tariff reductions. Conversely, a status quo situation at the WTO level would conserve tariff preferences to the benefit of African LDCs, whereas the impact on non-LDC ACP fish exporters would depend on the outcome of EPA negotiations with the EU – and even then their margin of tariff preference may still be eroded.

As far as NAMA is concerned, the December 2005 Hong Kong Ministerial Declaration only indicated the use of a ‘Swiss formula’ for reducing tariffs in industrial goods, but left open the possibility of both a two-coefficient and a multiple-coefficient formula. In practice, this left most of the tough negotiations on ‘full modalities’ to be carried out in 2006. Broadly speaking, at the time of writing, the success of NAMA negotiations was seen as contingent to the outcome of negotiations on agriculture.

Fisheries products are one of the sectors suggested for accelerated tariff reduction or elimination under NAMA negotiations. It is worth reiterating that fisheries tariffs are already relatively low as a result of liberalisation in the Uruguay Round. However, while semi-processed fish tariffs were also reduced, they remained fairly high post-Uruguay (Greenaway and Milner 1996: 30).¹⁰ The implication is that for those countries that do not benefit from other forms of preferential market access (such as the ACP to the EU) these tariffs act as a possible barrier to the development of fish products with higher processing content in developing countries. Moreover, in current NAMA negotiations there is a divide as to whether fish issues should be separate from other non-agricultural goods. On one hand, the US, Canada, Iceland, New Zealand, Norway, Singapore and Thailand have proposed to eliminate or substantially

¹⁰ For example, for unprocessed fish, the EU reduced its average MFN *ad valorem* tariffs by 20.3% to 11.8%, Japan by 36.8% to 3.2%, and the US by 32.4% to 0.1%, making these markets very open to raw materials. In contrast, the average MFN *ad valorem* tariffs for semi-processed fish were 15% for the EU, 8.1% for Japan and 6.5% for the US.

reduce tariffs and address unjustified non-tariff barriers within the fish sector. On the other hand, South Korea and Taiwan are opposed to liberalising trade in fish products on a sectoral basis.¹¹

According to paragraph 16 of the Doha mandate, NAMA negotiations should result not only in reducing tariffs but also non-tariff barriers (NTBs) (see below). Even slower progress has been made on the latter. The ‘July 2004 Package’ mandated the ‘identification, examination, categorization, and ultimately negotiation’ of NTBs. The beginning of this process has seen the presentation of over 70 notifications challenging other countries’ social, environmental and/or health NTBs that affect their exporters. This was ‘noted’ in the Hong Kong Ministerial Declaration, which also recognized ‘the need for specific negotiating proposals and encourage[d] participants to make such submissions as quickly as possible’ (WTO 2005).

3.2 What we do and do not know about fisheries subsidies

Two broad impacts of fisheries subsidies are usually highlighted in the literature: (1) on fish stocks and aquatic ecosystems, and; (2) on trade. Yet, assessing these two relations is fraught with difficulties. There have been very different approaches towards what constitute fishery subsidies in the literature, and the debate is still open on their magnitude, although most analysts agree that they are substantial. In 1989, FAO put the figure on global fisheries subsidies at US\$22 billion (measuring the operating costs only), which rose to US\$54 billion with all investment costs included. In a landmark study, Milazzo (1998) indicated the value of fisheries subsidies worldwide in the range of US\$14 billion to US\$20.5 billion, while a more recent WWF study arrived at the figure of US\$15 billion (WWF, 2001; for reviews of the evidence, see Steenberg and Wallis, 2001; Grynberg, 2003; Schrank, 2003; Tallontire, 2004). Even using the lowest estimate (US\$ 14 billion), the total value of subsidies would represent almost one-quarter of the value of total fish exports (as in 2002). However, there is generally little quantitative data on developing countries subsidies. In OECD countries, a large majority of subsidies target marine capture fisheries, and

¹¹ Thanks to Elizabeth Havice for this last point.

within these distant water fisheries in particular. In 1997, the EU accounted for 23 per cent of all fisheries subsidies disbursed in OECD countries (Japan accounted for 47 per cent, the US for 14 per cent) (Flaaten and Wallis, 2000).

Since 2000, FAO has spearheaded a global initiative seeking to clarify what subsidies are, to reach a common methodology for quantification, and to analyze the short and long-term effects of fisheries subsidies on sustainability, trade flows, and economic growth (FAO, 2000; Westlund, 2004). This has yielded suggestions on how to streamline a definition of subsidies, how subsidies could be categorized, and how their economic value should be assessed.

In short, it is clear that there is a significant lack of international agreement on the level and impact of fisheries subsidies. At the same time, a majority opinion in the fisheries literature points out that subsidies contribute substantially to overcapacity and, in turn, overfishing.

3.3 Fisheries subsidies negotiations

As fisheries are not subject to the Agreement on Agriculture, negotiations on subsidies are framed within the far more rigorous disciplines of the WTO Agreement on Subsidies and Countervailing Measures (ASCM). As such, despite the FAO's recent suggestions on how to define and measure fisheries subsidies, the legal and operational definition of a subsidy remains the one provided by Art. 1.1 of the ASCM. To be covered by the ASCM, a subsidy has to be 'specific' (allocated to a specific enterprise or group, industry, geographic area, etc.). In Articles 3.1 and 5, the ASCM categorizes subsidies as: (1) prohibited, falling in the 'red light box' (those that are contingent on export performance, giving preference to domestic producers); or (2) actionable, falling in the 'amber light box' (those that can be challenged on the basis of causing adverse impact on the interests of other members and/or injury to their domestic industries). The provisions regulating non-actionable subsidies ('green light box') expired in December 1999.

Although ASCM made it possible to challenge (some) fisheries subsidies, no major reduction has taken place to date (see Bostock, Greenhalgh and Kleith, 2004). Part of the problem is that the system of notification for prohibited subsidies allows a high level of aggregation, thus making it difficult to assess species-related breakdowns of subsidies. Besides, even where species-specific subsidies are in place and therefore (in principle) disaggregated – as with Spain’s distant water fleets off West Africa – they can (and apparently do) target alternative species ([Kaczynski and Fluharty, 2002](#)). Importantly, few WTO members have complied with their obligation to report subsidies under the ASCM (Article 25). In fact, according to estimates by the World Wildlife Fund, ‘as many as 90 percent of fishing subsidies are not properly notified to the WTO’ (Schorr, 2004: 48). Fish exporters that do not import fish found that the main redress measure provided in the ASCM – countervailing measures – would not be effective. The ASCM also allows litigation through the WTO Dispute Settlement Body (DSB). A positive outcome of a case brought to the DSB could have allowed the imposition of countervailing duties in other sectors ([Grynberg, 2003](#)). Yet, the DSB has not yet been used to challenge fisheries subsidies.

Given the failure of member countries in using the ASCM and the DSB to force reductions in fisheries subsidies, the focus has now moved towards a negotiated process. Fisheries subsidies were explicitly slated for reduction or elimination in the Trade and Environment section of the Doha Declaration (paragraph 31). As suggested earlier, the limited status of knowledge on fisheries subsidies and their impacts implies that WTO negotiations are taking place with, at best, a fragmented and contradictory knowledge on the issue. These negotiations have been taking place within the ‘Negotiating Group on Rules’ since 2002. Before the start of the Doha Round (November 2001), fishery subsidies had been discussed for about five years in the Committee on Trade and Environment, which is a talk-shop and not a negotiating forum.

A number of submissions have been made to the ‘Negotiating Group on Rules’. In simplified terms, these fall along two main positions. The first is held by a group somewhat misleadingly known as ‘Friends of Fish’ – including Australia, Chile, Ecuador, Iceland, New Zealand, Peru, Philippines and the US, also supported by Norway, Mexico, Malaysia and Thailand, among others (the EU appeared internally

divided in its alliances). These countries argue that the existing provisions of the ASCM are not sufficient to regulate fisheries subsidies because they can not deal with the specific trade and production distortions that characterize the fisheries sector, and with the heterogeneous nature of fish stocks. Therefore, they call for a specific (and improved) discipline for fisheries subsidies within the WTO. At some point in the negotiations, these countries presented a proposal banning all subsidies, with exceptions to be negotiated and placed on a ‘negative list’. This is popularly known as the ‘top-down’ approach. It is supported by some countries on the basis of a ‘trade focus’ (New Zealand, Chile, Iceland – which are non-subsidizing countries with a clear commercial interest), and by other countries on the basis of an environmental agenda, backed up by environmental NGOs and pressure groups – particularly the WWF and Friends of the Earth International.

An opposite position has been developed chiefly by Japan, Korea and Taiwan, arguing that there is no need for special treatment for fisheries subsidies within the WTO (see a backing of this position in [Chang, 2003](#)). At the outset of the debate these countries even questioned whether the WTO was the appropriate forum to deal with fisheries subsidies, suggesting that management of fish stocks should be left to coastal states, regional fisheries organizations and the UN Convention on the Law of the Sea (UNCLOS). According to Japan and Korea, it is not subsidies that stimulate overfishing. It is rather the lack of appropriate fisheries management. They argued that because of the complex nature of the subject, negotiations should at least wait until a clear picture emerges from research being undertaken at FAO and OECD (see above). This initial refusal to negotiate on subsidies was later mitigated due to the increasing isolation of Japan and Korea in the ‘Group on Rules’. In June 2004, they submitted a proposal calling for a ‘bottom-up’ approach, where only ‘really problematic’ subsidies would be put on a ‘positive list’ to be prohibited – those promoting Illegal, Unreported and Unregulated (IUU) fishing and overcapacity. All other subsidies would be considered legitimate unless proven to the contrary.

In the early days of negotiation, the EU took a passive stance in the subsidies debate due to the on-going internal discussion on the reform of its Common Fisheries Policy (CFP). In its submission of May 2003, however, it finally presented a proposal based on another ‘traffic light’ system – calling for subsidies to be classified under the

‘red box’ (to be eliminated) if they cause an increase in fishing capacity; and under a ‘green box’ (to be accepted as legitimate) if they aim at decreasing capacity and at mitigating the effects of restructuring in the fishing sector. In this proposed system, subsidies under the ‘green box’ would have to be reported to the ASCM and information about them made publicly available (for details, see Grynberg and Rochester, 2005). By late 2004, the debate had focused on clarifying what would go into the red and green boxes. Thereafter, negotiations focused on understanding and clarifying specific elements of fisheries subsidies, such as: distinguishing general subsidies versus those *specific* to the fishing industry; examining the link between subsidies and illegal, unregulated and underreported (IUU) fishing; and identifying environmentally friendly subsidies. More recently, negotiations have begun to focus more on possible structures for new subsidies rules, including clarifying which subsidies would fall into the red and green boxes and how to incorporate Special and Differential Treatment (S&DT) for developing countries.¹² The issue of S&DT started being discussed in depth following Brazil’s detailed submission of April 2005.¹³

In the Hong Kong Ministerial Declaration (WTO, 2005), Members

‘note that there is broad agreement that the Group should strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and over-fishing, and call on Participants promptly to undertake further detailed work to, *inter alia*, establish the nature and extent of those disciplines, including transparency and enforceability. Appropriate and effective special and differential treatment for developing and least-developed Members should be an integral part of the fisheries subsidies negotiations, taking into account the importance of this sector to development priorities, poverty reduction, and livelihood and food security concerns.’

¹² Again, thanks to Elizabeth Havice for her input here.

¹³ Brazil’s detailed suggestion suggested that: (1) the main burden of subsidy removal be placed on developed countries; (2) subsidies that expand capacity in developing countries be allowed to the extent that this expansion is ‘sustainable’; (3) payment for access to other countries’ EEZs (Exclusive Economic Zones) be allowed as a subsidy; (4) a ‘comprehensive’ list of green box subsidies be drawn; and (5) all other subsidies be put in the red box, but under the condition that they are ‘actionable’ only if a causal link on the impact on trade is proved. The ‘traffic light system’ proposed by Brazil is different from the one proposed by the EU in 2003 in that: (1) *all* subsidies not explicitly mentioned are actionable; and (2) those in the green box can not have an impact on increasing capacity and distorting trade (not only on capacity as in the EU proposal). This submission was followed by a ‘small state’ one highlighting S&DT provisions for small vulnerable coastal states.

Despite not advancing on the content of negotiations, at the very least the Hong Kong declaration explicitly linked subsidies to over-capacity and over-fishing, and recognized S&DT concerns.¹⁴

African countries have remained mainly passive in these debates and negotiations, despite the clear impact that negotiations may have on some coastal states that have bilateral access agreements with the EU (particularly in West Africa and the African island states of the Western Indian Ocean). If, for example, access fees paid by the EU to many African countries are deemed to fall under the definition of subsidies and are consequently slated as ‘prohibited’ in a new WTO fishery subsidy regime, it would have serious consequences on the architecture of future bilateral and regional fisheries agreements between the EU and African coastal states.¹⁵ Whether the new agreements would be more or less advantageous for African countries would depend on the details of these deals, as we will see in the next section.

4. Reform of the EU Common Fisheries Policy (CFP): Implications for Africa

The EU Common Fisheries Policy (CFP) was agreed by member states in January 1983 with the intention of ensuring sustainability of fish stocks within EU waters. After more than 20 years of operation, it can be safely concluded that it has failed to do so, primarily due to over-capacity in the EU fishing fleet (fuelled substantially through subsidies) and ineffective regulatory and enforcement mechanisms. As fish stocks are at critically low levels in EU waters (ICES, 2004), resulting in decreasing levels of landings, the EU is facing a growing need to meet its demand for fish through imports. The present supply from EU waters is less than 50% of total demand. This supply deficit has been solved through the increased purchase of fish caught by non-EU vessels outside EU waters and by the rise in effort of EU fleets in distant water fisheries (particularly along the African coast). Several EU countries

¹⁴ In March 2006, five new submissions were discussed in the ‘Group on Rules’: one by New Zealand, proposing a draft legal text for a new fisheries-specific amendment to the ASCM; one by Brazil revising its previous proposal on S&DT; two by Japan and Taiwan reiterating their preference for a ‘bottom-up’ approach; and one by India putting forward a list of general characteristics of small-scale, artisanal fisheries for which additional ‘policy-space’ would be needed in developing countries.

¹⁵ EU access fees could be slated as ‘prohibited’ because industry only contributes a fraction of the total amount. The rest is paid from the EU budget.

have long traditions of distant-water fishing (DWF), most notably Spain (whose DWF fleets catch around 80% of all EU catches outside EU waters) (IFREMER/CEMARE, 1999), but also France, Portugal, the UK and recently the Netherlands. ACP countries, primarily African, supplied 15% of the value of EU fish imports in 2002, equivalent to US\$ 2.1 billion (ibid.).

The EU revised the CFP in 2002 (CEC, 2002). Although most of the revisions can be related to internal fisheries policy issues for EU waters, some changes may have an important impact on African countries. The CFP is composed of four policy areas. The following discussion highlights, for each policy area, the changes and specific content that impact on African countries.

- *Conservation policy* – The changes in the CFP under this area were primarily directed to cope with the problems affecting EU waters. However, the policy has now broadened from focusing solely on EU waters to also cover waters outside the EU in which EU vessels operate. An important principle here is to ensure that all conservation measures are respected, although this is not the case in practice. The track record of EU DWF fleets has encountered significant criticism regarding its adherence to regional conservation measures, particularly among its fleets operating in West Africa ([Kaczynski and Fluharty, 2002](#)).¹⁶
- *Structural policy* - The changes in this area were also related mainly to the European fishing industry, but have an indirect impact on African countries. The most important element is the Financial Instrument for Fisheries Guidance (FIFG), which is a subsidy scheme. The new CFP tightened (and by the end of 2004 formally terminated) the mechanism relating to the setting up of joint enterprises between EU companies and companies in third countries ([Grynberg, 2003](#)). From 2002, it has no longer been possible to establish *temporary* joint ventures,¹⁷ and the support from FIFG has generally declined in recent years. The financial support to the EU fish processing industry has

¹⁶ However, another study (with reference to Senegal) has argued that ‘the available evidence does not indicate that the EU fleet is particularly given to violating regulations’ (Johnstone, 1996: 18).

¹⁷ These were temporary transfer of vessels that aimed at relieving excess capacity in EU fleets. They were pilot joint ventures to explore possible future business opportunities.

also been revised. It is less favourable and has moved the focus from increased efficiency to the promotion of, and search for, new markets and uses for fisheries products (including quality certification, product labelling and marketing support).

- *Market policy* – The aims of the new market policy are to balance supply and demand, improve the competitiveness of the processing industry and ensure the availability of quality fish products at affordable prices for European consumers. From an African perspective, the common marketing standards and regimes for trade with non-member countries are the most important elements here. The common custom tariff scheme is basically a tool for accommodating EU interests. The EU is in a position where the demand for fisheries products exceeds its own supply and more than 50% of fisheries and aquaculture products are imported, primarily as raw or part-processed material. Almost two thirds of EU imports are covered by special rules as a result of bilateral agreements or special provisions (e.g. Cotonou, GSP).
- *International policy* – in the revised CFP, the international policy dimension has become more prominent. The intention is to move from ‘access agreements’ to Fisheries Partnership Agreements (FPAs) with third countries, particularly with developing coastal states. The FPAs are supposed, on the one hand, to protect the interests of the EU distant-water fleet and, on the other hand, to promote sustainable fisheries in the waters of the partner concerned. Furthermore, as part of a (self-professed) ‘sustainable fisheries policy’, it widened the scope of EU financial compensation to support sustainable fisheries in the ‘mutual interest’ of both the EU and the third country – rather than just paying for access rights (or ‘cash for access’). For example, it promotes international and regional co-operation for the sustainable exploitation of resources based on sound scientific advice and improved control, monitoring and enforcement systems.

Bilateral fisheries relations are the backbone of EU fisheries collaboration with ACP countries. As of mid-2005, the EU was part of 22 bilateral fisheries agreements of which 16 were with African countries (the latest protocols with Gambia and

Equatorial Guinea were not renewed when they expired in the early 2000s). Among African coastal states it is important to differentiate between those that are in a weak negotiating position due to limited competition for access by third party DWFNs and/or the centrality of the rent appropriated to government revenue (e.g. West Africa), and those that have been in a stronger position to negotiate better deals or refuse to sign agreements altogether (e.g. Namibia, Seychelles and South Africa.).

In 2005, approximately 22% of the EU fleet (in terms of Gross Register Tonnage, GRT – a capacity measure) was fishing under bilateral fisheries agreements with ACP countries (Deben Alfonso, 2005). The cost for the EU to enter these agreements is €180 million per annum paid to ACP countries as rent for obtaining fisheries access. The catch value of the EU distant-water fishing fleet that is operating under bilateral access agreements is about €2 billion, representing about 20% of the total turnover of EU fishing activities (ibid.).

A study by IFREMER/CEMARE (1999) estimated that EU vessels gained approximately €3 in increased profit for every €1 spent on bilateral fishing agreements with ACP countries – through processing and marketing of fish caught in ACP waters by EU. The reason is that the bulk of the fish caught under ACP-EU fishery agreements are shipped to the EU, where processing and marketing takes place. Furthermore, the catches by the EU distant-water fleet are most likely to be grossly underestimated, as ACP countries have limited possibilities to control their activities. While of the major DWFNs the EU is perhaps one of the better at reporting catches, there have been many examples of serious violations of formal agreements between the EU and third countries, where EU vessels have been caught fishing illegally (see for example [Kaczynski and Fluharty, 2002](#)). The recorded cases are likely to be only the tip of the iceberg.

Despite the EU's apparently sympathetic intentions, in reality it is also motivated by the mercantilist objectives of: (1) continued access to African waters to employ large, predominantly Spanish and French industrial fleets, and; (2) ensuring a reliable supply for the EU fish processing industry in the form of raw material, as landings from EU waters are continuously shrinking. It is worth noting that the EU openly emphasises the mercantilist dimension of access agreements, stating that 'agreements represent 40,650 jobs, over 83% of which depend upon "southern agreements"' (EC

2001: 8). At the same time, African fish processors have a genuine interest in obtaining access to the large and potentially lucrative EU fish market – particularly in increasing their share of processed products rather than being a raw material provider to the EU processing industry.

In the longer perspective, the reciprocity embodied in the proposed EPAs is likely to have a detrimental effect on African small-scale/artisanal fisheries as African fishers are expected to compete with EU industrial DWFs (O’Riordan, 2005). Additionally, if WTO negotiations result in the end of the current EU form of fisheries access, this would impact revenues of several African governments. On the other hand, the likely decrease in EU DWF capacity with the cutting of subsidies to globally non-competitive EU (and other) fleets might lead to a reduction in supply and therefore an increase in price to the benefit of African exporters. Similarly, reform of EU ROO might result in diversification of potential supply, which could improve the global competitiveness of African-based processing firms ([Grynberg and Rochester, 2005](#)), although whether or not they could compete with firms in Southeast Asia and Latin America is unclear. The scenario of an end to the DWFN subsidy regime might also open up opportunities for upgrading by African investors into industrial fisheries, as the present barriers to entry encapsulated in DWFN fleet subsidies would be reduced in magnitude. This could take place through the development of local fleets or (more likely) through a rise in joint-ventures and locally based, foreign-owned fleets.

The challenge of establishing FPAs in this ambiguous scenario is thus to find means that can ensure a balanced solution to the potentially conflicting interests of EU and (differentiated) African countries. As argued above, it should be kept in mind that the development of FPAs needs to be seen in the context of the negotiation of Economic Partnership Agreements (EPAs), which will to a large degree set the framework for how FPAs can be elaborated. At the same time, there may initially be important contradictions between them – contradictions that stem from the EU’s lack of transparency and openness in its negotiation platform.

The present arrangements seem to favour EU operators rather than their ACP ‘partners’. In order to avoid that FPAs result in ‘window dressing’ set-ups rather than genuine partnerships, African countries need to ensure that the EU fleet comply to

agreed stipulations, making systematic use of, for example, vessel-monitoring systems. Even more importantly, on-board observer programmes should be made compulsory in order to facilitate full reporting on species and quantities of catch. It should also become compulsory for EU fleets to land their catches of a given fishery at designated ports in the region to enable proper inspection of catches (as opposed to the current practices of landing in the EU or transshipping at sea). Not only would this help to improve stock assessments and population management, but it would also increase employment and revenue generation through the provision of port services and improve the possibility of upgrading opportunities, not least because of a stable supply of fish to domestically-based processing firms.¹⁸ If non-compliance behaviour takes place, action should be taken to introduce strong sanctions, such as the withdrawal of the fishing licenses and imposition of fees for offending vessels and/or vessel conglomerates.

If this does not happen, African countries will be paying the price for the EU maintaining its overly large and (without subsidies) globally non-competitive DWFs. This price entails – depending upon the species in question – the potential and *actual* over-exploitation of Africa's fish resources and the concomitant threat to entire ecosystems. Another hurdle is that, for many African countries, the economic and political conditions for entering into partnerships are highly uneven. Declining the present types of arrangement may be difficult because many governments depend upon good relations with the EU in order to obtain other mechanisms of (financial) support. Nevertheless, countries with stronger economies like South Africa or superior negotiation platforms (e.g. through courting the interest of third party DWFNs) have been able to withstand EU pressure to gain (uneven) access to its waters. If FPAs are negotiated at the regional or sub-regional levels (where stronger African countries are represented), the bargaining position would be far stronger.

¹⁸ A possible precedent for the latter outcome has already been set: The 2000 Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean was a positive example of the culmination of South-South cooperation among the island developing states of the Pacific in a negotiated agreement with DWFNs and other regional states. This Convention offers the possibility of industrial upgrading by these small islands *if* eventual total allowable catch is based upon national allocations and if, in turn, these are directed towards domestic industry (Ram-Bidesi and Tsamenyi, 2004). However, it should also be noted that a series of barriers to entry in fish processing in this region remain firmly in place (see for example Schurman, 1998).

5. Non-tariff barriers, market access and competitiveness

In addition to the challenges of tariff preference erosion and some of the negative effects of subsidies, African exporters face increasingly tough food safety and traceability standards imposed by developed countries and private companies. The associated costs of these standards are ever more being shifted upstream the value chain ([Gibbon and Ponte, 2005](#)). These issues are particularly tricky in relation to fisheries exports given their susceptibility to spoilage, the associated need for a cold-chain for many types of products, and the presence of heavy metals in the food chain (such as mercury and cadmium). Much of the discussion in the burgeoning literature on the impact of food safety and traceability measures on developing countries (for recent contributions, see [Henson and Mitullah, 2004](#); [Mehta and George, 2005](#); [Ponte, 2005](#); [World Bank, 2005](#); [Wilson and Abiola, 2003](#)) focuses on the thin boundary between ‘legitimate’ measures taken to safeguard consumers’ health and the environment, and measures that are taken with that explicit intent, but that willingly or unwillingly protect developed-country industry operators.

The main legal framework regulating food safety measures at the multilateral level is the WTO SPS Agreement, which aims at ensuring that SPS measures do not place ‘unnecessary barriers to trade’. In essence, the SPS Agreement recognizes the right for countries to protect human, animal and plant life/health through the application of standards, provided that: they are based on sound science; they are appropriate to the levels of risk incurred; and they do not unjustifiably discriminate among different importing countries. Complaints against a country’s perceived discriminatory SPS measures can be brought to the DSB of the WTO. A formal application for the establishment of a dispute panel is not the only option, however. Complaints and requests for clarification can also be brought to the SPS Committee for discussion and possible informal bilateral settlement. In a review of SPS cases, [Jensen \(2002\)](#) shows that there are many more instances of discussions at the SPS Committee than cases eventually brought to the DSB. Covering the period from 1995 to mid-2001, he lists 118 discussions at the SPS Committee, and only 18 cases brought to the DSB. Yet, African countries acted as complainants in only 4 cases in the SPS Committee. In two of these, South Africa was the complainant. African countries brought no cases at all

to the DSB. This raises the issue of the well-documented limitations of human and financial capacity in African countries (as well as the fear of retaliatory measures) in ensuring that the SPS Agreement is utilized in ways that promote their interests.

The Agreement on Technical Barriers to Trade (TBT) is also relevant to fisheries. It aims at ensuring that standards, regulations and analytical procedures for assessing conformity do not create unnecessary barriers to trade. The TBT Agreement distinguishes between technical regulations (legally-binding laws issued by governments; e.g. use of a specific fishing technique) and standards (voluntary and market-based measures; e.g. ecolabels), although in reality there is a high degree of overlap between the two. In this realm, the main case that has been brought to the DSB to date was the so-called 'sardine case', where Peru complained against EU labelling regulations on canned sardines. These regulations required the indication of geographic origin to qualify the term 'sardine' when it was not of the species *Sardinella pilchardus*. The Dispute Settlement Body ruling was in favour of Peru.

In the present conjuncture, African countries do not seem to be inclined (or able) to use the WTO to address perceived discriminatory standards applied by developed countries. An interesting illustration of the use of SPS measures as a discriminatory barrier to African fish exporters was the EU identification of swordfish from the western Indian Ocean as having overly high levels of cadmium, leading to a 'red alert' on this product that discouraged imports. However, other products that are likely to be consumed in greater quantities, such as crustaceans and pig, sheep and cattle kidneys, were permitted higher levels of cadmium. But even when these measures are not considered discriminatory or excessive, African fisheries still face the problematic task of compliance, including the creation (and maintenance) of national 'competent authorities'. The problems faced here are not only the level of expenditure, paperwork and skills necessary for exporters to assure compliance, but also the legal, managerial and financial requirements placed on African governments to establish regulatory frameworks at the domestic level to support compliance with stringent EU import requirements.

The EU has institutionalized particularly challenging regulations in this respect. The basic framework for fisheries products was laid out in the EC Directive 91/493 of

1991. This directive deals with ‘the production and placing on the market of fishery products for human consumption’. It requires member states and third countries to put in place systems of inspection and control to ensure the safety of fisheries products, including the implementation of Good Hygiene Practices (GHPs) and Hazard Analysis and Critical Control Point (HACCP) systems.¹⁹ Many EU fisheries-specific regulations have now been integrated within what is known as the new EU ‘hygiene package’ of regulations (for details, see Ponte, 2005). These contain a bewildering array of rules and demands on the regulatory agencies and exporters in African countries, even without considering private standards on quality, packaging, processing etc (see World Bank, 2005) and the impact of eco-labelling on market access (see Crosoer, van Sittert and Ponte, 2005; Ponte 2006 for the case of South Africa). Given the highly technical nature of compliance and the costs related to it, this is probably the area that will pose the most serious challenges for African exporters of fisheries products and their industries and governments. The repercussions (positive and negative) of repeated bans that the EU slapped on East African fish exports from Lake Victoria (see Box 2) are a good example of the challenges lying ahead for African countries.

Box 3: Food safety standards and the Uganda fish export industry

The fish export industry in Uganda is young. Exports of Nile Perch started only in the late 1980s, and grew tremendously in the 1990s – partially as the result of a crisis in cod stocks in the Northern Hemisphere. By the early 2000s, fish exports had almost caught up with coffee – the most valuable foreign exchange earner in the country. Because it is an artisanal fishery at the catch level, this growth has had positive income impacts on lakeshore communities. Increased employment has also taken place with the opening of new processing plants, where most of the operations are labour-intensive. The growth of the fish industry, however, has been marked by some serious problems. Matching strict food safety standards demanded by importing countries and firms has been the most pressing one.

¹⁹ Other important regulations affecting African exports of fisheries products are EU Regulation 466/2001 setting the maximum limits for heavy metals in a number of species of fish and shellfish, and EU Regulation 2065/2001 on labelling information for fishery and aquaculture products. The latter requires the label to provide information on the trade name of the species, production methods (capture or aquaculture) and country of origin. As a result of the ‘sardine case’ mentioned above, the EU had to change its rules and accept any of 18 different species of sardine to be labelled ‘sardine’ and not ‘sardine-type’. The EU is also developing a legal framework to regulate the development of ecolabels and voluntary certifications, and laying down guidelines for the monitoring of claims.

Fish exports from Uganda to the EU were suspended three times between 1997 and 2000 on food safety grounds (some of the bans included Tanzania and Kenya as well). The last suspension lasted almost 18 months and had a profound impact on fishing communities and the industry as a whole. Three of the eleven fish factories operating in Uganda were forced to close, and the others operated at much reduced capacity, resulting in unemployment for 32% of the labour force in the sector. The ban between April and August 1999 *alone* is estimated to have resulted in a loss of US\$ 36.9 million. However, this crisis finally brought together regulators and the industry in the three countries. Upgrading of plant, improvement of regulations and monitoring, the establishment of an accredited laboratory in Uganda, and new management procedures took place – partly with donor support. Currently, Uganda exports a variety of fish products (fillets, headed and gutted whole fish, fish maws, and trimmings) both in frozen or chilled form. Chilled fish (mostly fillets) are airlifted to Europe. Frozen products find their way to Europe, but also to Australia, North America, the Middle East and East Asia. All processing plants now conform to EU and US food safety regulation (including HACCP procedures), and are ISO 9000 certified.

Yet, a number of critical issues remain. First, monitoring of hygiene and handling practices focuses on ‘registered’ landing sites, where good infrastructure is present and quality management procedures are in place. These sites land only a small proportion of fish caught on the lake. Handling of fish in basic landing sites is still deemed to be generally inadequate. Second, proper traceability can only be assured up to the lake-shore level. This is not necessarily a problem in terms of EU regulation on traceability, but it will become more of an issue as fish buyers in Europe move towards ensuring full product traceability. Third, expensive product testing on all consignments before export is still required, even though it should not be as HACCP is itself a risk-minimizing tool. Fourth, if a fish safety problem is found within Uganda, a factory is closed down quietly and the problem is rectified without much fanfare. Also, if a private buyer in Europe encounters a quality problem on a consignment, this is resolved through private negotiation (and often a price discount) or arbitration rather than through seizure. This is a reasonable system considering what happened last time the Ugandan authorities tried to be frank and transparent – the EU imposed a long import ban. One also wonders whether the lack of inspections by the EU since 2000 and the accepted wisdom that a small number of upgraded sites handles *all* fish for export are actually actions of willing negligence on the part of the EU – a performative ritual to show its anxious consumers that ‘everything is fine in the system’.

Source: Ponte’s own fieldwork interviews (see details in [Ponte, 2005](#))

What the experience of Uganda suggests is that SPS measures are not insurmountable, even in African LDCs. The costs of transition, however, are high and are unlikely to be absorbed by local industry actors without technical support and financial assistance. Furthermore, food safety regulations are constantly changing and becoming increasingly strict. They are not as clearly implemented as the official ‘systems’ would imply (even within the EU), suggesting that a certain amount of politics is at play, despite claims that these systems are based on ‘scientific’ risk minimization. Finally, private and voluntary standards add new layers of compliance that are needed to gain (or maintain) market access in developed countries. African countries should press for more support in matching non-tariff barriers (both public and voluntary/private) at the WTO-level and within EPA and FPA negotiations.

6. Conclusion and policy implications

African fish exporting countries are facing challenging negotiations and new developments in many different guises. These include: WTO-level negotiations on tariffs and subsidies; bilateral and regional negotiations with the EU in the formulation of Economic Partnership Agreements (EPAs) and Fisheries Partnership Agreements (FPAs); and increased food safety standards imposed on their exports both by government regulation and by private buyers. The limited capabilities of these countries, especially LDCs, to follow (let alone shape) the outcome of these processes requires external support, regional coordination, and prioritization of effort.

In general, African countries, both LDCs and non-LDCs, have very little direct interest in seeing NAMA tariff negotiations succeed. They already enjoy preferential market access to the EU and will see this preference eroded in the case of successful negotiations. Thus, if anything, they should use the possibility of NAMA success as a bargaining chip for concessions in other areas of negotiation.

Despite the high level attention that Northern subsidies have attracted in development circles, especially in agriculture, we argue that this is not the area where the most dangerous challenges arise for African fisheries. The latest developments in fisheries subsidy negotiations suggest that, because access fees are so important to developing

country revenue, they are likely to end up being considered ‘acceptable’ forms of subsidisation – provided that certain caveats are met, such as (for the EU) a progressive increase in the percentage of the total fee paid for by fishing fleets. At the same time though, the broader impacts of Northern subsidies have repercussions in African countries: overfishing, overcapacity and oversupply, threats to artisanal/small-scale fishing, insufficient local landings for processing, and a dearth of fish in local markets. Yet, if well-managed, local landings from distant water fleets can progressively stimulate local processing industries and create employment, and by-catch can be used as a source of supply for local markets (see MRAG, 2000).

In our view, the main area where African negotiating teams should focus for the time being is on EPA/FPA negotiations with the EU, and within these on instruments that would facilitate the matching of public and private food safety (and in the future, environmental) standards. The situation is particularly delicate for non-LDCs as they may well lose preferential access to the EU in 2008 under the terms of the Cotonou Agreement if EPA/FPA negotiations on goods are not completed in time. Still, even LDCs will be under a lot of pressure from the EU, as the EBA is a unilateral offer and can be withdrawn at will at any time. Also, cross-conditionality between EPA/FPA negotiations and bilateral aid is likely to continue, albeit in more hidden forms than previously.

On the other hand, the EU is deeply concerned about finding sources of supply for its distant water fleets, its processing industry and its domestic markets more generally. This should give African countries more weight than is generally currently assumed in fisheries-related negotiations with the EU. But the possibility of yielding positive results for Africa can only happen if: (1) fisheries issues (or at least some of the basic principles underpinning them) are negotiated at the regional or sub-regional levels, rather than at the level of individual countries; this way, countries with a stronger position to negotiate better deals can carry weaker countries with them; (2) fisheries issues are negotiated in relation to EPAs, and not in independent FPAs, due to the more mercantilist approach taken by the EU’s DG Fisheries in the latter; and (3)

African countries raise the level of informal cooperation with other ACP sub-regions on ongoing EPA and FPA negotiations.²⁰

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²⁰ Such a strategy could be extended to an alliance with the island members of the South Pacific Forum Secretariat and Forum Fisheries Agency (FFA). These share similar concerns and constraints in their fisheries relations with the EU, have a fairly sophisticated knowledge base on fisheries and significant experience in *collective* fisheries negotiations, and are (reportedly) a few steps ahead of some of the African sub-regions in terms of negotiating fisheries aspects of their EPA with the EU.

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