

FFA FISHERIES TRADE BRIEFING

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Editorial Note

This is the first issue of a new monthly series called *FFA Fisheries Trade Briefing*. The rationale for this new service is to provide short updates to Forum Island Country (FIC) Members and industry on issues of importance to the international trade in fish and fish products, with an emphasis on tuna. The service is an extension of FFA's recent engagement with fisheries trade issues which culminated in the guidebook *Pacific Island Countries, the Global Tuna Industry and the International Trade Regime* (full text available at <http://www.ffa.int/node/891> and the subsequent FFA 'Fisheries Trade Studies Workshop' which successfully brought together fisheries and trade officials in Port Vila, 19–20 March 2007.

Note that long internet addresses have been converted into shorter more manageable versions using the free online TinyURL service, which is available here: <http://www.tinyurl.com>

Economic Partnership Agreement (EPA) Negotiations

Status of EPA Negotiations

At the beginning of October 2007, a joint Pacific-EC EPA Ministerial Meeting declared that 'in view of the short time available until the deadline of December 31 2007, it was necessary to conclude a WTO-compatible interim agreement as a stepping stone to a comprehensive EPA'.²

Since then there has been a huge amount of press coverage of the ACP EPA negotiations with the EC in November.³ With the 'deadline' for the signature of EPAs rapidly approaching, Fiji and Papua New Guinea initialed an interim EPA with the EC in Brussels on 29 November. This interim agreement (or 'EPA-lite') simply covers tariff liberalisation commitments for the trade in goods. A major motivation for PNG signing an interim EPA is uninterrupted duty-free access for its tuna exports because – unlike FIC LDCs – it cannot switch to duty-free access under the Everything But Arms initiative (EBA). It should be noted there have been some uncorroborated informal reports that buyers in the EU have held off on orders from Pacific non-LDCs because of the uncertainty regarding continued duty-free market access. A recent EC press release states that a comprehensive EPA 'is foreseen to be concluded by the end of 2008'.⁴

However, while an interim EPA will avoid the disruption of trade that would arise for non-LDCs, some analysts are concerned that the associated delays in negotiations might result in the eventual acceptance of an EPA by end-2008 that does not meet the original core elements of the agreement as the pressure for the EC to provide concessions may have reduced.⁵ Similarly, the PIFS Deputy Secretary



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Contents

Economic Partnership Agreement (EPA) Negotiations

Status of EPA negotiations
Reform of EU fisheries rules of origin

Free Trade Agreements

Thailand
Japan-Philippines

Quality Standards

The WTO and private standards
Proposed new EU standards on IUU fishing

Tuna Markets

UK Competition Commission findings on the supermarket sector
WTO EU-Norway salmon dispute ruling
Crisis in Spanish tuna canneries
'Eco tax' on fish to support French fishermen
Possible 20% EU canned tuna price increase
Japanese southern bluefin scandal

Fiji and Papua New Guinea initial an interim EPA with the EC



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General, Peter Forau, cautioned signatories of the interim EPA to study the document very carefully and noted that: 'If it was signed by one of our members – that would be the interim agreement for every other PACP country'. In response a representative of the EC noted that an interim agreement does not set the benchmark for market access issues as future FIC signatories would be able to set their own schedule for tariff liberalisation.⁶ While it is true that each country negotiates its own market access offer with the EC, it is fairly clear that if Fiji and PNG agreed to liberalise at least 80 percent of the value of their imports from the EC, new signatories would have to meet the same level of ambition.

Finally, it is worth noting that the ACP-EU Joint Parliamentary Assembly in Rwanda on 22 November urged 'the European Commission to acknowledge that more time is needed for ACP states to assess the implications of the agreements proposed' (known as the 'Kigali Declaration');⁷ it is however, unlikely that the recommendations of this Assembly will be heeded by the EC.

Importantly, for Fiji and PNG, the initialling of an interim EPA is likely to formally trigger PACER-plus negotiations with Australia and New Zealand. It remains to be seen however what this implies for those FICs who are not signatories to the interim deal.

Reform of EU Fisheries Rules of Origin (RoO)

A major positive outcome for the Pacific in the EPA negotiations – arguably the only new concession – is the substantial reform of rules of origin for certain processed fish products exported to the EU. Processors are now able to use 'global sourcing' of fish categorised under Chapter 3 of the Harmonised System of Tariff Classification (e.g. fresh and frozen tuna) to make products falling under Chapter 16 (e.g. mainly canned tuna and tuna loins for reprocessing). In other words, for those countries that sign a Goods Agreement under the interim EPA, tuna canneries and loining plants based within their borders can utilise fish from vessels regardless of flag, vessel ownership and crewing requirements; of course, subject to the regulations of national authorities, the Western and Central Pacific Fisheries Commission (WCPFC), and the EU, such as its Sanitary and Phyto-Sanitary (SPS) measures.

This represents an important and historic victory as FICs have been struggling to have Lomé/Cotonou fisheries RoO reformed to reflect the region's specific economic needs and geographical isolation for almost thirty years. Notably, it would appear that this reform has only been extended to the Pacific interim EPA, with all other EPA regions receiving less favourable treatment.

However, this reform does not seem to include products classified under Chapter 3 of the Harmonised System (specifically fresh or frozen fish fillets, steaks and other types of cut), which are important value-added products for several FICs. Several observers have noted that reform of fisheries RoO for products under Chapter 3 will be up for discussion in negotiations for a comprehensive EPA in 2008.

**Historic victory
for the Pacific
on fisheries
rules of origin in
interim EPA**



Free Trade Agreements (FTAs)

Thailand

One of Thailand's main market access strategies for its exports (including canned tuna) is to negotiate FTAs with principal markets. The idea being that this provides Thai exports with a competitive advantage in terms of reduced trade tariffs. So even though the growth rate of Thailand's canned tuna exports declined in 2007, according to the vice chairman of the Federation of Thai Industries, they are expected to rise again in 2008 because of improved market access through FTAs.⁸

However, it is worth noting that FTAs remain a controversial issue in Thai society. For example, the Japan-Thailand Economic Partnership Agreement (JTEPA) which came into effect on 1 November 2007 is being contested by civil society activists through the Thai Constitutional Court because of its potentially harmful environmental effects.⁹ The deal provides improved market access for Thai tuna products into Japan, but which are constrained by strict rules of origin (similar to those applied under the Cotonou Agreement) thereby acting as an additional incentive for the development of a Thai tuna fishing fleet. There are even higher levels of domestic political opposition against the proposed FTA with the US, which is likely to provide significantly improved market access for Thai tuna products.

Japan-Philippines

The Japan-Philippines Economic Partnership Agreement (JPEPA) was signed in September 2006 but has not yet been approved by the Philippine senate. One of the key fisheries aspects of the JPEPA is that Japanese fishing vessels will be allowed access to fisheries resources in the Philippines EEZ. This aspect of the agreement has met with protest from local tuna fishing industry based in General Santos (one of the main areas of tuna fishing and processing in the Philippines) because of the perceived impact on smaller scale local fishers by large industrial fishing vessels from Japan. A representative of Pamalakaya (a nationwide federation of fisherfolk organisations) said that 'the efforts of local tuna producers to upgrade their operations to world class standards will be put to waste once Japanese factory ships invade the country's tuna rich fishing waters courtesy of the one-sided agreement'.¹⁰ As with Thailand, there are questions over the extent to which the JPEPA is constitutional. One of the reasons for this challenge is because those opposed argue that Japanese nationals should not be able to have a right over marine resources in the Philippines' EEZ.¹¹

On a different issue – market access for frozen filtered smoked tuna products – Philippine processing industry is highly supportive of JPEPA.¹² Japan banned 'smokeless smoke' or CO treated tuna products in 1997 for 'health reasons'. Smoked tuna exports are worth around USD 50 million to processors in the Philippines, so the lifting of the Japanese ban might act as an important sweetener for certain sections of the tuna industry in the Philippines.

**Thai strategy
of improving
market access
through FTAs a
success**

**Japan-
Philippines
FTA has mixed
results for
Philippine tuna
sector**



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Quality Standards

The WTO and Private Standards

Many private standards for food products are set by large corporations (especially supermarkets) and industry associations. The requirements of private standards are often over-and-above those laid down by public bodies and as such can negatively impact the flow of exports – especially from developing countries – if these standards cannot be met, or they can increase firms' costs if they are. However, developing countries do not have immediate recourse to the Dispute Settlement Mechanism at the WTO to contest the legality of private standards because (unlike public standards) they are not set by WTO Member countries, but by firms based in those countries.

A workshop of the WTO Committee on Sanitary and Phytosanitary (SPS) Measures focussed on this issue in October 2007. Some developing country Members would like governments to take responsibility for the WTO-compatibility of voluntary standards that are set by firms within their borders. While no actual measures have been developed to address the issue to the satisfaction of developing country Members, and developed country Members are generally opposed to engaging the WTO in the regulation of private standards, the issue remains on the agenda.¹³

The WTO has launched a new fully searchable called the SPS Information Management System, which is available at: <http://spsims.wto.org/> The database is currently very complex, but experienced government officials and exporters may find it of use.

Proposed New EU Standards on Illegal, Unreported and Unregulated (IUU) Fishing

The European Commission is pushing for deepened regulations to combat the global flow of IUU caught fish to EU markets. The proposed set of measures is intended to combat all IUU fishing activities in EU waters, on the high seas and in third country EEZs.¹⁴ A major mechanism to achieve this objective is the enhancement of traceability requirements so that the flow of fish products can be tracked from vessel to plate. The proposed regulations will link the legal origin of catch to access to the EU market (e.g. through catch certification requirements). If a firm is found to be taking part in IUU fishing activities or allowing them to occur it will be subject to sanctions. Additional aspects of the proposed package of measures are stricter port controls, the prohibition of transshipment at sea, and the creations of 'black lists' of known IUU vessels and non-cooperating states.

EU industry is also supporting these measures but only as applied to non-EU vessels. This latter position is clearly inappropriate in terms of the basic harmonisation of regulation, but also in light of the European Court of Auditors recent special report that found problems with EU fishing industry in terms of 'unreliable catch data, inspections of limited effectiveness, systems for following up infringements and imposing sanctions that are often inappropriate'.¹⁵

Developing countries push for inclusion of private standards under WTO rules



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Moreover, from the perspective of FICs, the Coalition for Fair Fisheries Arrangements (the Brussels-based NGO) correctly points out that without concrete actions on behalf of the EU to help developing countries to meet the proposed new requirements, '[such] trade-related measures ... will definitely constitute new trade barriers for legally-caught fish from developing countries, especially those fish products from the artisanal fishing sector'.¹⁶

It is important to note that there are already several mechanisms in place to address IUU fishing activity in the WCPO, including the WCPFC measure prohibiting Commission members from licensing vessels flagged to non-Commission members and Cooperating non-Members, the regionally agreed harmonised minimum Terms and Conditions of Access, and the FFA's Vessel Monitoring System. There are additional steps being taken in the WCPFC, such as the vessel catch documentation system.

Sainsbury's tuna product recall: based upon information from the major UK supermarket Sainsbury's, the Food Standards Agency recalled several tuna products with use-by dates of 4 and 5 November because of traces of higher than normal levels of histamine. The products in question included Sainsbury's fresh tuna steak (x2 piece packs), 'Taste the Difference' fresh tuna steak (x1 and x2 piece packs), fresh diced tuna (200g), and 'Taste the Difference' tuna purchased from the fresh fish counter. A Sainsbury's spokesperson noted that: 'In terms of how it happened, that is something that we are investigating. Any tuna that is on sale now is perfectly ok'.¹⁷ This case serves to reiterate the need for effective testing of FIC tuna exports.

Tuna Markets

This briefing series does not attempt to reproduce the same coverage that can already be found in the FFA's existing *Tuna Market News* (available at <http://www.ffa.int> or the FAO Globefish programme's existing free newsletter which can be subscribed to here: <http://www.globefish.org/>

UK Competition Commission findings on the supermarket sector

The UK government Office of Fair Trading established an investigation by the Competition Commission in May 2006. The provisional findings of which were made available at the end of October 2007. Supermarkets were provided with a month to submit evidence-based objections to the findings. The major conclusion of the Competition Commission's 270 page report is that there are aspects of the UK supermarket sector 'that prevent, restrict or distort competition in connection with the supply or acquisition of groceries by retailers and hence that there is an adverse effect on competition'. One of the major alleged strategies by the large supermarkets of note here is the purchase of land to block competitors from setting up stores. Of more relevance to FIC exporters to the UK is the finding that 'the exercise of buyer power by certain grocery retailers and symbol groups with

New EU IUU proposal might act as trade barrier for developing country exports



respect to their suppliers of groceries, through the adoption of supply chain practices that transfer excessive risks and unexpected costs to those suppliers'.¹⁸

In terms of specific actions to overcome the anti-competitive effects of this market concentration (including potential knock-on benefits for suppliers), the Competition Commission has made the following preliminary remedies:

- A set of proposals to reduce concentration and enhance competition through changes to the national planning system to make more land available to competitors and to restrict the control of land by large supermarkets where it might be being used as an entry barrier.
- A series of measures 'to address the transfer of excessive risks and unexpected costs to suppliers', including reforms of the Supermarkets Code of Practice; and consideration of the 'scope to identify best practice in relation to grocery retailers' dealings with their suppliers'.

The extent to which any of these proposed remedies become concrete reforms is as yet unknown, but if they did there might be increased competition in the UK supermarket sector and the institutionalization of improved relations with suppliers.

WTO EU-Norway Salmon Dispute Ruling

The first restrictions on salmon imports from Norway were applied by the EU in 1989 in a response to claims that Norwegian farmed salmon was being 'dumped' on EU markets (i.e. it was being exported at a price lower than sold in Norway or lower than the cost of production).

Norway took this case to the Dispute Settlement Body (DSB) at the WTO whose ruling was released on 16 November 2007. The DSB panel stated that the EU 'acted inconsistently with the provisions of the AD [Anti-Dumping] Agreement' and it is necessary to 'bring its measure into conformity' with that Agreement. But the DSB panel did not go so far as to explicitly order the EU to drop its safeguard measures: the text of the panel report reads that it will 'not make any suggestions concerning ways in which the EC could implement our recommendation to bring its measure into conformity'. The outcome was that *both* sides claimed a victory based upon the Panel ruling!

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Beyond its potential implications for the eventual expansion of Norwegian salmon products on EU markets (which are substitutable for high-value tuna products), this DSB panel ruling also makes clear that WTO mediation will not necessarily result in a clear victory, even if the evidence of the case appears to be in the favour of the aggrieved party.

**Remedies
to improve
competition
and treatment
of suppliers
in UK
supermarket
sector?**



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Crisis in Spanish tuna canneries: Spanish production of canned tuna amounts to around 60 percent of total EU production, however canneries are faced with a combination of high wages, low retail prices and the increased cost of frozen tuna and tuna loins. In an effort to reduce costs, canneries are making full use of the tariff quota on tuna loins to purchase product from Southeast Asia, which is filled within days. Spanish processing firms are reportedly investigating the purchase of canneries in low cost sites of production in Southeast Asia and China.²⁰ The negative implication for FIC suppliers of frozen tuna and tuna loins to the EU is that buyers based in Spain are increasingly looking to Asia for supply (both for raw material and finished product) thereby partly eroding the rationale for the tariff preference for tuna. The positive implication for FICs is that the duty free preference – under a proposed interim EPA for signatory countries and under the existing Everything But Arms initiative (EBA) for LDCs – provides huge and immediate growth potential in the Spanish market for tuna loins.

'Eco tax' on fish to support French fishermen: In order to compensate French fisherman for the commercial costs of increased fuel prices, the French government has proposed a tax of 1 or 2 percent on the price of fish sold to consumers, including that sold by retailers, restaurants and fishmongers. This 'eco-tax' would also apply to *all* imported fish, which accounts for around 85 percent of French consumption. This new subsidy would provide French fishers with between €2,500 and €5,000 per year, allocated according to the proportion of fuel use. However, EC rules may make this initiative a non-starter because of its potential impact on competition with fishers in other EU member states.²¹

Possible 20% EU canned tuna price increase: At the First International Tuna Conference, 25-28 October 2007, the Spanish Fish and Seafood Canners' Association (ANFACO) argued that a 20 per cent increase in canned tuna prices was necessary to offset rising fuel and raw material costs. Other representatives of the global canning industry present at the conference supported the proposal.²²

Japanese southern bluefin scandal: A new aspect of the alleged multi billion-dollar Japanese southern bluefin scandal has been reported on. The Australian newspaper *The Age* reports that a confidential Japanese government investigation 'shows there were illegal or inappropriate labelling and trading that led buyers to believe imported tuna [was] domestic tuna, and farmed tuna [was] wild tuna at least at the retail and wholesale level in Japan'. This implies that the alleged fraud extended to Japanese consumer markets.²³

Spain looks East for tuna supply and future investment in processing capacity



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1. Liam Campling is Consultant Fisheries Trade Analyst, FFA. The contents of this Briefing (including all analysis and opinions) are solely the responsibility of the author and do not necessarily reflect the positions or thinking of the FFA Secretariat or its Members. The author would like to thank four individuals for their invaluable input on an earlier draft of this briefing.
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COMING IN THE NEXT ISSUE (January 2008, Vol. 1: Issue 2)

Update on preference erosion and NAMA negotiations

Update on negotiations for proposed fisheries subsidies rules at the WTO

Update on EC proposed reform of GSP fisheries rules of origin