



PREFERENTIAL & FISHERIES TRADE

Special Feature: Possible impacts of post-Brexit UK trade policy on the canned tuna trade

In the current mayhem of the UK government's internal politics and its posturing on 'taking back control' from the tentacles of EU regulation, the country's trading relations with third countries have taken a back seat. But consideration needs to be given to the issues facing countries with preferential trading relations with the EU via Economic Partnership Agreements (EPA), such as Fiji and PNG's Interim EPA, and via the non-reciprocal Generalised System of Preferences, such as the Solomon Islands under the Everything But Arms (EBA) initiative for least developed countries (LDCs). Before moving to some reflections on these issues it is important to take stock of the importance of EU preferences in shaping the canned tuna trade and of the relative role of the UK market.

Fish processing is one of the few success stories of industrial upgrading in the ACP countries under historical trade preferences with the EU (see Table 1). In addition to earning crucial foreign exchange, labour-intensive fish processing provides a vital source of private sector ACP employment. In the aggregate, small vulnerable economies in particular, have seen an improvement in their relative positioning in global value chains in fish products, moving from a share of the global trade of 5.2 per cent in 2003 to 6.5 per cent in 2013.² EU trade preferences are fundamental in this success.³

The UK has been the EU's largest import market for canned tuna in volume and value since the 1990s. It is a relatively high value market due to oligopolistic rent seeking by only two brands (John West and Princes) and the 'big four' supermarkets (Tesco, Asda, Sainsbury and Morrisons).⁴ The UK is also a world leader in the development of sustainable procurement policies by big retailers; private standards that UK-centred exporters have invested heavily to comply with.

Table 1: UK import of canned tuna from selected countries, 1996-2016 (in million⁵ GBP)

	Tariff Regime	1996	2001	2006	2011	2016
Ghana	IEPA	11.1	27.3	21.7	34.7	65.1
Seychelles	IEPA	6.5	37.8	50.6	50.0	57.5
Mauritius	IEPA	13.3	35.5	42.4	54.2	47.3
Thailand	GSP	34.3	24.9	22.6	46.6	32.9
Ecuador	GSP+	0.9	10.9	11.2	29.9	24.7
Philippines	GSP/GSP+	12.9	6.5	11.8	17.5	24.3
Indonesia	GSP	7.3	4.6	0.9	4.0	15.9
Ivory Coast	IEPA	0.1	0.4	..	0.3	5.3
Papua New Guinea	IEPA	..	0.2	6.7	3.6	4.1
Maldives	EBA/GSP	7.0	2.9	2.8	2.1	0.9
Total imports all countries		131.5	160.5	183.3	246.4	281.6

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The most likely scenario for a post-Brexit EU-UK trading relationship is a free trade agreement (FTA). This will mean that existing bilateral trading obligations that the UK is currently committed to as a member of the EU will no longer stand (e.g. EPAs). For countries categorized as LDCs there is some relief in the consistent assurance provided by the UK that it will continue to honour duty-free, quota-free (DFQF) market access.⁶ In other words, an equivalent of the EU's EBA will be applied by the UK.

A far more politically difficult and contingent question is the trade relationship for non-LDCs that currently benefit from preferential trade under EPAs and Interim EPAs. Given that the UK is not a signatory to EU EPAs, there is a risk that non-LDC exporters of canned tuna under IEPAs, including PNG (see Table 1), will be met with a WTO applied tariff of 24% (bound at 25%). This will either divert trade to non-UK markets in the EU⁷ and/or undermine the commercial viability of these producers, thereby risking a vital source of employment. There are, however, a number of forces at play that want to liberalize UK imports.

Powerful figures in the UK government with a ministerial remit over fish product trade – Liam Fox, Secretary of State for International Trade and Michael Gove, Secretary of State for Environment, Food and Rural Affairs – are both firm believers in free trade.⁸ Further, mainstream economists associated with the UK's quasi-government Overseas Development Institute and prominent pro-free trade academics such as those associated with the UK Trade Policy Observatory have recommended that the UK treat all developing countries the same.⁹ For some, the UK should unilaterally liberalize as, in theory, it will create a 'level playing field' and offer greater choice and lower prices to UK consumers. This argument may gather momentum for products that receive high levels of protection under the EU tariff regime but where there is no UK industry to protect, such as the duty on canned tuna imports designed to support canneries in Spain, Italy and France.

Another pro-trade liberalization lobby may be the UK supermarkets. In the context of ongoing (and deepening) Brexit-induced price rises and existing austerity policy impacts on UK workers' spending power, UK supermarkets are likely to put pressure on the UK government to liberalize tariffs in order to cheapen goods, especially food. The supermarkets will be motivated by the possibility of capturing part of the margin (i.e. higher profits) and the ability to source from a wider range of suppliers (e.g. from Southeast Asia).¹⁰

If, post-Brexit, the UK were to unilaterally erode preference schemes that differentiate ('discriminate') among developing countries it would contribute to major shifts in the global supply of several food and other products such as cut flowers. A study by the Commonwealth Secretariat estimated that Commonwealth developing countries 'could end up paying as much as US\$800 million in additional duties if comparable EU preferences are not available in the EU market post-Brexit'.¹¹ In relation to the canned tuna industry, it would mean that large developing countries like Indonesia, the Philippines, especially Thailand and, increasingly, China will gain advantage in the UK market. It would also make DFQF market access worthless. It is worth noting that the UK is already a less attractive market because of lower purchasing power caused by a weaker pound.¹²

Alternatively, the UK Department for International Trade might reason that it is important to have something to bargain with in future FTA negotiations. For example, should the UK wish to negotiate an FTA with Thailand, it would be able to trade-off liberalized access to the UK market for canned tuna in return for UK interests in Thai markets.

LDCs will continue to access the UK duty-free, but the situation is unsure for non-LDCs

Several influential players in the UK are against the continuation of trade preferences

Moreover, the UK has a duty of care to continue to provide the conditions for the survival of export-oriented fish processors that are dependent on its market. Countries with historical links to the UK, such as developing Commonwealth countries with low levels of economic diversification, are significantly exposed to the UK market.¹³ This includes countries that signed EPAs with the expectation of continuing preferential access to UK markets alongside the other 27 EU member states.

One proposal is that the UK should adapt an equivalent of the USA's African Growth and Opportunity Act (AGOA) because waivers have already been granted at the WTO.¹⁴ While this would be a welcome solution to the African countries with IEPAs, it would exclude Papua New Guinea and other PICs with the potential to export to the UK.

Finally, it may even be in the UK national interest to honour its trade policy commitments as a former member of the EU. Given the UK's dependence on imported food, it is important to ensure a diversity of sources of supply, especially given the risk of more expensive food imports from the EU should tariffs be applied in an FTA. The share of the top 10 countries supplying the UK with canned tuna as a proportion of total UK imports was ~99% in 2016 and 2011 (see Table 1). This indicates UK exposure to supply shocks. To erode fish product preferences through, for example, unilateral liberalization, would almost certainly divert trade to the UK away from the IEPA and GSP+ countries and to the three Southeast Asian suppliers in Table 1. To depend solely on exports from Southeast Asia would mean a reliance on countries with low levels of national raw material supply outside of their waters (i.e. Thailand depends on imported fish and Philippines industry relies increasingly on access to PIC waters), which in the context of intensifying international struggles for control over fisheries, may marginalize the UK market. It is also the case that there are considerable reports of serious labour abuses in the Southeast Asian tuna industries,¹⁵ which mean imports may run into trouble in relation to the UK Ethical Trading Initiative and the UK Modern Slavery Act 2015.¹⁶

An announcement in June by the Department for International Trade suggests that the UK will work towards 'maintaining existing trading arrangements and avoiding costly tariffs' for those countries currently in agreements with the EU such as under EPAs.¹⁷ But to be WTO compatible this would require the negotiation of a network of FTAs to not discriminate against other developing countries. It might be the case that the UK would simply 'copy and paste' from existing EPAs and IEPAs, but as we have seen, some powerful players may lobby against this.

Update on fisheries subsidies debates in the lead up to the 11th WTO Ministerial

The Eleventh WTO Ministerial Council Meeting (MC11) takes place in Buenos Aires, Argentina, 10-13 December 2017. Several WTO Members hope to agree to new rules that discipline subsidies to the fisheries sector under a reform of the WTO Agreement on Subsidies and Countervailing Measures (ASCM). Before moving to an outline of the recent proposals submitted as part of the debate in the lead up to MC11, the following briefly reviews why the last WTO Ministerial Council failed, parallel negotiations among a self-selected group of countries, and the additional impetus of the United Nations Sustainable Development Goals (SDGs).

After several years of malaise, new life was breathed into the push to establish specific disciplines on fisheries subsidies at the WTO in 2015 when several Members submitted position papers for negotiation with a view to reach agreement at MC10 in Kenya in December 2015. Despite the considerable narrowing of proposed disciplines compared to debates in the late 2000s, lack of agreement pivoted on

The UK has an obligation to non-LDC signatories of EPAs; a UK version of AGOA has been proposed, but this would exclude PNG

The UK has announced that it hopes to honour its trade commitments to developing countries, but how this will be done remains unclear

three issues:¹⁸ (i) the EU reportedly objected to a specific timeframe to complete negotiations; (ii) China rejected the ‘best endeavour’ standstill provision on new subsidies in prohibited areas; and (iii) China and India objected to the reporting burden of having specific fisheries subsidy notification commitments under the ASCM.

In response to the failure of MC10, 13 Members released a Ministerial Statement in September 2016 pledging to reinvigorate WTO work to achieve ambitious disciplines on fisheries subsidies in a plurilateral approach (i.e. seeking to reach agreement among a limited number of Members or a ‘coalition of the willing’). Papua New Guinea is part of this group alongside Australia, New Zealand, the USA, and others.¹⁹

In parallel, the UN SDG 14.6 is a multilateral commitment to prohibit ‘certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies’.²⁰ SDG 14.6 recognizes special and differential treatment (S&DT) for developing and least developed countries (LDCs) as integral. And crucially, the WTO is identified as the institution where rules should be applied. SDG 14.6 has a target date for completion of 2020. Several other international agencies have supported the call for a regulatory framework to streamline fisheries subsidies, including UNCTAD, FAO and UNEP in a joint statement in July 2016 which was supported by the ACP and Pacific Island Forum Secretariat,

It is in this context that several WTO Members submitted proposals for reforms in late 2016 and 2017. Proposals in the last quarter of 2016 can be grouped into one batch, these were by the EU, the ACP group, the LDC group and a joint proposal from Argentina, Colombia, Costa Rica, Panama, Peru and Uruguay.²¹ There are key commonalities among these. First, all have the shared objectives of reaching agreement by MC11 in December 2017 and achieving UN SDG 14.6 by 2020; similarly, all proposals call for across-the board prohibitions of subsidies linked to IUU fishing and overfished stocks (with no exemptions) and some specific prohibitions (to be determined) on capacity-enhancing subsidies. Each proposal includes S&DT provisions for developing and LDC members, but to varied degrees in terms of the level of exemptions offered, the transparency and notification requirements, and capacity-building commitments.

An early indication of the types of politics that might emerge in MC11 can be found in a proposal by Japan in February 2017, which seems to undermine the emerging consensus on low-ambition disciplines. It returns Japan to its initial position of the early 2000s: that there is no direct causal link between subsidies and depletion of global fish stocks and that fisheries management is more important to sustainable fisheries than the regulation of subsidies.²² In doing so, it places considerable emphasis on the role of RFMOs.

Seven other proposals were submitted between April and July in 2017 and which include suggestions for legal text. The proposals were compiled by Ambassador Wayne McCook (Jamaica), Chair of the Negotiating Group on Rules,²³ and are listed in Table 2. The Table provides a snap shot of a complicated range of (often conflicting) proposals; for more detail, the South Centre has completed an excellent legal analysis.²⁴

WTO members could not agree to fisheries subsidies rules in 2015, pushing some to establish a ‘coalition of the willing’

Consensus was developing in the UN system and at the WTO in 2016 on low ambition disciplines banning subsidies to IUU boats and fishing on overfished stocks

Table 2: Snap shot of 2017 textual proposals on fisheries subsidies disciplines²⁵

Proponents	Selected key points
Iceland, New Zealand, Pakistan ²⁶	Radically broadens scope to include 'fish stocks that have not been assessed or have been assessed to be in an overfished condition' and fishing on the high seas and other Members' EEZs Also broadens scope to 'fishing related activities' (e.g. packaging, processing, or transporting). No exceptions (i.e. no S&DT)
Indonesia ²⁷	Ban subsidies for vessel modernization, etc, and for fixed or variable operational costs S&DT for developing country artisanal and small-scale fisheries (SSF) – i.e. boats under 24m; and for vessel construction No S&DT for vessels flying flags of convenience
Norway ²⁸	Focussed text on IUU that requires cross-checks against IUU vessel lists over time before a boat is awarded subsidies
European Union ²⁹	Ban capacity increasing, vessel construction and vessel transfer subsidies for fishing that 'negatively affects' targeted fish stocks that are in an overfished condition
ACP Group ³⁰	Ban capital and operating cost subsidies that contribute to overfishing and overcapacity where targeted fish stocks are in an overfished condition
Argentina, Colombia, Costa Rica, Panama, Peru, and Uruguay ³¹	Ban subsidies related to IUU fishing drawing on RFMO and national lists of IUU vessels Ban certain subsidies related to overcapacity and to boats that 'negatively affect' overfished stocks Flexibilities for SSF
LDC Group ³²	Ban effort-enhancing, vessel construction/ modernization and operating cost subsidies for fishing stocks that are in an overfished condition

Two general points can be drawn from Table 2. First, Members appear to be nowhere nearer consensus. Instead, old dividing lines of more or less ambition in the scope of disciplines have resurfaced. For example, the problem of agreeing on S&DT remains. While there appears to be a degree of consensus on policy space for small-scale fisheries (although the scope of this is under debate), for industrial fishing there is a polarization between those seeking a partial carve out for all developing countries (not just LDCs), those wanting maximum flexibility for in-EEZ fishing, and others who want no exemptions. This may be a negotiation tactic for the purpose of performing trade-offs at MC11 and in the lead up to it, but it may also have the effect of deepening division. Second, there are strategic silences, especially by China and India. Given their centrality in blocking agreement at MC10, the lack of formal textual proposals to-date might suggest a similar outcome at MC11. If this is the case, the plurilateral approach would appear to be the only option available to those countries wanting to establish international bans on certain types of fisheries subsidies.

Reform proposals tabled in 2017 indicate growing polarization among Members

FISHERIES REGULATION

Legal challenge to new US Seafood Import Monitoring Program unsuccessful

As reported in *FFA TIN May-June 2017* and earlier issues, a lawsuit was filed by the National Fisheries Institute (NFI), together with a large group of US industry and seafood companies, against the US' new seafood traceability regulatory program – the Seafood Import Monitoring Program (SIMP). The rule was developed under former US President Barak Obama's Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud and enacted in December 2016. In January 2017, the lawsuit was filed in an attempt to block implementation of the rule, on grounds that the SIMP violated federal law and will harm American seafood businesses, given additional administrative and associated financial burdens relating to its implementation. NFI argues the program will not be effective in decreasing IUU fishing and will instead, increase food prices and reduce seafood choices for average American families.³³

The US District Judge ruled against the plaintiffs, finding that the traceability rule was issued in accordance with the US' Magnuson-Stevens Act and Administrative Procedure Act and that the Commerce Department properly completed a regulatory flexibility analysis to determine SIMP's impact on small businesses. In his ruling, the Judge highlighted that the US annually imports around 90 per cent of its seafood which is caught in distant waters or consumes locally caught fish which has passed through a foreign processing and distribution chain. Hence, seafood supply chains are rife with vulnerabilities, with opportunists seeking to game the system by circumventing laws, which has profound global and domestic economic and non-economic consequences. The Judge's decision was supported by several environmental NGOs, including Oceana, who highlight that an estimated 20-32 per cent of wild-caught seafood entering the US market comes from IUU fishing.³⁴

Provided the plaintiffs do not lodge a successful appeal against the District Judge's ruling, the SIMP will come into effect on 1 January 2018. US seafood importers will be required to provide detailed traceability information from point of capture on a number of wild-caught seafood species, including albacore, bigeye, skipjack, yellowfin and bigeye tuna. In order to assist US importers and foreign exporters become abreast of the traceability data reporting and record-keeping requirements under the SIMP, NOAA Fisheries is currently hosting a series of roundtables across the country.³⁵ An implementation guide for electronic filing of data by US importers has also recently been published.³⁶ Seafood exporters to the US, including PICs, should now be liaising with their US importers to ensure they are fully prepared in advance of implementation of the new traceability rule on 1 January 2018.

Ongoing concern in American Samoa over marine monument review, minimum wage

As reported in *Trade and Industry News*, the Trump Administration has recently called for a review of Marine National Monuments created and extended by recent US presidents. As the monuments have come under review, several key figures in the tuna industry have made public comment on how the expansion of the Pacific Islands Remote Marine National Monument (PRIMNM) and the ban on commercial fishing within the monument have affected the American Samoa economy and US tuna industry activities. Tri Marine, which owns a shuttered cannery in Pago Pago and US flagged purse seine vessels, has recommended that the federal government begin a rule making process to remove commercial fishing restrictions for tuna in certain areas of water around the monument. The firm argued that the PRIMNM

The Plaintiffs unsuccessfully argued the SIMP violated federal law and will create a large financial burden for US seafood businesses

PIC exporters to the US should start preparing with their US importers for SIMP implementation from 1 January 2018

and associated fishing ban do not have a science-based impact on highly migratory tunas, but do have a discernable negative economic impact on US fishing and processing operations and the American Samoa economy.³⁷ Tri Marine closed its tuna processing operations in Pago Pago in December 2016, and has recently indicated that it is continuing to explore options for the cannery, including an arrangement with another operator to reopen the facility.

Other industry actors echoed these concerns in public comments. The American Tunaboat Association estimated that fishing closures in US monument areas, coupled with fishing restrictions on the high seas and other countries' EEZs have combined to cost American Samoa upwards of US\$ 100 million annually.³⁸ Starkist, the largest private sector employer in American Samoa also weighed in with a letter to the Department of Interior that emphasized the impacts of the closure on raw material supply to its cannery, arguing the expansion of the PRIMNM threatens the firm's business model.³⁹ Several weeks later, Starkist announced a temporary closure of operations as a result of fish shortages. In October 2016, Starkist also shutdown for over a week due to a gap in supply.⁴⁰ The review of the monuments will continue over the next several months and recommendations for changes are due from Commerce Secretary Wilbur Ross by 25 October 2017.

In addition to stability of supply, Pago Pago's processing industry also continues to face the spectre of the 2007 law that requires incremental increases in minimum wage until the Territory's wages match the mainland's US\$ 7.25 minimum wage. Prior to this mandate, US Territories' minimum wages were set by what was known as the 'Special Industry Committee' under the jurisdiction of the Department of Labor. The Special Industry Committee set the minimum wage on an industry-by-industry basis, taking into consideration local conditions. In response to the growing pressure that increasing minimum wages have put on the remaining processing plant in American Samoa, Congresswoman Aumua Amata introduced a bill in congress to restore the Special Industry Committee model and to build a minimum wage policy that speaks specifically to economic and social conditions in American Samoa.⁴¹ Starkist announced support for the bill and Aumua Amata's ongoing work in support of the sector. Workers surveyed by reporters at Samoa News had mixed reviews of the proposal, reflecting a desire to retain their jobs, but also have wages that increase along with the cost of living in Pago Pago.⁴²

FISHERIES MANAGEMENT

Latest stock assessment indicates positive WCPO bigeye status ^{43,44}

WCPFC's Thirteenth Scientific Committee (SC13) endorsed the latest 2017 WCPO bigeye tuna stock assessment during its recent meeting in Rarotonga, Cook Islands from 9-17 August 2017, regarding it as "the most advanced and comprehensive assessment yet conducted for this species". The 2017 bigeye stock assessment model builds on the model used for the previous 2014 assessment, with two significant changes. Firstly, a new bigeye growth curve has been incorporated based on updated biological data obtained from otolith samples ('ear bones' extracted from fish which help to derive age-related information and growth rates). This data indicates that the asymptotic size for old fish (i.e. the mean length of fish when they live out their full life span) is lower than previously estimated. Secondly, a new spatial regional structure has been developed. The stock assessment area is still divided into nine regions, but the boundary between the northern (Regions 1 & 2) and tropical regions (Regions 3 & 4) has been shifted lower from 20°N to 10°N, in response to tagging data indicating there is limited fish movement between the equatorial and more

Industry continues to raise concerns about the rationale for, and economic impact of PRIMNM

Aumua Amata has proposed a return to the Special Industry Committee model for setting wages in American Samoa



temperate zones. The adjusted boundaries also reflect more closely the distribution of purse seine fishing in the Pacific, which is largely restricted to the equatorial zone between 10°N and 10°S.

To account for structural uncertainty relating to growth, regional structure, stock recruitment, size and tagging data, the stock assessment adopted by SC13 was comprised of 144 different weighted models reflecting plausible bigeye tuna stock dynamics (termed the 'uncertainty grid'). The median values of relative recent (2012-2015) spawning biomass and fishing mortality were used to measure the central tendency of stock status. The assessment indicates that the stock is not experiencing overfishing (with 77% probability) and is not in an overfished state (with 84% probability). This result is more positive than past bigeye stock assessments, which have deemed the stock to be in an overfished state, with overfishing occurring. Three factors contribute to the positive changes in bigeye stock status – inclusion of the new growth curve information, inclusion of the new regional assessment structure and estimated increases in recruitment in recent years. Recruitment may have improved due to positive oceanographic conditions, effective management measures to conserve spawning biomass, a combination of both or other factors (note: recruitment has also improved for WCPO yellowfin and skipjack and EPO bigeye).

SC13 noted that despite these positive results, the WCPO bigeye stock has been continuously declining since the 1950s, with continued higher levels of depletion in the equatorial and western Pacific (i.e. regions 3,4, 7 & 8 of the stock assessment), particularly of juvenile bigeye tuna, caught by purse seiners and 'other' fisheries. Hence, the recommended management advice from SC13 is that the Commission (at WCPFC14) continues to consider measures to reduce fishing mortality from fisheries that take juveniles, with the goal of increasing bigeye fishery yields and reducing any further impacts on the spawning potential for this stock in the tropical regions. A precautionary approach should be taken, with no further increases in fishing mortality on current levels of bigeye tuna in order to maintain or increase spawning biomass until the Commission can agree on an appropriate target reference point (TRP).

The results of the stock assessment were apparently met with mixed responses from WCPFC members at SC13. Japan, together with Korea, the United States and Taiwan, are cautious about the improved stock status and are reluctant for provisions in WCPFC's tropical tuna measure to be loosened as a result. This likely relates to these members' significant stake in the WCPO tropical longline fishery which targets adult bigeye (and yellowfin) and to Japan being the principal market for WCPO bigeye tuna. On the other hand, many WCPFC members with strong purse seine interests, particularly PNA, are optimistic about the improved stock status but stress that effective management remains crucial. At the recent meeting on the interim bridging tropical tuna measure in Honolulu, all FFA members presented the case that the effectiveness of the current bigeye measures needs to be maintained.

*The 2017
WCPO
bigeye stock
assessment
model
incorporates
a new growth
curve and
regional
structure*

*The 2017
assessment
indicates
WCPO bigeye
stocks are not
overfished, nor
is overfishing
occurring*

TUNA INDUSTRY

China takes steps to exert greater control over its longline fleet in the WCPO

In June 2017, it was reported that a Chinese fishing company was de-registered and fined the equivalent of approximately US\$ 597,000 by Chinese authorities when two of its vessels were found to have fished without authorization in a high seas area between New Zealand and Fiji, adjacent to the New Zealand Exclusive Economic Zone.⁴⁵ New Zealand authorities took genetic samples of the fish during an at sea inspection and subsequently confirmed fish onboard were southern Bluefin, not bigeye as reported by the captain. In August, Chinese authorities fined another company US\$ 300,000 and terminated all its fishing licences because one of its vessels was caught by Australian authorities fishing illegally for southern bluefin in Australian waters.⁴⁶

These two incidents were investigated by Chinese authorities and the described actions taken pursuant to WCPFC Conservation and Management Measure 2006-08 on high seas boarding and inspection procedures. CMM 2006-08 requires the flag state, in this case China, to investigate “serious infractions” as identified by a commission member or cooperating non-member and take “enforcement action” if found to be warranted.

The actions taken to terminate licences and charge large fines demonstrates China’s efforts to deter potential IUU activity and exert greater control over its distant water longliners, 418 of which operated in the WCPO in 2016.⁴⁷ In China, fishing authorisations are given to a company for each of its vessels. Under current regulations if one vessel in a company is caught contravening the law, all vessels in the company must stop fishing until an investigation is complete. As was the case relating to the Australian incident noted above, if one of the company’s vessels is found guilty of a serious infraction, the company may lose licenses for all its vessels. According to officials of the China Overseas Fisheries Association, the threat of licence loss coupled with several new requirements that have been instituted will enable better compliance with regulations and RFMO requirements from the distant water tuna longline industry.⁴⁸

Beginning in 2013, companies were given four years by the government to re-organize to be able to meet a deposit (bond) requirement equal to RMB30 million (about US\$5 million) intended to cover 6 vessels or 2,000 gross registered tons. The intention is to have the smaller companies consolidate by joining a group and pooling financial resources. It is thought this will give the resulting companies a greater incentive to self-police activities to avoid losing all licenses. It also makes it more difficult for large companies to avoid the risk of losing all its vessel licenses by dividing up their fleets under smaller companies. The consolidation policy may also have the potential to make Chinese government oversight and management of the fishery easier by lessening the number of commercial entities it must deal with on a day-to-day basis.

The new company consolidation requirement joins others that are designed to ensure participation in the distant water tuna longline fishery is done by only reputable and experienced companies. China is no doubt keenly aware of the problems that can emanate from the operations of a large number of vessels in a distant water fishery. Taiwan’s experience in struggling for years to gain control over its large fleet of highly mobile tuna longliners may well have contributed to China’s increasing control over the corporate governance of its fleet. In aggregate, the policies and domestic regulations help China comply with RFMO requirements and contribute to

Chinese government gave fishing companies four years to reorganize and meet bond requirement for their distant water longline fleets



being seen as a responsible participant in global tuna fisheries. Exerting significant control over the operations of its distant water fleet can also mean avoiding market access problems such as the EU “red card” that can come about as a result of lax oversight.

Exerting control over fishing activities is one thing, but China may still have difficulty in controlling the activities of some large Chinese companies in their quest for equity investment overseas. In a highly publicized 2014 episode, the Dalian-based China Tuna Industry Group withdrew its application to list an initial public offering on the Hong Kong stock exchange when Greenpeace revealed significant inaccuracies and claims in the firm’s draft prospectus. The Bureau of Fisheries was later quoted as saying that it had never given approval for the company to engage in offshore fishing, and that the company had not registered its fishing vessels with any RFMO nor been allocated any quota.⁴⁹ More recently a class action lawsuit was filed in August, 2017 by U.S. lawyers in New York against Pingtan Marine Enterprise Ltd. that is listed on the Nasdaq stock exchange. The lawsuit seeks to recover damages for Pingtan investors under federal securities laws.⁵⁰

Thai Union and Greenpeace broker sustainable fishing agreement⁵¹

Following several years of intense lobbying from Greenpeace, Thai Union, the world’s largest tuna processor and owner of a number of prominent canned tuna brands (e.g. Chicken of the Sea, John West (UK), Petit Navire, Mareblu and Sealect), has committed to measures in an agreement with Greenpeace that will tackle IUU fishing, overfishing and labour abuse issues in the tuna supply chain.

The agreement with Greenpeace spanning 10 pages complements Thai Union’s sustainability strategy, Sea Change® and includes the following commitments:

- Reduce the number of FADs used globally in its supply chains by an average of 50 per cent and doubling the amount of verifiable FAD-free fish available in markets globally by 2020.
- Banning at-sea transshipment across its entire supply chain (i.e. for all gear types, not just purse seine), unless new strict conditions are met by suppliers.
- An observer must be on board all longliners conducting at sea transshipments and vessels supplying Thai Union must have 100 per cent human or electronic observer coverage.
- Develop a comprehensive code of conduct for all vessels in its supply chains to help ensure workers at sea are treated fairly and humanely, with third party independent audits with publicly accessible results and clear timelines to ensure requirements are being met.
- Shift significant portions of longline-caught tuna to pole and line or troll-caught tuna by 2020 and implement strong requirements in place to help reduce bycatch.
- Move to full digital traceability to enable consumers to be able to trace products back to point of capture.

Greenpeace and Thai Union will meet every six months to assess implementation of the agreement. In addition, at the end of 2018, an independent third-party will review Thai Union’s progress to date on the commitments.

Controlling representations by some Chinese fishing companies in equity markets has proven more difficult for government than controlling fishing operations

Thai Union has committed to reducing purse seine FAD fishing and strengthening monitoring of longline fishing and transshipments

Given Thai Union's prominence in the global tuna industry and the related large volumes of tuna it sources, the agreement brokered by Greenpeace stands to widely influence tuna trading and fishing operations. However, given the level of ambition, meeting the commitments made will not be without challenges, as they rely heavily on cooperation by the fishing sector, in some areas over and above what is currently mandated by tuna RFMOs. For example, in the WCPO, the minimum observer coverage required for longline fishing trips is only 5%. Scaling up to 100% observer coverage will present numerous challenges – longline vessels need to accommodate an extra person into an already cramped working and living space; alternatively, vessels owners need to purchase and install cameras etc. for electronic monitoring; fisheries regulators need to enhance their monitoring, control and surveillance systems to be able to effectively manage increased observer coverage. The commitment to source verifiable FAD-free fish comes at a time when perhaps the most robust third-party sustainable fishing certification, Marine Stewardship Council, is being heavily criticised for certifying FAD-free catches, when purse seine vessels also set on FADs within the same fishing trip, if not on the same day. Shifting longline sources (presumably for albacore) to pole and line and troll may be challenging, if the volumes available are more limited than longline-caught albacore and already secured by other, possibly higher priced, supply chains.

US price fixing criminal probe continues, plaintiffs continue to join civil case

Ongoing investigations that the 'big three' US tuna brands engaged in a price fixing scheme are taking place under two distinct legal avenues. One is a set of lawsuits filed by numerous retailers, grocers, wholesalers and suppliers seeking alleged damages from the price fixing conspiracy. These suits have been joined together and moved to a US District Court in California. Recently, a series of new lawsuits have been added to the group, including suits from the large Minnesota-based retailer, Target, and several other large retailers.⁵² In sum, more than 100 distributors, grocers, retailers and customers of the 'big three' assert that they were damaged by a long-running price-fixing conspiracy.

Simultaneously, the US Department of Justice (DOJ) is conducting a criminal probe into the price fixing scheme. In that process, Bumble Bee has pleaded guilty and been mandated to pay a US\$25 million fine. Following the issuance of the fine, Bumble Bee Holdco and its subsidiary Bumble Bee Foods have refinanced 100 percent of the company's debt. In a press release, the company announced that its restructuring will include borrowing under a five-year term a US\$200 million asset-based revolving credit facility and issuance of a six-year, US\$650 million term loan facility.⁵³ The refinancing comes on the heels of its guilty plea and correlating plea agreement that included a reduced fine due to concerns over the company's financial solvency. The deal also included partial immunity from further prosecution for its current executives, according to court documents.⁵⁴ In addition to these developments, two former Bumble Bee executives have pleaded guilty, as has one former Starkist employee.

As the Department of Justice continues to prepare its case, it has asked for the court that is over seeing the criminal case to delay depositions in the civil suit so as not to reveal information important to the criminal proceedings.⁵⁵ Given the timing of the allegations, and that no executives from Chicken of Sea or its parent company Thai-Union or its Tri Union Seafoods subsidiary have lodged guilty pleas, speculation abounds that Thai Union was the whistleblower in the case. One report suggests that the details of the price fixing scheme were discovered during the DOJ's review of Thai Union's bid to acquire Bumble Bee, which was abandoned at the end of

More than 100 companies are suing the 'big three' for alleged price fixing

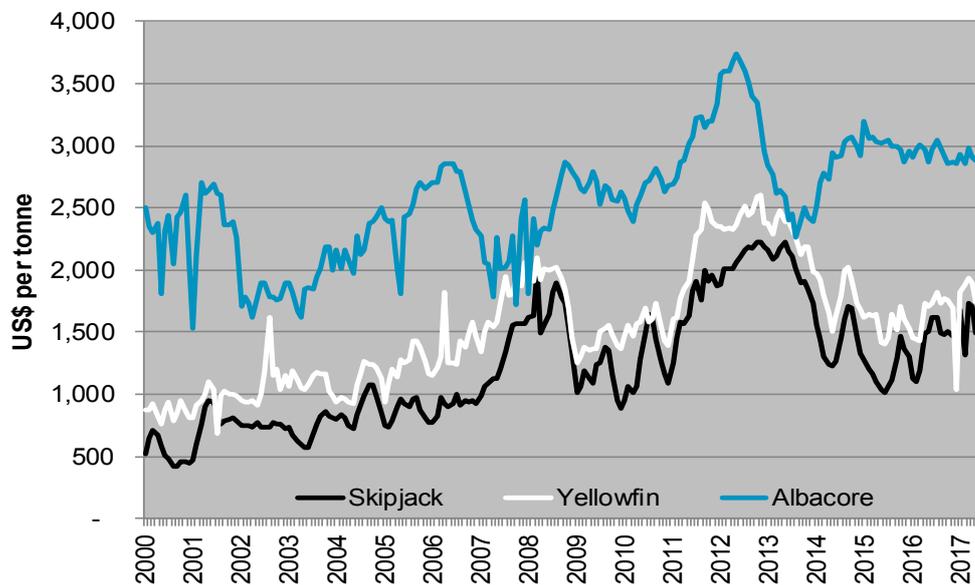
Following a guilty plea and concerns about solvency, Bumble Bee has restructured its debt

2015. According to this report, Chicken of the Sea sought 'Type B' leniency in which the DOJ uncovers wrongdoing first and then uses a company's cooperation to build its case.⁵⁶

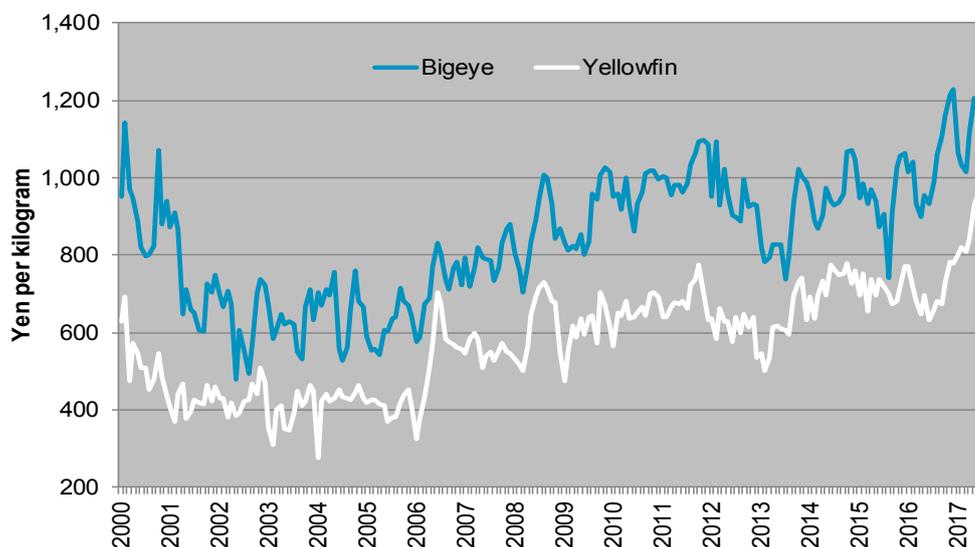
Bumble Bee's owner, London-based private equity firm Lion Capital has reportedly begun to look for a sale for the Canadian operations of the firm, and engaged in discussions with frozen seafood processor High Liner Foods for the sale. The Canadian business, Connors Bros., consists of the Clover Leaf brand which sells shelf stable tuna, salmon, clams, oysters and other items and the Brunswick and Beach Cliff sardine brands. Bumble Bee also owns a processing plant in New Brunswick, Canada, which is reported to be an 'optional' part of the deal. For its part, High Liner has recently acquired a series of foodservice-focussed frozen whitefish processing companies in the US. It has shown intent to diversify with recent purchases of a farmed shrimp supplier based in California with strong ties to Walmart-owned Sam's Club and a farmed salmon importing business also with links to Sam's Club.⁵⁷ The terms of Bumble Bee's plea deal dissuade Lion Capital from selling the US branch of the firm: if the company is sold before it pays its full fine of US\$25 million to the US government, which under the agreement cannot be completed in fewer than five years, the fine will balloon to US\$ 81.5 million.⁵⁸

TUNA PRICE TRENDS⁵⁹

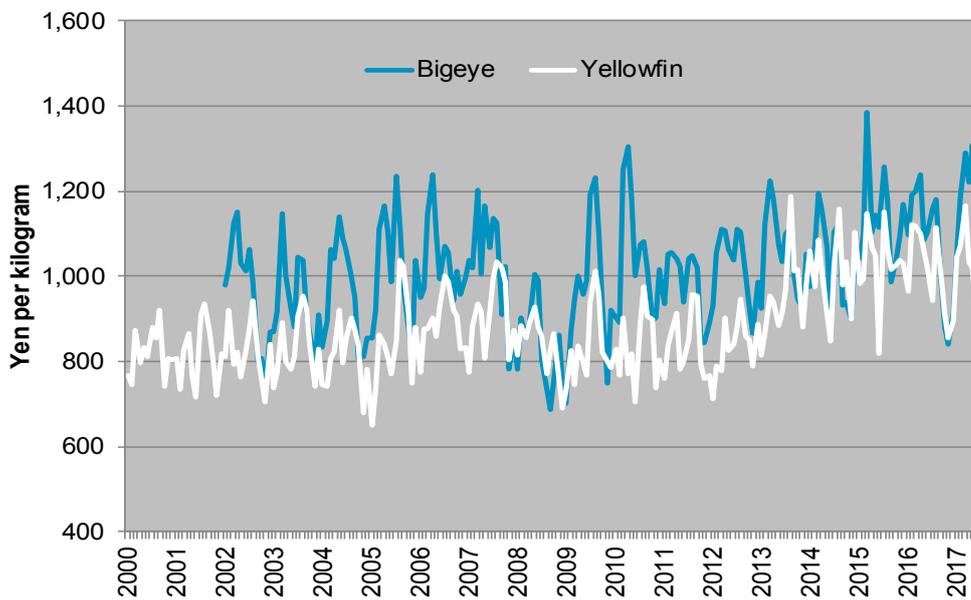
Bangkok canning-grade prices to June 2017⁶⁰



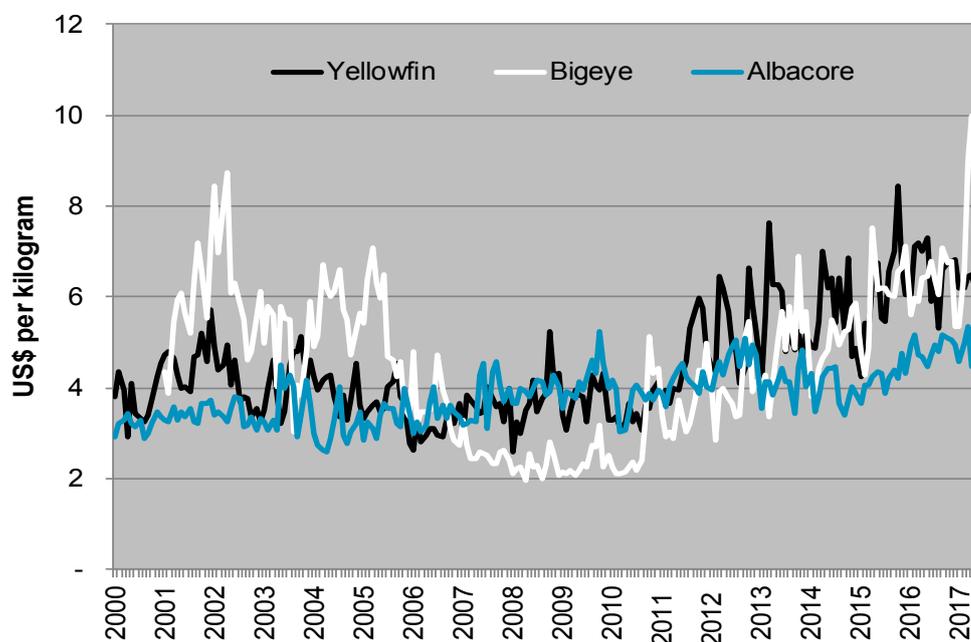
Japan frozen sashimi prices (ex-vessel, Japanese ports) to June 2017⁶¹



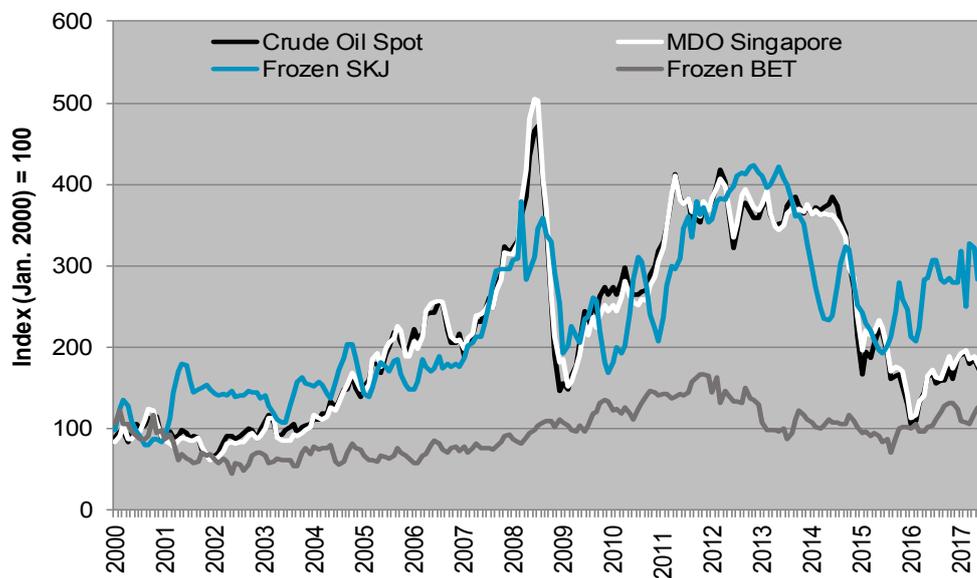
Japan fresh sashimi prices (origin Oceania) to June 2017⁶²



US imported fresh sashimi prices to June 2017⁶³



Crude oil, canning-grade frozen skipjack (SKJ) and frozen bigeye (BET) price index to June 2017⁶⁴



¹ Prepared for the FFA Fisheries Development Division by Dr Liam Campling, School of Business and Management, Queen Mary University of London, Dr Elizabeth Havice, University of North Carolina at Chapel Hill and Mike McCoy, independent consultant, all Consultant Fisheries Trade and Market Intelligence Analysts, Fisheries Development Division, FFA. Desktop publishing by Antony Price. The authors would like to thank Len Rodwell and David Power for their input on an earlier draft of this briefing. The contents of this briefing (including all analysis and opinions) are the responsibility of the authors and do not necessarily reflect the positions or thinking of the FFA Secretariat or its Members.

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