

# FFA FISHERIES TRADE BRIEFING

Volume 1: Issue 3 February 2008

By Liam Campling<sup>1</sup>

## Economic Partnership Agreement (EPA) Negotiations: What to Expect in 2008

The controversies surrounding the initialling of a Pacific Interim Economic Partnership Agreement (IEPA) by Fiji and Papua New Guinea in December 2007 have been reported on elsewhere and will not be repeated here.<sup>2</sup> Instead, the focus of this note is to outline what might be expected from EPA negotiations in 2008.

### General Issues

The Pacific Forum's Technical Working Group (TWG) on Legal and Institutional Matters met end-February to discuss the legal text of the Pacific IEPA, and to recommend a way forward for Pacific EPA negotiations. PACP Trade Officials then met to make recommendations based on the work of the TWG on the way forward to their Ministers. An outcome was the development of a potential timetable of meetings. Ministers are due to meet end-March to consider this timetable, but it would seem likely to include a Joint Technical Working Group with the EC in April.

A major issue for Pacific negotiators is the extent to which the text of a comprehensive Pacific EPA will deviate from the text of the Caribbean comprehensive EPA, which has already been negotiated. By early March it was unclear whether any PIC except from Fiji and PNG had decided to sign an IEPA; however, several other PICs may decide to sign a comprehensive EPA.<sup>3</sup>

It has been reported that the current president of the European Commission would provide the ACP with an opportunity to discuss and potentially renegotiate rushed and onerous aspects of IEPAs; a position that the EU trade commissioner (Peter Mandelson) allegedly contradicts.<sup>4</sup>

It has long been known that EPA negotiations would have implications for the Pacific Agreement on Closer Economic Relations (PACER) because the text indicates that a negotiation for a free trade agreement (FTA) between PICs and Australia and New Zealand (ANZ) may commence if PICs enter into negotiations for FTAs with other developed and non-Forum countries.<sup>5</sup> The reported ANZ position is that PACER was triggered when Fiji and PNG initialled the Pacific IEPA. However, at the Forum Trade Ministers Meeting in 2007 the ANZ position was that they would not seek to rush in to negotiations with PICs on PACER. The next step is for an informal roundtable meeting between PICs and ANZ officials in New Zealand on 7-11 April, where a way forward on PACER will be discussed.



FFA

## Contents

### Economic Partnership Agreement (EPA) Negotiations: what to expect in 2008

General Issues  
Fisheries Issues  
Brazil challenges legal status of EPAs at the WTO

### Negotiations on Rules for Fisheries Subsidies at the WTO

Special and Differential Treatment (S&DT)  
Fisheries Management Conditions

### Non-Agricultural Market Access (NAMA) Negotiations at the WTO

Preference erosion for tuna exports to the EU  
Fish and Fish Product Sectorals

### Quality Standards

Fiji Competent Authority sanctioned by EU  
Spain sanctioned for poor catch reporting  
Market recalls in Australia and Hawaii

**By early March it was unclear whether any PIC except from Fiji and PNG had decided to sign an IEPA**



**FFA**

## **Fisheries Issues**

Turning to fisheries specific aspects: one of the major objectives of the Pacific in the negotiation of a comprehensive EPA is the extension of 'global sourcing' rules of origin (RoO) to fresh and frozen fish fillets (categorised under 0304 under the harmonised system of tariff classification).<sup>6</sup> This would provide PIC exporters with maximum flexibility in buying fish for value-added processing and export.

### **Brazil challenges legal status of EPAs at the WTO**

At the end of January, Brazil circulated a communication requesting that EPAs be considered as an agenda item at the meeting of the WTO General Council on the 5 February 2008.<sup>7</sup> Brazil argues that EPAs contravene the WTO 'Enabling Clause' – a pro-development component of international trade law that was a major victory of developing country pressure in the 1970s, which, among other things, allows non-reciprocal trade preferences between developing and developed countries such as the Generalised System of Preferences. The argument is that the MFN (Most Favoured Nation or 'non-discrimination') clause in EPAs means that the EU demands the same line-by-line tariff liberalisation treatment if an ACP signatory engages in future free trade agreements (FTAs) with any 'major trading economy'. This will limit opportunities for ACP signatories' future benefits from South-South trade (one of the major objectives of the Enabling Clause) because MFN clauses in EPAs reduces the incentive for ACP countries offering improved tariff liberalisation with large developing countries ('major trading economies') because the EU would automatically get the same treatment. Brazil's position was supported in the General Council by Argentina, China, India, Pakistan, and Paraguay.<sup>8</sup>

It is important to note that this action by Brazil is not intended as an affront to the ACP, but, first, it is in the interests of large developing countries ('major trading economies') should they wish to engage in future FTA negotiations with those ACP countries that sign EPAs, and second, it is also an attempt to block systemic abuse of the Enabling Clause (i.e. to stop the EU from setting a precedent in international trade law).

## **Negotiations on Rules for Fisheries Subsidies at the WTO**

As reported in last month's issue of *Fisheries Trade Briefing*, WTO Members are debating a draft text written by the Chair of the Negotiating Group on Rules, which includes provisions for fisheries subsidies.<sup>9</sup> There have since been two clusters of meetings (30 January to 1 February and 18-19 February) to discuss and debate this text in detail. The Pacific group of WTO Members has been active in all of these meetings, both in the context of statements made by Pacific ambassadors as well signing-up to statements by two

**The position of Australia and New Zealand is that PACER was triggered when Fiji and PNG initialled the Pacific IEPA**

**One of the major objectives of the Pacific is the extension of 'global sourcing' rules of origin to fresh and frozen fish fillets**



country groupings that the Pacific is allied to – the ACP and the Small Vulnerable Economies (SVEs) group. To date, two sets of issues have been focused on by the Pacific: Special and Differential Treatment (S&DT) and the set of proposed conditionalities for such treatment that require fisheries management to be in place (otherwise known as 'sustainability criteria'). Other issues have been raised, but they are reported on elsewhere.<sup>10</sup>

### **Special and Differential Treatment (S&DT)**

PICs have little bargaining power at the WTO both because of their marginal role in the world economy and due to the fact that only four of the fourteen Forum Island Countries are currently Members. As a result, much of the thrust of PIC arguments on fisheries subsidies has been taking a moral line, such as re-iterating the deep importance of fisheries to the livelihoods and economic and social development of the Pacific islands. In this context, in his statement on S&DT Ambassador Sisilo noted that fish and fish products constitute an average of around 30 percent of exports from the 14 PICs, and moreover, in terms of food security, per capita fish consumption in the Pacific islands averages 70 kg per year compared to the global average of around 16 kg, demonstrating the *profound* importance of this resource to the Pacific's basic survival. Ambassador Sisilo then pointed out that while the prior, present and future contribution of PICs to global overcapacity and overfishing is *minimal*, the importance of fisheries to their economic survival is *huge*.

Key concerns and requests for clarification of the Pacific in respect to the Chair's draft text include the following points, several of which were supported by other groups of countries, in particular the ACP and SVEs:

- Article II of the text deals with 'general exemptions' to the prohibited list of banned subsidies (i.e. those that developing *and* developing countries can apply). While this is not an issue of S&DT in itself, the Pacific requested that developing countries be exempted from any disciplines on Research and Development and that they also be allowed to retrain fish workers to move up the value chain.
- Developing countries are provided with S&DT in the provision of subsidies to fisheries-specific port infrastructure, but this is conditional upon meeting criteria on fisheries management (under Article V, see below). The Pacific raised its firm concerns regarding the inclusion of this prohibition in the first place: The PIC private sector is not large enough, first, to build ports without financial assistance, and, second, fishing activities are not substantial enough for port construction firms to implement effective cost recovery systems through the charging of user fees to vessels.

**PICs have little  
bargaining  
power at the  
WTO**



**FFA**

**The Pacific argued that one size does not fit all and increased flexibility in S&DT is required**

- The Pacific also re-iterated its concern highlighted in the December 2007 meeting, that only subsidies for vessel construction, acquisition, repair, etc. (under Article III (b) (3)) were provided with full exemptions (still subject to strict fisheries management conditions). However, PIC governments are not currently in a fiscal position to offer such expensive capital subsidies. Instead, Pacific governments tend to focus on subsidies for operating costs, which are more affordable, more targeted and which can be withdrawn more easily when economic conditions improve, but which are currently excluded for commercial fisheries in the Chair's text.
- A final major point was that even if PIC governments could afford subsidies for vessel construction, acquisition, repair, etc., the text proposes to limit in their operations solely to the EEZ of the subsidising state. Despite the obvious problems with enforcing such a rule, the Pacific made clear that such a limit would be an absolute commercial disaster for vessels targeting highly migratory species as they need to follow the fish. In other words, the draft text here precludes PIC subsidised vessels from targeting the main commercial fisheries resource that they have available to them, namely, tuna.

In summary, the Pacific argued that it is clear that one size does not fit all and that, therefore, increased flexibility in S&DT is required to reach a solution in these negotiations.

### **Fisheries Management Conditions**

Under the terms of the current draft of the Chair's text, if a country wishes to subsidise its fishing sector it must meet strict conditionalities in terms of effective systems of fisheries management (Article V). In other words, if a PIC government wanted to use S&DT it would first have to jump through several hoops that are in place to try to ensure that the subsidy did not lead to overfishing. The Pacific position at the WTO was that it fully supports measures to ensure the long term sustainability of fish stocks.

However, aside from several technical elements, the Pacific raised issue with one core aspect of the draft text on fisheries management. While the purpose of requiring a fisheries management system is clearly a logical one for commercial fisheries, the terms of the draft text are far too ambitious and complex for artisanal, small scale and coastal fisheries and would lead to serious blockages in the application of legitimate subsidies. In order to offer a constructive solution to this problem, the Pacific proposed a three-tiered approach to sustainability criteria that attempted to reflect the concrete realities of developing country fisheries. The proposal was that commercial fisheries would receive the strictest treatment, small-scale commercial fisheries would receive substantially less in scope, and subsistence and commercial artisanal fisheries would require the utmost flexibility.

**The Pacific proposed a three-tiered approach to sustainability criteria that reflects the concrete realities of developing country fisheries**



**FFA**

## **Non-Agricultural Market Access (NAMA) Negotiations at the WTO**

### ***Preference erosion for tuna exports to the EU<sup>11</sup>***

Fish and fish products are classified at the WTO as industrial goods and thus fall under the Non-Agricultural Market Access (NAMA) negotiations as opposed to being considered as an agricultural good.<sup>12</sup> In the context of the Doha Round, the objective of NAMA is to reduce bound MFN tariff rates on all industrial goods. On 8 February 2008 the Chair of the NAMA negotiations released his second draft text summarising debates and areas of consensus,<sup>13</sup> however, very little has changed of relevance to PIC fish trade since the first draft that came out in July 2007.<sup>14</sup> One aspect that has changed though is the rise in discussion of potential trade offs between NAMA and Agriculture (the other biggest political barrier to progress in the Doha Round).<sup>15</sup>

Initially, a key obstacle to reaching agreement in the NAMA negotiations was a debate over the design of the formula to be used to calculate multilateral reductions on bound rates. While WTO Members seemingly have agreed to use a basic 'Swiss Formula',<sup>16</sup> debate has shifted to the values of the co-efficient that determines the tariff reduction (i.e. how deep the tariff cuts should be). Members have proposed to include different co-efficient values for developed countries and developing countries, with the former undertaking a greater degree of liberalisation than the latter. In terms of the Pacific – and tuna more specifically – what matters is not simply the extent of liberalisation of *developing* country trade tariffs, but also reductions in the levels of tariffs applied in PIC major markets and the impact that these reductions will have on PIC competitiveness.

The current EU bound rate for canned tuna and tuna loins is 25 percent (only 1 percent more than the current applied MFN rate). If the range of the Swiss Formula co-efficient that is currently under negotiation is applied to this, the post-NAMA EU bound tariff for canned tuna and tuna loins will be reduced to between 6.1 and 6.6 percent (see Table 1). This will clearly have a deeply negative impact on the competitive advantage available to Fiji and PNG under the IEPA and to PIC LDCs under the Everything But Arms initiative.

While there is some special treatment being proposed for those products whereby the erosion of preferences for ACP exporters would prove overly damaging – including for the EU imports of fresh yellowfin tuna and processed skipjack – the mechanism currently envisaged would only give an additional two years to spread out the reductions (i.e. a seven rather than five year phase out by developed countries).<sup>17</sup> After these two extra years, the products will arrive at the same tariff level as they would have if a five year phase out had been applied. Table 1 demonstrates that this marginal flexibility would do little to cushion the far-reaching preference erosion impacts of NAMA on EU processed tuna tariffs.

**What matters most to the Pacific tuna trade in the NAMA negotiations is the effect on the value of trade preferences**

**The EU bound MFN tariff for canned tuna and tuna loins will be reduced to between 6.1 and 6.6 percent after 5 to 7 years if NAMA is finalised**



**Table 1: EU import tariffs on processed tuna post-NAMA**

	Starting duty 25%	Starting duty 25%	Starting duty 25%	Starting duty 25%
Formula coefficient	<b>8</b>		<b>9</b>	
Year 1	21.22	22.30	21.32	22.37
Year 2	17.44	19.60	17.64	19.74
Year 3	13.66	16.90	13.96	17.11
Year 4	9.88	14.20	10.28	14.49
Year 5	6.10	11.50	6.60	11.86
Year 6*		8.80		9.23
Year 7*		6.10		6.60
Final EU tariff rate	6.10	6.10	6.60	6.60
Annual reductions	3.78	2.70	3.68	2.63
<b>% cut overall</b>	76%		74%	

Source: Campling, Havice and Primack 2007. The coefficient remains unchanged in the revised draft of the Chair's text (TN/MA/W/103, 8 February 2008)

\* This additional two years of 'flexibility' are provided in Annex 2 to the Chair's text, which lists sensitive products as requested by the European Communities. The fish and fish products listed by the EC are as follows:

<b>Tariff line</b>	<b>Indicative product description</b>
0302.32.90	Yellowfin tunas ( <i>Thunnus albacares</i> ), fresh or chilled, other than for the industrial manufacture of products of heading 16.04
0302.69.99	Other fish, fresh or chilled, excluding livers and roes
0303.79.98	Other frozen fish
0304.10.38	Other fish fillets and other fish meat, fresh or chilled
0304.20.19	Frozen fillets, of other freshwater fish
0304.20.94	Other frozen fillets
0306.13.50	Shrimps of the genus <i>Penaeus</i>
0306.13.80	Other shrimps and prawns
0307.49.18	Other cuttle fish ( <i>Sepia officinalis</i> , <i>Rossia macrosoma</i> , <i>Sepiola spp.</i> ), frozen
0307.59.10	Other octopus ( <i>Octopus spp.</i> ), frozen
1604.14.11	Tunas and skipjack, in vegetable oil
1604.14.16	Tunas and skipjack, fillets known as 'loins'
1604.14.18	Other preserved or prepared tunas and skipjack



**FFA**

## **Fish and Fish Product Sectorals<sup>18</sup>**

In accordance with Paragraph 7 of the NAMA framework, several WTO members are pursuing sectoral initiatives. A proposal by New Zealand, Canada, Thailand and others (TN/MA/W/63 Add.1) represents a sectoral initiative for trade liberalisation in fish and fish products, which is of concern to PICs. The proposal calls for a comprehensive elimination of all import tariffs and unjustified non-tariff barriers affecting fish and fish products with the objective of increasing trade liberalization and tackling high tariffs, tariff peaks and tariff escalation.

While it is non-mandatory like all other sectoral proposals, it might have a significant impact on non-signatory countries such as those ACP countries dependent on preference quotas for export of fish and fish products. In other words, these countries will lose out on their current preferential margins as other competitors (such as Thailand as an example) will be able to export duty-free to developed countries if such an agreement is put into effect.

PIC delegations are currently working to obtain an assessment of the likely impacts of such a sectoral initiative for ACP members who are dependent on preferences for the export of their fish and fish products. An important element that needs to be recognised is the likely impact of NAMA sectorals in fisheries for increasing the rate of natural resource depletion and the undermining of livelihoods.

Despite all this, Fish and Fish Product Sectorals are one of the least likely proposals to be successful due to the lack of critical mass of support for it.

## **Quality Standards**

### ***Fiji Competent Authority sanctioned by EU***

The immediate value of improved access to EU markets through better rules of origin for fish fillets and similar products (see above) has been brought into question as far as exporters based in Fiji are concerned. This is because a DG Sanco inspection pointed out apparently serious deficiencies with the Fijian Competent Authority (CA) and claimed that due to the latter's lack of ability to provide the necessary guarantees the export of fish products from Fiji constituted a risk to EU consumers.<sup>19</sup>

On a more positive note, Fijian exports of fresh and frozen fish (mainly tuna) to the US grew by 71 percent in 2007 compared to 2006 to reach a new high of US\$10.2 million, and these exports will not be effected by the DG Sanco report.

**Fish and Fish Product Sectorals are being pushed by major exporting countries and call for a comprehensive elimination of all import tariffs and unjustified non-tariff barriers**

**Improved EU fisheries RoO in negotiations for a comprehensive EPA may not benefit Fijian fish exporters because of problems with the national Competent Authority.**



### **France and Spain sanctioned for poor catch reporting**

Based upon evidence uncovered by the European Court of Auditors, the European Commission (EC) has opened initiated proceedings against several EU Member countries for improper reporting of tuna catches. France has already been sentenced to a fine of €20 million for its failure to sufficiently meet catch reporting requirements, and if investigations into allegations of similar failings in Spain turn out to be accurate it will also face high fines.<sup>20</sup>

### **Market recalls in Australia and Hawaii**

*Australia:* two cases of histamine food poisoning have been attributed to frozen tuna steaks, which were labelled as being a 'product of Indonesia'. The tuna steaks were sold at *Foodland* supermarkets or sold to the food service sector and have since been recalled.<sup>21</sup>

*Hawaii:* the company *Choyce Products* has worked with the US Food & Drug Agency (FDA) and the state of Hawaii to recall almost 2.5 metric tons of vacuum packed frozen yellowfin tuna because it might be contaminated with *Salmonella*. According to the report: 'The company bought the tuna from a mainland distributor who stated that the fish was from Indonesia'.<sup>22</sup>

## **Coming in the next issue (March 2008, Vol. 1: Issue 4)**

- Update on fisheries subsidies negotiations at the WTO
- Important recent developments in tuna markets, including move to value added in Philippine tuna exports, India as a new tuna power?, the ruling of the UK Competition Commission on the supermarket sector.



## References

- 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 two individuals for their invaluable input on an earlier draft of this briefing.
- 2 See in particular the excellent article by David Primack, 'EPA fails to draw the Pacific closer to the international trading system', *Trade Negotiations Insights*, Volume 6. Number 8 / December 2007 & January 2008. Available at: <http://www.ictsd.org/tni/index.htm>
- 3 For more detail see ECDPM, 'EPA Negotiations: Where do we stand?', 3 March 2008 Available at: <http://tinyurl.com/38unrs>. For an overview of the status of EPA negotiations in 2008 from the EC perspective see, Commission Staff Working Paper, 'EU-ACP Economic Partnership Agreements: State of Play and Key Issues for 2008 Brussels', Council of the European Union, 5445/08, 17 January 2008.
- 4 David Cronin 'Africans Stuck With EU Deals', Inter Press Service (IPS) News Agency, 2 February 2008
- 5 Under Article 6 (3.a) of PACER, if PICs sign a trade agreement with another developed country (i.e. the EU) then they 'shall offer to undertake consultations as soon as practicable with Australia and New Zealand, whether individually or jointly, with a view to the commencement of negotiation of free trade arrangements' (emphasis added). While the wording of this text does not commit the PICs to sign an EPA-equivalent with Australia and New Zealand (i.e. 'with a view'), there will be significant diplomatic pressure to do so as ANZ exporters to PIC markets will be disadvantaged relative to exporters from the EU.
- 6 See *FFA Fisheries Trade Briefing* Vol. 1: Issue 1 (December 2007) for details on the Pacific victory in gaining 'global sourcing' for fish products categorised under 1604 (canned tuna and tuna loins) and 1605 in IEPA negotiations.
- 7 See WT/GC/W/585 2008, 'ACP-EC Economic Partnership Agreements – Communication from Brazil', 28 January 2008. Available at: <http://tinyurl.com/yuxbxd>
- 8 For more excellent detailed coverage of this issue see: Cheikh Tidiane Dièye and Victoria Hanson, 'MFN provisions in EPAs: a threat to South-South trade?' *Trade Negotiations Insights*, Volume 7, No. 2, March 2008. Available at: <http://www.ictsd.org/tni/index.htm>. For a shorter overview see ICTSD, 'EU EPAs Could Inhibit South-South Trade Integration, Brazil Alleges', *Bridges Weekly*, Vol 12, No. 6, 20 February 2008. Available at: <http://www.ictsd.org/weekly/08-02-20/story3.htm>
- 9 The draft Chair's text is available at: <http://tinyurl.com/2dn2c3>
- 10 ICTSD, 'Rough Sailing for Fisheries Subsidies Talks', *Bridges Trade BioRes*, Vol. 8, No. 2, 8 February 2008. Available at: <http://www.ictsd.org/biores/08-02-08/story2.htm>
- 11 The coverage of this section draws heavily upon the following: Liam Campling, Elizabeth Havice and David Primack 2007, 'Trade-Related Aspects of Tuna Industry Development in Papua New Guinea', *FFA Fisheries Trade Studies National Briefing Paper*, Honiara: Forum Fisheries Agency (July).
- 12 For an overview of the fisheries aspect of NAMA see Part I, Chapter 9 of Liam Campling, Elizabeth Havice and Vina Ram-Bidesi (2007), *Pacific Island Countries, the Global Tuna Industry and the International Trade Regime*. Available at: <http://www.ffa.int/node/891>
- 13 TN/MA/W/103, 8 February 2008, 'WTO Negotiating Group on Market Access Draft Modalities for Non-Agricultural Market Access'. Available at: <http://tinyurl.com/3c54kb>
- 14 For a more general overview of the text see ICSD 'Breakthrough Still Elusive in Doha Round', *Bridges*, Year 12 No.1 February 2008. Available at: <http://www.ictsd.org/monthly/index.htm>. See also also ICSD 'NAMA Impasse Persists, as WTO Members Await New Draft Texts', *Bridges Weekly*, Vol 12, No. 2, 23 January 2008. Available at:



**FFA**

<http://www.ictsd.org/weekly/08-01-23/story1.htm>

15 Jonathan Lynn 'Doha round trade-offs begin', 25 February 2008. Africa.Reuters.com

16 For a definition and discussion of the Swiss Formula see Part I, Chapter 9 of Campling, Havice and Ram-Bidesi (2007). Available at: <http://www.ffa.int/node/891>

17 In terms of fish and fisheries products Annex II and Annex III of the second draft NAMA text have not changed significantly since the first draft of the text in July 2007.

18 The following is based entirely upon Manleen Dugal, 'Key issues for PACP in the WTO negotiations on fisheries issues – Briefing Paper', Geneva, Permanent Office of the Pacific to the WTO, 20 February 2008.

19 DG (SANCO) 7305/07 'Final report of a mission carried out in Fiji from 9 to 13 July 2007 to assess the public health controls and conditions of production of fishery products intended for export to the EU'. Available at: [http://ec.europa.eu/food/fvo/act\\_getPDF.cfm?PDF\\_ID=6393](http://ec.europa.eu/food/fvo/act_getPDF.cfm?PDF_ID=6393)

20 'EU Threatens To Punish Spain For Lack Of Inspection In Fisheries', 29 January 2008. Available at <http://www.atuna.com>

21 'Food poisoning forces tuna steaks recall', ABC News, 8 February 2008. Available at: <http://tinyurl.com/3bo7oz>

22 'Yellowfin Tuna Recalled Due to Possible Health Risk', Honolulu Personal Injury Lawyer, February 2008. Available at: <http://tinyurl.com/2ye66q>