InBrief
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Comparing EU free trade agreements

Fisheries

CFFA - Coalition for Fair Fisheries Arrangements

The aim of this *InBrief* series is to provide a synthesis of various chapters of the ten free trade agreements (FTAs) recently concluded by the European Union with developing countries, as well as other relevant trade agreements when appropriate. Each *InBrief* offers a detailed and schematic overview of a specific set of trade and trade-related provisions in these agreements.

The scope of the paper

This *InBrief* sets out to compare the European Union (EU) approaches to fisheries in the different Free Trade Agreements (FTAs) concluded over the last decade and the ACP-EU Partnership Agreement.

It first provides an overview of the international trade in fish and fishery products. This includes a review of international trade agreements and arrangements as undertaken through multilateral negotiations under the auspices of the United Nations (UN) organisations and the World Trade Organization (WTO).

A brief background is also provided on the EU's fisheries policies for fleet access to distant water fishing grounds and for supplying its market with fish.

The *InBrief* then outlines the main features and common aspects of the fisheries provisions in the various FTAs concluded by the EU. The fisheries components of the particular FTAs with the MED countries, South Africa, Mexico, and Chile are highlighted and discussed.

Finally it sets out to establish some common themes and trends in EU FTAs.

The international trade in fishery Products: an overview

After rapid increases over four decades from the 1950s, the annual world fish catch from wild stocks (from marine and inland waters) has stagnated in recent years, fluctuating at around 90-95 million tonnes (some 90% marine and 10% inland). The total world fish catch in the year 2000 reached record levels of 94.8 million tonnes, with an estimated sale value of USD 81 billion. Most of the world's fish catch (around 60%) is now taken from the waters of countries in the South. This is partly due to the expansion of developing country fisheries (notably China), but also to over-fished resources in the North.

Some 70% of the world fish catch is destined for direct human consumption. The remaining 30% is converted into non-food products, mainly fishmeal and oil. An unknown, but significant volume (estimated at between 17.9 and 39.5 million tons, some 28% of the total marine fish catch) of fish is discarded each year in commercial fisheries as uneconomic by-catch.

As a highly perishable commodity, fish has significant processing requirements. In 2000, more than 60% of total world fisheries production underwent some form of processing. The most important fish products destined for direct human consumption were fresh fish (a share of 53.7%), followed by frozen fish (25.7%), canned fish (11.0%) and cured fish (9.6%).

Importance of fisheries and international trade agreements to developing countries

The market for fish is increasingly a global market. Exports of fishery commodities constitute some 40% of total catch by weight, suggesting that trade and trade policies may have significant consequences for fisheries conservation.

For many developing countries (DCs) fishery products have become a highly important source of foreign exchange, the most important among all agricultural products.[1]

Preferential tariff regimes have played a significant role in facilitating trade for DCs. The Least Developed Countries (LDCs) in particular have greatly benefited from the Generalised Systems of Preferences (GSP) established by developed countries. Fishery products from the African, Caribbean and Pacific (ACP) countries have enjoyed, under successive Lomé conventions and the Cotonou Agreement, considerable margins of preference on the EU market. The EU pro-

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vides the ACP countries with their most lucrative market for fish. In 2001, EU markets provided the ACP States with 75% of their export earnings from fish and fishery products. In 2002, eight products accounted for 61% of all ACP exports to the EU. Fish comprised 6% of all ACP exports by value, with only petroleum oil (28%), diamonds (9%) and cocoa (8%) being more valuable.

The UN and the WTO are responsible for the international legal and policy frameworks that define how fisheries may be exploited and fishery products may be traded. While the WTO provides the institutional structure and legal basis for international trade liberalisation, the United Nations provides the legal basis for the sustainable development and management of fisheries resources. This potentially brings the conservation instruments of the UN and the trade liberalisation processes of the WTO into conflict.[2]

Multilateral Environmental Agreements (MEAs) are also likely to play an important role in international trade in fish and fishery products in the future. The WTO recognises that conflicts may exist between the achievements of environmental conservation objectives (under MEAs) on the one hand and trade liberalisation on the other. Under the Doha Mandate negotiations have been initiated on clarifying the relationship between trade measures taken under MEAs and WTO rules.

In the case of fisheries, the most important MEAs are the United Nations Convention on the Law of the Sea (UNCLOS) and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (otherwise called "the UN Fish Stocks Agreement").

There are more than twenty regional and sub-regional fishery management organisations (RFMOs) receiving their mandates from these two MEAs. Some have full regulatory powers while others have an advisory role related to management issues. The entry into force of the UN Fish Stocks Agreement has strengthened the role of RFMOs, and under WTO rules they may use trade barriers, such as banning the sale of certain fishery products from Illegal, Unregulated, Unreported (IUU) fishing fleets, to promote conservation.

Current status of fisheries in the WTO and the Doha Round

During the Uruguay Round of negotiations of the General Agreement on Tariffs and Trade (GATT), mainly as a result of the position taken by a number of WTO Members, fisheries (and fishery products) were left out of the Agreement on Agriculture. Fisheries and fishery products are therefore treated as an industrial sector and industrial products respectively by the WTO.

As an industrial sector, fisheries are currently dealt with by the WTO at five different levels:

- market access for non-agricultural products (reduction and elimination of tariffs and non-tariff barriers, particularly on products of interest to developing countries);
- agreement on subsidies and countervailing measures (ASCM). The Doha Round called for negotiations to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries;
- trade and the environment, particularly as regards multilateral environmental agreements (MEAs) and environmental labelling;
- dispute settlement procedures;
- technical assistance and capacity building.

Box 1 GATT/WTO agreements dealing with fish trade

The multilateral agreements on trade in goods under the GATT/WTO relevant to fisheries are:

- Marrakech Protocol to the General Agreement on Tariffs and Trade (GATT) 1994
- WTO Agreement on Technical Barriers to Trade (TBT)
- WTO Agreement on Sanitary and Phytosanitary Measures (SPS)
- Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) 1994 (Anti-dumping)
- Agreement on Import Licensing Procedures
- WTO Agreement on Subsidies and Countervailing Measures
- WTO Agreement on Safeguards
- WTO Dispute Settlement Procedures.

See www.wto.org

EU agreements, fishery and market access: past and present

As of 2003, the EU is the world's largest market for fish imports, importing more than € 12 billion worth of fish and fishery products; with its exports amounting to more than € 2 billion.

The EU market has enormous potential for fish exporters. First, it has recently enlarged the number of Member States from 15 to 25 and, secondly, due to over-fishing and resource depletion it is able to supply less than 50% of its market demand from its own fishing grounds. It is also highly significant that the EU fish supply deficit is growing.

In order to address the shortfall in fish supplies in its own waters, the EU seeks supplies from third countries. It does this either through trade (which may involve "free trade" agreements), or through arrangements that enable its vessels to fish in third country waters (within the waters under jurisdiction of non-EU Member States).

In the case of trade, the provisions of the CPA allow ACP States tariff free access to the EU market for "originating" (governed by the Rules of Origin - RoO) fish and fishery products. Similar tariff concessions are granted to other countries through specific Free Trade Agreements (FTAs) and through the General System of Preferences (see below).

At least 20% of the EU's direct fish supplies that come from its own fleet originate outside EU waters, in international waters and waters under the jurisdiction of third countries. Access for the EU fleet to third country waters is achieved through the negotiation of fisheries agreements. These are either bilateral agreements with financial compensation (known as "cash for access" agreements) or "reciprocal agreements" that involve exchanges of fishing opportunities/rights between Community fleets and the fleets of non-member countries.

Under the provisions of "cash for access" agreements, the EU pays an agreed amount of compensation to the third country concerned in exchange for an agreed amount of access for its fleets (usually based on the number of vessels or a measure of their fishing capacity). In these agreements a proportion of the compensation is often being allocated to "targeted actions". According to the European Commission, these are designed for cooperation and development actions. However, all fisheries agreement protocols specify that the third

Table 1: EU fisheries agreements

EU cash for access fisheries agreements		EU reciprocal agreements
Signed with 18 ACP Countries, access for EU fleets granted in exchange for financial compensation.		Signed with Norway, Iceland and Faeroe Islands. Agreements grant access to third country waters on a reciprocal basis, i.e. in exchange for fishing rights in EU waters
Mixed agreements Access granted to tuna and other fish stocks - e.g. with Senegal, Mauritania and Angola.	**Tuna agreements** Access granted only to tuna stocks - e.g. with Cape Verde, Ivory Coast, Seychelles, Kiribati and Madagascar.	

country government: "*shall have full discretion regarding the use to which the financial compensation is put*." This means that the targeted actions are often not implemented as proposed.

In the context of negotiations on fisheries subsidies in the WTO, in 2003, the European Commission proposed that cash for access agreements should be replaced by "Fishery Partnership Agreements" (FPA), with a greater share of the access costs being borne by the vessel owners.[3] As of August 2005, three FPAs are in the process of being formalised with the Seychelles, Comoros and Morocco. Protocols to the Fisheries Agreements have been signed, and approval is now awaited from the European Council.

EU fish trade and trade agreements

The EU obtains 30-40% of its market requirements for fish through trade, with the remainder being supplied from its fleets.[4] Fish and fishery products, particularly in processed form, incur high tariff rates. These may be as high as 18% for some fish fillets and 24-25% in the case of processed tuna products.

In addition to the regulations concerning tariffs, fish imports to the EU must comply with various regulations including those governing:

- EU standards for sanitary and phytosanitary (SPS) measures;
- EU legislation on residue levels and heavy metals in fishery products;
- EU legislation on labelling.

The EU's policy framework that deals with the trade in fishery products with third countries, distinguishes between:

- the provisions of the bilateral free trade agreements;
- the trade relations with the 77 ACP States under the CPA;
- the overall GSP arrangements for all developing countries;
- trade relations with other countries that do not fall into any of the above categories.

For the trade in fisheries products, all these arrangements have the following common elements:

- rules governing which fishery products, in what form, can be exported to the EU;
- the specific tariff concessions to be applied to these fisheries products, leading to complete or partial tariff reductions according to specific time frames;
- Rules of Origin. These conform to a standard EU format, where the main criteria for originating products are registration and flag, ownership and crewing arrangements on the fishing vessels and factory ships. This essentially means that the origin of the fishery products is not linked to where they were caught (e.g. within the territorial seas or Exclusive Economic Zone - EEZ of the country concerned), but depends on the ownership of the vessel concerned;
- provisions for cooperation in the fisheries sector (technical and scientific).

The EU's bilateral free trade agreements

In recent years, the EU has signed a number of Free Trade Agreements (FTAs), including with developing countries. These FTAs differ from the CPA in that:

- they are reciprocal in nature, so that specific EU fishery products may also be granted tariff concessions in the third country;
- they may include tariff rate quota concessions, i.e. tariff reductions for defined quantities of certain products such as tuna loins, canned tuna, and highly processed fish products (breaded fillets) where there is competition with EU fish processing companies;
- the rules of origin specify relatively high crewing levels (75% FTAs, 50% CPA).[5]
- they may make the market access arrangements for fishery products to the EU market conditional on favourable investment conditions for EU investors in the third country (as in the case of Chile);

Box 2 Where to find articles on fisheries in EU trade agreements

EU-MED Agreements:
http://europa.eu.int/comm/external_relations/euromed/med_ass_agreemnts.htm

EU-Mexico Agreement:
http://europa.eu.int/comm/trade/issues/bilateral/countries/mexico/fta_en.htm

EU-Chile Agreement:
http://europa.eu.int/comm/external_relations/chile/assoc_agr/text.htm

EU-South Africa TDCA:
http://europa.eu.int/scadplus/leg/en/lvb/r12201.htm

EU-CPA:
http://europa.eu.int/comm/development/body/cotonou/index_en.htm

EU-ACP Fisheries Agreements :
http://europa.eu.int/comm/fisheries/doc_et_publ/factsheets/facts/en/pcp4_1.htm

For other agreements, see the Trade agreements database and Archive by the Dartmouth Tuck School of Business
http://mba.tuck.dartmouth.edu/cbi/research/trade_agreements.html

- they may make third country tariff concessions conditional on EU fishery access (to the resources of the third country) - as in the case of South Africa.

Provisions for fish and fisheries products can vary significantly from one agreement to another, as shown by a comparison of recent FTAs concluded by the EU: the Association Agreement with Chile, the Trade Development and Cooperation Agreement (TDCA) with South Africa, the Economic Partnership, Political Coordination and Cooperation Agreement (Global Agreement) with Mexico, and the Euro-Mediterranean Association (MED) Agreements (notably Morocco, Tunisia and Algeria). Negotiations are currently underway between the EU and the MERCOSUR countries on a free trade agreement that includes fisheries.

The Euro-Mediterranean Association (MED) Agreements

Since the first Euro-Mediterranean Conference held in November 1995, the EU and 12 Mediterranean countries have been involved in talks on 'Association Agreements'. The overall objective is to form, by 2010, a single Euro-Mediterranean Free Trade Area out of the separate agreements currently in place. To date, ten bilateral Association Agreements have been concluded with ten countries: Turkey (1995), Tunisia (1995), Israel (1995), Morocco (1996), Jordan (1997), the Palestinian Authority (1997), Algeria (2001), Lebanon (2002), Egypt (2004), and Syria (initialled 2004, pending European Council signature).

In those agreements where fisheries form a part (Algeria, Morocco and Tunisia), the main provisions are included under the broader area of Agricultural and Fishery Products and cover two main areas:

(1) Liberalisation of trade in agricultural, fisheries and processed agricultural products (tariff concessions and tariff rate quota concessions).
(2) cooperation in Agriculture and Fisheries.

Fisheries access to third country waters in the Mediterranean for European vessels is not an issue. The reason is that there are no 200-mile EEZs in the Mediterranean.[6]

- Market Access for fishery products

Only three of the MED Agreements deal with trade in fisheries products: Morocco, Algeria and Tunisia. The provisions on fisheries include:

Table 2 Fisheries in MED agreements

Country	Tariff concessions	Tariff rate quotas
Algeria	On all CN[7] Chapter 3 Products, and most processed products	None
Morocco	As above	On prepared and preserved sardines up to December 1998
Tunisia	As above	None
Reciprocal arrangements (EU Fish Exports)		
Algeria	Tariff concessions on a wide range of fishery products, rates conditional on Algeria's accession to the WTO	None
Morocco	None	
Tunisia	None	

- The arrangements applying to imports into the EU of fishery products originating in the third country;
- The arrangements applying to imports into the third country of fishery products originating in the EU; and
- The "rules of origin" for fishery products - defining originating products and listing the working or processing requirements for non-originating materials for manufactured products to obtain originating status.

The fishery products to be imported to the EU free of customs duties include salmon, herrings, tunas, and various shellfish (crab, shrimps and prawns, lobster, mussels etc). In the case of Morocco, special tariff rate quota concessions were applied to the prepared or preserved sardine products originating in Morocco up to 31 December 1998.

- Cooperation in Fisheries

The main objectives of the cooperation aspects of the agreements are the modernisation of agriculture and fisheries, the development of sea fishing and aquaculture, diversification of output, promoting environmentally-friendly forms of fishing, evaluation and rational management of fish stocks, modernisation of infrastructure and equipment, cooperation on sanitary and phytosanitary techniques, development of packaging and storage techniques and the improvement of private distribution and marketing chains.

The EU-South Africa Trade Development and Cooperation Agreement (TDCA)

The Trade, Development and Cooperation Agreement (TDCA) was concluded with South Africa in 1999, and has been in force provisionally and partially since January 2000 and fully since May 2004.

The main basis for past fisheries relations between South Africa and the EU was access to the EU market for South African fishery products (such as hake), and access to South African fishery resources for the EU fleet. Although the EU has never had a "Community" agreement with South Africa on fisheries access, both Spain and Portugal have bilateral fishery access agreements that predate their membership of the EU. These remain in force today as the EU has been unable to conclude a "Community" agreement with South Africa.

- Market Access for Fishery Products

The TDCA provides for tariff concessions on a reciprocal basis for an extensive range of fishery products. In the case of South African goods there are 5 lists of products and the agreement specifies that these: "shall only take effect once the Fisheries Agreement referred to in Article 62 of this Agreement has entered into force". This is the first time that such a condition was set in any FTA.

The tariff reductions that apply to the five lists of South African products have specific schedules for implementation. Thus, for products on List 1, tariffs will be eliminated after entry into force of the Fisheries Agreement; List 2 tariffs in equal annual steps after entry into force of the Fisheries Agreement; List 3 in equal annual steps starting at the beginning of the fourth year after entry into force of the Fisheries Agreement; List 4 in equal annual steps starting at the beginning of the sixth year after entry into force of the Fisheries Agreement; List 5 tariff concessions to be "envisaged in the light of the content and continuity of the Fisheries Agreement referred to in Article 62 of this Agreement". List 5 includes high value fresh (whole) hake and monkfish, frozen (whole) hake and monkfish, and canned fish (sardines, anchovy, etc.).

Table 3 EU-South Africa TDCA Tariff Concessions - elimination schedule (after entry into force of fishery agreement)

	Tariff Concessions				
Schedule Fishery Products	List 1 - immediately Eels, Salmon, and Tuna - Whole Fish, Live, Fresh or Frozen; salmon fillets; pasta	List 2 - in equal annual steps Live carp and other freshwater fish; whole fresh cod like fishes; whole frozen cod like fishes; fish fillets; dried salted etc fish; molluscs and crustaceans; surimi; processed salmon, trout and cod; processed shell fish	List 3 - Yr 4 in equal annual steps Live saltwater fish; fresh and frozen whole salmon; fillets of freshwater fish and some hake species; sardines in olive oil	List 4 - Yr 6 in equal annual steps Live saltwater fish; whole fresh and frozen flat fish, cod like species, sea bass, swordfish, anchovies; various fish fillets and meat; various dried, salted and smoked fish; various shell fish; prepared fish products including herring fillets, tuna products of lower value species (skipjack etc).	List 5 - not fixed Whole fresh and frozen hake and monkfish; monkfish fillets; preserved fish including canned salmon, anchovies, sardines and tuna.

In the case of tariff concessions on EU fishery products entering South Africa, the TDCA notes that: "Customs duties applicable on import into South Africa of fisheries products originating in the Community listed in Annex VII shall be progressively abolished in parallel with the elimination of customs duties of the corresponding tariff positions by the Community".

As no Fisheries Agreement has been signed, South Africa does not benefit from any tariff concessions for its fish and fishery products on the EU market, and vice-versa. This would imply that South Africa regards not signing a fisheries agreement with the EU as more important than liberalisation of its trade in fisheries products with the EU.

- Cooperation in Fisheries

The TDCA specifies that: "cooperation in this area shall aim at promoting sustainable management and use of fisheries resources for the long-term interest of both Parties. This will be achieved by exchanges of information and the design and implementation of agreed arrangements that may address the economic, commercial, developmental, scientific and technical aspirations of the Parties. These arrangements will be set out in a separate mutually beneficial fisheries agreement which the Parties undertake to seek to complete as soon as possible". This has yet to be implemented in practice, as to date there is no EU-South Africa fisheries agreement.

The EU-Mexico Economic Partnership, Political Coordination and Cooperation Agreement (Global Agreement)

The Economic Partnership, Political Coordination and Cooperation Agreement, also known as the Global Agreement, between the EU and Mexico was signed on 8 December 1997 and came into force in October 2000.

- Liberalisation of Trade in Agriculture and Fishery Products

For Mexican fishery products imported into the EU, with the notable exception of tuna loins, tuna steaks and canned tuna, trade is to be fully liberalised by 2010. 4 schedules (Category 1, 2, 3 and 4a) of timetables establish the periods over which tariff concessions are to be implemented (3-10 years). Tuna loins are subject to special treatment under Article 10 of the agreement (the Review Clause on Agriculture and Fisheries Products). Tuna steaks (and some other tuna products like canned tuna) are given tariff-quota concessions (Category 6 products), where an aggregate quantity of 2,000 tonnes is allowed with a preferential customs duty. The quota is set to grow by 500 metric tonnes each year.

As regards tuna loins, a Commission Proposal for a Council Decision dated 16 March 2004, sets out the conditions for a preferential tariff rate quota for tuna loins originating in Mexico. Starting with a quota of 5,000 tonnes in year 1, this is set to rise to 14,000 tonnes by year 10, with a ceiling of 15,000 tonnes in subsequent years at a duty rate of 6%.

Likewise, tariff concessions and timetables are set for the import of fishery products from the EU to Mexico. Tariff quotas are set for some processed products, including processed tuna, but excluding tuna and skipjack loins. This is based on an aggregate quantity of 2,000 tonnes of products, which is set to grow annually by 500 metric tonnes, and to be reviewed in accordance with Article 10.

- Cooperation in Fisheries

The Global Agreement states that: "In view of the socio-economic importance of their respective fisheries sectors, the Parties undertake to develop closer cooperation in this field in particular through the conclusion of a sectorial fisheries agreement, in accordance with their respective legislation, if deemed appropriate".

The EU-Chile Association Agreement

To date, the most recent FTA concluded by the EU is that with Chile. Signed in November 2002, it has been provisionally in effect since 1 February 2003. Besides covering political dialogue and cooperation issues, the trade and investment provisions of the Association Agreement stand out as the most far-reaching in all EU regional agreements to date.

- Liberalisation of Trade in Agriculture and Fishery Products

Provisions cover the elimination of customs duties on the import of Chilean fishery products into the EU and tariff quotas on imports of certain Chilean fish and fishery products; and vice versa.

In the case of Chile's exports to the EU, most fishery products have their tariffs reduced to

Table 4 Tariff Quotas on the Importation of Chilean Fish Products to the Community

Elimination of Customs Duties in 10 Equal Stages, starting on the entry into force of the agreement, then subsequently on January 1 for each successive year, so customs duty completely eliminated by January 1 on Year 10 (2013) of the agreement		Preferential Customs Duty of One Third of MFN Duty Applicable at Time of Importation
Fresh Hake Products	Processed Salmon	Preserved Tuna Products (excluding "loins")
5,000 Tonnes	40 Tonnes	150 Tonnes

zero over a 10 year period. For a few specific products (hake, salmon and tuna) listed below, three regimes of tariff quotas apply. Products eligible for tariff reductions fall into 4 categories: Year 0, Year 4, Year 7 and Year 10. Tariff reductions on these products follow a specific timetable, and tariffs are "due to be completely eliminated by the entry into force of this Agreement, 1 January 2007, 1 January 2010, and 1 January 2013, respectively.

Tariff quotas are applied to various (fresh) hake products, salmon products (dried, salted and smoked), and various tuna products (excluding loins), according to the schedule in table 4

For the EU, customs duties for all listed fishery products are reduced to zero on the entry into force of the agreement.
There is also a similar schedule of tariff quotas established for various fresh hake products, processed salmon products (dried, salted, smoked), and processed tuna (excluding loins) and hake products of EU origin for import to Chile.

- Rules of Origin

The RoO for fishery products follow the standard EU format, where the main criteria for originating products are registration and flag, ownership and crewing arrangements on the fishing vessels and factory ships.

- Cooperation in Fisheries.

The EU-Chile Association Agreement states that Chile and the EU *"undertake to develop closer economic and technical collaboration, possibly leading to bilateral and/or multilateral agreements covering fisheries on the high seas"*.

- Fisheries Investment

A new dimension of the EU-Chile Association Agreement is the inclusion of a separate Protocol on Fishing Enterprises (dealt with under Annex 10, article 132 that sets out the Schedules of Specific Commitments on Establishment). It establishes conditions, on a reciprocal basis, for European investment in the Chilean fisheries sector. It sets out provisions under which the European owners of Chilean companies may register their vessels, buy licenses and quotas, and transfer vessels to Chile. The conditions are fully reciprocal, according to the national laws of Chile and of EU Member States.

The Protocol on Fishing Enterprises has four main components, with conditions governing:

(1) ownership and control which, on the one hand, authorise EU companies to own a major stake in, control and manage new or existing fishery enterprises in Chile and, on the other hand, authorise reciprocal rights for Chilean companies in EU Member states.
(2) registration and operation of fishing vessels. These entitle EU companies owning Chilean companies to apply for, register and operate fishing vessels in Chile, under the same conditions as Chilean companies. Reciprocal rights apply to Chilean companies owning companies registered in EU Member States.
(3) fishing permits, which entitle EU companies to obtain fishing permits and their corresponding individual quotas (with reciprocal rights for Chileans).
(4) the transfer of licences and vessels, which entitle EU companies to receive, by means of transfer, fishing authorisations and vessels under the same conditions as Chilean companies.

The CPA and Fish Trade

The provisions of the Cotonou Partnership Agreement (CPA) define the terms and conditions for the export of ACP fish and fishery products to EU. This includes specifying the rules of origin that must be met in order to benefit from these special arrangements. Whilst the CPA contains provisions for the negotiation of fisheries agreements, unlike in the case of the TDCA with South Africa, there is no direct linkage between these and the granting of trade concessions.

Liberalisation of Trade in Agriculture and Fishery Products

The current market-access provisions of the CPA are based on the non-reciprocal trade preferences extended to ACP countries under the earlier Lomé Conventions. These allow ACP countries to export their fish products to the EU without having to pay the import taxes applied to fisheries exports from other countries. These ACP tariff preferences will continue until the end of 2007. The EU is seeking to replace the current unilateral preferences with new reciprocal arrangements that would begin in January 2008.

Rules of Origin

Duty-free access for fishery products is qualified by the rules of origin applied to fishery products under the Cotonou Agreement (Protocol I, Annex V). To obtain duty-free access, ACP fishery products must be 'wholly obtained' in the ACP state concerned. Article 3 defines ' wholly obtained products', and specifies that (paragraph 1) for fisheries these include:

- products obtained by hunting or fishing conducted there;
- products of sea fishing and other products taken from the sea outside the territorial waters by their vessels;
- products made aboard their factory ships exclusively from products referred to in the above subparagraph; and
- goods produced there exclusively from the products specified in the above subparagraphs.

It further defines (in paragraph 2) the terms 'their vessels' and 'their factory ships' referred to above, where these shall apply only to vessels and factory ships:

- which are registered or recorded in an EC member state, in an ACP state or in an OCT;
- which sail under the flag of an EC member state, of an ACP state or of an OCT;
- which are owned to an extent of at least 50 per cent by nationals of States party to the Agreement, or of an OCT, or by a company with its head office in one of these states or OCT, of which the Chairman of the Board of Directors or the Supervisory Board, and the majority of the members of such boards are nationals of States party to the

Agreement, or of an OCT, and of which, in addition, in the case of partnerships or limited companies, at least half the capital belongs to those states party to the Agreement or to public bodies or nationals of the said states, or of an OCT;
- of which at least 50 % of the crew, master and officers included, are nationals of States party to the Agreement, or of an OCT.

The restrictions imposed by "the rules of origin" have long been a source of contention in EU-ACP fisheries relations, with the ACP countries demanding that all catches made in their waters (i.e. within their national jurisdiction) should enjoy originating status. This is recorded in Declaration XXXIX: ACP Declaration relating to Protocol 1 of Annex V on the origin of fishery products in the Cotonou Agreement.

The rules of origin as defined in the Cotonou Agreement pose particular problems for ACP countries since the structure of many ACP fisheries sectors, based on vessel-chartering arrangements, joint ventures, fishing agreements etc, makes it impossible for them to comply with the rules of origin. This means, for example, that a significant part of the ACP tuna catch does not comply with the rules of origin as set out in the Cotonou Agreement, and therefore does not benefit from any tariff preferences over their competitors.

The tariff preferences provided by the Cotonou Agreement were originally conceived to promote economic development. However, the conditions applied through the associated rules of origin tend to promote a model of development that enhances rather than reduces dependence on the EU.

The EU's GSP Arrangements

Since 1971 the EU has granted trade preferences to developing countries in the framework of its generalised tariff preferences. A new Council Regulation, 980/2005 of June 27 2005, has recently been approved. This will apply a new scheme of generalised tariff preferences up to 31 December 2008. The new regulation, which will replace all existing GSP arrangements, includes three arrangements:

- the general arrangements;
- the special arrangements for least developed countries, the so-called "Everything But Arms" Arrangement (EBA); and
- the special incentive arrangement for sustainable development and good governance (also known as GSP +).

With the exception of "GSP+", which, as an exception enters into force on July 1 2005, the new tariff preferences will enter into force on January 1 2006.

Customs duties on all products listed as non-sensitive (NS) will be entirely suspended. For sensitive (S) products, which include all fish and fishery products, customs duties will be reduced by 3.5 percentage points. These are as listed in Annex II of the new Regulation.

A special provision has been introduced for fisheries under Title III, "Temporary Withdrawal and Safeguard Provisions". Article 16, 1e) provides for the preferential arrangements to be withdrawn if there are "serious and systematic infringements of the objectives of regional fishery organisations or arrangements to which the Community is a member, concerning the conservation and management of fishery resources"

The EU's EBA Initiative

The conditions that apply under the 'Everything But Arms' (EBA) initiative are referred to under Section 3 (Special Arrangement for Least Developed Countries), Article 12 of Regulation 980/2005.[8] With the notable exceptions of bananas, sugar and rice for a limited transition period, "Common Customs Tariff duties on all products of Chapters 1 to 97 of the Harmonized System except those of Chapter 93 (arms and ammunition; parts and accessories thereof) thereof, originating in a country that according to Annex I benefits from the special arrangement for least developed countries, shall be entirely suspended."

Of the 50 countries listed as 'least developed' (and therefore eligible under the EBA provisions), 39 are ACP countries. As in the case of the Cotonou Agreement, to benefit from the EBA preferential tariffs, fishery products must comply with the appropriate GSP's rules-of-origin requirements. Failing this, the normal third-country duty rates (MFN duty rates), or other preferential duty rate agreed by separate agreement by the country in question and the EU would apply.

Fisheries Access Agreements and the CPA

Fisheries Agreements are referred to in the CPA in Part 3 under Title II: Economic and Trade cooperation, Chapter 6: cooperation in other areas. Article 53 on Fishery Agreements contains two elements that concern:

- the willingness to negotiate fishery agreements aimed at guaranteeing sustainable and mutually satisfactory conditions for fishing activities in ACP States; and
- a commitment on the side of the ACP States not to discriminate against the Community or among the Member States, without prejudice to special arrangements between developing States within the same geographical area, including reciprocal fishing arrangements, when concluding or implementing such agreements, and a commitment from the Community not to discriminate against ACP States.

Although fisheries access agreements are mentioned in the Cotonou Agreement, they are mainly dealt with under the EU's international Common Fisheries Policy (CFP).

Table 5: EU Trade agreements covering fisheries

	Trade Provisions			Fishery Access Provisions		Development Cooperation in Fisheries
Agreement	Reciprocity	Tariff Reductions	RoO	Reciprocity	Main provisions	Main Provisions
ACP Fisheries Access Agreements	No direct link between fisheries access and trade			Non-reciprocal	Access to particular fish stocks (tuna, demersal or pelagic stocks) for EU vessels -Fees to be paid for by vessel owners -By catch restrictions -Local landing provisions - Employment of local crew and observers -Compensation payment to ACP State made by EU	Part of compensation designated, but not binding for "targeted actions", including: - fishery research - fishery management - monitoring, control and surveillance programmes - up grading processing
Cotonou Agreement	Non-reciprocal up to 2008	From 2008, possible replacement by bilateral or regional EPAs	Strict RoO	Reciprocal in principle,	Aimed at guaranteeing sustainable and mutually satisfactory conditions for fishing activities in ACP States. Non-discriminatory towards Community and Member States	No specific provisions established for development co-operation in fisheries
GSP/EBA	Non-reciprocal	Under EBA, fishery products are eligible for duty-free access for an unlimited time period.	Strict RoO	No fisheries agreement provisions		No development co-operation provisions
MED agreements	Reciprocal to a specified degree	Limited to particular products. Fisheries products trade concessions granted to Morocco, Tunisia and Algeria, with some reciprocity with Algeria In agreement with Jordan, fishery products are excluded.	Strict RoO, similar to CPA	No fisheries agreement provisions For Morocco, last fishery agreement expired in 1999. New four year fisheries agreement signed in July 2005, to take effect from March 1, 2006.		Dealt with under co-operation in Agriculture and Fisheries in all MED agreements except Israel and Jordan. Aimed at modernisation and restructuring of fisheries sector, with particular regard to: - diversification of output; - promoting environmentally forms of fisheries; - co-operation on sanitary and phytosanitary techniques; - establishing closer fisheries relations; and - evaluation and rational management of fish stocks.

Table 5: EU Trade agreements covering fisheries

	Trade Provisions			Fishery Access Provisions		Development Cooperation in Fisheries
Agreement	Reciprocity	Tariff Reductions	RoO	Reciprocity	Main provisions	Main Provisions
TDCA with South Africa	Reciprocal to a specified degree	Limited to particular products Conditional on signing a fisheries agreement	Strict RoO, similar to CPA	No provisions given for fisheries agreements	Main provisions not specified, other than that the agreement should be mutually beneficial and completed as soon as possible. As of July 2005, no agreement has signed.	Aimed at promoting sustainable management and use of fisheries resources for the long-term interest of both Parties. To be achieved by exchanges of information and the design and implementation of agreed arrangements that may address the economic, commercial, developmental, scientific and technical aspirations of the Parties. Arrangements to be set out in a separate mutually beneficial fisheries agreement
FTA with Mexico	Reciprocal to a specified degree	For all products, except some tuna products.	Strict RoO, similar to CPA	Reciprocal in principle	Unspecified	Unspecified, but closer co-operation to be developed "in particular through the conclusion of a sectorial fisheries agreement, in accordance with their respective legislation"
FTA with Chile	Reciprocal to a specified degree	Customs duties on fish and fishery products to be reduced to zero for most products over a 10 year period	Strict RoO	Reciprocal in principle	Protocol on Fishing Enterprises sets out conditions for reciprocal arrangements for investment in the Chilean and EU Member States fishing sectors.	Unspecified, but under Article 25 it is noted that: *Closer economic and technical collaboration (will be developed), possibly leading to bilateral and/or multilateral agreements covering fisheries on the high seas.*

Conclusions

The EU is a major world market for fish and fishery products, but faces an ever increasing shortfall in supplies from its own waters. It therefore seeks to bridge this supply gap by importing from other fish producing countries, and through catching fish in the waters of third countries (through fisheries agreements). Although fisheries access agreements have been important in the past, an increasing proportion of EU fish supplies are provided through trade agreements (FTAs).

An important recent development (as in the case of the EU-Chile Association Agreement) has been to link tariff free access to the EU market for third country fish products to allowing direct investment for EU companies in the third country fishing sectors. Such a linkage is also being pursued by the EU in its on-going negotiations with the MERCOSUR countries.
With regards to fishery relations, EU FTAs with DCs fall into two main categories:

(1) those where the access provided for third country fishery products on the EU market is not made conditional on meeting any provisions for fisheries access for the European fleet to third country resources or EU investment in the partner's country fishing enterprises. Thus, the market access provisions contained in the Cotonou Agreement, the MED Agreements, and the Mexico Agreement are not conditional on meeting any fishery agreement provisions;

(2) those where market access is conditional on meeting fishery agreement provisions. In the case of the TCDA with South Africa, this is explicitly laid down in the agreement. In the EU-Chile Association Agreement, a separate Protocol on Fishing Enterprises establishes the possibilities for EU companies for direct investment, to own fully Chilean companies, to transfer EU vessels to Chile (to Chilean fishing companies) and to purchase licences to fish in Chile and Chilean fish quotas. The Association Agreement with Chile ties trade liberalisation to European investment in Chilean fishing enterprises.

The development cooperation components of the EU-third country trade and fisheries access agreements tend to highlight the development priorities of the third country as regards fisheries management (including monitoring, control and surveillance) and the non-tariff barriers to accessing the EU market. In the case of the EU-Chile Association Agreement, there is a separate component that deals specifically with sanitary and phytosanitary issues.

In the case of EU cash for access fisheries agreements, development cooperation provisions are financed as part of the overall financial compensation. This means that the third country has the option of either using the part of the financial compensation for implementing these provisions, or using the moneys for other budgetary priorities. In most cases, the latter option tends to be preferred.

With the EU proposal to move from the current cash for access fisheries agreements to Fisheries Partnership Agreements,[9] the way the development cooperation components are addressed will change.

Notes

1 *Net foreign exchange receipts in developing countries for fishery products (i.e. the difference between the costs of imports and the total value of exports), increased from US$3.7 billion in 1980 to US$18.0 billion in 2000 - a 2.5-fold increase in real terms.*
2 *An example of such a conflict was the complaint brought by the EU to the WTO against Chile for closing its ports to EU vessels fishing in international waters. Chile responded by challenging the EU under the conservation provisions of the United Nations Convention on the Law of the Sea (UNCLOS).*
3 *FPAs are designed to be WTO compatible, and to promote responsible and sustainable fisheries in third country waters with an EU presence. See Discussion Paper 69 on Fisheries for a fuller description at www.ecdpm.org/dp69*
4 *50% from its own fishing grounds and 20% from distant waters*
5 *However, a recent EC Communication proposes that "the origin of the fish should be based on the flag, registration and simplified yet adequate conditions regarding property, the crew conditions being removed" (author's emphasis);*
6 *The geographical situation means that whilst most Mediterranean States have established 12-mile territorial seas, it has not been possible to extend these: if every state declared a 200 mile EEZ, there would be no sea left. This means that the EU fishing fleet is free to fish up to the territorial limits (12 miles) of all Mediterranean countries. Thus there is little need for the EU to enter into fisheries access arrangements with third countries in the Mediterranean.*
7 *CN refers to the Combined Nomenclature code system of the EU, as opposed to the Harmonised Commodity Description and Coding System (HS).*
8 *See EBA regulation, Council regulation N° 416/2001 http://europa.eu.int/comm/trade/issues/global/gsp/eba/index_en.htm*
9 **F***or a fuller discussion on FPAs, see the ECDPM EPA InBrief on Fisheries*

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Information sources

www.acp-eu-trade.org

Agritrade
http://agritrade.cta.int

FAO GLOBEFISH website
www.globefish.org

The Codex Alimentarius
www.codexalimentarius.net/web/index_en.jsp

The international food trade
www.fao.org/trade/index_en.asp

Fisheries conservation and trade rules (MEAs and WTO)
http://biodiversityeconomics.org/trade/topics-406-00.htm

Tariff and NTBs and the WTO (several important references)
www.globefish.org

Foreign Trade Information System (several FTAs):
www.sice.oas.org/tradee.asp

GSP rules of origin requirements: a guide to the GSP:
http://europa.eu.int/comm/taxation_customs/customs/origin/gsp/index_en.htm

Detailed fish trade regulations (Health and safety) for the EU market can be found on the Globefish web site:
www.globefish.org/presentations/rulesandregs/health %20and%20safety/regional/Europe/eu/hseu.htm

EU Food hygiene regulations applicable to fisheries products can be found on
http://europa.eu.int/comm/fisheries/doc_et_publ/factsheets/legal_texts/sani_en.htm

EU Trade Issues:
http://europa.eu.int/comm/trade/issues/index_en.htm

Acronyms

ACP	African, Caribbean and Pacific
ASCM	Agreement on subsidies and countervailing measures
ASEAN	Association of Southeast Asian Nations
CPA	Cotonou Partnership Agreement
DC	Developing Country
CFP	Common Fisheries Policy
EEZ	Exclusive Economic Zone
EPA	Economic Partnership Agreement
EU	European Union
EBA	Everything-But-Arms
FAO	Food and Agriculture Organization of the United Nations
FTA	Free Trade Agreement
FPA	Fisheries Partnership Agreement
GATT	General Agreement on Tariffs and Trade
GRT	Gross Registered Tonnage
GSP	Generalised System of Preferences
IUU	Illegal, Unregulated, Unreported (fishing)
LDCs	Least Developed Countries
LIFDC	Low Income Food Deficit Country
MEAs	Multilateral Environmental Agreements
MED	Mediterranean countries
MERCOSUR	Common Market of the South
MFN	Most-Favoured-Nation
OECD	Organisation for Economic Cooperation and Development
RFMOs	Regional Fisheries Management organisations
RoO	Rules of Origin
SPS	Standards for sanitary and phytosanitary measures
TBT	Technical barriers to trade
TDCA	Trade Development and Cooperation Agreement
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
USD	United States dollars
WTO	World Trade Organization

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The *InBrief* series Comparing EU free trade agreements is aimed at trade negotiators, policy makers, officials and experts in gathering a better technical insight into the evolution of EU trade agreements and the approaches adopted by the EU in negotiating these agreements. This might be of particular interest to actors involved with or interested in the current and forthcoming negotiations on trading agreements with the EU, such as the African, Caribbean and Pacific (ACP) countries with Economic Partnership Agreements (EPAs). A complementary and parallel series on EPAs, called *Economic Partnership Agreement InBriefs*, provides insights into the main issues faced by the ACP, and discusses options for the negotiations with the EU (www.ecdpm.org/epainbriefs).

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